

STATE OF NEW YORK

1274

2025-2026 Regular Sessions

IN SENATE

January 9, 2025

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

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:

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

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

13 2. [~~For purposes of forensic DNA analysis, the term "forensic DNA~~
14 ~~laboratory" shall mean any forensic laboratory operated by the state or~~
15 ~~unit of local government, that performs forensic DNA testing on crime~~
16 ~~scenes or materials derived from the human body for use as evidence in a~~
17 ~~criminal proceeding or for purposes of identification and the term~~
18 ~~"forensic DNA]~~ "Forensic testing" shall mean any test or examination
19 that employs techniques to examine [~~deoxyribonucleic acid (DNA) derived~~
20 ~~from the human body]~~ physical, chemical, digital, or biometric proper-
21 ties of evidence or data for the purpose of [~~providing information to~~

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

LBD01337-01-5

~~resolve issues of identification]~~ determining the connection of evidence 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 analysts' 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

1 member shall have a degree in a field relevant to forensic science.
2 Expertise in forensic science shall be evidenced by, but not limited to,
3 participation in national forensic science conferences, forensic science
4 publications, lecturing, or receipt of awards in the field of forensic
5 science;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 12. There shall be three permanent advisory committees to the commis-
5 sion, as follows:

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

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

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

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

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

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

47 (i) The chairperson of the social justice, ethics and equity assess-
48 ment committee shall be the commissioner selected pursuant to paragraph
49 (h) of subdivision one of this section.

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

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

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

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

15 (i) (1) The first person to serve as the presiding officer will be
16 selected by the members of the commission from a list of five nominees
17 or applicants submitted by the scientific advisory committee. The subse-
18 quent person to serve as the presiding officer shall be selected from
19 the membership of the forensic analyst license advisory committee and,
20 as necessary, the commission may select a new committee presiding offi-
21 cer in the same manner as the original appointment.

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

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

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

42 13. The commission on forensic science shall have ultimate, final
43 decision-making authority with respect to recommendations from the
44 committees established pursuant to this section. In exercising this
45 authority, the commission shall have the right to accept or reject in
46 whole or in part any and all recommendations or issue a different deci-
47 sion from that which a committee recommends. Acceptance of a committee
48 recommendation shall require a majority vote of the commission members.
49 Rejection in whole or in part of a committee's recommendation or issu-
50 ance of a different decision from that which a committee recommends
51 shall require a two-thirds vote of the commission members. The commis-
52 sion's reasons for either accepting or rejecting a committee recommenda-
53 tion or issuing a different decision from that which a committee recom-
54 mends shall be publicly reported in writing on the commission's website.

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

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

5 (b) Upon the vote of a majority of the members of the commission, the
6 committee shall have the authority to review a forensic laboratory
7 accreditation pursuant to this article and make recommendations to the
8 commission to grant, deny, or modify accreditation of forensic laborato-
9 ries as defined in subdivision one of section nine hundred ninety-five
10 of this article. Upon the vote of a majority of the members of the
11 commission, the committee shall have the authority to establish and
12 oversee a blind external proficiency testing program for forensic labo-
13 ratories, including receiving and analyzing the data from such a
14 program. The committee shall also recommend the adoption and implementa-
15 tion of internal and external proficiency testing programs and provide
16 the commission with a list of accredited proficiency testers.

17 (c) The committee may lend their expertise to, issue reports, and
18 provide written recommendations to the commission or another committee
19 at any time upon three votes of the commission, a majority vote of the
20 social justice, ethics, and equity committee, or a majority vote of the
21 forensic analyst licensing advisory committee, provided they disclose a
22 record to the public of all recommendations to the commission. Recommen-
23 dations may address, but are not limited to, minimum scientific stand-
24 ards to be utilized in conducting forensic testing, including but not
25 limited to examination of specimens, population studies and methods
26 employed to determine probabilities and interpret test results, licens-
27 ing requirements, training requirements, assessment and evaluation of
28 all methodologies proposed to be used for forensic testing, implementa-
29 tion of scientific control and quality assurance procedures and
30 adoptions of standards for the performance of forensic testing, or any
31 other matters referred to it by the commission. The committee may
32 require a demonstration by a forensic laboratory of any proposed foren-
33 sic testing methodology proposed to be used by a forensic laboratory.

