

5284

2013-2014 Regular Sessions

I N A S S E M B L Y

February 22, 2013

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the disclosure of
DNA-related information in criminal investigations and proceedings and
the expungement of such information

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

1 Section 1. Paragraph (a) of subdivision 6 of section 995-c of the
2 executive law, as added by chapter 737 of the laws of 1994, is amended
3 to read as follows:
4 (a) to a federal law enforcement agency, or to a state or local law
5 enforcement agency or district attorney's office OR TO ANY OTHER PUBLIC
6 AGENCY for law enforcement identification purposes [upon submission of a
7 DNA record] in connection with the investigation of the commission of
8 one or more crimes or to assist in the recovery or identification of
9 specified human remains, including identification of missing persons[,
10 provided that there exists between the division and such agency a writ-
11 ten agreement governing the use and dissemination of such DNA records in
12 accordance with the provisions of this article];
13 S 2. Subdivision 9 of section 995-c of the executive law, as amended
14 by chapter 524 of the laws of 2002, is amended to read as follows:
15 9. [(a)] Upon receipt of notification of a reversal or a vacatur of a
16 conviction, or of the granting of a pardon pursuant to article two-A of
17 this chapter, of an individual whose DNA record has been stored in the
18 state DNA identification index in accordance with this article by the
19 division of criminal justice services, the DNA record shall be expunged
20 from the state DNA identification index, and such individual may apply
21 to the court in which the judgment of conviction was originally entered
22 for an order directing the expungement of any DNA record and any
23 samples, analyses, or other documents relating to the DNA testing of
24 such individual in connection with the investigation or prosecution of

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

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1 the crime which resulted in the conviction that was reversed or vacated
2 or for which the pardon was granted. A copy of such application shall be
3 served on the district attorney and an order directing expungement may
4 be granted if the court finds that all appeals relating to the
5 conviction have been concluded; that such individual will not be
6 retried, or, if a retrial has occurred, the trier of fact has rendered a
7 verdict of complete acquittal, and that expungement will not adversely
8 affect the investigation or prosecution of some other person or persons
9 for the crime. The division shall, by rule or regulation, prescribe
10 procedures to ensure that the DNA record in the state DNA identification
11 index, and any samples, analyses, or other documents relating to such
12 record, whether in the possession of the division, or any law enforce-
13 ment or police agency, or any forensic DNA laboratory, including any
14 duplicates or copies thereof, at the discretion of the possessor there-
15 of, are either destroyed or returned to such individual, or to the
16 attorney who represented him or her at the time such reversal, vacatur
17 or pardon, was granted. The commissioner shall also adopt by rule and
18 regulation a procedure for the expungement in other appropriate circum-
19 stances of DNA records contained in the index.

20 [(b) As prescribed in this paragraph, if an individual, either volun-
21 tarily or pursuant to a warrant or order of a court, has provided a
22 sample for DNA testing in connection with the investigation or prose-
23 cution of a crime and (i) no criminal action against the individual
24 relating to such crime was commenced within the period specified by
25 section 30.10 of the criminal procedure law, or (ii) a criminal action
26 was commenced against the individual relating to such crime which
27 resulted in a complete acquittal, or (iii) a criminal action against the
28 individual relating to such crime resulted in a conviction that was
29 subsequently reversed or vacated, or for which the individual was grant-
30 ed a pardon pursuant to article two-A of this chapter, such individual
31 may apply to the supreme court or the court in which the judgment of
32 conviction was originally entered for an order directing the expungement
33 of any DNA record and any samples, analyses, or other documents relating
34 to the DNA testing of such individual in connection with the investi-
35 gation or prosecution of such crime. A copy of such application shall be
36 served on the district attorney and an order directing expungement may
37 be granted if the court finds that the individual has satisfied the
38 conditions of one of the subparagraphs of this paragraph; that if a
39 judgment of conviction was reversed or vacated, all appeals relating
40 thereto have been concluded and the individual will not be retried, or,
41 if a retrial has occurred, the trier of fact has rendered a verdict of
42 complete acquittal, and that expungement will not adversely affect the
43 investigation or prosecution of some other person or persons for the
44 crime. If an order directing the expungement of any DNA record and any
45 samples, analyses or other documents relating to the DNA testing of such
46 individual is issued, such record and any samples, analyses, or other
47 documents shall, at the discretion of the possessor thereof, be
48 destroyed or returned to such individual or to the attorney who repres-
49 ented him or her in connection with the application for the order of
50 expungement.]

51 S 3. Section 995-d of the executive law, as added by chapter 737 of
52 the laws of 1994, subdivision 2 as amended by chapter 560 of the laws of
53 1999, is amended to read as follows:

54 S 995-d. Confidentiality AND APPLICATIONS FOR EXPUNGEMENT. 1. All
55 records, findings, reports, and results of DNA testing performed on any
56 person, INCLUDING THOSE IN THE POSSESSION OF A FORENSIC DNA LABORATORY,

1 shall be confidential and may not be disclosed or redisclosed without
2 the consent of the subject of such DNA testing. Such records, findings,
3 reports and results shall not be released to insurance companies,
4 employers or potential employers, health providers, employment screening
5 or personnel companies, agencies, or services, private investigation
6 services, and may not be disclosed in response to a subpoena or other
7 compulsory legal process or warrant, or upon request or order of any
8 agency, authority, division, office, corporation, partnership, or any
9 other private or public entity or person, except that nothing contained
10 herein shall prohibit disclosure in response to a subpoena issued on
11 behalf of the subject of such [DNA] record or on behalf of a party in a
12 civil proceeding where the subject of such [DNA] record has put such
13 record in issue.

14 2. Notwithstanding the provisions of subdivision one of this section,
15 records, findings, reports, and results of DNA testing[, other than a
16 DNA record maintained in the state DNA identification index,] MAINTAINED
17 BY A FORENSIC DNA LABORATORY may be disclosed BY SUCH LABORATORY AND
18 REDISCLOSED BY ANY PUBLIC AGENCY FOR THE FOLLOWING PURPOSES:

19 (A) TO A FEDERAL LAW ENFORCEMENT AGENCY, OR TO A STATE OR LOCAL LAW
20 ENFORCEMENT AGENCY OR DISTRICT ATTORNEY'S OFFICE OR TO ANY OTHER PUBLIC
21 AGENCY FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES IN CONNECTION WITH
22 THE INVESTIGATION OF THE COMMISSION OF ONE OR MORE CRIMES OR TO ASSIST
23 IN THE RECOVERY OR IDENTIFICATION OF HUMAN REMAINS, INCLUDING IDENTIFI-
24 CATION OF MISSING PERSONS;

25 (B) in a criminal proceeding to the court, the prosecution, and the
26 defense pursuant to a written request [on a form prescribed by the
27 commissioner of the division of criminal justice services.] BY ONE OF
28 THESE ENTITIES TO THE POSSESSOR OF SUCH RECORDS, FINDINGS, REPORTS, OR
29 RESULTS OF DNA TESTING; OR

30 (C) AFTER PERSONALLY IDENTIFIABLE INFORMATION HAS BEEN REMOVED BY THE
31 FORENSIC DNA LABORATORY, TO AN ENTITY AUTHORIZED BY THE FORENSIC DNA
32 LABORATORY FOR THE PURPOSE OF CREATING OR MAINTAINING A POPULATION
33 STATISTICS DATABASE OR FOR IDENTIFICATION RESEARCH AND PROTOCOL DEVELOP-
34 MENT FOR FORENSIC DNA ANALYSIS OR QUALITY CONTROL PURPOSES.

