

9247

I N A S S E M B L Y

April 2, 2014

Introduced by M. of A. MAGNARELLI -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing standards
of regulation to permit familial searching and partial DNA matches as
an investigative tool in certain unsolved crimes

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

1 Section 1. Section 995 of the executive law, as added by chapter 737
2 of the laws of 1994, subdivision 7 as amended by chapter 19 of the laws
3 of 2012, is amended to read as follows:
4 S 995. Definitions. When used in this article, the following words and
5 terms shall have the meanings ascribed to them in this section:
6 1. For purposes of general forensic analysis the term "forensic labo-
7 ratory" shall mean any laboratory operated by the state or unit of local
8 government that performs forensic testing on evidence in a criminal
9 investigation or proceeding or for purposes of identification provided,
10 however, that the examination of latent fingerprints by a police agency
11 shall not be subject to the provisions of this article.
12 2. For purposes of forensic DNA analysis, the term "forensic DNA labo-
13 ratory" shall mean any forensic laboratory operated by the state or unit
14 of local government, that performs forensic DNA testing on crime scenes
15 or materials derived from the human body for use as evidence in a crimi-
16 nal proceeding or for purposes of identification and the term "forensic
17 DNA testing" shall mean any test that employs techniques to examine
18 deoxyribonucleic acid (DNA) derived from the human body for the purpose
19 of providing information to resolve issues of identification. Regu-
20 lation pursuant to this article shall not include DNA testing on materi-
21 als derived from the human body pursuant to title five of article five
22 of the public health law for the purpose of determining a person's
23 genetic disease or medical condition and shall not include a laboratory
24 operated by the federal government.
25 3. "DNA testing methodology" means methods and procedures used to
26 extract and analyze DNA material, as well as the methods, procedures,

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

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1 assumptions, and studies used to draw statistical inferences from the
2 test results.

3 4. "Blind external proficiency testing" means a test sample that is
4 presented to a forensic laboratory for forensic DNA testing through a
5 second agency, and which appears to the analysts to involve routine
6 evidence submitted for forensic DNA testing.

7 5. "DNA" means deoxyribonucleic acid.

8 5-A. "DNA PROFILE" MEANS A SET OF DNA IDENTIFICATION CHARACTERISTICS
9 WHICH MAY PERMIT THE DNA OF ONE PERSON TO BE DISTINGUISHABLE FROM THAT
10 OF ANOTHER PERSON. FOR SHORT TANDEM REPEAT DNA PROFILES, IT MEANS THE
11 LIST OF ALLELES CARRIED BY A PARTICULAR INDIVIDUAL AT A SPECIFIC SET OF
12 GENETIC LOCI.

13 5-B. "SUBJECT DNA PROFILE" MEANS THE DNA PROFILE GENERATED BY ANALYSIS
14 OF A BIOLOGICAL SAMPLE COLLECTED FROM A SUBJECT CONVICTED OF A CRIME
15 WHOSE SPECIMEN WAS COLLECTED: AFTER A CRIMINAL TRIAL; PURSUANT TO A PLEA
16 AGREEMENT; AS A CONDITION OF PARTICIPATION IN A TEMPORARY RELEASE,
17 COMPREHENSIVE ALCOHOL AND SUBSTANCE ABUSE TREATMENT (CASAT) OR SHOCK
18 INCARCERATION PROGRAM; AS A CONDITION OF RELEASE ON PAROLE, POST-RELEASE
19 SUPERVISION, PRESUMPTIVE RELEASE OR CONDITIONAL RELEASE ON A DEFINITE OR
20 INDETERMINATE SENTENCE; OR AS A CONDITION OF PROBATION OR INTERIM
21 PROBATION SUPERVISION.

22 5-C. "SUBJECT INDEX" MEANS THE ELECTRONIC DATABASE CONTAINING DNA
23 PROFILES GENERATED FROM A SUBJECT CONVICTED OF A CRIME WHOSE DNA SPECI-
24 MEN WAS COLLECTED: AFTER A CRIMINAL TRIAL; PURSUANT TO A PLEA AGREEMENT;
25 AS A CONDITION OF PARTICIPATION IN A TEMPORARY RELEASE, COMPREHENSIVE
26 ALCOHOL AND SUBSTANCE ABUSE TREATMENT (CASAT) OR SHOCK INCARCERATION
27 PROGRAM; AS A CONDITION OF RELEASE ON PAROLE, POST-RELEASE SUPERVISION,
28 PRESUMPTIVE RELEASE OR CONDITIONAL RELEASE ON A DEFINITE OR INDETERMI-
29 NATE SENTENCE; OR AS A CONDITION OF PROBATION OR INTERIM PROBATION
30 SUPERVISION.

