

1 AMENDMENT TO HOUSE BILL 1281

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1281 by replacing  
3 the title with the following:

4 "AN ACT in relation to criminal matters."; and

5 by replacing everything after the enacting clause with the  
6 following:

7 "Section 5. The Illinois Criminal Justice Information Act  
8 is amended by adding Section 7.2 as follows:

9 (20 ILCS 3930/7.2 new)

10 Sec. 7.2. Custodial Interview Pilot Program.

11 (a) Legislative findings and intent. The General  
12 Assembly finds that technology has made it possible to  
13 electronically record custodial interviews of suspects during  
14 first degree murder investigations. This technology will  
15 protect law enforcement agencies against claims of abuse and  
16 coercion by suspects while providing a memorialized account  
17 of interviews at police stations. The technology will also  
18 provide a better means for courts to review confessions of  
19 suspects with direct evidence of demeanor, tone, manner, and  
20 content of statements. The General Assembly intends to create  
21 a Custodial Interview Pilot Program to establish 4 pilot

1 programs at police stations in the State of Illinois. For  
2 each program, video and audio experts shall install equipment  
3 and train participating law enforcement agencies to  
4 electronically record custodial interviews at their  
5 respective police stations. Participating law enforcement  
6 agencies shall choose how to use the equipment in cooperation  
7 with the local State's Attorney's office. The participating  
8 law enforcement agencies may choose to electronically record  
9 interviews of suspects for offenses other than first degree  
10 murder if they adopt local protocols in cooperation with the  
11 local State's Attorney's office.

12 (b) Definitions. In this Section:

13 (1) "Electronically record" means to memorialize by  
14 video and audio electronic equipment.

15 (2) "Custodial interviews" means interviews of  
16 suspects during first degree murder investigations or  
17 other investigations established by local protocol by law  
18 enforcement authorities that take place at the police  
19 station.

20 (c) Custodial Interview Pilot Program. The Authority  
21 shall, subject to appropriation, establish a Custodial  
22 Interview Pilot Program to operate 4 custodial interview  
23 pilot programs. The programs shall be established in a police  
24 station in the County of Cook and in 3 other police stations  
25 geographically distributed throughout the State. Each  
26 participating law enforcement agency must:

27 (1) Promulgate procedures for recording custodial  
28 interviews of suspects during first degree murder  
29 investigations by video and audio means.

30 (2) Promulgate procedures for maintaining and  
31 storing video and audio recordings.

32 (d) Each of the 4 pilot programs established by the  
33 Authority shall be in existence for a minimum of 2 years  
34 after its establishment under this Act.

1       (e) Report. No later than one year after the  
 2       establishment of pilot programs under this Section, the  
 3       Authority must report to the General Assembly on the efficacy  
 4       of the Custodial Interview Pilot Program.

5       (f) The Authority shall adopt rules in cooperation with  
 6       the Illinois Department of State Police to implement this  
 7       Section.

8       Section 10. The Criminal Code of 1961 is amended by  
 9       changing Sections 9-1 and 14-3 as follows:

10       (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

11       Sec. 9-1. First degree Murder - Death penalties -  
 12       Exceptions - Separate Hearings - Proof - Findings - Appellate  
 13       procedures - Reversals.

14       (a) A person who kills an individual without lawful  
 15       justification commits first degree murder if, in performing  
 16       the acts which cause the death:

17               (1) he either intends to kill or do great bodily  
 18       harm to that individual or another, or knows that such  
 19       acts will cause death to that individual or another; or

20               (2) he knows that such acts create a strong  
 21       probability of death or great bodily harm to that  
 22       individual or another; or

23               (3) he is attempting or committing a forcible  
 24       felony other than second degree murder.

25       (b) Aggravating Factors. A defendant who at the time of  
 26       the commission of the offense has attained the age of 18 or  
 27       more and who has been found guilty of first degree murder may  
 28       be sentenced to death if:

29               (1) the murdered individual was a peace officer or  
 30       fireman killed in the course of performing his official  
 31       duties, to prevent the performance of his official  
 32       duties, or in retaliation for performing his official

1 duties, and the defendant knew or should have known that  
2 the murdered individual was a peace officer or fireman;  
3 or

4 (2) the murdered individual was an employee of an  
5 institution or facility of the Department of Corrections,  
6 or any similar local correctional agency, killed in the  
7 course of performing his official duties, to prevent the  
8 performance of his official duties, or in retaliation for  
9 performing his official duties, or the murdered  
10 individual was an inmate at such institution or facility  
11 and was killed on the grounds thereof, or the murdered  
12 individual was otherwise present in such institution or  
13 facility with the knowledge and approval of the chief  
14 administrative officer thereof; or

15 (3) the defendant has been convicted of murdering  
16 two or more individuals under subsection (a) of this  
17 Section or under any law of the United States or of any  
18 state which is substantially similar to subsection (a) of  
19 this Section regardless of whether the deaths occurred  
20 as the result of the same act or of several related or  
21 unrelated acts so long as the deaths were the result of  
22 either an intent to kill more than one person or of  
23 separate acts which the defendant knew would cause death  
24 or create a strong probability of death or great bodily  
25 harm to the murdered individual or another; or

26 (4) ~~(Blank) the-murdered-individual-was-killed-as-a~~  
27 ~~result-of-the-hijacking-of-an-airplane,-train,-ship,-bus~~  
28 ~~or-other-public-conveyance;~~ or

29 (5) the defendant committed the murder pursuant to  
30 a contract, agreement or understanding by which he was to  
31 receive money or anything of value in return for  
32 committing the murder or procured another to commit the  
33 murder for money or anything of value; or

34 (6) the murdered individual was killed in the

1 course of another felony if:

2 (a) the murdered individual:

3 (i) was actually killed by the defendant,

4 or

5 (ii) received physical injuries  
6 personally inflicted by the defendant  
7 substantially contemporaneously with physical  
8 injuries caused by one or more persons for  
9 whose conduct the defendant is legally  
10 accountable under Section 5-2 of this Code, and  
11 the physical injuries inflicted by either the  
12 defendant or the other person or persons for  
13 whose conduct he is legally accountable caused  
14 the death of the murdered individual; and

15 (b) in performing the acts which caused the  
16 death of the murdered individual or which resulted  
17 in physical injuries personally inflicted by the  
18 defendant on the murdered individual under the  
19 circumstances of subdivision (ii) of subparagraph  
20 (a) of paragraph (6) of subsection (b) of this  
21 Section, the defendant acted with the intent to kill  
22 the murdered individual or with the knowledge that  
23 his acts created a strong probability of death or  
24 great bodily harm to the murdered individual or  
25 another; and

26 (c) the other felony was one of the following:  
27 armed robbery, ~~armed--violence~~, robbery, predatory  
28 criminal sexual assault of a child, aggravated  
29 criminal sexual assault, aggravated kidnapping,  
30 aggravated vehicular hijacking, ~~forcible-detention~~,  
31 arson, aggravated arson, aggravated stalking,  
32 burglary, residential burglary, home invasion,  
33 ~~calculated-criminal-drug-conspiracy--as--defined--in~~  
34 ~~Section--405--of--the-Illinois-Controlled-Substances~~

1 Act, streetgang criminal drug conspiracy as defined  
 2 in Section 405.2 of the Illinois Controlled  
 3 Substances Act, or the attempt to commit any of the  
 4 felonies listed in this subsection (c); or

5 (7) the murdered individual was under 12 years of  
 6 age and the death resulted from exceptionally brutal or  
 7 heinous behavior indicative of wanton cruelty; or

