

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS15091-MA-8 (10/04)

Short Title: Create Independent State Forensics Laboratory.

(Public)

Sponsors: Senators McKissick and Kinnaird (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE AN INDEPENDENT STATE FORENSICS LABORATORY TO PROVIDE FORENSIC SERVICES TO PROSECUTORS AND THE COURTS BY ANALYZING SUBMITTED EVIDENCE AND PROVIDING INDEPENDENT AND IMPARTIAL REPORTS BASED ON GENERALLY ACCEPTED SCIENTIFIC PRINCIPLES AND TO MAKE CORRESPONDING CHANGES TO GENERAL STATUTES AFFECTED BY THE CREATION OF AN INDEPENDENT STATE FORENSICS LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. Those functions, powers, duties, and obligations previously vested in the State Bureau of Investigation's Crime Laboratory are transferred to and vested in the Office of the Attorney General by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 35. North Carolina State Forensics Laboratory.

§ 143B-216.80. North Carolina State Forensics Laboratory established.

There is established the North Carolina State Forensics Laboratory (State Crime Lab). The State Crime Lab shall be located in the Office of the Attorney General for administrative and budgetary purposes.

§ 143B-216.81. Director of the State Crime Lab; personnel.

The Attorney General shall appoint a Director of the State Crime Lab, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Department of Administration. The Director of the State Crime Lab shall be familiar with the standards of accepted scientific methods and principles for the examination of evidence for criminal prosecutions.

§ 143B-216.82. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc.

There shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the public and members of the criminal justice system in the discharge of



1 their duties. The laboratory and clinical facilities of the institutions of the State, both
2 educational and departmental, shall be made available to the State Crime Lab, and scientists
3 and doctors now working for the State through its institutions and departments may be called
4 upon by the Attorney General to aid the State Crime Lab in the evaluation, preparation, and
5 preservation of evidence in which scientific methods are employed, and a reasonable fee may
6 be allowed by the Attorney General for such service.

7 **"§ 143B-216.83. Law enforcement status of laboratory employees.**

8 (a) No employee of the North Carolina State Forensics Laboratory (State Crime Lab)
9 shall be certified as a law enforcement officer by the North Carolina Department of Justice. No
10 employee of the State Crime Lab may hold any law enforcement certification or be sworn with
11 any law enforcement agency whether inside or outside the State of North Carolina. No
12 employee of the State Crime Lab shall have any law enforcement jurisdiction while performing
13 the duties of the employees.

14 (b) A violation of this section is a Class 3 misdemeanor.

15 **"§ 143B-216.84. Reports to the Joint Legislative Corrections, Crime Control, and**
16 **Juvenile Justice Oversight Committee.**

17 The State Crime Lab shall report quarterly, beginning October 1, 2011, to the Chairs of the
18 Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee the
19 number of cases submitted to the State Crime Lab for review, the types of evidence submitted
20 and analyzed, the number of cases in which an analyst was required to testify in court, and the
21 number of cases submitted, delineated by State, local, federal, company, and campus law
22 enforcement agencies. The report shall also include any recommendations or proposed
23 legislation the Director of the State Crime Lab deems necessary to provide adequate and
24 impartial services to the courts and the justice system."

25 **SECTION 3.** Notwithstanding the provisions of Section 2 of this act, any
26 personnel who are currently assigned to the State Bureau of Investigation's Crime Laboratory
27 who are sworn law enforcement agents shall be retained by the Bureau, as shall any equipment
28 used by those law enforcement agents to collect evidence at crime scenes, clandestine
29 laboratories, and environmental disasters. The Office of State Budget and Management shall, in
30 consultation with the Attorney General, the Director of the State Bureau of Investigation, and
31 the Director of the State Crime Lab, determine what equipment needs to be retained by the
32 Bureau to conduct the duties required by Section 2 of this act and G.S. 144-16. No equipment
33 may be retained by the Bureau that would impair the State Crime Lab's ability to carry out the
34 duties assigned pursuant to Section 2 of this act.

