

Chapter HSS 336

SECURITY

HSS 336.01	General security policy	HSS 336.11	Periodic search of entire institution
HSS 336.015	Applicability	HSS 336.12	Search of rooms of youth
HSS 336.02	Responsibility of employees	HSS 336.13	Search of youth
HSS 336.03	Resident count	HSS 336.14	Search of visitors
HSS 336.04	Use of force	HSS 336.15	Search of staff
HSS 336.05	Use of chemical agents	HSS 336.16	Factors to consider to decide if search is necessary
HSS 336.06	Mechanical restraints for transportation of youth	HSS 336.17	Use of contraband as evidence at disciplinary hearing
HSS 336.07	Use of mechanical restraints	HSS 336.175	Seizure and disposal of contraband
HSS 336.08	Duty of staff regarding runaways	HSS 336.18	Disturbance plan
HSS 336.09	Runaways	HSS 336.19	Emergencies
HSS 336.10	Search of institution grounds	HSS 336.20	Annual report

Note: Several sections in this chapter have explanatory material relating to the text of the rule. This material can be found following the last section of this chapter.

HSS 336.01 General security policy. Primary security objectives of the department in youth corrections are to protect the public, staff, and youth and to afford youth a safe setting to participate in activities that equip them to be successfully reintegrated into the community, while maintaining the least possible restriction on the individual youth's liberty.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.015 Applicability. This chapter applies to the department of health and social services and to all youth under its legal custody in correctional institutions. It interprets s. 46.03 (1) and (6), Stats., and ch. 48, Stats. The definitions under ch. HSS 333 apply to this chapter.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.02 Responsibility of employees. Every employe of the division of corrections is responsible for the safe custody and treatment of the youth confined in the institutions.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.03 Resident count. An institution shall have a system for accurately accounting for the whereabouts of all youth in its custody at all times. The system shall interfere as little as practical with school, work, program and recreational activities. The system shall be described in writing. All institution staff shall be familiar with the system.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, April, 1995, No. 472, eff. 5-1-95.

HSS 336.04 Use of force. (1) As used in this chapter:

(a) "Non-deadly force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way. It includes the use of chemical, mechanical, and physical power and strength.

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

(2) Corporal punishment of youth is forbidden. This prohibition allows no exceptions and applies to public and private programs.

(3) Only so much force may be used as is reasonably necessary to achieve the objective for which it is used. The use of excessive force is forbidden.

(4) Non-deadly force may be used by correctional staff against youth 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;

(c) To regain control of an institution or part of an institution after a takeover of the institution by youth;

(d) To prevent the running away of a youth from an institution; or

(e) To change the location of a youth.

(5) Non-deadly force may be used to apprehend a youth who is a runaway from the custody of correctional staff or an institution in the following manner:

(a) Staff members, upon sighting runaway(s), shall notify the institution. The institution shall notify local law enforcement and request assistance by advising of the time of sighting, numbers involved, description, and specific location;

(b) Runaway youth should be kept in sight whenever possible;

(c) Staff should exhaust all efforts to persuade runaway youth to voluntarily return to the institution prior to utilizing force;

(d) If the runaway youth refuses to return voluntarily and local law enforcement is absent, staff may exercise minimal physical force necessary to apprehend the youth. Minimal force should be exercised in the following way if possible:

HSS 336.04

1. Staff should not attempt to physically handle the youth until sufficient staff persons are present to evidence a show of force;

2. The youth should again be asked to voluntarily return;

3. If the youth refuses, the youth may be firmly grasped by one or more staff; and

4. The youth shall then be restrained as necessary for the protection of the youth or others and led to an authorized vehicle.

(e) After apprehension, the youth and staff shall be checked for injury. If injury resulted, the institution shall be notified;

(f) If force is used, each staff member involved shall submit a separate written report covering the apprehension to the superintendent; and

(g) Youth and staff shall be examined for injury by the medical staff with a summary report submitted to the superintendent.

(6) Deadly force may not be used by correctional staff against youth except to prevent death or bodily injury likely to cause death to oneself or another person.

(7) Deadly force may not be used if its use creates a substantial risk of harm to innocent third parties.

(8) Youth are not authorized by this section to use force at any time.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.05 Use of chemical agents. (1) Chemical agents may be used only as follows:

(a) To subdue youth who pose an immediate threat of bodily injury or death to self or another; or

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

(2) In confined or close areas, only mace, chloroacelophenone (CN), and o-chlorobenzalmalononitrile (CS) chemical agents and canister dust chemical agents may be used. In all respects, the manufacturer's safety instructions shall be followed when practicable. If the manufacturer's instructions were not followed, the superintendent shall conduct an investigation to determine whether or not it was practicable to follow the instructions, based on the surrounding circumstances, and include that determination in the report under sub. (6).

(3) Tear gas grenades, projectiles, pepper foggers, and riot shells may only be used in outside areas and large enclosed areas in which the danger due to a reduction in oxygen is minimal.

(4) The use of chemical agents shall be authorized only by the superintendent or designee who has charge of the institution. Chemical agents may only be discharged by a trained staff member 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.

(5) After a chemical agent has been used, all youth exposed to the chemical agent shall have their eyes cleaned

Register, April, 1995, No. 472

with water or other appropriate solution prescribed by professional health staff, be provided with a change of clothing, and given a shower as soon as practicable. Exposed living quarters shall have bedding and mattress changes, a thorough cleaning, and be ventilated. All youth exposed directly or indirectly shall be examined by health services staff.

(6) Whenever a chemical agent has been used, an incident report shall be submitted to the director of the bureau of juvenile services. The report shall include the youth's name, the date, names of staff members present when the agent was used, reasons for using the agent, time the agent was used, and treatment given. The director of the bureau of juvenile services shall review the incident with the institution superintendent and make a record of the usage. Each year a report concerning these incidents shall be submitted to the administrator with a copy to the secretary, pursuant to s. HSS 336.20.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.06 Mechanical restraints for transportation of youth. Mechanical restraints, including handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints, and leather and plastic restraints may be used in transporting a youth within an institution or outside an institution. Only commercially manufactured restraining devices may be used.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.07 Use of mechanical restraints. (1) Mechanical restraints to confine youth to their beds may be used only in the following circumstances:

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

(b) To protect a youth who poses an immediate threat of physical injury to himself or herself, unless restrained;

(c) To protect youth in a health emergency; and

(d) To restrain a youth who is acting in a way that substantially disrupts the normal functioning of the institution over an extended period of time and less restrictive ways to control the behavior have failed.

(2) Mechanical restraints shall never be used:

(a) As a method of punishment;

(b) About the head or neck of the youth; and

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

(3) When a youth is placed in restraints, the shift supervisor shall be present and shall notify the superintendent, a member of the health services staff, and the clinical services unit supervisor or the clinical services worker on call. There shall be at least 3 staff persons present when the youth is placed in restraints. The clinical services representative shall arrange for an evaluation as soon as practicable. The evaluators shall recommend to the superintendent, based on their interview and the examinations, whether the youth should remain in restraints based on the clinical services worker's judgment of whether the youth has regained control of himself or herself. If the

superintendent approves the recommendation, it shall be followed. If not, he or she shall, as soon as possible, refer the issue to the director, bureau of juvenile services, who shall decide whether the youth shall remain in restraints.

