

May 11, 2023

## Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-603.411 Warrants for Retaking Offenders

PURPOSE AND EFFECT: The rule as currently written is more restrictive than the statute, which gives the Department discretion whether to issue a warrant. Rule amendment is necessary to reflect the statutory language and current Department procedures and to ensure that inmates who have been released in error are not held beyond their maximum release date.

SUMMARY: The proposed rule amendment conforms with section 944.405, Florida Statutes, and current Department procedures by giving the Department discretion in whether to issue a warrant for retaking offenders who have been released in error. The proposed amendment also clarifies that inmates who have been released in error will not be held beyond their maximum release date.

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 a 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: 944.405, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, [FDCRuleCorrespondence@fdc.myflorida.com](mailto:FDCRuleCorrespondence@fdc.myflorida.com).

THE FULL TEXT OF THE PROPOSED RULE IS:

### **33-603.411 Warrants for Retaking Offenders.**

(1) When an offender escapes from custody or absconds from a rehabilitative community reentry program prior to satisfaction of the sentence or combined sentences, ~~or if it is determined that an offender was released in error, or if it is subsequently determined that the offender was statutorily ineligible for release,~~ the Secretary of the Department or the Secretary's designated representative ~~may shall~~ issue a warrant for retaking such offender into custody to serve the remainder of such sentence or combined sentences. If it is determined that an offender was released in error, or if it is subsequently determined that the offender was statutorily ineligible for release, a warrant may be issued if the sentence would not have expired had the inmate remained in confinement. The warrant issued ~~must shall~~:

(a) No change.

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(b) Command that law enforcement officials take the offender against whom the warrant is issued into custody and hold ~~them him~~ until such time as proper arrangements can be made for the return of the offender to the ~~D~~Department;

(c) Specify the name of the offender to be apprehended, the date of escape, date of absconding from supervision, or the date on which the offender was released in error, the date the offender was sentenced to incarceration in the ~~D~~Department, the county of sentence, the term of sentence; and

(d) No change.

(2) The following procedures ~~must shall~~ be followed in cases of offenders who were released in error or were subsequently determined to be statutorily ineligible for release:

(a) Within three days of receiving notification that the offender has been taken into custody, excluding the day of notice, weekends and holidays, a correctional probation officer, classification supervisor, or other person designated by the Bureau Chief of Admission and Release for that purpose ~~must shall~~ provide the offender with a copy of the affidavit upon which the warrant was issued, a copy of the warrant, a written statement advising the offender that ~~they he or she~~ may challenge ~~their his~~ return to custody through use of the inmate grievance procedure, and a copy of Form DC1-303, Request for Administrative Remedy or Appeal. Form DC1-303 is incorporated by reference in Rule 33-103.006, F.A.C. In ~~those~~ cases in which the offender is out of state, the time frame for delivery of the warrant package to the offender ~~will shall~~ be extended to seven days, excluding the day of ~~the~~ notice, holidays, and weekends.

(b) An offender who wishes to challenge ~~their his or her~~ return to Department of Corrections custody ~~must shall~~ file an emergency grievance directly with the Office of the Secretary using the Request for Administrative Remedy or Appeal, Form DC1-303, in accordance with Rule 33-103.007(3) subsection 33-103.006(1), F.A.C.

(c) Grievances filed with the Office of the Secretary regarding retaking ~~of~~ an offender into custody ~~must shall~~ be responded to in accordance with the time frames set forth in Rules 33-103.007 and 33-103.011, F.A.C.

(d) No change.

(3) A warrant issued under subsection (1) of this rule is in effect until the offender has been returned to the custody of the Department, or until the sentence is deemed satisfied, whichever occurs first.

*Rulemaking Authority 944.09 FS. Law Implemented 944.405 FS. History--New 2-29-88, Amended 1-6-94, Formerly 33-3.0105, Amended 10-20-13,\_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Hope Gartman, Assistant Deputy Secretary for Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 1, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 28, 2022