

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-203.201 Inmate Trust Fund

PURPOSE AND EFFECT: The proposed rule is intended to increase the safety, security, and good order of state correctional institutions by better regulating deposits into inmate trust accounts.

SUMMARY: Rulemaking is necessary to reorganize the rule, to provide greater accountability in order to prevent fraudulent, unauthorized, or other illegal financial transactions involving inmate trust fund accounts, to limit depositors to an inmate's trust fund account to those individuals on the inmate's automated visiting record, to establish criteria for charitable organizations making deposits into an inmate's trust fund account, to add categories for inmate special withdrawals, and to modify Form DC2-304 to improve its clarity and usability.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or, if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.516, 945.091, 945.215 F.S.

LAW IMPLEMENTED: 17.61, 20.315(12), 57.085, 717.113, 944.09, 944.516, 945.091, 945.215 F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 33-203.201, F.A.C., follows. See Florida Administrative Code for present text.

33-203.201 Inmate Trust Fund.

(1) The provisions of this rule will regulate monies received for the personal use or benefit of inmates.

(a) Inmate Trust Accounts. Inmates may establish a demand deposit account, hereinafter referred to as an inmate trust account, through the Inmate Trust Fund at the Bureau of Finance and Accounting, Inmate Trust Fund Section. If an inmate establishes an inmate trust account through the Inmate Trust Fund, such funds will not accrue interest to the inmate.

1. The Department may invest, through the State Treasurer, funds on deposit in the Inmate Trust Fund in excess of the cash needed to meet the current needs of the inmates. Interest earned on investments of money from the Inmate Trust Fund may be used to replace any funds belonging to an inmate that are stolen, lost, or otherwise misappropriated from the inmate's trust account through no fault of the Department or its employees, and which cannot be replaced by appropriated funds, insurance payments, or other available resources.

2. Pursuant to Section 944.516, F.S., each inmate will be charged an administrative processing fee of no more than \$6.00 per month for services related to his or her inmate trust account. The fee will be based upon account activity for the month. An inmate whose account has no activity for the month will not be assessed a fee for that month. An inmate will be charged one percent of his or her total weekly canteen purchases and \$0.50 for each

deposit. Inmates housed at Community Release Centers will be assessed a \$1.00 fee for each weekly cash draw. All administrative processing fees are waived for Veterans of the United States Armed Forces who notify and provide documentation to the Department that they have received an honorable discharge from military service.

3. In an effort to detect and aid in the prevention of the fraudulent use of an inmate's trust account, the Department will conduct monthly reviews of Inmate Trust Fund transactions. Suspicious activity will be reported to the Office of the Inspector General to determine whether additional investigation is warranted.

4. The Department may place a hold or freeze on an inmate's trust account upon the written request of a law enforcement agency or the Department's Office of the Inspector General due to an active investigation. The written request must be submitted to the Bureau of Finance and Accounting, Inmate Trust Fund Section. The hold or freeze will remain in place until the Bureau of Finance and Accounting, Inmate Trust Fund Section receives written notice from the appropriate authority to remove it.

(b) Individual Bank Account at a Private Financial Institution. Inmates may establish personal accounts with a bank, savings and loan association, or similar private financial institution.

1. An inmate's right to establish an account with a private financial institution does not in any way diminish the provisions of Rule 33-602.203, F.A.C., Control of Contraband, which limits and controls the amount of money an inmate may have in his or her possession; Rule 33-602.201, F.A.C., Inmate Property, which does not allow inmates to possess checks, credit cards, debit cards, or other negotiables; or, Rule 33-602.207, F.A.C., Conducting Business While Incarcerated, which prohibits an inmate from establishing or actively engaging in a business while incarcerated.

2. The Department will not be responsible for transactions between inmates and private financial institutions or for financial transactions between inmates and other parties.

(2) Deposits. An inmate may receive funds for deposit into his or her inmate trust account only from individuals who, pursuant to Rule 33-601.716, F.A.C., are identified on the inmate's automated visiting record, and who have a current "approved" status. Deposits from individuals will be received and processed by the contracted vendor through online, telephone, or mailing of money orders, cashiers checks, or certified bank drafts (no cash or personal checks allowed). A newly received inmate may receive funds from any remitter for up to 60 days from the date of reception or up to the date the inmate's automated visiting record is established, whichever occurs first.

