

STATE OF NEW YORK

3543

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IN ASSEMBLY

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Introduced by M. of A. LENTOL, AUBRY, JAFFEE, FARRELL, WEINSTEIN, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. GOTTFRIED, PERRY, TITONE, TITUS, WEPRIN, ZEBROWSKI -- read once and referred to the Committee on Codes

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
6 federal bureau of investigation provided that the commission determines
7 that such exchange, use and storage are consistent with the provisions
8 of this article and applicable provisions of law~~[-]~~; and

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

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(c) within one year of the effective date of this paragraph, determine, consistent with this article, the appropriate minimum period of time that forensic samples of blood, tissue and other biological material, obtained in connection with the forensic examination of crime scenes, should be retained by investigating authorities and the time or specified event or events, if any, after which, consistent with the interest of all persons and law enforcement, such samples may be destroyed, and determine standards for the cataloging and maintaining records of such samples. Pending the promulgation of a policy addressing the issues set forth in this paragraph, the commission may adopt an interim policy mandating the preservation by investigating authorities of forensic samples of blood, tissue and other biological material obtained in connection with the forensic examination of crime scenes.

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

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following ~~fourteen~~ sixteen members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) ~~twelve~~ fourteen members appointed by the governor.

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

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; ~~and~~

(j) two members shall be jointly appointed by the temporary president of the senate and the speaker of the assembly: one such person shall be a crime victims advocate, and one such person shall be an expert in biomedical ethics; and

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

ARTICLE 23

STATE COMMISSION FOR THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

Section 900. Definition.

901. State commission for the integrity of the criminal justice system.

902. Purpose and conduct of the commission.

903. Powers and duties.

904. Use of reports.

§ 900. Definition. As used in this article, "commission" shall mean the state commission for the integrity of the criminal justice system established pursuant to section nine hundred one of this article.

§ 901. State commission for the integrity of the criminal justice system. 1. The state commission for the integrity of the criminal justice system is hereby established as an independent agency of the state. The commission shall consist of ten members as follows:

(a) the commissioner of criminal justice services;

(b) four members appointed by the governor, of whom:

(i) one shall be a representative of a law enforcement agency,
(ii) one shall be a representative of the public criminal defense bar or private criminal defense bar who shall be appointed upon the recommendation of an organization with more than seven hundred fifty dues paying members representing such public or private defense services,
(iii) one shall be a representative of victims rights advocacy or services organizations, and
(iv) one shall be a representative of the forensic science field;
(c) a member appointed by the attorney general who shall be a representative of prosecution services;
(d) two members appointed by the chief judge of the court of appeals, of whom:
(i) one shall be a retired judge or justice of a New York state court of record, and
(ii) one shall be a professor of law or a retired full time professor of law who has taught law school courses in criminal law, criminal procedure, constitutional law, or evidence at an accredited post-graduate college in New York state;
(e) one member appointed by the temporary president of the senate, who shall be a member of the public-at-large; and
(f) one member appointed by the speaker of the assembly, who shall be a member of the public-at-large.

2. The commissioner of criminal justice services shall serve an indefinite term. The members appointed by the governor shall serve a term of four years. The retired judge or justice appointed by the chief judge shall serve a term of three years. The professor of law or retired professor of law appointed by the chief judge shall serve a term of two years. The members appointed by the attorney general, the temporary president of the senate and the speaker of the assembly shall each serve a term of two years. Each of the members of the commission, except the commissioner of criminal justice services, appointed thereafter shall serve a term of five years. Every vacancy occurring prior to the expiration of a member's term shall be filled for the remainder of such term in the manner provided for the original appointment to such term. Upon the expiration of the term of a member of the commission, such member shall continue to serve until his or her successor is appointed.

3. The commission shall elect a chair from amongst its members by a majority vote of the members thereof.

4. No member of the commission shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment pursuant to this section, and the members of the commission shall be required to take and file oaths of office before serving on the commission.

5. The commission shall meet at least four times each year at predetermined times and locations announced in advance, and at such other times as the chair of the commission or four or more members shall determine to be necessary.

6. For any action authorized by this article, five members of the commission shall constitute a quorum and, except as otherwise provided in subdivisions three and five of this section, the concurrence of six members of the commission shall be necessary.

7. The members of the commission shall serve without salary or other compensation, but shall be entitled to receive actual and necessary expenses incurred in the discharge of their duties pursuant to this article.

