



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0935

Introduced 2/10/2009, by Rep. Susana A Mendoza

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 samples 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 earlier of the following: (1) the date on which the Department of State Police informs law enforcement agencies that the Department is ready to collect samples; or (2) January 1, 2013. 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. Provides that the identification, detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is later determined that the sample should not have been obtained or placed in the database. Effective immediately.

LRB096 10778 RLC 20982 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 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; or -

18 (4) Destroys, alters, conceals, disguises, or otherwise
19 tampers with samples 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 upon notification to the
15 Department of State Police by the court system.

16 (c) Subject to appropriation, the Department of State
17 Police shall implement this Section no later than the earlier
18 of the following: (1) the date on which the Department of State
19 Police informs law enforcement agencies that the Department is
20 ready to collect samples; or (2) January 1, 2013.

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

23 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

24 Sec. 5-4-3. Persons convicted of, or found delinquent for,

1 certain offenses or institutionalized as sexually dangerous;
2 specimens; genetic marker groups.

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

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

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

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

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

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

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

21 (4.5) ordered committed as a sexually violent person on
22 or after the effective date of the Sexually Violent Persons
23 Commitment Act; ~~or~~

24 (5) seeking transfer to or residency in Illinois under
25 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
26 Corrections and the Interstate Compact for Adult Offender

1 Supervision or the Interstate Agreements on Sexually
2 Dangerous Persons Act; or -

3 (6) arrested and is suspected of committing a felony as
4 defined in Section 2-7 of the Criminal Code of 1961 on or
5 after the operative date of Section 107-2.5 of the Code of
6 Criminal Procedure of 1963.

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 at each arrest that the arrestee sample is not
11 already on file with the Department of State Police.

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. Having established the
24 State DNA identification index, a match between casework
25 evidence DNA samples from a criminal investigation and DNA
26 samples from a State or federal DNA database of eligible

1 offenders may be used only to sustain probable cause for the
2 issuance of a warrant to obtain the DNA sample from an eligible
3 offender for confirmation. The identification, detention,
4 arrest, or conviction of a person based upon a database match
5 or database information is not invalidated if it is later
6 determined that the sample should not have been obtained or
7 placed in the database. Notwithstanding any other statutory
8 provision to the contrary, all information obtained under this
9 Section shall be maintained in a single State data base, which
10 may be uploaded into a national database, and which information
11 may be subject to expungement only as set forth in subsection
12 (f-1).

13 (f-1) Upon receipt of a certified copy of a final court
14 order for ~~notification of~~ a reversal of each a conviction based
15 on actual innocence, if that document specifically states the
16 reason for the reversal is the actual innocence of an
17 individual, or of the granting of a pardon pursuant to Section
18 12 of Article V of the Illinois Constitution, if that pardon
19 document specifically states that the reason for the pardon is
20 the actual innocence of an individual whose DNA record has been
21 stored in the State or national DNA identification index in
22 accordance with this Section by the Illinois Department of
23 State Police, the DNA record for that conviction shall be
24 expunged from the DNA identification index, and the Department
25 shall by rule prescribe procedures to ensure that the record
26 and any samples, analyses, or other documents relating to such

1 record, ~~whether~~ in the possession or control of the Department
2 or any law enforcement or police agency, or any forensic DNA
3 laboratory, including any duplicates or copies thereof, are
4 destroyed and a letter is sent to the court verifying the
5 expungement is completed.

6 Upon receipt of a certified copy of a final court order for
7 each charge against an individual, whose DNA record has been
8 stored in the State or national DNA identification index in
9 accordance with this Section by the Illinois Department of
10 State Police, establishing that such a charge has been
11 dismissed or resulted in acquittal or that no charge was filed
12 within the applicable time period, the DNA record for that
13 arrest 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 records, in the possession or control of the
17 Department 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 Public Act 93-216 ~~this amendatory~~
20 ~~Act of the 93rd General Assembly~~ is held unconstitutional or
21 otherwise invalid, the remainder of Public Act 93-216 ~~this~~
22 ~~amendatory Act of the 93rd General Assembly~~ is not affected.

23 (n) If any provision of this amendatory Act of the 96th
24 General Assembly is held unconstitutional or otherwise
25 invalid, the remainder of this amendatory Act of the 96th
26 General Assembly is not affected.

1 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
2 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
3 1-1-07.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.