

2003

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the collection of DNA samples from designated offenders, collection and preservation of biological evidence, and establishing the office of wrongful conviction review; to amend the criminal procedure law, in relation to the statute of limitations for criminal offenses, access by defendants to DNA evidence, and procedures for consideration of post-conviction relief; to amend the penal law, in relation to the conditions of probation and conditional discharge; to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; to repeal subdivision 7 of section 995 of the executive law relating to the definition of "designated offender" for purposes of the DNA identification index; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 7 of section 995 of the executive law is
2 REPEALED and a new subdivision 7 is added to read as follows:
3 7. "DESIGNATED OFFENDER" MEANS A PERSON CONVICTED OF AND SENTENCED FOR
4 A MISDEMEANOR DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL
5 LAW, OR A PERSON ADJUDICATED AND SENTENCED AS A YOUTHFUL OFFENDER PURSU-
6 ANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR
7 ANY SUCH MISDEMEANOR OR FELONY, OR A PERSON WHO IS REQUIRED TO REGISTER
8 AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.
9 S 2. Subdivision 3 of section 995-c of the executive law, as amended
10 by chapter 576 of the laws of 2004, is amended to read as follows:
11 3. (A) Any designated offender [subsequent to conviction and sentenc-
12 ing for a crime specified in subdivision seven of section nine hundred
13 ninety-five of this article,] shall be required to provide a sample
14 appropriate for DNA testing to determine identification characteristics

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

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specific to such person and to be included in a state DNA identification index pursuant to this article.

(B)(I) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM OF IMPRISONMENT, SUCH SAMPLE SHALL BE COLLECTED BY THE PUBLIC SERVANT TO WHOSE CUSTODY THE DESIGNATED OFFENDER HAS BEEN COMMITTED.

(II) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM OF PROBATION, SUCH SAMPLE SHALL BE COLLECTED BY THE LOCAL PROBATION DEPARTMENT SUPERVISING THE DESIGNATED OFFENDER.

(III) IN THE CASE OF A DESIGNATED OFFENDER WHO IS NEITHER SENTENCED TO A TERM OF IMPRISONMENT NOR PROBATION, SUCH SAMPLE SHALL BE COLLECTED BY THE PROBATION DEPARTMENT OF THE COUNTY IN WHICH SENTENCING TAKES PLACE, UNLESS AN ALTERNATE COLLECTION PROCEDURE HAS BEEN IMPLEMENTED.

(IV) PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE COLLECTION OF A DNA SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT OFFICIAL, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT WHO HAS BEEN NOTIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT THE DESIGNATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE.

(C) NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, A CITY WITH A POPULATION OF ONE MILLION OR MORE OR ANY COUNTY ACTING THROUGH ITS LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL A LOCAL LAW TO IMPOSE A DNA COLLECTION FEE NOT TO EXCEED FIFTY DOLLARS ON DESIGNATED OFFENDERS FROM WHOM ITS PROBATION DEPARTMENT IS REQUIRED BY SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION TO COLLECT A DNA SAMPLE; PROVIDED, HOWEVER, THAT THE FAILURE OF A DESIGNATED OFFENDER TO PAY SUCH DNA COLLECTION FEE, IF REQUIRED, SHALL NOT PREVENT THE COLLECTION OF THE OFFENDER'S DNA SAMPLE.

(D) A PUBLIC SERVANT TO WHOSE CUSTODY A DESIGNATED OFFENDER WHO HAS NOT YET PROVIDED A DNA SAMPLE HAS BEEN COMMITTED MAY USE REASONABLE PHYSICAL FORCE TO COLLECT SUCH SAMPLE IF THE OFFENDER, AFTER WRITTEN OR ORAL REQUEST, REFUSES TO PROVIDE SUCH SAMPLE.

(E) THE DETENTION, ARREST, INDICTMENT OR CONVICTION OF A PERSON BASED UPON DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX SHALL NOT BE INVALIDATED IF IT IS LATER DETERMINED THAT THE DIVISION OF CRIMINAL JUSTICE SERVICES INADVERTENTLY, BUT IN GOOD FAITH, COLLECTED OR PLACED THE PERSON'S DNA SAMPLE IN THE INDEX.

(F) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE RULES AND REGULATIONS GOVERNING THE PERIODIC REVIEW OF THE DNA IDENTIFICATION INDEX TO DETERMINE WHETHER OR NOT THE INDEX CONTAINS DNA PROFILES THAT SHOULD NOT BE IN THE INDEX, INCLUDING THE STEPS NECESSARY TO EXPUNGE ANY PROFILES WHICH THE DIVISION DETERMINES SHOULD NOT BE IN THE INDEX.

S 3. The opening paragraph of section 995-f of the executive law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. ANY DESIGNATED OFFENDER SUBJECT TO PROBATION OR PAROLE SUPERVISION WHO IS REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT TO THE PROVISIONS OF THIS ARTICLE, AND WHO FAILS TO PROVIDE SUCH SAMPLE UPON NOTIFICATION BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT OF HIS OR HER OBLIGATION TO PROVIDE SUCH A SAMPLE, SHALL BE DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR PAROLE, AND SUCH VIOLATION SHALL BE A BASIS FOR THE REVOCATION OF PROBATION OR PAROLE IN ACCORDANCE WITH ARTICLE FOUR HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW OR SECTION TWO HUNDRED FIFTY-NINE-1 OF THIS CHAP-

1 TER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED
2 TO INCLUDE POST-RELEASE SUPERVISION.

3 S 4. Subdivision 4 of section 995-c of the executive law, as amended
4 by section 65 of part A of chapter 56 of the laws of 2010, is amended to
5 read as follows:

6 4. The commissioner of [the division of] criminal justice services, in
7 consultation with the commission, the commissioner of health, the divi-
8 sion of parole, the director of the office of probation and correctional
9 alternatives, and the department of correctional services, shall promul-
10 gate rules and regulations governing the procedures for notifying desig-
11 nated offenders of the requirements of this section. FURTHERMORE, THE
12 COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL ALSO PROMULGATE RULES
13 AND REGULATIONS GOVERNING THE PROCEDURES FOR OBTAINING A SAMPLE APPRO-
14 PRIATE FOR DNA TESTING FROM A PERSON WHO IS REQUIRED TO REGISTER AS A
15 SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

16 S 5. Section 995-b of the executive law is amended by adding a new
17 subdivision 3-a to read as follows:

18 3-A. THE COMMISSION, IN CONSULTATION WITH THE DNA SUBCOMMITTEE, SHALL
19 DEVELOP, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION,
20 VOLUNTARY GUIDELINES REFLECTING BEST PRACTICES REGARDING THE COLLECTION
21 AND PRESERVATION OF BIOLOGICAL EVIDENCE BY LAW ENFORCEMENT AGENCIES AND
22 FORENSIC LABORATORIES. SUCH VOLUNTARY GUIDELINES SHALL INCLUDE, BUT NOT
23 BE LIMITED TO, THE MINIMUM PERIOD OF TIME THAT BIOLOGICAL EVIDENCE
24 OBTAINED FROM CRIME SCENES SHOULD BE RETAINED. AS USED IN THIS SUBDIVI-
25 SION, THE TERM "BIOLOGICAL EVIDENCE" SHALL MEAN SEMEN, BLOOD, SALIVA,
26 HAIR, SKIN, TISSUE OR OTHER IDENTIFIED BIOLOGICAL MATERIAL, AND SHALL
27 INCLUDE A SEXUAL ASSAULT FORENSIC EXAMINATION KIT.

28 S 6. The executive law is amended by adding a new section 837-s to
29 read as follows:

30 S 837-S. OFFICE OF WRONGFUL CONVICTION REVIEW. THERE SHALL BE ESTAB-
31 LISHED WITHIN THE DIVISION OF CRIMINAL JUSTICE SERVICES AN OFFICE OF
32 WRONGFUL CONVICTION REVIEW, HEREINAFTER REFERRED TO IN THIS SECTION AS
33 THE "OFFICE". THE OFFICE SHALL CONDUCT REVIEWS OF CRIMINAL AND JUVENILE
34 CASES IN THIS STATE INVOLVING WRONGFUL CONVICTIONS AND CONSIDER WHETHER
35 THERE MAY BE POSSIBLE REFORMS THAT COULD PROTECT AGAINST SIMILAR WRONG-
36 FUL CONVICTIONS OCCURRING IN THE FUTURE. SUCH REVIEWS SHALL INCLUDE
37 PARTICIPATION BY PROSECUTORS, DEFENSE ATTORNEYS, FORMER JUDGES AND OTHER
38 EXPERTS IN RELEVANT FIELDS. WHENEVER A PERSON WHO HAS BEEN CONVICTED OF
39 A CRIME OR ADJUDICATED A YOUTHFUL OFFENDER IS SUBSEQUENTLY DETERMINED TO
40 BE INNOCENT OF SUCH OFFENSE AND EXONERATED, THE OFFICE SHALL REVIEW THE
41 CIRCUMSTANCES OF SUCH CASE TO DETERMINE THE CAUSE OR CAUSES OF SUCH
42 WRONGFUL CONVICTION. THE OFFICE SHALL CONDUCT SUCH REVIEWS OF PAST CASES
43 INCLUDING, AT A MINIMUM, ALL CASES IN WHICH EXONERATION RESULTED FROM
44 DNA EVIDENCE, AND ON AN ONGOING BASIS, ALL CASES IN WHICH A DEFENDANT IS
45 EXONERATED. THE OFFICE SHALL MAKE AVAILABLE AN ANNUAL REPORT DETAILING,
46 AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR INVESTIGATION, THE NUMBER
47 OF COMPLETED INVESTIGATIONS AND THE STATUS OF PENDING INVESTIGATIONS.
48 THE REPORT SHALL INCLUDE THE OFFICE'S FINDINGS AND CONCLUSIONS AS TO THE
49 CAUSE OR CAUSES OF WRONGFUL CONVICTIONS IN INVESTIGATIONS THAT IT HAS
50 COMPLETED. THE REPORT SHALL BE PROVIDED TO THE GOVERNOR, ATTORNEY GENER-
51 AL, CHIEF JUDGE OF THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE
52 SENATE, SPEAKER OF THE ASSEMBLY AND TO GOVERNMENTAL UNITS OR AGENCIES
53 THAT IT FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDI-
54 CATION OF WRONGFUL CONVICTIONS. NOTWITHSTANDING ANY OTHER PROVISION OF
55 LAW, THE OFFICE MAY REQUEST AND SHALL RECEIVE FROM ANY COURT, DEPART-
56 MENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE

1 OR POLITICAL SUBDIVISION THEREOF, OR ANY PUBLIC AUTHORITY SUCH ASSIST-
2 ANCE, INFORMATION, RECORDS AND DATA AS WILL ENABLE IT EFFECTIVELY TO
3 CARRY OUT ITS POWERS AND DUTIES.

4 S 7. Paragraph (d) of subdivision 1 of section 160.50 of the criminal
5 procedure law, as amended by chapter 169 of the laws of 1994, is amended
6 to read as follows:

7 (d) such records shall be made available to the person accused or to
8 such person's designated agent, and shall be made available to (i) a
9 prosecutor in any proceeding in which the accused has moved for an order
10 pursuant to section 170.56 or 210.46 of this [chapter] PART, or (ii) a
11 law enforcement agency upon ex parte motion in any superior court, if
12 such agency demonstrates to the satisfaction of the court that justice
13 requires that such records be made available to it, or (iii) any state
14 or local officer or agency with responsibility for the issuance of
15 licenses to possess guns, when the accused has made application for such
16 a license, or (iv) the [New York state] division of parole when the
17 accused is on parole supervision as a result of conditional release or a
18 parole release granted by the [New York] state board of parole, and the
19 arrest which is the subject of the inquiry is one which occurred while
20 the accused was under such supervision, or (v) any prospective employer
21 of a police officer or peace officer [as those terms are defined in
22 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
23 ter], in relation to an application for employment as a police officer
24 or peace officer; provided, however, that every person who is an appli-
25 cant for the position of police officer or peace officer shall be
26 furnished with a copy of all records obtained under this paragraph and
27 afforded an opportunity to make an explanation thereto, or (vi) the
28 probation department responsible for supervision of the accused when the
29 arrest which is the subject of the inquiry is one which occurred while
30 the accused was under such supervision, OR (VII) THE DIVISION OF CRIMI-
31 NAL JUSTICE SERVICES IN CONNECTION WITH INQUIRIES BY THE OFFICE OF
32 WRONGFUL CONVICTION REVIEW ESTABLISHED BY SECTION EIGHT HUNDRED THIRTY-
33 SEVEN-S OF THE EXECUTIVE LAW; and

34 S 8. Subdivision 4 of section 190.25 of the criminal procedure law is
35 amended by adding a new paragraph (c) to read as follows:

36 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL GRAND JURY TESTI-
37 MONY, EVIDENCE, DECISIONS, RESULTS AND OTHER MATTERS ATTENDING A GRAND
38 JURY PROCEEDING SHALL BE DISCLOSED TO THE OFFICE OF WRONGFUL CONVICTION
39 REVIEW ESTABLISHED BY SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECU-
40 TIVE LAW, UPON ITS REQUEST, IN CONNECTION WITH AN INQUIRY BY SUCH OFFICE
41 INTO A WRONGFUL CONVICTION RELATED TO SUCH GRAND JURY PROCEEDING.

42 S 9. Paragraph (a) of subdivision 4 of section 30.10 of the criminal
43 procedure law is amended to read as follows:

44 (a) Any period following the commission of the offense during which
45 (i) the defendant was continuously outside this state or (ii) the where-
46 abouts of the defendant were continuously unknown and continuously unas-
47 certainable by the exercise of reasonable diligence OR (III) THE IDENTI-
48 TY OF THE DEFENDANT WAS CONTINUOUSLY UNKNOWN AND A DEOXYRIBONUCLEIC ACID
49 (DNA) RECORD OF THE DEFENDANT'S GENETIC CODE, OBTAINED BY FORENSIC DNA
50 TESTING OF EVIDENCE LOCATED AT A TIME OR PLACE RELEVANT TO THE COMMIS-
51 SION OF THE OFFENSE, COULD NOT BE MATCHED TO AN INDIVIDUAL IDENTIFIED BY
52 DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX BY THE EXER-
53 CISE OF REASONABLE DILIGENCE. However, in no event shall the period of
54 limitation be extended by more than five years beyond the period other-
55 wise applicable under subdivision two OF THIS SECTION.

