

1 AMENDMENT TO HOUSE BILL 1281

2 AMENDMENT NO. _____. Amend House Bill 1281, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Capital Punishment Reform Study Committee Act.

7 Section 2. Capital Punishment Reform Study Committee.

8 (a) There is created the Capital Punishment Reform Study
9 Committee, hereinafter referred to as the Committee,
10 consisting of 15 members appointed as follows:

11 (1) Three members appointed by the President of the
12 Senate;

13 (2) Two members appointed by the Minority Leader of
14 the Senate;

15 (3) Three members appointed by the Speaker of the
16 House of Representatives;

17 (4) Two members appointed by the Minority Leader of
18 the House of Representatives;

19 (5) One member appointed by the Attorney General;

20 (6) One member appointed by the Governor;

21 (7) One member appointed by the Cook County State's
22 Attorney;

1 (8) One member appointed by the Office of the Cook
2 County Public Defender; and

3 (9) One member appointed by the Office of the State
4 Appellate Defender.

5 (b) The Committee shall study the impact of the various
6 reforms to the capital punishment system enacted by the 93rd
7 General Assembly and annually report to the General Assembly
8 on the effects of these reforms. Each report shall include:

9 (1) The impact of the reforms on the issue of
10 uniformity and proportionality in the application of the
11 death penalty including, but not limited to, the tracking
12 of data related to whether the reforms have eliminated
13 the statistically significant differences in sentencing
14 related to the geographic location of the homicide and
15 the race of the victim found by the Governor's Commission
16 on Capital Punishment in its report issued on April 15,
17 2002.

18 (2) The implementation of training for police,
19 prosecutors, defense attorneys, and judges as recommended
20 by the Governor's Commission on Capital Punishment.

21 (3) The impact of the various reforms on the
22 quality of evidence used during capital prosecutions.

23 (4) The quality of representation provided by
24 defense counsel to defendants in capital prosecutions.

25 (5) The impact of the various reforms on the costs
26 associated with the administration of the Illinois
27 capital punishment system.

28 (c) The Committee shall hold hearings on a periodic
29 basis to receive testimony from the public regarding the
30 manner in which reforms have impacted the capital punishment
31 system.

32 (d) The Committee shall submit its final report to the
33 General Assembly no later than 5 years after the effective
34 date of this Act.

1 Section 5. The Illinois Criminal Justice Information Act
2 is amended by adding Section 7.2 as follows:

3 (20 ILCS 3930/7.2 new)

4 Sec. 7.2. Custodial Interview Pilot Program.

5 (a) Legislative findings and intent. The General
6 Assembly finds that technology has made it possible to
7 electronically record custodial interviews of suspects during
8 first degree murder investigations. This technology will
9 protect law enforcement agencies against claims of abuse and
10 coercion by suspects while providing a memorialized account
11 of interviews at police stations. The technology will also
12 provide a better means for courts to review confessions of
13 suspects with direct evidence of demeanor, tone, manner, and
14 content of statements. The General Assembly intends to create
15 a Custodial Interview Pilot Program to establish 4 pilot
16 programs at police stations in the State of Illinois. For
17 each program, video and audio experts shall install equipment
18 and train participating law enforcement agencies to
19 electronically record custodial interviews at their
20 respective police stations. Participating law enforcement
21 agencies shall choose how to use the equipment in cooperation
22 with the local State's Attorney's office. The participating
23 law enforcement agencies may choose to electronically record
24 interviews of suspects for offenses other than first degree
25 murder if they adopt local protocols in cooperation with the
26 local State's Attorney's office.

27 (b) Definitions. In this Section:

28 (1) "Electronically record" means to memorialize by
29 video and audio electronic equipment.

30 (2) "Custodial interviews" means interviews of
31 suspects during first degree murder investigations or
32 other investigations established by local protocol by law
33 enforcement authorities that take place at the police

1 station.

2 (c) Custodial Interview Pilot Program. The Authority
3 shall, subject to appropriation, establish a Custodial
4 Interview Pilot Program to operate 4 custodial interview
5 pilot programs. The programs shall be established in a police
6 station in the County of Cook and in 3 other police stations
7 geographically distributed throughout the State. Each
8 participating law enforcement agency must:

9 (1) Promulgate procedures for recording custodial
10 interviews of suspects during first degree murder
11 investigations by video and audio means.

12 (2) Promulgate procedures for maintaining and
13 storing video and audio recordings.

14 (d) Each of the 4 pilot programs established by the
15 Authority shall be in existence for a minimum of 2 years
16 after its establishment under this Act.

17 (e) Report. No later than one year after the
18 establishment of pilot programs under this Section, the
19 Authority must report to the General Assembly on the efficacy
20 of the Custodial Interview Pilot Program.

21 (f) The Authority shall adopt rules in cooperation with
22 the Illinois Department of State Police to implement this
23 Section.

24 Section 6. The Illinois Police Training Act is amended by
25 changing Section 6.1 as follows:

26 (50 ILCS 705/6.1)

27 Sec. 6.1. Decertification of full-time and part-time
28 police officers.

29 (a) The Board must review police officer conduct and
30 records to ensure that no police officer is certified or
31 provided a valid waiver if that police officer has been
32 convicted of a felony offense under the laws of this State or

1 any other state which if committed in this State would be
2 punishable as a felony. The Board must also ensure that no
3 police officer is certified or provided a valid waiver if
4 that police officer has been convicted on or after the
5 effective date of this amendatory Act of 1999 of any
6 misdemeanor specified in this Section or if committed in any
7 other state would be an offense similar to Section 11-6,
8 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
9 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
10 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
11 Act. The Board must appoint investigators to enforce the
12 duties conferred upon the Board by this Act.

13 (b) It is the responsibility of the sheriff or the chief
14 executive officer of every local law enforcement agency or
15 department within this State to report to the Board any
16 arrest or conviction of any officer for an offense identified
17 in this Section.

18 (c) It is the duty and responsibility of every full-time
19 and part-time police officer in this State to report to the
20 Board within 30 days, and the officer's sheriff or chief
21 executive officer, of his or her arrest or conviction for an
22 offense identified in this Section. Any full-time or
23 part-time police officer who knowingly makes, submits, causes
24 to be submitted, or files a false or untruthful report to the
25 Board must have his or her certificate or waiver immediately
26 decertified or revoked.

27 (d) Any person, or a local or State agency, or the Board
28 is immune from liability for submitting, disclosing, or
29 releasing information of arrests or convictions in this
30 Section as long as the information is submitted, disclosed,
31 or released in good faith and without malice. The Board has
32 qualified immunity for the release of the information.

33 (e) Any full-time or part-time police officer with a
34 certificate or waiver issued by the Board who is convicted of

1 any offense described in this Section immediately becomes
2 decertified or no longer has a valid waiver. The
3 decertification and invalidity of waivers occurs as a matter
4 of law. Failure of a convicted person to report to the Board
5 his or her conviction as described in this Section or any
6 continued law enforcement practice after receiving a
7 conviction is a Class 4 felony.

8 (f) The Board's investigators are peace officers and
9 have all the powers possessed by policemen in cities and by
10 sheriff's, provided that the investigators may exercise those
11 powers anywhere in the State, only after contact and
12 cooperation with the appropriate local law enforcement
13 authorities.

14 (g) The Board must request and receive information and
15 assistance from any federal, state, or local governmental
16 agency as part of the authorized criminal background
17 investigation. The Department of State Police must process,
18 retain, and additionally provide and disseminate information
19 to the Board concerning criminal charges, arrests,
20 convictions, and their disposition, that have been filed
21 before, on, or after the effective date of this amendatory
22 Act of the 91st General Assembly against a basic academy
23 applicant, law enforcement applicant, or law enforcement
24 officer whose fingerprint identification cards are on file or
25 maintained by the Department of State Police. The Federal
26 Bureau of Investigation must provide the Board any criminal
27 history record information contained in its files pertaining
28 to law enforcement officers or any applicant to a Board
29 certified basic law enforcement academy as described in this
30 Act based on fingerprint identification. The Board must make
31 payment of fees to the Department of State Police for each
32 fingerprint card submission in conformance with the
33 requirements of paragraph 22 of Section 55a of the Civil
34 Administrative Code of Illinois.

1 (h) A police officer who has been certified or granted a
2 valid waiver may also be decertified or have his or her
3 waiver revoked upon a determination by the Board that he or
4 she, while under oath, has knowingly and willfully made false
5 statements as to a material fact during a homicide
6 proceeding. A determination may be made only after an
7 investigation and hearing upon a verified complaint filed
8 with the Illinois Law Enforcement Training Standards Board.

9 (1) The Board shall adopt rules governing the
10 investigation and hearing of a verified complaint to
11 assure the police officer due process and to eliminate
12 conflicts of interest within the Board itself.

13 (2) Upon receipt of the initial verified complaint,
14 the Board is empowered to investigate and dismiss the
15 complaint if it finds there is insufficient evidence to
16 support it. Upon the initial filing, the sheriff or
17 police chief, or other employing agency, of the accused
18 officer may suspend, with pay, the accused officer
19 pending a decision of the Board. Upon a Board finding of
20 insufficient evidence, the police officer shall be
21 reinstated. The sheriff or police chief, or employing
22 agency, shall take such necessary action as is ordered by
23 the Board.

24 (i) The Board shall have the power and authority to
25 appoint administrative law judges. The Board shall also
26 adopt rules governing the appointment of administrative law
27 judges and the conduct of hearings consistent with the
28 requirements of this Section. If the Board finds that
29 sufficient evidence exists to support the complaint, it shall
30 authorize a hearing before an administrative law judge within
31 45 days of the Board's finding, unless, based upon the
32 complexity and extent of the allegations and charges,
33 additional time is needed. The administrative law judge shall
34 hear all evidence and prepare a written recommendation of his

1 or her findings to the Board. At the hearing the accused
2 police officer shall be afforded the opportunity to:

3 (1) Be represented by counsel;

4 (2) Be heard in his or her own defense;

5 (3) Produce evidence in his or her defense;

6 (4) Request that the Board compel the attendance of
7 witnesses and production of court records and documents.

8 (j) Once a case has been set for hearing, the person who
9 filed the verified complaint shall have the opportunity to
10 produce evidence to support any charge against a police
11 officer that he or she, while under oath, has knowingly and
12 willfully made false statements as to a material fact during
13 a homicide proceeding.

14 (1) The person who filed the verified complaint
15 shall have the opportunity to be represented by counsel
16 and shall produce evidence to support his or her charges;

17 (2) The person who filed the verified complaint may
18 request the Board to compel the attendance of witnesses
19 and production of court records and documents.

20 (k) The Board shall have the power to issue subpoenas
21 requiring the attendance and testimony of witnesses and the
22 production of court records and documents and shall have the
23 power to administer oaths.

