



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1739

by Rep. Dennis M. Reboletti

SYNOPSIS AS INTRODUCED:

720 ILCS 5/31-4	from Ch. 38, par. 31-4
725 ILCS 5/107-2.5 new	
730 ILCS 5/5-4-3	from Ch. 38, par. 1005-4-3

Amends the Criminal Code of 1961. Provides that the offense of obstructing justice also includes destroying, altering, concealing, disguising, or otherwise tampering with samples collected for DNA fingerprinting analysis. Provides that the offense is a Class 3 felony. Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. Provides that every person arrested for committing a felony or a Class A misdemeanor shall have a sample of his or her saliva or tissue taken for DNA fingerprinting analysis, at the time of booking, for the purpose of determining identity and for certain other specified purposes. Provides that subject to appropriation, the Department of State Police shall implement this provision. Provides that this provision becomes operative no later than the earlier of the following: (1) the date on which the Department of State Police informs law enforcement agencies that the Department is ready to collect samples; or (2) January 1, 2013. Provides that in the amendatory changes to the Unified Code of Corrections, intentionally using genetic marker grouping analysis information derived from a DNA sample beyond authorized uses is a Class 3 rather than a Class 4 felony. Provides that the identification, detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is later determined that the sample should not have been obtained or placed in the database. Effective immediately.

LRB097 08656 RLC 48785 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 Criminal Code of 1961 is amended by changing
5 Section 31-4 as follows:

6 (720 ILCS 5/31-4) (from Ch. 38, par. 31-4)

7 Sec. 31-4. Obstructing justice.

8 (a) A person obstructs justice when, with intent to prevent
9 the apprehension or obstruct the prosecution or defense of any
10 person, he knowingly commits any of the following acts:

11 (1) ~~(a)~~ Destroys, alters, conceals or disguises physical
12 evidence, plants false evidence, furnishes false information;
13 or

14 (2) ~~(b)~~ Induces a witness having knowledge material to the
15 subject at issue to leave the State or conceal himself; or

16 (3) ~~(c)~~ Possessing knowledge material to the subject at
17 issue, he leaves the State or conceals himself; or -

18 (4) Destroys, alters, conceals, disguises, or otherwise
19 tampers with samples collected under Section 107-2.5 of the
20 Code of Criminal Procedure of 1963 or Section 5-4-3 of the
21 Unified Code of Corrections.

22 (b) ~~(d)~~ Sentence.

23 (1) Obstructing justice is a Class 4 felony, except as

1 provided in paragraph (2) of this subsection (b) ~~(d)~~.

2 (2) Obstructing justice in furtherance of streetgang
3 related or gang-related activity, as defined in Section 10
4 of the Illinois Streetgang Terrorism Omnibus Prevention
5 Act, is a Class 3 felony. Obstructing justice in violation
6 of paragraph (a) (4) is a Class 3 felony.

7 (Source: P.A. 90-363, eff. 1-1-98.)

8 Section 10. The Code of Criminal Procedure of 1963 is
9 amended by adding Section 107-2.5 as follows:

10 (725 ILCS 5/107-2.5 new)

11 Sec. 107-2.5. DNA fingerprinting analysis.

12 (a) Every person arrested for committing a felony as
13 defined in Section 2-7 of the Criminal Code of 1961 or a Class
14 A misdemeanor as defined in Section 2-11 of the Criminal Code
15 of 1961 shall have a sample of his or her saliva or tissue
16 taken for DNA fingerprinting analysis, at the time of booking,
17 for the purpose of determining identity and for the purposes
18 specified in this Section and subsection (f) of Section 5-4-3
19 of the Unified Code of Corrections. Any law enforcement agency
20 extracting DNA samples under this Section shall be required to
21 follow all written rules and regulations for the collection,
22 storage, and processing of those samples promulgated by the
23 Department of State Police. The analysis shall be performed by
24 the Department of State Police or a specific agent approved by

1 the Department of State Police. The identification
2 characteristics resulting from the DNA analysis shall be stored
3 and maintained by the Department of State Police or the
4 specific agent approved by the Department. All results
5 developed from collected DNA samples shall be subject to any
6 and all confidentiality provisions of State and federal laws.
7 The specific agent approved by the Department of State Police
8 to store and analyze DNA samples shall be required to meet all
9 Illinois State Police laboratory accreditation requirements
10 and shall properly forward the results of the DNA analysis to
11 the Department of State Police.

12 (b) If charges are dismissed or an individual is found not
13 guilty, any expungement of that person's DNA sample shall be in
14 accordance with the procedures set forth in Section 5 of the
15 Criminal Identification Act upon notification to the
16 Department of State Police by the court system.

17 (c) Subject to appropriation, the Department of State
18 Police shall implement this Section no later than the earlier
19 of the following: (1) the date on which the Department of State
20 Police informs law enforcement agencies that the Department is
21 ready to collect samples; or (2) January 1, 2013.

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

24 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

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

1 the offense;

2 (1.5) found guilty or given supervision under the
3 Juvenile Court Act of 1987 for a qualifying offense or
4 attempt of a qualifying offense on or after January 1,
5 1997;

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

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

14 (3.5) convicted or found guilty of any offense
15 classified as a felony under Illinois law or found guilty
16 or given supervision for such an offense under the Juvenile
17 Court Act of 1987 on or after August 22, 2002;

18 (4) presently institutionalized as a sexually
19 dangerous person or presently institutionalized as a
20 person found guilty but mentally ill of a sexual offense or
21 attempt to commit a sexual offense;

22 (4.5) ordered committed as a sexually violent person on
23 or after the effective date of the Sexually Violent Persons
24 Commitment Act; ~~or~~

25 (5) seeking transfer to or residency in Illinois under
26 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of

1 Corrections and the Interstate Compact for Adult Offender
2 Supervision or the Interstate Agreements on Sexually
3 Dangerous Persons Act; or -

4 (6) arrested and is suspected of committing a felony as
5 defined in Section 2-7 of the Criminal Code of 1961 on or
6 after the operative date of Section 107-2.5 of the Code of
7 Criminal Procedure of 1963.

8 Notwithstanding other provisions of this Section, any
9 person incarcerated in a facility of the Illinois Department of
10 Corrections or the Illinois Department of Juvenile Justice on
11 or after August 22, 2002, whether for a term of years, natural
12 life, or a sentence of death, who has not yet submitted a
13 sample of blood, saliva, or tissue shall be required to submit
14 a specimen of blood, saliva, or tissue prior to his or her
15 final discharge, or release on parole or mandatory supervised
16 release, as a condition of his or her parole or mandatory
17 supervised release, or within 6 months from August 13, 2009
18 (the effective date of Public Act 96-426), whichever is sooner.
19 A person incarcerated on or after August 13, 2009 (the
20 effective date of Public Act 96-426) shall be required to
21 submit a sample within 45 days of incarceration, or prior to
22 his or her final discharge, or release on parole or mandatory
23 supervised release, as a condition of his or her parole or
24 mandatory supervised release, whichever is sooner. These
25 specimens shall be placed into the State or national DNA
26 database, to be used in accordance with other provisions of

1 this Section, by the Illinois State Police.

2 Notwithstanding other provisions of this Section, any
3 person sentenced to life imprisonment in a facility of the
4 Illinois Department of Corrections after the effective date of
5 this amendatory Act of the 94th General Assembly or sentenced
6 to death after the effective date of this amendatory Act of the
7 94th General Assembly shall be required to provide a specimen
8 of blood, saliva, or tissue within 45 days after sentencing or
9 disposition at a collection site designated by the Illinois
10 Department of State Police. Any person serving a sentence of
11 life imprisonment in a facility of the Illinois Department of
12 Corrections on the effective date of this amendatory Act of the
13 94th General Assembly or any person who is under a sentence of
14 death on the effective date of this amendatory Act of the 94th
15 General Assembly shall be required to provide a specimen of
16 blood, saliva, or tissue upon request at a collection site
17 designated by the Illinois Department of State Police.

