

1 County Public Defender;

2 (9) One member appointed by the Office of the State
3 Appellate Defender; and

4 (10) One member appointed by the office of the
5 State's Attorneys Appellate Prosecutor.

6 (b) The Committee shall study the impact of the various
7 reforms to the capital punishment system enacted by the 93rd
8 General Assembly and annually report to the General Assembly
9 on the effects of these reforms. Each report shall include:

10 (1) The impact of the reforms on the issue of
11 uniformity and proportionality in the application of the
12 death penalty including, but not limited to, the tracking
13 of data related to whether the reforms have eliminated
14 the statistically significant differences in sentencing
15 related to the geographic location of the homicide and
16 the race of the victim found by the Governor's Commission
17 on Capital Punishment in its report issued on April 15,
18 2002.

19 (2) The implementation of training for police,
20 prosecutors, defense attorneys, and judges as recommended
21 by the Governor's Commission on Capital Punishment.

22 (3) The impact of the various reforms on the
23 quality of evidence used during capital prosecutions.

24 (4) The quality of representation provided by
25 defense counsel to defendants in capital prosecutions.

26 (5) The impact of the various reforms on the costs
27 associated with the administration of the Illinois
28 capital punishment system.

29 (c) The Committee shall hold hearings on a periodic
30 basis to receive testimony from the public regarding the
31 manner in which reforms have impacted the capital punishment
32 system.

33 (d) The Committee shall submit its final report to the
34 General Assembly no later than 5 years after the effective

1 date of this Act.

2 Section 5. The Illinois Criminal Justice Information Act
3 is amended by adding Section 7.2 as follows:

4 (20 ILCS 3930/7.2 new)

5 Sec. 7.2. Custodial Interview Pilot Program.

6 (a) Legislative findings and intent. The General
7 Assembly finds that technology has made it possible to
8 electronically record custodial interviews of suspects during
9 first degree murder investigations. This technology will
10 protect law enforcement agencies against claims of abuse and
11 coercion by suspects while providing a memorialized account
12 of interviews at police stations. The technology will also
13 provide a better means for courts to review confessions of
14 suspects with direct evidence of demeanor, tone, manner, and
15 content of statements. The General Assembly intends to create
16 a Custodial Interview Pilot Program to establish 4 pilot
17 programs at police stations in the State of Illinois. For
18 each program, video and audio experts shall install equipment
19 and train participating law enforcement agencies to
20 electronically record custodial interviews at their
21 respective police stations. Participating law enforcement
22 agencies shall choose how to use the equipment in cooperation
23 with the local State's Attorney's office. The participating
24 law enforcement agencies may choose to electronically record
25 interviews of suspects for offenses other than first degree
26 murder if they adopt local protocols in cooperation with the
27 local State's Attorney's office.

28 (b) Definitions. In this Section:

29 (1) "Electronically record" means to memorialize by
30 video and audio electronic equipment.

31 (2) "Custodial interviews" means interviews of
32 suspects during first degree murder investigations or

1 other investigations established by local protocol by law
2 enforcement authorities that take place at the police
3 station.

4 (c) Custodial Interview Pilot Program. The Authority
5 shall, subject to appropriation, establish a Custodial
6 Interview Pilot Program to operate 4 custodial interview
7 pilot programs. The programs shall be established in a police
8 station in the County of Cook and in 3 other police stations
9 geographically distributed throughout the State. Each
10 participating law enforcement agency must:

11 (1) Promulgate procedures for recording custodial
12 interviews of suspects during first degree murder
13 investigations by video and audio means.

14 (2) Promulgate procedures for maintaining and
15 storing video and audio recordings.

16 (d) Each of the 4 pilot programs established by the
17 Authority shall be in existence for a minimum of 2 years
18 after its establishment under this Act.

19 (e) Report. No later than one year after the
20 establishment of pilot programs under this Section, the
21 Authority must report to the General Assembly on the efficacy
22 of the Custodial Interview Pilot Program.

23 (f) The Authority shall adopt rules in cooperation with
24 the Illinois Department of State Police to implement this
25 Section.

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

28 (50 ILCS 705/6.1)

29 Sec. 6.1. Decertification of full-time and part-time
30 police officers.

31 (a) The Board must review police officer conduct and
32 records to ensure that no police officer is certified or

1 provided a valid waiver if that police officer has been
2 convicted of a felony offense under the laws of this State or
3 any other state which if committed in this State would be
4 punishable as a felony. The Board must also ensure that no
5 police officer is certified or provided a valid waiver if
6 that police officer has been convicted on or after the
7 effective date of this amendatory Act of 1999 of any
8 misdemeanor specified in this Section or if committed in any
9 other state would be an offense similar to Section 11-6,
10 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
11 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
12 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
13 Act. The Board must appoint investigators to enforce the
14 duties conferred upon the Board by this Act.

15 (b) It is the responsibility of the sheriff or the chief
16 executive officer of every local law enforcement agency or
17 department within this State to report to the Board any
18 arrest or conviction of any officer for an offense identified
19 in this Section.

20 (c) It is the duty and responsibility of every full-time
21 and part-time police officer in this State to report to the
22 Board within 30 days, and the officer's sheriff or chief
23 executive officer, of his or her arrest or conviction for an
24 offense identified in this Section. Any full-time or
25 part-time police officer who knowingly makes, submits, causes
26 to be submitted, or files a false or untruthful report to the
27 Board must have his or her certificate or waiver immediately
28 decertified or revoked.

29 (d) Any person, or a local or State agency, or the Board
30 is immune from liability for submitting, disclosing, or
31 releasing information of arrests or convictions in this
32 Section as long as the information is submitted, disclosed,
33 or released in good faith and without malice. The Board has
34 qualified immunity for the release of the information.

1 (e) Any full-time or part-time police officer with a
2 certificate or waiver issued by the Board who is convicted of
3 any offense described in this Section immediately becomes
4 decertified or no longer has a valid waiver. The
5 decertification and invalidity of waivers occurs as a matter
6 of law. Failure of a convicted person to report to the Board
7 his or her conviction as described in this Section or any
8 continued law enforcement practice after receiving a
9 conviction is a Class 4 felony.

10 (f) The Board's investigators are peace officers and
11 have all the powers possessed by policemen in cities and by
12 sheriff's, provided that the investigators may exercise those
13 powers anywhere in the State, only after contact and
14 cooperation with the appropriate local law enforcement
15 authorities.

16 (g) The Board must request and receive information and
17 assistance from any federal, state, or local governmental
18 agency as part of the authorized criminal background
19 investigation. The Department of State Police must process,
20 retain, and additionally provide and disseminate information
21 to the Board concerning criminal charges, arrests,
22 convictions, and their disposition, that have been filed
23 before, on, or after the effective date of this amendatory
24 Act of the 91st General Assembly against a basic academy
25 applicant, law enforcement applicant, or law enforcement
26 officer whose fingerprint identification cards are on file or
27 maintained by the Department of State Police. The Federal
28 Bureau of Investigation must provide the Board any criminal
29 history record information contained in its files pertaining
30 to law enforcement officers or any applicant to a Board
31 certified basic law enforcement academy as described in this
32 Act based on fingerprint identification. The Board must make
33 payment of fees to the Department of State Police for each
34 fingerprint card submission in conformance with the

1 requirements of paragraph 22 of Section 55a of the Civil
2 Administrative Code of Illinois.

