

2003

2011-2012 Regular Sessions

I N   S E N A T E

January 14, 2011

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Introduced by Sen. SKELOS -- 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 collection of DNA samples from designated offenders, collection and preservation of biological evidence, and establishing the office of wrongful conviction review; to amend the criminal procedure law, in relation to the statute of limitations for criminal offenses, access by defendants to DNA evidence, and procedures for consideration of post-conviction relief; to amend the penal law, in relation to the conditions of probation and conditional discharge; to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; to repeal subdivision 7 of section 995 of the executive law relating to the definition of "designated offender" for purposes of the DNA identification index; and providing for the repeal of certain provisions upon expiration thereof

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

1     Section 1. Subdivision 7 of section 995 of the executive law is  
2     REPEALED and a new subdivision 7 is added to read as follows:  
3     7. "DESIGNATED OFFENDER" MEANS A PERSON CONVICTED OF AND SENTENCED FOR  
4     A MISDEMEANOR DEFINED IN THE PENAL LAW OR A FELONY DEFINED IN THE PENAL  
5     LAW, OR A PERSON ADJUDICATED AND SENTENCED AS A YOUTHFUL OFFENDER PURSU-  
6     ANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW FOR  
7     ANY SUCH MISDEMEANOR OR FELONY, OR A PERSON WHO IS REQUIRED TO REGISTER  
8     AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.  
9     S 2. Subdivision 3 of section 995-c of the executive law, as amended  
10    by chapter 576 of the laws of 2004, is amended to read as follows:  
11    3. (A) Any designated offender [subsequent to conviction and sentenc-  
12    ing for a crime specified in subdivision seven of section nine hundred  
13    ninety-five of this article,] shall be required to provide a sample  
14    appropriate for DNA testing to determine identification characteristics

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

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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, SUCH SAMPLE SHALL BE COLLECTED BY THE LOCAL PROBATION DEPARTMENT SUPERVISING THE DESIGNATED OFFENDER.

(III) IN THE CASE OF A DESIGNATED OFFENDER WHO IS NEITHER SENTENCED TO A TERM OF IMPRISONMENT NOR PROBATION, SUCH SAMPLE SHALL BE COLLECTED BY THE PROBATION DEPARTMENT OF THE COUNTY IN WHICH SENTENCING TAKES PLACE, UNLESS AN ALTERNATE COLLECTION PROCEDURE HAS BEEN IMPLEMENTED.

(IV) PROVIDED, HOWEVER, THAT 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, OR OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT WHO HAS BEEN NOTIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT THE DESIGNATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE.

(C) NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, A CITY WITH A POPULATION OF ONE MILLION OR MORE OR ANY COUNTY ACTING THROUGH ITS LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL A LOCAL LAW TO IMPOSE A DNA COLLECTION FEE NOT TO EXCEED FIFTY DOLLARS ON DESIGNATED OFFENDERS FROM WHOM ITS PROBATION DEPARTMENT IS REQUIRED BY SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION TO COLLECT A DNA SAMPLE; PROVIDED, HOWEVER, THAT THE FAILURE OF A DESIGNATED OFFENDER TO PAY SUCH DNA COLLECTION FEE, IF REQUIRED, SHALL NOT PREVENT THE COLLECTION OF THE OFFENDER'S DNA SAMPLE.

(D) 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.

(E) 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.

(F) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE RULES AND REGULATIONS GOVERNING THE PERIODIC REVIEW OF THE DNA IDENTIFICATION INDEX TO DETERMINE WHETHER OR NOT THE INDEX CONTAINS DNA PROFILES THAT SHOULD NOT BE IN THE INDEX, INCLUDING THE STEPS NECESSARY TO EXPUNGE ANY PROFILES WHICH THE DIVISION DETERMINES SHOULD NOT BE IN THE INDEX.

