



Department of Public Protection

Report of Incident

TO: George Recktenwald, Director
Department of Public Protection

FROM: David Vanis, Captain
Public Protection Administration
Internal Affairs

DATE: April 22, 2015

SUBJECT: Case # IA 2015-01, Senior Officer Xavier Rodriguez, Volusia County Division of
Corrections

References:

1. Request for Internal investigation DPP15-012 (Dated February 13, 2015).
2. Notice of Internal Investigation (Dated February 16, 2015).
3. VCDC Incident reports (Dated January 29, 2015).
4. Sro. X. Rodriguez incident report (Dated February 2, 2015).
5. VCBJ Bravo shift Unit 4 Log (Dated January 28-29, 2015).
6. Sergeant Jason Johnson witness interview transcript (Dated February 16, 2015).
7. Senior Officer Armando Mendoza witness interview transcript (Dated February 16, 2015).
8. Crystal Moore witness interview transcript (Dated February 16, 2015).
9. Captain Scott Mason witness interview transcript (Dated February 25, 2015).
10. Senior Officer Francisco Medina witness interview transcript (Dated February 25, 2015).
11. Amanda Huff witness interview transcript (Dated February 25, 2015).
12. Senior Officer Xavier Rodriguez subject interview transcript (Dated March 3, 2015).
13. Medical documentation provided by Sro. Rodriguez.

Complaint:

Based upon reports and a supervisor inquiry conducted by Captain Scott Mason, VCDC Director Ford requested an internal investigation to determine if Senior Officer Xavier Rodriguez was negligent in his duties as a Corrections Officer when he was alleged to have fallen asleep while assigned to VCBJ Unit 4 on January 29, 2015.

Information:

On January 29, 2015 Senior Corrections Officer Xavier Rodriguez was assigned to Unit 4 Bravo shift. At approximately 0148 hours, Sro. Armando Mendoza attempted to contact him via mobile radio and telephone regarding breakfast chow count. After several failed attempts to reach Sro. Rodriguez, Sgt. Johnson, Sro. Mendoza, and Sro. Francisco Medina responded to Unit 4 to check on the officer's well being. Sgt. Johnson used his assigned Medco key to gain entry to Unit 4's outer sallyport gate. As Sgt. Johnson approached the inner sallyport gate, he observed Sro. Rodriguez asleep at the officer's station desk. According to Sgt. Johnson's report, he had to yell at Sro. Rodriguez two or three times before Sro. Rodriguez noticed the Sergeant standing at the gate and granted entry. Sro. Rodriguez told Sgt Johnson that [REDACTED] At the time of this incident, Sro. Rodriguez was the only officer on Unit 4.

Sgt. Johnson reported this information to Capt. Mason who immediately relieved Sro. Rodriguez of his duties at Unit 4. Once relieved, Sro. Rodriguez contacted Capt. Mason in his office and advised that "he (Rodriguez) [REDACTED]

[REDACTED] When Capt. Mason asked if he had been sleeping, Sro. Rodriguez stated that he may have dosed off but was not sure. Sro. Rodriguez told Capt. Mason that he [REDACTED] Capt. Mason had Sgt. Johnson drive Sro. Rodriguez home due to his [REDACTED]

After speaking with Sro. Rodriguez, Capt. Mason contacted Crystal Moore, the charge nurse in the clinic. Nurse Moore advised that Sro. Rodriguez comes to the clinic approximately once a month [REDACTED] Nurse Moore told Capt. Mason that she gave Sro. Rodriguez [REDACTED] When asked if [REDACTED] would make Sro. Rodriguez drowsy, Nurse Moore advised it would not. Nurse Moore's report indicates that Sro. Moore contacted her that night and [REDACTED] She wrote that she explained to Sro. Moore [REDACTED] She added in her report that Sro. Rodriguez [REDACTED] was told he could not have it.

Capt Mason advised in his report that at no time during the shift did Sro. Rodriguez tell him or his direct supervisor, Sgt. Johnson, that he was sick or need to go home. Capt. Mason added that he reviewed the Ocularis video surveillance system but was unable to see the officer's station on unit four from the positioning of the camera.

