

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1050

Short Title: DNA Database and Databank.

(Public)

Sponsors: Representatives Richardson; and Spears.

Referred to: Judiciary I.

April 19, 1993

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DNA DATABASE AND DATABANK ACT OF 1993.

The General Assembly of North Carolina enacts:

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

"ARTICLE 13.

"DNA DATABASE AND DATABANK.

"§ 15A-266. Short title.

This Article may be cited as the DNA Database and Databank Act of 1993.

"§ 15A-266.1. Policy.

The policy of the State is to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of violent crimes against the person in which biological evidence is often left by the perpetrator or is recovered from the crime scene(s), as well as to identify missing persons and victims of mass disasters.

"§ 15A-266.2. Definitions.

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

- (1) 'CODIS' (originally Combined DNA Index System) means the FBI's national DNA identification index system which allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories.

- 1 (2) 'DNA' means deoxyribonucleic acid. DNA is located in the nucleus of
2 cells and provides an individual's personal genetic blueprint. DNA
3 encodes genetic information that is the basis of human heredity and
4 forensic identification.
- 5 (3) 'DNA Record' means DNA identification information stored in the
6 State DNA Database or CODIS for the purpose of generating
7 investigative leads or supporting statistical interpretation of DNA test
8 results. The DNA record is the result obtained from the DNA typing
9 tests. The DNA record is comprised of the characteristics of a DNA
10 sample which are of value in establishing the identity of individuals.
11 The results of all DNA identification tests on an individual's DNA
12 sample is also collectively referred to as the DNA profile of an
13 individual.
- 14 (4) 'DNA Sample' in this Article means a blood sample provided by any
15 person convicted of offenses covered by this Article or submitted to
16 the SBI Laboratory for analysis pursuant to a criminal investigation.
- 17 (5) 'FBI' means the Federal Bureau of Investigation.
- 18 (6) 'SBI' means the State Bureau of Investigation. The SBI is responsible
19 for the policy management and administration of the State DNA
20 identification record system to support law enforcement, and for
21 liaison with the FBI regarding the State's participation in CODIS.
- 22 (7) 'State DNA Database' means the SBI's DNA identification record
23 system to support law enforcement. It is administered by the SBI and
24 provides DNA records to the FBI for storage and maintenance in
25 CODIS. The SBI's DNA Database system is the collective capability
26 provided by computer software and procedures administered by the
27 SBI to store and maintain DNA records (DNA profiles) related to
28 forensic casework, to convicted offenders required to provide a DNA
29 sample under this Article, and to anonymous DNA records used for
30 research or quality control
- 31 (8) 'State DNA Databank' means the repository of DNA samples collected
32 under the provisions of this Article.

33 **"§ 15A-266.3. Procedural compatibility with the FBI.**

34 The DNA identification system as established by the SBI shall be compatible with
35 the procedures specified by the FBI, including use of comparable test procedures,
36 laboratory equipment, supplies, and computer software.

37 **"§ 15A-266.4. Blood sample required for DNA analysis upon conviction.**

38 Every person convicted on or after July 1, 1994, under the following General
39 Statutes and who was incarcerated on July 1, 1994, for one or more of these offenses
40 shall have a DNA sample drawn for inclusion in the State DNA Database.

41 On or after July 1, 1994, individuals convicted of the below listed crimes shall have
42 a DNA sample drawn upon intake to a jail or prison. In addition, every person
43 convicted on or after July 1, 1994, of any of the below listed crimes, but who is not
44 sentenced to a term of confinement shall provide a DNA sample as condition of such

1 sentence. Those individuals already convicted and incarcerated as a result of conviction
 2 of one or more of the below listed crimes prior to July 1, 1994, shall have a DNA
 3 sample drawn before parole or release from the penal system.