24 (l) The administrative law judge shall have the
25 responsibility of receiving into evidence relevant testimony
26 and documents, including court records, to support or
27 disprove the allegations made by the person filing the
28 verified complaint, and, at the close of the case, hear
29 arguments. If the administrative law judge finds that there
30 is not clear and convincing evidence to support the verified
31 complaint that the police officer has, while under oath,
32 knowingly and willfully made false statements as to a
33 material fact during a homicide proceeding, the
34 administrative law judge shall make a written recommendation

1 of dismissal to the Board. If the administrative law judge
2 finds that there is clear and convincing evidence to support
3 the verified complaint that the police officer has, while
4 under oath, knowingly and willfully made false statements as
5 to a material fact during a homicide proceeding, the
6 administrative law judge shall make a written recommendation
7 of decertification to the Board.

8 (m) Any person, with the exception of the police officer
9 who is the subject of the hearing, who is served by the Board
10 with a subpoena to appear, testify or produce evidence and
11 refuses to comply with the subpoena is guilty of a Class B
12 misdemeanor. Any circuit court or judge, upon application by
13 the Board, may compel compliance with a subpoena issued by
14 the Board.

15 (n) The Board shall consider the recommendation of the
16 administrative law judge and the record of the hearing at a
17 quarterly Board meeting. If, by a two-thirds vote of the
18 members present at the quarterly Board meeting, the Board
19 finds that there is clear and convincing evidence that the
20 police officer has, while under oath, knowingly and willfully
21 made false statements as to a material fact during a homicide
22 proceeding, the Board shall order that the police officer be
23 decertified as a full-time or part-time police officer. If
24 less than two-thirds of the members present vote to decertify
25 the police officer, the Board shall dismiss the complaint.

26 (o) The provisions of the Administrative Review Law
27 shall govern all proceedings for the judicial review of any
28 order rendered by the Board. The moving party shall pay the
29 reasonable costs of preparing and certifying the record for
30 review including, if so ordered by the Board, the costs
31 incurred in the hearing before the administrative law judge.
32 If the moving party is the police officer and he or she
33 prevails, the court may award the police officer actual costs
34 incurred in all proceedings, including reasonable attorney

1 fees.

2 (p) If the police officer is decertified under
3 subsection (h), the Board shall notify the defendant who was
4 a party to the proceeding that resulted in the police
5 officer's decertification and his or her attorney of the
6 Board's decision. Notification shall be by certified mail
7 sent to the party's last known address.

8 (g) Limitation of action.

9 (1) No complaint may be filed pursuant to this
10 Section until after a verdict or other disposition is
11 rendered or the case is dismissed in the trial court.

12 (2) A complaint pursuant to this Section may not be
13 filed more than 2 years after the final resolution of the
14 case. For purposes of this Section, final resolution is
15 defined as the trial court's ruling on the State
16 post-conviction proceeding in the case in which it is
17 alleged the police officer, while under oath, knowingly
18 and willfully made false statements as to a material fact
19 during a homicide proceeding. In the event a
20 post-conviction petition is not filed, an action pursuant
21 to this Section may not be commenced more than 2 years
22 after the denial of a petition for certiorari to the
23 United States Supreme Court, or if no petition for
24 certiorari is filed, 2 years after the date such a
25 petition should have been filed. In the event of an
26 acquittal, no proceeding may be commenced pursuant to
27 this Section more than 6 years after the date upon which
28 judgment on the verdict of acquittal was entered.

29 (r) Interested parties. Only interested parties to the
30 criminal prosecution in which the police officer allegedly,
31 while under oath, knowingly and willfully made false
32 statements as to a material fact during a homicide proceeding
33 may file a verified complaint pursuant to this Section. For
34 purposes of this Section, "interested parties" include the

1 defendant and any police officer who has personal knowledge
2 that the police officer who is the subject of the complaint
3 has, while under oath, knowingly and willfully made false
4 statements as to a material fact during a homicide
5 proceeding.

6 (Source: P.A. 91-495, eff. 1-1-00.)

7 Section 10. The Criminal Code of 1961 is amended by
8 changing Sections 9-1 and 14-3 as follows:

9 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

10 Sec. 9-1. First degree Murder - Death penalties -
11 Exceptions - Separate Hearings - Proof - Findings - Appellate
12 procedures - Reversals.

13 (a) A person who kills an individual without lawful
14 justification commits first degree murder if, in performing
15 the acts which cause the death:

16 (1) he either intends to kill or do great bodily
17 harm to that individual or another, or knows that such
18 acts will cause death to that individual or another; or

19 (2) he knows that such acts create a strong
20 probability of death or great bodily harm to that
21 individual or another; or

22 (3) he is attempting or committing a forcible
23 felony other than second degree murder.

24 (b) Aggravating Factors. A defendant who at the time of
25 the commission of the offense has attained the age of 18 or
26 more and who has been found guilty of first degree murder may
27 be sentenced to death if:

28 (1) the murdered individual was a peace officer or
29 fireman killed in the course of performing his official
30 duties, to prevent the performance of his official
31 duties, or in retaliation for performing his official
32 duties, and the defendant knew or should have known that

1 the murdered individual was a peace officer or fireman;
2 or

3 (2) the murdered individual was an employee of an
4 institution or facility of the Department of Corrections,
5 or any similar local correctional agency, killed in the
6 course of performing his official duties, to prevent the
7 performance of his official duties, or in retaliation for
8 performing his official duties, or the murdered
9 individual was an inmate at such institution or facility
10 and was killed on the grounds thereof, or the murdered
11 individual was otherwise present in such institution or
12 facility with the knowledge and approval of the chief
13 administrative officer thereof; or

14 (3) the defendant has been convicted of murdering
15 two or more individuals under subsection (a) of this
16 Section or under any law of the United States or of any
17 state which is substantially similar to subsection (a) of
18 this Section regardless of whether the deaths occurred
19 as the result of the same act or of several related or
20 unrelated acts so long as the deaths were the result of
21 either an intent to kill more than one person or of
22 separate acts which the defendant knew would cause death
23 or create a strong probability of death or great bodily
24 harm to the murdered individual or another; or

25 (4) the murdered individual was killed as a result
26 of the hijacking of an airplane, train, ship, bus or
27 other public conveyance; or

28 (5) the defendant committed the murder pursuant to
29 a contract, agreement or understanding by which he was to
30 receive money or anything of value in return for
31 committing the murder or procured another to commit the
32 murder for money or anything of value; or

33 (6) the murdered individual was killed in the
34 course of another felony if:

1 (a) the murdered individual:

2 (i) was actually killed by the defendant,

3 or

4 (ii) received physical injuries
5 personally inflicted by the defendant
6 substantially contemporaneously with physical
7 injuries caused by one or more persons for
8 whose conduct the defendant is legally
9 accountable under Section 5-2 of this Code, and
10 the physical injuries inflicted by either the
11 defendant or the other person or persons for
12 whose conduct he is legally accountable caused
13 the death of the murdered individual; and

14 (b) in performing the acts which caused the
15 death of the murdered individual or which resulted
16 in physical injuries personally inflicted by the
17 defendant on the murdered individual under the
18 circumstances of subdivision (ii) of subparagraph
19 (a) of paragraph (6) of subsection (b) of this
20 Section, the defendant acted with the intent to kill
21 the murdered individual or with the knowledge that
22 his acts created a strong probability of death or
23 great bodily harm to the murdered individual or
24 another; and

25 (c) the other felony was an inherently violent
26 crime ~~one-of-the--following:--armed--robbery,--armed~~
27 ~~violence,--robbery,--predatory-criminal-sexual-assault~~
28 ~~of--a--child,--aggravated--criminal--sexual-assault,~~
29 ~~aggravated---kidnapping,---aggravated---vehicular~~
30 ~~hijacking,--forcible--detention,--arson,--aggravated~~
31 ~~arson,--aggravated--stalking,--burglary,--residential~~
32 ~~burglary,--home--invasion,--calculated-criminal-drug~~
33 ~~conspiracy-as-defined-in-Section-405-of-the-Illinois~~
34 ~~Controlled-Substances-Act,--streetgang-criminal--drug~~

1 conspiracy--as--defined--in--Section--405.2--of--the
2 Illinois--Controlled--Substances--Act, or the attempt
3 to commit an inherently violent crime. In this
4 subparagraph (c), "inherently violent crime"
5 includes, but is not limited to, armed robbery,
6 robbery, predatory criminal sexual assault of a
7 child, aggravated criminal sexual assault,
8 aggravated kidnapping, aggravated vehicular
9 hijacking, aggravated arson, aggravated stalking,
10 residential burglary, and home invasion any-of-the
11 felonies-listed-in-this-subsection-(e); or

12 (7) the murdered individual was under 12 years of
13 age and the death resulted from exceptionally brutal or
14 heinous behavior indicative of wanton cruelty; or

15 (8) the defendant committed the murder with intent
16 to prevent the murdered individual from testifying or
17 participating in any criminal investigation or
18 prosecution or giving material assistance to the State in
19 any investigation or prosecution, either against the
20 defendant or another; or the defendant committed the
21 murder because the murdered individual was a witness in
22 any prosecution or gave material assistance to the State
23 in any investigation or prosecution, either against the
24 defendant or another; for purposes of this paragraph (8),
25 "participating in any criminal investigation or
26 prosecution" is intended to include those appearing in
27 the proceedings in any capacity such as trial judges,
28 prosecutors, defense attorneys, investigators, witnesses,
29 or jurors; or

30 (9) the defendant, while committing an offense
31 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
32 407 or 407.1 or subsection (b) of Section 404 of the
33 Illinois Controlled Substances Act, or while engaged in a
34 conspiracy or solicitation to commit such offense,

1 intentionally killed an individual or counseled,
2 commanded, induced, procured or caused the intentional
3 killing of the murdered individual; or

4 (10) the defendant was incarcerated in an
5 institution or facility of the Department of Corrections
6 at the time of the murder, and while committing an
7 offense punishable as a felony under Illinois law, or
8 while engaged in a conspiracy or solicitation to commit
9 such offense, intentionally killed an individual or
10 counseled, commanded, induced, procured or caused the
11 intentional killing of the murdered individual; or

12 (11) the murder was committed in a cold, calculated
13 and premeditated manner pursuant to a preconceived plan,
14 scheme or design to take a human life by unlawful means,
15 and the conduct of the defendant created a reasonable
16 expectation that the death of a human being would result
17 therefrom; or

18 (12) the murdered individual was an emergency
19 medical technician - ambulance, emergency medical
20 technician - intermediate, emergency medical technician -
21 paramedic, ambulance driver, or other medical assistance
22 or first aid personnel, employed by a municipality or
23 other governmental unit, killed in the course of
24 performing his official duties, to prevent the
25 performance of his official duties, or in retaliation for
26 performing his official duties, and the defendant knew or
27 should have known that the murdered individual was an
28 emergency medical technician - ambulance, emergency
29 medical technician - intermediate, emergency medical
30 technician - paramedic, ambulance driver, or other
31 medical assistance or first aid personnel; or

