



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3433

Introduced 2/24/2011, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3
30 ILCS 805/8.35 new

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

Amends the Unified Code of Corrections. Provides that a person arrested for the commission or attempted commission of a violent crime shall submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for DNA analysis and categorization into genetic marker groupings. Sets forth procedures to be followed if the charge for which the specimens were taken is dismissed, the defendant is acquitted at trial, or the defendant's conviction is overturned and procedures to be followed if the person is convicted of, granted court supervision for, or found guilty under the Juvenile Court Act of 1987 of the offense for which the person was arrested. Amends the State Mandates Act to require implementation without reimbursement.

LRB097 08895 RLC 49026 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 required to submit ~~convicted of, or~~
8 ~~found delinquent for, certain offenses or institutionalized as~~
9 ~~sexually dangerous;~~ 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 release on parole or mandatory supervised
21 release, as a condition of his or her parole or mandatory
22 supervised release, or within 6 months from August 13, 2009
23 (the effective date of Public Act 96-426), whichever is sooner.
24 A person incarcerated on or after August 13, 2009 (the
25 effective date of Public Act 96-426) shall be required to
26 submit a sample within 45 days of incarceration, or prior to

1 his or her final discharge, or release on parole or mandatory
2 supervised release, as a condition of his or her parole or
3 mandatory supervised release, whichever is sooner. These
4 specimens shall be placed into the State or national DNA
5 database, to be used in accordance with other provisions of
6 this Section, by the Illinois State Police.

7 Notwithstanding other provisions of this Section, any
8 person sentenced to life imprisonment in a facility of the
9 Illinois Department of Corrections after the effective date of
10 this amendatory Act of the 94th General Assembly or sentenced
11 to death after the effective date of this amendatory Act of the
12 94th General Assembly shall be required to provide a specimen
13 of blood, saliva, or tissue within 45 days after sentencing or
14 disposition at a collection site designated by the Illinois
15 Department of State Police. Any person serving a sentence of
16 life imprisonment in a facility of the Illinois Department of
17 Corrections on the effective date of this amendatory Act of the
18 94th General Assembly or any person who is under a sentence of
19 death on the effective date of this amendatory Act of the 94th
20 General Assembly shall be required to provide a specimen of
21 blood, saliva, or tissue upon request at a collection site
22 designated by the Illinois Department of State Police.

23 (a-5) Any person who was otherwise convicted of or received
24 a disposition of court supervision for any other offense under
25 the Criminal Code of 1961 or who was found guilty or given
26 supervision for such a violation under the Juvenile Court Act

1 of 1987, may, regardless of the sentence imposed, be required
2 by an order of the court to submit specimens of blood, saliva,
3 or tissue to the Illinois Department of State Police in
4 accordance with the provisions of this Section.

5 (b) Any person required by paragraphs (a)(1), (a)(1.5),
6 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
7 saliva, or tissue shall provide specimens of blood, saliva, or
8 tissue within 45 days after sentencing or disposition at a
9 collection site designated by the Illinois Department of State
10 Police.

11 (c) Any person required by paragraphs (a)(3), (a)(4), and
12 (a)(4.5) to provide specimens of blood, saliva, or tissue shall
13 be required to provide such samples prior to final discharge or
14 within 6 months from August 13, 2009 (the effective date of
15 Public Act 96-426), whichever is sooner. These specimens shall
16 be placed into the State or national DNA database, to be used
17 in accordance with other provisions of this Act, by the
18 Illinois State Police.

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

25 (c-6) The Illinois Department of State Police may determine
26 which type of specimen or specimens, blood, saliva, or tissue,

1 is acceptable for submission to the Division of Forensic
2 Services for analysis.

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

13 (d-1) The Illinois Department of State Police shall provide
14 all equipment and instructions necessary for the collection of
15 saliva samples. The collection of saliva samples shall be
16 performed in a medically approved manner. Only a person trained
17 in the instructions promulgated by the Illinois State Police on
18 collecting saliva may collect saliva for the purposes of this
19 Section. 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-2) The Illinois Department of State Police shall provide
24 all equipment and instructions necessary for the collection of
25 tissue samples. The collection of tissue 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 tissue may collect tissue 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-5) To the extent that funds are available, the Illinois
8 Department of State Police shall contract with qualified
9 personnel and certified laboratories for the collection,
10 analysis, and categorization of known samples, except as
11 provided in subsection (n) of this Section.

12 (d-6) Agencies designated by the Illinois Department of
13 State Police and the Illinois Department of State Police may
14 contract with third parties to provide for the collection or
15 analysis of DNA, or both, of an offender's blood, saliva, and
16 tissue samples, except as provided in subsection (n) of this
17 Section.

18 (e) The genetic marker groupings shall be maintained by the
19 Illinois Department of State Police, Division of Forensic
20 Services.

21 (f) The genetic marker grouping analysis information
22 obtained pursuant to this Act shall be confidential and shall
23 be released only to peace officers of the United States, of
24 other states or territories, of the insular possessions of the
25 United States, of foreign countries duly authorized to receive
26 the same, to all peace officers of the State of Illinois and to

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

20 (f-1) Upon receipt of notification of a reversal of a
21 conviction based on actual innocence, or of the granting of a
22 pardon pursuant to Section 12 of Article V of the Illinois
23 Constitution, if that pardon document specifically states that
24 the reason for the pardon is the actual innocence of an
25 individual whose DNA record has been stored in the State or
26 national DNA identification index in accordance with this

1 Section by the Illinois Department of State Police, the DNA
2 record shall be expunged from the DNA identification index, and
3 the Department shall by rule prescribe procedures to ensure
4 that the record and any samples, analyses, or other documents
5 relating to such record, whether in the possession of the
6 Department or any law enforcement or police agency, or any
7 forensic DNA laboratory, including any duplicates or copies
8 thereof, are destroyed and a letter is sent to the court
9 verifying the expungement is completed.

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

16 (f-6) The Illinois Department of State Police may contract
17 with third parties for the purposes of implementing this
18 amendatory Act of the 93rd General Assembly, except as provided
19 in subsection (n) of this Section. Any other party contracting
20 to carry out the functions of this Section shall be subject to
21 the same restrictions and requirements of this Section insofar
22 as applicable, as the Illinois Department of State Police, and
23 to any additional restrictions imposed by the Illinois
24 Department of State Police.

25 (g) For the purposes of this Section, "qualifying offense"
26 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

1 impede, delay or stop the collection of the blood, saliva,
2 or tissue specimen is a Class A misdemeanor.

3 (2) In the event that a person's DNA sample is not
4 adequate for any reason, the person shall provide another
5 DNA sample for analysis. Duly authorized law enforcement
6 and corrections personnel may employ reasonable force in
7 cases in which an individual refuses to provide a DNA
8 sample required under this Act.

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

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

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

24 (2) All fees shall be collected by the clerk of the
25 court and forwarded to the State Offender DNA
26 Identification System Fund for deposit. The clerk of the

1 circuit court may retain the amount of \$10 from each
2 collected analysis fee to offset administrative costs
3 incurred in carrying out the clerk's responsibilities
4 under this Section.

5 (3) Fees deposited into the State Offender DNA
6 Identification System Fund shall be used by Illinois State
7 Police crime laboratories as designated by the Director of
8 State Police. These funds shall be in addition to any
9 allocations made pursuant to existing laws and shall be
10 designated for the exclusive use of State crime
11 laboratories. These uses may include, but are not limited
12 to, the following:

13 (A) Costs incurred in providing analysis and
14 genetic marker categorization as required by
15 subsection (d).

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

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

20 (D) Costs incurred in continuing research and
21 development of new techniques for analysis and genetic
22 marker categorization.

23 (E) Costs incurred in continuing education,
24 training, and professional development of forensic
25 scientists regularly employed by these laboratories.

26 (1) The failure of a person to provide a specimen, or of

1 any person or agency to collect a specimen, within the 45 day
2 period shall in no way alter the obligation of the person to
3 submit such specimen, or the authority of the Illinois
4 Department of State Police or persons designated by the
5 Department to collect the specimen, or the authority of the
6 Illinois Department of State Police to accept, analyze and
7 maintain the specimen or to maintain or upload results of
8 genetic marker grouping analysis information into a State or
9 national database.

10 (m) If any provision of this amendatory Act of the 93rd
11 General Assembly is held unconstitutional or otherwise
12 invalid, the remainder of this amendatory Act of the 93rd
13 General Assembly is not affected.

14 (n) Neither the Department of State Police, the Division of
15 Forensic Services, nor any laboratory of the Division of
16 Forensic Services may contract out forensic testing for the
17 purpose of an active investigation or a matter pending before a
18 court of competent jurisdiction without the written consent of
19 the prosecuting agency. For the purposes of this subsection
20 (n), "forensic testing" includes the analysis of physical
21 evidence in an investigation or other proceeding for the
22 prosecution of a violation of the Criminal Code of 1961 or for
23 matters adjudicated under the Juvenile Court Act of 1987, and
24 includes the use of forensic databases and databanks, including
25 DNA, firearm, and fingerprint databases, and expert testimony.
26 This subsection (n) does not prohibit the collection of samples

1 under subsection (o).

2 (o) Every person arrested on or after the effective date of
3 this amendatory Act of the 97th General Assembly for the
4 commission or attempted commission of a violent crime, as
5 defined in Section 3 of the Rights of Crime Victims and
6 Witnesses Act, shall submit specimens of blood, saliva, or
7 tissue within 45 days after arrest to the Illinois Department
8 of State Police at a collection site designated by the Illinois
9 Department of State Police. Subsections (c-6), (d), (d-1),
10 (d-2), (d-5), (d-6), (e), (f), (f-1), (f-5), (f-6), (h), and
11 (i) apply to the collection of samples under this subsection
12 (o). If specimens of blood, saliva, or tissue are submitted by
13 a person under this subsection (o) and the person is
14 subsequently convicted of, granted court supervision for, or
15 found guilty under the Juvenile Court Act of 1987 of the
16 offense for which the person was arrested, the specimens shall
17 be retained as the specimens required under subsection (a) and
18 the person shall pay the analysis fee in accordance with
19 subsection (j). If the charge for which the specimen was taken
20 is dismissed or the defendant is acquitted at trial, or the
21 defendant is convicted but the conviction is overturned, the
22 record and any samples, analyses, or other documents relating
23 to such record shall be expunged and destroyed in the manner
24 prescribed in subsection (f-1), provided there is no other
25 pending warrant that would otherwise require the preservation
26 of the record and any samples, analyses, or other documents

1 relating to such record.

2 (Source: P.A. 96-426, eff. 8-13-09; 96-642, eff. 8-24-09;
3 96-1000, eff. 7-2-10.)

4 Section 90. The State Mandates Act is amended by adding
5 Section 8.35 as follows:

6 (30 ILCS 805/8.35 new)

7 Sec. 8.35. Exempt mandate. Notwithstanding Sections 6 and 8
8 of this Act, no reimbursement by the State is required for the
9 implementation of any mandate created by this amendatory Act of
10 the 97th General Assembly.