

6319

I N S E N A T E

January 14, 2014

Introduced by Sen. O'BRIEN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the criminal procedure law, in relation to requiring individuals arrested in connection with a felony to submit a DNA sample

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

1 Section 1. Section 995 of the executive law is amended by adding a new
2 subdivision 7-a to read as follows:
3 7-A. "FELONY ARRESTEE" MEANS A PERSON ARRESTED AND CHARGED WITH ANY
4 ONE OR MORE OF THE FOLLOWING FELONIES, OR AN ATTEMPT THEREOF WHERE SUCH
5 ATTEMPT IS A FELONY OFFENSE, AS DEFINED IN THE PENAL LAW: SECTIONS
6 120.05, 120.06, 120.07, 120.10, 120.11 AND 120.12, RELATING TO ASSAULT;
7 SECTIONS 120.55 AND 120.60, RELATING TO STALKING; SECTION 120.70, RELAT-
8 ING TO LURING A CHILD; SECTIONS 125.15, 125.20, 125.21, 125.22, 125.25,
9 125.26 AND 125.27, RELATING TO HOMICIDE; SECTIONS 130.25, 130.30,
10 130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.67, 130.70, 130.75,
11 130.80, 130.95 AND 130.96, RELATING TO SEX OFFENSES; SECTIONS 135.10,
12 135.20, 135.25 AND 135.35, RELATING TO KIDNAPPING AND LABOR TRAFFICKING;
13 SECTIONS 140.17, 140.20, 140.25 AND 140.30, RELATING TO BURGLARY;
14 SECTIONS 150.05, 150.10, 150.15 AND 150.20, RELATING TO ARSON; SECTIONS
15 155.30, 155.35, 155.40 AND 155.42, RELATING TO GRAND LARCENY; SECTIONS
16 160.05, 160.10 AND 160.15, RELATING TO ROBBERY; SECTION 230.34 RELATING
17 TO SEX TRAFFICKING; SECTIONS 235.21 AND 235.22, RELATING TO DISSEM-
18 INATION OF INDECENT MATERIAL TO MINORS; SECTIONS 250.45 AND 250.50,
19 RELATING TO UNLAWFUL SURVEILLANCE; SECTIONS 255.25, 255.26, AND 255.27,
20 RELATING TO INCEST; SECTIONS 263.05, 263.10, 263.11, 263.15, 263.16, AND
21 263.30, RELATING TO SEXUAL PERFORMANCE BY A CHILD; OR SECTIONS 265.02,
22 265.03, 265.04, 265.08, 265.09, 265.11, 265.12, 265.13, 265.14 AND
23 265.16, RELATING TO FIREARMS AND OTHER DANGEROUS WEAPONS.
24 S 2. Subdivision 3 of section 995-c of the executive law is amended by
25 adding four new paragraphs (c), (d), (e) and (f) to read as follows:
26 (C) A FELONY ARRESTEE SHALL BE REQUIRED TO PROVIDE A SAMPLE APPROPRI-
27 ATE FOR DNA TESTING UPON HIS OR HER ARREST, UNLESS SUCH FELONY ARRESTEE

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

LBD08276-01-3

1 HAS PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDENTIFICATION INDEX.

2
3 (D) A PUBLIC SERVANT TO WHOSE CUSTODY A DESIGNATED OFFENDER OR FELONY
4 ARRESTEE WHO HAS NOT YET PROVIDED A DNA SAMPLE HAS BEEN COMMITTED SHALL
5 SEEK AN ORDER OF THE COURT TO COLLECT SUCH SAMPLE IF THE OFFENDER, AFTER
6 WRITTEN OR ORAL REQUEST, REFUSES TO PROVIDE SUCH SAMPLE.

7 (E) THE DETENTION, ARREST, INDICTMENT OR CONVICTION OF A PERSON BASED
8 UPON DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX SHALL
9 NOT BE INVALIDATED IF IT IS LATER DETERMINED THAT THE DIVISION OF CRIMINAL
10 JUSTICE SERVICES INADVERTENTLY, BUT IN GOOD FAITH, COLLECTED OR
11 PLACED THE PERSON'S DNA SAMPLE IN THE INDEX.

