



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB1935

Introduced 1/16/2008, by Sen. James F. Clayborne, Jr.

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/31-4	from Ch. 38, par. 31-4
725 ILCS 5/107-2.5 new	
730 ILCS 5/5-4-3	from Ch. 38, par. 1005-4-3

Amends the Criminal Code of 1961. Provides that the offense of obstructing justice also includes destroying, altering, concealing, disguising, or otherwise tampering with evidence collected for DNA fingerprinting analysis. Provides that the offense is a Class 3 felony. 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, 2011. Provides that in the amendatory changes to the Unified Code of Corrections, intentionally using genetic marker grouping analysis information derived from a DNA sample beyond authorized uses is a Class 3 rather than a Class 4 felony. Effective immediately.

LRB095 15185 RLC 41165 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

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 Criminal Code of 1961 is amended by changing  
5 Section 31-4 as follows:

6 (720 ILCS 5/31-4) (from Ch. 38, par. 31-4)

7 Sec. 31-4. Obstructing justice.

8 (a) A person obstructs justice when, with intent to prevent  
9 the apprehension or obstruct the prosecution or defense of any  
10 person, he knowingly commits any of the following acts:

11 (1) ~~(a)~~ Destroys, alters, conceals or disguises physical  
12 evidence, plants false evidence, furnishes false information;  
13 or

14 (2) ~~(b)~~ Induces a witness having knowledge material to the  
15 subject at issue to leave the State or conceal himself; or

16 (3) ~~(c)~~ Possessing knowledge material to the subject at  
17 issue, he leaves the State or conceals himself.

18 (4) ~~(d)~~ Destroys, alters, conceals, disguises, or otherwise  
19 tampers with evidence collected under Section 107-2.5 of the  
20 Code of Criminal Procedure of 1963 or Section 5-4-3 of the  
21 Unified Code of Corrections.

22 (b) ~~(d)~~ Sentence.

23 (1) Obstructing justice is a Class 4 felony, except as

1 provided in paragraph (2) of this subsection (b) ~~(d)~~.

2 (2) Obstructing justice in furtherance of streetgang  
3 related or gang-related activity, as defined in Section 10  
4 of the Illinois Streetgang Terrorism Omnibus Prevention  
5 Act, is a Class 3 felony. Obstructing justice in violation  
6 of paragraph (a) (4) is a Class 3 felony.

7 (Source: P.A. 90-363, eff. 1-1-98.)

8 Section 10. The Code of Criminal Procedure of 1963 is  
9 amended by adding Section 107-2.5 as follows:

10 (725 ILCS 5/107-2.5 new)

11 Sec. 107-2.5. DNA fingerprinting analysis.

12 (a) Every person arrested for committing a felony as  
13 defined in Section 2-7 of the Criminal Code of 1961 shall have  
14 a sample of his or her saliva or tissue taken for DNA  
15 fingerprinting analysis, at the time of booking, for the  
16 purpose of determining identity and for the purposes specified  
17 in this Section and subsection (f) of Section 5-4-3 of the  
18 Unified Code of Corrections. Any law enforcement agency  
19 extracting DNA samples under this Section shall be required to  
20 follow all written rules and regulations for the collection,  
21 storage, and processing of those samples promulgated by the  
22 Department of State Police. The analysis shall be performed by  
23 the Department of State Police or a specific agent approved by  
24 the Department of State Police. The identification

1 characteristics resulting from the DNA analysis shall be stored  
2 and maintained by the Department of State Police or the  
3 specific agent approved by the Department. All results  
4 developed from collected DNA samples shall be subject to any  
5 and all confidentiality provisions of State and federal laws.  
6 The specific agent approved by the Department of State Police  
7 to store and analyze DNA samples shall be required to meet all  
8 Illinois State Police laboratory accreditation requirements  
9 and shall properly forward the results of the DNA analysis to  
10 the Department of State Police.

11 (b) If charges are dismissed or an individual is found not  
12 guilty, any expungement of that person's DNA sample shall be in  
13 accordance with the procedures set forth in Section 5 of the  
14 Criminal Identification Act.

15 (c) Subject to appropriation, the Department of State  
16 Police shall implement this Section; however, this Section  
17 becomes operative no later than the earliest of the following:  
18 (1) two years after the effective date of this amendatory Act  
19 of the 95th General Assembly; (2) the date on which the  
20 Department of State Police informs law enforcement agencies  
21 that the Department is ready to collect samples; or (3) January  
22 1, 2011.

