



*"Service with Excellence  
and Integrity"*

## Arkansas Department of Community Correction

Two Union National Plaza Building  
105 West Capitol, 2<sup>nd</sup> Floor  
Little Rock, Arkansas 72201-5731  
(501) 682-9510 Fax: (501) 682-9513

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### ADMINISTRATIVE DIRECTIVE: #00-09 WHISTLE-BLOWER ACT

**TO: DEPARTMENT OF COMMUNITY CORRECTION (DCC) EMPLOYEES**

**FROM: G. DAVID GUNTARP, DIRECTOR**

**SUPERSEDES: NONE**

**PAGE 1**

**APPROVED: Signature on File**

**EFFECTIVE: AUGUST 31, 2000**

- I. APPLICABILITY.** This policy applies to Department of Community Correction (DCC) employees.
- II. POLICY.** It is Department of Community Correction (DCC) policy to protect employees from adverse action when, in good faith, they report fraud, waste of public funds or a violation of a State statute or regulation which is not of a merely technical or minimal nature, or violation of legal duties or a code of conduct or code of ethics designed to protect the interest of the public or the DCC. This policy does not permit the disclosure of legally protected confidential records.
- III. DEFINITIONS.**
  - A. Adverse Action.** To discharge, threaten, or otherwise discriminate or retaliate against an employee in any manner that effects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges.
  - B. Communicate.** To give a verbal or written report to an appropriate authority.
  - C. Employee.** A person who performs a full or part-time service for wages, salary, or other remuneration for the DCC.
  - D. Good Faith.** An employee communicates in "good faith" if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. "Good faith" is lacking when the employee does not have personal knowledge of a factual basis for the communication or where the employee knew or reasonably should have known that the communication of the waste or violation is malicious, false or frivolous.

- E. **Violation.** An infraction or a breach which is not of a merely technical or minimal nature of a State statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.
- F. **Waste.** A public employer's conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from State or local political subdivision's resources.
- G. **Whistle-Blower.** A person who witnesses or has evidence of a waste or violation while employed with the DCC and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the DCC, or to an appropriate authority, provided that the communication is made prior to any adverse action by a DCC supervisor.

IV. **GUIDELINES.** The Whistle-Blower Act prohibits DCC from taking adverse action (i.e., discharge, threaten, demote, etc.) against its employees for making waste and/or violation reports in good faith. However, the Act does not protect an employee from an adverse action which occurs before a violation report is communicated or from misconduct, poor job performance, or subjection to a reduction in workforce unrelated to a communication made pursuant to the Act.

**A. Supervisor Responsibilities.**

- 1. Familiarize themselves with this policy.
- 2. Notify supervised employees of their protections and obligations under the Whistle-Blower Act.
- 3. Document any conversations with employees relative to reported waste/violations and immediately forward it, with the report to the Internal Affairs Administrator (IAA), Director, BCCP Chairperson, whichever appropriate.

**B. Employee Responsibilities.**

- 1. When reporting, in good faith, waste or violations as defined in this policy, communicate verbally or in writing the existence of the following:
  - a. Waste of public funds, property, or manpower (excluding federal funds, property, or manpower) or
  - b. A violation or suspected violation of a State, county, or municipal law, rule, or regulation. The violation must be an infraction or breach which is not of a merely technical or minimal nature.

2. Report violations to an appropriate authority, such as the following:
  - a. a DCC supervisor, IAA, or Director, or BCCP Chairperson, as appropriate.
  - b. a State, county or municipal government department, agency or organization having jurisdiction over criminal law enforcement, etc.
  - c. the office of Attorney General, Auditor of State, Arkansas Ethics Commission, Legislative Joint Audit Committee, Division of Legislative Audit, or prosecuting attorney's office.
3. Make a reasonable attempt to determine the correctness of the information furnished regarding inappropriate activity being reported.
4. Communicate at a time and in a manner which gives the DCC reasonable notice of the need to correct the waste or violation. When reporting, employees are encouraged to first report within the agency so that investigations may be expedited and/or other necessary action taken.

#### **H. IAA Responsibilities.**

1. Appropriately and expeditiously investigate all whistle-blower reports received internally, investigating the merits of the assertion, determining whether it meets the definition of an improper governmental action, and determining an appropriate course of action. When determining if the alleged assertion is improper, consider the following factors:
  - a. Accuracy of the information furnished;
  - b. Nature and quality of evidence;
  - c. Existence of relevant laws and rules;
  - d. Whether the action appears to be isolated or systemic;
  - e. History of previous assertions regarding the same subject or subject matter;
  - f. Whether other avenues are available for addressing the matter;
  - g. Seriousness or significance of the asserted improper governmental action; and
  - h. Cost and benefit of potential investigation.
2. Be objective, thorough and independent of influence in conducting interviews and/or review of relevant documents associated with whistle-blower reports.
3. Maintain confidentiality of the whistle-blower and witnesses who provide information, as appropriate.
4. Document investigation activities and conclusions in a clear and understandable fashion and report findings to the Director.
5. Make referrals to appropriate agencies on discovery of reasonable cause to believe State laws have been violated, and follow up until appropriate corrective action has been taken.

**D. Actions Prohibited by the Whistle-Blower Act.**

1. The discharge, threat, discrimination or retaliation against an employee in any manner that affects the employee's employment (i.e. compensation, job location, rights, immunities, promotions, or privileges) when an employee engages in an activity protected by the Act. This does not preclude a supervisor from taking adverse action against an employee for misconduct, poor job performance, or a reduction in the workforce.
2. Adverse action against an employee who participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.
3. Adverse action against an employee who objects to or refuses to carry out a directive that the employee reasonably believes violates a law, rule, or regulation.

