

September 15, 2014

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.314

RULE TITLE: Rules of Prohibited Conduct and Penalties for Infractions

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to allow for the discipline of inmates who commit, attempt to commit, conspire to commit, or solicit another person to commit an unauthorized or illegal financial transaction; to allow for the discipline of inmates who possess any items or materials that can be used to facilitate an unauthorized or illegal financial transaction; and to allow for the discipline of inmates who tamper with, damage, lose, or destroy any electronic monitoring equipment.

SUMMARY: Rulemaking was initiated to make it a disciplinary infraction for inmates to engage in unauthorized or illegal financial transactions, to make it a disciplinary infraction for inmates to possess anything that can be used to facilitate an unauthorized or illegal financial transaction, and to make it a disciplinary infraction for inmates to tamper with, damage, lose or destroy electronic monitoring equipment.

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

LAW IMPLEMENTED: 20.315, 944.09, 944.14, 944.279, 944.28 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: Paul Vazquez, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

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

The following table shows established maximum penalties for the indicated offenses. As used in the table, “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. Any portion of either penalty may be applied.

Maximum Disciplinary Actions

SECTION 1 through SECTION 8 – No change.

SECTION 9 – MISCELLANEOUS INFRACTIONS

9-1	Obscene or profane act, gesture, or statement – oral, written, or signified	30 DC + 90 GT
9-2	Bribery or attempted bribery	30 DC + 90 GT
9-3	Breaking and entering or attempted breaking	30 DC + 90 GT
9-4	Attempt, conspiracy, or solicitation to commit any crime or violation of the Rules of Prohibited Conduct	30 DC + 90 GT
9-5	Theft of property under \$50.00 in value	30 DC + 60 GT
9-6	Bartering with others	15 DC + 30 GT
9-7	Sex acts or unauthorized physical contact involving inmates	30 DC + 90 GT
9-9	Tattooing, being tattooed, branding or body art to include body piercing	30 DC + 60 GT
9-10	Lying to staff member or others in official capacity, or falsifying records	60 DC + All GT
9-11	Feigning illness or malingering as determined by a physician or medical authority	10 DC + 15 GT
9-12	Gambling or possession of gambling paraphernalia	10 DC + 15 GT
9-13	Insufficient work: This constitutes an inmate not working up to expectation, taking into consideration the inmate’s physical condition, the degree of difficulty of assignment, and the average performance by fellow inmates assigned to the same task	10 DC + 15 GT
9-14	Mail regulation violations	30 DC + 30 GT
9-15	Visiting regulation violations	30 DC + 30 GT

9-16	Refusing to work or participate in mandatory programs	60 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	60 DC + All 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	15 DC + 30 GT
9-25	Telephone regulation violations	30 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 \$50.00	30 DC + 60 GT
9-29	Canteen Shortage over \$50.00	60 DC + All GT
9-31	Use of Alcohol – as evidenced by positive results from authorized tests, or by observable 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 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.	60 DC + All GT
9-33	Tampering with, defeating or depriving staff of any security device. Security devices include: 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.	60 DC + All GT
9-34	Tampering with or defeating any fire or other safety device. Safety devices include: fire, 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.	60 DC + All GT
9-35	Establishes or attempts to establish a personal or business relationship with any staff member or volunteer.	60 DC + 180 GT
9-36	Gang related activities, including recruitment; organizing; display of symbols, groups, or 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 office equipment. Other office equipment includes copying machines, facsimile machines, postage meters, or any other device utilized in an office or office-like environment.	60 DC + All GT
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.	60 DC + All GT
9-39	<u>Committing, attempting to commit, conspiring to commit, or soliciting another person to commit an unauthorized or illegal financial transaction.</u>	<u>60 DC + 90 GT</u>
9-40	<u>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.</u>	<u>60 DC + 90 GT</u>

SECTION 10 – COMMUNITY RELEASE PROGRAM VIOLATIONS – WORK

RELEASE, STUDY RELEASE, FURLOUGH AND VOLUNTEER SERVICE

10-1	Failure to directly and promptly proceed to and return from designated area by approved method	60 DC + 180 GT
10-2	Failure to remain within designated area of release plan	30 DC + 60 GT
10-3	Failure to return if plan terminated prior to scheduled time	30 DC + 30 GT
10-4	Making unauthorized contact – personal, telephone, or otherwise – with any individual in behalf of another inmate	10 DC + 15 GT
10-5	Deviating from or changing approved plan without permission	10 DC + 15 GT

10-6	Making purchase or contract without approval	10 DC + 15 GT
10-7	Failure to deposit entire earnings – less authorized deductions – each pay period	10 DC + 15 GT
10-8	Failure to repay advancement of monies as stipulated in the inmate’s financial plan	10 DC + 15 GT
10-9	<u>Tampering with, damaging, losing, or destroying any electronic monitoring equipment.</u>	<u>60 DC + All GT</u>

SECTION 11 – No change.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09, 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,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Upchurch, Assistant Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael D. Crews, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 13, 2014