

Public Notice

The Board of Corrections will review the following Administrative Regulation AR 834 Procedure for Handling Disciplinary Infraction of Mentally Disordered Inmates.

Copies of the proposed regulation are available for public inspection at the Arkansas Department of Correction, 6814 Princeton Pike Road, Pine Bluff, AR 71602. The proposed Administrative Regulation AR 834 Procedure for Handling Disciplinary Infraction of Mentally Disordered Inmates is also available for review online through the Secretary of State's website: sos.arkansas.gov.

Written comments regarding the Administrative Regulation should be postmarked by December 15, 2017. Comment may be mailed to Arkansas Department of Correction, Attention: Agency Policy Coordinator, P.O. Box 8707, Pine Bluff, AR 71611-8707.

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Correction

Department Public Information Office

Contact Takelia McDaniel E-mail Takelia.McDaniel@Arkansas.gov Phone 870-267-6345

Statutory Authority for Promulgating Rules 12-27-105

Rule Title: AR834 Procedure for Handling Disciplinary Infraction of Mentally Disordered Inmates

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published 12/13/17

Final Date for Public Comment 1/12/2017

Reviewed by Legislative Council _____

Adopted by State Agency _____

Date

12/13/17

1/12/2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Takelia McDaniel
Contact Person

Takelia.McDaniel@Arkansas.gov
E-mail Address

12/11/17
Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

T. McDaniel
Signature

870-267-6345

Phone Number

Takelia.McDaniel@arkansas.gov

E-mail Address

Agency Policy Coordinator

Title

12/11/2017

Date

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Correction
DIVISION Public Information Office
DIVISION DIRECTOR Solomon Graves
CONTACT PERSON Takelia McDaniel
ADDRESS PO Box 8707 Pine Bluff 71611
PHONE NO. 870-267-6345 FAX NO. 870-267-6373 E-MAIL takelia.mcdaniel@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Solomon Graves and Jim DePriest
PRESENTER E-MAIL solomon.graves@arkansas.gov and jim.depriest@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? AR-834: Procedure for Handling Disciplinary Infractions of Mentally Disordered Inmates
2. What is the subject of the proposed rule? The Proper handling of Disciplinary Infractions of Mentally Disorder Inmates
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. N/A

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes ☒ No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. 12-27-105

7. What is the purpose of this proposed rule? Why is it necessary? To ensure that policies and procedures for management of inmate behavior adequately take into account serious mental illness so that no inmate is punished for behavior in cases in which that inmate is unable, by virtue of mental illness or defect to exercise appropriate control. To ensure that appropriate treatment interventions are considered and made accessible to reduce the likelihood of future acting out. And further to ensure that any punishments imposed on mentally ill or developmentally disabled inmates are monitored so as to be consistent with treatment goals and not to cause regression or deterioration of the inmate's mental condition.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). SOS.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
December 15, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
Pending Legislative Review and final approval by Board of Correction

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please
explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.

None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Correction
DIVISION Public Information Office
PERSON COMPLETING THIS STATEMENT Takelia McDaniel
TELEPHONE NO. 870-267-6345 **FAX NO.** 870-267-6373 **EMAIL:** Takelia.McDaniel@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE AR-834: Procedure for Handling Disciplinary Infractions of Mentally Disordered Inmates

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

Other (Identify) 0

Other (Identify) 0

Total 0

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	0
Federal Funds	0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	0

Next Fiscal Year

General Revenue	0
Federal Funds	0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

N/A

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

N/A

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Attachment #1: AR-834 Summary

This is a proposed amendment to an existing Rule. Existing AR 834 sets of the policy of the Department of Corrections regarding the use of the disciplinary process in the management of the behavior of inmates who are suffering from, or may be suffering from, mental illness. The policy, both existing and as amended, recognizes the need to include the participation of trained mental health staff in the disciplinary process for these inmates. The purpose of the amendment is to adopt a new definition for the term "Serious Mental Illness" to conform with standards in the profession. Other proposed changes are non-substantive, designed only to clarify the existing procedures.

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and


(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

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 ADMINISTRATIVE REGULATIONS STATE OF ARKANSAS BOARD OF CORRECTIONS	Section Number: 834	Page Number: 1 of 2
	Board Approval Date: 8-23-06	
	Supersedes: AR-834	Dated: —5-19-88
	Reference:	Effective Date: 3-5-07
SUBJECT: Procedure for Handling Disciplinary Infractions of Mentally Disordered Inmates		

I. **AUTHORITY:**

The authority of the Board of Corrections to promulgate this Administrative Regulation is A.C.A. 12-27-105.