8 (8) the defendant committed the murder with intent  
 9 to prevent the murdered individual from testifying or  
 10 participating in any criminal investigation or  
 11 prosecution or giving material assistance to the State in  
 12 any investigation or prosecution, either against the  
 13 defendant or another; or the defendant committed the  
 14 murder because the murdered individual was a witness in  
 15 any prosecution or gave material assistance to the State  
 16 in any investigation or prosecution, either against the  
 17 defendant or another; or

18 (9) (Blank) the defendant, while committing an  
 19 offense punishable under Sections 401, 401.1, 401.2, 405,  
 20 405.2, 407 or 407.1 or subsection (b) of Section 404 of  
 21 the Illinois Controlled Substances Act, or while engaged  
 22 in a conspiracy or solicitation to commit such offense,  
 23 intentionally killed an individual or counseled,  
 24 commanded, induced, procured or caused the intentional  
 25 killing of the murdered individual; or

26 (10) (Blank) the defendant was incarcerated in an  
 27 institution or facility of the Department of Corrections  
 28 at the time of the murder, and while committing an  
 29 offense punishable as a felony under Illinois law, or  
 30 while engaged in a conspiracy or solicitation to commit  
 31 such offense, intentionally killed an individual or  
 32 counseled, commanded, induced, procured or caused the  
 33 intentional killing of the murdered individual; or

34 (11) the murder was committed in a cold, calculated

1 and premeditated manner pursuant to a preconceived plan,  
 2 scheme or design to take a human life by unlawful means,  
 3 and the conduct of the defendant created a reasonable  
 4 expectation that the death of a human being would result  
 5 therefrom; or

6 (12) the murdered individual was an emergency  
 7 medical technician - ambulance, emergency medical  
 8 technician - intermediate, emergency medical technician -  
 9 paramedic, ambulance driver, or other medical assistance  
 10 or first aid personnel, employed by a municipality or  
 11 other governmental unit, killed in the course of  
 12 performing his official duties, to prevent the  
 13 performance of his official duties, or in retaliation for  
 14 performing his official duties, and the defendant knew or  
 15 should have known that the murdered individual was an  
 16 emergency medical technician - ambulance, emergency  
 17 medical technician - intermediate, emergency medical  
 18 technician - paramedic, ambulance driver, or other  
 19 medical assistance or first aid personnel; or

20 (13) (Blank) the---defendant---was---a---principle  
 21 administrator,---organizer,---or---leader---of---a---calculated  
 22 criminal-drug-conspiracy---consisting---of---a---hierarchial  
 23 position---of---authority---superior---to---that---of---all---other  
 24 members-of-the-conspiracy,---and-the---defendant---counseled,  
 25 commanded,---induced,---procured,---or---caused-the-intentional  
 26 killing-of-the-murdered-person; or

27 (14) the murder was intentional and involved the  
 28 infliction of torture. For the purpose of this Section  
 29 torture means the infliction of or subjection to extreme  
 30 physical pain, motivated by an intent to increase or  
 31 prolong the pain, suffering or agony of the victim; or

32 (15) (Blank) the-murder-was-committed-as--a--result  
 33 of---the---intentional---discharge---of---a---firearm---by---the  
 34 defendant-from-a-motor-vehicle-and--the--victim--was--not

1 ~~present-within-the-motor-vehicle~~; or

2 (16) the murdered individual was 60 years of age or  
3 older and the death resulted from exceptionally brutal or  
4 heinous behavior indicative of wanton cruelty; or

5 (17) the murdered individual was a disabled person  
6 and the defendant knew or should have known that the  
7 murdered individual was disabled. For purposes of this  
8 paragraph (17), "disabled person" means a person who  
9 suffers from a permanent physical or mental impairment  
10 resulting from disease, an injury, a functional disorder,  
11 or a congenital condition that renders the person  
12 incapable of adequately providing for his or her own  
13 health or personal care; or

14 (18) the murder was committed by reason of any  
15 person's activity as a community policing volunteer or to  
16 prevent any person from engaging in activity as a  
17 community policing volunteer; or

18 (19) the murdered individual was subject to an  
19 order of protection and the murder was committed by a  
20 person against whom the same order of protection was  
21 issued under the Illinois Domestic Violence Act of 1986;  
22 or

23 (20) the murdered individual was known by the  
24 defendant to be a teacher or other person employed in any  
25 school and the teacher or other employee is upon the  
26 grounds of a school or grounds adjacent to a school, or  
27 is in any part of a building used for school purposes; or

28 (21) the murder was committed by the defendant in  
29 connection with or as a result of the offense of  
30 terrorism as defined in Section 29D-30 of this Code.

31 For the purpose of this Section:

32 "Participating in any criminal investigation or  
33 prosecution" is intended to include those appearing in the  
34 proceedings in any capacity, such as trial judges,



1 prosecutors, defense attorneys, investigators, witnesses, or  
2 jurors.

3 (c) Consideration of factors in Aggravation and  
4 Mitigation.

5 The court shall consider, or shall instruct the jury to  
6 consider any aggravating and any mitigating factors which are  
7 relevant to the imposition of the death penalty. Aggravating  
8 factors may include but need not be limited to those factors  
9 set forth in subsection (b). Mitigating factors may include  
10 but need not be limited to the following:

11 (1) the defendant has no significant history of  
12 prior criminal activity;

13 (2) the murder was committed while the defendant  
14 was under the influence of extreme mental or emotional  
15 disturbance, although not such as to constitute a defense  
16 to prosecution;

17 (3) the murdered individual was a participant in  
18 the defendant's homicidal conduct or consented to the  
19 homicidal act;

20 (4) the defendant acted under the compulsion of  
21 threat or menace of the imminent infliction of death or  
22 great bodily harm;

23 (5) the defendant was not personally present during  
24 commission of the act or acts causing death;

25 (6) the defendant's background includes a history  
26 of extreme emotional or physical abuse;

27 (7) the defendant suffers from a reduced mental  
28 capacity.

29 (d) Separate sentencing hearing.

30 Where requested by the State, the court shall conduct a  
31 separate sentencing proceeding to determine the existence of  
32 factors set forth in subsection (b) and to consider any  
33 aggravating or mitigating factors as indicated in subsection  
34 (c). The proceeding shall be conducted:

1           (1) before the jury that determined the defendant's  
2           guilt; or

3           (2) before a jury impanelled for the purpose of the  
4           proceeding if:

5                   A. the defendant was convicted upon a plea of  
6                   guilty; or

7                   B. the defendant was convicted after a trial  
8                   before the court sitting without a jury; or

9                   C. the court for good cause shown discharges  
10                  the jury that determined the defendant's guilt; or

11          (3) before the court alone if the defendant waives  
12          a jury for the separate proceeding.

13          (e) Evidence and Argument.

14          During the proceeding any information relevant to any of  
15          the factors set forth in subsection (b) may be presented by  
16          either the State or the defendant under the rules governing  
17          the admission of evidence at criminal trials. Any  
18          information relevant to any additional aggravating factors or  
19          any mitigating factors indicated in subsection (c) may be  
20          presented by the State or defendant regardless of its  
21          admissibility under the rules governing the admission of  
22          evidence at criminal trials. The State and the defendant  
23          shall be given fair opportunity to rebut any information  
24          received at the hearing.

25          (f) Proof.

26          The burden of proof of establishing the existence of any  
27          of the factors set forth in subsection (b) is on the State  
28          and shall not be satisfied unless established beyond a  
29          reasonable doubt.

30          (g) Procedure - Jury.

