

HB5184



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5184

by Rep. Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Makes a technical change in a Section concerning genetic marker grouping analysis information of persons convicted of, or found delinquent for, certain offenses or institutionalized as sexually dangerous.

LRB095 17996 RLC 44079 b

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 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 ~~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

1 the sentence or disposition imposed, be required to submit
2 specimens of blood, saliva, or tissue to the Illinois
3 Department of State Police in accordance with the provisions of
4 this Section, provided such person is:

5 (1) convicted of a qualifying offense or attempt of a
6 qualifying offense on or after July 1, 1990 and sentenced
7 to a term of imprisonment, periodic imprisonment, fine,
8 probation, conditional discharge or any other form of
9 sentence, or given a disposition of court supervision for
10 the offense;

11 (1.5) found guilty or given supervision under the
12 Juvenile Court Act of 1987 for a qualifying offense or
13 attempt of a qualifying offense on or after January 1,
14 1997;

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

17 (3) convicted of a qualifying offense or attempt of a
18 qualifying offense before July 1, 1990 and is presently
19 confined as a result of such conviction in any State
20 correctional facility or county jail or is presently
21 serving a sentence of probation, conditional discharge or
22 periodic imprisonment as a result of such conviction;

23 (3.5) convicted or found guilty of any offense
24 classified as a felony under Illinois law or found guilty
25 or given supervision for such an offense under the Juvenile
26 Court Act of 1987 on or after August 22, 2002;

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

5 (4.5) ordered committed as a sexually violent person on
6 or after the effective date of the Sexually Violent Persons
7 Commitment Act; or

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

13 Notwithstanding other provisions of this Section, any
14 person incarcerated in a facility of the Illinois Department of
15 Corrections on or after August 22, 2002 shall be required to
16 submit a specimen of blood, saliva, or tissue prior to his or
17 her final discharge or release on parole or mandatory
18 supervised release, as a condition of his or her parole or
19 mandatory supervised release.

20 Notwithstanding other provisions of this Section, any
21 person sentenced to life imprisonment in a facility of the
22 Illinois Department of Corrections after the effective date of
23 this amendatory Act of the 94th General Assembly or sentenced
24 to death after the effective date of this amendatory Act of the
25 94th General Assembly shall be required to provide a specimen
26 of blood, saliva, or tissue within 45 days after sentencing or

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

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

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

24 (c) Any person required by paragraphs (a)(3), (a)(4), and
25 (a)(4.5) to provide specimens of blood, saliva, or tissue shall
26 be required to provide such samples prior to final discharge,

1 parole, or release at a collection site designated by the
2 Illinois Department of State Police.

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

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

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

23 (d-1) The Illinois Department of State Police shall provide
24 all equipment and instructions necessary for the collection of
25 saliva samples. The collection of saliva samples shall be
26 performed in a medically approved manner. Only a person trained

1 in the instructions promulgated by the Illinois State Police on
2 collecting saliva may collect saliva for the purposes of this
3 Section. The samples shall thereafter be forwarded to the
4 Illinois Department of State Police, Division of Forensic
5 Services, for analysis and categorizing into genetic marker
6 groupings.

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

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

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

26 (e) The genetic marker groupings shall be maintained by the

1 Illinois Department of State Police, Division of Forensic
2 Services.

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

1 to expungement only as set forth in subsection (f-1).

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

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

24 (f-6) The Illinois Department of State Police may contract
25 with third parties for the purposes of implementing this
26 amendatory Act of the 93rd General Assembly. Any other party

1 contracting to carry out the functions of this Section shall be
2 subject to the same restrictions and requirements of this
3 Section insofar as applicable, as the Illinois Department of
4 State Police, and to any additional restrictions imposed by the
5 Illinois Department of State Police.

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

8 (1) any violation or inchoate violation of Section
9 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
10 Criminal Code of 1961;

11 (1.1) any violation or inchoate violation of Section
12 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
13 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
14 persons are convicted on or after July 1, 2001;

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

17 (3) (blank);

18 (4) any inchoate violation of Section 9-3.1, 11-9.3,
19 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

22 (g-5) (Blank).

23 (h) The Illinois Department of State Police shall be the
24 State central repository for all genetic marker grouping
25 analysis information obtained pursuant to this Act. The
26 Illinois Department of State Police may promulgate rules for

1 the form and manner of the collection of blood, saliva, or
2 tissue samples and other procedures for the operation of this
3 Act. The provisions of the Administrative Review Law shall
4 apply to all actions taken under the rules so promulgated.

5 (i) (1) A person required to provide a blood, saliva, or
6 tissue specimen shall cooperate with the collection of the
7 specimen and any deliberate act by that person intended to
8 impede, delay or stop the collection of the blood, saliva,
9 or tissue specimen is a Class A misdemeanor.

10 (2) In the event that a person's DNA sample is not
11 adequate for any reason, the person shall provide another
12 DNA sample for analysis. Duly authorized law enforcement
13 and corrections personnel may employ reasonable force in
14 cases in which an individual refuses to provide a DNA
15 sample required under this Act.

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

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

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

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

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

20 (A) Costs incurred in providing analysis and
21 genetic marker categorization as required by
22 subsection (d).

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

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

1 (D) Costs incurred in continuing research and
2 development of new techniques for analysis and genetic
3 marker categorization.

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

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

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

21 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
22 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
23 1-1-07.)