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Corporal Punishment and Use of Force

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Pursuant to state regulations, corporal punishment is not to be permitted under any circumstances. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (10). However, the use of force may be used to:

1. Overcome resistance;
2. Repel aggression;
3. Protect life; or
4. Retake prisoner or property.

The use of physical force must be thoroughly documented with a detailed account of who was involved, the force that was used and justification for its use. This report must be submitted to the jail administrator. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (11).

"It is not constitutionally permissible for officers to administer a beating as punishment for a prisoner's past misconduct," nor may government officials use gratuitous force against a prisoner who has been already subdued or incapacitated. *Skrnich v. Thornton*, 280 F.3d 1295, 1300-1303 (11th Cir. 2002).

Under the Eighth Amendment, force is deemed legitimate in a custodial setting as long as it is applied "in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically to cause harm." To determine if an application of force was applied maliciously and sadistically to cause harm, a variety of factors are considered including: "the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response." From consideration of such factors, "inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." Moreover, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable for his nonfeasance.

Id. See also *Hope v. Pelzer*, 240 F.3d 975, 980-981 (2001) (holding that "the policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment"), *affirmed*, 536 U.S. 730, 737, 122 S.Ct. 2508, 2514, 153 L.Ed.2d 666 (2002).

The maintenance of prison security and discipline may require that inmates be subjected to physical contact actionable as assault under common law; however, a violation of the Eighth Amendment will nevertheless occur if the offending conduct reflects an unnecessary and wanton infliction of pain. Factors to consider in determining whether the use of force was wanton and unnecessary include the extent of injury suffered by an inmate, the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.

Billingsley v. Shelby County Dept. of Correction, 2005 WL 2659105, *2 (W.D. Tenn. 2005), *citing Combs v. Wilkinson*, 315 F.3d 548, 556-557 (6th Cir. 2002).

Under the Eighth Amendment, prison "officials confronted with a prison disturbance must balance the threat unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force." *Combs v. Wilkinson*, 315 F.3d 548, 557 (6th Cir. 2002) (citation omitted). Because prison officials "must make their decisions in haste, under pressure, and frequently without the luxury of a second chance," courts analyzing a claim of excessive force in violation of the Eighth Amendment must grant them "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.*, (citations omitted).

The *Combs* Court found that a corrections officer's use of mace against a death row inmate while quelling a disturbance in the death row unit was not malicious or sadistic as required to support the inmate's claim of excessive force in violation of the Eighth Amendment. *Id.* See also *Brikho v. Horan*, 146 Fed.Appx. 13 (6th Cir. 2005) (finding deputy sheriff's kick or nudge to back of sleeping inmate when he did not wake up was not excessive force and did not violate Eighth Amendment, absent evidence of malicious or sadistic purpose); *Jennings v. Peiffer*, 110 Fed.Appx. 643 (6th Cir. 2004) (finding correctional officers use of chemical agents on an inmate in a good-faith effort to maintain or restore discipline defeated the inmate's Eighth Amendment excessive force claim under § 1983); *Davis v. Agosto*, 89 Fed.Appx. 523 (6th Cir. 2004) (finding prison officers' use of force in attempting to bring inmate under control was not excessive

and thus did not violate inmate's Eighth Amendment rights where inmate refused to comply with officers' command to submit to handcuffs, forced his way out of cell when door was opened, continued to resist after he was tackled by guard in hallway, and was struck with batons only after he tried to hit guard); *Leonard v. Hoover*, 76 Fed.Appx. 55 (6th Cir. 2003) (finding corrections officers' use of force to extract inmate from his cell was justified under the Eighth Amendment where officers had reason to believe that inmate had dangerous contraband in his cell and inmate repeatedly refused to comply with orders to submit to a search, and inmate suffered only minor injuries); *Kennedy v. Doyle*, 37 Fed.Appx. 755 (6th Cir. 2002) (holding that placing prisoner in restraints after he broke his prison cell window did not violate the prisoner's Eighth Amendment right against cruel and unusual punishment and 14th Amendment right to due process; the restraints were designed to control the prisoner's behavior, more restrictive restraints were placed on the prisoner after he continued to be involved in breaking one window while in restraints and attempting to break another window, and placement in such restraints did not impose "atypical and significant hardship"); *Davis v. Sutton*, 2005 WL 3434633 (W.D. Tenn. 2005) (finding defendants in contempt of court for violating permanent injunction prohibiting the use of chemical agents as a form of inmate discipline and awarding inmates a total of \$95,000 in compensatory damages for the inmates' pain and suffering).

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