S 3. The opening paragraph of section 995-f of the executive law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. ANY DESIGNATED OFFENDER SUBJECT TO PROBATION OR PAROLE SUPERVISION WHO IS REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT TO THE PROVISIONS OF THIS ARTICLE, AND WHO FAILS TO PROVIDE SUCH SAMPLE UPON NOTIFICATION 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 DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR PAROLE, AND SUCH VIOLATION 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 CHAP-

1 TER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED  
2 TO INCLUDE POST-RELEASE SUPERVISION.

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

6 4. The commissioner of [the division of] criminal justice services, in  
7 consultation with the commission, the commissioner of health, the divi-  
8 sion of parole, the director of the office of probation and correctional  
9 alternatives, and the department of correctional services, shall promul-  
10 gate rules and regulations governing the procedures for notifying desig-  
11 nated offenders of the requirements of this section. FURTHERMORE, THE  
12 COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL ALSO PROMULGATE RULES  
13 AND REGULATIONS GOVERNING THE PROCEDURES FOR OBTAINING A SAMPLE APPRO-  
14 PRIATE FOR DNA TESTING FROM A PERSON WHO IS REQUIRED TO REGISTER AS A  
15 SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

16 S 5. Section 995-b of the executive law is amended by adding a new  
17 subdivision 3-a to read as follows:

18 3-A. THE COMMISSION, IN CONSULTATION WITH THE DNA SUBCOMMITTEE, SHALL  
19 DEVELOP, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION,  
20 VOLUNTARY GUIDELINES REFLECTING BEST PRACTICES REGARDING THE COLLECTION  
21 AND PRESERVATION OF BIOLOGICAL EVIDENCE BY LAW ENFORCEMENT AGENCIES AND  
22 FORENSIC LABORATORIES. SUCH VOLUNTARY GUIDELINES SHALL INCLUDE, BUT NOT  
23 BE LIMITED TO, THE MINIMUM PERIOD OF TIME THAT BIOLOGICAL EVIDENCE  
24 OBTAINED FROM CRIME SCENES SHOULD BE RETAINED. AS USED IN THIS SUBDIVI-  
25 SION, THE TERM "BIOLOGICAL EVIDENCE" SHALL MEAN SEMEN, BLOOD, SALIVA,  
26 HAIR, SKIN, TISSUE OR OTHER IDENTIFIED BIOLOGICAL MATERIAL, AND SHALL  
27 INCLUDE A SEXUAL ASSAULT FORENSIC EXAMINATION KIT.

28 S 6. The executive law is amended by adding a new section 837-s to  
29 read as follows:

30 S 837-S. OFFICE OF WRONGFUL CONVICTION REVIEW. THERE SHALL BE ESTAB-  
31 LISHED WITHIN THE DIVISION OF CRIMINAL JUSTICE SERVICES AN OFFICE OF  
32 WRONGFUL CONVICTION REVIEW, HEREINAFTER REFERRED TO IN THIS SECTION AS  
33 THE "OFFICE". THE OFFICE SHALL CONDUCT REVIEWS OF CRIMINAL AND JUVENILE  
34 CASES IN THIS STATE INVOLVING WRONGFUL CONVICTIONS AND CONSIDER WHETHER  
35 THERE MAY BE POSSIBLE REFORMS THAT COULD PROTECT AGAINST SIMILAR WRONG-  
36 FUL CONVICTIONS OCCURRING IN THE FUTURE. SUCH REVIEWS SHALL INCLUDE  
37 PARTICIPATION BY PROSECUTORS, DEFENSE ATTORNEYS, FORMER JUDGES AND OTHER  
38 EXPERTS IN RELEVANT FIELDS. WHENEVER A PERSON WHO HAS BEEN CONVICTED OF  
39 A CRIME OR ADJUDICATED A YOUTHFUL OFFENDER IS SUBSEQUENTLY DETERMINED TO  
40 BE INNOCENT OF SUCH OFFENSE AND EXONERATED, THE OFFICE SHALL REVIEW THE  
41 CIRCUMSTANCES OF SUCH CASE TO DETERMINE THE CAUSE OR CAUSES OF SUCH  
42 WRONGFUL CONVICTION. THE OFFICE SHALL CONDUCT SUCH REVIEWS OF PAST CASES  
43 INCLUDING, AT A MINIMUM, ALL CASES IN WHICH EXONERATION RESULTED FROM  
44 DNA EVIDENCE, AND ON AN ONGOING BASIS, ALL CASES IN WHICH A DEFENDANT IS  
45 EXONERATED. THE OFFICE SHALL MAKE AVAILABLE AN ANNUAL REPORT DETAILING,  
46 AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR INVESTIGATION, THE NUMBER  
47 OF COMPLETED INVESTIGATIONS AND THE STATUS OF PENDING INVESTIGATIONS.  
48 THE REPORT SHALL INCLUDE THE OFFICE'S FINDINGS AND CONCLUSIONS AS TO THE  
49 CAUSE OR CAUSES OF WRONGFUL CONVICTIONS IN INVESTIGATIONS THAT IT HAS  
50 COMPLETED. THE REPORT SHALL BE PROVIDED TO THE GOVERNOR, ATTORNEY GENER-  
51 AL, CHIEF JUDGE OF THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE  
52 SENATE, SPEAKER OF THE ASSEMBLY AND TO GOVERNMENTAL UNITS OR AGENCIES  
53 THAT IT FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDI-  
54 CATION OF WRONGFUL CONVICTIONS. NOTWITHSTANDING ANY OTHER PROVISION OF  
55 LAW, THE OFFICE MAY REQUEST AND SHALL RECEIVE FROM ANY COURT, DEPART-  
56 MENT, DIVISION, BOARD, BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE

1 OR POLITICAL SUBDIVISION THEREOF, OR ANY PUBLIC AUTHORITY SUCH ASSIST-  
2 ANCE, INFORMATION, RECORDS AND DATA AS WILL ENABLE IT EFFECTIVELY TO  
3 CARRY OUT ITS POWERS AND DUTIES.

4 S 7. Paragraph (d) of subdivision 1 of section 160.50 of the criminal  
5 procedure law, as amended by chapter 169 of the laws of 1994, is amended  
6 to read as follows:

7 (d) such records shall be made available to the person accused or to  
8 such person's designated agent, and shall be made available to (i) a  
9 prosecutor in any proceeding in which the accused has moved for an order  
10 pursuant to section 170.56 or 210.46 of this [chapter] PART, or (ii) a  
11 law enforcement agency upon ex parte motion in any superior court, if  
12 such agency demonstrates to the satisfaction of the court that justice  
13 requires that such records be made available to it, or (iii) any state  
14 or local officer or agency with responsibility for the issuance of  
15 licenses to possess guns, when the accused has made application for such  
16 a license, or (iv) the [New York state] division of parole when the  
17 accused is on parole supervision as a result of conditional release or a  
18 parole release granted by the [New York] state board of parole, and the  
19 arrest which is the subject of the inquiry is one which occurred while  
20 the accused was under such supervision, or (v) any prospective employer  
21 of a police officer or peace officer [as those terms are defined in  
22 subdivisions thirty-three and thirty-four of section 1.20 of this chap-  
23 ter], in relation to an application for employment as a police officer  
24 or peace officer; provided, however, that every person who is an appli-  
25 cant for the position of police officer or peace officer shall be  
26 furnished with a copy of all records obtained under this paragraph and  
27 afforded an opportunity to make an explanation thereto, or (vi) the  
28 probation department responsible for supervision of the accused when the  
29 arrest which is the subject of the inquiry is one which occurred while  
30 the accused was under such supervision, OR (VII) THE DIVISION OF CRIMI-  
31 NAL JUSTICE SERVICES IN CONNECTION WITH INQUIRIES BY THE OFFICE OF  
32 WRONGFUL CONVICTION REVIEW ESTABLISHED BY SECTION EIGHT HUNDRED THIRTY-  
33 SEVEN-S OF THE EXECUTIVE LAW; and

34 S 8. Subdivision 4 of section 190.25 of the criminal procedure law is  
35 amended by adding a new paragraph (c) to read as follows:

36 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL GRAND JURY TESTI-  
37 MONY, EVIDENCE, DECISIONS, RESULTS AND OTHER MATTERS ATTENDING A GRAND  
38 JURY PROCEEDING SHALL BE DISCLOSED TO THE OFFICE OF WRONGFUL CONVICTION  
39 REVIEW ESTABLISHED BY SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECU-  
40 TIVE LAW, UPON ITS REQUEST, IN CONNECTION WITH AN INQUIRY BY SUCH OFFICE  
41 INTO A WRONGFUL CONVICTION RELATED TO SUCH GRAND JURY PROCEEDING.

