

March 31, 2017

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NOS.:RULE TITLES:

33-602.210 Use of Force

33-602.211 Restraint of Pregnant Inmates

33-602.212 Escort Chair

PURPOSE AND EFFECT: The purpose and effect of the amendment is to make Rule 33-602.210, F.A.C. more clearly set forth Department of Correction's policy, to reorganize it to make it more understandable, to add several definitions to the rule, and to otherwise improve the rule. The purpose and effect of amending Rules 33-602.211 and 33-602.212, F.A.C. is to make those minor changes that are necessitated by the changes to Rule 33-602.210, F.A.C..

SUMMARY: Rulemaking was initiated for Rule 33-602.210, F.A.C. to add the definition of various terms used in this rule; to require the inclusion of certain de-escalation information on the video of an organized use of force involving inmates who are classified as S-2 or higher; to remove several forms that are incorporated in the rule; to require de-escalation efforts be made to prevent an organized use of force on inmates classified as S-2 or higher; to designate an inmate's refusal to relinquish control of the cell's food flap as a situation that would give rise to an organized use of force subject to certain requirements; to allow for the use of non-deadly force to reasonably restrain an inmate to permit the administration of necessary mental health treatment; to align the justifications for use of force better with applicable statutory provisions; and to make several other changes suggested by the ACA. Rules 33-602.211 and 33-602.212, F.A.C. are being amended to remove references to a form that is being removed from Rule 33-602.210, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), FS. Any person who wishes to provide information regarding the statement of estimated regulatory costs or Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.241 FS.

LAW IMPLEMENTED: 776.012, 776.06, 776.07, 843.04, 944.02, 944.09, 944.241, 944.35, 957.05 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kyle Magee, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial Rewording of Rule 33-602.210 follows See Florida Administrative Code for present text.

33-602.210 Use of Force.

(1) Definitions.

(a) Controlled Conditions – Circumstances in which the inmate upon whom force would be used is secured in a cell, shower room, recreation enclosure, isolation management room, or similarly secure setting, and is not causing, or posing a threat of, any harm to themselves or others.

(b) Correctional Emergency Response Team – A team comprised of staff trained in special tactics including the use of deadly force for the intervention and resolution of life-threatening crisis events.

(c) Crisis Intervention Techniques (CIT) – Methods used to offer immediate, short-term help to individuals who experience an event that produces emotional, mental, physical, and behavioral distress or problems.

(d) Crisis Intervention Techniques Training – This training assists staff persons in applying non-force de-escalation techniques and strategies in the care and control of inmates suspected to be mentally ill.

(e) CS – Orthochlorobenzal Malononitrile or Orthochlorobenzylidene Malononitrile – An irritant agent that causes a burning sensation and tearing of the eyes, nasal discharge, and skin and upper respiratory irritation.

(f) Custodial grasp – A department staff person’s firm grasp of the tricep(s) or elbow(s) of an inmate who is being transported internally and who is proceeding appropriately.

(g) Deadly Force – Force that is likely to cause death or great bodily harm.

(h) Direct Firing – The practice of firing specialty impact munitions directly into a group of rioters with a target area of the waist or below from no less than a minimum distance designated by the manufacturer of the munitions.

(i) Electronic Immobilization Device (EID) – A device (either hand-held, shield, or belt/band type) that delivers an immobilizing electric charge of pre-determined and preset duration.

(j) Emergency Action Center – The unit located in the Central Office charged with receiving reports regarding serious incidents, such as riots and escapes, from all Department of Corrections’ (Department) facilities and reporting the information to the proper authorities. This unit also receives requests for criminal histories, warrant confirmations, and offender location requests from law enforcement agencies throughout the United States.

(k) Incident Commander – The employee responsible for the management of emergency incidents, such as riots and natural disasters.

(l) Isolation Management Room – A room in an infirmary or inpatient mental health unit that is used for observation and management of inmates who present symptoms of acute mental impairment, inmates who present a risk of serious self-injurious behavior, and other inmates in need of observation for mental health reasons.

(m) Less-Lethal Weapons - Weapons whose standard use is less likely to cause death or great bodily harm than are firearms loaded with lethal ammunition. Less-lethal weapons include, but are not limited to, electronic immobilization devices (EIDs), batons, the types of chemical agents mentioned in subsection (6), and specialty impact munitions.

(m) Less Than Lethal Force – Any force that is neither intended nor likely to cause death or serious bodily harm.

(n) Observation Cells – Cells in areas outside of an infirmary/inpatient mental health unit that meet the safety and custodial standards of an isolation management room.

(o) OC – Oleoresin Capsicum (pepper spray) – An inflammatory agent that causes tearing and involuntary closing of the eyes, nasal discharge, sneezing, disorientation, and the sensation of respiratory distress. OC is the primary chemical agent to be utilized for cell extractions and other in-cell uses unless circumstances exist as outlined below.

(p) Organized Use of Force – Any force that may be administered to control, escort, or geographically relocate an inmate, or to quell a disturbance in controlled conditions, when the immediate application is not necessary to prevent a hazard to any person.

(q) Psychiatric restraints are devices, procedures, or techniques used to restrict movement or behavior as to greatly reduce or eliminate the ability of an individual to harm him/herself or others, and include, but are not limited to, four-point and five-point psychiatric restraints.

(r) Qualified Mental Health Professional – A clinician who is credentialed and approved by the Department’s credentials review committee or a Department contractor to provide mental health treatment and services to an inmate assigned to a given level of mental health care.

(s) Rapid Response Team – A team comprised of Correctional Officers specially trained in less-lethal and lethal munitions, chemical munitions, crowd control, and riot suppression.

(t) Reactionary Use of Force – Any force that must be administered quickly or immediately to compel the cessation of an inmate’s violence or resistance to orders.

(u) Reasonable Force – Any force that is not excessive for protecting oneself or another or for gaining an inmate’s compliance with a lawful order.

(v) Rubber Ball Rounds – Multiple pellets fired from cartridges at the lower extremities of rioters and designed to inflict pain compliance.

(w) S-2 – The mental health classification denoting mild impairment in the ability to meet the ordinary demands of living within general inmate housing (which includes segregation) due to a diagnosed mental disorder. The impairment in functioning is not so severe as to prevent satisfactory adjustment in general inmate housing with provision of mental health services. Clinical management of the disorder may require at least periodic administration of psychotropic medication, which the inmate may exercise his or her right to refuse.

(x) S-3 – The mental health classification denoting moderate impairment in the ability to meet the ordinary demands of living within general inmate housing, due to a diagnosed mental disorder. The impairment in functioning is not so severe as to prevent satisfactory adjustment in general inmate housing with provision of mental health services. Clinical management of the disorder may require at least periodic administration of psychotropic medication, which the inmate may exercise his or her right to refuse.

(y) Self-Injurious Behavior – Behavior in which an inmate is attempting to hang him/herself, possesses or utilizes an instrument for self-injury or any other action in which risk to the inmate's life or safety is imminent.

(z) Great Bodily Harm – A physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(aa) Shift Supervisor – The highest ranking correctional officer of the on-duty shift.

(bb) Skip Firing – The practice of firing specialty impact munitions 5-7 feet in front of rioters, thereby deflecting the munitions into the legs of the rioters.

(bb) Specialty Impact Munitions – Munitions designed to incapacitate, distract, and control a subject with a relatively low likelihood of life-threatening injury.

(cc) Uninvolved CIT-Trained Staff Member – A CIT-trained staff member who is not involved in the events leading up to the need to use force.

(dd) Wooden Baton Rounds – Multiple wooden projectiles fired from a 37/40-mm weapon, designed to be skip fired into the lower extremities of rioters to inflict pain compliance.

(2) Authorization to Use Force

(a) The following authorization to use force is subject to every other provision of this rule. Department staff, and staff of a contractor who are responsible for supervising inmates, are authorized to apply force on an inmate only when they reasonably believe it to be necessary to:

1. Defend himself, herself, or others against imminent or already occurring unlawful force;
2. Prevent a person from escaping from a state correctional institution or any facility when the staff member reasonably believes that person is lawfully detained in such institution or facility;
3. Gain custody of an escaped inmate;
4. Prevent damage to property;
5. Quell a disturbance;
6. Overcome an inmate's physical resistance to a lawful command;
7. Prevent an inmate from inflicting any self-injury or from attempting to commit suicide; or
8. Restrain an inmate to permit the administration of medical treatment under the supervision of a physician or his or her designee when treatment is necessary to protect the inmate from self-injury or death, or to protect the health of others.

