

Rules – Markup Copy

ARKANSAS CRIME VICTIM'S REPARATIONS BOARD
RULES
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Rule No. 1 Rule No. 1.1

TITLE AND OPERATIVE DATE OF THE ACT

The title of the Act under which these rules are being promulgated is known as the Arkansas Crime Victims Reparations Act, hereinafter referred to as the Act "Act" and Arkansas Code Annotated § 12-12-404.

The operative date of the Act is July 1, 1988.

Rule No. 4 Rule No. 1.2

MEMBERSHIP AND OFFICERS OF THE BOARD

The Board shall consist of five (5) members appointed by the Governor to serve four (4) year terms and until the successor is appointed and qualified. At least two (2) members of the Board shall be persons admitted to practice law in this state. At least one (1) member of the board shall be: (A) a victim of criminally injurious conduct; (B) the next of kin of a homicide victim, or (C) an individual experienced in providing victim assistance services. Of the first members appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner.

Rule No. 5 Rule No. 1.3

PURPOSE OF THE BOARD

The purpose of the Board shall be to hear and decide all matters relating to Crime Victims Reparations applications. The Board shall have the authority to award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

Rule No. 6 Rule 1.4

POWERS AND DUTIES OF THE BOARD

The Board shall have the power:

1. To hear and determine all matters relating to applications filed with the Arkansas Crime Victim Reparations Board for compensation, including the power to re-investigate or re-open claims without regard to the statutes of limitations.
2. The Board, or the Administrator, on behalf of the Board, may subpoena witnesses, compel their attendance, enter orders, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence. The Board shall be considered in continuous session for the purposes stated above.
3. To regulate its own procedures except as otherwise provided in the Act.
4. To adopt rules to implement the provisions of the Act.
5. To define any term not defined in the Act.
6. To prescribe forms necessary to carry out the purposes of the Act.
7. To request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation.
8. To publicize the availability of compensation and information regarding the filing of claims therefore.
9. To order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim.
10. To require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
11. To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.
12. To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant.
13. To suspend the application for compensation proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

14. To join in a civil action as a part plaintiff to recover the compensation awarded if the claimant brings such action.

15. The Board shall be provided such office, supplies, staff and secretarial services as necessary by the Department of Public Safety.

16. All necessary and reasonable expenses of the Board shall be paid for from the Crime Victims Reparations Revolving Fund.

17. The Board shall have the duty of preparing and transmitting an annual report to the Governor.

17.18. To Reimburse any medical facility or licensed healthcare provider for the reasonable cost of providing medical-legal examinations to victims of sexual assault as outlined in Arkansas Code Annotated 12-12-401 et seq.

Rule No. 7 Rule 1.5

MEETINGS OF THE BOARD

1. The Board shall meet on the third Thursday of January, March, May, July, September, and November – six (6) times each year, or at the call of the Chairperson, at 9:30 a.m. to hear appeal claims.
2. The Chairperson shall serve as presiding officer at all official meetings of the Board. In the absence of the Chairperson, the remaining Board members present at the meeting may designate a president officer for that meeting.
3. The Chairperson shall have the authority to vote on all matters coming before the Board.
4. A majority of the Board shall constitute a quorum at hearings on appeal claims. The concurrence of two (2) members of the commission shall be necessary to determine the outcome of a claim. The Board may act in a panel of three (3) with proxies or consent decrees being permitted.
5. In the event of a tie vote the matter or matters shall be continued to the next meeting.
6. The order of business at any meeting of the Board shall follow the agenda prepared in advanced of the meeting. Such other matters may be brought before the Board as shall be requested by any member in writing and presented to the Chairperson.
7. Administrative staff shall be responsible for preparation of minutes for each Board meeting.
8. Roberts Rules of Order, Revised, shall govern all meetings of this Board.

Rule No. 15 Rule 1.6

BOARD STAFF

The Administrator of the Board shall be the Chief Executive Officer of the Board staff. He/she shall be hired by the Secretary of the Department of Public Safety with the advice and consent of the Board. He/she shall be responsible for the administration of the rules, policies and procedures promulgated by the Board, pursuant to the Administrative Procedure Act, and within such restraints as mandated by statute.

The Administrator shall also be responsible for employment, supervision, evaluation and termination of Board employees and shall delegate appropriate powers and duties to them, subject to the advice and/or consent of the Secretary and the Board.

Rule No. 17Rule 1.7

AMENDMENT TO RULES

Any modification or amendment to the Rules of the Board shall be made pursuant to the procedure as outlined in the Arkansas Administrative Procedure Act.

Rule No. 20 Rule 1.8

CONFLICT OF INTEREST

No member of the Board shall use such appointment for purposes which are motivated by private gain, including gain for providers, claimants, or victims with which the board member is associated within any capacity. There shall exist a conflict of interest when a provider, claimant, or victim with whom the board member is associated with appears before the board in the course of business of the board.

When such a conflict arises for a member, the individual member should declare the conflict. Additionally, any member of the Board who questions whether or not another member has a conflict of interest in the matter under discussion may ask for a determination by the Board. If the Board finds that a conflict exists, the affected member shall also follow the aforementioned procedure.

Any member of the Board who declares a conflict of interest, or who is found to have a conflict, should neither participate in debate nor vote on the issue in question.

A conflict of interest shall exist among members of the administrative staff in any case where a member of the Department of Public Safety's staff or a person related, whether by blood, adoption, or marriage within the second degree of consanguinity to a member of the Department of Public Safety's staff is the claimant or victim on a claim for compensation.

Additionally, the administrator of the Board and the staff attorney may determine that a conflict of interest exists on claims where one or more members of the administrative staff know the claimant or victim.

Administrative staff members shall immediately notify the administrator when another member of the Department of Public Safety's staff or someone whom they believe is known by one or more members of the administrative staff has filed a claim.

In the event that a conflict arises or exists among all members of the administrative staff, the administrative staff may gather necessary information and present the application and attachments to the Board, but shall not participate in the debate, nor vote on the claim in question.

The administrative staff shall also immediately notify the administrator when such staff members knows the victim or claimant on a particular claim.

