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

8163

I N S E N A T E

June 14, 2010

Introduced by Sen. SCHNEIDERMAN -- (at request of the Governor) -- 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 definition of and DNA designation of designated offenders; and to amend the penal law, in relation to DNA identification of designated offenders; and making an appropriation therefor

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

Section 1. Subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, paragraph (a) as separately amended by chapter 320 of the laws of 2006, is amended to read as follows:

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

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

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law; criminal possession of a controlled substance in the second degree, as defined in section 220.18 of the penal law; criminal sale of a controlled substance, as defined in article 220 of the penal law; or grand larceny in the fourth degree, as defined in subdivision five of section 155.30 of the penal law; or (c) any misdemeanor or felony defined as a sex offense or sexually violent offense pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision three of section one hundred sixty-eight-a of the correction law; or (d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent materials to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent materials to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee

by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or (e) a felony defined in the penal law or an attempt thereof where such attempt is a felony; or (f) any of the following misdemeanors: assault in the third degree as defined in section 120.00 of the penal law; attempted aggravated assault upon a person less than eleven years old, as defined in section 110.00 and section 120.12 of the penal law; attempted menacing in the first degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as defined in section 110.00 and section 120.55 of the penal law; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section 135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25] FELONY DEFINED IN THE PENAL LAW OR ANY MISDEMEANOR DEFINED IN THE PENAL LAW, OR A PERSON ADJUDICATED AND SENTENCED AS A YOUTHFUL OFFENDER PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR ANY SUCH MISDEMEANOR OR FELONY, OR A PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

S 2. Subdivision 3 of section 995-c of the executive law, as amended by chapter 576 of the laws of 2004, is amended to read as follows:

3. (A) Any designated offender [subsequent to conviction and sentencing for a crime specified in subdivision seven of section nine hundred

ninety-five of this article,] shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in a state DNA identification index pursuant to this article.

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

(II) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM OF PROBATION, INCLUDING A SENTENCE OF PROBATION IMPOSED IN CONJUNCTION WITH A SENTENCE OF IMPRISONMENT WHEN A SAMPLE HAS NOT ALREADY BEEN TAKEN, SUCH SAMPLE SHALL BE COLLECTED BY THE PROBATION DEPARTMENT SUPERVISING THE DESIGNATED OFFENDER.

(III) IN THE CASE OF A DESIGNATED OFFENDER WHOSE SENTENCE DOES NOT INCLUDE EITHER A TERM OF IMPRISONMENT OR A TERM OF PROBATION, THE COURT, OR IN THE CASE OF A PERSON REGISTERED AS A SEX OFFENDER ON OR BEFORE THE EFFECTIVE DATE OF THIS SUBPARAGRAPH WHO HAS NOT HAD A DNA SAMPLE TAKEN, THE DIVISION OF CRIMINAL JUSTICE SERVICES, SHALL ORDER THAT THE DESIGNATED OFFENDER REPORT TO AN OFFICE OF THE SHERIFF OF THAT COUNTY, AND WHEN THE DESIGNATED OFFENDER DOES SO, SUCH SAMPLE SHALL BE COLLECTED BY THE SHERIFF'S OFFICE.

(IV) IN THE CASE OF A DESIGNATED SEX OFFENDER WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW AS A RESULT OF A CONVICTION OBTAINED IN A FOREIGN JURISDICTION ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, SUCH SAMPLE SHALL BE COLLECTED BY THE PROBATION DEPARTMENT OF THE COUNTY IN WHICH THE DESIGNATED OFFENDER RESIDES.

(V) NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE COLLECTION OF A DNA SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT OFFICIAL, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, POLICE OFFICER, PEACE OFFICER, OR OTHER PUBLIC SERVANT WHO HAS BEEN NOTIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT SUCH DESIGNATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE. UPON NOTIFICATION BY THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT A DESIGNATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE, SUCH COURT OFFICIAL, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, POLICE OFFICER, PEACE OFFICER OR OTHER PUBLIC SERVANT SHALL COLLECT THE DNA SAMPLE.

S 3. Section 65.10 of the penal law is amended by adding a new subdivision 4-b to read as follows:

4-B. MANDATORY DNA CONDITION FOR DESIGNATED OFFENDERS AND CERTAIN OTHER OFFENDERS. WHEN IMPOSING A SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON DEFINED AS A DESIGNATED OFFENDER PURSUANT TO 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 OF THE EXECUTIVE LAW. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS PROHIBITING A DNA CONDITION UPON ANY OTHER OFFENDER WHERE AUTHORIZED BY ARTICLE FORTY-NINE-B OF THE EXECUTIVE LAW.

S 4. The penal law is amended by adding a new section 270.40 to read as follows:

S 270.40 FAILURE TO PROVIDE A DNA SAMPLE.

A PERSON IS GUILTY OF FAILURE TO PROVIDE A DNA SAMPLE WHEN HE OR SHE (A) IS A DESIGNATED OFFENDER, AS DEFINED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT TO THE PROVISIONS OF SUBDIVISION THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW; (B) HAS BEEN NOTIFIED BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR

EMPLOYEE, PAROLE OFFICER, PROBATION OFFICER, POLICE OFFICER, PEACE OFFICER OR OTHER PUBLIC SERVANT OF THE OBLIGATION TO PROVIDE SUCH A SAMPLE; AND (C) UPON REQUEST TO PROVIDE SUCH SAMPLE MADE BY A PUBLIC SERVANT AUTHORIZED TO COLLECT IT, FAILS TO PROVIDE SUCH A SAMPLE.

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

S 5. The sum of four hundred thousand dollars ($400,000), or so much thereof as may be necessary, is hereby appropriated to the division of criminal justice services and the division of state police out of any monies of the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, for the purpose of carrying out the provisions of this act. Such monies shall be made payable on the audit and warrant of the comptroller.

S 6. This act shall take effect January 1, 2011; provided, however, that the amendments to subdivision 7 of section 995 of the executive law made by section one of this act shall apply to designated offenses committed on or after such effective date; and provided, further that the amendments to subdivision 7 of section 995 of the executive law made by section one of this act relating to a person who is required to register as a sex offender pursuant to article six-C of the correction law shall apply to a person registered as a sex offender prior to, on, or after such effective date.