1 § 902. Purpose and conduct of the commission. The commission shall
2 review any criminal or juvenile case involving a wrongful conviction and
3 recommend reforms to lessen the likelihood of a similar wrongful
4 conviction occurring in the future.

5 Whenever a person who has been convicted of a crime or adjudicated a
6 youthful offender or juvenile delinquent is subsequently determined to
7 be innocent of such crime or offense and exonerated, the commission
8 shall conduct an investigation, hold hearings on and make findings of
9 fact regarding the wrongful conviction in order to determine the cause
10 or causes of the wrongful conviction.

11 Upon the completion of such process, the commission, within sixty
12 days, shall issue a preliminary written report of its findings of fact
13 and conclusions, and any recommendations to prevent wrongful convictions
14 from occurring under similar circumstances in the future. Within one
15 hundred twenty days after issuing such preliminary report, the commis-
16 sion shall issue its report and recommendations concerning the matter.
17 Such report and recommendations shall be made available to the public,
18 and shall be delivered to the governor, attorney general, chief judge of
19 the court of appeals, temporary president of the senate, speaker of the
20 assembly, and to any governmental unit or agency that the commission
21 finds may have been involved in the investigation or adjudication of the
22 wrongful conviction. The commission shall also make available an annual
23 report detailing, at a minimum, the number of cases accepted for formal
24 and informal investigation, the number of completed investigations and
25 the status of on-going or pending investigations.

26 § 903. Powers and duties. The commission shall have the powers and
27 duties to:

28 1. establish its own reasonable rules and procedures concerning the
29 conduct of its meetings and other affairs related to implementing the
30 provisions of this article;

31 2. employ and remove such officers, investigators and employees as it
32 may deem necessary for the performance of its powers and duties pursuant
33 to this article, and fix their compensation within the amounts made
34 available therefor;

35 3. conduct investigations and hearings, administer oaths or affirma-
36 tions, subpoena witnesses, compel their attendance, examine them under
37 oath or affirmation, require production of any books, records, documents
38 or other evidence that it may deem relevant or material to an investi-
39 gation, and may designate any of its members, officers or investigators
40 to exercise any such powers; provided, however, nothing in this subdivi-
41 sion shall authorize the issuance of a subpoena or compelled questioning
42 of the trial court judge or any appellate court judge concerning the
43 judge's mental processes in arriving at any decision in a case;

44 4. request and receive from any court, department, division, board,
45 bureau, commission or other agency of the state or a political subdivi-
46 sion thereof or any public authority such assistance, information,
47 records and data as will enable it to properly carry out its powers and
48 duties;

49 5. issue preliminary reports on any investigation conducted pursuant
50 to this article, which preliminary reports shall include findings of
51 fact and recommendations, and invite any party directly involved in the
52 wrongful conviction, which is the subject of the report, to submit a
53 reply within sixty days to the commission concerning the findings of
54 fact and recommendations in the report. Any such reply shall be made
55 available by the commission, together with any response by the commis-
56 sion thereto, to the parties listed in section nine hundred two of this

1 article as part of the commission's report and recommendations concern-
2 ing the matter; and

3 6. do all other things necessary and convenient to carry out the
4 provisions of this article.

5 § 904. Use of reports. No preliminary report, report or portion there-
6 of issued pursuant to this article shall be admitted into evidence or
7 used in any civil or criminal cause of action relating to a matter which
8 is the subject of such report.

9 § 5. Section 1.20 of the criminal procedure law is amended by adding a
10 new subdivision 44 to read as follows:

11 44. "Special fictitious name indictment" means an indictment of a
12 person whose name is unknown but whose identity is established to the
13 satisfaction of a grand jury pursuant to subdivision one of section
14 190.65 of this chapter by means of forensic deoxyribonucleic acid (DNA)
15 testing of evidence. The caption of a special fictitious name indictment
16 shall include a fictitious name, such as "John Doe" or "Jane Doe", in
17 place of the name of the defendant whose true name is unknown.

18 § 6. Subdivision 3 of section 190.65 of the criminal procedure law is
19 amended to read as follows:

20 3. Upon voting to indict a person, a grand jury must, through its
21 foreman or acting foreman, file an indictment with the court by which it
22 was impaneled. When the name of the indicted person is unknown but his
23 or her identity is established to the satisfaction of the grand jury
24 pursuant to subdivision one of this section by means of forensic deoxy-
25 ribonucleic acid (DNA) testing of evidence, then such indictment shall
26 be filed by the grand jury with such court as a special fictitious name
27 indictment. The authority to file a special fictitious name indictment
28 pursuant to this subdivision shall be in addition to any other authority
29 in law for the filing of an indictment when the name of an indicted
30 person is unknown.

