STATE OF NEW YORK

226

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. GIANARIS -- 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 prohibiting the use of DNA phenotyping in criminal prosecutions and proceedings

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 838-c to read as follows:

§ 838-c. DNA phenotyping. 1. As used in this section, the following terms shall have the following meanings:

(a) "DNA phenotyping" shall mean the process of predicting a person's physical biometric information and other observable physical or biochemical characteristics, ancestry or familial connections based on an analysis of such person's DNA; and

(b) "physical biometric information" shall mean an individual's physical characteristics, including, but not limited to, eye color, hair color, skin color, freckling and face shape.

2. No law enforcement agency or member of law enforcement shall contract for DNA phenotyping services with any public or private entity.

3. No product or evidence that results or flows from the use of DNA phenotyping may be used as part of reasonable cause for arrest, and any product or evidence that results or flows from the use of DNA phenotyping 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 phenotyping is inadmissible.

4. Any conviction obtained, either directly or indirectly, through the use of DNA phenotyping, shall be eligible for relief in accordance with section 440.10 of the criminal procedure law.

5. In any action brought by any person to enforce this section, the court may issue an injunction to restrain, prevent, or enforce any

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

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violation of this section, including but not limited to, the destruction of any product of DNA phenotyping. 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.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law and any physical biometric information obtained as a result of DNA phenotyping already in possession of law enforcement and peace officers shall be immediately destroyed.