

# DNA Expunction

## **The Statute**

Since February 1, 2011 the North Carolina DNA Database has been in effect. (**§ 15A-266.3A**) This Act requires defendants arrested for certain felony offenses to provide DNA samples at arrest rather than waiting for conviction. These samples are collected by local Law Enforcement while fingerprinting defendants at arrest. These samples are forwarded to the SBI to be analyzed and added to the DNA Database. They are then to be used to identify guilty parties as well as exonerate the innocent. If the defendant is later found not guilty, or pleads guilty to a misdemeanor not covered by this statute then the SBI is directed to destroy the sample. (Unless other grounds exist to allow them to keep the sample: i.e. the defendant's DNA was taken pursuant to a previous felony conviction)

## **The Problem for District Attorneys**

15A-266(3A) requires that in cases where the defendant has been found not guilty, case dismissed or never charged the Defendant shall have his DNA sample expunged from the DNA Database. The statute directs that that the local District Attorney notify the SBI when DNA should be expunged from the Database. There are **several major problems with this procedure**.

1. There is **nothing in the current Statute that requires** local Law Enforcement and the SBI to notify the District Attorney that a sample has ever been taken or entered into the DNA Database.
2. District Attorneys have no supervisory relationship with either of these agencies and in fact the SBI is supervised by the Attorney General's office.
3. There is **no automated system** that currently exists or can be created to assist the District Attorneys in determining whether a sample was collected or whether the SBI already has previous samples in its Database. Instead, numerous phone calls and legwork are required to determine these issues even before analyzing whether the Defendant's final conviction status precludes his sample from being kept in the Database.
4. Currently, **26** States collect DNA from either all felony arrestees or certain ones such as North Carolina. Only **1** State in addition to North Carolina places this burden on their prosecutors. (**See Attached**)
5. While it may have been contemplated that this process could be automated the District Attorneys and AOC have not been able to achieve this goal despite great effort for several good reasons including; complicated arrest scenarios involving one DNA sample taken for more than one offense at the time of arrest and different dispositions of those cases on different dates. Each determination requires human interaction and cannot be computer driven.
6. No additional DA staff or technology staff was provided for in this statute and the requirements of this statute will delay regular and automated full discovery which the General Assembly required in **all** felony cases.

## **The Solution**

The original DNA Database bill put the burden on the Defendant or his counsel to request expungement if they believed the defendant qualified under the law. There are **several good reasons for this approach**.

1. **No middleman**. The District Attorney, who has no control over any sample taken is out of the equation and the defendant only has to deal with **1** State agency to get their sample removed.
2. No other criminal expungement statute under NCGS 15A puts the burden on the DA to request that a case or charge be expunged. The defendant, the person who is in the best position to know whether he qualifies must start the expungement process.
3. Most States follow this approach and the original Bill placed the burden on the Defendant and the SBI when it was initially introduced. (**See Attached**)