



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Barbara Flynn Currie

SYNOPSIS AS INTRODUCED:

725 ILCS 5/116-4

Amends the Code of Criminal Procedure of 1963. Makes a technical change in the Section relating to preservation of physical evidence by law enforcement agencies and State's Attorney's offices.

LRB093 17155 RLC 42821 b

1 AN ACT in relation to criminal procedure.

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

22 (b) After a judgment of conviction is entered, the evidence
23 shall either be impounded with the Clerk of the Circuit Court
24 or shall be securely retained by a law enforcement agency.
25 Retention shall be permanent in cases where a sentence of death
26 is imposed. Retention shall be until the completion of the
27 sentence, including the period of mandatory supervised release
28 for the offense, or January 1, 2006, whichever is later, for
29 any conviction for an offense or an attempt of an offense
30 defined in Article 9 of the Criminal Code of 1961 or in Section
31 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of
32 1961 or for 7 years following any conviction for any other

1 felony for which the defendant's genetic profile may be taken
2 by a law enforcement agency and submitted for comparison in a
3 forensic DNA database for unsolved offenses.

4 (c) After a judgment of conviction is entered, the law
5 enforcement agency required to retain evidence described in
6 subsection (a) may petition the court with notice to the
7 defendant or, in cases where the defendant has died, his
8 estate, his attorney of record, or an attorney appointed for
9 that purpose by the court for entry of an order allowing it to
10 dispose of evidence if, after a hearing, the court determines
11 by a preponderance of the evidence that:

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

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

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

24 (d) The court may order the disposition of the evidence if
25 the defendant is allowed the opportunity to take reasonable
26 measures to remove or preserve portions of the evidence in
27 question for future testing.

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

34 (d-10) All records documenting the possession, control,
35 storage, and destruction of evidence and all police reports,
36 evidence control or inventory records, and other reports cited

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

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

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

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