

4308

2009-2010 Regular Sessions

I N S E N A T E

April 21, 2009

Introduced by Sens. DeFRANCISCO, ALESI, BONACIC, GRIFFO, LARKIN, MORAHAN, PADAVAN, SALAND, SKELOS, VOLKER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the criminal procedure law, in relation to collection of DNA samples from designated offenders; to amend the executive law, in relation to collection and preservation of biological evidence; to establish a commission for exoneration review; to amend the criminal procedure law, in relation to access by defendants to DNA evidence, and procedures for consideration of post-conviction relief; to amend the penal law, in relation to conditions of probation and conditional discharge; and to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; 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, as
2 amended by chapter 2 of the laws of 2006, paragraph (a) as separately
3 amended by chapter 320 of the laws of 2006, is amended to read as
4 follows:
5 7. "Designated offender" means a person [convicted of and sentenced
6 for any one or more of the following provisions of the penal law (a)
7 sections 120.05, 120.10, and 120.11, relating to assault; sections
8 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
9 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
10 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
11 escape and other offenses, where the offender has been convicted within
12 the previous five years of one of the other felonies specified in this
13 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
14 a violent felony offense as defined in subdivision one of section 70.02
15 of the penal law, attempted murder in the first degree, as defined in
16 section 110.00 and section 125.27 of the penal law, kidnapping in the

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

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1 first degree, as defined in section 135.25 of the penal law, arson in
2 the first degree, as defined in section 150.20 of the penal law,
3 burglary in the third degree, as defined in section 140.20 of the penal
4 law, attempted burglary in the third degree, as defined in section
5 110.00 and section 140.20 of the penal law, a felony defined in article
6 four hundred ninety of the penal law relating to terrorism or any
7 attempt to commit an offense defined in such article relating to terror-
8 ism which is a felony; or (b) criminal possession of a controlled
9 substance in the first degree, as defined in section 220.21 of the penal
10 law; criminal possession of a controlled substance in the second degree,
11 as defined in section 220.18 of the penal law; criminal sale of a
12 controlled substance, as defined in article 220 of the penal law; or
13 grand larceny in the fourth degree, as defined in subdivision five of
14 section 155.30 of the penal law; or (c) any misdemeanor or felony
15 defined as a sex offense or sexually violent offense pursuant to para-
16 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
17 three of section one hundred sixty-eight-a of the correction law; or (d)
18 any of the following felonies, or an attempt thereof where such attempt
19 is a felony offense:
20 aggravated assault upon a person less than eleven years old, as
21 defined in section 120.12 of the penal law; menacing in the first
22 degree, as defined in section 120.13 of the penal law; reckless endan-
23 germent in the first degree, as defined in section 120.25 of the penal
24 law; stalking in the second degree, as defined in section 120.55 of the
25 penal law; criminally negligent homicide, as defined in section 125.10
26 of the penal law; vehicular manslaughter in the second degree, as
27 defined in section 125.12 of the penal law; vehicular manslaughter in
28 the first degree, as defined in section 125.13 of the penal law;
29 persistent sexual abuse, as defined in section 130.53 of the penal law;
30 aggravated sexual abuse in the fourth degree, as defined in section
31 130.65-a of the penal law; female genital mutilation, as defined in
32 section 130.85 of the penal law; facilitating a sex offense with a
33 controlled substance, as defined in section 130.90 of the penal law;
34 unlawful imprisonment in the first degree, as defined in section 135.10
35 of the penal law; custodial interference in the first degree, as defined
36 in section 135.50 of the penal law; criminal trespass in the first
37 degree, as defined in section 140.17 of the penal law; criminal tamper-
38 ing in the first degree, as defined in section 145.20 of the penal law;
39 tampering with a consumer product in the first degree, as defined in
40 section 145.45 of the penal law; robbery in the third degree as defined
41 in section 160.05 of the penal law; identity theft in the second degree,
42 as defined in section 190.79 of the penal law; identity theft in the
43 first degree, as defined in section 190.80 of the penal law; promoting
44 prison contraband in the first degree, as defined in section 205.25 of
45 the penal law; tampering with a witness in the third degree, as defined
46 in section 215.11 of the penal law; tampering with a witness in the
47 second degree, as defined in section 215.12 of the penal law; tampering
48 with a witness in the first degree, as defined in section 215.13 of the
49 penal law; criminal contempt in the first degree, as defined in subdivi-
50 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
51 criminal contempt, as defined in section 215.52 of the penal law; bail
52 jumping in the second degree, as defined in section 215.56 of the penal
53 law; bail jumping in the first degree, as defined in section 215.57 of
54 the penal law; patronizing a prostitute in the second degree, as defined
55 in section 230.05 of the penal law; patronizing a prostitute in the
56 first degree, as defined in section 230.06 of the penal law; promoting

