

STATE OF NEW YORK

5350

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. WALLACE -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the public health law, in relation to the use of DNA collected from sexual offense evidence kits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 3 of section 995-c of the executive law is
2 amended by adding two new paragraphs (c) and (d) to read as follows:

3 (c) No DNA sample, record, product, or evidence collected or result-
4 ing from the collection of DNA of a victim collected in a sexual offense
5 evidence kit shall be included in the state DNA identification index.

6 (d) Any DNA record of a victim, collected from a sexual offense
7 evidence kit and stored in a DNA identification index maintained by the
8 state or any county, city, town, village, or municipality, or enti-
9 ty thereof, must be expunged within ninety days of the effective date
10 of this paragraph.

11 § 2. Subdivision 1 of section 838-a of the executive law is amended by
12 adding four new paragraphs (g), (h), (i) and (j) to read as follows:

13 (g) No DNA sample, record, product, or evidence collected or result-
14 ing from the collection of DNA of a victim collected in a sexual offense
15 evidence kit may be used as part of reasonable cause for arrest, and
16 any product or evidence that results from the use of DNA of a victim
17 collected from a sexual offense evidence kit is prohibited from use in
18 an investigation. For criminal prosecutions and proceedings, any
19 evidence or product that results or flows from the use of DNA of the
20 victim collected from a sexual offense evidence kit is inadmissible.

21 (h) No DNA sample, record, product or evidence collected or result-
22 ing from the collection of DNA of a victim in a sexual offense evidence
23 kit shall be transmitted to any local or state DNA database.

24 (i) Any conviction obtained, either directly or indirectly, through
25 the use of DNA of a victim collected in a sexual offense evidence kit

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

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1 shall be eligible for relief in accordance with section 440.10 of the
2 criminal procedure law.

3 (j) In any action brought by any person to enforce this section,
4 the court may issue an injunction to restrain, prevent, or enforce
5 any violation of this section. The court may mandate changes in the
6 policies and procedures of police department rules and guidelines when
7 such measures are required to remedy a violation under this section.

8 § 3. Subdivision 2 of section 2805-i of the public health law is
9 amended by adding four new paragraphs (k), (l), (m) and (n) to read as
10 follows:

11 (k) No DNA sample, record, product, or evidence collected or result-
12 ing from the collection of DNA of a victim collected in a sexual offense
13 evidence kit may be used as part of reasonable cause for arrest, and
14 any product or evidence that results from the use of DNA of a victim
15 collected from a sexual offense evidence kit is prohibited from use in
16 an investigation. For criminal prosecutions and proceedings, any
17 evidence or product that results or flows from the use of DNA of the
18 victim collected from a sexual offense evidence kit is inadmissible.

19 (l) No DNA sample, record, product or evidence collected or result-
20 ing from the collection of DNA of a victim in a sexual offense evidence
21 kit shall be transmitted to any local or state DNA database.

22 (m) Any conviction obtained, either directly or indirectly, through
23 the use of DNA of a victim collected in a sexual offense evidence kit
24 shall be eligible for relief in accordance with section 440.10 of the
25 criminal procedure law.

26 (n) In any action brought by any person to enforce this section,
27 the court may issue an injunction to restrain, prevent, or enforce
28 any violation of this section. The court may mandate changes in the
29 policies and procedures of police department rules and guidelines when
30 such measures are required to remedy a violation under this section.

31 § 4. This act shall take effect immediately.