

4224--B

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to establishing the minimum period of time that forensic samples should be retained by investigating authorities; in relation to appointments to the commission on forensic science; to amend the judiciary law, in relation to creating the state commission for the integrity of the criminal justice system, as an independent agency, and providing for such commission's powers and duties; to amend the criminal procedure law, in relation to special fictitious name indictments; to amend the executive law, in relation to requests for certain DNA test comparisons; to amend the criminal procedure law, in relation to forensic DNA testing; to amend the court of claims act, in relation to claims for unjust conviction and imprisonment; to amend the executive law and the criminal procedure law, in relation to DNA testing, confidentiality, data collection and record keeping; to amend the state finance law, in relation to establishing the DNA evidence fund; in relation to establishing the innocence research project program; to amend the criminal procedure law, in relation to electronic recordings of interrogations; and to amend the executive law, in relation to defining a designated offender

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

1 Section 1. Subparagraph (ix) of paragraph (b) of subdivision 9 of
2 section 995-b of the executive law, as added by chapter 737 of the laws
3 of 1994, is amended and a new paragraph (c) is added to read as follows:

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

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(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law[.]; AND

(C) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH, DETERMINE, CONSISTENT WITH THIS ARTICLE, THE APPROPRIATE MINIMUM PERIOD OF TIME THAT FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL, OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES, SHOULD BE RETAINED BY INVESTIGATING AUTHORITIES AND THE TIME OR SPECIFIED EVENT OR EVENTS, IF ANY, AFTER WHICH, CONSISTENT WITH THE INTEREST OF ALL PERSONS AND LAW ENFORCEMENT, SUCH SAMPLES MAY BE DESTROYED, AND DETERMINE STANDARDS FOR THE CATALOGING AND MAINTAINING RECORDS OF SUCH SAMPLES. PENDING THE PROMULGATION OF A POLICY ADDRESSING THE ISSUES SET FORTH IN THIS PARAGRAPH, THE COMMISSION MAY ADOPT AN INTERIM POLICY MANDATING THE PRESERVATION BY INVESTIGATING AUTHORITIES OF FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES.

S 2. Subdivision 1 of section 995-a of the executive law, as added by chapter 737 of the laws of 1994, is amended to read as follows:

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following [fourteen] SIXTEEN members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) [twelve] FOURTEEN members appointed by the governor.

S 3. Paragraph (i) of subdivision 2 of section 995-a of the executive law, as added by chapter 737 of the laws of 1994, is amended, paragraph (j) is relettered paragraph (k) and a new paragraph (j) is added to read as follows:

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; [and]

(J) TWO MEMBERS SHALL BE JOINTLY APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY: ONE SUCH PERSON SHALL BE A CRIME VICTIMS ADVOCATE, AND ONE SUCH PERSON SHALL BE AN EXPERT IN BIOMEDICAL ETHICS; AND

S 4. Article 23 and sections 860 and 861 of the judiciary law, as renumbered by chapter 840 of the laws of 1983, are renumbered article 24 and sections 1000 and 1001 and a new article 23 is added to read as follows:

ARTICLE 23

STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SECTION 900. DEFINITION.

901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM.

902. PURPOSE AND CONDUCT OF THE COMMISSION.

903. POWERS AND DUTIES.

904. USE OF REPORTS.

S 900. DEFINITION. AS USED IN THIS ARTICLE, "COMMISSION" SHALL MEAN THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ESTABLISHED PURSUANT TO SECTION NINE HUNDRED ONE OF THIS ARTICLE.

1 S 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE
2 SYSTEM. 1. THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL
3 JUSTICE SYSTEM IS HEREBY ESTABLISHED AS AN INDEPENDENT AGENCY OF THE
4 STATE. THE COMMISSION SHALL CONSIST OF TEN MEMBERS AS FOLLOWS:

5 (A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES;

6 (B) FOUR MEMBERS APPOINTED BY THE GOVERNOR, OF WHOM:

7 (I) ONE SHALL BE A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY,

8 (II) ONE SHALL BE A REPRESENTATIVE OF THE PUBLIC CRIMINAL DEFENSE BAR
9 OR PRIVATE CRIMINAL DEFENSE BAR WHO SHALL BE APPOINTED UPON THE RECOM-
10 MENDATION OF AN ORGANIZATION WITH MORE THAN SEVEN HUNDRED FIFTY DUES
11 PAYING MEMBERS REPRESENTING SUCH PUBLIC OR PRIVATE DEFENSE SERVICES,

12 (III) ONE SHALL BE A REPRESENTATIVE OF VICTIMS RIGHTS ADVOCACY OR
13 SERVICES ORGANIZATIONS, AND

14 (IV) ONE SHALL BE A REPRESENTATIVE OF THE FORENSIC SCIENCE FIELD;

15 (C) A MEMBER APPOINTED BY THE ATTORNEY GENERAL WHO SHALL BE A REPRE-
16 SENTATIVE OF PROSECUTION SERVICES;

17 (D) TWO MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS,
18 OF WHOM:

19 (I) ONE SHALL BE A RETIRED JUDGE OR JUSTICE OF A NEW YORK STATE COURT
20 OF RECORD, AND

21 (II) ONE SHALL BE A PROFESSOR OF LAW OR A RETIRED FULL TIME PROFESSOR
22 OF LAW WHO HAS TAUGHT LAW SCHOOL COURSES IN CRIMINAL LAW, CRIMINAL
23 PROCEDURE, CONSTITUTIONAL LAW, OR EVIDENCE AT AN ACCREDITED POST-GRADU-
24 ATE COLLEGE IN NEW YORK STATE;

25 (E) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, WHO
26 SHALL BE A MEMBER OF THE PUBLIC-AT-LARGE; AND

27 (F) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY, WHO SHALL BE
28 A MEMBER OF THE PUBLIC-AT-LARGE.

29 2. THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL SERVE AN INDEF-
30 INITE TERM. THE MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE A TERM OF
31 FOUR YEARS. THE RETIRED JUDGE OR JUSTICE APPOINTED BY THE CHIEF JUDGE
32 SHALL SERVE A TERM OF THREE YEARS. THE PROFESSOR OF LAW OR RETIRED
33 PROFESSOR OF LAW APPOINTED BY THE CHIEF JUDGE SHALL SERVE A TERM OF TWO
34 YEARS. THE MEMBERS APPOINTED BY THE ATTORNEY GENERAL, THE TEMPORARY
35 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH SERVE
36 A TERM OF TWO YEARS. EACH OF THE MEMBERS OF THE COMMISSION, EXCEPT THE
37 COMMISSIONER OF CRIMINAL JUSTICE SERVICES, APPOINTED THEREAFTER SHALL
38 SERVE A TERM OF FIVE YEARS. EVERY VACANCY OCCURRING PRIOR TO THE EXPI-
39 RATION OF A MEMBER'S TERM SHALL BE FILLED FOR THE REMAINDER OF SUCH TERM
40 IN THE MANNER PROVIDED FOR THE ORIGINAL APPOINTMENT TO SUCH TERM. UPON
41 THE EXPIRATION OF THE TERM OF A MEMBER OF THE COMMISSION, SUCH MEMBER
42 SHALL CONTINUE TO SERVE UNTIL HIS OR HER SUCCESSOR IS APPOINTED.

43 3. THE COMMISSION SHALL ELECT A CHAIR FROM AMONGST ITS MEMBERS BY A
44 MAJORITY VOTE OF THE MEMBERS THEREOF.

