S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. LENTOL, SILVER, AUBRY, JAFFEE, STIRPE, ALESSI, DESTITO, FARRELL, WEINSTEIN -- Multi-Sponsored by -- M. of A. KELLNER, ZEBROWSKI -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to establishing the minimum period of time that forensic samples should be retained by investigating authorities; in relation to appointments to the commission on forensic science; to amend the judiciary law, in relation to creating the state commission for the integrity of the criminal justice system, as an independent agency, and providing for such commission's powers and duties; to amend the criminal procedure law, in relation to special fictitious name indictments; to amend the executive law, in relation to requests for certain DNA test comparisons; to amend the criminal procedure law, in relation to forensic DNA testing; to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; to amend the executive law and the criminal procedure law, in relation to DNA testing, confidentiality, data collection and record keeping; to amend the state finance law, in relation to establishing the DNA evidence fund; in relation to establishing the innocence research project program; to amend the criminal procedure law, in relation to electronic recordings of interrogations; and to amend the executive law, in relation to defining a designated offender

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

Section 1. Subparagraph (ix) of paragraph (b) of subdivision 9 of section 995-b of the executive law, as added by chapter 737 of the laws of 1994, is amended and a new paragraph (c) is added to read as follows:

(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law[.]; AND

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

(C) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH, DETERMINE, CONSISTENT WITH THIS ARTICLE, THE APPROPRIATE MINIMUM PERIOD OF TIME THAT FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL, OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES, SHOULD BE RETAINED BY INVESTIGATING AUTHORITIES AND THE TIME OR SPECIFIED EVENT OR EVENTS, IF ANY, AFTER WHICH, CONSISTENT WITH THE INTEREST OF ALL PERSONS AND LAW ENFORCEMENT, SUCH SAMPLES MAY BE DESTROYED, AND DETERMINE STANDARDS FOR THE CATALOGING AND MAINTAINING RECORDS OF SUCH SAMPLES. PENDING THE PROMULGATION OF A POLICY ADDRESSING THE ISSUES SET FORTH IN THIS PARAGRAPH, THE COMMISSION MAY ADOPT AN INTERIM POLICY MANDATING THE PRESERVATION BY INVESTIGATING AUTHORITIES OF FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES.

S 2. Subdivision 1 of section 995-a of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following [fourteen] SIXTEEN members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) [twelve] FOURTEEN members appointed by the governor.

S 3. Paragraph (i) of subdivision 2 of section 995-a of the executive law, as added by chapter 737 of the laws of 1994, is amended, paragraph (j) is relettered paragraph (k) and a new paragraph (j) is added to read as follows:

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; [and]

(J) TWO MEMBERS SHALL BE JOINTLY APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY: ONE SUCH PERSON SHALL BE A CRIME VICTIMS ADVOCATE, AND ONE SUCH PERSON SHALL BE AN EXPERT IN BIOMEDICAL ETHICS; AND

S 4. Article 23 and sections 860 and 861 of the judiciary law, as renumbered by chapter 840 of the laws of 1983, are renumbered article 24 and sections 1000 and 1001 and a new article 23 is added to read as follows:

ARTICLE 23

STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SECTION 900. DEFINITION.

901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM.

902. PURPOSE AND CONDUCT OF THE COMMISSION.

903. POWERS AND DUTIES.

904. USE OF REPORTS.

S 900. DEFINITION. AS USED IN THIS ARTICLE, "COMMISSION" SHALL MEAN THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ESTABLISHED PURSUANT TO SECTION NINE HUNDRED ONE OF THIS ARTICLE.

S 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM. 1. THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM IS HEREBY ESTABLISHED AS AN INDEPENDENT AGENCY OF THE STATE. THE COMMISSION SHALL CONSIST OF TEN MEMBERS AS FOLLOWS:

(A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES;

(B) FOUR MEMBERS APPOINTED BY THE GOVERNOR, OF WHOM:

(I) ONE SHALL BE A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY,
(II) ONE SHALL BE A REPRESENTATIVE OF THE PUBLIC CRIMINAL DEFENSE BAR OR PRIVATE CRIMINAL DEFENSE BAR WHO SHALL BE APPOINTED UPON THE RECOMMENDATION OF AN ORGANIZATION WITH MORE THAN SEVEN HUNDRED FIFTY DUES PAYING MEMBERS REPRESENTING SUCH PUBLIC OR PRIVATE DEFENSE SERVICES,
(III) ONE SHALL BE A REPRESENTATIVE OF VICTIMS RIGHTS ADVOCACY OR SERVICES ORGANIZATIONS, AND
(IV) ONE SHALL BE A REPRESENTATIVE OF THE FORENSIC SCIENCE FIELD;
(C) A MEMBER APPOINTED BY THE ATTORNEY GENERAL WHO SHALL BE A REPRESENTATIVE OF PROSECUTION SERVICES;
(D) TWO MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS, OF WHOM:
(I) ONE SHALL BE A RETIRED JUDGE OR JUSTICE OF A NEW YORK STATE COURT OF RECORD, AND
(II) ONE SHALL BE A PROFESSOR OF LAW OR A RETIRED FULL TIME PROFESSOR OF LAW WHO HAS TAUGHT LAW SCHOOL COURSES IN CRIMINAL LAW, CRIMINAL PROCEDURE, CONSTITUTIONAL LAW, OR EVIDENCE AT AN ACCREDITED POST-GRADUATE COLLEGE IN NEW YORK STATE;
(E) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE; AND
(F) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE.

2. THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL SERVE AN INDEFINITE TERM. THE MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF FOUR YEARS. THE RETIRED JUDGE OR JUSTICE APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF THREE YEARS. THE PROFESSOR OF LAW OR RETIRED PROFESSOR OF LAW APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF TWO YEARS. THE MEMBERS APPOINTED BY THE ATTORNEY GENERAL, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH SERVE A TERM OF TWO YEARS. EACH OF THE MEMBERS OF THE COMMISSION, EXCEPT THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES, APPOINTED THEREAFTER SHALL SERVE A TERM OF FIVE YEARS. EVERY VACANCY OCCURRING PRIOR TO THE EXPIRATION OF A MEMBER'S TERM SHALL BE FILLED FOR THE REMAINDER OF SUCH TERM IN THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT TO SUCH TERM. UPON THE EXPIRATION OF THE TERM OF A MEMBER OF THE COMMISSION, SUCH MEMBER SHALL CONTINUE TO SERVE UNTIL HIS OR HER SUCCESSOR IS APPOINTED.

3. THE COMMISSION SHALL ELECT A CHAIR FROM AMONGST ITS MEMBERS BY A MAJORITY VOTE OF THE MEMBERS THEREOF.

4. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT, BY REASON OF HIS OR HER APPOINTMENT PURSUANT TO THIS SECTION, AND THE MEMBERS OF THE COMMISSION SHALL BE REQUIRED TO TAKE AND FILE OATHS OF OFFICE BEFORE SERVING ON THE COMMISSION.

5. THE COMMISSION SHALL MEET AT LEAST FOUR TIMES EACH YEAR AT PREDETERMINED TIMES AND LOCATIONS ANNOUNCED IN ADVANCE, AND AT SUCH OTHER TIMES AS THE CHAIR OF THE COMMISSION OR FOUR OR MORE MEMBERS SHALL DETERMINE TO BE NECESSARY.

6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX MEMBERS OF THE COMMISSION SHALL BE NECESSARY.

7. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES PURSUANT TO THIS ARTICLE.

S 902. PURPOSE AND CONDUCT OF THE COMMISSION. THE COMMISSION SHALL REVIEW ANY CRIMINAL OR JUVENILE CASE INVOLVING A WRONGFUL CONVICTION AND RECOMMEND REFORMS TO LESSEN THE LIKELIHOOD OF A SIMILAR WRONGFUL CONVICTION OCCURRING IN THE FUTURE.

WHENEVER A PERSON WHO HAS BEEN CONVICTED OF A CRIME OR ADJUDICATED A YOUTHFUL OFFENDER IS SUBSEQUENTLY DETERMINED TO BE INNOCENT OF SUCH CRIME OR OFFENSE AND EXONERATED, THE COMMISSION SHALL CONDUCT AN INVESTIGATION, HOLD HEARINGS ON AND MAKE FINDINGS OF FACT REGARDING THE WRONGFUL CONVICTION IN ORDER TO DETERMINE THE CAUSE OR CAUSES OF THE WRONGFUL CONVICTION.

UPON THE COMPLETION OF SUCH PROCESS, THE COMMISSION, WITHIN SIXTY DAYS, SHALL ISSUE A PRELIMINARY WRITTEN REPORT OF ITS FINDINGS OF FACT AND CONCLUSIONS, AND ANY RECOMMENDATIONS TO PREVENT WRONGFUL CONVICTIONS FROM OCCURRING UNDER SIMILAR CIRCUMSTANCES IN THE FUTURE. WITHIN ONE HUNDRED TWENTY DAYS AFTER ISSUING SUCH PRELIMINARY REPORT, THE COMMISSION SHALL ISSUE ITS REPORT AND RECOMMENDATIONS CONCERNING THE MATTER. SUCH REPORT AND RECOMMENDATIONS SHALL BE MADE AVAILABLE TO THE PUBLIC, AND SHALL BE DELIVERED TO THE GOVERNOR, ATTORNEY GENERAL, CHIEF JUDGE OF THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, AND TO ANY GOVERNMENTAL UNIT OR AGENCY THAT THE COMMISSION FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDICATION OF THE WRONGFUL CONVICTION. THE COMMISSION SHALL ALSO MAKE AVAILABLE AN ANNUAL REPORT DETAILING, AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR FORMAL AND INFORMAL INVESTIGATION, THE NUMBER OF COMPLETED INVESTIGATIONS AND THE STATUS OF ON-GOING OR PENDING INVESTIGATIONS.

S 903. POWERS AND DUTIES. THE COMMISSION SHALL HAVE THE POWERS AND DUTIES TO:

1. ESTABLISH ITS OWN REASONABLE RULES AND PROCEDURES CONCERNING THE CONDUCT OF ITS MEETINGS AND OTHER AFFAIRS RELATED TO IMPLEMENTING THE PROVISIONS OF THIS ARTICLE;

2. EMPLOY AND REMOVE SUCH OFFICERS, INVESTIGATORS AND EMPLOYEES AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS POWERS AND DUTIES PURSUANT TO THIS ARTICLE, AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE THEREFOR;

3. CONDUCT INVESTIGATIONS AND HEARINGS, ADMINISTER OATHS OR AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR AFFIRMATION, REQUIRE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN INVESTIGATION, AND MAY DESIGNATE ANY OF ITS MEMBERS, OFFICERS OR INVESTIGATORS TO EXERCISE ANY SUCH POWERS; PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE ISSUANCE OF A SUBPOENA OR COMPELLED QUESTIONING OF THE TRIAL COURT JUDGE OR ANY APPELLATE COURT JUDGE CONCERNING THE JUDGE'S MENTAL PROCESSES IN ARRIVING AT ANY DECISION IN A CASE;

4. REQUEST AND RECEIVE FROM ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE OR A POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC AUTHORITY SUCH ASSISTANCE, INFORMATION, RECORDS AND DATA AS WILL ENABLE IT TO PROPERLY CARRY OUT ITS POWERS AND DUTIES;

5. ISSUE PRELIMINARY REPORTS ON ANY INVESTIGATION CONDUCTED PURSUANT TO THIS ARTICLE, WHICH PRELIMINARY REPORTS SHALL INCLUDE FINDINGS OF FACT AND RECOMMENDATIONS, AND INVITE ANY PARTY DIRECTLY INVOLVED IN THE WRONGFUL CONVICTION, WHICH IS THE SUBJECT OF THE REPORT, TO SUBMIT A REPLY WITHIN SIXTY DAYS TO THE COMMISSION CONCERNING THE FINDINGS OF FACT AND RECOMMENDATIONS IN THE REPORT. ANY SUCH REPLY SHALL BE MADE AVAILABLE BY THE COMMISSION, TOGETHER WITH ANY RESPONSE BY THE COMMISSION THERETO, TO THE PARTIES LISTED IN SECTION NINE HUNDRED TWO OF THIS

ARTICLE AS PART OF THE COMMISSION'S REPORT AND RECOMMENDATIONS CONCERNING THE MATTER; AND

6. DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

S 904. USE OF REPORTS. NO PRELIMINARY REPORT, REPORT OR PORTION THEREOF ISSUED PURSUANT TO THIS ARTICLE SHALL BE ADMITTED INTO EVIDENCE OR USED IN ANY CIVIL OR CRIMINAL CAUSE OF ACTION RELATING TO A MATTER WHICH IS THE SUBJECT OF SUCH REPORT.

S 5. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 44 to read as follows:

44. "SPECIAL FICTITIOUS NAME INDICTMENT" MEANS AN INDICTMENT OF A PERSON WHOSE NAME IS UNKNOWN BUT WHOSE IDENTITY IS ESTABLISHED TO THE SATISFACTION OF A GRAND JURY PURSUANT TO SUBDIVISION ONE OF SECTION 190.65 OF THIS CHAPTER BY MEANS OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA) TESTING OF EVIDENCE. THE CAPTION OF A SPECIAL FICTITIOUS NAME INDICTMENT SHALL INCLUDE A FICTITIOUS NAME, SUCH AS "JOHN DOE" OR "JANE DOE", IN PLACE OF THE NAME OF THE DEFENDANT WHOSE TRUE NAME IS UNKNOWN.

S 6. Subdivision 3 of section 190.65 of the criminal procedure law is amended to read as follows:

3. Upon voting to indict a person, a grand jury must, through its foreman or acting foreman, file an indictment with the court by which it was impaneled. WHEN THE NAME OF THE INDICTED PERSON IS UNKNOWN BUT HIS OR HER IDENTITY IS ESTABLISHED TO THE SATISFACTION OF THE GRAND JURY PURSUANT TO SUBDIVISION ONE OF THIS SECTION BY MEANS OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA) TESTING OF EVIDENCE, THEN SUCH INDICTMENT SHALL BE FILED BY THE GRAND JURY WITH SUCH COURT AS A SPECIAL FICTITIOUS NAME INDICTMENT. THE AUTHORITY TO FILE A SPECIAL FICTITIOUS NAME INDICTMENT PURSUANT TO THIS SUBDIVISION SHALL BE IN ADDITION TO ANY OTHER AUTHORITY IN LAW FOR THE FILING OF AN INDICTMENT WHEN THE NAME OF AN INDICTED PERSON IS UNKNOWN.

S 7. Section 995-c of the executive law is amended by adding a new subdivision 10 to read as follows:

10. A SUPERIOR COURT, IN RESPONSE TO A MOTION FOR SUCH COMPARISON BY A DEFENDANT, MAY ORDER THAT DNA INFORMATION FROM A CRIME SCENE SAMPLE OR SAMPLES AND/OR FINGERPRINTS OBTAINED IN THE COURSE OF THE INVESTIGATION OF AN ALLEGED CRIME BE CHECKED AGAINST THE DNA RECORDS MAINTAINED BY OR AVAILABLE THROUGH THE STATE DNA IDENTIFICATION INDEX ESTABLISHED PURSUANT TO THIS SECTION AND THE NATIONAL DNA INDEX SYSTEM, AND AGAINST THE FINGERPRINT RECORDS MAINTAINED BY OR AVAILABLE THROUGH THE STATE FINGERPRINT RECORD DATABASE ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS CHAPTER AND THE NATIONAL FINGERPRINT IDENTIFICATION SYSTEM, AND THAT THE RESULTS OF SUCH CHECK OR CHECKS BE DISCLOSED TO SUCH DEFENDANT AND TO THE PROSECUTOR WHOSE JURISDICTION INCLUDES THE LOCATION OF THE ALLEGED COMMISSION OF SUCH CRIME, UPON A SHOWING BY THE DEFENDANT THAT SUCH AN ANALYSIS MAY BE MATERIAL TO HIS OR HER DEFENSE AND THAT THE REQUEST IS REASONABLE.

S 8. 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 to read as follows:

(a) Where the defendant's motion requests the performance of a forensic DNA test on specified evidence, and upon the court's determination that any evidence containing deoxyribonucleic acid ("DNA") was secured in connection with the INVESTIGATION OR trial resulting in the judgment, the court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on such evidence, and if the results had been AVAILABLE TO THE DEFENDANT,

OR THE RESULTS HAD BEEN admitted in the trial resulting in the judgment, there exists a reasonable probability that the DISPOSITION OR verdict would have been more favorable to the defendant.

