

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](mailto: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.

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

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|--|---|--|
| 1-3                                    | Spoken, written, or gestured threats  | 30 DC + 90 GT  |
| 1-4                                    | Disrespect to officials, employees, or other persons of constituted authority expressed by means of words, gestures, and the like   | 30 DC + 60 GT  |
| 1-5                                    | Sexual battery or attempted sexual battery  | <del>60</del> <u>90</u> DC + All GT  |
| 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     | 60 DC + 90 GT  |
| 1-7                                    | Aggravated battery or attempted aggravated battery on a correctional officer  | <del>60</del> <u>90</u> DC + All GT  |
| 1-8                                    | Aggravated battery or attempted aggravated battery on staff other than correctional officer   | <del>60</del> <u>90</u> DC + All GT  |
| 1-9                                    | Aggravated battery or attempted aggravated battery on someone other than staff or inmates (vendor, etc.)  | <del>60</del> <u>90</u> DC + All GT  |
| 1-10                                   | Aggravated battery or attempted aggravated battery on an inmate   | <del>60</del> <u>90</u> DC + All GT  |
| 1-11                                   | Aggravated assault or attempted aggravated assault on a correctional officer  | <del>60</del> <u>90</u> DC + All GT  |
| 1-12                                   | Aggravated assault or attempted aggravated assault on staff other than correctional officer   | <del>60</del> <u>90</u> DC + All GT  |
| 1-13                                   | Aggravated assault or attempted aggravated assault on someone other than staff or inmates (vendor, etc.)  | <del>60</del> <u>90</u> DC + All GT  |
| 1-14                                   | Aggravated assault or attempted aggravated assault on an inmate   | <del>60</del> <u>90</u> DC + All GT  |
| 1-15                                   | Battery or attempted battery on a correctional officer  | <del>60</del> <u>90</u> DC + All GT  |
| 1-16                                   | Battery or attempted battery on staff other than correctional officer   | <del>60</del> <u>90</u> DC + All GT  |
| 1-17                                   | Battery or attempted battery on someone other than staff or inmates (vendor, etc.)  | <del>60</del> <u>90</u> DC + All GT  |
| 1-18                                   | Battery or attempted battery on an inmate   | <del>60</del> <u>90</u> DC + All GT  |
| 1-19                                   | Assault or attempted assault on a correctional officer  | <del>60</del> <u>90</u> DC + 180 GT  |
| 1-20                                   | Assault or attempted assault on staff other than correctional officer   | <del>60</del> <u>90</u> DC + 180 GT  |
| 1-21                                   | Assault or attempted assault on someone other than staff or inmates (vendor, etc.)  | <del>60</del> <u>90</u> DC + 180 GT  |
| 1-22                                   | Assault or attempted assault on an inmate   | <del>60</del> <u>90</u> DC + 180 GT  |
| SECTION 2 through SECTION 8 No change. |   |  |
| SECTION 9 – MISCELLANEOUS INFRACTIONS  |   |  |
| 9-1                                    | Obscene or profane act, gesture, or statement – oral, written, or signified   | 15 DC + 30 GT  |
| 9-2                                    | Bribery or attempted bribery  | 10 DC + 15 GT  |
| 9-3                                    | Breaking and entering or attempted breaking   | 10 DC + 15 GT  |
| 9-4                                    | Attempt, conspiracy, or solicitation to commit any crime or violation of the Rules of Prohibited Conduct  | <del>40</del> <u>60</u> DC + <del>45</del> <u>All</u> GT<br><u>Penalty imposed not to exceed maximum authorized for the substantive infraction</u> |
| 9-5                                    | Theft of property under \$50.00 in value  | 10 DC + 15 GT  |
| 9-6                                    | Bartering with others   | 30 GT  |
| 9-7                                    | Sex acts or unauthorized physical contact involving inmates   | 10 DC + 30 GT  |
| 9-9                                    | Tattooing, being tattooed, branding or body art to include body piercing  | 10 DC + 30 GT  |
| 9-10                                   | Lying to staff member or others in official capacity, or falsifying records   | 30 DC + 60 GT  |
| 9-11                                   | Feigning illness or malingering as determined by a physician or medical authority   | 15 GT  |
| 9-12                                   | Gambling or possession of gambling paraphernalia  | 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 | 15 GT  |

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| 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 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   | 15 DC + 30 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   | 30 DC + 90 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   | 30 DC + 90 GT  |

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| 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 video, livestreaming, recording, or other electronic tampering  | 10 DC + 30 GT         |
| 9-44                    | eCommunication regulation violation   | 10 DC + 30 GT         |
| 9-45                    | <u>Tablet tampering- altering or attempting to alter a tablet to enable communication with 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>60 DC + All GT</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.