45 4. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY
46 PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE
47 OR EMPLOYMENT, BY REASON OF HIS OR HER APPOINTMENT PURSUANT TO THIS
48 SECTION, AND THE MEMBERS OF THE COMMISSION SHALL BE REQUIRED TO TAKE AND
49 FILE OATHS OF OFFICE BEFORE SERVING ON THE COMMISSION.

50 5. THE COMMISSION SHALL MEET AT LEAST FOUR TIMES EACH YEAR AT PREDE-
51 TERMINED TIMES AND LOCATIONS ANNOUNCED IN ADVANCE, AND AT SUCH OTHER
52 TIMES AS THE CHAIR OF THE COMMISSION OR FOUR OR MORE MEMBERS SHALL
53 DETERMINE TO BE NECESSARY.

54 6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE
55 COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED

1 IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX
2 MEMBERS OF THE COMMISSION SHALL BE NECESSARY.

3 7. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER
4 COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY
5 EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES PURSUANT TO THIS
6 ARTICLE.

7 S 902. PURPOSE AND CONDUCT OF THE COMMISSION. THE COMMISSION SHALL
8 REVIEW ANY CRIMINAL OR JUVENILE CASE INVOLVING A WRONGFUL CONVICTION AND
9 RECOMMEND REFORMS TO LESSEN THE LIKELIHOOD OF A SIMILAR WRONGFUL
10 CONVICTION OCCURRING IN THE FUTURE.

11 WHENEVER A PERSON WHO HAS BEEN CONVICTED OF A CRIME OR ADJUDICATED A
12 YOUTHFUL OFFENDER OR JUVENILE DELINQUENT IS SUBSEQUENTLY DETERMINED TO
13 BE INNOCENT OF SUCH CRIME OR OFFENSE AND EXONERATED, THE COMMISSION
14 SHALL CONDUCT AN INVESTIGATION, HOLD HEARINGS ON AND MAKE FINDINGS OF
15 FACT REGARDING THE WRONGFUL CONVICTION IN ORDER TO DETERMINE THE CAUSE
16 OR CAUSES OF THE WRONGFUL CONVICTION.

17 UPON THE COMPLETION OF SUCH PROCESS, THE COMMISSION, WITHIN SIXTY
18 DAYS, SHALL ISSUE A PRELIMINARY WRITTEN REPORT OF ITS FINDINGS OF FACT
19 AND CONCLUSIONS, AND ANY RECOMMENDATIONS TO PREVENT WRONGFUL CONVICTIONS
20 FROM OCCURRING UNDER SIMILAR CIRCUMSTANCES IN THE FUTURE. WITHIN ONE
21 HUNDRED TWENTY DAYS AFTER ISSUING SUCH PRELIMINARY REPORT, THE COMMISS-
22 SION SHALL ISSUE ITS REPORT AND RECOMMENDATIONS CONCERNING THE MATTER.
23 SUCH REPORT AND RECOMMENDATIONS SHALL BE MADE AVAILABLE TO THE PUBLIC,
24 AND SHALL BE DELIVERED TO THE GOVERNOR, ATTORNEY GENERAL, CHIEF JUDGE OF
25 THE COURT OF APPEALS, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE
26 ASSEMBLY, AND TO ANY GOVERNMENTAL UNIT OR AGENCY THAT THE COMMISSION
27 FINDS MAY HAVE BEEN INVOLVED IN THE INVESTIGATION OR ADJUDICATION OF THE
28 WRONGFUL CONVICTION. THE COMMISSION SHALL ALSO MAKE AVAILABLE AN ANNUAL
29 REPORT DETAILING, AT A MINIMUM, THE NUMBER OF CASES ACCEPTED FOR FORMAL
30 AND INFORMAL INVESTIGATION, THE NUMBER OF COMPLETED INVESTIGATIONS AND
31 THE STATUS OF ON-GOING OR PENDING INVESTIGATIONS.

32 S 903. POWERS AND DUTIES. THE COMMISSION SHALL HAVE THE POWERS AND
33 DUTIES TO:

34 1. ESTABLISH ITS OWN REASONABLE RULES AND PROCEDURES CONCERNING THE
35 CONDUCT OF ITS MEETINGS AND OTHER AFFAIRS RELATED TO IMPLEMENTING THE
36 PROVISIONS OF THIS ARTICLE;

37 2. EMPLOY AND REMOVE SUCH OFFICERS, INVESTIGATORS AND EMPLOYEES AS IT
38 MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS POWERS AND DUTIES PURSUANT
39 TO THIS ARTICLE, AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE
40 AVAILABLE THEREFOR;

41 3. CONDUCT INVESTIGATIONS AND HEARINGS, ADMINISTER OATHS OR AFFIRMA-
42 TIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER
43 OATH OR AFFIRMATION, REQUIRE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS
44 OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN INVESTI-
45 GATION, AND MAY DESIGNATE ANY OF ITS MEMBERS, OFFICERS OR INVESTIGATORS
46 TO EXERCISE ANY SUCH POWERS; PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVI-
47 SION SHALL AUTHORIZE THE ISSUANCE OF A SUBPOENA OR COMPELLED QUESTIONING
48 OF THE TRIAL COURT JUDGE OR ANY APPELLATE COURT JUDGE CONCERNING THE
49 JUDGE'S MENTAL PROCESSES IN ARRIVING AT ANY DECISION IN A CASE;

50 4. REQUEST AND RECEIVE FROM ANY COURT, DEPARTMENT, DIVISION, BOARD,
51 BUREAU, COMMISSION OR OTHER AGENCY OF THE STATE OR A POLITICAL SUBDIVI-
52 SION THEREOF OR ANY PUBLIC AUTHORITY SUCH ASSISTANCE, INFORMATION,
53 RECORDS AND DATA AS WILL ENABLE IT TO PROPERLY CARRY OUT ITS POWERS AND
54 DUTIES;

55 5. ISSUE PRELIMINARY REPORTS ON ANY INVESTIGATION CONDUCTED PURSUANT
56 TO THIS ARTICLE, WHICH PRELIMINARY REPORTS SHALL INCLUDE FINDINGS OF

1 FACT AND RECOMMENDATIONS, AND INVITE ANY PARTY DIRECTLY INVOLVED IN THE
2 WRONGFUL CONVICTION, WHICH IS THE SUBJECT OF THE REPORT, TO SUBMIT A
3 REPLY WITHIN SIXTY DAYS TO THE COMMISSION CONCERNING THE FINDINGS OF
4 FACT AND RECOMMENDATIONS IN THE REPORT. ANY SUCH REPLY SHALL BE MADE
5 AVAILABLE BY THE COMMISSION, TOGETHER WITH ANY RESPONSE BY THE COMMISS-
6 SION THERETO, TO THE PARTIES LISTED IN SECTION NINE HUNDRED TWO OF THIS
7 ARTICLE AS PART OF THE COMMISSION'S REPORT AND RECOMMENDATIONS CONCERN-
8 ING THE MATTER; AND

9 6. DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT THE
10 PROVISIONS OF THIS ARTICLE.

11 S 904. USE OF REPORTS. NO PRELIMINARY REPORT, REPORT OR PORTION THERE-
12 OF ISSUED PURSUANT TO THIS ARTICLE SHALL BE ADMITTED INTO EVIDENCE OR
13 USED IN ANY CIVIL OR CRIMINAL CAUSE OF ACTION RELATING TO A MATTER WHICH
14 IS THE SUBJECT OF SUCH REPORT.

15 S 5. Section 1.20 of the criminal procedure law is amended by adding a
16 new subdivision 44 to read as follows:

17 44. "SPECIAL FICTITIOUS NAME INDICTMENT" MEANS AN INDICTMENT OF A
18 PERSON WHOSE NAME IS UNKNOWN BUT WHOSE IDENTITY IS ESTABLISHED TO THE
19 SATISFACTION OF A GRAND JURY PURSUANT TO SUBDIVISION ONE OF SECTION
20 190.65 OF THIS CHAPTER BY MEANS OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA)
21 TESTING OF EVIDENCE. THE CAPTION OF A SPECIAL FICTITIOUS NAME INDICTMENT
22 SHALL INCLUDE A FICTITIOUS NAME, SUCH AS "JOHN DOE" OR "JANE DOE", IN
23 PLACE OF THE NAME OF THE DEFENDANT WHOSE TRUE NAME IS UNKNOWN.

24 S 6. Subdivision 3 of section 190.65 of the criminal procedure law is
25 amended to read as follows:

26 3. Upon voting to indict a person, a grand jury must, through its
27 foreman or acting foreman, file an indictment with the court by which it
28 was impaneled. WHEN THE NAME OF THE INDICTED PERSON IS UNKNOWN BUT HIS
29 OR HER IDENTITY IS ESTABLISHED TO THE SATISFACTION OF THE GRAND JURY
30 PURSUANT TO SUBDIVISION ONE OF THIS SECTION BY MEANS OF FORENSIC DEOXY-
31 RIBONUCLEIC ACID (DNA) TESTING OF EVIDENCE, THEN SUCH INDICTMENT SHALL
32 BE FILED BY THE GRAND JURY WITH SUCH COURT AS A SPECIAL FICTITIOUS NAME
33 INDICTMENT. THE AUTHORITY TO FILE A SPECIAL FICTITIOUS NAME INDICTMENT
34 PURSUANT TO THIS SUBDIVISION SHALL BE IN ADDITION TO ANY OTHER AUTHORITY
35 IN LAW FOR THE FILING OF AN INDICTMENT WHEN THE NAME OF AN INDICTED
36 PERSON IS UNKNOWN.

37 S 7. Section 995-c of the executive law is amended by adding a new
38 subdivision 10 to read as follows:

39 10. A SUPERIOR COURT, IN RESPONSE TO A MOTION FOR SUCH COMPARISON BY A
40 DEFENDANT, MAY ORDER THAT DNA INFORMATION FROM A CRIME SCENE SAMPLE OR
41 SAMPLES AND/OR FINGERPRINTS OR DNA INFORMATION OBTAINED IN THE COURSE OF
42 THE INVESTIGATION OF AN ALLEGED CRIME BE CHECKED AGAINST THE DNA RECORDS
43 MAINTAINED BY OR AVAILABLE THROUGH THE STATE DNA IDENTIFICATION INDEX
44 ESTABLISHED PURSUANT TO THIS SECTION AND THE NATIONAL DNA INDEX SYSTEM,
45 AND AGAINST THE FINGERPRINT RECORDS MAINTAINED BY OR AVAILABLE THROUGH
46 THE STATE FINGERPRINT RECORD DATABASE ESTABLISHED PURSUANT TO SUBDIVI-
47 SION SEVEN OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS CHAPTER AND THE
48 NATIONAL FINGERPRINT IDENTIFICATION SYSTEM, AND THAT THE RESULTS OF SUCH
49 CHECK OR CHECKS BE DISCLOSED TO SUCH DEFENDANT AND TO THE PROSECUTOR
50 WHOSE JURISDICTION INCLUDES THE LOCATION OF THE ALLEGED COMMISSION OF
51 SUCH CRIME, UPON A SHOWING BY THE DEFENDANT THAT SUCH AN ANALYSIS MAY BE
52 MATERIAL TO HIS OR HER DEFENSE AND THAT THE REQUEST IS REASONABLE.

53 S 8. Paragraph (a) of subdivision 1-a of section 440.30 of the crimi-
54 nal procedure law, as amended by chapter 138 of the laws of 2004, is
55 amended to read as follows:

1 (a) Where the defendant's motion requests the performance of a foren-
2 sic DNA test on specified evidence, and upon the court's determination
3 that any evidence containing deoxyribonucleic acid ("DNA") was secured
4 in connection with the INVESTIGATION OR trial resulting in the judgment,
5 the court shall grant the application for forensic DNA testing of such
6 evidence upon its determination that if a DNA test had been conducted on
7 such evidence, and if the results had been AVAILABLE TO THE DEFENDANT,
8 OR THE RESULTS HAD BEEN admitted in the trial resulting in the judgment,
9 there exists a reasonable probability that the DISPOSITION OR verdict
10 would have been more favorable to the defendant.

11 S 9. Subdivisions 3 and 5 of section 8-b of the court of claims act,
12 as added by chapter 1009 of the laws of 1984, are amended to read as
13 follows:

14 3. In order to present the claim for unjust conviction and imprison-
15 ment, claimant must establish by documentary evidence that:

16 (a) he has been convicted of one or more felonies or misdemeanors
17 against the state and subsequently sentenced to a term of imprisonment,
18 and has served all or any part of the sentence; and

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

46 (c) his claim is not time-barred by the provisions of subdivision
47 seven of this section.

48 5. In order to obtain a judgment in his favor, claimant must prove by
49 clear and convincing evidence that:

50 (a) he has been convicted of one or more felonies or misdemeanors
51 against the state and subsequently sentenced to a term of imprisonment,
52 and has served all or any part of the sentence; and

53 (b) (i) he has been pardoned upon the ground of innocence of the crime
54 or crimes for which he was sentenced and which are the grounds for the
55 complaint; or (ii) his judgment of conviction was reversed or vacated,
56 and the accusatory instrument dismissed or, if a new trial was ordered,

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

24 (c) he did not commit any of the acts charged in the accusatory
25 instrument or his acts or omissions charged in the accusatory instrument
26 did not constitute a felony or misdemeanor against the state, PROVIDED
27 THAT, WHERE ONE INDICTMENT CONTAINS MULTIPLE COUNTS ARISING FROM SEPA-
28 RATE COMPLAINTS OR INCIDENTS, THE COURT SHALL CONSIDER ANY CLAIM RELATED
29 TO SPECIFIED COUNTS IN THE INDICTMENT ARISING OUT OF ONLY ONE OF THE
30 COMPLAINTS OR INCIDENTS; and

31 (d) he did not by his own conduct cause or bring about his conviction.
32 S 10. Section 995-b of the executive law is amended by adding a new
33 subdivision 14 to read as follows:

34 14. THE COMMISSION SHALL REVIEW THE CONFIDENTIALITY SAFEGUARDS WHICH
35 ARE MAINTAINED WITH RESPECT TO DNA SAMPLES BEFORE AND AFTER INFORMATION
36 FROM SUCH SAMPLES IS ENCODED INTO THE STATE DNA IDENTIFICATION INDEX AND
37 SHALL DETERMINE WHETHER ANY ADDITIONAL CONFIDENTIALITY SAFEGUARDS ARE
38 NECESSARY WITH RESPECT TO SUCH SAMPLES. THE COMMISSION SHALL ALSO ISSUE
39 A REPORT TO THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE
40 ASSEMBLY WHICH DESCRIBES HOW SUCH SAMPLES ARE RETAINED AND THE REASONS
41 FOR MAINTAINING SUCH SAMPLES, FOLLOWING THE ENCODING OF INFORMATION FROM
42 SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX. SUCH REPORT SHALL
43 ALSO RECOMMEND WHETHER A PROGRAM TO DESTROY ANY SUCH SAMPLES, FOLLOWING
44 THE ENCODING OF INFORMATION FROM SUCH SAMPLES INTO THE STATE DNA IDEN-
45 TIFICATION INDEX, SHOULD BE INITIATED OR WHETHER, ALTERNATIVELY, SUCH
46 SAMPLES SHALL CONTINUE TO BE MAINTAINED.

