

No. 21-15089
PRO BONO

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SHAYKH MUHAMMAD ABDUL AZIZ KHALID BIN TALAL AL
SAUD,

Plaintiff-Appellant,

v.

PANNAN DAYS, et al.,

Defendant-Appellees.

On Appeal from the United States District Court
for the District of Arizona
No. CV 19-04863-PHX-SPL (JFM)
Hon. Steven P. Logan

APPELLANT'S REPLACEMENT OPENING BRIEF

William Fernholz
Susan Yorke
Chelsea Bray (Law Student)
Reginaldo Valdez (Law Student)
428 Law Building (North Addition)
Berkeley, California 94720-7200
510-926-9109
wfernholz@law.berkeley.edu

Attorneys for Appellant
Shaykh Muhammad Al Saud

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INTRODUCTION

Plaintiff Shaykh Muhammad Al Saud, an inmate at the Arizona State Prison Complex-Eyman, requested a housing accommodation to perform his five daily salats, or prayers, safely.¹ Those prayers are integral to his Muslim faith, and the Qur'an requires that he pray with other Muslims. Defendants, however, housed Al Saud with inmates who harassed him because of his faith.

Al Saud complained to the officers of the Arizona Department of Corrections Rehabilitation and Reentry (ADCRR),² who did not respond. As a result, Al Saud could not practice his religion without harassment. Al Saud sued under the Free Exercise Clause of the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Ariz. Rev. Stat. § 41-1493.01.³

Al Saud stated a claim under RLUIPA, because he engaged in a religious exercise and the State's actions substantially burdened that exercise. Therefore, the ADCRR had the burden to establish, based on the bare allegations in the pleadings, that its actions were the least restrictive means of furthering a compelling interest. The ADCRR claims that if it granted Al Saud's accommodation request, it would eventually violate the Equal Protection Clause. The ADCRR alleges it would have

¹ Because this case was resolved on the pleadings, allegations are treated as true.

² Defendants and ADCRR are used interchangeably throughout this brief.

³ The District Court did not consider the separate state law claim. If this Court reverses and remands, Al Saud should be able to pursue this claim as well.

to grant all similar accommodation requests, thus leading to a religiously segregated prison. This interest is legally speculative and without evidentiary support. Therefore, it is not compelling. Further, the ADCRR has employed the *most* restrictive means of considering religious housing accommodations by not responding to Al Saud's request.

Al Saud also stated a claim under the Free Exercise Clause of the First Amendment. The ADCRR has not demonstrated that its de facto policy of denying all requests for religious housing accommodation is reasonably related to a legitimate, penological interest under the four-factor *Turner* test.

Nevertheless, the District Court dismissed Al Saud's complaint for failing to state a claim under either RLUIPA or the First Amendment, relying on a single, inapposite case. That case, *Walker*, analyzed a request for a race-based exemption and applied the Equal Protection Clause of the Fourteenth Amendment. Indeed, this Court described the plaintiff in *Walker* as a "devout racist." Based on his racist beliefs, Walker requested to be housed exclusively with white inmates.

But the Constitution and laws of the United States treat racial and religious accommodations differently. It is true that racial classifications, and thus racial accommodations, are suspect and subject to strict scrutiny. By contrast, the Free Exercise Clause and RLUIPA favor, and even require religious accommodation. If race and religion were interchangeable, every religious accommodation—from

Kosher meals to Sunday services—would likely fail the exacting strict scrutiny test. Instead, the Supreme Court evaluates such religious exceptions to generally applicable standards under the religion clauses of the First Amendment rather than under the Equal Protection Clause. Al Saud respectfully requests that this Court reverse the decision below and remand the case for further proceedings.

JURISDICTIONAL STATEMENT

The District Court had original subject matter jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. This is an appeal from a final judgment of the District Court entered on January 6, 2021. ER-11. Al Saud filed a timely Notice of Appeal on January 13, 2021 pursuant to Fed. R. App. P.4(a)(1)(A). ER-66.

ISSUE PRESENTED

Whether Al Saud, an Arizona inmate, has stated a plausible claim under RLUIPA and the Free Exercise Clause, where the ADCRR did not consider under either its housing or religious activity policy his request to be housed with Muslims so as to practice his five daily prayers safely.

Pursuant to Circuit Rule 28-2.7, all applicable statutes and administrative orders are contained in the addendum.

STATEMENT OF THE CASE

I. The ADCRR Housing Policy Requires Correctional Staff To Consider Race, But Not Religion In Determining Whether An Inmate's Housing Is Safe

The ADCRR's policies are found in its Department Order Manual. *See generally* Department Order 101, System of Written Instructions⁴ (hereafter "DO"). Department Order 719 "establishes procedures for the integration of housing assignments." DO-719, Integrated Housing Program, Purpose. "Inmate housing assignments shall be determined in a manner that will ensure that the safety and security of the inmates are considered." DO-719, Purpose.

DO-719 provides that a correctional officer interviews the inmate and, if needed, researches the inmate's records. DO-719 at 1.2. The officer determines, among other things, whether the inmate has a disciplinary history of racial violence, a history as a victim or perpetrator of racial violence, affiliation with any criminal street gangs, and racially motivated, current or prior convictions. DO-719 at 1.2. This intake determines the inmate's "Integrated Housing Code," which assesses whether the inmate "can live with members of any race," "is able to live with the member of at least one different race," "can only live with member of the same race," and so on. DO-719 at 2.1.

⁴ https://corrections.az.gov/sites/default/files/policies/100/0101_071320.pdf. The Department Orders discussed below are included in the addendum.

Based on this information, the inmate will receive a housing assignment. DO-719 at 3.0. An inmate may request to change their housing status at any subsequent time. DO-719 at 4.13.

ADCRR housing policies provide no procedure for assessing the safety of inmates based on their religion. *See generally* DO-719.

II. The ADCRR Inmate Religious Activity Policy Does Not Provide An Inmate A Means To Request Safe Housing In Which To Conduct Daily Prayers

Department Order 904 concerns “Inmate Religious Activities.” DO-904. Inmates may designate a religious preference at intake or any time thereafter. DO-904 at 2.1. Inmates receive religious privileges based on their specific religious preference. DO-904 at 3.0-6.0. “Inmates not designating religious preferences,” however, “shall not be permitted to request religious privileges.” DO-904 at 2.1.2.1.⁵

Staff must “demonstrate respect of inmates’ religious beliefs, . . . not coerce or harass inmates into changing their religious affiliations, [and] treat faith system

⁵ The ADCRR eliminated this language in their updated Department Order 904, which became effective on September 23, 2021. This policy was updated after the District Court dismissed Al Saud’s complaint, and thus could not have been applied to his case. Both the previous and updated version of DO-904 are included in the addendum. Unless otherwise indicated, the citations to DO-904 in this brief refer to the previous version of that order which applied when Al Saud requested a religious housing accommodation.

representatives with equal respect, regardless of their represented faith.” DO-904 at 3.1.1-3.1.3.

Chaplains or other staff must “coordinate religious activities . . . [and] designate in each unit at least one appropriate area for religious activities.” DO-904 at 3.2. They “determine the number of formal religious activities per unit per week following an assessment of the religious needs of the institution/unit.” DO-904 at 3.5.1. An inmate may request “regular worship/study opportunities,” subject to limitations of safety, time, place, and manner. DO-904 at 3.5.2.

Inmates may request religious accommodations in six enumerated circumstances, none of which are at issue here.⁶ DO-904. The ADCRR does not provide a method for requesting religious accommodations, other than for the six

⁶ The six categories are:

1. Requests for religious items, such as smudging material, sacramental wine, and communion supplies. DO-904 at 4.1.8.1-4.1.8.1.3.
2. Requests for work abstinence during holy days or religious sabbaths. DO-904 at 4.2.
3. Requests for food abstinence in accordance with religious practices. DO-904 at 4.3.
4. Requests for special religious ceremonies, such as sweat lodges, multi-faith gatherings, and special annual religious events. DO-904 at 4.4.
5. Requests for religious/ceremonial property like headwear, ceremonial pipes, firewood, and candles. DO-904 at 4.4.6.
6. Requests for religious diets and a process to request those meals. DO-904 at 4.5.

recognized accommodations. *See* DO-904. In limited circumstances, inmates may file a grievance under the “DO-802, Inmate Grievance Procedure.” *See* DO-904 at 1.2.2.1. But DO-904 provides no general method for an inmate to request an unenumerated religious accommodation and receive a response from the institution. *See* DO-904.

III. Al Saud Requested That The ADCRR Provide Housing With Fellow Muslims So That He Can Pray Safely

Al Saud, an inmate at the Arizona State Prison Complex-Eyman, is Muslim. ER-64. As part of his faith, Al Saud must pray five times daily. Those prayers, or *salats*, are the second of the five pillars of Islam.⁷ ER-64.

In his *pro se* complaint, Al Saud asserted his “sincerely held religious belief” that he be “housed with [his] own Muslim believers in our faith.” ER-64. He believes that the Qur’an requires him to be housed with other Muslims to practice his five daily *salats*. ER-64. The area in which this practice is performed requires “cleanliness,” meaning “all believers [must] associate with [other] believers and not associate with anyone that’s . . . hostile towards [the] Islamic faith.” ER-64.

Al Saud alleges that other prisoners are hostile to his religion and religious practices: “Defendant’s refuse to respect my sincerely held faith by compelling me

⁷ OXFORD BIBLIOGRAPHIES, THE FIVE PILLARS OF ISLAM (2014), <https://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0062.xml>.

to be house[d] with racist hateful inmates who has displayed very hostile behavior towards Muslim defendants.” ER-54. “I am being harass about being ...[illegible]... due facts I’m Muslim.” ER-60. Al Saud alleges that other inmates, particularly Chicanos and White Nazis, “all possess hatred toward Muslims.” ER-64.

IV. The ADCRR Did Not Respond To His Request

Al Saud alleged that the ADCRR failed to respond to his request for a housing accommodation to allow him to pray safely with other members of his religion. He “sent numerous letters to [Defendants].” ER-63. He alleged that “these guards possess the authority and the duty to act upon and respect my sincerely held Islamic faith that cause for me to be housed with Muslims only.” ER-53. The ADCRR failed to respond to his repeated requests: “They all fail to act *or even issue response towards my allegation* which they have legal well as [ADCRR] policies and procedures to address these concerns. . .” ER-55 (emphasis added).

V. Al Saud Sued ADCRR Officials Alleging They Infringed His Religious Liberty

After failing to obtain relief—or even a response—from the prison, Al Saud sued ADCRR officials. ER-64. His pro se complaint alleged three claims, only the

third of which is at issue here.⁸ ER-50–64. In that third claim, Al Saud alleged that the ADCRR’s failure to consider and grant his request for a religious housing accommodation violated RLUIPA, the Free Exercise Clause of the First Amendment, and Ariz. Rev. Stat. § 41-1493.01. ER-64. Al Saud requested injunctive relief, ordering the ADCRR to provide a religious housing accommodation. ER-65. Al Saud also requested punitive and monetary damages. ER-56.

VI. The District Court Granted Judgment On The Pleadings, Finding Al Saud’s Case Controlled By *Walker*

The ADCRR moved for judgment on the pleadings under Federal Rule of Civil Procedure § 12(c). *See* ER-26–35. The ADCRR characterized Al Saud’s claim as “straightforward”: “[H]e alleges that his religion requires him to be housed with only Muslim inmates and because he is forced to house with non-Muslims his RLUIPA and First amendment rights are violated.” ER-29. The motion does not mention that Al Saud’s religion requires that he pray five times daily or that he faced harassment from non-Muslim inmates because of his religion. *See* ER-57; *see also* ER-64.

⁸ The District Court previously dismissed Counts One and Two without prejudice. ER-45.

The ADCRR contended that Al Saud's RLUIPA claim should be dismissed, because their denial of his request was the least restrictive means of furthering a compelling government interest, analogizing to *Walker v. Beard*, 789 F.3d 1125 (9th Cir. 2015). ER-31. The ADCRR argued that the District Court should dismiss the case because "discrimination based on race and discrimination based on religion is similarly barred by the 14th Amendment's Equal Protection Clause." ER-29.

The ADCRR also argued that the District Court should dismiss Al Saud's First Amendment claim solely because "a prisoner's Free Exercise Clause claim will fail if the state *shows* that the challenged action is 'reasonably related to legitimate penological interests.'" ER-32; *see Turner v. Safley*, 482 U.S. 78, 89 (1987) (emphasis added). The ADCRR devoted a single paragraph in its motion to the showing of the four *Turner* factors. ER-32.

The District Court granted the motion. ER-11. The court began by observing that "[p]laintiff alleges that he engages in prayer and that his ability to pray has been affected by housing with non-Muslims." ER-7. Thus, the court concluded that "[p]laintiff has satisfied the first two elements of a RLUIPA claim," namely that he takes part in a religious exercise, and the ADCRR's actions substantially burdened that exercise. ER-7. Nevertheless, the court dismissed Al Saud's RLUIPA claim. ER-9. Citing *Walker*, the court found that "ADCRR's compliance with

constitutional restrictions on segregating prisoners by religion is a compelling governmental interest under RLUIPA and that refusing to segregate prisoners by religion is the least-restrictive means of furthering that compelling interest.” ER-9. According to the District Court, “any religion-conscious celling policy *could* cause liability under the Constitution.” ER-8 (emphasis added).

The court also dismissed Al Saud’s Free Exercise claim. ER-10. The court first observed that Al Saud “satisfied the first two elements of a free exercise claim of a sincerely held religious belief and a claim rooted in his religious belief.” ER-9. Therefore, the court turned briefly to the four factors under *Turner v. Safley*. ER-9–10. According to the court, “Defendants here have a legitimate penological interest in avoiding liability for violating the Constitution by only housing Muslim prisoners with other Muslim prisoners.” ER-10. Additionally, “permitting Plaintiff to house only with other Muslims and not providing similar exemptions to other prisoners *might* exacerbate tensions.” ER-10. (emphasis added).

The court entered judgment on January 6, 2021. ER-11. Al Saud filed a timely appeal. ER-66.

SUMMARY OF THE ARGUMENT

The District Court erred in granting judgment on the pleadings because Al Saud stated claims under both RLUIPA and the First Amendment.

Al Saud stated a claim under RLUIPA. The parties and the District Court agree that Al Saud engaged in a religious exercise and the ADCRR's actions have substantially burdened that exercise. Therefore, the ADCRR's motion must fail unless it established, based on the bare allegations in the pleadings, that its actions were the least restrictive means of furthering a compelling interest.

Here, the ADCRR solely argues that it "has a compelling interest in complying with constitutional restrictions on religious-conscious actions," because "discrimination based on race and discrimination based on religion is similarly barred by the 14th Amendment's Equal Protection Clause." ER-29, 30. The United States Supreme Court has held that a government interest in complying with the law is only compelling if it is not speculative and has a strong basis in evidence.

The ADCRR's interest is legally speculative, because the courts treat race and religion differently. The Free Exercise Clause requires that the government provide accommodations based on religion. Claims that a government policy favors religious activity by granting such accommodations and exceptions from generally applicable law are analyzed under the Establishment Clause, not the Equal Protection Clause. Furthermore, there is no "strong basis in evidence" here. First, there is no evidence that a flood of prisoners would request religious housing accommodations, leading to a prison segregated by religion. Second, the ADCRR lacks evidence that it cannot provide a housing safety exception based on religion,

as it already does based on race. Third, the Constitution and laws of the United States bar special treatment based on race in most circumstances, yet provide for special treatment based on religion, distinguishing this case from *Walker v. Beard*. Fourth, the ADCRR's interest in protecting future inmates from religious discrimination is purely speculative. The ADCRR's interest in protecting Al Saud from harassment and hatred based on his religion is not.

Moreover, the ADCRR has not shown Al Saud's housing accommodation is the least restrictive means of furthering their alleged state interest. Instead, the ADCRR has employed the *most* restrictive means by not responding to and de facto denying any request for a religious housing accommodation.

Al Saud also stated a claim under the Free Exercise Clause of the First Amendment. The ADCRR has not provided evidence that its de facto policy of denying all requests for religious housing accommodation is reasonably related to a legitimate, penological interest under the four factor *Turner* test. First, the regulation here is not neutral, not legitimate, and not reasonably connected to the asserted interest. Second, the ADCRR provided no means, let alone alternative means, for Al Saud to safely exercise his religion. Third, as to the impact of the ADCRR's regulation on inmates and guards, the ADCRR has no supporting evidence, and summary denial of requests for religious housing accommodations may exacerbate rather than alleviate tensions by not providing a means for an

inmate to pray without harassment. Last, the cost of alternative means of accommodation is a deeply factual matter not appropriate for judgment on the pleadings in this case.

STANDARD AND SCOPE OF REVIEW

This Court reviews de novo a ruling on a motion for judgment on the pleadings under Federal Rule of Civil Procedure § 12(c). *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241, 1246 (9th Cir. 2017). In doing so, this Court takes the allegations in the pleadings as true and views them in the light most favorable to the plaintiff. *Id.*

In general, this Court liberally construes pleadings filed by pro se inmates. *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). The court expects that "[r]esponsive pleadings . . . may be necessary for a pro se plaintiff to clarify his legal theories." *Neitzke v. Williams*, 490 U.S. 319, 331 fn.9 (1989).

ARGUMENT

I. Al Saud Stated A Plausible Claim Under RLUIPA

RLUIPA states that “no government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless the government establishes that the burden furthers “a compelling government interest” and does so by “the least restrictive means.” 42 U.S.C §2000cc-1(a)(1)-(2). Thus, to state a claim under RLUIPA, a prisoner must show that: (1) he takes

part in a “religious exercise,” and (2) the State’s actions have substantially burdened that exercise. *Walker*, 789 F.3d at 1134. If these elements are satisfied, then the State bears the burden of proving that its actions were the least restrictive means of furthering a compelling interest. *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005).

The ADCRR has conceded that Al Saud’s request is for a religious exercise and that its actions substantially burdened that exercise. ER-30. The ADCRR has thus conceded that they have substantially burdened Al Saud’s ability to pray. Accordingly, the only question is whether, as a matter of law and based solely on the pleadings, the ADCRR’s conduct here was the least restrictive means of furthering a compelling interest. ER-31. The ADCRR has both failed to articulate a compelling interest and failed to show that its conduct was the least restrictive means of furthering that interest.

A. The ADCRR’s Sole Articulated Interest Of Complying With Equal Protection Clause Limitations Is Not A Compelling Interest

The ADCRR has asserted only one state interest. ER-30. In its motion for judgment on the pleadings, the ADCRR claimed “the State has a compelling interest in complying with constitutional restrictions on religious-conscious actions.” ER-30. This Court may review only that interest and “may not rely on an interest that the State has failed to articulate.” *Walker*, 789 F.3d at 1136. The District Court erroneously found that “ADCRR’s compliance with constitutional

restrictions on segregating prisoners by religion is a compelling governmental interest under RLUIPA.” ER-9.