1 S 10. Section 240.40 of the criminal procedure law is amended by
2 adding a new subdivision 1-a to read as follows:

3 1-A. UPON MOTION OF A DEFENDANT AGAINST WHOM AN INDICTMENT OR SUPERIOR
4 COURT INFORMATION IS PENDING, THE COURT IN WHICH SUCH ACCUSATORY INSTRU-
5 MENT IS PENDING MAY ORDER A COMPARISON OF A DNA PROFILE DERIVED FROM
6 EVIDENCE RECOVERED BY LAW ENFORCEMENT TO THE DEFENDANT'S DNA OR TO A DNA
7 DATABANK UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERI-
8 AL TO THE PREPARATION OF A DEFENSE, AND THAT THE REQUEST IS REASONABLE,
9 PROVIDED THAT THE COURT SHALL NOT DO SO IF IT IS SATISFIED THAT THE
10 PEOPLE HAVE SHOWN GOOD CAUSE WHY SUCH AN ORDER SHOULD NOT BE ISSUED. IF
11 THE MOTION OF THE DEFENDANT IS FOR COMPARISON OF A GIVEN PROFILE DERIVED
12 FROM DNA EVIDENCE TO A DNA DATABANK, THE COURT MAY DIRECT A STATE OR
13 LOCAL PUBLIC FORENSIC LABORATORY TO ARRANGE FOR SUCH PROFILE TO BE
14 ENTERED INTO AND SEARCHED AGAINST LOCAL, STATE AND FEDERAL DNA DATABANKS
15 TO THE EXTENT AND IN A MANNER CONSISTENT WITH FEDERAL AND STATE LAWS AND
16 REGULATIONS GOVERNING SUCH DATABANKS, INCLUDING REQUIREMENTS AS TO HOW
17 PROFILES FOR FORENSIC DNA ANALYSIS MUST BE GENERATED AND REQUIREMENTS
18 FOR SEARCHING AND STORAGE IN THE DATABANK IN QUESTION. IF SUCH A DATA-
19 BANK SEARCH REVEALS THAT THE DNA DERIVED FROM EVIDENCE RECOVERED BY LAW
20 ENFORCEMENT MATCHES A PROFILE IN THE DATABANK, THE DEFENDANT SHALL BE
21 NOTIFIED OF THE FACT THAT THERE WAS A MATCH WITH SOME SUCH PROFILE, AND
22 THE COURT SHALL GRANT REASONABLE ADJOURNMENTS SO AS TO ALLOW THE PEOPLE
23 TO PURSUE APPROPRIATE INVESTIGATIVE STEPS. NOTHING IN THIS ARTICLE
24 SHALL BE DEEMED TO ALLOW A DEFENDANT TO OBTAIN AN ORDER REQUIRING
25 COLLECTION OF A DNA SAMPLE FROM ANY OTHER PERSON.

26 S 11. The opening paragraph of subdivision 1 of section 440.10 of the
27 criminal procedure law is amended to read as follows:

28 [At any time after the entry of a judgment, the] THE court in which
29 [it] A JUDGEMENT OF CONVICTION was entered may, upon A TIMELY motion of
30 the defendant, vacate such judgment upon the ground that:

31 S 12. Paragraph (d) of subdivision 2 of section 440.10 of the criminal
32 procedure law is amended and two new paragraphs (e) and (f) are added to
33 read as follows:

34 (d) The ground or issue raised relates solely to the validity of the
35 sentence and not to the validity of the conviction[.]; OR

36 (E) THE DEFENDANT PREVIOUSLY BROUGHT A MOTION TO VACATE JUDGMENT,
37 WHICH WAS DENIED BY THE COURT, AND THE DEFENDANT IS CURRENTLY SEEKING TO
38 VACATE THE JUDGMENT ON A GROUND OTHER THAN NEWLY DISCOVERED EVIDENCE
39 UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION; OR

40 (F) THE DEFENDANT'S MOTION DOES NOT COMPLY WITH THE TIME LIMITS SET
41 FORTH IN SUBDIVISION NINE OF THIS SECTION.

42 S 13. The opening paragraph of paragraph (c) of subdivision 3 of
43 section 440.10 of the criminal procedure law is amended to read as
44 follows:

45 Upon a previous motion made pursuant to this section, the defendant
46 was in a position adequately to raise the [ground or issue underlying
47 the present motion] CLAIM OF NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH
48 (G) OF SUBDIVISION ONE OF THIS SECTION but did not do so.

49 S 14. Section 440.10 of the criminal procedure law is amended by
50 adding a new subdivision 9 to read as follows:

51 9. ANY MOTION TO VACATE JUDGMENT BY A DEFENDANT MUST BE FILED WITHIN
52 ONE YEAR OF THE DATE ON WHICH A JUDGMENT OF CONVICTION BECOMES FINAL BY
53 THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEK-
54 ING SUCH REVIEW; PROVIDED, HOWEVER, THAT A MOTION BY A DEFENDANT CLAIM-
55 ING NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF
56 THIS SECTION MAY BE MADE AT ANY TIME FOLLOWING THE DISCOVERY OF THE NEW

1 EVIDENCE SUPPORTING THE DEFENDANT'S CLAIM OF INNOCENCE. NOTHING IN THIS
2 SUBDIVISION SHALL RELIEVE THE DEFENDANT OF THE OBLIGATION, SET FORTH IN
3 PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, TO SHOW THAT HE OR SHE
4 HAS MADE THE MOTION TO VACATE JUDGMENT WITH DUE DILIGENCE AFTER THE
5 DISCOVERY OF THE ALLEGED NEW EVIDENCE.