47 S 11. Subdivision 2 of section 995-c of the executive law, as added by
48 chapter 737 of the laws of 1994, is amended to read as follows:

49 2. (A) Following the review and approval of the plan by the DNA
50 subcommittee and the commission and the filing of such plan with the
51 speaker of the assembly and the temporary president of the senate, the
52 commissioner of criminal justice services is hereby authorized to estab-
53 lish a computerized state DNA identification index pursuant to the
54 provisions of this article. NO OTHER DNA IDENTIFICATION INDEX OR COMPI-
55 LATION OF DNA IDENTIFICATION PROFILES MAY BE MAINTAINED IN THIS STATE
56 PROVIDED, HOWEVER, THAT THIS PROHIBITION SHALL NOT BE INTERPRETED TO

1 PROHIBIT ANY SUCH INDEX OR COMPILATION OF DNA INFORMATION OBTAINED FROM
2 CRIME SCENE SAMPLES OR CONCERNING MISSING PERSONS.

3 (B) IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION AND THIS SUBDI-
4 VISION, AND IN A MANNER CONSISTENT WITH THIS ARTICLE, THE COMMISSION MAY
5 AUTHORIZE THE INCLUSION OF DNA RECORDS DERIVED FROM FORENSIC EXAMINATION
6 OF CRIME SCENES IN THE STATE DNA IDENTIFICATION INDEX.

7 S 12. Paragraph (b) of subdivision 9 of section 995-c of the execu-
8 tive law, as added by chapter 524 of the laws of 2002, is amended and
9 two new paragraphs (c) and (d) are added to read as follows:

10 (b) As prescribed in this paragraph, if an individual, either volun-
11 tarily or pursuant to a warrant or order of a court, has provided a
12 sample for DNA testing in connection with the investigation or prose-
13 cution of a crime and (i) no criminal action against the individual
14 relating to such crime was commenced within the period specified by
15 section 30.10 of the criminal procedure law, or (ii) a criminal action
16 was commenced against the individual relating to such crime which
17 resulted in a complete acquittal, OR A DISMISSAL AND THE MATTER WILL NOT
18 BE TRIED OR RETRIED, or (iii) a criminal action against the individual
19 relating to such crime resulted in a conviction that was subsequently
20 reversed or vacated, or for which the individual was granted a pardon
21 pursuant to article two-A of this chapter, such individual may apply to
22 the supreme court or the court in which the judgment of conviction was
23 originally entered for an order directing the expungement of any DNA
24 record and any samples, analyses, or other documents relating to the DNA
25 testing of such individual in connection with the investigation or pros-
26 ecution of such crime. A copy of such application shall be served on the
27 district attorney and an order directing expungement may be granted if
28 the court finds that the individual has satisfied the conditions of one
29 of the subparagraphs of this paragraph; that if a judgment of conviction
30 was reversed or vacated, all appeals relating thereto have been
31 concluded and the individual will not be retried, or, if a retrial has
32 occurred, the trier of fact has rendered a verdict of complete acquit-
33 tal, and that expungement will not adversely affect the investigation or
34 prosecution of some other person or persons for the crime. NOTHING IN
35 THIS PARAGRAPH SHALL PREVENT A COURT, AT AN EARLIER TIME, FROM ORDERING
36 EXPUNGEMENT IN THE MANNER SPECIFIED IN THIS PARAGRAPH IN THE INTERESTS
37 OF JUSTICE, IN RESPONSE TO AN APPLICATION MADE ON NOTICE TO THE DISTRICT
38 ATTORNEY BY THE PERSON WHO PROVIDED SUCH DNA SAMPLE. If an order direct-
39 ing the expungement of any DNA record and any samples, analyses or other
40 documents relating to the DNA testing of such individual is issued, such
41 record and any samples, analyses, or other documents shall, at the
42 discretion of the possessor thereof, be destroyed or returned to such
43 individual or to the attorney who represented him or her in connection
44 with the application for the order of expungement. THE PERSON DESTROYING
45 OR RETURNING SUCH RECORD, SAMPLES, ANALYSES AND OTHER DOCUMENTS SHALL
46 MAINTAIN A RECORD CERTIFYING THE DATE, TIME AND MANNER OF DESTRUCTION OR
47 RETURN AND IDENTIFYING THE PERSON OR PERSONS DESTROYING OR RETURNING
48 SAME. THE PERSON DESTROYING OR RETURNING SAME SHALL SEND A COPY OF THIS
49 RECORD TO THE PERSON WHO SUBMITTED THE SAMPLE OR TO THE ATTORNEY WHO
50 REPRESENTED HIM OR HER IN CONNECTION WITH THE APPLICATION FOR THE ORDER
51 OF EXPUNGEMENT.

52 (C) (I) EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, IF AN
53 INDIVIDUAL HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE
54 INVESTIGATION OR PROSECUTION OF A CRIME, OTHER THAN IN RESPONSE TO A
55 DEMAND AUTHORIZED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF THIS
56 SECTION, OR IF A SAMPLE FOR DNA TESTING HAS OTHERWISE COME INTO THE

1 CUSTODY OR POSSESSION OF A LAW ENFORCEMENT AGENCY OR AN AGENT THEREOF,
2 AND THE DNA PROFILE DERIVED FROM SUCH SAMPLE DOES NOT MATCH A DNA
3 PROFILE DERIVED FROM CRIME SCENE EVIDENCE DEVELOPED IN CONNECTION WITH
4 THE INVESTIGATION OR PROSECUTION OF A CRIMINAL ACT OR ACTS, EVERY
5 RECORD, SAMPLE, ANALYSIS AND OTHER DOCUMENT RELATING TO THE DNA TESTING
6 OF SUCH SAMPLE SHALL, AT THE DISCRETION OF THE POSSESSOR THEREOF, BE
7 EITHER RETURNED TO THE INDIVIDUAL WHO PROVIDED SUCH SAMPLE, DESTROYED OR
8 MAINTAINED FOR THE DURATION OF THE INVESTIGATION, PROSECUTION OR ADJUDI-
9 CATION OF SUCH CRIMINAL ACTS EXCLUSIVELY FOR USE WITH RESPECT TO THE
10 INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF THE CRIMINAL CHARGES
11 FOR WHICH SUCH SAMPLE WAS OBTAINED OR WITH RESPECT TO ANY OTHER CRIMINAL
12 ACTS WHICH THE INVESTIGATING AGENCY HAS REASON TO BELIEVE MAY BE LINKED
13 TO SUCH SAMPLE; PROVIDED, HOWEVER, THAT NO LATER THAN FIVE YEARS AFTER
14 SUCH SAMPLE IS OBTAINED OR WHEN THE INVESTIGATION OR PROSECUTION OF SUCH
15 CRIME HAS CONCLUDED, WHICHEVER FIRST OCCURS, SUCH RECORDS, SAMPLES,
16 ANALYSES AND OTHER DOCUMENTS SHALL, AT THE DISCRETION OF THE POSSESSOR
17 THEREOF, BE RETURNED TO SUCH INDIVIDUAL OR DESTROYED, OR SEALED IN A
18 MANNER CONSISTENT WITH PARAGRAPH (C) AND SUBPARAGRAPH (II), (IV) OR (V)
19 OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 160.55 OF THE CRIMINAL
20 PROCEDURE LAW.

