

4394--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 4, 2013

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Introduced by M. of A. LENTOL, SILVER, AUBRY, JAFFEE, FARRELL, WEINSTEIN, CLARK, JACOBS, PEOPLES-STOKES, WEPRIN, PERRY, TITONE, TITUS -- Multi-Sponsored by -- M. of A. GOTTFRIED, KELLNER, ZEBROWSKI -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- 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; and to amend the criminal procedure law, in relation to electronic recordings of interrogations

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:  
4     (ix) such policy shall provide for the mutual exchange, use and stor-  
5     age of DNA records with the system of DNA identification utilized by the

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

LBD04635-03-3

1 federal bureau of investigation provided that the commission determines  
2 that such exchange, use and storage are consistent with the provisions  
3 of this article and applicable provisions of law[.]; AND

4 (C) WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH, DETER-  
5 MINE, CONSISTENT WITH THIS ARTICLE, THE APPROPRIATE MINIMUM PERIOD OF  
6 TIME THAT FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERI-  
7 AL, OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME  
8 SCENES, SHOULD BE RETAINED BY INVESTIGATING AUTHORITIES AND THE TIME OR  
9 SPECIFIED EVENT OR EVENTS, IF ANY, AFTER WHICH, CONSISTENT WITH THE  
10 INTEREST OF ALL PERSONS AND LAW ENFORCEMENT, SUCH SAMPLES MAY BE  
11 DESTROYED, AND DETERMINE STANDARDS FOR THE CATALOGING AND MAINTAINING  
12 RECORDS OF SUCH SAMPLES. PENDING THE PROMULGATION OF A POLICY ADDRESS-  
13 ING THE ISSUES SET FORTH IN THIS PARAGRAPH, THE COMMISSION MAY ADOPT AN  
14 INTERIM POLICY MANDATING THE PRESERVATION BY INVESTIGATING AUTHORITIES  
15 OF FORENSIC SAMPLES OF BLOOD, TISSUE AND OTHER BIOLOGICAL MATERIAL  
16 OBTAINED IN CONNECTION WITH THE FORENSIC EXAMINATION OF CRIME SCENES.

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

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

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

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

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

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

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

## 42 ARTICLE 23

### 43 STATE COMMISSION FOR THE INTEGRITY 44 OF THE CRIMINAL JUSTICE SYSTEM

#### 45 SECTION 900. DEFINITION.

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

48 902. PURPOSE AND CONDUCT OF THE COMMISSION.

49 903. POWERS AND DUTIES.

50 904. USE OF REPORTS.

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

54 S 901. STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE  
55 SYSTEM. 1. THE STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL

1 JUSTICE SYSTEM IS HEREBY ESTABLISHED AS AN INDEPENDENT AGENCY OF THE  
2 STATE. THE COMMISSION SHALL CONSIST OF TEN MEMBERS AS FOLLOWS:

3 (A) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 6. FOR ANY ACTION AUTHORIZED BY THIS ARTICLE, FIVE MEMBERS OF THE  
53 COMMISSION SHALL CONSTITUTE A QUORUM AND, EXCEPT AS OTHERWISE PROVIDED  
54 IN SUBDIVISIONS THREE AND FIVE OF THIS SECTION, THE CONCURRENCE OF SIX  
55 MEMBERS OF THE COMMISSION SHALL BE NECESSARY.

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

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

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

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

30 S 903. POWERS AND DUTIES. THE COMMISSION SHALL HAVE THE POWERS AND  
31 DUTIES TO:

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

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

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

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

53 5. ISSUE PRELIMINARY REPORTS ON ANY INVESTIGATION CONDUCTED PURSUANT  
54 TO THIS ARTICLE, WHICH PRELIMINARY REPORTS SHALL INCLUDE FINDINGS OF  
55 FACT AND RECOMMENDATIONS, AND INVITE ANY PARTY DIRECTLY INVOLVED IN THE  
56 WRONGFUL CONVICTION, WHICH IS THE SUBJECT OF THE REPORT, TO SUBMIT A

