

1 AMENDMENT TO HOUSE BILL 2004

2 AMENDMENT NO. _____. Amend House Bill 2004 as follows:

3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Police Training Act is amended
6 by changing Section 6.1 as follows:

7 (50 ILCS 705/6.1)

8 Sec. 6.1. Decertification of full-time and part-time
9 police officers.

10 (a) The Board must review police officer conduct and
11 records to ensure that no police officer is certified or
12 provided a valid waiver if that police officer has been:

13 (1) convicted of a felony offense under the laws of
14 this State or any other state which if committed in this
15 State would be punishable as a felony;

16 (2) ~~The--Board--must--also--ensure--that--no--police~~
17 ~~officer-is-certified-or-provided-a-valid-waiver--if--that~~
18 ~~police--officer--has--been~~ convicted on or after the
19 effective date of this amendatory Act of 1999 of any
20 misdemeanor specified in this Section or if committed in
21 any other state would be an offense similar to Section

1 11-6, 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1,
2 17-1, 17-2, 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7
3 of the Criminal Code of 1961 or to Section 5 or 5.2 of
4 the Cannabis Control Act; or

5 (3) the subject of an internal administrative
6 determination, conducted pursuant to the rules and
7 regulations of the law enforcement agency or department
8 employing the police officer, of knowingly committing
9 perjury in a criminal or quasicriminal proceeding. If
10 such a determination is conducted, then the standard of
11 proof shall be by a preponderance of the evidence. If
12 decertification of a law enforcement officer commenced,
13 where the individual would not only be subject to losing
14 his or her employment position, but also be subject to
15 fines and or imprisonment, then the State's Attorney of
16 the county may file a charge of perjury before the
17 circuit court and the standard of proof shall be beyond a
18 reasonable doubt. For the purposes of this subsection,
19 "perjury" shall have the meaning as set forth in Section
20 32-2 of the Criminal Code of 1961.

21 The Board must appoint investigators to enforce the
22 duties conferred upon the Board by this Act.

23 (b) It is the responsibility of the sheriff or the chief
24 executive officer of every local law enforcement agency or
25 department within this State to report to the Board any
26 arrest, administrative determination of perjury, or
27 conviction of any officer for an offense identified in this
28 Section.

29 (c) It is the duty and responsibility of every full-time
30 and part-time police officer in this State to report to the
31 Board within 30 days, and the officer's sheriff or chief
32 executive officer, of his or her arrest, administrative
33 determination of perjury, or conviction for an offense
34 identified in this Section. Any full-time or part-time police

1 officer who knowingly makes, submits, causes to be submitted,
2 or files a false or untruthful report to the Board must have
3 his or her certificate or waiver immediately decertified or
4 revoked.

5 (d) Any person, or a local or State agency, or the Board
6 is immune from liability for submitting, disclosing, or
7 releasing information of arrests, administrative
8 determinations of perjury, or convictions in this Section as
9 long as the information is submitted, disclosed, or released
10 in good faith and without malice. The Board has qualified
11 immunity for the release of the information.

12 (e) Any full-time or part-time police officer with a
13 certificate or waiver issued by the Board who is convicted of
14 any offense described in this Section or is subject to an
15 administrative determination of perjury immediately becomes
16 decertified or no longer has a valid waiver. The
17 decertification and invalidity of waivers occurs as a matter
18 of law. Failure of a convicted person to report to the Board
19 his or her conviction as described in this Section or any
20 continued law enforcement practice after receiving a
21 conviction is a Class 4 felony.

22 (f) The Board's investigators are peace officers and
23 have all the powers possessed by policemen in cities and by
24 sheriff's, provided that the investigators may exercise those
25 powers anywhere in the State, only after contact and
26 cooperation with the appropriate local law enforcement
27 authorities.