3 (h) A police officer who has been certified or granted a
4 valid waiver may also be decertified or have his or her
5 waiver revoked upon a determination by the Board that he or
6 she, while under oath, has knowingly and willfully made false
7 statements as to a material fact during a homicide
8 proceeding. A determination may be made only after an
9 investigation and hearing upon a verified complaint filed
10 with the Illinois Law Enforcement Training Standards Board.
11 No action may be taken by the Board regarding a complaint
12 unless a majority of the members of the Board are present at
13 the meeting at which the action is taken.

14 (1) The Board shall adopt rules governing the
15 investigation and hearing of a verified complaint to
16 assure the police officer due process and to eliminate
17 conflicts of interest within the Board itself.

18 (2) Upon receipt of the initial verified complaint,
19 the Board must make a finding within 30 days of receipt
20 of the complaint as to whether sufficient evidence exists
21 to support the complaint. The Board is empowered to
22 investigate and dismiss the complaint if it finds, by a
23 vote of a majority of the members present, that there is
24 insufficient evidence to support it. Upon the initial
25 filing, the sheriff or police chief, or other employing
26 agency, of the accused officer may suspend, with or
27 without pay, the accused officer pending a decision of
28 the Board. Upon a Board finding of insufficient evidence,
29 the police officer shall be reinstated with back pay,
30 benefits, and seniority status as appropriate. The
31 sheriff or police chief, or employing agency, shall take
32 such necessary action as is ordered by the Board.

33 (3) If the Board finds, by a vote of a majority of
34 the members present, that sufficient evidence exists to

1 support the complaint, it shall authorize a hearing
2 before an administrative law judge within 45 days of the
3 Board's finding, unless, based upon the complexity and
4 extent of the allegations and charges, additional time is
5 needed. In no event may a hearing before an
6 administrative law judge take place later than 60 days
7 after the Board's finding.

8 (i) The Board shall have the power and authority to
9 appoint administrative law judges on a contractual basis.
10 The Administrative law judges must be attorneys licensed to
11 practice law in the State of Illinois. The Board shall also
12 adopt rules governing the appointment of administrative law
13 judges and the conduct of hearings consistent with the
14 requirements of this Section. The administrative law judge
15 shall hear all evidence and prepare a written recommendation
16 of his or her findings to the Board. At the hearing the
17 accused police officer shall be afforded the opportunity to:

18 (1) Be represented by counsel;

19 (2) Be heard in his or her own defense;

20 (3) Produce evidence in his or her defense;

21 (4) Request that the Board compel the attendance of
22 witnesses and production of court records and documents.

23 (j) Once a case has been set for hearing, the person who
24 filed the verified complaint shall have the opportunity to
25 produce evidence to support any charge against a police
26 officer that he or she, while under oath, has knowingly and
27 willfully made false statements as to a material fact during
28 a homicide proceeding.

29 (1) The person who filed the verified complaint
30 shall have the opportunity to be represented by counsel
31 and shall produce evidence to support his or her charges;

32 (2) The person who filed the verified complaint may
33 request the Board to compel the attendance of witnesses
34 and production of court records and documents.

1 (k) The Board shall have the power to issue subpoenas
2 requiring the attendance and testimony of witnesses and the
3 production of court records and documents and shall have the
4 power to administer oaths.

5 (l) The administrative law judge shall have the
6 responsibility of receiving into evidence relevant testimony
7 and documents, including court records, to support or
8 disprove the allegations made by the person filing the
9 verified complaint, and, at the close of the case, hear
10 arguments. If the administrative law judge finds that there
11 is not clear and convincing evidence to support the verified
12 complaint that the police officer has, while under oath,
13 knowingly and willfully made false statements as to a
14 material fact during a homicide proceeding, the
15 administrative law judge shall make a written recommendation
16 of dismissal to the Board. If the administrative law judge
17 finds that there is clear and convincing evidence to support
18 the verified complaint that the police officer has, while
19 under oath, knowingly and willfully made false statements as
20 to a material fact during a homicide proceeding, the
21 administrative law judge shall make a written recommendation
22 of decertification to the Board.

23 (m) Any person, with the exception of the police officer
24 who is the subject of the hearing, who is served by the Board
25 with a subpoena to appear, testify or produce evidence and
26 refuses to comply with the subpoena is guilty of a Class B
27 misdemeanor. Any circuit court or judge, upon application by
28 the Board, may compel compliance with a subpoena issued by
29 the Board.

30 (n) Within 15 days of receiving the recommendation, the
31 Board shall consider the recommendation of the administrative
32 law judge and the record of the hearing at a Board meeting.
33 If, by a two-thirds vote of the members present at the Board
34 meeting, the Board finds that there is clear and convincing

1 evidence that the police officer has, while under oath,
2 knowingly and willfully made false statements as to a
3 material fact during a homicide proceeding, the Board shall
4 order that the police officer be decertified as a full-time
5 or part-time police officer. If less than two-thirds of the
6 members present vote to decertify the police officer, the
7 Board shall dismiss the complaint.

8 (o) The provisions of the Administrative Review Law
9 shall govern all proceedings for the judicial review of any
10 order rendered by the Board. The moving party shall pay the
11 reasonable costs of preparing and certifying the record for
12 review. If the moving party is the police officer and he or
13 she prevails, the court may award the police officer actual
14 costs incurred in all proceedings, including reasonable
15 attorney fees. If the court awards the police officer the
16 actual costs incurred in a proceeding, including reasonable
17 attorney fees, the costs and attorney fees shall be paid,
18 subject to appropriation, from the Illinois Law Enforcement
19 Training Standards Board Costs and Attorney Fees Fund, a
20 special fund that is created in the State Treasury. The Fund
21 shall consist of moneys appropriated or transferred into the
22 Fund for the purpose of making payments of costs and attorney
23 fees in accordance with this subsection (o). The Illinois Law
24 Enforcement Training Standards Board shall administer the
25 Fund and adopt rules for the administration of the Fund and
26 for the submission and disposition of claims for costs and
27 attorney fees in accordance with this subsection (o).

28 (p) If the police officer is decertified under
29 subsection (h), the Board shall notify the defendant who was
30 a party to the proceeding that resulted in the police
31 officer's decertification and his or her attorney of the
32 Board's decision. Notification shall be by certified mail,
33 return receipt requested, sent to the party's last known
34 address and to the party's attorney if any.

1 (g) Limitation of action.

2 (1) No complaint may be filed pursuant to this
3 Section until after a verdict or other disposition is
4 rendered in the underlying case or the underlying case is
5 dismissed in the trial court.

6 (2) A complaint pursuant to this Section may not be
7 filed more than 2 years after the final resolution of the
8 case. For purposes of this Section, final resolution is
9 defined as the trial court's ruling on the State
10 post-conviction proceeding in the case in which it is
11 alleged the police officer, while under oath, knowingly
12 and willfully made false statements as to a material fact
13 during a homicide proceeding. In the event a
14 post-conviction petition is not filed, an action pursuant
15 to this Section may not be commenced more than 2 years
16 after the denial of a petition for certiorari to the
17 United States Supreme Court, or if no petition for
18 certiorari is filed, 2 years after the date such a
19 petition should have been filed. In the event of an
20 acquittal, no proceeding may be commenced pursuant to
21 this Section more than 6 years after the date upon which
22 judgment on the verdict of acquittal was entered.

