Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.314 Rules of Prohibited Conduct and Penalties for Infractions

PURPOSE AND EFFECT: Rule amendment is necessary to increase institutional security and ensure that the penalties imposed are proportionate to the conduct.

SUMMARY: The proposed amendment increases penalties for assaultive infractions; clarifies that sanctions should be commensurate with the severity of the conduct; creates a new infraction for tampering with tablets; increases the penalty for inchoate infractions; increases the penalty for conspiracy; and clarifies that the full authorized penalty for infractions of 1-6 and 4-1 may be imposed without regard to an inmate's prior disciplinary history.

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, F.S.

LAW IMPLEMENTED: 20.315, 944.09, 944.115, 944.14, 944.279, 944.28, F.S.

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: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.314 Rules of Prohibited Conduct and Penalties for Infractions.

Sections 1 through 10 below show the maximum penalties allowed for the listed offenses. Staff should take into account the individual facts of each violation and impose a penalty that is proportionate to the conduct. Section 11 shows the penalties that will be imposed for the listed offenses based on the time since an inmate's last disciplinary infraction absent a statement in the written findings of the disciplinary team or hearing officer justifying an upward deviation. As used in this rule, "DC" means the maximum number of days of disciplinary confinement that may be imposed, and "GT" means the maximum number of days of gain time that may be taken. The imposition of DC and GT penalties are independent of one another and do not have to be imposed together; i.e., an inmate may be placed in DC without losing GT, and vice versa.

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		Maximum Disciplinary
		Actions
SECTION 1 – ASSAULT, BATTERY, THREATS, AND DISRESPECT		

1-4 Disrespect to officials, employees, or other persons of constituted authority expressed by means of words, gestures, and the like	1-3	Spoken, written, or gestured threats	30 DC + 90 GT
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average performance by fellow inmates assigned to the same task 15 GT		average performance by fellow inmates assigned to the same task	15 GT

0.14	M-111-411-41	10 DC + 20 CT
9-14	Mail regulation violations	10 DC + 30 GT
9-15	Visiting regulation violations	10 DC + 30 GT
9-16	Refusing to work or participate in mandatory programs	10 DC + 90 GT
9-17	Disorderly conduct	30 DC + 60 GT
9-18	Unauthorized physical contact involving non-inmates	60 DC + 90 GT
9-19	Presenting false testimony or information before Disciplinary Team, Hearing Officer, or	
	Investigating Officer	30 DC + 60 GT
9-20	Extortion or attempted extortion	60 DC + 60 GT
9-21	Fraud or attempted fraud	30 DC + 90 GT
9-22	Robbery or attempted robbery	60 DC + All GT
9-23	Theft of property exceeding \$50 in value	60 DC + All GT
9-24	Loaning or borrowing money or other valuables	30 GT
9-25	Telephone regulation violations	15 DC + 30 GT
9-26	Refusing to submit to substance abuse testing	60 DC + 180 GT
9-27	Use of unauthorized drugs – as evidenced by positive results from urinalysis test, or	
	observable behavior	60 DC + 180 GT
9-28	Canteen Shortage under \$100.00	10 DC + 60 GT
9-29	Canteen Shortage over \$100.00	30 DC + 90 GT
9-31	Use of Alcohol – as evidenced by positive results from authorized tests, or by observable	
7 31	behavior	30 DC + 90 GT
9-32	In accordance with Section 944.279(1), F.S., is found by the court to have brought a	2020 70 01
7 32	frivolous or malicious suit, action, claim, proceeding or appeal in any court, or to have	
	brought a frivolous or malicious collateral criminal proceeding or is found by the court to	
	have knowingly or with reckless disregard for the truth brought false information or evidence	
	before the court	15 DC + 30 GT
9-33	Tampering with, defeating or depriving staff of any security device. Security devices include:	10 20 00 01
, 55	locks; locking devices; electronic detection systems; personal body alarm transmitters and	
	receivers; handheld radios; restraint devices such as handcuffs, waist chains, leg irons and	
	handcuff covers; keys; video and audio monitoring and recording devices; security lighting;	
	weapons; and any other device utilized to ensure the security of the institution	
	weapons, and any outer action with the control of the inclination	60 DC + All GT
9-34	Tampering with or defeating any fire or other safety device. Safety devices include: fire,	00 BC - Tim GT
7 3 1	smoke, and carbon dioxide detection devices; alarm systems; fire suppression systems and	
	devices such as fire sprinklers, fire extinguishers, and dry chemical systems; safety and	
	emergency lighting; exit lights; evacuation route and warning placards; self-contained	
	breathing apparatuses; personal protective equipment; first aid kits; eye wash stations; and	
	any other device utilized to ensure the safety of the institution, staff, and inmates	
	and at the annual to endure the salety of the institution, smill, and initiates	60 DC + All GT
9-35	Establishes or attempts to establish a personal or business relationship with any staff member	UUDU IMUI
, 55	or volunteer	30 DC + 90 GT
9-36	Gang related activities, including recruitment; organizing; display of symbols, groups, or	2020 7001
7.50	group photos; promotion or participation	30 DC + 60 GT
9-37	Unauthorized use of or tampering with a computer, computer peripheral device, or any other	50 DC - 00 G1
)-J1	office equipment. Other office equipment includes copying machines, facsimile machines,	
	postage meters, or any other device utilized in an office or office-like environment	
	postage increas, or any other device utilized in all office of office-like chivitolifical	60 DC + All GT
0.29	In accordance with Section 217 525(A) E.S. is found by the count to have filed an directed	
9-38	In accordance with Section 817.535(4), F.S., is found by the court to have filed or directed a	
	filer to file, with the intent to defraud or harass another, any instrument containing a	
	materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument	30 DC + 90 GT
	owner's interest in the property desertoed in the institution	30 DC + 30 G1

