

1 AMENDMENT TO HOUSE BILL 1281

2 AMENDMENT NO. _____. Amend House Bill 1281, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Capital Punishment Reform Study Committee Act.

7 Section 2. Capital Punishment Reform Study Committee.

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

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

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

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

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

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

20 (6) One member appointed by the Governor;

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

1 (8) One member appointed by the Office of the Cook
2 County Public Defender;

3 (9) One member appointed by the Office of the State
4 Appellate Defender; and

5 (10) One member appointed by the office of the
6 State's Attorneys Appellate Prosecutor.

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

11 (1) The impact of the reforms on the issue of
12 uniformity and proportionality in the application of the
13 death penalty including, but not limited to, the tracking
14 of data related to whether the reforms have eliminated
15 the statistically significant differences in sentencing
16 related to the geographic location of the homicide and
17 the race of the victim found by the Governor's Commission
18 on Capital Punishment in its report issued on April 15,
19 2002.

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

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

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

27 (5) The impact of the various reforms on the costs
28 associated with the administration of the Illinois
29 capital punishment system.

30 (c) The Committee shall hold hearings on a periodic
31 basis to receive testimony from the public regarding the
32 manner in which reforms have impacted the capital punishment
33 system.

34 (d) The Committee shall submit its final report to the

1 General Assembly no later than 5 years after the effective
2 date of this Act.

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

5 (20 ILCS 3930/7.2 new)

6 Sec. 7.2. Custodial Interview Pilot Program.

7 (a) Legislative findings and intent. The General
8 Assembly finds that technology has made it possible to
9 electronically record custodial interviews of suspects during
10 first degree murder investigations. This technology will
11 protect law enforcement agencies against claims of abuse and
12 coercion by suspects while providing a memorialized account
13 of interviews at police stations. The technology will also
14 provide a better means for courts to review confessions of
15 suspects with direct evidence of demeanor, tone, manner, and
16 content of statements. The General Assembly intends to create
17 a Custodial Interview Pilot Program to establish 4 pilot
18 programs at police stations in the State of Illinois. For
19 each program, video and audio experts shall install equipment
20 and train participating law enforcement agencies to
21 electronically record custodial interviews at their
22 respective police stations. Participating law enforcement
23 agencies shall choose how to use the equipment in cooperation
24 with the local State's Attorney's office. The participating
25 law enforcement agencies may choose to electronically record
26 interviews of suspects for offenses other than first degree
27 murder if they adopt local protocols in cooperation with the
28 local State's Attorney's office.

29 (b) Definitions. In this Section:

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

32 (2) "Custodial interviews" means interviews of

1 suspects during first degree murder investigations or
2 other investigations established by local protocol by law
3 enforcement authorities that take place at the police
4 station.

5 (c) Custodial Interview Pilot Program. The Authority
6 shall, subject to appropriation, establish a Custodial
7 Interview Pilot Program to operate 4 custodial interview
8 pilot programs. The programs shall be established in a police
9 station in the County of Cook and in 3 other police stations
10 geographically distributed throughout the State. Each
11 participating law enforcement agency must:

12 (1) Promulgate procedures for recording custodial
13 interviews of suspects during first degree murder
14 investigations by video and audio means.

15 (2) Promulgate procedures for maintaining and
16 storing video and audio recordings.

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

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

24 (f) The Authority shall adopt rules in cooperation with
25 the Illinois Department of State Police to implement this
26 Section.

27 Section 6. The Illinois Police Training Act is amended by
28 changing Section 6.1 as follows:

29 (50 ILCS 705/6.1)

30 Sec. 6.1. Decertification of full-time and part-time
31 police officers.

32 (a) The Board must review police officer conduct and

1 records to ensure that no police officer is certified or
2 provided a valid waiver if that police officer has been
3 convicted of a felony offense under the laws of this State or
4 any other state which if committed in this State would be
5 punishable as a felony. The Board must also ensure that no
6 police officer is certified or provided a valid waiver if
7 that police officer has been convicted on or after the
8 effective date of this amendatory Act of 1999 of any
9 misdemeanor specified in this Section or if committed in any
10 other state would be an offense similar to Section 11-6,
11 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
12 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
13 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
14 Act. The Board must appoint investigators to enforce the
15 duties conferred upon the Board by this Act.

16 (b) It is the responsibility of the sheriff or the chief
17 executive officer of every local law enforcement agency or
18 department within this State to report to the Board any
19 arrest or conviction of any officer for an offense identified
20 in this Section.

21 (c) It is the duty and responsibility of every full-time
22 and part-time police officer in this State to report to the
23 Board within 30 days, and the officer's sheriff or chief
24 executive officer, of his or her arrest or conviction for an
25 offense identified in this Section. Any full-time or
26 part-time police officer who knowingly makes, submits, causes
27 to be submitted, or files a false or untruthful report to the
28 Board must have his or her certificate or waiver immediately
29 decertified or revoked.

30 (d) Any person, or a local or State agency, or the Board
31 is immune from liability for submitting, disclosing, or
32 releasing information of arrests or convictions in this
33 Section as long as the information is submitted, disclosed,
34 or released in good faith and without malice. The Board has

1 qualified immunity for the release of the information.

2 (e) Any full-time or part-time police officer with a
3 certificate or waiver issued by the Board who is convicted of
4 any offense described in this Section immediately becomes
5 decertified or no longer has a valid waiver. The
6 decertification and invalidity of waivers occurs as a matter
7 of law. Failure of a convicted person to report to the Board
8 his or her conviction as described in this Section or any
9 continued law enforcement practice after receiving a
10 conviction is a Class 4 felony.

11 (f) The Board's investigators are peace officers and
12 have all the powers possessed by policemen in cities and by
13 sheriff's, provided that the investigators may exercise those
14 powers anywhere in the State, only after contact and
15 cooperation with the appropriate local law enforcement
16 authorities.

17 (g) The Board must request and receive information and
18 assistance from any federal, state, or local governmental
19 agency as part of the authorized criminal background
20 investigation. The Department of State Police must process,
21 retain, and additionally provide and disseminate information
22 to the Board concerning criminal charges, arrests,
23 convictions, and their disposition, that have been filed
24 before, on, or after the effective date of this amendatory
25 Act of the 91st General Assembly against a basic academy
26 applicant, law enforcement applicant, or law enforcement
27 officer whose fingerprint identification cards are on file or
28 maintained by the Department of State Police. The Federal
29 Bureau of Investigation must provide the Board any criminal
30 history record information contained in its files pertaining
31 to law enforcement officers or any applicant to a Board
32 certified basic law enforcement academy as described in this
33 Act based on fingerprint identification. The Board must make
34 payment of fees to the Department of State Police for each

1 fingerprint card submission in conformance with the
2 requirements of paragraph 22 of Section 55a of the Civil
3 Administrative Code of Illinois.

