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CERTIFICATE

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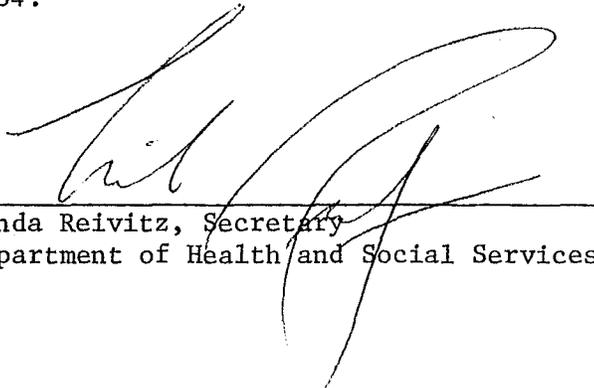
STATE OF WISCONSIN)
)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed rules relating to the use of chemical agents in adult correctional institutions were duly approved and adopted by this Department on August 31, 1984.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 31st day of August, A.D. 1984.



SEAL:

Linda Reivitz, Secretary
Department of Health and Social Services

11-1-84

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND RECREATING RULES

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To repeal and recreate HSS 306.08 and NOTE, relating to the use of chemical agents in adult correctional institutions.

Analysis by the Department of Health and Social Services.

Chemical agents such as Mace are used from time to time by staff at adult correctional institutions to subdue or deter unruly inmates, an inmate trying to escape, or an inmate who poses an immediate threat of bodily harm to others. This order revises s. HSS 306.08, Wis. Adm. Code, to clarify the Department's policy on the use of chemical agents.

New provisions are added to make clear that chemical agents may be used if necessary to prevent imminent escape and to cover situations in which an inmate poses an immediate threat of bodily injury to self as well as to others. The rule also deals with situations other than those already covered when s. HSS 306.06 permits the use of force and the inmate physically threatens to use immediate physical force against the staff member involved. The rule states a process through which staff must proceed before using chemical agents in non-emergency situations. The revised rule explicitly prohibits use of a chemical agent when the agent would have no effect on the offending inmate or when the inmate refuses to obey an order but does not threaten bodily harm to the staff person seeking to enforce it. The current rule allows the superintendent or his/her designee to authorize use of chemical agents. In the revised rule, authorization for use is specifically restricted to the senior staff member present when an inmate is trying to escape, to the superintendent in other specified situations, and to the superintendent or deputy superintendent, security director or assistant superintendent on call or in charge of the institution, in that order, in all other situations for which the use of chemical agents is authorized. This revision represents a compromise between the desire to limit the power to authorize use of chemical agents to the institution superintendent and the reality that the superintendent is not always available to give such authorization.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 46.03(6)(b), 53.07, and 227.014(2), Stats., the Department of Health and Social Services hereby repeals and recreates rules interpreting ss. 46.03(6)(b) and 53.07, Stats., as follows:

7-9-12/dw8

SECTION 1. HSS 306.08 and Note are repealed and recreated to read:

HSS 306.08 USE OF CHEMICAL AGENTS.

(1) DEFINITIONS. In this section: (a) "Chemical agent" means CN or CS or a comparable incapacitating agent in a form which includes, but is not limited to, a tear gas grenade, projectile, pepper fogger, riot shell, or cannister.

(b) "CN" means chloroacetophenone.

(c) "CS" means o-chlorobenzyl malononitrile.

(2) REGULATION. The use of a chemical agent is a form of non-deadly force and is regulated by this section.

(3) EMERGENCY SITUATIONS. Chemical agents may be used when necessary in the following emergency situations:

(a) To prevent imminent escape;

(b) To subdue an inmate who poses an immediate threat of bodily injury or death to self or someone else; or

(c) To regain control of all or part of an institution during a disturbance as defined in s. HSS 306.22(1), or an emergency as defined in s. HSS 306.23(1).

(4) NONEMERGENCY SITUATIONS. (a) To deal with situations other than those described in sub. (3), chemical agents may only be used where s. HSS 306.06(3) permits the use of force and the inmate physically threatens to use immediate physical force, which may involve a threat to use a weapon, against the staff member. An inmate's verbal threats do not justify using chemical agents.

(b) In order to ensure that chemical agents are used only as a last resort in these situations, the staff member shall take the following steps, if feasible, before actually employing a chemical agent:

1. Communicate with the inmate;
2. Ask one or more other available people to communicate with the inmate, such as another security officer, a social worker, a crisis intervention worker, a member of the clergy, or a psychologist or psychiatrist;
3. Wait for a reasonable period of time, unless waiting would likely result in an immediate risk of harm to the inmate or to another person;
4. Make a show of force to the inmate;
5. Use physical power and strength; and
6. Use any other reasonable means short of applying a chemical agent to enforce an order.

(c) When s.HSS 306.06(3) permits the use of force and a staff member knows of an inmate's history of violent behavior in similar situations and reasonably believes that the inmate will become violent in this situation, a chemical agent may be used after the procedures in par. (b) 1 to 4 have been followed but before the inmate physically threatens to use actual physical force.

(5) PROHIBITED USE. Chemical agents shall not be used when:

(a) It is clear that the chemical agents would have no physical effect on the inmate; or

(b) An inmate refuses to follow an order and exhibits no other behavior that would justify application of a chemical agent under sub. (3).

(6) ORDER OF USE. When use of CN or CS is indicated, CN shall be used first. If CN is ineffective, CS may be used.

(7) USE IN CONFINED OR CLOSE AREAS. In confined or close areas, only CN or CS may be used. In all respects, the manufacturer's safety instructions shall be followed.

(8) USE OUTSIDE AND IN LARGE ENCLOSED AREAS. Tear gas grenades, projectiles, pepper foggers and riot shells may only be used in outside areas or in large enclosed areas in which the danger due to a reduction in oxygen is minimal.

(9) AUTHORIZATION. Use of chemical agents may only be authorized by the following persons:

(a) In situations under sub. (3)(b) or (c), by the superintendent or his or her designee;

(b) In situations under sub. (3)(a), by the senior staff member present at the time and place; and

(c) In all situations under sub. (4), by the superintendent or deputy superintendent, or, if neither is present at the institution, the security director or, if that person is not available, the assistant superintendent on call or in charge of the institution.

(10) APPLICATION. Chemical agents may be employed only by a trained supervisor or staff member. When a chemical agent is used in a situation under sub. (4), the use shall be under the immediate supervision of a supervisor. Each institution shall ensure that every staff member authorized to use chemical agents is properly trained in their use.

(11) MEDICAL ATTENTION AND CLEAN-UP. As soon as possible after a chemical agent has been used, all inmates who have been exposed to the chemical shall be examined by the medical staff. These inmates shall have their eyes cleaned with water and be provided with a change of clothing. Exposed living quarters shall have bedding and mattresses changed and shall be thoroughly cleaned. Whenever CS is used, exposed inmates shall be offered an opportunity to shower.

(12) INCIDENT REPORT. As soon as possible following the use of a chemical agent, an incident report shall be submitted to the director of the division's bureau of adult institutions. The incident report shall be as thorough as possible, describing:

- (a) The problem leading to the use of the chemical agent;
- (b) The steps taken prior to the use of the chemical agent;
- (c) Why those steps were inadequate; and
- (d) Measures taken following the use of the chemical agent.

NOTE: HSS 306.08. HSS 306.08 authorizes and regulates the use of chemical agents in adult correctional institutions.

The Division's policy is to allow use of chemical agents in emergencies, and to ensure that in nonemergency situations chemical agents are used only as a last resort and not as alternatives to communication with an inmate or to other types of non-deadly force. The rule also makes clear that chemical agents may not be used to punish an inmate but only to control him or her when necessary.

As stated in sub. (2), the use of chemical agents is regulated by this section. Because chemical agents pose a risk of injury to others, they may only be used in limited situations.

Subsection (3) identifies emergency situations in which chemical agents may be used without going through the steps identified in sub. (4). Under this subsection, chemical agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, HSS 306.23(1), or disturbance, HSS 306.22(1). "Part of an institution" may be a building or a small area like a room. Whether a chemical agent should be used in such a situation depends upon whether using the chemical agent is less hazardous for both the person seeking to use the chemical agent and the inmate than using other reasonable means to accomplish the purpose. As explained in HSS 306.06(5)(b), an inmate's simple refusal to follow an order does not constitute loss of control of all or part of an institution.

Subsection (4) covers use of chemical agents in nonemergency situations, including situations in which an inmate refuses to follow an ordinary order. These situations include, for example, an inmate's refusal to take nonemergency medication or submit to nonemergency medical treatment; refusal to return a meal

tray or tray inserts, unless the tray or insert is presently being used as a weapon; an inmate's throwing objects or liquids from the cell, unless such activity constitutes an immediate threat of bodily injury or death to him or herself or another; refusal to be strip searched; refusal to come to the bars of a cell to be handcuffed for any nonemergency reason; and yelling or shouting.

Subsections (4) (b) 1. to 6. outline a series of steps to be taken before using the chemical agents in nonemergency situations, when it is feasible to take those steps. This procedure is designed to ensure that chemical agents are used only as needed in particular situations. The person seeking to use the chemical agent should communicate with the inmate and should ask other available personnel to communicate with the inmate to persuade the inmate to take the desired action or comply with an order. When communicating with an inmate, staff members should take into consideration an inmate's special needs, including, but not limited to, an inmate's inability to understand English. Waiting or reconsidering the propriety of an order may be possible in some cases. Other solutions may be appropriate in other situations.

Except in situations in which the staff member seeking to use chemical agents knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, chemical agents may only be used after an inmate physically threatens to use immediate physical force. Physical force includes possession of a weapon, such as a knife. Verbal threats do not constitute a sufficient threat. When the staff member knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, the staff member must follow all steps in the procedure in sub. (4)(b) 1. to 4. but may use chemical agents before using actual physical power and strength.

Subsection (5)(a) states that chemical agents may not be used when they clearly would have no effect. Situations include instances when the inmate has thrown a blanket over his or her head, when the chemical agent cannot effectively be used according to the manufacturer's instructions to produce the desired result, or when a particular inmate is known not to react to the chemical agent.

Subsection (5)(b) clarifies the Division's policy that an inmate's simple refusal to follow an order does not justify using chemical agents unless the inmate physically threatens to use immediate physical force.

Subsections (7) and (8) regulate the use of particular chemical agents. CN and CS agents are the only agents to be used in enclosed areas, because enclosed areas require the use of agents which can be released in small amounts and can be carefully controlled. This method of use further avoids unnecessary risks of injury. The manufacturer's safety instructions include guidance as to the distance from which the agent should be delivered as well as the date after which the agent must be replaced.

The use of agents identified in subsection (8) is confined to areas where the risk to life by a reduction in the oxygen available is minimal, for example, in open areas and in rooms such as the dining halls at most institutions.

Because use of chemical agents creates risks, subsection (9) imposes severe limitations on who may authorize their use. In emergency situations described

in subsection (3)(b) and (c), the superintendent or his or her designee may authorize the use of chemical agents although, to prevent an imminent escape, described in (9)(b), it may be necessary for the senior staff member present to authorize use of a chemical agent. In non-emergency situations, only the person actually in charge of the institution at the given time--who may be the superintendent or deputy superintendent, the security director, or an assistant superintendent may authorize the use of chemical agents.

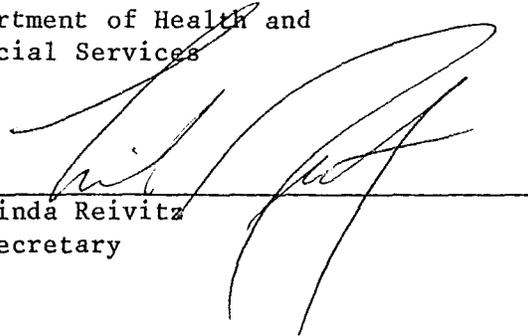
As provided in subsection (10), when chemical agents are used, only trained supervisory personnel may use them, except that a trained staff member may use them under immediate supervision. These requirements and the training requirements are to ensure that chemical agents are used only when necessary and in a way that minimizes the risk to staff and inmates.

Subsection (11) requires a medical examination and change of clothes and bedding and cleaning for exposed inmates and areas. Inmates exposed to CS must be given a chance to shower. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of chemical agents as well as the discomfort they may cause.

The reporting requirement in subsection (12) ensures adequate administrative notification and review of the use of chemical agents.

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s.227.026(1), Stats.

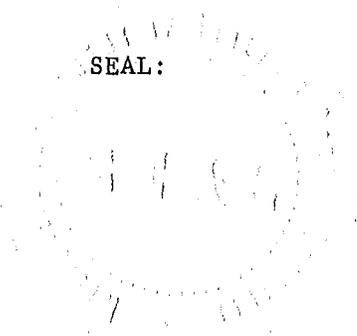
Department of Health and Social Services



By: _____
Linda Reivitz
Secretary

Dated: August 31, 1984

SEAL:





State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl
Governor

Linda Reivitz
Secretary

August 31, 1984

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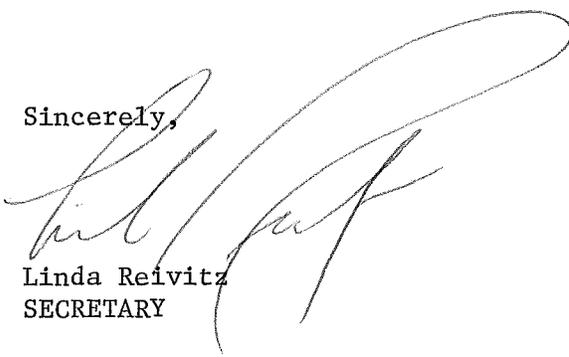
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Bureau

Dear Mr. Prestegard:

As provided in s. 227.023, Stats., there is hereby submitted a certified copy of HSS 306.08, administrative rules relating to the use of chemical agents in adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.023, Stats.

Sincerely,


Linda Reivitz
SECRETARY

Enclosure