

By: Representatives Cockerham, McLean, Ford  
(73rd), Anthony

To: Judiciary A

HOUSE BILL NO. 485

1 AN ACT TO PROVIDE A PROCESS TO COLLECT AND PRESERVE SEXUAL  
 2 ASSAULT EVIDENCE COLLECTION KITS; TO REQUIRE THE LAW ENFORCEMENT  
 3 AGENCY TO IMMEDIATELY COLLECT AND STORE THE KIT IN COMPLIANCE WITH  
 4 CERTAIN STANDARDS; TO REQUIRE THE LAW ENFORCEMENT AGENCY TO SEND  
 5 THE KIT TO THE MISSISSIPPI FORENSICS LABORATORY WITHIN A CERTAIN  
 6 NUMBER OF DAYS; TO REQUIRE THE FORENSICS LABORATORY TO PROCESS THE  
 7 KIT AND ENTER DNA INFORMATION INTO THE APPROPRIATE FEDERAL, STATE  
 8 AND LOCAL DATABASES; TO PROVIDE ADDITIONAL RIGHTS FOR SEXUAL  
 9 ASSAULT VICTIMS; TO REQUIRE THE MISSISSIPPI FORENSICS LABORATORY,  
 10 THE MISSISSIPPI ASSOCIATION OF FORENSIC NURSES AND THE MISSISSIPPI  
 11 DEPARTMENT OF PUBLIC SAFETY TO CONDUCT A STUDY AND ISSUE A REPORT  
 12 THAT EXAMINES THE RESOURCES REQUIRED TO IMPLEMENT A RAPE KIT  
 13 TRACKING SYSTEM; TO CREATE THE SEXUAL ASSAULT EVIDENCE  
 14 ACCOUNTABILITY TASK FORCE; TO BRING FORWARD SECTION 99-43-7,  
 15 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CRIME VICTIMS'  
 16 BILL OF RIGHTS, FOR PURPOSES OF AMENDMENT; TO AMEND SECTION  
 17 99-49-1, TO REVISE PRESERVATION OF EVIDENCE TIMELINES TO CONFORM  
 18 TO THIS ACT; AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** (1) The following words shall have the meanings  
 21 described in this act:

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

25 (b) "Medical facility" means any doctor's office,  
 26 hospital, medical clinic or nonprofit facility equipped to perform



27 forensic medical examinations and prepare sexual assault evidence  
28 kits.

29 (c) "Reported kit" means a sexual assault evidence kit  
30 in which the survivor has consented to participate in the criminal  
31 justice process through reporting the crime to law enforcement.

32 (d) "Sexual assault" means rape, sexual assault, sexual  
33 battery or any other nonconsensual forcible sexual intercourse.

34 (e) "Sexual assault evidence collection kit" means a  
35 sexual assault or rape kit developed by the Mississippi chapter of  
36 the International Association of Forensic Nurses (IAFN) and  
37 approved by the Sexual Assault Evidence Accountability Task Force.

38 (f) "Sexual Assault Nurse Examiner" means a registered  
39 nurse or advanced practice nurse, with a minimum of one (1) year  
40 of experience in areas of practice that require advanced physical  
41 assessment skills, such as emergency, critical care and maternal  
42 child health, who has completed sexual assault nurse examiner  
43 (SANE) training consistent with IAFN SANE Education Guidelines  
44 that consists of both classroom and clinical components.

45 (g) "Unreported kit" means a sexual assault evidence  
46 kit in which the survivor consented to the evidence collection,  
47 but has not consented to participate in the criminal justice  
48 process by reporting the crime to law enforcement - meaning they  
49 are not seeking to have their kit tested.

50 (2) Sexual assault evidence collection kits shall be  
51 processed in the following manner:



52           (a) Any medical facility that conducts a medical  
53 forensic examination and/or prepares a sexual assault evidence  
54 collection kit shall immediately, but no longer than four (4)  
55 hours after the finalization of examination, contact the  
56 appropriate law enforcement agency to collect the kit. Until the  
57 kit is retrieved by law enforcement, the medical facility shall  
58 store the kit in a refrigerated manner in conformity with the  
59 federal guidelines.

60           (b) When a law enforcement agency is contacted to  
61 collect a sexual assault evidence kit, the law enforcement agency  
62 shall take possession of the kit from the medical facility within  
63 twenty four (24) hours. Upon taking physical possession of the  
64 sexual assault evidence collection kit, the law enforcement agency  
65 shall transport the kit in a manner that preserves the evidence in  
66 the kit. The agency shall: (i) store the kit in a secure,  
67 refrigerated location in the agency no more than two (2) hours  
68 after taking physical possession of the kit; or (ii) transport the  
69 kit directly to the Mississippi Forensics Laboratory.