21 (II) THE PERSON RETURNING, DESTROYING OR SEALING SUCH RECORD, SAMPLES,
22 ANALYSES OR OTHER DOCUMENTS IN ACCORDANCE WITH THIS PARAGRAPH SHALL
23 MAINTAIN A RECORD CERTIFYING THE DATE AND MANNER OF SUCH RETURN,
24 DESTRUCTION OR SEALING AND IDENTIFYING THE PERSON OR PERSONS RETURNING,
25 DESTROYING OR SEALING SAME. THE PERSON RETURNING, DESTROYING OR SEALING
26 SAME SHALL SEND A COPY OF THIS RECORD TO THE PERSON WHO SUBMITTED THE
27 SAMPLE.

28 (III) THIS PARAGRAPH SHALL SUPPLEMENT AND NOT SUPPLANT ANY APPLICABLE
29 PROVISION OF PARAGRAPH (B) OF THIS SUBDIVISION. THIS PARAGRAPH SHALL NOT
30 APPLY TO DNA RECORDS, SAMPLES, ANALYSES AND OTHER DOCUMENTS OBTAINED
31 FROM THE FORENSIC EXAMINATION OF CRIME SCENE EVIDENCE, WHERE THE DNA
32 PROFILE DEVELOPED FROM SUCH CRIME SCENE EVIDENCE DOES NOT MATCH THE DNA
33 PROFILE OF A KNOWN PERSON.

34 (D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF
35 THIS SUBDIVISION, A DNA RECORD WHICH WAS OBTAINED FROM A SAMPLE PROVIDED
36 PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION PRIOR TO THE EFFEC-
37 TIVE DATE OF THIS PARAGRAPH NEED NOT BE DESTROYED, RETURNED OR SEALED,
38 AND MAY BE INCLUDED IN THE STATE DNA IDENTIFICATION INDEX ESTABLISHED
39 PURSUANT TO THIS ARTICLE, WHEN, AS OF THE EFFECTIVE DATE OF THIS PARA-
40 GRAPH, THE PERSON WHO PROVIDED SUCH SAMPLE STANDS CONVICTED OF A FELONY
41 OR MISDEMEANOR DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTI-
42 CLE. ALL LAWS GOVERNING DNA RECORDS INCLUDED IN THE STATE DNA IDENTIFI-
43 CATION INDEX SHALL APPLY TO ANY DNA RECORD INCLUDED IN THE STATE DNA
44 IDENTIFICATION INDEX PURSUANT TO THIS PARAGRAPH.

45 S 13. Section 995-d of the executive law is amended by adding two new
46 subdivisions 3 and 4 to read as follows:

47 3. IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION, ANY INDIVID-
48 UAL DNA PROFILE OBTAINED OR MAINTAINED BY A STATE, COUNTY OR LOCAL LAW
49 ENFORCEMENT AGENCY, OR AN AGENT THEREOF, FROM A BIOLOGICAL SAMPLE
50 SUBMITTED IN THE MANNER DESCRIBED IN PARAGRAPH (B) OR (C) OF SUBDIVISION
51 NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE, MAY BE
52 COMPARED INDIVIDUALLY OR VIA COMPUTERIZED DATABASE TO ONE OR MORE DNA
53 PROFILES MAINTAINED PURSUANT TO OR IN ACCORDANCE WITH SUBDIVISIONS ONE,
54 TWO AND THREE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE,
55 AND/OR MAY BE INDIVIDUALLY COMPARED BY SUCH STATE, COUNTY OR LOCAL LAW
56 ENFORCEMENT AGENCY, OR AN AGENT THEREOF, TO ONE OR MORE DNA PROFILES

1 DEVELOPED FROM THE FORENSIC EXAMINATION OF CRIME SCENES IN ONE OR MORE
2 CASES UNDER INVESTIGATION.

3 (A) IF SUCH INDIVIDUAL DNA PROFILE MATCHES THE DNA PROFILE DEVELOPED
4 FROM THE FORENSIC EXAMINATION OF ONE OR MORE CRIME SCENES IN ONE OR MORE
5 CASES UNDER INVESTIGATION, AND/OR ONE OR MORE DNA PROFILES MAINTAINED
6 PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE HUNDRED
7 NINETY-FIVE-C OF THIS ARTICLE, SUCH INDIVIDUAL DNA PROFILE, TOGETHER
8 WITH THE BIOLOGICAL MATERIAL FROM WHICH SUCH INDIVIDUAL DNA PROFILE WAS
9 DEVELOPED, MAY, AS APPROPRIATE PURSUANT TO APPLICABLE LAWS AND RULES OF
10 EVIDENCE AND CONSISTENT WITH THIS ARTICLE, BE USED IN CONNECTION WITH
11 THE INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF SUCH PERSON.

12 (B) IF SUCH INDIVIDUAL DNA PROFILE DOES NOT MATCH THE DNA PROFILE
13 DEVELOPED FROM FORENSIC EXAMINATION OF ONE OR MORE CRIME SCENES IN ONE
14 OR MORE CASES UNDER INVESTIGATION, AND/OR ONE OR MORE DNA PROFILES MAIN-
15 TAINED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF SECTION NINE
16 HUNDRED NINETY-FIVE-C OF THIS ARTICLE, SUCH INDIVIDUAL DNA PROFILE,
17 TOGETHER WITH THE BIOLOGICAL MATERIAL FROM WHICH SUCH INDIVIDUAL DNA
18 PROFILE WAS DEVELOPED, SHALL BE DEALT WITH IN ACCORDANCE WITH PARAGRAPH
19 (C) OF SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF THIS
20 ARTICLE.

