

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 Department of State Police Law of the Civil
5 Administrative Code of Illinois is amended by changing Section
6 2605-40 as follows:

7 (20 ILCS 2605/2605-40) (was 20 ILCS 2605/55a-4)

8 Sec. 2605-40. Division of Forensic Services.

9 (a) The Division of Forensic Services shall exercise the
10 following functions:

11 (1) Exercise the rights, powers, and duties vested by
12 law in the Department by the Criminal Identification Act.

13 (2) Exercise the rights, powers, and duties vested by
14 law in the Department by Section 2605-300 of this Law.

15 (3) Provide assistance to local law enforcement
16 agencies through training, management, and consultant
17 services.

18 (4) (Blank).

19 (5) Exercise other duties that may be assigned by the
20 Director in order to fulfill the responsibilities and
21 achieve the purposes of the Department.

22 (6) Establish and operate a forensic science
23 laboratory system, including a forensic toxicological

1 laboratory service, for the purpose of testing specimens
2 submitted by coroners and other law enforcement officers in
3 their efforts to determine whether alcohol, drugs, or
4 poisonous or other toxic substances have been involved in
5 deaths, accidents, or illness. Forensic toxicological
6 laboratories shall be established in Springfield, Chicago,
7 and elsewhere in the State as needed.

8 (7) Subject to specific appropriations made for these
9 purposes, establish and coordinate a system for providing
10 accurate and expedited forensic science and other
11 investigative and laboratory services to local law
12 enforcement agencies and local State's Attorneys in aid of
13 the investigation and trial of capital cases.

14 (b) When used in this Section, the following words and
15 terms shall have the meanings ascribed to them in this
16 subsection:

17 "Forensic laboratory" means any laboratory operated by the
18 Division of Forensic Services that performs forensic testing on
19 evidence in an investigation or other proceeding for the
20 prosecution of a violation of the Criminal Code of 1961 or for
21 matters adjudicated under the Juvenile Court Act of 1987.

22 "Forensic testing" includes the analysis of physical
23 evidence in an investigation or other proceeding for the
24 prosecution of a violation of the Criminal Code of 1961 or for
25 matters adjudicated under the Juvenile Court Act of 1987, and
26 includes the use of forensic databases and databanks, including

1 DNA, firearm, and fingerprint databases, and expert testimony.

2 "Private laboratory" or "subcontractor" means any
3 laboratory operated by any entity other than the Division of
4 Forensic Services of the Illinois State Police that performs
5 forensic testing on evidence in an investigation or other
6 proceeding for the prosecution of a violation of the Criminal
7 Code of 1961 or for matters adjudicated under the Juvenile
8 Court Act of 1987.

9 "ASCLD/LAB" means a laboratory which is accredited by the
10 American Society of Crime Laboratory Directors Accreditation
11 Board.

12 "ISO accreditation" means accreditation under standard
13 17025 of the International Organization for Standardization.

14 (c) A forensic laboratory authorized under this Section
15 must establish and carry out procedures to ensure, upon
16 subpoena request by prosecution or defense counsel, complete
17 disclosure in legal proceedings. Disclosure shall include all
18 reports, notes, and conversation logs, quality assurance and
19 quality control (QA/QC) documentation, protocol and procedure
20 manuals, command directives and other statements of procedure
21 and policy relating to forensic testing, validation studies,
22 documentation relating to corrective actions and remedial
23 actions, incidents, incident logs, errors, and incidents of
24 contamination, proficiency tests, and results, unless the
25 disclosure would be burdensome or duplicative, or both, and is
26 relevant to the case in which the subpoena has been issued.

1 This disclosure obligation also applies to any subcontractors
2 used by the forensic laboratory to undertake forensic
3 examinations. Forensic laboratories shall also ensure
4 prosecution and defense counsel reasonable access to interview
5 personnel involved in the pending case. This shall include
6 cases that the laboratory sends to private laboratories as
7 subcontractors. Costs for discovery materials shall be borne by
8 the requesting party. Disclosure shall be limited to the
9 documents and personnel used in the pending case unless a court
10 determines that additional discovery is material and relevant.

11 (Source: P.A. 90-130, eff. 1-1-98; 91-239, eff. 1-1-00; 91-589,
12 eff. 1-1-00; 91-760, eff. 1-1-01.)

13 Section 10. The Code of Criminal Procedure of 1963 is
14 amended by changing Section 116-3 as follows:

15 (725 ILCS 5/116-3)

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

18 (a) A defendant may make a motion before the trial court
19 that entered the judgment of conviction in his or her case for
20 the performance of fingerprint or forensic DNA testing,
21 including comparison analysis of genetic marker groupings of
22 the evidence collected by criminal justice agencies pursuant to
23 the alleged offense, to those of the defendant, to those of
24 other forensic evidence, and to those maintained under

1 subsection (f) of Section 5-4-3 of the Unified Code of
2 Corrections, on evidence that was secured in relation to the
3 trial which resulted in his or her conviction, but which was
4 not subject to the testing which is now requested because the
5 technology for the testing was not available at the time of
6 trial. Reasonable notice of the motion shall be served upon the
7 State.