1 prostitution in the second degree, as defined in section 230.30 of the
2 penal law; promoting prostitution in the first degree, as defined in
3 section 230.32 of the penal law; compelling prostitution, as defined in
4 section 230.33 of the penal law; disseminating indecent materials to
5 minors in the second degree, as defined in section 235.21 of the penal
6 law; disseminating indecent materials to minors in the first degree, as
7 defined in section 235.22 of the penal law; riot in the first degree, as
8 defined in section 240.06 of the penal law; criminal anarchy, as defined
9 in section 240.15 of the penal law; aggravated harassment of an employee
10 by an inmate, as defined in section 240.32 of the penal law; unlawful
11 surveillance in the second degree, as defined in section 250.45 of the
12 penal law; unlawful surveillance in the first degree, as defined in
13 section 250.50 of the penal law; endangering the welfare of a vulnerable
14 elderly person in the second degree, as defined in section 260.32 of the
15 penal law; endangering the welfare of a vulnerable elderly person in the
16 first degree, as defined in section 260.34 of the penal law; use of a
17 child in a sexual performance, as defined in section 263.05 of the penal
18 law; promoting an obscene sexual performance by a child, as defined in
19 section 263.10 of the penal law; possessing an obscene sexual perform-
20 ance by a child, as defined in section 263.11 of the penal law; promot-
21 ing a sexual performance by a child, as defined in section 263.15 of the
22 penal law; possessing a sexual performance by a child, as defined in
23 section 263.16 of the penal law; criminal possession of a weapon in the
24 third degree, as defined in section 265.02 of the penal law; criminal
25 sale of a firearm in the third degree, as defined in section 265.11 of
26 the penal law; criminal sale of a firearm to a minor, as defined in
27 section 265.16 of the penal law; unlawful wearing of a body vest, as
28 defined in section 270.20 of the penal law; hate crimes as defined in
29 section 485.05 of the penal law; and crime of terrorism, as defined in
30 section 490.25 of the penal law; or (e) a felony defined in the penal
31 law or an attempt thereof where such attempt is a felony; or (f) any of
32 the following misdemeanors: assault in the third degree as defined in
33 section 120.00 of the penal law; attempted aggravated assault upon a
34 person less than eleven years old, as defined in section 110.00 and
35 section 120.12 of the penal law; attempted menacing in the first degree,
36 as defined in section 110.00 and section 120.13 of the penal law; menac-
37 ing in the second degree as defined in section 120.14 of the penal law;
38 menacing in the third degree as defined in section 120.15 of the penal
39 law; reckless endangerment in the second degree as defined in section
40 120.20 of the penal law; stalking in the fourth degree as defined in
41 section 120.45 of the penal law; stalking in the third degree as defined
42 in section 120.50 of the penal law; attempted stalking in the second
43 degree, as defined in section 110.00 and section 120.55 of the penal
44 law; forcible touching as defined in section 130.52 of the penal law
45 regardless of the age of the victim; sexual abuse in the third degree as
46 defined in section 130.55 of the penal law regardless of the age of the
47 victim; unlawful imprisonment in the second degree as defined in section
48 135.05 of the penal law regardless of the age of the victim; attempted
49 unlawful imprisonment in the first degree, as defined in section 110.00
50 and section 135.10 of the penal law regardless of the age of the victim;
51 criminal trespass in the second degree as defined in section 140.15 of
52 the penal law; possession of burglar's tools as defined in section
53 140.35 of the penal law; petit larceny as defined in section 155.25 of
54 the penal law; endangering the welfare of a child as defined in section
55 260.10 of the penal law; endangering the welfare of an incompetent or
56 physically disabled person as defined in section 260.25] ARRESTED FOR

1 ANY OFFENSE FOR WHICH THE FINGERPRINTS OF THE DEFENDANT OR ARRESTED
2 PERSON ARE REQUIRED OR PERMITTED TO BE TAKEN PURSUANT TO SECTION 160.10
3 OF THE CRIMINAL PROCEDURE LAW, OR A PERSON ADJUDICATED AND SENTENCED AS
4 A YOUTHFUL OFFENDER PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE
5 CRIMINAL PROCEDURE LAW FOR ANY SUCH OFFENSE, OR A PERSON WHO IS REQUIRED
6 TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE
7 CORRECTION LAW.

