Chapter DOC 306

SECURITY

Note: Chapter HSS 306 was renumbered Chapter DOC 306 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, April 1990, No. 412.

DOC 306.01 Applicability and purpose. (1) Pursuant to authority vested in the department of corrections by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats., the department adopts this chapter for purposes of establishing security procedures at correctional institutions and establishing guidelines which permit inmates to participate in activities within a secure surrounding that may assist them in a successful reintegration into the community.

Cr. Register, August, 1980, No. 296, eff. 9−1−80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, August, 1980, No. 296, eff. 9−1−80; am. Register, April, 1985, No. 352, eff. 5−1−85.

DOC 306.02 Definitions. In this chapter:

(1) "Division of adult institutions" means the division of adult institutions, department of corrections.

(2) "Department" means the department of corrections.

(3) "Administrator of the division of adult institutions" means the administrator of adult institutions, department of corrections, or designee.

(4) "Director of the bureau of correctional health services"means the director of the bureau of correctional health services, the department of corrections, or designee.

(5) "Administrator of the division of program services" means the administrator of the division of program services, the department of corrections, or designee.

(6) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the disciplining of inmates for misconduct.

(7) "Division of program services" means the division of program services, the department of corrections.

(8) "Secretary" means the secretary of the department of corrections, or designee.

(9) "Security director" means the security director at an institution, or designee.

(10) "Superintendent" means the superintendent at an institution, or designee.

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

DOC 306.03 Security policy. Primary security objectives of the department are to protect the public, staff, and inmates and to afford inmates the opportunity to participate in a safe setting in activities that equip them to be successfully reintegrated into the community.

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

DOC 306.04 Responsibility of employes. Every employe of the department is responsible for the safe custody of the inmates confined in the institutions.

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

DOC 306.045 Voluntary confinement. (1) The security director may place an inmate in voluntary confinement if:

(a) The inmate requests the placement in writing; and

(b) The security director is satisfied that the placement is necessary for the safety and welfare of the inmate.

(2) An inmate shall remain in voluntary confinement for at least 72 hours from the time of placement unless the security director approves prior release.

(3) If the security director does not approve an inmate's release from voluntary confinement before 72 hours elapse, the inmate shall be released after 72 hours, if:

(a) The inmate requests release in writing; or

(b) The security director is satisfied that the placement is no longer necessary.

(4) An inmate in voluntary confinement shall be in maximum close custody as defined in s. DOC 302.12 (1) (a).

(5) Inmates in voluntary confinement shall have the following privileges and property:

(a) During the first 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in temporary lock−up (TLU) status, s. DOC 303.11;

(b) After 72 hours, privileges and property at least equivalent to privileges and property allowed to inmates in program segregation, s. DOC 303.70; and

(c) Additional privileges and property as determined by what is ordinarily allowed inmates by the rules governing the location of the unit in which the inmate is voluntarily confined.

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

Cr. Register, August, 1980, No. 296, eff. 9−1−80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, April, 1985, No. 352, eff. 5−1−85.

DOC 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.

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

DOC 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;

(g) To prevent unlawful damage to property; or

(h) To enforce a departmental rule, a posted policy or procedure or an order of a staff member.

(3m) The use of a chemical agent is a form of non–deadly force but it is regulated by s. DOC 306.08.

(4) Deadly force may be used:

(a) For the purposes stated in sub. (3) (a) to (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.

Cr. Register, August, 1980, No. 296, eff. 9–1–80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. am. (3) (f) and (g), cr. (3) (h), eff. 5–12–89; am. (3) (f) and (g), cr. (3) (h) and (3m), Register, December, 1989, No. 408, eff. 1–1–90.

DOC 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 division of adult 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 or her 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 administrator of the division of adult 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 secretary, 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 administrator of the division of adult institutions, one of whom shall be a member of the 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.

Cr. Register, August, 1980, No. 296, eff. 9–1–80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (6), Register, April, 1985, No. 352, eff. 5–1–85**; correction in (7) (b) made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1994, No. 462.**

DOC 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 canister.

(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. DOC 306.22 (1), or an emergency as defined in s. DOC 306.23 (1).

(4) NONEMERGENCY SITUATIONS. (a) To deal with situations other than those described in sub. (3), chemical agents may only be used where s. DOC 306.06 (3) permits the use of force and, unless par. (c) applies, the inmate physically threatens to use immediate physical force, which may involve a threat to use a weapon, against the staff member. Unless par. (c) applies, 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. DOC 306.06 (3) permits the use of force and a staff member knows of an inmate's history of violent behavior in similar situations while in custody 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.

(d) Chemical agents may not be used in nonemergency situations if:

1. It is clear that the chemical agents would have no physical effect on the inmate; or

2. An inmate refuses to follow an order and the use of chemical agents is not otherwise justified under par. (a) or (c).

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

(6) 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.

(7) 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.

(8) 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 designee;

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

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

(9) 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.

(10) 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.

(11) INCIDENT REPORT. As soon as possible following the use of a chemical agent, an incident report shall be submitted to the administrator of the division 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.

Cr. Register, August, 1980, No. 296, eff. 9−1−80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, August, 1980, No. 296, eff. 9−1−80; r. and recr. October, 1984, No. 346, eff. 11−1−84; emerg. am. (4) (a), cr. (4) (d), r. (5), renum. (6) to (12) to be (5) to (11), eff. 5−12−89; am. (4) (a) and (c), cr. (4) (d), r. (5), renum. (6) to (12) to be (5) to (11), Register, December, 1989, No. 408, eff. 1−1−90.

DOC 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 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. DOC 302.12.

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

DOC 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 self 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 or she shall, as soon as possible, refer the issue to the administrator of the division of adult institutions and the director of the bureau of 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.

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

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

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

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

(a) Reporting the escape to the superintendent, or if he or she is absent from the institution, the person in charge of the institution;

(b) Reporting the escape orally and in writing to the administrator of the division of adult institutions;

(c) Keeping an accessible list of the names, addresses, and phone numbers of off–duty staff members;

(d) An immediate count of all inmates;

(e) The operation of essential posts;

(f) Securing tools and any implement which may be fashioned into a weapon;

(g) The issuance of firearms to correctional staff;

(h) The issuance of escape circulars;

(i) The search of the institution;

(j) The investigation of the background, mail, and visiting list of the escapee;

(k) Notification of law enforcement officials of the escape;

(L) The preservation of any evidence relevant to the escape and the chain of such evidence;

(m) The repair of any facilities damaged in the escape;

(n) The responsibility of staff members after an escape;

(o) Notification of the administrator of the division of adult institutions, and law enforcement agencies of the apprehension of an escapee; and

(p) Pursuit of the escapee.

