

6145

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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.
22 11. "STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX" MEANS THE SEXUAL
23 OFFENSE FORENSIC EVIDENCE RECORD SYSTEM FOR NEW YORK ESTABLISHED PURSU-
24 ANT TO THIS ARTICLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (viii) that access to the [index] INDICES will be granted to an agency
54 authorized by this article to have such access only pursuant to a writ-
55 ten use and dissemination agreement, a copy of which is filed with the
56 commission, which agreement sets forth the specific procedures by which

1 such agency shall implement the provisions of subparagraphs (i) through
2 (vii) of this paragraph, as applicable, and which agreement specifically
3 prohibits the redisclosure by such agency of any information obtained
4 from the DNA identification index AND THE STATE SEXUAL OFFENSE FORENSIC
5 EVIDENCE INDEX; and

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

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

16 11. Upon the recommendation of the DNA subcommittee established pursu-
17 ant to subdivision thirteen of this section, the commission shall desig-
18 nate one or more approved methodologies for the performance of forensic
19 DNA testing AND SEXUAL ASSAULT FORENSIC EVIDENCE, and shall review and
20 act upon applications by forensic DNA laboratories for approval to
21 perform forensic DNA testing.

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

26 13. (a) The commission shall establish a subcommittee on forensic DNA
27 laboratories and forensic DNA AND SEXUAL OFFENSE FORENSIC EVIDENCE test-
28 ing. The chair of the subcommittee shall be appointed by the chair of
29 the commission. The chair of the subcommittee shall appoint six other
30 members to the subcommittee, one of whom shall represent the discipline
31 of molecular biology and be appointed upon the recommendation of the
32 commissioner of the department of health, one of whom shall represent
33 the discipline of population genetics and be appointed upon the recom-
34 mendation of the commissioner of the department of health, one of whom
35 shall be representative of the discipline of laboratory standards and
36 quality assurance regulation and monitoring and be appointed upon the
37 recommendation of the commissioner of the department of health, one of
38 whom shall be a forensic scientist and be appointed upon the recommenda-
39 tion of the commissioner of the department of health, one of whom shall
40 be representative of the discipline of population genetics and be
41 appointed upon the recommendation of the commissioner of criminal
42 justice services and one of whom shall be representative of the disci-
43 pline of forensic science and be appointed upon the recommendation of
44 the commissioner of criminal justice services. Members of the DNA
45 subcommittee shall serve for three year terms and be subject to the
46 conditions of service specified in section nine hundred ninety-five-a of
47 this article.

48 (b) The DNA subcommittee shall assess and evaluate all DNA AND SEXUAL
49 OFFENSE FORENSIC EVIDENCE methodologies proposed to be used for forensic
50 analysis, and make reports and recommendations to the commission as it
51 deems necessary. The DNA subcommittee shall make binding recommendations
52 for adoption by the commission addressing minimum scientific standards
53 to be utilized in conducting forensic DNA AND SEXUAL OFFENSE FORENSIC
54 EVIDENCE analysis including, but not limited to, examination of speci-
55 mens, population studies and methods employed to determine probabilities
56 and interpret test results. The DNA subcommittee may require a demon-

1 stration by an independent laboratory of any proposed forensic DNA OR
2 SEXUAL OFFENSE FORENSIC EVIDENCE testing methodology proposed to be used
3 by a forensic laboratory.

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

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

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

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

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

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

50 S 995-e. Applicability. This article shall not apply to a forensic DNA
51 laboratory operated by any agency of the federal government, or to any
52 forensic DNA test OR SEXUAL OFFENSE FORENSIC EVIDENCE TEST performed by
53 any such federal laboratory.

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

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

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

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

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

26 3. ANY FORENSIC EVIDENCE COLLECTED OR OBTAINED IN CONNECTION WITH THE
27 INVESTIGATION OF A CRIME OR OFFENSE CONTAINED IN ARTICLE ONE HUNDRED
28 THIRTY OF THE PENAL LAW MUST BE INCLUDED IN THE STATE SEXUAL OFFENSE
29 FORENSIC EVIDENCE INDEX PURSUANT TO THIS ARTICLE.