The ADCRR presented a multi-step argument that their interest in avoiding litigation is compelling. ER-30–31. First, they contended that *Johnson v. California* and *Walker v. Beard* establish that state-enforced racial segregation in prisons violates the Equal Protection Clause. ER-30. Second, they contended that racial claims are equivalent to religious claims under Equal Protection. ER-31. These two claims, in turn, rely on two assumptions. First, they assume that if they grant an accommodation to Al Saud, then many other prisoners will ask for a similar religious accommodation. *See* ER-31. Second, they assume that, if that happens, the prison will end up segregated by religion, thus violating Equal Protection. *See* ER-31.

Every government actor should, of course, comply with constitutional restrictions, but to establish a *compelling* state interest, a State must do more than simply assert that such a restriction exists. Binding U.S. Supreme Court precedent holds that a state interest is only compelling if it is not legally speculative and has a strong basis in evidence. *Fulton v. City of Philadelphia*, 141 S.Ct. 1868, 1881-82 (2021) (no compelling state interest in avoiding litigation where city “offers only speculation that it might be sued”); *Bush v. Vera*, 517 U.S. 952, 977 (1996) (no

compelling state interest in avoiding litigation unless state has established a “strong basis in evidence” that litigation will result).

The ADCRR’s asserted interest here is legally speculative because, as explained immediately below, Equal Protection claims based on religion are not equivalent to Equal Protection claims based on race. The ADCRR’s interest also has no strong basis in evidence. This matter was decided on the pleadings. As such, there is no evidence that other inmates will seek an accommodation similar to Al Saud’s request. Nor is there evidence that such accommodations will lead to inmate segregation based on religion.

1. Because the ADCRR’s Interest In Avoiding Liability Under The Equal Protection Clause Is Speculative, It Is Not Compelling

The government’s interest in denying an accommodation to avoid constitutional liability is compelling only when that interest is not “speculative.” *Fulton*, 141 S.Ct. at 1881-82.

Last term, in *Fulton*, the United States Supreme Court rejected an asserted compelling state interest in avoiding litigation as “only speculation” and thus insufficient to satisfy strict scrutiny. *Id.* In *Fulton*, a foster care agency affiliated with a Roman Catholic Archdiocese, together with three foster parents, brought an action against Philadelphia. *Id.* at 1876. They alleged that Philadelphia’s refusal to contract with the agency unless it agreed to certify same-sex couples as foster parents violated the Free Exercise and Free Speech Clauses of the First

Amendment. *Id.* at 1875-76. The District Court denied the plaintiffs request for preliminary injunctive relief and the Third Circuit affirmed. *Id.* at 1876. The Supreme Court reversed the Third Circuit. *Id.* at 1882.

Philadelphia asserted several compelling interests to justify its refusal to contract with the agency; the Supreme Court rejected each of them. *Id.* at 1881. One is relevant here. Philadelphia contended that it had a compelling interest in complying with anti-discrimination law, particularly a Philadelphia ordinance that prohibited discrimination based on sexual orientation. *Id.* at 1881-82. The Supreme Court determined that the interest in protecting the city from liability was not compelling, and thus did not justify burdening the foster care agency's free exercise rights. *Id.* The state interest was legally speculative: "As for liability the City offers only speculation that it might be sued over CSS's certification practices." *Id.* at 1882. In particular, "the authority to certify foster families is delegated to agencies by the State, not the City." *Id.* It was speculation that a city ordinance would bind the foster care agency, whose authority comes from the State. Because the possibility of liability under the ordinance was speculative, the agency's interest in avoiding liability did not qualify as compelling.

Fulton is similar to this case. In both cases, plaintiffs alleged that state officials violated the Free Exercise Clause. *See Fulton*, 141 S.Ct at 1871; ER-64. In both cases, the defendants countered that the state officials would violate anti-

discrimination law if they provided a religious exception to their policies. *See Fulton*, 141 S.Ct at 1871; ER-31. And like the claim in *Fulton*, the claim that the ADCRR risks violating the Equal Protection Clause by granting a religious housing accommodation is speculative.

The ADCRR's claim relies on establishing that the Equal Protection doctrine treats religion and race the same. ER-30. Their analysis in that regard begins and ends with the contention that religion and race are suspect classes under the Equal Protection Clause. ER-30. From this simple premise, the ADCRR reasons that their risk of liability for allowing housing exemptions based on race and based on religion must necessarily be identical. ER-30–31.

But the ADCRR overlooks that religious discrimination claims are analyzed quite differently from racial discrimination claims. That is because of the First Amendment's protection of religious freedom under the Free Exercise and Establishment Clauses. *See generally* Joy Milligan, *Religion and Race: On Duality and Entrenchment*, 87 N.Y.U. L. Rev. 393, 453 (2012) (“Over the last ten years, the Court has solidified its differential treatment of government pursuit of constitutional concerns based on religion and race.”).

No legal authority concerning religious discrimination supports the ADCRR's claim that, if they grant Al Saud's request for an accommodation, they will risk liability for failing to provide religiously integrated housing. The ADCRR

has built its argument on *Walker*, which is about the threat of racial segregation. ER-30–31. The ADCRR has not pointed to *any* case in which the State has used the threat of possible future liability for religious discrimination to justify its refusal to provide a religious accommodation. Nor has the ADCRR pointed to *any* case in which an inmate has sued on the basis that they are subject to religious segregation in housing. Inmates have brought legitimate Equal Protection claims against States that discriminated by providing a religious accommodation to inmates of one religion, but not another. *See, e.g., Shakur v. Schriro*, 514 F.3d 878, 891 (2008) (ADCRR denied a Muslim inmate halal meals, although it offered kosher meals to Jewish inmates). But the present case does not concern unequal treatment between two religions.

The dearth of relevant Equal Protection authority is understandable. The Establishment Clause—not the Equal Protection Clause—provides the proper doctrine under which to analyze “religious accommodations and exemptions from generally applicable laws.” *Am. Legion v. Am. Humanist Assn.*, 139 S.Ct 2067, 2081 fn.16, 204 L.Ed.2d 452 (2019). The Supreme Court “has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.” *Hobbie v. Unempl. Appeals Commn. of Fla.*, 480 U.S. 136, 144-145 (1987) (footnote omitted).

In *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, the United States Supreme Court expressly rejected using the Equal Protection Clause to analyze a religious exception to a general statute and instead applied Establishment Clause doctrine. 483 U.S. 327, 338-39 (1987). In that case, plaintiff, an employee of religious entities associated with the Church of Jesus Christ of Latter-day Saints, was discharged because he failed to qualify for a certificate that he was a member of the Church. *Id.* at 330. He brought an action alleging religious discrimination in violation of Title VII of the Civil Rights Act of 1964. *Id.* at 331. The employer defendants moved to dismiss on the grounds that they were shielded from liability under § 702 of the Act. That section exempts religious organizations from Title VII's prohibition of religious discrimination in employment. *Id.* at 329, 331.

The plaintiff argued that § 702 was itself unconstitutional, because it “offends equal protection principles by giving less protection to the employees of religious employers than to the employees of secular employers.” *Id.* at 338. The plaintiff argued that a law drawing distinctions on religious grounds was subject to strict scrutiny. *Id.* at 338-339.

The Supreme Court held that, while “laws discriminating *among* religions are subject to strict scrutiny,” laws “affording a uniform benefit to *all* religions” should be analyzed under the *Lemon* test, the applicable standard for the

Establishment Clause. *Id.* at 339; *see Lemon v. Kurtzman*, 403 U.S. 602 (1971). The Court concluded, “[t]o dispose of appellees’ Equal Protection argument, it suffices to hold—as we now do—that as applied to the nonprofit activities of religious employers, § 702 is rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions.” *Id.*

Here, Al Saud requested the ADCRR to house him with other Muslim inmates, so that he may pray without harassment or hatred due to his religion. ER-64. This is a request for an individual accommodation, but the ADCRR fears the precedent it could set. ER-13; ER-31. The precedent, if any, is that the ADCRR must consider the harassment inmates suffer due to practicing their religion in determining their housing, something the ADCRR already does for race. *See* DO-719 at 1.0. This principle provides “a uniform benefit to *all* religions.” *Amos*, 483 U.S. at 339. It is “neutral on its face” because it does not discriminate between religions. *Id.*

The ADCRR’s sole articulated compelling interest thus fails. It claims that its conduct here was justified by its compelling interest in avoiding liability for religious discrimination under the Equal Protection Clause. ER-30–31. Al Saud requests that the prison consider religious housing accommodations and grant them when safety and free exercise so require. His request does not implicate the Equal

Protection Clause because it does not require discrimination *between* religions. At a minimum, any risk of liability under that provision is highly speculative.⁹

Accordingly, the ADCRR's sole asserted interest is not compelling.

2. Because The ADCRR's Asserted Interest In Avoiding Liability Does Not Have A Strong Basis In Evidence, It Is Not Compelling

To be compelling, a stated government interest in avoiding litigation must also have a "strong basis in evidence." *Walker*, 789 F.3d at 1136. As this Court observed in *Walker*, the precise quantum of evidence necessary to render a government interest compelling is not clear from case precedent. *Id.* at 1137. *Walker* avoided that question, noting that this Court "need not determine the exact probability of constitutional harm necessary to give the state a compelling interest," because there was a "strong legal basis" for concluding that Walker's requested accommodation would lead to a violation of the 14th Amendment. *Id.*

Nevertheless, the State must make a showing that has a strong basis in evidence. That rule flows from the Supreme Court's decisions in *Bush v. Vera*, 517 U.S. 952 (1996) and *Ricci v. DeStefano*, 557 U.S. 557 (2009). *See also Shaw v. Hunt*, 517 U.S. 899, 910 (1996).

⁹ The ADCRR never asserted that it had an interest in avoiding liability under the Establishment Clause. And even if it had, liability under that Clause, too, is speculative.

In *Bush*, the Court reviewed a challenge based on the Equal Protection Clause to three gerrymandered districts in Texas after the case had progressed through trial. *Bush*, 517 U.S. at 952. The State asserted three interests, but the only one that is relevant here was the State’s asserted interest in complying with the results test of the Voting Rights Act. The court avoided the factual issue of compelling state interest. *Id.* at 977 (“We assume without deciding that compliance with the results test, as interpreted by our precedents, can be a compelling state interest.”). In doing so, however, the Court assumed Texas could demonstrate that the “State had a ‘*strong basis in evidence*’ for their compelling interest.” *Id.* (emphasis added).

In *Ricci*, firefighters sued a city and city officials alleging they violated Title VII by refusing to certify results of a promotion examination. *Ricci*, 557 U.S. at 557. The city defended their actions by arguing that they could have faced liability, also under Title VII, by adopting results that had a disparate impact on minority firefighters. *Id.* at 563. Following summary judgment, the Supreme Court discounted the city’s interest in avoiding potential liability. *Id.* The city failed to demonstrate a strong basis in evidence that if it had not acted then it would have been liable under a disparate impact theory. *Id.* “We conclude that race-based action like the City’s in this case is impermissible under Title VII unless the employer can demonstrate a strong basis in evidence that, had it not taken the

action, it would have been liable under the disparate impact statute.” *Ricci*, 557 U.S. at 563.

Both *Bush* and *Ricci*, as well as other cases that *Walker* cites¹⁰ on this point, were all either decided on summary judgment or after trial and thus arose after factual development. *See generally Bush*, 517 U.S. 952; *Ricci*, 557 U.S. 557. This alone suggests that where a State’s asserted interest in avoiding liability turns on questions of fact, judgment on the pleadings is likely inappropriate.

The ADCRR’s proffered State interest here does not have a strong basis in evidence. Given that this case was decided on the pleadings, the ADCRR has no evidence, let alone strong evidence, that it will face future litigation if it grants Al Saud’s request for an accommodation. ADCRR proffers no evidence that a flood of prisoners would request a religious housing accommodation if it granted Al Saud’s request to pray without harassment. Nor does it proffer evidence that those requests would necessarily be granted and lead to religiously segregated housing.

¹⁰ *See Widmar v. Vincent*, 454 U.S. 263, 275 (1981) (decided on summary judgment); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993) (decided on summary judgment); *KDM ex rel. WJM v. Reedsport Sch. Dist.*, 196 F.3d 1046, 1052 (9th Cir.1999) (decided after trial); *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 1002–03 (8th Cir.2012) (decided after trial).

Instead, the ADCRR argues that it has the equivalent of strong evidence by means of analogy to two cases. In *Walker*, which was also resolved on the pleadings, this Court relied on evidence that was gathered during trial in the *Johnson* litigation to conclude that race-based segregation violated Equal Protection. *Walker*, 789 F.3d at 1136-37. *Johnson* was a race-based prison case ultimately resolved by the U.S. Supreme Court. *Id.* *Johnson* concluded, after full discovery and a trial, that a de facto but universal California policy to segregate prisoners by race during the first 60 days of incarceration needed to be remanded to undergo a strict scrutiny analysis. *See Johnson v. California*, 543 U.S. 499, 501 (2005). *Walker* relied on *Johnson*—and the factual record developed at trial in that case—to hold that there was a strong basis in evidence supporting the state interest in avoiding liability for racial segregation. *Walker*, 789 F.3d at 1137.

This analogy, however, does not constitute strong evidence that religious segregation will result in this case. First, there is no religious segregation case on point here and thus no analogous factual record on which to rely. The ADCRR simply speculates that granting a religious accommodation “*could* cause liability under the Constitution.” ER-30 (emphasis added). Such liability would only occur if there were no basis upon which to distinguish those requests from Al Saud’s and it would necessarily have to treat such requests as a class. There is no evidence that this is true. Also, the ADCRR cannot rely solely on a theoretical equivalency

between race and religion to make up for lack of evidence and an absence of on-point legal authority. *See* ER-30-31. That is “speculation” that the Supreme Court under *Fulton* does not allow. *Fulton*, 141 S.Ct. at 1882.

Second, *Johnson* explicitly provides for a safety exception for race. The Supreme Court “reaffirm[ed] that the ‘necessities of prison security and discipline,’ are a compelling interest justifying only those uses of race that are narrowly tailored to address those necessities . . .” *Johnson*, 543 U.S. at 500 (quoting *Lee v. Washington*, 390 U.S. 333, 334 (1968)). The ADCRR policy itself provides that it may consider race in determining inmate housing, when race is relevant to safety. *See* DO-719 at 1.0.

Al Saud has alleged safety concerns here, but the plaintiff in *Walker* did not. *See* ER-60; *see generally Walker*, 789 F.3d 1125. The ADCRR is treating Al Saud’s request for a religious exception less favorably than if he had requested a purely racial exception. And it has provided no explanation or evidence as to why this is permissible.

Third, *Walker* does not dictate the result in this case, because it concerns race, not religion. *See Walker*, 789 F.3d at 1130. As discussed above, the Supreme Court treats the two quite differently. The Constitution has protected the practice of religion—in its various and sometimes surprising forms—since the Nation’s founding. *See* U.S. Const. amend. I. The law favors religious accommodations,

which are freely given absent strong countervailing interests. *See Cutter v. Wilkinson*, 544 U.S. 709, 710 (2005). The law opposes racial accommodations, which are tolerated in only limited circumstances, such as inmate safety. *See Johnson*, 543 U.S. at 514.

This Court deemed compelling California's interest in avoiding Equal Protection liability for racial housing segregation. That, however, does not answer the question of whether the ADCRR has a compelling interest in avoiding Equal Protection liability for religion-based housing accommodations. As shown above, the legal standards are not the same. Nor is the basis in evidence the same. The ADCRR has not shown that granting Al Saud's request would result in a flood of requests or de facto religious segregation. The ADCRR's neat equivalence between race and religion cannot excuse it from making the required showing.

Moreover, the ADCRR understands the distinction between religion and race in other contexts. The ADCRR does not have a mechanism for granting *racial* accommodations, other than safe housing, but it does have a mechanism for granting several categories of *religious* accommodations, including kosher meals, access to religious objects, weekly services, and the like. *See* DO-904 at 4.0. One cannot request, on the basis of race, kosher meals, or any other accommodation unrelated to safety.

Religious accommodations are based on the plurality of religious practice, and thus assume that inmates will be treated differently from one another. *See* DO-904 at 4.1.6. Inmates receive religious privileges based on their specific religious preference. DO-904 at 4.0. Inmates may designate a religious preference at intake or any time thereafter. DO-904 at 2.1-2.2. “Inmates not designating religious preferences,” however, “shall not be permitted to request religious privileges.” DO-904 at 2.1.2.1. ADCRR policy thus *already* distinguishes between religious and non-religious inmates, and it *already* grants special accommodations to ensure that the prison interferes as little as possible with inmates’ sincerely held religious beliefs. If any differential treatment based on religion raised a compelling specter of liability—as the prison seems to suggest here—then it begs the question why the prison has been able to provide religious accommodations in numerous contexts other than housing.

Finally, in *Walker*, unlike here, the prison at least considered and responded to the inmate’s request. *See Walker*, 789 F.3d at 1130. The ADCRR should not be excused from even responding to inmate claims of harassment based on religion simply because it fears disturbing the future and speculative right of other unnamed inmates to religiously plural housing. Al Saud alleges that prisoners are discriminating against him based on religion *right now*, and that the ADCRR has not responded to this discrimination. *See* ER-57. The ADCRR cannot justify its

inaction to protect a prisoner from religious discrimination *right now*, by speculating that, if it acted, it might, at some future date, lead to a different type of religious discrimination. *See Fulton*, 141 S.Ct. at 1882.

B. The ADCRR Has Failed To Demonstrate That Its De Facto Policy Of Refusing to Consider Housing Accommodations Based On Religion Is The Least Restrictive Means of Furthering Their Alleged State Interest

The ADCRR also has not satisfied its burden of establishing that its policies are the least restrictive means of furthering their purported interest in constitutional compliance with the Equal Protection Clause.

The least restrictive means standard is “exceptionally demanding.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014); *see also Holt v. Hobbs*, 574 U.S. 352, 364 (2015). While a plaintiff must propose the alternative practice, the government “bears the burden of proof to show its practice is the least-restrictive means.” *Walker*, 789 F.3d at 1137. Therefore, to succeed on a least restrictive means challenge, the ADCRR must prove “it had actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.” *Warsoldier*, 418 F.3d at 999. Conclusory statements of the policy’s necessity are insufficient to satisfy this burden. *Id.* at 1001. If the plaintiff proposes an available less restrictive option, the Government “must use it.” *U.S. v. Playboy Ent. Group, Inc.*, 529 U.S. 803, 815 (2000).

In *May v. Baldwin*, this Court held that defendants must provide detailed evidence to challenge a prisoner's alternatives: "Where a prisoner challenges their justifications, prison officials must set forth detailed evidence, tailored to the situation before the court that identifies the failings in the alternatives advanced by the prisoner. In some cases, this showing might call for an evidentiary hearing." 109 F.3d 557, 564-565 (9th Cir. 1997).

Here, Al Saud alleges that the ADCRR failed to respond to his request for safe housing in which to conduct his five daily prayers. ER-57. This error alone requires reversal. *Warsoldier*, 418 F.3d at 999 (The institution must prove "it had actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.").