8 S 2. Subdivision 3 of section 995-c of the executive law, as amended
9 by chapter 576 of the laws of 2004, is amended to read as follows:

10 3. (A) Any designated offender [subsequent to conviction and sentenc-
11 ing for a crime specified in subdivision seven of section nine hundred
12 ninety-five of this article,] shall be required to provide a sample
13 appropriate for DNA testing to determine identification characteristics
14 specific to such person and to be included in a state DNA identification
15 index pursuant to this article, UNLESS SUCH DESIGNATED OFFENDER HAS
16 PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDENTIFI-
17 CATION INDEX.

18 (B) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE COLLECTION OF A DNA
19 SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT OFFICIAL, STATE OR LOCAL
20 CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR
21 OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT WHO HAS BEEN NOTIFIED
22 BY THE DIVISION THAT THE DESIGNATED OFFENDER HAS NOT PROVIDED A DNA
23 SAMPLE.

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

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

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

39 S 3. Section 995-f of the executive law, as amended by chapter 560 of
40 the laws of 1999, is amended to read as follows:

41 S 995-f. Penalties. 1. Any person who (a) intentionally discloses a
42 DNA record, or the results of a forensic DNA test or analysis, to an
43 individual or agency other than one authorized to have access to such
44 records pursuant to this article or (b) intentionally uses or receives
45 DNA records, or the results of a forensic DNA test or analysis, for
46 purposes other than those authorized pursuant to this article or (c) any
47 person who knowingly tampers or attempts to tamper with any DNA sample
48 or the collection container without lawful authority shall be guilty of
49 a class E felony.

50 2. ANY DESIGNATED OFFENDER SUBJECT TO PROBATION OR PAROLE SUPERVISION
51 WHO IS REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT
52 TO THE PROVISIONS OF THIS ARTICLE, AND WHO FAILS TO PROVIDE SUCH SAMPLE
53 UPON NOTIFICATION BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR
54 EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT
55 OFFICIAL OR PUBLIC SERVANT OF HIS OR HER OBLIGATION TO PROVIDE SUCH A
56 SAMPLE, SHALL BE DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR

1 PAROLE, AND SUCH VIOLATION SHALL BE A BASIS FOR THE REVOCATION OF
2 PROBATION OR PAROLE IN ACCORDANCE WITH ARTICLE FOUR HUNDRED TEN OF THE
3 CRIMINAL PROCEDURE LAW OR SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAP-
4 TER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED
5 TO INCLUDE POST-RELEASE SUPERVISION.

6 S 4. Subdivision 4 of section 995-c of the executive law, as added by
7 chapter 737 of the laws of 1994, is amended to read as follows:

8 4. The commissioner of the division of criminal justice services, in
9 consultation with the commission, the commissioner of health, the divi-
10 sions of parole and of probation and correctional alternatives and the
11 department of correctional services, shall promulgate rules and regu-
12 lations governing the procedures for notifying designated offenders of
13 the requirements of this section. THE COMMISSIONER OF THE DIVISION OF
14 CRIMINAL JUSTICE SERVICES SHALL ALSO PROMULGATE RULES AND REGULATIONS
15 GOVERNING THE PROCEDURES FOR OBTAINING A SAMPLE APPROPRIATE FOR DNA
16 TESTING FROM A PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER
17 PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

