

# PROGRAM BILL #29

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
-----

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

\*CRIMIPLA\*  
(Relates to DNA testing of certain  
offenders convicted of a crime)

CP L. DNA testing

## AN ACT

to amend the criminal procedure law  
and the executive law, in relation  
to DNA testing of certain offenders  
convicted of a crime

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

## IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofner	s35 Stewart-
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s57 Young
s17 Dilan	Thompson	s62 Maziarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espallat	s04 Johnson	s18 Montgomery	s23 Savino	

## IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a052 Millman	a012 Saladino
a092 Abinanti	a014 Curran	a057 Jeffries	a015 Montesano	a113 Sayward
a105 Amedore	a063 Cusick	a135 Johns	a132 Morelle	a029 Scarborough
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a039 Moya	a016 Schimel
a035 Aubry	a034 DenDekker	a099 Katz	a003 Murray	a140 Schimminger
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a037 Nolan	a064 Silver
a040 Barron	a114 Duprey	a065 Kellner	a128 Oaks	a027 Simanowitz
a082 Benedetto	a004 Englebright	a129 Kolb	a069 O'Donnell	a036 Simotas
a122 Blankenbush	a054 Espinal	a025 Lancman	a051 Ortiz	a146 Smardz
a055 Boyland	a071 Farrell	a091 Latimer	a136 Palmesano	a079 Stevenson
a008 Boyle	a123 Finch	a013 Lavine	a088 Paulin	a011 Sweeney
a026 Braunstein	a007 Fitzpatrick	a050 Lentol	a141 Peoples-	a110 Tedisco
a044 Brennan	a137 Friend	a125 Lifton	Stokes	a115 Tenny
a116 Brindisi	a143 Gabryszak	a072 Linares	a058 Perry	a002 Thiele
a131 Bronson	a090 Galef	a127 Lopez, P.	a087 Pretlow	a061 Titone
a046 Brook-Krasny	a133 Gantt	a053 Lopez, V.	a073 Quart	a031 Titus
a147 Burling	a077 Gibson	a001 Losquadro	a021 Ra	a062 Tobacco
a117 Butler	a149 Giglio	a126 Lupardo	a097 Rabbitt	a148 Walter
a101 Cahill	a066 Glick	a111 Magee	a009 Raia	a041 Weinstein
a096 Calhoun	a023 Goldfeder	a120 Magnarelli	a006 Ramos	a020 Weisenberg
a043 Camara	a150 Goodell	a059 Maisel	a134 Reilich	a024 Wepzin
a106 Canestrari	a075 Gottfried	a060 Malliotakis	a109 Reilly	a070 Wright
a089 Castelli	a005 Graf	a030 Markey	a178 Rivera, J.	a094 Zebrowski
a086 Castro	a098 Gunther	a019 McDonough	a080 Rivera, N.	a093
a138 Ceretto	a130 Hanna	a104 McEneny	a076 Rivera, P.	a100
a033 Clark	a139 Hawley	a017 McKevitt	a119 Roberts	a103
a047 Colton	a083 Heastie	a108 McLaughlin	a056 Robinson	a145
a010 Conte	a028 Hevesi	a022 Meng	a068 Rodriguez	
a032 Cook	a048 Hiking	a121 Miller, D.	a067 Rosenthal	
a142 Corwin	a018 Hooper	a102 Miller, J.	a118 Russell	
a085 Crespo	a042 Jacobs	a038 Miller, M.	a144 Ryan	

1) Single House Bill (introduced and printed separately in either or both  
houses). Uni-Bill (introduced simultaneously in both houses and printed as one  
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed  
copies of bill and 4 copies of memorandum in support (single house); or 4 signed  
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Subdivision 1 of section 440.30 of the criminal procedure  
2 law is amended to read as follows:

