

STATE OF NEW YORK

71

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. GALLIVAN -- 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 and the criminal procedure law, in relation to requiring individuals arrested in connection with a felony to submit a DNA sample

The People of the State of New York, represented in Senate and Assembly, 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 the penal law: sections
6 120.05, 120.06, 120.07, 120.10, 120.11 and 120.12, relating to assault;
7 sections 120.55 and 120.60, relating to stalking; section 120.70, relat-
8 ing to luring a child; sections 125.15, 125.20, 125.21, 125.22, 125.25,
9 125.26 and 125.27, relating to homicide; sections 130.25, 130.30,
10 130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.67, 130.70, 130.75,
11 130.80, 130.95 and 130.96, relating to sex offenses; sections 135.10,
12 135.20, 135.25 and 135.35, relating to kidnapping and labor trafficking;
13 sections 140.17, 140.20, 140.25 and 140.30, relating to burglary;
14 sections 150.05, 150.10, 150.15 and 150.20, relating to arson; sections
15 155.30, 155.35, 155.40 and 155.42, relating to grand larceny; sections
16 160.05, 160.10 and 160.15, relating to robbery; section 230.34 relating
17 to sex trafficking; sections 235.21 and 235.22, relating to dissem-
18 ination of indecent material to minors; sections 250.45 and 250.50,
19 relating to unlawful surveillance; sections 255.25, 255.26, and 255.27,
20 relating to incest; sections 263.05, 263.10, 263.11, 263.15, 263.16, and
21 263.30, relating to sexual performance by a child; or sections 265.02,
22 265.03, 265.04, 265.08, 265.09, 265.11, 265.12, 265.13, 265.14 and
23 265.16, relating to firearms and other dangerous weapons.

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

LBD00569-01-3

§ 2. Subdivision 3 of section 995-c of the executive law is amended by adding four new paragraphs (c), (d), (e) and (f) to read as follows:

(c) A felony arrestee shall be required to provide a sample appropriate for DNA testing upon his or her arrest, unless such felony arrestee has previously provided a sample that is included in the state DNA identification index.

(d) A public servant to whose custody a designated offender or felony arrestee who has not yet provided a DNA sample has been committed shall seek an order of the court to collect such sample if the offender, after written or oral request, refuses to provide such sample.

(e) The detention, arrest, indictment or conviction of a person based upon DNA records contained in the state DNA identification index shall not be invalidated if it is later determined that the division of criminal justice services inadvertently, but in good faith, collected or placed the person's DNA sample in the index.

(f) The commissioner of criminal justice services shall promulgate rules and regulations governing the periodic review of the DNA identification index to determine whether or not the index contains DNA profiles that should not be in the index, including the steps necessary to expunge any profiles which the division of criminal justice services determines should not be in the index.

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

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, pursuant to paragraph (c) of subdivision three of this section, or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation, arrest or prosecution

1 of a crime and (i) no criminal action against the individual relating to
2 such crime was commenced within the period specified by section 30.10 of
3 the criminal procedure law, or (ii) a criminal action was commenced
4 against the individual relating to such crime which resulted in a
5 complete acquittal, or (iii) a criminal action was commenced against the
6 individual relating to such crime [~~resulted in a conviction that was~~
7 ~~subsequently reversed or vacated, or for which the individual was grant-~~
8 ~~ed a pardon pursuant to article two A of this chapter, such individual~~
9 ~~may apply to the supreme court or the court in which the judgment of~~
10 ~~conviction was originally entered for an order directing the expungement~~
11 ~~of any DNA record and any samples, analyses, or other documents relating~~
12 ~~to the DNA testing of such individual in connection with the investi-~~
13 ~~gation or prosecution of such crime. A copy of such application shall be~~
14 ~~served on the district attorney and an order directing expungement may~~
15 ~~be granted if the court finds that the individual has satisfied the~~
16 ~~conditions of one of the subparagraphs of this paragraph; that if a~~
17 ~~judgment of conviction was reversed or vacated, all appeals relating~~
18 ~~thereto have been concluded and the individual will not be retried, or,~~
19 ~~if a retrial has occurred, the trier of fact has rendered a verdict of~~
20 ~~complete acquittal, and that expungement will not adversely affect the~~
21 ~~investigation or prosecution of some other person or persons for the~~
22 ~~crime. If an order directing the expungement of any DNA record and any~~
23 ~~samples, analyses or other documents relating to the DNA testing of such~~
24 ~~individual is issued] which was resolved by a dismissal, successful
25 completion of a pre-prosecution diversion program, or conditional
26 discharge or misdemeanor conviction that did not require DNA collection
27 pursuant to section nine hundred ninety-five of this article, the DNA
28 record shall be expunged from the state DNA identification index. An
29 individual may request expungement of any DNA record and any samples,
30 analyses or other documents relating to the DNA testing of such individ-
31 ual by providing the following materials to the division of criminal
32 justice services:~~