28 (g) The Board must request and receive information and
29 assistance from any federal, state, or local governmental
30 agency as part of the authorized criminal background
31 investigation. The Department of State Police must process,
32 retain, and additionally provide and disseminate information
33 to the Board concerning criminal charges, arrests,
34 convictions, and their disposition, that have been filed

1 before, on, or after the effective date of this amendatory
2 Act of the 91st General Assembly against a basic academy
3 applicant, law enforcement applicant, or law enforcement
4 officer whose fingerprint identification cards are on file or
5 maintained by the Department of State Police. The Federal
6 Bureau of Investigation must provide the Board any criminal
7 history record information contained in its files pertaining
8 to law enforcement officers or any applicant to a Board
9 certified basic law enforcement academy as described in this
10 Act based on fingerprint identification. The Board must make
11 payment of fees to the Department of State Police for each
12 fingerprint card submission in conformance with the
13 requirements of paragraph 22 of Section 55a of the Civil
14 Administrative Code of Illinois.

15 (h) As soon as possible after decertification of a
16 police officer based upon the police officer's perjury in a
17 criminal or quasicriminal case, the Board shall notify the
18 defendant who was a party to a proceeding that resulted in
19 the police officer's decertification based on the perjury.

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

21 Section 10. The Criminal Code of 1961 is amended by
22 changing Section 9-1 as follows:

23 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

24 Sec. 9-1. First degree Murder - Death penalties -
25 Exceptions - Separate Hearings - Proof - Findings - Appellate
26 procedures - Reversals.

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

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

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

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

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

10 (1) the murdered individual was a peace officer or
11 fireman killed in the course of performing his official
12 duties, to prevent the performance of his official
13 duties, or in retaliation for performing his official
14 duties, and the defendant knew or should have known that
15 the murdered individual was a peace officer or fireman;
16 or

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

28 (3) the defendant has been convicted of murdering
29 two or more individuals under subsection (a) of this
30 Section or under any law of the United States or of any
31 state which is substantially similar to subsection (a) of
32 this Section regardless of whether the deaths occurred
33 as the result of the same act or of several related or
34 unrelated acts so long as the deaths were the result of

1 either an intent to kill more than one person or of
2 separate acts which the defendant knew would cause death
3 or create a strong probability of death or great bodily
4 harm to the murdered individual or another; or

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

8 (5) the defendant committed the murder pursuant to
9 a contract, agreement or understanding by which he was to
10 receive money or anything of value in return for
11 committing the murder or procured another to commit the
12 murder for money or anything of value; or

13 (6) the murdered individual was killed in the
14 course of another felony if:

15 (a) the murdered individual:

16 (i) was actually killed by the defendant,
17 or

18 (ii) received physical injuries
19 personally inflicted by the defendant
20 substantially contemporaneously with physical
21 injuries caused by one or more persons for
22 whose conduct the defendant is legally
23 accountable under Section 5-2 of this Code, and
24 the physical injuries inflicted by either the
25 defendant or the other person or persons for
26 whose conduct he is legally accountable caused
27 the death of the murdered individual; and

28 (b) in performing the acts which caused the
29 death of the murdered individual or which resulted
30 in physical injuries personally inflicted by the
31 defendant on the murdered individual under the
32 circumstances of subdivision (ii) of subparagraph
33 (a) of paragraph (6) of subsection (b) of this
34 Section, the defendant acted with the intent to kill

1 the murdered individual or with the knowledge that
2 his acts created a strong probability of death or
3 great bodily harm to the murdered individual or
4 another; and

5 (c) the other felony was an inherently violent
6 crime ~~one--of--the--following:--armed--robbery,--armed~~
7 ~~violence,--robbery,--predatory--criminal--sexual--assault~~
8 ~~of--a--child,--aggravated--criminal--sexual--assault,~~
9 ~~aggravated----kidnapping,----aggravated----vehicular~~
10 ~~hijacking,--forcible--detention,--arson,--aggravated~~
11 ~~arson,--aggravated--stalking,--burglary,--residential~~
12 ~~burglary,--home--invasion,--calculated--criminal--drug~~
13 ~~conspiracy--as--defined--in--Section--405--of--the--Illinois~~
14 ~~Controlled--Substances--Act,--streetgang--criminal--drug~~
15 ~~conspiracy--as--defined--in--Section--405.2--of--the~~
16 ~~Illinois--Controlled--Substances--Act,~~ or the attempt
17 to commit an inherently violent crime. In this
18 subparagraph (c), "inherently violent crime"
19 includes, but is not limited to, armed robbery,
20 robbery, burglary, predatory criminal sexual assault
21 of a child, criminal sexual assault, aggravated
22 criminal sexual assault, aggravated kidnapping,
23 aggravated vehicular hijacking, aggravated arson,
24 aggravated stalking, residential burglary, and home
25 invasion ~~any---of--the--felonies--listed--in--this~~
26 ~~subsection-(e); or~~

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

30 (8) the defendant committed the murder with intent
31 to prevent the murdered individual from testifying in any
32 criminal prosecution or giving material assistance to the
33 State in any investigation or prosecution, either against
34 the defendant or another; or the defendant committed the

1 murder because the murdered individual was a witness in
2 any prosecution or gave material assistance to the State
3 in any investigation or prosecution, either against the
4 defendant or another; or

5 (9) the defendant, while committing an offense
6 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
7 407 or 407.1 or subsection (b) of Section 404 of the
8 Illinois Controlled Substances Act, or while engaged in a
9 conspiracy or solicitation to commit such offense,
10 intentionally killed an individual or counseled,
11 commanded, induced, procured or caused the intentional
12 killing of the murdered individual; or

13 (10) the defendant was incarcerated in an
14 institution or facility of the Department of Corrections
15 at the time of the murder, and while committing an
16 offense punishable as a felony under Illinois law, or
17 while engaged in a conspiracy or solicitation to commit
18 such offense, intentionally killed an individual or
19 counseled, commanded, induced, procured or caused the
20 intentional killing of the murdered individual; or

21 (11) the murder was committed in a cold, calculated
22 and premeditated manner pursuant to a preconceived plan,
23 scheme or design to take a human life by unlawful means,
24 and the conduct of the defendant created a reasonable
25 expectation that the death of a human being would result
26 therefrom; or

27 (12) the murdered individual was an emergency
28 medical technician - ambulance, emergency medical
29 technician - intermediate, emergency medical technician -
30 paramedic, ambulance driver, or other medical assistance
31 or first aid personnel, employed by a municipality or
32 other governmental unit, killed in the course of
33 performing his official duties, to prevent the
34 performance of his official duties, or in retaliation for

1 performing his official duties, and the defendant knew or
2 should have known that the murdered individual was an
3 emergency medical technician - ambulance, emergency
4 medical technician - intermediate, emergency medical
5 technician - paramedic, ambulance driver, or other
6 medical assistance or first aid personnel; or

7 (13) the defendant was a principal administrator,
8 organizer, or leader of a calculated criminal drug
9 conspiracy consisting of a hierarchical position of
10 authority superior to that of all other members of the
11 conspiracy, and the defendant counseled, commanded,
12 induced, procured, or caused the intentional killing of
13 the murdered person; or

14 (14) the murder was intentional and involved the
15 infliction of torture. For the purpose of this Section
16 torture means the infliction of or subjection to extreme
17 physical pain, motivated by an intent to increase or
18 prolong the pain, suffering or agony of the victim; or

19 (15) the murder was committed as a result of the
20 intentional discharge of a firearm by the defendant from
21 a motor vehicle and the victim was not present within the
22 motor vehicle; or

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

26 (17) the murdered individual was a disabled person
27 and the defendant knew or should have known that the
28 murdered individual was disabled. For purposes of this
29 paragraph (17), "disabled person" means a person who
30 suffers from a permanent physical or mental impairment
31 resulting from disease, an injury, a functional disorder,
32 or a congenital condition that renders the person
33 incapable of adequately providing for his or her own
34 health or personal care; or

1 (18) the murder was committed by reason of any
2 person's activity as a community policing volunteer or to
3 prevent any person from engaging in activity as a
4 community policing volunteer; or

5 (19) the murdered individual was subject to an
6 order of protection and the murder was committed by a
7 person against whom the same order of protection was
8 issued under the Illinois Domestic Violence Act of 1986;
9 or

10 (20) the murdered individual was known by the
11 defendant to be a teacher or other person employed in any
12 school and the teacher or other employee is upon the
13 grounds of a school or grounds adjacent to a school, or
14 is in any part of a building used for school purposes; or

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

18 (c) Consideration of factors in Aggravation and
19 Mitigation.

