

HB0930



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0930

by Rep. Mark Batinick

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. 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.

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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 changing
5 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 intentionally
10 fail to comply with the provisions of subsections ~~subsection~~
11 (a) or (a-5) of Section 116-4 of the Code of Criminal Procedure
12 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 Criminal
5 Code of 1961 or the Criminal Code of 2012 or in a prosecution
6 for an offense defined in Article 9 of that Code, or in a
7 prosecution for an attempt in violation of Section 8-4 of that
8 Code of any of the above-enumerated offenses, unless otherwise
9 provided ~~herein under subsection (b) or (c)~~ this Section, a law
10 enforcement agency or an agent acting on behalf of the law
11 enforcement agency shall preserve, subject to a continuous
12 chain of custody, any physical evidence in their possession or
13 control that is reasonably likely to contain forensic evidence,
14 including, but not limited to, fingerprints or biological
15 material secured in relation to a trial and with sufficient
16 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.

23 (b) After a judgment of conviction is entered, the evidence
24 shall either be impounded with the Clerk of the Circuit Court
25 or shall be securely retained by a law enforcement agency.
26 Retention shall be permanent in cases where a sentence of death

1 is imposed. Retention shall be until the completion of the
2 sentence, including the period of mandatory supervised release
3 for the offense, or January 1, 2006, whichever is later, for
4 any conviction for an offense or an attempt of an offense
5 defined in Article 9 of the Criminal Code of 1961 or the
6 Criminal Code of 2012 or in Section 11-1.20, 11-1.30, 11-1.40,
7 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the
8 Criminal Code of 1961 or the Criminal Code of 2012 or for 7
9 years following any conviction for any other felony for which
10 the defendant's genetic profile may be taken by a law
11 enforcement agency and submitted for comparison in a forensic
12 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 or her
17 estate, his or her attorney of record, or an attorney appointed
18 for that purpose by the court for entry of an order allowing it
19 to dispose of evidence if, after a hearing, the court
20 determines 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. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)