

1 AMENDMENT TO HOUSE BILL 5657

2 AMENDMENT NO. _____. Amend House Bill 5657, AS AMENDED,
3 by replacing the title with the following:

4 "AN ACT in relation to criminal matters."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Police Training Act is amended
8 by changing Section 6.1 as follows:

9 (50 ILCS 705/6.1)

10 Sec. 6.1. Decertification of full-time and part-time
11 police officers.

12 (a) The Board must review police officer conduct and
13 records to ensure that no police officer is certified or
14 provided a valid waiver if that police officer has been:

15 (1) convicted of a felony offense under the laws of
16 this State or any other state which if committed in this
17 State would be punishable as a felony;

18 (2) ~~The Board must also ensure that no police~~
19 ~~officer is certified or provided a valid waiver if that~~
20 ~~police officer has been~~ convicted on or after the
21 effective date of this amendatory Act of 1999 of any

1 misdemeanor specified in this Section or if committed in
2 any other state would be an offense similar to Section
3 11-6, 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1,
4 17-1, 17-2, 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7
5 of the Criminal Code of 1961 or to Section 5 or 5.2 of
6 the Cannabis Control Act; or

7 (3) the subject of an administrative determination,
8 conducted pursuant to the rules and regulations of the
9 law enforcement agency or department employing the police
10 officer, of knowingly committing perjury in a criminal or
11 quasicriminal proceeding. For the purposes of this
12 subsection, "perjury" shall have the meaning as set forth
13 in Section 32-2 of the Criminal Code of 1961.

14 The Board must appoint investigators to enforce the
15 duties conferred upon the Board by this Act.

16 (b) It is the responsibility of the sheriff or the chief
17 executive officer of every local law enforcement agency or
18 department within this State to report to the Board any
19 arrest, administrative determination of perjury, or
20 conviction of any officer for an offense identified in this
21 Section.

22 (c) It is the duty and responsibility of every full-time
23 and part-time police officer in this State to report to the
24 Board within 30 days, and the officer's sheriff or chief
25 executive officer, of his or her arrest, administrative
26 determination of perjury, or conviction for an offense
27 identified in this Section. Any full-time or part-time police
28 officer who knowingly makes, submits, causes to be submitted,
29 or files a false or untruthful report to the Board must have
30 his or her certificate or waiver immediately decertified or
31 revoked.

32 (d) Any person, or a local or State agency, or the Board
33 is immune from liability for submitting, disclosing, or
34 releasing information of arrests, administrative

1 determinations of perjury, or convictions in this Section as
2 long as the information is submitted, disclosed, or released
3 in good faith and without malice. The Board has qualified
4 immunity for the release of the information.

5 (e) Any full-time or part-time police officer with a
6 certificate or waiver issued by the Board who is convicted of
7 any offense described in this Section or is subject to an
8 administrative determination of perjury immediately becomes
9 decertified or no longer has a valid waiver. The
10 decertification and invalidity of waivers occurs as a matter
11 of law. Failure of a convicted person to report to the Board
12 his or her conviction as described in this Section or any
13 continued law enforcement practice after receiving a
14 conviction is a Class 4 felony.

15 (f) The Board's investigators are peace officers and
16 have all the powers possessed by policemen in cities and by
17 sheriff's, provided that the investigators may exercise those
18 powers anywhere in the State, only after contact and
19 cooperation with the appropriate local law enforcement
20 authorities.

21 (g) The Board must request and receive information and
22 assistance from any federal, state, or local governmental
23 agency as part of the authorized criminal background
24 investigation. The Department of State Police must process,
25 retain, and additionally provide and disseminate information
26 to the Board concerning criminal charges, arrests,
27 convictions, and their disposition, that have been filed
28 before, on, or after the effective date of this amendatory
29 Act of the 91st General Assembly against a basic academy
30 applicant, law enforcement applicant, or law enforcement
31 officer whose fingerprint identification cards are on file or
32 maintained by the Department of State Police. The Federal
33 Bureau of Investigation must provide the Board any criminal
34 history record information contained in its files pertaining

1 to law enforcement officers or any applicant to a Board
2 certified basic law enforcement academy as described in this
3 Act based on fingerprint identification. The Board must make
4 payment of fees to the Department of State Police for each
5 fingerprint card submission in conformance with the
6 requirements of paragraph 22 of Section 55a of the Civil
7 Administrative Code of Illinois.

8 (Source: P.A. 91-495, eff. 1-1-00.)

9 Section 10. The Criminal Code of 1961 is amended by
10 changing Section 9-1 as follows:

11 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

12 Sec. 9-1. First degree Murder - Death penalties -
13 Exceptions - Separate Hearings - Proof - Findings - Appellate
14 procedures - Reversals.

15 (a) A person who kills an individual without lawful
16 justification commits first degree murder if, in performing
17 the acts which cause the death:

18 (1) he either intends to kill or do great bodily
19 harm to that individual or another, or knows that such
20 acts will cause death to that individual or another; or

21 (2) he knows that such acts create a strong
22 probability of death or great bodily harm to that
23 individual or another; or

24 (3) he is attempting or committing a forcible
25 felony other than second degree murder.

26 (b) Aggravating Factors. A defendant:

27 (i) who at the time of the commission of the
28 offense has attained the age of 18 or more; and

29 (ii) and who has been found guilty of first
30 degree murder;

31 may be sentenced to death if:

32 (1) the murdered individual was a peace officer or

1 fireman killed in the course of performing his official
2 duties, to prevent the performance of his official
3 duties, or in retaliation for performing his official
4 duties, and the defendant knew or should have known that
5 the murdered individual was a peace officer or fireman;
6 or

7 (2) the murdered individual was an employee of an
8 institution or facility of the Department of Corrections,
9 or any similar local correctional agency, killed in the
10 course of performing his official duties, to prevent the
11 performance of his official duties, or in retaliation for
12 performing his official duties, or the murdered
13 individual was an inmate at such institution or facility
14 and was killed on the grounds thereof, or the murdered
15 individual was otherwise present in such institution or
16 facility with the knowledge and approval of the chief
17 administrative officer thereof; or

18 (3) the defendant has been convicted of murdering
19 two or more individuals under subsection (a) of this
20 Section or under any law of the United States or of any
21 state which is substantially similar to subsection (a) of
22 this Section regardless of whether the deaths occurred
23 as the result of the same act or of several related or
24 unrelated acts so long as the deaths were the result of
25 either an intent to kill more than one person or of
26 separate acts which the defendant knew would cause death
27 or create a strong probability of death or great bodily
28 harm to the murdered individual or another; or

29 (4) the murdered individual was killed as a result
30 of the hijacking of an airplane, train, ship, bus or
31 other public conveyance; or

32 (5) the defendant committed the murder pursuant to
33 a contract, agreement or understanding by which he was to
34 receive money or anything of value in return for

1 committing the murder or procured another to commit the
2 murder for money or anything of value; or

3 (6) the murdered individual was killed in the
4 course of another felony if:

5 (a) the murdered individual:

6 (i) was actually killed by the defendant,

7 or

8 (ii) received physical injuries
9 personally inflicted by the defendant
10 substantially contemporaneously with physical
11 injuries caused by one or more persons for
12 whose conduct the defendant is legally
13 accountable under Section 5-2 of this Code, and
14 the physical injuries inflicted by either the
15 defendant or the other person or persons for
16 whose conduct he is legally accountable caused
17 the death of the murdered individual; and

18 (b) in performing the acts which caused the
19 death of the murdered individual or which resulted
20 in physical injuries personally inflicted by the
21 defendant on the murdered individual under the
22 circumstances of subdivision (ii) of subparagraph
23 (a) of paragraph (6) of subsection (b) of this
24 Section, the defendant acted with the intent to kill
25 the murdered individual or with the knowledge that
26 his acts created a strong probability of death or
27 great bodily harm to the murdered individual or
28 another; and

29 (c) the other felony was one of the following:
30 armed robbery, armed violence, robbery, predatory
31 criminal sexual assault of a child, aggravated
32 criminal sexual assault, aggravated kidnapping,
33 aggravated vehicular hijacking, forcible detention,
34 arson, aggravated arson, aggravated stalking,

1 burglary, residential burglary, home invasion,
2 calculated criminal drug conspiracy as defined in
3 Section 405 of the Illinois Controlled Substances
4 Act, streetgang criminal drug conspiracy as defined
5 in Section 405.2 of the Illinois Controlled
6 Substances Act, or the attempt to commit any of the
7 felonies listed in this subsection (c); or

8 (7) the murdered individual was under 12 years of
9 age and the death resulted from exceptionally brutal or
10 heinous behavior indicative of wanton cruelty; or

11 (8) the defendant committed the murder with intent
12 to prevent the murdered individual from testifying in any
13 criminal prosecution or giving material assistance to the
14 State in any investigation or prosecution, either against
15 the defendant or another; or the defendant committed the
16 murder because the murdered individual was a witness in
17 any prosecution or gave material assistance to the State
18 in any investigation or prosecution, either against the
19 defendant or another; or

20 (9) the defendant, while committing an offense
21 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
22 407 or 407.1 or subsection (b) of Section 404 of the
23 Illinois Controlled Substances Act, or while engaged in a
24 conspiracy or solicitation to commit such offense,
25 intentionally killed an individual or counseled,
26 commanded, induced, procured or caused the intentional
27 killing of the murdered individual; or

28 (10) the defendant was incarcerated in an
29 institution or facility of the Department of Corrections
30 at the time of the murder, and while committing an
31 offense punishable as a felony under Illinois law, or
32 while engaged in a conspiracy or solicitation to commit
33 such offense, intentionally killed an individual or
34 counseled, commanded, induced, procured or caused the

1 intentional killing of the murdered individual; or

2 (11) the murder was committed in a cold, calculated
3 and premeditated manner pursuant to a preconceived plan,
4 scheme or design to take a human life by unlawful means,
5 and the conduct of the defendant created a reasonable
6 expectation that the death of a human being would result
7 therefrom; or

8 (12) the murdered individual was an emergency
9 medical technician - ambulance, emergency medical
10 technician - intermediate, emergency medical technician -
11 paramedic, ambulance driver, or other medical assistance
12 or first aid personnel, employed by a municipality or
13 other governmental unit, killed in the course of
14 performing his official duties, to prevent the
15 performance of his official duties, or in retaliation for
16 performing his official duties, and the defendant knew or
17 should have known that the murdered individual was an
18 emergency medical technician - ambulance, emergency
19 medical technician - intermediate, emergency medical
20 technician - paramedic, ambulance driver, or other
21 medical assistance or first aid personnel; or

22 (13) the defendant was a principal administrator,
23 organizer, or leader of a calculated criminal drug
24 conspiracy consisting of a hierarchical position of
25 authority superior to that of all other members of the
26 conspiracy, and the defendant counseled, commanded,
27 induced, procured, or caused the intentional killing of
28 the murdered person; or

29 (14) the murder was intentional and involved the
30 infliction of torture. For the purpose of this Section
31 torture means the infliction of or subjection to extreme
32 physical pain, motivated by an intent to increase or
33 prolong the pain, suffering or agony of the victim; or

34 (15) the murder was committed as a result of the

1 intentional discharge of a firearm by the defendant from
2 a motor vehicle and the victim was not present within the
3 motor vehicle; or

4 (16) the murdered individual was 60 years of age or
5 older and the death resulted from exceptionally brutal or
6 heinous behavior indicative of wanton cruelty; or

7 (17) the murdered individual was a disabled person
8 and the defendant knew or should have known that the
9 murdered individual was disabled. For purposes of this
10 paragraph (17), "disabled person" means a person who
11 suffers from a permanent physical or mental impairment
12 resulting from disease, an injury, a functional disorder,
13 or a congenital condition that renders the person
14 incapable of adequately providing for his or her own
15 health or personal care; or

16 (18) the murder was committed by reason of any
17 person's activity as a community policing volunteer or to
18 prevent any person from engaging in activity as a
19 community policing volunteer; or

20 (19) the murdered individual was subject to an
21 order of protection and the murder was committed by a
22 person against whom the same order of protection was
23 issued under the Illinois Domestic Violence Act of 1986;
24 or

25 (20) the murdered individual was known by the
26 defendant to be a teacher or other person employed in any
27 school and the teacher or other employee is upon the
28 grounds of a school or grounds adjacent to a school, or
29 is in any part of a building used for school purposes.

30 (c) Consideration of factors in aggravation and
31 mitigation.

32 The court shall also consider, or shall also instruct the
33 jury to consider any aggravating and any mitigating factors
34 which are relevant to the imposition of the death penalty.

1 Aggravating factors may include but need not be limited to
2 those factors set forth in subsection (b). Mitigating factors
3 may include but need not be limited to the following:

4 (1) the defendant has no significant history of
5 prior criminal activity;

6 (2) the murder was committed while the defendant
7 was under the influence of extreme mental or emotional
8 disturbance, although not such as to constitute a defense
9 to prosecution;

10 (3) the murdered individual was a participant in
11 the defendant's homicidal conduct or consented to the
12 homicidal act;

13 (4) the defendant acted under the compulsion of
14 threat or menace of the imminent infliction of death or
15 great bodily harm;

16 (5) the defendant was not personally present during
17 commission of the act or acts causing death.

18 (d) Separate sentencing hearing.

19 Where requested by the State, the court shall conduct a
20 separate sentencing proceeding to determine the existence of
21 factors set forth in subsection (b) and to consider any
22 aggravating or mitigating factors as indicated in subsection
23 (c). The proceeding shall be conducted:

24 (1) before the jury that determined the defendant's
25 guilt; or

26 (2) before a jury impanelled for the purpose of the
27 proceeding if:

28 A. the defendant was convicted upon a plea of
29 guilty; or

30 B. the defendant was convicted after a trial
31 before the court sitting without a jury; or

32 C. the court for good cause shown discharges
33 the jury that determined the defendant's guilt; or

34 (3) before the court alone if the defendant waives

1 a jury for the separate proceeding.

2 (e) Evidence and Argument.

3 During the proceeding any information relevant to any of
4 the factors set forth in subsection (b) may be presented by
5 either the State or the defendant under the rules governing
6 the admission of evidence at criminal trials. Any
7 information relevant to any additional aggravating factors or
8 any mitigating factors indicated in subsection (c) may be
9 presented by the State or defendant regardless of its
10 admissibility under the rules governing the admission of
11 evidence at criminal trials. The State and the defendant
12 shall be given fair opportunity to rebut any information
13 received at the hearing.

14 (f) Proof.

15 The burden of proof of establishing the existence of any
16 of the factors set forth in subsection (b) is on the State
17 and shall not be satisfied unless established beyond a
18 reasonable doubt.

19 (g) Procedure - Jury.

20 If at the separate sentencing proceeding the jury finds
21 that none of the factors set forth in subsection (b) exists,
22 the court shall sentence the defendant to a term of
23 imprisonment under Chapter V of the Unified Code of
24 Corrections. If there is a unanimous finding by the jury
25 that one or more of the factors set forth in subsection (b)
26 exist, the jury shall consider aggravating and mitigating
27 factors as instructed by the court and shall determine
28 whether the sentence of death shall be imposed. If the issue
29 is raised by the defendant, the jury shall also determine
30 whether the defendant is mentally retarded as defined by
31 Section 5-2-7 of the Unified Code of Corrections. If the jury
32 determines unanimously that there are no mitigating factors
33 sufficient to preclude the imposition of the death sentence,
34 the court shall sentence the defendant to death. If the jury

1 determines that the defendant is mentally retarded, the court
2 shall sentence the defendant to a term of imprisonment under
3 Chapter V of the Unified Code of Corrections.

4 Unless the jury unanimously finds that there are no
5 mitigating factors sufficient to preclude the imposition of
6 the death sentence the court shall sentence the defendant to
7 a term of imprisonment under Chapter V of the Unified Code of
8 Corrections.

9 (h) Procedure - No Jury.

10 In a proceeding before the court alone, if the court
11 finds that none of the factors found in subsection (b)
12 exists, the court shall sentence the defendant to a term of
13 imprisonment under Chapter V of the Unified Code of
14 Corrections.

15 If the Court determines that one or more of the factors
16 set forth in subsection (b) exists, the Court shall consider
17 any aggravating and mitigating factors as indicated in
18 subsection (c). If the Court determines that there are no
19 mitigating factors sufficient to preclude the imposition of
20 the death sentence, the Court shall sentence the defendant to
21 death. If the court determines that the defendant is mentally
22 retarded as defined by Section 5-2-7 of the Unified Code of
23 Corrections after the issue has been raised by the defendant,
24 the court shall sentence the defendant to a term of
25 imprisonment under Chapter V of the Unified Code of
26 Corrections.

27 Unless the court finds that there are no mitigating
28 factors sufficient to preclude the imposition of the sentence
29 of death, the court shall sentence the defendant to a term of
30 imprisonment under Chapter V of the Unified Code of
31 Corrections.

32 (i) Appellate Procedure.

33 The conviction and sentence of death shall be subject to
34 automatic review by the Supreme Court. Such review shall be

1 in accordance with rules promulgated by the Supreme Court. In
2 addition to any procedural grounds for relief from the death
3 sentence that may otherwise be authorized by law, the Supreme
4 Court shall, for a first degree murder committed on or after
5 the effective date of this amendatory Act of the 92nd General
6 Assembly in which the death penalty is imposed, have the
7 authority to overturn the death sentence, and order the
8 imposition of a term of life imprisonment under Chapter V of
9 the Unified Code of Corrections, if it finds that the death
10 sentence is fundamentally unjust as applied to the particular
11 case. A finding that a particular death sentence was
12 fundamentally unjust means that upon an examination of the
13 entire record, including the circumstances of the crime or
14 the character of the defendant, it is determined that the
15 death penalty should not be imposed in the particular case.
16 Such a determination does not mean that any of the
17 defendant's procedural rights were violated. If the Supreme
18 Court finds that the death sentence is fundamentally unjust
19 as applied to the particular case, independent of any
20 procedural grounds for relief, it shall issue a written
21 opinion explaining this finding, but in no event shall such a
22 finding serve as precedent for the appellate review of any
23 other case in which a sentence of death is imposed.

24 (j) Disposition of reversed death sentence.

25 In the event that the death penalty in this Act is held
26 to be unconstitutional by the Supreme Court of the United
27 States or of the State of Illinois, any person convicted of
28 first degree murder shall be sentenced by the court to a term
29 of imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 In the event that any death sentence pursuant to the
32 sentencing provisions of this Section is declared
33 unconstitutional by the Supreme Court of the United States or
34 of the State of Illinois, the court having jurisdiction over

1 a person previously sentenced to death shall cause the
2 defendant to be brought before the court, and the court shall
3 sentence the defendant to a term of imprisonment under
4 Chapter V of the Unified Code of Corrections.

5 (Source: P.A. 90-213, eff. 1-1-98; 90-651, eff. 1-1-99;
6 90-668, eff. 1-1-99; 91-357, eff. 7-29-99; 91-434, eff.
7 1-1-00.)

