

March 28, 2014

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.210 Custody Classification

33-601.602 Community Release Programs

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to include certain offenses that make an inmate ineligible for community status; update definitions relating to community release programs; update ineligibility criteria to specifically exclude murder or homicide type offenses or attempts for placement into a community release program; clarify eligibility criteria regarding refusal to participate in community release programs; clarify ineligibility criteria regarding warrants and detainers; clarify the length of CWA assignment status; update where the Department will not authorize an inmate to work as well as reasons for removal from employment; clarify that the inmate must be present when job checks are conducted; add additional eligibility criteria for placement into a Community-based Therapeutic Program; add clarifying language relating to expected inmate contacts with facility while on community release; clarify an inmate's use and possession of a cell phone; clarify assessment of subsistence for inmates who become unemployed; add liens to list for inmate required disbursement of funds; clarify amounts for weekly and special draws as well as the largest denomination of monies allowed; clarify that the Classification Officer must enter the monetary obligations into OBIS; add additional considerations relating to removal from a community release program; and revise existing forms and add three new forms relating to cell phones, electronic monitoring, and continuation in paid employment respectively.

SUMMARY: To revise eligibility criteria for community status, to revise community release programs, to revise eligibility criteria for community release programs, to clarify an inmate's ability to use cell phones, and to revise forms.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency 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 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: upon review of the proposed changes to these rules and incorporated forms, 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, 945.091, 946.002, 958.09, 958.11 FS

LAW IMPLEMENTED: 20.315, 921.20, 944.09, 944.17(2), 944.1905, 945.091, 946.002, 958.11 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: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.210 Custody Classification.

(1) No change.

(2) Custody Grade Classification.

(a) – (h) No change.

(i) Any inmate who has a current or prior conviction for committing or attempting to commit any of the

following offenses is not eligible for community custody:

1. murder under Section 782.04, F.S.;

2. aggravated manslaughter of an elderly person or disabled adult under Section 782.07(2), F.S.;

3. aggravated manslaughter of a child under Section 782.07(3), F.S.;

4. aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under Section 782.07(4), F.S.;

5. murder of an unborn child under Section 782.09(1), F.S.;

6. attempted murder of a law enforcement officer under Section 784.07(3), F.S.;

7. making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under Section 790.161(4), F.S.; or

8. assisting self-murder under Section 782.08, F.S.

~~(j)(4)~~ Any inmate who has been certified as a mentally disordered sex offender pursuant to Chapter 917, F.S., shall not be assigned to minimum custody status unless he has successfully completed the mentally disordered sex offender program.

~~(k)(4)~~ Any inmate who has been designated as an alien by the department, who has been in the custody of the department less than six months, and:

1. – 3. No change.

~~(l)(4)~~ The following inmates shall not be classified as less than close custody unless approved for assignment to a lower custody by the Chairperson of the State Classification Office as provided in subsection (l) below:

1. – 5. No change.

~~(m)(4)~~ The Chairperson of the State Classification Office may approve an inmate listed in paragraph (k) for lower custody after consideration of the following criteria:

1. – 10. No change.

(n) An inmate may not remain community custody if subsequently found ineligible or inappropriate for community release program participation.

(3) – (4) No change.

Rulemaking Authority 944.09, 958.11 FS. Law Implemented 20.315, 921.20, 944.09, 944.17(2), 944.1905, 958.11 FS. History--New 12-7-81, Formerly 33-6.09, Amended 6-8-82, 10-26-83, 6-8-86, 7-8-86, 10-27-88, 1-1-89, 7-4-89, 10-12-89, 1-2-91, Formerly 33-6.009, Amended 7-21-91, 8-30-92, 5-13-96, 6-12-96, 11-19-96, 10-15-97, Formerly 33-6.0045, Amended 9-19-00, 2-25-07, 11-4-08, 7-4-10, 8-12-12,_____.

33-601.602 Community Release Programs.

(1) Definitions.

(a) Cell Phone - refers to a wireless communication device used to communicate with individuals via air signals and assigned a telephone number with area code.

~~(b)(a)~~ Center Work Assignment (CWA) – The portion of the community release program for inmates which allow placement at a community An inmate assignment to a work release center to assist with the maintenance, food service duties, or assignment on outside work squads while confined at the facility serve in a support capacity.

~~(c)(b)~~ Community Release Program – Any program that allows inmates to work at paid employment or a center

work assignment or to participate in education, training, substance abuse treatment programs, or any other transitional program to facilitate re-entry into the community while in a community work release center, ~~contract~~ community work release facility, or other contract community facility.

~~(d)~~~~(e)~~ Community Work Release (CWR) – The portion of the community release program that allows inmates to work at paid employment in the community while continuing as inmates of the facility where they are confined.

~~(e)~~~~(d)~~ Community Study Release – The portion of the community release program that allows inmates to attend an educational or vocational facility or participate in a training program in the community while continuing as inmates of the facility where they are confined.

~~(f)~~ Community-based Therapeutic Program (CTP) – The portion of the community release program for inmates that provides transitional services which includes substance abuse treatment, educational/vocational services, and self-betterment programs, while in the community, in lieu of placement into community work release (CWR) or center work assignment (CWA).

~~(g)~~~~(e)~~ Community Volunteer Service – An activity that allows inmates housed at a community work release center ~~or contract facility~~ to voluntarily work with a governmental or nonprofit agency in the community.

~~(h)~~ Extenuating Circumstances – Refers to overall positive adjustment, program participation, re-entry needs, length of time served on commitments, length of time served in a community release program, or other relevant classification factors that warrant consideration for placement in a community release program.

~~(i)~~~~(f)~~ Institutional Classification Team (ICT) – For the purposes of this rule, the ICT is the team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or designee. The ICT is responsible for making work, program, housing, and inmate status decisions at a facility and for making other classification recommendations to the State Classification Office (SCO). At private facilities, the Department of Corrections representative is to be considered a fourth member of the ICT when reviewing all job/program assignment, transfer, and custody recommendations/decisions. If a majority decision by the ICT is not possible, the decision of the Department of Corrections representative is final.

~~(j)~~~~(g)~~ Net Earnings – Gross pay less withholding tax, social security deductions, and any legally required court ordered civil deductions.

~~(k)~~~~(h)~~ Non-advanceable date refers to an inmate's release date that is restricted from continuous, monthly gain time awards over the entire length of the sentence, including:

1. – 3. No change.

~~(l)(4)~~ Transition Program (PWR) – The portion of the community release program ~~for that provides~~ inmates that provides transitional services which includes substance abuse treatment, educational/vocational services, and self-betterment programs, while in the community programming and skills necessary for employment and re-entry into their communities prior to placement into being assigned to CWR or CWA.

~~(m)(4)~~ State Classification Office (SCO) – The office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

~~(n)(4)~~ Community ~~Work~~ Release Center – A correctional or contracted facility that houses community custody inmates participating in a community release program.

~~(o)(4)~~ Work Release Inmate Monitoring System (WRIMS) – A web site application used by contract community release facility staff to record information related to an inmate's participation in a community release program.

(2) Eligibility and Ineligibility Criteria.

(a) Participation in a community release program is a privilege, not a guaranteed right of the inmate.

Participation in CWR and CWA is voluntary and the inmate has a right to refuse participation once without adverse actions and may be considered for return participation in CWR or CWA. Placement in PWR and CTP is not voluntary and refusal to participate subjects the inmate to removal and/or disciplinary action in accordance with Rule 33-601.314, F.A.C.

~~(b)(a)~~ An inmate is ineligible for any community release ~~program programs~~ if he has:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under Section 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under Section 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under Section 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under Section 782.07(4), F.S.;

6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under Section 782.09(1), F.S.;

7. Current or prior conviction for attempted murder of a law enforcement officer under Section 784.07(3), F.S.;

8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under Section 790.161(4), F.S.;

9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under Section 782.08, F.S.