(b) Force is necessary only when it would be unreasonable to pursue other means of attempting to achieve one of the objectives listed in (2)(a). Force is an option of last resort, to be used only when non-force options were attempted and were ineffective or when the circumstances reasonably preclude attempting or continuing non-force alternatives to achieve one of the objectives listed in paragraph (2)(a).

(c) Any force used must be reasonable, lawful, and of the minimum amount necessary to achieve the objective(s) from the above list that justified force.

(d) The custodial grasp is not force.

(e) Mere verbal abuse is not a sufficient basis to authorize the use of force.

(3) Determination of Method of Force

(a) If a department staff member determines that force should be used, he or she must determine which of a variety of methods of force to use or to seek to use.

(b) For many of the use of force situations faced by Department staff members and contractor staff, Department rule or policy provides specific guidance as to which method(s) would be authorized or prohibited. However, if Department rule or policy does not provide specific guidance for the use of force situation faced by a Department staff member or contract employee, the person pursuing the use of force should pursue a method, or methods, of force that they reasonably believe, based on their training and experience, is lawful, consistent with Department rules and policies, and is most appropriate under the circumstances.

(4) Use of Force – General and Miscellaneous Provisions.

(a) Many of the guidelines and restrictions for the use of force set forth in this rule pertain only to a specific method of force, and sometimes to only the reactionary or organized use of such a method. However, where applicable, the provisions of this subsection apply to the use of force generally.

(b) Miscellaneous Use of Force Protocol.

1. Any use of force shall cease whenever an inmate complies with orders or ceases the behavior which justified the use of force.

2. Use of force shall not be applied for punishment. Physical restraints such as handcuffs, leg irons, flex cuffs, and other such devices shall only be used for restraint purposes and not for punishment.

3. Inmates shall not be carried, dragged, or lifted by restraint devices. This shall not be construed to prohibit the use of an escort chair pursuant to Rule 33-602.212, F.A.C.

4. Hands-on force shall not be used if injury is less likely to occur by using chemical agents, specialty impact munitions, or EIDs.

5. If an inmate who is secured in a cell fails to comply with a lawful command to cease his or her prevention of staff from closing a food flap/cuff port cover, staff shall pursue an organized use of force.

6. Reactionary use of force to prevent an inmate from self-harm shall only be used in the most extreme cases when the action of the inmate has caused observable injuries, the inmate is attempting to hang him/herself, or the inmate possesses an instrument for self-injury and the risk is imminent and life threatening.

(c) Video Recording Protocol.

1. General.

a. Video recordings of all use of force incidents shall continue uninterrupted from commencement of recording until the situation is stable and under control and the inmate is placed in a secure cell or transport vehicle for transfer.

b. The camera operator shall, to the best of his or her ability, ensure that all staff actively involved in any use of force and captured within the view finder of the camera is identified by rank/title and name.

2. Reactionary Use of Force.

a. A video camera operator shall commence recording all reactionary use of force incidents upon arrival at the scene as soon as possible. At a minimum, the camera operator shall verbally identify themselves as well as stating the date, time, and location of the incident when commencing recording.

b. In the event of a reactionary use of force, once the camera operator and shift supervisor arrive on the scene, the shift supervisor upon assessing the situation and being properly briefed shall make a brief statement noting the reason(s) for the use of force. This shall be prior to the conclusion of recording and include:

(I) The rank/title and name of staff involved in the use of force;

(II) The rank/title and name of any staff who were present, but not involved in the use of force;

(III) The name and DC number of the inmate(s) involved;

(IV) The type and amount of force used;

(V) Any other pertinent information that he or she deems relevant.

3. Organized Use of Force.

a. All organized use of force incidents shall be video recorded unless exigent or emergency circumstances prevent such action.

b. The shift supervisor during any organized use of force shall include in each video recorded markers of the following:

(I) Date and time of the recording;

(II) Location of the recording;

(III) Name and rank of supervisor(s) present;

(IV) Name and rank of person authorizing use of chemical agent (if applicable);

(V) Name and DC number of the inmate involved in the use of force;

(VI) Name of the camera operator;

(VII) Brief description of efforts taken to stabilize or control the inmate prior to the application of force;

(VIII) Final warning order administered by a supervisor or incident commander;

(IX) Clear, concise, and audible verbal warning to the inmate of pending application of force or entry into cell for extraction;

(X) Application of chemical agents;

(XI) Verbal order for a decontamination shower;

(XII) Decontamination of the inmate;

(XIII) Any medical examination performed after the use of force;

(XIV) Physical escort and placement in a decontaminated cell after incident;

(XV) Verbal refusals by inmates to participate in decontamination or medical examination (if applicable);

(XVI) The name and rank of each Department staff member present.

c. Anytime there is a change in the on-scene supervisor or other staff during an application of an organized use of force, a new video recording will be initiated and the requirements in subparagraph (4)(c)1., and sub-subparagraphs 3.a. and b., shall be repeated.

d. In the event that the inmate ceases his or her disruptive behavior after being issued a final order while the shift supervisor and camera operator are present with a camera, but resumes such conduct after the shift supervisor and camera operator have departed the area prior to an application of chemical agents, the shift supervisor shall recommence video recording.

e. In all cases where the administration of chemical agents is subsequently required, video recording will resume prior to the application of chemical agents, to include a statement referring to the originating incident, and continue until completion as directed in sub-subparagraph (4)(c)1.a.

4. Post-Use of Force. Video recordings of post-use of force medical exams shall be conducted through a window or at a distance in such a manner so as to provide the maximum amount of privacy needed for the exams and so as to limit the disclosure of inmate protected health information to the minimum amount necessary. The fact that the footage is taken through a window or at a sufficient distance is to keep communication between the inmate and medical staff confidential and to ensure that only the minimum amount of protected health information—e.g., visible injuries or the lack thereof—is disclosed. Inmates involved in an organized use of force shall be video recorded continually until they have been placed in a vehicle for transportation or in a secure cell.

(5) Use of Chemical Agents.

(a) General.

1. All chemical agents shall be used with caution and in accordance with the manufacturer's instructions.

2. Authorization for an organized use of force application of chemical agents within an institution may only be given by the warden or designee.

3. Authorization to Use CS instead of OC.

a. CS may be used during cell extractions and other in-cell incidents if OC applications previously administered were ineffective in obtaining compliance or ceasing disruptive actions or physically threatening behavior.

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 use of force narrative report as having been applied and ineffective.

c. The warden or designee may authorize the use of CS as an initial or primary chemical agent during in-cell applications whenever an inmate attempts to deploy a shield, barrier, or obstruction in an obvious attempt to avoid contact with an application of chemical agents. Justification for the use of CS whenever an inmate barricades or presents physical obstructions to counter chemical agent applications shall be noted on the use of force narrative report.

4. Only staff members who have received training in the use of chemical agents may discharge, carry, possess, or use chemical agents within an institution, except during emergencies such as riots or disasters or at the direction of the warden or designee.

(b) Reactionary use of chemical agents on inmates outside of controlled conditions.

1. Officers may utilize chemical agents to compel the cessation of an inmate's violence or resistance to orders. During emergency situations with multiple inmates in an outside area, chemical agents may be applied to quell the disturbance. In reactionary use of force situations, chemical agents are authorized for disbursal in a continuous manner until the moment the inmate(s) become(s) compliant with lawful orders.

2. An inmate shall at no time be removed from his or her assigned cell or placed at an alternate location, have clothing removed, or be restrained for the purpose of chemical agent application. If an officer administers chemical agents while an inmate is handcuffed or wearing restraints, and removal of such restraints was not possible prior to the application, the officer shall record an explanation of the circumstances in the use of force narrative report.

