

April 10, 2020

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.260

RULE TITLE: Administrative Management Units

PURPOSE AND EFFECT: To established administrative management units within the Department of Corrections.

SUMMARY: Rulemaking is necessary to create administrative management units within the Department of Corrections, and to establish the criteria for the assignment of inmates to, the transfer of inmates from, and the management of privileges for inmates assigned to these specialized, highly structured, general population housing locations.

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 the 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 F.S.

LAW IMPLEMENTED: 944.17, 944.1905, 944.801 F.S.

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: Paul A. Vazquez, Assistant

General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.260 Administrative Management Units.

(1) Definitions.

(a) Administrative Management Unit (AMU) – where used herein, refers to a general population housing status where an inmate is placed in a highly structured environment to promote the safety and security of inmates, staff, and the public, or the security and good order of an institution. Placement in an AMU is the consequence of an inmate’s inability to live within an institutionalized setting without abusing the rights and privileges of others by committing, or instigating others to commit, violent, disruptive, predatory, or riotous actions, or an inmate’s behavior that poses a threat to the security of an institution. The Secretary will designate the institutions where AMU inmates will be housed based on the needs of the Department.

(b) Institution – where used herein, refers to all state correctional institutions as defined in s. 944.02, F.S., and all private correctional facilities as defined in s. 944.710, F.S.

(c) Institutional Classification Team (ICT) – where used herein, refers to a team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or as designated by rule. The ICT is responsible for making work, program, housing, and inmate status decisions at an institution, and for making other classification recommendations to the State Classification Office.

(d) Institutional Classification Team Docket – where used herein, refers to the official record of an ICT hearing.

(e) Negative Transfer – where used herein, refers to an inmate transfer that is the result of the inmate’s negative behavior that has been documented and verified.

(f) Offender Based Information System (OBIS) – where used herein, refers to the Department’s computer-based offender database system that is utilized to organize and store security, classification, program, and other inmate and offender information.

(g) Review – where used herein, refers to the evaluation of all available relevant information concerning an inmate’s behavior to determine if he or she should be placed in an AMU, or whether any changes to the inmate’s placement status are required or recommended.

(h) Security Threat Group (STG) – where used herein, refers to a formal or informal ongoing inmate or offender group, gang, organization, or association consisting of three or more members who have:

1. A common name or common identifying signs, colors, or symbols;

2. Members or associates who individually or collectively engage in or have engaged in a pattern of gang activity, criminal activity, or Department rule violations; or

3. The potential to act in concert to pose a threat or potential threat to the public, staff, visitors, other inmates or offenders, or the secure and orderly operations of an institution, probation office, other Department property, or Department activity or function.

(i) State Classification Office (SCO) – the office or office staff at the central office level that is responsible for the review of inmate classification decisions, including the placement of an inmate into or the removal of an inmate from an AMU.

(2) Inmates assigned to an AMU are general population inmates and, unless otherwise restricted pursuant to this rule, have access to the same privileges and are subject to the same restrictions as other general population inmates.

(3) Any of the following acts by an inmate will result in the inmate being considered for placement in an AMU:

(a) A documented history of disciplinary action or institutional maladjustment reflecting an inmate's inability to live in the general inmate population without disrupting the operation of the institution;

(b) Participation in a predatory or aggressive act against another person using force or intimidation;

(c) Two or more disciplinary reports for possession of unauthorized drugs or testing positive for drugs;

(d) Possession of negotiables, escape paraphernalia, or other items that present a threat to the safe and secure operation of an institution;

(e) Participation in a riot, strike, mutinous act, or disturbance;

(f) Release from close management followed by two or more negative transfers within a two-year period following release;

(g) Placement in disciplinary confinement for a cumulative total that is equal to or greater than 180 days during any 36-month period;

(h) Two or more negative transfers within a one-year period;

(i) Participation in any documented STG-related activity that causes disruption in the operation of an institution;

(j) Documented leadership of an STG and participation in any documented STG-related activity.

(4) Procedures for Placement in an AMU.

(a) When an inmate demonstrates an inability to live within an institutionalized setting without abusing the rights and privileges of others by committing, or instigating others to commit violent, disruptive, predatory, or riotous actions, or behaves in a way that poses a serious threat to the security of an institution, the inmate will be placed in administrative confinement pending a review for possible placement in an AMU.

