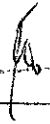


9 AUG 10 2006

SENATE
S.B. No. **3373**

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.

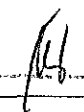
The Innocence Project, established in 1992 at the Benjamin N. Cardozo School of Law of the Yeshiva University in New York City and dedicated to exonerating the innocent through post-conviction DNA testing has helped in the exoneration of more than 215 people in the United States. The Innocence Project's 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.

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.


MIRIAM DEFENSOR SANTIAGO

SENATE
S. B. No. **3373**

RECEIVED BY 

Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 TO IMPROVE THE PRESERVATION AND ACCESSIBILITY
3 OF BIOLOGICAL EVIDENCE

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

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

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

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

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

16 B. “DNA” means deoxyribonucleic acid;

17 C. “Custody” means persons currently incarcerated; civilly committed; on parole or
18 probation; or subject to sex offender registration;

1 D. "Profile" means a unique identifier of an individual, derived from DNA; and

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

7 F. "Secretary" Secretary means the Secretary of the Department of Justice

8 SECTION 4. *Preservation of Evidence Procedures.*—

9 A. The State shall preserve all biological evidence:

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

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

14 3. That is in the custody of a law enforcement agency of the State on the effective
15 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 of
18 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 (an) additional co-
21 defendant(s), convicted of the same crime, remain in custody and shall preserve said
22 evidence for the period of 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 his 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
3 following 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 evidence to:

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

9 b. The attorney of record for each person in custody;

10 c. The Department Of Justice

11 3. No person who is notified under Section 4(F)(2) of this Act does either of the
12 following within 180 days after the date on which the person received the notice:

13 a. Files a motion for testing of evidence; or

14 b. Submits a written request for retention of evidence to the State entity
15 which provided notice of its intent to destroy evidence under Section
16 4(F)(2) of this Act.

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

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

25 I. Should the State be called upon to produce biological evidence that could not be
26 located and whose preservation was required under the provisions of this statute, the chief
27 evidence custodian assigned to the entity charged with the preservation of said evidence
28 shall provide an affidavit in which he stipulates, under penalty of perjury, that describes
29 the efforts taken to locate that evidence and that the evidence could not be located.

1 SECTION 5. *Remedies for noncompliance.*—

2 If the court finds that biological evidence was destroyed in violation of the provisions of
3 this statute, it shall impose appropriate sanctions and order appropriate remedies.

4 SECTION 6. *Creation of a Task to Recommend Procedures and Practices to Improve the*
5 *Preservation of Biological Evidence.*—

6 A task force is convened by the Secretary of the Department of Justice and is composed
7 of eleven (11) members:

- 8 A. The Secretary of the DOJ;
- 9 B. A member of Philippine Judicial Academy
- 10 C. A dean of a law school;
- 11 D. A representative of the Philippine National Police;
- 12 E. A representative of Office of the Prosecutor
- 13 F. A representative of the Public Attorney's Office;
- 14 G. A member of the Committee on Justice and Human Rights of the Senate;
- 15 H. A member of the Committee on Justice of the House of Representatives;
- 16 I. A member of the National Bureau of Investigation;
- 17 J. An expert in forensic science;
- 18 K. A representative of a victims rights organization.

19 SECTION 7. *Duties of the Task Force.*—

20 The Task Force for the Preservation of Biological Evidence shall:

- 21 A. Establish standards regarding proper identification, collection, preservation, storage,
22 cataloguing and organization of biological evidence.
- 23 B. Recommend essential components of training programs for law enforcement officers
24 and other relevant employees that are charged with preserving and retrieving biological
25 evidence regarding the methods and procedures referenced in this Act.
- 26 C. Issue recommendations regarding the creation of a centralized tracking system through
27 which laboratories, facilities and other related entities may locate biological evidence
28 connected to felony cases, which include:
 - 29 1. Protocol for the retrieval of biological evidence for cases that have already
30 resulted in felony convictions; and

- 1 2. Protocol for the retrieval of biological evidence for unsolved felony cases; and
- 2 3. Recommend practices, protocols, models and resources for the cataloguing and
- 3 accessibility of preserved biological evidence already in the possession of local,
- 4 county, and state entities that preserve such evidence.

5 D. The task force shall establish the implementing rules and regulations of this Act.

6 SECTION 8. *Standards and Training of Evidence Custodians.* –

7 In consultation with the Task Force, the Dept. of Justice shall administer and conduct
8 training programs for law enforcement officers and other relevant employees that are charged
9 with preserving and cataloguing biological evidence regarding the methods and procedures
10 referenced in this Act.

11 SECTION 9. *Appropriation.* – To carry out the provisions of this Act, such amount as

12 may be necessary is hereby authorized to be appropriated from the National Treasury.

13 Thereafter, the amount necessary for the continuous operation of the Task Force shall be
14 included in the annual appropriation of the DOJ.

15 SECTION 10. *Separability Clause.* – If any provision or part hereof, is held invalid or

16 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
17 valid and subsisting.

18 SECTION 11. *Repealing Clause.* – Any law, presidential decree or issuance, executive

19 order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent
20 with the provision of this Act is hereby repealed, modified, or amended accordingly.

21 SECTION 12. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its

22 publication in at least two (2) newspapers of general circulation.

Approved,