

September 11, 2014

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.307 Disciplinary Hearings

33-601.604 Determination of Credit When Inmate Is Released in Error

PURPOSE AND EFFECT: The purpose and effect of the proposed amendments to Rule 33-601.307 are to add form references and to allow disciplinary hearings relating to inmate escapes to be held in an inmate's absence in order to assess a gain time penalty if applicable. The amendment is necessary to prevent escaped inmates from reaching the end of their sentences prior to a disciplinary hearing relating to the escape. The purpose and effect of the proposed amendment to Rule 33-601.604 is to provide for a hearing to determine whether or not time at liberty should be counted towards time served when an inmate is erroneously released from custody by another jurisdiction that is at fault for the release.

SUMMARY: Rulemaking was initiated to add references to forms, to add language to allow disciplinary hearings to be held in an inmate's absence under certain circumstances, and to amend language to provide for a hearing regarding credit for time served under certain circumstances.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION: The Department has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. A SERC has not been prepared by the Department. The Department has determined that the proposed rule is not expected to require legislative ratification based on the SERC or, if no SERC is required, the information expressly relied upon and described herein: 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), FS. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.275 FS

LAW IMPLEMENTED: 20.315, 944.09, 944.275, 945.04 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, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.307 Disciplinary Hearings.

(1)(a) No hearing shall commence prior to 24 hours following the delivery of the charges except when the inmate's release date does not allow time for such notice or the inmate waives the 24 hour period. In such cases, an explanation shall be provided in the basis of findings section of the disciplinary report. The inmate may waive the 24-hour waiting period. In such cases, a waiver must be signed by the inmate, witnessed by an employee, and copies attached to each copy of the disciplinary report. Form DC6-112D, 24 Hour/Refusal to Appear Waiver, shall be used for this purpose. The disciplinary team or hearing officer shall provide an explanation in the basis of findings section whenever the waiver process is utilized. Form DC6-112D is incorporated by reference in Rule 33-601.313, F.A.C.

(b) The inmate charged shall be present at the disciplinary hearing unless a confirmed medical condition makes the inmate unable to attend, the inmate demonstrates disruptive behavior, either before or during the hearing, that impedes the process or poses a threat to the safety of others or the security of the institution, or the inmate has waived his right to be present. If the inmate waives the right to be present or refuses to be present, Form DC6-112D, ~~the 24 Hour/Refusal to Appear, Form DC6-112D~~, shall be signed by the inmate and witnessed by an employee. If the inmate refuses to sign the form, this shall be noted and signed by the employee. When an inmate waives the right to be present at the hearing, the inmate may not submit a written closing statement to the disciplinary team or hearing officer in place of the oral closing statement permitted in paragraph (1)(g). If the inmate's disruptive conduct makes it necessary to remove the inmate from the hearing, the hearing shall be conducted in the inmate's absence. The reason for the inmate's absence shall be explained in the basis of decision section of the disciplinary report.

(c) – (f) No change.

(g) If the inmate pleads "guilty," no further evidence needs to be heard. If the inmate pleads "not guilty," evidence is to be presented, including witness statement forms obtained from witnesses. If evidence is not revealed

to the inmate, the reason(s) shall be documented in the comment section of Form DC6-112B, ~~the~~ Witness Disposition ~~Form, DC6-112B~~, the comment section of Form DC6-151, ~~the~~ Documentary or Physical Evidence Disposition ~~Form, DC6-151~~, or the ~~comment~~ ~~comments~~ section of Form DC6-2028, ~~the~~ Disposition of Videotape/Audiotape Evidence, ~~Form DC6-2028~~, depending on the nature of the evidence, and in the witness comments section in the ~~Department's~~ ~~department's~~ automated database. Forms DC6-112B, DC6-151, and DC6-2028 are incorporated by reference in Rule 33-601.313, F.A.C. The inmate may make only an oral closing statement concerning the infraction for consideration by the hearing officer or disciplinary team. In the event the inmate refuses to enter a plea, it shall be treated as a “not guilty” plea insofar as hearing procedures are concerned. A “no contest” plea shall be handled as a guilty plea.

