

Public Notice

The Board of Corrections will review the following Administrative Regulation AR-804 Inmate Records.

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-804 Inmate Records 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 12-27-113

Rule Title: AR804 Inmate Records

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

Final Date for Public Comment

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 Takelia.McDaniel@arkansas.gov 12/11/17
Contact Person E-mail Address 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

Attachment #1: AR-804 Summary

This request is being presented to amend Administrative Regulation (AR) 804 Inmate Records to establish that upon the death of an inmate, access to that inmate's medical or mental health information or records will be provided to designated persons.

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

DEPARTMENT/AGENCY Arkansas Department of Correction
DIVISION Public Information Officer
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 & 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-804 Inmate Records
Consistent with A.C.A. 12-27-113, this rule protects the integrity of inmate records and ensures their proper use. It is unlawful to permit inspection of or disclose information contained in inmate records, or to copy or issue a copy of all or part of any inmate record, except as authorized by administrative regulation or court order.
2. What is the subject of the proposed rule? _____
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. _____

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 12-27-113

7. What is the purpose of this proposed rule? Why is it necessary? This change will allow for the disclosure of deceased inmates medical and mental health information or records to designated persons.

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. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attachment

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached emails

Special Revenue _____
 Other (Identify) _____
 Total _____

Special Revenue _____
 Other (Identify) _____
 Total _____

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

Current Fiscal Year

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

Next Fiscal Year

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

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. N/A

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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. N/A

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____


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 **X**

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.

 <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:
	804	1 of 3
	Board Approval Date:	
	11-23-2015	
	Supersedes:	Dated:
	AR 804	11/23/2015
	Reference:	Effective Date:
	Ark. Code Ann. § 12-27-113(e)	12-03-2015
SUBJECT: Inmate Records		

I. AUTHORITYPOLICY:

The ADC shall maintain a full and complete record of every inmate under its supervision and protect the integrity of such records in accordance with Ark. Code Ann. § 12-27-113(e). The Board of Corrections is vested with the authority to promulgate this administrative regulation by Ark. Code Ann. § 12-27-105.

II. APPLICABILITYEXPLANATION:

To protect the integrity of inmate records and to ensure their proper use. It is unlawful to permit inspection of or disclose information contained in the records, or to copy or issue a copy of all or part of any record, except as authorized by administrative regulation or court order.

Arkansas Department of Correction (ADC) employees.

III. POLICYDEFINITION:

Inmate Record (a/k/a Institutional File and Inmate Jacket): A full and complete record in written or electronic form regarding each person committed to the Department of Correction, which shall include, but is not limited to, a photograph of the convicted person, the offense and sentence for any conviction for which the inmate is incarcerated, the inmate's criminal history, medical and mental health information and records, and all other records which identify and relate directly to that inmate. Electronic transmissions and recordings that chronicle the activities and conversations of inmates are part of the Inmate Record.

The ADC shall maintain a full and complete record of every inmate under its supervision and protect the integrity of such records in accordance with Ark. Code Ann. § 12-27-113(e).

IV. DEFINITIONS:

Inmate Record (a/k/a Institutional File and Inmate Jacket): A full and complete record in written or electronic form regarding of each person committed to the Department of

~~Correction, which shall include, but is not limited to, a photograph of the convicted person, the offense and sentence for any conviction for which the inmate is incarcerated, conviction data, and the inmate's criminal history, and medical and mental health information and records, and all other records which identify and relate directly to that inmate, a chronological record of all medical and dental encounters and findings. Electronic transmissions and recordings that chronicle the activities and conversations of inmates are part of the Inmate Record institutional record.~~

IV. PROCEDURES:

RELEASE OF INFORMATION:

- A. Disclosure or inspection of information contained in inmate records is prohibited unless authorized by this Administrative Regulation or by court order.
- B. Except as authorized by Act 1265 of 2015 (Ark. Code Ann. § 12-27-145~~(JDI)~~4), only the following information from an inmate record may be released to the general public:
 1. Offender's name, aliases, ADC number, photograph, physical description, date of birth, age, race, and gender.
 2. Date of incarceration.
 3. Facility(ies) of confinement, and work assignments, and program participation (unless it involves drug and alcohol program participation).
 4. The following information regarding current incarceration: offense (s), sentence (s), sentence date (s), county (ies) of conviction, case number (s), total time to serve, parole/transfer eligibility date, movements and behavior.
 5. The following information regarding prior incarceration(s): offense(s), sentence(s), sentence date(s), county(ies) of conviction, case number(s), movements, behavior and parole/clemency history, including date(s) of release and date(s) of return to ADC.
 6. Detainers.
- C. Information from an inmate's record in addition to that in paragraph B of this section may be released to criminal justice agencies and to social service and other governmental authorities unless state or federal law prohibits such disclosure.
- D. Information contained in inmate records in addition to that in paragraph B of this section may be released to appropriate personnel for research purposes.