(a) Money Orders, cashiers checks, or certified bank drafts shall be mailed pursuant to the instructions provided on Form DC2-363, Money Order Deposit Form For Inmate Deposits, and shall be initially deposited into the Inmate Trust Fund. Form DC2-363 is hereby incorporated by reference. This form may be obtained from any institution, facility, the vendor listed on Form DC2-363, the Bureau of Finance and Accounting, Inmate Trust Fund Section, Centerville Station, P.O. Box 12100, Tallahassee, Florida 32317-2100 or the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-08569>. The effective date of this form is 8-17. Funds must be mailed with the completed Form DC2-363, Money Order Deposit Form For Inmate Deposits, and made payable to the vendor listed on Form DC2-363. Both Form DC2-363 and the money order must include the inmate's name and DC number. In addition the sender shall provide a valid copy of their drivers licence, state ID, or Passport. If a valid copy of the sender's ID is not enclosed the money will be returned to the sender. Funds will become available for the inmate's use within ten working days after receipt by the vendor. Every effort shall be made to have funds available sooner. Money orders from family and friends mailed to institutional or other Department addresses including the Bureau of Finance and Accounting, Inmate Trust Fund Section will be returned to the sender. Letters or notes included with payments will not be considered and will be discarded.

(b) Deposits sent by mail are processed using an advanced high-speed processing machine which requires the use of the deposit form. Attempts will be made to process deposits sent without the accompanying form, but the availability of funds may be delayed up to 30 days as a result. If staff are unable to determine the appropriate inmate recipient, the money will be returned to the sender with a request for additional information necessary to process the deposit. If staff are unable to determine the correct inmate recipient and the funds are nonreturnable because the sender did not provide a valid return address, the money will be held in a clearing account until the sender or recipient inmate is identified. If neither the sender nor the recipient can be identified within one year the funds shall escheat to the state as unclaimed funds held by a government agency in accordance with Section 717.113, F.S.

(c) Deposits from governmental agencies, transfers from private correctional facilities and county jails, checks

from charitable organizations, and checks from business accounts should be mailed to the Inmate Trust Fund address: Florida Department of Corrections, Inmate Trust Fund, Centerville Station, P.O. Box 12100, Tallahassee, FL 32317-2100. Business checks in the amount of \$400 or more posted to an inmate's trust account will be held for 10 days before the funds will be released.

(d) Charitable organizations will be permitted to deposit funds into an inmate's trust account subject to the provisions of this rule and provided the charitable organization:

1. Is a charitable organization as defined in Section 496.404(1), F.S.; or
2. Is actively registered with the Florida Secretary of State or comparable state entity; or
3. Possesses and maintains a valid Internal Revenue Code 501(c)(3) certificate as evidenced by an affirmation letter, a copy of which must accompany any deposit.

(e) In accordance with 38 U.S.C.S. 5301, United States Department of Veterans Affairs (VA) benefit checks are exempt from attachment, levy, or seizure. The Department will not deduct payments for liens on the inmate's trust account for medical co-payments, legal copies, or other Department generated liens from VA benefits checks mailed from the VA directly to the Bureau of Finance and Accounting, Inmate Trust Fund Section, Centerville Station, P.O. Box 12100, Tallahassee, FL 32317-2100.

(f) If an inmate does not wish to deposit his or her monies into the Inmate Trust Fund, the inmate must advise the donor of the funds to send them directly to a private financial institution of his or her choice. This option will not be available when an inmate is on work release or a similar paid work program. In such case, the provisions of Rule 33-601.602, F.A.C., will apply. An inmate on work release must submit his or her full pay for deposit in the Inmate Trust Fund. In the case of inmates who are paid via EFT, the funds will be deposited into the Inmate Trust Fund and the same provisions of Rule 33-601.602, F.A.C., will apply.

(3) Authorized Disbursements and Use of Funds.

