

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.250 Specialized Programs Institutions

PURPOSE AND EFFECT: To create and establish the operation of institutions with specialized housing programs.

SUMMARY: Rulemaking is necessary to create a new rule to establish institutions with specialized programs and progressive housing. The rule will establish the operating procedure of institutions designated as "Specialized Programs Institutions" to facilitate the housing needs of the Department. The rule will establish the criteria for assignment to or removal from a "Specialized Programs Institution," and address the programmatic needs of the inmates at such institutions.

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.

Any person who wishes to provide information regarding a 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 FS.

LAW IMPLEMENTED: 944.17, 944.801, 944.803, 944.1905 FS.

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: Paul Vazquez, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.250 Specialized Programs Institutions

(1) Definitions.

(a) Incentivized Prison Program – refers to a voluntary prison program located a Department institution or dorms for inmates who meet a strict admission criteria based on their demonstrated positive behavior while incarcerated. Enhanced opportunities will exist throughout an incentivized prison setting to provide inmates with resources and tools to build knowledge sets that will positively transform their lives and the lives of, and relationships with, their families and communities. The program will focus on quality of life and life skills improvements, education, recreation, leisure, wellness opportunities, and re-integration into the community.

(b) Institutional Classification Team (ICT) – refers to the team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or designated by rule. The ICT is responsible for making work, program, housing, and inmate status decisions at a facility, and for making other classification recommendations to the State Classification Office. At private facilities, the Department of Corrections representative is to be considered a fourth member of the ICT when reviewing all job or program assignments, transfers, and custody recommendations or decisions. If a majority decision by the ICT is not possible, the decision of the Department of Corrections representative is final.

(c) Security Threat Group (STG) – refers to formal or informal ongoing inmate or offender groups, gangs, organizations, or associations consisting of three or more members who have:

1. A common name or common identifying signs, colors, or symbols;
2. Members or associates who individually or collectively engage in or have engaged in a pattern of gang activity, criminal activity, or Department rule violations; or
3. Potential to act in concert to pose a threat or potential threat to the public, staff, visitors, other inmates or offenders, or the secure and orderly operations of an institution, probation office, other Department property, or Department activity or function.

(d) State Classification Office (SCO) – refers to the office or office staff at the central office level that is

responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations, and approving program transfers.

(2) Inmates must meet the following criteria to be placed in an incentivized prison program:

(a) Must not have been assigned to Close Management within the last four years.

(b) Must not have been found guilty of a disciplinary report for any of the following behaviors within the past four years:

1-5 Sexual battery or attempted sexual battery;

1-6 Lewd or lascivious exhibition by intentionally masturbating, intentionally exposing genitals in a lewd or lascivious manner, or intentionally committing any other sexual act in the presence of a staff member, contracted staff member or visitor;

1-7 Aggravated battery or attempted aggravated battery on a correctional officer;

1-8 Aggravated battery or attempted aggravated battery on staff other than a correctional officer;

1-9 Aggravated battery or attempted aggravated battery on someone other than staff or inmates (vendor, etc.);

1-10 Aggravated battery or attempted aggravated battery on an inmate;

1-11 Aggravated assault or attempted aggravated assault on a correctional officer;

1-12 Aggravated assault or attempted aggravated assault on staff other than a correctional officer;

1-13 Aggravated assault or attempted aggravated assault on someone other than staff or inmates (vendor, etc.);

1-14 Aggravated assault or attempted aggravated assault on an inmate;

1-15 Battery or attempted battery on a correctional officer;

1-16 Battery or attempted battery on staff other than a correctional officer;

1-17 Battery or attempted battery on someone other than staff or inmates (vendor, etc.);

1-18 Battery or attempted battery on an inmate;

1-19 Assault or attempted assault on a correctional officer;

1-20 Assault or attempted assault on staff other than a correctional officer;

1-21 Assault or attempted assault on someone other than staff or inmates (vendor, etc.);

1-22 Assault or attempted assault on an inmate;

2-1 Participating in riots, strikes, mutinous acts, or disturbances;

2-2 Inciting or attempting to incite riots, strikes, mutinous acts, or disturbances – conveying any inflammatory, riotous, or mutinous communication by word of mouth, in writing or by sign, symbol, or gesture;

2-3 Creating, participating in, or inciting a minor disturbance;

2-4 Fighting;

3-1 Possession of or manufacture of weapons, ammunition, or explosives;

3-2 Possession of escape paraphernalia;

3-3 Possession of narcotics, unauthorized drugs and drug paraphernalia;

3-4 Trafficking in drugs or unauthorized beverages;

3-5 Manufacturing of drugs or unauthorized beverages;

3-6 Possession of unauthorized beverages;

