

1 AMENDMENT TO SENATE BILL 472

2 AMENDMENT NO. _____. Amend Senate Bill 472 as follows:

3 by replacing the title with the following:

4 "AN ACT in relation to criminal law."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Police Training Act is amended
8 by changing Section 6.1 as follows:

9 (50 ILCS 705/6.1)

10 Sec. 6.1. Decertification of full-time and part-time
11 police officers.

12 (a) The Board must review police officer conduct and
13 records to ensure that no police officer is certified or
14 provided a valid waiver if that police officer has been:

15 (1) convicted of a felony offense under the laws of
16 this State or any other state which if committed in this
17 State would be punishable as a felony;

18 (2) ~~The Board must also ensure that no police~~
19 ~~officer is certified or provided a valid waiver if that~~
20 ~~police officer has been~~ convicted on or after the
21 effective date of this amendatory Act of 1999 of any

1 misdemeanor specified in this Section or if committed in
2 any other state would be an offense similar to Section
3 11-6, 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1,
4 17-1, 17-2, 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7
5 of the Criminal Code of 1961 or to Section 5 or 5.2 of
6 the Cannabis Control Act; or

7 (3) the subject of an administrative determination,
8 conducted pursuant to the rules and regulations of the
9 law enforcement agency or department employing the police
10 officer, of knowingly committing perjury in a criminal or
11 quasicriminal proceeding. For the purposes of this
12 subsection, "perjury" shall have the meaning as set forth
13 in Section 32-2 of the Criminal Code of 1961.

14 The Board must appoint investigators to enforce the
15 duties conferred upon the Board by this Act.

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

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

32 (d) Any person, or a local or State agency, or the Board
33 is immune from liability for submitting, disclosing, or
34 releasing information of arrests, administrative

1 determinations of perjury, or convictions in this Section as
2 long as the information is submitted, disclosed, or released
3 in good faith and without malice. The Board has qualified
4 immunity for the release of the information.

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

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

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

1 to law enforcement officers or any applicant to a Board
2 certified basic law enforcement academy as described in this
3 Act based on fingerprint identification. The Board must make
4 payment of fees to the Department of State Police for each
5 fingerprint card submission in conformance with the
6 requirements of paragraph 22 of Section 55a of the Civil
7 Administrative Code of Illinois.

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

9 Section 10. The Criminal Code of 1961 is amended by
10 changing Section 9-1 as follows:

11 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

12 Sec. 9-1. First degree Murder - Death penalties -
13 Exceptions - Separate Hearings - Proof - Findings - Appellate
14 procedures - Reversals.

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

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

21 (2) he knows that such acts create a strong
22 probability of death or great bodily harm to that
23 individual or another; or

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

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

30 (1) the murdered individual was a peace officer or
31 fireman killed in the course of performing his official
32 duties, to prevent the performance of his official

1 duties, or in retaliation for performing his official
2 duties, and the defendant knew or should have known that
3 the murdered individual was a peace officer or fireman;
4 or

5 (2) the murdered individual was an employee of an
6 institution or facility of the Department of Corrections,
7 or any similar local correctional agency, killed in the
8 course of performing his official duties, to prevent the
9 performance of his official duties, or in retaliation for
10 performing his official duties, or the murdered
11 individual was an inmate at such institution or facility
12 and was killed on the grounds thereof, or the murdered
13 individual was otherwise present in such institution or
14 facility with the knowledge and approval of the chief
15 administrative officer thereof; or

16 (3) the defendant has been convicted of murdering
17 two or more individuals under subsection (a) of this
18 Section or under any law of the United States or of any
19 state which is substantially similar to subsection (a) of
20 this Section regardless of whether the deaths occurred
21 as the result of the same act or of several related or
22 unrelated acts so long as the deaths were the result of
23 either an intent to kill more than one person or of
24 separate acts which the defendant knew would cause death
25 or create a strong probability of death or great bodily
26 harm to the murdered individual or another; or

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

30 (5) the defendant committed the murder pursuant to
31 a contract, agreement or understanding by which he was to
32 receive money or anything of value in return for
33 committing the murder or procured another to commit the
34 murder for money or anything of value; or

1 (6) the murdered individual was killed in the
2 course of another felony if:

3 (a) the murdered individual:

4 (i) was actually killed by the defendant,
5 or

6 (ii) received physical injuries
7 personally inflicted by the defendant
8 substantially contemporaneously with physical
9 injuries caused by one or more persons for
10 whose conduct the defendant is legally
11 accountable under Section 5-2 of this Code, and
12 the physical injuries inflicted by either the
13 defendant or the other person or persons for
14 whose conduct he is legally accountable caused
15 the death of the murdered individual; and

16 (b) in performing the acts which caused the
17 death of the murdered individual or which resulted
18 in physical injuries personally inflicted by the
19 defendant on the murdered individual under the
20 circumstances of subdivision (ii) of subparagraph
21 (a) of paragraph (6) of subsection (b) of this
22 Section, the defendant acted with the intent to kill
23 the murdered individual or with the knowledge that
24 his acts created a strong probability of death or
25 great bodily harm to the murdered individual or
26 another; and

27 (c) the other felony was an inherently violent
28 crime one-of-the--following:--armed--robbery,--armed
29 violence,--robbery,--predatory-criminal-sexual-assault
30 of--a--child,--aggravated--criminal--sexual-assault,
31 aggravated---kidnapping,----aggravated---vehicular
32 hijacking,--forcible--detention,--arsen,--aggravated
33 arsen,--aggravated--stalking,--burglary,--residential
34 burglary,--home--invasion,--calculated-criminal-drug

1 conspiracy-as-defined-in-Section-405-of-the-Illinois
2 Controlled-Substances-Act, streetgang-eriminal--drug
3 conspiracy--as--defined--in--Section--405.2--of--the
4 Illinois--Controlled--Substances-Act, or the attempt
5 to commit an inherently violent crime. In this
6 subparagraph (c), "inherently violent crime"
7 includes, but is not limited to, armed robbery,
8 robbery, predatory criminal sexual assault of a
9 child, aggravated criminal sexual assault,
10 aggravated kidnapping, aggravated vehicular
11 hijacking, aggravated arson, aggravated stalking,
12 residential burglary, and home invasion any-of-the
13 felonies-listed-in-this-subsection-(e); or

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

17 (8) the defendant committed the murder with intent
18 to prevent the murdered individual from testifying in any
19 criminal prosecution or giving material assistance to the
20 State in any investigation or prosecution, either against
21 the defendant or another; or the defendant committed the
22 murder because the murdered individual was a witness in
23 any prosecution or gave material assistance to the State
24 in any investigation or prosecution, either against the
25 defendant or another; or

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

34 (10) the defendant was incarcerated in an

1 institution or facility of the Department of Corrections
2 at the time of the murder, and while committing an
3 offense punishable as a felony under Illinois law, or
4 while engaged in a conspiracy or solicitation to commit
5 such offense, intentionally killed an individual or
6 counseled, commanded, induced, procured or caused the
7 intentional killing of the murdered individual; or

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

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

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

1 (14) the murder was intentional and involved the
2 infliction of torture. For the purpose of this Section
3 torture means the infliction of or subjection to extreme
4 physical pain, motivated by an intent to increase or
5 prolong the pain, suffering or agony of the victim; or

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

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

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

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

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

31 (20) the murdered individual was known by the
32 defendant to be a teacher or other person employed in any
33 school and the teacher or other employee is upon the
34 grounds of a school or grounds adjacent to a school, or

1 is in any part of a building used for school purposes; or

2 (21) the murder was committed by the defendant in
3 connection with or as a result of the offense of
4 terrorism as defined in Section 29D-30 of this Code.

5 (c) Consideration of factors in Aggravation and
6 Mitigation.

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

13 (1) the defendant has no significant history of
14 prior criminal activity;

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

19 (3) the murdered individual was a participant in
20 the defendant's homicidal conduct or consented to the
21 homicidal act;

22 (4) the defendant acted under the compulsion of
23 threat or menace of the imminent infliction of death or
24 great bodily harm;

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

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

29 (7) the defendant suffers from a reduced mental
30 capacity.

31 (d) Separate sentencing hearing.

32 Where requested by the State, the court shall conduct a
33 separate sentencing proceeding to determine the existence of
34 factors set forth in subsection (b) and to consider any

1 aggravating or mitigating factors as indicated in subsection
2 (c). The proceeding shall be conducted:

3 (1) before the jury that determined the defendant's
4 guilt; or

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

7 A. the defendant was convicted upon a plea of
8 guilty; or

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

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

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

15 (e) Evidence and Argument.

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

27 (f) Proof.

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

32 (g) Procedure - Jury.

33 If at the separate sentencing proceeding the jury finds
34 that none of the factors set forth in subsection (b) exists,

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

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

27 (h) Procedure - No Jury.

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

33 If the Court determines that one or more of the factors
 34 set forth in subsection (b) exists, the Court shall consider

1 any aggravating and mitigating factors as indicated in
2 subsection (c). If the Court determines, after weighing the
3 factors in aggravation and mitigation, that death is the
4 appropriate sentence ~~that--there--are--no--mitigating--factors~~
5 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~
6 the Court shall sentence the defendant to death.

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

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

13 In a case in which the State seeks the death penalty as
14 an appropriate sentence, at the conclusion of all evidence in
15 the case, the court may decertify the case as a death penalty
16 case if the court makes a written finding that the only
17 evidence supporting the defendant's conviction is the
18 uncorroborated testimony of an in-custody informant witness
19 concerning the confession or admission of the defendant or
20 that the sole evidence against the defendant is a single
21 eyewitness or single accomplice without any other
22 corroborating evidence.

23 (i) Appellate Procedure.

