STATE OF NEW YORK

6124

2021-2022 Regular Sessions

IN ASSEMBLY

March 10, 2021

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

AN ACT to amend the executive law, in relation to the establishment of a single computerized state DNA identification index and requiring municipalities to expunge any DNA record stored in a municipal DNA identification index

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3 and 9 of section 995-c of the executive law, subdivisions 1 and 2 as added by chapter 737 of the laws of 1994, subdivision 3 as amended by chapter 19 of the laws of 2012, subparagraph (iii) of paragraph (b) of subdivision 3 as amended by section 1 of part A of chapter 55 of the laws of 2012 and subdivision 9 as amended by chapter 524 of the laws of 2002, are amended to read as follows:

1. Following the promulgation of a policy by the commission pursuant to subdivision nine of section nine hundred ninety-five-b of this article, the commissioner of criminal justice services is authorized to promulgate a plan for the establishment of a **single** computerized state DNA identification index within the division of criminal justice services. **No county, city, town, village, or municipality, or any entity thereof, may establish or maintain a computerized DNA identification index.**

2. Following the review and approval of the plan by the DNA subcommittee and the commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of criminal justice services is hereby authorized to establish a **single** computerized state DNA identification index pursuant to the provisions of this article.

3. (a) Any designated offender subsequent to conviction and sentencing for a crime specified in subdivision seven of section nine hundred nine-

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

LBD02638-01-1

ty-five of this article, shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in [~~a~~] **the** state DNA identification index pursuant to this article.

(b) (i) In the case of a designated offender who is sentenced to a term of imprisonment, such sample shall be collected by the public servant to whose custody the designated offender has been committed.

(ii) In the case of a designated offender who is sentenced to a term of probation, including a sentence of probation imposed in conjunction with a sentence of imprisonment when a sample has not already been taken, such sample shall be collected by the probation department supervising the designated offender.

(iii) In the case of a designated offender whose sentence does not include either a term of imprisonment or a term of probation, outside of the city of New York, the court shall order that a court officer take a sample or that the designated offender report to an office of the sheriff of that county, and when the designated offender does so, such sample shall be collected by the sheriff's office. Within the city of New York, the court shall order that the sample be collected by a court officer.

(iv) Nothing in this paragraph shall prohibit the collection of a DNA sample from a designated offender by any court official, state or local correction official or employee, probation officer, parole officer, police officer, peace officer, other law enforcement official, or designated personnel of the division of criminal justice services who has been notified by the division of criminal justice services that such designated offender has not provided a DNA sample. Upon notification by the division of criminal justice services that a designated offender has not provided a DNA sample, such court official, state or local correction official or employee, probation officer, parole officer, police officer, peace officer or other law enforcement official, or designated personnel of the division of criminal justice services shall collect the DNA sample.

(c) No persons other than designated offenders shall be required to provide a DNA sample for inclusion in the DNA identification index.

9. (a) Upon receipt of notification of a reversal or a vacatur of a conviction, or of the granting of a pardon pursuant to article two-A of this chapter, of an individual whose DNA record has been stored in the state DNA identification index in accordance with this article by the division of criminal justice services, the DNA record shall be expunged from the state DNA identification index, and such individual may apply to the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of the crime which resulted in the conviction that was reversed or vacated or for which the pardon was granted. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that all appeals relating to the conviction have been concluded; that such individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. The division shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification index, and any samples, analyses, or other documents relating to such

record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof, at the discretion of the possessor thereof, are either destroyed or returned to such individual, or to the attorney who represented him or her at the time such reversal, vacatur or pardon, was granted. The commissioner shall also adopt by rule and regulation a procedure for the expungement in other appropriate circumstances of DNA records contained in the index.

(b) As prescribed in this paragraph, if an individual[~~, either voluntarily or pursuant to a warrant or order of a court,~~] has provided**, or law enforcement has obtained,** a sample for DNA testing in connection with the investigation or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by section 30.10 of the criminal procedure law, or (ii) **in the case of a juvenile delinquency arrest, no proceeding under article three of the family court act was commenced within the period specified by section 302.2 of the family court act; or (iii)** a criminal action **or a proceeding under article three of the family court act** was commenced against the individual relating to such crime which resulted in a complete acquittal, **dismissal, or adjudication or conviction of a non-criminal offense,** or [~~(iii)~~] **(iv)** a criminal action against the individual relating to such crime resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court**, the court that had jurisdiction over the matter** or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be served on the district attorney **or presentment agency** and an order directing expungement [~~may~~] **shall** be granted if the court finds that the individual has satisfied the conditions of one of the subparagraphs of this paragraph; that if a judgment of conviction was reversed or vacated, all appeals relating thereto have been concluded and the individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. If an order directing the expungement of any DNA record and any samples, analyses or other documents relating to the DNA testing of such individual is issued, such record and any samples, analyses, or other documents shall, at the discretion of the possessor thereof, be destroyed or returned to such individual or to the attorney who represented him or her in connection with the application for the order of expungement. **Nothing in this subdivision authorizes any county, city, town, village, or municipality, or any entity thereof, to establish or maintain a computerized DNA identification index.**

(c) Any DNA record stored in a DNA identification index by any county, city, town, village, or municipality, or entity thereof, must be expunged within ninety days of the effective date of this paragraph.

§ 2. This act shall take effect immediately.