

1 AN ACT in relation to criminal matters.

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
5 Capital Punishment Reform Study Committee Act.

6 Section 2. Capital Punishment Reform Study Committee.

7 (a) There is created the Capital Punishment Reform Study
8 Committee, hereinafter referred to as the Committee,
9 consisting of 15 members appointed as follows:

10 (1) Three members appointed by the President of the
11 Senate;

12 (2) Two members appointed by the Minority Leader of
13 the Senate;

14 (3) Three members appointed by the Speaker of the
15 House of Representatives;

16 (4) Two members appointed by the Minority Leader of
17 the House of Representatives;

18 (5) One member appointed by the Attorney General;

19 (6) One member appointed by the Governor;

20 (7) One member appointed by the Cook County State's
21 Attorney;

22 (8) One member appointed by the Office of the Cook
23 County Public Defender; and

24 (9) One member appointed by the Office of the State
25 Appellate Defender.

26 (b) The Committee shall study the impact of the various
27 reforms to the capital punishment system enacted by the 93rd
28 General Assembly and annually report to the General Assembly
29 on the effects of these reforms. Each report shall include:

30 (1) The impact of the reforms on the issue of
31 uniformity and proportionality in the application of the

1 death penalty including, but not limited to, the tracking
 2 of data related to whether the reforms have eliminated
 3 the statistically significant differences in sentencing
 4 related to the geographic location of the homicide and
 5 the race of the victim found by the Governor's Commission
 6 on Capital Punishment in its report issued on April 15,
 7 2002.

8 (2) The implementation of training for police,
 9 prosecutors, defense attorneys, and judges as recommended
 10 by the Governor's Commission on Capital Punishment.

11 (3) The impact of the various reforms on the
 12 quality of evidence used during capital prosecutions.

13 (4) The quality of representation provided by
 14 defense counsel to defendants in capital prosecutions.

15 (5) The impact of the various reforms on the costs
 16 associated with the administration of the Illinois
 17 capital punishment system.

18 (c) The Committee shall hold hearings on a periodic
 19 basis to receive testimony from the public regarding the
 20 manner in which reforms have impacted the capital punishment
 21 system.

22 (d) The Committee shall submit its final report to the
 23 General Assembly no later than 5 years after the effective
 24 date of this Act.

25 Section 5. The Illinois Criminal Justice Information Act
 26 is amended by adding Section 7.2 as follows:

27 (20 ILCS 3930/7.2 new)

28 Sec. 7.2. Custodial Interview Pilot Program.

29 (a) Legislative findings and intent. The General
 30 Assembly finds that technology has made it possible to
 31 electronically record custodial interviews of suspects during
 32 first degree murder investigations. This technology will

1 protect law enforcement agencies against claims of abuse and
2 coercion by suspects while providing a memorialized account
3 of interviews at police stations. The technology will also
4 provide a better means for courts to review confessions of
5 suspects with direct evidence of demeanor, tone, manner, and
6 content of statements. The General Assembly intends to create
7 a Custodial Interview Pilot Program to establish 4 pilot
8 programs at police stations in the State of Illinois. For
9 each program, video and audio experts shall install equipment
10 and train participating law enforcement agencies to
11 electronically record custodial interviews at their
12 respective police stations. Participating law enforcement
13 agencies shall choose how to use the equipment in cooperation
14 with the local State's Attorney's office. The participating
15 law enforcement agencies may choose to electronically record
16 interviews of suspects for offenses other than first degree
17 murder if they adopt local protocols in cooperation with the
18 local State's Attorney's office.

19 (b) Definitions. In this Section:

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

22 (2) "Custodial interviews" means interviews of
23 suspects during first degree murder investigations or
24 other investigations established by local protocol by law
25 enforcement authorities that take place at the police
26 station.

27 (c) Custodial Interview Pilot Program. The Authority
28 shall, subject to appropriation, establish a Custodial
29 Interview Pilot Program to operate 4 custodial interview
30 pilot programs. The programs shall be established in a police
31 station in the County of Cook and in 3 other police stations
32 geographically distributed throughout the State. Each
33 participating law enforcement agency must:

34 (1) Promulgate procedures for recording custodial

1 interviews of suspects during first degree murder
2 investigations by video and audio means.

3 (2) Promulgate procedures for maintaining and
4 storing video and audio recordings.

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

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

12 (f) The Authority shall adopt rules in cooperation with
13 the Illinois Department of State Police to implement this
14 Section.

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

17 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

18 Sec. 9-1. First degree Murder - Death penalties -
19 Exceptions - Separate Hearings - Proof - Findings - Appellate
20 procedures - Reversals.

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

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

27 (2) he knows that such acts create a strong
28 probability of death or great bodily harm to that
29 individual or another; or

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

32 (b) Aggravating Factors. A defendant who at the time of

1 the commission of the offense has attained the age of 18 or
2 more and who has been found guilty of first degree murder may
3 be sentenced to death if:

4 (1) the murdered individual was a peace officer or
5 fireman killed in the course of performing his official
6 duties, to prevent the performance of his official
7 duties, or in retaliation for performing his official
8 duties, and the defendant knew or should have known that
9 the murdered individual was a peace officer or fireman;
10 or

11 (2) the murdered individual was an employee of an
12 institution or facility of the Department of Corrections,
13 or any similar local correctional agency, killed in the
14 course of performing his official duties, to prevent the
15 performance of his official duties, or in retaliation for
16 performing his official duties, or the murdered
17 individual was an inmate at such institution or facility
18 and was killed on the grounds thereof, or the murdered
19 individual was otherwise present in such institution or
20 facility with the knowledge and approval of the chief
21 administrative officer thereof; or

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

33 (4) (Blank) ~~the-murdered-individual-was-killed-as-a~~
34 ~~result-of-the-hijacking-of-an-airplane,-train,-ship,-bus~~

1 ~~or-ether-public-conveyance~~; or

2 (5) the defendant committed the murder pursuant to
3 a contract, agreement or understanding by which he was to
4 receive money or anything of value in return for
5 committing the murder or procured another to commit the
6 murder for money or anything of value; or

7 (6) the murdered individual was killed in the
8 course of another felony if:

9 (a) the murdered individual:

10 (i) was actually killed by the defendant,
11 or

12 (ii) received physical injuries
13 personally inflicted by the defendant
14 substantially contemporaneously with physical
15 injuries caused by one or more persons for
16 whose conduct the defendant is legally
17 accountable under Section 5-2 of this Code, and
18 the physical injuries inflicted by either the
19 defendant or the other person or persons for
20 whose conduct he is legally accountable caused
21 the death of the murdered individual; and

22 (b) in performing the acts which caused the
23 death of the murdered individual or which resulted
24 in physical injuries personally inflicted by the
25 defendant on the murdered individual under the
26 circumstances of subdivision (ii) of subparagraph
27 (a) of paragraph (6) of subsection (b) of this
28 Section, the defendant acted with the intent to kill
29 the murdered individual or with the knowledge that
30 his acts created a strong probability of death or
31 great bodily harm to the murdered individual or
32 another; and

33 (c) the other felony was one of the following:
34 armed robbery, ~~armed--violence~~, robbery, predatory

1 criminal sexual assault of a child, aggravated
 2 criminal sexual assault, aggravated kidnapping,
 3 aggravated vehicular hijacking, forcible-detention,
 4 arson, aggravated arson, aggravated stalking,
 5 burglary, residential burglary, home invasion,
 6 calculated-criminal-drug-conspiracy--as--defined--in
 7 Section--405--of--the-Illinois-Controlled-Substances
 8 Act,-streetgang-criminal-drug-conspiracy-as--defined
 9 in---Section---405.2---of--the--Illinois--Controlled
 10 Substances-Act, or the attempt to commit any of the
 11 felonies listed in this subsection (c); or

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

15 (8) the defendant committed the murder with intent
 16 to prevent the murdered individual from testifying or
 17 participating in any criminal investigation or
 18 prosecution or giving material assistance to the State in
 19 any investigation or prosecution, either against the
 20 defendant or another; or the defendant committed the
 21 murder because the murdered individual was a witness in
 22 any prosecution or gave material assistance to the State
 23 in any investigation or prosecution, either against the
 24 defendant or another; or

25 (9) (Blank) the--defendant,---while--committing--an
 26 offense-punishable-under-Sections-401,-401.1,-401.2,-405,
 27 405.2,-407--or-407.1-or-subsection-(b)-of-Section-404-of
 28 the-Illinois-Controlled-Substances-Act,-or-while--engaged
 29 in--a--conspiracy-or-solicitation-to-commit-such-offense,
 30 intentionally--killed---an---individual---or---counseled,
 31 commanded,-induced,-procured--or-caused-the-intentional
 32 killing-of-the-murdered-individual; or

33 (10) (Blank) the-defendant-was-incarcerated--in--an
 34 institution--or-facility-of-the-Department-of-Corrections

1 at-the-time--of--the--murder,--and--while--committing--an
 2 offense--punishable--as--a--felony--under--Illinois--law,--or
 3 while--engaged--in--a--conspiracy--or--solicitation--to--commit
 4 such--offense,--intentionally--killed--an--individual--or
 5 counseled,--commanded,--induced,--procured--or--caused--the
 6 intentional--killing--of--the--murdered--individual; or

7 (11) the murder was committed in a cold, calculated
 8 and premeditated manner pursuant to a preconceived plan,
 9 scheme or design to take a human life by unlawful means,
 10 and the conduct of the defendant created a reasonable
 11 expectation that the death of a human being would result
 12 therefrom; or

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

27 (13) (Blank) the---defendant---was---a---principal
 28 administrator,--organizer,--or--leader--of--a--calculated
 29 criminal--drug--conspiracy--consisting--of--a--hierarchical
 30 position--of--authority--superior--to--that--of--all--other
 31 members--of--the--conspiracy,--and--the--defendant--counseled,
 32 commanded,--induced,--procured,--or--caused--the--intentional
 33 killing--of--the--murdered--person; or

34 (14) the murder was intentional and involved the

1 infliction of torture. For the purpose of this Section
2 torture means the infliction of or subjection to extreme
3 physical pain, motivated by an intent to increase or
4 prolong the pain, suffering or agony of the victim; or

5 (15) (Blank) ~~the murder was committed as a result~~
6 ~~of the intentional discharge of a firearm by the~~
7 ~~defendant from a motor vehicle and the victim was not~~
8 ~~present within the motor vehicle; or~~

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

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

21 (18) the murder was committed by reason of any
22 person's activity as a community policing volunteer or to
23 prevent any person from engaging in activity as a
24 community policing volunteer; or

25 (19) the murdered individual was subject to an
26 order of protection and the murder was committed by a
27 person against whom the same order of protection was
28 issued under the Illinois Domestic Violence Act of 1986;
29 or

30 (20) the murdered individual was known by the
31 defendant to be a teacher or other person employed in any
32 school and the teacher or other employee is upon the
33 grounds of a school or grounds adjacent to a school, or
34 is in any part of a building used for school purposes; or

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

4 For the purpose of this Section:

5 "Participating in any criminal investigation or
6 prosecution" is intended to include those appearing in the
7 proceedings in any capacity, such as trial judges,
8 prosecutors, defense attorneys, investigators, witnesses, or
9 jurors.

