

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-203.801 Restitution Claims

PURPOSE AND EFFECT: Rulemaking is necessary to establish a new rule to set forth the process in which claimants may request and receive restitution within a reasonable timeframe for medical injury and/or property damage caused by an inmate in the care and custody of the Department of Corrections at one of its state institutions. DC2-379 is also created to allow claimants to provide the Department with the necessary documentation to access the claim. This rule will implement and interpret statutory changes pursuant to chapter 2021-131, Laws of Florida.

SUMMARY: The proposed rule sets forth a process in which claimants may request and receive restitution within a reasonable timeframe for medical injury and/or property damage caused by an inmate in the care and custody of the Department of Corrections at one of its state 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.

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 rule, the Department has determined that the rule 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: 402.181(3), F.S.

LAW IMPLEMENTED: 402.181, 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: 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:

33-203.801 Restitution Claims

(1) The following definitions shall be used herein for the purposes of addressing restitution claims:

(a) "Agency" means the Department of Corrections.

(b) "Claimant" means any person who submits a restitution claim alleging property damages and/or direct expenses for his/her injuries and/or direct medical expenses for his or her injuries under section 402.181, Florida Statutes.

(c) "Incident" means the occurrence of property damage resulting from the same or similar event or occurrence in time.

(d) "Inmate" means any person(s) in the care and custody of the Department of Corrections.

(e) "Preponderance of the evidence" means the party bearing the burden of proof must present evidence which shows that the fact to be proven is more probable than not.

(f) "Restitution" means recompense for injury or loss.

(g) "Restitution claim" means any reimbursement claim resulting from property damages caused by an inmate that has not been restored or recompensed through another entitlement.

(2) A claimant filing a restitution claim under section 402.181, Florida Statutes, with the Agency, has the burden to provide a preponderance of the evidence to prove:

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(a) that the action(s) of an inmate is the direct cause of claimant's property damages and

(b) the monetary amounts of the claimant's damages.

(3) Only one restitution claim can be submitted per claimant per incident.

(4) The maximum restitution amount per claimant per incident may not exceed \$1,000.00.

(5) Restitution claims must be submitted to the Agency using the State Institution Claim Program Form ("Claims Form") DC2-379, effective xx/xx, incorporated here by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX>.

(a) A complete State Institution Claims Program Form must be received by the Agency, in accordance with the instructions on the form, within 90 calendar days from the date of the incident that caused the property damage and/or medical injury. Any Claims Form received after 90 calendar days of the incident must be denied.

(b) The State Institution Claims Program Form is considered complete when it is received by the Agency with all required fields filled out, including all required documentation attached.

(c) Once the Agency has received a complete Claims Form, it must make a determination on the restitution claim within 60 calendar days. The 60 days may be tolled:

1. For 21 calendar days from the date the Agency issues a request for additional information to the claimant or legal representative. If the Agency has not received the additional information within the 21 calendar days, the Agency will make a determination on the claim based solely upon the information it has been provided.

2. Whenever a claimant requests compensation for the same incident not pursuant to section 402.181, Florida Statutes, for the period of time until such claim is resolved and until the Agency is notified thereof by claimant.

(6) This rule is in effect for five years from its effective date.

Rulemaking Authority 402.181(3) F.S. Law Implemented 402.181, F.S. History--New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Steven Fielder, Director of Administration

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: September 8, 2021