20 The court shall consider, or shall instruct the jury to
21 consider any aggravating and any mitigating factors which are
22 relevant to the imposition of the death penalty. Aggravating
23 factors may include but need not be limited to those factors
24 set forth in subsection (b). Mitigating factors may include
25 but need not be limited to the following:

26 (1) the defendant has no significant history of
27 prior criminal activity;

28 (2) the murder was committed while the defendant
29 was under the influence of extreme mental or emotional
30 disturbance, although not such as to constitute a defense
31 to prosecution;

32 (3) the murdered individual was a participant in
33 the defendant's homicidal conduct or consented to the
34 homicidal act;

1 (4) the defendant acted under the compulsion of
2 threat or menace of the imminent infliction of death or
3 great bodily harm;

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

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

8 (7) the defendant suffers from a reduced mental
9 capacity.

10 (d) Separate sentencing hearing.

11 Where requested by the State, the court shall conduct a
12 separate sentencing proceeding to determine the existence of
13 factors set forth in subsection (b) and to consider any
14 aggravating or mitigating factors as indicated in subsection
15 (c). The proceeding shall be conducted:

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

18 (2) before a jury impanelled for the purpose of the
19 proceeding if:

20 A. the defendant was convicted upon a plea of
21 guilty; or

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

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

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

28 (e) Evidence and Argument.

29 During the proceeding any information relevant to any of
30 the factors set forth in subsection (b) may be presented by
31 either the State or the defendant under the rules governing
32 the admission of evidence at criminal trials. Any
33 information relevant to any additional aggravating factors or
34 any mitigating factors indicated in subsection (c) may be

1 presented by the State or defendant regardless of its
2 admissibility under the rules governing the admission of
3 evidence at criminal trials. The State and the defendant
4 shall be given fair opportunity to rebut any information
5 received at the hearing.

6 (f) Proof.

7 The burden of proof of establishing the existence of any
8 of the factors set forth in subsection (b) is on the State
9 and shall not be satisfied unless established beyond a
10 reasonable doubt.

11 (g) Procedure - Jury.

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

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

33 (h) Procedure - No Jury.

34 In a proceeding before the court alone, if the court

1 finds that none of the factors found in subsection (b)
2 exists, the court shall sentence the defendant to a term of
3 imprisonment under Chapter V of the Unified Code of
4 Corrections.

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

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

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

19 In a case in which the State seeks the death penalty as
20 an appropriate sentence, at the conclusion of all evidence in
21 the case, the court may decertify the case as a death penalty
22 case if the court makes a written finding that the only
23 evidence supporting the defendant's conviction is the
24 uncorroborated testimony of an in-custody informant witness
25 concerning the confession or admission of the defendant or
26 that the sole evidence against the defendant is a single
27 eyewitness or single accomplice without any other
28 corroborating evidence. If a court decertifies the case, the
29 prosecution has the right to appeal the decertification prior
30 to conviction.

31 (i) Appellate Procedure.

32 The conviction and sentence of death shall be subject to
33 automatic review by the Supreme Court. Such review shall be
34 in accordance with rules promulgated by the Supreme Court.

1 The Illinois Supreme Court may overturn the death sentence,
2 and order the imposition of imprisonment under Chapter V of
3 the Unified Code of Corrections if the court finds that the
4 death sentence is fundamentally unjust as applied to the
5 particular case. If the Illinois Supreme Court finds that the
6 death sentence is fundamentally unjust as applied to the
7 particular case, independent of any procedural grounds for
8 relief, the Illinois Supreme Court shall issue a written
9 opinion explaining this finding.

10 (j) Disposition of reversed death sentence.

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

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

25 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
26 92-854, eff. 12-5-02.)