23 (r) Interested parties. Only interested parties to the
24 criminal prosecution in which the police officer allegedly,
25 while under oath, knowingly and willfully made false
26 statements as to a material fact during a homicide proceeding
27 may file a verified complaint pursuant to this Section. For
28 purposes of this Section, "interested parties" include the
29 defendant and any police officer who has personal knowledge
30 that the police officer who is the subject of the complaint
31 has, while under oath, knowingly and willfully made false
32 statements as to a material fact during a homicide
33 proceeding.

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

1 Section 10. The Criminal Code of 1961 is amended by
2 changing Sections 9-1 and 14-3 as follows:

3 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

4 Sec. 9-1. First degree Murder - Death penalties -
5 Exceptions - Separate Hearings - Proof - Findings - Appellate
6 procedures - Reversals.

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

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

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

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

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

22 (1) the murdered individual was a peace officer or
23 fireman killed in the course of performing his official
24 duties, to prevent the performance of his official
25 duties, or in retaliation for performing his official
26 duties, and the defendant knew or should have known that
27 the murdered individual was a peace officer or fireman;
28 or

29 (2) the murdered individual was an employee of an
30 institution or facility of the Department of Corrections,
31 or any similar local correctional agency, killed in the
32 course of performing his official duties, to prevent the
33 performance of his official duties, or in retaliation for

1 performing his official duties, or the murdered
2 individual was an inmate at such institution or facility
3 and was killed on the grounds thereof, or the murdered
4 individual was otherwise present in such institution or
5 facility with the knowledge and approval of the chief
6 administrative officer thereof; or

7 (3) the defendant has been convicted of murdering
8 two or more individuals under subsection (a) of this
9 Section or under any law of the United States or of any
10 state which is substantially similar to subsection (a) of
11 this Section regardless of whether the deaths occurred
12 as the result of the same act or of several related or
13 unrelated acts so long as the deaths were the result of
14 either an intent to kill more than one person or of
15 separate acts which the defendant knew would cause death
16 or create a strong probability of death or great bodily
17 harm to the murdered individual or another; or

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

21 (5) the defendant committed the murder pursuant to
22 a contract, agreement or understanding by which he was to
23 receive money or anything of value in return for
24 committing the murder or procured another to commit the
25 murder for money or anything of value; or

26 (6) the murdered individual was killed in the
27 course of another felony if:

28 (a) the murdered individual:

29 (i) was actually killed by the defendant,

30 or

31 (ii) received physical injuries
32 personally inflicted by the defendant
33 substantially contemporaneously with physical
34 injuries caused by one or more persons for

1 whose conduct the defendant is legally
 2 accountable under Section 5-2 of this Code, and
 3 the physical injuries inflicted by either the
 4 defendant or the other person or persons for
 5 whose conduct he is legally accountable caused
 6 the death of the murdered individual; and

7 (b) in performing the acts which caused the
 8 death of the murdered individual or which resulted
 9 in physical injuries personally inflicted by the
 10 defendant on the murdered individual under the
 11 circumstances of subdivision (ii) of subparagraph
 12 (a) of paragraph (6) of subsection (b) of this
 13 Section, the defendant acted with the intent to kill
 14 the murdered individual or with the knowledge that
 15 his acts created a strong probability of death or
 16 great bodily harm to the murdered individual or
 17 another; and

18 (c) the other felony was an inherently violent
 19 crime ~~one--of--the--following:-armed-robbery,armed~~
 20 violence,robbery,predatory-criminal-sexual-assault
 21 of-a--child,aggravated--criminal--sexual--assault,
 22 aggravated----kidnapping,----aggravated----vehicular
 23 hijacking,--forcible--detention,--arsen,--aggravated
 24 arsen,--aggravated--stalking,--burglary,--residential
 25 burglary,--home-invasion,--calculated--criminal--drug
 26 conspiracy-as-defined-in-Section-405-of-the-Illinois
 27 Controlled--Substances-Act,streetgang-criminal-drug
 28 conspiracy--as--defined--in--Section--405.2--of--the
 29 Illinois-Controlled-Substances-Act, or the attempt
 30 to commit an inherently violent crime. In this
 31 subparagraph (c), "inherently violent crime"
 32 includes, but is not limited to, armed robbery,
 33 robbery, predatory criminal sexual assault of a
 34 child, aggravated criminal sexual assault,

1 aggravated kidnapping, aggravated vehicular
2 hijacking, aggravated arson, aggravated stalking,
3 residential burglary, and home invasion any--of--the
4 felonies-listed-in-this-subsection-(e); or

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

8 (8) the defendant committed the murder with intent
9 to prevent the murdered individual from testifying or
10 participating in any criminal investigation or
11 prosecution or giving material assistance to the State in
12 any investigation or prosecution, either against the
13 defendant or another; or the defendant committed the
14 murder because the murdered individual was a witness in
15 any prosecution or gave material assistance to the State
16 in any investigation or prosecution, either against the
17 defendant or another; for purposes of this paragraph (8),
18 "participating in any criminal investigation or
19 prosecution" is intended to include those appearing in
20 the proceedings in any capacity such as trial judges,
21 prosecutors, defense attorneys, investigators, witnesses,
22 or jurors; or

23 (9) the defendant, while committing an offense
24 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
25 407 or 407.1 or subsection (b) of Section 404 of the
26 Illinois Controlled Substances Act, or while engaged in a
27 conspiracy or solicitation to commit such offense,
28 intentionally killed an individual or counseled,
29 commanded, induced, procured or caused the intentional
30 killing of the murdered individual; or

31 (10) the defendant was incarcerated in an
32 institution or facility of the Department of Corrections
33 at the time of the murder, and while committing an
34 offense punishable as a felony under Illinois law, or

1 while engaged in a conspiracy or solicitation to commit
2 such offense, intentionally killed an individual or
3 counseled, commanded, induced, procured or caused the
4 intentional killing of the murdered individual; or

5 (11) the murder was committed in a cold, calculated
6 and premeditated manner pursuant to a preconceived plan,
7 scheme or design to take a human life by unlawful means,
8 and the conduct of the defendant created a reasonable
9 expectation that the death of a human being would result
10 therefrom; or

11 (12) the murdered individual was an emergency
12 medical technician - ambulance, emergency medical
13 technician - intermediate, emergency medical technician -
14 paramedic, ambulance driver, or other medical assistance
15 or first aid personnel, employed by a municipality or
16 other governmental unit, killed in the course of
17 performing his official duties, to prevent the
18 performance of his official duties, or in retaliation for
19 performing his official duties, and the defendant knew or
20 should have known that the murdered individual was an
21 emergency medical technician - ambulance, emergency
22 medical technician - intermediate, emergency medical
23 technician - paramedic, ambulance driver, or other
24 medical assistance or first aid personnel; or

25 (13) the defendant was a principal administrator,
26 organizer, or leader of a calculated criminal drug
27 conspiracy consisting of a hierarchical position of
28 authority superior to that of all other members of the
29 conspiracy, and the defendant counseled, commanded,
30 induced, procured, or caused the intentional killing of
31 the murdered person; or

32 (14) the murder was intentional and involved the
33 infliction of torture. For the purpose of this Section
34 torture means the infliction of or subjection to extreme

1 physical pain, motivated by an intent to increase or
2 prolong the pain, suffering or agony of the victim; or

