

33-601.830 Death Row.

(1) Definitions.

(a) Death Row – The single-cell special housing status of an inmate who, upon conviction or adjudication of guilt of a capital felony, has been sentenced to death. Death row housing cells shall be separate from general population housing.

(b) Death Warrant Phases – The three stages of death row housing status that occur after an inmate's death warrant has been signed by the Governor. The three stages are as follows:

1. Phase I begins when an execution date is set.

2. Phase II begins at 8:00 a.m. seven calendar days prior to an inmate's set execution date.

3. Phase III refers to the status of an inmate whose death warrant has been signed by the Governor, but who does not have an execution date due to a stay. Phase III inmates have the same privileges as all other death row inmates except as otherwise provided in this rule.

(c) Institutional Classification Team (ICT) – 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 designated by rule. The ICT is responsible for making inmate status decisions and for making other classification recommendations to the state classification office, regional director, and warden. At private facilities, the Department's 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's representative is final.

(d) Lewd or Lascivious Exhibition – an inmate commits a lewd or lascivious exhibition when the inmate does any of the following in the presence of a person who is not in the custody of the Department:

1. Intentionally masturbates;

2. Intentionally exposes the genitals without authorization; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.

(e) Major Rule Violation – Any assault, battery, or attempted assault or battery; any lewd or lascivious exhibition; any spoken or written threat towards any person; inciting, attempting to incite, or participating in any riot, strike, mutinous act, or disturbance; fighting; possession or trafficking of weapons, ammunition, explosives, cell phones, unauthorized drugs, escape paraphernalia, or any other item that presents a threat to the safe and secure operation of the institution; and any escape or escape attempt.

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

(2) An inmate who is not under sentence of death may be housed on death row when:

(a) The inmate's death sentence has been overturned and the inmate is awaiting resentencing;

(b) The inmate is assigned to work in death row housing; or

(c) The warden has declared an emergency requiring use of death row housing for inmates not under sentence of death. In this instance, the warden shall notify the Deputy Secretary of Institutions or designee of the housing arrangement.

(3) Reviews.

(a) Annual Reviews – At least annually, a death row inmate shall be reviewed by his or her classification officer to determine overall institutional adjustment based on the inmate's disciplinary history, participation in programming, and cooperation with staff. This review shall be entered into the Department's electronic inmate database.

(b) ICT Reviews – The ICT shall conduct a review of a death row inmate when the inmate:

1. Is found guilty of a disciplinary report; or

2. Has had restrictions placed on his or her outdoor exercise pursuant to subparagraph (7)(j)3. of this rule. This review shall be conducted every six months after imposition of the restriction.

(4) Monitoring Death Row Inmates – Staff shall monitor death row inmates as follows:

(a) At least every 30 minutes by a correctional officer;

(b) Daily by the shift supervisor;

(c) Weekly by the chief of security;

(d) Weekly by the warden and assistant wardens having responsibility over the death row unit;

(e) Daily by a clinical health care person;

(f) Weekly by the chaplain; and

(g) Weekly by a classification officer, or more frequently as disciplinary incidents may require.

(5) Restraints and Escort Requirements.

(a) Prior to opening a death row cell for any reason, staff members shall restrain the inmate.

(b) A minimum of two officers shall be physically present whenever a death row cell door is opened.

(c) Prior to escorting an inmate from a death row cell for any activity within the housing unit, the inmate shall be thoroughly searched. If the inmate is escorted outside the immediate housing unit, the inmate shall be subject to an unclothed body search and restraint devices (handcuffs, waist chain, black box, and leg irons) shall be used.

(d) Once an inmate is properly restrained and searched and his or her cell is secured, only one officer is required to accompany the inmate.

(6) Except for visitation purposes, if more than one inmate is out of his or her cell within the death row unit at a time, there shall be one officer accompanying each inmate, and the inmates shall be kept at a distance from each other to preclude any unauthorized physical contact.

(7) Conditions and Privileges – The following conditions and privileges apply to all death row inmates except Phase I and Phase II inmates.

