

# COMPLIANCE DETERMINATION

## Nelson Mandela – Recommendation 4

**Recommendation Summary:** Prohibit the use of pepper spray except in situations of immediate risk to life and enhance oversight.

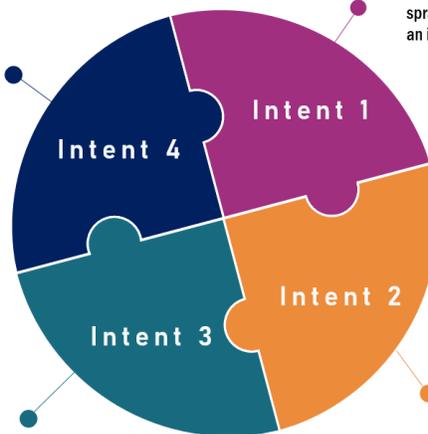
**Primary Public Body:** Manitoba Justice

### 4. To consider funding cell doors which open both ways

Manitoba Justice considered funding cell doors which open both ways and has begun installing two-way doors at the Manitoba Youth Centre. **Intent fully compliant.**

### 1. To prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk (proximate danger) to life

Policies were amended to be consistent with pepper spray use being limited to situations where there is an immediate risk to life. **Intent fully compliant.**



### 3. To have an external and independent body review and/or investigate every incident of pepper spray use and provide recommendations

An internal investigation was conducted by Manitoba Justice over the pepper spray incident and this report was shared with the Manitoba Advocate. The investigation was thorough and included recommendations consistent with the intent of this recommendation. **Intent fully compliant.**

### 2. To notify the Manitoba Advocate immediately of any incident where pepper spray was discharged

Manitoba Justice notified the Manitoba Advocate of a pepper spray incident. Manitoba Justice committed to notifying the Manitoba Advocate within two business days of a pepper spray incident. One incident was reported since the release of the special report. **Intent fully compliant.**

## COMPLIANCE DETERMINATION



Manitoba Justice demonstrated changes in policies that prohibit the use of pepper spray except in situations of immediate risk to life and enhancements to the oversight of pepper spray use. Actions taken fully implement the recommendation.

## Recommendation Compliance Summary

This form details the assessment of compliance with recommendations made under Section 27 and Section 31 of *The Advocate for Children and Youth Act*. MACY assesses recommendations for compliance once a year but receives updates from the public bodies every six months.

<b>1. Recommendation Information</b>	
<b>Report Name:</b>	Learning from Nelson Mandela: A Report on the Use of Solitary Confinement and Pepper Spray in Manitoba Youth Custody Facilities
<b>Date Released:</b>	2/21/2019
<b>Full Recommendation:</b> (including details)	<p><b>Recommendation Four:</b> The Manitoba Advocate for Children and Youth recommends that Manitoba Justice immediately prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk to life* to correctional staff or other youth in custody by amending <i>The Correctional Services Regulation</i>.</p> <p><b>DETAILS:</b></p> <ul style="list-style-type: none"> <li>• That Manitoba Justice prohibit the use of pepper spray to halt self-harming behaviour, barring no other serious and imminent risks to the lives of other youth or correctional officers</li> <li>• That Manitoba Justice consider the funding of cell doors which open both ways and can prevent the deployment of pepper spray due to forced entries.</li> <li>• That Manitoba Justice immediately notify the Manitoba Advocate for Children and Youth of any incident where pepper spray was discharged. Notification must include the full incident report, age of the youth, race, ethnicity, reasons for use, number of times pepper spray was deployed, and follow-up medical and psychological treatment.</li> <li>• That Manitoba Justice appoint an external and independent body to review and investigate every incident of pepper spray use, and provide recommendations of how the incident could be prevented.</li> </ul> <p>*For the purpose of this recommendation, ‘immediate’ shall be defined as proximate danger to life as perceived by an objective third party in the circumstances.</p>
<b>Intent(s) of Recommendation:</b>	<p>The intent of the recommendation is to:</p> <ol style="list-style-type: none"> <li><b>1. To prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk (proximate danger) to life.</b></li> <li><b>2. To notify the Manitoba Advocate immediately of any incident where pepper spray was discharged.</b></li> <li><b>3. To have an external and independent body review and/or investigate every incident of pepper spray use and provide recommendations.</b></li> <li><b>4. To consider funding cell doors which open both ways.</b></li> </ol>
<b>Theme:</b>	Pepper Spray

