

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 (h) As soon as possible after decertification of a
9 police officer based upon the police officer's perjury in a
10 criminal or quasicriminal case, the Board shall notify the
11 defendant who was a party to a proceeding that resulted in
12 the police officer's decertification based on the perjury.

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

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

16 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

17 Sec. 9-1. First degree Murder - Death penalties -
18 Exceptions - Separate Hearings - Proof - Findings - Appellate
19 procedures - Reversals.

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

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

26 (2) he knows that such acts create a strong
27 probability of death or great bodily harm to that
28 individual or another; or

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

31 (b) Aggravating Factors. A defendant who at the time of
32 the commission of the offense has attained the age of 18 or

1 more and who has been found guilty of first degree murder may
2 be sentenced to death if:

3 (1) the murdered individual was a peace officer or
4 fireman killed in the course of performing his official
5 duties, to prevent the performance of his official
6 duties, or in retaliation for performing his official
7 duties, and the defendant knew or should have known that
8 the murdered individual was a peace officer or fireman;
9 or

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

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

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

1 (5) the defendant committed the murder pursuant to
 2 a contract, agreement or understanding by which he was to
 3 receive money or anything of value in return for
 4 committing the murder or procured another to commit the
 5 murder for money or anything of value; or

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

8 (a) the murdered individual:

9 (i) was actually killed by the defendant,
 10 or

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

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

32 (c) the other felony was an inherently violent
 33 crime ~~one-of-the--following:--armed--robbery,--armed~~
 34 ~~violence,--robbery,--predatory-criminal-sexual-assault~~

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

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

22 (8) the defendant committed the murder with intent
 23 to prevent the murdered individual from testifying in any
 24 criminal prosecution or giving material assistance to the
 25 State in any investigation or prosecution, either against
 26 the defendant or another; or the defendant committed the
 27 murder because the murdered individual was a witness in
 28 any prosecution or gave material assistance to the State
 29 in any investigation or prosecution, either against the
 30 defendant or another; or

31 (9) the defendant, while committing an offense
 32 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
 33 407 or 407.1 or subsection (b) of Section 404 of the
 34 Illinois Controlled Substances Act, or while engaged in a

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

5 (10) the defendant was incarcerated in an
6 institution or facility of the Department of Corrections
7 at the time of the murder, and while committing an
8 offense punishable as a felony under Illinois law, or
9 while engaged in a conspiracy or solicitation to commit
10 such offense, intentionally killed an individual or
11 counseled, commanded, induced, procured or caused the
12 intentional killing of the murdered individual; or

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

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

33 (13) the defendant was a principal administrator,
34 organizer, or leader of a calculated criminal drug

1 conspiracy consisting of a hierarchical position of
2 authority superior to that of all other members of the
3 conspiracy, and the defendant counseled, commanded,
4 induced, procured, or caused the intentional killing of
5 the murdered person; or

6 (14) the murder was intentional and involved the
7 infliction of torture. For the purpose of this Section
8 torture means the infliction of or subjection to extreme
9 physical pain, motivated by an intent to increase or
10 prolong the pain, suffering or agony of the victim; or

11 (15) the murder was committed as a result of the
12 intentional discharge of a firearm by the defendant from
13 a motor vehicle and the victim was not present within the
14 motor vehicle; or

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

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

27 (18) the murder was committed by reason of any
28 person's activity as a community policing volunteer or to
29 prevent any person from engaging in activity as a
30 community policing volunteer; or

31 (19) the murdered individual was subject to an
32 order of protection and the murder was committed by a
33 person against whom the same order of protection was
34 issued under the Illinois Domestic Violence Act of 1986;

1 or

2 (20) the murdered individual was known by the
3 defendant to be a teacher or other person employed in any
4 school and the teacher or other employee is upon the
5 grounds of a school or grounds adjacent to a school, or
6 is in any part of a building used for school purposes; or

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

10 (c) Consideration of factors in Aggravation and
11 Mitigation.

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

18 (1) the defendant has no significant history of
19 prior criminal activity;

20 (2) the murder was committed while the defendant
21 was under the influence of extreme mental or emotional
22 disturbance, although not such as to constitute a defense
23 to prosecution;

24 (3) the murdered individual was a participant in
25 the defendant's homicidal conduct or consented to the
26 homicidal act;

27 (4) the defendant acted under the compulsion of
28 threat or menace of the imminent infliction of death or
29 great bodily harm;

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

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

34 (7) the defendant suffers from a reduced mental

1 capacity.

