

West's North Carolina General Statutes Annotated [Currentness](#)

Chapter 15A. Criminal Procedure Act ([Refs & Annos](#))

↳ [Subchapter II](#). Law-Enforcement and Investigative Procedures

↳ [Article 13](#). DNA Database and Databank ([Refs & Annos](#))

↳ **§ 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 felonies or violent crimes against the person. Identification, detection, and exclusion are 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.
- (1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. This term includes a central evidence storage facility operated by a State agency.
- (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, buccal, or any other 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.

(5a) “NDIS” means the National DNA Index System that is the system of DNA profile records which meet federal standards.

(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 or finding of not guilty by reason of insanity

(a) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to [G.S. 15A-148](#), on or after December 1, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with [G.S. 15A-1321](#) shall have a DNA sample drawn upon intake to jail, prison, or the mental health facility. In addition, every person convicted on or after December 1, 2003, 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 December 1, 2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with [G.S. 15A-1321](#) before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

- (1) All felonies.
- (2) [G.S. 14-32.1](#) -- Assaults on handicapped persons.
- (3) [G.S. 14-277.3A](#) or former [G.S. 14-277.3](#)--Stalking.
- (4) [G.S. 14-27.5A](#) -- Sexual battery.

§ 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

(a) 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 immediately following sentencing. The sentencing court shall order any person not sentenced to a term of confinement to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to [G.S. 5A-15](#) and may issue an order for arrest pursuant to [G.S. 5A-16](#).

(b) 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.

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

§ 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 en-

forcement 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. Repealed by S.L. 2001-282, § 3, eff. Oct. 1, 2001

§ 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 Class 1 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 Class 1 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 and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

§ 15A-267. Access to DNA samples from crime scene

(a) A criminal defendant shall have access before trial to the following:

(1) Any DNA analyses performed in connection with the case in which the defendant is charged.

(2) Any biological material, that has not been DNA tested, that was collected from the crime scene, the defendant's residence, or the defendant's property.

(3) A complete inventory of all physical evidence collected in connection with the investigation.

(b) Access as provided for in subsection (a) of this section shall be governed by [G.S. 15A-902](#) and [G.S. 15A-952](#).

(c) Upon a defendant's motion made before trial in accordance with [G.S. 15A-952](#), the court shall order the SBI or any approved vendor that meets SBI contracting standards to perform DNA testing and, if the data meets NDIS criteria, order the SBI to search and/or upload to CODIS any profiles obtained from the testing upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense.

(d) The defendant shall be responsible for bearing the cost of any further testing and comparison of the biological materials, including any costs associated with the testing and comparison by the SBI in accordance with this section, unless the court has determined the defendant is indigent, in which event the State shall bear the costs.

§ 15A-268. Preservation of biological evidence

(a) As used in this section, the term “biological evidence” includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence.

(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a custodial agency shall preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

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

(a3) When physical evidence is offered or admitted into evidence in a criminal proceeding of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to the identity of the collecting agency of the evidence and whether the evidence in question is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that the evidence in question may have biological evidentiary value, and the court so finds, the court shall instruct that the evidence be so designated in the court's records and that the evidence be preserved pursuant to the requirements of this section.

(a4) If evidence has been designated by the court as biological evidence pursuant to subsection (a3) of this section, the clerk of superior court that takes custody of evidence pursuant to the rules of practice and procedure for the superior and district courts as adopted by the Supreme Court pursuant to [G.S. 7A-34](#) shall preserve such evidence consistent with subsection (a1) of this section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of practice, the clerk shall return such evidence to the collecting agency, as determined in subsection (a3) of this section, in a manner that ensures the chain of custody is maintained and documented.

(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court proceeding.

