

2857--B

Cal. No. 581

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. DeFRANCISCO, GRIFFO, LARKIN, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law and the criminal procedure law, in relation to collection of DNA samples from designated offenders; to amend the executive law, in relation to collection and preservation of biological evidence; to establish a commission for exoneration review; to amend the criminal procedure law, in relation to access by defendants to DNA evidence, and procedures for consideration of post-conviction relief; to amend the penal law, in relation to conditions of probation and conditional discharge; and to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; 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, as
2 amended by chapter 2 of the laws of 2006, paragraph (a) as separately
3 amended by chapter 320 of the laws of 2006 and paragraph (f) as amended
4 by chapter 405 of the laws of 2010, is amended to read as follows:
5 7. "Designated offender" means a person [convicted of and sentenced
6 for any one or more of the following provisions of the penal law (a)
7 sections 120.05, 120.10, and 120.11, relating to assault; sections
8 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
9 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
10 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
11 escape and other offenses, where the offender has been convicted within
12 the previous five years of one of the other felonies specified in this

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

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1 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
2 a violent felony offense as defined in subdivision one of section 70.02
3 of the penal law, attempted murder in the first degree, as defined in
4 section 110.00 and section 125.27 of the penal law, kidnapping in the
5 first degree, as defined in section 135.25 of the penal law, arson in
6 the first degree, as defined in section 150.20 of the penal law,
7 burglary in the third degree, as defined in section 140.20 of the penal
8 law, attempted burglary in the third degree, as defined in section
9 110.00 and section 140.20 of the penal law, a felony defined in article
10 four hundred ninety of the penal law relating to terrorism or any
11 attempt to commit an offense defined in such article relating to terror-
12 ism which is a felony; or (b) criminal possession of a controlled
13 substance in the first degree, as defined in section 220.21 of the penal
14 law; criminal possession of a controlled substance in the second degree,
15 as defined in section 220.18 of the penal law; criminal sale of a
16 controlled substance, as defined in article 220 of the penal law; or
17 grand larceny in the fourth degree, as defined in subdivision five of
18 section 155.30 of the penal law; or (c) any misdemeanor or felony
19 defined as a sex offense or sexually violent offense pursuant to para-
20 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
21 three of section one hundred sixty-eight-a of the correction law; or (d)
22 any of the following felonies, or an attempt thereof where such attempt
23 is a felony offense:

24 aggravated assault upon a person less than eleven years old, as
25 defined in section 120.12 of the penal law; menacing in the first
26 degree, as defined in section 120.13 of the penal law; reckless endan-
27 germent in the first degree, as defined in section 120.25 of the penal
28 law; stalking in the second degree, as defined in section 120.55 of the
29 penal law; criminally negligent homicide, as defined in section 125.10
30 of the penal law; vehicular manslaughter in the second degree, as
31 defined in section 125.12 of the penal law; vehicular manslaughter in
32 the first degree, as defined in section 125.13 of the penal law;
33 persistent sexual abuse, as defined in section 130.53 of the penal law;
34 aggravated sexual abuse in the fourth degree, as defined in section
35 130.65-a of the penal law; female genital mutilation, as defined in
36 section 130.85 of the penal law; facilitating a sex offense with a
37 controlled substance, as defined in section 130.90 of the penal law;
38 unlawful imprisonment in the first degree, as defined in section 135.10
39 of the penal law; custodial interference in the first degree, as defined
40 in section 135.50 of the penal law; criminal trespass in the first
41 degree, as defined in section 140.17 of the penal law; criminal tamper-
42 ing in the first degree, as defined in section 145.20 of the penal law;
43 tampering with a consumer product in the first degree, as defined in
44 section 145.45 of the penal law; robbery in the third degree as defined
45 in section 160.05 of the penal law; identity theft in the second degree,
46 as defined in section 190.79 of the penal law; identity theft in the
47 first degree, as defined in section 190.80 of the penal law; promoting
48 prison contraband in the first degree, as defined in section 205.25 of
49 the penal law; tampering with a witness in the third degree, as defined
50 in section 215.11 of the penal law; tampering with a witness in the
51 second degree, as defined in section 215.12 of the penal law; tampering
52 with a witness in the first degree, as defined in section 215.13 of the
53 penal law; criminal contempt in the first degree, as defined in subdivi-
54 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
55 criminal contempt, as defined in section 215.52 of the penal law; bail
56 jumping in the second degree, as defined in section 215.56 of the penal

