



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB1168

Introduced 1/31/2023, by Rep. Daniel Didech and Joyce Mason

#### SYNOPSIS AS INTRODUCED:

410 ILCS 513/15  
725 ILCS 202/5  
725 ILCS 202/6 new

Amends the Genetic Information Privacy Act. Provides that in accordance with the Sexual Assault Evidence Submission Act, genetic information derived from reference specimens of DNA from: (1) a victim of a sexual assault crime or alleged sexual assault crime; (2) known reference samples of DNA from any individual that were voluntarily provided for the purpose of exclusion; and (3) any profiles developed from those samples, may be used only for purposes directly related to the investigation of the sexual assault crime or alleged sexual assault crime through which the victim's genetic information was obtained. Amends the Sexual Assault Evidence Submission Act. Establishes procedures for the use by law enforcement of known reference specimens of DNA from a victim of a sexual assault crime or alleged sexual assault crime, and to known reference samples of DNA from any individual that were voluntarily provided for the purpose of exclusion, and to any profiles developed from those samples. Adds various definitions to the Act.

LRB103 04746 RLC 49755 b

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 Genetic Information Privacy Act is amended  
5 by changing Section 15 as follows:

6 (410 ILCS 513/15)

7 Sec. 15. Confidentiality of genetic information.

8 (a) Except as otherwise provided in this Act, genetic  
9 testing and information derived from genetic testing is  
10 confidential and privileged and may be released only to the  
11 individual tested and to persons specifically authorized, in  
12 writing in accordance with Section 30, by that individual to  
13 receive the information. Except as otherwise provided in  
14 subsection (b) and in Section 30, this information shall not  
15 be admissible as evidence, nor discoverable in any action of  
16 any kind in any court, or before any tribunal, board, agency,  
17 or person pursuant to Part 21 of Article VIII of the Code of  
18 Civil Procedure. No liability shall attach to any hospital,  
19 physician, or other health care provider for compliance with  
20 the provisions of this Act including a specific written  
21 release by the individual in accordance with this Act.

22 (b) When a biological sample is legally obtained by a  
23 peace officer for use in a criminal investigation or

1 prosecution, information derived from genetic testing of that  
2 sample may be disclosed for identification purposes to  
3 appropriate law enforcement authorities conducting the  
4 investigation or prosecution and may be used in accordance  
5 with Section 5-4-3 of the Unified Code of Corrections and  
6 Section 6 of the Sexual Assault Evidence Submission Act. The  
7 information may be used for identification purposes during the  
8 course of the investigation or prosecution with respect to the  
9 individual tested without the consent of the individual and  
10 shall be admissible as evidence in court.

11 The information shall be confidential and may be disclosed  
12 only for purposes of criminal investigation or prosecution.

13 Genetic testing and genetic information derived thereof  
14 shall be admissible as evidence and discoverable, subject to a  
15 protective order, in any actions alleging a violation of this  
16 Act, seeking to enforce Section 30 of this Act through the  
17 Illinois Insurance Code, alleging discriminatory genetic  
18 testing or use of genetic information under the Illinois Human  
19 Rights Act or the Illinois Civil Rights Act of 2003, or  
20 requesting a workers' compensation claim under the Workers'  
21 Compensation Act.

22 In accordance with Section 6 of the Sexual Assault  
23 Evidence Submission Act, the following may be used only for  
24 purposes directly related to the investigation of the sexual  
25 assault crime or alleged sexual assault crime through which  
26 the victim's genetic information was obtained: (1) genetic

1 information derived from reference specimens of DNA from a  
2 victim of a sexual assault crime or alleged sexual assault  
3 crime; (2) genetic information derived from reference  
4 specimens of DNA from known reference samples of DNA from any  
5 individual that were voluntarily provided for the purpose of  
6 exclusion: and (3) genetic information derived from reference  
7 specimens of DNA from any profiles developed from those  
8 samples.

9 (c) If the subject of the information requested by law  
10 enforcement is found innocent of the offense or otherwise not  
11 criminally penalized, then the court records shall be expunged  
12 by the court within 30 days after the final legal proceeding.  
13 The court shall notify the subject of the information of the  
14 expungement of the records in writing.

15 (d) Results of genetic testing that indicate that the  
16 individual tested is at the time of the test afflicted with a  
17 disease, whether or not currently symptomatic, are not subject  
18 to the confidentiality requirements of this Act.

19 (Source: P.A. 95-927, eff. 1-1-09.)

20 Section 10. The Sexual Assault Evidence Submission Act is  
21 amended by changing Section 5 and by adding Section 6 as  
22 follows:

23 (725 ILCS 202/5)

24 Sec. 5. Definitions. In this Act:

1       "Agent" of a law enforcement agency includes any person or  
2 entity the agency provides access to a DNA sample collected  
3 directly from the person of a victim of or witness to a sexual  
4 assault crime or alleged sexual assault crime, or access to  
5 any profile developed from those samples. This includes, but  
6 is not limited to, public or private DNA testing facilities.

7       "Commission" means the Sexual Assault Evidence Tracking  
8 and Reporting Commission.

9       "Incident being investigated" means the sexual assault  
10 crime or alleged sexual assault crime that caused a law  
11 enforcement agency or agent to analyze or request a DNA sample  
12 from a victim of or witness to that sexual assault crime or  
13 alleged sexual assault crime.

