

1 AMENDMENT TO SENATE BILL 472

2 AMENDMENT NO. _____. Amend Senate Bill 472, AS AMENDED,
3 as follows:

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

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

8 (50 ILCS 705/6.1)

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

11 (a) The Board must review police officer conduct and
12 records to ensure that no police officer is certified or
13 provided a valid waiver if that police officer has been
14 convicted of a felony offense under the laws of this State or
15 any other state which if committed in this State would be
16 punishable as a felony. The Board must also ensure that no
17 police officer is certified or provided a valid waiver if
18 that police officer has been convicted on or after the
19 effective date of this amendatory Act of 1999 of any
20 misdemeanor specified in this Section or if committed in any
21 other state would be an offense similar to Section 11-6,

1 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
2 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
3 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
4 Act.

5 The Board must appoint investigators to enforce the
6 duties conferred upon the Board by this Act.

7 (b) It is the responsibility of the sheriff or the chief
8 executive officer of every local law enforcement agency or
9 department within this State to report to the Board any
10 arrest or conviction of any officer for an offense identified
11 in this Section.

12 (c) It is the duty and responsibility of every full-time
13 and part-time police officer in this State to report to the
14 Board within 30 days, and the officer's sheriff or chief
15 executive officer, of his or her arrest or conviction for an
16 offense identified in this Section. Any full-time or
17 part-time police officer who knowingly makes, submits, causes
18 to be submitted, or files a false or untruthful report to the
19 Board must have his or her certificate or waiver immediately
20 decertified or revoked.

21 (d) Any person, or a local or State agency, or the Board
22 is immune from liability for submitting, disclosing, or
23 releasing information of arrests or convictions in this
24 Section as long as the information is submitted, disclosed,
25 or released in good faith and without malice. The Board has
26 qualified immunity for the release of the information.

27 (e) Any full-time or part-time police officer with a
28 certificate or waiver issued by the Board who is convicted of
29 any offense described in this Section immediately becomes
30 decertified or no longer has a valid waiver. The
31 decertification and invalidity of waivers occurs as a matter
32 of law. Failure of a convicted person to report to the Board
33 his or her conviction as described in this Section or any
34 continued law enforcement practice after receiving a

1 conviction is a Class 4 felony.

2 (f) The Board's investigators are peace officers and
3 have all the powers possessed by policemen in cities and by
4 sheriff's, provided that the investigators may exercise those
5 powers anywhere in the State, only after contact and
6 cooperation with the appropriate local law enforcement
7 authorities.

8 (g) The Board must request and receive information and
9 assistance from any federal, state, or local governmental
10 agency as part of the authorized criminal background
11 investigation. The Department of State Police must process,
12 retain, and additionally provide and disseminate information
13 to the Board concerning criminal charges, arrests,
14 convictions, and their disposition, that have been filed
15 before, on, or after the effective date of this amendatory
16 Act of the 91st General Assembly against a basic academy
17 applicant, law enforcement applicant, or law enforcement
18 officer whose fingerprint identification cards are on file or
19 maintained by the Department of State Police. The Federal
20 Bureau of Investigation must provide the Board any criminal
21 history record information contained in its files pertaining
22 to law enforcement officers or any applicant to a Board
23 certified basic law enforcement academy as described in this
24 Act based on fingerprint identification. The Board must make
25 payment of fees to the Department of State Police for each
26 fingerprint card submission in conformance with the
27 requirements of paragraph 22 of Section 55a of the Civil
28 Administrative Code of Illinois.

29 (h) No person who has been certified or granted a valid
30 waiver shall be decertified or have his or her waiver revoked
31 except in a case involving homicide upon a finding that he or
32 she has willfully made false statements, under oath, as to a
33 material fact. A finding may be made only after a hearing
34 upon written charges filed with the Illinois Law Enforcement

1 Training Standards Board.

2 (1) The Board shall adopt rules governing the
3 investigation and hearing of charges to assure adequate
4 due process and to eliminate conflicts of interest. A
5 majority of the Board must be present to conduct the
6 hearing.