10 (c) Consideration of factors in Aggravation and
11 Mitigation.

12 The court shall consider, or shall instruct the jury to
13 consider any aggravating and any mitigating factors which are
14 relevant to the imposition of the death penalty. Aggravating
15 factors may include but need not be limited to those factors
16 set forth in subsection (b). Mitigating factors may include
17 but need not be limited to the following:

18 (1) the defendant has no significant history of
19 prior criminal activity;

20 (2) the murder was committed while the defendant
21 was under the influence of extreme mental or emotional
22 disturbance, although not such as to constitute a defense
23 to prosecution;

24 (3) the murdered individual was a participant in
25 the defendant's homicidal conduct or consented to the
26 homicidal act;

27 (4) the defendant acted under the compulsion of
28 threat or menace of the imminent infliction of death or
29 great bodily harm;

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

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

34 (7) the defendant suffers from a reduced mental

1 capacity.

2 (d) Separate sentencing hearing.

3 Where requested by the State, the court shall conduct a
4 separate sentencing proceeding to determine the existence of
5 factors set forth in subsection (b) and to consider any
6 aggravating or mitigating factors as indicated in subsection
7 (c). The proceeding shall be conducted:

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

10 (2) before a jury impanelled for the purpose of the
11 proceeding if:

12 A. the defendant was convicted upon a plea of
13 guilty; or

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

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

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

20 (e) Evidence and Argument.

21 During the proceeding any information relevant to any of
22 the factors set forth in subsection (b) may be presented by
23 either the State or the defendant under the rules governing
24 the admission of evidence at criminal trials. Any
25 information relevant to any additional aggravating factors or
26 any mitigating factors indicated in subsection (c) may be
27 presented by the State or defendant regardless of its
28 admissibility under the rules governing the admission of
29 evidence at criminal trials. The State and the defendant
30 shall be given fair opportunity to rebut any information
31 received at the hearing.

32 (f) Proof.

33 The burden of proof of establishing the existence of any
34 of the factors set forth in subsection (b) is on the State

1 and shall not be satisfied unless established beyond a
2 reasonable doubt.

3 (g) Procedure - Jury.

4 If at the separate sentencing proceeding the jury finds
5 that none of the factors set forth in subsection (b) exists,
6 the court shall sentence the defendant to a term of
7 imprisonment under Chapter V of the Unified Code of
8 Corrections. If there is a unanimous finding by the jury
9 that one or more of the factors set forth in subsection (b)
10 exist, the jury shall consider aggravating and mitigating
11 factors as instructed by the court and shall determine
12 whether the sentence of death shall be imposed. If the jury
13 determines unanimously, after weighing the factors in
14 aggravation and mitigation, that death is the appropriate
15 sentence ~~that there are no mitigating factors sufficient to~~
16 ~~preclude the imposition of the death sentence,~~ the court
17 shall sentence the defendant to death.

18 If Unless the jury determines unanimously, after weighing
19 the factors in aggravation and mitigation, that death is not
20 the appropriate sentence, ~~finds that there are no mitigating~~
21 ~~factors sufficient to preclude the imposition of the death~~
22 sentence the court shall sentence the defendant to a term of
23 natural life imprisonment under Chapter V of the Unified Code
24 of Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court
27 finds that none of the factors found in subsection (b)
28 exists, the court shall sentence the defendant to a term of
29 imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 If the Court determines, after weighing the factors in
32 aggravation and mitigation, that death is the appropriate
33 sentence ~~that one or more of the factors set forth in~~
34 ~~subsection (b) exists,~~ ~~the Court shall consider any~~

1 ~~aggravating-and-mitigating-factors-as-indicated-in-subsection~~
2 ~~(e).--If-the-Court-determines-that-there--are--no--mitigating~~
3 ~~factors--sufficient--to--preclude-the-imposition-of-the-death~~
4 ~~sentence, the Court shall sentence the defendant to death.~~

5 If Unless the court finds that there--are--no--mitigating
6 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~
7 ~~of death~~ is not the appropriate sentence, the court shall
8 sentence the defendant to a term of natural life imprisonment
9 under Chapter V of the Unified Code of Corrections.

10 (i) Appellate Procedure.

11 The conviction and sentence of death shall be subject to
12 automatic review by the Supreme Court. Such review shall be
13 in accordance with rules promulgated by the Supreme Court.

14 (j) Disposition of reversed death sentence.

15 In the event that the death penalty in this Act is held
16 to be unconstitutional by the Supreme Court of the United
17 States or of the State of Illinois, any person convicted of
18 first degree murder shall be sentenced by the court to a term
19 of imprisonment under Chapter V of the Unified Code of
20 Corrections.

21 In the event that any death sentence pursuant to the
22 sentencing provisions of this Section is declared
23 unconstitutional by the Supreme Court of the United States or
24 of the State of Illinois, the court having jurisdiction over
25 a person previously sentenced to death shall cause the
26 defendant to be brought before the court, and the court shall
27 sentence the defendant to a term of imprisonment under
28 Chapter V of the Unified Code of Corrections.

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

34 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;

1 92-854, eff. 12-5-02.)