(2) Reports of escapes required to be made by sub. (1) shall include:

(a) The method of escape;

(b) Who was involved in the escape;

(c) A description of the escapee, including clothing worn;

(d) Action taken by the institution, including procedures initiated;

(e) A brief evaluation of the factors which may have contributed to the escape; and

(f) The identification of persons who may have information about the escape.

(3) In the event of an escape, the superintendent or the person in charge of the institution may order any off–duty staff member to work.

(4) If a correctional staff member, including the superintendent, is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by correctional staff. Any orders issued by a hostage shall be disregarded by the correctional staff.

(5) Firearms shall be issued in accordance with these rules. Only deputized correctional staff members authorized by the superintendent may carry firearms off the grounds of the institution.

Note: 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).

(6) The pursuit of escapees shall be done under the supervision of local law enforcement authorities. Until local law enforcement authorities are able to supervise such pursuit, it shall be supervised by the superintendent.

(7) The superintendent may authorize staff members to use their own cars to pursue escapees if state–owned cars are unavailable.

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

DOC 306.13 Search of institution grounds. A search of any area on the grounds of a correctional institution except the living quarters of an inmate 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. DOC 306.14 and 306.15.

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

DOC 306.14 Periodic search of entire institution. (1) A search of the entire premises of each correctional institution, including living quarters of inmates and staff and staff cars, may be conducted periodically. Advance notice of such searches shall be provided, consistent with the need to prevent and detect the concealment of contraband. Inmates shall be present when their living quarters are searched pursuant to this section, unless the inmate becomes unruly or is otherwise absent when the search is begun.

(2) Inmates shall be paid for the period of any lockdown required for a search pursuant to this section, unless the lockdown is precipitated by inmate misconduct when only those inmates allowed to work shall be paid.

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

DOC 306.15 Search of inmate living quarters. (1) A search of the living quarters of any inmate may be made at any time. Before such a search occurs, it must 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 prepared by the supervisor of the living unit or the staff member who conducted the search. The report shall state:

(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.

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

DOC 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 the 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 clothes. Permissible inspection includes examination of the inmate's clothing and body and visual inspection of 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. DOC 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) to (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 or changes statuses within the segregation unit of a correctional institution;

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

(d) As part of a periodic search and lockdown of an institution under s. DOC 306.14;

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

(f) 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. DOC 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.

(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.

Cr. Register, August, 1980, No. 296, eff. 9−1−80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. 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; emerg. r. and recr. (3), eff. 5−12−89; r. and recr. (3), Register, December, 1989, No. 408, eff. 1−1−90.

DOC 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 s. DOC 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 administrator of the division of adult institutions, 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 administrator of the division of adult institutions 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.

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

DOC 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 s. DOC 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 administrator of the division of adult institutions 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 member who refuses to submit to a search shall not be admitted to the institution and may be subject to disciplinary action.

(2) If an unauthorized object is found pursuant to a search conducted pursuant to 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 or dispose of it in accordance with established procedure. If it is not illegal to possess or conceal the object, it shall be returned to the staff member when he or she is leaving the institution.

(3) All searches shall be conducted in a courteous manner. Correctional staff should strive to protect the dignity of staff who are searched.

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

(5) If a strip search is conducted pursuant to this section, a report containing the information required by s. DOC 306.17 (7) shall be filed with the administrator of the division of adult institutions and security director.

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

DOC 306.19 Factors to consider to decide if search is necessary. In determining whether a staff member should search another staff member, a visitor or an inmate in situations in which there must be either reasonable grounds or 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 inmate 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.

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

DOC 306.20 Report of contraband seized. Each month the security director of each correctional institution shall submit to the administrator of the division of adult institutions a report of all contraband seized, the place and time it was seized, and the identity of the person possessing the contraband. If the contraband was not found in the possession of a person, the report shall so state.

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

DOC 306.21 Use of contraband as evidence at disciplinary hearing. Contraband seized during a search which is done in violation of this chapter may be used as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

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

DOC 306.215 Use of test results as evidence at disciplinary hearings. Subject to the confirmation required under s. DOC 303.59 (2), results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances may be used as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

Cr. Register, August, 1980, No. 296, eff. 9−1−80; correction in (3) (intro.) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1985, No. 352. Cr. Register, January, 1987, No. 373, eff. 2−1−87.

DOC 306.22 Disturbance plan. (1) A "disturbance" is any of the following:

(a) An assault on any person by 2 or more inmates;

(b) The taking of a hostage by an inmate;

(c) The destruction of state property or the property of another by 2 or more inmates;

(d) The refusal by 2 or more inmates, acting in concert, to comply with an order, to return to cells or rooms; or

(e) Any words or acts which incite or encourage inmates to do any of the above.

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

(a) To insure the safety and welfare of the general public, staff, and inmates;

(b) To protect property;

(c) To maintain and restore order to the institution;

(d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to these rules, and to provide relevant information to the police so that participants can be arrested and prosecuted. The highest priority shall be given to insuring the safety and welfare of the general public, staff, and inmates.

(3) Each institution must have a written plan, a copy of which shall be filed with the administrator of the division of adult institutions, to control and stop a disturbance. This plan shall be prepared by the security director and shall be reviewed at least once a year. It shall provide for:

(a) The containment and ending of the disturbance, including procedures for preventing escape during the disturbance;

(b) The opportunity for inmates not involved in the disturbance to withdraw from the disturbed area;

(c) Immediate determination of the cause of the disturbance;

(d) The identification of the leaders of the disturbance;

(e) The use of force;

(f) Notification of the administrator of the division of adult institutions, 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 and any essential medical care;

(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) Keeping a list of off−duty employes. Off−duty employes may be required to report for duty during a disturbance or if a disturbance is anticipated;

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

(t) Interviewing and counseling of involved staff and inmates.

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

(5) If a disturbance occurs that prevents the normal functioning of the institution, the superintendent may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.06 to 306.08, until the disturbance is ended and order is restored to the institution. Provisions should be made for access to medical care.

(6) If a disturbance occurs and a person is injured or if it results in the suspension of these rules, a disturbance review panel will be convened to investigate the disturbance. This panel shall be made up of persons selected in accordance with s. DOC 306.07 (7) (d) and shall report in accordance with s. DOC 306.07 (7) (e). This panel shall be provided with staff adequate to conduct a thorough investigation of the disturbance.

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

DOC 306.23 Emergencies. (1) An emergency is an immediate threat to the safety of the staff or inmates of a correctional institution, other than a disturbance as defined in s. DOC 306.22 (1). An emergency may include, but is not limited to:

(a) An epidemic;

(b) A malfunctioning of the water, electrical, or telephone system;

(c) A fire;

(d) A bomb threat or explosion;

(e) A strike of employes;

(f) Any natural disaster; or

(g) A civil disturbance.

(2) (a) The purposes of the emergency plan shall be:

1. To insure the safety and welfare of the general public, staff, and inmates.

2. To protect property;

3. To maintain and restore order to the institution; and

4. To identify any person who contributed to the creation of an emergency and to provide this information to the police for their arrest and prosecution.

(b) The highest priority shall be given to insuring the safety and welfare of the general public, staff, and inmates.

(3) Each institution shall have a written plan, a copy of which shall be filed with the administrator of the bureau of adult institutions and director of the bureau of correctional health services, to

be implemented in the event of an emergency. The plan shall provide for:

(a) Notification of the division of emergency government;

(b) Notification of supervisory staff;

(c) Notification of the administrator of the bureau of adult institutions;

(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) The evacuation of the institution, including the people with authority to order an evacuation;

(h) The provision of medical attention to staff and inmates;

(i) The investigation of the emergency;

(j) A yearly review 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.

(4) If an emergency occurs that prevents the normal functioning of the institution, the superintendent may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.06 to 306.08, until the emergency is ended and order is restored to the institution.

(5) If an emergency occurs, the secretary may convene an emergency review panel to investigate the disturbance. This panel shall be made up of persons selected in accordance with s. DOC 306.07 (7) (d) and shall report in accordance with s. DOC 306.07 (7) (e). This panel shall be provided with staff adequate to conduct a thorough investigation of the emergency.

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

Chapter DOC 306

APPENDIX

Note: DOC 306.045. Some inmates wish to be confined because they fear for their safety. Voluntary confinement is permitted by this rule. An inmate will ordinarily remain confined for at least 72 hours to prevent abuses of the status. For example, it is not to be used to avoid work or school or to take a day off. The security director may approve earlier release. Maximum close custody is used in this case for the inmate's safety. Because the status is not punitive, efforts should be made to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate must be allowed at least the privileges and property allowed in temporary lock–up (TLU) for the first 72 hours and thereafter privileges and property allowed in program segregation.

Note: DOC 306.05. DOC 306.05 puts into rule form the present practice of the department. Accurate counts are essential for security and recordkeeping. Given the variety among institutional schedules, it would be undesirable to impose rigid counting systems for all institutions. Rather, each superintendent is given the responsibility to see to it that an accurate system exists and that it does not unduly interfere with programs. This complies with *ACA*, standard 4159. See also, 15 *Cal. Adm. Code* 3774.

Note: DOC 306.06. DOC 306.06 states the purposes for which non–deadly force and deadly force may be used. They are defined in sub. (1). The definitions under sub. (1) (b) and (d)–(f) are derived from s. 939.22, Stats. Sub. (2) states the existing policy which forbids corporal punishment. Most jurisdictions forbid it. S. 53.08, Stats.; N.Y. Corr. Law s. 9137 (Supp. 1975). It serves no proper correctional objective and has been declared to be cruel and unusual punishment in at least one jurisdiction. *Jackson v. Bishop*, 404 F. 2d 571 (8th Cir. 1968);*ACA*, standard 4188; *ABA*, standard 6.11. It must be recognized that a prison 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 prison setting. Situations arise in prison that must be controlled before substantial danger to others arises. Furthermore, the requirements for discipline and order in a prison and to prevent escapes give substantial responsibility to prison officials that may require the use of force to fulfill. Sub. (3) states the circumstances in which 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. Force may be used only when the user of it reasonably believes it to be necessary. This is an objective standard. 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, Stats. Furthermore, it must be immediately necessary to realize the objectives stated in sub. (3) (a) to (h). If means other than force can be used before there is an immediate need for force, those means should be used. S. 939.48, Stats., permits the use of force in the free world 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 so doing 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 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 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 to rely on the rule that excessive force may not be used as a limiting factor. Sub. (3) (b) authorizes the use of force to prevent damage to property if it might reasonably lead to injury of another. An objective standard is again relied on. A typical situation where force would be necessary, and has in the past been used, is when an inmate begins to set a fire in a cell hall. This creates a serious risk of harm to other inmates and staff and force may be necessary to prevent such harm. While the authority granted in this subsection may sometimes overlap with that granted in sub. (3) (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 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. Sub. (3) (c) authorizes the use of force to regain control of a correctional institution or part of an institution after a takeover by inmates. In recent years, prisons 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 DOC 306.22. This subsection substantially conforms to *ABA*, standard 6.11 and 15, *Cal. Adm. Code* 3279. Sub. (3) (d) and (e) authorize the use of force to prevent escape and to apprehend an escapee. It is the responsibility of correctional staff to prevent escapes from correctional facilities, and the use of force is sometimes necessary to fulfill this responsibility. *ABA*, standard 6.11; American Corr. Institute, Model Penal Code s. 3.07 (Proposed Official Draft 1962); 15 *Cal. Adm. Code* 3279. Sub. (3) (f) 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, the inmate may have to be physically moved from one place to another. Of course, in most situations, it is better to try to persuade the person to move before relying on force. This practice should be followed where appropriate. 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. (1), (4), and (5). 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 as 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 standard of reasonableness. Sub. (1). Deadly force, as defined in sub. (1), may be used in limited situations. Its use is limited first by its definition, e.g., it must be reasonably necessary to achieve the objective. If there are other ways to achieve the objective than through the use of deadly force, its use would not be reasonably necessary to achieve the objective. These same limitations apply to the use of deadly force to achieve the objectives identified in sub. (3) (a)–(c), though its use in such situations may be necessary and is authorized. Deadly force may be used, subject to the limitations under sub. (4), to prevent the escape and apprehend some escapees. Whether deadly force can be used for such purposes poses a difficult problem and a review of the development of what little law exists is helpful in understanding the issues. The *ABA* Standards state that whether deadly force should be authorized to prevent escape is a "subject of dispute." What little law exists relating to the force used to prevent escape developed not from prison settings, but escapes from police after apprehension. The use of force in such situations was typically limited by the seriousness of the offense for which the individual was apprehended. This precluded the use of deadly force to prevent the escape of people apprehended for misdemeanors, but authorized its use against those accused of felonies. For a helpful discussion of the development of the law, see American Law Institute's Model Penal Code Tent. Draft #8 (hereinafter"*ALI*") at 52 (May 9, 1958). In some cases, deadly force was authorized to prevent the escape of misdemeanants because state law made escape from custody a felony and the force was authorized on the theory that it was to prevent the commission of a felony. The Model Penal Code draws a distinction between escape from arrest and escape from custody and authorizes the use of deadly force to prevent escape from custody, whether the person was convicted of a felony or misdemeanor or is merely charged and awaiting trial. The comment states, "Persons in institutions are in a meaningful sense in the custody of the law and not of individuals; the social and psychological significance of an escape is very different in degree from flight from arrest." *ALI*, at 64 (May 9, 1958). Inmates in Wisconsin correctional institutions pose varying degrees of danger to others. It is difficult to articulate workable criteria for distinguishing the dangerous from the non–dangerous. Because people in maximum and medium security institutions may generally be classified as more dangerous, the authority is provided to use deadly force to apprehend escapees and prevent escapes from these institutions. People in minimum security institutions are there because they are thought to be less dangerous than other inmates. This section requires a reasonable belief that a person in such an institution poses a substantial risk to others before deadly force may be used to prevent escape or apprehend an escapee. This section also restricts the use of deadly force if it creates a danger to innocent third parties. For example, the use of firearms may pose such a risk. The public ought not be exposed to some risks posed by the use of force. The use of force in such a situation is forbidden unless not using such force creates an even greater danger to innocent third parties. Other measures, though less certain of preventing an escape, may be more desirable in such a situation. Sometimes, however, it may be necessary to expose the public to such risks because the risks are less serious than those created by not using deadly force. This section does not address the situation in which a hostage is taken. This section does not permit the use of deadly force to change the location of an inmate or to prevent damage to property. It does not seem desirable, for example, to permit deadly force to be used if an inmate takes a can of paint and starts to spill it on the floor. The use of force to stop this is permitted, however, by sub. (3) (g). For example, if an inmate were throwing pool balls through windows, non–deadly force could properly be used to stop this activity. Sub. (3) (h) authorizes the use of force to enforce department rules, posted 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 someone else. If the inmate cannot be persuaded to obey the order, some force must be used to compel compliance. However, in general, it is better to use persuasion and the disciplinary process to enforce regulations. (See ch. DOC 303). In any case, force should not be used to punish an inmate for refusing to obey an order.

