

September 9, 2020

NOTICE OF CHANGE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.210

RULE TITLE: Use of Force

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 46, No. 130, July 6, 2020 issue of the Florida Administrative Register.

33-602.210 Use of Force.

(1) Definitions.

(a) through (bb) No change.

(cc) Self-Injury or Self-Injurious Behavior – Any behavior where an individual purposefully inflicts harm to his or her body ~~for any purpose that is not socially recognized or sanctioned and~~ without the obvious intention of committing suicide.

(dd) through (ii) No change.

(2) through (4) No change.

(5) Use of Chemical Agents.

(a) General.

1. through 2. No change.

3. Authorization to Use CS instead of OC.

a. No change.

b. The warden or designee may authorize the use of CS as an initial primary chemical agent whenever past applications of OC to an inmate were documented on a Report of Force Used, Form DC6-230, as having been applied and ineffective. Form DC6-230, Report of Force Used, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>

~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-09006>~~. The effective date of the form is XX/XX 01/18.

c. No change.

4. No change.

(b) No change.

(c) Use of Chemical Agents on Inmates in Controlled Conditions.

1. The warden or designee shall be consulted and his or her written Authorization for Use of Force, Form DC6-232, must be obtained for any organized use of force prior to the application of chemical agents. Form DC6-232, Authorization for Use of Force, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01701>. The effective date of the form is ~~09/99~~ 09/09. The person responsible for submitting the use of force authorization shall prepare, date, and sign the authorization either prior to or immediately after the end of the shift in which force was used. If the authorization for use of force is granted after normal working hours, the authority granting the action shall sign the use of force authorization within one day following the incident, excluding weekends and holidays.

2. When an inmate in a controlled condition creates a disturbance, or the officer's ability to provide unit security is adversely impacted by an inmate's behavior, and the inmate refuses to comply with clear and audible lawful orders to cease his or her behavior, the following steps will be followed unless there is an emergency or other circumstances arise that would dictate alternative actions:

a. through c. No change.

d. If the inmate remains non-compliant or continues in his or her behavior that would justify using force and it is evident that the use of chemical agents is necessary to gain control of the inmate while minimizing the risk of injuries to others, the housing lieutenant or shift supervisor shall ensure that the following order of events takes place:

(I) No change.

(II) The shift supervisor shall review the Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, Form DC4-650B, to determine whether the inmate has a medical condition that may be exacerbated by the intended force. Form DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>

<http://www.flrules.org/Gateway/reference.asp?No=Ref-09004>. The effective date of the form is ~~XX/XX~~ 01/18. If

the inmate has a medical risk factor for chemical agents, chemical agents shall not be used on the inmate unless each of the following conditions exists: the inmate possesses a weapon capable of causing great bodily harm or death, the warden or designee approves, and medical staff are present in the housing unit prior to the application of chemical agents. Medical staff shall be consulted about physical conditions of an inmate that may be aggravated by the application of chemical agents unless safety concerns prevent prior consultation. If the inmate has a medical risk factor for chemical agents as indicated on the risk assessment, this does not automatically preclude the use of electronic immobilization devices on the inmate.

(III) through (IX) No change.

e. No change.

f. Post-chemical agent use protocol.

(I) Once the inmate becomes compliant with lawful orders and ceases his or her disruptive behavior, the shift supervisor or close management lieutenant will order the inmate to submit to hand restraints. Once the inmate is restrained, Department staff shall initiate decontamination protocol shall be initiated as outlined in paragraph (9)(b) of this rule.

(II) through (III) No change.

(6) through (9) No change.

(10) Review Requirements.

(a) through (e) No change.

(f) Upon review of the submitted documents, the Office of Inspector General shall notify the warden in writing or by electronic mail of its findings. The Office of the Inspector General shall evaluate the use of force to determine if the type and amount of force used was in accordance with the law, rule, or procedure, and whether any procedural violations are noted. All video recordings submitted with a Report of Force Used, Form DC6-230, shall be retained and maintained by the Office of Inspector General in accordance with public records retention law. The Office of Inspector General shall deem the use of force in compliance or not in compliance with law, rule, or procedure. The Office of the Inspector General shall notify the regional director and warden any time a reasonable suspicion or probable cause is found that the force administered by a staff member was not in compliance with law, rule, or procedure. The Office of Inspector General shall conduct an investigation of the incident. The warden shall complete Form DC6-296, Non-Compliant Use of Force/Warden Disposition Report, should the review of referred

cases lead to a determination that a procedural violation occurred. All disciplinary actions shall be forwarded to the Human Resources Section upon completion. Form DC6-296, Non-Compliant Use of Force/Warden Disposition Report, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500,

<http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>

<http://www.flrules.org/Gateway/reference.asp?No=Ref-01703>. The effective date of the form is XX/XX 07/02.

(g) through (k) No change.

(11) through (12) No change.

Rulemaking Authority 944.09 FS. Law Implemented 776.012, 776.06, 776.07, 843.04, 943.1717, 944.09, 944.35, 945.025, 945.04, 957.05 FS. History—New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, 7-25-02, 8-25-03, 2-25-04, 11-7-04, 4-17-05, 8-1-05, 3-2-06, 9-18-06, 10-4-07, 3-3-08, 8-4-08, 1-6-09, 5-26-09, 4-8-10, 9-13-10, 3-22-11, 12-16-12, 8-11-13, 11-5-13, 1-10-18, _____.