2 (d) Separate sentencing hearing.

3 Where requested by the State, the court shall conduct a
4 separate sentencing proceeding to determine the existence of
5 factors set forth in subsection (b) and to consider any
6 aggravating or mitigating factors as indicated in subsection
7 (c). The proceeding shall be conducted:

8 (1) before the jury that determined the defendant's
9 guilt; or

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

12 A. the defendant was convicted upon a plea of
13 guilty; or

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

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

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

20 (e) Evidence and Argument.

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

32 (f) Proof.

33 The burden of proof of establishing the existence of any
34 of the factors set forth in subsection (b) is on the State

1 and shall not be satisfied unless established beyond a
2 reasonable doubt.

3 (g) Procedure - Jury.

4 If at the separate sentencing proceeding the jury finds
5 that none of the factors set forth in subsection (b) exists,
6 the court shall sentence the defendant to a term of
7 imprisonment under Chapter V of the Unified Code of
8 Corrections. If there is a unanimous finding by the jury
9 that one or more of the factors set forth in subsection (b)
10 exist, the jury shall consider aggravating and mitigating
11 factors as instructed by the court and shall determine
12 whether the sentence of death shall be imposed. If the jury
13 determines unanimously, after weighing the factors in
14 aggravation and mitigation, that death is the appropriate
15 sentence ~~that there are no mitigating factors sufficient to~~
16 ~~preclude the imposition of the death sentence,~~ the court
17 shall sentence the defendant to death. If the court does not
18 concur with the jury determination that death is the
19 appropriate sentence, the court shall set forth reasons in
20 writing including what facts or circumstances the court
21 relied upon, along with any relevant documents, that
22 compelled the court to non-concur with the sentence. This
23 document and any attachments shall be part of the record for
24 appellate review.

25 If after weighing the factors in aggravation and
26 mitigation, one or more jurors determines that death is not
27 the appropriate sentence, ~~Unless the jury unanimously finds~~
28 ~~that there are no mitigating factors sufficient to preclude~~
29 ~~the imposition of the death sentence~~ the court shall sentence
30 the defendant to a term of imprisonment under Chapter V of
31 the Unified Code of Corrections.

32 (h) Procedure - No Jury.

33 In a proceeding before the court alone, if the court
34 finds that none of the factors found in subsection (b)

1 exists, the court shall sentence the defendant to a term of
2 imprisonment under Chapter V of the Unified Code of
3 Corrections.

4 If the Court determines that one or more of the factors
5 set forth in subsection (b) exists, the Court shall consider
6 any aggravating and mitigating factors as indicated in
7 subsection (c). If the Court determines, after weighing the
8 factors in aggravation and mitigation, that death is the
9 appropriate sentence ~~that--there--are--no--mitigating--factors~~
10 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~
11 the Court shall sentence the defendant to death.

12 If ~~Unless~~ the court finds that ~~there-are-no-mitigating~~
13 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~
14 ~~of death~~ is not the appropriate sentence, the court shall
15 sentence the defendant to a term of imprisonment under
16 Chapter V of the Unified Code of Corrections.

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

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

28 (i) Appellate Procedure.

29 The conviction and sentence of death shall be subject to
30 automatic review by the Supreme Court. Such review shall be
31 in accordance with rules promulgated by the Supreme Court.
32 The Illinois Supreme Court may overturn the death sentence,
33 and order the imposition of imprisonment under Chapter V of
34 the Unified Code of Corrections if the court finds that the

1 death sentence is fundamentally unjust as applied to the
 2 particular case. If the Illinois Supreme Court finds that the
 3 death sentence is fundamentally unjust as applied to the
 4 particular case, independent of any procedural grounds for
 5 relief, the Illinois Supreme Court shall issue a written
 6 opinion explaining this finding.

7 (j) Disposition of reversed death sentence.

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

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

22 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
 23 92-854, eff. 12-5-02.)

