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Short Title: DNA Database and Databank.

(Public)

Sponsors:

Referred to:

April 19, 1993

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.**

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

37 **§ 15A-266.3. Procedural compatibility with the FBI.**

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

41 **§ 15A-266.4. Blood sample required for DNA analysis upon conviction.**

42 (a) On or after 1 July 1994, a person who is convicted of any of the crimes listed  
43 in subsection (b) of this section shall have a DNA sample drawn upon intake to a jail or  
44 prison. In addition, every person convicted on or after 1 July 1994, of any of these

1 crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample  
 2 as a condition of the sentence. A person who has been convicted and incarcerated as a  
 3 result of a conviction of one or more of these crimes prior to 1 July 1994 shall have a  
 4 DNA sample drawn before parole or release from the penal system.

5 (b) Crimes covered by this Article include:

6 G.S. 14-17 - Murder in the first and second degree.

7 G.S. 14-27.2 - First degree rape.

8 G.S. 14-27.3 - Second degree rape.

9 G.S. 14-27.4 - First degree sexual offense.

10 G.S. 14-27.5 - Second degree sexual offense.

11 G.S. 14-28 - Malicious castration.

12 G.S. 14-29 - Castration or other maiming.

13 G.S. 14-30 - Malicious maiming.

14 G.S. 14-30.1 - Malicious throwing of corrosive acid or  
 15 alkali.

16 G.S. 14-31 - Malicious assault in secret manner.

17 G.S. 14-32 - Felonious assault with deadly weapon with  
 18 intent to kill.

19 G.S. 14-32.1 - Assaults on handicapped persons.

20 G.S. 14-34.1 - Discharging barreled weapon or firearm  
 21 into occupied property.

22 G.S. 14-34.2 - Assault with firearm or other deadly  
 23 weapon upon law enforcement officer,  
 24 fireman, or EMS personnel.

25 G.S. 14-39(a)(3) - Kidnapping for the purpose of doing  
 26 serious bodily harm to the person.

27 G.S. 14-49 - Malicious use of explosive or incendiary.

28 G.S. 14-58.2 - Burning of mobile home, manufactured-  
 29 type house, or recreational trailer home.

30 G.S. 14-202.1 - Taking indecent liberties with children.

31 G.S. 14-87 - Robbery with a dangerous weapon.

32 G.S. 14-277.3 - Stalking.

33 - Common law robbery.

34 - First degree arson.

35 **§ 15A-266.5. Tests to be performed on blood sample.**

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

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

39 (2) For law enforcement identification purposes.

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

41 a. Development of a population database when personal  
 42 identifying information is removed.

43 b. To support identification research and protocol development of  
 44 forensic DNA analysis methods.

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

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

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

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

19   **"§ 15A-266.7. Procedures for conducting DNA analysis of blood sample.**

20       The SBI shall adopt rules governing the procedures to be used in the submission,  
21   identification, analysis, and storage of DNA samples and typing results of DNA samples  
22   submitted under this Article. The DNA sample shall be securely stored in the State  
23   Databank. The typing results shall be securely stored in the State Database. These  
24   procedures shall also include quality assurance guidelines to insure that DNA  
25   identification records meet standards and audit standards for laboratories which submit  
26   DNA records to the State Database. Records of testing shall be retained on file at the  
27   SBI.

28   **"§ 15A-266.8. DNA database exchange.**

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

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

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

11 **"§ 15A-266.9. Cancellation of authority to exchange DNA records.**

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

16 **"§ 15A-266.10. Expungement.**

17       (a) Any person whose DNA record or profile has been included in the State  
18 Database and whose DNA sample is stored in the State Databank may apply for  
19 expungement on the grounds that the felony conviction that resulted in the inclusion of  
20 the person's DNA record or profile in the State Database or the inclusion of the person's  
21 DNA sample in the State Databank has been reversed and the case dismissed. The  
22 person, either individually or through an attorney, may apply to the court for  
23 expungement of the record as provided in G.S. 15A-146. A copy of the application for  
24 expungement shall be served on the district attorney for the judicial district in which the  
25 felony conviction was obtained not less than 20 days prior to the date of the hearing on  
26 the application. A certified copy of the order reversing and dismissing the conviction  
27 shall be attached to an order of expungement.

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

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

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

39       (b) Any person who, without authorization, willfully obtains individually  
40 identifiable 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, only if the General  
7 Assembly appropriates funds to implement the purpose of this act.