4 (h) A police officer who has been certified or granted a
5 valid waiver may also be decertified or have his or her
6 waiver revoked upon a determination by the Board that he or
7 she, while under oath, has knowingly and willfully made false
8 statements as to a material fact during a homicide
9 proceeding. A determination may be made only after an
10 investigation and hearing upon a verified complaint filed
11 with the Illinois Law Enforcement Training Standards Board.
12 No action may be taken by the Board regarding a complaint
13 unless a majority of the members of the Board are present at
14 the meeting at which the action is taken.

15 (1) The Board shall adopt rules governing the
16 investigation and hearing of a verified complaint to
17 assure the police officer due process and to eliminate
18 conflicts of interest within the Board itself.

19 (2) Upon receipt of the initial verified complaint,
20 the Board must make a finding within 30 days of receipt
21 of the complaint as to whether sufficient evidence exists
22 to support the complaint. The Board is empowered to
23 investigate and dismiss the complaint if it finds, by a
24 vote of a majority of the members present, that there is
25 insufficient evidence to support it (or if the Board is
26 evenly divided as to whether there is sufficient evidence
27 or insufficient evidence to support it). Upon the initial
28 filing, the sheriff or police chief, or other employing
29 agency, of the accused officer may suspend, with or
30 without pay, the accused officer pending a decision of
31 the Board. Upon a Board finding of insufficient evidence,
32 the police officer shall be reinstated with back pay,
33 benefits, and seniority status as appropriate. The
34 sheriff or police chief, or employing agency, shall take

1 such necessary action as is ordered by the Board.

2 (3) If the Board finds, by a vote of a majority of
3 the members present, that sufficient evidence exists to
4 support the complaint, it shall authorize a hearing
5 before an administrative law judge within 45 days of the
6 Board's finding, unless, based upon the complexity and
7 extent of the allegations and charges, additional time is
8 needed. In no event may a hearing before an
9 administrative law judge take place later than 60 days
10 after the Board's finding.

11 (i) The Board shall have the power and authority to
12 appoint administrative law judges on a contractual basis.
13 The Administrative law judges must be attorneys licensed to
14 practice law in the State of Illinois. The Board shall also
15 adopt rules governing the appointment of administrative law
16 judges and the conduct of hearings consistent with the
17 requirements of this Section. The administrative law judge
18 shall hear all evidence and prepare a written recommendation
19 of his or her findings to the Board. At the hearing the
20 accused police officer shall be afforded the opportunity to:

21 (1) Be represented by counsel;

22 (2) Be heard in his or her own defense;

23 (3) Produce evidence in his or her defense;

24 (4) Request that the Board compel the attendance of
25 witnesses and production of court records and documents.

26 (j) Once a case has been set for hearing, the person who
27 filed the verified complaint shall have the opportunity to
28 produce evidence to support any charge against a police
29 officer that he or she, while under oath, has knowingly and
30 willfully made false statements as to a material fact during
31 a homicide proceeding.

32 (1) The person who filed the verified complaint
33 shall have the opportunity to be represented by counsel
34 and shall produce evidence to support his or her charges;

1 (2) The person who filed the verified complaint may
2 request the Board to compel the attendance of witnesses
3 and production of court records and documents.

4 (k) The Board shall have the power to issue subpoenas
5 requiring the attendance and testimony of witnesses and the
6 production of court records and documents and shall have the
7 power to administer oaths.

8 (l) The administrative law judge shall have the
9 responsibility of receiving into evidence relevant testimony
10 and documents, including court records, to support or
11 disprove the allegations made by the person filing the
12 verified complaint, and, at the close of the case, hear
13 arguments. If the administrative law judge finds that there
14 is not clear and convincing evidence to support the verified
15 complaint that the police officer has, while under oath,
16 knowingly and willfully made false statements as to a
17 material fact during a homicide proceeding, the
18 administrative law judge shall make a written recommendation
19 of dismissal to the Board. If the administrative law judge
20 finds that there is clear and convincing evidence to support
21 the verified complaint that the police officer has, while
22 under oath, knowingly and willfully made false statements as
23 to a material fact during a homicide proceeding, the
24 administrative law judge shall make a written recommendation
25 of decertification to the Board.

26 (m) Any person, with the exception of the police officer
27 who is the subject of the hearing, who is served by the Board
28 with a subpoena to appear, testify or produce evidence and
29 refuses to comply with the subpoena is guilty of a Class B
30 misdemeanor. Any circuit court or judge, upon application by
31 the Board, may compel compliance with a subpoena issued by
32 the Board.

33 (n) Within 15 days of receiving the recommendation, the
34 Board shall consider the recommendation of the administrative

1 law judge and the record of the hearing at a Board meeting.
2 If, by a two-thirds vote of the members present at the Board
3 meeting, the Board finds that there is clear and convincing
4 evidence that the police officer has, while under oath,
5 knowingly and willfully made false statements as to a
6 material fact during a homicide proceeding, the Board shall
7 order that the police officer be decertified as a full-time
8 or part-time police officer. If less than two-thirds of the
9 members present vote to decertify the police officer, the
10 Board shall dismiss the complaint.

11 (o) The provisions of the Administrative Review Law
12 shall govern all proceedings for the judicial review of any
13 order rendered by the Board. The moving party shall pay the
14 reasonable costs of preparing and certifying the record for
15 review. If the moving party is the police officer and he or
16 she prevails, the court may award the police officer actual
17 costs incurred in all proceedings, including reasonable
18 attorney fees. If the court awards the police officer the
19 actual costs incurred in a proceeding, including reasonable
20 attorney fees, the costs and attorney fees shall be paid,
21 subject to appropriation, from the Illinois Law Enforcement
22 Training Standards Board Costs and Attorney Fees Fund, a
23 special fund that is created in the State Treasury. The Fund
24 shall consist of moneys appropriated or transferred into the
25 Fund for the purpose of making payments of costs and attorney
26 fees in accordance with this subsection (o). The Illinois Law
27 Enforcement Training Standards Board shall administer the
28 Fund and adopt rules for the administration of the Fund and
29 for the submission and disposition of claims for costs and
30 attorney fees in accordance with this subsection (o).

31 (p) If the police officer is decertified under
32 subsection (h), the Board shall notify the defendant who was
33 a party to the proceeding that resulted in the police
34 officer's decertification and his or her attorney of the

1 Board's decision. Notification shall be by certified mail,
2 return receipt requested, sent to the party's last known
3 address and to the party's attorney if any.

4 (g) Limitation of action.