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

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

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

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

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

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

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

35 S 7. Subdivisions 3 and 5 of section 8-b of the court of claims act,  
36 as added by chapter 1009 of the laws of 1984, are amended to read as  
37 follows:

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

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

43 (b) (i) he has been pardoned upon the ground of innocence of the crime  
44 or crimes for which he was sentenced and which are the grounds for the  
45 complaint; or (ii) his judgment of conviction was reversed or vacated,  
46 and the accusatory instrument dismissed or, if a new trial was ordered,  
47 either he was found not guilty at the new trial or he was not retried  
48 and the accusatory instrument dismissed; provided that the [judgement]  
49 JUDGMENT of conviction was reversed or vacated[, and the accusatory  
50 instrument was dismissed,] on any of the following grounds: (A) para-  
51 graph (a), (b), (c), (e), (F) or (g) of subdivision one of section  
52 440.10 of the criminal procedure law; or (B) subdivision one (where  
53 based upon grounds set forth in item (A) [hereof] OF THIS SUBPARAGRAPH),  
54 two, three (where the count dismissed was the sole basis for the impri-  
55 sonment complained of) or five of section 470.20 of the criminal proce-  
56 dure law; or (C) comparable provisions of the former code of criminal

1 procedure or subsequent law; or (D) the statute, or application thereof,  
2 on which the accusatory instrument was based violated the constitution  
3 of the United States or the state of New York; OR (E) THE CLAIMANT'S  
4 CONVICTION WAS VACATED UNDER ANOTHER SECTION OF LAW NOT ENUMERATED IN  
5 ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, BUT WHOSE APPLICATION  
6 TO CLAIMANT'S CONVICTION INVOLVED FACTS AND CIRCUMSTANCES THAT DIRECTLY  
7 SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE; AND PROVIDED THAT, IN CASES  
8 WHERE THE CONVICTION MAY HAVE BEEN VACATED ON MORE THAN ONE GROUND,  
9 INCLUDING ONE OF THE GROUNDS ENUMERATED IN ITEMS (A), (B), (C) AND (D)  
10 OF THIS SUBPARAGRAPH, THE COURT OF CLAIMS SHALL NOT BE BOUND BY A DECISION OF THE CRIMINAL COURT VACATING THE CONVICTION BASED ONLY ON A  
11 GROUND NOT ENUMERATED IN ITEMS (A), (B), (C) AND (D) OF THIS SUBPARA-  
12 GRAPH; and

13  
14 (c) his claim is not time-barred by the provisions of subdivision  
15 seven of this section.

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

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

21 (b) (i) he has been pardoned upon the ground of innocence of the crime  
22 or crimes for which he was sentenced and which are the grounds for the  
23 complaint; or (ii) his judgment of conviction was reversed or vacated,  
24 and the accusatory instrument dismissed or, if a new trial was ordered,  
25 either he was found not guilty at the new trial or he was not retried  
26 and the accusatory instrument dismissed; provided that the [judgement]  
27 JUDGMENT of conviction was reversed or vacated[, and the accusatory  
28 instrument was dismissed,] on any of the following grounds: (A) para-  
29 graph (a), (b), (c), (e), (F) [or], (g) OR (G-1) of subdivision one of  
30 section 440.10 of the criminal procedure law; or (B) subdivision one  
31 (where based upon grounds set forth in item (A) [hereof] OF THIS SUBPAR-  
32 AGRAPH), two, three (where the count dismissed was the sole basis for  
33 the imprisonment complained of) or five of section 470.20 of the crimi-  
34 nal procedure law; or (C) comparable provisions of the former code of  
35 criminal procedure or subsequent law; or (D) the statute, or application  
36 thereof, on which the accusatory instrument was based violated the  
37 constitution of the United States or the state of New York; OR (E) THE  
38 CLAIMANT'S CONVICTION WAS VACATED UNDER ANOTHER SECTION OF LAW NOT  
39 ENUMERATED IN ITEMS (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, BUT  
40 WHOSE APPLICATION TO CLAIMANT'S CONVICTION INVOLVED FACTS AND CIRCUM-  
41 STANCES THAT DIRECTLY SUPPORT CLAIMANT'S ASSERTION OF INNOCENCE; AND  
42 PROVIDED THAT, IN CASES WHERE THE CONVICTION MAY HAVE BEEN VACATED ON  
43 MORE THAN ONE GROUND, INCLUDING ONE OF THE GROUNDS ENUMERATED IN ITEMS  
44 (A), (B), (C) AND (D) OF THIS SUBPARAGRAPH, THE COURT OF CLAIMS SHALL  
45 NOT BE BOUND BY A DECISION OF THE CRIMINAL COURT VACATING THE CONVICTION  
46 BASED ONLY ON A GROUND NOT ENUMERATED IN ITEMS (A), (B), (C) AND (D) OF  
47 THIS SUBPARAGRAPH; and