27 Section 15. The Code of Criminal Procedure of 1963 is
28 amended by changing Sections 114-13, 116-3, 122-1 and 122-2.1
29 and adding Article 107A and Sections 114-15, 115-21, 115-22,
30 116-5, and 122-2.2 as follows:

31 (725 ILCS 5/107A Art. heading new)

32 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

1 (725 ILCS 5/107A-5 new)

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

3 (a) All lineups shall be photographed or otherwise
4 recorded. These photographs shall be disclosed to the accused
5 and his or her defense counsel during discovery proceedings
6 as provided in Illinois Supreme Court Rules. All photographs
7 of suspects shown to an eyewitness during the photo spread
8 shall be disclosed to the accused and his or her defense
9 counsel during discovery proceedings as provided in Illinois
10 Supreme Court Rules.

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

13 (1) The suspect might not be in the lineup or photo
14 spread and the eyewitness is not obligated to make an
15 identification.

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

19 (c) Suspects in a lineup or photo spread should not
20 appear to be substantially different from "fillers" or
21 "distracters" in the lineup or photo spread, based on the
22 eyewitness' previous description of the perpetrator, or based
23 on other factors that would draw attention to the suspect.

24 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

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

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

28 (b) Any investigative, law enforcement, or other agency
29 responsible for investigating any felony offense or
30 participating in an investigation of any felony offense,
31 other than defense investigators, shall provide to the
32 authority prosecuting the offense all investigative material,
33 including but not limited to reports that have been generated

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

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

11 (725 ILCS 5/114-15 new)

12 Sec. 114-15. Mental retardation.

13 (a) In a first degree murder case in which the State
14 seeks the death penalty as an appropriate sentence, any party
15 may raise the issue of the defendant's mental retardation by
16 motion. A defendant wishing to raise the issue of his or her
17 mental retardation shall provide written notice to the State
18 and the court as soon as the defendant reasonably believes
19 such issue will be raised.

20 (b) In determining whether the defendant is mentally
21 retarded, the mental retardation must have manifested itself
22 by the age of 18. An intelligence quotient (IQ) of 70 or
23 below is presumptive evidence of mental retardation. IQ tests
24 and psychometric tests administered to the defendant must be
25 the kind and type recognized by a licensed clinical
26 psychiatrist or psychologist qualified by the court on the
27 issue of mental retardation. In order for the defendant to be
28 considered mentally retarded, a low IQ must be accompanied by
29 significant deficits in adaptive behavior in at least 2 of
30 the following skill areas: communication, self-care, social
31 or interpersonal skills, home living, self-direction,
32 academics, health and safety, use of community resources, and
33 work.

1 (c) Evidence of mental retardation that did not result
2 in disqualifying the case as a capital case, may be
3 introduced as evidence in mitigation during a capital
4 sentencing hearing. A failure of the court to determine that
5 the defendant is mentally retarded does not preclude the
6 court during trial from allowing evidence relating to mental
7 disability should the court deem it appropriate.

8 (d) If the court determines that a capital defendant is
9 mentally retarded, the case shall no longer be considered a
10 capital case and the procedural guidelines established for
11 capital cases shall no longer be applicable to the defendant.
12 In that case, the defendant, if convicted, shall be sentenced
13 under the sentencing provisions of Chapter V of the Unified
14 Code of Corrections. A denial of such a petition may be
15 appealed to the Illinois Supreme Court.

16 (725 ILCS 5/115-21 new)

17 Sec. 115-21. Informant testimony.

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

22 (b) This Section applies to any capital case in which
23 the prosecution attempts to introduce evidence of
24 incriminating statements made by the accused to an informant.

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

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

28 (2) any deal, promise, inducement, or benefit that
29 the offering party has made or will make in the future to
30 the informant;

31 (3) the statements made by the accused;

32 (4) the time and place of the statements, the time
33 and place of their disclosure to law enforcement

1 officials, and the names of all persons who were present
2 when the statements were made;

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

7 (6) other cases of which the prosecution is aware
8 in which the informant testified against an individual or
9 offered a statement against an individual, and whether
10 the informant received any deal, promise, inducement, or
11 benefit in exchange for or subsequent to that testimony
12 or statement; and

13 (7) any other information relevant to the
14 informant's credibility.

15 (d) This Section applies to all death penalty
16 prosecutions initiated on or after the effective date of this
17 amendatory Act of the 93rd General Assembly.