(b) When an inmate housed in a confinement unit demonstrates an inability to live within an institutionalized setting without abusing the rights and privileges of others by committing, or instigating others to commit violent, disruptive, predatory, or riotous actions, or behaves in a way that poses a serious threat to the security of an institution, the inmate will remain housed in his or her current confinement unit pending a review for possible placement in an AMU.

(c) Prior to a review for placement in an AMU, the classification officer at the institution housing the inmate must complete Section I of Form DC6-233D, Report of Administrative Management Unit. Form DC6-233D is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of the form is XX/XX. Upon completion of Section I, the classification officer will forward Form DC6-233D to his or her classification supervisor. The classification officer will ensure that the inmate receives a copy of Form DC6-233D to allow the inmate to prepare for the AMU review. The staff member delivering the copy of Form DC6-233D to the inmate must document on the form that the inmate was informed of the allotted time to prepare for the AMU review. The inmate will have a minimum of 48 hours to prepare for the AMU review unless the time is waived by the inmate by completing an Administrative Management Waiver, Form DC6-265D. Form DC6-265D is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of the form is XX/XX.

(d) Upon receiving the completed Form DC6-233D, the classification supervisor will submit the case for placement on the ICT docket.

(e) The ICT will evaluate the recommendation for AMU placement, interview the inmate being reviewed, and consider all information provided by the inmate. The inmate may present information verbally or in writing for consideration by the ICT. The ICT must ensure that the inmate was given a minimum of 48 hours to prepare for the review unless waived by the inmate. The ICT must document on Form DC6-233D that the inmate was allowed 48

hours to prepare for the review or that the time was waived by the inmate completing Form DC6-265D. The ICT must inquire whether the inmate needs staff assistance during the review. A staff member will be assigned to assist an inmate when the team determines that the inmate is illiterate, does not understand English, has a disability that would likely hinder the inmate's ability to properly represent himself or herself, or when the complexity of the issues makes it unlikely that the inmate will be able to properly represent himself or herself. Assistance can also be provided at the inmate's request. In the event a staff member is assigned to assist the inmate, it is the responsibility of the staff member to explain the recommendation for AMU placement and the review process to the inmate. Even though the staff member will be authorized to assist an inmate during the review and aid the inmate in presenting his or her position, the staff assistant must not take the position of an advocate or defense attorney for the inmate. The ICT is authorized to postpone the review to allow an inmate additional time to prepare. If the review is postponed, the team must document the postponement on Form DC6-233D. The inmate may appear at the AMU review unless he or she is disruptive either before or during the review, impedes the process of the review, or waives his or her right to be present at the review. If the inmate waives his or her right to be present at the review, Form DC6-265D must be completed. If the inmate is precluded from attending the review, is removed from the review, or waives his or her right to appear at the review, the review will be conducted without the inmate present. The presence, removal, or absence of the inmate will be documented on Form DC6-233D. After the interview and review of all relevant information, the ICT will make an AMU placement recommendation and provide it to the SCO. This recommendation will be documented on Form DC6-233D. The ICT will inform the inmate of the basis for its decision and provide a copy of its decision to the inmate after the conclusion of its review. The ICT classification member will ensure that the results of the ICT review are entered in OBIS.

(f) The SCO will consider the recommendations of the ICT and all information reviewed by the ICT before making a final decision regarding the inmate's placement in an AMU. As part of its review, the SCO may interview the inmate or rely on the documentation available in OBIS. The SCO may request that the ICT obtain and submit additional information before reaching a final decision. At the conclusion of its review, the SCO will approve or disapprove the ICT's recommendation. If the ICT's recommendation is disapproved, the inmate will be informed of the decision in writing by the SCO. Inmate notification will not be required when the SCO approves the ICT's recommendation. After its review is complete, the SCO will document its final decision in OBIS.

(5) Transfer of Inmates to an AMU.

(a) If an inmate is being reviewed for placement in an AMU, the inmate will remain in administrative confinement or in his or her current confinement status pending the final decision of the SCO. If the inmate's disciplinary confinement status expires before a final decision is made, the inmate will be placed in administrative confinement until a final decision is made by the SCO.

