

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1403 (Third Edition)

SHORT TITLE: Collect DNA Sample on Arrest.

SPONSOR(S): Representatives Neumann, Burris-Floyd, McCormick, and Tillis

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
REVENUE:	\$825,000	\$1,100,000	\$1,100,000	\$1,100,000	\$1,100,000
EXPENDITURES:					
Department of Justice (DOJ)	\$1,416,245	\$1,358,263	\$1,464,113	\$1,576,079	\$1,694,514
Judicial Branch	Exact amount cannot be determined*				
POSITIONS:					
(cumulative)	8	8	8	8	8
<i>*See Assumptions and Methodology</i>					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice- State Bureau of Investigation (SBI); Judicial Branch					
EFFECTIVE DATE: Section 12 of this act becomes effective October 1, 2010, and applies to taxes assessed or collected on or after that date. The remainder of this act becomes effective December 1, 2010.					

BILL SUMMARY:

House Bill 1403 requires that a DNA sample be taken from any person arrested for an offense listed in the act; amends current statutes pertaining to the collection of DNA upon conviction; and levies a two dollar (\$2.00) court cost in Superior and District Court cases, except for infractions, to be remitted to the State Treasurer for support of the DNA Database. The new court cost would become effective October 1, 2010, and the remainder of the act would become effective December 1, 2010.

The proposed legislation differs from the version reported out of House Judiciary I as follows:

- It removes arson, robbery, and certain felony assaults from the list of offenses for which an arrestee must provide a DNA sample.
- It changes who is required to initiate the expunction procedure. Under the 2nd Edition, the State Bureau of Investigation (SBI) would have been required to remove a person's DNA record and destroy any DNA biological samples in the Database once the defendant or the defendant's counsel provided the State with a signed form requesting that the defendant's DNA record be expunged. Under the proposed legislation, the State would be required to initiate the expunction process once the charge is dismissed, the person is acquitted, or if charges are not filed on time. Once the State has verified certain requirements, it must submit to the SBI a form signed by a judge or district attorney indicating that the requirements have been met.
- It deletes the section that would have created a separate DNA index for missing person identification purposes (former Section 12).
- It makes several changes with respect to the fee provision:
 - It denotes the additional court cost as a "tax" rather than a "fee" since the charge is largely imposed on individuals who are not receiving the "service" involved through the provision of a DNA sample. In other words, a number of defendants must pay the tax who were not required to provide a sample.
 - It reduces the cost from \$3.00 to \$2.00.
 - It exempts people found responsible for infractions from having to pay the cost.
 - It changes the effective date of the added court cost from July 1, 2010 to October 1, 2010.
- It adds standard waiver language for new costs and fees in Section 13.

Source: Adopted from Committee Counsel's bill summary dated July 1, 2010.

ASSUMPTIONS AND METHODOLOGY:

Current Law

Any person convicted of a felony offense, assault on a handicapped person, stalking, or sexual battery must provide a DNA blood sample. If the defendant's sentence includes confinement, the DNA sample is taken at the place of incarceration. If the sentence does not include incarceration, then the court includes, as a part of the judgment that the defendant report to the sheriff at a time and place designated to provide the sample. If the defendant does not appear, a show cause order is issued, and the defendant may be held in contempt of court.

DNA samples are analyzed and the DNA profile is entered into the State DNA Database. The sample is then searchable through the Combined DNA Index System (CODIS), a DNA database funded by the United States Federal Bureau of Investigation (FBI). The DNA profiles are searched against all other

profiles in the system, which includes suspect samples, and samples taken from both solved and unsolved crime scenes. If a “hit” is obtained between a sample and an unsolved forensic unknown, a confirmation process is initiated, and a report is issued.

The DNA profile that results from the analysis contains a series of numbers only, and can only identify an individual. The DNA sample is not analyzed for any type of personal physiological information, i.e., information that could disclose a person's propensity for diseases, etc. This type of information cannot be included or stored in the State DNA Database. The DNA sample is maintained in order to confirm an identity if there is a "match" to an unsolved criminal offense, and, if requested, to provide a defendant with an opportunity to obtain an independent verification of the DNA profile in the DNA Database.

