

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

8547--A

2011-2012 Regular Sessions

I N A S S E M B L Y

July 20, 2011

Introduced by M. of A. PAULIN, CLARK, GALEF, GUNTHER, SCHIMEL, BENEDETTO, COLTON, GABRYSZAK, P. RIVERA, KOLB, SIMANOWITZ, LANCMAN, MAGNARELLI, JAFFEE, TITONE, MORELLE, ESPINAL, LAVINE, SIMOTAS -- Multi-Sponsored by -- M. of A. ABBATE, GOTTFRIED, PALMESANO, ROBINSON, SCHIMMINGER, THIELE -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to DNA testing of certain offenders convicted of a crime

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
13 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,
14 a violent felony offense as defined in subdivision one of section 70.02
15 of the penal law, attempted murder in the first degree, as defined in
16 section 110.00 and section 125.27 of the penal law, kidnapping in the
17 first degree, as defined in section 135.25 of the penal law, arson in
18 the first degree, as defined in section 150.20 of the penal law,
19 burglary in the third degree, as defined in section 140.20 of the penal

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

LBD11912-03-2

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

17 aggravated assault upon a person less than eleven years old, as
18 defined in section 120.12 of the penal law; menacing in the first
19 degree, as defined in section 120.13 of the penal law; reckless endan-
20 germent in the first degree, as defined in section 120.25 of the penal
21 law; stalking in the second degree, as defined in section 120.55 of the
22 penal law; criminally negligent homicide, as defined in section 125.10
23 of the penal law; vehicular manslaughter in the second degree, as
24 defined in section 125.12 of the penal law; vehicular manslaughter in
25 the first degree, as defined in section 125.13 of the penal law;
26 persistent sexual abuse, as defined in section 130.53 of the penal law;
27 aggravated sexual abuse in the fourth degree, as defined in section
28 130.65-a of the penal law; female genital mutilation, as defined in
29 section 130.85 of the penal law; facilitating a sex offense with a
30 controlled substance, as defined in section 130.90 of the penal law;
31 unlawful imprisonment in the first degree, as defined in section 135.10
32 of the penal law; custodial interference in the first degree, as defined
33 in section 135.50 of the penal law; criminal trespass in the first
34 degree, as defined in section 140.17 of the penal law; criminal tamper-
35 ing in the first degree, as defined in section 145.20 of the penal law;
36 tampering with a consumer product in the first degree, as defined in
37 section 145.45 of the penal law; robbery in the third degree as defined
38 in section 160.05 of the penal law; identity theft in the second degree,
39 as defined in section 190.79 of the penal law; identity theft in the
40 first degree, as defined in section 190.80 of the penal law; promoting
41 prison contraband in the first degree, as defined in section 205.25 of
42 the penal law; tampering with a witness in the third degree, as defined
43 in section 215.11 of the penal law; tampering with a witness in the
44 second degree, as defined in section 215.12 of the penal law; tampering
45 with a witness in the first degree, as defined in section 215.13 of the
46 penal law; criminal contempt in the first degree, as defined in subdivi-
47 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated
48 criminal contempt, as defined in section 215.52 of the penal law; bail
49 jumping in the second degree, as defined in section 215.56 of the penal
50 law; bail jumping in the first degree, as defined in section 215.57 of
51 the penal law; patronizing a prostitute in the second degree, as defined
52 in section 230.05 of the penal law; patronizing a prostitute in the
53 first degree, as defined in section 230.06 of the penal law; promoting
54 prostitution in the second degree, as defined in section 230.30 of the
55 penal law; promoting prostitution in the first degree, as defined in
56 section 230.32 of the penal law; compelling prostitution, as defined in