35 **SECTION 4.** G.S. 114-16 reads as rewritten:

36 **"§ 114-16. ~~Laboratory and clinical facilities; employment of criminologists; services of~~**
37 **~~scientists, etc., employed by State; radio system.~~Assistance to law enforcement**
38 **agencies and officers by the Bureau; State radio system access for the Bureau.**

39 In the said Bureau there shall be provided laboratory facilities for the analysis of evidences
40 of crime, including the determination of presence, quantity and character of poisons, the
41 character of bloodstains, microscopic and other examination material associated with the
42 commission of crime, examination and analysis of projectiles of ballistic imprints and records
43 which might lead to the determination or identification of criminals, the examination and
44 identification of fingerprints, and other evidence leading to the identification, apprehension, or
45 conviction of criminals. A sufficient number of persons skilled in such matters shall be
46 employed to render a reasonable service to the prosecuting officers of the State in the discharge
47 of their duties. In the personnel of the Bureau shall be included a sufficient number of persons
48 of training and skill in the investigation of crime and in the preparation of evidence as to be of
49 service to local law enforcement agencies and officers, under the direction of the Governor, in
50 criminal matters of major importance.

1 ~~The laboratory and clinical facilities of the institutions of the State, both educational and~~
2 ~~departmental, shall be made available to the Bureau, and scientists and doctors now working~~
3 ~~for the State through its institutions and departments may be called upon by the Governor to aid~~
4 ~~the Bureau in the evaluation, preparation, and preservation of evidence in which scientific~~
5 ~~methods are employed, and a reasonable fee may be allowed by the Governor for such service.~~

6 The State radio system shall be made available to the Bureau for use in its work."

7 **SECTION 5.** G.S. 7A-304(a) reads as rewritten:

8 "**§ 7A-304. Costs in criminal actions.**

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 (7) For the services of the ~~State Bureau of Investigation laboratory~~State Crime
17 Lab facilities, the district or superior court judge shall, upon conviction,
18 order payment of the sum of six hundred dollars (\$600.00) to be remitted to
19 the ~~Department of Justice~~North Carolina State Forensics Laboratory for
20 support of the ~~State Bureau of Investigation~~State Crime Lab. This cost shall
21 be assessed only in cases in which, as part of the investigation leading to the
22 defendant's conviction, the laboratories have performed DNA analysis of the
23 crime, tests of bodily fluids of the defendant for the presence of alcohol or
24 controlled substances, or analysis of any controlled substance possessed by
25 the defendant or the defendant's agent. The court may waive or reduce the
26 amount of the payment required by this subdivision upon a finding of just
27 cause to grant such a waiver or reduction.

28 (8) For the services of any crime laboratory facility operated by a local
29 government or group of local governments, the district or superior court
30 judge shall, upon conviction, order payment of the sum of six hundred
31 dollars (\$600.00) to be remitted to the general fund of the local
32 governmental unit that operates the laboratory to be used for law
33 enforcement purposes. The cost shall be assessed only in cases in which, as
34 part of the investigation leading to the defendant's conviction, the laboratory
35 has performed DNA analysis of the crime, test of bodily fluids of the
36 defendant for the presence of alcohol or controlled substances, or analysis of
37 any controlled substance possessed by the defendant or the defendant's
38 agent. The costs shall be assessed only if the court finds that the work
39 performed at the local government's laboratory is the equivalent of the same
40 kind of work performed by the ~~State Bureau of Investigation~~State Crime Lab
41 under subdivision (7) of this subsection. The court may waive or reduce the
42 amount of the payment required by this subdivision upon a finding of just
43 cause to grant such a waiver or reduction.

44 (9) For the support and services of the ~~State Bureau of Investigation~~State Crime
45 Lab DNA Database and DNA Databank, the sum of two dollars (\$2.00).
46 This amount is annually appropriated to the Department of Justice for this
47 purpose. Notwithstanding the provisions of subsection (e) of this section,
48 this cost does not apply to infractions."

