

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1383

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors: Senators Clodfelter and Stein.

Referred to: Judiciary I.

May 26, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE COLLECTION AND ANALYSIS OF DNA SAMPLES
3 FROM INDIVIDUALS ARRESTED FOR FELONY OFFENSES, TO PROVIDE FOR
4 THE EXPUNGEMENT OF DNA RECORDS, TO STRENGTHEN PROVISIONS
5 RELATING TO THE CONFIDENTIALITY OF SUCH DNA RECORDS, AND TO
6 INCREASE THE COST OF COURT TO COVER THE EXPENSES OF DNA
7 COLLECTION AND ANALYSIS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 15A-266 reads as rewritten:

10 "§ 15A-266. Short title.

11 This Article may be cited as the DNA Database and Databank Act of ~~1993~~2010.

12 SECTION 2. G.S. 15A-266.1 reads as rewritten:

13 "§ 15A-266.1. Policy.

14 It is the policy of the State to assist federal, State, and local criminal justice and law
15 enforcement agencies in the identification, detection, or exclusion of individuals who are
16 subjects of the investigation or prosecution of felonies or violent crimes against the person.
17 Identification, detection, and exclusion are facilitated by the analysis of biological evidence that
18 is often left by the perpetrator or is recovered from the crime scene. The analysis of biological
19 evidence can also be used to identify missing ~~persons~~persons, unidentified human remains, and
20 victims of mass disasters. Therefore, it is in the best interests of the State to establish a DNA
21 database and DNA databank containing DNA samples submitted by persons arrested for felony
22 offenses, persons required to register as sex offenders, and persons convicted of certain
23 misdemeanor and felony offenses. Additionally, the State DNA database and DNA databank
24 may include DNA records and samples necessary for the identification of missing persons and
25 unidentified human remains. The General Assembly also finds that a match between casework
26 evidence DNA samples from a criminal investigation and DNA samples from a State or federal
27 DNA database of certain offenders and arrestees may be used to sustain probable cause for the
28 issuance of a warrant to obtain the DNA sample from these individuals."

29 SECTION 3. G.S. 15A-266.2 reads as rewritten:

30 "§ 15A-266.2. Definitions.

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

- 33 (1) "CODIS" means the FBI's national DNA identification index system that
34 allows the storage and exchange of DNA records submitted by federal, State
35 and local forensic DNA laboratories. The term "CODIS" is derived from
36 Combined DNA Index System, (NDIS) administered and operated by the
37 Federal Bureau of Investigation.