10.2. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;

11.3. A current or prior conviction for escape covered by Section 945.092, F.S.;

12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;

13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

(c) In addition to the above, an inmate is ineligible to be considered for community work release (CWR), center work assignment (CWA), or transition (PWR) participation if he has:

1.4. Been terminated from CWR, a CWA, or a ~~PWR transition program~~ for disciplinary reasons during the inmate's current commitment, unless extenuating circumstances exist;

2.5. Been committed to or incarcerated in a state or federal correctional facility four or more times unless extenuating circumstances exist;

3.6. Been found guilty of a ~~any~~ disciplinary report and received disciplinary confinement as a result of the infraction, in the 60 days prior to placement in CWR, CWA, or PWR;

4.7. The inmate was designated as a Mandatory Program Participation inmate (MPP-Y) and rRefused to complete or has an unsatisfactory removal from a substance abuse program that the inmate was required to complete at any point during his current period of incarceration unless the refusal was based upon objections to the religious based content of the program, in which case an alternate non-deity based program will be offered and must be

successfully completed. The removal of an inmate from a program for violation of program or institutional rules or for behavioral management problems constitutes an unsatisfactory removal from a program. The inmate shall remain ineligible until a comparable program is satisfactorily completed;

~~8. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;~~

~~9. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.~~

~~(d)(b)~~ In order to be eligible for consideration for placement in a community release program, an inmate must:

1. No change.

2. Be in Department custody for 60 days and have at least 60 days to serve prior to initial placement in paid employment;

3. When assigned to CWA at a community release center, the inmate will remain in this status for 90 days or until within the timeframe for CWR, whichever in greater unless extenuating circumstances exist;

~~4.3.~~ For inmates with non-advanceable dates, the inmate must be within:

a. 28 months of his earliest release date for PWR ~~the transition program~~, or

b. – c. No change.

~~5.4.~~ For inmates who do not have non-advanceable dates, the inmate must be within:

a. 36 months of his earliest release date for PWR ~~the transition program~~, or

b. – c. No change.

~~6.5.~~ An inmate whose current commitment includes DUI-BUI Manslaughter, 4th DUI-BUI, Felony DUI-BUI, or DUI-BUI with Serious Injury must have successfully completed substance abuse treatment during the current commitment prior to being considered for CWA or CWR placement.

7. Additional eligibility criteria for placement in CTP:

a. The inmate has no less than 6 months or more than 12 months left to serve;

b. Been terminated from CWR, CWA, or PWR for non-violent/non-aggressive disciplinary reasons during the inmate's current commitment;

c. Been terminated from CWR, CWA, or PWR for possession, use, introduction of any controlled substance, alcohol, or aromatic substance;

d. An inmate is eligible for placement in CTP regardless of the number of commitments;

e. An inmate is eligible for CTP placement even if he has been found guilty of any non-violent/non-aggressive disciplinary report in the 60 days prior to placement;

f. The inmate was designated as a Mandatory Program Participation inmate (MPP-Y) and refused to complete, has an unsatisfactory removal from a substance abuse program that the inmate was required to complete at any point during his current period of incarceration unless the refusal was based upon objections to the religious based content of the program, in which case an alternate non-deity based program will be offered and must be successfully completed, or has not had an opportunity to participate in a substance abuse program. The removal of an inmate from a program for violation of program or institutional rules or for behavioral management problems constitutes an unsatisfactory removal from a program;

g. An inmate whose current commitment includes DUI-BUI manslaughter, 4th DUI-BUI, Felony DUI-BUI, or DUI-BUI with Serious Injury, has not completed substance abuse treatment during the current commitment and falls within the timeframe listed in subsection (2)(d)7.a. of this rule.

~~8.6.~~ The Secretary of the Department or his designee, who for the purpose of this subparagraph shall be the Assistant Secretary for Institutions, shall have the authority to place an inmate who is in community custody at a community work release center regardless of time constraints for the purpose of participating in a specialized work detail or program.

~~(e)~~~~(e)~~ If an inmate is otherwise eligible for a community release program, the Department will also consider the following factors to ensure community release placement is appropriate:

1. – 7. No change.

~~(f)~~~~(d)~~ Community release placements will be made to ensure inmates are housed and managed correctly for public safety or the safety of specific individuals.

(3) Placement of Work Release Inmates.

(a) – (b) No change.

(c) Any change to the facility assignment or diversion to another community release program facility must be approved by the SCO. This review will determine that the inmate's needs can be served adequately at a different community work release center.

(d) Inmates who are diverted to a community ~~work~~ release center which they did not request due to lack of bed space at the requested location must be successfully complying with community work release program rules and requirements in order to be considered for transfer from one facility to another.

(4) Inmate Conduct While on Community Release.

(a) During the inmate orientation process, which shall occur within three days of arrival at a community ~~work~~ release center, inmates will be instructed of the following conduct requirements. Upon completion of the orientation program, the inmate shall be given Form DC6-126, Certificate of Orientation. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____. ~~Form DC6-126 is incorporated in subsection (19) of this rule.~~ Inmates are required to:

1. Directly and promptly proceed to and return from their destination using the approved method of transportation and route designated by the correctional officer major or facility director of a contract facility.

Inmates shall contact the facility upon arrival and departure of their destination.

2. No change.

3. Return to the facility to which assigned at the scheduled time. Inmates shall contact the facility prior to their departure from the community release activity.

4. Return to the facility to which assigned immediately if the approved community release activity ceases prior to the end of the scheduled time. Inmates shall contact the facility prior to their departure from the community release activity.

5. – 10. No change.

11. If the primary client focus is children at any employment site, immediately report this to appropriate center staff.

(b) Inmates assigned to a community release program may be subject to electronic monitoring to ensure the safety and security of the public and are required to abide by the Community Release Center Electronic Monitoring Equipment Assignment Rules, Form DC6-199. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____.

~~(c)(b)~~ An inmate with community release privileges shall not operate any motor vehicle of any kind unless previously authorized to do so by the correctional officer major or facility director of a contract facility, and in the event of such authorization, shall operate the specified motor vehicle only for the limited purpose for which authorization was given.

~~(d)(e)~~ Every inmate assigned to a community release facility shall immediately, upon arrival, sign Form DC6-102, Letter of Notice, or the inmate shall be terminated from the program. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____. The inmate shall be furnished a copy of the Letter of Notice and must agree to abide by the conditions of the Letter of Notice. ~~Form DC6-102 is incorporated by reference in subsection (19) of this rule.~~

~~(e)(d)~~ The classification officer or designated contract facility staff shall complete Form DC6-118A, Personalized Program Plan for Community Work Release Centers, on all inmates assigned to the community work release center within 14 days of receipt of the inmate at the center. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____. ~~Form DC6-118A is incorporated by reference in subsection (19) of this rule.~~ The completed personalized program plan shall be signed by the inmate, the inmate's classification officer, and the correctional officer major or the designated contract facility staff and facility director at contract facilities. Once the personalized program plan is signed, it shall be given to the staff member assigned to work with the inmate. Any changes in the personalized program plan shall be discussed with the inmate and shall be documented on Form DC6-118B, Personalized Program Plan – Modification Plan. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 1-18-11. ~~Form DC6-118B is incorporated by reference in subsection (19) of this rule.~~ The inmate's progress towards achieving the goals of the personalized program plan shall be reviewed monthly with the inmate. The outcome of each review shall be documented on Form DC6-118C, Personalized Program Plan – Monthly Progress Review, or shall be entered into WRIMS at those facilities at which the system is operational. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 1-18-11. A copy of the Personalized Program Plan shall be printed and given to the inmate. ~~Form DC6-118C is incorporated by reference in subsection (19) of this rule.~~ Staff are authorized to schedule subsequent progress reviews upon request of the inmate.