42 S 9. Paragraph (a) of subdivision 4 of section 30.10 of the criminal  
43 procedure law is amended to read as follows:

44 (a) Any period following the commission of the offense during which  
45 (i) the defendant was continuously outside this state or (ii) the where-  
46 abouts of the defendant were continuously unknown and continuously unas-  
47 certainable by the exercise of reasonable diligence OR (III) THE IDENTI-  
48 TY OF THE DEFENDANT WAS CONTINUOUSLY UNKNOWN AND A DEOXYRIBONUCLEIC ACID  
49 (DNA) RECORD OF THE DEFENDANT'S GENETIC CODE, OBTAINED BY FORENSIC DNA  
50 TESTING OF EVIDENCE LOCATED AT A TIME OR PLACE RELEVANT TO THE COMMIS-  
51 SION OF THE OFFENSE, COULD NOT BE MATCHED TO AN INDIVIDUAL IDENTIFIED BY  
52 DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX BY THE EXER-  
53 CISE OF REASONABLE DILIGENCE. However, in no event shall the period of  
54 limitation be extended by more than five years beyond the period other-  
55 wise applicable under subdivision two OF THIS SECTION.

1 S 10. Section 240.40 of the criminal procedure law is amended by  
2 adding a new subdivision 1-a to read as follows:

3 1-A. UPON MOTION OF A DEFENDANT AGAINST WHOM AN INDICTMENT OR SUPERIOR  
4 COURT INFORMATION IS PENDING, THE COURT IN WHICH SUCH ACCUSATORY INSTRU-  
5 MENT IS PENDING MAY ORDER A COMPARISON OF A DNA PROFILE DERIVED FROM  
6 EVIDENCE RECOVERED BY LAW ENFORCEMENT TO THE DEFENDANT'S DNA OR TO A DNA  
7 DATABANK UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERI-  
8 AL TO THE PREPARATION OF A DEFENSE, AND THAT THE REQUEST IS REASONABLE,  
9 PROVIDED THAT THE COURT SHALL NOT DO SO IF IT IS SATISFIED THAT THE  
10 PEOPLE HAVE SHOWN GOOD CAUSE WHY SUCH AN ORDER SHOULD NOT BE ISSUED. IF  
11 THE MOTION OF THE DEFENDANT IS FOR COMPARISON OF A GIVEN PROFILE DERIVED  
12 FROM DNA EVIDENCE TO A DNA DATABANK, THE COURT MAY DIRECT A STATE OR  
13 LOCAL PUBLIC FORENSIC LABORATORY TO ARRANGE FOR SUCH PROFILE TO BE  
14 ENTERED INTO AND SEARCHED AGAINST LOCAL, STATE AND FEDERAL DNA DATABANKS  
15 TO THE EXTENT AND IN A MANNER CONSISTENT WITH FEDERAL AND STATE LAWS AND  
16 REGULATIONS GOVERNING SUCH DATABANKS, INCLUDING REQUIREMENTS AS TO HOW  
17 PROFILES FOR FORENSIC DNA ANALYSIS MUST BE GENERATED AND REQUIREMENTS  
18 FOR SEARCHING AND STORAGE IN THE DATABANK IN QUESTION. IF SUCH A DATA-  
19 BANK SEARCH REVEALS THAT THE DNA DERIVED FROM EVIDENCE RECOVERED BY LAW  
20 ENFORCEMENT MATCHES A PROFILE IN THE DATABANK, THE DEFENDANT SHALL BE  
21 NOTIFIED OF THE FACT THAT THERE WAS A MATCH WITH SOME SUCH PROFILE, AND  
22 THE COURT SHALL GRANT REASONABLE ADJOURNMENTS SO AS TO ALLOW THE PEOPLE  
23 TO PURSUE APPROPRIATE INVESTIGATIVE STEPS. NOTHING IN THIS ARTICLE  
24 SHALL BE DEEMED TO ALLOW A DEFENDANT TO OBTAIN AN ORDER REQUIRING  
25 COLLECTION OF A DNA SAMPLE FROM ANY OTHER PERSON.