24 The conviction and sentence of death shall be subject to
25 automatic review by the Supreme Court. Such review shall be
26 in accordance with rules promulgated by the Supreme Court.
27 The Illinois Supreme Court may overturn the death sentence,
28 and order the imposition of imprisonment under Chapter V of
29 the Unified Code of Corrections if the court finds that the
30 death sentence is fundamentally unjust as applied to the
31 particular case. If the Illinois Supreme Court finds that the
32 death sentence is fundamentally unjust as applied to the
33 particular case, independent of any procedural grounds for
34 relief, the Illinois Supreme Court shall issue a written

1 opinion explaining this finding.

2 (j) Disposition of reversed death sentence.

3 In the event that the death penalty in this Act is held
4 to be unconstitutional by the Supreme Court of the United
5 States or of the State of Illinois, any person convicted of
6 first degree murder shall be sentenced by the court to a term
7 of imprisonment under Chapter V of the Unified Code of
8 Corrections.

9 In the event that any death sentence pursuant to the
10 sentencing provisions of this Section is declared
11 unconstitutional by the Supreme Court of the United States or
12 of the State of Illinois, the court having jurisdiction over
13 a person previously sentenced to death shall cause the
14 defendant to be brought before the court, and the court shall
15 sentence the defendant to a term of imprisonment under
16 Chapter V of the Unified Code of Corrections.

17 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
18 92-854, eff. 12-5-02.)

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

23 (725 ILCS 5/107A Art. heading new)

24 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

25 (725 ILCS 5/107A-5 new)

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

27 (a) All lineups shall be photographed. These photographs
28 shall be disclosed to the accused and his or her defense
29 counsel during discovery proceedings as provided in Illinois
30 Supreme Court Rules. All photographs of suspects shown to an
31 eyewitness during the photo spread shall be disclosed to the

1 accused and his or her defense counsel during discovery
2 proceedings as provided in Illinois Supreme Court Rules.

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

5 (1) The suspect might not be in the lineup or photo
6 spread and the eyewitness is not obligated to make an
7 identification.

8 (2) The eyewitness should not assume that the
9 person administering the lineup or photo spread knows
10 which person is the suspect in the case.

11 (c) Suspects in a lineup or photo spread should not
12 appear to be substantially different from "fillers" or
13 "distracters" in the lineup or photo spread, based on the
14 eyewitness' previous description of the perpetrator, or based
15 on other factors that would draw attention to the suspect.

16 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

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

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

20 (b) Any investigative, law enforcement, or other agency
21 responsible for investigating any felony offense or
22 participating in an investigation of any felony offense,
23 other than defense investigators, shall provide to the
24 authority prosecuting the offense all investigative material,
25 including but not limited to reports, memoranda, and notes,
26 that have been generated by or have come into the possession
27 of the investigating agency concerning the offense being
28 investigated. In addition, the investigating agency shall
29 provide to the prosecuting authority any material or
30 information within its possession or control that would tend
31 to negate the guilt of the accused of the offense charged or
32 reduce his or her punishment for the offense. Every
33 investigative and law enforcement agency in this State shall

1 adopt policies to ensure compliance with these standards.

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

3 (725 ILCS 5/114-15 new)

4 Sec. 114-15. Mental retardation.

5 (a) In a first degree murder case in which the State
6 seeks the death penalty as an appropriate sentence, any party
7 may raise the issue of the defendant's mental retardation by
8 motion. A defendant wishing to raise the issue of his or her
9 mental retardation shall provide written notice to the State
10 and the court as soon as the defendant reasonably believes
11 such issue will be raised.

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

22 (c) In determining whether the defendant is mentally
23 retarded, the mental retardation must have manifested itself
24 by the age of 18. An intelligence quotient (IQ) of 75 or
25 below is presumptive evidence of mental retardation. IQ tests
26 and psychometric tests administered to the defendant must be
27 the kind and type recognized by experts in the field of
28 mental retardation. In order for the defendant to be
29 considered mentally retarded, a low IQ must be accompanied by
30 significant deficits in adaptive behavior in at least 2 of
31 the following skill areas: communication, self-care, social
32 or interpersonal skills, home living, self-direction,
33 academics, health and safety, use of community resources, and

1 work.

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

9 (e) If the court determines that a capital defendant is
10 mentally retarded, the case shall no longer be considered a
11 capital case and the procedural guidelines established for
12 capital cases shall no longer be applicable to the defendant.
13 In that case, the defendant, if convicted, shall be sentenced
14 under the sentencing provisions of Chapter V of the Unified
15 Code of Corrections. A denial of such a petition may be
16 appealed to the Illinois Supreme Court.

17 (725 ILCS 5/115-21 new)

18 Sec. 115-21. Informant testimony.

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

23 (b) This Section applies to any capital case in which
24 the prosecution attempts to introduce evidence of
25 incriminating statements made by the accused to an informant.

