STATE OF NEW YORK

6661

2023-2024 Regular Sessions

IN ASSEMBLY

April 26, 2023

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

AN ACT to amend the penal law, in relation to prohibiting the unlawful disclosure of a sexual assault victim's DNA or RNA evidence; and to amend the criminal procedure law, in relation to limiting the use of a sexual assault victim's DNA or RNA evidence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding a new section 215.85 to read as follows:

§ 215.85 Unlawful disclosure of a sexual assault victim's DNA or RNA evidence.

1. A person is guilty of unlawful disclosure of a sexual assault victim's DNA or RNA evidence when, being a police officer or peace officer, a public officer or public employee, or an employee or agent of a hospital or a criminal or private testing facility or laboratory, he or she:

(a) enters into any international, federal, state or municipal criminal database evidence of a sexual assault victim's deoxyribonucleic acid ("DNA") profile or ribonucleic acid ("RNA") profile that was obtained during the investigation of an offense described in article one hundred thirty of this part or treatment of the sexual assault victim following the commission of an offense described in article one hundred thirty of this part; or

(b) accesses or utilizes evidence of a sexual assault victim's DNA profile or RNA profile that was obtained as described in paragraph (a) of this subdivision during an investigation or prosecution of the sexual assault victim for any offense or attempt to commit an offense unconnected to the sexual assault, regardless of when such offense or attempt to commit the offense occurred.

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

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2. Nothing in this section shall prohibit the inclusion of a sexual assault victim's DNA or RNA evidence:

(a) in a non-criminal missing persons database; or

(b) in a criminal database if the sexual assault victim, or the victim's parent, guardian or legal representative consents to the inclusion in writing.

Unlawful disclosure of a sexual assault victim's DNA or RNA evidence is a class E felony.

§ 2. The criminal procedure law is amended by adding a new section 60.77 to read as follows:

§ 60.77 Rules of evidence; use of a sexual assault victim's DNA or RNA evidence in certain cases.

1. Evidence of a sexual assault victim's deoxyribonucleic acid ("DNA") profile or ribonucleic acid ("RNA") profile that was obtained during the investigation of an offense described in article one hundred thirty of the penal law or treatment of the sexual assault victim following the commission of an offense described in article one hundred thirty of the penal law shall not be admissible in a prosecution of the victim for any offense or an attempt to commit an offense unrelated to the sexual assault, regardless of when such offense or attempt to commit the offense occurred.

2. Evidence that resulted from a violation of subdivision one of section 215.85 of the penal law (unlawful disclosure of a sexual assault victim's DNA or RNA evidence) shall not be admissible in a prosecution of the sexual assault victim for any offense or an attempt to commit an offense unrelated to the sexual assault, regardless of when such offense or attempt to commit the offense occurred. Any such evidence shall be ordered by the court to be sealed.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.