

Senate Bill 119

By: Senators Adelman of the 42nd, Kemp of the 3rd, Meyer von Bremen of the 12th and Reed of the 35th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 5 of Title 5 of the Official Code of Georgia Annotated,  
2 relating to procedures for new trial, so as to change certain provisions relating to a motion  
3 for new trial where a person is sentenced for a capital crime and DNA testing may be  
4 exculpatory; to provide for post-conviction requests for DNA testing in cases where a person  
5 is sentenced to death; to provide criteria for said motion; to provide for matters related to  
6 previous DNA testing; to provide a procedure for the motion and hearing; to provide for  
7 relief on the motion; to provide for preservation of evidence; to amend Code Section 17-5-54  
8 of the Official Code of Georgia Annotated, relating to disposition of personal property in  
9 custody of law enforcement agency, so as to conform it to the changes made in Title 5; to  
10 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 3 of Chapter 5 of Title 5 of the Official Code of Georgia Annotated, relating to  
15 procedures for new trial, is amended by striking subsection (a) of Code Section 5-5-40,  
16 relating to time of motion for new trial generally, and inserting in lieu thereof the following:  
17 "(a) All motions for new trial, except in extraordinary cases and as provided in Code  
18 Section 5-5-41.1, shall be made within 30 days of the entry of the judgment on the verdict  
19 or entry of the judgment where the case was tried without a jury."

20 **SECTION 2.**

21 Said article is further amended by striking Code Section 5-5-41, relating to requirements as  
22 to extraordinary motions for new trial generally and limitations, and inserting in lieu thereof  
23 the following:

1 "5-5-41.

2 (a) Except as provided in Code Section 5-5-41.1, when ~~When~~ a motion for a new trial is  
3 made after the expiration of a 30 day period from the entry of judgment, some good reason  
4 must be shown why the motion was not made during such period, which reason shall be  
5 judged by the court. In all such cases, 20 days' notice shall be given to the opposite party.  
6 (b) Whenever a motion for a new trial has been made within the 30 day period in any  
7 criminal case and overruled or when a motion for a new trial has not been made during  
8 such period, except as provided in Code Section 5-5-41.1, no motion for a new trial from  
9 the same verdict or judgment shall be made or received unless the same is an extraordinary  
10 motion or case; and only one such extraordinary motion shall be made or allowed."

### 11 SECTION 3.

12 Said article is amended further by inserting a new Code section to follow Code Section  
13 5-5-41 to read as follows:

14 "5-5-41.1.

15 (a) Any person who is convicted of a capital offense and sentenced to death by a court of  
16 this state may move the court at any time for deoxyribonucleic acid (DNA) testing,  
17 provided that the movant shows the court:

18 (1) That the identity of the perpetrator of the crime was or should have been a significant  
19 issue in the prosecution of the movant's case;

20 (2) That regardless of whether or not it was introduced in evidence in the original  
21 proceedings, particular described evidence exists which could be subjected to certain  
22 types of DNA testing, which type the movant shall specify and demonstrate to be  
23 generally accepted in the scientific community, and that the testing could produce reliable  
24 results material to the issues of identity and the alleged wrongful conviction;

25 (3) That a reasonable probability exists that the movant would not have been prosecuted  
26 or convicted if exculpatory results from the evidence had been obtained through DNA  
27 testing and analysis and had been available for trial which resulted in a death sentence;  
28 and

29 (4) That the evidence was not previously subjected to DNA testing or was not subjected  
30 to the particular testing which is requested by the movant.

31 (b) If the court finds that the evidence was previously subjected to DNA testing or other  
32 biological testing, it shall order the party at whose request the testing was conducted to  
33 provide all other parties and the court with access to all laboratory reports, laboratory notes,  
34 and data underlying the testing which was produced in connection with the DNA testing  
35 or biological testing.

