

Senate Bill 499

By: Senators Tippins of the 37th, Miller of the 49th, Dugan of the 30th, Mullis of the 53rd, Albers of the 56th and others

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 analysis and
3 collection of DNA of individuals convicted of certain misdemeanor offenses; to provide for
4 analysis and collection of DNA of individuals arrested for felony offenses; to revise and add
5 definitions; to change provisions relating to time and procedure for obtaining DNA samples;
6 to change provisions relating to expungement of profiles in the data bank; to amend Code
7 Section 17-6-1 of the Official Code of Georgia Annotated, relating to when offenses are
8 bailable, procedure, schedule of bails, and appeal bonds, so as to provide a cross-reference
9 for purposes of DNA collection as a condition of bail; to provide for related matters; to
10 provide for an effective date and applicability; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 6A of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
15 DNA sampling, collection, and analysis, is amended by revising Code Section 35-3-160,
16 relating to DNA analysis upon conviction of certain sex offenses, as follows:

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17 "35-3-160.

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

19 (1) 'Department' means the Department of Corrections.

20 (2) 'Detention facility' means a:

21 (A) A penal institution under the jurisdiction of the department, including penal
 22 institutions operated by a private company on behalf of the department, inmate work
 23 camp, inmate boot camp, probation detention center, and parole revocation center;
 24 and; or

25 (B) A jail or county correctional facilities facility.

26 (3) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of
 27 Investigation.

28 (4) 'Jail' shall have the same meaning as set forth in Code Section 42-4-13.

29 (b)(1) A sample of deoxyribonucleic acid (DNA) shall be collected by oral swab or other
 30 noninvasive 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; or

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) or~~
 36 ~~(c) of Code Section 16-13-2~~ after a finding of probable cause for his or her arrest; or

37 (C) Who has been convicted of a forcible misdemeanor or a misdemeanor offense of:

38 (i) Stalking in violation of Code Section 16-5-90;

39 (ii) Violating a family violence order in violation of Code Section 16-5-95;

40 (iii) Public indecency in violation of Code Section 16-6-8;

41 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

42 (v) Pimping in violation of Code Section 16-6-11;

43 (vi) Pandering in violation of Code Section 16-6-12;

44 (vii) Being a 'peeping Tom' in violation of Code Section 16-11-61; or
45 (viii) Invasion of privacy in violation of Part 3 of Article 3 of Chapter 11 of Title 16.
46 (2) Unless a DNA sample has already been collected by the department or another
47 agency or entity, each DNA sample required by paragraph (1) of this subsection shall be
48 collected by the detention facility which is detaining or the entity which is supervising
49 such individual, and the sample shall be forwarded to the division.
50 (3) Paragraph (1) of this subsection shall not apply to ~~any individual for a conviction for~~
51 ~~a misdemeanor, to any individual who is charged with a misdemeanor and the sentence~~
52 ~~for such misdemeanor is imposed pursuant to Article 3 of Chapter 8 of Title 42 regarding~~
53 ~~first offenders, or because he or she has been charged with a misdemeanor.~~
54 (c) DNA analysis shall be performed by the division. The division shall be authorized to
55 contract with individuals or organizations for services to perform such analysis. The
56 identifying characteristics of the profile resulting from the DNA analysis shall be stored
57 and maintained by the bureau in a DNA data bank in accordance with Code
58 Sections 35-3-162 and 35-3-163 and shall be made available only as provided in Code
59 Section 35-3-163."

60 **SECTION 2.**

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

63 "(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be
64 incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving
65 unit of the detention facility or at such other place as is designated by the department. Each
66 sample required pursuant to Code Section 35-3-160 from persons who are to be released
67 from a detention facility shall be withdrawn within the 12 months preceding such person's
68 release at a place designated by the department. The required samples from persons who
69 are not sentenced to a term of confinement shall be withdrawn as a condition of probation

70 or within 15 days of the finding of probable cause for such person's arrest. The division
71 shall publish in its quality manuals the procedures for the collection and transfer of samples
72 to such division pursuant to Code Section 35-3-154. Personnel at a detention facility shall
73 implement the provisions of this Code section as part of the regular processing of
74 offenders."

75 SECTION 3.

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

78 "35-3-165.

79 (a) The bureau shall purge all records and identifiable information in the data bank
80 pertaining to the DNA profile of the individual and shall destroy all such DNA samples
81 collected from such individual within 30 days of the receipt of a certified copy of the
82 applicable:

83 (1) Court order reversing the conviction together with a court order or documentation
84 from the prosecuting attorney stating that the charges were dismissed;

85 (2) Judgment of acquittal; or

86 (3) Sentencing order showing that all of the felony charges were reduced to
87 misdemeanors; ~~or~~ not otherwise requiring collection of DNA pursuant to Code Section
88 35-3-160.

89 ~~(4) Court order showing the successful completion of the sentence that was imposed~~
90 ~~pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code~~
91 ~~Section 16-13-2.~~

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

95 **SECTION 4.**

96 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to when offenses
97 are bailable, procedure, schedule of bails, and appeal bonds, is amended by adding a new
98 subsection to read as follows:

99 "(k) If a DNA sample is required to be collected in accordance with Code Section
100 35-3-160, the court shall add as a condition of bail that the accused shall ensure that his or
101 her DNA sample is provided within 15 days of the finding of probable cause for his or her
102 arrest. Upon failure of an individual to comply with this subsection, the prosecuting
103 attorney may proceed to forfeit the bond or recognizance; provided, however, that such
104 forfeiture shall be purged upon such individual's compliance with such requirement."

105 **SECTION 5.**

106 This Act shall become effective on January 1, 2023, and shall apply to arrests or offenses
107 committed on or after that date.

108 **SECTION 6.**

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