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

20 3-A. THE COMMISSION, IN CONSULTATION WITH THE SUBCOMMITTEE ON BIOLOG-
21 ICAL EVIDENCE PRESERVATION, SHALL DEVELOP GUIDELINES RELATING TO THE
22 COLLECTION, PRESERVATION, STORAGE, AND INDEXING OF BIOLOGICAL EVIDENCE
23 BY LAW ENFORCEMENT AGENCIES AND FORENSIC LABORATORIES. SUCH GUIDELINES
24 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE MINIMUM PERIOD OF TIME THAT
25 BIOLOGICAL EVIDENCE OBTAINED FROM CRIME SCENES SHOULD BE RETAINED. AS
26 USED IN THIS SUBDIVISION, THE TERM "BIOLOGICAL EVIDENCE" SHALL MEAN
27 SEMEN, BLOOD, SALIVA, HAIR, SKIN, TISSUE, OR OTHER IDENTIFIED BIOLOGICAL
28 MATERIAL, AND SHALL INCLUDE A SEXUAL ASSAULT FORENSIC EXAMINATION KIT.
29 INITIALLY, THE COMMISSION SHALL DEVELOP SUCH GUIDELINES AS VOLUNTARY
30 BEST PRACTICES. NONCOMPLIANCE WITH SUCH GUIDELINES SHALL NOT BE GROUNDS
31 FOR DISMISSAL OF CHARGES, EXCLUSION OF EVIDENCE, OR ANY OTHER LEGAL
32 RELIEF. THEREAFTER, AND TAKING INTO ACCOUNT THE EXPERIENCE UNDER THE
33 INITIAL GUIDELINES, THE COMMISSION SHALL CONSIDER WHAT MANDATORY RULES
34 SHOULD BE ADOPTED AS TO THE COLLECTION, PRESERVATION, STORAGE, AND
35 INDEXING OF BIOLOGICAL EVIDENCE BY LAW ENFORCEMENT AGENCIES AND FORENSIC
36 LABORATORIES. THE COMMISSION MAY ADOPT SUCH RULES WITHIN ITS EXISTING
37 REGULATORY AUTHORITY; IT MAY RECOMMEND THAT IT OR ANOTHER BODY BE GIVEN
38 EXPANDED REGULATORY AUTHORITY; AND IT MAY MAKE RECOMMENDATIONS FOR STAT-
39 UTORY ADOPTION OF PARTICULAR RULES. IN DEVELOPING SUCH GUIDELINES, RULES
40 AND RECOMMENDATIONS, THE COMMISSION SHALL CONSIDER THE VARYING NEEDS AND
41 RESOURCES OF LAW ENFORCEMENT AGENCIES AND JURISDICTIONS WITHIN THE
42 STATE.

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

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

1 OR SHE be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
2 TAKEN by the appropriate officer or agency, and that he OR SHE appear at
3 an appropriate designated time and place for such purpose.

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

7 S 130.60 Summons; fingerprinting of defendant.

8 1. Upon the arraignment of a defendant whose court attendance has been
9 secured by the issuance and service of a summons, based upon an indict-
10 ment, a prosecutor's information or upon an information, felony
11 complaint or misdemeanor complaint filed by a complainant who is a
12 police officer, the court must, if an offense charged in the accusatory
13 instrument is one specified in subdivision one of section 160.10, direct
14 that the defendant be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR
15 DNA TESTING TAKEN by the appropriate police officer or agency, and that
16 he or she appear at an appropriate designated time and place for such
17 purpose.

18 2. Upon the arraignment of a defendant whose court attendance has been
19 secured by the issuance and service of a summons based upon an informa-
20 tion or misdemeanor complaint filed by a complainant who is not a police
21 officer, and who has not previously been fingerprinted OR FROM WHOM A
22 DNA SAMPLE HAS NOT PREVIOUSLY BEEN TAKEN, the court may, if it finds
23 reasonable cause to believe that the defendant has committed an offense
24 specified in subdivision one of section 160.10, direct that the defend-
25 ant be fingerprinted AND/OR HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
26 TAKEN by the appropriate police officer or agency and that he OR SHE
27 appear at an appropriate designated time and place for such purpose. A
28 defendant whose court appearance has been secured by the issuance and
29 service of a criminal summons based upon a misdemeanor complaint or
30 information filed by a complainant who is not a police officer, must be
31 directed by the court, upon conviction of the defendant, to be finger-
32 printed AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN by the
33 appropriate police officer or agency and the court must also direct that
34 the defendant appear at an appropriate designated time and place for
35 such purpose, if the defendant is convicted of any offense specified in
36 subdivision one of section 160.10.

