

**Review of Use of Force at Mississippi State Penitentiary**  
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During the week of October 8, 2007 I reviewed the policy and practices related to the use of force at the Mississippi State Penitentiary, Unit 32. The purpose of this review was to determine whether use of force is being used appropriately, in light of national standards.

Mississippi Department of Corrections (MDOC) policy on use of force is embodied in its Policy Number 16-13. This policy restricts the use of physical force to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to maintain or regain control. The policy further states that force will only be utilized as a last resort and under no circumstances is to be used as punishment. The policy specifically outlines that force may be used in the following instances:

- To protect staff, the public, and offenders;
- To prevent escape;
- To prevent the destruction of state property;
- To gain compliance from an offender;
- In instances of justifiable self defense;
- To prevent the commission of a felony or misdemeanor;
- To enforce regulations and orders; and
- To prevent or quell a riot.

MDOC SOP Number 16-13-01 is the departmental procedure that identifies the levels of force that may be used given a specific situation. This procedure states that "...force should be employed only to the degree necessary to control the offender to a level that will be effective..." Chemical agents may only be authorized by the deputy commissioners, wardens, deputy wardens, majors, captains, or institutional watch commanders except where immediate decisions are required.

The Deputy Commissioner explained to me that MDOC authorizes staff to use the following kinds of chemical agents against prisoners:

Body Guard LE – 10 MK-9 (Oleoresin Capsicum)  
Body Guard LE – 10 MK-3 (Oleoresin Capsicum)  
Clear Out – CS Tear gas

None of the incident reports that were provided to me showed the actual use of any chemical agent other than Body Guard LE, and only in the form of spray, not the stinger rubber ball version of the chemical agent.

Use of chemical agents is identified as a Level Three option on the continuum of force. The policy provides that the use of chemical agents may be used on an offender to prevent serious injury, to prevent substantial property damage, to prevent loss of life, or to prevent escapes. SOP 16-13-1 appears to be consistent with national standards, which generally prohibit the use of chemical agents merely to gain compliance and enforce regulations and orders except where necessary to prevent serious injury or loss of life, prevent substantial property damage, or prevent escape.

In actual practice, however, my review of the incident reports from Unit 32 revealed that chemical agents are being used not just in the extraordinary circumstances approved by MDOC policy and national standards but on a regular basis. In fact, it appears that line staff are accustomed to routinely relying on chemical agents as a method of enforcing orders of any nature,

I arrived at this conclusion by conducting a detailed review of the Reports of Incidents that were filed at Unit 32 from January 1, 2007 thru September 30, 2007. The MDOC provided a total of 258 Reports of Incidents from this time period documenting use of force of some kind. In all but six of these situations the primary element of force involved the use of chemical agents. The monthly totals of these incidents were as follows:

<b>Month / Year</b>	<b>Number of Incidents</b>
January 2007	33
February 2007	37
March 2007	36
April 2007	28
May 2007	32
June 2007	35
July 2007	41
August 2007	21
September 2007	6
<b>Total</b>	<b>258</b>
<b>Monthly Average</b>	<b>28.6</b>

The chart shows that after spiking at 41 incidents of use of force in July, the incidents began to drop sharply in August and then plummeted in September. The probable reasons for this remarkable drop in use of chemical agents —to about 15 per cent of its previous level -- are discussed later in this report..

Each of the incident reports I reviewed documented the general nature of the situation that triggered staff's response with use of force I tried to determine whether each incident of use of chemical agents fell within a category approved by MDOC policy and its standard operating procedures. I found that the majority of incidents reported by MDOC did not fall into a category approved either by their own policy and procedures or by national standards.

To Prevent Serious Injury: Less than half (110) the 258 reported incidents of use of force involved any sort of behavior that might result in serious injury to another. I gave the department the benefit of the doubt and assigned the incident to this category whenever the incident involved assault by an inmate of any kind,; for example, throwing water, urine, feces, or property. I also included in this category all destruction of property that could lead to serious injury such as setting fires or flooding the units.

To Prevent Substantial Property Damage: Not one of the 258 incidents of use of force during this reporting period involved major damage to the physical plant, apart from the which involved flooding the cells and tier and the setting of mattresses and other property on fire, which I accounted for in the category above.

Prevent Escape: Only one of the 258 incidents of use of force during this reporting period involved an inmate trying to elude staff and get of the housing unit.

Prevent Loss of Life: Three of the 258 incidents of use of force involved assaulting staff or other inmates with a weapon or in one case an attempted suicide.