3 1. (a) A motion to vacate a judgment pursuant to section 440.10 of  
4 this article and a motion to set aside a sentence pursuant to section  
5 440.20 of this article must be made in writing and upon reasonable  
6 notice to the people. Upon the motion, a defendant who is in a position  
7 adequately to raise more than one ground should raise every such ground  
8 upon which he or she intends to challenge the judgment or sentence. If  
9 the motion is based upon the existence or occurrence of facts, the  
10 motion papers must contain sworn allegations thereof, whether by the  
11 defendant or by another person or persons. Such sworn allegations may be  
12 based upon personal knowledge of the affiant or upon information and  
13 belief, provided that in the latter event the affiant must state the  
14 sources of such information and the grounds of such belief. The defend-  
15 ant may further submit documentary evidence or information supporting or  
16 tending to support the allegations of the moving papers. The people may  
17 file with the court, and in such case must serve a copy thereof upon the  
18 defendant or his or her counsel, if any, an answer denying or admitting  
19 any or all of the allegations of the motion papers, and may further  
20 submit documentary evidence or information refuting or tending to refute  
21 such allegations. After all papers of both parties have been filed, and  
22 after all documentary evidence or information, if any, has been submit-  
23 ted, the court must consider the same for the purpose of ascertaining  
24 whether the motion is determinable without a hearing to resolve ques-  
25 tions of fact.

26 (b) In conjunction with the filing or consideration of a motion to  
27 vacate a judgment pursuant to section 440.10 of this article by a  
28 defendant convicted after a trial, in cases where the court has ordered

1 an evidentiary hearing upon such motion, the court may order that the  
2 people produce or make available for inspection property, as defined in  
3 subdivision three of section 240.10 of this part, in its possession,  
4 custody, or control that was secured in connection with the investi-  
5 gation or prosecution of the defendant upon credible allegations by the  
6 defendant and a finding by the court that such property, if obtained,  
7 would be probative to the determination of defendant's actual innocence,  
8 and that the request is reasonable. The court shall deny or limit such a  
9 request upon a finding that such a request, if granted, would threaten  
10 the integrity or chain of custody of property or the integrity of the  
11 processes or functions of a laboratory conducting DNA testing, pose a  
12 risk of harm, intimidation, embarrassment, reprisal, or other substan-  
13 tially negative consequences to any person, undermine the proper func-  
14 tions of law enforcement including the confidentiality of informants, or  
15 on the basis of any other factor identified by the court in the inter-  
16 ests of justice or public safety. The court shall further ensure that  
17 any property produced pursuant to this paragraph is subject to a protec-  
18 tive order, where appropriate. The court shall deny any request made  
19 pursuant to this paragraph where:

20 (i) (1) the defendant's motion pursuant to section 440.10 of this  
21 article does not seek to demonstrate his or her actual innocence of the  
22 offense or offenses of which he or she was convicted that are the  
23 subject of the motion, or (2) the defendant has not presented credible  
24 allegations and the court has not found that such property, if obtained,  
25 would be probative to the determination of the defendant's actual inno-  
26 cence and that the request is reasonable;

27 (ii) the defendant has made his or her motion after five years from  
28 the date of the judgment of conviction; provided, however, that this

1 limitation period shall be tolled for five years if the defendant is in  
2 custody in connection with the conviction that is the subject of his or  
3 her motion, and provided further that, notwithstanding such limitation  
4 periods, the court may consider the motion if the defendant has shown:  
5 (A) that he or she has been pursuing his or her rights diligently and  
6 that some extraordinary circumstance prevented the timely filing of the  
7 motion; (B) that the facts upon which the motion is predicated were  
8 unknown to the defendant or his or her attorney and could not have been  
9 ascertained by the exercise of due diligence prior to the expiration of  
10 the statute of limitations; or (C) considering all circumstances of the  
11 case including but not limited to evidence of the defendant's guilt, the  
12 impact of granting or denying such motion upon public confidence in the  
13 criminal justice system, or upon the safety or welfare of the community,  
14 and the defendant's diligence in seeking to obtain the requested proper-  
15 ty or related relief, the interests of justice would be served by  
16 considering the motion;

17 (iii) the defendant is challenging a judgment convicting him or her of  
18 an offense that is not a felony defined in section 10.00 of the penal  
19 law; or

20 (iv) upon a finding by the court that the property requested in this  
21 motion would be available through other means through reasonable efforts  
22 by the defendant to obtain such property.

