



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Linda Chapa LaVia, Susana Mendoza

SYNOPSIS AS INTRODUCED:

725 ILCS 5/107-2.5 new

730 ILCS 5/5-4-3

from Ch. 38, par. 1005-4-3

Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. Provides that every person arrested who is suspected of committing a felony shall have a sample of his or her saliva or tissue taken for DNA analysis for the purpose of determining identity and for certain other specified purposes. Provides that the analysis shall be performed by the Department of State Police or any other public or private entity designated by the Department of State Police. Provides that the identification characteristics of the profile resulting from DNA analysis shall be stored and maintained by the Department of State Police or any public or private entity designated by the Department. Provides that the information may be maintained in a database that is separate from the genetic marker groupings maintained by the Department of State Police. Provides that the DNA profile shall be made available to all parties to a civil or criminal proceeding arising from the felony violation for which the DNA analysis was required. Effective immediately.

LRB093 19144 RLC 44879 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 107-2.5 as follows:

6 (725 ILCS 5/107-2.5 new)

7 Sec. 107-2.5. DNA analysis. Every person arrested who is
8 suspected of committing a felony as defined in Section 2-7 of
9 the Criminal Code of 1961 shall have a sample of his or her
10 saliva or tissue taken for DNA analysis for the purpose of
11 determining identity and for the purposes specified in this
12 Section and subsection (f) of Section 5-4-3 of the Unified Code
13 of Corrections. The analysis shall be performed by the
14 Department of State Police or a public or private entity
15 designated by the Department of State Police. The
16 identification characteristics of the profile resulting from
17 DNA analysis shall be stored and maintained by the Department
18 of State Police or a public or private entity designated by the
19 Department. The information may be maintained in a database
20 that is separate from the genetic marker groupings maintained
21 under Section 5-4-3 of the Unified Code of Corrections. The DNA
22 profile shall be made available to all parties to a civil or
23 criminal proceeding arising from the felony violation for which
24 the DNA analysis was required. Any law enforcement agency
25 extracting DNA samples under this Section shall promulgate
26 written rules and regulations for the collection, storage, and
27 processing of such samples. Any law enforcement officer may use
28 reasonable force necessary to obtain a saliva or tissue sample
29 from an arrestee. Any public or private entity designated by
30 the Department of State Police to store and analyze DNA samples
31 shall be required to meet all Illinois State Police laboratory
32 accreditation requirements and shall properly forward the

1 results of the DNA analysis to the Department of State Police.

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

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

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

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

22 (1) convicted of a qualifying offense or attempt of a
23 qualifying offense on or after July 1, 1990 and sentenced
24 to a term of imprisonment, periodic imprisonment, fine,
25 probation, conditional discharge or any other form of
26 sentence, or given a disposition of court supervision for
27 the offense;

28 (1.5) found guilty or given supervision under the
29 Juvenile Court Act of 1987 for a qualifying offense or
30 attempt of a qualifying offense on or after January 1,
31 1997;

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

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

1 qualifying offense before July 1, 1990 and is presently
2 confined as a result of such conviction in any State
3 correctional facility or county jail or is presently
4 serving a sentence of probation, conditional discharge or
5 periodic imprisonment as a result of such conviction;

6 (3.5) convicted or found guilty of any offense
7 classified as a felony under Illinois law or found guilty
8 or given supervision for such an offense under the Juvenile
9 Court Act of 1987 on or after August 22, 2002;

10 (4) presently institutionalized as a sexually
11 dangerous person or presently institutionalized as a
12 person found guilty but mentally ill of a sexual offense or
13 attempt to commit a sexual offense;

14 (4.5) ordered committed as a sexually violent person on
15 or after the effective date of the Sexually Violent Persons
16 Commitment Act; or

17 (5) seeking transfer to or residency in Illinois under
18 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
19 Corrections and the Interstate Compact for Adult Offender
20 Supervision or the Interstate Agreements on Sexually
21 Dangerous Persons Act.

22 Notwithstanding other provisions of this Section, any
23 person incarcerated in a facility of the Illinois Department of
24 Corrections on or after August 22, 2002 shall be required to
25 submit a specimen of blood, saliva, or tissue prior to his or
26 her final discharge or release on parole or mandatory
27 supervised release, as a condition of his or her parole or
28 mandatory supervised release.

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

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

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

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

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

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

32 (d-1) The Illinois Department of State Police shall provide
33 all equipment and instructions necessary for the collection of
34 saliva samples under this Section. The collection of saliva
35 samples shall be performed in a medically approved manner. Only
36 a person trained in the instructions promulgated by the

1 Illinois State Police on collecting saliva may collect saliva
2 for the purposes of this Section. The samples shall thereafter
3 be forwarded to the Illinois Department of State Police,
4 Division of Forensic Services, for analysis and categorizing
5 into genetic marker groupings.

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

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

20 (d-6) Agencies designated by the Illinois Department of
21 State Police and the Illinois Department of State Police may
22 contract with third parties to provide for the collection or
23 analysis of DNA, or both, of an offender's blood, saliva, and
24 tissue samples.

25 (e) The genetic marker groupings shall be maintained by the
26 Illinois Department of State Police, Division of Forensic
27 Services.

