STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TEAMSTERS LOCAL UNION
NO. 2011,

Petitioner,

v.

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.
_____/

PETITION FOR RULE CHALLENGE
PURSUANT TO SECTION 120.56, FLORIDA STATUTES

COMES NOW, Petitioner, TEAMSTERS LOCAL UNION NO. 2011 ("Union") by and through undersigned counsel, on behalf of the Correctional Probation Officers ("Officers") of the Security Services Bargaining Unit, within the Florida Department of Corrections ("Department"), and files this Petition, pursuant to Section 120.56(4), Florida Statutes, regarding a Department of Corrections' statement abrogating minimum contact standards for maximum, medium, and minimum supervision levels which violates Section 120.54(a)(1), Florida Statutes, and in support thereof states as follows:

1. On February 29, 2012, the Department had a state-wide conference call during which Circuit Administrators[1] were instructed to inform all Officers that field contacts for maximum, medium, and minimum supervision levels will be ceased, state-wide, from March 1,

[1] Probation and Parole ("Community Corrections") for the State of Florida is divided into two regions – Northern and Southern. The two regions are then divided in accordance with 20 judicial circuits (ex. Leon County is part of Circuit 02). Each circuit is headed by a Circuit Administrator.

2012 until June 30, 2012, and that community control field contacts will be reduced from a minimum of four (4) visits per month to two (2) visits per month, for the same duration.

2. Subsequent to the call, the Circuit Administrators relayed the directive to the Officers. For example, the Circuit Administrator for Miami-Dade County sent an email to Officers, on February 29, 2012, relaying the information specified in Paragraph 1 *supra*.

3. On March 2, 2012, the Assistant Secretary of Community Corrections sent a memorandum to Community Corrections Regional Directors and Community Corrections Circuit Administrators confirming the directive to cease field contacts for maximum, medium, and minimum supervision levels, and to reduce contacts for community controlees.

4. The memorandum also included instructions as to how Officers are to annotate field notes for offenders requiring field contacts by writing "CN" which stands for "Contact Standards Adjusted." This creates a false-impression, as field contacts for the vast majority of offenders are not just being adjusted, but are being abrogated entirely for the months of March through June.

5. Also on March 2, 2012, Secretary Kenneth Tucker sent an email to Officers attaching a letter being sent to the Florida Police Chiefs, State Attorneys and Chief Judges. The letter reiterates the specifications of the February 29, 2012 directive.

6. An agency statement which constitutes a rule pursuant to Florida Statutes § 120.52, must be adopted by the rulemaking procedure set forth in Florida Statute § 120.54. If the agency fails to engage in the rulemaking procedure, and the statement constitutes a rule, the statement violates Florida Statute § 120.54(1)(a) and, "...the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action." Florida Statute § 120.56(4)(c). Furthermore, pursuant to Florida Statute §

120.56(4)(a), "[a]ny person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a)."

7. A "rule" is defined as an "...agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule." Florida Statute § 120.52(16). An agency statement constitutes a rule based on the effect of the statement, rather than "...the agency's characterization of the statement by some appellation other than 'rule.'" *State Department of Administration, Division of Personnel v. Harvey*, 356 So.2d 323, 325 (Fla. 1st DCA 1977) (Reh. den. 1978).

8. The Department's statement to cease all field visits for maximum, medium, and minimum supervision levels, and to reduce all community control field contacts from a minimum of four (4) visits per month to two (2) visits per month, is a statement of general applicability because it applies state-wide, requiring Officers in each community corrections circuit in the State to cease field visits for maximum, medium, and minimum supervision levels, and to reduce all community control field contacts. The statement does not afford Officers and/or Supervisors any discretion regarding how the cessation/reduction is implemented. The Officers and/or Supervisors cannot choose whether or not to cease field visits for certain offenders at maximum, medium, and minimum supervision levels, the Department's statement calls for a cessation of all field visits to offenders in the stated supervision levels.

9. Furthermore, the Department's statement is one that "...implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency." Florida Statute § 120.52(16). More specifically, the Department's statement "requires

compliance...or otherwise has the direct and consistent effect of law...." *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), *review denied*, 536 So.2d 243 (Fla.1988).

10. The Department's statement regarding the cessation of field visits for maximum, medium, and minimum supervision levels, and reduction of all community control field contacts, requires the compliance of all Officers to cease or reduce field visits as specified. The statement also sets forth substantive standards as to the supervision conducted by Officers. Specifically, that Officers cannot engage in any field visits regarding offenders at certain levels of supervision.

11. Pursuant to "Rules of the department; offenders, probationers, and parolees," Florida Statute § 944.09, "the department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement its statutory authority. The rules must include rules relating to...the function and duties of employees working in the area of community corrections and the operation of probation field and administrative offices." Fla. Stat. § 944.09(1)(r). However, the Department has failed to properly adopt the statement in question, which clearly relates to the functions and duties of employees working in the area of community corrections and the operation of probation field offices.

12. Moreover, pursuant to Florida Statute § 944.09(4), "the department shall...keep informed concerning the conduct, habits, associates, employment, recreations, and whereabouts of such probationer, **by visits,** by requiring reports, and in other ways." Fla. Stat. § 944.09(4)(c) (emphasis added). The department shall also, "supervise all persons placed on parole." Fla. Stat. § 944.09(4)(h). Thus, by taking the action of abrogating visits for all maximum, medium, and

minimum offenders, the Department's statement actually contradicts existing statute and exceeds the Department's legislatively delegated authority.

13. Additionally, Florida Statute § 948.12 – "Intensive supervision for postprison release of violent offenders" – states as follows:

> It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. **Therefore, for the purpose of enhanced public safety, any offender released from state prison who:**
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> (1) **Was most recently incarcerated for an offense that is or was contained in category 1 (murder, manslaughter), category 2 (sexual offenses), category 3 (robbery), or category 4 (violent personal crimes)** of Rules 3.701 and 3.988, Florida Rules of Criminal Procedure (1993), **and who has served at least one prior felony commitment at a state or federal correctional institution;**
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> (2) **Was sentenced as a habitual offender, violent habitual offender, or violent career criminal** pursuant to s. 775.084; or
>
> (3) Has been found to be a sexual predator pursuant to s. 775.21,
>
> **and who has a term of probation to follow the period of incarceration shall be provided intensive supervision by experienced correctional probation officers**. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety as well as to effectively monitor conditions of electronic monitoring or curfews, if such was ordered by the court.

Id.(emphasis added).

14. Offenders who fall into the categories enumerated by Florida Statute § 948.12(1), (2) above, are always classified at medium or maximum supervision level, with the exception of Sex Offenders, who are grouped in a separate classification entitled "Sex Offenders." *See* "Exhibit A," attached hereto, regarding the classification of offenders into different supervision levels.

15. Accordingly, the Department's statement affects "...either the private interests of any person or any plan or procedure important to the public." Florida Statute § 120.52(16)(a). One of the main goals of field visits, and supervision in general, is to protect Florida's communities. "Personal contacts with offenders are the department's primary means of monitoring whether offenders are complying with the conditions of their supervision and abiding by the law." *Several Deficiencies Hinder the Supervision of Offenders in the Community Corrections Program*, Florida Office of Program Policy Analysis & Government Accountability ("OPPAGA"), No. 06-37, April 2006. As OPPAGA reported in an April 2006 report, 71% of all offenders arrested for committing serious offenses, while on supervision, were maximum supervision offenders. These are the offenders who are classified as "maximum" pursuant to "public safety risks." Additionally, the very nature of having different levels of supervision is that certain offenders require more visits than other offenders. Certainly public safety is not served by eliminating all field visits for maximum, medium, and minimum offenders, including visits for those offenders requiring "intensive supervision" pursuant to Florida Statute § 948.12.

16. The Correctional Probation Officers ("Officers") are substantially affected by the Department's statement. The statement has a real and immediate effect on the Officers by directly regulating the Officers in the performance of their job duties. For example, prior to the implementation of the Department's statement on March 1, 2012, Officers would go out in the

field at least once a month to conduct a visit at the offender's home, or elsewhere depending on the location of the offender. Officers would also contact the offender's treatment provider at least once a month, if the offender is required to attend treatment.

17. In ceasing field visits (including home visits) of offenders at the maximum and medium supervision levels, the Officers violate Florida Statute § 948.12, which calls for intensive supervision for postprison release of violent offenders. Furthermore, Officers are required, pursuant to Florida Statute § 944.09, to keep informed concerning the conduct, habits, associates, employment, recreations, and whereabouts of such probationer **by visits**, by requiring reports, and in other ways." Fla. Stat. § 944.09(4)(c) (emphasis added). Thus, by abrogating field visits for maximum, medium and minimum offenders, Officers will no longer be in compliance with Florida Statute § 944.09(4)(c). Officers are prohibited from violating the law pursuant to Florida Statute § 110.227 and the applicable Collective Bargaining Agreement ("CBA") between the Union and the State of Florida.

18. As part of the cessation/reduction of field visits, Officers are required to annotate field notes for offenders requiring field contacts by writing "CN" which stands for "Contact Standards Adjusted." This creates a false-impression, as field contacts for the vast majority of offenders are not just being adjusted, but are being abrogated entirely for the months of March through June, and Officers are obligated to keep accurate records regarding the offenders they supervise.

19. The Teamsters Local Union No. 2011 is the certified representative of the state-wide bargaining unit of security services personnel employed by the State of Florida. This bargaining unit includes all Correctional Probation Officers within the Florida Department of Corrections ("Department'); thus, a substantial number of the Union's members are substantially

affected by the agency statement. The statement directly concerns the Officers' job duties and performance, which are matters within the Union's general scope of interest and activity as the Officers' collective bargaining representative. Likewise, as the Officers' collective bargaining representative, the type of relief requested, that the statement be invalidated, is of the type of relief that is appropriate for the Union to request because the proposed rule changes directly regulate the Officers' job duties and performance. Accordingly, the Union has standing to represent the Correctional Probation Officers.

WHEREFORE, Petitioner, Teamsters Local Union No. 2011, respectfully requests that Department's statement be invalidated, and seeks any other relief as this Division deems just and proper.

Respectfully submitted,

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