

9225

2009-2010 Regular Sessions

I N A S S E M B L Y

November 4, 2009

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to defining a designated offender; to amend the penal law, in relation to providing a DNA sample; 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 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; and to amend the executive law and the criminal procedure law, in relation to DNA testing, confidentiality, data collection and record keeping

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 for
6 [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.

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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] A MISDEMEANOR
2 DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL LAW, OR A
3 PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE
4 SIX-C OF THE CORRECTION LAW.

5 S 2. The penal law is amended by adding a new section 270.40 to read
6 as follows:

7 S 270.40 FAILURE TO PROVIDE A DNA SAMPLE.

8 A PERSON IS GUILTY OF FAILURE TO PROVIDE A DNA SAMPLE WHEN HE OR SHE

9 (A) IS A DESIGNATED OFFENDER, AS DEFINED IN SUBDIVISION SEVEN OF SECTION
10 NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, REQUIRED TO PROVIDE A
11 SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT TO THE PROVISIONS OF SUBDI-
12 VISION THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW;

13 (B) HAS BEEN NOTIFIED BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR
14 EMPLOYEE, PAROLE OFFICER, PROBATION OFFICER, POLICE OFFICER, PEACE OFFI-
15 CER OR OTHER PUBLIC SERVANT OF THE OBLIGATION TO PROVIDE SUCH A SAMPLE;
16 AND (C) UPON REQUEST TO PROVIDE SUCH SAMPLE, MADE IN PERSON BY A PUBLIC
17 SERVANT AUTHORIZED TO COLLECT IT, FAILS TO PROVIDE SUCH A SAMPLE.

18 FAILURE TO PROVIDE A DNA SAMPLE IS A CLASS A MISDEMEANOR.

19 S 3. Subparagraph (ix) of paragraph (b) of subdivision 9 of section
20 995-b of the executive law, as added by chapter 737 of the laws of 1994,
21 is amended and a new paragraph (c) is added to read as follows:

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

27 (C) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH, DETER-
28 MINE, CONSISTENT WITH THIS ARTICLE, THE APPROPRIATE MINIMUM PERIOD OF
29 TIME THAT FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERI-
30 AL, OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME
31 SCENES, SHOULD BE RETAINED BY INVESTIGATING AUTHORITIES AND THE TIME OR
32 SPECIFIED EVENT OR EVENTS, IF ANY, AFTER WHICH, CONSISTENT WITH THE
33 INTEREST OF ALL PERSONS AND LAW ENFORCEMENT, SUCH SAMPLES MAY BE
34 DESTROYED, AND DETERMINE STANDARDS FOR THE CATALOGING AND MAINTAINING
35 RECORDS OF SUCH SAMPLES. PENDING THE PROMULGATION OF A POLICY ADDRESS-
36 ING THE ISSUES SET FORTH IN THIS PARAGRAPH, THE COMMISSION MAY ADOPT AN
37 INTERIM POLICY MANDATING THE PRESERVATION BY INVESTIGATING AUTHORITIES
38 OF FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL
39 OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES.

40 S 4. Subdivision 1 of section 995-a of the executive law, as added by
41 chapter 737 of the laws of 1994, is amended to read as follows:

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

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

49 S 5. Paragraph (i) of subdivision 2 of section 995-a of the executive
50 law, as added by chapter 737 of the laws of 1994, is amended, paragraph
51 (j) is relettered paragraph (k) and a new paragraph (j) is added to read
52 as follows:

53 (i) two members shall be members-at-large, one of whom shall be
54 appointed upon the recommendation of the temporary president of the
55 senate, and one of whom shall be appointed upon the recommendation of
56 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 6. 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 7. 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 8. 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 9. 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.

