STATE OF NEW YORK

3969

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

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

AN ACT to amend the executive law, in relation to reforming the commission on forensic science; and to amend the executive law and the administrative code of the city of New York, in relation to making conforming changes; and to repeal certain provisions of the executive law relating thereto

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

Section 1. Subdivisions 1, 2, 4 and 8 of section 995 of the executive law, as added by chapter 737 of the laws of 1994 and subdivision 1 as amended by chapter 209 of the laws of 2021, are amended to read as follows:

1. [~~For purposes of general forensic analysis the term "forensic~~] **"Forensic** laboratory" shall mean any **agency, section of any agency, or** laboratory operated by [~~the state or unit of local government~~]**, or contracted with, a state or local law enforcement unit, inclusive of but not limited to sheriffs' offices, police departments, district attorney's offices and probation departments,** that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification.

2. [~~For purposes of forensic DNA analysis, the term "forensic DNA laboratory" shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term "forensic DNA~~] **"Forensic** testing" shall mean any test **or examination** that employs techniques to examine [~~deoxyribonucleic acid (DNA) derived from the human body~~] **physical, chemical, digital, or biometric properties of evidence or data** for the purpose of [~~providing information to resolve issues of identification~~] **determining the connection of evidence**

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

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or data to a criminal action or to resolve issues of identity pertaining to criminal investigations or surveillance, provided, however that the use of mobile forensic digital tools to extract data from cellphones and computers by a police agency shall not be subject to the provisions of this article. Regulation pursuant to this article shall not include [~~DNA~~] deoxyribonucleic acid (DNA) testing on materials derived from the human body pursuant to title five of article five of the public health law for the purpose of determining a person's genetic disease or medical condition and shall not include a laboratory operated by the federal government.

4. "Blind external proficiency testing" means a test [~~sample~~] that [~~is presented~~] appears to [~~a~~] the forensic [~~laboratory for forensic DNA testing through a second agency, and which appears to the analysts to involve routine evidence submitted for forensic DNA testing~~] analysts to involve routine evidence. The purpose of such a test is to evaluate the forensic analystsÆ performance against pre-existing criteria.

8. "DNA record" means DNA identification information prepared by a forensic [~~DNA~~] laboratory and stored in the state DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. A DNA record is [~~the objective form of~~] the results of a DNA analysis sample.

§ 2. Subdivision 9 of section 995 of the executive law is REPEALED and subdivision 10 is renumbered subdivision 9.

§ 3. Section 995 of the executive law is amended by adding seven new subdivisions 10, 11, 12, 13, 14, 15 and 16 to read as follows:

10. "Forensic analyst" means a person who on behalf of a forensic laboratory technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic report or forensic test.

11. "High-risk system" means a system or device deployed by a forensic laboratory whose failure could lead to serious adverse consequences including incarceration, deprivation of liberty, or loss of life.

12. "Scientific advisory committee" means the committee established pursuant to paragraph (a) of subdivision twelve of section nine hundred ninety-five-a of this article.

13. "Social justice, ethics, and equity assessment committee" means the committee established pursuant to paragraph (b) of subdivision twelve of section nine hundred ninety-five-a of this article.

14. "Forensic analyst license advisory committee" means the committee established pursuant to paragraph (c) of subdivision twelve of section nine hundred ninety-five-a of this article.

15. "Technologist" means a person with experience performing independent, third-party verification and validation of a high-risk system and publishing the results of that independent testing.

16. "Executive session" shall mean that portion of a meeting not open to the general public, in accordance with section one hundred two of the public officers law.

§ 4. Section 995-a of the executive law is REPEALED and a new section 995-a is added to read as follows:

§ 995-a. Commission on forensic science. 1. There is hereby created in the executive department, the commission on forensic science, as an independent agency of the state. The commission shall consist of the following nine members:

(a) one member who has expertise in the field of forensic science and works outside of New York whom the governor selects by application. The member shall have a degree in a field relevant to forensic science.

Expertise in forensic science shall be evidenced by, but not limited to, participation in national forensic science conferences, forensic science publications, lecturing, or receipt of awards in the field of forensic science;

(b) one member shall be a prosecuting attorney that the majority leader of the senate selects from a list of five names submitted by the district attorney's association of New York;

(c) one member shall be a criminal defense attorney that the speaker of the assembly selects from a list of five names jointly submitted by the New York state association of criminal defense lawyers and New York state defenders association;

(d) one member shall be a faculty member or staff member of public or private university who is a technologist as defined under subdivision fifteen of section nine hundred ninety-five of this article that the New York state chief privacy officer or their designee from the New York office of information technology services selects by application;

(e) one member shall be a faculty member or staff member of a public or private university who specializes in clinical laboratory science that the attorney general or their designee selects by application;

(f) one member shall be a faculty member or staff member of a public or private university who specializes in statistics that the chancellor of the city university of New York selects from a list of names submitted by application;

(g) one member shall be a faculty member or staff member of a public or private university who analyzes or researches the ethical, legal, social, and justice implications of scientific methods and technologies that the chancellor of the state university of New York selects by application. The member's input should be guided by previous experience with research on science and technology from ethical, empirical, or technical perspectives that consider privacy, civil liberties, and social disparities;

(h) one member shall be a faculty member or staff member of a public or private university who specializes in racial justice that the chancellor of the city university of New York selects by application; and

(i) one member shall be a faculty member or staff member of a public or private university who researches in cognitive bias that the chancellor of the state university of New York selects by application.

2. No member appointed pursuant to paragraph (a), (d), (e), (f), (g), (h), or (i) of subdivision one of this section shall have nor previously have had primary duties in investigation, apprehension, detention or prosecution of individuals suspected of criminal offenses.

3. Each member shall be appointed to serve a three-year term. The terms expire on December thirty-first of:

(a) two thousand twenty-six and every three years thereafter, for a member appointed under paragraph (a), (d), or (g) of subdivision one of this section; and

(b) two thousand twenty-seven and every three years thereafter, for a member appointed under paragraph (b), (e), or (h) of subdivision one of this section; and

(c) two thousand twenty-eight and every three years thereafter, for a member appointed under paragraph (c), (f), or (i) of subdivision one of this section.

4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed pursuant to subdivision one of this section for the unexpired term of the member such person is to succeed.

Any such vacancy shall be filled within ninety days in the same manner as the original appointment.

5. The commission by majority vote shall elect a chairperson from among its members for a term of three years. The term of the chair of the commission may not exceed the chair's term limit as a member of the commission. Any vacancy shall be filled within thirty days in the same manner.

6. The commission shall meet at least six times each year in public session and may establish its own rules and procedures concerning the conduct of its meetings and other affairs. Those rules and procedures, however, must prioritize public access to information and transparency.

7. The nine members of the commission shall be the only voting members. A majority of the whole number of members shall constitute a quorum and not less than a majority of the whole number may perform and exercise the power, authority, or duties of the commission.

8. Every meeting of the commission or its committees shall be open to the general public, except that an executive session of such body may be called and business transacted solely for the purposes enumerated in article seven of the public officers law. Notwithstanding the provisions of article seven of the public officers law, a supermajority vote of six of the nine members, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, is required to conduct an executive session. A motion for entry into an executive session must provide sufficient detail to enable the public to know whether an executive session is appropriate. The provision allowing a public body to meet in an executive session to discuss personnel matters is intended to protect the privacy of a particular person or person, not to shield policy or systemic issues from public discussion.

9. All the records and underlying documents of the commission, except for those records and documents specifically designated by a supermajority vote of the commission as subject to executive session as provided in subdivision eight of this section, and all non-conformity reports and non-conformity records, with forensic analysts' names redacted, shall be prominently displayed on the homepage of the commission's website or be made available to any member of the public who files a simple request in writing or by email to the commission. Unredacted non-conformity reports and records containing the names of the forensic analysts involved shall also be made available to any member of the public who files a simple request in writing or by email to the commission.

10. No member of the commission shall have a financial or ownership interest in any form of enterprise that profits from the use, continued use, or general acceptance of a forensic testing method that is subject to the commission's duties and powers. Unless employment results in such financial or ownership interest or results in disqualification pursuant to subdivision two of this section, no member of the commission shall be disqualified from holding any public office or employment, nor shall any member forfeit any such office or employment, by reason of such persons appointment under this section, and members of the commission shall not be required to take and file oaths of office before serving on the commission. In the event that a member of the commission does not meet these requirements, the member shall resign their role on the commission or a majority of the members of the commission may vote to remove a member from the commission.

11. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions under this section.

12. There shall be three permanent advisory committees to the commission, as follows:

(a) A scientific advisory committee, which will be made up of nine members, including its chair, and shall consist of four research scientists from a scientific discipline outside of the field of forensics; one legal scholar; and two forensic science researchers or two forensic analysts. At least one member shall be a scientist having experience in the areas of laboratory standards or quality assurance regulation and monitoring and at least one member shall have expertise in forensic biology, one in forensic chemistry, one in forensic toxicology, and one in a pattern-matching discipline.

(i) (1) The first person to chair the committee shall be selected by the members of the commission from a list of five nominees or applicants submitted by the commissioners. The subsequent person to chair shall be selected from the membership of the scientific advisory committee and, as necessary, the commission may select a new committee chairperson in the same manner as the original appointment.

(2) The chairperson shall serve in the role for a three-year term. Any chairperson chosen to fill a vacancy created otherwise than by expiration of term shall be selected by membership for the unexpired term of the member they are to succeed. A member may serve no more than two terms as chair.

(ii) (1) The first chairperson of the committee shall appoint eight members, selected by application, five of whom must be a faculty member or staff member of a public or private university. The chairperson's membership selections shall require confirmation by a majority vote of the commission members. The subsequent members shall be selected by the then-serving chairperson and confirmed by a majority vote of the commission members.

(2) Members of the committee shall serve three-year terms, which will have staggered terms of office such that one-third of the memberships' terms will expire each year and the succeeding members will have a term of three years and be subject to the conditions of service specified in subdivisions ten and eleven of this section. A committee member may not serve more than two terms.

(b) A social justice, ethics and equity assessment committee, which will be made up of nine members, including its chairperson, and shall consist of members with expertise in equity and equity impact assessments, civil rights, implicit bias, police accountability or legitimacy, and racial justice and history. At least one member must have expertise in algorithm bias detection and mitigation. At least two members must be from organizations or community groups representing people impacted by the criminal justice system.

(i) The chairperson of the social justice, ethics and equity assessment committee shall be the commissioner selected pursuant to paragraph (h) of subdivision one of this section.

(ii) (1) The chairperson of the committee shall appoint eight members, selected by application. In selecting members of the committee, the chair shall take into consideration the statewide geographic diversity of the membership. The chairperson's membership selections shall require confirmation by a majority vote of the commission members.

(2) Members of the committee shall serve for three-year terms, which will have staggered terms of office such that one-third of the member-

ships' terms will expire each year and the succeeding members will have a term of three years and be subject to the conditions of service specified in subdivisions ten and eleven of this section, except that members of the committee, excluding the chairperson of the committee, shall receive a fixed yearly stipend for their time. A committee member may not serve more than two terms. A vacancy on the advisory committee is filled by appointing a member in the same manner as the original appointment to serve for the unexpired portion of the term.

(c) A forensic analyst license advisory committee, whose membership shall consist of nine members as follows: one prosecuting attorney selected by the District Attorneys Association of New York; one defense attorney jointly selected by the New York State Association of Criminal Defense Lawyers and New York State Defenders Association; and seven members selected by the scientific advisory committee.

(i) (1) The first person to serve as the presiding officer will be selected by the members of the commission from a list of five nominees or applicants submitted by the scientific advisory committee. The subsequent person to serve as the presiding officer shall be selected from the membership of the forensic analyst license advisory committee and, as necessary, the commission may select a new committee presiding officer in the same manner as the original appointment.

(2) The presiding officer shall serve in that role for a three-year term. Any presiding officer chosen to fill a vacancy created otherwise than by expiration of term shall be selected by membership for the unexpired term of the member they are to succeed. A member may serve no more than two terms as presiding officer.

(ii) (1) All membership selections must be confirmed by a majority vote of the commission members. In selecting the license advisory committee members, the commission and scientific advisory committee shall consider experience and expertise in forensic biology, toxicology, forensic chemistry, firearms and toolmarks, trace, fingerprints, digital forensics, statistics, cognitive bias, and ethics.

