

Senate Bill 77

By: Senators Albers of the 56th, McKoon of the 29th, Stone of the 23rd, Williams of the 19th, Jackson of the 24th and others

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 analysis and
3 collection of DNA for individuals arrested and convicted of felony offenses; to revise and
4 add definitions; to change provisions relating to time and procedure for obtaining DNA
5 samples; to change provisions relating to expungement of profiles in the data bank; to amend
6 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses
7 are bailable, procedure, and schedule of bails, so as to provide a cross-reference for purposes
8 of DNA collections as a condition of bail; to provide for related matters; to provide for a
9 contingent effective date; to repeal conflicting laws; and for other 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 Code Section 35-3-160,
14 relating to DNA analysis upon conviction of certain sex offenses, as follows:

15 "35-3-160.

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

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

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

20 ~~(3)~~(2) 'Detention facility' means:

21 (A) A a penal institution under the jurisdiction of the department ~~used for the detention~~
22 ~~of persons convicted of a felony~~, including penal institutions operated by a private
23 company on behalf of the department, inmate work camps, inmate boot camps,
24 probation detention centers, and parole revocation centers; and

25 ~~(B) A jail~~ Such term shall also mean any facility operated under the jurisdiction of a
 26 ~~sheriff used for the detention of persons convicted of a felony including a county jail~~
 27 ~~or county correctional facility.~~

28 ~~(3) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of~~
 29 ~~Investigation.~~

30 ~~(4) 'Jail' shall have the same meaning as set forth in Code Section 42-4-13.~~

31 ~~(b) Any person convicted of a felony offense who is held in a detention facility or placed~~
 32 ~~on probation shall at the time of entering the detention facility or being placed on probation~~
 33 ~~have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive~~
 34 ~~procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification~~
 35 ~~characteristics specific to the person. The provisions and requirements of this Code section~~
 36 ~~shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and~~
 37 ~~who currently is incarcerated in a detention facility, serving a probation sentence, or~~
 38 ~~serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall~~
 39 ~~be the responsibility of the detention facility detaining or entity supervising a convicted~~
 40 ~~felon to collect the samples required by this Code section and forward the sample to the~~
 41 ~~division unless such sample has already been collected by the department or another~~
 42 ~~agency or entity.~~

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

48 SECTION 2.

49 Said article is further amended by revising Code Section 35-3-161, relating to time and
 50 procedure for withdrawal of blood samples, as follows:

51 "35-3-161.

52 ~~(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be~~
 53 ~~incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving~~
 54 ~~unit of the detention facility or at such other place as is designated by the department. Each~~
 55 ~~sample required pursuant to Code Section 35-3-160 from persons who are to be released~~
 56 ~~from a detention facility shall be withdrawn within the 12 months preceding such person's~~
 57 ~~release at a place designated by the department. The required samples from persons who~~
 58 ~~are not sentenced to a term of confinement shall be withdrawn as a condition of probation.~~
 59 ~~The division shall publish in its quality manuals the procedures for the collection and~~
 60 ~~transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a~~

61 ~~detention facility shall implement the provisions of this Code section as part of the regular~~
 62 ~~processing of offenders.~~

63 (a) A sample of DNA (deoxyribonucleic acid) shall be collected from the following:

64 (1) Any individual who has been convicted of a felony and currently is incarcerated in
 65 a detention facility, serving a probation sentence, or serving under the jurisdiction of the
 66 State Board of Pardons and Paroles for such felony offense; and

67 (2) Any individual arrested for a felony offense after there has been a finding of probable
 68 cause for his or her arrest.

69 (b)(1) It shall be the responsibility of the detention facility detaining or entity supervising
 70 a convicted felon to collect the samples required by paragraph (1) of subsection (a) of this
 71 Code section and forward such DNA sample to the division unless such sample has
 72 already been collected either by the department or by another agency or entity.

73 (2) It shall be the responsibility of the jail that is detaining or that released the individual
 74 described in paragraph (2) of subsection (a) of this Code section to collect DNA samples
 75 and forward such sample to the division unless such sample has already been collected
 76 either by the department or by another agency or entity.

77 ~~(b)~~(c)(1) DNA samples ~~Samples~~ collected by oral swab or by a noninvasive procedure
 78 may be collected by any individual who has been trained in the procedure.