4 Crimes covered by this Article include:

5		<u>G.S. 14-17</u>	- <u>Murder in the first and second degree.</u>
6		<u>G.S. 14-27.2</u>	- <u>First degree rape.</u>
7		<u>G.S. 14-27.3</u>	- <u>Second degree rape.</u>
8		<u>G.S. 14-27.4</u>	- <u>First degree sexual offense.</u>
9		<u>G.S. 14-27.5</u>	- <u>Second degree sexual offense.</u>
10		<u>G.S. 14-28</u>	- <u>Malicious castration.</u>
11		<u>G.S. 14-29</u>	- <u>Castration or other maiming.</u>
12		<u>G.S. 14-30</u>	- <u>Malicious maiming.</u>
13		<u>G.S. 14-30.1</u>	- <u>Malicious throwing of corrosive acid or alkali.</u>
14		<u>G.S. 14-31</u>	- <u>Malicious assault in secret manner.</u>
15		<u>G.S. 14-32</u>	- <u>Felonious assault with deadly weapon with intent to</u> 16 <u>kill.</u>
17		<u>G.S. 14-32.1</u>	- <u>Assaults on handicapped persons.</u>
18		<u>G.S. 14-34.1</u>	- <u>Discharging barreled weapon or firearm into</u> 19 <u>occupied property.</u>
20		<u>G.S. 14-34-2</u>	- <u>Assault with firearm or other deadly weapon upon</u> 21 <u>law enforcement officer, fireman, or EMS</u> 22 <u>personnel.</u>
23		<u>G.S. 14-39(a)(3)</u>	- <u>Kidnapping for the purpose of doing serious</u> 24 <u>bodily harm to the person.</u>
25		<u>G.S. 14-49</u>	- <u>Malicious use of explosive or incendiary.</u>
26		<u>G.S. 14-58</u>	- <u>First degree arson.</u>
27		<u>G.S. 14-58.2</u>	- <u>First degree arson.</u>
28		<u>G.S. 14-87</u>	- <u>Robbery with a dangerous weapon.</u>
29		<u>G.S. 14-277.3</u>	- <u>Stalking.</u>
30		<u>G.S. 14-202.1</u>	- <u>Indecent liberties;</u> 31 <u>and common law robbery.</u>

32 **"§ 15A-266.5. Tests to be performed on blood sample.**

33 The tests to be performed on each blood sample are

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| 34 | (1) | <u>To analyze and type the genetic markers contained in</u>
35 <u>or derived from the DNA,</u> |
| 36 | (2) | <u>For law enforcement identification purposes,</u> |
| 37 | (3) | <u>For research and administrative purposes, including</u> |
| 38 | a. | <u>Development of a population database when</u>
39 <u>personal identifying information is removed;</u> |
| 40 | b. | <u>To support identification research and</u>
41 <u>protocol development of forensic DNA</u>
42 <u>analysis methods;</u> |
| 43 | c. | <u>For quality control purposes, and</u> |

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

5 The DNA record of identification characteristics (the DNA profile of each DNA
6 sample) resulting from the DNA testing shall be stored and maintained by the SBI in the
7 State DNA Database.

8 The DNA sample itself will be stored and maintained by the SBI in the State DNA
9 Databank.

10 **"§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

11 Each DNA sample required to be drawn pursuant to G.S. 15A-266.4 from persons
12 who are incarcerated shall be drawn at the receiving unit [jail or prison]. DNA samples
13 from persons who are not sentenced to a term of confinement shall be drawn at a prison
14 or jail unit to be specified by the sentencing court. Only a correctional health nurse
15 technician, physician, registered professional nurse, licensed practical nurse, laboratory
16 technician, phlebotomist, or other health care worker with phlebotomy training shall
17 draw any DNA sample to be submitted for analysis. No civil liability shall attach to any
18 person authorized to draw blood as provided herein as a result of drawing blood from
19 any person submitting thereto, provided the blood was drawn according to recognized
20 medical procedures. However, no person shall be relieved from liability for negligence
21 in the drawing of any DNA sample.

22 The SBI shall issue appropriate regulations relating to procedures for DNA sample
23 collection, identification, and shipment to the SBI Laboratory for DNA identification
24 typing.