(2) The members shall serve three-year terms that begin with the first committee meeting. Members' terms of office will be staggered such that one-third of the memberships' terms will expire each year and the succeeding members will have a term of three years. A member may not serve more than two consecutive terms and will be subject to the conditions of service specified in subdivisions ten and eleven of this section. A vacancy on the committee shall be filled by appointing a member in the same manner as the original appointment to serve for the unexpired portion of the term.

13. The commission on forensic science shall have ultimate, final decision-making authority with respect to recommendations from the committees established pursuant to this section. In exercising this authority, the commission shall have the right to accept or reject in whole or in part any and all recommendations or issue a different decision from that which a committee recommends. Acceptance of a committee recommendation shall require a majority vote of the commission members. Rejection in whole or in part of a committee's recommendation or issuance of a different decision from that which a committee recommends shall require a two-thirds vote of the commission members. The commission's reasons for either accepting or rejecting a committee recommendation or issuing a different decision from that which a committee recommends shall be publicly reported in writing on the commission's website.

§ 5. The executive law is amended by adding a new section 995-aa to read as follows:

§ 995-aa. Permanent advisory committees to the commission. 1. (a) The scientific advisory committee established pursuant to section nine hundred ninety-five-a of this article shall meet six times per year at minimum and serve as advisors to the commission.

(b) Upon the vote of a majority of the members of the commission, the committee shall have the authority to review a forensic laboratory accreditation pursuant to this article and make recommendations to the commission to grant, deny, or modify accreditation of forensic laboratories as defined in subdivision one of section nine hundred ninety-five of this article. Upon the vote of a majority of the members of the commission, the committee shall have the authority to establish and oversee a blind external proficiency testing program for forensic laboratories, including receiving and analyzing the data from such a program. The committee shall also recommend the adoption and implementation of internal and external proficiency testing programs and provide the commission with a list of accredited proficiency testers.

(c) The committee may lend their expertise to, issue reports, and provide written recommendations to the commission or another committee at any time upon three votes of the commission, a majority vote of the social justice, ethics, and equity committee, or a majority vote of the forensic analyst licensing advisory committee, provided they disclose a record to the public of all recommendations to the commission. Recommendations may address, but are not limited to, minimum scientific standards to be utilized in conducting forensic testing, including but not limited to examination of specimens, population studies and methods employed to determine probabilities and interpret test results, licensing requirements, training requirements, assessment and evaluation of all methodologies proposed to be used for forensic testing, implementation of scientific control and quality assurance procedures and adoptions of standards for the performance of forensic testing, or any other matters referred to it by the commission. The committee may require a demonstration by a forensic laboratory of any proposed forensic testing methodology proposed to be used by a forensic laboratory.

2. (a) The purpose of the social justice, ethics and equity assessment committee established pursuant to section nine hundred ninety-five-a of this article is to advance social justice, ethics and equity in the use of forensic methods and make recommendations to the commission to reduce racial disparities.

(b) The committee shall have the power to:

(i) conduct equity assessments of current and emerging technologies and methods;

(ii) assess built-in biases in algorithms and the disparate impact of technologies;

(iii) establish recommendations for best practices to guard against racial disparities and advance social justice for implementation of forensic science and technology;

(iv) hold hearings and meetings to gather feedback from the public and to use public feedback to inform their work; and

(v) hold public meetings and briefings to educate the public and the commission on forensic science, technologies, and methods.

(c) The committee shall meet as the commission requests or a minimum of four times per year.

(d) The committee may lend their expertise to, issue reports, and provide written recommendations to the commission or another committee, provided they disclose a record of all recommendations to the commission and to the public. The committee may make recommendations or issue

reports to the commission at any time upon a vote of three members of the commission, a majority vote of the scientific advisory committee, or a majority vote of the license advisory committee.

3. (a) The forensic analyst license advisory committee established by section nine hundred ninety-five-a of this article shall advise the commission, with specific advisory responsibility to the commission on its rule-making pursuant to paragraphs (b), (c), (d), and (e) of subdivision seven of section nine hundred ninety-five-b of this article, and make recommendations related to the licensing of a forensic analyst defined under subdivision fourteen of section nine hundred ninety-five of this article.

(b) The committee shall conduct an annual needs assessment for all laboratories with licensed forensic analysts in New York state and issue a yearly needs report that includes recommendations for the expenditure of licensing fees to the commission.

(c) The committee shall meet at the call of the presiding officer of the committee or the commission.

(d) The commission may delegate its rule-making powers for forensic analyst licensing to the committee, but any proposed rule must be ratified for adoption by a majority vote of the commission members.

§ 6. Section 995-b of the executive law, as added by chapter 737 of the laws of 1994, paragraph (a) of subdivision 13 as amended by chapter 560 of the laws of 1999, is amended to read as follows:

§ 995-b. Powers and duties of the commission. 1. (a) Not later than June thirtieth of each year, the commission shall prepare and publish a report that covers the following areas of interest from the previous year, including:

(i) commission activity, which shall include:

(1) a description of each disclosure or complaint filed with the commission during the preceding twelve-month period, the disposition of each complaint, and the status of any complaint still pending on March first;

(2) a description of any specific forensic method or technology the commission designates as part of the accreditation process for crime laboratories established by this section;

(3) recommendations for best practices for each forensic method or technology;

(4) developments in forensic science or technology made or used in other state or federal investigations and the activities of the commission, if any, with respect to those developments; and

(5) other information that is relevant to investigations involving forensic science, as determined by a majority vote of the commission members; and

(ii) significant non-conformities, which shall include:

(1) the commission's definition of the term "significant non-conformities" based on the type of standard violated, its severity, risk of recurrence, and impact on the criminal legal system; and

(2) for each forensic science service provider overseen by the commission:

(A) the number of significant nonconformities identified and professional negligence or professional misconduct disclosed to the commission;

(B) a description of the nature of the nonconformity, professional negligence, or professional misconduct and how it was detected; and

(C) a description of all corrective actions implemented to address the nonconformity, professional negligence, or professional misconduct, and the effectiveness of the corrective actions taken; and

(iii) operational statistics, which shall include:

(1) for each forensic science service provider overseen by the commission:

(A) the volume of forensic services of each facility;

(B) the volume of forensic services required for each county; and

(C) the costs and length of time from submission for testing and the return of results from such facilities.