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

39 (b) The committee shall have the power to:

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

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

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

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

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

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

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

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

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

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

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

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

21 § 6. Section 995-b of the executive law, as added by chapter 737 of
22 the laws of 1994, paragraph (a) of subdivision 13 as amended by chapter
23 560 of the laws of 1999, is amended to read as follows:

24 § 995-b. Powers and duties of the commission. 1. (a) Not later than
25 June thirtieth of each year, the commission shall prepare and publish a
26 report that covers the following areas of interest from the previous
27 year, including:

28 (i) commission activity, which shall include:

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

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

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

38 (4) developments in forensic science or technology made or used in
39 other state or federal investigations and the activities of the commis-
40 sion, if any, with respect to those developments; and

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

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

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

48 (2) for each forensic science service provider overseen by the commis-
49 sion:

50 (A) the number of significant nonconformities identified and profes-
51 sional negligence or professional misconduct disclosed to the commis-
52 sion;

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

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

4 (iii) operational statistics, which shall include:

5 (1) for each forensic science service provider overseen by the commis-
6 sion:

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

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

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

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

14 (i) the New York State Defenders Association;

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

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

17 (iv) all county attorneys in New York state;

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

19 (vi) all New York crime laboratory directors;

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

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

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

24 2. (a) The commission shall adopt a code of professional responsibil-
25 ity by rule to regulate the conduct of persons, laboratories, facili-
26 ties, and other entities regulated under this article.

27 (b) The commission shall publish on its website the code of profes-
28 sional responsibility adopted under paragraph (a) of this subdivision
29 and provide a copy to every forensic laboratory as defined under subdi-
30 vision one of section nine hundred ninety-five of this article. Every
31 forensic laboratory shall be responsible for providing a copy of the
32 code of professional responsibility to each of its employees. Each such
33 employee shall acknowledge receipt of the code of professional responsi-
34 bility in writing on the first of each calendar year and file such
35 receipt with the laboratory's compliance officer or equivalent person-
36 nel.

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

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

43 3. (a) The commission shall:

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

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

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

51 (1) substantially affect the integrity of:

52 (A) the results of forensic testing conducted by a forensic laborato-
53 ry;

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

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

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

8 (b) The commission may also initiate an investigation of a forensic
9 testing method or a specific forensic analysis not subject to accredi-
10 tation, without receiving a complaint submitted through the reporting
11 system implemented under subparagraph (i) of paragraph (a) of this
12 subdivision if the commission determines by a majority vote of a quorum
13 of the members of the commission that an investigation of the forensic
14 method, test, examination, or specific analysis would advance the scien-
15 tific integrity and reliability of forensic science in this state.

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

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

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

24 (iii) provide the forensic laboratory or individual with the opportu-
25 nity to respond at a public hearing prior to the commission's vote to
26 undertake an investigation.

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

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

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

34 (A) the alleged negligence or misconduct;

35 (B) whether negligence or misconduct occurred;

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

37 (D) observations of the commission regarding the integrity and reli-
38 ability of the forensic testing conducted;

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

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

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

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

47 (B) follow-up evaluations of the forensic laboratory to review includ-
48 ing:

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

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

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

1 (1) observations of the commission regarding the integrity and reli-
2 ability of the applicable analysis, examination, or test conducted;

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

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

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

11 (i) observations of the commission regarding the integrity and reli-
12 ability of the forensic analysis conducted;

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

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

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

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

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

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

37 (j) The commission shall develop and implement a defendant notifica-
38 tion procedure for investigations conducted under this section that
39 includes all of the following:

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

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

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

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

54 4. (a) For purposes of this section:

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

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

6 (iii) "IEEE 1012" shall mean the Institute of Electrical and Electron-
7 ics Engineers (IEEE) standard 1012 that provides general requirements
8 for system, software, and hardware verification and validation.

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

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

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

19 (ii) a determination by two or more members of the commission that an
20 investigation of a forensic method would advance the integrity and reli-
21 ability of forensic science in the state.

22 (c) If the commission conducts an investigation under this subdivi-
23 sion, the investigation must include the preparation of a written public
24 report that contains:

25 (i) observations of the commission regarding the integrity and reli-
26 ability of the forensic method, including identifying the scientific
27 foundations that support the forensic method and evaluating the empir-
28 ical evidence for the reliability of the forensic method;

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

31 (iii) a review of relevant scientific literature, including any black-
32 box studies that assess the accuracy of an examiner's conclusions with-
33 out considering how the conclusions were reached, to determine whether
34 modification of any of the relevant manuals and procedures is desirable;

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

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

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

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

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

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

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

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

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

13 (h) For purposes of investigation and reporting under this subdivi-
14 sion, the commission may rely on the scientific advisory committee or a
15 working group.

