

Title 12. Law Enforcement, Emergency Management, and Military Affairs

Chapter VI. State Crime Laboratory, Department of Public Safety

Subchapter A. Generally

Part 31. Procedures for the Collection, Maintenance, and Preservation of Fetal Tissue

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 725 of 2013 (Child Maltreatment Act)."

Subpart 1. General Provisions

12 CAR § 30-101. Title.

The title of this part will be known as the Child Maltreatment Act rules to provide for the collection of a forensic sample of fetal tissue following an abortion performed on a child who is less than fourteen (14) years of age at the time of the abortion and to establish procedures for the collection, maintenance, and dissemination of the forensic samples.

Authority. Arkansas Code § 12-18-108.

12 CAR § 31-102. Definitions.

As used in this part:

(1)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) "Abortion" does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

- (i) Save the life or preserve the health of the unborn child;
- (ii) Remove a dead unborn child caused by spontaneous abortion; or
- (iii) Remove an ectopic pregnancy;

(2)(A) "Chain of custody" is a legal process referring to the paper trail that assures the integrity and security of the evidence.

(B) Chain of custody forms and labels document possession of the evidence from the moment of collection until the moment it is introduced in court, where the chain of custody will be closely scrutinized.

(C) If the chain of custody is broken, the evidence can be challenged in court and subject to allegations of mishandling or evidence tampering;

(3)(A) "Products of conception" is the medical term used for the tissue derived from the union of egg and a sperm.

(B) It is the fragments of fetal or membrane tissue remaining in utero following delivery or abortion; and

(4) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides:

- (A) Abortions;
- (B) Abortion counseling;
- (C) Abortion referrals;
- (D) Contraceptives;
- (E) Contraceptive counseling;
- (F) Sex education; or
- (G) Gynecological care and services.

Authority. Arkansas Code § 12-18-108.

12 CAR § 31-103. Required rules.

The State Crime Laboratory shall adopt rules prescribing:

- (1) The amount and type of fetal tissue to be preserved;
- (2) Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;
- (3) Procedures for documenting the chain of custody of the tissue for use as evidence;
- (4) Procedures for proper disposal of fetal tissue;
- (5) A uniform reporting instrument mandated to be used by physicians when submitting fetal tissue under this section shall include the:
 - (A) Name and address of the physician submitting the fetal tissue; and
 - (B) Name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and
- (6) Procedures for communication with law enforcement agencies regarding evidence and information obtained.

Authority. Arkansas Code § 12-18-108.

Codification Notes. "DNA" means deoxyribonucleic acid.

Subpart 2. Procedures for Collection, Maintenance, and Dissemination of Forensic Samples

12 CAR § 31-201. Amount and type of fetal tissue to be preserved.

All products of conception should be preserved and submitted to the State Crime Laboratory.

Authority. Arkansas Code § 12-18-108.

12 CAR § 31-202. Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination.

(a) Fetal tissue should be collected with no preservatives and packaged in an air-tight, sealed, and labeled container and immediately frozen at negative twenty degrees Celsius (-20°C).

(b) Never use formalin or formaldehyde to preserve any biological evidence because these chemicals degrade DNA.

(c) The container shall be labeled with the:

- (1) Patient's name and date of birth;
- (2) Date of the collection; and
- (3) Name of the individual collecting the products of conception.

Authority. Arkansas Code § 12-18-108.

Codification Notes. "DNA" means deoxyribonucleic acid.

12 CAR § 31-203. Procedures for documenting the chain of custody of the tissue for use as evidence.

(a) The chain of custody begins as soon as the physician locates or obtains physical evidence.

(b) The physician must properly establish and maintain the chain of custody for this evidence.

(c)(1) To properly initiate the chain of custody, labels are placed on each item of sealed evidence indicating the:

- (A) Patient's name and date of birth;
- (B) Date of the collection;
- (C) Name of the individual collecting the products of conception;
- (D) Name of the person who sealed the evidence;
- (E) Date and time it was sealed;
- (F) Names of those who release and receive the evidence; and
- (G) Time it is transferred.

(2) The final transfer of evidence to law enforcement is then documented on the State Crime Laboratory Submission Sheet.

Authority. Arkansas Code § 12-18-108.

12 CAR § 31-204. Procedures for proper disposal of fetal tissue.

Upon completion of DNA analysis, any remaining samples will be disposed of by the State Crime Laboratory after receipt of a "letter of destruction" from the respective investigating agency.

Authority. Arkansas Code § 12-18-108.

Codification Notes. "DNA" means deoxyribonucleic acid.

12 CAR § 31-205. Uniform reporting requirements.

(a) A uniform reporting instrument is mandated to be used by physicians when submitting fetal tissue under this part which shall include the:

- (1) Name and address of the physician submitting the fetal tissue; and
- (2) Name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed.

(b)(1) The physician collecting the sample must use the State Crime Laboratory Evidence Submission Sheet which will document the:

- (A) Name and address of the physician submitting the fetal tissue; and
- (B) Name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed.

(2) This submission sheet will be available on the State Crime Laboratory website: <https://www.dps.arkansas.gov/crime-info-support/arkansas-state-crime-lab/>.

Authority. Arkansas Code § 12-18-108.

12 CAR § 31-206. Procedures for communication with law enforcement agencies regarding evidence and information obtained.

(a) In accordance with requirements enumerated in Acts 2013, No. 725, the physician or the reporting medical facility shall contact the law enforcement agency in the jurisdiction where the child resides.

(b) The address of the victim, parent, and/or legal guardian must be placed on the State Crime Laboratory Submission Sheet.

Authority. Arkansas Code § 12-18-108.