

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 95

Short Title: DNA Samples on Arrest.

(Public)

Sponsors: Senators Rand; Albertson, Allran, Berger, Bingham, Carrington, Dalton, Dannelly, Forrester, Garrou, Garwood, Hagan, Hartsell, Horton, Hoyle, Kinnaird, Lee, Metcalf, Moore, Odom, Plyler, Purcell, Robinson, Rucho, Soles, Swindell, Warren, Weinstein, and Wellons.

Referred to: Judiciary I.

February 7, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON
3 ARRESTED FOR CERTAIN FELONIES AND STORED IN THE STATE DNA
4 DATABASE, TO ESTABLISH PILOT PROGRAMS TO IMPLEMENT THIS
5 PROCEDURE, AND TO PROVIDE THAT A DEFENDANT MAY FILE A
6 MOTION FOR APPROPRIATE RELIEF AT ANY TIME AFTER A VERDICT IF
7 DNA EVIDENCE IS AVAILABLE REGARDING THE CRIME FOR WHICH
8 THE DEFENDANT WAS CONVICTED BUT THE DNA EVIDENCE WAS NOT
9 ADMITTED INTO EVIDENCE AT THE TRIAL.

10 The General Assembly of North Carolina enacts:

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

13 **"§ 15A-502A. DNA sample.**

14 (a) Any person who is arrested for committing any of the following felony
15 offenses must provide his or her DNA sample pursuant to this section for DNA analysis
16 and testing:

17 (1) Any Class A through E felony unless the offense is a violation of
18 Chapter 90 of the General Statutes.

19 (2) Any felony that involves assaultive behavior that results in serious
20 injury or death.

21 (3) Any felony that is a sexual offense.

22 (4) Any felony that is committed against a juvenile, a disabled person, or
23 an elder adult.

24 (b) It is the duty of the arresting law enforcement officer to obtain the arrested
25 person's DNA sample and to forward the DNA sample to the appropriate laboratory for

1 DNA analysis and testing. A qualified member of the health profession shall take the
2 DNA sample. No unreasonable or unnecessary force shall be used to obtain the DNA
3 sample.

4 (c) The DNA record of identification characteristics resulting from the DNA
5 testing and the DNA sample itself shall be stored and maintained by the State Bureau of
6 Investigation in the State DNA Databank pursuant to Article 13 of Chapter 15A of the
7 General Statutes.

8 (d) Any law enforcement agency that, in the course of a criminal investigation,
9 collects evidence containing DNA shall retain a portion of the evidence sufficient to
10 extract a DNA sample for five years after the conclusion of the prosecution of the crime.
11 At the end of that five-year period of time, the portion of evidence retained in
12 compliance with this subsection may be destroyed unless otherwise provided by law.

13 (e) The following definitions apply in this section:

14 (1) 'DNA. – As defined in G.S. 15A-266.2.

15 (2) 'DNA Record'. – As defined in G.S. 15A-266.2.

16 (3) 'DNA Sample'. – A sample of body tissue, blood, or other bodily fluid
17 that is appropriate for DNA testing or analysis by the SBI Laboratory
18 pursuant to Article 13 of Chapter 15A of the General Statutes. The
19 term includes a DNA blood sample as defined in G.S. 15A-266.2 and a
20 DNA fluid or tissue sample as defined in G.S. 15A-266.2.

21 (4) 'SBI'. – State Bureau of Investigation."

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

23 **"§ 15A-266.2. Definitions.**

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

26 (1) 'CODIS' means the FBI's national DNA identification index system
27 that allows the storage and exchange of DNA records submitted by
28 State and local forensic DNA laboratories. The term "CODIS" is
29 derived from Combined DNA Index System.

30 (2) 'DNA' means deoxyribonucleic acid. DNA is located in the nucleus of
31 cells and provides an individual's personal genetic blueprint. DNA
32 encodes genetic information that is the basis of human heredity and
33 forensic identification.

34 ~~(4)~~(2a) 'DNA Blood Sample' in this Article means a blood sample provided by
35 any person convicted of offenses covered by this Article or submitted
36 to the SBI Laboratory for analysis pursuant to a criminal investigation.

