

March 14, 2024

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-203.201 Inmate Trust Fund

PURPOSE AND EFFECT: Rule amendment is necessary to clarify that civil cost judgments will be treated as liens rather than holds on inmate trusts accounts; adjust for inflation by increasing the weekly canteen and cash draw limits; allow release gratuity to be disbursed using additional payment methods; unincorporate Form DC6-363 due to a change in vendor; and add instructions for making trust fund deposits via money order, cashier's check, or certified bank draft.

SUMMARY: The proposed amendment clarifies that civil cost judgments will be treated as liens rather than holds on inmate trust accounts; adjusts for inflation by increasing the weekly canteen and cash draw limits; allows release gratuity to be disbursed using additional payment methods; unincorporates Form DC6-363 due to a change in vendor; and adds instructions for making trust fund deposits via money order, cashier's check, or certified bank draft.

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 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), 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: 944.09, 944.516, 945.091, 945.215, F.S

LAW IMPLEMENTED: 17.61, 20.315(12), 57.085, 717.113, 944.09, 944.516, 945.091, 945.215, 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:

33-203.201 Inmate Trust Fund.

(1) No change.

(2) Deposits. An inmate may receive funds for deposit into his or her inmate trust account only from individuals who, pursuant to Rule 33-601.716, F.A.C., are identified on the inmate's automated visiting record, and who have a current "approved" status. Deposits from individuals will be received and processed by the contracted vendor through online, telephone, kiosks, or mailing of money orders, cashier's ~~cashiers~~ checks, or certified bank drafts only (no cash or personal checks allowed). A newly received inmate may receive funds from any remitter for up to 60 days from the date of reception or up to the date the inmate's automated visiting record is established, whichever

March 14, 2024

occurs first.

(a) Money Orders, ~~cashier's~~ ~~cashiers~~ checks, or certified bank drafts must be made payable to the contracted vendor and will be deposited into the Inmate Trust Fund. The sender must legibly complete all fields on the vendor-supplied money order deposit form for inmates, including the date and amount sent; the money order, cashier's check, or certified bank draft number; the inmate's full name, DC number, and current facility; and the sender's full name, date of birth, mailing address, and telephone number. Money order deposit forms may be obtained from the contracted vendor; any institution or facility; the Bureau of Finance and Accounting, Inmate Trust Fund Section, Centerville Station, P.O. Box 12100, Tallahassee, Florida 32317-2100; the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500; or the Department's public website. The completed money order deposit form must be mailed to the vendor along with the money order or cashier's check at the address provided on the form, shall be mailed pursuant to the instructions provided on Form DC2 363, Money Order Deposit Form For Inmate Deposits, and shall be initially deposited into the Inmate Trust Fund. Form DC2 363 is hereby incorporated by reference. This form may be obtained from any institution, facility, the vendor listed on Form DC2 363, the Bureau of Finance and Accounting, Inmate Trust Fund Section, Centerville Station, P.O. Box 12100, Tallahassee, Florida 32317 2100 or the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No-Ref 08569>. The effective date of this form is 8 17. Funds must be mailed with the completed Form DC2 363, Money Order Deposit Form For Inmate Deposits, and made payable to the vendor listed on Form DC2 363. Both Form DC2 363 and the money order must include the inmate's name and DC number. In addition, the sender ~~must~~ shall provide a clearly legible, valid copy of their driver drivers license, state identification card ID, or Passport. If a legible, valid copy of the sender's driver license, state identification card, or passport identification ID is not enclosed, the funds money will be returned to the sender. If the vendor is unable to determine the appropriate inmate recipient, the funds money will be returned to the sender with a request for additional information necessary to process the deposit. If the vendor is unable to determine the correct inmate recipient and the funds are nonreturnable because the sender did not provide a valid return address, the funds will be held in a vendor designated account until the sender or recipient inmate is identified. If neither the sender nor the recipient can be identified within one year, the vendor must escheat the funds to the state as unclaimed funds held by a government agency in accordance with Section 717.113, F.S. Validated fFunds will become available for the inmate's use within ten working days after receipt by the vendor. Every effort will shall be made to have funds available sooner. Money orders, cashier's checks, and certified bank drafts from family and friends mailed to institutional or other Department addresses, including the Bureau of Finance and Accounting, Inmate Trust Fund Section will be returned to the sender. Letters or notes included with payments will not be considered and will be discarded.

