

The House Committee on Judiciary Non-civil offers the following substitute to HB 299:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 5-5-41, Code Section 17-5-56, and Chapter 4 of Title 24 of the  
2 Official Code of Georgia Annotated, relating to requirements as to extraordinary motions for  
3 new trial generally, maintenance of physical evidence containing biological material, and  
4 proof generally, respectively, so as to provide for matters relative to the collection of DNA;  
5 to provide for a short title; to transfer provisions relating to DNA analysis upon conviction  
6 of certain sex offenses to a new article of Chapter 3 of Title 35 of the Official Code of  
7 Georgia Annotated, relating to the Georgia Bureau of Investigation; to expand the types of  
8 convicted felons who shall have a DNA sample collected and maintained in the DNA data  
9 bank from certain designated sex offender felons to all convicted felons who are incarcerated  
10 or on probation or parole; to amend Chapter 3 of Title 35 of the Official Code of Georgia  
11 Annotated, relating to the Georgia Bureau of Investigation, so as to expand the types of  
12 convicted felons who shall have a DNA sample collected and maintained in the DNA data  
13 bank from certain designated sex offender felons to all convicted felons who are incarcerated  
14 or on probation or parole; to provide for related matters; to provide for an effective date and  
15 a contingent effective date; to provide for automatic repeal under certain circumstances; to  
16 repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **PART 1**

19 **SECTION 1-1.**

20 This Act shall be known and may be cited as the "Johnia Berry Act."

21 **SECTION 1-2.**

22 Code Section 5-5-41 of the Official Code of Georgia Annotated, relating to requirements as  
23 to extraordinary motions for new trial generally, is amended by revising paragraph (1) of  
24 subsection (c), as follows:

H. B. 299 (SUB)

25 "(c)(1) Subject to the provisions of subsections (a) and (b) of this Code section, a person  
 26 convicted of a ~~serious violent felony as defined in Code Section 17-10-6.1~~ may file a  
 27 written motion before the trial court that entered the judgment of conviction in his or her  
 28 case, for the performance of forensic deoxyribonucleic acid (DNA) testing."

29 **SECTION 1-3.**

30 Code Section 17-5-56 of the Official Code of Georgia Annotated, relating to maintenance  
 31 of physical evidence containing biological material, is amended by revising subsection (b)  
 32 as follows:

33 "(b) In a case in which the death penalty is imposed, the evidence shall be maintained until  
 34 the sentence in the case has been carried out. ~~In a case that involves the prosecution of a~~  
 35 ~~serious violent felony as defined by Code Section 17-10-6.1, a violation of Code Section~~  
 36 ~~16-6-5.1, or sodomy, statutory rape, child molestation, bestiality, incest, or sexual battery~~  
 37 ~~as those terms are defined in Chapter 6 of Title 16, the evidence~~ Evidence in all felony  
 38 cases that contains biological material, including, but not limited to, stains, fluids, or hair  
 39 samples that relate to the identity of the perpetrator of the crime shall be maintained for ~~ten~~  
 40 ~~years after judgment in the criminal case becomes final or ten years after May 27, 2003,~~  
 41 ~~whichever is later. Evidence in all other felony and misdemeanor cases may be purged the~~  
 42 period of time that the crime remains unsolved or until the sentence in the case is  
 43 completed, whichever occurs last."

44 **PART II**

45 **SECTION 2-1.**

46 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to proof generally,  
 47 is amended by redesignating Article 4 as Article 6A of Chapter 3 of Title 35 and by revising  
 48 said article, relating to DNA analysis upon conviction of certain sex offenses, as follows:

49 ~~"ARTICLE 4~~

50 ARTICLE 6A

51 ~~24-4-60~~ 35-3-160.

52 (a) As used in ~~subsection (b) of this Code section~~ article, the term:

53 (1) 'Department' means the Department of Corrections.

54 (2) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of  
 55 Investigation.

