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LRB093 19144 RLC 49009 a

1 AMENDMENT TO HOUSE BILL 4825

2 AMENDMENT NO. _____. Amend House Bill 4825, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Criminal Procedure of 1963 is
6 amended by adding Section 107-2.5 as follows:

7 (725 ILCS 5/107-2.5 new)

8 Sec. 107-2.5. DNA fingerprinting analysis.

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

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

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

12 (c) Subject to appropriation, the Department of State
13 Police shall implement this Section; however, this Section
14 becomes operative no later than the earliest of the following:
15 (1) two years after the effective date of this amendatory Act
16 of the 93rd General Assembly; (2) the date on which the
17 Department of State Police informs law enforcement agencies
18 that the Department is ready to collect samples; or (3) January
19 1, 2007.

20 Section 10. The Unified Code of Corrections is amended by
21 changing Section 5-4-3 as follows:

22 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

26 (a) Any person convicted of, found guilty under the
27 Juvenile Court Act of 1987 for, or who received a disposition
28 of court supervision for, a qualifying offense or attempt of a
29 qualifying offense, arrested for or convicted or found guilty
30 of any offense classified as a felony under Illinois law, found
31 guilty or given supervision for any offense classified as a
32 felony under the Juvenile Court Act of 1987, or

1 institutionalized as a sexually dangerous person under the
2 Sexually Dangerous Persons Act, or committed as a sexually
3 violent person under the Sexually Violent Persons Commitment
4 Act shall, regardless of the sentence or disposition imposed,
5 be required to submit specimens of blood, saliva, or tissue to
6 the Illinois Department of State Police in accordance with the
7 provisions of this Section, provided such person is:

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

14 (1.5) found guilty or given supervision under the
15 Juvenile Court Act of 1987 for a qualifying offense or
16 attempt of a qualifying offense on or after January 1,
17 1997;

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

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

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

30 (4) presently institutionalized as a sexually
31 dangerous person or presently institutionalized as a
32 person found guilty but mentally ill of a sexual offense or
33 attempt to commit a sexual offense;

34 (4.5) ordered committed as a sexually violent person on

1 or after the effective date of the Sexually Violent Persons
2 Commitment Act; ~~or~~

3 (5) seeking transfer to or residency in Illinois under
4 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
5 Corrections and the Interstate Compact for Adult Offender
6 Supervision or the Interstate Agreements on Sexually
7 Dangerous Persons Act; or

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

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

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,
27 saliva, or tissue shall provide specimens of blood, saliva, or
28 tissue within 45 days after sentencing or disposition at a
29 collection site designated by the Illinois Department of State
30 Police.

31 (c) Any person required by paragraphs (a) (3), (a) (4), and
32 (a) (4.5) to provide specimens of blood, saliva, or tissue shall
33 be required to provide such samples prior to final discharge,
34 parole, or release at a collection site designated by the

1 Illinois Department of State Police.

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

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

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

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

27 (d-1) The Illinois Department of State Police shall provide
28 all equipment and instructions necessary for the collection of
29 saliva samples under this Section. The collection of saliva
30 samples shall be performed in a medically approved manner. Only
31 a person trained in the instructions promulgated by the
32 Illinois State Police on collecting saliva may collect saliva
33 for the purposes of this Section. The samples shall thereafter
34 be forwarded to the Illinois Department of State Police,

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

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

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

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

22 (e) The genetic marker groupings shall be maintained by the
23 Illinois Department of State Police, Division of Forensic
24 Services.

25 (f) The genetic marker grouping analysis information
26 obtained pursuant to this Act and the information obtained
27 under Section 107-2.5 of the Code of Criminal Procedure of 1963
28 shall be confidential and shall be released only to peace
29 officers of the United States, of other states or territories,
30 of the insular possessions of the United States, of foreign
31 countries duly authorized to receive the same, to all peace
32 officers of the State of Illinois and to all prosecutorial
33 agencies, and to defense counsel as provided by Section 116-5
34 of the Code of Criminal Procedure of 1963. The genetic marker

1 grouping analysis information obtained pursuant to this Act
2 shall be used only for (i) valid law enforcement identification
3 purposes and as required by the Federal Bureau of Investigation
4 for participation in the National DNA database, (ii) technology
5 validation purposes, (iii) a population statistics database,
6 ~~or~~ (iv) quality assurance purposes if personally identifying
7 information is removed, or (v) ~~(iii)~~ assisting in the defense
8 of the criminally accused pursuant to Section 116-5 of the Code
9 of Criminal Procedure of 1963. Notwithstanding any other
10 statutory provision to the contrary, all information obtained
11 under this Section shall be maintained in a single State data
12 base, which may be uploaded into a national database, and which
13 information may be subject to expungement only as set forth in
14 subsection (f-1).

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

31 (f-5) Any person who intentionally uses genetic marker
32 grouping analysis information, or any other information
33 derived from a DNA sample, beyond the authorized uses as
34 provided under this Section, or any other Illinois law, is

1 guilty of a Class 4 felony, and shall be subject to a fine of
2 not less than \$5,000.

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

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

13 (1) any violation or inchoate violation of Section
14 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
15 Criminal Code of 1961;

16 (1.1) any violation or inchoate violation of Section
17 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
18 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
19 persons are convicted on or after July 1, 2001;

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

22 (3) (blank);

23 (4) any inchoate violation of Section 9-3.1, 11-9.3,
24 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

27 (g-5) (Blank).

28 (h) The Illinois Department of State Police shall be the
29 State central repository for all genetic marker grouping
30 analysis information obtained pursuant to this Act. The
31 Illinois Department of State Police may promulgate rules for
32 the form and manner of the collection of blood, saliva, or
33 tissue samples and other procedures for the operation of this
34 Act. The provisions of the Administrative Review Law shall

1 apply to all actions taken under the rules so promulgated.

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

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

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

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

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

28 (2) All fees shall be collected by the clerk of the
29 court and forwarded to the State Offender DNA
30 Identification System Fund for deposit. The clerk of the
31 circuit court may retain the amount of \$10 from each
32 collected analysis fee to offset administrative costs
33 incurred in carrying out the clerk's responsibilities
34 under this Section.

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

9 (A) Costs incurred in providing analysis and
10 genetic marker categorization as required by
11 subsection (d).

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

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

16 (D) Costs incurred in continuing research and
17 development of new techniques for analysis and genetic
18 marker categorization.

19 (E) Costs incurred in continuing education,
20 training, and professional development of forensic
21 scientists regularly employed by these laboratories.

22 (1) The failure of a person to provide a specimen, or of
23 any person or agency to collect a specimen, within the 45 day
24 period shall in no way alter the obligation of the person to
25 submit such specimen, or the authority of the Illinois
26 Department of State Police or persons designated by the
27 Department to collect the specimen, or the authority of the
28 Illinois Department of State Police to accept, analyze and
29 maintain the specimen or to maintain or upload results of
30 genetic marker grouping analysis information into a State or
31 national database.

32 (m) If any provision of this amendatory Act of the 93rd
33 General Assembly is held unconstitutional or otherwise
34 invalid, the remainder of this amendatory Act of the 93rd

1 General Assembly is not affected.

2 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,
3 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;
4 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.
5 11-19-03; revised 12-9-03.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.".