

January 20, 2022

Comments from the ACLU of Wisconsin
In Opposition to Assembly Bill 826



Chair Schraa and Members of the Committee:

The American Civil Liberties Union of Wisconsin (“ACLU”) is a nonpartisan, non-profit organization working to protect the civil liberties and civil rights of all Wisconsinites. The ACLU opposes the adoption of Assembly Bill 826 (“AB826”) which prohibits the Department of Corrections from prohibiting employees from carrying or using oleoresin of Capsicum (CS gel), commonly known as “pepper spray” in their official capacity.

In 2018, the State of Wisconsin agreed to settle a class-action lawsuit, *J.J. vs. Litscher*, brought against the Lincoln Hill and Copper Lake youth prisons. The young plaintiffs in the case challenged abusive practices including the use of pepper spray, and were represented by the ACLU of Wisconsin, Juvenile Law Center, and pro bono attorneys at Quarles & Bradley.

A key term of the settlement agreement was the elimination of pepper spray within 12 months of court approval. Under the 2018 plan, Lincoln Hills and Copper Lake were both put under a federal consent decree. Under that consent decree, an independent monitor was appointed by the court to conduct regular inspections of the youth prisons and ensure that the terms of the settlement were being followed.

Though recent monitor reports at Lincoln Hills and Copper Lake have shown concerning upticks in use of force, it is encouraging to see that pepper spray has not been used at these facilities recently. Unfortunately, the ACLU of Wisconsin is deeply concerned about how AB826 jeopardizes the crucial progress made through the settlement implementation process. Undoing the progress made by the State of Wisconsin would be severely damaging not only to children at Lincoln Hills and Copper Lake but to the people of Wisconsin on the whole.

Children who enter juvenile facilities like Lincoln Hills and Copper Lake 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. Research on clinical behavior has shown that trauma sustained as a child can have devastating consequences in adulthood. The harm and abuse that children sustain due to abuse in state-run facilities can prevent them from fully reintegrating into their communities upon release and exacerbates the risk of recidivism.

For these reasons, we urge you to oppose AB826. Thank you.