STATE OF NEW YORK

7371

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

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

AN ACT to amend the executive law, in relation to DNA databanks' treatment of volunteer DNA samples

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

Section 1. Section 995 of the executive law, as added by chapter 737 of the laws of 1994, subdivision 7 as amended by chapter 19 of the laws of 2012, is amended to read as follows:

§ 995. Definitions. When used in this article, the following words and terms shall have the meanings ascribed to them in this section:

1. For purposes of general forensic analysis the term "forensic laboratory" shall mean any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.

2. For purposes of forensic DNA analysis, the term "forensic DNA laboratory" shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term "forensic DNA testing" shall mean any test that employs techniques to examine deoxyribonucleic acid (DNA) derived from the human body for the purpose of providing information to resolve issues of identification. Regulation pursuant to this article shall not include DNA testing on materials derived from the human body pursuant to title five of article five of the public health law for the purpose of determining a person's genetic disease or medical condition and shall not include a laboratory operated by the federal government.

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

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3. "DNA testing methodology" means methods and procedures used to extract and analyze DNA material, as well as the methods, procedures, assumptions, and studies used to draw statistical inferences from the test results.

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

5. "DNA" means deoxyribonucleic acid.

5-a. "DNA profile" means a set of DNA identification characteristics which may permit the DNA of one person to be distinguishable from that of another person. For short tandem repeat DNA profiles, it means the list of alleles carried by a particular individual at a specific set of genetic loci.

5-b. "Subject DNA profile" means the DNA profile generated by analysis of a biological sample collected from a subject convicted of a crime whose specimen was collected: after a criminal trial; pursuant to a plea agreement; as a condition of participation in a temporary release, comprehensive alcohol and substance abuse treatment (CASAT) or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision.

5-c. "Subject index" means the electronic database containing DNA profiles generated from a subject convicted of a crime whose DNA specimen was collected: after a criminal trial; pursuant to a plea agreement; as a condition of participation in a temporary release, comprehensive alcohol and substance abuse treatment (CASAT) or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision.

5-d. "Volunteer index" means the electronic database containing DNA profiles generated from a volunteer sample.

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

6-a. "CODIS" means the federal combined DNA index system.

6-b. "NDIS" means the national DNA index system.

6-c. "Forensic DNA index" means the electronic database in CODIS that contains DNA profiles generated from casework evidence by forensic DNA laboratories.

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

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

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

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

11. "Sample" shall mean the immediate result of any genetic sampling and includes the means of sampling itself, such as a swab, and any genetic sample that came from the volunteer and is used for subsequent testing, analysis, or indexing, or that is in the custody of an agency.

12. "Volunteer sample" or "volunteer genetic sample" shall mean any genetic sample or DNA profile that is knowingly and intelligently given to the state by a person without an order of the court. The term does not include samples taken from designated offenders.

13. "Derived information" shall mean any and all information and documentation that is extracted or created from the sample and is associated with the sample, including any partial or complete DNA profile, code or genetic testing, or other identifying information.

§ 2. Sections 995-d, 995-e and 995-f of the executive law are renumbered sections 995-f, 995-g and 995-h and two new sections 995-d and 995-e are added to read as follows:

§ 995-d. Attachment of a volunteer sample to a specific case. 1. When any volunteer genetic sample or DNA profile is received by the state, or any subdivision thereof, it shall be attached to an ongoing investigation and given a unique reference number under which all derived information may be referenced.

(a) The sample and all derived information shall be organized and indexed in the volunteer index by each law enforcement agency or forensic lab to come in contact with the material.

(b) The law enforcement agency shall certify that the information was collected or created in reasonable and direct connection with one or more specific investigations.

(c) If a sample, derived information, or DNA profile is shared with another agency the following information shall be documented in association with the unique reference number: the name of the requesting agency; the purpose for which the sample, information or DNA profile was sought; and a description of the information shared.

2. Any information attached to a new case that had not been initiated at the time the unique identification number was first assigned shall be considered attached to an ongoing investigation and shall preclude approval of a request for expungement, provided, however, that the sample, derived information, of DNA profile must have a reasonable and direct connection with the new investigation.

3. Volunteer receipt and information. Any person who provides a volunteer sample shall be provided a receipt by the agency receiving the sample within forty-eight hours. The receipt shall indicate the following:

(a) the unique identification number assigned to the volunteer;

(b) a statement informing the volunteer that he or she may apply to have all the samples and derived information associated therewith expunged from the agencies' records, and returned to the volunteer upon the completion of the investigation for which the sample was submitted;

(c) a statement describing the process by which the volunteer may apply for such expungement; and

(d) a statement informing the volunteer that the sample and all derived information may be used in further investigations unless and until an expungement request is approved.

§ 995-e. Volunteer request for expungement. 1. Any person that has provided a volunteer sample to a law enforcement agency may request that their sample and all derived information be expunged from the records of any and all agencies that have examined the sample or any forensic information derived therefrom. When applying for such expungment the volunteer shall provide:

(a) proof of identity;

(b) the unique identification number associated with their sample; and

(c) a written attestation that they wish to have their sample and all derived information expunged and returned to them or expunged and destroyed.

2. When an agency receives a volunteer request for expungement the agency shall determine whether the sample is currently associated with an ongoing investigation and whether the information provided pursuant to subdivision one of this section is sufficient. If the sample is currently associated with an ongoing investigation or the information provided is insufficient the agency shall inform the volunteer the request is denied. When denying a volunteer request for expungement, the agency shall provide an explanation of its decision. If the sample is not currently associated with an ongoing investigation and the information required under subdivision one of this section is sufficient, the agency shall approve the request and shall:

(a) cease all testing and analysis of the sample or any derived information and shall delete all records identified with the volunteer's unique identification number, including DNA profiles from any and all databases or indexes maintained by the agency, and shall make the original samples available for destruction or return to the volunteer; and

(b) forward the request to all other agencies that were involved with the collection, processing, or analysis of that sample, including all agencies to which the agency receiving the request provided the sample or any derived information.

§ 3. This act shall take effect immediately.