

Effective: November 01, 2006

Mckinney's Consolidated Laws of New York Annotated Currentness

Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

→ Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

§ 995. Definitions

When used in this article, the following words and terms shall have the meanings ascribed to them in this section:

1. For purposes of general forensic analysis the term "forensic laboratory" shall mean any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.

2. For purposes of forensic DNA analysis, the term "forensic DNA laboratory" shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term "forensic DNA testing" shall mean any test that employs techniques to examine deoxyribonucleic acid (DNA) derived from the human body for the purpose of providing information to resolve issues of identification. Regulation pursuant to this article shall not include DNA testing on materials derived from the human body pursuant to title five of article five of the public health law for the purpose of determining a person's genetic disease or medical condition and shall not include a laboratory operated by the federal government.

3. "DNA testing methodology" means methods and procedures used to extract and analyze DNA material, as well as the methods, procedures, assumptions, and studies used to draw statistical inferences from the test results.

4. "Blind external proficiency testing" means a test sample that is presented to a forensic laboratory for forensic DNA testing through a second agency, and which appears to the analysts to involve routine evidence submitted for forensic DNA testing.

5. "DNA" means deoxyribonucleic acid.

6. "State DNA identification index" means the DNA identification record system for New York state established pursuant to this article.

7. "Designated offender" means a person convicted of and sentenced for any one or more of the following provisions of the penal law (a) sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted

within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal law, attempted burglary in the third degree, as defined in section 110.00 and section 140.20 of the penal law, a felony defined in article four hundred ninety of the penal law relating to terrorism or any attempt to commit an offense defined in such article relating to terrorism which is a felony; or (b) criminal possession of a controlled substance in the first degree, as defined in section 220.21 of the penal law; criminal possession of a controlled substance in the second degree, as defined in section 220.18 of the penal law; criminal sale of a controlled substance, as defined in article 220 of the penal law; or grand larceny in the fourth degree, as defined in subdivision five of section 155.30 of the penal law; or (c) any misdemeanor or felony defined as a sex offense or sexually violent offense pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision three of section one hundred sixty-eight-a of the correction law; or (d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law;

disseminating indecent materials to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent materials to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or (e) a felony defined in the penal law or an attempt thereof where such attempt is a felony; or (f) any of the following misdemeanors: assault in the third degree as defined in section 120.00 of the penal law; attempted aggravated assault upon a person less than eleven years old, as defined in section 110.00 and section 120.12 of the penal law; attempted menacing in the first degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as defined in section 110.00 and section 120.55 of the penal law; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section 135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25.

8. "DNA record" means DNA identification information prepared by a forensic DNA laboratory and stored in the state DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. A DNA record is the objective form of the results of a DNA analysis sample.

9. "DNA subcommittee" shall mean the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to subdivision thirteen of section nine hundred ninety-

five-b of this article.

10. "Commission" shall mean the commission on forensic science established pursuant to section nine hundred ninety-five-a of this article.

**<Laws 1951, Chapter 800>
Effective: [See Text Amendments]**

§ 995-a. Commission on forensic science

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following fourteen members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) twelve members appointed by the governor.

2. Of the members appointed by the governor,

(a) one member shall be the chair of the New York state crime laboratory advisory committee;

(b) one member shall be the director of a forensic laboratory located in New York state;

(c) one member shall be the director of the office of forensic services within the division of criminal justice services;

(d) two members shall be a scientist having experience in the areas of laboratory standards or quality assurance regulation and monitoring and shall be appointed upon the recommendation of the commissioner of health;

(e) one member shall be a representative of a law enforcement agency and shall be appointed upon the recommendation of the commissioner of criminal justice services;

(f) one member shall be a representative of prosecution services who shall be appointed upon the recommendation of the commissioner of criminal justice services;

(g) one member shall be a representative of the public criminal defense bar who shall be appointed upon the recommendation of an organization representing public defense services;

(h) one member shall be a representative of the private criminal defense bar who shall be appointed upon the recommendation of an organization of such bar;

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; and

(j) one member, who shall be an attorney or judge with a background in privacy issues and biomedical ethics, shall be appointed upon the recommendation of the chief judge of the court of appeals.