12 (F) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE
13 RULES AND REGULATIONS GOVERNING THE PERIODIC REVIEW OF THE DNA IDENTIFICATION
14 INDEX TO DETERMINE WHETHER OR NOT THE INDEX CONTAINS DNA PROFILES
15 THAT SHOULD NOT BE IN THE INDEX, INCLUDING THE STEPS NECESSARY TO
16 EXPUNGE ANY PROFILES WHICH THE DIVISION OF CRIMINAL JUSTICE SERVICES
17 DETERMINES SHOULD NOT BE IN THE INDEX.

18 S 3. Subdivision 9 of section 995-c of the executive law, as amended
19 by chapter 524 of the laws of 2002, is amended to read as follows:

20 9. (a) Upon receipt of notification of a reversal or a vacatur of a
21 conviction, or of the granting of a pardon pursuant to article two-A of
22 this chapter, of an individual whose DNA record has been stored in the
23 state DNA identification index in accordance with this article by the
24 division of criminal justice services, the DNA record shall be expunged
25 from the state DNA identification index, and such individual may apply
26 to the court in which the judgment of conviction was originally entered
27 for an order directing the expungement of any DNA record and any
28 samples, analyses, or other documents relating to the DNA testing of
29 such individual in connection with the investigation or prosecution of
30 the crime which resulted in the conviction that was reversed or vacated
31 or for which the pardon was granted. A copy of such application shall be
32 served on the district attorney and an order directing expungement may
33 be granted if the court finds that all appeals relating to the
34 conviction have been concluded; that such individual will not be
35 retried, or, if a retrial has occurred, the trier of fact has rendered a
36 verdict of complete acquittal, and that expungement will not adversely
37 affect the investigation or prosecution of some other person or persons
38 for the crime. The division shall, by rule or regulation, prescribe
39 procedures to ensure that the DNA record in the state DNA identification
40 index, and any samples, analyses, or other documents relating to such
41 record, whether in the possession of the division, or any law enforcement
42 or police agency, or any forensic DNA laboratory, including any
43 duplicates or copies thereof, at the discretion of the possessor thereof,
44 are either destroyed or returned to such individual, or to the
45 attorney who represented him or her at the time such reversal, vacatur
46 or pardon, was granted. The commissioner shall also adopt by rule and
47 regulation a procedure for the expungement in other appropriate circumstances
48 of DNA records contained in the index.

49 (b) As prescribed in this paragraph, if an individual, either voluntarily,
50 PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION,
51 or pursuant to a warrant or order of a court, has provided a sample for
52 DNA testing in connection with the investigation, ARREST or prosecution
53 of a crime and (i) no criminal action against the individual relating to
54 such crime was commenced within the period specified by section 30.10 of
55 the criminal procedure law, or (ii) a criminal action was commenced
56 against the individual relating to such crime which resulted in a

1 complete acquittal, or (iii) a criminal action WAS COMMENCED against the
2 individual relating to such crime [resulted in a conviction that was
3 subsequently reversed or vacated, or for which the individual was grant-
4 ed a pardon pursuant to article two-A of this chapter, such individual
5 may apply to the supreme court or the court in which the judgment of
6 conviction was originally entered for an order directing the expungement
7 of any DNA record and any samples, analyses, or other documents relating
8 to the DNA testing of such individual in connection with the investi-
9 gation or prosecution of such crime. A copy of such application shall be
10 served on the district attorney and an order directing expungement may
11 be granted if the court finds that the individual has satisfied the
12 conditions of one of the subparagraphs of this paragraph; that if a
13 judgment of conviction was reversed or vacated, all appeals relating
14 thereto have been concluded and the individual will not be retried, or,
15 if a retrial has occurred, the trier of fact has rendered a verdict of
16 complete acquittal, and that expungement will not adversely affect the
17 investigation or prosecution of some other person or persons for the
18 crime. If an order directing the expungement of any DNA record and any
19 samples, analyses or other documents relating to the DNA testing of such
20 individual is issued] WHICH WAS RESOLVED BY A DISMISSAL, SUCCESSFUL
21 COMPLETION OF A PRE-PROSECUTION DIVERSION PROGRAM, OR CONDITIONAL
22 DISCHARGE OR MISDEMEANOR CONVICTION THAT DID NOT REQUIRE DNA COLLECTION
23 PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE DNA
24 RECORD SHALL BE EXPUNGED FROM THE STATE DNA IDENTIFICATION INDEX. AN
25 INDIVIDUAL MAY REQUEST EXPUNGEMENT OF ANY DNA RECORD AND ANY SAMPLES,
26 ANALYSES OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH INDIVID-
27 UAL BY PROVIDING THE FOLLOWING MATERIALS TO THE DIVISION OF CRIMINAL
28 JUSTICE SERVICES:

29 (1) A WRITTEN REQUEST FOR EXPUNGEMENT OF THE SAMPLE AND DNA RECORDS;
30 AND

31 (2) A CERTIFIED COPY OF THE DISMISSAL, SUCCESSFUL COMPLETION OF A
32 PRE-PROSECUTION DIVERSION PROGRAM OR A CONDITIONAL DISCHARGE, MISDEMEA-
33 NOR CONVICTION OR ACQUITTAL; AND

34 (3) A SWORN STATEMENT FROM THE DISTRICT ATTORNEY'S OFFICE WITH JURIS-
35 DICTION OVER THE MATTER THAT: THE CASE WAS DISMISSED; A PRE-PROSECUTION
36 DIVERSION PROGRAM OR CONDITIONAL DISCHARGE, MISDEMEANOR CONVICTION
37 EXCLUDED FROM DNA COLLECTION PURSUANT TO SECTION NINE HUNDRED
38 NINETY-FIVE OF THIS ARTICLE OR ACQUITTAL OCCURRED; NO FELONY CHARGES
39 AROSE OUT OF THE ARREST; OR NO CRIMINAL ACTION AGAINST THE INDIVIDUAL
40 RELATING TO SUCH CRIME WAS COMMENCED WITHIN THE PERIOD SPECIFIED BY
41 SECTION 30.10 OF THE CRIMINAL PROCEDURE LAW; AND THAT EXPUNGEMENT WILL
42 NOT ADVERSELY AFFECT THE INVESTIGATION OR PROSECUTION OF SOME OTHER
43 PERSON OR PERSONS FOR THE CRIME.

44 (C) IF EXPUNGEMENT IS WARRANTED PURSUANT TO PARAGRAPH (A) OR (B) OF
45 THIS SUBDIVISION, such record and any samples, analyses, or other docu-
46 ments shall, at the discretion of the possessor thereof, be destroyed or
47 returned to such individual or to the attorney who represented him or
48 her IN THE CRIMINAL ACTION OR in connection with the [application for
49 the order of] REQUEST FOR expungement.

50 (D) NO EXPUNGEMENT SHALL BE GRANTED WHERE AN INDIVIDUAL HAS A PRIOR
51 CONVICTION REQUIRING A DNA SAMPLE, OR A PENDING FELONY CHARGE FOR WHICH
52 COLLECTION OF A SAMPLE IS AUTHORIZED PURSUANT TO THE PROVISIONS OF PARA-
53 GRAPH (C) OF SUBDIVISION THREE OF THIS SECTION.

54 S 4. Subdivision 6 of section 120.90 of the criminal procedure law, as
55 amended by chapter 424 of the laws of 1998, is amended to read as
56 follows:

1 6. Before bringing a defendant arrested pursuant to a warrant before
2 the local criminal court in which such warrant is returnable, a police
3 officer must without unnecessary delay perform all fingerprinting and
4 other preliminary police duties required in the particular case. In any
5 case in which the defendant is not brought by a police officer before
6 such court but, following his arrest in another county for an offense
7 specified in subdivision one of section 160.10 OF THIS TITLE, is
8 released by a local criminal court of such other county on his own
9 recognizance or on bail for his appearance on a specified date before
10 the local criminal court before which the warrant is returnable, the
11 latter court must, upon arraignment of the defendant before it, direct
12 that he be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
13 TAKEN, IF REQUIRED PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE
14 EXECUTIVE LAW, by the appropriate officer or agency, and that he appear
15 at an appropriate designated time and place for such purpose.

