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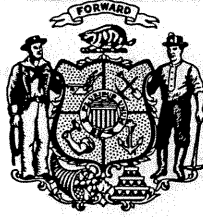
LCRC
FORM 2

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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-079

AN ORDER to repeal and recreate chapter DOC 306, relating to security.

Submitted by **DEPARTMENT OF CORRECTIONS**

04-24-00 RECEIVED BY LEGISLATIVE COUNCIL.

05-22-00 REPORT SENT TO AGENCY.

RS:DD;jal;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

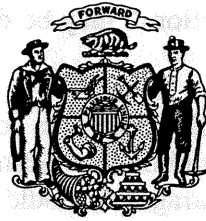
NO

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CLEARINGHOUSE RULE 00-079

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. As the department's analysis indicates, the rule removes a number of current provisions of ch. DOC 306 and contemplates including many of these deleted provisions in the department's plans, internal management procedures, emergency preparedness manual and similar internal documents. In addition, the notes to the rule make reference to a protocol to be developed by the Division of Adult Institutions. The department is urged to carefully review the definition of "rule" in s. 227.01 (13), Stats., and the internal management exception to the definition in s. 227.01 (13) (a), Stats. Because a number of the deleted provisions affect private rights or interests, they arguably should be in the form of a rule rather than internal management policies. In general, it is not clear why rules providing general principles and standards cannot be drafted in such a way that the desired flexibility, described in the department's analysis, is achieved in contrast to relying so heavily on internal policies, plans, procedures, protocols, etc.

b. The department's analysis only cites s. 227.11 (2), Stats., under "statutory authority." Compare the references in s. DOC 306.01.

2. Form, Style and Placement in Administrative Code

a. The rule repeals and recreates ch. DOC 306. However, the organization of the chapter is substantially unchanged and large portions of the substance of the chapter remain unchanged or are changed in a relatively minor way. It would be much easier to compare the

proposed rule with the current rule if the department were to amend existing rule sections rather than repealing and recreating the rule chapter.

b. In s. DOC 306.01, "of corrections" may be deleted because the term "department" is defined.

c. In s. DOC 306.05 (4) (a), there appears to be no reason to include the acronym "TLU." (If the acronym is used, it should be in a definition provision.) The comma preceding the administrative code citation in that paragraph should be deleted and replaced by "under."

d. In s. DOC 306.05 (4) (b), the comma before the administrative code citation should be deleted and replaced by "under."

e. If the definitions in s. DOC 306.07 (1) are indeed intended to apply to the entire chapter, they should be included in the general definitions section, s. DOC 306.02.

f. In s. DOC 306.07 (1) (intro.), "the following definitions apply" may be deleted.

g. In s. DOC 306.07 (1) (a), (c), (d), (e) and (g), "is" should be replaced by "means."

h. It appears that the definition in s. DOC 306.07 (1) (f) is not directly used in the rule. Consideration should be given to including the substance of that definition in s. DOC 306.08.

i. Section DOC 306.07 (3) (c) and (d) could be combined for consistency with sub. (5) (d).

j. In s. DOC 306.08 (1), reference to "warden or next authority" should be compared with the definition of "authority" in s. DOC 306.07 (1) (a). Reference to "weapons" in the subsection should be reviewed; pertinent related provisions refer to "firearms."

k. Section DOC 306.08 (2) references "disturbances or emergencies" without defining the terms; definitions of those terms in the rule are included for purposes of other sections only and do not apply to this section.

l. Should s. DOC 306.08 (3) begin: "An authority may issue . . ."? The subsection references "training programs" in sub. (4). Subsection (4), however, refers to "program" in the singular.

m. In s. DOC 306.08 (4) (intro.), it is suggested that "provide" replace "have." [See also s. DOC 306.09 (5).]

n. In s. DOC 306.08 (5) (d) (intro.), last sentence, "The" should replace "This."

o. In s. DOC 306.08 (5) (e), "states" should be deleted.

p. Section DOC 306.09 (3) (c) and (d) should be reviewed for possible consolidation; see s. DOC 306.07 (5) (d).

q. It is suggested that consideration be given to revising s. DOC 306.09 (4) to read: "Only a staff member trained under sub. (4) may use an incapacitating agent."

r. It is not clear how s. DOC 306.10 (intro.) relates to the rest of that section and the provisions of s. DOC 306.11. If retained, this material should be a numbered subsection since it does not grammatically lead into following subunits.

s. In s. DOC 306.10 (2) (a), is there a need to define "institution" as used here and elsewhere in the rule?

t. In s. DOC 306.10 (2) (b) and (c), "TLU" should be deleted and replaced with "temporary lock-up" (unless, as suggested previously, "TLU" is defined).

u. In s. DOC 306.10 (3), "commercially manufactured" is unnecessary and should be deleted. [See the definition of "mechanical restraint" in s. DOC 306.10 (1) and see s. DOC 306.11 (4).]

v. In s. DOC 306.11 (2) (intro.), "may not" should replace "shall never."

w. In s. DOC 306.11 (3) (intro.), "all of the following" should replace "these." In addition, "restraints" should be replaced by "a mechanical restraint."

x. In s. DOC 306.12, the phrase "have the duty to" should be replaced by the word "shall."

y. Section DOC 306.13 (3) should be relocated to a more appropriate place, such as the provision on issuance of firearms.

z. The note to s. DOC 306.13 duplicates the corresponding note in the appendix.

aa. In s. DOC 306.15 (1), should "entire premises" be defined?

ab. If the second sentence of s. DOC 306.16 (1) is necessary, it should be reworded as follows: "Entry into the living quarters of an inmate by a staff member to retrieve state property does not constitute a search of the living quarters of an inmate."

ac. The (intro.) clause of s. DOC 306.17 should be deleted and the opening phrase of each subsection should be a title.

ad. In s. DOC 306.17 (1) (a), it is not clear why "including, but not limited to" is used rather than "means," particularly given that a personal search is the least intrusive of the range of searches mentioned in this section. If the definition of "personal search" includes searches not specifically mentioned, those other types of searches should be specifically described in the definition.

ae. In s. DOC 306.17 (2) (b), "pursuant to a strip search" should be inserted after "inspection." Should "is limited to" replace "includes"?

af. In s. DOC 306.17, the relationship of subs. (4) and (5) should be clarified. Subsection (5) contains a definition, but no substantive content. It appears to be linked to sub. (4), but the exact nature of the link is unclear.

ag. In s. DOC 306.17 (4) (b), the use of "for" is not clear. Is "as part of" intended instead? A "body content search" is defined as a search in which the inmate is required to supply specified specimens. In addition, it appears that "may" should be substituted for "shall."

ah. In s. DOC 306.18 (3), all plural references to "visitor" should be in the singular, with appropriate adjustments made to corresponding language.

ai. In s. DOC 306.18 (8), it appears that reference in the first sentence should be made to finding "an unauthorized object pursuant to a search under this section . . ." [Compare s. DOC 306.19 (2).] Further, the use of "and or" in the sentence should be reviewed. [See s. 101 (9), Manual.] It appears that "local" should precede "law enforcement agency."

aj. In s. DOC 306.19 (1), the phrases "staff members" and "a staff members" should be replaced by the phrase "a staff member's." In sub. (2), "local" should precede "law enforcement agency."

ak. In s. DOC 306.19 (3), it appears that "inspected or" should precede "searched."

al. Consideration should be given to rewriting s. DOC 306.20 along the following lines: "Contraband that is seized during a search which violates this chapter may be used as evidence by the institution at a disciplinary hearing conducted under ch. DOC 303."

am. For consistency of terminology, should s. DOC 306.21 reference "body specimen searches and analyses"?

an. Does s. DOC 306.22 (4) refer to both a plan under sub. (2) and a plan under sub. (3)? In any case, sub. (2) (d) (last sentence) and sub. (4) appear to be redundant and unnecessary.

