

House Bill 599

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Post 2 and Boggs of the 145<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so  
2 as to provide that a request for postconviction DNA testing shall be made through an  
3 extraordinary motion for new trial; to provide for postconviction DNA testing of evidence  
4 in certain criminal cases; to provide procedures, conditions, and standards for the conduct  
5 of postconviction DNA testing of evidence; to provide for the state to appeal in criminal  
6 cases in which an extraordinary motion for new trial is granted; to amend Article 3 of  
7 Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to disposition of  
8 property seized, so as to provide standards for the retention of evidence in criminal cases; to  
9 provide for other related matters; to provide an effective date and applicability; to repeal  
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended  
14 by adding a new subsection to the end of Code Section 5-5-41, relating to general  
15 requirements for extraordinary motions for new trial, to read as follows:

16 "(c) Subject to the provisions of subsections (a) and (b) of this Code section, a person who  
17 was convicted of a felony and is currently serving a term of imprisonment may make a  
18 written motion before the trial court that entered the judgment of conviction in his or her  
19 case, for the performance of forensic deoxyribonucleic acid (DNA) testing.

20 (1) The motion shall be verified by the convicted person under penalty of perjury and  
21 shall provide all of the following information:

22 (A) Establish that evidence that potentially contains deoxyribonucleic acid (DNA) was  
23 obtained in relation to the crime and subsequent indictment, which resulted in his or her  
24 conviction;

25 (B) Establish that the evidence was not subjected to the testing which is now being  
26 requested because the existence of the evidence was unknown to the defendant or to the

1 defendant's attorney prior to trial or because the technology for the testing was not  
2 available at the time of trial;

3 (C) Establish why the identity of the perpetrator was, or should have been, a significant  
4 issue in the case;

5 (D) Show, in light of all the evidence in the case, how the requested DNA testing  
6 would raise a reasonable probability that the defendant would have been acquitted if the  
7 results of DNA testing had been available at the time of conviction;

8 (E) Identify the evidence to be tested by its description and, if known, its present  
9 location, its origin and the date, time, and means of its original collection;

10 (F) Reveal the results of any DNA or other biological evidence testing that was  
11 conducted previously by either the prosecution or the defense, if known; and

12 (G) If known, identify the names, addresses, and telephone numbers of all persons who  
13 are known or believed to have possession of any evidence described by  
14 subparagraphs (A) through (F) of this paragraph, and any persons who have provided  
15 any of the information contained in the motion, indicating which person has which  
16 items of evidence or information.

17 (2) The motion shall be served upon the district attorney. If the person filing the motion  
18 is in the custody of the Department of Corrections, a copy of the motion shall also be  
19 served upon the Attorney General. The state shall be given notice and an opportunity to  
20 respond to any hearing conducted pursuant to this Code section.

21 (3) If the motion complies with the requirements of paragraph (1) of this subsection, the  
22 court shall order a hearing on the motion.

23 (A) The motion shall be heard by the judge who conducted the trial that resulted in the  
24 person's conviction unless the presiding judge determines that the trial judge is  
25 unavailable.

26 (B) Upon request of either party, the court may order, in the interest of justice, that the  
27 convicted person be at the hearing on the motion.

28 (C) The purpose for the hearing shall be to allow the state to be heard on the issue of  
29 whether the defendant's motion complies with the requirements of paragraph (1) of this  
30 subsection.

31 (4) If the court determines at the hearing provided for in paragraph (3) of this subsection  
32 that the defendant's motion, on its face, provides the information required by  
33 paragraph (1) of this subsection and establishes a prima facie case that the requested  
34 DNA testing would raise a reasonable probability that the defendant would have been  
35 acquitted, then the state shall be allowed 60 days to respond to the motion and request a  
36 rebuttal hearing. At the rebuttal hearing:

1 (A) The state may present evidence by affidavit or testimony to rebut the information  
2 provided in the defendant's motion for new trial;

3 (B) The court shall determine whether upon consideration of all of the evidence there  
4 is a reasonable probability that the verdict would have been different if the results of  
5 the requested DNA testing had been available at the time of trial.