II. **PURPOSE:**

To ensure that policies and procedures for management of inmate behavior adequately take into account serious mental illness, ~~so that no inmate is punished for behavior in cases in which that inmate is unable, by virtue of mental illness or defect to exercise appropriate control. Also To~~ ensure that appropriate treatment interventions are considered and made accessible to reduce the likelihood of future misbehavior acting out. And these treatment interventions are consistent And further to ensure that any punishments imposed on mentally ill or developmentally disabled inmates are monitored so as to be consistent with treatment goals so as and not to cause regression or deterioration of the inmate's mental condition.

III. **APPLICABILITY:**

To all inmates identified as having a history of serious mental illness, or suspected at any point to be developing serious mental illness. To all staff involved in the disciplinary process, supervising inmates in segregated areas, or involved in health and correctional programs.

IV. **DEFINITIONS:**

- A. **Assessment Evaluation:** A mental health ~~assessment~~ evaluation performed under the supervision of a licensed practitioner, and which includes, at a minimum, direct contact with the inmate.
- B. **Recommendations:** Statements made and signed by a licensed clinician ~~which that may include, but are not limited to, the following:~~ will include a strategy for preventing future repetitions of the misbehavior while maintaining the mental health of the offender inmate; and shall may include the degree to which the individual should be held

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accountable for the behaviors in question, mitigating circumstances, suggestions for placement of the inmate, and treatment plan considerations for the inmate.

C. C. Serious Mental Illness: This is defined as symptoms of a diagnosable mental disorder that impairs an individual's functioning and disrupts the capacity to cope with the ordinary demands of life. A serious mental illness will be considered to be a psychosis, such as schizophrenia, or major affective disorder such as bipolar disorder or major depression, that is likely to impair cognitive function and judgment but may include other mental disorders as defined as Axis-I disorders in the current Diagnostic and Statistical Manual and Developmental Disabilities. It may also be considered for individuals with Axis-II diagnoses where the disorder clearly contributes to major functional impairments.

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V. POLICY:

It is the policy of the Arkansas Department of Correction and a goal of the correctional process to teach self-control and personal responsibility for behavior to all inmates in its custody. It is recognized that inmate personal responsibility for behavior may be influenced by serious mental illness, and that such influences must be taken into account in pursuing the goals set out in this policy, both in assigning responsibility and in carrying out consequences.

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VI. PROCEDURES:

- A. At intake an evaluation assessment will be done on all individuals inmates entering the Arkansas Department of Correction and a mental health classification will be assigned as recommended by a licensed mental health staff psychologist or psychiatrist, and documented in the appropriate records.
- B. This classification will be reviewed and updated during the inmate's incarceration.
- C. Individuals Inmates, who are identified as seriously mentally ill shall, at the time disciplinary charges are filed, or assignment to administrative segregation is being considered, be referred for an evaluation assessment. Individuals suspected of being seriously mentally ill At any point during the disciplinary process, an inmate suspected of being mentally ill can be referred for an evaluation, shall also be referred for an assessment.


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 <p style="text-align: center;">ADMINISTRATIVE REGULATIONS</p> <p style="text-align: center;">STATE OF ARKANSAS</p> <p style="text-align: center;">BOARD OF CORRECTIONS</p>	Section Number:	Page Number:
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III. APPLICABILITY:

To all inmates identified as having a history of serious mental illness, or suspected at any point to be developing serious mental illness. To all staff involved in the disciplinary process, supervising inmates in segregated areas, or involved in health and correctional programs.

IV. DEFINITIONS:

- A. **Evaluation:** A mental health evaluation performed under the supervision of a licensed practitioner, and which includes, at a minimum, direct contact with the inmate.
- B. **Recommendations:** Statements made and signed by a licensed clinician may include, but are not limited to, the following: a strategy for preventing future repetitions of the misbehavior while maintaining the mental health of the inmate; suggestions for placement of the inmate; and treatment plan considerations for the inmate.
- C. **Serious Mental Illness:** This is defined as symptoms of a diagnosable mental disorder that impairs an individual's functioning and disrupts the capacity to cope with the ordinary demands of life.

V. POLICY:

It is the policy of the Arkansas Department of Correction and a goal of the correctional process to teach self-control and personal responsibility for behavior to all inmates in its custody. It is recognized that inmate behavior may be influenced by **serious mental illness**, and that such influences must be taken into account in pursuing the goals set out in this policy.

VI. PROCEDURES:

- A. At intake an **evaluation** will be done on all inmates entering the Arkansas Department of Correction and a mental health classification will be assigned as recommended by licensed mental health staff, and documented in the appropriate records.
- B. This classification will be reviewed and updated during the inmate's incarceration.
- C. Inmates who are identified as **seriously mentally ill** shall, at the time disciplinary charges are filed, be referred for an **evaluation**. At any point during the disciplinary process, an inmate suspected of being mentally ill can be referred for an **evaluation**.

AR 834
07Feb21