31          If at the separate sentencing proceeding the jury finds  
32          that none of the factors set forth in subsection (b) exists,  
33          the court shall sentence the defendant to a term of  
34          imprisonment under Chapter V of the Unified Code of

1 Corrections. If there is a unanimous finding by the jury  
 2 that one or more of the factors set forth in subsection (b)  
 3 exist, the jury shall consider aggravating and mitigating  
 4 factors as instructed by the court and shall determine  
 5 whether the sentence of death shall be imposed. If the jury  
 6 determines unanimously, after weighing the factors in  
 7 aggravation and mitigation, that death is the appropriate  
 8 sentence ~~that there are no mitigating factors--sufficient--to~~  
 9 ~~preclude--the--imposition--of--the--death--sentence,~~ the court  
 10 shall sentence the defendant to death.

11 If Unless the jury determines unanimously, after weighing  
 12 the factors in aggravation and mitigation, that death is not  
 13 the appropriate sentence, ~~finds that there are no mitigating~~  
 14 ~~factors sufficient to preclude the imposition--of--the--death~~  
 15 sentence the court shall sentence the defendant to a term of  
 16 natural life imprisonment under Chapter V of the Unified Code  
 17 of Corrections.

18 (h) Procedure - No Jury.

19 In a proceeding before the court alone, if the court  
 20 finds that none of the factors found in subsection (b)  
 21 exists, the court shall sentence the defendant to a term of  
 22 imprisonment under Chapter V of the Unified Code of  
 23 Corrections.

24 If the Court determines, after weighing the factors in  
 25 aggravation and mitigation, that death is the appropriate  
 26 sentence ~~that one--or--more--of--the--factors--set--forth--in~~  
 27 ~~subsection--(b)--exists,~~ ~~the--Court--shall--consider--any~~  
 28 ~~aggravating--and--mitigating--factors--as--indicated--in--subsection~~  
 29 ~~(c).~~ ~~If the Court determines that there are no mitigating~~  
 30 ~~factors sufficient to preclude the imposition of the death~~  
 31 sentence, the Court shall sentence the defendant to death.

32 If Unless the court finds that ~~there are no mitigating~~  
 33 ~~factors sufficient to preclude the imposition of the sentence~~  
 34 of death is not the appropriate sentence, the court shall

1 sentence the defendant to a term of natural life imprisonment  
2 under Chapter V of the Unified Code of Corrections.

3 (i) Appellate Procedure.

4 The conviction and sentence of death shall be subject to  
5 automatic review by the Supreme Court. Such review shall be  
6 in accordance with rules promulgated by the Supreme Court.

7 (j) Disposition of reversed death sentence.

8 In the event that the death penalty in this Act is held  
9 to be unconstitutional by the Supreme Court of the United  
10 States or of the State of Illinois, any person convicted of  
11 first degree murder shall be sentenced by the court to a term  
12 of imprisonment under Chapter V of the Unified Code of  
13 Corrections.

14 In the event that any death sentence pursuant to the  
15 sentencing provisions of this Section is declared  
16 unconstitutional by the Supreme Court of the United States or  
17 of the State of Illinois, the court having jurisdiction over  
18 a person previously sentenced to death shall cause the  
19 defendant to be brought before the court, and the court shall  
20 sentence the defendant to a term of imprisonment under  
21 Chapter V of the Unified Code of Corrections.

22 (k) Guidelines for seeking the death penalty. The  
23 Attorney General and States Attorney's Association shall  
24 adopt voluntary guidelines on procedures for deciding whether  
25 or not to seek the death penalty. The guidelines do not have  
26 the force of law and are only advisory in nature.

27 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;  
28 92-854, eff. 12-5-02.)

29 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

30 Sec. 14-3. Exemptions. The following activities shall  
31 be exempt from the provisions of this Article:

32 (a) Listening to radio, wireless and television  
33 communications of any sort where the same are publicly made;

1           (b) Hearing conversation when heard by employees of any  
2 common carrier by wire incidental to the normal course of  
3 their employment in the operation, maintenance or repair of  
4 the equipment of such common carrier by wire so long as no  
5 information obtained thereby is used or divulged by the  
6 hearer;

7           (c) Any broadcast by radio, television or otherwise  
8 whether it be a broadcast or recorded for the purpose of  
9 later broadcasts of any function where the public is in  
10 attendance and the conversations are overheard incidental to  
11 the main purpose for which such broadcasts are then being  
12 made;

13           (d) Recording or listening with the aid of any device to  
14 any emergency communication made in the normal course of  
15 operations by any federal, state or local law enforcement  
16 agency or institutions dealing in emergency services,  
17 including, but not limited to, hospitals, clinics, ambulance  
18 services, fire fighting agencies, any public utility,  
19 emergency repair facility, civilian defense establishment or  
20 military installation;

21           (e) Recording the proceedings of any meeting required to  
22 be open by the Open Meetings Act, as amended;

23           (f) Recording or listening with the aid of any device to  
24 incoming telephone calls of phone lines publicly listed or  
25 advertised as consumer "hotlines" by manufacturers or  
26 retailers of food and drug products. Such recordings must be  
27 destroyed, erased or turned over to local law enforcement  
28 authorities within 24 hours from the time of such recording  
29 and shall not be otherwise disseminated. Failure on the part  
30 of the individual or business operating any such recording or  
31 listening device to comply with the requirements of this  
32 subsection shall eliminate any civil or criminal immunity  
33 conferred upon that individual or business by the operation  
34 of this Section;

1           (g) With prior notification to the State's Attorney of  
2 the county in which it is to occur, recording or listening  
3 with the aid of any device to any conversation where a law  
4 enforcement officer, or any person acting at the direction of  
5 law enforcement, is a party to the conversation and has  
6 consented to it being intercepted or recorded under  
7 circumstances where the use of the device is necessary for  
8 the protection of the law enforcement officer or any person  
9 acting at the direction of law enforcement, in the course of  
10 an investigation of a forcible felony, a felony violation of  
11 the Illinois Controlled Substances Act, a felony violation of  
12 the Cannabis Control Act, or any "streetgang related" or  
13 "gang-related" felony as those terms are defined in the  
14 Illinois Streetgang Terrorism Omnibus Prevention Act. Any  
15 recording or evidence derived as the result of this exemption  
16 shall be inadmissible in any proceeding, criminal, civil or  
17 administrative, except (i) where a party to the conversation  
18 suffers great bodily injury or is killed during such  
19 conversation, or (ii) when used as direct impeachment of a  
20 witness concerning matters contained in the interception or  
21 recording. The Director of the Department of State Police  
22 shall issue regulations as are necessary concerning the use  
23 of devices, retention of tape recordings, and reports  
24 regarding their use;

25           (g-5) With approval of the State's Attorney of the  
26 county in which it is to occur, recording or listening with  
27 the aid of any device to any conversation where a law  
28 enforcement officer, or any person acting at the direction of  
29 law enforcement, is a party to the conversation and has  
30 consented to it being intercepted or recorded in the course  
31 of an investigation of any offense defined in Article 29D of  
32 this Code. In all such cases, an application for an order  
33 approving the previous or continuing use of an eavesdropping  
34 device must be made within 48 hours of the commencement of

1 such use. In the absence of such an order, or upon its  
2 denial, any continuing use shall immediately terminate. The  
3 Director of State Police shall issue rules as are necessary  
4 concerning the use of devices, retention of tape recordings,  
5 and reports regarding their use.

6 Any recording or evidence obtained or derived in the  
7 course of an investigation of any offense defined in Article  
8 29D of this Code shall, upon motion of the State's Attorney  
9 or Attorney General prosecuting any violation of Article 29D,  
10 be reviewed in camera with notice to all parties present by  
11 the court presiding over the criminal case, and, if ruled by  
12 the court to be relevant and otherwise admissible, it shall  
13 be admissible at the trial of the criminal case.

14 This subsection (g-5) is inoperative on and after January  
15 1, 2005. No conversations recorded or monitored pursuant to  
16 this subsection (g-5) shall be inadmissible in a court of law  
17 by virtue of the repeal of this subsection (g-5) on January  
18 1, 2005<sub>i</sub>.

