

1 AN ACT in relation to criminal law.

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

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

6 Section 2. Capital Punishment Reform Study Committee.

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

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

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

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

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

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

19 (6) One member appointed by the Governor;

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

22 (8) One member appointed by the Office of the Cook
23 County Public Defender;

24 (9) One member appointed by the Office of the State
25 Appellate Defender; and

26 (10) One member appointed by the office of the
27 State's Attorneys Appellate Prosecutor.

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

1 (1) The impact of the reforms on the issue of
2 uniformity and proportionality in the application of the
3 death penalty including, but not limited to, the tracking
4 of data related to whether the reforms have eliminated
5 the statistically significant differences in sentencing
6 related to the geographic location of the homicide and
7 the race of the victim found by the Governor's Commission
8 on Capital Punishment in its report issued on April 15,
9 2002.

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

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

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

17 (5) The impact of the various reforms on the costs
18 associated with the administration of the Illinois
19 capital punishment system.

20 (c) The Committee shall hold hearings on a periodic
21 basis to receive testimony from the public regarding the
22 manner in which reforms have impacted the capital punishment
23 system.

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

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

29 (20 ILCS 3930/7.2 new)

30 Sec. 7.2. Custodial Interview Pilot Program.

31 (a) Legislative findings and intent. The General
32 Assembly finds that technology has made it possible to

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

21 (b) Definitions. In this Section:

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

24 (2) "Custodial interviews" means interviews of
25 suspects during first degree murder investigations or
26 other investigations established by local protocol by law
27 enforcement authorities that take place at the police
28 station.

29 (c) Custodial Interview Pilot Program. The Authority
30 shall, subject to appropriation, establish a Custodial
31 Interview Pilot Program to operate 4 custodial interview
32 pilot programs. The programs shall be established in a police
33 station in the County of Cook and in 3 other police stations
34 geographically distributed throughout the State. Each

1 participating law enforcement agency must:

2 (1) Promulgate procedures for recording custodial
3 interviews of suspects during first degree murder
4 investigations by video and audio means.

5 (2) Promulgate procedures for maintaining and
6 storing video and audio recordings.

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

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

14 (f) The Authority shall adopt rules in cooperation with
15 the Illinois Department of State Police to implement this
16 Section.

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

19 (50 ILCS 705/6.1)

20 Sec. 6.1. Decertification of full-time and part-time
21 police officers.

22 (a) The Board must review police officer conduct and
23 records to ensure that no police officer is certified or
24 provided a valid waiver if that police officer has been
25 convicted of a felony offense under the laws of this State or
26 any other state which if committed in this State would be
27 punishable as a felony. The Board must also ensure that no
28 police officer is certified or provided a valid waiver if
29 that police officer has been convicted on or after the
30 effective date of this amendatory Act of 1999 of any
31 misdemeanor specified in this Section or if committed in any
32 other state would be an offense similar to Section 11-6,

1 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
2 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
3 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
4 Act. The Board must appoint investigators to enforce the
5 duties conferred upon the Board by this Act.

6 (b) It is the responsibility of the sheriff or the chief
7 executive officer of every local law enforcement agency or
8 department within this State to report to the Board any
9 arrest or conviction of any officer for an offense identified
10 in this Section.

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

20 (d) Any person, or a local or State agency, or the Board
21 is immune from liability for submitting, disclosing, or
22 releasing information of arrests or convictions in this
23 Section as long as the information is submitted, disclosed,
24 or released in good faith and without malice. The Board has
25 qualified immunity for the release of the information.

26 (e) Any full-time or part-time police officer with a
27 certificate or waiver issued by the Board who is convicted of
28 any offense described in this Section immediately becomes
29 decertified or no longer has a valid waiver. The
30 decertification and invalidity of waivers occurs as a matter
31 of law. Failure of a convicted person to report to the Board
32 his or her conviction as described in this Section or any
33 continued law enforcement practice after receiving a
34 conviction is a Class 4 felony.

1 (f) The Board's investigators are peace officers and
2 have all the powers possessed by policemen in cities and by
3 sheriff's, provided that the investigators may exercise those
4 powers anywhere in the State, only after contact and
5 cooperation with the appropriate local law enforcement
6 authorities.

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

28 (h) A police officer who has been certified or granted a
29 valid waiver may also be decertified or have his or her
30 waiver revoked upon a determination by the Board that he or
31 she, while under oath, has knowingly and willfully made false
32 statements as to a material fact during a homicide
33 proceeding. A determination may be made only after an
34 investigation and hearing upon a verified complaint filed

1 with the Illinois Law Enforcement Training Standards Board.
2 No action may be taken by the Board regarding a complaint
3 unless a majority of the members of the Board are present at
4 the meeting at which the action is taken.

5 (1) The Board shall adopt rules governing the
6 investigation and hearing of a verified complaint to
7 assure the police officer due process and to eliminate
8 conflicts of interest within the Board itself.

9 (2) Upon receipt of the initial verified complaint,
10 the Board must make a finding within 30 days of receipt
11 of the complaint as to whether sufficient evidence exists
12 to support the complaint. The Board is empowered to
13 investigate and dismiss the complaint if it finds, by a
14 vote of a majority of the members present, that there is
15 insufficient evidence to support it. Upon the initial
16 filing, the sheriff or police chief, or other employing
17 agency, of the accused officer may suspend, with or
18 without pay, the accused officer pending a decision of
19 the Board. Upon a Board finding of insufficient evidence,
20 the police officer shall be reinstated with back pay,
21 benefits, and seniority status as appropriate. The
22 sheriff or police chief, or employing agency, shall take
23 such necessary action as is ordered by the Board.

24 (3) If the Board finds, by a vote of a majority of
25 the members present, that sufficient evidence exists to
26 support the complaint, it shall authorize a hearing
27 before an administrative law judge within 45 days of the
28 Board's finding, unless, based upon the complexity and
29 extent of the allegations and charges, additional time is
30 needed. In no event may a hearing before an
31 administrative law judge take place later than 60 days
32 after the Board's finding.

33 (i) The Board shall have the power and authority to
34 appoint administrative law judges on a contractual basis.

1 The Administrative law judges must be attorneys licensed to
2 practice law in the State of Illinois. The Board shall also
3 adopt rules governing the appointment of administrative law
4 judges and the conduct of hearings consistent with the
5 requirements of this Section. The administrative law judge
6 shall hear all evidence and prepare a written recommendation
7 of his or her findings to the Board. At the hearing the
8 accused police officer shall be afforded the opportunity to:

9 (1) Be represented by counsel;

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

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

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

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

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

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

26 (k) The Board shall have the power to issue subpoenas
27 requiring the attendance and testimony of witnesses and the
28 production of court records and documents and shall have the
29 power to administer oaths.

30 (l) The administrative law judge shall have the
31 responsibility of receiving into evidence relevant testimony
32 and documents, including court records, to support or
33 disprove the allegations made by the person filing the
34 verified complaint, and, at the close of the case, hear

1 arguments. If the administrative law judge finds that there
2 is not clear and convincing evidence to support the verified
3 complaint that the police officer has, while under oath,
4 knowingly and willfully made false statements as to a
5 material fact during a homicide proceeding, the
6 administrative law judge shall make a written recommendation
7 of dismissal to the Board. If the administrative law judge
8 finds that there is clear and convincing evidence to support
9 the verified complaint that the police officer has, while
10 under oath, knowingly and willfully made false statements as
11 to a material fact during a homicide proceeding, the
12 administrative law judge shall make a written recommendation
13 of decertification to the Board.

14 (m) Any person, with the exception of the police officer
15 who is the subject of the hearing, who is served by the Board
16 with a subpoena to appear, testify or produce evidence and
17 refuses to comply with the subpoena is guilty of a Class B
18 misdemeanor. Any circuit court or judge, upon application by
19 the Board, may compel compliance with a subpoena issued by
20 the Board.

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

33 (o) The provisions of the Administrative Review Law
34 shall govern all proceedings for the judicial review of any

1 order rendered by the Board. The moving party shall pay the
2 reasonable costs of preparing and certifying the record for
3 review. If the moving party is the police officer and he or
4 she prevails, the court may award the police officer actual
5 costs incurred in all proceedings, including reasonable
6 attorney fees. If the court awards the police officer the
7 actual costs incurred in a proceeding, including reasonable
8 attorney fees, the costs and attorney fees shall be paid,
9 subject to appropriation, from the Illinois Law Enforcement
10 Training Standards Board Costs and Attorney Fees Fund, a
11 special fund that is created in the State Treasury. The Fund
12 shall consist of moneys appropriated or transferred into the
13 Fund for the purpose of making payments of costs and attorney
14 fees in accordance with this subsection (o). The Illinois Law
15 Enforcement Training Standards Board shall administer the
16 Fund and adopt rules for the administration of the Fund and
17 for the submission and disposition of claims for costs and
18 attorney fees in accordance with this subsection (o).

19 (p) If the police officer is decertified under
20 subsection (h), the Board shall notify the defendant who was
21 a party to the proceeding that resulted in the police
22 officer's decertification and his or her attorney of the
23 Board's decision. Notification shall be by certified mail,
24 return receipt requested, sent to the party's last known
25 address and to the party's attorney if any.

26 (g) Limitation of action.

27 (1) No complaint may be filed pursuant to this
28 Section until after a verdict or other disposition is
29 rendered in the underlying case or the underlying case is
30 dismissed in the trial court.

31 (2) A complaint pursuant to this Section may not be
32 filed more than 2 years after the final resolution of the
33 case. For purposes of this Section, final resolution is
34 defined as the trial court's ruling on the State

1 post-conviction proceeding in the case in which it is
2 alleged the police officer, while under oath, knowingly
3 and willfully made false statements as to a material fact
4 during a homicide proceeding. In the event a
5 post-conviction petition is not filed, an action pursuant
6 to this Section may not be commenced more than 2 years
7 after the denial of a petition for certiorari to the
8 United States Supreme Court, or if no petition for
9 certiorari is filed, 2 years after the date such a
10 petition should have been filed. In the event of an
11 acquittal, no proceeding may be commenced pursuant to
12 this Section more than 6 years after the date upon which
13 judgment on the verdict of acquittal was entered.

14 (r) Interested parties. Only interested parties to the
15 criminal prosecution in which the police officer allegedly,
16 while under oath, knowingly and willfully made false
17 statements as to a material fact during a homicide proceeding
18 may file a verified complaint pursuant to this Section. For
19 purposes of this Section, "interested parties" include the
20 defendant and any police officer who has personal knowledge
21 that the police officer who is the subject of the complaint
22 has, while under oath, knowingly and willfully made false
23 statements as to a material fact during a homicide
24 proceeding.

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

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

28 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

29 Sec. 9-1. First degree Murder - Death penalties -
30 Exceptions - Separate Hearings - Proof - Findings - Appellate
31 procedures - Reversals.

32 (a) A person who kills an individual without lawful

1 justification commits first degree murder if, in performing
2 the acts which cause the death:

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

6 (2) he knows that such acts create a strong
7 probability of death or great bodily harm to that
8 individual or another; or

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

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

15 (1) the murdered individual was a peace officer or
16 fireman killed in the course of performing his official
17 duties, to prevent the performance of his official
18 duties, or in retaliation for performing his official
19 duties, and the defendant knew or should have known that
20 the murdered individual was a peace officer or fireman;
21 or

22 (2) the murdered individual was an employee of an
23 institution or facility of the Department of Corrections,
24 or any similar local correctional agency, killed in the
25 course of performing his official duties, to prevent the
26 performance of his official duties, or in retaliation for
27 performing his official duties, or the murdered
28 individual was an inmate at such institution or facility
29 and was killed on the grounds thereof, or the murdered
30 individual was otherwise present in such institution or
31 facility with the knowledge and approval of the chief
32 administrative officer thereof; or

33 (3) the defendant has been convicted of murdering
34 two or more individuals under subsection (a) of this

1 Section or under any law of the United States or of any
2 state which is substantially similar to subsection (a) of
3 this Section regardless of whether the deaths occurred
4 as the result of the same act or of several related or
5 unrelated acts so long as the deaths were the result of
6 either an intent to kill more than one person or of
7 separate acts which the defendant knew would cause death
8 or create a strong probability of death or great bodily
9 harm to the murdered individual or another; or

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

13 (5) the defendant committed the murder pursuant to
14 a contract, agreement or understanding by which he was to
15 receive money or anything of value in return for
16 committing the murder or procured another to commit the
17 murder for money or anything of value; or

18 (6) the murdered individual was killed in the
19 course of another felony if:

20 (a) the murdered individual:

21 (i) was actually killed by the defendant,
22 or

23 (ii) received physical injuries
24 personally inflicted by the defendant
25 substantially contemporaneously with physical
26 injuries caused by one or more persons for
27 whose conduct the defendant is legally
28 accountable under Section 5-2 of this Code, and
29 the physical injuries inflicted by either the
30 defendant or the other person or persons for
31 whose conduct he is legally accountable caused
32 the death of the murdered individual; and

33 (b) in performing the acts which caused the
34 death of the murdered individual or which resulted

1 in physical injuries personally inflicted by the
 2 defendant on the murdered individual under the
 3 circumstances of subdivision (ii) of subparagraph
 4 (a) of paragraph (6) of subsection (b) of this
 5 Section, the defendant acted with the intent to kill
 6 the murdered individual or with the knowledge that
 7 his acts created a strong probability of death or
 8 great bodily harm to the murdered individual or
 9 another; and

10 (c) the other felony was an inherently violent
 11 crime ~~one--of--the--following:--armed--robbery,--armed~~
 12 ~~violence,--robbery,--predatory--criminal--sexual--assault~~
 13 ~~of--a--child,--aggravated--criminal--sexual--assault,~~
 14 ~~aggravated----kidnapping,----aggravated----vehicular~~
 15 ~~hijacking,--forcible--detention,--arson,--aggravated~~
 16 ~~arson,--aggravated--stalking,--burglary,--residential~~
 17 ~~burglary,--home--invasion,--calculated--criminal--drug~~
 18 ~~conspiracy--as--defined--in--Section--405--of--the--Illinois~~
 19 ~~Controlled--Substances--Act,--streetgang--criminal--drug~~
 20 ~~conspiracy--as--defined--in--Section--405.2--of--the~~
 21 ~~Illinois--Controlled--Substances--Act,~~ or the attempt
 22 to commit an inherently violent crime. In this
 23 subparagraph (c), "inherently violent crime"
 24 includes, but is not limited to, armed robbery,
 25 robbery, predatory criminal sexual assault of a
 26 child, aggravated criminal sexual assault,
 27 aggravated kidnapping, aggravated vehicular
 28 hijacking, aggravated arson, aggravated stalking,
 29 residential burglary, and home invasion any--of--the
 30 felonies-listed-in-this-subsection-(e); or

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

34 (8) the defendant committed the murder with intent

1 to prevent the murdered individual from testifying or
2 participating in any criminal investigation or
3 prosecution or giving material assistance to the State in
4 any investigation or prosecution, either against the
5 defendant or another; or the defendant committed the
6 murder because the murdered individual was a witness in
7 any prosecution or gave material assistance to the State
8 in any investigation or prosecution, either against the
9 defendant or another; for purposes of this paragraph (8),
10 "participating in any criminal investigation or
11 prosecution" is intended to include those appearing in
12 the proceedings in any capacity such as trial judges,
13 prosecutors, defense attorneys, investigators, witnesses,
14 or jurors; or

15 (9) the defendant, while committing an offense
16 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
17 407 or 407.1 or subsection (b) of Section 404 of the
18 Illinois Controlled Substances Act, or while engaged in a
19 conspiracy or solicitation to commit such offense,
20 intentionally killed an individual or counseled,
21 commanded, induced, procured or caused the intentional
22 killing of the murdered individual; or

23 (10) the defendant was incarcerated in an
24 institution or facility of the Department of Corrections
25 at the time of the murder, and while committing an
26 offense punishable as a felony under Illinois law, or
27 while engaged in a conspiracy or solicitation to commit
28 such offense, intentionally killed an individual or
29 counseled, commanded, induced, procured or caused the
30 intentional killing of the murdered individual; or

31 (11) the murder was committed in a cold, calculated
32 and premeditated manner pursuant to a preconceived plan,
33 scheme or design to take a human life by unlawful means,
34 and the conduct of the defendant created a reasonable

1 expectation that the death of a human being would result
2 therefrom; or

3 (12) the murdered individual was an emergency
4 medical technician - ambulance, emergency medical
5 technician - intermediate, emergency medical technician -
6 paramedic, ambulance driver, or other medical assistance
7 or first aid personnel, employed by a municipality or
8 other governmental unit, killed in the course of
9 performing his official duties, to prevent the
10 performance of his official duties, or in retaliation for
11 performing his official duties, and the defendant knew or
12 should have known that the murdered individual was an
13 emergency medical technician - ambulance, emergency
14 medical technician - intermediate, emergency medical
15 technician - paramedic, ambulance driver, or other
16 medical assistance or first aid personnel; or

