

The House Committee on Judiciary Non-civil offers the following substitute to SB 80:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 5-5-41, Code Section 17-5-56, Chapter 4 of Title 24, and Article 2  
2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to requirements  
3 as to extraordinary motions for new trial generally, maintenance of physical evidence  
4 containing biological material, proof generally, and the Georgia Crime Information Center,  
5 respectively, so as to provide for matters relative to the collection of DNA and the disclosure  
6 and dissemination of criminal records to private persons and businesses; to provide for a  
7 short title; to transfer provisions relating to DNA analysis upon conviction of certain sex  
8 offenses to a new article of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,  
9 relating to the Georgia Bureau of Investigation; to expand the types of convicted felons who  
10 shall have a DNA sample collected and maintained in the DNA data bank from certain  
11 designated sex offender felons to all convicted felons who are incarcerated or on probation  
12 or parole; to change provisions relating to inspection, purging, modifying, or supplementing  
13 of criminal records; to provide for a definition; to provide for time frames within which  
14 certain actions must be taken with respect to restricting access to records or modifying,  
15 correcting, supplementing, amending, or sealing criminal records; to provide for procedure;  
16 to provide for individuals who have not been convicted to have their arrest records restricted;  
17 to amend Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to  
18 judgments and rulings deemed directly appealable, so as to provide for a cross-reference; to  
19 amend Code Section 15-11-83 of the Official Code of Georgia Annotated, relating to when  
20 a child may be fingerprinted or photographed and confidentiality of information, so as to  
21 correct a cross-reference; to amend Chapter 3 of Title 35 of the Official Code of Georgia  
22 Annotated, relating to the Georgia Bureau of Investigation, so as to expand the types of  
23 convicted felons who shall have a DNA sample collected and maintained in the DNA data  
24 bank from certain designated sex offender felons to all convicted felons who are incarcerated  
25 or on probation or parole; to provide for related matters; to provide for an effective date and  
26 contingent effective dates; to provide for automatic repeal under certain circumstances; to  
27 repeal conflicting laws; and for other purposes.

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

29 PART 1

30 SECTION 1-1.

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

32 SECTION 1-2.

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

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

40 SECTION 1-3.

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

44 "(b) In a case in which the death penalty is imposed, the evidence shall be maintained until  
45 the sentence in the case has been carried out. ~~In a case that involves the prosecution of a~~  
46 ~~serious violent felony as defined by Code Section 17-10-6.1, a violation of Code Section~~  
47 ~~16-6-5.1, or sodomy, statutory rape, child molestation, bestiality, incest, or sexual battery~~  
48 ~~as those terms are defined in Chapter 6 of Title 16, the evidence~~ Evidence in all felony  
49 cases that contains biological material, including, but not limited to, stains, fluids, or hair  
50 samples that relate to the identity of the perpetrator of the crime shall be maintained for ~~ten~~  
51 ~~years after judgment in the criminal case becomes final or ten years after May 27, 2003,~~  
52 ~~whichever is later. Evidence in all other felony and misdemeanor cases may be purged the~~  
53 period of time that the crime remains unsolved or until the sentence in the case is  
54 completed, whichever occurs last."

## PART II

## SECTION 2-1.

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

~~"ARTICLE 4~~ARTICLE 6A

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

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

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

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

(3) 'Detention facility' ~~'state correctional facility'~~ means a penal institution under the jurisdiction of the ~~Department of Corrections~~ department used for the detention of persons convicted of a felony, including penal institutions operated by a private company on behalf of the department, inmate work camps, and inmate boot camps; provided, however, that such term shall not include a, probation detention center, probation diversion center, or probation boot camp under the jurisdiction of the Department of Corrections centers, and parole revocation centers. Such term shall also mean any facility operated under the jurisdiction of a sheriff used for the detention of persons convicted of a felony including a county jail or county correctional facility.

(b) Any person convicted of a ~~criminal offense defined in Code Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-3, relating to the offense of statutory rape; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; Code Section 16-6-5.1, relating to the offense of sexual assault against persons in custody, sexual assault against a person detained or a patient in a hospital or other institution, or sexual assault by a practitioner of psychotherapy against a patient; Code Section 16-6-6, relating to the offense of bestiality; Code Section 16-6-7, relating to the offense of necrophilia; or Code Section 16-6-22, relating to the offense of incest, shall have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. In addition, on and after July 1, 2000, any person convicted of a felony and~~

