

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

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 _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

☐

Emergency (ACA 25-15-204)

Legal Notice Published _____

☐

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

Final Date for Public Comment _____

☐

Other _____

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

Reviewed by Legislative Council _____

Adopted by State Agency _____

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

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.)


Signature

Phone Number

E-mail Address

Title

Date

 <div style="text-align: center;"> ADMINISTRATIVE RULE STATE OF ARKANSAS SECRETARY OF CORRECTIONS </div>	Section Number:	Page Number: 1 of 2
	Approval Date: 09/26/2024	
	Supersedes: N/A	Dated: N/A
	Reference:	Effective Date: 10/08/2024
SUBJECT: Prison Rape Elimination Act (P.R.E.A.)		

I. POLICY:

It is the policy of the Arkansas Department of Corrections that “zero tolerance” exists regarding the rape, sexual abuse, or sexual harassment of Inmates, whether by staff or other Inmates.

II. EXPLANATION:

A. It has been a policy and goal of the Arkansas Department of Corrections (DOC) to provide a safe and secure environment to protect the State of Arkansas, our employees, and the Inmates committed to our care and custody. The passage by the United States Congress, in 2003, of the Prison Rape Elimination Act (PREA), reinforces previous policies and goals of the ADC.

B. Pursuant to Arkansas Code Annotated § 12-29-803, it is the policy of the DOC to limit Inspections by male correctional officers in areas where a female Inmate is likely to be in a state of undress.

III. DEFINITIONS. As used in this rule:

A. “Exigent Circumstances” means a set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

B. “Inmate” means a person confined to a prison or community correction center under the control of the DOC.

C. “Inspections” include searches but do not include routine cell checks.

IV. PROCEDURES:

A. Review of Policies. The DOC will annually review policies associated with rape, sexual abuse, or sexual harassment of Inmates. The DOC will revise, adopt, or both new policies and procedures to address the elimination of sexual abuse and sexual harassment of Inmates in its care and custody, as those needs are identified. Areas that will be addressed may include, but are not limited to:

1. Prevention
2. Staff Training/Education
3. Inmate Education
4. Identification/Classification/Housing and Tracking of sexually aggressive Inmates
5. Victim Support
6. Investigation Procedures/Training
7. Prosecution of perpetrators

8. Sanctions
9. Facility reviews and design
10. Data Collection
11. Continuity of counseling/referral upon release

B. Staff Training. Staff training shall be tailored to be gender specific to the facility. All employees shall receive training annually in PREA compliance.

C. Staff Reporting. Reports by male officers conducting Inspections in an area where a female Inmate was in a state of undress shall include:

1. The time and date of the Inspection;
2. Availability or unavailability of female officers; and
3. An explanation of events necessitating the Inspection.

D. General Provisions.

1. Female Inmates shall be permitted to shower, perform bodily functions, and change clothing without male officers viewing their breasts, buttocks, or genitalia except in Exigent Circumstances or when such viewing is incidental to routine cell checks.
2. Male officers shall announce their presence when entering a female housing unit.
3. Unannounced Rounds.
 - a. Each facility shall implement a practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds on all shifts.
 - b. Staff are prohibited from alerting other staff of unannounced rounds unless such announcement is related to legitimate operational functions.

E. Retaliation Prohibited. Retaliation by or against any staff, Inmate, or witness involved in a complaint or report of unauthorized viewing of a female Inmate by a male officer is strictly prohibited and may constitute grounds for disciplinary action, up to and including termination.

V. REFERENCES:

Prison Rape Elimination Act

Arkansas Code Annotated § 12-29-803.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Corrections

BOARD/COMMISSION Office of the Secretary

PERSON COMPLETING THIS STATEMENT William Bowman

TELEPHONE NO. (501) 682-9513 **EMAIL** William.bowman@doc.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Prison Rape Elimination Act (P.R.E.A)

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

Total _____

Next Fiscal Year

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

Total _____

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

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, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ 0.00

Next Fiscal Year

\$ 0.00

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.