



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0779

Introduced 2/2/2005, by Rep. Susana A Mendoza

SYNOPSIS AS INTRODUCED:

725 ILCS 5/107-2.5 new

730 ILCS 5/5-4-3

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

Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. Provides that every person arrested for committing a felony shall have a sample of his or her saliva or tissue taken for DNA fingerprinting analysis, at the time of booking, for the purpose of determining identity and for certain other specified purposes. Provides that subject to appropriation, the Department of State Police shall implement this provision. Provides that this provision becomes operative no later than the earliest of the following: (1) two years after the effective date of this amendatory Act; (2) the date on which the Department of State Police informs law enforcement agencies that the Department is ready to collect samples; or (3) January 1, 2008. Effective immediately.

LRB094 03414 RLC 33416 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 107-2.5 as follows:

6 (725 ILCS 5/107-2.5 new)

7 Sec. 107-2.5. DNA fingerprinting analysis.

8 (a) Every person arrested for committing a felony as
9 defined in Section 2-7 of the Criminal Code of 1961 shall have
10 a sample of his or her saliva or tissue taken for DNA
11 fingerprinting analysis, at the time of booking, for the
12 purpose of determining identity and for the purposes specified
13 in this Section and subsection (f) of Section 5-4-3 of the
14 Unified Code of Corrections. Any law enforcement agency
15 extracting DNA samples under this Section shall be required to
16 follow all written rules and regulations for the collection,
17 storage, and processing of those samples promulgated by the
18 Department of State Police. The analysis shall be performed by
19 the Department of State Police or a specific agent approved by
20 the Department of State Police. The identification
21 characteristics resulting from the DNA analysis shall be stored
22 and maintained by the Department of State Police or the
23 specific agent approved by the Department. All results
24 developed from collected DNA samples shall be subject to any
25 and all confidentiality provisions of State and federal laws.
26 The specific agent approved by the Department of State Police
27 to store and analyze DNA samples shall be required to meet all
28 Illinois State Police laboratory accreditation requirements
29 and shall properly forward the results of the DNA analysis to
30 the Department of State Police.

31 (b) If charges are dismissed or an individual is found not
32 guilty, any expungement of that person's DNA sample shall be in

1 accordance with the procedures set forth in Section 5 of the
2 Criminal Identification Act.

3 (c) Subject to appropriation, the Department of State
4 Police shall implement this Section; however, this Section
5 becomes operative no later than the earliest of the following:
6 (1) two years after the effective date of this amendatory Act
7 of the 94th General Assembly; (2) the date on which the
8 Department of State Police informs law enforcement agencies
9 that the Department is ready to collect samples; or (3) January
10 1, 2008.

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

13 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

31 (1) convicted of a qualifying offense or attempt of a
32 qualifying offense on or after July 1, 1990 and sentenced
33 to a term of imprisonment, periodic imprisonment, fine,
34 probation, conditional discharge or any other form of

1 sentence, or given a disposition of court supervision for
2 the offense;

3 (1.5) found guilty or given supervision under the
4 Juvenile Court Act of 1987 for a qualifying offense or
5 attempt of a qualifying offense on or after January 1,
6 1997;

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

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

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

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

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

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

31 (6) arrested who is suspected of committing a felony as
32 defined in Section 2-7 of the Criminal Code of 1961.

33 Notwithstanding other provisions of this Section, any
34 person incarcerated in a facility of the Illinois Department of
35 Corrections on or after August 22, 2002 shall be required to
36 submit a specimen of blood, saliva, or tissue prior to his or

1 her final discharge or release on parole or mandatory
2 supervised release, as a condition of his or her parole or
3 mandatory supervised release.

4 (a-5) Any person who was otherwise convicted of or received
5 a disposition of court supervision for any other offense under
6 the Criminal Code of 1961 or who was found guilty or given
7 supervision for such a violation under the Juvenile Court Act
8 of 1987, may, regardless of the sentence imposed, be required
9 by an order of the court to submit specimens of blood, saliva,
10 or tissue to the Illinois Department of State Police in
11 accordance with the provisions of this Section.

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

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

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

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

33 (c-7) Any person required by paragraph (a) (6) to provide
34 specimens of saliva or tissue shall be required to provide the
35 specimens at the booking procedure. The law enforcement officer
36 shall verify that the arrestee sample has not been previously

1 collected at each arrest.

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

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

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

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

36 (d-6) Agencies designated by the Illinois Department of

1 State Police and the Illinois Department of State Police may
2 contract with third parties to provide for the collection or
3 analysis of DNA, or both, of an offender's blood, saliva, and
4 tissue samples.

5 (e) The genetic marker groupings shall be maintained by the
6 Illinois Department of State Police, Division of Forensic
7 Services.

8 (f) The genetic marker grouping analysis information
9 obtained pursuant to this Act and the information obtained
10 under Section 107-2.5 of the Code of Criminal Procedure of 1963
11 shall be confidential and shall be released only to peace
12 officers of the United States, of other states or territories,
13 of the insular possessions of the United States, of foreign
14 countries duly authorized to receive the same, to all peace
15 officers of the State of Illinois and to all prosecutorial
16 agencies, and to defense counsel as provided by Section 116-5
17 of the Code of Criminal Procedure of 1963. The genetic marker
18 grouping analysis information obtained pursuant to this Act
19 shall be used only for (i) valid law enforcement identification
20 purposes and as required by the Federal Bureau of Investigation
21 for participation in the National DNA database, (ii) technology
22 validation purposes, (iii) a population statistics database,
23 (iv) quality assurance purposes if personally identifying
24 information is removed, (v) assisting in the defense of the
25 criminally accused pursuant to Section 116-5 of the Code of
26 Criminal Procedure of 1963, or (vi) identifying and assisting
27 in the prosecution of a person who is suspected of committing a
28 sexual assault as defined in Section 1a of the Sexual Assault
29 Survivors Emergency Treatment Act. Notwithstanding any other
30 statutory provision to the contrary, all information obtained
31 under this Section shall be maintained in a single State data
32 base, which may be uploaded into a national database, and which
33 information may be subject to expungement only as set forth in
34 subsection (f-1).

35 (f-1) Upon receipt of notification of a reversal of a
36 conviction based on actual innocence, or of the granting of a

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

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

21 (f-6) The Illinois Department of State Police may contract
22 with third parties for the purposes of implementing this
23 amendatory Act of the 93rd General Assembly. Any other party
24 contracting to carry out the functions of this Section shall be
25 subject to the same restrictions and requirements of this
26 Section insofar as applicable, as the Illinois Department of
27 State Police, and to any additional restrictions imposed by the
28 Illinois Department of State Police.

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

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

34 (1.1) any violation or inchoate violation of Section
35 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
36 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which

1 persons are convicted on or after July 1, 2001;

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

4 (3) (blank);

5 (4) any inchoate violation of Section 9-3.1, 11-9.3,
6 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

9 (g-5) (Blank).

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

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

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

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

1 exceed 24 months from the time of conviction. The inability to
2 pay this analysis fee shall not be the sole ground to
3 incarcerate the person.

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

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

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

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

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

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

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

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

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

36 (l) The failure of a person to provide a specimen, or of

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

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

14 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,
15 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;
16 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.
17 11-19-03; 93-781, eff. 1-1-05.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.