6 (5) The court shall grant the motion for DNA testing if it determines at the conclusion  
7 of the rebuttal hearing that the defendant has met the burden of proof set forth in  
8 paragraphs (1) and (4) of this subsection, and that all of the following have been  
9 established:

10 (A) The evidence to be tested is available and in a condition that would permit the  
11 DNA testing requested in the motion;

12 (B) The evidence to be tested has been subject to a chain of custody sufficient to  
13 establish that it has not been substituted, tampered with, replaced, or altered in any  
14 material respect;

15 (C) The evidence was not tested previously or, if tested previously, the requested DNA  
16 test would provide results that are reasonably more discriminating or probative of the  
17 identity of the perpetrator than prior test results;

18 (D) The motion is not made for the purpose of delay and the issue has not been  
19 previously litigated in a prior proceeding in the courts of this state or of the United  
20 States;

21 (E) The identity of the perpetrator of the crime was a significant issue in the case;

22 (F) The testing requested employs a scientific method that has reached a scientific state  
23 of verifiable certainty such that the procedure rests upon the laws of nature;

24 (G) The defendant has made a prima facie showing that the evidence sought to be  
25 tested is material to the issue of the defendant's identity as the perpetrator of, or  
26 accomplice to, the crime, aggravating circumstance, or similar transaction that resulted  
27 in the conviction.

28 (6) If the court orders testing pursuant to this subsection, the court shall determine the  
29 method of testing and responsibility for payment for the cost of testing, if necessary, and  
30 may require the defendant to pay the costs of testing if the court determines that the  
31 defendant has the ability to pay.

32 (7) If the court orders testing pursuant to this subsection, the court shall order that the  
33 evidence be tested by the Division of Forensic Sciences of the Georgia Bureau of  
34 Investigation. In addition, the court may also authorize the testing of the evidence by a  
35 laboratory that meets the standards of the DNA advisory board established pursuant to  
36 the DNA Identification Act of 1994, Section 14131 of Title 42 of the United States Code,  
37 to conduct the testing. The court shall order that a sample of the defendant's DNA be

1 submitted to the Division of Forensic Sciences of the Georgia Bureau of Investigation  
2 and that the DNA analysis be stored and maintained by the bureau in the DNA data bank.

3 (8) If a motion is filed pursuant to this subsection the court shall order the state to  
4 preserve during the pendency of the proceeding all evidence in the state's possession or  
5 control that could be subjected to DNA testing.

6 (9) The result of any test ordered under this subsection shall be fully disclosed to the  
7 defendant, the district attorney, and the Attorney General.

8 (10) The judge shall set forth by written order the reason or reasons for the grant or  
9 denial of the motion for new trial filed pursuant to this subsection.

10 (11) Notwithstanding any other provision of law, the state or the defendant may appeal  
11 an order, decision, or judgment rendered pursuant to this subsection."

## 12 SECTION 2.

13 Said title is further amended by striking the "or" at the end of paragraph (5) of subsection (a),  
14 the period at the end of paragraph (6) of subsection (a) and inserting a "; or", and adding a  
15 new paragraph to subsection (a) of Code Section 5-7-1, relating to orders, decisions, or  
16 judgments appealable by the state, to read as follows:

17 "(7) From an order, decision, or judgment of a superior court granting an extraordinary  
18 motion for new trial."

## 19 SECTION 3.

20 Article 3 of Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to  
21 disposition of property seized, is amended by adding new Code sections at the end of the  
22 article to read as follows:

23 "17-5-55.

24 (a) In all criminal cases, the court shall designate either the clerk of court, the court  
25 reporter, or any other officer of the court to be the custodian of any property that is  
26 introduced into evidence at trial. Property that is introduced into evidence shall be  
27 identified or tagged with an exhibit number. After verdict and judgment has been entered  
28 in any criminal case, the clerk of court or court reporter who has custody of the physical  
29 evidence introduced in the case shall inventory the evidence and create a log of the  
30 evidence. The log shall contain the case number, style of the case, description of the item,  
31 exhibit number, the name of the custodian, and the location where the physical evidence  
32 is stored. If evidence is transferred to a third party other than the court reporter or the clerk  
33 of court, the log shall be annotated to show the identity of the person or entity receiving the  
34 evidence, the date of the transfer, and the location of the evidence. Any person or entity  
35 to which physical evidence is transferred shall be required to sign a property transfer form

1 that will be filed with the log of evidence. When physical evidence, other than audio or  
2 video recordings, is transferred to any person or entity other than the clerk of court or court  
3 reporter, a photograph or other visual image of the evidence shall be made and placed in  
4 the case file.

