

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 401
HOUSE BILL 1050

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) 'CODIS' means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term 'CODIS' is derived from Combined DNA Index System.
- (2) 'DNA' means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
- (3) 'DNA Record' means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA

sample are also collectively referred to as the DNA profile of an individual.

- (4) 'DNA Sample' in this Article means a blood sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.
- (5) 'FBI' means the Federal Bureau of Investigation.
- (6) 'SBI' means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.
- (7) 'State DNA Database' means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.
- (8) 'State DNA Databank' means the repository of DNA samples collected under the provisions of this Article.

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

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

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

(a) On or after 1 July 1994, a person who is convicted of any of the crimes listed in subsection (b) of this section shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after 1 July 1994, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to 1 July 1994 shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article include:

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| <u>G.S. 14-17</u> | <u>- Murder in the first and second degree.</u> |
| <u>G.S. 14-27.2</u> | <u>- First degree rape.</u> |
| <u>G.S. 14-27.3</u> | <u>- Second degree rape.</u> |
| <u>G.S. 14-27.4</u> | <u>- First degree sexual offense.</u> |
| <u>G.S. 14-27.5</u> | <u>- Second degree sexual offense.</u> |
| <u>G.S. 14-28</u> | <u>- Malicious castration.</u> |
| <u>G.S. 14-29</u> | <u>- Castration or other maiming.</u> |
| <u>G.S. 14-30</u> | <u>- Malicious maiming.</u> |
| <u>G.S. 14-30.1</u> | <u>- Malicious throwing of corrosive acid or alkali.</u> |
| <u>G.S. 14-31</u> | <u>- Malicious assault in secret manner.</u> |

- G.S. 14-32 - Felonious assault with deadly weapon with intent to kill.
- G.S. 14-32.1 - Assaults on handicapped persons.
- G.S. 14-34.1 - Discharging barreled weapon or firearm into occupied property.
- G.S. 14-34.2 - Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.
- G.S. 14-39(a)(3) - Kidnapping for the purpose of doing serious bodily harm to the person.
- G.S. 14-49 - Malicious use of explosive or incendiary.
- G.S. 14-58.2 - Burning of mobile home, manufactured-type house, or recreational trailer home.
- G.S. 14-202.1 - Taking indecent liberties with children.
- G.S. 14-87 - Robbery with a dangerous weapon.
- G.S. 14-277.3 - Stalking.
- Common law robbery.
- First degree arson.

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

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

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

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

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

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

person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample.

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

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

"§ 15A-266.8. DNA database exchange.

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

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

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

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

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

"§ 15A-266.10. Expungement.

(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for

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

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

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

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

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

"§ 15A-266.12. Confidentiality of records.

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

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

Sec. 2. This act becomes effective December 1, 1993, only if the General Assembly appropriates funds to implement the purpose of this act.

In the General Assembly read three times and ratified this the 19th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives