



Rep. Jim Durkin

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1 AMENDMENT TO HOUSE BILL 448

2 AMENDMENT NO. _____. Amend House Bill 448 by replacing
3 everything after the enacting clause with the following:

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

1 services.

2 (4) (Blank).

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

6 (6) Establish and operate a forensic science
7 laboratory system, including a forensic toxicological
8 laboratory service, for the purpose of testing specimens
9 submitted by coroners and other law enforcement officers in
10 their efforts to determine whether alcohol, drugs, or
11 poisonous or other toxic substances have been involved in
12 deaths, accidents, or illness. Forensic toxicological
13 laboratories shall be established in Springfield, Chicago,
14 and elsewhere in the State as needed.

15 (7) Subject to specific appropriations made for these
16 purposes, establish and coordinate a system for providing
17 accurate and expedited forensic science and other
18 investigative and laboratory services to local law
19 enforcement agencies and local State's Attorneys in aid of
20 the investigation and trial of capital cases.

21 (b) When used in this Section, the following words and
22 terms shall have the meanings ascribed to them in this
23 subsection:

24 "Forensic laboratory" means any laboratory operated by the
25 Division of Forensic Services that performs forensic testing on
26 evidence in an investigation or other proceeding for the

1 prosecution of a violation of the Criminal Code of 1961 or for
2 matters adjudicated under the Juvenile Court Act of 1987.

3 "Forensic testing" includes the analysis of physical
4 evidence in an investigation or other proceeding for the
5 prosecution of a violation of the Criminal Code of 1961 or for
6 matters adjudicated under the Juvenile Court Act of 1987, and
7 includes the use of forensic databases and databanks, including
8 DNA, firearm, and fingerprint databases, and expert testimony.

9 "Private laboratory" or "subcontractor" means any
10 laboratory operated by any entity other than the Division of
11 Forensic Services of the Illinois State Police that performs
12 forensic testing on evidence in an investigation or other
13 proceeding for the prosecution of a violation of the Criminal
14 Code of 1961 or for matters adjudicated under the Juvenile
15 Court Act of 1987.

16 "ASCLD/LAB" means a laboratory which is accredited by the
17 American Society of Crime Laboratory Directors Accreditation
18 Board.

19 "ISO accreditation" means accreditation under standard
20 17025 of the International Organization for Standardization.

21 (c) A forensic laboratory authorized under this Section
22 must establish and carry out procedures to ensure, upon
23 subpoena request by prosecution or defense counsel, complete
24 disclosure in legal proceedings. Disclosure shall include all
25 reports, notes, and conversation logs, quality assurance and
26 quality control (QA/QC) documentation, protocol and procedure

1 manuals, command directives and other statements of procedure
2 and policy relating to forensic testing, validation studies,
3 documentation relating to corrective actions and remedial
4 actions, incidents, incident logs, errors, and incidents of
5 contamination, proficiency tests, and results, unless the
6 disclosure would be burdensome or duplicative, or both, and is
7 relevant to the case in which the subpoena has been issued.
8 This disclosure obligation also applies to any subcontractors
9 used by the forensic laboratory to undertake forensic
10 examinations. Forensic laboratories shall also ensure
11 prosecution and defense counsel reasonable access to interview
12 personnel involved in the pending case. This shall include
13 cases that the laboratory sends to private laboratories as
14 subcontractors. Costs for discovery materials shall be borne by
15 the requesting party. Disclosure shall be limited to the
16 documents and personnel used in the pending case unless a court
17 determines that additional discovery is material and relevant.

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

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

22 (725 ILCS 5/116-3)

23 Sec. 116-3. Motion for fingerprint or forensic testing not
24 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 for
3 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 to
6 the alleged offense, to those of the defendant, to those of
7 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 the
14 State.

