

3110

2009-2010 Regular Sessions

I N S E N A T E

March 11, 2009

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the collection of DNA samples from designated offenders, collection and preservation of biological evidence, and establishing the office of wrongful conviction review; to amend the criminal procedure law, in relation to the statute of limitations for criminal offenses, access by defendants to DNA evidence, and procedures for consideration of post-conviction relief; to amend the penal law, in relation to the conditions of probation and conditional discharge; to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; to repeal subdivision 7 of section 995 of the executive law relating to the definition of "designated offender" for purposes of the DNA identification index; 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 is
2 REPEALED and a new subdivision 7 is added to read as follows:
3 7. "DESIGNATED OFFENDER" MEANS A PERSON CONVICTED OF AND SENTENCED FOR
4 A MISDEMEANOR DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL
5 LAW, OR A PERSON ADJUDICATED AND SENTENCED AS A YOUTHFUL OFFENDER PURSU-
6 ANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR
7 ANY SUCH MISDEMEANOR OR FELONY, OR A PERSON WHO IS REQUIRED TO REGISTER
8 AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE 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

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

LBD10238-01-9

1 specific to such person and to be included in a state DNA identification
2 index pursuant to this article.

3 (B)(I) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM
4 OF IMPRISONMENT, SUCH SAMPLE SHALL BE COLLECTED BY THE PUBLIC SERVANT TO
5 WHOSE CUSTODY THE DESIGNATED OFFENDER HAS BEEN COMMITTED.

6 (II) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM
7 OF PROBATION, SUCH SAMPLE SHALL BE COLLECTED BY THE LOCAL PROBATION
8 DEPARTMENT SUPERVISING THE DESIGNATED OFFENDER.

9 (III) IN THE CASE OF A DESIGNATED OFFENDER WHO IS NEITHER SENTENCED TO
10 A TERM OF IMPRISONMENT NOR PROBATION, SUCH SAMPLE SHALL BE COLLECTED BY
11 THE PROBATION DEPARTMENT OF THE COUNTY IN WHICH SENTENCING TAKES PLACE,
12 UNLESS AN ALTERNATE COLLECTION PROCEDURE HAS BEEN IMPLEMENTED.

13 (IV) PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL PROHIBIT
14 THE COLLECTION OF A DNA SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT
15 OFFICIAL, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION
16 OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC
17 SERVANT WHO HAS BEEN NOTIFIED BY THE DIVISION OF CRIMINAL JUSTICE
18 SERVICES THAT THE DESIGNATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE.

19 (C) NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, A CITY
20 WITH A POPULATION OF ONE MILLION OR MORE OR ANY COUNTY ACTING THROUGH
21 ITS LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND
22 OR REPEAL A LOCAL LAW TO IMPOSE A DNA COLLECTION FEE NOT TO EXCEED FIFTY
23 DOLLARS ON DESIGNATED OFFENDERS FROM WHOM ITS PROBATION DEPARTMENT IS
24 REQUIRED BY SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION TO
25 COLLECT A DNA SAMPLE; PROVIDED, HOWEVER, THAT THE FAILURE OF A DESIG-
26 NATED OFFENDER TO PAY SUCH DNA COLLECTION FEE, IF REQUIRED, SHALL NOT
27 PREVENT THE COLLECTION OF THE OFFENDER'S DNA SAMPLE.

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

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

37 (F) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE
38 RULES AND REGULATIONS GOVERNING THE PERIODIC REVIEW OF THE DNA IDENTIFI-
39 CATION INDEX TO DETERMINE WHETHER OR NOT THE INDEX CONTAINS DNA PROFILES
40 THAT SHOULD NOT BE IN THE INDEX, INCLUDING THE STEPS NECESSARY TO
41 EXPUNGE ANY PROFILES WHICH THE DIVISION DETERMINES SHOULD NOT BE IN THE
42 INDEX.