49 **SECTION 6.** G.S. 8-58.20 reads as rewritten:

50 "**§ 8-58.20. Forensic analysis admissible as evidence.**

1 (a) In any criminal prosecution, a laboratory report of a written forensic analysis,
2 including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's
3 DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and
4 that is signed and sworn to by the person performing the analysis may be admissible in
5 evidence without the testimony of the analyst who prepared the report in accordance with the
6 requirements of this section.

7 (b) A forensic analysis, to be admissible under this section, shall be performed ~~in~~
8 ~~accordance with rules or procedures adopted by the State Bureau of Investigation, or by another~~
9 ~~laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory~~
10 ~~Accreditation Board (ASCLD/LAB) by a laboratory that is accredited by an accrediting body~~
11 ~~that requires conformance to forensic specific requirements and which is a signatory to the~~
12 ~~International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement~~
13 ~~For Testing for the submission, identification, analysis, and storage of forensic analyses. The~~
14 ~~analyses of DNA samples and typing results of DNA samples shall be performed in accordance~~
15 ~~with the rules or procedures of the State Bureau of Investigation or other~~
16 ~~ASCLD/LAB-accredited laboratory by a laboratory that is accredited by an accrediting body~~
17 ~~that requires conformance to forensic specific requirements and which is a signatory to the~~
18 ILAC Mutual Recognition Arrangement For Testing.

19 (c) The analyst who analyzes the forensic sample and signs the report shall complete an
20 affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst
21 shall state (i) that the person is qualified by education, training, and experience to perform the
22 analysis, (ii) the name and location of the laboratory where the analysis was performed, and
23 (iii) that performing the analysis is part of that person's regular duties. The analyst shall also
24 aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB-accrediting~~
25 body's standards for that discipline and that the evidence was handled in accordance with
26 established and accepted procedures while in the custody of the laboratory. The affidavit shall
27 be sufficient to constitute prima facie evidence regarding the person's qualifications. The
28 analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the
29 investigating officer and the district attorney in the prosecutorial district in which the criminal
30 charges are pending. An affidavit by a forensic analyst sworn to and properly executed before
31 an official authorized to administer oaths is admissible in evidence without further
32 authentication in any criminal proceeding with respect to the forensic analysis administered and
33 the procedures followed.

34"

35 **SECTION 7.** G.S. 20-139.1(c1) reads as rewritten:

36 "(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
37 ~~North Carolina State Bureau of Investigation Laboratory, State Crime Lab,~~ the Charlotte, North
38 Carolina, Police Department Laboratory, or any other laboratory approved for chemical
39 analysis by the Department of Health and Human Services, are admissible as evidence in all
40 administrative hearings, and in any court, without further authentication and without the
41 testimony of the analyst. The results shall be certified by the person who performed the
42 analysis. The provisions of this subsection may be utilized in any administrative hearing, but
43 can only be utilized in cases tried in the district and superior court divisions, or in an
44 adjudicatory hearing in juvenile court, if:

- 45 (1) The State notifies the defendant at least 15 business days before the
46 proceeding at which the evidence would be used of its intention to introduce
47 the report into evidence under this subsection and provides a copy of the
48 report to the defendant, and
- 49 (2) The defendant fails to file a written objection with the court, with a copy to
50 the State, at least five business days before the proceeding at which the

1 report would be used that the defendant objects to the introduction of the
2 report into evidence.

3 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
4 a written objection as provided in this subsection, then the report may be admitted into
5 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
6 of the report shall be determined and governed by the appropriate rules of evidence.

7 The report containing the results of any blood or urine test may be transmitted
8 electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall
9 be admissible in any court or administrative hearing without further authentication. A copy of
10 the report shall be sent to the charging officer, the clerk of superior court in the county in which
11 the criminal charges are pending, the Division of Motor Vehicles, and the Department of
12 Health and Human Services.

13 Nothing in this subsection precludes the right of any party to call any witness or to
14 introduce any evidence supporting or contradicting the evidence contained in the report."