89 ~~incarcerated in a state correctional facility~~ felony offense who is held in a detention facility  
 90 or placed on probation shall at the time of entering the ~~prison system~~ detention facility or  
 91 being placed on probation have a sample of his or her blood, an oral swab, or a sample  
 92 obtained from a noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis  
 93 to determine identification characteristics specific to the person. The provisions and  
 94 requirements of this Code section shall also apply to any person who has been convicted  
 95 of a felony prior to July 1, ~~2000~~ 2011, and who currently is incarcerated in a ~~state~~  
 96 ~~correctional~~ detention facility in this state, serving a probation sentence, or serving under  
 97 the jurisdiction of the Board of Pardons and Paroles for such offense. ~~The provisions and~~  
 98 ~~requirements of this Code section shall also apply to any person who has been convicted~~  
 99 ~~of a felony in this state on or after July 1, 2000, and who is incarcerated in a private~~  
 100 ~~correctional facility in this state for such offense pursuant to a contract with the Department~~  
 101 ~~of Corrections upon entering the facility, and for any person convicted of a felony prior to~~  
 102 ~~July 1, 2000, and who is incarcerated in a private correctional facility in this state pursuant~~  
 103 ~~to contract with the Department of Corrections.~~ It shall be the responsibility of the  
 104 detention facility detaining or entity supervising a convicted felon to collect the samples  
 105 required by this Code section and forward the sample to the division unless such sample  
 106 has already been collected by the department or another agency or entity.

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

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

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

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

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

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

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

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

126 ~~(G) Code Section 16-6-5.1, relating to the offense of sexual assault against persons in~~  
 127 ~~custody, sexual assault against a person detained or a patient in a hospital or other~~  
 128 ~~institution, or sexual assault by a practitioner of psychotherapy against a patient;~~  
 129 ~~(H) Code Section 16-6-6, relating to the offense of bestiality;~~  
 130 ~~(I) Code Section 16-6-7, relating to the offense of necrophilia;~~  
 131 ~~(J) Code Section 16-6-22, relating to the offense of incest;~~  
 132 ~~(K) Code Section 16-7-1, relating to the offense of burglary;~~  
 133 ~~(L) Code Section 16-8-40, relating to the offense of robbery;~~  
 134 ~~(M) Code Section 16-8-41, relating to the offense of armed robbery;~~  
 135 ~~(N) Code Section 16-10-23, relating to the offense of impersonating an officer;~~  
 136 ~~(O) Code Section 16-10-24, relating to the offense of obstruction of an officer;~~  
 137 ~~(P) Article 4 of Chapter 11 of Title 16, relating to dangerous instrumentalities and~~  
 138 ~~practices; and~~  
 139 ~~(Q) Chapter 13 of Title 16, relating to controlled substances.~~

140 ~~(2) The analysis shall be performed by the Division of Forensic Sciences of the Georgia~~  
 141 ~~Bureau of Investigation. The division shall be authorized to contract with individuals or~~  
 142 ~~organizations for services to perform such analysis. The identification characteristics of~~  
 143 ~~the profile resulting from the DNA analysis shall be stored and maintained by the bureau~~  
 144 ~~in a DNA data bank and shall be made available only as provided in Code Section~~  
 145 ~~24-4-63. The Department of Corrections shall be responsible for collecting such sample.~~

146 ~~24-4-61~~ 35-3-161.

147 (a) Each sample required pursuant to Code Section ~~24-4-60~~ 35-3-160 from persons who  
 148 are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the  
 149 receiving unit of the detention facility or at such other place as is designated by the  
 150 ~~Department of Corrections~~ department. Each sample required pursuant to Code Section  
 151 ~~24-4-60~~ 35-3-160 from persons who are to be released from a ~~state correctional facility or~~  
 152 ~~private correctional~~ detention facility shall be withdrawn within the 12 months preceding  
 153 such person's release at a place designated by the ~~Department of Corrections~~ department.  
 154 The required samples from persons who are not sentenced to a term of confinement shall  
 155 be withdrawn as a condition of probation. ~~The Division of Forensic Sciences of the~~  
 156 ~~Georgia Bureau of Investigation~~ division shall publish in its quality manuals the procedures  
 157 for the collection and transfer of samples to such division pursuant to Code Section  
 158 35-3-154. Personnel at a ~~Department of Corrections~~ detention facility shall implement the  
 159 provisions of this Code section as part of the regular processing of offenders.

160 (b) Samples collected by oral swab or by a noninvasive procedure may be collected by any  
 161 individual who has been trained in the procedure. Only a correctional health nurse

162 technician, physician, registered professional nurse, licensed practical nurse, graduate  
163 laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted  
164 for analysis. No civil liability shall attach to any person authorized to take a sample as  
165 provided in this article as a result of the act of taking a sample from any person submitting  
166 thereto, provided the sample was taken according to recognized medically accepted  
167 procedures. However, no person shall be relieved from liability for negligence in the  
168 withdrawing of any blood sample.

169 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all  
170 samples of blood. The containers for blood samples, oral swabs, and the samples obtained  
171 by noninvasive procedures shall be sealed and labeled with the subject's name, social  
172 security number, date of birth, race, and gender plus the name of the person collecting the  
173 sample and the date and place of collection. The containers shall be secured to prevent  
174 tampering with the contents. The steps set forth in this subsection relating to the taking,  
175 handling, identification, and disposition of samples are procedural and not substantive.  
176 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be  
177 transported to the ~~Division of Forensic Sciences of the Georgia Bureau of Investigation~~  
178 division not more than 15 days following withdrawal and shall be analyzed and stored in  
179 the DNA data bank in accordance with Code Sections ~~24-4-62~~ 35-3-162 and ~~24-4-63~~  
180 35-3-163.