70           (c) All kits must be delivered to the Mississippi  
71 Forensics Laboratory no later than seven (7) calendar days from  
72 the date the law enforcement agency took physical possession of  
73 the kit.

74           (d) A law enforcement agency that receives a sexual  
75 assault collection kit from a healthcare provider that relates to  
76 a report of a sexual assault that occurred outside the



77 jurisdiction of that law enforcement agency shall have the sexual  
78 assault collection kit delivered to the law enforcement agency  
79 having jurisdiction within ten (10) days of learning that the  
80 other law enforcement agency has jurisdiction.

81 (3) (a) The Mississippi Forensics Laboratory shall test  
82 sexual assault evidence collection kits within forty-five (45)  
83 days of receipt from a law enforcement agency. Forensic DNA  
84 testing shall be performed according to laboratory methods that  
85 determine the presence of DNA suitable for autosomal STR analysis.  
86 Any autosomal, CODIS eligible DNA profile shall be entered into  
87 the Combined DNA Index System (CODIS) or equivalency thereof and  
88 state or local DNA database. If the Mississippi Forensics  
89 Laboratory is unable to determine DNA present in the sexual  
90 assault evidence collection kit, the laboratory should evaluate  
91 the case to determine if any other DNA results could be used for  
92 investigative purposes.

93 (b) When testing does result in a DNA profile, the  
94 Mississippi Forensics Laboratory should enter the full DNA profile  
95 into the Combined DNA Index System (CODIS) or equivalency thereof  
96 and any other required state or local DNA databases. The average  
97 completion rate for this analysis and classification should not  
98 exceed sixty (60) days.

99 (c) The Mississippi Forensics Laboratory is authorized  
100 to contract with other laboratories to ensure that each kit is



101 tested and the information from such kit is entered into CODIS  
102 within the time frames required by this subsection.

103 **SECTION 2.** (1) Upon the request of a sexual assault victim  
104 or their designee, the law enforcement agency that is  
105 investigating the assault of such victim shall inform the victim  
106 of the location of the sexual assault evidence kit or other crime  
107 scene evidence from the victim's case and the status of the DNA  
108 testing of the sexual assault evidence kit or other crime scene  
109 evidence from the victim's case.

110 (2) The law enforcement agency shall respond to the victim's  
111 request as soon as possible, but no longer than seven (7) calendar  
112 days, with either an oral or written communication, or by email,  
113 if an email address is available.

114 (3) In addition to the rights provided in the "Mississippi  
115 Crime Victims' Bill of Rights," in Sections 99-43-1 through  
116 99-43-101, a victim of sexual assault shall have:

117 (a) The right to be informed whether a DNA profile of  
118 the assailant was obtained from the testing of the sexual assault  
119 evidence kit or other crime scene evidence from their case.

120 (b) The right to be informed whether the DNA profile of  
121 the assailant developed from the sexual assault evidence kit or  
122 other crime scene evidence has been entered into the Mississippi  
123 Forensics Laboratory's DNA identification system or CODIS.

124 (c) The right to be informed whether there is a match  
125 between the DNA profile of the assailant developed from the rape



126 kit evidence or other crime scene evidence and a DNA profile  
127 contained in the Mississippi Forensics Laboratory's DNA  
128 identification system, provided that disclosure would not impede  
129 or compromise an ongoing investigation.

130 (4) If the law enforcement agency intends to destroy or  
131 dispose of the sexual assault evidence kit or any other crime  
132 scene evidence from an unsolved sexual assault case, the victim of  
133 the case shall be given written notification by the law  
134 enforcement agency of that intention within twenty (20) days. The  
135 victim shall be granted further preservation of the kit or its  
136 probative contents, upon their request.

137 (5) A law enforcement agency shall not destroy or dispose of  
138 the sexual assault evidence kit or any other crime scene evidence  
139 from an unsolved sexual assault case before twenty (20) years  
140 after the collection of the evidence of the crime or, if the  
141 victim was under eighteen (18) years of age at the time of the  
142 alleged offense, before the victim's fortieth birthday.

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

147 (7) For the purpose of receiving notice under this section,  
148 the victim or the victim's designee may keep appropriate  
149 authorities informed of the name, address, telephone number, and  
150 email address of the person to whom the information should be



151 provided, and any changes of the name, address, telephone number,  
152 and email address, if an email address is available.

