



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 8, 2003

FILE NO. 03-007

CRIMINAL LAW:
DNA Database

The Honorable Tony Lee
State's Attorney, Ford County
Ford County Courthouse
200 West State Street
Paxton, Illinois 60957

Dear Mr. Lee:

I have your letter wherein you inquire whether defendants who are placed on felony first offender drug probation pursuant to section 10 of the Cannabis Control Act (720 ILCS 550/10 (West 2002)) or section 410 of the Illinois Controlled Substances Act (720 ILCS 570/410 (West 2002)) are required to submit to blood, saliva or tissue sampling for inclusion in the State Offender DNA Identification System database. For the reasons stated below, it is my opinion that persons who are sentenced to first offender probation are "found guilty of [an] offense classified as a felony under Illinois law," for purposes of section 5-4-3 of the Unified Code of Corrections (730 ILCS

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5/5-4-3 (West 2002), as amended by Public Act 92-829, effective August 22, 2002), and are therefore required to submit appropriate samples for analysis and inclusion in the database.

Section 5-4-3 of the Unified Code of Corrections provides, in part:

(a) Any person convicted of, found guilty under the Juvenile Court Act of 1987 for, or who received a disposition of court supervision for, a qualifying offense or attempt of a qualifying offense, convicted or found guilty of any offense classified as a felony under Illinois law, found guilty or given supervision for any offense classified as a felony under the Juvenile Court Act of 1987, or institutionalized as a sexually dangerous person under the Sexually Dangerous Persons Act, or committed as a sexually violent person under the Sexually Violent Persons Commitment Act shall, regardless of the sentence or disposition imposed, be required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police in accordance with the provisions of this Section, provided such person is:

* * *

(3.5) convicted or found guilty of any offense classified as a felony under Illinois law or found guilty or given supervision for such an offense under the Juvenile Court Act of 1987 on or after the effective date of this amendatory Act of the 92nd General Assembly[.] (Emphasis added.)

Section 10 of the Cannabis Control Act and section 410 of the Illinois Controlled Substances Act are substantially

similar in scope. Each provides that when any person who has not previously been convicted of, or placed on probation or court supervision for, a drug offense "pleads guilty to or is found guilty". of a violation of specified sections of those Acts, "the court, without entering a judgment and with the consent of such person, may sentence him to probation." Upon fulfillment of the terms and conditions of probation, "the court shall discharge the person and dismiss the proceedings against him." Each section further provides that a disposition of probation granted thereunder is considered to be a conviction for the purposes of imposing conditions of probation and for appeal, but not for purposes of disqualifications or disabilities resulting from the conviction of a crime, or for purposes of imposing enhanced penalties under the Acts themselves.

The primary goal of statutory construction is to ascertain and give effect to the intention of the General Assembly in its enactment. (King v. Industrial Comm'n (2000), 189 Ill. 2d 167, 171.) An inquiry into the meaning of a statute begins with an examination of its language. (In re Marriage of Burgess (2000), 189 Ill. 2d 270, 277.) Where statutory language is clear and unambiguous, its plain meaning will be given effect. People v. Whitney (1999), 188 Ill. 2d 91, 97.

Under the unambiguous language of section 10 of the Cannabis Control Act and section 410 of the Illinois Controlled Substances Act, a defendant must either plead guilty to or be found guilty of an offense in order to qualify for first offender probation. The requirements of section 5-4-3 of the Unified Code of Corrections are applicable to any person who is "convicted or found guilty of any offense classified as a felony * * * regardless of the sentence or disposition imposed." The term "found guilty" in each of these statutes is clearly employed as an alternative to the term "convicted"; it refers to a finding of operative facts, rather than an entry of judgment. Thus, a defendant who is "found guilty" of a felony for purposes of eligibility for first offender probation would also be "found guilty" of a felony for purposes of the application of section 5-4-3 of the Code of Corrections. The requirements of section 5-4-3 are specifically made applicable to defendants regardless of the sentence or disposition imposed, including defendants who are placed on court supervision, a disposition similar in most respects to first offender probation.

The legislative history of section 5-4-3 supports this conclusion. With respect to the scope of the sampling requirements, the Senate sponsor of the amendment repeatedly pointed out that when another State implemented a similar

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program, it found that a large majority of cases solved through the use of its database involved nonviolent felons, such as drug offenders and thieves, who had "graduated" to more violent crimes. (Remarks of Sen. Dillard, April 4, 2002, Senate Debate on Senate Bill No. 2024, at 86; May 29, 2002, Senate Debate on Senate Bill No. 2024, at 1.) To exclude from the database defendants who have been admitted to first offender probation for felony drug offenses would result in the exclusion of members of an entire class of offenders with respect to whom the genetic information collected may be most important in effectuating the purpose for which the database was created.

It is my opinion, therefore, that defendants who are admitted to first offender probation pursuant to the terms of section 10 of the Cannabis Control Act and section 410 of the Illinois Controlled Substances Act are required to comply with the DNA sampling requirements of section 5-4-3 of the Unified Code of Corrections.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is written in a cursive, flowing style.

LISA MADIGAN
Attorney General