

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-208.002 Rules of Conduct

PURPOSE AND EFFECT: The proposed rule is intended to increase the safety, security, and good order of state correctional institutions and facilities by regulating the introduction of contraband by staff.

SUMMARY: Rulemaking is necessary to clarify and reorganize the rule, to make the rule gender neutral, and to establish criteria that will precipitate an intensive search of Department employees, employee property, and employee vehicles when entering, departing, or otherwise being on the premises of a Department institution or facility.

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, FS.

LAW IMPLEMENTED: 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.

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: Kyle Magee, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, kyle.magee@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-208.002 Rules of Conduct.

The Department of Corrections requires all employees to familiarize themselves with all rules and regulations pertaining to their positions and duties, and requires ~~all that~~ employees to abide by these rules and regulations. The following rules of conduct and performance standards are applicable to all employees both on and off the job ~~to all Department of Corrections employees~~. Some of these rules of conduct are restated found again in abbreviated form in Rule 33-208.003, F.A.C. However, ~~the next section titled "Range of Disciplinary Actions;" however,~~ all rules of conduct are enforceable by appropriate disciplinary action even if not listed in Rule 33-208.003, F.A.C. ~~regardless of whether they are listed in the range of disciplinary actions.~~

(1) Each warden, officer-in-charge, ~~and circuit administrator, administrator or~~ supervisor, ~~or as well as~~ designated central office staff ~~Central Office staff~~, shall be responsible for ensuring ~~insuring~~ that each employee under his or her supervision, before assuming the duties of his or her employment, is familiar with all rules and regulations of the Department ~~and institution~~ that pertain to such employee and to the protection, custody, control, care, and treatment of persons under his or her supervision ~~or control~~. Each employee shall keep himself or herself

completely familiar and comply with all such rules and regulations during his or her employment. Copies of the rules and regulations shall be made available for inspection by all employees.

(2)(a) Each employee shall make a full written report of any of the following within 24 hours or upon reporting to work for his or her next assigned shift, whichever is sooner:

1. A criminal ~~Criminal~~ charge was filed against the employee, or the employee is the principal in a criminal investigation. ~~him, or~~

2. The employee was arrested or received ~~Arrest or receipt~~ of a Notice to Appear for violation of any criminal law involving a misdemeanor, felony, or ordinance, except minor violations for which the fine or bond forfeiture is \$200 or less.

3. Any ~~status change in any case arising out of circumstances 'status change' in the case~~ described in subparagraphs (2)(a)1. and (2)(a)2. above, to include any pleadings filed, appearances made, dates set, sanctions ordered, and decisions rendered.

4. Knowledge of any violation of the law, or any rules, directives, or procedures of the Department.

5. Knowledge that a business associate, relative, or co-resident of the employee was placed under Department supervision. "Business associate" means any person or entity engaged in or carrying on a business enterprise with a Department employee as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. "Relative" means any person who is related to a Department employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. "Co-resident" means any person who resides in the same household or residence with a Department employee.

(b) For an employee outside of central office, this ~~This~~ report shall be submitted to the warden, regional director, or circuit administrator. For an employee in central office,; ~~in central office~~ this report shall be submitted to the employee's bureau chief or director.

(3)(a) All employees shall keep themselves physically fit and ~~Each employee shall keep himself physically fit,~~ mentally alert, and shall perform their ~~his~~ duties fairly and impartially, and shall ~~otherwise~~ conduct themselves ~~himself~~ both on-duty and off-duty so as to command the respect of fellow employees, inmates, offenders subject to community supervision, persons on parole, probation or otherwise under his supervision, inmates and the general public. Each employee's conduct shall at all times be consistent with the maintenance of proper security and welfare of Department institutions and facilities, the institution and of inmates, and offenders subject to community supervision, persons on parole, probation or otherwise under his supervision.

(b) Supervisors of employees shall not fraternize or have a dating relationship with employees they directly supervise or who are supervised by subordinate supervisors in their chain of command.

~~(c)(b)~~ Each employee shall comply with the grooming, clothing, and uniform standards outlined in Rule 33-208.101, F.A.C.

(4) No change.

(5) No employee shall solicit, ~~trade, barter,~~ or accept a gift or any compensation from, trade or barter with, or present a gift to, an inmate, an inmate's family, a person under the supervision of the Department, department, his or her family, or any other person on ~~in~~ behalf of an inmate or person under supervision, except as deemed appropriate and approved in writing ~~authorized~~ by the warden, officer-in-charge, circuit administrator, administrator or supervisor.

(6) No employee shall refuse to truthfully answer questions specifically relating to the performance of his or her official duties.

(7)(a) ~~No employee shall refuse to submit to a search or inspection by an authorized employee of his person, personal property or vehicle while entering, departing or otherwise being upon the premises of an institution. Refusal of an employee to submit to such search or inspection is considered as a serious form of insubordination. Upon proper notice to an employee occupying state owned housing, such housing is subject to reasonable inspections for maintenance and sanitation purposes at least annually.~~

(b) ~~All employees and contract staff shall be subject to some form of metal detection system search, and items in their possession or on their person shall be inspected prior to gaining entry to an institution or facility of the Department. Employees and contract staff may also be subject to a clothed pat search as a part of this routine search~~

process. Outer wear such as jackets or coats and footwear shall be removed and inspected upon request during the metal detection process and during clothed pat searches. Routine searches conducted prior to entry to a Department institution or facility shall be performed by an employee of the rank of correctional officer or above.

(c) ~~When the officer in charge has good reason to believe an employee is involved in the unauthorized or unlawful possession or movement of anything into or out of an institution or facility of the Department, he may authorize a more intensive search than is normally required. Such an intensive search may include the employee's person, vehicle, and any locker, desk or storage space assigned to or used by the employee.~~

(d) ~~The results of intensive search of an employee's person, property or vehicle shall be verbally reported to the officer in charge of the institution or facility immediately upon completion of the search. This shall be followed with a written report to the warden.~~

(e) ~~When the intensive search includes the employee's assigned locker, desk or storage space provided by the Department, the employee should be present during the search. If the employee is unavailable and the delay required to await his presence would jeopardize the effectiveness of the search, or if the employee's presence would jeopardize the effectiveness of the search, the search shall be conducted without the employee. In such cases, the reasons for conducting the search in the employee's absence shall be documented and submitted to the warden for review.~~

(f) ~~When an employee is subjected to a more intensive search than is normally required, the employee shall be informed of the reason for the search and of the name of the official ordering the search before the search begins.~~

(g) ~~Any search of an employee's person that involves the visual inspection of the employee's unclothed body shall be conducted in private and out of the sight and hearing of other employees and inmates. Such searches shall only be conducted, observed and supervised by officials of the same sex as the employee being searched. Such searches shall be conducted by not less than two employees, one of whom will be at least the rank of correctional officer lieutenant. The correctional officer inspector shall assist in such searches unless he is unavailable and the delay associated with awaiting the inspector's arrival would jeopardize the effectiveness of the search. No more than three staff members shall be involved in the actual search. Group strip searches of employees shall not be permitted.~~

(h) ~~Property that is introduced into the secure perimeter such as purses, briefcases, lunch boxes, or bags is subject to search at any time by an employee of the rank of a correctional officer or above.~~

(7) Upon proper notice to an employee occupying state-owned housing, such housing is subject to reasonable inspections at least annually for maintenance and sanitation purposes.

(8) No change.

(9) No employee shall report for duty or exercise supervision or control over any person while under the influence of a narcotic, barbiturate, hallucinogenic drug, central nervous system ~~stimulant, or any stimulant or an~~ intoxicant. However, in the event any of the foregoing ~~drugs~~ is legally prescribed and administered to an employee, the employee shall report this to the circuit administrator, ~~supervisor or~~ officer-in-charge, or supervisor and provide him or her with a prescription receipt detailing the type of medication, the dosage, and the possible side effects. The circuit administrator, ~~supervisor or~~ officer-in-charge, or supervisor shall then determine ~~make a determination~~ whether the employee can perform his or her duties without detrimental effect. No employee shall refuse to submit to a blood alcohol test ~~scientific test~~ to measure the employee's ~~his~~ alcohol blood level when reporting for duty or while on duty if the circuit administrator, ~~supervisor or~~ officer-in-charge, or supervisor has reason to believe that the employee is under the influence of alcohol.

(10) through (12) No change.

(13) No employee shall sleep while on duty. Sleeping on duty is absolutely prohibited.

(14) No employee shall apply physical force to the person of an inmate except as provided in Rule 33-602.210, F.A.C., or to any other person under the employee's ~~his~~ supervision except and only to the degree that it reasonably appears to be necessary for ~~in~~ self-defense, to prevent escape, to prevent injury to a person or damage to property, to quell a disturbance, or when an inmate exhibits physical resistance to a lawful command. When force becomes necessary, a detailed written report shall be made by the employee to the warden who shall have an investigation made and shall approve or disapprove the force used. The employee's report, together with the warden's written approval or disapproval of the force used and his reasons therefore, shall be forwarded and distributed in accordance with Rule 33-602.210, F.A.C.

(15) No change.

(16) Violence, fighting, horseplay and threatening or interfering with other employees at any time on Department ~~property, of Corrections premises~~ or at any other place, while on duty, will not be tolerated.

(17) Gambling of any kind on Department ~~property, of Corrections premises~~ or at any other place, while on duty, will not be tolerated.

(18) Employees shall not reveal to unauthorized persons confidential information held by the Department. ~~in Department of Corrections records to unauthorized persons.~~

(19) No employee shall knowingly submit inaccurate or provide untruthful information for or on any Department ~~of Corrections~~ record, report, or document.

(20) ~~No employee shall~~ ~~Employees shall not~~ be tardy, absent, or depart from work early without the permission of ~~the employee's supervisor, their supervisors~~ Every employee and shall observe time limitations on rest and meal periods. Each employee shall notify his or her immediate supervisor or designated representative prior to the employee's ~~his~~ scheduled work shift in the event the employee ~~he~~ expects to be absent from duty due to illness or other reason.

(21) No employee shall solicit funds or services, sell tickets, or distribute petitions or literature for any purpose other than official business on Department ~~property, of Corrections property~~ or at any other place while on duty, except that an employee may engage in such activities on Department ~~of Corrections~~ property when off-duty (before or after work, while on lunch hour, or during breaks) provided advance permission is obtained from the employee's supervisor. Such permission shall be given by the supervisor; if such solicitation is legal, if no employee is approached with a solicitation while on duty, and if such solicitations are conducted courteously without pressuring any employee ~~employees~~ to participate.

(22) Every employee shall ~~will~~ comply with safety regulations and must promptly report any illness or injury sustained while on duty ~~shall report promptly~~ to the appropriate supervisor ~~any injury or illness.~~

(23) Employees shall not use Department materials, equipment, ~~of Corrections materials~~ or facilities for personal purposes. No employee ~~employees~~ shall occupy, use, or operate any Department property, equipment, ~~of Corrections property~~ or facility without prior authorization.

(24) Every employee has the responsibility to protect and safeguard Department ~~of Corrections~~ property and the person and property of inmates and employees. No employee shall be in unauthorized possession of any property of the Department ~~of Corrections~~, its inmates, persons under its supervision, or other employees, regardless of value, or attempt to remove such property from the Department ~~of Corrections~~ premises.

(25) Unauthorized possession or use of firearms or other weapons on Department ~~of Corrections~~ property, or at any other place while on duty, is prohibited.

(26) Employees shall maintain a professional relationship with all persons in the custody or under the supervision of the Department and with their immediate family and ~~or~~ visitors. No personal or business relationships are permitted. Marriage between employees and inmates is not permitted.

(27)(a) No employee shall refuse to submit to a search or inspection by authorized Department staff of his or her person, personal property, or vehicle when entering, exiting, or otherwise being upon the premises of a Department institution or facility. Refusal to submit to such searches or inspections is considered a serious form of insubordination.

(b) All employee property that is introduced into the secure perimeter such as purses, briefcases, lunch boxes, or bags is subject to search at any time by a Department employee of the rank of a correctional officer or higher.