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

28 (1) the complete criminal history of the informant;

29 (2) any deal, promise, inducement, or benefit that
30 the offering party has made or will make in the future to
31 the informant;

32 (3) the statements made by the accused;

33 (4) the time and place of the statements, the time

1 and place of their disclosure to law enforcement
2 officials, and the names of all persons who were present
3 when the statements were made;

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

8 (6) other cases of which the prosecution is aware
9 in which the informant testified against an individual or
10 offered a statement against an individual, and whether
11 the informant received any deal, promise, inducement, or
12 benefit in exchange for or subsequent to that testimony
13 or statement; and

14 (7) any other information relevant to the
15 informant's credibility.

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

26 (e) A hearing required under subsection (d) does not
27 apply to statements covered under subsection (b) that are
28 lawfully recorded.

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

32 (725 ILCS 115-22 new)

33 Sec. 115-22. Witness inducements. When the State

1 intends to introduce the testimony of a witness in a capital
 2 case, the State shall, before trial, disclose to the
 3 defendant and to his or her defense counsel the following
 4 information, which shall be reduced to writing:

5 (1) whether the witness has received anything,
 6 including pay, immunity from prosecution, leniency in
 7 prosecution, or personal advantage, in exchange for
 8 testimony;

9 (2) any other case in which the witness testified
 10 or offered statements against an individual but was not
 11 called, and whether the statements were admitted in the
 12 case, and whether the witness received any deal, promise,
 13 inducement, or benefit in exchange for that testimony or
 14 statement;

15 (3) whether the witness has ever changed his or her
 16 testimony;

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

18 (5) any other evidence relevant to the credibility
 19 of the witness.

20 (725 ILCS 5/116-3)

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

23 (a) A defendant may make a motion before the trial court
 24 that entered the judgment of conviction in his or her case
 25 for the performance of fingerprint or forensic DNA testing,
 26 including comparison analysis of genetic marker groupings of
 27 the evidence collected by criminal justice agencies pursuant
 28 to the alleged offense, to those of the defendant, to those
 29 of other forensic evidence, and to those maintained under
 30 subsection (f) of Section 5-4-3 of the Unified Code of
 31 Corrections, on evidence that was secured in relation to the
 32 trial which resulted in his or her conviction, but which was
 33 not subject to the testing which is now requested because the

1 technology for the testing was not available at the time of
2 trial. Reasonable notice of the motion shall be served upon
3 the State.

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

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

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

11 (c) The trial court shall allow the testing under
12 reasonable conditions designed to protect the State's
13 interests in the integrity of the evidence and the testing
14 process upon a determination that:

15 (1) the result of the testing has the scientific
16 potential to produce new, noncumulative evidence
17 materially relevant to the defendant's assertion of
18 actual innocence even though the results may not
19 completely exonerate the defendant;

20 (2) the testing requested employs a scientific
21 method generally accepted within the relevant scientific
22 community.

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

24 (725 ILCS 5/116-5 new)

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

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

32 (1) the genetic profile from forensic evidence that
33 was secured in relation to the trial against the genetic

1 profile of the defendant,

2 (2) the genetic profile of items of forensic
3 evidence secured in relation to trial to the genetic
4 profile of other forensic evidence secured in relation to
5 trial, or

6 (3) the genetic profiles referred to in
7 subdivisions (1) and (2) against:

8 (i) genetic profiles of offenders maintained
9 under subsection (f) of Section 5-4-3 of the Unified
10 Code of Corrections, or

11 (ii) genetic profiles, including but not
12 limited to, profiles from unsolved crimes maintained
13 in state or local DNA databases by law enforcement
14 agencies.

15 (b) If appropriate federal criteria are met, the court
16 may order the Department of State Police to request the
17 National DNA index system to search its database of genetic
18 profiles.

19 (c) If requested by the defense, a defense
20 representative shall be allowed to view any genetic marker
21 grouping analysis conducted by the Department of State
22 Police. The defense shall be provided with copies of all
23 documentation, correspondence, including digital
24 correspondence, notes, memoranda, and reports generated in
25 relation to the analysis.

26 (d) Reasonable notice of the motion shall be served upon
27 the State.

28 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

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

30 (a) Any person imprisoned in the penitentiary may
31 institute a proceeding under this Article if the person who
32 asserts that:

33 (1) in the proceedings which resulted in his or her

1 conviction there was a substantial denial of his or her
2 rights under the Constitution of the United States or of
3 the State of Illinois or both; or may--institute-a
4 proceeding-under-this-Article-

5 (2) the death penalty was imposed and there is
6 newly discovered evidence not available to the person at
7 the time of the proceeding that resulted in his or her
8 conviction that establishes a substantial basis to
9 believe that the defendant is actually innocent by clear
10 and convincing evidence.

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

22 (b) The proceeding shall be commenced by filing with the
23 clerk of the court in which the conviction took place a
24 petition (together with a copy thereof) verified by
25 affidavit. Petitioner shall also serve another copy upon the
26 State's Attorney by any of the methods provided in Rule 7 of
27 the Supreme Court. The clerk shall docket the petition for
28 consideration by the court pursuant to Section 122-2.1 upon
29 his or her receipt thereof and bring the same promptly to the
30 attention of the court.