43 S 3. The opening paragraph of section 995-f of the executive law is
44 designated subdivision 1 and a new subdivision 2 is added to read as
45 follows:

46 2. ANY DESIGNATED OFFENDER SUBJECT TO PROBATION OR PAROLE SUPERVISION
47 WHO IS REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT
48 TO THE PROVISIONS OF THIS ARTICLE, AND WHO FAILS TO PROVIDE SUCH SAMPLE
49 UPON NOTIFICATION BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR
50 EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT
51 OFFICIAL OR PUBLIC SERVANT OF HIS OR HER OBLIGATION TO PROVIDE SUCH A
52 SAMPLE, SHALL BE DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR
53 PAROLE, AND SUCH VIOLATION SHALL BE A BASIS FOR THE REVOCATION OF
54 PROBATION OR PAROLE IN ACCORDANCE WITH ARTICLE FOUR HUNDRED TEN OF THE
55 CRIMINAL PROCEDURE LAW OR SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAP-

1 TER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED
2 TO INCLUDE POST-RELEASE SUPERVISION.

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

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

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

17 3-A. THE COMMISSION, IN CONSULTATION WITH THE DNA SUBCOMMITTEE, SHALL
18 DEVELOP, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION,
19 VOLUNTARY GUIDELINES REFLECTING BEST PRACTICES REGARDING THE COLLECTION
20 AND PRESERVATION OF BIOLOGICAL EVIDENCE BY LAW ENFORCEMENT AGENCIES AND
21 FORENSIC LABORATORIES. SUCH VOLUNTARY GUIDELINES SHALL INCLUDE, BUT NOT
22 BE LIMITED TO, THE MINIMUM PERIOD OF TIME THAT BIOLOGICAL EVIDENCE
23 OBTAINED FROM CRIME SCENES SHOULD BE RETAINED. AS USED IN THIS SUBDIVI-
24 SION, THE TERM "BIOLOGICAL EVIDENCE" SHALL MEAN SEMEN, BLOOD, SALIVA,
25 HAIR, SKIN, TISSUE OR OTHER IDENTIFIED BIOLOGICAL MATERIAL, AND SHALL
26 INCLUDE A SEXUAL ASSAULT FORENSIC EXAMINATION KIT.

27 S 6. The executive law is amended by adding a new section 837-s to
28 read as follows:

29 S 837-S. OFFICE OF WRONGFUL CONVICTION REVIEW. THERE SHALL BE ESTAB-
30 LISHED WITHIN THE DIVISION OF CRIMINAL JUSTICE SERVICES AN OFFICE OF
31 WRONGFUL CONVICTION REVIEW, HEREINAFTER REFERRED TO IN THIS SECTION AS
32 THE "OFFICE". THE OFFICE SHALL CONDUCT REVIEWS OF CRIMINAL AND JUVENILE
33 CASES IN THIS STATE INVOLVING WRONGFUL CONVICTIONS AND CONSIDER WHETHER
34 THERE MAY BE POSSIBLE REFORMS THAT COULD PROTECT AGAINST SIMILAR WRONG-
35 FUL CONVICTIONS OCCURRING IN THE FUTURE. SUCH REVIEWS SHALL INCLUDE
36 PARTICIPATION BY PROSECUTORS, DEFENSE ATTORNEYS, FORMER JUDGES AND OTHER
37 EXPERTS IN RELEVANT FIELDS. WHENEVER A PERSON WHO HAS BEEN CONVICTED OF
38 A CRIME OR ADJUDICATED A YOUTHFUL OFFENDER IS SUBSEQUENTLY DETERMINED TO
39 BE INNOCENT OF SUCH OFFENSE AND EXONERATED, THE OFFICE SHALL REVIEW THE
40 CIRCUMSTANCES OF SUCH CASE TO DETERMINE THE CAUSE OR CAUSES OF SUCH
41 WRONGFUL CONVICTION. THE OFFICE SHALL CONDUCT SUCH REVIEWS OF PAST CASES
42 INCLUDING, AT A MINIMUM, ALL CASES IN WHICH EXONERATION RESULTED FROM
43 DNA EVIDENCE, AND ON AN ONGOING BASIS, ALL CASES IN WHICH A DEFENDANT IS
44 EXONERATED. THE OFFICE SHALL MAKE AVAILABLE AN ANNUAL REPORT DETAILING,
45 AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR INVESTIGATION, THE NUMBER
46 OF COMPLETED INVESTIGATIONS AND THE STATUS OF PENDING INVESTIGATIONS.
47 THE REPORT SHALL INCLUDE THE OFFICE'S FINDINGS AND CONCLUSIONS AS TO THE
48 CAUSE OR CAUSES OF WRONGFUL CONVICTIONS IN INVESTIGATIONS THAT IT HAS
49 COMPLETED. THE REPORT SHALL BE PROVIDED TO THE GOVERNOR, ATTORNEY GENER-
50 AL, CHIEF JUDGE OF THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE
51 SENATE, SPEAKER OF THE ASSEMBLY AND TO GOVERNMENTAL UNITS OR AGENCIES
52 THAT IT FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDI-
53 CATION OF WRONGFUL CONVICTIONS. NOTWITHSTANDING ANY OTHER PROVISION OF
54 LAW, THE OFFICE MAY REQUEST AND SHALL RECEIVE FROM ANY COURT, DEPART-
55 MENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE
56 OR POLITICAL SUBDIVISION THEREOF, OR ANY PUBLIC AUTHORITY SUCH ASSIST-

1 ANCE, INFORMATION, RECORDS AND DATA AS WILL ENABLE IT EFFECTIVELY TO
2 CARRY OUT ITS POWERS AND DUTIES.

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

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

33 S 8. Subdivision 4 of section 190.25 of the criminal procedure law is
34 amended by adding a new paragraph (c) to read as follows:

35 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL GRAND JURY TESTI-
36 MONY, EVIDENCE, DECISIONS, RESULTS AND OTHER MATTERS ATTENDING A GRAND
37 JURY PROCEEDING SHALL BE DISCLOSED TO THE OFFICE OF WRONGFUL CONVICTION
38 REVIEW ESTABLISHED BY SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECU-
39 TIVE LAW, UPON ITS REQUEST, IN CONNECTION WITH AN INQUIRY BY SUCH OFFICE
40 INTO A WRONGFUL CONVICTION RELATED TO SUCH GRAND JURY PROCEEDING.

41 S 9. Paragraph (a) of subdivision 4 of section 30.10 of the criminal
42 procedure law is amended to read as follows:

43 (a) Any period following the commission of the offense during which
44 (i) the defendant was continuously outside this state or (ii) the where-
45 abouts of the defendant were continuously unknown and continuously unas-
46 certainable by the exercise of reasonable diligence OR (III) THE IDENTI-
47 TY OF THE DEFENDANT WAS CONTINUOUSLY UNKNOWN AND A DEOXYRIBONUCLEIC ACID
48 (DNA) RECORD OF THE DEFENDANT'S GENETIC CODE, OBTAINED BY FORENSIC DNA
49 TESTING OF EVIDENCE LOCATED AT A TIME OR PLACE RELEVANT TO THE COMMIS-
50 SION OF THE OFFENSE, COULD NOT BE MATCHED TO AN INDIVIDUAL IDENTIFIED BY
51 DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX BY THE EXER-
52 CISE OF REASONABLE DILIGENCE. However, in no event shall the period of
53 limitation be extended by more than five years beyond the period other-
54 wise applicable under subdivision two OF THIS SECTION.

55 S 10. Section 240.40 of the criminal procedure law is amended by
56 adding a new subdivision 1-a to read as follows:

1 1-A. UPON MOTION OF A DEFENDANT AGAINST WHOM AN INDICTMENT OR SUPERIOR
2 COURT INFORMATION IS PENDING, THE COURT IN WHICH SUCH ACCUSATORY INSTRU-
3 MENT IS PENDING MAY ORDER A COMPARISON OF A DNA PROFILE DERIVED FROM
4 EVIDENCE RECOVERED BY LAW ENFORCEMENT TO THE DEFENDANT'S DNA OR TO A DNA
5 DATABANK UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERI-
6 AL TO THE PREPARATION OF A DEFENSE, AND THAT THE REQUEST IS REASONABLE,
7 PROVIDED THAT THE COURT SHALL NOT DO SO IF IT IS SATISFIED THAT THE
8 PEOPLE HAVE SHOWN GOOD CAUSE WHY SUCH AN ORDER SHOULD NOT BE ISSUED. IF
9 THE MOTION OF THE DEFENDANT IS FOR COMPARISON OF A GIVEN PROFILE DERIVED
10 FROM DNA EVIDENCE TO A DNA DATABANK, THE COURT MAY DIRECT A STATE OR
11 LOCAL PUBLIC FORENSIC LABORATORY TO ARRANGE FOR SUCH PROFILE TO BE
12 ENTERED INTO AND SEARCHED AGAINST LOCAL, STATE AND FEDERAL DNA DATABANKS
13 TO THE EXTENT AND IN A MANNER CONSISTENT WITH FEDERAL AND STATE LAWS AND
14 REGULATIONS GOVERNING SUCH DATABANKS, INCLUDING REQUIREMENTS AS TO HOW
15 PROFILES FOR FORENSIC DNA ANALYSIS MUST BE GENERATED AND REQUIREMENTS
16 FOR SEARCHING AND STORAGE IN THE DATABANK IN QUESTION. IF SUCH A DATA-
17 BANK SEARCH REVEALS THAT THE DNA DERIVED FROM EVIDENCE RECOVERED BY LAW
18 ENFORCEMENT MATCHES A PROFILE IN THE DATABANK, THE DEFENDANT SHALL BE
19 NOTIFIED OF THE FACT THAT THERE WAS A MATCH WITH SOME SUCH PROFILE, AND
20 THE COURT SHALL GRANT REASONABLE ADJOURNMENTS SO AS TO ALLOW THE PEOPLE
21 TO PURSUE APPROPRIATE INVESTIGATIVE STEPS. NOTHING IN THIS ARTICLE
22 SHALL BE DEEMED TO ALLOW A DEFENDANT TO OBTAIN AN ORDER REQUIRING
23 COLLECTION OF A DNA SAMPLE FROM ANY OTHER PERSON.

24 S 11. The opening paragraph of subdivision 1 of section 440.10 of the
25 criminal procedure law is amended to read as follows:

26 [At any time after the entry of a judgment, the] THE court in which
27 [it] A JUDGMENT OF CONVICTION was entered may, upon A TIMELY motion of
28 the defendant, vacate such judgment upon the ground that:

29 S 12. Paragraph (d) of subdivision 2 of section 440.10 of the criminal
30 procedure law is amended and two new paragraphs (e) and (f) are added to
31 read as follows:

32 (d) The ground or issue raised relates solely to the validity of the
33 sentence and not to the validity of the conviction[.]; OR

34 (E) THE DEFENDANT PREVIOUSLY BROUGHT A MOTION TO VACATE JUDGMENT,
35 WHICH WAS DENIED BY THE COURT, AND THE DEFENDANT IS CURRENTLY SEEKING TO
36 VACATE THE JUDGMENT ON A GROUND OTHER THAN NEWLY DISCOVERED EVIDENCE
37 UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION; OR

38 (F) THE DEFENDANT'S MOTION DOES NOT COMPLY WITH THE TIME LIMITS SET
39 FORTH IN SUBDIVISION EIGHT OF THIS SECTION.

40 S 13. The opening paragraph of paragraph (c) of subdivision 3 of
41 section 440.10 of the criminal procedure law is amended to read as
42 follows:

43 Upon a previous motion made pursuant to this section, the defendant
44 was in a position adequately to raise the [ground or issue underlying
45 the present motion] CLAIM OF NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH
46 (G) OF SUBDIVISION ONE OF THIS SECTION but did not do so.

47 S 14. Section 440.10 of the criminal procedure law is amended by
48 adding a new subdivision 8 to read as follows:

49 8. ANY MOTION TO VACATE JUDGMENT BY A DEFENDANT MUST BE FILED WITHIN
50 ONE YEAR OF THE DATE ON WHICH A JUDGMENT OF CONVICTION BECOMES FINAL BY
51 THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEK-
52 ING SUCH REVIEW; PROVIDED, HOWEVER, THAT A MOTION BY A DEFENDANT CLAIM-
53 ING NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF
54 THIS SECTION MAY BE MADE AT ANY TIME FOLLOWING THE DISCOVERY OF THE NEW
55 EVIDENCE SUPPORTING THE DEFENDANT'S CLAIM OF INNOCENCE. NOTHING IN THIS
56 SUBDIVISION SHALL RELIEVE THE DEFENDANT OF THE OBLIGATION, SET FORTH IN

1 PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, TO SHOW THAT HE OR SHE
2 HAS MADE THE MOTION TO VACATE JUDGMENT WITH DUE DILIGENCE AFTER THE
3 DISCOVERY OF THE ALLEGED NEW EVIDENCE.