(b) ~~Deposits sent by mail are processed using an advanced high speed processing machine which requires the use of the deposit form. Attempts will be made to process deposits sent without the accompanying form, but the availability of funds may be delayed up to 30 days as a result. If staff are unable to determine the appropriate inmate recipient, the money will be returned to the sender with a request for additional information necessary to process the deposit. If staff are unable to determine the correct inmate recipient and the funds are nonreturnable because the sender did not provide a valid return address, the money will be held in a clearing account until the sender or recipient inmate is identified. If neither the sender nor the recipient can be identified within one year the funds shall escheat to the state as unclaimed funds held by a government agency in accordance with Section 717.113, F.S.~~

(b)(e) Deposits from governmental agencies, transfers from private correctional facilities and county jails, checks from charitable organizations, and checks from business accounts should be mailed to the Inmate Trust Fund address: Florida Department of Corrections, Inmate Trust Fund, Centerville Station, P.O. Box 12100, Tallahassee, FL 32317-2100. For purposes of this paragraph, business accounts include accounts administered by corporate trustees. Business checks in the amount of \$400 or more posted to an inmate's trust account will be held for 10 days before the funds will be released. If department staff are unable to determine the appropriate inmate recipient, the money will be returned to the sender with a request for additional information necessary to process the deposit. If department staff are unable to determine the correct inmate recipient and the funds are nonreturnable because the sender did not provide a valid return address, the money will be held in a clearing account until the sender or recipient inmate is identified. If neither the sender nor the recipient can be identified within one year the Department will escheat the funds to the State as unclaimed funds held by a government agency in accordance with Section

March 14, 2024

717.113, F.S.

~~(c)~~ Charitable organizations will be permitted to deposit funds into an inmate's trust account subject to the provisions of this rule and provided the charitable organization:

1. Is a charitable organization as defined in Section 496.404(1), F.S.; or
2. Is actively registered with the Florida Secretary of State or comparable state entity; or
3. Possesses and maintains a valid Internal Revenue Code 501(c)(3) certificate as evidenced by an affirmation letter, a copy of which must accompany any deposit.

~~(d)~~ In accordance with 38 U.S.C.S. 5301, United States Department of Veterans Affairs (VA) benefit checks are exempt from attachment, levy, or seizure. The Department will not deduct payments for liens on the inmate's trust account for medical co-payments, legal copies, or other Department generated liens from VA benefits checks mailed from the VA directly to the Bureau of Finance and Accounting, Inmate Trust Fund Section, Centerville Station, P.O. Box 12100, Tallahassee, FL 32317-2100.

~~(e)~~ If an inmate does not wish to deposit his or her monies into the Inmate Trust Fund, the inmate must advise the donor of the funds to send them directly to a private financial institution of his or her choice. This option will not be available when an inmate is on work release or a similar paid work program. In such case, the provisions of Rule 33-601.602, F.A.C., will apply. An inmate on work release must submit his or her full pay for deposit in the Inmate Trust Fund. In the case of inmates who are paid via EFT, the funds will be deposited into the Inmate Trust Fund, and the same provisions of Rule 33-601.602, F.A.C., will apply.

(3) Authorized Disbursements and Use of Funds.

(a) Canteen Limit and Cash Draws. Inmates with sufficient balances in their inmate trust accounts after all debts against the account have been satisfied will be allowed to spend an amount not to exceed ~~\$150~~ ~~\$100~~ per week for personal use subject to the provisions of Rule 33-203.101, F.A.C. Inmates on work release with sufficient balances in their inmate trust accounts will be allowed to request a weekly draw not to exceed ~~\$150~~ ~~\$100~~ per week for personal use subject to Rule 33-601.602, F.A.C.

(b) Special Withdrawals. An inmate may request a special withdrawal of funds in addition to the authorized canteen limit and weekly draws for a purpose authorized by Department rules. Inmates requesting a special withdrawal must submit a completed Form DC2-304, Inmate Trust Fund Special Withdrawal, with any supporting documentation to the warden, or to his or her designee who must be the rank of Correctional Officer Major or higher, for review. The warden, or his or her designee, will approve or deny the request. Form DC2-304 is hereby incorporated by reference and may be obtained from any institution or facility or from the Forms Control Administrator, Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. <http://www.flrules.org/Gateway/reference.asp?No=Ref-14122>. The effective date of this form is 03/22. Special withdrawals include:

1. through 10. No change.

11. Community Release Centers – a special withdrawal request from an inmate housed at a Community Release Center will follow the guidelines set forth in Rule Section 33-601.602 F.A.C.

(c) No change.

(d) The inmate is responsible for ensuring that a request for a special withdrawal complies with the provisions of this rule, includes a legible and complete Form DC2-304, and includes any additional or required documentation. A special withdrawal request that fails to comply with any provision of this rule will be returned to the inmate without action.

(4) No change.

(5) ~~When an inmate being released from the custody of the Department has a Trust Fund Account balance exceeding \$1.00, inmates being released from the custody of the Department whose Trust Fund Account balance exceeds \$1.00 and/or who are eligible for release gratuity will be provided a release debit card. The inmate's Trust Fund Account will be reviewed to determine the amount (if any) that may be issued as an advance from the Trust Fund Account. Any advance and/or any release gratuity for which the inmate is eligible will be paid to the inmate at the at the time of release. Individuals under the age of 18 will receive a check for release gratuity and/or any advance portion of the trust fund account at the time of release. The balance of the trust account will be paid downloaded to the inmate's release debit card or a check will be mailed to the inmate within 45 days after of the inmate's release date. If at the time of an inmate's release, deposits of checks or other negotiable instruments have~~

March 14, 2024

been made to the inmate's trust account but have not cleared the account of the payor, funds equal to the amount of the uncleared deposits will be retained in the inmate's trust account until the deposits clear. Any balance due the inmate ~~after the deposits have cleared will then be paid to the inmate downloaded to the inmate's release debit card or will be paid by check mailed to the inmate. If funds remain~~ In the event that funds are unclaimed after a period of one year, the balance will escheat to the State as unclaimed funds held by a government agency pursuant to Section 717.113, F.S. Inmates being released from a Community Release Center may receive funds pursuant to this rule and Rule 33-601.602, F.A.C.

(6) Upon the death of any inmate affected by the provisions of this section during the period of incarceration, all funds in the inmate's trust account in excess of \$1.00 will be held pending official notification from the personal representative of the inmate. Any unclaimed money held for an inmate in trust by the Department or by the State Treasurer will be applied to the payment of any unpaid state claims against the inmate. ~~If funds remain In the event that funds are~~ unclaimed after a period of one year, the balance will escheat to the State as unclaimed funds held by a fiduciary pursuant to Section 944.516, F.S.

(7) When an inmate escapes and is not captured within 30 days, the Bureau of Classification Management will notify the Bureau of Finance and Accounting, Inmate Trust Fund Section. Any balance in the escapee's inmate trust account in excess of \$1.00 will be forwarded to the person designated on the inmate's notification record. If this person cannot be located after reasonable efforts, the funds will be held for one year and, if unclaimed, will escheat to the State pursuant to Section 717.113, F.S.

(8) No change.

(9) Notice to the Department of an adverse claim against funds held by an inmate in the Inmate Trust Fund will not cause the Department to recognize the adverse claimant unless the adverse claimant is the State of Florida (hereinafter referred to as "claimant") and the claim is:

(a) a cost judgment entered by a state or federal court against the inmate in a civil or criminal action; brought by the inmate;

(b) a cost judgment entered by a state or federal court against the inmate in an appeal of a such civil or criminal action brought by the inmate; or, or if the cost judgment is

(c) the result of any other monetary judgment, order, or sanction imposed by a court against the an inmate. ~~The provisions of subsection (10) of this rule will apply.~~

(10) Any cost judgment or other monetary judgment, order, or sanction imposed against an inmate as described in subsection (9) above; will be paid by offsetting the amount of the judgment or monetary order or sanction against the inmate's funds in his or her inmate trust account in the following manner:

(a) through (b) No change.