23 § 2. Subdivision 1-a of section 440.30 of the criminal procedure law,  
24 as amended by chapter 138 of the laws of 2004, is amended to read as  
25 follows:

26 1-a. (a) (1) Where the defendant's motion requests the performance of  
27 a forensic DNA test on specified evidence, and upon the court's determi-  
28 nation that any evidence containing deoxyribonucleic acid ("DNA") was

1 secured in connection with the trial resulting in the judgment, the  
2 court shall grant the application for forensic DNA testing of such  
3 evidence upon its determination that if a DNA test had been conducted on  
4 such evidence, and if the results had been admitted in the trial result-  
5 ing in the judgment, there exists a reasonable probability that the  
6 verdict would have been more favorable to the defendant.

7 (2) Where the defendant's motion for forensic DNA testing of specified  
8 evidence is made following a plea of guilty and entry of judgment there-  
9 on convicting him or her of: (A) a homicide offense defined in article  
10 one hundred twenty-five of the penal law, any felony sex offense defined  
11 in article one hundred thirty of the penal law, a violent felony offense  
12 as defined in paragraph (a) of subdivision one of section 70.02 of the  
13 penal law, or (B) any other felony offense to which he or she pled guilt-  
14 ty after being charged in an indictment or information in superior court  
15 with one or more of the offenses listed in clause (A) of this subpara-  
16 graph, then the court shall grant such a motion upon its determination  
17 that evidence containing DNA was secured in connection with the investi-  
18 gation or prosecution of the defendant, and if a DNA test had been  
19 conducted on such evidence and the results had been known to the parties  
20 prior to the entry of the defendant's plea and judgment thereon, there  
21 exists a substantial probability that the evidence would have estab-  
22 lished the defendant's actual innocence of the offense or offenses that  
23 are the subject of the defendant's motion; provided, however, that:

24 (i) the court shall consider whether the defendant had the opportunity  
25 to request such testing prior to entering a guilty plea, and, where it  
26 finds that the defendant had such opportunity and unjustifiably failed  
27 to do so, the court may deny such motion; and

1 (ii) a court shall deny the defendant's motion for forensic DNA test-  
2 ing where the defendant has made his or her motion more than five years  
3 after entry of the judgment of conviction; except that the limitation  
4 period may be tolled if the defendant has shown: (A) that he or she has  
5 been pursuing his or her rights diligently and that some extraordinary  
6 circumstance prevented the timely filing of the motion for forensic DNA  
7 testing; (B) that the facts upon which the motion is predicated were  
8 unknown to the defendant or his or her attorney and could not have been  
9 ascertained by the exercise of due diligence prior to the expiration of  
10 this statute of limitations; or (C) considering all circumstances of the  
11 case including but not limited to evidence of the defendant's guilt, the  
12 impact of granting or denying such motion upon public confidence in the  
13 criminal justice system, or upon the safety or welfare of the community,  
14 and the defendant's diligence in seeking to obtain the requested proper-  
15 ty or related relief, the interests of justice would be served by toll-  
16 ing such limitation period.

17 (b) In conjunction with the filing of a motion under this subdivision,  
18 the court may direct the people to provide the defendant with informa-  
19 tion in the possession of the people concerning the current physical  
20 location of the specified evidence and if the specified evidence no  
21 longer exists or the physical location of the specified evidence is  
22 unknown, a representation to that effect and information and documentary  
23 evidence in the possession of the people concerning the last known phys-  
24 ical location of such specified evidence. If there is a finding by the  
25 court that the specified evidence no longer exists or the physical  
26 location of such specified evidence is unknown, such information in and  
27 of itself shall not be a factor from which any inference unfavorable to  
28 the people may be drawn by the court in deciding a motion under this

1 section. The court, on motion of the defendant, may also issue a subpoena  
2 na duces tecum directing a public or private hospital, laboratory or  
3 other entity to produce such specified evidence in its possession and/or  
4 information and documentary evidence in its possession concerning the  
5 location and status of such specified evidence.