37 S 8. Subdivision 5 of section 140.20 of the criminal procedure law, as
38 amended by chapter 762 of the laws of 1971, is amended to read as
39 follows:

40 5. Before service of an appearance ticket upon an arrested person
41 pursuant to subdivision two or three, the issuing police officer must,
42 if the offense designated in such appearance ticket is one of those
43 specified in subdivision one of section 160.10, cause such person to be
44 fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN in the
45 same manner as would be required were no appearance ticket to be issued
46 or served.

47 S 9. Subdivision 2 of section 140.27 of the criminal procedure law, as
48 amended by chapter 843 of the laws of 1980, is amended to read as
49 follows:

50 2. Upon arresting a person without a warrant, a peace officer, except
51 as otherwise provided in subdivision three, must without unnecessary
52 delay bring him OR HER or cause him OR HER to be brought before a local
53 criminal court, as provided in section 100.55 and subdivision one of
54 section 140.20, and must without unnecessary delay file or cause to be
55 filed therewith an appropriate accusatory instrument. If the offense
56 which is the subject of the arrest is one of those specified in subdivi-

sion one of section 160.10, the arrested person must be fingerprinted [and], photographed AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN as therein provided. In order to execute the required post-arrest functions, such arresting peace officer may perform such functions himself OR HERSELF, or he OR SHE may enlist the aid of a police officer for the performance thereof in the manner provided in subdivision one of section 140.20.

S 10. Section 150.70 of the criminal procedure law, as amended by chapter 762 of the laws of 1971, is amended to read as follows:

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

Upon the arraignment of a defendant who has not been arrested and whose court attendance has been secured by the issuance and service of an appearance ticket pursuant to subdivision one of section 150.20, the court must, if an offense charged in the accusatory instrument is one specified in subdivision one of section 160.10, direct that the defendant be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN by the appropriate police officer or agency, and that he OR SHE appear at an appropriate designated time and place for such purpose.

S 11. The section heading of section 160.10 of the criminal procedure law, as amended by chapter 762 of the laws of 1971, is amended and a new subdivision 5 is added to read as follows:

Fingerprinting AND DNA ANALYSIS; duties of police with respect thereto.

5. (A) WHENEVER FINGERPRINTS ARE REQUIRED TO BE TAKEN PURSUANT TO SUBDIVISION ONE OF THIS SECTION OR PERMITTED TO BE TAKEN PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE TAKING OF A SAMPLE APPROPRIATE FOR DNA TESTING SHALL BE SIMILARLY REQUIRED OR PERMITTED.

(B) THE TAKING OF SAMPLES APPROPRIATE FOR DNA TESTING AS PRESCRIBED IN THIS SECTION SHALL BE IN ACCORDANCE WITH STANDARDS THAT MAY BE ESTABLISHED BY RULES AND REGULATIONS OF THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(C) "DNA" AS USED IN THIS ARTICLE MEANS DNA AS DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW.

S 12. Section 160.20 of the criminal procedure law, as amended by chapter 108 of the laws of 1973, is amended to read as follows:

S 160.20 Fingerprinting AND DNA ANALYSIS SAMPLE; forwarding of fingerprints AND DNA ANALYSIS SAMPLE.

Upon the taking of fingerprints AND A SAMPLE APPROPRIATE FOR DNA TESTING of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services, AND SHALL STORE AND FORWARD SUCH DNA SAMPLE TO A FORENSIC DNA LABORATORY FOR FORENSIC DNA TESTING AND ANALYSIS, AND INCLUSION IN THE STATE DNA IDENTIFICATION INDEX IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW.

S 13. Paragraphs (a) and (b) of subdivision 1 of section 160.55 of the criminal procedure law, as amended by chapter 169 of the laws of 1994, are amended to read as follows:

(a) every photograph of such person and photographic plate or proof, [and] all palmprints and fingerprints taken or made of such person, AND ALL DNA ANALYSIS SAMPLES AND DNA RECORDS TAKEN pursuant to the provisions of this article in regard to the action or proceeding terminated, [and] all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to paragraph (e) of this subdivi-

1 sion, shall forthwith be, at the discretion of the recipient agency,
2 either destroyed or returned to such person, or to the attorney who
3 represented such person at the time of the termination of the action or
4 proceeding, at the address given by such person or attorney during the
5 action or proceeding, by the division of criminal justice services and
6 by any police department or law enforcement agency having any such
7 photograph, photographic plate or proof, palmprints [or], fingerprints,
8 AND DNA ANALYSIS SAMPLE AND DNA RECORD in its possession or under its
9 control;

