

1455--A

2015-2016 Regular Sessions

I N   S E N A T E

January 12, 2015

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to establishing the state sexual offense forensic evidence index and the processing of evidence related to sexual offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivisions 2 and 9 of section 995 of the executive law,  
2     as added by chapter 737 of the laws of 1994, are amended and a new  
3     subdivision 11 is added to read as follows:  
4     2. For purposes of forensic DNA analysis, the term "forensic DNA labo-  
5     ratory" shall mean any forensic laboratory operated by the state or unit  
6     of local government, that performs forensic DNA testing on crime scenes,  
7     FORENSIC TESTING ON EVIDENCE OF SEXUAL OFFENSES or materials derived  
8     from the human body for use as evidence in a criminal proceeding or for  
9     purposes of identification and the term "forensic DNA testing" shall  
10    mean any test that employs techniques to examine deoxyribonucleic acid  
11    (DNA) derived from the human body for the purpose of providing informa-  
12    tion to resolve issues of identification. Regulation pursuant to this  
13    article shall not include DNA testing on materials derived from the  
14    human body pursuant to title five of article five of the public health  
15    law for the purpose of determining a person's genetic disease or medical  
16    condition and shall not include a laboratory operated by the federal  
17    government.  
18    9. "DNA subcommittee" shall mean the subcommittee on forensic DNA  
19    laboratories and forensic DNA AND SEXUAL OFFENSE FORENSIC EVIDENCE test-  
20    ing established pursuant to subdivision thirteen of section nine hundred  
21    ninety-five-b of this article.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 11. "STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX" MEANS THE SEXUAL  
2 OFFENSE FORENSIC EVIDENCE RECORD SYSTEM FOR NEW YORK ESTABLISHED PURSU-  
3 ANT TO THIS ARTICLE.

4 S 2. Paragraph (b) of subdivision 2 of section 995-b of the executive  
5 law, as added by chapter 737 of the laws of 1994, is amended to read as  
6 follows:

7 (b) ensure that forensic analyses, including forensic DNA testing AND  
8 SEXUAL OFFENSE FORENSIC EVIDENCE TESTING, are performed in accordance  
9 with the highest scientific standards practicable;

10 S 3. Subdivisions 7, 9, 10, 11, 12 and 13 of section 995-b of the  
11 executive law, as added by chapter 737 of the laws of 1994 and paragraph  
12 (a) of subdivision 13 as amended by chapter 560 of the laws of 1999, are  
13 amended to read as follows:

14 7. The commission and DNA subcommittee may establish, appoint, and set  
15 terms of members to as many advisory councils as it deems necessary to  
16 provide specialized expertise to the commission with respect to new  
17 forensic technologies including DNA testing methodologies AND SEXUAL  
18 OFFENSE FORENSIC EVIDENCE TESTING METHODOLOGIES.

19 9. After reviewing recommendations from the division of criminal  
20 justice services, the commission, in consultation with the DNA subcom-  
21 mittee, shall promulgate a policy for the establishment and operation of  
22 a DNA identification index AND A SEXUAL OFFENSE FORENSIC EVIDENCE INDEX  
23 consistent with the operational requirements and capabilities of the  
24 division of criminal justice services. Such policy shall address the  
25 following issues:

26 (a) the forensic DNA methodology or methodologies to be utilized in  
27 compiling the [index] INDICES;

28 (b) procedures for assuring that the state DNA identification index  
29 [contains] AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX CONTAIN  
30 the following safeguards:

31 (i) that any records maintained as part of such [an index] INDICES are  
32 accurate and complete;

33 (ii) that effective software and hardware designs are instituted with  
34 security features to prevent unauthorized access to such records;

35 (iii) that periodic audits will be conducted to ensure that no illegal  
36 disclosures of such records have taken place;

37 (iv) that access to record information system facilities, systems  
38 operating environments, data file contents whether while in use or when  
39 stored in a media library is restricted to authorized personnel only;

40 (v) that operation programs are used that will prohibit inquiry,  
41 record updates, or destruction of records from any source other than an  
42 authorized source of inquiry, update, or destruction of records;

43 (vi) that operational programs are used to detect and store for the  
44 output of authorized employees only all unauthorized attempts to pene-  
45 trate the state DNA identification index AND THE STATE SEXUAL OFFENSE  
46 FORENSIC EVIDENCE INDEX;

47 (vii) that adequate and timely procedures exist to insure that any  
48 subject of the state DNA identification index AND THE STATE SEXUAL  
49 OFFENSE FORENSIC EVIDENCE INDEX has the right of access to and review of  
50 records relating to such individual contained in such [index] INDICES  
51 for the purpose of ascertaining their accuracy and completeness, includ-  
52 ing procedures for review of information maintained about such individ-  
53 uals and administrative review (including procedures for administrative  
54 appeal) and the necessary documentation to demonstrate that the informa-  
55 tion is inaccurate or incomplete;

(viii) that access to the [index] INDICES will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX; and

(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

10. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX submitted by the commissioner of criminal justice services pursuant to section nine hundred ninety-five-c of this article.

