

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 412

1 AN ACT TO AMEND SECTION 45-47-1, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY THAT DNA SAMPLES SHALL BE COLLECTED FROM PERSONS ARRESTED
 3 FOR ANY FELONY; TO PROVIDE THAT THE DNA SAMPLE SHALL BE DESTROYED
 4 ONLY UPON RECEIPT OF AN EXPUNGEMENT REQUEST FROM THE PERSON WHOSE
 5 DNA HAS BEEN INCLUDED IN THE STATE DATABASE; TO AMEND SECTION
 6 99-49-1, MISSISSIPPI CODE OF 1972, TO CONFORM THE PROVISION OF LAW
 7 THAT PROVIDES FOR THE PRESERVATION AND DESTRUCTION OF DNA SAMPLES;
 8 AND FOR RELATED PURPOSES.

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

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

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



22 (2) (a) A DNA sample shall be collected by an individual
23 who is trained in the collection procedures that the Mississippi
24 Forensics Laboratory uses.

25 (b) Upon * * * receipt of an expungement request from a
26 person whose DNA has been included in the state database in
27 accordance with this section, or sua sponte by the court, the
28 court may direct the Forensics * * * Laboratory to 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
66 seek destruction of the DNA sample and deletion of such
67 information from the record under this section.

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



70 99-49-1. (1) **Legislative intent.** The Legislature finds
71 that:

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

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

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

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

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

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



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

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

107 (b) "DNA" means deoxyribonucleic acid.

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

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

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



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

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

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

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

130 (b) This section applies to evidence that:

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

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

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

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

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



145 (f) The state may destroy evidence that includes
146 biological material before the expiration of the time period as
147 provided in Section 45-47-1 or as specified in paragraph (a) of
148 this subsection if all of the following apply:

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

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

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

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

158 3. The Mississippi Office of Indigent
159 Appeals;

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

162 5. The Mississippi Attorney General.

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

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



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

172 (g) If, after providing notice under paragraph (f) (ii)
173 of this subsection of its intent to destroy evidence, the state
174 receives a written request for retention of the evidence, the
175 state shall retain the evidence while the person remains in
176 custody.

177 (h) The state shall not be required to preserve
178 physical evidence that is of such a size, bulk or physical
179 character as to render retention impracticable. When such
180 retention is impracticable, the state shall remove and preserve
181 portions of the material evidence likely to contain biological
182 evidence related to the offense, in a quantity sufficient to
183 permit future DNA testing, before returning or disposing of the
184 physical evidence.

185 (i) Should the state be called upon to produce
186 biological evidence that could not be located and whose
187 preservation was required under the provisions of this statute,
188 the chief evidence custodian assigned to the entity charged with
189 the preservation of the evidence shall provide an affidavit in
190 which the custodian stipulates, under penalty of perjury, an
191 accurate description of the efforts taken to locate that evidence
192 and that the evidence could not be located.



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

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

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

206 **SECTION 3.** This act shall take effect and be in force from
207 and after July 1, 2023.