21 4. (A) EXCEPT WHERE THE DEMAND IS PURSUANT TO A COURT ORDER OR WARRANT
22 OR PURSUANT TO SUBDIVISION THREE OF SECTION NINE HUNDRED NINETY-FIVE-C
23 OF THIS ARTICLE, PRIOR TO REQUESTING A BIOLOGICAL SAMPLE FROM AN INDIVIDUAL
24 THAT WILL BE USED FOR DNA TESTING, THE POLICE DEPARTMENT, LAW
25 ENFORCEMENT AGENCY, OR AGENT THEREOF REQUESTING SUCH SAMPLE SHALL OBTAIN
26 WRITTEN INFORMED CONSENT FROM SUCH INDIVIDUAL CONSISTING OF WRITTEN
27 AUTHORIZATION IN PLAIN LANGUAGE THAT IS DATED AND SIGNED AND INCLUDES AT
28 LEAST THE FOLLOWING: (1) A GENERAL DESCRIPTION OF THE TEST; (2) A STATE-
29 MENT THAT THE DNA SAMPLE OF THE SUBJECT MAY INITIALLY BE COMPARED
30 AGAINST ANY CRIME SCENE EVIDENCE OR DATABASE OF CRIME SCENE EVIDENCE AND
31 A DESCRIPTION OF WHETHER, IN THE EVENT SUCH SUBJECT SAMPLE DOES NOT
32 MATCH A DNA PROFILE DERIVED FROM ANY SUCH CRIME SCENE EVIDENCE, SUCH
33 SUBJECT SAMPLE WILL THEREAFTER BE RETURNED, DESTROYED OR RETAINED. IN
34 THE EVENT THE AGENT REQUESTING SUCH SAMPLE MAY RETAIN SUCH SAMPLE, SUCH
35 STATEMENT SHALL DESCRIBE THE CIRCUMSTANCES UNDER WHICH SUCH SAMPLE MAY
36 THEREAFTER BE LAWFULLY USED; (3) THE NAME OF THE PERSON OR SPECIFIC
37 CATEGORIES OF PERSONS OR ORGANIZATIONS TO WHOM THE TEST RESULTS MAY BE
38 DISCLOSED; (4) A STATEMENT THAT NO TESTS OTHER THAN THOSE AUTHORIZED
39 SHALL BE PERFORMED ON THE BIOLOGICAL SAMPLE; AND (5) A SUMMARY OF THE
40 INFORMATION SET FORTH IN PARAGRAPHS (B) AND (C) OF SUBDIVISION NINE OF
41 SECTION NINE HUNDRED NINETY-FIVE-C OF THIS ARTICLE.

42 (B) NONCOMPLIANCE WITH ANY PROVISION OF THIS SUBDIVISION SHALL NOT IN
43 AND OF ITSELF AFFECT THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE AFFECT
44 ANY CONVICTION OR CRIMINAL PROSECUTION.

45 S 14. Section 340.20 of the criminal procedure law is amended by
46 adding a new subdivision 5 to read as follows:

47 5. PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY TO A COUNT OR
48 COUNTS OF AN INFORMATION CHARGING A MISDEMEANOR, AS DEFINED IN PARAGRAPH
49 (A) OF SUBDIVISION TWO OF SECTION 55.10 OF THE PENAL LAW AND INCLUDED IN
50 THE DEFINITION OF DESIGNATED OFFENDER PURSUANT TO SUBDIVISION SEVEN OF
51 SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL
52 ADVISE THE DEFENDANT THAT UPON THE CONVICTION FOR SUCH MISDEMEANOR HE OR
53 SHE WILL BE REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING FOR
54 INCLUSION IN THE STATE DNA IDENTIFICATION INDEX PURSUANT TO ARTICLE
55 FORTY-NINE-B OF THE EXECUTIVE LAW. THE COURT SHALL AFFIRM ON THE RECORD
56 OR IN WRITING THAT THE DEFENDANT HAS BEEN GIVEN THE NOTICE REQUIRED BY

THIS SUBDIVISION. THE FAILURE OF A COURT TO ADVISE THE DEFENDANT PURSUANT TO THIS SUBDIVISION OR TO OTHERWISE COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE DEEMED TO AFFECT THE VOLUNTARINESS OF A PLEA OF GUILTY OR THE VALIDITY OF A CONVICTION.

S 15. Subdivision 1-a of section 440.30 of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

(C) IN CONJUNCTION WITH THE FILING OF A MOTION UNDER THIS SUBDIVISION, THE COURT MAY DIRECT THE STATE TO PROVIDE THE MOVANT WITH INFORMATION, INCLUDING DOCUMENTS, NOTES, LOGS OR REPORTS, RELATING TO ANY PHYSICAL ITEMS COLLECTED IN CONNECTION WITH THE CASE, WHERE IT IS LIKELY ANY SUCH PHYSICAL ITEMS, IF SUBJECTED TO DNA TESTING, WOULD YIELD DNA INFORMATION THAT MEETS THE STANDARD SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION. THE COURT MAY DIRECT THE STATE TO PROVIDE OTHER REASONABLE ASSISTANCE TO THE MOVANT IN LOCATING ANY SUCH RECORDS OR ITEMS OF PHYSICAL EVIDENCE WHICH MAY HAVE BEEN LOST OR DESTROYED. THE COURT MAY ALSO DIRECT THE PEOPLE TO TAKE REASONABLE MEASURES TO ATTEMPT TO LOCATE ANY SUCH RECORDS OR PHYSICAL ITEMS THAT MAY BE IN GOVERNMENT CUSTODY AND/OR ASSIST THE MOVANT IN LOCATING ANY SUCH RECORDS OR PHYSICAL ITEMS THAT MAY BE IN THE CUSTODY OF A PUBLIC OR PRIVATE HOSPITAL, LABORATORY OR OTHER FACILITY. THE COURT SHALL DENY A REQUEST FOR ASSISTANCE BROUGHT UNDER THIS PARAGRAPH IF THE COURT DETERMINES THAT SUCH REQUEST FOR ASSISTANCE IS FRIVOLOUS, ABUSIVE OR INAPPROPRIATE.

S 16. The state finance law is amended by adding a new section 97-llll to read as follows:

S 97-LLLL. ASSISTANCE TO POLICE AND CRIME LABORATORIES: DNA EVIDENCE FUND. 1. THERE IS HEREBY CREATED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "ASSISTANCE TO POLICE AND CRIME LABORATORIES: DNA EVIDENCE FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONIES APPROPRIATED FOR THE PURPOSE OF SUCH FUND, ALL OTHER MONIES CREDITED OR TRANSFERRED TO SUCH FUND PURSUANT TO LAW, ALL MONIES REQUIRED BY THE PROVISIONS OF THIS SECTION OR ANY OTHER LAW TO BE PAID INTO OR CREDITED TO SUCH ACCOUNT, AND ALL MONIES RECEIVED BY THE ACCOUNT OR DONATED TO IT.

3. MONIES OF SUCH FUND SHALL BE AVAILABLE FOR APPROPRIATION AND ALLOCATION TO THE DIVISION OF STATE POLICE, TO LOCAL POLICE AGENCIES, AND TO FORENSIC DNA LABORATORIES IN THIS STATE, AS DEFINED IN SUBDIVISION TWO OF SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, TO ASSIST SUCH ENTITIES IN EFFECTIVELY COLLECTING, TESTING AND ANALYZING FORENSIC DNA CRIME SCENE EVIDENCE PURSUANT TO ARTICLE FORTY-NINE-B OF THE EXECUTIVE LAW. FIFTY PERCENT OF SUCH FUNDS SHALL BE MADE AVAILABLE FOR APPROPRIATION OR ALLOCATION BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES FOR THE PURPOSE OF FUNDING AN INNOCENCE RESEARCH PROJECT PROGRAM IN THIS STATE.

4. MONIES OF SUCH FUND SHALL BE PAID OUT ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES.

S 17. Innocence research project program. 1. There is hereby established in this state an innocence research project program. Funding shall be made available for the purposes of such program to up to three not-for-profit organizations by the commissioner of criminal justice services pursuant to subdivisions 3 and 4 of section 97-llll of the state finance law.

2. The innocence research project program shall review and study cases in which there appears to be a reasonable possibility that a person charged with or convicted of a crime in this state may be innocent of the crime or crimes charged. Such program may provide legal and other

1 expert assistance, and may also provide relevant training, including but
2 not limited to training in the use of DNA evidence for forensic iden-
3 tification purposes, to attorneys engaged in the defense of criminal
4 cases.