11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing AND SEXUAL ASSAULT FORENSIC EVIDENCE, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.

12. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX and a DNA record of a person submitted for comparison therewith.

13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA AND SEXUAL OFFENSE FORENSIC EVIDENCE testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in section nine hundred ninety-five-a of this article.

(b) The DNA subcommittee shall assess and evaluate all DNA AND SEXUAL OFFENSE FORENSIC EVIDENCE methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards

1 to be utilized in conducting forensic DNA AND SEXUAL OFFENSE FORENSIC  
2 EVIDENCE analysis including, but not limited to, examination of speci-  
3 mens, population studies and methods employed to determine probabilities  
4 and interpret test results. The DNA subcommittee may require a demon-  
5 stration by an independent laboratory of any proposed forensic DNA OR  
6 SEXUAL OFFENSE FORENSIC EVIDENCE testing methodology proposed to be used  
7 by a forensic laboratory.

8 (c) The DNA subcommittee shall make binding recommendations for  
9 adoption by the commission with regard to an accreditation program for  
10 laboratories performing forensic DNA AND SEXUAL OFFENSE FORENSIC  
11 EVIDENCE testing in accordance with the provisions of the state adminis-  
12 trative procedure act. Such recommendations shall include the adoption  
13 and implementation of internal and external proficiency testing  
14 programs, including, if possible, a blind external proficiency testing  
15 program for forensic laboratories performing forensic DNA AND SEXUAL  
16 OFFENSE FORENSIC EVIDENCE testing. The DNA subcommittee shall also  
17 provide the commission with a list of accepted proficiency testers.

18 (d) The DNA subcommittee shall be authorized to advise the commission  
19 on any other matters regarding the implementation of scientific controls  
20 and quality assurance procedures for the performance of forensic DNA AND  
21 SEXUAL OFFENSE FORENSIC EVIDENCE testing, or on any other matters  
22 referred to it by the commission.

23 S 4. Section 995-d of the executive law, as added by chapter 737 of  
24 the laws of 1994 and subdivision 2 as amended by chapter 560 of the laws  
25 of 1999, is amended to read as follows:

26 S 995-d. Confidentiality. 1. All records, findings, reports, and  
27 results of DNA AND SEXUAL OFFENSE FORENSIC EVIDENCE testing performed on  
28 any person shall be confidential and may not be disclosed or redisclosed  
29 without the consent of the subject of such DNA OR SEXUAL OFFENSE FOREN-  
30 SIC EVIDENCE testing. Such records, findings, reports and results shall  
31 not be released to insurance companies, employers or potential employ-  
32 ers, health providers, employment screening or personnel companies,  
33 agencies, or services, private investigation services, and may not be  
34 disclosed in response to a subpoena or other compulsory legal process or  
35 warrant, or upon request or order of any agency, authority, division,  
36 office, corporation, partnership, or any other private or public entity  
37 or person, except that nothing contained herein shall prohibit disclo-  
38 sure in response to a subpoena issued on behalf of the subject of such  
39 DNA OR SEXUAL OFFENSE FORENSIC EVIDENCE record or on behalf of a party  
40 in a civil proceeding where the subject of such DNA OR SEXUAL OFFENSE  
41 FORENSIC EVIDENCE record has put such record in issue.

42 2. Notwithstanding the provisions of subdivision one of this section,  
43 records, findings, reports, and results of DNA testing, other than a DNA  
44 record maintained in the state DNA identification index, may be  
45 disclosed in a criminal proceeding to the court, the prosecution, and  
46 the defense pursuant to a written request on a form prescribed by the  
47 commissioner of the division of criminal justice services. Notwith-  
48 standing the provisions of subdivision one of this section, a DNA OR  
49 SEXUAL OFFENSE FORENSIC EVIDENCE record maintained in the state DNA  
50 identification index may be disclosed pursuant to section nine hundred  
51 ninety-five-c of this article.