(c) All employees shall be subject to some form of metal detection search, and items in their possession or on their person shall be inspected prior to entering a Department institution or facility. Employees may also be subject to a clothed pat search as a part of the routine search process. Exterior layers of clothing and accessories such as gloves, scarves, jackets, coats, sweaters, footwear, and any approved head covering shall be removed and inspected upon request during the metal detection process and during clothed pat searches. Clothed pat searches shall include manual and visual inspection of an employee's hair, hair piece, toupee, wig, hair extensions, facial hair, and scalp. Metal detection and clothed pat searches conducted prior to entry to a Department institution or facility shall be performed by an employee of the rank of correctional officer or higher.

(d) Based on the criteria set for the below, when authorized Department staff suspects that an employee is involved in the unauthorized or unlawful possession or movement of any unauthorized item into or out of a Department institution or facility, the officer-in-charge may request authorization from the warden or duty warden to

conduct a more intensive search than is normally required. An intensive search may include a search of the employee's person, including the visual inspection of an employee's unclothed body, and the search of the employee's vehicle and any locker, desk, or storage space assigned to or used by the employee.

(e) An intensive search of an employee's vehicle or any locker, desk, or storage space assigned to or used by the employee shall only be authorized by the warden or duty warden based on one or more of the following:

1. A K-9 alert;

2. A drug ion scanner alert;

3. Credible information compiled, analyzed, or disseminated in an effort to anticipate, prevent, or monitor criminal activity obtained from the Department's Office of Intelligence, or a federal, state, or local law enforcement agency that has been vetted through the Department's office of Inspector General.

(f) An intensive search of an employee's person shall only be authorized by the warden or duty warden based on one or more of the following:

1. An employee's failure to clear approved security devices, including a cell phone tower or metal detector; or

2. The detection of a foreign object during a routine clothed pat search.

(g) When an intensive search of an employee's person, vehicle, or any locker, desk, or storage space assigned to or used by the employee is authorized, the employee shall be informed of the reason for the search and of the name of the official ordering the search before the search begins.

(h) When an intensive search includes the employee's assigned locker, desk, or storage space provided by the Department, the employee should be present during the search. However, if the employee is unavailable and the delay required to wait for his or her presence would jeopardize the effectiveness of the search, or if the employee's presence would jeopardize the effectiveness of the search, the search shall be conducted without the employee present. In such cases, the reasons for conducting the search in the employee's absence shall be documented and submitted by the officer-in-charge to the warden for review.

(i) Before an intensive search of an employee's person that involves the visual inspection of the employee's unclothed body may proceed, the employee must either give his or her consent to the search or a search warrant must be obtained authorizing the search.

(j) Any search of an employee's person that involves the visual inspection of the employee's unclothed body must be approved by the warden or duty warden and shall be conducted in private and out of the sight and hearing of other employees and inmates. Such searches must be conducted, observed, and supervised by at least two employees of the same sex as the employee being searched, one of whom must be at least the rank of correctional officer lieutenant, unless a same sex correctional officer lieutenant or higher is unavailable and the delay required to wait for his or her presence would jeopardize the effectiveness of the search. No more than three staff members shall be involved in the unclothed body search of an employee. Group unclothed body searches of employees are not permitted.

(k) If at any time during any search criminal activity is suspected, the search process shall be suspended and the Office of the Inspector General and, if appropriate, local law enforcement, must be notified to conduct any further investigation.

(l) The results of an intensive search of an employee's person, vehicle, or any locker, desk, or storage space assigned to or used by the employee shall be verbally reported to the officer-in-charge immediately upon completion of the search. This shall be followed with a written report from the officer-in-charge to the warden.

Rulemaking Authority 944.09 FS. Law Implemented 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47 FS. History—New 10-8-76, Amended 10-11-77, 4-19-79, 6-18-83, Formerly 33-4.02, Amended 8-15-89, 10-20-90, 3-20-91, 1-30-96, 3-24-97, 4-19-98, Formerly 33-4.002, Amended 7-17-02, 4-5-04, 4-17-06, 11-6-08, 3-9-10,

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: November 30, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 6, 2020