ao. In the last sentence of s. DOC 306.23 (4), "the" should replace "this."

ap. In s. DOC 306.23 (1), the introduction should read: "In this section, "disturbance" means any of the following:". Section DOC 306.24 (1) also should be rewritten in this style. However, these suggestions leave the terms undefined in s. DOC 306.22. Another approach is to define the terms in s. DOC 306.22 by stating: "In ss. DOC 306.22 to 306.24"

aq. Section DOC 306.24 (1) (intro.) should be drafted in the standard definition form. The second sentence of the (intro.) clause should read: "An emergency" includes any of the following:". The reference in sub. (4) should be to "the" panel rather than "this" panel.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the department's analysis, s. DOC 306.11 (2), Stats., is listed as one of the statutes interpreted by the rule. Is that the correct citation?

b. Section DOC 306.05 (3) cross-references s. DOC 306.12 (1) (a). Note that there are two classifications in the cited provision rather than one, as implied in the cross-reference.

c. In s. DOC 306.05 (4) (b), the cross-reference to s. DOC 303.70 should be more specific.

d. In s. DOC 306.08 (5) (c), the internal references in the last sentence should be to "par. (b)" and "this paragraph."

e. In s. DOC 306.08 (5) (e), reference to "these rules" should be more specific. For example, the phrase "this chapter" could be used. [See also ss. DOC 306.22 (2) (d) and 306.23 (4).]

f. In s. DOC 306.16 (4), "searches under this section" should replace "these searches."

g. In s. DOC 306.18 (8), first sentence, it appears that reference should be made to a "search under s. DOC 306.17 (1) or a search under this section." The suggested references should be reviewed to ensure that they are complete and accurate.

h. To which searches does s. DOC 306.18 (9) refer?

i. In ss. DOC 306.23 (4) and 306.24 (4), reference to s. DOC 306.08 (5) (e) does not appear appropriate. The latter provision appears to assume the use of firearms.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the last sentence of the third paragraph of page 3 of the department's analysis, "ensure" should be "ensures."

b. In the sentence at the bottom of page 4 of the department's analysis, "the" should precede "requirement"; "that" should be substituted for "for"; and "to" before "submit" should be deleted.

c. In the first sentence of the first full paragraph on page 5 of the department's analysis, "the" should precede "option" and an apostrophe should be placed after the "s" in visitors.

d. In the last sentence of the analysis, the word "an" should precede the word "intoxicating."

e. Does s. DOC 306.04 create a duty and potential liability beyond that which would otherwise exist?

f. In s. DOC 306.08 (5) (intro.) and (d), it is not specified when or where the firearm is discharged or the injury or death occurs.

g. Section DOC 306.09 (1) makes reference to incapacitating agents "authorized by the department." What are the criteria for such authorization?

h. In s. DOC 306.11 (3) (d) and (e) and (4), specified individuals should be given the listed duties rather than the "institution."

i. The duty specified in s. DOC 306.12 should be reviewed, particularly in light of s. DOC 306.07 (5) (d), which authorizes use of deadly force to prevent an escape. Does the duty *require* the use of deadly force if staff reasonably believes it immediately necessary to prevent the escape?

j. Section DOC 306.14 does not specify when a search may be made or what constitutes the grounds of a correctional institution. The relationship of this section and DOC 306.15 and 306.16 should be clarified.

k. It is not clear why DOC 306.15 (2) is contained in the chapter. Is there a more appropriate place for the provision? Further, it is awkwardly drafted.

l. In s. DOC 306.17 (1) (b) 2., the second "or" should be replaced by a comma.

m. In s. DOC 306.17 (1) (b) 4., it appears that "status" will suffice; i.e., it is not necessary to refer to "statuses." See, also, par. (c) 2., in this regard.

n. To what type of visit does s. DOC 306.17 (2) (c) 3., refer?

o. Section DOC 306.18 (5) should conclude with a period.

p. The second sentence of s. DOC 306.24 (4) is awkwardly drafted and it appears that the reference to s. DOC 306.05 (5) (e) may not be appropriate. Reference should be made to "the" panel in the last sentence of that section.

q. Is the sixth paragraph to the note to s. DOC 306.07 reflected in the substance of the rule? In the sixth paragraph on page 18, which continues the note to s. DOC 306.07, reference in the second sentence should be made to preventing "an" escape. What is the significance of the subsequent reference to "some" escapees?

r. Regarding the last sentence of the last paragraph of the note on page 18, should a corresponding substantive provision or a cross-reference to ch. DOC 303 be included in the rule?

s. In the first paragraph of the note to s. DOC 306.08, should reference be made to the "next available" staff member in the line of succession?

t. In the second sentence, first paragraph in the note to s. DOC 306.11, is reference to "any other reason" included in the rule? The citation to s. DOC 302.10 in the next sentence appears to be incorrect (it appears that s. DOC 306.10 is the correct reference.)

u. In the fifth paragraph of the note to s. DOC 306.11, the comma after "restraints" should be removed. The seventh paragraph of the note to s. DOC 306.11 should be reviewed for placement of commas and for consistency with provisions of the rule (it appears, for example, that crisis intervention worker is not used in the rule).

v. In the second paragraph of the note to s. DOC 306.13, the word "effect" should be replaced by the word "affect."

w. The note to s. DOC 306.15 indicates that the rule "permits" each institution to be completely searched periodically. However, the rule "requires" each institution to be completely searched periodically.

x. Is the last paragraph of the note to s. DOC 306.17 reflected in the rule?

Repealed

PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

CP, Dec 2001

Wisconsin Department of Corrections proposes an order to repeal and recreate Chapter DOC 306 relating to security.

Statutory authority: s. 227.11 (2), Stats.

Statutes interpreted: s. 302.07, 302.08, 302.11 (2) and 302.04, Stats.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rule relating to security have not been updated since the rule was created in 1980. With over 20 years of experience working with the rule, the department proposes to update the rule.

BACKGROUND

DOC 306 governs security standards and practices at state correctional institutions. As technology, science, population and government evolve over time, security standards and practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 18,000 in 2000, and has a projected population of more than 27,000 in the year 2001. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff and has created the possibility for a more hazardous environment. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. Correctional staff must now make urgent decisions regarding the best way to ensure staff, inmate and visitor safety and security. These situation and decisions are infinitely different from those of 20 years ago when the current rule was promulgated. The changes in this rule make it possible for inmate rights and needs to be protected without compromising institution security.

DEFINITIONS

- Removes the definitions for "Director of the bureau of correctional health services," "Administrator of the division of program services," "Division of program services," "CN chloroacetophenone and CS-o-chlorobenzyl malononitrile."
- Adds definition of "Authority," and "Issuance of firearms," adds "X-ray" to definition of "body cavity search," and adds "hair, fingernails, saliva, or semen" to definition of "body contents search."

- Changes the terms “Voluntary Confinement” to “Protective Confinement,” “chemical agent” to “incapacitating agent,” and changes the definition of “Superintendent” to “Warden.”

REPORTS/RECORDS/PLANS

Throughout this rule change, requirements regarding keeping reports, records, and plans are maintained, while the enumerated contents are eliminated. The Department’s Internal Management Procedures will dictate what information is necessary and these documents will continue to be kept in a consistent manner. The following is a list of the changes in this rule:

- Maintains requirement for an incident report, but removes language dictating the contents of the report.
- Maintains requirement for a report regarding escape, but removes language detailing information required to be included in the report.
- Maintains requirement for staff to provide report on a visitor search, but deletes enumerated requirements of the report.
- ✓ Maintains requirement that the institution keep a record of the use of restraints, but removes language listing what information the record must contain.
- ✓ Maintains requirement that a record of search be kept, but deletes language specifying material that must be included in the report.
- Maintains requirement for institution plans regarding escape, but removes requirement that the plans are filed with the administrator and removes language specifying the contents of the plan.
- Maintains requirement for emergency preparedness and disturbance plans, but deletes language detailing the contents.

