

1 AN ACT concerning 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  
8 testing.

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

24 (b) After a judgment of conviction is entered, the  
25 evidence shall either be impounded with the Clerk of the  
26 Circuit Court or shall be securely retained by a law  
27 enforcement agency. Retention shall be permanent in cases  
28 where a sentence of death is imposed. Retention shall be  
29 until the completion of the sentence, including the period of  
30 mandatory supervised release for the offense, or January 1,  
31 2006, whichever is later, for any conviction for an offense

1 or an attempt of an offense defined in Article 9 of the  
2 Criminal Code of 1961 or in Section 12-13, 12-14, 12-14.1,  
3 12-15, or 12-16 of the Criminal Code of 1961 or for 7 years  
4 following any conviction for any other felony for which the  
5 defendant's genetic profile may be taken by a law enforcement  
6 agency and submitted for comparison in a forensic DNA  
7 database for unsolved offenses.

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

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

20 (2) it has no significant value for forensic  
21 science analysis and is of a size, bulk, or physical  
22 character not usually retained by the law enforcement  
23 agency and cannot practicably be retained by the law  
24 enforcement agency; or

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

29 (d) The court may order the disposition of the evidence  
30 if the defendant is allowed the opportunity to take  
31 reasonable measures to remove or preserve portions of the  
32 evidence in question for future testing.

33 (d-5) Any order allowing the disposition of evidence  
34 pursuant to subsection (c) or (d) shall be a final and

1     appealable order. No evidence shall be disposed of until 30  
2     days after the order is entered, and if a notice of appeal is  
3     filed, no evidence shall be disposed of until the mandate has  
4     been received by the circuit court from the appellate court.

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

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

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

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