(a) Canteen Limit and Cash Draws. Inmates with sufficient balances in their inmate trust accounts after all debts against the account have been satisfied will be allowed to spend an amount not to exceed \$100 per week for personal use subject to the provisions of Rule 33-203.101, F.A.C. Inmates on work release with sufficient balances in their inmate trust accounts will be allowed to request a weekly draw not to exceed \$100 per week for personal use subject to Rule 33-601.602, F.A.C.

(b) Special Withdrawals. An inmate may request a special withdrawal of funds in addition to the authorized canteen limit and weekly draws for a purpose authorized by Department rules. Inmates requesting a special withdrawal must submit a completed Form DC2-304, Inmate Trust Fund Special Withdrawal, with any supporting documentation to the warden, or to his or her designee who must be the rank of Correctional Officer Major or higher, for review. The warden, or his or her designee, will approve or deny the request. Form DC2-304 is hereby incorporated by reference and may be obtained from any institution or facility or from the Forms Control Administrator, Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. <http://www.flrules.org/Gateway/reference.asp?No=Ref XXXXX>. The effective date of this form is XX/XX. Special withdrawals include:

1. Financial Support/Gift – a special withdrawal payable to an individual for financial support or as a gift will be limited to those approved visitors listed in the inmate's automated visiting record described in Rule 33-601.716, F.A.C.

2. Bill Payment – a special withdrawal for the payment of bills must include a copy of the invoice or statement along with a completed Form DC2-304. Payments will be processed from the inmate's trust account and will be mailed directly to the payee. The Department will not be liable for any late fees, penalties, or other charges related to the late payment of an invoice or statement.

3. Legal Fees- – a special withdrawal for the payment of legal fees and costs must include a copy of the invoice or statement, when available, along with a completed Form DC2-304. Payments will be processed from the inmate's trust account and will be mailed directly to the law firm or legal office. The Department will not be liable for any late fees, penalties, or other charges related to the late payment of an invoice or statement.

4. Magazines/Books – a special withdrawal for the purchase of magazines or books must include a copy of the invoice and/or order form, when available, along with a completed Form DC2-304. Payments will be processed from the inmate's trust account and will be mailed directly to the magazine or book company. The Department will not be liable for any late fees, penalties, or other charges related to the late payment of an invoice or statement.

5. Tithe/Donation – a special withdrawal for the payment of a tithe or donation will be processed from the inmate’s trust account and will be mailed directly to the organization.

6. Religious Items – a special withdrawal for the purchase of religious items will be processed from the inmate’s trust account and will be mailed directly to the vendor.

7. Birth Certificate – a special withdrawal for obtaining an inmate’s birth certificate will be processed from the inmate’s trust account and will be mailed directly to the responsible agency.

8. Deposits to an Inmate’s Private Financial Institution – a special withdrawal for the purpose of making a deposit into an inmate’s personal account with a private financial institution will be drawn upon the inmate’s trust account by check made payable to the private financial institution that the inmate has chosen. The inmate’s name will be referenced, and the payment will be mailed directly to the private financial institution.

9. Inmate Funds Transfer to Other Incarcerated Family Member – an inmate requesting funds be sent to another incarcerated family member must obtain approval from the wardens at both institutions. Approval will be documented either by the wardens’ signatures on Form DC2-304 or via e-mails from the wardens indicating approval attached to Form DC2-304.

10. Canceled Checks/Stop Payments – when an inmate requests a copy of a canceled check or requests to stop payment on a check, the inmate will be responsible for the fees charged to process the transaction.

11. Community Release Centers – a special withdrawal request from an inmate housed at a Community Release Center will follow the guidelines set forth in Chapter 33-601.602 F.A.C.

(c) The Department will make every reasonable effort to process special withdrawal requests within 10 days from the date the inmate’s written request on Form DC2-304 is received in the Department’s Inmate Trust Fund office.

(d) The inmate is responsible for ensuring that a request for a special withdrawal complies with the provisions of this rule, includes a legible and complete DC2-304, and includes any additional or required documentation. A special withdrawal request that fails to comply with any provision of this rule will be returned to the inmate without action.

