

# HB1732



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB1732

by Rep. Michael J. Madigan

### 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.

LRB100 03318 SLF 13323 b

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 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 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.

23 (b) After a judgment of conviction is entered, the evidence

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

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

24 (1) it has no significant value for forensic science  
25 analysis and should be returned to its rightful owner,  
26 destroyed, used for training purposes, or as otherwise

1 provided by law; or

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

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

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

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

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

26 (e) In this Section, "law enforcement agency" includes any

1 of the following or an agent acting on behalf of any of the  
2 following: a municipal police department, county sheriff's  
3 office, any prosecuting authority, the Department of State  
4 Police, or any other State, university, county, federal, or  
5 municipal police unit or police force.

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

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