5 (1) No complaint may be filed pursuant to this
6 Section until after a verdict or other disposition is
7 rendered in the underlying case or the underlying case is
8 dismissed in the trial court.

9 (2) A complaint pursuant to this Section may not be
10 filed more than 2 years after the final resolution of the
11 case. For purposes of this Section, final resolution is
12 defined as the trial court's ruling on the State
13 post-conviction proceeding in the case in which it is
14 alleged the police officer, while under oath, knowingly
15 and willfully made false statements as to a material fact
16 during a homicide proceeding. In the event a
17 post-conviction petition is not filed, an action pursuant
18 to this Section may not be commenced more than 2 years
19 after the denial of a petition for certiorari to the
20 United States Supreme Court, or if no petition for
21 certiorari is filed, 2 years after the date such a
22 petition should have been filed. In the event of an
23 acquittal, no proceeding may be commenced pursuant to
24 this Section more than 6 years after the date upon which
25 judgment on the verdict of acquittal was entered.

26 (r) Interested parties. Only interested parties to the
27 criminal prosecution in which the police officer allegedly,
28 while under oath, knowingly and willfully made false
29 statements as to a material fact during a homicide proceeding
30 may file a verified complaint pursuant to this Section. For
31 purposes of this Section, "interested parties" include the
32 defendant and any police officer who has personal knowledge
33 that the police officer who is the subject of the complaint
34 has, while under oath, knowingly and willfully made false

1 statements as to a material fact during a homicide
2 proceeding.

3 (Source: P.A. 91-495, eff. 1-1-00.)

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

6 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

7 Sec. 9-1. First degree Murder - Death penalties -
8 Exceptions - Separate Hearings - Proof - Findings - Appellate
9 procedures - Reversals.

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

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

16 (2) he knows that such acts create a strong
17 probability of death or great bodily harm to that
18 individual or another; or

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

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

25 (1) the murdered individual was a peace officer or
26 fireman killed in the course of performing his official
27 duties, to prevent the performance of his official
28 duties, or in retaliation for performing his official
29 duties, and the defendant knew or should have known that
30 the murdered individual was a peace officer or fireman;
31 or

32 (2) the murdered individual was an employee of an

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

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

22 (4) the murdered individual was killed as a result
23 of the hijacking of an airplane, train, ship, bus or
24 other public conveyance; or

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

30 (6) the murdered individual was killed in the
31 course of another felony if:

32 (a) the murdered individual:

33 (i) was actually killed by the defendant,

34 or

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

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

22 (c) the other felony was an inherently violent
23 crime ~~one-of-the--following:--armed--robbery,--armed~~
24 ~~violence,--robbery,--predatory-criminal-sexual-assault~~
25 ~~of--a--child,--aggravated--criminal--sexual-assault,~~
26 ~~aggravated---kidnapping,---aggravated---vehicular~~
27 ~~hijacking,--forcible--detention,--arsen,--aggravated~~
28 ~~arsen,--aggravated--stalking,--burglary,--residential~~
29 ~~burglary,--home--invasion,--calculated-criminal-drug~~
30 ~~conspiracy-as-defined-in-Section-405-of-the-Illinois~~
31 ~~Controlled-Substances-Act,--streetgang-criminal--drug~~
32 ~~conspiracy--as--defined--in--Section--405.2--of--the~~
33 ~~Illinois--Controlled--Substances-Act,~~ or the attempt
34 to commit an inherently violent crime. In this

1 subparagraph (c), "inherently violent crime"
2 includes, but is not limited to, armed robbery,
3 robbery, predatory criminal sexual assault of a
4 child, aggravated criminal sexual assault,
5 aggravated kidnapping, aggravated vehicular
6 hijacking, aggravated arson, aggravated stalking,
7 residential burglary, and home invasion any-of-the
8 ~~felonies-listed-in-this-subsection-(e);~~ or

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

12 (8) the defendant committed the murder with intent
13 to prevent the murdered individual from testifying or
14 participating in any criminal investigation or
15 prosecution or giving material assistance to the State in
16 any investigation or prosecution, either against the
17 defendant or another; or the defendant committed the
18 murder because the murdered individual was a witness in
19 any prosecution or gave material assistance to the State
20 in any investigation or prosecution, either against the
21 defendant or another; for purposes of this paragraph (8),
22 "participating in any criminal investigation or
23 prosecution" is intended to include those appearing in
24 the proceedings in any capacity such as trial judges,
25 prosecutors, defense attorneys, investigators, witnesses,
26 or jurors; or

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

1 (10) the defendant was incarcerated in an
2 institution or facility of the Department of Corrections
3 at the time of the murder, and while committing an
4 offense punishable as a felony under Illinois law, or
5 while engaged in a conspiracy or solicitation to commit
6 such offense, intentionally killed an individual or
7 counseled, commanded, induced, procured or caused the
8 intentional killing of the murdered individual; or

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

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

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

1 the murdered person; or

2 (14) the murder was intentional and involved the
3 infliction of torture. For the purpose of this Section
4 torture means the infliction of or subjection to extreme
5 physical pain, motivated by an intent to increase or
6 prolong the pain, suffering or agony of the victim; or

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

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

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

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

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

32 (20) the murdered individual was known by the
33 defendant to be a teacher or other person employed in any
34 school and the teacher or other employee is upon the

1 grounds of a school or grounds adjacent to a school, or
2 is in any part of a building used for school purposes; or

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

6 (c) Consideration of factors in Aggravation and
7 Mitigation.

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

14 (1) the defendant has no significant history of
15 prior criminal activity;

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

20 (3) the murdered individual was a participant in
21 the defendant's homicidal conduct or consented to the
22 homicidal act;

23 (4) the defendant acted under the compulsion of
24 threat or menace of the imminent infliction of death or
25 great bodily harm;

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

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

30 (7) the defendant suffers from a reduced mental
31 capacity.

32 (d) Separate sentencing hearing.

33 Where requested by the State, the court shall conduct a
34 separate sentencing proceeding to determine the existence of

1 factors set forth in subsection (b) and to consider any
2 aggravating or mitigating factors as indicated in subsection
3 (c). The proceeding shall be conducted:

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

6 (2) before a jury impanelled for the purpose of the
7 proceeding if:

8 A. the defendant was convicted upon a plea of
9 guilty; or

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

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

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

16 (e) Evidence and Argument.

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

28 (f) Proof.

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

33 (g) Procedure - Jury.

