



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/09/04, by John J. Millner

**SYNOPSIS AS INTRODUCED:**

730 ILCS 5/5-4-3

from Ch. 38, par. 1005-4-3

Amends the Unified Code of Corrections. Includes in the requirements of submission of blood, saliva, and tissue samples for analysis and inclusion in the genetic marker grouping analysis database maintained by the Department of State Police a person found not guilty by reason of insanity for certain qualifying offenses or inchoate offenses. Includes in the definition of "qualifying offense" any offense or inchoate offense that is a felony.

LRB093 18858 RLC 44593 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

6 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

7 Sec. 5-4-3. Persons convicted of, or found not guilty by  
8 reason of insanity of, or found delinquent for, certain  
9 offenses or institutionalized as sexually dangerous;  
10 specimens; genetic marker groups.

11 (a) Any person convicted of, or found not guilty by reason  
12 of insanity of, or found guilty under the Juvenile Court Act of  
13 1987 for, or who received a disposition of court supervision  
14 for, a qualifying offense or ~~inchoate attempt of a~~ qualifying  
15 offense, convicted or found not guilty by reason of insanity of  
16 any offense classified as a felony under Illinois law, found  
17 guilty or given supervision for any offense classified as a  
18 felony under the Juvenile Court Act of 1987, or  
19 institutionalized as a sexually dangerous person under the  
20 Sexually Dangerous Persons Act, or committed as a sexually  
21 violent person under the Sexually Violent Persons Commitment  
22 Act shall, regardless of the sentence or disposition imposed,  
23 be required to submit specimens of blood, saliva, or tissue to  
24 the Illinois Department of State Police in accordance with the  
25 provisions of this Section, provided such person is:

26 (1) convicted of a qualifying offense or inchoate  
27 ~~attempt of a~~ qualifying offense on or after July 1, 1990  
28 and sentenced to a term of imprisonment, periodic  
29 imprisonment, fine, probation, conditional discharge or  
30 any other form of sentence, or given a disposition of court  
31 supervision for the offense, or remanded to a Department of  
32 Human Services mental health facility;

1 (1.5) found guilty or given supervision under the  
2 Juvenile Court Act of 1987 for a qualifying offense or  
3 inchoate ~~attempt of a~~ qualifying offense on or after  
4 January 1, 1997;

5 (2) ordered institutionalized as a sexually dangerous  
6 person on or after July 1, 1990;

7 (3) convicted of a qualifying offense or inchoate  
8 ~~attempt of a~~ qualifying offense before July 1, 1990 and is  
9 presently confined as a result of such conviction in any  
10 State correctional facility or county jail or is presently  
11 serving a sentence of probation, conditional discharge or  
12 periodic imprisonment as a result of such conviction, or is  
13 confined in a Department of Human Services mental health  
14 facility;

15 (3.5) convicted or found guilty of any offense  
16 classified as a felony under Illinois law or found guilty  
17 or given supervision for such an offense under the Juvenile  
18 Court Act of 1987 on or after August 22, 2002;

19 (4) presently institutionalized as a sexually  
20 dangerous person or presently institutionalized as a  
21 person found guilty but mentally ill of a sexual offense or  
22 attempt to commit a sexual offense;

23 (4.5) ordered committed as a sexually violent person on  
24 or after the effective date of the Sexually Violent Persons  
25 Commitment Act; or

26 (5) seeking transfer to or residency in Illinois under  
27 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of  
28 Corrections and the Interstate Compact for Adult Offender  
29 Supervision or the Interstate Agreements on Sexually  
30 Dangerous Persons Act.

31 Notwithstanding other provisions of this Section, any  
32 person incarcerated in a facility of the Illinois Department of  
33 Corrections or confined in a Department of Human Services  
34 mental health facility after a finding of not guilty by reason  
35 of insanity for a felony offense, qualifying offense, or  
36 inchoate qualifying offense on or after August 22, 2002 shall

1 be required to submit a specimen of blood, saliva, or tissue  
2 prior to his or her final discharge or release on parole or  
3 mandatory supervised release, as a condition of his or her  
4 parole or mandatory supervised release.

5 (a-5) Any person who was otherwise convicted of, or found  
6 not guilty by reason of insanity of, or received a disposition  
7 of court supervision for any other offense under the Criminal  
8 Code of 1961 or who was found guilty or given supervision for  
9 such a violation under the Juvenile Court Act of 1987, may,  
10 regardless of the sentence imposed, be required by an order of  
11 the court to submit specimens of blood, saliva, or tissue to  
12 the Illinois Department of State Police in accordance with the  
13 provisions of this Section.

