

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1403  
PROPOSED COMMITTEE SUBSTITUTE H1403-CSRkf-98 [v.22]

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Short Title: Collect DNA Sample on Arrest.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON  
2 ARRESTED FOR COMMITTING CERTAIN OFFENSES, TO AMEND THE  
3 STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION, TO  
4 ESTABLISH THE MISSING PERSONS DNA IDENTIFICATION SYSTEM AS PART  
5 OF THE STATE'S CURRENT DNA DATABASE AND DNA DATABANK, AND TO  
6 PROVIDE FUNDING FOR THE DNA DATABASE AND DATABANK.  
7

8 Whereas, DNA databases are important tools in criminal investigations, in the  
9 exclusion of individuals who are the subject of criminal investigations or prosecutions, and in  
10 detecting recidivist acts; and

11 Whereas, it is the policy of this state to assist federal, state, and local criminal  
12 justice and law enforcement agencies in the identification and detection of individuals in  
13 criminal investigations and the identification and location of missing and unidentified persons;  
14 and

15 Whereas, it is in the best interests of the citizens of this state to establish a statewide  
16 DNA database containing DNA samples submitted by persons arrested for certain criminal  
17 offenses; and

18 Whereas, a statewide DNA database that includes DNA records and samples  
19 necessary for the identification of missing persons and unidentified human remains, including  
20 DNA samples voluntarily contributed by relatives of missing persons, will assist in bringing  
21 closure to families who have family members missing, and may also be an important tool in  
22 criminal investigations; Now, therefore,

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** This Act shall be known and may be cited as "The DNA Database  
25 Act of 2010."

26 **SECTION 2.** Article 13 of Chapter 15A of the General Statutes is amended by  
27 adding a new section to read:

28 **§ 15A-266.3A.**

29 (a) Unless a DNA sample has previously been obtained by lawful process and stored in  
30 the State DNA Database, and that sample has not been expunged pursuant to any provision of  
31 law, a DNA sample shall be obtained from any person who is arrested for committing an  
32 offense described in subsections (d) or (e) of this section for DNA analysis and testing.



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1 (b) It is the duty of the arresting law enforcement officer to obtain the arrested person's  
2 DNA sample and to forward the DNA sample to the appropriate laboratory for DNA analysis  
3 and testing.

4 (1) The DNA sample taken from the arrested person shall be by cheek swab or  
5 by any other method than by a blood sample, unless a court order authorizes  
6 that a DNA blood sample be obtained.

7 (2) If a DNA blood sample is taken, it shall comply with the requirements of  
8 G.S. 15A-266.6(b).

9 (c) The DNA record of identification characteristics resulting from the DNA testing and  
10 the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank  
11 pursuant to this Article.

12 (d) This section shall apply to a person arrested for violating any one of the following  
13 offenses in Chapter 14 of the General Statutes:

14 (1) G.S. 14-17. First and Second Degree Murder.

15 (2) G.S. 14-18. Manslaughter.

16 (3) Any offense in Article 7A. Rape and Other Sex Offenses.

17 (4) Any offense punishable as a felony in Article 8. Assaults; and G.S. 14-32.1,  
18 Assault on a Handicapped Person.

19 (5) Any offense in Article 10. Kidnapping and Abduction, or Article 10A,  
20 Human Trafficking.

21 (6) Any offense in Article 14. Burglary.

22 (7) Any offense in Article 15. Arson.

23 (8) Any offense in Article 17. Robbery.

24 (9) Any offense which would require the person to register under the provisions  
25 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and  
26 Public Protection Registration Programs.

27 (10) G.S. 14-196.3, Cyberstalking.

28 (11) G.S. 14-277.3A, Stalking.

29 (e) This section shall also apply to a person arrested for attempting, solicitation of  
30 another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the  
31 violations included in subsection (d) of this section.

32 (f) The State Bureau of Investigation shall remove a person's DNA sample, and any  
33 DNA biological samples that may have been retained, from the State DNA Database if all of  
34 the following conditions are met:

35 (1) As to the charge, or all charges, upon which a DNA sample is required under  
36 this section, a court or the State has taken action resulting in any one of the  
37 following:

38 a. The charge has been dismissed and not refiled within the applicable  
39 time period.