32 (13) the defendant was a principal administrator,
33 organizer, or leader of a calculated criminal drug
34 conspiracy consisting of a hierarchical position of

1 authority superior to that of all other members of the
2 conspiracy, and the defendant counseled, commanded,
3 induced, procured, or caused the intentional killing of
4 the murdered person; or

5 (14) the murder was intentional and involved the
6 infliction of torture. For the purpose of this Section
7 torture means the infliction of or subjection to extreme
8 physical pain, motivated by an intent to increase or
9 prolong the pain, suffering or agony of the victim; or

10 (15) the murder was committed as a result of the
11 intentional discharge of a firearm by the defendant from
12 a motor vehicle and the victim was not present within the
13 motor vehicle; or

14 (16) the murdered individual was 60 years of age or
15 older and the death resulted from exceptionally brutal or
16 heinous behavior indicative of wanton cruelty; or

17 (17) the murdered individual was a disabled person
18 and the defendant knew or should have known that the
19 murdered individual was disabled. For purposes of this
20 paragraph (17), "disabled person" means a person who
21 suffers from a permanent physical or mental impairment
22 resulting from disease, an injury, a functional disorder,
23 or a congenital condition that renders the person
24 incapable of adequately providing for his or her own
25 health or personal care; or

26 (18) the murder was committed by reason of any
27 person's activity as a community policing volunteer or to
28 prevent any person from engaging in activity as a
29 community policing volunteer; or

30 (19) the murdered individual was subject to an
31 order of protection and the murder was committed by a
32 person against whom the same order of protection was
33 issued under the Illinois Domestic Violence Act of 1986;
34 or

1 (20) the murdered individual was known by the
2 defendant to be a teacher or other person employed in any
3 school and the teacher or other employee is upon the
4 grounds of a school or grounds adjacent to a school, or
5 is in any part of a building used for school purposes; or

6 (21) the murder was committed by the defendant in
7 connection with or as a result of the offense of
8 terrorism as defined in Section 29D-30 of this Code.

9 (c) Consideration of factors in Aggravation and
10 Mitigation.

11 The court shall consider, or shall instruct the jury to
12 consider any aggravating and any mitigating factors which are
13 relevant to the imposition of the death penalty. Aggravating
14 factors may include but need not be limited to those factors
15 set forth in subsection (b). Mitigating factors may include
16 but need not be limited to the following:

17 (1) the defendant has no significant history of
18 prior criminal activity;

19 (2) the murder was committed while the defendant
20 was under the influence of extreme mental or emotional
21 disturbance, although not such as to constitute a defense
22 to prosecution;

23 (3) the murdered individual was a participant in
24 the defendant's homicidal conduct or consented to the
25 homicidal act;

26 (4) the defendant acted under the compulsion of
27 threat or menace of the imminent infliction of death or
28 great bodily harm;

29 (5) the defendant was not personally present during
30 commission of the act or acts causing death;

31 (6) the defendant's background includes a history
32 of extreme emotional or physical abuse;

33 (7) the defendant suffers from a reduced mental
34 capacity.

1 (d) Separate sentencing hearing.

2 Where requested by the State, the court shall conduct a
3 separate sentencing proceeding to determine the existence of
4 factors set forth in subsection (b) and to consider any
5 aggravating or mitigating factors as indicated in subsection
6 (c). The proceeding shall be conducted:

7 (1) before the jury that determined the defendant's
8 guilt; or

9 (2) before a jury impanelled for the purpose of the
10 proceeding if:

11 A. the defendant was convicted upon a plea of
12 guilty; or

13 B. the defendant was convicted after a trial
14 before the court sitting without a jury; or

15 C. the court for good cause shown discharges
16 the jury that determined the defendant's guilt; or

17 (3) before the court alone if the defendant waives
18 a jury for the separate proceeding.

19 (e) Evidence and Argument.

20 During the proceeding any information relevant to any of
21 the factors set forth in subsection (b) may be presented by
22 either the State or the defendant under the rules governing
23 the admission of evidence at criminal trials. Any
24 information relevant to any additional aggravating factors or
25 any mitigating factors indicated in subsection (c) may be
26 presented by the State or defendant regardless of its
27 admissibility under the rules governing the admission of
28 evidence at criminal trials. The State and the defendant
29 shall be given fair opportunity to rebut any information
30 received at the hearing.

31 (f) Proof.

32 The burden of proof of establishing the existence of any
33 of the factors set forth in subsection (b) is on the State
34 and shall not be satisfied unless established beyond a

1 reasonable doubt.

2 (g) Procedure - Jury.

3 If at the separate sentencing proceeding the jury finds
4 that none of the factors set forth in subsection (b) exists,
5 the court shall sentence the defendant to a term of
6 imprisonment under Chapter V of the Unified Code of
7 Corrections. If there is a unanimous finding by the jury
8 that one or more of the factors set forth in subsection (b)
9 exist, the jury shall consider aggravating and mitigating
10 factors as instructed by the court and shall determine
11 whether the sentence of death shall be imposed. If the jury
12 determines unanimously, after weighing the factors in
13 aggravation and mitigation, that death is the appropriate
14 sentence ~~that--there-are-no-mitigating-factors-sufficient-to~~
15 ~~preclude-the-imposition-of--the--death--sentence,~~ the court
16 shall sentence the defendant to death. If the court does not
17 concur with the jury determination that death is the
18 appropriate sentence, the court shall set forth reasons in
19 writing including what facts or circumstances the court
20 relied upon, along with any relevant documents, that
21 compelled the court to non-concur with the sentence. This
22 document and any attachments shall be part of the record for
23 appellate review. The court shall be bound by the jury's
24 sentencing determination.

25 If after weighing the factors in aggravation and
26 mitigation, one or more jurors determines that death is not
27 the appropriate sentence, ~~Unless-the-jury--unanimously--finds~~
28 ~~that--there--are--no-mitigating-factors-sufficient-to-preclude~~
29 ~~the-imposition-of-the-death-sentence~~ the court shall sentence
30 the defendant to a term of imprisonment under Chapter V of
31 the Unified Code of Corrections.

32 (h) Procedure - No Jury.

33 In a proceeding before the court alone, if the court
34 finds that none of the factors found in subsection (b)

1 exists, the court shall sentence the defendant to a term of
2 imprisonment under Chapter V of the Unified Code of
3 Corrections.

4 If the Court determines that one or more of the factors
5 set forth in subsection (b) exists, the Court shall consider
6 any aggravating and mitigating factors as indicated in
7 subsection (c). If the Court determines, after weighing the
8 factors in aggravation and mitigation, that death is the
9 appropriate sentence ~~that--there--are--no--mitigating--factors~~
10 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~
11 the Court shall sentence the defendant to death.

12 If ~~Unless~~ the court finds that ~~there-are-no-mitigating~~
13 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~
14 ~~of death~~ is not the appropriate sentence, the court shall
15 sentence the defendant to a term of imprisonment under
16 Chapter V of the Unified Code of Corrections.

17 (h-5) Decertification as a capital case.

18 In a case in which the defendant has been found guilty of
19 first degree murder by a judge or jury, or a case on remand
20 for resentencing, and the State seeks the death penalty as an
21 appropriate sentence, on the court's own motion or the
22 written motion of the defendant, the court may decertify the
23 case as a death penalty case if the court finds that the only
24 evidence supporting the defendant's conviction is the
25 uncorroborated testimony of an informant witness, as defined
26 in Section 115-21 of the Code of Criminal Procedure of 1963,
27 concerning the confession or admission of the defendant or
28 that the sole evidence against the defendant is a single
29 eyewitness or single accomplice without any other
30 corroborating evidence. If the court decertifies the case as
31 a capital case under either of the grounds set forth above,
32 the court shall issue a written finding. The State may
33 pursue its right to appeal the decertification pursuant to
34 Supreme Court Rule 604(a)(1). If the court does not

1 decertify the case as a capital case, the matter shall
2 proceed to the eligibility phase of the sentencing hearing.

3 (i) Appellate Procedure.

4 The conviction and sentence of death shall be subject to
5 automatic review by the Supreme Court. Such review shall be
6 in accordance with rules promulgated by the Supreme Court.
7 The Illinois Supreme Court may overturn the death sentence,
8 and order the imposition of imprisonment under Chapter V of
9 the Unified Code of Corrections if the court finds that the
10 death sentence is fundamentally unjust as applied to the
11 particular case. If the Illinois Supreme Court finds that the
12 death sentence is fundamentally unjust as applied to the
13 particular case, independent of any procedural grounds for
14 relief, the Illinois Supreme Court shall issue a written
15 opinion explaining this finding.

16 (j) Disposition of reversed death sentence.

17 In the event that the death penalty in this Act is held
18 to be unconstitutional by the Supreme Court of the United
19 States or of the State of Illinois, any person convicted of
20 first degree murder shall be sentenced by the court to a term
21 of imprisonment under Chapter V of the Unified Code of
22 Corrections.

23 In the event that any death sentence pursuant to the
24 sentencing provisions of this Section is declared
25 unconstitutional by the Supreme Court of the United States or
26 of the State of Illinois, the court having jurisdiction over
27 a person previously sentenced to death shall cause the
28 defendant to be brought before the court, and the court shall
29 sentence the defendant to a term of imprisonment under
30 Chapter V of the Unified Code of Corrections.

31 (k) Guidelines for seeking the death penalty.

32 The Attorney General and State's Attorneys Association
33 shall consult on voluntary guidelines for procedures
34 governing whether or not to seek the death penalty. The

1 guidelines do not have the force of law and are only advisory
2 in nature.

3 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
4 92-854, eff. 12-5-02.)

