

The Senate Committee on Judiciary Non Civil offers the following substitute to SB 77:

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 for certain felony offenses; to revise and add
4 definitions; to change provisions relating to time and procedure for obtaining DNA samples;
5 to change provisions relating to expungement of profiles in the data bank; to provide for
6 related matters; to provide for a contingent effective date; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

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

13 "35-3-160.

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

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

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

18 ~~(3)(2) 'Detention facility' means a penal institution under the jurisdiction of the~~
19 ~~department used for the detention of persons convicted of a felony, including penal~~
20 ~~institutions operated by a private company on behalf of the department, inmate work~~
21 ~~camp, inmate boot camp, probation detention center, and parole revocation center:~~
22 ~~Such term shall also mean any facility operated under the jurisdiction of a sheriff used~~
23 ~~for the detention of persons convicted of a felony including a county jail or, and a county~~
24 ~~correctional facility.~~

25 (3) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of
26 Investigation.

- 27 (4) 'Serious offense' means:
- 28 (A) A serious violent felony as such term is defined in Code Section 17-10-6.1; or
- 29 (B) A felony offense of:
- 30 (i) False imprisonment in violation of Code Section 16-5-41 when the victim is not
- 31 the child of the accused and the victim is less than 14 years of age;
- 32 (ii) Aggravated assault in violation of Code Section 16-5-21;
- 33 (iii) Sodomy in violation of Code Section 16-6-2;
- 34 (iv) Statutory rape in violation of Code Section 16-6-3;
- 35 (v) Child molestation in violation of Code Section 16-6-4;
- 36 (vi) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 37 (vii) Sexual assault of certain persons in violation of Code Section 16-6-5.1;
- 38 (viii) Incest in violation of Code Section 16-6-22;
- 39 (ix) Sexual battery in violation of Code Section 16-6-22.1;
- 40 (x) Burglary in violation of Code Section 16-7-1;
- 41 (xi) Theft by receiving stolen property in violation of Code Section 16-8-7;
- 42 (xii) Robbery in violation of Code Section 16-8-40;
- 43 (xiii) Sexual exploitation of children in violation of Code Section 16-12-100;
- 44 (xiv) Drug related objects in violation of Code Section 16-13-1;
- 45 (xv) Approval by the federal Food and Drug Administration as prerequisite to certain
- 46 sales in violation of Code Section 16-13-4;
- 47 (xvi) Purchase, possession, manufacture, distribution, or sale of controlled substances
- 48 or marijuana in violation of Code Section 16-13-30;
- 49 (xvii) Licenses for sale, transfer, or purchase for resale of products containing
- 50 pseudoephedrine; reporting and record-keeping requirements in violation of Code
- 51 Section 16-13-30.4;
- 52 (xviii) Possession of substances with intent to use or convey such substances for the
- 53 manufacture of Schedule I or Schedule II controlled substances in violation of Code
- 54 Section 16-13-30.5;
- 55 (xvix) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine in
- 56 violation of Code Section 16-13-31;
- 57 (xx) Trafficking in ecstasy in violation of Code Section 16-13-31.1;
- 58 (xxi) Transactions in drug related objects in violation of Code Section 16-13-32;
- 59 (xxii) Transactions in drug related objects in violation of Code Section 16-13-32.1;
- 60 (xxiii) Use of a communication facility in committing or facilitating commission of
- 61 an act which constitutes a felony in violation of Code Section 16-13-32.3;
- 62 (xxiv) Manufacturing, distributing, dispensing, or possessing controlled substances
- 63 in, on, or near public or private schools in violation of Code Section 16-13-32.4;

64 (xxv) Manufacturing, distributing, dispensing, or possessing controlled substances,
 65 marijuana, or counterfeit substances near a park or housing project in violation of
 66 Code Section 16-13-32.5;

67 (xxvi) Manufacturing, distributing, dispensing, or possessing with intent to distribute
 68 controlled substances or marijuana in, on, or within a drug-free commercial zone in
 69 violation of Code Section 16-13-32.6;

70 (xxvii) Unauthorized distribution and dispensation of a controlled substance in
 71 violation of Code Section 16-13-42;

72 (xxviii) Unauthorized distribution of a controlled substance in violation of Code
 73 Section 16-13-43; or

74 (xxix) A violation of Article 3 of Chapter 13 of Title 16 involving dangerous drugs.

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

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

92 **SECTION 2.**

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

95 "35-3-161.

96 ~~(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be~~
 97 ~~incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving~~
 98 ~~unit of the detention facility or at such other place as is designated by the department. Each~~
 99 ~~sample required pursuant to Code Section 35-3-160 from persons who are to be released~~

100 ~~from a detention facility shall be withdrawn within the 12 months preceding such person's~~
 101 ~~release at a place designated by the department. The required samples from persons who~~
 102 ~~are not sentenced to a term of confinement shall be withdrawn as a condition of probation.~~
 103 ~~The division shall publish in its quality manuals the procedures for the collection and~~
 104 ~~transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a~~
 105 ~~detention facility shall implement the provisions of this Code section as part of the regular~~
 106 ~~processing of offenders.~~

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

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

111 (2) Any individual arrested for a serious offense.