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- 1 (1a) "Custodial Agency" means the governmental entity in possession of
2 evidence collected as part of a criminal investigation or prosecution. ~~This~~
3 ~~term includes a central evidence storage facility operated by a State agency.~~
- 4 (2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of cells~~
5 and provides an individual's personal genetic blueprint. DNA encodes
6 genetic information that is the basis of human heredity and forensic
7 identification.
- 8 (3) "DNA Record" means DNA identification information stored in the State
9 DNA Database or CODIS for the purpose of generating investigative leads
10 or supporting statistical interpretation of DNA test results. The DNA record
11 is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record
12 is comprised of the characteristics of a DNA sample which are of value in
13 establishing the identity of individuals. The results of all DNA identification
14 ~~tests analyses~~ on an individual's DNA sample are also collectively referred
15 to as the DNA profile of an individual.
- 16 (4) "DNA Sample" ~~in this Article~~ means ~~a blood, buccal, cheek swabs, or any~~
17 ~~other biological sample containing cells~~ provided by any person with respect
18 ~~to convicted of~~ offenses covered by this Article or submitted to the SBI
19 Laboratory State Bureau of Investigation pursuant to this Article for analysis
20 pursuant to a criminal ~~investigation.~~ investigation or storage or both.
- 21 (5) "FBI" means the Federal Bureau of Investigation.
- 22 (5a) "NDIS" means the National DNA Index System that is the national DNA
23 database system of DNA profile records ~~which that~~ meet federal quality
24 assurance and privacy standards.
- 25 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible for
26 the ~~policy management~~ policy, management, and administration of the State
27 DNA identification record system to support law ~~enforcement,~~ and for
28 ~~liaison with the FBI regarding the State's participation in~~
29 CODIS enforcement and other criminal justice agencies.
- 30 (7) "State DNA Database" means the SBI's DNA identification record system to
31 support law enforcement. It is administered by the SBI and provides DNA
32 records to the FBI for storage and maintenance in CODIS. The SBI's DNA
33 Database system is the collective capability provided by computer software
34 and procedures administered by the SBI to store and maintain DNA records
35 ~~related to forensic casework, to convicted offenders required to provide a~~
36 ~~DNA sample under this Article, and to anonymous DNA records used for~~
37 ~~research or quality control.~~ to: forensic casework; convicted offenders, and
38 arrestees required to provide a DNA sample under this Article; persons
39 required to register as sex offenders under G.S. 14-208.7; unidentified
40 persons or body parts; missing persons; relatives of missing persons; and
41 anonymous DNA profiles used for forensic validation, forensic protocol
42 development, or quality control purposes or establishment of a population
43 statistics database for use by criminal justice agencies.
- 44 (8) "State DNA Databank" means the repository of DNA samples collected
45 under the provisions of this Article.
- 46 (9) "Criminal Justice Agency" means an agency or institution of a federal, State,
47 or local government, other than the office of the public defender, that
48 performs as part of its principal function, activities relating to the
49 apprehension, investigation, prosecution, adjudication, incarceration,
50 supervision, or rehabilitation of criminal offenders.
- 51 (10) "Qualifying Offense" means all of the following:

- 1 a. Any felony offense as defined in the General Statutes or under
2 common law.
3 b. The following misdemeanor offenses: G.S. 14-32.1 (assaults on
4 handicapped persons), G.S. 14-277.3 (stalking), and G.S. 14-27.5A
5 (sexual battery).
6 c. Any offense requiring a person to register as a sex offender under
7 G.S. 14-208.7.

8 (11) "Arrestee" means any person arrested for a felony offense.

9 (12) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea
10 of nolo contendere, or a finding of not guilty by reason of insanity or mental
11 disease or defect. A finding of not guilty by reason of insanity or mental
12 disease or defect shall be considered a conviction for purposes of this Article
13 and the collection of a DNA sample.

14 **SECTION 4.** G.S. 15A-266.3 reads as rewritten:

15 "**§ 15A-266.3. Procedural compatibility with the FBI. Establishment of State DNA**
16 **database and databank.**

17 The DNA identification system as established by the SBI shall be compatible with the
18 procedures specified by the FBI, including use of comparable test procedures, laboratory
19 equipment, supplies, and computer software. There is established under the administration of
20 the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records
21 to the FBI for the searching of DNA records nationwide and storage and maintenance by
22 CODIS. The State DNA databank shall serve as the repository for DNA samples obtained
23 pursuant to this Article. The State DNA database shall be compatible with the procedures
24 specified by the FBI, including use of comparable test procedures, laboratory and computer
25 equipment, supplies and computer platform and software. The State DNA database shall have
26 the capability provided by computer software and procedures administered by the SBI to store
27 and maintain DNA records related to all of the following:

28 (1) Crime scene evidence and forensic casework.

29 (2) Arrestees, offenders, and persons found not guilty by reason of insanity, who
30 are required to provide a DNA sample under this Article.

31 (3) Persons required to register as sex offenders under G.S. 14-208.7.

32 (4) Unidentified persons or body parts.

33 (5) Missing persons.

34 (6) Relatives of missing persons.

35 (7) Anonymous DNA profiles used for forensic validation, forensic protocol
36 development, or quality control purposes or establishment of a population
37 statistics database, for use by criminal justice agencies."

