

Learning from Nelson Mandela	Recommendation Four	Reported Status: (not reported)
Report Sent: February 21, 2019	Public Body: Manitoba Justice	

Recommendation Four:

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 *The Correctional Services Regulation*.

DETAILS:

- 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
- 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.
- 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.
- 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.

***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.**

Response from the Manitoba Government on June 27, 2019:

Summary of activities completed since report was released

The department shifted policy direction in relation to the use of OC (pepper) spray several years ago, as is evident from the significant reduction in use over that time. For example, OC spray was used only once in each youth facility in 2018 and only once total in 2019 as of the date of this report.

The current policy on the use of OC requires authorization by the facility head. It is only authorized in circumstances of serious physical threat to the individual, staff or other youth. Additionally, the department has voluntarily implemented a practice to notify the MACY in circumstances where OC spray is used.

Analysis of Manitoba Government’s Response by the Manitoba Advocate for Children and Youth:

Activities Completed:

- The MACY-RAP response states that Manitoba Justice shifted policy direction in relation to the use of OC (pepper) spray “several years ago” and that the “significant reduction” of OC spray use can be attributed to this shift, providing the following statistics:
 - 2018: 1 incident at MYC, 1 incident at AYC
 - 2019: 1 incident in total, as of June 2019
- Manitoba Justice also notes that current policy on the use of OC spray requires authorization by the facility head, and is only authorized in circumstances of serious physical threat to the individual, staff, or another youth.
- The MACY-RAP response notes that Manitoba Justice has voluntarily implemented a practice to notify MACY in every circumstance where OC spray is used.

Level of Compliance

This response indicates a commitment to respond to the intent of the recommendation and its details.

Analysis of Response

- What is the current policy on the use of OC spray since this ‘shift’? Please provide MACY with a copy of the policy so we are able to assess whether this recommendation has been implemented.
- In the details of this recommendation, as listed in the special report, it is outlined that Manitoba Justice should “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”.
- To be addressed in the short term*:
 - Status of implementation
 - Information indicating a timeline for implementation

*On September 30, 2019, the Manitoba Advocate sent a letter to the members of the government’s MACY-RAP committee and working group requesting additional information regarding the government’s progress on recommendations made by the Advocate. The Advocate communicated to the government representatives short-term questions for information that could be provided quickly. Additionally, the Advocate sent long-term questions for the government to address in future progress reports. The questions are designed to seek clarification on activities, seek evidence or documentation to support the activities, or to determine how the government’s responses are meeting the intent of the recommendations made by the Advocate. All of this information will be used by the Advocate to determine the levels of compliance with implementation, in accordance with s.11(1)(d), s.30(2)(d), and s.30(4), of *The Advocate for Children and Youth Act*.