26 S 11. The opening paragraph of subdivision 1 of section 440.10 of the  
27 criminal procedure law is amended to read as follows:

28 [At any time after the entry of a judgment, the] THE court in which  
29 [it] A JUDGMENT OF CONVICTION was entered may, upon A TIMELY motion of  
30 the defendant, vacate such judgment upon the ground that:

31 S 12. Paragraph (d) of subdivision 2 of section 440.10 of the criminal  
32 procedure law is amended and two new paragraphs (e) and (f) are added to  
33 read as follows:

34 (d) The ground or issue raised relates solely to the validity of the  
35 sentence and not to the validity of the conviction[.]; OR

36 (E) THE DEFENDANT PREVIOUSLY BROUGHT A MOTION TO VACATE JUDGMENT,  
37 WHICH WAS DENIED BY THE COURT, AND THE DEFENDANT IS CURRENTLY SEEKING TO  
38 VACATE THE JUDGMENT ON A GROUND OTHER THAN NEWLY DISCOVERED EVIDENCE  
39 UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION; OR

40 (F) THE DEFENDANT'S MOTION DOES NOT COMPLY WITH THE TIME LIMITS SET  
41 FORTH IN SUBDIVISION NINE OF THIS SECTION.

42 S 13. The opening paragraph of paragraph (c) of subdivision 3 of  
43 section 440.10 of the criminal procedure law is amended to read as  
44 follows:

45 Upon a previous motion made pursuant to this section, the defendant  
46 was in a position adequately to raise the [ground or issue underlying  
47 the present motion] CLAIM OF NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH  
48 (G) OF SUBDIVISION ONE OF THIS SECTION but did not do so.

49 S 14. Section 440.10 of the criminal procedure law is amended by  
50 adding a new subdivision 9 to read as follows:

51 9. ANY MOTION TO VACATE JUDGMENT BY A DEFENDANT MUST BE FILED WITHIN  
52 ONE YEAR OF THE DATE ON WHICH A JUDGMENT OF CONVICTION BECOMES FINAL BY  
53 THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEK-  
54 ING SUCH REVIEW; PROVIDED, HOWEVER, THAT A MOTION BY A DEFENDANT CLAIM-  
55 ING NEWLY DISCOVERED EVIDENCE UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF  
56 THIS SECTION MAY BE MADE AT ANY TIME FOLLOWING THE DISCOVERY OF THE NEW

1 EVIDENCE SUPPORTING THE DEFENDANT'S CLAIM OF INNOCENCE. NOTHING IN THIS  
2 SUBDIVISION SHALL RELIEVE THE DEFENDANT OF THE OBLIGATION, SET FORTH IN  
3 PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION, TO SHOW THAT HE OR SHE  
4 HAS MADE THE MOTION TO VACATE JUDGMENT WITH DUE DILIGENCE AFTER THE  
5 DISCOVERY OF THE ALLEGED NEW EVIDENCE.