15 **SECTION 8.** G.S. 20-139.1(c2) reads as rewritten:

16 "(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be
17 performed in accordance with rules or procedures adopted by the ~~State Bureau of~~
18 ~~Investigation, State Crime Lab~~ or by another laboratory accredited by ~~the American Society of~~
19 ~~Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) for the an~~
20 accrediting body that requires conformance to forensic specific requirements and which is a
21 signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual
22 Recognition Arrangement For Testing submission, identification, analysis, and storage of
23 forensic analyses."

24 **SECTION 9.** G.S. 90-95(g) reads as rewritten:

25 "(g) Whenever matter is submitted to the ~~North Carolina State Bureau of Investigation~~
26 ~~Laboratory, State Crime Lab~~, the Charlotte, North Carolina, Police Department Laboratory or to
27 the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to
28 determine if the matter is or contains a controlled substance, the report of that analysis certified
29 to upon a form approved by the Attorney General by the person performing the analysis shall
30 be admissible without further authentication and without the testimony of the analyst in all
31 proceedings in the district court and superior court divisions of the General Court of Justice as
32 evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the
33 provisions of this subsection may be utilized by the State only if:

- 34 (1) The State notifies the defendant at least 15 business days before the
35 proceeding at which the report would be used of its intention to introduce the
36 report into evidence under this subsection and provides a copy of the report
37 to the defendant, and
38 (2) The defendant fails to file a written objection with the court, with a copy to
39 the State, at least five business days before the proceeding that the defendant
40 objects to the introduction of the report into evidence.

41 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
42 a written objection as provided in this subsection, then the report may be admitted into
43 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
44 of the report shall be determined and governed by the appropriate rules of evidence.

45 Nothing in this subsection precludes the right of any party to call any witness or to
46 introduce any evidence supporting or contradicting the evidence contained in the report."

47 **SECTION 10.** G.S. 15A-148(b) reads as rewritten:

48 "(b) When an order of ~~expungement~~ expunction has been issued pursuant to subsection
49 (a) of this section, the order of ~~expungement~~ expunction, together with a certified copy of the
50 final appellate court order reversing and dismissing the conviction or a certified copy of the
51 instrument granting the pardon of innocence, shall be provided to the ~~SBI~~ State Crime Lab by

1 the clerk of court. Upon receiving an order of ~~expungement~~ expunction for an individual whose
2 DNA record or profile has been included in the State DNA Database and whose DNA sample is
3 stored in the State DNA Databank, the DNA profile shall be expunged and the DNA sample
4 destroyed by the ~~SBI~~ State Crime Lab except that the order shall not apply to other offenses
5 committed by the individual that qualify for inclusion in the State DNA Database and the State
6 DNA Databank. A letter documenting ~~expungement~~ expunction of the DNA record and
7 destruction of the DNA sample shall be sent by the ~~SBI~~ State Crime Lab to the defendant and
8 the defendant's attorney at the address specified by the court in the order of
9 ~~expungement~~ expunction. The ~~SBI~~ State Crime Lab shall adopt procedures to comply with this
10 subsection."

11 **SECTION 11.** G.S. 15A-266.2 reads as rewritten:

12 **"§ 15A-266.2. Definitions.**

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

- 15 ...
- 16 (6) ~~"SBI" means the State Bureau of Investigation. The SBI~~ "State Crime Lab"
17 means the agency which is responsible for the policy, management, and
18 administration of the State DNA identification record system to support law
19 enforcement and other criminal justice agencies.
- 20 (7) "State DNA Databank" means the repository of DNA samples collected
21 under the provisions of this Article.
- 22 (8) "State DNA Database" means the ~~SBI's~~ State Crime Lab's DNA
23 identification record system to support law enforcement. It is administered
24 by the ~~SBI~~ State Crime Lab and provides DNA records to the FBI for
25 storage and maintenance in CODIS. The ~~SBI's~~ State Crime Lab's DNA
26 Database system is the collective capability provided by computer software
27 and procedures administered by the ~~SBI~~ State Crime Lab to store and
28 maintain DNA records related to: forensic casework; convicted offenders
29 and arrestees required to provide a DNA sample under this Article; persons
30 required to register as sex offenders under G.S. 14-208.7; unidentified
31 persons or body parts; missing persons; relatives of missing persons; and
32 anonymous DNA profiles used for forensic validation, forensic protocol
33 development, or quality control purposes or establishment of a population
34 statistics database for use by criminal justice agencies."

