

The Senate Committee on Judiciary Non-Civil offered the following substitute to SB 77:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 17-6-1 and Article 6A of Chapter 3 of Title 35 of the Official Code
2 of Georgia Annotated, relating to where offenses are bailable, procedure, schedule of bails,
3 and appeal bonds and DNA sampling, collection, and analysis, respectively, so as to provide
4 for analysis and collection of DNA for individuals indicted for certain felony offenses; to
5 provide for DNA collection as a condition of bail; to provide for procedure; to revise and add
6 definitions; to change provisions relating to time and procedure for obtaining DNA samples;
7 to change provisions relating to expungement of profiles in the data bank; to provide for
8 related matters; to provide for a contingent effective date; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

11 Code Section 17-6-1 of the Official Code of Georgia Annotated, relating to where offenses
12 are bailable, procedure, schedule of bails, and appeal bonds, is amended by adding a new
13 subsection to read as follows:
14

15 "(k)(1) As used in this subsection, the term 'serious offense' shall have the same meaning
16 as set forth in Code Section 35-3-160.

17 (2) When an accused is arrested for a serious offense and a DNA sample is required to
18 be collected in accordance with Code Section 35-3-161, the court shall add as a condition
19 of bail or pretrial release from custody that the accused provide his or her DNA sample
20 to the law enforcement agency that arrested the accused within ten days of the date set
21 for his or her arraignment, as provided in a notice to the accused. The prosecuting
22 attorney shall advise the clerk of court when such notice is to be provided to the accused.
23 Notice of such requirement to provide a DNA sample shall be mailed to the accused by
24 the clerk of court at the same time as the notice of arraignment is sent to the accused. The
25 accused's failure to timely provide a DNA sample shall be considered a violation of the
26 terms and conditions of bail or pretrial release, subjecting the bond to forfeiture. The

27 length of time between the alleged serious offense and the date set for arraignment shall
 28 not be a defense to a bond forfeiture."

29 **SECTION 2.**

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

33 "35-3-160.

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

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

36 ~~(2) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of~~
 37 ~~Investigation.~~

38 ~~(3)(2) 'Detention facility' means a penal institution under the jurisdiction of the~~
 39 ~~department used for the detention of persons convicted of a felony, including penal~~
 40 ~~institutions operated by a private company on behalf of the department, inmate work~~
 41 ~~camps, inmate boot camps, probation detention centers, and parole revocation centers.~~
 42 ~~Such term shall also mean any facility operated under the jurisdiction of a sheriff used~~
 43 ~~for the detention of persons convicted of a felony including a county jail or, and county~~
 44 ~~correctional facility facilities.~~

45 ~~(3) 'Division' means the Division of Forensic Sciences of the Georgia Bureau of~~
 46 ~~Investigation.~~

47 (4) 'Serious offense' means:

48 (A) A serious violent felony as such term is defined in Code Section 17-10-6.1; or

49 (B) A felony offense of:

50 (i) False imprisonment in violation of Code Section 16-5-41 when the victim is not
 51 the child of the accused and the victim is less than 14 years of age;

52 (ii) Aggravated assault in violation of Code Section 16-5-21;

53 (iii) Sodomy in violation of Code Section 16-6-2;

54 (iv) Statutory rape in violation of Code Section 16-6-3;

55 (v) Child molestation in violation of Code Section 16-6-4;

56 (vi) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

57 (vii) Sexual assault of certain persons in violation of Code Section 16-6-5.1;

58 (viii) Incest in violation of Code Section 16-6-22;

59 (ix) Sexual battery in violation of Code Section 16-6-22.1;

60 (x) Burglary in violation of Code Section 16-7-1;

61 (xi) Robbery in violation of Code Section 16-8-40; or

62 (xii) Sexual exploitation of children in violation of Code Section 16-12-100.

