

5323--A

2015-2016 Regular Sessions

I N S E N A T E

May 13, 2015

Introduced by Sens. BOYLE, COMRIE, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the criminal procedure law, in relation to requiring individuals arrested in connection with certain felonies to submit a DNA sample

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

1 Section 1. Section 995 of the executive law is amended by adding a new
2 subdivision 7-a to read as follows:
3 7-A. "FELONY ARRESTEE" MEANS A PERSON ARRESTED AND CHARGED WITH ANY
4 ONE OR MORE OF THE FOLLOWING FELONIES, OR AN ATTEMPT THEREOF WHERE SUCH
5 ATTEMPT IS A FELONY OFFENSE, AS DEFINED IN SECTIONS 130.25, 130.30,
6 130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.66, 130.67, 130.70,
7 130.75, 130.80, 130.95 AND 130.96 OF THE PENAL LAW, RELATING TO SEX
8 OFFENSES; AND THE VICTIM IS LESS THAN THIRTEEN YEARS OLD.
9 S 2. Subdivision 3 of section 995-c of the executive law is amended by
10 adding four new paragraphs (c), (d), (e) and (f) to read as follows:
11 (C) A FELONY ARRESTEE SHALL BE REQUIRED TO PROVIDE A SAMPLE APPROPRI-
12 ATE FOR DNA TESTING UPON HIS OR HER ARREST, UNLESS SUCH FELONY ARRESTEE
13 HAS PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDEN-
14 TIFICATION INDEX.
15 (D) A PUBLIC SERVANT TO WHOSE CUSTODY A DESIGNATED OFFENDER OR FELONY
16 ARRESTEE WHO HAS NOT YET PROVIDED A DNA SAMPLE HAS BEEN COMMITTED SHALL
17 SEEK AN ORDER OF THE COURT TO COLLECT SUCH SAMPLE IF THE OFFENDER, AFTER
18 WRITTEN OR ORAL REQUEST, REFUSES TO PROVIDE SUCH SAMPLE.
19 (E) THE DETENTION, ARREST, INDICTMENT OR CONVICTION OF A PERSON BASED
20 UPON DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX SHALL
21 NOT BE INVALIDATED IF IT IS LATER DETERMINED THAT THE DIVISION OF CRIMI-

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

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NAL 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 OF CRIMINAL JUSTICE SERVICES DETERMINES SHOULD NOT BE IN THE INDEX.

S 3. Subdivision 9 of section 995-c of the executive law, as amended by chapter 524 of the laws of 2002, is amended to read as follows:

9. (a) Upon receipt of notification of a reversal or a vacatur of a conviction, or of the granting of a pardon pursuant to article two-A of this chapter, of an individual whose DNA record has been stored in the state DNA identification index in accordance with this article by the division of criminal justice services, the DNA record shall be expunged from the state DNA identification index, and such individual may apply to the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of the crime which resulted in the conviction that was reversed or vacated or for which the pardon was granted. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that all appeals relating to the conviction have been concluded; that such individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. The division shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification index, and any samples, analyses, or other documents relating to such record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof, at the discretion of the possessor thereof, are either destroyed or returned to such individual, or to the attorney who represented him or her at the time such reversal, vacatur or pardon, was granted. The commissioner shall also adopt by rule and regulation a procedure for the expungement in other appropriate circumstances of DNA records contained in the index.

(b) As prescribed in this paragraph, if an individual, either voluntarily, PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION, or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation, ARREST or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by section 30.10 of the criminal procedure law, or (ii) a criminal action was commenced against the individual relating to such crime which resulted in a complete acquittal, or (iii) a criminal action WAS COMMENCED against the individual relating to such crime [resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be