~~(f)(e)~~ When the inmate is ready for release, ~~Form DC6-118D, Transition a Release pPlan,~~ shall be completed in order to assist the inmate in his or her release plans or the plan information shall be entered into WRIMS at those facilities at which the system is operational. ~~Form DC6-118D is incorporated by reference in subsection (19) of this rule.~~

(5) Community Study Release.

(a) No change.

(b) Any inmate being considered for community study release shall be currently in a community release center facility and assigned to CWA, CWR, or PWR.

(c) – (g) No change.

(6) Upon identification by the Department, an inmate shall be considered for placement in a CWA, PWR, CTP ~~a transition program,~~ or CWR, providing that the inmate meets all criteria outlined in subsection (2) of this rule.

(a) If the inmate meets all criteria in subsection (2) of this rule, the classification officer will enter a community release recommendation.

(b) The ICT shall review the classification officer's recommendation and recommend approval, ~~or disapproval,~~ or modification.

(c) The ICT recommendation shall be forwarded to the SCO.

(d) The SCO staff member reviewing the ICT recommendation will utilize the criteria in subsection (2) of this rule to determine the appropriateness for the inmate's placement into CWA, CWR, PWR, or CTP ~~a transition program.~~ The SCO staff member shall approve, disapprove, or modify the ICT recommendation.

(e) The classification officer will ensure the inmate is notified of the final decision.

(7) No change.

(8) Employment.

(a) No change.

(b) The Department will not authorize an inmate to work at paid employment if:

1. – 4. No change.

5. The inmate wants to be employed at an establishment where:

a. No change.

b. There is a perception that children without parental supervision visit the establishment frequently; ~~or~~

c. Children are normally dropped off by parents to be supervised by the employment site staff; or-

d. The primary focus of the establishment is the selling or serving of alcohol.

(c) – (d) No change.

(e) If the Department authorizes paid employment for an inmate with a given employer and subsequently receives and verifies information that the inmate is not being treated by the employer in a manner comparable to other employees, or it has been determined that it is not in the best interest of the department, inmate, or public to remain employed with the employer, the correctional officer major or facility director will remove the inmate from such employment with that employer.

(f) The prospective employer shall sign Form DC6-124, Employer's Community Work Agreement. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is _____. ~~Form DC6-124 is incorporated by reference in subsection (19) of this rule.~~ Inmates engaged in paid employment are not considered employees of the state or the Department while engaging in or traveling to and from such employment.

(g) – (h) No change.

(i) Facility personnel shall visit the inmate's place of employment for new employers within the first five days to verify employment. Documentation of on-site employment verification shall be placed in the inmate's file by utilizing Form DC6-125, Employment Contacts, or shall be entered into WRIMS at those facilities at which the system is operational. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 9-2-01. ~~Form DC6-125 is incorporated by reference in subsection (19) of this rule.~~

(j) There shall be a minimum of three employment contacts per inmate per month by facility personnel to substantiate attendance and discuss any problems that may have arisen. If the inmate has multiple part time jobs, the required contacts must be made at each place of employment. Two of the contacts shall be accomplished either through telephone calls or site visits to the inmate's place(s) of employment, and documentation of the contacts shall be made on Form DC6-125, Employment Contacts, or shall be entered into WRIMS at those facilities at which the system is operational. One of the three monthly contacts shall be a personal on-site job check while the inmate is present on the job site. The documentation of the contacts shall be made on Form DC6-125 and placed in the inmate's file or shall be entered into WRIMS at those facilities at which the system is operational for future

reference.

(k) – (l) No change.

(m) All inmates employed in the community shall be in staff custody no later than 12 midnight Eastern Standard Time (EST). Inmates will not be authorized to leave the facility to work in the community between 12 midnight and 5 a.m. EST unless an exception is made. Any exceptions must be reviewed and approved on a case by case basis by the warden over the community work release center. No exceptions will be approved unless it is determined that the risk to the community is minimal, and the earning potential and rehabilitative benefits which the job offers the inmate are substantial.

(9) Clothing and Equipment.

(a) – (g) No change.

