

By: Representatives McLean, Ford (73rd),
Stamps

To: Judiciary B

HOUSE BILL NO. 1079

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.



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

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

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

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

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

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



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

49 (b) "Sexual assault" means sexual battery as described
50 in Section 97-3-95, statutory rape as defined in Section 97-3-65,
51 battery of a child as described in Section 97-5-39, touching or
52 handling a child for lustful purposes as described in Section
53 97-5-23, or exploitation of children as described in Section
54 97-5-33, and includes any attempt for such crimes.

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

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

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

68 (ii) Transmit the sexual assault forensic evidence
69 kit to another crime lab as soon as practically possible, but no
70 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



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

98 SECTION 6. (1) In addition to the rights provided in the
99 "Mississippi Crime Survivors' Bill of Rights," a victim of sexual
100 assault shall have:

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

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

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

116 (2) If the law enforcement agency does not receive the DNA
117 analysis of sexual assault evidence within six (6) months, a
118 victim of a sexual assault offense shall be informed, either
119 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,



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

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

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

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

159 99-37-25. (1) (a) When a person is brought into a doctor's
160 office, a hospital or a medical clinic by a law enforcement agency
161 as the victim of an alleged rape or sexual assault having occurred
162 in this state, or comes into a doctor's office, a hospital or a
163 medical clinic alleging rape or sexual assault having occurred in
164 this state, the bill for the medical forensic examination and the
165 preparation of the sexual assault evidence collection kit will be
166 sent to the Division of Victim Compensation, Office of the
167 Attorney General. The Division of Victim Compensation shall pay
168 for the medical examination conducted for the procurement of



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

183 (b) Upon application submitted by the district
184 attorney, provided the proper warrant or court order has been
185 issued, the county in which an offense of sexual assault or of
186 felonious abuse or battery of a child as described in Section
187 97-5-39, touching or handling a child for lustful purposes as
188 described in Section 97-5-23, exploitation of children as
189 described in Section 97-5-33 or sexual battery as described in
190 Section 97-3-95, or statutory rape as defined in Section 97-3-65,
191 or an attempt to commit such offense has occurred shall pay for a
192 medical forensic examination of the person arrested, charged or
193 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



244 shall be paid by the State Treasurer upon warrants issued by the
245 Department of Finance and Administration, and upon requisitions
246 signed by the Attorney General or his duly designated
247 representative in the manner provided by law. The fund shall be a
248 continuing fund, not subject to fiscal-year limitations, and shall
249 consist of: (a) monies appropriated by the Legislature for the
250 purposes of compensating the victims of crime and other claimants
251 under this chapter; (b) the interest accruing to the fund; (c)
252 monies recovered by the director under the provisions of Section
253 99-41-21; (d) monies received from the federal government; and (e)
254 monies received from such other sources as may be provided by law.

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

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



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

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

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

280 99-47-1. (1) **Definitions.** As used in this section:

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

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

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



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

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

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

299 (iii) Threats of such acts.

300 (d) "Sexual assault" means an act as defined in Section
301 45-33-23(h) as a sex offense.

302 (e) "Stalking" means an act as defined in Section
303 97-3-107 or Section 97-45-15.

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

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

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



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

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

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

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

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

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



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

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

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

351 1. Law enforcement, court or other local,
352 state or federal agency records or files;

353 2. Documentation from a domestic violence
354 shelter or rape crisis center; or

355 3. Other form of evidence as determined by
356 the Office of the Attorney General.

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

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



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

377 (e) A fraudulent attempt to gain access to a program
378 participant's confidential address shall constitute a felony,
379 punishable by a fine not to exceed Two Thousand Dollars
380 (\$2,000.00) or by imprisonment in the county jail for a term not
381 to exceed two (2) years.

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

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

390 (3) **Certification cancellation.** (a) If the program
391 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:



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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



515 99-49-1. (1) **Legislative intent.** The Legislature finds
516 that:

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

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

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

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

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

537 (f) Simple but crucial enhancements to protocols for
538 properly preserving biological evidence can solve old crimes,
539 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



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

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

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

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

575 (b) This section applies to evidence that:

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

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

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

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

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



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

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

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

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

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

603 3. The Mississippi Office of Indigent
604 Appeals;

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

607 5. The Mississippi Attorney General.

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

612 1. Files a motion for testing of evidence
613 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, 2022.

