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## EVIDENCE Proof Generally: Provide Procedures for Operating and Maintaining a DNA Data Bank

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## EVIDENCE

### *Proof Generally: Provide Procedures for Operating and Maintaining a DNA Data Bank*

CODE SECTIONS: O.C.G.A. §§ 24-4-60 to -65 (new)  
BILL NUMBER: SB 594  
ACT NUMBER: 1150  
SUMMARY: The Act provides procedures for the development and maintenance of a data bank containing deoxyribonucleic acid (DNA) analysis of blood taken from convicted sex offenders. The Act sets procedures for the withdrawal of the blood samples. The Act authorizes the Georgia Bureau of Investigation Division of Forensic Sciences (GBIDFS) to perform DNA analysis of the blood for the purpose of determining identification characteristics of the person from whom the blood was taken, and to set up a data bank containing the results of the analysis. The Act provides procedures to release this information and dictates to whom it may be released. The Act emphasizes confidentiality of the results of the analysis and provides penalties for unauthorized use and release of the results.

EFFECTIVE DATE: July 1, 1992

#### *History*

Scientists consider deoxyribonucleic acid (DNA) to be a person's "genetic fingerprint."<sup>1</sup> Like a fingerprint, each person's DNA is unique. In theory, DNA analysis can be used as a method of identifying a person.<sup>2</sup> A person's DNA may be analyzed by an examination of

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1. Telephone Interview with Jim Hallman, Special Agent in Charge of Internal Affairs, Georgia Bureau of Investigation, Legislative Liaison to Georgia Bureau of Investigation (Apr. 13, 1992) [hereinafter Hallman Interview]. Because of Mr. Hallman's knowledge of the bill, its history, and its importance to the GBI, the Senate sponsor of the bill, Sen. Mark Taylor, recommended Mr. Hallman as the best source from which to obtain background information. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (Apr. 9, 1992) [hereinafter Taylor Interview].

2. Hallman Interview, *supra* note 1.

biological fluids, including blood and semen.<sup>3</sup> Technicians at the Georgia Bureau of Investigation Division of Forensic Sciences (GBIDFS) recently have been trained to analyze biological samples and to measure the "genetic fingerprint" of the person from whom these samples were taken.<sup>4</sup>

Florida and Virginia, among other states, have enacted legislation which allows for the compilation of DNA analysis of convicted sex offenders.<sup>5</sup> States have enacted such legislation in order to aid law enforcement in the identification of criminal suspects.<sup>6</sup>

Agents of the Georgia Bureau of Investigation believe that a data bank containing information regarding the DNA makeup of sex offenders will be a powerful tool in identifying and apprehending criminals.<sup>7</sup> The DNA analysis will be placed in a computer bank and the information will be made available to law enforcement officials who have obtained bodily fluid samples at crime scenes.<sup>8</sup> A preliminary comparison of the DNA makeup can be used to exclude a suspect, or to provide probable cause to perform a complete DNA analysis.<sup>9</sup>

### *SB 594*

In order to develop and maintain a data bank containing DNA analysis of convicted sex offenders, the General Assembly passed SB 594, providing authorization and procedural guidelines to the GBIDFS to establish such a data bank.<sup>10</sup>

The Act sets up the procedures and the duties of the GBIDFS regarding the withdrawal of blood samples, the DNA analysis and classification of those samples, and the storage of the results of the analysis.<sup>11</sup> In addition, the Act provides guidelines concerning the release of the information contained in the DNA data bank<sup>12</sup> and provides penalties for violations of those guidelines.<sup>13</sup> The Act was passed without amendment.<sup>14</sup>

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3. *Id.*

4. *Id.*

5. Hallman Interview, *supra* note 1; see FLA. STAT. ANN. § 943.325 (West Supp. 1992); VA. CODE ANN. § 19.2-310.2 (Michie Supp. 1992).

6. Hallman Interview, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. Taylor Interview, *supra* note 1. Sen. Taylor indicated that SB 594 was part of Governor Zell Miller's "Crime Package."

