

Chapter DOC 306

APPENDIX

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

Maximum custody is used in this case for the inmate's safety. Because the status is not punitive, DOC attempts to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate shall be allowed at least the privileges and property allowed in program segregation.

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

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

Situations arise in prison that must be controlled before substantial danger to others arises. The requirements for discipline and order in a prison and to prevent an escape give substantial responsibility to prison officials that may require the use of force to fulfill.

Sub. (2) states the circumstances in which non–deadly force may be used in a prison. This rule applies to correctional staff and not inmates. Inmates are not authorized to use force at any time by this rule.

A typical situation in which a correctional staff member would be authorized to use force in defense of another is if there was a fight between or among inmates. The correctional staff member must be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a prison setting, correctional staff must have the authority to prevent disturbances without worrying about who is wrongfully fighting and who is acting in self–defense.

Sub. (2) (d) authorizes the use of force to change the location of an inmate. Occasionally, an inmate is ordered to be placed in a segregation unit and refuses to go. To maintain the orderly operation of the institution, staff may have to physically move an inmate from one place to another.

Sub. (2) (g) authorizes the use of force to enforce department rules, policies and procedures and staff member orders. A typical situation in which a correctional officer would be authorized to use force under this paragraph is if an inmate refuses to be strip–searched prior to entering the segregation unit. Without the strip search the inmate could be hiding a weapon that could be used by a self–destructive inmate to kill or severely injure himself or herself or some-

one else. If the inmate cannot be persuaded to obey the order, staff may use force to compel compliance.

Note: DOC 306.08. The use of firearms is subject to the limitations on the use of force in DOC 306.07. This section reflects present policy of the department of corrections. Correctional staff in daily contact with inmates are not armed. Rather, officers who are posted in towers and in control centers are the only staff who are issued firearms, unless there is a disturbance or an emergency. Sub. (3).

Sub. (6) provides for the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Sub. (6) provides for investigation and reporting through the normal chain of command and for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity.

Sub. (7) indicates that the warden must authorize staff before they may carry firearms off grounds. Correctional staff officers need not be deputized since “Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates.” (OAG 103–79).

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

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

Subsection (3) identifies situations in which incapacitating agents may be used. Under this subsection, incapacitating agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, DOC 306.02 (9), or disturbance, DOC 306.02 (7). “Part of an institution” may be a building or a small area like a room. Whether an incapacitating agent should be used in such a situation depends upon whether using the incapacitating agent is less hazardous for both the person seeking to use the incapacitating agent and the inmate than using other reasonable means to accomplish the purpose.

This rule requires appropriate medical care, if necessary, and an opportunity for hygienic care. “Exposed inmates” are not just those against whom the agent is used but those

exposed to it because they are nearby. Medical examinations and cleaning may minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of incapacitating agents as well as the discomfort they may cause.

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

Note: DOC 306.11. DOC 306.11 regulates the use of restraints to immobilize inmates. Restraining devices are permitted in three situations: to protect property; to protect others from an inmate; and to protect an inmate from himself or herself. The use for transporting is regulated by DOC 306.10. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. DOC 306.11 is designed to insure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of inmates and correctional staff.

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

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

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

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

Sub. (3) (e) requires an examination by a licensed psychologist or a designee acting under the supervision of a licensed psychologist, or a psychiatrist, and a member of the medical staff every 12 hours an inmate remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the inmate.

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

Note: DOC 306.12. DOC 306.12 states the general policy that it is the responsibility of each staff member to take appropriate actions to prevent escapes. Appropriate action may include being alert and diligent, reporting observations and events, and may also include taking physical actions

consistent with directed duty and training. Decisive action when signs of trouble exist is also important.

Note: DOC 306.13. Sub. (3) 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 himself or herself, the institution, or inmates. To permit a person to retain authority while a hostage is an invitation to take high ranking officials as hostages.

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

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

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

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

Note: DOC 306.16. The search of the living quarters of an inmate is of importance to correctional officials and inmates. It is important that random searches of living quarters be conducted because contraband, including drugs and objects fashioned into dangerous weapons, are sometimes discovered during such searches and such searches deter the possession of contraband.

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

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

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

Note: DOC 306.17. DOC 306.17 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Visitors or inmates who go outside may carry contraband into institutions. Contraband is transported by inmates within institutions and is frequently moved to avoid detection. Contraband, including money illegally obtained, is also removed from institutions. Much

of this contraband poses a threat to inmates, to correctional treatment, to staff, and to the very institution itself. See the note to DOC 306.16.

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

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

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

Sub. (2) (c) 3. authorizes strip searches prior to and after a visit. Frequently, visitors are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited.

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

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

Sub. (4) (c) describes the circumstances under which a body contents search may be conducted. The division of adult institutions is expected to develop a protocol to define the role of health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff.

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

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

If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches.

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

Sub. (7) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution. The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects.

Sub. (8) requires correctional staff to turn over to law enforcement such objects that it is illegal to possess or conceal. The warden is a peace officer within the institution and on institution grounds by virtue of 301.29 (2), Stats. Under s. 939.22 (22), Stats., "peace officer" means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Section 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG-103-79).

Note: DOC 306.19. 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 he or she needs for an 8-hour period. Also, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. In addition, a staff member may deliberately bring an unauthorized object into an institution.

Note: DOC 306.23. Sub. (1) permits the suspension of the rules of the department. It is not intended that this rule be relied on frequently, but only in situations where the usual functioning of the institution becomes impossible. For example, programs and visits are impossible if a portion of an institution is taken over by inmates. Some rules, like those relating to the use of force, may never be suspended. This is provided for in the rule.