40 b. The person has been acquitted of the charge.

41 c. No charge was filed within the applicable time period.

42 (2) The SBI has determined that the person's DNA sample is not required to be  
43 in the State DNA Database under some other provision of law, or is not  
44 required to be in the State DNA Database based upon an offense from a  
45 different transaction or occurrence from the one which was the basis for the  
46 person's arrest.

47 (3) The SBI is provided with a form, promulgated by the Administrative Office  
48 of the Courts, which verifies that the requirements of subdivision (1) of this  
49 subsection have been met. The verification must be signed by a District or  
50 Superior Court Judge, or the District Attorney for the prosecutorial district in  
51 which the person was arrested. The State shall, within a reasonable period of

1 time following a circumstance described in subdivision (1) of this  
2 subsection, (i) provide the verification form for signature by a judge or the  
3 District Attorney, and (ii) transmit the verification form to the SBI.

4 (g) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or  
5 remove an item of physical evidence obtained from a sample if evidence relating to another  
6 person would thereby be destroyed.

7 (h) Any identification, warrant, probable cause to arrest, or arrest based upon a database  
8 match is not invalidated due to a failure to expunge or a delay in expunging records.

9 (i) A letter documenting expungement of the DNA record and destruction of the DNA  
10 sample shall be sent by the SBI to the person who provided the DNA sample at the address  
11 specified in the verification form.

12 (j) The SBI shall adopt procedures to comply with this section."

13 **SECTION 3.** G.S. 15A-266.2(4) reads as rewritten:

14 (4) "DNA Sample" in this Article means a blood, buccal, or any other sample  
15 sample of blood, saliva, hair, body tissue, or biological material that is  
16 appropriate for DNA testing or analysis and that is submitted to the SBI  
17 Laboratory pursuant to this Article, provided by any person convicted of  
18 offenses covered by this Article or submitted to the SBI Laboratory for  
19 analysis pursuant to a criminal investigation."

20 **SECTION 4.** G.S. 15A-266.4(a) reads as rewritten:

21 "(a) Unless a DNA sample has previously been obtained by lawful process and stored in  
22 the State DNA Database, and that sample has not been expunged pursuant to  
23 G.S. 15A-148, on or after December 1, 2003, a person any provision of law, a person:

24 (1) who Who is convicted of any of the crimes listed in subsection (b) of this  
25 section or who is found not guilty of any of these crimes by reason of  
26 insanity and committed to a mental health facility in accordance with  
27 G.S. 15A-1321 G.S. 15A-1321, shall have provide a DNA sample drawn  
28 upon intake to jail, prison, or the mental health facility. In addition, every  
29 person convicted on or after December 1, 2003, of any of these crimes, but  
30 who is not sentenced to a term of confinement, shall provide a DNA sample  
31 as a condition of the sentence.

32 (2) A person who Who has been convicted and incarcerated as a result of a  
33 conviction of one or more of these crimes prior to December 1, 2003, the  
34 crimes listed in subsection (b) of this section, or who was found not guilty of  
35 any of these crimes by reason of insanity and committed to a mental health  
36 facility in accordance with G.S. 15A-1321, G.S. 15A-1321 before December  
37 1, 2003, shall have provide a DNA sample drawn before parole or release  
38 from the penal system or before release from the mental health facility. This  
39 subdivision is retroactive and applies to (i) any person convicted of any of  
40 these offenses, regardless of the date of the conviction, or (ii) any person  
41 acquitted of any of these offenses by reason of insanity.

42 (b) Crimes covered by this Article include all of the following:

43 (1) All felonies.

44 (2) ~~G.S. 14-32.1 Assaults on handicapped persons.~~

45 (3) ~~G.S. 14-277.3A or former Former G.S. 14-277.3 – Stalking.~~

46 (4) ~~G.S. 14-27.5A Sexual battery.~~

47 (5) All offenses described in G.S. 15A-266.3A."