4 S 15. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
5 nal procedure law, as amended by chapter 138 of the laws of 2004, is
6 amended and a new paragraph (c) is added to read as follows:

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

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

45 S 16. Section 440.30 of the criminal procedure law is amended by
46 adding a new subdivision 8 to read as follows:

47 8. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, IF THE PEOPLE BECOME
48 AWARE OF EVIDENCE THAT SUBSTANTIALLY TENDS TO EXONERATE A CONVICTED
49 DEFENDANT AND WAS NOT PREVIOUSLY KNOWN TO THE DEFENSE, THE PEOPLE SHALL
50 NOTIFY THE COURT OF THE EXISTENCE OF SUCH EVIDENCE. UPON RECEIPT OF SUCH
51 NOTIFICATION, THE COURT SHALL NOTIFY THE DEFENDANT TO THE SAME EFFECT
52 AND, IF APPROPRIATE, APPOINT DEFENSE COUNSEL SO THAT THE DEFENDANT MAY
53 SEEK ANY APPROPRIATE REMEDY UNDER THIS ARTICLE. THE PEOPLE MAY MAKE
54 NOTIFICATION TO A COURT PURSUANT TO THIS SUBDIVISION WITHOUT TAKING THE
55 POSITION THAT THE DEFENDANT WAS IN FACT INNOCENT AND, IF THE DEFENDANT
56 MOVES FOR RELIEF UNDER THIS ARTICLE, THE PEOPLE MAY TAKE ANY POSITION,

1 INCLUDING CONSENT OR OPPOSITION, AS TO SUCH MOTION. THE COURT MAY
2 CONSIDER, BUT NEED NOT GRANT, THE DEFENDANT'S RELEASE ON BAIL PENDING
3 THE DETERMINATION OF A MOTION MADE FOLLOWING SUCH A NOTIFICATION.

4 S 17. The section heading of section 440.40 of the criminal procedure
5 law is amended and a new subdivision 7 is added to read as follows:

6 Motion to set aside sentence OR TO VACATE JUDGMENT; by people.

7 7. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, THE PEOPLE MAY, IN LIEU
8 OF THE NOTIFICATION PROCEDURES SET FORTH IN SUBDIVISION EIGHT OF SECTION
9 440.30 OF THIS ARTICLE, MOVE TO VACATE A DEFENDANT'S JUDGMENT OF
10 CONVICTION UPON THE GROUND THAT THE DEFENDANT IS ACTUALLY INNOCENT OF
11 THE CHARGES UNDERLYING THE JUDGMENT. IN SUCH A MOTION, THE PEOPLE SHALL
12 SET FORTH EVIDENTIARY FACTS AND INFERENCES SUPPORTING THE CONTENTION
13 THAT THE DEFENDANT IS INNOCENT. UPON RECEIPT OF SUCH A MOTION, THE COURT
14 SHALL ORDER THAT THE DEFENDANT BE PRODUCED BEFORE THE COURT WITHOUT
15 DELAY. AT SUCH A COURT APPEARANCE, THE COURT MAY SUMMARILY GRANT THE
16 MOTION BASED ON THE ALLEGATIONS IN THE PEOPLE'S MOTION AND IN ANY
17 RESPONSIVE PAPERS FILED ON THE DEFENDANT'S BEHALF, AND BASED ON ANY ORAL
18 ARGUMENTS MADE ON THE MOTION. IF THE COURT DOES NOT SUMMARILY GRANT THE
19 MOTION: (A) IT MUST APPOINT COUNSEL FOR THE DEFENDANT IF THE DEFENDANT
20 IS NOT ALREADY REPRESENTED BY COUNSEL, (B) IT MUST CONSIDER, BUT NEED
21 NOT GRANT, A DEFENDANT'S RELEASE ON BAIL PENDING THE DETERMINATION OF
22 THE MOTION, AND (C) IT MUST GRANT A PROMPT HEARING, AT WHICH THE PARTIES
23 MAY CALL WITNESSES AND OFFER DOCUMENTARY EVIDENCE, BEFORE RENDERING ITS
24 DECISION TO GRANT OR DENY THE MOTION. IF THE COURT DENIES THE MOTION, IT
25 SHALL SET FORTH FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUPPORTING ITS
26 DECISION.