8 Section 15. The Code of Criminal Procedure of 1963 is
9 amended by changing Sections 114-13, 116-3, 122-1, 122-2, and
10 122-3 and by adding Sections 114-15 and 122-6.1 as follows:

11 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

12 Sec. 114-13. Discovery in criminal cases.

13 (a) Discovery procedures in criminal cases shall be in
14 accordance with Supreme Court Rules.

15 (b) Any investigative, law enforcement, or other agency
16 responsible for investigating any felony offense or
17 participating in an investigation of any felony offense shall
18 provide to the authority prosecuting the offense all reports
19 that have been generated by or have come into the possession
20 of the investigating agency concerning the offense being
21 investigated. In addition, the investigating agency shall
22 provide to the prosecuting authority any material or
23 information within its possession or control that would tend
24 to negate the guilt of the accused of the offense charged or
25 reduce his or her punishment for the offense. Every
26 investigative and law enforcement agency in this State shall
27 adopt policies to ensure compliance with these provisions.

28 (Source: Laws 1963, p. 2836.)

29 (725 ILCS 5/114-15 new)

30 Sec. 114-15. Motion for genetic marker groupings
31 comparison analysis.

1 (a) Upon a defendant's pre-trial motion, a court may
2 order a comparison analysis by the Department of State Police
3 with those genetic marker groupings maintained under
4 subsection (f) of Section 5-4-3 of the Unified Code of
5 Corrections if the defendant meets all of the following
6 requirements:

7 (1) The defendant shows good cause.

8 (2) The defendant is charged with any offense.

9 (3) The defendant seeks for the Department of State
10 Police to identify genetic marker groupings from evidence
11 collected by criminal justice agencies or the defendant
12 pursuant to the alleged offense.

13 (4) The defendant seeks comparison analysis of
14 genetic marker groupings of the evidence under
15 subdivision (3) to those of the defendant, to those of
16 other forensic evidence, and to those maintained under
17 subsection (f) of Section 5-4-3 of the Unified Code of
18 Corrections.

19 (5) Genetic marker grouping analysis must be
20 performed by a laboratory compliant with the quality
21 assurance standards required by the Department of State
22 Police for genetic marker grouping analysis comparisons.

23 (6) Reasonable notice of the motion shall be served
24 upon the State.

25 (b) The Department of State Police may promulgate rules
26 for the types of comparisons performed and the quality
27 assurance standards required for submission of genetic marker
28 groupings. The provisions of the Administrative Review Law
29 shall apply to all actions taken under the rules so
30 promulgated.

31 (725 ILCS 5/116-3)

32 Sec. 116-3. Motion for fingerprint or forensic testing
33 not available at trial regarding actual innocence.

1 (a) A defendant may make a motion before the trial court
2 that entered the judgment of conviction in his or her case
3 for the performance of fingerprint or forensic DNA testing,
4 including comparison analysis of genetic marker groupings of
5 the evidence collected by criminal justice agencies pursuant
6 to the alleged offense, to those of the defendant, to those
7 of other forensic evidence, and to those maintained under
8 subsection (f) of Section 5-4-3 of the Unified Code of
9 Corrections, on evidence that was secured in relation to the
10 trial which resulted in his or her conviction, but which was
11 not subject to the testing which is now requested because the
12 technology for the testing was not available at the time of
13 trial. Reasonable notice of the motion shall be served upon
14 the State.

15 (b) The defendant must present a prima facie case that:
16 (1) identity was the issue in the trial which
17 resulted in his or her conviction; and
18 (2) the evidence to be tested has been subject to a
19 chain of custody sufficient to establish that it has not
20 been substituted, tampered with, replaced, or altered in
21 any material aspect.

22 (c) The trial court shall allow the testing under
23 reasonable conditions designed to protect the State's
24 interests in the integrity of the evidence and the testing
25 process upon a determination that:
26 (1) the result of the testing has the scientific
27 potential to produce new, noncumulative evidence
28 materially relevant to the defendant's assertion of
29 actual innocence;
30 (2) the testing requested employs a scientific
31 method generally accepted within the relevant scientific
32 community.

33 (Source: P.A. 90-141, eff. 1-1-98.)

1 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

2 Sec. 122-1. Petition in the trial court.

3 (a) Any person imprisoned in the penitentiary who
4 asserts that in the proceedings which resulted in his or her
5 conviction there was a substantial denial of his or her
6 rights under the Constitution of the United States or of the
7 State of Illinois or both may institute a proceeding under
8 this Article. Under the Constitution of the State of
9 Illinois, an assertion of substantial denial of rights
10 pursuant to this Article includes, but is not limited to, an
11 independent claim of actual innocence based on newly
12 discovered evidence.

13 (b) The proceeding shall be commenced by filing with the
14 clerk of the court in which the conviction took place a
15 petition (together with a copy thereof) verified by
16 affidavit. Petitioner shall also serve another copy upon the
17 State's Attorney by any of the methods provided in Rule 7 of
18 the Supreme Court. The clerk shall docket the petition for
19 consideration by the court pursuant to Section 122-2.1 upon
20 his or her receipt thereof and bring the same promptly to the
21 attention of the court.

22 (c) A proceeding on an independent claim of actual
23 innocence based on newly discovered evidence must be
24 commenced within 2 years after the discovery of the new
25 evidence by the defendant. No other proceedings under this
26 Article shall be commenced more than 6 months after the
27 denial of a petition for leave to appeal or the date for
28 filing such a petition if none is filed or more than 45 days
29 after the defendant files his or her brief in the appeal of
30 the sentence before the Illinois Supreme Court (or more than
31 45 days after the deadline for the filing of the defendant's
32 brief with the Illinois Supreme Court if no brief is filed)
33 or 3 years from the date of conviction, whichever is sooner,
34 unless the petitioner alleges facts showing that the delay

1 was not due to his or her culpable negligence.

2 (d) A person seeking relief by filing a petition under
3 this Section must specify in the petition or its heading that
4 it is filed under this Section. A trial court that has
5 received a petition complaining of a conviction or sentence
6 that fails to specify in the petition or its heading that it
7 is filed under this Section need not evaluate the petition to
8 determine whether it could otherwise have stated some grounds
9 for relief under this Article.

10 (e) A proceeding under this Article may not be commenced
11 on behalf of a defendant who has been sentenced to death
12 without the written consent of the defendant, unless the
13 defendant, because of a mental or physical condition, is
14 incapable of asserting his or her own claim.