6 S 15. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
7 nal procedure law, as amended by chapter 138 of the laws of 2004, is
8 amended and a new paragraph (c) is added to read as follows:

9 (a) Where the defendant's motion requests the performance of a foren-
10 sic DNA test on specified evidence, and upon the court's determination
11 that any evidence containing deoxyribonucleic acid ("DNA") was secured
12 in connection with the [trial] PROCEEDINGS resulting in the judgment,
13 the court shall grant the application for forensic DNA testing of such
14 evidence upon its determination that if a DNA test had been conducted on
15 such evidence, and if the results had been admitted in the trial result-
16 ing in the judgment, there exists a reasonable probability that the
17 verdict would have been more favorable to the defendant. IN THE CASE OF
18 A DEFENDANT CONVICTED UPON A PLEA OF GUILTY, THE COURT SHALL GRANT THE
19 APPLICATION ONLY UPON ITS DETERMINATION THAT IF THE RESULTS HAD BEEN
20 AVAILABLE TO THE DEFENDANT, THERE EXISTS A REASONABLE PROBABILITY THAT
21 THE DEFENDANT WOULD NOT HAVE BEEN CONVICTED BY PLEA OF GUILTY OR OTHER-
22 WISE, AND IN MAKING THAT DETERMINATION, THE COURT MAY CONSIDER, AMONG
23 OTHER RELEVANT INFORMATION, THE PROCEEDINGS IN CONNECTION WITH THE
24 DEFENDANT'S PLEA OF GUILTY.

25 (C) IN ADDITION TO REQUESTING THE PERFORMANCE OF A FORENSIC DNA TEST
26 OF SPECIFIED EVIDENCE, AS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVI-
27 SION, THE DEFENDANT MAY ALSO MOVE FOR A COMPARISON OF A DNA PROFILE
28 DERIVED FROM EVIDENCE RECOVERED BY LAW ENFORCEMENT TO A DNA DATABANK.
29 IN DECIDING WHETHER TO GRANT A MOTION FOR SUCH COMPARISON, THE COURT MAY
30 CONSIDER WHETHER THE DEFENDANT HAD THE OPPORTUNITY TO MOVE FOR SUCH A
31 COMPARISON PURSUANT TO SUBDIVISION ONE-A OF SECTION 240.40 OF THIS PART,
32 BUT UNJUSTIFIABLY FAILED TO DO SO. IF THE COURT GRANTS THE MOTION FOR
33 SUCH A COMPARISON, IT MAY DIRECT A STATE OR LOCAL PUBLIC FORENSIC LABO-
34 RATORY TO ARRANGE FOR SUCH PROFILE TO BE ENTERED INTO AND SEARCHED
35 AGAINST LOCAL, STATE AND FEDERAL DNA DATABANKS TO THE EXTENT AND IN A
36 MANNER CONSISTENT WITH FEDERAL AND STATE LAWS AND REGULATIONS GOVERNING
37 SUCH DATABANKS, INCLUDING REQUIREMENTS AS TO HOW PROFILES FOR FORENSIC
38 DNA ANALYSIS MUST BE GENERATED AND REQUIREMENTS FOR SEARCHING AND STOR-
39 AGE IN THE DATABANK IN QUESTION. IF SUCH A DATABANK SEARCH REVEALS THAT
40 THE DNA DERIVED FROM EVIDENCE RECOVERED BY LAW ENFORCEMENT MATCHES A
41 PROFILE IN THE DATABANK, THE DEFENDANT SHALL BE NOTIFIED OF THE FACT
42 THAT THERE WAS A MATCH WITH SOME SUCH PROFILE, AND THE COURT SHALL GRANT
43 REASONABLE ADJOURNMENTS SO AS TO ALLOW THE PEOPLE TO PURSUE APPROPRIATE
44 INVESTIGATIVE STEPS. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO ALLOW A
45 DEFENDANT TO OBTAIN AN ORDER REQUIRING COLLECTION OF A DNA SAMPLE FROM
46 ANY OTHER PERSON.