PROTECTIVE CONFINEMENT

By removing the requirements that an inmate remain in protective confinement for at least 72 hours unless security director approves prior release and that the inmate be released automatically after the 72 hours, this rule clarifies that determining the length of stay in protective confinement is the security director’s role. In order to facilitate protection of inmates at risk, this rule removes the artificial figure of 72 hours and grants the security director the ability to regulate protective placement as long as the inmate remains at risk.

ISSUANCE AND USE OF WEAPONS

This rule allows an authority other than the Warden to issue weapons to staff and recognizes that circumstances arise within the institution where the warden may be unavailable at a time when weapons must be issued in order to maintain security. This rule change provides a process whereby designated staff may have authority to act in the warden’s absence. DOC Security Internal Management Procedures and Emergency Preparedness Manual will specify the line of succession and circumstances under which weapons authorization may occur.

This rule requires that staff actions prior to discharging a firearm are consistent with mandated comprehensive and uniform training requirements.

INCAPACITATING AGENTS

Science changes so rapidly and now provides us with a wider variety of incapacitating agents that are often times safer and more effective in controlling inmates. Department Security Internal Management Procedures will provide a wider variety of situation-appropriate alternatives in a graduated force option continuum. We are no longer limited to the narrow selection of "chemicals" enumerated in the current rule and it is futile, given sciences speedy advances, to attempt to continue enumerating incapacitating agents within the rule.

To ensure safety and proper application, this rule requires that only trained staff use incapacitating agents and grants general authority for their use under certain circumstances. The current rule reads so as to allow any staff member, even those not trained in the use of these agents, to use an incapacitating agent so long as it is done in the presence of a trained staff member. This rule ensure that the staff member actually administering or using the agent is properly trained, thereby ensuring greater safety to those involved in the situation.

This rule requires that the Division of Adult Institutions provide incapacitating agent training which includes safe handling, legal use, division policies and procedures, fundamentals of using and when incapacitating agents may and shall be used. In light of this requirement, the language dictating the procedure for using incapacitating agents is unnecessary and is removed.

The rule adds the following as situations for which staff may use incapacitating agents:

- a. to apprehend an inmate who has escaped
- b. to change the location of an inmate
- c. to control a disruptive inmate
- d. to prevent unlawful damage to property
- e. to enforce a departmental rule, policy or procedure or an order of a staff member

MECHANICAL RESTRAINTS

This rule permits use of mechanical restraints to immobilize inmates for the protection of property. Occasionally, highly destructive inmates do considerable damage to state and personal property. For example, inmates already in segregation manage to destroy light fixtures, plumbing, electrical boxes, windows, etc. This type of destruction is not only costly, but obviously jeopardizes the welfare of staff and inmates. Such inmates also use this behavior to create weapons and escape confinement.

Recognizing a need in today's changing institutions, this rule permits Wardens the discretion in determining if security warrants use of mechanical restraints for movement within the institution. Situations in which the mechanical restraints are necessary for movement within the institution are too numerous and various to attempt listing in the rule. To do so would unnecessarily and unduly

limit the ability of the Warden to ensure safety and security within the institution by responding to individual circumstances with the appropriate security measures. For example, mechanical restraints may be necessary during institution lock-downs, inclement weather such as severe fog, electrical blackouts, etc. There are a number of situations that may be unanticipated and due to circumstances beyond the Department's control. The Warden must have the ability to react in these situations.

ESCAPES

To ensure staff safety and limit liability, staff may no longer be authorized to use their own cars to pursue escapees.

SEARCH

This rule changes institution searches from permissive to mandatory and establishes the Department's clear intention to periodically search entire institutions

The effectiveness and validity of this type of search is dependent upon eliminating the requirement that inmates be given advance notice. Searches are considered a regular and necessary part of maintaining institution security and this rule removes the administratively burdensome requirement for housing unit supervisors or shift supervisors to authorize searches of inmate living quarters.

The current rules allow inmates to conceal contraband under the guise of "legal material" by forbidding staff to read and review this alleged legal material. This rule will allow staff, during a living quarters search, to examine legal materials to the extent necessary to determine that the item is, in fact, legal material and does not contain contraband.

This rule enumerates circumstances under which a strip search may be conducted and expands the reasons for conducting a body contents search.

This rule adds "biological specimen analysis" as a type of search in response to new laws allowing and/or requiring certain testing such as DNA.

This rule maintains the requirement that staff have reasonable grounds to search an inmate, but eliminates listed factors for staff to consider in deciding if reasonable grounds exist. Such factors will continue to be the subject of staff training and detailed in the department's internal policies and procedures.

This rule deletes the arbitrary recommendations for consideration in determining whether or not to conduct a search. This determination is best left to the Department's policies and procedures due to the changing circumstances and the variety of situations correctional staff encounter in today's institutions.

✓ This rule also deletes requirement for the security director of each correctional institution to submit monthly reports to the administrator regarding seized contraband. These reports continue to be

maintained at institutions and the Administrator has access to these reports on demand. To continue keeping records at DOC Central Office, in addition to the institutions, would be redundant and an unnecessary use of time and resources.

VISITORS

Allows institutions ^{the} option to store visitors personal property which may not be carried into the institution. There may be instances when visitors have too much personal property to be securely stored given minimal space and resources available.

This rule requires Warden approval for strip searches or personal searches of visitors.

then what?

PERSONS UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES

Occasionally, visitors are found with drugs, or become disruptive due to apparent influence of intoxicating substances. The Warden currently has statutory authority to arrest and detain under sec. 301.29(2) Wis. Stats. In practice, the Department does not have arresting protocols and therefore handles these procedures through law enforcement. This rule allows the Warden to deny a visit and to detain a visitor and inform law enforcement if the visitor appears to be under the influence of an intoxicating substance. This rule also allows the Warden to detain staff members, and to notify law enforcement, who appear to be under the influence of intoxicating substance.

all

Chapter DOC 306

SECURITY

DOC 306.01 Applicability and purpose.

DOC 306.02 Definitions.

DOC 306.03 Security policy.

DOC 306.04 Responsibility of employes.

DOC 306.05 Protective confinement.

DOC 306.06 Inmate count.

DOC 306.07 Use of force.

DOC 306.08 Use of firearms.

DOC 306.09 Use of incapacitating agents.

DOC306.10 Mechanical restraints for transportation of inmates.

DOC 306.11 Use of mechanical restraints to immobilize inmates.

DOC 306.12 Duty of staff regarding escapes.

DOC 306.13 Escapes.

DOC 306.14 Search of institution grounds.

DOC306.15 Periodic search of entire institution.

DOC 306.16 Search of inmate living quarters.

DOC 306.17 Search of inmates.

DOC 306.18 Search of visitors.

DOC 306.19 Search of staff.

DOC 306.20 Use of contraband as evidence at disciplinary hearing.

DOC 306.21 Use of test results as evidence at disciplinary hearings.

DOC 306.22 Emergency preparedness plan.

DOC 306.23 Disturbances.

DOC 306.24 Emergencies.

DOC 306.01 Applicability and purpose.

Pursuant to authority vested in the department of corrections by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats., the department adopts this chapter for purposes of establishing security standards and practices at state correctional institutions.

DOC 306.02 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division or designee.

(2) "Department" means the department of corrections.

(3) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the disciplining of inmates for misconduct.

(4) "Division" means the division of adult institutions, department of corrections.

(5) "Secretary" means the secretary of the department of corrections, or designee.

(6) "Security director" means the security director at an institution, or designee.

(7) "Warden" means the warden at an institution, or designee.

DOC 306.03 Security policy. Primary security objectives of the department are to protect the public, staff, and inmates and to afford inmates the opportunity to participate in correctional activities in a safe setting.

the unit in which the inmate is protectively confined.

