

10133

I N A S S E M B L Y

May 12, 2016

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.