Enforcement of an Order, Regulation, or Policy: In the majority of the incidents – 144 out of 258—officers used chemical agents where it was obviously *not* necessary to prevent serious injury, loss of life, substantial property damage or escape, but merely to respond to inmates' refusal to obey orders. For example, there were many incidents of officers using chemical agents against inmates for refusing to return food trays, blocking the food tray slot, shouting or pounding on the bars, or otherwise creating a disturbance in the unit.

An analysis of each of the incidents provided resulted in the following breakdown of the incidents by type as defined in the above:

Incidents by Type	Number of Incidents
To prevent serious injury	110
To prevent substantial property damage	0
To prevent loss of life	3
To prevent escape	1
To enforce orders	144

## Observations

1. The number and type of incidents reported by the MDOC for the period in question indicate a significant overuse of chemical agents in the enforcement and control of inmates in Unit 32. It is obvious on the face of the incident reports that in many cases the use of chemical agents was unjustified.
2. It appeared to me that the primary reason for security staff's excessive reliance on chemical agents is their inexperience and lack of training combined with the constant stress and intense pressure produced by working in an atmosphere like Unit 32. Additional training is advisable and recommended for all staff placed in these units.
3. The very remarkable reduction in the use of chemical agents reported in August and September 2007 shows that Unit 32 can be kept secure without routine resort to force. The low number of incidents in September 2007 (there were only six) much more closely reflect the level of force that is normal and predictable for a facility of this kind than the very high figures in January through July.
4. One evident reason for the extraordinary drop in use of force incidents in August and September in Unit 32 is the constant presence in the Unit of senior management staff of the MDOC, including the Deputy Commissioner. The dramatic reduction in use of force during this time frame is particularly striking because the reduction occurred at the same time that MDOC was reclassifying hundreds of inmates from lock-down status to general population inside of Unit

32. The reduction in use of force coincided with the implementation of greater freedom inside Unit 32 for more than half the population in the Unit. This suggests that the new mode of operation, which relies on intense involvement by senior management in the daily operation of the Unit, and in limiting segregation status to those inmates who actually need it, is a far more effective method of maintaining safety and security than the previous method of universal lockdown.
5. Whether the trend toward less use of chemical agents will continue once the Deputy Commissioner returns to his normal activities remains in doubt and must be determined after a few months of further review.
  6. MDOC policy and standard operating procedures appear to approve the use of chemical agents to enforce an order only where necessary to prevent potentially serious injury, loss of life, serious damage to property, or escape. However, the majority of the incidents reviewed did not in any sense have the potential to reach that level. For example, there were several instances of chemical agents being used in reaction to inmates banging cups or trays on walls or bars. This activity is disruptive to the unit but does not constitute grounds for the use of chemical agents. Similarly, although it is totally inappropriate for inmates to masturbate in front of female staff, the use of chemical agents is not warranted to compel the inmate to comply with an order to cease the behavior.
  7. In many of the incidents I reviewed, officers used chemical agents on offenders for refusing to comply with orders to come to the cell fronts to be handcuffed. There are many times when it is essential for the ongoing safety and security of the Unit that inmates comply with these orders; however, MDOC needs to review its protocol and develop options that may be utilized in lieu of chemical agents.
  8. Based on my observations during the week of October 8, 2007, I anticipate that the trend observed in August and September 2007 will continue, *so long as the percentage of the population in a lockdown situation is reduced and stabilized, and so long as the change in culture implemented by senior management staff in August and September can be sustained.* Very few instances of use of force have occurred in the portions of the Unit where prisoners who have been reclassified from lockdown status to general population.

## **Recommendations**

MDOC should provide additional staff training to address those situations that occur daily in which inmates refuse to comply with an order (creating a disturbance, masturbating, etc.) in order to limit and reduce the use of chemical agents for these reasons. The pre-service and in-service training curriculums should be reviewed and modified accordingly.

The Commissioner and Deputy Commissioner should clarify Policy Number 16-13 and SOP 16-13-01 to make it absolutely clear to staff that they are not to use chemical agents to gain compliance except where necessary to prevent loss of life or injury, serious damage to property, or escape. An exception could be carved out to allow for the use of chemical agents when an inmate refuses to come to the cell front to be handcuffed, in those limited situations where immediate handcuffing is essential for the safety and security of the Unit.

The use of force, and specifically the use of chemical agents, should be monitored closely over the next six months to ensure that the positive trends noted in August and September 2007 are maintained.