If only one staff member is determined to have a conflict, then that staff member shall not participate in the debate, nor vote on the claim in question. If that staff member has been assigned to investigate the claim, then the administrator shall immediately re-assign the claim to another investigator.

Rule No. 2 Rule No. 2.1

DEFINITIONS

1. **BOARD** - Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.
2. **CLAIMANT** - Means any of the following persons applying for reparations under this act:
 - a. a victim,
 - b. dependent of a victim who has died because of criminally injurious conduct, or
 - c. a person authorized to act on behalf of any of the persons listed above.

The term shall not include a service provider.

3. **VICTIM** - Means a person who suffers personal injury or death as a result of criminally injurious conduct committed within the state of Arkansas. The term further includes any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible and any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

The term "victim" shall include a person who:

- (A) is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim;
- (B) is not an immediate family member, but resided, at the time of the crime, in the same permanent household as a deceased victim;
- (C) discovered the body of a victim who dies as the result of criminally injurious conduct.
- (D) is the minor child, whether by blood, adoption, or marriage, of an eligible victim.

4. **DEPENDENT** - Means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

5. **IMMEDIATE FAMILY** - Means a person's spouse, children, parents or guardian, siblings, and grandparents whether related by blood, adoption, or marriage.

6. **CRIMINALLY INJURIOUS CONDUCT** - Means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. This term shall include acts of terrorism committed outside of the United States as defined in §2331, Title 18, United States Code, against any Arkansas resident. This term shall not include acts arising out of the operation of motor vehicles, boats or aircraft unless the acts involve any of the following:

- (A) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
- (B) A violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq;
- (C) A violation of A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death).

7. PERSONAL INJURY - Means actual bodily harm, including pregnancy or mental anguish, which is the direct result of a violent criminal act.

8. ECONOMIC LOSS - Means monetary detriment consisting of allowable expense, and work loss, but shall not include non-economic detriment.

9. ALLOWABLE EXPENSE - Means charge incurred for needed products, services and accommodations, including, but not limited to medical care, rehabilitation, rehabilitative occupational training, crime scene cleanup, and other remedial treatment and care. It also includes a total charge not in excess of Seven Thousand Five Hundred Dollars (\$7,500) for expenses related to funeral, cremation or burial. Such term shall also include the cost of legal services for the establishment of guardianship for minor children ~~as per Rule 18 of the~~ pursuant to Arkansas Crime Victims Reparations Board Rules.

10. WORK LOSS - Means loss of income from work the victim or claimant would have performed in their regular course of employment if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. Individuals filing claims must provide clear and convincing evidence of employment including but not limited to pay stubs, tax returns or certified documentation from employer.

11. NON-ECONOMIC DETRIMENT - Means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

12. COLLATERAL SOURCE - Means a source of benefits or advantages for economic loss which the claimant has received, or which is readily available to the claimant including but not limited to any one or more of the following:

- (a) the offender,
- (b) the government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions,
- (c) state required temporary non-occupational disability insurance,
- (d) workers' compensation,

- (e) wage continuation programs of any employer,
- (f) proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- (g) a contract providing prepaid hospital and other health care service or benefits for disability.

13. CATASTROPHIC - Means injuries involving a sustained loss of function, including but not limited to any of the following conditions: mangle, crushing, or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision, or loss of hearing.

14. TOTAL AND PERMANENT DISABILITY - Means an impairment based upon demonstrable medical evidence, which restricts the victim from performing the usual tasks of a worker to such an extent that the victim cannot maintain employment.

Rule No. 3 Rule No. 2.2

TYPES OF COMPENSATION AVAILABLE

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Economic loss sustained by the victim or a dependent arising from the criminally injurious conduct of another. Future economic loss is also compensable but may be reduced or discontinued if the recipient's circumstances change.

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Mental health expenses incurred as a result of the criminally injurious conduct of another.

Awards for mental health expenses, for any victim, shall be made in accordance with guidelines established by a committee of mental health professionals appointed by the Arkansas Crime Victims Reparations Board.

Rule No. 8 Rule 2.3

ELIGIBILITY CRITERIA FOR COMPENSATION

1. The criminally injurious conduct leading to the filing of the reparations claim must have occurred in Arkansas or must have occurred to a resident of Arkansas in a state without a reparations program for which the victim is eligible or to a resident of Arkansas who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.
2. The incident must have occurred on or after July 1, 1988.
3. The incident must have been reported to the proper authorities within 72 hours or would have been reported within the period of time except for good cause.
 - (A) Good cause shall include, but not be limited to:
 - (1) the physical incapacity of a victim,
 - (2) the mental incompetence of a victim,
 - (3) the age of the victim,
 - (4) the injury was not reasonably discoverable.
4. The application for compensation must be filed within one (1) year of the incident, unless the Board finds good cause for failure to file a timely claim.
 - (A) Good cause shall include, but not be limited to:
 - (1) the physical incapacity of a victim,
 - (2) the mental incompetence of a victim,
 - (3) the age of the victim,
 - (4) the injury was not reasonably discoverable,
 - (5) restitution or other collateral source was regularly being paid and then terminated,
 - (6) postal service delays which are verifiable.
5. The victim must have suffered personal injury or death as a result of the criminal act of another.
6. The claimant and/or victim must to the extent able, have cooperated with law enforcement officials during their investigation.

The following issues may be considered when determining cooperation:

1. Failure to cooperate in the prosecution of the defendant or to appear as a witness.
2. Not cooperating initially but later deciding to cooperate and the delay allows

the defendant to escape prosecution.

3. Not cooperating initially but later deciding to cooperate without any good cause as to the delay.
 4. Causing extra or unnecessary effort on the part of law enforcement to gain prosecution.
 5. Reluctantly providing information pertaining to the crime; failing to appear when requested, without good cause; giving false or misleading information; or attempting to avoid law enforcement.
 6. Failing to prosecute or cooperate with law enforcement because of fear for his/her personal safety.
 7. Failing to give testimony or otherwise cooperate with the prosecutor's office.
 8. Failing to cooperate with Arkansas Crime Victims Reparations Board administrative staff by not returning requested information, not returning telephone calls, not providing accurate information, etc.
7. The net amount of compensation requested in the application must not have been paid by another source.
 8. The claimant and/or victim was not the offender or an accomplice of the offender. Claimant/victim may be denied if he/she has been engaged in an illegal activity during his/her victimization.