8 (b) The defendant must present a prima facie case that:

9 (1) identity was the issue in the trial which resulted
10 in his or her conviction; and

11 (2) the evidence to be tested has been subject to a
12 chain of custody sufficient to establish that it has not
13 been substituted, tampered with, replaced, or altered in
14 any material aspect.

15 (c) The trial court shall allow the testing under
16 reasonable conditions designed to protect the State's
17 interests in the integrity of the evidence and the testing
18 process upon a determination that:

19 (1) the result of the testing has the scientific
20 potential to produce new, noncumulative evidence
21 materially relevant to the defendant's assertion of actual
22 innocence even though the results may not completely
23 exonerate the defendant;

24 (2) the testing requested employs a scientific method
25 generally accepted within the relevant scientific
26 community; and -

1 (3) when forensic DNA testing is requested, and the
2 testing is to be performed on or after the effective date
3 of this amendatory Act of the 95th General Assembly, the
4 forensic DNA testing shall be performed by a forensic
5 laboratory, private laboratory, or subcontractor as
6 defined under Section 2605-40 of the Department of State
7 Police Law of the Civil Administrative Code of Illinois,
8 and shall be an American Society of Crime Laboratory
9 Directors/Laboratory Accreditation Board (ASCLD/LAB)
10 accredited laboratory or an International Organization for
11 Standardization (ISO) accredited laboratory, unless upon
12 written motion and after hearing arguments or evidence, or
13 both, the court may order the DNA testing be performed by a
14 laboratory that is not ASCLD/LAB or ISO accredited.

15 (Source: P.A. 93-605, eff. 11-19-03.)

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

18 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

22 (a) Any person convicted of, found guilty under the
23 Juvenile Court Act of 1987 for, or who received a disposition
24 of court supervision for, a qualifying offense or attempt of a

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

16 (1) convicted of a qualifying offense or attempt of a
17 qualifying offense on or after July 1, 1990 and sentenced
18 to a term of imprisonment, periodic imprisonment, fine,
19 probation, conditional discharge or any other form of
20 sentence, or given a disposition of court supervision for
21 the offense;

22 (1.5) found guilty or given supervision under the
23 Juvenile Court Act of 1987 for a qualifying offense or
24 attempt of a qualifying offense on or after January 1,
25 1997;

26 (2) ordered institutionalized as a sexually dangerous

1 person on or after July 1, 1990;

2 (3) convicted of a qualifying offense or attempt of a
3 qualifying offense before July 1, 1990 and is presently
4 confined as a result of such conviction in any State
5 correctional facility or county jail or is presently
6 serving a sentence of probation, conditional discharge or
7 periodic imprisonment as a result of such conviction;

8 (3.5) convicted or found guilty of any offense
9 classified as a felony under Illinois law or found guilty
10 or given supervision for such an offense under the Juvenile
11 Court Act of 1987 on or after August 22, 2002;

12 (4) presently institutionalized as a sexually
13 dangerous person or presently institutionalized as a
14 person found guilty but mentally ill of a sexual offense or
15 attempt to commit a sexual offense;

16 (4.5) ordered committed as a sexually violent person on
17 or after the effective date of the Sexually Violent Persons
18 Commitment Act; or

19 (5) seeking transfer to or residency in Illinois under
20 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
21 Corrections and the Interstate Compact for Adult Offender
22 Supervision or the Interstate Agreements on Sexually
23 Dangerous Persons Act.

24 Notwithstanding other provisions of this Section, any
25 person incarcerated in a facility of the Illinois Department of
26 Corrections on or after August 22, 2002 shall be required to

1 submit a specimen of blood, saliva, or tissue prior to his or
2 her final discharge or release on parole or mandatory
3 supervised release, as a condition of his or her parole or
4 mandatory supervised release.

5 Notwithstanding other provisions of this Section, any
6 person sentenced to life imprisonment in a facility of the
7 Illinois Department of Corrections after the effective date of
8 this amendatory Act of the 94th General Assembly or sentenced
9 to death after the effective date of this amendatory Act of the
10 94th General Assembly shall be required to provide a specimen
11 of blood, saliva, or tissue within 45 days after sentencing or
12 disposition, or within 30 days after sentencing or disposition
13 and receipt by the Department thereof from the forwarding
14 agency if the sentence or disposition occurred on or after the
15 effective date of this amendatory Act of the 95th General
16 Assembly, at a collection site designated by the Illinois
17 Department of State Police. Any person serving a sentence of
18 life imprisonment in a facility of the Illinois Department of
19 Corrections on the effective date of this amendatory Act of the
20 94th General Assembly or any person who is under a sentence of
21 death on the effective date of this amendatory Act of the 94th
22 General Assembly shall be required to provide a specimen of
23 blood, saliva, or tissue upon request at a collection site
24 designated by the Illinois Department of State Police.