Indeed, the two relevant ADCRR policies do not appear to provide a means for it to consider inmate claims for any form of housing accommodation based on religion. The ADCRR housing policy provides that prison staff may consider several factors in assessing safe housing—including race—but does not so provide for religion. DO-719 at 1.1-1.2. The ADCRR religious exercise policy does not provide any mechanism for requesting a religious accommodation other than for specific categories of religious practice, none of which apply here.

ADCRR's de facto policy appears to be that it will not consider, let alone grant, any form of religious accommodation in housing. Their argument in the

District Court, which assumes that housing accommodations based on religion violate the Equal Protection Clause, is consistent with such a de facto policy. ER-31. ADCRR's non-response to Al Saud's request for a religious accommodation was not the least restrictive means of furthering its interests. If anything, it was the *most* restrictive means; no other policy could be more restrictive.

ADCRR has failed to establish its burden for four additional reasons.

First, the ADCRR makes safety-based exceptions to its housing policy, for race, gang status, prior victimization, and so on. DO-719 at 1.2.1-1.2.4. The de facto policy of denying all religious housing accommodations treats religion as a less-favored class than any of those categories. As the Supreme Court reiterated this past term, "[w]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Fulton*, 141 S.Ct. at 1877 (quoting *Empl. Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 884 (1990)).

Second, the ADCRR has relied on conclusory statements alone to justify this policy. The Defendants allege that denying Al Saud's request is "the *only* way to avert potential constitutional liability" because allowing the request "thereby [raises] the specter of a credible Equal Protection claim." ER-31 (quoting *Walker*, 789 F.3d at 1137) (emphasis added). However, no evidence supports this

statement. Defendants may choose to offer relevant evidence to the District Court on remand, but they may not prevail here in the absence of any evidence.

Third, the ADCRR's religious accommodation policy is more restrictive than sister states in this Circuit and their own recently-adopted revision to that policy. California regulations provide that the prison administrators "shall make every reasonable effort to provide for the religious and spiritual welfare of all interested inmates." 15 California Code of Regulations § 3210(a). Here, the ADCRR's policy provides less religious protection, limiting religious exercise to enumerated categories of practice.

The ADCRR has recently updated their Department Order 904 on Religious Activities. The new policy now provides that the Wardens, Deputy Wardens, and other Administrators shall ensure that staff "[d]emonstrate respect of an inmate's constitutional religious rights regarding religious beliefs and observance." DO 904 at 3.1.1 (updated policy). The prior version, which applied to Al Saud, contains no reference to "constitutional religious rights."

Finally, there is no evidence—and could be no evidence at this early stage of the litigation—that the ADCRR considered any means of protecting Al Saud from harassment during his prayers before denying his religious accommodation. To further their stated interest in constitutional compliance, the ADCRR has ironically jeopardized a fundamental penological interest in maintaining prison safety. *See*

Cutter, 544 U.S. at 25 n.13 (recognizing “prison security is a compelling state interest”).

The Defendants have not justified a policy that substantially—and needlessly—burdens an inmate’s religious practice, relying instead on conclusory statements of the policy’s necessity, despite it being the *most* rather than *least* restrictive policy.

II. Al Saud Stated A Plausible Claim Under The Free Exercise Clause Of The First Amendment

Al Saud has plausibly alleged the ADCRR violated his right to freely exercise his religion in two ways. First, the ADCRR neglected to respond to Al Saud’s request for a religious accommodation. Second, it failed to consider the hostility Al Saud experienced based on his Muslim faith in determining safe inmate housing. Neither the ADCRR religious activities policy, nor its housing policy provide a means for Al Saud to request a religious housing accommodation. To the extent that the ADCRR has adopted a de facto policy of ignoring religious accommodations requests regarding safe housing, that purported policy is not reasonably related to a legitimate, penological interest under the *Turner* factors.

The Free Exercise Clause of the First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .” U.S. Const. amend. I. The Fourteenth Amendment has extended this right to apply against the States. *Cantwell v. State of Connecticut*,

310 U.S. 296, 303 (1940). The Free Exercise Clause protects religious freedoms by curtailing the government from enacting laws that infringe on religious beliefs or practices. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523-24 (1993). When assessing laws that burden religious practices, the Court’s inquiry goes further than merely considering the law’s textual language. *Id.* at 534 (1993). Instead, the Court has interpreted the Free Exercise Clause as a protection “against governmental hostility which is masked, as well as overt.” *Id.* This Court has recognized that the “right to the free exercise of religion is to be jealously guarded . . . A human being does not cease to be human because the human being is a prisoner of the state.” *Ward v. Walsh*, 1 F.3d 873, 876 (9th Cir. 1993).

Here, the District Court found that plaintiff satisfied the first two elements of a Free Exercise claim, i.e., (1) the “proffered belief [is] sincerely held” and (2) the “claim [is] rooted in religious belief.” ER-13. In the prison context, a regulation that curtails the inmates’ constitutional rights must pass the four-factor analysis in *Turner v. Safley*, 482 U.S. 78, 78-79 (1987). Those factors are “relevant in determining the reasonableness of the regulation at issue.” *Id.* at 89. The four *Turner* factors that courts analyze are: (a) whether there is a valid, rational connection between the regulation and a legitimate, neutral governmental interest; (b) whether alternative means of performing the religious practice are available to the inmate; (c) whether the religious accommodation will have an impact on prison

staff, on inmates' liberty, and on the allocation of limited prison resources; (d) whether the regulation is an exaggerated response to prison concerns, and the existence of an alternative that fully accommodates the prisoner's rights at de minimis costs to valid penological interests. These factors help determine the reasonableness of the policy at issue by "a balancing of the degree of intrusiveness into the right of free exercise against the costs of accommodation." *Ward*, 1 F.3d at 877. This Court has recognized that without "sufficient factual findings" it is "*impossible* for us to determine whether the [challenged policy] is reasonably related to the prison's legitimate interest." *Id.* at 879 (emphasis added).

Because this case was decided on the pleadings, the question is whether, as a matter of law, the prison's conduct here satisfied *Turner*, taking as true all of Al Saud's allegations. The four *Turner* factors reveal that Al Saud plausibly stated a First Amendment claim.

Under the first factor of the *Turner* test, there must exist "a 'valid rational connection' between the regulation and a legitimate governmental interest put forward to justify it." *Turner*, 482 U.S. at 89. The ADCRR has no legitimate interest in providing a safety exception to housing based on race, but not on religion. *Turner* held that lower courts should analyze "whether prison regulations restricting inmates' First Amendment rights operated in a neutral fashion, without regard to the content of the expression." *Id.* at 90. The ADCRR's de facto policy is

not neutral. In the context of housing, it treats requests for religious accommodations worse than requests for racial accommodations, because the housing policy expressly provides an exception for race-based safety concerns. DO-719 at 1.0. The ADCRR failed to consider that a person could be at risk because of their religion, on the same basis as a person could be at risk because of their race. By implementing a de facto policy of not considering any request to alter housing based on an inmate's religion, the ADCRR never worked towards a legitimate end.

Moreover, the connection between the de facto regulation and the asserted government interest is not substantial. In *Walker*, this Court stated that “given the real threat of liability . . . post-*Johnson* the connection between the State's interest in avoiding liability and denying Walker's requested relief is substantial.” *Walker*, 789 F.3d at 1139. By contrast, there is no equivalent religious-based precedent that applies here. And, as demonstrated above, courts treat racial and religious accommodations differently.

The second *Turner* factor is “whether there are alternative means of exercising the right that remain open to prison inmates.” *Turner*, 482 U.S. at 90. The de facto policy of not considering *any* form of religious accommodation in housing demonstrates that no means—let alone “alternative means”—are available

to inmates to safely pray where they live. This second factor is also necessarily a fact-bound inquiry.

The third *Turner* factor is “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. *Turner*, 482 U.S. at 90. This factor, too, often requires detailed factual findings. *See, e.g., Shakur*, 514 F.3d 886-87 (“There is no evidence in the record suggesting that [ADCRR] actually looked into providing kosher meat to all Muslim prisoners.”); *see also, Ward*, 1 F.3d 879 (“We cannot determine how heavily this factor weighs in the prison’s favor, however, because the magnitude of these costs is a factual question for which the district court made no findings”).

The District Court stated that if the ADCRR failed to provide similar accommodations to other prisoners, it “*might* exacerbate tensions within Arizona’s prisons and endanger guards and other prisoners.” ER-10 (emphasis added). Such speculation, particularly at the pleading stage, is insufficient to establish that guards, inmates, or prison resources would be impacted by granting Al Saud an accommodation.

Moreover, the ADCRR itself has exacerbated tensions by its actual failure to respond to Al Saud’s allegations of already-existing religion-based harassment. ER-57. It is completely speculative whether the ADCRR’s hypothetical dismissal of future requests would exacerbate tensions. The ADCRR may, of course, present

evidence on remand that religious housing accommodations would heighten religious tension. But the District Court erred in deciding that factual matter on bare allegations in the pleadings.

The fourth *Turner* factor is the existence of “an alternative that fully accommodates the prisoner’s rights at de minimis cost to valid penological interests.” *Turner*, 482 U.S. at 91. As demonstrated above, the ADCRR provided Al Saud no means of seeking a religious accommodation for housing. The cost of any means, alternative or otherwise, is a deeply factual matter unsuitable for decision at this early pleading stage. *See Ward*, 1 F.3d at 879 (“The district court, however, made no findings regarding the feasibility of such alternatives; we cannot speculate about their existence or the impact they would have...”).

Application of the *Turner* factors to Al Saud’s allegations reveals that his First Amendment claim is plausible. At minimum, more factual development is necessary to determine whether alternatives are available, what cost those alternatives might impose on the prison, and the impact of accommodating Al Saud’s request to pray safely.

The ADCRR’s de facto policy fails under the *Turner* factors and, as a result, it has not established the reasonableness required for a legitimate penological interest.

CONCLUSION

Al Saud respectfully requests that this Court reverse the District Court's grant of Defendants' Motion for Judgment on the Pleadings and remand the case for further proceedings.

Date: October 15, 2021

/s/ William Fernholz

William Fernholz

Susan Yorke

Chelsea Bray (Law Student)

Reginaldo Valdez (Law Student)

*Attorneys for Appellant Shaykh Muhammad
Al Saud*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

9th Cir. Case Number 21-15089

The undersigned attorney or self-represented party states the following:

[X] I am unaware of any related cases currently pending in this court.

[] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature: s/ William Fernholz

Date: October 15, 2021

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s) 21-15089

I am the attorney or self-represented party.

This brief contains 8880 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Cir. R. 32-1.

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Signature: s/ William Fernholz

Date: October 15, 2021

ADDENDUM PURSUANT TO CIRCUIT RULE 28-2.7

Shaykh Muhammad Al Saud v. Pannan Days, et al.

Case No. 21-15089

Constitutional and Statutory Provisions

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment provides in part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

The Religious Land Use and Institutionalized Persons Act of 2000, 41 U.S. Code § 2000cc-1 provides:

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which—

- (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
- (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

CHAPTER: 700

Operational Security

DEPARTMENT ORDER:

719 – Integrated Housing Program

OFFICE OF PRIMARY
RESPONSIBILITY:

OPS

Effective Date:

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ACCESS

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Arizona Department of Corrections Rehabilitation and Reentry



Department Order Manual

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David Shinn, Director

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PURPOSE

This Department Order establishes procedures for the integration of housing assignments, to include cells and dorms. Inmate housing assignments shall be determined in a manner that will ensure that the safety and security of the inmates are considered, as well as the safety and security of the public, staff and institutions. Housing assignments shall be in accordance with the principles and criteria outlined in Department Order #704, Inmate Regulations.

APPLICABILITY

This Department Order applies only to state facilities that have implemented the Integrated Housing Program (IHP) and does not apply to private prisons.

RESPONSIBILITY

Wardens and Deputy Wardens shall ensure inmate housing assignments yield the highest degree of safety possible when housing inmates in cells or dormitories.

PROCEDURES

1.0 HOUSING ASSIGNMENT PRINCIPLES - The assigned custody level (Minimum, Medium, Close and Maximum) and the assigned Internal Risk Level (1-5) and the criteria outlined in Department Order #704, Inmate Regulations, shall be the primary criteria for all housing assignments.

- 1.1 An inmate's race shall not be used as a primary determining factor for housing assignments.
- 1.2 Inmates shall be assigned to the first available bed vacancy in accordance with Department Order #704, Inmate Regulations, and take into account individual case factors which include but are not limited to the following:
 - 1.2.1 Disciplinary history of racial violence
 - 1.2.2 History of being a victim or perpetrator of racial violence
 - 1.2.3 Security Threat Group (STG) or criminal street gang affiliation
 - 1.2.4 Current or prior convictions that were racially motivated

2.0 INITIAL ASSESSMENT

- 2.1 Upon arrival to the Department's intake and reception centers, inmates shall be briefed on the integrated housing process and once transferred to a permanent unit, the Correctional Officer (CO) III shall:
 - 2.1.1 Complete Integrated Housing Program Declaration, Form 704-2, by interviewing the inmate and researching the inmate record, as needed, to determine any applicable factors outlined in section 1.2.1 through 1.2.4 above.
 - 2.1.2 Determine the inmate's "Integrated Housing Code" based on the inmate interview and research of the inmate record:

- 2.1.2.1 IRE (Inmate Racially Eligible) - Can live with members of any race.
 - 2.1.2.2 IRP (Inmate Restricted Partially) - May be considered ineligible to live with inmates of a particular race, but is able to live with the member of at least one different race.
 - 2.1.2.3 IRO (Inmate Restricted to Own) - Can only live with member of the same race. This cannot be based solely on the inmate's declaration.
 - 2.1.2.4 IRT (Inmate Restricted Temporarily by Custody) - Pending further review based on lack of documentation and/or inmate is required by policy to be single celled.
 - 2.1.2.5 IRH (Inmate Refuses To House With Another Race, But No Valid Reason)
 - 2.1.3 Ensure the inmate signs and dates the Integrated Housing Program Declaration form indicating inmate has been advised of consequences of declaring housing with own race only or refusing a subsequent housing assignment.
 - 2.1.3.1 If the inmate refuses to sign, the form shall be annotated and an additional staff must witness and sign the form.
 - 2.1.4 Enter the information from the Integrated Housing Program Declaration form onto the appropriate Arizona Correctional Information System (ACIS) screen to include justification of the selected Integrated Housing Code.
 - 2.1.5 Place a copy of the Integrated Housing Program Declaration form in the institutional file and master record file.
 - 2.2 For status population inmates (inmates who were already in Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) at the time of this implementation and who did not receive a briefing of the integrated housing process), each unit shall provide briefings to the inmate population prior to the integrated housing implementation at their unit. Following those briefings, the Correctional Officer (CO) III shall interview inmates at their unit within a specified timeframe in compliance with section 2.1 through 2.1.5 above.
 - 2.3 Subsequent Assessment - Inmates do not require a subsequent follow-up interview and updated Integrated Housing Program Declaration form, unless the inmate requests to change his status or there is a compelling reason to do so.
- 3.0 HOUSING ASSIGNMENT** - Upon arrival to the receiving unit, the Accountability Officer shall:
- 3.1 Review the appropriate ACIS housing screens and the Integrated Housing Program Declaration form or ACIS entry.
 - 3.2 Based on a review of the inmate's profile, ACIS housing screens, and the inmate's declaration on the form, assign the inmate to an appropriate bed assignment in accordance with this Department Order and Department Order #704, Inmate Regulations.
 - 3.2.1 Update the ACIS housing screen.

4.0 INTEGRATED HOUSING PROGRAM DECLARATION

- 4.1 Inmates who refuse to house with any other race and the department has determined that the inmate does not have a valid reason for this declaration (RH) shall be placed in the Earned Incentive Program (EIP) Phase I and/or Step I (for those inmates housed in Maximum Custody) until such time the inmate revises his/her declaration.
- 4.2 Inmates in EIP Phase I or Maximum Custody Step I who have signed the IHP declaration and have agreed to house with another race (RE or RP) shall advance to EIP Phase II or Step II.
 - 4.2.1 Inmates do not need to meet the functional literacy standard to advance to Phase II or Step II.
 - 4.2.2 Inmates shall meet the functional literacy standard prior to advancing to Phase III or Step III.
- 4.3 Inmates in EIP Phase II or Maximum Custody Step II who have signed the IHP declaration and have agreed to house with another race (RE or RP) shall remain a Phase II or Step II and advance in Phase or Step pursuant to Department Order #809, Earned Incentive Program or Department Order #812, Inmate Maximum Custody Management and Incentive System.
- 4.4 Inmates in EIP Phase III or Maximum Custody Step III who have signed the IHP declaration and have agreed to house with another race (RE or RP) shall remain in Phase III or Step III.
- 4.5 Inmates who have an Integrated Housing Code of Restricted to Own (RO) or Restricted by Custody (RT) if EIP Phase I or Maximum Custody Step I may advance to Phase II or Step II.
- 4.6 Advancement from Phase I or Step I to Phase II or Step II through this method is only available one time during the inmate's current incarceration period.
- 4.7 An inmate's Phase or Step may be reduced pursuant to Department Order #809, Earned Incentive Program and Department Order #812, Inmate Maximum Custody Management and Incentive System.
- 4.8 Inmates who have completed the IHP declaration and have agreed to house with another race may receive incentives specific to those outlined in Department Order #906, Inmate Recreation/Arts and Crafts.
- 4.9 An eligible inmate who is under visitation sanctions may apply to have these sanctions suspended if the inmate is:
 - 4.9.1 On visitation suspension status of Loss of Visitation/Non-Contact Visitation sanction of 180 calendar days/365 calendar days or more, including indefinite.
 - 4.9.2 Participating in one or more programs to include clinical treatment, CO III programming, peer to peer education or a volunteer program (e.g., 12 step programs).
 - 4.9.3 Not deemed a security risk by Unit Administration.

