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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

July 28, 2021

Mr. Jason W. Holman, Esq.
Assistant General Counsel
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

Re: Proposed Rule 33-210.101, Florida Administrative Code

Dear Mr. Holman:

Thank you for your letter of July 23, 2021. The following comments are in response to your letter and supplement the Committee's initial comments presented in its July 6, 2021, letter.

Purpose and Effect: The Notice of Proposed Rule states: "PURPOSE AND EFFECT: To increase the safety and security of inmates and staff, the Department is developing a system through a third-party vendor to allow for the receipt, processing, and delivery of routine mail in correctional institutions."

If the system is in development through a third-party vendor, does that mean that the Department does not know the cost of the new system?

It is not clear from the language of the rule how any of the proposed amendments contribute to the "increased safety and security of inmates and staff." As stated in the Notice Summary, "[t]he proposed rule establishes the protocols for processing routine mail electronically and updates the regular routine mail process to make it consistent with the electronic routine mail process." The Purpose and Effect should either be amended to reflect how the proposed changes "increase the safety and security of inmates and staff," or that phrase should be deleted from the stated purpose and effect of the proposed rule, thereby limiting the purpose of the rule to "establish protocols for processing routine mail electronically and to update the regular routine mail process to make it consistent with the electronic routine mail process." Please advise.

Summary: If the Department intends to maintain that the purpose and effect of the proposed rule is, “[t]o increase the safety and security of inmates and staff,” the Summary should be revised to identify how the proposed amendments meet this goal.

**Statement of
Estimated Regulatory
Costs and Legislative
Ratification:**

The Notice states that “[t]he Department used an itemized checklist to conduct an economic analysis and. . . has determined that the amendments will not exceed any one of the economic analyses criteria in a SERC as set forth in s. 120.541(2)(a), F.S.”

Please provide the Committee with a copy of all the supporting data relied upon by the Department in making this determination.

Section 120.54(3)(a), Florida Statutes, states, in part, that “[t]he notice must include a summary of the agency’s statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2).” The Department’s determination 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.,” appears to gloss over the requirement for consideration of the other provisions under section 120.541(2), Florida Statutes. More specifically, section 120.541(2)(c), Florida Statutes, which requires that “[a] statement of estimated regulatory costs shall include: . . . A good faith estimate of the cost to the agency, and any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state and local revenues.” The fact that a SERC was not prepared does not relieve the Department from considering the cost to the Department in implementing the proposed changes when determining whether or not a SERC should be prepared.

Please provide the Committee with a copy of the estimated costs to the Department in implementing the proposed changes to the routine mail program.

33-210.101(1): This rule states, “[e]lectronic mail processing,’ where used herein, refers to the process of electronically scanning routine mail to digitize the documents received.” The Notice Summary states that “[t]he proposed rule establishes the protocols for processing routine mail electronically and updates the regular routine mail process to make it consistent with the electronic routine mail process.” This statement suggests that there is an existing electronic routine mail process. Either a reference should be added to this section as to the location in the Department’s rules of the “electronic routine mail process,” or the rule text should be revised for clarity.

The proposed rule effectively eliminates inmates receiving hard copies of correspondence and photographs. Please explain how the elimination of hard copies of correspondence meets the stated purpose and effect of the proposed rule, to wit: “[t]o increase the safety and security of inmate and staff. . . .”

Under the proposed rule, all routine inmate correspondence is to be scanned and uploaded to an inmate’s tablet. Correspondence received by the Committee from the public regarding the proposed changes stress the importance of mail call and the ability of the inmates to physically hold letters and photographs, their only tangible, tactile connection with families and friends. Please explain how the elimination of hard copies of correspondence and photographs under the proposed rule comports with the legislative intent under section 20.315(1)(d), Florida Statutes, that the Department “. . . provide a safe and humane environment for offenders and staff in which rehabilitation is possible.”

Rule 33-602.900(5)(s) states, in part:

Upon the expiration of an inmate’s sentence, the inmate must return his or her assigned tablet to the Department at the time of the inmate’s release from the Department’s custody. A former inmate may obtain access to his or her purchased content by contacting the vendor.

The rule does not address whether, under the proposed rule, personal correspondence and photographs stored on an inmate’s tablet will be accessible after release from custody and, if so, if there is any charge for accessing and/or retrieval of the material. The rule should be updated to address the proposed amendments to the processing and receipt of routine mail. Please advise. [Note: Although the instant letter addresses the proposed amendments to rule 33-22.101, and is not intended to be a review of the rule 33-602,900(5)(s), it should be pointed out that: (1) the procedures for accessing purchased content under rule 33-602.900(5)(s) and any associated costs should be set out in the rule and not left up to the discretion of the vendor; (2) the contact information for the vendor should be included in the rule; and (3) the rule should set out whether there is a timeframe for requesting access to the material.]

33-210.101(5)(c): This section states that “the following items may not be included with or attached to incoming routine mail: . . . stickers or stamps (other than postage stamps affixed to the outside of the mailing envelope, postal service attachments, and address labels affixed to the outside of the mailing envelope.)” Please explain how the prohibition of receiving postage stamps

to facilitate inmates' ability to send outgoing correspondence meets the purpose and effect of the proposed rule "[t]o increase the safety and security of inmate and staff. . . ."

Also, please explain how this provision comports with the legislative intent under section 20.315(1)(d), Florida Statutes, that the Department ". . . provide a safe and humane environment for offenders and staff in which rehabilitation is possible."

33-210.101(5)(f): Under section 33-210.101(2)(d) of the current rule, inmates are permitted to receive "[u]p to ten unused greeting cards (no larger than 8"x10") with matching envelopes or up to ten sheets of stationery or other blank writing paper (lined or unlined) with envelopes (stamped or unstamped)."

The proposed rule states that ". . . the following items may not be included with or attached to incoming routine mail: . . . greeting cards." Although I appreciate the Department's intention to revisit this issue in a Notice of Change, the question remains as to how the prohibition against receiving blank greeting cards for use by inmates meets the stated purpose and effect of the proposed rule, to wit: "[t]o increase the safety and security of inmate and staff. . . ."

Also, please explain how this provision comports with the provision of section 20.315(1)(d), Florida Statutes, that the Department is "[t]o provide a safe and humane environment for offenders and staff in which rehabilitation is possible."

33-210.101(6): This section provides that:

The sender of incoming routine mail that is to be or that is processed electronically may request that the original correspondence and contents be returned by sending a written request with a self-addressed stamped envelope to the Department contractor any time prior to the expiration of the 90-day retention period.

The contact information for the contractor should be included in the proposed rule.

Law Implemented: The proposed rule cites section 20.315, Florida Statutes, as a law implemented. Section 20.315, Florida Statutes, provides, in part:

(1) PURPOSE. - The purpose of the Department of Corrections is to protect the public through the incarceration and supervision of offenders and to rehabilitate offenders

through the application of work, programs, and services.
The goals of the department shall be:

* * *

(d) To provide a safe and humane environment for offenders
and staff in which rehabilitation is possible.

Please explain how the proposed scanning of all correspondence and the resulting removal of any tactile or tangible connection with inmates' families and friends is necessary to accomplish the expressed objectives of section 20.315(1)(d), Florida Statutes. *See* § 120.545(1)(g), Fla. Stat.

Please explain how the proposed prohibition against the receipt of postage stamps is necessary to accomplish the expressed objectives of section 20.315(1)(d), Florida Statutes. *See* § 120.545(1)(g), Fla. Stat.

Please explain how the proposed prohibition of inmates receiving blank greeting cards is necessary to accomplish the expressed objectives of section 20.315(1)(d), Florida Statutes. *See* § 120.545(1)(g), Fla. Stat.

Public Hearing

A public hearing was held regarding the proposed rule. Public comments received by the Committee indicate that when it was their time to speak, the technology would not allow some attendees to unmute their line to address the Department. To date, it appears that a second hearing has not been scheduled. Please explain how the initial hearing comports with the requirements of the "Government in the Sunshine," rule 28-109.004(2), F.A.C., which requires that:

(1) Nothing in this chapter shall be construed to permit the agency to conduct any proceeding otherwise subject to the provisions of Section 286.011, F.S., exclusively by means of CMT without making provision for the attendance of any member of the public who desires to attend.

(2) No proceeding otherwise subject to Section 286.011, F.S., shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested persons to attend. If during the course of a CMT proceeding technical problems develop with the communications network that prevent interested persons from attending, the agency shall terminate the proceeding until the problems have been corrected.

Please advise the Committee how the Department intends to address this issue.

Mr. Jason W. Holman, Esq.

July 28, 2021

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Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large, stylized initial 'K'.

Kenneth J. Plante
Coordinator

KJP:tl #184251