17 (13) the defendant was a principal administrator,
18 organizer, or leader of a calculated criminal drug
19 conspiracy consisting of a hierarchical position of
20 authority superior to that of all other members of the
21 conspiracy, and the defendant counseled, commanded,
22 induced, procured, or caused the intentional killing of
23 the murdered person; or

24 (14) the murder was intentional and involved the
25 infliction of torture. For the purpose of this Section
26 torture means the infliction of or subjection to extreme
27 physical pain, motivated by an intent to increase or
28 prolong the pain, suffering or agony of the victim; or

29 (15) the murder was committed as a result of the
30 intentional discharge of a firearm by the defendant from
31 a motor vehicle and the victim was not present within the
32 motor vehicle; or

33 (16) the murdered individual was 60 years of age or
34 older and the death resulted from exceptionally brutal or

1 heinous behavior indicative of wanton cruelty; or

2 (17) the murdered individual was a disabled person
3 and the defendant knew or should have known that the
4 murdered individual was disabled. For purposes of this
5 paragraph (17), "disabled person" means a person who
6 suffers from a permanent physical or mental impairment
7 resulting from disease, an injury, a functional disorder,
8 or a congenital condition that renders the person
9 incapable of adequately providing for his or her own
10 health or personal care; or

11 (18) the murder was committed by reason of any
12 person's activity as a community policing volunteer or to
13 prevent any person from engaging in activity as a
14 community policing volunteer; or

15 (19) the murdered individual was subject to an
16 order of protection and the murder was committed by a
17 person against whom the same order of protection was
18 issued under the Illinois Domestic Violence Act of 1986;
19 or

20 (20) the murdered individual was known by the
21 defendant to be a teacher or other person employed in any
22 school and the teacher or other employee is upon the
23 grounds of a school or grounds adjacent to a school, or
24 is in any part of a building used for school purposes; or

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

28 (c) Consideration of factors in Aggravation and
29 Mitigation.

30 The court shall consider, or shall instruct the jury to
31 consider any aggravating and any mitigating factors which are
32 relevant to the imposition of the death penalty. Aggravating
33 factors may include but need not be limited to those factors
34 set forth in subsection (b). Mitigating factors may include

1 but need not be limited to the following:

2 (1) the defendant has no significant history of
3 prior criminal activity;

4 (2) the murder was committed while the defendant
5 was under the influence of extreme mental or emotional
6 disturbance, although not such as to constitute a defense
7 to prosecution;

8 (3) the murdered individual was a participant in
9 the defendant's homicidal conduct or consented to the
10 homicidal act;

11 (4) the defendant acted under the compulsion of
12 threat or menace of the imminent infliction of death or
13 great bodily harm;

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

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

18 (7) the defendant suffers from a reduced mental
19 capacity.

20 (d) Separate sentencing hearing.

21 Where requested by the State, the court shall conduct a
22 separate sentencing proceeding to determine the existence of
23 factors set forth in subsection (b) and to consider any
24 aggravating or mitigating factors as indicated in subsection
25 (c). The proceeding shall be conducted:

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

28 (2) before a jury impanelled for the purpose of the
29 proceeding if:

30 A. the defendant was convicted upon a plea of
31 guilty; or

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

34 C. the court for good cause shown discharges

1 the jury that determined the defendant's guilt; or
 2 (3) before the court alone if the defendant waives
 3 a jury for the separate proceeding.

4 (e) Evidence and Argument.

5 During the proceeding any information relevant to any of
 6 the factors set forth in subsection (b) may be presented by
 7 either the State or the defendant under the rules governing
 8 the admission of evidence at criminal trials. Any
 9 information relevant to any additional aggravating factors or
 10 any mitigating factors indicated in subsection (c) may be
 11 presented by the State or defendant regardless of its
 12 admissibility under the rules governing the admission of
 13 evidence at criminal trials. The State and the defendant
 14 shall be given fair opportunity to rebut any information
 15 received at the hearing.

16 (f) Proof.

17 The burden of proof of establishing the existence of any
 18 of the factors set forth in subsection (b) is on the State
 19 and shall not be satisfied unless established beyond a
 20 reasonable doubt.

21 (g) Procedure - Jury.

22 If at the separate sentencing proceeding the jury finds
 23 that none of the factors set forth in subsection (b) exists,
 24 the court shall sentence the defendant to a term of
 25 imprisonment under Chapter V of the Unified Code of
 26 Corrections. If there is a unanimous finding by the jury
 27 that one or more of the factors set forth in subsection (b)
 28 exist, the jury shall consider aggravating and mitigating
 29 factors as instructed by the court and shall determine
 30 whether the sentence of death shall be imposed. If the jury
 31 determines unanimously, after weighing the factors in
 32 aggravation and mitigation, that death is the appropriate
 33 sentence ~~that there are no mitigating factors--sufficient--to~~
 34 ~~preclude--the--imposition--of--the--death--sentence,~~ the court

1 shall sentence the defendant to death. If the court does not
 2 concur with the jury determination that death is the
 3 appropriate sentence, the court shall set forth reasons in
 4 writing including what facts or circumstances the court
 5 relied upon, along with any relevant documents, that
 6 compelled the court to non-concur with the sentence. This
 7 document and any attachments shall be part of the record for
 8 appellate review. The court shall be bound by the jury's
 9 sentencing determination.

10 If after weighing the factors in aggravation and
 11 mitigation, one or more jurors determines that death is not
 12 the appropriate sentence, Unless-the-jury-unanimously-finds
 13 that-there-are-no-mitigating-factors-sufficient--to--preclude
 14 the-imposition-of-the-death-sentence the court shall sentence
 15 the defendant to a term of imprisonment under Chapter V of
 16 the Unified Code of Corrections.

17 (h) Procedure - No Jury.

18 In a proceeding before the court alone, if the court
 19 finds that none of the factors found in subsection (b)
 20 exists, the court shall sentence the defendant to a term of
 21 imprisonment under Chapter V of the Unified Code of
 22 Corrections.

23 If the Court determines that one or more of the factors
 24 set forth in subsection (b) exists, the Court shall consider
 25 any aggravating and mitigating factors as indicated in
 26 subsection (c). If the Court determines, after weighing the
 27 factors in aggravation and mitigation, that death is the
 28 appropriate sentence that-there--are--no--mitigating--factors
 29 sufficient--to-preclude-the-imposition-of-the-death-sentence,
 30 the Court shall sentence the defendant to death.

31 If Unless the court finds that there--are--no--mitigating
 32 factors-sufficient-to-preclude-the-imposition-of-the-sentence
 33 of death is not the appropriate sentence, the court shall
 34 sentence the defendant to a term of imprisonment under

1 Chapter V of the Unified Code of Corrections.

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

3 In a case in which the defendant has been found guilty of
4 first degree murder by a judge or jury, or a case on remand
5 for resentencing, and the State seeks the death penalty as an
6 appropriate sentence, on the court's own motion or the
7 written motion of the defendant, the court may decertify the
8 case as a death penalty case if the court finds that the only
9 evidence supporting the defendant's conviction is the
10 uncorroborated testimony of an informant witness, as defined
11 in Section 115-21 of the Code of Criminal Procedure of 1963,
12 concerning the confession or admission of the defendant or
13 that the sole evidence against the defendant is a single
14 eyewitness or single accomplice without any other
15 corroborating evidence. If the court decertifies the case as
16 a capital case under either of the grounds set forth above,
17 the court shall issue a written finding. The State may
18 pursue its right to appeal the decertification pursuant to
19 Supreme Court Rule 604(a)(1). If the court does not
20 decertify the case as a capital case, the matter shall
21 proceed to the eligibility phase of the sentencing hearing.

22 (i) Appellate Procedure.

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

1 (j) Disposition of reversed death sentence.

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

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

16 (k) Guidelines for seeking the death penalty.

17 The Attorney General and State's Attorneys Association
18 shall consult on voluntary guidelines for procedures
19 governing whether or not to seek the death penalty. The
20 guidelines do not have the force of law and are only advisory
21 in nature.

22 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
23 92-854, eff. 12-5-02.)

