

Georgia insight

Sue Ella Deadwyler
4168 Rue Antoinette
Stone Mountain, Georgia 30083
"She hath done what she could."
Mark 14:8a

If you're not a criminal, could DNA profiling affect your life?

S.B. 430 Passed, Amending DNA Law

The GBI collects, analyzes, classifies, and files DNA¹ results within 15 days of collection, then posts them in Georgia's databank, linked to CODIS², the FBI's National DNA Index System.

The GBI obtains DNA profiles from blood, oral swabs and other biologic samples taken from (a) suspects after they're *convicted* of specific sex crimes³, (b) *convicted felons* within 30 days of incarceration or (c) within 12 months preceding an inmate's release from a state correctional facility⁴. Also swabbed are (d) *convicted* criminals that accept probation instead of jail terms. Georgia does *not* do DNA profiles on suspects that are acquitted or whose charges are dropped.

S.B. 430 was introduced by Senator Bill Hamrick from Carrollton in District 30 and passed on April 4th, the last day of the session. The GBI will continue to collect, analyze and maintain all DNA samples, but S.B. 430 goes a step further than current law by authorizing prosecutors and law enforcement agencies to compare previously stored legally obtained DNA profiles to DNA evidence that's legally obtained in other criminal investigations.

Consumer Protection: Genetic Testing Law Passes Congress May 1st

Because DNA can uniquely identify individuals, it's been a boon to law enforcement, but could be used to discriminate against law-abiding consumers whose genetic tests reveal a propensity toward hereditary disease or illness (that might never occur) indicated in one of more of the 1,100 genetic tests now available. That possibility, coupled with the privacy issue, prompted Congress to begin addressing the issue over a decade ago.

In 2003 and 2005 the U.S. Senate unanimously passed bills to prohibit the use of genetic testing to discriminate, but the House failed to act. *Until now, all such bills have died.*

On April 25, 2008 the *Associated Press* reported a victory for consumers. The Senate passed the Genetic Information Nondiscrimination Act 95 – 0 and six days later it passed the U.S. House 414 – 1⁵, prohibiting discrimination based on DNA test results. With 1,100 genetic screenings available, *everyone could have indicators of some anomaly.*

On May 1st, Congress sent the bill to the White House, where President Bush has indicated he will sign it. Possible discriminatory uses of genetic test results are as follows:

- DNA results could be used to increase premiums or deny life insurance and health coverage.
- Employers could use genetic data to retain, fire or promote workers or screen job applicants.
- Colleges and universities could design enrollment based on "good" or "bad" genetic data.

¹ Deoxyribonucleic acid, any of various nucleic acids localized in cell nuclei, forming the molecular basis of heredity.

² CODIS is the Combined DNA Index System established by the FBI pursuant to 42 U.S.C. 14132.

³ Rape, sodomy or aggravated sodomy, statutory rape, child molestation or aggravated child molestation, enticing a child for indecent purposes, sexual assault against a person in custody or detained or a patient in a hospital or other institution, sexual assault by a psychotherapist against a patient, bestiality, necrophilia, or incest

⁴ Applies to Department of Corrections (DOC) penal institutions, including inmate work camps and inmate boot camps
Does not apply to DOC probation detention centers, probation diversion centers or probation boot camps

⁵ U.S. Congressman Ron Paul (R – Texas) voted NO, terming the legislation "intrusive."

Federal “Swab-Upon-Arrest” Expands DNA Collection

To be Swabbed: Everyone Arrested by Feds & Foreigners Detained by Feds

Everyone agrees government has way too much power, but the Justice Department empowered federal law enforcement agencies to further invade the privacy of every individual Fed's arrest, however briefly. Though Justice's extension of federal DNA collections is touted as a means to get violent criminals off the street, there's more to be considered. You may read the proposed regulations in the Federal Register and submit your comments¹ until May 19th.

