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SECRETARY**

PROCEDURE NUMBER: 208.041

**PROCEDURE TITLE: DOMESTIC OR SEXUAL VIOLENCE
PROGRAM FOR STAFF**

RESPONSIBLE AUTHORITY: OFFICE OF HUMAN RESOURCES

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**SUPERSEDES: PERSONNEL OPERATING PROCEDURE, VOLUME 9,
CHAPTER 7**

RELEVANT DC FORMS: NONE

OTHER RELEVANT FORMS: CJSTC-78

ACA/CAC STANDARDS: 5-ACI-1C-25

**STATE/FEDERAL STATUTES: 27 CFR PART 178 (1997); AND 18 USC CHAPTER 44,
AND SECTIONS 741.28, 741.30, 741.31, 741.313, AND 790.233, F.S.**

**FLORIDA ADMINISTRATIVE CODE: RULES 33-208.002(3), 33-208.003(22), AND 60L-
36.005, F.A.C.**

PURPOSE: To establish a uniform process to address occurrences of domestic violence among staff, both as victims and batterers, and sexual violence among staff as victims.

DEFINITIONS:

- (1) **Arrest**, where used herein, refers to any arrests or charges filed for a domestic violence related offense ever received by the employee. This includes arrests before the Department employed the employee.
- (2) **Batterer**, where used herein, refers to the individual who perpetrates an act of domestic violence.
- (3) **Batterers' Intervention Program**, where used herein, refers to a batterers' program designed to eliminate violence in intimate relationships, to stop other forms of abusive behavior, and to increase victim safety. These programs educate batterers and monitor their behavior, while also holding them accountable for their behavior.
- (4) **Decision-making Authority**, where used herein, refers to the Secretary, Deputy Secretary, Assistant Secretary, Chief of Staff, General Counsel, Inspector General, Chief Financial Officer, Chief Information Officer, Warden, Circuit Administrator, Bureau Chief, or Director.
- (5) **Department**, where used herein, refers to the Florida Department of Corrections.
- (6) **Domestic Violence**, where used herein, refers to any of the following offenses or any criminal offense resulting in physical injury or death of one family or household member by another family or household member:
 - (a) assault,
 - (b) aggravated assault,
 - (c) battery,
 - (d) aggravated battery,
 - (e) sexual assault,
 - (f) sexual battery,
 - (g) stalking,
 - (h) aggravated stalking,
 - (i) kidnapping,
 - (j) false imprisonment, and/or
 - (k) criminal offense.

- (7) **Domestic Violence Centers**, where used herein, refers to shelters, refuge houses, and other safe houses where victims of domestic violence can go to escape their batterers, receive assistance, and learn about legal methods of obtaining protection for themselves.
- (8) **EAP Coordinator(s)**, where used herein, refers to the assigned Employee Relations representative in the Employee Relations Section of the Office of Human Resources responsible for coordination of supervisory and mandatory referrals. Each work location is assigned a specific EAP Coordinator.
- (9) **Employee Assistance Program (EAP)**, where used herein, refers to a program designed to promote health and wellness and to provide a referral to counseling for employees experiencing problems of a person nature, but not limited to:
- (a) domestic violence;
 - (b) mental health issues;
 - (c) alcohol and substance abuse; or
 - (d) financial instability.
- (10) **Family or Household Members**, where used herein, refers to:
- (a) spouses,
 - (b) former spouses,
 - (c) persons related by blood or marriage,
 - (d) persons who are presently residing together as if a family or who have resided together in the past as if a family, and/or
 - (e) persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.
- (11) **Injunction for Protection**, where used herein, refers to a judicial remedy awarded to one party to restrain another party from committing an act of domestic violence. The injunction is a preventative measure to guard against future injuries. This includes any injunction for protection ever received by the employee, including those received before the Department employed the employee.

(12) **Sexual Violence** refers to:

- (a) sexual battery;
- (b) a lewd lascivious act committed upon or in the presence of a person younger than 16 years of age;
- (c) luring or enticing a child;
- (d) sexual performance by a child; or
- (e) any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

(13) **Temporary Injunction for Protection**, where used herein, refers to an injunction for protection that is set to expire at a particular time, generally one month, pending a hearing before a judge to determine if an injunction for protection should be issued.

(14) **Victim**, where used herein, refers to the individual who has been subjected to domestic or sexual violence.

