

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-602.204 Searches of Inmates

PURPOSE AND EFFECT: To clarify and update the rule related to searches of inmates.

SUMMARY: Rulemaking is necessary to clarify and reorganize the rule, to establish that the Department may use x-ray body scanner technology to search inmates for contraband, and to reiterate that x-ray technology intended for the diagnosis or treatment of injury or disease will not be used for such purpose.

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: The Department used an itemized checklist to conduct an economic analysis and determine if there would be any adverse impact or regulatory cost associated with this rule that exceeds the stated criteria. Upon review of the proposed rulemaking, the Department 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), F.S.

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, 944.473 FS.

LAW IMPLEMENTED: 944.09, 944.47, 944.472, 944.473 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, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 33-602.204, F.A.C., follows. See Florida Administrative Code for present text.

33-602.204 Searches of Inmates.

Searches of inmates will be conducted to control the introduction and movement of contraband, and to prevent escapes. When searching an inmate, staff must follow established search protocol to ensure the safety of staff and the inmate.

(1) Clothed searches.

(a) Inmates should be searched while fully clothed whenever possible since most contraband can be detected using this method of search if it is properly conducted.

(b) With proper training, a correctional officer may conduct searches of clothed inmates without prior approval from his or her supervisor.

(c) Visual and metal detector searches may be routinely conducted on clothed inmates, and may be conducted at random.

(d) In addition to visual or metal detector searches, a search of clothed inmates may be conducted utilizing x-ray body scanner technology intended for security use when available.

1. Any inmate entering or exiting the secure perimeter of a Department institution or who is suspected of hiding contraband inside his or her body may be searched utilizing x-ray body scanner technology intended for security use.

2. Scanned images will only be viewed by correctional officers of the same sex as the inmate being searched, except in an emergency situation for the protection of staff, inmates, or the public.

3. The Department must maintain a log to track each time an inmate is searched utilizing x-ray body scanner

technology intended for security use to ensure that an inmate does not exceed the recommended radiation exposure limit.

(e) With the exception of scanned images described in paragraph (1)(d) above, searches of clothed male inmates may be conducted by staff who are of the opposite sex from the inmates.

(f) Searches of clothed female inmates by male staff must only be conducted during an emergency situation as determined by the shift supervisor. The only exception to this is when time and circumstances do not permit the arrival of female staff or consultation with the shift supervisor prior to conducting the search due to an imminent threat of physical violence when an immediate search is necessary to secure the inmate to prevent injury to staff, inmates, or the public.

(g) Before the search of a clothed inmate begins, the inmate must remove the contents of his or her pockets, and remove his or her shoes and hat. The shoes, hat, and personal effects removed from the inmate's pockets must be inspected prior to conducting the search of the clothed inmate.

(2) Unclothed body searches.

(a) Unclothed body searches of inmates will only be conducted by correctional officers who are the same sex as the inmate, except in an emergency situation for the protection of staff, inmates, or the public.

(b) An inmate will generally be subject to an unclothed body search upon his or her arrival at an institution from court, another institution, or from any other place where the inmate may have come in contact with the public. When an inmate is apprehended after an escape, attempted escape, or hideout, he or she will be subject to an unclothed body search. There may be other occasions that warrant an unclothed body search, such as before an inmate is admitted to confinement or at any time when an inmate is suspected of carrying contraband.

(c) Inmates on outside work squads provided to other agencies while under supervision do not require an unclothed body search upon their return to the institution. A clothed search will normally be utilized when checking in these inmates. If there is reason to believe an inmate is concealing contraband on his or her body, an unclothed body search will be performed.

(d) When there are established written institutional policies and procedures that require a Correctional Officer I to perform unclothed body searches of inmates in the performance of his or her routine duties, permission from a higher-ranking officer is not required prior to conducting the search.

(e) Except for the above, the following procedures will be followed when conducting an unclothed body search of an inmate:

1. A correctional officer of the rank of at least Correctional Officer II must supervise unclothed body searches whenever possible. If a Correctional Officer II cannot be physically present during an unclothed body search, then the Sergeant or a higher-ranking officer must give his or her permission before the search can be conducted. In facilities where it is not possible for a shift to have a Correctional Officer II on duty, the Shift Officer in Charge must give his or her permission before an unclothed body search can be conducted.

2. Before an unclothed body search can be conducted, an inmate suspected of hiding contraband on his or her body must be removed out of view of the inmate population. If only one inmate is being searched, the search will be conducted in an area accessible only to the inmate and the staff conducting the search. In cases involving more than one inmate, they may all be searched at the same time and in view of each other. Only those inmates and staff conducting the search will be present during the search.