Note: DOC 306.07. DOC 307.07 governs the use of firearms by correctional staff. The use of firearms is, of course, subject to the limitations on the use of force in DOC 306.06. 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 central centers are the only staff who are issued firearms, unless there is an emergency. Sub. (2). When firearms may otherwise be required, only the superintendent may authorize the issuance of firearms. Sub. (1). Their issuance is only permitted to those who have successfully completed the training program referred to in subs. (3) and (4). To remain qualified, a staff member must requalify each year. Only issued firearms may be used: DOC 306.06 (1). These rules fulfill the requirements of *ACA*, standards 4154 and 4155. See 15 *Cal. Adm. Code* 3276. The reasons that firearms are not typically carried by correctional staff is that they do not assist staff in fulfilling their responsibilities and because the presence of firearms in institutions creates an unnecessary risk to the security of the institution. Firearms are not necessary to the appropriate functioning of institutions. They create unnecessary tension. Were a firearm to get into the possession of an inmate or be misused by a staff member, a great danger to other inmates and staff would thereby be created.

On balance, modern correctional thinking is that firearms ought not be carried by staff who have contact with inmates. In view of the danger created by firearms and their minimal benefit, only the superintendent is permitted to authorize the issuance of firearms. Typically, the person who is in charge of the institution when the superintendent is not there will also have this authority. This subsection follows the recommendations of *ABA* at 555. Sub. (4) indicates the nature of the weapons training and qualification program staff must complete to be certified to be issued weapons. It is important the staff who have weapons know how to use them. This greatly increases the chances that they will be used responsibly and diminishes the chances for accidents or negligent handling of them. Moreover, there is a great need for training in human relations and alternatives to force. This training should be part of weapons training. To insure that weapons are handled responsibly, sub. (5) indicates the procedure to be followed before discharging a weapon. It will not always be possible, given the nature of the situations in which firearms are used, to follow this procedure. However, it is required that it be followed unless it is not feasible to do so. For example, if it becomes necessary to shoot at a person holding a hostage, the procedure might not be followed. The procedure is designed to verbally inform the inmate that a staff member possesses a weapon and that the inmate should stop the activity. An adequate verbal warning to a person attempting to escape would be to say,"Halt, don't move! I have a weapon." If the verbal warning is disregarded and the inmate does not halt, a warning shot should be fired. If this is disregarded, it might be necessary to fire shots at the inmate. Such shots should be fired to stop the activity and, if possible, not to kill or cause great bodily harm. There may be situations in which it is necessary to shoot to kill. This is provided for in sub. (6) by the phrase "if the inmates activity poses an immediate threat of death or great bodily harm to another." In such case, shooting with the intention of causing death or great bodily harm would be justified and is authorized by the rule. Sub. (7) the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency. Subsections (7) (a)–(c) provide for investigation and reporting through the normal chain of command. Sub. (7) (d) and (e) provide for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity. No attempt is made in the rule to identify those sanctions that may or shall be applied to staff members who violate the rules. Clearly, the civil and criminal law of the state applies. A current issue in administrative law is whether the violation of a rule is the basis for a cause of action in tort or under 42 U.S.C. s. 1983. These are matters for the legislature and the Congress. What administrative sanction may be applied is addressed elsewhere in these rules.

