

By: Representative Hughes

To: Public Health and Human Services; Judiciary B

HOUSE BILL NO. 460

1 AN ACT TO CREATE THE "SEXUAL ASSAULT VICTIMS' DNA BILL OF  
 2 RIGHTS"; TO PROVIDE DEFINITIONS FOR SUCH ACT; TO REGULATE THE  
 3 PREPARATION AND PRODUCTION OF SEXUAL ASSAULT EVIDENCE; TO DESCRIBE  
 4 THE RIGHTS OF SEXUAL ASSAULT VICTIMS; TO PROVIDE THAT SUCH RIGHTS  
 5 ARE IN ADDITION TO ANY OF THE RIGHTS PROVIDED IN THE "MISSISSIPPI  
 6 CRIME VICTIMS' BILL OF RIGHTS"; TO BRING FORWARD SECTION 99-37-25,  
 7 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR PAYMENT OF SEXUAL  
 8 ASSAULT COLLECTION KITS FOR PURPOSES OF AMENDMENT; AND FOR RELATED  
 9 PURPOSES.

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

11 **SECTION 1.** This act shall be known as and may be cited as  
 12 the "Sexual Assault Victims' DNA Bill of Rights."

13 **SECTION 2.** The Legislature finds that:

14 (a) Deoxyribonucleic acid (DNA) and forensic  
 15 identification analysis is a powerful law enforcement tool for  
 16 identifying and prosecuting sexual assault offenders.

17 (b) Timely DNA analysis of sexual assault evidence is a  
 18 core public safety issue affecting men, women and children in the  
 19 State of Mississippi.



20 (c) The Legislature has a public interest in regulating  
21 the timely processing of sexual assault evidence kits within the  
22 time limits imposed by this act.

23 (d) Victims of sexual assault have vested interests in  
24 the investigation and prosecution of their cases.

25 (e) Law enforcement agencies have an obligation to  
26 victims of sexual assault to properly handle, retain, and timely  
27 DNA test the sexual assault evidence kits or other crime scene  
28 evidence, and to be responsive to victims concerning the  
29 developments of forensic testing and the investigation of their  
30 cases.

31 (f) The growth of the Mississippi Forensics  
32 Laboratory's DNA identification system and its cooperation with  
33 the Federal Bureau of Investigation and other criminal justice  
34 agencies relating to the Combined DNA Index System (CODIS) allow  
35 many sexual assault perpetrators to be identified after their  
36 first offense, provided the sexual assault evidence kit is  
37 analyzed in a timely manner.

38 **SECTION 3.** The following words shall have the meanings  
39 ascribed herein, unless the context clearly requires otherwise:

40 (a) "Law enforcement" means the law enforcement agency  
41 with the primary responsibility for investigating an alleged  
42 sexual assault.

43 (b) "Sexual assault" means sexual battery as described  
44 in Section 97-3-95, statutory rape as defined in Section 97-3-65,



45 battery of a child as described in Section 97-5-39, touching or  
46 handling a child for lustful purposes as described in Section  
47 97-5-23, or exploitation of children as described in Section  
48 97-5-33, and includes any attempt for such crimes.

49 **SECTION 4.** (1) Any doctor's office, hospital, medical  
50 clinic or other medical facility that performs a medical forensic  
51 examination on an alleged victim shall send the results of the  
52 examination to the Division of Victim Compensation within thirty  
53 (30) days from the date of the examination.

54 (2) (a) On or after the effective date of this act, upon  
55 receipt of any sexual assault forensic evidence kit, the  
56 Mississippi Forensics Laboratory shall:

57 (i) Process sexual assault forensic evidence,  
58 create DNA profiles when able, and upload qualifying DNA profiles  
59 into the Combined DNA Index System (CODIS) as soon as practically  
60 possible, but no later than one hundred twenty (120) days after  
61 initial receipt of the evidence; or

62 (ii) Transmit the sexual assault forensic evidence  
63 kit to another crime lab as soon as practically possible, but no  
64 later than thirty (30) days after initial receipt of the evidence,  
65 to test for the presence of DNA. If a DNA profile is created, the  
66 lab that created the profile shall upload the profile into CODIS  
67 as soon as practically possible, but no longer than thirty (30)  
68 days after being notified about the presence of DNA.