(5) The security director shall review placements in protective confinement at least every 90 days. *90 days/ rev. in sec. or per convict.*

✓ **DOC 306.04 Responsibility of employees.** Every employe of the department is responsible for the safe custody of the inmates confined in the institutions.

DOC 306.06 Inmate Count. Each warden shall establish and maintain a system to accurately account for all inmates in the warden's custody at all times. The institution shall make a count of all inmates at least 4 times each day. The institution shall space these counts to minimize interference with school, work, program, and recreational activities.

DOC 306.05 Protective confinement.

(1) The security director may place an inmate in protective confinement if one of the following exist:

(a) The inmate requests the placement in writing.

DOC 306.07 Use of force. (1) In this chapter, the following definitions apply: *scope of docs?*

(b) The security director is satisfied that the placement is necessary for the safety and welfare of the inmate.

(a) "Authority" is the highest ranking individual available in the institution, based on the written institution line of succession. *means*

(2) An inmate shall remain in protective confinement unless the security director determines that the conditions which warranted protective confinement no longer exist and approves release.

(b) "Bodily injury" means physical injury, illness, or any impairment of physical condition.

(3) The department shall consider an inmate in protective confinement to be in maximum custody as defined in s. DOC 302.12 (1) (a).

(c) "Deadly force" is force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(4) Inmates in protective confinement shall have the following privileges and property:

(d) "Force" is the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.

(a) During the first 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in temporary lock-up or TLU, s. DOC 303.11.

(e) "Great bodily injury" is bodily injury which creates a high probability of death, serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) After 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in program segregation, s. DOC 303.70.

(f) "Issuance of firearms" means the deployment of firearms to authorized individuals, as determined by the warden, *Not used under 306.07*

(c) Additional privileges and property as determined by what is ordinarily allowed inmates by the rules governing the location of

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beyond designated armed posts in response to an emergency.

(g) "Non-deadly force" is force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

(h) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable.

(2) Corporal punishment of inmates is forbidden.

(3) Staff may use non-deadly force against inmates only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

(a) To prevent death or bodily injury to oneself or another.

(b) To regain control of an institution or part of an institution.

(c) To prevent the escape of an inmate.

(d) To apprehend an inmate who has escaped.

(e) To change the location of an inmate.

(f) To control a disruptive inmate.

(g) To prevent unlawful damage to property.

(h) To enforce a departmental rule, a policy or procedure or an order of a staff member.

(4) The use of an incapacitating agent is a form of non-deadly force and is regulated by s. DOC 306.09.

(5) Staff may use deadly force only if the user of force reasonably believes it is immediately necessary for the purpose of stopping the action in any of the following situations:

(a) To prevent death or bodily injury to oneself or another.

(b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

(c) To regain control of an institution or part of an institution.

(d) To prevent escape and apprehend an escapee.

(6) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

DOC 306.08 Use of firearms. **(1)** The warden or next authority who is available may issue weapons to staff. Staff may only use weapons approved by the department.

(2) Except in disturbances or emergencies, only staff assigned to posts requiring the use of firearms shall be armed.

(3) The warden shall ^{may} issue firearms only to staff who have successfully completed the training programs in sub. (4).

(4) The division shall have an annual weapons training and qualification program which shall include instruction on the following:

(a) Safe handling of firearms while on duty.

(b) Legal use of firearms and the use of deadly force.

(c) Division policies and procedures regarding firearms.

(d) Fundamentals of firearms use, including range firing.

(e) When firearms may and shall be used, including the use of verbal warnings and warning shots.

(5) If a staff member discharges a firearm, either accidentally or intentionally, staff shall do the following:

(a) The staff member who discharged the firearm shall notify the staff member's supervisor as soon as possible.

(b) The staff member who discharged the firearm shall file a written report of the incident in which the firearm was discharged with the staff member's supervisor, as soon as possible, but not more than 16 hours after the incident. If the staff member is unable to file the report, the supervisor shall file it with the warden.

(c) The supervisor shall investigate the incident and file a report with the warden. The supervisor shall state in the report all facts relevant to the discharge of the firearm and shall include the supervisor's opinion as to whether the discharge was justified and occurred in accordance with this chapter. The warden shall send the reports required by sub-

(b) and this subsection and the warden's conclusions as to the justification for the discharge and whether it was in accordance with these rules to the administrator.

(d) If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. This panel shall consist of 5 persons selected as follows:

1. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson.

2. Two members designated by the administrator, one of whom shall be a member of the central office staff and one of whom shall be a member of the public.

3. One member designated by the warden of the institution where the incident occurred, who is a member of the institution staff.

(e) The panel shall submit a written report to the secretary which includes the facts relevant to the incident and states an opinion as to whether these rules were complied with relating to the use of force.

DOC 306.09 Use of incapacitating agents. (1) DEFINITION.

In this section "incapacitating agent" means any agent or device commercially manufactured and authorized by the department for the purpose of temporary control of an inmate or area.

(2) REGULATION. The use of an incapacitating agent is a form of non-deadly force and is regulated by this section.

(3) AUTHORIZATION. Staff may use incapacitating agents in any of the following situations:

(a) To prevent death or bodily injury to oneself or another.

(b) To regain control of an institution or part of an institution.

(c) To prevent the escape of an inmate.

(d) To apprehend an inmate who has escaped.

(e) To change the location of an inmate.

(f) To control a disruptive inmate.

(g) To prevent unlawful damage to property.

(h) To enforce a departmental rule, policy or procedure or an order of a staff member.

(4) APPLICATION. Only a staff member trained in the use of incapacitating agents may use them.

(5) TRAINING. The division shall have an incapacitating agent training program which shall include instruction on the following:

(a) Safe handling of incapacitating agents while on duty.

- (b) Legal use of incapacitating agents.
- (c) Division policies and procedures regarding incapacitating agents.
- (d) Fundamentals of use of incapacitating agents.
- (e) When incapacitating agents may and shall be used.

(6) MEDICAL ATTENTION AND CLEAN-UP. As soon as possible after an incapacitating agent has been used, staff shall provide exposed inmates an opportunity for any necessary hygienic needs and shall consult with medical staff who shall provide any appropriate medical care.

(7) INCIDENT REPORT. As soon as possible following the use of an incapacitating agent, all staff present during the incident shall write and submit an incident report.

DOC 306.10 Mechanical restraints for transportation of inmates. Staff members may use mechanical restraints if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution.

(1) DEFINITION. In this section, "mechanical restraint" means a commercially manufactured device approved by the department and applied to impede free movement of the inmate.

(2) MOVEMENT WITHIN INSTITUTION Staff may use mechanical restraints in the following situations if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution:

- (a) In transporting an inmate from within the institution to outside the institution.

(b) In transporting an inmate to segregation or TLU status.

(c) For an inmate who is in segregation or TLU status, while the inmate is outside his or her cell.

(d) For other security reasons as determined by the warden.

(3) MOVEMENT OUTSIDE INSTITUTION. Staff may use commercially manufactured mechanical restraints in transporting an inmate outside an institution, in accordance with s. DOC 302.12.

DOC 306.11 Use of mechanical restraints to immobilize inmates. (1)

Staff may use mechanical restraints to confine inmates only with the express authorization of the shift supervisor and only in the following circumstances:

- (a) To protect staff and inmates from an inmate who poses an immediate risk of physical injury to others unless restrained.

- (b) To protect an inmate who poses an immediate threat of physical injury to self unless restrained.

- (c) To protect property.

(2) Staff shall never use mechanical restraints:

- (a) As a method of punishment.

- (b) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate.

(3) When staff places an inmate in restraints, staff shall follow these procedures:

- (a) The shift supervisor shall notify the licensed psychologist or designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff. They shall interview the inmate and

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arrange for a physical and mental examination as soon as possible. They shall recommend to the warden, based on their interview and the examinations, whether the inmate should remain in restraints. The warden shall evaluate the recommendation and decide if the inmate shall remain in restraints.

(b) A staff member shall observe an inmate in restraints every 15 minutes.