(a) Clothing – No death row inmate shall be issued a belt. “Croc” style shoes shall be provided as regulation foot wear. Death row inmates shall be distinguished by designated different clothing that must be worn whenever they are out of the death row unit for the purpose of escort or transport. Otherwise, death row inmates shall be provided the same clothing and clothing exchange as inmates in general population unless there are facts to suggest that on an individual basis, exceptions are necessary for the welfare of the inmate or the security of the institution. If an inmate’s clothing is removed, a modesty garment shall be immediately given to the inmate. If the inmate chooses not to wear the garment, the garment shall be left in the cell and this action shall be documented on Form DC6-229, Daily Record of Special Housing. Form DC6-229 is incorporated by reference in Rule 33-601.800, F.A.C. Under no circumstances shall an inmate be left without a means to cover himself or herself.

(b) Bedding and Linens – Bedding and linens shall be issued and exchanged for death row inmates in the same manner as is provided to inmates in general population, and any restrictions shall be based on potential harm to individuals or threat to the security of the institution.

(c) Comfort Items – Unless an item poses a potential threat of harm to an individual or a potential threat to the security of the institution, inmates on death row shall be permitted personal hygiene items and other medically necessary or prescribed items, such as eye glasses and hearing aids. Death row inmates shall not possess any products that contain baby oil, mineral oil, cocoa butter, or alcohol. At a minimum, death row inmates shall be provided a toothbrush, toothpaste, a bar of soap, a towel or paper towels, toilet tissue, and feminine hygiene products for women.

(d) Personal Property – Inmates on death row shall be allowed to possess property such as watches, rings, stamps, envelopes, writing paper, approved televisions, fans, Walkman-type radios, tablets, tablet chargers (if approved by the warden), headphones, and earbuds unless an item poses a potential threat of harm to an individual or a potential threat to the security of the institution. Each inmate may possess no more than one approved television, fan, radio, tablet, set of headphones, and set of earbuds.

(e) Canteen – Death row inmates shall be permitted to make authorized canteen orders in accordance with rule 33-203.101, F.A.C.

(f) Writing Utensils – Inmates on death row shall possess only security pens, with a possession limit of four. If no security pens are available, an inmate may sign out a regular pen from the assigned officer, which must be returned upon completion of preparation of the document. Care shall be taken to ensure that an inmate who requests a pen in order to prepare legal documents or legal mail or to file a grievance with the Department has access to a pen for a time period sufficient to prepare the legal documents, legal mail, or grievances.

(g) Reading Material – Inmates shall be provided access to admissible reading material as provided in Rule 33-501.401, F.A.C., unless it poses a potential threat to the safety, security, or sanitation of the institution. If it is determined that there is such a threat, the material shall be removed. Removal of reading material shall be documented and reviewed in accordance with paragraph (7)(i) of this rule.

(h) Televisions – An inmate on death row may possess a television in his or her cell. Approved televisions may be purchased from the institutional canteen; otherwise, televisions shall be provided by the Department, if available, as follows:

1. As inmates are placed on death row, their names shall be placed in a television logbook. As televisions become available, the televisions shall be assigned to inmates in the order that their names appear in the logbook.

2. Inmates shall be allowed to operate televisions between the hours of 8:00 a.m. and 11:30 p.m. unless otherwise authorized or restricted by the warden or designee. Televisions shall be turned off during count procedures.

3. Televisions shall only be operated with headphones or earbuds.

4. Inmates in disciplinary confinement shall have their televisions removed. The television shall then be assigned to the next eligible inmate as indicated in the television logbook. Inmates who are guilty of a disciplinary infraction and who do not have televisions shall have their names removed from the logbook until their disciplinary confinement time is completed. Their names shall then be added to the bottom of the list.

5. Inmates transferring from the institution for twenty-four hours or longer shall have their televisions reassigned to the next eligible inmate, as indicated in the television logbook.

6. Altering the television, earphones, or any parts thereof, including the electrical cord, shall result in disciplinary action and possible loss of television privileges.

(i) Removal or Denial of Items – Any item may be denied an inmate or removed from a death row cell to prevent the inmate from inflicting injury to himself, herself, or others, to prevent the destruction of property or equipment, or to prevent the inmate from impeding security staff from accomplishing functions essential to the unit and institutional security. The senior correctional officer on duty must initially approve the decision to deny or remove clothing, bedding, or any other items from the cell and document the action on Form DC6-229, Daily Record of Special Housing. Removal of any property item shall also be documented by security staff on Form DC6-220, Inmate Impounded Property List, and signed by the inmate designating what items were removed. Form DC6-220 is incorporated by reference in Rule 33-602.201, F.A.C. The original Form DC6-220 shall be placed in the inmate's property file, and a copy of the form shall be given to the inmate for his or her records. The duty warden shall make a final decision regarding the appropriateness of any removal no later than the next working day. If items are removed from a death row cell pursuant to this paragraph, staff shall re-assess the need for continued restriction every 72 hours thereafter and document the assessment on Form DC6-229. The warden, based on this assessment, shall make a final determination on the continued denial or return of the items and document the decision on Form DC6-229. The items shall be returned to the inmate when no further behavior or threat of behavior of the type leading to the restriction is present.

(j) Exercise – An exercise schedule shall be implemented to ensure a minimum of six hours per week of exercise out-of-doors. Such exercise periods shall be documented on Form DC6-229, Daily Record of Special Housing.

1. Medical restrictions can place limitations on an inmate's exercise periods. A disabled inmate who is unable to participate in the normal exercise program shall have an exercise program developed for him or her that shall accomplish the need for exercise and take into account the particular inmate's limitations. Recreational equipment may be available for such exercise periods provided the equipment does not compromise the safety or security of the institution. The reasons for any medically-based exercise restrictions shall be documented on Form DC6-229.

2. The ICT is authorized to deny exercise for an individual inmate when the inmate is found guilty of a major rule violation as defined in this rule. Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be for no more than 15 days per incident and for no longer than 30 days in cumulative length. If the inmate requests a physical fitness program handout, the wellness specialist or the confinement officer shall provide the inmate with an in-cell exercise guide, which shall be documented on Form DC6-229.

3. The ICT is authorized to restrict the place and manner of outdoor exercise, such as an inmate's ability to interact with other inmates or use exercise equipment, if the inmate has been convicted of or found guilty through the Department's disciplinary process in Chapter 33-601, F.A.C., or an investigation sufficiently documents that the inmate was involved in:

a. Assault or battery, murder, or attempted murder of a correctional officer, volunteer, visitor, or other inmate within an institution; or

b. Escape or attempted escape; or

c. Possession of escape paraphernalia; or

d. Any major rule violation that requires heightened security measures to ensure the safety of staff, inmates, and the public, or the security of the institution.

4. Phase III inmates shall be restricted from exercise pursuant to subparagraph (15)(b)8. of this rule.

(k) Telephone Privileges – Death row inmates shall have only those telephone privileges expressly and particularly provided for such inmates in rule 33-602.205, F.A.C.

(l) Visitation – Death row visits shall be contact visits unless security concerns indicate that a non-contact visit is necessary, in

which case the non-contact visit shall be approved by the warden in advance. Visitation shall be on Saturday or Sunday (only one day of visitation per week per inmate) between the hours of 9:00 a.m. and 3:00 p.m. The visitation provisions of Chapter 33-601, F.A.C., otherwise apply. News media visits shall be in accordance with Rule 33-104.203, F.A.C. Death row inmates shall have video visitation privileges pursuant to Rule 33-602.901, F.A.C. Death row inmates are allowed one 15-minute video visit each calendar week, and no extensions shall be permitted. Video visits must be scheduled at least three days in advance.

(m) Library Services – Inmates shall be allowed to check out library books once weekly, with a possession limit of four books.