S 9. Section 8-b of the court of claims act, as added by chapter 1009 of the laws of 1984, subdivision 2 as amended by chapter 210 of the laws of 2007, is amended to read as follows:

S 8-b. Claims for unjust conviction and imprisonment. 1. The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he did not commit may, under the conditions hereinafter provided, present a claim for damages against the state. In scheduling court appearances and filing deadlines, the court shall give docket priority at each stage of the proceeding to such claims for damages under this subdivision where the claimant asserts proof of innocence through DNA evidence. Any adjournments granted in the course of such a proceeding should be for as short a time as is practicable.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; 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), (F) 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 ITEMS (A), (B), (C) AND

(D) OF THIS SUBPARAGRAPH, 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 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, 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 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH; and

(c) his claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he did not by his own conduct cause or bring about his conviction. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his favor, claimant must prove by clear and convincing evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; 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), (F) 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 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, 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 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, 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 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH; and

(c) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, PROVIDED THAT, WHERE ONE INDICTMENT CONTAINS MULTIPLE COUNTS ARISING FROM SEPARATE COMPLAINTS OR INCIDENTS, THE COURT SHALL CONSIDER ANY CLAIM RELATED

TO SPECIFIED COUNTS IN THE INDICTMENT ARISING OUT OF ONLY ONE OF THE COMPLAINTS OR INCIDENTS; and

(d) he did not by his own conduct cause or bring about his conviction.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his claim within two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his claim within two years after the pardon or dismissal.

S 10. Section 995-b of the executive law is amended by adding a new subdivision 14 to read as follows:

14. THE COMMISSION SHALL REVIEW THE CONFIDENTIALITY SAFEGUARDS WHICH ARE MAINTAINED WITH RESPECT TO DNA SAMPLES BEFORE AND AFTER INFORMATION FROM SUCH SAMPLES IS ENCODED INTO THE STATE DNA IDENTIFICATION INDEX AND SHALL DETERMINE WHETHER ANY ADDITIONAL CONFIDENTIALITY SAFEGUARDS ARE NECESSARY WITH RESPECT TO SUCH SAMPLES. THE COMMISSION SHALL ALSO ISSUE A REPORT TO THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY WHICH DESCRIBES HOW SUCH SAMPLES ARE RETAINED AND THE REASONS FOR MAINTAINING SUCH SAMPLES, FOLLOWING THE ENCODING OF INFORMATION FROM SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX. SUCH REPORT SHALL ALSO RECOMMEND WHETHER A PROGRAM TO DESTROY ANY SUCH SAMPLES, FOLLOWING THE ENCODING OF INFORMATION FROM SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX, SHOULD BE INITIATED OR WHETHER, ALTERNATIVELY, SUCH SAMPLES SHALL CONTINUE TO BE MAINTAINED.

S 11. Subdivision 2 of section 995-c of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

2. (A) Following the review and approval of the plan by the DNA subcommittee and the commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of criminal justice services is hereby authorized to establish a computerized state DNA identification index pursuant to the provisions of this article. NO OTHER DNA IDENTIFICATION INDEX OR COMPILATION OF DNA IDENTIFICATION PROFILES MAY BE MAINTAINED IN THIS STATE PROVIDED, HOWEVER, THAT THIS PROHIBITION SHALL NOT BE INTERPRETED TO PROHIBIT ANY SUCH INDEX OR COMPILATION OF DNA INFORMATION OBTAINED FROM CRIME SCENE SAMPLES OR CONCERNING MISSING PERSONS.

(B) IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION AND THIS SUBDIVISION, AND IN A MANNER CONSISTENT WITH THIS ARTICLE, THE COMMISSION MAY AUTHORIZE THE INCLUSION OF DNA RECORDS DERIVED FROM FORENSIC EXAMINATION OF CRIME SCENES IN THE STATE DNA IDENTIFICATION INDEX.

S 12. Paragraph (b) of subdivision 9 of section 995-c of the executive law, as added by chapter 524 of the laws of 2002, is amended and two new paragraphs (c) and (d) are added to read as follows:

(b) As prescribed in this paragraph, if an individual, either voluntarily or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by section 30.10 of the criminal procedure law, or (ii) a criminal action was commenced against the individual relating to such crime which

resulted in a complete acquittal, OR A DISMISSAL AND THE MATTER WILL NOT BE TRIED OR RETRIED, or (iii) a criminal action against the individual relating to such crime resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that the individual has satisfied the conditions of one of the subparagraphs of this paragraph; that if a judgment of conviction was reversed or vacated, all appeals relating thereto have been concluded and the individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. NOTHING IN THIS PARAGRAPH SHALL PREVENT A COURT, AT AN EARLIER TIME, FROM ORDERING EXPUNGEMENT IN THE MANNER SPECIFIED IN THIS PARAGRAPH IN THE INTERESTS OF JUSTICE, IN RESPONSE TO AN APPLICATION MADE ON NOTICE TO THE DISTRICT ATTORNEY BY THE PERSON WHO PROVIDED SUCH DNA SAMPLE. If an order directing the expungement of any DNA record and any samples, analyses or other documents relating to the DNA testing of such individual is issued, such record and any samples, analyses, or other documents shall, at the discretion of the possessor thereof, be destroyed or returned to such individual or to the attorney who represented him or her in connection with the application for the order of expungement. THE PERSON DESTROYING OR RETURNING SUCH RECORD, SAMPLES, ANALYSES AND OTHER DOCUMENTS SHALL MAINTAIN A RECORD CERTIFYING THE DATE, TIME AND MANNER OF DESTRUCTION OR RETURN AND IDENTIFYING THE PERSON OR PERSONS DESTROYING OR RETURNING SAME. THE PERSON DESTROYING OR RETURNING SAME SHALL SEND A COPY OF THIS RECORD TO THE PERSON WHO SUBMITTED THE SAMPLE OR TO THE ATTORNEY WHO REPRESENTED HIM OR HER IN CONNECTION WITH THE APPLICATION FOR THE ORDER OF EXPUNGEMENT.

