

October 8, 2014

## NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.210

RULE TITLE: Use of Force

**PURPOSE AND EFFECT:** The purpose and effect of the proposed rule is to add the definition of Crisis Intervention Training; to add the definition of Qualified Mental Health Professional; 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 amend Form DC6-230; 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/cell port cover as 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 require a Warden or designee to verify the narrative on Form DC6-230 regarding the reasons for authorizing an organized use of force; to amend Form DC6-232; to require that following a medically necessary use of force that Form DC6-232 be attached to Form DC6-230 for review by the Warden or Duty Warden; and to remove the requirement that Form DC2-802 be maintained in personnel files.

**SUMMARY:** Rulemaking was initiated to add definitions; to change how a use of force involving certain mental health inmates will be implemented and recorded; to establish that the use of force when an inmate refuses to relinquish control of the cell's food flap/cell port cover will be classified as an organized use of force; to allow for the use of non-deadly force in the administration of necessary mental health treatment; to require the verification of certain information provided in Form DC6-230; to amend Forms DC6-230 and DC6-232; to require the review of Forms DC6-230 and DC6-232 following a medically necessary use of force; and to remove the requirement that Form DC2-802 be maintained in personnel files.

### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

**RATIFICATION:** The Department 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 Department. The Department has determined that the proposed rule is

not expected to require legislative ratification based on the SERC or, if no SERC is required, the information expressly relied upon and described herein: upon review of the proposed changes to the rule 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: Paul Vazquez, 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) – (b) No change.

(c) Crisis Intervention Training (CIT) – This training assists officers in applying non-force de-escalation techniques and strategies in the care and control of inmates suspected to have a mental illness. A knowledgeable officer equipped with the skills from CIT can more effectively assist a mentally ill inmate to meet the demands of the correctional environment.

~~(d)~~(e) 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.

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

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

~~(g)(f)~~ 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.

~~(h)~~ Qualified Mental Health Professional – A clinician who is credentialed under Health Services Bulletin (HSB) 15.09.05, “Credentialing and Privileging Procedures,” to provide mental health treatment and services to an inmate assigned to a given level of mental health care.

~~(i)(g)~~ 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.

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

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

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

~~(m)(k)~~ 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.

~~(n)(h)~~ 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.

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

~~(p)(n)~~ 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.

~~(q)(o)~~ 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.

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

~~(s)(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)(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. – 6. No change.

7. Brief description of efforts taken to stabilize or control the inmate prior to the application of force, including name and rank of the uninvolved CIT-trained officer who has attempted to de-escalate the situation whenever an inmate who is classified as S-2 or higher is involved;

8. – 16. No change.

(b) – (e) No change.

(4) – (8) No change.

(9) 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. No change.

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

a. No change.

b. The warden or designee may authorize the use of CS as an initial primary chemical agent whenever past applications of OC to an inmate were documented on Form DC6-230, Report of Force Used, as having been applied and ineffective. Form DC6-230 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-01700>. The effective date of the form is \_\_\_\_\_.

c. No change.

(b) – (f) No change.

(g) Prior to issuance of a final order, a 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 confinement lieutenant, close management lieutenant or shift supervisor shall have a qualified mental health professional provide crisis intervention and attempt to de-escalate the situation and prevent a use of force. After regular work hours, the confinement lieutenant, close management 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.

~~(h)(g)~~ A confinement or close management lieutenant or shift supervisor shall be responsible for the issuance of a final order to an inmate ordering compliance or cessation of disruptive behavior prior to the application of chemical agents. Additionally, a confinement or close management lieutenant, shift supervisor, or staff member of greater rank shall be present and observe the application of chemical agents to inmates in such housing settings.

~~(i)(h)~~ Any application of chemical agents within an institution shall be noted on Form DC6-230, Report of Force Used. Any officer who uses chemical agents shall record the following on Form DC6-230:

1. – 7. No change.

~~(j)(i)~~ 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.

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

~~(l)(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-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. 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.

~~(m)~~(4) Issuance and use of chemical agents:

1. – 6. No change.

~~(n)~~(m) Use of chemical agents on inmates outside of controlled conditions. Officers may utilize chemical agents whenever an inmate becomes disorderly or disruptive or does not comply with clear and audible orders that have been communicated to cease such behavior. During emergency situations with multiple inmates in an outside area, chemical agents may be applied to quell the disturbance. 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 on Form DC6-230, Report of Force Used.

~~(o)~~(n) Use of chemical agents on inmates under controlled conditions:

1. When an inmate in a secure housing unit occupied by other inmates becomes disorderly or disruptive 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 confinement or close management lieutenant, shift supervisor, or person of higher rank shall be contacted and consulted for instructions prior to any application of chemical agents. The refusal of an inmate to relinquish control of the cell's food flap/cuff port cover, i.e., will not allow staff to close the food flap/cuff port cover, shall be defined as an organized use of force subject to the requirements of Paragraph (3) of this rule.

2. No change.

~~(p)~~(o) Additional applications of chemical agents and forced cell extractions:

1. – 2. No change.

~~(q)(p)~~ Medical requirements:

1. – 10. No change.

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

(a) – (g) No change.

(h) Reasonably restrain an inmate to permit the administration of necessary medical or mental health treatment.

(11) 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 and shall sign the DC6-230, Report of Force Used, as appropriate to indicate that the narrative accurately reflects the reason(s) for authorizing staff to use force. 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](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) 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 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. 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) – (h) No change.

(i) The Assistant 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 contain a record of every use of force report completed by an employee ~~be placed in every employee's personnel file.~~ Form DC2-802 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 report completed by the employee.~~

(j) – (m) No change.

(n) Officers may use reasonable physical force to restrain an inmate, upon supervision and direction of a physician or medical practitioner, for the purpose of providing necessary treatment or for the safety of an employee. The attending Qualified Health Care Provider who directs or observes medically necessary use of force shall prepare Form DC6-232, Authorization for Use of Force for Facilitating Emergency Treatment Order, authorizing the use of force. A copy of the DC6-232 shall be provided to the Shift Supervisor for attachment to the Institutions Report of Force Used DC6-230 for review by the Warden or Duty Warden. 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 \_\_\_\_\_. Officers who use force pursuant to a physician or medical practitioner's request shall complete



Form DC6-230, Report of Force Used, when actual force is used, or Form DC6-210, Incident Report, when restraints are applied with no physical resistance by the inmate, and the form shall be forwarded to the warden.

(o) – (p) No change.

(q) When the use of four-point or five-point 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. The application of the restraints will be videotaped. The videotape, Form DC6-210, Incident Report, ~~Form DC6-232, Authorization for Use of Force Report~~, 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, the steps outlined in subsection (4) shall be followed.

(13) – (17) No change.

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, 8-11-13, 11-5-13, \_\_\_\_\_.

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: October 6, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 19, 2014