Illegal activity may consist of any of the following but is not limited to:

- (a) victim was buying drugs;
- (b) victim was using drugs;
- (c) victim was a minor and drinking alcohol;
- (d) victim was in an illegal place of business, such as a crackhouse, house of prostitution, or gambling establishment.

If claimant/victim contributed or was offender - compensation shall not be awarded to a claimant/victim who was the offender or an accomplice to the offender or who encouraged or in any way participated in the criminally injurious conduct. Compensation may be diminished to the extent or the degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board.

In determining the amount of an award, the Arkansas Crime Victims Reparations Board shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the Board shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

Contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime. While there is no set formula for calculating the percentage of contribution to be assessed, the following factors should serve as a guideline:

- (1) If it appears that the victim was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self defense, no contribution should be assessed.
- (2) If it appears that the victim was provoked by the defendant in a manner where bodily harm to the victim appeared unlikely, and the victim used poor judgment because of intoxication or other drug involvement, a 25% contribution factor should be assessed.
- (3) If it appears that the defendant was provoked by the victim in a manner where bodily harm appeared unlikely, a 50% contribution factor should be assessed.
- (4) If the victim is injured as a result of his conduct not being that of a prudent person, a 50% contribution factor should be assessed.
- (5) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant appears intentional, a 75% contribution factor should be assessed.
- (6) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant is unquestionable, a 100% contribution factor should be assessed and the claim denied.
- (7) If the victim is not wearing protective equipment as prescribed by law, a 25% contribution factor shall be assessed. This includes helmets, seat belts, etc.
- (8) If the victim was involved in drugs as verified by the police report or other official documents, a 100% contribution factor should be assessed and the claim denied.

9. The injury or death must not have been the result of negligent maintenance or use of a motor vehicle unless the acts are committed with the intent to inflict injury or death or unless the acts committed were in violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq. or A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death.)
10. Claimant/victim has not been convicted of a felony involving criminally injurious conduct.
11. Awards shall not be made to a victim who is injured or killed while confined in state, county, or municipal jail, prison or other correctional facility as a result of conviction of any crime.
12. The award would unjustly benefit the offender or accomplice except as permitted by **Rule 9** of the Arkansas Crime Victims Reparations Rules. (~~See Rule 9~~)
13. In those cases where the victim has died, the claimant will be considered to have no compensable loss for the expenses incurred by the victim as a result of the criminally injurious conduct if the claimant has no legal obligation to pay for these expenses.

Rule No. 9Rule No. 2.4

UNJUST ENRICHMENT

1. No portion of a compensation award shall unjustly benefit the offender or accomplice. However, no award shall be denied solely on the basis of the victim's familial relationship to the offender or the presence of the offender in the household at the time of the award.
2. In determining whether or not an award would unjustly benefit the offender, the following factors should be considered:
 - a. The legal responsibilities of the offender to the victim and collateral resources available to the victim from the offender. Victims of family violence must not be penalized when collateral sources of payment are not viable.
 - b. Payments to victims of family violence that only minimally or inconsequentially benefit the offender.
 - c. The special needs of child witnesses to violence and child victims of criminal violence, especially when the perpetrator is a parent who may or may not live in the same residence.
3. Collateral resources available to the victim from the offender shall be considered when awarding a claim, however, the victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.
4. Payments to third-party providers shall be made to prevent cash intended for the victim's bills to be used by or on behalf of the offender.
5. The Board shall not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming.

Rule No. 10 Rule 2.5

MAXIMUM COMPENSATION AMOUNTS AND METHODS OF PAYMENTS

1. Compensation payable to a victim or claimant incurring expenses due to injury or death may not exceed a total of Ten Thousand Dollars (\$10,000.00). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed \$25,000.
2. Compensation for funeral expenses of deceased victims may not exceed \$7,500.
 - a. Collateral sources of income such as burial policies, workers' compensation, etc. will be applied towards the total cost of the victim's funeral.
 - b. Life insurance may not be used as a collateral source when dependents of the deceased victim remain and may benefit from the proceeds of this policy.
 - c. Life insurance will be utilized as a collateral source and be applied against funeral expenses in those cases involving no surviving dependents.
3. The Board may provide for the payment to a claimant in a lump sum or in installments.
4. The Board shall pay all or part of an award directly to service providers unless evidence of prior payment for services is submitted.
5. The Board may also provide for payment of legal fees, not to exceed Two Hundred Fifty Dollars (\$250) - plus filing fees, of a guardianship when an award has been made to a minor child ~~as per Rule 18 of the~~ pursuant to Arkansas Crime Victims Reparations Board Rules. Legal services expenses shall not be deducted from the otherwise compensable amount unless amount is over \$10,000.
6. Upon request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:
 - a. That the award in a lump sum will promote the interests of the claimant;
 - b. That the present value of all future economic loss does not exceed One Thousand Dollars (\$1,000).
7. An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board upon finding that a significant change in circumstances has occurred.
8. Approved claims will be paid in the order of their approval by the Board as funds become available.

Rule No. 11 Rule 2.6

APPLICATION REVIEW PROCEDURE

1. A victim, dependent of a victim, or person legally acting in behalf of the victim, must first secure a copy of the official Victims Reparations Application Form from their local prosecuting attorney's office, law enforcement agency, victim/witness coordinator, service provider or from the Board. Assistance in completing the form may be provided by the victim/witness coordinator or the prosecuting attorney's staff in districts that have no victim/witness coordinator. The Crime Victims Reparations Board staff will also be available to assist in the completion of the form.
2. A form must be completed in its entirety, and accompanied with an itemized statement and police offense report or other official documentation from the agency to which the incident was reported.
3. A victim must submit a Victims Reparations Application as a necessary (but not sufficient) condition of directly receiving payment. The Board may directly reimburse a medical-care provider for costs associated with a sexual-assault testing kit, even in the absence of a victim's application. Such costs, which include those associated with testing for sexually transmitted diseases, may be reimbursed regardless of which fund or cost center is used to make the reimbursement.
4. The staff of the Board shall log the application as being received and begin a thorough review and verification process.
5. The Board and staff have the authority to conduct investigations and/or request any additional information from the victim, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the application.
6. The staff shall make a thorough analysis of the application and attachments, then prepare staff comments relative to the application which shall be filed in the application folder along with supportive data that is pertinent to the investigation.
7. The administrative staff shall have the authority to review and decide crime victim reparations claims up to the maximum allowable amount of Ten Thousand Dollars (\$10,000) or Twenty-five Thousand Dollars (\$25,000) for victims whose injuries are catastrophic and result in a total and permanent disability.
8. The administrative staff of the Board shall then make a decision regarding the claim. The claimant/victim shall be mailed notification of the administrative decision within fifteen (15) calendar days by mail. If the claim is denied the claimant/victim will be notified by certified mail, return receipt requested.