15 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
16 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

17 (725 ILCS 5/122-2) (from Ch. 38, par. 122-2)

18 Sec. 122-2. Contents of petition.

19 The petition shall identify the proceeding in which the
20 petitioner was convicted, give the date of the rendition of
21 the final judgment complained of, and clearly set forth the
22 respects in which petitioner's constitutional rights were
23 violated. If the petition asserts an independent claim of
24 actual innocence based on newly discovered evidence, it must
25 set forth the nature of the evidence and demonstrate that:
26 (i) the new evidence was discovered since the defendant's
27 trial; and (ii) the new evidence could not have been
28 discovered prior to trial by the exercise of due diligence.

29 The petition shall have attached thereto affidavits, records,
30 or other evidence supporting its allegations or shall state
31 why the same are not attached. The petition shall identify
32 any previous proceedings that the petitioner may have taken
33 to secure relief from his conviction. Argument and citations

1 and discussion of authorities shall be omitted from the
2 petition.

3 (Source: Laws 1963, p. 2836.)

4 (725 ILCS 5/122-3) (from Ch. 38, par. 122-3)

5 Sec. 122-3. Waiver of claims.

6 Any claim of substantial denial of constitutional rights
7 not raised in the original or an amended petition is waived.

8 This provision does not apply to independent claims of actual
9 innocence based on newly discovered evidence.

10 (Source: Laws 1963, p. 2836.)

11 (725 ILCS 5/122-6.1 new)

12 Sec. 122-6.1. Actual innocence hearing.

13 (a) At a hearing on a petition that asserts an
14 independent claim of actual innocence based on newly
15 discovered evidence, the burden is on the defendant to prove
16 his or her actual innocence. At no time in such a hearing
17 shall the defendant be entitled to a presumption of
18 innocence. It is presumed that the verdict rendered at the
19 trial in which the defendant was convicted was correct, and
20 the burden is on the defendant to rebut this presumption.

21 (b) The defendant, at an actual innocence hearing, must
22 prove his or her actual innocence by clear and convincing
23 evidence.

24 (c) In an actual innocence hearing, the court shall make
25 a determination about the reliability and admissibility of
26 the newly discovered evidence. Only if the court finds that
27 the evidence of the defendant's actual innocence is clear and
28 convincing and of such a conclusive character that it would
29 likely change the result of the defendant's trial shall the
30 court order a new trial for the defendant.

31 Section 20. The Capital Crimes Litigation Act is

1 amended by changing Sections 15 and 19 as follows:

2 (725 ILCS 124/15)

3 (Section scheduled to be repealed on July 1, 2004)

4 Sec. 15. Capital Litigation Trust Fund.

5 (a) The Capital Litigation Trust Fund is created as a
6 special fund in the State Treasury. The Trust Fund shall be
7 administered by the State Treasurer to provide moneys for the
8 appropriations to be made, grants to be awarded, and
9 compensation and expenses to be paid under this Act. All
10 interest earned from the investment or deposit of moneys
11 accumulated in the Trust Fund shall, under Section 4.1 of the
12 State Finance Act, be deposited into the Trust Fund.

13 (b) Moneys deposited into the Trust Fund shall not be
14 considered general revenue of the State of Illinois.

15 (c) Moneys deposited into the Trust Fund shall be used
16 exclusively for the purposes of providing funding for the
17 prosecution and defense of capital cases as provided in this
18 Act and shall not be appropriated, loaned, or in any manner
19 transferred to the General Revenue Fund of the State of
20 Illinois.

21 (d) Every fiscal year the State Treasurer shall transfer
22 from the General Revenue Fund to the Capital Litigation Trust
23 Fund an amount equal to the full amount of moneys
24 appropriated by the General Assembly (both by original and
25 supplemental appropriation), less any unexpended balance from
26 the previous fiscal year, from the Capital Litigation Trust
27 Fund for the specific purpose of making funding available for
28 the prosecution and defense of capital cases. The Public
29 Defender and State's Attorney in Cook County, the State
30 Appellate Defender, the State's Attorneys Appellate
31 Prosecutor, and the Attorney General shall make annual
32 requests for appropriations from the Trust Fund.

33 (1) The Public Defender in Cook County shall

1 request appropriations to the State Treasurer for
2 expenses incurred by the Public Defender and for funding
3 for private appointed defense counsel in Cook County.

4 (2) The State's Attorney in Cook County shall
5 request an appropriation to the State Treasurer for
6 expenses incurred by the State's Attorney.

7 (3) The State Appellate Defender shall request a
8 direct appropriation from the Trust Fund for expenses
9 incurred by the State Appellate Defender in providing
10 assistance to trial attorneys under item (c)(5) of
11 Section 10 of the State Appellate Defender Act and an
12 appropriation to the State Treasurer for payments from
13 the Trust Fund for the defense of cases in counties other
14 than Cook County.

15 (4) The State's Attorneys Appellate Prosecutor
16 shall request a direct appropriation from the Trust Fund
17 to pay expenses incurred by the State's Attorneys
18 Appellate Prosecutor and an appropriation to the State
19 Treasurer for payments from the Trust Fund for expenses
20 incurred by State's Attorneys in counties other than Cook
21 County.

22 (5) The Attorney General shall request a direct
23 appropriation from the Trust Fund to pay expenses
24 incurred by the Attorney General in assisting the State's
25 Attorneys in counties other than Cook County.

26 The Public Defender and State's Attorney in Cook County,
27 the State Appellate Defender, the State's Attorneys Appellate
28 Prosecutor, and the Attorney General may each request
29 supplemental appropriations from the Trust Fund during the
30 fiscal year.

31 (e) Moneys in the Trust Fund shall be expended only as
32 follows:

33 (1) To pay the State Treasurer's costs to
34 administer the Trust Fund. The amount for this purpose

1 may not exceed 5% in any one fiscal year of the amount
2 otherwise appropriated from the Trust Fund in the same
3 fiscal year.

4 (2) To pay the capital litigation expenses of trial
5 defense including, but not limited to, DNA testing,
6 analysis, and expert testimony, investigatory and other
7 assistance, expert, forensic, and other witnesses, and
8 mitigation specialists, and grants and aid provided to
9 public defenders or assistance to attorneys who have been
10 appointed by the court to represent defendants who are
11 charged with capital crimes.

12 (3) To pay the compensation of trial attorneys,
13 other than public defenders, who have been appointed by
14 the court to represent defendants who are charged with
15 capital crimes.