(c) Once the Bureau of Finance and Accounting, Inmate Trust Fund Section, receives the letter and a copy of the judgment or relevant order, a withdrawal from hold will immediately be placed on the inmate's trust account will be processed. A copy of the attorney's letter or the letter from the probation and parole field office and a copy of the judgment or relevant order will be given to the inmate upon his or her request.

(d) If there are sufficient funds in the inmate's trust account to satisfy the amount shown as due or the remaining balance as stated by the attorney, the appropriate Inmate Trust Fund staff officer will promptly cause a check to be issued payable to the claimant "State of Florida" and will send the check to the claimant ~~return the check to the attorney~~. The check will be drawn and credited against funds in the inmate's trust account. ~~At such time, the hold will be released on the inmate's trust account. It will be the attorney's responsibility to see that the check is forwarded to the appropriate state agency or entity.~~

(e) If there are insufficient funds in the inmate's account to satisfy the amount shown as due or the balance remaining as stated by the attorney, a check will be issued payable to the claimant "State of Florida" for the amount contained in the inmate's trust account, and a lien will be established against the inmate's account for the balance due. Each time that the inmate receives funds in his or her account, payment will be disbursed to the claimant State of Florida until the debt is satisfied. The lien hold will remain on the inmate's trust account until sufficient funds have been paid to satisfy the full amount due. If the inmate is released from the custody of the Department before he or she has paid the full amount due, upon the inmate's release a notice will be sent to the attorney or probation and parole office advising the attorney or office of the inmate's release, the inmate's last forwarding address, if known, and the fact that the inmate has not paid the full amount due. A copy of this notice will be placed in the inmate's file.

March 14, 2024

The lien will remain on the inmate account unless the Inmate Trust Fund is notified that the court order has been nullified, the obligation has been paid in full, or the inmate is deceased.

(11) Inmates will be provided a monthly trust account statement reflecting all transactions and activity in the inmate's trust account for the previous month. If an inmate disputes a transaction, or if additional information is needed about a transaction, the inmate must submit Form DC6-236, Inmate Request, no later than sixty days after the date of the first statement on which the disputed item appeared. A Form DC6-236 that disputes a transaction on an inmate's trust fund statement that is received by the Bureau of Finance and Accounting, Inmate Trust Fund Section, beyond the sixty-day period will be denied and returned to the inmate without further action. The Form DC6-236 must provide sufficient detail to allow for auditing. The disputed item will be investigated, and any errors will be corrected promptly. If it takes more than ten working days to resolve the dispute, a written notification of the delay will be provided to the inmate. Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C. ~~Rule 33-103.019, F.A.C.~~

(12) When necessary to meet for meeting state or federal requirements for demonstrating indigence to the courts, and upon presentation of information demonstrating that litigation is pending (e.g., case number (if known), name of court, completed affidavit of indigency) attached to Form DC6-236, an inmate will be provided ~~with~~ a copy of a printout showing his or her trust fund activity for the previous six months ~~upon presentation of information demonstrating that litigation is pending (e.g., case number (if known), name of court, completed affidavit of indigency) attached to Form DC6-236.~~ Application of this provision is limited to ~~those~~ requests that specifically state ~~that~~ a printout is necessary for this purpose. The printout will be provided to the inmate by classification staff at the institution within ten 10 working days of receipt of the request. When necessary to meet time constraints within the court system, the printout will be provided by other available means. Copies will be limited to one per month. Copies will be authorized in accordance with Rule 33-501.302, F.A.C.

Rulemaking Authority 944.09, 944.516, 945.091, 945.215 FS. Law Implemented 17.61, 20.315(12), 57.085, 717.113, 944.09, 944.516, 945.091, 945.215 FS. History--New 1-27-86, Amended 7-16-89, 5-1-90, 3-2-92, 6-2-92, 8-25-92, 10-19-92, 4-13-93, 5-28-96, 6-15-98, Formerly 33-3.018, Amended 5-7-00, 7-13-03, 10-20-03, 1-23-05, 5-12-05, 11-12-06, 9-2-08, 5-26-09, 7-1-13, 3-11-14, 8-15-17, 3-29-22, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Tallent, Chief Financial Officer

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 13, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 27, 2023