



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB0992

Introduced 2/3/2005, by Rep. William Delgado

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Provides that any person sentenced to life imprisonment in a facility of the Illinois Department of Corrections after the effective date of this amendatory Act or sentenced to death after the effective date of this amendatory Act shall be required to provide a specimen of blood, saliva, or tissue within 45 days after sentencing or disposition at a collection site designated by the Illinois Department of State Police. Provides that any person serving a sentence of life imprisonment in a facility of the Illinois Department of Corrections on the effective date of this amendatory Act or any person who is under a sentence of death on the effective date of this amendatory Act shall be required to provide a specimen of blood, saliva, or tissue upon request at a collection site designated by the Illinois Department of State Police. Effective immediately.

LRB094 03675 RLC 33680 b

1 AN ACT concerning criminal law.

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

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

6 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

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

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

1 1997;

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

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

10 (3.5) convicted or found guilty of any offense  
11 classified as a felony under Illinois law or found guilty  
12 or given supervision for such an offense under the Juvenile  
13 Court Act of 1987 on or after August 22, 2002;

14 (4) presently institutionalized as a sexually  
15 dangerous person or presently institutionalized as a  
16 person found guilty but mentally ill of a sexual offense or  
17 attempt to commit a sexual offense;

18 (4.5) ordered committed as a sexually violent person on  
19 or after the effective date of the Sexually Violent Persons  
20 Commitment Act; or

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

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

33 Notwithstanding other provisions of this Section, any  
34 person sentenced to life imprisonment in a facility of the  
35 Illinois Department of Corrections after the effective date of  
36 this amendatory Act of the 94th General Assembly or sentenced

1 to death after the effective date of this amendatory Act of the  
2 94th General Assembly shall be required to provide a specimen  
3 of blood, saliva, or tissue within 45 days after sentencing or  
4 disposition at a collection site designated by the Illinois  
5 Department of State Police. Any person serving a sentence of  
6 life imprisonment in a facility of the Illinois Department of  
7 Corrections on the effective date of this amendatory Act of the  
8 94th General Assembly or any person who is under a sentence of  
9 death on the effective date of this amendatory Act of the 94th  
10 General Assembly shall be required to provide a specimen of  
11 blood, saliva, or tissue upon request at a collection site  
12 designated by the Illinois Department of State Police.

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

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

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

32 (c-5) Any person required by paragraph (a)(5) to provide  
33 specimens of blood, saliva, or tissue shall, where feasible, be  
34 required to provide the specimens before being accepted for  
35 conditioned residency in Illinois under the interstate compact  
36 or agreement, but no later than 45 days after arrival in this

1 State.

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

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

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

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

36 (d-5) To the extent that funds are available, the Illinois

1 Department of State Police shall contract with qualified  
2 personnel and certified laboratories for the collection,  
3 analysis, and categorization of known samples.

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

9 (e) The genetic marker groupings shall be maintained by the  
10 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 the  
16 United States, of foreign countries duly authorized to receive  
17 the same, to all peace officers of the State of Illinois and to  
18 all prosecutorial agencies, and to defense counsel as provided  
19 by Section 116-5 of the Code of Criminal Procedure of 1963. The  
20 genetic marker grouping analysis information obtained pursuant  
21 to this Act shall be used only for (i) valid law enforcement  
22 identification purposes and as required by the Federal Bureau  
23 of Investigation for participation in the National DNA  
24 database, (ii) technology validation purposes, (iii) a  
25 population statistics database, (iv) quality assurance  
26 purposes if personally identifying information is removed, (v)  
27 assisting in the defense of the criminally accused pursuant to  
28 Section 116-5 of the Code of Criminal Procedure of 1963, or  
29 (vi) identifying and assisting in the prosecution of a person  
30 who is suspected of committing a sexual assault as defined in  
31 Section 1a of the Sexual Assault Survivors Emergency Treatment  
32 Act. Notwithstanding any other statutory provision to the  
33 contrary, all information obtained under this Section shall be  
34 maintained in a single State data base, which may be uploaded  
35 into a national database, and which information may be subject  
36 to expungement only as set forth in subsection (f-1).

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

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

23 (f-6) The Illinois Department of State Police may contract  
24 with third parties for the purposes of implementing this  
25 amendatory Act of the 93rd General Assembly. Any other party  
26 contracting to carry out the functions of this Section shall be  
27 subject to the same restrictions and requirements of this  
28 Section insofar as applicable, as the Illinois Department of  
29 State Police, and to any additional restrictions imposed by the  
30 Illinois Department of State Police.

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

33 (1) any violation or inchoate violation of Section  
34 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
35 Criminal Code of 1961;

36 (1.1) any violation or inchoate violation of Section

1 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
2 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
3 persons are convicted on or after July 1, 2001;

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

6 (3) (blank);

7 (4) any inchoate violation of Section 9-3.1, 11-9.3,  
8 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

11 (g-5) (Blank).

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

20 (i) (1) A person required to provide a blood, saliva, or  
21 tissue specimen shall cooperate with the collection of the  
22 specimen and any deliberate act by that person intended to  
23 impede, delay or stop the collection of the blood, saliva,  
24 or tissue specimen is a Class A misdemeanor.

25 (2) In the event that a person's DNA sample is not  
26 adequate for any reason, the person shall provide another  
27 DNA sample for analysis. Duly authorized law enforcement  
28 and corrections personnel may employ reasonable force in  
29 cases in which an individual refuses to provide a DNA  
30 sample required under this Act.

31 (j) Any person required by subsection (a) to submit  
32 specimens of blood, saliva, or tissue to the Illinois  
33 Department of State Police for analysis and categorization into  
34 genetic marker grouping, in addition to any other disposition,  
35 penalty, or fine imposed, shall pay an analysis fee of \$200. If  
36 the analysis fee is not paid at the time of sentencing, the



1 court shall establish a fee schedule by which the entire amount  
2 of the analysis fee shall be paid in full, such schedule not to  
3 exceed 24 months from the time of conviction. The inability to  
4 pay this analysis fee shall not be the sole ground to  
5 incarcerate the person.

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

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

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

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

25 (A) Costs incurred in providing analysis and  
26 genetic marker categorization as required by  
27 subsection (d).

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

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

32 (D) Costs incurred in continuing research and  
33 development of new techniques for analysis and genetic  
34 marker categorization.

35 (E) Costs incurred in continuing education,  
36 training, and professional development of forensic

1 scientists regularly employed by these laboratories.

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

12 (m) If any provision of this amendatory Act of the 93rd  
13 General Assembly is held unconstitutional or otherwise  
14 invalid, the remainder of this amendatory Act of the 93rd  
15 General Assembly is not affected.

16 (Source: P.A. 92-16, eff. 6-28-01; 92-40, eff. 6-29-01; 92-571,  
17 eff. 6-26-02; 92-600, eff. 6-28-02; 92-829, eff. 8-22-02;  
18 92-854, eff. 12-5-02; 93-216, eff. 1-1-04; 93-605, eff.  
19 11-19-03; 93-781, eff. 1-1-05.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.