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

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

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

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

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

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

33 (b) As prescribed in this paragraph, if an individual, either volun-
34 tarily or pursuant to a warrant or order of a court, has provided a
35 sample for DNA testing in connection with the investigation or prose-
36 cution of a crime and (i) no criminal action against the individual
37 relating to such crime was commenced within the period specified by
38 section 30.10 of the criminal procedure law, or (ii) a criminal action
39 was commenced against the individual relating to such crime which
40 resulted in a complete acquittal, OR A DISMISSAL AND THE MATTER WILL NOT
41 BE TRIED OR RETRIED, or (iii) a criminal action against the individual
42 relating to such crime resulted in a conviction that was subsequently
43 reversed or vacated, or for which the individual was granted a pardon
44 pursuant to article two-A of this chapter, such individual may apply to
45 the supreme court or the court in which the judgment of conviction was
46 originally entered for an order directing the expungement of any DNA
47 record and any samples, analyses, or other documents relating to the DNA
48 testing of such individual in connection with the investigation or pros-
49 ecution of such crime. A copy of such application shall be served on the
50 district attorney and an order directing expungement may be granted if
51 the court finds that the individual has satisfied the conditions of one
52 of the subparagraphs of this paragraph; that if a judgment of conviction
53 was reversed or vacated, all appeals relating thereto have been
54 concluded and the individual will not be retried, or, if a retrial has
55

1 occurred, the trier of fact has rendered a verdict of complete acquit-
2 tal, and that expungement will not adversely affect the investigation or
3 prosecution of some other person or persons for the crime. NOTHING IN
4 THIS PARAGRAPH SHALL PREVENT A COURT, AT AN EARLIER TIME, FROM ORDERING
5 EXPUNGEMENT IN THE MANNER SPECIFIED IN THIS PARAGRAPH IN THE INTERESTS
6 OF JUSTICE, IN RESPONSE TO AN APPLICATION MADE ON NOTICE TO THE DISTRICT
7 ATTORNEY BY THE PERSON WHO PROVIDED SUCH DNA SAMPLE. If an order direct-
8 ing the expungement of any DNA record and any samples, analyses or other
9 documents relating to the DNA testing of such individual is issued, such
10 record and any samples, analyses, or other documents shall, at the
11 discretion of the possessor thereof, be destroyed or returned to such
12 individual or to the attorney who represented him or her in connection
13 with the application for the order of expungement. THE PERSON DESTROYING
14 OR RETURNING SUCH RECORD, SAMPLES, ANALYSES AND OTHER DOCUMENTS SHALL
15 MAINTAIN A RECORD CERTIFYING THE DATE, TIME AND MANNER OF DESTRUCTION OR
16 RETURN AND IDENTIFYING THE PERSON OR PERSONS DESTROYING OR RETURNING
17 SAME. THE PERSON DESTROYING OR RETURNING SAME SHALL SEND A COPY OF THIS
18 RECORD TO THE PERSON WHO SUBMITTED THE SAMPLE OR TO THE ATTORNEY WHO
19 REPRESENTED HIM OR HER IN CONNECTION WITH THE APPLICATION FOR THE ORDER
20 OF EXPUNGEMENT.

21 (C) (I) EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, IF AN
22 INDIVIDUAL HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE
23 INVESTIGATION OR PROSECUTION OF A CRIME, OTHER THAN IN RESPONSE TO A
24 DEMAND AUTHORIZED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF THIS
25 SECTION, OR IF A SAMPLE FOR DNA TESTING HAS OTHERWISE COME INTO THE
26 CUSTODY OR POSSESSION OF A LAW ENFORCEMENT AGENCY OR AN AGENT THEREOF,
27 AND THE DNA PROFILE DERIVED FROM SUCH SAMPLE DOES NOT MATCH A DNA
28 PROFILE DERIVED FROM CRIME SCENE EVIDENCE DEVELOPED IN CONNECTION WITH
29 THE INVESTIGATION OR PROSECUTION OF A CRIMINAL ACT OR ACTS, EVERY
30 RECORD, SAMPLE, ANALYSIS AND OTHER DOCUMENT RELATING TO THE DNA TESTING
31 OF SUCH SAMPLE SHALL, AT THE DISCRETION OF THE POSSESSOR THEREOF, BE
32 EITHER RETURNED TO THE INDIVIDUAL WHO PROVIDED SUCH SAMPLE, DESTROYED OR
33 MAINTAINED FOR THE DURATION OF THE INVESTIGATION, PROSECUTION OR ADJUDI-
34 CATION OF SUCH CRIMINAL ACTS EXCLUSIVELY FOR USE WITH RESPECT TO THE
35 INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF THE CRIMINAL CHARGES
36 FOR WHICH SUCH SAMPLE WAS OBTAINED OR WITH RESPECT TO ANY OTHER CRIMINAL
37 ACTS WHICH THE INVESTIGATING AGENCY HAS REASON TO BELIEVE MAY BE LINKED
38 TO SUCH SAMPLE; PROVIDED, HOWEVER, THAT NO LATER THAN FIVE YEARS AFTER
39 SUCH SAMPLE IS OBTAINED OR WHEN THE INVESTIGATION OR PROSECUTION OF SUCH
40 CRIME HAS CONCLUDED, WHICHEVER FIRST OCCURS, SUCH RECORDS, SAMPLES,
41 ANALYSES AND OTHER DOCUMENTS SHALL, AT THE DISCRETION OF THE POSSESSOR
42 THEREOF, BE RETURNED TO SUCH INDIVIDUAL OR DESTROYED, OR SEALED IN A
43 MANNER CONSISTENT WITH PARAGRAPH (C) AND SUBPARAGRAPH (II), (IV) OR (V)
44 OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 160.55 OF THE CRIMINAL
45 PROCEDURE LAW.

