

4668

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. SCHNEIDERMAN -- 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 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:

1 Section 1. Subparagraph (ix) of paragraph (b) of subdivision 9 of
2 section 995-b of the executive law, as added by chapter 737 of the laws
3 of 1994, is amended and a new paragraph (c) is added to read as follows:
4 (ix) such policy shall provide for the mutual exchange, use and stor-
5 age of DNA records with the system of DNA identification utilized by the
6 federal bureau of investigation provided that the commission determines
7 that such exchange, use and storage are consistent with the provisions
8 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.

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1 (C) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH, DETER-
2 MINE, CONSISTENT WITH THIS ARTICLE, THE APPROPRIATE MINIMUM PERIOD OF
3 TIME THAT FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERI-
4 AL, OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME
5 SCENES, SHOULD BE RETAINED BY INVESTIGATING AUTHORITIES AND THE TIME OR
6 SPECIFIED EVENT OR EVENTS, IF ANY, AFTER WHICH, CONSISTENT WITH THE
7 INTEREST OF ALL PERSONS AND LAW ENFORCEMENT, SUCH SAMPLES MAY BE
8 DESTROYED, AND DETERMINE STANDARDS FOR THE CATALOGING AND MAINTAINING
9 RECORDS OF SUCH SAMPLES. PENDING THE PROMULGATION OF A POLICY ADDRESS-
10 ING THE ISSUES SET FORTH IN THIS PARAGRAPH, THE COMMISSION MAY ADOPT AN
11 INTERIM POLICY MANDATING THE PRESERVATION BY INVESTIGATING AUTHORITIES
12 OF FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL
13 OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES.

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

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

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

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

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

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

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

39 ARTICLE 23

40 STATE COMMISSION FOR THE INTEGRITY 41 OF THE CRIMINAL JUSTICE SYSTEM

42 SECTION 900. DEFINITION.

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

45 902. PURPOSE AND CONDUCT OF THE COMMISSION.

46 903. POWERS AND DUTIES.

47 904. USE OF REPORTS.

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

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

55 (A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES;