31 § 7. Subdivisions 3 and 5 of section 8-b of the court of claims act,
32 as added by chapter 1009 of the laws of 1984, are amended to read as
33 follows:

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

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

39 (b) (i) he has been pardoned upon the ground of innocence of the crime
40 or crimes for which he was sentenced and which are the grounds for the
41 complaint; or (ii) his judgment of conviction was reversed or vacated,
42 and the accusatory instrument dismissed or, if a new trial was ordered,
43 either he was found not guilty at the new trial or he was not retried
44 and the accusatory instrument dismissed; provided that the [judgement]
45 judgment of conviction was reversed or vacated[~~, and the accusatory~~
46 ~~instrument was dismissed,~~] on any of the following grounds: (A) para-
47 graph (a), (b), (c), (e), (f) or (g) of subdivision one of section
48 440.10 of the criminal procedure law; or (B) subdivision one (where
49 based upon grounds set forth in item (A) [~~hereof~~] of this subparagraph),
50 two, three (where the count dismissed was the sole basis for the impri-
51 sonment complained of) or five of section 470.20 of the criminal proce-
52 dure law; or (C) comparable provisions of the former code of criminal
53 procedure or subsequent law; or (D) the statute, or application thereof,
54 on which the accusatory instrument was based violated the constitution
55 of the United States or the state of New York; or (E) the claimant's
56 conviction was vacated under another section of law not enumerated in

1 items (A), (B), (C) and (D) of this subparagraph, but whose application
2 to claimant's conviction involved facts and circumstances that directly
3 support claimant's assertion of innocence; and provided that, in cases
4 where the conviction may have been vacated on more than one ground,
5 including one of the grounds enumerated in items (A), (B), (C) and (D)
6 of this subparagraph, the court of claims shall not be bound by a deci-
7 sion of the criminal court vacating the conviction based only on a
8 ground not enumerated in items (A), (B), (C) and (D) of this subpara-
9 graph; and

10 (c) his claim is not time-barred by the provisions of subdivision
11 seven of this section.

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

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

17 (b) (i) he has been pardoned upon the ground of innocence of the crime
18 or crimes for which he was sentenced and which are the grounds for the
19 complaint; or (ii) his judgment of conviction was reversed or vacated,
20 and the accusatory instrument dismissed or, if a new trial was ordered,
21 either he was found not guilty at the new trial or he was not retried
22 and the accusatory instrument dismissed; provided that the [~~judgement~~]
23 judgment of conviction was reversed or vacated[~~, and the accusatory~~
24 ~~instrument was dismissed,~~] on any of the following grounds: (A) para-
25 graph (a), (b), (c), (e), ~~(f)~~ [~~or~~], (g) or (g-1) of subdivision one of
26 section 440.10 of the criminal procedure law; or (B) subdivision one
27 (where based upon grounds set forth in item (A) [~~hereof~~] of this subpar-
28 agraph), two, three (where the count dismissed was the sole basis for
29 the imprisonment complained of) or five of section 470.20 of the crimi-
30 nal procedure law; or (C) comparable provisions of the former code of
31 criminal procedure or subsequent law; or (D) the statute, or application
32 thereof, on which the accusatory instrument was based violated the
33 constitution of the United States or the state of New York; or (E) the
34 claimant's conviction was vacated under another section of law not
35 enumerated in items (A), (B), (C) and (D) of this subparagraph, but
36 whose application to claimant's conviction involved facts and circum-
37 stances that directly support claimant's assertion of innocence; and
38 provided that, in cases where the conviction may have been vacated on
39 more than one ground, including one of the grounds enumerated in items
40 (A), (B), (C) and (D) of this subparagraph, the court of claims shall
41 not be bound by a decision of the criminal court vacating the conviction
42 based only on a ground not enumerated in items (A), (B), (C) and (D) of
43 this subparagraph; and

44 (c) he did not commit any of the acts charged in the accusatory
45 instrument or his acts or omissions charged in the accusatory instrument
46 did not constitute a felony or misdemeanor against the state, provided
47 that, where one indictment contains multiple counts arising from sepa-
48 rate complaints or incidents, the court shall consider any claim related
49 to specified counts in the indictment arising out of only one of the
50 complaints or incidents; and

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

52 § 8. Section 995-b of the executive law is amended by adding a new
53 subdivision 14 to read as follows:

54 14. The commission shall review the confidentiality safeguards which
55 are maintained with respect to DNA samples before and after information
56 from such samples is encoded into the state DNA identification index and

1 shall determine whether any additional confidentiality safeguards are
2 necessary with respect to such samples. The commission shall also issue
3 a report to the majority leader of the senate and the speaker of the
4 assembly which describes how such samples are retained and the reasons
5 for maintaining such samples, following the encoding of information from
6 such samples into the state DNA identification index. Such report shall
7 also recommend whether a program to destroy any such samples, following
8 the encoding of information from such samples into the state DNA iden-
9 tification index, should be initiated or whether, alternatively, such
10 samples shall continue to be maintained.

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

13 2. (a) Following the review and approval of the plan by the DNA
14 subcommittee and the commission and the filing of such plan with the
15 speaker of the assembly and the temporary president of the senate, the
16 commissioner of criminal justice services is hereby authorized to estab-
17 lish a computerized state DNA identification index pursuant to the
18 provisions of this article. No other DNA identification index or compi-
19 lation of DNA identification profiles may be maintained in this state
20 provided, however, that this prohibition shall not be interpreted to
21 prohibit any such index or compilation of DNA information obtained from
22 crime scene samples or concerning missing persons.

23 (b) In accordance with subdivision one of this section and this subdi-
24 vision, and in a manner consistent with this article, the commission may
25 authorize the inclusion of DNA records derived from forensic examination
26 of crime scenes in the state DNA identification index.

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

30 (b) As prescribed in this paragraph, if an individual, either volun-
31 tarily or pursuant to a warrant or order of a court, has provided a
32 sample for DNA testing in connection with the investigation or prose-
33 cution of a crime and (i) no criminal action against the individual
34 relating to such crime was commenced within the period specified by
35 section 30.10 of the criminal procedure law, or (ii) a criminal action
36 was commenced against the individual relating to such crime which
37 resulted in a complete acquittal, or a dismissal and the matter will not
38 be tried or retried, or (iii) a criminal action against the individual
39 relating to such crime resulted in a conviction that was subsequently
40 reversed or vacated, or for which the individual was granted a pardon
41 pursuant to article two-A of this chapter, such individual may apply to
42 the supreme court or the court in which the judgment of conviction was
43 originally entered for an order directing the expungement of any DNA
44 record and any samples, analyses, or other documents relating to the DNA
45 testing of such individual in connection with the investigation or pros-
46 ecution of such crime. A copy of such application shall be served on the
47 district attorney and an order directing expungement may be granted if
48 the court finds that the individual has satisfied the conditions of one
49 of the subparagraphs of this paragraph; that if a judgment of conviction
50 was reversed or vacated, all appeals relating thereto have been
51 concluded and the individual will not be retried, or, if a retrial has
52 occurred, the trier of fact has rendered a verdict of complete acquit-
53 tal, and that expungement will not adversely affect the investigation or
54 prosecution of some other person or persons for the crime. Nothing in
55 this paragraph shall prevent a court, at an earlier time, from ordering
56 expungement in the manner specified in this paragraph in the interests

1 of justice, in response to an application made on notice to the district
2 attorney by the person who provided such DNA sample. If an order direct-
3 ing the expungement of any DNA record and any samples, analyses or other
4 documents relating to the DNA testing of such individual is issued, such
5 record and any samples, analyses, or other documents shall, at the
6 discretion of the possessor thereof, be destroyed or returned to such
7 individual or to the attorney who represented him or her in connection
8 with the application for the order of expungement. The person destroying
9 or returning such record, samples, analyses and other documents shall
10 maintain a record certifying the date, time and manner of destruction or
11 return and identifying the person or persons destroying or returning
12 same. The person destroying or returning same shall send a copy of this
13 record to the person who submitted the sample or to the attorney who
14 represented him or her in connection with the application for the order
15 of expungement.