(n) Self-Improvement Programs – Inmates shall be permitted to participate in self-improvement programs unless participation poses a security threat to inmates or staff. Such programs shall take place in the inmate's housing area in a manner that conforms to the need for security.

(o) Kiosk, Kiosk Services, and Tablet Services – With the exception of outgoing videograms, inmates on death row are permitted access to kiosks, kiosk services, and tablet services as provided for in Rule 33-602.900, F.A.C.

(8) Personal Hygiene – Inmates on death row shall meet the same personal hygiene standards required of inmates in general population.

(9) Correspondence – Correspondence shall be in accordance with Chapter 33-210, F.A.C.

(10) Attorney and Consulate Visits – Attorney visits shall be in accordance with Rule 33-601.711, F.A.C., and Consulate visits shall be in accordance with Rule 33-601.7115, F.A.C.

(11) Legal Access – Legal access for all death row inmates except those on Phase I and II of an active death warrant shall be as follows:

(a) Inmates shall be permitted to have access to their personal legal files and law books, to correspond with the law library, to have the law library deliver legal materials to their cell, and to correspond with inmate law clerks. Efforts shall be made to accommodate the research needs of inmates on death row who demonstrate that they need to meet a deadline imposed by law, rule, or order of court, including the provision of opportunities to visit a secure, single-person room within the law library at least once per week for up to two hours if security concerns permit. Death row inmates using the law library are required to stay in a secure, single-person room in order to conduct research and draft legal documents, and materials shall be obtained via non-contact interaction with library staff or inmate law clerks under the supervision of security staff. Inmates may be required to conduct legal business through correspondence rather than a personal visit to the law library if security requirements prevent a personal visit.

(b) Written inmate requests for legal assistance shall be directed to the librarian or designee and shall be responded to within two working days of receipt, not including the day of receipt. Specific requests for cases, statutes, or other reference materials or requests for legal supplies or forms shall be responded to by means of correspondence. However, written inmate requests for legal assistance that are broad in scope, contain incorrect references to research materials, or contain styling or content errors that indicate the inmate lacks an understanding of the law or legal research or that he or she may be impaired shall be responded to by personal interview with an inmate law clerk or the librarian or designee.

(c) Inmates shall be limited to the receipt of no more than 15 research items from the law library at any one time. Research items are defined as photocopies of cases, statutes, and other reference materials provided by the law library and do not include the inmate's personal legal papers, pleadings, or transcripts. Institutions shall require that inmates return all research materials supplied previously by the law library or explain why some or all research materials issued previously must be retained in order to receive additional materials. Institutions shall also limit the accumulation of research materials when their possession in an inmate's cell creates a safety, sanitation, or security hazard.

(d) Illiterate and impaired inmates shall be permitted to request a visit with an inmate law clerk by making an oral request to the correctional staff working in the unit. Upon receipt of the oral request, the correctional staff shall contact the law library to schedule a visit between the inmate and inmate law clerk. The inmate shall be required to remain in a secure, single-person room in the law library and have non-contact interaction with the inmate law clerk.

(e) Indigent inmates shall be provided paper, security pens, and envelopes in order to prepare and send legal papers.

(12) Diet and meals shall be provided in accordance with Chapter 33-204, F.A.C.

(13) Form DC6-228, Inspection of Special Housing Record, shall be maintained in each death row unit. Form DC6-228 is incorporated by reference in Rule 33-601.800, F.A.C. Each staff person shall sign the form when entering and leaving the death row unit. Prior to departure, each staff member shall indicate any specific problems, including any inmate who requires special attention. Upon completion, Form DC6-228 shall be maintained in the housing area and forwarded to the correctional officer chief on a weekly basis, where it shall be maintained on file pursuant to the current retention schedule.

