

(6) The security director shall review placements in voluntary confinement at least every 90 days.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.

**HSS 306.05 Inmate count.** Each superintendent shall establish and maintain a system to accurately account for all inmates in his or her custody at all times. A count of all inmates shall be made at least 4 times each day. These counts should be spaced as to interfere as little as possible with school, work, program, and recreational activities.

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

**HSS 306.06 Use of force.** (1) In this chapter, the following definitions apply:

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

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

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

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

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

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

(2) Corporal punishment of inmates is forbidden.

(3) Non-deadly force may be used by correctional staff against inmates only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

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

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

(c) To regain control of an institution or part of an institution after an inmate takeover;

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

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

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

(g) To prevent unlawful damage to property.

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(4) Deadly force may be used:

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

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

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

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

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

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

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

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

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

(a) Safe handling of firearms while on duty;

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

(c) Division rules regarding firearms;

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

(e) When firearms may and should be used.

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

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

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

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

(6) A staff member who fires a shot under sub. (5) (c) may aim to cause death or great bodily injury, if the inmate's activity poses an immediate threat of death or great bodily harm to another.

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

(a) The staff member who discharged the firearm shall notify his or her supervisor as soon as possible.

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

(c) The supervisor shall personally investigate the incident and file a report with the superintendent. This report shall state all facts relevant to the discharge of the firearm and shall include the supervisor's opinion as to whether the discharge was justified and occurred in accordance with this chapter. The superintendent shall send the reports required by sub. (7) (b) and (c) and his or her conclusions as to the justification for the discharge and whether it was in accordance with these rules to the director of the bureau of institutions.

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

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

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

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

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

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (6), Register, April, 1985, No. 352, eff. 5-1-85.

**HSS 306.08 Use of chemical agents. (1) DEFINITIONS.** In this section:

(a) "Chemical agent" means CN or CS or a comparable incapacitating agent in a form which includes, but is not limited to, a tear gas grenade, projectile, pepper fogger, riot shell, or cannister.

(b) "CN" means chloroacetophenone.

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

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

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

(a) To prevent imminent escape;

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

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

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

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

1. Communicate with the inmate;
2. Ask one or more other available people to communicate with the inmate, such as another security officer, a social worker, a crisis intervention worker, a member of the clergy, or a psychologist or psychiatrist;
3. Wait for a reasonable period of time, unless waiting would likely result in an immediate risk of harm to the inmate or to another person;
4. Make a show of force to the inmate;
5. Use physical power and strength; and
6. Use any other reasonable means short of applying a chemical agent to enforce an order.

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

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

- (a) It is clear that the chemical agents would have no physical effect on the inmate; or
- (b) An inmate refuses to follow an order and exhibits no other behavior that would justify application of a chemical agent under sub. (3).

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

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

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

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

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

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

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

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

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

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

- (a) The problem leading to the use of the chemical agent;
- (b) The steps taken prior to the use of the chemical agent;
- (c) Why those steps were inadequate; and
- (d) Measures taken following the use of the chemical agent.

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

**HSS 306.09 Mechanical restraints for transportation of inmates. (1) DEFINITION.** In this section "mechanical restraint" means a commercially manufactured device applied to an inmate to restrain or impede the free movement of the inmate's arms or legs. Mechanical restraints include but are not limited to handcuffs with restraining belt or chain, restraining chains, leg restraints, and leather and plastic restraints.

(2) MOVEMENT WITHIN INSTITUTION. Mechanical restraints may be used in the following situations if the superintendent or his or her designee determines that the use of mechanical restraints is necessary to protect staff or other inmates or to maintain the security of the institution:

- (a) In transporting an inmate from within the institution to outside the institution;
- (b) In transporting an inmate to segregation or TLU status; and
- (c) For an inmate who is in segregation or TLU status, while the inmate is outside his or her cell.

(3) **MOVEMENT OUTSIDE INSTITUTION.** Commercially manufactured mechanical restraints may be used in transporting an inmate outside an institution, in accordance with s. HSS 302.12.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. r. and recr. eff. 11-18-85; r. and recr. Register, May, 1986, No. 365, eff. 6-1-86.

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

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

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

(2) Mechanical restraints shall never be used:

(a) As a method of punishment;

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

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

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

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

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

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

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

1. The inmate's full name, number, and date;
2. The names of the staff members and supervisor present when the inmate was placed in restraints;
3. The reasons for placing the person in restraints;
4. The times that the inmate was checked, the name of the person making the check, and comments on the individual's behavior while in restraints;

5. The times the inmate was placed in restraints and removed;
6. Medication given; and
7. The names of staff visitors, the times of their visits, and any written comments they make.

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

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

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (3)(a) made under s. 13.93 (2m) (b) 6, Stats, Register, April, 1985, No. 352.