31 (c) Except as otherwise provided in subsection (a-5), if
32 the petitioner is under sentence of death, no proceedings
33 under this Article shall be commenced more than 6 months
34 after the denial of a petition for certiorari to the United

1 States Supreme Court on direct appeal, or more than 6 months
2 from the date for filing such a petition if none is filed.

3 When a defendant has a sentence other than death, no
4 proceedings under this Article shall be commenced more than 6
5 months after the denial of the Petition for Leave to Appeal
6 to the Illinois Supreme Court, or more than 6 months from the
7 date for filing such a petition if none is filed.

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

20 (d) A person seeking relief by filing a petition under
21 this Section must specify in the petition or its heading that
22 it is filed under this Section. A trial court that has
23 received a petition complaining of a conviction or sentence
24 that fails to specify in the petition or its heading that it
25 is filed under this Section need not evaluate the petition to
26 determine whether it could otherwise have stated some grounds
27 for relief under this Article.

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

33 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
34 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

1 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

5 (1) If the petitioner is under sentence of death
6 and is without counsel and alleges that he is without
7 means to procure counsel, he shall state whether or not
8 he wishes counsel to be appointed to represent him. If
9 appointment of counsel is so requested, the court shall
10 appoint counsel if satisfied that the petitioner has no
11 means to procure counsel.

12 (2) If the petitioner is sentenced to imprisonment
13 and the court determines the petition is frivolous or is
14 patently without merit, it shall dismiss the petition in
15 a written order, specifying the findings of fact and
16 conclusions of law it made in reaching its decision.
17 Such order of dismissal is a final judgment and shall be
18 served upon the petitioner by certified mail within 10
19 days of its entry.

20 (b) If the petition is not dismissed pursuant to this
21 Section, the court shall order the petition to be docketed
22 for further consideration in accordance with Sections 122-4
23 through 122-6. If the petitioner is under sentence of death,
24 the court shall order the petition to be docketed for further
25 consideration and hearing within one year of the filing of
26 the petition.

27 (c) In considering a petition pursuant to this Section,
28 the court may examine the court file of the proceeding in
29 which the petitioner was convicted, any action taken by an
30 appellate court in such proceeding and any transcripts of
31 such proceeding.

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

33 (725 ILCS 5/122-2.2 new)

1 Sec. 122-2.2. Mental retardation and post-conviction
2 relief.

3 (a) In cases in which a defendant has been convicted of
4 first-degree murder, sentenced to death, and is in custody
5 pending execution of the sentence of death, the following
6 procedures shall apply:

7 (1) Notwithstanding any other provision of law or
8 rule of court, a defendant may seek relief from the death
9 sentence through a petition for post-conviction relief
10 under this Article alleging that the defendant was
11 mentally retarded at the time the offense was alleged to
12 have been committed.

13 (2) The petition must be filed within 180 days of
14 the effective date of this amendatory Act of the 93rd
15 General Assembly or within 180 days of the issuance of
16 the mandate by the Illinois Supreme Court setting the
17 date of execution, whichever is later.

18 (3) All other provisions of this Article governing
19 petitions for post-conviction relief shall apply to a
20 petition for post-conviction relief alleging mental
21 retardation.

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

24 (725 ILCS 124/15)

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

26 Sec. 15. Capital Litigation Trust Fund.

27 (a) The Capital Litigation Trust Fund is created as a
28 special fund in the State Treasury. The Trust Fund shall be
29 administered by the State Treasurer to provide moneys for the
30 appropriations to be made, grants to be awarded, and
31 compensation and expenses to be paid under this Act. All
32 interest earned from the investment or deposit of moneys

1 accumulated in the Trust Fund shall, under Section 4.1 of the
2 State Finance Act, be deposited into the Trust Fund.

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

5 (c) Moneys deposited into the Trust Fund shall be used
6 exclusively for the purposes of providing funding for the
7 prosecution and defense of capital cases as provided in this
8 Act and shall not be appropriated, loaned, or in any manner
9 transferred to the General Revenue Fund of the State of
10 Illinois.

11 (d) Every fiscal year the State Treasurer shall transfer
12 from the General Revenue Fund to the Capital Litigation Trust
13 Fund an amount equal to the full amount of moneys
14 appropriated by the General Assembly (both by original and
15 supplemental appropriation), less any unexpended balance from
16 the previous fiscal year, from the Capital Litigation Trust
17 Fund for the specific purpose of making funding available for
18 the prosecution and defense of capital cases. The Public
19 Defender and State's Attorney in Cook County, the State
20 Appellate Defender, the State's Attorneys Appellate
21 Prosecutor, and the Attorney General shall make annual
22 requests for appropriations from the Trust Fund.

23 (1) The Public Defender in Cook County shall
24 request appropriations to the State Treasurer for
25 expenses incurred by the Public Defender and for funding
26 for private appointed defense counsel in Cook County.