25 **"§ 15A-266.7. Procedures for conducting DNA analysis of blood sample.**

26 The SBI shall establish regulations governing the procedures to be used in the
27 submission, identification, analysis, and storage of DNA samples and typing results of
28 DNA samples submitted under this Article. These procedures shall also include quality
29 assurance guidelines to insure that DNA identification records meet standards and audit
30 standards for laboratories which submit DNA records to the State Database. Such
31 regulations/procedures and records of testing shall be retained on file at the SBI. Except
32 as specifically provided in this section and in G.S. 15A-266.8, the typing results (the
33 DNA profile of that sample) of the analysis as well as the DNA samples themselves
34 shall be securely stored in either the State Database or Databank respectively and shall
35 remain confidential.

36 **"§ 15A-266.8. DNA database exchange.**

37 It shall be the duty of the SBI to receive DNA samples, to store, to analyze, classify
38 and file the DNA record of identification characteristic profiles of DNA samples
39 submitted pursuant to G.S. 15A-266.7 and to make such information available as
40 provided in this section. The results of the DNA profile of individuals in the State
41 Database shall be made available to local, State, or federal law enforcement agencies,
42 approved crime laboratories which serve these agencies, or the District Attorney's
43 Office upon written or electronic request and in furtherance of an official investigation
44 of a criminal offense. These records shall also be available upon receipt of a valid court

1 order directing the SBI to release these results to appropriate parties not listed above,
2 when the court order is signed by a superior court judge after a hearing. The SBI shall
3 maintain a file of such court orders.

4 The SBI shall adopt regulations governing (i) the methods of obtaining
5 information from the State Database and CODIS and (ii) procedures for verification of
6 the identity and authority of the requester.

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

14 **"§ 15A-266.9. Cancellation of authority to exchange DNA records.**

15 The SBI is authorized to revoke the right of a forensic DNA laboratory within the
16 State to exchange DNA identification records with federal, State, or local criminal
17 justice agencies if the required control and privacy standards specified by the SBI for
18 the State DNA Database are not met by these agencies.

19 **"§ 15A-266.10. Expungement.**

20 Any person whose DNA record or profile has been included in the State Database
21 and whose DNA sample is stored in the State Databank may request expungement on
22 the grounds that the felony conviction upon which the authority for including his/her
23 DNA profile was based has been reversed and the case dismissed. The individual or
24 his/her attorney may petition the court for expungement of the record, and the order for
25 expungement shall be a valid court order signed by a superior court judge and directed
26 to the SBI. Attached to such order for expungement shall be a certified copy of the
27 order reversing and dismissing the conviction.

28 Upon receipt of an expungement order, the SBI shall purge the DNA record and all
29 other identifiable information from the State Database and the DNA sample stored in
30 the State Databank covered by the order. If the individual has more than one entry in
31 the State Database and Databank, then only the entry covered by the expungement order
32 shall be deleted from the State Database or Databank.

33 **"§ 15A-266.11. Unauthorized uses of DNA Databank - penalties.**

34 Any person who, by virtue of employment, or official position, has possession of, or
35 access to, individually identifiable DNA information contained in the State DNA
36 Database or Databank and who willfully discloses it in any manner to any person or
37 agency not entitled to receive it is guilty of a misdemeanor in accordance with G.S. 14-
38 3.

39 Any person who, without authorization, willfully obtains individually identifiable
40 DNA information from the State DNA Database or Databank is guilty of a
41 misdemeanor in accordance with G.S. 14-3.

42 **"§ 15A-266.12. Confidentiality of records.**

43 (a) All DNA profiles and samples submitted to the SBI pursuant to this Article
44 shall be treated as confidential except as provided in G.S. 15A-266.8.

1 **(b)** Only DNA records that directly relate to the identification of individuals shall
2 be collected and stored. These records shall NOT be used for any purpose other than to
3 facilitate personal identification of an offender; provided that in appropriate
4 circumstances such records may be used to identify potential victims of mass disasters
5 or missing persons."

6 Sec. 2. This act becomes effective December 1, 1993.