24 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

29 (b) Hearing conversation when heard by employees of any
30 common carrier by wire incidental to the normal course of
31 their employment in the operation, maintenance or repair of
32 the equipment of such common carrier by wire so long as no
33 information obtained thereby is used or divulged by the

1 hearer;

2 (c) Any broadcast by radio, television or otherwise
3 whether it be a broadcast or recorded for the purpose of
4 later broadcasts of any function where the public is in
5 attendance and the conversations are overheard incidental to
6 the main purpose for which such broadcasts are then being
7 made;

8 (d) Recording or listening with the aid of any device to
9 any emergency communication made in the normal course of
10 operations by any federal, state or local law enforcement
11 agency or institutions dealing in emergency services,
12 including, but not limited to, hospitals, clinics, ambulance
13 services, fire fighting agencies, any public utility,
14 emergency repair facility, civilian defense establishment or
15 military installation;

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

18 (f) Recording or listening with the aid of any device to
19 incoming telephone calls of phone lines publicly listed or
20 advertised as consumer "hotlines" by manufacturers or
21 retailers of food and drug products. Such recordings must be
22 destroyed, erased or turned over to local law enforcement
23 authorities within 24 hours from the time of such recording
24 and shall not be otherwise disseminated. Failure on the part
25 of the individual or business operating any such recording or
26 listening device to comply with the requirements of this
27 subsection shall eliminate any civil or criminal immunity
28 conferred upon that individual or business by the operation
29 of this Section;

30 (g) With prior notification to the State's Attorney of
31 the county in which it is to occur, recording or listening
32 with the aid of any device to any conversation where a law
33 enforcement officer, or any person acting at the direction of
34 law enforcement, is a party to the conversation and has

1 consented to it being intercepted or recorded under
2 circumstances where the use of the device is necessary for
3 the protection of the law enforcement officer or any person
4 acting at the direction of law enforcement, in the course of
5 an investigation of a forcible felony, a felony violation of
6 the Illinois Controlled Substances Act, a felony violation of
7 the Cannabis Control Act, or any "streetgang related" or
8 "gang-related" felony as those terms are defined in the
9 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
10 recording or evidence derived as the result of this exemption
11 shall be inadmissible in any proceeding, criminal, civil or
12 administrative, except (i) where a party to the conversation
13 suffers great bodily injury or is killed during such
14 conversation, or (ii) when used as direct impeachment of a
15 witness concerning matters contained in the interception or
16 recording. The Director of the Department of State Police
17 shall issue regulations as are necessary concerning the use
18 of devices, retention of tape recordings, and reports
19 regarding their use;

20 (g-5) With approval of the State's Attorney of the
21 county in which it is to occur, recording or listening with
22 the aid of any device to any conversation where a law
23 enforcement officer, or any person acting at the direction of
24 law enforcement, is a party to the conversation and has
25 consented to it being intercepted or recorded in the course
26 of an investigation of any offense defined in Article 29D of
27 this Code. In all such cases, an application for an order
28 approving the previous or continuing use of an eavesdropping
29 device must be made within 48 hours of the commencement of
30 such use. In the absence of such an order, or upon its
31 denial, any continuing use shall immediately terminate. The
32 Director of State Police shall issue rules as are necessary
33 concerning the use of devices, retention of tape recordings,
34 and reports regarding their use.

1 Any recording or evidence obtained or derived in the
2 course of an investigation of any offense defined in Article
3 29D of this Code shall, upon motion of the State's Attorney
4 or Attorney General prosecuting any violation of Article 29D,
5 be reviewed in camera with notice to all parties present by
6 the court presiding over the criminal case, and, if ruled by
7 the court to be relevant and otherwise admissible, it shall
8 be admissible at the trial of the criminal case.

9 This subsection (g-5) is inoperative on and after January
10 1, 2005. No conversations recorded or monitored pursuant to
11 this subsection (g-5) shall be inadmissible in a court of law
12 by virtue of the repeal of this subsection (g-5) on January
13 1, 2005;—

14 (h) Recordings made simultaneously with a video
15 recording of an oral conversation between a peace officer,
16 who has identified his or her office, and a person stopped
17 for an investigation of an offense under the Illinois Vehicle
18 Code;

19 (i) Recording of a conversation made by or at the
20 request of a person, not a law enforcement officer or agent
21 of a law enforcement officer, who is a party to the
22 conversation, under reasonable suspicion that another party
23 to the conversation is committing, is about to commit, or has
24 committed a criminal offense against the person or a member
25 of his or her immediate household, and there is reason to
26 believe that evidence of the criminal offense may be obtained
27 by the recording; and

28 (j) The use of a telephone monitoring device by either
29 (1) a corporation or other business entity engaged in
30 marketing or opinion research or (2) a corporation or other
31 business entity engaged in telephone solicitation, as defined
32 in this subsection, to record or listen to oral telephone
33 solicitation conversations or marketing or opinion research
34 conversations by an employee of the corporation or other

1 business entity when:

2 (i) the monitoring is used for the purpose of
3 service quality control of marketing or opinion research
4 or telephone solicitation, the education or training of
5 employees or contractors engaged in marketing or opinion
6 research or telephone solicitation, or internal research
7 related to marketing or opinion research or telephone
8 solicitation; and

9 (ii) the monitoring is used with the consent of at
10 least one person who is an active party to the marketing
11 or opinion research conversation or telephone
12 solicitation conversation being monitored.

13 No communication or conversation or any part, portion, or
14 aspect of the communication or conversation made, acquired,
15 or obtained, directly or indirectly, under this exemption
16 (j), may be, directly or indirectly, furnished to any law
17 enforcement officer, agency, or official for any purpose or
18 used in any inquiry or investigation, or used, directly or
19 indirectly, in any administrative, judicial, or other
20 proceeding, or divulged to any third party.

21 When recording or listening authorized by this subsection
22 (j) on telephone lines used for marketing or opinion research
23 or telephone solicitation purposes results in recording or
24 listening to a conversation that does not relate to marketing
25 or opinion research or telephone solicitation; the person
26 recording or listening shall, immediately upon determining
27 that the conversation does not relate to marketing or opinion
28 research or telephone solicitation, terminate the recording
29 or listening and destroy any such recording as soon as is
30 practicable.

31 Business entities that use a telephone monitoring or
32 telephone recording system pursuant to this exemption (j)
33 shall provide current and prospective employees with notice
34 that the monitoring or recordings may occur during the course

1 of their employment. The notice shall include prominent
2 signage notification within the workplace.

3 Business entities that use a telephone monitoring or
4 telephone recording system pursuant to this exemption (j)
5 shall provide their employees or agents with access to
6 personal-only telephone lines which may be pay telephones,
7 that are not subject to telephone monitoring or telephone
8 recording.

9 For the purposes of this subsection (j), "telephone
10 solicitation" means a communication through the use of a
11 telephone by live operators:

- 12 (i) soliciting the sale of goods or services;
13 (ii) receiving orders for the sale of goods or
14 services;
15 (iii) assisting in the use of goods or services; or
16 (iv) engaging in the solicitation, administration,
17 or collection of bank or retail credit accounts.

18 For the purposes of this subsection (j), "marketing or
19 opinion research" means a marketing or opinion research
20 interview conducted by a live telephone interviewer engaged
21 by a corporation or other business entity whose principal
22 business is the design, conduct, and analysis of polls and
23 surveys measuring the opinions, attitudes, and responses of
24 respondents toward products and services, or social or
25 political issues, or both; and

26 (k) Recording the interview or statement of any person
27 when the person knows that the interview is being conducted
28 by a law enforcement officer or prosecutor and the interview
29 takes place at a police station that is currently
30 participating in the Custodial Interview Pilot Program
31 established under the Illinois Criminal Justice Information
32 Act.

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

1 Section 15. The Code of Criminal Procedure of 1963 is
 2 amended by changing Sections 114-13, 116-3, 122-1, and
 3 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
 4 115-22, 116-5, and 122-2.2 as follows:

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

6 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

7 (725 ILCS 5/107A-5 new)

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

9 (a) All lineups shall be photographed or otherwise
 10 recorded. These photographs shall be disclosed to the accused
 11 and his or her defense counsel during discovery proceedings
 12 as provided in Illinois Supreme Court Rules. All photographs
 13 of suspects shown to an eyewitness during the photo spread
 14 shall be disclosed to the accused and his or her defense
 15 counsel during discovery proceedings as provided in Illinois
 16 Supreme Court Rules.

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

19 (1) The suspect might not be in the lineup or photo
 20 spread and the eyewitness is not obligated to make an
 21 identification.

22 (2) The eyewitness should not assume that the
 23 person administering the lineup or photo spread knows
 24 which person is the suspect in the case.

25 (c) Suspects in a lineup or photo spread should not
 26 appear to be substantially different from "fillers" or
 27 "distracters" in the lineup or photo spread, based on the
 28 eyewitness' previous description of the perpetrator, or based
 29 on other factors that would draw attention to the suspect.

30 (725 ILCS 5/107A-10 new)

31 Sec. 107A-10. Pilot study on sequential lineup

1 procedures.