1 law; bail jumping in the first degree, as defined in section 215.57 of
2 the penal law; patronizing a prostitute in the second degree, as defined
3 in section 230.05 of the penal law; patronizing a prostitute in the
4 first degree, as defined in section 230.06 of the penal law; promoting
5 prostitution in the second degree, as defined in section 230.30 of the
6 penal law; promoting prostitution in the first degree, as defined in
7 section 230.32 of the penal law; compelling prostitution, as defined in
8 section 230.33 of the penal law; disseminating indecent materials to
9 minors in the second degree, as defined in section 235.21 of the penal
10 law; disseminating indecent materials to minors in the first degree, as
11 defined in section 235.22 of the penal law; riot in the first degree, as
12 defined in section 240.06 of the penal law; criminal anarchy, as defined
13 in section 240.15 of the penal law; aggravated harassment of an employee
14 by an inmate, as defined in section 240.32 of the penal law; unlawful
15 surveillance in the second degree, as defined in section 250.45 of the
16 penal law; unlawful surveillance in the first degree, as defined in
17 section 250.50 of the penal law; endangering the welfare of a vulnerable
18 elderly person in the second degree, as defined in section 260.32 of the
19 penal law; endangering the welfare of a vulnerable elderly person in the
20 first degree, as defined in section 260.34 of the penal law; use of a
21 child in a sexual performance, as defined in section 263.05 of the penal
22 law; promoting an obscene sexual performance by a child, as defined in
23 section 263.10 of the penal law; possessing an obscene sexual perform-
24 ance by a child, as defined in section 263.11 of the penal law; promot-
25 ing a sexual performance by a child, as defined in section 263.15 of the
26 penal law; possessing a sexual performance by a child, as defined in
27 section 263.16 of the penal law; criminal possession of a weapon in the
28 third degree, as defined in section 265.02 of the penal law; criminal
29 sale of a firearm in the third degree, as defined in section 265.11 of
30 the penal law; criminal sale of a firearm to a minor, as defined in
31 section 265.16 of the penal law; unlawful wearing of a body vest, as
32 defined in section 270.20 of the penal law; hate crimes as defined in
33 section 485.05 of the penal law; and crime of terrorism, as defined in
34 section 490.25 of the penal law; or (e) a felony defined in the penal
35 law or an attempt thereof where such attempt is a felony; or (f) any of
36 the following misdemeanors: assault in the third degree as defined in
37 section 120.00 of the penal law; attempted aggravated assault upon a
38 person less than eleven years old, as defined in section 110.00 and
39 section 120.12 of the penal law; attempted menacing in the first degree,
40 as defined in section 110.00 and section 120.13 of the penal law; menac-
41 ing in the second degree as defined in section 120.14 of the penal law;
42 menacing in the third degree as defined in section 120.15 of the penal
43 law; reckless endangerment in the second degree as defined in section
44 120.20 of the penal law; stalking in the fourth degree as defined in
45 section 120.45 of the penal law; stalking in the third degree as defined
46 in section 120.50 of the penal law; attempted stalking in the second
47 degree, as defined in section 110.00 and section 120.55 of the penal
48 law; criminal obstruction of breathing or blood circulation as defined
49 in section 121.11 of the penal law; forcible touching as defined in
50 section 130.52 of the penal law regardless of the age of the victim;
51 sexual abuse in the third degree as defined in section 130.55 of the
52 penal law regardless of the age of the victim; unlawful imprisonment in
53 the second degree as defined in section 135.05 of the penal law regard-
54 less of the age of the victim; attempted unlawful imprisonment in the
55 first degree, as defined in section 110.00 and section 135.10 of the
56 penal law regardless of the age of the victim; criminal trespass in the

1 second degree as defined in section 140.15 of the penal law; possession
2 of burglar's tools as defined in section 140.35 of the penal law; petit
3 larceny as defined in section 155.25 of the penal law; endangering the
4 welfare of a child as defined in section 260.10 of the penal law; endan-
5 gering the welfare of an incompetent or physically disabled person as
6 defined in section 260.25 of the penal law] ARRESTED FOR ANY OFFENSE FOR
7 WHICH THE FINGERPRINTS OF THE DEFENDANT OR ARRESTED PERSON ARE REQUIRED
8 OR PERMITTED TO BE TAKEN PURSUANT TO SECTION 160.10 OF THE CRIMINAL
9 PROCEDURE LAW, OR A PERSON ADJUDICATED AND SENTENCED AS A YOUTHFUL
10 OFFENDER PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCE-
11 DURE LAW FOR ANY SUCH OFFENSE, OR A PERSON WHO IS REQUIRED TO REGISTER
12 AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW.

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

15 3. (A) Any designated offender [subsequent to conviction and sentenc-
16 ing for a crime specified in subdivision seven of section nine hundred
17 ninety-five of this article,] shall be required to provide a sample
18 appropriate for DNA testing to determine identification characteristics
19 specific to such person and to be included in a state DNA identification
20 index pursuant to this article, UNLESS SUCH DESIGNATED OFFENDER HAS
21 PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDENTIFI-
22 CATION INDEX.

23 (B) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE COLLECTION OF A DNA
24 SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT OFFICIAL, STATE OR LOCAL
25 CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR
26 OTHER LAW ENFORCEMENT OFFICIAL OR PUBLIC SERVANT WHO HAS BEEN NOTIFIED
27 BY THE DIVISION THAT THE DESIGNATED OFFENDER HAS NOT PROVIDED A DNA
28 SAMPLE.

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

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

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

44 S 3. Section 995-f of the executive law, as amended by chapter 560 of
45 the laws of 1999, is amended to read as follows:

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

55 2. ANY DESIGNATED OFFENDER SUBJECT TO PROBATION OR PAROLE SUPERVISION
56 WHO IS REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING PURSUANT

1 TO THE PROVISIONS OF THIS ARTICLE, AND WHO FAILS TO PROVIDE SUCH SAMPLE
2 UPON NOTIFICATION BY A COURT, STATE OR LOCAL CORRECTION OFFICIAL OR
3 EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, OR OTHER LAW ENFORCEMENT
4 OFFICIAL OR PUBLIC SERVANT OF HIS OR HER OBLIGATION TO PROVIDE SUCH A
5 SAMPLE, SHALL BE DEEMED TO VIOLATE THE CONDITIONS OF PROBATION OR
6 PAROLE, AND SUCH VIOLATION SHALL BE A BASIS FOR THE REVOCATION OF
7 PROBATION OR PAROLE IN ACCORDANCE WITH ARTICLE FOUR HUNDRED TEN OF THE
8 CRIMINAL PROCEDURE LAW OR SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAP-
9 TER. FOR PURPOSES OF THIS ARTICLE, "PAROLE SUPERVISION" SHALL BE DEEMED
10 TO INCLUDE POST-RELEASE SUPERVISION.

11 S 4. Subdivision 4 of section 995-c of the executive law, as amended
12 by section 104 of subpart B of part C of chapter 62 of the laws of 2011,
13 is amended to read as follows:

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

24 S 4-a. Subdivision 9 of section 995-c of the executive law, as amended
25 by chapter 524 of the laws of 2002, is amended to read as follows:

26 9. (a) Upon receipt of notification of a reversal or a vacatur of a
27 conviction, or of the granting of a pardon pursuant to article two-A of
28 this chapter, of an individual whose DNA record has been stored in the
29 state DNA identification index in accordance with this article by the
30 division of criminal justice services, the DNA record shall be expunged
31 from the state DNA identification index, and such individual may apply
32 to the court in which the judgment of conviction was originally entered
33 for an order directing the expungement of any DNA record and any
34 samples, analyses, or other documents relating to the DNA testing of
35 such individual in connection with the investigation or prosecution of
36 the crime which resulted in the conviction that was reversed or vacated
37 or for which the pardon was granted. A copy of such application shall be
38 served on the district attorney and an order directing expungement may
39 be granted if the court finds that all appeals relating to the
40 conviction have been concluded; that such individual will not be
41 retried, or, if a retrial has occurred, the trier of fact has rendered a
42 verdict of complete acquittal, and that expungement will not adversely
43 affect the investigation or prosecution of some other person or persons
44 for the crime. The division shall, by rule or regulation, prescribe
45 procedures to ensure that the DNA record in the state DNA identification
46 index, and any samples, analyses, or other documents relating to such
47 record, whether in the possession of the division, or any law enforce-
48 ment or police agency, or any forensic DNA laboratory, including any
49 duplicates or copies thereof, at the discretion of the possessor there-
50 of, are either destroyed or returned to such individual, or to the
51 attorney who represented him or her at the time such reversal, vacatur
52 or pardon, was granted. The commissioner shall also adopt by rule and
53 regulation a procedure for the expungement in other appropriate circum-
54 stances of DNA records contained in the index.

55 (b) As prescribed in this paragraph, if an individual, either volun-
56 tarily, PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION,

1 or pursuant to a warrant or order of a court, has provided a sample for
2 DNA testing in connection with the investigation, ARREST or prosecution
3 of a crime and (i) no criminal action against the individual relating to
4 such crime was commenced within the period specified by section 30.10 of
5 the criminal procedure law, or (ii) a criminal action was commenced
6 against the individual relating to such crime which resulted in a
7 complete acquittal, or (iii) a criminal action WAS COMMENCED against the
8 individual relating to such crime [resulted in a conviction that was
9 subsequently reversed or vacated, or for which the individual was grant-
10 ed a pardon pursuant to article two-A of this chapter, such individual
11 may apply to the supreme court or the court in which the judgment of
12 conviction was originally entered for an order directing the expungement
13 of any DNA record and any samples, analyses, or other documents relating
14 to the DNA testing of such individual in connection with the investi-
15 gation or prosecution of such crime. A copy of such application shall be
16 served on the district attorney and an order directing expungement may
17 be granted if the court finds that the individual has satisfied the
18 conditions of one of the subparagraphs of this paragraph; that if a
19 judgment of conviction was reversed or vacated, all appeals relating
20 thereto have been concluded and the individual will not be retried, or,
21 if a retrial has occurred, the trier of fact has rendered a verdict of
22 complete acquittal, and that expungement will not adversely affect the
23 investigation or prosecution of some other person or persons for the
24 crime. If an order directing the expungement of any DNA record and any
25 samples, analyses or other documents relating to the DNA testing of such
26 individual is issued] WHICH WAS RESOLVED BY A DISMISSAL, SUCCESSFUL
27 COMPLETION OF A PRE-PROSECUTION DIVERSION PROGRAM OR CONDITIONAL
28 DISCHARGE OR CONVICTION THAT DID NOT REQUIRE DNA COLLECTION PURSUANT TO
29 SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTICLE,
30 THE DNA RECORD SHALL BE EXPUNGED FROM THE STATE DNA IDENTIFICATION
31 INDEX. AN INDIVIDUAL MAY REQUEST EXPUNGEMENT OF ANY DNA RECORD AND ANY
32 SAMPLES, ANALYSES OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH
33 INDIVIDUAL BY PROVIDING THE FOLLOWING MATERIALS TO THE DIVISION OF CRIM-
34 INAL JUSTICE SERVICES:

35 (1) A WRITTEN REQUEST FOR EXPUNGEMENT OF THE SAMPLE AND DNA RECORDS;
36 (2) A CERTIFIED COPY OF THE DISMISSAL, SUCCESSFUL COMPLETION OF A
37 PRE-PROSECUTION DIVERSION PROGRAM OR A CONDITIONAL DISCHARGE OR NON-QUA-
38 LIFYING CONVICTION OR ACQUITTAL; AND

39 (3) A SWORN STATEMENT FROM THE DISTRICT ATTORNEY'S OFFICE WITH JURIS-
40 DICTION OVER THE MATTER THAT: THE CASE WAS DISMISSED; A PRE-PROSECUTION
41 DIVERSION PROGRAM OR CONDITIONAL DISCHARGE, NON-QUALIFYING CONVICTION
42 EXCLUDED FROM DNA COLLECTION PURSUANT TO SECTION NINE HUNDRED
43 NINETY-FIVE OF THIS ARTICLE OR ACQUITTAL OCCURRED; NO QUALIFYING CHARGES
44 AROSE OUT OF THE ARREST; OR NO CRIMINAL ACTION AGAINST THE INDIVIDUAL
45 RELATING TO SUCH CRIME WAS COMMENCED WITHIN THE PERIOD SPECIFIED BY
46 SECTION 30.10 OF THE CRIMINAL PROCEDURE LAW; AND THAT EXPUNGEMENT WILL
47 NOT ADVERSELY AFFECT THE INVESTIGATION OR PROSECUTION OF SOME OTHER
48 PERSON OR PERSONS FOR THE CRIME.

49 (C) IF EXPUNGEMENT IS WARRANTED PURSUANT TO PARAGRAPH (A) OR (B) OF
50 THIS SUBDIVISION, such record and any samples, analyses, or other docu-
51 ments shall, at the discretion of the possessor thereof, be destroyed or
52 returned to such individual or to the attorney who represented him or
53 her IN THE CRIMINAL ACTION OR in connection with the [application for
54 the order of] REQUEST FOR expungement.

55 (D) NO EXPUNGEMENT SHALL BE GRANTED WHERE AN INDIVIDUAL HAS A PRIOR
56 CONVICTION REQUIRING A DNA SAMPLE, OR A PENDING CHARGE FOR WHICH

1 COLLECTION OF A SAMPLE IS AUTHORIZED PURSUANT TO THE PROVISIONS OF PARA-
2 GRAPH (B) OF SUBDIVISION THREE OF THIS SECTION.

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

5 3-A. THE COMMISSION, IN CONSULTATION WITH THE SUBCOMMITTEE ON BIOLOG-
6 ICAL EVIDENCE PRESERVATION, SHALL DEVELOP GUIDELINES RELATING TO THE
7 COLLECTION, PRESERVATION, STORAGE, AND INDEXING OF BIOLOGICAL EVIDENCE
8 BY LAW ENFORCEMENT AGENCIES AND FORENSIC LABORATORIES. SUCH GUIDELINES
9 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE MINIMUM PERIOD OF TIME THAT
10 BIOLOGICAL EVIDENCE OBTAINED FROM CRIME SCENES SHOULD BE RETAINED. AS
11 USED IN THIS SUBDIVISION, THE TERM "BIOLOGICAL EVIDENCE" SHALL MEAN
12 SEMEN, BLOOD, SALIVA, HAIR, SKIN, TISSUE, OR OTHER IDENTIFIED BIOLOGICAL
13 MATERIAL, AND SHALL INCLUDE A SEXUAL ASSAULT FORENSIC EXAMINATION KIT.
14 INITIALLY, THE COMMISSION SHALL DEVELOP SUCH GUIDELINES AS VOLUNTARY
15 BEST PRACTICES. NONCOMPLIANCE WITH SUCH GUIDELINES SHALL NOT BE GROUNDS
16 FOR DISMISSAL OF CHARGES, EXCLUSION OF EVIDENCE, OR ANY OTHER LEGAL
17 RELIEF. THEREAFTER, AND TAKING INTO ACCOUNT THE EXPERIENCE UNDER THE
18 INITIAL GUIDELINES, THE COMMISSION SHALL CONSIDER WHAT MANDATORY RULES
19 SHOULD BE ADOPTED AS TO THE COLLECTION, PRESERVATION, STORAGE, AND
20 INDEXING OF BIOLOGICAL EVIDENCE BY LAW ENFORCEMENT AGENCIES AND FORENSIC
21 LABORATORIES. THE COMMISSION MAY ADOPT SUCH RULES WITHIN ITS EXISTING
22 REGULATORY AUTHORITY; IT MAY RECOMMEND THAT IT OR ANOTHER BODY BE GIVEN
23 EXPANDED REGULATORY AUTHORITY; AND IT MAY MAKE RECOMMENDATIONS FOR STAT-
24 UTORY ADOPTION OF PARTICULAR RULES. IN DEVELOPING SUCH GUIDELINES, RULES
25 AND RECOMMENDATIONS, THE COMMISSION SHALL CONSIDER THE VARYING NEEDS AND
26 RESOURCES OF LAW ENFORCEMENT AGENCIES AND JURISDICTIONS WITHIN THE
27 STATE.

