

By: Representative McLean

To: Judiciary B

HOUSE BILL NO. 670

1 AN ACT TO CREATE THE "SEXUAL ASSAULT SURVIVORS' 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 SURVIVORS; TO PROVIDE THAT SUCH
5 RIGHTS ARE IN ADDITION TO ANY OF THE RIGHTS PROVIDED IN THE
6 "MISSISSIPPI CRIME SURVIVORS' BILL OF RIGHTS"; TO AMEND SECTION
7 99-37-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR PROCESSING
8 OF RAPE KITS FOR PURPOSES OF AMENDMENT; TO BRING FORWARD SECTION
9 99-41-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME
10 VICTIMS' COMPENSATION FUND, FOR PURPOSES OF AMENDMENT; TO BRING
11 FORWARD SECTION 99-47-1, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
12 FOR VICTIM CONFIDENTIALITY, FOR PURPOSES OF AMENDMENT; TO AMEND
13 SECTION 99-49-1, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR
14 PRESERVATION OF CERTAIN BIOLOGICAL EVIDENCE, FOR PURPOSES OF
15 AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** This act shall be known as and may be cited as
18 the "Sexual Assault Survivors' DNA Bill of Rights."

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

20 (a) Deoxyribonucleic acid (DNA) and forensic
21 identification analysis is a powerful law enforcement tool for
22 identifying and prosecuting sexual assault offenders.



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

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

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

(e) Law enforcement agencies have an obligation to survivors of sexual assault to properly handle, retain, and timely test the DNA within sexual assault evidence kits and other crime scene evidence, and to be responsive to survivors concerning the developments of forensic testing and the investigation of their cases.

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

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



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

(b) "Sexual assault" means sexual battery as described in Section 97-3-95, statutory rape as defined in Section 97-3-65, battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, or exploitation of children as described in Section 97-5-33, and includes any attempt for such crimes.

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

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

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

(ii) Transmit the sexual assault forensic evidence kit to another crime lab as soon as practically possible, but no later than thirty (30) days after initial receipt of the evidence,



71 to test for the presence of DNA. If a DNA profile is created, the
72 lab that created the profile shall upload the profile into CODIS
73 as soon as practically possible, but no longer than thirty (30)
74 days after being notified about the presence of DNA.

75 (b) A lab is considered to be in compliance with the
76 guidelines of this subsection (2)(a) when representative samples
77 of the evidence are processed by the lab in an effort to detect
78 the foreign DNA of the perpetrator.

79 (c) This subsection (2)(a) does not require a DNA
80 profile to be uploaded into CODIS if the DNA profile does not meet
81 federal guidelines regarding the uploading of DNA profiles into
82 CODIS.

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

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

93 (3) Nothing in this subsection shall be interpreted to
94 require any law enforcement agency to communicate with the victim
95 or the victim's designee regarding the status of DNA testing



without a specific request from the victim or the victim's designee.

SECTION 6. (1) In addition to the rights provided in the "Mississippi Crime Survivors' 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's 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.



120 (3) If the law enforcement agency intends to destroy or
121 dispose of the sexual assault evidence kit or any other crime
122 scene evidence from an unsolved sexual assault case, the victim of
123 the case shall be given written notification by the law
124 enforcement agency of that intention within twenty (20) days.

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

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

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

139 (7) In order to be entitled to receive notice under this
140 section, the victim or the victim's designee shall keep
141 appropriate authorities informed of the name, address, telephone
142 number, and email address of the person to whom the information
143 should be provided, and any changes of the name, address,



telephone number, and email address, if an email address is available.

(8) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

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

SECTION 7. Section 99-37-25, Mississippi Code of 1972, is amended as follows:

99-37-25. (1) (a) When a person is brought into a doctor's office, a hospital or a medical clinic by a law enforcement agency as the victim of an alleged rape or sexual assault having occurred in this state, or comes into a doctor's office, a hospital or a medical clinic alleging rape or sexual assault having occurred in this state, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General. The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of



evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.