6 (c) In response to a motion under this paragraph, upon notice to the  
7 parties and to the entity required to perform the search the court may  
8 order an entity that has access to the combined DNA index system  
9 ("CODIS") or its successor system to compare a DNA profile obtained from  
10 probative biological material gathered in connection with the investi-  
11 gation or prosecution of the defendant against DNA databanks by keyboard  
12 searches, or a similar method that does not involve uploading, upon a  
13 court's determination that (1) such profile complies with federal bureau  
14 of investigation or state requirements, whichever are applicable and as  
15 such requirements are applied to law enforcement agencies seeking such a  
16 comparison, and that the data meet state DNA index system and/or  
17 national DNA index system criteria as such criteria are applied to law  
18 enforcement agencies seeking such a comparison and (2) if such compar-  
19 ison had been conducted, and if the results had been admitted in the  
20 trial resulting in the judgment, a reasonable probability exists that  
21 the verdict would have been more favorable to the defendant, or in a  
22 case involving a plea of guilty, if the results had been available to  
23 the defendant prior to the plea, a reasonable probability exists that  
24 the conviction would not have resulted. For purposes of this subdivi-  
25 sion, a "keyboard search" shall mean a search of a DNA profile against  
26 the databank in which the profile that is searched is not uploaded to or  
27 maintained in the databank.

1 § 3. Subdivision 1 of section 240.40 of the criminal procedure law, as  
2 amended by chapter 558 of the laws of 1982, the opening paragraph as  
3 amended by chapter 317 of the laws of 1983, is amended to read as  
4 follows:

5 1. Upon motion of a defendant against whom an indictment, superior  
6 court information, prosecutor's information, information, or simplified  
7 information charging a misdemeanor is pending, the court in which such  
8 accusatory instrument is pending:

9 (a) must order discovery as to any material not disclosed upon a  
10 demand pursuant to section 240.20, if it finds that the prosecutor's  
11 refusal to disclose such material is not justified; (b) must, unless it  
12 is satisfied that the people have shown good cause why such an order  
13 should not be issued, order discovery or any other order authorized by  
14 subdivision one of section 240.70 as to any material not disclosed upon  
15 demand pursuant to section 240.20 where the prosecutor has failed to  
16 serve a timely written refusal pursuant to section 240.35; [and] (c) may  
17 order discovery with respect to any other property, which the people  
18 intend to introduce at the trial, upon a showing by the defendant that  
19 discovery with respect to such property is material to the preparation  
20 of his or her defense, and that the request is reasonable; and (d) where  
21 property in the people's possession, custody, or control that consists  
22 of a deoxyribonucleic acid ("DNA") profile obtained from probative  
23 biological material gathered in connection with the investigation or  
24 prosecution of the defendant and the defendant establishes that such  
25 profile complies with federal bureau of investigation or state require-  
26 ments, whichever are applicable and as such requirements are applied to  
27 law enforcement agencies seeking a keyboard search or similar compar-  
28 ison, and that the data meets state DNA index system or national DNA

1 index system criteria as such criteria are applied to law enforcement  
2 agencies seeking such a keyboard search or similar comparison, the court  
3 may order an entity that has access to the combined DNA index system or  
4 its successor system to compare such DNA profile against DNA databanks  
5 by keyboard searches, or a similar method that does not involve upload-  
6 ing, upon notice to both parties and the entity required to perform the  
7 search, upon a showing by the defendant that such a comparison is mate-  
8 rial to the presentation of his or her defense and that the request is  
9 reasonable. For purposes of this paragraph, a "keyboard search" shall  
10 mean a search of a DNA profile against the databank in which the profile  
11 that is searched is not uploaded to or maintained in the databank. Upon  
12 granting the motion pursuant to paragraph (c) [hereof] of this subdivi-  
13 sion, the court shall, upon motion of the people showing such to be  
14 material to the preparation of their case and that the request is  
15 reasonable, condition its order of discovery by further directing  
16 discovery by the people of property, of the same kind or character as  
17 that authorized to be inspected by the defendant, which he or she  
18 intends to introduce at the trial.

