

STATE OF NEW YORK

9672

IN SENATE

May 16, 2024

Introduced by Sen. GIANARIS -- 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~~
22 ~~resolve issues of identification]~~ determining the connection of evidence
23 or data to a criminal action or to resolve issues of identity pertaining
24 to criminal investigations or surveillance, provided, however that the
25 use of mobile forensic digital tools to extract data from cellphones and

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

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1 computers by a police agency shall not be subject to the provisions of
2 this article. Regulation pursuant to this article shall not include
3 deoxyribonucleic acid (DNA) testing on materials derived from the human
4 body pursuant to title five of article five of the public health law for
5 the purpose of determining a person's genetic disease or medical condi-
6 tion and shall not include a laboratory operated by the federal govern-
7 ment.

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

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

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 Subdivision 9 of section 995 of the executive law is REPEALED and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

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

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

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

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

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

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

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

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

45 § 4. Section 995-a of the executive law is REPEALED and a new section
46 995-a is added to read as follows:

47 § 995-a. Commission on forensic science. 1. There is hereby created
48 in the executive department, the commission on forensic science, as an
49 independent agency of the state. The commission shall consist of the
50 following nine members:

51 (a) one member who has expertise in the field of forensic science and
52 works outside of New York whom the governor selects by application. The
53 member shall have a degree in a field relevant to forensic science.
54 Expertise in forensic science shall be evidenced by, but not limited to,
55 participation in national forensic science conferences, forensic science

1 publications, lecturing, or receipt of awards in the field of forensic
2 science;

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

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

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

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

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

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

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

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

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

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

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

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

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

51 4. Any member chosen to fill a vacancy created otherwise than by expi-
52 ration of term shall be appointed pursuant to subdivision one of this
53 section for the unexpired term of the member such person is to succeed.
54 Any such vacancy shall be filled within ninety days in the same manner
55 as the original appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (2) Members of the committee shall serve for three-year terms, which
53 will have staggered terms of office such that one-third of the member-
54 ships' terms will expire each year and the succeeding members will have
55 a term of three years and be subject to the conditions of service speci-
56 fied in subdivisions ten and eleven of this section, except that members

1 of the committee, excluding the chairperson of the committee, shall
2 receive a fixed yearly stipend for their time. A committee member may
3 not serve more than two terms. A vacancy on the advisory committee is
4 filled by appointing a member in the same manner as the original
5 appointment to serve for the unexpired portion of the term.

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

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

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

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

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

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

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

54 § 995-aa. Permanent advisory committees to the commission. 1. (a) The
55 scientific advisory committee established pursuant to section nine

1 hundred ninety-five-a of this article shall meet six times per year at
2 minimum and serve as advisors to the commission.

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

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

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

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

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

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

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

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

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

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

51 (d) The committee may lend their expertise to, issue reports, and
52 provide written recommendations to the commission or another committee,
53 provided they disclose a record of all recommendations to the commission
54 and to the public. The committee may make recommendations or issue
55 reports to the commission at any time upon a vote of three members of

1 the commission, a majority vote of the scientific advisory committee, or
2 a majority vote of the license advisory committee.

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

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

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

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

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

23 § 995-b. Powers and duties of the commission. 1. (a) Not later than
24 June thirtieth of each year, the commission shall prepare and publish a
25 report that covers the following areas of interest from the previous
26 year, including:

27 (i) commission activity, which shall include:

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

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

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

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

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

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

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

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

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

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

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

(iii) operational statistics, which shall include:
(1) for each forensic science service provider overseen by the commis-
sion:

(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 responsibil-
ity by rule to regulate the conduct of persons, laboratories, facili-
ties, and other entities regulated under this article.

(b) The commission shall publish on its website the code of profes-
sional responsibility adopted under paragraph (a) of this subdivision
and provide a copy to every forensic laboratory as defined under subdi-
vision 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 responsi-
bility in writing on the first of each calendar year and file such
receipt with the laboratory's compliance officer or equivalent person-
nel.

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

(d) The commission shall update the code of professional responsibil-
ity 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 laborato-
ry;

(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

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

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

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

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

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

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

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

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

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

32 (A) the alleged negligence or misconduct;

33 (B) whether negligence or misconduct occurred;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 instrumental performance checks: summaries, protocols, written policies,
2 source code, if requested; scope document describing sources and disci-
3 plines of accreditation; and all underlying data. The commission may
4 rely upon a third party, selected by a majority vote, to assess the
5 source code. In such a case, the commission shall disclose the name of
6 the third party and a summary of their findings to the public.

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

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

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

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

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

36 ~~[2-]~~ (c) The minimum standards and program of accreditation shall be
37 designed and updated as required in paragraph (b) of this subdivision to
38 accomplish the following objectives:

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

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

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

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

54 ~~(e)]~~ (v) set forth minimum requirements for the quality and mainte-
55 nance of equipment; and

1 (vi) set forth minimum requirements for the quality, validation test-
2 ing, 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 bind-~~
12 ~~ing recommendations of the DNA subcommittee made pursuant to this arti-~~
13 ~~cle, 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 bind-~~
16 ~~ing 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
20 include, at a minimum, the following requirements:

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

25 ~~[(b)]~~ (ii) routine internal and external proficiency testing of all
26 laboratory personnel involved in forensic [analysis] testing, including
27 blind external proficiency testing [if the commission, or the DNA
28 subcommittee as the case may be, determines such a blind proficiency
29 testing program to be practicable and appropriate. In determining wheth-
30 er a blind proficiency testing program is practicable and appropriate,
31 the commission, or the DNA subcommittee as the case may be, shall
32 consider such factors as accuracy and reliability of laboratory results,
33 cost-effectiveness, time, allocation of resources, and availability] .
34 The program of proficiency testing includes initial competency testing.
35 The results of the proficiency testing program, including the substance
36 of the testing, the name of the forensic analyst, as well as active
37 individual forensic analyst's results, shall be published by the labora-
38 tory;

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

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

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

51 ~~[(i)]~~ (1) is guilty of misrepresentation in obtaining a forensic labo-
52 ratory accreditation;

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

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

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

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

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

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

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

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

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

34 (b) The commission by rule shall:

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

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

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

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

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

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

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

50 (c) The commission by rule may recognize a certification issued by a
51 national organization in an accredited field of forensic science as
52 satisfying the requirements established under clause three of subpara-
53 graph (i) of paragraph (b) of this subdivision to the extent the commis-
54 sion determines the content required to receive the certification is
55 substantially equivalent to the content of the requirements under that
56 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 profes-

1 sional conduct officer's direct referral to the commission for its
2 review and recommendation as to the measure of discipline to be imposed.

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

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

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

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

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

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

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

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

50 (3) The evidence in support of the charges shall be presented by the
51 professional conduct officer. The licensee shall have the rights
52 required to be stated in the notice of hearing. The panel shall not be
53 bound by the rules of evidence, but its affirmance of professional
54 misconduct or professional negligence shall be based on a preponderance
55 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

1 shall be available upon written request to the commission. In all disci-
2 plinary proceedings brought pursuant to this subsection or in any volun-
3 tary settlement of a complaint between the licensee and the commission,
4 the commission shall notify the licensee in writing that the record and
5 reports of such disciplinary proceeding or of such voluntary settlement
6 shall be considered matters of public information.

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

16 ~~[5-]~~ 8. The commission and ~~[the DNA subcommittee established pursuant~~
17 ~~to subdivision thirteen of this section]~~ its committees may:

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

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

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

41 ~~[6-]~~ 9. All of the commission's records, reports, assessments, and
42 evaluation with respect to accreditation, implementation of quality
43 assurance standards (including proficiency testing) and monitoring ther-
44 eof, shall be archived by the commission and made available to the
45 public upon a simple written request, except insofar as the redaction of
46 personally identifying information is required by this statute or other
47 applicable law. The names of forensic analysts who have been found to
48 have committed an act of negligence, misconduct, or incompetence; who
49 have been suspended; or who have failed proficiency examinations and the
50 forensic laboratory where they are or were employed shall not be redact-
51 ed.

52 ~~[7-]~~ 10. The commission and ~~[DNA subcommittee]~~ its committees may
53 establish, appoint, and set terms of members to as many advisory coun-
54 cils as it deems necessary to provide specialized expertise to the
55 commission with respect to new forensic technologies including computer
56 science, data science, technology and DNA testing methodologies.

1 ~~[8-]~~ 11. The commission ~~[or DNA subcommittee]~~ shall designate one or
2 more entities for the performance of proficiency tests required pursuant
3 to the provisions of this article. In making such designation, the
4 commission shall publicly consider the difficulty, breath, and depth of
5 the proficiency testing projects offered by the designated entities.

6 ~~[9-]~~ 12. After reviewing recommendations from the division of criminal
7 justice services, the commission, in consultation with ~~[the DNA subcom-~~
8 ~~mittee]~~ its scientific advisory committee, shall promulgate a policy for
9 the establishment and operation of a DNA identification index consistent
10 with the operational requirements and capabilities of the division of
11 criminal justice services. Such policy shall address the following
12 issues:

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

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

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

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

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

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

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

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

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

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

48 (ix) such policy shall provide for the mutual exchange, use and stor-
49 age of DNA records with the system of DNA identification utilized by the
50 federal bureau of investigation provided that the commission determines
51 that such exchange, use and storage are consistent with the provisions
52 of this article and applicable provisions of law.

53 ~~[10-]~~ 13. Review, and if necessary, recommend modifications to, a plan
54 for implementation of the DNA identification index submitted by the
55 commissioner of criminal justice services pursuant to section nine
56 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

1 website, the laboratory shall forward the same to the commission not
2 later than March thirtieth of each year, and the commission shall
3 publish the same on a website accessible to the public within thirty
4 days. In the event that a forensic laboratory changes its forensic test-
5 ing methods, procedures, or protocols, the laboratory shall publish the
6 mentioned materials on its website within thirty days of such
7 change or shall notify the commission within ten days of such a change
8 and the commission shall have thirty days to publish the same.

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

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

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

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

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

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

37 § 995-e. Applicability. This article shall not apply to a forensic
38 [DNA] laboratory operated by any agency of the federal government, or to
39 any forensic [DNA] test performed by any such federal laboratory, or
40 contracted by a non-law enforcement agency.

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

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

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

52 1. Following the promulgation of a policy by the commission pursuant
53 to subdivision [nine] twelve of section nine hundred ninety-five-b of
54 this article, the commissioner of criminal justice services is author-
55 ized to promulgate a plan for the establishment of a computerized state

1 DNA identification index within the division of criminal justice
2 services.
3 § 10. This act shall take effect on the one hundred eightieth day
4 after it shall have become a law.