- 4.10 Inmates may apply for suspension of visitation sanctions according to the following schedule:
 - 4.10.1 Visitation suspension sanction may be suspended to Non-Contact status after 90 calendar days if the above conditions are met and the inmate has no major disciplinary violations within 90 calendar days of applying.
 - 4.10.2 Visitation Non-Contact sanctions may be suspended to allow Contact visitation after 180 calendar days if the above conditions are met within 180 calendar days of applying.
 - 4.10.3 All applications for suspension of sanctions must be submitted by inmate letter to the Unit Administrator. The Unit Administrator's decision is final.
 - 4.10.4 Visitation sanction suspension may be revoked if the inmate fails to meet the eligibility requirement. An inmate who has had their visitation sanctions suspension revoked is not eligible to reapply for 180 calendar days.
- 4.11 The IHP level incentives do not apply to inmates in detention status.
- 4.12 The Integrated Housing Program Declaration form shall remain in effect during the inmate's entire incarceration, unless rescinded by the inmate in writing. The inmate does not need to be re-interviewed for each housing assignment.
 - 4.12.1 An inmate who refuses a bed housing assignment consistent with his/her declaration shall be placed in Phase I and/or Step I until such time they accept the housing assignment or an equivalent housing assignment.
- 4.13 If at any time during incarceration an inmate wishes to change their decision about housing with another race, they may notify their assigned CO III, in writing, for review of appropriate housing assignment.
 - 4.13.1 The CO III shall complete a new Integrated Housing Program Declaration form and update the appropriate ACIS screen.
- 4.14 Inmates who are identified as Refuse to House (RH) shall not be subject to disciplinary action or detention placement.
- 4.15 Inmates who are identified as RH shall complete at a minimum the following programming:
 - 4.15.1 Living with Others
 - 4.15.2 Tolerating Differences
- 5.0 **CORRECTIONS PLAN** - Inmates assigned to integrated housing units who have not been interviewed by the CO III and have not completed Integrated Housing Program Declaration form shall be reviewed at the inmates scheduled corrections plan review or when the inmate is assigned a new bed assignment.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

CHAPTER: 800

DEPARTMENT ORDER:

802 – Inmate Grievance Procedure

OFFICE OF PRIMARY
RESPONSIBILITY:

DIR
OPS

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Arizona Department of Corrections Rehabilitation and Reentry



Department Order Manual

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David Shinn, Director

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STANDARDS

American Correctional Association (ACA) Standards: 5-ACI-3D-19, 5-ACI-5E-02, 5-ACI-6A-01 (M), and 5-ACI-6C-01 *[Revision – February 7, 2021]*

PURPOSE

The Department provides inmates with access to an Inmate Grievance Procedure to provide opportunity for informal resolution and a formal review of an issue impacting conditions of confinement or institutional life which personally affect the inmate grievant. This Department Order provides timely, administrative remedies to inmate complaints that might otherwise unnecessarily burden the courts.

RESPONSIBILITY

All Department employees are responsible for promoting meaningful dialogue and timely written communication with inmates to resolve inmate complaints and disputes at the lowest possible level in the organization and at the earliest possible opportunity.

The Assistant Director for Prison Operations is responsible for the overall operation of the Inmate Grievance Procedure. Under the direction of the General Counsel, the Central Office Appeals Unit Administrator and Appeals Officers are responsible for monitoring the effectiveness of the procedure and ensuring all appeals are presented to the Director for review. Wardens are responsible for ensuring Department employees follow all procedures outlined in this Department Order.

PROCEDURES

1.0 GENERAL INFORMATION

- 1.1 The Inmate Grievance Procedure is designed to address inmate complaints related to any aspect of institutional life or condition of confinement that directly and personally affects the inmate grievant, including written instructions (i.e., Department Orders, Post Orders, and Technical Manuals), procedures, and the actions of staff. {5-ACI-3D-19} *[Revision – February 7, 2021]*
- 1.2 The following are not grievable under the Inmate Grievance Procedure:
 - 1.2.1 Actions of the Governor or State Legislature
 - 1.2.2 Decisions of the Arizona Board of Executive Clemency
 - 1.2.3 Judicial proceedings or decisions of the Courts
- 1.3 The Inmate Grievance Procedure does not serve as a duplicate appeal process or substitute appeal process for the following, which have independent appeal processes:
 - 1.3.1 Disciplinary Hearing Process outlined in Department Order #803, Inmate Disciplinary Procedure
 - 1.3.2 Publication Review outlined in Department Order #914, Inmate Mail
 - 1.3.3 Protective Custody outlined in Department Order #805, Protective Custody

- 1.3.4 Security Threat Group Validation outlined in Department Order #806, Security Threat Groups (STGs)
- 1.3.5 Classification action outlined in Department Order #801, Inmate Classification
- 1.4 Inmates who attempt to file grievances and appeals for actions outlined in 1.3 of this section will be instructed to follow the appeal process outlined in the specific Department Order or written instruction. Appeals to the Central Office Appeals Unit on these actions may be considered only if the primary issue is outside the scope of the established appeals process.
- 1.5 Pursuant to the Prison Litigation Reform Act of 1996 (PLRA), inmates shall completely exhaust the Department's internal grievance and administrative processes prior to filing any complaint with any State Board or Federal Court.
- 1.6 Inmates may utilize the Inmate Grievance Procedure regardless of their disciplinary status, housing location or classification. Wardens shall prohibit discrimination and make appropriate provisions to ensure inmates who are not fluent in English, persons with disabilities, inmates with low literacy levels, the elderly and the mentally ill have access to the Inmate Grievance Procedure. {5-ACI-5E-02} ***[Revision – February 7, 2021]***
- 1.7 Wardens shall ensure there are no barriers for inmate access to Inmate Grievance forms and inmates have the ability to file grievances and appeals in a timely and confidential manner.
- 1.8 Inmates are not required to use the formal Inmate Grievance Procedure to submit a verbal or written emergency complaint.
 - 1.8.1 An emergency is a condition which, if processed through the normal grievance time frames, would subject the inmate to substantial risk of medical harm, personal injury or cause other serious and irreparable harm.
 - 1.8.2 Any emergency complaint received by staff shall be immediately evaluated through the chain of command to determine whether it is an emergency as defined in 1.8.1 of this section and requires immediate response outside of the Inmate Grievance Procedure time frames.
- 1.9 Inmates may file grievances and appeals directly to the Warden when the content of the grievance is of a nature, which would pose a threat to the safety of the inmate, staff, or other inmates if the grievance were filed through established procedures.
- 1.10 Unless notified of an extension of time frames, expiration of any time limit for a response at any stage in the process shall entitle the inmate grievant to move to the next step in the process. Extensions at any step in the grievance process shall not exceed 15 workdays, with the exception of section 8.0.
 - 1.10.1 If an inmate does not receive a response within the time period specified, his/her time to proceed to the next stage of the grievance process is the same as if he/she had received a response. The time to proceed to the next stage of the grievance process begins to run the day after a response was due back to the inmate.
- 1.11 The maximum length of time for completion of the grievance process is 120 calendar days from initiation of the Formal Grievance process to final disposition.

2.0 INFORMAL COMPLAINT RESOLUTION

- 2.1 Inmates shall attempt to resolve their complaints through informal means including, but not limited to, discussion with staff in the area most responsible for the complaint or through the submission of an Inmate Informal Complaint Resolution, Form 802-11.
- 2.2 In the event an inmate is unable to resolve their complaint through informal means, he/she may submit an Informal Complaint on an Inmate Informal Complaint Resolution form to the Correctional Officer (CO) III in their respective unit. The Informal Complaint must be submitted within ten workdays from the date of the action that caused the complaint. The inmate shall attach copies of all documentation to support his/her complaint.
- 2.3 The CO III shall:
 - 2.3.1 Investigate and attempt to resolve the complaint informally.
 - 2.3.2 Provide a response to the inmate within 15 workdays using the Inmate Informal Complaint Response, Form 802-12.
 - 2.3.3 For Medical Informal Complaint Resolutions, immediately forward the Informal Complaint to the Contract Assistant Director of Nursing. ***[Revision – February 7, 2021: Sections 2.3.3 and 2.3.3.1]***
 - 2.3.3.1 The Contract Assistant Director of Nursing shall respond to the Informal Complaint within 15 workdays using the Inmate Informal Complaint Response form.
- 2.4 Inmates may file a Formal Grievance if they are dissatisfied with the Inmate Informal Complaint Response or if the time frames for the response have been exceeded.

3.0 FORMAL GRIEVANCE PROCESS (NON-MEDICAL)

- 3.1 Grievances of inmates deemed a Vexatious Grievant in accordance with Department Order #803, Inmate Disciplinary Procedure, shall be filed and reviewed as outlined in section 8.0.
- 3.2 An inmate may file a Formal Grievance should he/she be unable to resolve their complaint informally. The inmate has five workdays from receipt of the response from the CO III to submit a Formal Grievance to the unit CO IV Grievance Coordinator using the Inmate Grievance, Form 802-1, and/or the Inmate Grievance-GF Supplement, Form 802-7.
- 3.3 The inmate shall place a single complaint with related issues on a single Inmate Grievance form. If the inmate includes multiple unrelated issues on a single form or submits a duplicate complaint, the submission of the grievance shall be rejected and returned to the inmate as unprocessed.
- 3.4 The inmate shall submit the Inmate Grievance form to the unit CO IV Grievance Coordinator. The unit CO IV Grievance Coordinator shall log and assign a number to each Inmate Grievance form using the Unit Coordinator Grievance Log, Form 802-9.
- 3.5 The unit CO IV Grievance Coordinator may request an additional investigation be conducted and may assign any unit staff member to the investigation to aid in the resolution of the grievance. The inmate shall be notified in writing of any extensions.

- 3.6 Within 15 workdays following receipt of the Formal Grievance, the Deputy Warden shall issue a written response to the inmate.
 - 3.6.1 The written response to the inmate shall include:
 - 3.6.1.1 A summarization of the inmate's complaint.
 - 3.6.1.2 A description of what action was taken to investigate the complaint.
 - 3.6.1.3 A summary of the findings.
 - 3.6.1.4 The decision and supporting rationale in reaching the decision.
 - 3.6.2 The decision from the unit level shall either be "Resolved" or "Not Resolved."
 - 3.6.3 Should the response indicate the grievance is "Not Resolved" due to a Department written instruction, the specific Department Order, or Post Order or other written instruction or directive shall be noted in the response. *[Revision – February 7, 2021]*
 - 3.6.4 The Deputy Warden shall sign the written response to the inmate. Any attachments shall remain with the original grievance form.

4.0 APPEALS TO THE DIRECTOR (NON-MEDICAL) {5-ACI-3D-19} *[Revision – February 7, 2021]*

- 4.1 Inmates may elect to appeal the decision of the Deputy Warden to the Director within five workdays of receipt of the Deputy Warden's decision by submitting an Inmate Grievance Appeal, Form 802-3, to the unit CO IV Grievance Coordinator. Inmates may not file an appeal to the Director until the Inmate Grievance Procedure within their assigned unit and institution has been exhausted.
- 4.2 The unit CO IV Grievance Coordinator shall log, process and forward all documents to the Central Office Appeals Officer within five workdays of receiving the Inmate Grievance Appeal from the inmate.
- 4.3 The Central Office Appeals Officer may return Grievance Appeals to the unit CO IV Grievance Coordinator for further investigation or when they do not meet the requirements of this Department Order.
- 4.4 Within 30 calendar days of receiving the Inmate Grievance Appeal, the Central Office Appeals Officer shall prepare a response and submit it to the Director for signature.
- 4.5 The Director may delegate signature authority for any and all Grievance Appeal responses.
- 4.6 The decision of the Director is final and constitutes exhaustion of all remedies within the Department.

5.0 FORMAL GRIEVANCE PROCESS (MEDICAL) {5-ACI-6A-01 (M)} {5-ACI-6C-01} *[Revision – February 7, 2021: Sections 5.0 thru 5.2]*

- 5.1 An inmate may file a Formal Grievance should he/she be unable to resolve their complaint informally. The inmate has five workdays from receipt of the response from the Contract Assistant Director of Nursing to submit a Formal Grievance to the unit CO IV Grievance Coordinator, using the Inmate Grievance, and/or the Inmate Grievance-GF Supplement forms.

- 5.2 Upon receipt of any Medical Grievance, the unit CO IV Grievance Coordinator shall immediately forward the Formal Grievance form to the Contract Director of Nursing. Within 15 workdays of receipt, the Contract Director of Nursing shall:

5.2.1 Investigate the complaint.

5.2.2 Prepare a written response to the inmate's Formal Grievance using the Inmate Formal Grievance Response, Form 802-2. The written response to the inmate shall include: *[Revision – February 7, 2021]*

5.2.2.1 A summarization of the inmates complaint.

5.2.2.2 A description of what action was taken to investigate the complaint to include the date and content if a personal meeting with the inmate was conducted.

5.2.2.3 A summary of findings.

5.2.2.4 The decision and supporting rationale in reaching the decision.

5.2.2.5 The decision from the facility level shall either be "Resolved" or "Not Resolved."

5.2.3 Maintain a copy of the inmate's Formal Grievance and return the completed grievance in a sealed envelope to the unit CO IV Grievance Coordinator clearly marked with the inmate's name, Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) number, housing unit location, and the Grievance number.

5.2.3.1 The unit CO IV Grievance Coordinator shall utilize the Grievance number on the envelope to close out their tracking log and forward the completed Formal Grievance to the inmate in the sealed envelope.

5.2.4 Email copies of the Grievance, Response, and supporting documentation to the Department Contract Compliance Monitor or designee.

6.0 APPEALS TO THE CONTRACT FACILITY HEALTH ADMINISTRATOR (MEDICAL) {5-ACI-6A-01 (M)} {5-ACI-6C-01} *[Revision – February 7, 2021: Sections 6.0 thru 6.5]*

6.1 Inmates may elect to appeal the decision of the Contract Director of Nursing to the Contract Facility Health Administrator within five workdays of receipt of the Contract Director of Nursing's decision by submitting an Inmate Grievance Appeal, Form 802-3, to the unit CO IV Grievance Coordinator. Inmates may not file an appeal to the Contract Facility Health Administrator until the Inmate Grievance Procedure within their assigned unit has been exhausted.

6.2 The unit CO IV Grievance Coordinator shall log, process and forward all documents to the Contract Facility Health Administrator within five workdays of receiving the Inmate Grievance Appeal from the inmate.

6.3 The Contract Facility Health Administrator may return Grievance Appeals to the unit CO IV Grievance Coordinator for further investigation or when they do not meet the requirements of this Department Order.

- 6.4 Within 30 calendar days of receiving the Inmate Grievance Appeal, the Contract Facility Health Administrator shall:
 - 6.4.1 Prepare a response.
 - 6.4.2 Return the response to the CO IV Grievance Coordinator.
 - 6.4.3 Email copies of the Grievance Appeal, Response, and supporting documentation to the Department Contract Compliance Monitor or designee.
- 6.5 The decision of the Contract Facility Health Administrator is final and constitutes exhaustion of all remedies within the Department.

7.0 INTERSTATE COMPACT AND PRIVATE PRISON GRIEVANCES

- 7.1 Inmates housed out-of-state through Interstate Compact Agreements or assigned to a private prison facility in state or out of state shall follow all Inmate Grievance and Appeals procedures at the institution where they are housed.
- 7.2 Private prison Wardens shall notify the Contract Beds Bureau Monitor of all Formal Grievances regarding issues specifically related to an action by the private prison, and how they were resolved. Documentation shall be maintained as part of the Inmate Grievance record.
- 7.3 Inmates Assigned To Private Prisons – For inmates housed in private prisons, whether in-state or out-of-state, the private prison Warden shall ensure the contracted facility has a meaningful grievance procedure that affords inmates the opportunity to resolve issues at the local level.
 - 7.3.1 The private prison Program Supervisor shall act in the capacity of the CO IV Grievance Coordinator as outlined in section 3.0.
 - 7.3.2 The private prison Warden or designee shall act in the capacity of the Deputy Warden as outlined in section 3.0. The private prison Warden or designee, in consultation with the Contract Beds Bureau Deputy Warden Monitor, shall provide written Formal Grievance response to the inmate.
 - 7.3.3 The Contract Facility Health Administrator shall be responsible for responding to inmate Medical Grievances.

8.0 VEXATIOUS GRIEVANCES (NON-MEDICAL) – Grievances of inmates deemed a Vexatious Grievant in accordance with Department Order #803, Inmate Disciplinary Procedure, shall be filed and reviewed as outlined in this section. An inmate's Vexatious Grievant status shall be noted on the appropriate Arizona Correctional Information System (ACIS) screen.

- 8.1 The filing of even one grievance that meets any of the criteria of Vexatious Conduct, as defined in the Glossary of Terms, may subject inmates to disciplinary action in accordance with Department Order #803, Inmate Disciplinary Procedure.
- 8.2 Inmates who have been designated as a Vexatious Grievant who wish to file a Formal Grievance after following the process outlined in section 2.0 shall submit a Grievance Request, Form 802-13, to the Warden. Grievance requests not submitted on the Grievance Request form shall be returned as unprocessed.

- 8.3 The Warden shall review the Grievance Request form and all other documentation related to the grievance to determine whether the grievance meets the criteria of Vexatious Conduct.
 - 8.3.1 The Warden's decision to allow or deny the grievance shall be noted on the Grievance Request form.
 - 8.3.1.1 If the grievance is allowed, the decision shall be noted on the form and returned to the inmate within five calendar days. The grievance will then be accepted and processed in accordance with sections 3.0 and 4.0.
 - 8.3.1.2 If the grievance is denied, the form shall be returned to the inmate within five calendar days with the reason for the denial noted.
 - 8.4 If the inmate wishes to appeal the decision of the Warden, the inmate shall submit the Grievance Appeal form and one of the copies of the Grievance Request form provided to the inmate after the Warden's review to the unit CO IV Grievance Coordinator within five calendar days of receipt.
 - 8.4.1 The unit CO IV Grievance Coordinator shall log, process and forward all documentation to the Central Office Appeals Officer.
 - 8.5 Within 15 calendar days of receipt of an inmate's Inmate Grievance Appeal, the Director or designee shall note their decision to allow or deny the appeal on the form, and return the form to the inmate. The Director's Level decision is final and constitutes an exhaustion of available administrative remedies as it relates to Inmate Grievance Requests.
- 9.0 SEXUAL OFFENSE GRIEVANCE** – Staff receiving an Informal Complaint or Formal Grievance at any level that describes activity that may be in violation of the Prison Rape Elimination Act (PREA) of 2003, 24 U.S.C.A. 15601 through 15609 shall immediately initiate Department Order #125, Sexual Offense Reporting and notify the shift commander who shall notify the unit Deputy Warden or institution Warden.
- 9.1 The exhaustion of administrative remedies consists of the following (an agency shall be exempt from this standard if it does not have administrative procedures to address Inmate Grievances regarding sexual abuse):
 - 9.1.1 The Department shall not impose a time limit when an inmate may submit a grievance regarding an allegation of sexual abuse.
 - 9.1.2 The Department may apply otherwise applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.
 - 9.1.3 The Department shall not require an inmate to use any informal grievance process or to otherwise attempt to resolve with staff an alleged incident of sexual abuse.
 - 9.1.4 Nothing in this section of the Department Order shall restrict the ability of the Department to defend against an inmate's lawsuit on the ground that the applicable statute of limitation has expired.
 - 9.1.5 The Complex Grievance Coordinator shall ensure an inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint; and such grievance is not referred to a staff member who is the subject of the complaint.

9.2 Final Decisions/Extensions

- 9.2.1 The Warden or designee shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 workdays of the initial filing of the grievance. Computation of the 90 workday time period shall not include time consumed by inmates in preparing any administrative appeal.
- 9.2.2 The Complex Grievance Coordinator may claim an extension of time to respond, of up to 70 workdays, if the normal time period of 90 workdays for response is insufficient to make an appropriate decision. The Department shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.
- 9.2.3 At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

9.3 Third Parties

- 9.3.1 Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.
- 9.3.2 If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
- 9.3.3 If the inmate declines to have the request processed on his or her behalf, the Department shall document the inmate's decision.