48 **SECTION 5.** G.S. 15A-266.5 reads as rewritten:

49 "**§ 15A-266.5. Tests to be performed on blood sample. DNA sample.**

50 (a) The tests to be performed on each blood DNA sample are:

- 1 (1) To analyze and type the genetic markers contained in or derived from the  
2 DNA.
- 3 (2) For law enforcement identification purposes.
- 4 (3) For research and administrative purposes, including:  
5 a. Development of a population database when personal identifying  
6 information is removed.  
7 b. To support identification research and protocol development of  
8 forensic DNA analysis methods.  
9 c. For quality control purposes.  
10 d. To assist in the recovery or identification of human remains from  
11 mass disasters or for other humanitarian purposes, including  
12 identification of missing persons.

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

16 **SECTION 6.** G.S. 15A-266.6 reads as rewritten:

17 "**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ DNA analysis.**

18 (a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from  
19 persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA  
20 samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained  
21 immediately following sentencing. The sentencing court shall order any person not sentenced  
22 to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample  
23 pursuant to any provision of law requiring a sample and whose DNA sample has not been  
24 expunged pursuant to law, to report immediately following sentencing to the location  
25 designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform  
26 the court of the date, time, and location at which the sample shall be taken, and the court shall  
27 enter that date, time, and location into its order. A copy of the court order indicating the date,  
28 time, and location the person is to appear to have a sample taken shall be given to the sheriff. If  
29 a person not sentenced to a term of confinement fails to appear immediately following  
30 sentencing or at the date, time, and location designated in the court order, the sheriff shall  
31 inform the court of the failure to appear and the court may issue an order to show cause  
32 pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The  
33 defendant shall continue to be subject to the court's order to provide a DNA sample until such  
34 time as his or her DNA sample is successfully entered into the State DNA Database.

35 (b) If, for any reason, the defendant provides a DNA blood sample instead of by some  
36 other method, Only ~~only~~ a correctional health nurse technician, physician, registered  
37 professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health  
38 care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted  
39 for analysis. No civil liability shall attach to any person authorized to draw blood by this  
40 section as a result of drawing blood from any person if the blood was drawn according to  
41 recognized medical procedures. No person shall be relieved from liability for negligence in the  
42 drawing-obtaining of any a DNA sample-sample by any method.

43 (c) The SBI shall provide to the sheriff the materials and supplies necessary to ~~draw~~  
44 obtain a DNA sample from a person not sentenced to a term of confinement. Any DNA sample  
45 drawn from a person not sentenced to a term of confinement shall be taken using the materials  
46 and supplies provided by the SBI."

47 **SECTION 7.** G.S. 15A-266.7 reads as rewritten:

48 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

49 ~~The SBI shall adopt rules governing the procedures to be used in the submission,~~  
50 ~~identification, analysis, and storage of DNA samples and typing results of DNA samples~~  
51 ~~submitted under this Article. The DNA sample shall be securely stored in the State Databank.~~

1 ~~The typing results shall be securely stored in the State Database. These procedures shall also~~  
2 ~~include quality assurance guidelines to insure that DNA identification records meet standards~~  
3 ~~and audit standards for laboratories which submit DNA records to the State Database. Records~~  
4 ~~of testing shall be retained on file at the SBI.~~

5 (a) The SBI shall:

6 (1) Adopt rules governing the procedures to be used in the submission,  
7 identification, analysis, and storage of DNA samples and typing results of  
8 DNA samples submitted under this Article. These procedures shall also  
9 include quality assurance guidelines to insure that DNA identification  
10 records meet audit standards for laboratories which submit DNA records to  
11 the State Database.

12 (2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and  
13 DNA Databasing Laboratories that meet or exceed the quality assurance  
14 guidelines established for such laboratories by the CODIS unit of the Federal  
15 Bureau of Investigation.

16 (b) DNA samples shall be securely stored in the State Databank. The typing results  
17 shall be securely stored in the State Database.

18 (c) Records of testing shall be retained on file at the SBI."

19 **SECTION 8.** G.S. 15A-266.8 reads as rewritten:

20 **"§ 15A-266.8. DNA database exchange.**

21 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to  
22 contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines  
23 as established by the SBI, classify, and file the DNA record of identification characteristic  
24 profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such  
25 information available as provided in this section. The SBI may contract out DNA typing  
26 analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The  
27 results of the DNA profile of individuals in the State Database shall be made available to local,  
28 State, or federal law enforcement agencies, approved crime laboratories which serve these  
29 agencies, or the district attorney's office upon written or electronic request and in furtherance of  
30 an official investigation of a criminal offense. These records shall also be available upon  
31 receipt of a valid court order directing the SBI to release these results to appropriate parties not  
32 listed above, when the court order is signed by a superior court judge after a hearing. The SBI  
33 shall maintain a file of such court orders.