9. The claimant shall have the right to appeal decisions of the Board in the manner set forth in ~~Rule No. 14,~~ APPEALS PROCEDURE.

Rule No. 12 Rule No. 2.7

ADVANCE (EMERGENCY) AWARD OF COMPENSATION

The Board may make or authorize the Administrator to make an advance (emergency) award of compensation to the claimant/victim prior to taking action on an application and pending a final decision when it appears the claim is one for which compensation is probable and undue hardship will result to the claimant/victim if immediate payment is not made. The claimant/victim may request in the application that consideration be given for an advance award and provide justification for such award. A decision denying emergency relief shall not be appealable.

The amount of such advance (emergency) award shall not exceed Five Hundred Dollars (\$500). Any advance award shall be deducted from the final compensation made to the claimant/victim. If the final award amount is less than the amount of the advance award, the claimant/victim must repay the excess to the Board. If an emergency award is made and the claimant/victim later does not follow through with prosecution or some other requirement of this program, the claimant/victim will be required to reimburse the Board for the amount of the award made.

Criteria for payment of emergency awards is listed below:

- a. Claimant/victim is without an income at the time of application resulting in loss of food, heat or shelter.
- b. Claimant/victim cannot receive emergency service (i.e. burial) without the emergency payment.

Documentation required:

- a. Proof of financial emergency should be obtained for the file such as notice of eviction from the landlord or a shut-off notice from the power company.
- b. If no proof is available, then the investigator should note in file why he/she thinks the application is considered an emergency.
- c. There must be contact with the investigating law enforcement officer to verify what occurred, the victim's innocence and the victim's cooperation. A law enforcement offense report and Crime Victims Reparations Board Law Enforcement Form must be included in the file.
- d. For wage loss claims, the employer may be contacted by telephone but the written verification must follow to go in the file. If self-employed applicant must provide a copy of his/her last three (3) years tax return or check stubs for the last three (3) months as proof of his/her income. If proof is not available, lost wages can not be considered.

- e. If the injury is not commensurate with the time lost from work, a doctor's excuse will be required.
- f. Claimant/victim is required to sign a promissory (demand) note which must be signed and executed by the claimant/victim with the Administrator prior to receiving the emergency award.

Rule No. 13 Rule No. 2.8

APPEALS PROCEDURE

1. In the event an application for compensation is approved in a modified form or denied, the administrative staff of the Board shall notify the claimant/victim by certified mail, return receipt requested, within fifteen (15) calendar days setting forth the basis of the decision.
2. The claimant/victim shall have the right to appeal and may do so by notifying the administrative staff of the Board, in writing, by certified mail, return receipt requested, of the intent to appeal within forty-five (45) calendar days of the date of the notification letter setting forth the Board's decision.
3. The claimant/victim shall then be entitled to a formal hearing before the Board. The hearing shall be held within ninety (90) calendar days of the date of the notice from the claimant/victim stating the intent to appeal.
4. The claimant/victim or an authorized representative, in the event the claimant/victim is incapacitated must be present at the appeal hearing. In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.
5. Notification of Board meetings shall be made in compliance with Arkansas Code Annotated § 25-19-101 - 25-19-107 - the Arkansas Freedom of Information Act.
6. All agendas and supporting documentation necessary shall be mailed to the Board ten (10) calendar days in advance of the Board meeting.
7. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.
8. The Board shall render its decision relative to the appeal within ten (10) calendar days of the formal hearing and the claimant/victim will be notified by mail.
9. The claimant/victim, if not successful in the appeal to the Board shall then have thirty (30) days from the receipt of the decision to file a petition for judicial review pursuant to Arkansas Code Annotated 25-15-212 in the circuit court of his/her county of residence or in Pulaski County.

Rule No. 16 Rule No. 2.9

CLAIMS OF INCOMPETENTS OF MINOR CHILDREN

Proof of the establishment of the guardianship may be required by the Board prior to release of funds to the claimant. A certified copy of the Order of Guardianship shall be sufficient proof.

Rule No. 18 Rule No. 2.10

COST CEILING ON MEDICAL BILLS

In connection with claims for payment on medical bills, not covered by insurance, made by victims, the Board will award up to 65% of medical bills, not to exceed a total reimbursement of \$10,000. However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the total reimbursement shall not exceed \$25,000.

The provider of medical services to whom the award is made will be notified that by accepting the payment of 65% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

Rule No. 19 Rule No. 2.11

COST CEILING ON MENTAL HEALTH BILLS

1. In connection with claims for payment of mental health services, not covered by insurance, incurred by victims, the Board will pay a maximum of twenty-five Hundred Dollars (\$2500) or provide for six (6) months, whichever occurs first, provided the treatment plan is submitted within thirty (30) days of the application to the Board for those victims receiving ongoing therapy or within thirty (30) days of beginning therapy for those victims who seek mental health treatment after making application to the board. This treatment plan must state the basis for the necessity of such treatment, the anticipated extent of the treatment, and the relationship of the treatment to the crime perpetrated upon the victim and whether or not the diagnosis is related to a pre-existing condition.
2. A mandatory review by the Board is required after ninety (90) or twenty-five hundred dollars (\$2500), whichever occurs first, should the victim of the provider find that further services are required.
 - a. The provider will be required to submit a new treatment plan to justify the continued need for the treatment and its continued relationship to the crime.
 - b. The Board may waive the maximum upon a justification of special need based upon documentation to be submitted by the provider.
 - c. The Board also reserves the right to have any mental health claims and treatment plans reviewed by an independent peer review committee should it so desire.