16 (4) To provide State's Attorneys with funding for
17 capital litigation expenses including, but not limited
18 to, investigatory and other assistance and expert,
19 forensic, and other witnesses necessary to prosecute
20 capital cases. State's Attorneys in any county other
21 than Cook County seeking funding for capital litigation
22 expenses including, but not limited to, investigatory and
23 other assistance and expert, forensic, or other witnesses
24 under this Section may request that the State's Attorneys
25 Appellate Prosecutor or the Attorney General, as the case
26 may be, certify the expenses as reasonable, necessary,
27 and appropriate for payment from the Trust Fund, on a
28 form created by the State Treasurer. Upon certification
29 of the expenses and delivery of the certification to the
30 State Treasurer, the Treasurer shall pay the expenses
31 directly from the Capital Litigation Trust Fund if there
32 are sufficient moneys in the Trust Fund to pay the
33 expenses.

34 (5) To provide financial support through the

1 Attorney General pursuant to the Attorney General Act for
2 the several county State's Attorneys outside of Cook
3 County, but shall not be used to increase personnel for
4 the Attorney General's Office.

5 (6) To provide financial support through the
6 State's Attorneys Appellate Prosecutor pursuant to the
7 State's Attorneys Appellate Prosecutor's Act for the
8 several county State's Attorneys outside of Cook County,
9 but shall not be used to increase personnel for the
10 State's Attorneys Appellate Prosecutor.

11 (7) To provide financial support to the State
12 Appellate Defender pursuant to the State Appellate
13 Defender Act.

14 Moneys expended from the Trust Fund shall be in addition
15 to county funding for Public Defenders and State's Attorneys,
16 and shall not be used to supplant or reduce ordinary and
17 customary county funding.

18 (f) Moneys in the Trust Fund shall be appropriated to
19 the State Appellate Defender, the State's Attorneys Appellate
20 Prosecutor, the Attorney General, and the State Treasurer.
21 The State Appellate Defender shall receive an appropriation
22 from the Trust Fund to enable it to provide assistance to
23 appointed defense counsel throughout the State and to Public
24 Defenders in counties other than Cook. The State's Attorneys
25 Appellate Prosecutor and the Attorney General shall receive
26 appropriations from the Trust Fund to enable them to provide
27 assistance to State's Attorneys in counties other than Cook
28 County. Moneys shall be appropriated to the State Treasurer
29 to enable the Treasurer (i) to make grants to Cook County,
30 (ii) to pay the expenses of Public Defenders and State's
31 Attorneys in counties other than Cook County, (iii) to pay
32 the expenses and compensation of appointed defense counsel in
33 counties other than Cook County, and (iv) to pay the costs of
34 administering the Trust Fund. All expenditures and grants

1 made from the Trust Fund shall be subject to audit by the
2 Auditor General.

3 (g) For Cook County, grants from the Trust Fund shall be
4 made and administered as follows:

5 (1) For each State fiscal year, the State's
6 Attorney and Public Defender must each make a separate
7 application to the State Treasurer for capital litigation
8 grants.

9 (2) The State Treasurer shall establish rules and
10 procedures for grant applications. The rules shall
11 require the Cook County Treasurer as the grant recipient
12 to report on a periodic basis to the State Treasurer how
13 much of the grant has been expended, how much of the
14 grant is remaining, and the purposes for which the grant
15 has been used. The rules may also require the Cook
16 County Treasurer to certify on a periodic basis that
17 expenditures of the funds have been made for expenses
18 that are reasonable, necessary, and appropriate for
19 payment from the Trust Fund.

20 (3) The State Treasurer shall make the grants to
21 the Cook County Treasurer as soon as possible after the
22 beginning of the State fiscal year.

23 (4) The State's Attorney or Public Defender may
24 apply for supplemental grants during the fiscal year.

25 (5) Grant moneys shall be paid to the Cook County
26 Treasurer in block grants and held in separate accounts
27 for the State's Attorney, the Public Defender, and court
28 appointed defense counsel other than the Cook County
29 Public Defender, respectively, for the designated fiscal
30 year, and are not subject to county appropriation.

31 (6) Expenditure of grant moneys under this
32 subsection (g) is subject to audit by the Auditor
33 General.

34 (7) The Cook County Treasurer shall immediately

1 make payment from the appropriate separate account in the
2 county treasury for capital litigation expenses to the
3 State's Attorney, Public Defender, or court appointed
4 defense counsel other than the Public Defender, as the
5 case may be, upon order of the State's Attorney, Public
6 Defender or the court, respectively.

7 (h) If a defendant in a capital case in Cook County is
8 represented by court appointed counsel other than the Cook
9 County Public Defender, the appointed counsel shall petition
10 the court for an order directing the Cook County Treasurer to
11 pay the court appointed counsel's reasonable and necessary
12 compensation and capital litigation expenses from grant
13 moneys provided from the Trust Fund. These petitions shall be
14 considered in camera. Orders denying petitions for
15 compensation or expenses are final. Counsel may not petition
16 for expenses that may have been provided or compensated by
17 the State Appellate Defender under item (c)(5) of Section 10
18 of the State Appellate Defender Act.

19 (i) In counties other than Cook County, and excluding
20 capital litigation expenses or services that may have been
21 provided by the State Appellate Defender under item (c)(5) of
22 Section 10 of the State Appellate Defender Act:

23 (1) Upon certification by the circuit court, on a
24 form created by the State Treasurer, that all or a
25 portion of the expenses are reasonable, necessary, and
26 appropriate for payment from the Trust Fund and the
27 court's delivery of the certification to the Treasurer,
28 the Treasurer shall pay the certified expenses of Public
29 Defenders from the money appropriated to the Treasurer
30 for capital litigation expenses of Public Defenders in
31 any county other than Cook County, if there are
32 sufficient moneys in the Trust Fund to pay the expenses.

33 (2) If a defendant in a capital case is represented
34 by court appointed counsel other than the Public

1 Defender, the appointed counsel shall petition the court
2 to certify compensation and capital litigation expenses
3 including, but not limited to, investigatory and other
4 assistance, expert, forensic, and other witnesses, and
5 mitigation specialists as reasonable, necessary, and
6 appropriate for payment from the Trust Fund. Upon
7 certification on a form created by the State Treasurer of
8 all or a portion of the compensation and expenses
9 certified as reasonable, necessary, and appropriate for
10 payment from the Trust Fund and the court's delivery of
11 the certification to the Treasurer, the State Treasurer
12 shall pay the certified compensation and expenses from
13 the money appropriated to the Treasurer for that purpose,
14 if there are sufficient moneys in the Trust Fund to make
15 those payments.

