



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3238

Introduced 2/24/2011, by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3  
730 ILCS 150/8

from Ch. 38, par. 1005-4-3  
from Ch. 38, par. 228

Amends the Unified Code of Corrections and the Sex Offender Registration Act. Includes in the requirements to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for inclusion in the DNA database: (1) a person required by an order of the court to submit a DNA specimen; (2) on or after the effective date of the amendatory Act, any person arrested for any of the following offenses, after a determination by a judge or a grand jury that probable cause exists for the arrest: (A) first degree murder, (B) home invasion, (C) predatory criminal sexual assault of a child, (D) aggravated criminal sexual assault, (E) criminal sexual assault; and (3) any person required to register as a sex offender under the Sex Offender Registration Act, regardless of the date of conviction. Increases the DNA analysis fee from \$200 to \$250. Increases from a Class A misdemeanor to a Class 4 felony, the penalty for a person who is required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for inclusion in the DNA database and who impedes such submission. Provides that the detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtained or placed in the database by mistake. Makes other changes. Contains a severability provision.

LRB097 08079 RLC 51373 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 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. Specimens ~~Persons convicted of, or found~~  
8 ~~delinquent for, certain offenses or institutionalized as~~  
9 ~~sexually dangerous; 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; ~~or~~

13 (6) required by an order of the court to submit a DNA  
14 specimen;

15 (7) on or after the effective date of this amendatory  
16 Act of the 97th General Assembly, arrested for any of the  
17 following offenses, after a determination by a judge or a  
18 grand jury that probable cause exists for the arrest:

19 (A) first degree murder;

20 (B) home invasion;

21 (C) predatory criminal sexual assault of a child;

22 (D) aggravated criminal sexual assault; or

23 (E) criminal sexual assault; or

24 (8) required to register as a sex offender under the  
25 Sex Offender Registration Act, regardless of the date of  
26 conviction as set forth in subsection (c-5.2).

1        (a-1) Any ~~Notwithstanding other provisions of this~~  
2 ~~Section, any~~ person incarcerated in a facility of the Illinois  
3 Department of Corrections or the Illinois Department of  
4 Juvenile Justice on or after August 22, 2002, whether for a  
5 term of years, natural life, or a sentence of death, who has  
6 not yet submitted a specimen ~~sample~~ of blood, saliva, or tissue  
7 shall be required to submit a specimen of blood, saliva, or  
8 tissue prior to his or her final discharge, or release on  
9 parole or mandatory supervised release, as a condition of his  
10 or her parole or mandatory supervised release, or within 6  
11 months from August 13, 2009 (the effective date of Public Act  
12 96-426), whichever is sooner. A person incarcerated on or after  
13 August 13, 2009 (the effective date of Public Act 96-426) shall  
14 be required to submit a specimen ~~sample~~ within 45 days of  
15 incarceration, or prior to his or her final discharge, or  
16 release on parole or mandatory supervised release, as a  
17 condition of his or her parole or mandatory supervised release,  
18 whichever is sooner. These specimens shall be placed into the  
19 State or national DNA database, to be used in accordance with  
20 other provisions of this Section, by the Illinois State Police.

21        (a-2) Any ~~Notwithstanding other provisions of this~~  
22 ~~Section, any~~ person sentenced to life imprisonment in a  
23 facility of the Illinois Department of Corrections after the  
24 effective date of this amendatory Act of the 94th General  
25 Assembly or sentenced to death after the effective date of this  
26 amendatory Act of the 94th General Assembly shall be required

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

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

20 (b) Any person required by paragraphs (a)(1), (a)(1.5),  
21 (a)(2), (a)(3.5), (a)(6), and (a-5) to provide specimens of  
22 blood, saliva, or tissue shall provide specimens of blood,  
23 saliva, or tissue within 45 days after sentencing or  
24 disposition at a collection site designated by the Illinois  
25 Department of State Police.

26 (c) Any person required by paragraphs (a)(3), (a)(4), and

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

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

14 (c-5.1) Any person required by paragraph (7) of subsection  
15 (a) to provide specimens of blood, saliva, or tissue shall  
16 provide specimens of blood, saliva, or tissue within 14 after  
17 indictment or a judicial finding of probable cause at a  
18 collection site designated by the Illinois Department of State  
19 Police.

20 (c-5.2) Unless it is determined that a registered sex  
21 offender has previously submitted a specimen of blood, saliva,  
22 or tissue that has been placed into the State DNA database,  
23 persons registering as sex offenders shall be required to  
24 submit a specimen at the time of their initial registration  
25 pursuant to the Sex Offender Registration Act or, for persons  
26 registered as sex offenders on or prior to the effective date

1 of this amendatory Act of the 97th General Assembly, within one  
2 year of the effective date of this amendatory Act or at the  
3 time of their next required registration.

