



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2329

by Rep. Deanne M. Mazzochi

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/116-4  
735 ILCS 5/Art. VIII Pt. 29 heading new  
735 ILCS 5/8-2901 new

Amends the Code of Criminal Procedure of 1963. Provides that the law enforcement agency shall present the documentation demonstrating the chain of custody that accompanies the forensic evidence at trial, as well as authenticated copies of the original testing, including, but not limited to, laboratory notebooks, the resumes and qualifications of each individual performing and analyzing the testing and results, as well as supporting documentation from the test methodology itself. Provides that the provision does not apply if a representative of the defendant witnesses the testing as it is being performed or if stipulated to by counsel. Amends the Code of Civil Procedure. Provides that any party seeking to introduce forensic or scientific testing evidence shall present the documentation demonstrating the chain of custody that accompanies the forensic or scientific evidence at trial, as well as authenticated copies of the original testing, including, but not limited to, laboratory notebooks, the resumes and qualifications of each individual performing and analyzing the testing and results, as well as supporting documentation from the test methodology itself. Provides that the receiving party of the evidence in the discovery phase may also request the raw electronic files underlying analytical testing performed on any article or sample.

LRB101 10874 SLF 56017 b

1 AN ACT concerning forensic evidence.

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 changing Section 116-4 as follows:

6 (725 ILCS 5/116-4)

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

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

1 of custody that accompanies the forensic evidence at trial, as  
2 well as authenticated copies of the original testing,  
3 including, but not limited to, laboratory notebooks, the  
4 resumes and qualifications of each individual performing and  
5 analyzing the testing and results, as well as supporting  
6 documentation from the test methodology itself. This  
7 requirement shall not apply if a representative of the  
8 defendant witnesses the testing as it is being performed or if  
9 stipulated to by counsel.

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

26 (c) After a judgment of conviction is entered, the law

1 enforcement agency required to retain evidence described in  
2 subsection (a) may petition the court with notice to the  
3 defendant or, in cases where the defendant has died, his  
4 estate, his attorney of record, or an attorney appointed for  
5 that purpose by the court for entry of an order allowing it to  
6 dispose of evidence if, after a hearing, the court determines  
7 by a preponderance of the evidence that:

8 (1) it has no significant value for forensic science  
9 analysis and should be returned to its rightful owner,  
10 destroyed, used for training purposes, or as otherwise  
11 provided by law; or

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

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

20 (d) The court may order the disposition of the evidence if  
21 the defendant is allowed the opportunity to take reasonable  
22 measures to remove or preserve portions of the evidence in  
23 question for future testing.

24 (d-5) Any order allowing the disposition of evidence  
25 pursuant to subsection (c) or (d) shall be a final and  
26 appealable order. No evidence shall be disposed of until 30

1 days after the order is entered, and if a notice of appeal is  
2 filed, no evidence shall be disposed of until the mandate has  
3 been received by the circuit court from the appellate court.

4 (d-10) All records documenting the possession, control,  
5 storage, and destruction of evidence and all police reports,  
6 evidence control or inventory records, and other reports cited  
7 in this Section, including computer records, must be retained  
8 for as long as the evidence exists and may not be disposed of  
9 without the approval of the Local Records Commission.

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

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

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

20 Section 10. The Code of Civil Procedure is amended by  
21 adding Article VIII Pt. 29 as follows:

22 (735 ILCS 5/Art. VIII Pt. 29 heading new)

23 ARTICLE VIII Pt. 29. Forensic or Scientific Evidence

1 (735 ILCS 5/8-2901 new)

2 Sec. 8-2901. Forensic or scientific evidence;  
3 requirements. Any party seeking to introduce forensic or  
4 scientific testing evidence shall present the documentation  
5 demonstrating the chain of custody that accompanies the  
6 forensic or scientific evidence at trial, as well as  
7 authenticated copies of the original testing, including, but  
8 not limited to, laboratory notebooks, the resumes and  
9 qualifications of each individual performing and analyzing the  
10 testing and results, as well as supporting documentation from  
11 the test methodology itself. The receiving party of the  
12 evidence in the discovery phase may also request the raw  
13 electronic files underlying analytical testing performed on  
14 any article or sample. This Section does not apply if  
15 stipulated to by counsel.