

725 ILCS 5/116-4

West's Smith-hurd Illinois Compiled Statutes Annotated [Currentness](#)

Chapter 725. Criminal Procedure

Act 5. Code of Criminal Procedure of 1963

[Title VI.](#) Proceedings at Trial

[Article 116.](#) Post-trial Motions

➔5/116-4. Preservation of evidence for forensic testing

§ 116-4. Preservation of evidence for forensic testing.

(a) Before or after the trial in a prosecution for a violation of Section 12- 13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 [\[FN1\]](#) or in a prosecution for an offense defined in Article 9 of that Code, [\[FN2\]](#) or in a prosecution for an attempt in violation of Section 8-4 of that Code [\[FN3\]](#) of any of the above-enumerated offenses, unless otherwise provided herein under subsection (b) or (c), a law enforcement agency or an agent acting on behalf of the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence in their possession or control that is reasonably likely to contain forensic evidence, including, but not limited to, fingerprints or biological material secured in relation to a trial and with sufficient documentation to locate that evidence.

(b) After a judgment of conviction is entered, the evidence shall either be impounded with the Clerk of the Circuit Court or shall be securely retained by a law enforcement agency. Retention shall be permanent in cases where a sentence of death is imposed. Retention shall be until the completion of the sentence, including the period of mandatory supervised release for the offense, or January 1, 2006, whichever is later, for any conviction for an offense or an attempt of an offense defined in Article 9 of the Criminal Code of 1961 or in Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or for 7 years following any conviction for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison in a forensic DNA database for unsolved offenses.

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

(1) it has no significant value for forensic science analysis and should be returned to its rightful owner, destroyed, used for training purposes, or as otherwise provided by law; or
(2) it has no significant value for forensic science analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the law enforcement agency; or
(3) there no longer exists a reasonable basis to require the preservation of the evidence because of the death of the defendant; however, this paragraph (3) does not apply if a sentence of death was imposed.

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

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

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

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

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

CREDIT(S)

Laws 1963, p. 2836, § 116-4, added by [P.A. 91-871, § 10, eff. Jan. 1, 2001](#).
Amended by [P.A. 92-459, § 10, eff. Aug. 22, 2001](#).
[\[FN1\] 720 ILCS 5/12-13, 5/12-14, 5/12-14.1, 5/12-15, or 5/12-16.](#)

[\[FN2\] 720 ILCS 5/9-1](#) et seq.

[\[FN3\] 720 ILCS 5/8-4.](#)

HISTORICAL AND STATUTORY NOTES

P.A. 92-459 rewrote this section, which prior thereto read:

"Chain of custody.

"(a) In a prosecution for a violation of Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or in a prosecution for an offense defined in Article 9 of that Code, the law enforcement agency and the State's Attorney's Office shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence.

"(b) After a trial resulting in a judgment of conviction the evidence shall either be impounded with the Clerk of the Circuit Court or shall be securely retained by a law enforcement agency. Retention shall be:

"(1) Permanent following any conviction for an offense defined in Article 9 of the Criminal Code of 1961.

"(2) For 25 years following any conviction for a violation of Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961.

"(3) For 7 years following any conviction for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison in a forensic DNA database for unsolved offenses.

"(c) After a judgment of conviction is entered, the State's Attorney or law enforcement agency having custody of evidence described in subsection (a) may petition the court with notice to the defendant for entry of an order allowing it to dispose of evidence if, after a hearing, the court determines by a preponderance of the evidence that:

"(1) it has no significant value for forensic science analysis and must be returned to its rightful owner; or

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

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

"(e) For purposes of this Section, 'law enforcement agency' has the meaning ascribed to it in clause (a)(4) of Section 107-4 of this Code."

CROSS REFERENCES

Crimes, chain of custody, intentional failure to comply, see [720 ILCS 5/33- 5](#).

LIBRARY REFERENCES

[Criminal Law](#) ¶700(9).

Westlaw Topic No. [110](#).

[C.J.S. Criminal Law §§ 541](#) to [548](#).

RESEARCH REFERENCES

Treatises and Practice Aids

[6 Illinois Practice Series § 23.46](#), Preserving Evidence (New).

[11 Illinois Practice Series § 901\(1\):2](#), Chain of Custody.

UNITED STATES CODE ANNOTATED

Innocence Protection Act of 2004, see [18 U.S.C.A. § 3600A](#); [42 U.S.C.A. §§ 14136e](#), 4163 et seq.

725 I.L.C.S. 5/116-4, IL ST CH 725 § 5/116-4

Current through P.A. 94-726 of the 2005 Reg. Sess.