5 (b) Physical evidence which is classified as dangerous or contraband by state or federal  
6 law, including but not limited to items described by state or federal law as controlled  
7 substances, dangerous drugs, explosives, weapons, ammunition, biomedical waste,  
8 hazardous substances, or hazardous waste shall be properly secured in a manner authorized  
9 by state or federal law. Such evidence may be transferred to a government agency  
10 authorized to store or dispose of such material.

11 (c) Documents, photographs, and similar evidence shall be maintained and disposed of in  
12 accordance with records retention schedules adopted in accordance with Article 5 of  
13 Chapter 18 of Title 50, known as the 'Georgia Records Act.' Other physical evidence,  
14 including physical evidence for which postconviction DNA testing may be requested in  
15 accordance with subsection (c) of Code Section 5-5-41, shall be maintained for a period  
16 of not less than two years after judgment in the case becomes final or two years after the  
17 effective date of this Code section, whichever is later; provided, however, that in any case  
18 in which the defendant is sentenced to death, such physical evidence shall be maintained  
19 until after the sentence has been carried out. A party to an extraordinary motion for new  
20 trial or a habeas corpus action in which DNA testing is requested that was filed prior to the  
21 expiration of the time prescribed for the preservation of evidence by this Code section, may  
22 apply to the court in which the defendant was convicted for an order directing that the  
23 evidence be preserved beyond the time period prescribed by this Code section and until  
24 judgment in the action shall become final.

25 (d) Except as is otherwise provided in subsection (b) of this Code section or by law,  
26 following the expiration of the period of time set forth in subsection (b) of this Code  
27 section, physical evidence may be disposed of in accordance with the provisions of Article  
28 5 of Chapter 12 of Title 50, known as the 'Disposition of Unclaimed Property Act' or, in  
29 the case of property of historical or instructional value, as provided in Code Section  
30 17-5-53.

31 17-5-56.

32 (a) Except as otherwise provided in Code Section 17-5-55, on or after the effective date  
33 of this Code section, governmental entities that may be in possession of any physical  
34 evidence in a criminal case, including, but not limited to, a law enforcement agency or  
35 prosecuting attorney shall maintain any physical evidence collected at the time of the crime

1 for which a postconviction DNA testing may be requested except as otherwise provided  
2 in this Code section.

3 (b) Except for a case in which the death penalty is imposed, such evidence shall be  
4 maintained for a period of not less than two years after judgment in the criminal case  
5 becomes final or two years after the effective date of this Code section, whichever is later.  
6 In a case in which the death penalty is imposed, such evidence shall be maintained until the  
7 sentence in the case has been carried out.

8 (c) A governmental entity may dispose of physical evidence before the expiration of the  
9 time period set forth in subsection (b) of this Code section if the following conditions are  
10 met:

11 (1) The governmental entity notifies all of the following individuals of its intent to  
12 dispose of the evidence:

- 13 (A) The defendant;
- 14 (B) Any counsel of record;
- 15 (C) The prosecuting attorney; and
- 16 (D) The Attorney General;

17 (2) The governmental entity does not receive, within 90 days after sending the  
18 notification, either a copy of a motion for postconviction DNA testing filed pursuant to  
19 subsection (c) of Code Section 5-5-41 or a request that the evidence not be destroyed  
20 because the defendant will be filing the motion before the time for filing has expired; and

21 (3) No other provision of law or court rule requires the physical evidence to be preserved  
22 or retained."

#### 23 **SECTION 4.**

24 This Act shall become effective upon its approval by the Governor or upon its becoming law  
25 without such approval. Notwithstanding the provisions of subsection (b) of Code Section  
26 5-5-41, any person who is serving a term of imprisonment for a conviction imposed prior to  
27 the effective date of this Act who has, prior to the effective date of this Act, filed an  
28 extraordinary motion for new trial, may file an extraordinary motion for new trial requesting  
29 DNA testing pursuant to Section 1 of this Act if the issue of DNA testing was not raised in  
30 the prior extraordinary motion for new trial. In any extraordinary motion for new trial  
31 allowed pursuant to Section 1 of this Act, the court shall not have jurisdiction to reconsider  
32 any issue raised in the first extraordinary motion for new trial.

#### 33 **SECTION 5.**

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