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

116 (2) It shall be the responsibility of the persons in charge of law enforcement agencies that
 117 arrest individuals for a serious offense to collect DNA samples and forward such sample
 118 to the division unless such sample has already been collected either by the department or
 119 by another agency or entity.

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

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

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

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

136 ~~(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all~~
137 ~~samples of blood. The containers for blood samples, oral swabs, and the samples obtained~~
138 ~~by noninvasive procedures shall be sealed and labeled with the subject's name, social~~
139 ~~security number, date of birth, race, and gender plus the name of the person collecting the~~
140 ~~sample and the date and place of collection. The containers shall be secured to prevent~~
141 ~~tampering with the contents. The steps set forth in this subsection relating to the taking,~~
142 ~~handling, identification, and disposition of samples are procedural and not substantive.~~
143 ~~Substantial compliance therewith shall be deemed to be sufficient. The samples shall be~~
144 ~~transported to the division not more than 15 days following withdrawal and shall be~~
145 ~~analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and~~
146 ~~35-3-163.~~

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

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

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

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

157 (2) Each DNA sample required pursuant to paragraph (2) of subsection (a) of this Code
158 section shall be collected by the arresting law enforcement agency.

159 (e) Personnel at detention facilities and law enforcement officials shall implement the
160 provisions of this Code section as part of the regular processing of offenders.

161 (f) DNA samples shall be transported to the division as soon as practical but not more than
162 15 days after being obtained.

163 (g) DNA analysis shall be performed by the division. The division shall be authorized to
164 contract with individuals or organizations for services to perform such analysis. The
165 identification characteristics of the profile resulting from the DNA analysis shall be stored
166 and maintained by the bureau in a DNA data bank in accordance with Code Sections
167 35-3-162 and 35-3-163 and shall be made available only as provided in Code Section
168 35-3-163.

169 (h) The division shall publish in its quality manuals the procedures for the collection,
170 handling, identification, and transfer of samples to the division pursuant to Code Section
171 35-3-154.

172 (i) The steps set forth in this Code section relating to the collecting, transfer, handling,
 173 identification, and disposition of DNA samples are procedural and not substantive.
 174 Substantial compliance therewith shall be deemed to be sufficient."

175 **SECTION 3.**

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

178 "35-3-162.

179 Whether or not the results of an analysis are to be included in the data bank, the bureau
 180 shall conduct the DNA analysis of samples submitted pursuant to Code Section 35-3-161
 181 in accordance with procedures adopted by the bureau to determine identification
 182 characteristics specific to the individual whose DNA sample is being analyzed. The
 183 director or his or her designated representative shall complete and maintain on file a form
 184 indicating the name of the person individual whose DNA sample is to be analyzed, the date
 185 and by whom the such sample was received and examined, and a statement that the seal on
 186 the container containing the such sample had not been broken or otherwise tampered with.
 187 The remainder of a DNA sample submitted for analysis and inclusion in the data bank
 188 ~~pursuant to Code Section 35-3-160~~ may be divided, if possible, labeled as provided for the
 189 original sample, and securely stored by the bureau in accordance with specific procedures
 190 of the bureau to ensure the integrity and confidentiality of the DNA samples. All or part
 191 of the remainder of ~~that~~ a sample may be used only to create a statistical data base,
 192 provided that no identifying information on the individual whose sample is being analyzed
 193 is included, or for retesting by the bureau to validate or update the original analysis. A
 194 report of the results of a DNA analysis conducted by the bureau ~~as authorized~~, including
 195 the identifying information, shall be made and maintained at the bureau. Except as
 196 specifically provided in this Code section and Code Section 35-3-163, the results of the
 197 analysis shall be securely stored and shall remain confidential."

198 **SECTION 4.**

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

202 "(a) It shall be the duty of the bureau to receive DNA samples and to analyze, classify, and
 203 file the results of DNA identification characteristics of samples submitted pursuant to Code
 204 Section ~~35-3-160~~ 35-3-161 and to make such information available as provided in this
 205 Code 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 "(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any
 212 person individual identified and charged with an offense as the result of a search of
 213 information in the data bank. Only when a sample or DNA profile supplied by the
 214 requestor satisfactorily matches the requestor's profile in the data bank shall the existence
 215 of data in the data bank be confirmed or identifying information from the data bank be
 216 disseminated."

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

222 SECTION 5.

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

225 "35-3-165.

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

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

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

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

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

233 or

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

235 (b) The bureau shall purge all records and identifiable information in the data bank
 236 pertaining to the person individual described in subsection (a) of this Code section and
 237 destroy all samples from ~~the person upon~~ such individual within 30 days of the receipt of
 238 a written request that such data be expunged, pursuant to this Code section, and a certified
 239 copy of:

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

241 (2) The judgment of acquittal;