56 (3) ~~'state correctional~~ Detention facility' means a penal institution under the jurisdiction  
 57 of the ~~Department of Corrections~~ department used for the detention of persons convicted  
 58 of a felony, including penal institutions operated by a private company on behalf of the

59 department, inmate work camps, and inmate boot camps; provided, however, that such  
 60 term shall not include a, probation detention center, probation diversion center, or  
 61 probation boot camp under the jurisdiction of the Department of Corrections centers, and  
 62 parole revocation centers. Such term shall also mean any facility operated under the  
 63 jurisdiction of a sheriff used for the detention of persons convicted of a felony including  
 64 a county jail or county correctional facility.

65 (b) Any person convicted of a ~~criminal offense defined in Code Section 16-6-1, relating~~  
 66 ~~to the offense of rape; Code Section 16-6-2, relating to the offense of sodomy or~~  
 67 ~~aggravated sodomy; Code Section 16-6-3, relating to the offense of statutory rape; Code~~  
 68 ~~Section 16-6-4, relating to the offense of child molestation or aggravated child molestation;~~  
 69 ~~Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; Code~~  
 70 ~~Section 16-6-5.1, relating to the offense of sexual assault against persons in custody, sexual~~  
 71 ~~assault against a person detained or a patient in a hospital or other institution, or sexual~~  
 72 ~~assault by a practitioner of psychotherapy against a patient; Code Section 16-6-6, relating~~  
 73 ~~to the offense of bestiality; Code Section 16-6-7, relating to the offense of necrophilia; or~~  
 74 ~~Code Section 16-6-22, relating to the offense of incest, shall have a sample of his or her~~  
 75 ~~blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA~~  
 76 ~~(deoxyribonucleic acid) analysis to determine identification characteristics specific to the~~  
 77 ~~person. In addition, on and after July 1, 2000, any person convicted of a felony and~~  
 78 ~~incarcerated in a state correctional facility felony offense who is held in a detention facility~~  
 79 ~~or placed on probation shall at the time of entering the prison system detention facility or~~  
 80 ~~being placed on probation have a sample of his or her blood, an oral swab, or a sample~~  
 81 ~~obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis~~  
 82 ~~to determine identification characteristics specific to the person. The provisions and~~  
 83 ~~requirements of this Code section shall also apply to any person who has been convicted~~  
 84 ~~of a felony prior to July 1, 2000 2011, and who currently is incarcerated in a state~~  
 85 ~~correctional detention facility in this state, serving a probation sentence, or serving under~~  
 86 ~~the jurisdiction of the Board of Pardons and Paroles for such offense. ~~The provisions and~~~~  
 87 ~~requirements of this Code section shall also apply to any person who has been convicted~~  
 88 ~~of a felony in this state on or after July 1, 2000, and who is incarcerated in a private~~  
 89 ~~correctional facility in this state for such offense pursuant to a contract with the Department~~  
 90 ~~of Corrections upon entering the facility, and for any person convicted of a felony prior to~~  
 91 ~~July 1, 2000, and who is incarcerated in a private correctional facility in this state pursuant~~  
 92 ~~to contract with the Department of Corrections. It shall be the responsibility of the~~  
 93 ~~detention facility detaining or entity supervising a convicted felon to collect the samples~~  
 94 ~~required by this Code section and forward the sample to the division unless such sample~~  
 95 ~~has already been collected by the department or another agency or entity.~~

96 ~~(c)~~ The analysis shall be performed by the ~~Division of Forensic Sciences of the Georgia~~  
 97 ~~Bureau of Investigation~~ division. The division shall be authorized to contract with  
 98 individuals or organizations for services to perform such analysis. The identification  
 99 characteristics of the profile resulting from the DNA analysis shall be stored and  
 100 maintained by the bureau in a DNA data bank and shall be made available only as provided  
 101 in Code Section ~~24-4-63~~ 35-3-163.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

129 ~~(2) The analysis shall be performed by the Division of Forensic Sciences of the Georgia~~  
 130 ~~Bureau of Investigation. The division shall be authorized to contract with individuals or~~  
 131 ~~organizations for services to perform such analysis. The identification characteristics of~~  
 132 ~~the profile resulting from the DNA analysis shall be stored and maintained by the bureau~~

133 ~~in a DNA data bank and shall be made available only as provided in Code Section~~  
134 ~~24-4-63. The Department of Corrections shall be responsible for collecting such sample.~~

135 ~~24-4-61~~ 35-3-161.

136 (a) Each sample required pursuant to Code Section ~~24-4-60~~ 35-3-160 from persons who  
137 are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the  
138 receiving unit of the detention facility or at such other place as is designated by the  
139 ~~Department of Corrections~~ department. Each sample required pursuant to Code Section  
140 ~~24-4-60~~ 35-3-160 from persons who are to be released from a ~~state correctional facility or~~  
141 ~~private correctional~~ detention facility shall be withdrawn within the 12 months preceding  
142 such person's release at a place designated by the ~~Department of Corrections~~ department.  
143 The required samples from persons who are not sentenced to a term of confinement shall  
144 be withdrawn as a condition of probation. ~~The Division of Forensic Sciences of the~~  
145 ~~Georgia Bureau of Investigation~~ division shall publish in its quality manuals the procedures  
146 for the collection and transfer of samples to such division pursuant to Code Section  
147 35-3-154. Personnel at a ~~Department of Corrections~~ detention facility shall implement the  
148 provisions of this Code section as part of the regular processing of offenders.

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

158 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all  
159 samples of blood. The containers for blood samples, oral swabs, and the samples obtained  
160 by noninvasive procedures shall be sealed and labeled with the subject's name, social  
161 security number, date of birth, race, and gender plus the name of the person collecting the  
162 sample and the date and place of collection. The containers shall be secured to prevent  
163 tampering with the contents. The steps set forth in this subsection relating to the taking,  
164 handling, identification, and disposition of samples are procedural and not substantive.  
165 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be  
166 transported to the ~~Division of Forensic Sciences of the Georgia Bureau of Investigation~~  
167 division not more than 15 days following withdrawal and shall be analyzed and stored in

168 the DNA data bank in accordance with Code Sections ~~24-4-62~~ 35-3-162 and ~~24-4-63~~  
169 35-3-163.

170 ~~24-4-62~~ 35-3-162.

171 Whether or not the results of an analysis are to be included in the data bank, the bureau  
172 shall conduct the DNA analysis in accordance with procedures adopted by the bureau to  
173 determine identification characteristics specific to the individual whose sample is being  
174 analyzed. The director of the ~~Georgia Bureau of Investigation~~ or his or her designated  
175 representative shall complete and maintain on file a form indicating the name of the person  
176 whose sample is to be analyzed, the date and by whom the sample was received and  
177 examined, and a statement that the seal on the container containing the sample had not been  
178 broken or otherwise tampered with. The remainder of a sample submitted for analysis and  
179 inclusion in the data bank pursuant to Code Section ~~24-4-60~~ 35-3-160 may be divided, if  
180 possible, labeled as provided for the original sample, and securely stored by the bureau in  
181 accordance with specific procedures of the bureau to ensure the integrity and  
182 confidentiality of the samples. All or part of the remainder of that sample may be used  
183 only to create a statistical data base provided no identifying information on the individual  
184 whose sample is being analyzed is included or for retesting by the bureau to validate or  
185 update the original analysis. A report of the results of a DNA analysis conducted by the  
186 bureau as authorized, including the identifying information, shall be made and maintained  
187 at the bureau. Except as specifically provided in this Code section and Code Section  
188 ~~24-4-63~~ 35-3-163, the results of the analysis shall be securely stored and shall remain  
189 confidential.

190 ~~24-4-63~~ 35-3-163.

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

200 (b) Upon request from a prosecutor or law enforcement agency, the bureau may compare  
201 a DNA profile from an analysis of a sample from a suspect in a criminal investigation  
202 where the sample was obtained through a search warrant, consent of the suspect, court

203 order, or other lawful means to DNA profiles lawfully collected and maintained by the  
 204 bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank  
 205 except upon conviction as provided in this article.

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

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

215 (3) Upon a showing by the ~~defendant~~ accused in a criminal case proceeding that access  
 216 to the DNA data bank is material to the investigation, preparation, or presentation of a  
 217 defense at trial or in a motion for a new trial postconviction proceeding, a superior court  
 218 having proper jurisdiction over such criminal case proceeding shall direct the bureau to  
 219 compare a DNA profile which has been generated by the ~~defendant~~ accused through an  
 220 independent test against the data bank, provided that such DNA profile has been  
 221 generated in accordance with standards for forensic DNA analysis adopted pursuant to  
 222 42 U.S.C. Section 14131, ~~as amended~~.