3. During an unclothed body search, the inmate will remove all clothing, place it in a pile, then move away from the pile a few paces. The search will include hair, ears, and mouth (dentures must be removed). The entire body will then be checked including armpits, hands, pubic region, between the toes, soles of the feet, external anal area, and inner portions of the legs.

4. Internal examination of body orifices or cavities, if necessary, will be made by medical personnel only. Any bandages or casts will be thoroughly examined by medical personnel only.

5. Every article of clothing and personal property will be thoroughly searched.

(3) Body orifice and cavity searches.

(a) Body orifice and cavity searches of inmates may only be conducted by appropriate medical personnel who may be of the opposite sex from the inmates.

(b) Body orifice and cavity searches will only be conducted when authorized by the warden, assistant warden, or the Correctional Officer Chief upon a finding that there exists a reasonable suspicion that an inmate has

contraband secreted in a body orifice or cavity. Reasonable suspicion may be established from any of the following evidence:

1. Confidential information received from a reliable source.
2. Irregularities found in the area of the body during an unclothed body search.
3. Observed actions or behavior that creates a reasonable suspicion that an inmate has secreted contraband within a body orifice or cavity.

(c) The following procedures and conditions apply to body orifice and cavity searches:

1. The degree and intensity of the search must be the least required to bring the search to a conclusion.
2. Oral cavity searches may be conducted visually as a routine element of any search of an inmate. When evidence indicates an inmate is concealing contraband in his or her mouth, the following steps will be taken:

a. The inmate will be restrained or be placed under constant visual observation.
b. No restraints or holds may be applied in any manner that inhibit breathing or swallowing. However, the inmate may be physically controlled and isolated from other inmates if necessary in order to avoid his or her disposal of the contraband.

c. When there is reasonable cause to believe contraband has been swallowed, any attempt to retrieve the contraband will be accomplished by appropriate medical personnel only unless exigent circumstances require immediate action to protect the health of the inmate.

d. No physical intrusion into an inmate's oral cavity will be attempted by any person other than appropriate medical personnel.

3. Physical intrusion. The forcible retrieval of contraband by intrusion into the inmate's body may be conducted for any of the following reasons:

a. When appropriate medical personnel has determined that failure to remove the contraband presents an imminent danger to the health of the inmate;

b. When the contraband is clearly identified and constitutes a clear and present danger to the security of the institution or the safety of the inmate or other persons, and the contraband cannot be retrieved by any less intrusive or forcible manner; or

c. When it is necessary to retrieve the contraband for purposes of identification or to secure it as evidence, and the contraband cannot be retrieved by any less intrusive or forcible manner.

4. Physical isolation and observation. When the inmate cannot or will not voluntarily remove and surrender the contraband, or when a physician has determined that the physical removal of contraband may be hazardous to the health and safety of the inmate, the inmate may be placed in a medically approved isolated setting under constant visual supervision until the contraband can be retrieved through natural means. The natural process of waste elimination will be used as an alternative to forcible intrusion into the body cavities or surgery whenever a physician determines that the natural method is feasible and does not pose a hazard to the inmate's health and safety.

5. The search must be reasonably necessary for institutional security, for the safety of persons, or for evidence involving a criminal offense.

6. Prior to the initiation of the first phase of the search, and before each successive escalation of the search, the individual will be given ample opportunity to voluntarily remove and surrender the contraband.

7. A Correctional Security Shift Supervisor or Correctional Officer III of the same sex as the inmate must be physically present when the search is made.

8. The search will be made only by a physician or appropriate medical personnel working under sanitary conditions and in a medically approved way.

9. Force may be used only to the extent necessary to make the person submit to the examination.

10. Blood, urine, and saliva may be taken from the person and subjected to laboratory analysis to determine the presence of alcohol, narcotics, or dangerous drugs, where there is a clear indication that such evidence will be found.

11. X-ray technology intended for the diagnosis or treatment of injury or disease will not be used to determine if contraband is concealed in a body orifice or cavity of an inmate.

12. Complete and detailed documentation of all body orifice or cavity searches must be submitted to the warden. Such documentation must include the following information:

a. Chronology of events leading to the search and escalation of the search process.

b. Name and rank of all persons participating in the search process or supplying information which justified the

search.

c. All evidence and information regarding the justification for each degree of the search.

d. Results at the conclusion of the search.

Rulemaking Authority 944.09, 944.473 FS. Law Implemented 944.09, 944.47, 944.472, 944.473 FS. History–New 4-8-81, Amended 7-3-85, Formerly 33-3.065, Amended 11-2-86, 6-2-94, 1-25-96, 3-24-97, 9-9-97, 12-15-98, Formerly 33-3.0065, Amended 2-8-00, 9-4-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2019

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 26, 2019