

May 13, 2013

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-602.210 Use of Force

33-602.212 Escort Chair

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the use of the camera during a reactionary use of force, the use of force on inmates in mental health settings, how to complete Form DC6-230, Report Of Force Used, and the role of the warden in reviewing uses of force. The proposed rule also updates definitions, amends Form DC6-216, eliminates the use of Form DC6-213, changes engagement distances on specialty impact munitions and adds the use of noise flash distraction devices. The proposed rule explains the use of escort chairs to transport inmates around the secure compound under specific circumstances.

SUMMARY: The proposed rule is needed to clarify the use of the camera during a reactionary use of force, the use of force on inmates in mental health settings, how to complete Form DC6-230 and the role of the warden in reviewing uses of force. The proposed rule is needed to update definitions, amend forms, amends the use of speciality impact munitions, and explain the use of escort chairs to transport inmates around the secure compound under specific circumstances.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. 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 these rules and incorporated forms, 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 to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09 FS

LAW IMPLEMENTED: 776.07, 944.09, 944.35 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: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.210 Use of Force.

(1) No change.

(2) Definitions.

(a) Direct Firing – The practice of firing specialty munitions directly into a group of rioters ~~from a distance of greater than 20 feet and~~ with a target area of the waist or below from a minimum distance designated by the manufacturer of the munitions.

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

~~(c)(b)~~ 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.

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

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

~~(f)(e)~~ Organized Use of Force – Any force that may be administered to control, escort, or geographically relocate any inmate when the immediate application is not immediately necessary to prevent a hazard to any person.

~~(g)(f)~~ 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.

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

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

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

~~(k)(i)~~ 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.

~~(l)(j)~~ 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.

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

~~(n)(f)~~ 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.

~~(o)(m)~~ Serious Bodily Injury – 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.

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

~~(q)(e)~~ 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.

(3) A video camera operator shall commence recording all reactionary use of force incidents upon arrival at the scene as soon as possible. All organized use of force incidents shall be video recorded unless exigent or emergency circumstances prevent such action. Except in the circumstances described in sub-subparagraph ~~(9)(8)(n)~~2.e., video

recordings shall continue uninterrupted from commencement until the situation is stable and under control and the inmate is placed in a secure cell or transport vehicle for transfer. Additionally, 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.

(a) The shift supervisor during any organized use of force shall include in each video recorded markers of the following:

1. – 7. No change.

8. – 16. No change.

(b) – (d) No change.

(e) 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:

1. Make a brief statement noting the reason(s) for the use of force. This shall be prior to the conclusion of recording:

2. The rank/title and name of staff involved in the use of force;

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

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

5. The type and amount of force used;

6. Any other pertinent information that he or she deems relevant.

(4) – (6) No change.

(7) 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.

(8) Hands-on physical force shall not be used if injury is less likely to occur by using chemical agents, specialty impact munitions, or EIDs. Batons, chemical agents, EIDs, specialty impact munitions, and other authorized less lethal weapons shall not be used on inmates who are 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 attempts by available mental health staff to otherwise de-escalate and resolve the situation are unsuccessful and it appears reasonably necessary to:

(a) Prevent an inmate or inmates from taking control of the health unit, or to subdue a take-over of the health unit.

(b) Prevent an inmate or inmates from taking a hostage or to help free a hostage.

(c) Prevent an inmate or inmates from escaping.

(d) Stop an assault on staff or other inmates when other means of intervention are likely to be ineffective or pose a risk of injury to the intervening staff.

(e) Disarm an inmate in possession of a weapon capable of causing injury to staff when other possible means of disarming the inmate pose a risk of injury to the staff involved.

~~(9)(8)~~ Use of Chemical Agents. All chemical agents shall be used with caution and in accordance with the manufacturer's instructions.

(a) The following chemical agents are authorized for use by the Department:

1. – 2. No change.

~~3. CN— Chloroacetophene— An agent that causes tearing of the eyes, nasal discharge, and skin and upper respiratory irritation. CN projectiles, grenades, and thermal foggers shall only be used within institutions, upon Department of Corrections property, in response to unauthorized mass gatherings, disturbances involving multiple inmates, or for crowd control. CN shall not be authorized for use after the expiration date noted on the canister.~~

(b) No change.

(c) Chemical agents shall only be used when the use of force is authorized and the level of force is necessary to prevent injuries to staff or inmates including any self injurious behavior exhibited by inmates.

(d) – (j) No change.

(k) All chemical agent dispensers shall be numbered and recorded on Form DC6-216, Chemical Agent Accountability Log. Form DC6-216 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-01699>. The effective date of the form is 7-25-02.

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. The shift supervisor shall verify the weight of chemical agent dispensers 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) Issuance and use of chemical agents:

1. – 2. No change.

3. 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, on Form DC6-210, Incident Report, will be completed by the end of the officer's shift and a replacement of the canister will occur completed and a replacement made. Form DC6-210 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-01697>. The effective date of the form is 12-12. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Housing Unit Log.

4. – 5. No change.

6. 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. ~~Form DC6-213, Individual Chemical Agent Dispenser Accountability Log, will be utilized to document the name of the officer to whom each dispenser is assigned and the seal number on the dispenser he or she received. Form DC6-213 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01698>. The effective date of the form is 12-12.~~ 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. 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 Form DC6-210, Incident Report, prior to the end of the shift. 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 Form DC6-210.

(m) – (o) No change.

(p) Medical requirements:

1. Inmates who have been administered 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.

2. – 7. No change.

8. The shift supervisor shall comply with provisions stated in paragraph ~~(10)(9)~~(h) if, upon consultation with medical services staff, he or she is advised a decontamination shower is necessary for the safety of the inmate or the failure to complete a decontamination shower is a hazard to the inmate. The inmate shall be relocated to a decontamination cell.

a. – b. No change.

9. – 10. No change.

~~(10)(9)~~ Non-deadly Force. In accordance with Section 944.35, F.S., officers are authorized to apply lawful and reasonably necessary physical force to:

(a) – (h) No change.

~~(11)(10)~~ Only reasonable, lawful, and the minimal amount of force necessary shall be employed to control the situation. Force shall not be used solely as a response to verbal abuse. Utilization of the custodial touch, with the

hand firmly grasped around the inmate's triceps or elbow, during internal transport of restrained inmates when resistance is not encountered shall not be considered a use of force when the transport hold is for the safety of the inmate or officer. The warden or designee shall be consulted and must authorize any organized use of force prior to application. The warden or designee shall be notified without unnecessary delay any time a reactionary use of force incident occurs and circumstances did not permit obtaining authorization prior to the use of force. The person who was responsible for requesting authorization to use force shall prepare, date, and sign Form DC6-232, Authorization for Use of Force, either prior to or immediately after the end of the shift when force was used. Form DC6-232 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01701>. The effective date of the form is 9-99. If the authorization for an organized use of force is granted after normal working hours, the authority granting the action shall complete and sign Form DC6-232 within one day following the incident, excluding weekends and holidays.

~~(12)(44)~~ Any time force is used, the officer initially using force shall complete Form DC6-230, Report of Force Used. The completed form must contain a clear and comprehensive narrative of the circumstances ~~shall include the events~~ 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, and the post-event actions. An incident report prepared by the author of the DC6-230, Report of Force Used, may be referenced in Section A., Narrative of Pre-event, and attached to the report to provide additional detail regarding the justification and necessity for using force. If more than one officer was involved in the use of force, the initial officer using force shall complete the report. Any participant who objects to information recorded by the reporting officer or who has additional observations to add to the narrative or description of the incident written by the reporting officer shall complete and attach Form DC6-230, Report of Force Used. No officer or employee shall receive discipline for providing updated information to a use of force report, provided the updated information is presented without unnecessary delay after discovery of the discrepancy. Updates or addendums recorded on any Form DC6-230, Report of Force Used, should be completed and forwarded to the warden not later than one (1) business day (excluding weekends and holidays) following the date that the original Form DC6-232, Authorization for Use of Force, is signed and dated.

(a) Form DC6-230, Report of Force Used, shall be completed by those staff involved in any application of force, reactionary or organized, that occurred during their shift. Form DC6-230 shall be completed no later than the

end of the shift during which the use of force occurred. The warden or designee is authorized to permit a delay of completing required use of force reports for up to 72 hours when circumstances prohibit completion of the reports by the end of the shift. All reports must be typed. No use of force report may be altered, changed, or destroyed by any employee. Officers may submit amendments to a report at any time with authorization from the warden or designee. 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 DC6-230 or the statements of staff witnesses, inmate witnesses, or the inmate subject. All inmate statements (subject and witnesses) shall be made in writing using Form DC6-112C, Witness Statement. Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C. Any employee who witnesses but does not participate in a use of force and suspects inappropriate action shall complete Form DC6-210, Incident 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.

(b) 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 involving physical force 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~~ ~~or~~ ~~designee that~~ ~~reviews any~~ ~~shall review all~~ use of force ~~incident reports~~ conducts the review in a comprehensive manner and that, in addition to procedural concerns, the review ensure that 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 ~~or designee~~ shall personally review any available video recording of 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.

(c) 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. Any time a warden or designee assigned to review and evaluate use of force reports suspects the application of force was contrary to this rule or was unlawful, he or she shall notify the Office of Inspector General without unnecessary delay.

(d) The warden or designee shall review the information and note any inappropriate actions in memorandum and attach the information to Form DC6-230, Report of Force Used. The warden or designee's signature in the Warden's Review signature block on Form DC6-230 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 Form DC6-230 shall be forwarded to the Office of Inspector General within eleven (11) business days. Requests for extensions for DC6-230s to be forwarded after eleven (11) days shall require authorization from the Assistant Secretary of Institutions and the Inspector General or designee. Requests for extensions for submission of DC6-230s 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.

(e) – (q) No change.

(13)(12) Use of Deadly Force. For the purposes of this rule, deadly force refers to force that is likely to cause death or great bodily harm. 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.

(a) – (b) No change.

(c) Shot guns are approved for use by the Department's designated armed response team, Rrapid Rresponse Tteams, Correctional Emergency Response Teams and/or other trained staff as authorized by the Assistant Secretary of Institutions for use during riots and mass disturbances. The type of authorized lethal or non-lethal ammunition used will be at the discretion of the Incident Commander. Only #6 shot is authorized to be discharged from shotguns

~~during attempts to cease riots or mass disturbances unless otherwise specifically authorized by the warden or designee.~~

(d) – (j) No change.

(14)~~(13)~~ Use of Deadly 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.

(a) No change.

(b) Apprehension of escaped inmates once they are outside an institutional perimeter.

1. No change.

2. 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 or the Office of Inspector General. 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.

3. No change.

(c) No change.

(15)~~(14)~~ Other authorized uses of force. The use of electronic immobilization devices (EIDs), batons, chemical agents, specialty impact munitions, or other less lethal weapons within institutions shall be authorized only by the warden or designee. Such weapons shall be utilized by officers who have completed training on their use and shall be used in accordance with manufacturer specifications. ~~Hands on physical force shall not be used if injury is less likely to occur by using chemical agents, specialty impact munitions, or EIDs. Batons, chemical agents, EIDs, specialty impact munitions, and other authorized less lethal weapons shall not be used on inmates who are 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 attempts by available mental health staff to physically control dangerous or violent behavior are unsuccessful.~~

(a) No change.

(b) Specialty impact munitions. Specialty impact munitions shall be used primarily by the Department's designated armed response teams, Rapid Response Teams, Correctional Emergency Response Teams and/or trained staff as authorized by the Assistant Secretary of Institutions for use and correctional emergency response teams 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.

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

- a. 37/40-mm rubber ball pellet rounds (~~minimum engagement distance is 15 feet~~);
- b. 12 gauge rubber ball pellet rounds – high velocity (~~minimum engagement distance is 15 feet~~);
- c. 12 gauge rubber ball pellet rounds – low velocity (~~minimum engagement distance is 3 feet~~);
- d. 12 gauge drag stabilized (bean bag) rounds (~~minimum engagement distance is 15 feet~~);
- e. 37/40-mm wooden baton rounds (~~minimum engagement distance is~~ – skip fired 6 feet in front of target, no direct fire);
- f. Stinger rubber ball grenades (~~no minimum engagement distance~~ – stun grenade);
- g. 40mm impact munitions 40 mm exact/direct impact – (OC, marking and inert foam) long range rounds/short range (~~minimum engagement distance is 5 feet~~); and
- h. 40mm impact munitions 40 mm exact/direct impact – (OC, marking and inert foam) short range rounds/long range (~~minimum engagement distance is 25 feet~~).

2. Specialty impact munitions engagement distance will be in accordance with training and dependent on the situation and the level of force required to resolve the situation.

~~32.~~ 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. ~~The use of all specialty impact munitions shall be supervised by the tactical field operations leaders, designated armed response team, rapid response team or correctional emergency response team leader.~~

~~43.~~ 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 lethal force.

54. 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.

65. Storage of Specialty Impact Munitions.

a. – c. No change.

76. After each use of specialty impact munitions, exposed inmates shall be examined by medical personnel.

87. In any case where specialty impact munitions are deployed, the incident shall be recorded on Form DC6-230, Report of Force Used.

(c) No change.

1. – 8. No change.

9. Noise flash distraction devices. Noise flash distraction devices shall be used primarily by the Department's Rapid Response Teams, Correctional Emergency Response Teams and/or other trained staff as authorized by the Assistant 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.

a. The following noise flash distraction devices have been approved for use by the Department:

i. Hand-launched, reloaded noise flash distraction devices (non-launchable);

ii. Hand-launched, single use noise flash distraction devices;

iii. Shotgun-launched (aerial distraction) noise flash distraction devices.

(16)(15) Medical Attention Following Use of Force. 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 on Form DC6-230, Report of Force Used. 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 Form DC6-230. The original reports shall be filed in the inmate's medical record.

~~(17)(16)~~ 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 776.07, 944.09, 944.35 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,_____.

33-602.212 Escort Chair

(1) Definitions.

(a) 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.

(b) Escort Chair- A manufactured chair with wheels that the Secretary authorizes that is used to escort inmates under specific circumstances. The chair allows the inmate to be restrained at the ankles, waist and shoulders with secure straps.

(c) Spit Net/Shield- A material or device used to cover the facial are of an inmate to prevent the spitting or expelling of bodily fluids onto other people.

(d) Use of Force- The physical force used on an inmate only when and to the degree that reasonably appears necessary to control the inmate's behavior.

(2) The escort chair shall only be used under the following circumstances:

(a) The inmate is housed in one of the following statuses:

1. Close management;

2. Confinement (administrative or disciplinary);

3. Death row;

4. Maximum management;

5. Mental health status (crisis stabilization unit, transitional care unit, self-harm observation status, etc.); and

(b) The inmate needs to be transported within the secure compound from one location to another location for a documentable reason such as, but not limited to, a callout, appointment, or treatment; and

(c) The inmate presents an imminent danger of physical harm or injury to himself or others or has a prior history of self injurious behavior, assaultive behavior or violent behavior or has a prior history of uncooperative or combative behavior during escorts; and/or

(d) The inmate is being escorted to the medical unit for pre-confinement physical and additional force is used on the inmate.

(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) The escort chair shall not be used in such a manner as to cause physical injury to an inmate, as a form of physical punishment, or in lieu of psychiatric restraints.

(b) An inmate shall not be deprived of food, water or use of the restroom facilities for an unreasonable period of time while in the escort chair.

(c) The escort chair will be used for escort purposes only. The use of the escort chair to either punish or retaliate against an inmate is strictly prohibited.

(d) Inmates shall not be utilized to push the escort chair.

(e) Escort chairs shall not be placed in vehicles when inmates are restrained in the escort chairs.

(f) The inmate shall be removed from the chair upon arrival at the destination and returned to the chair for the return escort.

(g) If the inmate does not offer resistance to placement into the escort chair, the completion of Form DC6-230, Institutions Report of Force Used. If at any time the inmate offers resistance, this shall constitute a physical use of force and the guidelines in Rule 33-602.210, 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) The placement into the escort chair and application of the restraints shall be videotaped and Form DC6-210, Incident Report, shall be completed. The videotape and the completed Form DC6-210 shall be forwarded to the Warden or the Duty Warden for review within one working day. Form DC6-210, Incident Report, is incorporated by reference in Rule 33-602.210, F.A.C.

(i) The Warden or the Duty Warden shall forward any instances where he or she is concerned the rules related to escort chair use were not complied with to the Office of the Inspector General for appropriate handling.

(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 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is _____.

(5) In all instances, the medical department shall be contacted by the Shift Supervisor and the medical staff member on duty shall conduct a review of the inmate's medical condition and document on Form DC6-2068, Escort Chair Inmate Observation Log, that the use of the escort chair will not threaten the health of the inmate.

(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 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is _____.

(7) Staff conducting the escort shall carry a spit net/shield during the escort in the event the inmate begins behavior warranting its use.

(8) The spit net/shield shall be secured in such a manner in order to allow normal breathing capabilities. Medical personnel shall assess the inmate during and subsequent to placing the spit net/shield over the inmate's head to ensure that the inmate can breathe sufficiently.

(9) If any staff member observes that the restraints appear to be restricting circulation to the hands or feet, the officer will confer with his supervisor prior to adjusting the restraints.

(10) The Shift Supervisor shall ensure that Form DC6-2068, Escort Chair Inmate Observation Log, is initiated and that all facts concerning the inmate are continuously documented. Form DC6-2028 must be completed any time an inmate is placed in an escort chair and restrained.

(11) Responsibility for the inmate restrained in the escort chair is assigned to the on-duty Shift Supervisor who, when relieved of duties, shall update the on-coming Shift supervisor of all relevant facts. Once the inmate is secured in the escort chair, the Shift Supervisor is not required to be present during the remainder of the escort.

(12) Chemical agents shall not be administered to an inmate while he is restrained in an escort chair.

(13) Form DC6-2028, Escort Chair Inmate Observation Log, shall be retained by the Warden for a period of three years. A copy of Form DC6-2028 shall be forwarded to the Regional Director.

(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) A lead-in statement with the rationale for the use of the escort chair shall be provided on camera by the Shift Supervisor, Confinement Lieutenant, or Close Management Lieutenant, which shall include:

1. The date and time;
2. His name and rank;
3. The camera operator's name and rank;
4. The inmate's name and DC number; and

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

1. The lead-in statement specified in subsection (14)(a) of this rule;
2. The statement from the Shift Supervisor to the inmate that physical force will be used to place the inmate in the escort chair if there is a refusal or resistance;

3. Any response by the inmate;

4. The actual placement of the inmate in the escort chair;

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.;

6. The actual removal of the inmate from the escort chair at the destination;

7. The inmate's behavior upon arrival at the destination;

8. The actual placement of the inmate in the escort chair at the destination for the return trip;

9. The action during the trip;

10. Securing of the inmate in a cell; and

11. Any unusual events that occur during the time the inmate is in the escort chair.

(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) The Shift Supervisor shall make a determination whether to cancel the escort or use force to gain the compliance of the inmate for the escort.

(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, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Upchurch, Assistant Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael D. Crews, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 4-18-13

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 4-26-13