

# HB0448



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB0448**

Introduced 1/26/2007, by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-3

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

Amends the Unified Code of Corrections. Provides that the Illinois Department of State Police shall, within 30 days after sentencing, collect and analyze DNA samples required to be submitted by a person who has been convicted of a felony.

LRB095 03714 RLC 23741 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

6 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

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

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

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

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

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

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

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

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

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

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

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

1 disposition, or within 30 days after sentencing or disposition  
2 if the sentence or disposition occurred on or after the  
3 effective date of this amendatory Act of the 95th General  
4 Assembly, at a collection site designated by the Illinois  
5 Department of State Police. Any person serving a sentence of  
6 life imprisonment in a facility of the Illinois Department of  
7 Corrections on the effective date of this amendatory Act of the  
8 94th General Assembly or any person who is under a sentence of  
9 death on the effective date of this amendatory Act of the 94th  
10 General Assembly shall be required to provide a specimen of  
11 blood, saliva, or tissue upon request at a collection site  
12 designated by the Illinois Department of State Police.

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

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

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

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

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

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

26 (d-1) The Illinois Department of State Police shall provide

1 all equipment and instructions necessary for the collection of  
2 saliva samples. The collection of saliva samples shall be  
3 performed in a medically approved manner. Only a person trained  
4 in the instructions promulgated by the Illinois State Police on  
5 collecting saliva may collect saliva for the purposes of this  
6 Section. The samples shall thereafter be forwarded to the  
7 Illinois Department of State Police, Division of Forensic  
8 Services, for analysis and categorizing into genetic marker  
9 groupings.

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

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

24 (d-6) Agencies designated by the Illinois Department of  
25 State Police and the Illinois Department of State Police may  
26 contract with third parties to provide for the collection or

1 analysis of DNA, or both, of an offender's blood, saliva, and  
2 tissue samples.

3 (e) The genetic marker groupings shall be maintained by the  
4 Illinois Department of State Police, Division of Forensic  
5 Services.

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



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

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

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

1 (f-6) The Illinois Department of State Police may contract  
2 with third parties for the purposes of implementing this  
3 amendatory Act of the 93rd General Assembly. Any other party  
4 contracting to carry out the functions of this Section shall be  
5 subject to the same restrictions and requirements of this  
6 Section insofar as applicable, as the Illinois Department of  
7 State Police, and to any additional restrictions imposed by the  
8 Illinois Department of State Police.

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

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

14 (1.1) any violation or inchoate violation of Section  
15 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,  
16 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which  
17 persons are convicted on or after July 1, 2001;

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

20 (3) (blank);

21 (4) any inchoate violation of Section 9-3.1, 11-9.3,  
22 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

25 (g-5) (Blank).

26 (h) The Illinois Department of State Police shall be the

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

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

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

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

1 exceed 24 months from the time of conviction. The inability to  
2 pay this analysis fee shall not be the sole ground to  
3 incarcerate the person.

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

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

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

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

23 (A) Costs incurred in providing analysis and  
24 genetic marker categorization as required by  
25 subsection (d).

26 (B) Costs incurred in maintaining genetic marker

1 groupings as required by subsection (e).

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

4 (D) Costs incurred in continuing research and  
5 development of new techniques for analysis and genetic  
6 marker categorization.

7 (E) Costs incurred in continuing education,  
8 training, and professional development of forensic  
9 scientists regularly employed by these laboratories.

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

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

24 (n) On and after the effective date of this amendatory Act  
25 of the 95th General Assembly, the Illinois Department of State  
26 Police shall, within 30 days after sentencing, collect and

1 analyze DNA samples required to be submitted by a person  
2 described in subsection (a) who has been convicted of a felony.

3 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;  
4 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.  
5 1-1-07.)