

1 AMENDMENT TO SENATE BILL 470

2 AMENDMENT NO. _____. Amend Senate Bill 470 as follows:

3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Police Training Act is amended
6 by changing Section 6.1 as follows:

7 (50 ILCS 705/6.1)

8 Sec. 6.1. Decertification of full-time and part-time
9 police officers.

10 (a) The Board must review police officer conduct and
11 records to ensure that no police officer is certified or
12 provided a valid waiver if that police officer has been:

13 (1) convicted of a felony offense under the laws of
14 this State or any other state which if committed in this
15 State would be punishable as a felony;

16 (2) ~~The--Board--must--also--ensure--that--no--police~~
17 ~~officer-is-certified-or-provided-a-valid-waiver--if--that~~
18 ~~police--officer--has--been~~ convicted on or after the
19 effective date of this amendatory Act of 1999 of any
20 misdemeanor specified in this Section or if committed in
21 any other state would be an offense similar to Section

1 11-6, 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1,
 2 17-1, 17-2, 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7
 3 of the Criminal Code of 1961 or to Section 5 or 5.2 of
 4 the Cannabis Control Act; or

5 (3) the subject of an administrative determination,
 6 conducted pursuant to the rules and regulations of the
 7 law enforcement agency or department employing the police
 8 officer, of knowingly committing perjury in a criminal or
 9 quasicriminal proceeding. For the purposes of this
 10 subsection, "perjury" shall have the meaning as set forth
 11 in Section 32-2 of the Criminal Code of 1961.

12 The Board must appoint investigators to enforce the
 13 duties conferred upon the Board by this Act.

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

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

30 (d) Any person, or a local or State agency, or the Board
 31 is immune from liability for submitting, disclosing, or
 32 releasing information of arrests, administrative
 33 determinations of perjury, or convictions in this Section as
 34 long as the information is submitted, disclosed, or released

1 in good faith and without malice. The Board has qualified
2 immunity for the release of the information.

3 (e) Any full-time or part-time police officer with a
4 certificate or waiver issued by the Board who is convicted of
5 any offense described in this Section or is subject to an
6 administrative determination of perjury immediately becomes
7 decertified or no longer has a valid waiver. The
8 decertification and invalidity of waivers occurs as a matter
9 of law. Failure of a convicted person to report to the Board
10 his or her conviction as described in this Section or any
11 continued law enforcement practice after receiving a
12 conviction is a Class 4 felony.

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

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

1 Act based on fingerprint identification. The Board must make
2 payment of fees to the Department of State Police for each
3 fingerprint card submission in conformance with the
4 requirements of paragraph 22 of Section 55a of the Civil
5 Administrative Code of Illinois.

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

7 Section 10. The Criminal Code of 1961 is amended by
8 changing Section 9-1 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 in any
17 criminal prosecution or giving material assistance to the
18 State in any investigation or prosecution, either against
19 the defendant or another; or the defendant committed the
20 murder because the murdered individual was a witness in
21 any prosecution or gave material assistance to the State
22 in any investigation or prosecution, either against the
23 defendant or another; or

24 (9) the defendant, while committing an offense
25 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
26 407 or 407.1 or subsection (b) of Section 404 of the
27 Illinois Controlled Substances Act, or while engaged in a
28 conspiracy or solicitation to commit such offense,
29 intentionally killed an individual or counseled,
30 commanded, induced, procured or caused the intentional
31 killing of the murdered individual; or

32 (10) the defendant was incarcerated in an
33 institution or facility of the Department of Corrections
34 at the time of the murder, and while committing an

1 offense punishable as a felony under Illinois law, or
2 while engaged in a conspiracy or solicitation to commit
3 such offense, intentionally killed an individual or
4 counseled, commanded, induced, procured or caused the
5 intentional killing of the murdered individual; or

6 (11) the murder was committed in a cold, calculated
7 and premeditated manner pursuant to a preconceived plan,
8 scheme or design to take a human life by unlawful means,
9 and the conduct of the defendant created a reasonable
10 expectation that the death of a human being would result
11 therefrom; or

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

26 (13) the defendant was a principal administrator,
27 organizer, or leader of a calculated criminal drug
28 conspiracy consisting of a hierarchical position of
29 authority superior to that of all other members of the
30 conspiracy, and the defendant counseled, commanded,
31 induced, procured, or caused the intentional killing of
32 the murdered person; or

33 (14) the murder was intentional and involved the
34 infliction of torture. For the purpose of this Section

1 torture means the infliction of or subjection to extreme
2 physical pain, motivated by an intent to increase or
3 prolong the pain, suffering or agony of the victim; or

4 (15) the murder was committed as a result of the
5 intentional discharge of a firearm by the defendant from
6 a motor vehicle and the victim was not present within the
7 motor vehicle; or

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

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

20 (18) the murder was committed by reason of any
21 person's activity as a community policing volunteer or to
22 prevent any person from engaging in activity as a
23 community policing volunteer; or

24 (19) the murdered individual was subject to an
25 order of protection and the murder was committed by a
26 person against whom the same order of protection was
27 issued under the Illinois Domestic Violence Act of 1986;
28 or

29 (20) the murdered individual was known by the
30 defendant to be a teacher or other person employed in any
31 school and the teacher or other employee is upon the
32 grounds of a school or grounds adjacent to a school, or
33 is in any part of a building used for school purposes; or

34 (21) the murder was committed by the defendant in

1 connection with or as a result of the offense of
2 terrorism as defined in Section 29D-30 of this Code.

3 (c) Consideration of factors in Aggravation and
4 Mitigation.

5 The court shall consider, or shall instruct the jury to
6 consider any aggravating and any mitigating factors which are
7 relevant to the imposition of the death penalty. Aggravating
8 factors may include but need not be limited to those factors
9 set forth in subsection (b). Mitigating factors may include
10 but need not be limited to the following:

11 (1) the defendant has no significant history of
12 prior criminal activity;

13 (2) the murder was committed while the defendant
14 was under the influence of extreme mental or emotional
15 disturbance, although not such as to constitute a defense
16 to prosecution;

17 (3) the murdered individual was a participant in
18 the defendant's homicidal conduct or consented to the
19 homicidal act;

20 (4) the defendant acted under the compulsion of
21 threat or menace of the imminent infliction of death or
22 great bodily harm;

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

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

27 (7) the defendant suffers from a reduced mental
28 capacity.

29 (d) Separate sentencing hearing.

30 Where requested by the State, the court shall conduct a
31 separate sentencing proceeding to determine the existence of
32 factors set forth in subsection (b) and to consider any
33 aggravating or mitigating factors as indicated in subsection
34 (c). The proceeding shall be conducted:

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

3 (2) before a jury impanelled for the purpose of the
4 proceeding if:

5 A. the defendant was convicted upon a plea of
6 guilty; or

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

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

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

13 (e) Evidence and Argument.

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

25 (f) Proof.

26 The burden of proof of establishing the existence of any
27 of the factors set forth in subsection (b) is on the State
28 and shall not be satisfied unless established beyond a
29 reasonable doubt.

30 (g) Procedure - Jury.

31 If at the separate sentencing proceeding the jury finds
32 that none of the factors set forth in subsection (b) exists,
33 the court shall sentence the defendant to a term of
34 imprisonment under Chapter V of the Unified Code of

1 Corrections. If there is a unanimous finding by the jury
2 that one or more of the factors set forth in subsection (b)
3 exist, the jury shall consider aggravating and mitigating
4 factors as instructed by the court and shall determine
5 whether the sentence of death shall be imposed. If the jury
6 determines unanimously, after weighing the factors in
7 aggravation and mitigation, that death is the appropriate
8 sentence ~~that there are no mitigating factors--sufficient--to~~
9 ~~preclude--the--imposition--of--the--death--sentence,~~ the court
10 shall sentence the defendant to death. If the court does not
11 concur with the jury determination that death is the
12 appropriate sentence, the court shall set forth reasons in
13 writing including what facts or circumstances the court
14 relied upon, along with any relevant documents, that
15 compelled the court to non-concur with the sentence. This
16 document and any attachments shall be part of the record for
17 appellate review.