31 6. "State DNA identification index" means the DNA identification
32 record system for New York state established pursuant to this article.

33 6-A. "CODIS" MEANS THE FEDERAL COMBINED DNA INDEX SYSTEM.

34 6-B. "NDIS" MEANS THE NATIONAL DNA INDEX SYSTEM.

35 6-C. "FORENSIC DNA INDEX" MEANS THE ELECTRONIC DATABASE IN CODIS THAT
36 CONTAINS DNA PROFILES GENERATED FROM CASEWORK EVIDENCE BY FORENSIC DNA
37 LABORATORIES.

38 6-D. "UNIDENTIFIED HUMAN REMAINS INDEX" MEANS THE ELECTRONIC DATABASE
39 IN CODIS THAT CONTAINS DNA PROFILES GENERATED FROM HUMAN REMAINS OF
40 UNKNOWN ORIGIN.

41 7. "Designated offender" means a person convicted of any felony
42 defined in any chapter of the laws of the state or any misdemeanor
43 defined in the penal law except that where the person is convicted under
44 section 221.10 of the penal law, only a person convicted under subdivi-
45 sion two of such section, or a person convicted under subdivision one of
46 such section who stands previously convicted of any crime as defined in
47 subdivision six of section 10.00 of the penal law.

48 8. "DNA record" means DNA identification information prepared by a
49 forensic DNA laboratory and stored in the state DNA identification index
50 for purposes of establishing identification in connection with law
51 enforcement investigations or supporting statistical interpretation of
52 the results of DNA analysis. A DNA record is the objective form of the
53 results of a DNA analysis sample.

54 9. "DNA subcommittee" shall mean the subcommittee on forensic DNA
55 laboratories and forensic DNA testing established pursuant to subdivi-
56 sion thirteen of section nine hundred ninety-five-b of this article.

1 10. "Commission" shall mean the commission on forensic science estab-
2 lished pursuant to section nine hundred ninety-five-a of this article.

3 11. "DIVISION" SHALL MEAN THE NEW YORK STATE DIVISION OF CRIMINAL
4 JUSTICE SERVICES.

5 12. "ALLELE" SHALL MEAN ONE OF THE ALTERNATE FORMS OF THE DNA AT A
6 PARTICULAR GENETIC LOCUS.

7 13. "LOCI" SHALL MEAN THE SPECIFIC CHROMOSOMAL LOCATIONS OF GENES OR
8 OTHER DNA ELEMENTS SUCH AS SHORT TANDEM REPEATS.

9 14. "STR" SHALL MEAN SHORT TANDEM REPEAT.

10 15. "STR ANALYSIS" SHALL MEAN A FORM OF TESTING WHICH PROVIDES DNA
11 PROFILES FOR LOCI WHICH CONTAIN SIMPLE DNA UNIT REPEATS. STR LOCI ON THE
12 Y-CHROMOSOME ARE REFERRED TO AS "Y-STRS".

13 16. "MITOCHONDRIAL DNA TESTING" OR "MTDNA TESTING" REFERS TO ANALYSIS
14 OF GENETIC POLYMORPHISMS THAT OCCUR IN THE DNA OF MITOCHONDRIA.

15 17. "CASEWORK EVIDENCE DNA PROFILE" SHALL MEAN A DNA PROFILE THAT IS
16 DERIVED FROM BIOLOGICAL EVIDENCE ORIGINATING FROM AND ASSOCIATED WITH
17 THE COMMISSION OF A CRIME.

18 18. "CONVICTED OFFENDER DNA PROFILE" SHALL MEAN THAT DNA PROFILE
19 GENERATED BY TESTING OF A BIOLOGICAL SAMPLE COLLECTED FROM A DESIGNATED
20 OFFENDER AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION.

21 19. "CONVICTED OFFENDER INDEX" SHALL MEAN THAT ELECTRONIC DATABASE
22 CONTAINING DNA PROFILES GENERATED FROM DESIGNATED OFFENDERS AS DEFINED
23 BY SUBDIVISION SEVEN OF THIS SECTION AND STORED IN CODIS.