(4) A correctional staff member shall observe any youth in restraints every 15 minutes at a minimum.

(5) If possible, youth shall be released from restraints to perform bodily functions and for meals. Three staff members, one of whom shall be a residential care supervisor, shall be present before such release may occur.

(6) A record shall be kept of youth placed in restraints and it shall include:

- (a) The youth's full name and date;
- (b) The names of the staff members and supervisor present when the youth was placed in restraints;
- (c) The reasons for placing the youth in restraints;
- (d) The times that the youth was checked, the name of the person making the check and comments on the individual's behavior while in restraints;
- (e) The times the youth was placed in restraints and removed;
- (f) Medication given; and
- (g) The names of staff visitors, the times of their visits, and any written comments they make.

(7) No youth may be kept in restraints for longer than 12 hours, with redetermination of need for restraints every 2 hours, unless the youth is examined by a psychologist, psychiatrist, or clinical services professional, who shall make a written recommendation to the superintendent as to whether the person should remain in restraints. Such an examination shall occur thereafter at least every 12 hours a youth is in restraints. At any time there is a need for transfer to a mental health facility, that procedure shall be initiated, but in no case shall a youth remain in restraints more than 24 hours without the procedure for transfer to a mental health facility being initiated. As soon as possible after a youth is placed in restraints, a gradual lessening of restraint shall be attempted such as releasing one limb at a time.

(8) 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.

(9) An annual report concerning each incident of usage of mechanical restraints shall be submitted by the superintendent to the administrator, with a copy to the secretary, pursuant to s. HSS 336.20.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.08 Duty of staff regarding runaways. It is the duty of each correctional staff member to prevent youth from running away.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.09 Runaways. (1) PLAN. Each institution shall have a written plan approved by the superintendent to be implemented in the event a youth has allegedly run away

from the institution or has not returned from an approved leave. The plan shall provide for:

(a) Notification to the superintendent and the administrator as soon as practicable when a youth has allegedly run away under s. HSS 333.42;

(b) Staff communication;

(c) Notification of local law enforcement authorities that a youth has allegedly run away under s. HSS 333.42 (1) (a) or (b) or failed to return to the institution within the institution-designated return time under s. HSS 333.42 (1) (d), and whether staff are pursuing the youth;

(d) If the superintendent determines that it is necessary for the protection of the public or to secure the youth's return to the institution, the superintendent may release information under sub. (4) (b) about the youth. The information may only be released when the youth was adjudicated delinquent for a violation of s. 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02, 948.03, 948.05, 948.60, 948.605 or 948.61, Stats., or for any crime specified in ch. 940, Stats., and either:

1. Has allegedly violated s. HSS 333.42 (1) (a) or (b); or
2. Has allegedly violated s. HSS 333.42 (1) (d) and fails to return to the institution or other designated facility within 12 hours after the institution-designated return time;

(e) An immediate count of all youth under the institution's custody;

(f) A search of the institution, when necessary;

(g) An investigation into the reason for the runaway; and

(h) Notification of local law enforcement authorities, the superintendent, the administrator and, if the superintendent believes it is necessary, the public of the apprehension of a runaway youth.

(2) **CHAIN OF COMMAND.** When a youth takes the superintendent or any staff member hostage in a runaway or an attempt at running away, the hostage shall have no authority to order any action or inaction by staff. Any order from a hostage shall be disregarded by staff.

(3) **PURSUIT.** Any pursuit of a runaway youth by staff shall be done in cooperation with local law enforcement authorities. Until local law enforcement authorities are able to supervise pursuit, staff shall conduct the pursuit under supervision of the superintendent and in accordance with s. HSS 336.04 (5).

(4) **RELEASE OF INFORMATION.** (a) *Superintendent's decision.* The superintendent shall consider all of the following factors regarding a youth in reaching a decision to release information about the youth under sub. (1) (d):

1. Offenses committed by the youth before admission and at the institution;
2. History of aggressive behavior;
3. Past or recent threats to persons in the community;

HSS 336.09

4. Behavior while in the institution;
5. Emotional state at the time of the runaway;
6. Circumstances under which the youth ran away; and
7. Anticipated community reaction.

(b) *Information released.* When the superintendent decides to release information about a youth who has allegedly run away, that information may include:

1. The youth's name;
2. A physical description of the youth, including photographs;
3. Information about whether the youth is known to be dangerous and a threat to the public;
4. Information about whether the youth is believed to be armed;
5. Information about where the youth is likely to be heading; and
6. Any other information the department determines is necessary for the protection of the public or to secure the youth's return to the institution.

(5) **WAIVED YOUTH** A youth waived into circuit court and sentenced under s. 973.013 (3m), Stats., who allegedly runs away from an institution shall be treated as an adult in regard to confidentiality of information.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; corrections in (2) (intro.) and (5) made under s. 13.93 (2m) (b) 4 and 5, Stats., Register, April, 1991, No. 424; r. and recr. Register, April, 1995, No. 472, eff. 5-1-95.

HSS 336.10 Search of institution grounds. A search of any area on the grounds of a correctional institution except the room of a youth under ss. HSS 336.11 and 336.12 may be conducted at any time by any correctional staff member. There is no requirement that there be evidence that contraband is concealed on institutional grounds before such a search is conducted. Searches of living quarters are regulated by ss. HSS 336.11 and 336.12.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.11 Periodic search of entire institution. (1) A search of the entire premises of each correctional institution, including living quarters of youth and staff and staff cars, may be conducted periodically, with the approval of the superintendent.

(2) Notice of searches under sub. (1) is to be provided to the youth and staff involved. Posting of notice is sufficient under this section.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.12 Search of rooms of youth. (1) A search of the room of any youth may be made at any time. Before such a search occurs, it shall be approved by the housing unit supervisor or shift supervisor.

(2) There shall be a written record of all searches conducted under sub. (1). This record shall be in the form of a report prepared by the supervisor of the living unit or the staff member who conducted the search. The report shall state:

Register, April, 1995, No. 472

(a) The identity of the staff member who conducted the search and the supervisor who approved it;

(b) The date and time of the search;

(c) The identity of the youth whose room was searched;

(d) The reason for conducting the search. If the search was a random one, the report shall so state;

(e) Any objects which were seized pursuant to the search; and

(f) Whether any damage was done to the premises during the search.

(3) If any objects are seized or property damaged pursuant to the search of a youth's room, the youth shall be informed in writing what those objects are. The youth shall be reimbursed for damage to any property which is not contraband. Property which is damaged shall be replaced or the youth shall be given its fair market value.

(4) In conducting such searches, correctional staff shall disturb the effects of the youth as little as possible.

