

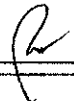
FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

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SENATE
S.B. No. **2592**

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

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

The Innocence Project, established in 1992 at the Benjamin N. Cardozo School of Law of the Yeshiva University in New York City and dedicated to exonerating the innocent through post-conviction DNA testing, has helped in the exoneration of more than 215 people in the United States. The Innocence Project's groundbreaking use of DNA technology to free innocent people has provided irrefutable proof that wrongful convictions are not isolated or rare events but instead arise from systemic defects.

The Philippines can only benefit from these learnings and use it to enhance local investigative and law enforcement procedures.

Tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloguing, and organization of such evidence. Simple but crucial enhancements to protocols for properly preserving biological evidence can solve old crimes, enhance public safety, and settle claims of innocence.

Innocent people mistakenly convicted of the serious crimes for which biological evidence is probative cannot prove their innocence if such evidence is not accessible for testing in appropriate circumstances.

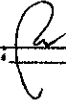
Aside from the wrongfully convicted and their families, crime victims, law enforcement, prosecutors, courts and the public are harmed whenever individuals guilty of crimes elude justice while innocent individuals are imprisoned for crimes they did not commit.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
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1 AN ACT
2 TO IMPROVE THE PRESERVATION AND ACCESSIBILITY
3 OF BIOLOGICAL EVIDENCE
4

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

5 SECTION 1. *Short Title.* – This Act shall be known as the “Evidence Preservation Act.”

6 SECTION 2. *Declaration of Policy.* – It is the policy of the State to convict the guilty and
7 protect the innocent. Towards this end, enhancements to protocols for properly preserving
8 biological evidence can solve old crimes, enhance public safety, and settle claims of innocence.

9 SECTION 3. *Definitions.* – For purposes of this Act, the term:

10 (a) “Biological evidence” means the contents of a sexual assault examination kit; and
11 any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily
12 fluids, or other identifiable biological material that was collected as part of the criminal
13 investigation or may reasonably be used to incriminate or exculpate any person for the offense.
14 This definition applies whether the material is catalogued separately (e.g., on a slide, a swab, or
15 in a test tube) or is present on other evidence (including, but not limited to, clothing, ligatures,
16 bedding or other household material, drinking cups, cigarettes, etc.);

17 (b) “DNA” means deoxyribonucleic acid;

18 (c) “Custody” means persons currently incarcerated, civilly committed, on parole,
19 probation, or subject to sex offender registration;

20 (d) “Profile” means a unique identifier of an individual, derived from DNA;

1 (e) "State" refers to any governmental or public entity within (including all private
2 entities that perform such functions) and its officials or employees, including but not limited to
3 law enforcement agencies, prosecutors' offices, courts, public hospitals, crime laboratories, and
4 any other entity or individual charged with the collection, storage, and/or retrieval of biological
5 evidence; and

6 (f) "Secretary" means the Secretary of Justice.

7 SECTION 4. *Preservation of Evidence Procedures.* –

8 (a) The State shall preserve all biological evidence:

9 (1) That is secured in relation to an investigation or prosecution of a crime for
10 the period of time that the crime remains unsolved; or

11 (2) That is secured in relation to an investigation or prosecution of a crime for
12 the period of time that the person convicted of that crime remains in
13 custody; and

14 (3) That is in the custody of a law enforcement agency of the State on the
15 effective date of this Act.

16 (b) This Act applies to evidence that:

17 (1) Was in the possession of the State during the investigation and prosecution
18 of the case; and

19 (2) At the time of conviction was likely to contain biological material.

20 (c) The State shall not destroy biological evidence should additional co-defendant(s),
21 convicted of the same crime, remain in custody and shall preserve said evidence for the period of
22 time in which all co-defendants remain in custody.

23 (d) The State shall retain evidence in the amount and manner sufficient to develop a
24 DNA profile from the biological material contained in or included on the evidence.

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

1 (f) The State may destroy evidence that includes biological material before the
2 expiration of the time period specified in subsection (a) of this section if all of the following
3 apply:

4 (1) No other provision of law requires the State to preserve the evidence.

5 (2) The State sends certified delivery of notice of intent to destroy the
6 evidence to:

7 (i) All persons who remain in custody as a result of the criminal
8 conviction, delinquency adjudication, or commitment related to
9 evidence in question;

10 (ii) The attorney of record for each person in custody; and

11 (iii) The Department Of Justice.