(b) Upon application submitted by the district attorney, provided the proper warrant or court order has been issued, the county in which an offense of sexual assault or of felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, exploitation of children as described in Section 97-5-33 or sexual battery as described in Section 97-3-95, or statutory rape as defined in Section 97-3-65, or an attempt to commit such offense has occurred shall pay for a medical forensic examination of the person arrested, charged or convicted of such offense to determine if the person so arrested,



194 charged or convicted has any sexually transmitted disease and for
195 the collection of evidence. Such payment shall be made by the
196 county directly to the health care provider or other service
197 performing the collection of evidence and tests. At the victim's
198 request, a test for human immunodeficiency virus (HIV) shall be
199 administered to the defendant/accused not later than forty-eight
200 (48) hours after the date on which the information or indictment
201 is presented, and the defendant/accused shall be subjected to
202 follow-up testing for HIV upon a determination that such follow-up
203 testing is medically necessary and reasonable. The results of any
204 such test shall be confidential but shall be made available to the
205 victim or, if the victim is a child, to the guardian of the
206 victim. After an indictment, if the case is dismissed, the
207 defendant is found not guilty or the case is not prosecuted within
208 three (3) years of the indictment, all records of tests shall be
209 returned to the accused or destroyed. Upon a showing of good
210 cause, the court may retain such records and allow a case to
211 remain open after the expiration of the three-year limitation
212 provided herein.

213 (2) Any defendant who is convicted of, or pleads guilty or
214 nolo contendere to, any offense or an attempt to commit any such
215 offense specified in subsection (1)(b) shall be ordered by the
216 court to make restitution to the Division of Victim Compensation
217 in an amount equal to the compensation paid by the Division of
218 Victim Compensation to the victim or medical provider for the



219 medical forensic examination and to the county for tests for
220 sexually transmitted diseases. Such restitution shall be in
221 addition to any restitution which the court orders the defendant
222 to pay the victim under the provisions of Chapter 37 * * *, Title
223 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

224 (3) The Division of Victim Compensation is hereby
225 authorized, in its discretion, to make application for and comply
226 with such requirements as may be necessary to qualify for any
227 federal funds as may be available as a result of services rendered
228 to crime survivors under the provisions of this section.

229 **SECTION 8.** Section 99-41-29, Mississippi Code of 1972, is
230 brought forward as follows:

231 99-41-29. (1) From and after July 1, 1990, there is hereby
232 created in the State Treasury a special interest-bearing fund to
233 be known as the Crime Victims' Compensation Fund. The monies
234 contained in the fund shall be used for the sole purpose of
235 payment of awards of compensation to victims and claimants
236 pursuant to this chapter, the payment of all necessary and proper
237 expenses incurred by the division in the administration of this
238 chapter, payment of sexual assault examinations pursuant to
239 Section 99-37-25, payment of Address Confidentiality Program
240 administrative expenses pursuant to Section 99-47-1(7) and payment
241 of other expenses in furtherance of providing assistance to
242 victims of crime through information referrals, advocacy outreach
243 programs and victim-related services. Expenditures from the fund



shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, and upon requisitions signed by the Attorney General or his duly designated representative in the manner provided by law. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of compensating the victims of crime and other claimants under this chapter; (b) the interest accruing to the fund; (c) monies recovered by the director under the provisions of Section 99-41-21; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

(2) No compensation payments shall be made which exceed the amount of money in the fund. The state shall not be liable for a written order to pay compensation, except to the extent that monies are available in the fund on the date the award is ordered. The Attorney General shall establish such rules and regulations as shall be necessary to adjust awards and payments so that the total amount awarded does not exceed the amount of money on deposit in the fund. Such rules and regulations may include, but shall not be limited to, the authority to provide for suspension of payments and proportioned reduction of benefits to all claimants; provided, however, no such reductions as provided for shall entitle claimants to future retroactive reimbursements in future years.

(3) From and after July 1, 2016, the expenses of the Crime Victims Compensation Fund program (including the Crime Victims



Compensation Administration Fund) shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SECTION 9. Section 99-47-1, Mississippi Code of 1972, is brought forward as follows:

99-47-1. (1) **Definitions.** As used in this section:

(a) "Confidential address" means any residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this section.

(b) "Program participant" means a person certified as a program participant under this section.

(c) "Domestic violence" means any of the following acts committed against a current or former spouse, a person living as a spouse or who formerly lived as a spouse or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person with whom the defendant has a biological



or legally adopted child in common, or a person in a current or former dating relationship:

(i) A violation of a domestic violence protection order;

(ii) Simple or aggravated domestic violence as defined in Section 97-3-7(3) or 97-3-7(4); or

(iii) Threats of such acts.

(d) "Sexual assault" means an act as defined in Section 45-33-23(h) as a sex offense.

(e) "Stalking" means an act as defined in Section 97-3-107 or Section 97-45-15.

(f) "Substitute address" means an address designated and assigned by the Office of the Attorney General to a program participant as a substitute mailing address under the Address Confidentiality Program.

(g) "Victim" means an individual against whom domestic violence, sexual assault, or stalking has been committed.