(C) (I) EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, IF AN INDIVIDUAL HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF A CRIME, OTHER THAN IN RESPONSE TO A DEMAND AUTHORIZED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF THIS SECTION, OR IF A SAMPLE FOR DNA TESTING HAS OTHERWISE COME INTO THE CUSTODY OR POSSESSION OF A LAW ENFORCEMENT AGENCY OR AN AGENT THEREOF, AND THE DNA PROFILE DERIVED FROM SUCH SAMPLE DOES NOT MATCH A DNA PROFILE DERIVED FROM CRIME SCENE EVIDENCE DEVELOPED IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF A CRIMINAL ACT OR ACTS, EVERY RECORD, SAMPLE, ANALYSIS AND OTHER DOCUMENT RELATING TO THE DNA TESTING OF SUCH SAMPLE SHALL, AT THE DISCRETION OF THE POSSESSOR THEREOF, BE EITHER RETURNED TO THE INDIVIDUAL WHO PROVIDED SUCH SAMPLE, DESTROYED OR MAINTAINED FOR THE DURATION OF THE INVESTIGATION, PROSECUTION OR ADJUDICATION OF SUCH CRIMINAL ACTS EXCLUSIVELY FOR USE WITH RESPECT TO THE INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF THE CRIMINAL CHARGES FOR WHICH SUCH SAMPLE WAS OBTAINED OR WITH RESPECT TO ANY OTHER CRIMINAL ACTS WHICH THE INVESTIGATING AGENCY HAS REASON TO BELIEVE MAY BE LINKED TO SUCH SAMPLE; PROVIDED, HOWEVER, THAT NO LATER THAN FIVE YEARS AFTER SUCH SAMPLE IS OBTAINED OR WHEN THE INVESTIGATION OR PROSECUTION OF SUCH CRIME HAS CONCLUDED, WHICHEVER FIRST OCCURS, SUCH RECORDS, SAMPLES, ANALYSES AND OTHER DOCUMENTS SHALL, AT THE DISCRETION OF THE POSSESSOR

THEREOF, BE RETURNED TO SUCH INDIVIDUAL OR DESTROYED, OR SEALED IN A MANNER CONSISTENT WITH PARAGRAPH (C) AND SUBPARAGRAPH (II), (IV) OR (V) OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 160.55 OF THE CRIMINAL PROCEDURE LAW.

(II) THE PERSON RETURNING, DESTROYING OR SEALING SUCH RECORD, SAMPLES, ANALYSES OR OTHER DOCUMENTS IN ACCORDANCE WITH THIS PARAGRAPH SHALL MAINTAIN A RECORD CERTIFYING THE DATE AND MANNER OF SUCH RETURN, DESTRUCTION OR SEALING AND IDENTIFYING THE PERSON OR PERSONS RETURNING, DESTROYING OR SEALING SAME. THE PERSON RETURNING, DESTROYING OR SEALING SAME SHALL SEND A COPY OF THIS RECORD TO THE PERSON WHO SUBMITTED THE SAMPLE.

(III) THIS PARAGRAPH SHALL SUPPLEMENT AND NOT SUPPLANT ANY APPLICABLE PROVISION OF PARAGRAPH (B) OF THIS SUBDIVISION. THIS PARAGRAPH SHALL NOT APPLY TO DNA RECORDS, SAMPLES, ANALYSES AND OTHER DOCUMENTS OBTAINED FROM THE FORENSIC EXAMINATION OF CRIME SCENE EVIDENCE, WHERE THE DNA PROFILE DEVELOPED FROM SUCH CRIME SCENE EVIDENCE DOES NOT MATCH THE DNA PROFILE OF A KNOWN PERSON.

(D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF THIS SUBDIVISION, A DNA RECORD WHICH WAS OBTAINED FROM A SAMPLE PROVIDED PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH NEED NOT BE DESTROYED, RETURNED OR SEALED, AND MAY BE INCLUDED IN THE STATE DNA IDENTIFICATION INDEX ESTABLISHED PURSUANT TO THIS ARTICLE, WHEN, AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, THE PERSON WHO PROVIDED SUCH SAMPLE STANDS CONVICTED OF A FELONY OR MISDEMEANOR DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTICLE. ALL LAWS GOVERNING DNA RECORDS INCLUDED IN THE STATE DNA IDENTIFICATION INDEX SHALL APPLY TO ANY DNA RECORD INCLUDED IN THE STATE DNA IDENTIFICATION INDEX PURSUANT TO THIS PARAGRAPH.

S 13. Section 995-d of the executive law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION, ANY INDIVIDUAL DNA PROFILE OBTAINED OR MAINTAINED BY A STATE, COUNTY OR LOCAL LAW ENFORCEMENT AGENCY, OR AN AGENT THEREOF, FROM A BIOLOGICAL SAMPLE SUBMITTED IN THE MANNER DESCRIBED IN PARAGRAPH (B) OR (C) OF SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, MAY BE COMPARED INDIVIDUALLY OR VIA COMPUTERIZED DATABASE TO ONE OR MORE DNA PROFILES MAINTAINED PURSUANT TO OR IN ACCORDANCE WITH SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, AND/OR MAY BE INDIVIDUALLY COMPARED BY SUCH STATE, COUNTY OR LOCAL LAW ENFORCEMENT AGENCY, OR AN AGENT THEREOF, TO ONE OR MORE DNA PROFILES DEVELOPED FROM THE FORENSIC EXAMINATION OF CRIME SCENES IN ONE OR MORE CASES UNDER INVESTIGATION.