79 (2) Only a correctional health nurse technician, physician, registered professional nurse,
 80 licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw
 81 any sample of blood to be submitted for analysis. Chemically clean sterile disposable
 82 needles shall be used for the withdrawal of all samples of blood.

83 (3) The containers for blood samples, oral swabs, and the samples obtained by
 84 noninvasive procedures shall be sealed and labeled with the subject's name, social
 85 security number, date of birth, race, and gender; the name of the individual collecting the
 86 sample; and the date and place of collection. The containers shall be secured to prevent
 87 tampering with the contents.

88 (4) No civil liability shall attach to any person individual authorized to take collect a
 89 sample as provided in this article as a result of the act of taking collecting a sample from
 90 any person individual submitting thereto, provided that the sample was taken collected
 91 according to recognized medically accepted procedures. However, no person individual
 92 shall be relieved from liability for negligence in the withdrawing of any blood sample.

93 ~~(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all~~
 94 ~~samples of blood. The containers for blood samples, oral swabs, and the samples obtained~~
 95 ~~by noninvasive procedures shall be sealed and labeled with the subject's name, social~~
 96 ~~security number, date of birth, race, and gender plus the name of the person collecting the~~
 97 ~~sample and the date and place of collection. The containers shall be secured to prevent~~

98 ~~tampering with the contents. The steps set forth in this subsection relating to the taking,~~
99 ~~handling, identification, and disposition of samples are procedural and not substantive.~~
100 ~~Substantial compliance therewith shall be deemed to be sufficient. The samples shall be~~
101 ~~transported to the division not more than 15 days following withdrawal and shall be~~
102 ~~analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and~~
103 ~~35-3-163.~~

104 (d)(1) Each DNA sample required pursuant to paragraph (1) of subsection (a) of this
105 Code section shall be collected as follows:

106 (A) If the individual is incarcerated, such DNA sample shall be collected within the
107 first 30 days of incarceration at the receiving unit of the detention facility or at such
108 other place as is designated by the department;

109 (B) If the individual is to be released from a detention facility and has not had a DNA
110 sample collected, it shall be collected within the 12 months preceding his or her release
111 at a place designated by the department; and

112 (C) If the individual is not sentenced to a term of confinement, it shall be collected as
113 a condition of probation.

114 (2) Each DNA sample required pursuant to paragraph (2) of subsection (a) of this Code
115 section shall be collected within 15 days of a finding of probable cause for an accused's
116 arrest, his or her release upon his or her own recognizance, or his or her release on bail
117 whether the bail amount is set by the court or set by a schedule of bails, whichever last
118 occurs. An accused may voluntarily provide his or her DNA sample.

119 (e) The steps set forth in this Code section relating to the collecting, handling,
120 identification, and disposition of DNA samples are procedural and not substantive.
121 Substantial compliance therewith shall be deemed to be sufficient.

122 (f) Personnel at jails and detention facilities shall implement the provisions of this Code
123 section as part of the regular processing of offenders.

124 (g) DNA samples shall be transported to the division not more than 15 days after being
125 obtained.

126 (h) DNA analysis shall be performed by the division. The division shall be authorized to
127 contract with individuals or organizations for services to perform such analysis. The
128 identification characteristics of the profile resulting from the DNA analysis shall be stored
129 and maintained by the bureau in a DNA data bank in accordance with Code Sections
130 35-3-162 and 35-3-163 and shall be made available only as provided in Code Section
131 35-3-163.

132 (i) The division shall publish in its quality manuals the procedures for the collection and
133 transfer of samples to the division pursuant to Code Section 35-3-154."

134 **SECTION 3.**

135 Said article is further amended by revising Code Section 35-3-162, relating to the procedure
 136 and analysis of blood samples, as follows:

137 "35-3-162.