2 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

7 (b) Hearing conversation when heard by employees of any
8 common carrier by wire incidental to the normal course of
9 their employment in the operation, maintenance or repair of
10 the equipment of such common carrier by wire so long as no
11 information obtained thereby is used or divulged by the
12 hearer;

13 (c) Any broadcast by radio, television or otherwise
14 whether it be a broadcast or recorded for the purpose of
15 later broadcasts of any function where the public is in
16 attendance and the conversations are overheard incidental to
17 the main purpose for which such broadcasts are then being
18 made;

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

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

29 (f) Recording or listening with the aid of any device to
30 incoming telephone calls of phone lines publicly listed or
31 advertised as consumer "hotlines" by manufacturers or
32 retailers of food and drug products. Such recordings must be
33 destroyed, erased or turned over to local law enforcement

1 authorities within 24 hours from the time of such recording
2 and shall not be otherwise disseminated. Failure on the part
3 of the individual or business operating any such recording or
4 listening device to comply with the requirements of this
5 subsection shall eliminate any civil or criminal immunity
6 conferred upon that individual or business by the operation
7 of this Section;

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

32 (g-5) With approval of the State's Attorney of the
33 county in which it is to occur, recording or listening with
34 the aid of any device to any conversation where a law

1 enforcement officer, or any person acting at the direction of
2 law enforcement, is a party to the conversation and has
3 consented to it being intercepted or recorded in the course
4 of an investigation of any offense defined in Article 29D of
5 this Code. In all such cases, an application for an order
6 approving the previous or continuing use of an eavesdropping
7 device must be made within 48 hours of the commencement of
8 such use. In the absence of such an order, or upon its
9 denial, any continuing use shall immediately terminate. The
10 Director of State Police shall issue rules as are necessary
11 concerning the use of devices, retention of tape recordings,
12 and reports regarding their use.

13 Any recording or evidence obtained or derived in the
14 course of an investigation of any offense defined in Article
15 29D of this Code shall, upon motion of the State's Attorney
16 or Attorney General prosecuting any violation of Article 29D,
17 be reviewed in camera with notice to all parties present by
18 the court presiding over the criminal case, and, if ruled by
19 the court to be relevant and otherwise admissible, it shall
20 be admissible at the trial of the criminal case.

21 This subsection (g-5) is inoperative on and after January
22 1, 2005. No conversations recorded or monitored pursuant to
23 this subsection (g-5) shall be inadmissible in a court of law
24 by virtue of the repeal of this subsection (g-5) on January
25 1, 2005_i.

26 (h) Recordings made simultaneously with a video
27 recording of an oral conversation between a peace officer,
28 who has identified his or her office, and a person stopped
29 for an investigation of an offense under the Illinois Vehicle
30 Code;

31 (i) Recording of a conversation made by or at the
32 request of a person, not a law enforcement officer or agent
33 of a law enforcement officer, who is a party to the
34 conversation, under reasonable suspicion that another party

1 to the conversation is committing, is about to commit, or has
 2 committed a criminal offense against the person or a member
 3 of his or her immediate household, and there is reason to
 4 believe that evidence of the criminal offense may be obtained
 5 by the recording; and

6 (j) The use of a telephone monitoring device by either
 7 (1) a corporation or other business entity engaged in
 8 marketing or opinion research or (2) a corporation or other
 9 business entity engaged in telephone solicitation, as defined
 10 in this subsection, to record or listen to oral telephone
 11 solicitation conversations or marketing or opinion research
 12 conversations by an employee of the corporation or other
 13 business entity when:

14 (i) the monitoring is used for the purpose of
 15 service quality control of marketing or opinion research
 16 or telephone solicitation, the education or training of
 17 employees or contractors engaged in marketing or opinion
 18 research or telephone solicitation, or internal research
 19 related to marketing or opinion research or telephone
 20 solicitation; and

21 (ii) the monitoring is used with the consent of at
 22 least one person who is an active party to the marketing
 23 or opinion research conversation or telephone
 24 solicitation conversation being monitored.

25 No communication or conversation or any part, portion, or
 26 aspect of the communication or conversation made, acquired,
 27 or obtained, directly or indirectly, under this exemption
 28 (j), may be, directly or indirectly, furnished to any law
 29 enforcement officer, agency, or official for any purpose or
 30 used in any inquiry or investigation, or used, directly or
 31 indirectly, in any administrative, judicial, or other
 32 proceeding, or divulged to any third party.

33 When recording or listening authorized by this subsection
 34 (j) on telephone lines used for marketing or opinion research

1 or telephone solicitation purposes results in recording or
2 listening to a conversation that does not relate to marketing
3 or opinion research or telephone solicitation; the person
4 recording or listening shall, immediately upon determining
5 that the conversation does not relate to marketing or opinion
6 research or telephone solicitation, terminate the recording
7 or listening and destroy any such recording as soon as is
8 practicable.

9 Business entities that use a telephone monitoring or
10 telephone recording system pursuant to this exemption (j)
11 shall provide current and prospective employees with notice
12 that the monitoring or recordings may occur during the course
13 of their employment. The notice shall include prominent
14 signage notification within the workplace.

15 Business entities that use a telephone monitoring or
16 telephone recording system pursuant to this exemption (j)
17 shall provide their employees or agents with access to
18 personal-only telephone lines which may be pay telephones,
19 that are not subject to telephone monitoring or telephone
20 recording.

21 For the purposes of this subsection (j), "telephone
22 solicitation" means a communication through the use of a
23 telephone by live operators:

- 24 (i) soliciting the sale of goods or services;
- 25 (ii) receiving orders for the sale of goods or
26 services;
- 27 (iii) assisting in the use of goods or services; or
- 28 (iv) engaging in the solicitation, administration,
29 or collection of bank or retail credit accounts.

30 For the purposes of this subsection (j), "marketing or
31 opinion research" means a marketing or opinion research
32 interview conducted by a live telephone interviewer engaged
33 by a corporation or other business entity whose principal
34 business is the design, conduct, and analysis of polls and

1 surveys measuring the opinions, attitudes, and responses of
2 respondents toward products and services, or social or
3 political issues, or both; and

4 (k) Recording the interview or statement of any person
5 when the person knows that the interview is being conducted
6 by a law enforcement officer or prosecutor and the interview
7 takes place at a police station that is currently
8 participating in the Custodial Interview Pilot Program
9 established under the Illinois Criminal Justice Information
10 Act.