5 3. Each not-for-profit organization receiving funding for such program
6 shall file an annual report with the commissioner of criminal justice
7 services summarizing the activities of the program during the previous
8 year. Such report shall be filed within one year after such organization
9 first receives funding under such program, and annually thereafter for
10 so long as the program receives such funding.

11 4. Before providing assistance to any individual believed to be actu-
12 ally innocent of the crime or crimes charged, the organization-based
13 coordinator of such program shall determine whether such individual is
14 financially able to pay for the proposed services or assistance to be
15 provided. If such individual is able to financially afford to pay for
16 such services or assistance, such coordinator shall request and receive
17 such payment or payments on behalf of the program from such individual.
18 All monies received from individuals pursuant to this subdivision shall
19 be promptly forwarded by such coordinator to the state comptroller, for
20 deposit into the "assistance to police and crime laboratories: DNA
21 evidence fund" established pursuant to section 97-llll of the state
22 finance law.

23 S 18. The criminal procedure law is amended by adding a new section
24 60.47 to read as follows:

25 S 60.47 RULES OF EVIDENCE; ELECTRONIC RECORDING OF STATEMENTS OF DEFEND-
26 ANTS.

27 1. DEFINITIONS. AS USED IN THIS SECTION:

28 (A) "ELECTRONIC RECORDING" MEANS A CONTEMPORANEOUS VIDEO AND AUDIO
29 RECORDING, OR WHERE VIDEO RECORDING IS IMPRACTICABLE, A CONTEMPORANEOUS
30 AUDIO RECORDING.

31 (B) "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION WHICH IS
32 CONDUCTED IN A PLACE OF DETENTION AND DURING WHICH A REASONABLE PERSON
33 IN THE SUBJECT'S POSITION WOULD CONSIDER HIMSELF OR HERSELF TO BE IN
34 CUSTODY.

35 (C) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILI-
36 TY, HOLDING FACILITY FOR PRISONERS, OR OTHER GOVERNMENT FACILITY WHERE
37 PERSONS ARE HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES WHICH
38 HAVE BEEN OR MAY BE FILED AGAINST THEM.

39 2. DURING THE PROSECUTION OF A FELONY, AN ORAL, WRITTEN, OR SIGN
40 LANGUAGE STATEMENT OF A DEFENDANT MADE DURING A CUSTODIAL INTERROGATION
41 SHALL BE PRESUMED INADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT IN A
42 CRIMINAL PROCEEDING UNLESS AN ELECTRONIC RECORDING IS MADE OF THE CUSTO-
43 DIAL INTERROGATION IN ITS ENTIRETY AND THE RECORDING IS SUBSTANTIALLY
44 ACCURATE AND NOT INTENTIONALLY ALTERED.

45 3. IF THE COURT FINDS THAT THE DEFENDANT WAS SUBJECTED TO A CUSTODIAL
46 INTERROGATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THEN ANY
47 STATEMENTS MADE BY THE DEFENDANT FOLLOWING THAT CUSTODIAL INTERROGATION,
48 EVEN IF OTHERWISE IN COMPLIANCE WITH THIS SECTION, ARE ALSO PRESUMED
49 INADMISSIBLE.

50 4. THE PEOPLE MAY REBUT A PRESUMPTION OF INADMISSIBILITY THROUGH CLEAR
51 AND CONVINCING EVIDENCE THAT THE STATEMENT WAS BOTH VOLUNTARY AND RELI-
52 ABLE AND:

53 (A) EXIGENT CIRCUMSTANCES EXISTED NECESSITATING INTERROGATION AT A
54 PLACE IN A LOCATION OTHER THAN A POLICE STATION, CORRECTIONAL FACILITY,
55 OR HOLDING FACILITY FOR PRISONERS AND WHERE THE REQUISITE RECORDING
56 EQUIPMENT WAS NOT READILY AVAILABLE;

1 (B) THE ACCUSED REFUSED TO HAVE HIS OR HER INTERROGATION ELECTRON-
2 ICALLY RECORDED, AND THE REFUSAL ITSELF WAS ELECTRONICALLY RECORDED; OR
3 (C) THE FAILURE TO ELECTRONICALLY RECORD AN ENTIRE INTERROGATION WAS
4 THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS
5 NOT FEASIBLE.

6 5. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

7 (A) A STATEMENT MADE BY THE ACCUSED IN OPEN COURT AT HIS OR HER TRIAL,
8 BEFORE GRAND JURY, OR AT A PRELIMINARY HEARING;

9 (B) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO INTERRO-
10 GATION;

11 (C) A STATEMENT MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING
12 THE PROCESSING OF THE ARREST OF THE SUSPECT;

13 (D) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT IS
14 CONDUCTED OUT-OF-STATE;

15 (E) A STATEMENT OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A
16 FEDERAL PLACE OF DETENTION;

17 (F) A STATEMENT GIVEN AT A TIME WHEN THE INTERROGATORS ARE UNAWARE
18 THAT A FELONY HAS IN FACT OCCURRED; OR

19 (G) A STATEMENT, OTHERWISE INADMISSIBLE UNDER THIS SECTION, THAT IS
20 USED ONLY FOR IMPEACHMENT AND NOT AS SUBSTANTIVE EVIDENCE.

21 6. THE PEOPLE SHALL NOT DESTROY OR ALTER ANY ELECTRONIC RECORDING MADE
22 OF A CUSTODIAL INTERROGATION UNTIL SUCH TIME AS THE DEFENDANT'S
23 CONVICTION FOR ANY OFFENSE RELATING TO THE INTERROGATION IS FINAL AND
24 ALL DIRECT AND HABEAS CORPUS APPEALS ARE EXHAUSTED, OR THE PROSECUTION
25 OF THAT OFFENSE IS BARRED BY LAW.

26 S 19. Subdivision 7 of section 995 of the executive law, as amended by
27 chapter 2 of the laws of 2006, paragraph (a) as separately amended by
28 chapter 320 of the laws of 2006 and paragraph (f) as amended by chapter
29 405 of the laws of 2010, is amended to read as follows:

30 7. "Designated offender" means a person convicted of and sentenced for
31 [any one or more of the following provisions of the penal law (a)
32 sections 120.05, 120.10, and 120.11, relating to assault; sections
33 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,
34 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to
35 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to
36 escape and other offenses, where the offender has been convicted within
37 the previous five years of one of the other felonies specified in this
38 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
39 a violent felony offense as defined in subdivision one of section 70.02
40 of the penal law, attempted murder in the first degree, as defined in
41 section 110.00 and section 125.27 of the penal law, kidnapping in the
42 first degree, as defined in section 135.25 of the penal law, arson in
43 the first degree, as defined in section 150.20 of the penal law,
44 burglary in the third degree, as defined in section 140.20 of the penal
45 law, attempted burglary in the third degree, as defined in section
46 110.00 and section 140.20 of the penal law, a felony defined in article
47 four hundred ninety of the penal law relating to terrorism or any
48 attempt to commit an offense defined in such article relating to terror-
49 ism which is a felony; or (b) criminal possession of a controlled
50 substance in the first degree, as defined in section 220.21 of the penal
51 law; criminal possession of a controlled substance in the second degree,
52 as defined in section 220.18 of the penal law; criminal sale of a
53 controlled substance, as defined in article 220 of the penal law; or
54 grand larceny in the fourth degree, as defined in subdivision five of
55 section 155.30 of the penal law; or (c) any misdemeanor or felony
56 defined as a sex offense or sexually violent offense pursuant to para-