28 S 6. Subdivision 6 of section 120.90 of the criminal procedure law, as
29 amended by chapter 424 of the laws of 1998, is amended to read as
30 follows:

31 6. Before bringing a defendant arrested pursuant to a warrant before
32 the local criminal court in which such warrant is returnable, a police
33 officer must without unnecessary delay perform all fingerprinting and
34 other preliminary police duties required in the particular case. In any
35 case in which the defendant is not brought by a police officer before
36 such court but, following his OR HER arrest in another county for an
37 offense specified in subdivision one of section 160.10, is released by a
38 local criminal court of such other county on his OR HER own recognizance
39 or on bail for his OR HER appearance on a specified date before the
40 local criminal court before which the warrant is returnable, the latter
41 court must, upon arraignment of the defendant before it, direct that he
42 OR SHE be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
43 TAKEN by the appropriate officer or agency, and that he OR SHE appear at
44 an appropriate designated time and place for such purpose.

45 S 7. Section 130.60 of the criminal procedure law, as amended by chap-
46 ter 95 of the laws of 1991, subdivision 1 as amended by chapter 446 of
47 the laws of 1993, is amended to read as follows:

48 S 130.60 Summons; fingerprinting of defendant.

49 1. Upon the arraignment of a defendant whose court attendance has been
50 secured by the issuance and service of a summons, based upon an indict-
51 ment, a prosecutor's information or upon an information, felony
52 complaint or misdemeanor complaint filed by a complainant who is a
53 police officer, the court must, if an offense charged in the accusatory
54 instrument is one specified in subdivision one of section 160.10, direct
55 that the defendant be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR
56 DNA TESTING TAKEN by the appropriate police officer or agency, and that

1 he or she appear at an appropriate designated time and place for such
2 purpose.

3 2. Upon the arraignment of a defendant whose court attendance has been
4 secured by the issuance and service of a summons based upon an informa-
5 tion or misdemeanor complaint filed by a complainant who is not a police
6 officer, and who has not previously been fingerprinted OR FROM WHOM A
7 DNA SAMPLE HAS NOT PREVIOUSLY BEEN TAKEN, the court may, if it finds
8 reasonable cause to believe that the defendant has committed an offense
9 specified in subdivision one of section 160.10, direct that the defend-
10 ant be fingerprinted AND/OR HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
11 TAKEN by the appropriate police officer or agency and that he OR SHE
12 appear at an appropriate designated time and place for such purpose. A
13 defendant whose court appearance has been secured by the issuance and
14 service of a criminal summons based upon a misdemeanor complaint or
15 information filed by a complainant who is not a police officer, must be
16 directed by the court, upon conviction of the defendant, to be finger-
17 printed AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN by the
18 appropriate police officer or agency and the court must also direct that
19 the defendant appear at an appropriate designated time and place for
20 such purpose, if the defendant is convicted of any offense specified in
21 subdivision one of section 160.10.

22 S 8. Subdivision 5 of section 140.20 of the criminal procedure law, as
23 amended by chapter 762 of the laws of 1971, is amended to read as
24 follows:

25 5. Before service of an appearance ticket upon an arrested person
26 pursuant to subdivision two or three, the issuing police officer must,
27 if the offense designated in such appearance ticket is one of those
28 specified in subdivision one of section 160.10, cause such person to be
29 fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN in the
30 same manner as would be required were no appearance ticket to be issued
31 or served.

32 S 9. Subdivision 2 of section 140.27 of the criminal procedure law, as
33 amended by chapter 843 of the laws of 1980, is amended to read as
34 follows:

35 2. Upon arresting a person without a warrant, a peace officer, except
36 as otherwise provided in subdivision three, must without unnecessary
37 delay bring him OR HER or cause him OR HER to be brought before a local
38 criminal court, as provided in section 100.55 and subdivision one of
39 section 140.20, and must without unnecessary delay file or cause to be
40 filed therewith an appropriate accusatory instrument. If the offense
41 which is the subject of the arrest is one of those specified in subdivi-
42 sion one of section 160.10, the arrested person must be fingerprinted
43 [and], photographed AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN
44 as therein provided. In order to execute the required post-arrest func-
45 tions, such arresting peace officer may perform such functions himself
46 OR HERSELF, or he OR SHE may enlist the aid of a police officer for the
47 performance thereof in the manner provided in subdivision one of section
48 140.20.

49 S 10. Section 150.70 of the criminal procedure law, as amended by
50 chapter 762 of the laws of 1971, is amended to read as follows:

51 S 150.70 Appearance ticket; fingerprinting AND DNA ANALYSIS SAMPLE of
52 defendant.

53 Upon the arraignment of a defendant who has not been arrested and
54 whose court attendance has been secured by the issuance and service of
55 an appearance ticket pursuant to subdivision one of section 150.20, the
56 court must, if an offense charged in the accusatory instrument is one

1 specified in subdivision one of section 160.10, direct that the defend-
2 ant be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN
3 by the appropriate police officer or agency, and that he OR SHE appear
4 at an appropriate designated time and place for such purpose.

5 S 11. The section heading of section 160.10 of the criminal procedure
6 law, as amended by chapter 762 of the laws of 1971, is amended and a new
7 subdivision 5 is added to read as follows:

8 Fingerprinting AND DNA ANALYSIS; duties of police with respect there-
9 to.

10 5. (A) WHENEVER FINGERPRINTS ARE REQUIRED TO BE TAKEN PURSUANT TO
11 SUBDIVISION ONE OF THIS SECTION OR PERMITTED TO BE TAKEN PURSUANT TO
12 SUBDIVISION TWO OF THIS SECTION, THE TAKING OF A SAMPLE APPROPRIATE FOR
13 DNA TESTING SHALL BE SIMILARLY REQUIRED OR PERMITTED.