1 section 230.33 of the penal law; disseminating indecent materials to
2 minors in the second degree, as defined in section 235.21 of the penal
3 law; disseminating indecent materials to minors in the first degree, as
4 defined in section 235.22 of the penal law; riot in the first degree, as
5 defined in section 240.06 of the penal law; criminal anarchy, as defined
6 in section 240.15 of the penal law; aggravated harassment of an employee
7 by an inmate, as defined in section 240.32 of the penal law; unlawful
8 surveillance in the second degree, as defined in section 250.45 of the
9 penal law; unlawful surveillance in the first degree, as defined in
10 section 250.50 of the penal law; endangering the welfare of a vulnerable
11 elderly person in the second degree, as defined in section 260.32 of the
12 penal law; endangering the welfare of a vulnerable elderly person in the
13 first degree, as defined in section 260.34 of the penal law; use of a
14 child in a sexual performance, as defined in section 263.05 of the penal
15 law; promoting an obscene sexual performance by a child, as defined in
16 section 263.10 of the penal law; possessing an obscene sexual perform-
17 ance by a child, as defined in section 263.11 of the penal law; promot-
18 ing a sexual performance by a child, as defined in section 263.15 of the
19 penal law; possessing a sexual performance by a child, as defined in
20 section 263.16 of the penal law; criminal possession of a weapon in the
21 third degree, as defined in section 265.02 of the penal law; criminal
22 sale of a firearm in the third degree, as defined in section 265.11 of
23 the penal law; criminal sale of a firearm to a minor, as defined in
24 section 265.16 of the penal law; unlawful wearing of a body vest, as
25 defined in section 270.20 of the penal law; hate crimes as defined in
26 section 485.05 of the penal law; and crime of terrorism, as defined in
27 section 490.25 of the penal law; or (e) a felony defined in the penal
28 law or an attempt thereof where such attempt is a felony; or (f) any of
29 the following misdemeanors: assault in the third degree as defined in
30 section 120.00 of the penal law; attempted aggravated assault upon a
31 person less than eleven years old, as defined in section 110.00 and
32 section 120.12 of the penal law; attempted menacing in the first degree,
33 as defined in section 110.00 and section 120.13 of the penal law; menac-
34 ing in the second degree as defined in section 120.14 of the penal law;
35 menacing in the third degree as defined in section 120.15 of the penal
36 law; reckless endangerment in the second degree as defined in section
37 120.20 of the penal law; stalking in the fourth degree as defined in
38 section 120.45 of the penal law; stalking in the third degree as defined
39 in section 120.50 of the penal law; attempted stalking in the second
40 degree, as defined in section 110.00 and section 120.55 of the penal
41 law; criminal obstruction of breathing or blood circulation as defined
42 in section 121.11 of the penal law; forcible touching as defined in
43 section 130.52 of the penal law regardless of the age of the victim;
44 sexual abuse in the third degree as defined in section 130.55 of the
45 penal law regardless of the age of the victim; unlawful imprisonment in
46 the second degree as defined in section 135.05 of the penal law regard-
47 less of the age of the victim; attempted unlawful imprisonment in the
48 first degree, as defined in section 110.00 and section 135.10 of the
49 penal law regardless of the age of the victim; criminal trespass in the
50 second degree as defined in section 140.15 of the penal law; possession
51 of burglar's tools as defined in section 140.35 of the penal law; petit
52 larceny as defined in section 155.25 of the penal law; endangering the
53 welfare of a child as defined in section 260.10 of the penal law; endan-
54 gering the welfare of an incompetent or physically disabled person as
55 defined in section 260.25 of the penal law] ANY FELONY DEFINED IN ANY

1 CHAPTER OF THE LAWS OF THE STATE OR ANY MISDEMEANOR DEFINED IN THE PENAL
2 LAW.

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

5 3. (A) Any designated offender subsequent to conviction and sentencing
6 for a crime specified in subdivision seven of section nine hundred nine-
7 ty-five of this article, shall be required to provide a sample appropri-
8 ate for DNA testing to determine identification characteristics specific
9 to such person and to be included in a state DNA identification index
10 pursuant to this article.

11 (B) (I) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A
12 TERM OF IMPRISONMENT, SUCH SAMPLE SHALL BE COLLECTED BY THE PUBLIC SERV-
13 ANT TO WHOSE CUSTODY THE DESIGNATED OFFENDER HAS BEEN COMMITTED.

14 (II) IN THE CASE OF A DESIGNATED OFFENDER WHO IS SENTENCED TO A TERM
15 OF PROBATION, INCLUDING A SENTENCE OF PROBATION IMPOSED IN CONJUNCTION
16 WITH A SENTENCE OF IMPRISONMENT WHEN A SAMPLE HAS NOT ALREADY BEEN
17 TAKEN, SUCH SAMPLE SHALL BE COLLECTED BY THE PROBATION DEPARTMENT SUPER-
18 VISING THE DESIGNATED OFFENDER.

19 (III) IN THE CASE OF A DESIGNATED OFFENDER WHOSE SENTENCE DOES NOT
20 INCLUDE EITHER A TERM OF IMPRISONMENT OR A TERM OF PROBATION, THE COURT
21 SHALL ORDER THAT THE DESIGNATED OFFENDER REPORT TO AN OFFICE OF THE
22 SHERIFF OF THAT COUNTY, AND WHEN THE DESIGNATED OFFENDER DOES SO, SUCH
23 SAMPLE SHALL BE COLLECTED BY THE SHERIFF'S OFFICE.

24 (IV) NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE COLLECTION OF A DNA
25 SAMPLE FROM A DESIGNATED OFFENDER BY ANY COURT OFFICIAL, STATE OR LOCAL
26 CORRECTION OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER,
27 POLICE OFFICER, PEACE OFFICER, OR OTHER PUBLIC SERVANT WHO HAS BEEN
28 NOTIFIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES THAT SUCH DESIG-
29 NATED OFFENDER HAS NOT PROVIDED A DNA SAMPLE. UPON NOTIFICATION BY THE
30 DIVISION OF CRIMINAL JUSTICE SERVICES THAT A DESIGNATED OFFENDER HAS NOT
31 PROVIDED A DNA SAMPLE, SUCH COURT OFFICIAL, STATE OR LOCAL CORRECTION
32 OFFICIAL OR EMPLOYEE, PROBATION OFFICER, PAROLE OFFICER, POLICE OFFICER,
33 PEACE OFFICER OR OTHER PUBLIC SERVANT SHALL COLLECT THE DNA SAMPLE.

34 S 3. This act shall take effect October 1, 2012; provided, however,
35 that the amendments to subdivision 7 of section 995 of the executive law
36 made by section one of this act shall apply to conviction of designated
37 offenses on or after such effective date.