

By: Senator(s) Stogner, Gollott, Chaney, King, Robertson, Moffatt, Harvey, Carmichael, Hewes, Mettetal, Scoper, Kirby, Hyde-Smith, Browning, Lee, Cuevas, White, Minor

To: Judiciary

SENATE BILL NO. 2455

1 AN ACT TO CREATE THE MISSISSIPPI DNA DATA BANK; TO ENACT
2 DEFINITIONS; TO REQUIRE CERTAIN PERSONS CONVICTED OR ACCUSED OF A
3 FELONY TO SUBMIT TO BIOLOGICAL SAMPLING IN ORDER TO DETERMINE
4 IDENTIFICATION CHARACTERISTICS SPECIFIC TO THE PERSON; TO PROVIDE
5 THAT THE CRIME LAB SHALL COMPILE AND MAINTAIN THIS INFORMATION IN
6 THE FORM OF A DNA DATA BANK; TO PROVIDE FOR THE CONFIDENTIALITY OF
7 THE SAMPLES AND RECORDS SO MAINTAINED; TO PROVIDE FOR THE RELEASE
8 AND DISSEMINATION OF THE INFORMATION; TO PROVIDE FOR EXPUNCTION OF
9 THE RECORDS UNDER CERTAIN CIRCUMSTANCES; TO AUTHORIZE ASSESSMENT
10 OF A \$25.00 FEE UNDER CERTAIN CIRCUMSTANCES; TO ENACT STANDARDS
11 FOR THE TAKING OF BIOLOGICAL SAMPLES; TO CREATE SECTION 13-1-157,
12 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ADMISSIBILITY OF DNA
13 PROFILE COMPARISON INFORMATION AS EVIDENCE; AND FOR RELATED
14 PURPOSES.

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

16 **SECTION 1.** This act may be cited as the Mississippi DNA Data
17 Bank Act or the DNA Data Bank Act.

18 **SECTION 2.** For the purposes of this act:

19 (a) "DNA" means deoxyribonucleic acid;

20 (b) "Biological sample" means a sample of a person's
21 blood, saliva or tissue.

22 **SECTION 3.** (1) (a) Every person convicted of a felony on
23 or after July 1, 2003, and every person convicted of a felony who
24 is under sentence of incarceration on July 1, 2003, shall have a
25 biological sample taken for DNA analysis to determine
26 identification characteristics specific to the person. The
27 biological sample shall be taken at any time prior to release from
28 custody.

29 (b) A juvenile adjudicated delinquent on or after July
30 1, 2003, on the basis of an act which would constitute a felony if
31 committed by an adult, shall have a biological sample taken for
32 DNA analysis.



33 (c) Any person convicted of a felony who is in custody
34 on or after July 1, 2003, shall provide a biological sample prior
35 to release from custody.

36 (d) Every person convicted of a felony on or after July
37 1, 2003, who is not sentenced to a term of confinement shall
38 provide a biological sample as a condition of the sentence
39 imposed.

40 (e) (i) Every person arrested for a violent felony
41 shall have a biological sample taken for DNA analysis to determine
42 identification characteristics specific to the person. After a
43 determination by a magistrate that probable cause exists for the
44 arrest, a sample shall be taken prior to the person's release from
45 custody.

46 (ii) The clerk of the court shall notify the Crime
47 Lab of final disposition of the criminal proceedings. If the
48 charge for which the sample was taken is dismissed or the
49 defendant is acquitted at trial, the Crime Lab shall destroy the
50 sample and all records thereof.

51 (2) If it is known that a sample has been previously taken
52 from a person under the provisions of this act, no additional
53 sample shall be taken.

54 (3) A fee of Twenty-five Dollars (\$25.00) shall be charged
55 for the taking of a required sample if the fee can be taxed as
56 part of the costs of the criminal case resulting in the felony
57 conviction; one-half (1/2) of the fee shall be paid into the
58 general fund of the locality where the sample was taken and
59 one-half (1/2) of the fee shall be paid into the General Fund of
60 the State Treasury. The assessment shall be in addition to any
61 other fees prescribed by law. The analysis shall be performed by
62 the Mississippi Crime Lab or other entity designated by the Crime
63 Lab.