181 ~~24-4-62~~ 35-3-162.

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

198 at the bureau. Except as specifically provided in this Code section and Code Section  
 199 ~~24-4-63~~ 35-3-163, the results of the analysis shall be securely stored and shall remain  
 200 confidential.

201 ~~24-4-63~~ 35-3-163.

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

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

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

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

226 (3) Upon a showing by the ~~defendant~~ accused in a criminal ~~case~~ proceeding that access  
 227 to the DNA data bank is material to the investigation, preparation, or presentation of a  
 228 defense at trial or in a ~~motion for a new trial~~ postconviction proceeding, a superior court  
 229 having proper jurisdiction over such criminal ~~case~~ proceeding shall direct the bureau to  
 230 compare a DNA profile which has been generated by the ~~defendant~~ accused through an  
 231 independent test against the data bank, provided that such DNA profile has been  
 232 generated in accordance with standards for forensic DNA analysis adopted pursuant to  
 233 42 U.S.C. Section 14131, ~~as amended~~.

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

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

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

247 ~~24-4-64~~ 35-3-164.

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

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

257 ~~24-4-65~~ 35-3-165.

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

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

269

## PART III

270

## SECTION 3-1.

271 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the  
 272 Georgia Crime Information Center, is amended by revising paragraph (1) of subsection (a)  
 273 of Code Section 35-3-34, relating to disclosure and dissemination of criminal records to  
 274 private persons and businesses, by deleting "and" at the end of subparagraph (B), by  
 275 replacing "or" with "and" at the end of subparagraph (C), and by adding a new subparagraph  
 276 to read as follows:

277 "(D) The center shall not provide records of arrests, charges, or dispositions when  
 278 access has been restricted pursuant to paragraph (1) or (2) of subsection (h) of Code  
 279 Section 35-3-37; or"

280

## SECTION 3-2.

281 Said article is further amended by revising Code Section 35-3-37, relating to inspection,  
 282 purging, modifying, or supplementing of criminal records, as follows:

283 "35-3-37.

284 ~~(a) Nothing in this article shall be construed so as to authorize any person, agency,~~  
 285 ~~corporation, or other legal entity to invade the privacy of any citizen as defined by the~~  
 286 ~~General Assembly or the courts other than to the extent provided in this article.~~

287 ~~(b) The center shall make a person's criminal records available for inspection by such~~  
 288 ~~person or his or her attorney upon written application to the center. Should the person or~~  
 289 ~~his or her attorney contest the accuracy of any portion of the records, it shall be mandatory~~  
 290 ~~upon the center to make available to the person or such person's attorney a copy of the~~  
 291 ~~contested record upon written application identifying the portion of the record contested~~  
 292 ~~and showing the reason for the contest of accuracy. Forms, procedures, identification, and~~  
 293 ~~other related aspects pertinent to access to records may be prescribed by the center.~~

294 ~~(c) If an individual believes his or her criminal records to be inaccurate or incomplete, he~~  
 295 ~~or she may request the original agency having custody or control of the detail records to~~  
 296 ~~purge, modify, or supplement them and to notify the center of such changes. Should the~~  
 297 ~~agency decline to act or should the individual believe the agency's decision to be~~  
 298 ~~unsatisfactory, the individual or his or her attorney may, within 30 days of such decision,~~  
 299 ~~enter an appeal to the superior court of the county of his or her residence or to the court in~~  
 300 ~~the county where the agency exists, with notice to the agency, to acquire an order by the~~  
 301 ~~court that the subject information be expunged, modified, or supplemented by the agency~~  
 302 ~~of record. The court shall conduct a de novo hearing and may order such relief as it finds~~  
 303 ~~to be required by law. Such appeals shall be entered in the same manner as appeals are~~

304 entered from the probate court, except that the appellant shall not be required to post bond  
305 or pay the costs in advance. If the aggrieved person desires, the appeal may be heard by  
306 the judge at the first term or in chambers. A notice sent by registered or certified mail or  
307 statutory overnight delivery shall be sufficient service on the agency having custody or  
308 control of disputed record that such appeal has been entered. Should the record in question  
309 be found to be inaccurate, incomplete, or misleading as set forth in paragraph (3) of  
310 subsection (d) of this Code section, the court shall order it to be appropriately expunged,  
311 modified, or supplemented by an explanatory notation. Each agency or individual in the  
312 state with custody, possession, or control of any such record shall promptly cause each and  
313 every copy thereof in his or her custody, possession, or control to be altered in accordance  
314 with the court's order. Notification of each such deletion, amendment, and supplementary  
315 notation shall be promptly disseminated to any individuals or agencies, including the  
316 center, to which the records in question have been communicated, as well as to the  
317 individual whose records have been ordered so altered.

