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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. P. RIVERA, SCHROEDER, ORTIZ -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the disclosure of DNA-related information in criminal investigations and proceedings and the expungement of such information

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

Section 1. Paragraph (a) of subdivision 6 of section 995-c of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

(a) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office OR TO ANY OTHER PUBLIC AGENCY for law enforcement identification purposes [upon submission of a DNA record] in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of specified human remains, including identification of missing persons[, provided that there exists between the division and such agency a written agreement governing the use and dissemination of such DNA records in accordance with the provisions of this article];

S 2. Subdivision 9 of section 995-c of the executive law, as amended by chapter 524 of the laws of 2002, is amended to read as follows:

9. [(a)] Upon receipt of notification of a reversal or a vacatur of a conviction, or of the granting of a pardon pursuant to article two-A of this chapter, of an individual whose DNA record has been stored in the state DNA identification index in accordance with this article by the division of criminal justice services, the DNA record shall be expunged from the state DNA identification index, and such individual may apply to the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of

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

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the crime which resulted in the conviction that was reversed or vacated or for which the pardon was granted. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that all appeals relating to the conviction have been concluded; that such individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. The division shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification index, and any samples, analyses, or other documents relating to such record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof, at the discretion of the possessor thereof, are either destroyed or returned to such individual, or to the attorney who represented him or her at the time such reversal, vacatur or pardon, was granted. The commissioner shall also adopt by rule and regulation a procedure for the expungement in other appropriate circumstances of DNA records contained in the index.

[(b) As prescribed in this paragraph, if an individual, either voluntarily or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by section 30.10 of the criminal procedure law, or (ii) a criminal action was commenced against the individual relating to such crime which resulted in a complete acquittal, or (iii) a criminal action against the individual relating to such crime resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that the individual has satisfied the conditions of one of the subparagraphs of this paragraph; that if a judgment of conviction was reversed or vacated, all appeals relating thereto have been concluded and the individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. If an order directing the expungement of any DNA record and any samples, analyses or other documents relating to the DNA testing of such individual is issued, such record and any samples, analyses, or other documents shall, at the discretion of the possessor thereof, be destroyed or returned to such individual or to the attorney who represented him or her in connection with the application for the order of expungement.]

S 3. Section 995-d of the executive law, as added by chapter 737 of the laws of 1994, subdivision 2 as amended by chapter 560 of the laws of 1999, is amended to read as follows:

S 995-d. Confidentiality AND APPLICATIONS FOR EXPUNGEMENT. 1. All records, findings, reports, and results of DNA testing performed on any person, INCLUDING THOSE IN THE POSSESSION OF A FORENSIC DNA LABORATORY,

shall be confidential and may not be disclosed or redisclosed without the consent of the subject of such DNA testing. Such records, findings, reports and results shall not be released to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies, or services, private investigation services, and may not be disclosed in response to a subpoena or other compulsory legal process or warrant, or upon request or order of any agency, authority, division, office, corporation, partnership, or any other private or public entity or person, except that nothing contained herein shall prohibit disclosure in response to a subpoena issued on behalf of the subject of such [DNA] record or on behalf of a party in a civil proceeding where the subject of such [DNA] record has put such record in issue.

2. Notwithstanding the provisions of subdivision one of this section, records, findings, reports, and results of DNA testing[, other than a DNA record maintained in the state DNA identification index,] MAINTAINED BY A FORENSIC DNA LABORATORY may be disclosed BY SUCH LABORATORY AND REDISCLOSED BY ANY PUBLIC AGENCY FOR THE FOLLOWING PURPOSES:

(A) TO A FEDERAL LAW ENFORCEMENT AGENCY, OR TO A STATE OR LOCAL LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY'S OFFICE OR TO ANY OTHER PUBLIC AGENCY FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES IN CONNECTION WITH THE INVESTIGATION OF THE COMMISSION OF ONE OR MORE CRIMES OR TO ASSIST IN THE RECOVERY OR IDENTIFICATION OF HUMAN REMAINS, INCLUDING IDENTIFICATION OF MISSING PERSONS;

