

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65213-LH-18 (01/12)

Short Title: Take DNA Sample On Arrest for Certain Crimes. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON
ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL
OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended
by adding a new section to read:

"§ 15A-502A. DNA sample.

(a) The following definitions apply in this section:

- (1) 'DNA'. – As defined in G.S. 15A-266.2.
- (2) 'DNA Record'. – As defined in G.S. 15A-266.2.
- (3) 'DNA Sample'. – As defined in G.S. 15A-266.2.
- (4) 'SBI'. – State Bureau of Investigation.

(b) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or after December 1, 2005, any person who is arrested for committing any of the following offenses must provide his or her DNA sample pursuant to this section for DNA analysis and testing:

- (1) Any Class A through E felony unless the offense is a violation of Chapter 90 or Chapter 143 of the General Statutes or is a larceny or embezzlement offense. For purposes of this subdivision, the term 'larceny or embezzlement offense' is a violation of G.S. 14-74, 14-100, 53-129, 58-2-162, or 105-236(9a)a., or Article 18 of Chapter 14 of the General Statutes.
- (2) G.S. 14-32.1 Assaults on handicapped persons.
- (3) G.S. 14-277.3 Stalking.

1 (c) It is the duty of the arresting law enforcement officer to obtain the arrested
2 person's DNA sample and to forward the DNA sample to the appropriate laboratory for
3 DNA analysis and testing. A qualified member of the health profession shall take the
4 DNA sample. If the arrested person objects to having a DNA blood sample taken, then a
5 sample of saliva, hair, body tissue, or other bodily fluid that is appropriate for DNA
6 testing shall be taken for the DNA sample, unless provided otherwise by a court order.
7 No unreasonable or unnecessary force shall be used to obtain the DNA sample.

8 (d) The DNA record of identification characteristics resulting from the DNA
9 testing and the DNA sample itself shall be stored and maintained by the State Bureau of
10 Investigation in the State DNA Databank pursuant to Article 13 of Chapter 15A of the
11 General Statutes."

12 **SECTION 2.** G.S. 15A-266.2 reads as rewritten:

13 **"§ 15A-266.2. Definitions.**

14 As used in this Article, unless another meaning is specified or the context clearly
15 requires otherwise, the following terms have the meanings specified:

- 16 (1) "CODIS" means the FBI's national DNA identification index system
17 that allows the storage and exchange of DNA records submitted by
18 State and local forensic DNA laboratories. The term "CODIS" is
19 derived from Combined DNA Index System.
- 20 (2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of
21 cells and provides an individual's personal genetic blueprint. DNA
22 encodes genetic information that is the basis of human heredity and
23 forensic identification.
- 24 (2a) "DNA Blood Sample" in this Article means a blood sample provided
25 by any person convicted of offenses covered by this Article or
26 submitted to the SBI Laboratory for analysis pursuant to a criminal
27 investigation.
- 28 (3) "DNA Record" means DNA identification information stored in the
29 State DNA Database or CODIS for the purpose of generating
30 investigative leads or supporting statistical interpretation of DNA test
31 results. The DNA record is the result obtained from the DNA typing
32 tests. The DNA record is comprised of the characteristics of a DNA
33 sample which are of value in establishing the identity of individuals.
34 The results of all DNA identification tests on an individual's DNA
35 sample are also collectively referred to as the DNA profile of an
36 individual.
- 37 (4) "DNA Sample" in this Article ~~means~~ means either: (i) a blood sample
38 as defined by this section ~~provided by any person convicted of~~
39 ~~offenses covered by this Article or submitted to the SBI Laboratory for~~
40 ~~analysis pursuant to a criminal investigation.~~ or (ii) a sample of saliva,
41 hair, body tissue, or bodily fluid other than blood that is appropriate
42 for DNA testing or analysis and that is provided by a person arrested
43 for certain felonies and submitted for DNA analysis by the SBI
44 Laboratory pursuant to G.S. 15A-502A and this Article.