(14) Form DC6-229, Daily Record of Special Housing, shall be maintained for each inmate in the death row unit for 30 days, after which the form shall be forwarded to the warden for review. Once reviewed, these forms shall be forwarded to classification to be filed in each inmate's respective file. Form DC6-229 shall be utilized to document any and all activities, including cell searches, items removed, showers, recreation, haircuts, and shaves. Form DC6-229B, Daily Record of Special Housing – Supplemental, may be used if further writing space is needed. Form DC6-229B is incorporated by reference in rule 33-601.800, F.A.C. Additionally, staff shall fully and completely document when:

- (a) There is an unusual occurrence in the inmate's behavior;
- (b) It becomes necessary to notify the medical department;
- (c) The inmate refuses food;
- (d) The inmate changes cells;
- (e) Medical staff performs any function, such as dispensing medication;
- (f) The inmate's diet is ordered to be changed;
- (g) Complaints are received and medical treatment is therefore given;
- (h) The classification officer conducts a review;
- (i) The inmate engages in disruptive behavior requiring that official action be taken; or
- (j) Disciplinary violations occur.

(15) Death Warrants – Upon receipt of a death warrant signed by the Governor authorizing execution, the warden or designee shall determine the housing location of the inmate. Inmates housed at Union Correctional Institution shall be immediately transferred to Florida State Prison. Upon arrival, the warden shall inform the inmate of the death warrant, and the inmate shall be allowed to contact his or her attorney and a family member at state expense. If the inmate is housed at Lowell Correctional Institution, the inmate shall not be transferred to Florida State Prison until Phase II. The warden at Lowell shall inform the inmate of the death warrant and allow the inmate to contact her attorney and a family member at state expense.

(a) At the initiation of Phase I, the warden of Florida State Prison shall notify the Deputy Secretary of Institutions or designee and the regional director. Wardens of surrounding institutions shall be informed should circumstances warrant the activation of a rapid response team. Local law enforcement agencies shall also be notified.

(b) Conditions and privileges for Phase I and Phase II inmates.

1. Phase I and Phase II inmates may possess the following state issued property:

- a. A standard issue of clothing,
- b. One bed,
- c. One mattress,
- d. One pillow,
- e. A standard issue of bedding,
- f. One toothbrush,
- g. One tube of toothpaste,
- h. One bar of soap,
- i. One towel,
- j. One pair of underwear,
- k. Toilet tissue as needed,
- l. Six sheets of stationery,
- m. Three envelopes,
- n. A maximum of 10 religious texts distributed by the institutional chaplain,
- o. Writing paper distributed by the library as needed,
- p. Notary services upon request,
- q. One security pen,
- r. One television, and

s. Form DC1-303, Request for Administrative Remedy or Appeal, and Form DC6-236, Inmate Request, as needed. Form DC1-303 is incorporated by reference in Rule 33-103.006, F.A.C. Form DC6-236 is incorporated by reference in rule 33-103.005, F.A.C.

2. The inmate's visiting list shall be frozen once an execution date is set. No additional visitors can be added to a Phase I or Phase II inmate's approved visiting list. All visits shall be non-contact, except that the inmate may receive a one-hour contact visit

on the day of execution.

3. News media visits and interviews shall be in accordance with Chapter 33-104, F.A.C.

4. Inmate bank access shall be the same as for any other inmate, except that Phase II inmates may not request more than two special withdrawals during the week.

5. Canteen privileges shall be allowed in accordance with paragraph (7)(e) above but may be restricted or denied if they pose a security threat. Canteen orders shall be reviewed by the administrative lieutenant prior to delivery.

6. Inmates may request in writing to the librarian and receive legal materials from the law library. All such requests are to be routed through the death watch supervisor. Copying services or notary services shall be handled by staff without the involvement of any inmate.

7. The inmate shall be allowed to receive periodical subscriptions but may not order new subscriptions.

8. Exercise for all inmates with signed death warrants, including Phase III inmates, shall be suspended. However, an inmate shall be permitted to resume exercise and recreation in accordance with subparagraphs (7)(j)1.-3. above if the inmate remains in Phase III status longer than 90 days.

(16) All death row inmates remain subject to disciplinary action for violation of rules and regulations.

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