



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### HB2195

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.

LRB097 08671 RLC 48800 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; 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 or the Illinois Department of Juvenile Justice on  
10 or after August 22, 2002, whether for a term of years, natural  
11 life, or a sentence of death, who has not yet submitted a  
12 sample of blood, saliva, or tissue shall be required to submit  
13 a specimen of blood, saliva, or tissue prior to his or her  
14 final discharge, or release on parole or mandatory supervised  
15 release, as a condition of his or her parole or mandatory  
16 supervised release, or within 6 months from August 13, 2009  
17 (the effective date of Public Act 96-426), whichever is sooner.  
18 A person incarcerated on or after August 13, 2009 (the  
19 effective date of Public Act 96-426) shall be required to  
20 submit a sample within 45 days of incarceration, or prior to  
21 his or her final discharge, or release on parole or mandatory  
22 supervised release, as a condition of his or her parole or  
23 mandatory supervised release, whichever is sooner. These  
24 specimens shall be placed into the State or national DNA  
25 database, to be used in accordance with other provisions of  
26 this Section, by the Illinois State Police.

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 August 13, 2009 (the effective date of  
9 Public Act 96-426), whichever is sooner. These specimens shall  
10 be placed into the State or national DNA database, to be used  
11 in accordance with other provisions of this Act, by the  
12 Illinois State Police.

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

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

23 (c-7) Any person required by paragraph (a)(6) to provide  
24 specimens of saliva or tissue shall be required to provide the  
25 specimens at the booking procedure. The law enforcement officer  
26 shall verify at each arrest that the arrestee sample is not

1 already on file with the Department of State Police.

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

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

22 (d-2) The Illinois Department of State Police shall provide  
23 all equipment and instructions necessary for the collection of  
24 tissue samples under this Section. The collection of tissue  
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 tissue may collect tissue  
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-5) To the extent that funds are available, the Illinois  
7 Department of State Police shall contract with qualified  
8 personnel and certified laboratories for the collection,  
9 analysis, and categorization of known samples, except as  
10 provided in subsection (n) of this Section.

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

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

20 (f) The genetic marker grouping analysis information  
21 obtained pursuant to this Act and the information obtained  
22 under Section 107-2.5 of the Code of Criminal Procedure of 1963  
23 shall be confidential and shall be released only to peace  
24 officers of the United States, of other states or territories,  
25 of the insular possessions of the United States, of foreign  
26 countries duly authorized to receive the same, to all peace

1 officers of the State of Illinois and to all prosecutorial  
2 agencies, and to defense counsel as provided by Section 116-5  
3 of the Code of Criminal Procedure of 1963. The genetic marker  
4 grouping analysis information obtained pursuant to this Act  
5 shall be used only for (i) valid law enforcement identification  
6 purposes and as required by the Federal Bureau of Investigation  
7 for participation in the National DNA database, (ii) technology  
8 validation purposes, (iii) a population statistics database,  
9 (iv) quality assurance purposes if personally identifying  
10 information is removed, (v) assisting in the defense of the  
11 criminally accused pursuant to Section 116-5 of the Code of  
12 Criminal Procedure of 1963, or (vi) identifying and assisting  
13 in the prosecution of a person who is suspected of committing a  
14 sexual assault as defined in Section 1a of the Sexual Assault  
15 Survivors Emergency Treatment Act. Having established the  
16 State DNA identification index, a match between casework  
17 evidence DNA samples from a criminal investigation and DNA  
18 samples from a State or federal DNA database of eligible  
19 offenders may be used only to sustain probable cause for the  
20 issuance of a warrant to obtain the DNA sample from an eligible  
21 offender for confirmation. The identification, detention,  
22 arrest, or conviction of a person based upon a database match  
23 or database information is not invalidated if it is later  
24 determined that the sample should not have been obtained or  
25 placed in the database. Notwithstanding any other statutory  
26 provision to the contrary, all information obtained under this

1 Section shall be maintained in a single State data base, which  
2 may be uploaded into a national database, and which information  
3 may be subject to expungement only as set forth in subsection  
4 (f-1).

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

22 Upon receipt of a certified copy of a final court order for  
23 each charge against an individual, whose DNA record has been  
24 stored in the State or national DNA identification index in  
25 accordance with this Section by the Illinois Department of  
26 State Police, establishing that such a charge has been

1 dismissed or resulted in acquittal or that no charge was filed  
2 within the applicable time period, the DNA record for that  
3 arrest shall be expunged from the DNA identification index, and  
4 the Department shall by rule prescribe procedures to ensure  
5 that the record and any samples, analyses, or other documents  
6 relating to such records, in the possession or control of the  
7 Department are destroyed and a letter is sent to the court  
8 verifying the expungement is completed.

9 (f-5) Any person who intentionally uses genetic marker  
10 grouping analysis information, or any other information  
11 derived from a DNA sample, beyond the authorized uses as  
12 provided under this Section or under Section 107-2.5 of the  
13 Code of Criminal Procedure of 1963, or any other Illinois law,  
14 is guilty of a Class 3 4 felony, and shall be subject to a fine  
15 of 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 sentenced and required by subsection (a) to  
10          submit 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 Public Act 93-216 ~~this amendatory~~  
11 ~~Act of the 93rd General Assembly~~ is held unconstitutional or  
12 otherwise invalid, the remainder of Public Act 93-216 ~~this~~  
13 ~~amendatory Act of the 93rd 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 (o) If any provision of this amendatory Act of the 97th

1 General Assembly is held unconstitutional or otherwise  
2 invalid, the remainder of this amendatory Act of the 97th  
3 General Assembly is not affected.

4 (Source: P.A. 96-426, eff. 8-13-09; 96-642, eff. 8-24-09;  
5 96-1000, eff. 7-2-10.)

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