

The House Committee on Public Safety and Homeland Security offers the following substitute to SB 29:

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 from individuals who are arrested for the commission of a serious violent  
4 felony; to revise provisions relating to the collection of DNA samples; to revise provisions  
5 relating to the destruction of certain DNA profiles; to provide for short title; to provide for  
6 related matters; to provide for contingent effectiveness upon appropriation of funds; to repeal  
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Ashley Spence Act."

11 **SECTION 2.**

12 Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to  
13 DNA sampling, collection, and analysis, is amended by revising Code Section 35-3-160,  
14 relating to DNA analysis in felony convictions and certain felony charges and performance  
15 of tests, as follows:

S. B. 29 (SUB)

16 "35-3-160.

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

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

19 (2) ~~'Detention facility' means a penal institution under the jurisdiction of the department,~~  
 20 ~~including penal institutions operated by a private company on behalf of the department,~~  
 21 ~~inmate work camps, inmate boot camps, probation detention centers, parole revocation~~  
 22 ~~centers, and county correctional facilities~~ any place of confinement for adult individuals  
 23 accused of, convicted of, or adjudicated for violating a law of this state or an ordinance  
 24 of a political subdivision of this state.

25 (3)~~(2)~~ 'Division' means the Division of Forensic Sciences of the ~~Georgia Bureau of~~  
 26 ~~Investigation~~ bureau.

27 (3) 'Serious violent felony' shall have the same meaning as set forth in Code  
 28 Section 17-10-6.1.

29 (b)(1) ~~A~~ Except as provided in paragraph (3) of this subsection, a sample of  
 30 deoxyribonucleic acid (DNA) shall be collected by oral swab or other noninvasive  
 31 procedure from any individual:

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

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

38 (C) Who has been convicted of a felony and is subject to an immigration detainer  
 39 notice as such term is defined in Code Section 42-1-11.5; or

40 (D) Who has been arrested for the commission of a serious violent felony in this state.

41 (2) ~~Unless a DNA sample has already been collected by the department or another~~  
 42 ~~agency or entity, each~~ Each DNA sample required by paragraph (1) of this subsection

43 shall be collected by the detention facility which is detaining or the entity which is  
 44 supervising such individual, and the DNA sample shall be forwarded to the division.

45 (3) No DNA sample shall be required to be collected under this Code section from any  
 46 individual for whom a DNA sample has already been received by the division and that  
 47 has not been destroyed pursuant to Code Section 35-3-165.

48 ~~(3)~~(4) Paragraph (1) of this subsection shall not apply to any individual for a conviction  
 49 for a misdemeanor, to any individual who is charged with a misdemeanor and the  
 50 sentence for such misdemeanor is imposed pursuant to Article 3 of Chapter 8 of Title 42  
 51 regarding first offenders, or because he or she has been charged with a misdemeanor.

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

58 **SECTION 3.**

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

61 "35-3-161.

62 (a) Each DNA sample required pursuant to Code Section 35-3-160 from ~~persons~~  
 63 individuals who are arrested or to be incarcerated shall be collected at the time such  
 64 individuals are received, booked, or otherwise processed by the detention facility  
 65 ~~withdrawn within the first 30 days of incarceration at the receiving unit of the detention~~  
 66 ~~facility or at such other place as is designated by the department.~~ Each DNA sample  
 67 required pursuant to Code Section 35-3-160 from ~~persons~~ individuals who are to be  
 68 released from a detention facility shall be withdrawn within the 12 months preceding such

69 ~~person's release at a place designated by the department~~ individual's release. The required  
70 DNA samples from persons who are not sentenced to a term of confinement shall be  
71 withdrawn as a condition of probation. The division shall publish in its quality manuals  
72 the procedures for the collection and transfer of DNA samples to such division pursuant  
73 to Code Section 35-3-154. ~~Personnel at a detention facility shall implement the provisions~~  
74 ~~of this Code section as part of the regular processing of offenders.~~

75 (b) ~~Samples~~ DNA samples collected by oral swab or by a noninvasive procedure may be  
76 collected by any individual who has been trained in the procedure. Only a correctional  
77 health nurse technician, physician, registered professional nurse, licensed practical nurse,  
78 graduate laboratory technician, or phlebotomist shall withdraw any sample of blood to be  
79 submitted for DNA analysis. No civil liability shall attach to any person authorized to take  
80 a DNA sample as provided in this article as a result of the act of taking a DNA sample from  
81 any person submitting thereto, provided that the DNA sample was taken according to  
82 recognized medically accepted procedures. However, no person shall be relieved from  
83 liability for negligence in the withdrawing of any blood sample and chemically clean sterile  
84 disposable needles shall be used for the withdrawal of all blood samples.

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

95 collection and shall be analyzed and stored in the DNA data bank in accordance with Code  
96 Sections 35-3-162 and 35-3-163.

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

99 **SECTION 4.**

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

102 "35-3-165.

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

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

107 (A) Court order or documentation from the prosecuting attorney or arresting law  
108 enforcement agency stating that the charges for which the DNA profile was created  
109 were dismissed; or

110 ~~(B)~~ (B) Court order reversing the conviction of the charges for which the DNA profile  
111 was created together with a court order or documentation from the prosecuting attorney  
112 stating that the charges were dismissed;

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

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

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

119 (5) Documentation from the prosecuting attorney that the applicable statute of limitations  
120 for each of the offenses relating to the charges for which the DNA profile was created has  
121 expired and that no such charges remain pending; or  
122 (6) A combination of any of the above that provides satisfactory proof that none of the  
123 charges for which the DNA profile was created remain pending and that the individual  
124 has not been convicted of any such charges or that the individual has completed a  
125 sentence relating to any such charges that was imposed pursuant to Article 3 of Chapter  
126 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2.  
127 (b) A DNA sample obtained in good faith shall be deemed to have been obtained in  
128 accordance with the requirements of this article and its use in accordance with this article  
129 shall be authorized until it is expunged as set forth in subsection (a) of this Code section."

130

**SECTION 5.**

131 This Act shall become effective on July 1, 2028, only if funds are specifically appropriated  
132 for the purposes of this Act and shall become effective when funds so appropriated become  
133 available for expenditure.

134

**SECTION 6.**

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