New regulations, but no new law. Acting on authority Congress provided in laws passed in 2005 and 2006, Justice Department spokesman Erik Ablin revealed on April 16, 2008² plans to extend the number of DNA collections taken. If proposed regulations are approved after the 30-day comment period, cheek swabs will be used to collect DNA samplings from (a) everyone *arrested by federal law* enforcement agencies – of which there are dozens – and (b) *detained illegal aliens*, whether or not they are arrested. Until now, the Fed limited DNA collections to convicted felons, but swabbing everyone in custody will add about 1.2 million people a year to CODIS, the federal DNA database operated by the FBI.

All 50 states now collect DNA samples from convicted sex offenders and at least 45 states, including Georgia, require all convicted felons to provide a DNA sample for the database. As of January 2008, eleven states authorize DNA samples to be taken upon arrest, while other states have varying standards for sampling arrested individuals.

Although Georgia does *not* allow Georgia law enforcement officers to collect DNA until after a suspect is convicted, this *federal expansion of DNA collection will apply to anyone arrested by federal officers in any state, including Georgia.*

DNA collection is a crime-fighting method to some, but an invasion of privacy to others.

Although law enforcement has found the use of DNA profiling to be a valuable tool for getting criminals off the street, requiring DNA samples from those who have *not* committed crimes suggests a far wider agenda no one's willing to announce. The unwarranted acquisition of biologic material is a gross invasion of personal privacy and the posting of personalized DNA profiles on government databases is unnecessary over-kill.

However, Mr. Ablin of the Justice Department assures everyone that DNA collections by federal agencies are subject to privacy laws applicable to all DNA sampling. Meaning – except for medical purposes – the use of DNA tests to identify genetic traits, diseases or disorders is illegal. Adding DNA profiles of innocent people to CODIS is an obvious enticement to unscrupulous, profiteering hackers who delight in designing ways to capture, supposedly, “secure” information that may be invaluable to multitudes of other unscrupulous people.

Will innocents' DNA be taken off databank? It's no comfort to tell someone who's been swabbed to “ask the Justice Department to destroy the sample.” Justice personnel might have the same attitude Georgia Department of Transportation folks have about mandatory hearings and public projects – “We've got to have a hearing, but we don't have to do what you say!”

¹ Information about the proposed rule and directions for commenting are available online at <http://www.regulations.gov>.
Mail comments to: David J. Karp, Sr. Counsel, Office of Legal Policy, Rm. 4509, Main Justice Bldg., 950 Pennsylvania Ave., NW, Washington, DC 20530. For more information, call David J. Karp, Office of Legal Policy, 202 514-3273.

² *Associated Press* report by Eileen Sullivan

An Amazing Legislative Transformation Switches Subjects

Time Line: Between March 20, 2008 and April 4, 2008

H.R. 1701. Original Subject as Introduced on March 20, 2008:

Prostitution & the Adult Entertainment Industry

Nothing can be taken for granted when bills go through the legislative process in the Georgia General Assembly and some things are unforgettable. Take for example, the time House members decided to study the business of prostitution and brought in a real-life prostitute to testify. Having a woman openly identified as a prostitute, while strolling down the hall of the Capitol, was surprising. Especially, since Title 16 of the Criminal Code of Georgia clearly defines prostitution as a crime. And, there she was, *invited by lawmakers* to come to the Capitol and testify to a House committee *because* of her occupation.

With that bit of anecdotal history imbedded in my mind, I couldn't help but read **H.R. 1701** to see what this crop of legislators meant by creating the "House Study Committee on Prostitution and the Adult Entertainment Industry." It's a bipartisan bill introduced by three Democrat Representatives – Abdul-Salaam, Ashe and Thomas – and three Republicans – Harbin, Lunsford and Walker. It was meant to authorize the appointment of five representatives to a special study committee that would meet five times and file a report before December 1st. They would research the pros and cons about adult entertainment, especially in metro Atlanta, and its relationship to (a) child sexual exploitation, (b) recruitment into prostitution, (c) stalking by customers, and (d) unsafe working conditions, especially for employees under 21 years old.

The goal was to research whether more regulation of adult entertainment would reduce prostitution, child commercial sexual exploitation, and their effects on community safety.