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

55 (d) he did not by his own conduct cause or bring about his conviction.

1 S 8. Section 995-b of the executive law is amended by adding a new  
2 subdivision 14 to read as follows:

3 14. THE COMMISSION SHALL REVIEW THE CONFIDENTIALITY SAFEGUARDS WHICH  
4 ARE MAINTAINED WITH RESPECT TO DNA SAMPLES BEFORE AND AFTER INFORMATION  
5 FROM SUCH SAMPLES IS ENCODED INTO THE STATE DNA IDENTIFICATION INDEX AND  
6 SHALL DETERMINE WHETHER ANY ADDITIONAL CONFIDENTIALITY SAFEGUARDS ARE  
7 NECESSARY WITH RESPECT TO SUCH SAMPLES. THE COMMISSION SHALL ALSO ISSUE  
8 A REPORT TO THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE  
9 ASSEMBLY WHICH DESCRIBES HOW SUCH SAMPLES ARE RETAINED AND THE REASONS  
10 FOR MAINTAINING SUCH SAMPLES, FOLLOWING THE ENCODING OF INFORMATION FROM  
11 SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX. SUCH REPORT SHALL  
12 ALSO RECOMMEND WHETHER A PROGRAM TO DESTROY ANY SUCH SAMPLES, FOLLOWING  
13 THE ENCODING OF INFORMATION FROM SUCH SAMPLES INTO THE STATE DNA IDENTIFICATION INDEX, SHOULD BE INITIATED OR WHETHER, ALTERNATIVELY, SUCH  
14 SAMPLES SHALL CONTINUE TO BE MAINTAINED.

16 S 9. Subdivision 2 of section 995-c of the executive law, as added by  
17 chapter 737 of the laws of 1994, is amended to read as follows:

18 2. (A) Following the review and approval of the plan by the DNA  
19 subcommittee and the commission and the filing of such plan with the  
20 speaker of the assembly and the temporary president of the senate, the  
21 commissioner of criminal justice services is hereby authorized to establish a computerized state DNA identification index pursuant to the  
22 provisions of this article. NO OTHER DNA IDENTIFICATION INDEX OR COMPI-  
23 LATION OF DNA IDENTIFICATION PROFILES MAY BE MAINTAINED IN THIS STATE  
24 PROVIDED, HOWEVER, THAT THIS PROHIBITION SHALL NOT BE INTERPRETED TO  
25 PROHIBIT ANY SUCH INDEX OR COMPILATION OF DNA INFORMATION OBTAINED FROM  
26 CRIME SCENE SAMPLES OR CONCERNING MISSING PERSONS.

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

32 S 10. Paragraph (b) of subdivision 9 of section 995-c of the execu-  
33 tive law, as added by chapter 524 of the laws of 2002, is amended and  
34 two new paragraphs (c) and (d) are added to read as follows:

35 (b) As prescribed in this paragraph, if an individual, either volun-  
36 tarily or pursuant to a warrant or order of a court, has provided a  
37 sample for DNA testing in connection with the investigation or prose-  
38 cution of a crime and (i) no criminal action against the individual  
39 relating to such crime was commenced within the period specified by  
40 section 30.10 of the criminal procedure law, or (ii) a criminal action  
41 was commenced against the individual relating to such crime which  
42 resulted in a complete acquittal, OR A DISMISSAL AND THE MATTER WILL NOT  
43 BE TRIED OR RETRIED, or (iii) a criminal action against the individual  
44 relating to such crime resulted in a conviction that was subsequently  
45 reversed or vacated, or for which the individual was granted a pardon  
46 pursuant to article two-A of this chapter, such individual may apply to  
47 the supreme court or the court in which the judgment of conviction was  
48 originally entered for an order directing the expungement of any DNA  
49 record and any samples, analyses, or other documents relating to the DNA  
50 testing of such individual in connection with the investigation or pros-  
51 ecution of such crime. A copy of such application shall be served on the  
52 district attorney and an order directing expungement may be granted if  
53 the court finds that the individual has satisfied the conditions of one  
54 of the subparagraphs of this paragraph; that if a judgment of conviction  
55 was reversed or vacated, all appeals relating thereto have been  
56 concluded and the individual will not be retried, or, if a retrial has

1 occurred, the trier of fact has rendered a verdict of complete acquit-  
2 tal, and that expungement will not adversely affect the investigation or  
3 prosecution of some other person or persons for the crime. NOTHING IN  
4 THIS PARAGRAPH SHALL PREVENT A COURT, AT AN EARLIER TIME, FROM ORDERING  
5 EXPUNGEMENT IN THE MANNER SPECIFIED IN THIS PARAGRAPH IN THE INTERESTS  
6 OF JUSTICE, IN RESPONSE TO AN APPLICATION MADE ON NOTICE TO THE DISTRICT  
7 ATTORNEY BY THE PERSON WHO PROVIDED SUCH DNA SAMPLE. If an order direct-  
8 ing the expungement of any DNA record and any samples, analyses or other  
9 documents relating to the DNA testing of such individual is issued, such  
10 record and any samples, analyses, or other documents shall, at the  
11 discretion of the possessor thereof, be destroyed or returned to such  
12 individual or to the attorney who represented him or her in connection  
13 with the application for the order of expungement. THE PERSON DESTROYING  
14 OR RETURNING SUCH RECORD, SAMPLES, ANALYSES AND OTHER DOCUMENTS SHALL  
15 MAINTAIN A RECORD CERTIFYING THE DATE, TIME AND MANNER OF DESTRUCTION OR  
16 RETURN AND IDENTIFYING THE PERSON OR PERSONS DESTROYING OR RETURNING  
17 SAME. THE PERSON DESTROYING OR RETURNING SAME SHALL SEND A COPY OF THIS  
18 RECORD TO THE PERSON WHO SUBMITTED THE SAMPLE OR TO THE ATTORNEY WHO  
19 REPRESENTED HIM OR HER IN CONNECTION WITH THE APPLICATION FOR THE ORDER  
20 OF EXPUNGEMENT.

21 (C) (I) EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, IF AN  
22 INDIVIDUAL HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE  
23 INVESTIGATION OR PROSECUTION OF A CRIME, OTHER THAN IN RESPONSE TO A  
24 DEMAND AUTHORIZED PURSUANT TO SUBDIVISIONS ONE, TWO AND THREE OF THIS  
25 SECTION, OR IF A SAMPLE FOR DNA TESTING HAS OTHERWISE COME INTO THE  
26 CUSTODY OR POSSESSION OF A LAW ENFORCEMENT AGENCY OR AN AGENT THEREOF,  
27 AND THE DNA PROFILE DERIVED FROM SUCH SAMPLE DOES NOT MATCH A DNA  
28 PROFILE DERIVED FROM CRIME SCENE EVIDENCE DEVELOPED IN CONNECTION WITH  
29 THE INVESTIGATION OR PROSECUTION OF A CRIMINAL ACT OR ACTS, EVERY  
30 RECORD, SAMPLE, ANALYSIS AND OTHER DOCUMENT RELATING TO THE DNA TESTING  
31 OF SUCH SAMPLE SHALL, AT THE DISCRETION OF THE POSSESSOR THEREOF, BE  
32 EITHER RETURNED TO THE INDIVIDUAL WHO PROVIDED SUCH SAMPLE, DESTROYED OR  
33 MAINTAINED FOR THE DURATION OF THE INVESTIGATION, PROSECUTION OR ADJUDI-  
34 CATION OF SUCH CRIMINAL ACTS EXCLUSIVELY FOR USE WITH RESPECT TO THE  
35 INVESTIGATION, PROSECUTION AND/OR ADJUDICATION OF THE CRIMINAL CHARGES  
36 FOR WHICH SUCH SAMPLE WAS OBTAINED OR WITH RESPECT TO ANY OTHER CRIMINAL  
37 ACTS WHICH THE INVESTIGATING AGENCY HAS REASON TO BELIEVE MAY BE LINKED  
38 TO SUCH SAMPLE; PROVIDED, HOWEVER, THAT NO LATER THAN FIVE YEARS AFTER  
39 SUCH SAMPLE IS OBTAINED OR WHEN THE INVESTIGATION OR PROSECUTION OF SUCH  
40 CRIME HAS CONCLUDED, WHICHEVER FIRST OCCURS, SUCH RECORDS, SAMPLES,  
41 ANALYSES AND OTHER DOCUMENTS SHALL, AT THE DISCRETION OF THE POSSESSOR  
42 THEREOF, BE RETURNED TO SUCH INDIVIDUAL OR DESTROYED, OR SEALED IN A  
43 MANNER CONSISTENT WITH PARAGRAPH (C) AND SUBPARAGRAPH (II), (IV) OR (V)  
44 OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 160.55 OF THE CRIMINAL  
45 PROCEDURE LAW.