34 If at the separate sentencing proceeding the jury finds

1 that none of the factors set forth in subsection (b) exists,
2 the court shall sentence the defendant to a term of
3 imprisonment under Chapter V of the Unified Code of
4 Corrections. If there is a unanimous finding by the jury
5 that one or more of the factors set forth in subsection (b)
6 exist, the jury shall consider aggravating and mitigating
7 factors as instructed by the court and shall determine
8 whether the sentence of death shall be imposed. If the jury
9 determines unanimously, after weighing the factors in
10 aggravation and mitigation, that death is the appropriate
11 sentence ~~that--there-are-no-mitigating-factors-sufficient-to~~
12 ~~preclude-the-imposition-of--the--death--sentence,~~ the court
13 shall sentence the defendant to death. If the court does not
14 concur with the jury determination that death is the
15 appropriate sentence, the court shall set forth reasons in
16 writing including what facts or circumstances the court
17 relied upon, along with any relevant documents, that
18 compelled the court to non-concur with the sentence. This
19 document and any attachments shall be part of the record for
20 appellate review. The court shall be bound by the jury's
21 sentencing determination.

22 If after weighing the factors in aggravation and
23 mitigation, one or more jurors determines that death is not
24 the appropriate sentence, ~~Unless-the-jury--unanimously--finds~~
25 ~~that--there--are--no--mitigating--factors--sufficient--to--preclude~~
26 ~~the-imposition-of-the-death-sentence~~ the court shall sentence
27 the defendant to a term of imprisonment under Chapter V of
28 the Unified Code of Corrections.

29 (h) Procedure - No Jury.

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

1 If the Court determines that one or more of the factors
2 set forth in subsection (b) exists, the Court shall consider
3 any aggravating and mitigating factors as indicated in
4 subsection (c). If the Court determines, after weighing the
5 factors in aggravation and mitigation, that death is the
6 appropriate sentence ~~that--there--are--no--mitigating--factors~~
7 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~
8 the Court shall sentence the defendant to death.

9 If ~~Unless~~ the court finds that ~~there-are-no-mitigating~~
10 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~
11 ~~of death~~ is not the appropriate sentence, the court shall
12 sentence the defendant to a term of imprisonment under
13 Chapter V of the Unified Code of Corrections.

14 (h-5) Decertification as a capital case.

15 In a case in which the defendant has been found guilty of
16 first degree murder by a judge or jury, or a case on remand
17 for resentencing, and the State seeks the death penalty as an
18 appropriate sentence, on the court's own motion or the
19 written motion of the defendant, the court may decertify the
20 case as a death penalty case if the court finds that the only
21 evidence supporting the defendant's conviction is the
22 uncorroborated testimony of an informant witness, as defined
23 in Section 115-21 of the Code of Criminal Procedure of 1963,
24 concerning the confession or admission of the defendant or
25 that the sole evidence against the defendant is a single
26 eyewitness or single accomplice without any other
27 corroborating evidence. If the court decertifies the case as
28 a capital case under either of the grounds set forth above,
29 the court shall issue a written finding. The State may
30 pursue its right to appeal the decertification pursuant to
31 Supreme Court Rule 604(a)(1). If the court does not
32 decertify the case as a capital case, the matter shall
33 proceed to the eligibility phase of the sentencing hearing.

34 (i) Appellate Procedure.

1 The conviction and sentence of death shall be subject to
2 automatic review by the Supreme Court. Such review shall be
3 in accordance with rules promulgated by the Supreme Court.
4 The Illinois Supreme Court may overturn the death sentence,
5 and order the imposition of imprisonment under Chapter V of
6 the Unified Code of Corrections if the court finds that the
7 death sentence is fundamentally unjust as applied to the
8 particular case. If the Illinois Supreme Court finds that the
9 death sentence is fundamentally unjust as applied to the
10 particular case, independent of any procedural grounds for
11 relief, the Illinois Supreme Court shall issue a written
12 opinion explaining this finding.

13 (j) Disposition of reversed death sentence.

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

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

28 (k) Guidelines for seeking the death penalty.

29 The Attorney General and State's Attorneys Association
30 shall consult on voluntary guidelines for procedures
31 governing whether or not to seek the death penalty. The
32 guidelines do not have the force of law and are only advisory
33 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 114-13, 116-3, 122-1, and
14 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
15 115-22, 116-5, and 122-2.2 as follows:

16 (725 ILCS 5/107A Art. heading new)

17 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

18 (725 ILCS 5/107A-5 new)

19 Sec. 107A-5. Lineup and photo spread procedure.

20 (a) All lineups shall be photographed or otherwise
21 recorded. These photographs shall be disclosed to the accused
22 and his or her defense counsel during discovery proceedings
23 as provided in Illinois Supreme Court Rules. All photographs
24 of suspects shown to an eyewitness during the photo spread
25 shall be disclosed to the accused and his or her defense
26 counsel during discovery proceedings as provided in Illinois
27 Supreme Court Rules.

28 (b) Each eyewitness who views a lineup or photo spread
29 shall sign a form containing the following information:

30 (1) The suspect might not be in the lineup or photo
31 spread and the eyewitness is not obligated to make an

1 identification.

2 (2) The eyewitness should not assume that the
3 person administering the lineup or photo spread knows
4 which person is the suspect in the case.

5 (c) Suspects in a lineup or photo spread should not
6 appear to be substantially different from "fillers" or
7 "distracters" in the lineup or photo spread, based on the
8 eyewitness' previous description of the perpetrator, or based
9 on other factors that would draw attention to the suspect.

10 (725 ILCS 5/107A-10 new)

11 Sec. 107A-10. Pilot study on sequential lineup
12 procedures.

13 (a) Legislative intent. Because the goal of a police
14 investigation is to apprehend the person or persons
15 responsible for committing a crime, it is useful to conduct a
16 pilot study in the field on the effectiveness of the
17 sequential method for lineup procedures.

18 (b) Establishment of pilot jurisdictions. The Department
19 of State Police shall select 3 police departments to
20 participate in a one-year pilot study on the effectiveness of
21 the sequential lineup method for photo and live lineup
22 procedures. One such pilot jurisdiction shall be a police
23 district within a police department in a municipality whose
24 population is at least 500,000 residents; one such pilot
25 jurisdiction shall be a police department in a municipality
26 whose population is at least 100,000 but less than 500,000;
27 and one such pilot jurisdiction shall be a police department
28 in a municipality whose population is less than 100,000. All
29 such pilot jurisdictions shall be selected no later than
30 January 1, 2004.

31 (c) Sequential lineup procedures in pilot jurisdictions.
32 For any offense alleged to have been committed in a pilot
33 jurisdiction on or after January 1, 2004, selected lineup

1 identification procedure shall be presented in the sequential
2 method in which a witness is shown lineup participants one at
3 a time, using the following procedures:

4 (1) The witness shall be requested to state whether
5 the individual shown is the perpetrator of the crime
6 prior to viewing the next lineup participant. Only one
7 member of the lineup shall be a suspect and the remainder
8 shall be "fillers" who are not suspects but fit the
9 general description of the offender without the suspect
10 unduly standing out;

11 (2) The lineup administrator shall be someone who
12 is not aware of which member of the lineup is the suspect
13 in the case; and

14 (3) Prior to presenting the lineup using the
15 sequential method the lineup administrator shall:

16 (A) Inform the witness that the perpetrator
17 may or may not be among those shown, and the witness
18 should not feel compelled to make an identification;

19 (B) Inform the witness that he or she will
20 view individuals one at a time and will be requested
21 to state whether the individual shown is the
22 perpetrator of the crime, prior to viewing the next
23 lineup participant; and

24 (C) Ask the witness to state in his or her own
25 words how sure he or she is that the person
26 identified is the actual offender. During the
27 statement, or as soon thereafter as reasonably
28 possible, the witness's actual words shall be
29 documented.

30 (d) Application. This Section applies to selected live
31 lineups that are composed and presented at a police station
32 and to selected photo lineups regardless of where presented;
33 provided that this Section does not apply in police
34 investigations in which a spontaneous identification is

1 possible and no lineup procedure is being used. This Section
2 does not affect the right to counsel afforded by the U.S. or
3 Illinois Constitutions or State law at any stage of a
4 criminal proceeding.

5 (e) Selection of lineups. The participating
6 jurisdictions shall develop a protocol for the selection and
7 administration of lineups which is practical, designed to
8 elicit information for comparative evaluation purposes, and
9 is consistent with objective scientific research methodology.

10 (f) Training and administrators. The Department of State
11 Police shall offer training to police officers and any other
12 appropriate personnel on the sequential method of conducting
13 lineup procedures in the pilot jurisdictions and the
14 requirements of this Section. The Department of State Police
15 may seek funding for training and administration from the
16 Illinois Criminal Justice Information Authority and the
17 Illinois Law Enforcement Training Standards Board if
18 necessary.

19 (g) Report on the pilot study. The Department of State
20 Police shall gather information from each of the
21 participating police departments selected as a pilot
22 jurisdiction with respect to the effectiveness of the
23 sequential method for lineup procedures and shall file a
24 report of its findings with the Governor and the General
25 Assembly no later than April 1, 2005.

26 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

27 Sec. 114-13. Discovery in criminal cases.

28 (a) Discovery procedures in criminal cases shall be in
29 accordance with Supreme Court Rules.

30 (b) Any public investigative, law enforcement, or other
31 public agency responsible for investigating any homicide
32 offense or participating in an investigation of any homicide
33 offense, other than defense investigators, shall provide to

1 the authority prosecuting the offense all investigative
2 material, including but not limited to reports, memoranda,
3 and field notes, that have been generated by or have come
4 into the possession of the investigating agency concerning
5 the homicide offense being investigated. In addition, the
6 investigating agency shall provide to the prosecuting
7 authority any material or information, including but not
8 limited to reports, memoranda, and field notes, within its
9 possession or control that would tend to negate the guilt of
10 the accused of the offense charged or reduce his or her
11 punishment for the homicide offense. Every investigative and
12 law enforcement agency in this State shall adopt policies to
13 ensure compliance with these standards. Any investigative,
14 law enforcement, or other public agency responsible for
15 investigating any "non-homicide felony" offense or
16 participating in an investigation of any "non-homicide
17 felony" offense, other than defense investigators, shall
18 provide to the authority prosecuting the offense all
19 investigative material, including but not limited to reports
20 and memoranda that have been generated by or have come into
21 the possession of the investigating agency concerning the
22 "non-homicide felony" offense being investigated. In
23 addition, the investigating agency shall provide to the
24 prosecuting authority any material or information, including
25 but not limited to reports and memoranda, within its
26 possession or control that would tend to negate the guilt of
27 the accused of the "non-homicide felony" offense charged or
28 reduce his or her punishment for the "non-homicide felony"
29 offense. This obligation to furnish exculpatory evidence
30 exists whether the information was recorded or documented in
31 any form. Every investigative and law enforcement agency in
32 this State shall adopt policies to ensure compliance with
33 these standards.

34 (Source: Laws 1963, p. 2836.)

1 (725 ILCS 5/114-15 new)

2 Sec. 114-15. Mental retardation.

3 (a) In a first degree murder case in which the State
4 seeks the death penalty as an appropriate sentence, any party
5 may raise the issue of the defendant's mental retardation by
6 motion. A defendant wishing to raise the issue of his or her
7 mental retardation shall provide written notice to the State
8 and the court as soon as the defendant reasonably believes
9 such issue will be raised.

10 (b) The issue of the defendant's mental retardation
11 shall be determined in a pretrial hearing. The court shall be
12 the fact finder on the issue of the defendant's mental
13 retardation and shall determine the issue by a preponderance
14 of evidence in which the moving party has the burden of
15 proof. The court may appoint an expert in the field of mental
16 retardation. The defendant and the State may offer experts
17 from the field of mental retardation. The court shall
18 determine admissibility of evidence and qualification as an
19 expert.

20 (c) If after a plea of guilty to first degree murder, or
21 a finding of guilty of first degree murder in a bench trial,
22 or a verdict of guilty for first degree murder in a jury
23 trial, or on a matter remanded from the Supreme Court for
24 sentencing for first degree murder, and the State seeks the
25 death penalty as an appropriate sentence, the defendant may
26 raise the issue of defendant's mental retardation not at
27 eligibility but at aggravation and mitigation. The defendant
28 and the State may offer experts from the field of mental
29 retardation. The court shall determine admissibility of
30 evidence and qualification as an expert.

31 (d) In determining whether the defendant is mentally
32 retarded, the mental retardation must have manifested itself
33 by the age of 18. IQ tests and psychometric tests
34 administered to the defendant must be the kind and type

1 recognized by experts in the field of mental retardation. In
2 order for the defendant to be considered mentally retarded, a
3 low IQ must be accompanied by significant deficits in
4 adaptive behavior in at least 2 of the following skill areas:
5 communication, self-care, social or interpersonal skills,
6 home living, self-direction, academics, health and safety,
7 use of community resources, and work. An intelligence
8 quotient (IQ) of 75 or below is presumptive evidence of
9 mental retardation.

10 (e) Evidence of mental retardation that did not result
11 in disqualifying the case as a capital case, may be
12 introduced as evidence in mitigation during a capital
13 sentencing hearing. A failure of the court to determine that
14 the defendant is mentally retarded does not preclude the
15 court during trial from allowing evidence relating to mental
16 disability should the court deem it appropriate.

17 (f) If the court determines at a pretrial hearing or
18 after remand that a capital defendant is mentally retarded,
19 and the State does not appeal pursuant to Supreme Court Rule
20 604, the case shall no longer be considered a capital case
21 and the procedural guidelines established for capital cases
22 shall no longer be applicable to the defendant. In that
23 case, the defendant shall be sentenced under the sentencing
24 provisions of Chapter V of the Unified Code of Corrections.

25 (725 ILCS 5/115-21 new)

26 Sec. 115-21. Informant testimony.

27 (a) For the purposes of this Section, "informant" means
28 someone who is purporting to testify about admissions made to
29 him or her by the accused while incarcerated in a penal
30 institution contemporaneously.

31 (b) This Section applies to any capital case in which
32 the prosecution attempts to introduce evidence of
33 incriminating statements made by the accused to or overheard

1 by an informant.

2 (c) In any case under this Section, the prosecution
3 shall timely disclose in discovery:

4 (1) the complete criminal history of the informant;

5 (2) any deal, promise, inducement, or benefit that
6 the offering party has made or will make in the future to
7 the informant;

8 (3) the statements made by the accused;

9 (4) the time and place of the statements, the time
10 and place of their disclosure to law enforcement
11 officials, and the names of all persons who were present
12 when the statements were made;

13 (5) whether at any time the informant recanted that
14 testimony or statement and, if so, the time and place of
15 the recantation, the nature of the recantation, and the
16 names of the persons who were present at the recantation;

17 (6) other cases in which the informant testified,
18 provided that the existence of such testimony can be
19 ascertained through reasonable inquiry and whether the
20 informant received any promise, inducement, or benefit in
21 exchange for or subsequent to that testimony or
22 statement; and

23 (7) any other information relevant to the
24 informant's credibility.

25 (d) In any case under this Section, the prosecution must
26 timely disclose its intent to introduce the testimony of an
27 informant. The court shall conduct a hearing to determine
28 whether the testimony of the informant is reliable, unless
29 the defendant waives such a hearing. If the prosecution
30 fails to show by a preponderance of the evidence that the
31 informant's testimony is reliable, the court shall not allow
32 the testimony to be heard at trial. At this hearing, the
33 court shall consider the factors enumerated in subsection (c)
34 as well as any other factors relating to reliability.

1 (e) A hearing required under subsection (d) does not
2 apply to statements covered under subsection (b) that are
3 lawfully recorded.

4 (f) This Section applies to all death penalty
5 prosecutions initiated on or after the effective date of this
6 amendatory Act of the 93rd General Assembly.

7 (725 ILCS 5/115-22 new)

8 Sec. 115-22. Witness inducements. When the State
9 intends to introduce the testimony of a witness in a capital
10 case, the State shall, before trial, disclose to the
11 defendant and to his or her defense counsel the following
12 information, which shall be reduced to writing:

13 (1) whether the witness has received or been
14 promised anything, including pay, immunity from
15 prosecution, leniency in prosecution, or personal
16 advantage, in exchange for testimony;

17 (2) any other case in which the witness testified
18 or offered statements against an individual but was not
19 called, and whether the statements were admitted in the
20 case, and whether the witness received any deal, promise,
21 inducement, or benefit in exchange for that testimony or
22 statement; provided that the existence of such testimony
23 can be ascertained through reasonable inquiry;

24 (3) whether the witness has ever changed his or her
25 testimony;

26 (4) the criminal history of the witness; and

27 (5) any other evidence relevant to the credibility
28 of the witness.

29 (725 ILCS 5/116-3)

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

32 (a) A defendant may make a motion before the trial court

1 that entered the judgment of conviction in his or her case
2 for the performance of fingerprint or forensic DNA testing,
3 including comparison analysis of genetic marker groupings of
4 the evidence collected by criminal justice agencies pursuant
5 to the alleged offense, to those of the defendant, to those
6 of other forensic evidence, and to those maintained under
7 subsection (f) of Section 5-4-3 of the Unified Code of
8 Corrections, on evidence that was secured in relation to the
9 trial which resulted in his or her conviction, but which was
10 not subject to the testing which is now requested because the
11 technology for the testing was not available at the time of
12 trial. Reasonable notice of the motion shall be served upon
13 the State.

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

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

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

21 (c) The trial court shall allow the testing under
22 reasonable conditions designed to protect the State's
23 interests in the integrity of the evidence and the testing
24 process upon a determination that:

25 (1) the result of the testing has the scientific
26 potential to produce new, noncumulative evidence
27 materially relevant to the defendant's assertion of
28 actual innocence even though the results may not
29 completely exonerate the defendant;

30 (2) the testing requested employs a scientific
31 method generally accepted within the relevant scientific
32 community.

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

1 (725 ILCS 5/116-5 new)

2 Sec. 116-5. Motion for DNA database search (genetic
3 marker groupings comparison analysis).

4 (a) Upon motion by a defendant charged with any offense
5 where DNA evidence may be material to the defense
6 investigation or relevant at trial, a court may order a DNA
7 database search by the Department of State Police. Such
8 analysis may include comparing:

9 (1) the genetic profile from forensic evidence that
10 was secured in relation to the trial against the genetic
11 profile of the defendant,

12 (2) the genetic profile of items of forensic
13 evidence secured in relation to trial to the genetic
14 profile of other forensic evidence secured in relation to
15 trial, or

16 (3) the genetic profiles referred to in
17 subdivisions (1) and (2) against:

18 (i) genetic profiles of offenders maintained
19 under subsection (f) of Section 5-4-3 of the Unified
20 Code of Corrections, or

21 (ii) genetic profiles, including but not
22 limited to, profiles from unsolved crimes maintained
23 in state or local DNA databases by law enforcement
24 agencies.

25 (b) If appropriate federal criteria are met, the court
26 may order the Department of State Police to request the
27 National DNA index system to search its database of genetic
28 profiles.

29 (c) If requested by the defense, a defense
30 representative shall be allowed to view any genetic marker
31 grouping analysis conducted by the Department of State
32 Police. The defense shall be provided with copies of all
33 documentation, correspondence, including digital
34 correspondence, notes, memoranda, and reports generated in

1 relation to the analysis.

2 (d) Reasonable notice of the motion shall be served upon
3 the State.

4 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)
5 Sec. 122-1. Petition in the trial court.

6 (a) Any person imprisoned in the penitentiary may
7 institute a proceeding under this Article if the person who
8 asserts that:

9 (1) in the proceedings which resulted in his or her
10 conviction there was a substantial denial of his or her
11 rights under the Constitution of the United States or of
12 the State of Illinois or both; or ~~may--institute--a~~
13 proceeding-under-this-Article.

14 (2) the death penalty was imposed and there is
15 newly discovered evidence not available to the person at
16 the time of the proceeding that resulted in his or her
17 conviction that establishes a substantial basis to
18 believe that the defendant is actually innocent by clear
19 and convincing evidence.