**E. Legal Action.**

1. Civil. An employee who alleges adverse action in violation of this Act may bring a civil action in chancery court for appropriate injunctive relief and/or actual damages within 180 days after the alleged violation of the Act.
  - a. The employee has the burden of proof in establishing that he or she has suffered an adverse action for an activity protected under the Act.
  - b. The DCC shall have an affirmative defense if it can establish by a preponderance of the evidence that the adverse action taken against the employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication made pursuant to the Act.
2. Remedies. The court rendering judgment under the Act may order any or all of the following remedies:
  - a. order an injunction to restrain continued violation of the provisions of the Act;
  - b. reinstate the employee to the same position or to an equivalent position;
  - c. reinstate full fringe benefits and retirement service credit;
  - d. order compensation for lost wages, benefits, and any other remuneration;
  - e. order DCC payment of reasonable court costs and attorney's fees, or
  - f. Order employee payment of reasonable attorney's fees and court costs unless, after exercising reasonable and diligent efforts after filing the suit, the employee files a voluntary non-suit concerning the employer within 60 days after determining the employer would not be liable for damages.
3. Mediation. The employee and DCC may voluntarily participate in mediation under the Department of Finance and Administration's mediation program to resolve a dispute involving an adverse action taken against the employee. If voluntary mediation is agreed to, it shall occur before a civil action has been initiated in court.

**V. PROCEDURES.**

- A. Reporting Alleged Violations.** An employee who wishes to initiate a “good faith” report of a violation internally must complete and submit the Whistle-Blower Reporting Form (AD 00-09 Form 1) to his/her or higher level supervisor, directly to the DCC IAA or, if believed to be necessary, to one of the other authorities identified in paragraph IV. B.1. above. If the IAA is the subject of the alleged violation, the report should be submitted to the DCC Director. If the Director is the subject of the alleged violation, the report should be submitted to the Chairperson of the Board of Correction and Community Correction.
- B. Employee Notification.** All DCC employees shall be notified of the existence and contents of this policy and sign a copy of the notification form, AD 00-09 Form 2. New Hire employees will be so informed and complete the form as part of the new-hire orientation. Completed forms will be submitted to the DCC Human Resources Administrator for filling in the employees’ personnel files.

**VI. REFERENCE.** Arkansas Code Annotated §§21-1-601 et. seq.

**VII. STANDARDS.** None Applicable

**VIII. ATTACHMENTS.**

Whistle-Blower Reporting Form, AD 00-09 Form 1  
Notice of Whistle-Blower Policy, AD 00-09 Form 2

# DEPARTMENT OF COMMUNITY CORRECTION (DCC) WHISTLE-BLOWER REPORTING FORM

Investigator's Office Only Date Received	Investigator's Office Only WB Case No.

**DCC Employee Filing Whistle-Blower Report**

Name	Position Title	Date
Home Address	Complete Position Location	Day Phone
	Best Time to Call	Night Phone

**Name of Alleged Violator(s)**

**Name of Alleged Violators' Supervisors**

Alleged Violator's Name
Position
Position Location

Supervisor's Name
Position
Position Location

Alleged Violator's Name
Position
Position Location

Supervisor's Name
Position
Position Location

**Please Complete One Form For Each Assertion**

Which type(s) of improper governmental action does the assertion invoke?

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Violation of State Law  | <input type="checkbox"/> Fraud                       | <input type="checkbox"/> Code of Conduct/Ethics Violation |
| <input type="checkbox"/> Violation of State Reg. | <input type="checkbox"/> Gross Waste of Public Funds | <input type="checkbox"/> Other (Specify) _____            |

Whistle-Blower Reporting Form Continued

What is the alleged improper activity? Please describe in detail and attach a separate piece of paper if necessary.

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When did the event(s) take place? Please include date, time, and frequency.

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Where did the event(s) occur?

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Are there other witnesses? If so, what are their names, position titles and locations?

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List evidence or documentation which can be examined or reviewed?

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How do you know about the improper action? Did you see documentation indicating it occurred? Did you hear it from someone? If so, from whom?

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If known, what specific law or State regulation has been violated?

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**Notice of Whistle-Blower Policy**

**Department of Community Correction  
Two Union National Plaza Building  
105 West Capitol, 2nd Floor  
Little Rock, Arkansas 72201-5731  
(501) 682-9510  
Fax (501) 682-9513**

**TO: Department of Community Correction, Human Resources Section**

**FROM: DCC Employee - \_\_\_\_\_**

**RE: Notice of Whistle-Blower Policy**

**DATE: \_\_\_\_\_**

**APPLICANT/WORKER STATEMENT:** I have read and understand the Department of Community Correction policy as outlined in the Administrative Directive titled “Whistle-Blower Act.” I understand that I am protected from adverse action when I report “in good faith,” fraud, waste of public funds or a violation of a State statute or regulation which is not of a merely technical or minimal nature, or violation of legal duties or a code of conduct or code of ethics designed to protect the interest of the public or the DCC. I understand adverse action includes any of the following actions: discharge, threat, or otherwise discriminatory or retaliatory action in any manner that effects my employment, including compensation, job location, rights, immunities, promotions, or privileges. I am not protected from adverse action by this policy for actions which occur before a violation notice is communicated or for conduct or performance independent of communicating, in good faith, a violation notice.

_____ Applicant/Employee’s Signature	_____ Date	_____ Witness’ Signature
_____ Applicant/Employee’s Printed Name		_____ Witness’ Printed Name