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

10269

I N A S S E M B L Y

May 16, 2012

Introduced by M. of A. LAVINE, LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the comparison of fingerprints

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

Section 1. Subdivision 1 of section 240.40 of the criminal procedure law, as amended by chapter 19 of the laws of 2012, is amended to read as follows:

1. Upon motion of a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending, the court in which such accusatory instrument is pending:

(a) must order discovery as to any material not disclosed upon a demand pursuant to section 240.20, if it finds that the prosecutor's refusal to disclose such material is not justified; (b) must, unless it is satisfied that the people have shown good cause why such an order should not be issued, order discovery or any other order authorized by subdivision one of section 240.70 as to any material not disclosed upon demand pursuant to section 240.20 where the prosecutor has failed to serve a timely written refusal pursuant to section 240.35; (c) may order discovery with respect to any other property, which the people intend to introduce at the trial, upon a showing by the defendant that discovery with respect to such property is material to the preparation of his or her defense, and that the request is reasonable; [and] (d) where property in the people's possession, custody, or control that consists of a deoxyribonucleic acid ("DNA") profile obtained from probative biological material gathered in connection with the investigation or prosecution of the defendant and the defendant establishes that such profile complies with federal bureau of investigation or state requirements, whichever are applicable and as such requirements are applied to law enforcement agencies seeking a keyboard search or similar comparison, and that the data meets state DNA index system or national DNA index system criteria as such criteria are applied to law enforcement agencies seeking such a

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

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keyboard search or similar comparison, the court may order an entity that has access to the combined DNA index system or its successor system to compare such DNA profile against DNA databanks by keyboard searches, or a similar method that does not involve uploading, upon notice to both parties and the entity required to perform the search, upon a showing by the defendant that such a comparison is material to the presentation of his or her defense and that the request is reasonable. For purposes of this paragraph, a "keyboard search" shall mean a search of a DNA profile against the databank in which the profile that is searched is not uploaded to or maintained in the databank; AND (E) MAY ORDER THE DIVISION OF CRIMINAL JUSTICE SERVICES TO COMPARE A FINGERPRINT OBTAINED IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF THE DEFENDANT AGAINST THE STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, AND THE NATIONAL INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, UPON THE COURT'S DETERMINATION THAT SUCH FINGERPRINT COMPLIES WITH FEDERAL BUREAU OF INVESTIGATION OR STATE REQUIREMENTS, WHICHEVER ARE APPLICABLE AND AS SUCH REQUIREMENTS ARE APPLIED TO LAW ENFORCEMENT AGENCIES SEEKING SUCH A COMPARISON AND UPON A SHOWING BY THE DEFENDANT THAT SUCH COMPARISON IS MATERIAL TO THE PREPARATION OF HIS OR HER DEFENSE, AND THAT THE REQUEST IS REASONABLE. Upon granting the motion pursuant to paragraph (c) of this subdivision, the court shall, upon motion of the people showing such to be material to the preparation of their case and that the request is reasonable, condition its order of discovery by further directing discovery by the people of property, of the same kind or character as that authorized to be inspected by the defendant, which he or she intends to introduce at the trial.

S 2. Section 440.30 of the criminal procedure law is amended by adding a new subdivision 1-b to read as follows:

1-B. IN RESPONSE TO A MOTION UNDER THIS SECTION, THE COURT MAY ORDER THE DIVISION OF CRIMINAL JUSTICE SERVICES TO COMPARE A FINGERPRINT OBTAINED IN CONNECTION WITH THE INVESTIGATION OR PROSECUTION OF THE DEFENDANT AGAINST THE STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, AND THE NATIONAL INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR ITS SUCCESSOR SYSTEM, UPON THE COURT'S DETERMINATION THAT (1) SUCH FINGERPRINT COMPLIES WITH FEDERAL BUREAU OF INVESTIGATION OR STATE REQUIREMENTS, WHICHEVER ARE APPLICABLE AND AS SUCH REQUIREMENTS ARE APPLIED TO LAW ENFORCEMENT AGENCIES SEEKING SUCH A COMPARISON AND (2) IF SUCH COMPARISON HAD BEEN CONDUCTED, AND IF THE RESULTS HAD BEEN ADMITTED IN THE TRIAL RESULTING IN THE JUDGMENT, A REASONABLE PROBABILITY EXISTS THAT THE VERDICT WOULD HAVE BEEN MORE FAVORABLE TO THE DEFENDANT, OR IN A CASE INVOLVING A PLEA OF GUILTY, IF THE RESULTS HAD BEEN AVAILABLE TO THE DEFENDANT PRIOR TO THE PLEA, A REASONABLE PROBABILITY EXISTS THAT THE CONVICTION WOULD NOT HAVE RESULTED.

S 3. This act shall take effect on the same date as chapter 19 of the laws of 2012, as amended, takes effect.