25 (a-5) Any person who was otherwise convicted of or received
26 a disposition of court supervision for any other offense under

1 the Criminal Code of 1961 or who was found guilty or given
2 supervision for such a violation under the Juvenile Court Act
3 of 1987, may, regardless of the sentence imposed, be required
4 by an order of the court to submit specimens of blood, saliva,
5 or tissue to the Illinois Department of State Police in
6 accordance with the provisions of this Section.

7 (b) Any person required by paragraphs (a)(1), (a)(1.5),
8 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
9 saliva, or tissue shall provide specimens of blood, saliva, or
10 tissue within 45 days after sentencing or disposition at a
11 collection site designated by the Illinois Department of State
12 Police.

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

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

24 (c-6) The Illinois Department of State Police may determine
25 which type of specimen or specimens, blood, saliva, or tissue,
26 is acceptable for submission to the Division of Forensic

1 Services for analysis.

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

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

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

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

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

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

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

20 (f) The genetic marker grouping analysis information
21 obtained pursuant to this Act shall be confidential and shall
22 be released only to peace officers of the United States, of
23 other states or territories, of the insular possessions of the
24 United States, of foreign countries duly authorized to receive
25 the same, to all peace officers of the State of Illinois and to
26 all prosecutorial agencies, and to defense counsel as provided

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

19 (f-1) Upon receipt of notification of a reversal of a
20 conviction based on actual innocence, or of the granting of a
21 pardon pursuant to Section 12 of Article V of the Illinois
22 Constitution, if that pardon document specifically states that
23 the reason for the pardon is the actual innocence of an
24 individual whose DNA record has been stored in the State or
25 national DNA identification index in accordance with this
26 Section by the Illinois Department of State Police, the DNA

1 record shall be expunged from the DNA identification index, and
2 the Department shall by rule prescribe procedures to ensure
3 that the record and any samples, analyses, or other documents
4 relating to such record, whether in the possession of the
5 Department or any law enforcement or police agency, or any
6 forensic DNA laboratory, including any duplicates or copies
7 thereof, are destroyed and a letter is sent to the court
8 verifying the expungement is completed.

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

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

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

26 (1) any violation or inchoate violation of Section

1 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
2 Criminal Code of 1961;

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

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

9 (3) (blank);

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

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

14 (g-5) (Blank).

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

23 (i) (1) A person required to provide a blood, saliva, or
24 tissue specimen shall cooperate with the collection of the
25 specimen and any deliberate act by that person intended to
26 impede, delay or stop the collection of the blood, saliva,

1 or tissue specimen is a Class A misdemeanor.

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

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

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

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

23 (2) All fees shall be collected by the clerk of the
24 court and forwarded to the State Offender DNA
25 Identification System Fund for deposit. The clerk of the
26 circuit court may retain the amount of \$10 from each

1 collected analysis fee to offset administrative costs
2 incurred in carrying out the clerk's responsibilities
3 under this Section.

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

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

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

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

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

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

25 (1) The failure of a person to provide a specimen, or of
26 any person or agency to collect a specimen, within the ~~45-day~~

1 period or periods specified by this Section shall in no way
2 alter the obligation of the person to submit such specimen, or
3 the authority of the Illinois Department of State Police or
4 persons designated by the Department to collect the specimen,
5 or the authority of the Illinois Department of State Police to
6 accept, analyze and maintain the specimen or to maintain or
7 upload results of genetic marker grouping analysis information
8 into a State or national database.

9 (m) If any provision of this amendatory Act of the 93rd
10 General Assembly is held unconstitutional or otherwise
11 invalid, the remainder of this amendatory Act of the 93rd
12 General Assembly is not affected.

13 (n) Neither the Department of State Police, the Division of
14 Forensic Services, nor any laboratory of the Division of
15 Forensic Services may contract out forensic testing, as defined
16 in Section 2605-40 of the Department of State Police Law of the
17 Civil Administrative Code of Illinois, for the purpose of an
18 active investigation or a matter pending before a court of
19 competent jurisdiction without the written consent of the
20 prosecuting agency.

21 (o) On and after the effective date of this amendatory Act
22 of the 95th General Assembly, the Illinois Department of State
23 Police shall, within 30 days after sentencing or disposition
24 and receipt by the Department thereof from the forwarding
25 agency, analyze DNA samples required to be submitted by a
26 person described in subsection (a) who has been convicted of a

1 felony.

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