SPECIFIC PROCEDURES:

(1) **GENERAL GUIDELINES:**

- (a) Domestic and sexual violence is a universal problem that affects people from all walks of life. The Department will provide information, resources, and support for employees and management responding to employees' domestic or sexual violence concerns to maintain a safe, productive workplace. The Department will treat all employees fairly and will not discriminate against an employee in any employment actions (including recruiting, hiring, promoting, disciplining, or terminating) because the employee is, or is perceived to be a victim of domestic or sexual violence.
- (b) To enable employees to seek assistance for domestic or sexual violence needs, management will maintain an open mind when responding to employees who are victims of domestic or sexual violence. Respecting employees' needs for confidentiality and self-determination whenever possible, the Department reserves the right to disclose limited information and take action when it is clearly necessary to protect its employees.

(2) **DOMESTIC VIOLENCE IN THE WORKPLACE:**

- (a) The effects of domestic violence in the workplace can most easily be identified in increasing absenteeism, low productivity, and increased health care costs, as well as impacting the level of violence experienced in the workplace.
 - 1. Behaviors associated with domestic violence include, but are not limited to, patterns of coercive behavior that are used by one person to control another by means of physical

or sexual violence, emotional and psychological abuse, intimidation, stalking, verbal abuse, and economic control.

2. Domestic violence is a criminal activity and no employee is exempt, regardless of her/his occupation, from the consequences of her/his actions that result in an arrest or conviction for domestic violence and/or issuance of an injunction for protection.
- (b) The Department will maintain a zero tolerance policy against domestic violence and will not tolerate harassment of any employee or other individual while on Department premises or while conducting Department business.
 - (c) To promote awareness and educate staff on how to recognize signs of abuse, and address incidents of domestic violence among staff, both as victims and batterers, the Department will provide various training opportunities. In addition to statewide domestic violence training curriculum, local management staff are encouraged to partner with local domestic violence service providers to assist in providing additional staff training opportunities.
 - (d) Local, community-based domestic violence experts provide critical services to domestic violence victims and sometimes to batterers. Their expertise is applicable to the workplace, and local management staff are encouraged to utilize their expertise in assisting with training efforts.
 - (e) The EAP Coordinators are available to coordinate EAP referrals in accordance with "Employee Assistance Program," Procedure 208.042.

(3) DOMESTIC VIOLENCE INJUNCTIONS:

- (a) Under state law, an individual who has had a final injunction for protection issued against her/him due to domestic violence is prohibited from possessing firearms or ammunition at any time. The individual must immediately surrender all personal firearms and ammunition to the appropriate local law enforcement agency.
 1. Certified Correctional Officers will be permitted to possess firearms and ammunition in the performance of their official duties only, in accordance with section 790.233 (3), F.S.
 2. Employees in the Correctional Probation Officer class series with a final injunction for protection issued against them will not be allowed to carry firearms or ammunition while on duty. Therefore, individuals who had previously been authorized to carry firearms or ammunition will have such authorization revoked.
- (b) A certified officer who has a temporary injunction for protection issued against her/him that states s/he cannot possess firearms or ammunition must be temporarily restricted from possessing firearms or ammunition while on duty. Therefore, the officer's authorization to carry a firearm while on duty will be revoked or s/he must be removed from a post that requires possession of such equipment and her/his firearms certification card must be retained temporarily. This restriction will remain in place until the temporary injunction for protection is dismissed or the employee is issued an injunction for protection.

- (c) Department employees are obligated to immediately report any officer in violation of a final injunction for protection or temporary injunction for protection to the decision making authority, who will ensure a report is made to the appropriate local law enforcement agency.

(4) **DOMESTIC OR SEXUAL VIOLENCE CONVICTIONS:**

- (a) Employees in the Correctional Officer class series (certified officers and trainees) who are convicted of a misdemeanor crime of domestic violence will immediately be removed from her/his job class and/or dismissed.
- (b) Employees in the Correctional Probation Officer class series (certified officers) who are convicted of a misdemeanor crime of domestic violence will not be authorized to carry firearms in the performance of her/his duties. Therefore, if the employee has been authorized to carry a firearm and ammunition while on duty, such authorization will be immediately revoked.
- (c) Employees who are in a Correctional Probation Officer position, in trainee status, who are convicted of a misdemeanor crime of domestic violence will immediately be removed from her/his job class and/or dismissed.
- (d) Employees who are convicted of a crime of sexual violence will immediately be removed from her/his job class and/or dismissed.