5 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

6 Sec. 14-3. Exemptions. The following activities shall
7 be exempt from the provisions of this Article:

8 (a) Listening to radio, wireless and television
9 communications of any sort where the same are publicly made;

10 (b) Hearing conversation when heard by employees of any
11 common carrier by wire incidental to the normal course of
12 their employment in the operation, maintenance or repair of
13 the equipment of such common carrier by wire so long as no
14 information obtained thereby is used or divulged by the
15 hearer;

16 (c) Any broadcast by radio, television or otherwise
17 whether it be a broadcast or recorded for the purpose of
18 later broadcasts of any function where the public is in
19 attendance and the conversations are overheard incidental to
20 the main purpose for which such broadcasts are then being
21 made;

22 (d) Recording or listening with the aid of any device to
23 any emergency communication made in the normal course of
24 operations by any federal, state or local law enforcement
25 agency or institutions dealing in emergency services,
26 including, but not limited to, hospitals, clinics, ambulance
27 services, fire fighting agencies, any public utility,
28 emergency repair facility, civilian defense establishment or
29 military installation;

30 (e) Recording the proceedings of any meeting required to
31 be open by the Open Meetings Act, as amended;

32 (f) Recording or listening with the aid of any device to
33 incoming telephone calls of phone lines publicly listed or

1 advertised as consumer "hotlines" by manufacturers or
2 retailers of food and drug products. Such recordings must be
3 destroyed, erased or turned over to local law enforcement
4 authorities within 24 hours from the time of such recording
5 and shall not be otherwise disseminated. Failure on the part
6 of the individual or business operating any such recording or
7 listening device to comply with the requirements of this
8 subsection shall eliminate any civil or criminal immunity
9 conferred upon that individual or business by the operation
10 of this Section;

11 (g) With prior notification to the State's Attorney of
12 the county in which it is to occur, recording or listening
13 with the aid of any device to any conversation where a law
14 enforcement officer, or any person acting at the direction of
15 law enforcement, is a party to the conversation and has
16 consented to it being intercepted or recorded under
17 circumstances where the use of the device is necessary for
18 the protection of the law enforcement officer or any person
19 acting at the direction of law enforcement, in the course of
20 an investigation of a forcible felony, a felony violation of
21 the Illinois Controlled Substances Act, a felony violation of
22 the Cannabis Control Act, or any "streetgang related" or
23 "gang-related" felony as those terms are defined in the
24 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
25 recording or evidence derived as the result of this exemption
26 shall be inadmissible in any proceeding, criminal, civil or
27 administrative, except (i) where a party to the conversation
28 suffers great bodily injury or is killed during such
29 conversation, or (ii) when used as direct impeachment of a
30 witness concerning matters contained in the interception or
31 recording. The Director of the Department of State Police
32 shall issue regulations as are necessary concerning the use
33 of devices, retention of tape recordings, and reports
34 regarding their use;

1 (g-5) With approval of the State's Attorney of the
2 county in which it is to occur, recording or listening with
3 the aid of any device to any conversation where a law
4 enforcement officer, or any person acting at the direction of
5 law enforcement, is a party to the conversation and has
6 consented to it being intercepted or recorded in the course
7 of an investigation of any offense defined in Article 29D of
8 this Code. In all such cases, an application for an order
9 approving the previous or continuing use of an eavesdropping
10 device must be made within 48 hours of the commencement of
11 such use. In the absence of such an order, or upon its
12 denial, any continuing use shall immediately terminate. The
13 Director of State Police shall issue rules as are necessary
14 concerning the use of devices, retention of tape recordings,
15 and reports regarding their use.

16 Any recording or evidence obtained or derived in the
17 course of an investigation of any offense defined in Article
18 29D of this Code shall, upon motion of the State's Attorney
19 or Attorney General prosecuting any violation of Article 29D,
20 be reviewed in camera with notice to all parties present by
21 the court presiding over the criminal case, and, if ruled by
22 the court to be relevant and otherwise admissible, it shall
23 be admissible at the trial of the criminal case.

24 This subsection (g-5) is inoperative on and after January
25 1, 2005. No conversations recorded or monitored pursuant to
26 this subsection (g-5) shall be inadmissible in a court of law
27 by virtue of the repeal of this subsection (g-5) on January
28 1, 2005_i.

29 (h) Recordings made simultaneously with a video
30 recording of an oral conversation between a peace officer,
31 who has identified his or her office, and a person stopped
32 for an investigation of an offense under the Illinois Vehicle
33 Code;

34 (i) Recording of a conversation made by or at the

1 request of a person, not a law enforcement officer or agent
2 of a law enforcement officer, who is a party to the
3 conversation, under reasonable suspicion that another party
4 to the conversation is committing, is about to commit, or has
5 committed a criminal offense against the person or a member
6 of his or her immediate household, and there is reason to
7 believe that evidence of the criminal offense may be obtained
8 by the recording; and

9 (j) The use of a telephone monitoring device by either
10 (1) a corporation or other business entity engaged in
11 marketing or opinion research or (2) a corporation or other
12 business entity engaged in telephone solicitation, as defined
13 in this subsection, to record or listen to oral telephone
14 solicitation conversations or marketing or opinion research
15 conversations by an employee of the corporation or other
16 business entity when:

17 (i) the monitoring is used for the purpose of
18 service quality control of marketing or opinion research
19 or telephone solicitation, the education or training of
20 employees or contractors engaged in marketing or opinion
21 research or telephone solicitation, or internal research
22 related to marketing or opinion research or telephone
23 solicitation; and

24 (ii) the monitoring is used with the consent of at
25 least one person who is an active party to the marketing
26 or opinion research conversation or telephone
27 solicitation conversation being monitored.

28 No communication or conversation or any part, portion, or
29 aspect of the communication or conversation made, acquired,
30 or obtained, directly or indirectly, under this exemption
31 (j), may be, directly or indirectly, furnished to any law
32 enforcement officer, agency, or official for any purpose or
33 used in any inquiry or investigation, or used, directly or
34 indirectly, in any administrative, judicial, or other

1 proceeding, or divulged to any third party.

2 When recording or listening authorized by this subsection
3 (j) on telephone lines used for marketing or opinion research
4 or telephone solicitation purposes results in recording or
5 listening to a conversation that does not relate to marketing
6 or opinion research or telephone solicitation; the person
7 recording or listening shall, immediately upon determining
8 that the conversation does not relate to marketing or opinion
9 research or telephone solicitation, terminate the recording
10 or listening and destroy any such recording as soon as is
11 practicable.

12 Business entities that use a telephone monitoring or
13 telephone recording system pursuant to this exemption (j)
14 shall provide current and prospective employees with notice
15 that the monitoring or recordings may occur during the course
16 of their employment. The notice shall include prominent
17 signage notification within the workplace.

18 Business entities that use a telephone monitoring or
19 telephone recording system pursuant to this exemption (j)
20 shall provide their employees or agents with access to
21 personal-only telephone lines which may be pay telephones,
22 that are not subject to telephone monitoring or telephone
23 recording.

24 For the purposes of this subsection (j), "telephone
25 solicitation" means a communication through the use of a
26 telephone by live operators:

- 27 (i) soliciting the sale of goods or services;
- 28 (ii) receiving orders for the sale of goods or
29 services;
- 30 (iii) assisting in the use of goods or services; or
- 31 (iv) engaging in the solicitation, administration,
32 or collection of bank or retail credit accounts.

33 For the purposes of this subsection (j), "marketing or
34 opinion research" means a marketing or opinion research

1 interview conducted by a live telephone interviewer engaged
 2 by a corporation or other business entity whose principal
 3 business is the design, conduct, and analysis of polls and
 4 surveys measuring the opinions, attitudes, and responses of
 5 respondents toward products and services, or social or
 6 political issues, or both; and

7 (k) Recording the interview or statement of any person
 8 when the person knows that the interview is being conducted
 9 by a law enforcement officer or prosecutor and the interview
 10 takes place at a police station that is currently
 11 participating in the Custodial Interview Pilot Program
 12 established under the Illinois Criminal Justice Information
 13 Act.

14 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

15 Section 15. The Code of Criminal Procedure of 1963 is
 16 amended by changing Sections 114-13, 116-3, 122-1, and
 17 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
 18 115-22, 116-5, and 122-2.2 as follows:

19 (725 ILCS 5/107A Art. heading new)

20 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

21 (725 ILCS 5/107A-5 new)

22 Sec. 107A-5. Lineup and photo spread procedure.

23 (a) All lineups shall be photographed or otherwise
 24 recorded. These photographs shall be disclosed to the accused
 25 and his or her defense counsel during discovery proceedings
 26 as provided in Illinois Supreme Court Rules. All photographs
 27 of suspects shown to an eyewitness during the photo spread
 28 shall be disclosed to the accused and his or her defense
 29 counsel during discovery proceedings as provided in Illinois
 30 Supreme Court Rules.

31 (b) Each eyewitness who views a lineup or photo spread

1 shall sign a form containing the following information:

2 (1) The suspect might not be in the lineup or photo
3 spread and the eyewitness is not obligated to make an
4 identification.

5 (2) The eyewitness should not assume that the
6 person administering the lineup or photo spread knows
7 which person is the suspect in the case.

8 (c) Suspects in a lineup or photo spread should not
9 appear to be substantially different from "fillers" or
10 "distracters" in the lineup or photo spread, based on the
11 eyewitness' previous description of the perpetrator, or based
12 on other factors that would draw attention to the suspect.

13 (725 ILCS 5/107A-10 new)

14 Sec. 107A-10. Pilot study on sequential lineup
15 procedures.

16 (a) Legislative intent. Because the goal of a police
17 investigation is to apprehend the person or persons
18 responsible for committing a crime, it is useful to conduct a
19 pilot study in the field on the effectiveness of the
20 sequential method for lineup procedures.

21 (b) Establishment of pilot jurisdictions. The Department
22 of State Police shall select 3 police departments to
23 participate in a one-year pilot study on the effectiveness of
24 the sequential lineup method for photo and live lineup
25 procedures. One such pilot jurisdiction shall be a police
26 district within a police department in a municipality whose
27 population is at least 500,000 residents; one such pilot
28 jurisdiction shall be a police department in a municipality
29 whose population is at least 100,000 but less than 500,000;
30 and one such pilot jurisdiction shall be a police department
31 in a municipality whose population is less than 100,000. All
32 such pilot jurisdictions shall be selected no later than
33 January 1, 2004.

1 (c) Sequential lineup procedures in pilot jurisdictions.
2 For any offense alleged to have been committed in a pilot
3 jurisdiction on or after January 1, 2004, selected lineup
4 identification procedure shall be presented in the sequential
5 method in which a witness is shown lineup participants one at
6 a time, using the following procedures:

7 (1) The witness shall be requested to state whether
8 the individual shown is the perpetrator of the crime
9 prior to viewing the next lineup participant. Only one
10 member of the lineup shall be a suspect and the remainder
11 shall be "fillers" who are not suspects but fit the
12 general description of the offender without the suspect
13 unduly standing out;

14 (2) The lineup administrator, when feasible for
15 municipalities under 100,000, shall be someone who is not
16 aware of which member of the lineup is the suspect in the
17 case; and

18 (3) Prior to presenting the lineup using the
19 sequential method the lineup administrator shall:

20 (A) Inform the witness that the perpetrator
21 may or may not be among those shown, and the witness
22 should not feel compelled to make an identification;

23 (B) Inform the witness that he or she will
24 view individuals one at a time and will be requested
25 to state whether the individual shown is the
26 perpetrator of the crime, prior to viewing the next
27 lineup participant; and

28 (C) Ask the witness to state in his or her own
29 words how sure he or she is that the person
30 identified is the actual offender. During the
31 statement, or as soon thereafter as reasonably
32 possible, the witness's actual words shall be
33 documented.

34 (d) Application. This Section applies to selected live

1 lineups that are composed and presented at a police station
2 and to selected photo lineups regardless of where presented;
3 provided that this Section does not apply in police
4 investigations in which a spontaneous identification is
5 possible and no lineup procedure is being used. This Section
6 does not affect the right to counsel afforded by the U.S. or
7 Illinois Constitutions or State law at any stage of a
8 criminal proceeding.