38 **SECTION 5 .** G.S. 15A-266.4 reads as rewritten:

39 "**§ 15A-266.4. Blood sample required for DNA analysis upon conviction or finding of not**
40 **guilty by reason of insanity. Persons required to provide DNA sample;**
41 **collection of DNA samples from persons convicted of, or arrested for,**
42 **qualifying offenses.**

43 (a) Conviction or Arrest for Qualifying Offense. – A person convicted of, or arrested
44 for, a qualifying offense shall provide a DNA sample in accordance with the provisions of this
45 section. Unless a DNA sample has previously been obtained by lawful process and stored in the
46 State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or
47 after December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b)
48 of this section or who is found not guilty of any of these crimes by reason of insanity and
49 committed to a mental health facility in accordance with G.S. 15A-1321 shall have a blood or
50 cheek swab DNA sample drawn upon intake to jail, prison, or the mental health facility. In
51 addition, every person convicted on or after December 1, 2003, of any of these crimes, but who

1 is not sentenced to a term of confinement, shall provide a blood or cheek swab DNA sample as
2 a condition of the sentence. A person who has been convicted and incarcerated as a result of a
3 conviction of one or more of these crimes prior to December 1, 2003, or who was found not
4 guilty of any of these crimes by reason of insanity and committed to a mental health facility in
5 accordance with G.S. 15A-1321 before December 1, 2003, shall have a blood or cheek swab
6 DNA sample drawn before parole or release from the penal system or before release from the
7 mental health facility.

8 (b) Crimes Covered by Article. – Crimes covered by this Article include all of the
9 following:

- 10 (1) All felonies.
- 11 (2) G.S. 14-32.1 – Assaults on handicapped persons.
- 12 (3) G.S. 14-277.3A or former G.S. 14-277.3 – Stalking.
- 13 (4) G.S. 14-27.5A – Sexual battery.

14 (c) Person Convicted of Certain Crimes Must Provide DNA Sample. – A person who is
15 convicted of any of the crimes listed in subsection (b) of this section shall have a DNA sample
16 drawn upon intake to jail, prison, or the mental health facility. In addition, every person
17 convicted of any of these crimes, but who is not sentenced to a term of confinement, shall
18 provide a DNA sample as a condition of the sentence. A person who has been convicted and
19 incarcerated as a result of a conviction of one or more of these crimes before October 1, 2010,
20 shall have a DNA sample drawn before parole or release from the penal system or before
21 release from the mental health facility. Crimes covered by this subsection include all of the
22 following:

- 23 (1) All felonies.
- 24 (2) G.S. 14-32.1
- 25 (3) Assaults on handicapped persons.
- 26 (4) G.S. 14-277.3 Stalking.
- 27 (5) G.S. 14-27.5A Sexual battery.

28 (d) Sex Offender Must Provide DNA Sample. – A person required to register as a sex
29 offender under G.S. 14-208.7 who has not already provided a DNA sample in accordance with
30 this Article shall provide a DNA sample at a time and manner determined by the registration
31 agency and consistent with SBI policies and procedures.

32 (e) Arrestee Must Provide DNA Sample. – Effective January 1, 2011, an arrestee shall
33 provide a DNA sample at the time of arrest or booking. An arrestee is any person arrested for a
34 felony offense. The arresting authority shall be responsible for obtaining the required DNA
35 sample from an arrestee required to provide a DNA sample in accordance with the policies and
36 procedures established by the SBI.

37 (f) Conviction of Qualifying Offense After October 1, 2010. – A person who is
38 convicted for a qualifying offense on or after October 1, 2010, shall provide a DNA sample as
39 follows:

- 40 (1) A person who is sentenced to a period of incarceration shall provide a DNA
41 sample upon intake to a prison, jail, mental health facility, or any other
42 detention facility or institution. If the person is already confined at the time
43 of sentencing, the person shall provide a DNA sample immediately after
44 sentencing.
- 45 (2) A person who is convicted for a qualifying offense shall provide a DNA
46 sample as a condition for any sentence which disposition will not involve a
47 period of incarceration. The agency supervising the person shall determine
48 the time for collection of the DNA sample.