- 1 (5) "FBI" means the Federal Bureau of Investigation.
- 2 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible
- 3 for the policy management and administration of the State DNA
- 4 identification record system to support law enforcement, and for
- 5 liaison with the FBI regarding the State's participation in CODIS.
- 6 (7) "State DNA Database" means the SBI's DNA identification record
- 7 system to support law enforcement. It is administered by the SBI and
- 8 provides DNA records to the FBI for storage and maintenance in
- 9 CODIS. The SBI's DNA Database system is the collective capability
- 10 provided by computer software and procedures administered by the
- 11 SBI to store and maintain DNA records related to forensic casework,
- 12 to convicted offenders required to provide a DNA sample under this
- 13 Article, and to anonymous DNA records used for research or quality
- 14 control.
- 15 (8) "State DNA Databank" means the repository of DNA samples
- 16 collected under the provisions of this Article."

17 **SECTION 3.** G.S. 15A-266.4(a) reads as rewritten:

18 "(a) Unless a DNA blood sample has previously been obtained by lawful process

19 and stored in the State DNA database, and that sample has not been expunged pursuant

20 to G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the

21 crimes listed in subsection (b) of this section or who is found not guilty of any of these

22 crimes by reason of insanity and committed to a mental health facility in accordance

23 with G.S. 15A-1321 shall have a DNA blood sample drawn upon intake to jail, prison,

24 or the mental health facility. In addition, every person convicted on or after December

25 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall

26 provide a DNA blood sample as a condition of the sentence. A person who has been

27 convicted and incarcerated as a result of a conviction of one or more of these crimes

28 prior to December 1, 2003, or who was found not guilty of any of these crimes by

29 reason of insanity and committed to a mental health facility in accordance with

30 G.S. 15A-1321 before December 1, 2003, shall have a DNA blood sample drawn before

31 parole or release from the penal system or before release from the mental health

32 facility."

33 **SECTION 4.** G.S. 15A-266.5 reads as rewritten:

34 **"§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.**

- 35 (a) The tests to be performed on each ~~blood-DNA~~ sample are:
- 36 (1) To analyze and type the genetic markers contained in or derived from
- 37 the DNA.
- 38 (2) For law enforcement identification purposes.
- 39 (3) For research and administrative purposes, including:
- 40 a. Development of a population database when personal
- 41 identifying information is removed.
- 42 b. To support identification research and protocol development of
- 43 forensic DNA analysis methods.
- 44 c. For quality control purposes.

1 d. To assist in the recovery or identification of human remains
2 from mass disasters or for other humanitarian purposes,
3 including identification of missing persons.

4 (b) The DNA record of identification characteristics resulting from the DNA
5 testing shall be stored and maintained by the SBI in the State DNA Database. The DNA
6 sample itself will be stored and maintained by the SBI in the State DNA Databank."

7 **SECTION 5.** G.S. 15A-266.6 reads as rewritten:

8 **"§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

9 (a) Each DNA blood sample required to be drawn pursuant to G.S. 15A-266.4
10 from persons who are incarcerated shall be drawn at the place of incarceration. DNA
11 blood samples from persons who are not sentenced to a term of confinement shall be
12 drawn immediately following sentencing. The sentencing court shall order any person
13 not sentenced to a term of confinement to report immediately following sentencing to
14 the location designated by the sheriff. If the sample cannot be taken immediately, the
15 sheriff shall inform the court of the date, time, and location at which the sample shall be
16 taken, and the court shall enter that date, time, and location into its order. A copy of the
17 court order indicating the date, time, and location the person is to appear to have a
18 sample taken shall be given to the sheriff. If a person not sentenced to a term of
19 confinement fails to appear immediately following sentencing or at the date, time, and
20 location designated in the court order, the sheriff shall inform the court of the failure to
21 appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may
22 issue an order for arrest pursuant to G.S. 5A-16.

23 (b) Only a correctional health nurse technician, physician, registered professional
24 nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care
25 worker with phlebotomy training shall draw any DNA blood sample to be submitted for
26 analysis. No civil liability shall attach to any person authorized to draw blood by this
27 section as a result of drawing blood from any person if the blood was drawn according
28 to recognized medical procedures. No person shall be relieved from liability for
29 negligence in the drawing of any DNA blood sample.