24 Section 15. The Code of Criminal Procedure of 1963 is
 25 amended by changing Sections 114-13, 116-3, 122-1 and 122-2.1
 26 and adding Article 107A and Sections 114-15, 115-21, 115-22,
 27 116-5, and 122-2.2 as follows:

28 (725 ILCS 5/107A Art. heading new)

29 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

30 (725 ILCS 5/107A-5 new)

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

1 (a) All lineups shall be photographed or otherwise
2 recorded. These photographs shall be disclosed to the accused
3 and his or her defense counsel during discovery proceedings
4 as provided in Illinois Supreme Court Rules. All photographs
5 of suspects shown to an eyewitness during the photo spread
6 shall be disclosed to the accused and his or her defense
7 counsel during discovery proceedings as provided in Illinois
8 Supreme Court Rules.

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

11 (1) The suspect might not be in the lineup or photo
12 spread and the eyewitness is not obligated to make an
13 identification.

14 (2) The eyewitness should not assume that the
15 person administering the lineup or photo spread knows
16 which person is the suspect in the case.

17 (c) Suspects in a lineup or photo spread should not
18 appear to be substantially different from "fillers" or
19 "distracters" in the lineup or photo spread, based on the
20 eyewitness' previous description of the perpetrator, or based
21 on other factors that would draw attention to the suspect.

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

1 investigated. In addition, the investigating agency shall
2 provide to the prosecuting authority any material or
3 information within its possession or control that would tend
4 to negate the guilt of the accused of the offense charged or
5 reduce his or her punishment for the offense. Every
6 investigative and law enforcement agency in this State shall
7 adopt policies to ensure compliance with these standards.

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

9 (725 ILCS 5/114-15 new)

10 Sec. 114-15. Mental retardation.

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

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

28 (c) In determining whether the defendant is mentally
29 retarded, the mental retardation must have manifested itself
30 by the age of 18. An intelligence quotient (IQ) of 75 or
31 below is presumptive evidence of mental retardation. IQ tests
32 and psychometric tests administered to the defendant must be
33 the kind and type recognized by experts in the field of

1 mental retardation. In order for the defendant to be
2 considered mentally retarded, a low IQ must be accompanied by
3 significant deficits in adaptive behavior in at least 2 of
4 the following skill areas: communication, self-care, social
5 or interpersonal skills, home living, self-direction,
6 academics, health and safety, use of community resources, and
7 work.

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

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

23 (725 ILCS 5/115-21 new)

24 Sec. 115-21. Informant testimony.

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

29 (b) This Section applies to any capital case in which
30 the prosecution attempts to introduce evidence of
31 incriminating statements made by the accused to 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 of which the prosecution is aware
15 in which the informant testified against an individual or
16 offered a statement against an individual, and whether
17 the informant received any deal, promise, inducement, or
18 benefit in exchange for or subsequent to that testimony
19 or 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 anything,
11 including pay, immunity from prosecution, leniency in
12 prosecution, or personal advantage, in exchange for
13 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;

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

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

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

25 (725 ILCS 5/116-3)

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

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

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

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

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

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

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

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

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

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

30 (725 ILCS 5/116-5 new)

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

33 (a) Upon motion by a defendant charged with any offense

1 where DNA evidence may be material to the defense
2 investigation or relevant at trial, a court may order a DNA
3 database search by the Department of State Police. Such
4 analysis may include comparing:

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

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

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

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

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

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

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

32 (d) Reasonable notice of the motion shall be served upon
33 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 When a defendant has a sentence other than death, no
10 proceedings under this Article shall be commenced more than 6
11 months after the denial of the Petition for Leave to Appeal
12 to the Illinois Supreme Court, or more than 6 months from the
13 date for filing such a petition if none is filed.

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

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

34 (e) A proceeding under this Article may not be commenced

1 on behalf of a defendant who has been sentenced to death
2 without the written consent of the defendant, unless the
3 defendant, because of a mental or physical condition, is
4 incapable of asserting his or her own claim.

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

7 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

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

26 (b) If the petition is not dismissed pursuant to this
27 Section, the court shall order the petition to be docketed
28 for further consideration in accordance with Sections 122-4
29 through 122-6. If the petitioner is under sentence of death,
30 the court shall order the petition to be docketed for further
31 consideration and hearing within one year of the filing of
32 the petition.

33 (c) In considering a petition pursuant to this Section,

1 the court may examine the court file of the proceeding in
2 which the petitioner was convicted, any action taken by an
3 appellate court in such proceeding and any transcripts of
4 such proceeding.