27 (2) The State's Attorney in Cook County shall
28 request an appropriation to the State Treasurer for
29 expenses incurred by the State's Attorney.

30 (3) The State Appellate Defender shall request a
31 direct appropriation from the Trust Fund for expenses
32 incurred by the State Appellate Defender in providing
33 assistance to trial attorneys under item (c)(5) of
34 Section 10 of the State Appellate Defender Act and an

1 appropriation to the State Treasurer for payments from
2 the Trust Fund for the defense of cases in counties other
3 than Cook County.

4 (4) The State's Attorneys Appellate Prosecutor
5 shall request a direct appropriation from the Trust Fund
6 to pay expenses incurred by the State's Attorneys
7 Appellate Prosecutor and an appropriation to the State
8 Treasurer for payments from the Trust Fund for expenses
9 incurred by State's Attorneys in counties other than Cook
10 County.

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

15 The Public Defender and State's Attorney in Cook County,
16 the State Appellate Defender, the State's Attorneys Appellate
17 Prosecutor, and the Attorney General may each request
18 supplemental appropriations from the Trust Fund during the
19 fiscal year.

20 (e) Moneys in the Trust Fund shall be expended only as
21 follows:

22 (1) To pay the State Treasurer's costs to
23 administer the Trust Fund. The amount for this purpose
24 may not exceed 5% in any one fiscal year of the amount
25 otherwise appropriated from the Trust Fund in the same
26 fiscal year.

27 (2) To pay the capital litigation expenses of trial
28 defense including, but not limited to, DNA testing,
29 including DNA testing under Section 116-3 of the Code of
30 Criminal Procedure of 1963, analysis, and expert
31 testimony, investigatory and other assistance, expert,
32 forensic, and other witnesses, and mitigation
33 specialists, and grants and aid provided to public
34 defenders or assistance to attorneys who have been

1 appointed by the court to represent defendants who are
2 charged with capital crimes.

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

7 (4) To provide State's Attorneys with funding for
8 capital litigation expenses including, but not limited
9 to, investigatory and other assistance and expert,
10 forensic, and other witnesses necessary to prosecute
11 capital cases. State's Attorneys in any county other
12 than Cook County seeking funding for capital litigation
13 expenses including, but not limited to, investigatory and
14 other assistance and expert, forensic, or other witnesses
15 under this Section may request that the State's Attorneys
16 Appellate Prosecutor or the Attorney General, as the case
17 may be, certify the expenses as reasonable, necessary,
18 and appropriate for payment from the Trust Fund, on a
19 form created by the State Treasurer. Upon certification
20 of the expenses and delivery of the certification to the
21 State Treasurer, the Treasurer shall pay the expenses
22 directly from the Capital Litigation Trust Fund if there
23 are sufficient moneys in the Trust Fund to pay the
24 expenses.

25 (5) To provide financial support through the
26 Attorney General pursuant to the Attorney General Act for
27 the several county State's Attorneys outside of Cook
28 County, but shall not be used to increase personnel for
29 the Attorney General's Office.

30 (6) To provide financial support through the
31 State's Attorneys Appellate Prosecutor pursuant to the
32 State's Attorneys Appellate Prosecutor's Act for the
33 several county State's Attorneys outside of Cook County,
34 but shall not be used to increase personnel for the

1 State's Attorneys Appellate Prosecutor.

2 (7) To provide financial support to the State
3 Appellate Defender pursuant to the State Appellate
4 Defender Act.

5 Moneys expended from the Trust Fund shall be in addition
6 to county funding for Public Defenders and State's Attorneys,
7 and shall not be used to supplant or reduce ordinary and
8 customary county funding.

9 (f) Moneys in the Trust Fund shall be appropriated to
10 the State Appellate Defender, the State's Attorneys Appellate
11 Prosecutor, the Attorney General, and the State Treasurer.
12 The State Appellate Defender shall receive an appropriation
13 from the Trust Fund to enable it to provide assistance to
14 appointed defense counsel throughout the State and to Public
15 Defenders in counties other than Cook. The State's Attorneys
16 Appellate Prosecutor and the Attorney General shall receive
17 appropriations from the Trust Fund to enable them to provide
18 assistance to State's Attorneys in counties other than Cook
19 County. Moneys shall be appropriated to the State Treasurer
20 to enable the Treasurer (i) to make grants to Cook County,
21 (ii) to pay the expenses of Public Defenders and State's
22 Attorneys in counties other than Cook County, (iii) to pay
23 the expenses and compensation of appointed defense counsel in
24 counties other than Cook County, and (iv) to pay the costs of
25 administering the Trust Fund. All expenditures and grants
26 made from the Trust Fund shall be subject to audit by the
27 Auditor General.

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

30 (1) For each State fiscal year, the State's
31 Attorney and Public Defender must each make a separate
32 application to the State Treasurer for capital litigation
33 grants.