52 S 5. Section 995-e of the executive law, as added by chapter 737 of  
53 the laws of 1994, is amended to read as follows:

54 S 995-e. Applicability. This article shall not apply to a forensic DNA  
55 laboratory operated by any agency of the federal government, or to any

1 forensic DNA test OR SEXUAL OFFENSE FORENSIC EVIDENCE TEST performed by  
2 any such federal laboratory.

3 S 6. Section 995-f of the executive law, as amended by chapter 560 of  
4 the laws of 1999, is amended to read as follows:

5 S 995-f. Penalties. Any person who (a) intentionally discloses a DNA  
6 record, [or] the results of a forensic DNA test or analysis, OR THE  
7 RESULT OF A SEXUAL OFFENSE FORENSIC EVIDENCE TEST OF ANALYSIS, to an  
8 individual or agency other than one authorized to have access to such  
9 records pursuant to this article or (b) intentionally uses or receives  
10 DNA records, [or] the results of a forensic DNA test or analysis, OR THE  
11 RESULTS OF A SEXUAL OFFENSE FORENSIC EVIDENCE TEST OF ANALYSIS, for  
12 purposes other than those authorized pursuant to this article or (c) any  
13 person who knowingly tampers or attempts to tamper with any DNA sample  
14 [or], the collection container OR SEXUAL OFFENSE FORENSIC EVIDENCE  
15 SAMPLE without lawful authority shall be guilty of a class E felony.

16 S 7. The executive law is amended by adding a new section 995-g to  
17 read as follows:

18 S 995-G. STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX. 1. FOLLOWING  
19 THE PROMULGATION OF A POLICY BY THE COMMISSION PURSUANT TO SUBDIVISION  
20 NINE OF SECTION NINE HUNDRED NINETY-FIVE-B OF THIS ARTICLE, THE COMMIS-  
21 SIONER OF CRIMINAL JUSTICE SERVICES IS AUTHORIZED TO PROMULGATE A PLAN  
22 FOR THE ESTABLISHMENT OF A COMPUTERIZED STATE SEXUAL OFFENSE FORENSIC  
23 EVIDENCE INDEX WITHIN THE DIVISION OF CRIMINAL JUSTICE SERVICES.

24 2. FOLLOWING THE REVIEW AND APPROVAL OF THE PLAN BY THE DNA SUBCOMMIT-  
25 TEE AND THE COMMISSION AND THE FILING OF SUCH PLAN WITH THE SPEAKER OF  
26 THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE, THE COMMISSIONER  
27 OF CRIMINAL JUSTICE SERVICES IS HEREBY AUTHORIZED TO ESTABLISH A COMPUT-  
28 ERIZED STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX PURSUANT TO THE  
29 PROVISIONS OF THIS ARTICLE.

30 3. ANY FORENSIC EVIDENCE COLLECTED OR OBTAINED IN CONNECTION WITH THE  
31 INVESTIGATION OF A CRIME OR OFFENSE CONTAINED IN ARTICLE ONE HUNDRED  
32 THIRTY OF THE PENAL LAW MUST BE INCLUDED IN THE STATE SEXUAL OFFENSE  
33 FORENSIC EVIDENCE INDEX PURSUANT TO THIS ARTICLE. THIS SUBDIVISION  
34 ABOVE DOES NOT REQUIRE A LAB TO TEST ALL ITEMS OF FORENSIC EVIDENCE  
35 OBTAINED IN A SEXUAL ASSAULT FORENSIC EVIDENCE EXAMINATION OR A SEXUAL  
36 ASSAULT INVESTIGATION. FOR THE PURPOSE OF TIMELY PROCESSING OF SEXUAL  
37 OFFENSE FORENSIC EVIDENCE, THIS SUBDIVISION INTENDS TO ENSURE THAT THE  
38 BEST EVIDENCE IS SELECTED AND ANALYZED AS SOON AS PRACTICABLE AMONG THE  
39 REPRESENTATIVE SAMPLE OF FORENSIC EVIDENCE, BASED ON THE MEDICAL EXAM-  
40 INATION OR THE SEXUAL ASSAULT INVESTIGATION, THE COLLECTION AND PRESER-  
41 VATION OF THAT EVIDENCE, AND THE TRANSFER OF THE EVIDENCE FROM THE  
42 MEDICAL FACILITY OR THE LAW ENFORCEMENT AGENCY TO THE FORENSIC DNA LABO-  
43 RATORY.