14       "Law enforcement agencies" means local, county, State or  
15 federal law enforcement agencies involved in the investigation  
16 of sexual assault cases in Illinois.

17       "Sexual assault evidence" means evidence collected in  
18 connection with a sexual assault investigation, including, but  
19 not limited to, evidence collected using the Illinois State  
20 Police Evidence Collection Kits.

21       "Victim" or "witness" does not include any person who is a  
22 target of the investigation of the incident being  
23 investigated, if law enforcement agents have probable cause to  
24 believe that person has committed a public offense relating to  
25 the incident under investigation.

26       "Voluntarily provided for the purpose of exclusion" means

1 a sample is voluntarily provided for the purpose of exclusion  
2 if law enforcement agents do not consider the individual to be  
3 a suspect and have requested a voluntary DNA sample in order to  
4 exclude that person's DNA profile from consideration in the  
5 current investigation.

6 (Source: P.A. 102-538, eff. 8-20-21.)

7 (725 ILCS 202/6 new)

8 Sec. 6. DNA samples; restrictions on use. The following  
9 procedures in this Section apply to known reference specimens  
10 of DNA from: (1) a victim of a sexual assault crime or alleged  
11 sexual assault crime; (2) known reference samples of DNA from  
12 any individual that were voluntarily provided for the purpose  
13 of exclusion; and (3) any profiles developed from those  
14 samples:

15 (1) Law enforcement agencies and their agents shall use  
16 these DNA samples or profiles only for purposes directly  
17 related to the incident being investigated.

18 (2) No law enforcement agency or agent of a law  
19 enforcement agency may compare any of these samples or  
20 profiles with DNA samples or profiles that do not relate to the  
21 incident being investigated.

22 (3) No law enforcement agency or agent of a law  
23 enforcement agency may include any of these DNA profiles in  
24 any database that allows these samples to be compared to or  
25 matched with profiles derived from DNA evidence obtained from

1 crime scenes.

2 (4) No law enforcement agency or agent of a law  
3 enforcement agency may provide any other person or entity with  
4 access to any of these DNA samples or profiles, unless that  
5 person or entity agrees to abide by the statutory restrictions  
6 on the use and disclosure of that sample or profile.

7 (5) Any part of a DNA sample that remains after the  
8 requested testing or analysis has been performed shall be  
9 securely stored and may be used only in accordance with the  
10 restrictions on use and disclosure of the sample provided in  
11 this Section.

12 (6) No agent of a law enforcement agency may provide any  
13 part of these DNA samples or profiles to any person or entity  
14 other than the law enforcement agency that provided them,  
15 except portions of these remaining DNA samples may be provided  
16 to the defendant when authorized by court order.

17 (7) A person whose DNA profile has been voluntarily  
18 provided for purposes of exclusion shall have the person's  
19 searchable database profile expunged from all public and  
20 private databases if the person has no past or present offense  
21 or pending charge which qualifies that person for inclusion  
22 within the State's DNA Database and Databank Program.

23 (8) This Section does not prohibit crime laboratories from  
24 collecting, retaining, and using for comparison purposes in  
25 multiple cases the following DNA profiles:

26 (A) The DNA profiles from persons whose proximity or

1 access to DNA case evidence during the collection,  
2 handling, or processing of that evidence might result in  
3 DNA contamination, including first responders, crime scene  
4 investigators, laboratory staff, or others at the  
5 laboratory, if these kinds of elimination samples are  
6 voluntarily provided with written consent for their use as  
7 quality assurance or control samples, or if the  
8 elimination samples are obtained as a condition of  
9 employment with written consent, so that the crime  
10 laboratory can assure reliable results.

11 (B) The DNA profiles from persons associated with the  
12 manufacturing or production of consumable supplies or  
13 reagents or positive control samples used in laboratory  
14 testing, if these kinds of elimination samples are  
15 voluntarily provided with written consent.

16 (C) The DNA profiles that may be incidentally  
17 encountered on consumable supplies or reagents such as  
18 plastic tubes, plastic plates, swabs, and buffers.

19 (9) The requirement for written consent for voluntary  
20 elimination samples does not preclude a DNA testing laboratory  
21 from retaining, for use consistent with this Section, the  
22 voluntary quality assurance or control samples described in  
23 paragraph (8) that were provided without written consent by  
24 persons prior to the effective date of this amendatory Act of  
25 the 103rd General Assembly, or if the laboratory is otherwise  
26 required to retain such case samples by another provision of



1 law.

2 (10) This Section does not preclude a DNA testing  
3 laboratory from conducting a limited comparison of samples  
4 that were analyzed concurrently in order to evaluate the DNA  
5 typing results for potential contamination, determine the  
6 source of contamination when detected, and to ensure that the  
7 contaminating profiles were not misidentified as DNA profiles  
8 from putative perpetrators.

9 (11) This Section does not affect the inclusion of  
10 specimens in State DNA databases as described in Section 5-4-3  
11 of the Unified Code of Corrections, the use of state DNA  
12 databases for identifying missing persons, the compliance with  
13 other provisions of law that allow the release of samples for  
14 post-conviction testing, or the use of reference samples from  
15 a suspect lawfully collected in a manner that does not violate  
16 this Section.

17 (12) This Section does not apply to evidence arising from  
18 the victim that is biological material that is not the  
19 victim's own and is not from an individual who voluntarily  
20 provided a reference sample for exclusion, such as DNA  
21 transferred from an assailant.