

# HB3726



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB3726

Introduced 2/28/2007, by Rep. Susana A Mendoza

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Makes a technical change in the Section providing that certain offenders submit blood, saliva, or tissue samples to the Department of State Police for forensic DNA testing and for deposit of this information into a central repository maintained by the Department.

LRB095 11386 RLC 32182 b

A BILL FOR

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 ~~convicted~~ of, found guilty under  
11 the Juvenile Court Act of 1987 for, or who received a  
12 disposition of court supervision for, a qualifying offense or  
13 attempt of a qualifying offense, convicted or found guilty of  
14 any offense classified as a felony under Illinois law,  
15 convicted or found guilty of any offense requiring registration  
16 under the Sex Offender Registration Act, found guilty or given  
17 supervision for any offense classified as a felony under the  
18 Juvenile Court Act of 1987, convicted or found guilty of, under  
19 the Juvenile Court Act of 1987, any offense requiring  
20 registration under the Sex Offender Registration Act, or  
21 institutionalized as a sexually dangerous person under the  
22 Sexually Dangerous Persons Act, or committed as a sexually  
23 violent person under the Sexually Violent Persons Commitment

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

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

11 (1.5) found guilty or given supervision under the  
12 Juvenile Court Act of 1987 for a qualifying offense or  
13 attempt of a qualifying offense on or after January 1,  
14 1997;

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

17 (3) convicted of a qualifying offense or attempt of a  
18 qualifying offense before July 1, 1990 and is presently  
19 confined as a result of such conviction in any State  
20 correctional facility or county jail or is presently  
21 serving a sentence of probation, conditional discharge or  
22 periodic imprisonment as a result of such conviction;

23 (3.5) convicted or found guilty of any offense  
24 classified as a felony under Illinois law or found guilty  
25 or given supervision for such an offense under the Juvenile  
26 Court Act of 1987 on or after August 22, 2002;

1           (4) presently institutionalized as a sexually  
2 dangerous person or presently institutionalized as a  
3 person found guilty but mentally ill of a sexual offense or  
4 attempt to commit a sexual offense;

5           (4.5) ordered committed as a sexually violent person on  
6 or after the effective date of the Sexually Violent Persons  
7 Commitment Act; or

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

13           Notwithstanding other provisions of this Section, any  
14 person incarcerated in a facility of the Illinois Department of  
15 Corrections on or after August 22, 2002 shall be required to  
16 submit a specimen of blood, saliva, or tissue prior to his or  
17 her final discharge or release on parole or mandatory  
18 supervised release, as a condition of his or her parole or  
19 mandatory supervised release.

20           Notwithstanding other provisions of this Section, any  
21 person sentenced to life imprisonment in a facility of the  
22 Illinois Department of Corrections after the effective date of  
23 this amendatory Act of the 94th General Assembly or sentenced  
24 to death after the effective date of this amendatory Act of the  
25 94th General Assembly shall be required to provide a specimen  
26 of blood, saliva, or tissue within 45 days after sentencing or

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

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

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

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

1 parole, or release at a collection site designated by the  
2 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, be  
5 required to provide the specimens before being accepted for  
6 conditioned residency in Illinois under the interstate compact  
7 or agreement, but no later than 45 days after arrival in this  
8 State.

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

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

23 (d-1) The Illinois Department of State Police shall provide  
24 all equipment and instructions necessary for the collection of  
25 saliva samples. The collection of saliva samples shall be  
26 performed in a medically approved manner. Only a person trained

1 in the instructions promulgated by the Illinois State Police on  
2 collecting saliva may collect saliva for the purposes of this  
3 Section. The samples shall thereafter be forwarded to the  
4 Illinois Department of State Police, Division of Forensic  
5 Services, for analysis and categorizing into genetic marker  
6 groupings.

7 (d-2) The Illinois Department of State Police shall provide  
8 all equipment and instructions necessary for the collection of  
9 tissue samples. The collection of tissue samples shall be  
10 performed in a medically approved manner. Only a person trained  
11 in the instructions promulgated by the Illinois State Police on  
12 collecting tissue may collect tissue for the purposes of this  
13 Section. The samples shall thereafter be forwarded to the  
14 Illinois Department of State Police, Division of Forensic  
15 Services, for analysis and categorizing into genetic marker  
16 groupings.

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

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

26 (e) The genetic marker groupings shall be maintained by the

1 Illinois Department of State Police, Division of Forensic  
2 Services.

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



1 to expungement only as set forth in subsection (f-1).

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

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

24 (f-6) The Illinois Department of State Police may contract  
25 with third parties for the purposes of implementing this  
26 amendatory Act of the 93rd General Assembly. Any other party

1 contracting to carry out the functions of this Section shall be  
2 subject to the same restrictions and requirements of this  
3 Section insofar as applicable, as the Illinois Department of  
4 State Police, and to any additional restrictions imposed by the  
5 Illinois Department of State Police.

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

8 (1) any violation or inchoate violation of Section  
9 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
10 Criminal Code of 1961;

11 (1.1) any violation or inchoate violation of Section  
12 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
13 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
14 persons are convicted on or after July 1, 2001;

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

17 (3) (blank);

18 (4) any inchoate violation of Section 9-3.1, 11-9.3,  
19 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

22 (g-5) (Blank).

23 (h) The Illinois Department of State Police shall be the  
24 State central repository for all genetic marker grouping  
25 analysis information obtained pursuant to this Act. The  
26 Illinois Department of State Police may promulgate rules for

1 the form and manner of the collection of blood, saliva, or  
2 tissue samples and other procedures for the operation of this  
3 Act. The provisions of the Administrative Review Law shall  
4 apply to all actions taken under the rules so promulgated.

5 (i) (1) A person required to provide a blood, saliva, or  
6 tissue specimen shall cooperate with the collection of the  
7 specimen and any deliberate act by that person intended to  
8 impede, delay or stop the collection of the blood, saliva,  
9 or tissue specimen is a Class A misdemeanor.

10 (2) In the event that a person's DNA sample is not  
11 adequate for any reason, the person shall provide another  
12 DNA sample for analysis. Duly authorized law enforcement  
13 and corrections personnel may employ reasonable force in  
14 cases in which an individual refuses to provide a DNA  
15 sample required under this Act.

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

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

3 (1) The State Offender DNA Identification System Fund  
4 is hereby created as a special fund in the State 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 State  
14 Police crime laboratories as designated by the Director of  
15 State Police. These funds shall be in addition to any  
16 allocations made pursuant to existing laws and shall be  
17 designated for the exclusive use of State crime  
18 laboratories. These uses may include, but are not limited  
19 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 marker  
24 groupings as required by subsection (e).

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

1           (D) Costs incurred in continuing research and  
2 development of new techniques for analysis and genetic  
3 marker categorization.

4           (E) Costs incurred in continuing education,  
5 training, and professional development of forensic  
6 scientists regularly employed by these laboratories.

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

17           (m) If any provision of this amendatory Act of the 93rd  
18 General Assembly is held unconstitutional or otherwise  
19 invalid, the remainder of this amendatory Act of the 93rd  
20 General Assembly is not affected.

21           (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;  
22 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.  
23 1-1-07.)