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

6 (725 ILCS 5/122-2.2 new)

7 Sec. 122-2.2. Mental retardation and post-conviction
8 relief.

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

13 (1) Notwithstanding any other provision of law or
14 rule of court, a defendant may seek relief from the death
15 sentence through a petition for post-conviction relief
16 under this Article alleging that the defendant was
17 mentally retarded at the time the offense was alleged to
18 have been committed.

19 (2) The petition must be filed within 180 days of
20 the effective date of this amendatory Act of the 93rd
21 General Assembly or within 180 days of the issuance of
22 the mandate by the Illinois Supreme Court setting the
23 date of execution, whichever is later.

24 (3) All other provisions of this Article governing
25 petitions for post-conviction relief shall apply to a
26 petition for post-conviction relief alleging mental
27 retardation.

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

30 (725 ILCS 124/15)

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

1 Sec. 15. Capital Litigation Trust Fund.

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

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

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

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

30 (1) The Public Defender in Cook County shall
31 request appropriations to the State Treasurer for
32 expenses incurred by the Public Defender and for funding
33 for private appointed defense counsel in Cook County.

34 (2) The State's Attorney in Cook County shall

1 request an appropriation to the State Treasurer for
2 expenses incurred by the State's Attorney.

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

11 (4) The State's Attorneys Appellate Prosecutor
12 shall request a direct appropriation from the Trust Fund
13 to pay expenses incurred by the State's Attorneys
14 Appellate Prosecutor and an appropriation to the State
15 Treasurer for payments from the Trust Fund for expenses
16 incurred by State's Attorneys in counties other than Cook
17 County.

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

22 The Public Defender and State's Attorney in Cook County,
23 the State Appellate Defender, the State's Attorneys Appellate
24 Prosecutor, and the Attorney General may each request
25 supplemental appropriations from the Trust Fund during the
26 fiscal year.

27 (e) Moneys in the Trust Fund shall be expended only as
28 follows:

29 (1) To pay the State Treasurer's costs to
30 administer the Trust Fund. The amount for this purpose
31 may not exceed 5% in any one fiscal year of the amount
32 otherwise appropriated from the Trust Fund in the same
33 fiscal year.

34 (2) To pay the capital litigation expenses of trial

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

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

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

32 (5) To provide financial support through the
33 Attorney General pursuant to the Attorney General Act for
34 the several county State's Attorneys outside of Cook

1 County, but shall not be used to increase personnel for
2 the Attorney General's Office.

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

9 (7) To provide financial support to the State
10 Appellate Defender pursuant to the State Appellate
11 Defender Act.

12 Moneys expended from the Trust Fund shall be in addition
13 to county funding for Public Defenders and State's Attorneys,
14 and shall not be used to supplant or reduce ordinary and
15 customary county funding.

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

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

3 (1) For each State fiscal year, the State's
4 Attorney and Public Defender must each make a separate
5 application to the State Treasurer for capital litigation
6 grants.

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

18 (3) The State Treasurer shall make the grants to
19 the Cook County Treasurer as soon as possible after the
20 beginning of the State fiscal year.

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

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

29 (6) Expenditure of grant moneys under this
30 subsection (g) is subject to audit by the Auditor
31 General.

32 (7) The Cook County Treasurer shall immediately
33 make payment from the appropriate separate account in the
34 county treasury for capital litigation expenses to the

1 State's Attorney, Public Defender, or court appointed
2 defense counsel other than the Public Defender, as the
3 case may be, upon order of the State's Attorney, Public
4 Defender or the court, respectively.

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

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

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

31 (2) If a defendant in a capital case is represented
32 by court appointed counsel other than the Public
33 Defender, the appointed counsel shall petition the court
34 to certify compensation and capital litigation expenses

1 including, but not limited to, investigatory and other
2 assistance, expert, forensic, and other witnesses, and
3 mitigation specialists as reasonable, necessary, and
4 appropriate for payment from the Trust Fund. Upon
5 certification on a form created by the State Treasurer of
6 all or a portion of the compensation and expenses
7 certified as reasonable, necessary, and appropriate for
8 payment from the Trust Fund and the court's delivery of
9 the certification to the Treasurer, the State Treasurer
10 shall pay the certified compensation and expenses from
11 the money appropriated to the Treasurer for that purpose,
12 if there are sufficient moneys in the Trust Fund to make
13 those payments.