1 served on the district attorney and an order directing expungement may
2 be granted if the court finds that the individual has satisfied the
3 conditions of one of the subparagraphs of this paragraph; that if a
4 judgment of conviction was reversed or vacated, all appeals relating
5 thereto have been concluded and the individual will not be retried, or,
6 if a retrial has occurred, the trier of fact has rendered a verdict of
7 complete acquittal, and that expungement will not adversely affect the
8 investigation or prosecution of some other person or persons for the
9 crime. If an order directing the expungement of any DNA record and any
10 samples, analyses or other documents relating to the DNA testing of such
11 individual is issued] WHICH WAS RESOLVED BY A DISMISSAL, SUCCESSFUL
12 COMPLETION OF A PRE-PROSECUTION DIVERSION PROGRAM, OR CONDITIONAL
13 DISCHARGE OR MISDEMEANOR CONVICTION THAT DID NOT REQUIRE DNA COLLECTION
14 PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE DNA
15 RECORD SHALL BE EXPUNGED FROM THE STATE DNA IDENTIFICATION INDEX. AN
16 INDIVIDUAL MAY REQUEST EXPUNGEMENT OF ANY DNA RECORD AND ANY SAMPLES,
17 ANALYSES OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH INDIVID-
18 UAL BY PROVIDING THE FOLLOWING MATERIALS TO THE DIVISION OF CRIMINAL
19 JUSTICE SERVICES:

20 (1) A WRITTEN REQUEST FOR EXPUNGEMENT OF THE SAMPLE AND DNA RECORDS;
21 AND

22 (2) A CERTIFIED COPY OF THE DISMISSAL, SUCCESSFUL COMPLETION OF A
23 PRE-PROSECUTION DIVERSION PROGRAM OR A CONDITIONAL DISCHARGE, MISDEMEA-
24 NOR CONVICTION OR ACQUITTAL; AND

25 (3) A SWORN STATEMENT FROM THE DISTRICT ATTORNEY'S OFFICE WITH JURIS-
26 DICTION OVER THE MATTER THAT: THE CASE WAS DISMISSED; A PRE-PROSECUTION
27 DIVERSION PROGRAM OR CONDITIONAL DISCHARGE, MISDEMEANOR CONVICTION
28 EXCLUDED FROM DNA COLLECTION PURSUANT TO SECTION NINE HUNDRED
29 NINETY-FIVE OF THIS ARTICLE OR ACQUITTAL OCCURRED; NO FELONY CHARGES
30 AROSE OUT OF THE ARREST; OR NO CRIMINAL ACTION AGAINST THE INDIVIDUAL
31 RELATING TO SUCH CRIME WAS COMMENCED WITHIN THE PERIOD SPECIFIED BY
32 SECTION 30.10 OF THE CRIMINAL PROCEDURE LAW; AND THAT EXPUNGEMENT WILL
33 NOT ADVERSELY AFFECT THE INVESTIGATION OR PROSECUTION OF SOME OTHER
34 PERSON OR PERSONS FOR THE CRIME.

35 (C) IF EXPUNGEMENT IS WARRANTED PURSUANT TO PARAGRAPH (A) OR (B) OF
36 THIS SUBDIVISION, such record and any samples, analyses, or other docu-
37 ments shall, at the discretion of the possessor thereof, be destroyed or
38 returned to such individual or to the attorney who represented him or
39 her IN THE CRIMINAL ACTION OR in connection with the [application for
40 the order of] REQUEST FOR expungement.

41 (D) NO EXPUNGEMENT SHALL BE GRANTED WHERE AN INDIVIDUAL HAS A PRIOR
42 CONVICTION REQUIRING A DNA SAMPLE, OR A PENDING FELONY CHARGE FOR WHICH
43 COLLECTION OF A SAMPLE IS AUTHORIZED PURSUANT TO THE PROVISIONS OF PARA-
44 GRAPH (C) OF SUBDIVISION THREE OF THIS SECTION.