Rule No. 21 Rule No. 2.12

SUPPLEMENTAL AWARDS

If at the time of the application, the victim or claimant was unable to submit all of the itemized bills, he/she may submit supplemental bills to be considered after the original award. If a victim or claimant has been awarded their original claim at a reduced amount due to contribution, then the Board will note at the time of approval whether or not they will consider any supplemental awards concerning this claim. If the Board determines that supplemental awards will not be considered after the initial award, the Board shall so note at the time of the initial award. Each case will be considered on its own merits.

The total of the original award and any and all supplemental awards may not exceed \$10,000.

Supplemental awards may be paid quarterly.

Supplemental bills will be considered only if submitted within one year of:

- a. The date of treatment, or
- b. Notification of payment or denial by a collateral source.

Rule No. 22~~Rule No. 2.13~~

FINANCIAL OBLIGATION REQUIREMENT

Reparations shall not be awarded to any victim/claimant who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the board receives information or materials establishing to the satisfaction of the board that the financial obligation has been satisfied. If the board does not receive the information or materials within six months after the board notifies the victim/claimant, the application will be closed and the victim notified of their right to appeal.

Rule No. 14Rule 2.14

PENALTY FOR FALSE CLAIMS

The filing of a false claim for compensation pursuant to the Arkansas Crime Victims Reparations Act shall constitute a Class D Felony. If a victim or a claimant knowingly files a false claim or provides false information or fails to provide material facts or circumstances necessary to substantiate the claim, he/she may not at a later date, file a correct claim. If this happens, the claim shall be denied.

Rule No. 3.1

DEFINITIONS

1. **MEDICAL-LEGAL EXAMINATION** – Means health care delivered to a possible victim of a sexual assault, with an emphasis on the gathering and preserving of evidence for the purpose of serving criminal justice.
2. **LICENSED HEALTH CARE PROVIDER** – Means a person licensed in a healthcare field who conducts medical-legal examinations or a medical facility that is currently licensed by the Department of Health and providing emergency services.
- 3.—
3. **VICTIM** – Means any person who has been a victim of any alleged sexual assault or incest as defined by Arkansas Code Annotated § 5-14-101 et seq. and § 5-26-202.
4. **BOARD** – Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.
5. **COLLATERAL SOURCE** – Means a source of benefits or advantages for economic loss, including, but not limited to:
 - (a) The government of the United States or any agency thereof, in the form of benefits such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions;
 - (b) Proceeds of a contract of insurance payable to the sexual-assault victim;
 - (a)(c) A contract providing prepaid hospital and other health care services or benefits. .
6. **SEXUAL ASSAULT** – Means an offense described in Arkansas Code Annotated § 5-14-101 et seq or § 5-26-202.

Rule 3.2

ELIGIBILITY CRITERIA FOR COMPENSATION

1. The victim received the medical-legal examination within ninety-six (96) hours of the attack or would have received the medical-legal examination within the required time except for good cause.

(A) Good cause includes, but is not limited to:

(1) The physical incapacity of the victim;

(2) The mental incompetence of the victim;

(3) The age of the victim; or

(4) The sexual assault was not reasonably discoverable.

2. The billing for the medical-legal examination is submitted to the Board within three (3) months of the medical-legal examination, unless the Board finds good cause for failure to timely submit.

(A) Good cause includes, but is not limited to:

(1) Restitution or other collateral source was terminated;

(2) Verifiable postal service delays;

(3) Other good cause as determined by the Board.

Rule No. 3.3

COLLATERAL SOURCES

Medical-Legal Examination bills will be denied or diminished to the extent that the expenses can be recuperated from a collateral source.

Rule No. 3.4

MAXIMUM PAYMENT AMOUNTS

1. Acceptance of payment by the medical provider from the Board constitutes a full and final payment for the services. Any remaining balances shall not be submitted to the victim
2. The Board may reimburse the following expenses. The amount listed constitutes the maximum allowable reimbursement by the Board.

<u>Facility Fee</u>	<u>\$350</u>
<u>SANE Nurse Fee</u>	<u>\$350</u>
<u>Labs</u>	<u>\$200</u>
<u>Colposcope</u>	<u>\$160.88</u>

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 430

5 By: Senator B. Ballinger
6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 12 OF
10 THE ARKANSAS CODE CONCERNING LAW ENFORCEMENT
11 AGENCIES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO MAKE TECHNICAL CORRECTIONS TO TITLE
16 12 OF THE ARKANSAS CODE CONCERNING LAW
17 ENFORCEMENT AGENCIES.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 12, Chapter 12, Subchapter 4, is
23 amended to read as follows to reorganize defined terms and to clarify
24 references:
25

Subchapter 4

26 – Sexual Assault – Medical-Legal Examinations
27
28

29 12-12-401. Definitions.

30 As used in this subchapter:

31 (1) “Anonymous kit” means a sexual assault collection kit that
32 is collected from a possible victim of a sexual assault who has not decided
33 whether to report the sexual assault to a law enforcement agency;

34 ~~(1)(A)~~(2)(A) “Appropriate emergency medical-legal examinations”
35 means health care delivered with emphasis on the collection of evidence for
36 the purpose of prosecution.



1 (B) It shall include, but not be limited to, the
2 appropriate components contained in an evidence collection kit for sexual
3 assault examination distributed by the Forensic DNA Section of the State
4 Crime Laboratory;

5 (3) “Law enforcement agency” means a police force or
6 organization whose primary responsibility as established by statute or
7 ordinance is the enforcement of the criminal laws, traffic laws, or highway
8 laws of this state;

9 ~~(2)~~(4) “Licensed health care healthcare provider” means a person
10 licensed in a healthcare field who conducts medical-legal examinations;

11 ~~(3)~~ “Medical facility” means any healthcare provider or a
12 medical facility that is currently licensed by the Department of Health and
13 providing emergency services; and

14 (5) “Medical-legal examination” means health care delivered to a
15 possible victim of a sexual assault, with an emphasis on the gathering and
16 preserving of evidence for the purpose of serving criminal justice;

17 (6) “Sexual assault” means an offense described in § 5-14-101 et
18 seq. or § 5-26-202;

19 (7) “Sexual assault collection kit” means a human biological
20 specimen or specimens collected during a medical-legal examination from the
21 alleged victim of a sexual assault; and

22 ~~(4)~~(8) “Victim” means any person who has been a victim of any
23 alleged sexual assault or incest as defined by § 5-14-101 et seq. and § 5-26-
24 202.