(B) in a criminal proceeding to the court, the prosecution, and the defense pursuant to a written request [on a form prescribed by the commissioner of the division of criminal justice services.] BY ONE OF THESE ENTITIES TO THE POSSESSOR OF SUCH RECORDS, FINDINGS, REPORTS, OR RESULTS OF DNA TESTING; OR

(C) AFTER PERSONALLY IDENTIFIABLE INFORMATION HAS BEEN REMOVED BY THE FORENSIC DNA LABORATORY, TO AN ENTITY AUTHORIZED BY THE FORENSIC DNA LABORATORY FOR THE PURPOSE OF CREATING OR MAINTAINING A POPULATION STATISTICS DATABASE OR FOR IDENTIFICATION RESEARCH AND PROTOCOL DEVELOPMENT FOR FORENSIC DNA ANALYSIS OR QUALITY CONTROL PURPOSES.

3. AS PRESCRIBED IN THIS SUBDIVISION, IF AN INDIVIDUAL NOT OTHERWISE COVERED BY SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, EITHER VOLUNTARILY OR PURSUANT TO A WARRANT OR ORDER OF A COURT, HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF A CRIME AND (A) NO CRIMINAL ACTION AGAINST THE INDIVIDUAL RELATING TO SUCH CRIME WAS COMMENCED OR IS INTENDED TO BE COMMENCED WITHIN THE PERIOD SPECIFIED BY SECTION 30.10 OF THE CRIMINAL PROCEDURE LAW, OR (B) A CRIMINAL ACTION WAS COMMENCED AGAINST THE INDIVIDUAL RELATING TO SUCH CRIME WHICH RESULTED IN A COMPLETE ACQUITTAL, OR (C) A CRIMINAL ACTION AGAINST THE INDIVIDUAL RELATING TO SUCH CRIME RESULTED IN A CONVICTION THAT WAS SUBSEQUENTLY REVERSED OR VACATED, OR FOR WHICH THE INDIVIDUAL WAS GRANTED A PARDON PURSUANT TO ARTICLE TWO-A OF THIS CHAPTER, SUCH INDIVIDUAL MAY APPLY TO THE SUPREME COURT OR THE COURT IN WHICH THE JUDGMENT OF CONVICTION WAS ORIGINALLY ENTERED FOR AN ORDER DIRECTING THE EXPUNGEMENT OF ANY DNA IDENTIFICATION INFORMATION AND ANY SAMPLES, ANALYSES, OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH INDIVIDUAL IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF SUCH CRIME. A COPY OF SUCH APPLICATION SHALL BE SERVED ON THE DISTRICT ATTORNEY AND AN ORDER DIRECTING EXPUNGEMENT SHALL BE GRANTED IF THE COURT FINDS THAT THE INDIVIDUAL HAS SATISFIED THE CONDITIONS OF ONE OF THE PARAGRAPHS OF THIS SUBDIVISION; THAT IF A JUDGMENT OF CONVICTION WAS REVERSED OR VACATED, ALL APPEALS RELAT-

ING THERETO HAVE BEEN CONCLUDED AND THE INDIVIDUAL WILL NOT BE RETRIED, OR, IF A RETRIAL HAS OCCURRED, THE TRIER OF FACT HAS RENDERED A VERDICT OF COMPLETE ACQUITTAL, AND THAT EXPUNGEMENT WILL NOT ADVERSELY AFFECT THE INVESTIGATION OR PROSECUTION OF SOME OTHER PERSON OR PERSONS FOR THE CRIME. IF AN ORDER DIRECTING THE EXPUNGEMENT OF ANY DNA IDENTIFICATION INFORMATION AND ANY SAMPLES, ANALYSES OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH INDIVIDUAL IS ISSUED, SUCH IDENTIFICATION INFORMATION AND ANY SAMPLES, ANALYSES, OR OTHER DOCUMENTS SHALL, AT THE DISCRETION OF THE POSSESSOR THEREOF, BE DESTROYED OR RETURNED TO SUCH INDIVIDUAL OR TO THE ATTORNEY WHO REPRESENTED HIM OR HER IN CONNECTION WITH THE APPLICATION FOR THE ORDER OF EXPUNGEMENT.

4. Notwithstanding the provisions of subdivision one of this section, a DNA record maintained in the state DNA identification index may be disclosed pursuant to section nine hundred ninety-five-c of this article.

S 4. This act shall take effect immediately.