14 (3) A petition for capital litigation expenses
15 under this subsection shall be considered in camera.
16 Orders denying petitions for compensation or expenses are
17 final.

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

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

25 (725 ILCS 124/19)

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

27 Sec. 19. Report; repeal.

28 (a) The Cook County Public Defender, the Cook County
29 State's Attorney, the State Appellate Defender, the State's
30 Attorneys Appellate Prosecutor, and the Attorney General
31 shall each report separately to the General Assembly by
32 January 1, 2004 detailing the amounts of money received by
33 them through this Act, the uses for which those funds were

1 expended, the balances then in the Capital Litigation Trust
 2 Fund or county accounts, as the case may be, dedicated to
 3 them for the use and support of Public Defenders, appointed
 4 trial defense counsel, and State's Attorneys, as the case may
 5 be. The report shall describe and discuss the need for
 6 continued funding through the Fund and contain any
 7 suggestions for changes to this Act.

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

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

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

13 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

31 (1) convicted of a qualifying offense or attempt of
 32 a qualifying offense on or after July 1, 1990 the

1 effective-date--of--this--amendatory--Act--of--1989, and
 2 sentenced to a term of imprisonment, periodic
 3 imprisonment, fine, probation, conditional discharge or
 4 any other form of sentence, or given a disposition of
 5 court supervision for the offense; ~~or~~

6 (1.5) found guilty or given supervision under the
 7 Juvenile Court Act of 1987 for a qualifying offense or
 8 attempt of a qualifying offense on or after January 1,
 9 1997; ~~the-effective-date-of-this-amendatory-Act-of--1996,~~
 10 ~~or~~

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

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

21 (3.5) convicted or found guilty of any offense
 22 classified as a felony under Illinois law or found guilty
 23 or given supervision for such an offense under the
 24 Juvenile Court Act of 1987 on or after August 22, 2002;
 25 ~~the--effective--date---of-this-amendatory-Act-of-the-92nd~~
 26 ~~General-Assembly,~~ ~~or~~

27 (4) presently institutionalized as a sexually
 28 dangerous person or presently institutionalized as a
 29 person found guilty but mentally ill of a sexual offense
 30 or attempt to commit a sexual offense; ~~or~~

31 (4.5) ordered committed as a sexually violent
 32 person on or after the effective date of the Sexually
 33 Violent Persons Commitment Act; or

34 (5) seeking transfer to or residency in Illinois

1 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
2 Code of Corrections and the Interstate Compact for Adult
3 Offender Supervision or the Interstate Agreements on
4 Sexually Dangerous Persons Act.

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

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

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

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

33 (c-5) Any person required by paragraph (a)(5) to provide
34 specimens of blood, saliva, or tissue shall, where feasible,

1 be required to provide the specimens before being accepted
2 for conditioned residency in Illinois under the interstate
3 compact or agreement, but no later than 45 days after arrival
4 in this State.

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

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

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

29 (d-2) The Illinois Department of State Police shall
30 provide all equipment and instructions necessary for the
31 collection of tissue samples. The collection of tissue
32 samples shall be performed in a medically approved manner.
33 Only a person trained in the instructions promulgated by the
34 Illinois State Police on collecting tissue may collect tissue

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

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

9 (e) The genetic marker groupings shall be maintained by
10 the Illinois Department of State Police, Division of Forensic
11 Services.

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

33 (f-1) Upon receipt of notification of a reversal of a
34 conviction based on actual innocence, or of the granting of a

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

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

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

23 (1) any violation or inchoate violation of Section
 24 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
 25 Criminal Code of 1961~~;~~

26 (1.1) any violation or inchoate violation of
 27 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
 28 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
 29 for which persons are convicted on or after July 1,
 30 2001~~;~~

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

33 (3) (blank)~~;~~

34 (4) any inchoate violation of Section 9-3.1,

1 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;
2 or

3 (5) any violation or inchoate violation of Article
4 29D of the Criminal Code of 1961.

5 (g-5) (Blank).

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Department to collect the specimen, or the authority of the
2 Illinois Department of State Police to accept, analyze and
3 maintain the specimen or to maintain or upload results of
4 genetic marker grouping analysis information into a State or
5 national database.

6 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
7 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
8 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
9 1-20-03.)

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law."