3. Of the members appointed by the governor, each member shall be appointed to serve a three year term. Any member appointed by the governor may be reappointed for additional three year terms.

4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed by the governor for the unexpired term of the member he or she is to succeed. Any such vacancy shall be filled in the same manner as the original appointment.

5. The commission shall meet at least four times each year and may establish its own rules and procedures concerning the conduct of its meetings and other affairs not inconsistent with law.

6. No member of the commission on forensic science shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment hereunder, and members of the commission shall not be required to take and file oaths of office before serving on the commission.

7. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

**<Laws 1951, Chapter 800>
Effective: December 01, 1999**

§ 995-b. Powers and duties of the commission

1. The commission shall develop minimum standards and a program of accreditation for all forensic laboratories in New York state, including establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies. Nothing in this article shall be deemed to preclude forensic laboratories from performing research and validation studies on new methodologies and technologies which may not yet be approved by the commission at that time.

In designing a system of accreditation pursuant to this article, the commission shall evaluate other systems of accreditation.

2. The minimum standards and program of accreditation shall be designed to accomplish the following objectives:

(a) increase and maintain the effectiveness, efficiency, reliability, and accuracy of forensic laboratories, including forensic DNA laboratories;

(b) ensure that forensic analyses, including forensic DNA testing, are performed in accordance with the highest scientific standards practicable;

(c) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system;

(d) ensure compatibility, to the extent consistent with the provisions of this article and any other applicable provision of law pertaining to privacy or restricting disclosure or redisclosure of in-

formation, with other state and federal forensic laboratories to the extent necessary to share and exchange information, data and results of forensic analyses and tests; and

(e) set forth minimum requirements for the quality and maintenance of equipment.

2-a. Any program of forensic laboratory accreditation with respect to a DNA laboratory pursuant to this section shall be under the direction of the DNA subcommittee established pursuant to subdivision thirteen of this section. Such subcommittee shall have the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation pursuant to this article, provided that such authority shall be effectuated through binding recommendations made by the DNA subcommittee to the commission. In the event the commission disagrees with any of the binding recommendations of the DNA subcommittee made pursuant to this article, the commission may so notify such subcommittee and request such subcommittee to reasonably review such binding recommendations. The DNA subcommittee shall conduct such review and either forward revised binding recommendations to the commission or indicate, with the reasons therefor, that following such review such subcommittee has determined that such binding recommendations shall not be revised.

3. The program of forensic laboratory accreditation shall include, at a minimum, the following requirements:

(a) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance with accreditation requirements;

(b) routine internal and external proficiency testing of all laboratory personnel involved in forensic analysis, including blind external proficiency testing if the commission, or the DNA subcommittee as the case may be, determines such a blind proficiency testing program to be practicable and appropriate. In determining whether a blind proficiency testing program is practicable and appropriate, the commission, or the DNA subcommittee as the case may be, shall consider such factors as accuracy and reliability of laboratory results, cost-effectiveness, time, allocation of resources, and availability;

(c) quality control and quality assurance protocols, a method validation procedure and a corrective action and remedial program;

(d) annual certification to the commission by the forensic laboratories of their continued compliance with the requirements of the accreditation program which certification, in the case of a forensic DNA laboratory, shall be forwarded to the DNA subcommittee;

(e) the accreditation of a forensic laboratory may be revoked, suspended or otherwise limited, upon a determination by the commission or, in the case of a forensic DNA laboratory, upon the binding recommendation of the DNA subcommittee, that the laboratory or one or more persons in its employ:

(i) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;

(ii) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

(iii) showed a pattern of excessive errors in the performance of forensic laboratory examination procedures;

(iv) failed to file any report required to be submitted pursuant to this article or the rules and regulations promulgated pursuant thereto; or

(v) violated in a material respect any provision of this article or the rules and regulations promulgated pursuant thereto; and

(f) no forensic laboratory accreditation shall be revoked, suspended, or otherwise limited without a hearing. The commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the forensic laboratory accreditation at the address of such holder at least twenty-one days prior to the date fixed for such hearing. An accredited laboratory may file a written answer to the charges with the commission, not less than five days prior to the hearing.

4. A laboratory director who knowingly operates a laboratory without obtaining the accreditation required by this article, or who, with the intent to mislead or deceive, misrepresents a material fact to the commission or DNA subcommittee, shall be subject to a civil penalty not to exceed seventy-five hundred dollars and such other penalties as are prescribed by the law.

5. The commission and the DNA subcommittee established pursuant to subdivision thirteen of this section may require and receive from any agency of the state or any political subdivision thereof such assistance and data as may be necessary to enable the commission or DNA subcommittee to administer the provisions of this article. The commission or DNA subcommittee may enter into such cooperative arrangements with the division of criminal justice services, the department of health, and any other state agency, each of which is authorized to enter into such cooperative arrangements as shall be necessary or appropriate. Upon request of the commission or DNA subcommittee, any state agency may transfer to the commission such officers and employees as the commission or DNA subcommittee may deem necessary from time to time to assist the commission or DNA subcommittee in carrying out its functions and duties. Officers and employees so transferred shall not lose their civil service status or rights, and shall remain in the negotiating unit, if any, established prior to such transfer.

6. All of the commission's records, reports, assessments, and evaluation with respect to accreditation, implementation of quality assurance standards (including proficiency testing) and monitoring thereof, shall be archived by the commission.

7. The commission and DNA subcommittee may establish, appoint, and set terms of members to as many advisory councils as it deems necessary to provide specialized expertise to the commission with respect to new forensic technologies including DNA testing methodologies.

8. The commission or DNA subcommittee shall designate one or more entities for the performance of proficiency tests required pursuant to the provisions of this article.

9. After reviewing recommendations from the division of criminal justice services, the commission, in consultation with the DNA subcommittee, shall promulgate a policy for the establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the division of criminal justice services. Such policy shall address the follow-

ing issues:

- (a) the forensic DNA methodology or methodologies to be utilized in compiling the index;
- (b) procedures for assuring that the state DNA identification index contains the following safeguards:
 - (i) that any records maintained as part of such an index are accurate and complete;
 - (ii) that effective software and hardware designs are instituted with security features to prevent unauthorized access to such records;
 - (iii) that periodic audits will be conducted to ensure that no illegal disclosures of such records have taken place;
 - (iv) that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only;
 - (v) that operation programs are used that will prohibit inquiry, record updates, or destruction of records from any source other than an authorized source of inquiry, update, or destruction of records;
 - (vi) that operational programs are used to detect and store for the output of authorized employees only all unauthorized attempts to penetrate the state DNA identification index;
 - (vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index has the right of access to and review of records relating to such individual contained in such index for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information is inaccurate or incomplete;
 - (viii) that access to the index will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index; and
 - (ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

10. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index submitted by the commissioner of criminal justice services pursuant to section nine hundred ninety-five-c of this article.

11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision

thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.

12. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index and a DNA record of a person submitted for comparison therewith.

13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in section nine hundred ninety-five-a of this article.

(b) The DNA subcommittee shall assess and evaluate all DNA methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results. The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology proposed to be used by a forensic laboratory.

(c) The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing in accordance with the provisions of the state administrative procedure act. Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing. The DNA subcommittee shall also provide the commission with a list of accepted proficiency testers.

(d) The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.