1 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision
2 three of section one hundred sixty-eight-a of the correction law; or (d)
3 any of the following felonies, or an attempt thereof where such attempt
4 is a felony offense:
5 aggravated assault upon a person less than eleven years old, as
6 defined in section 120.12 of the penal law; menacing in the first
7 degree, as defined in section 120.13 of the penal law; reckless endan-
8 germent in the first degree, as defined in section 120.25 of the penal
9 law; stalking in the second degree, as defined in section 120.55 of the
10 penal law; criminally negligent homicide, as defined in section 125.10
11 of the penal law; vehicular manslaughter in the second degree, as
12 defined in section 125.12 of the penal law; vehicular manslaughter in
13 the first degree, as defined in section 125.13 of the penal law;
14 persistent sexual abuse, as defined in section 130.53 of the penal law;
15 aggravated sexual abuse in the fourth degree, as defined in section
16 130.65-a of the penal law; female genital mutilation, as defined in
17 section 130.85 of the penal law; facilitating a sex offense with a
18 controlled substance, as defined in section 130.90 of the penal law;
19 unlawful imprisonment in the first degree, as defined in section 135.10
20 of the penal law; custodial interference in the first degree, as defined
21 in section 135.50 of the penal law; criminal trespass in the first
22 degree, as defined in section 140.17 of the penal law; criminal tamper-
23 ing in the first degree, as defined in section 145.20 of the penal law;
24 tampering with a consumer product in the first degree, as defined in
25 section 145.45 of the penal law; robbery in the third degree as defined
26 in section 160.05 of the penal law; identity theft in the second degree,
27 as defined in section 190.79 of the penal law; identity theft in the
28 first degree, as defined in section 190.80 of the penal law; promoting
29 prison contraband in the first degree, as defined in section 205.25 of
30 the penal law; tampering with a witness in the third degree, as defined
31 in section 215.11 of the penal law; tampering with a witness in the
32 second degree, as defined in section 215.12 of the penal law; tampering
33 with a witness in the first degree, as defined in section 215.13 of the
34 penal law; criminal contempt in the first degree, as defined in subdivi-
35 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
36 criminal contempt, as defined in section 215.52 of the penal law; bail
37 jumping in the second degree, as defined in section 215.56 of the penal
38 law; bail jumping in the first degree, as defined in section 215.57 of
39 the penal law; patronizing a prostitute in the second degree, as defined
40 in section 230.05 of the penal law; patronizing a prostitute in the
41 first degree, as defined in section 230.06 of the penal law; promoting
42 prostitution in the second degree, as defined in section 230.30 of the
43 penal law; promoting prostitution in the first degree, as defined in
44 section 230.32 of the penal law; compelling prostitution, as defined in
45 section 230.33 of the penal law; disseminating indecent materials to
46 minors in the second degree, as defined in section 235.21 of the penal
47 law; disseminating indecent materials to minors in the first degree, as
48 defined in section 235.22 of the penal law; riot in the first degree, as
49 defined in section 240.06 of the penal law; criminal anarchy, as defined
50 in section 240.15 of the penal law; aggravated harassment of an employee
51 by an inmate, as defined in section 240.32 of the penal law; unlawful
52 surveillance in the second degree, as defined in section 250.45 of the
53 penal law; unlawful surveillance in the first degree, as defined in
54 section 250.50 of the penal law; endangering the welfare of a vulnerable
55 elderly person in the second degree, as defined in section 260.32 of the
56 penal law; endangering the welfare of a vulnerable elderly person in the

1 first degree, as defined in section 260.34 of the penal law; use of a
2 child in a sexual performance, as defined in section 263.05 of the penal
3 law; promoting an obscene sexual performance by a child, as defined in
4 section 263.10 of the penal law; possessing an obscene sexual perform-
5 ance by a child, as defined in section 263.11 of the penal law; promot-
6 ing a sexual performance by a child, as defined in section 263.15 of the
7 penal law; possessing a sexual performance by a child, as defined in
8 section 263.16 of the penal law; criminal possession of a weapon in the
9 third degree, as defined in section 265.02 of the penal law; criminal
10 sale of a firearm in the third degree, as defined in section 265.11 of
11 the penal law; criminal sale of a firearm to a minor, as defined in
12 section 265.16 of the penal law; unlawful wearing of a body vest, as
13 defined in section 270.20 of the penal law; hate crimes as defined in
14 section 485.05 of the penal law; and crime of terrorism, as defined in
15 section 490.25 of the penal law; or (e) a felony defined in the penal
16 law or an attempt thereof where such attempt is a felony; or (f) any of
17 the following misdemeanors: assault in the third degree as defined in
18 section 120.00 of the penal law; attempted aggravated assault upon a
19 person less than eleven years old, as defined in section 110.00 and
20 section 120.12 of the penal law; attempted menacing in the first degree,
21 as defined in section 110.00 and section 120.13 of the penal law; menac-
22 ing in the second degree as defined in section 120.14 of the penal law;
23 menacing in the third degree as defined in section 120.15 of the penal
24 law; reckless endangerment in the second degree as defined in section
25 120.20 of the penal law; stalking in the fourth degree as defined in
26 section 120.45 of the penal law; stalking in the third degree as defined
27 in section 120.50 of the penal law; attempted stalking in the second
28 degree, as defined in section 110.00 and section 120.55 of the penal
29 law; criminal obstruction of breathing or blood circulation as defined
30 in section 121.11 of the penal law; forcible touching as defined in
31 section 130.52 of the penal law regardless of the age of the victim;
32 sexual abuse in the third degree as defined in section 130.55 of the
33 penal law regardless of the age of the victim; unlawful imprisonment in
34 the second degree as defined in section 135.05 of the penal law regard-
35 less of the age of the victim; attempted unlawful imprisonment in the
36 first degree, as defined in section 110.00 and section 135.10 of the
37 penal law regardless of the age of the victim; criminal trespass in the
38 second degree as defined in section 140.15 of the penal law; possession
39 of burglar's tools as defined in section 140.35 of the penal law; petit
40 larceny as defined in section 155.25 of the penal law; endangering the
41 welfare of a child as defined in section 260.10 of the penal law; endan-
42 gering the welfare of an incompetent or physically disabled person as
43 defined in section 260.25 of the penal law] A MISDEMEANOR DEFINED IN THE
44 PENAL LAW OR A FELONY DEFINED IN THE PENAL LAW, OR A PERSON WHO IS
45 REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO ARTICLE SIX-C OF THE
46 CORRECTION LAW.

47 S 20. This act shall take effect immediately; provided, however, that:

48 (a) sections eleven, twelve and thirteen of this act shall take effect
49 on the one hundred twentieth day after it shall have become a law;

50 (b) the amendments to section 340.20 of the criminal procedure law
51 made by section fourteen of this act shall apply to pleas of guilty to a
52 count or counts of an information entered 60 days or more after the
53 effective date of this act;

54 (c) section eighteen of this act shall take effect on the ninetieth
55 day after it shall have become a law, and shall apply to any criminal
56 proceeding commenced on and after such date; and

1 (d) section nineteen of this act shall apply to designated offenses
2 committed on or after the effective date of this act, as well as to
3 designated offenses committed prior to such effective date, where
4 service of the sentence imposed upon conviction of such designated
5 offense has not been completed prior to such effective date.