9 (e) Selection of lineups. The participating
10 jurisdictions shall develop a protocol for the selection and
11 administration of lineups which is practical, designed to
12 elicit information for comparative evaluation purposes, and
13 is consistent with objective scientific research methodology.

14 (f) Training and administrators. The Department of State
15 Police shall offer training to police officers and any other
16 appropriate personnel on the sequential method of conducting
17 lineup procedures in the pilot jurisdictions and the
18 requirements of this Section. The Department of State Police
19 may seek funding for training and administration from the
20 Illinois Criminal Justice Information Authority and the
21 Illinois Law Enforcement Training Standards Board if
22 necessary.

23 (g) Report on the pilot study. The Department of State
24 Police shall gather information from each of the
25 participating police departments selected as a pilot
26 jurisdiction with respect to the effectiveness of the
27 sequential method for lineup procedures and shall file a
28 report of its findings with the Governor and the General
29 Assembly no later than April 1, 2005.

30 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

31 Sec. 114-13. Discovery in criminal cases.

32 (a) Discovery procedures in criminal cases shall be in
33 accordance with Supreme Court Rules.

1 (b) Any public investigative, law enforcement, or other
2 public agency responsible for investigating any homicide
3 offense or participating in an investigation of any homicide
4 offense, other than defense investigators, shall provide to
5 the authority prosecuting the offense all investigative
6 material, including but not limited to reports, memoranda,
7 and field notes, that have been generated by or have come
8 into the possession of the investigating agency concerning
9 the homicide offense being investigated. In addition, the
10 investigating agency shall provide to the prosecuting
11 authority any material or information, including but not
12 limited to reports, memoranda, and field notes, within its
13 possession or control that would tend to negate the guilt of
14 the accused of the offense charged or reduce his or her
15 punishment for the homicide offense. Every investigative and
16 law enforcement agency in this State shall adopt policies to
17 ensure compliance with these standards. Any investigative,
18 law enforcement, or other public agency responsible for
19 investigating any "non-homicide felony" offense or
20 participating in an investigation of any "non-homicide
21 felony" offense, other than defense investigators, shall
22 provide to the authority prosecuting the offense all
23 investigative material, including but not limited to reports
24 and memoranda that have been generated by or have come into
25 the possession of the investigating agency concerning the
26 "non-homicide felony" offense being investigated. In
27 addition, the investigating agency shall provide to the
28 prosecuting authority any material or information, including
29 but not limited to reports and memoranda, within its
30 possession or control that would tend to negate the guilt of
31 the accused of the "non-homicide felony" offense charged or
32 reduce his or her punishment for the "non-homicide felony"
33 offense. This obligation to furnish exculpatory evidence
34 exists whether the information was recorded or documented in

1 any form. Every investigative and law enforcement agency in
2 this State shall adopt policies to ensure compliance with
3 these standards.

4 (Source: Laws 1963, p. 2836.)

5 (725 ILCS 5/114-15 new)

6 Sec. 114-15. Mental retardation.

7 (a) In a first degree murder case in which the State
8 seeks the death penalty as an appropriate sentence, any party
9 may raise the issue of the defendant's mental retardation by
10 motion. A defendant wishing to raise the issue of his or her
11 mental retardation shall provide written notice to the State
12 and the court as soon as the defendant reasonably believes
13 such issue will be raised.

14 (b) The issue of the defendant's mental retardation
15 shall be determined in a pretrial hearing. The court shall be
16 the fact finder on the issue of the defendant's mental
17 retardation and shall determine the issue by a preponderance
18 of evidence in which the moving party has the burden of
19 proof. The court may appoint an expert in the field of mental
20 retardation. The defendant and the State may offer experts
21 from the field of mental retardation. The court shall
22 determine admissibility of evidence and qualification as an
23 expert.

24 (c) If after a plea of guilty to first degree murder, or
25 a finding of guilty of first degree murder in a bench trial,
26 or a verdict of guilty for first degree murder in a jury
27 trial, or on a matter remanded from the Supreme Court for
28 sentencing for first degree murder, and the State seeks the
29 death penalty as an appropriate sentence, the defendant may
30 raise the issue of defendant's mental retardation not at
31 eligibility but at aggravation and mitigation. The defendant
32 and the State may offer experts from the field of mental
33 retardation. The court shall determine admissibility of

1 evidence and qualification as an expert.

2 (d) In determining whether the defendant is mentally
3 retarded, the mental retardation must have manifested itself
4 by the age of 18. IQ tests and psychometric tests
5 administered to the defendant must be the kind and type
6 recognized by experts in the field of mental retardation. In
7 order for the defendant to be considered mentally retarded, a
8 low IQ must be accompanied by significant deficits in
9 adaptive behavior in at least 2 of the following skill areas:
10 communication, self-care, social or interpersonal skills,
11 home living, self-direction, academics, health and safety,
12 use of community resources, and work. An intelligence
13 quotient (IQ) of 75 or below is presumptive evidence of
14 mental retardation.

15 (e) Evidence of mental retardation that did not result
16 in disqualifying the case as a capital case, may be
17 introduced as evidence in mitigation during a capital
18 sentencing hearing. A failure of the court to determine that
19 the defendant is mentally retarded does not preclude the
20 court during trial from allowing evidence relating to mental
21 disability should the court deem it appropriate.

22 (f) If the court determines at a pretrial hearing or
23 after remand that a capital defendant is mentally retarded,
24 and the State does not appeal pursuant to Supreme Court Rule
25 604, the case shall no longer be considered a capital case
26 and the procedural guidelines established for capital cases
27 shall no longer be applicable to the defendant. In that
28 case, the defendant shall be sentenced under the sentencing
29 provisions of Chapter V of the Unified Code of Corrections.

30 (725 ILCS 5/115-21 new)

31 Sec. 115-21. Informant testimony.

32 (a) For the purposes of this Section, "informant" means
33 someone who is purporting to testify about admissions made to

1 him or her by the accused while incarcerated in a penal
2 institution contemporaneously.

3 (b) This Section applies to any capital case in which
4 the prosecution attempts to introduce evidence of
5 incriminating statements made by the accused to or overheard
6 by an informant.

7 (c) In any case under this Section, the prosecution
8 shall timely disclose in discovery:

9 (1) the complete criminal history of the informant;

10 (2) any deal, promise, inducement, or benefit that
11 the offering party has made or will make in the future to
12 the informant;

13 (3) the statements made by the accused;

14 (4) the time and place of the statements, the time
15 and place of their disclosure to law enforcement
16 officials, and the names of all persons who were present
17 when the statements were made;

18 (5) whether at any time the informant recanted that
19 testimony or statement and, if so, the time and place of
20 the recantation, the nature of the recantation, and the
21 names of the persons who were present at the recantation;

22 (6) other cases in which the informant testified,
23 provided that the existence of such testimony can be
24 ascertained through reasonable inquiry and whether the
25 informant received any promise, inducement, or benefit in
26 exchange for or subsequent to that testimony or
27 statement; and

28 (7) any other information relevant to the
29 informant's credibility.

30 (d) In any case under this Section, the prosecution must
31 timely disclose its intent to introduce the testimony of an
32 informant. The court shall conduct a hearing to determine
33 whether the testimony of the informant is reliable, unless
34 the defendant waives such a hearing. If the prosecution

1 fails to show by a preponderance of the evidence that the
2 informant's testimony is reliable, the court shall not allow
3 the testimony to be heard at trial. At this hearing, the
4 court shall consider the factors enumerated in subsection (c)
5 as well as any other factors relating to reliability.

6 (e) A hearing required under subsection (d) does not
7 apply to statements covered under subsection (b) that are
8 lawfully recorded.

9 (f) This Section applies to all death penalty
10 prosecutions initiated on or after the effective date of this
11 amendatory Act of the 93rd General Assembly.

12 (725 ILCS 5/115-22 new)

13 Sec. 115-22. Witness inducements. When the State
14 intends to introduce the testimony of a witness in a capital
15 case, the State shall, before trial, disclose to the
16 defendant and to his or her defense counsel the following
17 information, which shall be reduced to writing:

18 (1) whether the witness has received or been
19 promised anything, including pay, immunity from
20 prosecution, leniency in prosecution, or personal
21 advantage, in exchange for testimony;

22 (2) any other case in which the witness testified
23 or offered statements against an individual but was not
24 called, and whether the statements were admitted in the
25 case, and whether the witness received any deal, promise,
26 inducement, or benefit in exchange for that testimony or
27 statement; provided that the existence of such testimony
28 can be ascertained through reasonable inquiry;

29 (3) whether the witness has ever changed his or her
30 testimony;

31 (4) the criminal history of the witness; and

32 (5) any other evidence relevant to the credibility
33 of the witness.

1 (725 ILCS 5/116-3)

2 Sec. 116-3. Motion for fingerprint or forensic testing
3 not available at trial regarding actual innocence.

4 (a) A defendant may make a motion before the trial court
5 that entered the judgment of conviction in his or her case
6 for the performance of fingerprint or forensic DNA testing,
7 including comparison analysis of genetic marker groupings of
8 the evidence collected by criminal justice agencies pursuant
9 to the alleged offense, to those of the defendant, to those
10 of other forensic evidence, and to those maintained under
11 subsection (f) of Section 5-4-3 of the Unified Code of
12 Corrections, on evidence that was secured in relation to the
13 trial which resulted in his or her conviction, but which was
14 not subject to the testing which is now requested because the
15 technology for the testing was not available at the time of
16 trial. Reasonable notice of the motion shall be served upon
17 the State.

18 (b) The defendant must present a prima facie case that:

19 (1) identity was the issue in the trial which
20 resulted in his or her conviction; and

21 (2) the evidence to be tested has been subject to a
22 chain of custody sufficient to establish that it has not
23 been substituted, tampered with, replaced, or altered in
24 any material aspect.

25 (c) The trial court shall allow the testing under
26 reasonable conditions designed to protect the State's
27 interests in the integrity of the evidence and the testing
28 process upon a determination that:

29 (1) the result of the testing has the scientific
30 potential to produce new, noncumulative evidence
31 materially relevant to the defendant's assertion of
32 actual innocence even though the results may not
33 completely exonerate the defendant;

34 (2) the testing requested employs a scientific

1 method generally accepted within the relevant scientific
2 community.

3 (Source: P.A. 90-141, eff. 1-1-98.)