19 (h) Recordings made simultaneously with a video  
20 recording of an oral conversation between a peace officer,  
21 who has identified his or her office, and a person stopped  
22 for an investigation of an offense under the Illinois Vehicle  
23 Code;

24 (i) Recording of a conversation made by or at the  
25 request of a person, not a law enforcement officer or agent  
26 of a law enforcement officer, who is a party to the  
27 conversation, under reasonable suspicion that another party  
28 to the conversation is committing, is about to commit, or has  
29 committed a criminal offense against the person or a member  
30 of his or her immediate household, and there is reason to  
31 believe that evidence of the criminal offense may be obtained  
32 by the recording; and

33 (j) The use of a telephone monitoring device by either  
34 (1) a corporation or other business entity engaged in

1 marketing or opinion research or (2) a corporation or other  
2 business entity engaged in telephone solicitation, as defined  
3 in this subsection, to record or listen to oral telephone  
4 solicitation conversations or marketing or opinion research  
5 conversations by an employee of the corporation or other  
6 business entity when:

7 (i) the monitoring is used for the purpose of  
8 service quality control of marketing or opinion research  
9 or telephone solicitation, the education or training of  
10 employees or contractors engaged in marketing or opinion  
11 research or telephone solicitation, or internal research  
12 related to marketing or opinion research or telephone  
13 solicitation; and

14 (ii) the monitoring is used with the consent of at  
15 least one person who is an active party to the marketing  
16 or opinion research conversation or telephone  
17 solicitation conversation being monitored.

18 No communication or conversation or any part, portion, or  
19 aspect of the communication or conversation made, acquired,  
20 or obtained, directly or indirectly, under this exemption  
21 (j), may be, directly or indirectly, furnished to any law  
22 enforcement officer, agency, or official for any purpose or  
23 used in any inquiry or investigation, or used, directly or  
24 indirectly, in any administrative, judicial, or other  
25 proceeding, or divulged to any third party.

26 When recording or listening authorized by this subsection  
27 (j) on telephone lines used for marketing or opinion research  
28 or telephone solicitation purposes results in recording or  
29 listening to a conversation that does not relate to marketing  
30 or opinion research or telephone solicitation; the person  
31 recording or listening shall, immediately upon determining  
32 that the conversation does not relate to marketing or opinion  
33 research or telephone solicitation, terminate the recording  
34 or listening and destroy any such recording as soon as is



1 practicable.

2 Business entities that use a telephone monitoring or  
3 telephone recording system pursuant to this exemption (j)  
4 shall provide current and prospective employees with notice  
5 that the monitoring or recordings may occur during the course  
6 of their employment. The notice shall include prominent  
7 signage notification within the workplace.

8 Business entities that use a telephone monitoring or  
9 telephone recording system pursuant to this exemption (j)  
10 shall provide their employees or agents with access to  
11 personal-only telephone lines which may be pay telephones,  
12 that are not subject to telephone monitoring or telephone  
13 recording.

14 For the purposes of this subsection (j), "telephone  
15 solicitation" means a communication through the use of a  
16 telephone by live operators:

- 17 (i) soliciting the sale of goods or services;
- 18 (ii) receiving orders for the sale of goods or  
19 services;
- 20 (iii) assisting in the use of goods or services; or
- 21 (iv) engaging in the solicitation, administration,  
22 or collection of bank or retail credit accounts.

23 For the purposes of this subsection (j), "marketing or  
24 opinion research" means a marketing or opinion research  
25 interview conducted by a live telephone interviewer engaged  
26 by a corporation or other business entity whose principal  
27 business is the design, conduct, and analysis of polls and  
28 surveys measuring the opinions, attitudes, and responses of  
29 respondents toward products and services, or social or  
30 political issues, or both; and

31 (k) Recording the interview or statement of any person  
32 when the person knows that the interview is being conducted  
33 by a law enforcement officer or prosecutor and the interview  
34 takes place at a police station that is currently

1 participating in the Custodial Interview Pilot Program  
2 established under the Illinois Criminal Justice Information  
3 Act.

4 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

5 Section 15. The Code of Criminal Procedure of 1963 is  
6 amended by changing Sections 116-3 and 122-2.1 and by adding  
7 Sections 113-8, 114-13.5, and 114-15 as follows:

8 (725 ILCS 5/113-8 new)

9 Sec. 113-8. Notice of intention to seek or decline the  
10 death penalty.

11 The State's Attorney or Attorney General shall provide  
12 notice of the State's intention to seek or decline the death  
13 penalty by filing a Notice of Intent to Seek or Decline the  
14 Death Penalty as soon as practicable. In no event shall the  
15 filing of the notice be later than 120 days after  
16 arraignment, unless, for good cause shown, the court directs  
17 otherwise. A notice of intent to seek the death penalty shall  
18 also include all of the statutory aggravating factors  
19 enumerated in subsection (b) of Section 9-1 of the Criminal  
20 Code of 1961 that the State intends to introduce during the  
21 death penalty sentencing hearing.

22 (725 ILCS 5/114-13.5 new)

23 Sec. 114-13.5. Investigative reports. Any  
24 investigative, law enforcement, or other agency responsible  
25 for investigating any felony offense or participating in an  
26 investigation of any felony offense, other than defense  
27 investigators, shall provide to the authority prosecuting the  
28 offense all investigative material, including but not limited  
29 to reports and memoranda that have been generated by or have  
30 come into the possession of the investigating agency  
31 concerning the offense being investigated. In addition, the

1 investigating agency shall provide to the prosecuting  
2 authority any material or information within its possession  
3 or control that would tend to negate the guilt of the accused  
4 of the offense charged or reduce his or her punishment for  
5 the offense. Every investigative and law enforcement agency  
6 in this State shall adopt policies to ensure compliance with  
7 these standards.

8 (725 ILCS 5/114-15 new)

9 Sec. 114-15. Motion for genetic marker groupings  
10 comparison analysis.

11 (a) A defendant may make a motion for a court order  
12 before trial for comparison analysis by the Department of  
13 State Police with those genetic marker groupings maintained  
14 under subsection (f) of Section 5-4-3 of the Unified Code of  
15 Corrections if the defendant meets all of the following  
16 requirements:

17 (1) The defendant shows good cause.

18 (2) The defendant is charged with any offense.

19 (3) The defendant seeks for the Department of State  
20 Police to identify genetic marker groupings from evidence  
21 collected by criminal justice agencies pursuant to the  
22 alleged offense.

23 (4) The defendant seeks comparison analysis of  
24 genetic marker groupings of the evidence under  
25 subdivision (3) to those of the defendant, to those of  
26 other forensic evidence, and to those maintained under  
27 subsection (f) of Section 5-4-3 of the Unified Code of  
28 Corrections.

29 (5) Genetic marker grouping analysis must be  
30 performed by a laboratory compliant with the quality  
31 assurance standards required by the Department of State  
32 Police for genetic marker grouping analysis comparisons.

33 (6) Reasonable notice of the motion shall be served

1       upon the State.

2       (b) The Department of State Police may promulgate rules  
3 for the types of comparisons performed and the quality  
4 assurance standards required for submission of genetic marker  
5 groupings. The provisions of the Administrative Review Law  
6 shall apply to all actions taken under the rules so  
7 promulgated.

