

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

To: Judiciary A

HOUSE BILL NO. 485
(As Sent to Governor)

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 CERTAIN DNA INFORMATION INTO THE APPROPRIATE
8 FEDERAL, STATE AND LOCAL DATABASES; TO PROVIDE ADDITIONAL RIGHTS
9 FOR SEXUAL ASSAULT VICTIMS; TO CREATE THE SEXUAL ASSAULT EVIDENCE
10 ACCOUNTABILITY TASK FORCE TO CONDUCT A STUDY AND ISSUE A REPORT
11 THAT EXAMINES THE RESOURCES REQUIRED TO IMPLEMENT A RAPE KIT
12 TRACKING SYSTEM; TO AMEND SECTION 99-49-1, MISSISSIPPI CODE OF
13 1972, TO REVISE THE DEFINITION OF THE TERM "PROFILE"; TO CONFORM;
14 AND FOR RELATED PURPOSES.

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

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

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

21 (b) "Medical facility" means any state, local, tribal,
22 community, free, nonprofit, academic, or private doctor's office,
23 hospital, or medical clinic equipped to perform forensic medical
24 examinations and prepare sexual assault evidence kits.



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

28 (d) "Sexual assault" means rape as defined in Section
29 97-3-71, sexual battery as defined in Section 97-3-95 and sexual
30 penetration as defined in Section 97-3-97.

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

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

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

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



49 (a) Any medical facility that conducts a medical
50 forensic examination and/or prepares a sexual assault evidence
51 collection kit shall immediately, but no longer than four (4)
52 hours after the finalization of examination, contact the
53 appropriate law enforcement agency to collect the kit. Until the
54 kit is retrieved by law enforcement, the medical facility shall
55 store the kit in a refrigerated manner in conformity with the
56 Scientific Working Group for DNA Analysis Method.

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

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

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



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

78 (3) (a) The Mississippi Forensics Laboratory shall test
79 sexual assault evidence collection kits within sixty (60) days of
80 receipt from a law enforcement agency. Forensic DNA testing shall
81 be performed according to laboratory methods that determine the
82 presence of DNA suitable for STR analysis. Any autosomal, CODIS
83 eligible DNA profile shall be entered into the Combined DNA Index
84 System (CODIS) or equivalency thereof and state or local DNA
85 database. If the Mississippi Forensics Laboratory is unable to
86 determine DNA present, other than the victim's DNA, in the sexual
87 assault evidence collection kit, the laboratory should evaluate
88 the case, when suitable, to determine if any other DNA results
89 could be used for investigative purposes.

90 (b) When forensic laboratory testing does result in a
91 DNA profile foreign to the victim, the Mississippi Forensics
92 Laboratory should enter the foreign DNA profile into the Combined
93 DNA Index System (CODIS) or equivalency thereof and any other
94 required state or local DNA databases. The average completion
95 rate for this analysis and classification should not exceed ninety
96 (90) days.

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



99 tested and the information from such kit is entered into CODIS,
100 when applicable, within the time frames required by this
101 subsection.

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

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

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

116 (a) The right to be informed by the law enforcement
117 agency handling the case whether a DNA profile of the assailant
118 was obtained from the testing of the sexual assault evidence kit
119 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 is forty (40) years of age.

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 by July 1, 2024, that examines
168 the resources required to implement a rape kit tracking system in
169 the state that 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.