(5) Staff shall not read the youth's correspondence or personal legal materials during such searches.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.13 Search of youth. (1) There are 3 types of searches of youth:

(a) A "personal search" is a search of a youth's person, including, but not limited to, the youth's pockets, frisking his or her body, an examination of the youth's shoes and hat, and an inspection of the youth's mouth.

(b) A "strip search" is a search in which the youth is required to remove some or all of his or her clothes. Permissible inspection includes examination of the youth's clothing and body and visual inspection of his or her body cavities. A strip search may only be conducted in a clean and private place. A strip search shall be conducted by a person of the same sex as the youth being searched or a member of the health services staff. In a non-emergency situation, 2 staff members of the same sex as the youth shall be present during a strip search.

(c) A "body cavity search" is a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities. Such inspections shall be conducted by health services staff.

(2) A personal search of a youth may be conducted by any correctional staff member under the following conditions:

(a) If the staff member has reasonable grounds to believe that the youth possesses contraband;

(b) At the direction of the shift supervisor who has reasonable grounds to believe that the youth possesses contraband; or

(c) In the circumstances defined in sub. (3) (a) through (c).

(3) A strip search may be conducted:

(a) Before a youth enters the security unit of a correctional institution and after the youth leaves it;

(b) Before and after a visit from someone outside the institution to a youth or if the youth is returning from offgrounds activity; or

(c) If the shift supervisor is satisfied that there are reasonable grounds to believe the youth possesses contraband.

(4) A body cavity search may only be conducted if the superintendent or person in charge of the institution approves, upon probable cause to believe that contraband is hidden in a body cavity. There shall be no random body cavity searches.

(5) A written report or written log entry of all strip searches under sub. (3), of all body cavity searches, and of all searches in which contraband is found shall be filed with the residential care director. Each year a summary report on body cavity searches shall be submitted to the administrator with a copy to the secretary, pursuant to s. HSS 336.20. The report filed with the residential care director shall state:

(a) The identity of the staff member who conducted the search and the shift supervisor who approved it;

(b) The date and time of the search;

(c) The identity of the youth searched;

(d) The reason for the search. If the search was a random personal search the report shall so state;

(e) Any objects seized pursuant to the search; and

(f) The identity of other staff members present when the search was conducted.

(6) Correctional staff shall preserve the dignity of youth to the extent possible in all searches conducted under this section.

(7) Before a search is conducted under this section, the youth shall be informed that a search is about to occur, the nature of the search, and the location where the search is to occur.

(8) In deciding whether there are reasonable grounds to believe a youth possesses contraband or there is probable cause that it is hidden in a body cavity, a staff member should consider:

(a) The observation of a staff member;

(b) Information provided by a reliable informant;

(c) The experience of a staff member; and

(d) Prior seizures of contraband from the person or room of the youth.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.14 Search of visitors. (1) Before a visitor is permitted in a correctional institution, 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) Each correctional institution shall have information readily available to visitors informing them of the objects they may carry 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 themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects.

(4) (a) Before admitting a visitor, the staff member responsible for admission of visitors may require a visitor to submit to a personal search as defined in s. HSS 336.13 (1) (a). Such a search may be conducted only with the approval of the superintendent, or the person in charge of the institution, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(b) If following a personal search staff have reasonable grounds to believe a strip search as defined under s. HSS 336.13 (1) (b) is necessary, local law enforcement shall be requested to conduct the search. If local law enforcement cannot or will not conduct the strip search, the visitor may be asked to leave.

(5) Before an inspection or search is conducted under subs. (3) and (4), the visitor shall be informed 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, the visitor shall not be admitted to the institution at that time.

(6) If in an inspection under sub. (3) or a search under sub. (4) an unauthorized object is found, the visitor may be denied the visit to the institution on the occasion and the privilege to visit further may be suspended.

(7) If a visitor is refused entry to an institution for refusal to permit a search or if a search is conducted of a visitor under sub. (4), the staff member shall submit to the residential care director a written report which shall state:

(a) The identity of the staff member and the person who approved the search;

(b) The identity of the visitor and the youth being visited;

(c) The date and time of the search, or proposed search;

(d) The reason for the request to permit a search which shall include the basis for the belief that unauthorized objects were concealed by the visitor; and

(e) Whether unauthorized objects were seized pursuant to the search and their description.

(8) If an unauthorized object is found pursuant to a personal search or inspection of a visitor and it is illegal to conceal or possess the object, the shift supervisor shall so inform the sheriff and shall turn the object over to the sheriff. If it is not illegal to possess or conceal the object, it shall be returned to the visitor.

(9) All inspections and searches shall be conducted in a courteous manner. Correctional staff shall strive to protect the dignity of visitors who are inspected or searched.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; correction in (5) made under s. 13.93 (2m) (b) 4, Stats., Register, April, 1991, No. 424.

HSS 336.15 Search of staff. (1) (a) The superintendent may require that correctional staff members be searched

HSS 336.15

before they enter and before they leave a correctional institution. The search may be accomplished by requiring the staff member to empty pockets and containers and submit themselves and objects they carry into or out of the institution to inspection by a device designed to detect metal or other unauthorized objects or a personal search. Approval of the superintendent, or the residential care director, or designee is required for a personal search. Approval shall be given only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. A staff member who refuses to submit to a search shall not be admitted to the institution and may be subject to disciplinary action.

(b) If following a personal search staff have reasonable grounds to believe a strip search is necessary, local law enforcement shall be requested to conduct the search. If local law enforcement cannot or will not conduct the strip search, the visitor may be asked to leave.

(2) If an unauthorized object is found as a result of a search conducted under this section and it is illegal to conceal or possess the object, the shift supervisor shall so inform the sheriff and shall turn the object over to the sheriff. If it is not illegal to possess or conceal the object, it shall be returned to the staff member when the staff member leaves the institution.

(3) All searches shall be conducted in a courteous manner.

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

(5) If a search is conducted under this section, a report containing the information required under s. HSS 336.14 (7) shall be filed with the residential care director, the institution superintendent, and the bureau of juvenile services.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.16 Factors to consider to decide if search is necessary. In determining whether a staff member should search another staff member, a visitor or a youth in situations in which there must be either reasonable grounds of probable cause to believe the person being searched possesses contraband, the following factors should be considered:

(1) The reliability of the information relied on. In evaluating reliability, attention should be given to whether the information is detailed and consistent and whether it is corroborated.

(2) The reliability of the informant. In evaluating reliability, attention should be given to whether the informant has supplied reliable information in the past, and whether the informant has reason to supply inaccurate information.

(3) The activity of any youth that relates to whether the person to be searched might carry contraband.

(4) Information provided by the person who may be searched which is relevant to whether he or she possesses contraband.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Register, April, 1995, No. 472

HSS 336.17 Use of contraband as evidence at disciplinary hearing. Contraband seized during a search may be used as evidence at a disciplinary hearing conducted under ch. HSS 333, or a departmental disciplinary hearing for a staff member.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.175 Seizure and disposal of contraband. (1) Any staff member who reasonably believes that an item is contraband may seize the item, whether or not the staff member believes a violation of ss. HSS 333.34 to 333.41 has occurred. Items seized shall be sent to the residential care director, accompanied by the conduct report, as described in s. HSS 333.62, if there is one. If there is none, the item shall be accompanied by an appropriate written report. Property shall either be returned to the owner or disposed of in accordance with this section.

