

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) ~~(iii)~~ 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.)