9.4 Emergency Grievance(s)

- 9.4.1 The Grievance Coordinator or staff member receiving an emergency grievance or an Informal Complaint alleging an inmate is subject to a substantial risk of imminent sexual abuse shall immediately forward the grievance or Complaint (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken. An initial response shall be provided to the inmate within 48 hours, and the Warden or designee shall issue a final decision within five calendar days.
- 9.4.2 The Warden or designee shall document the initial response and final decision, the determination whether the inmate is in substantial risk of imminent sexual abuse, and the action taken in response to the emergency grievance. Copies shall be forwarded to Legal Services and the Department PREA Coordinator.
- 9.4.3 The Department may discipline an inmate for filing a grievance related to alleged sexual abuse only where the Department can demonstrate the inmate filed the grievance with malicious intent.

10.0 REJECTED AND UNPROCESSED GRIEVANCE(S)

- 10.1 The following Informal Complaint(s), Formal Grievance(s), or Appeal(s) shall be rejected and returned to the inmate as unprocessed:
 - 10.1.1 Threatens serious bodily harm to staff, inmates or the general public
 - 10.1.2 Raises multiple unrelated issue(s) on a single form
 - 10.1.3 A duplicate Complaint, Grievance or Appeal
 - 10.1.4 Raises an issue previously addressed through the grievance process
 - 10.1.5 Filed past the time frame requirement unless there are extenuating circumstances (i.e., inmates not aware of property losses until after returning from court, a hospital or a Criminal Detention Unit)
 - 10.1.6 Grievances of inmates designated as a Vexatious Grievant not completed on the Grievance Request form
- 10.2 Prior to returning unprocessed Informal Complaints, Formal Grievances or Appeals, Grievance Coordinators shall annotate on the document the specific reason for the rejection.

11.0 PROTECTION AGAINST REPRISAL

- 11.1 Retaliation or the threat of retaliation for use of the Inmate Grievance Procedure is strictly prohibited. The inmate may pursue any alleged or threatened retaliation through the Inmate Grievance Procedure. An inmate retaliation hotline shall be accessible to all inmates thru the Inmate Telephone System. Employees found to be in violation of this section shall receive disciplinary action as outlined in Department Order #601, Administrative Investigations and Employee Discipline. *[Revision – February 7, 2021]*
- 11.2 Failure of an inmate to substantiate his/her grievance allegations shall not, by itself, be used as grounds to initiate disciplinary action against the inmate. If it is found the inmate has intentionally falsified information in the Informal Complaint, Formal Grievance or Appeal, the unit CO IV Grievance Coordinator may recommend disciplinary action after consultation with the Central Office Appeals Administrator.
- 11.3 Staff responses to inmate Informal Complaints, Formal Grievances and Appeals shall be professional and shall not include any demeaning or degrading language or inappropriate remarks.
- 11.4 All documents relating to the Inmate Grievance Procedure are confidential and shall not be shared with any other inmate or staff member outside of the investigative and appeal process.

12.0 ORIENTATION AND TRAINING

- 12.1 A written explanation and instructions for the use of the Inmate Grievance Procedure shall be made available to all staff. Both an oral and written explanation of the Inmate Grievance Procedure shall be made available to all new staff at Employee Orientations and shall be included in the Correctional Officer Training Academy (COTA) curriculum.
- 12.2 Inmates shall receive a written and oral explanation of the Inmate Grievance Procedure at Reception Centers Intake and as part of the orientation process in any subsequent facility.

13.0 REPORTING AND RECORDS REQUIREMENTS

- 13.1 The Warden shall designate staff at their institution and ensure Deputy Wardens designate a staff member at their unit to record and enter information regarding Inmate Grievances into the Monthly Statistical Report, Form 802-10.
- 13.2 The Central Office Appeals Administrator shall collect and review Monthly Statistical Report form data and evaluate the effectiveness of the grievance process.
- 13.3 The Central Office Appeals Administrator shall conduct an annual assessment of the Inmate Grievance Procedure. Comments shall be solicited from staff and inmates and summarized in the assessment report. This report shall be due on or before June 30 of each year and shall reflect information for the preceding fiscal year.
- 13.4 The unit CO IV Grievance Coordinator at each unit and Appeals Officer at Central Office shall maintain all Inmate Grievance records to include “unprocessed grievances” in a confidential and secure storage area. Inmate Grievances and Appeals are confidential and shall not be included in the Inmate Master File or any institutional file.
- 13.5 Inmate Grievance records shall be maintained for five years following the date of the last appeal response.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

FORMS LIST *[Revision – February 7, 2021]*

802-1, Inmate Grievance
802-2, Inmate Formal Grievance Response
802-3, Inmate Grievance Appeal
802-7, Inmate Grievance-GF Supplement
802-9, Unit Coordinator Grievance Log
802-10, Monthly Statistical Report
802-11, Inmate Informal Complaint Resolution
802-12, Inmate Informal Complaint Response
802-13, Grievance Request

AUTHORITY

28 CFR Part 40, Order 957-81, Standards for Inmate Grievance Procedures

CHAPTER: 900
Inmate Programs and Services

DEPARTMENT ORDER:

**904 – Inmate Religious
Activities/Marriage Requests**

**OFFICE OF PRIMARY
RESPONSIBILITY:**

**DIR
OPS
IP&R**

Effective Date:

June 11, 2016

Amendment:

October 1, 2019

Supersedes:

**DO 904 (2/12/11)
DI 318 (11/22/13)**

Scheduled Review Date:

January 1, 2021

ACCESS

☐ **Contains Restricted Section(s)**

Arizona Department of Corrections

Department Order Manual



A handwritten signature in black ink, appearing to read 'Joe Profiri', is written over a horizontal line.

Joseph Profiri, Acting Director

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PURPOSE

The purpose of this Department Order is to ensure inmates are allowed to participate in religious activities, have access to religious materials, religious diets and other legitimate aspects of their faith and, if approved, may marry in accordance with state law.

PROCEDURES

1.0 PASTORAL SERVICES

- 1.1 The Religious and Volunteer Services Administrator shall:
 - 1.1.1 Directly supervise senior chaplains at all institutions.
 - 1.1.2 Make recommendations to the Director regarding Department-wide religious issues.
 - 1.1.3 Provide verbal and/or written directives for the resolution of issues related to religious publications, diets, articles, apparel, practices and observances.
- 1.2 Wardens and Deputy Wardens shall ensure:
 - 1.2.1 Chaplains and inmates have access to each other.
 - 1.2.2 Staff consults with the chaplain's office regarding any questionable religious item(s).
 - 1.2.2.1 Chaplains, in consultation with the Warden and the Religious and Volunteer Services Administrator shall make final decisions on whether or not the item(s) are permitted. Inmates may appeal this decision by filing a grievance in accordance with Department Order #802, Inmate Grievance Procedure.
- 1.3 At Department-operated institutions, senior chaplains shall:
 - 1.3.1 Report directly to the Religious and Volunteer Services Administrator.
 - 1.3.2 Supervise other chaplains within an institution.
 - 1.3.3 Attend Wardens' management meetings as members of the executive staff representing the religious program.
 - 1.3.4 Ensure at least one chaplain is available to attend Deputy Warden unit meetings, upon request.
 - 1.3.5 Ensure appropriate chaplaincy coverage is maintained at each institution, including on Saturdays and Sundays.
 - 1.3.6 Create and manage all religious programs at the institution.
 - 1.3.7 Serve as the contact for all outside religious activities, persons or groups requesting institution admittance for religious purposes.
 - 1.3.8 Ensure unit chaplains interact with inmates during their daily activities (e.g., dining, recreation, work, etc.) for moral and religious instruction.

- 1.3.9 Ensure inmates in detention or disciplinary detention have access to and are visited by chaplains as often as possible.
- 1.3.10 Ensure all chaplains conduct a minimum of two services per month at the assigned institution or unit.
- 1.3.11 Coordinate with Wardens, Deputy Wardens or designees to notify inmates of serious illnesses or deaths in their immediate families, as outlined in Department Order #1005, Escorted Inmate Leave for Family Serious Illness or Funeral, using the Chaplain's Emergency Call Record, Form 904-4.
 - 1.3.11.1 Other chaplains may assist in the notification process if on duty, but no chaplain shall be called back to work to make notifications.
- 1.4 Private prison facilities shall conduct 1.3.1 through 1.3.11.1 of this section in accordance with contractual agreements.

2.0 RELIGIOUS PREFERENCES

- 2.1 Inmates shall be given the opportunity to designate religious preferences during their initial intake process. This designation shall be entered on Inmate Orientation, Form 901-5.
 - 2.1.1 Inmates shall be provided additional opportunities to designate religious preferences after their unit orientation if they did not do so during their initial intake process.
 - 2.1.2 Inmates may designate "none" during either of the processes outlined above.
 - 2.1.2.1 Inmates not designating religious preferences shall not be permitted to request religious privileges, except as outlined below in 2.2 through 2.2.2 of this section.
- 2.2 Inmates may request changes to their religious preference at any time by:
 - 2.2.1 Submitting Inmate Letters, Form 916-1, to senior chaplains/chaplains for processing and distribution.
 - 2.2.2 Providing additional requested information or documentation if within one year of a previous religious preference designation.
- 2.3 Native American Ethnicity – Due to the sacred nature of Sweat Lodges, participation in Sweat Lodge ceremonies requires Native American ethnicity verification.
 - 2.3.1 Prior to the authorization of privileges, inmates not ethnically identified as Native American shall provide verification to their senior chaplain/chaplain. Verification shall include evidence inmates are:
 - 2.3.1.1 Descended from a United States (U.S.) Tribe, and may have a valid Bureau of Indian Affairs or Tribal number.
 - 2.3.1.2 Presently a member of a U.S. Indian Community.
 - 2.3.1.3 Duly recognized by a U.S. Indian Community.

2.3.2 Senior chaplains/chaplains shall forward inmates' verification information to the Religious and Volunteer Services Administrator for review.

2.3.2.1 Upon confirmation by recognized Native American Leaders, the Religious and Volunteer Services Administrator shall:

2.3.2.1.1 Approve or disapprove inmates' eligibility.

2.3.2.1.2 Notify senior chaplains/chaplains the disposition.

2.3.2.1.3 Enter approved inmates' eligibility information on the Arizona Correctional Information System (ACIS).

3.0 RELIGIOUS ACTIVITIES

3.1 Wardens, Deputy Wardens and other Administrators shall ensure staff:

3.1.1 Demonstrate respect of inmates' religious beliefs.

3.1.2 Do not coerce or harass inmates into changing their religious affiliations.

3.1.3 Treat faith system representatives with equal respect, regardless of their represented faith.

3.2 Wardens, in conjunction with the Religious and Volunteer Services Administrator shall:

3.2.1 Appoint staff members to coordinate religious activities when no chaplains are assigned.

3.2.2 Designate in each unit at least one appropriate area for religious activities.

3.2.2.1 Designated areas do not need to be solely used for religious activities.

3.2.3 Ensure faith groups' religious symbols are displayed only during religious activities and are removed and stored at all other times.

3.3 Contract Beds Monitors shall ensure private prison facilities provide space for religious activities.

3.4 Religious Publications – Wardens and Deputy Wardens shall ensure institution Inmate Resource Center/libraries include religion sections for religious publications.

3.4.1 Religious publications are inventoried and managed by librarians in consultation with senior chaplains.

3.4.2 Publications threatening the safety and security of the institution (e.g., materials that advocate violence, rebellion or blatant prejudice/bigotry against any race or creed) shall not be included.

3.4.3 Inmate Resource Center/library donations shall become the property of the Department in accordance with Department Order #301, Fiscal Management.

3.4.4 No separate, designated religious libraries shall be maintained.

- 3.4.5 Some religious material may be maintained in a unit where a chaplain has an office or in areas designated for religious activity.

3.5 Number/Length of Religious Activities or Services

- 3.5.1 The senior chaplain/chaplain, in conjunction with Wardens, shall determine the number of formal religious activities per unit per week following an assessment of the religious needs of the institution/unit. Private prison facilities shall conduct activities in accordance with contractual requirements.
- 3.5.2 Regular worship/study opportunities shall be provided for faith groups based on:
 - 3.5.2.1 Inmate requests.
 - 3.5.2.2 Space availability.
 - 3.5.2.3 Time considerations of the monthly religious services calendar.
 - 3.5.2.4 Institutions' safety and security requirements.
 - 3.5.2.5 Availability of a qualified religious leadership.
- 3.5.3 Services assisted with or conducted by volunteers shall be scheduled for a minimum of 90 minutes, unless a shorter duration is requested by volunteers.
- 3.5.4 All group religious services shall end no later than 2000 hours.

3.6 Coordination of and Security for Religious Activities

- 3.6.1 Senior chaplains/chaplains shall coordinate all religious activities, groups, and individual/group religious volunteers.
- 3.6.2 Wardens and Deputy Wardens shall:
 - 3.6.2.1 Provide the necessary security staffing for religious activities.
 - 3.6.2.2 Ensure assigned security staff does not participate in the activities.

3.7 Requests to Conduct Religious Activities

- 3.7.1 Outside religious groups wanting to conduct religious activities in the institutions shall submit written requests to senior chaplains/chaplains. The request shall include the:
 - 3.7.1.1 Name and contact information of the group.
 - 3.7.1.2 Type of activity.
 - 3.7.1.3 Proposed date and time of the activity.
 - 3.7.1.4 Materials/equipment to be used.
- 3.7.2 Wardens or Deputy Wardens, in consultation with senior chaplains/chaplains, shall approve or disapprove requests within five workdays of receipt.

- 3.7.3 Senior chaplains/chaplains shall advise outside religious groups of the decision in writing, including the reasoning if the request has been disapproved.

4.0 RELIGIOUS ACCOMMODATIONS

4.1 Religious Claims

- 4.1.1 Wardens or Deputy Wardens shall:
 - 4.1.1.1 Consult with senior chaplains, chaplains or the Religious and Volunteer Services Administrator on the validity of inmates' religious claims.
 - 4.1.1.2 Ensure inmates following faith systems requiring having/wearing of religious apparel are accommodated within the compelling interests.
 - 4.1.1.3 Ensure inmates are not denied access to approved religious items or opportunities as part of the sanctions of disciplinary isolation, unless specifically restricted by custody level and security of their housing unit.
- 4.1.2 Senior chaplains/chaplains may contact the Religious and Volunteer Services Administrator for clarification on appropriate religious publications and materials, special religious diets or other special requirements inmates' faith systems.
- 4.1.3 Religious items used in the practice of inmates' chosen religions may be authorized provided the items:
 - 4.1.3.1 Do not pose a threat to the safe, secure and orderly operation of the institution.
 - 4.1.3.2 Are on the list of approved items maintained by Religious and Volunteer Services Administrator that is updated and distributed to all institutions. Authorized personal religious items may be kept in the possession of inmates in accordance with 4.1.3.3 of this section.
 - 4.1.3.3 When not in use, are stored collectively within inmates' storage box as outlined in Department Order #704, Inmate Regulations.
- 4.1.4 Approved property items not available in the Inmate Store shall be ordered from approved sources and paid for from inmate accounts. To order religious items, inmates shall submit their requests to senior chaplains using Inmate Letters and shall include the following information:
 - 4.1.4.1 A description of each item, including each item's size.
 - 4.1.4.2 Where each item is available, including each source's name and contact information.
 - 4.1.4.3 A complete itemized list of all previously approved religious items currently in their possession.
- 4.1.5 Included with Inmate Letters, inmates shall also provide senior chaplains:

- 4.1.5.1 Completed and signed Inmate Request for Withdrawal, Form 905-1, for the total amount of their orders, including any applicable shipping and handling charges unless the ordered item(s) are provided free of charge by the approved source.
- 4.1.5.2 Completed order forms from approved sources.
 - 4.1.5.2.1 Order forms may be handmade if the company accepts them.
- 4.1.5.3 Completed and stamped envelopes addressed to the approved sources.
- 4.1.6 Senior chaplains shall:
 - 4.1.6.1 Verify inmates' religious preferences.
 - 4.1.6.2 Determine if requested items are on the approved items list for inmates' religious preference.
 - 4.1.6.3 Approve or deny requests.
 - 4.1.6.4 Forward the information on requested items not currently approved to the Religious and Volunteer Services Administrator.
 - 4.1.6.4.1 Additions to the approved items list shall be reviewed by the Religious Accommodation Review Committee (RARC).
- 4.1.7 Staff assigned to Inmate Banking shall only accept and process orders for religious items approved by senior chaplains.
 - 4.1.7.1 When approved items are unavailable for purchase through approved sources (e.g., eagle feathers) senior chaplains, in consultation with the Religious and Volunteer Services Administrator, shall determine the method for obtaining the items.
- 4.1.8 Other ceremonial use of religious items is permitted as follows:
 - 4.1.8.1 Smudging material
 - 4.1.8.1.1 Smudging (smoldering herbs) by followers of religious traditions that smudge is permitted, unless specifically restricted by the custody level and security of the unit.
 - 4.1.8.1.2 Locations and times of this activity shall be determined by senior chaplains and Deputy Wardens.
 - 4.1.8.2 Sacramental wine
 - 4.1.8.2.1 If permitted by the religious tenets, no more than two ounces shall be allowed for use only by priests, chaplains or religious leaders.
 - 4.1.8.2.2 Inmates shall not partake of sacramental wine.

4.1.8.3 Communion supplies

- 4.1.8.3.1 Volunteers, pastoral visitors and staff chaplains may bring in communion supplies for religious ceremonies with prior approval from the chaplain, in consultation with Wardens/Deputy Wardens.
- 4.1.8.3.2 Only a sufficient supply for participants in scheduled services shall be authorized and any remaining supply shall be taken out of institutions by volunteers/visitors at departure.
- 4.1.8.3.3 Other requested supplies/items may be authorized for group ceremony by the senior chaplains after consultation/ approval from the Religious and Volunteer Services Administrator and Wardens/Deputy Wardens.

4.2 Requests for Work Abstinence

- 4.2.1 Inmates may request to be excused from work on specified holy days, documented as "no-work" days for the religion in question.
- 4.2.2 Inmates requesting to abstain from work shall remain in their cells or dormitory on the requested days and refrain from recreation activities, phone calls, shopping at the Inmate Store, etc.
 - 4.2.2.1 Inmates may leave their cell or dormitory to accomplish routine institutional practices such as showers and meals when directed by staff.
- 4.2.3 Requests to observe "no-work" days recurring each week, such as Sundays and Sabbaths:
 - 4.2.3.1 These requests shall be submitted in writing to senior chaplains.
 - 4.2.3.2 Senior chaplains shall consult with Wardens/Deputy Wardens or their designees regarding appropriate work assignments prior to approval.
- 4.2.4 Requests to observe "no-work" days not recurring each week:
 - 4.2.4.1 These requests shall be submitted in writing to senior chaplains 30 calendar days prior to the day in question.
 - 4.2.4.2 Senior chaplains shall consult with work supervisors and/or Deputy Wardens or their designees regarding appropriate work assignments prior to approval.
- 4.2.5 Questions regarding days documented as "no-work" days for a particular religion shall be referred to the Religious and Volunteer Services Administrator for disposition.

