

Senate Bill 29

By: Senators Williams of the 25th, Albers of the 56th, Robertson of the 29th, Hodges of the 3rd, Bearden of the 30th and others

AS PASSED SENATE

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 the collection of
3 DNA samples of individuals arrested for the commission of a felony at the time such
4 individuals are booked or otherwise processed by a detention facility; to revise provisions
5 relating to the destruction of DNA profiles; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
10 DNA sampling, collection, and analysis, is amended by revising Code Section 35-3-160,
11 relating to DNA analysis in felony convictions and certain felony charges and performance
12 of tests, 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) 'Detention facility' means a penal institution under the jurisdiction of the department,~~
 17 ~~including penal institutions operated by a private company on behalf of the department,~~
 18 ~~inmate work camps, inmate boot camps, probation detention centers, parole revocation~~
 19 ~~centers, and county correctional facilities any place of confinement for juvenile or adult~~
 20 ~~individuals accused of, convicted of, or adjudicated for violating a law of this state or an~~
 21 ~~ordinance of a political subdivision of this state.~~

22 ~~(3)(2) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of~~
 23 ~~Investigation bureau.~~

24 (b)(1) ~~A Except as provided in paragraph (2) of this subsection, a sample of~~
 25 ~~deoxyribonucleic acid (DNA) shall be collected by oral swab or other noninvasive~~
 26 ~~procedure from any individual who has been arrested for the commission of a serious~~
 27 ~~violent felony, as such term is defined in Code Section 17-10-6.1; in this state:~~

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

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

34 ~~(C) Who has been convicted of a felony and is subject to an immigration detainer~~
 35 ~~notice as such term is defined in Code Section 42-1-11.5.~~

36 ~~(2) Unless a DNA sample has already been collected by the department or another~~
 37 ~~agency or entity, each DNA sample required by paragraph (1) of this subsection shall be~~
 38 ~~collected by the detention facility which is detaining or the entity which is supervising~~
 39 ~~such individual, and the sample shall be forwarded to the division.~~

40 ~~(2) A detention facility shall not be required to collect a DNA sample from any~~
 41 ~~individual for whom a sample has already been received by the division and that has not~~
 42 ~~been destroyed pursuant to Code Section 35-3-165.~~

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

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

54

SECTION 2.

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

57 "35-3-161.

58 (a) Each sample required pursuant to Code Section 35-3-160 from ~~persons~~ individuals
 59 ~~who are to be incarcerated~~ arrested for the commission of a serious violent felony, as such
 60 term is defined in Code Section 17-10-6.1; shall be collected at the time such individuals
 61 are booked or otherwise processed by the detention facility ~~withdrawn within the first 30~~
 62 ~~days of incarceration at the receiving unit of the detention facility or at such other place as~~
 63 ~~is designated by the department. Each sample required pursuant to Code Section 35-3-160~~
 64 ~~from persons who are to be released from a detention facility shall be withdrawn within the~~
 65 ~~12 months preceding such person's release at a place designated by the department. The~~
 66 ~~required samples from persons who are not sentenced to a term of confinement shall be~~
 67 ~~withdrawn as a condition of probation.~~ The division shall publish in its quality manuals
 68 the procedures for the collection and transfer of samples to such division pursuant to Code

69 Section 35-3-154. ~~Personnel at a detention facility shall implement the provisions of this~~
70 ~~Code section as part of the regular processing of offenders.~~

71 (b) Samples collected by oral swab or by a noninvasive procedure may be collected by any
72 individual who has been trained in the procedure. Only a correctional health nurse
73 technician, physician, registered professional nurse, licensed practical nurse, graduate
74 laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted
75 for analysis. No civil liability shall attach to any person authorized to take a sample as
76 provided in this article as a result of the act of taking a sample from any person submitting
77 thereto, provided that the sample was taken according to recognized medically accepted
78 procedures. However, no person shall be relieved from liability for negligence in the
79 withdrawing of any blood sample.

80 (c) Chemically clean sterile disposable needles shall be used for the withdrawal of all
81 samples of blood. The containers for ~~blood~~ DNA samples, ~~oral swabs, and the samples~~
82 ~~obtained by noninvasive procedures~~ collected pursuant to this article shall be sealed and
83 labeled with the subject's name, social security number, date of birth, race, and gender plus
84 the name of the person collecting the sample and the date and place of collection. The
85 containers shall be secured to prevent tampering with the contents. The steps set forth in
86 this subsection relating to the taking, handling, identification, and disposition of samples
87 are procedural and not substantive. Substantial compliance therewith shall be deemed to
88 be sufficient. The samples collected pursuant to this article shall be transported to the
89 division not more than 15 days following ~~withdrawal~~ the date of collection and shall be
90 analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162
91 and 35-3-163.

92 (d) Personnel at a detention facility shall implement the provisions of this Code section as
93 part of the regular processing of arrested individuals."

94

SECTION 3.

95 Said article is further amended by revising Code Section 35-3-165, relating to expungement
96 of DNA profile in data bank and requirements, as follows:

97 "35-3-165.

98 (a) The bureau shall purge all records and identifiable information in the data bank
99 pertaining to the DNA profile of the individual and shall destroy all such DNA samples
100 collected from such individual within 30 days of the receipt of:

101 (1) A a certified copy of the applicable:

102 (A) Court order or documentation from the prosecuting attorney stating that all charges
103 for which the DNA profile was created were dismissed; or

104 ~~(H)~~(B) Court order reversing the conviction of all charges for which the DNA profile
105 was created together with a court order or documentation from the prosecuting attorney
106 stating that the charges were dismissed;

107 (2) Judgment of acquittal of all charges for which the DNA profile was created;

108 (3) Sentencing order showing that all of the felony charges for which the DNA profile
109 was created were reduced to misdemeanors; ~~or~~

110 (4) Court order showing the successful completion of ~~the~~ a sentence relating to all of the
111 charges for which the DNA profile was created that was imposed pursuant to Article 3
112 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2;

113 (5) Satisfactory proof that the applicable statute of limitations for each of the offenses
114 relating to the charges for which the DNA profile was created has expired and that no
115 such charges remain pending; or

116 (6) A combination of any of the above that provides satisfactory proof that none of the
117 charges for which the DNA profile was created remain pending and that the individual
118 has not been convicted of any such charges.

119 (b) A DNA sample obtained in good faith shall be deemed to have been obtained in
120 accordance with the requirements of this article and its use in accordance with this article
121 shall be authorized until it is expunged as set forth in subsection (a) of this Code section."

122

SECTION 4.

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