0.20		
9-39	Committing, attempting to commit, conspiring to commit, or soliciting another person to	
	commit an unauthorized or illegal financial transaction	30 DC + 60 GT
9-40	Possession of any items or materials that can be used to facilitate an unauthorized or illegal	
	financial transaction, including account numbers, passwords, PINs, or other similar items or	
	materials that an inmate is not authorized to possess	60 DC + 90 GT
9-41	Kiosk regulation violation	10 DC + 30 GT
9-42	Tablet regulation violation	10 DC + 30 GT
9-43	Video visitation regulation violation, including call forwarding, video chatting, three-way	10 DC + 30 GT
	video, livestreaming, recording, or other electronic tampering	
9-44	eCommunication regulation violation	10 DC + 30 GT
<u>9-45</u>	Tablet tampering- alterating or attempting to alter a tablet to enable communication with	$\underline{60 DC + All GT}$
	another device, to change tablet services as defined in 33-602.900(2), or to change in any	
	manner the functionality of the tablet, or possession of any tablet so altered.	
		<u> </u>

SECTION 10 - No change.

SECTION 11 - PENALTY SCALE

- (1) through (2) No change.
- 1-4 No change.
- 1.6 Lewd or lascivious exhibition by intentionally masturbating, intentionally exposing genitals in a lewd or lascivious
- manner, or intentionally committing any other sexual act in the presence of a staff member, contracted staff member or
 - ---visitor
 - 2-4 through 3-16 No change.
 - 4.1 Escape or escape attempt
 - 4-2 through 10-3 No change.
- 10-4 Making unauthorized contact personal, telephone, or otherwise with any individual on in behalf of another inmate
 - 10-5 through 10-9 No change.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.115, 944.14, 944.279, 944.28 FS. History—New 3-12-84, Amended 1-10-85, Formerly 33-22.12, Amended 12-30-86, 9-7-89, 11-22-90, 6-2-94, 10-1-95, 3-24-97, 7-9-98, 8-13-98, Formerly 33-22.012, Amended 9-30-99, 6-7-00, 4-18-02, 10-10-04, 1-9-05, 4-17-05, 6-5-05, 10-27-05, 10-12-06, 11-8-07, 5-18-08, 11-9-08, 5-11-09, 12-12-10, 10-1-11, 6-18-13, 11-14-13, 11-4-14, 1-18-21, 2-14-23, _______.

NAME OF PERSON ORIGINATING PROPOSED RULE: Hope Gartman, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 17, 2023 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: June 12, 2023.