

10133

I N   A S S E M B L Y

May 12, 2016

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

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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 SECTIONS 130.25, 130.30,  
6     130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.66, 130.67, 130.70,  
7     130.75, 130.80, 130.95 AND 130.96 OF THE PENAL LAW, RELATING TO SEX  
8     OFFENSES; AND THE VICTIM IS LESS THAN THIRTEEN YEARS OLD.  
9     S 2. Subdivision 3 of section 995-c of the executive law is amended by  
10    adding four new paragraphs (c), (d), (e) and (f) to read as follows:  
11    (C) A FELONY ARRESTEE SHALL BE REQUIRED TO PROVIDE A SAMPLE APPROPRI-  
12    ATE FOR DNA TESTING UPON HIS OR HER ARREST, UNLESS SUCH FELONY ARRESTEE  
13    HAS PREVIOUSLY PROVIDED A SAMPLE THAT IS INCLUDED IN THE STATE DNA IDEN-  
14    TIFICATION INDEX.  
15    (D) A PUBLIC SERVANT TO WHOSE CUSTODY A DESIGNATED OFFENDER OR FELONY  
16    ARRESTEE WHO HAS NOT YET PROVIDED A DNA SAMPLE HAS BEEN COMMITTED SHALL  
17    SEEK AN ORDER OF THE COURT TO COLLECT SUCH SAMPLE IF THE OFFENDER, AFTER  
18    WRITTEN OR ORAL REQUEST, REFUSES TO PROVIDE SUCH SAMPLE.  
19    (E) THE DETENTION, ARREST, INDICTMENT OR CONVICTION OF A PERSON BASED  
20    UPON DNA RECORDS CONTAINED IN THE STATE DNA IDENTIFICATION INDEX SHALL  
21    NOT BE INVALIDATED IF IT IS LATER DETERMINED THAT THE DIVISION OF CRIMI-  
22    NAL JUSTICE SERVICES INADVERTENTLY, BUT IN GOOD FAITH, COLLECTED OR  
23    PLACED THE PERSON'S DNA SAMPLE IN THE INDEX.  
24    (F) THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE  
25    RULES AND REGULATIONS GOVERNING THE PERIODIC REVIEW OF THE DNA IDENTIFI-  
26    CATION INDEX TO DETERMINE WHETHER OR NOT THE INDEX CONTAINS DNA PROFILES  
27    THAT SHOULD NOT BE IN THE INDEX, INCLUDING THE STEPS NECESSARY TO

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

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1 EXPUNGE ANY PROFILES WHICH THE DIVISION OF CRIMINAL JUSTICE SERVICES  
2 DETERMINES SHOULD NOT BE IN THE INDEX.

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

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

34 (b) As prescribed in this paragraph, if an individual, either volun-  
35 tarily, PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION,  
36 or pursuant to a warrant or order of a court, has provided a sample for  
37 DNA testing in connection with the investigation, ARREST or prosecution  
38 of a crime and (i) no criminal action against the individual relating to  
39 such crime was commenced within the period specified by section 30.10 of  
40 the criminal procedure law, or (ii) a criminal action was commenced  
41 against the individual relating to such crime which resulted in a  
42 complete acquittal, or (iii) a criminal action WAS COMMENCED against the  
43 individual relating to such crime [resulted in a conviction that was  
44 subsequently reversed or vacated, or for which the individual was grant-  
45 ed a pardon pursuant to article two-A of this chapter, such individual  
46 may apply to the supreme court or the court in which the judgment of  
47 conviction was originally entered for an order directing the expungement  
48 of any DNA record and any samples, analyses, or other documents relating  
49 to the DNA testing of such individual in connection with the investi-  
50 gation or prosecution of such crime. A copy of such application shall be  
51 served on the district attorney and an order directing expungement may  
52 be granted if the court finds that the individual has satisfied the  
53 conditions of one of the subparagraphs of this paragraph; that if a  
54 judgment of conviction was reversed or vacated, all appeals relating  
55 thereto have been concluded and the individual will not be retried, or,  
56 if a retrial has occurred, the trier of fact has rendered a verdict of