18 If ~~Unless~~ the jury determines unanimously, after weighing
19 the factors in aggravation and mitigation, that death is not
20 the appropriate sentence, finds that there are no mitigating
21 ~~factors sufficient to preclude the imposition--of--the--death~~
22 sentence the court shall sentence the defendant to a term of
23 imprisonment under Chapter V of the Unified Code of
24 Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court
27 finds that none of the factors found in subsection (b)
28 exists, the court shall sentence the defendant to a term of
29 imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 If the Court determines that one or more of the factors
32 set forth in subsection (b) exists, the Court shall consider
33 any aggravating and mitigating factors as indicated in
34 subsection (c). If the Court determines, after weighing the

1 factors in aggravation and mitigation, that death is the
2 appropriate sentence that--there--are--no--mitigating--factors
3 sufficient-to-preclude-the-imposition-of-the-death--sentence,
4 the Court shall sentence the defendant to death.

5 If Unless the court finds that there-are-no-mitigating
6 factors-sufficient-to-preclude-the-imposition-of-the-sentence
7 of death is not the appropriate sentence, the court shall
8 sentence the defendant to a term of imprisonment under
9 Chapter V of the Unified Code of Corrections.

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

11 In a case in which the State seeks the death penalty as
12 an appropriate sentence, at the conclusion of all evidence in
13 the case, the court may decertify the case as a death penalty
14 case if the court makes a written finding that the only
15 evidence supporting the defendant's conviction is the
16 uncorroborated testimony of an in-custody informant witness
17 concerning the confession or admission of the defendant or
18 that the sole evidence against the defendant is a single
19 eyewitness or single accomplice without any other
20 corroborating evidence.

21 (i) Appellate Procedure.

22 The conviction and sentence of death shall be subject to
23 automatic review by the Supreme Court. Such review shall be
24 in accordance with rules promulgated by the Supreme Court.
25 The Illinois Supreme Court may overturn the death sentence,
26 and order the imposition of imprisonment under Chapter V of
27 the Unified Code of Corrections if the court finds that the
28 death sentence is fundamentally unjust as applied to the
29 particular case. If the Illinois Supreme Court finds that the
30 death sentence is fundamentally unjust as applied to the
31 particular case, independent of any procedural grounds for
32 relief, the Illinois Supreme Court shall issue a written
33 opinion explaining this finding.

34 (j) Disposition of reversed death sentence.

1 In the event that the death penalty in this Act is held
2 to be unconstitutional by the Supreme Court of the United
3 States or of the State of Illinois, any person convicted of
4 first degree murder shall be sentenced by the court to a term
5 of imprisonment under Chapter V of the Unified Code of
6 Corrections.

7 In the event that any death sentence pursuant to the
8 sentencing provisions of this Section is declared
9 unconstitutional by the Supreme Court of the United States or
10 of the State of Illinois, the court having jurisdiction over
11 a person previously sentenced to death shall cause the
12 defendant to be brought before the court, and the court shall
13 sentence the defendant to a term of imprisonment under
14 Chapter V of the Unified Code of Corrections.

15 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
16 92-854, eff. 12-5-02.)

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

21 (725 ILCS 5/107A Art. heading new)

22 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

23 (725 ILCS 5/107A-5 new)

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

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

1 (b) Each eyewitness who views a lineup or photo spread
2 shall sign a form containing the following information:

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

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

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

14 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)
15 Sec. 114-13. Discovery in criminal cases.

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

18 (b) Any investigative, law enforcement, or other agency
19 responsible for investigating any felony offense or
20 participating in an investigation of any felony offense,
21 other than defense investigators, shall provide to the
22 authority prosecuting the offense all investigative material,
23 including but not limited to reports, memoranda, and notes,
24 that have been generated by or have come into the possession
25 of the investigating agency concerning the offense being
26 investigated. In addition, the investigating agency shall
27 provide to the prosecuting authority any material or
28 information within its possession or control that would tend
29 to negate the guilt of the accused of the offense charged or
30 reduce his or her punishment for the offense. Every
31 investigative and law enforcement agency in this State shall
32 adopt policies to ensure compliance with these standards.