16 (3) A petition for capital litigation expenses
17 under this subsection shall be considered in camera.
18 Orders denying petitions for compensation or expenses are
19 final.

20 (j) If the Trust Fund is discontinued or dissolved by an
21 Act of the General Assembly or by operation of law, any
22 balance remaining in the Trust Fund shall be returned to the
23 General Revenue Fund after deduction of administrative costs,
24 any other provision of this Act to the contrary
25 notwithstanding.

26 (Source: P.A. 91-589, eff. 1-1-00.)

27 (725 ILCS 124/19)

28 (Section scheduled to be repealed on July 1, 2004)

29 Sec. 19. Report; repeal.

30 (a) The Cook County Public Defender, the Cook County
31 State's Attorney, the State Appellate Defender, the State's
32 Attorneys Appellate Prosecutor, and the Attorney General
33 shall each report separately to the General Assembly by

1 January 1, 2004 detailing the amounts of money received by
2 them through this Act, the uses for which those funds were
3 expended, the balances then in the Capital Litigation Trust
4 Fund or county accounts, as the case may be, dedicated to
5 them for the use and support of Public Defenders, appointed
6 trial defense counsel, and State's Attorneys, as the case may
7 be. The report shall describe and discuss the need for
8 continued funding through the Fund and contain any
9 suggestions for changes to this Act.

10 (b) (Blank) ~~Unless---the---General--Assembly--provides~~
11 ~~otherwise,--this-Act-is-repealed-on-July-17-2004.~~

12 (Source: P.A. 91-589, eff. 1-1-00.)

13 Section 25. The Unified Code of Corrections is amended
14 by changing Sections 3-3-13 and 5-4-3 and adding Section
15 5-2-7 as follows:

16 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

17 Sec. 3-3-13. Procedure for Executive Clemency.

18 (a) Petitions seeking pardon, commutation, or reprieve
19 shall be addressed to the Governor and filed with the
20 Prisoner Review Board. The petition shall be in writing and
21 signed by the person under conviction or by a person on his
22 behalf. It shall contain a brief history of the case, the
23 reasons for seeking executive clemency, and other relevant
24 information the Board may require.

25 (a-5) After a petition has been denied by the Governor,
26 the Board may not accept a repeat petition for executive
27 clemency for the same person until one full year has elapsed
28 from the date of the denial. The Chairman of the Board may
29 waive the one-year requirement if the petitioner offers in
30 writing new information that was unavailable to the
31 petitioner at the time of the filing of the prior petition
32 and which the Chairman determines to be significant. The

1 Chairman also may waive the one-year waiting period if the
2 petitioner can show that a change in circumstances of a
3 compelling humanitarian nature has arisen since the denial of
4 the prior petition.

5 (b) Notice of the proposed application shall be given by
6 the Board to the committing court and the state's attorney of
7 the county where the conviction was had.

8 (c) The Board shall, if requested and upon due notice,
9 give a hearing to each application, allowing representation
10 by counsel, if desired, after which it shall confidentially
11 advise the Governor by a written report of its
12 recommendations which shall be determined by majority vote.
13 The Board shall meet to consider such petitions no less than
14 4 times each year.

15 Application for executive clemency under this Section may
16 not be commenced on behalf of a person who has been sentenced
17 to death without the written consent of the defendant, unless
18 the defendant, because of a mental or physical condition, is
19 incapable of asserting his or her own claim.

20 All petitions for executive clemency on behalf of a
21 person who is sentenced to death must be filed with the
22 Prisoner Review Board within 30 days from the date that the
23 Supreme Court has issued a final order setting the execution
24 date. The Governor or the Chairman of the Prisoner Review
25 Board may waive the 30-day requirement if the petitioner has
26 just cause for not filing the petition within the appropriate
27 time limitations.

28 (d) The Governor shall decide each application and
29 communicate his decision to the Board which shall notify the
30 petitioner.

31 In the event a petitioner who has been convicted of a
32 Class X felony is granted a release, after the Governor has
33 communicated such decision to the Board, the Board shall give
34 written notice to the Sheriff of the county from which the

1 offender was sentenced if such sheriff has requested that
 2 such notice be given on a continuing basis. In cases where
 3 arrest of the offender or the commission of the offense took
 4 place in any municipality with a population of more than
 5 10,000 persons, the Board shall also give written notice to
 6 the proper law enforcement agency for said municipality which
 7 has requested notice on a continuing basis.

8 (e) Nothing in this Section shall be construed to limit
 9 the power of the Governor under the constitution to grant a
 10 reprieve, commutation of sentence, or pardon.

11 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

12 (730 ILCS 5/5-2-7 new)

13 Sec. 5-2-7. Fitness to be executed.

14 (a) A person is unfit to be executed if the person is
 15 mentally retarded. For the purposes of this Section,
 16 "mentally retarded" means:

17 (1) having significantly sub-average general
 18 intellectual functioning as evidenced by a functional
 19 intelligence quotient (I.Q.) of 70 or below; and

20 (2) having significant deficits in adaptive
 21 behavior in at least 2 of the following skill areas:
 22 communication, self-care, social or interpersonal skills,
 23 home living, self-direction, academics, health and
 24 safety, use of community resources, and work.

25 The mental retardation must have been manifested during
 26 the developmental period, or by 18 years of age.

27 (b) The question of fitness to be executed may be raised
 28 after pronouncement of the death sentence. The procedure for
 29 raising and deciding the question shall be the same as that
 30 provided for raising and deciding the question of fitness to
 31 stand trial subject to the following specific provisions:

32 (1) the question shall be raised by motion filed in
 33 the sentencing court;

1 (2) the question shall be decided by the court;

2 (3) the burden of proving that the offender is
3 unfit to be executed is on the offender;

4 (4) if the offender is found to be mentally
5 retarded, the court must resentence the offender to
6 natural life imprisonment under Chapter V of the Unified
7 Code of Corrections.

8 (c) If the question of mental retardation was raised at
9 the offender's sentencing hearing and the trier of fact
10 expressly found that the offender was not mentally retarded
11 as required by subsections (g) and (h) of Section 9-1 of the
12 Criminal Code of 1961, the trier of fact's determination on
13 that issue shall be presumed correct unless it is proven by
14 the offender to be against the manifest weight of the
15 evidence.