Proposed Law

An analysis of selected sections of H1403 follows:

Section 2:

- A new section would be added to the current statutes, which were enacted by the “DNA Database Act of 2003.” The DNA sample would be taken upon arrest, or when the person arrested is fingerprinted at booking. [If the arrest was made without a warrant, the DNA sample may not be taken until a magistrate has found probable cause that a crime was committed, and that the arrested person committed it.] The listed offenses relate to crimes involving some type of violence, acts that are likely to injure persons or property, or are recognized as precursors to such acts. Any offense which would require the person to register as a sex offender, which includes some misdemeanors, is included.
- Records and samples relating to a defendant’s DNA sample must be expunged by the State if the charge is dismissed; is not filed in the appropriate time period; or if the defendant is acquitted. The State must initiate the process by: verifying that a qualifying circumstance exists; that the defendant's DNA record or sample is not required to be maintained under some other provision of law; obtaining a judge's or a District Attorney's signature on a verification form; and the forwarding the form to the SBI. The State has 30 days in which to complete verification and send the form to the SBI.
- If the State determines that the defendant is not eligible for expunction, it must notify the defendant. The defendant has the right to have a court review the State's determination, or to seek judicial review if the State has not acted on the request within the prescribed time period.
- The SBI expunges the record and sample from the State DNA Database and Databank. The act provides that the expunction is to take place within 30 days of the SBI's receipt of the verification form, and a letter confirming the expunction is sent to the defendant.
- If the State or SBI is unable to process the expunction within the prescribed time, a judicial extension can be sought by either. If there is a database match to the defendant's DNA sample after the time set by statute, or permitted by a court, then a hearing is held to determine

whether the failure to expunge the sample should result in the invalidation of any identification, warrant, probable cause to arrest, or arrest based upon a database match.

- If the defendant pleads guilty or nolo contendere to an offense which is a lesser included offense, then the DNA record is not expunged. However, if the offense is a misdemeanor, and not on the list of qualifying offenses for a DNA sample, then the DNA record and sample is expunged. The act provides that nothing in the Article would prevent the State from requiring a DNA sample as part of a plea bargain.

Section 2.1:

The statute providing the procedure for voluntary dismissal is amended to reference the DNA on arrest statute. The prosecutor would note on any dismissal form, or announce in open court if an oral dismissal, that the defendant's DNA sample had been taken upon arrest. The provision relates to establishing actual notice of the requirement to expunge the DNA sample [assuming all the other criteria for expunction are met].

Section 3:

The definition of “DNA Sample” is amended to reflect the various methods of taking a DNA sample and to comport with the addition of a new index for missing persons, which is added to the Article.

Section 4:

The act makes technical amendments and reorganization of the statute that provides for the DNA samples of those convicted of designated offenses, whether sentenced to confinement or not.

- Current law requires persons convicted of felonies, and other designated offenses, to provide a DNA sample. The amendments would add the offenses which are listed in the new section on DNA upon arrest to the statute. Consequently, persons who are convicted of misdemeanor offenses requiring registration on the Sex Offender registry, who were not previously required to provide a DNA sample, would be required to do so.
- The act also amends the provision requiring a person to provide a DNA sample prior to his or her release from incarceration, or institutionalization due to a finding of not guilty by reason of insanity. The amendment clarifies that the requirement is retroactive and applies to all offenses, regardless of the date of conviction, or acquittal by reason of insanity. Thus, if a person is convicted and confined in July 2010, on one or more misdemeanor offenses, and any one of the offenses will require the person to register on the Sex Offender registry, then the person must provide a DNA sample prior to release from confinement.

Section 5:

The term “blood” is deleted to conform to the language in the section on testing to reflect the additional methods of DNA sampling provided in the Article. The SBI would report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections,

Crime Control, and Juvenile Justice Oversight Committee. The report would include a calendar year summary of the operations and expenditures associated with the DNA Database and Databank, and the additional information set forth in the section.

Section 6:

The act amends the statute on procedures for obtaining DNA samples of convicted persons to reflect the additional methods of DNA sampling provided in the act. The act clarifies that if a defendant, who is not confined, provides a sample that can not be loaded into the State DNA database for any reason, he or she is under a continuing order to provide a DNA sample.

Section 7:

The section on procedures for conducting DNA analysis is redrafted to include specific language relating to the adoption of quality assurance guidelines. The SBI would be required to adopt guidelines that meet or exceed the guidelines established by the CODIS unit of the FBI. All current requirements are retained, including the retention of testing records at the SBI.

Section 8:

The term “blood” is deleted to conform the language in the section on a separate population database to reflect the additional methods of DNA sampling provided in the act.

Section 9:

The act amends the criminal procedure statutes by adding a new section that cross-references the DNA upon arrest statute. The new section immediately follows the current statute on the fingerprinting and photographing of arrestees, G.S. 15A-502A.

Section 10:

The section adds a cross-reference to the statute which requires the State to take action upon the disposition of a case which meets the requirements for the expunction of a DNA sample that was taken upon arrest.

Section 11:

The act amends the statute which requires the fingerprints of a juvenile whose case is transferred to the superior court for trial as an adult. The amendment provides that if the juvenile is charged for an offense covered under the DNA Article, then a DNA sample would also be obtained.

Section 12:

The act provides for a two dollar (\$2.00) criminal court cost, to be assessed in every criminal case in Superior or District Court where the defendant is convicted, enters a guilty or nolo contendere plea, or when costs are assessed against the prosecuting witness. The cost does not apply to infractions. The

funds would be remitted to the State Treasurer, for the support and services of the SBI's DNA Database and DNA Databank. *Source: Adopted from Committee Counsel's bill summary dated July 1, 2010.*

Department of Justice-State Bureau of Investigation (SBI)

The Department of Justice (DOJ) reported to the Fiscal Research Division that they expect the proposed bill to require the purchase and distribution of DNA kits to all law enforcement agencies throughout North Carolina, so that a sample can be collected from all persons arrested in connection with specific felonies. Each individual for which a DNA kit is collected must have their personal information entered into a database and each sample must be genetically analyzed so that a suitable DNA profile can be uploaded into the database. The analysis of each sample must be reviewed by a qualified SBI analyst prior to entry into the DNA database. In the event that a person can legally remove their DNA profile from the database, the SBI will be responsible for removing the information (expungement) as required by court order or other legal means. The SBI will also be responsible for the long-term storage of the arrestee database samples.

The Department of Justice estimates that in FY 2010-11, approximately 38,000 individuals will be arrested for offenses covered under this bill. The effective date of the proposed legislation is December 1, 2010, so only individuals arrested in the last seven months of the first fiscal year would be required to provide DNA upon arrest. Therefore, DOJ anticipates that 22,205 individuals will be arrested for offenses covered under this bill, requiring the purchase of approximately 22,205 DNA/cheek swab collection kits. All the costs associated with the DNA/cheek swab collection kits would be prorated in FY 2010-11 to reflect the December 1, 2010, effective date.

In the first full year, DOJ states that the proposed bill will require the purchase of approximately 40,349 DNA/cheek swab collection kits. DOJ's data source for the estimated number of samples is the SBI Computerized Criminal History system that is integrated into the Statewide Automated Fingerprint System (SAFIS) which captures current arrestee fingerprint records across the state. By using the SBI Computerized Criminal History system, DOJ was able to count the specific arrests that would precipitate collection of DNA. DOJ's reported numbers count distinct State Identifier Numbers (SID's) as opposed to individual arrest charges. The SID is a number unique to a person and assigned by the fingerprint system (SAFIS) based on the person's biometric identity. Also, SID is propagated through many other state and federal criminal justice information systems, including the SBI Computerized Criminal History system.

The DNA collection kits cost an average of \$6.00 per kit. The kits will be distributed to local law enforcement agencies across the state, so DOJ would include \$0.98 for self-addressed paid postage on each kit sent to the local agencies. Therefore, 40,349 kits at an average cost of \$6.98 per kit would equate to a total expense of \$281,638 in FY 2011-12. DOJ anticipates that the number of DNA/cheek swab collection kits collected will increase about 6% each year.

Once DNA samples are collected from the local law enforcement agencies, DOJ would send them to a third-party laboratory at a cost of \$27 per sample, for an expense of \$1,089,429 in FY 2011-12. Based on DNA grant expenditures over the last few fiscal years, DOJ anticipates that \$698,451 in federal grant funding would support a portion of the outsourced lab analysis expenses.

For FY 2010-11, DOJ estimates that it will need eight additional staff members to handle the additional requirements of this bill. These include five Molecular Geneticists, one Latent Print Examiner and two Technicians. DOJ calculated their workload estimates from a 2006 OSBM study of crime control lab operations, which estimated twenty-one minutes were needed to process a DNA CODIS type sample. DOJ adjusted this workload review to twenty-four minutes on average per sample, to compensate for staff time devoted to eliminating duplicate samples. DOJ reported that fourteen staff members are needed to process existing Combined DNA Index System (CODIS) samples and new arrestee samples. Currently, six staff members are devoted full time to CODIS DNA processing, and DOJ states eight additional staff members would be needed to provide necessary staff capacity. The more intensive requirements related to expunction are also anticipated to increase staff activity. The SBI expunges the record and sample from the State DNA Database and Databank. The act provides that the expunction is to take place within 30 days of the SBI's receipt of the verification form, and a letter confirming the expunction is sent to the defendant.