4 (c-6) The Illinois Department of State Police may determine  
5 which type of specimen or specimens, blood, saliva, or tissue,  
6 is acceptable for submission to the Division of Forensic  
7 Services for analysis. The Illinois Department of State Police  
8 may require the submission of fingerprints from anyone required  
9 to give a specimen under this Act.

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

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



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

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

14 (d-5) To the extent that funds are available, the Illinois  
15 Department of State Police shall contract with qualified  
16 personnel and certified laboratories for the collection,  
17 analysis, and categorization of known specimens ~~samples~~,  
18 except as provided in subsection (n) of this Section.

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 specimens ~~samples~~, except as provided in subsection (n)  
24 of this Section.

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

1 Services.

2 (f) The genetic marker grouping analysis information  
3 obtained pursuant to this Act shall be confidential and shall  
4 be released only to peace officers of the United States, of  
5 other states or territories, of the insular possessions of the  
6 United States, of foreign countries duly authorized to receive  
7 the same, to all peace officers of the State of Illinois and to  
8 all prosecutorial agencies, and to defense counsel as provided  
9 by Section 116-5 of the Code of Criminal Procedure of 1963. The  
10 genetic marker grouping analysis information obtained pursuant  
11 to this Act shall be used only for (i) valid law enforcement  
12 identification purposes and as required by the Federal Bureau  
13 of Investigation for participation in the National DNA  
14 database, (ii) technology validation purposes, (iii) a  
15 population statistics database, (iv) quality assurance  
16 purposes if personally identifying information is removed, (v)  
17 assisting in the defense of the criminally accused pursuant to  
18 Section 116-5 of the Code of Criminal Procedure of 1963, or  
19 (vi) identifying and assisting in the prosecution of a person  
20 who is suspected of committing a sexual assault as defined in  
21 Section 1a of the Sexual Assault Survivors Emergency Treatment  
22 Act. Notwithstanding any other statutory provision to the  
23 contrary, all information obtained under this Section shall be  
24 maintained in a single State data base, which may be uploaded  
25 into a national database, and which information may be subject  
26 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 specimens ~~samples~~, analyses, or other  
12 documents relating to such record, whether in the possession of  
13 the 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. For specimens required  
17 to be collected prior to conviction, unless the individual has  
18 other charges or convictions that require submission of a  
19 specimen, the DNA record for an individual shall be expunged  
20 from the DNA identification databases and the specimen  
21 destroyed upon receipt of a certified copy of a final court  
22 order for each charge against an individual in which the charge  
23 has been dismissed, resulted in acquittal, or that the charge  
24 was not filed within the applicable time period. The Department  
25 shall by rule prescribe procedures to ensure that the record  
26 and any specimens in the possession or control of the

1 Department are destroyed and a letter is sent to the court  
2 verifying the expungement is completed.

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

9 (f-6) The Illinois Department of State Police may contract  
10 with third parties for the purposes of implementing this  
11 amendatory Act of the 93rd General Assembly, except as provided  
12 in subsection (n) of this Section. Any other party contracting  
13 to carry out the functions of this Section shall be subject to  
14 the same restrictions and requirements of this Section insofar  
15 as applicable, as the Illinois Department of State Police, and  
16 to any additional restrictions imposed by the Illinois  
17 Department of State Police.

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

20 (1) any violation or inchoate violation of Section  
21 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
22 Criminal Code of 1961;

23 (1.1) any violation or inchoate violation of Section  
24 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
25 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
26 persons are convicted on or after July 1, 2001;

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

3 (3) (blank);

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

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

8 (g-5) (Blank).

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

18 (i) (1) 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,  
22 or tissue specimen is a Class 4 felony ~~A misdemeanor~~.

23 (2) In the event that a person's DNA specimen ~~sample~~ is  
24 not adequate for any reason, the person shall provide  
25 another DNA specimen ~~sample~~ for analysis. Duly authorized  
26 law enforcement and corrections personnel may employ

1 reasonable force in cases in which an individual refuses to  
2 provide a DNA specimen ~~sample~~ required under this Act.