18 (725 ILCS 5/115-22 new)

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

24 (1) whether the witness has received anything,
25 including pay, immunity from prosecution, leniency in
26 prosecution, or personal advantage, in exchange for
27 testimony;

28 (2) any other case in which the witness testified
29 or offered statements against an individual but was not
30 called, and whether the statements were admitted in the
31 case, and whether the witness received any deal, promise,
32 inducement, or benefit in exchange for that testimony or
33 statement;

- 1 (3) whether the witness has ever changed his or her
- 2 testimony;
- 3 (4) the criminal history of the witness; and
- 4 (5) any other evidence relevant to the credibility
- 5 of the witness.

6 (725 ILCS 5/116-3)

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

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

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

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

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

30 (c) The trial court shall allow the testing under
31 reasonable conditions designed to protect the State's
32 interests in the integrity of the evidence and the testing
33 process upon a determination that:

1 (1) the result of the testing has the scientific
2 potential to produce new, noncumulative evidence
3 materially relevant to the defendant's assertion of
4 actual innocence even though the results may not
5 completely exonerate the defendant;

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

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

10 (725 ILCS 5/116-5 new)

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

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

18 (1) the genetic profile from forensic evidence that
19 was secured in relation to the trial against the genetic
20 profile of the defendant,

21 (2) the genetic profile of items of forensic
22 evidence secured in relation to trial to the genetic
23 profile of other forensic evidence secured in relation to
24 trial, or

25 (3) the genetic profiles referred to in
26 subdivisions (1) and (2) against:

27 (i) genetic profiles of offenders maintained
28 under subsection (f) of Section 5-4-3 of the Unified
29 Code of Corrections, or

30 (ii) genetic profiles, including but not
31 limited to, profiles from unsolved crimes maintained
32 in state or local DNA databases by law enforcement
33 agencies.

1 (b) If appropriate federal criteria are met, the court
2 may order the Department of State Police to request the
3 National DNA index system to search its database of genetic
4 profiles.

5 (c) Reasonable notice of the motion shall be served upon
6 the State.

7 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

8 Sec. 122-1. Petition in the trial court.

9 (a) Any person imprisoned in the penitentiary may
10 institute a proceeding under this Article if the person who
11 asserts that:

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

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

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

1 (b) The proceeding shall be commenced by filing with the
 2 clerk of the court in which the conviction took place a
 3 petition (together with a copy thereof) verified by
 4 affidavit. Petitioner shall also serve another copy upon the
 5 State's Attorney by any of the methods provided in Rule 7 of
 6 the Supreme Court. The clerk shall docket the petition for
 7 consideration by the court pursuant to Section 122-2.1 upon
 8 his or her receipt thereof and bring the same promptly to the
 9 attention of the court.

10 (c) Except as otherwise provided in subsection (a-5), if
 11 the petitioner is under sentence of death, no proceedings
 12 under this Article shall be commenced more than 6 months
 13 after the denial of a petition for certiorari to the United
 14 States Supreme Court on direct appeal, or more than 6 months
 15 from the date for filing such a petition if none is filed.

16 When a defendant has a sentence other than death, no
 17 proceedings under this Article shall be commenced more than 6
 18 months after the denial of the Petition for Leave to Appeal
 19 to the Illinois Supreme Court, or more than 6 months from the
 20 date for filing such a petition if none is filed.

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

33 (d) A person seeking relief by filing a petition under
 34 this Section must specify in the petition or its heading that

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

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

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

14 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

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

33 (b) If the petition is not dismissed pursuant to this

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

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

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

13 (725 ILCS 5/122-2.2 new)

14 Sec. 122-2.2. Mental retardation and post-conviction
15 relief.

16 (a) In cases in which a defendant has been convicted of
17 first-degree murder, sentenced to death, and is in custody
18 pending execution of the sentence of death, the following
19 procedures shall apply:

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

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

31 (b) All other provisions of this Article governing
32 petitions for post-conviction relief shall apply to a
33 petition for post-conviction relief alleging mental

1 retardation.