- (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 inmate whose living quarters were 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 an inmate's living quarters, the inmate shall be informed in writing what those objects are. The inmate shall be reimbursed for damage to any property which is not contraband. Property which is damaged shall be valued at its fair market value, not the cost to replace it.
- (4) In conducting such searches, correctional staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness. Inmate's quarters shall not be left unlocked after a search.
- (5) Staff shall not read any inmate's legal materials during such searches.

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

**HSS 306.16 Search of inmates.** (1) There are 4 types of searches of inmates as follows:

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

(b) A "strip search" is a search in which the inmate is required to remove all of his or her clothes. Permissible inspection includes examination of the inmate'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. Visual inspection of body cavities may be by any staff. Except in emergencies, a strip search shall be conducted by a person of the same sex as the inmate being searched.

(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. These inspections shall be by medical staff.

(d) A "body contents search" is a search in which the inmate is required to provide a sample of urine, breath, blood, or stool for testing for the presence of intoxicating substances, as defined in s. HSS 303.02 (10), in accordance with division procedures and with methods approved by the state laboratory of hygiene, or to submit to a nonsurgical physical examination by medical staff which may include but is not limited to x-rays for detecting the use of intoxicating substances or the possession of other contraband. Body contents searches do not include examinations and tests requested by medical staff for medical reasons. Appropriately licensed or certified medical staff shall take blood samples and x-rays and shall perform all other procedures requiring medical expertise. A staff

member of the same sex as the inmate being searched shall collect urine specimens. Any trained staff member may conduct breathalyzer tests.

(2) A personal search of an inmate may be conducted by any correctional staff member:

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

(b) At the direction of the shift supervisor; or

(c) In the circumstances defined under sub. (3) (a)-(d).

(3) A strip search may be conducted:

(a) Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum security institution;

(b) Before an inmate enters or leaves the segregation unit of a correctional institution;

(c) Before and after a visit to an inmate;

(d) At the direction of the shift supervisor who is satisfied that there are reasonable grounds to believe the inmate possesses contraband; or

(e) In the absence of the shift supervisor, if a staff member is satisfied that there are reasonable grounds to believe the inmate 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.

(5) A body contents search may only be conducted under one of the following conditions and only after approval by the superintendent or that person's designee:

(a) If a staff member, from direct observation or reliable sources, has reasonable grounds to believe that the inmate has used, possesses or is under the influence of intoxicating substances, as defined in s. HSS 303.02 (10), or other contraband;

(b) Upon intake in the assessment and evaluation process;

(c) After an inmate returns from:

1. A furlough;

2. Work or study release;

3. Temporary release offgrounds;

4. Any outside work details, or

5. A visit; or

(d) As part of a random testing program conducted on the entire population of the correctional institution. Selection of inmates for random testing may not be made with knowledge of inmate identities.

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(6) A written report or written log entry of all strip searches under sub. (3) (d), of all body cavity searches under sub. (4), of all body contents searches under sub. (5) and of all searches in which contraband is found shall be filed with the security director. This report 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 inmate searched;

(d) The reason for the search. If the search was a random 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.

(7) Correctional staff should strive to preserve the dignity of inmates in all searches conducted under this section.

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

(9) In deciding whether there are reasonable grounds to believe an inmate possesses contraband or 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 living quarters of the inmate.

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (3) (c) and (d), cr. (3) (e), Register, April, 1985, No. 352, eff. 5-1-85; am. (1), renum. (5) to (8) to be (6) to (9) and am. (6) (intro.), cr. (5), Register, January, 1987, No. 373, eff. 2-1-87.

**HSS 306.17 Search of visitors.** (1) Before a visit by a non-inmate to a correctional institution is permitted, the staff member responsible for the admission of visitors must 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. Each institution shall have a place for the safekeeping of all objects which may not be carried into the institution and shall permit visitors to store objects in these places.

(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) Before admitting a visitor, the staff member responsible for admission of visitors may require a visitor to submit to a personal search or

strip search as defined in HSS 306.16 (1) (a) and (b). Such a search may be conducted only with the approval of the superintendent or the person in charge of the institution, and the bureau director, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(5) Before an inspection or search is conducted pursuant to 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 pursuant to 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 pursuant to sub. (5), the staff member shall submit to the security director and to the bureau 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 inmate 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 or dispose of it in accordance with institutional procedure. 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 should strive to protect the dignity of visitors who are inspected or searched.

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

**HSS 306.18 Search of staff.** (1) The superintendent may require that correctional staff members be searched before they enter and before they leave a correctional institution. Such a search may be accomplished by requiring the staff member to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under HSS 306.16 (1). Before a strip search of a staff member is conducted, the approval of the superintendent or the person in charge of the institution and the bureau director is required. Such approval shall be given only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. A staff