44 4. ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN THE SEXUAL  
45 OFFENSE FORENSIC EVIDENCE SHALL BE COLLECTED, STORED AND FORWARDED TO  
46 ANY FORENSIC DNA LABORATORY WHICH HAS BEEN AUTHORIZED BY THE COMMISSION  
47 TO PERFORM SEXUAL OFFENSE FORENSIC EVIDENCE TESTING AND ANALYSIS FOR  
48 INCLUSION IN THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX WITHIN  
49 THIRTY DAYS AFTER IT IS COLLECTED AND BOOKED INTO EVIDENCE IN CONNECTION  
50 WITH A SEXUAL ASSAULT INVESTIGATION. ANY FORENSIC EVIDENCE COLLECTED  
51 DURING A FORENSIC SEXUAL ASSAULT EXAMINATION ON A VICTIM OF A SEXUAL  
52 ASSAULT SHALL BE FORWARDED DIRECTLY FROM THE MEDICAL FACILITY TO THE  
53 AUTHORIZED FORENSIC DNA LABORATORY WITHIN TEN DAYS OF ITS COLLECTION.  
54 SUCH LABORATORY SHALL PERFORM THE REQUISITE TESTING AND ANALYSIS WITHIN  
55 EIGHT MONTHS OF RECEIPT OR TRANSMIT THE SEXUAL OFFENSE FORENSIC EVIDENCE  
56 TO ANOTHER APPROVED FORENSIC DNA LABORATORY AS SOON AS POSSIBLE BUT NO

1 LATER THAN THIRTY DAYS AFTER RECEIPT, AND FORWARD THE RESULTING SEXUAL  
2 OFFENSE FORENSIC EVIDENCE RECORD TO THE STATE SEXUAL OFFENSE FORENSIC  
3 EVIDENCE INDEX IN ACCORDANCE WITH THE REGULATIONS OF THE DIVISION OF  
4 CRIMINAL JUSTICE SERVICES WITHIN EIGHT MONTHS OF RECEIPT.

5 5. SEXUAL OFFENSE FORENSIC EVIDENCE RECORDS CONTAINED IN THE STATE  
6 SEXUAL OFFENSE FORENSIC EVIDENCE INDEX SHALL BE RELEASED ONLY FOR THE  
7 FOLLOWING PURPOSES:

8 (A) TO A FEDERAL LAW ENFORCEMENT AGENCY, OR TO A STATE OR LOCAL LAW  
9 ENFORCEMENT AGENCY OR DISTRICT ATTORNEY'S OFFICE FOR LAW ENFORCEMENT  
10 IDENTIFICATION PURPOSES IN CONNECTION WITH THE INVESTIGATION OF THE  
11 COMMISSION OF ONE OR MORE CRIMES, PROVIDED THAT THERE EXISTS BETWEEN THE  
12 DIVISION AND SUCH AGENCY A WRITTEN AGREEMENT GOVERNING THE USE AND  
13 DISSEMINATION OF SUCH SEXUAL OFFENSE FORENSIC EVIDENCE RECORDS IN  
14 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; OR

15 (B) FOR CRIMINAL DEFENSE PURPOSES, TO A DEFENDANT OR HIS OR HER REPRE-  
16 SENTATIVE, WHO SHALL ALSO HAVE ACCESS TO SAMPLES AND ANALYSES PERFORMED  
17 IN CONNECTION WITH THE CASE IN WHICH SUCH DEFENDANT IS CHARGED.

18 6. REQUESTS FOR SEXUAL OFFENSE FORENSIC EVIDENCE RECORDS MUST BE IN  
19 WRITING, OR IN A FORM PRESCRIBED BY THE DIVISION AUTHORIZED BY THE  
20 REQUESTING PARTY, AND, OTHER THAN A REQUEST PURSUANT TO PARAGRAPH (B) OF  
21 SUBDIVISION FIVE OF THIS SECTION, MAINTAINED ON FILE AT THE STATE SEXUAL  
22 OFFENSE FORENSIC EVIDENCE INDEX IN ACCORDANCE WITH RULES AND REGULATIONS  
23 PROMULGATED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE  
24 SERVICES.

25 7. THE VICTIM OF A SEXUAL OFFENSE SHALL HAVE ACCESS TO INFORMATION  
26 REGARDING:

27 (A) WHETHER A SEXUAL OFFENSE FORENSIC EVIDENCE TEST IS PERFORMED BY  
28 ANY FORENSIC DNA LABORATORY;

29 (B) WHETHER THE RESULT OF A SEXUAL OFFENSE EVIDENCE TEST OF ANALYSIS  
30 WAS ENTERED INTO THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX; AND

31 (C) WHETHER THERE IS A MATCH BETWEEN THE RESULT OF A SEXUAL OFFENSE  
32 EVIDENCE TEST OF ANALYSIS AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE  
33 INDEX.

34 S 8. This act shall take effect June 1, 2016.