The eight additional positions are included in the chart below:

Position Classification	FTE	Annual Salary	Annual Benefits	Total Salary & Benefits for FY 10-11	Total Salary & Benefits for FY 11-12
2 Information Processing Technicians to order, distribute, and receive the collection kits	2	\$39,000	\$12,011	\$101,743	\$108,450
5 Molecular Geneticists to review and upload genetic information into the database	5	\$44,000	\$12,919	\$283,806	\$302,725
1 Latent Evidence Examiner to verify fingerprints	1	\$44,000	\$12,919	\$56,761	\$60,545
TOTAL:	8	\$127,000	\$37,850	\$442,311	\$471,720

Although the samples would be outsourced, the additional Geneticists will be needed in order to hand process every sample to get them to the point of outsource. Hand processing would include entering identity information for the specimen into DOJ's in-house information management system, taking a cutting (if bloodstain) or punch (if buccal swab), and sending the samples to the vendor laboratory. The vendor laboratory will then extract, amplify, and run the DNA on a CE instrument, generate a data file, and send the data back to the SBI. The SBI will then perform a quality assurance review of every profile analyzed by the vendor, upload the profile into CODIS (federal DNA database), and respond to DNA database hits to cold cases which will require working with local law enforcement agencies. When an individual is arrested, they will also submit a set of limited fingerprints which will also be included in the local agency DNA collection kit as a secondary resource to confirm identity.

The Information Processing Technicians' duties would include ordering, distributing, and receiving the collection kits. The Latent Evidence Examiner's primary duties would be to expedite the response to local and state law enforcement agencies. The Fingerprint Evidence Examiner's work includes the fingerprint comparison, verification and quality control that is done with every DNA confirmation when a CODIS hit occurs. The DNA, as well as the prints, are verified and confirmed with each

DNA database hit of an offender to DNA crime scene evidence that has yet to be linked to any suspect. This position would also serve as back-up for the molecular geneticist staff during periods of peak demand to ensure efficient and accurate processing of DNA samples.

In addition, DOJ states that they would need \$445,000 in non-recurring information system development costs to support revisions to existing Criminal History Systems that can interface with SAFIS statewide fingerprint systems. Of the \$445,000, \$250,000 would be used to revise and modify the state SAFIS fingerprint system to be able to integrate with fingerprint and DNA booking and processing procedures. Modifying the SAFIS equipment software would allow local agency booking staff to complete data entry on a single unified system and be able to process fingerprint scan records and buccal swab bar code mailing sheets in a straightforward process that minimizes error and confusion. DOJ states that local agency staff would also be able to easily query SAFIS and criminal database tables to verify whether a DNA profile is already on record for an arrest suspect, which is not effectively accomplished with the existing limited CODIS DNA system. The \$150,000 would be used for the new DNA Specimen Management System and changes to other DOJ systems with which the DNA system would interact. This will support bar coding and tracking of all specimens and ensure offender data is integrated with CCH Computerized Criminal History files and related central DOJ IT systems. This system will also support secure connections to private vendor labs, so they can electronically transfer completed DNA profiles to SBI crime lab staff for quality review and final uploading to state and national DNA databanks. Finally, \$45,000 would be used for local agency fingerprint equipment updates, so local agencies can interface with new DNA system components.

DOJ estimates that approximately \$342,778 in additional scientific and start-up equipment would also be needed. The \$342,778 would equate to \$77,500 for scientific equipment, \$13,408 for computers, \$175,000 for moveable equipment, \$44,000 for cubicles, and \$24,000 for one vehicle. Other expenses related to the vehicle and traveling include \$4,000 for in-state lodging and \$26,624 for gasoline, car maintenance, and general utilities. The vehicle and various traveling expenses would be used for the following:

- Deliver buccal swab kits
- Provide hands on training and technical assistance to local agencies
- Attend technical staff training classes
- Assist local law enforcement agencies on DNA related search warrants and arrest activities that cannot be completed on the phone
- Deliver swabs or samples to private vendor labs
- Participate in quality assurance reviews of local agencies and private labs
- Attend court proceedings throughout the state as required

DOJ also requests \$30,000 in non-recurring funds for SBI local agency training. DOJ would have one day regional workshops in major metro areas, such as Charlotte, Raleigh, Greensboro, and Wilmington. Staff from all one hundred counties would be invited to a regional workshop for four employees per county, for an estimate of 400 local people targeted for training. For each regional workshop, expenses would include:

- Sample kits/education supplies = \$30.00 per student
- Training facility rental for one day = \$1,200

- Snacks/lunch/Coffee = \$10.00 to \$15.00 per student
- \$5,000 cost for DVD production/ancillary training that can be distributed to interested counties.

Training would be coordinated with training curricula and classes would be offered through the NC Justice Academy.

Additional requests from DOJ include \$5,760 for telephone charges, \$4,200 for additional postage, \$3,251 for professional training for the Molecular Geneticist staff (five positions times \$650) a year, and \$3,150 for general office supplies. Also, DOJ requests \$104,500 for IT maintenance contracts, so new IT equipment and systems, as well as crime lab equipment, can be calibrated each year or receive software and hardware maintenance updates. The department estimates that \$4,675 would be needed for crime lab clothing and \$9,979 in intangible assets.