(b) The annual report will be posted to the commission website upon publication on June thirtieth and distributed directly to the following institutional stakeholders:

(i) the New York State Defenders Association;

(ii) the New York State Association of Criminal Defense Lawyers;

(iii) the District Attorneys' Association of the State of New York;

(iv) all county attorneys in New York state;

(v) all public defense organizations in New York state;

(vi) all New York crime laboratory directors;

(vii) the New York state office of court administration;

(viii) all New York state supreme court justices; and

(ix) any other local government body or nonprofit organization that requests to be included on the annual report distribution list.

2. (a) The commission shall adopt a code of professional responsibility by rule to regulate the conduct of persons, laboratories, facilities, and other entities regulated under this article.

(b) The commission shall publish on its website the code of professional responsibility adopted under paragraph (a) of this subdivision and provide a copy to every forensic laboratory as defined under subdivision one of section nine hundred ninety-five of this article. Every forensic laboratory shall be responsible for providing a copy of the code of professional responsibility to each of its employees. Each such employee shall acknowledge receipt of the code of professional responsibility in writing on the first of each calendar year and file such receipt with the laboratory's compliance officer or equivalent personnel.

(c) The commission shall adopt rules establishing sanctions for code violations.

(d) The commission shall update the code of professional responsibility as necessary to reflect changes in science, technology, or other factors affecting persons, laboratories, facilities, and other entities regulated under this article.

3. (a) The commission shall:

(i) develop and implement a uniform reporting system through which a forensic laboratory, individual, or other entity may report professional negligence or professional misconduct;

(ii) require a forensic laboratory to report professional negligence or professional misconduct to the commission; and

(iii) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would:

(1) substantially affect the integrity of:

(A) the results of forensic testing conducted by a forensic laboratory;

(B) an examination or test that is conducted by a forensic laboratory and that is a forensic examination or test not subject to accreditation; or

(C) testimony related to an analysis, examination, or test described by item (A) or (B) of this clause; or

(2) constitute professional misconduct requiring disciplinary action pursuant to paragraph (f) of subdivision seven of this section. The results of this investigation shall include a determination of whether there is substantial evidence of professional misconduct or whether further proceedings are warranted.

(b) The commission may also initiate an investigation of a forensic testing method or a specific forensic analysis not subject to accreditation, without receiving a complaint submitted through the reporting system implemented under subparagraph (i) of paragraph (a) of this subdivision if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the forensic method, test, examination, or specific analysis would advance the scientific integrity and reliability of forensic science in this state.

(c) If the commission initiates an investigation under subparagraph (i) of paragraph (a) of this subdivision, the commission shall:

(i) provide written notice and a description of the complaint to the affected forensic laboratory or individual;

(ii) provide the affected forensic laboratory or individual thirty days to respond to the allegation or provide information about how the forensic laboratory or individual has remediated the problem or issue; and

(iii) provide the forensic laboratory or individual with the opportunity to respond at a public hearing prior to the commission's vote to undertake an investigation.

(d) If the commission conducts an investigation under subparagraph (i) of paragraph (a) of this subdivision of a forensic laboratory:

(i) that is accredited under this article pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic testing, the investigation:

(1) shall include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred;

(C) any corrective action required of the forensic laboratory;

(D) observations of the commission regarding the integrity and reliability of the forensic testing conducted;

(E) best practices identified by the commission during the course of the investigation; and

(F) other recommendations that are relevant, as determined by the commission; and

(2) may include one or more of the following:

(A) retrospective reexaminations of other forensic testing conducted by the forensic laboratory that may involve the same kind of negligence or misconduct; and

(B) follow-up evaluations of the forensic laboratory to review including:

i. the implementation of any corrective action required under item (C) of clause one of this subparagraph; or

ii. the conclusion of any retrospective reexamination under item (A) of this clause.

(ii) that is not accredited under this article or the investigation involves a forensic test not subject to accreditation, the investigation must include the preparation of a written report, which may contain:

(1) observations of the commission regarding the integrity and reliability of the applicable analysis, examination, or test conducted;

(2) best practices identified by the commission during the course of the investigation; or

(3) other recommendations that are relevant, as determined by the commission.

(e) If the commission conducts an investigation of a forensic testing method or specific forensic analysis under paragraph (b) of subdivision three of this section, the investigation must include the preparation of a written report that contains:

(i) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;

(ii) best practices identified by the commission during the course of the investigation; and

(iii) other recommendations that are relevant, as determined by the commission.

(f) The commission by contract may delegate the duties described by subparagraphs (i) and (iii) of paragraph (a) of this subdivision, paragraph (b) of this subdivision, and paragraph (a) of subdivision five of this section to any person the commission determines to be qualified to assume those duties, however, the commission retains the authority for determining the standards by which those activities are conducted.

(g) The commission may require that a forensic laboratory investigated under this section pay any costs incurred to ensure compliance with paragraphs (c), (d), or (e) of this subdivision as part of its accreditation responsibilities.

(h) The commission shall make all investigation reports completed under paragraphs (d) or (e) of this subdivision available to the public. A report completed under paragraphs (d) or (e) of this subdivision, in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report, nor is it prima facie evidence of general acceptance by the relevant scientific community.

(i) The commission may not issue a finding related to the guilt or innocence of a party in an underlying civil or criminal trial involving conduct investigated by the commission under this article.

(j) The commission shall develop and implement a defendant notification procedure for investigations conducted under this section that includes all of the following:

(i) notification to New York state defenders association, New York state association of criminal defense lawyers, all county attorneys in New York state, and all public defense organizations in New York state, the district attorney's office, the defendant in any affected criminal case and that defendant's attorney, if applicable, of the disposition, if that disposition includes a finding that an act of professional negligence, misconduct, nonconformance, or a change in science affected the integrity of the results of a forensic analysis;

(ii) a description of the technical issue and a written summary of the facts;

(iii) a referral to relevant resources, including, but not limited to, public defenders; and

(iv) a protocol for the commission to provide potentially affected defendants with information regarding relevant resources.

