

May 18, 2018

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-603.201 Transfer of Inmates

PURPOSE AND EFFECT: The rule is being amended to implement legislative changes contained in 2017-031 (HB1201) related to private transport personnel training curriculum and deletion of language related to Florida-based transport company employment of individuals based outside the state.

SUMMARY: Rulemaking was initiated to reflect the change of qualifications for private transport companies who provide inmate transfer transportation and to clarify driver and motor vehicle licensure issues to reflect the application of Florida law for those individuals residing in the state and other state laws for those residing outside the state of Florida.

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: 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, provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, FS.

LAW IMPLEMENTED: 944.597FS.

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:

33-603.201 Transfer of Inmates.

(1) - (3) No changes.

(4) The transfer officer shall be responsible for maintaining schedules approved by the Bureau of Security Operations, Population Management Sentence Structure and Transportation, supervising and instructing additional personnel assigned, guarding inmates, maintaining order and discipline and ensuring the secure and safe custody of inmates being transferred.

(5) - (8) No changes.

(9) In transferring any death row, close management, or disciplinary confinement inmate, or any inmate determined by the Chief of Security to be a high-risk inmate, the following shall be required:

(a) Communication between the two vehicles is essential and is required between both vehicles and the home station.

(b) Specific written instructions will be provided from the transportation section of the Bureau of Security Operations, Population Management Sentence Structure and Transportation.

(10) - (16) No changes.

(17) Transfer by Commercial Airlines. Transfers via airlines shall be coordinated by the Bureau of Security Operations, Population Management Sentence Structure and Transportation. The Bureau of Security Operations, Population Management Sentence Structure and Transportation shall maintain liaison with the airlines and formulate standard operating procedures in accordance with Federal Aviation Agency and airline regulations.

(18) Private Transport Companies. The Department is authorized to contract with private transport companies for the transfer of prisoners both within the beyond the limits of this state. In addition to the provisions found in section 944.597, Florida Statutes, the following contractual requirements are also applicable to private transport companies:

~~(a) The transport company shall take the prisoner into custody for the purpose of transferring the prisoner to the proper law enforcement official within or beyond the limits of this state.~~

~~(b) The Department shall include, but not be limited to, the following requirements in any contract with a private transport company:~~

~~1. Any private transport company transferring an inmate shall be considered an independent contractor and shall be solely liable for the inmate while he is in the custody of that company.~~

~~2. The transport company shall maintain adequate liability coverage with respect to the transferring of inmates.~~

~~3. Personnel employed with the transport company who are based in Florida shall meet the minimum standards of a correctional or law enforcement officer in accordance with Chapter 943.13, Florida Statutes. Personnel who are based outside Florida shall meet the minimum standards of a correctional officer or law enforcement officer in the state where the employee is based.~~

~~(a)4. Transfer officers whose driver's license is issued by the state of who are based in Florida shall comply with the licensure provisions specific requirements contained in Chapter 322 346, Florida Statutes. Transfer officers whose driver's license is issued by another state who are based outside of Florida shall comply with the licensure provisions legal driving requirements of that the state in which they are based.~~

~~(b)5. Each motor transfer vehicle registered and licensed operated by a the transport company in the state of Florida shall comply with the provisions of Chapter 320, Florida Statutes (Motor Vehicle Licenses) and Chapter 324, Florida Statutes (Financial Responsibility) must be maintained in a condition meeting the specific requirements of Chapter 316, Florida Statutes, and be mechanically safe to transfer inmates. Transfer vehicles used outside the State of Florida must be maintained in a condition meeting the specific requirements of that state. Each motor vehicle registered and licensed by a transport company in another state shall comply with the applicable motor vehicle licensure and financial responsibility laws of that state. Every motor vehicle operated by a transport company for the transfer of inmates shall comply with all inspection and safety requirements of the state where the vehicle is registered. Each motor vehicle operated for the purpose of transporting inmates shall be routinely inspected by the operator, maintained, and mechanicalsafe for the transfer~~

~~6. The transport company shall adhere to standards which provide for humane treatment of inmates while in the custody of that company.~~

~~(c)7. The transport company shall submit reports to the Department regarding incidents of escape, use of force, abuse, and accidents involving inmates in the custody of the transport company within 24 hours of the incident. Failure to report incidents, falsification of reports, coercing or attempting to coerce others not to report or to falsify reports may result in appropriate criminal penalties and cancellation of the contract.~~

~~8. The transport company shall hold a Class "B" license pursuant to Chapter 493, Florida Statutes, and any employee of the company shall hold a Class "D" and Class "G" license pursuant to Chapter 493, Florida Statutes.~~

~~(d)9. Correctional administrators will refuse to release death row, close custody, or other high-risk inmates to a private transport company or other law enforcement agencies that do not have an armed officer assigned or who do not provide a secure vehicle for transport. In these situations, the institution will:~~

~~1a. Refuse to release the inmate and advise the transport company or law enforcement officer to stand by.~~

2b. Contact the Population Management section of the Bureau of Security Operations ~~Sentence Structure and Transportation~~ during normal working hours.

3e. On weekends, holidays, or after normal working hours, contact the Emergency Action Center which will notify appropriate central office staff.

4d. Population Management staff will contact the on duty supervisor for the private transport agency or law enforcement agency involved and advise him or her of the specific concern. This will be documented and the results of this contact relayed to the involved institutional staff providing specific directions regarding release.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—New 7-12-86, Amended 5-21-92, 1-6-94, 2-12-97, 11-8-98, Formerly 33-7.009, Amended 8-28-01, 3-27-08, _____.

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

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 7, 2018

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 30, 2017