3 (15) the murder was committed as a result of the
4 intentional discharge of a firearm by the defendant from
5 a motor vehicle and the victim was not present within the
6 motor vehicle; or

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

10 (17) the murdered individual was a disabled person
11 and the defendant knew or should have known that the
12 murdered individual was disabled. For purposes of this
13 paragraph (17), "disabled person" means a person who
14 suffers from a permanent physical or mental impairment
15 resulting from disease, an injury, a functional disorder,
16 or a congenital condition that renders the person
17 incapable of adequately providing for his or her own
18 health or personal care; or

19 (18) the murder was committed by reason of any
20 person's activity as a community policing volunteer or to
21 prevent any person from engaging in activity as a
22 community policing volunteer; or

23 (19) the murdered individual was subject to an
24 order of protection and the murder was committed by a
25 person against whom the same order of protection was
26 issued under the Illinois Domestic Violence Act of 1986;
27 or

28 (20) the murdered individual was known by the
29 defendant to be a teacher or other person employed in any
30 school and the teacher or other employee is upon the
31 grounds of a school or grounds adjacent to a school, or
32 is in any part of a building used for school purposes; or

33 (21) the murder was committed by the defendant in
34 connection with or as a result of the offense of

1 terrorism as defined in Section 29D-30 of this Code.

2 (c) Consideration of factors in Aggravation and
3 Mitigation.

4 The court shall consider, or shall instruct the jury to
5 consider any aggravating and any mitigating factors which are
6 relevant to the imposition of the death penalty. Aggravating
7 factors may include but need not be limited to those factors
8 set forth in subsection (b). Mitigating factors may include
9 but need not be limited to the following:

10 (1) the defendant has no significant history of
11 prior criminal activity;

12 (2) the murder was committed while the defendant
13 was under the influence of extreme mental or emotional
14 disturbance, although not such as to constitute a defense
15 to prosecution;

16 (3) the murdered individual was a participant in
17 the defendant's homicidal conduct or consented to the
18 homicidal act;

19 (4) the defendant acted under the compulsion of
20 threat or menace of the imminent infliction of death or
21 great bodily harm;

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

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

26 (7) the defendant suffers from a reduced mental
27 capacity.

28 (d) Separate sentencing hearing.

29 Where requested by the State, the court shall conduct a
30 separate sentencing proceeding to determine the existence of
31 factors set forth in subsection (b) and to consider any
32 aggravating or mitigating factors as indicated in subsection
33 (c). The proceeding shall be conducted:

34 (1) before the jury that determined the defendant's

1 guilt; or

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

4 A. the defendant was convicted upon a plea of
5 guilty; or

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

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

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

12 (e) Evidence and Argument.

13 During the proceeding any information relevant to any of
14 the factors set forth in subsection (b) may be presented by
15 either the State or the defendant under the rules governing
16 the admission of evidence at criminal trials. Any
17 information relevant to any additional aggravating factors or
18 any mitigating factors indicated in subsection (c) may be
19 presented by the State or defendant regardless of its
20 admissibility under the rules governing the admission of
21 evidence at criminal trials. The State and the defendant
22 shall be given fair opportunity to rebut any information
23 received at the hearing.

24 (f) Proof.

25 The burden of proof of establishing the existence of any
26 of the factors set forth in subsection (b) is on the State
27 and shall not be satisfied unless established beyond a
28 reasonable doubt.

29 (g) Procedure - Jury.

30 If at the separate sentencing proceeding the jury finds
31 that none of the factors set forth in subsection (b) exists,
32 the court shall sentence the defendant to a term of
33 imprisonment under Chapter V of the Unified Code of
34 Corrections. If there is a unanimous finding by the jury

1 that one or more of the factors set forth in subsection (b)
2 exist, the jury shall consider aggravating and mitigating
3 factors as instructed by the court and shall determine
4 whether the sentence of death shall be imposed. If the jury
5 determines unanimously, after weighing the factors in
6 aggravation and mitigation, that death is the appropriate
7 sentence ~~that there are no mitigating factors--sufficient--to~~
8 ~~preclude--the--imposition--of--the--death--sentence,~~ the court
9 shall sentence the defendant to death. If the court does not
10 concur with the jury determination that death is the
11 appropriate sentence, the court shall set forth reasons in
12 writing including what facts or circumstances the court
13 relied upon, along with any relevant documents, that
14 compelled the court to non-concur with the sentence. This
15 document and any attachments shall be part of the record for
16 appellate review. The court shall be bound by the jury's
17 sentencing determination.

18 If after weighing the factors in aggravation and
19 mitigation, one or more jurors determines that death is not
20 the appropriate sentence, ~~Unless the jury unanimously finds~~
21 ~~that there are no mitigating factors sufficient--to--preclude~~
22 ~~the imposition of the death sentence~~ the court shall sentence
23 the defendant to a term of imprisonment under Chapter V of
24 the Unified Code of Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court
27 finds that none of the factors found in subsection (b)
28 exists, the court shall sentence the defendant to a term of
29 imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 If the Court determines that one or more of the factors
32 set forth in subsection (b) exists, the Court shall consider
33 any aggravating and mitigating factors as indicated in
34 subsection (c). If the Court determines, after weighing the

1 factors in aggravation and mitigation, that death is the
2 appropriate sentence that there--are--no--mitigating--factors
3 sufficient--to-preclude-the-imposition-of-the-death-sentence,
4 the Court shall sentence the defendant to death.

5 If Unless the court finds that there--are--no--mitigating
6 factors-sufficient-to-preclude-the-imposition-of-the-sentence
7 of death is not the appropriate sentence, the court shall
8 sentence the defendant to a term of imprisonment under
9 Chapter V of the Unified Code of Corrections.

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

11 In a case in which the defendant has been found guilty of
12 first degree murder by a judge or jury, or a case on remand
13 for resentencing, and the State seeks the death penalty as an
14 appropriate sentence, on the court's own motion or the
15 written motion of the defendant, the court may decertify the
16 case as a death penalty case if the court finds that the only
17 evidence supporting the defendant's conviction is the
18 uncorroborated testimony of an informant witness, as defined
19 in Section 115-21 of the Code of Criminal Procedure of 1963,
20 concerning the confession or admission of the defendant or
21 that the sole evidence against the defendant is a single
22 eyewitness or single accomplice without any other
23 corroborating evidence. If the court decertifies the case as
24 a capital case under either of the grounds set forth above,
25 the court shall issue a written finding. The State may
26 pursue its right to appeal the decertification pursuant to
27 Supreme Court Rule 604(a)(1). If the court does not
28 decertify the case as a capital case, the matter shall
29 proceed to the eligibility phase of the sentencing hearing.

30 (i) Appellate Procedure.

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

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

9 (j) Disposition of reversed death sentence.

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

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

24 (k) Guidelines for seeking the death penalty.

25 The Attorney General and State's Attorneys Association
 26 shall consult on voluntary guidelines for procedures
 27 governing whether or not to seek the death penalty. The
 28 guidelines do not have the force of law and are only advisory
 29 in nature.

30 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
 31 92-854, eff. 12-5-02.)