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

53 (III) THIS PARAGRAPH SHALL SUPPLEMENT AND NOT SUPPLANT ANY APPLICABLE
54 PROVISION OF PARAGRAPH (B) OF THIS SUBDIVISION. THIS PARAGRAPH SHALL NOT
55 APPLY TO DNA RECORDS, SAMPLES, ANALYSES AND OTHER DOCUMENTS OBTAINED
56 FROM THE FORENSIC EXAMINATION OF CRIME SCENE EVIDENCE, WHERE THE DNA

1 PROFILE DEVELOPED FROM SUCH CRIME SCENE EVIDENCE DOES NOT MATCH THE DNA
2 PROFILE OF A KNOWN PERSON.

3 (D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF
4 THIS SUBDIVISION, A DNA RECORD WHICH WAS OBTAINED FROM A SAMPLE PROVIDED
5 PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION PRIOR TO THE EFFEC-
6 TIVE DATE OF THIS PARAGRAPH NEED NOT BE DESTROYED, RETURNED OR SEALED,
7 AND MAY BE INCLUDED IN THE STATE DNA IDENTIFICATION INDEX ESTABLISHED
8 PURSUANT TO THIS ARTICLE, WHEN, AS OF THE EFFECTIVE DATE OF THIS PARA-
9 GRAPH, THE PERSON WHO PROVIDED SUCH SAMPLE STANDS CONVICTED OF A FELONY
10 OR MISDEMEANOR DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTI-
11 CLE. ALL LAWS GOVERNING DNA RECORDS INCLUDED IN THE STATE DNA IDENTIFI-
12 CATION INDEX SHALL APPLY TO ANY DNA RECORD INCLUDED IN THE STATE DNA
13 IDENTIFICATION INDEX PURSUANT TO THIS PARAGRAPH.

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

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

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

37 (B) IF SUCH INDIVIDUAL DNA PROFILE DOES NOT MATCH THE DNA PROFILE
38 DEVELOPED FROM FORENSIC EXAMINATION OF ONE OR MORE CRIME SCENES IN ONE
39 OR MORE CASES UNDER INVESTIGATION, AND/OR ONE OR MORE DNA PROFILES MAIN-
40 TAINED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE
41 HUNDRED NINETY-FIVE-C OF THIS ARTICLE, SUCH INDIVIDUAL DNA PROFILE,
42 TOGETHER WITH THE BIOLOGICAL MATERIAL FROM WHICH SUCH INDIVIDUAL DNA
43 PROFILE WAS DEVELOPED, SHALL BE DEALT WITH IN ACCORDANCE WITH PARAGRAPH
44 (C) OF SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS
45 ARTICLE.

