

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Controlled Substances Act is amended by adding Section 510 as follows:

(720 ILCS 570/510 new)

Sec. 510. Preservation of evidence for laboratory testing.

(a) Before or after the trial in a prosecution for a violation of any Section of Article IV of this Act, a law enforcement agency or an agent acting on behalf of the law enforcement agency must preserve, subject to a continuous chain of custody, not less than:

(1) 2 kilograms of any substance containing a detectable amount of heroin;

(2) 10 kilograms of any substance containing a detectable amount of: (A) coca leaves, except coca leaves and extract of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; (B) cocaine, its salts, optical and geometric isomers, and salts of isomers; (C) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or (D) any combination of the substances described in subdivisions (A) through (C) of this paragraph (a) (2);

(3) 10 kilograms of a mixture of substances described in subdivision (B) of paragraph (a)(2) that contains a cocaine base;

(4) 200 grams of phencyclidine (also referred to as "PCP") or 2 kilograms of any substance containing a detectable amount of phencyclidine;

(5) 20 grams of any substance containing a detectable amount of lysergic acid diethylamide (also referred to as "LSD");

(6) 800 grams of a mixture or substance containing a detectable amount of fentanyl, or 2 grams of any substance containing a detectable amount of any analog of fentanyl;
with respect to the offenses enumerated in this subsection (a) and must maintain sufficient documentation to locate that evidence. Excess quantities with respect to the offenses enumerated in this subsection (a) cannot practicably be retained by a law enforcement agency because of its size, bulk, and physical character.

(b) The sheriff or seizing law enforcement agency must file a motion requesting destruction of bulk evidence before the trial judge in the courtroom where the criminal charge is pending. The sheriff or seizing law enforcement agency must give notice of the motion requesting destruction of bulk evidence to the prosecutor of the criminal charge and the defense attorney of record. The trial judge will conduct an evidentiary hearing in which all parties will be given the

opportunity to present evidence and arguments relating to whether the evidence should be destroyed, whether such destruction will prejudice the prosecution of the criminal case, and whether the destruction of the evidence will prejudice the defense of the criminal charge. The court's determination whether to grant the motion for destruction of bulk evidence must be based upon the totality of all of the circumstances of the case presented at the evidentiary hearing, the effect such destruction would have upon the defendant's constitutional rights, and the prosecutor's ability to proceed with the prosecution of the criminal charge.

(c) The court may, before trial, transfer excess quantities of any substance containing any of the controlled substances enumerated in subsection (a) with respect to a prosecution for any offense enumerated in subsection (a) to the sheriff of the county, or may, in its discretion, transfer such evidence to the Department of State Police, for destruction after notice is given to the defendant's attorney of record or to the defendant if the defendant is proceeding pro se.

(d) After a judgment of conviction is entered and the charged quantity is no longer needed for evidentiary purposes with respect to a prosecution for any offense enumerated in subsection (a), the court may transfer any substance containing any of the controlled substances enumerated in subsection (a) to the sheriff of the county, or may, in its discretion, transfer such evidence to the Department of State Police, for

destruction after notice is given to the defendant's attorney of record or to the defendant if the defendant is proceeding pro se. No evidence shall be disposed of until 30 days after the judgment 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.

Section 99. Effective date. This Act takes effect upon becoming law.