6 S 15. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-  
7 nal procedure law, as amended by chapter 138 of the laws of 2004, is  
8 amended and a new paragraph (c) is added to read as follows:

9 (a) Where the defendant's motion requests the performance of a foren-  
10 sic DNA test on specified evidence, and upon the court's determination  
11 that any evidence containing deoxyribonucleic acid ("DNA") was secured  
12 in connection with the [trial] PROCEEDINGS resulting in the judgment,  
13 the court shall grant the application for forensic DNA testing of such  
14 evidence upon its determination that if a DNA test had been conducted on  
15 such evidence, and if the results had been admitted in the trial result-  
16 ing in the judgment, there exists a reasonable probability that the  
17 verdict would have been more favorable to the defendant. IN THE CASE OF  
18 A DEFENDANT CONVICTED UPON A PLEA OF GUILTY, THE COURT SHALL GRANT THE  
19 APPLICATION ONLY UPON ITS DETERMINATION THAT IF THE RESULTS HAD BEEN  
20 AVAILABLE TO THE DEFENDANT, THERE EXISTS A REASONABLE PROBABILITY THAT  
21 THE DEFENDANT WOULD NOT HAVE BEEN CONVICTED BY PLEA OF GUILTY OR OTHER-  
22 WISE, AND IN MAKING THAT DETERMINATION, THE COURT MAY CONSIDER, AMONG  
23 OTHER RELEVANT INFORMATION, THE PROCEEDINGS IN CONNECTION WITH THE  
24 DEFENDANT'S PLEA OF GUILTY.

25 (C) IN ADDITION TO REQUESTING THE PERFORMANCE OF A FORENSIC DNA TEST  
26 OF SPECIFIED EVIDENCE, AS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVI-  
27 SION, THE DEFENDANT MAY ALSO MOVE FOR A COMPARISON OF A DNA PROFILE  
28 DERIVED FROM EVIDENCE RECOVERED BY LAW ENFORCEMENT TO A DNA DATABANK.  
29 IN DECIDING WHETHER TO GRANT A MOTION FOR SUCH COMPARISON, THE COURT MAY  
30 CONSIDER WHETHER THE DEFENDANT HAD THE OPPORTUNITY TO MOVE FOR SUCH A  
31 COMPARISON PURSUANT TO SUBDIVISION ONE-A OF SECTION 240.40 OF THIS PART,  
32 BUT UNJUSTIFIABLY FAILED TO DO SO. IF THE COURT GRANTS THE MOTION FOR  
33 SUCH A COMPARISON, IT MAY DIRECT A STATE OR LOCAL PUBLIC FORENSIC LABO-  
34 RATORY TO ARRANGE FOR SUCH PROFILE TO BE ENTERED INTO AND SEARCHED  
35 AGAINST LOCAL, STATE AND FEDERAL DNA DATABANKS TO THE EXTENT AND IN A  
36 MANNER CONSISTENT WITH FEDERAL AND STATE LAWS AND REGULATIONS GOVERNING  
37 SUCH DATABANKS, INCLUDING REQUIREMENTS AS TO HOW PROFILES FOR FORENSIC  
38 DNA ANALYSIS MUST BE GENERATED AND REQUIREMENTS FOR SEARCHING AND STOR-  
39 AGE IN THE DATABANK IN QUESTION. IF SUCH A DATABANK SEARCH REVEALS THAT  
40 THE DNA DERIVED FROM EVIDENCE RECOVERED BY LAW ENFORCEMENT MATCHES A  
41 PROFILE IN THE DATABANK, THE DEFENDANT SHALL BE NOTIFIED OF THE FACT  
42 THAT THERE WAS A MATCH WITH SOME SUCH PROFILE, AND THE COURT SHALL GRANT  
43 REASONABLE ADJOURNMENTS SO AS TO ALLOW THE PEOPLE TO PURSUE APPROPRIATE  
44 INVESTIGATIVE STEPS. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO ALLOW A  
45 DEFENDANT TO OBTAIN AN ORDER REQUIRING COLLECTION OF A DNA SAMPLE FROM  
46 ANY OTHER PERSON.