16 S 5. Section 130.60 of the criminal procedure law, as amended by chap-
17 ter 95 of the laws of 1991, subdivision 1 as amended by chapter 446 of
18 the laws of 1993, is amended to read as follows:
19 S 130.60 Summons; fingerprinting of defendant.

20 1. Upon the arraignment of a defendant whose court attendance has been
21 secured by the issuance and service of a summons, based upon an indict-
22 ment, a prosecutor's information or upon an information, felony
23 complaint or misdemeanor complaint filed by a complainant who is a
24 police officer, the court must, if an offense charged in the accusatory
25 instrument is one specified in subdivision one of section 160.10 OF THIS
26 TITLE, direct that the defendant be fingerprinted by the appropriate
27 police officer or agency, and that he or she appear at an appropriate
28 designated time and place for such purpose. IF AN OFFENSE CHARGED IN
29 THE ACCUSATORY INSTRUMENT IS ONE SPECIFIED IN SUBDIVISION SEVEN-A OF
30 SECTION NINE HUNDRED NINETY-FIVE OF THE EXECUTIVE LAW, THE COURT MUST
31 DIRECT THAT A SAMPLE APPROPRIATE FOR DNA TESTING BE TAKEN, AND THAT HE
32 OR SHE APPEAR AT AN APPROPRIATE DESIGNATED TIME AND PLACE FOR SUCH
33 PURPOSE.

34 2. Upon the arraignment of a defendant whose court attendance has been
35 secured by the issuance and service of a summons based upon an informa-
36 tion or misdemeanor complaint filed by a complainant who is not a police
37 officer, and who has not previously been fingerprinted OR FROM WHOM A
38 DNA SAMPLE HAS NOT PREVIOUSLY BEEN TAKEN AND WAS REQUIRED PURSUANT TO
39 SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, the court may,
40 if it finds reasonable cause to believe that the defendant has committed
41 an offense specified in subdivision one of section 160.10 OF THIS TITLE,
42 direct that the defendant be fingerprinted AND/OR HAVE A SAMPLE APPRO-
43 PRIATE FOR DNA TESTING TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINE-
44 TY-FIVE-C OF THE EXECUTIVE LAW, by the appropriate police officer or
45 agency and that he appear at an appropriate designated time and place
46 for such purpose. A defendant whose court appearance has been secured by
47 the issuance and service of a criminal summons based upon a misdemeanor
48 complaint or information filed by a complainant who is not a police
49 officer, must be directed by the court, upon conviction of the defend-
50 ant, to be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING
51 TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECU-
52 TIVE LAW, by the appropriate police officer or agency and the court must
53 also direct that the defendant appear at an appropriate designated time
54 and place for such purpose, if the defendant is convicted of any offense
55 specified in subdivision one of section 160.10 OF THIS TITLE.

1 S 6. Subdivision 5 of section 140.20 of the criminal procedure law, as
2 amended by chapter 762 of the laws of 1971, is amended to read as
3 follows:

4 5. Before service of an appearance ticket upon an arrested person
5 pursuant to subdivision two or three OF THIS SECTION, the issuing police
6 officer must, if the offense designated in such appearance ticket is one
7 of those specified in subdivision one of section 160.10 OF THIS TITLE,
8 cause such person to be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR
9 DNA TESTING TAKEN, IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C OF
10 THE EXECUTIVE LAW, in the same manner as would be required were no
11 appearance ticket to be issued or served.

12 S 7. Subdivision 2 of section 140.27 of the criminal procedure law, as
13 amended by chapter 843 of the laws of 1980, is amended to read as
14 follows:

15 2. Upon arresting a person without a warrant, a peace officer, except
16 as otherwise provided in subdivision three OF THIS SECTION, must without
17 unnecessary delay bring him or cause him to be brought before a local
18 criminal court, as provided in section 100.55 and subdivision one of
19 section 140.20 OF THIS TITLE, and must without unnecessary delay file or
20 cause to be filed therewith an appropriate accusatory instrument. If
21 the offense which is the subject of the arrest is one of those specified
22 in subdivision one of section 160.10 OF THIS TITLE, the arrested person
23 must be fingerprinted and photographed, AND HAVE A SAMPLE APPROPRIATE
24 FOR DNA TESTING TAKEN IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C
25 OF THE EXECUTIVE LAW, as therein provided. In order to execute the
26 required post-arrest functions, such arresting peace officer may perform
27 such functions himself or he may enlist the aid of a police officer for
28 the performance thereof in the manner provided in subdivision one of
29 section 140.20 OF THIS ARTICLE.

30 S 8. Section 150.70 of the criminal procedure law, as amended by chap-
31 ter 762 of the laws of 1971, is amended to read as follows:

32 S 150.70 Appearance ticket; fingerprinting AND DNA ANALYSIS SAMPLE of
33 defendant.

34 Upon the arraignment of a defendant who has not been arrested and
35 whose court attendance has been secured by the issuance and service of
36 an appearance ticket pursuant to subdivision one of section 150.20 OF
37 THIS ARTICLE, the court must, if an offense charged in the accusatory
38 instrument is one specified in subdivision one of section 160.10 OF THIS
39 TITLE, direct that the defendant be fingerprinted AND HAVE A SAMPLE
40 APPROPRIATE FOR DNA TESTING TAKEN WHEN REQUIRED BY SECTION NINE HUNDRED
41 NINETY-FIVE-C OF THE EXECUTIVE LAW by the appropriate police officer or
42 agency, and that he appear at an appropriate designated time and place
43 for such purpose.

44 S 9. Section 160.20 of the criminal procedure law, as amended by chap-
45 ter 108 of the laws of 1973, is amended to read as follows:

46 S 160.20 Fingerprinting AND DNA ANALYSIS SAMPLE; forwarding of finger-
47 prints AND DNA ANALYSIS SAMPLE.

48 1. Upon the taking of fingerprints of an arrested person or defendant
49 as prescribed in section 160.10 OF THIS ARTICLE, the appropriate police
50 officer or agency must without unnecessary delay forward two copies of
51 such fingerprints to the division of criminal justice services.

52 2. UPON TAKING A SAMPLE APPROPRIATE FOR DNA TESTING, THE APPROPRIATE
53 POLICE OFFICE OR AGENCY MUST WITHOUT UNNECESSARY DELAY STORE AND FORWARD
54 SUCH DNA SAMPLE TO A FORENSIC DNA LABORATORY FOR FORENSIC DNA TESTING
55 AND ANALYSES, AND INCLUSION IN THE STATE DNA IDENTIFICATION INDEX IN

1 ACCORDANCE WITH SUBDIVISION FIVE OF SECTION NINE HUNDRED NINETY-FIVE-C
2 OF THE EXECUTIVE LAW.

3 S 10. Paragraphs (d) and (e) of subdivision 1 of section 160.50 of the
4 criminal procedure law, paragraph (d) as amended by section 73 of
5 subpart B of part C of chapter 62 of the laws of 2011 and paragraph (e)
6 as amended by chapter 169 of the laws of 1994, are amended and a new
7 paragraph (f) is added to read as follows:

8 (d) such records shall be made available to the person accused or to
9 such person's designated agent, and shall be made available to (i) a
10 prosecutor in any proceeding in which the accused has moved for an order
11 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law
12 enforcement agency upon ex parte motion in any superior court, if such
13 agency demonstrates to the satisfaction of the court that justice
14 requires that such records be made available to it, or (iii) any state
15 or local officer or agency with responsibility for the issuance of
16 licenses to possess guns, when the accused has made application for such
17 a license, or (iv) the [New York state] department of corrections and
18 community supervision when the accused is on parole supervision as a
19 result of conditional release or a parole release granted by the [New
20 York] state board of parole, and the arrest which is the subject of the
21 inquiry is one which occurred while the accused was under such super-
22 vision or (v) any prospective employer of a police officer or peace
23 officer as those terms are defined in subdivisions thirty-three and
24 thirty-four of section 1.20 of this chapter, in relation to an applica-
25 tion for employment as a police officer or peace officer; provided,
26 however, that every person who is an applicant for the position of
27 police officer or peace officer shall be furnished with a copy of all
28 records obtained under this paragraph and afforded an opportunity to
29 make an explanation thereto, or (vi) the probation department responsi-
30 ble for supervision of the accused when the arrest which is the subject
31 of the inquiry is one which occurred while the accused was under such
32 supervision; [and]

