

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2812

1 AN ACT TO REQUIRE PRESERVATION OF DNA SAMPLES; TO PROVIDE
2 PENALTIES FOR FAILURE TO COMPLY; TO PROVIDE FOR DNA COLLECTION
3 FROM PERSONS ARRESTED FOR CERTAIN CRIMES; AND FOR RELATED
4 PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 **SECTION 2.** (1) Every person eighteen (18) years of age or
51 older who is arrested for the commission or attempted commission
52 of a felony shall provide a biological sample for DNA testing to
53 jail or detention center personnel upon booking. The analysis
54 shall be performed by the Mississippi Crime Lab or other entity
55 designated by the Department of Public Safety, and the results
56 shall be maintained by the Crime Lab according to standard
57 protocols adopted for maintenance of DNA records in conformity to
58 federal guidelines for the maintenance of such records.

59 (2) The clerk of the court shall notify the Crime Lab of the
60 final disposition of criminal proceedings. If the charge for
61 which the sample was taken is dismissed or the defendant is

62 acquitted at trial, the Crime Lab shall destroy the sample and all
63 records thereof, provided there is no other pending qualifying
64 warrant or capias for an arrest or felony conviction that would
65 require that the sample remain in the data bank.

66 (3) (a) Any person who, without authority, disseminates
67 information contained in the DNA data bank shall be guilty of a
68 misdemeanor.

69 (b) Any person who disseminates, receives, or otherwise
70 uses or attempts to use information in the DNA data bank, knowing
71 that such dissemination, receipt or use is for a purpose other
72 than as authorized by law, shall be guilty of a misdemeanor.

73 (c) Except as authorized by law, any person who obtains
74 or attempts to obtain any sample for purposes of having DNA
75 analysis performed shall be guilty of a felony.

76 (4) (a) Any person convicted under subsection (3)(a) shall
77 be sentenced to a fine not to exceed Five Hundred Dollars
78 (\$500.00), or confinement in the county jail not to exceed thirty
79 (30) days, or both.

80 (b) Any person convicted under subsection (3)(b) shall
81 be sentenced to a fine not to exceed One Thousand Dollars
82 (\$1,000.00), or confinement in the county jail not to exceed six
83 (6) months, or both.

84 (c) Any person convicted under subsection (3)(c) shall
85 be sentenced to a fine not to exceed One Thousand Dollars
86 (\$1,000.00), or commitment to the custody of the Department of
87 Corrections not to exceed two (2) years, or both.

88 **SECTION 3.** This act shall take effect and be in force from
89 and after July 1, 2007.