Note: DOC 306.08. DOC 306.08 authorizes and regulates the use of chemical agents in adult correctional institutions. The department's policy is to allow use of chemical agents in emergencies, and to ensure that in nonemergency situations chemical agents are used only as a last resort and not as alternatives to communication with an inmate or to other types of non–deadly force. The rule also makes clear that chemical agents may not be used to punish an inmate but only to control him or her when necessary. As stated in sub. (2), the use of chemical agents is regulated by this section. Because chemical agents pose a risk of injury to others, they may only be used in limited situations. Subsection (3) identifies emergency situations in which chemical agents may be used without going through the steps identified in sub. (4). Under this subsection, chemical agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, DOC 306.23 (1), or disturbance, DOC 306.22 (1). "Part of an institution"may be a building or a small area like a room. Whether a chemical agent should be used in such a situation depends upon whether using the chemical agent is less hazardous for both the person seeking to use the chemical agent and the inmate than using other reasonable means to accomplish the purpose. Subsection (4) covers use of chemical agents in nonemergency situations, including situations in which an inmate refuses to follow an ordinary order. These situations include, for example, an inmate's refusal to take nonemergency medication or submit to nonemergency medical treatment; refusal to return a meal tray or tray inserts, unless the tray or insert is presently being used as a weapon; an inmate's throwing objects or liquids from the cell, unless such activity constitutes an immediate threat of bodily injury or death to him or herself or another; refusal to be strip searched; refusal to come to bars of a cell to be handcuffed for any nonemergency reason; and yelling or shouting. Subsections (4) (b) 1. to 6. outline a series of steps to be taken before using the chemical agents in nonemergency situations, when it is feasible to take those steps. This procedure is designed to ensure that chemical agents are used only as needed in particular situations. The person seeking to use the chemical agent should communicate with the inmate and should ask other available personnel to communicate with the inmate to persuade the inmate to take the desired action or comply with an order. When communicating with an inmate, staff members should take into consideration an inmate's special needs, including, but not limited to, an inmate's inability to understand English. Waiting or reconsidering the propriety of an order may be possible in some cases. Other solutions may be appropriate in other situations. Except in situations in which the staff member seeking to use chemical agents knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, chemical agents may only be used after an inmate physically threatens to use immediate physical force. Physical force includes possession of a weapon, such as a knife. Verbal threats do not constitute a sufficient threat. When the staff member knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, the staff member must follow all steps in the procedure in sub. (4) (b) 1. and 4. but may use chemical agents before using actual physical power and strength. Sub. (4) (d) 1. states that chemical agents may not be used in a nonemergency situation when they clearly would have no effect. Situations include instances when the inmate has thrown a blanket over his or her head, when the chemical agent cannot effectively be used according to the manufacturer's instructions to produce the desired result, or when a particular inmate is known not to react to the chemical agent. Sub. (4) (d) 2. clarifies the department's policy that an inmate's simple refusal to follow an order does not justify using chemical agents in a nonemergency situation unless the inmate physically threatens to use immediate physical force or the inmate has a history of violent behavior and staff reasonably believe that the inmate will become violent in the present situation. Subsections (7) and (8) regulate the use of particular chemical agents. CN and CS agents are the only agents to be used in enclosed areas, because enclosed areas require the use of agents which can be released in small amounts and can be carefully controlled. This method of use further avoids unnecessary risks of injury. The manufacturer's safety instructions include guidance as to the distance from which the agent should be delivered as well as the date after which the agent must be replaced. The use of agents identified in sub. (8) is confined to areas where the risk to life by a reduction in the oxygen available is minimal, for example, in open areas and in rooms such as the dining halls at most institutions. Because use of chemical agents creates risks, sub. (9) imposes severe limitations on who may authorize their use. In emergency situations described in sub. (3) (b) and (c), the superintendent or designee may authorize the use of chemical agents although, to prevent an imminent escape, described in (9) (b), it may be necessary for the senior staff member present to authorize use of a chemical agent. In non–emergency situations, only the person actually in charge of the institution at the given time—;who may be the superintendent or deputy superintendent, the security director, or an assistant superintendent—;may authorize the use of chemical agents. As provided in sub. (10), when chemical agents are used, only trained supervisory personnel may use them, except that a trained staff member may use them under immediate supervision. These requirements and the training requirements are to ensure that chemical agents are used only when necessary and in a way that minimizes the risk to staff and inmates. Subsection (11) requires a medical examination and change of clothes and bedding and cleaning for exposed inmates and areas. Inmates exposed to CS must be given a chance to shower. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of chemical agents as well as the discomfort they may cause. The reporting requirement in sub. (12) ensures adequate administrative notification and review of the use of chemical agents.

Note: DOC 306.10. DOC 306.10 regulates the use of restraints to immobilize inmates. It is substantially in accord with existing department policy. Restraining devices are permitted in three situations: in transporting an inmate; (DOC 302.12) to protect others from an inmate; and to protect an inmate from himself or herself. The use of restraints for punishment or any other reason is not permitted. The use for transporting is regulated by DOC 302.12, relating to custody requirements for inmates. DOC 306.10 addresses the other 2 uses. Sub. (1) (a) and (b) permit the use of restraints when the danger created by an inmate is so imminent and serious that physical restraint, sometimes for a period of several hours, is necessary. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. Subs. (1) and (2) are designed to insure that restraining 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. Sub. (2) applies to the use of restraints for all purposes except transporting inmates, a routine use determined by the inmate's security classification. This particular subsection addresses situations in which devices are used to restrain disturbed inmates. It is important that the authority to require restraining devices be centralized. For this reason, only the superintendent or the staff member in charge may order their use or removal. Sub. (3) (a). To avoid injury, it is necessary to have adequate staff to subdue the inmate. As a general rule, 2 or 3 staff members should be present when an inmate is placed in restraints. This is for the safety of the inmate and the staff, because inmates may be violent. Injury and unnecessary anxiety may be avoided if the shift supervisor explains to the inmate why restraints are being imposed. When possible, this is to be done before placing the person in restraints. Inmates placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to insure that the person is not being injured by the restraints. Furthermore, the decision to keep a person in restraints must be constantly reviewed. Sub. (3) (a), (b) and (c) provide for counseling, medical exams, and monitoring to get the inmate the immediate help he or she needs that may permit the removal of the restraints, as well as a review of the necessity for them. Sub. (3) (c) provides for the removal of the restraints, for meals and to perform bodily functions when possible. This is to preserve the inmate's dignity, consistent with the safety of the inmate and staff. Sub. (3) (d) provides for the records that are to be kept when an inmate is placed in restraints. Given the seriousness of this measure, it is important that records be kept to insure that these rules are complied with and to permit review of the procedures used. This should prove helpful if further rules need to be developed regarding restraints. Sub. (3) (e) requires an examination by a psychiatrist, licensed psychologist, or crisis intervention worker every 12 hours an inmate remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the inmate. Sub. (4) requires that a supply of restraining devices be maintained and periodically reviewed. This is to insure that devices which might injure an inmate or permit escape are not used. For a similar, though less detailed rule relating to restraints, see 15 *Cal. Adm. Code* 3280.

Note: DOC 306.11. DOC 306.11 states the general policy that it is the responsibility of each staff member to prevent escapes. While escapes are relatively rare in a well–administered institution, staff must be alert to prevent them. Prevention is accomplished best by having a sound classification system, thorough security inspections, institutional programs that provide full–time work and adequate recreation, consideration of legitimate complaints, and alertness to signs of unrest and tension. Decisive action when signs of trouble exist is also important. See 15*Cal. Adm. Code* 3290.

Note: DOC 306.12. DOC 306.12 states the responsibility of the department when there is an escape or attempted escape from an institution. It requires that each institution have a plan in the event of an escape or attempt. This plan must be reviewed yearly, and updated if circumstances so dictate. Sub. (1) outlines what the plan must include. Given the substantial differences among institutions and the need to limit access to the plan, its contents are merely outlined. Sub. (2) states what must be

included in reports made pursuant to subsection (1). This is to insure that adequate and complete information is reported to increase the chances for the rapid apprehension of escapees. Sub. (3) gives the superintendent the authority to order off–duty employes to work. This is to insure that the institution functions in a secure way, while staff members are assigned to duties relating to the escape. Sub. (4) states the rule 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 effect 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. Sub. (5) indicates that the usual rules relating to firearms apply during an escape. Furthermore, only the superintendent must authorize staff before they may carry weapons off grounds. Sub. (6) indicates that the pursuit of escapees must be under the supervision of local law enforcement officials. In some rural areas, correctional institutions and camps are a great distance from population centers where police are located. Until police are able to supervise pursuit, pursuit is to occur and be supervised by the superintendent. Sub. (7) authorizes the use of privately owned cars where state vehicles are unavailable to pursue escapees. This rule is in accordance with *ACA*, standard 4179. It substantially reflects existing department policy. For a less detailed though similar rule relating to escapes, see 15 *Cal. Adm. Code* 3291.