63 ~~(b) Any person convicted of a felony offense who is held in a detention facility or placed~~
 64 ~~on probation shall at the time of entering the detention facility or being placed on probation~~
 65 ~~have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive~~
 66 ~~procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification~~
 67 ~~characteristics specific to the person. The provisions and requirements of this Code section~~
 68 ~~shall also apply to any person who has been convicted of a felony prior to July 1, 2011, and~~
 69 ~~who currently is incarcerated in a detention facility, serving a probation sentence, or~~
 70 ~~serving under the jurisdiction of the Board of Pardons and Paroles for such offense. It shall~~
 71 ~~be the responsibility of the detention facility detaining or entity supervising a convicted~~
 72 ~~felon to collect the samples required by this Code section and forward the sample to the~~
 73 ~~division unless such sample has already been collected by the department or another~~
 74 ~~agency or entity.~~

75 ~~(c) The analysis shall be performed by the division. The division shall be authorized to~~
 76 ~~contract with individuals or organizations for services to perform such analysis. The~~
 77 ~~identification characteristics of the profile resulting from the DNA analysis shall be stored~~
 78 ~~and maintained by the bureau in a DNA data bank and shall be made available only as~~
 79 ~~provided in Code Section 35-3-163."~~

80

SECTION 3.

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

83 "35-3-161.

84 (a) ~~Each sample required pursuant to Code Section 35-3-160 from persons who are to be~~
 85 ~~incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving~~
 86 ~~unit of the detention facility or at such other place as is designated by the department. Each~~
 87 ~~sample required pursuant to Code Section 35-3-160 from persons who are to be released~~
 88 ~~from a detention facility shall be withdrawn within the 12 months preceding such person's~~
 89 ~~release at a place designated by the department. The required samples from persons who~~
 90 ~~are not sentenced to a term of confinement shall be withdrawn as a condition of probation.~~
 91 ~~The division shall publish in its quality manuals the procedures for the collection and~~
 92 ~~transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a~~
 93 ~~detention facility shall implement the provisions of this Code section as part of the regular~~
 94 ~~processing of offenders. A sample of deoxyribonucleic acid (DNA) shall be collected~~
 95 ~~from:~~

96 (1) Any individual who has been convicted of a felony and currently is incarcerated in
 97 a detention facility, serving a probation sentence, or serving under the jurisdiction of the
 98 State Board of Pardons and Paroles for such felony offense; and

99 (2) Any individual indicted for a serious offense.

100 ~~(b)(1) DNA samples~~ Samples collected by oral swab or by a noninvasive procedure may
101 be collected by any individual who has been trained in the procedure.

102 (2) Only a correctional health nurse technician, physician, registered professional nurse,
103 licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw
104 any sample of blood to be submitted for analysis. Chemically clean sterile disposable
105 needles shall be used for the withdrawal of all samples of blood.

106 (3) The containers for blood samples, oral swabs, and the samples obtained by
107 noninvasive procedures shall be sealed and labeled with the subject's name, social
108 security number, date of birth, race, and gender; the name of the individual collecting the
109 sample; and the date and place of collection. The containers shall be secured to prevent
110 tampering with the contents.

111 (4) No civil liability shall attach to any person individual authorized to take collect a
112 sample as provided in this article as a result of the act of taking collecting a sample from
113 any person individual submitting thereto, provided that the sample was taken collected
114 according to recognized medically accepted procedures. However, no person individual
115 shall be relieved from liability for negligence in the withdrawing of any blood sample.

116 ~~(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all~~
117 ~~samples of blood. The containers for blood samples, oral swabs, and the samples obtained~~
118 ~~by noninvasive procedures shall be sealed and labeled with the subject's name, social~~
119 ~~security number, date of birth, race, and gender plus the name of the person collecting the~~
120 ~~sample and the date and place of collection. The containers shall be secured to prevent~~
121 ~~tampering with the contents. The steps set forth in this subsection relating to the taking,~~
122 ~~handling, identification, and disposition of samples are procedural and not substantive.~~
123 ~~Substantial compliance therewith shall be deemed to be sufficient. The samples shall be~~
124 ~~transported to the division not more than 15 days following withdrawal and shall be~~
125 ~~analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and~~
126 ~~35-3-163.~~

127 (c)(1) Unless a DNA sample has already been collected by the department or another
128 agency or entity, each DNA sample required by paragraph (1) of subsection (a) of this
129 Code section shall be collected and forwarded to the division as follows:

130 (A) If the individual is incarcerated, such DNA sample shall be collected within the
131 first 30 days of incarceration at the receiving unit of the detention facility or at such
132 other place as is designated by the department;

133 (B) If the individual is to be released from a detention facility and has not had a DNA
134 sample collected, it shall be collected within the 12 months preceding his or her release
135 at a place designated by the department; and