10 (b) any police department or law enforcement agency, including the
11 division of criminal justice services, which transmitted or otherwise
12 forwarded to any agency of the United States or of any other state or of
13 any other jurisdiction outside the state of New York copies of any such
14 photographs, photographic plates or proofs, palmprints [and], finger-
15 prints, AND DNA ANALYSIS SAMPLE AND DNA RECORD, shall forthwith formally
16 request in writing that all such copies be destroyed or returned to the
17 police department or law enforcement agency which transmitted or
18 forwarded them, and upon such return such department or agency shall, at
19 its discretion, either destroy or return them as provided herein;

20 S 14. (a) The commission for exoneration review is hereby established
21 on a temporary basis as an independent agency of the state to study and
22 review recent cases in which convicted defendants were subsequently
23 exonerated, whether by DNA evidence or otherwise, to determine why the
24 process failed in each individual case, and to determine whether these
25 cases are indicative of systemic flaws that have led to the conviction
26 and sentencing of innocent people.

27 (b) The governor shall appoint the chair and ten other members of such
28 commission, including one appointed on the recommendation of the chief
29 judge of the court of appeals, one appointed on the recommendation of
30 the speaker of the assembly, one appointed on the recommendation of the
31 temporary president of the senate, one appointed on the recommendation
32 of the minority leader of the senate, and one appointed on the recommen-
33 dation of the minority leader of the assembly. If any vacancy occurs it
34 shall be filled in the manner provided for the original appointment to
35 the vacated seat.

36 (c) No member of the commission shall be disqualified from holding any
37 public office or employment, nor shall he or she forfeit any such office
38 or employment, by reason of his or her appointment pursuant to this
39 section.

40 (d) The commission shall meet as often as its chair, or at least five
41 of its members, shall determine to be necessary. Six members shall
42 constitute a quorum, and except as otherwise provided in this section,
43 affirmative decisions of the commission shall require the concurrence of
44 seven members.

45 (e) The members of the commission shall serve without salary or other
46 compensation, but shall be entitled to receive actual and necessary
47 expenses incurred in the discharge of their duties pursuant to this
48 section.

49 (f) The commission shall review criminal or juvenile cases in which
50 the defendant or respondent was sentenced but subsequently exonerated.
51 The purpose of such review is to consider whether experience in such
52 cases provides useful information about possible reforms that could
53 enhance safeguards, make improvements in the way that law enforcement
54 agencies and the criminal justice system function, and protect against
55 future convictions of innocent persons. Such possible reforms may
56 include but are not limited to the areas of:

1 (1) investigative techniques that led to the arrest, identification,
2 and conviction of the innocent persons;
3 (2) issues relating to false confessions, including whether the
4 recording of interrogations should be mandated;
5 (3) trial processes and procedures that may have contributed to
6 convictions of innocent persons;
7 (4) any conduct of prosecutors, defense counsels, or courts that may
8 have contributed to convictions of innocent persons;
9 (5) issues relating to the provision of counsel to indigent defend-
10 ants, including whether counsel are adequately trained, compensated, and
11 provided with appropriate resources for investigations; and
12 (6) failures in the appellate or post-conviction process that resulted
13 in wrongful convictions not being discovered or corrected at an earlier
14 time.

15 (g) The commissioner of criminal justice services shall identify cases
16 in which convictions were set aside and it appears reasonably likely
17 that the person convicted was innocent of the crimes charged, and it
18 shall submit summaries of such cases to the commission. The commissioner
19 of criminal justice services shall seek to submit at least all such
20 cases in which exoneration resulted from DNA evidence, and all such
21 cases in which there was an exoneration within five years prior to the
22 effective date of this act. The commission of exoneration review shall
23 conduct an initial review of each case submitted by the commissioner of
24 criminal justice services, and may also choose to conduct initial
25 reviews of other cases. As to each case, the commission shall decide
26 whether such case warrants detailed review in that (1) it appears highly
27 likely that the person convicted was actually innocent of the crimes
28 charged, and (2) there appear to be features of the case that may
29 provide useful information without possible reforms.