(A) IF SUCH INDIVIDUAL DNA PROFILE MATCHES THE DNA PROFILE DEVELOPED FROM THE FORENSIC EXAMINATION OF ONE OR MORE CRIME SCENES IN ONE OR MORE CASES UNDER INVESTIGATION, AND/OR ONE OR MORE DNA PROFILES MAINTAINED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, SUCH INDIVIDUAL DNA PROFILE, TOGETHER WITH THE BIOLOGICAL MATERIAL FROM WHICH SUCH INDIVIDUAL DNA PROFILE WAS DEVELOPED, MAY, AS APPROPRIATE PURSUANT TO APPLICABLE LAWS AND RULES OF EVIDENCE AND CONSISTENT WITH THIS ARTICLE, BE USED IN CONNECTION WITH THE INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF SUCH PERSON.

(B) IF SUCH INDIVIDUAL DNA PROFILE DOES NOT MATCH THE DNA PROFILE DEVELOPED FROM FORENSIC EXAMINATION OF ONE OR MORE CRIME SCENES IN ONE OR MORE CASES UNDER INVESTIGATION, AND/OR ONE OR MORE DNA PROFILES MAINTAINED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, SUCH INDIVIDUAL DNA PROFILE,

TOGETHER WITH THE BIOLOGICAL MATERIAL FROM WHICH SUCH INDIVIDUAL DNA PROFILE WAS DEVELOPED, SHALL BE DEALT WITH IN ACCORDANCE WITH PARAGRAPH (C) OF SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE.

4. (A) EXCEPT WHERE THE DEMAND IS PURSUANT TO A COURT ORDER OR WARRANT OR PURSUANT TO SUBDIVISION THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, PRIOR TO REQUESTING A BIOLOGICAL SAMPLE FROM AN INDIVIDUAL THAT WILL BE USED FOR DNA TESTING, THE POLICE DEPARTMENT, LAW ENFORCEMENT AGENCY, OR AGENT THEREOF REQUESTING SUCH SAMPLE SHALL OBTAIN WRITTEN INFORMED CONSENT FROM SUCH INDIVIDUAL CONSISTING OF WRITTEN AUTHORIZATION IN PLAIN LANGUAGE THAT IS DATED AND SIGNED AND INCLUDES AT LEAST THE FOLLOWING: (1) A GENERAL DESCRIPTION OF THE TEST; (2) A STATEMENT THAT THE DNA SAMPLE OF THE SUBJECT MAY INITIALLY BE COMPARED AGAINST ANY CRIME SCENE EVIDENCE OR DATABASE OF CRIME SCENE EVIDENCE AND A DESCRIPTION OF WHETHER, IN THE EVENT SUCH SUBJECT SAMPLE DOES NOT MATCH A DNA PROFILE DERIVED FROM ANY SUCH CRIME SCENE EVIDENCE, SUCH SUBJECT SAMPLE WILL THEREAFTER BE RETURNED, DESTROYED OR RETAINED. IN THE EVENT THE AGENT REQUESTING SUCH SAMPLE MAY RETAIN SUCH SAMPLE, SUCH STATEMENT SHALL DESCRIBE THE CIRCUMSTANCES UNDER WHICH SUCH SAMPLE MAY THEREAFTER BE LAWFULLY USED; (3) THE NAME OF THE PERSON OR SPECIFIC CATEGORIES OF PERSONS OR ORGANIZATIONS TO WHOM THE TEST RESULTS MAY BE DISCLOSED; (4) A STATEMENT THAT NO TESTS OTHER THAN THOSE AUTHORIZED SHALL BE PERFORMED ON THE BIOLOGICAL SAMPLE; AND (5) A SUMMARY OF THE INFORMATION SET FORTH IN PARAGRAPHS (B) AND (C) OF SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE.

(B) NONCOMPLIANCE WITH ANY PROVISION OF THIS SUBDIVISION SHALL NOT IN AND OF ITSELF AFFECT THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE AFFECT ANY CONVICTION OR CRIMINAL PROSECUTION.

S 14. Section 340.20 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY TO A COUNT OR COUNTS OF AN INFORMATION CHARGING A MISDEMEANOR, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 55.10 OF THE PENAL LAW AND INCLUDED IN THE DEFINITION OF DESIGNATED OFFENDER PURSUANT TO SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL ADVISE THE DEFENDANT THAT UPON THE CONVICTION FOR SUCH MISDEMEANOR HE OR SHE WILL BE REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING FOR INCLUSION IN THE STATE DNA IDENTIFICATION INDEX PURSUANT TO ARTICLE FORTY-NINE-B OF THE EXECUTIVE LAW. THE COURT SHALL AFFIRM ON THE RECORD OR IN WRITING THAT THE DEFENDANT HAS BEEN GIVEN THE NOTICE REQUIRED BY THIS SUBDIVISION. THE FAILURE OF A COURT TO ADVISE THE DEFENDANT PURSUANT TO THIS SUBDIVISION OR TO OTHERWISE COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE DEEMED TO AFFECT THE VOLUNTARINESS OF A PLEA OF GUILTY OR THE VALIDITY OF A CONVICTION.