25
26 12-12-402. Procedures governing medical treatment.

27 (a) All ~~medical facilities or~~ licensed healthcare providers conducting
28 medical-legal examinations in Arkansas shall adhere to the procedures set
29 forth in this section in the event that a person presents himself or herself
30 or is presented for treatment as a victim of rape, attempted rape, any other
31 type of sexual assault, or incest.

32 (b)(1)(A) Any adult victim presented for medical treatment shall make
33 the decision of whether or not the incident will be reported to a law
34 enforcement agency.

35 (B) No ~~medical facility or~~ licensed healthcare provider
36 may require an adult victim to report the incident in order to receive

1 medical treatment.

2 (C)(i) Evidence will be collected only with the permission
3 of the victim.

4 (ii) However, permission shall not be required when
5 the victim is unconscious, mentally incapable of consent, or intoxicated.

6 (2)(A) Should an adult victim wish to report the incident to a
7 law enforcement agency, the appropriate law enforcement agencies shall be
8 contacted by the ~~medical facility or~~ licensed healthcare provider or the
9 victim's designee.

10 (B)(i) The victim shall be given a medical screening
11 examination by a qualified medical person as provided under the Emergency
12 Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, as in effect on
13 January 1, 2001, if the victim arrives at the emergency department of a
14 hospital, and the person shall be examined and treated and any injuries
15 requiring medical attention will be treated in the standard manner.

16 (ii) A medical-legal examination shall be conducted
17 and specimens shall be collected for evidence.

18 (C) If a law enforcement agency has been contacted and
19 with the permission of the victim, the evidence shall be turned over to the
20 law enforcement officers when they arrive to assume responsibility for
21 investigation of the incident.

22 (c)(1) Any victim under eighteen (18) years of age shall be examined
23 and treated, and any injuries requiring medical attention shall be treated in
24 the standard manner.

25 (2) A medical-legal examination shall be performed, and
26 specimens shall be collected for evidence.

27 (3) The reporting ~~medical facility or~~ licensed healthcare
28 provider shall follow the procedures set forth in Subchapter 4 of the Child
29 Maltreatment Act, § 12-18-101 et seq., regarding the reporting of injuries to
30 victims under eighteen (18) years of age.

31 (4) The evidence shall be turned over to the law enforcement
32 officers when they arrive to assume responsibility for investigation of the
33 incident.

34 (d) Reimbursement for the medical-legal examinations shall be
35 available to the ~~medical facility or~~ licensed healthcare provider pursuant to
36 the procedures set forth in § 12-12-403.

1 (e) A ~~medical facility or~~ licensed healthcare provider shall not
2 transfer the victim to another ~~medical facility~~ licensed healthcare provider
3 unless:

4 (1) The victim or a parent or guardian of a victim under
5 eighteen (18) years of age requests the transfer, or a physician or other
6 qualified medical personnel when a physician is not available has signed a
7 certification that the benefits to the victim's health would outweigh the
8 risks to the victim's health as a result of the transfer; and

9 (2) The transferring ~~medical facility or~~ licensed healthcare
10 provider provides all necessary medical records and ensures that appropriate
11 transportation is available.

12
13 12-12-403. Examinations and treatment – Payment.

14 (a) All licensed emergency departments shall provide prompt,
15 appropriate emergency medical-legal examinations for sexual assault victims.

16 (b)(1)(A) All victims shall be exempted from the payment of expenses
17 incurred as a result of receiving a medical-legal examination if the victim
18 receives the medical-legal examination within ninety-six (96) hours of the
19 attack.

20 (B) However, the time limitation of ninety-six (96) hours
21 may be waived if the victim is a minor or if the Crime Victims Reparations
22 Board finds that good cause exists for the failure to provide the medical-
23 legal examination within the required time.

24 (2)(A) This subsection does not require a victim of sexual
25 assault to participate in the criminal justice system or to cooperate with
26 law enforcement in order to be provided with a forensic medical exam or
27 reimbursement for charges incurred on account of a forensic medical exam, or
28 both.

29 (B) Subdivision (b)(2)(A) of this section does not
30 preclude a report of suspected abuse or neglect as permitted or required by
31 the Child Maltreatment Act, § 12-18-101 et seq.

32 (c)(1) A ~~medical facility or~~ licensed healthcare provider that
33 performs a medical-legal examination shall submit a sexual assault
34 reimbursement form, an itemized statement that meets the requirements of 45
35 C.F.R. § 164.512(d), as it existed on January 2, 2001, directly to the board
36 for payment.

1 (2) The ~~medical facility or~~ licensed healthcare provider shall
2 not submit any remaining balance after reimbursement by the board to the
3 victim.

4 (3) Acceptance of payment of the expenses of the medical-legal
5 examination by the board shall be considered payment in full and bars any
6 legal action for collection.

7
8 12-12-404. Reimbursement of medical facility – Rules.

9 (a) The Crime Victims Reparations Board may reimburse any ~~medical~~
10 ~~facility or~~ licensed healthcare provider that provides the services outlined
11 in this subchapter for the reasonable cost for such services.

12 (b) The board is empowered to prescribe minimum standards and rules
13 necessary to implement this subchapter. These shall include, but not be
14 limited to, a cost ceiling for each claim and the determination of reasonable
15 cost.

16
17 12-12-405. License suspension or revocation.

18 Noncompliance with the provisions of this subchapter is grounds for
19 licensure suspension or revocation pursuant to the provisions of § 20-9-215
20 or any other provisions governing the licensure of ~~medical facilities or~~
21 healthcare providers.

22
23 12-12-406. Sexual assault collection kits – Submission for testing –
24 Definitions.