(5) **REFERRAL TO EMPLOYEE ASSISTANCE PROGRAM AND DISCIPLINARY ACTION FOR DOMESTIC VIOLENCE:**

- (a) Employees issued an injunction for protection or who are arrested for an incident of domestic violence, charged with a domestic violence related offense or are convicted of a domestic violence related offense may be disciplined up to and including dismissal in accordance with Rule 33-208.003(22), F.A.C.
- (b) Employees who are issued an injunction for protection, a temporary injunction for protection, or are arrested for an incident of domestic violence or are charged with a domestic violence related offense will report such information in writing to her/his supervisor within 24 hours or upon reporting to work for her/his next assigned shift, whichever is sooner.
- (c) Employees will also report, within 24 hours, the subsequent disposition of the charges filed for a domestic violence related offense.
- (d) Once the decision-making authority has received notification that an employee has been issued an injunction for protection, including temporary injunctions, or arrested for an incident of domestic violence, s/he will notify the assigned Employee Relations representative.
- (e) On the employee's first day back at work after notice of the incident, the Employee Relations representative will:

1. contact decision-making authority to determine the specifics of the incident (obtain a copy of the injunction, arrest report, etc.);
 2. determine if the employee previously completed a mandatory EAP referral due to an incident involving domestic violence; and
 3. determine the appropriate action to take based upon the incident, the employee's history of domestic violence, and any other information deemed relevant.
- (f) The decision-making authority will ensure each domestic violence incident is reviewed and acted upon in accordance with "Reporting Incidents to the Inspector General and Management Information Notification System," Procedure 108.007. If the employee is in a certified position, the Criminal Justice Standards and Training Commission will be notified by an "Internal Investigation Report," CJSTC-78, in accordance with rule 11B-27.003, F.A.C.
- (g) Referral to the EAP will be made to employees for whom it has been determined that the Department will not pursue dismissal action for a:
1. first occurrence of domestic violence, and
 2. subsequent occurrence of domestic violence provided the employee has not previously completed or been offered an opportunity by the Department to participate in the EAP as a result of a domestic battery incident. The employee will be given a mandatory EAP referral and will be required to successfully complete any and all recommended treatment and/or programs. It is the responsibility of the employee to pay all costs associated with participation in EAP that is not covered by EAP and/or health insurance. The employee will also sign an EAP Management Referral Form, to enable the Department to have direct communication with the EAP provider.
- (h) Refusals of either the referral or of signing the EAP Management Referral Form, as indicated above in sections (5)(g)1. and 2. of this procedure, will be documented in accordance with "Employee Assistance Program," Procedure 208.042, and any discipline imposed will be done without mitigation.
- (i) Discipline will be deferred until it can be determined whether the employee has completed the recommended program(s). In accordance with this procedure, when determining appropriate discipline for an employee, the following will be considered:
1. prior arrests and convictions,
 2. prior or current injunctions for protection,
 3. completion or failure to complete the recommended treatment by EAP,
 4. prior discipline for domestic violence, and
 5. prior discipline of any kind.
- (j) The decision-making authority will administer discipline as outlined below unless the offense is of such severity (including, but is not limited to, causing great bodily harm, permanent disability, or permanent disfigurement) that the Department is compelled to take disciplinary action up to and including dismissal in accordance with Rule 33-208.003(22), F.A.C.
1. An employee against whom an injunction for protection has been issued or who has been arrested for a first occurrence of domestic violence and:

- a. completes any program(s) that may have been recommended pursuant to an EAP assessment, will not be disciplined in accordance with Rule 33-208.003(22), F.A.C., for such occurrence or may have the severity of the discipline mitigated; or
 - b. does not complete program(s) recommended by the EAP, will be disciplined without mitigation.
2. An employee who is issued an injunction for protection or is arrested for a second occurrence of domestic violence, will be disciplined:
 - a. up to and including dismissal in accordance with Rule 33-208.003(22), F.A.C. Discipline may be mitigated if the employee has completed a mandatory referral to EAP as a result of the second occurrence of domestic violence; or
 - b. without deferral and without mitigation, if the employee had previously completed a mandatory EAP referral for a prior occurrence of domestic violence.
 3. An employee who is issued an injunction for protection or is arrested for a third or subsequent occurrence of domestic violence will be dismissed.