When Sro. Rodriguez returned to work on February 2, 2015, Capt. Mason met with him again regarding the incident on January 29, 2015. Sro. Rodriguez told Capt. Mason that he was feeling better and able to work. He further explained that the [REDACTED] He told Capt. Mason that the [REDACTED] are not work related. Sro. Rodriguez provided a letter from his personal physician stating that [REDACTED] Captain Mason advised Sro. Rodriguez that he could not work [REDACTED] and requested that he (Rodriguez) complete an incident report regarding the January 29, 2015 incident.

See item 3 for incident reports from Capt Mason, Sgt. Johnson, Sro. Mendoza, Sro. Medina, Nurse Moore, and Nurse Huff.

Sro. Rodriguez' report indicates that [REDACTED] while he was working on the unit. He went to medical where [REDACTED]. After completing rounds, his partner took some paperwork to control leaving Sro. Rodriguez alone on the unit. Sro. Rodriguez's report then states:

"So I let my partner out and sat down again and started [REDACTED]. So I shut my eyes for a second to see if it will relieve [REDACTED] and waited to see [REDACTED] before I called my supervisor to go home and after all I remember was [REDACTED] with Sgt. Johnson at the gate with a few other officers, and having [REDACTED]."

Sro. Rodriguez' report and doctor's note were added to the case file as item 4.

After all associated reports were forwarded through the VCDC chain of command, Director Ford requested that Director Recktenwald order an internal investigation into the incident. Dir. Recktenwald instructed me to conduct the investigation on February 13, 2015 (item 1).

I contacted Sro. Rodriguez on February 25, 2015 at VCBJ and provided him with notice of the internal investigation (Item 2). His interview was scheduled for March 3, 2015 at 2000 hours.

Sergeant Jason Johnson:

I conducted a recorded interview with Sgt. Johnson on February 16, 2015 at VCBJ.

Sgt. Johnson advised that he was Sro. Rodriguez's housing unit supervisor on January 29, 2015. Sgt. Johnson told me that Sro. Rodriguez made no indication to him that he was ill until 0148 hours. Sgt. Johnson told me that he was in the Shift Commander's office while Sro. Mendoza was unsuccessful in trying to contact Unit 4 (Sro. Rodriguez). At some point, Sro. Mendoza walked down to Unit 4. While Sro. Mendoza was away, Sro. Medina contacted Sgt. Johnson to ask for his keys to gain access to Unit 4. Sgt. Johnson gave his keys to Sro. Medina and tried to contact Sro. Rodriguez by radio while Capt. Mason tried to call the unit on the phone. When neither receive an answer, Sgt. Johnson went to Unit 4 and retrieved his keys from Sro. Medina. As Sgt. Johnson, Sro. Mendoza, and Sro. Medina approached the outer sallyport gate, Sgt. Johnson noticed that the gate was approximately six inches open. He could not see any staff inside the unit or any inmate movement. Sgt. Johnson used his Medco key to open the outer gate. As he approached the inner gate, Sgt. Johnson observed Sro. Rodriguez "leaning back in the chair and it appeared that he was sleeping." Sgt. Johnson added that Sro. Rodriguez's eyes were closed. Sgt. Johnson told me that he made this observation from 20-30 feet away from Sro. Rodriguez. Sgt. Johnson yelled "Hey!" two or three times before he received a reaction from Sro. Rodriguez. Sgt. Johnson advised that Sro. Rodriguez behavior was like he had just woken up. Once Sro. Rodriguez open the gate to allow Sgt. Johnson onto the unit, Sgt. Johnson checked on his well being. Sro. Rodriguez responded [REDACTED]. Sgt. Johnson had Ofc. Wood return to Unit 4 to complete security rounds and had Sro. Rodriguez report to the Shift Commander's office.

Once Sro. Rodriguez came into the Shift Commander's office, he explained that [REDACTED]. [REDACTED] Capt. Mason determined that it would be best for Sgt. Johnson to drive Sro.

Rodriguez home. Sgt. Johnson drove Sro. Rodriguez home as requested and then returned to his normal duties.

This interview was transcribed and added to the case file as item 6.

Senior Officer Armando Mendoza:

I conducted a recorded interview with Sro. Mendoza on February 16, 2015 at VCBJ.

Sro. Mendoza was the acting Housing Unit Supervisor for Units 5, 6, and 9 on January 29, 2015. As part of his responsibilities, he conducts a breakfast chow count for the entire facility. Sro. Mendoza attempted to contact Unit 4 by phone 2 times with no response. He specified that he allowed the phone to ring three times each time he called. Concerned for the unit officer's safety, Sro. Mendoza went to the outer gate of Unit 4 and yelled "Unit 4," twice with no response. Sro. Mendoza told me that he was yelling loud enough that the officer on Unit 5 heard him. While still at the outer gate, Sgt. Johnson approached and opened the outer gate. As he approached the inner gate, Sgt. Johnson yelled "Hey!" and Sro. Mendoza saw Sro. Rodriguez "jump up" and stated "What? What's going on?" Sro. Mendoza described Sro. Rodriguez [REDACTED] believed that he had just woke up. Sro. Mendoza explained that prior to Sro. Rodriguez sitting up, he could not see the officer in the station even though he stated "You could clearly see that he was sleeping." Sro. Mendoza told me that once he confirmed that Sro. Rodriguez was safe, he left the scene and had no further contact with Sro. Rodriguez.

This interview was transcribed and added to the case file as item 7.

Captain Scott Mason:

I conducted a recorded interview with Capt. Mason on February 25, 2015 at VCBJ.

Capt. Mason was Sro. Rodriguez Shift Commander on January 29, 2015. Capt. Mason overheard Sro. Medonza and Sgt. Johnson calling Unit 4 on the phone and radio. After no answer, Sro. Mendoza went to Unit 4 and Sgt. Johnson followed shortly after. Capt. Mason also responded but as he approached Unit 4, he saw the gate opening and assumed they had finally contacted the Unit 4 officer. After returning to his office, Sgt. Johnson advised the Captain that he had to override the outer gate and eventually got Sro. Rodriguez to open the inner gate after waking him up. Capt. Mason instructed Sgt. Johnson to have Sro. Rodriguez come to his office. Once Sro. Rodriguez arrive, Capt. Mason asked what had occurred. Sro. Rodriguez told the Captain [REDACTED]. He eventually [REDACTED] and had "closed his eyes [REDACTED]". Capt. Mason asked Sro. Rodriguez if he was sleeping. Sro. Rodriguez responded that "he may have dozed off." Capt. Mason [REDACTED] Sro. Rodriguez responded that he did not. Capt. Mason decided that it would be safest for Sgt. Johnson to drive Sro. Rodriguez home [REDACTED].

After Sro. Rodriguez left the facility, Capt. Mason contacted the charge nurse Crystal Moore to follow up on what he had been told. Nurse Moore advised that Sro. Rodriguez [REDACTED].

Capt. Mason wrote his incident report and contacted Warden McClelland about the incident. Capt. Mason told me that this had occurred on a Wednesday night shift and that Sro. Rodriguez called in sick the next night (Thursday). Sro. Rodriguez reported for work on the next scheduled shift which would have been

Monday February 2, 2015. Sro. Rodriguez provided Capt. Mason [REDACTED]
[REDACTED] Capt. Mason told me that he instructed Sro. Rodriguez to
document the January 29, 2015 incident and then [REDACTED]

This interview was transcribed and added to the case file as item 9.

Senior Officer Francisco Medina:

I conducted a recorded interview with Sro. Medina on February 25, 2015 at VCBJ.

Sro. Medina advised that on January 29, 2015 while he was exiting the Shift Commander's office that Sro. Mendoza had asked him to get the override keys from Sgt. Johnson due to difficulties contacting Unit 4 by radio or phone. Sro. Medina contacted Sgt. Johnson and explained why he needed the keys. Sgt. Johnson gave Sro. Medina the keys but caught up with Sros. Medina and Mendoza prior to arriving at Unit 4. As the three approached the out gate of Unit 4, Sro. medina noted that the gate was slightly open. Sgt. Johnson used his keys to open the outer gate. As they entered the Unit, Sro. Medina could not see any staff in A or D block or at the Officer's station. Sro. Medina heard Sgt. Johnson yell "Hey!" and saw Sro. Rodriguez stand up at the Officer's station. Sro. Medina made no significant observations and quickly left the unit so Sgt. Johnson could speak with Sro. Rodriguez.

This interview was transcribed and added to the case file as item 9.

Registered Nurse Crystal Moore:

I conducted a recorded interview with Crystal Moore on February 16, 2015 at VCBJ.

Ms. Moore is a register nurse and is the Charge Nurse on Sro. Rodriguez's shift. Ms. Moore explained that over the past year, Sro. Rodriguez [REDACTED] She
[REDACTED] She told me that while the clinic
[REDACTED] Ms.
Moore stated that she has told Sro. Rodriguez this in the past [REDACTED]

Ms. Moore told me that Sro. Rodriguez [REDACTED]
[REDACTED]
[REDACTED] Ms. Moore told me that it may cause [REDACTED] but does
not cause drowsiness based on her experience. Ms. Moore told me that Amanda Huff was the other nurse
working on that shift.

This interview was transcribed and added to the case file as item 8.

Licensed Practical Nurse Amanda Huff:

I conducted a recorded interview with Amanda Huff on February 25, 2015 at VCBJ.

Ms. Huff is an LPN and works under the direction of Charge Nurse Crystal Moore. Ms. Huff confirmed that she was working the night that Sro. Rodriguez allegedly fell asleep. She knows Sro. Rodriguez because he was one of the officers assigned to a unit [REDACTED] Ms. Huff told me that she remembers Sro. Rodriguez coming into the clinic after she had completed her medical rounds. He

told her and Ms. Moore that [REDACTED] She could not recall if he asked for a [REDACTED] she did not know [REDACTED] Ms. Huff told me that Sro. Rodriguez made no mention [REDACTED] while she was on his unit earlier that evening for "med pass."

This interview was transcribed and added to the case file as item 11.

Senior Officer Xavier Rodriguez:

I conducted a recorded interview with Sro. Rodriguez on March 3, 2015 at VCBJ. Sro. Rodriguez acknowledged that he had reviewed all associated reports and interview transcripts prior to the beginning of this interview. Sro. Rodriguez was not accompanied by a representative and he acknowledged that this was his choice.

Sro. Rodriguez told me that he was assigned as the Unit 4 Housing Unit Officer on the night shift that began on January 28, 2015. Sro. Rodriguez explained that two officers are assigned to Unit 4 but only one is required to stay on the unit at any given time.

Sro. Rodriguez told me that he was feeling fine at the beginning of his shift but developed [REDACTED] shortly before 0100 hours. He explained [REDACTED] He remembered that it occurred just prior to 0100 hours because it was right before his 1 am headcount that [REDACTED] Sro. Rodriguez told me that when he went into the clinic he asked "Hey do you guys [REDACTED] Sro. Rodriguez told me [REDACTED] When Sro. Rodriguez returned to the unit, his partner left to go to ID. At this point, Sro. Rodriguez [REDACTED] He explained that [REDACTED] Sro. Rodriguez told me that he had shut his eyes, [REDACTED] Sro. Rodriguez agreed that he was unable to perform his duties as a corrections officer at this point and made the voluntary decision to close his eyes. After shutting his eyes, the next thing he remembers is seeing Sgt. Johnson at the gate.

Sro. Rodriguez explained that [REDACTED] [REDACTED] After the [REDACTED] interview, [REDACTED]

Sro. Rodriguez told me [REDACTED] of the visit. He told me that [REDACTED] The provided [REDACTED]

I asked Sro. Rodriguez why this was the first time he had brought up [REDACTED] He had already spoken with Sgt. Johnson and Capt. Mason on the night of the incident and with Capt. Mason again on February 2, 2015 when he (Rodriguez) wrote an incident report. Sro. Rodriguez told me that the night of the incident [REDACTED]

Volusia County Division of Corrections General Post Order (12): Remain alert at all times while on duty. Sleeping on duty is grounds for dismissal.

Volusia County Merit Rules 86-453 (10): Incompetent or unsatisfactory performance of duties.

Based upon testimony provided by Senior Officer Rodriguez and the witnesses of this incident, I recommend that the following allegations are **unfounded** against Sro. Rodriguez:


Volusia County Division of Corrections Policy and Procedure 102.09 (B): No CO shall report to work under the influence of alcohol or drugs, nor shall they consume alcoholic beverages or drugs while on duty. Medication prescribed and taken under a doctor's care may be taken so long as the following criteria are met:

- 1. It does not impair the Officer's ability to carry out his/her assigned duties.*
- 2. It is not taken in such quantity as to impair the Officer's ability to properly function.*
- 3. Should #1 or #2 apply, the Officer must notify the Shift Commander without divulging the specific medication.*

Concluding Statement:

Unless otherwise directed, this investigation is considered closed, and is submitted for review and action as deemed appropriate. The original attachments of interviews and other documents pertaining to this investigation remain on file with the Internal Affairs Unit.

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss.112.532 and 112.533, Florida Statute."



Captain David Vanis



Date



INTER-OFFICE MEMORANDUM
Department of Public Protection
125 West New York Ave., Suite 183
DeLand, Florida 32720
386-740-5120 – FAX 386-740-5283

TO: Corrections Officer Xavier Rodriguez
Division of Corrections - Branch Jail

DATE: June 26, 2015

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP15-056

SUBJECT: Notice of Suspension Without Pay

REFERENCE: DPP15-053 NOIS
Sleeping on Duty

Purpose: The purpose of this memorandum is to provide you with notice of suspension without pay for one (1) work day which equates to 12.25 hours (one 12.25-hour shift). This action is the result of your inability to function in your position as a Corrections Officer and attend to the assigned duties of that position on January 29, 2015. The date of your suspension without pay will be Tuesday, July 7, 2015. You will return to work on Friday, July 10, 2015.

You received my notice of intent to suspend without pay on Wednesday, June 17, 2015. You have not contacted this office to provide any information that would alter my decision. Therefore, I am proceeding with the intended action. The suspension day is to be served as noted above, and you are advised that there shall be no voluntary overtime allowed in this pay period to make up the time.

Background: You were observed with your eyes closed and inattentive by Sergeant Jason Johnson on January 29, 2015.

Information: On January 29, 2015, you and Senior Officer Isaac Wood were assigned to work Unit 4. At 1:01 a.m., you and your partner completed the hourly security checks. At approximately 1:07 a.m., Senior Officer Wood left to assist elsewhere in the building, leaving you alone to cover the unit.

At approximately 1:38 a.m. on January 29, 2015, Senior Officer Armando Mendoza was the Acting Housing Unit Supervisor (HUS) for Units 5, 6, and 9. As part of his duties, he had to determine the meal count for the morning breakfast, which he did by contacting each unit for its headcount (number of inmates on the unit). Mendoza reports that he attempted to contact Unit 4 several times by telephone, but with negative results. Since he was unable to get an answer, Mendoza then attempted to contact your unit via the radio several times, but again there was no answer. Mendoza reports he then proceeded to the outer gate of Unit 4 and yelled, "Unit 4," twice, but with negative response. He reported that he was yelling loud enough that the Unit 5 officer heard him.

At approximately 1:45 a.m. on January 29, 2015, Senior Officer Francisco Medina reports he observed Senior Officer Mendoza having difficulty contacting Unit 4 via telephone and radio. At approximately 1:48 a.m. Medina was exiting the Shift Commander's office, which is located along the same corridor as the Unit 4 gate where Mendoza was standing. Mendoza asked Medina to get the Unit 4 Medco key from Sergeant Jason Johnson. Medina explained the situation to Sergeant Johnson, who gave him the key. As Medina was going to meet Mendoza at the Unit 4 gate, Sergeant Johnson caught up with him; both officers joined Mendoza and gained access to the unit. Medina reports he did not have a clear line of sight to the officer's station due to a fan and lunch bag blocking his view. He witnessed Sergeant Johnson yell, "Hey!" at which point you stood up and operated the outer gate controls.

Sergeant Jason Johnson reports that at approximately 1:48 a.m. on January 29, 2015, Senior Officer Francisco Medina

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asked to borrow his Medco key to Unit 4 to check on the housing officers; Medina explained the inability to get a response from Unit 4 despite repeated attempts. Sergeant Johnson reports he radioed Unit 4 several times, but without success. He also noticed the Shift Commander, Captain Scott Mason, attempting to contact unit 4 via the landline telephone. Sergeant Johnson responded to Unit 4 and retrieved his keys from Medina. Sergeant Johnson reports noticing the outer security gate to the unit was opened approximately six inches, and he could not see any staff at the officer's station or any inmate movement. Sergeant Johnson opened the outer door fully so that he, Medina, and Mendoza could enter Unit 4. Sergeant Johnson reports a lunch box and fan blocked his view to the inside of the officer's station. As Sergeant Johnson and the other officers approached the inner gate, he observed you leaning backwards in the chair, with your head bent backwards, and you appeared to be sleeping. Sergeant Johnson then checked for your responsiveness by yelling, "Hey!" He yelled this two or three times before you rose from the chair.

You were instructed to report to the Shift Commander's office following your security rounds at 2:00 am. When you did, you informed Captain Mason [REDACTED]. According to Captain Mason's report, [REDACTED]

[REDACTED] Captain Mason directed Sergeant Johnson [REDACTED]

Charge Nurse Crystal Moore reports that earlier that evening, [REDACTED]

According to your written report of February 2, 2015, and your statements during the Internal Affairs investigation, [REDACTED] You reported that Nurse Crystal Moore [REDACTED]

[REDACTED] in your written account of the incident [REDACTED]

[REDACTED] During the IA interview on March 3, 2015, you reported [REDACTED] at your post on Unit 4 and [REDACTED] were roused the night of the incident.

Your conduct violated the Volusia County Merit System, the Division of Corrections Policy and Procedures and General Post Orders:

1. Volusia County Division of Corrections Policy and Procedure 102.09 (Z) Correctional Officer/Employee Conduct): *COs shall remain alert and in full possess of his/her faculties while on duty. Sleeping, reading, engaging in distracting amusement or occupation while on duty, except to consult such rules or other material as the proper performance of these duties is prohibited and may result in severe adverse action up to and including termination. A CO shall not leave an assigned post until properly relieved.*

This also is Volusia County Division of Corrections General Post Order: *(12) Remain alert at all times while on duty. Sleeping on duty is grounds for dismissal.*

2. Volusia County Merit System, Section 86-453, Reasons for Disciplinary Action: *Incompetent or unsatisfactory performance of duties.*

(Continued)

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Your past corrective discipline history is noted as below:

07/16/2013 *Negative EPN – Absenteeism*
08/19/2013 *Written Reprimand – Absenteeism*

As a Corrections Officer with more than six years of service, you have the knowledge and experience to perform your duties. Following Division policies and procedures is extremely important; policy is designed to maintain security and safety of the inmate, yourself, and the general public. You seriously neglected your duty as a corrections officer by being inattentive to your duties. You failure to contact your supervisor as soon as you were aware that you could not perform the responsibilities of your position [REDACTED] Your failure to follow policy and act responsibly could have had disastrous consequences, but fortunately it did not.

Conclusion: Due to the seriousness of your misconduct, and consistent with the recommendations of the supervisors in your chain of command, I am issuing this letter of suspension without pay for one (1) shift, which equates to 12.25 hours. The date of your suspension without pay will be Tuesday, July 7, 2015. You will return to work on Friday, July 10, 2015. The suspension day is to be served as noted above, and you are advised that there shall be no voluntary overtime allowed in this pay period to make up the time.

Please realize that progressive discipline does not require a strict “stair step” approach. In other words, significant adverse action may be a future step if you fail to correct your performance. If I or Dr. Ford can be of any assistance in correcting this behavior, please let me know.

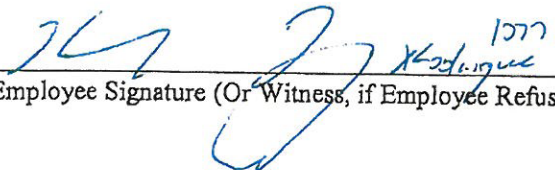
Action: In accordance with section 86-485 (a)(3) of the Merit System Rules and Regulations you have ten (10) working days from receipt of this notification (or effective date of the suspension) to appeal this action through the County Personnel Board. Should you decide to exercise your right to appeal, submit your written request to the County Personnel Office, 230 N. Woodland Blvd., Suite 262, DeLand, FL 32720.

Pursuant to Merit Rule 86-455, the Legal Department and the Human Resources Director have reviewed this notice and concur with the proposed action.

GR:tb

cc: ___ Terry Sanders, Deputy Director Public Protection
 ___ Marilyn Chandler Ford, Corrections Director
 ___ Tom Motes, Human Resources Director
 ___ Chandra Gordon, EEO Coordinator
 ___ County Attorney’s Office

I certify that I have read this notification and acknowledge receipt of the original copy.


Employee Signature (Or Witness, if Employee Refuses to Sign)

6/27/15
(Date of Signature)