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

4 (725 ILCS 124/15)

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

6 Sec. 15. Capital Litigation Trust Fund.

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

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

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

23 (d) Every fiscal year the State Treasurer shall transfer
24 from the General Revenue Fund to the Capital Litigation Trust
25 Fund an amount equal to the full amount of moneys
26 appropriated by the General Assembly (both by original and
27 supplemental appropriation), less any unexpended balance from
28 the previous fiscal year, from the Capital Litigation Trust
29 Fund for the specific purpose of making funding available for
30 the prosecution and defense of capital cases. The Public
31 Defender and State's Attorney in Cook County, the State
32 Appellate Defender, the State's Attorneys Appellate

1 Prosecutor, and the Attorney General shall make annual
2 requests for appropriations from the Trust Fund.

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

7 (2) The State's Attorney in Cook County shall
8 request an appropriation to the State Treasurer for
9 expenses incurred by the State's Attorney.

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

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

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

29 The Public Defender and State's Attorney in Cook County,
30 the State Appellate Defender, the State's Attorneys Appellate
31 Prosecutor, and the Attorney General may each request
32 supplemental appropriations from the Trust Fund during the
33 fiscal year.

34 (e) Moneys in the Trust Fund shall be expended only as

1 follows:

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

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

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

21 (4) To provide State's Attorneys with funding for
22 capital litigation expenses including, but not limited
23 to, investigatory and other assistance and expert,
24 forensic, and other witnesses necessary to prosecute
25 capital cases. State's Attorneys in any county other
26 than Cook County seeking funding for capital litigation
27 expenses including, but not limited to, investigatory and
28 other assistance and expert, forensic, or other witnesses
29 under this Section may request that the State's Attorneys
30 Appellate Prosecutor or the Attorney General, as the case
31 may be, certify the expenses as reasonable, necessary,
32 and appropriate for payment from the Trust Fund, on a
33 form created by the State Treasurer. Upon certification
34 of the expenses and delivery of the certification to the

1 State Treasurer, the Treasurer shall pay the expenses
2 directly from the Capital Litigation Trust Fund if there
3 are sufficient moneys in the Trust Fund to pay the
4 expenses.

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

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

16 (7) To provide financial support to the State
17 Appellate Defender pursuant to the State Appellate
18 Defender Act.

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

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

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

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

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

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

25 (3) The State Treasurer shall make the grants to
26 the Cook County Treasurer as soon as possible after the
27 beginning of the State fiscal year.

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

30 (5) Grant moneys shall be paid to the Cook County
31 Treasurer in block grants and held in separate accounts
32 for the State's Attorney, the Public Defender, and court
33 appointed defense counsel other than the Cook County
34 Public Defender, respectively, for the designated fiscal

1 year, and are not subject to county appropriation.

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

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

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

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

28 (1) Upon certification by the circuit court, on a
29 form created by the State Treasurer, that all or a
30 portion of the expenses are reasonable, necessary, and
31 appropriate for payment from the Trust Fund and the
32 court's delivery of the certification to the Treasurer,
33 the Treasurer shall pay the certified expenses of Public
34 Defenders from the money appropriated to the Treasurer

1 for capital litigation expenses of Public Defenders in
2 any county other than Cook County, if there are
3 sufficient moneys in the Trust Fund to pay the expenses.

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

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

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

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

32 (725 ILCS 124/19)

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

1 Sec. 19. Report; repeal.

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

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

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

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

20 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

1 violent person under the Sexually Violent Persons Commitment
 2 Act shall, regardless of the sentence or disposition imposed,
 3 be required to submit specimens of blood, saliva, or tissue
 4 to the Illinois Department of State Police in accordance with
 5 the provisions of this Section, provided such person is:

6 (1) convicted of a qualifying offense or attempt of
 7 a qualifying offense on or after July 1, 1990 the
 8 ~~effective--date--of--this--amendatory--Act--of--1989~~, and
 9 sentenced to a term of imprisonment, periodic
 10 imprisonment, fine, probation, conditional discharge or
 11 any other form of sentence, or given a disposition of
 12 court supervision for the offense;~~7-er~~

