

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.800 Close Management

PURPOSE AND EFFECT: The proposed rule is intended to provide procedures for placement of pregnant inmates in Close Management.

SUMMARY: Rulemaking is necessary to amend an existing rule to establish processes and procedures related to the placement of pregnant inmates in restrictive housing in accordance with § 944.241, F.S., as amended by the Florida Legislature in 2020.

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 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, F.S.

LAW IMPLEMENTED: 944.09, 944.241 F.S.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Holman, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, Jason.Holman@fdc.myflorida.com

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.800 Close Management.

(1) through (2) No change

(3) Procedures for Placement in Close Management.

(a) through (c) No change.

(d) When a pregnant inmate is placed in close management to protect the health and safety of the pregnant inmate or others, or to preserve the security and order of the institution, the senior correctional officer or above must make a report utilizing Form DC6-1015, Report of Placement in Restrictive Housing for Pregnant Inmates, clearly stating the following:

1. The individualized reason restrictive housing is necessary;

2. The reason less restrictive means are not available; and,

3. Whether a qualified healthcare professional at the correctional institution objects to the placement.

A copy of the report must be provided to the pregnant prisoner within 12 hours after placement in close management. Form DC6-1015 is incorporated by reference in Rule 33-602.220, F.A.C.

(c)(4) Prior to docketing an inmate's case for CM review by the ICT, the classification supervisor will submit a

referral to the senior psychologist for evaluation of the inmate utilizing the Close Management Referral Assessment, Form DC6-128. Form DC6-128 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun St., Tallahassee, FL 32399, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03418>. The effective date of the form is 12/13.

~~(f)(e)~~ Mental health staff will complete Form DC6-128, within five working days of receipt and return it to the classification supervisor.

~~(g)(f)~~ Upon receiving the completed Form DC6-128, the classification supervisor will submit the case for placement on the ICT docket.

~~(h)(g)~~ ICT Hearing. The ICT shall evaluate the recommendations for CM placement and the mental health assessment, interview the inmate, and consider all relevant information provided to the ICT by the inmate. The ICT shall ensure that the inmate was given a minimum of 48 hours to prepare for the review unless waived by completing Form DC6-265. The ICT shall document on Form DC6-233C that the inmate was allowed at least 48 hours to prepare for the review. The ICT shall inquire whether the inmate needs staff assistance. A staff member shall be assigned to assist an inmate when the ICT determines that the inmate is illiterate or does not understand English, has a disability that would hinder the inmate's ability to represent himself or herself, or when the complexity of the issues makes it unlikely that the inmate will be able to properly represent himself or herself. Assistance can also be provided at the inmate's request. In the event a staff member is assigned to assist an inmate, it is the responsibility of the staff member to explain the CM recommendation and procedures to the inmate. Even though the staff member will be authorized to assist an inmate during the hearing and aid the inmate in presenting his or her position, the staff member shall not take the position of an advocate or defense attorney for the inmate. The ICT is authorized to postpone the case review to allow an inmate additional time to prepare. If an extension of time is given, the ICT shall document the postponement on Form DC6-233C. The inmate will appear at the hearing unless he or she demonstrates disruptive behavior, either before or during the hearing, that impedes the process, or the inmate waives his or her right to be present at the CM hearing. If the inmate waives his or her right to be present at the CM hearing Form DC6-265 shall be completed. In such cases, the review will be completed without the inmate present. The absence, removal, or presence of the inmate will be documented on Form DC6-233C. After the interview and review of all pertinent information including the mental health assessment, the ICT will make a recommendation to the SCO. This recommendation will be documented on Form DC6-233C. The ICT will inform the inmate of the basis for its decision and provide a copy of its decision to the inmate after the conclusion of the hearing. The ICT classification member will ensure that the results are entered in OBIS.

~~(i)(h)~~ The SCO will review the recommendations of the ICT, Form DC6-128, and other pertinent information before making the final decision regarding CM placement. This review will be on site and the SCO may interview the inmate, except in situations requiring more immediate action. In such case, the SCO will review the documentation in OBIS. The SCO will approve, disapprove, or modify the ICT's recommendation, or obtain further information from the ICT before reaching a final decision. If the ICT's recommendation is disapproved or modified by the SCO, the inmate will be informed of the decision in writing by the SCO. Inmate notification will not be required when the SCO approves the ICT's recommendation. After the review is complete, the SCO will document its decision in OBIS. A copy of Form DC6-233C will be kept in the inmate record file.

(4) through (18) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09, 944.241 FS. History—New 2-1-01, Amended 12-16-01, 4-8-04, 3-10-05, 4-9-06, 8-23-07, 4-27-08, 6-28-10, 4-6-11, 7-31-11, 1-4-12, 12-9-12, 12-24-13, 3-6-14, 8-17-16, 1-18-21, _____.

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: March 4, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 27, 2020