34 (2) The State Treasurer shall establish rules and

1 procedures for grant applications. The rules shall
2 require the Cook County Treasurer as the grant recipient
3 to report on a periodic basis to the State Treasurer how
4 much of the grant has been expended, how much of the
5 grant is remaining, and the purposes for which the grant
6 has been used. The rules may also require the Cook
7 County Treasurer to certify on a periodic basis that
8 expenditures of the funds have been made for expenses
9 that are reasonable, necessary, and appropriate for
10 payment from the Trust Fund.

11 (3) The State Treasurer shall make the grants to
12 the Cook County Treasurer as soon as possible after the
13 beginning of the State fiscal year.

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

16 (5) Grant moneys shall be paid to the Cook County
17 Treasurer in block grants and held in separate accounts
18 for the State's Attorney, the Public Defender, and court
19 appointed defense counsel other than the Cook County
20 Public Defender, respectively, for the designated fiscal
21 year, and are not subject to county appropriation.

22 (6) Expenditure of grant moneys under this
23 subsection (g) is subject to audit by the Auditor
24 General.

25 (7) The Cook County Treasurer shall immediately
26 make payment from the appropriate separate account in the
27 county treasury for capital litigation expenses to the
28 State's Attorney, Public Defender, or court appointed
29 defense counsel other than the Public Defender, as the
30 case may be, upon order of the State's Attorney, Public
31 Defender or the court, respectively.

32 (h) If a defendant in a capital case in Cook County is
33 represented by court appointed counsel other than the Cook
34 County Public Defender, the appointed counsel shall petition

1 the court for an order directing the Cook County Treasurer to
2 pay the court appointed counsel's reasonable and necessary
3 compensation and capital litigation expenses from grant
4 moneys provided from the Trust Fund. These petitions shall be
5 considered in camera. Orders denying petitions for
6 compensation or expenses are final. Counsel may not petition
7 for expenses that may have been provided or compensated by
8 the State Appellate Defender under item (c)(5) of Section 10
9 of the State Appellate Defender Act.

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

14 (1) Upon certification by the circuit court, on a
15 form created by the State Treasurer, that all or a
16 portion of the expenses are reasonable, necessary, and
17 appropriate for payment from the Trust Fund and the
18 court's delivery of the certification to the Treasurer,
19 the Treasurer shall pay the certified expenses of Public
20 Defenders from the money appropriated to the Treasurer
21 for capital litigation expenses of Public Defenders in
22 any county other than Cook County, if there are
23 sufficient moneys in the Trust Fund to pay the expenses.

24 (2) If a defendant in a capital case is represented
25 by court appointed counsel other than the Public
26 Defender, the appointed counsel shall petition the court
27 to certify compensation and capital litigation expenses
28 including, but not limited to, investigatory and other
29 assistance, expert, forensic, and other witnesses, and
30 mitigation specialists as reasonable, necessary, and
31 appropriate for payment from the Trust Fund. Upon
32 certification on a form created by the State Treasurer of
33 all or a portion of the compensation and expenses
34 certified as reasonable, necessary, and appropriate for

1 payment from the Trust Fund and the court's delivery of
2 the certification to the Treasurer, the State Treasurer
3 shall pay the certified compensation and expenses from
4 the money appropriated to the Treasurer for that purpose,
5 if there are sufficient moneys in the Trust Fund to make
6 those payments.

7 (3) A petition for capital litigation expenses
8 under this subsection shall be considered in camera.
9 Orders denying petitions for compensation or expenses are
10 final.

11 (j) If the Trust Fund is discontinued or dissolved by an
12 Act of the General Assembly or by operation of law, any
13 balance remaining in the Trust Fund shall be returned to the
14 General Revenue Fund after deduction of administrative costs,
15 any other provision of this Act to the contrary
16 notwithstanding.

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

18 (725 ILCS 124/19)

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

20 Sec. 19. Report; repeal.

21 (a) The Cook County Public Defender, the Cook County
22 State's Attorney, the State Appellate Defender, the State's
23 Attorneys Appellate Prosecutor, and the Attorney General
24 shall each report separately to the General Assembly by
25 January 1, 2004 detailing the amounts of money received by
26 them through this Act, the uses for which those funds were
27 expended, the balances then in the Capital Litigation Trust
28 Fund or county accounts, as the case may be, dedicated to
29 them for the use and support of Public Defenders, appointed
30 trial defense counsel, and State's Attorneys, as the case may
31 be. The report shall describe and discuss the need for
32 continued funding through the Fund and contain any
33 suggestions for changes to this Act.

1 (b) (Blank). ~~Unless---the--General--Assembly--provides~~
 2 ~~otherwise, this Act is repealed on July 1, 2004.~~
 3 (Source: P.A. 91-589, eff. 1-1-00.)

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

6 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)
 7 Sec. 5-4-3. Persons convicted of, or found delinquent
 8 for, certain offenses or institutionalized as sexually
 9 dangerous; specimens; genetic marker groups.

