

PROGRAM BILL # 29

GOVERNOR'S PROGRAM BILL

2012

MEMORANDUM

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

Purpose:

This legislation would amend the Criminal Procedure Law ("CPL") and Executive Law ("EL") to expand the collection of DNA samples from defendants convicted of crimes in New York State to include, for the first time in this state and across the country, all felonies and all penal law misdemeanors. The bill would also enhance the protections afforded defendants to demonstrate their actual innocence by providing access in certain circumstances to DNA testing in post-plea contexts. In addition, the bill would provide a mechanism for defendants convicted after a trial who have obtained a hearing on a post-conviction motion seeking to demonstrate actual innocence for certain discovery from the people to facilitate such a hearing.

Summary of Provisions:

Section 1 of the bill would amend subdivision 1 of CPL § 440.30 to provide for discovery of property in the possession, custody and control of the prosecution in certain circumstances where a defendant filing a post-conviction motion after trial has asserted his or her actual innocence and has obtained an evidentiary hearing. There is a statute of limitations for bringing such a motion depending on whether a defendant is incarcerated or not. This provision would ensure maximum protection of victims and the integrity of the criminal justice process, as well.

Section 2 of the bill would amend subdivision 1-a of CPL § 440.30 to provide for DNA testing under certain circumstances to defendants convicted after entering a guilty plea in conjunction with a post-conviction motion to vacate the judgment, and to provide for DNA "keyboard searches" to be performed upon a court's order.

Section 3 of the bill would amend subdivision 1 of CPL § 240.40 to provide for DNA "keyboard searches" to be performed under certain circumstances upon a court's order before trial.

Section 4 of the bill would amend subdivision 1 of CPL § 440.10 to set the standard for post-conviction motions seeking to vacate a judgment based upon the results

of DNA testing by providing that the defendant must demonstrate a substantial probability that he or she is actually innocent of the offense of which he or she was convicted or that there is a reasonable probability that the verdict would have been more favorable to the defendant.

Section 5 of the bill would amend subdivision 7 of EL § 995 to mandate that DNA samples be collected from all offenders convicted of any felony defined in any chapter of the laws of the state or any misdemeanor defined in the penal law. Where an individual is convicted of the class B misdemeanor of possessing marihuana or smoking marihuana in plain view but has never been convicted of any crime before, DNA is not collected from that defendant; if the defendant has been convicted of any crime, then DNA is collected from him or her.

Section 6 of the bill would amend subdivision 3 of EL §995-c to provide for the administration of the collection of DNA samples from convicted offenders.

Section 7 clarifies that nothing in the act should be construed to create, impose, affect, or remove any existing obligation on laboratories, police departments, district attorneys, or any other law enforcement agencies to retain or preserve property that may contain DNA.

Section 8 provides that the actual costs incurred for DNA testing or "keyboard searches" performed pursuant to subdivision 1-a of CPL §440.30 be borne by the defendant, provided, however, that the State would bear such costs upon a court's finding that, taking into account a defendant's financial resources and financial obligations, the payment of such costs would impose a hardship.

Section 9 provides the effective dates of the provisions of the bill. The portions of the bill relating to post-plea DNA testing would apply only to pleas entered on or after the effective date and the collection of DNA would occur for crimes committed on or after the effective date.

Existing Law:

The existing provisions govern DNA: (1) DNA testing and post-conviction motions are in CPL § 440 ; (2) pre-trial discovery are in CPL § 240; (3) DNA collection for the state DNA identification system are in EL § 995; and (4) the Commission on Forensic Science are in EL §995.

Statement in Support:

The DNA identification index ("Databank") is a powerful tool both for preventing and solving crimes and for establishing a defendant's innocence. Since its inception in 1996, there have been more than 10,000 hits against the Databank resulting in over 2,900 convictions. Currently, convicted offenders who are in the Databank have, on average,

been convicted of three crimes -- and in some cases as many as 30 crimes -- for which no DNA has been collected before they were convicted of the DNA-eligible offense. Because individuals who commit serious crimes also commit less serious crimes, collecting DNA from individuals convicted of any Penal Law misdemeanor and all felonies will help to prevent and solve murders, rapes, and other crimes. The last expansion of the Databank that included petit larceny provides concrete evidence of the promise that this expansion holds: when petit larceny was added to list of DNA eligible crimes in 2006, it resulted in solving almost 1000 crimes, including 223 rapes and 53 homicides.

The Databank also plays a significant role in helping to determine who did not commit a crime. There have been 27 individuals exonerated in New York through DNA evidence, as well as countless suspects who have been excluded and cleared most often at the earliest stages of an investigation. This legislation provides for expanded access to defendants, both before trial and after plea or conviction, to DNA testing and other discovery to demonstrate their innocence.

Budget Implications:

This legislation is not expected to have a significant impact on the State's budget.

Effective Date:

This act shall take effect October 1, 2012.