4. (a) For purposes of this section:

(i) "Forensic method" shall mean any forensic science technique, instruments, software program, or analysis used in a criminal matter or investigation or proposed for use in a criminal matter; and

(ii) "Method accreditation" shall mean meeting or exceeding applicable quality standards and supplemental forensic standards;

(iii) "IEEE 1012" shall mean the Institute of Electrical and Electronics Engineers (IEEE) standard 1012 that provides general requirements for system, software, and hardware verification and validation.

(iv) "Supplemental forensic standards" shall mean additional standards established or published by a governmental agency, a nationally or internationally recognized organization for design, development, or impartial review of laboratories or technology, which are relevant to forensic methodologies.

(b) The commission shall initiate an investigation into any current or new forensic method upon:

(i) application by a person alleging that a forensic method may not be scientifically valid if two or more of the members of the commission confirm that an investigation is warranted; or

(ii) a determination by two or more members of the commission that an investigation of a forensic method would advance the integrity and reliability of forensic science in the state.

(c) If the commission conducts an investigation under this subdivision, the investigation must include the preparation of a written public report that contains:

(i) observations of the commission regarding the integrity and reliability of the forensic method, including identifying the scientific foundations that support the forensic method and evaluating the empirical evidence for the reliability of the forensic method;

(ii) best practices identified by the commission during the course of the investigation;

(iii) a review of relevant scientific literature, including any black-box studies that assess the accuracy of an examiner's conclusions without considering how the conclusions were reached, to determine whether modification of any of the relevant manuals and procedures is desirable;

(iv) where the method involves any system, software or hardware covered by IEEE 1012, documentation of the degree to which the requirements of IEEE 1012 have been met including a discussion of the integrity level assigned to the system, software or hardware;

(v) a discussion of the limitations of the method, the limits of detection, statistical validation, and how the laboratory could improve the method;

(vi) performance of a racial equity impact assessment; and

(vii) other recommendations that are relevant, as determined by the commission.

(d) The commission may, upon a majority vote, establish supplemental forensic standards.

(e) Reports and recommendations issued pursuant to this section shall not limit admissibility challenges to the introduction of any evidence utilizing the new method before a court.

(f) To use a method in a criminal investigation or report the results of such a method to a court of this state, a forensic laboratory of this state or a forensic laboratory outside the borders of New York state as defined pursuant to subdivision one of section nine hundred ninety-five of this article shall first report use of the method to the commission. When a forensic laboratory is a non-public laboratory, that laboratory must disclose their department of health application materials and

permit to the commission. Upon disclosure of use of the method to the commission, or upon request by the commission, the forensic laboratory shall provide a copy of the following for validation, verification, and instrumental performance checks: summaries, protocols, written policies, source code, if requested; scope document describing sources and disciplines of accreditation; and all underlying data. The commission may rely upon a third party, selected by a majority vote, to assess the source code. In such a case, the commission shall disclose the name of the third party and a summary of their findings to the public.

(g) If a modification to an approved method could or does impact the interpretation of evidence or reported results in any way, then it must be reported to the commission.

(h) For purposes of investigation and reporting under this subdivision, the commission may rely on the scientific advisory committee or a working group.

(i) The commission shall develop minimum standards for forensic laboratories to evaluate the case-specific reliability of systems and methods using validation data. These standards will include but not be limited to guidance on implementing protocols that incorporate the limitations of interpretation methods and defining what constitutes interpretable data versus data that are unsuitable for comparison or uninterpretable.

5. (a) The commission shall develop minimum standards and a program of accreditation for all forensic laboratories in New York state, including establishing minimum qualifications for forensic laboratory directors, technical leaders, and quality control managers and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies. Nothing in this article shall be deemed to preclude forensic laboratories from performing research and validation studies on new methodologies and technologies which may not yet be approved by the commission at that time.

(b) The commission shall evaluate and update the system of accreditation every five years to reflect changes in science, technology, or other factors affecting minimum standards, forensic laboratory management and oversight. In designing a system of accreditation pursuant to this article, the commission shall evaluate other systems of accreditation every five years.

[~~2.~~] (c) The minimum standards and program of accreditation shall be designed and updated as required in paragraph (b) of this subdivision to accomplish the following objectives:

[~~(a)~~] (i) increase and maintain the transparency, effectiveness, efficiency, reliability, and accuracy of forensic laboratories[~~, including forensic DNA laboratories~~];

[~~(b)~~] (ii) ensure that forensic [~~analyses, including forensic DNA testing, are~~] testing is performed in accordance with the highest scientific standards [~~practicable~~], including cognitive bias protections, and is based on demonstrated foundationally valid methods and research;

[~~(c)~~] (iii) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system;

[~~(d)~~] (iv) ensure compatibility, to the extent consistent with the provisions of this article and any other applicable provision of law pertaining to privacy or restricting disclosure or redisclosure of information, with other state and federal forensic laboratories to the extent necessary to share and exchange information, data and results of forensic analyses and tests; [~~and~~

~~(e)~~] (v) set forth minimum requirements for the quality and maintenance of equipment; and

(vi) set forth minimum requirements for the quality, validation testing, equity, privacy, and ethics of the deployment of methodologies and technologies.

[~~2-a. Any program of forensic laboratory accreditation with respect to a DNA laboratory pursuant to this section shall be under the direction of the DNA subcommittee established pursuant to subdivision thirteen of this section. Such subcommittee shall have the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation pursuant to this article, provided that such authority shall be effectuated through binding recommendations made by the DNA subcommittee to the commission. In the event the commission disagrees with any of the binding recommendations of the DNA subcommittee made pursuant to this article, the commission may so notify such subcommittee and request such subcommittee to reasonably review such binding recommendations. The DNA subcommittee shall conduct such review and either forward revised binding recommendations to the commission or indicate, with the reasons therefor, that following such review such subcommittee has determined that such binding recommendations shall not be revised.~~

~~3.~~] (d) The program of forensic laboratory accreditation shall include, at a minimum, the following requirements:

[~~(a)~~] (i) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance with accreditation requirements. The results of the annual inspection, and underlying documents, shall be published on the laboratory's website;