<b>Issue:</b>	Use of Force
<b>Primary Department:</b>	Manitoba Justice
<b>Dates of Previous Official Updates from Public Body:</b>	June 30, 2020
	December 31, 2019
	June 26, 2019
<b>2. Compliance Determination</b>	
Fully Compliant 1.0	The addressee complies entirely with the requirements of the recommendation.
<b>3. Rationale for Determination</b> <i>(How did you reach this compliance determination)</i>	
<p><b>1. To prohibit the use of pepper spray in youth custody facilities except in situations of immediate risk (proximate danger) to life.</b></p> <ul style="list-style-type: none"> <li>Standing Orders shared by Manitoba Justice with the Manitoba Advocate are largely compliant with allowing the use of pepper spray only in situations of immediate risk to life; however, they are inconsistent because they cite examples of other allowable situations which cannot be reasonably understood to pose “an immediate risk to life”, including “6.5 [to] Prevent a youth from escaping or attempting to”.</li> <li>Furthermore, the Standing Orders at both facilities are not consistent with each other (Standing Order 03-967 and Standing Order 974). Improving consistency within and among standing orders would increase compliance with this intent.</li> </ul> <p><b>2. To notify the Manitoba Advocate immediately of any incident where pepper spray was discharged.</b></p> <ul style="list-style-type: none"> <li>Manitoba Justice reported a single pepper spray incident in 2019 to the Manitoba Advocate. The report was not immediate as the Manitoba Advocate was notified eight days later and the full details were provided over three weeks following the incident.</li> <li>In January 2020, the Manitoba Advocate requested that Manitoba Justice notify her office within 48 hours following any use of OC spray. On September 15, 2020, Manitoba Justice confirmed that the Executive Director will inform the Manitoba Advocate within two business days of any incident, in case an incident occurred on a Friday, and to send full details of the incident in the weeks following that initial notification. This process would be ongoing. Hence, this intent has been met.</li> </ul> <p><b>3. To have an external and independent body review and/or investigate every incident of pepper spray use and provide recommendations.</b></p> <ul style="list-style-type: none"> <li>Manitoba Justice provided MACY with a comprehensive report investigating the incident of pepper spray use in 2019 and recommending logical and feasible changes in services. This report complies with the intent of the recommendation.</li> <li>The analysis of the incident is consistent with the intent of the recommendation as it evaluated the use of force in relation to “immediate risk to life”.</li> <li>The investigation was conducted and the report was written by Manitoba Justice employees, and thus the process was neither external nor independent. Due to the comprehensiveness of the report, the Manitoba Advocate, the independent review body for youth justice, decided not to investigate further.</li> <li>While further information was provided on September 15, 2020 regarding the Use of Force</li> </ul>	

policy and how correctional officers (juvenile counsellors) are expected to respond based on recognition of a young person's displayed behavior, no update has been provided on whether the recommendations emerging from the internal investigation have been implemented, or if there is a plan for implementation. Nevertheless, this intent has been met.

**4. To consider funding cell doors which open both ways.**

- As per information received on September 15, 2020, Manitoba Justice considered funding cell doors which open both ways and has begun installing two-way doors at the Manitoba Youth Centre. According to the department, as there is significant cost, the process will take some time however it has commenced. Two-way doors allow correctional officers to enter a room that might be barricaded without the use of pepper spray. This intent has been met.

The actions and evidence submitted indicate that:

- The policies in place are consistent with use of pepper spray only in cases of immediate risk to life; however, there are some reasonable uses that are not consistent with the recommendation and some inconsistencies between facilities.
- As stated in the recommendation Manitoba Justice reported the pepper spray incident to the Manitoba Advocate and investigated the incident, with some minor deficiencies in implementation including timeliness. The department has agreed to notify the Manitoba Advocate within two business days of any future pepper spray incidents and to provide a full report in the weeks following the initial notification. The Manitoba Advocate may choose to investigate the incident independently once notified. This ensure that there is oversight on the use of pepper spray in Manitoba youth custody facilities.
- Manitoba Justice has begun installing two-way cell doors at the Manitoba Youth Centre. More information to regarding the number of doors that have so far been installed and how many more will be completed, including those at the Agassiz Youth Centre.
- Overall, actions reported entirely meet requirements of the intent, deeming Manitoba Justice's response fully compliant with the recommendation. Of note, there has been no use of pepper spray for over a year in Manitoba youth custody facilities.