30 4. THE SEXUAL OFFENSE FORENSIC EVIDENCE SHALL BE COLLECTED, STORED AND
31 FORWARDED TO ANY FORENSIC DNA LABORATORY WHICH HAS BEEN AUTHORIZED BY
32 THE COMMISSION TO PERFORM SEXUAL OFFENSE FORENSIC EVIDENCE TESTING AND
33 ANALYSIS FOR INCLUSION IN THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE
34 INDEX. SUCH LABORATORY SHALL PERFORM THE REQUISITE TESTING AND ANALYSIS
35 WITHIN TEN BUSINESS DAYS OF COLLECTION, AND FORWARD THE RESULTING SEXUAL
36 OFFENSE FORENSIC EVIDENCE RECORD TO THE STATE SEXUAL OFFENSE FORENSIC
37 EVIDENCE INDEX IN ACCORDANCE WITH THE REGULATIONS OF THE DIVISION OF
38 CRIMINAL JUSTICE SERVICES.

39 5. SEXUAL OFFENSE FORENSIC EVIDENCE THAT HAS BEEN BACKLOGGED SHALL BE
40 FORWARDED TO ANY FORENSIC DNA LABORATORY WHICH HAS BEEN AUTHORIZED BY
41 THE COMMISSION TO PERFORM SEXUAL OFFENSE FORENSIC EVIDENCE TESTING AND
42 ANALYSIS FOR THE INCLUSION IN THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE
43 INDEX BY AUGUST FIRST, TWO THOUSAND FIFTEEN. SUCH LABORATORY SHALL
44 PERFORM THE REQUISITE TESTING AND ANALYSIS WITHIN ONE HUNDRED TWENTY
45 DAYS OF RECEIPT OF THE SEXUAL OFFENSE FORENSIC EVIDENCE AND FORWARD THE
46 RESULTING SEXUAL OFFENSE FORENSIC EVIDENCE RECORD TO THE STATE SEXUAL
47 OFFENSE FORENSIC EVIDENCE INDEX IN ACCORDANCE WITH THE REGULATIONS OF
48 THE DIVISION OF CRIMINAL JUSTICE SERVICES.

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

52 (A) TO A FEDERAL LAW ENFORCEMENT AGENCY, OR TO A STATE OR LOCAL LAW
53 ENFORCEMENT AGENCY OR DISTRICT ATTORNEY'S OFFICE FOR LAW ENFORCEMENT
54 IDENTIFICATION PURPOSES IN CONNECTION WITH THE INVESTIGATION OF THE
55 COMMISSION OF ONE OR MORE CRIMES, PROVIDED THAT THERE EXISTS BETWEEN THE
56 DIVISION AND SUCH AGENCY A WRITTEN AGREEMENT GOVERNING THE USE AND

1 DISSEMINATION OF SUCH SEXUAL OFFENSE FORENSIC EVIDENCE RECORDS IN
2 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; OR

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

6 7. REQUESTS FOR SEXUAL OFFENSE FORENSIC EVIDENCE RECORDS MUST BE IN
7 WRITING, OR IN A FORM PRESCRIBED BY THE DIVISION AUTHORIZED BY THE
8 REQUESTING PARTY, AND, OTHER THAN A REQUEST PURSUANT TO PARAGRAPH (B) OF
9 SUBDIVISION SIX OF THIS SECTION, MAINTAINED ON FILE AT THE STATE SEXUAL
10 OFFENSE FORENSIC EVIDENCE INDEX IN ACCORDANCE WITH RULES AND REGULATIONS
11 PROMULGATED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE
12 SERVICES.

13 8. THE DEFENDANT, INCLUDING THE REPRESENTATIVE OF A DEFENDANT, IN A
14 CRIMINAL ACTION OR PROCEEDING SHALL HAVE ACCESS TO INFORMATION IN THE
15 STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX RELATING TO THE NUMBER OF
16 REQUESTS PREVIOUSLY MADE FOR A COMPARISON SEARCH AND THE NAME AND IDEN-
17 TITY OF ANY REQUESTING PARTY.

18 S 8. This act shall take effect on June 1, 2015.