32 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

33 Sec. 14-3. Exemptions. The following activities shall

1 be exempt from the provisions of this Article:

2 (a) Listening to radio, wireless and television
3 communications of any sort where the same are publicly made;

4 (b) Hearing conversation when heard by employees of any
5 common carrier by wire incidental to the normal course of
6 their employment in the operation, maintenance or repair of
7 the equipment of such common carrier by wire so long as no
8 information obtained thereby is used or divulged by the
9 hearer;

10 (c) Any broadcast by radio, television or otherwise
11 whether it be a broadcast or recorded for the purpose of
12 later broadcasts of any function where the public is in
13 attendance and the conversations are overheard incidental to
14 the main purpose for which such broadcasts are then being
15 made;

16 (d) Recording or listening with the aid of any device to
17 any emergency communication made in the normal course of
18 operations by any federal, state or local law enforcement
19 agency or institutions dealing in emergency services,
20 including, but not limited to, hospitals, clinics, ambulance
21 services, fire fighting agencies, any public utility,
22 emergency repair facility, civilian defense establishment or
23 military installation;

24 (e) Recording the proceedings of any meeting required to
25 be open by the Open Meetings Act, as amended;

26 (f) Recording or listening with the aid of any device to
27 incoming telephone calls of phone lines publicly listed or
28 advertised as consumer "hotlines" by manufacturers or
29 retailers of food and drug products. Such recordings must be
30 destroyed, erased or turned over to local law enforcement
31 authorities within 24 hours from the time of such recording
32 and shall not be otherwise disseminated. Failure on the part
33 of the individual or business operating any such recording or
34 listening device to comply with the requirements of this

1 subsection shall eliminate any civil or criminal immunity
2 conferred upon that individual or business by the operation
3 of this Section;

4 (g) With prior notification to the State's Attorney of
5 the county in which it is to occur, recording or listening
6 with the aid of any device to any conversation where a law
7 enforcement officer, or any person acting at the direction of
8 law enforcement, is a party to the conversation and has
9 consented to it being intercepted or recorded under
10 circumstances where the use of the device is necessary for
11 the protection of the law enforcement officer or any person
12 acting at the direction of law enforcement, in the course of
13 an investigation of a forcible felony, a felony violation of
14 the Illinois Controlled Substances Act, a felony violation of
15 the Cannabis Control Act, or any "streetgang related" or
16 "gang-related" felony as those terms are defined in the
17 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
18 recording or evidence derived as the result of this exemption
19 shall be inadmissible in any proceeding, criminal, civil or
20 administrative, except (i) where a party to the conversation
21 suffers great bodily injury or is killed during such
22 conversation, or (ii) when used as direct impeachment of a
23 witness concerning matters contained in the interception or
24 recording. The Director of the Department of State Police
25 shall issue regulations as are necessary concerning the use
26 of devices, retention of tape recordings, and reports
27 regarding their use;

28 (g-5) With approval of the State's Attorney of the
29 county in which it is to occur, recording or listening with
30 the aid of any device to any conversation where a law
31 enforcement officer, or any person acting at the direction of
32 law enforcement, is a party to the conversation and has
33 consented to it being intercepted or recorded in the course
34 of an investigation of any offense defined in Article 29D of

1 this Code. In all such cases, an application for an order
2 approving the previous or continuing use of an eavesdropping
3 device must be made within 48 hours of the commencement of
4 such use. In the absence of such an order, or upon its
5 denial, any continuing use shall immediately terminate. The
6 Director of State Police shall issue rules as are necessary
7 concerning the use of devices, retention of tape recordings,
8 and reports regarding their use.

9 Any recording or evidence obtained or derived in the
10 course of an investigation of any offense defined in Article
11 29D of this Code shall, upon motion of the State's Attorney
12 or Attorney General prosecuting any violation of Article 29D,
13 be reviewed in camera with notice to all parties present by
14 the court presiding over the criminal case, and, if ruled by
15 the court to be relevant and otherwise admissible, it shall
16 be admissible at the trial of the criminal case.

17 This subsection (g-5) is inoperative on and after January
18 1, 2005. No conversations recorded or monitored pursuant to
19 this subsection (g-5) shall be inadmissible in a court of law
20 by virtue of the repeal of this subsection (g-5) on January
21 1, 2005;:-

22 (h) Recordings made simultaneously with a video
23 recording of an oral conversation between a peace officer,
24 who has identified his or her office, and a person stopped
25 for an investigation of an offense under the Illinois Vehicle
26 Code;

27 (i) Recording of a conversation made by or at the
28 request of a person, not a law enforcement officer or agent
29 of a law enforcement officer, who is a party to the
30 conversation, under reasonable suspicion that another party
31 to the conversation is committing, is about to commit, or has
32 committed a criminal offense against the person or a member
33 of his or her immediate household, and there is reason to
34 believe that evidence of the criminal offense may be obtained

1 by the recording; and

2 (j) The use of a telephone monitoring device by either
3 (1) a corporation or other business entity engaged in
4 marketing or opinion research or (2) a corporation or other
5 business entity engaged in telephone solicitation, as defined
6 in this subsection, to record or listen to oral telephone
7 solicitation conversations or marketing or opinion research
8 conversations by an employee of the corporation or other
9 business entity when:

10 (i) the monitoring is used for the purpose of
11 service quality control of marketing or opinion research
12 or telephone solicitation, the education or training of
13 employees or contractors engaged in marketing or opinion
14 research or telephone solicitation, or internal research
15 related to marketing or opinion research or telephone
16 solicitation; and

17 (ii) the monitoring is used with the consent of at
18 least one person who is an active party to the marketing
19 or opinion research conversation or telephone
20 solicitation conversation being monitored.

21 No communication or conversation or any part, portion, or
22 aspect of the communication or conversation made, acquired,
23 or obtained, directly or indirectly, under this exemption
24 (j), may be, directly or indirectly, furnished to any law
25 enforcement officer, agency, or official for any purpose or
26 used in any inquiry or investigation, or used, directly or
27 indirectly, in any administrative, judicial, or other
28 proceeding, or divulged to any third party.

29 When recording or listening authorized by this subsection
30 (j) on telephone lines used for marketing or opinion research
31 or telephone solicitation purposes results in recording or
32 listening to a conversation that does not relate to marketing
33 or opinion research or telephone solicitation; the person
34 recording or listening shall, immediately upon determining

1 that the conversation does not relate to marketing or opinion
2 research or telephone solicitation, terminate the recording
3 or listening and destroy any such recording as soon as is
4 practicable.

5 Business entities that use a telephone monitoring or
6 telephone recording system pursuant to this exemption (j)
7 shall provide current and prospective employees with notice
8 that the monitoring or recordings may occur during the course
9 of their employment. The notice shall include prominent
10 signage notification within the workplace.

11 Business entities that use a telephone monitoring or
12 telephone recording system pursuant to this exemption (j)
13 shall provide their employees or agents with access to
14 personal-only telephone lines which may be pay telephones,
15 that are not subject to telephone monitoring or telephone
16 recording.

17 For the purposes of this subsection (j), "telephone
18 solicitation" means a communication through the use of a
19 telephone by live operators:

- 20 (i) soliciting the sale of goods or services;
- 21 (ii) receiving orders for the sale of goods or
22 services;
- 23 (iii) assisting in the use of goods or services; or
- 24 (iv) engaging in the solicitation, administration,
25 or collection of bank or retail credit accounts.

26 For the purposes of this subsection (j), "marketing or
27 opinion research" means a marketing or opinion research
28 interview conducted by a live telephone interviewer engaged
29 by a corporation or other business entity whose principal
30 business is the design, conduct, and analysis of polls and
31 surveys measuring the opinions, attitudes, and responses of
32 respondents toward products and services, or social or
33 political issues, or both; and

34 (k) Recording the interview or statement of any person

1 when the person knows that the interview is being conducted
 2 by a law enforcement officer or prosecutor and the interview
 3 takes place at a police station that is currently
 4 participating in the Custodial Interview Pilot Program
 5 established under the Illinois Criminal Justice Information
 6 Act.

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

8 Section 15. The Code of Criminal Procedure of 1963 is
 9 amended by changing Sections 114-13, 116-3, 122-1, and
 10 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
 11 115-22, 116-5, and 122-2.2 as follows:

12 (725 ILCS 5/107A Art. heading new)

13 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

14 (725 ILCS 5/107A-5 new)

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

16 (a) All lineups shall be photographed or otherwise
 17 recorded. These photographs shall be disclosed to the accused
 18 and his or her defense counsel during discovery proceedings
 19 as provided in Illinois Supreme Court Rules. All photographs
 20 of suspects shown to an eyewitness during the photo spread
 21 shall be disclosed to the accused and his or her defense
 22 counsel during discovery proceedings as provided in Illinois
 23 Supreme Court Rules.

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

26 (1) The suspect might not be in the lineup or photo
 27 spread and the eyewitness is not obligated to make an
 28 identification.

29 (2) The eyewitness should not assume that the
 30 person administering the lineup or photo spread knows
 31 which person is the suspect in the case.

1 (c) Suspects in a lineup or photo spread should not
2 appear to be substantially different from "fillers" or
3 "distracters" in the lineup or photo spread, based on the
4 eyewitness' previous description of the perpetrator, or based
5 on other factors that would draw attention to the suspect.

6 (725 ILCS 5/107A-10 new)

7 Sec. 107A-10. Pilot study on sequential lineup
8 procedures.

9 (a) Legislative intent. Because the goal of a police
10 investigation is to apprehend the person or persons
11 responsible for committing a crime, it is useful to conduct a
12 pilot study in the field on the effectiveness of the
13 sequential method for lineup procedures.

14 (b) Establishment of pilot jurisdictions. The Department
15 of State Police shall select 3 police departments to
16 participate in a one-year pilot study on the effectiveness of
17 the sequential lineup method for photo and live lineup
18 procedures. One such pilot jurisdiction shall be a police
19 district within a police department in a municipality whose
20 population is at least 500,000 residents; one such pilot
21 jurisdiction shall be a police department in a municipality
22 whose population is at least 100,000 but less than 500,000;
23 and one such pilot jurisdiction shall be a police department
24 in a municipality whose population is less than 100,000. All
25 such pilot jurisdictions shall be selected no later than
26 January 1, 2004.

27 (c) Sequential lineup procedures in pilot jurisdictions.
28 For any offense alleged to have been committed in a pilot
29 jurisdiction on or after January 1, 2004, selected lineup
30 identification procedure shall be presented in the sequential
31 method in which a witness is shown lineup participants one at
32 a time, using the following procedures:

33 (1) The witness shall be requested to state whether

1 the individual shown is the perpetrator of the crime
2 prior to viewing the next lineup participant. Only one
3 member of the lineup shall be a suspect and the remainder
4 shall be "fillers" who are not suspects but fit the
5 general description of the offender without the suspect
6 unduly standing out;

7 (2) The lineup administrator shall be someone who
8 is not aware of which member of the lineup is the suspect
9 in the case; and

10 (3) Prior to presenting the lineup using the
11 sequential method the lineup administrator shall:

12 (A) Inform the witness that the perpetrator
13 may or may not be among those shown, and the witness
14 should not feel compelled to make an identification;

15 (B) Inform the witness that he or she will
16 view individuals one at a time and will be requested
17 to state whether the individual shown is the
18 perpetrator of the crime, prior to viewing the next
19 lineup participant; and

20 (C) Ask the witness to state in his or her own
21 words how sure he or she is that the person
22 identified is the actual offender. During the
23 statement, or as soon thereafter as reasonably
24 possible, the witness's actual words shall be
25 documented.

26 (d) Application. This Section applies to selected live
27 lineups that are composed and presented at a police station
28 and to selected photo lineups regardless of where presented;
29 provided that this Section does not apply in police
30 investigations in which a spontaneous identification is
31 possible and no lineup procedure is being used. This Section
32 does not affect the right to counsel afforded by the U.S. or
33 Illinois Constitutions or State law at any stage of a
34 criminal proceeding.

1 (e) Selection of lineups. The participating
2 jurisdictions shall develop a protocol for the selection and
3 administration of lineups which is practical, designed to
4 elicit information for comparative evaluation purposes, and
5 is consistent with objective scientific research methodology.

6 (f) Training and administrators. The Department of State
7 Police shall offer training to police officers and any other
8 appropriate personnel on the sequential method of conducting
9 lineup procedures in the pilot jurisdictions and the
10 requirements of this Section. The Department of State Police
11 may seek funding for training and administration from the
12 Illinois Criminal Justice Information Authority and the
13 Illinois Law Enforcement Training Standards Board if
14 necessary.

15 (g) Report on the pilot study. The Department of State
16 Police shall gather information from each of the
17 participating police departments selected as a pilot
18 jurisdiction with respect to the effectiveness of the
19 sequential method for lineup procedures and shall file a
20 report of its findings with the Governor and the General
21 Assembly no later than April 1, 2005.

22 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

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

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

26 (b) Any public investigative, law enforcement, or other
27 public agency responsible for investigating any homicide
28 offense or participating in an investigation of any homicide
29 offense, other than defense investigators, shall provide to
30 the authority prosecuting the offense all investigative
31 material, including but not limited to reports, memoranda,
32 and field notes, that have been generated by or have come
33 into the possession of the investigating agency concerning

1 the homicide offense being investigated. In addition, the
2 investigating agency shall provide to the prosecuting
3 authority any material or information, including but not
4 limited to reports, memoranda, and field notes, 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 homicide offense. Every investigative and
8 law enforcement agency in this State shall adopt policies to
9 ensure compliance with these standards. Any investigative,
10 law enforcement, or other public agency responsible for
11 investigating any "non-homicide felony" offense or
12 participating in an investigation of any "non-homicide
13 felony" offense, other than defense investigators, shall
14 provide to the authority prosecuting the offense all
15 investigative material, including but not limited to reports
16 and memoranda that have been generated by or have come into
17 the possession of the investigating agency concerning the
18 "non-homicide felony" offense being investigated. In
19 addition, the investigating agency shall provide to the
20 prosecuting authority any material or information, including
21 but not limited to reports and memoranda, within its
22 possession or control that would tend to negate the guilt of
23 the accused of the "non-homicide felony" offense charged or
24 reduce his or her punishment for the "non-homicide felony"
25 offense. This obligation to furnish exculpatory evidence
26 exists whether the information was recorded or documented in
27 any form. Every investigative and law enforcement agency in
28 this State shall adopt policies to ensure compliance with
29 these standards.

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

31 (725 ILCS 5/114-15 new)

32 Sec. 114-15. Mental retardation.

33 (a) In a first degree murder case in which the State

1 seeks the death penalty as an appropriate sentence, any party
2 may raise the issue of the defendant's mental retardation by
3 motion. A defendant wishing to raise the issue of his or her
4 mental retardation shall provide written notice to the State
5 and the court as soon as the defendant reasonably believes
6 such issue will be raised.

7 (b) The issue of the defendant's mental retardation
8 shall be determined in a pretrial hearing. The court shall be
9 the fact finder on the issue of the defendant's mental
10 retardation and shall determine the issue by a preponderance
11 of evidence in which the moving party has the burden of
12 proof. The court may appoint an expert in the field of mental
13 retardation. The defendant and the State may offer experts
14 from the field of mental retardation. The court shall
15 determine admissibility of evidence and qualification as an
16 expert.

17 (c) If after a plea of guilty to first degree murder, or
18 a finding of guilty of first degree murder in a bench trial,
19 or a verdict of guilty for first degree murder in a jury
20 trial, or on a matter remanded from the Supreme Court for
21 sentencing for first degree murder, and the State seeks the
22 death penalty as an appropriate sentence, the defendant may
23 raise the issue of defendant's mental retardation not at
24 eligibility but at aggravation and mitigation. The defendant
25 and the State may offer experts from the field of mental
26 retardation. The court shall determine admissibility of
27 evidence and qualification as an expert.

28 (d) In determining whether the defendant is mentally
29 retarded, the mental retardation must have manifested itself
30 by the age of 18. IQ tests and psychometric tests
31 administered to the defendant must be the kind and type
32 recognized by experts in the field of mental retardation. In
33 order for the defendant to be considered mentally retarded, a
34 low IQ must be accompanied by significant deficits in

1 adaptive behavior in at least 2 of the following skill areas:
2 communication, self-care, social or interpersonal skills,
3 home living, self-direction, academics, health and safety,
4 use of community resources, and work. An intelligence
5 quotient (IQ) of 75 or below is presumptive evidence of
6 mental retardation.

7 (e) Evidence of mental retardation that did not result
8 in disqualifying the case as a capital case, may be
9 introduced as evidence in mitigation during a capital
10 sentencing hearing. A failure of the court to determine that
11 the defendant is mentally retarded does not preclude the
12 court during trial from allowing evidence relating to mental
13 disability should the court deem it appropriate.

14 (f) If the court determines at a pretrial hearing or
15 after remand that a capital defendant is mentally retarded,
16 and the State does not appeal pursuant to Supreme Court Rule
17 604, the case shall no longer be considered a capital case
18 and the procedural guidelines established for capital cases
19 shall no longer be applicable to the defendant. In that
20 case, the defendant shall be sentenced under the sentencing
21 provisions of Chapter V of the Unified Code of Corrections.

22 (725 ILCS 5/115-21 new)

23 Sec. 115-21. Informant testimony.

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

28 (b) This Section applies to any capital case in which
29 the prosecution attempts to introduce evidence of
30 incriminating statements made by the accused to or overheard
31 by an informant.

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

1 (1) the complete criminal history of the informant;
2 (2) any deal, promise, inducement, or benefit that
3 the offering party has made or will make in the future to
4 the informant;

5 (3) the statements made by the accused;

6 (4) the time and place of the statements, the time
7 and place of their disclosure to law enforcement
8 officials, and the names of all persons who were present
9 when the statements were made;

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

14 (6) other cases in which the informant testified,
15 provided that the existence of such testimony can be
16 ascertained through reasonable inquiry and whether the
17 informant received any promise, inducement, or benefit in
18 exchange for or subsequent to that testimony or
19 statement; and

20 (7) any other information relevant to the
21 informant's credibility.

22 (d) In any case under this Section, the prosecution must
23 timely disclose its intent to introduce the testimony of an
24 informant. The court shall conduct a hearing to determine
25 whether the testimony of the informant is reliable, unless
26 the defendant waives such a hearing. If the prosecution
27 fails to show by a preponderance of the evidence that the
28 informant's testimony is reliable, the court shall not allow
29 the testimony to be heard at trial. At this hearing, the
30 court shall consider the factors enumerated in subsection (c)
31 as well as any other factors relating to reliability.

32 (e) A hearing required under subsection (d) does not
33 apply to statements covered under subsection (b) that are
34 lawfully recorded.

1 (f) This Section applies to all death penalty
2 prosecutions initiated on or after the effective date of this
3 amendatory Act of the 93rd General Assembly.

4 (725 ILCS 5/115-22 new)

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

10 (1) whether the witness has received or been
11 promised anything, including pay, immunity from
12 prosecution, leniency in prosecution, or personal
13 advantage, in exchange for testimony;

14 (2) any other case in which the witness testified
15 or offered statements against an individual but was not
16 called, and whether the statements were admitted in the
17 case, and whether the witness received any deal, promise,
18 inducement, or benefit in exchange for that testimony or
19 statement; provided that the existence of such testimony
20 can be ascertained through reasonable inquiry;

21 (3) whether the witness has ever changed his or her
22 testimony;

23 (4) the criminal history of the witness; and

24 (5) any other evidence relevant to the credibility
25 of the witness.

26 (725 ILCS 5/116-3)

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

29 (a) A defendant may make a motion before the trial court
30 that entered the judgment of conviction in his or her case
31 for the performance of fingerprint or forensic DNA testing,
32 including comparison analysis of genetic marker groupings of

1 the evidence collected by criminal justice agencies pursuant
2 to the alleged offense, to those of the defendant, to those
3 of other forensic evidence, and to those maintained under
4 subsection (f) of Section 5-4-3 of the Unified Code of
5 Corrections, on evidence that was secured in relation to the
6 trial which resulted in his or her conviction, but which was
7 not subject to the testing which is now requested because the
8 technology for the testing was not available at the time of
9 trial. Reasonable notice of the motion shall be served upon
10 the State.

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

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

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

18 (c) The trial court shall allow the testing under
19 reasonable conditions designed to protect the State's
20 interests in the integrity of the evidence and the testing
21 process upon a determination that:

22 (1) the result of the testing has the scientific
23 potential to produce new, noncumulative evidence
24 materially relevant to the defendant's assertion of
25 actual innocence even though the results may not
26 completely exonerate the defendant;

27 (2) the testing requested employs a scientific
28 method generally accepted within the relevant scientific
29 community.

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

31 (725 ILCS 5/116-5 new)

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

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

6 (1) the genetic profile from forensic evidence that
7 was secured in relation to the trial against the genetic
8 profile of the defendant,

9 (2) the genetic profile of items of forensic
10 evidence secured in relation to trial to the genetic
11 profile of other forensic evidence secured in relation to
12 trial, or

13 (3) the genetic profiles referred to in
14 subdivisions (1) and (2) against:

15 (i) genetic profiles of offenders maintained
16 under subsection (f) of Section 5-4-3 of the Unified
17 Code of Corrections, or

18 (ii) genetic profiles, including but not
19 limited to, profiles from unsolved crimes maintained
20 in state or local DNA databases by law enforcement
21 agencies.

22 (b) If appropriate federal criteria are met, the court
23 may order the Department of State Police to request the
24 National DNA index system to search its database of genetic
25 profiles.

26 (c) If requested by the defense, a defense
27 representative shall be allowed to view any genetic marker
28 grouping analysis conducted by the Department of State
29 Police. The defense shall be provided with copies of all
30 documentation, correspondence, including digital
31 correspondence, notes, memoranda, and reports generated in
32 relation to the analysis.

33 (d) Reasonable notice of the motion shall be served upon
34 the State.

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

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

3 (a) Any person imprisoned in the penitentiary may
4 institute a proceeding under this Article if the person who
5 asserts that:

6 (1) in the proceedings which resulted in his or her
7 conviction there was a substantial denial of his or her
8 rights under the Constitution of the United States or of
9 the State of Illinois or both; or may--institute-a
10 proceeding-under-this-Article-

11 (2) the death penalty was imposed and there is
12 newly discovered evidence not available to the person at
13 the time of the proceeding that resulted in his or her
14 conviction that establishes a substantial basis to
15 believe that the defendant is actually innocent by clear
16 and convincing evidence.

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

28 (b) The proceeding shall be commenced by filing with the
29 clerk of the court in which the conviction took place a
30 petition (together with a copy thereof) verified by
31 affidavit. Petitioner shall also serve another copy upon the
32 State's Attorney by any of the methods provided in Rule 7 of
33 the Supreme Court. The clerk shall docket the petition for
34 consideration by the court pursuant to Section 122-2.1 upon

1 his or her receipt thereof and bring the same promptly to the
2 attention of the court.

3 (c) Except as otherwise provided in subsection (a-5), if
4 the petitioner is under sentence of death, no proceedings
5 under this Article shall be commenced more than 6 months
6 after the denial of a petition for certiorari to the United
7 States Supreme Court on direct appeal, or more than 6 months
8 from the date for filing such a petition if none is filed,
9 unless the petitioner alleges facts showing that the delay
10 was not due to his or her culpable negligence.

11 When a defendant has a sentence other than death, no
12 proceedings under this Article shall be commenced more than 6
13 months after the denial of the Petition for Leave to Appeal
14 to the Illinois Supreme Court, or more than 6 months from the
15 date for filing such a petition if none is filed, unless the
16 petitioner alleges facts showing that the delay was not due
17 to his or her culpable negligence.

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

30 (d) A person seeking relief by filing a petition under
31 this Section must specify in the petition or its heading that
32 it is filed under this Section. A trial court that has
33 received a petition complaining of a conviction or sentence
34 that fails to specify in the petition or its heading that it

1 is filed under this Section need not evaluate the petition to
2 determine whether it could otherwise have stated some grounds
3 for relief under this Article.

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

9 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
10 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

11 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

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

30 (b) If the petition is not dismissed pursuant to this
31 Section, the court shall order the petition to be docketed
32 for further consideration in accordance with Sections 122-4
33 through 122-6. If the petitioner is under sentence of death,

1 the court shall order the petition to be docketed for further
2 consideration and hearing within one year of the filing of
3 the petition. Continuances may be granted as the court deems
4 appropriate.

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

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

11 (725 ILCS 5/122-2.2 new)

12 Sec. 122-2.2. Mental retardation and post-conviction
13 relief.

14 (a) In cases where no determination of mental
15 retardation was made and a defendant has been convicted of
16 first-degree murder, sentenced to death, and is in custody
17 pending execution of the sentence of death, the following
18 procedures shall apply:

19 (1) Notwithstanding any other provision of law or
20 rule of court, a defendant may seek relief from the death
21 sentence through a petition for post-conviction relief
22 under this Article alleging that the defendant was
23 mentally retarded as defined in Section 114-15 at the
24 time the offense was alleged to have been committed.

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

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

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

3 (725 ILCS 124/15)

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

5 Sec. 15. Capital Litigation Trust Fund.

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

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

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

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

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

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

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

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

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

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

32 (e) Moneys in the Trust Fund shall be expended only as
33 follows:

34 (1) To pay the State Treasurer's costs to

1 administer the Trust Fund. The amount for this purpose
2 may not exceed 5% in any one fiscal year of the amount
3 otherwise appropriated from the Trust Fund in the same
4 fiscal year.

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

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

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

1 are sufficient moneys in the Trust Fund to pay the
2 expenses.

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

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

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

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

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

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

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

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

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

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

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

28 (5) Grant moneys shall be paid to the Cook County
29 Treasurer in block grants and held in separate accounts
30 for the State's Attorney, the Public Defender, and court
31 appointed defense counsel other than the Cook County
32 Public Defender, respectively, for the designated fiscal
33 year, and are not subject to county appropriation.

34 (6) Expenditure of grant moneys under this

1 subsection (g) is subject to audit by the Auditor
2 General.

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

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

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

26 (1) Upon certification by the circuit court, on a
27 form created by the State Treasurer, that all or a
28 portion of the expenses are reasonable, necessary, and
29 appropriate for payment from the Trust Fund and the
30 court's delivery of the certification to the Treasurer,
31 the Treasurer shall pay the certified expenses of Public
32 Defenders from the money appropriated to the Treasurer
33 for capital litigation expenses of Public Defenders in
34 any county other than Cook County, if there are

1 sufficient moneys in the Trust Fund to pay the expenses.

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

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

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

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

30 (725 ILCS 124/19)

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

32 Sec. 19. Report; repeal.

33 (a) The Cook County Public Defender, the Cook County

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

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

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

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

18 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

1 be required to submit specimens of blood, saliva, or tissue
2 to the Illinois Department of State Police in accordance with
3 the provisions of this Section, provided such person is:

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

11 (1.5) found guilty or given supervision under the
12 Juvenile Court Act of 1987 for a qualifying offense or
13 attempt of a qualifying offense on or after January 1,
14 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996~~
15 ~~er~~

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

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

26 (3.5) convicted or found guilty of any offense
27 classified as a felony under Illinois law or found guilty
28 or given supervision for such an offense under the
29 Juvenile Court Act of 1987 on or after August 22, 2002;
30 ~~the-effective-date-of-this-amendatory-Act-of-the-92nd~~
31 ~~General-Assembly~~; ~~er~~

32 (4) presently institutionalized as a sexually
33 dangerous person or presently institutionalized as a
34 person found guilty but mentally ill of a sexual offense

1 or attempt to commit a sexual offense; or

2 (4.5) ordered committed as a sexually violent
3 person on or after the effective date of the Sexually
4 Violent Persons Commitment Act; or

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

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

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

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

33 (c) Any person required by paragraphs (a)(3), (a)(4),
34 and (a)(4.5) to provide specimens of blood, saliva, or tissue

1 shall be required to provide such samples prior to final
2 discharge, parole, or release at a collection site designated
3 by the Illinois Department of State Police.

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

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

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

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

34 (d-2) The Illinois Department of State Police shall

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

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

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

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

1 base, which may be uploaded into a national database, and
2 which information may be subject to expungement only as set
3 forth in subsection (f-1).

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

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

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

28 (1) any violation or inchoate violation of Section
29 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
30 Criminal Code of 1961~~;~~

31 (1.1) any violation or inchoate violation of
32 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
33 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
34 for which persons are convicted on or after July 1,

1 2001~~;~~

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

4 (3) (blank)~~;~~

5 (4) any inchoate violation of Section 9-3.1,
6 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961~~;~~
7 or

8 (5) any violation or inchoate violation of Article
9 29D of the Criminal Code of 1961.

10 (g-5) (Blank).

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

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

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

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

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

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

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

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

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

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

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

32 (E) Costs incurred in continuing education,
33 training, and professional development of forensic
34 scientists regularly employed by these laboratories.

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

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

15 Section 90. The State Finance Act is amended by adding
16 Section 5.595 as follows:

17 (30 ILCS 105/5.595 new)

18 Sec. 5.595. The Illinois Law Enforcement Training
19 Standards Board Costs and Attorney Fees Fund.

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

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."