STATE OF NEW YORK

5350

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

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

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:

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

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

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

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

(g) No DNA sample, record, product, or evidence collected or resulting from the collection of DNA of a victim collected in a sexual offense evidence kit may be used as part of reasonable cause for arrest, and any product or evidence that results from the use of DNA of a victim collected from a sexual offense evidence kit is prohibited from use in an investigation. For criminal prosecutions and proceedings, any evidence or product that results or flows from the use of DNA of the victim collected from a sexual offense evidence kit is inadmissible.

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

(i) Any conviction obtained, either directly or indirectly, through the use of DNA of a victim collected in a sexual offense evidence kit

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

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shall be eligible for relief in accordance with section 440.10 of the criminal procedure law.

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

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

(k) No DNA sample, record, product, or evidence collected or resulting from the collection of DNA of a victim collected in a sexual offense evidence kit may be used as part of reasonable cause for arrest, and any product or evidence that results from the use of DNA of a victim collected from a sexual offense evidence kit is prohibited from use in an investigation. For criminal prosecutions and proceedings, any evidence or product that results or flows from the use of DNA of the victim collected from a sexual offense evidence kit is inadmissible.

(l) No DNA sample, record, product or evidence collected or resulting from the collection of DNA of a victim in a sexual offense evidence kit shall be transmitted to any local or state DNA database.

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

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

§ 4. This act shall take effect immediately.