

Title 12. Law Enforcement, Emergency Management, and Military Affairs
Chapter VI. State Crime Laboratory, Department of Public Safety
Subchapter A. Generally
Part 30. Rules and Procedures for the Collection of DNA Samples

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"AUTHORITY

As required by the Administrative Procedures Act, Arkansas Code 25-15-204, the Arkansas State Crime Laboratory duly adopts and promulgates the following rules and regulations for the procedures to implement the requirements of Act 974 of 2009 (Juli's Law)".

Subpart 1. Generally

12 CAR § 30-101. Title.

The title of this part will be known as the "Rules and Procedures for the Collection of DNA Samples", to provide for the collection of a DNA sample following an arrest or a criminal charge for certain offenses and to establish procedures for the collection, maintenance, and dissemination of DNA samples".

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-102. Definitions.

As used in this part:

(1)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) The administration of criminal justice also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2) "Arrest tracking number" means a unique number assigned to an arrestee at the time of each arrest that is used to link that arrest to the final disposition of that charge;

(3) "Central repository" means the Arkansas Crime Information Center, which is authorized to collect, maintain, and disseminate criminal history information;

(4) "CODIS" means the Federal Bureau of Investigation Laboratory's Combined DNA Index System that allows the storage and exchange of DNA records submitted by:

(A) Federal forensic laboratories;

(B) State forensic laboratories; and

(C) Local forensic laboratories;

(5) "Conviction information" means criminal history information disclosing that a person has pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense in a court of law, together with sentencing information;

(6)(A)(i) "Criminal history information" means a record compiled by a central repository or the Identification Bureau of the Division of Arkansas State Police on an individual consisting of:

(a) Names and identification data;

(b) Notation of arrest;

(c) Detentions;

(d) Indictments;

(e) Information; or

(f) Other formal criminal charges.

(ii) This record also includes any dispositions of the charges, as well as notations on correctional supervision and release.

(B) "Criminal history information" does not include fingerprint records on individuals not involved in the criminal justice system or driver history records;

(7) "Criminal history information system" means the equipment, procedures, agreements, and organizations thereof, for the compilation, processing, preservation, and dissemination of criminal history information;

(8) "Criminal justice agency" means a government agency or any subunit of a government agency that:

(A) Is authorized by law to perform the administration of criminal justice;
and

(B) Allocates more than one-half (1/2) its annual budget to the administration of criminal justice;

(9) "Criminal justice official" means an employee of a criminal justice agency performing the administration of criminal justice;

(10)(A) "Disposition" means information describing the outcome of any criminal charges, including notations that:

(i) Law enforcement officials have elected not to refer the matter to a prosecutor;

(ii) A prosecutor has elected not to commence criminal proceedings;

or

(iii) Proceedings have been indefinitely postponed.

(B) "Disposition" also includes:

(i) Acquittals;

(ii) Dismissals;

(iii) Probations;

(iv) Charges pending due to mental disease or defect;

(v) Guilty pleas;

(vi) Nolle prosequi;

(vii) Nolo contendere pleas;

(viii) Findings of guilt;

(ix) Youthful offender determinations;

(x) First offender programs;

(xi) Pardons;

- (xii) Commuted sentences;
- (xiii) Mistrials in which the defendant is discharged;
- (xiv) Executive clemencies;
- (xv) Paroles;
- (xvi) Releases from correctional supervision; or
- (xvii) Deaths;

(11) "DNA" means deoxyribonucleic acid and is located in the cells of an individual, provides an individual personal genetic blueprint, and encodes genetic information that is the basis of human heredity and forensic identification;

(12)(A) "DNA record" means DNA identification information stored in the State DNA Data Base or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

(B) The DNA record is the result obtained from the DNA typing tests.

(C) The DNA record comprises the characteristics of a DNA sample which are of value in establishing the identity of individuals.