(4) Each facility that houses inmates on work release will establish an inmate check cashing procedure with a local bank or business so that inmates can cash checks authorized by the facility or the Bureau of Finance and Accounting, Inmate Trust Fund Section. Under no circumstances will an employee of the Department or privately operated work release center countersign or endorse an inmate’s check for the purpose of cashing such check.

(5) Inmates being released from the custody of the Department whose Trust Fund Account balance exceeds \$1.00 and/or who are eligible for release gratuity will be provided a release debit card. The inmate’s Trust Fund Account will be reviewed to determine the amount (if any) that may be issued as an advance from the Trust Fund Account. Individuals under the age of 18 will receive a check for release gratuity and/or any advance portion of the trust fund account at the time of release. The balance of the trust account will be downloaded to the inmate’s release debit card or a check will be mailed to the inmate within 45 days of the inmate’s release date. If at the time of an inmate’s release deposits of checks or other negotiable instruments have been made to the inmate’s trust account but have not cleared the account of the payor, funds equal to the amount of the uncleared deposits will be retained in the inmate’s trust account until the deposits clear. Any balance due the inmate will be downloaded to the inmate’s release debit card or will be paid by check mailed to the inmate. In the event that funds are unclaimed after a period of one year, the balance will escheat to the state as unclaimed funds held by a government agency pursuant to Section 717.113, F.S. Inmates being released from a Community Release Center may receive funds pursuant to this rule and Rule 33-601.602, F.A.C.

(6) Upon the death of any inmate affected by the provisions of this section during the period of incarceration, all funds in the inmate’s trust account in excess of \$1.00 will be held pending official notification from the personal representative of the inmate. Any unclaimed money held for an inmate in trust by the Department or by the State Treasurer will be applied to the payment of any unpaid state claims against the inmate. In the event that funds are unclaimed after a period of one year, the balance will escheat to the state as unclaimed funds held by a fiduciary pursuant to Section 944.516, F.S.

(7) When an inmate escapes and is not captured within 30 days, the Bureau of Classification Management will notify the Bureau of Finance and Accounting, Inmate Trust Fund Section. Any balance in the escapee’s inmate trust account in excess of \$1.00 will be forwarded to the person designated on the inmate’s notification record. If this

person cannot be located after reasonable efforts, the funds will be held for one year and, if unclaimed, will escheat to the state pursuant to Section 717.113, F.S.

(8) The Bureau of Finance and Accounting will conduct periodic reviews of Inmate Trust Fund financial statements to determine whether any shortages exist. Any shortage will be resolved in accordance with Section 944.516, F.S. If fraudulent activity is suspected, the Bureau Chief of Finance and Accounting, or his or her designee, will file an incident report with the Inspector General's Office. The Inspector General's Office will process the incident report and forward the results to the Bureau of Internal Audit. The Bureau of Internal Audit will audit the findings and make a recommendation to the Chief of Finance and Accounting. The audit will be conducted in accordance with Sections 20.055 and 944.516, F.S.

(9) Notice to the Department of an adverse claim against funds held by an inmate in the Inmate Trust Fund will not cause the Department to recognize the adverse claimant unless the adverse claimant is the State of Florida and the claim is: a cost judgment entered by a state or federal court against the inmate in a civil or criminal action, brought by the inmate in an appeal of such civil or criminal action, or if the cost judgment is the result of any other monetary judgment, order, or sanction imposed by a court against an inmate. The provisions of subsection (10) of this rule will apply.

(10) Any cost judgment or other monetary judgment, order, or sanction imposed against an inmate as described in subsection (9) above, will be paid by offsetting the amount of the judgment or monetary order or sanction against the inmate's funds in his or her inmate trust account in the following manner:

(a) The attorney representing the State in such civil or criminal action or appeal must file with the Office of the General Counsel, Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, a true copy of the judgment or other monetary order or sanction that has been entered by the appropriate court, together with a cover letter stating the date and amount of the judgment, monetary order, or sanction, or the balance remaining if less than the face amount thereof, as well as the attorney's name, address, and telephone number. The attorney must also certify in the letter that:

1. He or she has been employed by the State to handle such action;

2. The enclosed copy of the judgment or other monetary order or sanction is a true and accurate copy thereof as actually entered by the court;

3. The judgment or relevant order is final; and

4. A copy of the letter, together with a copy of the judgment or relevant order has been furnished to the inmate at his or her last known address as indicated in the attorney's records.