The chart below shows the total cost estimate to implement the proposed legislation:

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
PURCHASED SERVICES					
Contractual Services					
DNA Sample Testing \$27/sample	\$599,535	\$1,089,429	\$1,154,795	\$1,224,083	\$1,297,528
Info System Development	\$445,000				
Maintenance Agreements		\$104,500	\$104,500	\$104,500	\$104,500
Travel & Training	\$34,000	\$4,000	\$4,000	\$4,000	\$4,000
Communications & Data Processing					
Telephone Charges	\$5,760	\$5,760	\$5,760	\$5,760	\$5,760
Additional Postage	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200
Other Services	\$3,251	\$3,251	\$3,251	\$3,251	\$3,251
SUPPLIES					
General Admin Supplies	\$3,150	\$3,150	\$3,150	\$3,150	\$3,150
Vehicle/Equipment Operating Supplies	\$26,624	\$26,624	\$26,624	\$26,624	\$26,624
Clothing and Recreational Supplies	\$4,675				
Research/Development & Educational Supplies					
DNA Collection Kits \$6.98/kit	\$154,991	\$281,638	\$298,536	\$316,448	\$335,435
SBI crime lab supplies	\$80,698	\$80,698	\$80,698	\$80,698	\$80,698
PROPERTY, PLANT AND EQUIPMENT					
Equipment (Furniture, Office Equip., Computers)	\$342,778				
Intangible Assets	\$9,979				
Operating Costs	\$ 1,714,641	\$ 1,603,250	\$ 1,685,514	\$ 1,772,714	\$1,865,146
Staff Costs	\$ 442,311	\$ 471,720	\$ 495,306	\$ 520,071	\$ 546,075
Total Staff & Operating Costs	\$ 2,156,952	\$ 2,074,970	\$ 2,180,820	\$ 2,292,786	\$2,411,221
Less Receipts - Federal Grants	\$ (698,451)	\$ (698,451)	\$ (698,451)	\$ (698,451)	\$ (698,451)
Net State Funds Needed	\$ 1,458,501	\$ 1,376,519	\$ 1,482,369	\$ 1,594,335	\$1,712,770

After reviewing the DOJ analysis for H1403, the following adjustments have been made by the Fiscal Research Division (FRD):

- 1) DOJ estimates they will need \$24,000 for a new vehicle. However, the Department should be able to implement the proposed legislation with the existing vehicles assigned to the crime lab. Therefore, the updated cost of equipment including furniture, office equipment, and computers would equal \$318,778.
- 2) Accordingly, DOJ requests \$26,624 for gasoline, car maintenance, and general utilities. Since a new vehicle is not required, the costs should be adjusted to represent the mileage that will be used by the eight additional staff members. For example, if staff members used a Taurus station wagon at a minimum of 1,050 miles a month at \$0.34 per mile, the cost would be \$357 a month, or \$4,284 a year. Assuming the eight additional staff members would need two cars, in case more than one task needed to be done at the same time, the total for vehicle and operating equipment would equal \$8,368.

The chart below shows the updated cost estimate to implement the proposed legislation:

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
PURCHASED SERVICES					
Contractual Services					
DNA Sample Testing \$27/sample	\$599,535	\$1,089,429	\$1,154,795	\$1,224,083	\$1,297,528
Info System Development	\$445,000				
Maintenance Agreements		\$104,500	\$104,500	\$104,500	\$104,500
Travel & Training	\$34,000	\$4,000	\$4,000	\$4,000	\$4,000
Communications & Data Processing					
Telephone Charges	\$5,760	\$5,760	\$5,760	\$5,760	\$5,760
Additional Postage	\$4,200	\$4,200	\$4,200	\$4,200	\$4,200
Other Services	\$3,251	\$3,251	\$3,251	\$3,251	\$3,251
SUPPLIES					
General Admin Supplies	\$3,150	\$3,150	\$3,150	\$3,150	\$3,150
Vehicle/Equipment Operating Supplies	\$8,368	\$8,368	\$8,368	\$8,368	\$8,368
Clothing and Recreational Supplies	\$4,675				
Research/Development & Educational Supplies					
DNA Collection Kits \$6.98/kit	\$154,991	\$281,638	\$298,536	\$316,448	\$335,435
SBI crime lab supplies	\$80,698	\$80,698	\$80,698	\$80,698	\$80,698
PROPERTY, PLANT AND EQUIPMENT					
Equipment (Furniture, Office Equip., Computers)	\$318,778				
Intangible Assets	\$9,979				
Operating Costs	\$ 1,672,385	\$ 1,584,994	\$ 1,667,258	\$1,754,458	\$ 1,846,890
Staff Costs	\$ 442,311	\$ 471,720	\$ 495,306	\$ 520,071	\$ 546,075
Total Staff & Operating Costs	\$ 2,114,696	\$ 2,056,714	\$ 2,162,564	\$2,274,530	\$ 2,392,965
Less Receipts - Federal Grants	\$ (698,451)	\$ (698,451)	\$ (698,451)	\$ (698,451)	\$ (698,451)
Net State Funds Needed	\$ 1,416,245	\$ 1,358,263	\$ 1,464,113	\$1,576,079	\$ 1,694,514