28 (f) The genetic marker grouping analysis information
29 obtained pursuant to this Act and the information obtained
30 under Section 107-2.5 of the Code of Criminal Procedure of 1963
31 shall be confidential and, except as otherwise provided in that
32 Act, shall be released only to peace officers of the United
33 States, of other states or territories, of the insular
34 possessions of the United States, of foreign countries duly
35 authorized to receive the same, to all peace officers of the
36 State of Illinois and to all prosecutorial agencies, and to

1 defense counsel as provided by Section 116-5 of the Code of
2 Criminal Procedure of 1963. The genetic marker grouping
3 analysis information obtained pursuant to this Act shall be
4 used only for (i) valid law enforcement identification purposes
5 and as required by the Federal Bureau of Investigation for
6 participation in the National DNA database, (ii) technology
7 validation purposes, (iii) a population statistics database,
8 ~~or~~ (iv) quality assurance purposes if personally identifying
9 information is removed, or (v) ~~(iii)~~ assisting in the defense
10 of the criminally accused pursuant to Section 116-5 of the Code
11 of Criminal Procedure of 1963. Notwithstanding any other
12 statutory provision to the contrary, all information obtained
13 under this Section shall be maintained in a single State data
14 base, which may be uploaded into a national database, and which
15 information may be subject to expungement only as set forth in
16 subsection (f-1).

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

33 (f-5) Any person who intentionally uses genetic marker
34 grouping analysis information, or any other information
35 derived from a DNA sample, beyond the authorized uses as
36 provided under this Section, or any other Illinois law, is

1 guilty of a Class 4 felony, and shall be subject to a fine of
2 not less than \$5,000.

3 (f-6) The Illinois Department of State Police may contract
4 with third parties for the purposes of implementing this
5 amendatory Act of the 93rd General Assembly. Any other party
6 contracting to carry out the functions of this Section shall be
7 subject to the same restrictions and requirements of this
8 Section insofar as applicable, as the Illinois Department of
9 State Police, and to any additional restrictions imposed by the
10 Illinois Department of State Police.

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

13 (1) any violation or inchoate violation of Section
14 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
15 Criminal Code of 1961;

16 (1.1) any violation or inchoate violation of Section
17 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
18 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
19 persons are convicted on or after July 1, 2001;

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

22 (3) (blank);

23 (4) any inchoate violation of Section 9-3.1, 11-9.3,
24 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

27 (g-5) (Blank).

28 (h) The Illinois Department of State Police shall be the
29 State central repository for all genetic marker grouping
30 analysis information obtained pursuant to this Act. The
31 Illinois Department of State Police may promulgate rules for
32 the form and manner of the collection of blood, saliva, or
33 tissue samples and other procedures for the operation of this
34 Act. The provisions of the Administrative Review Law shall
35 apply to all actions taken under the rules so promulgated.

36 (i) (1) A person required to provide a blood, saliva, or

1 tissue specimen shall cooperate with the collection of the
2 specimen and any deliberate act by that person intended to
3 impede, delay or stop the collection of the blood, saliva,
4 or tissue specimen is a Class A misdemeanor.

5 (2) In the event that a person's DNA sample is not
6 adequate for any reason, the person shall provide another
7 DNA sample for analysis. Duly authorized law enforcement
8 and corrections personnel may employ reasonable force in
9 cases in which an individual refuses to provide a DNA
10 sample required under this Act.

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

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

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

26 (2) All fees shall be collected by the clerk of the
27 court and forwarded to the State Offender DNA
28 Identification System Fund for deposit. The clerk of the
29 circuit court may retain the amount of \$10 from each
30 collected analysis fee to offset administrative costs
31 incurred in carrying out the clerk's responsibilities
32 under this Section.

33 (3) Fees deposited into the State Offender DNA
34 Identification System Fund shall be used by Illinois State
35 Police crime laboratories as designated by the Director of
36 State Police. These funds shall be in addition to any

1 allocations made pursuant to existing laws and shall be
2 designated for the exclusive use of State crime
3 laboratories. These uses may include, but are not limited
4 to, the following:

5 (A) Costs incurred in providing analysis and
6 genetic marker categorization as required by
7 subsection (d).

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

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

12 (D) Costs incurred in continuing research and
13 development of new techniques for analysis and genetic
14 marker categorization.

15 (E) Costs incurred in continuing education,
16 training, and professional development of forensic
17 scientists regularly employed by these laboratories.

18 (1) The failure of a person to provide a specimen, or of
19 any person or agency to collect a specimen, within the 45 day
20 period shall in no way alter the obligation of the person to
21 submit such specimen, or the authority of the Illinois
22 Department of State Police or persons designated by the
23 Department to collect the specimen, or the authority of the
24 Illinois Department of State Police to accept, analyze and
25 maintain the specimen or to maintain or upload results of
26 genetic marker grouping analysis information into a State or
27 national database.

28 (m) If any provision of this amendatory Act of the 93rd
29 General Assembly is held unconstitutional or otherwise
30 invalid, the remainder of this amendatory Act of the 93rd
31 General Assembly is not affected.

32 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,
33 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;
34 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.
35 11-19-03; revised 12-9-03.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.