

(3) Non-deadly force may be used by correctional staff 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 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 after an inmate takeover;

(d) To prevent the escape of an inmate from an institution;

(e) To apprehend an inmate who has escaped from an institution;

(f) To change the location of an inmate; or

(f) To prevent unlawful damage to property.

(4) Deadly force may be used:

(a) For the purposes stated in sub. (3) (a)-(c);

(b) To prevent escape and apprehend an escapee from a maximum or medium security institution; or

(c) To prevent escape from a minimum security institution if the user reasonably believes there is a substantial risk that a person escaping will cause death or bodily harm to another unless immediately apprehended.

(5) Deadly force may not be used 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.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 306.07 Use of firearms. (1) Only the superintendent may issue weapons to correctional staff. Correctional staff may only use weapons issued to them by the superintendent.

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

(3) Firearms shall be issued only to correctional staff who have successfully completed the training programs referred to in sub. (4) and who have requalified in weapons training within one year of the issuance of the weapon.

(4) The bureau of institutions shall have a weapons training and qualification program which shall include instructions on:

(a) Safe handling of firearms while on duty;

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

(c) Division rules regarding firearms;

(d) Fundamentals of firearms use, including range firing; and

(e) When firearms may and should be used.

(5) Before discharging a firearm, a staff member should, insofar as it is feasible, do the following:

(a) Verbally warn the inmate to stop the activity giving rise to the use of the firearm, and inform the inmate that the staff member possesses a firearm;

(b) If the warning is disregarded, fire a warning shot; and

(c) If the warning shot is disregarded, fire shots to stop the activity.

(6) All shots should be fired to wound the inmate, not to cause death or great bodily injury, unless the inmate's activity poses an immediate threat of death or great bodily harm to another.

(7) If a firearm is discharged, either accidentally or intentionally the following procedure shall be followed:

(a) The staff member who discharged the firearm shall notify his or her 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 his 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 superintendent.

(c) The supervisor shall personally investigate the incident and file a report with the superintendent. This report shall state 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 superintendent shall send the reports required by sub. (7) (b) and (c) and his or her conclusions as to the justification for the discharge and whether it was in accordance with these rules to the director of the bureau of institutions.

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

1. Two members designated by the administrator, 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 director of the bureau of institutions, one of whom shall be a member of his or her central office staff and one of whom shall be a member of the public;

3. One member, to be designated by the superintendent 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.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 306.08 Use of chemical agents. (1) DEFINITIONS. In this section: (a) "Chemical agent" means CN or CS or a comparable incapacitating agent in a form which includes, but is not limited to, a tear gas grenade, projectile, pepper fogger, riot shell, or cannister.

(b) "CN" means chloroacetophenone.

(c) "CS" means o-chlorobenzyl malononitrile.

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

(3) **EMERGENCY SITUATIONS.** Chemical agents may be used when necessary in the following emergency situations:

(a) To prevent imminent escape;

(b) To subdue an inmate who poses an immediate threat of bodily injury or death to self or someone else; or

(c) To regain control of all or part of an institution during a disturbance as defined in s. HSS 306.22 (1), or an emergency as defined in s. HSS 306.23 (1).

(4) **NONEMERGENCY SITUATIONS.** (a) To deal with situations other than those described in sub. (3), chemical agents may only be used where s. HSS 306.06 (3) permits the use of force and the inmate physically threatens to use immediate physical force, which may involve a threat to use a weapon, against the staff member. An inmate's verbal threats do not justify using chemical agents.

(b) In order to ensure that chemical agents are used only as a last resort in these situations, the staff member shall take the following steps, if feasible, before actually employing a chemical agent:

1. Communicate with the inmate;

2. Ask one or more other available people to communicate with the inmate, such as another security officer, a social worker, a crisis intervention worker, a member of the clergy, or a psychologist or psychiatrist;

3. Wait for a reasonable period of time, unless waiting would likely result in an immediate risk of harm to the inmate or to another person;

4. Make a show of force to the inmate;

5. Use physical power and strength; and

6. Use any other reasonable means short of applying a chemical agent to enforce an order.

(c) When s. HSS 306.06 (3) permits the use of force and a staff member knows of an inmate's history of violent behavior in similar situations and reasonably believes that the inmate will become violent in this situation, a chemical agent may be used after the procedures in par. (b) 1 to 4 have been followed but before the inmate physically threatens to use actual physical force.