(2) If a conduct report is written, the disposal of the item shall be decided by the hearing officer at the disciplinary hearing. If there is no conduct report, the residential care director may dispose of seized items. Disposal shall be as follows:

(a) *Currency (money).* All confiscated currency shall be placed in the state's general fund if its true owner cannot be determined.

(b) *Checks.* Checks and other negotiable instruments shall be returned to the maker. If it is not possible to determine an address for the maker of the check, the check shall be destroyed.

(c) *U.S. bonds and other securities.* Upon proof of ownership and the source of a U.S. bond or other security, the item shall be held in the institution business office until it can be returned to the owner. If the owner is a youth, it shall be held until discharge or other release.

(d) *Property.* If the true owner is known, property may be returned to the true owner, placed in storage, or sent at the youth's expense to another, in accordance with the nature of the property. If the owner is not known, items of inherent value shall be sold through the department's purchasing officer and money received shall be placed in the state's general fund; items having a value of \$5 or less shall be destroyed. Property items authorized but in excess of the amount allowed youth may be sent at the youth's expense to anyone designated by the youth or stored.

(e) *Intoxicating substances.* Intoxicating substances shall be disposed of by the residential care director in the presence of a witness or given to the sheriff's department for use as evidence or for disposal.

(f) *Weapons.* Firearms not required for use as evidence shall be disposed of by law enforcement agencies. Other weapons not required for use as evidence shall be disposed of by institution authorities or law enforcement agencies.

(g) *Institution property.* Any article originally assigned as property of the institution may be returned to service at the institution.

(3) If a youth loses property or it is stolen, this should be reported promptly. If the property is found and the youth believes that the property should be returned, placed in storage or sent out at his or her direction, and a decision

to dispose of it in a different manner has been made, the youth may file a grievance under ch. HSS 340. The property shall not be disposed of until the grievance is resolved.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

HSS 336.18 Disturbance plan. (1) For purposes of this section, "disturbance" means any of the following when so declared by the superintendent:

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

(2) Each institution shall have a written plan, a copy of which shall be filed with the director, bureau of juvenile services, to control and stop a disturbance. This plan shall be prepared by the residential care director and shall be reviewed at least once a year.

(3) The purposes of the disturbance plan shall be:

- (a) To ensure as the highest priority the safety and welfare of the general public, staff, and youth;
- (b) To protect property;
- (c) To maintain and restore order to the institution; and
- (d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to the rules of the department, and to provide relevant information to the police so that participants can be arrested and prosecuted.

(4) The disturbance plan shall provide for:

- (a) The containment and ending of the disturbance, including procedures for preventing escape during the disturbance;
- (b) The opportunity for youth not involved in the disturbance to withdraw from the disturbed area;
- (c) Immediate ascertainment of the cause of the disturbance;
- (d) The identification of the leaders of the disturbance;
- (e) The use of force;
- (f) Notification of the director, bureau of juvenile services, of the disturbance.
- (g) Notification of supervisory personnel of the disturbance.
- (h) The confinement of participants after the disturbance has ended;
- (i) Investigation of the disturbance;
- (j) The repair of damaged equipment and property;
- (k) Medical treatment for the injured;

(l) Notification of law enforcement agencies of the disturbance;

(m) The chain-of-command in the event of the incapacitation or taking of hostages of supervisory personnel;

(n) Training of staff;

(o) The notification of and communication with the news media;

(p) Communication among staff;

(q) Action to be taken in the event a hostage is taken;

(r) Notification of the division of emergency government; and

(s) Interviewing and counseling of involved staff and youth.

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

(6) If a major disturbance occurs that prevents the normal functioning of the institution, the superintendent or designee may suspend chs. HSS 331 to 341, except ss. HSS 336.04 and 336.05, until the disturbance is ended and order is restored to the institution.

(7) If a disturbance occurs and a person is injured or if it results in the suspension of chs. HSS 331 to 341, a disturbance review panel shall be convened to investigate the disturbance. This panel shall be made up of persons selected in accordance with sub. (8). This panel shall be provided with staff adequate to conduct a thorough investigation of the disturbance.

(8) The disturbance review panel shall consist of 5 persons selected as follows:

(a) 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;

(b) Two members designated by the director of the bureau of juvenile services, 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; and

(c) One member to be designated by the superintendent of the institution where the incident occurred, who is a member of the institution staff.

(9) 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 disturbance.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; correction in (6) made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1991, No. 424.

HSS 336.19 Emergencies. (1) An emergency is an immediate threat to the safety of the staff or youth of a correctional institution, other than a disturbance as defined in s. HSS 336.18 (1), when so declared by the superintendent. An emergency may include, but is not limited to:

(a) An epidemic;

(b) A malfunctioning of institution systems such as the water, electrical, or telephone system;

HSS 336.19

- (c) A fire;
 - (d) A bomb threat or explosion;
 - (e) A strike of employes;
 - (f) Any natural disaster; or
 - (g) A civil disturbance.
- (2) Each institution shall have a written plan, a copy of which shall be filed with the director, bureau of juvenile services, to be implemented in the event of an emergency.
- (3) The purposes of the emergency plan shall be:
- (a) To ensure as the highest priority the safety and welfare of the general public, staff, and youth;
 - (b) To protect property;
 - (c) To maintain and restore order to the institution; and
 - (d) To identify any person who contributed to the creation of an emergency and to provide this information to the police for arrest and prosecution purposes.
- (4) The emergency plan shall provide for:
- (a) Notification of the division of emergency government;
 - (b) Notification of supervisory staff;
 - (c) Notification of the director, bureau of juvenile services;
 - (d) Notification of state and local agencies with responsibility in the event of an emergency;
 - (e) The containment of damage and disease;
 - (f) Communications within the institution and with those outside it;
 - (g) Evacuation of the institution, including the identity of persons with authority to order an evacuation;
 - (h) Provision of medical attention to staff and youth;
 - (i) Investigation of the emergency;
 - (j) A review yearly or more often of possible hazardous situations;
 - (k) The disposal of bombs or dangerous devices;
 - (l) Training of staff; and
 - (m) Keeping a list of off-duty employes. Off-duty employes may be required to report for duty during an emergency or if an emergency is anticipated.
- (5) If an emergency occurs that prevents the normal functioning of the institution, the superintendent may suspend chs. HSS 331 to 341, except ss. HSS 336.04, 336.05 and 336.07 (1) and (2), until the emergency is ended and order is restored to the institution.
- (6) If an emergency occurs, the administrator may convene a review panel to investigate the causes of the emergency. This panel shall be made up of persons selected in accordance with s. HSS 336.18 (8). This panel shall be provided with staff adequate to conduct a thorough investigation of the emergency.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.
Register, April, 1995, No. 472

HSS 336.20 Annual report. The superintendent of each institution shall annually submit a written report to the administrator and the department secretary listing each use of leather mechanical bed restraints under s. HSS 336.07 (7), each use of chemical agents under s. HSS 336.05 and each body cavity search under s. HSS 336.13 (4), with the date of the incident and the name of the youth. The report shall also state the justification for each use of bed restraints or chemical agents and each body cavity search. The report shall be submitted within 30 days after the end of the calendar year and shall cover all of the specified incidents during that calendar year. The administrator and the secretary shall review the reports to determine whether any incidents were inappropriate so that corrective measures may be taken.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, April, 1995, No. 472, eff. 5-1-95.

Note: HSS 336.01. HSS 336.01 states 2 important objectives of the division of youth services. One is the protection of the public through adequate supervision of youth during their confinement. This objective is also realized through individual treatment which affords the youth the opportunity to be reintegrated into the community, an important objective itself.

These objectives can only be realized if youth live in safety. Otherwise, it is impossible to conduct programs and provide other treatment which can make possible the successful re-assimilation of the youth into home and community. This is in the public interest. It is also in the youth's interest, as it is the goal of corrections, to allow youth to live with dignity, free from fear and harassment. This also requires a safe setting. Providing a safe, humane, caring environment is one of the goals of planning for youth in Wisconsin identified under s. HSS 331.01 (3), Institute for Judicial Administration and American Bar Association's Juvenile Justice Standards Project's *Standards Relating to Corrections Administration* (1980) (hereinafter *IJA-ABA Standards*), standards 4.9 and 1.2 and Title 15, *California Administrative Code* (hereinafter *Cal. Adm. Code*), section 4.

This chapter authorizes the division to use many of the same security measures as are used for adults. It is important for the authority to exist to preserve safety in the youth institutions. However, the frequency with which the measures authorized in this chapter are used should be much less than for adults.

It is important that staff consider the least restrictive alternative among the measures authorized in this chapter.

Note: HSS 336.02. HSS 336.02 reflects the importance attached to the objectives stated in s. HSS 336.01. While members of the residential care staff have primary responsibility for safety and security, it is impossible to separate treatment from security. Thus, all staff are responsible for security. It is important for all employes to be aware of security in the regular performance of their duties. Matters such as the confidential nature of the relationship of some staff to youth are dealt with elsewhere.

Note: HSS 336.04. HSS 336.04 states the purposes for which non-deadly force and deadly force may be used.

It must be recognized that an institution setting is different from the outside world and that the rules relating to the use of force in a free society are not adequate for the sometimes volatile institution setting. Situations arise in institutions that must be controlled before substantial danger to others arises. Furthermore, the requirements for discipline and order in an institution and to prevent runaways give substantial responsibility to officials that may require the use of force to fulfill.

Subsection (4) states the circumstances in which force may be used in an institution. This subsection applies to correctional staff and not youth. Force may be used only when the user of it reasonably believes it to be necessary. Mere subjective belief is insufficient to justify the use of force. The belief must be a reasonable one. This is the standard used in the Wisconsin Criminal Code, s. 939.48. Furthermore, it must be immediately necessary to realize the objectives stated in sub. (4) (a) to (e). If means other than force can be used, those means should be used.

Section 939.48, Stats., permits the use of force to prevent "an unlawful interference" with oneself or another. This is traditionally called "self-defense" and "defense of another."

This section does not require that the user of force reasonably believe that in using force 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 youth. Correctional staff members must be authorized to use force to stop fights. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but is fighting in self-defense. This is so because, in an institution setting, correctional staff must have the authority to prevent disturbances without worrying about who 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 as a limiting factor to rely on the rule that excessive force may not be used.

Subsection (4) (b) authorizes the use of force to prevent damage to property. An objective standard is again relied on. A typical situation where force would be necessary and has in the past been used is when a youth begins to set a fire in a cottage. This creates a serious risk of harm to another youth and staff and force may be necessary to prevent such harm. While the authority in this subsection may sometimes overlap with that granted in sub. (4) (a), it is better to be clear that authority extends to situations in which the danger to oneself or others is less immediate but not so remote that force can safely be dispensed with. It should also be pointed out that some of the disturbances which have occurred in Wisconsin adult and juvenile correctional institutions in recent years began with the random destruction of property. These incidents then escalated to the point where people were injured and lives could have been lost. It may be necessary, as it was in those situations, to take immediate action to prevent the escalation and spread of such disturbances so that life is not threatened.

Subsection (4) (c) authorizes the use of force to regain control of a correctional institution or part of an institution after a takeover by youth. In recent years, adult and youth institutions across the United States have been the scene of serious disturbances in which lives have been lost. Fortunately, there has been no loss of life in disturbances in Wisconsin. The use of force is sometimes necessary to regain control of institutions. The requirement that there be a detailed plan for each institution in the event of a disturbance is in s. HSS 336.18.

Subsection (4) (e) authorizes the use of force to change the location of a youth. For instance, a youth is ordered to be placed in a security unit and refuses to go. To maintain the orderly operation of the institution, the youth may have to be physically moved from one place to another. Of course, in most situations, it is better to try to persuade the youth to move before relying on force. Rather than rely on force to enforce rules, it is more desirable to rely on the disciplinary process. This may make force unnecessary. The few instances when it does not are ones in which the youth simply refuses to move from a room or place to the hearing or security cottage and force may then be used.

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. (5) and (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 so much force as is reasonably necessary to achieve the objective is authorized and the use of excessive force is forbidden. Thus, if an escape can be prevented or a fight stopped simply by correctional staff wrestling an individual to the ground and holding him or her, that is the amount of force authorized. Of course, how much force is necessary requires the exercise of judgment in accordance with a standard of reasonableness.

This section substantially conforms to *ACA Juvenile Standards*, standards 9231 and 9223.

Note: HSS 336.05. The use of chemical agents is subject to the limitations on the use of force in s. HSS 336.04. Because chemical agents pose a risk of injury to others, resort to their use is made in limited situations. These situations are identified in sub. (1). The first such situation is when a youth poses an immediate threat of bodily injury or death to self or another. Such a situation might be a riot or other disturbance involving a group of youth or because of the danger created in subduing a single violent youth. The second situation in which chemical agents might be used is to regain control of an institution or part of an institution. "Part of an institution" may be an outside area, building, or a small area like a room.

Subsections (2) and (3) regulate the use of particular chemical agents. Mace, CS, and CN agents and cannister dust are the only agents to be used in close areas. This is because close areas require the use of agents which can be released in small amounts and which can be carefully controlled.

The manufacturer's safety instructions for the use of chemical agents 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.

Medical exams and cleaning minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks of the residue of chemical agents as well as the discomfort they may cause.

The reporting requirement in sub. (6) is to ensure that there is adequate administrative notification and review of the use of chemical agents. Such reports are considered essential by *ACA Juvenile Standards*, standard 9232 and 9236. The limited use of chemical agents authorized by this section is in conformity with *IJA-ABA Standards*, standard 7.8 B.