16 (c) (i) Except as provided in paragraph (d) of this subdivision, if an
17 individual has provided a sample for DNA testing in connection with the
18 investigation or prosecution of a crime, other than in response to a
19 demand authorized pursuant to subdivisions one, two and three of this
20 section, or if a sample for DNA testing has otherwise come into the
21 custody or possession of a law enforcement agency or an agent thereof,
22 and the DNA profile derived from such sample does not match a DNA
23 profile derived from crime scene evidence developed in connection with
24 the investigation or prosecution of a criminal act or acts, every
25 record, sample, analysis and other document relating to the DNA testing
26 of such sample shall, at the discretion of the possessor thereof, be
27 either returned to the individual who provided such sample, destroyed or
28 maintained for the duration of the investigation, prosecution or adjudi-
29 cation of such criminal acts exclusively for use with respect to the
30 investigation, prosecution and/or adjudication of the criminal charges
31 for which such sample was obtained or with respect to any other criminal
32 acts which the investigating agency has reason to believe may be linked
33 to such sample; provided, however, that no later than five years after
34 such sample is obtained or when the investigation or prosecution of such
35 crime has concluded, whichever first occurs, such records, samples,
36 analyses and other documents shall, at the discretion of the possessor
37 thereof, be returned to such individual or destroyed, or sealed in a
38 manner consistent with paragraph (c) and subparagraph (ii), (iv) or (v)
39 of paragraph (d) of subdivision one of section 160.55 of the criminal
40 procedure law.

41 (ii) The person returning, destroying or sealing such record, samples,
42 analyses or other documents in accordance with this paragraph shall
43 maintain a record certifying the date and manner of such return,
44 destruction or sealing and identifying the person or persons returning,
45 destroying or sealing same. The person returning, destroying or sealing
46 same shall send a copy of this record to the person who submitted the
47 sample.

48 (iii) This paragraph shall supplement and not supplant any applicable
49 provision of paragraph (b) of this subdivision. This paragraph shall not
50 apply to DNA records, samples, analyses and other documents obtained
51 from the forensic examination of crime scene evidence, where the DNA
52 profile developed from such crime scene evidence does not match the DNA
53 profile of a known person.

54 (d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of
55 this subdivision, a DNA record which was obtained from a sample provided
56 pursuant to paragraph (a) or (b) of this subdivision prior to the effec-

1 tive date of this paragraph need not be destroyed, returned or sealed,
2 and may be included in the state DNA identification index established
3 pursuant to this article, when, as of the effective date of this para-
4 graph, the person who provided such sample stands convicted of a felony
5 or misdemeanor defined in section nine hundred ninety-five of this arti-
6 cle. All laws governing DNA records included in the state DNA identifi-
7 cation index shall apply to any DNA record included in the state DNA
8 identification index pursuant to this paragraph.

9 § 11. Section 340.20 of the criminal procedure law is amended by
10 adding a new subdivision 5 to read as follows:

11 5. Prior to accepting a defendant's plea of guilty to a count or
12 counts of an information charging a misdemeanor, as defined in paragraph
13 (a) of subdivision two of section 55.10 of the penal law and included in
14 the definition of designated offender pursuant to subdivision seven of
15 section nine hundred ninety-five of the executive law, the court shall
16 advise the defendant that upon the conviction for such misdemeanor he or
17 she will be required to provide a sample appropriate for DNA testing for
18 inclusion in the state DNA identification index pursuant to article
19 forty-nine-B of the executive law. The court shall affirm on the record
20 or in writing that the defendant has been given the notice required by
21 this subdivision. The failure of a court to advise the defendant pursu-
22 ant to this subdivision or to otherwise comply with the provisions of
23 this subdivision shall not be deemed to affect the voluntariness of a
24 plea of guilty or the validity of a conviction.

25 § 12. The state finance law is amended by adding a new section 97-pppp
26 to read as follows:

27 § 97-pppp. Assistance to police and crime laboratories: DNA evidence
28 fund. 1. There is hereby created in the custody of the state comp-
29 troller a special fund to be known as the "assistance to police and
30 crime laboratories: DNA evidence fund".

31 2. Such fund shall consist of all monies appropriated for the purpose
32 of such fund, all other monies credited or transferred to such fund
33 pursuant to law, all monies required by the provisions of this section
34 or any other law to be paid into or credited to such account, and all
35 monies received by the account or donated to it.