8       (725 ILCS 5/116-3)

9       Sec. 116-3. Motion for fingerprint or forensic testing  
10 not available at trial regarding actual innocence.

11       (a) A defendant may make a motion before the trial court  
12 that entered the judgment of conviction in his or her case  
13 for the performance of fingerprint or forensic DNA testing,  
14 including comparison analysis of genetic marker groupings of  
15 the evidence collected by criminal justice agencies pursuant  
16 to the alleged offense, to those of the defendant, to those  
17 of other forensic evidence, and to those maintained under  
18 subsection (f) of Section 5-4-3 of the Unified Code of  
19 Corrections, on evidence that was secured in relation to the  
20 trial which resulted in his or her conviction, but which was  
21 not subject to the testing which is now requested because the  
22 technology for the testing was not available at the time of  
23 trial. Reasonable notice of the motion shall be served upon  
24 the State.

25       (b) The defendant must present a prima facie case that:

26           (1) identity was the issue in the trial which  
27 resulted in his or her conviction; and

28           (2) the evidence to be tested has been subject to a  
29 chain of custody sufficient to establish that it has not  
30 been substituted, tampered with, replaced, or altered in  
31 any material aspect.

32       (c) The trial court shall allow the testing under  
33 reasonable conditions designed to protect the State's

1 interests in the integrity of the evidence and the testing  
2 process upon a determination that:

3 (1) the result of the testing has the scientific  
4 potential to produce new, noncumulative evidence  
5 materially relevant to the defendant's assertion of  
6 actual innocence that significantly advances the  
7 defendant's claim of innocence;

8 (2) the testing requested employs a scientific  
9 method generally accepted within the relevant scientific  
10 community.

11 (Source: P.A. 90-141, eff. 1-1-98.)

12 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

13 Sec. 122-2.1. (a) Within 90 days after the filing and  
14 docketing of each petition, the court shall examine such  
15 petition and enter an order thereon pursuant to this Section.

16 (1) If the petitioner is under sentence of death  
17 and is without counsel and alleges that he is without  
18 means to procure counsel, he shall state whether or not  
19 he wishes counsel to be appointed to represent him. If  
20 appointment of counsel is so requested, the court shall  
21 appoint counsel if satisfied that the petitioner has no  
22 means to procure counsel.

23 (2) If the petitioner is sentenced to imprisonment  
24 and the court determines the petition is frivolous or is  
25 patently without merit, it shall dismiss the petition in  
26 a written order, specifying the findings of fact and  
27 conclusions of law it made in reaching its decision.  
28 Such order of dismissal is a final judgment and shall be  
29 served upon the petitioner by certified mail within 10  
30 days of its entry.

31 (b) If the petition is not dismissed pursuant to this  
32 Section, the court shall order the petition to be docketed  
33 for further consideration in accordance with Sections 122-4

1 through 122-6. If the petitioner is under sentence of death,  
2 the court shall order the petition to be docketed for further  
3 consideration and hearing within one year of the filing of  
4 the petition.

5 (c) In considering a petition pursuant to this Section,  
6 the court may examine the court file of the proceeding in  
7 which the petitioner was convicted, any action taken by an  
8 appellate court in such proceeding and any transcripts of  
9 such proceeding.

10 (Source: P.A. 86-655; 87-904.)

11 Section 20. The Capital Crimes Litigation Act is  
12 amended by changing Sections 10, 15, and 19 as follows:

13 (725 ILCS 124/10)

14 (Section scheduled to be repealed on July 1, 2004)

15 Sec. 10. Court appointed trial counsel; compensation and  
16 expenses.

17 (a) This Section applies only to compensation and  
18 expenses of trial counsel appointed by the court as set forth  
19 in Section 5, other than public defenders, for the period  
20 after arraignment and so long as the State's Attorney has  
21 not, at any time, filed a certificate indicating he or she  
22 will not seek the death penalty or stated on the record in  
23 open court that the death penalty will not be sought.

24 (b) Appointed trial counsel shall be compensated upon  
25 presentment and certification by the circuit court of a claim  
26 for services detailing the date, activity, and time duration  
27 for which compensation is sought. Compensation for appointed  
28 trial counsel may be paid at a reasonable rate not to exceed  
29 \$125 per hour.

30 Beginning in 2001, every January 20, the statutory rate  
31 prescribed in this subsection shall be automatically  
32 increased or decreased, as applicable, by a percentage equal

1 to the percentage change in the consumer price index-u during  
2 the preceding 12-month calendar year. "Consumer price  
3 index-u" means the index published by the Bureau of Labor  
4 Statistics of the United States Department of Labor that  
5 measures the average change in prices of goods and services  
6 purchased by all urban consumers, United States city average,  
7 all items, 1982-84=100. The new rate resulting from each  
8 annual adjustment shall be determined by the State Treasurer  
9 and made available to the chief judge of each judicial  
10 circuit. Payment in excess of the limitations stated in this  
11 subsection (b) may be made if the trial court certifies that  
12 such payment is necessary to provide fair compensation for  
13 representation based upon customary charges in the relevant  
14 legal market for attorneys of similar skill, background, and  
15 experience. A trial court may entertain the filing of this  
16 verified statement before the termination of the cause and  
17 may order the provisional payment of sums during the pendency  
18 of the cause.

19 (c) Appointed trial counsel may also petition the court  
20 for certification of expenses for reasonable and necessary  
21 capital litigation expenses including, but not limited to,  
22 investigatory and other assistance, expert, forensic, and  
23 other witnesses, and mitigation specialists. Counsel may not  
24 petition for certification of expenses that may have been  
25 provided or compensated by the State Appellate Defender under  
26 item (c)(5) of Section 10 of the State Appellate Defender  
27 Act.

28 (d) Appointed trial counsel shall petition the court for  
29 certification of compensation and expenses under this Section  
30 periodically during the course of counsel's representation.  
31 If the court determines that the compensation and expenses  
32 should be paid from the Capital Litigation Trust Fund, the  
33 court shall certify, on a form created by the State  
34 Treasurer, that all or a designated portion of the amount

1 requested is reasonable, necessary, and appropriate for  
2 payment from the Trust Fund. Certification of compensation  
3 and expenses by a court in any county other than Cook County  
4 shall be delivered by the court to the State Treasurer and  
5 paid by the State Treasurer directly from the Capital  
6 Litigation Trust Fund if there are sufficient moneys in the  
7 Trust Fund to pay the compensation and expenses.  
8 Certification of compensation and expenses by a court in Cook  
9 County shall be delivered by the court to the county  
10 treasurer and paid by the county treasurer from moneys  
11 granted to the county from the Capital Litigation Trust Fund.  
12 (Source: P.A. 91-589, eff. 1-1-00.)

13 (725 ILCS 124/15)

14 (Section scheduled to be repealed on July 1, 2004)

15 Sec. 15. Capital Litigation Trust Fund.

16 (a) The Capital Litigation Trust Fund is created as a  
17 special fund in the State Treasury. The Trust Fund shall be  
18 administered by the State Treasurer to provide moneys for the  
19 appropriations to be made, grants to be awarded, and  
20 compensation and expenses to be paid under this Act. All  
21 interest earned from the investment or deposit of moneys  
22 accumulated in the Trust Fund shall, under Section 4.1 of the  
23 State Finance Act, be deposited into the Trust Fund.

24 (b) Moneys deposited into the Trust Fund shall not be  
25 considered general revenue of the State of Illinois.

26 (c) Moneys deposited into the Trust Fund shall be used  
27 exclusively for the purposes of providing funding for the  
28 prosecution and defense of capital cases as provided in this  
29 Act and shall not be appropriated, loaned, or in any manner  
30 transferred to the General Revenue Fund of the State of  
31 Illinois.

32 (d) Every fiscal year the State Treasurer shall transfer  
33 from the General Revenue Fund to the Capital Litigation Trust



1 Fund an amount equal to the full amount of moneys  
2 appropriated by the General Assembly (both by original and  
3 supplemental appropriation), less any unexpended balance from  
4 the previous fiscal year, from the Capital Litigation Trust  
5 Fund for the specific purpose of making funding available for  
6 the prosecution and defense of capital cases. The Public  
7 Defender and State's Attorney in Cook County, the State  
8 Appellate Defender, the State's Attorneys Appellate  
9 Prosecutor, and the Attorney General shall make annual  
10 requests for appropriations from the Trust Fund.

