



## MARKUP

	<b>ADMINISTRATIVE REGULATION</b> <b>STATE OF ARKANSAS</b> <b>BOARD OF CORRECTIONS</b>	<b>Section Number:</b> <b>DCC 7.12</b> <b>ADC 1317</b>	<b>Page Number:</b> <b>1</b>
		<b>Board Approval Date:</b> <b>11/29/2014</b>	
		<b>Supersedes:</b> <b>N/A <u>DCC 7.12</u></b> <b><u>ADC 1317</u></b>	<b>Dated:</b> <b>N/A <u>1/31/2013</u></b>
		<b>Reference:</b> <b>Sec. of State <b>159.</b></b>	<b>Effective Date:</b> <b><u>1/31/2013</u></b>
<b>SUBJECT: Electronic Monitoring After 120 Days Served</b>			

**DRAFT as of: 4/24/2015 Printed: 6/19/2015**

- I. AUTHORITY.** The Board of Corrections is vested with the authority to promulgate this administrative regulation by Ark. Code Ann. §§ 12-27-105, 16-93-1203 and 16-93-1205.
- II. POLICY.** ~~It shall be the policy of the~~ The Department of Correction (ADC) ~~to implement a will~~ have an appropriate process and/or procedures for identifying and certifying ~~(to the Parole Board)~~ eligible ADC inmates to be considered for release to electronic monitoring (EM) after serving 120 days of a sentence.
- III. APPLICABILITY.** This policy applies to ADC and ~~DCC~~ACC employees and ADC inmates.
- IV. GUIDELINES.**
- A. Eligibility Criteria.** Community Correction Center residents are not eligible for EM-120 release. An inmate serving a sentence in the ADC may be approved for EM-120 release if the
- offense for which the offender is incarcerated was committed on or after ~~July 2721,~~ March 2, 2014 2015
  - sentence was not the result of a jury or bench verdict
  - inmate has served one hundred twenty (120) days of his/her sentence
  - inmate has an approved parole plan
  - inmate does not have a prior felony conviction for a sex offense or for a felony offense that involved the use or threat of violence or bodily harm
  - ~~inmate was sentenced from a cell in the sentencing guidelines that does not include incarceration in the presumptive range with:~~
    - an incarceration range of 36 months or less, or
    - a presumptive sentence of probation
  - ~~conviction is for a Class C or D felony~~
  - ~~conviction is not for a crime of violence, regardless of felony level~~
  - ~~conviction is not for a sex offense, including failure to register as a sex offender under § 12-12-906,~~ regardless of felony level

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- ~~910.~~ conviction is not for manufacturing methamphetamine, §5-64-423(a) or the former §5-64-401
- ~~1011.~~ conviction is not for possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, if the conviction is a Class C felony or higher;
- ~~1112.~~ conviction is not for a crime involving the use or threat of violence or bodily harm;
- ~~1213.~~ conviction is not for a crime that resulted in a death
- ~~1314.~~ inmate has not previously failed a drug court program
- ~~1415.~~ inmate has not been transferred from ~~the Dept. of Community Correction~~ (DCC) Arkansas Community Correction (ACC) to ADC as a result of disciplinary action, and,
- ~~1516.~~ inmate does not have an active detainer.
- B. Notice.** The ADC Director will provide notice to the Parole Board of ~~eligible~~-inmates eligible for EM-120 release and subsequent notice to the Institutional Release Office if approved for such release.
- C. Supervision.** Offenders approved for EM-120 release will be supervised by ~~DCC-ACC~~ through electronic monitoring (home detention) until the offender's transfer eligibility date or for at least ninety (90) days of full compliance by the offender, whichever is sooner. Home detention will be tailored and defined by the parole/probation supervision officer for each program participant (~~e.g. for example,~~ curfew, authorized for school/work, practice religion). The term of electronic monitoring ~~shall~~ must not exceed the maximum number of years of imprisonment or supervision to which the offender could be sentenced.
- D. Funding for Services.** Eligible offenders ~~will~~ must pay the cost of their electronic monitoring service and associated equipment ~~directly to the EM company providing the service.~~
- ~~D-E.~~ Types of GPS Devices.** ~~DCC-ACC~~ is authorized to use all types of electronic monitoring devices for monitoring the presence of an offender in his/her home in a manner consistent with the law.
- ~~E-F.~~ Discharge Credit.** An eligible offender approved for EM-120 release may earn discharge credits against his/her sentence.

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

**DEPARTMENT/AGENCY** Arkansas Community Correction  
**DIVISION** Communications and Public Affairs  
**DIVISION DIRECTOR** Dina Tyler  
**CONTACT PERSON** Russ Carter  
**ADDRESS** 105 West Capitol Ave, 3<sup>rd</sup> Floor; Little Rock, AR 72201-5731  
**PHONE NO.** 501-682-9572 **FAX NO.** 501-682-9513 **E-MAIL** Russ.Carter@Arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Dina Tyler  
**PRESENTER E-MAIL** Dina.Tyler@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, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Electronic Monitoring After 120 Days Served
2. What is the subject of the proposed rule? Monitoring offenders with electronic devices
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? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

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. The Board of Corrections is vested with the authority to promulgate rules by Arkansas law sections 12-27-105, 16-93-211, 16-93-1203, 16-93-1205

7. What is the purpose of this proposed rule? Why is it necessary? This rule exists so that inmates and correctional staff will know and comply with the criteria and requirements for releasing inmates pursuant to law.

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). Prior to adoption: [www.sos.arkansas.gov/rulesRegs](http://www.sos.arkansas.gov/rulesRegs). After adoption: [www.dcc.arkansas.gov](http://www.dcc.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.)

July 15, 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

August 15, 2015

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 known.

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## FINANCIAL IMPACT STATEMENT

### PLEASE ANSWER ALL QUESTIONS COMPLETELY

**DEPARTMENT** Arkansas Community Correction  
**DIVISION** Communications and Public Affairs  
**PERSON COMPLETING THIS STATEMENT** Dina Tyler  
**TELEPHONE NO.** 501-683-3300 **FAX NO.** 501-682-9513 **EMAIL:** Dina.Tyler@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** Electronic Monitoring After 120 Days Served

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

**Next Fiscal Year**

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**

\$ 0 \_\_\_\_\_

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

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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**

\$ 7,000 \_\_\_\_\_

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

State government must contract for software revisions to implement the revised law.

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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.