[~~(b)~~] (ii) routine internal and external proficiency testing of all laboratory personnel involved in forensic [~~analysis~~] testing, including blind external proficiency testing [~~if the commission, or the DNA subcommittee as the case may be, determines such a blind proficiency testing program to be practicable and appropriate. In determining whether a blind proficiency testing program is practicable and appropriate, the commission, or the DNA subcommittee as the case may be, shall consider such factors as accuracy and reliability of laboratory results, cost-effectiveness, time, allocation of resources, and availability~~] . The program of proficiency testing includes initial competency testing. The results of the proficiency testing program, including the substance of the testing, the name of the forensic analyst, as well as active individual forensic analyst's results, shall be published by the laboratory;

[~~(c)~~] (iii) published quality control and quality assurance protocols, a published method validation procedure and a corrective action and remedial program;

[~~(d)~~] (iv) annual certification to the commission by the forensic laboratories of their continued compliance with the requirements of the accreditation program [~~which certification, in the case of a forensic DNA laboratory, shall be forwarded to the DNA subcommittee~~];

[~~(e)~~] (v) the accreditation of a forensic laboratory may be revoked, suspended or otherwise limited, upon a determination by the commission [~~or, in the case of a forensic DNA laboratory, upon the binding recommendation of the DNA subcommittee,~~] that the laboratory or one or more persons in its employ:

[~~(i)~~] (1) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;

[~~(ii)~~] (2) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

[~~(iii)~~] (3) showed a pattern of excessive errors in the performance of forensic laboratory examination procedures;

[~~(iv)~~] (4) failed to file any report required to be submitted pursuant to this article or the rules and regulations promulgated pursuant thereto;

(5) is guilty of misrepresenting in rending a report on laboratory work, testifying in any criminal or civil proceeding, or failing to document and disclose changes to conclusions or results; or

[~~(v)~~] (6) violated in a material respect any provision of this article or the rules and regulations promulgated pursuant thereto; and

[~~(f)~~] (vi) no forensic laboratory accreditation shall be revoked, suspended, or otherwise limited without a hearing. The commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the forensic laboratory accreditation at the address of such holder at least twenty-one days prior to the date fixed for such hearing. An accredited laboratory may file a written answer to the charges with the commission, not less than five days prior to the hearing.

[~~4. A~~] (e) The commission shall develop and implement standardized forms for reporting non-conformities and analysis of non-conformities and analysis of non-conformities which shall be used by all forensic laboratories under the jurisdiction of the commission.

6. To effectuate its powers and duties, the commission may compel the attendance of witnesses and the production of documents by the issuance of subpoenas.

7. (a) A person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license or a limited permit as defined in paragraph (e) of this subdivision. The commission by rule may establish classifications of forensic analyst licenses if the commission determines that it is necessary to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the commission.

(b) The commission by rule shall:

(i) establish the qualifications for a license that include:

(1) successful completion of education requirements which shall be established for each discipline by the commission;

(2) specific course work and experience, which shall be established for each discipline by the commission and which shall include instruction in Brady v. Maryland obligations, the duty to be candid with the court, and ethics in a crime laboratory;

(3) successful completion of an examination, which shall be required or recognized by the commission; and

(4) successful completion of competency and proficiency testing to the extent required for crime laboratory accreditation as defined by the commission pursuant to subparagraph (ii) of paragraph (d) of subdivision five of this section;

(ii) set fees for the issuance and renewal of a license; and

(iii) establish the term of a forensic analyst license.

(c) The commission by rule may recognize a certification issued by a national organization in an accredited field of forensic science as satisfying the requirements established under clause three of subparagraph (i) of paragraph (b) of this subdivision to the extent the commis-

sion determines the content required to receive the certification is substantially equivalent to the content of the requirements under that subparagraph.

(d) The commission shall issue a license to an applicant who:

(i) submits an application on a form prescribed by the commission;

(ii) meets the qualifications established by commission rule; and

(iii) pays the required fee.

(e) (i) The license advisory committee and the commission may issue a limited permit to practice as a forensic analyst to an applicant who has met all requirements for licensure as a forensic analyst, except those relating to the examination and proficiency test and provided that the individual is under the general supervision of the director of a forensic laboratory, as determined by the commission. This limited permit shall be valid for a period of not more than one year and may be extended for one additional year for good cause as determined by the commission.

(ii) Each limited permit shall be subject to the disciplinary provisions applicable to licensees pursuant to paragraph (f) of this subdivision.

(iii) The commission is authorized to adopt such rules and regulations as may be necessary to implement the provisions of this section.

(f) (i) On a determination by the commission that there is substantial evidence that a license holder has committed professional negligence or professional misconduct under this article or violated this article or a rule or order of the commission under this article, the commission may institute disciplinary proceedings.

(ii) The commission will designate a professional conduct officer in connection with professional licensing and misconduct proceedings and criminal matters, such officer to be empowered to issue subpoenas and administer oaths in connection with such proceedings.

(iii) The professional conduct officer shall prepare charges. The charges shall state the alleged professional negligence or professional misconduct or violation and shall state concisely the material facts but not the evidence by which the charges are to be proved.

(iv) In order to commence disciplinary proceedings under this article, service of a copy of the charges and notice of hearing must be completed twenty days before the date of the hearing if by personal delivery and must be completed twenty-five days before the date of the hearing if by any other method. An administrative copy of the charges must also be sent to the forensic laboratory which employs the license holder.

(1) Personal service of the charges and hearing notice shall be made by either of the following methods:

(A) delivery within the state to the person to be served; or

(B) delivery by certified mail, return service requested, to the forensic laboratory with which the license holder registered their employment to the commission.

(2) Service of charges and notice of hearing may be made upon a license holder within or outside of the state.

(v) (1) Violations of a minor or technical nature, not impacting the integrity of the licensing scheme or forensic testing more broadly, may be resolved by the professional conduct officer's direct referral of the matter to the commission for the imposition of an administrative warning, written reprimand, written censure, and/or a fine not to exceed five hundred dollars for each specification of a minor, or technical misconduct.

(2) Discipline based solely on conviction of crimes or administrative violation under New York state law or federal law or the law of another jurisdiction which, if committed within this state, would have constituted a crime under New York state law, may be resolved by the professional conduct officer's direct referral to the commission for its review and recommendation as to the measure of discipline to be imposed.