35 3. AS PRESCRIBED IN THIS SUBDIVISION, IF AN INDIVIDUAL NOT OTHERWISE
36 COVERED BY SUBDIVISION NINE OF SECTION NINE HUNDRED NINETY-FIVE-C OF
37 THIS ARTICLE, EITHER VOLUNTARILY OR PURSUANT TO A WARRANT OR ORDER OF A
38 COURT, HAS PROVIDED A SAMPLE FOR DNA TESTING IN CONNECTION WITH THE
39 INVESTIGATION OR PROSECUTION OF A CRIME AND (A) NO CRIMINAL ACTION
40 AGAINST THE INDIVIDUAL RELATING TO SUCH CRIME WAS COMMENCED OR IS
41 INTENDED TO BE COMMENCED WITHIN THE PERIOD SPECIFIED BY SECTION 30.10 OF
42 THE CRIMINAL PROCEDURE LAW, OR (B) A CRIMINAL ACTION WAS COMMENCED
43 AGAINST THE INDIVIDUAL RELATING TO SUCH CRIME WHICH RESULTED IN A
44 COMPLETE ACQUITTAL, OR (C) A CRIMINAL ACTION AGAINST THE INDIVIDUAL
45 RELATING TO SUCH CRIME RESULTED IN A CONVICTION THAT WAS SUBSEQUENTLY
46 REVERSED OR VACATED, OR FOR WHICH THE INDIVIDUAL WAS GRANTED A PARDON
47 PURSUANT TO ARTICLE TWO-A OF THIS CHAPTER, SUCH INDIVIDUAL MAY APPLY TO
48 THE SUPREME COURT OR THE COURT IN WHICH THE JUDGMENT OF CONVICTION WAS
49 ORIGINALLY ENTERED FOR AN ORDER DIRECTING THE EXPUNGEMENT OF ANY DNA
50 IDENTIFICATION INFORMATION AND ANY SAMPLES, ANALYSES, OR OTHER DOCUMENTS
51 RELATING TO THE DNA TESTING OF SUCH INDIVIDUAL IN CONNECTION WITH THE
52 INVESTIGATION OR PROSECUTION OF SUCH CRIME. A COPY OF SUCH APPLICATION
53 SHALL BE SERVED ON THE DISTRICT ATTORNEY AND AN ORDER DIRECTING EXPUNGE-
54 MENT SHALL BE GRANTED IF THE COURT FINDS THAT THE INDIVIDUAL HAS SATIS-
55 FIED THE CONDITIONS OF ONE OF THE PARAGRAPHS OF THIS SUBDIVISION; THAT
56 IF A JUDGMENT OF CONVICTION WAS REVERSED OR VACATED, ALL APPEALS RELAT-

1 ING THERE TO HAVE BEEN CONCLUDED AND THE INDIVIDUAL WILL NOT BE RETRIED,
2 OR, IF A RETRIAL HAS OCCURRED, THE TRIER OF FACT HAS RENDERED A VERDICT
3 OF COMPLETE ACQUITTAL, AND THAT EXPUNGEMENT WILL NOT ADVERSELY AFFECT
4 THE INVESTIGATION OR PROSECUTION OF SOME OTHER PERSON OR PERSONS FOR THE
5 CRIME. IF AN ORDER DIRECTING THE EXPUNGEMENT OF ANY DNA IDENTIFICATION
6 INFORMATION AND ANY SAMPLES, ANALYSES OR OTHER DOCUMENTS RELATING TO THE
7 DNA TESTING OF SUCH INDIVIDUAL IS ISSUED, SUCH IDENTIFICATION INFORMA-
8 TION AND ANY SAMPLES, ANALYSES, OR OTHER DOCUMENTS SHALL, AT THE
9 DISCRETION OF THE POSSESSOR THEREOF, BE DESTROYED OR RETURNED TO SUCH
10 INDIVIDUAL OR TO THE ATTORNEY WHO REPRESENTED HIM OR HER IN CONNECTION
11 WITH THE APPLICATION FOR THE ORDER OF EXPUNGEMENT.

12 4. Notwithstanding the provisions of subdivision one of this section,
13 a DNA record maintained in the state DNA identification index may be
14 disclosed pursuant to section nine hundred ninety-five-c of this arti-
15 cle.

16 S 4. This act shall take effect immediately.