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

16 (1) identity was the issue in the trial which resulted
17 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

1 potential to produce new, noncumulative evidence
2 materially relevant to the defendant's assertion of actual
3 innocence even though the results may not completely
4 exonerate the defendant;

5 (2) the testing requested employs a scientific method
6 generally accepted within the relevant scientific
7 community; and -

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

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

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

1 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

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

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

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

1 sentence, or given a disposition of court supervision for
2 the offense;

3 (1.5) found guilty or given supervision under the
4 Juvenile Court Act of 1987 for a qualifying offense or
5 attempt of a qualifying offense on or after January 1,
6 1997;

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

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

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

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

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

26 (5) seeking transfer to or residency in Illinois under

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

5 Notwithstanding other provisions of this Section, any
6 person incarcerated in a facility of the Illinois Department of
7 Corrections on or after August 22, 2002 shall be required to
8 submit a specimen of blood, saliva, or tissue prior to his or
9 her final discharge or release on parole or mandatory
10 supervised release, as a condition of his or her parole or
11 mandatory supervised release.

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

1 who is under a sentence of death on the effective date of this
2 amendatory Act of the 94th General Assembly shall be required
3 to provide a specimen of blood, saliva, or tissue upon request
4 at a collection site designated by the Illinois Department of
5 State Police.

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

14 (b) Any person required by paragraphs (a)(1), (a)(1.5),
15 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
16 saliva, or tissue shall provide specimens of blood, saliva, or
17 tissue within 45 days after sentencing or disposition at a
18 collection site designated by the Illinois Department of State
19 Police.

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

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

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

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

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

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

1 Services, for analysis and categorizing into genetic marker
2 groupings.

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

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

18 (d-6) Agencies designated by the Illinois Department of
19 State Police and the Illinois Department of State Police may
20 contract with third parties to provide for the collection or
21 analysis of DNA, or both, of an offender's blood, saliva, and
22 tissue samples, except as provided in subsection (n) of this
23 Section.

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

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

26 (f-1) Upon receipt of notification of a reversal of a

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

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

22 (f-6) The Illinois Department of State Police may contract
23 with third parties for the purposes of implementing this
24 amendatory Act of the 93rd General Assembly, except as provided
25 in subsection (n) of this Section. Any other party contracting
26 to carry out the functions of this Section shall be subject to

1 the same restrictions and requirements of this Section insofar
2 as applicable, as the Illinois Department of State Police, and
3 to any additional restrictions imposed by the Illinois
4 Department of State Police.

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

7 (1) any violation or inchoate violation of Section
8 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
9 Criminal Code of 1961;

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

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

16 (3) (blank);

17 (4) any inchoate violation of Section 9-3.1, 11-9.3,
18 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

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

21 (g-5) (Blank).

22 (h) The Illinois Department of State Police shall be the
23 State central repository for all genetic marker grouping
24 analysis information obtained pursuant to this Act. The
25 Illinois Department of State Police may promulgate rules for
26 the form and manner of the collection of blood, saliva, or

1 tissue samples and other procedures for the operation of this
2 Act. The provisions of the Administrative Review Law shall
3 apply to all actions taken under the rules so promulgated.

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

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

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

26 (k) All analysis and categorization fees provided for by

1 subsection (j) shall be regulated as follows:

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

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

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

19 (A) Costs incurred in providing analysis and
20 genetic marker categorization as required by
21 subsection (d).

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

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

26 (D) Costs incurred in continuing research and

1 development of new techniques for analysis and genetic
2 marker categorization.

3 (E) Costs incurred in continuing education,
4 training, and professional development of forensic
5 scientists regularly employed by these laboratories.

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

16 (m) If any provision of this amendatory Act of the 93rd
17 General Assembly is held unconstitutional or otherwise
18 invalid, the remainder of this amendatory Act of the 93rd
19 General Assembly is not affected.

20 (n) Neither the Department of State Police, the Division of
21 Forensic Services, nor any laboratory of the Division of
22 Forensic Services may contract out forensic testing, as defined
23 in Section 2605-40 of the Department of State Police Law of the
24 Civil Administrative Code of Illinois, for the purpose of an
25 active investigation or a matter pending before a court of
26 competent jurisdiction without the written consent of the

1 prosecuting agency.

2 (o) On and after the effective date of this amendatory Act
3 of the 95th General Assembly, the Illinois Department of State
4 Police shall, within 30 days after sentencing, collect and
5 analyze DNA samples required to be submitted by a person
6 described in subsection (a) who has been convicted of a felony.

7 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
8 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
9 1-1-07.)".