



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**  
**HB4424**

Introduced 02/03/04, by Careen Gordon

**SYNOPSIS AS INTRODUCED:**

410 ILCS 70/6.4  
730 ILCS 5/5-4-3

from Ch. 111 1/2, par. 87-6.4  
from Ch. 38, par. 1005-4-3

Amends the Sexual Assault Survivors Emergency Treatment Act and the Unified Code of Corrections. Provides that the statewide sexual assault evidence collection program shall also consist of comparing the collected evidence from a sexual assault with the genetic marker grouping analysis information maintained by the Department of State Police and with the information contained in the Federal Bureau of Investigation's National DNA database for the purpose of identifying and assisting in the prosecution of a person suspected of committing a sexual assault.

LRB093 19433 RLC 45171 b

1 AN ACT concerning sexual assault.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Sexual Assault Survivors Emergency  
5 Treatment Act is amended by changing Section 6.4 as follows:

6 (410 ILCS 70/6.4) (from Ch. 111 1/2, par. 87-6.4)

7 Sec. 6.4. Sexual assault evidence collection program.

8 (a) There is created a statewide sexual assault evidence  
9 collection program to facilitate the prosecution of persons  
10 accused of sexual assault. This program shall be administered  
11 by the Illinois State Police. The program shall consist of the  
12 following: (1) distribution of sexual assault evidence  
13 collection kits which have been approved by the Illinois State  
14 Police to hospitals that request them, or arranging for such  
15 distribution by the manufacturer of the kits, (2) collection of  
16 the kits from hospitals after the kits have been used to  
17 collect evidence, (3) analysis of the collected evidence and  
18 conducting of laboratory tests, ~~and~~ (4) maintaining the chain  
19 of custody and safekeeping of the evidence for use in a legal  
20 proceeding, and (5) the comparison of the collected evidence  
21 with the genetic marker grouping analysis information  
22 maintained by the Department of State Police under Section  
23 5-4-3 of the Unified Code of Corrections and with the  
24 information contained in the Federal Bureau of Investigation's  
25 National DNA database. The standardized evidence collection  
26 kit for the State of Illinois shall be the State Police  
27 Evidence Collection Kit, also known as "S.P.E.C.K.". A sexual  
28 assault evidence collection kit may not be released by a  
29 hospital without the written consent of the sexual assault  
30 survivor. In the case of a survivor who is a minor 13 years of  
31 age or older, evidence and information concerning the alleged  
32 sexual assault may be released at the written request of the

1 minor. If the survivor is a minor who is under 13 years of age,  
2 evidence and information concerning the alleged sexual assault  
3 may be released at the written request of the parent, guardian,  
4 investigating law enforcement officer, or Department of  
5 Children and Family Services. Any health care professional,  
6 including any physician or nurse, sexual assault nurse  
7 examiner, and any health care institution, including any  
8 hospital, who provides evidence or information to a law  
9 enforcement officer pursuant to a written request as specified  
10 in this Section is immune from any civil or professional  
11 liability that might arise from those actions, with the  
12 exception of willful or wanton misconduct. The immunity  
13 provision applies only if all of the requirements of this  
14 Section are met.

15 (b) The Illinois State Police shall administer a program to  
16 train hospitals and hospital personnel participating in the  
17 sexual assault evidence collection program, in the correct use  
18 and application of the sexual assault evidence collection kits.  
19 A sexual assault nurse examiner may conduct examinations using  
20 the sexual assault evidence collection kits, without the  
21 presence or participation of a physician. The Department of  
22 Public Health shall cooperate with the Illinois State Police in  
23 this program as it pertains to medical aspects of the evidence  
24 collection.

25 (c) In this Section, "sexual assault nurse examiner" means  
26 a registered nurse who has completed a sexual assault nurse  
27 examiner (SANE) training program that meets the Forensic Sexual  
28 Assault Nurse Examiner Education Guidelines established by the  
29 International Association of Forensic Nurses.

30 (Source: P.A. 91-888, eff. 7-6-00; 92-514, eff. 1-1-02.)

31 Section 10. The Unified Code of Corrections is amended by  
32 changing Section 5-4-3 as follows:

33 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

34 Sec. 5-4-3. Persons convicted of, or found delinquent for,

1 certain offenses or institutionalized as sexually dangerous;  
2 specimens; genetic marker groups.