(c) If possible, staff may release an inmate from restraints to perform bodily functions and for meals. Three staff members, one of whom shall be a security supervisor, shall be present at the time of release.

(d) The institution shall keep a record of persons placed in restraints.

(e) The institution shall not allow an inmate to remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or a designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff who shall make a recommendation to the warden as to whether the person should remain in restraints. The institution shall conduct such an examination at least every 12 hours an inmate is in restraints. The warden shall notify the administrator of the decision to continue the use of restraints beyond 12 hours.

(4) Institutions shall maintain a supply of restraining devices which staff shall periodically examine. Staff shall remove any excessively worn or defective restraint devices from the supply. Institutions may use only commercially manufactured restraining devices.

DOC 306.12 Duty of staff regarding escapes. Staff have the duty to take actions to prevent the escape of any inmate.

DOC 306.13 Escapes. (1) Each institution shall have a written plan to be implemented if an escape occurs or is attempted. The security director shall prepare

this plan and shall review and update the plan yearly.

(2) If a staff member is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by staff. Staff shall disregard any orders issued by a hostage.

(3) Only staff authorized by the warden may carry firearms off the grounds of the institution.

(4) The institution shall coordinate the pursuit of escapees with law enforcement authorities.

Note: Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103-79).

DOC 306.14 Search of institution grounds. A staff member may conduct a search of any area on the grounds of a correctional institution.

DOC 306.15 Periodic search of entire institution. (1) Staff shall periodically conduct a thorough search of the entire premises of each institution.

(2) The institution shall pay inmates wages for the period of any lockdown required for a search pursuant to this section, unless the lockdown is precipitated by inmate misconduct when the institution shall pay only those inmates allowed to work.

DOC 306.16 Search of inmate living quarters. (1) Staff may conduct a search of the living quarters of any inmate at any time. A search of living quarters does not include those occasions when a staff member enters the living quarters of an inmate to retrieve state property.

(2) The institution shall maintain a written record of all searches conducted under sub. (1).

(3) If staff seize any property or damage any property pursuant to the search of an inmate's living quarters, staff shall identify the property to the inmate in writing. The institution shall reimburse the inmate for damage to any property which is not contraband. The institution shall value any property which is damaged at its fair market value, not replacement cost.

(4) In conducting these searches, staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness.

(5) Staff shall read only that part of the inmate's legal materials as necessary to determine that the item is legal material and does not contain contraband.

DOC 306.17 Search of inmates. There are 5 types of searches of inmates as follows:

(1) Personal search. (a) In this subsection, "personal search" means a search of a person, including, but not limited to, the clothing, frisking the body, and an inspection of the mouth.

(b) Any staff member may conduct a personal search of an inmate under any of the following circumstances:

1. If the staff member has reasonable grounds to believe that the inmate possesses contraband.

2. At the direction of a supervisor either verbally or in written job instructions or post orders or policies and procedures.

3. Before an inmate enters or leaves the security enclosure of a maximum or medium security institution or the grounds of a minimum security institution.

4. Before an inmate enters or leaves the segregation unit or changes statuses within the segregation unit of an institution.

5. Before and after a visit to an inmate or as part of a periodic search or lockdown of a housing unit.

(2) Strip search. (a) In this subsection, "strip search" means a search in which the person is required to remove all clothes.

(b) Permissible inspection includes examination of the inmate's clothing and body and visual inspection of body cavities. Staff shall conduct a strip search in a clean and private place. Any staff member may conduct a visual inspection of body cavities. Except in emergencies, a person of the same sex as the inmate being searched shall conduct the strip search.

(c) Staff may conduct a strip search of an inmate under any of the following circumstances:

1. Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum security institution.

2. Before an inmate enters or leaves the segregation unit or changes statuses within the segregation unit of an institution.

3. Before and after a visit.

4. As part of a periodic search and lockdown of an institution under s. DOC 306.15.

5. At the direction of a supervisor. Staff shall write a report or log entry of the searches under this subdivision.

(3) Body cavity search. (a) In this subsection, "body cavity search" means an x-ray, or a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

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 (b) Medical staff shall conduct body cavity searches. Medical staff may conduct a body cavity search only if the warden approves. The warden shall approve if there is probable cause to believe that contraband is hidden in a body cavity.

(4) Body contents search. (a) In this subsection, "body contents search" means a search in which the inmate is required to provide a biological specimen, including a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen for testing.

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 (b) Only assigned staff *may* obtain samples for a body contents search.

✓ (c) Staff may conduct a body contents search only under one of the following conditions and only after approval by the warden:

1. Security reasons.
2. Program reasons.
3. Investigation purposes.
4. As part of a random testing program.

✓ (5) Biological specimen analysis. In this subsection, "biological specimen analysis" means a search in which the inmate is required by a court to provide a biological specimen^A for deoxyribonucleic acid or DNA analysis under s. 973.047, Stats., or any other biological specimen analysis. Biological specimens may include, but are not limited to, a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen.

(6) (a) Staff shall write a report or log entry of all body cavity searches under sub. (3), of all body contents searches under sub. (4), of all biological specimen analysis under sub. (5), and of all searches in which contraband is found. Reports shall be filed with the security director.

✓ (b) Staff shall strive to preserve the dignity of inmates in all searches conducted under this section.

(c) Before a search is conducted pursuant to this section, staff shall inform the inmate that a search is about to occur, the nature of the search, and the place where the search is to occur.

DOC 306.18 Search of visitors. (1) Before a visit by a non-inmate to an institution is permitted, the staff member responsible for the admission of visitors shall be satisfied that the visitor is not carrying any unauthorized objects into the institution.

(2) The institution shall have information readily available to visitors informing them of the objects they may carry into the institution. The institution may provide a place for the safekeeping of objects which may not be carried into the institution.

(3) Before admitting a visitor, the staff member responsible for admission of visitors may require visitors to empty pockets and containers, permit the inspection of containers and submit the visitors and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects.

(4) The warden may require a visitor to submit to a personal search or strip search as defined in s. DOC 306.17 (1) and (2) prior to entering the institution. The staff member may conduct such a search only with the approval of the warden, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(5) The staff member shall write a report if the visitor refuses to submit to a search or if the search is conducted, and shall submit the report to the security director, with a copy to the warden and the administrator.

(6) Before an inspection or search is conducted pursuant to subs. (3) and (4) staff shall inform the visitor orally and in writing, either by a sign posted in a prominent place or on a notice, that the visitor need not permit the inspection or search and that if the visitor does not permit it, staff shall not admit the visitor to the institution at that time.

(7) If in an inspection pursuant to sub. (3) or a search under sub. (4) staff finds an unauthorized object, staff may deny the visitor the visit to the institution on the occasion, may suspend the visitor from further visits to the institution, or may allow the visit without the object.

(8) If the institution finds an unauthorized object pursuant to a personal search or inspection of a visitor and it is illegal to conceal or possess the object, the warden shall inform the sheriff and or law enforcement agency, turn the object over to the sheriff or law enforcement agency for referral to the district attorney pursuant to ss. 302.04 and 302.07, Stats. and deny the visit. If the institution determines that the visitor appears to be under the influence of an intoxicating substance, the warden shall deny the visit, may detain the visitor, and may inform the sheriff or law enforcement agency.

(9) Staff shall conduct all inspections and searches in a courteous manner. Staff shall strive to protect the dignity of visitors who are inspected or searched.

DOC 306.19 Search of staff. (1) The warden may require that staff members be searched while on the grounds of an institution or require that staff members' cars be searched while on institution grounds. The institution may conduct such a search by requiring the staff members to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under s. DOC 306.17 (1) and (2).

Before a strip search of a staff member or the search of a staff members' vehicle is conducted, the warden and the administrator shall approve the search. They shall approve the search only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. The institution shall not admit a staff member who refuses to submit to a search into the institution or may remove such a staff member from the institution and may subject the staff member to disciplinary action.

