

**ADMINISTRATIVE RULE REVIEW SUBCOMMITTEE
OF THE
JOINT BUDGET COMMITTEE**

**Tuesday, February 22, 2022
Upon Adjournment of House State Agencies
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order.
- B. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.
 - 1. **DEPARTMENT OF CORRECTIONS** (Solomon Graves)
 - a. **SUBJECT: Administrative Transfer**

DESCRIPTION: 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 Correction 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.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on February 4, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

Q. Section VI.C.3 sets out procedures that ADC Central Records will follow “if the Sentencing Order does authorize administrative transfer[.]” Does this require affirmative indication that administrative transfer is authorized, or does it include instances where the Sentencing Order is silent on whether administrative transfer is permitted, as per Act 55?

Response: Act 55 essentially flipped the box on the order for admin transfers. There is really no way for the Order to be silent on whether or not it is authorized, either prior to or after passage of Act 55. If the ADC box is checked, then the DOC would be authorized to utilize admin transfer. See the snip of the order below. Previously, the judge had to affirmatory [sic] select “ADC, Admin Transfer authorized” in order for the DOC to utilize this sentencing option. The Sentencing Order is the standardized form that has to be used when sentencing an offender in Circuit Court.

Sentence Options	Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. <input type="checkbox"/> Yes <input type="checkbox"/> No			Extended Juvenile Jurisdiction Applied <input type="checkbox"/> Yes <input type="checkbox"/> No
	The Court hereby orders a judicial transfer to the AR Division of Community Correction. <input type="checkbox"/> Yes <input type="checkbox"/> No			
	Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. <input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
	JAIL TIME CREDIT	TOTAL TIME TO BE SERVED FOR ALL OFFENSES In months: _____ <input type="checkbox"/> Life <input type="checkbox"/> LWOP	Death Penalty <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, State Execution Date: _____
	DEFENDANT IS ASSIGNED TO: <input type="checkbox"/> ADC <input type="checkbox"/> ADC, Admin.Transfer <input type="checkbox"/> CCC <input type="checkbox"/> COUNTY JAIL <input type="checkbox"/> PROBATION <input type="checkbox"/> SIS			
	Conditions of disposition or probation are attached. <input type="checkbox"/> Yes <input type="checkbox"/> No			
	A copy of the pre-sentence investigation on sentencing information is attached <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Defendant is subject to delayed release pursuant to A.C.A. § 5-4-405.	
	A copy of the Prosecutor's Short Report is attached <input type="checkbox"/> Yes <input type="checkbox"/> No		DEFENDANT WAS INFORMED OF APPELLATE RIGHTS <input type="checkbox"/> Yes <input type="checkbox"/> No	
			Appeal Bond \$ _____	
	The County Sheriff is hereby ordered to: <input type="checkbox"/> transport the defendant to county jail <input type="checkbox"/> take custody for referral to CCC <input type="checkbox"/> transport to ADC			
Defendant shall report to ACC probation officer for report date to CCC <input type="checkbox"/> Yes <input type="checkbox"/> No				
Prosecuting Attorney/Deputy (Print Name): _____				
Signature: _____		Date: _____		

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: This rule implements Act 55 of 2021, sponsored by Representative Carol Dalby, which concerned the judicial or administrative transfer of an inmate to the Division of Community Correction and concerned transfer to the Division of Community Correction noted on a court’s sentencing order. Under the Act, “[t]he Director of the Division of Correction, in accordance with the rules and procedures promulgated by the Board of Corrections, shall . . . determine the administrative transfer of an inmate to the Division of Community

Correction[.]” Act 55, § 1(b)(1), *codified at* Ark. Code Ann. § 12-27-113(b)(1).

2. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL BOARD** (Doralee Chandler)

- a. **SUBJECT: Title 1, Subtitle C, Rule 1.33(15): Sale of Beer or Small Farm Wine Through Drive Up Windows Prohibited at Off Premises Retail Beer and Small Farm Wine Premises**

DESCRIPTION: This proposed rule removes the prohibition on alcohol sales through a drive up window for Off-Premises Retail Beer and Small Farm Wine premises.

PUBLIC COMMENT: A public hearing was held on these rules on January 19, 2022. The public comment period expired on January 19, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). “It is intended by this grant of power to adopt rules that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.” Ark. Code Ann. § 3-2-206(d).

- b. **SUBJECT: Title 3, Subtitle C, Rule 3.13.1: Sale of Beer and Wine through Drive Up Windows Allowed at Outlets Holding a Retail Beer Off Premises Permit and Small Farm Wine Retail Permit**

DESCRIPTION: This proposed rule allows beer and wine sales through a drive-up window for establishments that hold an Off-Premises Retail Beer and Small Farm Wine permit.

PUBLIC COMMENT: A public hearing was held on this rule on January 19, 2022. The public comment period expired on January 19, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the authority to promulgate rules as needed to carry out any “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). “It is intended by this grant of power to adopt rules that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.” Ark. Code Ann. § 3-2-206(d).

B. Adjournment.