11 (1) The Public Defender in Cook County shall  
12 request appropriations to the State Treasurer for  
13 expenses incurred by the Public Defender and for funding  
14 for private appointed defense counsel in Cook County.

15 (2) The State's Attorney in Cook County shall  
16 request an appropriation to the State Treasurer for  
17 expenses incurred by the State's Attorney.

18 (3) The State Appellate Defender shall request a  
19 direct appropriation from the Trust Fund for expenses  
20 incurred by the State Appellate Defender in providing  
21 assistance to trial attorneys under item (c)(5) of  
22 Section 10 of the State Appellate Defender Act and an  
23 appropriation to the State Treasurer for payments from  
24 the Trust Fund for the defense of cases in counties other  
25 than Cook County.

26 (4) The State's Attorneys Appellate Prosecutor  
27 shall request a direct appropriation from the Trust Fund  
28 to pay expenses incurred by the State's Attorneys  
29 Appellate Prosecutor and an appropriation to the State  
30 Treasurer for payments from the Trust Fund for expenses  
31 incurred by State's Attorneys in counties other than Cook  
32 County.

33 (5) The Attorney General shall request a direct  
34 appropriation from the Trust Fund to pay expenses

1 incurred by the Attorney General in assisting the State's  
2 Attorneys in counties other than Cook County.

3 The Public Defender and State's Attorney in Cook County,  
4 the State Appellate Defender, the State's Attorneys Appellate  
5 Prosecutor, and the Attorney General may each request  
6 supplemental appropriations from the Trust Fund during the  
7 fiscal year.

8 (e) Moneys in the Trust Fund shall be expended only as  
9 follows:

10 (1) To pay the State Treasurer's costs to  
11 administer the Trust Fund. The amount for this purpose  
12 may not exceed 5% in any one fiscal year of the amount  
13 otherwise appropriated from the Trust Fund in the same  
14 fiscal year.

15 (2) To pay the capital litigation expenses of trial  
16 defense including, but not limited to, investigatory and  
17 other assistance, expert, forensic, and other witnesses,  
18 and mitigation specialists, including forensic DNA  
19 testing under Section 116-3 of the Code of Criminal  
20 Procedure of 1963, and grants and aid provided to public  
21 defenders or assistance to attorneys who have been  
22 appointed by the court to represent defendants who are  
23 charged with capital crimes.

24 (3) To pay the compensation of trial attorneys,  
25 other than public defenders, who have been appointed by  
26 the court to represent defendants who are charged with  
27 capital crimes.

28 (4) To provide State's Attorneys with funding for  
29 capital litigation expenses including, but not limited  
30 to, investigatory and other assistance and expert,  
31 forensic, and other witnesses necessary to prosecute  
32 capital cases. State's Attorneys in any county other  
33 than Cook County seeking funding for capital litigation  
34 expenses including, but not limited to, investigatory and

1 other assistance and expert, forensic, or other witnesses  
2 under this Section may request that the State's Attorneys  
3 Appellate Prosecutor or the Attorney General, as the case  
4 may be, certify the expenses as reasonable, necessary,  
5 and appropriate for payment from the Trust Fund, on a  
6 form created by the State Treasurer. Upon certification  
7 of the expenses and delivery of the certification to the  
8 State Treasurer, the Treasurer shall pay the expenses  
9 directly from the Capital Litigation Trust Fund if there  
10 are sufficient moneys in the Trust Fund to pay the  
11 expenses.

12 (5) To provide financial support through the  
13 Attorney General pursuant to the Attorney General Act for  
14 the several county State's Attorneys outside of Cook  
15 County, but shall not be used to increase personnel for  
16 the Attorney General's Office.

17 (6) To provide financial support through the  
18 State's Attorneys Appellate Prosecutor pursuant to the  
19 State's Attorneys Appellate Prosecutor's Act for the  
20 several county State's Attorneys outside of Cook County,  
21 but shall not be used to increase personnel for the  
22 State's Attorneys Appellate Prosecutor.

23 (7) To provide financial support to the State  
24 Appellate Defender pursuant to the State Appellate  
25 Defender Act.

26 Moneys expended from the Trust Fund shall be in addition  
27 to county funding for Public Defenders and State's Attorneys,  
28 and shall not be used to supplant or reduce ordinary and  
29 customary county funding.

30 (f) Moneys in the Trust Fund shall be appropriated to  
31 the State Appellate Defender, the State's Attorneys Appellate  
32 Prosecutor, the Attorney General, and the State Treasurer.  
33 The State Appellate Defender shall receive an appropriation  
34 from the Trust Fund to enable it to provide assistance to

1 appointed defense counsel throughout the State and to Public  
2 Defenders in counties other than Cook. The State's Attorneys  
3 Appellate Prosecutor and the Attorney General shall receive  
4 appropriations from the Trust Fund to enable them to provide  
5 assistance to State's Attorneys in counties other than Cook  
6 County. Moneys shall be appropriated to the State Treasurer  
7 to enable the Treasurer (i) to make grants to Cook County,  
8 (ii) to pay the expenses of Public Defenders and State's  
9 Attorneys in counties other than Cook County, (iii) to pay  
10 the expenses and compensation of appointed defense counsel in  
11 counties other than Cook County, and (iv) to pay the costs of  
12 administering the Trust Fund. All expenditures and grants  
13 made from the Trust Fund shall be subject to audit by the  
14 Auditor General.

15 (g) For Cook County, grants from the Trust Fund shall be  
16 made and administered as follows:

17 (1) For each State fiscal year, the State's  
18 Attorney and Public Defender must each make a separate  
19 application to the State Treasurer for capital litigation  
20 grants.

21 (2) The State Treasurer shall establish rules and  
22 procedures for grant applications. The rules shall  
23 require the Cook County Treasurer as the grant recipient  
24 to report on a periodic basis to the State Treasurer how  
25 much of the grant has been expended, how much of the  
26 grant is remaining, and the purposes for which the grant  
27 has been used. The rules may also require the Cook  
28 County Treasurer to certify on a periodic basis that  
29 expenditures of the funds have been made for expenses  
30 that are reasonable, necessary, and appropriate for  
31 payment from the Trust Fund.

32 (3) The State Treasurer shall make the grants to  
33 the Cook County Treasurer as soon as possible after the  
34 beginning of the State fiscal year.

1           (4) The State's Attorney or Public Defender may  
2 apply for supplemental grants during the fiscal year.

3           (5) Grant moneys shall be paid to the Cook County  
4 Treasurer in block grants and held in separate accounts  
5 for the State's Attorney, the Public Defender, and court  
6 appointed defense counsel other than the Cook County  
7 Public Defender, respectively, for the designated fiscal  
8 year, and are not subject to county appropriation.

9           (6) Expenditure of grant moneys under this  
10 subsection (g) is subject to audit by the Auditor  
11 General.

12           (7) The Cook County Treasurer shall immediately  
13 make payment from the appropriate separate account in the  
14 county treasury for capital litigation expenses to the  
15 State's Attorney, Public Defender, or court appointed  
16 defense counsel other than the Public Defender, as the  
17 case may be, upon order of the State's Attorney, Public  
18 Defender or the court, respectively.