33 (1) a written request for expungement of the sample and DNA records;
34 and

35 (2) a certified copy of the dismissal, successful completion of a
36 pre-prosecution diversion program or a conditional discharge, misdemea-
37 nor conviction or acquittal; and

38 (3) a sworn statement from the district attorney's office with juris-
39 diction over the matter that: the case was dismissed; a pre-prosecution
40 diversion program or conditional discharge, misdemeanor conviction
41 excluded from DNA collection pursuant to section nine hundred ninety-
42 five of this article or acquittal occurred; no felony charges arose out
43 of the arrest; or no criminal action against the individual relating to
44 such crime was commenced within the period specified by section 30.10 of
45 the criminal procedure law; and that expungement will not adversely
46 affect the investigation or prosecution of some other person or persons
47 for the crime.

48 (c) If expungement is warranted pursuant to paragraph (a) or (b) of
49 this subdivision, such record and any samples, analyses, or other docu-
50 ments shall, at the discretion of the possessor thereof, be destroyed or
51 returned to such individual or to the attorney who represented him or
52 her in the criminal action or in connection with the [application for
53 the order of] request for expungement.

54 (d) No expungement shall be granted where an individual has a prior
55 conviction requiring a DNA sample, or a pending felony charge for which

collection of a sample is authorized pursuant to the provisions of paragraph (c) of subdivision three of this section.

§ 4. Subdivision 6 of section 120.90 of the criminal procedure law, as amended by section 16 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

6. Before bringing a defendant arrested pursuant to a warrant before the local criminal court or youth part of a superior court in which such warrant is returnable, a police officer must without unnecessary delay perform all fingerprinting and other preliminary police duties required in the particular case. In any case in which the defendant is not brought by a police officer before such court but, following his or her arrest in another county for an offense specified in subdivision one of section 160.10 of this title, is released by a local criminal court of such other county on his or her own recognizance or on bail for his or her appearance on a specified date before the local criminal court before which the warrant is returnable, the latter court must, upon arraignment of the defendant before it, direct that he or she be fingerprinted and have a sample appropriate for DNA testing taken, if required pursuant to section nine hundred ninety-five-c of the executive law, by the appropriate officer or agency, and that he or she appear at an appropriate designated time and place for such purpose.

§ 5. Section 130.60 of the criminal procedure law, as amended by chapter 95 of the laws of 1991, subdivision 1 as amended by chapter 446 of the laws of 1993, is amended to read as follows:

§ 130.60 Summons; fingerprinting of defendant.

1. Upon the arraignment of a defendant whose court attendance has been secured by the issuance and service of a summons, based upon an indictment, a prosecutor's information or upon an information, felony complaint or misdemeanor complaint filed by a complainant who is a police officer, the court must, if an offense charged in the accusatory instrument is one specified in subdivision one of section 160.10 of this title, direct that the defendant be fingerprinted by the appropriate police officer or agency, and that he or she appear at an appropriate designated time and place for such purpose. If an offense charged in the accusatory instrument is one specified in subdivision seven-a of section nine hundred ninety-five of the executive law, the court must direct that a sample appropriate for DNA testing be taken, and that he or she appear at an appropriate designated time and place for such purpose.

2. Upon the arraignment of a defendant whose court attendance has been secured by the issuance and service of a summons based upon an information or misdemeanor complaint filed by a complainant who is not a police officer, and who has not previously been fingerprinted or from whom a DNA sample has not previously been taken and was required pursuant to section nine hundred ninety-five-c of the executive law, the court may, if it finds reasonable cause to believe that the defendant has committed an offense specified in subdivision one of section 160.10 of this title, direct that the defendant be fingerprinted and/or have a sample appropriate for DNA testing taken, if required by section nine hundred ninety-five-c of the executive law, by the appropriate police officer or agency and that he or she appear at an appropriate designated time and place for such purpose. A defendant whose court appearance has been secured by the issuance and service of a criminal summons based upon a misdemeanor complaint or information filed by a complainant who is not a police officer, must be directed by the court, upon conviction of the defendant, to be fingerprinted and have a sample appropriate for DNA

1 testing taken, if required by section nine hundred ninety-five-c of the
2 executive law, by the appropriate police officer or agency and the court
3 must also direct that the defendant appear at an appropriate designated
4 time and place for such purpose, if the defendant is convicted of any
5 offense specified in subdivision one of section 160.10 of this title.

