

The Senate Committee on Judiciary offered the following substitute to HB 470:

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 charged with a felony offense but sentenced as a first
4 offender or under conditional discharge; to revise definitions; to change provisions relating
5 to dissemination of information in the data bank; to change provisions relating to
6 expungement of profiles in the data bank; to provide for related matters; to provide for an
7 effective date; to repeal conflicting laws; and for 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 ~~camps, inmate boot camps, probation detention centers, and parole revocation centers:~~
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 county~~
24 ~~correctional facility facilities.~~

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

27 ~~(b)(1) Any person convicted of a felony offense who is held in a detention facility or~~
 28 ~~placed on probation shall at the time of entering the detention facility or being placed on~~
 29 ~~probation have a sample of his or her blood, an oral swab, or a sample obtained from a~~
 30 ~~noninvasive procedure taken for DNA (deoxyribonucleic acid) analysis to determine~~
 31 ~~identification characteristics specific to the person. The provisions and requirements of~~
 32 ~~this Code section shall also apply to any person who has been convicted of a felony prior~~
 33 ~~to July 1, 2011, and who currently is incarcerated in a detention facility, serving a~~
 34 ~~probation sentence, or serving under the jurisdiction of the Board of Pardons and Paroles~~
 35 ~~for such offense. It~~ A sample of deoxyribonucleic acid (DNA) shall be collected by oral
 36 swab or other noninvasive procedure from any individual:

37 (A) Who has been convicted of a felony and is currently incarcerated in a detention
 38 facility, serving a probation sentence, or serving under the jurisdiction of the State
 39 Board of Pardons and Paroles for such felony; or

40 (B) Who has been charged with a felony, and sentence for such offense has been
 41 imposed pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or
 42 (c) of Code Section 16-13-2.

43 (2) Unless a DNA sample has already been collected by the department or another
 44 agency or entity, each DNA sample required by paragraph (1) of this subsection shall be
 45 the responsibility of collected by the detention facility which is detaining or the entity
 46 which is supervising a convicted felon to collect the samples required by this Code
 47 section and forward the sample such individual, and the sample shall be forwarded to the
 48 division unless such sample has already been collected by the department or another
 49 agency or entity.

50 (3) Paragraph (1) of this subsection shall not apply to any individual for a conviction for
 51 a misdemeanor, to any individual who is charged with a misdemeanor and the sentence
 52 for such misdemeanor is imposed pursuant to Article 3 of Chapter 8 of Title 42 regarding
 53 first offenders, or because he or she has been charged with a misdemeanor.

54 (c) ~~The DNA~~ analysis shall be performed by the division. The division shall be authorized
 55 to contract with individuals or organizations for services to perform such analysis. The
 56 ~~identification~~ identifying characteristics of the profile resulting from the DNA analysis
 57 shall be stored and maintained by the bureau in a DNA data bank in accordance with Code
 58 Sections 35-3-162 and 35-3-163 and shall be made available only as provided in Code
 59 Section 35-3-163."

60

SECTION 2.

61 Said article is further amended by revising subsections (b) and (c) of Code Section 35-3-163,
 62 relating to dissemination of information in the data bank to law enforcement officials, as
 63 follows:

64 "(b) Upon request from a ~~prosecutor~~ prosecuting attorney or law enforcement agency, the
 65 bureau may compare a DNA profile from an analysis of a sample from a suspect in a
 66 criminal investigation ~~where~~ when the sample was obtained through a search warrant,
 67 consent of the suspect, court order, or other lawful means to DNA profiles lawfully
 68 collected and maintained by the bureau. The bureau shall not add a DNA profile of any
 69 such suspect to any DNA data bank except ~~upon conviction~~ as provided in this article.

70 (c)(1) Upon his or her request, a copy of the request for search shall be furnished to any
 71 person individual identified and charged with an offense as the result of a search of
 72 information in the data bank. Only when a sample or DNA profile supplied by the
 73 requestor satisfactorily matches the requestor's profile in the data bank shall the existence
 74 of data in the data bank be confirmed or identifying information from the data bank be
 75 disseminated.

76 (2) The name of the ~~convicted felon~~ individual whose profile is contained in the data
 77 bank may be related to any other data bases which are constructed for law enforcement
 78 purposes and may be disseminated only for law enforcement purposes.

79 (3) Upon a showing by the accused in a criminal proceeding that access to the DNA data
 80 bank is material to the investigation, preparation, or presentation of a defense at trial or
 81 in a ~~postconviction~~ posttrial proceeding, a superior court having proper jurisdiction over
 82 such criminal proceeding shall direct the bureau to compare a the DNA profile which has
 83 been generated by the accused through an independent test against the data bank,
 84 provided that such DNA profile has been generated in accordance with standards for
 85 forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131."

86

SECTION 3.

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

89 "35-3-165.

90 (a) ~~A person whose DNA profile has been included in the data bank pursuant to this article~~
 91 ~~may request that it be expunged on the grounds that the conviction on which the authority~~
 92 ~~for including his or her DNA profile was based has been reversed and the case dismissed.~~
 93 The bureau shall purge all records and identifiable information in the data bank pertaining
 94 to the person DNA profile of the individual and shall destroy all such DNA samples from
 95 the person upon collected from such individual within 30 days of the receipt of a written

96 ~~request that such data be expunged, pursuant to this Code section, and a certified copy of~~
 97 ~~the court applicable:~~

98 (1) Court order reversing and dismissing the conviction together with a court order or
 99 documentation from the prosecuting attorney stating that the charges were dismissed;

100 (2) Judgment of acquittal;

101 (3) Sentencing order showing that all of the felony charges were reduced to
 102 misdemeanors; or

103 (4) Court order showing the successful completion of the sentence that was imposed
 104 pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code
 105 Section 16-13-2.

106 (b) A DNA sample obtained in good faith shall be deemed to have been obtained in
 107 accordance with the requirements of this article and its use in accordance with this article
 108 ~~is shall be~~ authorized until ~~a court order directing expungement is obtained and submitted~~
 109 ~~to the bureau~~ it is expunged as set forth in subsection (a) of this Code section."

110 **SECTION 4.**

111 This Act shall become effective upon its approval by the Governor or upon its becoming law
 112 without such approval.

113 **SECTION 5.**

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