S 15. Subdivision 1-a of section 440.30 of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

(C) IN CONJUNCTION WITH THE FILING OF A MOTION UNDER THIS SUBDIVISION, THE COURT MAY DIRECT THE STATE TO PROVIDE THE MOVANT WITH INFORMATION, INCLUDING DOCUMENTS, NOTES, LOGS OR REPORTS, RELATING TO ANY PHYSICAL ITEMS COLLECTED IN CONNECTION WITH THE CASE, WHERE IT IS LIKELY ANY SUCH PHYSICAL ITEMS, IF SUBJECTED TO DNA TESTING, WOULD YIELD DNA INFORMATION THAT MEETS THE STANDARD SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION. THE COURT MAY DIRECT THE STATE TO PROVIDE OTHER REASONABLE ASSISTANCE TO THE MOVANT IN LOCATING ANY SUCH RECORDS OR ITEMS OF PHYSICAL EVIDENCE WHICH MAY HAVE BEEN LOST OR DESTROYED. THE COURT MAY ALSO DIRECT THE PEOPLE TO TAKE REASONABLE MEASURES TO ATTEMPT TO LOCATE ANY SUCH RECORDS

OR PHYSICAL ITEMS THAT MAY BE IN GOVERNMENT CUSTODY AND/OR ASSIST THE MOVANT IN LOCATING ANY SUCH RECORDS OR PHYSICAL ITEMS THAT MAY BE IN THE CUSTODY OF A PUBLIC OR PRIVATE HOSPITAL, LABORATORY OR OTHER FACILITY. THE COURT SHALL DENY A REQUEST FOR ASSISTANCE BROUGHT UNDER THIS PARAGRAPH IF THE COURT DETERMINES THAT SUCH REQUEST FOR ASSISTANCE IS FRIVOLOUS, ABUSIVE OR INAPPROPRIATE.

S 16. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. ASSISTANCE TO POLICE AND CRIME LABORATORIES: DNA EVIDENCE FUND. 1. THERE IS HEREBY CREATED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "ASSISTANCE TO POLICE AND CRIME LABORATORIES: DNA EVIDENCE FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONIES APPROPRIATED FOR THE PURPOSE OF SUCH FUND, ALL OTHER MONIES CREDITED OR TRANSFERRED TO SUCH FUND PURSUANT TO LAW, ALL MONIES REQUIRED BY THE PROVISIONS OF THIS SECTION OR ANY OTHER LAW TO BE PAID INTO OR CREDITED TO SUCH ACCOUNT, AND ALL MONIES RECEIVED BY THE ACCOUNT OR DONATED TO IT.

3. MONIES OF SUCH FUND SHALL BE AVAILABLE FOR APPROPRIATION AND ALLOCATION TO THE DIVISION OF STATE POLICE, TO LOCAL POLICE AGENCIES, AND TO FORENSIC DNA LABORATORIES IN THIS STATE, AS DEFINED IN SUBDIVISION TWO OF SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, TO ASSIST SUCH ENTITIES IN EFFECTIVELY COLLECTING, TESTING AND ANALYZING FORENSIC DNA CRIME SCENE EVIDENCE PURSUANT TO ARTICLE FORTY-NINE-B OF THE EXECUTIVE LAW. FIFTY PERCENT OF SUCH FUNDS SHALL BE MADE AVAILABLE FOR APPROPRIATION OR ALLOCATION BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES FOR THE PURPOSE OF FUNDING AN INNOCENCE RESEARCH PROJECT PROGRAM IN THIS STATE.

4. MONIES OF SUCH FUND SHALL BE PAID OUT ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES.

S 17. Innocence research project program. 1. There is hereby established in this state an innocence research project program. Funding shall be made available for the purposes of such program to up to three not-for-profit organizations by the commissioner of criminal justice services pursuant to subdivisions 3 and 4 of section 97-jjjj of the state finance law.

2. The innocence research project program shall review and study cases in which there appears to be a reasonable possibility that a person charged with or convicted of a crime in this state may be innocent of the crime or crimes charged. Such program may provide legal and other expert assistance, and may also provide relevant training, including but not limited to training in the use of DNA evidence for forensic identification purposes, to attorneys engaged in the defense of criminal cases.

3. Each not-for-profit organization receiving funding for such program shall file an annual report with the commissioner of criminal justice services summarizing the activities of the program during the previous year. Such report shall be filed within one year after such organization first receives funding under such program, and annually thereafter for so long as the program receives such funding.

4. Before providing assistance to any individual believed to be actually innocent of the crime or crimes charged, the organization-based coordinator of such program shall determine whether such individual is financially able to pay for the proposed services or assistance to be provided. If such individual is able to financially afford to pay for such services or assistance, such coordinator shall request and receive

such payment or payments on behalf of the program from such individual. All monies received from individuals pursuant to this subdivision shall be promptly forwarded by such coordinator to the state comptroller, for deposit into the "assistance to police and crime laboratories: DNA evidence fund" established pursuant to section 97-jjjj of the state finance law.

S 18. The criminal procedure law is amended by adding a new section 60.47 to read as follows:

S 60.47 RULES OF EVIDENCE; ELECTRONIC RECORDING OF STATEMENTS OF DEFENDANTS.

1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "ELECTRONIC RECORDING" MEANS A CONTEMPORANEOUS VIDEO AND AUDIO RECORDING, OR WHERE VIDEO RECORDING IS IMPRACTICABLE, A CONTEMPORANEOUS AUDIO RECORDING.

(B) "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION WHICH IS CONDUCTED IN A PLACE OF DETENTION AND DURING WHICH A REASONABLE PERSON IN THE SUBJECT'S POSITION WOULD CONSIDER HIMSELF OR HERSELF TO BE IN CUSTODY.

