

December 23, 2015

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-208.003

RULE TITLE: Range of Disciplinary Actions

PURPOSE AND EFFECT: The purpose and effect of the amendment is to update disciplinary standards to current Department expectations for members.

SUMMARY: The proposed rule provides for a modern disciplinary range based on the frequency and nature of a particular offense and the circumstances surrounding each case; requires the Disciplinary Authority to consider the Florida Administrative Code, the seriousness of the offense, and an employee's entire work history in reaching disciplinary decisions; expands offenses and/or deficiencies to encompass commonly occurring conduct; adds clarity for the Department's members of their expectations while adding structure to the Disciplinary Authority's responsibility; and limits suspension duration to ensure appropriate balance between behavior modification and financial hardship on the member.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION: The Department has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. A SERC has not been prepared by the Department. The Department has determined that the proposed rule is not expected to require legislative ratification based on the SERC or, if no SERC is required, the information expressly relied upon and described herein: 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), FS. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09 FS

LAWS IMPLEMENTED: 110.227, 112.0455, 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-208.003 Range of Disciplinary Actions.

Violations of the foregoing Rules of Conduct as well as other departmental and institutional policies will result in disciplinary actions, which may be by ~~oral reprimand~~, written reprimand, suspension, ~~reduction in pay~~, demotion or dismissal.

Any employee who feels that unjust disciplinary action ~~such as an oral or written reprimand~~ has been given has the right to submit a grievance as established by the grievance procedures of the Department of Corrections. For disciplinary actions involving, suspension, ~~reduction in pay~~, demotion, or dismissal, permanent Career Service employees have the right to appeal to the Public Employees Relations Commission. Violation of more than one rule shall be considered in the application of discipline and may result in greater discipline than specified for one offense alone. Any questions regarding these rules and personnel procedures should be referred to the employee's circuit administrator, warden or personnel officer ~~Personnel Officer~~.

The preceding section titled Rules of Conduct and the following list of offenses and work deficiencies with their ranges of disciplinary actions will be used by this Department in administering an effective disciplinary program. The severity of penalties may vary depending upon the frequency and nature of a particular offense and the circumstances surrounding each case. While the following guidelines are not a substitute for impartial supervision and effective management, and do not set absolute minimum and maximum penalties, it is expected that all Disciplinary Authorities will consider them, the seriousness of the offense, and an employee's entire work history in reaching disciplinary decisions.

~~THE SEVERITY OF PENALTIES MAY VARY DEPENDING UPON THE FREQUENCY AND NATURE OF A PARTICULAR OFFENSE AND THE CIRCUMSTANCES SURROUNDING EACH CASE. WHILE THE FOLLOWING GUIDELINES ARE NOT A SUBSTITUTE FOR IMPARTIAL SUPERVISION AND EFFECTIVE MANAGEMENT, AND DO NOT SET ABSOLUTE MINIMUM AND MAXIMUM PENALTIES, IT IS~~

~~EXPECTED THAT ALL SUPERVISORS WILL CONSIDER THEM IN REACHING DISCIPLINARY DECISIONS.~~

Suspensions shall not exceed eighty work hours.

Offense or Deficiency	First Occurrence	Second Occurrence	Third Occurrence	Fourth Occurrence
(1) <u>Gambling during work time</u>	<del>Oral or</del> Written Reprimand	Written Reprimand, <del>or up to 10-day</del> Suspension	<del>Up to 30 days</del> Suspension, Demotion, <del>or Dismissal</del> dismissal	Dismissal
(2) <u>Wrestling or Horseplay during work time</u> <del>Horseplay or Fighting</del>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>
(3) <u>Inappropriate Idleness while working</u> <del>Loafing</del>	<u>Written Reprimand, Suspension Same</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(4) <u>Tardiness (within a 2-month period)</u>	<u>Written Reprimand Same</u>	<u>Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(5) <u>Excessive Absenteeism</u>	<u>Written Reprimand Same</u>	<u>Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(6) <u>Malicious Use of Profane or Abusive Language Toward Inmates, Visitors, or Persons Under Supervision</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>
(7) <u>Absence Without Authorized Leave</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal Same</u>
(8) <u>Unauthorized Distribution of Written or Printed Material of any Description While on FDC property or during work time</u>	<u>Written Reprimand Same</u>	<u>Written Reprimand, Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(9) <u>Unauthorized Solicitations or Sales While on FDC property or during work time on DC Premises or While on Duty</u>	<u>Written Reprimand Same</u>	<u>Written Reprimand, Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>