(3) Discipline based solely on the license holder having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, may be resolved by the professional conduct officer's direct referral to the commission for its review and recommendation as to the measure of discipline to be imposed.

(vi) Contested disciplinary proceedings and other disciplinary proceedings not resolved pursuant to subparagraph (v) of this paragraph shall be tried before a hearing panel of the commission as provided in this subparagraph.

(1) The commission shall set the time and place of the hearing and shall prepare the notice of hearing. The notice of hearing shall state the time and place of the hearing, that the licensee may file a written answer to the charges prior to the hearing, that the licensee may appear personally at the hearing and may be represented by counsel, that the licensee shall have the right to produce witnesses and evidence in their behalf, to cross-examine witnesses and examine evidence produced against them, and to issue subpoenas in accordance with the provisions of the civil practice law and rules, that a stenographic record of the hearing will be made, and such other information as may be considered appropriate by the commission.

(2) (A) A hearing shall be conducted by a panel of three or more members of the commission. The chair of the commission shall appoint the panel and shall designate its executive secretary.

(B) If the charges involve a question of technical expertise, then the chair may appoint up to two members of any of the three permanent advisory committees established in paragraph (a), (b), or (c) of subdivision twelve of section nine hundred ninety-five-a of this article who have the relevant technical expertise to the hearing panel.

(C) In any event, the hearing panel will always consist of an odd number of total members.

(D) In addition to said panel members, the chair shall designate an administrative officer, admitted to practice as an attorney in the state of New York, who shall have the authority to rule on all motions, procedures and other legal objections and shall draft a written report and decision for the hearing panel which shall be subject to the approval of and signature by the panel executive secretary on behalf of the panel. The administrative officer shall not be entitled to a vote.

(E) A hearing which has been initiated shall not be discontinued because of the death or incapacity to serve of one member of the hearing panel. However, after the commencement of a hearing, no panel member shall be replaced. A determination by the administrative officer of a need to disqualify or remove any panel member will result in the disqualification or removal of the panel and cause a new panel to be appointed.

(3) The evidence in support of the charges shall be presented by the professional conduct officer. The licensee shall have the rights required to be stated in the notice of hearing. The panel shall not be

bound by the rules of evidence, but its affirmance of professional misconduct or professional negligence shall be based on a preponderance of the evidence.

(4) The hearing panel shall render a written report and decision which shall include findings of fact, a determination of guilty or not guilty on each charge, and, in the event of an affirmance of professional misconduct or professional negligence, a recommendation of the penalty to be imposed. For the panel to make such affirmance, a minimum of two of the voting members of the panel must vote for such a determination. A copy of the report of the hearing panel shall be transmitted to the licensee.

(vii) (1) The commission shall receive the professional conduct officer's recommendations pursuant to the expedited procedures defined in subparagraph (v) of this paragraph or the hearing panel's written report and decision pursuant to an adversarial hearing as defined in subparagraph (vi) of this paragraph.

(2) Additionally, any member of the commission may request that the commission receive and review any documentary evidence collected, any answer, affidavits or briefs submitted by the license-holder, and any evidence or sworn testimony presented by the license-holder or the professional conduct officer at the adversarial hearing.

(3) The commission shall consider the materials submitted pursuant to clauses one and two of this subparagraph and shall issue an order adopting or rejecting the professional conduct officer or the hearing panel's recommended findings and discipline or remitting the matter for further fact-finding, consideration, and/or reconsideration to the professional conduct officer, the original hearing panel, or a new hearing panel.

(viii) The hearing panel may recommend, and the commission may impose any of the following discipline:

(1) revocation of a license holder's license;

(2) suspension of a license holder's license;

(3) placement on probation of a person whose license is suspended. If a license suspension is probated, the commission may require the license holder to: i. report regularly to the commission on matters that are the basis of the probation; or ii. continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation; and/or

(4) issuance of a written censure, administrative warning, or written reprimand.

(g) The disciplinary decisions of the commission may be reviewed pursuant to the proceedings under article seventy-eight of the civil practice law and rules. Such proceedings shall be returnable before the appellate division of the third judicial department, and such decisions shall not be stayed or enjoined except upon application to such appellate division after notice to the commission and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success.

(h) Notwithstanding any other provision of law, persons who assist the department as consultants or expert witnesses in the investigation or prosecution of alleged professional negligence, professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions based on professional misconduct, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual malice. The attorney general shall defend such persons

in any such action or proceeding, in accordance with section seventeen of the public officers law.

(i) All adjudicated discipline shall be posted on the commission's website. The full record of the underlying disciplinary proceedings shall be available upon written request to the commission. In all disciplinary proceedings brought pursuant to this subsection or in any voluntary settlement of a complaint between the licensee and the commission, the commission shall notify the licensee in writing that the record and reports of such disciplinary proceeding or of such voluntary settlement shall be considered matters of public information.

(j) If the commission finds a laboratory director [~~who~~] has knowingly [~~operates~~] operated a laboratory without obtaining the accreditation required by this article, or [~~who,~~] with the intent to mislead or deceive, [~~misrepresents~~] has misrepresented a material fact to the commission [~~or DNA subcommittee, shall be subject~~], its accrediting bodies, or its committees, the commission may subject the laboratory director to a civil penalty not to exceed [~~seventy-five hundred~~] twenty-five thousand dollars and such other penalties as are prescribed by the law.

[~~5.~~] 8. The commission and [~~the DNA subcommittee established pursuant to subdivision thirteen of this section~~] its committees may:

(a) require and receive from any court, department, division, board, bureau, commission or other agency of the state or any political subdivision thereof [~~such assistance and data as may be necessary to enable the commission or DNA subcommittee to administer the provisions of this article. The commission or DNA subcommittee may enter into such cooperative arrangements with the division of criminal justice services, the department of health, and any other state agency, each of which is authorized to enter into such cooperative arrangements as shall be necessary or appropriate. Upon request of the commission or DNA subcommittee~~], or any public authority such assistance, information, records or data as will enable the commission or its committees to properly carry out its powers and duties;

(b) request that and receive from any state agency [~~may~~] transfer to the commission such officers and employees as the commission [~~or DNA subcommittee~~] may deem necessary from time to time to assist the commission [~~or DNA subcommittee~~] in carrying out its functions and duties. Officers and employees so transferred shall not lose their civil service status or rights, and shall remain in the negotiating unit, if any, established prior to such transfer; and

(c) employ and remove such officers, investigators and employees as it may deem necessary for the performance of its powers and duties pursuant to this article, and fix their compensation within the amounts made available therefore.