(C) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILITY, HOLDING FACILITY FOR PRISONERS, OR OTHER GOVERNMENT FACILITY WHERE PERSONS ARE HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES WHICH HAVE BEEN OR MAY BE FILED AGAINST THEM.

2. DURING THE PROSECUTION OF A FELONY, AN ORAL, WRITTEN, OR SIGN LANGUAGE STATEMENT OF A DEFENDANT MADE DURING A CUSTODIAL INTERROGATION SHALL BE PRESUMED INADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT IN A CRIMINAL PROCEEDING UNLESS AN ELECTRONIC RECORDING IS MADE OF THE CUSTODIAL INTERROGATION IN ITS ENTIRETY AND THE RECORDING IS SUBSTANTIALLY ACCURATE AND NOT INTENTIONALLY ALTERED.

3. IF THE COURT FINDS THAT THE DEFENDANT WAS SUBJECTED TO A CUSTODIAL INTERROGATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THEN ANY STATEMENTS MADE BY THE DEFENDANT FOLLOWING THAT CUSTODIAL INTERROGATION, EVEN IF OTHERWISE IN COMPLIANCE WITH THIS SECTION, ARE ALSO PRESUMED INADMISSIBLE.

4. THE PEOPLE MAY REBUT A PRESUMPTION OF INADMISSIBILITY THROUGH CLEAR AND CONVINCING EVIDENCE THAT THE STATEMENT WAS BOTH VOLUNTARY AND RELIABLE AND:

(A) EXIGENT CIRCUMSTANCES EXISTED NECESSITATING INTERROGATION AT A PLACE IN A LOCATION OTHER THAN A POLICE STATION, CORRECTIONAL FACILITY, OR HOLDING FACILITY FOR PRISONERS AND WHERE THE REQUISITE RECORDING EQUIPMENT WAS NOT READILY AVAILABLE;

(B) THE ACCUSED REFUSED TO HAVE HIS OR HER INTERROGATION ELECTRONICALLY RECORDED, AND THE REFUSAL ITSELF WAS ELECTRONICALLY RECORDED; OR

(C) THE FAILURE TO ELECTRONICALLY RECORD AN ENTIRE INTERROGATION WAS THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS NOT FEASIBLE.

5. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

(A) A STATEMENT MADE BY THE ACCUSED IN OPEN COURT AT HIS OR HER TRIAL, BEFORE GRAND JURY, OR AT A PRELIMINARY HEARING;

(B) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO INTERROGATION;

(C) A STATEMENT MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING THE PROCESSING OF THE ARREST OF THE SUSPECT;

(D) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT IS CONDUCTED OUT-OF-STATE;

(E) A STATEMENT OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A FEDERAL PLACE OF DETENTION;

(F) A STATEMENT GIVEN AT A TIME WHEN THE INTERROGATORS ARE UNAWARE THAT A FELONY HAS IN FACT OCCURRED; OR

(G) A STATEMENT, OTHERWISE INADMISSIBLE UNDER THIS SECTION, THAT IS USED ONLY FOR IMPEACHMENT AND NOT AS SUBSTANTIVE EVIDENCE.

6. THE PEOPLE SHALL NOT DESTROY OR ALTER ANY ELECTRONIC RECORDING MADE OF A CUSTODIAL INTERROGATION UNTIL SUCH TIME AS THE DEFENDANT'S CONVICTION FOR ANY OFFENSE RELATING TO THE INTERROGATION IS FINAL AND ALL DIRECT AND HABEAS CORPUS APPEALS ARE EXHAUSTED, OR THE PROSECUTION OF THAT OFFENSE IS BARRED BY LAW.

S 19. Subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, paragraph (a) as separately amended by chapter 320 of the laws of 2006, is amended to read as follows:

7. "Designated offender" means a person convicted of and sentenced for [any one or more of the following provisions of the penal law (a) sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal law, attempted burglary in the third degree, as defined in section 110.00 and section 140.20 of the penal law, a felony defined in article four hundred ninety of the penal law relating to terrorism or any attempt to commit an offense defined in such article relating to terrorism which is a felony; or (b) criminal possession of a controlled substance in the first degree, as defined in section 220.21 of the penal law; criminal possession of a controlled substance in the second degree, as defined in section 220.18 of the penal law; criminal sale of a controlled substance, as defined in article 220 of the penal law; or grand larceny in the fourth degree, as defined in subdivision five of section 155.30 of the penal law; or (c) any misdemeanor or felony defined as a sex offense or sexually violent offense pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision three of section one hundred sixty-eight-a of the correction law; or (d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a

controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent materials to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent materials to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or (e) a felony defined in the penal law or an attempt thereof where such attempt is a felony; or (f) any of the following misdemeanors: assault in the third degree as defined in

section 120.00 of the penal law; attempted aggravated assault upon a person less than eleven years old, as defined in section 110.00 and section 120.12 of the penal law; attempted menacing in the first degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as defined in section 110.00 and section 120.55 of the penal law; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section 135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25] A MISDEMEANOR DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL LAW, OR A PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

S 20. This act shall take effect immediately; provided, however, that:

(a) sections eleven, twelve and thirteen of this act shall take effect on the one hundred twentieth day after it shall have become a law;

(b) the amendments to section 340.20 of the criminal procedure law made by section fourteen of this act shall apply to pleas of guilty to a count or counts of an information entered 60 days or more after the effective date of this act; and

(c) section eighteen of this act shall take effect on the ninetieth day after it shall have become a law, and shall apply to any criminal proceeding commenced on and after such date.