

Senate Amendments to House Bill No. 485

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

18 SECTION 1. (1) The following words shall have the meanings
19 described in this act:

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

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

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

30 (d) "Sexual assault" means any nonconsensual forcible
31 sexual intercourse and any sexual crime against the person found
32 in Title 97, Chapter 3.

33 (e) "Sexual assault evidence collection kit" means a
34 sexual assault or rape kit developed by the Mississippi chapter of

35 the International Association of Forensic Nurses (IAFN) and
36 approved by the Sexual Assault Evidence Accountability Task Force.

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

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

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

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

59 (b) When a law enforcement agency is contacted to
60 collect a sexual assault evidence kit, the law enforcement agency

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

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

73 (d) A law enforcement agency that receives a sexual
74 assault collection kit from a healthcare provider that relates to
75 a report of a sexual assault that occurred outside the
76 jurisdiction of that law enforcement agency shall have the sexual
77 assault collection kit delivered to the law enforcement agency
78 having jurisdiction within ten (10) days of learning that the
79 other law enforcement agency has jurisdiction.

80 (3) (a) The Mississippi Forensics Laboratory shall test
81 sexual assault evidence collection kits within sixty (60) days of
82 receipt from a law enforcement agency. Forensic DNA testing shall
83 be performed according to laboratory methods that determine the
84 presence of DNA suitable for STR analysis. Any autosomal, CODIS
85 eligible DNA profile shall be entered into the Combined DNA Index
86 System (CODIS) or equivalency thereof and state or local DNA

87 database. If the Mississippi Forensics Laboratory is unable to
88 determine DNA present, other than the victim's DNA, in the sexual
89 assault evidence collection kit, the laboratory should evaluate
90 the case, when suitable, to determine if any other DNA results
91 could be used for investigative purposes.

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

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

111 (2) The law enforcement agency shall respond to the victim's
112 request as soon as possible, but no longer than seven (7) calendar

113 days, with either an oral or written communication, or by email,
114 if an email address is available.

115 (3) In addition to the rights provided in the "Mississippi
116 Crime Victims' Bill of Rights," in Sections 99-43-1 through
117 99-43-101, a victim of sexual assault shall have:

118 (a) The right to be informed by the law enforcement
119 agency handling the case whether a DNA profile of the assailant
120 was obtained from the testing of the sexual assault evidence kit
121 or other crime scene evidence from their case.

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

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

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

139 (5) A law enforcement agency shall not destroy or dispose of
140 the sexual assault evidence kit or any other crime scene evidence
141 from an unsolved sexual assault case before twenty (20) years
142 after the collection of the evidence of the crime or, if the
143 victim was under eighteen (18) years of age at the time of the
144 alleged offense, before the victim is forty (40) years of age.

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

149 (7) For the purpose of receiving notice under this section,
150 the victim or the victim's designee may keep appropriate
151 authorities informed of the name, address, telephone number, and
152 email address of the person to whom the information should be
153 provided, and any changes of the name, address, telephone number,
154 and email address, if an email address is available.

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

161 (9) The sole civil or criminal remedy available to a sexual
162 assault victim for a law enforcement agency's failure to fulfill
163 its responsibilities under this section shall be standing to file

164 a writ of mandamus to require compliance with subdivision with the
165 requirements of this act.

166 **SECTION 3.** (1) The Mississippi Forensics Laboratory, in
167 consultation with the Sexual Assault Evidence Accountability Task
168 Force, and the Mississippi Department of Public Safety, shall
169 conduct a study and issue a report by July 1, 2024, that examines
170 the resources required to implement a rape kit tracking system in
171 the state that shall:

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

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

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

182 (2) The study authorized under subsection (1) of this
183 section shall also examine the resources required to implement a
184 procedure for every person arrested for any felony to provide a
185 biological sample for DNA testing.

186 (3) The Mississippi Department of Public Safety and
187 Mississippi Forensic Laboratory shall issue a report of its
188 findings and recommendations to the Legislature within twelve (12)

189 months of the effective date of this section. The report shall,
190 at a minimum, identify the following:

191 (a) The resources and training needed to implement,
192 manage and maintain a rape kit tracking system and felony DNA
193 testing procedure;

194 (b) The costs associated with implementing, managing
195 and maintaining a rape kit tracking system and felony DNA testing
196 procedure;

197 (c) Potential sources of funding for implementing,
198 managing and maintaining a rape kit tracking system and felony DNA
199 testing procedure; and

200 (d) The benefits to victims and to public safety
201 associated with implementing a rape kit tracking system in
202 Mississippi and recommendations on implementing, managing and
203 maintaining an efficient and cost-effective rape kit tracking
204 system and felony DNA testing procedure.