(h) Advancement of Funds. The facility director at a contract community work release center, if authorized by contract, shall advance up to \$75.00 to an inmate who needs money for clothing, equipment, tools, transportation or incidental expenses in order to begin working at paid employment. The financial plan for the disbursement of the inmate's earnings, as provided in subsection (11), shall provide for the repayment of any such advancement of monies from the inmate's earnings. If the inmate's employment is terminated or if for any other reason the advancement of monies is not repaid from the inmate's earnings, the advancement of monies remains a personal obligation of the inmate. Disciplinary action pursuant to Rule 33-601.314, F.A.C., shall be initiated to ensure due process for the collection of any unpaid portion of the advancement. All or part of the discharge gratuity as provided in Rule 33-601.502, F.A.C., shall be taken, but only if the Department of Corrections finds that such action will not jeopardize the inmate's ability to transition himself into the community.

(i) Inmates assigned to a Community Release Program are authorized to possess 1 cell phone each to assist these inmates in setting up job interviews, cementing family relationships, and establishing contacts necessary to increase their chances for successful reentry into the community.

1. Possession of a cell phone by an inmate is a privilege that may be forfeited by any inmate who fails to abide by the rules of the department, or otherwise engages in misuse of this privilege. The only inmates that are allowed to possess or use a cell phone are those in one of the following statuses:

a. all inmates assigned to CWR;

b. inmates in the last 90 days of PWR;

c. inmates assigned to CWA who are within 90 days of the CWR timeframes; and

d. inmates assigned to CTP who are within 90 days of release.

2. Inmates may only have non-contract (i.e. pre-paid or “pay-as-you-go”) cell phones. However, nothing in this rule precludes inmates from being added to the calling plans of family members.

3. Inmates are responsible for notifying the correctional officer major, facility director of a contract facility, or designated staff member upon the purchase of a cell phone or changes in cell phone number so that it may be properly recorded in the inmate’s file. Inmates may elect to have the cell phone dropped off subject to subsections (9)(c) and (d) of this rule. Failure to notify staff will result in:

a. the cell phone being deemed contraband and being disposed of per Rule 33-602.203, F.A.C.;

b. disciplinary action being taken per Rule 33-601.314, F.A.C.; and

c. the inmate may be subject to removal from the community release program under section (13) of this rule.

4. The inmate, correctional officer major or facility director of a contract facility, and the designated staff member will acknowledge and sign Form DC6-2075, Cell Phone Rules and Regulations, Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is _____. Refusal by the inmate to agree to the terms and conditions and sign same will result in the cell phone being deemed contraband and being disposed of per Rule 33-602.203, F.A.C. and may result in disciplinary action and/or termination.

5. Upon acknowledgement of the DC6-2075 by the inmate, staff will:

a. add the cell phone to the inmate’s Inmate Personal Property List, Form DC6-224 denoting the make, model, serial number, and associated phone number. Form DC6-224 is incorporated in Rule 33-602.221, F.A.C. This information will also be entered into WRIMS; and

b. inventory on the inmate’s DC6-224 the pre-purchased, pre-addressed, pre-postage paid bubble wrapped envelope that is to be purchased at the time of the cell phone purchase. The envelope will be used by staff to mail the cell phone in the event it becomes necessary upon termination, etc.

6. Inmates are personally and solely responsible for the care and security of their cell phones. The Department and/or contract provider assumes no responsibility for theft, loss, damage, or vandalism to inmate cell phones, or the unauthorized use of such devices. In the event that a cell phone is damaged or destroyed by department and/or

contract facility staff during a routine search, emergency search or while impounded, the warden or her/his designee shall cause an investigation to be made and action taken in accordance with Rule 33-602.203, F.A.C.

7. All cell phones on the property of the community release center or in an inmate's possession are subject to search at any time or for any reason in accordance with Rules 33-602.203 and 33-602.204, F.A.C.

8. Use of the cell phone in any manner contrary to local, state or federal laws, telephone company regulations, or department or institution rules or regulations constitutes misuse and will be dealt with by the Department according to Rule 33-601.314, F.A.C. and applicable law.