25 ~~(a) As used in this section:~~

26 ~~(1) “Anonymous kit” means a sexual assault collection kit that~~
27 ~~is collected from a possible victim of a sexual assault who has not decided~~
28 ~~whether to report the sexual assault to a law enforcement agency;~~

29 ~~(2) “Healthcare provider” means a person or facility that~~
30 ~~provides a medical-legal examination;~~

31 ~~(3) “Law enforcement agency” means a police force or~~
32 ~~organization whose primary responsibility as established by statute or~~
33 ~~ordinance is the enforcement of the criminal laws, traffic laws, or highway~~
34 ~~laws of this state;~~

35 ~~(4) “Medical-legal examination” means health care delivered to a~~
36 ~~possible victim of a sexual assault, with an emphasis on the gathering and~~

1 ~~preserving of evidence for the purpose of serving criminal justice;~~

2 ~~(5) "Sexual assault" means an offense described in § 5-14-101 et~~
3 ~~seq. or § 5-26-202; and~~

4 ~~(6) "Sexual assault collection kit" means a human biological~~
5 ~~specimen or specimens collected during a medical-legal examination from the~~
6 ~~alleged victim of a sexual assault.~~

7 ~~(b)(1)(a)(1)~~ A licensed healthcare provider that has collected
8 required victim information as part of a medical-legal examination shall
9 enter the required victim information into a sexual assault collection kit
10 tracking system of the State Crime Laboratory before transferring the sexual
11 assault collection kit to a law enforcement agency with jurisdiction.

12 (2) The system described in subdivision ~~(b)(1)(a)(1)~~ of this
13 section shall provide secure electronic access that allows a law enforcement
14 agency, a licensed healthcare provider, the laboratory, and a victim to
15 access tracking information.

16 (3) A sexual assault collection kit collected by a licensed
17 healthcare provider shall be taken into custody by a law enforcement agency
18 as soon as possible and within three (3) business days of notice from the
19 licensed healthcare provider.

20 ~~(e)(1)(b)(1)~~ A law enforcement agency that receives a sexual assault
21 collection kit from a licensed healthcare provider shall enter all necessary
22 information into the system described in subdivision ~~(b)(1)(a)(1)~~ of this
23 section.

24 (2) A law enforcement agency that receives a sexual assault
25 collection kit from a licensed healthcare provider that relates to a report
26 of a sexual assault that occurred outside of the jurisdiction of the law
27 enforcement agency shall have the sexual assault collection kit delivered to
28 the law enforcement agency having jurisdiction within ten (10) days of
29 learning that the other law enforcement agency has jurisdiction.

30 ~~(d)(c)~~ A sexual assault collection kit shall be submitted to the
31 laboratory by the receiving law enforcement agency as soon as possible, but
32 no later than fifteen (15) days after receipt of the sexual assault
33 collection kit.

34 ~~(e)(1)(d)(1)~~ A law enforcement agency is not required to submit an
35 anonymous kit to the laboratory if the victim does not affirmatively request
36 submission.

1 (2) If a victim chooses to provide a personal statement about
2 the sexual assault to a law enforcement agency at any time after initially
3 declining to provide a personal statement, the anonymous kit shall be
4 delivered to the laboratory as soon as possible, but no later than fifteen
5 (15) days after the victim chooses to provide a personal statement to the law
6 enforcement agency.

7 ~~(f)~~(e) If available, a suspect standard or a consensual partner
8 elimination standard shall be submitted to the laboratory:

9 (1) With the sexual assault collection kit, if available, at the
10 time the sexual assault collection kit is submitted; or

11 (2) As soon as possible, but no later than fifteen (15) days
12 from the date the sexual assault collection kit was obtained by the law
13 enforcement agency, if the suspect standard or consensual partner elimination
14 standard is not obtained until after the sexual assault collection kit is
15 submitted.

16 ~~(g)(1) Starting July 1, 2019, the~~

17 (f)(1) The laboratory shall test all sexual assault collection kits
18 that are received from a law enforcement agency with the goal of developing
19 autosomal DNA profiles that are eligible for entry into the Combined DNA
20 Index System.

21 (2) Sexual assault collection kits shall be tested by the
22 laboratory and the tests completed within sixty (60) days of receipt from the
23 law enforcement agency.

24 (3) The ability of the laboratory to complete all tests within
25 sixty (60) days of receipt may be dependent upon the following factors:

26 (A) The number of sexual assault collection kits that the
27 laboratory receives;

28 (B) The technology and improved testing methods available;

29 (C) The establishment of a fully trained and dedicated
30 staff to meet the caseload; and

31 (D) The number of lab requests received relating to other
32 crime categories.

33 (4) Failure to meet a deadline established under this subsection
34 or administrative rule is not a basis for dismissal of a criminal action or a
35 bar to the admissibility of the evidence in a criminal action.

36

1 SECTION 2. Arkansas Code § 12-18-607 is amended to read as follows to
2 clarify its application:

3 12-18-607. When the alleged offender is neither a family member nor a
4 fictive kin and not living in the home with the alleged victim.

5 If the alleged offender is not a family member or fictive kin living in
6 the home with the alleged victim, the investigation under this chapter shall
7 seek to ascertain:

8 (1) The existence, cause, nature, and extent of child
9 maltreatment;

10 (2) The identity of the person responsible for the child
11 maltreatment;

12 (3) The existence and extent of previous child maltreatment
13 perpetrated by the alleged offender;

14 (4) If the report is determined to be true, the names and
15 conditions of any children of the alleged offender and whether these children
16 have been maltreated or are at risk of child maltreatment unless the
17 investigating agency has determined that there is no indication of risk to
18 the children;

19 (5) If the report is determined to be true and is a report of
20 sexual abuse, sexual contact, or sexual exploitation, an assessment of any
21 other children previously or currently under the care of the alleged
22 offender, to the extent practical, and whether these children have been
23 maltreated or are at risk of maltreatment unless the investigating agency has
24 determined that there is no indication of risk to the children; and

25 (6) All other pertinent and relevant data.
26

27 SECTION 3. Arkansas Code § 12-18-620(e)(11)(A), concerning releases of
28 information on pending child maltreatment investigations, is amended to read
29 as follows to clarify a reference:

30 (11)(A) Federal, state, and local government entities, or any
31 agent of ~~such~~ federal, state, or local government entities, that have a need
32 for such information to carry out their responsibilities under law to protect
33 children from child maltreatment.
34

35 SECTION 4. Arkansas Code § 12-18-710(e)(12)(A), concerning releases of
36 information on true child maltreatment investigative determinations pending

1 due process, is amended to read as follows to clarify a reference:

2 (12)(A) Federal, state, and local government entities, or any
3 agent of ~~such~~ federal, state, or local government entities, that have a need
4 for such information to carry out their responsibilities under law to protect
5 children from child maltreatment.