47 S 16. Section 440.30 of the criminal procedure law is amended by  
48 adding a new subdivision 8 to read as follows:

49 8. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, IF THE PEOPLE BECOME  
50 AWARE OF EVIDENCE THAT SUBSTANTIALLY TENDS TO EXONERATE A CONVICTED  
51 DEFENDANT AND WAS NOT PREVIOUSLY KNOWN TO THE DEFENSE, THE PEOPLE SHALL  
52 NOTIFY THE COURT OF THE EXISTENCE OF SUCH EVIDENCE. UPON RECEIPT OF SUCH  
53 NOTIFICATION, THE COURT SHALL NOTIFY THE DEFENDANT TO THE SAME EFFECT  
54 AND, IF APPROPRIATE, APPOINT DEFENSE COUNSEL SO THAT THE DEFENDANT MAY  
55 SEEK ANY APPROPRIATE REMEDY UNDER THIS ARTICLE. THE PEOPLE MAY MAKE  
56 NOTIFICATION TO A COURT PURSUANT TO THIS SUBDIVISION WITHOUT TAKING THE

1 POSITION THAT THE DEFENDANT WAS IN FACT INNOCENT AND, IF THE DEFENDANT  
2 MOVES FOR RELIEF UNDER THIS ARTICLE, THE PEOPLE MAY TAKE ANY POSITION,  
3 INCLUDING CONSENT OR OPPOSITION, AS TO SUCH MOTION. THE COURT MAY  
4 CONSIDER, BUT NEED NOT GRANT, THE DEFENDANT'S RELEASE ON BAIL PENDING  
5 THE DETERMINATION OF A MOTION MADE FOLLOWING SUCH A NOTIFICATION.

6 S 17. The section heading of section 440.40 of the criminal procedure  
7 law is amended and a new subdivision 7 is added to read as follows:

8 Motion to set aside sentence OR TO VACATE JUDGMENT; by people.

9 7. AT ANY TIME AFTER THE ENTRY OF A JUDGMENT, THE PEOPLE MAY, IN LIEU  
10 OF THE NOTIFICATION PROCEDURES SET FORTH IN SUBDIVISION EIGHT OF SECTION  
11 440.30 OF THIS ARTICLE, MOVE TO VACATE A DEFENDANT'S JUDGMENT OF  
12 CONVICTION UPON THE GROUND THAT THE DEFENDANT IS ACTUALLY INNOCENT OF  
13 THE CHARGES UNDERLYING THE JUDGMENT. IN SUCH A MOTION, THE PEOPLE SHALL  
14 SET FORTH EVIDENTIARY FACTS AND INFERENCES SUPPORTING THE CONTENTION  
15 THAT THE DEFENDANT IS INNOCENT. UPON RECEIPT OF SUCH A MOTION, THE COURT  
16 SHALL ORDER THAT THE DEFENDANT BE PRODUCED BEFORE THE COURT WITHOUT  
17 DELAY. AT SUCH A COURT APPEARANCE, THE COURT MAY SUMMARILY GRANT THE  
18 MOTION BASED ON THE ALLEGATIONS IN THE PEOPLE'S MOTION AND IN ANY  
19 RESPONSIVE PAPERS FILED ON THE DEFENDANT'S BEHALF, AND BASED ON ANY ORAL  
20 ARGUMENTS MADE ON THE MOTION. IF THE COURT DOES NOT SUMMARILY GRANT THE  
21 MOTION: (A) IT MUST APPOINT COUNSEL FOR THE DEFENDANT IF THE DEFENDANT  
22 IS NOT ALREADY REPRESENTED BY COUNSEL, (B) IT MUST CONSIDER, BUT NEED  
23 NOT GRANT, A DEFENDANT'S RELEASE ON BAIL PENDING THE DETERMINATION OF  
24 THE MOTION, AND (C) IT MUST GRANT A PROMPT HEARING, AT WHICH THE PARTIES  
25 MAY CALL WITNESSES AND OFFER DOCUMENTARY EVIDENCE, BEFORE RENDERING ITS  
26 DECISION TO GRANT OR DENY THE MOTION. IF THE COURT DENIES THE MOTION, IT  
27 SHALL SET FORTH FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUPPORTING ITS  
28 DECISION.

29 S 18. Section 65.10 of the penal law is amended by adding a new subdi-  
30 vision 4-b to read as follows:

31 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A  
32 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED  
33 OF AN OFFENSE SPECIFIED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED  
34 NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATO-  
35 RY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS  
36 REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW.