11. O.C.G.A. § 24-4-60 (Supp. 1992).

12. *Id.* § 24-4-63 (Supp. 1992).

13. *Id.* § 24-4-64 (Supp. 1992).

14. SB 594, as introduced, 1992 Ga. Gen. Assem.; O.C.G.A. §§ 24-4-60 to -64 (Supp. 1992).

The Act specifies persons who are subject to DNA sampling.<sup>15</sup> DNA sampling will be performed on those who have been convicted of one of the following sex crimes: rape, sodomy, statutory rape, child molestation, enticement of a child for indecent purposes, sexual assault against a person in custody, bestiality, necrophilia, or incest.<sup>16</sup> Other types of crimes were not included in this itemization because they generally do not result in the perpetrator's bodily fluids being left at the crime scene, and bodily fluids are needed to perform the DNA testing.<sup>17</sup>

The Act indicates that the purpose of the DNA analysis is to "determine identification characteristics specific to that person."<sup>18</sup> In order to avoid a possible conflict with the Fourth Amendment, the legislature specifically stated the Act's purpose was to aid law enforcement officials in identifying criminal suspects.<sup>19</sup> Furthermore, the Act authorizes the GBIDFS to perform the analysis and to set up a DNA data bank containing the results of the analysis.<sup>20</sup>

The Act provides when, how, and by whom the actual blood samples may be taken from convicted offenders.<sup>21</sup> The sample must be taken within the first thirty days of incarceration, or as a condition of probation.<sup>22</sup> The Act requires that the blood be drawn only by a health professional authorized under the Act.<sup>23</sup> Because the legislature has determined that the development and maintenance of a DNA data bank serves a strong public interest, partial tort immunity is provided to health care professionals who take blood samples pursuant to the Act.<sup>24</sup>

15. O.C.G.A. § 24-4-60 (Supp. 1992).

16. *Id.* The Act states:

Any person convicted of a criminal offense defined in Code section 16-6-1 [rape], 16-6-2 [sodomy], 16-6-3 [statutory rape], 16-6-4 [child molestation], 16-6-5 [enticement of a child for indecent purposes], 16-6-5.1 [sexual assault against a person in custody], 16-6-6 [bestiality], 16-6-7 [necrophilia], or 16-6-22 [incest] shall have a sample of his or her blood taken for DNA (deoxyribonucleic acid) analysis.

*Id.*

17. Hallman Interview, *supra* note 1.

18. O.C.G.A. § 24-4-60 (Supp. 1992).

19. Hallman Interview, *supra* note 1. Mr. Hallman stated that law enforcement has long been able to utilize various means of identifying offenders without violating the Fourth Amendment to the Constitution. *Id.* According to Mr. Hallman, by ensuring that the purpose for the procedure pertains to identification, the DNA testing statute is likely to withstand constitutional muster. *Id.*

20. O.C.G.A. § 24-4-60 (Supp. 1992).

21. *Id.* §§ 24-4-60 to -61 (Supp. 1992).

22. *Id.* § 24-4-61(a) (Supp. 1992).

23. *Id.* Health care professionals authorized to withdraw the blood include: a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist. *Id.*

24. *Id.* The legislature provided limited tort immunity to health care professionals

The Act specifies the type of instruments to be used to take samples and the method of labeling the samples.<sup>25</sup> The Act mandates that the tubes containing the samples have a tamper-proof enclosure.<sup>26</sup> The Act emphasizes, however, that the guidelines contained in this section are procedural, not substantive, and substantial compliance with the guidelines is sufficient.<sup>27</sup>

The Act provides procedures for the GBIDFS to use in analyzing, recording, and storing the results of the blood samples.<sup>28</sup> In addition, it describes what is to be done with the remaining blood.<sup>29</sup> The Act authorizes the GBIDFS to adopt a procedure for DNA analysis, and authorizes it to conduct such an analysis.<sup>30</sup> The Act mandates specific procedures to ensure accurate identification of the offender.<sup>31</sup> Moreover, the Act emphasizes the storage method to ensure the "integrity and confidentiality of the samples."<sup>32</sup> The emphasis on confidentiality stresses that the samples are to be used only for purposes of identification.<sup>33</sup> The Act also ensures that any remainder of the blood sample may only be used to create a statistical data bank, providing no information identifying the individual whose sample is used.<sup>34</sup>