45 S 4. Subdivision 6 of section 120.90 of the criminal procedure law, as
46 amended by chapter 424 of the laws of 1998, is amended to read as
47 follows:

48 6. Before bringing a defendant arrested pursuant to a warrant before
49 the local criminal court in which such warrant is returnable, a police
50 officer must without unnecessary delay perform all fingerprinting and
51 other preliminary police duties required in the particular case. In any
52 case in which the defendant is not brought by a police officer before
53 such court but, following his arrest in another county for an offense
54 specified in subdivision one of section 160.10 OF THIS TITLE, is
55 released by a local criminal court of such other county on his own
56 recognizance or on bail for his appearance on a specified date before

1 the local criminal court before which the warrant is returnable, the
2 latter court must, upon arraignment of the defendant before it, direct
3 that he be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
4 TAKEN, IF REQUIRED PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE
5 EXECUTIVE LAW, by the appropriate officer or agency, and that he appear
6 at an appropriate designated time and place for such purpose.

7 S 5. Section 130.60 of the criminal procedure law, as amended by chap-
8 ter 95 of the laws of 1991, subdivision 1 as amended by chapter 446 of
9 the laws of 1993, is amended to read as follows:

10 S 130.60 Summons; fingerprinting of defendant.

11 1. Upon the arraignment of a defendant whose court attendance has been
12 secured by the issuance and service of a summons, based upon an indict-
13 ment, a prosecutor's information or upon an information, felony
14 complaint or misdemeanor complaint filed by a complainant who is a
15 police officer, the court must, if an offense charged in the accusatory
16 instrument is one specified in subdivision one of section 160.10 OF THIS
17 TITLE, direct that the defendant be fingerprinted by the appropriate
18 police officer or agency, and that he or she appear at an appropriate
19 designated time and place for such purpose. IF AN OFFENSE CHARGED IN
20 THE ACCUSATORY INSTRUMENT IS ONE SPECIFIED IN SUBDIVISION SEVEN-A OF
21 SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT MUST
22 DIRECT THAT A SAMPLE APPROPRIATE FOR DNA TESTING BE TAKEN, AND THAT HE
23 OR SHE APPEAR AT AN APPROPRIATE DESIGNATED TIME AND PLACE FOR SUCH
24 PURPOSE.

25 2. Upon the arraignment of a defendant whose court attendance has been
26 secured by the issuance and service of a summons based upon an informa-
27 tion or misdemeanor complaint filed by a complainant who is not a police
28 officer, and who has not previously been fingerprinted OR FROM WHOM A
29 DNA SAMPLE HAS NOT PREVIOUSLY BEEN TAKEN AND WAS REQUIRED PURSUANT TO
30 SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, the court may,
31 if it finds reasonable cause to believe that the defendant has committed
32 an offense specified in subdivision one of section 160.10 OF THIS TITLE,
33 direct that the defendant be fingerprinted AND/OR HAVE A SAMPLE APPRO-
34 PRIATE FOR DNA TESTING TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINE-
35 TY-FIVE-C OF THE EXECUTIVE LAW, by the appropriate police officer or
36 agency and that he appear at an appropriate designated time and place
37 for such purpose. A defendant whose court appearance has been secured by
38 the issuance and service of a criminal summons based upon a misdemeanor
39 complaint or information filed by a complainant who is not a police
40 officer, must be directed by the court, upon conviction of the defend-
41 ant, to be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
42 TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECU-
43 TIVE LAW, by the appropriate police officer or agency and the court must
44 also direct that the defendant appear at an appropriate designated time
45 and place for such purpose, if the defendant is convicted of any offense
46 specified in subdivision one of section 160.10 OF THIS TITLE.

47 S 6. Subdivision 5 of section 140.20 of the criminal procedure law, as
48 amended by chapter 762 of the laws of 1971, is amended to read as
49 follows:

50 5. Before service of an appearance ticket upon an arrested person
51 pursuant to subdivision two or three OF THIS SECTION, the issuing police
52 officer must, if the offense designated in such appearance ticket is one
53 of those specified in subdivision one of section 160.10 OF THIS TITLE,
54 cause such person to be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR
55 DNA TESTING TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF

1 THE EXECUTIVE LAW, in the same manner as would be required were no
2 appearance ticket to be issued or served.

3 S 7. Subdivision 2 of section 140.27 of the criminal procedure law, as
4 amended by chapter 843 of the laws of 1980, is amended to read as
5 follows:

6 2. Upon arresting a person without a warrant, a peace officer, except
7 as otherwise provided in subdivision three OF THIS SECTION, must without
8 unnecessary delay bring him or cause him to be brought before a local
9 criminal court, as provided in section 100.55 and subdivision one of
10 section 140.20 OF THIS TITLE, and must without unnecessary delay file or
11 cause to be filed therewith an appropriate accusatory instrument. If
12 the offense which is the subject of the arrest is one of those specified
13 in subdivision one of section 160.10 OF THIS TITLE, the arrested person
14 must be fingerprinted and photographed, AND HAVE A SAMPLE APPROPRIATE
15 FOR DNA TESTING TAKEN IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C
16 OF THE EXECUTIVE LAW, as therein provided. In order to execute the
17 required post-arrest functions, such arresting peace officer may perform
18 such functions himself or he may enlist the aid of a police officer for
19 the performance thereof in the manner provided in subdivision one of
20 section 140.20 OF THIS ARTICLE.

21 S 8. Section 150.70 of the criminal procedure law, as amended by chap-
22 ter 762 of the laws of 1971, is amended to read as follows:

23 S 150.70 Appearance ticket; fingerprinting AND DNA ANALYSIS SAMPLE of
24 defendant.

25 Upon the arraignment of a defendant who has not been arrested and
26 whose court attendance has been secured by the issuance and service of
27 an appearance ticket pursuant to subdivision one of section 150.20 OF
28 THIS ARTICLE, the court must, if an offense charged in the accusatory
29 instrument is one specified in subdivision one of section 160.10 OF THIS
30 TITLE, direct that the defendant be fingerprinted AND HAVE A SAMPLE
31 APPROPRIATE FOR DNA TESTING TAKEN WHEN REQUIRED BY SECTION NINE HUNDRED
32 NINETY-FIVE-C OF THE EXECUTIVE LAW by the appropriate police officer or
33 agency, and that he appear at an appropriate designated time and place
34 for such purpose.

35 S 9. Section 160.20 of the criminal procedure law, as amended by chap-
36 ter 108 of the laws of 1973, is amended to read as follows:

37 S 160.20 Fingerprinting AND DNA ANALYSIS SAMPLE; forwarding of finger-
38 prints AND DNA ANALYSIS SAMPLE.

39 1. Upon the taking of fingerprints of an arrested person or defendant
40 as prescribed in section 160.10 OF THIS ARTICLE, the appropriate police
41 officer or agency must without unnecessary delay forward two copies of
42 such fingerprints to the division of criminal justice services.

43 2. UPON TAKING A SAMPLE APPROPRIATE FOR DNA TESTING, THE APPROPRIATE
44 POLICE OFFICE OR AGENCY MUST WITHOUT UNNECESSARY DELAY STORE AND FORWARD
45 SUCH DNA SAMPLE TO A FORENSIC DNA LABORATORY FOR FORENSIC DNA TESTING
46 AND ANALYSES, AND INCLUSION IN THE STATE DNA IDENTIFICATION INDEX IN
47 ACCORDANCE WITH SUBDIVISION FIVE OF SECTION NINE HUNDRED NINETY-FIVE-C
48 OF THE EXECUTIVE LAW.

49 S 10. Paragraphs (d) and (e) of subdivision 1 of section 160.50 of the
50 criminal procedure law, paragraph (d) as amended by chapter 449 of the
51 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of
52 1994, are amended and a new paragraph (f) is added to read as follows:

53 (d) such records shall be made available to the person accused or to
54 such person's designated agent, and shall be made available to (i) a
55 prosecutor in any proceeding in which the accused has moved for an order
56 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law