7 (2) Upon receipt of written charges, the Board is
8 empowered to investigate and dismiss such charges if
9 there is no evidence to support them and to justify the
10 hearing.

11 (i) If the Board finds that sufficient evidence exists,
12 it shall conduct a hearing upon not less than 14 days
13 certified notice. The accused person shall be afforded the
14 opportunity to:

- 15 (1) be represented by counsel;
- 16 (2) be heard in his or her own defense;
- 17 (3) produce proof in his or her defense;
- 18 (4) request that the Board compel the attendance of
19 witnesses and production of documents.

20 (j) The Board shall have the power to issue subpoenas
21 requiring the attendance and testimony of witnesses and the
22 production of documents and shall also have the power to
23 administer oaths.

24 (k) Any person who is served by the Board with a subpoena
25 to appear, testify, or produce documents and refuses to
26 comply with the subpoena, shall be guilty of a Class B
27 misdemeanor. Any circuit court or judge, upon application by
28 the Board, may compel compliance with Board issued subpoenas.

29 (l) If the charges against the accused are established by
30 clear and convincing evidence, the Board, by a two-thirds
31 vote of the members present at the hearing shall make a
32 finding of guilty and order that the person be decertified to
33 serve as a full-time or part-time police officer. Upon the
34 initial filing of charges, the sheriff or police chief of the

1 accused may suspend the accused person pending the decision
 2 of the Board. If the charges are not established by clear and
 3 convincing evidence, the Board shall make a finding of not
 4 guilty and order the person reinstated and paid compensation
 5 for the suspension period, if any, while awaiting the
 6 hearing. The sheriff or police chief shall take such action
 7 as is ordered by the Board.

8 (m) The provisions of the Administrative Review Law
 9 shall govern all proceedings for the judicial review of any
 10 order rendered by the Board. Plaintiff shall pay the
 11 reasonable cost of preparing and certifying the record for
 12 review. If plaintiff prevails, the court shall award the
 13 plaintiff the costs incurred.

14 (n) As soon as possible after decertification of a
 15 police officer based upon the police officer's willful making
 16 of false statements, under oath, as to a material fact in a
 17 homicide case, the Board shall notify the defendant who was a
 18 party to a proceeding that resulted in the police officer's
 19 decertification based on the false statements made by the
 20 police officer.

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

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

24 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

25 Sec. 9-1. First degree Murder - Death penalties -
 26 Exceptions - Separate Hearings - Proof - Findings - Appellate
 27 procedures - Reversals.

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

31 (1) he either intends to kill or do great bodily
 32 harm to that individual or another, or knows that such

1 acts will cause death to that individual or another; or

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

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

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

11 (1) the murdered individual was a peace officer or
12 fireman killed in the course of performing his official
13 duties, to prevent the performance of his official
14 duties, or in retaliation for performing his official
15 duties, and the defendant knew or should have known that
16 the murdered individual was a peace officer or fireman;
17 or

18 (2) the murdered individual was an employee of an
19 institution or facility of the Department of Corrections,
20 or any similar local correctional agency, killed in the
21 course of performing his official duties, to prevent the
22 performance of his official duties, or in retaliation for
23 performing his official duties, or the murdered
24 individual was an inmate at such institution or facility
25 and was killed on the grounds thereof, or the murdered
26 individual was otherwise present in such institution or
27 facility with the knowledge and approval of the chief
28 administrative officer thereof; or

29 (3) the defendant has been convicted of murdering
30 two or more individuals under subsection (a) of this
31 Section or under any law of the United States or of any
32 state which is substantially similar to subsection (a) of
33 this Section regardless of whether the deaths occurred
34 as the result of the same act or of several related or

1 unrelated acts so long as the deaths were the result of
2 either an intent to kill more than one person or of
3 separate acts which the defendant knew would cause death
4 or create a strong probability of death or great bodily
5 harm to the murdered individual or another; or

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

9 (5) the defendant committed the murder pursuant to
10 a contract, agreement or understanding by which he was to
11 receive money or anything of value in return for
12 committing the murder or procured another to commit the
13 murder for money or anything of value; or

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

16 (a) the murdered individual:

17 (i) was actually killed by the defendant,

18 or

19 (ii) received physical injuries
20 personally inflicted by the defendant
21 substantially contemporaneously with physical
22 injuries caused by one or more persons for
23 whose conduct the defendant is legally
24 accountable under Section 5-2 of this Code, and
25 the physical injuries inflicted by either the
26 defendant or the other person or persons for
27 whose conduct he is legally accountable caused
28 the death of the murdered individual; and

29 (b) in performing the acts which caused the
30 death of the murdered individual or which resulted
31 in physical injuries personally inflicted by the
32 defendant on the murdered individual under the
33 circumstances of subdivision (ii) of subparagraph
34 (a) of paragraph (6) of subsection (b) of this

1 Section, the defendant acted with the intent to kill
 2 the murdered individual or with the knowledge that
 3 his acts created a strong probability of death or
 4 great bodily harm to the murdered individual or
 5 another; and

6 (c) the other felony was an inherently violent
 7 crime ~~one-of-the--following:--armed--robbery,--armed~~
 8 ~~violence,--robbery,--predatory-criminal-sexual-assault~~
 9 ~~of--a--child,--aggravated--criminal--sexual-assault,~~
 10 ~~aggravated---kidnapping,---aggravated---vehicular~~
 11 ~~hijacking,--forcible--detention,--arson,--aggravated~~
 12 ~~arson,--aggravated--stalking,--burglary,--residential~~
 13 ~~burglary,--home--invasion,--calculated-criminal-drug~~
 14 ~~conspiracy-as-defined-in-Section-405-of-the-Illinois~~
 15 ~~Controlled-Substances-Act,--streetgang-criminal--drug~~
 16 ~~conspiracy--as--defined--in--Section--405.2--of--the~~
 17 ~~Illinois--Controlled--Substances-Act,~~ or the attempt
 18 to commit an inherently violent crime. In this
 19 subparagraph (c), "inherently violent crime"
 20 includes, but is not limited to, armed robbery,
 21 robbery, predatory criminal sexual assault of a
 22 child, aggravated criminal sexual assault,
 23 aggravated kidnapping, aggravated vehicular
 24 hijacking, aggravated arson, aggravated stalking,
 25 residential burglary, and home invasion any-of-the
 26 felonies-listed-in-this-subsection-(e); or

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

30 (8) the defendant committed the murder with intent
 31 to prevent the murdered individual from testifying in any
 32 criminal prosecution or giving material assistance to the
 33 State in any investigation or prosecution, either against
 34 the defendant or another; or the defendant committed the

1 murder because the murdered individual was a witness in
2 any prosecution or gave material assistance to the State
3 in any investigation or prosecution, either against the
4 defendant or another; or

5 (9) the defendant, while committing an offense
6 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
7 407 or 407.1 or subsection (b) of Section 404 of the
8 Illinois Controlled Substances Act, or while engaged in a
9 conspiracy or solicitation to commit such offense,
10 intentionally killed an individual or counseled,
11 commanded, induced, procured or caused the intentional
12 killing of the murdered individual; or

13 (10) the defendant was incarcerated in an
14 institution or facility of the Department of Corrections
15 at the time of the murder, and while committing an
16 offense punishable as a felony under Illinois law, or
17 while engaged in a conspiracy or solicitation to commit
18 such offense, intentionally killed an individual or
19 counseled, commanded, induced, procured or caused the
20 intentional killing of the murdered individual; or

21 (11) the murder was committed in a cold, calculated
22 and premeditated manner pursuant to a preconceived plan,
23 scheme or design to take a human life by unlawful means,
24 and the conduct of the defendant created a reasonable
25 expectation that the death of a human being would result
26 therefrom; or

27 (12) the murdered individual was an emergency
28 medical technician - ambulance, emergency medical
29 technician - intermediate, emergency medical technician -
30 paramedic, ambulance driver, or other medical assistance
31 or first aid personnel, employed by a municipality or
32 other governmental unit, killed in the course of
33 performing his official duties, to prevent the
34 performance of his official duties, or in retaliation for

1 performing his official duties, and the defendant knew or
2 should have known that the murdered individual was an
3 emergency medical technician - ambulance, emergency
4 medical technician - intermediate, emergency medical
5 technician - paramedic, ambulance driver, or other
6 medical assistance or first aid personnel; or

7 (13) the defendant was a principal administrator,
8 organizer, or leader of a calculated criminal drug
9 conspiracy consisting of a hierarchical position of
10 authority superior to that of all other members of the
11 conspiracy, and the defendant counseled, commanded,
12 induced, procured, or caused the intentional killing of
13 the murdered person; or

14 (14) the murder was intentional and involved the
15 infliction of torture. For the purpose of this Section
16 torture means the infliction of or subjection to extreme
17 physical pain, motivated by an intent to increase or
18 prolong the pain, suffering or agony of the victim; or

19 (15) the murder was committed as a result of the
20 intentional discharge of a firearm by the defendant from
21 a motor vehicle and the victim was not present within the
22 motor vehicle; or

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

26 (17) the murdered individual was a disabled person
27 and the defendant knew or should have known that the
28 murdered individual was disabled. For purposes of this
29 paragraph (17), "disabled person" means a person who
30 suffers from a permanent physical or mental impairment
31 resulting from disease, an injury, a functional disorder,
32 or a congenital condition that renders the person
33 incapable of adequately providing for his or her own
34 health or personal care; or

1 (18) the murder was committed by reason of any
2 person's activity as a community policing volunteer or to
3 prevent any person from engaging in activity as a
4 community policing volunteer; or

5 (19) the murdered individual was subject to an
6 order of protection and the murder was committed by a
7 person against whom the same order of protection was
8 issued under the Illinois Domestic Violence Act of 1986;
9 or

10 (20) the murdered individual was known by the
11 defendant to be a teacher or other person employed in any
12 school and the teacher or other employee is upon the
13 grounds of a school or grounds adjacent to a school, or
14 is in any part of a building used for school purposes; or

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

18 (c) Consideration of factors in Aggravation and
19 Mitigation.

20 The court shall consider, or shall instruct the jury to
21 consider any aggravating and any mitigating factors which are
22 relevant to the imposition of the death penalty. Aggravating
23 factors may include but need not be limited to those factors
24 set forth in subsection (b). Mitigating factors may include
25 but need not be limited to the following:

26 (1) the defendant has no significant history of
27 prior criminal activity;

28 (2) the murder was committed while the defendant
29 was under the influence of extreme mental or emotional
30 disturbance, although not such as to constitute a defense
31 to prosecution;

32 (3) the murdered individual was a participant in
33 the defendant's homicidal conduct or consented to the
34 homicidal act;

1 (4) the defendant acted under the compulsion of
2 threat or menace of the imminent infliction of death or
3 great bodily harm;

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

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

8 (7) the defendant suffers from a reduced mental
9 capacity.

10 (d) Separate sentencing hearing.

11 Where requested by the State, the court shall conduct a
12 separate sentencing proceeding to determine the existence of
13 factors set forth in subsection (b) and to consider any
14 aggravating or mitigating factors as indicated in subsection
15 (c). The proceeding shall be conducted:

16 (1) before the jury that determined the defendant's
17 guilt; or

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

20 A. the defendant was convicted upon a plea of
21 guilty; or

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

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

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

28 (e) Evidence and Argument.

29 During the proceeding any information relevant to any of
30 the factors set forth in subsection (b) may be presented by
31 either the State or the defendant under the rules governing
32 the admission of evidence at criminal trials. Any
33 information relevant to any additional aggravating factors or
34 any mitigating factors indicated in subsection (c) may be

1 presented by the State or defendant regardless of its
2 admissibility under the rules governing the admission of
3 evidence at criminal trials. The State and the defendant
4 shall be given fair opportunity to rebut any information
5 received at the hearing.