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

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

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

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

35 (d) The Illinois Department of State Police shall provide  
36 all equipment and instructions necessary for the collection of

1 blood samples. The collection of samples shall be performed in  
2 a medically approved manner. Only a physician authorized to  
3 practice medicine, a registered nurse or other qualified person  
4 trained in venipuncture may withdraw blood for the purposes of  
5 this Act. The samples shall thereafter be forwarded to the  
6 Illinois Department of State Police, Division of Forensic  
7 Services, for analysis and categorizing into genetic marker  
8 groupings.

9 (d-1) The Illinois Department of State Police shall provide  
10 all equipment and instructions necessary for the collection of  
11 saliva samples. The collection of saliva samples shall be  
12 performed in a medically approved manner. Only a person trained  
13 in the instructions promulgated by the Illinois State Police on  
14 collecting saliva may collect saliva for the purposes of this  
15 Section. The samples shall thereafter be forwarded to the  
16 Illinois Department of State Police, Division of Forensic  
17 Services, for analysis and categorizing into genetic marker  
18 groupings.

19 (d-2) The Illinois Department of State Police shall provide  
20 all equipment and instructions necessary for the collection of  
21 tissue samples. The collection of tissue samples shall be  
22 performed in a medically approved manner. Only a person trained  
23 in the instructions promulgated by the Illinois State Police on  
24 collecting tissue may collect tissue for the purposes of this  
25 Section. The samples shall thereafter be forwarded to the  
26 Illinois Department of State Police, Division of Forensic  
27 Services, for analysis and categorizing into genetic marker  
28 groupings.

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

33 (d-6) Agencies designated by the Illinois Department of  
34 State Police and the Illinois Department of State Police may  
35 contract with third parties to provide for the collection or  
36 analysis of DNA, or both, of an offender's blood, saliva, and

1 tissue samples.

2 (e) The genetic marker groupings shall be maintained by the  
3 Illinois Department of State Police, Division of Forensic  
4 Services.

5 (f) The genetic marker grouping analysis information  
6 obtained pursuant to this Act shall be confidential and shall  
7 be released only to peace officers of the United States, of  
8 other states or territories, of the insular possessions of the  
9 United States, of foreign countries duly authorized to receive  
10 the same, to all peace officers of the State of Illinois and to  
11 all prosecutorial agencies, and to defense counsel as provided  
12 by Section 116-5 of the Code of Criminal Procedure of 1963. The  
13 genetic marker grouping analysis information obtained pursuant  
14 to this Act shall be used only for (i) valid law enforcement  
15 identification purposes and as required by the Federal Bureau  
16 of Investigation for participation in the National DNA  
17 database, (ii) technology validation purposes, (iii) a  
18 population statistics database, ~~or~~ (iv) quality assurance  
19 purposes if personally identifying information is removed, or  
20 (v) ~~(iii)~~ assisting in the defense of the criminally accused  
21 pursuant to Section 116-5 of the Code of Criminal Procedure of  
22 1963. Notwithstanding any other statutory provision to the  
23 contrary, all information obtained under this Section shall be  
24 maintained in a single State data base, which may be uploaded  
25 into a national database, and which information may be subject  
26 to expungement only as set forth in subsection (f-1).

27 (f-1) Upon receipt of notification of a reversal of a  
28 conviction based on actual innocence, or of the granting of a  
29 pardon pursuant to Section 12 of Article V of the Illinois  
30 Constitution, if that pardon document specifically states that  
31 the reason for the pardon is the actual innocence of an  
32 individual whose DNA record has been stored in the State or  
33 national DNA identification index in accordance with this  
34 Section by the Illinois Department of State Police, the DNA  
35 record shall be expunged from the DNA identification index, and  
36 the Department shall by rule prescribe procedures to ensure

1 that the record and any samples, analyses, or other documents  
2 relating to such record, whether in the possession of the  
3 Department or any law enforcement or police agency, or any  
4 forensic DNA laboratory, including any duplicates or copies  
5 thereof, are destroyed and a letter is sent to the court  
6 verifying the expungement is completed.

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

13 (f-6) The Illinois Department of State Police may contract  
14 with third parties for the purposes of implementing this  
15 amendatory Act of the 93rd General Assembly. Any other party  
16 contracting to carry out the functions of this Section shall be  
17 subject to the same restrictions and requirements of this  
18 Section insofar as applicable, as the Illinois Department of  
19 State Police, and to any additional restrictions imposed by the  
20 Illinois Department of State Police.