46 (II) THE PERSON RETURNING, DESTROYING OR SEALING SUCH RECORD, SAMPLES,  
47 ANALYSES OR OTHER DOCUMENTS IN ACCORDANCE WITH THIS PARAGRAPH SHALL  
48 MAINTAIN A RECORD CERTIFYING THE DATE AND MANNER OF SUCH RETURN,  
49 DESTRUCTION OR SEALING AND IDENTIFYING THE PERSON OR PERSONS RETURNING,  
50 DESTROYING OR SEALING SAME. THE PERSON RETURNING, DESTROYING OR SEALING  
51 SAME SHALL SEND A COPY OF THIS RECORD TO THE PERSON WHO SUBMITTED THE  
52 SAMPLE.

53 (III) THIS PARAGRAPH SHALL SUPPLEMENT AND NOT SUPPLANT ANY APPLICABLE  
54 PROVISION OF PARAGRAPH (B) OF THIS SUBDIVISION. THIS PARAGRAPH SHALL NOT  
55 APPLY TO DNA RECORDS, SAMPLES, ANALYSES AND OTHER DOCUMENTS OBTAINED  
56 FROM THE FORENSIC EXAMINATION OF CRIME SCENE EVIDENCE, WHERE THE DNA

1 PROFILE DEVELOPED FROM SUCH CRIME SCENE EVIDENCE DOES NOT MATCH THE DNA  
2 PROFILE OF A KNOWN PERSON.

3 (D) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A), (B) AND (C) OF  
4 THIS SUBDIVISION, A DNA RECORD WHICH WAS OBTAINED FROM A SAMPLE PROVIDED  
5 PURSUANT TO PARAGRAPH (A) OR (B) OF THIS SUBDIVISION PRIOR TO THE EFFEC-  
6 TIVE DATE OF THIS PARAGRAPH NEED NOT BE DESTROYED, RETURNED OR SEALED,  
7 AND MAY BE INCLUDED IN THE STATE DNA IDENTIFICATION INDEX ESTABLISHED  
8 PURSUANT TO THIS ARTICLE, WHEN, AS OF THE EFFECTIVE DATE OF THIS PARA-  
9 GRAPH, THE PERSON WHO PROVIDED SUCH SAMPLE STANDS CONVICTED OF A FELONY  
10 OR MISDEMEANOR DEFINED IN SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTI-  
11 CLE. ALL LAWS GOVERNING DNA RECORDS INCLUDED IN THE STATE DNA IDENTIFI-  
12 CATION INDEX SHALL APPLY TO ANY DNA RECORD INCLUDED IN THE STATE DNA  
13 IDENTIFICATION INDEX PURSUANT TO THIS PARAGRAPH.