16 (i) The commission shall develop minimum standards for forensic labo-
17 ratories to evaluate the case-specific reliability of systems and meth-
18 ods using validation data. These standards will include but not be
19 limited to guidance on implementing protocols that incorporate the limi-
20 tations of interpretation methods and defining what constitutes inter-
21 pretable data versus data that are unsuitable for comparison or uninter-
22 pretable.

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

33 (b) The commission shall evaluate and update the system of accredi-
34 tation every five years to reflect changes in science, technology, or
35 other factors affecting minimum standards, forensic laboratory manage-
36 ment and oversight. In designing a system of accreditation pursuant to
37 this article, the commission shall evaluate other systems of accredi-
38 tation every five years.

39 ~~2-~~ (c) The minimum standards and program of accreditation shall be
40 designed and updated as required in paragraph (b) of this subdivision to
41 accomplish the following objectives:

42 ~~(a)~~ (i) increase and maintain the transparency, effectiveness, effi-
43 ciency, reliability, and accuracy of forensic laboratories~~[, including~~
44 ~~forensic DNA laboratories];~~

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

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

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

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

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

3 technologies.

4 ~~[2-a. Any program of forensic laboratory accreditation with respect to~~

5 ~~a DNA laboratory pursuant to this section shall be under the direction~~

6 ~~of the DNA subcommittee established pursuant to subdivision thirteen of~~

7 ~~this section. Such subcommittee shall have the sole authority to grant,~~

8 ~~deny, review or modify a DNA forensic laboratory accreditation pursuant~~

9 ~~to this article, provided that such authority shall be effectuated~~

10 ~~through binding recommendations made by the DNA subcommittee to the~~

11 ~~commission. In the event the commission disagrees with any of the binding~~

12 ~~recommendations of the DNA subcommittee made pursuant to this article,~~

13 ~~the commission may so notify such subcommittee and request such~~

14 ~~subcommittee to reasonably review such binding recommendations. The DNA~~

15 ~~subcommittee shall conduct such review and either forward revised binding~~

16 ~~recommendations to the commission or indicate, with the reasons~~

17 ~~therefor, that following such review such subcommittee has determined~~

18 ~~that such binding recommendations shall not be revised.~~

19 ~~3-]~~ (d) The program of forensic laboratory accreditation shall include, at a minimum, the following requirements:

20 ~~[(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;

21 ~~[(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;

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

23 ~~[(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];~~

24 ~~[(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:

25 ~~[(1)]~~ (1) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;

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

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

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

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

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

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

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

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

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

37 (b) The commission by rule shall:

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

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

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

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

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

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

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

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

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

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

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

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

7 (iii) pays the required fee.

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

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

20 (iii) The commission is authorized to adopt such rules and regu-
21 lations as may be necessary to implement the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (vii) (1) The commission shall receive the professional conduct offi-
13 cer's recommendations pursuant to the expedited procedures defined in
14 subparagraph (v) of this paragraph or the hearing panel's written report
15 and decision pursuant to an adversarial hearing as defined in subpara-
16 graph (vi) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

20 [5.] 8. The commission and [the DNA subcommittee established pursuant
21 to subdivision thirteen of this section] its committees may:

22 (a) require and receive from any court, department, division, board,
23 bureau, commission or other agency of the state or any political subdi-
24 vision thereof [such assistance and data as may be necessary to enable
25 the commission or DNA subcommittee to administer the provisions of this
26 article. The commission or DNA subcommittee may enter into such cooper-
27 ative arrangements with the division of criminal justice services, the
28 department of health, and any other state agency, each of which is
29 authorized to enter into such cooperative arrangements as shall be
30 necessary or appropriate. Upon request of the commission or DNA subcom-
31 mittee], or any public authority such assistance, information, records
32 or data as will enable the commission or its committees to properly
33 carry out its powers and duties;

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

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

45 [6.] 9. All of the commission's records, reports, assessments, and
46 evaluation with respect to accreditation, implementation of quality
47 assurance standards (including proficiency testing) and monitoring ther-
48 eof, shall be archived by the commission and made available to the
49 public upon a simple written request, except insofar as the redaction of
50 personally identifying information is required by this statute or other
51 applicable law. The names of forensic analysts who have been found to
52 have committed an act of negligence, misconduct, or incompetence; who
53 have been suspended; or who have failed proficiency examinations and the
54 forensic laboratory where they are or were employed shall not be redact-
55 ed.

1 ~~[7.]~~ 10. The commission and ~~[DNA subcommittee]~~ its committees may
2 establish, appoint, and set terms of members to as many advisory coun-
3 cils as it deems necessary to provide specialized expertise to the
4 commission with respect to new forensic technologies including computer
5 science, data science, technology and DNA testing methodologies.