20 (a-5) A proceeding under paragraph (2) of subsection (a)
21 may be commenced within a reasonable period of time after the
22 person's conviction notwithstanding any other provisions of
23 this Article. In such a proceeding regarding actual
24 innocence, if the court determines the petition is frivolous
25 or is patently without merit, it shall dismiss the petition
26 in a written order, specifying the findings of fact and
27 conclusions of law it made in reaching its decision. Such
28 order of dismissal is a final judgment and shall be served
29 upon the petitioner by certified mail within 10 days of its
30 entry.

31 (b) The proceeding shall be commenced by filing with the
32 clerk of the court in which the conviction took place a
33 petition (together with a copy thereof) verified by

1 affidavit. Petitioner shall also serve another copy upon the
 2 State's Attorney by any of the methods provided in Rule 7 of
 3 the Supreme Court. The clerk shall docket the petition for
 4 consideration by the court pursuant to Section 122-2.1 upon
 5 his or her receipt thereof and bring the same promptly to the
 6 attention of the court.

7 (c) Except as otherwise provided in subsection (a-5), if
 8 the petitioner is under sentence of death, no proceedings
 9 under this Article shall be commenced more than 6 months
 10 after the denial of a petition for certiorari to the United
 11 States Supreme Court on direct appeal, or more than 6 months
 12 from the date for filing such a petition if none is filed,
 13 unless the petitioner alleges facts showing that the delay
 14 was not due to his or her culpable negligence.

15 When a defendant has a sentence other than death, no
 16 proceedings under this Article shall be commenced more than 6
 17 months after the denial of the Petition for Leave to Appeal
 18 to the Illinois Supreme Court, or more than 6 months from the
 19 date for filing such a petition if none is filed, unless the
 20 petitioner alleges facts showing that the delay was not due
 21 to his or her culpable negligence.

22 This limitation does not apply to a petition advancing a
 23 claim of actual innocence. no-proceedings-under-this--Article
 24 shall--be--commenced-more-than-6-months-after-the-denial-of-a
 25 petition-for-leave--to-appeal-or-the-date-for-filing--such--a
 26 petition--if--none--is--filed--or-more-than-45-days-after-the
 27 defendant-files-his--or--her--brief--in--the--appeal--of--the
 28 sentence--before--the-Illinois-Supreme-Court-(or-more-than-45
 29 days-after-the-deadline-for-the--filing--of--the--defendant's
 30 brief--with--the-Illinois-Supreme-Court-if-no-brief-is-filed)
 31 or-3-years-from-the-date-of-conviction, whichever is--sooner,
 32 unless--the--petitioner--alleges-facts-showing-that-the-delay
 33 was-not-due-to-his-or-her-culpable-negligence.

34 (d) A person seeking relief by filing a petition under

1 this Section must specify in the petition or its heading that
2 it is filed under this Section. A trial court that has
3 received a petition complaining of a conviction or sentence
4 that fails to specify in the petition or its heading that it
5 is filed under this Section need not evaluate the petition to
6 determine whether it could otherwise have stated some grounds
7 for relief under this Article.

8 (e) A proceeding under this Article may not be commenced
9 on behalf of a defendant who has been sentenced to death
10 without the written consent of the defendant, unless the
11 defendant, because of a mental or physical condition, is
12 incapable of asserting his or her own claim.

13 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
14 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

15 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

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

1 (b) If the petition is not dismissed pursuant to this
2 Section, the court shall order the petition to be docketed
3 for further consideration in accordance with Sections 122-4
4 through 122-6. If the petitioner is under sentence of death,
5 the court shall order the petition to be docketed for further
6 consideration and hearing within one year of the filing of
7 the petition. Continuances may be granted as the court deems
8 appropriate.

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

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

15 (725 ILCS 5/122-2.2 new)

16 Sec. 122-2.2. Mental retardation and post-conviction
17 relief.

18 (a) In cases where no determination of mental
19 retardation was made and a defendant has been convicted of
20 first-degree murder, sentenced to death, and is in custody
21 pending execution of the sentence of death, the following
22 procedures shall apply:

23 (1) Notwithstanding any other provision of law or
24 rule of court, a defendant may seek relief from the death
25 sentence through a petition for post-conviction relief
26 under this Article alleging that the defendant was
27 mentally retarded as defined in Section 114-15 at the
28 time the offense was alleged to have been committed.

29 (2) The petition must be filed within 180 days of
30 the effective date of this amendatory Act of the 93rd
31 General Assembly or within 180 days of the issuance of
32 the mandate by the Illinois Supreme Court setting the
33 date of execution, whichever is later.

1 (3) All other provisions of this Article governing
2 petitions for post-conviction relief shall apply to a
3 petition for post-conviction relief alleging mental
4 retardation.

5 Section 20. The Capital Crimes Litigation Act is amended
6 by changing Sections 15 and 19 as follows:

7 (725 ILCS 124/15)

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

9 Sec. 15. Capital Litigation Trust Fund.

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

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

20 (c) Moneys deposited into the Trust Fund shall be used
21 exclusively for the purposes of providing funding for the
22 prosecution and defense of capital cases as provided in this
23 Act and shall not be appropriated, loaned, or in any manner
24 transferred to the General Revenue Fund of the State of
25 Illinois.

26 (d) Every fiscal year the State Treasurer shall transfer
27 from the General Revenue Fund to the Capital Litigation Trust
28 Fund an amount equal to the full amount of moneys
29 appropriated by the General Assembly (both by original and
30 supplemental appropriation), less any unexpended balance from
31 the previous fiscal year, from the Capital Litigation Trust
32 Fund for the specific purpose of making funding available for

1 the prosecution and defense of capital cases. The Public
2 Defender and State's Attorney in Cook County, the State
3 Appellate Defender, the State's Attorneys Appellate
4 Prosecutor, and the Attorney General shall make annual
5 requests for appropriations from the Trust Fund.

6 (1) The Public Defender in Cook County shall
7 request appropriations to the State Treasurer for
8 expenses incurred by the Public Defender and for funding
9 for private appointed defense counsel in Cook County.

10 (2) The State's Attorney in Cook County shall
11 request an appropriation to the State Treasurer for
12 expenses incurred by the State's Attorney.

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

21 (4) The State's Attorneys Appellate Prosecutor
22 shall request a direct appropriation from the Trust Fund
23 to pay expenses incurred by the State's Attorneys
24 Appellate Prosecutor and an appropriation to the State
25 Treasurer for payments from the Trust Fund for expenses
26 incurred by State's Attorneys in counties other than Cook
27 County.

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

32 The Public Defender and State's Attorney in Cook County,
33 the State Appellate Defender, the State's Attorneys Appellate
34 Prosecutor, and the Attorney General may each request

1 supplemental appropriations from the Trust Fund during the
2 fiscal year.