13 (1.5) found guilty or given supervision under the
 14 Juvenile Court Act of 1987 for a qualifying offense or
 15 attempt of a qualifying offense on or after January 1,
 16 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996~~,
 17 ~~er~~

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

21 (3) convicted of a qualifying offense or attempt of
 22 a qualifying offense before July 1, 1990 ~~the-effective~~
 23 ~~date-of-this-amendatory-Act--of--1989~~ and is presently
 24 confined as a result of such conviction in any State
 25 correctional facility or county jail or is presently
 26 serving a sentence of probation, conditional discharge or
 27 periodic imprisonment as a result of such conviction;~~7-er~~

28 (3.5) convicted or found guilty of any offense
 29 classified as a felony under Illinois law or found guilty
 30 or given supervision for such an offense under the
 31 Juvenile Court Act of 1987 on or after August 22, 2002;
 32 ~~the-effective-date--of-this-amendatory-Act--of--the--92nd~~
 33 ~~General-Assembly~~; ~~er~~

34 (4) presently institutionalized as a sexually

1 dangerous person or presently institutionalized as a
2 person found guilty but mentally ill of a sexual offense
3 or attempt to commit a sexual offense; or

4 (4.5) ordered committed as a sexually violent
5 person on or after the effective date of the Sexually
6 Violent Persons Commitment Act; or

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

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

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

29 (b) Any person required by paragraphs (a)(1), (a)(1.5),
30 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
31 saliva, or tissue shall provide specimens of blood, saliva,
32 or tissue within 45 days after sentencing or disposition at a
33 collection site designated by the Illinois Department of
34 State Police.

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

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

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

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

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

1 categorizing into genetic marker groupings.

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

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

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

19 (f) The genetic marker grouping analysis information
20 obtained pursuant to this Act shall be confidential and shall
21 be released only to peace officers of the United States, of
22 other states or territories, of the insular possessions of
23 the United States, of foreign countries duly authorized to
24 receive the same, to all peace officers of the State of
25 Illinois and to all prosecutorial agencies, and to defense
26 counsel as provided by Section 116-5 of the Code of Criminal
27 Procedure of 1963. The genetic marker grouping analysis
28 information obtained pursuant to this Act shall be used only
29 for (i) valid law enforcement identification purposes and as
30 required by the Federal Bureau of Investigation for
31 participation in the National DNA database or (ii) technology
32 validation purposes or (iii) assisting in the defense of the
33 criminally accused pursuant to Section 116-5 of the Code of
34 Criminal Procedure of 1963. Notwithstanding any other

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

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

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

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

30 (1) any violation or inchoate violation of Section
31 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
32 Criminal Code of 1961;~~7-07~~

33 (1.1) any violation or inchoate violation of
34 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,

1 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
2 for which persons are convicted on or after July 1,
3 2001;~~7-08~~

4 (2) any former statute of this State which defined
5 a felony sexual offense;~~7-08~~

6 (3) (blank);~~7-08~~

7 (4) any inchoate violation of Section 9-3.1,
8 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~7~~
9 or

10 (5) any violation or inchoate violation of Article
11 29D of the Criminal Code of 1961.

12 (g-5) (Blank).

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

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

26 (j) Any person required by subsection (a) to submit
27 specimens of blood, saliva, or tissue to the Illinois
28 Department of State Police for analysis and categorization
29 into genetic marker grouping, in addition to any other
30 disposition, penalty, or fine imposed, shall pay an analysis
31 fee of \$200. If the analysis fee is not paid at the time of
32 sentencing, the court shall establish a fee schedule by which
33 the entire amount of the analysis fee shall be paid in full,
34 such schedule not to exceed 24 months from the time of

1 conviction. The inability to pay this analysis fee shall not
2 be the sole ground to incarcerate the person.

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

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

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

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

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

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

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

31 (D) Costs incurred in continuing research and
32 development of new techniques for analysis and
33 genetic marker categorization.

34 (E) Costs incurred in continuing education,

1 training, and professional development of forensic
2 scientists regularly employed by these laboratories.

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

13 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
14 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
15 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
16 1-20-03.)

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

19 Section 99. Effective date. This Act takes effect upon
20 becoming law."