

House Bill 299

By: Representatives Neal of the 1<sup>st</sup>, Pak of the 102<sup>nd</sup>, Sheldon of the 105<sup>th</sup>, and Ramsey of the 72<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to proof  
2 generally, so as to transfer provisions relating to DNA analysis upon conviction of certain  
3 sex offenses, to a new article of Chapter 3 of Title 35 of the Official Code of Georgia  
4 Annotated, relating to the Georgia Bureau of Investigation; to expand the types of convicted  
5 felons who shall have a DNA sample collected and maintained in the DNA data bank from  
6 certain designated sex offender felons to all convicted felons who are incarcerated or on  
7 probation or parole; to provide for related matters; to provide an effective date; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to proof generally,  
12 is amended by redesignating Article 4 as Article 9 of Chapter 3 of Title 35 and by revising  
13 said article, relating to DNA analysis upon conviction of certain sex offenses, as follows:

14 ~~"ARTICLE 4~~  
15 ARTICLE 9

16  
17 ~~24-4-60~~ 35-3-200.

18 (a) As used in ~~subsection (b)~~ of this Code section, the term '~~state correctional detention~~  
19 facility' means a penal institution under the jurisdiction of the Department of Corrections  
20 used for the detention of persons convicted of a felony, including penal institutions  
21 operated by a private company on behalf of the Department of Corrections, inmate work  
22 camps, and inmate boot camps; provided, however, that such term shall not include a,  
23 probation detention center, probation diversion center, or probation boot camp under the  
24 jurisdiction of the Department of Corrections centers, and parole revocation centers. Such  
25 term shall also mean any facility operated under the jurisdiction of a sheriff used for the

26 detention of persons convicted of a felony including a county jail or county correctional  
 27 facility.

28 (b) Any person convicted of a ~~criminal offense defined in Code Section 16-6-1, relating~~  
 29 ~~to the offense of rape; Code Section 16-6-2, relating to the offense of sodomy or~~  
 30 ~~aggravated sodomy; Code Section 16-6-3, relating to the offense of statutory rape; Code~~  
 31 ~~Section 16-6-4, relating to the offense of child molestation or aggravated child molestation;~~  
 32 ~~Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; Code~~  
 33 ~~Section 16-6-5.1, relating to the offense of sexual assault against persons in custody, sexual~~  
 34 ~~assault against a person detained or a patient in a hospital or other institution, or sexual~~  
 35 ~~assault by a practitioner of psychotherapy against a patient; Code Section 16-6-6, relating~~  
 36 ~~to the offense of bestiality; Code Section 16-6-7, relating to the offense of necrophilia; or~~  
 37 ~~Code Section 16-6-22, relating to the offense of incest, shall have a sample of his or her~~  
 38 ~~blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA~~  
 39 ~~(deoxyribonucleic acid) analysis to determine identification characteristics specific to the~~  
 40 ~~person. In addition, on and after July 1, 2000, any person convicted of a felony and~~  
 41 ~~incarcerated in a state correctional facility felony offense who is held in a detention facility~~  
 42 ~~or placed on probation shall at the time of entering the ~~prison system~~ detention facility or~~  
 43 ~~being placed on probation have a sample of his or her blood, an oral swab, or a sample~~  
 44 ~~obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis~~  
 45 ~~to determine identification characteristics specific to the person. The provisions and~~  
 46 ~~requirements of this Code section shall also apply to any person who has been convicted~~  
 47 ~~of a felony prior to July 1, ~~2000~~ 2011, and who currently is incarcerated in a state~~  
 48 ~~correctional detention facility in this state, serving a probation sentence, or serving under~~  
 49 ~~the jurisdiction of the Board of Pardons and Paroles for such offense. The provisions and~~  
 50 ~~requirements of this Code section shall also apply to any person who has been convicted~~  
 51 ~~of a felony in this state on or after July 1, 2000, and who is incarcerated in a private~~  
 52 ~~correctional facility in this state for such offense pursuant to a contract with the Department~~  
 53 ~~of Corrections upon entering the facility, and for any person convicted of a felony prior to~~  
 54 ~~July 1, 2000, and who is incarcerated in a private correctional facility in this state pursuant~~  
 55 ~~to contract with the Department of Corrections. It shall be the responsibility of the agency~~  
 56 ~~or department detaining or supervising a convicted felon to collect the samples required by~~  
 57 ~~this Code section and forward the sample to the Division of Forensic Sciences of the~~  
 58 ~~bureau unless such sample has already been collected by another agency.~~