2 (a) Legislative intent. Because the goal of a police
3 investigation is to apprehend the person or persons
4 responsible for committing a crime, it is useful to conduct a
5 pilot study in the field on the effectiveness of the
6 sequential method for lineup procedures.

7 (b) Establishment of pilot jurisdictions. The Department
8 of State Police shall select 3 police departments to
9 participate in a one-year pilot study on the effectiveness of
10 the sequential lineup method for photo and live lineup
11 procedures. One such pilot jurisdiction shall be a police
12 district within a police department in a municipality whose
13 population is at least 500,000 residents; one such pilot
14 jurisdiction shall be a police department in a municipality
15 whose population is at least 100,000 but less than 500,000;
16 and one such pilot jurisdiction shall be a police department
17 in a municipality whose population is less than 100,000. All
18 such pilot jurisdictions shall be selected no later than
19 January 1, 2004.

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

26 (1) The witness shall be requested to state whether
27 the individual shown is the perpetrator of the crime
28 prior to viewing the next lineup participant. Only one
29 member of the lineup shall be a suspect and the remainder
30 shall be "fillers" who are not suspects but fit the
31 general description of the offender without the suspect
32 unduly standing out;

33 (2) The lineup administrator shall be someone who
34 is not aware of which member of the lineup is the suspect

1 in the case; and

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

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

7 (B) Inform the witness that he or she will
8 view individuals one at a time and will be requested
9 to state whether the individual shown is the
10 perpetrator of the crime, prior to viewing the next
11 lineup participant; and

12 (C) Ask the witness to state in his or her own
13 words how sure he or she is that the person
14 identified is the actual offender. During the
15 statement, or as soon thereafter as reasonably
16 possible, the witness's actual words shall be
17 documented.

18 (d) Application. This Section applies to selected live
19 lineups that are composed and presented at a police station
20 and to selected photo lineups regardless of where presented;
21 provided that this Section does not apply in police
22 investigations in which a spontaneous identification is
23 possible and no lineup procedure is being used. This Section
24 does not affect the right to counsel afforded by the U.S. or
25 Illinois Constitutions or State law at any stage of a
26 criminal proceeding.

27 (e) Selection of lineups. The participating
28 jurisdictions shall develop a protocol for the selection and
29 administration of lineups which is practical, designed to
30 elicit information for comparative evaluation purposes, and
31 is consistent with objective scientific research methodology.

32 (f) Training and administrators. The Department of State
33 Police shall offer training to police officers and any other
34 appropriate personnel on the sequential method of conducting

1 lineup procedures in the pilot jurisdictions and the
 2 requirements of this Section. The Department of State Police
 3 may seek funding for training and administration from the
 4 Illinois Criminal Justice Information Authority and the
 5 Illinois Law Enforcement Training Standards Board if
 6 necessary.

7 (g) Report on the pilot study. The Department of State
 8 Police shall gather information from each of the
 9 participating police departments selected as a pilot
 10 jurisdiction with respect to the effectiveness of the
 11 sequential method for lineup procedures and shall file a
 12 report of its findings with the Governor and the General
 13 Assembly no later than April 1, 2005.

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

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

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

23 (725 ILCS 5/114-15 new)

24 Sec. 114-15. Mental retardation.

25 (a) In a first degree murder case in which the State
26 seeks the death penalty as an appropriate sentence, any party
27 may raise the issue of the defendant's mental retardation by
28 motion. A defendant wishing to raise the issue of his or her
29 mental retardation shall provide written notice to the State
30 and the court as soon as the defendant reasonably believes
31 such issue will be raised.

32 (b) The issue of the defendant's mental retardation
33 shall be determined in a pretrial hearing. The court shall be

1 the fact finder on the issue of the defendant's mental
2 retardation and shall determine the issue by a preponderance
3 of evidence in which the moving party has the burden of
4 proof. The court may appoint an expert in the field of mental
5 retardation. The defendant and the State may offer experts
6 from the field of mental retardation. The court shall
7 determine admissibility of evidence and qualification as an
8 expert.

9 (c) If after a plea of guilty to first degree murder, or
10 a finding of guilty of first degree murder in a bench trial,
11 or a verdict of guilty for first degree murder in a jury
12 trial, or on a matter remanded from the Supreme Court for
13 sentencing for first degree murder, and the State seeks the
14 death penalty as an appropriate sentence, the defendant may
15 raise the issue of defendant's mental retardation not at
16 eligibility but at aggravation and mitigation. The defendant
17 and the State may offer experts from the field of mental
18 retardation. The court shall determine admissibility of
19 evidence and qualification as an expert.

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

33 (e) 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 (f) If the court determines at a pretrial hearing or
 7 after remand that a capital defendant is mentally retarded,
 8 and the State does not appeal pursuant to Supreme Court Rule
 9 604, the case shall no longer be considered a capital case
 10 and the procedural guidelines established for capital cases
 11 shall no longer be applicable to the defendant. In that
 12 case, the defendant shall be sentenced under the sentencing
 13 provisions of Chapter V of the Unified Code of Corrections.

14 (725 ILCS 5/115-21 new)

15 Sec. 115-21. Informant testimony.

16 (a) For the purposes of this Section, "informant" means
 17 someone who is purporting to testify about admissions made to
 18 him or her by the accused while incarcerated in a penal
 19 institution contemporaneously.

20 (b) This Section applies to any capital case in which
 21 the prosecution attempts to introduce evidence of
 22 incriminating statements made by the accused to or overheard
 23 by an informant.

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

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

27 (2) any deal, promise, inducement, or benefit that
 28 the offering party has made or will make in the future to
 29 the informant;

30 (3) the statements made by the accused;

31 (4) the time and place of the statements, the time
 32 and place of their disclosure to law enforcement
 33 officials, and the names of all persons who were present

1 when the statements were made;

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

6 (6) other cases in which the informant testified,
7 provided that the existence of such testimony can be
8 ascertained through reasonable inquiry and whether the
9 informant received any promise, inducement, or benefit in
10 exchange for or subsequent to that testimony or
11 statement; and

12 (7) any other information relevant to the
13 informant's credibility.

14 (d) In any case under this Section, the prosecution must
15 timely disclose its intent to introduce the testimony of an
16 informant. The court shall conduct a hearing to determine
17 whether the testimony of the informant is reliable, unless
18 the defendant waives such a hearing. If the prosecution
19 fails to show by a preponderance of the evidence that the
20 informant's testimony is reliable, the court shall not allow
21 the testimony to be heard at trial. At this hearing, the
22 court shall consider the factors enumerated in subsection (c)
23 as well as any other factors relating to reliability.

24 (e) A hearing required under subsection (d) does not
25 apply to statements covered under subsection (b) that are
26 lawfully recorded.

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

30 (725 ILCS 5/115-22 new)

31 Sec. 115-22. Witness inducements. When the State
32 intends to introduce the testimony of a witness in a capital
33 case, the State shall, before trial, disclose to the

1 defendant and to his or her defense counsel the following
2 information, which shall be reduced to writing:

3 (1) whether the witness has received or been
4 promised anything, including pay, immunity from
5 prosecution, leniency in prosecution, or personal
6 advantage, in exchange for testimony;

7 (2) any other case in which the witness testified
8 or offered statements against an individual but was not
9 called, and whether the statements were admitted in the
10 case, and whether the witness received any deal, promise,
11 inducement, or benefit in exchange for that testimony or
12 statement; provided that the existence of such testimony
13 can be ascertained through reasonable inquiry;

14 (3) whether the witness has ever changed his or her
15 testimony;

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

17 (5) any other evidence relevant to the credibility
18 of the witness.

19 (725 ILCS 5/116-3)

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

22 (a) A defendant may make a motion before the trial court
23 that entered the judgment of conviction in his or her case
24 for the performance of fingerprint or forensic DNA testing,
25 including comparison analysis of genetic marker groupings of
26 the evidence collected by criminal justice agencies pursuant
27 to the alleged offense, to those of the defendant, to those
28 of other forensic evidence, and to those maintained under
29 subsection (f) of Section 5-4-3 of the Unified Code of
30 Corrections, on evidence that was secured in relation to the
31 trial which resulted in his or her conviction, but which was
32 not subject to the testing which is now requested because the
33 technology for the testing was not available at the time of

1 trial. Reasonable notice of the motion shall be served upon
2 the State.

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

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

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

10 (c) The trial court shall allow the testing under
11 reasonable conditions designed to protect the State's
12 interests in the integrity of the evidence and the testing
13 process upon a determination that:

14 (1) the result of the testing has the scientific
15 potential to produce new, noncumulative evidence
16 materially relevant to the defendant's assertion of
17 actual innocence even though the results may not
18 completely exonerate the defendant;

19 (2) the testing requested employs a scientific
20 method generally accepted within the relevant scientific
21 community.

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

23 (725 ILCS 5/116-5 new)

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

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

31 (1) the genetic profile from forensic evidence that
32 was secured in relation to the trial against the genetic
33 profile of the defendant,

1 (2) the genetic profile of items of forensic
 2 evidence secured in relation to trial to the genetic
 3 profile of other forensic evidence secured in relation to
 4 trial, or

5 (3) the genetic profiles referred to in
 6 subdivisions (1) and (2) against:

7 (i) genetic profiles of offenders maintained
 8 under subsection (f) of Section 5-4-3 of the Unified
 9 Code of Corrections, or

10 (ii) genetic profiles, including but not
 11 limited to, profiles from unsolved crimes maintained
 12 in state or local DNA databases by law enforcement
 13 agencies.

14 (b) If appropriate federal criteria are met, the court
 15 may order the Department of State Police to request the
 16 National DNA index system to search its database of genetic
 17 profiles.

18 (c) If requested by the defense, a defense
 19 representative shall be allowed to view any genetic marker
 20 grouping analysis conducted by the Department of State
 21 Police. The defense shall be provided with copies of all
 22 documentation, correspondence, including digital
 23 correspondence, notes, memoranda, and reports generated in
 24 relation to the analysis.

25 (d) Reasonable notice of the motion shall be served upon
 26 the State.

27 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)
 28 Sec. 122-1. Petition in the trial court.

29 (a) Any person imprisoned in the penitentiary may
 30 institute a proceeding under this Article if the person who
 31 asserts that:

32 (1) in the proceedings which resulted in his or her
 33 conviction there was a substantial denial of his or her

1 rights under the Constitution of the United States or of
2 the State of Illinois or both; or may--institute-a
3 proceeding-under-this-Article-

4 (2) the death penalty was imposed and there is
5 newly discovered evidence not available to the person at
6 the time of the proceeding that resulted in his or her
7 conviction that establishes a substantial basis to
8 believe that the defendant is actually innocent by clear
9 and convincing evidence.

10 (a-5) A proceeding under paragraph (2) of subsection (a)
11 may be commenced within a reasonable period of time after the
12 person's conviction notwithstanding any other provisions of
13 this Article. In such a proceeding regarding actual
14 innocence, if the court determines the petition is frivolous
15 or is patently without merit, it shall dismiss the petition
16 in a written order, specifying the findings of fact and
17 conclusions of law it made in reaching its decision. Such
18 order of dismissal is a final judgment and shall be served
19 upon the petitioner by certified mail within 10 days of its
20 entry.

21 (b) The proceeding shall be commenced by filing with the
22 clerk of the court in which the conviction took place a
23 petition (together with a copy thereof) verified by
24 affidavit. Petitioner shall also serve another copy upon the
25 State's Attorney by any of the methods provided in Rule 7 of
26 the Supreme Court. The clerk shall docket the petition for
27 consideration by the court pursuant to Section 122-2.1 upon
28 his or her receipt thereof and bring the same promptly to the
29 attention of the court.

30 (c) Except as otherwise provided in subsection (a-5), if
31 the petitioner is under sentence of death, no proceedings
32 under this Article shall be commenced more than 6 months
33 after the denial of a petition for certiorari to the United
34 States Supreme Court on direct appeal, or more than 6 months

1 from the date for filing such a petition if none is filed,
2 unless the petitioner alleges facts showing that the delay
3 was not due to his or her culpable negligence.

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

11 This limitation does not apply to a petition advancing a
12 claim of actual innocence. no-proceedings-under-this-Article
13 shall-be-commenced-more-than-6-months-after-the-denial--of--a
14 petition--for--leave--to--appeal--or--the--date--for--filing--such--a
15 petition--if--none--is--filed--or--more--than--45--days--after--the
16 defendant--files--his--or--her--brief--in--the--appeal--of--the
17 sentence--before--the--Illinois--Supreme--Court--(or--more--than--45
18 days--after--the--deadline--for--the--filing--of--the--defendant's
19 brief--with--the--Illinois--Supreme--Court--if--no--brief--is--filed)
20 or--3--years--from--the--date--of--conviction, whichever is sooner,
21 unless the petitioner alleges facts showing that the delay
22 was not due to his or her culpable negligence.

23 (d) A person seeking relief by filing a petition under
24 this Section must specify in the petition or its heading that
25 it is filed under this Section. A trial court that has
26 received a petition complaining of a conviction or sentence
27 that fails to specify in the petition or its heading that it
28 is filed under this Section need not evaluate the petition to
29 determine whether it could otherwise have stated some grounds
30 for relief under this Article.

31 (e) A proceeding under this Article may not be commenced
32 on behalf of a defendant who has been sentenced to death
33 without the written consent of the defendant, unless the
34 defendant, because of a mental or physical condition, is

1 incapable of asserting his or her own claim.

2 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
3 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

4 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

8 (1) If the petitioner is under sentence of death
9 and is without counsel and alleges that he is without
10 means to procure counsel, he shall state whether or not
11 he wishes counsel to be appointed to represent him. If
12 appointment of counsel is so requested, the court shall
13 appoint counsel if satisfied that the petitioner has no
14 means to procure counsel.

15 (2) If the petitioner is sentenced to imprisonment
16 and the court determines the petition is frivolous or is
17 patently without merit, it shall dismiss the petition in
18 a written order, specifying the findings of fact and
19 conclusions of law it made in reaching its decision.
20 Such order of dismissal is a final judgment and shall be
21 served upon the petitioner by certified mail within 10
22 days of its entry.

23 (b) If the petition is not dismissed pursuant to this
24 Section, the court shall order the petition to be docketed
25 for further consideration in accordance with Sections 122-4
26 through 122-6. If the petitioner is under sentence of death,
27 the court shall order the petition to be docketed for further
28 consideration and hearing within one year of the filing of
29 the petition. Continuances may be granted as the court deems
30 appropriate.

31 (c) In considering a petition pursuant to this Section,
32 the court may examine the court file of the proceeding in
33 which the petitioner was convicted, any action taken by an

1 appellate court in such proceeding and any transcripts of
2 such proceeding.

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

4 (725 ILCS 5/122-2.2 new)

5 Sec. 122-2.2. Mental retardation and post-conviction
6 relief.

7 (a) In cases where no determination of mental
8 retardation was made and a defendant has been convicted of
9 first-degree murder, sentenced to death, and is in custody
10 pending execution of the sentence of death, the following
11 procedures shall apply:

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

18 (2) The petition must be filed within 180 days of
19 the effective date of this amendatory Act of the 93rd
20 General Assembly or within 180 days of the issuance of
21 the mandate by the Illinois Supreme Court setting the
22 date of execution, whichever is later.

23 (3) All other provisions of this Article governing
24 petitions for post-conviction relief shall apply to a
25 petition for post-conviction relief alleging mental
26 retardation.

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

29 (725 ILCS 124/15)

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

31 Sec. 15. Capital Litigation Trust Fund.

1 (a) The Capital Litigation Trust Fund is created as a
2 special fund in the State Treasury. The Trust Fund shall be
3 administered by the State Treasurer to provide moneys for the
4 appropriations to be made, grants to be awarded, and
5 compensation and expenses to be paid under this Act. All
6 interest earned from the investment or deposit of moneys
7 accumulated in the Trust Fund shall, under Section 4.1 of the
8 State Finance Act, be deposited into the Trust Fund.

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

11 (c) Moneys deposited into the Trust Fund shall be used
12 exclusively for the purposes of providing funding for the
13 prosecution and defense of capital cases as provided in this
14 Act and shall not be appropriated, loaned, or in any manner
15 transferred to the General Revenue Fund of the State of
16 Illinois.

17 (d) Every fiscal year the State Treasurer shall transfer
18 from the General Revenue Fund to the Capital Litigation Trust
19 Fund an amount equal to the full amount of moneys
20 appropriated by the General Assembly (both by original and
21 supplemental appropriation), less any unexpended balance from
22 the previous fiscal year, from the Capital Litigation Trust
23 Fund for the specific purpose of making funding available for
24 the prosecution and defense of capital cases. The Public
25 Defender and State's Attorney in Cook County, the State
26 Appellate Defender, the State's Attorneys Appellate
27 Prosecutor, and the Attorney General shall make annual
28 requests for appropriations from the Trust Fund.

29 (1) The Public Defender in Cook County shall
30 request appropriations to the State Treasurer for
31 expenses incurred by the Public Defender and for funding
32 for private appointed defense counsel in Cook County.

33 (2) The State's Attorney in Cook County shall
34 request an appropriation to the State Treasurer for

1 expenses incurred by the State's Attorney.

2 (3) The State Appellate Defender shall request a
3 direct appropriation from the Trust Fund for expenses
4 incurred by the State Appellate Defender in providing
5 assistance to trial attorneys under item (c)(5) of
6 Section 10 of the State Appellate Defender Act and an
7 appropriation to the State Treasurer for payments from
8 the Trust Fund for the defense of cases in counties other
9 than Cook County.

10 (4) The State's Attorneys Appellate Prosecutor
11 shall request a direct appropriation from the Trust Fund
12 to pay expenses incurred by the State's Attorneys
13 Appellate Prosecutor and an appropriation to the State
14 Treasurer for payments from the Trust Fund for expenses
15 incurred by State's Attorneys in counties other than Cook
16 County.

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

21 The Public Defender and State's Attorney in Cook County,
22 the State Appellate Defender, the State's Attorneys Appellate
23 Prosecutor, and the Attorney General may each request
24 supplemental appropriations from the Trust Fund during the
25 fiscal year.

26 (e) Moneys in the Trust Fund shall be expended only as
27 follows:

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

33 (2) To pay the capital litigation expenses of trial
34 defense including, but not limited to, DNA testing,

1 including DNA testing under Section 116-3 of the Code of
2 Criminal Procedure of 1963, analysis, and expert
3 testimony, investigatory and other assistance, expert,
4 forensic, and other witnesses, and mitigation
5 specialists, and grants and aid provided to public
6 defenders or assistance to attorneys who have been
7 appointed by the court to represent defendants who are
8 charged with capital crimes.

9 (3) To pay the compensation of trial attorneys,
10 other than public defenders, who have been appointed by
11 the court to represent defendants who are charged with
12 capital crimes.

13 (4) To provide State's Attorneys with funding for
14 capital litigation expenses including, but not limited
15 to, investigatory and other assistance and expert,
16 forensic, and other witnesses necessary to prosecute
17 capital cases. State's Attorneys in any county other
18 than Cook County seeking funding for capital litigation
19 expenses including, but not limited to, investigatory and
20 other assistance and expert, forensic, or other witnesses
21 under this Section may request that the State's Attorneys
22 Appellate Prosecutor or the Attorney General, as the case
23 may be, certify the expenses as reasonable, necessary,
24 and appropriate for payment from the Trust Fund, on a
25 form created by the State Treasurer. Upon certification
26 of the expenses and delivery of the certification to the
27 State Treasurer, the Treasurer shall pay the expenses
28 directly from the Capital Litigation Trust Fund if there
29 are sufficient moneys in the Trust Fund to pay the
30 expenses.

31 (5) To provide financial support through the
32 Attorney General pursuant to the Attorney General Act for
33 the several county State's Attorneys outside of Cook
34 County, but shall not be used to increase personnel for

1 the Attorney General's Office.

2 (6) To provide financial support through the
3 State's Attorneys Appellate Prosecutor pursuant to the
4 State's Attorneys Appellate Prosecutor's Act for the
5 several county State's Attorneys outside of Cook County,
6 but shall not be used to increase personnel for the
7 State's Attorneys Appellate Prosecutor.

8 (7) To provide financial support to the State
9 Appellate Defender pursuant to the State Appellate
10 Defender Act.

11 Moneys expended from the Trust Fund shall be in addition
12 to county funding for Public Defenders and State's Attorneys,
13 and shall not be used to supplant or reduce ordinary and
14 customary county funding.

15 (f) Moneys in the Trust Fund shall be appropriated to
16 the State Appellate Defender, the State's Attorneys Appellate
17 Prosecutor, the Attorney General, and the State Treasurer.
18 The State Appellate Defender shall receive an appropriation
19 from the Trust Fund to enable it to provide assistance to
20 appointed defense counsel throughout the State and to Public
21 Defenders in counties other than Cook. The State's Attorneys
22 Appellate Prosecutor and the Attorney General shall receive
23 appropriations from the Trust Fund to enable them to provide
24 assistance to State's Attorneys in counties other than Cook
25 County. Moneys shall be appropriated to the State Treasurer
26 to enable the Treasurer (i) to make grants to Cook County,
27 (ii) to pay the expenses of Public Defenders and State's
28 Attorneys in counties other than Cook County, (iii) to pay
29 the expenses and compensation of appointed defense counsel in
30 counties other than Cook County, and (iv) to pay the costs of
31 administering the Trust Fund. All expenditures and grants
32 made from the Trust Fund shall be subject to audit by the
33 Auditor General.

34 (g) For Cook County, grants from the Trust Fund shall be

1 made and administered as follows:

2 (1) For each State fiscal year, the State's
3 Attorney and Public Defender must each make a separate
4 application to the State Treasurer for capital litigation
5 grants.

6 (2) The State Treasurer shall establish rules and
7 procedures for grant applications. The rules shall
8 require the Cook County Treasurer as the grant recipient
9 to report on a periodic basis to the State Treasurer how
10 much of the grant has been expended, how much of the
11 grant is remaining, and the purposes for which the grant
12 has been used. The rules may also require the Cook
13 County Treasurer to certify on a periodic basis that
14 expenditures of the funds have been made for expenses
15 that are reasonable, necessary, and appropriate for
16 payment from the Trust Fund.

17 (3) The State Treasurer shall make the grants to
18 the Cook County Treasurer as soon as possible after the
19 beginning of the State fiscal year.

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

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

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

31 (7) The Cook County Treasurer shall immediately
32 make payment from the appropriate separate account in the
33 county treasury for capital litigation expenses to the
34 State's Attorney, Public Defender, or court appointed

1 defense counsel other than the Public Defender, as the
2 case may be, upon order of the State's Attorney, Public
3 Defender or the court, respectively.

4 (h) If a defendant in a capital case in Cook County is
5 represented by court appointed counsel other than the Cook
6 County Public Defender, the appointed counsel shall petition
7 the court for an order directing the Cook County Treasurer to
8 pay the court appointed counsel's reasonable and necessary
9 compensation and capital litigation expenses from grant
10 moneys provided from the Trust Fund. These petitions shall be
11 considered in camera. Orders denying petitions for
12 compensation or expenses are final. Counsel may not petition
13 for expenses that may have been provided or compensated by
14 the State Appellate Defender under item (c)(5) of Section 10
15 of the State Appellate Defender Act.

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

20 (1) Upon certification by the circuit court, on a
21 form created by the State Treasurer, that all or a
22 portion of the expenses are reasonable, necessary, and
23 appropriate for payment from the Trust Fund and the
24 court's delivery of the certification to the Treasurer,
25 the Treasurer shall pay the certified expenses of Public
26 Defenders from the money appropriated to the Treasurer
27 for capital litigation expenses of Public Defenders in
28 any county other than Cook County, if there are
29 sufficient moneys in the Trust Fund to pay the expenses.

30 (2) If a defendant in a capital case is represented
31 by court appointed counsel other than the Public
32 Defender, the appointed counsel shall petition the court
33 to certify compensation and capital litigation expenses
34 including, but not limited to, investigatory and other

1 assistance, expert, forensic, and other witnesses, and
2 mitigation specialists as reasonable, necessary, and
3 appropriate for payment from the Trust Fund. Upon
4 certification on a form created by the State Treasurer of
5 all or a portion of the compensation and expenses
6 certified as reasonable, necessary, and appropriate for
7 payment from the Trust Fund and the court's delivery of
8 the certification to the Treasurer, the State Treasurer
9 shall pay the certified compensation and expenses from
10 the money appropriated to the Treasurer for that purpose,
11 if there are sufficient moneys in the Trust Fund to make
12 those payments.

13 (3) A petition for capital litigation expenses
14 under this subsection shall be considered in camera.
15 Orders denying petitions for compensation or expenses are
16 final.

17 (j) If the Trust Fund is discontinued or dissolved by an
18 Act of the General Assembly or by operation of law, any
19 balance remaining in the Trust Fund shall be returned to the
20 General Revenue Fund after deduction of administrative costs,
21 any other provision of this Act to the contrary
22 notwithstanding.

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

24 (725 ILCS 124/19)

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

26 Sec. 19. Report; repeal.

27 (a) The Cook County Public Defender, the Cook County
28 State's Attorney, the State Appellate Defender, the State's
29 Attorneys Appellate Prosecutor, and the Attorney General
30 shall each report separately to the General Assembly by
31 January 1, 2004 detailing the amounts of money received by
32 them through this Act, the uses for which those funds were
33 expended, the balances then in the Capital Litigation Trust

1 Fund or county accounts, as the case may be, dedicated to
2 them for the use and support of Public Defenders, appointed
3 trial defense counsel, and State's Attorneys, as the case may
4 be. The report shall describe and discuss the need for
5 continued funding through the Fund and contain any
6 suggestions for changes to this Act.