1 enforcement agency upon ex parte motion in any superior court, or in any
2 district court, city court or the criminal court of the city of New York
3 provided that such court sealed the record, if such agency demonstrates
4 to the satisfaction of the court that justice requires that such records
5 be made available to it, or (iii) any state or local officer or agency
6 with responsibility for the issuance of licenses to possess guns, when
7 the accused has made application for such a license, or (iv) the New
8 York state department of corrections and community supervision when the
9 accused is on parole supervision as a result of conditional release or a
10 parole release granted by the New York state board of parole, and the
11 arrest which is the subject of the inquiry is one which occurred while
12 the accused was under such supervision, or (v) any prospective employer
13 of a police officer or peace officer as those terms are defined in
14 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
15 ter, in relation to an application for employment as a police officer or
16 peace officer; provided, however, that every person who is an applicant
17 for the position of police officer or peace officer shall be furnished
18 with a copy of all records obtained under this paragraph and afforded an
19 opportunity to make an explanation thereto, or (vi) the probation
20 department responsible for supervision of the accused when the arrest
21 which is the subject of the inquiry is one which occurred while the
22 accused was under such supervision; [and]

23 (e) where fingerprints subject to the provisions of this section have
24 been received by the division of criminal justice services and have been
25 filed by the division as digital images, such images may be retained,
26 provided that a fingerprint card of the individual is on file with the
27 division which was not sealed pursuant to this section or section 160.55
28 of this article[.]; AND

29 (F) A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN FROM SUCH PERSON PURSU-
30 ANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, AND ANY
31 DNA RECORD RELATING TO SUCH SAMPLE, AND ANY ANALYSES OR OTHER DOCUMENTS
32 RELATING TO SUCH DNA SAMPLE SHALL BE EXPUNGED, DESTROYED OR RETURNED IN
33 ACCORDANCE WITH SUBDIVISION NINE OF SUCH SECTION OF THE EXECUTIVE LAW.

34 S 11. Paragraphs (d) and (e) of subdivision 1 of section 160.55 of the
35 criminal procedure law, paragraph (d) as amended by chapter 449 of the
36 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of
37 1994, are amended and a new paragraph (f) is added to read as follows:

38 (d) the records referred to in paragraph (c) of this subdivision shall
39 be made available to the person accused or to such person's designated
40 agent, and shall be made available to (i) a prosecutor in any proceeding
41 in which the accused has moved for an order pursuant to section 170.56
42 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
43 parte motion in any superior court, or in any district court, city court
44 or the criminal court of the city of New York provided that such court
45 sealed the record, if such agency demonstrates to the satisfaction of
46 the court that justice requires that such records be made available to
47 it, or (iii) any state or local officer or agency with responsibility
48 for the issuance of licenses to possess guns, when the accused has made
49 application for such a license, or (iv) the New York state department of
50 corrections and community supervision when the accused is under parole
51 supervision as a result of conditional release or parole release granted
52 by the New York state board of parole and the arrest which is the
53 subject of the inquiry is one which occurred while the accused was under
54 such supervision, or (v) the probation department responsible for super-
55 vision of the accused when the arrest which is the subject of the
56 inquiry is one which occurred while the accused was under such super-

1 vision, or (vi) a police agency, probation department, sheriff's office,
2 district attorney's office, department of correction of any municipality
3 and parole department, for law enforcement purposes, upon arrest in
4 instances in which the individual stands convicted of harassment in the
5 second degree, as defined in section 240.26 of the penal law, committed
6 against a member of the same family or household as the defendant, as
7 defined in subdivision one of section 530.11 of this chapter, and deter-
8 mined pursuant to subdivision eight-a of section 170.10 of this title;
9 [and]

10 (e) where fingerprints subject to the provisions of this section have
11 been received by the division of criminal justice services and have been
12 filed by the division as digital images, such images may be retained,
13 provided that a fingerprint card of the individual is on file with the
14 division which was not sealed pursuant to this section or section 160.50
15 of this article[.]; AND

16 (F) A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN FROM SUCH PERSON PURSU-
17 ANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, ANY DNA
18 RECORD RELATING TO SUCH SAMPLE, AND ANY ANALYSES OR OTHER DOCUMENTS
19 RELATING TO SUCH DNA SAMPLE SHALL BE EXPUNGED, DESTROYED OR RETURNED IN
20 ACCORDANCE WITH SUBDIVISION NINE OF SUCH SECTION OF THE EXECUTIVE LAW.

21 S 12. This act shall take effect on the one hundred eightieth day
22 after it shall have become a law.