

STATE OF OHIO



DEPARTMENT OF REHABILITATION  
AND CORRECTION

SUBJECT: <b>Variance Process for Ohio Minimum Jail Standards</b>	PAGE <u> 1 </u> OF <u> 5 </u> .  NUMBER: 107-BAD-05
RULE/CODE REFERENCE: ORC5120.10, 119.12; Ex.Or. 92.03 A.R. 5120:1-7-01	SUPERSEDES: 107-BAD-05 dated 06/19/15
RELATED ACA STANDARDS:	EFFECTIVE DATE: July 13, 2016
	APPROVED: 

**I. AUTHORITY**

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

**II. PURPOSE**

The purpose of this policy is to provide a process for considering, approving, and monitoring variance requests from local jails.

**III. APPLICABILITY**

This policy applies to Bureau of Adult Detention staff and to local officials who request variances to the Minimum Standards for Jails in Ohio.

**IV. DEFINITIONS**

**Appeal** - The process by which a jail formally contests the official determination of non-certification during the certification process or the inspection findings during the annual inspection process.

**Compliance** - A term that indicates that a jail successfully meets a particular standard.

**Jail** - A local confinement facility and operation recognized by the Bureau of Adult Detention as either a Temporary Holding Facility (THF), 12-Hour Jail (12H), 12-Day Jail (12D), Minimum Security Jail (MSJ), or Full-Service Jail (FSJ) classification. The classification of jails is established in OAC 5120:1-7-02(A).

**Jail Inspector** - A Bureau of Adult Detention employee responsible for the day-to-day operations as they relate to the jails in the State of Ohio, including conducting jail inspections pursuant to ORC 5120.10.

**Minimum Standards for Jails in Ohio** - Enforceable standards established by the Director of the Ohio Department of Rehabilitation and Correction (DRC), in consultation with the Bureau of Adult Detention under the authority of the Ohio Revised Code which applies to county jails, municipal jails, regional jails and workhouse facilities. The purpose of the standards is to facilitate the safe, secure, legal, and effective operation of Ohio's local adult jails in accordance with applicable state and federal laws. Also referred to as "Standards for Jails in Ohio".

**Variance** - The process of receiving approval by the Bureau of Adult Detention for an alternative but acceptable method of complying with the intent of a standard when strict compliance would cause unusual, practical difficulties, or financial hardship. The alternative practice must not seriously affect the security of the jail, the supervision of the prisoners, or the safe operation of the jail.

## V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) through the Bureau of Adult Detention to review variance requests from the Minimum Standards for Jails in Ohio in accordance with Ohio Revised Code Section 5120.10(C). The Director of the DRC shall grant variances from the Minimum Standards for Jails in Ohio when strict compliance would cause unusual, practical difficulties, or financial hardship, when existing practices meet the intent of the standards, and where the granting of a variance would not seriously affect the security of the jail, the supervision of inmates, or the safe, healthful operation of the jail. The DRC chief inspector shall serve as the Director's designee in granting variances.

## VI. PROCEDURES

### A. Variance Inquiries

1. Whenever appropriate or requested, Bureau of Adult Detention staff shall enlighten jails about the variance process.
2. Bureau of Adult Detention staff shall clarify that variances are granted for a specific standard and the jail cannot be exempted from compliance with standards.

### B. Variance Request Process

1. Bureau of Adult Detention staff shall instruct those officials wishing to apply for a variance to:
  - a. Submit a written request to the jail inspector stating:
    - i. Standard for which the variance is requested;
    - ii. Reasons for variance request (e.g. unusual, practical difficulties, or financial hardships encountered);
    - iii. How existing practices meet the intent of the standard;
    - iv. Why granting the variance would not adversely affect the security of the jail, the supervision of inmates, or the safe, healthful operation of the jail.

- b. Enclose supportive documentation as appropriate (e.g. procedures, photographs, reports).
    - c. Contact the jail inspector for assistance in preparing materials as needed.
  2. Upon receipt of a variance request, the jail inspector shall visit the jail in question, if necessary, to verify all information contained in the request. The jail inspector shall assess optional ways of complying with the standard that would be acceptable to the Bureau of Adult Detention and the jail and would not require a variance.
  3. The jail inspector or facilities project manager shall submit a memo to the administrator of the Bureau of Adult Detention or designee including:
    - a. Verification of information in the application;
    - b. Any comments or background data thought to be relevant to the evaluation of the request;
    - c. Options identified and considered;
    - d. All relevant materials and/or documentation;
    - e. Recommendation as to granting or denying the request, the period for which the variance should be granted, and any conditions that should be placed on the variance.
  4. The administrator of the Bureau of Adult Detention or designee shall review all data submitted and shall:
    - a. Discuss the variance request with the DRC chief inspector to determine:
      - i. If the DRC legal section should be consulted; and,
      - ii. If the variance is appropriate and should be granted.
    - b. Prepare a written response to the request for approval of the DRC chief inspector as the Director's designee.
      - i. If the variance is granted, the response shall include reason(s) for the decision, any conditions placed on granting the variance, effective date and length of variance, and the renewal procedures as appropriate.
      - ii. If the variance is not granted, the response shall include reason(s) for the decision, notification of the appeal process, and encouragement to comply with the standard in more conventional ways if appropriate.
    - c. Forward the written decision to the requestor with a copy to other appropriate parties.
  5. The requestor may appeal a variance denial by writing directly to the Director of the DRC and/or as provided through section 119.12 of the Ohio Revised Code.

C. Monitoring Variances

1. The jail inspector shall monitor a jail's adherence to variance conditions during appropriate contacts with the jail (e.g. annual inspections, phone calls, and other scheduled on-site visits).
  - a. Required monitoring must be documented by memorandum to the jail inspector noting status of variance conditions and making recommendations of future action(s) as appropriate.
  - b. Unscheduled contacts shall only be noted by a "memo to file" unless the jail is not adhering to the variance conditions.
2. Variances shall be rescinded when:
  - a. The jurisdiction is not meeting the conditions placed on the variance; or
  - b. The time period for the variance has expired and no extension has been requested or granted; or
  - c. The situation has changed and the variance is no longer applicable or required.
3. Variances may be renewed or made permanent as deemed appropriate by the DRC.
  - a. The jail inspector and/or assistant bureau administrator must remind the jail ninety (90) days prior to the expiration of the variance period. If an extension is not appropriate or desired, the inspector shall notify officials in written correspondence that the variance will expire on the date specified with a copy to the administrator of the Bureau of Adult Detention and the DRC chief inspector.
  - b. The jail inspector and/or assistant bureau administrator shall instruct those officials wishing to renew or make the variance permanent to submit a written request to the jail inspector and/or assistant bureau administrator specifying the reasons justifying the change sixty (60) days prior to the expiration of the variance.
  - c. Upon receipt of the request, the jail inspector and/or assistant bureau administrator shall take steps as outlined in this procedure.
  - d. The jail inspector and/or assistant bureau administrator shall process the request.
  - e. Records shall be maintained of variances requested, granted, denied, extended, or rescinded according to the DRC record retention schedule.
  - f. The jail inspector shall record such events as appropriate in the weekly reports.

**Related Department Forms:**

Variance Request/Jail Certification

DRC7057