14 (B) THE TAKING OF SAMPLES APPROPRIATE FOR DNA TESTING AS PRESCRIBED IN
15 THIS SECTION SHALL BE IN ACCORDANCE WITH STANDARDS THAT MAY BE ESTAB-
16 LISHED BY RULES AND REGULATIONS OF THE COMMISSIONER OF THE DIVISION OF
17 CRIMINAL JUSTICE SERVICES.

18 (C) "DNA" AS USED IN THIS ARTICLE MEANS DNA AS DEFINED IN SECTION NINE
19 HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW.

20 S 12. Section 160.20 of the criminal procedure law, as amended by
21 chapter 108 of the laws of 1973, is amended to read as follows:

22 S 160.20 Fingerprinting AND DNA ANALYSIS SAMPLE; forwarding of finger-
23 prints AND DNA ANALYSIS SAMPLE.

24 Upon the taking of fingerprints AND A SAMPLE APPROPRIATE FOR DNA TEST-
25 ING of an arrested person or defendant as prescribed in section 160.10,
26 the appropriate police officer or agency must without unnecessary delay
27 forward two copies of such fingerprints to the division of criminal
28 justice services, AND SHALL STORE AND FORWARD SUCH DNA SAMPLE TO A
29 FORENSIC DNA LABORATORY FOR FORENSIC DNA TESTING AND ANALYSIS, AND
30 INCLUSION IN THE STATE DNA IDENTIFICATION INDEX IN ACCORDANCE WITH
31 SUBDIVISION FIVE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE
32 LAW.

33 S 13. Paragraphs (a) and (b) of subdivision 1 of section 160.55 of the
34 criminal procedure law, paragraph (a) as amended by chapter 476 of the
35 laws of 2009 and paragraph (b) as amended by chapter 169 of the laws of
36 1994, are amended to read as follows:

37 (a) every photograph of such person and photographic plate or proof,
38 [and] all palmprints and fingerprints taken or made of such person, AND
39 ALL DNA ANALYSIS SAMPLES AND DNA RECORDS TAKEN pursuant to the
40 provisions of this article in regard to the action or proceeding termi-
41 nated, [and] all duplicates and copies thereof, except a digital finger-
42 print image where authorized pursuant to paragraph (e) of this subdivi-
43 sion, except for the palmprints and fingerprints concerning a
44 disposition of harassment in the second degree as defined in section
45 240.26 of the penal law, committed against a member of the same family
46 or household as the defendant, as defined in subdivision one of section
47 530.11 of this chapter, and determined pursuant to subdivision eight-a
48 of section 170.10 of this title, shall forthwith be, at the discretion
49 of the recipient agency, either destroyed or returned to such person, or
50 to the attorney who represented such person at the time of the termi-
51 nation of the action or proceeding, at the address given by such person
52 or attorney during the action or proceeding, by the division of criminal
53 justice services and by any police department or law enforcement agency
54 having any such photograph, photographic plate or proof, palmprints
55 [or], fingerprints, AND DNA ANALYSIS SAMPLE AND DNA RECORD in its
56 possession or under its control;

1 (b) any police department or law enforcement agency, including the
2 division of criminal justice services, which transmitted or otherwise
3 forwarded to any agency of the United States or of any other state or of
4 any other jurisdiction outside the state of New York copies of any such
5 photographs, photographic plates or proofs, palmprints [and], finger-
6 prints, AND DNA ANALYSIS SAMPLE AND DNA RECORD, shall forthwith formally
7 request in writing that all such copies be destroyed or returned to the
8 police department or law enforcement agency which transmitted or
9 forwarded them, and upon such return such department or agency shall, at
10 its discretion, either destroy or return them as provided herein;

11 S 14. (a) The commission for exoneration review is hereby established
12 on a temporary basis as an independent agency of the state to study and
13 review recent cases in which convicted defendants were subsequently
14 exonerated, whether by DNA evidence or otherwise, to determine why the
15 process failed in each individual case, and to determine whether these
16 cases are indicative of systemic flaws that have led to the conviction
17 and sentencing of innocent people.

18 (b) The governor shall appoint the chair and ten other members of such
19 commission, including one appointed on the recommendation of the chief
20 judge of the court of appeals, one appointed on the recommendation of
21 the speaker of the assembly, one appointed on the recommendation of the
22 temporary president of the senate, one appointed on the recommendation
23 of the minority leader of the senate, and one appointed on the recommen-
24 dation of the minority leader of the assembly. If any vacancy occurs it
25 shall be filled in the manner provided for the original appointment to
26 the vacated seat.

27 (c) No member of the commission shall be disqualified from holding any
28 public office or employment, nor shall he or she forfeit any such office
29 or employment, by reason of his or her appointment pursuant to this
30 section.

31 (d) The commission shall meet as often as its chair, or at least five
32 of its members, shall determine to be necessary. Six members shall
33 constitute a quorum, and except as otherwise provided in this section,
34 affirmative decisions of the commission shall require the concurrence of
35 seven members.

36 (e) The members of the commission shall serve without salary or other
37 compensation, but shall be entitled to receive actual and necessary
38 expenses incurred in the discharge of their duties pursuant to this
39 section.

40 (f) The commission shall review criminal or juvenile cases in which
41 the defendant or respondent was sentenced but subsequently exonerated.
42 The purpose of such review is to consider whether experience in such
43 cases provides useful information about possible reforms that could
44 enhance safeguards, make improvements in the way that law enforcement
45 agencies and the criminal justice system function, and protect against
46 future convictions of innocent persons. Such possible reforms may
47 include but are not limited to the areas of:

48 (1) investigative techniques that led to the arrest, identification,
49 and conviction of the innocent persons;

50 (2) issues relating to false confessions, including whether the
51 recording of interrogations should be mandated;

52 (3) trial processes and procedures that may have contributed to
53 convictions of innocent persons;

54 (4) any conduct of prosecutors, defense counsels, or courts that may
55 have contributed to convictions of innocent persons;

1 (5) issues relating to the provision of counsel to indigent defend-
2 ants, including whether counsel are adequately trained, compensated, and
3 provided with appropriate resources for investigations; and

4 (6) failures in the appellate or post-conviction process that resulted
5 in wrongful convictions not being discovered or corrected at an earlier
6 time.

7 (g) The commissioner of criminal justice services shall identify cases
8 in which convictions were set aside and it appears reasonably likely
9 that the person convicted was innocent of the crimes charged, and it
10 shall submit summaries of such cases to the commission. The commissioner
11 of criminal justice services shall seek to submit at least all such
12 cases in which exoneration resulted from DNA evidence, and all such
13 cases in which there was an exoneration within five years prior to the
14 effective date of this act. The commission of exoneration review shall
15 conduct an initial review of each case submitted by the commissioner of
16 criminal justice services, and may also choose to conduct initial
17 reviews of other cases. As to each case, the commission shall decide
18 whether such case warrants detailed review in that (1) it appears highly
19 likely that the person convicted was actually innocent of the crimes
20 charged, and (2) there appear to be features of the case that may
21 provide useful information without possible reforms.

22 (h) When the commission for exoneration review decides that a case
23 warrants detailed review, the commissioner of criminal justice services
24 shall compile records and other information relating to that case, and
25 may solicit comments or analyses by experts in relevant fields.
26 Notwithstanding any other provision of law, the commissioner of criminal
27 justice services may request and shall receive from any court, depart-
28 ment, division, board, bureau, commission or other agency of the state
29 or political subdivision thereof, or any public authority, such assist-
30 ance, records and data as will enable it effectively to carry out its
31 duties. The commissioner of criminal justice services shall submit such
32 records, information, comments, and analyses to the commission of exon-
33 eration review. Confidential and sensitive material, such as certain
34 information relating to victims and confidential informants, may be
35 redacted as appropriate. The commission for exoneration review may
36 conduct its detailed review on the basis of the materials submitted, or
37 it may request the commissioner of criminal justice services to compile
38 and submit further specified kinds of information about the case.

39 (i) The commission for exoneration review shall make available an
40 annual report detailing, at a minimum, the number of cases submitted by
41 the commissioner of criminal justice services, the number of cases
42 chosen for detailed review, and the number of detailed reviews
43 completed. The report shall include any findings of fact and recommenda-
44 tions for reform that may have been adopted by the commission since its
45 last report. Recommendations that are not adopted by the commission but
46 obtain the concurrence of at least four members shall be included in the
47 annual report as proposals for consideration. In addition to the annual
48 report, the commission may decide to issue other reports containing
49 findings of fact and/or recommendations for reform. All reports issued
50 by the commission shall be made available to the public and delivered to
51 the governor, the chief judge of the court of appeals, the temporary
52 president of the senate, and the speaker of the assembly.

53 S 15. Paragraph (d) of subdivision 1 of section 160.50 of the criminal
54 procedure law, as amended by section 73 of subpart B of part C of chap-
55 ter 62 of the laws of 2011, is amended to read as follows:

1 (d) such records shall be made available to the person accused or to
2 such person's designated agent, and shall be made available to (i) a
3 prosecutor in any proceeding in which the accused has moved for an order
4 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
5 enforcement agency upon ex parte motion in any superior court, if such
6 agency demonstrates to the satisfaction of the court that justice
7 requires that such records be made available to it, or (iii) any state
8 or local officer or agency with responsibility for the issuance of
9 licenses to possess guns, when the accused has made application for such
10 a license, or (iv) the New York state department of corrections and
11 community supervision when the accused is on parole supervision as a
12 result of conditional release or a parole release granted by the New
13 York state board of parole, and the arrest which is the subject of the
14 inquiry is one which occurred while the accused was under such super-
15 vision or (v) any prospective employer of a police officer or peace
16 officer as those terms are defined in subdivisions thirty-three and
17 thirty-four of section 1.20 of this chapter, in relation to an applica-
18 tion for employment as a police officer or peace officer; provided,
19 however, that every person who is an applicant for the position of
20 police officer or peace officer shall be furnished with a copy of all
21 records obtained under this paragraph and afforded an opportunity to
22 make an explanation thereto, or (vi) the probation department responsi-
23 ble for supervision of the accused when the arrest which is the subject
24 of the inquiry is one which occurred while the accused was under such
25 supervision, OR (VII) THE COMMISSION FOR EXONERATION REVIEW; and

26 S 16. Subdivision 4 of section 190.25 of the criminal procedure law is
27 amended by adding a new paragraph (c) to read as follows:

28 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL GRAND JURY TESTI-
29 MONY, EVIDENCE, DECISIONS, RESULTS AND OTHER MATTERS ATTENDING A GRAND
30 JURY PROCEEDING SHALL BE DISCLOSED TO THE COMMISSION FOR EXONERATION
31 REVIEW, UPON ITS REQUEST, IN CONNECTION WITH AN INQUIRY BY SUCH COMMIS-
32 SION INTO A WRONGFUL CONVICTION RELATED TO SUCH GRAND JURY PROCEEDING.