49 (g) Interstate Transfer on Parole or Probation. – When the State accepts a person from
50 another state under any interstate compact, or under any other reciprocal agreement with any
51 county, State, or federal agency, or any other provision of law, whether or not the person is

1 confined or released, the acceptance is conditional on the person providing a DNA sample if
2 the person was convicted of an offense in any other jurisdiction that would be considered a
3 qualifying offense as defined in G.S. 15A-266.2 if committed in this State, or if the person was
4 convicted of an equivalent offense in any other jurisdiction. The person shall provide the DNA
5 sample in accordance with the policies and procedures of the custodial institution or
6 supervising agency.

7 (h) Applicability and Additional Sample. – The requirements of this Article are
8 mandatory and apply regardless of whether a court advises a person that a DNA sample must
9 be provided to the State DNA databank and database as a condition of probation or parole. A
10 person who has been sentenced to death or life without the possibility of parole, or to any life
11 or indeterminate term of incarceration is not exempt from the requirements of this Article. Any
12 person subject to this Article, who has not provided a DNA sample for any reason, including
13 the person's release prior to October 1, 2010, an oversight or error, or because of the person's
14 transfer from another jurisdiction, shall give a DNA sample for inclusion in the State DNA
15 database after being notified by the SBI of the requirement to provide a DNA sample. In the
16 event that a person's DNA sample is not adequate for any reason, the person shall provide
17 another DNA sample for analysis.

18 (i) Time and Manner of Collecting DNA Sample. – The agency having control,
19 custody, and supervision of a person subject to this Article may, in consultation with the SBI,
20 promulgate policies and procedures specifying the time and manner of collection of the DNA
21 samples as well as any other matter necessary to carry out its responsibilities under this Article.
22 The SBI shall provide the materials and supplies necessary to collect a DNA sample from
23 persons required to provide a DNA sample under this Article.

24 (j) Contracting With Third Parties. – The agency or institution having custody or
25 control or the agency providing supervision of any person subject to this Article, as appropriate,
26 may contract with third parties to provide for the collection of the DNA samples described in
27 this section.

28 (k) Identification Information. – A fingerprint shall be provided by an arrestee or a
29 person convicted of a qualifying offense for the purpose of verifying the identity of that person.

30 (l) Samples Provided to the SBI. – DNA samples collected pursuant to this Article shall
31 be forwarded to the SBI Laboratory in accordance with policies and procedures established by
32 the SBI.

33 (m) Limitation on Liability. – A person authorized to collect DNA samples shall not be
34 civily or criminally liable for the collection of a DNA sample pursuant to this Article if the
35 person performs these duties in good faith and in a reasonable manner according to generally
36 accepted medical or other professional practices.

37 (n) Reasonable Use of Force. – Duly authorized law enforcement and corrections
38 personnel may employ reasonable force in cases where an individual refuses to provide a DNA
39 sample required under this Article, and no such employee shall be civilly or criminally liable
40 for the use of such reasonable force.

41 (o) Refusal to Provide DNA Sample. – Any person who is subject to the requirements
42 of this Article, and who, after receiving notification of the requirement to provide a DNA
43 sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1
44 misdemeanor.

45 (p) Mistake Does Not Invalidate a Database Match. – The detention, arrest, or
46 conviction of a person based upon a database match or database information is not invalidated
47 if it is determined that the sample was obtained or placed in the database by mistake."