(10) Substandard Quality and/or Quantity of Work	<u>Written Reprimand Same</u>	<u>Written Reprimand, Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(11) Reporting to Work Improperly Dressed for Job Assignment	<u>Written Reprimand Same</u>	<u>Written Reprimand, Suspension Same</u>	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>
(12) Sleeping on the Job	<u>Suspension, Demotion, Dismissal</u> <u>Written Reprimand, up to 30 days Suspension or Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>
(13) Negligence (Job Related)	<u>Written Reprimand, Suspension, Demotion, Dismissal Same</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal Same</u>	<u>Suspension, Demotion, Dismissal</u>	<u>Dismissal</u>
(14) Revealing Confidential Information in DC records to unauthorized person(s) person	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(15) Possession of an Unauthorized Intoxicant, Narcotic, Barbiturate, Hallucinogenic drug, Central nervous system stimulant, Weapon or Firearm on DC Property	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(16*) Reporting to Work under the Influence of an Intoxicant, Narcotic, Barbiturate, Hallucinogenic drug, or Central nervous system stimulant	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(17*) Drinking an Intoxicant or using a Narcotic, Barbiturate, Hallucinogenic drug, or Central nervous system stimulant on the job	<u>Suspension, Demotion, Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(18) Failure to maintain direct (sight) supervision of assigned medium, close or maximum custody inmates while outside the institution security perimeter	<u>Written Reprimand, up to 30 days of Suspension, Demotion, or Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>

(19) Leaving the Assigned Work Station without Authorization	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(20) Use of Corporal Punishment or Hazing, Verbal or Physical Abuse of an Inmate	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(21) Falsification of Documents (Job Related) Forms or Records	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(22) Conduct Unbecoming a Public Employee or Failing to Maintain a Proper Level of Professionalism	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Suspension, Demotion,</u> <u>Dismissal</u>	<u>Dismissal</u>
(23) Theft of State Stealing DC Property, or Property of Another an Inmate Visitor or Employee	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(24) Willful Violation of Rules, Procedures, Post Orders, Regulations, Directives, or Policy Statements	<u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(25) Unauthorized Use of State DC Equipment, Property, or Weapons	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(26) Insubordination	<u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(27) Destruction or Abuse of State DC Property or Equipment	<u>Written Reprimand,</u> <u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Suspension,</u> <u>Demotion,</u> <u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>

(28) Destruction of Evidence, or Giving False Testimony or False Statements and/or Coercion of Others to do the same	Suspension, Demotion, or Dismissal Written Reprimand, up to 30 days	Dismissal	<u>Dismissal</u>	<u>Dismissal</u>
(29) Unlawfully Obtaining Items of Value Money from or on behalf of an Inmate or Person under FDC Supervision	Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(30) Failure to Report and Turn in Without Delay all Property Found, Seized, or Taken in One's Official Capacity as an Employee Officially	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(31) Failure to Submit to a Required Physical Exam	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(32) Failure to follow Oral or Written Instructions	Written Reprimand, Suspension, Demotion, Dismissal Same	Written Reprimand, Suspension, Demotion, Dismissal Same	Suspension, Demotion, Dismissal	<u>Dismissal</u>
(33) Abuse of Sick Leave Privileges	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(34) Careless or Unsafe Handling of Firearms or Other Weapons (Job Related)	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(35) Cowardice on the Job	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(36) Failure to report for duty when instructed to do so in time of emergency or potential emergency	Written Reprimand, Suspension, Demotion, Dismissal Same	<u>Dismissal Same</u>	<u>Dismissal</u>	<u>Dismissal</u>
(37) Violation of Law, whether or not on the job (conviction not required, not including civil infractions)	Written Reprimand, Suspension,	Written Reprimand, Suspension,	Suspension, Demotion, Dismissal	<u>Dismissal</u>

	<u>Demotion, Dismissal</u>	<u>Demotion, Dismissal</u>		
<u>(38) Disruptive Conduct on the Job</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal</u>	<u>Suspension, Demotion, Dismissal</u>	<u>Dismissal</u>
<u>(39) Discrimination and/or Harassment on the Job</u>	<u>Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>	<u>Dismissal</u>
<u>(40) Failure to Remain Mentally Alert on the Job</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal</u>	<u>Written Reprimand, Suspension, Demotion, Dismissal</u>	<u>Suspension, Demotion, Dismissal</u>	<u>Dismissal</u>

Rulemaking Authority 944.09 FS. Law Implemented 110.227, 112.0455, 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47 FS. History—New 10-8-76, Formerly 33-4.03, Amended 1-30-96, Formerly 33-4.003, Amended 8-5-07, 11-13-07, 1-31-10,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brett Shively, Director, Office of Human Resources

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 14, 2015

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 24, 2015