33 (e) where fingerprints subject to the provisions of this section have
34 been received by the division of criminal justice services and have been
35 filed by the division as digital images, such images may be retained,
36 provided that a fingerprint card of the individual is on file with the
37 division which was not sealed pursuant to this section or section 160.55
38 of this article[.]; AND

39 (F) A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN FROM SUCH PERSON PURSU-
40 ANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, AND ANY
41 DNA RECORD RELATING TO SUCH SAMPLE, AND ANY ANALYSES OR OTHER DOCUMENTS
42 RELATING TO SUCH DNA SAMPLE SHALL BE EXPUNGED, DESTROYED OR RETURNED IN
43 ACCORDANCE WITH SUBDIVISION NINE OF SUCH SECTION OF THE EXECUTIVE LAW.

44 S 11. Paragraphs (d) and (e) of subdivision 1 of section 160.55 of the
45 criminal procedure law, paragraph (d) as amended by section 74 of
46 subpart B of part C of chapter 62 of the laws of 2011 and paragraph (e)
47 as amended by chapter 169 of the laws of 1994, are amended and a new
48 paragraph (f) is added to read as follows:

49 (d) the records referred to in paragraph (c) of this subdivision shall
50 be made available to the person accused or to such person's designated
51 agent, and shall be made available to (i) a prosecutor in any proceeding
52 in which the accused has moved for an order pursuant to section 170.56
53 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
54 parte motion in any superior court, if such agency demonstrates to the
55 satisfaction of the court that justice requires that such records be
56 made available to it, or (iii) any state or local officer or agency with

1 responsibility for the issuance of licenses to possess guns, when the
2 accused has made application for such a license, or (iv) the [New York
3 state] department of corrections and community supervision when the
4 accused is under parole supervision as a result of conditional release
5 or parole release granted by the [New York] state board of parole and
6 the arrest which is the subject of the inquiry is one which occurred
7 while the accused was under such supervision, or (v) the probation
8 department responsible for supervision of the accused when the arrest
9 which is the subject of the inquiry is one which occurred while the
10 accused was under such supervision, or (vi) a police agency, probation
11 department, sheriff's office, district attorney's office, department of
12 correction of any municipality and parole department, for law enforce-
13 ment purposes, upon arrest in instances in which the individual stands
14 convicted of harassment in the second degree, as defined in section
15 240.26 of the penal law, committed against a member of the same family
16 or household as the defendant, as defined in subdivision one of section
17 530.11 of this chapter, and determined pursuant to subdivision eight-a
18 of section 170.10 of this title; [and]

19 (e) where fingerprints subject to the provisions of this section have
20 been received by the division of criminal justice services and have been
21 filed by the division as digital images, such images may be retained,
22 provided that a fingerprint card of the individual is on file with the
23 division which was not sealed pursuant to this section or section 160.50
24 of this article[.]; AND

25 (F) A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN FROM SUCH PERSON PURSU-
26 ANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, ANY DNA
27 RECORD RELATING TO SUCH SAMPLE, AND ANY ANALYSES OR OTHER DOCUMENTS
28 RELATING TO SUCH DNA SAMPLE SHALL BE EXPUNGED, DESTROYED OR RETURNED IN
29 ACCORDANCE WITH SUBDIVISION NINE OF SUCH SECTION OF THE EXECUTIVE LAW.

30 S 12. This act shall take effect on the one hundred eightieth day
31 after it shall have become a law.