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

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I N A S S E M B L Y

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Introduced by M. of A. AMEDORE, BARCLAY, BURLING, CROUCH, JOHNS, SALADINO, KATZ, MURRAY, McKEVITT, TOBACCO, KOLB, SAYWARD, McDONOUGH -- Multi-Sponsored by -- M. of A. MALLIOTAKIS, OAKS -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the penal law, in relation to DNA testing

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 and paragraph (f) as amended by chapter 405 of the laws of 2010, 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 terror-

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

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ism 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 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; criminal obstruction of breathing or blood circulation as defined in section 121.11 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 of the penal law] A MISDEMEANOR DEFINED IN THE PENAL LAW OR A FELONY 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. Section 995-f of the executive law, as amended by chapter 560 of the laws of 1999, is amended to read as follows:

S 995-f. Penalties. 1. Any person who (a) intentionally discloses a DNA record, or the results of a forensic DNA test or analysis, to an individual or agency other than one authorized to have access to such records pursuant to this article or (b) intentionally uses or receives DNA records, or the results of a forensic DNA test or analysis, for purposes other than those authorized pursuant to this article or (c) any person who knowingly tampers or attempts to tamper with any DNA sample or the collection container without lawful authority shall be guilty of a class E felony.

2. ANY DESIGNATED OFFENDER REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT TO THE PROVISIONS OF THIS ARTICLE WHO KNOWINGLY FAILS TO PROVIDE SUCH SAMPLE WITHIN THIRTY DAYS OF BEING NOTIFIED BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER OR OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT OF HIS OR HER OBLIGATION TO PROVIDE SUCH A SAMPLE SHALL BE GUILTY OF A CLASS E FELONY. ANY SUCH KNOWING FAILURE TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING SHALL ALSO BE DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR PAROLE AND SHALL BE A BASIS FOR THE REVOCATION OF PROBATION OR PAROLE IN ACCORDANCE WITH ARTICLE FOUR HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW OR SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAPTER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED TO INCLUDE POST-RELEASE SUPERVISION.

S 3. Subdivision 4 of section 995-c of the executive law, as amended by section 65 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

4. The commissioner of the division of criminal justice services, in consultation with the commission, the commissioner of health, the division of parole, the director of the office of probation and correctional alternatives and the department of correctional services, shall promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ALSO PROMULGATE RULES AND REGULATIONS GOVERNING THE PROCEDURES FOR OBTAINING A SAMPLE APPROPRIATE FOR DNA TESTING FROM A PERSON WHO IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

S 4. 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 UNLESS SUCH DESIGNATED OFFENDER HAS PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDENTIFICATION INDEX.

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

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

S 5. 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 DEFINED 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 OF THE EXECUTIVE LAW.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, however, that the amendments to subdivision 7 of section 995 of the executive law made by section one of this act and the amendments to paragraph (a) of subdivision 3 of section 995-c of the executive law made by section four of this act shall apply to any person who is convicted of a crime, or adjudicated a youthful offender, or is incarcerated or subject to probation or parole supervision, or is subject to a requirement to register as a sex offender, on or after such effective date.