

2675

2009-2010 Regular Sessions

I N S E N A T E

February 26, 2009

Introduced by Sens. MORAHAN, PADAVAN, LARKIN -- 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 expanding the DNA identification index to include all felons

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "All Felons DNA Identification Index Act".
3 S 2. Legislative findings. The legislature hereby finds that the crime
4 of rape is horrific in its immediate and secondary consequences to the
5 victim which are often long term. When a rapist is unidentified, victims
6 of such rapist frequently experience a perceived sense of constant fear
7 and dread wondering if the rapist will ever return.
8 One positive method to improve this state of uncertainty for rape
9 victims is the establishment of "All Felons" database legislation to
10 record and maintain the DNA of convicted felons to allow and attempt the
11 matching of such DNA against that of known criminal offenders to seek
12 prosecution and confinement of those previously unidentified and hidden
13 offenders. The United States Congress has recognized and supported this
14 purpose by passing H.R. 5107 authorizing \$1,000,000,000 to help states
15 pass All Felons legislation and to complete DNA casework on hundreds of
16 thousands of unsolved homicide and rape cases. Therefore, the legisla-
17 ture finds it appropriate for the state to establish an All Felons DNA
18 Identification Index Act.
19 S 3. Subdivision 7 of section 995 of the executive law, as amended by
20 chapter 2 of the laws of 2006 and paragraph (a) as separately amended by
21 chapter 320 of the laws of 2006, is amended to read as follows:
22 7. "Designated offender" means a person convicted of and sentenced for
23 [any one or more of the following provisions of the penal law (a)
24 sections 120.05, 120.10, and 120.11, relating to assault; sections
25 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,

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

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1 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
2 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
3 escape and other offenses, where the offender has been convicted within
4 the previous five years of one of the other felonies specified in this
5 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
6 a violent felony offense as defined in subdivision one of section 70.02
7 of the penal law, attempted murder in the first degree, as defined in
8 section 110.00 and section 125.27 of the penal law, kidnapping in the
9 first degree, as defined in section 135.25 of the penal law, arson in
10 the first degree, as defined in section 150.20 of the penal law,
11 burglary in the third degree, as defined in section 140.20 of the penal
12 law, attempted burglary in the third degree, as defined in section
13 110.00 and section 140.20 of the penal law, a felony defined in article
14 four hundred ninety of the penal law relating to terrorism or any
15 attempt to commit an offense defined in such article relating to terror-
16 ism which is a felony; or (b) criminal possession of a controlled
17 substance in the first degree, as defined in section 220.21 of the penal
18 law; criminal possession of a controlled substance in the second degree,
19 as defined in section 220.18 of the penal law; criminal sale of a
20 controlled substance, as defined in article 220 of the penal law; or
21 grand larceny in the fourth degree, as defined in subdivision five of
22 section 155.30 of the penal law; or (c)] (A) A FELONY DEFINED IN THE
23 PENAL LAW OR A PERSON ADJUDICATED A YOUTHFUL OFFENDER PURSUANT TO ARTI-
24 CLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR ANY SUCH
25 FELONY; OR (B) any misdemeanor or felony defined as a sex offense or
26 sexually violent offense pursuant to paragraph (a), (b) or (c) of subdivi-
27 sion two or paragraph (a) of subdivision three of section one hundred
28 sixty-eight-a of the correction law[; or (d) any of the following felo-
29 nies, or an attempt thereof where such attempt is a felony offense:
30 aggravated assault upon a person less than eleven years old, as
31 defined in section 120.12 of the penal law; menacing in the first
32 degree, as defined in section 120.13 of the penal law; reckless endan-
33 germent in the first degree, as defined in section 120.25 of the penal
34 law; stalking in the second degree, as defined in section 120.55 of the
35 penal law; criminally negligent homicide, as defined in section 125.10
36 of the penal law; vehicular manslaughter in the second degree, as
37 defined in section 125.12 of the penal law; vehicular manslaughter in
38 the first degree, as defined in section 125.13 of the penal law;
39 persistent sexual abuse, as defined in section 130.53 of the penal law;
40 aggravated sexual abuse in the fourth degree, as defined in section
41 130.65-a of the penal law; female genital mutilation, as defined in
42 section 130.85 of the penal law; facilitating a sex offense with a
43 controlled substance, as defined in section 130.90 of the penal law;
44 unlawful imprisonment in the first degree, as defined in section 135.10
45 of the penal law; custodial interference in the first degree, as defined
46 in section 135.50 of the penal law; criminal trespass in the first
47 degree, as defined in section 140.17 of the penal law; criminal tamper-
48 ing in the first degree, as defined in section 145.20 of the penal law;
49 tampering with a consumer product in the first degree, as defined in
50 section 145.45 of the penal law; robbery in the third degree as defined
51 in section 160.05 of the penal law; identity theft in the second degree,
52 as defined in section 190.79 of the penal law; identity theft in the
53 first degree, as defined in section 190.80 of the penal law; promoting
54 prison contraband in the first degree, as defined in section 205.25 of
55 the penal law; tampering with a witness in the third degree, as defined
56 in section 215.11 of the penal law; tampering with a witness in the