19 § 4. Subdivision 1 of section 440.10 of the criminal procedure law is  
20 amended by adding a new paragraph (g-1) to read as follows:

21 (g-1) Forensic DNA testing of evidence performed since the entry of a  
22 judgment, (1) in the case of a defendant convicted after a guilty plea,  
23 the court has determined that the defendant has demonstrated a substan-  
24 tial probability that the defendant was actually innocent of the offense  
25 of which he or she was convicted, or (2) in the case of a defendant  
26 convicted after a trial, the court has determined that there exists a  
27 reasonable probability that the verdict would have been more favorable  
28 to the defendant.

1 § 5. Subdivision 7 of section 995 of the executive law, as amended by  
2 chapter 2 of the laws of 2006, paragraph (a) as separately amended by  
3 chapter 320 of the laws of 2006 and paragraph (f) as amended by chapter  
4 405 of the laws of 2010, is amended to read as follows:

5 7. "Designated offender" means a person convicted of [and sentenced  
6 for any one or more of the following provisions of the penal law (a)  
7 sections 120.05, 120.10, and 120.11, relating to assault; sections  
8 125.15 through 125.27 relating to homicide; sections 130.25, 130.30,  
9 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to  
10 sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to  
11 escape and other offenses, where the offender has been convicted within  
12 the previous five years of one of the other felonies specified in this  
13 subdivision; or sections 255.25, 255.26 and 255.27, relating to incest,  
14 a violent felony offense as defined in subdivision one of section 70.02  
15 of the penal law, attempted murder in the first degree, as defined in  
16 section 110.00 and section 125.27 of the penal law, kidnapping in the  
17 first degree, as defined in section 135.25 of the penal law, arson in  
18 the first degree, as defined in section 150.20 of the penal law,  
19 burglary in the third degree, as defined in section 140.20 of the penal  
20 law, attempted burglary in the third degree, as defined in section  
21 110.00 and section 140.20 of the penal law, a felony defined in article  
22 four hundred ninety of the penal law relating to terrorism or any  
23 attempt to commit an offense defined in such article relating to terror-  
24 ism which is a felony; or (b) criminal possession of a controlled  
25 substance in the first degree, as defined in section 220.21 of the penal  
26 law; criminal possession of a controlled substance in the second degree,  
27 as defined in section 220.18 of the penal law; criminal sale of a  
28 controlled substance, as defined in article 220 of the penal law; or

1 grand larceny in the fourth degree, as defined in subdivision five of  
2 section 155.30 of the penal law; or (c) any misdemeanor or felony  
3 defined as a sex offense or sexually violent offense pursuant to para-  
4 graph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision  
5 three of section one hundred sixty-eight-a of the correction law; or (d)  
6 any of the following felonies, or an attempt thereof where such attempt  
7 is a felony offense:

8 aggravated assault upon a person less than eleven years old, as  
9 defined in section 120.12 of the penal law; menacing in the first  
10 degree, as defined in section 120.13 of the penal law; reckless endan-  
11 germent in the first degree, as defined in section 120.25 of the penal  
12 law; stalking in the second degree, as defined in section 120.55 of the  
13 penal law; criminally negligent homicide, as defined in section 125.10  
14 of the penal law; vehicular manslaughter in the second degree, as  
15 defined in section 125.12 of the penal law; vehicular manslaughter in  
16 the first degree, as defined in section 125.13 of the penal law;  
17 persistent sexual abuse, as defined in section 130.53 of the penal law;  
18 aggravated sexual abuse in the fourth degree, as defined in section  
19 130.65-a of the penal law; female genital mutilation, as defined in  
20 section 130.85 of the penal law; facilitating a sex offense with a  
21 controlled substance, as defined in section 130.90 of the penal law;  
22 unlawful imprisonment in the first degree, as defined in section 135.10  
23 of the penal law; custodial interference in the first degree, as defined  
24 in section 135.50 of the penal law; criminal trespass in the first  
25 degree, as defined in section 140.17 of the penal law; criminal tamper-  
26 ing in the first degree, as defined in section 145.20 of the penal law;  
27 tampering with a consumer product in the first degree, as defined in  
28 section 145.45 of the penal law; robbery in the third degree as defined

