

# STATE OF NEW YORK

5350--A

2023-2024 Regular Sessions

## IN ASSEMBLY

March 7, 2023

Introduced by M. of A. WALLACE, O'DONNELL, REYES -- 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 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 five new paragraphs (c), (d), (e), (f) and (g) to read  
3 as follows:

4 (c) For the purposes of paragraphs (d), (e), (f), and (g) of this  
5 subdivision:

6 (i) "DNA profile" shall mean a DNA sample, record, product, or profile  
7 voluntarily submitted or collected from a victim of a sexual offense via  
8 a sexual offense evidence kit, a sexual assault nurse examination kit,  
9 provided for the purposes of exclusion, or developed from a known DNA  
10 reference sample, and shall not be construed to pertain to designated  
11 offender DNA; and

12 (ii) "DNA identification index" does not include storage or treatment  
13 of evidence as laid out in section eight hundred thirty-eight-a of this  
14 chapter or section twenty-eight hundred five-i of the public health law.

15 (d) A DNA profile shall not be used for comparison purposes in any  
16 unrelated criminal investigation. Such DNA shall not be collected, cata-  
17 loged, indexed, stored, or uploaded to any state or local DNA Identifi-  
18 cation Index maintained or operated by a public agency.

19 (e) (i) DNA profiles shall only be used for purposes directly related  
20 to the incident being investigated.

21 (ii) No law enforcement agency or agent thereof may compare any DNA  
22 profiles described in this paragraph or paragraph (d), (f), or (g) of

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

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1 this subdivision with DNA samples or records that do not relate to the  
2 incident being investigated.

3 (f) DNA profiles shall have their searchable database profile  
4 expunged from all public and private databases if the person has no past  
5 or present offense or pending charge which qualifies such person for  
6 inclusion within the state's DNA identification index.

7 (g) Any part of a DNA profile that remains after the requested testing  
8 or analysis has been performed shall be securely stored and may only be  
9 used in accordance with the restrictions on use and disclosure of the  
10 sample provided in this section and section eight hundred thirty-eight-a  
11 of the executive law or section twenty-eight hundred five-i of the  
12 public health law.

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

15 (g) Known reference DNA samples or profiles submitted, developed, or  
16 collected from a victim of a sexual offense via a sexual offense  
17 evidence kit shall not be used as part of reasonable cause for arrest.  
18 Such evidence is prohibited from use in an unrelated investigation. For  
19 criminal prosecutions and proceedings, any evidence or product that  
20 results or flows from the use of a known reference DNA samples or  
21 profiles submitted, developed, or collected from a victim of a sexual  
22 offense via a sexual offense evidence kit that violates any provision of  
23 this section shall be inadmissible.

24 (h) No victim's DNA sample, record, product, profile or evidence  
25 collected or resulting from the collection of DNA of a victim in a  
26 sexual offense evidence kit shall be transmitted to any local or state  
27 DNA identification index or database. DNA identification index or data-  
28 base does not include storage or treatment of evidence as laid out this  
29 section or section twenty-eight hundred five-i of the public health law.

30 (i) Any conviction against a victim obtained, either directly or indi-  
31 rectly, through the use of a victim's DNA collected in a sexual offense  
32 evidence kit shall be eligible for relief in accordance with section  
33 440.10 of the criminal procedure law.

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

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

42 (k) For the purposes of paragraphs (l), (m), (n) and (o) of this  
43 subdivision, "DNA profile" shall mean a DNA sample, record, product, or  
44 profile voluntarily submitted or collected from a victim of a sexual  
45 offense via a sexual offense evidence kit, a sexual assault nurse exam-  
46 ination kit, provided for the purposes of exclusion, or developed from a  
47 known DNA reference sample. Nothing in paragraphs (l), (m), (n) and (o)  
48 of this subdivision shall be construed to pertain to designated offender  
49 DNA.

50 (l) DNA profiles shall not be used as part of reasonable cause for  
51 arrest. Such evidence shall be prohibited from use in an unrelated  
52 investigation. For criminal prosecutions and proceedings, any evidence  
53 or product that results or flows from the use of a DNA profile that  
54 violates any provision of this section shall be inadmissible.

55 (m) DNA profiles shall not be collected, cataloged, indexed, stored,  
56 transmitted or uploaded to any state or local DNA identification index

1 maintained or operated by a public agency. DNA identification index does  
2 not include storage or treatment of evidence as laid out in this section  
3 or section eight hundred thirty-eight-a of the executive law.

4 (n) Any conviction obtained, either directly or indirectly, through  
5 the use of a DNA profile shall be eligible for relief in accordance  
6 with section 440.10 of the criminal procedure law.

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

12 § 4. This act shall take effect immediately.