6
7 SECTION 5. Arkansas Code § 12-18-909(g)(15)(A), concerning the
8 availability of true reports of child maltreatment from the Child
9 Maltreatment Central Registry, is amended to read as follows to clarify a
10 reference:

11 (15)(A) Federal, state, and local government entities, or any
12 agent of ~~such~~ federal, state, or local government entities, that have a need
13 for such information to carry out their responsibilities under law to protect
14 children from child maltreatment.

15
16 SECTION 6. Arkansas Code § 12-18-910(f)(6)(A), concerning the
17 availability of screened-out and unsubstantiated child maltreatment reports,
18 is amended to read as follows to clarify a reference:

19 (6)(A) Federal, state, and local government entities, or any
20 agent of ~~such~~ federal, state, or local government entities, that have a need
21 for such information to carry out their responsibilities under law to protect
22 children from child maltreatment.

23
24 SECTION 7. Arkansas Code § 12-29-118(b)(2)(B), concerning punitive
25 isolation or solitary confinement of inmates who are minors, is amended to
26 read as follows to correct an engrossment error:

27 (B) The warden of the state correctional facility or his
28 or her designee shall provide the written authorization described in
29 subdivision (b)(2)(A) of this section for every twenty-four-hour period
30 during which the minor remains in punitive isolation or solitary confinement
31 after the initial twenty-four (24) hours.

32
33 SECTION 8. Arkansas Code § 12-32-102(c), concerning restraint of a
34 pregnant inmate or detainee, is amended to read as follows to clarify
35 references:

36 (c) If restraints are used on a pregnant inmate or detainee under

1 subsection (a) of this section:

2 (1)(A) The type of restraints shall be the least restrictive
3 type necessary, and the restraints shall be applied in the least restrictive
4 manner necessary.

5 (B) Leg or waist restraints shall not be used on any
6 pregnant inmate or detainee who is in labor.

7 (C) Leg restraints shall not be used on a pregnant inmate
8 or detainee who is not in a wheelchair, bed, or gurney;

9 (2) The restraints shall always be forward-facing, designed to
10 restrain the ~~person's~~ hands of the pregnant inmate or detainee in front of
11 the ~~person~~ pregnant inmate or detainee to protect the ~~person~~ pregnant inmate
12 or detainee and others;

13 (3) Only soft restraints may be used; and

14 (4)(A) The correctional or detention facility shall make written
15 findings within ten (10) days regarding the substantial flight risk of that
16 pregnant inmate or detainee or other extraordinary medical or security
17 circumstance that dictated the pregnant inmate or detainee be restrained to
18 ensure the safety and security of the pregnant inmate or detainee, the child,
19 staff of the correctional or detention facility, or medical facility, other
20 inmates or detainees, or the public.

21 (B) The written findings under subdivision (c)(4)(A) of
22 this section shall be maintained by the correctional or detention facility
23 for at least five (5) years and be made available for public inspection,
24 except that information identifying any pregnant inmate or detainee or that
25 could lead to the identification of the pregnant inmate or detainee shall not
26 be made public.

27

28 SECTION 9. Arkansas Code § 12-41-505(b)(3)(B), concerning expenses and
29 support of county jail inmates, is amended to read as follows to clarify a
30 reference:

31 (B) The remaining funds shall be deposited into or
32 credited to a special revenue fund and used for the maintenance, operation,
33 and capital expenditures of a county jail or regional detention facility and
34 for certificate pay for law enforcement and ~~jailer~~ jail personnel.

35

36 SECTION 10. Arkansas Code § 12-64-518(e), concerning issuance of

1 process under the Military Code of Arkansas, is amended to read as follows to
 2 clarify a criminal offense pursuant to § 5-1-107(c), which makes any
 3 misdemeanor defined by a statute not a part of the Arkansas Criminal Code
 4 that does not specify the class of the misdemeanor or prescribe a limitation
 5 on a sentence to imprisonment a Class A misdemeanor, and make stylistic
 6 changes:

7 (e) Any sheriff, constable, jailer, marshal, or other civil officer
 8 named in this code, who shall neglect or refuse to obey, execute, or return
 9 the lawful warrant or other process of a military court or make a false
 10 return thereon, ~~shall be~~ upon conviction is guilty of a Class A misdemeanor
 11 and in addition to the ~~penalties attaching thereto~~ criminal penalties, shall
 12 forfeit fifty dollars (\$50.00) for each offense or neglect of duty, the money
 13 to be recovered in a civil action against the officer and his or her official
 14 sureties by the Attorney General for the benefit of the Department of the
 15 Military Fund Account.

16
 17 SECTION 11. DO NOT CODIFY. CONSTRUCTION AND LEGISLATIVE INTENT.

18 It is the intent of the General Assembly that:

19 (1) The enactment and adoption of this act shall not expressly
 20 or impliedly repeal an act passed during the regular session of the Ninety-
 21 Third General Assembly;

22 (2) To the extent that a conflict exists between an act of the
 23 regular session of the Ninety-Third General Assembly and this act:

24 (A) The act of the regular session of the Ninety-Third
 25 General Assembly shall be treated as a subsequent act passed by the General
 26 Assembly for the purposes of:

27 (i) Giving the act of the regular session of the
 28 Ninety-Third General Assembly its full force and effect; and

29 (ii) Amending or repealing the appropriate parts of
 30 the Arkansas Code of 1987; and

31 (B) Section 1-2-107 shall not apply; and

32 (3) This act shall make only technical, not substantive, changes
 33 to the Arkansas Code of 1987.

34
 35 **APPROVED: 3/25/21**