

Senate Bill 80

By: Senators McKoon of the 29th, Bethel of the 54th, Cowser of the 46th, Gooch of the 51st, Albers of the 56th and others

AS PASSED

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:

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) 'Detention facility' ~~'state correctional facility'~~ means a penal institution under the
 57 jurisdiction of the ~~Department of Corrections~~ department used for the detention of
 58 persons convicted of a felony, including penal institutions operated by a private company
 59 on behalf of the department, inmate work camps, and inmate boot camps; provided,
 60 ~~however, that such term shall not include a, probation detention center, probation~~
 61 ~~diversion center, or probation boot camp under the jurisdiction of the Department of~~
 62 ~~Corrections centers, and parole revocation centers. Such term shall also mean any facility~~
 63 operated under the jurisdiction of a sheriff used for the detention of persons convicted of
 64 a felony including 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 ~~(c)(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 shall
285 be the responsibility of the detention facility detaining or entity supervising a convicted
286 felon to collect the samples required by this Code section and forward the sample to the
287 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 subsection
415 (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.