64 (4) The identification characteristics of the profile
65 resulting from the DNA analysis shall be stored and maintained by
66 the Crime Lab in a DNA data bank.

67 (5) (a) Required biological samples shall be obtained at
68 the receiving unit or at such other place as is designated by the
69 Department of Corrections or, in the case of a juvenile, the
70 Department of Human Services. The required samples from persons
71 who are not sentenced to a term of confinement shall be obtained
72 at a time and place specified by the sentencing court. Only a
73 correctional health nurse technician or a physician, registered
74 professional nurse, licensed practical nurse, graduate laboratory
75 technician or phlebotomist shall take any sample of blood or
76 tissue to be submitted for analysis. No civil liability shall
77 attach to any person authorized to take a biological sample as
78 provided herein as a result of the act of taking a sample from any
79 person submitting thereto, provided the sample was taken according
80 to recognized medical procedures. However, no person shall be
81 relieved from liability for negligence in the taking of any
82 sample.

83 (b) Chemically clean sterile disposable needles and
84 vacuum draw tubes or swabs shall be used for taking all samples.
85 The tube containing the sample shall be sealed and labeled with
86 the subject's name, social security number, date of birth, race
87 and gender; the name of the person collecting the sample; and the
88 date and place of collection. The tubes containing the samples
89 shall be secured to prevent tampering with the contents.

90 (c) The steps set forth in this section relating to the
91 taking, handling, identification and disposition of biological
92 samples are procedural and not substantive. Substantial
93 compliance with this section shall be deemed to be sufficient. A
94 sample shall be remitted to the custody of the Mississippi Crime
95 Lab not more than fifteen (15) days following taking of a sample



96 and shall be analyzed and stored in the DNA data bank in
97 accordance with this act.

98 (6) (a) The Crime Lab shall conduct all DNA analysis in
99 accordance with procedures adopted by the director to determine
100 identification characteristics specific to the individual whose
101 sample is being analyzed. The Crime Lab shall complete and
102 maintain on file a form indicating the name of the person whose
103 sample is to be analyzed, the date and by whom the biological
104 sample was received and examined, and a statement as to whether
105 the seal on the tube containing the sample had or had not been
106 broken or otherwise tampered with.

107 (b) The remainder of a biological sample submitted for
108 analysis and inclusion in the data bank may be divided, labeled as
109 provided for the original sample and securely stored by the Crime
110 Lab in accordance with specific procedures adopted by regulation
111 of the Crime Lab to ensure the integrity and confidentiality of
112 the samples. All or part of the remainder of that sample may be
113 used only:

114 (i) To create a statistical database provided no
115 identifying information on the individual whose sample is being
116 analyzed is included, or

117 (ii) For retesting by the Crime Lab to validate or
118 update a previous analysis.

119 (7) A report of the results of a DNA analysis conducted by
120 the Crime Lab as authorized, including the profile and identifying
121 information, shall be made and maintained at the Crime Lab. A
122 certificate and the results of the analysis shall be admissible in
123 any court as evidence of the facts therein stated. Except as
124 specifically provided in this act, the results of the analysis
125 shall be securely stored and shall remain confidential.

126 **SECTION 4.** (1) The Crime Lab shall receive biological
127 samples and analyze, classify and file the results of DNA
128 identification characteristics profiles of biological samples



129 submitted pursuant to this act. The information maintained shall
130 constitute the DNA data bank.

131 (2) The Crime Lab shall make such information available only
132 as provided in this section.

133 (3) (a) The results of an analysis and comparison of the
134 identification characteristics from two (2) or more biological
135 samples shall be made available directly to federal, state and
136 local law enforcement officers upon request made in furtherance of
137 an official investigation of any criminal offense. The Crime Lab
138 shall confirm whether there is a DNA profile on file for a
139 specific individual if a federal, state or local law enforcement
140 officer requests that information in furtherance of an official
141 investigation of any criminal offense.

142 (b) A request may be made by personal contact, mail or
143 electronic means. The name of the requestor and the purpose for
144 which the information is requested shall be maintained on file
145 with the Crime Lab.

146 (c) A copy of the request for search shall be furnished
147 to any person identified and charged with an offense as the result
148 of a search of information in the data bank upon request of that
149 person.