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

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

15 (725 ILCS 5/113-8 new)

16 Sec. 113-8. Notice of intention to seek or decline the
17 death penalty.

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

29 (725 ILCS 5/114-13.5 new)

30 Sec. 114-13.5. Investigative reports. Any investigative,
31 law enforcement, or other agency responsible for

1 investigating any felony offense or participating in an
2 investigation of any felony offense, other than defense
3 investigators, shall provide to the authority prosecuting the
4 offense all investigative material, including but not limited
5 to reports and memoranda that have been generated by or have
6 come into the possession of the investigating agency
7 concerning the offense being investigated. In addition, the
8 investigating agency shall provide to the prosecuting
9 authority any material or information within its possession
10 or control that would tend to negate the guilt of the accused
11 of the offense charged or reduce his or her punishment for
12 the offense. Every investigative and law enforcement agency
13 in this State shall adopt policies to ensure compliance with
14 these standards.

15 (725 ILCS 5/114-15 new)

16 Sec. 114-15. Motion for genetic marker groupings
17 comparison analysis.

18 (a) A defendant may make a motion for a court order
19 before trial for comparison analysis by the Department of
20 State Police with those genetic marker groupings maintained
21 under subsection (f) of Section 5-4-3 of the Unified Code of
22 Corrections if the defendant meets all of the following
23 requirements:

24 (1) The defendant shows good cause.

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

26 (3) The defendant seeks for the Department of State
27 Police to identify genetic marker groupings from evidence
28 collected by criminal justice agencies pursuant to the
29 alleged offense.

30 (4) The defendant seeks comparison analysis of
31 genetic marker groupings of the evidence under
32 subdivision (3) to those of the defendant, to those of
33 other forensic evidence, and to those maintained under

1 subsection (f) of Section 5-4-3 of the Unified Code of
2 Corrections.

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

7 (6) Reasonable notice of the motion shall be served
8 upon the State.

9 (b) The Department of State Police may promulgate rules
10 for the types of comparisons performed and the quality
11 assurance standards required for submission of genetic marker
12 groupings. The provisions of the Administrative Review Law
13 shall apply to all actions taken under the rules so
14 promulgated.

15 (725 ILCS 5/116-3)

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

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

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

33 (1) identity was the issue in the trial which

1 resulted in his or her conviction; and

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

6 (c) The trial court shall allow the testing under
7 reasonable conditions designed to protect the State's
8 interests in the integrity of the evidence and the testing
9 process upon a determination that:

10 (1) the result of the testing has the scientific
11 potential to produce new, noncumulative evidence
12 materially relevant to the defendant's assertion of
13 actual innocence that significantly advances the
14 defendant's claim of innocence;

15 (2) the testing requested employs a scientific
16 method generally accepted within the relevant scientific
17 community.

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

19 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

23 (1) If the petitioner is under sentence of death
24 and is without counsel and alleges that he is without
25 means to procure counsel, he shall state whether or not
26 he wishes counsel to be appointed to represent him. If
27 appointment of counsel is so requested, the court shall
28 appoint counsel if satisfied that the petitioner has no
29 means to procure counsel.

30 (2) If the petitioner is sentenced to imprisonment
31 and the court determines the petition is frivolous or is
32 patently without merit, it shall dismiss the petition in
33 a written order, specifying the findings of fact and

1 conclusions of law it made in reaching its decision.
 2 Such order of dismissal is a final judgment and shall be
 3 served upon the petitioner by certified mail within 10
 4 days of its entry.

5 (b) If the petition is not dismissed pursuant to this
 6 Section, the court shall order the petition to be docketed
 7 for further consideration in accordance with Sections 122-4
 8 through 122-6. If the petitioner is under sentence of death,
 9 the court shall order the petition to be docketed for further
 10 consideration and hearing within one year of the filing of
 11 the petition.

12 (c) In considering a petition pursuant to this Section,
 13 the court may examine the court file of the proceeding in
 14 which the petitioner was convicted, any action taken by an
 15 appellate court in such proceeding and any transcripts of
 16 such proceeding.

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

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

20 (725 ILCS 124/10)

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

22 Sec. 10. Court appointed trial counsel; compensation and
 23 expenses.

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

31 (b) Appointed trial counsel shall be compensated upon
 32 presentment and certification by the circuit court of a claim

1 for services detailing the date, activity, and time duration
2 for which compensation is sought. Compensation for appointed
3 trial counsel may be paid at a reasonable rate not to exceed
4 \$125 per hour.

5 Beginning in 2001, every January 20, the statutory rate
6 prescribed in this subsection shall be automatically
7 increased or decreased, as applicable, by a percentage equal
8 to the percentage change in the consumer price index-u during
9 the preceding 12-month calendar year. "Consumer price
10 index-u" means the index published by the Bureau of Labor
11 Statistics of the United States Department of Labor that
12 measures the average change in prices of goods and services
13 purchased by all urban consumers, United States city average,
14 all items, 1982-84=100. The new rate resulting from each
15 annual adjustment shall be determined by the State Treasurer
16 and made available to the chief judge of each judicial
17 circuit. Payment in excess of the limitations stated in this
18 subsection (b) may be made if the trial court certifies that
19 such payment is necessary to provide fair compensation for
20 representation based upon customary charges in the relevant
21 legal market for attorneys of similar skill, background, and
22 experience. A trial court may entertain the filing of this
23 verified statement before the termination of the cause and
24 may order the provisional payment of sums during the pendency
25 of the cause.

