

6186

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. SCHIMMINGER, CARROZZA, CUSICK, DeMONTE, FIELDS, GABRYSZAK, GALEF, KOON, ALFANO, STIRPE -- Multi-Sponsored by -- M. of A. EDDINGTON, LATIMER, MAGEE, MAYERSOHN, REILLY, SEMINERIO, SWEENEY -- read once and referred to the Committee on Codes

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

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

LBD08890-01-9

1 section 110.00 and section 125.27 of the penal law, kidnapping in the
2 first degree, as defined in section 135.25 of the penal law, arson in
3 the first degree, as defined in section 150.20 of the penal law,
4 burglary in the third degree, as defined in section 140.20 of the penal
5 law, attempted burglary in the third degree, as defined in section
6 110.00 and section 140.20 of the penal law, a felony defined in article
7 four hundred ninety of the penal law relating to terrorism or any
8 attempt to commit an offense defined in such article relating to terror-
9 ism which is a felony; or (b) criminal possession of a controlled
10 substance in the first degree, as defined in section 220.21 of the penal
11 law; criminal possession of a controlled substance in the second degree,
12 as defined in section 220.18 of the penal law; criminal sale of a
13 controlled substance, as defined in article 220 of the penal law; or
14 grand larceny in the fourth degree, as defined in subdivision five of
15 section 155.30 of the penal law; or (c) any misdemeanor or felony
16 defined as a sex offense or sexually violent offense pursuant to para-
17 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
18 three of section one hundred sixty-eight-a of the correction law; or (d)
19 any of the following felonies, or an attempt thereof where such attempt
20 is a felony offense:

21 aggravated assault upon a person less than eleven years old, as
22 defined in section 120.12 of the penal law; menacing in the first
23 degree, as defined in section 120.13 of the penal law; reckless endan-
24 germent in the first degree, as defined in section 120.25 of the penal
25 law; stalking in the second degree, as defined in section 120.55 of the
26 penal law; criminally negligent homicide, as defined in section 125.10
27 of the penal law; vehicular manslaughter in the second degree, as
28 defined in section 125.12 of the penal law; vehicular manslaughter in
29 the first degree, as defined in section 125.13 of the penal law;
30 persistent sexual abuse, as defined in section 130.53 of the penal law;
31 aggravated sexual abuse in the fourth degree, as defined in section
32 130.65-a of the penal law; female genital mutilation, as defined in
33 section 130.85 of the penal law; facilitating a sex offense with a
34 controlled substance, as defined in section 130.90 of the penal law;
35 unlawful imprisonment in the first degree, as defined in section 135.10
36 of the penal law; custodial interference in the first degree, as defined
37 in section 135.50 of the penal law; criminal trespass in the first
38 degree, as defined in section 140.17 of the penal law; criminal tamper-
39 ing in the first degree, as defined in section 145.20 of the penal law;
40 tampering with a consumer product in the first degree, as defined in
41 section 145.45 of the penal law; robbery in the third degree as defined
42 in section 160.05 of the penal law; identity theft in the second degree,
43 as defined in section 190.79 of the penal law; identity theft in the
44 first degree, as defined in section 190.80 of the penal law; promoting
45 prison contraband in the first degree, as defined in section 205.25 of
46 the penal law; tampering with a witness in the third degree, as defined
47 in section 215.11 of the penal law; tampering with a witness in the
48 second degree, as defined in section 215.12 of the penal law; tampering
49 with a witness in the first degree, as defined in section 215.13 of the
50 penal law; criminal contempt in the first degree, as defined in subdivi-
51 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
52 criminal contempt, as defined in section 215.52 of the penal law; bail
53 jumping in the second degree, as defined in section 215.56 of the penal
54 law; bail jumping in the first degree, as defined in section 215.57 of
55 the penal law; patronizing a prostitute in the second degree, as defined
56 in section 230.05 of the penal law; patronizing a prostitute in the

1 first degree, as defined in section 230.06 of the penal law; promoting
2 prostitution in the second degree, as defined in section 230.30 of the
3 penal law; promoting prostitution in the first degree, as defined in
4 section 230.32 of the penal law; compelling prostitution, as defined in
5 section 230.33 of the penal law; disseminating indecent materials to
6 minors in the second degree, as defined in section 235.21 of the penal
7 law; disseminating indecent materials to minors in the first degree, as
8 defined in section 235.22 of the penal law; riot in the first degree, as
9 defined in section 240.06 of the penal law; criminal anarchy, as defined
10 in section 240.15 of the penal law; aggravated harassment of an employee
11 by an inmate, as defined in section 240.32 of the penal law; unlawful
12 surveillance in the second degree, as defined in section 250.45 of the
13 penal law; unlawful surveillance in the first degree, as defined in
14 section 250.50 of the penal law; endangering the welfare of a vulnerable
15 elderly person in the second degree, as defined in section 260.32 of the
16 penal law; endangering the welfare of a vulnerable elderly person in the
17 first degree, as defined in section 260.34 of the penal law; use of a
18 child in a sexual performance, as defined in section 263.05 of the penal
19 law; promoting an obscene sexual performance by a child, as defined in
20 section 263.10 of the penal law; possessing an obscene sexual perform-
21 ance by a child, as defined in section 263.11 of the penal law; promot-
22 ing a sexual performance by a child, as defined in section 263.15 of the
23 penal law; possessing a sexual performance by a child, as defined in
24 section 263.16 of the penal law; criminal possession of a weapon in the
25 third degree, as defined in section 265.02 of the penal law; criminal
26 sale of a firearm in the third degree, as defined in section 265.11 of
27 the penal law; criminal sale of a firearm to a minor, as defined in
28 section 265.16 of the penal law; unlawful wearing of a body vest, as
29 defined in section 270.20 of the penal law; hate crimes as defined in
30 section 485.05 of the penal law; and crime of terrorism, as defined in
31 section 490.25 of the penal law; or (e) a felony defined in the penal
32 law or an attempt thereof where such attempt is a felony; or (f) any of
33 the following misdemeanors: assault in the third degree as defined in
34 section 120.00 of the penal law; attempted aggravated assault upon a
35 person less than eleven years old, as defined in section 110.00 and
36 section 120.12 of the penal law; attempted menacing in the first degree,
37 as defined in section 110.00 and section 120.13 of the penal law; menac-
38 ing in the second degree as defined in section 120.14 of the penal law;
39 menacing in the third degree as defined in section 120.15 of the penal
40 law; reckless endangerment in the second degree as defined in section
41 120.20 of the penal law; stalking in the fourth degree as defined in
42 section 120.45 of the penal law; stalking in the third degree as defined
43 in section 120.50 of the penal law; attempted stalking in the second
44 degree, as defined in section 110.00 and section 120.55 of the penal
45 law; forcible touching as defined in section 130.52 of the penal law
46 regardless of the age of the victim; sexual abuse in the third degree as
47 defined in section 130.55 of the penal law regardless of the age of the
48 victim; unlawful imprisonment in the second degree as defined in section
49 135.05 of the penal law regardless of the age of the victim; attempted
50 unlawful imprisonment in the first degree, as defined in section 110.00
51 and section 135.10 of the penal law regardless of the age of the victim;
52 criminal trespass in the second degree as defined in section 140.15 of
53 the penal law; possession of burglar's tools as defined in section
54 140.35 of the penal law; petit larceny as defined in section 155.25 of
55 the penal law; endangering the welfare of a child as defined in section
56 260.10 of the penal law; endangering the welfare of an incompetent or

1 physically disabled person as defined in section 260.25] ARRESTED FOR
2 ANY OFFENSE FOR WHICH THE FINGERPRINTS OF THE DEFENDANT OR ARRESTED
3 PERSON ARE REQUIRED OR PERMITTED TO BE TAKEN PURSUANT TO SECTION 160.10
4 OF THE CRIMINAL PROCEDURE LAW, OR A PERSON ADJUDICATED AND SENTENCED AS
5 A YOUTHFUL OFFENDER PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE
6 CRIMINAL PROCEDURE LAW FOR ANY SUCH OFFENSE, OR A PERSON WHO IS REQUIRED
7 TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE
8 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
15 specific to such person and to be included in a state DNA identification
16 index pursuant to this article, UNLESS SUCH DESIGNATED OFFENDER HAS
17 PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDENTIFI-
18 CATION INDEX.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 court must, upon arraignment of the defendant before it, direct that he
2 OR SHE be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
3 TAKEN by the appropriate officer or agency, and that he OR SHE appear at
4 an appropriate designated time and place for such purpose.

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

8 S 130.60 Summons; fingerprinting of defendant.

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

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

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

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

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

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

1 which is the subject of the arrest is one of those specified in subdivi-
2 sion one of section 160.10, the arrested person must be fingerprinted
3 [and], photographed AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN
4 as therein provided. In order to execute the required post-arrest func-
5 tions, such arresting peace officer may perform such functions himself
6 OR HERSELF, or he OR SHE may enlist the aid of a police officer for the
7 performance thereof in the manner provided in subdivision one of section
8 140.20.

9 S 10. Section 150.70 of the criminal procedure law, as amended by
10 chapter 762 of the laws of 1971, is amended to read as follows:
11 S 150.70 Appearance ticket; fingerprinting AND DNA ANALYSIS SAMPLE of
12 defendant.

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

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

24 Fingerprinting AND DNA ANALYSIS; duties of police with respect there-
25 to.

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

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

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

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

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

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

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

52 (a) every photograph of such person and photographic plate or proof,
53 [and] all palmprints and fingerprints taken or made of such person, AND
54 ALL DNA ANALYSIS SAMPLES AND DNA RECORDS TAKEN pursuant to the
55 provisions of this article in regard to the action or proceeding termi-
56 nated, [and] all duplicates and copies thereof, except a digital finger-

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

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

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

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

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

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

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

50 (f) The commission shall review criminal or juvenile cases in which
51 the defendant or respondent was sentenced but subsequently exonerated.
52 The purpose of such review is to consider whether experience in such
53 cases provides useful information about possible reforms that could
54 enhance safeguards, make improvements in the way that law enforcement
55 agencies and the criminal justice system function, and protect against

1 future convictions of innocent persons. Such possible reforms may
2 include but are not limited to the areas of:

3 (1) investigative techniques that led to the arrest, identification,
4 and conviction of the innocent persons;

5 (2) issues relating to false confessions, including whether the
6 recording of interrogations should be mandated;

7 (3) trial processes and procedures that may have contributed to
8 convictions of innocent persons;

9 (4) any conduct of prosecutors, defense counsels, or courts that may
10 have contributed to convictions of innocent persons;

11 (5) issues relating to the provision of counsel to indigent defend-
12 ants, including whether counsel are adequately trained, compensated, and
13 provided with appropriate resources for investigations; and

14 (6) failures in the appellate or post-conviction process that resulted
15 in wrongful convictions not being discovered or corrected at an earlier
16 time.

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

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

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

1 annual report as proposals for consideration. In addition to the annual
2 report, the commission may decide to issue other reports containing
3 findings of fact and/or recommendations for reform. All reports issued
4 by the commission shall be made available to the public and delivered to
5 the governor, the chief judge of the court of appeals, the temporary
6 president of the senate, and the speaker of the assembly.

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

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

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

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

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

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

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

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

11 (a) Where the defendant's motion requests the performance of a forensic DNA test on specified evidence, and upon the court's determination
12 that any evidence containing deoxyribonucleic acid ("DNA") was secured
13 in connection with the [trial] PROCEEDINGS resulting in the judgment,
14 the court shall grant the application for forensic DNA testing of such
15 evidence upon its determination that if a DNA test had been conducted on
16 such evidence, and if the results had been admitted in the trial resulting 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 OTHERWISE, AND IN MAKING THAT DETERMINATION, THE COURT MAY CONSIDER, AMONG
22 OTHER RELEVANT INFORMATION, THE PROCEEDINGS IN CONNECTION WITH THE
23 DEFENDANT'S PLEA OF GUILTY.

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

45 S 19. Section 65.10 of the penal law is amended by adding a new subdivision 4-b to read as follows:

46 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A
47 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED
48 OF AN OFFENSE DEFINED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINE-

TY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW.

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

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

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

1 S 21. This act shall take effect November 1, 2009; provided that:
2 (a) the amendments to article 49-B of the executive law, made by
3 sections one and two of this act, and the amendments to the criminal
4 procedure law, made by sections six, seven, eight, nine, ten, eleven,
5 twelve and thirteen of this act, shall apply to designated offenses
6 committed on or after the effective date of this act; and to designated
7 offenses committed prior to such effective date where either the crimi-
8 nal proceeding arising out of the commission of such offense is pending
9 on the effective date of this act or the service of the sentence imposed
10 upon conviction of the designated offense has not been completed prior
11 to such effective date; and to any person adjudicated a youthful offen-
12 der for the commission of a designated offense committed prior to the
13 effective date of this act where service of the sentence imposed upon
14 adjudication as a youthful offender has not been completed prior to such
15 effective date; and to any person required to register as a sex offender
16 pursuant to article 6-C of the correction law on or after the effective
17 date of this act; and
18 (b) sections fourteen, fifteen and sixteen of this act shall take
19 effect April 1, 2010, and shall expire and be deemed repealed September
20 1, 2013.