3 (j) Any person required by subsection (a) to submit  
4 specimens of blood, saliva, or tissue to the Illinois  
5 Department of State Police for analysis and categorization into  
6 genetic marker grouping, in addition to any other disposition,  
7 penalty, or fine imposed, shall pay an analysis fee of \$250  
8 ~~\$200~~. If the analysis fee is not paid at the time of  
9 sentencing, the court shall establish a fee schedule by which  
10 the entire amount of the analysis fee shall be paid in full,  
11 such schedule not to exceed 24 months from the time of  
12 conviction. The inability to pay this analysis fee shall not be  
13 the sole ground to incarcerate the person.

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

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

18 (2) All fees shall be collected by the clerk of the  
19 court and forwarded to the State Offender DNA  
20 Identification System Fund for deposit. The clerk of the  
21 circuit court may retain the amount of \$10 from each  
22 collected analysis fee to offset administrative costs  
23 incurred in carrying out the clerk's responsibilities  
24 under this Section.

25 (3) Fees deposited into the State Offender DNA  
26 Identification System Fund shall be used by Illinois State

1 Police crime laboratories as designated by the Director of  
2 State Police. These funds shall be in addition to any  
3 allocations made pursuant to existing laws and shall be  
4 designated for the exclusive use of State crime  
5 laboratories. These uses may include, but are not limited  
6 to, the following:

7 (A) Costs incurred in providing analysis and  
8 genetic marker categorization as required by  
9 subsection (d).

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

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

14 (D) Costs incurred in continuing research and  
15 development of new techniques for analysis and genetic  
16 marker categorization.

17 (E) Costs incurred in continuing education,  
18 training, and professional development of forensic  
19 scientists regularly employed by these laboratories.

20 (1) The failure of a person to provide a specimen, or of  
21 any person or agency to collect a specimen, ~~within the 45 day~~  
22 ~~period~~ shall in no way alter the obligation of the person to  
23 submit such specimen, or the authority of the Illinois  
24 Department of State Police or persons designated by the  
25 Department to collect the specimen, or the authority of the  
26 Illinois Department of State Police to accept, analyze and

1 maintain the specimen or to maintain or upload results of  
2 genetic marker grouping analysis information into a State or  
3 national database.

4 (m) If any provision of this amendatory Act of the 93rd  
5 General Assembly is held unconstitutional or otherwise  
6 invalid, the remainder of this amendatory Act of the 93rd  
7 General Assembly is not affected.

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

20 (o) Mistake does not invalidate a database match. The  
21 detention, arrest, or conviction of a person based upon a  
22 database match or database information is not invalidated if it  
23 is determined that the specimen was obtained or placed in the  
24 database by mistake.

25 (p) This Section may be referred to as the Illinois DNA  
26 Database Law of 2011.



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

3 Section 10. The Sex Offender Registration Act is amended by  
4 changing Section 8 as follows:

5 (730 ILCS 150/8) (from Ch. 38, par. 228)

6 Sec. 8. Registration and DNA submission requirements  
7 ~~Requirements.~~

8 (a) Registration. Registration as required by this Article  
9 shall consist of a statement in writing signed by the person  
10 giving the information that is required by the Department of  
11 State Police, which may include the fingerprints and must  
12 include a current photograph of the person, to be updated  
13 annually. If the sex offender is a child sex offender as  
14 defined in Section 11-9.3 or 11-9.4 of the Criminal Code of  
15 1961, he or she shall sign a statement that he or she  
16 understands that according to Illinois law as a child sex  
17 offender he or she may not reside within 500 feet of a school,  
18 park, or playground. The offender may also not reside within  
19 500 feet of a facility providing services directed exclusively  
20 toward persons under 18 years of age unless the sex offender  
21 meets specified exemptions. The registration information must  
22 include whether the person is a sex offender as defined in the  
23 Sex Offender Community Notification Law. Within 3 days, the  
24 registering law enforcement agency shall forward any required

1 information to the Department of State Police. The registering  
2 law enforcement agency shall enter the information into the Law  
3 Enforcement Agencies Data System (LEADS) as provided in  
4 Sections 6 and 7 of the Intergovernmental Missing Child  
5 Recovery Act of 1984.

6 (b) DNA submission. Every person registering as a sex  
7 offender pursuant to this Act, regardless of the date of  
8 conviction or the date of initial registration shall submit a  
9 DNA specimen as required by Section 5-4-3 of the Unified Code  
10 of Corrections. Registered sex offenders who have previously  
11 submitted a DNA specimen which has been uploaded to the  
12 Illinois DNA database shall not be required to submit an  
13 additional specimen pursuant to this Section.

14 (Source: P.A. 93-979, eff. 8-20-04; 94-166, eff. 1-1-06;  
15 94-945, eff. 6-27-06.)

16 Section 97. Severability. The provisions of this Act are  
17 severable under Section 1.31 of the Statute on Statutes.