

SIXTEENTH CONGRESS OF THE REPUBLIC)
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15 SEP 17 A4 24

SENATE
S. No. 2958

RECEIVED BY: *J*

Introduced by Senator Miriam Defensor Santiago

AN ACT
TO IMPROVE THE PRESERVATION AND ACCESSIBILITY
OF BIOLOGICAL EVIDENCE

EXPLANATORY NOTE

The Constitution, Article 2, Section 10 provides: "Section 10. The State shall promote social justice in all phases of national development."

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 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 learning 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
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* This bill was originally filed in the Fifteenth Congress, Second Regular Session

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

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

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

7 SECTION 3. *Definitions.* – For purposes of this Act, the terms:

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

1 (b) "DNA" means deoxyribonucleic acid;

2 (c) "Custody" means persons currently incarcerated, civilly committed, on
3 parole, probation, or subject to sex offender registration;

4 (d) "Profile" means a unique identifier of an individual, derived from DNA;

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

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

11 SECTION 4. *Preservation of Evidence Procedures.* – (a) The State shall
12 preserve all biological evidence:

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

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

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

20 (b) This Act applies to evidence that:

21 (1) Was in the possession of the State during the investigation and
22 prosecution of the case; and

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

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

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

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

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

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

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

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

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

18 (iii) The Department of Justice.

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

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

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

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

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

9 (i) Should the State be called upon to produce biological evidence that could not
10 be located and whose preservation was required under the provisions of this statute, the
11 chief evidence custodian assigned to the entity charged with the preservation of said
12 evidence shall provide an affidavit in which he or she stipulates, under penalty of perjury,
13 that describes the efforts taken to locate that evidence and that the evidence could not be
14 located.

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

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

22 (a) A member of the Philippine Judicial Academy;

23 (b) A dean of a Philippine law school;

24 (c) A representative of the Philippine National Police;

25 (d) A representative of the Office of the National Prosecution Service;

- 1 (e) A representative of the Public Attorney's Office;
- 2 (f) A member of the Committee on Justice and Human Rights of the Senate;
- 3 (g) A member of the Committee on Justice of the House of Representatives;
- 4 (h) A representative of the National Bureau of Investigation;
- 5 (i) An expert in forensic science; and
- 6 (j) A representative of a victims rights organization.

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

9 (a) Establish standards regarding proper identification, collection,
10 preservation, storage, cataloguing, and organization of biological evidence;

11 (b) Recommend essential components of training programs for law enforcement
12 officers and other relevant employees that are charged with preserving and retrieving
13 biological evidence regarding the methods and procedures referenced in this Act; and

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

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

19 (2) Protocol for the retrieval of biological evidence for unsolved felony
20 cases; and

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

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

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

6 SECTION 9. *Appropriations.* – To carry out the provisions of this Act, such
7 amount as may be necessary is hereby authorized to be appropriated from the National
8 Treasury. Thereafter, such amount necessary to carry out the provisions of this Act shall
9 be included in the annual appropriation of the Department of Justice.

10 SECTION 10. *Repealing Clause.* – All laws, decrees, orders, rules and regulations
11 or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended
12 or modified accordingly.

13 SECTION 11. *Separability Clause.* – If, for any reason, any provision of this Act
14 is declared to be unconstitutional or invalid, the other sections or provisions which are
15 not affected shall continue to be in full force and effect.

16 SECTION 12. *Effectivity Clause.* – This Act shall take effect after fifteen (15)
17 days following its publication in the *Official Gazette* or in two (2) newspapers of general
18 circulation.

Approved,