

4524--A

2015-2016 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. CLARK, SIMOTAS, SCARBOROUGH, JAFFEE, SCHIMEL --
Multi-Sponsored by -- M. of A. CERETTO, HOOPER, KATZ, MONTESANO --
read once and referred to the Committee on Codes -- 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 ASSEM-
BLY, 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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11. "STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX" MEANS THE SEXUAL OFFENSE FORENSIC EVIDENCE RECORD SYSTEM FOR NEW YORK ESTABLISHED PURSUANT TO THIS ARTICLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index AND THE STATE SEXUAL OFFENSE FORENSIC EVIDENCE INDEX has the right of access to and review of records relating to such individual contained in such [index] INDICES for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information 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 REPRESENTATIVE,
16 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.