6 § 6. Subdivision 5 of section 140.20 of the criminal procedure law, as
7 amended by chapter 762 of the laws of 1971, is amended to read as
8 follows:

9 5. Before service of an appearance ticket upon an arrested person
10 pursuant to subdivision two or three of this section, the issuing police
11 officer must, if the offense designated in such appearance ticket is one
12 of those specified in subdivision one of section 160.10 of this title,
13 cause such person to be fingerprinted and have a sample appropriate for
14 DNA testing taken, if required by section nine hundred ninety-five-c of
15 the executive law, in the same manner as would be required were no
16 appearance ticket to be issued or served.

17 § 7. Subdivision 2 of section 140.27 of the criminal procedure law, as
18 amended by section 21 of part WWW of chapter 59 of the laws of 2017, is
19 amended to read as follows:

20 2. Upon arresting a person without a warrant, a peace officer, except
21 as otherwise provided in subdivision three or three-a of this section,
22 must without unnecessary delay bring [~~him~~] such person or cause him or
23 her to be brought before a local criminal court, as provided in section
24 100.55 of this title and subdivision one of section 140.20 of this arti-
25 cle, and must without unnecessary delay file or cause to be filed there-
26 with an appropriate accusatory instrument. If the offense which is the
27 subject of the arrest is one of those specified in subdivision one of
28 section 160.10 of this title, the arrested person must be fingerprinted
29 and photographed, and have a sample appropriate for DNA testing taken if
30 required by section nine hundred ninety-five-c of the executive law, as
31 therein provided. In order to execute the required post-arrest func-
32 tions, such arresting peace officer may perform such functions himself
33 or herself or he or she may enlist the aid of a police officer for the
34 performance thereof in the manner provided in subdivision one of section
35 140.20 of this article.

36 § 8. Section 150.70 of the criminal procedure law, as amended by chap-
37 ter 762 of the laws of 1971, is amended to read as follows:

38 § 150.70 Appearance ticket; fingerprinting and DNA analysis sample of
39 defendant.

40 Upon the arraignment of a defendant who has not been arrested and
41 whose court attendance has been secured by the issuance and service of
42 an appearance ticket pursuant to subdivision one of section 150.20 of
43 this article, the court must, if an offense charged in the accusatory
44 instrument is one specified in subdivision one of section 160.10 of this
45 title, direct that the defendant be fingerprinted and have a sample
46 appropriate for DNA testing taken when required by section nine hundred
47 ninety-five-c of the executive law by the appropriate police officer or
48 agency, and that he or she appear at an appropriate designated time and
49 place for such purpose.

50 § 9. Section 160.20 of the criminal procedure law, as amended by chap-
51 ter 108 of the laws of 1973, is amended to read as follows:

52 § 160.20 Fingerprinting and DNA analysis sample; forwarding of finger-
53 prints and DNA analysis sample.

54 1. Upon the taking of fingerprints of an arrested person or defendant
55 as prescribed in section 160.10 of this article, the appropriate police

1 officer or agency must without unnecessary delay forward two copies of
2 such fingerprints to the division of criminal justice services.

3 2. Upon taking a sample appropriate for DNA testing, the appropriate
4 police office or agency must without unnecessary delay store and forward
5 such DNA sample to a forensic DNA laboratory for forensic DNA testing
6 and analyses, and inclusion in the state DNA identification index in
7 accordance with subdivision five of section nine hundred ninety-five-c
8 of the executive law.

9 § 10. Paragraphs (d) and (e) of subdivision 1 of section 160.50 of the
10 criminal procedure law, paragraph (d) as amended by chapter 449 of the
11 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of
12 1994, are amended and a new paragraph (f) is added to read as follows:

13 (d) such records shall be made available to the person accused or to
14 such person's designated agent, and shall be made available to (i) a
15 prosecutor in any proceeding in which the accused has moved for an order
16 pursuant to section 170.56 or 210.46 of this ~~chapter~~ **part**, or (ii) a
17 law enforcement agency upon ex parte motion in any superior court, or in
18 any district court, city court or the criminal court of the city of New
19 York provided that such court sealed the record, if such agency demon-
20 strates to the satisfaction of the court that justice requires that such
21 records be made available to it, or (iii) any state or local officer or
22 agency with responsibility for the issuance of licenses to possess guns,
23 when the accused has made application for such a license, or (iv) the
24 New York state department of corrections and community supervision when
25 the accused is on parole supervision as a result of conditional release
26 or a parole release granted by the New York state board of parole, and
27 the arrest which is the subject of the inquiry is one which occurred
28 while the accused was under such supervision, or (v) any prospective
29 employer of a police officer or peace officer as those terms are defined
30 in subdivisions thirty-three and thirty-four of section 1.20 of this
31 chapter, in relation to an application for employment as a police offi-
32 cer or peace officer; provided, however, that every person who is an
33 applicant for the position of police officer or peace officer shall be
34 furnished with a copy of all records obtained under this paragraph and
35 afforded an opportunity to make an explanation thereto, or (vi) the
36 probation department responsible for supervision of the accused when the
37 arrest which is the subject of the inquiry is one which occurred while
38 the accused was under such supervision; ~~and~~

39 (e) where fingerprints subject to the provisions of this section have
40 been received by the division of criminal justice services and have been
41 filed by the division as digital images, such images may be retained,
42 provided that a fingerprint card of the individual is on file with the
43 division which was not sealed pursuant to this section or section 160.55
44 of this article~~[-]~~; and

45 (f) a sample appropriate for DNA testing taken from such person pursu-
46 ant to section nine hundred ninety-five-c of the executive law, and any
47 DNA record relating to such sample, and any analyses or other documents
48 relating to such DNA sample shall be expunged, destroyed or returned in
49 accordance with subdivision nine of such section of the executive law.

50 § 11. Paragraphs (d) and (e) of subdivision 1 of section 160.55 of the
51 criminal procedure law, paragraph (d) as amended by chapter 449 of the
52 laws of 2015 and paragraph (e) as amended by chapter 169 of the laws of
53 1994, are amended and a new paragraph (f) is added to read as follows:

54 (d) the records referred to in paragraph (c) of this subdivision shall
55 be made available to the person accused or to such person's designated
56 agent, and shall be made available to (i) a prosecutor in any proceeding

1 in which the accused has moved for an order pursuant to section 170.56
2 or 210.46 of this ~~chapter~~ part, or (ii) a law enforcement agency upon
3 ex parte motion in any superior court, or in any district court, city
4 court or the criminal court of the city of New York provided that such
5 court sealed the record, if such agency demonstrates to the satisfaction
6 of the court that justice requires that such records be made available
7 to it, or (iii) any state or local officer or agency with responsibility
8 for the issuance of licenses to possess guns, when the accused has made
9 application for such a license, or (iv) the New York state department of
10 corrections and community supervision when the accused is under parole
11 supervision as a result of conditional release or parole release granted
12 by the New York state board of parole and the arrest which is the
13 subject of the inquiry is one which occurred while the accused was under
14 such supervision, or (v) the probation department responsible for super-
15 vision of the accused when the arrest which is the subject of the
16 inquiry is one which occurred while the accused was under such super-
17 vision, or (vi) a police agency, probation department, sheriff's office,
18 district attorney's office, department of correction of any municipality
19 and parole department, for law enforcement purposes, upon arrest in
20 instances in which the individual stands convicted of harassment in the
21 second degree, as defined in section 240.26 of the penal law, committed
22 against a member of the same family or household as the defendant, as
23 defined in subdivision one of section 530.11 of this chapter, and deter-
24 mined pursuant to subdivision eight-a of section 170.10 of this title;
25 ~~and~~

26 (e) where fingerprints subject to the provisions of this section have
27 been received by the division of criminal justice services and have been
28 filed by the division as digital images, such images may be retained,
29 provided that a fingerprint card of the individual is on file with the
30 division which was not sealed pursuant to this section or section 160.50
31 of this article~~[-]~~; and

32 (f) a sample appropriate for DNA testing taken from such person pursu-
33 ant to section nine hundred ninety-five-c of the executive law, any DNA
34 record relating to such sample, and any analyses or other documents
35 relating to such DNA sample shall be expunged, destroyed or returned in
36 accordance with subdivision nine of such section of the executive law.

37 § 12. This act shall take effect on the one hundred eightieth day
38 after it shall have become a law.