138 Whether or not the results of an analysis are to be included in the data bank, the bureau
 139 shall conduct the DNA analysis of samples submitted pursuant to Code Section 35-3-161
 140 in accordance with procedures adopted by the bureau to determine identification
 141 characteristics specific to the individual whose DNA sample is being analyzed. The
 142 director or his or her designated representative shall complete and maintain on file a form
 143 indicating the name of the ~~person~~ individual whose DNA sample is to be analyzed, the date
 144 and by whom ~~the~~ such sample was received and examined, and a statement that the seal on
 145 the container containing ~~the~~ such sample had not been broken or otherwise tampered with.
 146 The remainder of a DNA sample submitted for analysis and inclusion in the data bank
 147 ~~pursuant to Code Section 35-3-160~~ may be divided, if possible, labeled as provided for the
 148 original sample, and securely stored by the bureau in accordance with specific procedures
 149 of the bureau to ensure the integrity and confidentiality of ~~the~~ DNA samples. All or part
 150 of the remainder of ~~that~~ a sample may be used only to create a statistical data base,
 151 provided that no identifying information on the individual whose sample is being analyzed
 152 is included, or for retesting by the bureau to validate or update the original analysis. A
 153 report of the results of a DNA analysis conducted by the bureau ~~as authorized~~, including
 154 the identifying information, shall be made and maintained at the bureau. Except as
 155 specifically provided in this Code section and Code Section 35-3-163, the results of the
 156 analysis shall be securely stored and shall remain confidential."

157 **SECTION 4.**

158 Said article is further amended by revising subsection (a), paragraph (1) of subsection (c),
 159 and subsection (e) of Code Section 35-3-163, relating to dissemination of information in data
 160 bank to law enforcement officials, as follows:

161 "(a) It shall be the duty of the bureau to receive DNA samples and to analyze, classify, and
 162 file the results of DNA identification characteristics of samples submitted pursuant to Code
 163 Section ~~35-3-160~~ 35-3-161 and to make such information available as provided in this
 164 Code section. The results of an analysis and comparison of the identification of the
 165 characteristics from two or more biological samples shall be made available directly to
 166 federal, state, and local law enforcement officers upon a request made in furtherance of an
 167 official investigation of any criminal offense. A request may be made by personal contact,
 168 mail, or electronic means. The name of the requestor and the purpose for which the
 169 information is requested shall be maintained on file with the bureau."

170 "(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any
 171 ~~person~~ individual identified and charged with an offense as the result of a search of
 172 information in the data bank. Only when a sample or DNA profile supplied by the
 173 requestor satisfactorily matches the requestor's profile in the data bank shall the existence
 174 of data in the data bank be confirmed or identifying information from the data bank be
 175 disseminated."

176 "(e) The bureau may create a separate statistical data base composed of DNA profiles of
 177 samples of ~~persons~~ individuals whose ~~identity is~~ identities are unknown. Nothing in this
 178 Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise
 179 disseminating the information in the statistical data base with law enforcement or criminal
 180 justice agencies within or outside ~~the~~ this state."

181 SECTION 5.

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

184 "35-3-165.

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

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

189 (2) The individual has been acquitted of the felony charges;

190 (3) All of the felony charges have been reduced to misdemeanors;

191 (4) The felony charges have been placed on the dead docket for more than 12 months;

192 or

193 (5) The prosecuting attorney has otherwise dismissed the charges.

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

198 (1) ~~The~~ the court order reversing and dismissing the conviction;

199 (2) The judgment of acquittal;

200 (3) The sentencing order showing that all of the felony charges were reduced to
 201 misdemeanors;

202 (4) The court order dead docketing the felony charges; or

203 (5) Documentation from the prosecuting attorney stating that the charges were dismissed.

204 ~~(b)~~(c) A DNA sample obtained in good faith shall be deemed to have been obtained in
 205 accordance with the requirements of this article, and its use in accordance with this article

206 is shall be authorized until a court order directing expungement is obtained and the
207 documentation set forth in subsection (b) of this Code section is submitted to the bureau."

208 **SECTION 6.**

209 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses
210 are bailable, procedure, and schedule of bails, is amended by adding a new subsection to read
211 as follows:

212 "(k) If DNA analysis is required to be collected in accordance with Code Section 35-3-161,
213 the court shall add as a condition of bail that the accused ensure that his or her DNA
214 sample is provided within 15 days of a finding of probable cause for his or her arrest, his
215 or her release upon his or her own recognizance, or his or her release on bail whether the
216 bail amount is set by the court or set by a schedule of bails, whichever last occurs. Upon
217 failure of an individual to comply with paragraph (2) of subsection (d) of Code Section
218 35-3-161, the prosecuting attorney may proceed to forfeit the bond or recognizance with
219 the condition that such forfeiture may be automatically purged by compliance with such
220 requirement."

221 **SECTION 7.**

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

225 **SECTION 8.**

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