

By: Representatives Gipson, Bennett

To: Judiciary B

HOUSE BILL NO. 1380

1 AN ACT TO AMEND SECTION 99-3-41, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY THAT AN ARRESTING AUTHORITY SHALL REPORT ALL HIV TEST
 3 RESULTS TO THE STATE DEPARTMENT OF HEALTH AND THE CHILDREN'S SAFE
 4 CENTER, NO LATER THAN 24 HOURS AFTER THE TEST RESULTS ARE
 5 AVAILABLE; TO AMEND SECTION 99-49-1, MISSISSIPPI CODE OF 1972, TO
 6 DELETE THE PROVISION THAT REQUIRES THE STATE TO PRESERVE THE
 7 BIOLOGICAL EVIDENCE TAKEN IN TESTS FOR HIV/AIDS OF PERSONS
 8 ARRESTED FOR THE COMMISSION OF A SEX CRIME AGAINST A MINOR, WHICH
 9 CONFLICTS WITH THE PROVISION OF SECTION 99-3-41 THAT REQUIRES THE
 10 BIOLOGICAL SAMPLE TO BE DESTROYED; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 99-3-41, Mississippi Code of 1972, is
 13 amended as follows:

14 99-3-41. (1) Every person who is arrested for the
 15 commission of any sex crime against a minor as provided in Section
 16 97-5-51, the Mississippi Child Protection Act, shall be tested for
 17 the human immunodeficiency virus (HIV) and the acquired immune
 18 deficiency syndrome (AIDS). Such test shall be administered upon
 19 arrest but, no later than twenty-four (24) hours after arrest.
 20 The test shall be performed by any qualified medical personnel in
 21 conjunction with the arresting authority. The arresting authority
 22 shall report all test results * * * to the State Department of



23 Health and the Children's Safe Center, no later than twenty-four
24 (24) hours after the test results are available. * * * Each
25 victim of the alleged offense, or the parent, guardian, or
26 custodian of each minor victim, and the accused shall be notified
27 of the test results, * * * no later than twenty-four (24) hours
28 after the test results are available. The State Department of
29 Health shall provide counseling and the referral for the
30 appropriate treatment for each victim when the accused tested
31 positive for HIV or AIDS. For the purposes of this section, the
32 term "minor" means the same as defined in Section 97-5-51. The
33 HIV and AIDS tests collected under the authority of this section
34 shall not be used for any other purpose that is not authorized by
35 this section.

36 (2) Any qualified medical personnel and/or arresting
37 authority who is authorized to perform the test required by
38 subsection (1) of this section shall only keep the results of HIV
39 and/or AIDS tests, but shall destroy any biological sample taken
40 from a person for purposes of performing such tests.

41 **SECTION 2.** Section 99-49-1, Mississippi Code of 1972, is
42 amended as follows:

43 99-49-1. (1) **Legislative intent.** The Legislature finds
44 that:

45 (a) The value of properly preserved biological evidence
46 has been enhanced by the discovery of modern DNA testing methods,
47 which, coupled with a comprehensive system of DNA databases that



48 store crime scene and offender profiles, allow law enforcement to
49 improve its crime-solving potential;

50 (b) Tapping the potential of preserved biological
51 evidence requires the proper identification, collection,
52 preservation, storage, cataloguing and organization of such
53 evidence;

54 (c) Law enforcement agencies indicate that "cold" case
55 investigations are hindered by an inability to access biological
56 evidence that was collected in connection with criminal
57 investigations;

58 (d) Innocent people mistakenly convicted of the serious
59 crimes for which biological evidence is probative cannot prove
60 their innocence if such evidence is not accessible for testing in
61 appropriate circumstances;

62 (e) It is well established that the failure to update
63 policies regarding the preservation of evidence squanders valuable
64 law enforcement resources, manpower hours and storage space; and

65 (f) Simple but crucial enhancements to protocols for
66 properly preserving biological evidence can solve old crimes,
67 enhance public safety and settle claims of innocence.

68 (2) **Definitions.** For the purposes of this section:

69 (a) "Biological evidence" means the contents of a
70 sexual assault examination kit or any item that contains blood,
71 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
72 bodily fluids or other identifiable biological material that was



73 collected as part of the criminal investigation or may reasonably
74 be used to incriminate or exculpate any person for the offense.
75 This definition applies whether that material is catalogued
76 separately, such as on a slide, swab or in a test tube, or is
77 present on other evidence, including, but not limited to,
78 clothing, ligatures, bedding or other household material, drinking
79 cups, cigarettes or other items.

80 (b) "DNA" means deoxyribonucleic acid.