59 (c) The analysis shall be performed by the Division of Forensic Sciences of the ~~Georgia~~  
 60 ~~Bureau of Investigation~~ bureau. The division shall be authorized to contract with  
 61 individuals or organizations for services to perform such analysis. The identification  
 62 characteristics of the profile resulting from the DNA analysis shall be stored and

63 maintained by the bureau in a DNA data bank and shall be made available only as provided  
 64 in Code Section ~~24-4-63~~ 35-3-203.

65 ~~(c)(1) On and after July 1, 2007, any person who is placed on probation shall have a~~  
 66 ~~sample of his or her blood, an oral swab, or a sample obtained from a noninvasive~~  
 67 ~~procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification~~  
 68 ~~characteristics specific to the person if such person is convicted of a felony violation of~~  
 69 ~~any of the following:~~

70 ~~(A) Chapter 5 of Title 16, relating to crimes against persons;~~

71 ~~(B) Code Section 16-6-1, relating to the offense of rape;~~

72 ~~(C) Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy;~~

73 ~~(D) Code Section 16-6-3, relating to the offense of statutory rape;~~

74 ~~(E) Code Section 16-6-4, relating to the offense of child molestation or aggravated~~  
 75 ~~child molestation;~~

76 ~~(F) Code Section 16-6-5, relating to the offense of enticing a child for indecent~~  
 77 ~~purposes;~~

78 ~~(G) Code Section 16-6-5.1, relating to the offense of sexual assault against persons in~~  
 79 ~~custody, sexual assault against a person detained or a patient in a hospital or other~~  
 80 ~~institution, or sexual assault by a practitioner of psychotherapy against a patient;~~

81 ~~(H) Code Section 16-6-6, relating to the offense of bestiality;~~

82 ~~(I) Code Section 16-6-7, relating to the offense of necrophilia;~~

83 ~~(J) Code Section 16-6-22, relating to the offense of incest;~~

84 ~~(K) Code Section 16-7-1, relating to the offense of burglary;~~

85 ~~(L) Code Section 16-8-40, relating to the offense of robbery;~~

86 ~~(M) Code Section 16-8-41, relating to the offense of armed robbery;~~

87 ~~(N) Code Section 16-10-23, relating to the offense of impersonating an officer;~~

88 ~~(O) Code Section 16-10-24, relating to the offense of obstruction of an officer;~~

89 ~~(P) Article 4 of Chapter 11 of Title 16, relating to dangerous instrumentalities and~~  
 90 ~~practices; and~~

91 ~~(Q) Chapter 13 of Title 16, relating to controlled substances.~~

92 ~~(2) The analysis shall be performed by the Division of Forensic Sciences of the Georgia~~  
 93 ~~Bureau of Investigation. The division shall be authorized to contract with individuals or~~  
 94 ~~organizations for services to perform such analysis. The identification characteristics of~~  
 95 ~~the profile resulting from the DNA analysis shall be stored and maintained by the bureau~~  
 96 ~~in a DNA data bank and shall be made available only as provided in Code Section~~  
 97 ~~24-4-63. The Department of Corrections shall be responsible for collecting such sample.~~

98 ~~24-4-61~~ 35-3-201.

