

SB1841



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1841

Introduced 2/20/2009, by Sen. Randall M. Hultgren

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Provides that specified persons who have not yet submitted a sample of blood, saliva, or tissue shall be required to submit a specimen of blood, saliva, or tissue prior to their final discharge or within 6 months from the effective date of the amendatory Act, whichever is sooner. Provides that "these specimens shall be placed into the State or national DNA database, to be used in accordance with other provisions of this Act, by the Illinois State Police". Effective immediately.

LRB096 11307 RLC 21739 b

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 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, 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 or the Illinois Department of Juvenile Justice on
16 or after August 22, 2002, whether for a term of years, natural
17 life, or a sentence of death, who has not yet submitted a
18 sample of blood, saliva, or tissue shall be required to submit
19 a specimen of blood, saliva, or tissue prior to his or her
20 final discharge or within 6 months from the effective date of
21 this amendatory Act of the 96th General Assembly, whichever is
22 sooner. These specimens shall be placed into the State or
23 national DNA database, to be used in accordance with other
24 provisions of this Act, by the Illinois State Police ~~release on~~
25 ~~parole or mandatory supervised release, as a condition of his~~
26 ~~or her parole or 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,

1 saliva, or tissue shall provide specimens of blood, saliva, or
2 tissue within 45 days after sentencing or disposition at a
3 collection site designated by the Illinois Department of State
4 Police.

5 (c) Any person required by paragraphs (a) (3), (a) (4), and
6 (a) (4.5) to provide specimens of blood, saliva, or tissue shall
7 be required to provide such samples prior to final discharge or
8 within 6 months from the effective date of this amendatory Act
9 of the 96th General Assembly, whichever is sooner. These
10 specimens shall be placed into the State or national DNA
11 database, to be used in accordance with other provisions of
12 this Act, by the Illinois State Police, parole, or release at a
13 collection site designated by the Illinois Department of State
14 Police.

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

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

25 (d) The Illinois Department of State Police shall provide
26 all equipment and instructions necessary for the collection of

1 blood samples. The collection of samples shall be performed in
2 a medically approved manner. Only a physician authorized to
3 practice medicine, a registered nurse or other qualified person
4 trained in venipuncture may withdraw blood for the purposes of
5 this Act. The samples shall thereafter be forwarded to the
6 Illinois Department of State Police, Division of Forensic
7 Services, for analysis and categorizing into genetic marker
8 groupings.

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

19 (d-2) The Illinois Department of State Police shall provide
20 all equipment and instructions necessary for the collection of
21 tissue samples. The collection of tissue samples shall be
22 performed in a medically approved manner. Only a person trained
23 in the instructions promulgated by the Illinois State Police on
24 collecting tissue may collect tissue for the purposes of this
25 Section. The samples shall thereafter be forwarded to the
26 Illinois Department of State Police, Division of Forensic

1 Services, for analysis and categorizing into genetic marker
2 groupings.

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

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

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

15 (f) The genetic marker grouping analysis information
16 obtained pursuant to this Act shall be confidential and shall
17 be released only to peace officers of the United States, of
18 other states or territories, of the insular possessions of the
19 United States, of foreign countries duly authorized to receive
20 the same, to all peace officers of the State of Illinois and to
21 all prosecutorial agencies, and to defense counsel as provided
22 by Section 116-5 of the Code of Criminal Procedure of 1963. The
23 genetic marker grouping analysis information obtained pursuant
24 to this Act shall be used only for (i) valid law enforcement
25 identification purposes and as required by the Federal Bureau
26 of Investigation for participation in the National DNA

1 database, (ii) technology validation purposes, (iii) a
2 population statistics database, (iv) quality assurance
3 purposes if personally identifying information is removed, (v)
4 assisting in the defense of the criminally accused pursuant to
5 Section 116-5 of the Code of Criminal Procedure of 1963, or
6 (vi) identifying and assisting in the prosecution of a person
7 who is suspected of committing a sexual assault as defined in
8 Section 1a of the Sexual Assault Survivors Emergency Treatment
9 Act. Notwithstanding any other statutory provision to the
10 contrary, all information obtained under this Section shall be
11 maintained in a single State data base, which may be uploaded
12 into a national database, and which information may be subject
13 to expungement only as set forth in subsection (f-1).

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

1 forensic DNA laboratory, including any duplicates or copies
2 thereof, are destroyed and a letter is sent to the court
3 verifying the expungement is completed.

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

10 (f-6) The Illinois Department of State Police may contract
11 with third parties for the purposes of implementing this
12 amendatory Act of the 93rd General Assembly. Any other party
13 contracting to carry out the functions of this Section shall be
14 subject to the same restrictions and requirements of this
15 Section insofar as applicable, as the Illinois Department of
16 State Police, and to any additional restrictions imposed by the
17 Illinois Department of State Police.

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

20 (1) any violation or inchoate violation of Section
21 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
22 Criminal Code of 1961;

23 (1.1) any violation or inchoate violation of Section
24 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
25 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
26 persons are convicted on or after July 1, 2001;

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

3 (3) (blank);

4 (4) any inchoate violation of Section 9-3.1, 11-9.3,
5 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

8 (g-5) (Blank).

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

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

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

1 sample required under this Act.

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

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

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

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

24 (3) Fees deposited into the State Offender DNA
25 Identification System Fund shall be used by Illinois State
26 Police crime laboratories as designated by the Director of

1 State Police. These funds shall be in addition to any
2 allocations made pursuant to existing laws and shall be
3 designated for the exclusive use of State crime
4 laboratories. These uses may include, but are not limited
5 to, the following:

6 (A) Costs incurred in providing analysis and
7 genetic marker categorization as required by
8 subsection (d).

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

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

13 (D) Costs incurred in continuing research and
14 development of new techniques for analysis and genetic
15 marker categorization.

16 (E) Costs incurred in continuing education,
17 training, and professional development of forensic
18 scientists regularly employed by these laboratories.

19 (1) The failure of a person to provide a specimen, or of
20 any person or agency to collect a specimen, within the 45 day
21 period shall in no way alter the obligation of the person to
22 submit such specimen, or the authority of the Illinois
23 Department of State Police or persons designated by the
24 Department to collect the specimen, or the authority of the
25 Illinois Department of State Police to accept, analyze and
26 maintain the specimen or to maintain or upload results of

1 genetic marker grouping analysis information into a State or
2 national database.

3 (m) If any provision of this amendatory Act of the 93rd
4 General Assembly is held unconstitutional or otherwise
5 invalid, the remainder of this amendatory Act of the 93rd
6 General Assembly is not affected.

7 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
8 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
9 1-1-07.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.