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

1 (I) ONE SHALL BE A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY,
2 (II) ONE SHALL BE A REPRESENTATIVE OF THE PUBLIC CRIMINAL DEFENSE BAR
3 OR PRIVATE CRIMINAL DEFENSE BAR WHO SHALL BE APPOINTED UPON THE RECOM-
4 MENDATION OF AN ORGANIZATION WITH MORE THAN SEVEN HUNDRED FIFTY DUES
5 PAYING MEMBERS REPRESENTING SUCH PUBLIC OR PRIVATE DEFENSE SERVICES,
6 (III) ONE SHALL BE A REPRESENTATIVE OF VICTIMS RIGHTS ADVOCACY OR
7 SERVICES ORGANIZATIONS, AND
8 (IV) ONE SHALL BE A REPRESENTATIVE OF THE FORENSIC SCIENCE FIELD;
9 (C) A MEMBER APPOINTED BY THE ATTORNEY GENERAL WHO SHALL BE A REPRE-
10 SENTATIVE OF PROSECUTION SERVICES;
11 (D) TWO MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS,
12 OF WHOM:
13 (I) ONE SHALL BE A RETIRED JUDGE OR JUSTICE OF A NEW YORK STATE COURT
14 OF RECORD, AND
15 (II) ONE SHALL BE A PROFESSOR OF LAW OR A RETIRED FULL TIME PROFESSOR
16 OF LAW WHO HAS TAUGHT LAW SCHOOL COURSES IN CRIMINAL LAW, CRIMINAL
17 PROCEDURE, CONSTITUTIONAL LAW, OR EVIDENCE AT AN ACCREDITED POST-GRADU-
18 ATE COLLEGE IN NEW YORK STATE;
19 (E) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO
20 SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE; AND
21 (F) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL BE
22 A MEMBER OF THE PUBLIC-AT-LARGE.
23 2. THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL SERVE AN INDEF-
24 INITE TERM. THE MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF
25 FOUR YEARS. THE RETIRED JUDGE OR JUSTICE APPOINTED BY THE CHIEF JUDGE
26 SHALL SERVE A TERM OF THREE YEARS. THE PROFESSOR OF LAW OR RETIRED
27 PROFESSOR OF LAW APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF TWO
28 YEARS. THE MEMBERS APPOINTED BY THE ATTORNEY GENERAL, THE TEMPORARY
29 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH SERVE
30 A TERM OF TWO YEARS. EACH OF THE MEMBERS OF THE COMMISSION, EXCEPT THE
31 COMMISSIONER OF CRIMINAL JUSTICE SERVICES, APPOINTED THEREAFTER SHALL
32 SERVE A TERM OF FIVE YEARS. EVERY VACANCY OCCURRING PRIOR TO THE EXPI-
33 RATION OF A MEMBER'S TERM SHALL BE FILLED FOR THE REMAINDER OF SUCH TERM
34 IN THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT TO SUCH TERM. UPON
35 THE EXPIRATION OF THE TERM OF A MEMBER OF THE COMMISSION, SUCH MEMBER
36 SHALL CONTINUE TO SERVE UNTIL HIS OR HER SUCCESSOR IS APPOINTED.
37 3. THE COMMISSION SHALL ELECT A CHAIR FROM AMONGST ITS MEMBERS BY A
38 MAJORITY VOTE OF THE MEMBERS THEREOF.
39 4. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY
40 PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE
41 OR EMPLOYMENT, BY REASON OF HIS OR HER APPOINTMENT PURSUANT TO THIS
42 SECTION, AND THE MEMBERS OF THE COMMISSION SHALL BE REQUIRED TO TAKE AND
43 FILE OATHS OF OFFICE BEFORE SERVING ON THE COMMISSION.
44 5. THE COMMISSION SHALL MEET AT LEAST FOUR TIMES EACH YEAR AT PREDE-
45 TERMINED TIMES AND LOCATIONS ANNOUNCED IN ADVANCE, AND AT SUCH OTHER
46 TIMES AS THE CHAIR OF THE COMMISSION OR FOUR OR MORE MEMBERS SHALL
47 DETERMINE TO BE NECESSARY.
48 6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE
49 COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED
50 IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX
51 MEMBERS OF THE COMMISSION SHALL BE NECESSARY.
52 7. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER
53 COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY
54 EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES PURSUANT TO THIS
55 ARTICLE.

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

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

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

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

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

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

35 3. CONDUCT INVESTIGATIONS AND HEARINGS, ADMINISTER OATHS OR AFFIRMA-
36 TIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER
37 OATH OR AFFIRMATION, REQUIRE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS
38 OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN INVESTI-
39 GATION, AND MAY DESIGNATE ANY OF ITS MEMBERS, OFFICERS OR INVESTIGATORS
40 TO EXERCISE ANY SUCH POWERS; PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVI-
41 SION SHALL AUTHORIZE THE ISSUANCE OF A SUBPOENA OR COMPELLED QUESTIONING
42 OF THE TRIAL COURT JUDGE OR ANY APPELLATE COURT JUDGE CONCERNING THE
43 JUDGE'S MENTAL PROCESSES IN ARRIVING AT ANY DECISION IN A CASE;

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

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

1 ARTICLE AS PART OF THE COMMISSION'S REPORT AND RECOMMENDATIONS CONCERN-
2 ING THE MATTER; AND

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

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

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

11 44. "SPECIAL FICTITIOUS NAME INDICTMENT" MEANS AN INDICTMENT OF A
12 PERSON WHOSE NAME IS UNKNOWN BUT WHOSE IDENTITY IS ESTABLISHED TO THE
13 SATISFACTION OF A GRAND JURY PURSUANT TO SUBDIVISION ONE OF SECTION
14 190.65 OF THIS CHAPTER BY MEANS OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA)
15 TESTING OF EVIDENCE. THE CAPTION OF A SPECIAL FICTITIOUS NAME INDICTMENT
16 SHALL INCLUDE A FICTITIOUS NAME, SUCH AS "JOHN DOE" OR "JANE DOE", IN
17 PLACE OF THE NAME OF THE DEFENDANT WHOSE TRUE NAME IS UNKNOWN.