318 (d)(1) An individual who was:

319 (A) Arrested for an offense under the laws of this state but subsequent to such arrest  
320 is released by the arresting agency without such offense being referred to the  
321 prosecuting attorney for prosecution; or

322 (B) After such offense referred to the proper prosecuting attorney, and the prosecuting  
323 attorney dismisses the charges without seeking an indictment or filing an accusation  
324 may request the original agency in writing to expunge the records of such arrest,  
325 including any fingerprints or photographs of the individual taken in conjunction with such  
326 arrest, from the agency files. Such request shall be in such form as the center shall  
327 prescribe. Reasonable fees shall be charged by the original agency and the center for the  
328 actual costs of the purging of such records, provided that such fees shall not exceed  
329 \$50.00.

330 (2) Upon receipt of such written request, the agency shall provide a copy of the request  
331 to the proper prosecuting attorney. Upon receipt of a copy of the request to expunge a  
332 criminal record, the prosecuting attorney shall promptly review the request to determine  
333 if it meets the criteria for expungement set forth in paragraph (3) of this subsection. If  
334 the request meets those criteria, the prosecuting attorney shall review the records of the  
335 arrest to determine if any of the material contained therein must be preserved in order to  
336 protect the constitutional rights of an accused under *Brady v. Maryland*.

337 (3) An individual has the right to have his or her record of such arrest expunged,  
338 including any fingerprints or photographs of the individual taken in conjunction with such  
339 arrest, if the prosecuting attorney determines that the following criteria have been  
340 satisfied:

- 341 ~~(A) The charge was dismissed under the conditions set forth in paragraph (1) of this~~  
342 ~~subsection;~~
- 343 ~~(B) No other criminal charges are pending against the individual, and~~
- 344 ~~(C) The individual has not been previously convicted of the same or similar offense~~  
345 ~~under the laws of this state, the United States, or any other state within the last five~~  
346 ~~years, excluding any period of incarceration.~~
- 347 ~~(4) The agency shall expunge the record by destroying the fingerprint cards,~~  
348 ~~photographs, and documents relating exclusively to such person. Any material which~~  
349 ~~cannot be physically destroyed or which the prosecuting attorney determines must be~~  
350 ~~preserved under *Brady v. Maryland* shall be restricted by the agency and shall not be~~  
351 ~~subject to disclosure to any person except by direction of the prosecuting attorney or as~~  
352 ~~ordered by a court of record of this state.~~
- 353 ~~(5) It shall be the duty of the agency to notify promptly the center of any records which~~  
354 ~~are expunged pursuant to this subsection. Upon receipt of notice from an agency that a~~  
355 ~~record has been expunged, the center shall, within a reasonable time, restrict access to the~~  
356 ~~criminal history of such person relating to such charge. Records for which access is~~  
357 ~~restricted pursuant to this subsection shall be made available only to criminal justice~~  
358 ~~officials upon written application for official judicial law enforcement or criminal~~  
359 ~~investigative purposes.~~
- 360 ~~(6) If the agency declines to expunge such arrest record, the individual may file an action~~  
361 ~~in the superior court where the agency is located as provided in Code Section 50-13-19.~~  
362 ~~A decision of the agency shall be upheld only if it is determined by clear and convincing~~  
363 ~~evidence that the individual did not meet the criteria set forth in paragraph (3) of this~~  
364 ~~subsection or subparagraphs (A) through (G) of paragraph (7) of this subsection. The~~  
365 ~~court in its discretion may award reasonable court costs including attorney's fees to the~~  
366 ~~individual if he or she prevails in the appellate process. Any such action shall be served~~  
367 ~~upon the agency, the center, the prosecuting attorney having jurisdiction over the offense~~  
368 ~~sought to be expunged, and the Attorney General who may become parties to the action.~~
- 369 ~~(7) After the filing of an indictment or an accusation, a record shall not be expunged if~~  
370 ~~the prosecuting attorney shows that the charges were nolle prossed, dead docketed, or~~  
371 ~~otherwise dismissed because:~~
- 372 ~~(A) Of a plea agreement resulting in a conviction for an offense arising out of the same~~  
373 ~~underlying transaction or occurrence as the conviction;~~
- 374 ~~(B) The government was barred from introducing material evidence against the~~  
375 ~~individual on legal grounds including but not limited to the grant of a motion to~~  
376 ~~suppress or motion in limine;~~

