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Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-602.205 Inmate Telephone Use

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to modify the provisions concerning inmate telephone use to align with the Department's updated inmate telephone system, such as elimination of the use of Form DC6-223, Inmate Telephone Agreement and Number List; adds requirements relating to the telephone system's inmate biometric PIN confirmation process; revises the persons with access to records and recordings of monitored calls; provides additional clarification for calls to attorneys; removes the use of Form DC6-214, Inclusion of Attorney on Inmate Telephone List; reorganizes the rule to provide better clarity and usability; and any other "clean-up" revisions needed or deemed necessary for inclusion/deletion.

SUMMARY: The proposed rule eliminates the use of Form DC6-223, Inmate Telephone Agreement and Number List; adds requirements relating to the telephone system's inmate biometric PIN confirmation process; revises the persons with access to records and recordings of monitored calls; provides additional clarification for calls to attorneys; removes the use of Form DC6-214, Inclusion of Attorney on Inmate Telephone List; reorganizes the rule to provide better clarity and usability; and makes "clean-up" revisions needed or deemed necessary for inclusion/deletion.

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: 944.09 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.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.205 Inmate Telephone Use.

(1) This rule sets forth the minimum telephone privileges that shall be granted to inmates housed in institutions or facilities other than community correctional centers. All inmate calls, with the exception of those calls placed to attorneys pursuant to paragraph (3)(a), and to foreign consulates pursuant to paragraph ~~(5)(a)~~ ~~(4)(a)~~ shall be subject to monitoring and recording. Due to the high level of security needs on death row, the only telephone privileges available to death row inmates – except those inmates in Phase I or Phase II, as those phases are described in rule

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~~paragraph 33-601.830(1)(c), F.A.C. – are those set forth in paragraph (3)(a), private calls to attorneys; subsection (4), calls to the courts; paragraph (5)(a) (4)(a), private calls to foreign consulates; subsection (6) (5), calls made in the event of family crisis; and subsection (18) (17), other monthly telephone calls. The only telephone privileges available to death row inmates in Phase I and Phase II are those set forth in paragraph (3)(a), calls to attorneys; paragraph (5)(a) (4)(a), private calls to foreign consulates; and subsection (6) (5), calls made in the event of family crisis.~~

(2) Inmate telephone procedures will be conducted as follows:

~~To initiate telephone privileges, inmates shall complete Form DC6-223, Inmate Telephone Agreement and Number List. Each inmate is limited to no more than 10 names and numbers of persons he or she wishes to access. Inmates shall not be allowed to telephone any authorized person and those not on this list except as outlined in paragraph (3)(a), and subsection (4), and subsection (5) of this rule. Inmates shall not make three-way telephone calls, conference calls, or nor make calls to numbers on the list which are then transferred to other telephone numbers. Inmates shall not be allowed to include business telephone numbers or cell phone numbers on the list. Collect calls to personal cell phone numbers will be allowed as follows:~~

1. through 5. No Change.

~~(b) The reception center classification staff shall assign compile the inmate a Personal Identification Number (PIN) upon reception. The PIN assigned during the reception process will be the same PIN the inmate will use throughout their incarceration calling list through use of Form DC6-223, in conjunction with the acquisition of the inmate visiting list. Form DC6-223 shall become part of the inmate's permanent file and shall accompany the inmate with each subsequent transfer. Form DC6-223 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No-Ref-01234>. The effective date of this form is June, 2012.~~

~~(c) An inmate shall be allowed to change his or her telephone list once every six months by completing a new Form DC6-223, Inmate Telephone Agreement and Number List. Changes can be made more frequently for the following reasons only:~~

~~1. The number for a person already on the inmate's list has been changed. The inmate shall be responsible for providing documentation of the change to his or her classification officer before the list will be amended. Documentation shall be in the form of copies of the cover page of both the old and new telephone statement of the person whose number has been changed. The cover page must include the name, address and telephone number of the individual.~~

~~2. The inmate has married and wishes to add the name and telephone number of the spouse. The inmate shall be responsible for providing documentation of the marriage before the list will be amended.~~

~~3. An inmate shall be allowed to update his or her telephone list when there is a change in telephone providers, an installation of updated equipment or software, or a repair to the equipment, if the department determines that an update of the telephone list would be more efficient in completing the change, installation, or repair.~~

~~(c) Upon the first call attempt, the inmate is required to complete the telephone system's inmate biometric PIN confirmation process.~~

~~(d) Unless authorized by the Department to do so, no one is permitted to modify, alter, circumvent, attempt to modify, attempt to alter, or attempt to circumvent the PIN confirmation process or any security features of the telephone system or to use such privileges to engage in any activity that violates Department rules, state law, or federal law. The use or misuse of the telephone system or privileges in such manner will cause the PIN to be disabled by institutional staff, subject the inmate to discipline pursuant to rule 33-601.314, F.A.C., and have the inmate's telephone privileges restricted or revoked due to misuse of telephone privileges as outlined in subsection (14) of this rule.~~

~~(e)(d) Each inmate will only use their specifically assigned be provided with a personal identification number (PIN), which allows them him access to the telephone calling services numbers on his calling list.~~

~~(f) Individual PINs may be disabled by institutional staff due to misuse of telephone privileges as outlined in subsection (14) of this rule.~~

~~(g) All calls will require PIN usage unless otherwise provided within this rule.~~

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~~(h)(e)~~ Except for calls to attorneys as provided in paragraph (3)(a), calls to foreign consulates as provided in paragraph (4)(a), or calls during family crisis as provided in subsection (5), calls shall be limited to 30 ~~15~~ minutes. Calls to attorneys as provided in paragraph (3)(a), calls to foreign consulates provided in paragraph (4)(a), and calls in time of family crisis as provided in subsection (5) shall be limited to the amount of time reasonably necessary to accomplish the purpose of the call.

~~(i)(f)~~ The warden shall determine the frequency with which inmates are allowed to use the monitored telephones based on population to telephone ratios and institutional needs.

~~(j)(g)~~ All calls from the monitored telephones shall be collect and shall contain a prompt which clearly identifies the call as coming from a Florida Department of Corrections institution.

1. through 2. No Change.

3. The system requires the inmate caller to key in their ~~his or her~~ PIN on the key pad before gaining access to an outside line.

4. No Change.

~~(k)(h)~~ Each institution where monitoring and recording is conducted shall ensure that signs are posted which state that telephone calls are subject to being monitored or recorded. These signs shall be posted on or beside each telephone subject to monitoring and shall remain posted at all times. Stolen or defaced signs shall be replaced promptly upon discovery.

~~(l)(i)~~ At each institution where telephone calls are monitored or recorded, the warden or designee ~~institutional inspector~~ will be the individual primarily responsible for the monitoring equipment, maintenance of records, and review of conversations.

~~(m)(j)~~ Wardens are authorized to designate additional staff who will be responsible for monitoring telephone calls and reviewing records and recordings of monitored calls.

~~(n)(k)~~ Records and recordings of monitored calls shall be kept in an area where staff access is controlled. Records and recordings of monitored calls shall be retained for a minimum of one year. Access to records and recordings shall be limited to the following persons:

1. Secretary ~~or Deputy Secretary~~;

2. Deputy Secretary;

~~3.2. Assistant Deputy Secretary~~ Director of Institutions or their his or her designee;

~~4.3. Regional directors or designees~~;

~~5.4. Inspector General or designee~~;

~~6.5. The warden of each institution or their his or her designee~~;

~~7. Director of Institutional Operations and Intelligence or their designee~~;

~~8. Deputy Director of Institutional Operations~~;

~~9. Chief of Bureau of Intelligence or their designee(s)~~;

~~10. Chief of Bureau of Security Operations or their designee(s)~~; and

~~11. Chief of Bureau of Classification Management or their designee(s)~~.

~~6. Correctional officer senior inspectors~~;

~~7. Inspector supervisors~~; and

~~8. The correctional officer inspector of each institution.~~

~~(o)(l)~~ The department's contract manager or designee and wardens shall ensure that the system is checked periodically to assess the integrity of all components of the system. If the notification system is not functioning properly, monitoring of the telephone calls shall immediately cease until the problem is corrected.

~~(p)(m)~~ The Department shall have the ability to immediately temporarily deactivate any inmate's telephone account established under paragraph (2)(a), upon approval of the Warden/Duty Warden, for any of the following reasons:

1. through 3. No Change.

(3) Calls to attorneys.

(a) Inmates shall be allowed to make private telephone calls to attorneys by whom they are represented or from whom they are seeking legal representation upon presentation to the warden or his designee of evidence that the call is necessary. Such evidence shall be a letter from the attorney (transmission by FAX or via e-mail with scanned letter is acceptable) requesting the return call or a court order containing a deadline the inmate cannot meet if he

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must communicate by letter with the attorney. The letter shall be on attorney letterhead, signed by the attorney requesting the telephone call, and include the bar association number of the attorney. Additionally, aAn attorney shall also be permitted to make prior arrangements by letter, email with attached letter, or FAX (conforming to the requirements listed above) with the warden or warden's designee to have an the inmate client with whom the attorney has established an attorney-client relationship receive a private telephone call from the attorney on an unmonitored telephone. Attorneys shall not be permitted to make prior arrangements for prospective inmate clients to receive a private telephone call from the attorney on an unmonitored telephone. Except as authorized by warrant or order of court, telephone calls to attorneys made pursuant to this section shall not be monitored or electronically recorded. These calls will be placed on telephones designated for this purpose and shall be collect calls; there shall be at least one telephone at each institution that is not connected to the monitoring system for these calls.

(b) If an inmate places requests to place a call to their his or her attorney's telephone number outside of the parameters above, on his or her calling list, the attorney must provide written acknowledgment of the telephone procedures by completing Form DC6-214, Inclusion of Attorney on Inmate Telephone List and indicating that he or she understands that there are options available for private calls. The requesting inmate will be responsible for notifying the attorney and arranging for the correspondence to the institution. There will be no special provisions for these calls. They will be placed on regular inmate telephones, it will be collect, subject to monitoring and recording, and limited to 30 45 minutes. If the inmate and the attorney want to have non-monitored conversations, the procedures in paragraph (3)(a) must be followed. Form DC6-214, Inclusion of Attorney on Inmate Telephone List, is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is June 18, 2002.

(4) Court Calls.

(a) When an inmate is required to appear or participate in a hearing or other court-scheduled proceeding, and a telephonic appearance is being utilized for the inmate to participate:

1. The inmate or their legal representative will be responsible for making arrangements with the court to appear telephonically; and,

2. The inmate or their legal representative must provide notice of the call to the inmate's classification officer at least five business days prior to the scheduled hearing to facilitate telephone access except in the case of extenuating circumstances (e.g., emergency order issued from the court requiring a telephonic appearance by the inmate the following day).

a. Such notice shall include the date, time, estimated duration, case number, presiding judge (if known), telephone number, and whether the call is to be incoming (i.e., court calling in) or outgoing (i.e., dialed by staff) for the telephonic appearance. Any other requirements necessary for the telephonic appearance shall be included in the notice (e.g., whether a Notary Public is requested to witness and notarize legal material).

b. Inmates shall provide such notice by submitting Form DC6-236, Inmate Request, to his or her classification officer and shall include any directive received from the court or legal representative (e.g., an order or notice of hearing). Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C.

c. Inmate legal representatives shall provide advance written notice to the inmate's classification officer. Notices shall include or attach any orders or directives issued by the court.

3. To not impair or disrupt the normal operations or security of the facility, and taking into consideration schedules of institutional staff, telephonic appearances should be scheduled between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding paid state holidays. Telephonic appearances shall be limited to the amount of time reasonably necessary to accomplish the purpose of the call.

(5)(4) Calls to Foreign Consulates.

(a) A foreign national inmate shall be allowed to make private telephone calls to their his or her respective consulate upon presentation to the warden or his designee of evidence that the call is necessary and that the inmate is a native of the country represented by the consulate as verified by Immigration and Custody Enforcement. Such evidence shall be a letter from the consulate (transmission by FAX is acceptable) requesting the return call. A consulate shall also be permitted to make prior arrangements by letter or FAX with the warden or warden's designee to have the inmate receive a private telephone call from the consulate on an unmonitored telephone.

(b) No Change.

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~~(6)~~⁽⁵⁾ An inmate may be authorized by the warden or the warden's designee to make telephone calls in cases of family crisis, including death or serious illness in the immediate family, or serious marital or other family problems. The warden or the warden's designee shall consider each request for such a call and shall authorize such a call only if, after considering the totality of the circumstances, they ~~he or she~~ determines that authorizing the call would be consistent with their ~~his or her~~ duty to maintain the safety, security, and effective management of their ~~his or her~~ institution.

~~(7)~~⁽⁶⁾ Unless otherwise outlined in this rule, inmates in administrative confinement, protective management, disciplinary confinement, close management, maximum management, or death row status have telephone use privileges set forth in rules 33-602.220, 33-602.221, 33-602.222, 33-601.800, 33-602.820, and 33-601.830, F.A.C., respectively. Telephone privileges for inmates in administrative or disciplinary confinement shall be in accordance with Rules 33-602.220 (Administrative Confinement) and 33-602.222, F.A.C. (Disciplinary Confinement).

~~(8)~~⁽⁷⁾ Inmates may not receive incoming telephone calls because it is disruptive to normal operating and program functions of an institution. Inmates may receive incoming voicemails which are recorded and subject to the same monitoring as telephone calls. These messages will be stored, reviewed, and retained for inmates to access the messages.

~~(9)~~⁽⁸⁾ All long distance calls shall be "collect" calls except those :

~~(a)~~ Those authorized in response to family crisis in subsection (6)~~(5)~~ or calls to courts when the inmate is required to participate in a hearing as outlined in subsection~~(4)~~, and

~~(b)~~ Calls to courts when the inmate is required to participate in a telephone conference hearing. Institutional staff shall place a direct call to the court, using the most efficient and economical means available. If the department is involved as a party, the inmate's account shall not be charged for the cost of such call, unless it can be demonstrated that the hearing was scheduled at the inmate's request. In all other circumstances, the inmate's account shall be charged in full for such cost. The charge shall be based on the current SUNCOM telephone rate for state telephone calls.

~~(c)~~ If funds are not available in the account to pay the charge in full, then the account shall be charged in part, up to the amount available. A hold shall then be placed on the inmates account and all subsequent deposits to the inmate's account shall be applied against the unpaid costs until the debt has been paid.

~~(10)~~⁽⁹⁾ For security and control purposes, telephones designated for inmate use will be designed to be rendered inoperable during times when telephone usage would interfere with other institutional activities and during institutional emergencies.

~~(11)~~⁽¹⁰⁾ No inmate shall establish or conduct a business through use of the telephone, or any other avenue of communication, during their ~~his or her~~ period of incarceration.

~~(12)~~⁽¹¹⁾ Any request to make a telephone call may be denied if the call would present a threat to institution security or order or to the safety of any person.

~~(13)~~⁽¹²⁾ The Department is not responsible for maintaining telephone equipment damaged by inmate abuse or for providing telephone service if the telephone company discontinues service as a result of inmate abuse.

~~(14)~~⁽¹³⁾ Misuse of telephone privileges.

(a) No Change.

(b) Inmates shall be subject to having telephone privileges restricted or revoked for abuse of telephone communication services. Examples of abuse include:

1. through 4. No Change

5. Making three-way or conference ~~telephone~~ calls. This includes calls that are placed and then transferred to another telephone number. The telephone system automatically detects any such call and blocks the number from the inmate's telephone list. For purposes of this rule, a three-way call includes any call where a third party has been added to the conversation without the assistance of a telephone operator.

a. through b. No Change.

c. Any subsequent violations of the three-way or conference call prohibition will result in a permanent block being placed on the telephone number involved.

6. through 7. No Change.

8. Speaking in an unidentifiable code; ~~and~~

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9. Modifying, altering, circumventing, attempting to modify, attempting to alter, or attempting to circumvent the PIN confirmation process or any security features of the telephone system or using or misusing such privileges to engage in any activity that violates Department rules, state law, or federal law; and

~~10.9.~~ Sharing calls or placing calls for another inmate and allowing him or her to converse with a party not on that inmate's approved list.

(c) Inmates found to have abused telephone privileges shall be subject to disciplinary action in accordance with Rules 33-601.301-314, F.A.C. In addition, wardens are authorized to suspend an inmate's telephone privileges, other than calls to attorneys as outlined in paragraph (3)(a), calls to courts as outlined in subsection (4), and calls to foreign consulates as outlined in paragraph (5)(a), during an investigation for abuse of telephone privileges.

(d) Inmates shall also be subject to suspension of telephone privileges, other than calls to attorneys as outlined in paragraph (3)(a), calls to courts as outlined in subsection (4), and calls to foreign consulates as outlined in paragraph (5)(a), as a result of other disciplinary infractions unrelated to telephone procedure violations.

~~(15)(14)~~ Inmates will not be allowed to possess or use telephone calling cards or prepaid phone cards.

~~(16)(15)~~ Telephone devices for the deaf.

(a) No Change.

(b) Usage of telephone devices for the deaf shall be limited to sixty ~~thirty~~ minutes per call.

(c) through (d) No Change.

(e) The call will be recorded and transcribed within the telephone system so as to be available for access and review by the designated security staff ~~tape used by the telephone device will be removed after each call and provided to the institutional inspector for review.~~

~~(17)(16)~~ Prison Tips Hotline.

(a) No Change.

(b) The inmate will not have to enter their ~~his or her~~ personal identification number (PIN) to access the prison tips hotline.

(c) No Change.

~~(18)(17)~~ In addition to the other telephone privileges set forth in this rule for death row inmates, and according to the capabilities of the facility, such inmates shall be allowed to coordinate and schedule a minimum of one thirty-minute ~~fifteen-minute~~ telephone call per month. The call shall be subject to the same Department telephone monitoring and recording as that to which non-death row inmate calls placed to persons or entities other than attorneys and foreign consulates are subject.

~~(19)(18)~~ Inmates who violate any Department rule pertaining to the use of telephones shall be prohibited from making any telephone call, except private calls to attorneys as set forth in paragraph (3)(a), calls to courts as outlined in subsection (4), or calls to foreign consulates as outlined in paragraph (5)(a), for the 30-day period immediately following the date of any such violation.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 11-19-81, Formerly 33-3.125, Amended 11-21-86, 1-6-92, 3-24-97, 7-22-97, 12-21-98, Formerly 33-3.0125, Amended 2-7-00, 6-18-02, 2-4-03, 12-30-03, 11-25-04, 1-7-07, 9-24-07, 3-23-08, 6-14-12, 8-11-16,_____.

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: August 11, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 9, 2021