35 **SECTION 12.** G.S. 15A-266.3 reads as rewritten:

36 **"§ 15A-266.3. Establishment of State DNA database and databank.**

37 There is established under the administration of the ~~SBI~~ State Crime Lab, the State DNA
38 Database and State DNA Databank. The ~~SBI~~ State Crime Lab shall provide DNA records to the
39 FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The
40 State DNA Databank shall serve as the repository for DNA samples obtained pursuant to this
41 Article. The State DNA Database shall be compatible with the procedures specified by the FBI,
42 including use of comparable test procedures, laboratory and computer equipment, supplies and
43 computer platform and software. The State DNA Database shall have the capability provided
44 by computer software and procedures administered by the ~~SBI~~ State Crime Lab to store and
45 maintain DNA records related to all of the following:

- 46 (1) Crime scene evidence and forensic casework.
47 (2) Arrestees, offenders, and persons found not guilty by reason of insanity, who
48 are required to provide a DNA sample under this Article.
49 (3) Persons required to register as sex offenders under G.S. 14-208.7.
50 (4) Unidentified persons or body parts.
51 (5) Missing persons.

1 (6) Relatives of missing persons.

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

5 **SECTION 13.** G.S. 15A-266.3A reads as rewritten:

6 "**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

7 ...
8 (c) At the time a DNA sample is taken pursuant to this section, the person obtaining the
9 DNA sample shall record, on a form promulgated by the ~~SBI~~State Crime Lab, the date and
10 time the sample was taken, the name of the person taking the DNA sample, the name and
11 address of the person from whom the sample was taken, and the offense or offenses for which
12 the person was arrested. This record shall be maintained in the case file and shall be available
13 to the prosecuting district attorney for the purpose of completing the requirements of subsection
14 (j) of this section.

15 ...
16 (e) The DNA record of identification characteristics resulting from the DNA testing and
17 the DNA sample itself shall be stored and maintained by the ~~SBI~~State Crime Lab in the State
18 DNA Databank pursuant to this Article.

19 ...
20 (h) The ~~State Bureau of Investigation~~State Crime Lab shall remove a person's DNA
21 record, and destroy any DNA biological samples that may have been retained, from the State
22 DNA Database and DNA Databank if both of the following are determined pursuant to
23 subsection (i) of this section:

24 (1) As to the charge, or all charges, resulting from the arrest upon which a DNA
25 sample is required under this section, a court or the district attorney has
26 taken action resulting in any one of the following:

- 27 a. The charge has been dismissed.
28 b. The person has been acquitted of the charge.
29 c. The defendant is convicted of a lesser-included misdemeanor offense
30 that is not an offense included in subsection (f) or (g) of this section.
31 d. No charge was filed within the statute of limitations, if any.
32 e. No conviction has occurred, at least three years has passed since the
33 date of arrest, and no active prosecution is occurring.

34 (2) The person's DNA record is not required to be in the State DNA Database
35 under some other provision of law, or is not required to be in the State DNA
36 Database based upon an offense from a different transaction or occurrence
37 from the one which was the basis for the person's arrest.

38 ...
39 (j) Prior to June 1, 2012, within 30 days of the receipt of the form required by
40 subsection (i) of this section or the occurrence of one of the events in sub-subdivision a., b., or
41 c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30
42 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section,
43 the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this
44 section, and if so, shall:

- 45 (1) Verify and indicate the facts of the qualifying event on a verification form
46 promulgated by the Administrative Office of the Courts.
47 (2) Include the last known address of the defendant, as reflected in the court
48 files, on the verification form.
49 (3) Sign the verification form or, if the defendant was acquitted or the charges
50 were dismissed by the court, obtain the signature of a judge.
51 (4) Transmit the verification form to the ~~SBI~~State Crime Lab.

1 (k) Within 30 days of receipt of the verification form, the ~~SBI~~State Crime Lab shall:

2 (1) Determine whether the requirement of subdivision (2) of subsection (h) of
3 this section has been met.

4 (2) If the requirement has been met, remove the defendant's DNA record and
5 samples as required by subsection (h) of this section.

6 (3) Mail to the defendant, at the address specified in the verification form, a
7 notice either:

8 a. Documenting expunction of the DNA record and destruction of the
9 DNA sample, or

10 b. Notifying the defendant that the DNA record and sample do not
11 qualify for expunction pursuant to subsection (h) of this section.

12 (l) The defendant may file a motion with the court to review the denial of the
13 defendant's request or the failure of either the district attorney or the ~~SBI~~State Crime Lab to act
14 within the prescribed time period.

15 ...

16 (n) Notwithstanding subsection (h) of this section, the ~~SBI~~State Crime Lab is not
17 required to destroy or remove an item of physical evidence obtained from a sample if evidence
18 relating to another person would thereby be destroyed.

19 (o) The ~~SBI~~State Crime Lab shall adopt procedures to comply with this section."

20 **SECTION 14.** G.S. 15A-266.5 reads as rewritten:

21 "**§ 15A-266.5. Tests to be performed on DNA sample.**

22 ...

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

27 (c) The ~~SBI~~State Crime Lab shall report annually to the Joint Legislative Commission
28 on Governmental Operations and to the Joint Legislative Corrections, Crime Control and
29 Juvenile Justice Oversight Committee, on or before February 1, with information for the
30 previous calendar year, which shall include: a summary of the operations and expenditures
31 relating to the DNA Database and DNA Databank; the number of DNA records from arrestees
32 entered; the number of DNA records from arrestees that have been expunged; and the number
33 of DNA arrestee matches or hits that occurred with an unknown sample, and how many of
34 those have led to an arrest and conviction; and how many letters notifying defendants that a
35 record and sample have been expunged, along with the number of days it took to complete the
36 expunction and notification process, from the date of the receipt of the verification form from
37 the State.

38"

39 **SECTION 15.** G.S. 15A-266.6(c) reads as rewritten:

40 "(c) The ~~SBI~~State Crime Lab shall provide the materials, supplies, and postage prepaid
41 envelopes necessary to obtain a DNA sample from a person required to provide a DNA sample
42 pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA
43 analysis and testing. Any DNA sample obtained pursuant to this Article, other than a DNA
44 sample obtained from a person who is incarcerated, shall be taken using the materials and
45 supplies provided by the ~~SBI~~State Crime Lab."

46 **SECTION 16.** G.S. 15A-266.7 reads as rewritten:

47 "**§ 15A-266.7. Procedures for conducting DNA analysis of DNA sample.**

48 (a) The ~~SBI~~State Crime Lab shall:

49 (1) Adopt procedures to be used in the collection, security, submission,
50 identification, analysis, and storage of DNA samples and typing results of
51 DNA samples submitted under this Article. These procedures shall also

1 include quality assurance guidelines to insure that DNA identification
2 records meet audit standards for laboratories which submit DNA records to
3 the State DNA Database.

4 (2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and
5 DNA Databasing Laboratories that meet or exceed the quality assurance
6 guidelines established for such laboratories by the CODIS unit of the Federal
7 Bureau of Investigation.

8 (b) DNA samples shall be securely stored in the State DNA Databank. The typing
9 results shall be securely stored in the State DNA Database.

10 (c) Records of testing shall be retained on file at the ~~SBI~~ State Crime Lab."