9. An inmate shall not contact by telephone any Central Office or other departmental staff, except those staff assigned to the community release center in which the inmate is assigned, or any person who has advised the warden's office, the correctional officer major or facility director of a contract facility that he does not wish to receive telephone calls from the inmate. Once the inmate is notified of this restriction, any further attempt to communicate by telephone will be considered a violation of this rule and will subject the inmate to disciplinary action and/or termination from the community release program.

10. Upon termination or removal from the community release program, the cell phone will be mailed to a predetermined family member or individual in the pre-addressed, pre-postage paid bubble wrapped envelope purchased in advance for this purpose. Cell phones will not be packed as inmate property. Staff will check the cell phone to ensure the SIM card is present and seal the envelope in the presence of the inmate prior to transport. However, if the cell phone has been deemed contraband / evidence and will be used in court or disciplinary proceedings, it will be retained and disposed of as provided in Rule 33-602.203(8), F.A.C.

(10) Transportation.

(a) Transportation for inmates engaged in community release programs shall be by the following means and be approved by the major or contract facility director:

1. – 2. No change.

3. Transportation provided by a family ~~members member~~ or an approved ~~sponsors sponsor~~ as defined in Rule 33-601.603, F.A.C.;

4. – 5. No change.

6. Center provided transportation at contract ~~community work~~ release ~~centers facilities~~ only.

(b) Contract ~~Community Work~~ Release ~~Centers Facilities~~:

1. Contract ~~community work release centers facilities~~ are authorized to assess a transportation fee from community release inmates not to exceed \$3.00 each way for transportation provided by the contract work release center except as provided in subparagraph (b)3. below.

2. Inmates will utilize transportation authorized in paragraph (10)(a) of this rule, unless the warden over the ~~community work release center~~ determines for public safety reasons another means of transportation is necessary.

3. Such facilities shall provide, at no cost to the Department or the inmate, transportation ~~within the community~~ for medical or mental health services, religious services (if not provided at the ~~community work release center~~), attendance at substance abuse group meetings, or for shopping.

(c) In order to ensure that inmates are not working long distances from the center, the warden over the ~~community work release center~~ shall establish maximum boundaries for employment sites by center geographic location. The maximum boundaries shall not exceed two hours travel time to the employment site from the facility unless an exception has been granted. Any exceptions must be reviewed and approved on a case by case basis by the warden over the ~~community work release center~~, who shall assess whether the rehabilitative benefit to the inmate outweighs risks to public safety.

(11) Disbursement of Earnings.

(a) – (f) No change.

(g) An inmate who has been gainfully employed and becomes unemployed through no fault of the inmate's action for any reason shall continue to be assessed for subsistence at the rate of \$6.00 per day to the limit of funds available. If an inmate becomes unemployed through his actions, he shall continue to be assessed for subsistence to the limit of the funds available. Absent earnings to compute the subsistence deduction, the assessment will be made at the same per diem level as was deducted from the inmate's last regular wages.

(h) No change.

(i) While in paid employment status, the inmate shall be responsible for reimbursing the Department for costs associated with the following:

1. – 2.

~~3. Transportation costs at contract work release facilities as stipulated by the vendor contract, but not to exceed three dollars (\$3.00) each way.~~

(j) – (k) No change.

(l) An inmate is permitted to draw up to \$100.00 from his account each week, provided the inmate has sufficient funds, it is in accordance with the inmate's financial/budget section of his personalized program plan, and the draw is not taken from the savings required by paragraph (11)(c) above. The largest denomination of monies allowed is a five dollar bill.

(m) Any requests for special withdrawal shall be made in accordance with paragraph (3)(a) of Rule 33-203.201, F.A.C. The amount of such requests will be limited to no more than ~~60%~~ 40% of funds available in the inmate's trust fund account. Special withdrawal requests are limited to one per month unless an emergency arises, such as a sudden change of employment requiring the purchase of appropriate tools, clothing, or equipment. Emergency special withdrawal requests will be evaluated and approved or disapproved by the major or contract facility director to ensure that the withdrawal is emergent in nature.