14 S 11. Section 340.20 of the criminal procedure law is amended by  
15 adding a new subdivision 5 to read as follows:

16 5. PRIOR TO ACCEPTING A DEFENDANT'S PLEA OF GUILTY TO A COUNT OR  
17 COUNTS OF AN INFORMATION CHARGING A MISDEMEANOR, AS DEFINED IN PARAGRAPH  
18 (A) OF SUBDIVISION TWO OF SECTION 55.10 OF THE PENAL LAW AND INCLUDED IN  
19 THE DEFINITION OF DESIGNATED OFFENDER PURSUANT TO SUBDIVISION SEVEN OF  
20 SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT SHALL  
21 ADVISE THE DEFENDANT THAT UPON THE CONVICTION FOR SUCH MISDEMEANOR HE OR  
22 SHE WILL BE REQUIRED TO PROVIDE A SAMPLE APPROPRIATE FOR DNA TESTING FOR  
23 INCLUSION IN THE STATE DNA IDENTIFICATION INDEX PURSUANT TO ARTICLE  
24 FORTY-NINE-B OF THE EXECUTIVE LAW. THE COURT SHALL AFFIRM ON THE RECORD  
25 OR IN WRITING THAT THE DEFENDANT HAS BEEN GIVEN THE NOTICE REQUIRED BY  
26 THIS SUBDIVISION. THE FAILURE OF A COURT TO ADVISE THE DEFENDANT PURSU-  
27 ANT TO THIS SUBDIVISION OR TO OTHERWISE COMPLY WITH THE PROVISIONS OF  
28 THIS SUBDIVISION SHALL NOT BE DEEMED TO AFFECT THE VOLUNTARINESS OF A  
29 PLEA OF GUILTY OR THE VALIDITY OF A CONVICTION.

30 S 12. The state finance law is amended by adding a new section 97-1111  
31 to read as follows:

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

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

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

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

54 S 13. Innocence research project program. 1. There is hereby estab-  
55 lished in this state an innocence research project program. Funding  
56 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 97-1111 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 expert assistance, and may also provide relevant training, including but not limited to training in the use of DNA evidence for forensic identification purposes, to attorneys engaged in the defense of criminal cases.

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

4. Before providing assistance to any individual believed to be actually innocent of the crime or crimes charged, the organization-based coordinator of such program shall determine whether such individual is financially able to pay for the proposed services or assistance to be provided. If such individual is able to financially afford to pay for such services or assistance, such coordinator shall request and receive such payment or payments on behalf of the program from such individual. All monies received from individuals pursuant to this subdivision shall be promptly forwarded by such coordinator to the state comptroller, for deposit into the "assistance to police and crime laboratories: DNA evidence fund" established pursuant to section 97-1111 of the state finance law.

S 14. The criminal procedure law is amended by adding a new section 60.47 to read as follows:

S 60.47 RULES OF EVIDENCE; ELECTRONIC RECORDING OF STATEMENTS OF DEFENDANTS.

1. DEFINITIONS. AS USED IN THIS SECTION:

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

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

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

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

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

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

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

8 (B) THE ACCUSED REFUSED TO HAVE HIS OR HER INTERROGATION ELECTRON-  
9 ICALLY RECORDED, AND THE REFUSAL ITSELF WAS ELECTRONICALLY RECORDED; OR

10 (C) THE FAILURE TO ELECTRONICALLY RECORD AN ENTIRE INTERROGATION WAS  
11 THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS  
12 NOT FEASIBLE.

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

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

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

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

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

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

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

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

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

33 S 15. This act shall take effect immediately; provided, however, that:

34 (a) sections nine and ten of this act shall take effect on the one  
35 hundred twentieth day after it shall have become a law;

36 (b) the amendments to section 340.20 of the criminal procedure law  
37 made by section eleven of this act shall apply to pleas of guilty to a  
38 count or counts of an information entered 60 days or more after the  
39 effective date of this act; and

40 (c) section fourteen of this act shall take effect on the ninetieth  
41 day after it shall have become a law, and shall apply to any criminal  
42 proceeding commenced on and after such date.