

July 1, 2016

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.720

RULE TITLE: Sex Offender and Child Abuse Offender Visiting Restrictions

PURPOSE AND EFFECT: The purpose and effect of the amendment is to bring the rule into line with case law that holds that when someone pleads nolo contendere to a crime, then has adjudication withheld for that crime, they shall nonetheless be considered to have been “convicted” of that crime for the purposes of the sentencing guidelines.

SUMMARY: The proposed rule removes the provision stating that a plea of nolo contendere followed by a withhold of adjudication does not constitute a conviction under Section 944.09(1)(n), F.S.

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 FS

LAWS IMPLEMENTED: 20.315, 944.09, 944.23 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FUTURE. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED

RULE IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.720 Sex Offender and Child Abuse Offender Visiting Restrictions.

(1) An inmate shall not be authorized to visit with any person seventeen years of age or younger if:

(a) through (b) No change

~~(c) A plea of nolo contendere followed by a withhold of adjudication does not constitute a conviction under Section 944.09(1)(n), F.S.~~

~~(c)(d)~~ Current and prior convictions from other jurisdictions comparable to the offenses listed above also serve as a basis for imposing visiting restrictions.

~~(d)(e)~~ Only the judge who issued an order imposing visitation restrictions may modify those restrictions.

(2) through (6) No change

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.23 FS. History—New 11-18-01, Formerly 33-601.707, Amended 5-29-03, 9-29-03, 4-17-05, 4-10-08, 8-15-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard D. Comerford, Director of Institutional Support

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 16, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: May 23, 2016