33 S 17. Section 240.40 of the criminal procedure law is amended by
34 adding a new subdivision 1-a to read as follows:

35 1-A. UPON MOTION OF A DEFENDANT AGAINST WHOM AN INDICTMENT OR SUPERIOR
36 COURT INFORMATION IS PENDING, THE COURT IN WHICH SUCH ACCUSATORY INSTRU-
37 MENT IS PENDING MAY ORDER A COMPARISON OF A DNA PROFILE DERIVED FROM
38 EVIDENCE RECOVERED BY LAW ENFORCEMENT TO THE DEFENDANT'S DNA OR TO A DNA
39 DATABANK UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERI-
40 AL TO THE PREPARATION OF A DEFENSE, AND THAT THE REQUEST IS REASONABLE,
41 PROVIDED THAT THE COURT SHALL NOT DO SO IF IT IS SATISFIED THAT THE
42 PEOPLE HAVE SHOWN GOOD CAUSE WHY SUCH AN ORDER SHOULD NOT BE ISSUED. IF
43 THE MOTION OF THE DEFENDANT IS FOR COMPARISON OF A GIVEN PROFILE DERIVED
44 FROM DNA EVIDENCE TO A DNA DATABANK, THE COURT MAY DIRECT A STATE OR
45 LOCAL PUBLIC FORENSIC LABORATORY TO ARRANGE FOR SUCH PROFILE TO BE
46 ENTERED INTO AND SEARCHED AGAINST LOCAL, STATE, AND FEDERAL DNA DATA-
47 BANKS TO THE EXTENT, AND IN A MANNER, CONSISTENT WITH FEDERAL AND STATE
48 LAWS AND REGULATIONS GOVERNING SUCH DATABANKS, INCLUDING REQUIREMENTS AS
49 TO HOW PROFILES FOR FORENSIC DNA ANALYSIS MUST BE GENERATED, AND
50 REQUIREMENTS FOR SEARCHING AND STORAGE IN THE DATABANK IN QUESTION. IF
51 SUCH A DATABANK SEARCH REVEALS THAT THE DNA DERIVED FROM EVIDENCE RECOV-
52 ERED BY LAW ENFORCEMENT MATCHES A PROFILE IN THE DATABANK, THE DEFENDANT
53 SHALL BE NOTIFIED OF THE FACT THAT THERE WAS A MATCH WITH SOME SUCH
54 PROFILE, AND THE COURT SHALL GRANT REASONABLE ADJOURNMENTS SO AS TO
55 ALLOW THE PEOPLE TO PURSUE APPROPRIATE INVESTIGATIVE STEPS. NOTHING IN

1 THIS ARTICLE SHALL BE DEEMED TO ALLOW A DEFENDANT TO OBTAIN AN ORDER
2 REQUIRING COLLECTION OF A DNA SAMPLE FROM ANY OTHER PERSON.

3 S 18. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
4 nal procedure law, as amended by chapter 138 of the laws of 2004, is
5 amended and a new paragraph (c) is added to read as follows:

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

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

44 S 19. Section 65.10 of the penal law is amended by adding a new subdi-
45 vision 4-b to read as follows:

46 4-B. MANDATORY CONDITION FOR DNA DESIGNATED OFFENDERS. WHEN IMPOSING A
47 SENTENCE OF PROBATION OR CONDITIONAL DISCHARGE UPON A PERSON CONVICTED
48 OF AN OFFENSE DEFINED IN SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINE-
49 TY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL REQUIRE, AS A MANDATORY
50 CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PROVIDE A DNA SAMPLE AS
51 REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW.

52 S 20. Paragraph (b) of subdivision 3 and paragraph (b) of subdivision
53 5 of section 8-b of the court of claims act, as added by chapter 1009 of
54 the laws of 1984, are amended to read as follows:

55 (b) (i) he has been pardoned upon the ground of innocence of the crime
56 or crimes for which he was sentenced and which are the grounds for the

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

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

49 S 21. This act shall take effect November 1, 2011; provided that:

50 (a) the amendments to article 49-B of the executive law, made by
51 sections one and two of this act, and the amendments to the criminal
52 procedure law, made by sections six, seven, eight, nine, ten, eleven,
53 twelve and thirteen of this act, shall apply to designated offenses
54 committed on or after the effective date of this act; and to designated
55 offenses committed prior to such effective date where either the crimi-
56 nal proceeding arising out of the commission of such offense is pending

1 on the effective date of this act or the service of the sentence imposed
2 upon conviction of the designated offense has not been completed prior
3 to such effective date; and to any person adjudicated a youthful offen-
4 der for the commission of a designated offense committed prior to the
5 effective date of this act where service of the sentence imposed upon
6 adjudication as a youthful offender has not been completed prior to such
7 effective date; and to any person required to register as a sex offender
8 pursuant to article 6-C of the correction law on or after the effective
9 date of this act; and
10 (b) sections fourteen, fifteen and sixteen of this act shall take
11 effect April 1, 2012, and shall expire and be deemed repealed September
12 1, 2015.