99 (a) Each sample required pursuant to Code Section ~~24-4-60~~ 35-3-200 from persons who  
100 are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the  
101 receiving unit or at such other place as is designated by the Department of Corrections.  
102 Each sample required pursuant to Code Section ~~24-4-60~~ 35-3-200 from persons who are  
103 to be released from a state correctional facility or private correctional facility shall be  
104 withdrawn within the 12 months preceding such person's release at a place designated by  
105 the Department of Corrections. The required samples from persons who are not sentenced  
106 to a term of confinement shall be withdrawn as a condition of probation. The Division of  
107 Forensic Sciences of the ~~Georgia Bureau of Investigation~~ bureau shall publish in its quality  
108 manuals the procedures for the collection and transfer of samples to such division pursuant  
109 to Code Section 35-3-154. Personnel at a Department of Corrections facility shall  
110 implement the provisions of this Code section as part of the regular processing of  
111 offenders.

112 (b) Samples collected by oral swab or by a noninvasive procedure may be collected by any  
113 individual who has been trained in the procedure. Only a correctional health nurse  
114 technician, physician, registered professional nurse, licensed practical nurse, graduate  
115 laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted  
116 for analysis. No civil liability shall attach to any person authorized to take a sample as  
117 provided in this article as a result of the act of taking a sample from any person submitting  
118 thereto, provided the sample was taken according to recognized medically accepted  
119 procedures. However, no person shall be relieved from liability for negligence in the  
120 withdrawing of any blood sample.

121 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all  
122 samples of blood. The containers for blood samples, oral swabs, and the samples obtained  
123 by noninvasive procedures shall be sealed and labeled with the subject's name, social  
124 security number, date of birth, race, and gender plus the name of the person collecting the  
125 sample and the date and place of collection. The containers shall be secured to prevent  
126 tampering with the contents. The steps set forth in this subsection relating to the taking,  
127 handling, identification, and disposition of samples are procedural and not substantive.  
128 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be  
129 transported to the Division of Forensic Sciences of the ~~Georgia Bureau of Investigation~~  
130 bureau not more than 15 days following withdrawal and shall be analyzed and stored in the  
131 DNA data bank in accordance with Code Sections ~~24-4-62~~ 35-3-202 and ~~24-4-63~~ 35-3-203.

132 ~~24-4-62~~ 35-3-202.

133 Whether or not the results of an analysis are to be included in the data bank, the bureau  
134 shall conduct the DNA analysis in accordance with procedures adopted by the bureau to  
135 determine identification characteristics specific to the individual whose sample is being  
136 analyzed. The director of the ~~Georgia Bureau of Investigation~~ or his or her designated  
137 representative shall complete and maintain on file a form indicating the name of the person  
138 whose sample is to be analyzed, the date and by whom the sample was received and  
139 examined, and a statement that the seal on the container containing the sample had not been  
140 broken or otherwise tampered with. The remainder of a sample submitted for analysis and  
141 inclusion in the data bank pursuant to Code Section ~~24-4-60~~ 35-3-200 may be divided, if  
142 possible, labeled as provided for the original sample, and securely stored by the bureau in  
143 accordance with specific procedures of the bureau to ensure the integrity and  
144 confidentiality of the samples. All or part of the remainder of that sample may be used  
145 only to create a statistical data base provided no identifying information on the individual  
146 whose sample is being analyzed is included or for retesting by the bureau to validate or  
147 update the original analysis. A report of the results of a DNA analysis conducted by the  
148 bureau as authorized, including the identifying information, shall be made and maintained  
149 at the bureau. Except as specifically provided in this Code section and Code Section  
150 ~~24-4-63~~ 35-3-203, the results of the analysis shall be securely stored and shall remain  
151 confidential.

152 ~~24-4-63~~ 35-3-203.

153 (a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file  
154 the results of DNA identification characteristics of samples submitted pursuant to Code  
155 Section ~~24-4-60~~ 35-3-200 and to make such information available as provided in this Code  
156 section. The results of an analysis and comparison of the identification of the  
157 characteristics from two or more biological samples shall be made available directly to  
158 federal, state, and local law enforcement officers upon a request made in furtherance of an  
159 official investigation of any criminal offense. A request may be made by personal contact,  
160 mail, or electronic means. The name of the requestor and the purpose for which the  
161 information is requested shall be maintained on file with the bureau.