47 S 16. Section 440.30 of the criminal procedure law is amended by
48 adding a new subdivision 8 to read as follows:

49 8. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, IF THE PEOPLE BECOME
50 AWARE OF EVIDENCE THAT SUBSTANTIALLY TENDS TO EXONERATE A CONVICTED
51 DEFENDANT AND WAS NOT PREVIOUSLY KNOWN TO THE DEFENSE, THE PEOPLE SHALL
52 NOTIFY THE COURT OF THE EXISTENCE OF SUCH EVIDENCE. UPON RECEIPT OF SUCH
53 NOTIFICATION, THE COURT SHALL NOTIFY THE DEFENDANT TO THE SAME EFFECT
54 AND, IF APPROPRIATE, APPOINT DEFENSE COUNSEL SO THAT THE DEFENDANT MAY
55 SEEK ANY APPROPRIATE REMEDY UNDER THIS ARTICLE. THE PEOPLE MAY MAKE
56 NOTIFICATION TO A COURT PURSUANT TO THIS SUBDIVISION WITHOUT TAKING THE

1 POSITION THAT THE DEFENDANT WAS IN FACT INNOCENT AND, IF THE DEFENDANT
2 MOVES FOR RELIEF UNDER THIS ARTICLE, THE PEOPLE MAY TAKE ANY POSITION,
3 INCLUDING CONSENT OR OPPOSITION, AS TO SUCH MOTION. THE COURT MAY
4 CONSIDER, BUT NEED NOT GRANT, THE DEFENDANT'S RELEASE ON BAIL PENDING
5 THE DETERMINATION OF A MOTION MADE FOLLOWING SUCH A NOTIFICATION.

6 S 17. The section heading of section 440.40 of the criminal procedure
7 law is amended and a new subdivision 7 is added to read as follows:

8 Motion to set aside sentence OR TO VACATE JUDGMENT; by people.

9 7. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, THE PEOPLE MAY, IN LIEU
10 OF THE NOTIFICATION PROCEDURES SET FORTH IN SUBDIVISION EIGHT OF SECTION
11 440.30 OF THIS ARTICLE, MOVE TO VACATE A DEFENDANT'S JUDGMENT OF
12 CONVICTION UPON THE GROUND THAT THE DEFENDANT IS ACTUALLY INNOCENT OF
13 THE CHARGES UNDERLYING THE JUDGMENT. IN SUCH A MOTION, THE PEOPLE SHALL
14 SET FORTH EVIDENTIARY FACTS AND INFERENCES SUPPORTING THE CONTENTION
15 THAT THE DEFENDANT IS INNOCENT. UPON RECEIPT OF SUCH A MOTION, THE COURT
16 SHALL ORDER THAT THE DEFENDANT BE PRODUCED BEFORE THE COURT WITHOUT
17 DELAY. AT SUCH A COURT APPEARANCE, THE COURT MAY SUMMARILY GRANT THE
18 MOTION BASED ON THE ALLEGATIONS IN THE PEOPLE'S MOTION AND IN ANY
19 RESPONSIVE PAPERS FILED ON THE DEFENDANT'S BEHALF, AND BASED ON ANY ORAL
20 ARGUMENTS MADE ON THE MOTION. IF THE COURT DOES NOT SUMMARILY GRANT THE
21 MOTION: (A) IT MUST APPOINT COUNSEL FOR THE DEFENDANT IF THE DEFENDANT
22 IS NOT ALREADY REPRESENTED BY COUNSEL, (B) IT MUST CONSIDER, BUT NEED
23 NOT GRANT, A DEFENDANT'S RELEASE ON BAIL PENDING THE DETERMINATION OF
24 THE MOTION, AND (C) IT MUST GRANT A PROMPT HEARING, AT WHICH THE PARTIES
25 MAY CALL WITNESSES AND OFFER DOCUMENTARY EVIDENCE, BEFORE RENDERING ITS
26 DECISION TO GRANT OR DENY THE MOTION. IF THE COURT DENIES THE MOTION, IT
27 SHALL SET FORTH FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUPPORTING ITS
28 DECISION.

