

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; provided the amount and quality of  
26 genetic marker grouping results obtained from the evidence in  
27 the sexual assault case meets the requirements of both the  
28 Department of State Police and the Federal Bureau of  
29 Investigation's Combined DNA Index System (CODIS) policies.  
30 The standardized evidence collection kit for the State of  
31 Illinois shall be the State Police Evidence Collection Kit,  
32 also known as "S.P.E.C.K.". A sexual assault evidence

1 collection kit may not be released by a hospital without the  
2 written consent of the sexual assault survivor. In the case of  
3 a survivor who is a minor 13 years of age or older, evidence  
4 and information concerning the alleged sexual assault may be  
5 released at the written request of the minor. If the survivor  
6 is a minor who is under 13 years of age, evidence and  
7 information concerning the alleged sexual assault may be  
8 released at the written request of the parent, guardian,  
9 investigating law enforcement officer, or Department of  
10 Children and Family Services. Any health care professional,  
11 including any physician or nurse, sexual assault nurse  
12 examiner, and any health care institution, including any  
13 hospital, who provides evidence or information to a law  
14 enforcement officer pursuant to a written request as specified  
15 in this Section is immune from any civil or professional  
16 liability that might arise from those actions, with the  
17 exception of willful or wanton misconduct. The immunity  
18 provision applies only if all of the requirements of this  
19 Section are met.

20 (a-5) All sexual assault evidence collected using the State  
21 Police Evidence Collection Kits before the effective date of  
22 this amendatory Act of the 93rd General Assembly that have not  
23 been previously analyzed and tested by the Department of State  
24 Police shall be analyzed and tested within 2 years after  
25 receipt of all necessary evidence and standards into the State  
26 Police Laboratory if sufficient staffing and resources are  
27 available. All sexual assault evidence collected using the  
28 State Police Evidence Collection Kits on or after the effective  
29 date of this amendatory Act of the 93rd General Assembly shall  
30 be analyzed and tested by the Department of State Police within  
31 one year after receipt of all necessary evidence and standards  
32 into the State Police Laboratory if sufficient staffing and  
33 resources are available.

34 (b) The Illinois State Police shall administer a program to  
35 train hospitals and hospital personnel participating in the  
36 sexual assault evidence collection program, in the correct use

1 and application of the sexual assault evidence collection kits.  
2 A sexual assault nurse examiner may conduct examinations using  
3 the sexual assault evidence collection kits, without the  
4 presence or participation of a physician. The Department of  
5 Public Health shall cooperate with the Illinois State Police in  
6 this program as it pertains to medical aspects of the evidence  
7 collection.

8 (c) In this Section, "sexual assault nurse examiner" means  
9 a registered nurse who has completed a sexual assault nurse  
10 examiner (SANE) training program that meets the Forensic Sexual  
11 Assault Nurse Examiner Education Guidelines established by the  
12 International Association of Forensic Nurses.

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

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

16 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

20 (a) Any person convicted of, found guilty under the  
21 Juvenile Court Act of 1987 for, or who received a disposition  
22 of court supervision for, a qualifying offense or attempt of a  
23 qualifying offense, convicted or found guilty of any offense  
24 classified as a felony under Illinois law, found guilty or  
25 given supervision for any offense classified as a felony under  
26 the Juvenile Court Act of 1987, or institutionalized as a  
27 sexually dangerous person under the Sexually Dangerous Persons  
28 Act, or committed as a sexually violent person under the  
29 Sexually Violent Persons Commitment Act shall, regardless of  
30 the sentence or disposition imposed, be required to submit  
31 specimens of blood, saliva, or tissue to the Illinois  
32 Department of State Police in accordance with the provisions of  
33 this Section, provided such person is:

34 (1) convicted of a qualifying offense or attempt of a

1           qualifying offense on or after July 1, 1990 and sentenced  
2           to a term of imprisonment, periodic imprisonment, fine,  
3           probation, conditional discharge or any other form of  
4           sentence, or given a disposition of court supervision for  
5           the offense;

6           (1.5) found guilty or given supervision under the  
7           Juvenile Court Act of 1987 for a qualifying offense or  
8           attempt of a qualifying offense on or after January 1,  
9           1997;

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

12          (3) convicted of a qualifying offense or attempt of a  
13          qualifying offense before July 1, 1990 and is presently  
14          confined as a result of such conviction in any State  
15          correctional facility or county jail or is presently  
16          serving a sentence of probation, conditional discharge or  
17          periodic imprisonment as a result of such conviction;