(2) If an unauthorized object is found pursuant to a search conducted under this section and it is illegal to conceal or possess the object, the warden may detain the staff member pursuant to ss. 302.04 and 302.07, Stats., and shall inform the sheriff or law enforcement agency and turn the object over to the sheriff or law enforcement agency for referral to the district attorney. If the warden determines that the staff member appears to be under the influence of an intoxicating substance, the warden may detain the staff member and may inform the sheriff or local law enforcement agency.

(3) Staff shall conduct all searches in a courteous manner. Staff shall strive to protect the dignity of staff who are searched.

(4) Each institution shall inform staff in writing what objects they may not carry into the institution.

(5) If a strip search is conducted pursuant to this section, the staff member conducting the search shall file a report with the security director. The security director shall provide a copy of the report to the warden and the administrator.

DOC 306.20 Use of contraband as evidence at disciplinary hearing. The institution may use contraband seized during a search which is done in violation of this chapter as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

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DOC 306.21 Use of test results as evidence at disciplinary hearings.

Subject to the confirmation required under s. DOC 303.59 (2), the institution may use results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

DOC 306.22 Emergency preparedness plan.

(1) The warden shall ensure that the institution has a written emergency preparedness plan for disturbances and emergencies and that a copy of the plan is filed with the administrator and implemented in a disturbance or an emergency.

(2) The purposes of the written emergency preparedness plan for disturbances plan shall be:

- (a) To insure the safety and welfare of the general public, staff, and inmates.
- (b) To protect property.
- (c) To maintain and restore order to the institution.
- (d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to these rules, and to provide relevant information to the police so that participants can be arrested and prosecuted. The plan shall give the highest priority to insuring the safety and welfare of the general public, staff, and inmates.

(3) The purposes of the emergency preparedness plan for emergencies shall be:

- (a) To insure the safety and welfare of the general public, staff, and inmates.
- (b) To protect property.

(c) To maintain and restore order to the institution.

(d) To identify any person who contributed to the creation of an emergency and to provide this information to the police for the person's arrest and prosecution.

(4) The plan shall give the highest priority to insuring the safety and welfare of the general public, staff, and inmates.

DOC 306.23 Disturbance. (1) A "disturbance" is any of the following:

- (a) An assault on any person by 2 or more inmates.
- (b) The taking of a hostage by an inmate.
- (c) The destruction of state property or the property of another by 2 or more inmates.
- (d) The refusal by 2 or more inmates, acting in concert, to comply with an order, to return to cells or rooms.
- (e) Any words or acts which incite or encourage inmates to do any of the above.

(2) A staff member taken hostage has no authority to order any action or inaction by staff.

(3) If a disturbance occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the disturbance is ended and order is restored to the institution. The warden shall make provisions for access to medical care.

(4) If a disturbance occurs and a person is injured and if it results in the suspension of these rules, the secretary may convene a disturbance review panel to investigate the disturbance. The secretary shall appoint the panel in accordance with s. DOC 306.08 (5) (d) and shall report in accordance with s. DOC

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306.08 (5) (e). The department shall provide this panel with staff adequate to conduct a thorough investigation of the disturbance.

DOC 306.24 Emergencies. (1) An emergency is an immediate threat to the safety of the public, staff or inmates of an institution, other than a disturbance as defined in s. DOC 306.23 (1). An emergency may include, but is not limited to:

- (a) An epidemic.
- (b) A malfunctioning of the water, electrical, or telephone system.
- (c) A fire.
- (d) A bomb threat or explosion.
- (e) A strike of employes.
- (f) Any natural disaster.
- (g) A civil disturbance.

(3) If an emergency occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the emergency is ended and order is restored to the institution.

(4) If an emergency occurs, the secretary may convene an emergency review panel to investigate the emergency. The department shall ensure that this panel shall be made up of persons selected in accordance with s. DOC 306.08 (5) (d) and shall report in accordance with s. DOC 306.08 (5) (e). The department shall provide this panel with staff adequate to conduct a thorough investigation of the emergency.

Chapter DOC 306

APPENDIX

Note: DOC 306.05. Some inmates wish to be confined because they fear for their safety. Protective confinement is permitted by this rule.

Maximum custody is used in this case for the inmate's safety. Because the status is not punitive, DOC attempts to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate shall be allowed at least the privileges and property allowed in temporary lock-up (TLU) for the first 72 hours and thereafter privileges and property allowed in program segregation.

Note: DOC 306.06. Accurate counts are essential for security and recordkeeping. Given the variety among institutional schedules, each warden is given the responsibility to see to it that an accurate system exists and that it does not unduly interfere with programs.

Note: DOC 306.07. DOC 306.07 states the purposes for which non-deadly force and deadly force may be used.

Sub. (2) states the existing policy which forbids corporal punishment.

A prison setting is different from the outside world and rules relating to the use of force in a free society are not adequate for the sometimes volatile prison setting. Situations arise in prison that must be controlled before substantial danger to others arises. The requirements for discipline and order in a prison and to prevent escapes give substantial responsibility to prison officials that may require the use of force to fulfill.

Sub. (3) states the circumstances in which non-deadly force may be used in a prison. This rule applies to correctional staff and not inmates. Inmates are not authorized to use force at any time by this rule.

Force may be used only when the user of it reasonably believes it to be necessary. This is an objective standard. Mere subjective belief is insufficient to justify the use of force. The belief must be a reasonable one.

Furthermore, it must be immediately necessary to realize the objectives stated in sub. (3) (a) to (h). If means other than force can be used before there is an immediate need for force, those means should be used.

This section does not require that the user of force reasonably believe that in so doing he or she is preventing an unlawful interference with another. A typical situation in which a correctional staff member would be authorized to use force in defense of another is if there were a fight between or among inmates. The correctional staff member must be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a prison setting, correctional staff must have the authority to prevent disturbances without worrying about whom is wrongfully fighting and who is simply defending himself or herself. After the disturbance is ended, investigation should reveal who started the fight. Such situations are so volatile that it is thought better to rely on the rule that excessive force may not be used as a limiting factor.

Sub. (3) (b) authorizes the use of force to regain control of a correctional institution or part of an institution after a takeover by inmates. The requirement that there be a detailed plan for each institution in the event of a disturbance is in DOC 306.22.

Sub. (3) (c) and (d) authorize the use of force to prevent escape and to apprehend an escapee. It is the responsibility of correctional staff to prevent escapes from correctional facilities, and the use of force is sometimes necessary to fulfill this responsibility.

Sub. (3) (e) authorizes the use of force to change the location of an inmate. Occasionally, an inmate is ordered to be placed in a segregation unit and refuses to go. To maintain the orderly operation of the institution, staff may have to physically move an inmate from one place to another.

More difficult questions than whether force may be used in a particular situation are how much force can be used and whether deadly force can be used. These questions are addressed in subs. (1) through (6). These subsections should be read together for a full understanding of the amount of force which may be used in a particular situation.

As a general rule, only as much force as is reasonably necessary to achieve the objective is authorized. How much force is necessary requires the exercise of judgment in accordance with standard of reasonableness. Sub. (1).

Deadly force, as defined in sub. (1), may be used in limited situations as stated in subs. (5) and (6). Deadly force may be used, subject to the limitations under subs. (5) and (6), to prevent the escape and apprehend some escapees.

This section also restricts the use of deadly force if it creates a danger to innocent third parties. The use of force in such a situation is forbidden unless not using such force creates an even greater danger to innocent third parties.

Other measures, though less certain of preventing an escape, may be more desirable in such a situation. Sometimes, however, it may be necessary to expose the public to such risks because the risks are less serious than those created by not using deadly force.

This section does not permit the use of deadly force to change the location of an inmate or to prevent damage to property. DOC 306.08 (4) provides for an annual weapons training and qualification program which shall include instruction on the legal use of firearms and deadly force.