69           (b) This subsection does not require a lab to test all  
70 items of forensic evidence obtained in a sexual assault forensic  
71 evidence examination. A lab is considered to be in compliance  
72 with the guidelines of this subsection when representative samples  
73 of the evidence are processed by the lab in an effort to detect  
74 the foreign DNA of the perpetrator.

75           (c) This subsection does not require a DNA profile to  
76 be uploaded into CODIS if the DNA profile does not meet federal  
77 guidelines regarding the uploading of DNA profiles into CODIS.

78           **SECTION 5.** (1) Upon the request of a sexual assault victim  
79 or his or her designee, the law enforcement agency which is  
80 investigating the assault of such victim shall inform the victim  
81 of the status of the DNA testing of the sexual assault evidence  
82 kit or other crime scene evidence from the victim's case. The law  
83 enforcement agency may, at its discretion, require that the  
84 victim's request be in writing.

85           (2) The law enforcement agency shall respond to the victim's  
86 request within thirty (30) days with either an oral or written  
87 communication, or by email, if an email address is available.

88           (3) Nothing in this subsection shall be interpreted to  
89 require any law enforcement agency to communicate with the victim  
90 or the victim's designee regarding the status of DNA testing  
91 without a specific request from the victim or the victim's  
92 designee.



**SECTION 6.**

(1) In addition to the rights provided in the "Mississippi Crime Victims' Bill of Rights," a victim of sexual assault shall have:

(a) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the sexual assault evidence kit or other crime scene evidence from their case.

(b) The right to be informed whether or not the DNA profile of the assailant developed from the sexual assault evidence kit or other crime scene evidence has been entered into the Mississippi Forensic Laboratory DNA identification system or CODIS.

(c) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Mississippi Forensics Laboratory's DNA identification system, provided that disclosure would not impede or compromise an ongoing investigation.

(2) If the law enforcement agency does not receive the DNA analysis of sexual assault evidence within six (6) months, a victim of a sexual assault offense shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(3) If the law enforcement agency intends to destroy or dispose of the sexual assault evidence kit or any other crime scene evidence from an unsolved sexual assault case, the victim of



118 the case shall be given written notification by the law  
119 enforcement agency of that intention within twenty (20) days.

120 (4) A law enforcement agency shall not destroy or dispose of  
121 the sexual assault evidence kit or any other crime scene evidence  
122 from an unsolved sexual assault case before at least twenty (20)  
123 years after the collection of the evidence of the crime, or if the  
124 victim was under eighteen (18) years of age at the time of the  
125 alleged offense, before the victim's fortieth birthday.

126 (5) Written notification shall be made at least sixty (60)  
127 days before the destruction or disposal of the rape kit evidence  
128 or other crime scene evidence from an unsolved sexual assault  
129 case.

130 (6) A sexual assault victim may designate a sexual assault  
131 victim advocate, or other support person of the victim's choosing,  
132 to act as a recipient of the above information required to be  
133 provided by this section.

134 (7) In order to be entitled to receive notice under this  
135 section, the victim or the victim's designee shall keep  
136 appropriate authorities informed of the name, address, telephone  
137 number, and email address of the person to whom the information  
138 should be provided, and any changes of the name, address,  
139 telephone number, and email address, if an email address is  
140 available.

141 (8) A defendant or person accused or convicted of a crime  
142 against the victim shall have no standing to object to any failure



143 to comply with this section. The failure to provide a right or  
144 notice to a sexual assault victim under this section may not be  
145 used by a defendant to seek to have the conviction or sentence set  
146 aside.

147 (9) The sole civil or criminal remedy available to a sexual  
148 assault victim for a law enforcement agency's failure to fulfill  
149 its responsibilities under this section shall be standing to file  
150 a writ of mandamus to require compliance with subdivision with the  
151 requirements of this act.

