

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 provide for the furnishing of DNA kits; to revise provisions relating to the
5 collection of DNA samples; to revise provisions relating to the destruction of certain DNA
6 profiles; to provide for a short title; to provide for related matters; to provide for contingent
7 effectiveness upon appropriation of funds; to repeal 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)~~ (2) 'Division' means the Division of Forensic Sciences of the bureau.

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

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

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

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

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

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

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

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

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

47 ~~(3)~~(4) Paragraph (1) of this subsection shall not apply to any individual for a conviction
48 for a misdemeanor, to any individual who is charged with a misdemeanor and the
49 sentence for such misdemeanor is imposed pursuant to Article 3 of Chapter 8 of Title 42
50 regarding first offenders, or because he or she has been charged with a misdemeanor.

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

57 (d) All DNA sample collection kits shall be postage prepaid and furnished to law
58 enforcement agencies by the state of Georgia."

59 **SECTION 3.**

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

62 "35-3-161.

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

68 detention facility. However, if the person is arrested without a warrant, then the DNA
69 sample shall not be taken until a probable cause determination has been made by a judge
70 or grand jury. Each DNA sample required pursuant to Code Section 35-3-160 from
71 persons individuals who are to be released from a detention facility shall be withdrawn
72 within the 12 months preceding such person's release at a place designated by the
73 department individual's release. The required DNA samples from persons who are not
74 sentenced to a term of confinement imprisonment shall be withdrawn as a condition of
75 probation. The division shall publish in its quality manuals the procedures for the
76 collection and transfer of DNA samples to such division pursuant to Code Section
77 35-3-154. Personnel at a detention facility shall implement the provisions of this Code
78 section as part of the regular processing of offenders.

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

89 ~~(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all~~
90 ~~samples of blood. The containers for blood DNA samples, oral swabs, and the samples~~
91 ~~obtained by noninvasive procedures~~ collected pursuant to this article shall be sealed and
92 labeled with the subject's name, social security number, date of birth, race, and gender plus
93 the name of the person collecting the DNA sample and the date and place of collection.
94 The containers shall be secured to prevent tampering with the contents. The steps set forth

95 in this subsection relating to the taking, handling, identification, and disposition of DNA
 96 samples are procedural and not substantive. Substantial compliance therewith shall be
 97 deemed to be sufficient. The DNA samples collected pursuant to this article shall be
 98 transported to the division not more than 15 days following ~~withdrawal~~ the date of
 99 collection and shall be analyzed and stored in the DNA data bank in accordance with Code
 100 Sections 35-3-162 and 35-3-163.

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

103 SECTION 4.

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

106 "35-3-165.

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

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

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

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

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

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

- 120 (4) Court order showing the successful completion of the a sentence relating to the
121 charges for which the DNA profile was created that was imposed pursuant to Article 3
122 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2;
- 123 (5) Documentation from the prosecuting attorney that the applicable statute of limitations
124 for each of the offenses relating to the charges for which the DNA profile was created has
125 expired and that no such charges remain pending; or
- 126 (6) A combination of any of the above that provides satisfactory proof that none of the
127 charges for which the DNA profile was created remain pending and that the individual
128 has not been convicted of any such charges or that the individual has completed a
129 sentence relating to any such charges that was imposed pursuant to Article 3 of Chapter 8
130 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2.
- 131 (b) A DNA sample obtained in good faith shall be deemed to have been obtained in
132 accordance with the requirements of this article and its use in accordance with this article
133 shall be authorized until it is ~~expunged as set forth in subsection (a) of this Code section~~
134 a court order directing expungement is obtained and the documentation set forth in
135 subsection (c) of this Code section is submitted to the bureau.
- 136 (c) Within 30 days of an event occurring as described in subsection (a) of this Code
137 section, the clerk of court shall provide the bureau with a copy of:
- 138 (1) The court order reversing and dismissing the conviction;
139 (2) The judgment of acquittal;
140 (3) The sentencing order showing that all of the felony charges were reduced to
141 misdemeanors;
142 (4) The court order dead docketing the felony charges; or
143 (5) Documentation from the prosecuting attorney stating that the charges were dismissed.
- 144 (d) The bureau shall purge all records and identifiable information in the data bank
145 pertaining to the individual described in subsection (a) of this Code section and destroy all
146 samples from the individual upon such individual within 30 days of the receipt of a written

147 request that such data be expunged, pursuant to this Code section, and a certified copy of
148 the court order reversing and dismissing the conviction the documentation described in
149 subsection (c) of this Code section. If a clerk of the court fails to comply with
150 subsection (c) of this Code section, the individual whose DNA was collected may submit
151 a certified copy of the documentation described in subsection (c) of this Code section to
152 the bureau."

153 **SECTION 5.**

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

157 **SECTION 6.**

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