



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1315

Introduced 2/9/2007, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

725 ILCS 5/107-2.5 new
730 ILCS 5/5-4-3

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

Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. Provides that every person arrested for committing a felony shall have a sample of his or her saliva or tissue taken for DNA fingerprinting analysis, at the time of booking, for the purpose of determining identity and for certain other specified purposes. Provides that subject to appropriation, the Department of State Police shall implement this provision. Provides that this provision becomes operative no later than the earliest of the following: (1) two years after the effective date of this amendatory Act; (2) the date on which the Department of State Police informs law enforcement agencies that the Department is ready to collect samples; or (3) January 1, 2010. Effective immediately.

LRB095 04546 RLC 24599 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 Code of Criminal Procedure of 1963 is
5 amended by adding Section 107-2.5 as follows:

6 (725 ILCS 5/107-2.5 new)

7 Sec. 107-2.5. DNA fingerprinting analysis.

8 (a) Every person arrested for committing a felony as
9 defined in Section 2-7 of the Criminal Code of 1961 shall have
10 a sample of his or her saliva or tissue taken for DNA
11 fingerprinting analysis, at the time of booking, for the
12 purpose of determining identity and for the purposes specified
13 in this Section and subsection (f) of Section 5-4-3 of the
14 Unified Code of Corrections. Any law enforcement agency
15 extracting DNA samples under this Section shall be required to
16 follow all written rules and regulations for the collection,
17 storage, and processing of those samples promulgated by the
18 Department of State Police. The analysis shall be performed by
19 the Department of State Police or a specific agent approved by
20 the Department of State Police. The identification
21 characteristics resulting from the DNA analysis shall be stored
22 and maintained by the Department of State Police or the
23 specific agent approved by the Department. All results

1 developed from collected DNA samples shall be subject to any
2 and all confidentiality provisions of State and federal laws.
3 The specific agent approved by the Department of State Police
4 to store and analyze DNA samples shall be required to meet all
5 Illinois State Police laboratory accreditation requirements
6 and shall properly forward the results of the DNA analysis to
7 the Department of State Police.

8 (b) If charges are dismissed or an individual is found not
9 guilty, any expungement of that person's DNA sample shall be in
10 accordance with the procedures set forth in Section 5 of the
11 Criminal Identification Act.

12 (c) Subject to appropriation, the Department of State
13 Police shall implement this Section; however, this Section
14 becomes operative no later than the earliest of the following:
15 (1) two years after the effective date of this amendatory Act
16 of the 95th General Assembly; (2) the date on which the
17 Department of State Police informs law enforcement agencies
18 that the Department is ready to collect samples; or (3) January
19 1, 2010.

20 Section 10. The Unified Code of Corrections is amended by
21 changing Section 5-4-3 as follows:

22 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

23 Sec. 5-4-3. Persons convicted of, or found delinquent for,
24 certain offenses or institutionalized as sexually dangerous;

1 specimens; genetic marker groups.

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

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

26 (1.5) found guilty or given supervision under the

1 Juvenile Court Act of 1987 for a qualifying offense or
2 attempt of a qualifying offense on or after January 1,
3 1997;

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

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

12 (3.5) convicted or found guilty of any offense
13 classified as a felony under Illinois law or found guilty
14 or given supervision for such an offense under the Juvenile
15 Court Act of 1987 on or after August 22, 2002;

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

20 (4.5) ordered committed as a sexually violent person on
21 or after the effective date of the Sexually Violent Persons
22 Commitment Act; ~~or~~

23 (5) seeking transfer to or residency in Illinois under
24 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
25 Corrections and the Interstate Compact for Adult Offender
26 Supervision or the Interstate Agreements on Sexually

1 Dangerous Persons Act; or -

2 (6) arrested who is suspected of committing a felony as
3 defined in Section 2-7 of the Criminal Code of 1961.

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

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

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

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

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

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

26 (c-6) The Illinois Department of State Police may determine

1 which type of specimen or specimens, blood, saliva, or tissue,
2 is acceptable for submission to the Division of Forensic
3 Services for analysis.

4 (c-7) Any person required by paragraph (a)(6) to provide
5 specimens of saliva or tissue shall be required to provide the
6 specimens at the booking procedure. The law enforcement officer
7 shall verify that the arrestee sample has not been previously
8 collected at each arrest.

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 under this Section. The collection of saliva
22 samples shall be performed in a medically approved manner. Only
23 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 thereafter
26 be forwarded to the Illinois Department of State Police,

1 Division of Forensic Services, for analysis and categorizing
2 into genetic marker 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 under this Section. The collection of tissue
6 samples shall be performed in a medically approved manner. Only
7 a person trained in the instructions promulgated by the
8 Illinois State Police on collecting tissue may collect tissue
9 for the purposes of this Section. The samples shall thereafter
10 be forwarded to the Illinois Department of State Police,
11 Division of Forensic Services, for analysis and categorizing
12 into genetic marker 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.

17 (d-6) Agencies designated by the Illinois Department of
18 State Police and the Illinois Department of State Police may
19 contract with third parties to provide for the collection or
20 analysis of DNA, or both, of an offender's blood, saliva, and
21 tissue samples.

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

25 (f) The genetic marker grouping analysis information
26 obtained pursuant to this Act and the information obtained

1 under Section 107-2.5 of the Code of Criminal Procedure of 1963
2 shall be confidential and shall be released only to peace
3 officers of the United States, of other states or territories,
4 of the insular possessions of the United States, of foreign
5 countries duly authorized to receive the same, to all peace
6 officers of the State of Illinois and to all prosecutorial
7 agencies, and to defense counsel as provided by Section 116-5
8 of the Code of Criminal Procedure of 1963. The genetic marker
9 grouping analysis information obtained pursuant to this Act
10 shall be used only for (i) valid law enforcement identification
11 purposes and as required by the Federal Bureau of Investigation
12 for participation in the National DNA database, (ii) technology
13 validation purposes, (iii) a population statistics database,
14 (iv) quality assurance purposes if personally identifying
15 information is removed, (v) assisting in the defense of the
16 criminally accused pursuant to Section 116-5 of the Code of
17 Criminal Procedure of 1963, or (vi) identifying and assisting
18 in the prosecution of a person who is suspected of committing a
19 sexual assault as defined in Section 1a of the Sexual Assault
20 Survivors Emergency Treatment Act. Notwithstanding any other
21 statutory provision to the contrary, all information obtained
22 under this Section shall be maintained in a single State data
23 base, which may be uploaded into a national database, and which
24 information may be subject to expungement only as set forth in
25 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. Any other party
25 contracting to carry out the functions of this Section shall be
26 subject to the same restrictions and requirements of this

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

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

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

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

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

15 (3) (blank);

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

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

20 (g-5) (Blank).

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

1 Act. The provisions of the Administrative Review Law shall
2 apply to all actions taken under the rules so promulgated.

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

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

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

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

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

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

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

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

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

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

25 (D) Costs incurred in continuing research and
26 development of new techniques for analysis and genetic

1 marker categorization.

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

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

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

19 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
20 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
21 1-1-07.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.