(5) **PROHIBITED USE.** Chemical agents shall not be used when:

(a) It is clear that the chemical agents would have no physical effect on the inmate; or

(b) An inmate refuses to follow an order and exhibits no other behavior that would justify application of a chemical agent under sub. (3).

(6) **ORDER OF USE.** When use of CN or CS is indicated, CN shall be used first. If CN is ineffective, CS may be used.

(7) **USE IN CONFINED OR CLOSE AREAS.** In confined or close areas, only CN or CS may be used. In all respects, the manufacturer's safety instructions shall be followed.

(8) **USE OUTSIDE AND IN LARGE ENCLOSED AREAS.** Tear gas grenades, projectiles, pepper foggers and riot shells may only be used in outside areas or in large enclosed areas in which the danger due to a reduction in oxygen is minimal.

(9) **AUTHORIZATION.** Use of chemical agents may only be authorized by the following persons:

(a) In situations under sub. (3) (b) or (c), by the superintendent or his or her designee;

(b) In situations under sub. (3) (a), by the senior staff member present at the time and place; and

(c) In all situations under sub. (4), by the superintendent or deputy superintendent, or, if neither is present at the institution, the security director or, if that person is not available, the assistant superintendent on call or in charge of the institution.

(10) **APPLICATION.** Chemical agents may be employed only by a trained supervisor or staff member. When a chemical agent is used in a situation under sub. (4), the use shall be under the immediate supervision of a supervisor. Each institution shall ensure that every staff member authorized to use chemical agents is properly trained in their use.

(11) **MEDICAL ATTENTION AND CLEAN-UP.** As soon as possible after a chemical agent has been used, all inmates who have been exposed to the chemical shall be examined by the medical staff. These inmates shall have their eyes cleaned with water and be provided with a change of clothing. Exposed living quarters shall have bedding and mattresses changed and shall be thoroughly cleaned. Whenever CS is used, exposed inmates shall be offered an opportunity to shower.

(12) **INCIDENT REPORT.** As soon as possible following the use of a chemical agent, an incident report shall be submitted to the director of the division's bureau of adult institutions. The incident report shall be as thorough as possible, describing:

(a) The problem leading to the use of the chemical agent;

(b) The steps taken prior to the use of the chemical agent;

(c) Why those steps were inadequate; and

(d) Measures taken following the use of the chemical agent.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; r. and recr. October, 1984, No. 346, eff. 11-1-84.

HSS 306.09 Mechanical restraints for transportation of inmates. Mechanical restraints, including handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints, leather and plastic restraints may be used in transporting an inmate within an institution or outside an institution, in accordance with ch. HSS 302. Only commercially manufactured restraining devices may be used.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 306.10 Use of mechanical restraints to immobilize inmates. (1) Mechanical restraints to confine inmates to their beds may be used only in the following circumstances:

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

(b) To protect an inmate who poses an immediate threat of physical injury to himself or herself unless restrained. An inmate may be placed in restraints only with the express authorization of the shift supervisor.

(2) Mechanical restraints shall never be used:

(a) As a method of punishment;

(b) About the head or neck of the inmate;

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

(3) When an inmate is placed in restraints, the following procedure shall be followed:

(a) The shift supervisor shall so notify the clinical services unit supervisor, the crisis intervention worker, or the licensed clinician on call, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall recommend to the superintendent, based on their interview and the examinations, whether the inmate should remain in restraints. If the superintendent approves the recommendation, it shall be followed. If not, he shall, as soon as possible, refer the issue to the directors of the bureau of institutions and program resources, who shall decide whether the inmate shall remain in restraints.

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

(c) If possible, inmates should be released from restraints to perform bodily functions and for meals. Three staff members, one of whom shall be a security supervisor, must be present before such release may occur.

(d) A record must be kept of persons placed in restraints and it shall include:

1. The inmate's full name, number, and date;
2. The names of the staff members and supervisor present when the inmate was placed in restraints;
3. The reasons for placing the person in restraints;
4. The times that the inmate was checked, the name of the person making the check, and comments on the individual's behavior while in restraints;
5. The times the inmate was placed in restraints and removed;
6. Medication given, and
7. The names of staff visitors, the times of their visits, and any written comments they make.

(e) No inmate shall remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or psychiatrist or the crisis intervention worker, who shall make a recommendation to the superintendent as to whether the person should remain in restraints. Such an examination shall occur at least every 12 hours an inmate is in restraints.