(2) **Address Confidentiality Program.** (a) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General serve as the substitute address for the person, the minor or the incapacitated person. The Office of the Attorney General shall approve an application if it is



filed in the manner and on the form prescribed by the Office of the Attorney General and if it contains:

(i) A sworn statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, or sexual assault, and that the applicant fears for his or her safety, or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(ii) A designation of the Office of the Attorney General as agent for purposes of services of process and for the purpose of receipt of mail;

(iii) The confidential address where the applicant can be contacted by the Office of the Attorney General, and the telephone number or numbers where the applicant can be contacted by the Office of the Attorney General;

(iv) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, stalking, or sexual assault;

(v) A statement of any existing or pending court order or court action involving the applicant that is related to divorce proceedings, child support, child custody, or child visitation; the court that issued each order or has jurisdiction over an action shall be noted;



(vi) The signature of the applicant and a representative of a domestic violence shelter or rape crisis center as designated under subsection (6) who assisted in the preparation of the application;

(vii) The date on which the applicant signed the application; and

(viii) Evidence that the applicant is a victim of domestic violence, sexual assault, or stalking. This evidence shall include at least one (1) of the following:

1. Law enforcement, court or other local, state or federal agency records or files;
2. Documentation from a domestic violence shelter or rape crisis center; or
3. Other form of evidence as determined by the Office of the Attorney General.

(b) Applications shall be filed with the Office of the Attorney General.

(c) Upon approval of an application, the Office of the Attorney General shall certify the applicant as a program participant. Upon certification, the Office of the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. Applicants shall be certified for four (4) years following the date of certification unless the certification is withdrawn, cancelled or invalidated before that date.



(d) A program applicant who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application or while a program participant, shall be guilty of a misdemeanor, punishable by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months.

(e) A fraudulent attempt to gain access to a program participant's confidential address shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(f) Knowingly entering the Address Confidentiality Program to evade civil liability or criminal prosecution shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(g) A program participant may terminate the certification by filing a notarized request for withdrawal from the program with the Office of the Attorney General.

(3) **Certification cancellation.** (a) If the program participant obtains a name change, the person's program



392 participation is terminated and the person may immediately reapply
393 for certification under the new name.

394 (b) The Office of the Attorney General may cancel a
395 program participant's certification if there is a change in the
396 residential address or telephone number from the address or the
397 telephone number listed for the program participant on the
398 application unless the program participant provides the Office of
399 the Attorney General with a minimum of seven (7) days' notice
400 before the change of address occurs.

401 (c) The Office of the Attorney General may cancel
402 certification of a program participant if mail forwarded by the
403 Office of the Attorney General to the program participant's
404 confidential address is returned as undeliverable or if service of
405 process documents are returned to the Office of the Attorney
406 General as unable to be served.

407 (d) The Office of the Attorney General shall cancel
408 certification of a program participant who applies using false
409 information.

410 (e) The Office of the Attorney General shall send
411 notice of cancellation to the program participant. Notice of
412 cancellation shall set out the reasons for cancellation. That
413 program participant shall have thirty (30) days from receipt of
414 notification of cancellation to appeal the cancellation decisions
415 under procedures adopted by the Office of the Attorney General.



416 (f) An individual who ceases to be a program
417 participant is responsible for notifying persons, who use the
418 substitute address designated by the Office of the Attorney
419 General as the program participant's address, that the designated
420 substitute address is no longer the individual's address.

421 (4) **Agency use of designated address.** (a) Except as
422 otherwise provided in this section, a program participant may
423 request that public bodies use the address designated by the
424 Office of the Attorney General as the participant's substitute
425 address. The program participant, and not the Office of the
426 Attorney General, domestic violence shelter, nor rape crisis
427 center, is responsible for requesting that any public body use the
428 address designated by the Office of the Attorney General as the
429 substitute address of the program participant. If there is any
430 criminal proceeding on behalf of the program participant, the
431 program participant is also responsible for notifying any law
432 enforcement agency and the district attorney's office of the
433 person's participation in the program. There shall be no
434 responsibility on the part of any district attorney's office or
435 any law enforcement agency to request that a public body use the
436 substitute address. Public bodies shall accept the address
437 designated by the Office of the Attorney General as a program
438 participant's substitute address, unless the Office of the
439 Attorney General has determined that:



(i) The public body has a bona fide statutory or administrative requirement for the use of the confidential address of the program participant as defined in this section; and

(ii) The confidential address will be used only for those statutory and administrative purposes.

(b) A program participant may use the substitute address designated by the Office of the Attorney General as his or her work address.

(c) The Office of the Attorney General shall forward all first-class, certified or registered mail to the program participant at the confidential address provided by the program participant. The Office of the Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

(d) A program participant's name, confidential address, telephone number and any other identifying information within the possession of a public body, as defined by Section 25-61-3, shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983. The program participant's actual name, address and telephone number shall be confidential and no public body shall disclose the program participant's name, address, telephone number, or any other identifying information.

