



June 15, 2020

Secretary Mark Inch
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

Dear Secretary Inch,

FAMM appreciates the intent behind proposed Rule 33-601.260 (Rule). The Legislature's unwillingness to reduce the state prison population, coupled with its unwillingness to fund the Florida Department of Corrections (FDC) at a level appropriate for that population, has led to well-documented staff shortages. These shortages, in turn, have allowed violence, gang activity, and drug abuse to grow within the state prison system. That you inherited these problems, and are doing your best to solve them with plainly inadequate resources, is not lost on us. Violence, predatory behavior, and abuse of prisoners is intolerable, and incompatible with FDC's obligation to protect those in its care. Protecting incarcerated people appears to be the good faith intent behind the rule, and we share that goal.

We are skeptical the rule reflects the most effective means of achieving its intended outcomes. Our skepticism is rooted primarily in penological history, which is replete with attempts to isolate "the worst of the worst" in special facilities. Experience suggests these sorts of "hard sites" are less likely to develop into safe places of rehabilitation, and more likely to devolve into Hobbesian warzones that create heightened opportunities for abuse and neglect. Given FDC's lack of sufficient funding, staffing, and rehabilitative programming even in facilities that hold rule-compliant people with lower risk and need levels, we are doubtful the proposed Administrative Management Units (AMUs) will receive the necessary resources to manage and rehabilitate a population that has much higher risks and needs. As an initial matter, then, the evidentiary hurdle AMUs must overcome is high, and we believe FDC has not yet made a persuasive case. We therefore request FDC release any studies, data, models, assessments of similar programs and facilities, and any other evidence on which FDC relied in developing the rule.

Even assuming there is strong evidence that AMUs are the most effective and efficient means to solve FDC's problems, we believe the rule as currently written will have negative unintended costs that outweigh any of its potential benefits. Below, we highlight some of our objections.

First, the eligibility requirements under the rule are arbitrary and overbroad. For example, while the rule is aimed at prisoners who demonstrate "an inability to live within an institutionalized setting without abusing the rights and privileges of others by committing, or instigating others to commit violent, disruptive, predatory, or riotous actions, or behaves in a way that poses a serious threat to the security of an institution," the rule allows any prisoner who tests positive for drugs to be placed in an AMU for at least a year. Additionally, the rule allows placement in an AMU for *potentially* threatening the safety of an institution. These rules are almost certain to place people in AMUs when they do not belong there.

Second, the rule provides insufficient due process for prisoners before they may be placed in an AMU. For example, despite a sanction that could amount to a deprivation of constitutionally protected liberty interests, the rule provides no requirement that prisoners have access to representation by counsel. Additionally, the rule provides accusing authorities unlimited time to prepare a case for AMU placement, while it gives prisoners only 48 hours to prepare a defense.

Third, the rule provides no mechanism for appeal of AMU placement decisions.

Fourth, the rule provides insufficient review to determine if prisoners need to remain in an AMU.

Finally, the rule punishes prisoners placed in an AMU by reducing visitation. This is cruel, counterproductive, and punishes innocent families unnecessarily. Family contact is connected to lower recidivism, so this part of the rule also threatens public safety.

Once again, FAMM appreciates the intent of the rule. We are open to a persuasive case for the necessity of AMUs, particularly given FDC's ongoing challenges. However, we cannot support the proposed rule. We have attached to this letter a substitute rule we believe would achieve the intended outcomes of the proposed rule while limiting negative unintended consequences. We remain skeptical that AMUs can ever be an ideal solution, and we urge FDC to exhaust all less restrictive options before adopting them. But in the event FDC concludes AMUs are the only available option, we urge you to adopt our substitute rule.

Sincerely,

Greg Newburn
Florida Director, FAMM

cc: Governor Ron DeSantis; FDC Deputy General Counsel Paul Vazquez

APPENDIX: FAMM's Substitute Rule for Proposed Rule 33-601.260

33-601.260 Administrative Management Units.

(1) Definitions.

(a) Administrative Management Unit (AMU) – where used herein, refers to a general population housing status where an inmate is placed in a highly structured environment to promote the safety and security of inmates, staff, and the public, or the security and good order of an institution. Placement in an AMU is the consequence of an inmate's inability to live within an institutionalized setting without abusing the rights and privileges of others by committing, or instigating others to commit, violent, disruptive, predatory, or riotous actions, or an inmate's behavior that poses an ongoing threat to the security of an institution. The Secretary will designate the institutions where AMU inmates will be housed based on the needs of the Department.

(b) Institution – where used herein, refers to all state correctional institutions as defined in s. 944.02, F.S., and all private correctional facilities as defined in s. 944.710, F.S.