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

228 (e) The bureau may create a separate statistical data base comprised of DNA profiles of  
 229 samples of persons whose identity is unknown. Nothing in this Code section or Code  
 230 Section ~~24-4-64~~ 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating  
 231 the information in the statistical data base with law enforcement or criminal justice  
 232 agencies within or outside the state.

233 (f) The bureau may charge a reasonable fee to search and provide a comparative analysis  
 234 of DNA profiles in the data bank to any authorized law enforcement agency outside of ~~the~~  
 235 this state.

236 ~~24-4-64~~ 35-3-164.

237 (a) Any person who, without authority, disseminates information contained in the data  
 238 bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or

239 otherwise uses or attempts to so use information in the data bank, knowing that such  
 240 dissemination, receipt, or use is for a purpose other than as authorized by law, shall be  
 241 guilty of a misdemeanor of a high and aggravated nature.

242 (b) Except for purposes of law enforcement or as authorized by law this article, any person  
 243 who, for purposes of having DNA analysis performed, obtains or attempts to obtain any  
 244 sample submitted to the ~~Division of Forensic Sciences~~ division for analysis shall be guilty  
 245 of a felony.

246 ~~24-4-65~~ 35-3-165.

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

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

### 258 PART III

#### 259 SECTION 3-1.

260 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia  
 261 Bureau of Investigation, is amended by repealing Article 6A as enacted by HB 24,  
 262 substantially revising, superseding, and modernizing provisions relating to evidence during  
 263 the 2011-2012 biennium of the General Assembly, and enacting a new article to read as  
 264 follows:

#### 265 "ARTICLE 6A

266 35-3-160.

267 (a) As used in this article, the term:

268 (1) 'Department' means the Department of Corrections.

269 (2) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of  
 270 Investigation.

271 (3) 'Detention facility' means a penal institution under the jurisdiction of the department  
272 used for the detention of persons convicted of a felony, including penal institutions  
273 operated by a private company on behalf of the department, inmate work camps, inmate  
274 boot camps, probation detention centers, and parole revocation centers. Such term shall  
275 also mean any facility operated under the jurisdiction of a sheriff used for the detention  
276 of persons convicted of a felony including a county jail or county correctional facility.

277 (b) Any person convicted of a felony offense who is held in a detention facility or placed  
278 on probation shall at the time of entering the detention facility or being placed on probation  
279 have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive  
280 procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification  
281 characteristics specific to the person. The provisions and requirements of this Code section  
282 shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and  
283 who currently is incarcerated in a detention facility, serving a probation sentence, or  
284 serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It  
285 shall be the responsibility of the detention facility detaining or entity supervising a  
286 convicted felon to collect the samples required by this Code section and forward the sample  
287 to the division unless such sample has already been collected by the department or another  
288 agency or entity.

289 (c) The analysis shall be performed by the division. The division shall be authorized to  
290 contract with individuals or organizations for services to perform such analysis. The  
291 identification characteristics of the profile resulting from the DNA analysis shall be stored  
292 and maintained by the bureau in a DNA data bank and shall be made available only as  
293 provided in Code Section 35-3-163.

294 35-3-161.

295 (a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be  
296 incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving  
297 unit of the detention facility or at such other place as is designated by the department. Each  
298 sample required pursuant to Code Section 35-3-160 from persons who are to be released  
299 from a detention facility shall be withdrawn within the 12 months preceding such person's  
300 release at a place designated by the department. The required samples from persons who  
301 are not sentenced to a term of confinement shall be withdrawn as a condition of probation.  
302 The division shall publish in its quality manuals the procedures for the collection and  
303 transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a  
304 detention facility shall implement the provisions of this Code section as part of the regular  
305 processing of offenders.

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

315 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all  
316 samples of blood. The containers for blood samples, oral swabs, and the samples obtained  
317 by noninvasive procedures shall be sealed and labeled with the subject's name, social  
318 security number, date of birth, race, and gender plus the name of the person collecting the  
319 sample and the date and place of collection. The containers shall be secured to prevent  
320 tampering with the contents. The steps set forth in this subsection relating to the taking,  
321 handling, identification, and disposition of samples are procedural and not substantive.  
322 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be  
323 transported to the division not more than 15 days following withdrawal and shall be  
324 analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and  
325 35-3-163.

326 35-3-162.

327 Whether or not the results of an analysis are to be included in the data bank, the bureau  
328 shall conduct the DNA analysis in accordance with procedures adopted by the bureau to  
329 determine identification characteristics specific to the individual whose sample is being  
330 analyzed. The director or his or her designated representative shall complete and maintain  
331 on file a form indicating the name of the person whose sample is to be analyzed, the date  
332 and by whom the sample was received and examined, and a statement that the seal on the  
333 container containing the sample had not been broken or otherwise tampered with. The  
334 remainder of a sample submitted for analysis and inclusion in the data bank pursuant to  
335 Code Section 35-3-160 may be divided, if possible, labeled as provided for the original  
336 sample, and securely stored by the bureau in accordance with specific procedures of the  
337 bureau to ensure the integrity and confidentiality of the samples. All or part of the  
338 remainder of that sample may be used only to create a statistical data base provided no  
339 identifying information on the individual whose sample is being analyzed is included or  
340 for retesting by the bureau to validate or update the original analysis. A report of the  
341 results of a DNA analysis conducted by the bureau as authorized, including the identifying

342 information, shall be made and maintained at the bureau. Except as specifically provided  
343 in this Code section and Code Section 35-3-163, the results of the analysis shall be securely  
344 stored and shall remain confidential.

345 35-3-163.

346 (a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file  
347 the results of DNA identification characteristics of samples submitted pursuant to Code  
348 Section 35-3-160 and to make such information available as provided in this Code section.  
349 The results of an analysis and comparison of the identification of the characteristics from  
350 two or more biological samples shall be made available directly to federal, state, and local  
351 law enforcement officers upon a request made in furtherance of an official investigation  
352 of any criminal offense. A request may be made by personal contact, mail, or electronic  
353 means. The name of the requestor and the purpose for which the information is requested  
354 shall be maintained on file with the bureau.

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

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

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

370 (3) Upon a showing by the accused in a criminal proceeding that access to the DNA data  
371 bank is material to the investigation, preparation, or presentation of a defense at trial or  
372 in a postconviction proceeding, a superior court having proper jurisdiction over such  
373 criminal proceeding shall direct the bureau to compare a DNA profile which has been  
374 generated by the accused through an independent test against the data bank, provided that  
375 such DNA profile has been generated in accordance with standards for forensic DNA  
376 analysis adopted pursuant to 42 U.S.C. Section 14131.

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

382 (e) The bureau may create a separate statistical data base comprised of DNA profiles of  
383 samples of persons whose identity is unknown. Nothing in this Code section or Code  
384 Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the  
385 information in the statistical data base with law enforcement or criminal justice agencies  
386 within or outside the state.

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

390 35-3-164.

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

396 (b) Except for purposes of law enforcement or as authorized by this article, any person  
397 who, for purposes of having DNA analysis performed, obtains or attempts to obtain any  
398 sample submitted to the division for analysis shall be guilty of a felony.

399 35-3-165.

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

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

411

**PART IV**

412

**SECTION 4-1.**

413 (a) Parts I, II, and IV of this Act shall become effective upon its approval by the Governor  
414 or upon its becoming law without such approval, except as otherwise provided by  
415 subsection (b) of this section.

416 (b)(1) Part III of this Act shall become effective only if HB 24, substantially revising,  
417 superseding, and modernizing provisions relating to evidence, is enacted during the  
418 2011-2012 biennium of the General Assembly and becomes law on or before January 1,  
419 2013, in which case Part III of this Act shall become effective on the same date that said  
420 HB 24 becomes effective.

421 (2) Part II of this Act shall stand repealed if and when Part III of this Act becomes  
422 effective as provided by paragraph (1) of this subsection.

423 (3) If said HB 24 does not become law on or before January 1, 2013, as provided by  
424 paragraph (1) of this subsection, then Part III of this Act shall stand repealed on  
425 January 1, 2013.

426

**SECTION 4-2.**

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