

STATE OF NEW YORK

4965

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Governmental Operations

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:

1 Section 1. The executive law is amended by adding a new section 838-c
2 to read as follows:

3 § 838-c. DNA phenotyping. 1. As used in this section, the following
4 terms shall have the following meanings:

5 (a) "DNA phenotyping" shall mean the process of predicting a person's
6 physical biometric information and other observable physical or biochem-
7 ical characteristics, ancestry or familial connections based on an anal-
8 ysis of such person's DNA; and

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

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

14 3. No product or evidence that results or flows from the use of DNA
15 phenotyping may be used as part of reasonable cause for arrest, and any
16 product or evidence that results or flows from the use of DNA phenotyp-
17 ing is prohibited from use in an investigation. For criminal prose-
18 cutions and proceedings, any evidence or product that results or flows
19 from the use of DNA phenotyping is inadmissible.

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

23 5. In any action brought by any person to enforce this section, the
24 court may issue an injunction to restrain, prevent, or enforce any
25 violation of this section, including but not limited to, the destruction

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

LBD01859-01-3

1 of any product of DNA phenotyping. The court may mandate changes in the
2 policies and procedures of police department rules and guidelines when
3 such measures are required to remedy a violation under this section.

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