6 (f) Proof.

7 The burden of proof of establishing the existence of any
8 of the factors set forth in subsection (b) is on the State
9 and shall not be satisfied unless established beyond a
10 reasonable doubt.

11 (g) Procedure - Jury.

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

33 If after weighing the factors in aggravation and
34 mitigation, one or more jurors determines that death is not

1 ~~the appropriate sentence, Unless the jury--unanimously--finds~~
2 ~~that--there--are--no--mitigating--factors--sufficient--to--preclude~~
3 ~~the--imposition--of--the--death--sentence~~ the court shall sentence
4 the defendant to a term of imprisonment under Chapter V of
5 the Unified Code of Corrections.

6 (h) Procedure - No Jury.

7 In a proceeding before the court alone, if the court
8 finds that none of the factors found in subsection (b)
9 exists, the court shall sentence the defendant to a term of
10 imprisonment under Chapter V of the Unified Code of
11 Corrections.

12 If the Court determines that one or more of the factors
13 set forth in subsection (b) exists, the Court shall consider
14 any aggravating and mitigating factors as indicated in
15 subsection (c). If the Court determines, after weighing the
16 factors in aggravation and mitigation, that death is the
17 appropriate sentence ~~that--there--are--no--mitigating--factors~~
18 ~~sufficient--to--preclude--the--imposition--of--the--death--sentence,~~
19 the Court shall sentence the defendant to death.

20 If ~~Unless~~ the court finds that ~~there--are--no--mitigating~~
21 ~~factors--sufficient--to--preclude--the--imposition--of--the--sentence~~
22 ~~of death~~ is not the appropriate sentence, the court shall
23 sentence the defendant to a term of imprisonment under
24 Chapter V of the Unified Code of Corrections.

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

26 In a case in which the defendant has been found guilty of
27 first degree murder by a judge or jury, or a case on remand
28 for resentencing, and the State seeks the death penalty as an
29 appropriate sentence, a defendant may file a written motion
30 to decertify the case as a death penalty case if the court
31 makes a written finding that the only evidence supporting the
32 defendant's conviction is the uncorroborated testimony of an
33 informant witness, as defined in Section 115-21 of the Code
34 of Criminal Procedure of 1963, concerning the confession or

1 admission of the defendant or that the sole evidence against
2 the defendant is a single eyewitness or single accomplice
3 without any other corroborating evidence. If the court grants
4 defendant's motion to decertify the case as a capital case
5 under either of the grounds set forth above, the court shall
6 issue a written finding. The State may pursue its right to
7 appeal the decertification pursuant to Supreme Court Rule
8 604(a)(1). If the court denies defendant's motion to
9 decertify the case as a capital case, the matter shall
10 proceed to the eligibility phase of the sentencing hearing.

11 (i) Appellate Procedure.

12 The conviction and sentence of death shall be subject to
13 automatic review by the Supreme Court. Such review shall be
14 in accordance with rules promulgated by the Supreme Court.
15 The Illinois Supreme Court may overturn the death sentence,
16 and order the imposition of imprisonment under Chapter V of
17 the Unified Code of Corrections if the court finds that the
18 death sentence is fundamentally unjust as applied to the
19 particular case. If the Illinois Supreme Court finds that the
20 death sentence is fundamentally unjust as applied to the
21 particular case, independent of any procedural grounds for
22 relief, the Illinois Supreme Court shall issue a written
23 opinion explaining this finding.

24 (j) Disposition of reversed death sentence.

25 In the event that the death penalty in this Act is held
26 to be unconstitutional by the Supreme Court of the United
27 States or of the State of Illinois, any person convicted of
28 first degree murder shall be sentenced by the court to a term
29 of imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 In the event that any death sentence pursuant to the
32 sentencing provisions of this Section is declared
33 unconstitutional by the Supreme Court of the United States or
34 of the State of Illinois, the court having jurisdiction over

1 a person previously sentenced to death shall cause the
2 defendant to be brought before the court, and the court shall
3 sentence the defendant to a term of imprisonment under
4 Chapter V of the Unified Code of Corrections.