(b) Upon receipt of the above documents, the Office of the General Counsel will determine if the inmate is still in the custody of the Department. If the inmate is not in the custody of the Department, the Office of the General Counsel will advise the attorney of that fact and, if known, advise the attorney of the last known forwarding address of the inmate. If the inmate is in the custody of the Department, the Office of the General Counsel will forward the letter and a copy of the judgment or relevant order to the Bureau of Finance and Accounting, Inmate Trust Fund Section.

(c) Once the Bureau of Finance and Accounting, Inmate Trust Fund Section, receives the letter and a copy of the judgment or relevant order, a hold will immediately be placed on the inmate's trust account. A copy of the attorney's letter or the letter from the probation and parole field office and a copy of the judgment or relevant order will be given to the inmate upon his or her request.

(d) If there are sufficient funds in the inmate's trust account to satisfy the amount shown as due or the remaining balance as stated by the attorney, the appropriate officer will promptly cause a check to be issued payable to the "State of Florida" and will return the check to the attorney. The check will be drawn and credited against funds in the inmate's trust account. At such time, the hold will be released on the inmate's trust account. It will be the attorney's responsibility to see that the check is forwarded to the appropriate state agency or entity.

(e) If there are insufficient funds in the inmate's account to satisfy the amount shown as due or the balance remaining as stated by the attorney, a check will be issued payable to the "State of Florida" for the amount contained in the inmate's trust account. Each time that the inmate receives funds in his or her account, payment will be disbursed to the State of Florida until the debt is satisfied. The hold will remain on the inmate's trust account until sufficient funds have been paid to satisfy the full amount due. If the inmate is released from the custody of the Department before he or she has paid the full amount due, upon the inmate's release a notice will be sent to the

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attorney or probation and parole office advising the attorney or office of the inmate's release, the inmate's last forwarding address, if known, and the fact that the inmate has not paid the full amount due. A copy of this notice will be placed in the inmate's file.

(11) Inmates will be provided a monthly trust account statement reflecting all transactions and activity in the inmate's trust account for the previous month. If an inmate disputes a transaction, or if additional information is needed about a transaction, the inmate must submit Form DC6-236, Inmate Request, no later than sixty days after the date of the first statement on which the disputed item appeared. A Form DC6-236 that disputes a transaction on an inmate's trust fund statement that is received by the Bureau of Finance and Accounting, Inmate Trust Fund Section, beyond the sixty-day period will be denied and returned to the inmate without further action. The Form DC6-236 must provide sufficient detail to allow for auditing. The disputed item will be investigated, and any errors will be corrected promptly. If it takes more than ten working days to resolve the dispute, a written notification of the delay will be provided to the inmate. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(12) When necessary for meeting state or federal requirements for demonstrating indigence to the courts, an inmate will be provided with a copy of a printout showing his or her trust fund activity for the previous six months upon presentation of information demonstrating that litigation is pending (e.g., case number (if known), name of court, completed affidavit of indigency) attached to Form DC6-236. Application of this provision is limited to those requests that specifically state that a printout is necessary for this purpose. The printout will be provided to the inmate by classification staff at the institution within 10 working days of receipt of the request. When necessary to meet time constraints within the court system, the printout will be provided by other available means. Copies will be limited to one per month. Copies will be authorized in accordance with Rule 33-501.302, F.A.C.

Rulemaking Authority 944.09, ~~944.151~~, 944.516, 945.091, 945.215 FS. Law Implemented 17.61, 20.315(12), 57.085, 717.113, 944.09, ~~944.151~~, 944.516, 945.091, 945.215 FS. History—New 1-27-86, Amended 7-16-89, 5-1-90, 3-2-92, 6-2-92, 8-25-92, 10-19-92, 4-13-93, 5-28-96, 6-15-98, Formerly 33-3.018, Amended 5-7-00, 7-13-03, 10-20-03, 1-23-05, 5-12-05, 11-12-06, 9-2-08, 5-26-09, 7-1-13, 3-11-14, 8-15-17, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 30, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 6, 2020