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

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

44 **SECTION 9.** Article 23 of Chapter 15A of the General Statutes is amended by  
45 adding a new section to read:

46 **"§ 15A-502A. DNA sample upon arrest.**

47 A DNA sample shall be obtained from any person arrested for an offense designated under  
48 G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of  
49 the General Statutes."

50 **SECTION 10.** G.S. 15A-1382 reads as rewritten:

51 **"§ 15A-1382. Reports of disposition; ~~fingerprints~~ fingerprints and DNA samples.**

1 (a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the  
2 disposition of the case, a report of the disposition of the charges shall be made to the State  
3 Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days  
4 following disposition.

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

12 (c) When a defendant has provided a DNA sample pursuant to G.S. 15A-502A and G.S.  
13 15A-266.3A, a determination shall be made whether the disposition of the charges requires that  
14 a verification form be completed and transmitted to the SBI, pursuant to G.S. 15A-266.3A(f)."

15 **SECTION 11.** G.S. 7B-2201 reads as rewritten:

16 "**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

17 (a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile  
18 shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of  
19 Investigation.

20 (b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample  
21 shall be taken from the juvenile if the offenses are included in the provisions of  
22 G.S. 15A-266.3A."

23 **SECTION 12.** Article 13 of Chapter 15A of the General Statutes is amended by  
24 adding a new section to read:

25 "**§ 15A-270.15. Missing persons DNA identification system.**

26 (a) The SBI shall establish and administer a missing persons DNA identification system  
27 as part of the State DNA Database and the State DNA Databank. The purpose of the missing  
28 persons DNA identification system is to facilitate the use of DNA records by law enforcement  
29 agencies and the Chief Medical Examiner in the identification and location of missing and  
30 unidentified persons or human remains. The DNA missing persons identification system shall  
31 consist of all of the following DNA indexes:

32 (1) Unidentified persons.

33 (2) Unidentified human remains.

34 (3) Relatives of, or known reference samples from, missing persons.

35 (b) Samples from unidentified persons or relatives of a missing person shall be provided  
36 to the SBI as follows:

37 (1) Upon the completion of a permission to search form supplied by the SBI that  
38 authorizes the collection of a DNA sample.

39 (2) Upon the receipt of a properly executed search warrant.

40 (3) Upon the issuance of a court order.

41 (c) Samples from unidentified human remains shall be provided by the Chief Medical  
42 Examiner.

43 (d) Samples of known reference materials from missing persons shall be provided by  
44 the investigating law enforcement agency.

45 (e) Searches of samples collected pursuant to this section may be made against DNA  
46 indexes consisting of any of the following, but shall not be performed against DNA indexes  
47 consisting of evidentiary samples resulting from criminal investigations:

48 (1) Unidentified persons.

49 (2) Unidentified human remains.

50 (3) Relatives of, or known reference samples from, missing persons.

51 (4) Persons required to provide a DNA sample under G.S. 15A-266.3A.

1           (5)    Persons required to provide a DNA sample under G.S. 15A-266.4.

2           (f)    The SBI may contract or associate with any State agency or private entity that meets  
3 guidelines established by the SBI to fulfill any part of its responsibilities under this section."

4           **SECTION 13.** G.S. 7A-304(a) reads as rewritten:

5           "(a)   In every criminal case in the superior or district court, wherein the defendant is  
6 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the  
7 prosecuting witness, the following costs shall be assessed and collected, except that when the  
8 judgment imposes an active prison sentence, costs shall be assessed and collected only when  
9 the judgment specifically so provides, and that no costs may be assessed when a case is  
10 dismissed.

11           . . . .  
12           (9)    For the support and services of the State Bureau of Investigation DNA  
13 Database and DNA Databank, the sum of three dollars (\$3.00), to be  
14 remitted to the State Treasurer."

15           **SECTION 14.** Section 13 of this act becomes effective July 1, 2010. The  
16 remainder of this act becomes effective October 1, 2010.