24 20. "FORENSIC DNA PROFILE" REFERS TO A DNA PROFILE THAT IS DERIVED
25 FROM BIOLOGICAL EVIDENCE ORIGINATING FROM AND ASSOCIATED WITH THE
26 COMMISSION OF A CRIME.

27 21. "INDIRECT ASSOCIATION" SHALL MEAN THE DETERMINATION DURING THE
28 CODIS CANDIDATE MATCH CONFIRMATION PROCESS THAT A FORENSIC INDEX DNA
29 PROFILE IS SIMILAR TO A DNA PROFILE IN THE CONVICTED OFFENDER INDEX OR
30 SUBJECT INDEX AND A COMPARISON REVEALS THAT THE OFFENDER OR SUBJECT IS
31 NOT THE SOURCE OF THE DNA PROFILE BUT MAY BE A RELATIVE OF THE SOURCE OF
32 THE FORENSIC INDEX PROFILE. AN INDIRECT ASSOCIATION MAY ALSO BE REFERRED
33 TO AS A "PARTIAL MATCH".

34 22. "FAMILIAL SEARCHING" REFERS TO THE PROCESS OF PURPOSEFULLY SEARCH-
35 ING A DNA DATABANK FOR PARTIAL MATCHES OR INDIRECT ASSOCIATIONS BETWEEN
36 A NEW YORK STATE CONVICTED OFFENDER'S DNA PROFILE AND A DNA PROFILE
37 DEVELOPED FROM CRIME SCENE EVIDENCE.

38 23. "LDIS" REFERS TO THE LEVEL OF THE CODIS PROGRAM IN WHICH A PUBLIC
39 DNA LABORATORY MAINTAINS ITS DNA RECORDS FOR SEARCHING AND UPLOADING TO
40 HIGHER LEVEL INDICES SUCH AS SDIS AND NDIS.

41 S 2. Section 995-b of the executive law is amended by adding a new
42 subdivision 12-a to read as follows:

43 12-A. IN CASES LIMITED TO VIOLENT FELONY OFFENSES, HOMICIDES AND
44 BURGLARY IN THE THIRD DEGREE, AS DEFINED BY ARTICLES ONE HUNDRED TWEN-
45 TY-FIVE AND ONE HUNDRED FORTY OF THE PENAL LAW, RESPECTIVELY, THE
46 COMMISSION SHALL PROMULGATE STANDARDS THAT PERMIT FAMILIAL SEARCHING AND
47 THE RELEASE OF PARTIAL MATCHES TO INVESTIGATING LAW ENFORCEMENT OFFI-
48 CIALS AND THE APPROPRIATE PROSECUTOR OR PROSECUTORS.

49 (A) SUCH STANDARDS SHALL PERMIT THE USE OF FAMILIAL SEARCHING. SUCH
50 STANDARDS SHALL ALSO REQUIRE THE RELEASE OF THE RESULTS OF SUCH SEARCH
51 TO THE INVESTIGATING LAW ENFORCEMENT OFFICIALS AND THE APPROPRIATE
52 PROSECUTOR OR PROSECUTORS IF, UPON APPLICATION OF A POLICE OFFICER, A
53 DISTRICT ATTORNEY OR OTHER PUBLIC SERVANT ACTING IN THE COURSE OF HIS
54 OFFICIAL DUTIES, A LOCAL COURT DETERMINES THAT ALL OF THE FOLLOWING
55 CONDITIONS ARE SATISFIED:

1 (I) THERE IS REASONABLE CAUSE TO BELIEVE THAT A FAMILIAL SEARCH USING
2 THE CRIME SCENE DNA PROFILE MAY RESULT IN A PARTIAL DNA MATCH;

3 (II) THE CRIME SCENE DNA PROFILE DERIVES FROM A SINGLE SOURCE AND
4 CONTAINS AT LEAST TEN OF THE CODIS CORE LOCI;

5 (III) THE CRIME IS UNSOLVED AND ALL PRACTICABLE INVESTIGATIVE LEADS
6 HAVE BEEN EXHAUSTED;

7 (IV) THE DNA LABORATORY HAS RUN AN EXACT MATCH ON THE CRIME SCENE DNA
8 PROFILE WITH NEGATIVE RESULTS;

