

10269

I N A S S E M B L Y

May 16, 2012

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

AN ACT to amend the criminal procedure law, in relation to the compar-
ison of fingerprints

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

1 Section 1. Subdivision 1 of section 240.40 of the criminal procedure
2 law, as amended by chapter 19 of the laws of 2012, is amended to read as
3 follows:
4 1. Upon motion of a defendant against whom an indictment, superior
5 court information, prosecutor's information, information, or simplified
6 information charging a misdemeanor is pending, the court in which such
7 accusatory instrument is pending:
8 (a) must order discovery as to any material not disclosed upon a
9 demand pursuant to section 240.20, if it finds that the prosecutor's
10 refusal to disclose such material is not justified; (b) must, unless it
11 is satisfied that the people have shown good cause why such an order
12 should not be issued, order discovery or any other order authorized by
13 subdivision one of section 240.70 as to any material not disclosed upon
14 demand pursuant to section 240.20 where the prosecutor has failed to
15 serve a timely written refusal pursuant to section 240.35; (c) may order
16 discovery with respect to any other property, which the people intend to
17 introduce at the trial, upon a showing by the defendant that discovery
18 with respect to such property is material to the preparation of his or
19 her defense, and that the request is reasonable; [and] (d) where proper-
20 ty in the people's possession, custody, or control that consists of a
21 deoxyribonucleic acid ("DNA") profile obtained from probative biological
22 material gathered in connection with the investigation or prosecution of
23 the defendant and the defendant establishes that such profile complies
24 with federal bureau of investigation or state requirements, whichever
25 are applicable and as such requirements are applied to law enforcement
26 agencies seeking a keyboard search or similar comparison, and that the
27 data meets state DNA index system or national DNA index system criteria
28 as such criteria are applied to law enforcement agencies seeking such a

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

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1 keyboard search or similar comparison, the court may order an entity
2 that has access to the combined DNA index system or its successor system
3 to compare such DNA profile against DNA databanks by keyboard searches,
4 or a similar method that does not involve uploading, upon notice to both
5 parties and the entity required to perform the search, upon a showing by
6 the defendant that such a comparison is material to the presentation of
7 his or her defense and that the request is reasonable. For purposes of
8 this paragraph, a "keyboard search" shall mean a search of a DNA profile
9 against the databank in which the profile that is searched is not
10 uploaded to or maintained in the databank; AND (E) MAY ORDER THE DIVI-
11 SION OF CRIMINAL JUSTICE SERVICES TO COMPARE A FINGERPRINT OBTAINED IN
12 CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF THE DEFENDANT
13 AGAINST THE STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR
14 ITS SUCCESSOR SYSTEM, AND THE NATIONAL INTEGRATED AUTOMATED FINGERPRINT
15 IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, UPON THE COURT'S DETER-
16 MINATION THAT SUCH FINGERPRINT COMPLIES WITH FEDERAL BUREAU OF INVESTI-
17 GATION OR STATE REQUIREMENTS, WHICHEVER ARE APPLICABLE AND AS SUCH
18 REQUIREMENTS ARE APPLIED TO LAW ENFORCEMENT AGENCIES SEEKING SUCH A
19 COMPARISON AND UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS
20 MATERIAL TO THE PREPARATION OF HIS OR HER DEFENSE, AND THAT THE REQUEST
21 IS REASONABLE. Upon granting the motion pursuant to paragraph (c) of
22 this subdivision, the court shall, upon motion of the people showing
23 such to be material to the preparation of their case and that the
24 request is reasonable, condition its order of discovery by further
25 directing discovery by the people of property, of the same kind or char-
26 acter as that authorized to be inspected by the defendant, which he or
27 she intends to introduce at the trial.

28 S 2. Section 440.30 of the criminal procedure law is amended by adding
29 a new subdivision 1-b to read as follows:

30 1-B. IN RESPONSE TO A MOTION UNDER THIS SECTION, THE COURT MAY ORDER
31 THE DIVISION OF CRIMINAL JUSTICE SERVICES TO COMPARE A FINGERPRINT
32 OBTAINED IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF THE
33 DEFENDANT AGAINST THE STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION
34 SYSTEM, OR ITS SUCCESSOR SYSTEM, AND THE NATIONAL INTEGRATED AUTOMATED
35 FINGERPRINT IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, UPON THE
36 COURT'S DETERMINATION THAT (1) SUCH FINGERPRINT COMPLIES WITH FEDERAL
37 BUREAU OF INVESTIGATION OR STATE REQUIREMENTS, WHICHEVER ARE APPLICABLE
38 AND AS SUCH REQUIREMENTS ARE APPLIED TO LAW ENFORCEMENT AGENCIES SEEKING
39 SUCH A COMPARISON AND (2) IF SUCH COMPARISON HAD BEEN CONDUCTED, AND IF
40 THE RESULTS HAD BEEN ADMITTED IN THE TRIAL RESULTING IN THE JUDGMENT, A
41 REASONABLE PROBABILITY EXISTS THAT THE VERDICT WOULD HAVE BEEN MORE
42 FAVORABLE TO THE DEFENDANT, OR IN A CASE INVOLVING A PLEA OF GUILTY, IF
43 THE RESULTS HAD BEEN AVAILABLE TO THE DEFENDANT PRIOR TO THE PLEA, A
44 REASONABLE PROBABILITY EXISTS THAT THE CONVICTION WOULD NOT HAVE
45 RESULTED.

46 S 3. This act shall take effect on the same date as chapter 19 of the
47 laws of 2012, as amended, takes effect.