(6) VICTIMS' ASSISTANCE:

- (a) The Employee Relations representative will maintain an accurate and up-to-date list of all domestic violence centers within her/his geographical area and keep institutions and offices updated with the information. The list will include the name, address, and phone number of the center. This information will be provided to employees who are victims of domestic violence. Victims of domestic violence may contact the Florida Domestic Violence Hotline at 1-800-500-1119; TTY callers should dial 1-800-621-4202 or 711 for assistance. Information regarding domestic violence and the programs available are available on the Florida Department of Children and Families website: <https://www.myflfamilies.com/service-programs/domestic-violence/>.
- (b) An employee who is the victim of harassment by an abuser or fears that s/he is, or may be, the victim of a stalker should immediately contact her/his Employee Relations representative or applicable decision-making authority so appropriate security measures can be taken in the workplace. Such measures include, but are not limited to:
 1. a permanent or temporary job reassignment and/or office relocation,
 2. changing her/his telephone number or filtering phone calls through another employee,
 3. posting a picture of the stalker,
 4. notifying co-workers to maintain awareness of the abuser/stalker,
 5. providing escort to and from the employee's vehicle,
 6. ensuring the victim has notified law enforcement, and
 7. offering the victim the services of a EAP to assist them in accessing the services of a local community-based provider.
- (c) Every effort will be made to grant leave time or adjust an employee's work schedule for the purpose of contacting and/or arranging for services from a domestic violence center or a batterers' intervention program.
- (d) Supervisors should familiarize themselves with the document "Domestic Violence Guide for Supervisors" and other resources that are available online at: <http://dcweb/co/personnel/index.html>, under the "Domestic Violence" resources section.

(7) **STATE LEAVE PROVISION FOR EMPLOYEES:**

- (a) Victims of domestic or sexual violence may require time off from work to address related personal needs. Supervisors are encouraged to work with staff who are victims of abuse in approving adequate leave as necessary to meet those needs.
- (b) In recognition of these needs, section 741.313, F.S., (enacted 2007 and amended July 1, 2008), grants an employee who has been employed by the State of Florida for three or more months up to three working days of unpaid leave in any 12-month period if the employee or a family or household member of an employee is the victim of domestic or sexual violence. The leave may be taken to:
 - 1. seek an injunction for protection against domestic violence or in cases of repeat violence, dating violence, or sexual violence;
 - 2. obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic or sexual violence;
 - 3. obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic or sexual violence;
 - 4. make the employee's home secure from the perpetrator of the domestic or sexual violence or to seek new housing to escape the perpetrator; or
 - 5. seek legal assistance in addressing issues arising from the act of domestic or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic or sexual violence.
- (c) An employee seeking leave under section 741.313, F.S., may utilize any accrued leave, or may choose leave without pay. Therefore, if the employee chooses leave without pay or does not have sufficient leave accrued, the supervisor will approve leave without pay.
- (d) Section 741.313, F.S., requires, except in cases of imminent danger to the health or safety of the employee, or to the health or safety of a family or household member, that an employee seeking leave from work under this section must provide appropriate advance notice of the leave, along with sufficient documentation of the act of domestic or sexual violence. Documentation requirements include:
 - 1. Personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to the Department, as defined in chapter 119, F.S., under the requirements of this section is confidential and exempt from section 119.07(1), F.S., and section 24(a), Art. I of the State Constitution.
 - 2. A written request for leave which is submitted under the requirements of this section and any time sheet that reflects such a request are confidential and exempt from section 119.07(1), F.S., and section 24(a), Art. I of the State Constitution, until one year after the leave has been taken.
 - 3. All documentation submitted per the above will be maintained in the confidential folder in the official personnel file. If the documentation contains medical information, it will be maintained in the confidential medical file.

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- (e) Although section 741.313, F.S., does not entitle employees to receive more than three work days of leave total in any 12-month period for dealing with issues relating to victims of domestic or sexual violence, this does not preclude a Warden, Circuit Administrator, Bureau Chief level or above from approving additional leave for victims of domestic or sexual violence in accordance with chapter 60L-34, F.A.C.



Chief of Staff