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

26 (b) Any person required by paragraphs (a)(1), (a)(1.5),

1 (a) (2), (a) (3.5), and (a-5) to provide specimens of blood,
2 saliva, or tissue shall provide specimens of blood, saliva, or
3 tissue within 45 days after sentencing or disposition at a
4 collection site designated by the Illinois Department of State
5 Police.

6 (c) Any person required by paragraphs (a) (3), (a) (4), and
7 (a) (4.5) to provide specimens of blood, saliva, or tissue shall
8 be required to provide such samples prior to final discharge or
9 within 6 months from August 13, 2009 (the effective date of
10 Public Act 96-426), whichever is sooner. These specimens shall
11 be placed into the State or national DNA database, to be used
12 in accordance with other provisions of this Act, by the
13 Illinois State Police.

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

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

24 (c-7) Any person required by paragraph (a) (6) to provide
25 specimens of saliva or tissue shall be required to provide the
26 specimens at the booking procedure. The law enforcement officer

1 shall verify at each arrest that the arrestee sample is not
2 already on file with the Department of State Police.

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

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

23 (d-2) The Illinois Department of State Police shall provide
24 all equipment and instructions necessary for the collection of
25 tissue samples under this Section. The collection of tissue
26 samples shall be performed in a medically approved manner. Only

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

7 (d-5) To the extent that funds are available, the Illinois
8 Department of State Police shall contract with qualified
9 personnel and certified laboratories for the collection,
10 analysis, and categorization of known samples, except as
11 provided in subsection (n) of this Section.

12 (d-6) Agencies designated by the Illinois Department of
13 State Police and the Illinois Department of State Police may
14 contract with third parties to provide for the collection or
15 analysis of DNA, or both, of an offender's blood, saliva, and
16 tissue samples, except as provided in subsection (n) of this
17 Section.

18 (e) The genetic marker groupings shall be maintained by the
19 Illinois Department of State Police, Division of Forensic
20 Services.

21 (f) The genetic marker grouping analysis information
22 obtained pursuant to this Act and the information obtained
23 under Section 107-2.5 of the Code of Criminal Procedure of 1963
24 shall be confidential and shall be released only to peace
25 officers of the United States, of other states or territories,
26 of the insular possessions of the United States, of foreign

1 countries duly authorized to receive the same, to all peace
2 officers of the State of Illinois and to all prosecutorial
3 agencies, and to defense counsel as provided by Section 116-5
4 of the Code of Criminal Procedure of 1963. The genetic marker
5 grouping analysis information obtained pursuant to this Act
6 shall be used only for (i) valid law enforcement identification
7 purposes and as required by the Federal Bureau of Investigation
8 for participation in the National DNA database, (ii) technology
9 validation purposes, (iii) a population statistics database,
10 (iv) quality assurance purposes if personally identifying
11 information is removed, (v) assisting in the defense of the
12 criminally accused pursuant to Section 116-5 of the Code of
13 Criminal Procedure of 1963, or (vi) identifying and assisting
14 in the prosecution of a person who is suspected of committing a
15 sexual assault as defined in Section 1a of the Sexual Assault
16 Survivors Emergency Treatment Act. Having established the
17 State DNA identification index, a match between casework
18 evidence DNA samples from a criminal investigation and DNA
19 samples from a State or federal DNA database of eligible
20 offenders may be used only to sustain probable cause for the
21 issuance of a warrant to obtain the DNA sample from an eligible
22 offender for confirmation. The identification, detention,
23 arrest, or conviction of a person based upon a database match
24 or database information is not invalidated if it is later
25 determined that the sample should not have been obtained or
26 placed in the database. Notwithstanding any other statutory

1 provision to the contrary, all information obtained under this
2 Section shall be maintained in a single State data base, which
3 may be uploaded into a national database, and which information
4 may be subject to expungement only as set forth in subsection
5 (f-1).