377 ~~(C) A material witness refused to testify or was unavailable to testify against the~~  
378 ~~individual unless such witness refused to testify based on his or her statutory right to~~  
379 ~~do so;~~  
380 ~~(D) The individual was incarcerated on other criminal charges and the prosecuting~~  
381 ~~attorney elected not to prosecute for reasons of judicial economy;~~  
382 ~~(E) The individual successfully completed a pretrial diversion program, the terms of~~  
383 ~~which did not specifically provide for expungement of the arrest record;~~  
384 ~~(F) The conduct which resulted in the arrest of the individual was part of a pattern of~~  
385 ~~criminal activity which was prosecuted in another court of this state, the United States,~~  
386 ~~another state, or foreign nation; or~~  
387 ~~(G) The individual had diplomatic, consular, or similar immunity or inviolability from~~  
388 ~~arrest or prosecution.~~

389 ~~(8) If the prosecuting attorney having jurisdiction determines that the records should not~~  
390 ~~be expunged because the criteria set forth in paragraph (3) or subparagraphs (A) through~~  
391 ~~(G) of paragraph (7) of this subsection were not met, and the agency or center fails to~~  
392 ~~follow the prosecuting attorney's recommendation, the prosecuting attorney having~~  
393 ~~jurisdiction over the offense sought to be expunged or the Attorney General may appeal~~  
394 ~~a decision by the agency or center to expunge a criminal history as provided in Code~~  
395 ~~Section 50-13-19.~~

396 ~~(9) An individual who has been indicted or charged by accusation that was subsequently~~  
397 ~~dismissed, dead docketed, or nolle prossed may request an expungement as provided by~~  
398 ~~paragraphs (1) through (3) of this subsection; provided, however, that if the prosecuting~~  
399 ~~attorney objects to the expungement request within 60 days after receiving a copy of said~~  
400 ~~request from the agency, the agency shall decline to expunge and the individual shall~~  
401 ~~have the right to appeal as provided by paragraph (6) of this subsection.~~

402 ~~(10) Nothing in this subsection shall be construed as requiring the destruction of incident~~  
403 ~~reports or other records that a crime was committed or reported to law enforcement.~~  
404 ~~Further, nothing in this subsection shall be construed to apply to custodial records~~  
405 ~~maintained by county or municipal jail or detention centers. It shall be the duty of the~~  
406 ~~agency to take such action as may be reasonable to prevent disclosure of information to~~  
407 ~~the public which would identify such person whose records were expunged.~~

408 ~~(e) Agencies, including the center, at which criminal offender records are sought to be~~  
409 ~~inspected may prescribe reasonable hours and places of inspection and may impose such~~  
410 ~~additional procedures, fees not to exceed \$3.00, or restrictions including fingerprinting as~~  
411 ~~are reasonably necessary to assure the records' security, to verify the identities of those who~~  
412 ~~seek to inspect them, and to maintain an orderly and efficient mechanism for inspection of~~  
413 ~~records.~~

414 ~~(f) The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'~~  
415 ~~shall not apply to proceedings under this Code section.~~

416 ~~(g) If the center has notified a firearms dealer that a person is prohibited from purchasing~~  
417 ~~or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the~~  
418 ~~prohibition is the result of such person's being involuntarily hospitalized within the~~  
419 ~~immediately preceding five years, upon such person or his or her attorney making an~~  
420 ~~application to inspect his or her records, the center shall provide the record of involuntary~~  
421 ~~hospitalization and also inform the person or attorney of his or her right to a hearing before~~  
422 ~~the judge of the probate court or superior court relative to such person's eligibility to~~  
423 ~~possess or transport a handgun.~~

424 (a) As used in this Code section, the term 'entity' means the arresting law enforcement  
425 agency, other law enforcement agency, including county and municipal jails and detention  
426 centers, or clerk of court's office.

427 (b) Nothing in this article shall be construed so as to authorize any person, agency,  
428 corporation, or other legal entity of this state to invade the privacy of any citizen as defined  
429 by the General Assembly or as defined by the courts other than to the extent provided in  
430 this article.

431 (c) The center shall make an individual's criminal history record information available for  
432 review by such individual or his or her attorney upon written application to the center.  
433 Forms, procedures, identification, and other related aspects pertinent to access to criminal  
434 history record information may be prescribed by the center.

435 (d) If an individual believes his or her criminal history record information to be inaccurate,  
436 incomplete, or misleading, he or she may request a criminal history record information  
437 inspection at the center or entity having custody or control of the criminal history record  
438 information. The center and any entity at which criminal history record information is  
439 sought to be inspected may prescribe reasonable hours and places of inspection and may  
440 impose such additional procedures or restrictions, including fingerprinting, as are  
441 reasonably necessary to assure the security of the criminal history record information, to  
442 verify the identities of those who seek to inspect such information, and to maintain an  
443 orderly and efficient mechanism for inspection of criminal history record information. The  
444 fee for inspection of criminal history record information shall not exceed \$15.00, which  
445 shall not include the cost of the fingerprinting.

446 (e) If the criminal history record information is believed to be inaccurate, incomplete, or  
447 misleading, the individual may request the entity having custody or control of the  
448 challenged information to modify, correct, supplement, amend, or seal the information and  
449 to notify the center of such changes within 60 days. In the case of county and municipal  
450 jails and detention centers, such notice to the center shall not be required. If the entity

451 declines to act within 60 days of such request or if the individual believes the entity's  
452 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the  
453 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the  
454 right to appeal to the superior court of the county where the entity is located.

455 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order  
456 by the court that the subject information be modified, corrected, supplemented, amended,  
457 or sealed by the entity with custody of such information. Such appeals shall be entered in  
458 the same manner as appeals are entered from the probate court, except that the appellant  
459 shall not be required to post bond or pay the costs in advance. Notice of the appeal shall  
460 be provided to the entity. A notice sent by registered or certified mail or statutory  
461 overnight delivery shall be sufficient service on the entity having custody or control of the  
462 disputed criminal history record information. The court shall conduct a de novo review and  
463 shall, if requested by a party, hold a hearing within 90 days of the filing of the appeal;  
464 provided, however, that such time requirement may be waived if agreed upon by both  
465 parties. If the appellant requests, the appeal may be heard by the judge in chambers. The  
466 proceedings shall be recorded at the request of the appellant.

467 (g) The court shall file a decision within 60 days of the hearing should the court find by  
468 a preponderance of the evidence that the criminal history record information in question  
469 is inaccurate, incomplete, or misleading and the court shall order such information to be  
470 appropriately modified, corrected, supplemented, amended, or sealed as the court deems  
471 appropriate. Any entity with custody, possession, or control of any such criminal history  
472 record information shall cause each and every copy thereof in its custody, possession, or  
473 control to be altered in accordance with the court's order within 60 days of the entry of the  
474 order. To the extent that the entity has previously disseminated the inaccurate, incomplete,  
475 or misleading criminal history record information, and upon written request by the  
476 individual, or his or her designee, whose criminal history record information is at issue,  
477 notification of each modification, correction, supplement, amendment, or sealing shall be  
478 disseminated to any individuals or agencies, including the center, to which the information  
479 in question has been communicated, as well as to the individual whose information has  
480 been ordered so altered within 60 days of the court order. If the court declines to modify,  
481 correct, supplement, amend, or seal an individual's criminal history record information or  
482 if the court's order is contrary to the desires of the entity or prosecuting attorney, any party  
483 may file an appeal pursuant to Code Section 5-6-34. The ruling of the court shall not be  
484 reversed absent a showing of an abuse of discretion.

485 (h) The center shall restrict access to an individual's criminal history record information,  
486 including any fingerprints or photographs of the individual taken in conjunction with the  
487 arrest, for the following types of dispositions:

488 (1) Prior to indictment or accusation:

489 (A) The case was never referred for further prosecution to the prosecuting attorney by  
 490 the arresting law enforcement agency because either such agency closed the case  
 491 without referring the case to the prosecuting attorney or a period of two years for  
 492 misdemeanor offenses or four years for felony offenses has elapsed from the date of  
 493 arrest; or

494 (B) The case was referred to the prosecuting attorney but was later dismissed; and

495 (2) After indictment or accusation:

496 (A) The case was dismissed or nolle prossed or the case was placed on the dead docket  
 497 without the consent of the state and a period of 12 months has expired from the date of  
 498 placing such case on the dead docket;

499 (B) The individual was convicted of an offense and was sentenced to punishment other  
 500 than the death penalty, but such conviction was vacated by the trial court or reversed  
 501 by an appellate court, the decision of which has been made final, and the prosecuting  
 502 attorney has not retried the case within 18 months of the final order of the court unless  
 503 the prosecuting attorney obtains a court order, prior to the expiration of the 18 months,  
 504 lengthening the time due to ongoing investigation or other appropriate circumstances;  
 505 or

506 (C) The grand jury returned two no bills.

507 (i) After the filing of an indictment or accusation, a record shall not be restricted if:

508 (1) The charges were nolle prossed, dead docketed, or otherwise dismissed because of  
 509 a plea agreement resulting in a conviction for an offense arising out of the same  
 510 underlying transaction or occurrence as the conviction;

511 (2) The charges were tried and some but not all of the charges resulted in an acquittal;

512 (3) The conduct which resulted in the arrest of the individual was part of a pattern of  
 513 criminal activity which was prosecuted in another court of this state, the United States,  
 514 another state, or a foreign nation; or

515 (4) The individual had diplomatic, consular, or similar immunity or inviolability from  
 516 arrest or prosecution.

517 (j) An individual may petition the superior court for the jurisdiction in which the arrest for  
 518 the offense occurred to restrict access to criminal history record information for such  
 519 offense within four years of the arrest. Such court shall maintain jurisdiction over the case  
 520 for this limited purpose and duration. Such petition shall be served on the arresting law  
 521 enforcement agency. Such court shall hear evidence and may hold a hearing, if requested,  
 522 and shall grant such relief as the court deems appropriate if extraordinary circumstances  
 523 are shown to warrant restricted access to the criminal history record information; provided,  
 524 however, that access shall not be restricted to criminal history record information of any

525 arrest which resulted in a felony conviction of the petitioner. Such court shall file its order  
526 granting or denying the request for restricting information within 60 days of the hearing.  
527 Any party may file an appeal of an order entered pursuant to this subsection as provided  
528 in Code Section 5-6-34.

529 (k)(1) The center shall notify the arresting law enforcement agency or other law  
530 enforcement agency of any criminal history record information, access to which has been  
531 restricted pursuant to this Code section, within 30 days of the date access to such  
532 information is restricted. Upon receipt of notice from the center that access to  
533 information has been restricted, the arresting law enforcement agency or other law  
534 enforcement agency shall, within 30 days, restrict access to all such information  
535 maintained by such arresting law enforcement agency or other law enforcement agency  
536 for such individual's offense.

537 (2) An individual who has had criminal history record information restricted pursuant  
538 to this Code section may submit a written request to the appropriate county or municipal  
539 jail or detention center to have all records maintained by the appropriate county or  
540 municipal jail or detention center restricted. Within 30 days of such request, the  
541 appropriate county or municipal jail or detention center shall restrict access to all such  
542 information maintained by such appropriate county or municipal jail or detention center  
543 for such individual's offense.

544 (3) As to all arrests occurring subsequent to the effective date of this Code section, a  
545 clerk of court shall restrict access to an individual's criminal history record information  
546 if such criminal history record information is required to be restricted pursuant to this  
547 Code section.

548 (4) As to arrests occurring prior to the effective date of this Code section, an individual  
549 who has had criminal history record information restricted pursuant to this Code section  
550 may submit a written request to a clerk of court to have all records maintained by such  
551 clerk of court restricted. Within 60 days of such request, the clerk of court shall restrict  
552 access to all such information maintained by such clerk of court for such individual's  
553 offense.

554 (5) Information for which access is restricted pursuant to this subsection shall be made  
555 available only to criminal justice officials for official judicial law enforcement or criminal  
556 investigative purposes.

557 (l) If criminal history record information is restricted pursuant to this Code section and if  
558 an entity declines to restrict access to such information, the individual may file an action  
559 in the superior court where the entity is located as provided in Code Section 50-13-19. A  
560 decision of the entity shall be upheld only if it is determined by clear and convincing  
561 evidence that the individual did not meet the criteria set forth in paragraph (1) or (2) of

562 subsection (h) of this Code section. Any such action shall be served upon the entity, the  
 563 center, the prosecuting attorney having jurisdiction over the offense sought to be restricted,  
 564 and the Attorney General who may become parties to the action.

565 (m) It shall be the duty of the entity to take such action as may be reasonable to prevent  
 566 disclosure of information to the public which would identify any individual whose criminal  
 567 history record information is restricted.

568 (n) If the center has notified a firearms dealer that an individual is prohibited from  
 569 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title  
 570 16 and if the prohibition is the result of such individual being involuntarily hospitalized  
 571 within the immediately preceding five years, upon such individual or his or her attorney  
 572 making an application to inspect his or her criminal history record information, the center  
 573 shall provide the record of involuntary hospitalization and also inform the individual or  
 574 attorney of his or her right to a hearing before the judge of the probate court or superior  
 575 court relative to such individual's eligibility to possess or transport a handgun."

576 **SECTION 3-3.**

577 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and  
 578 rulings deemed directly appealable, is amended in subsection (a) by deleting "and" at the end  
 579 of paragraph (10), by replacing the period with "; and" at the end of paragraph (11), and by  
 580 adding a new paragraph to read as follows:

581 "(12) All judgments or orders entered pursuant to Code Section 35-3-37."

582 **SECTION 3-4.**

583 Code Section 15-11-83 of the Official Code of Georgia Annotated, relating to when a child  
 584 may be fingerprinted or photographed and confidentiality of information, is amended by  
 585 revising subsection (e) as follows:

586 "(e) Upon application of the child, fingerprints and photographs of a child shall be  
 587 removed from the file and destroyed if a petition alleging delinquency is not filed or the  
 588 proceedings are dismissed after either a petition is filed or the case is transferred to the  
 589 juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be  
 590 a delinquent child. The court shall notify the deputy director of the Georgia Crime  
 591 Information Center when fingerprints and photographs are destroyed pursuant to this  
 592 subsection, and the Georgia Bureau of Investigation shall treat such records in the same  
 593 manner as ~~expunged records~~ criminal history record information restricted pursuant to  
 594 subsection (c) of Code Section 35-3-37."

595

## PART IV

596

## SECTION 4-1.

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

602

"ARTICLE 6A603 35-3-160.604 (a) As used in this article, the term:605 (1) 'Department' means the Department of Corrections.606 (2) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of  
607 Investigation.608 (3) 'Detention facility' means a penal institution under the jurisdiction of the department  
609 used for the detention of persons convicted of a felony, including penal institutions  
610 operated by a private company on behalf of the department, inmate work camps, inmate  
611 boot camps, probation detention centers, and parole revocation centers. Such term shall  
612 also mean any facility operated under the jurisdiction of a sheriff used for the detention  
613 of persons convicted of a felony including a county jail or county correctional facility.614 (b) Any person convicted of a felony offense who is held in a detention facility or placed  
615 on probation shall at the time of entering the detention facility or being placed on probation  
616 have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive  
617 procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification  
618 characteristics specific to the person. The provisions and requirements of this Code section  
619 shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and  
620 who currently is incarcerated in a detention facility, serving a probation sentence, or  
621 serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall  
622 be the responsibility of the detention facility detaining or entity supervising a convicted  
623 felon to collect the samples required by this Code section and forward the sample to the  
624 division unless such sample has already been collected by the department or another  
625 agency or entity.626 (c) The analysis shall be performed by the division. The division shall be authorized to  
627 contract with individuals or organizations for services to perform such analysis. The  
628 identification characteristics of the profile resulting from the DNA analysis shall be stored

629 and maintained by the bureau in a DNA data bank and shall be made available only as  
630 provided in Code Section 35-3-163.

631 35-3-161.

632 (a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be  
633 incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving  
634 unit of the detention facility or at such other place as is designated by the department. Each  
635 sample required pursuant to Code Section 35-3-160 from persons who are to be released  
636 from a detention facility shall be withdrawn within the 12 months preceding such person's  
637 release at a place designated by the department. The required samples from persons who  
638 are not sentenced to a term of confinement shall be withdrawn as a condition of probation.  
639 The division shall publish in its quality manuals the procedures for the collection and  
640 transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a  
641 detention facility shall implement the provisions of this Code section as part of the regular  
642 processing of offenders.

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

652 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all  
653 samples of blood. The containers for blood samples, oral swabs, and the samples obtained  
654 by noninvasive procedures shall be sealed and labeled with the subject's name, social  
655 security number, date of birth, race, and gender plus the name of the person collecting the  
656 sample and the date and place of collection. The containers shall be secured to prevent  
657 tampering with the contents. The steps set forth in this subsection relating to the taking,  
658 handling, identification, and disposition of samples are procedural and not substantive.  
659 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be  
660 transported to the division not more than 15 days following withdrawal and shall be  
661 analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and  
662 35-3-163.

663 35-3-162.

664 Whether or not the results of an analysis are to be included in the data bank, the bureau  
665 shall conduct the DNA analysis in accordance with procedures adopted by the bureau to  
666 determine identification characteristics specific to the individual whose sample is being  
667 analyzed. The director or his or her designated representative shall complete and maintain  
668 on file a form indicating the name of the person whose sample is to be analyzed, the date  
669 and by whom the sample was received and examined, and a statement that the seal on the  
670 container containing the sample had not been broken or otherwise tampered with. The  
671 remainder of a sample submitted for analysis and inclusion in the data bank pursuant to  
672 Code Section 35-3-160 may be divided, if possible, labeled as provided for the original  
673 sample, and securely stored by the bureau in accordance with specific procedures of the  
674 bureau to ensure the integrity and confidentiality of the samples. All or part of the  
675 remainder of that sample may be used only to create a statistical data base provided no  
676 identifying information on the individual whose sample is being analyzed is included or  
677 for retesting by the bureau to validate or update the original analysis. A report of the  
678 results of a DNA analysis conducted by the bureau as authorized, including the identifying  
679 information, shall be made and maintained at the bureau. Except as specifically provided  
680 in this Code section and Code Section 35-3-163, the results of the analysis shall be securely  
681 stored and shall remain confidential.

682 35-3-163.

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

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

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

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

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

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

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

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

727 35-3-164.

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

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

736 35-3-165.

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

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

748 **PART V**

749 **SECTION 5-1.**

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

753 (b)(1) Part IV of this Act shall become effective only if HB 24, substantially revising,  
 754 superseding, and modernizing provisions relating to evidence, is enacted during the  
 755 2011-2012 biennium of the General Assembly and becomes law on or before January 1,  
 756 2013, in which case Part IV of this Act shall become effective on the same date that said  
 757 HB 24 becomes effective.

758 (2) Part II of this Act shall stand repealed if and when Part IV of this Act becomes  
 759 effective as provided by paragraph (1) of this subsection.

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

763 (c) Part III of this Act shall become effective only if:

764 (1) Funds are specifically appropriated for purposes of this Act in an appropriations Act  
 765 making specific reference to this Act and only if funds so appropriated become available  
 766 for expenditure; or

767 (2) Funds are otherwise made available to the Georgia Bureau of Investigation for  
768 purposes of this Act, provided that the director of the bureau shall certify in writing to the  
769 Office of Legislative Counsel, as staff for the Code Revision Commission, that funds  
770 have been made available for such purposes and the date such funds became available.

771 **SECTION 5-2.**

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