Transformation of H.R. 1701: From a Study of Prostitution & Adult Entertainment To a Study of Children in the Protective Care of DFACS

When H.R. 1701 was introduced, it was assigned to the House Special Rules Committee. From there it went to the Rules Committee and, somewhere along the way, it was totally transformed. It came out of Rules Committee a new piece of legislation, though it retained the same number. The transformed version that passed the last day of the session changed the bill to create a study of children and a state agency rather than a study of the intended two businesses – adult entertainment that's legal, but seamy, and prostitution that's illegal.

There's no doubt both subjects need more attention from lawmakers, but did prostitutes and lobbyists from the adult entertainment industry get the subject of H.R. 1701 changed? Or were the authors, simply, snookered in this election year? Whatever the reason for the switch, the subject in the final version is long overdue for thorough, honest investigation and real remedies.

The transformed H.R. 1701 cites the deaths of children in the protective care of the Division of Family and Children Services (DFACS) as an issue worthy of further study. While such tragedies make headlines, probes of the system should include the investigation of reports that some children – not deprived or abused or neglected – have been taken from loving, caring, parents and good foster homes for no legitimate reason. Those reports, also, suggest that federal grants, available to agencies for each child adopted out of protective services, may be the reason some of the children are taken from good homes and put up for adoption.

An Amazing Legislative Amendment to Change Georgia's Moral Law

Time Line: Between March 28, 2008 and April 4, 2008

S.B. 88, Original Subject as Introduced in 2007:

Power of Attorney for the Care of a Minor Child Act

Its passage took two entire legislative sessions, but S.B. 88 introduced on January 31, 2007 by Senator Renee Unterman of District 45, finally, passed with a lot of baggage attached.

Senator Unterman's bill authorizes legal and financial assistance for the increasing number of grand- and great-grandparents caring for children who cannot live with their parents for various reasons, such as hardship. Families that would be eligible for this assistance are those having (a) a serious illness or death of a parent that renders the other incapable of caring for their children. Other situations may involve (b) a physical or mental condition of a parent or child, (c) imprisonment of a parent, (d) a home damaged by natural disaster or (e) a parent on active military duty for over two years.

Since those circumstances are all too common now, legislators passed S.B. 88 to authorize the legal transfer of parental responsibilities to grand- or great-grandparents, without involving the courts. In addition, S.B. 88 allows financial subsidies to senior citizens who accept the rearing of their biological grand- or great-grandchildren or step-grand- or step-great-grandchildren. That's S.B. 88 as introduced, but H.B. 158 was attached before it passed. Here's that story.

The Amendment: H.B. 158, Legitimate an Illegitimate Child

Rescued by Senator Unterman and Attached to Her S.B. 88

On January 25, 2007, Representative Wendell Willard, an attorney from Sandy Springs in District 49, introduced H.B. 158 to allow couples to declare their offspring legitimate, though the parents have no intention of marrying each other. It failed to pass in 2007.

Legitimation is used to declare something legal, although it's illegal. Under common law, which is the basis of law as adopted by U.S. courts, legitimate children are those produced within marriage. Births outside of marriage have always been "contrary to law," meaning illegitimate. Unless the governor vetoes S.B. 88, that standard will change in Georgia.

Both bills – S. B. 88 and H.B. 158 – were left in committee last session but remained alive for 2008. If Senator Unterman had not attached it to her S.B. 88, H.B. 158 would have died at the end of this session because it had too many problems to pass on its own merit. For example, H.B. 158 ignores Georgia's moral standards by making marriage unnecessary to legitimate children. By doing so, it takes away the most basic reason couples should marry before having children.

Promiscuity is already so prevalent that DNA tests are often necessary to prove paternity of children. Now, DNA testing services are using telephone poles and trees as bulletin boards to advertise contact numbers. In a given year, 13-percent of U.S. births are to teens, of whom 78-percent are not married. DNA tests will be even more necessary if S.B. 88 is not vetoed.

ACTION – Call 404 656-1776 and ask the governor to veto S.B. 88. Earl, who answered the phone in the governor's office, said telephone calls are the best way to register opinions, which they tally and report. He, also, said it's best to briefly say, "I'm against S.B. 88." When I asked that the governor veto S.B. 88, he said, "You mean H.B. 89," which is the gun bill. I said, "No, it's S.B. 88, not the gun bill." So, make sure they understand which bill you want vetoed.

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