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

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

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

33 10. A SUPERIOR COURT, IN RESPONSE TO A MOTION FOR SUCH COMPARISON BY A
34 DEFENDANT, MAY ORDER THAT DNA INFORMATION FROM A CRIME SCENE SAMPLE OR
35 SAMPLES AND/OR FINGERPRINTS OBTAINED IN THE COURSE OF THE INVESTIGATION
36 OF AN ALLEGED CRIME BE CHECKED AGAINST THE DNA RECORDS MAINTAINED BY OR
37 AVAILABLE THROUGH THE STATE DNA IDENTIFICATION INDEX ESTABLISHED PURSU-
38 ANT TO THIS SECTION AND THE NATIONAL DNA INDEX SYSTEM, AND AGAINST THE
39 FINGERPRINT RECORDS MAINTAINED BY OR AVAILABLE THROUGH THE STATE FINGER-
40 PRINT RECORD DATABASE ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF
41 SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS CHAPTER AND THE NATIONAL
42 FINGERPRINT IDENTIFICATION SYSTEM, AND THAT THE RESULTS OF SUCH CHECK OR
43 CHECKS BE DISCLOSED TO SUCH DEFENDANT AND TO THE PROSECUTOR WHOSE JURIS-
44 DICTION INCLUDES THE LOCATION OF THE ALLEGED COMMISSION OF SUCH CRIME,
45 UPON A SHOWING BY THE DEFENDANT THAT SUCH AN ANALYSIS MAY BE MATERIAL TO
46 HIS OR HER DEFENSE AND THAT THE REQUEST IS REASONABLE.

47 S 8. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
48 nal procedure law, as amended by chapter 138 of the laws of 2004, is
49 amended to read as follows:

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

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

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

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

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

34 3. In order to present the claim for unjust conviction and imprison-
35 ment, claimant must establish by documentary evidence that:

36 (a) he has been convicted of one or more felonies or misdemeanors
37 against the state and subsequently sentenced to a term of imprisonment,
38 and has served all or any part of the sentence; and

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

1 (D) OF THIS SUBPARAGRAPH, BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION
2 INVOLVED FACTS AND CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S
3 ASSERTION OF INNOCENCE; AND PROVIDED THAT, IN CASES WHERE THE CONVICTION
4 MAY HAVE BEEN VACATED ON MORE THAN ONE GROUND, INCLUDING ONE OF THE
5 GROUNDS ENUMERATED IN ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH,
6 THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE CRIMINAL
7 COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT ENUMERATED IN
8 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH; and
9 (c) his claim is not time-barred by the provisions of subdivision
10 seven of this section.

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

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

23 (a) he has been convicted of one or more felonies or misdemeanors
24 against the state and subsequently sentenced to a term of imprisonment,
25 and has served all or any part of the sentence; and

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

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

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

3 (d) he did not by his own conduct cause or bring about his conviction.
4 6. If the court finds that the claimant is entitled to a judgment, it
5 shall award damages in such sum of money as the court determines will
6 fairly and reasonably compensate him.

7 7. Any person claiming compensation under this section based on a
8 pardon that was granted before the effective date of this section or the
9 dismissal of an accusatory instrument that occurred before the effective
10 date of this section shall file his claim within two years after the
11 effective date of this section. Any person claiming compensation under
12 this section based on a pardon that was granted on or after the effec-
13 tive date of this section or the dismissal of an accusatory instrument
14 that occurred on or after the effective date of this section shall file
15 his claim within two years after the pardon or dismissal.