Judicial Branch

The bill would impact the workload of the Administrative Office of the Courts (AOC) and court personnel primarily due to the provisions for the expunction of DNA. Other workload impact is outlined after the estimates for expunction workload.

Subsection (f)(1) provides for expunction eligibility if (a) all charges listed in new G.S. 15A-266.3A have been dismissed, (b) the person has been acquitted of all charges listed, or (c) no charge was filed within the applicable time period.

Subsection (f)(2) further limits the expunction and destruction of samples by requiring that “the State [DA] has determined that the person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.”

New G.S. 15A-266.3A(1) also prohibits the expunction of the DNA record if there was a conviction for a lesser included felony offense.

Workflow:

Due to the time lapse between charge and disposition (in FY 2008-09, the median age at disposition of a felony case in Superior Court was 203 days), AOC does not anticipate significant workload for court personnel until FY 2011-12.

DNA Record Expunction: Estimate 10 minutes per request for DA staff, 1 minute per approved request for a DA or judge

- For every applicable case, there would be work required for assistant district attorneys or victim witness legal assistants to review the case and review the defendant’s criminal history and any pending charges.
- For DNA records that will be verified as expungible, the DA staff must also prepare the paperwork for the signature of a district attorney or judge, and copy, file, and submit the signed verification form to the SBI. There may be further communications between the SBI and the court system if clarification is needed for any case. There would also be time incurred by judges and/or district attorneys to review and sign the verification forms. DA staff must also prepare, copy, and mail a letter to the defendant.
- For DNA records that will not be verified as expungible, the DA staff must prepare, copy, and mail a letter to the defendant.

Courtroom Personnel: 3 Types of Hearings

Hearings would involve a judge (presumably a Superior Court judge given that the majority of the charges in question are felony charges), a deputy clerk, a court reporter, an assistant district attorney, and indigent defense if applicable.

- (1) The defendant seeks judicial review of the State’s [DA’s] determination that the DNA record does not qualify for expunction – estimate 20 minutes per hearing [NOTE: AOC has provided

a scenario of 5% to illustrate the potential impact of these hearings. AOC is unable to provide any estimates, including scenarios, for the frequency with which the other two types of hearings listed below will occur.]

- (2) The State or the SBI seeks a judicial order granting additional time beyond the 30 days provided in the proposed statute – estimate 20 minutes per hearing
- (3) A court must determine whether any database matches that occur outside of the 30-day statutory period and after the expiration of any court-granted extension should be suppressed. These hearings will take significantly longer, and the duration cannot be estimated at this time.

Workload:

The Department of Justice (DOJ) estimates that in FY 2010-11, approximately 38,000 individuals will be arrested for offenses covered under this bill. The effective date of the proposed legislation is December 1, 2010, so only individuals arrested in the last seven months of the first fiscal year would be required to provide DNA upon arrest. The delay between charge and conviction is also approximately seven months for felony cases (median age at disposition is 203 days). Most workload associated with expunction will not occur until a case has been disposed. Therefore, AOC anticipates a seven-month lag between the act of taking the DNA sample and the court workload associated with expunction. Thus, AOC’s starting figure for FY 2011-12 impact is the DOJ estimate of arrestees for FY 2010-11: 38,000. Approximately 34.5% of those would already have DNA on file from a prior conviction. For the purposes of court workload, the critical figures are not the number of arrests but:

- (a) the number of arrestees who are not subsequently convicted of an eligible offense or a lesser included felony offense;
- (b) the number of arrestees in (a) who are ineligible for expunction due another felony conviction, or due to another pending charge;
- (c) the number in (b) and who are denied expunction and request judicial review.