4.3 Requests for Food Abstinence

- 4.3.1 Inmates requesting and granted approval to refrain from food on designated days or for designated periods, such as Ramadan, shall not be required to turn out for meals and shall not be penalized for failure to take their designated diet.
- 4.3.2 Food abstinence may be requested in accordance with provisions for fasting outlined in the Food Service Technical Manual, 912-T-OPS.
- 4.3.3 Questions regarding religious fast requests for a particular religion shall be referred to the Religious and Volunteer Services Administrator for a decision.

4.4 Special Religious Ceremonies/Property

4.4.1 Sweat Lodges

4.4.1.1 Sweat Lodge ceremonies are:

- 4.4.1.1.1 Held for the purification of participants.
- 4.4.1.1.2 Typically three to four hours in length.
- 4.4.1.1.3 Operated according to a schedule published by chaplains.

4.4.1.2 Chaplains shall:

- 4.4.1.2.1 Publish a list of approved participants.
- 4.4.1.2.2 Monitor compliance with the Sweat guidelines established in Attachment C.

4.4.1.3 Sweat Lodge ceremonies may be held on a weekly basis and may be assisted by Native American spiritual advisors provided wood is available and no security or other operational concerns prohibit this frequency.

- 4.4.1.3.1 At locations where security requires the presence of advisors to perform the Sweat, ceremonies shall be scheduled when advisors are available.

- 4.4.1.3.2 If firewood is not available through donations, inmates may purchase firewood exclusively for use in a Sweat ceremony by submitting a request to a senior chaplain in accordance with 4.1.4 and 4.1.5 of this section. The public may donate toward these purchases in accordance with Department Order #301, Fiscal Management.

- 4.4.1.3.2.1 Firewood purchases may be requested for group ceremony involving all eligible participants or for personal ceremony involving no other inmates.

4.4.1.4 Male participants shall wear shorts covering their genital and buttocks areas.

- 4.4.1.5 Female participants shall wear shorts, shirts or T-shirts and brassieres.
- 4.4.1.6 Staff shall facilitate the lighting of the fire for Sweat Lodge ceremonies.
- 4.4.1.7 Sweat Lodges shall be located on the grounds of all institutions where a sufficient number of eligible Native American inmates are able to participate in Sweat Lodge ceremonies and inmate requests have been made for a Sweat Lodge.
- 4.4.1.8 Sweat Lodges shall be constructed in an area approximately 30 by 40 feet under the guidance of an approved Native American advisor. Refer to Attachment B for construction specifics.
- 4.4.1.9 Sweat Lodge sites and all associated storage areas are subject to search. As Sweat Lodges and fire pits are sacred areas, searches shall be conducted with prior approval from Shift Commanders and appropriate notification of Wardens or Deputy Wardens and chaplains.
- 4.4.1.10 Sweat Lodge areas shall be kept clean at all times and shall include a secure place to store religious items and materials. Participants shall be responsible for maintaining the site and any authorized ceremonial supplies.
- 4.4.1.11 Sweat Lodge areas may be screened with wooden fences or other material for privacy and respect provided it does not jeopardize security.
- 4.4.1.12 Sweat Lodge areas shall only be used for Sweat ceremonies.
- 4.4.2 Multi-faith Gatherings
 - 4.4.2.1 Religious ceremonies may be held on a weekly basis.
 - 4.4.2.2 The details, times and location shall be arranged through chaplains, in consultation with Wardens, Deputy Wardens or Chiefs of Security, and shall include religions:
 - 4.4.2.2.1 Not having identified volunteer leadership.
 - 4.4.2.2.2 Not already scheduled for weekly ceremonies.
 - 4.4.2.2.3 Having a sufficient number of inmates making the request for group ceremonies.
- 4.4.3 Smoke Generating Ceremonies
 - 4.4.3.1 Smoke Generating Ceremonies are religious ceremonies involving activities generating smoke, including group and personal smudging and pipe ceremonies.
 - 4.4.3.2 The frequency and details of group ceremonies shall be arranged through chaplains, in consultation with Wardens, Deputy Wardens or Chiefs of Security.

- 4.4.3.3 Smoke-generating ceremonies shall only be conducted outdoors.
 - 4.4.3.3.1 Inmates in detention or a Special Management Unit (SMU) shall be allowed to conduct the ceremonies only during their regularly scheduled exercise time in an approved exercise area.
 - 4.4.3.3.2 Personal ceremonies for inmates not on lockdown shall be conducted during an inmates' free time on the open yard at locations authorized by Deputy Wardens or designees.
- 4.4.4 Special Annual Religious Events
 - 4.4.4.1 Special Annual Religious Events are closed religious events limited to inmates with religious preference designations for the religion in question, volunteers and guest performers not on participating inmates' visitation list.
 - 4.4.4.2 These events shall be planned by chaplains in consultation and with the assistance of outside sponsors and inmate representatives.
 - 4.4.4.3 Wardens or Deputy Wardens shall approve the final selection list of inmate attendees from Close and Maximum Custody units.
 - 4.4.4.4 Attachment A of this Department Order provides established guidelines to be followed regarding the authorization and scheduling of events assisted by outside sponsors.
- 4.4.5 Restroom or port-a-john facilities shall be available for participants of Sweat Lodge ceremonies and special annual religious events. Use of these facilities shall not terminate participation in ceremonies.
- 4.4.6 Religious/Ceremonial Property
 - 4.4.6.1 All religious property approved by chaplains or by the Religious and Volunteer Services Administrator shall be inspected by the appropriate security staff prior to introduction into institutions/units.
 - 4.4.6.2 All religious property is subject to periodic security inspection and shall be handled with appropriate respect.
 - 4.4.6.3 Inmates shall not keep the following approved religious items in their possession:
 - 4.4.6.3.1 Ceremonial items or supplies, such as ceremonial pipes, drums, musical equipment, and communion supplies, shall be stored in a secure area supervised and inventoried by chaplains.
 - 4.4.6.3.2 Firewood shall be stored in an acceptable area as determined by the Warden or designee.

- 4.4.6.3.2.1 Firewood purchased by inmates shall only be used for Sweat ceremonies and shall not be traded, loaned, bartered or sold. Individually purchased firewood shall be disposed of in accordance with Department Order #909, Inmate Property.
- 4.4.6.4 Inmates in detention or a SMU shall not possess items specified in this section, such as smudging supplies, in their cells. Wardens/Deputy Wardens shall designate the items permitted. Items not approved for personal possession in these instances shall be kept in secure areas designated by Wardens or Deputy Wardens. If a supply of these items is available, inmates may be allowed access for the purpose of engaging in personal religious ceremonies.
 - 4.4.6.4.1 Health and welfare indigent inmates may use supplies donated for group ceremonies. Chaplains shall manage the distribution of donated supplies.
- 4.4.6.5 Religious symbols or clothing items, including head coverings may be worn openly only during religious ceremonies and at no other time or place. These ceremonies include:
 - 4.4.6.5.1 Approved group religious ceremonies.
 - 4.4.6.5.2 Personal ceremonies in inmates' own living spaces or recreation pens for lockdown inmates.
- 4.4.6.6 Candles - Wax candles shall be allowed in group religious ceremonies where their requirement has been documented by designated religious leaders and approved by the Religious and Volunteer Services Administrator.
 - 4.4.6.6.1 Wax candle usage shall be restricted to Minimum and Medium Custody level units.
 - 4.4.6.6.1.1 In units other than Minimum or Medium Custody or where a chaplain or volunteer is not available, candle usage shall be restricted to electric candles only.
 - 4.4.6.6.2 Ceremonies where wax candles are utilized shall be led by chaplains, authorized religious leaders or badged ADC volunteers.
 - 4.4.6.6.3 Inmates shall not possess wax candles at any time.
 - 4.4.6.6.4 Possession of Shabbat Candles which are watch battery operated are permitted for the religions requiring the use of Shabbat Candles. Possession is for all custody levels.
[Revision – October 1, 2019: Sections 4.4.6.6.4 and 4.4.6.6.4.1]

- 4.4.6.6.4.1 Request to purchase Shabbat Candles shall follow the approved property process outlined in this section.

4.5 Religious Diets

- 4.5.1 Inmates wanting to observe religious dietary laws shall provide written special diet requests to institutional chaplains.
- 4.5.2 Religious dietary requests shall be accommodated to the extent practicable within the constraints of budgetary limitations, security and the orderly operation of the institution.
- 4.5.3 Applications for special diets, and processing such requests, shall be in accordance with Department Order #912, Food Service and the Food Service Technical Manual.

5.0 **RELIGIOUS VISITATION** – Wardens and Deputy Wardens shall encourage religious visitation between religious leaders and inmates.

5.1 Visits by Religious Leaders

- 5.1.1 Senior chaplains/chaplains shall arrange all religious and pastoral visits by initiating the Request for Pastoral Visit, Form 904-5. Authorization for religious visits may be at the discretion of the Warden or Deputy Warden.
- 5.1.2 Wardens or Deputy Wardens may deny religious visits which may threaten the safety and/or security of the institution.
- 5.1.3 Inmates shall request or consent to visits by accredited ministers or religious leaders prior to visit authorization.
- 5.1.4 Senior chaplains/chaplains shall verify the credentials and/or accreditation of the visiting religious leader(s).
 - 5.1.4.1 Wardens, Deputy Wardens or senior chaplains/chaplains shall consult with the Religious and Volunteer Services Administrator when there is a question regarding the validity of visiting religious leaders' credentials.
- 5.1.5 After their credentials have been verified, senior chaplains/chaplains shall facilitate pastoral visits including distributing appropriate gate passes.
- 5.1.6 Pastoral visitors shall not be placed on inmates' visitation list.

- 5.2 Emergency Visits - At the discretion of Wardens or Deputy Wardens, emergency religious visits may be permitted based on the severity of the emergency and the safety and/or security of the institution.

6.0 **RELIGIOUS ADVISORY COMMITTEE**

- 6.1 Membership – The Religious Advisory Committee shall consist of representatives of the religious community.
 - 6.1.1 Committee members are appointed by the Director and serve at the pleasure of the Director without any monetary compensation from the Department.

- 6.1.2 Senior chaplains and the Religious Advisory Committee shall recommend new appointments and removals from the Committee.
- 6.2 Identification Cards – Committee members shall be issued appropriate identification cards, as outlined in Department Order #515, Identification System. These identification cards:
 - 6.2.1 Allow Committee members to enter any institution when engaged in Committee business.
 - 6.2.1.1 Committee members shall have reasonable access to all institution areas. Wardens or Deputy Wardens may require Committee members to be escorted by Department staff and may deny them access during dangerous conditions.
 - 6.2.2 Cannot be used to gain access to conduct religious services or visitations unless the member is listed as an active volunteer for the institution served.
- 6.3 Committee Member Activities
 - 6.3.1 Institutional chaplains shall coordinate committee members' activities while they are in the institution.
 - 6.3.2 Committee members are authorized, subject to institution scheduling requirements, to talk with staff members and/or inmates.
- 6.4 Committee Progress Reports – The Committee shall submit quarterly progress reports and recommendations to the Religious and Volunteer Services Administrator.
- 6.5 Orientation – All Committee members shall receive an orientation in accordance with Department Order #509, Employee Training and Education.

7.0 MARRIAGE

- 7.1 Inmates shall obtain a Marriage Application, Form 904-2, from institutional chaplains and complete Sections I and II of the Marriage Application and return it to the chaplain they received the form from.
 - 7.1.1 Chaplains receiving Marriage Applications shall:
 - 7.1.1.1 Review applications to determine their completeness.
 - 7.1.1.2 Return incomplete applications with instructions for proper completion.
 - 7.1.1.3 Accept and review completed applications to determine if applying inmates and their prospective spouses meet the eligibility requirements in 7.2.3.1 through 7.2.3.3 of this section.
 - 7.1.1.4 Document in the appropriate comments section if the applying inmates or their prospective spouses fail to meet any of the eligibility requirements and forwarding the Marriage Application packet to their Warden or Deputy Warden.

- 7.1.1.4.1 Inmates at Department institutions may appeal disapprovals of Marriage Applications by writing to the appropriate Regional Operations Director within ten work days after being notified of the disapproval. Inmates' requests to marry other inmates are not appealable.
 - 7.1.1.4.2 Inmates assigned to private prison facilities shall appeal to the Contract Beds Operations Director.
 - 7.1.1.4.3 Decisions made by the Contract Beds Operations Director or the Regional Operations Director shall be final.
 - 7.1.1.4.4 If circumstances have changed, inmates may reapply 60 calendar days from the date the first application was disapproved.
- 7.2 Approved inmate marriages shall remain valid for one year unless withdrawn by Wardens or Deputy Wardens if inmates become ineligible provided:
 - 7.2.1 Marriages are:
 - 7.2.1.1 To be performed legally.
 - 7.2.1.2 Not a risk to the safe, secure and orderly operation of the Department or jeopardize public safety.
 - 7.2.1.3 Not to another inmate.
 - 7.2.2 Both inmates and their prospective spouse are not:
 - 7.2.2.1 Currently married.
 - 7.2.2.2 Mentally incapacitated.
 - 7.2.2.3 Of a blood relation of first cousins or closer.
 - 7.2.3 Inmates:
 - 7.2.3.1 Do not have any pending disciplinary charges.
 - 7.2.3.2 Are not confined in detention units, disciplinary isolation or investigative "lock up" detention.
 - 7.2.3.3 Are eligible for visitors at the time of the application through to their marriage ceremony.
- 7.3 Permission to marry does not supersede or change any instructions governing visitation, release procedures, mail and property or phone calls.
 - 7.3.1 Refer to the appropriate Department Order for complete rules and regulations.
- 7.4 If not in the best interests of the community, marriages do not guarantee or mandate inmates will be approved to reside with their new spouse upon transfer from an institution to any release under community supervision.

- 7.5 Whether indigent or not, all inmates applying for marriage applications shall accept full financial responsibility for all marriage process expenses including license fees and ceremony expenses.
- 7.6 In accordance with Arizona Revised Statute (A.R.S.) §25-125, valid marriage ceremonies are conducted in the presence of persons authorized to solemnize marriages.
 - 7.6.1 Telephonic marriages are not authorized.
- 7.7 Chaplains shall coordinate with all parties involved including the Clerk of the Superior Court, security staff, inmates and their prospective spouses to obtain marriage licenses. Copies of marriage licenses shall be attached to Marriage Application packets.
- 7.8 Once Marriage Applications are approved, chaplains shall coordinate ceremony arrangements including:
 - 7.8.1 Ensuring ceremonies are performed by approved clergy or Justices of the Peace to fulfill legal requirements.
 - 7.8.2 Inmates, their prospective spouses and two lawfully aged witnesses are present for the ceremony.
 - 7.8.3 Inmates are not in special clothing for a marriage ceremony.
 - 7.8.4 Photographs are not taken and no other publicity arrangements are made.
 - 7.8.5 Rings are not exchanged during the ceremony.
 - 7.8.5.1 Refer to Department Order #909, Inmate Property for additional information on wedding rings.
- 7.9 Inmates marrying in violation of this Department Order may be charged with disobeying a direct order and disciplined for such activity in accordance with Department Order #803, Inmate Disciplinary Procedure.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

ATTACHMENTS

Attachment A - Special Annual Religious Events (Sample Request)
Attachment B – Native American Sweat Lodge (Construction)
Attachment C – Sweat Guidelines

FORMS LIST

904-2, Marriage Application
904-4, Chaplain's Emergency Call Record
904-5, Request for Pastoral Visit

AUTHORITY

A.R.S. §25-125, Marriage Ceremony; Official; Witnesses; Marriage License; Covenant Marriages

A.R.S. §31-201.01, Duties of the Director; Tort Actions; Medical Treatment Costs; State Immunity; Definitions

A.R.S. §31-206, Chaplains; Duties; Traditional Native American Religious Practitioners

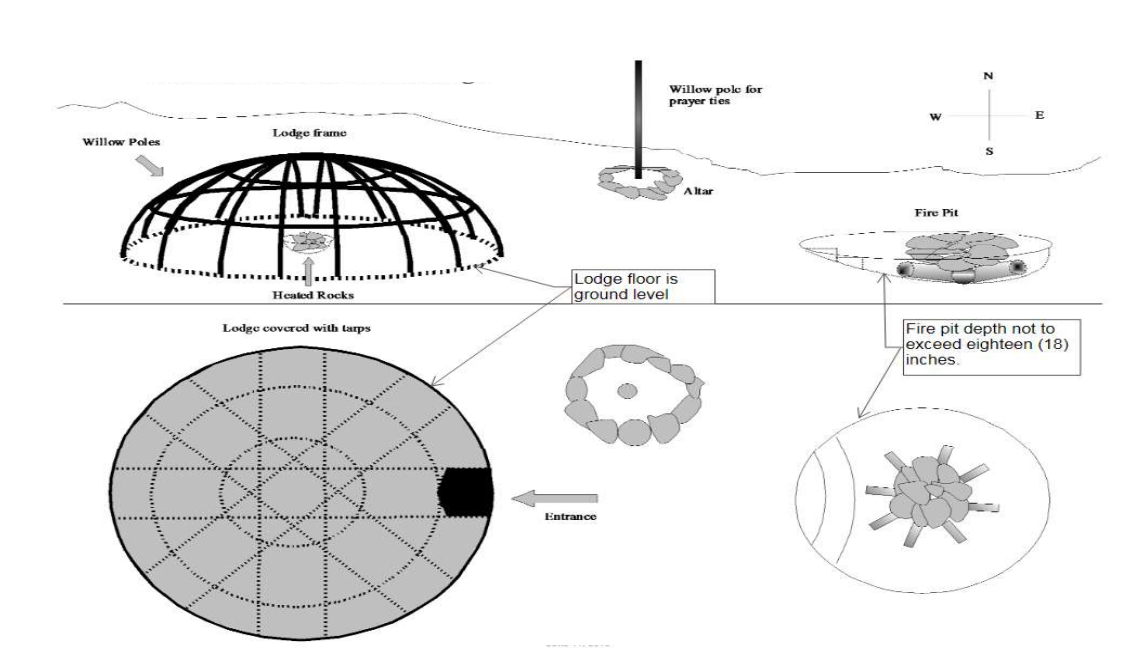
A.R.S. §41-1493.01, Free Exercise of Religion Protected
Religious Land Use and Institutionalized Persons Act of 2000

ATTACHMENT A

SPECIAL ANNUAL RELIGIOUS EVENTS

- Purpose:** Annual Intra-faith, community and religious/cultural celebration
- Time/Date:** Single day event assisted by outside sponsors, which may have morning and afternoon sessions interrupted by count and lunch, where guests depart the facility and inmates return to housing for count.
- Location:** Outdoor section of visitation area, weather permitting or other approved location.
- Attendance:**
- Authorized inmates with appropriate religious preference designation assigned to the unit where the event is held who are eligible to attend group religious activities.
 - Spiritual leaders and Advisors not on the visiting list of any participating inmate.
- Agenda:** To be announced at the institution with approval from the Warden, Deputy Warden or Administrator.
- Supplies:** Supplies/equipment provided by the institution:
- Chairs
 - Tarp/canopy (for shade for senior citizens)
 - Public address system (optional)
 - Ceremonial items/ supplies available but not personally possessed by inmates (e.g., ceremonial drum and pipe, communion-type supplies, etc.)
- Supplies/equipment provided by the inmate:
- Ceremonial supplies approved for personal possession
- Supplies/equipment provided by the special guests:
- Musical instruments (e.g., contemporary and traditional such as drums, rattles, flutes, keyboards, etc.)
 - Religious Paraphernalia (supplies and religious ceremonial items, all pre-approved, none to be left with the inmates)

ATTACHMENT B
NORTH AMERICAN SWEAT LODGE



ATTACHMENT C

SWEAT GUIDELINES

1. The sweat lodge area is opened and the chaplain allows authorized inmates to enter the area.
2. The fire is started in the fire pit and allowed to burn to produce hot coals.
3. Participants cover the lodge with blankets and tarps and prepare for the ceremony.
4. Participants enter the lodge and position themselves around the perimeter.
5. The only items taken inside the lodge:
 - a. A small amount of herbs (1 ounce or less)
 - b. Water to pour over the hot rocks
 - c. A small plastic container to pour water over the rocks
6. Heated rocks from the fire pit are brushed and placed in the small pit in the center of the lodge. **At no time are any coals, embers or burning wood pieces to be placed inside the lodge structure!!**
7. The lodge structure door (flap of blankets/tarps) is closed.
8. Participants remain inside approximately 20 minutes (no more than 30 minutes) unless:
 - a. A safety or security reason demands exit sooner
 - b. An inmate leaves for health or heat related reasons
9. The door flap is opened so that participants can cool off and drink water. The flap is then closed after the break for subsequent rounds (total of 4).
10. After the final round participants exit the lodge and begin "striking" the lodge:
 - a. Tarps, blankets are removed from the structure
 - b. Wood lodge frame remains intact
 - c. Tarps and blankets are folded and stored
 - d. Rocks are returned to their designated location (unless too hot)
11. All participants leave the sweat lodge area.
12. The sweat lodge fence is secured (total time: 4 hours).