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

1 (725 ILCS 5/114-15 new)

2 Sec. 114-15. Mental retardation.

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

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

20 (c) In determining whether the defendant is mentally
21 retarded, the mental retardation must have manifested itself
22 by the age of 18. An intelligence quotient (IQ) of 75 or
23 below is presumptive evidence of mental retardation. IQ tests
24 and psychometric tests administered to the defendant must be
25 the kind and type recognized by experts in the field of
26 mental retardation. In order for the defendant to be
27 considered mentally retarded, a low IQ must be accompanied by
28 significant deficits in adaptive behavior in at least 2 of
29 the following skill areas: communication, self-care, social
30 or interpersonal skills, home living, self-direction,
31 academics, health and safety, use of community resources, and
32 work.

33 (d) Evidence of mental retardation that did not result
34 in disqualifying the case as a capital case, may be

1 introduced as evidence in mitigation during a capital
2 sentencing hearing. A failure of the court to determine that
3 the defendant is mentally retarded does not preclude the
4 court during trial from allowing evidence relating to mental
5 disability should the court deem it appropriate.

6 (e) If the court determines that a capital defendant is
7 mentally retarded, the case shall no longer be considered a
8 capital case and the procedural guidelines established for
9 capital cases shall no longer be applicable to the defendant.
10 In that case, the defendant, if convicted, shall be sentenced
11 under the sentencing provisions of Chapter V of the Unified
12 Code of Corrections. A denial of such a petition may be
13 appealed to the Illinois Supreme Court.

14 (725 ILCS 115-22 new)

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

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

24 (2) any other case in which the witness testified
25 or offered statements against an individual but was not
26 called, and whether the statements were admitted in the
27 case, and whether the witness received any deal, promise,
28 inducement, or benefit in exchange for that testimony or
29 statement;

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

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

33 (5) any other evidence relevant to the credibility

1 of the witness.

2 (725 ILCS 5/116-3)

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

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

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

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

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

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

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

1 completely exonerate the defendant;

2 (2) the testing requested employs a scientific
3 method generally accepted within the relevant scientific
4 community.

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

6 (725 ILCS 5/116-5 new)

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

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

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

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

21 (3) the genetic profiles referred to in
22 subdivisions (1) and (2) against:

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

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

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

1 (c) If requested by the defense, a defense
 2 representative shall be allowed to view any genetic marker
 3 grouping analysis conducted by the Department of State
 4 Police. The defense shall be provided with copies of all
 5 documentation, correspondence, including digital
 6 correspondence, notes, memoranda, and reports generated in
 7 relation to the analysis.

8 (d) Reasonable notice of the motion shall be served upon
 9 the State.

10 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)
 11 Sec. 122-1. Petition in the trial court.

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

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

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

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

1 order of dismissal is a final judgment and shall be served
2 upon the petitioner by certified mail within 10 days of its
3 entry.

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

13 (c) Except as otherwise provided in subsection (a-5), if
14 the petitioner is under sentence of death, no proceedings
15 under this Article shall be commenced more than 6 months
16 after the denial of a petition for certiorari to the United
17 States Supreme Court on direct appeal, or more than 6 months
18 from the date for filing such a petition if none is filed.

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.

24 This limitation does not apply to a petition advancing a
25 claim of actual innocence. no-proceedings-under-this-Article
26 shall-be-commenced-more-than-6-months-after-the-denial--of--a
27 petition--for--leave--to-appeal-or-the-date-for-filing-such-a
28 petition-if-none-is-filed-or-more--than--45--days--after--the
29 defendant--files--his--or--her--brief--in--the--appeal-of-the
30 sentence-before-the-Illinois-Supreme-Court-(or-more--than--45
31 days--after--the--deadline--for-the-filing-of-the-defendant's
32 brief-with-the-Illinois-Supreme-Court-if-no-brief--is--filed)
33 or--3-years-from-the-date-of-conviction, whichever is sooner,
34 unless the petitioner alleges facts showing that the delay

1 ~~was-not-due-to-his-or-her-culpable-negligence.~~

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

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

15 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
16 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

17 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

28 (2) If the petitioner is sentenced to imprisonment
29 and the court determines the petition is frivolous or is
30 patently without merit, it shall dismiss the petition in
31 a written order, specifying the findings of fact and
32 conclusions of law it made in reaching its decision.
33 Such order of dismissal is a final judgment and shall be

1 served upon the petitioner by certified mail within 10
2 days of its entry.

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

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

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

16 (725 ILCS 5/122-2.2 new)

17 Sec. 122-2.2. Mental retardation and post-conviction
18 relief.

19 (a) In cases in which a defendant has been convicted of
20 first-degree murder, sentenced to death, and is in custody
21 pending execution of the sentence of death, the following
22 procedures shall apply:

23 (1) Notwithstanding any other provision of law or
24 rule of court, a defendant may seek relief from the death
25 sentence through a petition for post-conviction relief
26 under this Article alleging that the defendant was
27 mentally retarded at the time the offense was alleged to
28 have been committed.

29 (2) The petition must be filed within 180 days of
30 the effective date of this amendatory Act of the 93rd
31 General Assembly or within 180 days of the issuance of
32 the mandate by the Illinois Supreme Court setting the
33 date of execution, whichever is later.

1 (3) All other provisions of this Article governing
2 petitions for post-conviction relief shall apply to a
3 petition for post-conviction relief alleging mental
4 retardation.

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

7 (725 ILCS 124/15)

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

9 Sec. 15. Capital Litigation Trust Fund.

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

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

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

26 (d) Every fiscal year the State Treasurer shall transfer
27 from the General Revenue Fund to the Capital Litigation Trust
28 Fund an amount equal to the full amount of moneys
29 appropriated by the General Assembly (both by original and
30 supplemental appropriation), less any unexpended balance from
31 the previous fiscal year, from the Capital Litigation Trust
32 Fund for the specific purpose of making funding available for

1 the prosecution and defense of capital cases. The Public
2 Defender and State's Attorney in Cook County, the State
3 Appellate Defender, the State's Attorneys Appellate
4 Prosecutor, and the Attorney General shall make annual
5 requests for appropriations from the Trust Fund.

6 (1) The Public Defender in Cook County shall
7 request appropriations to the State Treasurer for
8 expenses incurred by the Public Defender and for funding
9 for private appointed defense counsel in Cook County.

10 (2) The State's Attorney in Cook County shall
11 request an appropriation to the State Treasurer for
12 expenses incurred by the State's Attorney.

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

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

28 (5) The Attorney General shall request a direct
29 appropriation from the Trust Fund to pay expenses
30 incurred by the Attorney General in assisting the State's
31 Attorneys in counties other than Cook County.

32 The Public Defender and State's Attorney in Cook County,
33 the State Appellate Defender, the State's Attorneys Appellate
34 Prosecutor, and the Attorney General may each request

1 supplemental appropriations from the Trust Fund during the
2 fiscal year.

3 (e) Moneys in the Trust Fund shall be expended only as
4 follows:

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

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

20 (3) To pay the compensation of trial attorneys,
21 other than public defenders, who have been appointed by
22 the court to represent defendants who are charged with
23 capital crimes.

24 (4) To provide State's Attorneys with funding for
25 capital litigation expenses including, but not limited
26 to, investigatory and other assistance and expert,
27 forensic, and other witnesses necessary to prosecute
28 capital cases. State's Attorneys in any county other
29 than Cook County seeking funding for capital litigation
30 expenses including, but not limited to, investigatory and
31 other assistance and expert, forensic, or other witnesses
32 under this Section may request that the State's Attorneys
33 Appellate Prosecutor or the Attorney General, as the case
34 may be, certify the expenses as reasonable, necessary,

1 and appropriate for payment from the Trust Fund, on a
2 form created by the State Treasurer. Upon certification
3 of the expenses and delivery of the certification to the
4 State Treasurer, the Treasurer shall pay the expenses
5 directly from the Capital Litigation Trust Fund if there
6 are sufficient moneys in the Trust Fund to pay the
7 expenses.

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

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

19 (7) To provide financial support to the State
20 Appellate Defender pursuant to the State Appellate
21 Defender Act.

22 Moneys expended from the Trust Fund shall be in addition
23 to county funding for Public Defenders and State's Attorneys,
24 and shall not be used to supplant or reduce ordinary and
25 customary county funding.

26 (f) Moneys in the Trust Fund shall be appropriated to
27 the State Appellate Defender, the State's Attorneys Appellate
28 Prosecutor, the Attorney General, and the State Treasurer.
29 The State Appellate Defender shall receive an appropriation
30 from the Trust Fund to enable it to provide assistance to
31 appointed defense counsel throughout the State and to Public
32 Defenders in counties other than Cook. The State's Attorneys
33 Appellate Prosecutor and the Attorney General shall receive
34 appropriations from the Trust Fund to enable them to provide

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

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

13 (1) For each State fiscal year, the State's
14 Attorney and Public Defender must each make a separate
15 application to the State Treasurer for capital litigation
16 grants.

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

28 (3) The State Treasurer shall make the grants to
29 the Cook County Treasurer as soon as possible after the
30 beginning of the State fiscal year.

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

33 (5) Grant moneys shall be paid to the Cook County
34 Treasurer in block grants and held in separate accounts

1 for the State's Attorney, the Public Defender, and court
2 appointed defense counsel other than the Cook County
3 Public Defender, respectively, for the designated fiscal
4 year, and are not subject to county appropriation.

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

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

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

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

31 (1) Upon certification by the circuit court, on a
32 form created by the State Treasurer, that all or a
33 portion of the expenses are reasonable, necessary, and
34 appropriate for payment from the Trust Fund and the

1 court's delivery of the certification to the Treasurer,
2 the Treasurer shall pay the certified expenses of Public
3 Defenders from the money appropriated to the Treasurer
4 for capital litigation expenses of Public Defenders in
5 any county other than Cook County, if there are
6 sufficient moneys in the Trust Fund to pay the expenses.

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

24 (3) A petition for capital litigation expenses
25 under this subsection shall be considered in camera.
26 Orders denying petitions for compensation or expenses are
27 final.

28 (j) If the Trust Fund is discontinued or dissolved by an
29 Act of the General Assembly or by operation of law, any
30 balance remaining in the Trust Fund shall be returned to the
31 General Revenue Fund after deduction of administrative costs,
32 any other provision of this Act to the contrary
33 notwithstanding.

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

1 (725 ILCS 124/19)
2 (Section scheduled to be repealed on July 1, 2004)
3 Sec. 19. Report; repeal.

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

17 (b) (Blank). ~~Unless---the--General--Assembly--provides~~
18 ~~otherwise,--this-Act-is-repealed-on-July-1,--2004.~~
19 (Source: P.A. 91-589, eff. 1-1-00.)

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

22 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)
23 Sec. 5-4-3. Persons convicted of, or found delinquent
24 for, certain offenses or institutionalized as sexually
25 dangerous; specimens; genetic marker groups.

26 (a) Any person convicted of, found guilty under the
27 Juvenile Court Act of 1987 for, or who received a disposition
28 of court supervision for, a qualifying offense or attempt of
29 a qualifying offense, convicted or found guilty of any
30 offense classified as a felony under Illinois law, found
31 guilty or given supervision for any offense classified as a
32 felony under the Juvenile Court Act of 1987, or

1 institutionalized as a sexually dangerous person under the
 2 Sexually Dangerous Persons Act, or committed as a sexually
 3 violent person under the Sexually Violent Persons Commitment
 4 Act shall, regardless of the sentence or disposition imposed,
 5 be required to submit specimens of blood, saliva, or tissue
 6 to the Illinois Department of State Police in accordance with
 7 the provisions of this Section, provided such person is:

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

15 (1.5) found guilty or given supervision under the
 16 Juvenile Court Act of 1987 for a qualifying offense or
 17 attempt of a qualifying offense on or after January 1,
 18 1997; ~~the effective date of this amendatory Act of 1996,~~
 19 ~~or~~

20 (2) ordered institutionalized as a sexually
 21 dangerous person on or after July 1, 1990; ~~the effective~~
 22 ~~date of this amendatory Act of 1989,~~ ~~or~~

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

30 (3.5) convicted or found guilty of any offense
 31 classified as a felony under Illinois law or found guilty
 32 or given supervision for such an offense under the
 33 Juvenile Court Act of 1987 on or after August 22, 2002;
 34 ~~the effective date of this amendatory Act of the 92nd~~

1 ~~General-Assembly,~~

2 (4) presently institutionalized as a sexually
3 dangerous person or presently institutionalized as a
4 person found guilty but mentally ill of a sexual offense
5 or attempt to commit a sexual offense; or

6 (4.5) ordered committed as a sexually violent
7 person on or after the effective date of the Sexually
8 Violent Persons Commitment Act; or

9 (5) seeking transfer to or residency in Illinois
10 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
11 Code of Corrections and the Interstate Compact for Adult
12 Offender Supervision or the Interstate Agreements on
13 Sexually Dangerous Persons Act.

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

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

31 (b) Any person required by paragraphs (a)(1), (a)(1.5),
32 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
33 saliva, or tissue shall provide specimens of blood, saliva,
34 or tissue within 45 days after sentencing or disposition at a

1 collection site designated by the Illinois Department of
2 State Police.

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

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

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

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

28 (d-1) The Illinois Department of State Police shall
29 provide all equipment and instructions necessary for the
30 collection of saliva samples. The collection of saliva
31 samples shall be performed in a medically approved manner.
32 Only a person trained in the instructions promulgated by the
33 Illinois State Police on collecting saliva may collect saliva
34 for the purposes of this Section. The samples shall

1 thereafter be forwarded to the Illinois Department of State
2 Police, Division of Forensic Services, for analysis and
3 categorizing into genetic marker groupings.

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

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

18 (e) The genetic marker groupings shall be maintained by
19 the Illinois Department of State Police, Division of Forensic
20 Services.

21 (f) The genetic marker grouping analysis information
22 obtained pursuant to this Act shall be confidential and shall
23 be released only to peace officers of the United States, of
24 other states or territories, of the insular possessions of
25 the United States, of foreign countries duly authorized to
26 receive the same, to all peace officers of the State of
27 Illinois and to all prosecutorial agencies, and to defense
28 counsel as provided by Section 116-5 of the Code of Criminal
29 Procedure of 1963. The genetic marker grouping analysis
30 information obtained pursuant to this Act shall be used only
31 for (i) valid law enforcement identification purposes and as
32 required by the Federal Bureau of Investigation for
33 participation in the National DNA database or (ii) technology
34 validation purposes or (iii) assisting in the defense of the

1 criminally accused pursuant to Section 116-5 of the Code of
2 Criminal Procedure of 1963. Notwithstanding any other
3 statutory provision to the contrary, all information obtained
4 under this Section shall be maintained in a single State data
5 base, which may be uploaded into a national database, and
6 which information may be subject to expungement only as set
7 forth in subsection (f-1).

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

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

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

- 32 (1) any violation or inchoate violation of Section
33 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
34 Criminal Code of 1961~~i7-er~~

1 (1.1) any violation or inchoate violation of
2 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
3 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
4 for which persons are convicted on or after July 1,
5 2001;~~7-0~~

6 (2) any former statute of this State which defined
7 a felony sexual offense;~~7-0~~

8 (3) (blank);~~7-0~~

9 (4) any inchoate violation of Section 9-3.1,
10 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~7~~
11 or

12 (5) any violation or inchoate violation of Article
13 29D of the Criminal Code of 1961.

14 (g-5) (Blank).

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

23 (i) A person required to provide a blood, saliva, or
24 tissue specimen shall cooperate with the collection of the
25 specimen and any deliberate act by that person intended to
26 impede, delay or stop the collection of the blood, saliva, or
27 tissue specimen is a Class A misdemeanor.

28 (j) Any person required by subsection (a) to submit
29 specimens of blood, saliva, or tissue to the Illinois
30 Department of State Police for analysis and categorization
31 into genetic marker grouping, in addition to any other
32 disposition, penalty, or fine imposed, shall pay an analysis
33 fee of \$200. If the analysis fee is not paid at the time of
34 sentencing, the court shall establish a fee schedule by which

1 the entire amount of the analysis fee shall be paid in full,
2 such schedule not to exceed 24 months from the time of
3 conviction. The inability to pay this analysis fee shall not
4 be the sole ground to incarcerate the person.

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

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

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

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

25 (A) Costs incurred in providing analysis and
26 genetic marker categorization as required by
27 subsection (d).

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

30 (C) Costs incurred in the purchase and
31 maintenance of equipment for use in performing
32 analyses.

33 (D) Costs incurred in continuing research and
34 development of new techniques for analysis and

1 genetic marker categorization.

2 (E) Costs incurred in continuing education,
3 training, and professional development of forensic
4 scientists regularly employed by these laboratories.

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

15 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
16 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
17 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
18 1-20-03.)

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."