37 (2b) 'DNA Fluid or Tissue Sample' in this Article means a sample of saliva,
38 hair, body tissue, or bodily fluid other than blood that is provided by a
39 person arrested for certain felonies and submitted for DNA analysis as
40 required by G.S. 15A-502A.

41 (3) 'DNA Record' means DNA identification information stored in the
42 State DNA Database or CODIS for the purpose of generating
43 investigative leads or supporting statistical interpretation of DNA test
44 results. The DNA record is the result obtained from the DNA typing

1 tests. The DNA record is comprised of the characteristics of a DNA
2 sample which are of value in establishing the identity of individuals.
3 The results of all DNA identification tests on an individual's DNA
4 sample are also collectively referred to as the DNA profile of an
5 individual.

6 (4) 'DNA Sample' in this Article means a sample of body tissue, blood, or
7 other bodily fluid that is appropriate for DNA testing or analysis by the
8 SBI Laboratory pursuant to this Article. The term includes both DNA
9 blood samples and DNA fluid or tissue samples.

10 (5) 'FBI' means the Federal Bureau of Investigation.

11 (6) 'SBI' means the State Bureau of Investigation. The SBI is responsible
12 for the policy management and administration of the State DNA
13 identification record system to support law enforcement, and for
14 liaison with the FBI regarding the State's participation in CODIS.

15 (7) 'State DNA Database' means the SBI's DNA identification record
16 system to support law enforcement. It is administered by the SBI and
17 provides DNA records to the FBI for storage and maintenance in
18 CODIS. The SBI's DNA Database system is the collective capability
19 provided by computer software and procedures administered by the
20 SBI to store and maintain DNA records related to forensic casework,
21 to convicted offenders required to provide a DNA sample under this
22 Article, and to anonymous DNA records used for research or quality
23 control.

24 (8) 'State DNA Databank' means the repository of DNA samples collected
25 under the provisions of this Article."

26 **SECTION 3.** G.S. 15A-266.5 reads as rewritten:

27 **"§ 15A-266.5. Tests to be performed on ~~blood sample~~ blood, other bodily fluids, or**
28 **tissue samples.**

29 (a) The tests to be performed on each ~~blood~~ blood, other bodily fluid, or tissue
30 sample are:

31 (1) To analyze and type the genetic markers contained in or derived from
32 the DNA.

33 (2) For law enforcement identification purposes.

34 (3) For research and administrative purposes, including:

35 a. Development of a population database when personal
36 identifying information is removed.

37 b. To support identification research and protocol development of
38 forensic DNA analysis methods.

39 c. For quality control purposes.

40 d. To assist in the recovery or identification of human remains
41 from mass disasters or for other humanitarian purposes,
42 including identification of missing persons.

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

4 **SECTION 4.** The catch line of G.S. 15A-266.7 reads as rewritten:

5 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample~~, blood,**
6 **other bodily fluid, or tissue samples.**"

7 **SECTION 5.** G.S. 15A-266.8 reads as rewritten:

8 "**§ 15A-266.8. DNA database ~~exchange~~; exchange; respond to inmate inquiry**
9 **regarding DNA evidence.**

10 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or
11 to contract out the DNA typing analysis to a qualified DNA laboratory that meets the
12 guidelines as established by the SBI, classify, and file the DNA record of identification
13 characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S.
14 15A-502A and to make such information available as provided in this section. The SBI
15 may contract out DNA typing analysis to a qualified DNA laboratory that meets
16 guidelines as established by the SBI. The results of the DNA profile of individuals in
17 the State Database shall be made available to local, State, or federal law enforcement
18 agencies, approved crime laboratories which serve these agencies, or the district
19 attorney's office upon written or electronic request and in furtherance of an official
20 investigation of a criminal offense. These records shall also be available upon receipt of
21 a valid court order directing the SBI to release these results to appropriate parties not
22 listed above, when the court order is signed by a superior court judge after a hearing.
23 The SBI shall maintain a file of such court orders.

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

27 (c) The SBI shall create a separate population database comprised of ~~blood~~
28 blood, other bodily fluid, and tissue samples obtained under this Article, after all
29 personal identification is removed. Nothing shall prohibit the SBI from sharing or
30 disseminating population databases with other law enforcement agencies, crime
31 laboratories that serve them, or other third parties the SBI deems necessary to assist the
32 SBI with statistical analysis of the SBI's population databases. The population database
33 may be made available to and searched by other agencies participating in the CODIS
34 system.