162 (b) Upon request from a prosecutor or law enforcement agency, the bureau may compare  
163 a DNA profile from an analysis of a sample from a suspect in a criminal investigation  
164 where the sample was obtained through a search warrant, consent of the suspect, court  
165 order, or other lawful means to DNA profiles lawfully collected and maintained by the  
166 bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank  
167 except upon conviction as provided in this article.

168 (c)(1) Upon his or her request, a copy of the request for search shall be furnished to any  
 169 person identified and charged with an offense as the result of a search of information in  
 170 the data bank. Only when a sample or DNA profile supplied by the requestor  
 171 satisfactorily matches the requestor's profile in the data bank shall the existence of data  
 172 in the data bank be confirmed or identifying information from the data bank be  
 173 disseminated.

174 (2) The name of the convicted ~~offender~~ felon whose profile is contained in the data bank  
 175 may be related to any other data bases which are constructed for law enforcement  
 176 purposes and may be disseminated only for law enforcement purposes.

177 (3) Upon a showing by the defendant in a criminal case that access to the DNA data bank  
 178 is material to the investigation, preparation, or presentation of a defense at trial or in a  
 179 motion for a new trial, a superior court having proper jurisdiction over such criminal case  
 180 shall direct the bureau to compare a DNA profile which has been generated by the  
 181 defendant through an independent test against the data bank, provided that such DNA  
 182 profile has been generated in accordance with standards for forensic DNA analysis  
 183 adopted pursuant to 42 U.S.C. Section 14131, as amended.

184 (d) The bureau shall develop procedures governing the methods of obtaining information  
 185 from the data bank in accordance with this Code section and procedures for verification of  
 186 the identity and authority of the requestor. The bureau shall specify the positions in that  
 187 agency which require regular access to the data bank and samples submitted as a necessary  
 188 function of the job.

189 (e) The bureau may create a separate statistical data base comprised of DNA profiles of  
 190 samples of persons whose identity is unknown. Nothing in this Code section or Code  
 191 Section ~~24-4-64~~ 35-3-204 shall prohibit the bureau from sharing or otherwise disseminating  
 192 the information in the statistical data base with law enforcement or criminal justice  
 193 agencies within or outside the state.

194 (f) The bureau may charge a reasonable fee to search and provide a comparative analysis  
 195 of DNA profiles in the data bank to any authorized law enforcement agency outside of the  
 196 state.

197 ~~24-4-64~~ 35-3-204.

198 (a) Any person who, without authority, disseminates information contained in the data  
 199 bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or  
 200 otherwise uses or attempts to so use information in the data bank, knowing that such  
 201 dissemination, receipt, or use is for a purpose other than as authorized by law, shall be  
 202 guilty of a misdemeanor of a high and aggravated nature.

203 (b) Except as authorized by law, any person who, for purposes of having DNA analysis  
204 performed, obtains or attempts to obtain any sample submitted to the Division of Forensic  
205 Sciences for analysis shall be guilty of a felony.

206 ~~24-4-65~~ 35-3-205.

207 (a) A person whose DNA profile has been included in the data bank pursuant to this article  
208 may request that it be expunged on the grounds that the conviction on which the authority  
209 for including his or her DNA profile was based has been reversed and the case dismissed.  
210 The bureau shall purge all records and identifiable information in the data bank pertaining  
211 to the person and destroy all samples from the person upon receipt of a written request that  
212 such data be expunged, pursuant to this Code section, and a certified copy of the court  
213 order reversing and dismissing the conviction.

214 (b) A DNA sample obtained in good faith shall be deemed to have been obtained in  
215 accordance with the requirements of this article and its use in accordance with this article  
216 is authorized until a court order directing expungement is obtained and submitted to the  
217 bureau."

218 **SECTION 2.**

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

221 **SECTION 3.**

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