(12) Restitution.

(a) Unless there exist reasons not to order restitution, the Department shall require inmates working at paid employment, under the provision of Section 945.091, F.S., to provide restitution to an aggrieved party for the damage or loss caused as a result of a prior or current offense of the inmate. For purposes of this rule, fines, court costs, liens, and court ordered payments shall be treated in the same manner as restitution.

(b) – (d) No change.

(e) Restitution requirements shall be recorded on Form DC6-123, Monetary Reimbursement Agreement, and current commitment(s) obligations are to be entered in OBIS by the classification officer. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____. ~~Form DC6-123 is incorporated by reference in subsection (19) of this rule.~~

(13) Reasons for Removal from a Community Release Program. An inmate may be removed from a CWA, PWR, CTP ~~a transition program~~, or from CWR for any of the following reasons:

(a) – (c) No change.

(d) If assigned to CWR, f~~Failure to obtain lawful employment within 60 days of placement will be cause for review by center department staff utilizing Form DC6-198, Continuation in Paid Employment Evaluation, for determination of continued participation in a community release program. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is ____.~~

(14) Process for Removal from a Community Release Program.

(a) When an inmate is removed from a community release CWA, ~~a transition program, or from CWR~~ for negative behavior or unsuccessful participation in the program and placed in a secure facility, the inmate shall be recommended for termination from the program by his classification officer.

(b) – (d) No change.

(e) Upon removal from CWA, PWR, or CWR, the inmate can be considered for placement in CTP following the process as outlined in subsection (7) of this rule.

(f) Inmates in CWR are required to pay for their medical and dental expenses. If unable to afford these expenses, the inmate may be removed from the center and re-evaluated for appropriateness to remain at the center.

(15) No change.

(16) Citizen Committees. The correctional officer major or facility director of a community work release center ~~or facility director of a contract facility~~ shall establish committees of volunteer citizens in the various communities of the state to assist the Department by:

(a) Aiding in the development of suitable employment in the community for those inmates who have been approved for participation in the community ~~work~~ release program.

(b) – (d) No change.

(e) Adding or establishing linkages between the community release ~~correctional~~ center and the community.

(17) Program Facilities.

(a) The Department is authorized to utilize any facility, including a contract facility, under its jurisdiction to provide community ~~work~~ release programs to inmates.

(b) Inmates participating in community release programs will be housed in a community work release center ~~or contract facility~~.

(c) No change.

(18) Records Required. The Department shall keep a record of the following:

(a) – (d) No change.

(19) Forms. ~~The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.~~

~~(a) DC6-123, Monetary Reimbursement Agreement, effective 9-2-01.~~

- ~~(b) DC6 124, Employer's Community Work Agreement, effective 3-14-01.~~
- ~~(c) DC6 125, Employment Contacts, effective 9-2-01.~~
- ~~(d) DC6 126, Certificate of Orientation, effective 9-2-01.~~
- ~~(e) DC6 118A, Personalized Program Plan for Work Release Centers, effective 1-18-11.~~
- ~~(f) DC6 118B, Personalized Program Plan — Modification Plan, effective 1-18-11.~~
- ~~(g) DC6 118C, Personalized Program Plan Progress Review, effective 1-18-11.~~
- ~~(h) DC6 118D, Transition Release Plan, effective 1-18-11.~~
- ~~(i) DC6 102, Letter of Notice, effective 1-18-11.~~

Rulemaking Authority 945.091, 946.002, 958.09 FS. Law Implemented 945.091, 946.002 FS. History—New 12-7-97, Amended 4-13-98, 10-20-98, Formerly 33-9.023, Amended 3-14-01, 9-2-01, 10-27-03, 3-2-04, 10-28-04, 2-7-05, 2-22-07, 7-17-07, 4-10-08, 9-30-08, 1-18-11, 3-6-14,_____.

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: March 27, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: March 13, 2014