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

17 (1) convicted of a qualifying offense or attempt of a  
18 qualifying offense on or after July 1, 1990 and sentenced  
19 to a term of imprisonment, periodic imprisonment, fine,  
20 probation, conditional discharge or any other form of  
21 sentence, or given a disposition of court supervision for  
22 the offense;

23 (1.5) found guilty or given supervision under the  
24 Juvenile Court Act of 1987 for a qualifying offense or  
25 attempt of a qualifying offense on or after January 1,  
26 1997;

27 (2) ordered institutionalized as a sexually dangerous  
28 person on or after July 1, 1990;

29 (3) convicted of a qualifying offense or attempt of a  
30 qualifying offense before July 1, 1990 and is presently  
31 confined as a result of such conviction in any State  
32 correctional facility or county jail or is presently  
33 serving a sentence of probation, conditional discharge or  
34 periodic imprisonment as a result of such conviction;

35 (3.5) convicted or found guilty of any offense  
36 classified as a felony under Illinois law or found guilty

1 or given supervision for such an offense under the Juvenile  
2 Court Act of 1987 on or after August 22, 2002;

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

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

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

15 Notwithstanding other provisions of this Section, any  
16 person incarcerated in a facility of the Illinois Department of  
17 Corrections on or after August 22, 2002 shall be required to  
18 submit a specimen of blood, saliva, or tissue prior to his or  
19 her final discharge or release on parole or mandatory  
20 supervised release, as a condition of his or her parole or  
21 mandatory supervised release.

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

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

36 (c) Any person required by paragraphs (a)(3), (a)(4), and

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

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

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

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

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

35 (d-2) The Illinois Department of State Police shall provide  
36 all equipment and instructions necessary for the collection of

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

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

13 (d-6) Agencies designated by the Illinois Department of  
14 State Police and the Illinois Department of State Police may  
15 contract with third parties to provide for the collection or  
16 analysis of DNA, or both, of an offender's blood, saliva, and  
17 tissue samples.

18 (e) The genetic marker groupings shall be maintained by the  
19 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 the  
25 United States, of foreign countries duly authorized to receive  
26 the same, to all peace officers of the State of Illinois and to  
27 all prosecutorial agencies, and to defense counsel as provided  
28 by Section 116-5 of the Code of Criminal Procedure of 1963. The  
29 genetic marker grouping analysis information obtained pursuant  
30 to this Act shall be used only for (i) valid law enforcement  
31 identification purposes and as required by the Federal Bureau  
32 of Investigation for participation in the National DNA  
33 database, (ii) technology validation purposes, (iii) a  
34 population statistics database, ~~or~~ (iv) quality assurance  
35 purposes if personally identifying information is removed, ~~or~~  
36 (v) ~~(iii)~~ assisting in the defense of the criminally accused

1 pursuant to Section 116-5 of the Code of Criminal Procedure of  
2 1963, or (vi) identifying and assisting in the prosecution of a  
3 person who is suspected of committing a sexual assault as  
4 defined in Section 1a of the Sexual Assault Survivors Emergency  
5 Treatment Act. Notwithstanding any other statutory provision  
6 to the contrary, all information obtained under this Section  
7 shall be maintained in a single State data base, which may be  
8 uploaded into a national database, and which information may be  
9 subject to expungement only as set forth in subsection (f-1).

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

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

32 (f-6) The Illinois Department of State Police may contract  
33 with third parties for the purposes of implementing this  
34 amendatory Act of the 93rd General Assembly. Any other party  
35 contracting to carry out the functions of this Section shall be  
36 subject to the same restrictions and requirements of this



1 Section insofar as applicable, as the Illinois Department of  
2 State Police, and to any additional restrictions imposed by the  
3 Illinois Department of State Police.

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

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

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

13 (2) any former statute of this State which defined a  
14 felony sexual offense;

15 (3) (blank);

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

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

20 (g-5) (Blank).

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

29 (i) (1) A person required to provide a blood, saliva, or  
30 tissue specimen shall cooperate with the collection of the  
31 specimen and any deliberate act by that person intended to  
32 impede, delay or stop the collection of the blood, saliva,  
33 or tissue specimen is a Class A misdemeanor.

34 (2) In the event that a person's DNA sample is not  
35 adequate for any reason, the person shall provide another  
36 DNA sample for analysis. Duly authorized law enforcement

1 and corrections personnel may employ reasonable force in  
2 cases in which an individual refuses to provide a DNA  
3 sample required under this Act.

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

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

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

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

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

34 (A) Costs incurred in providing analysis and  
35 genetic marker categorization as required by  
36 subsection (d).

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

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

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

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

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

21 (m) If any provision of this amendatory Act of the 93rd  
22 General Assembly is held unconstitutional or otherwise  
23 invalid, the remainder of this amendatory Act of the 93rd  
24 General Assembly is not affected.

25 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,  
26 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;  
27 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.  
28 11-19-03; revised 12-9-03.)