26 (c) Appointed trial counsel may also petition the court
27 for certification of expenses for reasonable and necessary
28 capital litigation expenses including, but not limited to,
29 investigatory and other assistance, expert, forensic, and
30 other witnesses, and mitigation specialists. Counsel may not
31 petition for certification of expenses that may have been
32 provided or compensated by the State Appellate Defender under
33 item (c)(5) of Section 10 of the State Appellate Defender
34 Act.

1 (d) Appointed trial counsel shall petition the court for
2 certification of compensation and expenses under this Section
3 periodically during the course of counsel's representation.
4 If the court determines that the compensation and expenses
5 should be paid from the Capital Litigation Trust Fund, the
6 court shall certify, on a form created by the State
7 Treasurer, that all or a designated portion of the amount
8 requested is reasonable, necessary, and appropriate for
9 payment from the Trust Fund. Certification of compensation
10 and expenses by a court in any county other than Cook County
11 shall be delivered by the court to the State Treasurer and
12 paid by the State Treasurer directly from the Capital
13 Litigation Trust Fund if there are sufficient moneys in the
14 Trust Fund to pay the compensation and expenses.
15 Certification of compensation and expenses by a court in Cook
16 County shall be delivered by the court to the county
17 treasurer and paid by the county treasurer from moneys
18 granted to the county from the Capital Litigation Trust Fund.
19 (Source: P.A. 91-589, eff. 1-1-00.)

20 (725 ILCS 124/15)

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

22 Sec. 15. Capital Litigation Trust Fund.

23 (a) The Capital Litigation Trust Fund is created as a
24 special fund in the State Treasury. The Trust Fund shall be
25 administered by the State Treasurer to provide moneys for the
26 appropriations to be made, grants to be awarded, and
27 compensation and expenses to be paid under this Act. All
28 interest earned from the investment or deposit of moneys
29 accumulated in the Trust Fund shall, under Section 4.1 of the
30 State Finance Act, be deposited into the Trust Fund.

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

33 (c) Moneys deposited into the Trust Fund shall be used

1 exclusively for the purposes of providing funding for the
2 prosecution and defense of capital cases as provided in this
3 Act and shall not be appropriated, loaned, or in any manner
4 transferred to the General Revenue Fund of the State of
5 Illinois.

6 (d) Every fiscal year the State Treasurer shall transfer
7 from the General Revenue Fund to the Capital Litigation Trust
8 Fund an amount equal to the full amount of moneys
9 appropriated by the General Assembly (both by original and
10 supplemental appropriation), less any unexpended balance from
11 the previous fiscal year, from the Capital Litigation Trust
12 Fund for the specific purpose of making funding available for
13 the prosecution and defense of capital cases. The Public
14 Defender and State's Attorney in Cook County, the State
15 Appellate Defender, the State's Attorneys Appellate
16 Prosecutor, and the Attorney General shall make annual
17 requests for appropriations from the Trust Fund.

18 (1) The Public Defender in Cook County shall
19 request appropriations to the State Treasurer for
20 expenses incurred by the Public Defender and for funding
21 for private appointed defense counsel in Cook County.

22 (2) The State's Attorney in Cook County shall
23 request an appropriation to the State Treasurer for
24 expenses incurred by the State's Attorney.

25 (3) The State Appellate Defender shall request a
26 direct appropriation from the Trust Fund for expenses
27 incurred by the State Appellate Defender in providing
28 assistance to trial attorneys under item (c)(5) of
29 Section 10 of the State Appellate Defender Act and an
30 appropriation to the State Treasurer for payments from
31 the Trust Fund for the defense of cases in counties other
32 than Cook County.

33 (4) The State's Attorneys Appellate Prosecutor
34 shall request a direct appropriation from the Trust Fund

1 to pay expenses incurred by the State's Attorneys
2 Appellate Prosecutor and an appropriation to the State
3 Treasurer for payments from the Trust Fund for expenses
4 incurred by State's Attorneys in counties other than Cook
5 County.

6 (5) The Attorney General shall request a direct
7 appropriation from the Trust Fund to pay expenses
8 incurred by the Attorney General in assisting the State's
9 Attorneys in counties other than Cook County.

10 The Public Defender and State's Attorney in Cook County,
11 the State Appellate Defender, the State's Attorneys Appellate
12 Prosecutor, and the Attorney General may each request
13 supplemental appropriations from the Trust Fund during the
14 fiscal year.

15 (e) Moneys in the Trust Fund shall be expended only as
16 follows:

17 (1) To pay the State Treasurer's costs to
18 administer the Trust Fund. The amount for this purpose
19 may not exceed 5% in any one fiscal year of the amount
20 otherwise appropriated from the Trust Fund in the same
21 fiscal year.

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

31 (3) To pay the compensation of trial attorneys,
32 other than public defenders, who have been appointed by
33 the court to represent defendants who are charged with
34 capital crimes.

1 (4) To provide State's Attorneys with funding for
2 capital litigation expenses including, but not limited
3 to, investigatory and other assistance and expert,
4 forensic, and other witnesses necessary to prosecute
5 capital cases. State's Attorneys in any county other
6 than Cook County seeking funding for capital litigation
7 expenses including, but not limited to, investigatory and
8 other assistance and expert, forensic, or other witnesses
9 under this Section may request that the State's Attorneys
10 Appellate Prosecutor or the Attorney General, as the case
11 may be, certify the expenses as reasonable, necessary,
12 and appropriate for payment from the Trust Fund, on a
13 form created by the State Treasurer. Upon certification
14 of the expenses and delivery of the certification to the
15 State Treasurer, the Treasurer shall pay the expenses
16 directly from the Capital Litigation Trust Fund if there
17 are sufficient moneys in the Trust Fund to pay the
18 expenses.

19 (5) To provide financial support through the
20 Attorney General pursuant to the Attorney General Act for
21 the several county State's Attorneys outside of Cook
22 County, but shall not be used to increase personnel for
23 the Attorney General's Office.