152 **SECTION 7.** Section 99-37-25, Mississippi Code of 1972, is  
153 brought forward as follows:

154 99-37-25. (1) (a) When a person is brought into a doctor's  
155 office, a hospital or a medical clinic by a law enforcement agency  
156 as the victim of an alleged rape or sexual assault having occurred  
157 in this state, or comes into a doctor's office, a hospital or a  
158 medical clinic alleging rape or sexual assault having occurred in  
159 this state, the bill for the medical forensic examination and the  
160 preparation of the sexual assault evidence collection kit will be  
161 sent to the Division of Victim Compensation, Office of the  
162 Attorney General. The Division of Victim Compensation shall pay  
163 for the medical examination conducted for the procurement of  
164 evidence to aid in the investigation and prosecution of the  
165 alleged offense. Such payment shall be limited to the customary  
166 and usual hospital and physician charges for such services in the  
167 area. Such payment shall be made by the Division of Victim



168 Compensation directly to the health care provider. No bill for  
169 the examination will be submitted to the victim, nor shall the  
170 medical facility hold the victim responsible for payment. The  
171 victim may be billed for any further medical services not required  
172 for the investigation and prosecution of the alleged offense. In  
173 cases where the damage caused by the alleged sexual assault  
174 requires medical treatment or diagnosis in addition to the  
175 examination, the patient will be given information about the  
176 availability of victim compensation and the procedure for applying  
177 for such compensation.

178 (b) Upon application submitted by the district  
179 attorney, provided the proper warrant or court order has been  
180 issued, the county in which an offense of sexual assault or of  
181 felonious abuse or battery of a child as described in Section  
182 97-5-39, touching or handling a child for lustful purposes as  
183 described in Section 97-5-23, exploitation of children as  
184 described in Section 97-5-33 or sexual battery as described in  
185 Section 97-3-95, or statutory rape as defined in Section 97-3-65,  
186 or an attempt to commit such offense has occurred shall pay for a  
187 medical forensic examination of the person arrested, charged or  
188 convicted of such offense to determine if the person so arrested,  
189 charged or convicted has any sexually transmitted disease and for  
190 the collection of evidence. Such payment shall be made by the  
191 county directly to the health care provider or other service  
192 performing the collection of evidence and tests. At the victim's





193 request, a test for human immunodeficiency virus (HIV) shall be  
194 administered to the defendant/accused not later than forty-eight  
195 (48) hours after the date on which the information or indictment  
196 is presented, and the defendant/accused shall be subjected to  
197 follow-up testing for HIV upon a determination that such follow-up  
198 testing is medically necessary and reasonable. The results of any  
199 such test shall be confidential but shall be made available to the  
200 victim or, if the victim is a child, to the guardian of the  
201 victim. After an indictment, if the case is dismissed, the  
202 defendant is found not guilty or the case is not prosecuted within  
203 three (3) years of the indictment, all records of tests shall be  
204 returned to the accused or destroyed. Upon a showing of good  
205 cause, the court may retain such records and allow a case to  
206 remain open after the expiration of the three-year limitation  
207 provided herein.

208 (2) Any defendant who is convicted of, or pleads guilty or  
209 nolo contendere to, any offense or an attempt to commit any such  
210 offense specified in subsection (1)(b) shall be ordered by the  
211 court to make restitution to the Division of Victim Compensation  
212 in an amount equal to the compensation paid by the Division of  
213 Victim Compensation to the victim or medical provider for the  
214 medical forensic examination and to the county for tests for  
215 sexually transmitted diseases. Such restitution shall be in  
216 addition to any restitution which the court orders the defendant



217 to pay the victim under the provisions of Chapter 37 of Title 99,  
218 (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

219 (3) The Division of Victim Compensation is hereby  
220 authorized, in its discretion, to make application for and comply  
221 with such requirements as may be necessary to qualify for any  
222 federal funds as may be available as a result of services rendered  
223 to crime victims under the provisions of this section.

224 **SECTION 8.** This act shall take effect and be in force from  
225 and after July 1, 2019.