48 **SECTION 6.** G.S. 15A-266.5 reads as rewritten:

49 **"§ 15A-266.5. ~~Tests to be performed on blood sample.~~ Analysis of DNA samples.**

50 (a) The tests to be performed on each ~~blood~~ DNA sample ~~are:~~ shall be to analyze and
51 type the genetic markers contained in or derived from the DNA for the following:

- 1 (1) ~~To analyze and type the genetic markers contained in or derived from the~~
2 ~~DNA.~~
- 3 (2) For law enforcement identification purposes.
- 4 (2a) To assist in the recovery or identification of human remains from mass
5 disasters or for other humanitarian purposes, including identification of
6 missing persons.
- 7 (3) For research and administrative purposes, including:
- 8 a. Development of a population database when personal identifying
9 information is removed.
- 10 b. To support identification research and protocol development of
11 forensic DNA analysis methods.
- 12 c. For quality control purposes.
- 13 d. ~~To assist in the recovery or identification of human remains from~~
14 ~~mass disasters or for other humanitarian purposes, including~~
15 ~~identification of missing persons.~~
- 16 (b) The DNA record of identification characteristics resulting from the DNA testing
17 shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself
18 will be stored and maintained by the SBI in the State DNA Databank.
- 19 (c) All or part of the remainder of the DNA sample stored in the State DNA databank
20 may be used only by criminal justice agencies for any of the following:
- 21 (1) For forensic validation studies and forensic protocol development purposes.
- 22 (2) To create a statistical database provided that no personally identifying
23 information is included.
- 24 (3) For retesting to validate or update the original analysis or for quality control
25 purposes.
- 26 (d) Searches of the State DNA database shall be performed in accordance with State
27 and federal law and procedures.
- 28 (e) The SBI may contract with third parties for the purposes of implementing this
29 Article. Any other party contracting to carry out the functions of this Article shall be subject to
30 the same restrictions and requirements of this Article, insofar as applicable, to the SBI, as well
31 as any additional restrictions imposed by the SBI."

32 **SECTION 7.** G.S. 15A-266.6 reads as rewritten:

33 "**§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**Procedures.

34 (a) ~~Each DNA sample required to be drawn pursuant to G.S. 15A-266.4 from persons~~
35 ~~who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons~~
36 ~~who are not sentenced to a term of confinement shall be drawn immediately following~~
37 ~~sentencing. The sentencing court shall order any person not sentenced to a term of confinement~~
38 ~~to report immediately following sentencing to the location designated by the sheriff. If the~~
39 ~~sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and~~
40 ~~location at which the sample shall be taken, and the court shall enter that date, time, and~~
41 ~~location into its order. A copy of the court order indicating the date, time, and location the~~
42 ~~person is to appear to have a sample taken shall be given to the sheriff. If a person not~~
43 ~~sentenced to a term of confinement fails to appear immediately following sentencing or at the~~
44 ~~date, time, and location designated in the court order, the sheriff shall inform the court of the~~
45 ~~failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and~~
46 ~~may issue an order for arrest pursuant to G.S. 5A-16.~~

47 (b) ~~Only a correctional health nurse technician, physician, registered professional nurse,~~
48 ~~licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with~~
49 ~~phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability~~
50 ~~shall attach to any person authorized to draw blood by this section as a result of drawing blood~~

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

3 (e) ~~The SBI shall provide to the sheriff the materials and supplies necessary to draw a~~
4 ~~DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn~~
5 ~~from a person not sentenced to a term of confinement shall be taken using the materials and~~
6 ~~supplies provided by the SBI. The SBI shall adopt policies governing the procedures to be used~~
7 ~~in the submission, identification, analysis, and storage of DNA samples and typing results of~~
8 ~~DNA samples submitted under this Article. These procedures shall also require compliance~~
9 ~~with national quality assurance standards to ensure that the DNA records satisfy standards for~~
10 ~~acceptance of such records into the national DNA index."~~

11 SECTION 8. G.S. 15A-266.7 reads as rewritten:

12 "~~§ 15A-266.7. Procedures for conducting DNA analysis of blood sample.~~DNA database
13 exchange.

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

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

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

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

42 SECTION 9. G.S. 15A-266.8 reads as rewritten:

43 "~~§ 15A-266.8. DNA database exchange.~~Cancellation of authority to exchange DNA
44 records.