[~~6.~~] 9. All of the commission's records, reports, assessments, and evaluation with respect to accreditation, implementation of quality assurance standards (including proficiency testing) and monitoring thereof, shall be archived by the commission and made available to the public upon a simple written request, except insofar as the redaction of personally identifying information is required by this statute or other applicable law. The names of forensic analysts who have been found to have committed an act of negligence, misconduct, or incompetence; who have been suspended; or who have failed proficiency examinations and the forensic laboratory where they are or were employed shall not be redacted.

[~~7.~~] **10.** The commission and [~~DNA subcommittee~~] **its committees** may establish, appoint, and set terms of members to as many advisory councils as it deems necessary to provide specialized expertise to the commission with respect to new forensic technologies including **computer science, data science, technology and** DNA testing methodologies.

[~~8.~~] **11.** The commission [~~or DNA subcommittee~~] shall designate one or more entities for the performance of proficiency tests required pursuant to the provisions of this article**. In making such designation, the commission shall publicly consider the difficulty, breath, and depth of the proficiency testing projects offered by the designated entities**.

[~~9.~~] **12.** After reviewing recommendations from the division of criminal justice services, the commission, in consultation with [~~the DNA subcommittee~~] **its scientific advisory committee**, shall promulgate a policy for the establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the division of criminal justice services. Such policy shall address the following issues:

(a) the forensic DNA methodology or methodologies to be utilized in compiling the index;

(b) procedures for assuring that the state DNA identification index contains the following safeguards:

(i) that any records maintained as part of such an index are accurate and complete;

(ii) that effective software and hardware designs are instituted with security features to prevent unauthorized access to such records;

(iii) that periodic audits will be conducted to ensure that no illegal disclosures of such records have taken place;

(iv) that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only;

(v) that operation programs are used that will prohibit inquiry, record updates, or destruction of records from any source other than an authorized source of inquiry, update, or destruction of records;

(vi) that operational programs are used to detect and store for the output of authorized employees only all unauthorized attempts to penetrate the state DNA identification index;

(vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index has the right of access to and review of records relating to such individual contained in such index for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information is inaccurate or incomplete;

(viii) that access to the index will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index; and

(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines

that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

[~~10.~~] 13. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index submitted by the commissioner of criminal justice services pursuant to section nine hundred ninety-five-c of this article.

[~~11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.~~

~~12.~~] 14. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index and a DNA record of a person submitted for comparison therewith.

[~~13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in section nine hundred ninety-five-a of this article.~~

~~(b) The DNA subcommittee shall assess and evaluate all DNA methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results. The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology proposed to be used by a forensic laboratory.~~

~~(c) The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing in accordance with the provisions of the state administrative procedure act. Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing. The DNA subcommittee shall also provide the commission with a list of accepted proficiency testers.~~

~~(d) The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls~~

~~and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.~~]

15. All forensic laboratories shall publish on a website accessible to the public all forensic testing methods the lab utilizes, the names of the tests, and the protocols they utilize. In the event that a forensic laboratory does not publish the aforementioned materials on its own website, the laboratory shall forward the same to the commission not later than March thirtieth of each year, and the commission shall publish the same on a website accessible to the public within thirty days. In the event that a forensic laboratory changes its forensic testing methods, procedures, or protocols, the laboratory shall publish the aforementioned materials on its website within thirty days of such change or shall notify the commission within ten days of such a change and the commission shall have thirty days to publish the same.

16. All forensic analyst reports should clearly state: the purpose of the examination or testing; the method and materials used; a description or summary of the data or results; any conclusions derived from those data or results; any discordant results or conclusions; the estimated uncertainty and variability if applicable; and possible sources of error and limitations in the method, data, and conclusions. Reports shall also disclose bench notes relevant to the examination or test. The laboratory compliance officer shall maintain written records of discordant results or conclusions. Public laboratory compliance officers shall disclose such records to the public upon a simple written request.

17. (a) Upon a majority vote, the commission may send a proposal regarding the expansion of its jurisdiction to its committees.

(b) The scientific advisory committee and racial equity committee shall review proposals from the commission regarding the expansion of its jurisdiction and provide the commission with its recommendations in writing.

(c) Upon a majority vote, the commission may but need not hold public hearings and receive public comments regarding the expansion of its jurisdiction.

(d) After considering the recommendations of the scientific advisory committee, the recommendations of the racial equity committee, and public comments if applicable, the commission may vote to send a recommendation to the legislature to expand its jurisdiction. Upon a majority vote, the commission shall send notice to the senate, the assembly, the governor, and any agencies that provide the commission with resources or staff.

§ 7. Section 995-e of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

§ 995-e. Applicability. This article shall not apply to a forensic [~~DNA~~] laboratory operated by any agency of the federal government, or to any forensic [~~DNA~~] test performed by any such federal laboratory, or contracted by a non-law enforcement agency.

§ 8. Paragraph 2 of subdivision a of section 17-208 of the administrative code of the city of New York, as added by local law number 86 of the city of New York for the year 2013, is amended to read as follows:

2. "Proficiency test" shall mean such testing as is required by the New York state commission on forensic science [~~and the New York state subcommittee on forensic DNA laboratories and forensic DNA testing pursuant to paragraph b of subdivision three of~~] section nine hundred ninety-five-b of article forty-nine-b of the New York state executive law, or any successor provision thereto.

§ 9. Subdivision 1 of section 995-c of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

1. Following the promulgation of a policy by the commission pursuant to subdivision [~~nine~~] **twelve** of section nine hundred ninety-five-b of this article, the commissioner of criminal justice services is authorized to promulgate a plan for the establishment of a computerized state DNA identification index within the division of criminal justice services.

§ 10. This act shall take effect on the one hundred eightieth day after it shall have become a law.