184 **SECTION 4.** There is created the "Sexual Assault Evidence
185 Accountability Task Force" for the purpose of developing and
186 approving standardized policies and procedures concerning the
187 sexual assault evidence collection kit. The committee shall be
188 comprised of the following twelve (12) members:

189 (a) The director of the Mississippi Forensic Laboratory
190 or their designee;

191 (b) One (1) representative from the Mississippi
192 Department of Public Safety;

193 (c) One (1) district attorney appointed by the
194 Mississippi Prosecutors' Association;

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

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



199 (f) One (1) investigator from the Mississippi Attorney
200 General's Office;

201 (g) One (1) sexual assault nurse examiner practicing in
202 north Mississippi appointed by the President of the Board of
203 Directors of the Mississippi Association of Forensic Nurses
204 (MAFN);

205 (h) One (1) sexual assault nurse examiner practicing in
206 central Mississippi appointed by the President of the Board of
207 Directors of the Mississippi Association of Forensic Nurses
208 (MAFN);

209 (i) One (1) sexual assault nurse examiner practicing in
210 south Mississippi appointed by the President of the Board of
211 Directors of the Mississippi Association of Forensic Nurses
212 (MAFN);

213 (j) One (1) physician who regularly performs forensic
214 medical exams appointed by the Mississippi State Medical
215 Association;

216 (k) One (1) physician who regularly performs forensic
217 medical exams appointed by the Mississippi Academy of Family
218 Physicians; and

219 (l) One (1) member appointed by the Mississippi
220 Hospital Association who regularly performs forensic medical
221 exams.

222 **SECTION 5.** Section 99-49-1, Mississippi Code of 1972, is
223 amended as follows:



224 99-49-1. (1) **Legislative intent.** The Legislature finds
225 that:

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

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

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

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

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

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



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

250 (a) "Biological evidence" means the contents of a
251 sexual assault examination kit or any item that contains blood,
252 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
253 bodily fluids or other identifiable biological material that was
254 collected as part of the criminal investigation or may reasonably
255 be used to incriminate or exculpate any person for the offense.
256 This definition applies whether that material is catalogued
257 separately, such as on a slide, swab or in a test tube, or is
258 present on other evidence, including, but not limited to,
259 clothing, ligatures, bedding or other household material, drinking
260 cups, cigarettes or other items.

261 (b) "DNA" means deoxyribonucleic acid.

262 (c) "Custody" means persons currently incarcerated;
263 civilly committed; on parole or probation; or subject to sex
264 offender registration for the period of the registration or for
265 the first five (5) years of the registration, whichever is the
266 shorter period.

267 (d) "Profile" means * * * an autosomal, Y chromosome,
268 or mitochondrial DNA profile generated from an individual.

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



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

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

278 (i) That is secured in relation to an
279 investigation or prosecution of a crime for the period of time
280 that the crime remains unsolved or as otherwise provided by law
281 for that crime; or

282 (ii) That is secured in relation to an
283 investigation or prosecution of a crime for the period of time
284 that the person convicted of that crime remains in custody or as
285 otherwise provided by law for that crime.

286 (b) This section applies to evidence that:

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

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

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

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



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

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

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

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

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

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

315 3. The Mississippi Office of Indigent
316 Appeals;

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

319 5. The Mississippi Attorney General.

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



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

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

329 (g) If, after providing notice under paragraph (f)(ii)
330 of this subsection of its intent to destroy evidence, the state
331 receives a written request for retention of the evidence, the
332 state shall retain the evidence while the person remains in
333 custody.

334 (h) The state shall not be required to preserve
335 physical evidence that is of such a size, bulk or physical
336 character as to render retention impracticable. When such
337 retention is impracticable, the state shall remove and preserve
338 portions of the material evidence likely to contain biological
339 evidence related to the offense, in a quantity sufficient to
340 permit future DNA testing, before returning or disposing of the
341 physical evidence.

342 (i) Should the state be called upon to produce
343 biological evidence that could not be located and whose
344 preservation was required under the provisions of this statute,
345 the chief evidence custodian assigned to the entity charged with
346 the preservation of the evidence shall provide an affidavit in
347 which the custodian stipulates, under penalty of perjury, an



348 accurate description of the efforts taken to locate that evidence
349 and that the evidence could not be located.

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

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

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

363 **SECTION 6.** Section 4 of this act shall take effect and be in
364 force from and after July 1, 2023. Sections 1, 2, 3 and 5 shall
365 take effect and be in force from and after December 1, 2023.