The *ACA Juvenile Standards*, standard 9235, recommends against using chemical agents in the control of juveniles. The department's position is that in some cases the use of chemical agents is more humane than other, more physical means of control.

Note: HSS 336.06. This section substantially conforms to *ACA Juvenile Standards*, standard 9240.

Note: HSS 336.07. HSS 336.07 regulates the use of restraints to immobilize youth. Restraining devices are permitted in 3 situations: transporting a youth, to protect others from a youth, and to protect a youth from himself or herself. The use of restraints for punishment or any other reason is not permitted.

Subsections (1) (a), (b), (c), and (d) permit the use of restraints when the danger created by a youth 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. Subsections (2) and (3) are designed to ensure that restraining devices are used only when necessary, to regulate their use or ensure that they are used humanely, and to adequately provide for the safety of youth and correctional staff.

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. HSS 336.07 (3). Subsection (3) requires the supervision of a shift supervisor when a youth is placed in restraints and 3 staff members to place the person in them. This is for the safety of the youth and the staff, for youth may be violent. To avoid injury, it is necessary to have adequate staff to subdue the youth. Likewise, injury and unnecessary anxiety may be avoided if the shift supervisor explains to the youth why restraints are being imposed. When possible, this is to be done before placing the person in restraints. The only exception to the three-staff member requirement is an emergency. For example, at small institutions limited staff might make it impossible to have three staff present at certain times at night without jeopardizing the security of the whole institution.

Youth placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to ensure that the person is not being injured by the restraints. Furthermore, the decision to keep a person in restraints must be constantly reviewed. HSS 336.07 (2) (c), (3) and (4) provide for counseling, health services exams, and monitoring to get the youth 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.

Subsection (6) provides for the records that are to be kept when a youth is placed in restraints. Given the seriousness of this measure, it is important that records be kept to ensure that these rules are complied with and to permit review of the procedures used.

Subsection (7) requires an examination by a psychiatrist, licensed psychologist, or clinical services worker, every 12 hours a youth remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the youth.

Subsection (8) requires that a supply of restraining devices be maintained and periodically reviewed. This is to ensure that devices which might injure a youth or permit escape are not used.

This section substantially conforms to *ACA Juvenile Standards*, standards 9232, 9233, and 9234.

Note: HSS 336.08. HSS 336.08 states the general policy that it is the responsibility of each staff member to prevent runaways. Prevention is accomplished best by having thorough security inspections, institutional programs that provide full-time school and adequate recreation, consideration of legitimate complaints, and alertness to signs of unrest and tension. Decisive action when signs of trouble exist is also important.

Note: HSS 336.09. The specified crimes referenced in sub. (1) (d) are the following: negligent handling of burning material (941.10), unsafe burning of buildings (941.11), endangering safety by use of a dangerous weapon (941.20), disarming a police officer (941.21), carrying a concealed weapon (941.23), carrying a firearm in a public building (941.235), carrying a hand-

HSS 336.20

gun in a tavern or liquor store (941.237), possession of a switchblade knife (941.24), selling, possessing, using or transporting a machine gun or other full automatic firearm (941.26), possession of a short-barreled rifle (941.28), possession of an electric weapon (941.295), selling, delivering or possessing a firearm silencer (941.298), recklessly endangering safety (941.30), possession of explosives (941.31), administration of dangerous or stupefying drugs (941.32), placing foreign objects in edibles (941.325), arson to buildings or damage of property by explosives (943.02), arson to property other than buildings (943.03), arson with intent to defraud (943.04), burglary while armed with a dangerous weapon (943.10 (2) (a)), taking a vehicle without consent of the owner while using or threatening to use a dangerous weapon (943.23 (1g), (1m) or (1r)), robbery using or threatening use of a dangerous weapon (943.32 (2)), sexual assault of a child (948.02), physical abuse of a child (948.03), sexual exploitation of a child (948.05), possession of a dangerous weapon (948.60), possession or discharge of a firearm in a school zone (948.605), having a dangerous weapon other than a firearm on school premises (948.61) or any crime against life and bodily security specified in ch. 940, Stats., such as homicide, sexual assault or abuse of vulnerable persons.

Subsection (2) states 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 affect herself or himself, the institution or youth. To permit a person to retain authority while a hostage is an invitation to take high-ranking officials hostage.

Subsection (3) indicates that the pursuit of runaways must be with the cooperation of local law enforcement officials. In some rural areas, correctional institutions and camps are a great distance from population centers where police are located, and so this subsection authorizes staff pursuit under supervision of the superintendent and in accordance with s. HSS 336.04 (5), until local law enforcement authorities are able to take over supervision of the pursuit.

Note: HSS 336.10. HSS 336.10 authorizes the search of institution grounds other than living quarters at any time. Contraband, including drugs and weapons, are often concealed in areas of general access, in workshops and in classrooms. The present practice in the division of corrections is to authorize staff who routinely supervise such areas to search them at any time. Such searches often turn up contraband. They also serve as a deterrent to bring contraband into institutions. It is important that such searches be random. Otherwise, youth may move the contraband in anticipation of a search.

This section reflects the view that youth have no expectation of privacy in the general grounds of a correctional institution. While the United States Supreme Court has not specifically so held, it has said:

"But to say that a public jail is the equivalent of a man's 'house' or that it is a place where he can claim constitutional immunity from search or seizure of his person, his papers, or his effects, is at best a novel argument." *Lanza v. New York*, 370 U.S. 139, 143 (1962). See also, *United States v. Hitchcock*, 467 F. 2nd 1107 (9th Cir. 1972), cert. denied 410 U.S. 916 (1973). *Pietrazewski v. State*, 285 Minn. 212, 172 N.W. 2nd 758 (1969).

In this regard, the U.S. Supreme Court upheld the random searches of the cells of pretrial detainees. *Bell v. Wolfish*, 441 U.S. 520 (1979). The more limited intrusion authorized by this chapter is permissible under the reasoning of this decision. See *ACA Juvenile Standards*, standards 9217 and 9345 which consider written policies on searches essential.

Note: HSS 336.11. HSS 336.11 permits each institution to be completely searched at least once per year. In recent years, this has become routine. In such searches, massive amounts of contraband are discovered. This has convinced correctional officials of the desirability of such searches and of random area searches. See *Bell v. Wolfish*, 441 U.S. 520 (1979).

It is essential that such notice be given in a way that prevents continued hiding of contraband. For a more detailed discussion of the search of quarters, see the note to s. HSS 336.12. This is in substantial accord with *ACA Juvenile Standards*, standards 9217 and 9345.

Note: HSS 336.12. The search of the living quarters of a youth is a sensitive issue and one of great importance to correctional officials and youth. The experience in corrections in Wisconsin is that it is important that random searches of living quarters be conducted. Experience teaches that such searches are necessary because contraband, including drugs and objects fashioned into dangerous weapons, are discovered during such searches. And, such searches are thought to deter the possession of contraband.