30 (h) When the commission for exoneration review decides that a case
31 warrants detailed review, the commissioner of criminal justice services
32 shall compile records and other information relating to that case, and
33 may solicit comments or analyses by experts in relevant fields.
34 Notwithstanding any other provision of law, the commissioner of criminal
35 justice services may request and shall receive from any court, depart-
36 ment, division, board, bureau, commission or other agency of the state
37 or political subdivision thereof, or any public authority, such assist-
38 ance, records and data as will enable it effectively to carry out its
39 duties. The commissioner of criminal justice services shall submit such
40 records, information, comments, and analyses to the commission of exon-
41 eration review. Confidential and sensitive material, such as certain
42 information relating to victims and confidential informants, may be
43 redacted as appropriate. The commission for exoneration review may
44 conduct its detailed review on the basis of the materials submitted, or
45 it may request the commissioner of criminal justice services to compile
46 and submit further specified kinds of information about the case.

47 (i) The commission for exoneration review shall make available an
48 annual report detailing, at a minimum, the number of cases submitted by
49 the commissioner of criminal justice services, the number of cases
50 chosen for detailed review, and the number of detailed reviews
51 completed. The report shall include any findings of fact and recommenda-
52 tions for reform that may have been adopted by the commission since its
53 last report. Recommendations that are not adopted by the commission but
54 obtain the concurrence of at least four members shall be included in the
55 annual report as proposals for consideration. In addition to the annual
56 report, the commission may decide to issue other reports containing

1 findings of fact and/or recommendations for reform. All reports issued
2 by the commission shall be made available to the public and delivered to
3 the governor, the chief judge of the court of appeals, the temporary
4 president of the senate, and the speaker of the assembly.

5 S 15. Paragraph (d) of subdivision 1 of section 160.50 of the criminal
6 procedure law, as amended by chapter 169 of the laws of 1994, is amended
7 to read as follows:

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

33 S 16. Subdivision 4 of section 190.25 of the criminal procedure law is
34 amended by adding a new paragraph (c) to read as follows:

35 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL GRAND JURY TESTI-
36 MONY, EVIDENCE, DECISIONS, RESULTS AND OTHER MATTERS ATTENDING A GRAND
37 JURY PROCEEDING SHALL BE DISCLOSED TO THE COMMISSION FOR EXONERATION
38 REVIEW, UPON ITS REQUEST, IN CONNECTION WITH AN INQUIRY BY SUCH COMMIS-
39 SION INTO A WRONGFUL CONVICTION RELATED TO SUCH GRAND JURY PROCEEDING.

40 S 17. Section 240.40 of the criminal procedure law is amended by
41 adding a new subdivision 1-a to read as follows:

42 1-A. UPON MOTION OF A DEFENDANT AGAINST WHOM AN INDICTMENT OR SUPERIOR
43 COURT INFORMATION IS PENDING, THE COURT IN WHICH SUCH ACCUSATORY INSTRU-
44 MENT IS PENDING MAY ORDER A COMPARISON OF A DNA PROFILE DERIVED FROM
45 EVIDENCE RECOVERED BY LAW ENFORCEMENT TO THE DEFENDANT'S DNA OR TO A DNA
46 DATABANK UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERI-
47 AL TO THE PREPARATION OF A DEFENSE, AND THAT THE REQUEST IS REASONABLE,
48 PROVIDED THAT THE COURT SHALL NOT DO SO IF IT IS SATISFIED THAT THE
49 PEOPLE HAVE SHOWN GOOD CAUSE WHY SUCH AN ORDER SHOULD NOT BE ISSUED. IF
50 THE MOTION OF THE DEFENDANT IS FOR COMPARISON OF A GIVEN PROFILE DERIVED
51 FROM DNA EVIDENCE TO A DNA DATABANK, THE COURT MAY DIRECT A STATE OR
52 LOCAL PUBLIC FORENSIC LABORATORY TO ARRANGE FOR SUCH PROFILE TO BE
53 ENTERED INTO AND SEARCHED AGAINST LOCAL, STATE, AND FEDERAL DNA DATA-
54 BANKS TO THE EXTENT, AND IN A MANNER, CONSISTENT WITH FEDERAL AND STATE
55 LAWS AND REGULATIONS GOVERNING SUCH DATABANKS, INCLUDING REQUIREMENTS AS
56 TO HOW PROFILES FOR FORENSIC DNA ANALYSIS MUST BE GENERATED, AND