(4) Institutions shall maintain a supply of restraining devices which shall be periodically examined. Any excessively worn or defective restraint devices shall be removed from the supply. Only commercially manufactured restraining devices may be used.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 306.11 Duty of staff regarding escapes. It is the duty of each correctional staff member to prevent the escape of any inmate.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 306.12 Escapes. (1) Each institution shall have a written plan to be implemented if an escape occurs or is attempted. This plan shall be prepared by the security director who shall review and update the plan yearly. A copy of the plan shall be filed with the director of the bureau of institutions. The plan shall provide for:

will be used responsibly and diminishes the chances for accidents or negligent handling of them. There is a great need for training in human relations and alternatives to force. This training should be part of weapons training.

To insure that weapons are handled responsibly, sub. (5) indicates the procedure to be followed before discharging a weapon. It will not always be possible, given the nature of the situations in which firearms are used, to follow this procedure. However, it is required that it be followed unless it is not feasible. For example, if it were necessary to shoot at a person holding a hostage, the procedure might not be followed.

The procedure is designed to verbally inform the inmate that a staff member possesses a weapon and that the inmate should stop the activity. An adequate verbal warning to a person attempting to escape would be to say, "Halt, don't move! I have a weapon." If the verbal warning is disregarded and the inmate does not halt, a warning shot should be fired. If this is disregarded, it might be necessary to fire shots at the inmate. Such shots should be fired to stop the inmate by wounding him or her, not to kill or cause great bodily harm. This is consistent with HSS 303.06. There may be situations in which it is necessary to shoot to kill. This is provided for in sub. (6) by the phrase "unless the inmate poses an immediate threat of death or great bodily harm to another." In such case, shooting with the intention of causing death would be justified and is authorized by the rule.

Sub. (7) requires 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 (7) (a)-(c) provide for investigation and reporting through the normal chain of command. Sub. (7) (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 division of corrections to insure that the investigation is conducted with the necessary objectivity.

No attempt is made in the rule to identify those sanctions that may or shall be applied to staff members who violate the rules. Clearly, the civil and criminal law of the state applies. A current issue in administrative law is whether the violation of a rule is the basis for a cause of action in tort or under 42 U.S.C. s. 1983. These are matters for the legislature and the Congress. What administrative sanction may be applied is addressed elsewhere in these rules.

Note: HSS 306.08, HSS 306.08 authorizes and regulates the use of chemical agents in adult correctional institutions.

The division's policy is to allow use of chemical agents in emergencies, and to ensure that in nonemergency situations chemical agents are used only as a last resort and not as alternatives to communication with an inmate or to other types of non-deadly force. The rule also makes clear that chemical agents may not be used to punish an inmate but only to control him or her when necessary.

As stated in sub. (2), the use of chemical agents is regulated by this section. Because chemical agents pose a risk of injury to others, they may only be used in limited situations.

Subsection (3) identifies emergency situations in which chemical agents may be used without going through the steps identified in sub. (4). Under this subsection, chemical 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, HSS 306.23 (1), or disturbance, HSS 306.22 (1). "Part of an institution" may be a building or a small area like a room. Whether a chemical agent should be used in such a situation depends upon whether using the chemical agent is less hazardous for both the person seeking to use the chemical agent and the inmate than using other reasonable means to accomplish the purpose. As explained in HSS 306.06 (5) (b), an inmate's simple refusal to follow an order does not constitute loss of control of all or part of an institution.

Subsection (4) covers use of chemical agents in nonemergency situations, including situations in which an inmate refuses to follow an ordinary order. These situations include, for example, an inmate's refusal to take nonemergency medication or submit to nonemergency medical treatment; refusal to return a meal tray or tray inserts, unless the tray or insert is presently being used as a weapon; an inmate's throwing objects or liquids from the cell, unless such activity constitutes an immediate threat of bodily injury or death to him or herself or another; refusal to be strip searched; refusal to come to bars of a cell to be handcuffed for any nonemergency reason; and yelling or shouting.

Subsections (4) (b) 1 to 6 outline a series of steps to be taken before using the chemical agents in nonemergency situations, when it is feasible to take those steps. This procedure is designed to ensure that chemical agents are used only as needed in particular situations. The person seeking to use the chemical agent should communicate with the inmate and should ask other available personnel to communicate with the inmate to persuade the inmate to take the

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desired action or comply with an order. When communicating with an inmate, staff members should take into consideration an inmate's special needs, including, but not limited to, an inmate's inability to understand English. Waiting or reconsidering the propriety of an order may be possible in some cases. Other solutions may be appropriate in other situations.