- 136 (C) If the individual is not sentenced to a term of confinement, it shall be collected as
 137 a condition of probation.
- 138 (2) Unless a DNA sample has already been collected by the department or another
 139 agency or entity, each DNA sample required by paragraph (2) of subsection (a) of this
 140 Code section shall be collected by the law enforcement agency that arrested the accused
 141 within ten days of the date set for his or her arraignment.
- 142 (d) Personnel at detention facilities and law enforcement officials shall implement the
 143 provisions of this Code section as part of the regular processing of offenders.
- 144 (e) DNA samples shall be transported to the division as soon as practical but not more than
 145 15 days after being obtained.
- 146 (f) DNA analysis shall be performed by the division. The division shall be authorized to
 147 contract with individuals or organizations for services to perform such analysis. The
 148 identification characteristics of the profile resulting from the DNA analysis shall be stored
 149 and maintained by the bureau in a DNA data bank in accordance with Code Sections
 150 35-3-162 and 35-3-163 and shall be made available only as provided in Code Section
 151 35-3-163.
- 152 (g) The division shall publish in its quality manuals the procedures for the collection,
 153 handling, identification, and transfer of samples to the division pursuant to Code Section
 154 35-3-154.
- 155 (h) The steps set forth in this Code section relating to the collecting, transfer, handling,
 156 identification, and disposition of DNA samples are procedural and not substantive.
 157 Substantial compliance therewith shall be deemed to be sufficient."

158 **SECTION 4.**

159 Said article is further amended by revising Code Section 35-3-162, relating to the procedure
 160 and analysis of blood samples, as follows:

161 "35-3-162.

162 Whether or not the results of an analysis are to be included in the data bank, the bureau
 163 shall conduct the DNA analysis of samples submitted pursuant to Code Section 35-3-161
 164 in accordance with procedures adopted by the bureau to determine identification
 165 characteristics specific to the individual whose DNA sample is being analyzed. The
 166 director or his or her designated representative shall complete and maintain on file a form
 167 indicating the name of the person individual whose DNA sample is to be analyzed, the date
 168 and by whom the such sample was received and examined, and a statement that the seal on
 169 the container containing the such sample had not been broken or otherwise tampered with.
 170 The remainder of a DNA sample submitted for analysis and inclusion in the data bank
 171 pursuant to Code Section 35-3-160 may be divided, if possible, labeled as provided for the

172 original sample, and securely stored by the bureau in accordance with specific procedures
 173 of the bureau to ensure the integrity and confidentiality of ~~the~~ DNA samples. All or part
 174 of the remainder of ~~that~~ a sample may be used only to create a statistical data base,
 175 provided that no identifying information on the individual whose sample is being analyzed
 176 is included, or for retesting by the bureau to validate or update the original analysis. A
 177 report of the results of a DNA analysis conducted by the bureau ~~as authorized~~, including
 178 the identifying information, shall be made and maintained at the bureau. Except as
 179 specifically provided in this Code section and Code Section 35-3-163, the results of the
 180 analysis shall be securely stored and shall remain confidential."

181 **SECTION 5.**

182 Said article is further amended by revising Code Section 35-3-163, relating to dissemination
 183 of information in data bank to law enforcement officials, as follows:

184 "35-3-163.

185 (a) It shall be the duty of the bureau to receive DNA samples and to analyze, classify, and
 186 file the results of DNA identification characteristics of samples submitted pursuant to Code
 187 Section ~~35-3-160~~ 35-3-161 and to make such information available as provided in this
 188 Code section. The results of an analysis and comparison of the identification of the
 189 characteristics from two or more biological samples shall be made available directly to
 190 federal, state, and local law enforcement officers upon a request made in furtherance of an
 191 official investigation of any criminal offense. A request may be made by personal contact,
 192 mail, or electronic means. The name of the requestor and the purpose for which the
 193 information is requested shall be maintained on file with the bureau.

194 (b) Upon request from a ~~prosecutor~~ prosecuting attorney or law enforcement agency, the
 195 bureau may compare a DNA profile from an analysis of a sample from a suspect in a
 196 criminal investigation ~~where~~ when the sample was obtained through a search warrant,
 197 consent of the suspect, court order, or other lawful means to DNA profiles lawfully
 198 collected and maintained by the bureau. The bureau shall not add a DNA profile of any
 199 such suspect to any DNA data bank except ~~upon conviction~~ as provided in this article.

200 (c)(1) Upon his or her request, a copy of the request for search shall be furnished to any
 201 ~~person~~ individual identified and charged with an offense as the result of a search of
 202 information in the data bank. Only when a sample or DNA profile supplied by the
 203 requestor satisfactorily matches the requestor's profile in the data bank shall the existence
 204 of data in the data bank be confirmed or identifying information from the data bank be
 205 disseminated.