45 (a) ~~It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to~~
46 ~~contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines~~
47 ~~as established by the SBI, classify, and file the DNA record of identification characteristic~~
48 ~~profiles of DNA samples submitted pursuant to G.S. 15A 266.7 and to make such information~~
49 ~~available as provided in this section. The SBI may contract out DNA typing analysis to a~~
50 ~~qualified DNA laboratory that meets guidelines as established by the SBI. The results of the~~
51 ~~DNA profile of individuals in the State Database shall be made available to local, State, or~~

1 federal law enforcement agencies, approved crime laboratories which serve these agencies, or
2 the district attorney's office upon written or electronic request and in furtherance of an official
3 investigation of a criminal offense. These records shall also be available upon receipt of a valid
4 court order directing the SBI to release these results to appropriate parties not listed above,
5 when the court order is signed by a superior court judge after a hearing. The SBI shall maintain
6 a file of such court orders.

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

10 (c) ~~The SBI shall create a separate population database comprised of blood samples
11 obtained under this Article, after all personal identification is removed. Nothing shall prohibit
12 the SBI from sharing or disseminating population databases with other law enforcement
13 agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to
14 assist the SBI with statistical analysis of the SBI's population databases. The population
15 database may be made available to and searched by other agencies participating in the CODIS
16 system. The SBI may revoke the right of a forensic DNA laboratory within the State to
17 exchange DNA identification records with federal, State, or local criminal justice agencies if
18 the required quality control and privacy standards specified by the SBI for the State DNA
19 Database are not met by these agencies."~~

20 **SECTION 10.** G.S. 15A-266.9 reads as rewritten:

21 "**§ 15A-266.9. Cancellation of authority to exchange DNA records.**Confidentiality of
22 records.

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

27 (a) All DNA records and samples submitted to the SBI pursuant to this Article shall be
28 treated as confidential and shall not be disclosed to or shared with any person or agency except
29 as provided in G.S. 15A-266.8.

30 (b) Only DNA records and samples that directly relate to the identification of
31 individuals shall be collected and stored. These records and samples shall solely be used as a
32 part of the criminal justice system for the purpose of facilitating the personal identification of
33 the perpetrator of a criminal offense; provided that in appropriate circumstances such records
34 may be used to identify potential victims of mass disasters or missing persons.

35 (c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not
36 a public record as defined by G.S. 132-1.

37 (d) In the case of a criminal proceeding, requests to access a person's DNA record shall
38 be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI
39 shall not be required to provide the State DNA database for criminal discovery purposes.

40 (e) DNA records and DNA samples submitted to the SBI may only be released for the
41 following authorized purposes:

42 (1) For law enforcement identification purposes, including the identification of
43 human remains, to federal, State, or local criminal justice agencies;

44 (2) For criminal defense and appeal purposes, to a defendant who shall have
45 access to samples and analyses performed in connection with the case in
46 which such defendant is charged or was convicted; and

47 (3) If personally identifiable information is removed to local, State, or federal
48 law enforcement agencies for forensic validation studies, forensic protocol
49 development or quality control purposes, and for establishment and/or
50 maintenance of a population statistics database.

1 (f) In order to maintain the computer system security of the SBI DNA database
2 program, the computer software and database structures used by the SBI to implement this
3 Article are confidential."

4 **SECTION 11.** G.S. 15A-266.11 reads as rewritten:

5 **"§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

6 (a) Any person who, by virtue of employment, or official position, has possession of, or
7 access to, individually identifiable DNA information contained in the State DNA Database or
8 Databank and who willfully discloses it in any manner to any person or agency not entitled to
9 receive it is guilty of a Class 4 ~~misdemeanor in accordance with G.S. 14-3-A1~~ misdemeanor.

10 (b) Any person who, without authorization, willfully obtains individually identifiable
11 DNA information from the State DNA Database or Databank is guilty of a Class 4
12 ~~misdemeanor in accordance with G.S. 14-3-A1~~ misdemeanor.