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

23 Upon receipt of a certified copy of a final court order for
24 each charge against an individual, whose DNA record has been
25 stored in the State or national DNA identification index in
26 accordance with this Section by the Illinois Department of

1 State Police, establishing that such a charge has been
2 dismissed or resulted in acquittal or that no charge was filed
3 within the applicable time period, the DNA record for that
4 arrest shall be expunged from the DNA identification index, and
5 the Department shall by rule prescribe procedures to ensure
6 that the record and any samples, analyses, or other documents
7 relating to such records, in the possession or control of the
8 Department are destroyed and a letter is sent to the court
9 verifying the expungement is completed.

10 (f-5) Any person who intentionally uses genetic marker
11 grouping analysis information, or any other information
12 derived from a DNA sample, beyond the authorized uses as
13 provided under this Section or under Section 107-2.5 of the
14 Code of Criminal Procedure of 1963, or any other Illinois law,
15 is guilty of a Class 3 4 felony, and shall be subject to a fine
16 of not less than \$5,000.

17 (f-6) The Illinois Department of State Police may contract
18 with third parties for the purposes of implementing this
19 amendatory Act of the 93rd General Assembly, except as provided
20 in subsection (n) of this Section. Any other party contracting
21 to carry out the functions of this Section shall be subject to
22 the same restrictions and requirements of this Section insofar
23 as applicable, as the Illinois Department of State Police, and
24 to any additional restrictions imposed by the Illinois
25 Department of State Police.

26 (g) For the purposes of this Section, "qualifying offense"

1 means any of the following:

2 (1) any violation or inchoate violation of Section
3 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
4 Criminal Code of 1961;

5 (1.1) any violation or inchoate violation of Section
6 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
7 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
8 persons are convicted on or after July 1, 2001;

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

11 (3) (blank);

12 (4) any inchoate violation of Section 9-3.1, 11-9.3,
13 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

16 (g-5) (Blank).

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

25 (i) (1) A person required to provide a blood, saliva, or
26 tissue specimen shall cooperate with the collection of the

1 specimen and any deliberate act by that person intended to
2 impede, delay or stop the collection of the blood, saliva,
3 or tissue specimen is a Class A misdemeanor.

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

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

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

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

25 (2) All fees shall be collected by the clerk of the
26 court and forwarded to the State Offender DNA

1 Identification System Fund for deposit. The clerk of the
2 circuit court may retain the amount of \$10 from each
3 collected analysis fee to offset administrative costs
4 incurred in carrying out the clerk's responsibilities
5 under this Section.

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

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

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

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

21 (D) Costs incurred in continuing research and
22 development of new techniques for analysis and genetic
23 marker categorization.

24 (E) Costs incurred in continuing education,
25 training, and professional development of forensic
26 scientists regularly employed by these laboratories.

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

11 (m) If any provision of Public Act 93-216 ~~this amendatory~~
12 ~~Act of the 93rd General Assembly~~ is held unconstitutional or
13 otherwise invalid, the remainder of Public Act 93-216 ~~this~~
14 ~~amendatory Act of the 93rd General Assembly~~ is not affected.

15 (n) Neither the Department of State Police, the Division of
16 Forensic Services, nor any laboratory of the Division of
17 Forensic Services may contract out forensic testing for the
18 purpose of an active investigation or a matter pending before a
19 court of competent jurisdiction without the written consent of
20 the prosecuting agency. For the purposes of this subsection
21 (n), "forensic testing" includes the analysis of physical
22 evidence in an investigation or other proceeding for the
23 prosecution of a violation of the Criminal Code of 1961 or for
24 matters adjudicated under the Juvenile Court Act of 1987, and
25 includes the use of forensic databases and databanks, including
26 DNA, firearm, and fingerprint databases, and expert testimony.

1 (o) If any provision of this amendatory Act of the 97th
2 General Assembly is held unconstitutional or otherwise
3 invalid, the remainder of this amendatory Act of the 97th
4 General Assembly is not affected.

5 (Source: P.A. 96-426, eff. 8-13-09; 96-642, eff. 8-24-09;
6 96-1000, eff. 7-2-10.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.