24 (6) To provide financial support through the
25 State's Attorneys Appellate Prosecutor pursuant to the
26 State's Attorneys Appellate Prosecutor's Act for the
27 several county State's Attorneys outside of Cook County,
28 but shall not be used to increase personnel for the
29 State's Attorneys Appellate Prosecutor.

30 (7) To provide financial support to the State
31 Appellate Defender pursuant to the State Appellate
32 Defender Act.

33 Moneys expended from the Trust Fund shall be in addition
34 to county funding for Public Defenders and State's Attorneys,

1 and shall not be used to supplant or reduce ordinary and
2 customary county funding.

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

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

24 (1) For each State fiscal year, the State's
25 Attorney and Public Defender must each make a separate
26 application to the State Treasurer for capital litigation
27 grants.

28 (2) The State Treasurer shall establish rules and
29 procedures for grant applications. The rules shall
30 require the Cook County Treasurer as the grant recipient
31 to report on a periodic basis to the State Treasurer how
32 much of the grant has been expended, how much of the
33 grant is remaining, and the purposes for which the grant
34 has been used. The rules may also require the Cook

1 County Treasurer to certify on a periodic basis that
2 expenditures of the funds have been made for expenses
3 that are reasonable, necessary, and appropriate for
4 payment from the Trust Fund.

5 (3) The State Treasurer shall make the grants to
6 the Cook County Treasurer as soon as possible after the
7 beginning of the State fiscal year.

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

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

16 (6) Expenditure of grant moneys under this
17 subsection (g) is subject to audit by the Auditor
18 General.

19 (7) The Cook County Treasurer shall immediately
20 make payment from the appropriate separate account in the
21 county treasury for capital litigation expenses to the
22 State's Attorney, Public Defender, or court appointed
23 defense counsel other than the Public Defender, as the
24 case may be, upon order of the State's Attorney, Public
25 Defender or the court, respectively.

26 (h) If a defendant in a capital case in Cook County is
27 represented by court appointed counsel other than the Cook
28 County Public Defender, the appointed counsel shall petition
29 the court for an order directing the Cook County Treasurer to
30 pay the court appointed counsel's reasonable and necessary
31 compensation and capital litigation expenses from grant
32 moneys provided from the Trust Fund. These petitions shall be
33 considered in camera. Orders denying petitions for
34 compensation or expenses are final. Counsel may not petition

1 for expenses that may have been provided or compensated by
2 the State Appellate Defender under item (c)(5) of Section 10
3 of the State Appellate Defender Act.

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

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

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

1 (3) A petition for capital litigation expenses
 2 under this subsection shall be considered in camera.
 3 Orders denying petitions for compensation or expenses are
 4 final.

5 (j) If the Trust Fund is discontinued or dissolved by an
 6 Act of the General Assembly or by operation of law, any
 7 balance remaining in the Trust Fund shall be returned to the
 8 General Revenue Fund after deduction of administrative costs,
 9 any other provision of this Act to the contrary
 10 notwithstanding.

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

12 (725 ILCS 124/19)

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

14 Sec. 19. Report; repeal.

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

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

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

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

1 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

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

3 (a) Petitions seeking pardon, commutation, or reprieve
4 shall be addressed to the Governor and filed with the
5 Prisoner Review Board. The petition shall be in writing and
6 signed by the person under conviction or by a person on his
7 behalf. It shall contain a brief history of the case, the
8 reasons for seeking executive clemency, and other relevant
9 information the Board may require.

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

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

25 (c) The Board shall, if requested and upon due notice,
26 give a hearing to each application, allowing representation
27 by counsel, if desired, after which it shall confidentially
28 advise the Governor by a written report of its
29 recommendations which shall be determined by majority vote.
30 The Board shall meet to consider such petitions no less than
31 4 times each year.

32 Application for executive clemency under this Section may
33 not be commenced on behalf of a person who has been sentenced
34 to death without the written consent of the defendant, unless

1 the defendant, because of a mental or physical condition, is
2 incapable of asserting his or her own claim.

3 All petitions for executive clemency on behalf of a
4 person who is sentenced to death must be filed with the
5 Prisoner Review Board within 30 days from the date that the
6 Supreme Court has issued a final order setting the execution
7 date. The Governor or the Chairman of the Prisoner Review
8 Board may waive the 30-day requirement if the petitioner has
9 just cause for not filing the petition within the appropriate
10 time limitations.

11 (d) The Governor shall decide each application and
12 communicate his decision to the Board which shall notify the
13 petitioner.

14 In the event a petitioner who has been convicted of a
15 Class X felony is granted a release, after the Governor has
16 communicated such decision to the Board, the Board shall give
17 written notice to the Sheriff of the county from which the
18 offender was sentenced if such sheriff has requested that
19 such notice be given on a continuing basis. In cases where
20 arrest of the offender or the commission of the offense took
21 place in any municipality with a population of more than
22 10,000 persons, the Board shall also give written notice to
23 the proper law enforcement agency for said municipality which
24 has requested notice on a continuing basis.