- E. Information contained in inmate records in addition to that in paragraph B of this section may be viewed by an employee of the Bureau of Legislative Research in accordance with and subject to the limitations of Arkansas Code Annotated § 12-27-113(e)(5).
- F. Access to an inmate's own record may be granted, or information from the record may be released to the inmate and/or his attorney as needed to resolve legitimate questions about the accuracy of information in the record or as required by the rules of discovery in pending litigation. The names of confidential informants and other sensitive or confidential information the disclosure of which might cause harm to any person are exempt from disclosure except pursuant to court order.
- G. Upon the death of inmate, access to that inmate's medical or mental health information or records may be granted to a person designated by the inmate to have access to such records in accordance with policies and procedures adopted by the Department, or as required by state or federal law. ~~Information in an inmate's medical and dental records may be released in accordance with the HIPAA Privacy Rule and Arkansas Law~~
- HG. An inmate will not be permitted to peruse his file at will. His/her request for access to the file or information contained therein must be made in writing to the Warden or his/her designee; the inmate must state with particularity the information or parts of the file to which access is requested; and the inmate's request must be supported by a showing of compelling need. The decision of the Warden or his/her designee to grant or deny the inmate's request shall be final.
- HI. An inmate will not be given access to another inmate's record or any information contained therein.

VI. REFERENCE:

Ark. Code Ann. § 12-27-113(e).

VII. STANDARDS:

American Correctional Association (ACA) Standards for Adult Correctional Institutions

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	Supersedes:	Dated:
	AR 804	11/23/2015
	Reference: Ark. Code Ann. § 12-27-113(e)	Effective Date:
SUBJECT: Inmate Records		

I. POLICY:

The ADC shall maintain a full and complete record of every inmate under its supervision and protect the integrity of such records in accordance with Ark. Code Ann. § 12-27-113(e).

II. EXPLANATION:

To protect the integrity of inmate records and to ensure their proper use. It is unlawful to permit inspection of or disclose information contained in the records, or to copy or issue a copy of all or part of any record, except as authorized by administrative regulation or court order.

III. DEFINITIONS:

Inmate Record (a/k/a Institutional File and Inmate Jacket): A full and complete record in written or electronic form regarding each person committed to the Department of Correction, which shall include, but is not limited to, a photograph of the convicted person, the offense and sentence for any conviction for which the inmate is incarcerated, the inmate's criminal history, medical and mental health information and records, and all other records which identify and relate directly to that inmate. Electronic transmissions and recordings that chronicle the activities and conversations of inmates are part of the Inmate Record.

IV. PROCEDURES:

- A. Disclosure or inspection of information contained in inmate records is prohibited unless authorized by this Administrative Regulation or by court order.
- B. Except as authorized by Act 1265 of 2015 (Ark. Code Ann. § 12-27-145), only the following information from an inmate record may be released to the general public:

1. Offender's name, aliases, ADC number, photograph, physical description, date of birth, age, race, and gender.
 2. Date of incarceration.
 3. Facility(ies) of confinement, work assignments, and program participation (unless it involves drug and alcohol program participation).
 4. The following information regarding current incarceration: offense (s), sentence (s), sentence date (s), county (ies) of conviction, case number (s), total time to serve, parole/transfer eligibility date, movements and behavior.
 5. The following information regarding prior incarceration(s): offense(s), sentence(s), sentence date(s), county(ies) of conviction, case number(s), movements, behavior and parole/clemency history, including date(s) of release and date(s) of return to ADC.
 6. Detainers.
- C. Information from an inmate's record in addition to that in paragraph B of this section may be released to criminal justice agencies and to social service and other governmental authorities unless state or federal law prohibits such disclosure.
- D. Information contained in inmate records in addition to that in paragraph B of this section may be released to appropriate personnel for research purposes.
- E. Information contained in inmate records in addition to that in paragraph B of this section may be viewed by an employee of the Bureau of Legislative Research in accordance with and subject to the limitations of Arkansas Code Annotated § 12-27-113(e)(5).
- F. Access to an inmate's own record may be granted, or information from the record may be released to the inmate and/or his attorney as needed to resolve legitimate questions about the accuracy of information in the record or as required by the rules of discovery in pending litigation. The names of confidential informants and other sensitive or confidential information the disclosure of which might cause harm to any person are exempt from disclosure except pursuant to court order.
- G. Upon the death of inmate, access to that inmate's medical or mental health information or records may be granted to a person designated by the inmate to have access to such records in accordance with policies and procedures adopted by the Department, or as required by state or federal law.

- H. An inmate will not be permitted to peruse his file at will. His/her request for access to the file or information contained therein must be made in writing to the Warden or his/her designee; the inmate must state with particularity the information or parts of the file to which access is requested; and the inmate's request must be supported by a showing of compelling need. The decision of the Warden or his/her designee to grant or deny the inmate's request shall be final.
- I. An inmate will not be given access to another inmate's record or any information contained therein.

V. REFERENCE:

Ark. Code Ann. § 12-27-113(e)

VI. STANDARD:

American Correctional Association (ACA) Standards for Adult Correctional Institutions
AR804