1 in section 160.05 of the penal law; identity theft in the second degree,  
2 as defined in section 190.79 of the penal law; identity theft in the  
3 first degree, as defined in section 190.80 of the penal law; promoting  
4 prison contraband in the first degree, as defined in section 205.25 of  
5 the penal law; tampering with a witness in the third degree, as defined  
6 in section 215.11 of the penal law; tampering with a witness in the  
7 second degree, as defined in section 215.12 of the penal law; tampering  
8 with a witness in the first degree, as defined in section 215.13 of the  
9 penal law; criminal contempt in the first degree, as defined in subdivi-  
10 sions (b), (c) and (d) of section 215.51 of the penal law; aggravated  
11 criminal contempt, as defined in section 215.52 of the penal law; bail  
12 jumping in the second degree, as defined in section 215.56 of the penal  
13 law; bail jumping in the first degree, as defined in section 215.57 of  
14 the penal law; patronizing a prostitute in the second degree, as defined  
15 in section 230.05 of the penal law; patronizing a prostitute in the  
16 first degree, as defined in section 230.06 of the penal law; promoting  
17 prostitution in the second degree, as defined in section 230.30 of the  
18 penal law; promoting prostitution in the first degree, as defined in  
19 section 230.32 of the penal law; compelling prostitution, as defined in  
20 section 230.33 of the penal law; disseminating indecent materials to  
21 minors in the second degree, as defined in section 235.21 of the penal  
22 law; disseminating indecent materials to minors in the first degree, as  
23 defined in section 235.22 of the penal law; riot in the first degree, as  
24 defined in section 240.06 of the penal law; criminal anarchy, as defined  
25 in section 240.15 of the penal law; aggravated harassment of an employee  
26 by an inmate, as defined in section 240.32 of the penal law; unlawful  
27 surveillance in the second degree, as defined in section 250.45 of the  
28 penal law; unlawful surveillance in the first degree, as defined in

1 section 250.50 of the penal law; endangering the welfare of a vulnerable  
2 elderly person in the second degree, as defined in section 260.32 of the  
3 penal law; endangering the welfare of a vulnerable elderly person in the  
4 first degree, as defined in section 260.34 of the penal law; use of a  
5 child in a sexual performance, as defined in section 263.05 of the penal  
6 law; promoting an obscene sexual performance by a child, as defined in  
7 section 263.10 of the penal law; possessing an obscene sexual perform-  
8 ance by a child, as defined in section 263.11 of the penal law; promot-  
9 ing a sexual performance by a child, as defined in section 263.15 of the  
10 penal law; possessing a sexual performance by a child, as defined in  
11 section 263.16 of the penal law; criminal possession of a weapon in the  
12 third degree, as defined in section 265.02 of the penal law; criminal  
13 sale of a firearm in the third degree, as defined in section 265.11 of  
14 the penal law; criminal sale of a firearm to a minor, as defined in  
15 section 265.16 of the penal law; unlawful wearing of a body vest, as  
16 defined in section 270.20 of the penal law; hate crimes as defined in  
17 section 485.05 of the penal law; and crime of terrorism, as defined in  
18 section 490.25 of the penal law; or (e) a felony defined in the penal  
19 law or an attempt thereof where such attempt is a felony; or (f) any of  
20 the following misdemeanors: assault in the third degree as defined in  
21 section 120.00 of the penal law; attempted aggravated assault upon a  
22 person less than eleven years old, as defined in section 110.00 and  
23 section 120.12 of the penal law; attempted menacing in the first degree,  
24 as defined in section 110.00 and section 120.13 of the penal law; menac-  
25 ing in the second degree as defined in section 120.14 of the penal law;  
26 menacing in the third degree as defined in section 120.15 of the penal  
27 law; reckless endangerment in the second degree as defined in section  
28 120.20 of the penal law; stalking in the fourth degree as defined in

