



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0710

Introduced 2/8/2007, by Sen. Randall "Randy" M. Hultgren

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 on the effective date of this amendatory Act incarcerated in a facility of the Illinois Department of Corrections for any sex offense, or a prior sex offense statute as defined in any former version of the Criminal Code of 1961, or any offense that was sexually motivated, shall submit a specimen of blood, saliva, or tissue by July 1, 2007 for immediate inclusion in the State Offender DNA Identification System. Provides that after July 1, 2007, every person convicted of a sex offense, or a prior sex offense statute as defined in any former version of the Criminal Code of 1961, or any offense which at the time of sentencing the court finds to be sexually motivated shall within 45 days of his or her placement in a facility of the Illinois Department of Corrections submit a sample of blood, saliva, or tissue for immediate inclusion in the State Offender DNA Identification System. Effective immediately.

LRB095 04889 RLC 24953 b

FISCAL NOTE ACT
MAY APPLY

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 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, convicted or found
15 guilty of any offense requiring registration under the Sex
16 Offender Registration Act, found guilty or given supervision
17 for any offense classified as a felony under the Juvenile Court
18 Act of 1987, convicted or found guilty of, under the Juvenile
19 Court Act of 1987, any offense requiring registration under the
20 Sex Offender Registration Act, or institutionalized as a
21 sexually dangerous person under the Sexually Dangerous Persons
22 Act, or committed as a sexually violent person under the
23 Sexually Violent Persons Commitment Act shall, regardless of

1 the sentence or disposition imposed, be required to submit
2 specimens of blood, saliva, or tissue to the Illinois
3 Department of State Police in accordance with the provisions of
4 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 on the effective date of this amendatory Act of the 95th
15 General Assembly incarcerated in a facility of the Illinois
16 Department of Corrections for any sex offense, including but
17 not limited to violations of Article 12 of the Criminal Code of
18 1961, or a prior sex offense statute as defined in any former
19 version of the Criminal Code of 1961, or any offense that was
20 sexually motivated, shall submit a specimen of blood, saliva,
21 or tissue by July 1, 2007 for immediate inclusion in the State
22 Offender DNA Identification System. After July 1, 2007, every
23 person convicted of a sex offense, including but not limited to
24 violations of Article 12 of the Criminal Code of 1961, or a
25 prior sex offense statute as defined in any former version of
26 the Criminal Code of 1961, or any offense which at the time of

1 sentencing the court finds to be sexually motivated shall
2 within 45 days of his or her placement in a facility of the
3 Illinois Department of Corrections submit a sample of blood,
4 saliva, or tissue for immediate inclusion in the State Offender
5 DNA Identification System.

6 Notwithstanding other provisions of this Section, any
7 person incarcerated in a facility of the Illinois Department of
8 Corrections on or after August 22, 2002 shall be required to
9 submit a specimen of blood, saliva, or tissue prior to his or
10 her final discharge or release on parole or mandatory
11 supervised release, as a condition of his or her parole or
12 mandatory supervised release, except that the specimen of any
13 person incarcerated in a facility of the Illinois Department of
14 Corrections, or received at a facility of the Illinois
15 Department of Corrections for a sex offense or an offense that
16 a court has found to be sexually motivated shall be collected
17 in accordance with the provision of the preceding paragraph.

18 Notwithstanding other provisions of this Section, any
19 person sentenced to life imprisonment in a facility of the
20 Illinois Department of Corrections after the effective date of
21 this amendatory Act of the 94th General Assembly or sentenced
22 to death after the effective date of this amendatory Act of the
23 94th General Assembly shall be required to provide a specimen
24 of blood, saliva, or tissue within 45 days after sentencing or
25 disposition at a collection site designated by the Illinois
26 Department of State Police. Any person serving a sentence of

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

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

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

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

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

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

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

21 (d-1) The Illinois Department of State Police shall provide
22 all equipment and instructions necessary for the collection of
23 saliva samples. The collection of saliva samples shall be
24 performed in a medically approved manner. Only a person trained
25 in the instructions promulgated by the Illinois State Police on
26 collecting saliva may collect saliva for the purposes of this

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

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

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

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

24 (e) The genetic marker groupings shall be maintained by the
25 Illinois Department of State Police, Division of Forensic
26 Services.

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

26 (f-1) Upon receipt of notification of a reversal of a

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

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

22 (f-6) The Illinois Department of State Police may contract
23 with third parties for the purposes of implementing this
24 amendatory Act of the 93rd General Assembly. Any other party
25 contracting to carry out the functions of this Section shall be
26 subject to the same restrictions and requirements of this

1 Section insofar as applicable, as the Illinois Department of
2 State Police, and to any additional restrictions imposed by the
3 Illinois Department of State Police.

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

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

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

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

15 (3) (blank);

16 (4) any inchoate violation of Section 9-3.1, 11-9.3,
17 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

20 (g-5) (Blank).

21 (h) The Illinois Department of State Police shall be the
22 State central repository for all genetic marker grouping
23 analysis information obtained pursuant to this Act. The
24 Illinois Department of State Police may promulgate rules for
25 the form and manner of the collection of blood, saliva, or
26 tissue samples and other procedures for the operation of this

1 Act. The provisions of the Administrative Review Law shall
2 apply to all actions taken under the rules so promulgated.

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

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

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

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

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

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

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

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

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

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

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

1 marker categorization.

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

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

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

19 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
20 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
21 1-1-07.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.