CHAPTER: 900
Inmate Programs and Services

DEPARTMENT ORDER:

904 – Inmate Religious
Activities/Marriage Requests

OFFICE OF PRIMARY
RESPONSIBILITY:

OPS
IP&R

Effective Date:

September 23, 2021

Amendment:

N/A

Supersedes:

DO 904 (6/11/16)

Scheduled Review Date:

January 1, 2024

ACCESS

☐ Contains Restricted Section(s)

Arizona Department of Corrections Rehabilitation and Reentry



Department Order Manual

A handwritten signature in black ink, appearing to read "David Shinn", written over a horizontal line.

David Shinn, Director

STANDARDS

American Correctional Association (ACA) Standards: 5-ACI-5C-07, 5-ACI-7D-18, 5-ACI-7F-01, 5-ACI-7F-02, 5-ACI-7F-03, 5-ACI-7F-05, 5-ACI-7F-06, 5-ACI-7F-07, and 5-ACI-7F-08

PURPOSE

The purpose of this Department Order is to ensure inmates are allowed to participate in religious activities, have access to religious materials, religious diets and other legitimate aspects of their faith and, if approved, may marry in accordance with state law.

PROCEDURES

1.0 PASTORAL SERVICES

1.1 The Director of Chaplaincy Services shall:

- 1.1.1 Directly supervise Senior Chaplains at all institutions.
- 1.1.2 Make recommendations to the Director regarding Department-wide religious issues.
- 1.1.3 Provide verbal and/or written directives for the resolution of issues related to religious publications, diets, articles, apparel, practices and observances.
- 1.1.4 Ensure all chaplains meet the required qualifications, to include a minimum of one unit of clinical pastoral education or equivalent specialized training and endorsement by the Denominational Endorsing Agent/officer. {5-ACI-7F-01}

1.2 Wardens and Deputy Wardens shall:

- 1.2.1 Ensure the following:
 - 1.2.1.1 Chaplains have access to inmates for the purpose of providing moral and religious instruction. They shall also be accessible to the inmate population. {5-ACI-7F-02} (Arizona Revised Statute (A.R.S.) §31-206)
 - 1.2.1.2 Security staff observes, but does not participate in religious activities.
 - 1.2.1.3 Inmates following faith systems requiring having/wearing of religious apparel are accommodated within the Department's compelling interests.
 - 1.2.1.4 Inmates are not denied access to approved religious items or opportunities as part of the sanctions of disciplinary isolation, unless specifically restricted by custody level and security of their housing unit.
 - 1.2.1.5 Staff members consult with the Senior Chaplain regarding religious matters of concern.
 - 1.2.1.5.1 Private prisons without an identified Senior Chaplain/appointee shall consult with the Director of Chaplaincy Services regarding religious matters of concern.

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- 1.2.2 Provide the necessary security staffing for religious activities.
- 1.2.3 Consult with Senior Chaplains or the Director of Chaplaincy Services on the validity of inmates' religious claims.
- 1.2.4 Deny religious visits or activities which may threaten the safety and/or security of the institution.
- 1.3 At Department-operated institutions, Senior Chaplains shall:
 - 1.3.1 Report directly to the Director of Chaplaincy Services.
 - 1.3.2 Supervise other chaplains within an institution.
 - 1.3.3 Attend Wardens' management meetings as a member of the executive staff representing the religious program.
 - 1.3.4 Create and manage all religious programs, group and individual religious activities at the institution.
 - 1.3.5 Serve as the contact for all outside religious activities, persons or groups requesting institution admittance for religious purposes.
 - 1.3.6 In cooperation with the Warden or designee, approve donations of equipment or materials for use in religious programs. {5-ACI-7F-08}
 - 1.3.7 Ensure the following:
 - 1.3.7.1 Equal status and protection for all religions. {5-ACI-7F-01}
 - 1.3.7.2 At least one chaplain is available to attend Deputy Warden Unit meetings, upon request.
 - 1.3.7.3 Appropriate chaplaincy coverage is maintained at each institution, including on Saturday and Sunday. {5-ACI-7F-02}
 - 1.3.7.4 Unit chaplains routinely interact with inmates during their daily activities (e.g., dining, recreation, work, etc.) for moral and religious instruction. {5-ACI-7F-02}
 - 1.3.7.5 Inmates in detention or disciplinary detention have access to and are visited by chaplains at least once per week.
 - 1.3.7.6 When a religious leader of an inmate's faith is not represented through the chaplaincy staff or volunteers, the unit Chaplain(s) shall assist the inmate in contacting a person who has the appropriate credentials from the faith judicatory. That person shall minister to the inmate under the supervision of the unit Chaplain(s). {5-ACI-7F-06}
 - 1.3.7.7 All chaplains conduct a minimum of two services per month at the assigned institution or unit in accordance with (A.R.S.) §31-206.

1.3.8 Coordinate with Wardens, Deputy Wardens or designees to notify inmates of serious illnesses or deaths in their immediate families, as outlined in Department Order #1005, Escorted Inmate Leave for Family Serious Illness or Funeral, using an Information Report, Form 105-2. The form shall be uploaded into the Arizona Correctional Information System (ACIS) Religious Services Manage Requests section. {5-ACI-7D-18}

1.3.8.1 Other chaplains shall assist in the notification process if on duty, but no chaplain shall be recalled back to work to make notifications.

1.4 Private prison facilities shall conduct 1.3.1 through 1.3.8.1 of this section in accordance with contractual agreements.

2.0 RELIGIOUS PREFERENCES

2.1 Inmates shall be given the opportunity to designate religious preferences during their initial intake process. This designation shall be entered in ACIS. {5-ACI-7F-05}

2.1.1 After their unit orientation, inmates shall be provided an additional opportunity to designate religious preferences if they did not do so during their initial intake process for up to one month after arrival at the unit.

2.1.2 Inmates may designate "none" during either of the processes outlined above.

2.2 Inmates may request changes to their religious preference at any time by: {5-ACI-7F-05}

2.2.1 Submitting Inmate Letters, Form 916-1, or using the tablet communication system, to Senior Chaplains/chaplains for processing and distribution.

2.2.2 Providing additional requested information or documentation if within one year of a previous religious preference designation.

3.0 RELIGIOUS ACTIVITIES

3.1 Wardens, Deputy Wardens and other Administrators shall ensure staff:

3.1.1 Demonstrate respect of an inmate's constitutional religious rights regarding religious beliefs and observance.

3.1.2 Do not coerce or harass inmates into changing their religious affiliations.

3.1.3 Treat faith system representatives with equal respect, regardless of their represented faith.

3.2 Wardens, in conjunction with the Director of Chaplaincy Services, shall: {5-ACI-7F-07}

3.2.1 Appoint staff members to coordinate religious activities when no chaplains are assigned.

3.2.2 Designate in each unit at least one appropriate area for religious activities.

3.2.2.1 Designated areas do not need to be solely used for religious activities.

- 3.2.3 Ensure faith groups' religious symbols are displayed only during religious activities and are removed and stored at all other times.
- 3.3 Contract Beds Bureau Monitors shall ensure private prison facilities provide space for religious activities.
- 3.4 Religious Publications – Wardens and Deputy Wardens shall ensure institution Inmate Resource Center/libraries include religion sections for religious publications.
 - 3.4.1 Religious publications are inventoried and managed by librarians in consultation with Senior Chaplains.
 - 3.4.2 Religious publications must meet Publication Review standards outlined in Department Order #914, Inmate Mail.
 - 3.4.3 Inmate Resource Center/library donations shall become the property of the Department in accordance with Department Order #301, Fiscal Management.
 - 3.4.4 No separate, designated religious libraries shall be maintained.
 - 3.4.5 Some religious material may be temporarily maintained in a chaplain's office or in designated religious activity areas during observances.
- 3.5 Number/Length of Religious Activities or Services
 - 3.5.1 The Senior Chaplain, in conjunction with Wardens or Deputy Wardens, shall determine the number of formal religious activities per unit per week following an assessment of the religious needs of the institution/unit. Private prison facilities shall conduct activities in accordance with contractual requirements.
 - 3.5.2 Regular worship/study opportunities shall be provided for faith groups based on:
 - 3.5.2.1 Inmate requests.
 - 3.5.2.2 Space availability.
 - 3.5.2.3 Time considerations of the monthly religious services calendar.
 - 3.5.2.4 Institutions' safety and security requirements.
 - 3.5.2.5 Availability of a qualified religious leadership.
 - 3.5.3 Services officiated by volunteers shall be scheduled for a minimum of one hour, but not to exceed 90 minutes, unless a shorter duration is requested by volunteers.
 - 3.5.4 All group religious services shall end no later than 2000 hours.
 - 3.5.5 Senior Chaplains shall coordinate all religious activities for group religious volunteers.
- 3.6 Requests to Conduct Religious Activities
 - 3.6.1 Outside religious groups wanting to conduct religious activities in the institutions shall submit written requests to Senior Chaplains. The request shall include the:

- 3.6.1.1 Name and contact information of the group.
- 3.6.1.2 Type of activity.
- 3.6.1.3 Proposed date and time of the activity.
- 3.6.1.4 Materials/equipment to be used.
- 3.6.2 Senior Chaplains, in consultation with Wardens or Deputy Wardens, shall approve or disapprove requests within five workdays of receipt.
- 3.6.3 Senior Chaplains shall advise outside religious groups of the decision in writing, including the reasoning if the request has been disapproved.

4.0 RELIGIOUS ACCOMMODATIONS {5-ACI-7F-05}

- 4.1 Religious Claims - Senior Chaplains/chaplains may contact the Director of Chaplaincy Services for clarification on appropriate religious publications and materials, special religious diets or other special requirements about inmates' faith systems.
- 4.2 Requests for Work Abstinence
 - 4.2.1 Inmates may request to be excused from work on specified holy days, documented as "no-work" days for their declared religious preference.
 - 4.2.2 Inmates requesting to abstain from work shall remain in their cells or dormitory on the requested days and refrain from recreation activities, phone calls, shopping at the inmate store, etc.
 - 4.2.2.1 Inmates may leave their cell or dormitory to accomplish routine institutional practices such as showers and meals when directed by staff.
 - 4.2.3 Requests to observe "no-work" days recurring each week, such as Sunday and Sabbath:
 - 4.2.3.1 These requests shall be submitted in writing to Senior Chaplains.
 - 4.2.3.2 Senior Chaplains shall consult with Wardens/Deputy Wardens or their designees regarding appropriate work assignments prior to approval.
 - 4.2.4 Requests to observe "no-work" days not recurring each week:
 - 4.2.4.1 These requests shall be submitted in writing to Senior Chaplains 30 calendar days prior to the day in question.
 - 4.2.4.2 Senior Chaplains shall consult with work supervisors and/or Deputy Wardens or their designees regarding appropriate work assignments prior to approval.
 - 4.2.5 Questions regarding days documented as "no-work" days for a particular religion shall be referred to the Director of Chaplaincy Services for disposition.

4.3 Requests for Food Abstinence

- 4.3.1 Inmates requesting and granted approval to refrain from food on designated days or for designated periods, such as Ramadan, shall not be required to turn out for meals and shall not be penalized for failure to take their designated diet.
- 4.3.2 Food abstinence may be requested in accordance with provisions for fasting outlined in the Food Service Technical Manual, 912-T-OPS.
- 4.3.3 Questions regarding religious fast requests for a particular religion shall be referred to the Director of Chaplaincy Services for a decision.

4.4 Sweat Lodges

- 4.4.1 Native American Ethnicity – Due to the sacred nature of Sweat Lodges, participation in Sweat Lodge ceremonies requires Native American ethnicity verification.
 - 4.4.1.1 Prior to the authorization of privileges, inmates not ethnically identified as Native American shall provide verification to their Senior Chaplain/chaplain. Verification shall include evidence inmates are:
 - 4.4.1.1.1 Descended from a United States (U.S.) Tribe, and may have a valid Bureau of Indian Affairs or Tribal number.
 - 4.4.1.1.2 Presently a member of a U.S. Indian Community.
 - 4.4.1.1.3 Duly recognized by a U.S. Indian Community.
- 4.4.2 Senior Chaplains/chaplains shall forward inmates' verification information to the Director of Chaplaincy Services for review.
 - 4.4.2.1 Upon confirmation by recognized Native American Leaders, the Director of Chaplaincy Services shall:
 - 4.4.2.1.1 Approve or disapprove inmates' eligibility.
 - 4.4.2.1.2 Notify Senior Chaplains/chaplains of the disposition.
 - 4.4.2.1.3 Enter approved inmates' eligibility information in ACIS.
- 4.4.3 Chaplains shall:
 - 4.4.3.1 Publish a list of approved participants.
 - 4.4.3.2 Monitor compliance with the Sweat guidelines established in Attachment C.
- 4.4.4 Sweat Lodge ceremonies are:
 - 4.4.4.1 Held for the purification of participants.
 - 4.4.4.2 Typically three to four hours in length.
 - 4.4.4.3 Operated according to a schedule published by chaplains.

- 4.4.5 Sweat Lodge ceremonies may be held on a weekly basis and may be assisted by Native American spiritual advisors provided wood is available and no security or other operational concerns prohibit this frequency. At locations where security requires the presence of advisors to perform the Sweat, ceremonies shall be scheduled when advisors are available.
 - 4.4.5.1 If firewood is not available through donations, inmates may purchase firewood exclusively for use in a Sweat ceremony by submitting a request to a Senior Chaplain in accordance with Section 5.0, 5.3.2.1. The public may donate toward these purchases in accordance with Department Order #301, Fiscal Management.
 - 4.4.5.1.1 Firewood purchases may be requested for group ceremony involving all eligible participants or for personal ceremony involving no other inmates.
 - 4.4.5.2 Staff shall facilitate the lighting of the fire for Sweat Lodge ceremonies.
 - 4.4.5.3 Participants
 - 4.4.5.3.1 Male participants shall wear shorts covering their genital and buttocks areas.
 - 4.4.5.3.2 Female participants shall wear shorts, shirts or T-shirts and brassieres.
- 4.4.6 Sweat Lodges shall be:
 - 4.4.6.1 Located on the grounds of all institutions where a sufficient number of eligible Native American inmates are able to participate in Sweat Lodge ceremonies and inmate requests have been made for a Sweat Lodge.
 - 4.4.6.2 Constructed in an area approximately 30 by 40 feet under the guidance of an approved Native American advisor. Refer to Attachment B for construction specifics.
- 4.4.7 Sweat Lodge areas:
 - 4.4.7.1 Shall be kept clean at all times and shall include a secure place to store religious items and materials. Participants shall be responsible for maintaining the site and any authorized ceremonial supplies.
 - 4.4.7.2 May be screened with wooden fences or other material for privacy and respect provided it does not jeopardize security.
 - 4.4.7.3 Shall only be used for Sweat ceremonies.
- 4.4.8 Sweat Lodge sites and all associated storage areas are subject to search. As Sweat Lodges and fire pits are sacred areas, searches shall be conducted with prior approval from Shift Commanders and appropriate notification of Wardens or Deputy Wardens and chaplains.

4.5 Multi-Faith Gatherings

4.5.1 The details, times and location shall be arranged through chaplains, in consultation with Wardens, Deputy Wardens or Chiefs of Security, and shall include religions:

4.5.1.1 Not having identified volunteer leadership.

4.5.1.2 Not already scheduled for services/ceremonies.

4.5.1.3 Having a sufficient number of inmates making the request for group ceremonies.

4.5.2 Multi-faith gatherings may be held on a regularly scheduled basis.

4.6 Smoke Generating Ceremonies - Smoke Generating Ceremonies shall only be conducted outdoors.

4.6.1 Inmates in detention or a Special Management Unit (SMU) shall be allowed to conduct the ceremonies only during their regularly scheduled exercise time in an approved exercise area.

4.6.2 Personal ceremonies for inmates not on lockdown shall be conducted during an inmates' free time on the open yard at locations authorized by Deputy Wardens or designees.

4.7 Special Annual Religious Events

4.7.1 Special Annual Religious Events shall be planned by chaplains in consultation and with the assistance of outside sponsors and inmate representatives.

4.7.2 Wardens or Deputy Wardens shall approve the final selection list of inmate attendees from Close and Maximum Custody units.

4.7.3 Attachment A of this Department Order provides established guidelines to be followed regarding the authorization and scheduling of events assisted by outside sponsors.

4.8 Restroom or port-a-john facilities shall be available for participants of Sweat Lodge ceremonies and special annual religious events. Use of these facilities shall not terminate participation in ceremonies.

5.0 RELIGIOUS/CEREMONIAL PROPERTY

5.1 All religious property approved by the Director of Chaplaincy Services shall be inspected by the appropriate security staff prior to introduction into institutions/units.

5.2 All religious property, to include headwear, is subject to security inspection and shall be handled with appropriate respect in accordance with Department Order #708, Searches.

5.3 Inmates shall not keep the following approved religious items in their possession:

5.3.1 Ceremonial items or supplies, such as ceremonial pipes, drums, musical equipment, and communion supplies, shall be stored in a secure area supervised and inventoried by chaplains.