AOC reports to the SBI all felony charges and all dispositions on those charges. The SBI, through its use of fingerprint records, is able to collapse charges to individuals. At the request of the AOC, DOJ reviewed arrest and disposition data for prior years to determine the number of arrestees for an offense that would require DNA sampling upon arrest under the proposed legislation, and the number of individuals adjudicated to date on an eligible offense for which an arrest was made in the specified fiscal year. DOJ found the following:

	FY 2006-07		FY 2007-08	
	#	%	#	%
Arrested for an eligible offense	28,882	100%	31,150	100%
No court disposition to date:	4,351	15%	5,950	19%
Disposed to date; Not adjudicated on eligible offense or other felony	13,115	45%	13,589	44%

Many of the offenders eligible under this bill to request expunction would be ineligible for expunction due to a conviction for another felony offense. For example, an offender charged with breaking and entering and felony larceny could have the breaking and entering charge dismissed and a conviction

for larceny. DNA would be taken on arrest for breaking and entering, but not for larceny. However, DNA would be taken on conviction for the larceny conviction, so an expunction request would be denied. Many offenders also have DNA on file from a previous felony conviction.

Position Costs (salaries, benefits, and related operating costs):

Position	FY 2011-12			FY 2012-13
	(R)	(NR)	Total	(R)
DA Victim Witness Legal Assistant	\$57,477	\$5,155	\$62,632	\$57,477
Assistant District Attorney	\$108,523	\$3,739	\$112,262	\$108,523
Superior Court Judge	\$183,654	\$6,553	\$190,207	\$183,654
Deputy Clerk	\$45,646	\$2,620	\$48,266	\$45,646
Court Reporter	\$68,620	\$4,857	\$73,477	\$68,620

Impact:

Based on the median age to disposition for a felony case of 203 days, AOC would not anticipate significant impact from this legislation until FY 2011-12.

Cost to review all cases with no conviction for an eligible offense, determine expunction eligibility, and associated work.	FY 2011-12		FY 2012-13	
	\$	Positions	\$	Positions
DA Staff (VWLA)	\$76,347	1.33	\$83,444	1.45
Elected DA time	\$25,909		\$28,318	
Total	\$102,257	1.33	\$111,761	1.45

<i>Scenario for Judicial Review: If 5% of ineligible defendants request review</i>		
	FY 2011-12	FY 2012-13
Number of Hearings	1,071	1,089
Cost for In-Court Personnel	\$122,705	\$124,762

Other workload required by this legislation would be as follows:

- G.S. 15A-931(a), as amended by this legislation, would direct the clerk, upon dismissal, to indicate in the case file whether the defendant had submitted a DNA sample pursuant to G.S. 15A-266.3A. This is in addition to other notes for whether a jury has been impaneled or evidence has been introduced. Because these other items are included only in the hard copy of the case file, it is assumed that the DNA sample indication will similarly be included only in the hard copy. New G.S. 15A-266.3A(f)(1)(b) requires the same indication by the clerk upon acquittal. Thus, AOC assumes that both indications will be made only in the hard copy of the file and take relatively little time. If these indications were to be made in the automated criminal and infraction system, the programming costs would be considerable.
- AOC would create a new form (new 15A-266.3A(f)) and modify some existing forms. This would be part of the workload of the criminal forms subcommittee and full forms committee.

- AOC would amend the bill of costs form and make adjustments to its financial systems for the receipt and remission of the new DNA fee. Workload impact would fall on technology services personnel within AOC and forms committee members.
- There may be a reduction in the number of suspended sentence defendants the court must order to provide a sample under G.S. 15A-266.6 and potentially a corresponding reduction in the number of suspended sentence defendants referred back to the court for failing to provide a sample. These changes could result in a slight decrease in court time for the affected defendants. In-court personnel include judges, deputy clerks, assistant district attorneys, and, in superior court, court reporters. The amount of time and number of defendants cannot be estimated.

REVENUE ESTIMATE:

The Administrative Office of the Courts (AOC) reports that based on the current number and rate of offender compliance in criminal judgments, the new \$2.00 fee on criminal cases upon conviction for all felonies and misdemeanors could be expected to yield approximately \$825,000 in the first year and \$1.1 million in subsequent years. All revenue would be remitted to the General Fund with the exception of certain designated fees such as the phone systems fee, the worthless check program fee, and a portion of the attorney appointment fee. AOC does not retain any revenue received by clerks.