205 **SECTION 4.** There is created the "Sexual Assault Evidence
206 Accountability Task Force" for the purpose of developing and
207 approving standardized policies and procedures concerning the
208 sexual assault evidence collection kit and examining the
209 implementation of a felony DNA testing procedure. The committee
210 shall be comprised of the following nine (9) members:

211 (a) The director of the Mississippi Forensic Laboratory
212 or their designee;

213 (b) One (1) representative from the Mississippi
214 Department of Public Safety;

- 215 (c) One (1) district attorney appointed by the
216 Mississippi Prosecutors' Association;
- 217 (d) One (1) sexual assault investigator appointed by
218 the Mississippi Association of Chiefs of Police;
- 219 (e) One (1) sexual assault investigator appointed by
220 the Mississippi Sheriffs' Association;
- 221 (f) One (1) investigator from the Mississippi Attorney
222 General's Office;
- 223 (g) One (1) sexual assault nurse examiner practicing in
224 north Mississippi appointed by the President of the Board of
225 Directors of the Mississippi Association of Forensic Nurses
226 (MAFN);
- 227 (h) One (1) sexual assault nurse examiner practicing in
228 central Mississippi appointed by the President of the Board of
229 Directors of the Mississippi Association of Forensic Nurses
230 (MAFN);
- 231 (i) One (1) sexual assault nurse examiner practicing in
232 south Mississippi appointed by the President of the Board of
233 Directors of the Mississippi Association of Forensic Nurses
234 (MAFN);
- 235 (j) One (1) physician who regularly performs forensic
236 medical exams appointed by the Mississippi State Medical
237 Association;
- 238 (k) One (1) physician who regularly performs forensic
239 medical exams appointed by the Mississippi Academy of Family
240 Physicians; and

241 (1) One (1) member appointed by the Mississippi
242 Hospital Association.

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

245 99-49-1. (1) **Legislative intent.** The Legislature finds
246 that:

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

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

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

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

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

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

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

271 (a) "Biological evidence" means the contents of a
272 sexual assault examination kit or any item that contains blood,
273 semen, hair, saliva, skin tissue, fingernail scrapings, bone,
274 bodily fluids or other identifiable biological material that was
275 collected as part of the criminal investigation or may reasonably
276 be used to incriminate or exculpate any person for the offense.
277 This definition applies whether that material is catalogued
278 separately, such as on a slide, swab or in a test tube, or is
279 present on other evidence, including, but not limited to,
280 clothing, ligatures, bedding or other household material, drinking
281 cups, cigarettes or other items.

282 (b) "DNA" means deoxyribonucleic acid.

283 (c) "Custody" means persons currently incarcerated;
284 civilly committed; on parole or probation; or subject to sex
285 offender registration for the period of the registration or for
286 the first five (5) years of the registration, whichever is the
287 shorter period.

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

290 (e) "State" refers to any governmental or public entity
291 within Mississippi, including all private entities that perform
292 such functions, and its officials or employees, including, but not

293 limited to, law enforcement agencies, prosecutors' offices,
294 courts, public hospitals, forensics laboratories, and any other
295 entity or individual charged with the collection, storage or
296 retrieval of biological evidence.

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

299 (i) That is secured in relation to an
300 investigation or prosecution of a crime for the period of time
301 that the crime remains unsolved or as otherwise provided by law
302 for that crime; or

303 (ii) That is secured in relation to an
304 investigation or prosecution of a crime for the period of time
305 that the person convicted of that crime remains in custody or as
306 otherwise provided by law for that crime.

307 (b) This section applies to evidence that:

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

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

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

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

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

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

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

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

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

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

336 3. The Mississippi Office of Indigent
337 Appeals;

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

340 5. The Mississippi Attorney General.

341 (iii) No person who is notified under subparagraph
342 (ii) of this paragraph (f) does either of the following within

343 sixty (60) days after the date on which the person received the
344 notice:

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

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

350 (g) If, after providing notice under paragraph (f)(ii)
351 of this subsection of its intent to destroy evidence, the state
352 receives a written request for retention of the evidence, the
353 state shall retain the evidence while the person remains in
354 custody.

355 (h) The state shall not be required to preserve
356 physical evidence that is of such a size, bulk or physical
357 character as to render retention impracticable. When such
358 retention is impracticable, the state shall remove and preserve
359 portions of the material evidence likely to contain biological
360 evidence related to the offense, in a quantity sufficient to
361 permit future DNA testing, before returning or disposing of the
362 physical evidence.

363 (i) Should the state be called upon to produce
364 biological evidence that could not be located and whose
365 preservation was required under the provisions of this statute,
366 the chief evidence custodian assigned to the entity charged with
367 the preservation of the evidence shall provide an affidavit in
368 which the custodian stipulates, under penalty of perjury, an

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

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

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

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

384 **SECTION 6.** This act shall take effect and be in force from
385 and after July 1, 2023.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 REQUIRE THE MISSISSIPPI FORENSICS
10 LABORATORY, THE MISSISSIPPI ASSOCIATION OF FORENSIC NURSES AND THE
11 MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY TO CONDUCT A STUDY AND
12 ISSUE A REPORT THAT EXAMINES THE RESOURCES REQUIRED TO IMPLEMENT A

13 RAPE KIT TRACKING SYSTEM; TO CREATE THE SEXUAL ASSAULT EVIDENCE
14 ACCOUNTABILITY TASK FORCE; TO AMEND SECTION 99-49-1, MISSISSIPPI
15 CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "PROFILE"; TO
16 CONFORM; AND FOR RELATED PURPOSES.

SS26\HB485PS.J

Eugene S. Clarke
Secretary of the Senate