

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

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|--|--|-------------------------------|
|  <div style="text-align: center;"> <b>ADMINISTRATIVE RULE</b><br/> <b>STATE OF ARKANSAS</b><br/> <b>BOARD OF CORRECTIONS</b> </div> | <b>Section Number:</b><br>ADC 805<br>ACC 9.0 | <b>Page Number:</b>           |
|  | <b>Board Approval Date:</b><br>TBD           |                               |
|  | <b>Supersedes:</b><br>New                    | <b>Dated:</b><br>TBD          |
|  | <b>Reference:</b><br>A.C.A. § 12-27-127      | <b>Effective Date:</b><br>TBD |
| <b>SUBJECT:</b><br>Administrative Transfer   |  |                               |

**I. AUTHORITY:**

The authority to promulgate this rule is vested in Act 423 of 2017, Regular Session, and Act 55 of 2021, Regular Session [A.C.A. § 12-27-127].

**II. PURPOSE:**

To establish criteria for the administrative transfer of individuals from the Division of Correction to a Community Correction Center operated by the Division of Community Correction.

**III. APPLICABILITY:**

Employees of the Divisions of Correction and Community Correction.

**IV. DEFINITIONS:**

- A. Community Correction Center: a minimum or medium security, alcohol and drug treatment facility operated by the Division of Community Correction.
- B. eOMIS: the electronic Offender Management Information System, or its successor.
- C. Inmate: a person sentenced to a term of incarceration in the Division of Correction.
- D. Target Offense: an offense that falls into the “Target Group” as defined by A.C.A. § 16-93-1202 (10).

**V. POLICY:**

It shall be the policy of the Board of Corrections to transfer eligible Inmates from the Division of Correction (ADC) to a Community Correction Center (CCC) operated by the Division of Community Correction (ACC).

**VI. PROCEDURES:****A. Authorization for Administrative Transfer.**

Pursuant to A.C.A. § 12-27-127, the Division of Correction is authorized to administratively transfer a statutorily eligible Inmate to a Community Correction Center if the Inmate is eligible for placement, unless the court indicates on the Sentencing Order that the Inmate is not authorized for administrative transfer.

**B. Eligibility for Administrative Transfer.**

1. An Inmate is eligible for administrative transfer to a CCC if:
  - a. The Inmate is sentenced to a term within the statutory parameters;
  - b. The Inmate's current convictions are comprised of Target Offenses;
  - c. The Inmate does not have a history of violent or sexual offenses;
  - d. The Inmate does not have a disciplinary history that disqualifies him or her from placement in a CCC; and
  - e. The Sentencing Order does not prohibit administrative transfer.
2. ACC shall maintain a list of criminal offenses and designate each as either: (1) a Target Offense, (2) not a Target Offense, or (3) a Potential Target Offense.
3. However, the ACC Director retains discretion over admittance of an Inmate into a Community Corrections Center and may exclude an Inmate who is otherwise eligible for reasons including, but not limited to:
  - a. facts of the current case,
  - b. disciplinary status while incarcerated, or
  - c. behavior while on a current or previous term of supervision.

**C. Screening Procedures.**

1. All Sentencing Orders assigning the defendant to the ADC will be reviewed for CCC eligibility by ADC Central Records.
2. If the Sentencing Order does not authorize administrative transfer, the Inmate will not be administratively transferred. The Inmate will be designated as not authorized in eOMIS and the ADC intake process will begin.
3. If the Sentencing Order does authorize administrative transfer, ADC Central Records will make a preliminary eligibility determination based on the following:
  - a. First, if the total time to serve on all offenses is outside the statutory guidelines for programming and a judicial transfer sentence, the Inmate is determined to be ineligible for administrative transfer to a CCC.
  - b. Second, if any of the offenses on the current Sentencing Order are designated as not a target offense by the Division of Community Correction, the Inmate is determined to be ineligible for administrative transfer to a CCC.
4. For Inmates determined to be ineligible during the preliminary eligibility determination, ADC Central Records will notate the reason that the Inmate is ineligible for administrative transfer in eOMIS and begin the ADC intake process.

5. ADC Central Records will forward Sentencing Orders for Inmates who are determined to be preliminarily eligible for administrative transfer to ACC Central Records for eligibility screening.
6. ACC Central Records will screen the Inmate and make a final determination on eligibility for placement in a Community Corrections Center.
  - a. The screening conducted by ACC Central Records will cover, at a minimum:
    - i. Inmate's current offenses
    - ii. Inmate's criminal history
    - iii. Inmate's history of discipline while incarcerated
    - iv. Inmate's violation history while under supervision
  - b. After conducting the screening, ACC Central Records will designate the Inmate as either (1) Eligible for Placement or (2) Ineligible for Placement in eOMIS.
  - c. If the Inmate is determined to be ineligible for placement, ACC Central Records will notate why the Inmate is ineligible in eOMIS and remit the record back to ADC Central Records.
  - d. If the Inmate is determined to be eligible for placement, ACC Central Records will determine if the Inmate is appropriate for placement in a CCC.
7. When analyzing whether an Inmate is suitable for placement in a CCC, ACC Central Records will consider the criminogenic, mental health, and substance abuse treatment needs of the Inmate.
  - a. If the Inmate is determined to be not suitable for placement, ACC Central Records will notate why the Inmate is not suitable for placement in eOMIS and remit the record back to ADC Central Records.
  - b. If the Inmate is determined to be suitable for placement, ACC Central Records will begin the ACC intake process for the Inmate.

## **VII. IMPLEMENTATION:**

- A. The Secretary or appropriate Division Director may issue directives to implement the guidance contained within this Rule.
- B. Implementation of this rule may be delayed until any necessary directives are issued and any required programming changes to eOMIS have been completed.

## **VIII. A.C.A. REFERENCES:**

- A.C.A. § 12-27-127  
A.C.A. § 16-93-1202

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE**

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

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

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.

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.

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

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.



## OFFICE OF THE SECRETARY

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### **Summary of Proposed Administrative Transfer Rule**

Act 55 of 2021 requires the Board of Corrections to promulgate a rule governing the procedures for administratively transferring an otherwise eligible offender from the Division of Correction (ADC) to the Division of Community Correction (ACC).

There are three (3) mechanisms for initial placement in a community correction center: Probation/SIS Plus, Judicial Transfer, or Administrative Transfer. Prior to the passage of Act 55, the ADC was only allowed to administratively transfer an offender if the Sentencing Order affirmatively indicated a transfer was allowed. With the passage of Act 55, the Department is allowed to administratively transfer an offender unless the Sentencing Order indicates that a transfer is NOT authorized. This change is designed to allow better utilization of ACC treatment beds for those offenders who are eligible for placement (no violent or sexual offenses and the sentence is within the statutory parameters for sentencing to ACC) and will benefit from the treatment-based programming that Community Corrections Centers are able to provide.

As of October 5, 2021, there were 930 offenders who may have been eligible for placement in an ACC bed if this process had existed at the time of sentencing. This proposal sets out a broad framework for the Department to follow in implementing the requirements of Act 55.