

June 2, 2016

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-602.205 Inmate Telephone Use

PURPOSE AND EFFECT: The purpose and effect of the amendment is to clarify the rule as to the telephone privileges of death row inmates, as well as to add a provision allowing for a monthly 15-minute telephone call for death row inmates.

SUMMARY: The proposed rulemaking clarifies the rule as to the telephone privileges of death row inmates, and it adds a provision allowing for a monthly 15-minute telephone call for death row inmates.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.205 Inmate Telephone Use.

(1) This rule sets forth the minimum telephone privileges that shall be granted to inmates housed in institutions or facilities other than community correctional centers, ~~or inmates housed on death row~~. All inmate calls, with the exception of those calls placed to attorneys pursuant to paragraph (3)(a), and to foreign consulates pursuant to paragraph (4)(a) shall be subject to monitoring and recording. Due to the high level of security needs on death row, the only telephone privileges available to death row inmates ~~—except those inmates in Phases I or Phase II, as those phases are described in Rule 33-601.830(1)(c)—~~are those set forth in paragraph (3)(a), private calls to attorneys; paragraph (4)(a), private calls to foreign consulates; ~~and subsection (5), calls made in the event of family crisis; and subsection (17), other monthly telephone calls. The only telephone privileges available to death row inmates in Phase I and Phase II are those set forth in paragraph (3)(a), calls to attorneys; paragraph (4)(a), private calls to foreign consulates; and subsection (5), calls made in the event of family crisis.~~

(2) No change

(3) Calls to attorneys.

(a) Inmates shall be allowed to make private telephone calls to attorneys upon presentation to the warden or his designee of evidence that the call is necessary. Such evidence shall be a letter from the attorney (transmission by FAX or via e-mail with scanned letter is acceptable) requesting the return call or a court order containing a deadline the inmate cannot meet if he must communicate by letter with the attorney. The letter shall be on attorney letterhead, signed by the attorney requesting the telephone call, and include the bar association number of the attorney. An attorney shall also be permitted to make prior arrangements by letter, e-mail with attached letter, or FAX with the warden or warden's designee to have the inmate client receive a private telephone call from the attorney on an unmonitored telephone. Except as authorized by warrant or order of court, telephone calls to attorneys made pursuant to this section shall not be monitored or electronically recorded. These calls will be placed on telephones designated for this purpose and shall be collect calls; there shall be at least one telephone at each institution that is not connected to the monitoring system for these calls.

(b) No change

(4) No change

(5) An inmate may be authorized by the warden or the warden's designee to make telephone calls in cases ease

of family crisis, including death or serious illness in the immediate family, or serious marital or other family problems. The warden or the warden's designee shall consider each request for such a call and shall authorize such a call only if, after considering the totality of the circumstances, he or she determines that authorizing the call would be consistent with his or her duty to maintain the safety, security, and effective management of his or her institution. All such calls must be approved by the chaplain or other official designated by the warden who shall, if possible, verify the existence of the family crisis.

(6) through (16) No change

(17) In addition to the other telephone privileges set forth in this rule for death row inmates, such inmates shall be allowed one fifteen-minute telephone call per month. The call shall be subject to the same Department telephone monitoring and recording as that to which non-death row inmate calls placed to persons or entities other than attorneys and foreign consulates are subject.

(18) Inmates who violate any Department rule pertaining to the use of telephones shall be prohibited from making any telephone call, except private calls to attorneys as set forth in paragraph (3)(a), for the 30-day period immediately following the date of any such violation.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 11-19-81, Formerly 33-3.125, Amended 11-21-86, 1-6-92, 3-24-97, 7-22-97, 12-21-98, Formerly 33-3.0125, Amended 2-7-00, 6-18-02, 2-4-03, 12-30-03, 11-25-04, 1-7-07, 9-24-07, 3-23-08, 6-14-12,_____.

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: May 23, 2016