(D) The results of all DNA identification tests on an individual DNA sample are also collectively referred to as the DNA profile of an individual;

(13) "DNA sample" means a blood, saliva, or tissue sample provided by any individual as required by this part or submitted to the State Crime Laboratory for:

(A) Analysis;

(B) Storage; or

(C) Both;

(14) "Expunged record" means a record that was expunged under Arkansas Code § 16-90-901 et seq. [repealed];

(15) "Identification Bureau" means the Identification Bureau of the Division of Arkansas State Police, which may maintain fingerprint card files and other identification information on individuals;

(16)(A) "Juvenile aftercare and custody information" means information maintained by the Division of Youth Services of the Department of Human Services regarding the status of a juvenile committed to or otherwise placed in the custody of

the Division of Youth Services of the Department of Human Services from the date of commitment until the juvenile is released from aftercare or custody, whichever is later.

(B) This may include the name, address, and phone number of a contact person or an entity responsible for the juvenile;

(17) "Non-conviction information" means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charge is pending, as well as all acquittals and all dismissals; and

(18) "Pending information" means criminal history information in some stage of active prosecution or processing.

Authority. Arkansas Code § 12-12-303.

Codification Notes. Arkansas Code §§ 16-90-901 – 16-90-906 were repealed by Acts 2013, No. 1460, §7. Arkansas Code § 16-90-907 was repealed by Acts 2015, No. 1152, § 11.

12 CAR § 30-103. Powers and duties of the State Crime Laboratory.

The powers and duties of the State Crime Laboratory are as follows:

(1) Be responsible for the policy management and administration of the state DNA identification record system to support law enforcement agencies and other criminal justice agencies;

(2) Promulgate rules to carry out the provisions of Acts 2009, No. 974, which will include:

(A) The storage of DNA samples;

(B) Maintenance of DNA records generated by the laboratory; and

(C) Retention of DNA samples;

(3) The State Crime Laboratory shall promulgate rules governing the procedures to be used in submission, identification, analysis, storage, and disposition of DNA samples and typing results of DNA samples submitted under the Arkansas State Criminal Records Act, Arkansas Code § 12-12-1501 et seq.;

(4) Establish quality assurance guidelines to ensure that DNA identification records meet standards for laboratories that submit DNA records to the State DNA Data Base;

(5) Promulgate rules governing the methods of obtaining information from the State DNA Data Base and CODIS and procedures for verification of the identity and authority of the requester;

(6) Provide for liaison with the Federal Bureau of Investigation and other criminal justice agencies in regard to the state's participation in CODIS or any DNA database designated by the State Crime Laboratory;

(7) Establish and administer the State DNA Data Base and may develop a local population DNA databank;

(8) The State Crime Laboratory shall have the capability provided by computer software and procedures to store and maintain DNA records related to;

(9) The State Crime Laboratory shall make recommendations to the General Assembly on additional criminal offenses which may need to be added;

(10) The DNA identification system as established shall be compatible with the procedures specified by the Federal Bureau of Investigation, to include using comparable:

(A) Test procedures;

(B) Lab equipment;

(C) Supplies; and

(D) Computer software; and

(11)(A) The State Crime Laboratory is authorized to contract with a third party or parties to run DNA analysis for use in the DNA databank.

(B) The submitted samples to the third party or parties will be identified only by a bar code.

(C) The contractual laboratory must meet the same quality assurance and quality control requirements as the State Crime Laboratory.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-104. Persons required to surrender a DNA sample.

A DNA sample is required of a person arrested for:

- (1) Capital murder, Arkansas Code § 5-10-101;
- (2) Murder in the first degree, Arkansas Code § 5-10-102;
- (3) Kidnapping, Arkansas Code § 5-11-102;
- (4) Sexual assault in the first degree, Arkansas Code § 5-14-124; and
- (5) Sexual assault in the second degree, Arkansas Code § 5-14-125.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-105. Procedures for collection and transmission of DNA samples.

