

Senate Bill 135

By: Senators McKoon of the 29th, Miller of the 49th, Gooch of the 51st, Shafer of the 48th, Albers of the 56th and others

AS PASSED SENATE

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 amend Code Section 17-6-1 of the Official Code of Georgia Annotated, relating
6 to where offenses are bailable, procedure, and schedule of bails, so as to provide a cross
7 reference for purposes of DNA collections as a condition of bail; to provide for related
8 matters; to provide for a contingent effective date; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

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

28 division unless such sample has already been collected by the department or another
 29 agency or entity. It shall be the responsibility of the law enforcement agency arresting a
 30 person for a felony offense to collect the samples required by this Code section and forward
 31 the sample to the division unless such sample has already been collected by the department
 32 or another agency or entity."

33 SECTION 2.

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

36 "(a) Each sample required pursuant to Code Section 35-3-160 from persons who have been
 37 arrested, and probable cause for the arrest has been established, shall be withdrawn within
 38 30 days of the finding of probable cause. Each sample required pursuant to Code Section
 39 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30
 40 days of incarceration at the receiving unit of the detention facility or at such other place as
 41 is designated by the department. Each sample required pursuant to Code Section 35-3-160
 42 from persons who are to be released from a detention facility shall be withdrawn within the
 43 12 months preceding such person's release at a place designated by the department. The
 44 required samples from persons who are not sentenced to a term of confinement shall be
 45 withdrawn as a condition of probation. The division shall publish in its quality manuals
 46 the procedures for the collection and transfer of samples to ~~such~~ the division pursuant to
 47 Code Section 35-3-154. Personnel at a detention facility shall implement the provisions
 48 of this Code section as part of the regular processing of offenders."

49 SECTION 3.

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

52 "35-3-165.

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

55 (1) The ~~the~~ conviction on which the authority for including his or her DNA profile was
 56 based has been reversed and the case dismissed;

57 (2) The person was acquitted of the felony charges;

58 (3) The felony charges against the person were reduced to misdemeanor charges;

59 (4) The felony charges are placed on the dead docket; or

60 (5) The prosecuting attorney otherwise dismisses the felony charges.

61 (b) The bureau shall purge all records and identifiable information in the data bank
 62 pertaining to the person described in subsection (a) of this Code section and destroy all

63 samples from the person upon receipt of a written request that such data be expunged,
 64 pursuant to this Code section, and a certified copy of:

- 65 (1) The the court order reversing and dismissing the conviction;
 66 (2) The judgment of acquittal;
 67 (3) The sentencing order showing that the charges were reduced to a misdemeanor;
 68 (4) The court order dead docketing the felony charges; or
 69 (5) Documentation from the prosecuting attorney stating that the felony charges were
 70 dismissed.

71 ~~(b)~~(c) A DNA sample obtained in good faith shall be deemed to have been obtained in
 72 accordance with the requirements of this article and its use in accordance with this article
 73 is authorized until ~~a court order directing expungement is obtained and~~ the documentation
 74 set forth in subsection (b) of this Code section is submitted to the bureau."

75 **SECTION 4.**

76 Code Section 17-6-1 relating to where offenses are bailable, procedure, and schedule of bails,
 77 is amended by adding a new subsection to read as follows:

78 "(k) If DNA analysis is required to be collected in accordance with Code Section 35-3-160,
 79 the court shall add as a condition of bail that the accused ensure that his or her DNA
 80 sample is provided to the arresting law enforcement agency within 15 days of a finding of
 81 probable cause for his or her arrest, his or her release upon his or her own recognizance,
 82 or his or her release on bail whether the bail amount is set by the court or set by a schedule
 83 of bails, whichever last occurs."

84 **SECTION 5.**

85 This Act shall become effective only if funds are specifically appropriated for purposes of
 86 this Act in an appropriations Act making specific reference to this Act and shall become
 87 effective when funds so appropriated become available for expenditure.

88 **SECTION 6.**

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