

May 5, 2017

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-203.201 Inmate Trust Fund

PURPOSE AND EFFECT: The purpose and effect of the amendment is to enhance internal controls to detect and aid in the prevention of fraudulent use of an inmate’s trust fund account. Additionally, the amendment makes clarifications to the Rule in several areas and implements several design changes to Form DC2-363.

SUMMARY: The proposed rulemaking deletes obsolete language in regards to depositing interest earned on the Inmate Trust Checking Account and removes language to reflect that inmates no longer have the option to receive cash upon their release for travel and related expenses. Additionally, language is added to enhance internal controls to detect and aid in the prevention of fraudulent use of inmate trust fund accounts and make clarifications throughout the Rule. Several design changes have been made to Form DC2-363 as well.

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, 944.151, 944.516, 945.091, 945.215 FS

LAW IMPLEMENTED: 17.61, 20.315(12), 57.085, 717.113, 944.09, 944.151, 944.516, 945.091, 945.215 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: Gregory Hill, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-203.201 Inmate Trust Fund.

(1) The following are the policies of the department with respect to money received for the personal use or benefit of inmates:

(a) through (e) No change

~~(f) Interest earned on these investments and on the central Inmate Trust Fund Checking Account or any local accounts shall be deposited to the General Revenue Fund.~~

~~(f)(g)~~ An inmate's right to establish an account with a private financial institution does not in any way diminish the provisions of paragraph 33-602.203(5)(a), F.A.C., Control of Contraband, which limits and controls the amount of money an inmate may have in his possession or Rule 33-602.201, F.A.C., Inmate Property, which does not allow inmates to possess checks, credit cards, debit cards, or other negotiables.

~~(g)(h)~~ Pursuant to Section 944.516, F.S., each inmate shall be charged an administrative processing fee of no more than \$6.00 per month for banking services. The fee shall be based upon account activity for the month. An inmate whose account has no activity for the month shall not be assessed a fee for that month. Inmates shall be charged one percent of their total weekly canteen purchases and \$0.50 for each deposit. Inmates housed at Community Work Release Centers (CRC's) ~~(WRC's)~~ will be assessed a \$1.00 fee for each weekly cash draw. These fees are waived for Veterans of the United States Armed Forces who notify and provide documentation to the department that they have received an honorable discharge from military services ~~been honorably discharged~~.

(h) In an effort to detect and aid in the prevention of the fraudulent use of an inmate's trust fund account, the Department will conduct monthly reviews of inmate trust fund transactions. Suspicious activity will be reported to the Office of the Inspector General for further review.

(i) The Department may place a hold or freeze on an inmate's trust fund account at the request of a law enforcement agency due to an active investigation. The hold or freeze will remain until the Department receives notice to remove it.

(2)(a) All monies from family and friends (cashiers checks, money orders, or certified bank drafts only; no

cash or personal checks allowed) 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, ~~Office of Research, Planning and Support Services~~, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of this form is _____

3-14. Funds must be mailed with the completed Form DC2-363, Money Order Deposit Form For Inmate Deposits, and made payable to vendor listed on Form DC2-363 and include the inmate's name and DC number. Funds will become available for the inmate's use within ten working days after receipt by the vendor, ~~listed on Form DC2-363~~. Every effort shall be made to have funds available sooner. ~~Any money order, cashiers check, or certified bank draft in the amount of \$400 or higher posted to an inmate's account will have a ten day hold placed on the funds. After ten days the funds will be available for the inmate's use.~~ Deposits 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. Do not include any letters or notes with your payments, these will be discarded. All other types of payments such as U.S. Treasury Checks, transfers from Private Facilities/County Jails, and business checks should continue to 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. Any money order, cashiers check, business check or certified bank draft in the amount of \$400 or higher posted to an inmate's account will have a ten day hold placed on the funds. On the tenth day the funds will be available for the inmate's use. Deposits processed through the contracted vendor, checks from the State of Florida, U.S. Treasury Checks, transfer checks from contracted facilities and county jails, and work release paychecks are exempt from the 10 day hold.

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

(c) through (d) No change.

(3)(a) Inmates with sufficient balances in their individual Inmate Trust Fund accounts shall be allowed to spend an amount set by the Secretary not to exceed \$100 a week at the institution's canteen for personal use. Inmates on work release with sufficient balances in their individual Inmate Trust Fund accounts shall be allowed to request a weekly draw set by the Secretary not to exceed \$100 to be expended for personal use. In order to request a expenditure of funds in excess of the authorized canteen limit or weekly draw, the inmate shall complete Form DC2-304, Inmate Trust Fund Special Withdrawal. Form DC2-304 is hereby incorporated by reference. This form may be obtained from any institution or facility or from the Forms Control Administrator, ~~Office of Research, Planning and Support Services~~, Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is September 2, 2008. If the withdrawal is for the purpose of making a deposit to a personal account with a private financial institution in the inmate's name, the check drawn upon the Inmate Trust Fund shall be made payable to the private financial institution which has been chosen by the inmate, with the inmate as a reference, and shall be mailed to the private financial institution. If an inmate requests a copy of a cancelled check or requests to stop payment on a check, the inmate shall be responsible for the fees charged to process these transactions. Requests for special withdrawals submitted without the required signatures or on other than the approved form will be returned to the inmate without processing. Inmates wishing to send funds to inmates at other institutions must obtain approval from the wardens at both institutions.

(b) No change.

(4) No change.

(5) When an inmate is released from the control of the Department, and his or her inmate trust account balance exceeds \$1.00, the inmate's balance in the Inmate Trust Fund at the time of discharge shall be downloaded to the inmate's release gratuity debit card or mailed by check by the Bureau of Finance and Accounting, Inmate Trust Fund Section, within 45 days of the inmate's release to the address provided by the inmate during the release process. However, if deposits of checks, money orders or other negotiable instruments have been made to the inmate's account but have not cleared the account of the payer by the time the inmate is discharged, funds equal to the amount of the uncleared deposits shall be retained in the inmate's trust fund account. Immediately after the deposits have cleared, the balance due the inmate shall be downloaded to the

inmate's release gratuity debit card or mailed by check forwarded by mail to the inmate. Inmates being released will be provided with ~~cash or~~ a debit card for travel and related expenses. For inmates who meet eligibility requirements set forth in Rule 33-601.502, F.A.C., this money shall be in the form of a discharge gratuity. For inmates who are not eligible for discharge gratuities, a hold will be placed on the inmate's trust account and any remaining account balance shall be forwarded as indicated above. Pursuant to Section 717.113, F.S., in the event that funds are unclaimed after a period of one year, the balance shall escheat to the state as unclaimed funds held by a government agency.

(6) through (11) No change.

(12) When necessary for meeting state or federal requirements for demonstrating indigence to the courts, inmates shall be provided with copies of printouts of their trust fund activity for the previous six months upon presentation of information demonstrating litigation – case number (if known), court, completed affidavit of indigency – attached to an inmate request. Application of this provision is limited to those requests which specifically state that the printouts are necessary for this purpose. The printout shall be provided to the inmate by the Bureau of ~~Classification Finance and Accounting, Inmate Trust Fund Section~~, within 10 working days of receipt of the request. When necessary to meet time constraints within the court system, the printout shall be provided by other means available. Copies will be limited to one per month. Copies shall be authorized in accordance with Rule 33-501.302, F.A.C.

Rulemaking Authority 944.09, 944.151, 944.516, 945.091, 945.215 FS. Law Implemented 17.61, 20.315(12), 57.085, 717.113, 944.09, 944.151, 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, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kim Banks, Chief Financial Officer

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 20, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: January 27, 2017

