

Clearinghouse Rule 96-206

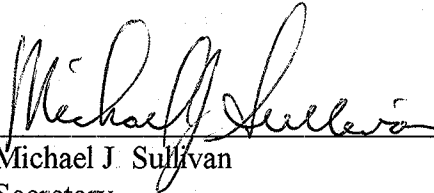
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

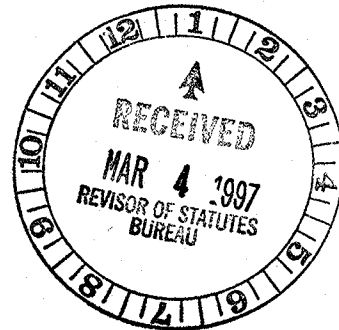
I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to the use of oleoresin of capsicum, firearms, and other weapons by division of community corrections employes, were duly approved and adopted by the Department on March 3, 1997.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections
149 E. Wilson Street in the City of
Madison, this 3rd day of March, 1997.

SEAL


Michael J. Sullivan
Secretary



96-206

5-1-97

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

The Wisconsin department of corrections proposes an order to repeal and recreate DOC 328.20 and 333.16, relating to use of oleoresin of capsicum, firearms and other weapons by division of community corrections employes.

Statutory authority: ss. 301.03 (3), 301.048 (10), 227.11 (2) (a), 941.26 (4) (a) and 941.26 (4) (c) 1., Stats.
Statutes interpreted: ss. 301.03 (3), 301.03 (3c), 301.03 (9m), and 301.048 (3) (a) 3. and 4., Stats.

Analysis Prepared by the Department of Corrections

Some Division of Community Corrections (DCC) employes have experienced physical injuries while on duty. In one incident, an offender physically injured a DCC employe. In another incident, a neighbor of an offender physically injured a DCC employe. The Department believes that the use of some type of self-protective tool could have prevented injuries to those DCC employes. Without this provision, the Department believes more DCC employes may be injured unnecessarily.

Section 941.26 (4) (a), Stats, permits a person to possess or use oleoresin capsicum. Section 941.26 (4) (c) 1., Stats., permits a person to use oleoresin of capsicum for self-defense or defense of another. Permitting DCC employes to use oleoresin of capsicum provides DCC staff members a legal, safe, and effective alternative for protection of themselves and others.

These rules permit DCC employes to possess and use oleoresin of capsicum while on duty. These rules authorize DCC employes to use oleoresin of capsicum against an offender or another person while acting in self-defense or defense of another, as allowed under s. 939.48, Stats.

These rules prohibit DCC employes from using or possessing oleoresin of capsicum while on duty unless the DCC employe has successfully completed a department approved training program. These rules require a DCC employe to update training pursuant to policy and procedures.

These rules prohibit DCC employes from using oleoresin of capsicum against another DCC employe or against an offender merely because the offender refuses to follow orders. These rules continue to prohibit an employe from using or possessing firearms or other weapons except for oleoresin of capsicum.

SECTION 1. DOC 328.20 is repealed and recreated to read:

DOC 328.20 OLEORESIN OF CAPSICUM, FIREARMS AND OTHER WEAPONS. (1) OLEORESIN OF CAPSICUM. For the purpose of this section, "oleoresin of capsicum" means the oleoresin extracted from fruits of plants of the genus capsicum. The oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

DOC 328.20 (2) AUTHORIZED USE OF OLEORESIN OF CAPSICUM. An employe may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a), Stats., while on duty, only under the following conditions:

(a) After successfully completing a department approved training program for oleoresin of capsicum or, if applicable, after successfully updating training according to department policy and procedure.

(b) While acting in self-defense or defense of a third person, as allowed under ss. 941.26 (4) (c) 1. and 939.48, Stats.

(c) Toward an offender, another person or an animal.

DOC 328.20 (3) PROHIBITED USE. An employe may not use oleoresin of capsicum under any of the following:

(a) Against another employe, except for training purposes.

(b) Toward an offender merely because the offender refuses to follow orders.

(c) Merely to cause bodily harm or bodily discomfort.

DOC 328.20 (4) APPROVED PRODUCTS. An employe shall carry and use only products and delivery systems approved by the department.

DOC 328.20 (5) MEDICAL CARE. An employe shall immediately provide medical attention to the person exposed to oleoresin of capsicum.

DOC 328.20 (6) DOCUMENTATION. The employe using oleoresin of capsicum shall document its use according to department policy and procedure.

DOC 328.20 (7) FIREARMS OR OTHER WEAPONS. No employee may carry or use a firearm or other weapons while on duty, except as permitted under s. DOC 328.20 (2).

SECTION 2. DOC 333.16 is repealed and recreated to read:

DOC 333.16 OLEORESIN OF CAPSICUM, FIREARMS AND OTHER WEAPONS. (1) OLEORESIN OF CAPSICUM. For the purpose of this section, "oleoresin of capsicum" means the oleoresin extracted from fruits of plants of the genus capsicum. The oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

DOC 333.16 (2) USE OF OLEORESIN OF CAPSICUM. An employe may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a), Stats., while on duty, only under the following conditions:

(a) After successfully completing a department approved training program or, if applicable, after successfully updating training according to department policy and procedure.

(b) While acting in self-defense or defense of a third person, as allowed under ss. 941.26 (4) (c) 1. and 939.48, Stats.

(c) Toward an offender, another person or an animal.

DOC 333.16 (3) PROHIBITED USE. (a) An employe may not use oleoresin of capsicum under the following:

(a) Against another employe, except for training purposes.

(b) Toward an offender merely because the offender refuses to follow orders.

(c) Merely to cause bodily harm or bodily discomfort.

DOC 333.16 (4) APPROVED PRODUCTS. An employe shall carry and use only products and delivery systems approved by the department.

DOC 333.16 (5) MEDICAL CARE. An employe shall immediately provide medical attention to the person exposed to oleoresin of capsicum.

DOC 333.16 (6) DOCUMENTATION. The employe involved in the use of oleoresin of capsicum shall document its use according to department policy and procedure.

DOC 333.16 (7) FIREARMS OR OTHER WEAPONS. No employe may carry or use a firearm or other weapons while on duty, except as permitted under s. DOC 333.16 (2).

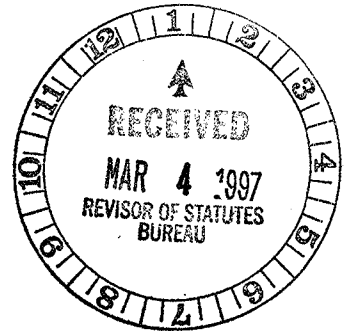
These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Dated: 2/27/97

By: Michael J. Sullivan
Michael J. Sullivan
Secretary

Seal:



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

State of Wisconsin Department of Corrections

March 3, 1997

Bruce Munson, Revisor
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3222

Dear Mr. Munson:

Pursuant to s 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 328.20 and DOC 333.16, relating to the use of oleoresin of capsicum, firearms and other weapons by division of community corrections employees.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan".

Michael J. Sullivan
Secretary

Attachments

