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

A BILL TO BE ENTITLED
AN ACT

To amend Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to DNA sampling, collection, and analysis, so as to provide for analysis and collection of DNA for individuals charged with a felony offense but sentenced as a first offender or under conditional discharge; to revise definitions; to change provisions relating to dissemination of information in the data bank; to change provisions relating to expungement of profiles in the data bank; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

35-3-160.

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

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

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

(2) 'Detention facility' means a penal institution under the jurisdiction of the department used for the detention of persons convicted of a felony, including penal institutions operated by a private company on behalf of the department, inmate work camps, inmate boot camps, probation detention centers, and parole revocation centers. Such term shall also mean any facility operated under the jurisdiction of a sheriff used for the detention of persons convicted of a felony including a county jail or county correctional facility facilities.

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

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

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

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

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

(c) The DNA analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identification identifying characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163 and shall be made available only as provided in Code Section 35-3-163."
SECTION 2.

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

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

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

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

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

SECTION 3.

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

“35-3-165.

(a) A person whose DNA profile has been included in the data bank pursuant to this article may request that it be expunged on the grounds that the conviction on which the authority for including his or her DNA profile was based has been reversed and the case dismissed.

The bureau shall purge all records and identifiable information in the data bank pertaining to the DNA profile of the individual and shall destroy all such DNA samples from the person upon collected from such individual within 30 days of the receipt of a written
request that such data be expunged, pursuant to this Code section, and a certified copy of
the court applicable:
(1) Court order reversing and dismissing the conviction together with a court order or
documentation from the prosecuting attorney stating that the charges were dismissed;
(2) Judgment of acquittal;
(3) Sentencing order showing that all of the felony charges were reduced to
misdemeanors; or
(4) Court order showing the successful completion of the sentence that was imposed
pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code
Section 16-13-2.
(b) A DNA sample obtained in good faith shall be deemed to have been obtained in
accordance with the requirements of this article and its use in accordance with this article
shall be authorized until a court order directing expungement is obtained and submitted
to the bureau it is expunged as set forth in subsection (a) of this Code section.”

SECTION 4.
This Act shall become effective upon its approval by the Governor or upon its becoming law
without such approval.

SECTION 5.
All laws and parts of laws in conflict with this Act are repealed.