(b) If the ICT's AMU placement recommendation is approved, the SCO will notify population management to initiate the transfer of the inmate to an appropriate AMU.

(c) If the ICT's AMU placement recommendation is disapproved, the SCO will determine whether the inmate should be transferred for other management reasons. The SCO will document its decision in OBIS. If a transfer is approved, the SCO will notify population management to initiate the transfer of the inmate to an appropriate institution.

(6) Transfer of Inmates While in an AMU.

(a) Special reviews conducted pursuant to Rule 33-601.211, F.A.C., involving inmates housed in an AMU will be resolved within the AMU. Unless exceptional circumstances exist, inmates will not be transferred from an AMU due to a special review.

(b) A recommendation by the ICT to transfer an inmate in an AMU to close management will be conducted pursuant to Rule 33-601.800, F.A.C. If the ICT's placement recommendation is approved, the SCO will document its decision in OBIS and notify population management to initiate the transfer of the inmate to an appropriate close management unit. If the ICT's placement recommendation is disapproved, the SCO will provide written notification to the ICT of its decision to not transfer the inmate.

(c) If an inmate is transferred to a close management unit from an AMU, the inmate will be reviewed for return to an AMU upon release from close management status.

(7) Privilege Restrictions While Housed in an AMU.

(a) Visitation – Unless otherwise restricted pursuant to Rule 33-601.731, F.A.C., an inmate housed in an AMU is eligible to receive one two-hour personal visit every 14 days provided the inmate has no major rule violations during the 14-day period. Visiting will be restricted by the warden or his or her designee when it is determined that a threat to institutional security would be created by allowing visitation due to limitations associated with the visiting area or visitation supervision. Attorney visits will be permitted in accordance with Rule 33-601.711, F.A.C., and will

not be restricted except when it is determined that the visit would be a threat to the safety or security of the institution.

(b) Canteen – An inmate housed in an AMU will be permitted to make canteen purchases in an amount up to \$35 once each week provided the inmate has no major rule violations during that period unless otherwise restricted by disciplinary action.

(8) Review of Inmate's Housed in AMU.

(a) A classification officer will review the placement of each inmate housed in an AMU no less than annually. For this review, the classification officer will interview the inmate and prepare a formal assessment and evaluation on Form DC6-233D. The assessment must include a brief paragraph detailing the original basis for the inmate's AMU status, the inmate's behavior and activities during the review period, and whether the inmate should be removed from or remain housed in the AMU. The classification officer must document any disciplinary reports, and the inmate's institutional adjustment, program participation, and job performance. The case will be forwarded to the classification supervisor who will submit the case for placement on the ICT docket.

(b) The purpose of the ICT review is to determine whether the inmate should remain housed in the AMU due to safety and security concerns. The ICT will evaluate the DC6-233D prepared by the classification officer, as well as any other relevant information relating to staff and inmate safety and institutional security. The inmate will be present for the review unless disruptive behavior is exhibited before or during the review that impedes the process, or the inmate waives the right to be present at the review by completing Form DC6-265D. The presence, absence, or removal of the inmate will be documented on Form DC6-233D. For this review, the ICT will consist of the warden or assistant warden, classification supervisor, and chief of security only. For an inmate to remain in an AMU, the ICT must state those safety and security issues or circumstances that can only be met by the inmate's continued placement in the AMU. The recommendation of the ICT will be documented on Form DC6-233D, recorded in OBIS, and forwarded to the SCO.

(c) The SCO will review the ICT's recommendation and all relevant information provided by the ICT concerning the inmate's AMU status. If the SCO determines that no safety or security concerns exist that justify the inmate's continued placement in an AMU, the inmate will be transferred out of the AMU. In such case, the SCO will notify population management to initiate the transfer of the inmate out of the AMU. For an inmate to remain in an AMU, the SCO must determine that based on all available relevant information, there are safety or security

concerns that warrant maintaining the inmate in the AMU. The SCO's decision must be documented on Form DC6-233D and recorded in OBIS. The SCO will advise the inmate of its decision.

Rulemaking Authority 944.09 FS. Law Implemented 944.17, 944.1905, 944.801 FS. History–New XX-XX-XX.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 1, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: March 25, 2020