<Laws 1951, Chapter 800>
Effective: July 06, 2004

§ 995-c. State DNA identification index

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 computerized state DNA identification index within the division of criminal justice services.
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 computerized state DNA identification index pursuant to the provisions of this article.
3. Any designated offender subsequent to conviction and sentencing for a crime specified in subdivision seven of section nine hundred ninety-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 state DNA identification index pursuant to this article.
4. The commissioner of the division of criminal justice services, in consultation with the commission, the commissioner of health, the divisions of parole and of probation and correctional alternatives and the department of correctional services, shall promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section.
5. The sample shall be collected, stored and forwarded to any forensic DNA laboratory which has been authorized by the commission to perform forensic DNA testing and analysis for inclusion in the state DNA identification index. Such laboratory shall promptly perform the requisite testing and analysis, and forward the resulting DNA record only to the state DNA identification index in accordance with the regulations of the division of criminal justice services. Such laboratory shall perform DNA analysis only for those markers having value for law enforcement identification purposes. For the purposes of this article, the term "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.
6. DNA records contained in the state DNA identification index shall be released only for the following purposes:
 - (a) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of specified human remains, including identification of missing persons, provided that there exists between the division and such agency a written agreement governing the use and dissemination of such DNA records in accordance with the provisions of this article;
 - (b) for criminal defense purposes, to a defendant or his or her representative, who shall also have access to samples and analyses performed in connection with the case in which such defendant is charged;
 - (c) after personally identifiable information has been removed by the division, to an entity authorized by the division for the purpose of creating or maintaining a population statistics data-

base or for identification research and protocol development for forensic DNA analysis or quality control purposes.

7. Requests for DNA records must be in writing, or in a form prescribed by the division authorized by the requesting party, and, other than a request pursuant to paragraph (b) of subdivision six of this section, maintained on file at the state DNA identification index in accordance with rules and regulations promulgated by the commissioner of the division of criminal justice services.

8. The defendant, including the representative of a defendant, in a criminal action or proceeding shall have access to information in the state DNA identification index relating to the number of requests previously made for a comparison search and the name and identity of any requesting party.

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 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) a criminal action was commenced against the individual relating to such crime which resulted in a complete acquittal, or (iii) 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 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 and an order directing

expungement may 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.

<Laws 1951, Chapter 800>
Effective: December 01, 1999

§ 995-d. Confidentiality

1. All records, findings, reports, and results of DNA testing performed on any person shall be confidential and may not be disclosed or redisclosed without the consent of the subject of such DNA testing. Such records, findings, reports and results shall not be released to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies, or services, private investigation services, and may not be disclosed in response to a subpoena or other compulsory legal process or warrant, or upon request or order of any agency, authority, division, office, corporation, partnership, or any other private or public entity or person, except that nothing contained herein shall prohibit disclosure in response to a subpoena issued on behalf of the subject of such DNA record or on behalf of a party in a civil proceeding where the subject of such DNA record has put such record in issue.

2. Notwithstanding the provisions of subdivision one of this section, records, findings, reports, and results of DNA testing, other than a DNA record maintained in the state DNA identification index, may be disclosed in a criminal proceeding to the court, the prosecution, and the defense pursuant to a written request on a form prescribed by the commissioner of the division of criminal justice services. Notwithstanding the provisions of subdivision one of this section, a DNA record maintained in the state DNA identification index may be disclosed pursuant to section nine hundred ninety-five-c of this article.

<Laws 1951, Chapter 800>
Effective: [See Text Amendments]

§ 995-e. Applicability

This article shall not apply to a forensic DNA laboratory operated by any agency of the federal government, or to any forensic DNA test performed by any such federal laboratory.

<Laws 1951, Chapter 800>
Effective: December 01, 1999

§ 995-f. Penalties

Any person who (a) intentionally discloses a DNA record, or the results of a forensic DNA test or analysis, to an individual or agency other than one authorized to have access to such records

pursuant to this article or (b) intentionally uses or receives DNA records, or the results of a forensic DNA test or analysis, for purposes other than those authorized pursuant to this article or (c) any person who knowingly tampers or attempts to tamper with any DNA sample or the collection container without lawful authority shall be guilty of a class E felony.

<Laws 1951, Chapter 800>

Current through 2006 laws.
END OF DOCUMENT