

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

3110--A

2009-2010 Regular Sessions

I N S E N A T E

March 11, 2009

Introduced by Sens. SKELOS, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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2 REPEALED and a new subdivision 7 is added to read as follows: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:

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

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1 3. (A) Any designated offender [subsequent to conviction and sentenc-
2 ing for a crime specified in subdivision seven of section nine hundred
3 ninety-five of this article,] shall be required to provide a sample
4 appropriate for DNA testing to determine identification characteristics
5 specific to such person and to be included in a state DNA identification
6 index pursuant to this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 LAW, THE OFFICE MAY REQUEST AND SHALL RECEIVE FROM ANY COURT, DEPART-
2 MENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE
3 OR POLITICAL SUBDIVISION THEREOF, OR ANY PUBLIC AUTHORITY SUCH ASSIST-
4 ANCE, INFORMATION, RECORDS AND DATA AS WILL ENABLE IT EFFECTIVELY TO
5 CARRY OUT ITS POWERS AND DUTIES.

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

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

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

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

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

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

1 limitation be extended by more than five years beyond the period other-
2 wise applicable under subdivision two OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

53 8. ANY MOTION TO VACATE JUDGMENT BY A DEFENDANT MUST BE FILED WITHIN
54 ONE YEAR OF THE DATE ON WHICH A JUDGMENT OF CONVICTION BECOMES FINAL BY
55 THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEK-
56 ING SUCH REVIEW; PROVIDED, HOWEVER, THAT A MOTION BY A DEFENDANT CLAIM-

1 ING NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF
2 THIS SECTION MAY BE MADE AT ANY TIME FOLLOWING THE DISCOVERY OF THE NEW
3 EVIDENCE SUPPORTING THE DEFENDANT'S CLAIM OF INNOCENCE. NOTHING IN THIS
4 SUBDIVISION SHALL RELIEVE THE DEFENDANT OF THE OBLIGATION, SET FORTH IN
5 PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, TO SHOW THAT HE OR SHE
6 HAS MADE THE MOTION TO VACATE JUDGMENT WITH DUE DILIGENCE AFTER THE
7 DISCOVERY OF THE ALLEGED NEW EVIDENCE.

8 S 15. Paragraph (a) of subdivision 1-a of section 440.30 of the criminal
9 procedure law, as amended by chapter 138 of the laws of 2004, is
10 amended and a new paragraph (c) is added to read as follows:

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

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

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

51 8. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, IF THE PEOPLE BECOME
52 AWARE OF EVIDENCE THAT SUBSTANTIALLY TENDS TO EXONERATE A CONVICTED
53 DEFENDANT AND WAS NOT PREVIOUSLY KNOWN TO THE DEFENSE, THE PEOPLE SHALL
54 NOTIFY THE COURT OF THE EXISTENCE OF SUCH EVIDENCE. UPON RECEIPT OF SUCH
55 NOTIFICATION, THE COURT SHALL NOTIFY THE DEFENDANT TO THE SAME EFFECT
56 AND, IF APPROPRIATE, APPOINT DEFENSE COUNSEL SO THAT THE DEFENDANT MAY

SEEK ANY APPROPRIATE REMEDY UNDER THIS ARTICLE. THE PEOPLE MAY MAKE NOTIFICATION TO A COURT PURSUANT TO THIS SUBDIVISION WITHOUT TAKING THE POSITION THAT THE DEFENDANT WAS IN FACT INNOCENT AND, IF THE DEFENDANT MOVES FOR RELIEF UNDER THIS ARTICLE, THE PEOPLE MAY TAKE ANY POSITION, INCLUDING CONSENT OR OPPOSITION, AS TO SUCH MOTION. THE COURT MAY CONSIDER, BUT NEED NOT GRANT, THE DEFENDANT'S RELEASE ON BAIL PENDING THE DETERMINATION OF A MOTION MADE FOLLOWING SUCH A NOTIFICATION.

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

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

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

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

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

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

(b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph [(a),] (b), (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) [hereof] OF THIS SUBPARAGRAPH), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-

1 DURE LAW; OR (E) the statute, or application thereof, on which the accu-
2 satory instrument was based violated the constitution of the United
3 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS
4 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,
5 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND
6 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;
7 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED
8 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS
9 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE
10 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT
11 ENUMERATED IN THIS PARAGRAPH; and

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

38 S 20. This act shall take effect November 1, 2010; provided, however,
39 that the amendments to paragraph (a) of subdivision 3 of section 995-c
40 of the executive law, made by section two of this act, shall apply to
41 any person who is convicted of a crime, adjudicated a youthful offender,
42 incarcerated or subject to probation or parole supervision, or subject
43 to a requirement to register as a sex offender, on or after such effec-
44 tive date; provided, further, that the amendments to paragraph (a) of
45 subdivision 4 of section 30.10 of the criminal procedure law, made by
46 section nine of this act, shall apply to offenses where the applicable
47 period of limitation, including any extension of such period of limita-
48 tion pursuant to law in effect before such effective date, has not
49 expired on such effective date; and provided, further, that, sections
50 six, seven and eight of this act shall take effect April 1, 2011, and
51 shall expire and be deemed repealed September 1, 2014.