206 (2) The name of the ~~convicted felon~~ individual whose profile is contained in the data
 207 bank may be related to any other data bases which are constructed for law enforcement
 208 purposes and may be disseminated only for law enforcement purposes.

209 (3) Upon a showing by the accused in a criminal proceeding that access to the DNA data
 210 bank is material to the investigation, preparation, or presentation of a defense at trial or
 211 in a postconviction proceeding, a superior court having proper jurisdiction over such
 212 criminal proceeding shall direct the bureau to compare a DNA profile which has been
 213 generated by the accused through an independent test against the data bank, provided that
 214 such DNA profile has been generated in accordance with standards for forensic DNA
 215 analysis adopted pursuant to 42 U.S.C. Section 14131.

216 (d) The bureau shall develop procedures governing the methods of obtaining information
 217 from the data bank in accordance with this Code section and procedures for verification of
 218 the identity and authority of the requestor. The bureau shall specify the positions in that
 219 agency which require regular access to the data bank and samples submitted as a necessary
 220 function of the job.

221 (e) The bureau may create a separate statistical data base composed of DNA profiles of
 222 samples of ~~persons~~ individuals whose ~~identity is~~ identities are unknown. Nothing in this
 223 Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise
 224 disseminating the information in the statistical data base with law enforcement or criminal
 225 justice agencies within or outside ~~the~~ this state.

226 (f) The bureau may charge a reasonable fee to search and provide a comparative analysis
 227 of DNA profiles in the data bank to any authorized law enforcement agency outside of this
 228 state."

229 SECTION 6.

230 Said article is further amended by revising Code Section 35-3-165, relating to expungement
 231 of profile in data bank upon reversal and dismissal of conviction, as follows:

232 "35-3-165.

233 (a) An individual ~~A person~~ whose DNA profile has been included in the data bank
 234 pursuant to this article ~~may request that~~ shall have it be expunged on the grounds that:

235 (1) The ~~the~~ conviction on which the authority for including his or her DNA profile was
 236 based has been reversed and the case dismissed;

237 (2) The individual has been acquitted of the felony charges;

238 (3) All of the felony charges have been reduced to misdemeanors;

239 (4) The felony charges have been placed on the dead docket for more than 12 months
 240 unless the court has issued a bench warrant for a defendant's or codefendant's failure to
 241 appear; or

- 242 (5) The prosecuting attorney has otherwise dismissed the charges.
- 243 (b) Within 30 days of an event occurring as described in subsection (a) of this Code
 244 section, the clerk of court shall provide the bureau with a copy of:
- 245 (1) The court order reversing and dismissing the conviction;
- 246 (2) The judgment of acquittal;
- 247 (3) The sentencing order showing that all of the felony charges were reduced to
 248 misdemeanors;
- 249 (4) The court order dead docketing the felony charges; or
- 250 (5) Documentation from the prosecuting attorney stating that the charges were dismissed.
- 251 (c) The bureau shall purge all records and identifiable information in the data bank
 252 pertaining to the person individual described in subsection (a) of this Code section and
 253 destroy all samples from the person upon such individual within 30 days of the receipt of
 254 a written request that such data be expunged, pursuant to this Code section, and a certified
 255 copy of the court order reversing and dismissing the conviction the documentation
 256 described in subsection (b) of this Code section. If a prosecuting attorney fails to comply
 257 with subsection (b) of this Code section, the individual whose DNA was collected may
 258 submit a certified copy of the documentation described in subsection (b) of this Code
 259 section to the bureau.
- 260 ~~(b)~~(d) A DNA sample obtained in good faith shall be deemed to have been obtained in
 261 accordance with the requirements of this article, and its use in accordance with this article
 262 is shall be authorized until ~~a court order directing expungement is obtained and the~~
 263 documentation set forth in subsection (b) of this Code section is submitted to the bureau."

264

SECTION 7.

265 This Act shall become effective only if funds are specifically appropriated for purposes of
 266 this Act in an appropriations Act enacted by the General Assembly. If funds are so
 267 appropriated, then this Act shall become effective on the later of:

- 268 (1) The date on which such appropriations Act becomes effective; or
- 269 (2) The beginning date of the fiscal year for which such appropriations are made.

270

SECTION 8.

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