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

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

29 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

33 (a) Any person convicted of, found guilty under the

1 Juvenile Court Act of 1987 for, or who received a disposition
 2 of court supervision for, a qualifying offense or attempt of
 3 a qualifying offense, convicted or found guilty of any
 4 offense classified as a felony under Illinois law, found
 5 guilty or given supervision for any offense classified as a
 6 felony under the Juvenile Court Act of 1987, or
 7 institutionalized as a sexually dangerous person under the
 8 Sexually Dangerous Persons Act, or committed as a sexually
 9 violent person under the Sexually Violent Persons Commitment
 10 Act shall, regardless of the sentence or disposition imposed,
 11 be required to submit specimens of blood, saliva, or tissue
 12 to the Illinois Department of State Police in accordance with
 13 the provisions of this Section, provided such person is:

14 (1) convicted of a qualifying offense or attempt of
 15 a qualifying offense on or after July 1, 1990 the
 16 ~~effective--date--of--this--amendatory--Act--of--1989,~~ and
 17 sentenced to a term of imprisonment, periodic
 18 imprisonment, fine, probation, conditional discharge or
 19 any other form of sentence, or given a disposition of
 20 court supervision for the offense;~~;~~

21 (1.5) found guilty or given supervision under the
 22 Juvenile Court Act of 1987 for a qualifying offense or
 23 attempt of a qualifying offense on or after January 1,
 24 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996,~~
 25 ~~or~~

26 (2) ordered institutionalized as a sexually
 27 dangerous person on or after July 1, 1990; ~~the--effective~~
 28 ~~date-of-this-amendatory-Act-of-1989,~~ ~~or~~

29 (3) convicted of a qualifying offense or attempt of
 30 a qualifying offense before July 1, 1990 ~~the-effective~~
 31 ~~date-of-this-amendatory-Act--of--1989~~ and is presently
 32 confined as a result of such conviction in any State
 33 correctional facility or county jail or is presently
 34 serving a sentence of probation, conditional discharge or

1 periodic imprisonment as a result of such conviction;~~i~~~~r~~~~e~~
2 (3.5) convicted or found guilty of any offense
3 classified as a felony under Illinois law or found guilty
4 or given supervision for such an offense under the
5 Juvenile Court Act of 1987 on or after August 22, 2002;
6 ~~the-effective-date--of-this-amendatory-Act--of--the--92nd~~
7 ~~General-Assembly~~~~r~~~~e~~

8 (4) presently institutionalized as a sexually
9 dangerous person or presently institutionalized as a
10 person found guilty but mentally ill of a sexual offense
11 or attempt to commit a sexual offense; ~~e~~~~r~~

12 (4.5) ordered committed as a sexually violent
13 person on or after the effective date of the Sexually
14 Violent Persons Commitment Act; or

15 (5) seeking transfer to or residency in Illinois
16 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
17 Code of Corrections and the Interstate Compact for Adult
18 Offender Supervision or the Interstate Agreements on
19 Sexually Dangerous Persons Act.

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

28 (a-5) Any person who was otherwise convicted of or
29 received a disposition of court supervision for any other
30 offense under the Criminal Code of 1961 or who was found
31 guilty or given supervision for such a violation under the
32 Juvenile Court Act of 1987, may, regardless of the sentence
33 imposed, be required by an order of the court to submit
34 specimens of blood, saliva, or tissue to the Illinois

1 Department of State Police in accordance with the provisions
2 of this Section.

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

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

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

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

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

34 (d-1) The Illinois Department of State Police shall

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

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

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

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

27 (f) The genetic marker grouping analysis information
28 obtained pursuant to this Act shall be confidential and shall
29 be released only to peace officers of the United States, of
30 other states or territories, of the insular possessions of
31 the United States, of foreign countries duly authorized to
32 receive the same, to all peace officers of the State of
33 Illinois and to all prosecutorial agencies. Notwithstanding
34 the limits on disclosure stated by this subsection (f), the

1 genetic marker grouping analysis information obtained under
2 this Act also may be released by court order pursuant to a
3 motion under Section 114-15 of the Code of Criminal Procedure
4 of 1963 to a defendant who meets all of the requirements
5 under that Section. The genetic marker grouping analysis
6 information obtained pursuant to this Act shall be used only
7 for (i) valid law enforcement identification purposes and as
8 required by the Federal Bureau of Investigation for
9 participation in the National DNA database or (ii) technology
10 validation purposes. Notwithstanding any other statutory
11 provision to the contrary, all information obtained under
12 this Section shall be maintained in a single State data base,
13 which may be uploaded into a national database, and which
14 information may be subject to expungement only as set forth
15 in subsection (f-1).

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

32 (f-5) Any person who intentionally uses genetic marker
33 grouping analysis information, or any other information
34 derived from a DNA sample, beyond the authorized uses as

1 provided under this Section, or any other Illinois law, is
2 guilty of a Class 4 felony, and shall be subject to a fine of
3 not less than \$5,000.

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

6 (1) any violation or inchoate violation of Section
7 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
8 Criminal Code of 1961;~~i7-er~~

9 (1.1) any violation or inchoate violation of
10 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
11 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
12 for which persons are convicted on or after July 1,
13 2001;~~i7-er~~

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

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

17 (4) any inchoate violation of Section 9-3.1,
18 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~i7~~
19 or

20 (5) any violation or inchoate violation of Article
21 29D of the Criminal Code of 1961.

22 (g-5) (Blank).

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

31 (i) A person required to provide a blood, saliva, or
32 tissue specimen shall cooperate with the collection of the
33 specimen and any deliberate act by that person intended to
34 impede, delay or stop the collection of the blood, saliva, or

1 tissue specimen is a Class A misdemeanor.

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

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

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

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

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

33 (A) Costs incurred in providing analysis and
34 genetic marker categorization as required by

1 subsection (d).

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

4 (C) Costs incurred in the purchase and
5 maintenance of equipment for use in performing
6 analyses.

7 (D) Costs incurred in continuing research and
8 development of new techniques for analysis and
9 genetic marker categorization.

10 (E) Costs incurred in continuing education,
11 training, and professional development of forensic
12 scientists regularly employed by these laboratories.

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

23 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
24 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
25 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
26 1-20-03.)

27 Section 99. Effective date. This Act takes effect upon
28 becoming law.