Sub. (3) (h) authorizes the use of force to enforce department rules, policies and procedures and staff member orders. A typical situation in which a correctional officer would be authorized to use force under this paragraph is if an inmate refuses to be strip searched prior to entering the segregation unit. Without the strip search the inmate could be hiding a weapon that could be used by a self-destructive inmate to kill or severely injure himself or herself or someone else. If the inmate cannot be persuaded to obey the order, staff may use force to compel compliance. However, in general, it is better to use persuasion and the disciplinary process to enforce regulations. (See ch. DOC 303).

Note: DOC 306.08. DOC 306.08 governs the use of firearms by correctional staff. When firearms may otherwise be required, only the warden or a staff member in the line of succession may authorize the issuance of firearms.

The use of firearms is subject to the limitations on the use of force in DOC 306.07. This section reflects present policy of the department of corrections. Correctional staff in daily contact with inmates are not armed. Rather, officers who are posted in towers and in control centers are the only staff who are issued firearms, unless there is an emergency. Sub. (2). When firearms may otherwise be required, only the warden or next authority who is available may authorize the issuance of firearms. Sub. (1). Their issuance is only permitted to those who have successfully completed the training program referred to in subs. (3) and (4). To remain qualified, a staff member must requalify each year. Only issued firearms may be used: DOC 306.07 (1).

The reasons that firearms are not typically carried by correctional staff is that they do not assist staff in fulfilling their responsibilities and because the presence of firearms in institutions creates an unnecessary risk to the security of the institution. In other situations, the institution chain of command shall authorize firearms.

Sub. (4) indicates the nature of the weapons training and qualification program staff must complete to be certified to be issued weapons. It is important the staff who have weapons know how to use them. This greatly increases the chances that they will be used responsibly and diminishes the chances for accidents or negligent handling of them.

Sub. (5) provides for the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Subsections (5) (a)-(c) provide for investigation and reporting through the normal chain of command. Sub. (5) (d) and (e) provide for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity.

Note: DOC 306.09. DOC 306.09 authorizes and regulates the use of incapacitating agents in adult correctional institutions.

As stated in sub. (2), this section regulates the use of incapacitating agents. Because incapacitating agents pose a risk of injury to others, staff may only use them in limited situations.

Subsection (3) identifies situations in which incapacitating agents may be used. Under this subsection, incapacitating agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, DOC 306.24 (1), or disturbance, DOC 306.23 (1). "Part of an institution" may be a building or a small area like a room. Whether an incapacitating agent should be used in such a situation depends upon whether using the incapacitating agent is less hazardous for both the person seeking to use the incapacitating agent and the inmate than using other reasonable means to accomplish the purpose.

When incapacitating agents are used, only trained personnel may use them. These requirements and the training requirements are to ensure that incapacitating agents are used only when necessary and in a way that minimizes the risk to staff and inmates.

This rule requires appropriate medical care, if necessary, and an opportunity for hygienic care. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning may minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of incapacitating agents as well as the discomfort they may cause.

The incident report for incapacitating agents in sub. (7) ensures adequate administrative notification and review of the use of incapacitating agents.

Note: DOC 306.11. DOC 306.11 regulates the use of restraints to immobilize inmates. Restraining devices are permitted in three situations: to protect property; to protect others from an inmate; and to protect an inmate from himself or herself. The use of restraints for punishment or any other reason is not permitted. The use for transporting is regulated by DOC 302.10, relating to custody requirements for inmates. DOC 306.11 addresses the other uses. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. Subs. (1) and (2) are designed to insure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of inmates and correctional staff.

It is important that the authority to require restraining devices be centralized. For this reason, only the warden or the staff member in charge may order their continued use or removal after review of psychological or medical staff reports. Sub. (3) (a).

To avoid injury, it is necessary to have adequate staff to subdue the inmate.

Inmates placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to insure that the person is not being injured by the restraints. Furthermore, the decision to keep a person in restraints must be constantly reviewed. Sub. (3) (a) and (b) provide for medical exams and monitoring to get the inmate the immediate help he or she needs that may permit the removal of the restraints, as well as a review of the necessity for them.

Sub. (3) (c) provides for the removal of the restraints, for meals and to perform bodily functions when possible. This is to preserve the inmate's dignity, consistent with the safety of the inmate and staff.

Sub. (3) (d) provides for the records that staff shall keep when an inmate is placed in restraints. Given the seriousness of this measure, it is important that records be kept to insure that these rules are complied with and to permit review of the procedures used. This should prove helpful if further rules need to be developed regarding restraints.

Sub. (3) (e) requires an examination by a licensed psychologist or a designee acting under the supervision of a licensed psychologist or a psychiatrist and a member of the medical staff, or crisis intervention worker every 12 hours an inmate remains in restraints. This is to provide

expert judgment about the need for restraints and to provide additional mental health services to the inmate.

Sub. (4) requires that DOC shall maintain and periodically review a supply of restraining devices. This is to insure that devices which might injure an inmate or permit escape are not used.

Note: DOC 306.12. DOC 306.12 states the general policy that it is the responsibility of each staff member to take appropriate actions to prevent escapes. Appropriate action may include being alert and diligent, reporting observations and events, and may also include taking physical actions consistent with directed duty and training. Decisive action when signs of trouble exist is also important.

Note: DOC 306.13. DOC 306.13 states the responsibility of the department when there is an escape or attempted escape from an institution. It requires that each institution have a plan in the event of an escape or attempt. This plan must be reviewed yearly.

Sub. (2) states the rule that no hostage, no matter what his or her rank, has any authority while a hostage. A person under such stress cannot be expected to make decisions that effect himself or herself, the institution, or inmates. To permit a person to retain authority while a hostage is an invitation to take high ranking officials as hostages. a

Sub. (3) indicates that the usual rules relating to firearms apply during an escape. Furthermore, the warden must authorize staff before they may carry weapons off grounds. Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103-79). Duplication

Sub. (4) states that the pursuit of escapees shall be coordinated with law enforcement officials.

Note: DOC 306.14. DOC 306.14 authorizes the search of institution grounds at any time. Contraband, including drugs and weapons, are sometimes concealed in areas of general access, in workshops and in classrooms. Searches turn up contraband and also serve as a deterrent to bringing contraband into institutions.

Such searches must be random so that inmates may not move the contraband in anticipation of a search. DOC is not required to give a specific reason for conducting a search.

Note: DOC 306.15. DOC 306.15 (1) permits that each institution may be completely searched periodically. DOC has discovered contraband during these searches. This has convinced correctional officials of the desirability of such searches and of random area searches to

These searches are to include the living quarters of inmates as good correctional practice.

Sub. (2) requires that inmates be paid during the lockdown, unless it is precipitated by misconduct. The limitation on pay is to avoid paying inmates for periods that they do not work because of their misconduct and as an incentive to all inmates to behave appropriately.

Note: DOC 306.16. The search of the living quarters of an inmate is of importance to correctional officials and inmates. It is important that random searches of living quarters be

conducted because contraband, including drugs and objects fashioned into dangerous weapons, are sometimes discovered during such searches and such searches deter the possession of contraband.

Contraband is a direct threat to the safety of staff and the institution as a whole. Weapons can be used against staff as well as inmates and may be an inducement to cause a disturbance which threatens everyone in the institution.

DOC conducts its searches unannounced so that inmates do not have the opportunity to remove contraband from the living unit. Various means may be used to conduct searches, including the use of canines and other available technological methods.

DOC staff conduct searches in a manner which demonstrates respect for an inmate's personal property. DOC staff shall notify inmates of any objects which are seized.

Note: DOC 306.17. DOC 306.17 regulates "personal", "strip", "body cavity", "body contents", and "biological specimen analysis" searches of inmates. In the note to DOC 306.16, there is a discussion of the purposes and importance of searches of living quarters.