4 (725 ILCS 5/116-5 new)

5 Sec. 116-5. Motion for DNA database search (genetic
6 marker groupings comparison analysis).

7 (a) Upon motion by a defendant charged with any offense
8 where DNA evidence may be material to the defense
9 investigation or relevant at trial, a court may order a DNA
10 database search by the Department of State Police. Such
11 analysis may include comparing:

12 (1) the genetic profile from forensic evidence that
13 was secured in relation to the trial against the genetic
14 profile of the defendant,

15 (2) the genetic profile of items of forensic
16 evidence secured in relation to trial to the genetic
17 profile of other forensic evidence secured in relation to
18 trial, or

19 (3) the genetic profiles referred to in
20 subdivisions (1) and (2) against:

21 (i) genetic profiles of offenders maintained
22 under subsection (f) of Section 5-4-3 of the Unified
23 Code of Corrections, or

24 (ii) genetic profiles, including but not
25 limited to, profiles from unsolved crimes maintained
26 in state or local DNA databases by law enforcement
27 agencies.

28 (b) If appropriate federal criteria are met, the court
29 may order the Department of State Police to request the
30 National DNA index system to search its database of genetic
31 profiles.

32 (c) If requested by the defense, a defense
33 representative shall be allowed to view any genetic marker

1 grouping analysis conducted by the Department of State
 2 Police. The defense shall be provided with copies of all
 3 documentation, correspondence, including digital
 4 correspondence, notes, memoranda, and reports generated in
 5 relation to the analysis.

6 (d) Reasonable notice of the motion shall be served upon
 7 the State.

8 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)
 9 Sec. 122-1. Petition in the trial court.

10 (a) Any person imprisoned in the penitentiary may
 11 institute a proceeding under this Article if the person who
 12 asserts that:

13 (1) in the proceedings which resulted in his or her
 14 conviction there was a substantial denial of his or her
 15 rights under the Constitution of the United States or of
 16 the State of Illinois or both; ~~or may--institute--a~~
 17 ~~proceeding-under-this-Article.~~

18 (2) the death penalty was imposed and there is
 19 newly discovered evidence not available to the person at
 20 the time of the proceeding that resulted in his or her
 21 conviction that establishes a substantial basis to
 22 believe that the defendant is actually innocent by clear
 23 and convincing evidence.

24 (a-5) A proceeding under paragraph (2) of subsection (a)
 25 may be commenced within a reasonable period of time after the
 26 person's conviction notwithstanding any other provisions of
 27 this Article. In such a proceeding regarding actual
 28 innocence, if the court determines the petition is frivolous
 29 or is patently without merit, it shall dismiss the petition
 30 in a written order, specifying the findings of fact and
 31 conclusions of law it made in reaching its decision. Such
 32 order of dismissal is a final judgment and shall be served
 33 upon the petitioner by certified mail within 10 days of its

1 entry.

2 (b) The proceeding shall be commenced by filing with the
3 clerk of the court in which the conviction took place a
4 petition (together with a copy thereof) verified by
5 affidavit. Petitioner shall also serve another copy upon the
6 State's Attorney by any of the methods provided in Rule 7 of
7 the Supreme Court. The clerk shall docket the petition for
8 consideration by the court pursuant to Section 122-2.1 upon
9 his or her receipt thereof and bring the same promptly to the
10 attention of the court.

11 (c) Except as otherwise provided in subsection (a-5), if
12 the petitioner is under sentence of death, no proceedings
13 under this Article shall be commenced more than 6 months
14 after the denial of a petition for certiorari to the United
15 States Supreme Court on direct appeal, or more than 6 months
16 from the date for filing such a petition if none is filed,
17 unless the petitioner alleges facts showing that the delay
18 was not due to his or her culpable negligence.

19 When a defendant has a sentence other than death, no
20 proceedings under this Article shall be commenced more than 6
21 months after the denial of the Petition for Leave to Appeal
22 to the Illinois Supreme Court, or more than 6 months from the
23 date for filing such a petition if none is filed, unless the
24 petitioner alleges facts showing that the delay was not due
25 to his or her culpable negligence.

26 This limitation does not apply to a petition advancing a
27 claim of actual innocence. no-proceedings-under-this--Article
28 shall--be--commenced-more-than-6-months-after-the-denial-of-a
29 petition-for-leave--to-appeal-or-the-date-for-filing--such--a
30 petition--if--none--is--filed--or-more-than-45-days-after-the
31 defendant-files-his--or--her--brief--in--the--appeal--of--the
32 sentence--before--the-Illinois-Supreme-Court-(or-more-than-45
33 days-after-the-deadline-for-the--filing--of--the--defendant's
34 brief--with--the-Illinois-Supreme-Court-if-no-brief-is-filed)

1 ~~er-3-years-from-the-date-of-conviction, whichever is sooner,~~
2 ~~unless the petitioner alleges facts showing that the delay~~
3 ~~was not due to his or her culpable negligence.~~

4 (d) A person seeking relief by filing a petition under
5 this Section must specify in the petition or its heading that
6 it is filed under this Section. A trial court that has
7 received a petition complaining of a conviction or sentence
8 that fails to specify in the petition or its heading that it
9 is filed under this Section need not evaluate the petition to
10 determine whether it could otherwise have stated some grounds
11 for relief under this Article.

12 (e) A proceeding under this Article may not be commenced
13 on behalf of a defendant who has been sentenced to death
14 without the written consent of the defendant, unless the
15 defendant, because of a mental or physical condition, is
16 incapable of asserting his or her own claim.

17 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
18 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

19 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

20 Sec. 122-2.1. (a) Within 90 days after the filing and
21 docketing of each petition, the court shall examine such
22 petition and enter an order thereon pursuant to this Section.

23 (1) If the petitioner is under sentence of death
24 and is without counsel and alleges that he is without
25 means to procure counsel, he shall state whether or not
26 he wishes counsel to be appointed to represent him. If
27 appointment of counsel is so requested, the court shall
28 appoint counsel if satisfied that the petitioner has no
29 means to procure counsel.

30 (2) If the petitioner is sentenced to imprisonment
31 and the court determines the petition is frivolous or is
32 patently without merit, it shall dismiss the petition in
33 a written order, specifying the findings of fact and

1 conclusions of law it made in reaching its decision.
2 Such order of dismissal is a final judgment and shall be
3 served upon the petitioner by certified mail within 10
4 days of its entry.

5 (b) If the petition is not dismissed pursuant to this
6 Section, the court shall order the petition to be docketed
7 for further consideration in accordance with Sections 122-4
8 through 122-6. If the petitioner is under sentence of death,
9 the court shall order the petition to be docketed for further
10 consideration and hearing within one year of the filing of
11 the petition. Continuances may be granted as the court deems
12 appropriate.

13 (c) In considering a petition pursuant to this Section,
14 the court may examine the court file of the proceeding in
15 which the petitioner was convicted, any action taken by an
16 appellate court in such proceeding and any transcripts of
17 such proceeding.

18 (Source: P.A. 86-655; 87-904.)

19 (725 ILCS 5/122-2.2 new)

20 Sec. 122-2.2. Mental retardation and post-conviction
21 relief.

22 (a) In cases where no determination of mental
23 retardation was made and a defendant has been convicted of
24 first-degree murder, sentenced to death, and is in custody
25 pending execution of the sentence of death, the following
26 procedures shall apply:

27 (1) Notwithstanding any other provision of law or
28 rule of court, a defendant may seek relief from the death
29 sentence through a petition for post-conviction relief
30 under this Article alleging that the defendant was
31 mentally retarded as defined in Section 114-15 at the
32 time the offense was alleged to have been committed.

33 (2) The petition must be filed within 180 days of

1 the effective date of this amendatory Act of the 93rd
2 General Assembly or within 180 days of the issuance of
3 the mandate by the Illinois Supreme Court setting the
4 date of execution, whichever is later.

5 (3) All other provisions of this Article governing
6 petitions for post-conviction relief shall apply to a
7 petition for post-conviction relief alleging mental
8 retardation.

9 Section 20. The Capital Crimes Litigation Act is amended
10 by changing Sections 15 and 19 as follows:

11 (725 ILCS 124/15)

12 (Section scheduled to be repealed on July 1, 2004)

13 Sec. 15. Capital Litigation Trust Fund.

14 (a) The Capital Litigation Trust Fund is created as a
15 special fund in the State Treasury. The Trust Fund shall be
16 administered by the State Treasurer to provide moneys for the
17 appropriations to be made, grants to be awarded, and
18 compensation and expenses to be paid under this Act. All
19 interest earned from the investment or deposit of moneys
20 accumulated in the Trust Fund shall, under Section 4.1 of the
21 State Finance Act, be deposited into the Trust Fund.

22 (b) Moneys deposited into the Trust Fund shall not be
23 considered general revenue of the State of Illinois.

24 (c) Moneys deposited into the Trust Fund shall be used
25 exclusively for the purposes of providing funding for the
26 prosecution and defense of capital cases as provided in this
27 Act and shall not be appropriated, loaned, or in any manner
28 transferred to the General Revenue Fund of the State of
29 Illinois.

30 (d) Every fiscal year the State Treasurer shall transfer
31 from the General Revenue Fund to the Capital Litigation Trust
32 Fund an amount equal to the full amount of moneys

1 appropriated by the General Assembly (both by original and
2 supplemental appropriation), less any unexpended balance from
3 the previous fiscal year, from the Capital Litigation Trust
4 Fund for the specific purpose of making funding available for
5 the prosecution and defense of capital cases. The Public
6 Defender and State's Attorney in Cook County, the State
7 Appellate Defender, the State's Attorneys Appellate
8 Prosecutor, and the Attorney General shall make annual
9 requests for appropriations from the Trust Fund.

10 (1) The Public Defender in Cook County shall
11 request appropriations to the State Treasurer for
12 expenses incurred by the Public Defender and for funding
13 for private appointed defense counsel in Cook County.

14 (2) The State's Attorney in Cook County shall
15 request an appropriation to the State Treasurer for
16 expenses incurred by the State's Attorney.

17 (3) The State Appellate Defender shall request a
18 direct appropriation from the Trust Fund for expenses
19 incurred by the State Appellate Defender in providing
20 assistance to trial attorneys under item (c)(5) of
21 Section 10 of the State Appellate Defender Act and an
22 appropriation to the State Treasurer for payments from
23 the Trust Fund for the defense of cases in counties other
24 than Cook County.

25 (4) The State's Attorneys Appellate Prosecutor
26 shall request a direct appropriation from the Trust Fund
27 to pay expenses incurred by the State's Attorneys
28 Appellate Prosecutor and an appropriation to the State
29 Treasurer for payments from the Trust Fund for expenses
30 incurred by State's Attorneys in counties other than Cook
31 County.

32 (5) The Attorney General shall request a direct
33 appropriation from the Trust Fund to pay expenses
34 incurred by the Attorney General in assisting the State's

1 Attorneys in counties other than Cook County.

2 The Public Defender and State's Attorney in Cook County,
3 the State Appellate Defender, the State's Attorneys Appellate
4 Prosecutor, and the Attorney General may each request
5 supplemental appropriations from the Trust Fund during the
6 fiscal year.