19           (h) If a defendant in a capital case in Cook County is  
20 represented by court appointed counsel other than the Cook  
21 County Public Defender, the appointed counsel shall petition  
22 the court for an order directing the Cook County Treasurer to  
23 pay the court appointed counsel's reasonable and necessary  
24 compensation and capital litigation expenses from grant  
25 moneys provided from the Trust Fund. These petitions shall be  
26 considered in camera. Orders denying petitions for  
27 compensation or expenses are final. Counsel may not petition  
28 for expenses that may have been provided or compensated by  
29 the State Appellate Defender under item (c)(5) of Section 10  
30 of the State Appellate Defender Act.

31           (i) In counties other than Cook County, and excluding  
32 capital litigation expenses or services that may have been  
33 provided by the State Appellate Defender under item (c)(5) of  
34 Section 10 of the State Appellate Defender Act:

1           (1) Upon certification by the circuit court, on a  
2 form created by the State Treasurer, that all or a  
3 portion of the expenses are reasonable, necessary, and  
4 appropriate for payment from the Trust Fund and the  
5 court's delivery of the certification to the Treasurer,  
6 the Treasurer shall pay the certified expenses of Public  
7 Defenders from the money appropriated to the Treasurer  
8 for capital litigation expenses of Public Defenders in  
9 any county other than Cook County, if there are  
10 sufficient moneys in the Trust Fund to pay the expenses.

11           (2) If a defendant in a capital case is represented  
12 by court appointed counsel other than the Public  
13 Defender, the appointed counsel shall petition the court  
14 to certify compensation and capital litigation expenses  
15 including, but not limited to, investigatory and other  
16 assistance, expert, forensic, and other witnesses, and  
17 mitigation specialists as reasonable, necessary, and  
18 appropriate for payment from the Trust Fund. Upon  
19 certification on a form created by the State Treasurer of  
20 all or a portion of the compensation and expenses  
21 certified as reasonable, necessary, and appropriate for  
22 payment from the Trust Fund and the court's delivery of  
23 the certification to the Treasurer, the State Treasurer  
24 shall pay the certified compensation and expenses from  
25 the money appropriated to the Treasurer for that purpose,  
26 if there are sufficient moneys in the Trust Fund to make  
27 those payments.

28           (3) A petition for capital litigation expenses  
29 under this subsection shall be considered in camera.  
30 Orders denying petitions for compensation or expenses are  
31 final.

32           (j) If the Trust Fund is discontinued or dissolved by an  
33 Act of the General Assembly or by operation of law, any  
34 balance remaining in the Trust Fund shall be returned to the

1 General Revenue Fund after deduction of administrative costs,  
2 any other provision of this Act to the contrary  
3 notwithstanding.

4 (Source: P.A. 91-589, eff. 1-1-00.)

5 (725 ILCS 124/19)

6 (Section scheduled to be repealed on July 1, 2004)

7 Sec. 19. Report; repeal.

8 (a) The Cook County Public Defender, the Cook County  
9 State's Attorney, the State Appellate Defender, the State's  
10 Attorneys Appellate Prosecutor, and the Attorney General  
11 shall each report separately to the General Assembly by  
12 January 1, 2004 detailing the amounts of money received by  
13 them through this Act, the uses for which those funds were  
14 expended, the balances then in the Capital Litigation Trust  
15 Fund or county accounts, as the case may be, dedicated to  
16 them for the use and support of Public Defenders, appointed  
17 trial defense counsel, and State's Attorneys, as the case may  
18 be. The report shall describe and discuss the need for  
19 continued funding through the Fund and contain any  
20 suggestions for changes to this Act.

21 (b) (Blank) ~~Unless---the---General--Assembly--provides~~  
22 ~~otherwise, this Act is repealed on July 1, 2004.~~

23 (Source: P.A. 91-589, eff. 1-1-00.)

24 Section 25. The Unified Code of Corrections is amended  
25 by changing Sections 3-3-13 and 5-4-3 as follows:

26 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

27 Sec. 3-3-13. Procedure for Executive Clemency.

28 (a) Petitions seeking pardon, commutation, or reprieve  
29 shall be addressed to the Governor and filed with the  
30 Prisoner Review Board. The petition shall be in writing and  
31 signed by the person under conviction or by a person on his

1 behalf. It shall contain a brief history of the case, the  
2 reasons for seeking executive clemency, and other relevant  
3 information the Board may require.

4 (a-5) After a petition has been denied by the Governor,  
5 the Board may not accept a repeat petition for executive  
6 clemency for the same person until one full year has elapsed  
7 from the date of the denial. The Chairman of the Board may  
8 waive the one-year requirement if the petitioner offers in  
9 writing new information that was unavailable to the  
10 petitioner at the time of the filing of the prior petition  
11 and which the Chairman determines to be significant. The  
12 Chairman also may waive the one-year waiting period if the  
13 petitioner can show that a change in circumstances of a  
14 compelling humanitarian nature has arisen since the denial of  
15 the prior petition.

16 (b) Notice of the proposed application shall be given by  
17 the Board to the committing court and the state's attorney of  
18 the county where the conviction was had.

19 (c) The Board shall, if requested and upon due notice,  
20 give a hearing to each application, allowing representation  
21 by counsel, if desired, after which it shall confidentially  
22 advise the Governor by a written report of its  
23 recommendations which shall be determined by majority vote.  
24 The Board shall meet to consider such petitions no less than  
25 4 times each year.

26 Application for executive clemency under this Section may  
27 not be commenced on behalf of a person who has been sentenced  
28 to death without the written consent of the defendant, unless  
29 the defendant, because of a mental or physical condition, is  
30 incapable of asserting his or her own claim.

31 All petitions for executive clemency on behalf of a  
32 person who is sentenced to death must be filed with the  
33 Prisoner Review Board within 30 days from the date that the  
34 Supreme Court has issued a final order setting the execution



1 date. The Governor or the Chairman of the Prisoner Review  
2 Board may waive the 30-day requirement if the petitioner has  
3 just cause for not filing the petition within the appropriate  
4 time limitations.

5 (d) The Governor shall decide each application and  
6 communicate his decision to the Board which shall notify the  
7 petitioner.

8 In the event a petitioner who has been convicted of a  
9 Class X felony is granted a release, after the Governor has  
10 communicated such decision to the Board, the Board shall give  
11 written notice to the Sheriff of the county from which the  
12 offender was sentenced if such sheriff has requested that  
13 such notice be given on a continuing basis. In cases where  
14 arrest of the offender or the commission of the offense took  
15 place in any municipality with a population of more than  
16 10,000 persons, the Board shall also give written notice to  
17 the proper law enforcement agency for said municipality which  
18 has requested notice on a continuing basis.

19 (e) Nothing in this Section shall be construed to limit  
20 the power of the Governor under the constitution to grant a  
21 reprieve, commutation of sentence, or pardon.

22 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

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  
25 for, certain offenses or institutionalized as sexually  
26 dangerous; specimens; genetic marker groups.

