

Senate Bill 449

By: Senators McKoon of the 29th, Ligon, Jr. of the 3rd, Albers of the 56th, Unterman of the 45th and Bethel of the 54th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,
2 relating to DNA sampling, collection, and analysis, so as to provide for DNA analysis of
3 persons arrested for felony offenses; to change provisions relating to time and procedure for
4 withdrawal of blood samples; to change provisions relating to expungement of profiles in the
5 data bank; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
10 DNA sampling, collection, and analysis, is amended by revising subsection (b) of Code
11 Section 35-3-160, relating to DNA analysis upon conviction of certain sex offenses, as
12 follows:

13 ~~"(b) Any person convicted of arrested for a felony offense who is held in a detention~~
14 ~~facility or placed on probation shall at the time of entering the detention facility or being~~
15 ~~placed on probation have~~ shall have a sample of his or her blood, an oral swab, or a sample
16 obtained from a noninvasive procedure taken by the arresting law enforcement agency after
17 a magistrate or grand jury has determined that probable cause exists for the arrest for DNA
18 (deoxyribonucleic acid) analysis to determine identification characteristics specific to the
19 person. The provisions and requirements of this Code section shall also apply to any
20 person who has been convicted of a felony ~~prior to July 1, 2011, and who currently is and~~
21 is currently incarcerated in a detention facility, serving a probation sentence, or serving
22 under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall be the
23 responsibility of the law enforcement agency arresting a person for a felony offense or the
24 detention facility detaining or entity supervising a convicted felon to collect the samples
25 required by this Code section and forward the sample to the division unless such sample
26 has already been collected by the department or another agency or entity."

27 **SECTION 2.**

28 Said article is further amended by revising subsection (a) of Code Section 35-3-161, relating
 29 to time and procedure for withdrawal of blood samples, as follows:

30 "(a) Each sample required pursuant to Code Section 35-3-160 from persons who have been
 31 arrested, and probable cause for the arrest has been established, shall be withdrawn within
 32 30 days of the finding of probable cause. Each sample required pursuant to Code Section
 33 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30
 34 days of incarceration at the receiving unit of the detention facility or at such other place as
 35 is designated by the department. Each sample required pursuant to Code Section 35-3-160
 36 from persons who are to be released from a detention facility shall be withdrawn within the
 37 12 months preceding such person's release at a place designated by the department. The
 38 required samples from persons who are not sentenced to a term of confinement shall be
 39 withdrawn as a condition of probation. The division shall publish in its quality manuals
 40 the procedures for the collection and transfer of samples to such division pursuant to Code
 41 Section 35-3-154. Personnel at a detention facility shall implement the provisions of this
 42 Code section as part of the regular processing of offenders."

43 **SECTION 3.**

44 Said article is further amended by revising Code Section 35-3-165, relating to expungement
 45 of profile in data bank upon reversal and dismissal of conviction, as follows:

46 "35-3-165.

47 (a) A person whose DNA profile has been included in the data bank pursuant to this article
 48 may request that it be expunged on the grounds that:

- 49 (1) The ~~the~~ conviction on which the authority for including his or her DNA profile was
 50 based has been reversed and the case dismissed;
 51 (2) The person was acquitted of the felony charges;
 52 (3) The felony charges against the person were reduced to misdemeanor charges;
 53 (4) The felony charges are placed on the dead docket; or
 54 (5) The prosecuting attorney otherwise dismisses the felony charges.

55 (b) The bureau shall purge all records and identifiable information in the data bank
 56 pertaining to the person described in subsection (a) of this Code section and destroy all
 57 samples from the person upon receipt of a written request that such data be expunged,
 58 pursuant to this Code section, and a certified copy of:

- 59 (1) The ~~the~~ court order reversing and dismissing the conviction;
 60 (2) The judgment of acquittal;
 61 (3) The sentencing order showing that the charges were reduced to a misdemeanor;
 62 (4) The court order dead docketing the felony charges; or