(c) On filing the motion, the movant shall serve the office of the district attorney which prosecuted movant's case to conviction and the Attorney General for this state. The office of the district attorney and the Attorney General shall file a response, if any, within 45 days of service.

(d) If practicable, the motion shall be heard by the judge who originally pronounced judgement. The court shall set a hearing on the motion within 90 days of the filing date. At the hearing the court shall issue an order granting the request for DNA testing and analysis or issue an order denying the request for DNA testing and analysis and the motion for new trial. An order granting the DNA testing and analysis may include other instructions as the court deems appropriate, including but not limited to, the type of DNA analysis to be used, scheduling, handling and preservation of samples and evidence, the regulation of elimination of samples from third parties, disclosure of underlying laboratory notes and data, and payment for the testing and analysis. The results of any testing ordered pursuant to this Code section shall be disclosed to all parties and the Attorney General.

(e) If the DNA testing and analysis is favorable to the movant, the court shall set a hearing to determine in the exercise of sound legal discretion whether good cause exists to grant or deny movant's request for a new trial. If the DNA testing and analysis is not favorable to petitioner, the court shall deny the motion.

(f) Any evidence in a capital case which is collected by the state, one of its political subdivisions, or any law enforcement agency shall be preserved for a period of four years from the date of the defendant's conviction. The defendant may petition the court pursuant to this subsection to show cause why the evidence should be preserved for a longer period of time."

#### SECTION 4.

Code Section 17-5-54 of the Official Code of Georgia Annotated, relating to disposition of personal property in custody of law enforcement agency, is amended by striking paragraph (1) of subsection (a) of this Code section and adding subsection (g) to this Code section to respectively read as follows:

"(a)(1) Except as otherwise provided in subsections (d), ~~and (e)~~, and (g) of this Code section, when a law enforcement agency assumes custody of any personal property which is the subject of a crime or has been abandoned or is otherwise seized, a disposition of such property shall be made in accordance with the provisions of this Code section. When a final judgment is entered finding a defendant guilty of the commission of a crime, any personal property used as evidence in the trial shall be returned to the rightful owner of the property. All personal property in the custody of a law enforcement agency, including personal property used as evidence in a criminal trial, which is unclaimed after a period

1 of 90 days following its seizure, or following the final conviction in the case of property  
2 used as evidence, and which is no longer needed in a criminal investigation or for  
3 evidentiary purposes shall be subject to disposition by the law enforcement agency. The  
4 sheriff, chief of police, or other executive officer of a law enforcement agency shall make  
5 application to the superior court for an order to retain, sell, or discard such property. In  
6 the application the officer shall state each item of personal property to be retained, sold,  
7 or discarded. Upon the superior court's granting an order for the law enforcement agency  
8 to retain such property, the law enforcement agency shall retain such property for official  
9 use. Upon the superior court's granting an order which authorizes that the property be  
10 discarded, the law enforcement agency shall dispose of the property as other salvage or  
11 nonserviceable equipment. Upon the superior court's granting an order for the sale of  
12 personal property, the officer shall provide for a notice to be placed once a week for four  
13 weeks in the legal organ of the county specifically describing each item and advising  
14 possible owners of items of the method of contacting the law enforcement agency;  
15 provided, however, that miscellaneous items having an estimated fair market value of  
16 \$75.00 or less may be advertised or sold, or both, in lots. Such notice shall also stipulate  
17 a date, time, and place said items will be placed for public sale if not claimed. Such notice  
18 shall also stipulate whether said items or groups of items are to be sold in blocks, by lot  
19 numbers, by entire list of items, or separately."

20 "(g) The provisions of this Code section shall not apply to any property which is subject  
21 to preservation pursuant to Code Section 5-5-41.1."

## 22 SECTION 5.

23 This Act shall become effective upon its approval by the Governor or upon its becoming law  
24 without such approval.

## 25 SECTION 6.

26 All laws and parts of laws in conflict with this Act are repealed.