1 complete acquittal, and that expungement will not adversely affect the  
2 investigation or prosecution of some other person or persons for the  
3 crime. If an order directing the expungement of any DNA record and any  
4 samples, analyses or other documents relating to the DNA testing of such  
5 individual is issued] WHICH WAS RESOLVED BY A DISMISSAL, SUCCESSFUL  
6 COMPLETION OF A PRE-PROSECUTION DIVERSION PROGRAM, OR CONDITIONAL  
7 DISCHARGE OR MISDEMEANOR CONVICTION THAT DID NOT REQUIRE DNA COLLECTION  
8 PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE DNA  
9 RECORD SHALL BE EXPUNGED FROM THE STATE DNA IDENTIFICATION INDEX. AN  
10 INDIVIDUAL MAY REQUEST EXPUNGEMENT OF ANY DNA RECORD AND ANY SAMPLES,  
11 ANALYSES OR OTHER DOCUMENTS RELATING TO THE DNA TESTING OF SUCH INDIVID-  
12 UAL BY PROVIDING THE FOLLOWING MATERIALS TO THE DIVISION OF CRIMINAL  
13 JUSTICE SERVICES:

14 (1) A WRITTEN REQUEST FOR EXPUNGEMENT OF THE SAMPLE AND DNA RECORDS;  
15 AND

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

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

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

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

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

42 6. Before bringing a defendant arrested pursuant to a warrant before  
43 the local criminal court in which such warrant is returnable, a police  
44 officer must without unnecessary delay perform all fingerprinting and  
45 other preliminary police duties required in the particular case. In any  
46 case in which the defendant is not brought by a police officer before  
47 such court but, following his arrest in another county for an offense  
48 specified in subdivision one of section 160.10 OF THIS TITLE, is  
49 released by a local criminal court of such other county on his own  
50 recognizance or on bail for his appearance on a specified date before  
51 the local criminal court before which the warrant is returnable, the  
52 latter court must, upon arraignment of the defendant before it, direct  
53 that he be fingerprinted AND HAVE A SAMPLE APPROPRIATE FOR DNA TESTING  
54 TAKEN, IF REQUIRED PURSUANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE  
55 EXECUTIVE LAW, by the appropriate officer or agency, and that he appear  
56 at an appropriate designated time and place for such purpose.

1 S 5. Section 130.60 of the criminal procedure law, as amended by chap-  
2 ter 95 of the laws of 1991, subdivision 1 as amended by chapter 446 of  
3 the laws of 1993, is amended to read as follows:

4 S 130.60 Summons; fingerprinting of defendant.

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

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

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

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

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

55 2. Upon arresting a person without a warrant, a peace officer, except  
56 as otherwise provided in subdivision three OF THIS SECTION, must without

1 unnecessary delay bring him or cause him to be brought before a local  
2 criminal court, as provided in section 100.55 and subdivision one of  
3 section 140.20 OF THIS TITLE, and must without unnecessary delay file or  
4 cause to be filed therewith an appropriate accusatory instrument. If  
5 the offense which is the subject of the arrest is one of those specified  
6 in subdivision one of section 160.10 OF THIS TITLE, the arrested person  
7 must be fingerprinted and photographed, AND HAVE A SAMPLE APPROPRIATE  
8 FOR DNA TESTING TAKEN IF REQUIRED BY SECTION NINE HUNDRED NINETY-FIVE-C  
9 OF THE EXECUTIVE LAW, as therein provided. In order to execute the  
10 required post-arrest functions, such arresting peace officer may perform  
11 such functions himself or he may enlist the aid of a police officer for  
12 the performance thereof in the manner provided in subdivision one of  
13 section 140.20 OF THIS ARTICLE.

14 S 8. Section 150.70 of the criminal procedure law, as amended by chap-  
15 ter 762 of the laws of 1971, is amended to read as follows:  
16 S 150.70 Appearance ticket; fingerprinting AND DNA ANALYSIS SAMPLE of  
17 defendant.

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

28 S 9. Section 160.20 of the criminal procedure law, as amended by chap-  
29 ter 108 of the laws of 1973, is amended to read as follows:  
30 S 160.20 Fingerprinting AND DNA ANALYSIS SAMPLE; forwarding of finger-  
31 prints AND DNA ANALYSIS SAMPLE.

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

36 2. UPON TAKING A SAMPLE APPROPRIATE FOR DNA TESTING, THE APPROPRIATE  
37 POLICE OFFICE OR AGENCY MUST WITHOUT UNNECESSARY DELAY STORE AND FORWARD  
38 SUCH DNA SAMPLE TO A FORENSIC DNA LABORATORY FOR FORENSIC DNA TESTING  
39 AND ANALYSES, AND INCLUSION IN THE STATE DNA IDENTIFICATION INDEX IN  
40 ACCORDANCE WITH SUBDIVISION FIVE OF SECTION NINE HUNDRED NINETY-FIVE-C  
41 OF THE EXECUTIVE LAW.