DOC 306.17 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Visitors or inmates who go outside may carry contraband into institutions. It is transported by inmates within institutions and is frequently moved to avoid detection. Contraband, including money illegally obtained, is also removed from institutions. Much of this contraband poses a threat to inmates, to correctional treatment, to staff, and to the very institution itself. See the note to DOC 306.16.

Body contents searches and urinalysis in particular are directed at controlling inmate use of intoxicants. Drug and alcohol use promotes the illegal entry, movement and selling of contraband within institutions and provides financial incentives which may corrupt other inmates and staff. Body contents searches and subsequent testing of those specimens are effective means to detect illicit use of drugs and alcohol. Test results may form the basis for disciplinary action, the prospect of which should deter inmates from using intoxicants or bringing them into the institutions.

Such searches may not be conducted without controls. This rule defines the 5 types of searches of the person of an inmate. The less intrusive and more common search is a personal search. Strip searches are conducted infrequently. Body cavity searches, as defined in this section, are rare.

Sub. (1) states the circumstances in which a personal search may be conducted. If a staff member has reasonable grounds to believe an inmate possesses contraband, an immediate search is permissible and is usually necessary to prevent disposal of the contraband. It is also desirable to permit random personal searches.

Sub. (2). Strip searches are sometimes necessary to detect contraband and deter people from bringing it into institutions.

Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit.

DOC places inmates in segregation units because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. With this need for a heightened level of security, it is essential to the safety of inmates that contraband not be brought into a segregation unit. Strip searches of inmates as they move in or out of the segregation unit are necessary for security.

Sub. (2) (c) 3. authorizes strip searches prior to and after a visit. Frequently, visitors are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited. On balance, it seems preferable to emphasize searches of inmates. Authority is also given to search visitors, however. See DOC 306.18.

Sub. (2) (c) 4. authorizes strip searches during a search of an entire institution or a part of an institution during a lockdown. Without strip searches during a lockdown, inmates can conceal contraband on their persons and defeat the purpose of the search under s. DOC 306.15.

Sub. (2) (c) limits staff members discretion to conduct strip searches.

Sub. (4) (c) describes the circumstances under which a body contents search may be conducted. Medical staff are in no way restricted from requesting physical examinations and tests for medical reasons. The division of adult institutions is expected to develop a protocol to define the role of health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff.

Each institution is expected to have procedures for selecting inmates on a random basis for body contents searches which minimize the potential for harassing or intimidating inmates.

Note: DOC 306.18. DOC 306.18 regulates the search of visitors. Other rules relating to visits are found under ch. DOC 309.

DOC staff treat visitors with respect and dignity. It is important to the safety of the visitor, the staff, and inmates that contraband or unauthorized objects not be brought into institutions. DOC uses proper detection procedures to discourage contraband and encourage safety.

Sub. (1) states the principle that correctional staff must be satisfied that visitors are not carrying unauthorized objects into the institution. Because such objects may be things which people normally carry with them and which visitors might assume are authorized, it is important to inform visitors of what they may or may not carry. Visitors may be provided with a place to store their belongings during the visit. Sub. (2).

If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the

responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches. Sub. (5).

The large majority of visitors are asked to empty pockets, permit the inspection of containers and submit to a metal detector screening similar to those used in airports. Sub. (3). This typically satisfies staff that contraband is not concealed. Occasionally, correctional staff have received information that a visitor is carrying contraband and that the inspection called for in sub. (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the warden may require the visitor to submit to a personal search or strip search as defined in DOC 306.17 (1) (a) and (2) (a) or be excluded from the institution. This authority is given only to supervisory people to insure that it is not abused.

Sub. (6) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution. The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects. It is essential that the notice of what is unauthorized be adequate. Sub. (2).

Sub. (7) requires a written report if a visitor is excluded or if a search is conducted. This is to insure that adequate records are kept that permit review of the decisions. This is a protection for the visitor and the correctional staff.

A dilemma is created when unauthorized objects are found. Sub. (8) resolves it by requiring correctional staff to turn over objects which it is illegal to possess or conceal to law enforcement. It would be neither wise nor safe, for example, to give a pistol to a visitor in the waiting room of an institution. On the other hand, it would not be proper to confiscate personal objects which visitors are not permitted to bring into institutions. The warden is a peace officer within the institution and on institution grounds by virtue of 301.29 (2), Stats. Under s. 939.22 (22), Stats., "peace officer" means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Sec. 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG-103-79).

Sub. (9) states the principle alluded to above that staff should try to conduct searches and inspections in a way that preserves the dignity of the individual.

Note: DOC 306.19. Searches of staff members are sometimes necessary. This is so for three reasons. First, staff members may inadvertently bring unauthorized objects into institutions. For example, an employe taking medication may bring in more than he or she needs for an 8-hour period. Second, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. Third, a staff member may deliberately bring an unauthorized object into an institution.

For these reasons, and because of the danger created thereby, the authority must exist to search staff. Subs. (2) and (3) are substantially the same as the relevant sections found in the section on search of visitors. See the notes to DOC 306.14-306.18.

It is important to inform staff of the objects they are not permitted to carry into the institution. Sub. (4) provides that each institution inform staff in writing.

Note: DOC 306.20. DOC 306.20 provides that contraband seized pursuant to a search which violates these rules may be used as evidence in a disciplinary proceeding. There are several reasons for this.

First, the rule encourages the making of adequate administrative rules. If such evidence could not be used, it is likely that there would be a change in the substance of the rules.

Second, the rule reflects the view that an exclusionary rule is not an effective way of encouraging compliance with the rules. Rather, enforcing the rules should be left to the administrative agency. This is a more desirable and effective way of enforcing compliance.

Third, to exclude the evidence is to misplace emphasis. The only justification for excluding it is to exact compliance. How the evidence was found does not bear on the issue of the guilt or innocence of the possessor of it. In a prison setting, it would be anomalous to not use evidence in a disciplinary hearing that is relevant, to enforce compliance with the rules.

If the issue of admissibility were permitted to be litigated, it would likely delay administrative action against the staff member who violated the rule.

Note: DOC 306.23. DOC 306.23 defines a disturbance, provides for the suspension of these rules, explains the effect on an individual's authority if the person is taken hostage, and provides for the investigation of the incident.

Disturbances threaten every inmate and staff member in a correctional institution and the general public. Some prison disturbances have had tragic consequences.

The nature of incarceration itself and the conditions under which prison sentences are served offer potential for disorder and are particularly conducive to the occasional eruption of incidents of extraordinary violence.

Prevention is the best way to deal with possible prison disturbances.

Staff shall be prepared to deal with disturbances in a way that attempts to insure the safety of people, the protection of property, the restoration and maintenance of order and disciplinary action against those responsible for the disturbance. While these are all important values, the protection of people is foremost.

Sub. (1) defines a disturbance. The definition is deliberately broad because of the importance of identifying possibly volatile situations and taking decisive action to control them. Small incidents can turn into serious disturbances and the definition reflects the view that even slight incidents should be regarded with concern. These rules may not be suspended for any disturbance, but only for ones that seriously disrupt institutional routine.

Sub. (2) addresses the situation in which a person in authority is taken hostage. It provides for the temporary suspension of that person's authority, because it is not proper to follow orders given by a person under duress.

Sub. (3) permits the suspension of the rules of the department. It is not intended that this rule be relied on frequently, but only in situations where the usual functioning of the institution becomes impossible. For example, programs and visits are impossible if a portion of an institution is taken over by inmates. Some rules, like those relating to the use of force, may never be suspended. This is provided for in the rule.

It is also important that people from outside the department be involved in an investigation and that it be adequately staffed.

Note: DOC 306.24. Emergencies of the kind defined in sub. (1) present a serious threat to the welfare of the public, inmates, and staff. It is essential that there be adequate planning in the event of such emergencies and prevention to avoid them altogether. Like disturbances, prevention is the best way to deal with emergencies.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats.

Wisconsin Department of Corrections

Dated: _____

By: _____

Jon Litscher
Secretary

Seal: