

**SB0058**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**SB0058**

Introduced 1/27/2011, by Sen. Ira I. Silverstein

**SYNOPSIS AS INTRODUCED:**

730 ILCS 5/5-4-3  
30 ILCS 805/8.35 new

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

Amends the Unified Code of Corrections. Provides that a person arrested for the commission or attempted commission of a violent crime shall submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for DNA analysis and categorization into genetic marker groupings. Sets forth procedures to be followed if the charge for which the specimens were taken is dismissed or the defendant is acquitted at trial and procedures to be followed if the person is convicted of, granted court supervision for, or found guilty under the Juvenile Court Act of 1987 of the offense for which the person was arrested. Amends the State Mandates Act to require implementation without reimbursement.

LRB097 02745 RLC 42767 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

**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 required to submit ~~convicted of, or~~  
8 ~~found delinquent for, certain offenses or institutionalized as~~  
9 ~~sexually dangerous;~~ 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 or the Illinois Department of Juvenile Justice on  
16 or after August 22, 2002, whether for a term of years, natural  
17 life, or a sentence of death, who has not yet submitted a  
18 sample of blood, saliva, or tissue shall be required to submit  
19 a specimen of blood, saliva, or tissue prior to his or her  
20 final discharge, or release on parole or mandatory supervised  
21 release, as a condition of his or her parole or mandatory  
22 supervised release, or within 6 months from August 13, 2009  
23 (the effective date of Public Act 96-426), whichever is sooner.  
24 A person incarcerated on or after August 13, 2009 (the  
25 effective date of Public Act 96-426) shall be required to  
26 submit a sample within 45 days of incarceration, or prior to

1 his or her final discharge, or release on parole or mandatory  
2 supervised release, as a condition of his or her parole or  
3 mandatory supervised release, whichever is sooner. These  
4 specimens shall be placed into the State or national DNA  
5 database, to be used in accordance with other provisions of  
6 this Section, by the Illinois State Police.

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

23 (a-5) Any person who was otherwise convicted of or received  
24 a disposition of court supervision for any other offense under  
25 the Criminal Code of 1961 or who was found guilty or given  
26 supervision for such a violation under the Juvenile Court Act

1 of 1987, may, regardless of the sentence imposed, be required  
2 by an order of the court to submit specimens of blood, saliva,  
3 or tissue to the Illinois Department of State Police in  
4 accordance with the provisions of this Section.

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

11 (c) Any person required by paragraphs (a)(3), (a)(4), and  
12 (a)(4.5) to provide specimens of blood, saliva, or tissue shall  
13 be required to provide such samples prior to final discharge or  
14 within 6 months from August 13, 2009 (the effective date of  
15 Public Act 96-426), whichever is sooner. These specimens shall  
16 be placed into the State or national DNA database, to be used  
17 in accordance with other provisions of this Act, by the  
18 Illinois State Police.

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

25 (c-6) The Illinois Department of State Police may determine  
26 which type of specimen or specimens, blood, saliva, or tissue,

1 is acceptable for submission to the Division of Forensic  
2 Services for analysis.

3 (d) The Illinois Department of State Police shall provide  
4 all equipment and instructions necessary for the collection of  
5 blood samples. The collection of samples shall be performed in  
6 a medically approved manner. Only a physician authorized to  
7 practice medicine, a registered nurse or other qualified person  
8 trained in venipuncture may withdraw blood for the purposes of  
9 this Act. 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-1) The Illinois Department of State Police shall provide  
14 all equipment and instructions necessary for the collection of  
15 saliva samples. The collection of saliva samples shall be  
16 performed in a medically approved manner. Only a person trained  
17 in the instructions promulgated by the Illinois State Police on  
18 collecting saliva may collect saliva for the purposes of this  
19 Section. The samples shall thereafter be forwarded to the  
20 Illinois Department of State Police, Division of Forensic  
21 Services, for analysis and categorizing into genetic marker  
22 groupings.

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

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

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

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

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

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



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

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

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

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

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

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

1           (1) any violation or inchoate violation of Section  
2           11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
3           Criminal Code of 1961;

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

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

10          (3) (blank);

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

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

15          (g-5) (Blank).

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

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

1           impede, delay or stop the collection of the blood, saliva,  
2           or tissue specimen is a Class A misdemeanor.

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

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

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

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

24                 (2) All fees shall be collected by the clerk of the  
25                 court and forwarded to the State Offender DNA  
26                 Identification System Fund for deposit. The clerk of the

1 circuit court may retain the amount of \$10 from each  
2 collected analysis fee to offset administrative costs  
3 incurred in carrying out the clerk's responsibilities  
4 under this Section.

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

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

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

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

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

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

26 (1) The failure of a person to provide a specimen, or of

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

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

14 (n) Neither the Department of State Police, the Division of  
15 Forensic Services, nor any laboratory of the Division of  
16 Forensic Services may contract out forensic testing for the  
17 purpose of an active investigation or a matter pending before a  
18 court of competent jurisdiction without the written consent of  
19 the prosecuting agency. For the purposes of this subsection  
20 (n), "forensic testing" includes the analysis of physical  
21 evidence in an investigation or other proceeding for the  
22 prosecution of a violation of the Criminal Code of 1961 or for  
23 matters adjudicated under the Juvenile Court Act of 1987, and  
24 includes the use of forensic databases and databanks, including  
25 DNA, firearm, and fingerprint databases, and expert testimony.  
26 This subsection (n) does not prohibit the collection of samples

1 under subsection (o).

2 (o) Every person arrested on or after the effective date of  
3 this amendatory Act of the 97th General Assembly for the  
4 commission or attempted commission of a violent crime, as  
5 defined in Section 3 of the Rights of Crime Victims and  
6 Witnesses Act, shall submit specimens of blood, saliva, or  
7 tissue within 45 days after arrest to the Illinois Department  
8 of State Police at a collection site designated by the Illinois  
9 Department of State Police. Subsections (c-6), (d), (d-1),  
10 (d-2), (d-5), (d-6), (e), (f), (f-1), (f-5), (f-6), (h), and  
11 (i) apply to the collection of samples under this subsection  
12 (o). If specimens of blood, saliva, or tissue are submitted by  
13 a person under this subsection (o) and the person is  
14 subsequently convicted of, granted court supervision for, or  
15 found guilty under the Juvenile Court Act of 1987 of the  
16 offense for which the person was arrested, the specimens shall  
17 be retained as the specimens required under subsection (a) and  
18 the person shall pay the analysis fee in accordance with  
19 subsection (j). If the charge for which the specimen was taken  
20 is dismissed or the defendant is acquitted at trial, the record  
21 and any samples, analyses, or other documents relating to such  
22 record shall be expunged and destroyed in the manner prescribed  
23 in subsection (f-1), provided there is no other pending warrant  
24 that would otherwise require the preservation of the record and  
25 any samples, analyses, or other documents relating to such  
26 record.

1 (Source: P.A. 96-426, eff. 8-13-09; 96-642, eff. 8-24-09;  
2 96-1000, eff. 7-2-10.)

3 Section 90. The State Mandates Act is amended by adding  
4 Section 8.35 as follows:

5 (30 ILCS 805/8.35 new)

6 Sec. 8.35. Exempt mandate. Notwithstanding Sections 6 and 8  
7 of this Act, no reimbursement by the State is required for the  
8 implementation of any mandate created by this amendatory Act of  
9 the 97th General Assembly.