1 second degree, as defined in section 215.12 of the penal law; tampering
2 with a witness in the first degree, as defined in section 215.13 of the
3 penal law; criminal contempt in the first degree, as defined in subdivi-
4 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
5 criminal contempt, as defined in section 215.52 of the penal law; bail
6 jumping in the second degree, as defined in section 215.56 of the penal
7 law; bail jumping in the first degree, as defined in section 215.57 of
8 the penal law; patronizing a prostitute in the second degree, as defined
9 in section 230.05 of the penal law; patronizing a prostitute in the
10 first degree, as defined in section 230.06 of the penal law; promoting
11 prostitution in the second degree, as defined in section 230.30 of the
12 penal law; promoting prostitution in the first degree, as defined in
13 section 230.32 of the penal law; compelling prostitution, as defined in
14 section 230.33 of the penal law; disseminating indecent materials to
15 minors in the second degree, as defined in section 235.21 of the penal
16 law; disseminating indecent materials to minors in the first degree, as
17 defined in section 235.22 of the penal law; riot in the first degree, as
18 defined in section 240.06 of the penal law; criminal anarchy, as defined
19 in section 240.15 of the penal law; aggravated harassment of an employee
20 by an inmate, as defined in section 240.32 of the penal law; unlawful
21 surveillance in the second degree, as defined in section 250.45 of the
22 penal law; unlawful surveillance in the first degree, as defined in
23 section 250.50 of the penal law; endangering the welfare of a vulnerable
24 elderly person in the second degree, as defined in section 260.32 of the
25 penal law; endangering the welfare of a vulnerable elderly person in the
26 first degree, as defined in section 260.34 of the penal law; use of a
27 child in a sexual performance, as defined in section 263.05 of the penal
28 law; promoting an obscene sexual performance by a child, as defined in
29 section 263.10 of the penal law; possessing an obscene sexual perform-
30 ance by a child, as defined in section 263.11 of the penal law; promot-
31 ing a sexual performance by a child, as defined in section 263.15 of the
32 penal law; possessing a sexual performance by a child, as defined in
33 section 263.16 of the penal law; criminal possession of a weapon in the
34 third degree, as defined in section 265.02 of the penal law; criminal
35 sale of a firearm in the third degree, as defined in section 265.11 of
36 the penal law; criminal sale of a firearm to a minor, as defined in
37 section 265.16 of the penal law; unlawful wearing of a body vest, as
38 defined in section 270.20 of the penal law; hate crimes as defined in
39 section 485.05 of the penal law; and crime of terrorism, as defined in
40 section 490.25 of the penal law; or (e) a felony defined in the penal
41 law or an attempt thereof where such attempt is a felony; or (f) any of
42 the following misdemeanors: assault in the third degree as defined in
43 section 120.00 of the penal law; attempted aggravated assault upon a
44 person less than eleven years old, as defined in section 110.00 and
45 section 120.12 of the penal law; attempted menacing in the first degree,
46 as defined in section 110.00 and section 120.13 of the penal law; menac-
47 ing in the second degree as defined in section 120.14 of the penal law;
48 menacing in the third degree as defined in section 120.15 of the penal
49 law; reckless endangerment in the second degree as defined in section
50 120.20 of the penal law; stalking in the fourth degree as defined in
51 section 120.45 of the penal law; stalking in the third degree as defined
52 in section 120.50 of the penal law; attempted stalking in the second
53 degree, as defined in section 110.00 and section 120.55 of the penal
54 law; forcible touching as defined in section 130.52 of the penal law
55 regardless of the age of the victim; sexual abuse in the third degree as
56 defined in section 130.55 of the penal law regardless of the age of the

1 victim; unlawful imprisonment in the second degree as defined in section
2 135.05 of the penal law regardless of the age of the victim; attempted
3 unlawful imprisonment in the first degree, as defined in section 110.00
4 and section 135.10 of the penal law regardless of the age of the victim;
5 criminal trespass in the second degree as defined in section 140.15 of
6 the penal law; possession of burglar's tools as defined in section
7 140.35 of the penal law; petit larceny as defined in section 155.25 of
8 the penal law; endangering the welfare of a child as defined in section
9 260.10 of the penal law; endangering the welfare of an incompetent or
10 physically disabled person as defined in section 260.25].

11 S 4. Subdivision 3 of section 995-c of the executive law, as amended
12 by chapter 576 of the laws of 2004, is amended to read as follows:

13 3. Any designated offender subsequent to conviction and sentencing for
14 a crime specified in subdivision seven of section nine hundred ninety-
15 five of this article, shall be required to provide a sample FROM SUCH
16 PERSON'S MOUTH BY USING BUCCAL SWABS, BY BLOOD DRAW OR BY ANY OTHER
17 METHOD APPROVED BY THE COMMISSION appropriate for DNA testing to deter-
18 mine identification characteristics specific to such person and to be
19 included in a state DNA identification index pursuant to this article.

20 S 5. This act shall take effect immediately and shall apply to desig-
21 nated offenses committed on or after the effective date of this act, as
22 well as to designated offenses committed prior to the effective date of
23 this act and after January 1, 2003 where service of the sentence imposed
24 upon conviction of the designated offense has not been completed prior
25 to the effective date of this act.