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

18 14. THE COMMISSION SHALL REVIEW THE CONFIDENTIALITY SAFEGUARDS WHICH
19 ARE MAINTAINED WITH RESPECT TO DNA SAMPLES BEFORE AND AFTER INFORMATION
20 FROM SUCH SAMPLES IS ENCODED INTO THE STATE DNA IDENTIFICATION INDEX AND
21 SHALL DETERMINE WHETHER ANY ADDITIONAL CONFIDENTIALITY SAFEGUARDS ARE
22 NECESSARY WITH RESPECT TO SUCH SAMPLES. THE COMMISSION SHALL ALSO ISSUE
23 A REPORT TO THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE
24 ASSEMBLY WHICH DESCRIBES HOW SUCH SAMPLES ARE RETAINED AND THE REASONS
25 FOR MAINTAINING SUCH SAMPLES, FOLLOWING THE ENCODING OF INFORMATION FROM
26 SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX. SUCH REPORT SHALL
27 ALSO RECOMMEND WHETHER A PROGRAM TO DESTROY ANY SUCH SAMPLES, FOLLOWING
28 THE ENCODING OF INFORMATION FROM SUCH SAMPLES INTO THE STATE DNA IDEN-
29 TIFICATION INDEX, SHOULD BE INITIATED OR WHETHER, ALTERNATIVELY, SUCH
30 SAMPLES SHALL CONTINUE TO BE MAINTAINED.

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

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

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

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

50 (b) As prescribed in this paragraph, if an individual, either volun-
51 tarily or pursuant to a warrant or order of a court, has provided a
52 sample for DNA testing in connection with the investigation or prose-
53 cution of a crime and (i) no criminal action against the individual
54 relating to such crime was commenced within the period specified by
55 section 30.10 of the criminal procedure law, or (ii) a criminal action
56 was commenced against the individual relating to such crime which

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

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

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

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

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

18 (D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF
19 THIS SUBDIVISION, A DNA RECORD WHICH WAS OBTAINED FROM A SAMPLE PROVIDED
20 PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION PRIOR TO THE EFFEC-
21 TIVE DATE OF THIS PARAGRAPH NEED NOT BE DESTROYED, RETURNED OR SEALED,
22 AND MAY BE INCLUDED IN THE STATE DNA IDENTIFICATION INDEX ESTABLISHED
23 PURSUANT TO THIS ARTICLE, WHEN, AS OF THE EFFECTIVE DATE OF THIS PARA-
24 GRAPH, THE PERSON WHO PROVIDED SUCH SAMPLE STANDS CONVICTED OF A FELONY
25 OR MISDEMEANOR DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTI-
26 CLE. ALL LAWS GOVERNING DNA RECORDS INCLUDED IN THE STATE DNA IDENTIFI-
27 CATION INDEX SHALL APPLY TO ANY DNA RECORD INCLUDED IN THE STATE DNA
28 IDENTIFICATION INDEX PURSUANT TO THIS PARAGRAPH.

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

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

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

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

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

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

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

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

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

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

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

1 OR PHYSICAL ITEMS THAT MAY BE IN GOVERNMENT CUSTODY AND/OR ASSIST THE
2 MOVANT IN LOCATING ANY SUCH RECORDS OR PHYSICAL ITEMS THAT MAY BE IN THE
3 CUSTODY OF A PUBLIC OR PRIVATE HOSPITAL, LABORATORY OR OTHER FACILITY.
4 THE COURT SHALL DENY A REQUEST FOR ASSISTANCE BROUGHT UNDER THIS PARA-
5 GRAPH IF THE COURT DETERMINES THAT SUCH REQUEST FOR ASSISTANCE IS FRIVO-
6 LOUS, ABUSIVE OR INAPPROPRIATE.

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

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

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

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

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

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

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

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

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

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

7 S 18. The criminal procedure law is amended by adding a new section
8 60.47 to read as follows:

9 S 60.47 RULES OF EVIDENCE; ELECTRONIC RECORDING OF STATEMENTS OF DEFEND-
10 ANTS.

11 1. DEFINITIONS. AS USED IN THIS SECTION:

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

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

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

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

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

34 4. THE PEOPLE MAY REBUT A PRESUMPTION OF INADMISSIBILITY THROUGH CLEAR
35 AND CONVINCING EVIDENCE THAT THE STATEMENT WAS BOTH VOLUNTARY AND RELI-
36 ABLE AND:

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

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

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

46 5. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

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

49 (B) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO INTERRO-
50 GATION;

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

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

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

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

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

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

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

13 7. "Designated offender" means a person convicted of and sentenced for
14 [any one or more of the following provisions of the penal law (a)
15 sections 120.05, 120.10, and 120.11, relating to assault; sections
16 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
17 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
18 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
19 escape and other offenses, where the offender has been convicted within
20 the previous five years of one of the other felonies specified in this
21 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
22 a violent felony offense as defined in subdivision one of section 70.02
23 of the penal law, attempted murder in the first degree, as defined in
24 section 110.00 and section 125.27 of the penal law, kidnapping in the
25 first degree, as defined in section 135.25 of the penal law, arson in
26 the first degree, as defined in section 150.20 of the penal law,
27 burglary in the third degree, as defined in section 140.20 of the penal
28 law, attempted burglary in the third degree, as defined in section
29 110.00 and section 140.20 of the penal law, a felony defined in article
30 four hundred ninety of the penal law relating to terrorism or any
31 attempt to commit an offense defined in such article relating to terror-
32 ism which is a felony; or (b) criminal possession of a controlled
33 substance in the first degree, as defined in section 220.21 of the penal
34 law; criminal possession of a controlled substance in the second degree,
35 as defined in section 220.18 of the penal law; criminal sale of a
36 controlled substance, as defined in article 220 of the penal law; or
37 grand larceny in the fourth degree, as defined in subdivision five of
38 section 155.30 of the penal law; or (c) any misdemeanor or felony
39 defined as a sex offense or sexually violent offense pursuant to para-
40 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
41 three of section one hundred sixty-eight-a of the correction law; or (d)
42 any of the following felonies, or an attempt thereof where such attempt
43 is a felony offense:

44 aggravated assault upon a person less than eleven years old, as
45 defined in section 120.12 of the penal law; menacing in the first
46 degree, as defined in section 120.13 of the penal law; reckless endan-
47 germent in the first degree, as defined in section 120.25 of the penal
48 law; stalking in the second degree, as defined in section 120.55 of the
49 penal law; criminally negligent homicide, as defined in section 125.10
50 of the penal law; vehicular manslaughter in the second degree, as
51 defined in section 125.12 of the penal law; vehicular manslaughter in
52 the first degree, as defined in section 125.13 of the penal law;
53 persistent sexual abuse, as defined in section 130.53 of the penal law;
54 aggravated sexual abuse in the fourth degree, as defined in section
55 130.65-a of the penal law; female genital mutilation, as defined in
56 section 130.85 of the penal law; facilitating a sex offense with a