29 S 18. Section 65.10 of the penal law is amended by adding a new subdi-
30 vision 4-b to read as follows:

31 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A
32 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED
33 OF AN OFFENSE SPECIFIED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED
34 NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATO-
35 RY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS
36 REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW.

37 S 19. Paragraph (b) of subdivision 3 and paragraph (b) of subdivision
38 5 of section 8-b of the court of claims act, as added by chapter 1009 of
39 the laws of 1984, are amended to read as follows:

40 (b) (i) he has been pardoned upon the ground of innocence of the crime
41 or crimes for which he was sentenced and which are the grounds for the
42 complaint; or (ii) his judgment of conviction was reversed or vacated,
43 and the accusatory instrument dismissed or, if a new trial was ordered,
44 either he was found not guilty at the new trial or he was not retried
45 and the accusatory instrument dismissed; provided that the judgement of
46 conviction was reversed or vacated, and the accusatory instrument was
47 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),
48 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal
49 procedure law; or (B) subdivision one (where based upon grounds set
50 forth in item (A) [hereof] OF THIS SUBPARAGRAPH), two, three (where the
51 count dismissed was the sole basis for the imprisonment complained of)
52 or five of section 470.20 of the criminal procedure law; or (C) compara-
53 ble provisions of the former code of criminal procedure or subsequent
54 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-
55 DURE LAW; OR (E) the statute, or application thereof, on which the accu-
56 satory instrument was based violated the constitution of the United

1 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS
2 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,
3 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND
4 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;
5 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED
6 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS
7 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE
8 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT
9 ENUMERATED IN THIS PARAGRAPH; and

10 (b) (i) he has been pardoned upon the ground of innocence of the crime
11 or crimes for which he was sentenced and which are the grounds for the
12 complaint; or (ii) his judgment of conviction was reversed or vacated,
13 and the accusatory instrument dismissed or, if a new trial was ordered,
14 either he was found not guilty at the new trial or he was not retried
15 and the accusatory instrument dismissed; provided that the judgement of
16 conviction was reversed or vacated, and the accusatory instrument was
17 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),
18 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal
19 procedure law; or (B) subdivision one (where based upon grounds set
20 forth in item (A) [hereof] OF THIS PARAGRAPH), two, three (where the
21 count dismissed was the sole basis for the imprisonment complained of)
22 or five of section 470.20 of the criminal procedure law; or (C) compara-
23 ble provisions of the former code of criminal procedure or subsequent
24 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-
25 DURE LAW; OR (E) the statute, or application thereof, on which the accu-
26 satory instrument was based violated the constitution of the United
27 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS
28 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,
29 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND
30 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;
31 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED
32 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS
33 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE
34 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT
35 ENUMERATED IN THIS PARAGRAPH; and

36 S 20. This act shall take effect November 1, 2011; provided, however,
37 that the amendments to paragraph (a) of subdivision 3 of section 995-c
38 of the executive law, made by section two of this act, shall apply to
39 any person who is convicted of a crime, adjudicated a youthful offender,
40 incarcerated or subject to probation or parole supervision, or subject
41 to a requirement to register as a sex offender, on or after such effec-
42 tive date; provided, further, that the amendments to paragraph (a) of
43 subdivision 4 of section 30.10 of the criminal procedure law, made by
44 section nine of this act, shall apply to offenses where the applicable
45 period of limitation, including any extension of such period of limita-
46 tion pursuant to law in effect before such effective date, has not
47 expired on such effective date; and provided, further, that, sections
48 six, seven and eight of this act shall take effect April 1, 2012, and
49 shall expire and be deemed repealed September 1, 2015.