The importance of keeping contraband such as drugs and weapons outside a correctional institution deserves comment. Of primary importance in all correctional institutions is the protection of youth from each other. Contraband, such as drugs, can be used as payment to induce a youth to attack another or otherwise violate cottage or institution rules. If a youth

discovers that another possesses contraband, this information may be used to blackmail the possessor.

Weapons, of course, pose a direct threat to youth, staff, and the public. They may be used to threaten, injure, or kill another. That weapons be kept out of institutions is critical for the safety of youth.

Contraband must also be kept out of institutions so that youth can participate in programs, jobs, and other treatment free of the fear that inevitably follows contraband into an institution. It is impossible to motivate youth to be involved in constructive activities if fear predominates in the institution.

Finally, 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 youth. And they may be an inducement to cause a disturbance which threatens everyone in the institution.

While the discovery of contraband is important, this is not to say that the authority to search should be without control. A search of a room is an intrusion into the life of a youth and may not be conducted to harass. Control is established in s. HSS 336.12 by requiring the approval of the supervisor of the cottage before a search may be conducted and by requiring a report of each search to be made. This is filed with the residential care director. This ensures that supervisory people approve the search. It permits the residential care director to monitor all searches of rooms. This should prevent unnecessary searches and ensure that enough searches are conducted to control contraband.

It would be inconsistent with the purposes of this type of search to notify the youth before such a search is conducted. This would permit the youth to remove contraband from the living unit.

The manner in which searches are conducted is also important. Subsection (4) requires that searches be conducted so as to disturb the effects of the youth as little as possible. Of course, a thorough search requires moving objects around.

Consistent with the recognition of the youth's interest in his or her property, youth are to be reimbursed for any damage done during a search. Occasionally, some damage is inevitable, given the nature of personal property. It is, of course, to be avoided as much as possible.

The youth should also be notified of objects seized. This sometimes takes the form of a conduct report, though not always. A report gives the youth the opportunity to dispute whether the object seized is indeed contraband.

Youths are not notified if searches are to take place. This is because searches of geographically close areas are done within a close time period. To notify youth of searches might be a signal when searches of other areas are to occur. This would permit the movement of contraband into places recently searched and make detection difficult.

This section attempts to give due regard to youth concerns about their privacy. Courts and commentators have taken varied positions on the applicability of the Fourth Amendment to the search of correctional living quarters. For example, one court said:

"Certainly in a federal prison the authorities must be able to search the prisoners, cells without a warrant, without notice and at any time, for concealed weapons and contraband of the type which threaten the security or legitimate purposes of the institution." *United States v. Ready*, 574 F. 2nd 1009, 1014, (10th Cir. 1978).

In concluding that a prisoner's objection to a search of his cells without a warrant was without merit, the Ninth Circuit Court of Appeals said that "We do not feel that it is reasonable for a prisoner to consider his cell private. Therefore, the search did not violate the limitations of the Fourth Amendment." *United States v. Hitchcock*, (9th Cir. 1972), cert. denied 410 U.S. 916 (1973).

Recently, the U.S. Supreme Court upheld a prison practice of random searching of the cells of pretrial detainees outside the presence of the detainees. *Bell v. Wolfish*, 441 U.S. 520 (1979). In so doing, the court suggested that any expectation of privacy of an inmate was very limited, if it existed at all. The court said:

"It may be argued that a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the Fourth Amendment provides no protection for such a person. . . Assuming, *arguendo*, that a pretrial detainee retains such a diminished expectation of privacy after commitment to a custodial facility, we nonetheless find that the room search rule does not violate the Fourth Amendment." *I.D.* at 3063.

See *ACA Juvenile Standards*, standard 9217.

Note: HSS 336.13. HSS 336.13 is directed at controlling the entry of contraband into correctional institutions and its movement within institutions. Contraband is usually carried into institutions either by visitors or youth who go outside. It is transported by youth 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 youth, to correctional treatment, to staff, and to the very institution itself. The Fifth Circuit Court of Appeals has written, with reference to strip searches in adult institutions, that "they not only help stem the flow of contraband into, within, and out of prisons, but they also have a beneficial deterrent effect." *United States v. Tilly*, 576 F. 2d 1240, 1246 (5th Cir. 1978).

The experience of the division of corrections is that personal, strip, and body cavity searches of youth are necessary to detect contraband and to deter people from bringing it into an institution.

Such searches may not be conducted without controls. HSS 336.13 (1) defines the three types of searches of the person of a youth. The less intrusive and more common search is a personal search. Random strip searches are conducted infrequently. Body cavity searches, which may never be random, are rare.

HSS 336.13 (2) states the circumstances in which a personal search may be conducted. If a staff member has reasonable grounds to believe a youth possesses contraband, an immediate search is permissible and is usually necessary to prevent disposal of the contraband. This is permitted by (2) (b) but requires the approval of the shift supervisor. This is to ensure that such searches are not conducted to harass youth 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.

Subsection (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 youth. All wish that such searches were unnecessary. However, they do detect contraband and deter people from bringing it into institutions. *United States v. Tilly*, 576 F. 2d 1240 (5th Cir. 1978). It would be unreasonable, however, to permit random body cavity searches. Cf. *Wolfish v. Levin*, 573 F. 2d 118 (2nd Cir. 1978). *United States ex. rel. Guy v. McCauley*, 385 F. Supp. 193 (D. Wis. 1974).

HSS 336.13 (3) identifies the circumstances in which strip searches are permitted. The rule is written to limit the use of strip searches in two principal ways. First, the rule identifies the specific situations in which youth may be strip searched. These 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 is to permit such searches only if the shift supervisor approves, after having found that reasonable grounds exist for the search.

The security unit of a juvenile correctional institution is usually a tense place. Youth are there because they have committed a serious violation of institution rules or because they are dangerous or disturbed. It is essential to the safety of youth that contraband not be brought into a security unit. Youth cannot be constantly observed while in segregation or when they are temporarily absent, and a weapon could be used to kill or severely injure a self-destructive youth or another. HSS 336.13 (3) (a) permits the strip search of youth going and coming into the security cottage, for whatever reason.

HSS 336.13 (3) (b) authorizes strip searches prior to and after a visit. Visitors bring contraband 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 youth or contact with visitors must be limited. On balance, it seems preferable to emphasize searches of youth. Authority is also given to search visitors, however. See s. HSS 336.14.

HSS 336.13 (3) (c) states that a strip search may be made if there are reasonable grounds to believe the youth possesses contraband. This is a less than probable cause standard, but more than mere suspicion. It is the same standard as in subsection (2) (a). Subsection (8) 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 youth, and the experience of the staff member are all relevant to the determination to be made by a shift supervisor.

In *Bell v. Wolfish*, the U.S. Supreme Court held that strip searches, including visual body cavity inspections, were permissible any time a pre-trial detainee had contact with a member of the public. This principle is applied in this section, 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.

Subsection (4) requires the person in charge of the institution to approve body cavity searches upon probable cause to believe contraband is hidden in the cavity. This is to ensure adequate control of such intrusive searches.

