

House Bill 208

By: Representative Holcomb of the 81st

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 5-5-41 of the Official Code of Georgia Annotated, relating to
2 requirements as to extraordinary motions for new trial generally, notice of filing of motion,
3 limitations as to number of extraordinary motions in criminal cases, and DNA testing, so as
4 to provide for remedies where evidence has been lost or destroyed by the state; to amend
5 Article 3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
6 disposition of property seized, so as to provide that court clerks maintain and store all
7 physical evidence introduced in felony trials after conviction; to provide for the preservation
8 and documentation of certain evidence; to provide for related matters; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 5-5-41 of the Official Code of Georgia Annotated, relating to requirements as
13 to extraordinary motions for new trial generally, notice of filing of motion, limitations as to
14 number of extraordinary motions in criminal cases, and DNA testing, is amended by revising
15 paragraphs (12) and (13) of subsection (c) as follows:

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16 "(12) If the court determines that the petitioner has met the requirements set forth in
17 paragraphs (3) and (4) of this subsection and has met the requirements set forth in
18 subparagraphs (C) through (G) of paragraph (7) of this subsection, and the evidence
19 sought by the petitioner for testing or analysis under this subsection cannot be produced
20 by the state, the evidence custodian of the entity last documented to have the evidence
21 shall provide an affidavit in which he or she describes, under penalty of perjury, the
22 efforts taken to locate the evidence and affirms that the evidence cannot be produced. If
23 the court determines that the failure to produce evidence was the result of an act of the
24 state in violation of Code Section 17-5-56, the court shall set forth by written order its
25 determination, and the court shall adopt a rebuttable presumption that the evidence would
26 have been exculpatory to the petitioner in the motion for new trial proceedings filed
27 pursuant to this subsection.

28 (13) The judge shall set forth by written order the rationale for the grant or denial of the
29 motion for new trial filed pursuant to this subsection.

30 ~~(13)~~(14) The petitioner or the state may appeal an order, decision, or judgment rendered
31 pursuant to this Code section."

32 SECTION 2.

33 Article 3 of Chapter 5 of Title 17, relating to disposition of property seized, is amended in
34 Code Section 17-5-55, relating to designation of a custodian for introduced evidence,
35 evidence log, storage, maintenance, and disposal of evidence, by revising subsection (a) as
36 follows:

37 "(a) In all criminal cases, the court shall designate either the clerk of court, the court
38 reporter, or any other officer of the court to be the custodian of any property that is
39 introduced into evidence during the pendency of the case. Property introduced into
40 evidence shall be identified or tagged with an exhibit number. After verdict and judgment
41 has been entered in any criminal case, the person who has custody of the physical evidence

42 introduced in the case shall inventory the evidence and create an evidence log within 30
43 days of the entry of the judgment. Within 30 days following the creation of the evidence
44 log, physical evidence shall be returned to the rightful owner of the property unless the
45 physical evidence itself is necessary for the appeal of the case, for a new trial, or for
46 purposes of complying with this Code section or Code Section 17-5-56. The evidence log
47 shall contain the case number, style of the case, description of the item, exhibit number, the
48 name of the person creating the evidence log, and the location where the physical evidence
49 is stored. In felony cases, the clerk of court shall, at the time the evidence log is completed,
50 obtain and store the evidence, pursuant to subsection (c) of this Code section, and a
51 notation shall appear in the evidence log indicating transfer of the evidence to the clerk.
52 In nonfelony criminal cases, after ~~After~~ the evidence log is completed, the judge shall
53 designate the clerk of court, the prosecuting attorney, or the law enforcement agency
54 involved in prosecuting the case to obtain and store the evidence, and a notation shall
55 appear in the evidence log indicating the transfer of evidence. If evidence is transferred to
56 any other party, the evidence log shall be annotated to show the identity of the person or
57 entity receiving the evidence, the date of the transfer, and the location of the evidence. The
58 signature of any person or entity to which physical evidence is transferred shall be captured
59 through electronic means that will be linked to the evidence log or the use of a property
60 transfer form that will be filed with the evidence log. When physical evidence, other than
61 audio or video recordings, is transferred to any person or entity, a photograph or other
62 visual image of the evidence shall be made and placed in the case file."

63

SECTION 3.

64 Said article is further amended in Code Section 17-5-56, relating to maintenance of physical
65 evidence containing biological material, by adding a new subsection to read as follows:

66 "(c) All evidence maintained pursuant to subsections (a) and (b) of this Code section shall
67 be preserved in a manner reasonably calculated to prevent contamination or degradation

68 of any biological evidence that might be present, subject to continuous chain of custody,
69 and securely retained with sufficient official documentation to locate the evidence."

70 **SECTION 4.**

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