(h) – (i) No change.

(2) No change.

(3)(a) – (b) No change.

(c) The testimony of witnesses requested by the charged inmate shall be presented at the hearing through Form DC6-112C, ~~the written~~ Witness Statement, ~~Form DC6-112C~~, unless the inmate:

1. Has completed and signed the witness request form during the investigation;
2. Makes a request at the hearing for a witness to appear to provide live testimony; and
3. The disciplinary team or hearing officer determines that the reason provided by the charged inmate for requesting live testimony overcomes the burden on institutional staff caused by the retrieval and escort of live witnesses as well as the diversion of security staff from assigned posts due to the potential security risk that may result from the appearance of live inmate witnesses and the disruption to the assignments and activities of inmate witnesses.

Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C.

(d) Failure to sign and complete ~~the witness disposition~~ Form DC6-112B, Witness Disposition, during the investigation constitutes waiver of the opportunity to call witnesses either live or by written statement. Form DC6-112B must be used for listing witnesses. Listing witness names on any other document, including Form DC6-112C, ~~the~~ Witness Statement, ~~Form DC6-112C~~, will not result in their being considered.

(e) – (g) No change.

(h) If the team or hearing officer utilizes confidential informant information during the hearing, the team or

hearing officer shall determine whether the informant has direct or indirect knowledge of the events in question. The team or hearing officer shall consider the informant's reliability by analyzing the informant's past record for providing accurate or inaccurate information. The disciplinary team or hearing officer shall not accept assurance alone from an officer as to the authenticity of the informant's information. Hearsay and second-hand knowledge not corroborated by other evidence shall not be used to support a finding of guilt. Unless supported by other evidence, information provided by a single informant shall not be used to support a finding of guilt unless the information is especially compelling. The team or hearing officer shall document the information used to determine guilt and the reliability of the information in the basis of decision section of Form DC6-112E, the Disciplinary Hearing Worksheet, Form DC6-112E. ~~Form DC6-112E~~. Form DC6-112E is incorporated by reference in Rule 33-601.313, F.A.C. If disclosure of the information would endanger the informant or adversely affect institutional security and order, the team or hearing officer shall document the information and the reasons for not revealing it to the inmate in the comment section of Form DC6-112B, Witness Disposition ~~the witness disposition form~~.

(i) If a witness is requested by the team or hearing officer to appear at the hearing and is unavailable the witness statement form shall be accepted as testimony. Signed witness statements used as testimony shall be read to the charged inmate at the hearing except as provided in paragraphs (a) and (c) above. Where a witness statement is not read or the inmate witness does not appear at the hearing as requested, the reason shall be recorded on in Form DC6-112B, Witness Disposition ~~the witness disposition form, Form DC6-112B~~.

(j) – (k) No change.

(4) – (5) No change.

(6) Notwithstanding any other rule to the contrary, when an inmate escapes or is otherwise absent from Department custody, the Department may conduct a disciplinary hearing in the inmate's absence at the institution in which the inmate was last confined. Any gain time forfeiture imposed in accordance with this section shall be immediately effective to modify the inmate's release date. When the inmate returns to custody the Warden shall have the charges reheard before a hearing team ordinarily within 60 days after the inmate's arrival at a permanent institution. The team shall ensure that the inmate has all rights required for a hearing as set forth in this rule.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 945.04 FS. History–New 3-12-84, Formerly 33-22.06, Amended 12-30-86, 10-1-95, 12-10-97, 5-19-98, Formerly 33-22.006, Amended 5-21-00, 2-11-01, 3-22-05, 10-12-05, 7-17-07, _____.

33-601.604 Determination of Credit When Inmate Is Released in Error.

(1) – (3) No change.

(4) Credit will not be applied if the release in error was caused by another state ~~state's~~ or federal jurisdiction.

Specific Authority 944.09, 944.275 FS. Law Implemented 944.09, 944.275 FS. History–New 7-11-00, Amended 7-3-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Upchurch, Assistant Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael D. Crews, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 1, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 1, 2014