Subsection (5) requires written reports of all strip, personal, and body cavity searches in which contraband is found, all body cavity searches, and all strip searches under (3) (c). This is to ensure that adequate control over such procedures can be exercised by high level supervisors and because the requirement of making a record may deter violation of the rule. Such records also afford staff protection, in that records provide documentation that can clarify what occurred and why, if it is later questioned.

Of course, it is not possible to give advance notice of a search. This would defeat its purpose. However, it is important that youth who are likely to be searched under subs. (3) and (2) (c) be aware that such searches may be conducted. These rules should serve as notice, particularly because s. HSS 331.05 requires review of them with youth as part of orientation during reception.

This section substantially conforms to the essential elements of a search plan considered essential by *ACA Juvenile Standards*, standards 9217 and 9345.

Note: HSS 336.14. It is the firm policy of the division of corrections to encourage visits to youth. Visits are important to the morale of youth. Contacts with family members, friends, and other members of the community can be very helpful in motivating youth and in assisting their re-assimilation 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 in 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 youth unless they bring contraband into an institution. It is important to the safety of the visitor, the staff, and youth 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 ensuring that contraband is not being brought into the institution.

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 that they are conducted, personal searches. HSS 336.14 (5).

Some visitors are asked to empty pockets and permit the inspection of containers. HSS 336.14 (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 subsection (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the superintendent, the residential care director, or the highest ranking member of the residential care staff, may require the visitor to submit to a personal search or strip search as defined in s. HSS 336.13 (1) or be excluded from the institution.

Subsection (6) requires that visitors are to be excluded from the institution if they attempt to bring in contraband. It is not intended to exclude people who unwittingly carry unauthorized objects. It is essential that the notice of what is unauthorized be adequate. HSS 336.14 (2).

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

A dilemma is created when unauthorized objects are found. HSS 336.14 (8) resolves it by requiring correctional staff to turn over objects which it is illegal to possess or conceal to the sheriff. It would be neither wise nor safe, for example, to give a pistol back 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.

This section substantially conforms to *ACA Juvenile Standards*, standards 9389 and 9392.

Note: HSS 336.15. Searches of staff members are sometimes necessary. Staff members may inadvertently bring unauthorized objects into institutions. For example, an employee taking medication may bring in more than

HSS 336.20

he or she needs for an eight-hour period. Also, youth may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. Finally, a staff member may deliberately bring an unauthorized object into an institution.

Note: HSS 336.16. This section is intended to guide staff who must decide whether there is reason to search another staff member, a youth, or a visitor.

Errors and abuse of search authority may be due to inadvertence and poor judgment. This section seeks to avoid inadvertence and poor judgment. Often, very general information is not reliable because its lack of detail suggests that it is hypothetical or incomplete. Specificity, on the other hand, usually suggests a more reliable grasp of the relevant facts. Consistency of information is also important. If a report is internally inconsistent, this makes it less reliable. Subsection (1) requires attention to the specificity and consistency of information. Of course, specificity or the lack of it is helpful in evaluating information.

Subsection (2) requires attention to the reliability of the informant, if one exists. Has the person supplied accurate information in the past? Does he or she have a reason to mislead? These are helpful questions to ask in evaluating an informant's reliability.

Subsection (3) suggests that attention must be paid to the activity of any youth who may be involved with the subject of the search. If the youth acts in a way that is consistent with the bringing of contraband by another into the institution, this bears on the decision whether to search the person suspected of doing so.

Subsection (4) indicates that before the search, the subject should be talked with. Sometimes, this will elicit information helpful in determining whether a search should be made.

Note: HSS 336.17. Contraband seized pursuant to a search that violates this chapter may be used as evidence in a disciplinary proceeding. There are several reasons for this.

First, if evidence could not be used, it is likely the department would choose to have less strict rules on searches. This is so because the rules relating to searches are more strict than the requirements of the Constitution.

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. The responsibility for enforcement, an extremely important matter, should be addressed independently.

Further, if the issue of admissibility were permitted to be litigated, it would likely delay disciplinary action against the staff member who violated the rule. This is the experience in the police field, where recommendations similar to the ones in these rules were made. American Bar Association Project on Standards For Criminal Justice, *Standards Relating to the Urban Police Function* (1973), standard 4.4. There is great value in proceeding promptly against such staff members. This is the most effective deterrent to violation of this chapter.

Note: HSS 336.175. In an institution it is necessary to regulate very carefully the property which may be kept by youth. This section provides the authority to seize and dispose of contraband in situations where no one is charged with an offense, as well as when someone is charged and found guilty.

Note: HSS 336.18. Disturbances threaten every youth and staff member in a correctional institution and the general public. Some adult prison disturbances have had tragic consequences. See *The Official Report of the New York State Special Commission on Attica* (1972). R. Oswald, *Attica — My Story* (1973); T. Wicker, *A Time to Die* (1973).

Ideally, disturbances will be prevented by firm, fair, sensitive and responsive correctional administration and the availability of adequate resources to permit youth to be involved in purposeful, constructive programs.

Of course, disturbances may occur in the best of institutions for:

"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." National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Disorders and Terrorism*, Goal 8.1 (1976).

If disturbances do occur, staff must be prepared to deal with them in a way that ensures, insofar as possible, 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. HSS 336.19 (2).

Subsection (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. The definition is modeled after that used in American Correctional Association, *Riots and Disturbances in Correctional Institutions* (1973). Small incidents can turn into serious disturbances and the definition reflects the view that even slight incidents should be regarded with concern.

Subsection (4) identifies the elements of the required plan. Given the differences among institutions and the need to limit access to disturbance plans, the rule simply identifies the elements of the plan. These elements were identified based on prior experience with adult and youth disturbances in Wisconsin, the study of the growing national experience on prison disturbances, and in consultation with the Wisconsin division of emergency government.

Subsection (5) 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. The subsection also forbids correctional staff from permitting a youth to run away from an institution through threats to a hostage.

Subsection (6) permits the suspension of the rules. It is not intended that this procedure 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 youth. It would be appropriate to suspend rules in such a situation. Some rules, like those relating to the use of force, may never be suspended.

One lesson of the Attica disturbance is that there must be a careful investigation after a disturbance. The disturbance plan must provide for such an internal investigation. Subs. (7) and (8). It is also important that people from outside the division be involved in an investigation and that it be adequately staffed. This is provided for in sub. (7).

A disturbance plan is considered essential by *ACA Juvenile Standards*, standard 9224.

Note: HSS 336.19. An emergency of the kind defined in sub. (1) presents a serious threat to the welfare of the public, youth, and staff. It is essential that there be adequate planning to deal with such an emergency and, insofar as possible, to prevent it.

Prevention is the best way to deal with emergencies. Sub. (4) (j) requires yearly review of possible hazardous situations and sub. (2) generally addresses the issue by requiring plans in the event of emergencies. The requirements of the plan were developed in consultation with the state division of emergency government. As in disturbance plans, there is a need to individualize plans according to the particular characteristics of institutions and to limit access to this information.

The emergency plan under this section substantially complies with *ACA Juvenile Standards*, standards 9224 to 9226.