

# STATE OF NEW YORK

1347

2021-2022 Regular Sessions

## IN SENATE

January 11, 2021

Introduced by Sens. HOYLMAN, BAILEY, COMRIE, GOUNARDES, JACKSON, KRUEGER, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

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:

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

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

16 2. Following the review and approval of the plan by the DNA subcommit-  
17 tee and the commission and the filing of such plan with the speaker of  
18 the assembly and the temporary president of the senate, the commissioner  
19 of criminal justice services is hereby authorized to establish a single  
20 computerized state DNA identification index pursuant to the provisions  
21 of this article.

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

LBD02638-01-1

1 3. (a) Any designated offender subsequent to conviction and sentencing  
2 for a crime specified in subdivision seven of section nine hundred nine-  
3 ty-five of this article, shall be required to provide a sample appropri-  
4 ate for DNA testing to determine identification characteristics specific  
5 to such person and to be included in [a] the state DNA identification  
6 index pursuant to this article.

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

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

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

23 (iv) Nothing in this paragraph shall prohibit the collection of a DNA  
24 sample from a designated offender by any court official, state or local  
25 correction official or employee, probation officer, parole officer,  
26 police officer, peace officer, other law enforcement official, or desig-  
27 nated personnel of the division of criminal justice services who has  
28 been notified by the division of criminal justice services that such  
29 designated offender has not provided a DNA sample. Upon notification by  
30 the division of criminal justice services that a designated offender has  
31 not provided a DNA sample, such court official, state or local  
32 correction official or employee, probation officer, parole officer,  
33 police officer, peace officer or other law enforcement official, or  
34 designated personnel of the division of criminal justice services shall  
35 collect the DNA sample.

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

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

1 procedures to ensure that the DNA record in the state DNA identification  
2 index, and any samples, analyses, or other documents relating to such  
3 record, whether in the possession of the division, or any law enforce-  
4 ment or police agency, or any forensic DNA laboratory, including any  
5 duplicates or copies thereof, at the discretion of the possessor there-  
6 of, are either destroyed or returned to such individual, or to the  
7 attorney who represented him or her at the time such reversal, vacatur  
8 or pardon, was granted. The commissioner shall also adopt by rule and  
9 regulation a procedure for the expungement in other appropriate circum-  
10 stances of DNA records contained in the index.

11 (b) As prescribed in this paragraph, if an individual [~~either volun-~~  
12 ~~tarily or pursuant to a warrant or order of a court,~~] has provided, or  
13 law enforcement has obtained, a sample for DNA testing in connection  
14 with the investigation or prosecution of a crime and (i) no criminal  
15 action against the individual relating to such crime was commenced with-  
16 in the period specified by section 30.10 of the criminal procedure law,  
17 or (ii) in the case of a juvenile delinquency arrest, no proceeding  
18 under article three of the family court act was commenced within the  
19 period specified by section 302.2 of the family court act; or (iii) a  
20 criminal action or a proceeding under article three of the family court  
21 act was commenced against the individual relating to such crime which  
22 resulted in a complete acquittal, dismissal, or adjudication or  
23 conviction of a non-criminal offense, or [~~(iii)~~] (iv) a criminal action  
24 against the individual relating to such crime resulted in a conviction  
25 that was subsequently reversed or vacated, or for which the individual  
26 was granted a pardon pursuant to article two-A of this chapter, such  
27 individual may apply to the supreme court, the court that had jurisdic-  
28 tion over the matter or the court in which the judgment of conviction  
29 was originally entered for an order directing the expungement of any DNA  
30 record and any samples, analyses, or other documents relating to the DNA  
31 testing of such individual in connection with the investigation or pros-  
32 ecution of such crime. A copy of such application shall be served on the  
33 district attorney or presentment agency and an order directing expunge-  
34 ment [~~may~~] shall be granted if the court finds that the individual has  
35 satisfied the conditions of one of the subparagraphs of this paragraph;  
36 that if a judgment of conviction was reversed or vacated, all appeals  
37 relating thereto have been concluded and the individual will not be  
38 retried, or, if a retrial has occurred, the trier of fact has rendered a  
39 verdict of complete acquittal, and that expungement will not adversely  
40 affect the investigation or prosecution of some other person or persons  
41 for the crime. If an order directing the expungement of any DNA record  
42 and any samples, analyses or other documents relating to the DNA testing  
43 of such individual is issued, such record and any samples, analyses, or  
44 other documents shall, at the discretion of the possessor thereof, be  
45 destroyed or returned to such individual or to the attorney who repres-  
46 ented him or her in connection with the application for the order of  
47 expungement. Nothing in this subdivision authorizes any county, city,  
48 town, village, or municipality, or any entity thereof, to establish or  
49 maintain a computerized DNA identification index.

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

53 § 2. This act shall take effect immediately.