



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB2904

Introduced 2/26/2007, by Rep. Tom Cross

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/116-4

Amends the Code of Criminal Procedure of 1963. Makes a technical change in a Section concerning preservation of evidence for forensic testing.

LRB095 06123 RLC 26216 b

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 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 ~~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 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

1 or shall be securely retained by a law enforcement agency.  
2 Retention shall be permanent in cases where a sentence of death  
3 is imposed. Retention shall be until the completion of the  
4 sentence, including the period of mandatory supervised release  
5 for the offense, or January 1, 2006, whichever is later, for  
6 any conviction for an offense or an attempt of an offense  
7 defined in Article 9 of the Criminal Code of 1961 or in Section  
8 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of  
9 1961 or for 7 years following any conviction for any other  
10 felony for which the defendant's genetic profile may be taken  
11 by a law enforcement agency and submitted for comparison in a  
12 forensic DNA database for unsolved offenses.

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

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

25 (2) it has no significant value for forensic science  
26 analysis and is of a size, bulk, or physical character not

1 usually retained by the law enforcement agency and cannot  
2 practicably be retained by the law enforcement agency; or

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

7 (d) The court may order the disposition of the evidence if  
8 the defendant is allowed the opportunity to take reasonable  
9 measures to remove or preserve portions of the evidence in  
10 question for future testing.

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

17 (d-10) All records documenting the possession, control,  
18 storage, and destruction of evidence and all police reports,  
19 evidence control or inventory records, and other reports cited  
20 in this Section, including computer records, must be retained  
21 for as long as the evidence exists and may not be disposed of  
22 without the approval of the Local Records Commission.

23 (e) In this Section, "law enforcement agency" includes any  
24 of the following or an agent acting on behalf of any of the  
25 following: a municipal police department, county sheriff's  
26 office, any prosecuting authority, the Department of State

1 Police, or any other State, university, county, federal, or  
2 municipal police unit or police force.

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

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