18          (3.5) convicted or found guilty of any offense  
19          classified as a felony under Illinois law or found guilty  
20          or given supervision for such an offense under the Juvenile  
21          Court Act of 1987 on or after August 22, 2002;

22          (4) presently institutionalized as a sexually  
23          dangerous person or presently institutionalized as a  
24          person found guilty but mentally ill of a sexual offense or  
25          attempt to commit a sexual offense;

26          (4.5) ordered committed as a sexually violent person on  
27          or after the effective date of the Sexually Violent Persons  
28          Commitment Act; or

29          (5) seeking transfer to or residency in Illinois under  
30          Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of  
31          Corrections and the Interstate Compact for Adult Offender  
32          Supervision or the Interstate Agreements on Sexually  
33          Dangerous Persons Act.

34          Notwithstanding other provisions of this Section, any  
35          person incarcerated in a facility of the Illinois Department of  
36          Corrections on or after August 22, 2002 shall be required to

1 submit a specimen of blood, saliva, or tissue prior to his or  
2 her final discharge or release on parole or mandatory  
3 supervised release, as a condition of his or her parole or  
4 mandatory supervised release.

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

13 (b) Any person required by paragraphs (a) (1), (a) (1.5),  
14 (a) (2), (a) (3.5), and (a-5) to provide specimens of blood,  
15 saliva, or tissue shall provide specimens of blood, saliva, or  
16 tissue within 45 days after sentencing or disposition at a  
17 collection site designated by the Illinois Department of State  
18 Police.

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

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

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

34 (d) The Illinois Department of State Police shall provide  
35 all equipment and instructions necessary for the collection of  
36 blood samples. The collection of samples shall be performed in

1 a medically approved manner. Only a physician authorized to  
2 practice medicine, a registered nurse or other qualified person  
3 trained in venipuncture may withdraw blood for the purposes of  
4 this Act. The samples shall thereafter be forwarded to the  
5 Illinois Department of State Police, Division of Forensic  
6 Services, for analysis and categorizing into genetic marker  
7 groupings.

8 (d-1) The Illinois Department of State Police shall provide  
9 all equipment and instructions necessary for the collection of  
10 saliva samples. The collection of saliva samples shall be  
11 performed in a medically approved manner. Only a person trained  
12 in the instructions promulgated by the Illinois State Police on  
13 collecting saliva may collect saliva for the purposes of this  
14 Section. The samples shall thereafter be forwarded to the  
15 Illinois Department of State Police, Division of Forensic  
16 Services, for analysis and categorizing into genetic marker  
17 groupings.

18 (d-2) The Illinois Department of State Police shall provide  
19 all equipment and instructions necessary for the collection of  
20 tissue samples. The collection of tissue samples shall be  
21 performed in a medically approved manner. Only a person trained  
22 in the instructions promulgated by the Illinois State Police on  
23 collecting tissue may collect tissue for the purposes of this  
24 Section. The samples shall thereafter be forwarded to the  
25 Illinois Department of State Police, Division of Forensic  
26 Services, for analysis and categorizing into genetic marker  
27 groupings.

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

32 (d-6) Agencies designated by the Illinois Department of  
33 State Police and the Illinois Department of State Police may  
34 contract with third parties to provide for the collection or  
35 analysis of DNA, or both, of an offender's blood, saliva, and  
36 tissue samples.

1 (e) The genetic marker groupings shall be maintained by the  
2 Illinois Department of State Police, Division of Forensic  
3 Services.

4 (f) The genetic marker grouping analysis information  
5 obtained pursuant to this Act shall be confidential and shall  
6 be released only to peace officers of the United States, of  
7 other states or territories, of the insular possessions of the  
8 United States, of foreign countries duly authorized to receive  
9 the same, to all peace officers of the State of Illinois and to  
10 all prosecutorial agencies, and to defense counsel as provided  
11 by Section 116-5 of the Code of Criminal Procedure of 1963. The  
12 genetic marker grouping analysis information obtained pursuant  
13 to this Act shall be used only for (i) valid law enforcement  
14 identification purposes and as required by the Federal Bureau  
15 of Investigation for participation in the National DNA  
16 database, (ii) technology validation purposes, (iii) a  
17 population statistics database, ~~or~~ (iv) quality assurance  
18 purposes if personally identifying information is removed, ~~or~~  
19 (v) assisting in the defense of the criminally accused  
20 pursuant to Section 116-5 of the Code of Criminal Procedure of  
21 1963, or (vi) identifying and assisting in the prosecution of a  
22 person who is suspected of committing a sexual assault as  
23 defined in Section 1a of the Sexual Assault Survivors Emergency  
24 Treatment Act. Notwithstanding any other statutory provision  
25 to the contrary, all information obtained under this Section  
26 shall be maintained in a single State data base, which may be  
27 uploaded into a national database, and which information may be  
28 subject to expungement only as set forth in subsection (f-1).