37 S 19. Paragraph (b) of subdivision 3 and paragraph (b) of subdivision  
38 5 of section 8-b of the court of claims act, as added by chapter 1009 of  
39 the laws of 1984, are amended to read as follows:

40 (b) (i) he has been pardoned upon the ground of innocence of the crime  
41 or crimes for which he was sentenced and which are the grounds for the  
42 complaint; or (ii) his judgment of conviction was reversed or vacated,  
43 and the accusatory instrument dismissed or, if a new trial was ordered,  
44 either he was found not guilty at the new trial or he was not retried  
45 and the accusatory instrument dismissed; provided that the judgement of  
46 conviction was reversed or vacated, and the accusatory instrument was  
47 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),  
48 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal  
49 procedure law; or (B) subdivision one (where based upon grounds set  
50 forth in item (A) [hereof] OF THIS SUBPARAGRAPH), two, three (where the  
51 count dismissed was the sole basis for the imprisonment complained of)  
52 or five of section 470.20 of the criminal procedure law; or (C) compara-  
53 ble provisions of the former code of criminal procedure or subsequent  
54 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-  
55 DURE LAW; OR (E) the statute, or application thereof, on which the accu-  
56 satory instrument was based violated the constitution of the United

1 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS  
2 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,  
3 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND  
4 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;  
5 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED  
6 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS  
7 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE  
8 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT  
9 ENUMERATED IN THIS PARAGRAPH; and

10 (b) (i) he has been pardoned upon the ground of innocence of the crime  
11 or crimes for which he was sentenced and which are the grounds for the  
12 complaint; or (ii) his judgment of conviction was reversed or vacated,  
13 and the accusatory instrument dismissed or, if a new trial was ordered,  
14 either he was found not guilty at the new trial or he was not retried  
15 and the accusatory instrument dismissed; provided that the judgement of  
16 conviction was reversed or vacated, and the accusatory instrument was  
17 dismissed, on any of the following grounds: (A) paragraph [(a),] (b),  
18 (c), [(e)] or (g) of subdivision one of section 440.10 of the criminal  
19 procedure law; or (B) subdivision one (where based upon grounds set  
20 forth in item (A) [hereof] OF THIS PARAGRAPH), two, three (where the  
21 count dismissed was the sole basis for the imprisonment complained of)  
22 or five of section 470.20 of the criminal procedure law; or (C) compara-  
23 ble provisions of the former code of criminal procedure or subsequent  
24 law; or (D) SUBDIVISION SEVEN OF SECTION 440.40 OF THE CRIMINAL PROCE-  
25 DURE LAW; OR (E) the statute, or application thereof, on which the accu-  
26 satory instrument was based violated the constitution of the United  
27 States or the state of New York; OR (F) THE CLAIMANT'S CONVICTION WAS  
28 VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN THIS PARAGRAPH,  
29 BUT WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND  
30 CIRCUMSTANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE;  
31 AND PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED  
32 ON MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN THIS  
33 PARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE  
34 CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A GROUND NOT  
35 ENUMERATED IN THIS PARAGRAPH; and

36 S 20. This act shall take effect November 1, 2011; provided, however,  
37 that the amendments to paragraph (a) of subdivision 3 of section 995-c  
38 of the executive law, made by section two of this act, shall apply to  
39 any person who is convicted of a crime, adjudicated a youthful offender,  
40 incarcerated or subject to probation or parole supervision, or subject  
41 to a requirement to register as a sex offender, on or after such effec-  
42 tive date; provided, further, that the amendments to paragraph (a) of  
43 subdivision 4 of section 30.10 of the criminal procedure law, made by  
44 section nine of this act, shall apply to offenses where the applicable  
45 period of limitation, including any extension of such period of limita-  
46 tion pursuant to law in effect before such effective date, has not  
47 expired on such effective date; and provided, further, that, sections  
48 six, seven and eight of this act shall take effect April 1, 2012, and  
49 shall expire and be deemed repealed September 1, 2015.