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# PATRICK SNYDER

STATE REPRESENTATIVE • 85<sup>th</sup> ASSEMBLY DISTRICT

## Testimony in Support of Assembly Bill 826

Assembly Committee on Corrections

January 11<sup>th</sup>, 2022

Chairman Schraa and members of the Committee:

I authored this legislation with Senator Feyen because the simple reality is that many Department of Corrections (DOC) employees do not feel safe when conducting their duties inside prisons. These safety concerns while incredibly concerning on their own have also directly impacted staffing shortages within the DOC. Along with Assembly Bills 828, 824, and 825, this bill will allow us to improve safety for corrections officers and inmates and help address staffing shortages.

Allowing corrections officers to carry oleoresin of capsicum (CS gel) - more commonly known as pepper spray - provides corrections officers a means to protect themselves during the course of their duties with a nonlethal deterrent. I have heard some truly horrifying stories of physical and sexual abuse directed at our corrections officers in recent years. Obviously, serving as a corrections officer is far from a typical job but no one should suffer violent felonies without protection as part of their work duties.

It is our duty as legislators to ensure that corrections officers are safe in the course of their important work. Unfortunately, many of them are not and this legislation will go a long way to helping ensure safety in our correctional institutions.

Thank you for taking the time to hear my testimony today. I am happy to answer any questions you may have.



**DAN FEYEN**

**STATE SENATOR**

18th Senate District  
(608) 266-5300  
Sen.Feyen@legis.wi.gov

PO Box 7882, Madison, WI 53707-7882  
<http://legis.wisconsin.gov/senate/18/feyen>

To: The Assembly Committee on Corrections  
From: Sen. Dan Feyen  
Re: Assembly Bill 826

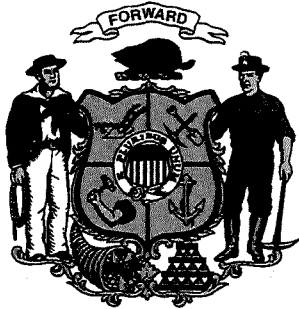
Hello Chair Schraa and members of the committee and thank you for taking the time to hold a public hearing on AB 826.

One of our main priorities as legislators should be to ensure state employees safety. AB 826 allows Department of Corrections (DOC) employees to use pepper spray while acting in an official capacity.

Law enforcement officers, armed forces, and national guardsman are already allowed to use pepper spray while acting in the line of duty, this bill simply extends the same ability to DOC employees.

At a time when we are seeing increases of battery against DOC employees and safety conditions are worsening at correctional facilities, we should provide them with all the tools that they need to keep themselves safe and make sure they can return to their families after their shift.

Thank you again for holding a public hearing on this important legislation.



# Wisconsin Department of Corrections

Governor Tony Evers | Secretary Kevin A. Carr

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## **Testimony in Opposition of AB 826 – Related to the Use of Pepper Spray by an Employee of the Department of Corrections (DOC)**

**Assembly Committee on Corrections**

**Tuesday, January 11, 2022**

**417 North GAR**

Good Morning Chairman Schraa and Committee members. Please accept this testimony in opposition to AB826 which prohibits the DOC from prohibiting any DOC employee from carrying or using OC Spray in their official capacity.

As I am sure you are aware, the DOC already has policies that permit certain staff in the Division of Adult Institutions (DAI) and the Division of Community Corrections (DCC) to carry and use OC spray. All correctional officers (CO), correctional sergeants, probation/parole agents, and corrections field supervisors are trained and certified in the use of OC spray, and most carry while on duty. Under current policy, we train all new COs and agents, certify their training, supply the necessary equipment, and provide annual refresher training for certified staff. This bill will effectively increase our training, certification, and equipment requirements by approximately 30% without any additional funding or resources. Without proper safeguards like training and certification in place, this bill puts the safety and security of our staff and the people in our care at severe risk and subjects our agency to additional litigation. Furthermore, as there is no need to carry and use chemical agents in our administrative offices, AB826 increases liability risks and safety concerns in nonsecure areas where only administrative duties are accomplished.

Along with AB 826's unfunded mandate, most concerning is the attempt of this bill to circumvent federal authority and force the use of OC spray in our secure youth facility, Lincoln Hills/Copper Lake Schools (LHS/CLS). Which will result in costly litigation by the plaintiffs in the current consent decree.

In 2018, after years of recorded concerns in relation to excessive use of force, including excessive use of chemical agents, and other egregious issues surrounding the safety and care of youth at LHS/CLS, the previous administration negotiated a settlement agreement in federal court that specifically included ending the use of OC Spray within the following year (2019). At the time, the federal judge noted that LHS/CLS was "out of touch" with national norms. AB826's attempt to force an, "out of touch" practice back into LHS/CLS would undo the efforts that began in 2018 to transition LHS/CLS from a punitive correctional model to an evidence-based treatment facility for youth. Chemical agents have no place in youth treatment facilities. The care of incarcerated youth in secure environments should look very different from that in adult institutions. Studies in developmental and child psychology reveal that adolescence is an important formative period of growth and transition. The punitive nature of chemical

agents and its adverse physical reactions have a tremendous negative impact on the treatment and rehabilitation of children who are incarcerated.

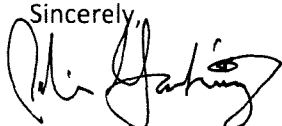
The 2018 settlement also put LHS/CLS under a federal consent decree. The consent decree established an enforceable plan for sustainable reform. A court-appointed independent Monitor regularly inspects and determines whether LHS/CLS is in compliance with the consent decree. The consent decree is clear in prohibiting the use of OC spray and other chemical agents at LHS/CLS. This federal court order was made pursuant to the U.S. Constitution, and therefore supersedes any contrary state law. Under this bill, the Department would be placed in a position to have to ignore state law in favor of enforcing the federal court order.

LHS/CLS has been without chemical agents for more than two years, and our transition to an evidence-based treatment model has proven that OC Spray is not necessary. In the first report from the Monitor, filed shortly after the Evers Administration took office, DOC was in substantial compliance with just one of roughly 50 benchmarks measured by the Monitor. Less than three years later, the latest November 2021 report shows DOC is now in substantial compliance with 12 items, with the Monitor noting the agency is close to substantial compliance with a handful of others. In addition, DOC continues to be in at least partial compliance with all requirements. Moreover, in the latest report, the Monitor noted, "...overall, there has been significant improvement in youth and staff morale..."

The safety and security of our staff and the persons in our care will continue to be our number one priority. At every step throughout the transition of LHS/CLS, the DOC has included communication plans, technical assistance, and trainings. Additionally, when staff were concerned about changes we adjusted timelines. All of this preparation has been implemented for every major change so that our dedicated our staff at LHS/CLS have time to learn, accept and then implement rehabilitative and evidence-based practices. And their commitment to move away from punitive practices is evident in the monitor's report. I welcome all committee members to read through the latest report, which is attached to this testimony, to provide you with a better understanding on why the efforts of AB 826 do not belong at LHS/CLS.

The DOC opposes AB 826, and asks the committee not to support its passage.

Sincerely,



Paulina Gutiérrez

Legislative Advisor

WI Department of Corrections

## Palmer, Linda

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**From:** Erin Miller <people1st.advocate@gmail.com>  
**Sent:** Tuesday, January 11, 2022 9:36 AM  
**To:** Palmer, Linda  
**Subject:** Re: Hearing on AB 826

Erin Miller  
3515 E. Tesch Ave. Apt 5  
ST Francis, Wisconsin  
53235

On Tue, Jan 11, 2022 at 9:34 AM Erin Miller <[people1st.advocate@gmail.com](mailto:people1st.advocate@gmail.com)> wrote:

I am very worried about there being no restrictions in the use of pepper spray by DOC employees. Specifically that it will end up disproportionately used on people with mental illness. My best friend since we were in 2nd grade is mentally ill. The thought of them already being scared, away from home, and people who love them, then getting pepper sprayed as well...I vomited with pain and fear just before sending this comment in. Please, there needs to be some limits on the use of pepper spray.