9 (V) THE INVESTIGATING LAW ENFORCEMENT AGENCY OR THE PROSECUTOR MAKES A
10 WRITTEN REQUEST THAT THE DNA LABORATORY CONDUCT A FAMILIAL SEARCH ON THE
11 CRIME SCENE DNA PROFILE; AND

12 (VI) THE INVESTIGATING LAW ENFORCEMENT AGENCY AND THE PROSECUTOR
13 COMMIT TO FURTHER INVESTIGATION OF THE CASE IF THE NAME OF THE POTEN-
14 Tially RELATED OFFENDER IS RELEASED AND THE NAME OF THE POTENTIALLY
15 RELATED OFFENDER WILL BE TREATED AS A CONFIDENTIAL, NON-PUBLIC INVESTI-
16 GATIVE LEAD.

17 (B) ONCE A LABORATORY HAS RECEIVED A PARTIAL MATCH AS A RESULT OF A
18 FAMILIAL SEARCH OR A STANDARD SEARCH OF THE DNA INDEX, THE LABORATORY
19 SUBMITTING THE CRIME SCENE DNA PROFILE TO THE CODIS PROGRAM SHALL
20 COMPLETE AN APPLICATION TO THE DIVISION REQUESTING THE NAMES OF THE
21 INVOLVED OFFENDERS AND, AS PART OF THE APPLICATION, CONFIRM THAT:

22 (I) AN LDIS SEARCH HAS BEEN PERFORMED USING THE CRIME SCENE PROFILE IN
23 THE FORENSIC UNKNOWN INDEX;

24 (II) THE CRIME SCENE DNA PROFILE DERIVES FROM A SINGLE SOURCE AND
25 CONTAINS AT LEAST TEN OF THE CODIS CORE LOCI;

26 (III) THE SUBMITTING AGENCY AND THE APPROPRIATE PROSECUTOR HAVE
27 COMMITTED TO PURSUE FURTHER INVESTIGATION OF THE CASE IF THE NAME IS
28 RELEASED; AND

29 (IV) THE SUBMITTING LABORATORY HAS CONFIRMED THAT RELEASE OF THE NAME
30 WILL BE FOLLOWED BY A REPORT TO THE INVESTIGATING LAW ENFORCEMENT AGEN-
31 CY. THE REPORT WILL INDICATE THAT THE MATCH IS INDIRECT AND WILL ALSO
32 INDICATE THAT THE AVAILABLE DATA SUGGESTS THAT THE SOURCE OF THE EVIDEN-
33 TIARY DNA PATTERN IS POTENTIALLY A RELATIVE OF THE CONVICTED OFFENDER.

34 (C) IN THE EVENT THAT A LABORATORY FINDS A PARTIAL MATCH AS A RESULT
35 OF A STANDARD SEARCH OF A DNA INDEX, BUT DOES NOT RECEIVE AN EXACT
36 MATCH, THE LABORATORY SHALL FIRST CONTACT THE SUBMITTING AGENCY AND THE
37 APPROPRIATE PROSECUTOR TO CONFIRM THAT THEY ARE COMMITTED TO PURSUE
38 FURTHER INVESTIGATION OF THE CASE IF THE NAME IS RELEASED. AFTER RECEIV-
39 ING WRITTEN CONFIRMATION FROM THE SUBMITTING AGENCY AND THE APPROPRIATE
40 PROSECUTOR, THE LABORATORY SHALL FOLLOW THE STEPS OUTLINED IN PARAGRAPH
41 (B) OF THIS SUBDIVISION.

42 (D) THE REPORT GENERATED FROM THE SUBMITTING LABORATORY TO THE INVES-
43 TIGATING LAW ENFORCEMENT AGENCY SHALL INDICATE THAT:

44 (I) THE MATCH IS A RESULT OF FAMILIAL SEARCHING OR IS A PARTIAL MATCH
45 RESULTING FROM A STANDARD SEARCH OF A DNA INDEX;

46 (II) THE INFORMATION PROVIDED IS A CONFIDENTIAL, NON-PUBLIC INVESTI-
47 GATIVE LEAD; AND

48 (III) THE AVAILABLE DATA SUGGESTS THAT THE SOURCE OF THE EVIDENTIARY
49 DNA PATTERN IS POTENTIALLY A RELATIVE OF THE CONVICTED OFFENDER BUT IS
50 NOT CONCLUSIVE EVIDENCE OF THE SAME.