5 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
6 92-854, eff. 12-5-02.)

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

11 (725 ILCS 5/107A Art. heading new)

12 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

13 (725 ILCS 5/107A-5 new)

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

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

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

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

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

31 (c) Suspects in a lineup or photo spread should not

1 appear to be substantially different from "fillers" or
2 "distracters" in the lineup or photo spread, based on the
3 eyewitness' previous description of the perpetrator, or based
4 on other factors that would draw attention to the suspect.

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

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

8 (a) Legislative intent. Whereas the goal of a police
9 investigation is to apprehend the person or persons
10 responsible for committing a crime, and whereas studies have
11 shown that the sequential method for photo and live lineups
12 increases the accuracy of positive identifications, it is
13 useful to conduct a pilot study in the field on the
14 effectiveness of the sequential method for lineup procedures.

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

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

1 (1) The witness shall be requested to state whether
2 the individual shown is the perpetrator of the crime
3 prior to viewing the next lineup participant. Only one
4 member of the lineup shall be a suspect and the remainder
5 shall be "fillers" who are not suspects but fit the
6 general description of the suspect;

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

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

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

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

20 (C) Ask the witness to state in his or her own
21 words how sure he or she is that the person
22 identified is the actual suspect, and make the
23 witness's words part of the record.

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

33 (e) Training. The Department of State Police shall offer
34 training to police officers and any other appropriate

1 personnel on the sequential method of conducting lineup
2 procedures in the pilot jurisdictions and the requirements of
3 this Section. The Department of State Police may seek funding
4 for training from the Illinois Criminal Justice Information
5 Authority and the Illinois Law Enforcement Training Standards
6 Board if necessary.

7 (f) Report on the pilot study. The Department of State
8 Police shall offer information from each of the police
9 departments selected as a pilot jurisdiction with respect to
10 the effectiveness of the sequential method for lineup
11 procedures and shall file a report of its findings with the
12 Governor and the General Assembly no later than April 1,
13 2005.

14 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

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

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

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

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

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

23 (725 ILCS 5/114-15 new)

24 Sec. 114-15. Mental retardation.

25 (a) In a first degree murder case in which the State
26 seeks the death penalty as an appropriate sentence, any party
27 may raise the issue of the defendant's mental retardation by
28 motion. A defendant wishing to raise the issue of his or her
29 mental retardation shall provide written notice to the State
30 and the court as soon as the defendant reasonably believes
31 such issue will be raised.

32 (b) The issue of the defendant's mental retardation
33 shall be determined in a pretrial hearing. The court shall be

1 the fact finder on the issue of the defendant's mental
2 retardation and shall determine the issue by a preponderance
3 of evidence in which the moving party has the burden of
4 proof. The court may appoint an expert in the field of mental
5 retardation. The defendant and the State may offer experts
6 from the field of mental retardation. The court shall
7 determine admissibility of evidence and qualification as an
8 expert.

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

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

33 (e) Evidence of mental retardation that did not result
34 in disqualifying the case as a capital case, may be

1 introduced as evidence in mitigation during a capital
2 sentencing hearing. A failure of the court to determine that
3 the defendant is mentally retarded does not preclude the
4 court during trial from allowing evidence relating to mental
5 disability should the court deem it appropriate.

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

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

22 (725 ILCS 5/115-21 new)

23 Sec. 115-21. Informant testimony.

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

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

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

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

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

4 (3) the statements made by the accused;

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

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

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

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

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

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

34 (f) This Section applies to all death penalty

1 prosecutions initiated on or after the effective date of this
2 amendatory Act of the 93rd General Assembly.