The majority of the revenue would be generated by misdemeanor traffic convictions. The revenue from felony convictions would be minimal in the first year due to the priority order of costs due the State and the number of probationers who take more than one year to pay all fees owed or who are revoked prior to paying all fees. Revenue from felony convictions would increase slightly in the second and subsequent years. [SEE TECHNICAL CONSIDERATIONS]

SOURCES OF DATA: Department of Justice; Judicial Branch

TECHNICAL CONSIDERATIONS:

1. The Department of Justice (DOJ) received \$221,156 for four positions in S.L. 2010-31C. The four positions were appropriated to provide the State Bureau of Investigation (SBI) Crime Lab with additional professional staff to analyze DNA samples.
2. The Administrative Office of the Courts (AOC) states that new GS 7A-304(a)(9) creates a new tax, paid upon conviction of a felony or misdemeanor, to be remitted to the State Treasurer. GS 7A-304(a) refers to costs in criminal cases. AOC assumed for the purposes of this analysis that the tax would be treated as a cost, but this may require clarification.
3. Section 5 of the proposed legislation that states the SBI would report a calendar year summary to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee. Since funds are appropriated on a fiscal year basis, a fiscal year report may be more useful.
4. There is the potential for North Carolina to receive federal funding through JAG-Byrne grants for enacting the proposed legislation. According to the United States Department of Justice’s website, the state of North Carolina received \$8,659,769 for the Governor’s Crime

Commission to administer during federal fiscal year 2010, which began October 1, 2009. Another \$4,393,965 was awarded directly to local and county governments in North Carolina. Under the JAG-Byrne program, several localities within a state are pre-determined by the United States Department of Justice to receive a certain amount of funds. Then, the state receives the remainder to administer according to internal processes. The Governor's Crime Commission sets priorities on this funding through an exhaustive process, and the money is awarded accordingly through competitive grant applications and awards.

Under the current program guidelines authorized by the United States Department of Justice, a 10% increase in JAG-Byrne grants can be administered to states that have DNA on arrest laws. The federal authorization changes from year to year, so this could change depending upon what the federal government chooses to prioritize in future years. If the state received a 10% increase in the JAG-Byrne grants for enacting the proposed legislation, this would equate to 10% of \$8,659,769, or about \$800,000.

Additionally, DOJ could potentially receive federal funding through the Convicted Offender and/or Arrestee DNA Backlog Reduction Program. The objective of the FY 2010 Convicted Offender and/or Arrestee DNA Backlog Reduction Program was to accelerate the analysis of convicted offender and/or arrestee DNA samples collected by states pursuant to applicable law for DNA database samples, in order to provide timely Combined DNA Index System (CODIS) compatible data for all 13 CODIS core STR loci ("profile") for state and national DNA databases. Funds were to be used by a state's designated existing and accredited DNA database laboratory to reduce the number of DNA database samples pending DNA analysis ("backlog") in one of three ways:

1. Through in-house analysis. The DNA database laboratory will determine what its backlog is and may apply for no more than \$35.00 per sample to be analyzed.
2. Through sending samples to be tested by accredited fee-for-service laboratories. The DNA database laboratory will determine what its backlog is and may apply for up to \$35.00 per sample to be analyzed.
3. Through data review of sample profiles generated by an accredited laboratory. If the database laboratory lacks funding to ensure timely review of the profiles generated, it may apply for up to \$5.00 per DNA profile reviewed.

Eligible applicants are states with a designated existing crime laboratory that conducts analysis of DNA database samples, provided the designated DNA database laboratory meets all of the following requirements:

- The laboratory is accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community.
- The laboratory is a participant in the National DNA Index System (NDIS).
- The laboratory undergoes external audits, not less than once every 2 years, to demonstrate compliance with the requirements of the Quality Assurance Standards for DNA Databasing Laboratories established by the Director of the Federal Bureau of Investigation.

- If the laboratory requests assistance with analysis of samples in-house, then the laboratory must possess sufficient in-house DNA analysis capacity to analyze at least 50 percent of its annual receipt of DNA database samples or a minimum of 5,000 DNA database samples per month.

Total awards did not exceed \$40.00 per DNA database sample analyzed, reviewed, and uploaded to NDIS. Funds were awarded only for sample analysis and data review above and beyond that which a state can accomplish using current sources of funding. The total amount of funding requested by eligible applicants may also affect award amounts.

All awards were subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law. Total funding for solicitation and the number of awards made depended on the availability of funds, the quality of the applications, and other pertinent factors.

The deadline to apply for the FY 2010 Convicted Offender and/or Arrestee DNA Backlog Reduction Program was April 19, 2010. Therefore, DOJ would need to apply for the FY 2011 Convicted Offender and/or Arrestee DNA Backlog Reduction Program in April of 2011. If the proposed legislation is implemented, DOJ met all the eligibility requirements, and DOJ was awarded the federal funding, the Department would begin receiving funds in September 2011. DOJ estimates they will collect 40,349 additional DNA samples in FY 2011-12. Therefore, the Department could receive a maximum of \$40 a sample through this federal program, or an additional \$1,613,960 under the proposed legislation. **It is also important to note that the federal government includes a non-supplant clause as part of the eligibility requirements. As a result, federal funding will not be provided to states that are already using existing state funding.**

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 6, 2010



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