(a) The State Crime Laboratory will provide an approved training method for the collection of DNA samples.

(b)(1) The State Crime Laboratory will provide a kit for the collection of the DNA sample.

(2) See attached collection procedure.

(c)(1) The State Crime Laboratory will also incur shipping costs of the kits from the laboratory to the collection agency.

(2) The collecting agency is responsible for the transportation or submission of collection kits.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-106. Limitation on liability.

(a) A person authorized to take a DNA sample is not criminally liable for taking a DNA sample under Acts 2009, No. 974, if he or she takes the DNA sample in good faith and uses reasonable force.

(b) A person authorized to take a DNA sample is not civilly liable for taking a DNA sample if the person acted:

- (1) In good faith;
- (2) In a reasonable manner;
- (3) Using reasonable force; and
- (4) According to generally accepted medical and other professional practices.

(c) An authorized law enforcement agency or an authorized correctional agency may employ reasonable force if an individual refuses to submit to a taking of a DNA sample authorized under Acts 2009, No. 974.

(d) An employee of an authorized law enforcement agency or an authorized correctional agency is not criminally or civilly liable for the use of reasonable force.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-107. Release of information.

(a) The following guidelines for release of information will be instituted after requirements of Arkansas Code § 12-12-312 have been met.

(b) A DNA sample or DNA record obtained under Acts 2009, No. 974, shall be disseminated only to criminal justice agencies and criminal justice officials for the administration of criminal justice.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-108. Rules for obtaining DNA information.

(a) The Director of the State Crime Laboratory, after review of written request, may release DNA information from the State DNA Data Bank as long as there is no conflict with provisions of:

- (1) Arkansas Code § 12-12-312;
- (2) Acts 2009, No. 974; and
- (3) CODIS rules and regulations.

(b) Such request must be:

- (1) On agency letterhead; and
- (2) Presented by a representative of such agency holding valid photo identification.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-109. Removal and destruction of DNA record and sample.

(a) Any person whose DNA record has been included in the State DNA Data Base and whose DNA sample is stored in the State DNA Data Bank as authorized by Acts 2009, No. 974, may apply to the State Crime Laboratory for removal and destruction of the DNA record and DNA sample if the arrest that led to the inclusion of the DNA record and DNA sample resulted in a charge that has been resolved by:

- (1) An acquittal;
- (2) A dismissal;
- (3) A nolle prosequi;
- (4) A successful completion of a preprosecution diversion program or a conditional discharge;
- (5) A conviction of a Class B misdemeanor or Class C misdemeanor; or
- (6) Not resulting in a charge within one (1) year of the date of the arrest.

(b) The State Crime Laboratory shall remove and destroy a person's DNA record and DNA sample by purging the DNA record and other identifiable information from the State DNA Data Base and the DNA sample stored in the State DNA Data Bank when the person provides the State Crime Laboratory with:

- (1) A court order for removal and destruction of the DNA record and DNA sample; and
- (2) Either of the following:
 - (A) A certified copy of:
 - (i) An order of acquittal;
 - (ii) An order of dismissal;

(iii) An order of nolle prosequi;
(iv) Documentation reflecting a successful completion of a preprosecution program or a conditional discharge; or
(v) A judgment of conviction of a Class B misdemeanor or Class C misdemeanor; or

(B) A court order stating that a charge arising out of the person's arrest has not been filed within one (1) year of the date of the arrest.

(c) If the State Crime Laboratory removes and destroys a person's DNA record and DNA sample under Acts 2009, No. 974, the State Crime Laboratory shall request that the person's DNA record be purged from the national DNA index system.

Authority. Arkansas Code § 12-12-303.

12 CAR § 30-110. Prohibition against disclosure.

Arkansas Code § 12-12-1115(b), concerning the penalty for prohibited disclosure of DNA information, is amended to read as follows: "Any person who knowingly violates this Act is guilty of a Class D felony."

Authority. Arkansas Code § 12-12-303.