81 (c) "Custody" means persons currently incarcerated;
82 civilly committed; on parole or probation; or subject to sex
83 offender registration for the period of the registration or for
84 the first five (5) years of the registration, whichever is the
85 shorter period.

86 (d) "Profile" means a unique identifier of an
87 individual, derived from DNA.

88 (e) "State" refers to any governmental or public entity
89 within Mississippi, including all private entities that perform
90 such functions, and its officials or employees, including, but not
91 limited to, law enforcement agencies, prosecutors' offices,
92 courts, public hospitals, forensics laboratories, and any other
93 entity or individual charged with the collection, storage or
94 retrieval of biological evidence.

95 (3) **Preservation of evidence procedures.** (a) The state
96 shall preserve all biological evidence:



97 (i) That is secured in relation to an
98 investigation or prosecution of a crime for the period of time
99 that the crime remains unsolved; or

100 (ii) That is secured in relation to an
101 investigation or prosecution of a crime for the period of time
102 that the person convicted of that crime remains in custody * * *.

103 (b) This section applies to evidence that:

104 (i) Was in the possession of the state during the
105 investigation and prosecution of the case; and

106 (ii) At the time of conviction was likely to
107 contain biological material.

108 (c) The state shall not destroy biological evidence
109 should one or more additional co-defendants, convicted of the same
110 crime, remain in custody, and shall preserve the evidence for the
111 period of time in which all co-defendants remain in custody.

112 (d) The state shall retain evidence in the amount and
113 manner sufficient to develop a DNA profile from the biological
114 material contained in or included on the evidence.

115 (e) Upon written request by the defendant, the state
116 shall prepare an inventory of biological evidence that has been
117 preserved in connection with the defendant's criminal case.

118 (f) The state may destroy evidence that includes
119 biological material before the expiration of the time period
120 specified in paragraph (a) of this subsection if all of the
121 following apply:



122 (i) No other provision of federal or state law
123 requires the state to preserve the evidence.

124 (ii) The state sends certified delivery of notice
125 of intent to destroy the evidence to:

126 1. All persons who remain in custody as a
127 result of the criminal conviction, delinquency adjudication, or
128 commitment related to evidence in question;

129 2. The attorney of record for each person in
130 custody;

131 3. The Mississippi Office of Indigent
132 Appeals;

133 4. The district attorney in the county of
134 conviction; and

135 5. The Mississippi Attorney General.

136 (iii) No person who is notified under subparagraph
137 (ii) of this paragraph (f) does either of the following within
138 sixty (60) days after the date on which the person received the
139 notice:

140 1. Files a motion for testing of evidence
141 under Title 99, Chapter 39, Mississippi Code of 1972; or

142 2. Submits a written request for retention of
143 evidence to the state entity which provided notice of its intent
144 to destroy evidence under subparagraph (ii) of this paragraph (f).

145 (g) If, after providing notice under paragraph (f)(ii)
146 of this subsection of its intent to destroy evidence, the state



147 receives a written request for retention of the evidence, the
148 state shall retain the evidence while the person remains in
149 custody.

150 (h) The state shall not be required to preserve
151 physical evidence that is of such a size, bulk or physical
152 character as to render retention impracticable. When such
153 retention is impracticable, the state shall remove and preserve
154 portions of the material evidence likely to contain biological
155 evidence related to the offense, in a quantity sufficient to
156 permit future DNA testing, before returning or disposing of the
157 physical evidence.

158 (i) Should the state be called upon to produce
159 biological evidence that could not be located and whose
160 preservation was required under the provisions of this statute,
161 the chief evidence custodian assigned to the entity charged with
162 the preservation of * * * the evidence shall provide an affidavit
163 in which the custodian stipulates, under penalty of perjury, an
164 accurate description of the efforts taken to locate that evidence
165 and that the evidence could not be located.

166 (4) This section does not require the state to preserve the
167 biological evidence that is obtained in performing the test
168 required by Section 99-3-41 and is required to be destroyed under
169 that section.

170 (* * *5) Any evidence in a murder, manslaughter or felony
171 sexual assault case in the possession of the state on July 1,



172 2009, whether biological or not, shall be preserved by the state
173 consistent with the legislative intent expressed in subsection (1)
174 and subject to compliance with subsection (3)(f).

175 (* * *6) **Remedies for noncompliance.** If the court finds
176 that biological evidence was destroyed in violation of the
177 provisions of this section, it may impose appropriate sanctions
178 and order appropriate remedies.

179 **SECTION 3.** This act shall take effect and be in force from
180 and after its passage.