51 (E) THE DIVISION WILL PROVIDE THE MATCH INFORMATION TO THE STATE DNA
52 DATABANK WHICH, IN TURN, WILL CALCULATE AND REPORT WHETHER THE APPROPRI-
53 ATE STATISTICAL THRESHOLD APPROVED BY THE DNA SUBCOMMITTEE HAS BEEN MET.

54 (F) UPON RECEIVING A COMPLETED APPLICATION FROM THE LOCAL PARTICIPAT-
55 ING CODIS LABORATORY AND CONFIRMATION FROM THE DATABANK THAT THE APPRO-
56 PRIATE STATISTICAL THRESHOLD HAS BEEN MET, THE DIVISION SHALL RELEASE

1 THE NAME OF THE OFFENDER TO THE SUBMITTED LABORATORY WHO SHALL, IN TURN,
2 RELEASE THE INFORMATION TO THE INVESTIGATING LAW ENFORCEMENT AGENCY
3 AFTER A LOCAL CRIMINAL COURT HAS DETERMINED THAT ALL OF THE REQUIREMENTS
4 IN PARAGRAPH (A) OF THIS SUBDIVISION HAVE BEEN SATISFIED. IF THE APPRO-
5 PRIATE STATISTICAL THRESHOLD VALUE IS NOT SUPPORTED BY THE AVAILABLE
6 DATA, THEN TESTING OF ADDITIONAL LOCI OF THE OFFENDER SAMPLE MAY BE
7 REQUIRED AND MAY INCLUDE Y-STR AND/OR MTDNA ANALYSIS. IF THE SUBSEQUENT
8 TESTING DOES NOT MEET THE APPROPRIATE THRESHOLD, THE DATABANK WILL NOTI-
9 FY THE DIVISION AND THE OFFENDER'S NAME WILL NOT BE RELEASED.

10 (G) THIS POLICY WILL BE SUBJECT TO REVIEW BY THE DNA SUBCOMMITTEE
11 EVERY TWO YEARS.

12 (H) THE SAME STANDARDS AND PROCEDURES DEFINED IN THIS SECTION APPLY TO
13 REQUESTS FOR PARTIAL MATCH AND FAMILIAL SEARCHING INFORMATION FROM CRIM-
14 INAL JUSTICE AGENCIES FROM OUTSIDE OF THE STATE.

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

17 S 995-f. Penalties. (A) Any person who [(a)] (I) intentionally
18 discloses a DNA record, or the results of a forensic DNA test or analy-
19 sis, to an individual or agency other than one authorized to have access
20 to such records pursuant to this article or [(b)] (II) intentionally
21 uses or receives DNA records, or the results of a forensic DNA test or
22 analysis, for purposes other than those authorized pursuant to this
23 article or [(c)] (III) any person who knowingly tampers or attempts to
24 tamper with any DNA sample or the collection container without lawful
25 authority shall be guilty of a class E felony.

26 (B) ANY PERSON WHO (I) INTENTIONALLY DISCLOSES A DNA RECORD, OR THE
27 RESULTS OF A FORENSIC DNA TEST OR ANALYSIS, FOUND AS A RESULT OF FAMI-
28 LIAL SEARCHING OR A PARTIAL MATCH, TO AN INDIVIDUAL OR AGENCY OTHER THAN
29 ONE AUTHORIZED TO HAVE ACCESS TO SUCH RECORDS PURSUANT TO THIS ARTICLE
30 OR (II) INTENTIONALLY USES OR RECEIVES DNA RECORDS, OR THE RESULTS OF A
31 FORENSIC DNA TEST OR ANALYSIS, FOUND AS A RESULT OF FAMILIAL SEARCHING
32 OR A PARTIAL MATCH, FOR PURPOSES OTHER THAN THOSE AUTHORIZED PURSUANT TO
33 THIS ARTICLE SHALL BE GUILTY OF A CLASS E FELONY, AND UPON CONVICTION
34 THEREOF, SHALL BE SUBJECT TO A FINE OF NOT MORE THAN TEN THOUSAND
35 DOLLARS AND ANY SUCH OTHER PENALTIES AS PROVIDED.

36 S 4. This act shall take effect immediately.