30 (c) The SBI shall provide to the sheriff the materials and supplies necessary to
31 draw a DNA blood sample from a person not sentenced to a term of confinement. Any
32 DNA blood sample drawn from a person not sentenced to a term of confinement shall
33 be taken using the materials and supplies provided by the SBI."

34 **SECTION 6.** The catch line of G.S. 15A-266.7 reads as rewritten:

35 **"§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

36 **SECTION 7.** G.S. 15A-266.8 reads as rewritten:

37 **"§ 15A-266.8. DNA database exchange.**

38 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or
39 to contract out the DNA typing analysis to a qualified DNA laboratory that meets the
40 guidelines as established by the SBI, classify, and file the DNA record of identification
41 characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and
42 G.S. 15A-502A and to make such information available as provided in this section. The
43 SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets
44 guidelines as established by the SBI. The results of the DNA profile of individuals in

1 the State Database shall be made available to local, State, or federal law enforcement
2 agencies, approved crime laboratories which serve these agencies, or the district
3 attorney's office upon written or electronic request and in furtherance of an official
4 investigation of a criminal offense. These records shall also be available upon receipt of
5 a valid court order directing the SBI to release these results to appropriate parties not
6 listed above, when the court order is signed by a superior court judge after a hearing.
7 The SBI shall maintain a file of such court orders.

8 (b) The SBI shall adopt rules governing the methods of obtaining information
9 from the State Database and CODIS and procedures for verification of the identity and
10 authority of the requester.

11 (c) The SBI shall create a separate population database comprised of ~~blood~~-DNA
12 samples obtained under this Article, after all personal identification is removed. Nothing
13 shall prohibit the SBI from sharing or disseminating population databases with other
14 law enforcement agencies, crime laboratories that serve them, or other third parties the
15 SBI deems necessary to assist the SBI with statistical analysis of the SBI's population
16 databases. The population database may be made available to and searched by other
17 agencies participating in the CODIS system."

18 **SECTION 8.** G.S. 15A-1382 reads as rewritten:

19 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~fingerprints and DNA samples.**

20 (a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the
21 disposition of the case, a report of the disposition of the charges shall be made to the
22 State Bureau of Investigation on a form supplied by the State Bureau of Investigation
23 within 60 days following disposition. When a DNA sample is taken from the defendant
24 pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the
25 disposition of the charges shall be made to the State Bureau of Investigation on a form
26 supplied by the State Bureau of Investigation within 60 days following disposition.

27 (b) When a defendant is found guilty of any felony, regardless of the class of
28 felony, a report of the disposition of the charges shall be made to the State Bureau of
29 Investigation on a form supplied by the State Bureau of Investigation within 60 days
30 following disposition. If a convicted felon was not fingerprinted pursuant to
31 G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and
32 submitted to the State Bureau of Investigation along with the report of the disposition of
33 the charges on forms supplied by the State Bureau of Investigation.

34 (c) If a convicted felon did not have a DNA blood sample taken pursuant to
35 G.S. 15A-502A prior to the disposition of the case, then a DNA blood sample shall be
36 taken from the felon in accordance with Article 13 of this Chapter and submitted to the
37 State Bureau of Investigation along with the report of the disposition of the charges on
38 forms supplied by the State Bureau of Investigation as provided by Article 13 of this
39 Chapter."

40 **SECTION 9.** G.S. 7B-2201 reads as rewritten:

41 "**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior**
42 **court.**

1 (a) When jurisdiction over a juvenile is transferred to the superior court, the
2 juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State
3 Bureau of Investigation."

4 (b) When jurisdiction over a juvenile is transferred to the superior court, a DNA
5 sample shall be taken from the juvenile pursuant to G.S. 15A-502A."

6 **SECTION 10.** This act becomes effective December 1, 2005, and applies to
7 arrests made on or after that date.