



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4434

Introduced 01/09/06, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Provides that the county board of any county, by resolution, may require any person convicted of, or found delinquent for, certain offenses or institutionalized as sexually dangerous or committed as a sexually violent person who is required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for analysis and categorization into genetic marker grouping to pay a reasonable fee for collection of the specimens. Provides that the fee shall be in addition to any other disposition, penalty, or fine imposed and shall be in addition to the analysis fee. Provides that any fee authorized by the county board shall be transmitted by the circuit clerk to the county treasurer for deposit into the county corporate fund and shall be used for the purposes authorized by the county board.

LRB094 15313 RLC 50504 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

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

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

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

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

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

24 (1) convicted of a qualifying offense or attempt of a
25 qualifying offense on or after July 1, 1990 and sentenced
26 to a term of imprisonment, periodic imprisonment, fine,
27 probation, conditional discharge or any other form of
28 sentence, or given a disposition of court supervision for
29 the offense;

30 (1.5) found guilty or given supervision under the
31 Juvenile Court Act of 1987 for a qualifying offense or
32 attempt of a qualifying offense on or after January 1,

1 1997;

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

4 (3) convicted of a qualifying offense or attempt of a
5 qualifying offense before July 1, 1990 and is presently
6 confined as a result of such conviction in any State
7 correctional facility or county jail or is presently
8 serving a sentence of probation, conditional discharge or
9 periodic imprisonment as a result of such conviction;

10 (3.5) convicted or found guilty of any offense
11 classified as a felony under Illinois law or found guilty
12 or given supervision for such an offense under the Juvenile
13 Court Act of 1987 on or after August 22, 2002;

14 (4) presently institutionalized as a sexually
15 dangerous person or presently institutionalized as a
16 person found guilty but mentally ill of a sexual offense or
17 attempt to commit a sexual offense;

18 (4.5) ordered committed as a sexually violent person on
19 or after the effective date of the Sexually Violent Persons
20 Commitment Act; or

21 (5) seeking transfer to or residency in Illinois under
22 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
23 Corrections and the Interstate Compact for Adult Offender
24 Supervision or the Interstate Agreements on Sexually
25 Dangerous Persons Act.

26 Notwithstanding other provisions of this Section, any
27 person incarcerated in a facility of the Illinois Department of
28 Corrections on or after August 22, 2002 shall be required to
29 submit a specimen of blood, saliva, or tissue prior to his or
30 her final discharge or release on parole or mandatory
31 supervised release, as a condition of his or her parole or
32 mandatory supervised release.

33 Notwithstanding other provisions of this Section, any
34 person sentenced to life imprisonment in a facility of the
35 Illinois Department of Corrections after the effective date of
36 this amendatory Act of the 94th General Assembly or sentenced

1 to death after the effective date of this amendatory Act of the
2 94th General Assembly shall be required to provide a specimen
3 of blood, saliva, or tissue within 45 days after sentencing or
4 disposition at a collection site designated by the Illinois
5 Department of State Police. Any person serving a sentence of
6 life imprisonment in a facility of the Illinois Department of
7 Corrections on the effective date of this amendatory Act of the
8 94th General Assembly or any person who is under a sentence of
9 death on the effective date of this amendatory Act of the 94th
10 General Assembly shall be required to provide a specimen of
11 blood, saliva, or tissue upon request at a collection site
12 designated by the Illinois Department of State Police.

13 (a-5) Any person who was otherwise convicted of or received
14 a disposition of court supervision for any other offense under
15 the Criminal Code of 1961 or who was found guilty or given
16 supervision for such a violation under the Juvenile Court Act
17 of 1987, may, regardless of the sentence imposed, be required
18 by an order of the court to submit specimens of blood, saliva,
19 or tissue to the Illinois Department of State Police in
20 accordance with the provisions 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, or
24 tissue within 45 days after sentencing or disposition at a
25 collection site designated by the Illinois Department of State
26 Police.

27 (c) Any person required by paragraphs (a)(3), (a)(4), and
28 (a)(4.5) to provide specimens of blood, saliva, or tissue shall
29 be required to provide such samples prior to final discharge,
30 parole, or release at a collection site designated by the
31 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, be
34 required to provide the specimens before being accepted for
35 conditioned residency in Illinois under the interstate compact
36 or agreement, but no later than 45 days after arrival in this

1 State.

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

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

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

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

36 (d-5) To the extent that funds are available, the Illinois

1 Department of State Police shall contract with qualified
2 personnel and certified laboratories for the collection,
3 analysis, and categorization of known samples.

4 (d-6) Agencies designated by the Illinois Department of
5 State Police and the Illinois Department of State Police may
6 contract with third parties to provide for the collection or
7 analysis of DNA, or both, of an offender's blood, saliva, and
8 tissue samples.

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

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

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

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

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

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

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

36 (1.1) any violation or inchoate violation of Section

1 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
2 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
3 persons are convicted on or after July 1, 2001;

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

6 (3) (blank);

7 (4) any inchoate violation of Section 9-3.1, 11-9.3,
8 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

11 (g-5) (Blank).

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (E) Costs incurred in continuing education,
36 training, and professional development of forensic

1 scientists regularly employed by these laboratories.

2 (k-1) The county board of any county, by resolution, may
3 require any person required by subsection (a) to submit
4 specimens of blood, saliva, or tissue to the Illinois
5 Department of State Police for analysis and categorization into
6 genetic marker grouping to pay a reasonable fee for collection
7 of the specimens. The fee shall be in addition to any other
8 disposition, penalty, or fine imposed and shall be in addition
9 to the analysis fee authorized by subsection (j). Any fee
10 authorized by the county board shall be transmitted by the
11 circuit clerk to the county treasurer for deposit into the
12 county corporate fund and shall be used for the purposes
13 authorized by the county board.

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

24 (m) If any provision of this amendatory Act of the 93rd
25 General Assembly is held unconstitutional or otherwise
26 invalid, the remainder of this amendatory Act of the 93rd
27 General Assembly is not affected.

28 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
29 93-781, eff. 1-1-05; 94-16, eff. 6-13-05.)