

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 746

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

Sponsors: Senators Rand; and Bingham.

Referred to: Judiciary I.

March 22, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON  
3 ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL  
4 OFFENSES.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 15A-502A. DNA sample.**

9 (a) The following definitions apply in this section:

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

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

12 (3) 'DNA Sample'. – As defined in G.S. 15A-266.2.

13 (4) 'SBI'. – State Bureau of Investigation.

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

19 (1) Any Class A through E felony unless the offense is a violation of  
20 Chapter 90 or Chapter 143 of the General Statutes or is a larceny or  
21 embezzlement offense. For purposes of this subdivision, the term  
22 'larceny or embezzlement offense' is a violation of G.S. 14-74, 14-100,  
23 53-129, 58-2-162, or 105-236(9a)a., or Article 18 of Chapter 14 of the  
24 General Statutes.

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

26 (3) G.S. 14-277.3 Stalking.

27 (c) It is the duty of the arresting law enforcement officer to obtain the arrested  
28 person's DNA sample and to forward the DNA sample to the appropriate laboratory for  
29 DNA analysis and testing. A qualified member of the health profession shall take the

1 DNA sample. If the arrested person objects to having a DNA blood sample taken, then a  
2 sample of saliva, hair, body tissue, or other bodily fluid that is appropriate for DNA  
3 testing shall be taken for the DNA sample, unless provided otherwise by a court order.  
4 No unreasonable or unnecessary force shall be used to obtain the DNA sample.

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

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

10 **"§ 15A-266.2. Definitions.**

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

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

17 (2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of  
18 cells and provides an individual's personal genetic blueprint. DNA  
19 encodes genetic information that is the basis of human heredity and  
20 forensic identification.

21 (2a) "DNA Blood Sample" in this Article means a blood sample provided  
22 by any person convicted of offenses covered by this Article or  
23 submitted to the SBI Laboratory for analysis pursuant to a criminal  
24 investigation.

25 (3) "DNA Record" means DNA identification information stored in the  
26 State DNA Database or CODIS for the purpose of generating  
27 investigative leads or supporting statistical interpretation of DNA test  
28 results. The DNA record is the result obtained from the DNA typing  
29 tests. The DNA record is comprised of the characteristics of a DNA  
30 sample which are of value in establishing the identity of individuals.  
31 The results of all DNA identification tests on an individual's DNA  
32 sample are also collectively referred to as the DNA profile of an  
33 individual.

34 (4) "DNA Sample" in this Article ~~means~~ means either: (i) a blood sample  
35 as defined by this section ~~provided by any person convicted of~~  
36 ~~offenses covered by this Article or submitted to the SBI Laboratory for~~  
37 ~~analysis pursuant to a criminal investigation or (ii) a sample of saliva,~~  
38 ~~hair, body tissue, or bodily fluid other than blood that is appropriate~~  
39 ~~for DNA testing or analysis and that is provided by a person arrested~~  
40 ~~for certain felonies and submitted for DNA analysis by the SBI~~  
41 ~~Laboratory pursuant to G.S. 15A-502A and this Article.~~

42 (5) "FBI" means the Federal Bureau of Investigation.

43 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible  
44 for the policy management and administration of the State DNA

1 identification record system to support law enforcement, and for  
2 liaison with the FBI regarding the State's participation in CODIS.

3 (7) "State DNA Database" means the SBI's DNA identification record  
4 system to support law enforcement. It is administered by the SBI and  
5 provides DNA records to the FBI for storage and maintenance in  
6 CODIS. The SBI's DNA Database system is the collective capability  
7 provided by computer software and procedures administered by the  
8 SBI to store and maintain DNA records related to forensic casework,  
9 to convicted offenders required to provide a DNA sample under this  
10 Article, and to anonymous DNA records used for research or quality  
11 control.

12 (8) "State DNA Databank" means the repository of DNA samples  
13 collected under the provisions of this Article."

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

15 "(a) Unless a DNA blood sample has previously been obtained by lawful process  
16 and stored in the State DNA database, and that sample has not been expunged pursuant  
17 to G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the  
18 crimes listed in subsection (b) of this section or who is found not guilty of any of these  
19 crimes by reason of insanity and committed to a mental health facility in accordance  
20 with G.S. 15A-1321 shall have a DNA blood sample drawn upon intake to jail, prison,  
21 or the mental health facility. In addition, every person convicted on or after December  
22 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall  
23 provide a DNA blood sample as a condition of the sentence. A person who has been  
24 convicted and incarcerated as a result of a conviction of one or more of these crimes  
25 prior to December 1, 2003, or who was found not guilty of any of these crimes by  
26 reason of insanity and committed to a mental health facility in accordance with  
27 G.S. 15A-1321 before December 1, 2003, shall have a DNA blood sample drawn before  
28 parole or release from the penal system or before release from the mental health  
29 facility."

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

31 "**§ 15A-266.5. Tests to be performed on ~~blood~~-DNA sample.**

32 (a) The tests to be performed on each ~~blood~~-DNA sample are:

- 33 (1) To analyze and type the genetic markers contained in or derived from  
34 the DNA.
- 35 (2) For law enforcement identification purposes.
- 36 (3) For research and administrative purposes, including:
- 37 a. Development of a population database when personal  
38 identifying information is removed.
- 39 b. To support identification research and protocol development of  
40 forensic DNA analysis methods.
- 41 c. For quality control purposes.
- 42 d. To assist in the recovery or identification of human remains  
43 from mass disasters or for other humanitarian purposes,  
44 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 5.** G.S. 15A-266.6 reads as rewritten:

5 **"§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

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

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

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

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

32 **"§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

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

34 **"§ 15A-266.8. DNA database exchange.**

35 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or  
36 to contract out the DNA typing analysis to a qualified DNA laboratory that meets the  
37 guidelines as established by the SBI, classify, and file the DNA record of identification  
38 characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and  
39 G.S. 15A-502A and to make such information available as provided in this section. The  
40 SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets  
41 guidelines as established by the SBI. The results of the DNA profile of individuals in  
42 the State Database shall be made available to local, State, or federal law enforcement  
43 agencies, approved crime laboratories which serve these agencies, or the district  
44 attorney's office upon written or electronic request and in furtherance of an official

1 investigation of a criminal offense. These records shall also be available upon receipt of  
2 a valid court order directing the SBI to release these results to appropriate parties not  
3 listed above, when the court order is signed by a superior court judge after a hearing.  
4 The SBI shall maintain a file of such court orders.

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

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

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

16 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~fingerprints and DNA samples.**

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

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

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

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

38 "**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior**  
39 **court.**

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

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

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