

# STATE OF NEW YORK

8408

## IN SENATE

February 24, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the executive law and the public health law, in relation to the use of DNA collected from sexual offense evidence kits

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

1 Section 1. Subdivision 3 of section 995-c of the executive law is  
2 amended by adding two new paragraphs (c) and (d) to read as follows:

3 (c) No DNA sample, record, product, or evidence collected or result-  
4 ing from the collection of DNA of a victim collected in a sexual offense  
5 evidence kit shall be included in the state DNA identification index.

6 (d) Any DNA record of a victim, collected from a sexual offense  
7 evidence kit and stored in a DNA identification index maintained by the  
8 state or any county, city, town, village, or municipality, or enti-  
9 ty thereof, must be expunged within ninety days of the effective date  
10 of this paragraph.

11 § 2. Subdivision 1 of section 838-a of the executive law is amended by  
12 adding four new paragraphs (g), (h), (i) and (j) to read as follows:

13 (g) No DNA sample, record, product, or evidence collected or result-  
14 ing from the collection of DNA of a victim collected in a sexual offense  
15 evidence kit may be used as part of reasonable cause for arrest, and  
16 any product or evidence that results from the use of DNA of a victim  
17 collected from a sexual offense evidence kit is prohibited from use in  
18 an investigation. For criminal prosecutions and proceedings, any  
19 evidence or product that results or flows from the use of DNA of the  
20 victim collected from a sexual offense evidence kit is inadmissible.

21 (h) No DNA sample, record, product or evidence collected or result-  
22 ing from the collection of DNA of a victim in a sexual offense evidence  
23 kit shall be transmitted to any local or state DNA database.

24 (i) Any conviction obtained, either directly or indirectly, through  
25 the use of DNA of a victim collected in a sexual offense evidence kit  
26 shall be eligible for relief in accordance with section 440.10 of the  
27 criminal procedure law.

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

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1 (j) In any action brought by any person to enforce this section,  
2 the court may issue an injunction to restrain, prevent, or enforce  
3 any violation of this section. The court may mandate changes in the  
4 policies and procedures of police department rules and guidelines when  
5 such measures are required to remedy a violation under this section.

6 § 3. Subdivision 2 of section 2805-i of the public health law is  
7 amended by adding four new paragraphs (l), (m), (n) and (o) to read as  
8 follows:

9 (l) No DNA sample, record, product, or evidence collected or result-  
10 ing from the collection of DNA of a victim collected in a sexual offense  
11 evidence kit may be used as part of reasonable cause for arrest, and  
12 any product or evidence that results from the use of DNA of a victim  
13 collected from a sexual offense evidence kit is prohibited from use in  
14 an investigation. For criminal prosecutions and proceedings, any  
15 evidence or product that results or flows from the use of DNA of the  
16 victim collected from a sexual offense evidence kit is inadmissible.

17 (m) No DNA sample, record, product or evidence collected or result-  
18 ing from the collection of DNA of a victim in a sexual offense evidence  
19 kit shall be transmitted to any local or state DNA database.

20 (n) Any conviction obtained, either directly or indirectly, through  
21 the use of DNA of a victim collected in a sexual offense evidence kit  
22 shall be eligible for relief in accordance with section 440.10 of the  
23 criminal procedure law.

24 (o) In any action brought by any person to enforce this section,  
25 the court may issue an injunction to restrain, prevent, or enforce  
26 any violation of this section. The court may mandate changes in the  
27 policies and procedures of police department rules and guidelines when  
28 such measures are required to remedy a violation under this section.

29 § 4. This act shall take effect immediately.