The Act explains who is authorized to obtain information from the DNA data bank and sets forth guidelines for information retrieval.<sup>35</sup> The purpose of this section is to authorize the GBIDFS to establish procedures to ensure that the information is only released to authorized persons.<sup>36</sup>

The Act further explains to whom the analysis results will be available and for what purpose the results may be used.<sup>37</sup> The GBIDFS is authorized to make the results available for purposes of

drawing the blood. *Id.* However, a health care official will be civilly liable if he or she performs the procedure in a negligent manner. *Id.*

25. *Id.* § 24-4-61(b) (Supp. 1992).

26. *Id.*

27. *Id.*

28. *Id.* § 24-4-62 (Supp. 1992).

29. *Id.*

30. *Id.*

31. *Id.* The GBI will maintain on file a form which consists of the name of the person whose blood is being analyzed, the date, the name of the person who received the blood, and a statement indicating that the seal has not been broken or tampered with. *Id.*

32. *Id.*

33. Hallman Interview, *supra* note 1.

34. *Id.* Such a data bank would be used for general scientific purposes not related to the investigation of specific crimes. *Id.*

35. O.C.G.A. § 24-4-63 (Supp. 1992).

36. Hallman Interview, *supra* note 1.

37. O.C.G.A. § 24-4-63(a) (Supp. 1992).

comparing the identifying characteristics of two or more biological samples.<sup>38</sup> The results and comparison can be released to any state, local, or federal law enforcement officer for purposes of furthering an official investigation of any criminal offense.<sup>39</sup> Should an analysis of a biological sample which is part of an investigation match an analysis contained in the data bank, law enforcement officers will use the match as evidence of the identification of a suspect in the official investigation.<sup>40</sup> The identification will provide probable cause to conduct a full DNA screening of the suspect.<sup>41</sup>

In order to create a data bank which can link crimes committed by the same offender, the Act authorizes the GBIDFS to create a DNA bank of unknown offenders.<sup>42</sup> This bank is not subject to the Act's strict confidentiality requirements, and its information can be disseminated to and used by law enforcement agencies in Georgia or other states.<sup>43</sup>

The Act emphasizes the need for confidentiality by requiring the GBIDFS to create a procedure for verifying the identity and authority of persons requesting data.<sup>44</sup> A person who disseminates information from the data bank without proper authority is guilty of a misdemeanor.<sup>45</sup> A person who uses, disseminates, or receives information from the data bank knowing that such action is illegal is guilty of a high and aggravated misdemeanor.<sup>46</sup> An unauthorized person who obtains or attempts to obtain a sample which was submitted to the GBIDFS for analysis is guilty of a felony.<sup>47</sup>

Finally, the Act provides a procedure for expunging a record from the data bank.<sup>48</sup> If an offender's DNA profile has become part of the data bank, but the conviction is subsequently reversed and the case is dismissed, the information contained in the data bank will be expunged upon request and all samples destroyed.<sup>49</sup>

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38. *Id.*

39. *Id.*

40. Hallman Interview, *supra* note 1.

41. *Id.* According to Mr. Hallman, data obtained in the original search will not be admissible evidence, but the GBI expects that the results of the comprehensive analysis of the suspect's DNA and a closer comparison of the sample in the data bank will be admissible. *Id.*

42. O.C.G.A. § 24-4-63(d) (Supp. 1992).

43. *Id.*

44. *Id.* § 24-4-63(c) (Supp. 1992).

45. *Id.* § 24-4-64(a) (Supp. 1992).

46. *Id.*

47. *Id.* § 24-4-64(b) (Supp. 1992).

48. *Id.* § 24-4-65 (Supp. 1992).

49. *Id.*