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

24 (1) convicted of a qualifying offense or attempt of
 25 a qualifying offense on or after July 1, 1990 ~~the~~
 26 ~~effective date of this amendatory Act of 1989,~~ and
 27 sentenced to a term of imprisonment, periodic
 28 imprisonment, fine, probation, conditional discharge or
 29 any other form of sentence, or given a disposition of
 30 court supervision for the offense; ~~or~~

31 (1.5) found guilty or given supervision under the
 32 Juvenile Court Act of 1987 for a qualifying offense or

1 attempt of a qualifying offense on or after January 1,
2 1997; ~~the-effective-date-of-this-amendatory-Act-of--1996,~~
3 ~~or~~

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

7 (3) convicted of a qualifying offense or attempt of
8 a qualifying offense before July 1, 1990 ~~the--effective~~
9 ~~date--of--this--amendatory--Act--of-1989~~ and is presently
10 confined as a result of such conviction in any State
11 correctional facility or county jail or is presently
12 serving a sentence of probation, conditional discharge or
13 periodic imprisonment as a result of such conviction; ~~or~~

14 (3.5) convicted or found guilty of any offense
15 classified as a felony under Illinois law or found guilty
16 or given supervision for such an offense under the
17 Juvenile Court Act of 1987 on or after August 22, 2002;
18 ~~the--effective--date---of-this-amendatory-Act-of-the-92nd~~
19 ~~General-Assembly,~~ ~~or~~

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

24 (4.5) ordered committed as a sexually violent
25 person on or after the effective date of the Sexually
26 Violent Persons Commitment Act; or

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

32 Notwithstanding other provisions of this Section, any
33 person incarcerated in a facility of the Illinois Department
34 of Corrections on or after August 22, 2002 ~~the-effective-date~~

1 ~~ef--this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be
2 required to submit a specimen of blood, saliva, or tissue
3 prior to his or her release on parole or mandatory supervised
4 release, as a condition of his or her parole or mandatory
5 supervised release.

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

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

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

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

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

1 Forensic Services for analysis.

2 (d) The Illinois Department of State Police shall
3 provide all equipment and instructions necessary for the
4 collection of blood samples. The collection of samples shall
5 be performed in a medically approved manner. Only a
6 physician authorized to practice medicine, a registered nurse
7 or other qualified person trained in venipuncture may
8 withdraw blood for the purposes of this Act. The samples
9 shall thereafter be forwarded to the Illinois Department of
10 State Police, Division of Forensic Services, for analysis and
11 categorizing into genetic marker groupings.

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

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

32 (d-5) To the extent that funds are available, the
33 Illinois Department of State Police shall contract with
34 qualified personnel and certified laboratories for the

1 collection, analysis, and categorization of known samples.

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

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

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

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

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

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

16 (1) any violation or inchoate violation of Section
 17 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
 18 Criminal Code of 1961~~;~~

19 (1.1) any violation or inchoate violation of
 20 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
 21 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
 22 for which persons are convicted on or after July 1,
 23 2001~~;~~

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

26 (3) (blank)~~;~~

27 (4) any inchoate violation of Section 9-3.1,
 28 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961~~;~~
 29 or

30 (5) any violation or inchoate violation of Article
 31 29D of the Criminal Code of 1961.

32 (g-5) (Blank).

33 (h) The Illinois Department of State Police shall be the
 34 State central repository for all genetic marker grouping

1 analysis information obtained pursuant to this Act. The
2 Illinois Department of State Police may promulgate rules for
3 the form and manner of the collection of blood, saliva, or
4 tissue samples and other procedures for the operation of this
5 Act. The provisions of the Administrative Review Law shall
6 apply to all actions taken under the rules so promulgated.

7 (i) A person required to provide a blood, saliva, or
8 tissue specimen shall cooperate with the collection of the
9 specimen and any deliberate act by that person intended to
10 impede, delay or stop the collection of the blood, saliva, or
11 tissue specimen is a Class A misdemeanor.

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

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

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

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

1 (3) Fees deposited into the State Offender DNA
2 Identification System Fund shall be used by Illinois
3 State Police crime laboratories as designated by the
4 Director of State Police. These funds shall be in
5 addition to any allocations made pursuant to existing
6 laws and shall be designated for the exclusive use of
7 State crime laboratories. These uses may include, but
8 are not limited to, the following:

9 (A) Costs incurred in providing analysis and
10 genetic marker categorization as required by
11 subsection (d).

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

14 (C) Costs incurred in the purchase and
15 maintenance of equipment for use in performing
16 analyses.

17 (D) Costs incurred in continuing research and
18 development of new techniques for analysis and
19 genetic marker categorization.

20 (E) Costs incurred in continuing education,
21 training, and professional development of forensic
22 scientists regularly employed by these laboratories.

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

33 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
34 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.

1 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
2 1-20-03.)

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

5 Section 99. Effective date. This Act takes effect upon
6 becoming law."