7 (e) Moneys in the Trust Fund shall be expended only as
8 follows:

9 (1) To pay the State Treasurer's costs to
10 administer the Trust Fund. The amount for this purpose
11 may not exceed 5% in any one fiscal year of the amount
12 otherwise appropriated from the Trust Fund in the same
13 fiscal year.

14 (2) To pay the capital litigation expenses of trial
15 defense including, but not limited to, DNA testing,
16 including DNA testing under Section 116-3 of the Code of
17 Criminal Procedure of 1963, analysis, and expert
18 testimony, investigatory and other assistance, expert,
19 forensic, and other witnesses, and mitigation
20 specialists, and grants and aid provided to public
21 defenders or assistance to attorneys who have been
22 appointed by the court to represent defendants who are
23 charged with capital crimes.

24 (3) To pay the compensation of trial attorneys,
25 other than public defenders, who have been appointed by
26 the court to represent defendants who are charged with
27 capital crimes.

28 (4) To provide State's Attorneys with funding for
29 capital litigation expenses including, but not limited
30 to, investigatory and other assistance and expert,
31 forensic, and other witnesses necessary to prosecute
32 capital cases. State's Attorneys in any county other
33 than Cook County seeking funding for capital litigation
34 expenses including, but not limited to, investigatory and

1 other assistance and expert, forensic, or other witnesses
2 under this Section may request that the State's Attorneys
3 Appellate Prosecutor or the Attorney General, as the case
4 may be, certify the expenses as reasonable, necessary,
5 and appropriate for payment from the Trust Fund, on a
6 form created by the State Treasurer. Upon certification
7 of the expenses and delivery of the certification to the
8 State Treasurer, the Treasurer shall pay the expenses
9 directly from the Capital Litigation Trust Fund if there
10 are sufficient moneys in the Trust Fund to pay the
11 expenses.

12 (5) To provide financial support through the
13 Attorney General pursuant to the Attorney General Act for
14 the several county State's Attorneys outside of Cook
15 County, but shall not be used to increase personnel for
16 the Attorney General's Office.

17 (6) To provide financial support through the
18 State's Attorneys Appellate Prosecutor pursuant to the
19 State's Attorneys Appellate Prosecutor's Act for the
20 several county State's Attorneys outside of Cook County,
21 but shall not be used to increase personnel for the
22 State's Attorneys Appellate Prosecutor.

23 (7) To provide financial support to the State
24 Appellate Defender pursuant to the State Appellate
25 Defender Act.

26 Moneys expended from the Trust Fund shall be in addition
27 to county funding for Public Defenders and State's Attorneys,
28 and shall not be used to supplant or reduce ordinary and
29 customary county funding.

30 (f) Moneys in the Trust Fund shall be appropriated to
31 the State Appellate Defender, the State's Attorneys Appellate
32 Prosecutor, the Attorney General, and the State Treasurer.
33 The State Appellate Defender shall receive an appropriation
34 from the Trust Fund to enable it to provide assistance to

1 appointed defense counsel throughout the State and to Public
2 Defenders in counties other than Cook. The State's Attorneys
3 Appellate Prosecutor and the Attorney General shall receive
4 appropriations from the Trust Fund to enable them to provide
5 assistance to State's Attorneys in counties other than Cook
6 County. Moneys shall be appropriated to the State Treasurer
7 to enable the Treasurer (i) to make grants to Cook County,
8 (ii) to pay the expenses of Public Defenders and State's
9 Attorneys in counties other than Cook County, (iii) to pay
10 the expenses and compensation of appointed defense counsel in
11 counties other than Cook County, and (iv) to pay the costs of
12 administering the Trust Fund. All expenditures and grants
13 made from the Trust Fund shall be subject to audit by the
14 Auditor General.

15 (g) For Cook County, grants from the Trust Fund shall be
16 made and administered as follows:

17 (1) For each State fiscal year, the State's
18 Attorney and Public Defender must each make a separate
19 application to the State Treasurer for capital litigation
20 grants.

21 (2) The State Treasurer shall establish rules and
22 procedures for grant applications. The rules shall
23 require the Cook County Treasurer as the grant recipient
24 to report on a periodic basis to the State Treasurer how
25 much of the grant has been expended, how much of the
26 grant is remaining, and the purposes for which the grant
27 has been used. The rules may also require the Cook
28 County Treasurer to certify on a periodic basis that
29 expenditures of the funds have been made for expenses
30 that are reasonable, necessary, and appropriate for
31 payment from the Trust Fund.

32 (3) The State Treasurer shall make the grants to
33 the Cook County Treasurer as soon as possible after the
34 beginning of the State fiscal year.

1 (4) The State's Attorney or Public Defender may
2 apply for supplemental grants during the fiscal year.

3 (5) Grant moneys shall be paid to the Cook County
4 Treasurer in block grants and held in separate accounts
5 for the State's Attorney, the Public Defender, and court
6 appointed defense counsel other than the Cook County
7 Public Defender, respectively, for the designated fiscal
8 year, and are not subject to county appropriation.

9 (6) Expenditure of grant moneys under this
10 subsection (g) is subject to audit by the Auditor
11 General.

12 (7) The Cook County Treasurer shall immediately
13 make payment from the appropriate separate account in the
14 county treasury for capital litigation expenses to the
15 State's Attorney, Public Defender, or court appointed
16 defense counsel other than the Public Defender, as the
17 case may be, upon order of the State's Attorney, Public
18 Defender or the court, respectively.

19 (h) If a defendant in a capital case in Cook County is
20 represented by court appointed counsel other than the Cook
21 County Public Defender, the appointed counsel shall petition
22 the court for an order directing the Cook County Treasurer to
23 pay the court appointed counsel's reasonable and necessary
24 compensation and capital litigation expenses from grant
25 moneys provided from the Trust Fund. These petitions shall be
26 considered in camera. Orders denying petitions for
27 compensation or expenses are final. Counsel may not petition
28 for expenses that may have been provided or compensated by
29 the State Appellate Defender under item (c)(5) of Section 10
30 of the State Appellate Defender Act.

31 (i) In counties other than Cook County, and excluding
32 capital litigation expenses or services that may have been
33 provided by the State Appellate Defender under item (c)(5) of
34 Section 10 of the State Appellate Defender Act:

1 (1) Upon certification by the circuit court, on a
2 form created by the State Treasurer, that all or a
3 portion of the expenses are reasonable, necessary, and
4 appropriate for payment from the Trust Fund and the
5 court's delivery of the certification to the Treasurer,
6 the Treasurer shall pay the certified expenses of Public
7 Defenders from the money appropriated to the Treasurer
8 for capital litigation expenses of Public Defenders in
9 any county other than Cook County, if there are
10 sufficient moneys in the Trust Fund to pay the expenses.

11 (2) If a defendant in a capital case is represented
12 by court appointed counsel other than the Public
13 Defender, the appointed counsel shall petition the court
14 to certify compensation and capital litigation expenses
15 including, but not limited to, investigatory and other
16 assistance, expert, forensic, and other witnesses, and
17 mitigation specialists as reasonable, necessary, and
18 appropriate for payment from the Trust Fund. Upon
19 certification on a form created by the State Treasurer of
20 all or a portion of the compensation and expenses
21 certified as reasonable, necessary, and appropriate for
22 payment from the Trust Fund and the court's delivery of
23 the certification to the Treasurer, the State Treasurer
24 shall pay the certified compensation and expenses from
25 the money appropriated to the Treasurer for that purpose,
26 if there are sufficient moneys in the Trust Fund to make
27 those payments.

28 (3) A petition for capital litigation expenses
29 under this subsection shall be considered in camera.
30 Orders denying petitions for compensation or expenses are
31 final.

32 (j) If the Trust Fund is discontinued or dissolved by an
33 Act of the General Assembly or by operation of law, any
34 balance remaining in the Trust Fund shall be returned to the

1 General Revenue Fund after deduction of administrative costs,
2 any other provision of this Act to the contrary
3 notwithstanding.

4 (Source: P.A. 91-589, eff. 1-1-00.)

5 (725 ILCS 124/19)

6 (Section scheduled to be repealed on July 1, 2004)

7 Sec. 19. Report; repeal.

8 (a) The Cook County Public Defender, the Cook County
9 State's Attorney, the State Appellate Defender, the State's
10 Attorneys Appellate Prosecutor, and the Attorney General
11 shall each report separately to the General Assembly by
12 January 1, 2004 detailing the amounts of money received by
13 them through this Act, the uses for which those funds were
14 expended, the balances then in the Capital Litigation Trust
15 Fund or county accounts, as the case may be, dedicated to
16 them for the use and support of Public Defenders, appointed
17 trial defense counsel, and State's Attorneys, as the case may
18 be. The report shall describe and discuss the need for
19 continued funding through the Fund and contain any
20 suggestions for changes to this Act.

21 (b) (Blank). ~~Unless--the--General--Assembly--provides~~
22 ~~otherwise, this Act is repealed on July 1, 2004.~~

23 (Source: P.A. 91-589, eff. 1-1-00.)

24 Section 25. The Unified Code of Corrections is amended
25 by changing Section 5-4-3 as follows:

26 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

27 Sec. 5-4-3. Persons convicted of, or found delinquent
28 for, certain offenses or institutionalized as sexually
29 dangerous; specimens; genetic marker groups.

30 (a) Any person convicted of, found guilty under the
31 Juvenile Court Act of 1987 for, or who received a disposition

1 of court supervision for, a qualifying offense or attempt of
 2 a qualifying offense, convicted or found guilty of any
 3 offense classified as a felony under Illinois law, found
 4 guilty or given supervision for any offense classified as a
 5 felony under the Juvenile Court Act of 1987, or
 6 institutionalized as a sexually dangerous person under the
 7 Sexually Dangerous Persons Act, or committed as a sexually
 8 violent person under the Sexually Violent Persons Commitment
 9 Act shall, regardless of the sentence or disposition imposed,
 10 be required to submit specimens of blood, saliva, or tissue
 11 to the Illinois Department of State Police in accordance with
 12 the provisions of this Section, provided such person is:

13 (1) convicted of a qualifying offense or attempt of
 14 a qualifying offense on or after July 1, 1990 the
 15 ~~effective--date--of--this--amendatory--Act--of--1989,~~ and
 16 sentenced to a term of imprisonment, periodic
 17 imprisonment, fine, probation, conditional discharge or
 18 any other form of sentence, or given a disposition of
 19 court supervision for the offense;~~;~~

20 (1.5) found guilty or given supervision under the
 21 Juvenile Court Act of 1987 for a qualifying offense or
 22 attempt of a qualifying offense on or after January 1,
 23 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996,~~
 24 ~~or~~

25 (2) ordered institutionalized as a sexually
 26 dangerous person on or after July 1, 1990; ~~the--effective~~
 27 ~~date-of-this-amendatory-Act-of-1989,~~ ~~or~~

28 (3) convicted of a qualifying offense or attempt of
 29 a qualifying offense before July 1, 1990 ~~the-effective~~
 30 ~~date-of-this-amendatory-Act--of--1989~~ and is presently
 31 confined as a result of such conviction in any State
 32 correctional facility or county jail or is presently
 33 serving a sentence of probation, conditional discharge or
 34 periodic imprisonment as a result of such conviction;~~;~~

1 (3.5) convicted or found guilty of any offense
2 classified as a felony under Illinois law or found guilty
3 or given supervision for such an offense under the
4 Juvenile Court Act of 1987 on or after August 22, 2002;
5 ~~the-effective-date--of-this-amendatory-Act--of--the--92nd~~
6 ~~General-Assembly~~;

7 (4) presently institutionalized as a sexually
8 dangerous person or presently institutionalized as a
9 person found guilty but mentally ill of a sexual offense
10 or attempt to commit a sexual offense; or

11 (4.5) ordered committed as a sexually violent
12 person on or after the effective date of the Sexually
13 Violent Persons Commitment Act; or

14 (5) seeking transfer to or residency in Illinois
15 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
16 Code of Corrections and the Interstate Compact for Adult
17 Offender Supervision or the Interstate Agreements on
18 Sexually Dangerous Persons Act.