46 4. (A) EXCEPT WHERE THE DEMAND IS PURSUANT TO A COURT ORDER OR WARRANT
47 OR PURSUANT TO SUBDIVISION THREE OF SECTION NINE HUNDRED NINETY-FIVE-C
48 OF THIS ARTICLE, PRIOR TO REQUESTING A BIOLOGICAL SAMPLE FROM AN INDIV-
49 IDUAL THAT WILL BE USED FOR DNA TESTING, THE POLICE DEPARTMENT, LAW
50 ENFORCEMENT AGENCY, OR AGENT THEREOF REQUESTING SUCH SAMPLE SHALL OBTAIN
51 WRITTEN INFORMED CONSENT FROM SUCH INDIVIDUAL CONSISTING OF WRITTEN
52 AUTHORIZATION IN PLAIN LANGUAGE THAT IS DATED AND SIGNED AND INCLUDES AT
53 LEAST THE FOLLOWING: (1) A GENERAL DESCRIPTION OF THE TEST; (2) A STATE-
54 MENT THAT THE DNA SAMPLE OF THE SUBJECT MAY INITIALLY BE COMPARED
55 AGAINST ANY CRIME SCENE EVIDENCE OR DATABASE OF CRIME SCENE EVIDENCE AND
56 A DESCRIPTION OF WHETHER, IN THE EVENT SUCH SUBJECT SAMPLE DOES NOT

1 MATCH A DNA PROFILE DERIVED FROM ANY SUCH CRIME SCENE EVIDENCE, SUCH
2 SUBJECT SAMPLE WILL THEREAFTER BE RETURNED, DESTROYED OR RETAINED. IN
3 THE EVENT THE AGENT REQUESTING SUCH SAMPLE MAY RETAIN SUCH SAMPLE, SUCH
4 STATEMENT SHALL DESCRIBE THE CIRCUMSTANCES UNDER WHICH SUCH SAMPLE MAY
5 THEREAFTER BE LAWFULLY USED; (3) THE NAME OF THE PERSON OR SPECIFIC
6 CATEGORIES OF PERSONS OR ORGANIZATIONS TO WHOM THE TEST RESULTS MAY BE
7 DISCLOSED; (4) A STATEMENT THAT NO TESTS OTHER THAN THOSE AUTHORIZED
8 SHALL BE PERFORMED ON THE BIOLOGICAL SAMPLE; AND (5) A SUMMARY OF THE
9 INFORMATION SET FORTH IN PARAGRAPHS (B) AND (C) OF SUBDIVISION NINE OF
10 SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE.

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

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

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

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

32 (C) IN CONJUNCTION WITH THE FILING OF A MOTION UNDER THIS SUBDIVISION,
33 THE COURT MAY DIRECT THE STATE TO PROVIDE THE MOVANT WITH INFORMATION,
34 INCLUDING DOCUMENTS, NOTES, LOGS OR REPORTS, RELATING TO ANY PHYSICAL
35 ITEMS COLLECTED IN CONNECTION WITH THE CASE, WHERE IT IS LIKELY ANY SUCH
36 PHYSICAL ITEMS, IF SUBJECTED TO DNA TESTING, WOULD YIELD DNA INFORMATION
37 THAT MEETS THE STANDARD SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION.
38 THE COURT MAY DIRECT THE STATE TO PROVIDE OTHER REASONABLE ASSISTANCE TO
39 THE MOVANT IN LOCATING ANY SUCH RECORDS OR ITEMS OF PHYSICAL EVIDENCE
40 WHICH MAY HAVE BEEN LOST OR DESTROYED. THE COURT MAY ALSO DIRECT THE
41 PEOPLE TO TAKE REASONABLE MEASURES TO ATTEMPT TO LOCATE ANY SUCH RECORDS
42 OR PHYSICAL ITEMS THAT MAY BE IN GOVERNMENT CUSTODY AND/OR ASSIST THE
43 MOVANT IN LOCATING ANY SUCH RECORDS OR PHYSICAL ITEMS THAT MAY BE IN THE
44 CUSTODY OF A PUBLIC OR PRIVATE HOSPITAL, LABORATORY OR OTHER FACILITY.
45 THE COURT SHALL DENY A REQUEST FOR ASSISTANCE BROUGHT UNDER THIS PARA-
46 GRAPH IF THE COURT DETERMINES THAT SUCH REQUEST FOR ASSISTANCE IS FRIVO-
47 LOUS, ABUSIVE OR INAPPROPRIATE.

48 S 16. This act shall take effect immediately; provided, however, that:

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

51 (b) section two of this act shall take effect on the ninetieth day
52 after it shall have become a law;

53 (c) the amendments to section 340.20 of the criminal procedure law
54 made by section fourteen of this act shall apply to pleas of guilty to a
55 count or counts of an information entered 60 days or more after the
56 effective date of this act.