(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

- (1) For conviction resulting in a sentence of death, until execution.
 - (2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.
 - (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.
 - (4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.
 - (5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.
- (a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that has been preserved pursuant to this section.
- (b) The custodial agency required to preserve evidence pursuant to subsection (a1) of this section may dispose of the evidence prior to the expiration of the period of time described in subsection (a6) of this section if all of the following conditions are met:
- (1) The custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.
 - (2) The district attorney gave to each of the following persons written notification of the intent of the custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.
 - (3) The written notification from the district attorney specified the following:

- a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.
 - b. The address of the custodial agency where the written request was to be sent.
 - c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.
 - d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:
 1. The case is currently on appeal.
 2. The case is currently in postconviction proceedings.
 3. The defendant will file a motion for DNA testing pursuant to [G.S. 15A-269](#) within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.
- (4) The custodial agency did not receive a written request in compliance with the conditions set forth in subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the custodial agency that intends to dispose of the sample of evidence. The custodial agency may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing held in response to a defendant's written request that the evidence not be destroyed in response to notice pursuant to subsection (b) of this section, the court may enter an order authorizing the custodial agency to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

- (1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law; or

(2) Deleted by [S.L. 2009-203, § 4, eff. Dec. 1, 2009](#).

(3) May have value for biological analysis but is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner.

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

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The custodial agency shall not dispose of the evidence while the appeal is pending.

(g) If an entity is asked to produce evidence that is required to be preserved under the provisions of this section and cannot produce the evidence, the chief evidence custodian of the custodial agency shall provide an affidavit in which he or she describes, under penalty of perjury, the efforts taken to locate the evidence and affirms that the evidence could not be located. If the evidence that is required to be preserved pursuant to this section has been destroyed, the court may conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. If the court finds the destruction violated the defendant's due process rights, the court shall order an appropriate remedy, which may include dismissal of charges.

(h) All records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (2), (3), or (4) of subsection (a6) of this section shall be retained.

(i) Whoever knowingly and intentionally destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section, with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding, shall be punished as follows:

(1) If the evidence is for a noncapital crime, then a violation of this subsection is a Class I felony.

(2) If the evidence is for a crime of first degree murder, then a violation of this subsection is a Class H felony.

§ 15A-269. Request for postconviction DNA testing

(a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence meets all of the following conditions:

(1) Is material to the defendant's defense.

(2) Is related to the investigation or prosecution that resulted in the judgment.

(3) Meets either of the following conditions:

a. It was not DNA tested previously.

b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and

(3) The defendant has signed a sworn affidavit of innocence.

(b1) If the court orders DNA testing, such testing shall be conducted by an SBI-approved testing facility, mutually agreed upon by the petitioner and the State and approved by the court. If the parties cannot agree, the court shall designate the testing facility and provide the parties with reasonable opportunity to be heard on the issue.

(c) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent. If the petitioner has filed pro se, the court shall appoint counsel for the petitioner upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction.

(d) The defendant shall be responsible for bearing the cost of any DNA testing ordered under this section unless the court determines the defendant is indigent, in which event the State shall bear the costs.

(e) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that DNA testing is necessary in the interests of justice, the court shall order a delay of the proceedings or execution of the sentence pending the DNA testing.

(f) Upon receipt of a motion for postconviction DNA testing, the custodial agency shall inventory the evidence pertaining to that case and provide the inventory list, as well as any documents, notes, logs, or reports relating to the items of physical evidence, to the prosecution, the petitioner, and the court.

(g) Upon receipt of a motion for postconviction DNA testing, the State shall, upon request, reactivate any victim services for the victim of the crime being investigated during the reinvestigation of the case and pendency of the proceedings.

(h) Nothing in this Article shall prohibit a convicted person and the State from consenting to and conducting postconviction DNA testing by agreement of the parties, without filing a motion for postconviction testing under this Article.

§ 15A-270. Post-test procedures

(a) Notwithstanding any other provision of law, upon receiving the results of the DNA testing conducted under [G.S. 15A-269](#), the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court shall dismiss the motion and, in the case of a defendant who is not indigent, shall assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are favorable to the defendant, the court shall enter any order that serves the interests of justice, including an order that does any of the following:

- (1) Vacates and sets aside the judgment.
- (2) Discharges the defendant, if the defendant is in custody.
- (3) Resentences the defendant.
- (4) Grants a new trial.

§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal. The court shall appoint counsel upon a finding of indigency.

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