3 (e) Moneys in the Trust Fund shall be expended only as
4 follows:

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

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

20 (3) To pay the compensation of trial attorneys,
21 other than public defenders, who have been appointed by
22 the court to represent defendants who are charged with
23 capital crimes.

24 (4) To provide State's Attorneys with funding for
25 capital litigation expenses including, but not limited
26 to, investigatory and other assistance and expert,
27 forensic, and other witnesses necessary to prosecute
28 capital cases. State's Attorneys in any county other
29 than Cook County seeking funding for capital litigation
30 expenses including, but not limited to, investigatory and
31 other assistance and expert, forensic, or other witnesses
32 under this Section may request that the State's Attorneys
33 Appellate Prosecutor or the Attorney General, as the case
34 may be, certify the expenses as reasonable, necessary,

1 and appropriate for payment from the Trust Fund, on a
2 form created by the State Treasurer. Upon certification
3 of the expenses and delivery of the certification to the
4 State Treasurer, the Treasurer shall pay the expenses
5 directly from the Capital Litigation Trust Fund if there
6 are sufficient moneys in the Trust Fund to pay the
7 expenses.

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

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

19 (7) To provide financial support to the State
20 Appellate Defender pursuant to the State Appellate
21 Defender Act.

22 Moneys expended from the Trust Fund shall be in addition
23 to county funding for Public Defenders and State's Attorneys,
24 and shall not be used to supplant or reduce ordinary and
25 customary county funding.

26 (f) Moneys in the Trust Fund shall be appropriated to
27 the State Appellate Defender, the State's Attorneys Appellate
28 Prosecutor, the Attorney General, and the State Treasurer.
29 The State Appellate Defender shall receive an appropriation
30 from the Trust Fund to enable it to provide assistance to
31 appointed defense counsel throughout the State and to Public
32 Defenders in counties other than Cook. The State's Attorneys
33 Appellate Prosecutor and the Attorney General shall receive
34 appropriations from the Trust Fund to enable them to provide

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

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

13 (1) For each State fiscal year, the State's
14 Attorney and Public Defender must each make a separate
15 application to the State Treasurer for capital litigation
16 grants.

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

28 (3) The State Treasurer shall make the grants to
29 the Cook County Treasurer as soon as possible after the
30 beginning of the State fiscal year.

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

33 (5) Grant moneys shall be paid to the Cook County
34 Treasurer in block grants and held in separate accounts

1 for the State's Attorney, the Public Defender, and court
2 appointed defense counsel other than the Cook County
3 Public Defender, respectively, for the designated fiscal
4 year, and are not subject to county appropriation.

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

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

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

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

31 (1) Upon certification by the circuit court, on a
32 form created by the State Treasurer, that all or a
33 portion of the expenses are reasonable, necessary, and
34 appropriate for payment from the Trust Fund and the

1 court's delivery of the certification to the Treasurer,
2 the Treasurer shall pay the certified expenses of Public
3 Defenders from the money appropriated to the Treasurer
4 for capital litigation expenses of Public Defenders in
5 any county other than Cook County, if there are
6 sufficient moneys in the Trust Fund to pay the expenses.

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

24 (3) A petition for capital litigation expenses
25 under this subsection shall be considered in camera.
26 Orders denying petitions for compensation or expenses are
27 final.

28 (j) If the Trust Fund is discontinued or dissolved by an
29 Act of the General Assembly or by operation of law, any
30 balance remaining in the Trust Fund shall be returned to the
31 General Revenue Fund after deduction of administrative costs,
32 any other provision of this Act to the contrary
33 notwithstanding.

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

1 (725 ILCS 124/19)

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

3 Sec. 19. Report; repeal.

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

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

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

20 Section 25. The Unified Code of Corrections is amended
21 by changing Section 5-4-3 as follows:

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

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

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

1 institutionalized as a sexually dangerous person under the
 2 Sexually Dangerous Persons Act, or committed as a sexually
 3 violent person under the Sexually Violent Persons Commitment
 4 Act shall, regardless of the sentence or disposition imposed,
 5 be required to submit specimens of blood, saliva, or tissue
 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;~~;~~

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;~~;~~

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, and to defense
28 counsel as provided by Section 116-5 of the Code of Criminal
29 Procedure of 1963. The genetic marker grouping analysis
30 information obtained pursuant to this Act shall be used only
31 for (i) valid law enforcement identification purposes and as
32 required by the Federal Bureau of Investigation for
33 participation in the National DNA database or (ii) technology
34 validation purposes or (iii) assisting in the defense of the

1 criminally accused pursuant to Section 116-5 of the Code of
2 Criminal Procedure of 1963. Notwithstanding any other
3 statutory provision to the contrary, all information obtained
4 under this Section shall be maintained in a single State data
5 base, which may be uploaded into a national database, and
6 which information may be subject to expungement only as set
7 forth in subsection (f-1).

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

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

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

- 32 (1) any violation or inchoate violation of Section
33 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
34 Criminal Code of 1961~~i7-er~~

1 (1.1) any violation or inchoate violation of
2 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
3 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
4 for which persons are convicted on or after July 1,
5 2001;~~7-07~~

6 (2) any former statute of this State which defined
7 a felony sexual offense;~~7-07~~

8 (3) (blank);~~7-07~~

9 (4) any inchoate violation of Section 9-3.1,
10 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~7~~
11 or

12 (5) any violation or inchoate violation of Article
13 29D of the Criminal Code of 1961.

14 (g-5) (Blank).

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

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

28 (j) Any person required by subsection (a) to submit
29 specimens of blood, saliva, or tissue to the Illinois
30 Department of State Police for analysis and categorization
31 into genetic marker grouping, in addition to any other
32 disposition, penalty, or fine imposed, shall pay an analysis
33 fee of \$200. If the analysis fee is not paid at the time of
34 sentencing, the court shall establish a fee schedule by which

1 the entire amount of the analysis fee shall be paid in full,
2 such schedule not to exceed 24 months from the time of
3 conviction. The inability to pay this analysis fee shall not
4 be the sole ground to incarcerate the person.

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

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

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

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

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

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

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

33 (D) Costs incurred in continuing research and
34 development of new techniques for analysis and

1 genetic marker categorization.

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

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

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

19 Section 90. The State Finance Act is amended by adding
20 Section 5.595 as follows:

21 (30 ILCS 105/5.595 new)

22 Sec. 5.595. The Illinois Law Enforcement Training
23 Standards Board Costs and Attorney Fees Fund.

24 Section 95. Severability. The provisions of this Act
25 are severable under Section 1.31 of the Statute on Statutes.

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