3 (725 ILCS 5/115-22 new)

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

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

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

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

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

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

24 (725 ILCS 5/116-3)

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

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

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

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

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

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

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

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

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

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

29 (725 ILCS 5/116-5 new)

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

32 (a) Upon motion by a defendant charged with any offense
33 where DNA evidence may be material to the defense

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

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

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

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

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

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

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

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

31 (d) Reasonable notice of the motion shall be served upon
32 the State.

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

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

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

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

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

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

1 attention of the court.

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

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

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

29 (d) A person seeking relief by filing a petition under
30 this Section must specify in the petition or its heading that
31 it is filed under this Section. A trial court that has
32 received a petition complaining of a conviction or sentence
33 that fails to specify in the petition or its heading that it
34 is filed under this Section need not evaluate the petition to

1 determine whether it could otherwise have stated some grounds
2 for relief under this Article.

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

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

10 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

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

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

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

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

1 consideration and hearing within one year of the filing of
2 the petition.

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

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

9 (725 ILCS 5/122-2.2 new)

10 Sec. 122-2.2. Mental retardation and post-conviction
11 relief.

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

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

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

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

32 Section 20. The Capital Crimes Litigation Act is amended

1 by changing Sections 15 and 19 as follows:

2 (725 ILCS 124/15)

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

4 Sec. 15. Capital Litigation Trust Fund.

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

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

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

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

33 (1) The Public Defender in Cook County shall

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

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

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

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

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

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

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

33 (1) To pay the State Treasurer's costs to
34 administer the Trust Fund. The amount for this purpose

1 may not exceed 5% in any one fiscal year of the amount
2 otherwise appropriated from the Trust Fund in the same
3 fiscal year.

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

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

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

1 expenses.

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

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

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

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

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

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

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

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

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

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

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

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

33 (6) Expenditure of grant moneys under this
34 subsection (g) is subject to audit by the Auditor

1 General.

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

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

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

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

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

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

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

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

29 (725 ILCS 124/19)

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

31 Sec. 19. Report; repeal.

32 (a) The Cook County Public Defender, the Cook County
33 State's Attorney, the State Appellate Defender, the State's

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

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

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

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

17 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

1 to the Illinois Department of State Police in accordance with
2 the provisions of this Section, provided such person is:

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

10 (1.5) found guilty or given supervision under the
11 Juvenile Court Act of 1987 for a qualifying offense or
12 attempt of a qualifying offense on or after January 1,
13 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996~~,
14 ~~or~~

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

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

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

31 (4) presently institutionalized as a sexually
32 dangerous person or presently institutionalized as a
33 person found guilty but mentally ill of a sexual offense
34 or attempt to commit a sexual offense; ~~or~~

1 (4.5) ordered committed as a sexually violent
2 person on or after the effective date of the Sexually
3 Violent Persons Commitment Act; or

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

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

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

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

32 (c) Any person required by paragraphs (a)(3), (a)(4),
33 and (a)(4.5) to provide specimens of blood, saliva, or tissue
34 shall be required to provide such samples prior to final

1 discharge, parole, or release at a collection site designated
2 by the Illinois Department of State Police.

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

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

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

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

33 (d-2) The Illinois Department of State Police shall
34 provide all equipment and instructions necessary for the

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

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

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

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

1 which information may be subject to expungement only as set
2 forth in subsection (f-1).

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

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

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

27 (1) any violation or inchoate violation of Section
28 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
29 Criminal Code of 1961;~~7-08~~

30 (1.1) any violation or inchoate violation of
31 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
32 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
33 for which persons are convicted on or after July 1,
34 2001;~~7-08~~

1 (2) any former statute of this State which defined
2 a felony sexual offense;~~i7-er~~

3 (3) (blank);~~i7-er~~

4 (4) any inchoate violation of Section 9-3.1,
5 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~i7~~
6 or

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

9 (g-5) (Blank).

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

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

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

34 (k) All analysis and categorization fees provided for by

1 subsection (j) shall be regulated as follows:

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

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

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

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

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

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

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

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

34 (1) The failure of a person to provide a specimen, or of

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

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

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law."