(c) Institutional Classification Team (ICT) – where used herein, refers to a team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or as designated by rule. The ICT is responsible for making work, program, housing, and inmate status decisions at an institution, and for making other classification recommendations to the State Classification Office.

(d) Institutional Classification Team Docket – where used herein, refers to the official record of an ICT hearing.

(e) Offender Based Information System (OBIS) – where used herein, refers to the Department's computer-based offender database system that is utilized to organize and store security, classification, program, and other inmate and offender information.

(f) Review – where used herein, refers to the evaluation of all available relevant information concerning an inmate's behavior to determine if he or she should be placed in an AMU, or whether any changes to the inmate's placement status are required or recommended.

(g) Security Threat Group (STG) – where used herein, refers to a formal or informal ongoing inmate or offender group, gang, organization, or association consisting of three or more members who have:

1. A common name or common identifying signs, colors, or symbols; and
2. Members or associates who individually or collectively have engaged in a pattern of gang activity, criminal activity, or Department rule violations.

(i) State Classification Office (SCO) – the office or office staff at the central office level that is

responsible for the review of inmate classification decisions, including the placement of an inmate into or the removal of an inmate from an AMU.

(2) Inmates assigned to an AMU are general population inmates and, unless otherwise restricted pursuant to this rule, have access to the same privileges and are subject to the same restrictions as other general population inmates.

(3) An inmate will be considered for placement in an AMU if the classification officer at the institution housing the inmate provides to the ICT a documented history of disciplinary action that shows by clear and convincing evidence that the inmate has:

(a) Participated in a predatory or aggressive act against another person using force or intimidation;

(b) Distributed unauthorized drugs;

(c) Possessed negotiables, escape paraphernalia, or other items that present a threat to the safe and secure operation of an institution;

(d) Participated in a riot, strike, or mutinous act;

(e) Participated in at least two documented STG-related activities that cause disruption in the operation of an institution; or

(f) Documented leadership of an STG and participation in any documented STG-related activity.

(4) Procedures for Placement in an AMU.

(a) Prior to a review for placement in an AMU, the classification officer at the institution housing the inmate must complete Section I of Form DC6-233D, Report of Administrative Management Unit. Form DC6-233D is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of the form is XX/XX. Upon completion of Section I, the classification officer will forward Form DC6-233D to his or her classification supervisor. The classification officer will ensure that the inmate receives a copy of Form DC6-233D to allow the inmate to prepare for the AMU review. The staff member delivering the copy of Form DC6-233D to the inmate must document on the form that the inmate was informed of the allotted time to prepare for the AMU review. The inmate shall have at least one week to prepare for the AMU review unless the time is waived by the inmate by completing an Administrative Management Waiver, Form DC6-265D. Form DC6-265D is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. The effective date of the form is XX/XX.

(b) Upon receiving the completed Form DC6-233D, the classification supervisor will submit the case for placement on the ICT docket.

(c) The ICT will evaluate the recommendation for AMU placement, interview the inmate being reviewed, and consider all information provided by the inmate. The inmate may present information verbally or in writing for consideration by the ICT. The ICT must ensure that the inmate was given a minimum of one week to prepare for the review unless waived by the inmate. The ICT must document on Form DC6-233D that the inmate was allowed one week to prepare for the review or that the time was waived by the inmate completing Form DC6-265D. The ICT must provide the inmate access to representation by counsel for the AMU review. The ICT is authorized to postpone the review to allow an inmate additional time to prepare. If the review is postponed, the team must document the postponement on Form DC6-233D. The inmate may appear at the AMU review unless he or she impedes the process of the review or waives his or her right to be present at the review. If the inmate waives his or her right to be present at the review, Form DC6-265D must be completed. If the inmate is precluded from attending the review, is removed from the review, or waives his or her right to appear at the review, the review will be conducted without the inmate present. The presence, removal, or absence of the inmate will be documented on Form DC6-233D. After the interview and review of all relevant information, the ICT will make an AMU placement recommendation and provide it to the SCO. This recommendation will be documented on Form DC6-233D. The ICT will inform the inmate of the basis for its decision and provide a copy of its decision to the inmate after the conclusion of its review. The ICT classification member will ensure that the results of the ICT review are entered in OBIS.

(d) The SCO will consider the recommendations of the ICT and all information reviewed by the ICT before making a decision regarding the inmate's placement in an AMU. As part of its review, the SCO may interview the inmate or rely on the documentation available in OBIS. The SCO may request that the ICT obtain and submit additional information before reaching a decision. At the conclusion of its review, the SCO will approve or disapprove the ICT's recommendation. If the ICT's recommendation is disapproved, the inmate will be informed of the decision in writing by the SCO. Inmate notification will not be required when the SCO approves the ICT's recommendation. After its review is complete, the SCO will document its final decision in OBIS.

(5) Appeal of SCO Final Decision.

(a) After a final decision by the SCO to place an inmate in an AMU, the inmate may appeal the SCO's decision through the formal grievance process outlined in Rule 33-103.007 of the Florida Administrative Code.

(b) Appeals filed pursuant to this subsection must be filed within 60 days of the SCO's final decision.

(c) If the Bureau of Inmate Grievance Appeals approves the inmate's grievance, the inmate shall not be placed in an AMU. If the inmate has already been placed at an AMU at the time of the approval, the inmate shall be transferred out of the AMU.

(6) Transfer of Inmates to an AMU.

(a) If an inmate is being reviewed for placement in an AMU, the inmate will remain in administrative confinement or in his or her current confinement status pending the final decision of the SCO. If the inmate's disciplinary confinement status expires before a final decision is made, the inmate will be placed in administrative confinement until a final decision is made by the SCO.

(b) If the ICT's AMU placement recommendation is approved, the SCO will notify population management to initiate the transfer of the inmate to an appropriate AMU.

(c) If the ICT's AMU placement recommendation is disapproved, the SCO will determine whether the inmate should be transferred for other management reasons. The SCO will document its decision in OBIS. If a transfer is approved, the SCO will notify population management to initiate the transfer of the inmate to an appropriate institution.

(7) Transfer of Inmates While in an AMU.

(a) Special reviews conducted pursuant to Rule 33-601.211, F.A.C., involving inmates housed in an AMU will be resolved within the AMU. Unless exceptional circumstances exist, inmates will not be transferred from an AMU due to a special review.

(b) A recommendation by the ICT to transfer an inmate in an AMU to close management will be conducted pursuant to Rule 33-601.800, F.A.C. If the ICT's placement recommendation is approved, the SCO will document its decision in OBIS and notify population management to initiate the transfer of the inmate to an appropriate close management unit. If the ICT's placement recommendation is disapproved, the SCO will provide written notification to the ICT of its decision to not transfer the inmate.

(c) If an inmate is transferred to a close management unit from an AMU, the inmate will be reviewed for return to an AMU upon release from close management status.

(8) Privilege Restrictions While Housed in an AMU.

(a) Visitation – Visitation will be restricted by the warden or his or her designee when it is determined that a threat to institutional security would be created by allowing visitation due to limitations associated with the visiting area or visitation supervision. Attorney visits will be permitted in accordance with Rule 33-601.711, F.A.C., and will not be restricted except when it is determined that the visit would be a threat to the safety or security of the institution.

(b) Canteen – An inmate housed in an AMU will be permitted to make canteen purchases in an amount up to \$35 once each week provided the inmate has no major rule violations during that period unless otherwise restricted by disciplinary action.

(9) Review of Inmates Housed in AMU.

(a) A classification officer will review the placement of each inmate housed in an AMU no less than every six months. For this review, the classification officer will interview the inmate and prepare a formal assessment and evaluation on Form DC6-233D. The assessment must include the original basis for the inmate's AMU status, the inmate's behavior and activities during the review period, and whether the inmate should be removed from or remain housed in the AMU. The classification officer must document any disciplinary reports, and the inmate's institutional adjustment, program participation, and job performance. The case will be forwarded to the classification supervisor who will submit the case for placement on the ICT docket.

(b) The purpose of the ICT review is to determine whether the inmate should remain housed in the AMU due to safety and security concerns. The ICT must provide the inmate access to representation by counsel for the ICT review, and the inmate must be given at least one week to prepare for the ICT review. The ICT will evaluate the DC6-233D prepared by the classification officer, as well as any other relevant information relating to staff and inmate safety and institutional security. The inmate will be present for the review unless he or she impedes the process of the review, or the inmate waives the right to be present at the review by completing Form DC6-265D. The presence, absence, or removal of the inmate will be documented on Form DC6-233D. For this review, the ICT will consist of the warden or assistant warden, classification supervisor, and chief of security only. For an inmate to remain in an AMU, the ICT must show by clear and convincing evidence that there are safety and security issues or circumstances that can only be met by the inmate's continued placement in the AMU. The recommendation of the ICT will be documented on Form DC6-233D, recorded in OBIS, and forwarded to the SCO.

(c) The SCO will review the ICT's recommendation and all relevant information provided by the ICT concerning the inmate's AMU status. If the SCO determines that the ICT has not shown by clear and convincing evidence that safety or security concerns justify the inmate's continued placement in an AMU, the inmate will be transferred out of the AMU. In such case, the SCO will notify population management to initiate the transfer of the inmate out of the AMU. For an inmate to remain in an AMU, the SCO must determine that clear and convincing evidence suggests there are safety or security concerns that warrant maintaining the inmate in the AMU. The SCO's decision must be documented on Form DC6-233D and recorded in OBIS. The SCO will advise the inmate of its decision.