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

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

164 **SECTION 3.** (1) The Mississippi Forensics Laboratory, in  
165 consultation with the Sexual Assault Evidence Accountability Task  
166 Force, and the Mississippi Department of Public Safety, shall  
167 conduct a study and issue a report that examines the resources  
168 required to implement a rape kit tracking system in the state that  
169 shall:

170 (a) Be operated and managed by the Mississippi  
171 Department of Public Safety or Mississippi Forensic Laboratory for  
172 the purpose of tracking all rape kits collected for testing or  
173 analysis;



174 (b) Be accessible to sexual assault victims and other  
175 authorized users as determined by the Mississippi Department of  
176 Public Safety; and

177 (c) Function as an online accessible database capable  
178 of receiving, maintaining, storing and preserving tracking  
179 information related to the testing and analysis of all rape kits.

180 (2) The Mississippi Department of Public Safety and  
181 Mississippi Forensic Laboratory shall issue a report of its  
182 findings and recommendations to the Legislature within twelve (12)  
183 months of the effective date of this section. The report shall,  
184 at a minimum, identify the following:

185 (a) The resources and training needed to implement,  
186 manage and maintain a rape kit tracking system;

187 (b) The costs associated with implementing, managing  
188 and maintaining a rape kit tracking system;

189 (c) Potential sources of funding for implementing,  
190 managing and maintaining a rape kit tracking system; and

191 (d) The benefits to victims and to public safety  
192 associated with implementing a rape kit tracking system in  
193 Mississippi and recommendations on implementing, managing and  
194 maintaining an efficient and cost effective rape kit tracking  
195 system.

196 **SECTION 4.** There is created the "Sexual Assault Evidence  
197 Accountability Task Force" for the purpose of developing and  
198 approving standardized policies and procedures concerning the





199 sexual assault evidence collection kit. The committee shall be  
200 comprised of the following nine (9) members:

201 (a) The director of the Mississippi Forensic  
202 Laboratory;

203 (b) One (1) representative from the Mississippi  
204 Department of Public Safety;

205 (c) One (1) district attorney appointed by the  
206 Mississippi Prosecutors' Association;

207 (d) One (1) sexual assault investigator appointed by  
208 the Mississippi Association of Chiefs of Police;

209 (e) One (1) sexual assault investigator appointed by  
210 the Mississippi Sheriffs' Association;

211 (f) One (1) investigator from the Mississippi Attorney  
212 General's Office;

213 (g) One (1) sexual assault nurse examiner practicing in  
214 north Mississippi appointed by the President of the Board of  
215 Directors of the Mississippi Association of Forensic Nurses  
216 (MAFN);

217 (h) One (1) sexual assault nurse examiner practicing in  
218 central Mississippi appointed by the President of the Board of  
219 Directors of the Mississippi Association of Forensic Nurses  
220 (MAFN); and

221 (i) One (1) sexual assault nurse examiner practicing in  
222 south Mississippi appointed by the President of the Board of



223 Directors of the Mississippi Association of Forensic Nurses  
224 (MAFN).

225 **SECTION 5.** Section 99-43-7, Mississippi Code of 1972, is  
226 brought forward as follows:

227 99-43-7. (1) Unless the victim is unavailable or  
228 incapacitated as a result of the crime, within seventy-two (72)  
229 hours after the law enforcement agency becomes responsible for  
230 investigating the crime, the law enforcement agency shall provide  
231 to the victim in a manner and form prescribed by the Attorney  
232 General the following information:

233 (a) The availability of emergency and crisis services.

234 (b) The availability of victims' compensation benefits  
235 and the address and telephone number of the Victim Compensation  
236 Division.

237 (c) The name of the law enforcement officer and  
238 telephone number of the law enforcement agency with the following  
239 statement attached: "If within sixty (60) days you are not  
240 notified of an arrest in your case, you may call the telephone  
241 number of the law enforcement agency for the status of the case."

242 (d) The procedural steps involved in a criminal  
243 prosecution.

244 (e) The rights authorized by the Mississippi  
245 Constitution on rights of victims, including a form to invoke  
246 these rights.



247 (f) The existence of and eligibility requirements for  
248 restitution and compensation pursuant to Section 99-37-1 et seq.  
249 and Section 99-41-1 et seq., Mississippi Code of 1972.

250 (g) A recommended procedure if the victim is subjected  
251 to threats or intimidation.

