



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1891

Introduced 2/15/2019, by Sen. Antonio Muñoz

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/33-5  
725 ILCS 5/116-4

Amends the Code of Criminal Procedure of 1963. Provides that notwithstanding any provision of the Code to the contrary, forensic testing that would result in the complete consumption of an evidentiary sample shall be permitted if the forensic testing utilizes methods sufficiently established in the particular field that have gained general acceptance and the forensic testing was not conducted in bad faith. Provides that prior to conducting forensic testing that would result in the complete consumption of an evidentiary sample, a forensic scientist must take all reasonable measures to preserve a portion of the evidentiary sample for subsequent forensic testing, unless in the course of the requested forensic testing, the forensic scientist has determined that complete consumption of an evidentiary sample is required to pursue a meaningful analytical result. Amends the Criminal Code of 2012. Provides that it is unlawful for a law enforcement agency or an agent acting on behalf of the law enforcement agency to intentionally fail to comply with the provision. Provides that a violation is a Class 4 felony.

LRB101 08018 SLF 53079 b

CORRECTIONAL  
BUDGET AND  
IMPACT 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 Criminal Code of 2012 is amended by changing  
5 Section 33-5 as follows:

6 (720 ILCS 5/33-5)

7 Sec. 33-5. Preservation of evidence.

8 (a) It is unlawful for a law enforcement agency or an agent  
9 acting on behalf of the law enforcement agency to intentionally  
10 fail to comply with the provisions of subsections ~~subsection~~  
11 (a) or (a-5) of Section 116-4 of the Code of Criminal Procedure  
12 of 1963.

13 (b) Sentence. A person who violates this Section is guilty  
14 of a Class 4 felony.

15 (c) For purposes of this Section, "law enforcement agency"  
16 has the meaning ascribed to it in subsection (e) of Section  
17 116-4 of the Code of Criminal Procedure of 1963.

18 (Source: P.A. 91-871, eff. 1-1-01; 92-459, eff. 8-22-01.)

19 Section 10. The Code of Criminal Procedure of 1963 is  
20 amended by changing Section 116-4 as follows:

21 (725 ILCS 5/116-4)

1           Sec. 116-4. Preservation of evidence for forensic testing.

2           (a) Before or after the trial in a prosecution for a  
3 violation of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50,  
4 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal  
5 Code of 1961 or the Criminal Code of 2012 or in a prosecution  
6 for an offense defined in Article 9 of that Code, or in a  
7 prosecution for an attempt in violation of Section 8-4 of that  
8 Code of any of the above-enumerated offenses, unless otherwise  
9 provided ~~herein under subsection (b) or (c)~~ this Section, a law  
10 enforcement agency or an agent acting on behalf of the law  
11 enforcement agency shall preserve, subject to a continuous  
12 chain of custody, any physical evidence in their possession or  
13 control that is reasonably likely to contain forensic evidence,  
14 including, but not limited to, fingerprints or biological  
15 material secured in relation to a trial and with sufficient  
16 documentation to locate that evidence.

17           (a-5) Notwithstanding any provision of this Code to the  
18 contrary, forensic testing that would result in the complete  
19 consumption of an evidentiary sample shall be permitted if the  
20 forensic testing utilizes methods sufficiently established in  
21 the particular field that have gained general acceptance and  
22 the forensic testing was not conducted in bad faith. Prior to  
23 conducting forensic testing that would result in the complete  
24 consumption of an evidentiary sample, a forensic scientist must  
25 take all reasonable measures to preserve a portion of the  
26 evidentiary sample for subsequent forensic testing, unless in

1 the course of the requested forensic testing, the forensic  
2 scientist has determined that complete consumption of an  
3 evidentiary sample is required to pursue a meaningful  
4 analytical result.

5 (b) After a judgment of conviction is entered, the evidence  
6 shall either be impounded with the Clerk of the Circuit Court  
7 or shall be securely retained by a law enforcement agency.  
8 Retention shall be permanent in cases where a sentence of death  
9 is imposed. Retention shall be until the completion of the  
10 sentence, including the period of mandatory supervised release  
11 for the offense, or January 1, 2006, whichever is later, for  
12 any conviction for an offense or an attempt of an offense  
13 defined in Article 9 of the Criminal Code of 1961 or the  
14 Criminal Code of 2012 or in Section 11-1.20, 11-1.30, 11-1.40,  
15 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the  
16 Criminal Code of 1961 or the Criminal Code of 2012 or for 7  
17 years following any conviction for any other felony for which  
18 the defendant's genetic profile may be taken by a law  
19 enforcement agency and submitted for comparison in a forensic  
20 DNA database for unsolved offenses.

21 (c) After a judgment of conviction is entered, the law  
22 enforcement agency required to retain evidence described in  
23 subsection (a) may petition the court with notice to the  
24 defendant or, in cases where the defendant has died, his or her  
25 estate, his or her attorney of record, or an attorney appointed  
26 for that purpose by the court for entry of an order allowing it

1 to dispose of evidence if, after a hearing, the court  
2 determines by a preponderance of the evidence that:

3 (1) it has no significant value for forensic science  
4 analysis and should be returned to its rightful owner,  
5 destroyed, used for training purposes, or as otherwise  
6 provided by law; ~~or~~

7 (2) it has no significant value for forensic science  
8 analysis and is of a size, bulk, or physical character not  
9 usually retained by the law enforcement agency and cannot  
10 practicably be retained by the law enforcement agency; or

11 (3) there no longer exists a reasonable basis to  
12 require the preservation of the evidence because of the  
13 death of the defendant; however, this paragraph (3) does  
14 not apply if a sentence of death was imposed.

15 (d) The court may order the disposition of the evidence if  
16 the defendant is allowed the opportunity to take reasonable  
17 measures to remove or preserve portions of the evidence in  
18 question for future testing.

19 (d-5) Any order allowing the disposition of evidence  
20 pursuant to subsection (c) or (d) shall be a final and  
21 appealable order. No evidence shall be disposed of until 30  
22 days after the order is entered, and if a notice of appeal is  
23 filed, no evidence shall be disposed of until the mandate has  
24 been received by the circuit court from the appellate court.

25 (d-10) All records documenting the possession, control,  
26 storage, and destruction of evidence and all police reports,

1 evidence control or inventory records, and other reports cited  
2 in this Section, including computer records, must be retained  
3 for as long as the evidence exists and may not be disposed of  
4 without the approval of the Local Records Commission.

5 (e) In this Section, "law enforcement agency" includes any  
6 of the following or an agent acting on behalf of any of the  
7 following: a municipal police department, county sheriff's  
8 office, any prosecuting authority, the Department of State  
9 Police, or any other State, university, county, federal, or  
10 municipal police unit or police force.

11 "Biological material" includes, but is not limited to, any  
12 blood, hair, saliva, or semen from which genetic marker  
13 groupings may be obtained.

14 (Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)