27 (a) Any person convicted of, found guilty under the  
28 Juvenile Court Act of 1987 for, or who received a disposition  
29 of court supervision for, a qualifying offense or attempt of  
30 a qualifying offense, convicted or found guilty of any  
31 offense classified as a felony under Illinois law, found  
32 guilty or given supervision for any offense classified as a  
33 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  
 6 to the Illinois Department of State Police in accordance with  
 7 the provisions of this Section, provided such person is:

8 (1) convicted of a qualifying offense or attempt of  
 9 a qualifying offense on or after July 1, 1990 the  
 10 ~~effective date of this amendatory Act of 1989,~~ and  
 11 sentenced to a term of imprisonment, periodic  
 12 imprisonment, fine, probation, conditional discharge or  
 13 any other form of sentence, or given a disposition of  
 14 court supervision for the offense; ~~or~~

15 (1.5) found guilty or given supervision under the  
 16 Juvenile Court Act of 1987 for a qualifying offense or  
 17 attempt of a qualifying offense on or after January 1,  
 18 1997; ~~the effective date of this amendatory Act of 1996,~~  
 19 ~~or~~

20 (2) ordered institutionalized as a sexually  
 21 dangerous person on or after July 1, 1990; ~~the effective~~  
 22 ~~date of this amendatory Act of 1989,~~ ~~or~~

23 (3) convicted of a qualifying offense or attempt of  
 24 a qualifying offense before July 1, 1990 the ~~effective~~  
 25 ~~date of this amendatory Act of 1989~~ and is presently  
 26 confined as a result of such conviction in any State  
 27 correctional facility or county jail or is presently  
 28 serving a sentence of probation, conditional discharge or  
 29 periodic imprisonment as a result of such conviction; ~~or~~

30 (3.5) convicted or found guilty of any offense  
 31 classified as a felony under Illinois law or found guilty  
 32 or given supervision for such an offense under the  
 33 Juvenile Court Act of 1987 on or after August 22, 2002;  
 34 ~~the effective date of this amendatory Act of the 92nd~~

1 ~~General-Assembly,~~

2 (4) presently institutionalized as a sexually  
3 dangerous person or presently institutionalized as a  
4 person found guilty but mentally ill of a sexual offense  
5 or attempt to commit a sexual offense; ~~or~~

6 (4.5) ordered committed as a sexually violent  
7 person on or after the effective date of the Sexually  
8 Violent Persons Commitment Act; or

9 (5) seeking transfer to or residency in Illinois  
10 under Sections 3-3-11.05 through 3-3-11.5 of the Unified  
11 Code of Corrections and the Interstate Compact for Adult  
12 Offender Supervision or the Interstate Agreements on  
13 Sexually Dangerous Persons Act.

14 Notwithstanding other provisions of this Section, any  
15 person incarcerated in a facility of the Illinois Department  
16 of Corrections on or after August 22, 2002 ~~the-effective-date~~  
17 ~~of--this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be  
18 required to submit a specimen of blood, saliva, or tissue  
19 prior to his or her release on parole or mandatory supervised  
20 release, as a condition of his or her parole or mandatory  
21 supervised release.

22 (a-5) Any person who was otherwise convicted of or  
23 received a disposition of court supervision for any other  
24 offense under the Criminal Code of 1961 or who was found  
25 guilty or given supervision for such a violation under the  
26 Juvenile Court Act of 1987, may, regardless of the sentence  
27 imposed, be required by an order of the court to submit  
28 specimens of blood, saliva, or tissue to the Illinois  
29 Department of State Police in accordance with the provisions  
30 of this Section.

31 (b) Any person required by paragraphs (a)(1), (a)(1.5),  
32 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,  
33 saliva, or tissue shall provide specimens of blood, saliva,  
34 or tissue within 45 days after sentencing or disposition at a

1 collection site designated by the Illinois Department of  
2 State Police.

3 (c) Any person required by paragraphs (a)(3), (a)(4),  
4 and (a)(4.5) to provide specimens of blood, saliva, or tissue  
5 shall be required to provide such samples prior to final  
6 discharge, parole, or release at a collection site designated  
7 by the Illinois Department of State Police.

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

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

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

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

1 thereafter be forwarded to the Illinois Department of State  
2 Police, Division of Forensic Services, for analysis and  
3 categorizing into genetic marker groupings.

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

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

18 (e) The genetic marker groupings shall be maintained by  
19 the 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  
25 the United States, of foreign countries duly authorized to  
26 receive the same, to all peace officers of the State of  
27 Illinois and to all prosecutorial agencies. Notwithstanding  
28 the limits on disclosure stated by this subsection (f), the  
29 genetic marker grouping analysis information obtained under  
30 this Act also may be released by court order pursuant to a  
31 motion under Section 114-15 of the Code of Criminal Procedure  
32 of 1963 to a defendant who meets all of the requirements  
33 under that Section. The genetic marker grouping analysis  
34 information obtained pursuant to this Act shall be used only

1 for (i) valid law enforcement identification purposes and as  
2 required by the Federal Bureau of Investigation for  
3 participation in the National DNA database or (ii) technology  
4 validation purposes. Notwithstanding any other statutory  
5 provision to the contrary, all information obtained under  
6 this Section shall be maintained in a single State data base,  
7 which may be uploaded into a national database, and which  
8 information may be subject to expungement only as set forth  
9 in subsection (f-1).

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

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

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

34 (1) any violation or inchoate violation of Section

1 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
2 Criminal Code of 1961;~~i7-er~~

3 (1.1) any violation or inchoate violation of  
4 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,  
5 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961  
6 for which persons are convicted on or after July 1,  
7 2001;~~i7-er~~

8 (2) any former statute of this State which defined  
9 a felony sexual offense;~~i7-er~~

10 (3) (blank);~~i7-er~~

11 (4) any inchoate violation of Section 9-3.1,  
12 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~i7~~  
13 or

14 (5) any violation or inchoate violation of Article  
15 29D of the Criminal Code of 1961.

16 (g-5) (Blank).

17 (h) The Illinois Department of State Police shall be the  
18 State central repository for all genetic marker grouping  
19 analysis information obtained pursuant to this Act. The  
20 Illinois Department of State Police may promulgate rules for  
21 the form and manner of the collection of blood, saliva, or  
22 tissue samples and other procedures for the operation of this  
23 Act. The provisions of the Administrative Review Law shall  
24 apply to all actions taken under the rules so promulgated.

25 (i) A person required to provide a blood, saliva, or  
26 tissue specimen shall cooperate with the collection of the  
27 specimen and any deliberate act by that person intended to  
28 impede, delay or stop the collection of the blood, saliva, or  
29 tissue specimen is a Class A misdemeanor.

30 (j) Any person required by subsection (a) to submit  
31 specimens of blood, saliva, or tissue to the Illinois  
32 Department of State Police for analysis and categorization  
33 into genetic marker grouping, in addition to any other  
34 disposition, penalty, or fine imposed, shall pay an analysis

1 fee of \$200. If the analysis fee is not paid at the time of  
2 sentencing, the court shall establish a fee schedule by which  
3 the entire amount of the analysis fee shall be paid in full,  
4 such schedule not to exceed 24 months from the time of  
5 conviction. The inability to pay this analysis fee shall not  
6 be the sole ground to incarcerate the person.

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

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

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

19 (3) Fees deposited into the State Offender DNA  
20 Identification System Fund shall be used by Illinois  
21 State Police crime laboratories as designated by the  
22 Director of State Police. These funds shall be in  
23 addition to any allocations made pursuant to existing  
24 laws and shall be designated for the exclusive use of  
25 State crime laboratories. These uses may include, but  
26 are not limited to, the following:

27 (A) Costs incurred in providing analysis and  
28 genetic marker categorization as required by  
29 subsection (d).

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

32 (C) Costs incurred in the purchase and  
33 maintenance of equipment for use in performing  
34 analyses.



1           (D) Costs incurred in continuing research and  
2           development of new techniques for analysis and  
3           genetic marker categorization.

4           (E) Costs incurred in continuing education,  
5           training, and professional development of forensic  
6           scientists regularly employed by these laboratories.

7           (1) The failure of a person to provide a specimen, or of  
8           any person or agency to collect a specimen, within the 45 day  
9           period shall in no way alter the obligation of the person to  
10          submit such specimen, or the authority of the Illinois  
11          Department of State Police or persons designated by the  
12          Department to collect the specimen, or the authority of the  
13          Illinois Department of State Police to accept, analyze and  
14          maintain the specimen or to maintain or upload results of  
15          genetic marker grouping analysis information into a State or  
16          national database.

17          (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;  
18          92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.  
19          6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised  
20          1-20-03.)

21          Section 99. Effective date. This Act takes effect upon  
22          becoming law."