**From:** Sharon Kusmirek <[skusmirek79@gmail.com](mailto:skusmirek79@gmail.com)>  
**Sent:** Monday, January 10, 2022 3:12 PM  
**To:** Palmer, Linda <[Linda.Palmer@legis.wisconsin.gov](mailto:Linda.Palmer@legis.wisconsin.gov)>  
**Subject:** Assembly Bill 826 -- Use of Pepper Spray by DOC

Dear Ms Palmer;

**Re:Assembly Committee on Corrections Public Hearing on AB-826 - relating to: use of pepper spray by an employee of the Department of Corrections.**

I wish to register my opposition AB 826, relating to: use of pepper spray by an employee of the Department of Corrections. It appears to prohibit DOC from placing any restrictions on use of pepper spray by DOC employees.

I am concerned that this policy will increase the use of pepper spray, and expect that it will be disproportionately used on people with mental illness, causing further trauma and psychological harm.

I ask the Committee abandon this bill.

Sincerely,

Sharon Kusmirek

4477 N. 55 Street

Milwaukee, WI 53218

414.466.5082

**From:** Shaadie Ali <[sali@aclu-wi.org](mailto:sali@aclu-wi.org)>  
**Sent:** Monday, January 10, 2022 9:38 PM  
**To:** Palmer, Linda <[Linda.Palmer@legis.wisconsin.gov](mailto:Linda.Palmer@legis.wisconsin.gov)>  
**Subject:** Comment for Submission for Assembly Corrections Committee Hearing -- AB826

Hello,

I am reaching out on behalf of the ACLU of Wisconsin to register our opposition with Assembly Bill 826. The bill would prohibit DOC restrictions on the use of pepper spray by DOC employees. We are particularly concerned about the policy leading to an increase in the use of pepper spray, especially at juvenile prisons like Lincoln Hills. Children who enter the juvenile system often suffer from anxiety and mood disorders including Post-Traumatic Stress Disorder, disruptive behavior disorders including Attention Deficit Hyperactivity Disorder, or schizophrenia and other psychotic disorders. Pepper spray is often cited as ineffective against individuals with mental illness and likely has an exacerbating effect on increasing children's anger and trauma. Increased use of pepper spray against these children may constitute cruel and unusual punishment. We urge the members of the committee to oppose AB826.

Sincerely,

Shaadie Ali

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Shaadie Ali  
Interim Deputy Director  
ACLU of Wisconsin  
[sali@aclu-wi.org](mailto:sali@aclu-wi.org)  
Cell: (414) 426.3030  
*Pronouns: He/Him*

Visit our website at [aclu-wi.org](http://aclu-wi.org)  
Like our [Facebook](#) page or follow us on [Twitter](#)

From: Joyce Ellwanger <[joyce.ellwanger@gmail.com](mailto:joyce.ellwanger@gmail.com)>  
Sent: Tuesday, January 11, 2022 7:50 AM  
To: Palmer, Linda <[Linda.Palmer@legis.wisconsin.gov](mailto:Linda.Palmer@legis.wisconsin.gov)>; Rep.Haywood  
<[Rep.Haywood@legis.wisconsin.gov](mailto:Rep.Haywood@legis.wisconsin.gov)>; Sen.Johnson <[Sen.Johnson@legis.wisconsin.gov](mailto:Sen.Johnson@legis.wisconsin.gov)>  
Subject: AB826

To the Assembly Committee on Corrections:

I am deeply disturbed by AB 826 which is before you today.

The need within DOC is not for ANY employee to be able to carry and use pepper spray at their discernment which can lead to severe harm to the majority of people in its care by those who are already afraid and untrained to deal with people with mental illnesses.

The need is for all staff to be trained to de-escalate situations of tension and to work in building positive relationships and trust with people with mental illness.

As the mother of someone who has made significant progress in addressing her mental health issues because of proper medication and support from those in her life I plead with you to defeat this punitive, harmful and unnecessary legislation.

Joyce Ellwanger  
1637 N 16th St  
Milwaukee, WI 53205