

By: Representative Gipson

To: Judiciary B

HOUSE BILL NO. 543

1 AN ACT TO AMEND SECTION 45-47-1, MISSISSIPPI CODE OF 1972, TO  
 2 PROVIDE THAT A MOTION TO REMOVE A DNA OR BIOLOGICAL SAMPLE SHALL  
 3 BE FILED BEFORE THE CRIME LAB IS REQUIRED TO DESTROY THE SAMPLE;  
 4 TO AMEND SECTION 99-49-1, MISSISSIPPI CODE OF 1972, TO CONFORM TO  
 5 THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 45-47-1, Mississippi Code of 1972, is  
 8 amended as follows:

9 45-47-1. (1) Every person who is arrested for the  
 10 commission or attempted commission of a crime of violence as  
 11 defined in Section 97-3-2 shall provide a biological sample for  
 12 DNA testing to jail or detention center personnel upon booking.  
 13 The analysis shall be performed by the Mississippi Crime Lab or  
 14 other entity designated by the Department of Public Safety, and  
 15 the results shall be maintained by the Crime Lab according to  
 16 standard protocols adopted for maintenance of DNA records in  
 17 conformity to federal guidelines for the maintenance of such  
 18 records.



19           (2)   (a)   A DNA sample shall be collected by an individual  
20 who is trained in the collection procedures that the Crime  
21 Laboratory uses.

22                   (b)   \* \* \* In order for the biological sample to be  
23 destroyed, the person who desires to have the sample destroyed  
24 shall file a motion to have the sample removed from the database  
25 with the Mississippi Crime Lab or other entity designated by the  
26 Department of Public Safety. The motion shall be approved if  
27 requirements of this subsection (2) are met. If requirements of  
28 subparagraphs (i) to (iv) are met, the Crime Lab shall destroy the  
29 sample and delete from the database all records thereof if there  
30 is no other pending qualifying warrant or capias for an arrest or  
31 felony conviction that would require that the sample remain in the  
32 DNA data bank and:

33                           (i)   The charge for which the sample was taken is  
34 dismissed;

35                           (ii)   The defendant is acquitted at trial or  
36 convicted of a lesser-included misdemeanor offense that is not an  
37 offense listed in this section;

38                           (iii)   No charge was filed within the statute of  
39 limitations, if any; or

40                           (iv)   No conviction has occurred, at least three  
41 (3) years have passed since the date of arrest, and there is no  
42 active prosecution.



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

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

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

53 (4) (a) Any person convicted under subsection (3)(a) shall  
54 be sentenced to a fine not to exceed Five Hundred Dollars  
55 (\$500.00) or confinement in the county jail not to exceed thirty  
56 (30) days, or both.

57 (b) Any person convicted under subsection (3)(b) shall  
58 be sentenced to a fine not to exceed One Thousand Dollars  
59 (\$1,000.00) or confinement in the county jail not to exceed six  
60 (6) months, or both.

61 (c) Any person convicted under subsection (3)(c) shall  
62 be sentenced to a fine not to exceed One Thousand Dollars  
63 (\$1,000.00) or commitment to the custody of the Department of  
64 Corrections not to exceed two (2) years, or both.

65 (5) A defendant may file a motion with the court to seek  
66 destruction of the DNA sample and deletion of such information  
67 from the record under this section.



68           (6) This section shall not take effect unless the  
69 Legislature has provided sufficient funds for implementing the  
70 provisions of this section, including training, as certified by  
71 the Joint Legislative Budget Committee.

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

74           99-49-1. (1) **Legislative intent.** The Legislature finds  
75 that:

76                   (a) The value of properly preserved biological evidence  
77 has been enhanced by the discovery of modern DNA testing methods,  
78 which, coupled with a comprehensive system of DNA databases that  
79 store crime scene and offender profiles, allow law enforcement to  
80 improve its crime-solving potential;

81                   (b) Tapping the potential of preserved biological  
82 evidence requires the proper identification, collection,  
83 preservation, storage, cataloguing and organization of such  
84 evidence;

85                   (c) Law enforcement agencies indicate that "cold" case  
86 investigations are hindered by an inability to access biological  
87 evidence that was collected in connection with criminal  
88 investigations;

89                   (d) Innocent people mistakenly convicted of the serious  
90 crimes for which biological evidence is probative cannot prove  
91 their innocence if such evidence is not accessible for testing in  
92 appropriate circumstances;



