STATE OF NEW YORK

5135

2021-2022 Regular Sessions

IN SENATE

February 24, 2021

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

AN ACT to amend the executive law, in relation to requiring consent of a minor's parent, legal guardian or attorney for law enforcement collection of DNA from certain minors

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

Section 1. The executive law is amended by adding a new section 837-w to read as follows:

§ 837-w. Collection of DNA from certain minors. 1. No member of a police department, county sheriff's office, the state police or other law enforcement officer shall collect a DNA sample from a minor prior to the lawful arrest of such minor without first obtaining the written consent of such minor's parent, legal guardian or attorney, except:

(a) Where the DNA sample is abandoned at the scene of an alleged criminal offense and is not collected from the minor's person; or

(b) Where the DNA sample is collected from a minor who is alleged to be the victim of a criminal offense.

2. Subdivision one of this section shall not be construed to prohibit any lawful method of collecting a DNA sample from a minor pursuant to a search warrant, other court order or provision of law that authorizes the search of a minor for the purpose of collecting a DNA sample.

3. As used in this section, the following terms shall have the following meanings:

(a) "DNA sample" means any amount of blood, saliva, hair or other bodily material from which deoxyribonucleic acid can be extracted.

(b) "Law enforcement officer" means any public servant who is authorized to conduct an investigation, prosecute or make an arrest for a criminal offense.

(c) "Minor" means a natural person under the age of eighteen.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

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

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