

A.C.A. § 12-12-104

West's Arkansas Code Annotated [Currentness](#)

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

Subtitle 2. Law Enforcement Agencies and Programs (Chapters 6 to 24)

[Chapter 12.](#) Crime Reporting and Investigations

[Subchapter 1.](#) General Provisions

➡§ 12-12-104. Retention and disposition of physical evidence in sex offense prosecutions

(a) In a prosecution for a sex offense or a violent offense, the law enforcement agency 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)(1) After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency.

(2) Retention shall be the greater of:

(A) Permanent following any conviction for a violent offense;

(B) For twenty-five (25) years following any conviction for a sex offense; and

(C) For seven (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 to the State DNA Data Base for unsolved offenses.

(c) After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of time in which to respond, the court determines by a preponderance of the evidence that:

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

(2) The evidence has no significant value for forensic 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 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)(1) It is unlawful for any person to purposely fail to comply with the provisions of this section.

(2) A person who violates this section is guilty of a Class A misdemeanor.

(f) As used in this section:

(1) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(2) "Sex offense" means a sex offense as defined in former [§ 12-12- 1103\(10\)](#); and

(3) "Violent offense" means a violent offense as defined in [§ 12-12- 1103\(11\)](#).

[Acts of 2001, Act 1780, § 11, eff. Aug. 13, 2001.](#)

CROSS REFERENCES

Classification of offenses, determinate sentencing, misdemeanors and felonies, see [§ 5-4-401](#).

Fines, restitution and imprisonment, punishment for misdemeanors and felonies generally, see [§ 5-4-104](#).

LIBRARY REFERENCES

[Criminal Law](#) ~~700~~[700\(9\)](#).

Westlaw Key Number Search: 110k700(9).

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

A.C.A. § 12-12-104, AR ST § 12-12-104

Current through 2005 Regular Session of the 85th General Assembly and November 8, 2005 General Election, including changes made by the Arkansas