

Sub. (2) 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. This is permitted by Sub. (2) (b), but requires the approval of the shift supervisor. This is to insure that such searches are not conducted to harass inmates, but are approved after reflection by a supervisory staff member.

Such random searches are not conducted frequently, but are thought to be of substantial deterrent value.

Sub. (2) (c) permits personal searches in lieu of strip searches, where strip searches are permitted.

Strip searches, by their nature, are unpleasant and degrading to both staff and inmates. All wish that such searches were unnecessary. As has already been stated, they do detect contraband and deter people from bringing it into institutions. *United States v. Lilly*, 576 F. 2nd 1240 (5th Cir. 1978).

It would be unreasonable, however, to permit random strip searches. Cf. *Wolfish v. Levi*, 573 F. 2nd 118 (2nd Cir. 1978). *United States ex. rel. Guy v. McCauley*, 385 F. Supp. 193 (D. Wis. 1974).

Sub. (3) identifies the circumstances in which strip searches are permitted. The rule is written to limit the use of strip searches in 2 principal ways. First, in pars. (a) to (c) the rule identifies the specific situations in which inmates may be strip searched. All of those situations are ones in which contraband is moved most frequently or where the danger created by the presence of contraband is so great as to require the authority to exist for strip searches. The other limitation, in pars. (d) and (e), is to permit such searches only if grounds exist for the search to believe that the inmate possesses contraband.

Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit. If this were not permitted, it is likely that there would be less movement in and out of institutions. This would defeat program objectives. Sub. (3) (a).

The segregation unit of a correctional institution is usually a tense place. Inmates are there because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. It is essential to the safety of inmates that contraband not be brought into a segregation unit. Inmates cannot be constantly observed while in segregation or when they are temporarily absent. Without the strip search of inmates entering and leaving segregation, a weapon could be taken in or out and used by a self-destructive inmate to kill or severely injure himself or herself or someone else.

Sub. (3) (c) authorizes strip searches prior to and after a visit. Visitors bring contraband to and also carry it from institutions. Frequently, they 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 HSS 306.17.

Sub. (3) (d) and (e) do not give staff members unlimited discretion to conduct strip searches. They state that a strip search may be made if there are reasonable grounds to believe the inmate possesses contraband. This is a less than probable cause standard, but more than mere suspicion. It is the same standard as in sub. (2) (a). Sub. (7) indicates what may be considered in determining if there are reasonable grounds. What a staff member observed, information from a reliable source, prior seizures of evidence from the inmate, and the experience of the staff member are all relevant to the determination to strip search. The staff member must believe that it is necessary to strip search an inmate without supervisory approval because a strip search is necessary to preserve evidence or in other cases in which timeliness is very important. Of course, a staff member may also conduct a strip search of an inmate at the direction of the shift supervisor.

In *Bell v. Wolfish*, *supra*, the U.S. Supreme Court held that strip searches including visual body cavity inspections were permissible anytime a pretrial detainee had contact with a member of the public. This principle is applied in this rule, as well as in other situations where the likelihood of contraband being moved or the danger created by the contraband is such that, in the judgment of correctional officials, a search should be permissible.

Sub. (5) 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 department's divisions of corrections and health are expected to develop a protocol to define the role of correctional 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. Paragraph (a) permits a body contents search if there are grounds to believe the inmate has used, possesses or is under the influence of intoxicants or other contraband. For example, grounds for a body

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contents search would exist if contraband were found either on the inmate or in an area controlled, occupied or inhabited by the inmate. In addition, if a staff member observes an inmate possessing or using contraband or if a staff member receives information from a reliable source that an inmate is currently under the influence of or has recently used contraband, grounds would exist for a body contents search. Paragraph (c) lists specific situations in which an inmate may be subjected to a body contents search. All those situations are ones in which the inmate has left the institution grounds and it is therefore possible that the inmate has had access to contraband. The superintendent has discretion to authorize body contents searches when inmates return to the institution under the situations listed in par. (c). If an inmate returns late from these offgrounds activities, the superintendent should always authorize a body contents search. Conducting body contents searches on inmates returning from offgrounds activities is intended to reduce the flow of contraband into the institutions. Since the use of intoxicants is often difficult to detect, par. (d) permits the division to establish random testing programs. Random testing of body fluids is not unreasonable as long as inmates are chosen for testing without regard to their identities. *Storms v. Coughlin*, 600 F. Supp. 1214 (S.D.N.Y. 1984).

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. The division is expected to have procedures which ensure that the test results are reliable, the test operators are properly trained, the chain of custody is preserved, and inmates are treated in the least degrading manner possible. These procedures are available on request from the Bureau of Adult Institutions, Division of Corrections, P.O. Box 7925, Madison, WI 53707.

HSS 306.17. HSS 306.17 regulates the search of visitors. Other rules relating to visits are found under ch. HSS 309.

It is the firm policy of the division of corrections to encourage visits to inmates. Visits are important to the morale of inmates. Contacts with family members, friends, and other members of the community can be very helpful in motivating inmates and in assisting their reasimilation into the community. Family ties, which are greatly strengthened by personal contact, are essential to successful reintegration.

Unfortunately, some visitors knowingly carry contraband into correctional institutions. More frequently, visitors unwittingly bring objects which are harmless if used as intended, but which can be fashioned into deadly weapons in institutions.

There have been cases in the past in which visitors have been told that their loved ones will be harmed by inmates unless they bring contraband into an institution. It is important to the safety of the visitor, the staff, and inmates that contraband or unauthorized objects not be brought into institutions. It is essential that this be done in a way that does not discourage visits or communicate to visitors that they are unwelcome. The dilemma is in treating visitors in a way that makes them feel welcome while insuring that contraband is not being brought into the institution. HSS 306.17 in conjunction with the other rules regarding visiting, is intended to achieve these goals. Krantz, one of the few commentators who has addressed the issue, recommends that visitors be searched. *Krantz, et al*, at 57. A "visitor" is anyone not employed by the division of corrections.

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 are 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 superintendent, the security director, or the highest ranking member of the security staff and the bureau director may require the visitor to submit to a personal search or strip search as defined in HSS 306.16 (1) (a) and (b) or be excluded from the institution. This authority is given only to high level 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 per Register, January, 1987, No. 373