16 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

20 (a) Any person convicted of, found guilty under the
21 Juvenile Court Act of 1987 for, or who received a disposition
22 of court supervision for, a qualifying offense or attempt of
23 a qualifying offense, convicted or found guilty of any
24 offense classified as a felony under Illinois law, found
25 guilty or given supervision for any offense classified as a
26 felony under the Juvenile Court Act of 1987, or
27 institutionalized as a sexually dangerous person under the
28 Sexually Dangerous Persons Act, or committed as a sexually
29 violent person under the Sexually Violent Persons Commitment
30 Act shall, regardless of the sentence or disposition imposed,
31 be required to submit specimens of blood, saliva, or tissue
32 to the Illinois Department of State Police in accordance with
33 the provisions of this Section, provided such person is:

1 (1) convicted of a qualifying offense or attempt of
2 a qualifying offense on or after the effective date of
3 this amendatory Act of 1989, and sentenced to a term of
4 imprisonment, periodic imprisonment, fine, probation,
5 conditional discharge or any other form of sentence, or
6 given a disposition of court supervision for the offense,
7 or

8 (1.5) found guilty or given supervision under the
9 Juvenile Court Act of 1987 for a qualifying offense or
10 attempt of a qualifying offense on or after the effective
11 date of this amendatory Act of 1996, or

12 (2) ordered institutionalized as a sexually
13 dangerous person on or after the effective date of this
14 amendatory Act of 1989, or

15 (3) convicted of a qualifying offense or attempt of
16 a qualifying offense before the effective date of this
17 amendatory Act of 1989 and is presently confined as a
18 result of such conviction in any State correctional
19 facility or county jail or is presently serving a
20 sentence of probation, conditional discharge or periodic
21 imprisonment as a result of such conviction, or

22 (3.5) convicted or found guilty of any offense
23 classified as a felony under Illinois law or found guilty
24 or given supervision for such an offense under the
25 Juvenile Court Act of 1987 on or after the effective date
26 of this amendatory Act of the 92nd General Assembly, or

27 (4) presently institutionalized as a sexually
28 dangerous person or presently institutionalized as a
29 person found guilty but mentally ill of a sexual offense
30 or attempt to commit a sexual offense; or

31 (4.5) ordered committed as a sexually violent
32 person on or after the effective date of the Sexually
33 Violent Persons Commitment Act; or

34 (5) seeking transfer to or residency in Illinois

1 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
2 Code of Corrections and the Interstate Compact for Adult
3 Offenders Supervision or the Interstate Agreements on
4 Sexually Dangerous Persons Act.

5 Notwithstanding other provisions of this Section, any
6 person incarcerated in a facility of the Illinois Department
7 of Corrections on or after the effective date of this
8 amendatory Act of the 92nd General Assembly shall be required
9 to submit a specimen of blood, saliva, or tissue prior to his
10 or her release on parole or mandatory supervised release, as
11 a condition of his or her parole or mandatory supervised
12 release.

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

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

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

33 (c-5) Any person required by paragraph (a)(5) to provide
34 specimens of blood, saliva, or tissue shall, where feasible,

1 be required to provide the specimens before being accepted
2 for conditioned residency in Illinois under the interstate
3 compact or agreement, but no later than 45 days after arrival
4 in this State.

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

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

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

29 (d-2) The Illinois Department of State Police shall
30 provide all equipment and instructions necessary for the
31 collection of tissue samples. The collection of tissue
32 samples shall be performed in a medically approved manner.
33 Only a person trained in the instructions promulgated by the
34 Illinois State Police on collecting tissue may collect tissue

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

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

9 (e) The genetic marker groupings shall be maintained by
10 the Illinois Department of State Police, Division of Forensic
11 Services.

12 (f) The genetic marker grouping analysis information
13 obtained pursuant to this Act shall be confidential and shall
14 be released only to peace officers of the United States, of
15 other states or territories, of the insular possessions of
16 the United States, of foreign countries duly authorized to
17 receive the same, to all peace officers of the State of
18 Illinois and to all prosecutorial agencies. Notwithstanding
19 the limits on disclosure stated by this subsection (f), the
20 genetic marker grouping analysis information obtained under
21 this Act also may be released by court order pursuant to a
22 motion under Section 114-15 of the Code of Criminal Procedure
23 of 1963 to a defendant who meets all of the requirements
24 under that Section. The genetic marker grouping analysis
25 information obtained pursuant to this Act shall be used only
26 for (i) valid law enforcement identification purposes and as
27 required by the Federal Bureau of Investigation for
28 participation in the National DNA database or (ii) technology
29 validation purposes. Notwithstanding any other statutory
30 provision to the contrary, all information obtained under
31 this Section shall be maintained in a single State data base,
32 which may be uploaded into a national database, and which
33 information may be subject to expungement only as set forth
34 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
5 that 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,
10 and the Department shall by rule prescribe procedures to
11 ensure that the record and any samples, analyses, or other
12 documents relating to such record, whether in the possession
13 of the Department or any law enforcement or police agency, or
14 any forensic DNA laboratory, including any duplicates or
15 copies thereof, are destroyed and a letter is sent to the
16 court verifying the expungement is completed.

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

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

25 (1) Any violation or inchoate violation of Section
26 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
27 Criminal Code of 1961, or

28 (1.1) Any violation or inchoate violation of
29 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
30 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
31 for which persons are convicted on or after July 1, 2001,
32 or

33 (2) Any former statute of this State which defined
34 a felony sexual offense, or

1 (3) (Blank), or

2 (4) Any inchoate violation of Section 9-3.1,
3 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961.

4 (g-5) (Blank).

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

13 (i) A person required to provide a blood, saliva, or
14 tissue specimen shall cooperate with the collection of the
15 specimen and any deliberate act by that person intended to
16 impede, delay or stop the collection of the blood, saliva, or
17 tissue specimen is a Class A misdemeanor.

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

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

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

34 (2) All fees shall be collected by the clerk of the

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

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

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

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

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

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

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

29 (1) The failure of a person to provide a specimen, or of
30 any person or agency to collect a specimen, within the 45 day
31 period shall in no way alter the obligation of the person to
32 submit such specimen, or the authority of the Illinois
33 Department of State Police or persons designated by the
34 Department to collect the specimen, or the authority of the

1 Illinois Department of State Police to accept, analyze and
2 maintain the specimen or to maintain or upload results of
3 genetic marker grouping analysis information into a State or
4 national database.

5 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
6 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
7 6-28-02; 92-829, eff. 8-22-02; revised 9-19-02.)

8 Section 97. Severability. The provisions of this Act
9 are severable under Section 1.31 of the Statute on
10 Statutes."