STATE OF NEW YORK

997--A

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

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

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

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

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

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

(d) A DNA profile shall not be used for comparison purposes in any unrelated criminal investigation. Such DNA shall not be collected, cataloged, indexed, stored, or uploaded to any state or local DNA Identification Index maintained or operated by a public agency.

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

(ii) No law enforcement agency or agent thereof may compare any DNA 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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this subdivision with DNA samples or records that do not relate to the incident being investigated.

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

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

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

(h) No victim's DNA sample, record, product, profile 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 identification index or database. DNA identification index or database does not include storage or treatment of evidence as laid out this section or section twenty-eight hundred five-i of the public health law.

(i) Any conviction against a victim obtained, either directly or indirectly, through the use of a victim's DNA collected in a sexual offense evidence kit 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 five new paragraphs (k), (l), (m), (n) and (o) to read as follows:

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

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

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

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

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

(o) 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.