19 Notwithstanding other provisions of this Section, any
20 person incarcerated in a facility of the Illinois Department
21 of Corrections on or after August 22, 2002 ~~the-effective-date~~
22 ~~of-this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be
23 required to submit a specimen of blood, saliva, or tissue
24 prior to his or her release on parole or mandatory supervised
25 release, as a condition of his or her parole or mandatory
26 supervised release.

27 (a-5) Any person who was otherwise convicted of or
28 received a disposition of court supervision for any other
29 offense under the Criminal Code of 1961 or who was found
30 guilty or given supervision for such a violation under the
31 Juvenile Court Act of 1987, may, regardless of the sentence
32 imposed, be required by an order of the court to submit
33 specimens of blood, saliva, or tissue to the Illinois
34 Department of State Police in accordance with the provisions

1 of this Section.

2 (b) Any person required by paragraphs (a)(1), (a)(1.5),
3 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
4 saliva, or tissue shall provide specimens of blood, saliva,
5 or tissue within 45 days after sentencing or disposition at a
6 collection site designated by the Illinois Department of
7 State Police.

8 (c) Any person required by paragraphs (a)(3), (a)(4),
9 and (a)(4.5) to provide specimens of blood, saliva, or tissue
10 shall be required to provide such samples prior to final
11 discharge, parole, or release at a collection site designated
12 by the Illinois Department of State Police.

13 (c-5) Any person required by paragraph (a)(5) to provide
14 specimens of blood, saliva, or tissue shall, where feasible,
15 be required to provide the specimens before being accepted
16 for conditioned residency in Illinois under the interstate
17 compact or agreement, but no later than 45 days after arrival
18 in this State.

19 (c-6) The Illinois Department of State Police may
20 determine which type of specimen or specimens, blood, saliva,
21 or tissue, is acceptable for submission to the Division of
22 Forensic Services for analysis.

23 (d) The Illinois Department of State Police shall
24 provide all equipment and instructions necessary for the
25 collection of blood samples. The collection of samples shall
26 be performed in a medically approved manner. Only a
27 physician authorized to practice medicine, a registered nurse
28 or other qualified person trained in venipuncture may
29 withdraw blood for the purposes of this Act. The samples
30 shall thereafter be forwarded to the Illinois Department of
31 State Police, Division of Forensic Services, for analysis and
32 categorizing into genetic marker groupings.

33 (d-1) The Illinois Department of State Police shall
34 provide all equipment and instructions necessary for the

1 collection of saliva samples. The collection of saliva
2 samples shall be performed in a medically approved manner.
3 Only a person trained in the instructions promulgated by the
4 Illinois State Police on collecting saliva may collect saliva
5 for the purposes of this Section. The samples shall
6 thereafter be forwarded to the Illinois Department of State
7 Police, Division of Forensic Services, for analysis and
8 categorizing into genetic marker groupings.

9 (d-2) The Illinois Department of State Police shall
10 provide all equipment and instructions necessary for the
11 collection of tissue samples. The collection of tissue
12 samples shall be performed in a medically approved manner.
13 Only a person trained in the instructions promulgated by the
14 Illinois State Police on collecting tissue may collect tissue
15 for the purposes of this Section. The samples shall
16 thereafter be forwarded to the Illinois Department of State
17 Police, Division of Forensic Services, for analysis and
18 categorizing into genetic marker groupings.

19 (d-5) To the extent that funds are available, the
20 Illinois Department of State Police shall contract with
21 qualified personnel and certified laboratories for the
22 collection, analysis, and categorization of known samples.

23 (e) The genetic marker groupings shall be maintained by
24 the Illinois Department of State Police, Division of Forensic
25 Services.

26 (f) The genetic marker grouping analysis information
27 obtained pursuant to this Act shall be confidential and shall
28 be released only to peace officers of the United States, of
29 other states or territories, of the insular possessions of
30 the United States, of foreign countries duly authorized to
31 receive the same, to all peace officers of the State of
32 Illinois and to all prosecutorial agencies, and to defense
33 counsel as provided by Section 116-5 of the Code of Criminal
34 Procedure of 1963. The genetic marker grouping analysis

1 information obtained pursuant to this Act shall be used only
2 for (i) valid law enforcement identification purposes and as
3 required by the Federal Bureau of Investigation for
4 participation in the National DNA database or (ii) technology
5 validation purposes or (iii) assisting in the defense of the
6 criminally accused pursuant to Section 116-5 of the Code of
7 Criminal Procedure of 1963. Notwithstanding any other
8 statutory provision to the contrary, all information obtained
9 under this Section shall be maintained in a single State data
10 base, which may be uploaded into a national database, and
11 which information may be subject to expungement only as set
12 forth in subsection (f-1).

13 (f-1) Upon receipt of notification of a reversal of a
14 conviction based on actual innocence, or of the granting of a
15 pardon pursuant to Section 12 of Article V of the Illinois
16 Constitution, if that pardon document specifically states
17 that the reason for the pardon is the actual innocence of an
18 individual whose DNA record has been stored in the State or
19 national DNA identification index in accordance with this
20 Section by the Illinois Department of State Police, the DNA
21 record shall be expunged from the DNA identification index,
22 and the Department shall by rule prescribe procedures to
23 ensure that the record and any samples, analyses, or other
24 documents relating to such record, whether in the possession
25 of the Department or any law enforcement or police agency, or
26 any forensic DNA laboratory, including any duplicates or
27 copies thereof, are destroyed and a letter is sent to the
28 court verifying the expungement is completed.

29 (f-5) Any person who intentionally uses genetic marker
30 grouping analysis information, or any other information
31 derived from a DNA sample, beyond the authorized uses as
32 provided under this Section, or any other Illinois law, is
33 guilty of a Class 4 felony, and shall be subject to a fine of
34 not less than \$5,000.

1 (g) For the purposes of this Section, "qualifying
2 offense" means any of the following:

3 (1) any violation or inchoate violation of Section
4 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
5 Criminal Code of 1961;~~i7-er~~

6 (1.1) any violation or inchoate violation of
7 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
8 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
9 for which persons are convicted on or after July 1,
10 2001;~~i7-er~~

11 (2) any former statute of this State which defined
12 a felony sexual offense;~~i7-er~~

13 (3) (blank);~~i7-er~~

14 (4) any inchoate violation of Section 9-3.1,
15 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~i7~~
16 or

17 (5) any violation or inchoate violation of Article
18 29D of the Criminal Code of 1961.

19 (g-5) (Blank).

20 (h) The Illinois Department of State Police shall be the
21 State central repository for all genetic marker grouping
22 analysis information obtained pursuant to this Act. The
23 Illinois Department of State Police may promulgate rules for
24 the form and manner of the collection of blood, saliva, or
25 tissue samples and other procedures for the operation of this
26 Act. The provisions of the Administrative Review Law shall
27 apply to all actions taken under the rules so promulgated.

28 (i) A person required to provide a blood, saliva, or
29 tissue specimen shall cooperate with the collection of the
30 specimen and any deliberate act by that person intended to
31 impede, delay or stop the collection of the blood, saliva, or
32 tissue specimen is a Class A misdemeanor.

33 (j) Any person required by subsection (a) to submit
34 specimens of blood, saliva, or tissue to the Illinois

1 Department of State Police for analysis and categorization
2 into genetic marker grouping, in addition to any other
3 disposition, penalty, or fine imposed, shall pay an analysis
4 fee of \$200. If the analysis fee is not paid at the time of
5 sentencing, the court shall establish a fee schedule by which
6 the entire amount of the analysis fee shall be paid in full,
7 such schedule not to exceed 24 months from the time of
8 conviction. The inability to pay this analysis fee shall not
9 be the sole ground to incarcerate the person.

10 (k) All analysis and categorization fees provided for by
11 subsection (j) shall be regulated as follows:

12 (1) The State Offender DNA Identification System
13 Fund is hereby created as a special fund in the State
14 Treasury.

15 (2) All fees shall be collected by the clerk of the
16 court and forwarded to the State Offender DNA
17 Identification System Fund for deposit. The clerk of the
18 circuit court may retain the amount of \$10 from each
19 collected analysis fee to offset administrative costs
20 incurred in carrying out the clerk's responsibilities
21 under this Section.

22 (3) Fees deposited into the State Offender DNA
23 Identification System Fund shall be used by Illinois
24 State Police crime laboratories as designated by the
25 Director of State Police. These funds shall be in
26 addition to any allocations made pursuant to existing
27 laws and shall be designated for the exclusive use of
28 State crime laboratories. These uses may include, but
29 are not limited to, the following:

30 (A) Costs incurred in providing analysis and
31 genetic marker categorization as required by
32 subsection (d).

33 (B) Costs incurred in maintaining genetic
34 marker groupings as required by subsection (e).

1 (C) Costs incurred in the purchase and
2 maintenance of equipment for use in performing
3 analyses.

4 (D) Costs incurred in continuing research and
5 development of new techniques for analysis and
6 genetic marker categorization.

7 (E) Costs incurred in continuing education,
8 training, and professional development of forensic
9 scientists regularly employed by these laboratories.

10 (1) The failure of a person to provide a specimen, or of
11 any person or agency to collect a specimen, within the 45 day
12 period shall in no way alter the obligation of the person to
13 submit such specimen, or the authority of the Illinois
14 Department of State Police or persons designated by the
15 Department to collect the specimen, or the authority of the
16 Illinois Department of State Police to accept, analyze and
17 maintain the specimen or to maintain or upload results of
18 genetic marker grouping analysis information into a State or
19 national database.

20 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
21 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
22 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
23 1-20-03.)

24 Section 95. Severability. The provisions of this Act
25 are severable under Section 1.31 of the Statute on Statutes.

26 Section 99. Effective date. This Act takes effect upon
27 becoming law."