11 **SECTION 17.** G.S. 15A-266.8 reads as rewritten:

12 **"§ 15A-266.8. DNA database exchange.**

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

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

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

37 **SECTION 18.** G.S. 15A-266.9 reads as rewritten:

38 **"§ 15A-266.9. Cancellation of authority to exchange DNA records.**

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

43 **SECTION 19.** G.S. 15A-266.12 reads as rewritten:

44 **"§ 15A-266.12. Confidentiality of records.**

45 (a) All DNA profiles and samples submitted to the ~~SBI~~ State Crime Lab pursuant to this
46 Article shall be treated as confidential and shall not be disclosed to or shared with any person
47 or agency except as provided in G.S. 15A-266.8.

48 (b) Only DNA records and samples that directly relate to the identification of
49 individuals shall be collected and stored. These records and samples shall solely be used as a
50 part of the criminal justice system for the purpose of facilitating the personal identification of

1 the perpetrator of a criminal offense; provided that in appropriate circumstances such records
2 may be used to identify potential victims of mass disasters or missing persons.

3 (c) DNA records and DNA samples submitted to the ~~SBI~~ State Crime Lab pursuant to
4 this Article are not a public record as defined by G.S. 132-1.

5 (d) In the case of a criminal proceeding, requests to access a person's DNA record shall
6 be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The ~~SBI~~
7 State Crime Lab shall not be required to provide the State DNA Database for criminal
8 discovery purposes.

9 (e) DNA records and DNA samples submitted to the ~~SBI~~ State Crime Lab may only be
10 released for the following authorized purposes:

11 (1) For law enforcement identification purposes, including the identification of
12 human remains, to federal, State, or local criminal justice agencies.

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

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

20 (f) In order to maintain the computer system security of the ~~SBI~~ State Crime Lab DNA
21 database program, the computer software and database structures used by the ~~SBI~~ State Crime
22 Lab to implement this Article are confidential."

23 **SECTION 20.** G.S. 15A-268 reads as rewritten:

24 "**§ 15A-268. Preservation of biological evidence.**

25 ...

26 (a2) The ~~SBI~~ State Crime Lab shall promulgate and publish minimum guidelines that
27 meet the requirements for retention and preservation of biological evidence under subsection
28 (a1) of this section. Guidelines shall be published no later than January 1, 2010, and shall be
29 reviewed and updated biennially thereafter. Law enforcement agencies and the Conference of
30 Clerks of Superior Court shall ensure the guidelines are distributed to all employees with
31 responsibility for maintaining custody of evidence.

32 ...

33 (e) The court order allowing the disposition of the evidence pursuant to subdivision
34 (d)(3) of this section shall require the custodial agency to return such evidence to the collecting
35 agency. The collecting agency shall take reasonable measures to remove or preserve portions of
36 evidence likely to contain biological evidence related to the offense through cuttings, swabs, or
37 other means consistent with ~~SBI~~ State Crime Lab minimum guidelines in a quantity sufficient
38 to permit DNA testing before returning or disposing of the evidence. The court may provide the
39 defendant an opportunity to take reasonable measures to preserve the evidence.

40"

41 **SECTION 21.** The Revisor of Statutes shall make any other corresponding
42 changes to the General Statutes required to give effect to this act by ensuring that all functions
43 of the State Bureau of Investigation's Crime Laboratory are transferred to the North Carolina
44 State Forensics Laboratory (State Crime Lab) created by this act.

45 **SECTION 22.** The provisions of this act shall in no way affect any pending
46 litigation before the courts and shall only be an administrative act designed to ensure the
47 continued integrity of the State Crime Lab.

48 **SECTION 23.** This act is effective when it becomes law. The Attorney General
49 shall make all necessary accommodations to ensure the personnel and property, real and
50 personal, tangible and intangible, currently held by the State Bureau of Investigation's Crime
51 Lab are transitioned to the independent State Crime Lab, to be known as the "North Carolina

1 State Forensics Laboratory," in accordance with this act. The transition required by this act
2 shall be completed no later than June 30, 2011.