252 (h) The name and telephone number of the office of the  
253 prosecuting attorney to contact for further information.

254 (2) In the event a victim initiates proceedings against a  
255 person by filing an affidavit, petition or complaint in a court of  
256 competent jurisdiction, the clerk of the court shall provide the  
257 victim with the information set forth in subsection (1); however,  
258 in lieu of the information set forth in subsection (1)(c), the  
259 clerk shall advise the victim of the name and telephone number of  
260 the law enforcement agency to which the complaint will be  
261 referred. This information shall be provided on a form prescribed  
262 by the Attorney General. Failure of the clerk of court to provide  
263 such information shall not subject the clerk to any criminal or  
264 civil liability.

265 **SECTION 6.** Section 99-49-1, Mississippi Code of 1972, is  
266 amended as follows:

267 99-49-1. (1) **Legislative intent.** The Legislature finds  
268 that:

269 (a) The value of properly preserved biological evidence  
270 has been enhanced by the discovery of modern DNA testing methods,  
271 which, coupled with a comprehensive system of DNA databases that



272 store crime scene and offender profiles, allow law enforcement to  
273 improve its crime-solving potential;

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

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

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

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

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

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

293 (a) "Biological evidence" means the contents of a  
294 sexual assault examination kit or any item that contains blood,  
295 semen, hair, saliva, skin tissue, fingernail scrapings, bone,  
296 bodily fluids or other identifiable biological material that was



297 collected as part of the criminal investigation or may reasonably  
298 be used to incriminate or exculpate any person for the offense.  
299 This definition applies whether that material is catalogued  
300 separately, such as on a slide, swab or in a test tube, or is  
301 present on other evidence, including, but not limited to,  
302 clothing, ligatures, bedding or other household material, drinking  
303 cups, cigarettes or other items.

304 (b) "DNA" means deoxyribonucleic acid.

305 (c) "Custody" means persons currently incarcerated;  
306 civilly committed; on parole or probation; or subject to sex  
307 offender registration for the period of the registration or for  
308 the first five (5) years of the registration, whichever is the  
309 shorter period.

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

312 (e) "State" refers to any governmental or public entity  
313 within Mississippi, including all private entities that perform  
314 such functions, and its officials or employees, including, but not  
315 limited to, law enforcement agencies, prosecutors' offices,  
316 courts, public hospitals, forensics laboratories, and any other  
317 entity or individual charged with the collection, storage or  
318 retrieval of biological evidence.

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



321 (i) That is secured in relation to an  
322 investigation or prosecution of a crime for the period of time  
323 that the crime remains unsolved or as otherwise provided by law  
324 for that crime; or

325 (ii) That is secured in relation to an  
326 investigation or prosecution of a crime for the period of time  
327 that the person convicted of that crime remains in custody or as  
328 otherwise provided by law for that crime.

329 (b) This section applies to evidence that:

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

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

334 (c) The state shall not destroy biological evidence  
335 should one or more additional co-defendants, convicted of the same  
336 crime, remain in custody, and shall preserve the evidence for the  
337 period of time in which all co-defendants remain in custody or as  
338 otherwise provided by law for that crime.

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

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



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

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

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

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

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

358 3. The Mississippi Office of Indigent  
359 Appeals;

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

362 5. The Mississippi Attorney General.

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

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



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

372                   (g) If, after providing notice under paragraph (f) (ii)  
373 of this subsection of its intent to destroy evidence, the state  
374 receives a written request for retention of the evidence, the  
375 state shall retain the evidence while the person remains in  
376 custody.

377                   (h) The state shall not be required to preserve  
378 physical evidence that is of such a size, bulk or physical  
379 character as to render retention impracticable. When such  
380 retention is impracticable, the state shall remove and preserve  
381 portions of the material evidence likely to contain biological  
382 evidence related to the offense, in a quantity sufficient to  
383 permit future DNA testing, before returning or disposing of the  
384 physical evidence.

385                   (i) Should the state be called upon to produce  
386 biological evidence that could not be located and whose  
387 preservation was required under the provisions of this statute,  
388 the chief evidence custodian assigned to the entity charged with  
389 the preservation of the evidence shall provide an affidavit in  
390 which the custodian stipulates, under penalty of perjury, an  
391 accurate description of the efforts taken to locate that evidence  
392 and that the evidence could not be located.





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

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

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

406 **SECTION 7.** This act shall take effect and be in force from  
407 and after July 1, 2023.

