

March 14, 2014

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-302.104 Correctional Probation Officers Carrying Firearms

33-302.108 Monitoring Sex Offender Conditions of Supervision

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to allow correctional probation officers to carry a firearm concealed on their person while they are in the probation office. Also to focus Rule 33-302.108 on the sex offender's responsibilities related to their conditions of supervision and to include the conditions regarding the prohibition on visiting schools, child care facilities, parks, playgrounds, distributing candy on Halloween, and wearing certain costumes as provided in Section 948.304(4)(a) and (b), Florida Statutes.

SUMMARY: To allow correctional probation officers to carry a firearm concealed on their person while they are in the probation office and to focus the rule on the sex offender's responsibilities related to their conditions of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency 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 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: upon review of the proposed changes to these rules, 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, 790.06, 944.09, 947.1405, 948.30 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: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-302.104 Correctional Probation Officers Carrying Firearms.

(1) – (3) No change.

(4) Carrying a Firearm While on Duty.

(a) Officers who elect to carry a firearm and who receive Department authorization to carry a firearm, are authorized to carry the firearm, in accordance with Department standards, only while on duty ~~conducting field supervision and investigation~~. The firearm shall be carried in a holster about the waist. Only the authorized firearm may be carried.

(b) Officers who are authorized to carry a firearm while on duty shall observe all laws, regulations, or other directives as may be applicable for locations which officers are professionally obligated to enter. When carrying the firearm inside the probation office, the firearm must, at all times, be concealed on the officer's person or secured in the office lock-box immediately upon entering the probation office.

(c) Each probation office shall have a designated ~~secure~~ space containing a secure locker for storage of firearms. ~~Officers shall place their firearms in the secure locker immediately upon entering the office. The Firearms firearm~~ shall be removed from the locker at the conclusion of the duty day. No firearm shall be left in the probation office overnight.

(d) No change.

(5) – (11) No change.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 790.06 FS. History—New 5-28-86, Amended 7-7-92, 12-20-92, 3-30-94, 9-27-94, 12-19-94, 3-8-95, 2-15-98, Formerly 33-24.013, Amended 3-4-01, 12-4-01, 8-13-03, 6-24-04, 7-13-05, 3-27-08, 2-13-12, \_\_\_\_.

Substantial rewording of Rule 33-302.108, F.A.C., follows. See Florida Administrative Code for present text.

33-302.108 ~~Standard Monitoring~~ Sex Offender Conditions of Supervision.

Standard sex offender conditions of supervision apply to certain offenders placed on probation or community control supervision for specific sex offenses committed on or after specified dates and do not have to be orally pronounced

by the judge at the time of sentencing in order to be in effect. These standard conditions of supervision are listed on the probation/community control order and include the following:

(1) If the offender is placed on probation or community control for a sex offense provided in chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S. committed on or after October 1, 1995, the offender must comply with the following standard conditions, in addition to any other special conditions ordered by the court:

(a) Mandatory curfew – The offender must remain at his/her approved residence during the designated curfew period on a daily basis, unless otherwise approved or ordered by the court. The offender may request a different 8-hour curfew period from the 10 p.m. to 6 a.m. schedule if it conflicts with his/her hours of employment; however any change in the curfew period must be approved by the court.

(b) Residence restrictions – If the victim was under the age of 18, the offender is prohibited from living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court. Offenders have the responsibility to find an appropriate residence that is in compliance with the conditions of supervision and applicable state and local laws regarding residency restrictions. Offenders have the responsibility to notify the Department of their intended residence and to seek approval of the residence location from the Department.

(c) Sex offender treatment program – The offender must actively participate and successfully complete a sex offender treatment program with a qualified practitioner specifically trained to treat sex offenders, at the offender's own expense.

(d) Prohibited victim contact – The offender must not initiate or have any contact, directly or indirectly, including through a third person, with the victim or the victim's family, unless approved by the victim, a qualified practitioner in the sexual offender treatment program and the sentencing court. The offender should immediately notify his/her probation officer if there is any contact with the victim with or without the offender initiating the contact.