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

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

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

100 (a) "Biological evidence" means the contents of a  
101 sexual assault examination kit or any item that contains blood,  
102 semen, hair, saliva, skin tissue, fingernail scrapings, bone,  
103 bodily fluids or other identifiable biological material that was  
104 collected as part of the criminal investigation or may reasonably  
105 be used to incriminate or exculpate any person for the offense.  
106 This definition applies whether that material is catalogued  
107 separately, such as on a slide, swab or in a test tube, or is  
108 present on other evidence, including, but not limited to,  
109 clothing, ligatures, bedding or other household material, drinking  
110 cups, cigarettes or other items.

111 (b) "DNA" means deoxyribonucleic acid.

112 (c) "Custody" means persons currently incarcerated;  
113 civilly committed; on parole or probation; or subject to sex  
114 offender registration for the period of the registration or for  
115 the first five (5) years of the registration, whichever is the  
116 shorter period.



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

119 (e) "State" refers to any governmental or public entity  
120 within Mississippi, including all private entities that perform  
121 such functions, and its officials or employees, including, but not  
122 limited to, law enforcement agencies, prosecutors' offices,  
123 courts, public hospitals, forensics laboratories, and any other  
124 entity or individual charged with the collection, storage or  
125 retrieval of biological evidence.

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

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

131 (ii) That is secured in relation to an  
132 investigation or prosecution of a crime for the period of time  
133 that the person convicted of that crime remains in custody.

134 (b) This section applies to evidence that:

135 (i) Was in the possession of the state during the  
136 investigation and prosecution of the case; and

137 (ii) At the time of conviction was likely to  
138 contain biological material.

139 (c) The state shall not destroy biological evidence  
140 should one or more additional co-defendants, convicted of the same



141 crime, remain in custody, and shall preserve the evidence for the  
142 period of time in which all co-defendants remain in custody.

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

146 (e) Upon written request by the defendant, the state  
147 shall prepare an inventory of biological evidence that has been  
148 preserved in connection with the defendant's criminal case. Upon  
149 motion to destroy the DNA sample or biological material as  
150 described in Section 45-47-1, the state shall destroy the sample  
151 or biological evidence.

152 (f) The state may destroy evidence that includes  
153 biological material before the expiration of the time period  
154 specified in paragraph (a) of this subsection if all of the  
155 following apply:

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

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

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

163 2. The attorney of record for each person in  
164 custody;



165 3. The Mississippi Office of Indigent  
166 Appeals;

167 4. The district attorney in the county of  
168 conviction; and

169 5. The Mississippi Attorney General.

170 (iii) No person who is notified under subparagraph  
171 (ii) of this paragraph (f) does either of the following within  
172 sixty (60) days after the date on which the person received the  
173 notice:

174 1. Files a motion for testing of evidence  
175 under \* \* \* Chapter 39, Title 99, Mississippi Code of 1972; or

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

179 (g) If, after providing notice under paragraph (f)(ii)  
180 of this subsection of its intent to destroy evidence, the state  
181 receives a written request for retention of the evidence, the  
182 state shall retain the evidence while the person remains in  
183 custody.

184 (h) The state shall not be required to preserve  
185 physical evidence that is of such a size, bulk or physical  
186 character as to render retention impracticable. When such  
187 retention is impracticable, the state shall remove and preserve  
188 portions of the material evidence likely to contain biological  
189 evidence related to the offense, in a quantity sufficient to





190 permit future DNA testing, before returning or disposing of the  
191 physical evidence.

192 (i) Should the state be called upon to produce  
193 biological evidence that could not be located and whose  
194 preservation was required under the provisions of this statute,  
195 the chief evidence custodian assigned to the entity charged with  
196 the preservation of the evidence shall provide an affidavit in  
197 which the custodian stipulates, under penalty of perjury, an  
198 accurate description of the efforts taken to locate that evidence  
199 and that the evidence could not be located.

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

204 (5) Any evidence in a murder, manslaughter or felony sexual  
205 assault case in the possession of the state on July 1, 2009,  
206 whether biological or not, shall be preserved by the state  
207 consistent with the legislative intent expressed in subsection (1)  
208 and subject to compliance with subsection (3)(f).

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

213 **SECTION 3.** This act shall take effect and be in force from  
214 and after July 1, 2018.

