

Department: UAMS Human Research Advisory Committee
Policy Number: 17.9
Section: Special Populations
Effective Date: July 31, 2002
Revision Date: November 18, 2002

SUBJECT: Prisoners in Research

The special vulnerability of prisoners makes consideration of involving them as research subjects particularly important. Prisoners may be under constraints because of their incarceration, which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research. To safeguard their interests and to protect them from harm, special ethical and regulatory considerations apply for reviewing research involving prisoners. Therefore, if a protocol involves the use of prisoners as subjects, both the general HRAC Policies apply and the special ones outlined in this Policy apply. The HRAC may approve research involving prisoners only if these special provisions are met.

Unique Definition of Minimal Risk. For research involving prisoners, the definition of minimal risk differs from the definition of minimal risk in the Common Rule. As used in this policy only, "Minimal risk" is defined as the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives of the prisoners, or in the routine medical, dental, or psychological examination of healthy persons.

Applicability of Policy Providing Special Protections for Prisoners. This policy applies to all research involving prisoners as subjects when one or more of the following apply:

1. The research is sponsored by UAMS
2. The research is conducted by or under the direction of any employee or agent of UAMS in connection with his or her institutional responsibilities
3. The research is conducted by or under the direction of any employee or agent of University of Arkansas for Medical Sciences using any property or facility of UAMS
4. The research involves the use of UAMS non-public information to identify or contact human research subjects or prospective subjects

Definition of Prisoner. As used in this policy "Prisoner" means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

When Subjects Become Prisoners During a Research Protocol. This Policy applies whenever any human subject in a research protocol becomes a prisoner at any time during the protocol, *e.g.*, after the research has commenced. This is necessary because it is unlikely that review of the research and the consent document contemplated the constraints imposed by the possible future incarceration of the subject

1. If a subject becomes a prisoner after enrollment in research, the Principal Investigator is responsible for reporting in writing this situation to the HRAC immediately.

2. At the earliest opportunity after receiving the Principal Investigator's notice or otherwise becoming aware of the prisoner status of a subject the HRAC should review the protocol again with a prisoner representative as a member of the HRAC Committee.
3. The HRAC Committee should take special consideration of the conditions of being a prisoner. Additionally, the HRAC Committee should confirm that, when appropriate, the informed consent process includes information regarding when subsequent incarceration may result in termination of the subject's participation by the investigator without regard to the subject's consent.
4. Upon this review, the HRAC can either (i) approve the involvement of the prisoner subject in the research in accordance with this policy or (ii) determine that this subject must be withdrawn from the research.

Composition of HRAC When Prisoners Are Involved.

1. To review a protocol involving prisoners as subjects:
 - a. A majority of the HRAC Committee (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the HRAC; and
 - b. At least one member of the HRAC Committee shall be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity.
 - i. If a prisoner representative is selected to serve on the HRAC Committee, the person must have a close working knowledge of prison conditions and the life of a prisoner. Suitable individuals could include present or former prisoners; prison chaplains; prison psychologists, prison nurses, prison social workers, or other prison service providers; persons who have conducted advocacy for the rights of prisoners; or any individuals who are qualified to represent the rights and welfare of prisoners by virtue of appropriate background and experience.
2. The HRAC must meet the special composition requirements for all types of review of the protocol: initial review, continuing review, protocol amendments, and reports of unanticipated problems involving risks to subjects.

Specific Findings of HRAC Required to Approve Research. When the HRAC is reviewing a protocol in which a prisoner is a subject, the HRAC Committee must make seven additional findings as follows:

1. The research under review represents one of the following categories of research:
 - a. A study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
 - b. A study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;
 - c. Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults); or

- d. Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well being of the subject;
2. Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;
3. The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;
4. Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the HRAC justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;
5. The information is presented in language, which is understandable to the subject population;
6. Adequate assurance exists that the Post Prison Transfer Board will not take into account a prisoner's participation in the research in making decisions regarding transfer to community supervision, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her sentence; and
7. Where the HRAC finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

Permitted Research Involving Prisoners. For research conducted or supported by HHS to involve prisoners, two actions must occur: (1) the HRAC must certify to OHRP that it has reviewed and approved the research under the federal regulations (see subsection c below); and (2) OHRP must determine that the proposed research falls within one of the categories of permissible research described above.

1. If an investigator wishes to engage in non-HHS-supported research, certification is not required. However, the HRAC should apply the standards of this policy and the federal regulations in reviewing the research.
2. Should the research (i) involve conditions particularly affecting prisoners as a class, or (ii) not satisfy the stipulations above, the research should proceed only after the HRAC has consulted with appropriate experts, as determined by the HRAC.
3. The HRAC certification to OHRP should consist of a certification letter stating that (i) the HRAC has been constituted properly according to federal regulation; (ii) that the HRAC considered and made the required seven findings set forth in 45CFR46.305; and (iii) that the "HRAC finds that category [Identify which category applies] of 45CFR46.306 permits this research to go forward with prisoners as human subjects." The certification letter should also provide a brief description of the research sufficient to allow OHRP to determine whether or not to concur with the HRAC; and, whether OHRP needs to consult with appropriate experts and publish a Federal Register Notice. The HRAC Office should retain a copy of this letter.

Prisoners Who Are Minors. When a prisoner is also a minor (e.g., an adolescent detained in a juvenile detention facility is a prisoner), HRAC policy 17.1 regarding Children in Research will also apply. Note that minors who participate in mental health treatment in a residential facility are not prisoners, even if

they have been charged with a crime. The residential treatment facility is not a stand-in for a penal institution.

Expedited Review of Research Involving Prisoners Not Allowed. The full HRAC Committee must review research involving prisoners as human subjects.

Exemption from Review of Research Involving Prisoners Not Allowed. Research that would otherwise be exempt from the requirement that it receive HRAC approval is not exempt when the research involves prisoners.

Documentation. When approving a protocol involving prisoners the minutes must document that the Committee made the findings required above. The HRAC must classify research involving prisoners into one of the seven categories described in Paragraph 4(a) above and document their discussions of the risks and benefits of the research study as described in [HRAC policy 16](#).

Federal Bureau of Prisons. The Federal Bureau of Prisons places special restrictions on research that takes place within the Bureau of Prisons. The HRAC should review the regulations at 28CFR512 when considering such research.