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

23 (1) any offense or inchoate offense that is a felony;

24 (2) any violation or inchoate violation of Section  
25 9-3.1, 11-6, 11-9.1, 11-9.3, 11-18.1, 12-7.3, 12-7.4, or  
26 12-15 whether punishable as a felony or a misdemeanor; or

27 (3) any former statute of this State that defined a  
28 felony offense.

29 ~~(1) any violation or inchoate violation of Section~~  
30 ~~11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the~~  
31 ~~Criminal Code of 1961;~~

32 ~~(1.1) any violation or inchoate violation of Section~~  
33 ~~9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,~~  
34 ~~18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which~~  
35 ~~persons are convicted on or after July 1, 2001;~~

36 ~~(2) any former statute of this State which defined a~~

1 ~~felony sexual offense;~~

2 ~~(3) (blank);~~

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

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

7 (g-5) (Blank).

8 (h) The Illinois Department of State Police shall be the  
9 State central repository for all genetic marker grouping  
10 analysis information obtained pursuant to this Act. The  
11 Illinois Department of State Police may promulgate rules for  
12 the form and manner of the collection of blood, saliva, or  
13 tissue samples and other procedures for the operation of this  
14 Act. The provisions of the Administrative Review Law shall  
15 apply to all actions taken under the rules so promulgated.

16 (i) (1) A person required to provide a blood, saliva, or  
17 tissue specimen shall cooperate with the collection of the  
18 specimen and any deliberate act by that person intended to  
19 impede, delay or stop the collection of the blood, saliva,  
20 or tissue specimen is a Class A misdemeanor.

21 (2) In the event that a person's DNA sample is not  
22 adequate for any reason, the person shall provide another  
23 DNA sample for analysis. Duly authorized law enforcement  
24 and corrections personnel may employ reasonable force in  
25 cases in which an individual refuses to provide a DNA  
26 sample required under this Act.

27 (j) Any person required by subsection (a) to submit  
28 specimens of blood, saliva, or tissue to the Illinois  
29 Department of State Police for analysis and categorization into  
30 genetic marker grouping, in addition to any other disposition,  
31 penalty, or fine imposed, shall pay an analysis fee of \$200. If  
32 the analysis fee is not paid at the time of sentencing, the  
33 court shall establish a fee schedule by which the entire amount  
34 of the analysis fee shall be paid in full, such schedule not to  
35 exceed 24 months from the time of conviction. The inability to  
36 pay this analysis fee shall not be the sole ground to



1 incarcerate the person.

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

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

6 (2) All fees shall be collected by the clerk of the  
7 court and forwarded to the State Offender DNA  
8 Identification System Fund for deposit. The clerk of the  
9 circuit court may retain the amount of \$10 from each  
10 collected analysis fee to offset administrative costs  
11 incurred in carrying out the clerk's responsibilities  
12 under this Section.

13 (3) Fees deposited into the State Offender DNA  
14 Identification System Fund shall be used by Illinois State  
15 Police crime laboratories as designated by the Director of  
16 State Police. These funds shall be in addition to any  
17 allocations made pursuant to existing laws and shall be  
18 designated for the exclusive use of State crime  
19 laboratories. These uses may include, but are not limited  
20 to, the following:

21 (A) Costs incurred in providing analysis and  
22 genetic marker categorization as required by  
23 subsection (d).

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

26 (C) Costs incurred in the purchase and maintenance  
27 of equipment for use in performing analyses.

28 (D) Costs incurred in continuing research and  
29 development of new techniques for analysis and genetic  
30 marker categorization.

31 (E) Costs incurred in continuing education,  
32 training, and professional development of forensic  
33 scientists regularly employed by these laboratories.

34 (l) The failure of a person to provide a specimen, or of  
35 any person or agency to collect a specimen, within the 45 day  
36 period shall in no way alter the obligation of the person to

1 submit such specimen, or the authority of the Illinois  
2 Department of State Police or persons designated by the  
3 Department to collect the specimen, or the authority of the  
4 Illinois Department of State Police to accept, analyze and  
5 maintain the specimen or to maintain or upload results of  
6 genetic marker grouping analysis information into a State or  
7 national database.

8 (m) If any provision of this amendatory Act of the 93rd  
9 General Assembly is held unconstitutional or otherwise  
10 invalid, the remainder of this amendatory Act of the 93rd  
11 General Assembly is not affected.

12 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,  
13 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;  
14 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.  
15 11-19-03; revised 12-9-03.)