23 Section 15. The Unified Code of Corrections is amended by  
24 changing Section 5-4-3 as follows:

1 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

23 (1) convicted of a qualifying offense or attempt of a  
24 qualifying offense on or after July 1, 1990 and sentenced  
25 to a term of imprisonment, periodic imprisonment, fine,  
26 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

1 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of  
2 Corrections and the Interstate Compact for Adult Offender  
3 Supervision or the Interstate Agreements on Sexually  
4 Dangerous Persons Act; or -

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

7 Notwithstanding other provisions of this Section, any  
8 person incarcerated in a facility of the Illinois Department of  
9 Corrections on or after August 22, 2002 shall be required to  
10 submit a specimen of blood, saliva, or tissue prior to his or  
11 her final discharge or release on parole or mandatory  
12 supervised release, as a condition of his or her parole or  
13 mandatory supervised release.

14 Notwithstanding other provisions of this Section, any  
15 person sentenced to life imprisonment in a facility of the  
16 Illinois Department of Corrections after the effective date of  
17 this amendatory Act of the 94th General Assembly or sentenced  
18 to death after the effective date of this amendatory Act of the  
19 94th General Assembly shall be required to provide a specimen  
20 of blood, saliva, or tissue within 45 days after sentencing or  
21 disposition at a collection site designated by the Illinois  
22 Department of State Police. Any person serving a sentence of  
23 life imprisonment in a facility of the Illinois Department of  
24 Corrections on the effective date of this amendatory Act of the  
25 94th General Assembly or any person who is under a sentence of  
26 death on the effective date of this amendatory Act of the 94th

1 General Assembly shall be required to provide a specimen of  
2 blood, saliva, or tissue upon request at a collection site  
3 designated by the Illinois Department of State Police.

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



1 or agreement, but no later than 45 days after arrival in this  
2 State.

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

7 (c-7) Any person required by paragraph (a)(6) to provide  
8 specimens of saliva or tissue shall be required to provide the  
9 specimens at the booking procedure. The law enforcement officer  
10 shall verify that the arrestee sample has not been previously  
11 collected at each arrest.

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

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

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

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

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

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

25 (e) The genetic marker groupings shall be maintained by the  
26 Illinois Department of State Police, Division of Forensic

1 Services.

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

1 information may be subject to expungement only as set forth in  
2 subsection (f-1).

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

19 (f-5) Any person who intentionally uses genetic marker  
20 grouping analysis information, or any other information  
21 derived from a DNA sample, beyond the authorized uses as  
22 provided under this Section or under Section 107-2.5 of the  
23 Code of Criminal Procedure of 1963, or any other Illinois law,  
24 is guilty of a Class 3 4 felony, and shall be subject to a fine  
25 of not less than \$5,000.

26 (f-6) The Illinois Department of State Police may contract

1 with third parties for the purposes of implementing this  
2 amendatory Act of the 93rd General Assembly. Any other party  
3 contracting to carry out the functions of this Section shall be  
4 subject to the same restrictions and requirements of this  
5 Section insofar as applicable, as the Illinois Department of  
6 State Police, and to any additional restrictions imposed by the  
7 Illinois Department of State Police.

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

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

13 (1.1) any violation or inchoate violation of Section  
14 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
15 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
16 persons are convicted on or after July 1, 2001;

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

19 (3) (blank);

20 (4) any inchoate violation of Section 9-3.1, 11-9.3,  
21 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

24 (g-5) (Blank).

25 (h) The Illinois Department of State Police shall be the  
26 State central repository for all genetic marker grouping

1 analysis information obtained pursuant to this Act. The  
2 Illinois Department of State Police may promulgate rules for  
3 the form and manner of the collection of blood, saliva, or  
4 tissue samples and other procedures for the operation of this  
5 Act. The provisions of the Administrative Review Law shall  
6 apply to all actions taken under the rules so promulgated.

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

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

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

1 pay this analysis fee shall not be the sole ground to  
2 incarcerate the person.

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

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

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

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

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

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

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

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

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

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

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

23 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;  
24 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.  
25 1-1-07.)

26 Section 99. Effective date. This Act takes effect upon



1 becoming law.