6 ~~[8.]~~ 11. The commission ~~[or DNA subcommittee]~~ shall designate one or
7 more entities for the performance of proficiency tests required pursuant
8 to the provisions of this article. In making such designation, the
9 commission shall publicly consider the difficulty, breath, and depth of
10 the proficiency testing projects offered by the designated entities.

11 ~~[9.]~~ 12. After reviewing recommendations from the division of criminal
12 justice services, the commission, in consultation with ~~[the DNA subcom-~~
13 ~~mittee]~~ its scientific advisory committee, shall promulgate a policy for
14 the establishment and operation of a DNA identification index consistent
15 with the operational requirements and capabilities of the division of
16 criminal justice services. Such policy shall address the following
17 issues:

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

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

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

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

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

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

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

34 (vi) that operational programs are used to detect and store for the
35 output of authorized employees only all unauthorized attempts to pene-
36 trate the state DNA identification index;

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

45 (viii) that access to the index will be granted to an agency author-
46 ized by this article to have such access only pursuant to a written use
47 and dissemination agreement, a copy of which is filed with the commis-
48 sion, which agreement sets forth the specific procedures by which such
49 agency shall implement the provisions of subparagraphs (i) through (vii)
50 of this paragraph, as applicable, and which agreement specifically
51 prohibits the redisclosure by such agency of any information obtained
52 from the DNA identification index; and

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

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

3 ~~[10.]~~ 13. Review, and if necessary, recommend modifications to, a plan
4 for implementation of the DNA identification index submitted by the
5 commissioner of criminal justice services pursuant to section nine
6 hundred ninety-five-c of this article.

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

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

15 ~~[13. (a) The commission shall establish a subcommittee on forensic~~
16 ~~DNA laboratories and forensic DNA testing. The chair of the subcommittee~~
17 ~~shall be appointed by the chair of the commission. The chair of the~~
18 ~~subcommittee shall appoint six other members to the subcommittee, one of~~
19 ~~whom shall represent the discipline of molecular biology and be~~
20 ~~appointed upon the recommendation of the commissioner of the department~~
21 ~~of health, one of whom shall represent the discipline of population~~
22 ~~genetics and be appointed upon the recommendation of the commissioner of~~
23 ~~the department of health, one of whom shall be representative of the~~
24 ~~discipline of laboratory standards and quality assurance regulation and~~
25 ~~monitoring and be appointed upon the recommendation of the commissioner~~
26 ~~of the department of health, one of whom shall be a forensic scientist~~
27 ~~and be appointed upon the recommendation of the commissioner of the~~
28 ~~department of health, one of whom shall be representative of the disci-~~
29 ~~pline of population genetics and be appointed upon the recommendation of~~
30 ~~the commissioner of criminal justice services and one of whom shall be~~
31 ~~representative of the discipline of forensic science and be appointed~~
32 ~~upon the recommendation of the commissioner of criminal justice~~
33 ~~services. Members of the DNA subcommittee shall serve for three year~~
34 ~~terms and be subject to the conditions of service specified in section~~
35 ~~nine hundred ninety-five-a of this article.~~

36 ~~(b) The DNA subcommittee shall assess and evaluate all DNA methodol-~~
37 ~~ogies proposed to be used for forensic analysis, and make reports and~~
38 ~~recommendations to the commission as it deems necessary. The DNA subcom-~~
39 ~~mittee shall make binding recommendations for adoption by the commission~~
40 ~~addressing minimum scientific standards to be utilized in conducting~~
41 ~~forensic DNA analysis including, but not limited to, examination of~~
42 ~~specimens, population studies and methods employed to determine proba-~~
43 ~~bilities and interpret test results. The DNA subcommittee may require a~~
44 ~~demonstration by an independent laboratory of any proposed forensic DNA~~
45 ~~testing methodology proposed to be used by a forensic laboratory.~~

46 ~~(c) The DNA subcommittee shall make binding recommendations for~~
47 ~~adoption by the commission with regard to an accreditation program for~~
48 ~~laboratories performing forensic DNA testing in accordance with the~~
49 ~~provisions of the state administrative procedure act. Such recommenda-~~
50 ~~tions shall include the adoption and implementation of internal and~~
51 ~~external proficiency testing programs, including, if possible, a blind~~
52 ~~external proficiency testing program for forensic laboratories perform-~~
53 ~~ing forensic DNA testing. The DNA subcommittee shall also provide the~~
54 ~~commission with a list of accepted proficiency testers.~~

55 ~~(d) The DNA subcommittee shall be authorized to advise the commission~~
56 ~~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.

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

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

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