- 5.3.2 Firewood shall be stored in an acceptable area as determined by the Warden or designee.
 - 5.3.2.1 Firewood purchased by inmates shall only be used for Sweat ceremonies and shall not be traded, loaned, bartered or sold. Individually purchased firewood shall be disposed of in accordance with Department Order #909, Inmate Property.
- 5.4 Inmates in detention or a SMU shall not possess items specified in this section, such as smudging supplies, in their cells. Wardens/Deputy Wardens shall designate the items permitted. Items not approved for personal possession in these instances shall be kept in secure areas designated by Wardens or Deputy Wardens. If these donated items are available, inmates may be allowed access for the purpose of engaging in personal religious ceremonies.
 - 5.4.1 Health and welfare indigent inmates may use supplies donated for group ceremonies. Chaplains shall manage the distribution of donated supplies.
- 5.5 Religious symbols or clothing items, excluding headwear, may be worn openly only during religious ceremonies and at no other time or place. These ceremonies include:
 - 5.5.1 Approved group religious ceremonies.
 - 5.5.2 Active personal ceremonies, which are performed in inmates' own living spaces or recreation enclosures in detention units.
- 5.6 Religious headwear may be worn throughout the complex/facility in accordance with the inmates' identified religious belief. Unless otherwise stated, all headwear is limited to one item only. Headwear shall not contain graphics or writing. Inmates who have declared a religious preference listed below are authorized to wear the following:
 - 5.6.1 Jewish yarmulke – black or white
 - 5.6.2 Moorish Science Temple of America (MST of A) kufi - black or white crochet cap
 - 5.6.3 Muslim kufi (men) - black or white crochet cap; Hijab (women) – black or white tube scarf for covering the head and neck
 - 5.6.4 Native American headband/bandana – The headband or bandana may be worn only in a circle covering the forehead, but not the crown of the head.
 - 5.6.4.1 Headband – multi-colored, a maximum of three headbands
 - 5.6.4.2 Bandana – maximum of six paisley print style, permitted colors: black, blue, green, red, white, yellow
 - 5.6.5 Rastafarian crown (may not have a bill) – multi-colored (red, yellow, green threads running through a black cap)
 - 5.6.6 Sikh turban – white
 - 5.6.7 Aztec (bandana) – maximum of six paisley print style, permitted colors: black, blue, green, red, white, yellow
 - 5.6.8 Druid (bandana) – If a solid color it shall not be blue, brown, black or tan

- 5.6.9 Orthodox Christian (head covering) – maximum size 24" by 24". If a solid color it shall not be blue, brown, black or tan
- 5.6.10 Santeria – Tam (head covering) – If a solid color it shall not be blue, brown, black or tan
- 5.7 Candles – Wax candles shall be allowed in group religious ceremonies where their requirement has been documented by designated religious leaders and approved by the Director of Chaplaincy Services.
 - 5.7.1 Wax candle usage shall be restricted to Minimum and Medium Custody level units.
 - 5.7.2 In units other than Minimum or Medium Custody or where a chaplain or volunteer is not available, candle usage shall be restricted to electric candles only.
 - 5.7.3 Ceremonies where wax candles are utilized shall be led by chaplains, authorized religious leaders or badged Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) volunteers.
 - 5.7.4 Inmates shall not possess wax candles at any time.
 - 5.7.5 Possession of Shabbat Candles which are watch battery operated are permitted for the religions requiring the use of Shabbat Candles. Possession is for all custody levels.
 - 5.7.5.1 Requests to purchase Shabbat Candles shall follow the approved property process outlined in this Department Order.

6.0 RELIGIOUS PROPERTY PURCHASE REQUESTS

- 6.1 Approved property items not available in the inmate store shall be ordered from approved sources and paid for from the inmate's Inmate Trust Accounts.
- 6.2 Wardens and Deputy Wardens shall ensure staff consults with the chaplain's office regarding any questionable religious item(s).
 - 6.2.1 Senior Chaplains, in consultation with the Warden and the Director of Chaplaincy Services, shall make final decisions on whether or not the item(s) are permitted. Inmates may appeal this decision by filing a grievance in accordance with Department Order #802, Inmate Grievance Procedure.
- 6.3 Religious items used in the practice of inmates' declared religious preference may be authorized provided the items:
 - 6.3.1 Do not pose a threat to the safe, secure and orderly operation of the institution.
 - 6.3.2 Are on the approved items list, which is updated and maintained by the Director of Chaplaincy Services, and distributed to all institutions. Authorized personal religious items may be kept in the possession of inmates in accordance with this Department Order.
 - 6.3.3 When not in use, are stored collectively within inmates' storage boxes as outlined in Department Order #704, Inmate Regulations.

- 6.4 To order religious items, inmates shall submit their requests to Senior Chaplains using Inmate Letters and shall include the following information:
 - 6.4.1 A description of each item, including each item's size.
 - 6.4.2 Each source's name and contact information.
 - 6.4.3 A complete itemized list of all previously approved religious items currently in their possession.
 - 6.4.4 Included with Inmate Letters, inmates shall also provide Senior Chaplains:
 - 6.4.4.1 Completed and signed Inmate Request for Withdrawal, Form 905-1, for the total amount of their orders, including any applicable shipping and handling charges, unless the ordered item(s) are provided free of charge by the approved source.
 - 6.4.4.2 Completed order forms from approved sources. Order forms may be handmade if the company accepts them.
 - 6.4.4.3 Completed and stamped envelopes addressed to the approved sources.
 - 6.4.5 Senior Chaplains shall:
 - 6.4.5.1 Verify inmates' religious preferences.
 - 6.4.5.2 Determine if requested items are on the approved items list for inmates' religious preference.
 - 6.4.5.3 Approve or deny requests.
 - 6.4.5.4 Forward the information on requested items not currently approved to the Director of Chaplaincy Services.
 - 6.4.6 Staff assigned to Inmate Banking shall only accept and process orders for religious items approved by Senior Chaplains.
 - 6.4.6.1 When approved items are unavailable for purchase through approved sources (e.g., eagle feathers) Senior Chaplains, in consultation with the Director of Chaplaincy Services, shall determine the method for obtaining the items.

7.0 RELIGIOUS PROPERTY ITEMS

- 7.1 Smudging Material - Smudging (smoldering herbs) by followers of religious traditions that smudge is permitted, unless specifically restricted by the custody level and security of the unit.
 - 7.1.1 Locations and times of this activity shall be determined by Senior Chaplains and Deputy Wardens.
- 7.2 Sacramental Wine - If permitted by the religious tenets, no more than two ounces shall be allowed for use only by priests, chaplains or religious leaders.

- 7.2.1 Inmates shall not partake of sacramental wine.
- 7.3 Consumable religious supplies require advance Senior Chaplain written approval prior to entrance.
- 7.4 Communion Supplies – Volunteers, pastoral visitors and staff chaplains may bring in communion supplies for religious ceremonies with prior approval written from the Senior Chaplain, in consultation with Wardens/Deputy Wardens.
 - 7.4.1 Only a sufficient supply for participants in scheduled services shall be authorized and any remaining supply shall be taken out of institutions at departure.
 - 7.4.2 Other requested supplies/items may be authorized for group ceremony by the Senior Chaplains after consultation/written approval from the Director of Chaplaincy Services and Wardens/Deputy Wardens.
- 8.0 RELIGIOUS DIETS** – Religious diets are accommodated with a Common Fare Meal (CFM), which meets the dietary requirement for Halal, Kosher and Vegetarian Standards. {5-ACI-5C-07}
 - 8.1 Inmates wanting to observe religious dietary laws shall provide an Inmate Letter requesting to participate in the CFM to institutional chaplains.
 - 8.1.1 Requests shall be submitted 30 calendar days prior to the desired start date of the CFM. Cancellation of the CFM shall be submitted 30 calendar days prior to the end of the CFM so there will be no suspension of the diet.
 - 8.2 Requests for a CFM shall be accommodated to the extent practicable within the constraints of budgetary limitations, security and the orderly operation of the institution.
 - 8.3 Requests to observe CFM for religious purposes shall be in accordance with Department Order #912, Food Service and the Food Service Technical Manual.
 - 8.4 The CFM provided for religious reasons shall be suspended if five meals are missed in a seven day period without justifiable reasons. The Senior Chaplain shall verify the justification and either suspend or reinstate the CFM.
 - 8.4.1 The first suspension shall be for six months and the second shall be for one year.
- 9.0 RELIGIOUS VISITATION** – Wardens and Deputy Wardens shall encourage religious visitation between religious leaders and inmates.
 - 9.1 Visits by Religious Leaders - Senior Chaplains shall arrange all religious and pastoral visits by initiating the Request for Pastoral Visit, Form 904-5. Authorization for religious visits may be at the discretion of the Warden or Deputy Warden.
 - 9.1.1 Inmates shall request or consent to visits by accredited ministers or religious leaders prior to visit authorization.
 - 9.1.2 Senior Chaplains shall verify the credentials and/or accreditation of the visiting religious leader(s).
 - 9.1.2.1 Wardens, Deputy Wardens or Senior Chaplains shall consult with the Director of Chaplaincy Services when there is a question regarding the validity of visiting religious leaders' credentials.

9.1.3 After their credentials have been verified, Senior Chaplains shall facilitate pastoral visits including distributing appropriate gate passes.

9.1.4 Pastoral visitors shall not be placed on inmates' visitation list.

9.2 Emergency Visits – At the discretion of Wardens or Deputy Wardens, emergency religious visits may be permitted based on the severity of the emergency and the safety and/or security of the unit and/or complex.

10.0 MARRIAGE - Marriages shall be permitted to the extent the marriage does not present a threat to the safe, secure and orderly operation of the institution or jeopardize the public safety. Marriages shall be conducted in accordance with A.R.S. Title §25, Marital and Domestic Relations.

10.1 Marriage ceremonies shall not be between two inmates.

10.2 Inmates shall request a Marriage Application, Form 904-2 from institutional chaplains in writing using an Inmate Letter or the tablet communication system; complete Sections I and II of the Application and return it to the chaplain's office.

10.2.1 Chaplains receiving Marriage Applications shall:

10.2.1.1 Review applications to determine their completeness.

10.2.1.2 Return incomplete applications with instructions for proper completion.

10.2.1.3 Review completed applications to determine if applying inmates and their prospective spouses meet the eligibility requirements of this section.

10.2.1.4 Document in the appropriate comments section if the applying inmates or their prospective spouses fail to meet any of the eligibility requirements and forward the Marriage Application packet to their Warden or Deputy Warden.

10.2.1.4.1 Inmates at Department institutions may appeal disapprovals of Marriage Applications by writing to the appropriate Regional Operations Director within ten workdays after being notified of the disapproval. Inmates' requests to marry other inmates are not appealable.

10.2.1.4.2 Inmates assigned to private prison facilities shall appeal to the Contract Beds Operations Director.

10.2.1.4.3 Decisions made by the Contract Beds Operations Director or the Regional Operations Director shall be final.

10.2.1.4.4 If circumstances have changed, inmates may reapply 60 calendar days from the date the first application was disapproved.

10.3 An approved Marriage Application form shall remain valid for one year unless withdrawn by Wardens or Deputy Wardens if:

10.3.1 Both the inmate and the prospective spouse are not:

- 10.3.1.1 Currently married.
 - 10.3.1.2 Mentally incapacitated.
 - 10.3.1.3 Of a blood relation of first cousins or closer.
- 10.3.2 Inmates:
 - 10.3.2.1 Do not have any pending disciplinary charges.
 - 10.3.2.2 Are not confined in detention units for disciplinary investigative reasons.
 - 10.3.2.3 Are eligible for visitors at the time of the application through to their marriage ceremony.
- 10.4 Permission to marry does not supersede or change any instructions governing visitation, release procedures, mail and property or phone calls. Refer to the appropriate Department Order for complete rules and regulations.
 - 10.4.1 If not in the best interests of the community, marriages do not guarantee or mandate inmates will be approved to reside with their new spouse upon transfer from an institution to any release under Community Supervision.
- 10.5 Chaplains shall coordinate with all parties involved including the Clerk of the Superior Court, security staff, inmates and their prospective spouses to obtain marriage licenses. Copies of marriage licenses shall be attached to Marriage Application packets.
 - 10.5.1 All inmates (including indigent) applying for marriage applications shall accept full financial responsibility for all marriage process expenses including license fees and ceremony expenses to demonstrate personal responsibility towards their successful reentry back into their community.
- 10.6 Once Marriage Applications are approved, chaplains shall coordinate ceremony arrangements including:
 - 10.6.1 Ensuring ceremonies are performed by approved clergy or Justices of the Peace to fulfill legal requirements.
 - 10.6.1.1 In accordance with A.R.S. §25-125, valid marriage ceremonies are conducted in the presence of persons authorized to solemnize marriages.
 - 10.6.2 The inmate, his/her prospective spouse, and two lawfully aged witnesses who have been authorized to enter the unit are present for the ceremony.
 - 10.6.2.1 Staff shall not act as witnesses or participate in the marriage ceremony.
 - 10.6.3 Inmates are not in special clothing for a marriage ceremony.
 - 10.6.4 Photographs are not taken and no other publicity arrangements are made.
 - 10.6.5 Rings are not exchanged during the ceremony.
 - 10.6.5.1 Refer to Department Order #909, Inmate Property, for additional information on wedding rings.

- 10.7 Inmates marrying in violation of this Department Order may be charged with disobeying a direct order and disciplined for such activity in accordance with Department Order #803, Inmate Disciplinary Procedure.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

ATTACHMENTS

Attachment A - Special Annual Religious Events (Sample Request)
Attachment B – Native American Sweat Lodge (Construction)
Attachment C – Sweat Guidelines

FORMS LIST

904-2, Marriage Application
904-5, Request for Pastoral Visit

AUTHORITY

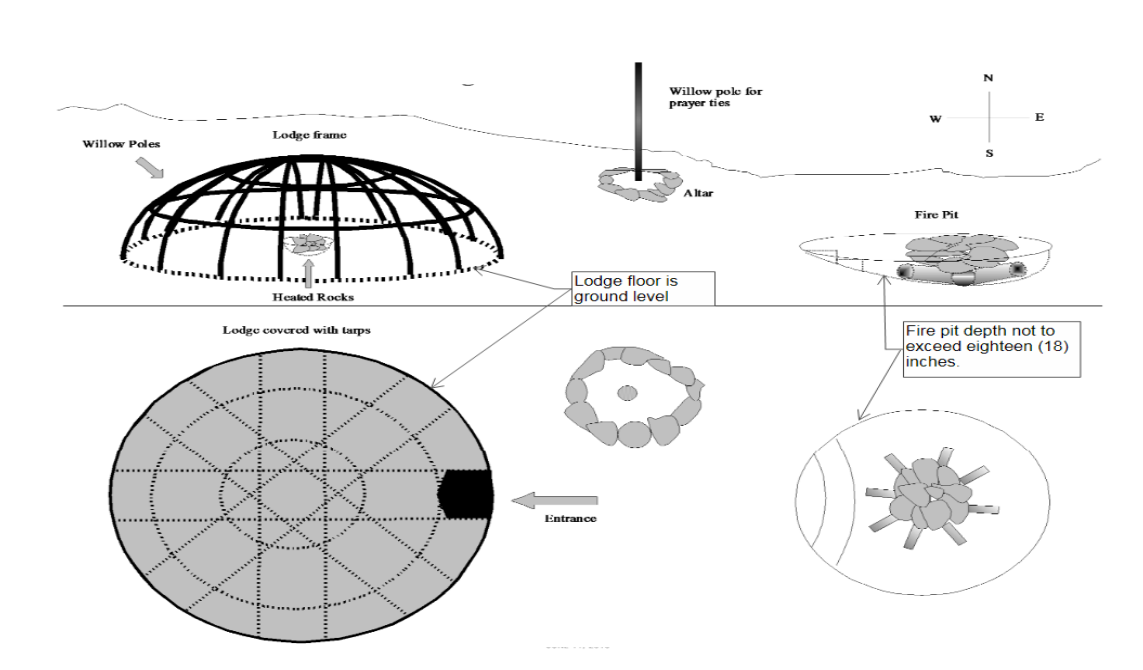
A.R.S. Title §25 - Marital and Domestic Relations
A.R.S. §25-125, Marriage Ceremony; Official; Witnesses; Marriage License; Covenant Marriages
A.R.S. §31-206, Chaplains; Duties; Traditional Native American Religious Practitioners
A.R.S. §41-1493.01, Free Exercise of Religion Protected
Religious Land Use and Institutionalized Persons Act of 2000

ATTACHMENT A

SPECIAL ANNUAL RELIGIOUS EVENTS

- Purpose:** Annual Intra-faith, community and religious/cultural celebration
- Time/Date:** Single day event assisted by outside sponsors, which may have morning and afternoon sessions interrupted by count and lunch, where guests depart the facility and inmates return to housing for count.
- Location:** Outdoor section of visitation area, weather permitting or other approved location.
- Attendance:**
- Authorized inmates with appropriate religious preference designation assigned to the unit where the event is held who are eligible to attend group religious activities.
 - Spiritual leaders and Advisors not on the visiting list of any participating inmate.
- Agenda:** To be announced at the institution with approval from the Warden, Deputy Warden or Administrator.
- Supplies:** Supplies/equipment provided by the institution:
- Chairs
 - Tarp/canopy (for shade for senior citizens)
 - Public address system (optional)
 - Ceremonial items/supplies available but not personally possessed by inmates (e.g., ceremonial drum and pipe, communion-type supplies, etc.)
- Supplies/equipment provided by the inmate:
- Ceremonial supplies approved for personal possession
- Supplies/equipment provided by the special guests:
- Musical instruments (e.g., contemporary and traditional such as drums, rattles, flutes, keyboards, etc.)
 - Religious Paraphernalia (supplies and religious ceremonial items, all pre-approved, none to be left with the inmates)

ATTACHMENT B
NORTH AMERICAN SWEAT LODGE



ATTACHMENT C

SWEAT GUIDELINES

1. The sweat lodge area is opened and the chaplain allows authorized inmates to enter the area.
2. The fire is started in the fire pit and allowed to burn to produce hot coals.
3. Participants cover the lodge with blankets and tarps and prepare for the ceremony.
4. Participants enter the lodge and position themselves around the perimeter.
5. The only items taken inside the lodge:
 - a. A small amount of herbs (1 ounce or less)
 - b. Water to pour over the hot rocks
 - c. A small plastic container to pour water over the rocks
6. Heated rocks from the fire pit are brushed and placed in the small pit in the center of the lodge. **At no time are any coals, embers or burning wood pieces to be placed inside the lodge structure!!**
7. The lodge structure door (flap of blankets/tarps) is closed.
8. Participants remain inside approximately 20 minutes (no more than 30 minutes) unless:
 - a. A safety or security reason demands exit sooner
 - b. An inmate leaves for health or heat related reasons
9. The door flap is opened so that participants can cool off and drink water. The flap is then closed after the break for subsequent rounds (total of 4).
10. After the final round participants exit the lodge and begin "striking" the lodge:
 - a. Tarps, blankets are removed from the structure
 - b. Wood lodge frame remains intact
 - c. Tarps and blankets are folded and stored
 - d. Rocks are returned to their designated location (unless too hot)
11. All participants leave the sweat lodge area.
12. The sweat lodge fence is secured (total time: 4 hours).