27 S 18. Section 65.10 of the penal law is amended by adding a new subdi-
28 vision 4-b to read as follows:

29 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A
30 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED
31 OF AN OFFENSE SPECIFIED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED
32 NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATO-
33 RY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS
34 REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW.

35 S 19. Paragraph (b) of subdivision 3 and paragraph (b) of subdivision
36 5 of section 8-b of the court of claims act, as added by chapter 1009 of
37 the laws of 1984, are amended to read as follows:

38 (b) (i) he has been pardoned upon the ground of innocence of the crime
39 or crimes for which he was sentenced and which are the grounds for the
40 complaint; or (ii) his judgment of conviction was reversed or vacated,
41 and the accusatory instrument dismissed or, if a new trial was ordered,
42 either he was found not guilty at the new trial or he was not retried
43 and the accusatory instrument dismissed; provided that the judgement of
44 conviction was reversed or vacated, and the accusatory instrument was
45 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),
46 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal
47 procedure law; or (B) subdivision one (where based upon grounds set
48 forth in item (A) [hereof] OF THIS SUBPARAGRAPH), two, three (where the
49 count dismissed was the sole basis for the imprisonment complained of)
50 or five of section 470.20 of the criminal procedure law; or (C) compara-
51 ble provisions of the former code of criminal procedure or subsequent
52 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-
53 DURE LAW; OR (E) the statute, or application thereof, on which the accu-
54 satory instrument was based violated the constitution of the United
55 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS
56 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,

1 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND
2 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;
3 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED
4 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS
5 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE
6 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT
7 ENUMERATED IN THIS PARAGRAPH; and

8 (b) (i) he has been pardoned upon the ground of innocence of the crime
9 or crimes for which he was sentenced and which are the grounds for the
10 complaint; or (ii) his judgment of conviction was reversed or vacated,
11 and the accusatory instrument dismissed or, if a new trial was ordered,
12 either he was found not guilty at the new trial or he was not retried
13 and the accusatory instrument dismissed; provided that the judgement of
14 conviction was reversed or vacated, and the accusatory instrument was
15 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),
16 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal
17 procedure law; or (B) subdivision one (where based upon grounds set
18 forth in item (A) [hereof] OF THIS PARAGRAPH), two, three (where the
19 count dismissed was the sole basis for the imprisonment complained of)
20 or five of section 470.20 of the criminal procedure law; or (C) compara-
21 ble provisions of the former code of criminal procedure or subsequent
22 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-
23 DURE LAW; OR (E) the statute, or application thereof, on which the accu-
24 satory instrument was based violated the constitution of the United
25 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS
26 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,
27 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND
28 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;
29 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED
30 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS
31 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE
32 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT
33 ENUMERATED IN THIS PARAGRAPH; and

34 S 20. This act shall take effect November 1, 2009; provided, however,
35 that the amendments to paragraph (a) of subdivision 3 of section 995-c
36 of the executive law, made by section two of this act, shall apply to
37 any person who is convicted of a crime, adjudicated a youthful offender,
38 incarcerated or subject to probation or parole supervision, or subject
39 to a requirement to register as a sex offender, on or after such effec-
40 tive date; provided, further, that the amendments to paragraph (a) of
41 subdivision 4 of section 30.10 of the criminal procedure law, made by
42 section nine of this act, shall apply to offenses where the applicable
43 period of limitation, including any extension of such period of limita-
44 tion pursuant to law in effect before such effective date, has not
45 expired on such effective date; and provided, further, that, sections
46 six, seven and eight of this act shall take effect April 1, 2010, and
47 shall expire and be deemed repealed September 1, 2013.