1 controlled substance, as defined in section 130.90 of the penal law;
2 unlawful imprisonment in the first degree, as defined in section 135.10
3 of the penal law; custodial interference in the first degree, as defined
4 in section 135.50 of the penal law; criminal trespass in the first
5 degree, as defined in section 140.17 of the penal law; criminal tamper-
6 ing in the first degree, as defined in section 145.20 of the penal law;
7 tampering with a consumer product in the first degree, as defined in
8 section 145.45 of the penal law; robbery in the third degree as defined
9 in section 160.05 of the penal law; identity theft in the second degree,
10 as defined in section 190.79 of the penal law; identity theft in the
11 first degree, as defined in section 190.80 of the penal law; promoting
12 prison contraband in the first degree, as defined in section 205.25 of
13 the penal law; tampering with a witness in the third degree, as defined
14 in section 215.11 of the penal law; tampering with a witness in the
15 second degree, as defined in section 215.12 of the penal law; tampering
16 with a witness in the first degree, as defined in section 215.13 of the
17 penal law; criminal contempt in the first degree, as defined in subdivi-
18 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
19 criminal contempt, as defined in section 215.52 of the penal law; bail
20 jumping in the second degree, as defined in section 215.56 of the penal
21 law; bail jumping in the first degree, as defined in section 215.57 of
22 the penal law; patronizing a prostitute in the second degree, as defined
23 in section 230.05 of the penal law; patronizing a prostitute in the
24 first degree, as defined in section 230.06 of the penal law; promoting
25 prostitution in the second degree, as defined in section 230.30 of the
26 penal law; promoting prostitution in the first degree, as defined in
27 section 230.32 of the penal law; compelling prostitution, as defined in
28 section 230.33 of the penal law; disseminating indecent materials to
29 minors in the second degree, as defined in section 235.21 of the penal
30 law; disseminating indecent materials to minors in the first degree, as
31 defined in section 235.22 of the penal law; riot in the first degree, as
32 defined in section 240.06 of the penal law; criminal anarchy, as defined
33 in section 240.15 of the penal law; aggravated harassment of an employee
34 by an inmate, as defined in section 240.32 of the penal law; unlawful
35 surveillance in the second degree, as defined in section 250.45 of the
36 penal law; unlawful surveillance in the first degree, as defined in
37 section 250.50 of the penal law; endangering the welfare of a vulnerable
38 elderly person in the second degree, as defined in section 260.32 of the
39 penal law; endangering the welfare of a vulnerable elderly person in the
40 first degree, as defined in section 260.34 of the penal law; use of a
41 child in a sexual performance, as defined in section 263.05 of the penal
42 law; promoting an obscene sexual performance by a child, as defined in
43 section 263.10 of the penal law; possessing an obscene sexual perform-
44 ance by a child, as defined in section 263.11 of the penal law; promot-
45 ing a sexual performance by a child, as defined in section 263.15 of the
46 penal law; possessing a sexual performance by a child, as defined in
47 section 263.16 of the penal law; criminal possession of a weapon in the
48 third degree, as defined in section 265.02 of the penal law; criminal
49 sale of a firearm in the third degree, as defined in section 265.11 of
50 the penal law; criminal sale of a firearm to a minor, as defined in
51 section 265.16 of the penal law; unlawful wearing of a body vest, as
52 defined in section 270.20 of the penal law; hate crimes as defined in
53 section 485.05 of the penal law; and crime of terrorism, as defined in
54 section 490.25 of the penal law; or (e) a felony defined in the penal
55 law or an attempt thereof where such attempt is a felony; or (f) any of
56 the following misdemeanors: assault in the third degree as defined in

1 section 120.00 of the penal law; attempted aggravated assault upon a
2 person less than eleven years old, as defined in section 110.00 and
3 section 120.12 of the penal law; attempted menacing in the first degree,
4 as defined in section 110.00 and section 120.13 of the penal law; menac-
5 ing in the second degree as defined in section 120.14 of the penal law;
6 menacing in the third degree as defined in section 120.15 of the penal
7 law; reckless endangerment in the second degree as defined in section
8 120.20 of the penal law; stalking in the fourth degree as defined in
9 section 120.45 of the penal law; stalking in the third degree as defined
10 in section 120.50 of the penal law; attempted stalking in the second
11 degree, as defined in section 110.00 and section 120.55 of the penal
12 law; forcible touching as defined in section 130.52 of the penal law
13 regardless of the age of the victim; sexual abuse in the third degree as
14 defined in section 130.55 of the penal law regardless of the age of the
15 victim; unlawful imprisonment in the second degree as defined in section
16 135.05 of the penal law regardless of the age of the victim; attempted
17 unlawful imprisonment in the first degree, as defined in section 110.00
18 and section 135.10 of the penal law regardless of the age of the victim;
19 criminal trespass in the second degree as defined in section 140.15 of
20 the penal law; possession of burglar's tools as defined in section
21 140.35 of the penal law; petit larceny as defined in section 155.25 of
22 the penal law; endangering the welfare of a child as defined in section
23 260.10 of the penal law; endangering the welfare of an incompetent or
24 physically disabled person as defined in section 260.25] A MISDEMEANOR
25 DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL LAW, OR A
26 PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE
27 SIX-C OF THE CORRECTION LAW.

28 S 20. This act shall take effect immediately; provided, however, that:
29 (a) sections eleven, twelve and thirteen of this act shall take effect
30 on the one hundred twentieth day after it shall have become a law;

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

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