Int. No. 517

By Council Members Brewer and Louis

A Local Law to amend the administrative code of the city of New York, in relation to the preservation of biological evidence in connection with criminal and juvenile delinquency matters

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 14 of the administrative code of the city of New York is amended by adding a new section 14-198 to read as follows:

§ 14-198 Biological evidence retention. a. Definitions. As used in this section, the following terms have the following meanings:

Biological evidence. The term "biological evidence" means an item in the possession of a custodial agency because of its evidentiary value in relation to a criminal investigation or a covered case that is (i) a sexual assault examination kit or (ii) any other item that is biological material, contains biological material, or is likely to contain biological material.

Biological material. The term "biological material" means blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or any other product of a human body that contains DNA.

Covered case. The term "covered case" means a criminal prosecution or a juvenile delinquency case.

Custodial agency. The term "custodial agency" means the department, the office of the chief medical examiner, or any other city agency in possession of biological evidence.

Custody or supervision. The term "custody or supervision" means incarceration, civil commitment, placement, parole, probation, detention, or mandatory registration in the sex offender registry.

Preserve biological evidence. The term "preserve biological evidence" means to retain biological

evidence, other than the biological evidence that has been used for DNA testing, in a manner sufficient to prevent deterioration and contamination so that the biological evidence may be used for future DNA testing to develop a profile.

Profile. The term "profile" means the results of DNA analysis of biological material that can be used as a unique identifier of an individual.

b. Preservation. 1. A custodial agency shall preserve biological evidence until:

(a) All individuals in custody or supervision as a result of the final adjudication of a covered case related to the biological evidence are released from custody or supervision; or

(b) 100 years have passed since the biological evidence was first collected.

2. When the custodial agency cannot preserve biological evidence because its size, bulk, or physical character renders preservation impracticable, the custodial agency shall remove and preserve portions of the biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the remainder of such biological evidence.

c. Destruction. The custodial agency may destroy biological evidence prior to the end of the time period specified in subparagraph (a) of paragraph 1 of subdivision b of this section if the following conditions are met:

1. No provision of federal or state law requires such biological evidence be preserved;

2. The custodial agency has notified the following parties in writing of the intent to destroy such biological evidence:

(a) All persons in custody or supervision as a result of the final adjudication of a covered case related to such biological evidence;

(b) The attorney of record for each person in custody or supervision as a result of a covered case related to such biological evidence;

(c) The district attorney, the special narcotics prosecutor, or the corporation counsel that brought the related covered case; and

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(d) The office of the attorney general of New York; and

3. After 180 days of giving notice pursuant to paragraph 2, none of the parties in paragraph 2 have filed a motion for testing of such biological evidence or submitted a written request for retention of such biological evidence to the custodial agency.

d. Inventory. Within 30 days after receipt of a written request by a person in custody or supervision as a result of the final adjudication of a covered case, the custodial agency shall prepare an inventory of biological evidence that has been preserved in connection with such person's case and provide such inventory to such person and their attorney of record.

e. Lost biological evidence. If biological evidence that was required to be preserved under subdivision b of this section cannot be located, the head of the custodial agency shall provide an affidavit, under penalty of perjury, that describes the efforts taken to locate such biological evidence and that such biological evidence could not be located.

f. Remedies. If a court finds that biological evidence was destroyed in violation of this section, it may impose appropriate sanctions and order appropriate remedies.

g. Accreditation. This section or the administration thereof may not be construed in a manner inconsistent with federal and state requirements and procedures regarding accreditation of forensic laboratories and best practices for forensic laboratories.

§ 2. Chapter 2 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-209 to read as follows:

§ 17-209 Biological evidence retention. The office of the chief medical examiner is subject to the requirements of section 14-198 when acting as a custodial agency, as defined by section 14-198.

§3. This local law takes effect 30 days after it becomes law.

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