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To: The Senate Committee on Judiciary and Public Safety
From: Sen. Dan Feyen
Re: Senate Bill 845

Hello, Chairman Wanggaard and committee members. Thank you for taking the time to hold a public hearing on Senate Bill 845. This bill passed the Assembly last month.

One of our main priorities as legislators should be to ensure state employees' safety. SB 845 allows Department of Corrections (DOC) employees to use pepper spray while acting in an official capacity.

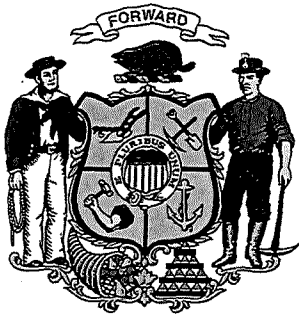
Law enforcement officers, armed forces, and national guardsman are already allowed to use pepper spray while acting in the line of duty, this bill simply extends the same ability to DOC employees.

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.

Recently, there was a riot at a maximum security facility in New York that only stopped because pepper spray was used. During the Assembly public hearing, corrections officers testified about a case where pepper spray saved the life of a correctional officer after a prisoner stabbed them. Allowing correctional officers to both carry and use pepper spray for self-defense purposes is critical to ensuring these individuals are protected.

There is one simple amendment that specifies an employee must take the proper training before being allowed to carry and use pepper spray. The Department may not deny this training.

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



Wisconsin Department of Corrections

Governor Tony Evers | Secretary Kevin A. Carr

Testimony in Opposition of SB845/AB826 – Related to the Use of Pepper Spray by an Employee of the Department of Corrections (DOC)

Senate Committee on Judiciary & Public Safety

Tuesday, February 8, 2022

411 South

Good Morning Chairman Wanggaard and Committee members. Please accept this testimony in opposition to SB845/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 SB845/AB826'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. SB845/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.

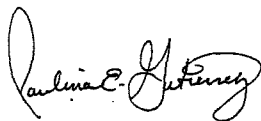
The 2018 settlement also put LHS/CLS under a federal consent decree. The consent decree established an enforceable plan for sustainable reform. A court-appointed independent Monitor regularly inspects and determines whether LHS/CLS is in compliance with the consent decree. The consent decree is clear 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 SB845/AB826 do not belong at LHS/CLS.

The DOC opposes SB845/AB826, and asks the committee not to support its passage.

Sincerely,



Paulina Gutiérrez
Legislative Advisor
WI Department of Corrections



PATRICK SNYDER

STATE REPRESENTATIVE • 85th ASSEMBLY DISTRICT

Testimony in Support of Senate Bills 844, 845, and 846 and Assembly Companion Bills 824, 825, 826

Senate Committee on Judiciary and Public Safety

February 8th, 2022

Chairman Wanggaard and members of the Committee:

I authored this legislative package with Senator Feyen and Representative Callahan 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. This package of bills will help improve safety for corrections officers and make sure that when violence is directed against corrections officers that is dealt with appropriately.

Senate Bill 844 increases the maximum imprisonment penalty for battery against a corrections officer by five years and mandates that if the battery is committed while an individual is already imprisoned that if found guilty the offender must serve the sentence consecutively with another sentence. Battery committed against a corrections worker is unique because often the perpetrator is already serving one prison sentence for another unrelated crime. In some cases the perpetrator serves no additional penalty because the sentence for the battery is served concurrently with another sentence allowing a prisoner the leeway to commit battery against a corrections officer with no additional penalties.

Senate Bill 845 allows corrections officers to carry oleoresin of capsicum (CS gel) - more commonly known as pepper spray - providing 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. This bill was amended based on feedback to place a training requirement on employees who wish to use pepper spray. During the testimony at the Assembly hearing corrections officers testified about a case where pepper spray saved the life of a corrections worker in Wisconsin who was stabbed several times by a prisoner - and just last week corrections officers in New York State prevented a riot due to pepper spray as you can see in the article submitted with my testimony.

Senate Bill 846 requires that the DOC report all cases of alleged battery by prisoners against corrections employees. These reports will be collected by the department and will be forwarded to local law enforcement for potential prosecution. This bill was amended to

remove language referring to the grounds of a correctional institution because there are times an inmate is in the custody of DOC, under the authority of the respective institution, but not actually on the grounds of the institution (i.e. in transport, at a hospital, etc.). Current administrative code only requires the Department "shall work with local law enforcement and the district attorney so that violations of criminal statutes may be investigated and appropriately referred for prosecution." However, it doesn't contain a mandatory report and many corrections employees have been frustrated that reports aren't required. Ensuring that local law enforcement receives reports will allow for the proper legal process to play out in cases of alleged battery against corrections employees.

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.

Union: Riot at max security N.Y. prison sends multiple COs to hospital

One of the officers was knocked unconscious after being slammed into a hand rail and punched in the head

Feb 3, 2022

By James McClendon
syracuse.com

ROMULUS, N.Y. — Four correctional officers and a sergeant were hospitalized Monday after a riot broke out in the mess hall of a maximum-security prison in Seneca County, union officials said.

The riot began Monday afternoon when two inmates refused to follow directions from three officers working in the mess hall at Five Points Correctional Facility in Romulus, union officials with the New York State Correctional Officers & Police Benevolent Association said Wednesday in a news release.

The officers grabbed one of the inmates in a body hold and began dragging him towards the exit, officials said. The officers wrestled the inmate to the ground outside the mess hall, where he continued to struggle, they said.

Another inmate jumped up from a table in the mess hall and ran towards the exit, officials said. Officers grabbed him and forced him against a wall, they said.

Multiple inmates then stood up and approached the officers in a threatening manner, officials said. Three inmates grabbed two officers near the exit door, and another officer was punched in the head when he tried to help, according to the release.

An inmate grabbed another officer, slammed him into a hand rail and punched him in the head, officials said. Another inmate then hit the officer and knocked him unconscious, they said.

Pepper spray was used and three of the inmates stopped fighting, officials said. One inmate continued to attack guards, punching and kicking them in the face, officials said.

The pepper spray was used again and the inmate eventually stopped resisting, officials said.

All inmates involved in the incident were placed in handcuffs and removed from the mess hall, according to the release.

Four of the inmates were transferred to Elmira Correctional Facility and placed in special housing units pending disciplinary charges, according to the release. Three other inmates were transferred to Attica Correctional Facility and placed in special housing units pending disciplinary charges, officials said.

The three inmates accused of inciting the riot were placed in special housing units at Five Points pending disciplinary charges, officials said.

Three officers were treated by prison medical staff for shoulder and lower back pain, officials said. They returned to work after being treated, according to the release.

Three officers and a sergeant were taken to Geneva Hospital for injuries to their jaws, heads, knees and for abrasions, officials said.

The officer who was knocked unconscious was taken to Cayuga Medical Center for a concussion. He was later released from the hospital.



The incident is still under investigation, officials said. No inmates or officers involved in the incident were identified by union officials.

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CORRECTIONS1 TOP 5

1 Off-duty N.Y. CO lured into robbery shoots 2 muggers