13 (c) Any person who knowingly or intentionally tampers or attempts to tamper with any
14 DNA sample, the result of any forensic analysis of a DNA sample collected pursuant to this
15 Article, or the DNA sample collection container, shall be guilty of a Class A1 misdemeanor."

16 **SECTION 12.** G.S. 15A-266.12 reads as rewritten:

17 **"§ 15A-266.12. Confidentiality of records. Expungement of DNA record.**

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

20 (b) ~~Only DNA records and samples that directly relate to the identification of~~
21 ~~individuals shall be collected and stored. These records and samples shall solely be used as a~~
22 ~~part of the criminal justice system for the purpose of facilitating the personal identification of~~
23 ~~the perpetrator of a criminal offense; provided that in appropriate circumstances such records~~
24 ~~may be used to identify potential victims of mass disasters or missing persons.~~

25 (a) A person whose DNA record has been included in the State DNA database in
26 accordance with this Article may request expungement on any of the following grounds:

27 (1) The conviction on which the authority for including that person's DNA
28 record was based has been reversed and the case dismissed.

29 (2) The arrest on which the authority for including the person's DNA record or
30 DNA profile was based has resulted in the charge being dismissed, and all
31 charges arising from the same criminal episode for which DNA was taken
32 resulted in dismissal (no DNA expungement where plea agreement entered
33 into), or resulted in acquittal, or no charge was filed within the applicable
34 statute of limitation period.

35 (b) Upon receipt of a written request for expungement of a conviction, a certified copy
36 of the final court order reversing and dismissing the conviction and any other information
37 necessary to ascertain the validity of the request, the SBI shall expunge all DNA records and
38 identifiable information in the database pertaining to the person and destroy the DNA sample
39 from the person, unless the SBI determines that the person has otherwise become obligated to
40 submit a DNA sample.

41 (c) Upon receipt of a written request for expungement of an arrest, a certified copy of
42 the court order that the charge has resulted in an acquittal or dismissal or other appropriate
43 documentation demonstrating that the statute of limitation period has expired, and any other
44 information necessary to ascertain the validity of the request, the SBI shall expunge all DNA
45 records and identifiable information in the database pertaining to the person and destroy the
46 DNA sample from the person, unless the SBI determines that the person has otherwise become
47 obligated to submit a DNA sample.

48 (d) The SBI is not required to destroy an item of physical evidence obtained from a
49 sample if evidence relating to another person would thereby be destroyed.

50 (e) Any identification, warrant, probable cause to arrest or arrest based upon a database
51 match is not invalidated due to a failure to expunge or a delay in expunging records."

1 **SECTION 13.** Article 13 of Chapter 15A of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 15A-266.13. Administrative functions.**

4 The SBI shall promulgate policies and procedures to implement the provisions of this
5 Article and provide for liaison with the FBI regarding and other criminal justice agencies
6 relating to the State's participation in CODIS program and the national DNA index system or in
7 any DNA database designated by the SBI."

8 **SECTION 14.** G.S. 7A-304(a) is amended by adding a new subdivision to read:

9 "(a) In every criminal case in the superior or district court, wherein the defendant is
10 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
11 prosecuting witness, the following costs shall be assessed and collected, except that when the
12 judgment imposes an active prison sentence, costs shall be assessed and collected only when
13 the judgment specifically so provides, and that no costs may be assessed when a case is
14 dismissed.

15 ...

16 (9) For support of the services of DNA collection and analysis, the sum of three
17 dollars (\$3.00) for all felonies to be remitted to the Department of Justice."

18 **SECTION 15.** The provisions of this act shall be liberally construed and shall be
19 held to be in addition to, and not in substitution for or a limitation of, the provisions of any
20 other law. If any provision or part of this act is held unconstitutional or otherwise invalid, the
21 remainder of this act shall not be affected.

22 **SECTION 16.** This act becomes effective October 1, 2010, except that the
23 amendments made to G.S. 15A-266.4(e) shall take effect January 1, 2011, provided that
24 sufficient funding has been appropriated to the SBI to implement that provision.