29 (f-1) Upon receipt of notification of a reversal of a  
30 conviction based on actual innocence, or of the granting of a  
31 pardon pursuant to Section 12 of Article V of the Illinois  
32 Constitution, if that pardon document specifically states that  
33 the reason for the pardon is the actual innocence of an  
34 individual whose DNA record has been stored in the State or  
35 national DNA identification index in accordance with this  
36 Section by the Illinois Department of State Police, the DNA

1 record shall be expunged from the DNA identification index, and  
2 the Department shall by rule prescribe procedures to ensure  
3 that the record and any samples, analyses, or other documents  
4 relating to such record, whether in the possession of the  
5 Department or any law enforcement or police agency, or any  
6 forensic DNA laboratory, including any duplicates or copies  
7 thereof, are destroyed and a letter is sent to the court  
8 verifying the expungement is completed.

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

15 (f-6) The Illinois Department of State Police may contract  
16 with third parties for the purposes of implementing this  
17 amendatory Act of the 93rd General Assembly. Any other party  
18 contracting to carry out the functions of this Section shall be  
19 subject to the same restrictions and requirements of this  
20 Section insofar as applicable, as the Illinois Department of  
21 State Police, and to any additional restrictions imposed by the  
22 Illinois Department of State Police.

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

25 (1) any violation or inchoate violation of Section  
26 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
27 Criminal Code of 1961;

28 (1.1) any violation or inchoate violation of Section  
29 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
30 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
31 persons are convicted on or after July 1, 2001;

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

34 (3) (blank);

35 (4) any inchoate violation of Section 9-3.1, 11-9.3,  
36 12-7.3, or 12-7.4 of the Criminal Code of 1961; or



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

3 (g-5) (Blank).

4 (h) The Illinois Department of State Police shall be the  
5 State central repository for all genetic marker grouping  
6 analysis information obtained pursuant to this Act. The  
7 Illinois Department of State Police may promulgate rules for  
8 the form and manner of the collection of blood, saliva, or  
9 tissue samples and other procedures for the operation of this  
10 Act. The provisions of the Administrative Review Law shall  
11 apply to all actions taken under the rules so promulgated.

12 (i) (1) A person required to provide a blood, saliva, or  
13 tissue specimen shall cooperate with the collection of the  
14 specimen and any deliberate act by that person intended to  
15 impede, delay or stop the collection of the blood, saliva,  
16 or tissue specimen is a Class A misdemeanor.

17 (2) In the event that a person's DNA sample is not  
18 adequate for any reason, the person shall provide another  
19 DNA sample for analysis. Duly authorized law enforcement  
20 and corrections personnel may employ reasonable force in  
21 cases in which an individual refuses to provide a DNA  
22 sample required under this Act.

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

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

36 (1) The State Offender DNA Identification System Fund

1 is hereby created as a special fund in the State Treasury.

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

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

17 (A) Costs incurred in providing analysis and  
18 genetic marker categorization as required by  
19 subsection (d).

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

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

24 (D) Costs incurred in continuing research and  
25 development of new techniques for analysis and genetic  
26 marker categorization.

27 (E) Costs incurred in continuing education,  
28 training, and professional development of forensic  
29 scientists regularly employed by these laboratories.

30 (1) The failure of a person to provide a specimen, or of  
31 any person or agency to collect a specimen, within the 45 day  
32 period shall in no way alter the obligation of the person to  
33 submit such specimen, or the authority of the Illinois  
34 Department of State Police or persons designated by the  
35 Department to collect the specimen, or the authority of the  
36 Illinois Department of State Police to accept, analyze and

1 maintain the specimen or to maintain or upload results of  
2 genetic marker grouping analysis information into a State or  
3 national database.

4 (m) If any provision of this amendatory Act of the 93rd  
5 General Assembly is held unconstitutional or otherwise  
6 invalid, the remainder of this amendatory Act of the 93rd  
7 General Assembly is not affected.

8 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,  
9 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;  
10 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.  
11 11-19-03; revised 12-9-03.)