1 section 120.45 of the penal law; stalking in the third degree as defined  
2 in section 120.50 of the penal law; attempted stalking in the second  
3 degree, as defined in section 110.00 and section 120.55 of the penal  
4 law; criminal obstruction of breathing or blood circulation as defined  
5 in section 121.11 of the penal law; forcible touching as defined in  
6 section 130.52 of the penal law regardless of the age of the victim;  
7 sexual abuse in the third degree as defined in section 130.55 of the  
8 penal law regardless of the age of the victim; unlawful imprisonment in  
9 the second degree as defined in section 135.05 of the penal law regard-  
10 less of the age of the victim; attempted unlawful imprisonment in the  
11 first degree, as defined in section 110.00 and section 135.10 of the  
12 penal law regardless of the age of the victim; criminal trespass in the  
13 second degree as defined in section 140.15 of the penal law; possession  
14 of burglar's tools as defined in section 140.35 of the penal law; petit  
15 larceny as defined in section 155.25 of the penal law; endangering the  
16 welfare of a child as defined in section 260.10 of the penal law; endan-  
17 gering the welfare of an incompetent or physically disabled person as  
18 defined in section 260.25 of the penal law] any felony defined in any  
19 chapter of the laws of the state or any misdemeanor defined in the penal  
20 law except that where the person is convicted under section 221.10 of  
21 the penal law, only a person convicted under subdivision two of such  
22 section, or a person convicted under subdivision one of such section who  
23 stands previously convicted of any crime as defined in subdivision six  
24 of section 10.00 of the penal law.

25 § 6. Subdivision 3 of section 995-c of the executive law, as amended  
26 by chapter 576 of the laws of 2004, is amended to read as follows:

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

1 ty-five of this article, shall be required to provide a sample appropri-  
2 ate for DNA testing to determine identification characteristics specific  
3 to such person and to be included in a state DNA identification index  
4 pursuant to this article.

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

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

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

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

1 correction official or employee, probation officer, parole officer,  
2 police officer, peace officer or other law enforcement official, or  
3 designated personnel of the division of criminal justice services shall  
4 collect the DNA sample.

5 § 7. Nothing in this act shall be construed to create or impose an  
6 affirmative obligation upon laboratories, police departments, district  
7 attorneys, or any other law enforcement agencies or personnel to retain  
8 or preserve property that may contain DNA if such obligation did not  
9 exist prior to the effective date of this act, provided, however, that  
10 nothing in this act shall be construed to affect or remove any such  
11 obligation if it did exist prior to the effective date of this act.

12 § 8. The actual costs incurred in connection with DNA testing or  
13 keyboard searches performed pursuant to subdivision 1-a of section  
14 440.30 of the criminal procedure law shall be borne by the defendant  
15 requesting such testing or searches, provided, however that the court,  
16 taking into account the defendant's financial resources, as well as any  
17 of the defendant's financial obligations, shall make a determination  
18 whether or not the payment of such cost would impose a hardship upon the  
19 defendant, and in such case, the state shall bear such costs.

20 § 9. This act shall take effect October 1, 2012; provided, however,  
21 that the amendments to subdivision 7 of section 995 of the executive law  
22 made by section five of this act shall apply to conviction of designated  
23 offenses, and subparagraph two of paragraph (a) of subdivision 1-a of  
24 section 440.30 of the criminal procedure law as added by section two of  
25 this act shall apply to a guilty plea entered, on or after such effec-  
26 tive date.