3-7 Possession of aromatic stimulants or depressants, such as paint thinner, glue, toluene, etc.;

3-8 Possession of negotiables – unauthorized amounts of cash where cash is permitted, cash where cash is not permitted, other inmate's canteen coupons, other inmate's cashless canteen or identification cards or gift certificates, checks, credit cards or any other negotiable item which is not authorized;

3-13 Introduction of any contraband;

3-14 Unauthorized possession or use of a cellular telephone or any other type of wireless communication device, or any components or peripherals to such devices, including but not limited to SIM cards, Bluetooth items, batteries, and charging devices; any other technology that is found to be in furtherance;

3-15 Possession of gang related paraphernalia or related material, gang symbols, logos, gang colors, drawings, hand signs, or gang related documents;

4-1 Escape or escape attempt;

7-6 Arson or attempted arson;

9-20 Extortion or attempted extortion;

9-22 Robbery or attempted robbery;

9-26 Refusing to submit to substance abuse test;

9-27 Use of unauthorized drugs – as evidenced by positive results from urinalysis test, or observable behavior;

9-31 Use of Alcohol – as evidenced by positive results from authorized tests, or by observable behavior;

9-33 Tampering with, defeating or depriving staff of any security device. Security devices include: locks; locking devices; electronic detection systems; personal body alarm transmitters and receivers; handheld radios; restraint devices such as handcuffs, waist chains, leg irons and handcuff covers; keys; video and audio monitoring and recording devices; security lighting; weapons; and any other device utilized to ensure the security of the institution;

9-34 Tampering with or defeating any fire or other safety device. Safety devices include: fire, smoke, and carbon dioxide detection devices; alarm systems; fire suppression systems and devices such as fire sprinklers, fire extinguishers, and dry chemical systems; safety and emergency lighting; exit lights; evacuation route and warning placards; self-contained breathing apparatuses; personal protective equipment; first aid kits; eye wash stations; and any other device utilized to ensure the safety of the institution, staff and inmates;

9-36 Gang related activities, including recruitment; organizing; display of symbols, groups, or group photos; promotion or participation;

10-1 Failure to directly and promptly proceed to and return from designated area by approved method; or

10-9 Tampering with, damaging, losing, or destroying any electronic monitoring equipment.

(c) Must not have been found guilty of a disciplinary report for any behavior listed in Rule 33-601.314, F.A.C., that resulted in disciplinary confinement placement within the past 2 years.

(d) Are not otherwise a documented security or disciplinary risk preventing placement as determined by the SCO based on a review of available records.

(e) Are compatible with the institution's mission and profile where the incentivized prison program is located.

(3) An inmate can voluntarily request placement in an incentivized prison program through his or her Classification Officer by submitting Form DC6-236, Inmate Request, or during his or her annual progress review. Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C.

(4) The selection of an inmate to participate in an incentivized prison program will be based on a number of factors, including the inmate's disciplinary history, past transfers, length of incarceration, overall adjustment to the incarceration experience, STG affiliation or activity, and past program participation. The SCO will be responsible for the review and selection of inmates that will maintain a balanced population with regard to race, custody, sex offender status, gang membership, and other factors that impact the security of the institution or compromise the structure of the program.

(5) An inmate will be removed from an incentivized prison program for any of the following reasons:

(a) Being found guilty of any disciplinary report for any behavior listed in Rule 33-601.314, F.A.C., that results in disciplinary confinement placement.

(b) Being found guilty of any disciplinary report listed in paragraph (2)(b) of this rule regardless of the penalty.

(c) By requesting removal in writing on Form DC6-236, Inmate Request.

(d) If determined to be a documented threat to the safety, security, and orderly operation of an institution as evidenced by written investigative reports or electronic records documenting behavior not congruent with the institution's mission and purpose. In such case, removal can be initiated by the Warden, Assistant Warden, Colonel, or ICT in conjunction with the SCO. Subsequent transfer locations will be determined by the SCO.

(6) In addition to the visitation schedule established in Rule 33-601.722, F.A.C., the visitation for inmates participating in an incentivized prison program will be modified to allow for two additional visitation days per week. Otherwise, all visitation rules and restrictions related to visitation approval or denial and related to visitor and inmate conduct will continue to be in effect. The Secretary, or his or her designee, will approve or disapprove any request for changes to visiting hours or days as submitted by the Warden of the facility.

(7) Inmates participating in an incentivized prison program will have access to the canteen in the morning and afternoon, and in the evening during the summer.

(8) An institution with an incentivized prison program will be permitted to structure its internal movements to meet daily program needs, including education, call outs, canteen, recreation, and other programs.

Rulemaking Authority 944.09 FS. Law Implemented 944.17, 944.1905, 944.801 FS. History—New _____.

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: December 16, 2019

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 23, 2019