(e) Prohibited contact with minors – If the victim was under the age of 18, the offender is prohibited from having contact with a child under the age of 18 unless the court approves supervised contact with a minor based on a recommendation by a qualified practitioner. In addition to court approval, the offender must be currently enrolled in or have successfully completed a sex offender treatment program.

(f) Prohibitions on Employment/Volunteer Work – If the victim was under age 18, the offender is prohibited

from working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to any school, child care facilities, park, playground, pet store, library, zoo, theme park or mall.

(g) Pornographic Material – Unless otherwise indicated in the treatment plan provided by the qualified practitioner in the sex offender treatment program, the offender is prohibited from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs or computer services that are relevant to the offender’s deviant behavior pattern.

(h) DNA Specimens – The offender must submit a DNA sample, as instructed, that will be forwarded to the Florida Department of Law Enforcement to be registered with the DNA data bank.

(i) Victim Restitution for Medical Services – The offender may be required to make restitution to the victim for all necessary medical and related professional services relating to physical, psychiatric and psychological care.

(j) All offenders are subject to a warrantless search by the probation officer of the offender’s person, residence or vehicle.

(2) If the offender is placed on probation or community control for a sex offense provided in chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S. committed on or after October 1, 1997, the offender must comply with the following standard conditions, in addition to the standard conditions listed above and any other special conditions ordered by the court:

(a) Polygraph Examinations – As part of the treatment program, the offender is required to participate, at his/her own expense, in a polygraph examination at least annually, as directed by the qualified practitioner or polygraph examiner. The polygraph examiner selected must be specially trained to perform polygraphs on sex offenders.

(b) Driving Log –The offender is required to maintain a driving log and is prohibited from driving a motor vehicle alone without the prior approval of the supervising officer.

1. The offender will utilize a Driving Log, Form DC3-244 to document each travel occurrence when the offender is driving, either alone, or when accompanied by someone. Form DC3-244 is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is December 18, 2001.

2. The offender will submit all completed Driving Logs, Form DC3-244, to the supervising officer at least once

a month. The completed driving logs will be maintained in the offender file.

(c) No Post Office Box Allowed – The offender is prohibited from obtaining or using a post office box without the prior approval of the supervising officer.

(d) HIV Testing – If there was sexual contact, the offender must submit to an HIV test, at his/her expense, with the results to be released to the victim and/or the victim's parent or guardian. The offender must submit to the HIV test at a Department of Health facility specified by the officer and provide the facility with a consent to release the test results to the victim. The offender must provide proof to the officer that he/she submitted to the test as required, without disclosing the results.

(e) Computer or Internet Restrictions – If the offender committed a certain sex offense on or after July 1, 2005, the offender is prohibited from accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(f) Electronic Monitoring – If the offender committed a certain sex offense on or after September 1, 2005 and he/she meets the statutory requirements of the Jessica Lunsford Act provided in s. 948.30(3), F.S., he/she is subject to mandatory electronic monitoring, at his/her own expense, for the entire term of supervision unless otherwise ordered by the court. In addition, if the offender is found in violation of his/her probation or community control and the conditions set forth in s. 948.063(1) or (2), F.S. are satisfied, the offender will be placed on electronic monitoring in accordance with s. 948.063, F.S.

(g) Additional Restrictions – If the offender committed any crime on or after May 26, 2010, and has been convicted at any time of committing, attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense, the offender is prohibited from:

1. Visiting schools, child care facilities, parks and playgrounds without prior approval from the offender's supervising officer. The offender must also comply with additional requirements provided in s. 856.022, F.S. regarding loitering within 300 feet of a place where children regularly congregate.

2. Distributing candy or other items to children on Halloween; wearing a Santa Clause costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without

prior approval from the court.

(h) All offenders are subject to a warrantless search by the probation officer of the offender's person, residence or vehicle.

Rulemaking Specific Authority 944.09 FS. Law Implemented 944.09, 947.1405, 948.30 FS. History–New 12-18-01, Amended 6-18-02, 12-31-03, 10-25-05, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jenny Nimer, Assistant Secretary of Community Corrections

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: February 20, 2014