36 3. Monies of such fund shall be available for appropriation and allo-
37 cation to the division of state police, to local police agencies, and to
38 forensic DNA laboratories in this state, as defined in subdivision two
39 of section nine hundred ninety-five of the executive law, to assist such
40 entities in effectively collecting, testing and analyzing forensic DNA
41 crime scene evidence pursuant to article forty-nine-B of the executive
42 law. Fifty percent of such funds shall be made available for appropri-
43 ation or allocation by the commissioner of criminal justice services for
44 the purpose of funding an innocence research project program in this
45 state.

46 4. Monies of such fund shall be paid out on the audit and warrant of
47 the comptroller on vouchers certified or approved by the commissioner of
48 criminal justice services.

49 § 13. Innocence research project program. 1. There is hereby estab-
50 lished in this state an innocence research project program. Funding
51 shall be made available for the purposes of such program to up to three
52 not-for-profit organizations by the commissioner of criminal justice
53 services pursuant to subdivisions 3 and 4 of section 97-pppp of the
54 state finance law.

55 2. The innocence research project program shall review and study cases
56 in which there appears to be a reasonable possibility that a person

1 charged with or convicted of a crime in this state may be innocent of
2 the crime or crimes charged. Such program may provide legal and other
3 expert assistance, and may also provide relevant training, including but
4 not limited to training in the use of DNA evidence for forensic iden-
5 tification purposes, to attorneys engaged in the defense of criminal
6 cases.

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

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

25 § 14. The criminal procedure law is amended by adding a new section
26 60.49 to read as follows:

27 § 60.49 Rules of evidence; electronic recording of statements of defend-
28 ants.

29 1. Definitions. As used in this section:

30 (a) "Electronic recording" means a contemporaneous video and audio
31 recording, or where video recording is impracticable, a contemporaneous
32 audio recording.

33 (b) "Custodial interrogation" means any interrogation which is
34 conducted in a place of detention and during which a reasonable person
35 in the subject's position would consider himself or herself to be in
36 custody.

37 (c) "Place of detention" means a police station, correctional facili-
38 ty, holding facility for prisoners, or other government facility where
39 persons are held in detention in connection with criminal charges which
40 have been or may be filed against them.

41 2. During the prosecution of a felony, an oral, written, or sign
42 language statement of a defendant made during a custodial interrogation
43 shall be presumed inadmissible as evidence against a defendant in a
44 criminal proceeding unless an electronic recording is made of the custo-
45 dial interrogation in its entirety and the recording is substantially
46 accurate and not intentionally altered.

47 3. If the court finds that the defendant was subjected to a custodial
48 interrogation in violation of subdivision two of this section, then any
49 statements made by the defendant following that custodial interrogation,
50 even if otherwise in compliance with this section, are also presumed
51 inadmissible.

52 4. The people may rebut a presumption of inadmissibility through clear
53 and convincing evidence that the statement was both voluntary and reli-
54 able and:

55 (a) exigent circumstances existed necessitating interrogation at a
56 place in a location other than a police station, correctional facility,

1 or holding facility for prisoners and where the requisite recording
2 equipment was not readily available;

3 (b) the accused refused to have his or her interrogation electron-
4 ically recorded, and the refusal itself was electronically recorded; or

5 (c) the failure to electronically record an entire interrogation was
6 the result of equipment failure and obtaining replacement equipment was
7 not feasible.

8 5. Nothing in this section precludes the admission of:

9 (a) a statement made by the accused in open court at his or her trial,
10 before grand jury, or at a preliminary hearing;

11 (b) a spontaneous statement that is not made in response to interro-
12 gation;

13 (c) a statement made after questioning that is routinely asked during
14 the processing of the arrest of the suspect;

15 (d) a statement made during a custodial interrogation that is
16 conducted out-of-state;

17 (e) a statement obtained by a federal law enforcement officer in a
18 federal place of detention;

19 (f) a statement given at a time when the interrogators are unaware
20 that a felony has in fact occurred; or

21 (g) a statement, otherwise inadmissible under this section, that is
22 used only for impeachment and not as substantive evidence.

23 6. The people shall not destroy or alter any electronic recording made
24 of a custodial interrogation until such time as the defendant's
25 conviction for any offense relating to the interrogation is final and
26 all direct and habeas corpus appeals are exhausted, or the prosecution
27 of that offense is barred by law.

28 § 15. This act shall take effect immediately; provided, however, that:

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

31 (b) the amendments to section 340.20 of the criminal procedure law
32 made by section eleven of this act shall apply to pleas of guilty to a
33 count or counts of an information entered sixty days or more after the
34 effective date of this act; and

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