

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2772

1 AN ACT TO REQUIRE PRESERVATION OF DNA SAMPLES; TO PROVIDE  
2 PENALTIES FOR FAILURE TO COMPLY; AND FOR RELATED PURPOSES.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

4 **SECTION 1.** (1) Notwithstanding any other provision of law,  
5 a law enforcement agency or any other state or local agency shall  
6 preserve biological evidence that was secured in the investigation  
7 or prosecution of an offense if a defendant is under a sentence of  
8 imprisonment for the offense.

9 (2) For purposes of this section, the term "biological  
10 evidence" means:

11 (a) A sexual assault forensic examination kit; or

12 (b) Semen, blood, saliva, hair, skin tissue or other  
13 identified biological material.

14 (3) Subsection (1) shall not apply if:

15 (a) A court has denied a request or motion for DNA  
16 testing of the biological evidence by the defendant and no appeal  
17 is pending;

18 (b) The defendant knowingly and voluntarily waived the  
19 right to request DNA testing of the biological evidence in a court  
20 proceeding conducted after the effective date of this act;

21 (c) After a conviction becomes final and the defendant  
22 has exhausted all opportunities for direct review of the  
23 conviction, the defendant is notified that the biological evidence  
24 may be destroyed and the defendant does not file a motion opposing  
25 the destruction within one hundred eighty (180) days of receipt of  
26 the notice;

27           (d) (i) The evidence must be returned to its rightful  
28 owner, or is of such a size, bulk or physical character as to  
29 render retention impracticable; and

30           (ii) The agency takes reasonable measures to  
31 remove and preserve portions of the material evidence sufficient  
32 to permit future DNA testing; or

33           (e) The biological evidence has already been subjected  
34 to DNA testing and the results included the defendant as the  
35 source of such evidence.

36           (4) Nothing in this section shall preempt or supersede any  
37 statute, regulation, court order or other provision of law that  
38 may require evidence, including biological evidence, to be  
39 preserved.

40           (5) Whoever knowingly and intentionally destroys, alters or  
41 tampers with biological evidence that is required to be preserved  
42 under this section with the intent to prevent that evidence from  
43 being subjected to DNA testing or prevent the production or use of  
44 that evidence in an official proceeding, shall be fined under this  
45 title, imprisoned for not more than five (5) years, or both.

46           (6) Nothing in this section shall provide a basis for relief  
47 in any state or federal habeas corpus proceeding.

48           **SECTION 2.** This act shall take effect and be in force from  
49 and after July 1, 2006.