(5) **Disclosure of records prohibited; exceptions.** A program participant's confidential address and telephone number and any



other identifying information in the possession of the Office of the Attorney General shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983, and shall not be disclosed during discovery in any criminal prosecution. The Office of the Attorney General shall not make any records in a program participant's file available for inspection or copying other than the address designated by the Office of the Attorney General, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency for official use only, but not to be included in any reports made by the law enforcement agency or required to be produced in discovery in any criminal prosecution;

(b) If directed by a court order, to a person identified in the order; or

(c) To verify, if requested by a public body, the participation of a specific program participant, in which case the Office of the Attorney General may only confirm participation in the program and confirm information supplied by the requester.

(6) **Assistance for program applicants.** The Office of the Attorney General shall refer potential participants to domestic violence shelters or rape crisis centers that provide shelter and counseling services to either victims of domestic violence, stalking, or sexual assault to assist persons applying to be program participants.



(7) **Address confidentiality funding.** Expenses of administering the Address Confidentiality Program shall be paid from the Crime Victims' Compensation Fund.

(8) **Immunity.** The Office of the Attorney General and/or its agents and/or employees are immune from civil and/or criminal liability for damages for conduct within the scope and arising out of the performance of the duties imposed under this section. Any district attorney and his agents and employees, any law enforcement agency and its agents and employees, and any local or state agency and its agents and employees are immune from liability, whether civil or criminal, for damages for conduct within the scope and arising out of the program. Any employee or representative of a domestic violence shelter or rape crisis center who acts in good faith to assist a victim complete an application for participation in the Address Confidentiality Program shall be immune from civil and/or criminal liability. Any assistance rendered pursuant to this section, by the Office of the Attorney General, its agents or employees, shall in no way be construed as legal advice.

(9) **Adoption of rules.** The Office of the Attorney General Victim Compensation Division is authorized to adopt rules and regulations as shall be necessary for carrying out the provisions of this section.

SECTION 10. Section 99-49-1, Mississippi Code of 1972, is amended as follows:



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

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

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

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

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

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

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



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

541 (a) "Biological evidence" means the contents of a
542 sexual assault examination kit or any item that contains blood,
543 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
544 bodily fluids or other identifiable biological material that was
545 collected as part of the criminal investigation or may reasonably
546 be used to incriminate or exculpate any person for the offense.
547 This definition applies whether that material is catalogued
548 separately, such as on a slide, swab or in a test tube, or is
549 present on other evidence, including, but not limited to,
550 clothing, ligatures, bedding or other household material, drinking
551 cups, cigarettes or other items.

552 (b) "DNA" means deoxyribonucleic acid.

553 (c) "Custody" means persons currently incarcerated;
554 civilly committed; on parole or probation; or subject to sex
555 offender registration for the period of the registration or for
556 the first five (5) years of the registration, whichever is the
557 shorter period.

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

560 (e) "State" refers to any governmental or public entity
561 within Mississippi, including all private entities that perform
562 such functions, and its officials or employees, including, but not
563 limited to, law enforcement agencies, prosecutors' offices,
564 courts, public hospitals, forensics laboratories, and any other



entity or individual charged with the collection, storage or retrieval of biological evidence.

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

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

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

(b) This section applies to evidence that:

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

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

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

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

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



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

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

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

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

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

3. The Mississippi Office of Indigent Appeals;

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

5. The Mississippi Attorney General.

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

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



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

617 (g) If, after providing notice under paragraph (f)(ii)
618 of this subsection of its intent to destroy evidence, the state
619 receives a written request for retention of the evidence, the
620 state shall retain the evidence while the person remains in
621 custody.

622 (h) The state shall not be required to preserve
623 physical evidence that is of such a size, bulk or physical
624 character as to render retention impracticable. When such
625 retention is impracticable, the state shall remove and preserve
626 portions of the material evidence likely to contain biological
627 evidence related to the offense, in a quantity sufficient to
628 permit future DNA testing, before returning or disposing of the
629 physical evidence.

630 (i) Should the state be called upon to produce
631 biological evidence that could not be located and whose
632 preservation was required under the provisions of this statute,
633 the chief evidence custodian assigned to the entity charged with
634 the preservation of the evidence shall provide an affidavit in
635 which the custodian stipulates, under penalty of perjury, an
636 accurate description of the efforts taken to locate that evidence
637 and that the evidence could not be located.



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

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

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

651 **SECTION 11.** This act shall take effect and be in force from
652 and after July 1, 2021.