12 (3) No person who is notified under the preceding subsection does either of
13 the following within one hundred eighty (180) days after the date on
14 which the person received the notice:

15 (i) Files a motion for testing of evidence; or

16 (ii) Submits a written request for retention of evidence to the State
17 entity which provided notice of its intent to destroy evidence under
18 the preceding subsection.

19 (g) If, after providing notice under Section (4)(f)(2) of this Act of its intent to destroy
20 evidence, the State receives a written request for retention of the evidence, the State shall retain
21 the evidence while the person remains in custody.

22 (h) The State shall not be required to preserve physical evidence that is of such a size,
23 bulk, or physical character as to render retention impracticable. When such retention is
24 impracticable, the State shall remove and preserve portions of the material evidence likely to
25 contain biological evidence related to the offense, in a quantity sufficient to permit future DNA
26 testing before returning or disposing of said physical evidence.

27 (i) Should the State be called upon to produce biological evidence that could not be
28 located and whose preservation was required under the provisions of this statute, the chief
29 evidence custodian assigned to the entity charged with the preservation of said evidence shall

1 provide an affidavit in which he or she stipulates, under penalty of perjury, that describes the
2 efforts taken to locate that evidence and that the evidence could not be located.

3 SECTION 5. *Remedies For Noncompliance.* – If the court finds that biological evidence
4 was destroyed in violation of the provisions of this Act, it shall impose appropriate sanctions and
5 order appropriate remedies.

6 SECTION 6. *Creation of a Task Force to Recommend Procedures and Practices to*
7 *Improve the Preservation of Biological Evidence.* – A Task Force for the Preservation of
8 Biological Evidence shall be convened and headed by the Secretary of Justice, and shall be
9 composed of ten (10) members:

- 10 (a) A member of the Philippine Judicial Academy;
- 11 (b) A dean of a Philippine law school;
- 12 (c) A representative of the Philippine National Police;
- 13 (d) A representative of the Office of the National Prosecution Service;
- 14 (e) A representative of the Public Attorney's Office;
- 15 (f) A member of the Committee on Justice and Human Rights of the Senate;
- 16 (g) A member of the Committee on Justice of the House of Representatives;
- 17 (h) A representative of the National Bureau of Investigation;
- 18 (i) An expert in forensic science; and
- 19 (j) A representative of a victims rights organization.

20 SECTION 7. *Duties of the Task Force.* – The Task Force for the Preservation of
21 Biological Evidence shall:

- 22 (a) Establish standards regarding proper identification, collection, preservation,
23 storage, cataloguing and organization of biological evidence;
- 24 (b) Recommend essential components of training programs for law enforcement
25 officers and other relevant employees that are charged with preserving and retrieving biological
26 evidence regarding the methods and procedures referenced in this Act; and

1 (c) Issue recommendations regarding the creation of a centralized tracking system
2 through which laboratories, facilities and other related entities may locate biological evidence
3 connected to felony cases, which include:

4 (1) Protocol for the retrieval of biological evidence for cases that have already
5 resulted in felony convictions;

6 (2) Protocol for the retrieval of biological evidence for unsolved felony cases;
7 and

8 (3) Practices, protocols, models, and resources for the cataloguing and
9 accessibility of preserved biological evidence already in the possession of
10 State entities that preserve such evidence.

11 (d) Formulate and issue the implementing rules and regulations of this Act.

12 SECTION 8. *Standards and Training of Evidence Custodians.* – In consultation with the
13 Task Force, the Department of Justice shall administer and conduct training programs for law
14 enforcement officers and other relevant employees charged with preserving and cataloguing
15 biological evidence regarding the methods and procedures referenced in this Act.

16 SECTION 9. *Appropriation.* — To carry out the provisions of this Act, such amount as
17 may be necessary is hereby authorized to be appropriated from the National Treasury.
18 Thereafter, such amount necessary to carry out the provisions of this Act shall be included in the
19 annual appropriation of the Department of Justice.

20 SECTION 10. *Separability Clause.* – If any provision or part hereof is held invalid or
21 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
22 valid and subsisting.

23 SECTION 11. *Repealing Clause.* – Any law, presidential decree or issuance, executive
24 order, letter of instruction, administrative order, rule, or regulation contrary to or is inconsistent
25 with the provision of this Act is hereby repealed, modified, or amended accordingly.

1 SECTION 12. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

Approved,

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