42 S 10. Paragraphs (d) and (e) of subdivision 1 of section 160.50 of the  
43 criminal procedure law, paragraph (d) as amended by chapter 449 of the  
44 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of  
45 1994, are amended and a new paragraph (f) is added to read as follows:

46 (d) such records shall be made available to the person accused or to  
47 such person's designated agent, and shall be made available to (i) a  
48 prosecutor in any proceeding in which the accused has moved for an order  
49 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law  
50 enforcement agency upon ex parte motion in any superior court, or in any  
51 district court, city court or the criminal court of the city of New York  
52 provided that such court sealed the record, if such agency demonstrates  
53 to the satisfaction of the court that justice requires that such records  
54 be made available to it, or (iii) any state or local officer or agency  
55 with responsibility for the issuance of licenses to possess guns, when  
56 the accused has made application for such a license, or (iv) the New

1 York state department of corrections and community supervision when the  
2 accused is on parole supervision as a result of conditional release or a  
3 parole release granted by the New York state board of parole, and the  
4 arrest which is the subject of the inquiry is one which occurred while  
5 the accused was under such supervision, or (v) any prospective employer  
6 of a police officer or peace officer as those terms are defined in  
7 subdivisions thirty-three and thirty-four of section 1.20 of this chap-  
8 ter, in relation to an application for employment as a police officer or  
9 peace officer; provided, however, that every person who is an applicant  
10 for the position of police officer or peace officer shall be furnished  
11 with a copy of all records obtained under this paragraph and afforded an  
12 opportunity to make an explanation thereto, or (vi) the probation  
13 department responsible for supervision of the accused when the arrest  
14 which is the subject of the inquiry is one which occurred while the  
15 accused was under such supervision; [and]

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

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

27 S 11. Paragraphs (d) and (e) of subdivision 1 of section 160.55 of the  
28 criminal procedure law, paragraph (d) as amended by chapter 449 of the  
29 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of  
30 1994, are amended and a new paragraph (f) is added to read as follows:

31 (d) the records referred to in paragraph (c) of this subdivision shall  
32 be made available to the person accused or to such person's designated  
33 agent, and shall be made available to (i) a prosecutor in any proceeding  
34 in which the accused has moved for an order pursuant to section 170.56  
35 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex  
36 parte motion in any superior court, or in any district court, city court  
37 or the criminal court of the city of New York provided that such court  
38 sealed the record, if such agency demonstrates to the satisfaction of  
39 the court that justice requires that such records be made available to  
40 it, or (iii) any state or local officer or agency with responsibility  
41 for the issuance of licenses to possess guns, when the accused has made  
42 application for such a license, or (iv) the New York state department of  
43 corrections and community supervision when the accused is under parole  
44 supervision as a result of conditional release or parole release granted  
45 by the New York state board of parole and the arrest which is the  
46 subject of the inquiry is one which occurred while the accused was under  
47 such supervision, or (v) the probation department responsible for super-  
48 vision of the accused when the arrest which is the subject of the  
49 inquiry is one which occurred while the accused was under such super-  
50 vision, or (vi) a police agency, probation department, sheriff's office,  
51 district attorney's office, department of correction of any municipality  
52 and parole department, for law enforcement purposes, upon arrest in  
53 instances in which the individual stands convicted of harassment in the  
54 second degree, as defined in section 240.26 of the penal law, committed  
55 against a member of the same family or household as the defendant, as  
56 defined in subdivision one of section 530.11 of this chapter, and deter-

1 mined pursuant to subdivision eight-a of section 170.10 of this title;  
2 [and]  
3 (e) where fingerprints subject to the provisions of this section have  
4 been received by the division of criminal justice services and have been  
5 filed by the division as digital images, such images may be retained,  
6 provided that a fingerprint card of the individual is on file with the  
7 division which was not sealed pursuant to this section or section 160.50  
8 of this article[.]; AND  
9 (F) A SAMPLE APPROPRIATE FOR DNA TESTING TAKEN FROM SUCH PERSON PURSU-  
10 ANT TO SECTION NINE HUNDRED NINETY-FIVE-C OF THE EXECUTIVE LAW, ANY DNA  
11 RECORD RELATING TO SUCH SAMPLE, AND ANY ANALYSES OR OTHER DOCUMENTS  
12 RELATING TO SUCH DNA SAMPLE SHALL BE EXPUNGED, DESTROYED OR RETURNED IN  
13 ACCORDANCE WITH SUBDIVISION NINE OF SUCH SECTION OF THE EXECUTIVE LAW.  
14 S 12. This act shall take effect on the one hundred eightieth day  
15 after it shall have become a law.