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

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

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

12 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

16 (a) Any person convicted of, found guilty under the
17 Juvenile Court Act of 1987 for, or who received a disposition
18 of court supervision for, a qualifying offense or attempt of
19 a qualifying offense, convicted or found guilty of any
20 offense classified as a felony under Illinois law, found
21 guilty or given supervision for any offense classified as a
22 felony under the Juvenile Court Act of 1987, or
23 institutionalized as a sexually dangerous person under the
24 Sexually Dangerous Persons Act, or committed as a sexually
25 violent person under the Sexually Violent Persons Commitment
26 Act shall, regardless of the sentence or disposition imposed,
27 be required to submit specimens of blood, saliva, or tissue
28 to the Illinois Department of State Police in accordance with
29 the provisions of this Section, provided such person is:

30 (1) convicted of a qualifying offense or attempt of
31 a qualifying offense on or after July 1, 1990 the
32 ~~effective date of this amendatory Act of 1989,~~ and

1 sentenced to a term of imprisonment, periodic
2 imprisonment, fine, probation, conditional discharge or
3 any other form of sentence, or given a disposition of
4 court supervision for the offense; ~~or~~

5 (1.5) found guilty or given supervision under the
6 Juvenile Court Act of 1987 for a qualifying offense or
7 attempt of a qualifying offense on or after January 1,
8 1997; the-effective-date-of-this-amendatory-Act-of--1996;
9 ~~or~~

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

13 (3) convicted of a qualifying offense or attempt of
14 a qualifying offense before July 1, 1990 ~~the-effective~~
15 ~~date-of--this--amendatory--Act--of-1989~~ and is presently
16 confined as a result of such conviction in any State
17 correctional facility or county jail or is presently
18 serving a sentence of probation, conditional discharge or
19 periodic imprisonment as a result of such conviction; ~~or~~

20 (3.5) convicted or found guilty of any offense
21 classified as a felony under Illinois law or found guilty
22 or given supervision for such an offense under the
23 Juvenile Court Act of 1987 on or after August 22, 2002;
24 ~~the-effective--date---of-this-amendatory-Act-of-the-92nd~~
25 ~~General-Assembly;~~ ~~or~~

26 (4) presently institutionalized as a sexually
27 dangerous person or presently institutionalized as a
28 person found guilty but mentally ill of a sexual offense
29 or attempt to commit a sexual offense; ~~or~~

30 (4.5) ordered committed as a sexually violent
31 person on or after the effective date of the Sexually
32 Violent Persons Commitment Act; or

33 (5) seeking transfer to or residency in Illinois
34 under Sections 3-3-11.05 through 3-3-11.5 of the Unified

1 Code of Corrections and the Interstate Compact for Adult
2 Offender Supervision or the Interstate Agreements on
3 Sexually Dangerous Persons Act.

4 Notwithstanding other provisions of this Section, any
5 person incarcerated in a facility of the Illinois Department
6 of Corrections on or after August 22, 2002 ~~the effective date~~
7 ~~of this amendatory Act of the 92nd General Assembly~~ shall be
8 required to submit a specimen of blood, saliva, or tissue
9 prior to his or her release on parole or mandatory supervised
10 release, as a condition of his or her parole or mandatory
11 supervised release.

12 (a-5) Any person who was otherwise convicted of or
13 received a disposition of court supervision for any other
14 offense under the Criminal Code of 1961 or who was found
15 guilty or given supervision for such a violation under the
16 Juvenile Court Act of 1987, may, regardless of the sentence
17 imposed, be required by an order of the court to submit
18 specimens of blood, saliva, or tissue to the Illinois
19 Department of State Police in accordance with the provisions
20 of this Section.

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

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

32 (c-5) Any person required by paragraph (a)(5) to provide
33 specimens of blood, saliva, or tissue shall, where feasible,
34 be required to provide the specimens before being accepted

1 for conditioned residency in Illinois under the interstate
2 compact or agreement, but no later than 45 days after arrival
3 in this State.

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

8 (d) The Illinois Department of State Police shall
9 provide all equipment and instructions necessary for the
10 collection of blood samples. The collection of samples shall
11 be performed in a medically approved manner. Only a
12 physician authorized to practice medicine, a registered nurse
13 or other qualified person trained in venipuncture may
14 withdraw blood for the purposes of this Act. The samples
15 shall thereafter be forwarded to the Illinois Department of
16 State Police, Division of Forensic Services, for analysis and
17 categorizing into genetic marker groupings.

18 (d-1) The Illinois Department of State Police shall
19 provide all equipment and instructions necessary for the
20 collection of saliva samples. The collection of saliva
21 samples shall be performed in a medically approved manner.
22 Only a person trained in the instructions promulgated by the
23 Illinois State Police on collecting saliva may collect saliva
24 for the purposes of this Section. The samples shall
25 thereafter be forwarded to the Illinois Department of State
26 Police, Division of Forensic Services, for analysis and
27 categorizing into genetic marker groupings.

28 (d-2) The Illinois Department of State Police shall
29 provide all equipment and instructions necessary for the
30 collection of tissue samples. The collection of tissue
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 tissue may collect tissue
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-5) To the extent that funds are available, the
5 Illinois Department of State Police shall contract with
6 qualified personnel and certified laboratories for the
7 collection, analysis, and categorization of known samples.

8 (e) The genetic marker groupings shall be maintained by
9 the Illinois Department of State Police, Division of Forensic
10 Services.

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

32 (f-1) Upon receipt of notification of a reversal of a
33 conviction based on actual innocence, or of the granting of a
34 pardon pursuant to Section 12 of Article V of the Illinois

1 Constitution, if that pardon document specifically states
2 that the reason for the pardon is the actual innocence of an
3 individual whose DNA record has been stored in the State or
4 national DNA identification index in accordance with this
5 Section by the Illinois Department of State Police, the DNA
6 record shall be expunged from the DNA identification index,
7 and the Department shall by rule prescribe procedures to
8 ensure that the record and any samples, analyses, or other
9 documents relating to such record, whether in the possession
10 of the Department or any law enforcement or police agency, or
11 any forensic DNA laboratory, including any duplicates or
12 copies thereof, are destroyed and a letter is sent to the
13 court verifying the expungement is completed.

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

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

22 (1) any violation or inchoate violation of Section
23 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
24 Criminal Code of 1961~~;~~

25 (1.1) any violation or inchoate violation of
26 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
27 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
28 for which persons are convicted on or after July 1,
29 2001~~;~~

30 (2) any former statute of this State which defined
31 a felony sexual offense~~;~~

32 (3) (blank)~~;~~

33 (4) any inchoate violation of Section 9-3.1,
34 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961~~;~~

1 or

2 (5) any violation or inchoate violation of Article
3 29D of the Criminal Code of 1961.

4 (g-5) (Blank).

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

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

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

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

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

34 (2) All fees shall be collected by the clerk of the

1 court and forwarded to the State Offender DNA
2 Identification System Fund for deposit. The clerk of the
3 circuit court may retain the amount of \$10 from each
4 collected analysis fee to offset administrative costs
5 incurred in carrying out the clerk's responsibilities
6 under this Section.

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

15 (A) Costs incurred in providing analysis and
16 genetic marker categorization as required by
17 subsection (d).

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

20 (C) Costs incurred in the purchase and
21 maintenance of equipment for use in performing
22 analyses.

23 (D) Costs incurred in continuing research and
24 development of new techniques for analysis and
25 genetic marker categorization.

26 (E) Costs incurred in continuing education,
27 training, and professional development of forensic
28 scientists regularly employed by these laboratories.

29 (1) The failure of a person to provide a specimen, or of
30 any person or agency to collect a specimen, within the 45 day
31 period shall in no way alter the obligation of the person to
32 submit such specimen, or the authority of the Illinois
33 Department of State Police or persons designated by the
34 Department to collect the specimen, or the authority of the

1 Illinois Department of State Police to accept, analyze and
2 maintain the specimen or to maintain or upload results of
3 genetic marker grouping analysis information into a State or
4 national database.

5 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
6 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
7 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
8 1-20-03.)

9 Section 90. The State Finance Act is amended by adding
10 Section 5.595 as follows:

11 (30 ILCS 105/5.595 new)

12 Sec. 5.595. The Illinois Law Enforcement Training
13 Standards Board Costs and Attorney Fees Fund.

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.