

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NOS.:RULE TITLES:

33-602.220 Administrative Confinement

33-602.222 Disciplinary Confinement

PURPOSE AND EFFECT: The proposed rules are intended to provide procedures for placement of pregnant inmates in Administrative Confinement and Disciplinary Confinement.

SUMMARY: Rulemaking is necessary to amend existing rules 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, FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.241, 945.04 FS.

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:

33-602.220 Administrative Confinement.

(1) No change.

(2) Procedures for Placement in Administrative Confinement.

(a) through (b) No change.

(c) When a pregnant inmate is placed in administrative confinement 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 administrative confinement. Form DC6-1015 is hereby incorporated by reference. A copy of this form is available from the Forms

Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of the form is XX/XX.

~~(d)~~~~(e)~~ Pursuant to Rule 33-601.733, F.A.C., upon placement into administrative confinement, the warden shall ensure that an inmate is provided the opportunity, at the inmate's expense, to notify at least three approved visitors of any visitation denial or restrictions before the next scheduled visiting day if the situation permits the inmate to do so, or that staff notifies visitors by telephone if the inmate is unable to do so.

~~(e)~~~~(f)~~ When an inmate is placed in administrative confinement, this action shall be documented in the electronic classification contact log in OBIS. This entry shall fully state the circumstances surrounding and the reason for placing the inmate in administrative confinement and a summary of the inmate's comments. The reason must correspond with one of the criteria for placement provided in subsection (3) of this rule. This electronic entry shall be completed the same day the inmate is placed into administrative confinement, will establish the ICT 72-hour review appointment, and will document any telephone calls made by staff on the inmate's behalf to his or her visitors if time does not permit contact by mail prior to the planned visit. Any written statements provided by the inmate shall be forwarded to the ICT for its consideration prior to the 72-hour review appointment.

~~(f)~~~~(e)~~ The ICT shall review inmates in administrative confinement within 72 hours. The ICT's findings and decision shall be documented in the electronic classification contact log in OBIS. The only exception to being reviewed within 72 hours is when the ICT cannot complete its review within the allotted timeframe due to a holiday. If the review cannot be completed within 72 hours, the action of the senior correctional officer shall be reviewed within 72 hours by the duty warden, documented on the Form DC6-229, Daily Record of Special Housing, and evaluated within 5 days by the ICT. Inmates placed into administrative confinement shall not be released from this status until approved by the ICT. The classification supervisor shall be responsible for ensuring that the ICT docket is prepared. The ICT Chairperson is responsible for scheduling the ICT hearing date and time. The ICT shall review inmates for release from administrative confinement. During this review the ICT shall consider pending disciplinary hearings and other pending issues or actions. If an inmate has been held in administrative confinement pending a disciplinary hearing and the decision is not to impose disciplinary confinement as a part of the disciplinary action, the disciplinary team or hearing officer shall notify the confinement supervisor who shall coordinate the release of the inmate from administrative confinement. If the confinement supervisor discovers other pending issues or actions, the ICT shall be required to immediately review the case. In the event it is necessary to release an inmate from administrative confinement during weekends or holidays, the duty warden is authorized to approve the release immediately.

(3) through (10) No change.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.241, 945.04 FS. History—New 4-7-81, Amended 6-23-83, 3-12-84, Formerly 33-3.081, Amended 4-22-87, 8-27-87, 7-10-90, 12-4-90, 3-24-97, 4-26-98, 10-5-98, Formerly 33-3.0081, Amended 2-12-01, 2-5-02, 1-19-03, 4-1-04, 3-5-06, 10-31-06, 4-8-08, 6-25-08, 6-8-09, 7-5-10, 10-7-12, 3-6-14, 8-17-16, 1-18-21, _____.

33-602.222 Disciplinary Confinement.

(1) Definitions.

(a) through (i) No change.

(j) Senior Correctional Officer – refers to a staff member with the rank of correctional officer lieutenant or above.

~~(k)~~~~(j)~~ Shift Supervisor – refers to the correctional officer in charge of security on any work shift.

~~(l)~~~~(k)~~ Special Risk Inmate – refers to any inmate who has demonstrated behavior that is or could be harmful to himself or herself.

~~(m)~~~~(l)~~ State Classification Office (SCO) – refers to the office or Department staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

~~(n)~~~~(m)~~ Visit – unless the context dictates otherwise, refers to the official inspection and tour of a confinement unit by a staff member.

(2) Placement in Confinement.

(a) An Inmate shall be given a pre-confinement medical evaluation by medical staff prior to being placed in

disciplinary confinement. Any inmate currently in another confinement status who received a pre-confinement medical assessment shall not be required to have another prior to placement in disciplinary confinement.

(b) When a pregnant inmate is placed in disciplinary confinement 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 disciplinary confinement. Form DC6-1015 is incorporated by reference in Rule 33-602.220, F.A.C.

(3) through (13) No change.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.241 FS. History—New 3-12-84, Formerly 33-3.084, Amended 7-10-90, 4-28-96, 12-7-97, 3-23-99, Formerly 33-3.0084, Amended 2-12-01, 2-15-02, 4-1-04, 1-16-06, 10-31-06, 6-25-08, 6-8-09, 7-5-10, 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 04, 2021

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