



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3533

Introduced 2/17/2023, by Rep. Patrick Windhorst

SYNOPSIS AS INTRODUCED:

New Act

Creates the Sexual Assault Survivors Protection Act. Establishes procedures that apply to the collection and use of known reference samples of DNA from a victim of a sex offense or alleged sex offense, and to known reference samples of DNA from any individual that was voluntarily provided for the purpose of exclusion, and to any profiles developed from those samples. Provides that law enforcement agencies and their agents shall use these DNA samples or profiles only for purposes directly related to the incident being investigated. Provides that a law enforcement agency or agent of a law enforcement agency may not compare any of these samples or profiles with DNA samples or profiles that do not relate to the incident being investigated. Provides that a law enforcement agency or agent of a law enforcement agency may not include any of these DNA profiles in any database that allows these samples to be compared to or matched with profiles derived from DNA evidence obtained from crime scenes. Provides that any part of a DNA sample that remains after the requested testing or analysis has been performed shall be securely stored and may only be used in accordance with the restrictions on use and disclosure of the sample provided in these provisions. Provides that an agent of a law enforcement agency may not provide any part of these DNA samples or profiles to any person or entity other than the law enforcement agency that provided them, except portions of these remaining DNA samples may be provided to the defendant when authorized by court order. Provides that the database profile of a person whose DNA profile has been voluntarily provided for purposes of exclusion shall be expunged from all public and private databases if the person has no past or present offense or pending charge which qualifies that person for inclusion within this State's DNA database as provided in the Unified Code of Corrections. Provides exceptions.

LRB103 29376 RLC 55765 b

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 1. Short title. This Act may be cited as the Sexual
5 Assault Survivors Protection Act.

6 Section 5. DNA reference samples.

7 (a) In this Section:

8 "Incident being investigated" means the crime or alleged
9 crime that caused a law enforcement agency or agent to analyze
10 or request a DNA sample from a victim of or witness to that sex
11 offense or alleged sex offense.

12 "Agent of a law enforcement agency" includes any person or
13 entity that the agency provides with access to a DNA sample
14 collected directly from the person of a victim of or witness to
15 a sex offense or alleged sex offense, or to any profile
16 developed from those samples. This includes, but is not
17 limited to, public or private DNA testing facilities.

18 "Sex offense" means any offense described in subsection
19 (c) of Section 10 of the Sex Offender Management Board Act.

20 "Victim" or "witness" does not include any person who is a
21 target of the investigation of the incident being
22 investigated, if law enforcement agents have probable cause to
23 believe that person has committed a sex offense relating to

1 the incident under investigation.

2 "Voluntarily provided for the purpose of exclusion" means
3 that law enforcement agents do not consider the individual to
4 be a suspect and have requested a voluntary DNA sample in order
5 to exclude that person's DNA profile from consideration in the
6 current investigation.

7 (b) The following procedures apply to known reference
8 samples of DNA from a victim of a sex offense or alleged sex
9 offense, and to known reference samples of DNA from any
10 individual that were voluntarily provided for the purpose of
11 exclusion, as well as to any profiles developed from those
12 samples:

13 (1) Law enforcement agencies and their agents shall
14 use these DNA samples or profiles only for purposes
15 directly related to the incident being investigated.

16 (2) A law enforcement agency or agent of a law
17 enforcement agency may not compare any of these samples or
18 profiles with DNA samples or profiles that do not relate
19 to the incident being investigated.

20 (3) A law enforcement agency or agent of a law
21 enforcement agency may not include any of these DNA
22 profiles in any database that allows these samples to be
23 compared to or matched with profiles derived from DNA
24 evidence obtained from crime scenes.

25 (4) A law enforcement agency or agent of a law
26 enforcement agency may not provide any other person or

1 entity with access to any of these DNA samples or
2 profiles, unless that person or entity agrees to abide by
3 the statutory restrictions on the use and disclosure of
4 that sample or profile.

5 (5) Any part of a DNA sample that remains after the
6 requested testing or analysis has been performed shall be
7 securely stored and may only be used in accordance with
8 the restrictions on use and disclosure of the sample
9 provided in this Section.

10 (6) An agent of a law enforcement agency may not
11 provide any part of these DNA samples or profiles to any
12 person or entity other than the law enforcement agency
13 that provided them, except portions of these remaining DNA
14 samples may be provided to the defendant when authorized
15 by court order.

16 (7) The database profile of a person whose DNA profile
17 has been voluntarily provided for purposes of exclusion
18 shall be expunged from all public and private databases if
19 the person has no past or present offense or pending
20 charge which qualifies that person for inclusion within
21 this State's DNA database as provided in Section 5-4-3 of
22 the Unified Code of Corrections.

23 (8) This Section does not prohibit crime laboratories
24 from collecting, retaining, and using for comparison
25 purposes in multiple cases the following DNA profiles:

26 (A) The DNA profiles from persons whose proximity

1 or access to DNA case evidence during the collection,
2 handling, or processing of that evidence might result
3 in DNA contamination, including first responders,
4 crime scene investigators, laboratory staff, or others
5 at the laboratory, if these kinds of elimination
6 samples are voluntarily provided with written consent
7 for their use as quality assurance or control samples,
8 or if the elimination samples are obtained as a
9 condition of employment with written consent, so that
10 the crime laboratory can assure reliable results.

11 (B) The DNA profiles from persons associated with
12 the manufacturing or production of consumable supplies
13 or reagents or positive control samples used in
14 laboratory testing, if these kinds of elimination
15 samples are voluntarily provided with written consent.

16 (C) The DNA profiles that may be incidentally
17 encountered on consumable supplies or reagents such as
18 plastic tubes, plastic plates, swabs, and buffers.

19 (9) The requirement for written consent for voluntary
20 elimination samples does not preclude a DNA testing
21 laboratory from retaining, for use consistent with this
22 Section, the voluntary quality assurance or control
23 samples described in paragraph (8) that were provided
24 without written consent by persons prior to the effective
25 date of this Act, or if the laboratory is otherwise
26 required to retain such case samples by another provision

1 of law.

2 (10) This Section does not preclude a DNA testing
3 laboratory from conducting a limited comparison of samples
4 that were analyzed concurrently in order to evaluate the
5 DNA typing results for potential contamination, determine
6 the source of contamination when detected, and to ensure
7 that the contaminating profiles were not misidentified as
8 DNA profiles from putative perpetrators.

9 (11) This Section does not affect the inclusion of
10 samples in the State DNA database described in Section
11 5-4-3 of the Unified Code of Corrections, the use of State
12 DNA databases for identifying missing persons under the
13 Missing Persons Identification Act, the compliance with
14 Section 116-3 of the Code of Criminal Procedure of 1963
15 that allow the release of samples for post-conviction
16 testing, or the use of reference samples from a suspect
17 lawfully collected in a manner that does not violate this
18 Section.

19 (c) This Section does not apply to evidence arising from
20 the victim that is biological material that is not the
21 victim's own and is not from an individual who voluntarily
22 provided a reference sample for exclusion, such as DNA
23 transferred from an assailant.