

September 30, 2011

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.307

RULE TITLE: Disciplinary Hearings

PURPOSE AND EFFECT: The purpose and effect of the proposed rulemaking is to clarify the disposition of evidence during disciplinary hearings.

SUBJECT AREA TO BE ADDRESSED: Inmate Discipline

RULEMAKING AUTHORITY: 944.09 FS

LAW IMPLEMENTED: 20.315, 944.09, 945.04 FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kendra Lee Jowers, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.307 Disciplinary Hearings.

(1) through (2) No change.

(3) The inmate may request that witnesses appear at the hearing, but inmate witnesses shall not be routinely called before the disciplinary team or hearing officer to provide live testimony for the following reasons:

(a) through (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, ~~and disposition of any evidence the inmate requested~~ in the basis of decision section of the Disciplinary Hearing Worksheet, Form DC6-112E. 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 the witness disposition form.

(i) through (5) No change.

Rulemaking 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, \_\_\_\_\_.