Note: DOC 306.13. DOC 306.13 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 department 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, inmates may move the contraband in anticipation of a search. There is no requirement that there be specific reasons for conducting such a search. This is in accord with *ABA*, standard 6.6 (a). See also Krantz et al., *Model Rules and Regulations on Prisoner Rights and Responsibilities* (1973) (hereinafter "Model Rules" or "Krantz et al."), at 66. This rule also reflects the view that inmates 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). *Pietrazweksi v. State*, 285 Minn. 212, 172 N.W. 2nd 758 (1969). Recently, 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 these rules is permissible under the reasoning of this decision. These searches are to include the living quarters of inmates. The amount of contraband found in such searches is ample justification for their continuation. Notice is to be provided. 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 quarters, see the note to DOC 306.14 and DOC 306.15.

Note: DOC 306.14. DOC 306.14 (1) permits that each institution may be completely searched periodically. In recent years, this has become routine at least once per year. In each such search, 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). These searches are to include the living quarters of inmates. The amount of contraband found in such searches is ample justification for their continuation. Notice is to be provided. 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 DOC 306.15. Inmates are to be present when their quarters are searched pursuant to this rule. Sub. (2) requires that inmates be paid during the lockdown, unless it is precipitated by misconduct. The limitation on pay is to avoid paying inmates for periods that they do not work because of their misconduct and as an incentive to all inmates to behave appropriately. While it is true that not all inmates are responsible for the misconduct, it is thought desirable to pay no one except those inmates allowed to work to perform the necessary housekeeping chores, to encourage appropriate behavior so lockdowns can be ended quickly.

Note: DOC 306.15. The search of the living quarters of an inmate is a sensitive issue, and one of great importance to correctional officials and inmates. 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 frequently 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 inmates from each other. Contraband such as drugs can be used as payment to induce an inmate to attack another, or otherwise violate prison rules. If an inmate discovers that another possesses contraband, this information may be used to blackmail the possessor. Weapons, of course, pose a direct threat to inmates. They may be used to threaten, injure, or kill another. That weapons be kept out of institutions is critical for the safety of inmates. Contraband must also be kept out of institutions so that inmates can participate in programs, jobs, and other treatment free of the fear that inevitably follows contraband into an institution. It is impossible to motivate inmates 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 inmates. And, they may be an inducement to cause a disturbance which threatens everyone in the institution. Experience teaches that the concerns expressed here are not groundless. For example, in early 1979, there were 2 serious incidents in which inmates stabbed other inmates and staff. At present, monthly reports of the contraband seized are submitted to the administrator of the division of adult institutions. These reports indicate that it is necessary to search the quarters and grounds of institutions randomly to detect contraband and deter people from bringing it into institutions. While the discovery of contraband is important, this is not to say that the authority to search should be without control. A search of living quarters is an intrusion into the life of an inmate and may not be conducted to harass. Adequate control is established under DOC 306.15 by requiring the approval of the supervisor of the living unit before a search may be conducted, and by requiring a report of each search to be made. Typically, this is filed with the security director. This insures that supervisory people approve the search. It permits the security director to monitor all searches of living units. This should prevent unnecessary searches and insure that enough searches are conducted to control contraband. It would be inconsistent with the purposes of searches to notify the inmate before such a search is conducted. This would permit the inmate to remove contraband from the living unit. The manner in which searches are conducted is also important. Sub. (4) requires that searches be conducted so as to disturb the effects of the inmate as little as possible. Of course, a thorough search requires moving objects around. But, the disturbance of living quarters is not the object of the searches. Consistent with the recognition of the inmate's interest in his or her property, inmates 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 inmate should also be notified of objects seized. This sometimes takes the form of a conduct report, though not always. A report gives the inmate the opportunity to dispute whether the object seized is indeed contraband. Inmates are not notified if searches take place. This is because searches of geographically close areas are done within a close time period. To notify inmates 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 inmate concerns about their privacy. Courts and commentators have taken varied positions on the applicability of the fourth amendment to the search of inmate 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 threatens the security or legitimate purposes of the institution. *United States v. Ready*, 574 F. 2d 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 "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*, 467 F. 2d 1107, 1108 (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. *Id.* at 556–57. On the other hand, the ABA would not permit the random search of living quarters. *ABA*, standard 6.6 (d). Krantz, et al., would permit random "routine room inspections" but not routine room searches. Still another commentator would *require* random, unannounced searches of cells for accreditation. *ACA* standard 4163. Judge (now Justice) John Paul Stevens, for the seventh circuit court of appeals, wrote: Respect for the dignity of the individual compels a comparable conclusion with respect to his interest in privacy. Unquestionably, entry into a controlled environment entails a dramatic loss of privacy. Moreover, the justifiable reasons for invading an inmate's privacy are both obvious and easily established. We are persuaded, however, that the surrender of the Fourth Amendment survives the transfer into custody. *Bonner v. Coughlin*, 517 F. 2d. 1311, 1316 (7th Cir. 1975). In the *Bonner* case, the Court did not decide what measures a prison must take to protect an inmate's fourth amendment right. DOC 306.15 and this note reflect the view that, in a prison context, the procedures hereby provided are a workable method for controlling contraband and thereby furthering important correctional objectives. This is in the interests of inmates. This section also seeks to protect any fourth amendment interest inmates may have.

Note: DOC 306.16. DOC 306.16 regulates "personal", "strip","body cavity", and "body contents" searches of inmates. In the note to DOC 306.15, there is a discussion of the purposes and importance of searches of living quarters. DOC 306.16 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Contraband is usually carried into institutions either by visitors or inmates who go outside. It 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 306.15. The fifth circuit court of appeals has written, with reference to strip searches, "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. Lilly*, 576 F. 2d 1240, 1246 (5th Cir. 1978). Body contents searches and urinalysis in particular are directed at controlling inmate use of intoxicants. The level of drug use in American prisons is thought to be high and to present a serious threat to the safety and security of correctional institutions. 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. Such searches may not be conducted without controls. Sub. (1) defines the 4 types of searches of the person of an inmate. The less intrusive and more common search is a personal search. Strip searches are conducted infrequently. Body cavity searches, as defined in this section, are rare. Correctional officials could recall only one during a recent 5–year period. Body contents searches are performed more frequently. In response to a recent study which showed high levels of drug use in Wisconsin correctional institutions, the department established a random urine testing program. Sub. (2) states the circumstances in which a personal search may be conducted. If a staff member has reasonable grounds to believe an inmate possesses contraband, an immediate search is per-

missible and is usually necessary to prevent disposal of the contraband. It is also desirable to permit random personal searches. This is permitted by Sub. (2) (b), but requires the approval of the shift supervisor. This is to insure that such searches are not conducted to harass inmates, but are approved after reflection by a supervisory staff member. Such random searches are not conducted frequently, but are thought to be of substantial deterrent value. Sub. (2) (c) permits personal searches in lieu of strip searches, where strip searches are permitted. Strip searches, by their nature, are unpleasant and degrading to both staff and inmates. All wish that such searches were unnecessary. As has already been stated, they do detect contraband and deter people from bringing it into institutions. *United States v. Lilly*, 576 F. 2d 1240 (5th Cir. 1978). It would be unreasonable, however, to permit random strip searches. *Cf. Wolfish v. Levi*, 573 F. 2nd 118 (2nd Cir. 1978). *United States ex. rel. Guy v. McCauley*, 385 F. Supp. 193 (D. Wis. 1974). Sub. (3). Strip searches, by their nature, are unpleasant and degrading to both staff and inmates. All wish that such searches were unnecessary. As has already been stated, they do detect contraband and deter people from bringing it into institutions. *United States v. Lilly,* 576 F.2d 1240 (5th Cir. 1978). Sub. (3) identifies the circumstances in which strip searches are permitted. The rule is written to limit the use of strip searches by, first, specifying in pars. (a) to (d) specific situations in which inmates may be strip searched. All of those situations are ones in which contraband is moved most frequently or where the danger created by the presence of contraband is so great as to require that authority exist for strip searches. The other limitation, in pars. (e) and (f), is to permit such searches at other times only if grounds exist to believe that the inmate possesses contraband. Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit. If this were not permitted, it is likely that there would be less movement in and out of institutions. This would defeat program objectives. Sub. (3) (a). The segregation unit of a correctional institution is usually a tense place. Inmates are there because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. It is essential to the safety of inmates that contraband not be brought into a segregation unit. Inmates cannot be constantly observed while in segregation or when they are temporarily absent. Without the strip search of inmates entering and leaving segregation or changing statuses within the segregation unit, a weapon could be taken in or out and used by a self–destructive inmate to kill or severely injure himself or herself or someone else. Sub. (3) (b). Sub. (3) (c) authorizes strip searches prior to and after a visit. Visitors may bring contraband to and also carry it from institutions. Frequently, they are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited. On balance, it seems preferable to emphasize searches of inmates. Authority is also given to search visitors, however. See DOC 306.17. Sub. (3) (d) 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 306.14. Sub. (3) (e) and (f) do not give staff members unlimited discretion to conduct strip searches. They state that a strip search may be made if there are reasonable grounds to believe the inmate possesses contraband. This is a less than probable cause standard, but more than mere suspicion. It is the same standard as in sub. (2) (a). Sub. (9) indicates what may be considered in determining if there are reasonable grounds. What a staff member observed, information from a reliable source, prior seizures of evidence from the inmate, and the experience of the staff member are all relevant to the determination to strip search. The staff member must believe that it is necessary to strip search an inmate without supervisory approval because a strip search is necessary to preserve evidence or in other cases in which timeliness is very important. Of course, a staff member may also conduct a strip search of an inmate at the direction of the shift supervisor. In *Bell v. Wolfish, supra*, the U.S. Supreme Court held that strip searches including visual body cavity inspections, are permissible anytime a pretrial detainee had contact with a member of the public. This principle is applied in this rule to cover situations where the likelihood of contraband being moved or the danger created by the contraband is such that, in the judgment of correctional officials, a search should be permissible. Sub. (5) describes the circumstances under which a body contents search may be conducted. Medical staff are in no way restricted from requesting physical examinations and tests for medical reasons. The division of adult institutions and the bureau of correctional health are expected to develop a protocol to define the role of correctional health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff. Par. (a) permits a body contents search if there are grounds to believe the inmate has used, possesses or is under the influence of intoxicants or other contraband. For example, grounds for a body contents search would exist if contraband were found either on the inmate or in an area controlled, occupied or inhabited by the inmate. In addition, if a staff member observes an inmate possessing or using contraband or if a staff member receives information from a reliable source that an inmate is currently under the influence of or has recently used contraband,grounds would exist for a body contents search. Paragraph (c) lists specific situations in which an inmate may be subjected to a body contents search. All those situations are ones in which the inmate has left the institution grounds and it is therefore possible that the inmate has had access to contraband. The superintendent has discretion to authorize body contents searches when inmates return to the institution under the situations listed in par. (c). If an inmate returns late from these offgrounds activities, the superintendent should always authorize a body contents search. Conducting body contents searches on inmates returning from offgrounds activities is intended to reduce the flow of contraband into the institutions. Since the use of intoxicants is often difficult to detect, par. (d) permits the department to establish random testing programs. Random testing of body fluids is not unreasonable as long as inmates are chosen for testing without regard to their identities. *Storms v. Coughlin,* 600 F. Supp. 1214 (S.D.N.Y. 1984). Each institution is expected to have procedures for selecting inmates on a random basis for body contents searches which minimize the potential for harassing or intimidating inmates. The department is expected to have procedures which ensure that the test results are reliable, the test operators are properly trained, the chain of custody is preserved, and inmates are treated in the least degrading manner possible. These procedures are available on request from the Division of Adult Institutions, Department of Corrections, P.O. Box 7925, Madison, WI 53707.

Note: DOC 306.17. DOC 306.17 regulates the search of visitors. Other rules relating to visits are found under ch. DOC 309. It is the firm policy of the department of corrections to encourage visits to inmates. Visits are important to the morale of inmates. Contacts with family members, friends, and other members of the community can be very helpful in motivating inmates and in assisting their reassimilation into the community. Family ties, which are greatly strengthened by personal contact, are essential to successful reintegration. Unfortunately, some visitors knowingly carry contraband into correctional institutions. More frequently, visitors unwittingly bring objects which are harmless if used as intended, but which can be fashioned into deadly weapons in institutions. There have been cases in the past in which visitors have been told that their loved ones will be harmed by inmates unless they bring contraband into an institution. It is important to the safety of the visitor, the staff, and inmates that contraband or unauthorized objects not be brought into institutions. It is essential that this be done in a way that does not discourage visits or communicate to visitors that they are unwelcome. The dilemma is in treating visitors in a way that makes them feel welcome while insuring that contraband is not being brought into the institution. DOC 306.17 in conjunction with the other rules regarding visiting, is intended to achieve these goals. Krantz, one of the few commentators who has addressed the issue, recommends that visitors be searched. *Krantz, et al*, at 57. A "visitor" is anyone not employed by the department of corrections. Sub. (1) states the principle that correctional staff must be satisfied that visitors are not carrying unauthorized objects into the institution. Because such objects may be things which people normally carry with them and which visitors might assume are authorized, it is important to inform visitors of what they may or may not carry. Visitors are provided with a place to store their belongings during the visit. Sub. (2). If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches. Sub. (5). The large majority of visitors are asked to empty pockets, permit the inspection of containers and submit to a metal detector screening similar to those used in airports. Sub. (3). This typically satisfies staff that contraband is not concealed. Occasionally, correctional staff have received information that a visitor is carrying contraband and that the inspection called for in sub. (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the superintendent, the security director, or the highest ranking member of the security staff and the administrator of the division of adult institutions may require the visitor to submit to a personal search or strip search as defined in DOC 306.16 (1) (a) and (b) or be excluded from the institution. This authority is given only to high level supervisory people to insure that it is not abused. Sub. (6) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution. The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects. It is essential that the notice of what is unauthorized be adequate. Sub. (2). Sub. (7) requires a written report if a visitor is excluded or if a search is even conducted. This is to insure that adequate records are kept that permit review of the decisions. This is a protection for the visitor and the correctional staff. A dilemma is created when unauthorized objects are found. Sub. (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 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. Sub. (9) states the principle alluded to above that staff should try to make visitors feel welcome, and conduct searches and inspections in a way that preserves the dignity of the individual.

Note: DOC 306.18. Searches of staff members are sometimes necessary. This is so for three reasons. First, staff members may inadvertently bring unauthorized objects into institutions. For example, an employe taking medication may bring in more than he or she needs for an 8–hour period. Second, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. Third, a staff member may deliberately bring an unauthorized object into an institution. For these reasons, and because of the danger created thereby, the authority must exist to search staff. Subs. (2) and (3) are substantially the same as the relevant sections found in the section on search of visitors. See the notes to DOC 306.13–306.17. It is, of course, important to inform staff of the objects they are not permitted to carry into the institution. Sub. (4) provides that they be informed in writing.

Note: DOC 306.19. This section is intended to guide staff who must decide whether there is sufficient reliable information to justify searching another staff member, an inmate, or a visitor. Errors and abuse of search authority may be due to inadvertence and poor judgment. This section seeks to avoid abuses and errors. Often, very general information is not reliable because its lack of detail suggests 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. Sub. (1) requires attention to the specificity and consistency of information. Of course, specificity or the lack of it is helpful in evaluating information. Sub. (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. Sub. (3) suggests that attention must be paid to the activity of any inmate who may be involved with the subject of the search. If the inmate 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. Sub. (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: DOC 306.20. DOC 306.20 provides for a report to the administrator of the division of adult institutions, of all contraband seized. This conforms to the present practice of the department of corrections. Such information is useful because it

reveals patterns of time and place as they relate to the discovery of contraband. This is helpful in guiding staff in searching for it. The identity of people who possess or conceal it is also useful in monitoring correctional institutions.

Note: DOC 306.21. DOC 306.21 provides that contraband seized pursuant to a search which violates these rules may be used as evidence in a disciplinary proceeding. There are several reasons for this. First, the rule encourages the making of adequate administrative rules. If such evidence could not be used, it is likely that there would be a change in the substance of the rules. 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. In a prison setting, it would be anomalous to not use evidence in a disciplinary hearing that is relevant, to enforce compliance with the rules. If the issue of admissibility were permitted to be litigated, it would likely delay administrative 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) s. 4.4. There is great value in proceeding promptly against such staff members. This is the most effective deterrent to violation of the rules. For recommendations to exclude evidence from disciplinary hearings because it was obtained in violation of these rules, see *Krantz, et al.*, at 67; *ABA*, standard 6.6 (g).

Note: DOC 306.22. DOC 306.22 defines a disturbance, requires that each institution have a plan in the event of a disturbance, identifies the elements of the plan and its purposes, provides for the suspension of these rules, explains the effect on an individual's authority if the person is taken hostage, and provides for the investigation of the incident. Disturbances threaten every inmate and staff member in a correctional institution and the general public. Some 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, prison disturbances will be prevented by firm, fair, sensitive correctional administration and the availability of adequate resources to permit inmates to be involved in purposeful, constructive programs. These qualities and the willingness to listen and respond positively to legitimate grievances will do much to prevent disturbances. Of course, disturbances may occur in the best of institutions: It is recognized that 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. Correctional authorities should address themselves to a systematic review of institutional conditions and factors conducive to unrest and disorder, with a view to producing viable, concrete solutions for preventing and controlling these problems. National Advisory Committee and Criminal Justice Standards and Goals,*Report of the Task Force on Disorders and Terrorism*, (1976) Goal 8.1. Prevention, then, is the best way to deal with possible prison disturbances. If disturbances do occur, staff must be prepared to deal with them in a way that insures, 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. Sub. (2). Sub. (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. These rules may not be suspended for any disturbance, but only for ones that seriously disrupt institutional routine. Sub. (3) identifies the elements of the required plan. Given the differences among institutions and the need to limit access to disturbance plans, the subsection simply identifies the elements of the plan. These elements were identified based on prior experience with disturbances in Wisconsin, the study of the growing literature on prison disturbances, and in consultation with the department of emergency government. Much of this literature is the result of the tragedy of Attica in 1971. See, e.g. *Oswald, supra*; *Wicker, supra*; *Official Report, supra*; *ACA, supra*; *Task Force Report, supra*; and N.Y. Department of Law, *Final Report of the Special Attica Investigation* (1975). Sub. (4) 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 an inmate to escape from an institution through threats to a hostage. Sub. (5) 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. 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. Sub. (3) (i). It is also important that people from outside the department be involved in an investigation and that it be adequately staffed. This is provided for in sub. (6). See N.Y. Dept. of Law, *Final Report of the Special Attica Investigation*, (1975) Findings 3 and 4.

Note: DOC 306.23. Emergencies of the kind defined in sub. (1) present a serious threat to the welfare of the public, inmates, and staff. It is essential that there be adequate planning in the event of such emergencies and prevention to avoid them altogether. Like disturbances, prevention is the best way to deal with emergencies. Sub. (3) (j) requires yearly review of possible hazardous situations and sub. (3) generally addresses the issue by requiring plans in the event of emergencies. The requirements of the plan were developed in consultation with the department 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 the information. The purposes of the plan are stated in sub. (2). See the note to DOC 306.22 (2). Subs. (4) and (5) are identical to DOC 306.22 (5) and (6). See the relevant notes.