1 REQUIREMENTS FOR SEARCHING AND STORAGE IN THE DATABANK IN QUESTION. IF
2 SUCH A DATABANK SEARCH REVEALS THAT THE DNA DERIVED FROM EVIDENCE RECOV-
3 ERED BY LAW ENFORCEMENT MATCHES A PROFILE IN THE DATABANK, THE DEFENDANT
4 SHALL BE NOTIFIED OF THE FACT THAT THERE WAS A MATCH WITH SOME SUCH
5 PROFILE, AND THE COURT SHALL GRANT REASONABLE ADJOURNMENTS SO AS TO
6 ALLOW THE PEOPLE TO PURSUE APPROPRIATE INVESTIGATIVE STEPS. NOTHING IN
7 THIS ARTICLE SHALL BE DEEMED TO ALLOW A DEFENDANT TO OBTAIN AN ORDER
8 REQUIRING COLLECTION OF A DNA SAMPLE FROM ANY OTHER PERSON.

9 S 18. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
10 nal procedure law, as amended by chapter 138 of the laws of 2004, is
11 amended and a new paragraph (c) is added to read as follows:

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

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

50 S 19. Section 65.10 of the penal law is amended by adding a new subdi-
51 vision 4-b to read as follows:

52 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A
53 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED
54 OF AN OFFENSE DEFINED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINE-
55 TY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATORY

1 CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS
2 REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW.

3 S 20. Paragraph (b) of subdivision 3 and paragraph (b) of subdivision
4 5 of section 8-b of the court of claims act, as added by chapter 1009 of
5 the laws of 1984, are amended to read as follows:

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

31 (b) (i) he has been pardoned upon the ground of innocence of the crime
32 or crimes for which he was sentenced and which are the grounds for the
33 complaint; or (ii) his judgment of conviction was reversed or vacated,
34 and the accusatory instrument dismissed or, if a new trial was ordered,
35 either he was found not guilty at the new trial or he was not retried
36 and the accusatory instrument dismissed; provided that the judgement of
37 conviction was reversed or vacated, and the accusatory instrument was
38 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),
39 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal
40 procedure law; or (B) subdivision one (where based upon grounds set
41 forth in item (A) [hereof] OF THIS SUBPARAGRAPH), two, three (where the
42 count dismissed was the sole basis for the imprisonment complained of)
43 or five of section 470.20 of the criminal procedure law; or (C) compara-
44 ble provisions of the former code of criminal procedure or subsequent
45 law; or (D) the statute, or application thereof, on which the accusatory
46 instrument was based violated the constitution of the United States or
47 the state of New York; OR (E) THE CLAIMANT'S CONVICTION WAS VACATED
48 UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH, BUT WHOSE
49 APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND CIRCUMSTANCES
50 THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE; AND PROVIDED
51 THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED ON MORE THAN
52 ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS PARAGRAPH,
53 THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE CRIMINAL
54 COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT ENUMERATED IN
55 THIS PARAGRAPH; and

56 S 21. This act shall take effect November 1, 2009; provided that:

1 (a) the amendments to article 49-B of the executive law, made by
2 sections one and two of this act, and the amendments to the criminal
3 procedure law, made by sections six, seven, eight, nine, ten, eleven,
4 twelve and thirteen of this act, shall apply to designated offenses
5 committed on or after the effective date of this act; and to designated
6 offenses committed prior to such effective date where either the crimi-
7 nal proceeding arising out of the commission of such offense is pending
8 on the effective date of this act or the service of the sentence imposed
9 upon conviction of the designated offense has not been completed prior
10 to such effective date; and to any person adjudicated a youthful offen-
11 der for the commission of a designated offense committed prior to the
12 effective date of this act where service of the sentence imposed upon
13 adjudication as a youthful offender has not been completed prior to such
14 effective date; and to any person required to register as a sex offender
15 pursuant to article 6-C of the correction law on or after the effective
16 date of this act; and
17 (b) sections fourteen, fifteen and sixteen of this act shall take
18 effect April 1, 2010, and shall expire and be deemed repealed September
19 1, 2013.