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

1. The warden or designee shall be consulted and his or her written use of force authorization must be obtained for any organized use of force, prior to application of chemical agents. The person who was 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 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. The housing unit supervisor will counsel with the inmate, ordering compliance with lawful commands or cessation of the behavior that would justify using force.

b. If the inmate remains non-compliant, the confinement lieutenant, close management lieutenant, or shift supervisor will counsel with the inmate, ordering compliance with lawful commands or cessation of the behavior that would justify using force.

c. If the inmate remains non-compliant, prior to issuance of a final order to an inmate ordering compliance or cessation of the behavior that would justify using force, the confinement lieutenant, close management lieutenant or shift supervisor shall have control room staff check the Bed Inventory List to ascertain whether the inmate involved is classified as S-2 or higher. During regular work hours, if the involved inmate is S-2 or higher, the housing lieutenant or shift supervisor shall have a qualified mental health professional, if available, or CIT-trained security staff member provide crisis intervention and attempt to de-escalate the situation and prevent a use of force. After regular work hours, the housing lieutenant or shift supervisor shall have an uninvolved CIT-trained officer speak with the inmate in an attempt to de-escalate the situation and prevent a use of force.

d. If the inmate remains non-compliant or continues in his 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) Uninvolved inmates in the cell or immediate area shall be given the opportunity to exit or depart the potentially affected area, if such relocation does not create or cause a hazard to the safety of others.

(II) The shift supervisor shall review the risk assessment for the use of chemical restraint agents and electronic immobilization devices to determine whether the inmate has a medical condition that may be exacerbated by the intended force. 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. However, 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. 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.

(III) The warden or designee shall be contacted for authorization to use chemical agents or other force in the area. The warden shall not give authorization if the use of chemical agents or other force is not appropriate under the circumstances.

(IV) Chemical agents or EIDs shall be retrieved from secure storage or preparations shall be made for a forced cell extraction.

(V) Video recording procedures shall be initiated as outlined in subsection (4) of this rule.

(VI) A confinement or close management lieutenant or shift supervisor shall issue a clear concise and audible final order to the inmate(s) ordering compliance. The inmate shall be advised chemical agents shall be used, if necessary, to gain compliance. If the inmate complies, the compliance shall be video recorded for 3 minutes and then the video recording shall cease. If, during the same shift, the inmate resumes his/her disruptive behavior, video recording shall resume prior to the application of chemical agents or other force. This recording shall include a statement referring to the originating incident, and continue from this point until the decontaminating shower is given, medical examination is offered, and the inmate is returned to secure, decontaminated housing or transport vehicle.

(VII) If, after 3 minutes, the inmate remains non-compliant with the final order of the housing lieutenant or shift supervisor and continues to disobey lawful orders or continues the behavior that would justify using force, the shift supervisor shall administer chemical agents upon the inmate in the amount of no greater than three (3) one-second bursts.

(VIII) If the inmate's disruptive behavior continues after the initial application, a subsequent application of chemical agents in the amount of no greater than three (3) one-second bursts may be administered upon an inmate after at least five (5) minutes have elapsed since the initial chemical agent application.

(IX) If the inmate does not comply with orders after a minimum of five (5) minutes have elapsed from the conclusion of the second application of chemical agents, the warden or designee shall be consulted to evaluate what further response, which may include a third application of chemical agents, is necessary to regain compliance or control of the inmate.

e. Protocol following a third application of chemical agents.

(I) The warden or designee shall be consulted to evaluate further responses. Additional use of force narrative reports shall be used to document the incident. The shift supervisor shall ensure all use of force applications are properly documented in a use of force narrative report.

(II) The warden or designee shall authorize the activation of a cell extraction team as necessary to obtain safety or compliance; however additional applications of chemical agents shall not be administered or discharged upon an inmate after the initial three applications until at least sixty (60) minutes have elapsed from the time of the last application.

f. Post-chemical agent use protocol.

(I) Once the inmate becomes compliant with orders and ceases his or her disruptive behavior, Department staff shall initiate decontamination protocol as outlined in paragraph (9)(b) of this rule.

(II) Once decontamination protocol is complete, the inmate shall be offered medical examination as outlined in paragraph (9)(c) of this rule.

(III) Reports for the completed use of force shall be completed in accordance with paragraph (9)(a) of this rule.

(6) Use of Less-Lethal Weapons.

(a) Less-lethal weapons may be used in either reactionary or organized uses of force.

(b) The use of electronic immobilization devices (EIDs), batons, the types of chemical agents mentioned in this section, specialty impact munitions, or other less-lethal weapons within institutions shall be authorized, only by the warden or designee, when their use is necessary, their use would comport with the other provisions of this rule, and the use of the chemical agents referenced elsewhere in this rule would be either inappropriate or ineffective. Such weapons shall be utilized by officers who have completed the Department's standard training on their use and shall be used in accordance with manufacturer specifications.

1. EIDs.

a. EIDs shall not be used on anyone other than an inmate during an authorized use of force, or upon any person to prevent serious injury or death. If possible, the shift supervisor shall counsel with the inmate, issue the final order to the inmate ordering compliance or cessation of disruptive behavior, and be present prior to the use of an EID at an institution or during work detail or transport.

b. EIDs authorized by the Department include:

(I) Handheld EIDs, which shall be the intermediate level of force alternative, issued primarily for the purpose of transportation and supervision of inmates outside the institution;

(II) Electronic shields, which may be used by force cell extraction teams; and

(III) Electronic restraint belts, which are authorized to be placed on an inmate for appearance in court, during transportation, or when the inmate is determined to be high risk or to have a history of violent behavior.

c. Prior to any organized use of force of the type described in sub-sub-subparagraph (6)(b)1.b.(II) above, the shift supervisor shall review the risk assessment for the use of chemical restraint agents and EIDs to determine whether the inmate has a medical condition that may be exacerbated by the intended force. If the inmate has a medical risk factor for EIDs, they 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 EIDs. However, if the inmate has a medical risk factor for EIDs, this does not automatically preclude the use of chemical agents on the inmate. Medical staff shall be consulted about physical conditions of an inmate that may be aggravated by the application of EIDs unless safety concerns prevent prior consultation.

2. Specialty impact munitions. Specialty impact munitions shall only be used after all other reasonable alternatives to regain control have been exhausted and their use is necessary. They are intended to be used as an interim force response between the use of chemical agents and deadly force.

a. Specialty impact munitions shall be used only by the Department's designated armed response teams, Rapid Response Teams, Correctional Emergency Response Teams and/or trained staff as authorized by the Deputy Secretary of Institutions for use during riots and disturbances and to respond to staff assaults. They are intended as a less-lethal alternative to the use of deadly force. Specialty impact munitions shall not be used on anyone other than an inmate during an authorized use of force.

b. The following specialty impact munitions have been approved for use by the Department:

(I) 37/40-mm rubber ball pellet rounds;

(II) 12 gauge rubber ball pellet rounds – high velocity;

(III) 12 gauge rubber ball pellet rounds – low velocity;

(IV) 12 gauge drag stabilized (bean bag) rounds;

(V) 37/40-mm wooden baton rounds (skip fired 6 feet in front of target, no direct fire);

(VI) Stinger rubber ball grenades (stun grenade);

(VII) 40-mm impact munitions (OC, marking and inert foam) long range; and

(VIII) 40-mm impact munitions (OC, marking and inert foam) short range.

c. Selection and deployment of specialty impact munitions during a riot or disturbance or other instance where less-lethal force options are needed shall be authorized by the Secretary, regional director, or warden or designee.

d. Specialty impact munitions shall not be deployed in the direction of any individual in a manner contrary to the manufacturer's directions or at a distance of less than that recommended by the manufacturer, unless the threat of bodily harm or death justifies the escalation to deadly force.

3. Pepperball Launching System (PLS). Subject to the other provisions of this rule and Department policy, the PLS shall be used instead of aerosol-type chemical agents when aerosol-type chemical agents would not be effective due to weather conditions or when their use could subject the officer or uninvolved inmates to injury. The PLS shall be used only by restricted labor squad supervisors and exercise officers for confinement, close management, maximum management, and death row populations. The PLS shall only be employed by officers who have completed the Department's standard trained in their use and effects.

a. General Provisions.

(I) The Deputy Secretary of Institutions shall designate those institutions authorized to use the PLS.

(II) PLS is classified as less-lethal at all distances, but, unless the incident necessitates otherwise, it only should be utilized at a distance of five (5) feet or greater to prevent the inmate from attempting to take control of the launcher.

b. PLS In Controlled Conditions.

(I) Written authorization from the warden or designee shall be received prior to utilization of the PLS for situations other than those described in sub-subparagraph (6)(c)3.c., below. This written authorization shall detail the reasons it was necessary to utilize the PLS in addition to or in place of aerosol-type chemical agents.

(II) In controlled situations when time constraints are not an issue, the PLS can only be used if authorized by the warden or designee. The warden or designee shall only authorize trained and certified officers to use the PLS.

c. PLS Outside of Controlled Conditions.

(I) The PLS is authorized for use to quell mass disturbances, violent events, assaults, and fights among inmates assigned to restricted labor squads. Authorized activation of the PLS by staff assigned to restricted labor squads does not constitute deadly force.

(II) PLS is authorized for use in confinement, close management, maximum management, and death row recreation areas to quell mass disturbances, violent events, assaults, and fights among inmates.

4. Noise flash distraction devices. Noise flash distraction devices shall be used only by the Department's Rapid Response Teams, Correctional Emergency Response Teams and/or other trained staff as authorized by the Deputy Secretary of Institutions for the purpose of creating a momentary diversion to assist correctional staff in restoring order in hostile situations. These situations include hostage rescue, crowd control and certain escape and recapture efforts. The following noise flash distraction devices have been approved for use by the Department:

- (a) Hand-launched, reloaded noise flash distraction devices;
- (b) Hand-launched, single use noise flash distraction devices;
- (c) Shotgun-launched (aerial distraction) noise flash distraction devices.

(7) Use of Deadly Force.

(a) Use of Deadly Force. Except as set forth elsewhere in this subsection, an officer is authorized to use deadly force only when the officer believes that such force is necessary to prevent imminent death or great bodily harm to him or herself or another.

1. Use of Firearms. The procedures set forth in this rule shall be readily available at all institutions and facilities for staff review.

2. Firearms or weapons shall be issued to an officer only upon instructions of the warden or designee, chief of security, or shift supervisor by the arsenal officer or the officer designated to issue weapons. Officers shall not intentionally discharge a firearm loaded with lethal ammunition—as opposed to less-lethal ammunition—at or in the direction of another person except under the following circumstances and after all reasonable non-lethal alternatives have been exhausted, and there is no reasonable danger to innocent bystanders:

- a. To prevent an escape of an inmate who is actively attempting to flee custody;
- b. To prevent any conveyance to gain unauthorized entry into or exit from a correctional institution;
- c. To prevent death or great bodily harm; or
- d. To quell a riot.

3. Subparagraph (7)(a)2. shall not be read to say that there are always reasonable non-lethal alternatives to the intentional discharge of firearms loaded with lethal ammunition. In many circumstances there is no such alternative.

4. Firearms and other weapons are approved for use by the Department's designated armed response team, Rapid Response Teams, Correctional Emergency Response Teams and/or other trained staff as authorized by the Deputy Secretary of Institutions for use during riots and mass disturbances. The Incident Commander shall determine the type of authorized lethal or less-lethal ammunition that is necessary to quell the riot or mass disturbance, and shall give orders accordingly.

5. The Incident Commander shall determine which weapons are necessary to quell the riot or mass disturbance, and shall give orders accordingly.

6. Firearms shall not be discharged:

a. In any case where there is a reasonable belief that the life of a bystander may be endangered by discharge of the firearm;

b. From any moving vehicle unless such action is reasonably believed necessary to protect oneself or another from imminent death or great bodily harm;

c. As a warning, except during escapes or when the officer reasonably believes it necessary to protect oneself or another from imminent death or great bodily harm, and time permits to do so.

d. Until the employee reasonably believes that the person to be fired upon is an escaping department inmate;

e. Except after all reasonable non-lethal alternatives have been exhausted;

f. On the mere suspicion that a crime, no matter how serious, has been committed; or

g. Except as authorized by Florida law.

(b) Because helicopters or other aircraft may be used during an escape or assault, the following policy shall apply:

1. When it can be done safely, actions other than firing weapons, such as waving arms in a manner to indicate disapproval to enter an area, shall be made in an attempt to cause the aircraft to leave.

2. If these attempts fail, the aircraft shall be allowed to land.

3. All inmates shall be kept away from the aircraft.

4. The aircraft shall be secured using armed security staff and shall be prevented from being flown away by securing the flight equipment with locks and chains, without causing damage to the aircraft, so that the aircraft can safely be removed by the proper authorities.

5. If the landing occurs due to an in-flight emergency—e.g., engine failure—staff shall maintain security of the aircraft and all occupants until their removal from the site.

6. Once the aircraft lands, efforts shall be directed to stop any inmate from boarding the aircraft. Staff are authorized to shoot any inmate attempting to escape in accordance with this rule. When circumstances permit, a verbal warning to halt and a warning shot shall be fired prior to the inmate reaching the aircraft to board.

7. If weapons are fired from an aircraft, Department personnel are authorized to return fire and use deadly force to protect themselves and others upon property of the institution.

8. Firearms shall not be used on departing aircraft after leaving contact with the ground. Immediate notification, without delay, shall be made to the law enforcement agency of local jurisdiction and the Office of Inspector General upon an aircraft landing on Department property. The Office of Inspector General shall notify the Florida Department of Law Enforcement, Federal Bureau of Investigation, and the Federal Aviation Administration.

9. All inmates shall receive orientation in regard to this subsection of the rule. This subsection of the rule shall be made a part of the Department's orientation program at all reception centers. This orientation shall contain instructions indicating that should any aircraft attempt to land on or near the property of any Department facility, inmates are required to move away from the aircraft. Movement toward the aircraft by an inmate shall be viewed as an escape attempt and shall subject the inmate to the use of deadly force to prevent him or her from escaping.

(c) Use of a conveyance to gain unauthorized entry into or exit from a correctional institution or facility. The institution or facility shall take the following steps to prevent any conveyance or vehicle from being used to gain unauthorized forced entry into or forced exit from its perimeter area:

1. Time permitting, a verbal order to halt shall be issued followed by a warning shot if the vehicle fails to stop.

2. If the vehicle does not stop and continues to be driven or operated in a manner that indicates the driver intends to or is in the process of forcibly entering or exiting the perimeter, officers may use deadly force to prevent imminent death or great bodily harm or to prevent the escape of an inmate.

(d) Use of Force to Prevent Escape or to Recapture Escapee. Officers are authorized to use force, including deadly force, as necessary to prevent the escape of an inmate from a correctional institution.

1. Escape attempts from inside an institutional perimeter where armed perimeter staff are assigned:

a. Institutions with a double perimeter fence. A loud verbal warning shall be made, if possible, instructing the inmate to stop or halt prior to the inmate's contact with any inner perimeter fence. A warning shot may be safely fired prior to any inmate's attempt to cross or pass over, through, or under the inner perimeter fence. The firearm shall not be fired at the inmate until he or she has begun to cross or pass over, through, or under the inner perimeter fence.

b. Institutions with a single perimeter fence. A loud verbal warning shall be reasonably made where possible instructing the inmate to stop or halt and a warning shot safely fired prior to the inmate's contact with the perimeter fence. A firearm shall not be fired at the inmate until he or she has begun to cross, or to pass over, through, or under the perimeter fence.

c. Warning shots are authorized only as provided herein. In all other instances where deadly force is authorized during inmate escape attempts, a loud verbal warning shall be issued if time and circumstances permit.

2. Apprehension of escaped inmates once they are outside an institutional perimeter.

a. Officers are considered to be in active pursuit of an escaped inmate who has fled from an institution or supervised work detail so long as the escape commander determines that the escape recovery efforts are active. An officer is authorized to use deadly force, after giving a loud verbal warning for the inmate to stop or halt the escape

attempt, when the inmate is demonstrating a refusal to cease active flight or escape from an institution or supervised work detail. A firearm shall not be fired if it creates a hazard to persons other than the inmate.

b. The officer in charge of the incident shall be the Incident Commander until relieved by a higher authority or the incident is turned over to a law enforcement agency. The Incident Commander of the escape attempt shall determine when active recapture efforts are terminated. Upon order of incident termination, the Incident Commander of the escape attempt may provide assistance to any law enforcement agency that is conducting an investigation of the incident. Officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force pursuant to Florida law.

c. Officers may provide assistance to any law enforcement agency that is seeking to capture or take into custody any inmate who has failed to return from a furlough or non-supervised outside assignment or who has escaped from any work release center. Correctional officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force pursuant to Florida law.

3. Escape attempts by inmates who are being transported or escorted outside institutional perimeters, e.g., court appearances, hearings, and medical visits, or while being supervised while in a hospital for treatment, are included within the purview of this subsection.

(e) Post-Firearm Discharge Protocol.

1. In addition to the any applicable post-use of force protocol set forth in subsection (9) of this rule, Department officers shall comply with the following protocol after a firearm is discharged. Any officer who discharges a firearm shall complete a use of force detailed narrative report. Any officer who has fired a weapon during the performance of his or her duty shall, as soon as is reasonably possible, notify his or her supervisor. Such shift supervisor shall, as soon as reasonably possible after learning of such an incident, have the scene secured and notify the Office of Inspector General. The senior officer in charge at the scene of the incident shall ensure all evidence is undisturbed, including locations of empty cartridges, until processed by a law enforcement agency or the Office of Inspector General.

2. Any officer who accidentally or negligently discharges a Department firearm or any firearm upon institutional property shall report the incident to the warden or designee without unnecessary delay and shall complete a use of force detailed narrative report.

(8) Use of Force Considerations and Protocol Unique to Inmates in Mental Health Treatment Settings.

(a) It is often necessary to use force on inmates who are in the mental health treatment settings set forth in the following paragraph. Though these situations present unique issues and challenges, they are subject to all the provisions of this rule, including the following paragraph. Where this subsection may depart from use of force protocol set forth in other subsections of this rule, the provisions of this subsection shall nonetheless bind Department staff members in situations involving those inmates described in the following paragraph.

(b) Batons, chemical agents, EIDs, specialty impact munitions, and other authorized less-lethal weapons shall not be used on inmates who are housed in isolation management rooms or observation rooms for the purpose of mental health services, assigned to inpatient mental health care in an infirmary, transitional care unit, crisis stabilization unit, corrections mental health institution, or other mental health treatment facility, as such facilities are defined in Rule 33-404.103, F.A.C., except when force reasonably appears necessary to:

1. Prevent an inmate or inmates from taking control of the health unit;

2. Prevent an inmate or inmates from taking a hostage;

3. Prevent an inmate or inmates from escaping;

4. Prevent an assault on staff or other inmates;

5. Stop an ongoing assault on staff or inmates;

6. Disarm an inmate in possession of a weapon capable of causing injury to staff;

7. Subdue a take-over of the health unit; or

8. Free a hostage.

(c) As to the objectives set forth in subparagraphs (8)(b)1.-4., force is necessary only where initiating or continuing non-force de-escalation of the situation by mental health staff would likely result in failure to achieve the objective.

(d) As to the objectives set forth in subparagraphs (8)(b)5.-8., force is necessary only where initiating or continuing non-force de-escalation of the situation by mental health staff would likely result in serious injury to the

inmate on whom force would be used, any injury to any other person, or a breach of the Department's duty to maintain the order, security, and proper functioning of the institutions.

(e) Use of Psychiatric Restraints.

1. Psychiatric restraints are devices, procedures, or techniques used to restrict movement or behavior as to greatly reduce or eliminate the ability of an individual to harm him/herself or others, and include, but are not limited to, four-point and five-point psychiatric restraints.

2. The warden or designee may authorize placing an inmate in psychiatric restraints after consultation with a member of health services staff. Approval from the warden or designee shall be obtained prior to any inmate being placed in psychiatric restraints. Health services staff shall review the medical record of the inmate prior to advising the warden or designee of known medical conditions that would affect the health of the inmate should the inmate be placed in psychiatric restraints. There are some instances when an inmate must be placed in psychiatric restraints immediately after having chemical agents applied. In such situations, the inmate shall be monitored by health services staff without interruption. Medical attention shall be provided, upon detection of physical distress, without unnecessary delay. No inmate shall be restrained in a manner which restricts breathing.

3. When the use of psychiatric restraints is authorized, and the inmate does not offer resistance to the application of the restraints, the completion of Form DC6-210, Incident Report, shall be required. Form DC6-210, Incident 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-01697>. The effective date of the form is 12-12. The application of the psychiatric restraints will be videotaped. The videotape, Form DC6-210, a written use of force authorization, Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, shall also be completed in their entirety with applicable data or the letters "N/A" used to indicate inapplicability and shall be forwarded to the warden or acting warden for review within one working day. Each institution shall retain the reports for the applicable retention period. If at any time prior to or during the application of the psychiatric restraints, the inmate offers resistance to the application, force shall be used, if necessary and justified.

(9) Post-Use of Force Protocol.

(a) Reporting.

1. The warden or designee shall be notified without unnecessary delay any time a reactionary use of force incident occurs.

2. Any time force is used, the staff person initially using force shall complete a use of force narrative report. The completed report must contain a clear and comprehensive narrative of the circumstances that led to the use of force, the specific justification and necessity for the use of force, and a description of the actual events that occurred as well as the post-event actions. If more than one staff member was involved in the use of force, the initial staff member using force shall complete the use of force narrative report. All participants who agree with the initial staff member shall sign the use of force narrative report. Any participant who objects to information recorded by the reporting staff member or who has additional observations to add to the narrative or description of the incident written by the reporting staff member shall complete a use of force narrative report and attach it to the use of force narrative report completed by the staff member initially using force. To provide additional detail, each participant in the use of force shall also complete their own use of force detailed narrative report, and each such report shall be attached to the use of force narrative report that was written by the person initially using force. However, if a participant writes his or her own use of force narrative report, his or her use of force detailed narrative report shall be attached to their own use of force narrative report. All use of force narrative reports and use of force detailed narrative reports shall be placed in one folder or binder.

3. A use of force narrative report shall be completed by those staff involved in any application of force, reactionary or organized, that occurred during their shift. This use of force narrative report shall be completed no later than the end of the shift during which the use of force occurred, or within 24 hours of the use of force incident. All reports must be typed. No use of force narrative report may be altered, changed, or destroyed by any employee. However, staff members may submit amendments to a report at any time with authorization from the warden or designee. In such situations, the original report itself shall remain intact and shall remain as part of the file; an amendment—a separate document—shall be added to the file. The warden or designee shall then appoint a staff member of equal or higher rank than those involved in the use of force incident to collect all pertinent information

and required documentation. This information shall include the reports of all involved staff who do not agree with the account as reported in the use of force narrative report or the statements of staff witnesses, inmate witnesses, or the inmate subject. Any employee who witnesses but does not participate in a use of force and suspects inappropriate action shall complete a use of force detailed narrative report. The warden shall ensure that Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, are included in the review of all uses of force and also forwarded with the rest of the required documentation to the Office of the Inspector General – Use of Force Unit. The Office of Inspector General field offices within each region shall provide the institutions, via electronic mail, with a use of force number once one is assigned and entered into the Office of Inspector General electronic logging system.

4. Form DC6-112C, Witness Statement, shall be completed by the inmate whom force was used upon within three (3) working days of the use of force incident. This statement shall be obtained by a staff member who was not involved in the use of force or assigned to the shift on which the use of force occurred. If the inmate refuses to sign the statement the inmate's refusal shall be witnessed by two staff members. In instances where the force occurred outside of controlled conditions, the uninvolved staff member assigned to obtain witness statements shall interview a random sample of the inmate witnesses and provide them with the opportunity to submit a written statement on Form DC6-112C. Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C.

5. Any accidental or incidental discharge of a chemical agent by a staff member within any institution shall be recorded in a use of force detailed narrative report.

6. The application of force by an EID or less-lethal weapon shall be reported by completion of a use of force narrative report by the staff member who deployed the device.

7. In any case where specialty impact munitions are deployed, the incident shall be recorded on a use of force narrative report.

8. Any time a witness of a reported use of force chooses to make a written statement, or is a use of force participating staff member and chooses to provide information not included in the reporting staff member's initial use of force narrative report, such person shall complete a use of force narrative report of their own. No employee may interfere with or obstruct such reporting or order any participant or witness involved in the use of force to alter, change, or not produce a written report of an incident in which the employee was involved or which he or she observed.

9. Any employee who witnesses, has reasonable cause to suspect, or has knowledge that any inmate has been a victim or subject of an unlawful battery or has been abused in violation of law or the Department's administrative rules shall without unnecessary delay submit a use of force detailed narrative report to the warden or designee describing his or her observations, knowledge, or suspicion. No employee shall commit a battery on or engage in cruel or inhumane treatment of any inmate. The warden or designee shall forward a copy of all reports involving allegations of inmate abuse, neglect, or battery to the Office of Inspector General without unnecessary delay.

10. Staff members may use reasonable hands-on force to restrain an inmate, upon supervision and direction of a physician or medical practitioner, for the purpose of providing necessary treatment to protect the health of others or to satisfy a duty to protect an inmate against self-inflicted injury or death. The attending qualified health care provider who directs or observes medically necessary use of force shall prepare a written authorization to use force. Staff members who use force pursuant to a physician or medical practitioner's request shall prepare a use of force narrative report and a use of force detailed narrative report when actual force is used, or Form DC6-210 when restraints are applied with no physical resistance by the inmate, and the reports shall be forwarded to the warden. Any report required in the preceding sentence shall be completed and forwarded to the warden without unnecessary delay.

11. Any application of chemical agents within an institution shall be documented in a use of force narrative report. Any staff member who uses chemical agents shall record the following in the use of force narrative report:

a. Type of agent discharged;

b. Amount of agent discharged;

c. Method of administration;

d. Name of the person who authorized issuance or possession of the chemical agent;

e. Name of person who administered the chemical agent;

f. Amount of the chemical agent used; and

g. Reason the chemical agent was used.

(b) Decontamination and Monitoring After Chemical Agent Exposure.

1. Inmates who have been exposed to any chemical agent shall be constantly monitored by a staff member or officer for no less than one (1) hour after application. The affected inmate shall remain in a standing or sitting position. The monitoring staff members or officers shall immediately seek medical attention by the appropriate medical staff or competent medical authority any time signs of respiratory distress, labored breathing, excessive or persistent coughing, or chest or arm pain are evident or if unconsciousness occurs or other signs of medical distress are observed. The absence of medical staff on scene does not preclude taking action as an emergency responder. The shift supervisor shall summon a medical staff member to the physical location of an inmate who has been exposed to a chemical application.

2. All inmates exposed to chemical agents shall be ordered to shower in cool water and change inner and outer garments within 20 minutes from the last application of chemical agents, unless there is a documentable emergency resulting in an extension of this time frame. The shift supervisor or confinement lieutenant shall record the decontamination activities in a use of force detailed narrative report and on Form DC6-229, Daily Record of Special Housing. Form DC6-229 is incorporated by reference in Rule 33-601.800, F.A.C.

3. The shift supervisor shall order the inmate to submit to cuffing procedures in order to exit her/his cell for a shower and decontamination of the cell. If at any time an inmate complies with orders to submit to a shower and decontamination procedures, then normal cuffing and escort procedures shall be followed and documented. Any portion of the inmate's body, including the eyes, that was exposed to, or that came in contact with, chemical agents, including the eyes, shall be flushed with water as soon as possible after application for 2 minutes or until the affected inmate experiences relief, whichever is longer. The inmate shall be advised by the officer in charge to avoid rubbing any irritated area with a cloth or towel. Under no circumstances will oils, creams, or topical medications be applied to the inmate without approval of a member of the medical services staff.

4. If the affected inmate refuses to participate in a decontamination shower, a second order shall be given by the shift supervisor. Inmates are not allowed to refuse a shower or refuse the decontamination of their cell after exposure to chemical agents. The shift supervisor shall record in a use of force detailed narrative report that a second order was administered and the inmate refused to comply. The shift supervisor shall submit Form DC6-112F, Disciplinary Report Worksheet, for processing.

5. Any time an inmate refuses to take a shower after an application of chemical agents, medical staff shall report cell-front and explain in a clear and audible tone the purpose of a decontamination shower and potential physical implications of not completing decontamination. Medical staff members shall record notes of any decontamination consultation on Form DC4-701C, Emergency Room Record.

6. After the second refusal by the inmate the shift supervisor shall contact the warden or designee for authorization to initiate cell extraction procedures. Upon approval by the warden or designee, the shift supervisor shall instruct the cell extraction team to enter the cell and place the inmate in restraints.

7. At least two (2) team members of the same sex of the inmate will maintain custodial grasp control of the inmate and physically guide the inmate to the shower to ensure that he/she remains under cool running water for no less than 2 minutes. Any portion of the inmate's body exposed to or that came into contact with chemical agents, including the eyes, shall be flushed with water as soon as possible after application. Staff shall not inhibit the ability of the inmate to move her/his head from under the water. The inmate should be advised by the officer in charge to avoid rubbing any irritated area with a cloth or towel. Caution shall be exercised to prevent injury to both staff and inmate. During the shower, all contaminated clothing with the exception of undergarments shall be removed, and the cell shall be decontaminated and searched for contraband.

8. Upon introduction into a decontamination cell, the inmate who refused or obstructed efforts to participate in a decontamination shower shall be placed in a sitting or standing position for a minimum of sixty (60) minutes after the use of chemical agents, including any inmate who must be physically held or is incapacitated, to permit officers to place approved restraining devices on the inmate.

9. Officers shall use all reasonable and due care to avoid physically placing the inmate in any position that may contribute to positional asphyxia, restricted blood circulation, or interference with physical functions that permit life processes to occur or in any position that causes any physical injury. Restraints shall not be applied in any manner

for the purpose of administration of punishment. The inmate shall not be directed, ordered, or required to stand or sit uninterrupted if such action is intended for reasons of punishment or likely to cause injury.

10. Any uninvolved inmate within the same cell shall also be offered shower and decontamination procedures.

11. All subsequent reports, medical requirements, and reviews required for the use of chemical agents as outlined in this rule shall be completed after the use of the PLS.

(c) Medical Attention Following Use of Force.

1. Medical Attention for Inmates Following Use of Force.

a. Appropriate medical treatment shall be provided immediately or, in the case of a riot or other man-made or natural disaster, as soon as possible following resolution of the riot or disaster. Any treatment or follow-up action shall be documented in the use of force narrative report. A qualified health care provider shall examine any person physically involved in a use of force to determine the extent of injury, if any, and shall prepare a report that shall include a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician, and the physician shall prepare a report documenting the extent of the injury and the treatment prescribed. Such report shall be completed within one (1) business day of the incident and shall be submitted to the warden for initial review. The qualified health provider and physician shall use Form DC4-701C, Emergency Room Record, to document an examination following use of force. Form DC4-708, Diagram of Injury, shall be used along with Form DC4-701C to document observed or known physical injuries. A copy of the report, including referenced forms, shall be attached to the use of force narrative report. The original reports shall be filed in the inmate's medical record.

b. After any use of force, the attending physician or medical practitioner shall complete Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, with applicable data or the letters "N/A" used to indicate inapplicability. The attending physician or medical practitioner shall document the presence or absence of any injury in his or her records whenever force has been applied. Every physical examination of an inmate patient who has been the subject of an application of force shall be documented with specificity by the attending physician or medical practitioner to include extent of injury, type of injury, and a description of any injury. Any time a physician or attending medical practitioner reports reasonable suspicion of abuse of an inmate to the warden or the Office of Inspector General, it shall be recorded in the use of force detailed narrative report. Form DC4-701C, Emergency Room Record, 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-01695>. The effective date of the form is 12-12. Form DC4-708, Diagram of Injury, 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-01696>. The effective date of the form is 10-04-07.

c. Upon being summoned by a shift supervisor to the physical location of the inmate after a use of force, the medical staff member shall conduct an examination of the inmate after the decontamination process is completed. The health services staff or ranking officer present shall ensure that any inmate who has a history of experiencing or who exhibits symptoms of physical distress as a result of chemical agent exposure is immediately provided all necessary medical attention. Medical staff members shall record any observations and medical actions taken on the following forms, including the presence or non-presence of injury on a DC4-701C and DC4-708.

d. In addition to completing a medical examination of any inmate who is exposed to chemical agents or EIDs, the attending medical staff member shall make a mental health referral for any inmate classified as "S-2" or "S-3" on Form DC4-529, Staff Request/Referral, and forward it immediately for a mental health evaluation to be conducted on the inmate. Form DC4-529, Staff Request/Referral, 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-01692>. The effective date of the form is 12-12. Mental health staff shall evaluate the inmate no later than the next business day. The mental health staff member who conducts the evaluation shall recommend to the shift supervisor those measures that they believe are necessary for the safety of the inmate, including placement in isolation management, a transitional care unit, or crisis stabilization as those placements are defined in Rule 33-404.103, F.A.C. After each use of specialty impact munitions, exposed inmates shall be examined by medical personnel.

2. Medical Attention for Department Staff Members Following Use of Force.

a. Any employee who participates in the application of reactionary or organized use of force and receives or experiences any injury shall report such injury to the officer in charge. Injured staff shall be offered an opportunity to receive a medical examination.

b. Should the employee decline a post-use of force medical examination, he or she shall sign Form DC4-711A, Refusal of Health Care Services, indicating an examination was offered but declined. In those cases where an injury is claimed but not substantiated by medical examination, the statement by the medical provider shall indicate this, and the documentation shall be sufficient to support that no injury was found upon examination. Form DC4-711A is incorporated by reference in Rule 33-401.105, F.A.C.

3. Medical services staff members shall record all observations and recommendations on the following forms:

a. Form DC4-701C, Emergency Room Record.

b. Form DC4-708, Diagram of Injury.

c. Form DC4-701, Chronological Record of Health Care. Form DC4-701, Chronological Record of Health Care, 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-01694>. The effective date of the form is 4-8-10.

(10) Review Requirements.

(a) The warden or designee shall conduct a preliminary review of facts recorded in reports to determine if the application or demonstration of force was lawful and a procedurally appropriate application. All use of force incidents will be reviewed by a designee of the rank of Correctional Officer Major or above and shall include a review of all videotapes of the incident. The warden shall ensure that any designee that reviews any use of force incident conducts the review in a comprehensive manner and that, in addition to procedural concerns, the force used was necessary, justified, proper, and not excessive. Any time improperly applied or unlawful use of force is indicated in a report, the warden shall personally review the incident. The warden shall personally review the reports, and all videotapes of any use of force incident that results in outside medical treatment for the involved inmate; this includes transfers to another correctional facility specifically for medical treatment. The warden shall consult with the Health Service Administrator or other medical personnel as appropriate regarding the nature of the injuries and required treatment determined to be necessary by the outside medical entity and incorporate this information into the determination if the force used was excessive, improper, or unnecessary.

(b) If during any part of the review process there is any indication of excessive, improper, or unnecessary force, the reviewer will notify the warden, who shall conduct a personal review of all pertinent information, reports, documentation, and videotapes and notify the Office of the Inspector General – Chief or Assistant Chief of Investigations in Central Office within one business day.

(c) The warden or designee shall review the information and note any inappropriate actions in memorandum and attach the information to the use of force narrative report. The warden or designee's signature in the Warden's Review signature block on the use of force narrative report indicates that the review of the reports, and videotapes as required, did or did not reveal, in addition to procedural concerns, any indication of excessive, improper, or unnecessary force. All videotape recordings of force applications and the original and one copy of the use of force narrative report shall be forwarded to the Office of Inspector General within eleven (11) business days. Requests for extensions for use of force narrative reports to be forwarded after eleven (11) days shall require authorization from the Deputy Secretary of Institutions and the Inspector General or designee. Requests for extensions for submission of use of force narrative reports beyond eleven (11) days may be granted if required staff is unavailable for signatures due to extended leave or similar circumstances, e.g., a staff member was injured in the use of force, etc., and major incidents occurring at the institution necessitate an extension, e.g., a riot or other major disturbance, nature disaster evacuation, etc.

(d) The warden shall keep all original completed forms and a copy of the use of force narrative report(s) until notified that the final review by the Office of Inspector General is complete. All original reports pertaining to a use of force shall be retained by the warden or designee.

(e) The Office of Inspector General shall report a disposition to the warden of any use of force within fourteen (14) business days of receipt. The warden shall be noticed of any extension to the review granted by the Inspector General or designee prior to the expiration of the fourteen (14) business days. The Inspector General shall notify the warden that a case has been reviewed and action was appropriate or a further review has commenced.

(f) Upon review of the submitted documents, the Office of Inspector General shall notify the warden in writing or by electronic mail of the findings. All video recordings submitted with use of force narrative reports shall be retained and maintained by the Office of Inspector General in accordance with records retention statutes. The Office of 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 or the warden, upon referral by the Office of Inspector General, shall conduct an investigation of the incident. Any staff member who is a subject of an investigation based on suspicion or allegation that force administered with their participation was not in compliance with this rule shall be notified by written letter when the matter is being investigated by the Office of Inspector General. Staff members shall not disclose or discuss any information concerning a use of force administrative investigation until receiving notice that a determination has been issued by the Office of Inspector General or warden. Wardens shall complete Form DC6-296, Disapproved Use of Force/Warden Disposition Report, should their review of referred cases lead to a determination that force was not appropriately used. All disciplinary actions shall be forwarded to the Human Resources Section upon completion. Form DC6-296, Disapproved 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-01703>. The effective date of the form is 7-25-02.

(g) The Deputy Secretary of Institutions, regional director, or warden shall be responsible for issuing any corrective action pursuant to a finding of non-compliance with this rule. Copies of the employee's report, the warden's summary, and the Office of Inspector General review and determination shall be kept in the inmate's file pursuant to public records retention law. Form DC2-802, Use of Force Log, shall be placed in every employee's personnel file. Form DC2-802, Use of Force Log, 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-01691>. The effective date of the form is 2-7-00. This form shall be maintained by the servicing personnel office and shall contain a record of every use of force narrative report completed by the employee.

(h) The warden or designee shall be responsible for submitting accurate information to the personnel office in order to maintain Form DC2-802. Any use of force narrative reports completed prior to April 15, 1998, shall remain in the file and be retained for the applicable retention period.

(i) The Office of Inspector General shall provide written notification to the warden of any staff member involved in three or more reactionary use of force incidents in a six-month period. The warden shall provide the following information on the document received from the Office of Inspector General and forward it to the appropriate regional director:

1. The number reactionary uses of force involving chemical agents during this period;
2. The number of other reactionary uses of force during this period; and
3. Whether the employee in question was reassigned on account of the Office of Inspector General's written notification.

(j) The regional director shall review the information provided by the warden and note whether he or she agrees with the determination to reassign the employee in question. The regional director shall forward the written notification to the Deputy Secretary of Institutions.

(k) The Office of the Inspector General shall notify the warden of any staff member involved in eight or more organized use of force incidents in an eighteen-month period. This notification will be for informational purposes only, and will not require any further action.

(l) Any incident that necessitates the drafting of a use of force narrative report shall be submitted to the Emergency Action Center (EAC).

(1) Chemical Agents – Issuance, Storage, and Handling.

(a) Chemical agents shall be stored in the designated main arsenal in a secure manner. The warden shall authorize and designate secure locations where chemical agents shall be stored that are accessible only to officers.

(b) Chemical agents assigned to institutions may not be removed from the facility at any time without authorization from the warden or designee.

(c) All chemical agent dispensers shall be numbered and recorded on Form DC6-216, Chemical Agent Accountability Log. Form DC6-216, Chemical Agent Accountability Log, 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-02950>. The effective date of the form is 8-13. Form DC6-216 shall be maintained in any location where chemical agents are stored. Chemical agent dispensers shall be weighed prior to issuance and upon return to storage.

(d) Only correctional officers and staff who have successfully completed the Department-approved training in the use of chemical agents, in possession of a current and valid certification of such completion, and assigned to institutions and work camps shall be issued an approved OC dispenser to carry while on duty. The warden is authorized to exempt an officer from carrying, possessing, or using chemical agents. Officers assigned to armed perimeter posts may be exempted from the requirement to carry OC by the warden or designee.

(e) An MK-9 sized canister or equivalent OC dispenser shall be issued to correctional officers who have successfully completed Department-approved training, are in possession of a current and valid certification of same, and who are assigned to internal security posts, recreation fields, shift supervisor posts, or designated as special response team members within an institution, including work camps. These officers are authorized to administer chemical agents during reactionary disturbance incidents that involve multiple inmates in locations where multiple inmates are generally present, such as open bay dorms, dining halls, recreation fields, canteens, and meal lines. This option shall only be exercised in response to mass disturbance critical incidents and as necessary to restore control, stability, or disciplinary order and shall normally not be used indoors.

(f) For those security positions assigned to housing units with a secure officer's station, an MK-4 sized canister or equivalent OC dispenser will be passed on from shift to shift and accounted for on Form DC6-209, Housing Unit Log, at the beginning of each shift with an entry for each canister indicated by canister number and officer initials who is assigned that canister. Form DC6-209 is incorporated by reference in Rule 33-601.800, F.A.C. Canisters that are not being worn by staff on shifts that have fewer assigned staff will remain in the officer station, stored in a secure, locked cabinet or drawer designated for this purpose. The number of chemical agent canisters assigned to a housing unit shall not exceed the maximum number of staff (officer and sergeant) assigned for the highest staffed shift per the institutional post chart. Any evidence of tampering, broken or missing seal, or signs that the canister is not functional will be immediately reported to the shift officer in charge. Additionally, a use of force detailed narrative report will be completed by the end of the officer's shift and a replacement of the canister will occur. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Housing Unit Log.

(g) For those staff assigned to internal security and designated A-Team members, exchange of approved canisters shall occur on the compound, with the canister number and confirmation of seal status and condition of canister called into the control room and notation made on the DC6-281, Control Room Security Equipment/Weapons Check Out/In Log. Form DC6-281, Control Room Security Equipment/Weapons Check Out/In Log, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun Street, Tallahassee, FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-02952>. The effective date of the form is 8-13. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Control Room Log.

(h) For those staff assigned to food service, wellness, gate areas, program areas, and other compound posts that are not manned on a 24-hour basis, the staff assigned to the daylight shift shall pick up their canisters at the control room immediately prior to proceeding to their assigned post. The exchange of canisters for their reliefs shall occur on the compound, with the canister number and confirmation of seal status and condition of canister called into the Control Room and notation made on Form DC6-281 Control Room Security Equipment/Weapons Check Out/In Log. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Control Room Log.

(i) Chemical agent dispensers shall be securely encased and attached to the officer's belt. Each chemical agent dispenser shall be secured within a pouch or to a holstering device by a numbered, breakable seal. Officers shall examine the condition of the canister and the safety seal at the time of receiving or being issued any chemical dispenser to ensure that the canister is not damaged and that the seal is intact and report any alteration or broken seal to the shift supervisor.

(j) Shift supervisors shall examine the seal of any chemical dispenser reported to be altered, broken, or manipulated and upon confirmation of alteration, breakage, or manipulation shall report the observation on a use of force detailed narrative report. The sergeant in charge of the arsenal shall maintain a master inventory of all individual chemical agent dispensers in storage. The master inventory shall indicate the weight of each dispenser at the time the original seal is attached and shall annotate the weight of the dispenser any time a dispenser is returned with a broken seal on Form DC6-216, Chemical Agent Accountability Log, and replace the seal or attach a new one. The arsenal sergeant shall report any discrepancies in the weight of the dispenser to the chief of security and complete a use of force detailed narrative report.

(k) The shift supervisor shall verify the weight of chemical agent dispensers after any use of the dispenser upon return to storage. Additionally, the shift supervisor shall ensure all issued chemical agent dispensers are accounted for and recorded on Form DC6-216. The chief of security shall monitor the canister weights following each use of chemical agents to ensure the contents are consistent after a reported use of force and recorded on Form DC6-216.

(l) Each assigned PLS system shall be numbered, maintained, and inventoried by the shift supervisor or designee on Form DC6-216, Chemical Agent Accountability Log.

(12) Less-Lethal Weapons – Issuance, Storage, and Handling.

(a) Handheld EIDs shall be issued to unarmed officers on any inmate transport or any outside hospital visit where firearms are issued. The chief of security or, in his or her absence, the shift supervisor shall determine the number of officers who will be issued firearms and EIDs during the transportation or movement of inmates.

(b) EIDs and other less-lethal weapons shall be stored and maintained in either the main arsenal or the control room mini-arsenal. The warden may authorize, in writing, the storage of one handheld unit and one shield in the confinement unit or close management unit. All EIDs or less-lethal weapons shall be secured in a locked cabinet when not in use. The arsenal sergeant shall be responsible for the proper documentation of the maintenance, storage, and issue of EIDs and less-lethal weapons.

(c) All EIDs and other less-lethal weapons shall be accounted for in the same manner as firearms.

(d) There shall be no attempt to alter, tamper with, or repair any EID or less-lethal weapon. Devices shall be sent to an authorized repair station if a malfunction occurs or repair is necessary. Any EID or less-lethal weapon that is dropped or is subject to possible damage shall be immediately tested to determine if it is safe and properly functioning. EIDs shall not be used after the application of any chemical agents.

(e) Storage of Specialty Impact Munitions.

1. Specialty impact munitions shall be stored and maintained in the main arsenal.

2. Specialty impact munitions shall not be mixed with lethal munitions. Weapons designated to deploy specialty impact munitions shall be marked in a manner to alert staff of their intended use.

3. All specialty impact munitions shall be accounted for in the same manner as firearms and ammunition.

(f) No weapon shall be issued for any purpose other than the authorized use of force or to a certified training officer for the purpose of approved training without prior written authorization from the warden or designee.

Rulemaking Authority 944.09 FS. Law Implemented 776.012, 776.06, 776.07, 843.04, 944.02, 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, _____.

33-602.211 Restraint of Pregnant Inmates.

(1) through (8) No change.

(9) Staff utilizing restraints on a compliant pregnant inmate under extraordinary circumstances during labor, delivery, or postpartum recovery will document the application of restraints in the inmate's file on Form DC6-210, Incident Report. If the inmate is noncompliant, the use of restraints will be documented on a use of force narrative report Form DC6-230, Institutions Report of Force Used. In either case, such documentation shall be prepared within 10 days. ~~Form DC6-230 is incorporated by reference in Rule 33-602.210, F.A.C.~~

Rulemaking Authority 944.09, 944.241 FS. Law Implemented 944.241 FS. History–New 9-24-12, Amended _____.

33-602.212 Escort Chair.

(1) through (2) No change.

(3) Security staff, upon receiving approval in accordance with subsection (4) of this rule, are authorized to escort inmates meeting the criteria listed in subsection (2) of this rule in an escort chair.

(a) through (e) No change.

(f) The inmate shall be removed from the chair upon arrival at the destination and returned to the chair for the return escort. No inmate shall be placed in the escort chair for longer than it takes for such inmate to be taken directly to his or her destination.

(g) If the inmate does not offer resistance to placement into the escort chair, no use of force narrative report shall be completed. ~~the completion of Form DC6 230, Institutions Report of Force Used, shall not be required.~~ If at any time the inmate offers resistance, proceeding to place the inmate into the escort chair this shall constitute a physical use of force, which shall be conducted pursuant to rule 33-602.210, F.A.C. and the guidelines in subsections 33-602.210(3) (5), (8) (12), F.A.C., shall be followed. ~~Form DC6 230, Institutions Report of Force Used, is incorporated by reference in Rule 33-602.210, F.A.C.~~

(h) through (i) No change.

(4) In all instances, the Warden or Duty Warden shall be contacted by the Shift Supervisor and shall give his permission prior to use of the escort chair. The Shift Supervisor shall provide the Warden or Duty Warden the rationale for using the escort chair and document it on Form DC6-2068, Escort Chair Inmate Observation Log. Form DC6-2068, Escort Chair Inmate Observation Log, 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-02953>. The effective date of the form is 8-13.

(5) No change.

(6) For those inmates spitting or expelling bodily fluids on employees or with a documented history of such behavior, a spit net/shield may be placed over the head of the inmate and Form DC6-280, Special Management Spit Shield Status Request, shall be completed in accordance with Department procedure 602.028(1), (3). Form DC6-280, Special Management Spit Shield Status Request, 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-02951>. The effective date of the form is 8-13.

(7) through (13) No change.

(14) Videotaping of escort chair use shall begin prior to the inmate being removed from his cell and shall not end until the inmate is secure back in a cell.

(a) No change.

(b) The video recording shall continuously run until the escort is complete and shall encompass the following:

1. No change.

2. The statement from the Shift Supervisor to the inmate that physical force will be used to place ~~placed in~~ the inmate in the escort chair if there is a refusal or resistance;

3. through 4. No change.

5. The actual transport to the destination. For medical or mental health treatment this recording, for confidentiality purposes, shall be handled in accordance with rule 33-602.210, F.A.C. ~~subsection 33-602.210(3), F.A.C.;~~

6. through 11. No change.

(15) If the inmate refuses or offers active physical resistance when being placed in the escort chair, staff may utilize the minimum physical force necessary to secure the inmate in the escort chair.

(a) No change.

(b) ~~The Duty Warden shall be consulted and give his permission prior to use of physical force.~~

(c) ~~In spontaneous use of force incidents when circumstances do not permit prior approval, the Duty Warden shall be notified immediately following any use of force incident.~~

(d) ~~If force is used all reporting and review requirements outlined in Rule 33-602.210, F.A.C., shall apply.~~

Rulemaking Authority 944.09 FS. Law Implemented 944.09, 944.35 FS. History—New 8-11-13, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard D. Comerford, Director of Institutional Operations

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2017

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