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THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

September 13, 2021

Mr. Jason Holman  
Assistant General Counsel  
Department of Corrections  
501 S. Calhoun Street  
Tallahassee, Florida 32399-6548

**RE: Department of Corrections  
Proposed Rule Number 33-210.101**

Dear Mr. Holman:

The following comments regarding the above-referenced rule are in addition to those set forth in the Committee's letter of September 10, 2021.

**33-210.101(6)** The Department's website accessed by the address provided in the Notice of Change includes a link to the JPay website. It appears that the cost of inmate services provided by JPay meet the definition of a rule set forth in section 120.52(16), Fla. Stat., and should, therefore, be clearly set out in the rule or incorporated by reference.

It should also be noted that there appears to be a discrepancy between the language on the Department's website and the information on the JPay website. The Department's website states: "Secure Mail is available to inmates at a cost of \$0.39/stamp, with one stamp purchasing one email," whereas the JPay website states: "Each typed page of text cost one stamp. Each attachment costs 1 stamp(s)." Furthermore, the cost of a stamp on the JPay site is \$0.40/stamp. The Department's website should be changed to reflect the actual cost of email.

**33-210.101(8)** The rule states that, "[o]utgoing or incoming mail shall be disapproved for mailing by or delivery to the inmate if any part of it" meets the criteria set forth in paragraphs (a) through (m). Subsection (16) further states: "Incoming routine mail that is to be processed electronically shall be sent via

the U.S Postal Service to a centralized address. . . . All such mail will be picked up for electronic mail processing by the Department contractor.”

This procedure suggests that all incoming mail to be processed electronically will be screened by the contractor for compliance with the provisions of subsection (8). Please provide the Committee with a citation to the statutory provision authorizing the Department to delegate the interpretation and application of Department rules to a third party.

**33-210.101(9)**

The rule states, in part, “(a) . . . if incoming correspondence is rejected by the Department **or a Department contractor** because it does not comply with the requirements of subsections (16) or (21) of this rule, Form DC2-521 will not be prepared.” (Emphasis added.)

Please provide the Committee with a citation to the statutory provision authorizing the Department to delegate the interpretation and application of Department rules to a third party.

**DC letter of 8/20/21**

Numbered para. 3.b., states: “. . . for purposes of determining whether a SERC is required and/or whether legislative ratification may be required at the time a rule is imposed, all alleged costs to the Department of Corrections in terms of manpower and administration are irrelevant to the Department’s determination of the costs of regulation.” Although the Committee appreciates the guidance provided by the SERC checklist, the checklist is silent regarding consideration of several costs/factors that must be included in the preparation of a SERC. More specifically, section 120.541(2)(c), Fla. Stat., provides that, “A statement of estimated regulatory costs shall include . . . [a] good faith estimate of the cost to the agency. . . .” Section 120.545(1)(k), Florida Statutes, further requires that the Committee, in reviewing proposed rules, determine whether “[t]he rule will require additional appropriations.” The projected/anticipated costs to an agency is, therefore, of legislative concern and relevant to the Committee’s review of the proposed rule.

Para. 3.b. further states: “The cost of digitizing incoming mail will not be borne by the Department but will be borne by the contractor and will be part of the current contract. . . .” The language suggests that the terms/conditions of digitizing the mail are not part of the current contract, but “will be” part of the current contract. Does the current/future contract envision the contractor passing any costs for digitization on to inmates and those individuals corresponding with inmates?

Numbered para. 4.d. states: “The rule, as already proposed, provides two solutions for the retention of physical mail: an inmate can pay to make a paper copy of incoming mail; or, the sender of mail can request mail be

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returned to them once scanned, as long as pre-paid postage is received.” Although the provision for the sender of mail to request that it be returned is set out in subsection (6), there does not appear to be a similar provision for inmates to make paper copies. A provision should, therefore be added to the rule or reference made to its location in another rule, as well as the costs associated with the option.

Please let me now if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante  
Coordinator

KJP:tf #184251