35 (d) The SBI shall respond within a reasonable period of time to any inquiry from
36 an incarcerated defendant convicted of a felony described in G.S. 15A-502A as to
37 whether evidence was collected in the investigation of the crime for which the
38 defendant was convicted from which a DNA sample may be obtained and the identify of
39 the law enforcement agency that retains that evidence."

40 **SECTION 6.** G.S. 15A-266.10(a) reads as rewritten:

41 "(a) Any person whose DNA record or profile has been included in the State
42 Database and whose DNA sample is stored in the State Databank may apply for
43 expungement on the grounds that the felony arrest or conviction that resulted in the
44 inclusion of the person's DNA record or profile in the State Database or the inclusion of

1 the person's DNA sample in the State Databank has been reversed and the case
2 dismissed. The person, either individually or through an attorney, may apply to the court
3 for expungement of the record as provided in G.S. 15A-146. A copy of the application
4 for expungement shall be served on the district attorney for the judicial district in which
5 the felony conviction was obtained not less than 20 days prior to the date of the hearing
6 on the application. A certified copy of the order reversing and dismissing the conviction
7 shall be attached to an order of expungement."

8 **SECTION 7.** G.S. 15A-1382 reads as rewritten:

9 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~fingerprints and DNA samples.**

10 (a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the
11 disposition of the case, a report of the disposition of the charges shall be made to the
12 State Bureau of Investigation on a form supplied by the State Bureau of Investigation
13 within 60 days following disposition. When a DNA sample is taken from the defendant
14 pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the
15 disposition of the charges shall be made to the State Bureau of Investigation on a form
16 supplied by the State Bureau of Investigation within 60 days following disposition.

17 (b) When a defendant is found guilty of any felony, regardless of the class of
18 felony, a report of the disposition of the charges shall be made to the State Bureau of
19 Investigation on a form supplied by the State Bureau of Investigation within 60 days
20 following disposition. If a convicted felon was not fingerprinted pursuant to G.S.
21 15A-502 prior to the disposition of the case, his fingerprints shall be taken and
22 submitted to the State Bureau of Investigation along with the report of the disposition of
23 the charges on forms supplied by the State Bureau of Investigation.

24 (c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-
25 502A prior to the disposition of the case, then a DNA sample shall be taken from the
26 felon in accordance with Article 13 of this Chapter of the General Statutes and
27 submitted to the State Bureau of Investigation along with the report of the disposition of
28 the charges on forms supplied by the State Bureau of Investigation as provided by
29 Article 13 of this Chapter.

30 **SECTION 8.** G.S. 15A-1415 is amended by adding a new subsection to
31 read:

32 "(c1) Notwithstanding the time limitations herein, a defendant at any time after a
33 verdict may by a motion for appropriate relief, raise the ground that DNA evidence is
34 available, that the DNA evidence was not admitted into evidence at the trial, and that
35 the DNA evidence has a direct and material bearing upon the defendant's eligibility for
36 the death penalty or the defendant's guilt or innocence. A motion based on this ground
37 must be filed within a reasonable time after notification of the defendant by a law
38 enforcement agency that the DNA sample exists and the location of the databank in
39 which that DNA sample is stored."

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.** By January 1, 2002, the Administrative Office of the Courts
7 in cooperation with the Department of Justice shall develop a pilot program to
8 implement this act. The Administrative Office of the Courts after consulting with the
9 Department of Justice shall designate three counties to participate in the pilot program.

10 **SECTION 11.** There is appropriated from the General Fund to the
11 Administrative Office of the Courts the sum of two hundred fifty thousand dollars
12 (\$250,000) for the 2001-2002 fiscal year and the sum of two hundred fifty thousand
13 dollars (\$250,000) for the 2002-2003 fiscal year to implement the pilot program
14 established in Section 10 of this act.

15 **SECTION 12.** Sections 10 and 12 of this act are effective when it becomes
16 law. Section 11 of this act becomes effective July 1, 2001. The remainder of this act
17 becomes effective December 1, 2001, and applies to arrests made on or after that date in
18 those counties designated by the Administrative Office of the Courts as participants in
19 the pilot program.