



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3741

Introduced 2/22/2021, by Rep. Jehan Gordon-Booth

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.

LRB102 13596 KMF 18945 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
5 changing 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
10 intentionally fail to comply with the provisions of
11 subsections ~~subsection~~ (a) or (a-5) of Section 116-4 of the
12 Code of Criminal Procedure 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
5 Criminal Code of 1961 or the Criminal Code of 2012 or in a
6 prosecution for an offense defined in Article 9 of that Code,
7 or in a prosecution for an attempt in violation of Section 8-4
8 of that Code of any of the above-enumerated offenses, unless
9 otherwise provided ~~herein~~ under ~~subsection (b) or (c)~~ this
10 Section, a law enforcement agency or an agent acting on behalf
11 of the law enforcement agency shall preserve, subject to a
12 continuous chain of custody, any physical evidence in their
13 possession or control that is reasonably likely to contain
14 forensic evidence, including, but not limited to, fingerprints
15 or biological material secured in relation to a trial and with
16 sufficient 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
25 must 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
6 evidence shall either be impounded with the Clerk of the
7 Circuit Court or shall be securely retained by a law
8 enforcement agency. Retention shall be permanent in cases
9 where a sentence of death is imposed. Retention shall be until
10 the completion of the sentence, including the period of
11 mandatory supervised release for the offense, or January 1,
12 2006, whichever is later, for any conviction for an offense or
13 an attempt of an offense defined in Article 9 of the Criminal
14 Code of 1961 or the Criminal Code of 2012 or in Section
15 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14,
16 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the
17 Criminal Code of 2012 or for 7 years following any conviction
18 for any other felony for which the defendant's genetic profile
19 may be taken by a law enforcement agency and submitted for
20 comparison in a forensic 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
26 appointed for that purpose by the court for entry of an order

1 allowing it to dispose of evidence if, after a hearing, the
2 court 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.)