

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 Sections 5-4-3 and 5-4-3a 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, convicted or found
15 guilty of any offense requiring registration under the Sex
16 Offender Registration Act, found guilty or given supervision
17 for any offense classified as a felony under the Juvenile Court
18 Act of 1987, convicted or found guilty of, under the Juvenile
19 Court Act of 1987, any offense requiring registration under the
20 Sex Offender Registration Act, or institutionalized as a
21 sexually dangerous person under the Sexually Dangerous Persons
22 Act, or committed as a sexually violent person under the
23 Sexually Violent Persons Commitment Act shall, regardless of
24 the sentence or disposition imposed, be required to submit
25 specimens of blood, saliva, or tissue to the Illinois
26 Department of State Police in accordance with the provisions of
27 this Section, provided such person is:

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

1 the offense;

2 (1.5) found guilty or given supervision under the
3 Juvenile Court Act of 1987 for a qualifying offense or
4 attempt of a qualifying offense on or after January 1,
5 1997;

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

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

14 (3.5) convicted or found guilty of any offense
15 classified as a felony under Illinois law or found guilty
16 or given supervision for such an offense under the Juvenile
17 Court Act of 1987 on or after August 22, 2002;

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

22 (4.5) ordered committed as a sexually violent person on
23 or after the effective date of the Sexually Violent Persons
24 Commitment Act; or

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

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

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

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

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

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

36 (c-5) Any person required by paragraph (a)(5) to provide

1 specimens of blood, saliva, or tissue shall, where feasible, be
2 required to provide the specimens before being accepted for
3 conditioned residency in Illinois under the interstate compact
4 or agreement, but no later than 45 days after arrival in this
5 State.

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

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

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

30 (d-2) The Illinois Department of State Police shall provide
31 all equipment and instructions necessary for the collection of
32 tissue samples. The collection of tissue samples shall be
33 performed in a medically approved manner. Only a person trained
34 in the instructions promulgated by the Illinois State Police on
35 collecting tissue may collect tissue for the purposes of this
36 Section. The samples shall thereafter be forwarded to the

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

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

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

13 (e) The genetic marker groupings shall be maintained by the
14 Illinois Department of State Police, Division of Forensic
15 Services.

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

1 contrary, all information obtained under this Section shall be
2 maintained in a single State data base, which may be uploaded
3 into a national database, and which information may be subject
4 to expungement only as set forth in subsection (f-1).

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

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

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

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

1 (1) any violation or inchoate violation of Section
2 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
3 Criminal Code of 1961;

4 (1.1) any violation or inchoate violation of Section
5 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
6 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
7 persons are convicted on or after July 1, 2001;

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

10 (3) (blank);

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

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

15 (g-5) (Blank).

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

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

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

35 (j) Any person required by subsection (a) to submit
36 specimens of blood, saliva, or tissue to the Illinois

1 Department of State Police for analysis and categorization into
2 genetic marker grouping, in addition to any other disposition,
3 penalty, or fine imposed, shall pay an analysis fee of \$200. If
4 the analysis fee is not paid at the time of sentencing, the
5 court shall establish a fee schedule by which the entire amount
6 of the analysis fee shall be paid in full, such schedule not to
7 exceed 24 months from the time of conviction. The inability to
8 pay this analysis fee shall not be the sole ground to
9 incarcerate the person.

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

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

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

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

29 (A) Costs incurred in providing analysis and
30 genetic marker categorization as required by
31 subsection (d).

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

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

36 (D) Costs incurred in continuing research and

1 development of new techniques for analysis and genetic
2 marker categorization.

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

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

16 (m) If any provision of this amendatory Act of the 93rd
17 General Assembly is held unconstitutional or otherwise
18 invalid, the remainder of this amendatory Act of the 93rd
19 General Assembly is not affected.

20 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
21 93-781, eff. 1-1-05; 94-16, eff. 6-13-05.)

22 (730 ILCS 5/5-4-3a)

23 Sec. 5-4-3a. DNA testing backlog accountability.

24 (a) On ~~or before February 1, 2005 and on~~ or before February
25 1 of each year ~~thereafter~~, the Department of State Police shall
26 report to the Governor and both houses of the General Assembly
27 the following information:

28 (1) the extent of the backlog of cases awaiting testing
29 or awaiting DNA analysis by that Department, including but
30 not limited to:

31 (A) those tests conducted under Section 5-4-3, as
32 of December 31 of the previous year; and

33 (B) all evidence awaiting testing or DNA analysis,
34 including whether such evidence is in the physical
35 custody of the Department of State Police or awaiting

1 submission to the Department of State Police, to the
2 extent that the Department of State Police has notice
3 of such evidence; and

4 (1.5) the number of convicted persons in Illinois
5 eligible to have their DNA profile entered into the
6 convicted offender database whose DNA profile has not yet
7 been entered into the convicted offender database; and

8 (2) what measures have been and are being taken to
9 reduce that backlog and the estimated costs or expenditures
10 in doing so.

11 (b) The information reported under this Section shall be
12 made available to the public, at the time it is reported, on
13 the official web site of the Department of State Police.

14 (Source: P.A. 93-785, eff. 7-21-04.)