150 (4) (a) The Crime Lab shall adopt regulations governing:

151 (i) The methods of obtaining information from the
152 data bank in accordance with this section;

153 (ii) Procedures for verification of the identity
154 and authority of the requestor; and

155 (iii) Procedures and required format for
156 requesting and supporting court-ordered documentation for
157 expunction of records.

158 (b) The Crime Lab shall specify the positions which are
159 authorized to have access to the data bank and samples submitted
160 as a necessary function of the job.



161 (5) The Crime Lab shall create a separate statistical
162 database comprised of DNA profiles of biological samples of
163 persons whose identity is unknown. Nothing in this act shall
164 prohibit the Crime Lab from sharing or otherwise disseminating the
165 information in the statistical database with law enforcement or
166 criminal justice agencies within or without the state.

167 (6) The Crime Lab may charge a reasonable fee to search and
168 provide a comparative analysis of DNA profiles in the data bank to
169 any authorized law enforcement agency outside of the state.

170 **SECTION 5.** (1) (a) Any person who, without authority,
171 disseminates information contained in the DNA data bank shall be
172 guilty of a misdemeanor.

173 (b) Any person who disseminates, receives or otherwise
174 uses or attempts to use information in the data bank, knowing that
175 such dissemination, receipt or use is for a purpose other than as
176 authorized by law, shall be guilty of a misdemeanor.

177 (c) Except as authorized by law, any person who, for
178 purposes of having DNA analysis performed, obtains or attempts to
179 obtain any biological sample for submission for DNA analysis under
180 this act shall be guilty of a misdemeanor.

181 (2) Any person found guilty of a misdemeanor under this
182 section shall be punished by a fine not to exceed Five Thousand
183 Dollars (\$5,000.00), imprisonment not to exceed one (1) year, or
184 both such fine and imprisonment.

185 **SECTION 6.** A person whose DNA profile has been included in
186 the DNA data bank pursuant to this chapter may request expunction
187 in a case where the felony conviction on which the authority for
188 including the person's DNA profile was based has been reversed and
189 the case dismissed. The Crime Lab shall purge all records and
190 identifiable information in the data bank pertaining to the person
191 and destroy all samples from the person upon receipt of a written
192 request for expunction pursuant to this section and a certified
193 copy of the court order reversing and dismissing the conviction if



194 the written request and supporting court order substantially
195 comply with the regulations promulgated by the Crime Lab.

196 **SECTION 7.** The following shall be codified as Section
197 13-1-157, Mississippi Code of 1972:

198 13-1-157. In any criminal proceeding, DNA (deoxyribonucleic
199 acid) testing shall be deemed to be a reliable scientific
200 technique and the evidence of a DNA profile comparison may be
201 admitted to prove or disprove the identity of any person. This
202 section shall not otherwise limit the introduction of any relevant
203 evidence bearing upon any question at issue before the court,
204 including the accuracy and reliability of the procedures employed
205 in the collection and analysis of a particular biological sample.
206 The court shall, regardless of the results of the DNA analysis, if
207 any, consider such other relevant evidence of the identity of the
208 accused as shall be admissible in evidence.

209 At least twenty-one (21) days prior to commencement of the
210 proceeding in which the results of a DNA analysis will be offered
211 as evidence, the party intending to offer the evidence shall
212 notify the opposing party, in writing, of the intent to offer the
213 analysis and shall provide or make available copies of the
214 profiles and the report or statement to be introduced. In the
215 event that such notice is not given, and the person proffers such
216 evidence, then the court, in its discretion, may either allow the
217 opposing party a continuance or, under appropriate circumstances
218 and if the evidence is not exculpatory to the defendant, bar the
219 person from presenting such evidence. The period of any such
220 continuance shall not be counted for speedy trial purposes. If
221 the opposing party intends to object to the admissibility of such
222 evidence he shall give written notice of that fact and the basis
223 for his objections at least ten (10) days prior to commencement of
224 the proceedings.



225 **SECTION 8.** Sections 1 through 6 of this act shall be
226 codified as a separate section or article within the Mississippi
227 Code of 1972.

228 **SECTION 9.** This act shall take effect and be in force from
229 and after July 1, 2003.

