

House Bill 1288

By: Representatives Cummings of the 39th, Dawson of the 65th, Flournoy of the 74th, Panitch of the 51st, Beckles of the 96th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-3-161 of the Official Code of Georgia Annotated, relating to
2 collection of DNA samples and time and procedure for withdrawal of blood samples, so as
3 to require consent or a court order to withdraw blood from persons who are to be incarcerated
4 or are to be released for DNA testing; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 35-3-161 of the Official Code of Georgia Annotated, relating to collection of
9 DNA samples and time and procedure for withdrawal of blood samples, is amended as
10 follows:

11 "35-3-161.

12 (a) No blood may be withdrawn from a person who is to be incarcerated for purposes of
13 performing DNA analysis pursuant to Code Section 35-3-160 without:

14 (1) Written consent from the person to be incarcerated authorizing such withdrawal; or

15 (2) A court order authorizing such withdrawal.

16 (b) Each sample required pursuant to Code Section 35-3-160 from persons who are to be
17 incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving
18 unit of the detention facility or at such other place as is designated by the department;
19 provided, however, that, if such sample is a blood withdrawal and the person to be
20 incarcerated does not consent to such withdrawal, the blood sample shall be withdrawn
21 within 30 days of a court order entered pursuant to subsection (a) of this Code section.
22 Each sample required pursuant to Code Section 35-3-160 from persons who are to be
23 released from a detention facility shall be withdrawn within the 12 months preceding such
24 person's release at a place designated by the department; provided, however, that, if such
25 sample is a blood withdrawal and the incarcerated person does not consent to such
26 withdrawal, the blood sample shall be withdrawn within 30 days of a court order entered
27 pursuant to subsection (a) of this Code section. The required samples from persons who
28 are not sentenced to a term of confinement shall be withdrawn as a condition of probation.
29 The division shall publish in its quality manuals the procedures for the collection and
30 transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a
31 detention facility shall implement the provisions of this Code section as part of the regular
32 processing of offenders.

33 ~~(b)~~(c) Samples collected by oral swab or by a noninvasive procedure may be collected by
34 any individual who has been trained in the procedure. Only a correctional health nurse
35 technician, physician, registered professional nurse, licensed practical nurse, graduate
36 laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted
37 for analysis. No civil liability shall attach to any person authorized to take a sample as
38 provided in this article as a result of the act of taking a sample from any person submitting
39 thereto, provided the sample was taken according to recognized medically accepted
40 procedures. However, no person shall be relieved from liability for negligence in the
41 withdrawing of any blood sample.

42 ~~(c)~~(d) Chemically clean sterile disposable needles shall be used for the withdrawal of all
43 samples of blood. The containers for blood samples, oral swabs, and the samples obtained
44 by noninvasive procedures shall be sealed and labeled with the subject's name, social
45 security number, date of birth, race, and gender plus the name of the person collecting the
46 sample and the date and place of collection. The containers shall be secured to prevent
47 tampering with the contents. The steps set forth in this subsection relating to the taking,
48 handling, identification, and disposition of samples are procedural and not substantive.
49 Substantial compliance therewith shall be deemed to be sufficient. The samples shall be
50 transported to the division not more than 15 days following withdrawal and shall be
51 analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and
52 35-3-163."

53

SECTION 2.

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