Except in situations in which the staff member seeking to use chemical agents knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, chemical agents may only be used after an inmate physically threatens to use immediate physical force. Physical force includes possession of a weapon, such as a knife. Verbal threats do not constitute a sufficient threat. When the staff member knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, the staff member must follow all steps in the procedure in sub. (4) (b) 1 and 4 but may use chemical agents before using actual physical power and strength.

Subsection (5) (a) states that chemical agents may not be used when they clearly would have no effect. Situations include instances when the inmate has thrown a blanket over his or her head, when the chemical agent cannot effectively be used according to the manufacturer's instructions to produce the desired result, or when a particular inmate is known not to react to the chemical agent.

Subsection (5) (b) clarifies the division's policy that an inmate's simple refusal to follow an order does not justify using chemical agents unless the inmate physically threatens to use immediate physical force.

Subsections (7) and (8) regulate the use of particular chemical agents. CN and CS agents are the only agents to be used in enclosed areas, because enclosed areas require the use of agents which can be released in small amounts and can be carefully controlled. This method of use further avoids unnecessary risks of injury. The manufacturer's safety instructions include guidance as to the distance from which the agent should be delivered as well as the date after which the agent must be replaced.

The use of agents identified in sub. (8) is confined to areas where the risk to life by a reduction in the oxygen available is minimal, for example, in open areas and in rooms such as the dining halls at most institutions.

Because use of chemical agents creates risks, sub. (9) imposes severe limitations on who may authorize their use. In emergency situations described in sub. (3) (b) and (c), the superintendent or designee may authorize the use of chemical agents although, to prevent an imminent escape, described in (9) (b), it may be necessary for the senior staff member present to authorize use of a chemical agent. In non-emergency situations, only the person actually in charge of the institution at the given time—who may be the superintendent or deputy superintendent, the security director, or an assistant superintendent—may authorize the use of chemical agents.

As provided in sub. (10), when chemical agents are used, only trained supervisory personnel may use them, except that a trained staff member may use them under immediate supervision. These requirements and the training requirements are to ensure that chemical agents are used only when necessary and in a way that minimizes the risk to staff and inmates.

Subsection (11) requires a medical examination and change of clothes and bedding and cleaning for exposed inmates and areas. Inmates exposed to CS must be given a chance to shower. "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 minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of chemical agents as well as the discomfort they may cause.

The reporting requirement in sub. (12) ensures adequate administrative notification and review of the use of chemical agents.

HSS 306.09. HSS 306.09 authorizes particular restraining devices to be used in transporting an inmate. The use of such devices is addressed in HSS 302.12.

HSS 306.10. HSS 306.10 regulates the use of restraints to immobilize inmates. It is substantially in accord with existing division policy. Restraining devices are permitted in three situations: in transporting an inmate; (HSS 302.12) 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 HSS 302.12, relating to custody requirements for inmates. HSS 306.10 addresses the other 2 uses. Sub. (1) (a) and (b) permit the use of restraints when the danger created by an inmate is so imminent and serious that physical restraint, sometimes for a period of several hours, is necessary. 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 de-

VICES 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.

Sub. (2) applies to the use of restraints for all purposes except transporting inmates, a routine use determined by the inmate's security classification. This particular subsection addresses situations in which devices are used to restrain disturbed inmates.

It is important that the authority to require restraining devices be centralized. For this reason, only the superintendent or the staff member in charge may order their use or removal. Sub. (3) (a).

To avoid injury, it is necessary to have adequate staff to subdue the inmate. As a general rule, 2 or 3 staff members should be present when an inmate is placed in restraints. This is for the safety of the inmate and the staff, because inmates may be violent. Injury and unnecessary anxiety may be avoided if the shift supervisor explains to the inmate why restraints are being imposed. When possible, this is to be done before placing the person in restraints.

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), (b) and (c) provide for counseling, 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 are to be kept 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 psychiatrist, licensed psychologist, 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 a supply of restraining devices be maintained and periodically reviewed. This is to insure that devices which might injure an inmate or permit escape are not used. For a similar, though less detailed rule relating to restraints, see 15 *Cal. Adm. Code* 3280.

HSS 306.11. HSS 306.11 states the general policy that it is the responsibility of each staff member to prevent escapes. While escapes are relatively rare in a well-administered institution, staff must be alert to prevent them. Prevention is accomplished best by having a sound classification system, thorough security inspections, institutional programs that provide full-time work and adequate recreation, consideration of legitimate complaints,