

**FINAL STATEMENT OF REASONS
AMENDMENT, ADOPTION AND REPEAL OF REGULATIONS OF THE
BOARD OF STATE AND COMMUNITY CORRECTIONS**

**MINIMUM STANDARDS FOR JUVENILE FACILITIES
TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 5**

LOCAL MANDATE DETERMINATION

As required by Government Code Section 11346.9(a)(2), the Board of State and Community Corrections (BSCC) has determined that there will be no mandates imposed on local agencies or school districts through the adoption of these Title 15 regulations as proposed.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.9(a)(4), the BSCC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The BSCC has determined that there are no alternatives that would be more effective or as effective, less burdensome, and more cost effective, to affected persons. The 45-day public comment period began April 6, 2018, and ended May 21, 2018. The BSCC held two public hearings on May 22, 2018, in Ontario, and on May 30, 2018, in Sacramento.

All comments received during the 45-day public comment period and at the public hearings are summarized and addressed below.

UPDATES TO INITIAL STATEMENT OF REASONS

There have been no updates to the Initial Statement of Reasons, originally noticed on April 6, 2018.

NONDUPLICATION OF STATE OR FEDERAL STATUTE OR REGULATION

The proposed language does not duplicate any state or federal statute or regulation.

SUMMARY AND RESPONSE TO PUBLIC COMMENTS

Comments were received from the persons listed below in table #1. Comments are summarized and responded to by subject in table #2.

TABLE #1

COMMENT #	COMMENTS NAME /TITLE/ORG	DATE RECEIVED
1	Sue Burrell, Policy & Training Director Pacific Juvenile Defender Center	May 18, 2018 (Letter)
2	Virginia Corrigan, Staff Attorney The Youth Law Center	May 21, 2018 (Letter)
3	Brian Goldstein, Director of Policy and Development Center on Juvenile and Criminal Justice, et al. (Please see original letter for list of signatories)	May 29, 2018 (Letter)
4	Meghan Best, Legal Fellow Children's Defense Fund – California	May 22, 2018 (Public hearing)
5	Renee Menart, Communications and Policy Analyst Center on Juvenile and Criminal Justice	May 30, 2018 (Public hearing)

**TABLE #2
COMMENT A**

SUMMARY OF COMMENT	<p>Regulations should specify that BSCC staff capture the actual staffing ratios in facilities when conducting onsite inspections.</p> <p>We recommend that Title 15, California Code of Regulation section 1321(h) be amended as follows:</p> <p>Staffing shall be in compliance with a minimum youth-staff ratio for the following facility types, <u>and facilities shall report actual staffing ratios in the form requested by the Board of State and Community Corrections at the time of inspections conducted pursuant to Welfare and Institutions Code section 209.</u></p>
COMMENTER(S)	#1
BSCC RESPONSE	<p>BSCC's Facility Standards and Operations staff is responsible for ensuring that facilities meet the minimum standards set forth in California regulations. Among their duties, BSCC staff document relevant and necessary information in inspection reports. BSCC staff presently review and discuss the actual number of youth in custody and staff ratios during their on-site inspections, as well as report and document the findings in their inspection documents; specifically, in the Procedures Checklist (PC) or Living Area Space Evaluation (LASE). The PC and LASE are posted to the BSCC website for public viewing as part of the complete inspection report.</p> <p>BSCC does not believe that the suggested modification is necessary for two reasons. First, the proposed language does not set forth a minimum standard for facilities, but rather designates ministerial tasks to BSCC staff and their inspections. Second, the proposed language is rendered moot as BSCC staff reviews and documents actual staffing ratios of facilities as aforementioned.</p> <p>However, BSCC acknowledges the public's interest in knowing the actual staffing ratios that serve their respective communities. Accordingly, the BSCC will conduct an internal review of facility inspection documents to determine how the actual staffing ratios on the day of the inspection may be documented consistently.</p>

COMMENT B

SUMMARY OF COMMENT

It is imperative that the Board gather data and assess facilities' existing staffing ratios and policies and practices regarding the use of chemical agents and mechanical restraints.

The proposed regulation revisions require facilities to document their use of chemical agents and mechanical restraints, allowing the Board both to monitor compliance with regulatory requirements and to gain a baseline understanding of how chemical agents and mechanical restraints are used in juvenile facilities in California. Conducting such an assessment would provide much-needed context and permit an informed discussion of these issues when revisions to Titles 15 and 24 are next contemplated.

COMMENTER(S)

#2

BSCC RESPONSE

BSCC staff inspects juvenile facilities for minimum standards outlined in Title 15 and 24, which include staffing, chemical agents, and mechanical restraints. BSCC staff gain contextual understanding of staffing and use of force incidents in facilities through on-site facility inspections, where they review incident reports, grievances, other forms of documentation, and conduct random interviews of youth and staff. Although the facility documentation is not included in BSCC inspection reports, BSCC staff uses the information obtained onsite to determine whether the facility is in compliance.

BSCC will conduct an internal review of facility inspection documents to determine how actual staffing ratios on the day of inspection and other data, may be documented consistently.

COMMENT C	
SUMMARY OF COMMENT	The Youth Law Center believes that the proposed revisions do not go far enough to protect youth from the unnecessary use of mechanical restraints. These protections should be strengthened by limiting the use of mechanical restraints to handcuffs and to situations where they are necessary to protect the minor or others and by requiring an individualized determination of need prior to the application of any mechanical restraints, including during transportation.
COMMENTS(S)	#2
BSCC RESPONSE	<p>California is diverse in many ways, including its juvenile detention facilities. There are many differences in resources, limitations, and abilities among California's 58 counties. For this reason, California's Title 15 regulations are promulgated to be performance-based. Performance-based regulations ensure each facilities ability to comply with minimum standards, provide safe environments for youth and staff, and flexibility to meet population needs. There are some correctional settings where restraints are necessary to protect the safety of a youth and staff.</p> <p>Existing regulations do limit the use of mechanical restraints. Specifically, Section 1358 requires the use of restraints be administered only upon approval of the facility manager or designee. Where approval is obtained, facilities are required to review retention reasons hourly, provide continuous visual supervision, and document at least every 15 minutes. Moreover, Section 1358 prohibits the use of restraint devices that attach a youth to a wall, floor, or other fixture, including restraint chair, or through affixing of hands and feet together behind the back (hogtying). Existing language requires staff document the circumstances leading up to restraint, medical conditions that contraindicate devices or techniques, the identification of acceptable devices, signs/symptoms for immediate medical/mental health referral, protective housing, hydration and sanitation, and exercise of extremities.</p>

**BSCC
RESPONSE
CONTINUED**

Section 1358.5 is specifically proposed to address the movement and transportation of youth in the facility. This section requires that the facility administrator, in cooperation with the responsible physician and behavioral/mental health director develop policies and procedures that identify acceptable devices, staff approved to utilize devices, circumstances that lead to the use, individual assessment of need, and consideration of safety and security.

COMMENT D

SUMMARY OF COMMENT

Chemical spray use should be banned inside youth facilities. To date 36 states have banned completely the use of chemical agents in juvenile facilities and only five states California, Illinois, Indiana, Minnesota, and Texas permit staff to carry it on their person.

Chemical spray is not an appropriate method for behavioral management and safety in juvenile facilities. It causes harm to youth and staff, and disrupts correctional climates and staff-youth relationships that are essential to effective rehabilitative programming.

According to the National Institute of Justice, chemical spray “incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed... temporarily restricting breathing to short, shallow breaths.” The use of such destructive agents on our youth should not be tolerated.

COMMENTS(S)

#2, 3, 4, and 5

BSCC RESPONSE

The BSCC provided many avenues for public input on the use of chemical agents in juvenile detention facilities. The issue was widely discussed at Executive Steering Committee meetings and workgroups, and at the Board meeting in February 2018. Stakeholders presented many arguments both for, and against, the use of chemical agents. The possibility of a total ban on the use of chemical agents was also discussed. However, the Board noted that a total ban was not within the scope of their authority and may require an act of legislation.

Ultimately, the Board chose to adopt the proposed language that further defines the use of chemical agents in juvenile facilities.

Additionally, the Board is watching Assembly Bill 2010 (AB 2010), which proposes to further limit the use of chemical agents in juvenile facilities by adding Section 208.4 to the Welfare and Institutions Code. Title 15 may be amended as necessary following the adoption of AB 2010.

COMMENT E	
SUMMARY OF COMMENT	<p>Staff-to-youth ratios of 1:8 during the day and 1:16 during sleeping hours should be adopted to reduce safety risks and improve outcomes for youth.</p> <p>A smaller youth to staff ratio can increase a staff members ability to engage more fully on trauma-informed approaches that are sensitive to the needs of our young people. Title 15, Section 1321 (Staffing) should incorporate these modern, nationally recognized staffing ratios to limit sexual assault and violence against young people while allowing greater opportunities for youth to develop meaningful relationships with adult role models and staff.</p> <p>It is the standard used by more than 300 jurisdictions as well as the U.S. Department of Justice and now required by the federal Prison Rape Elimination Act (PREA).</p>
COMMENTS(S)	#2, 3, 4, and 5
BSCC RESPONSE	<p>Staffing ratios were among the most talked about topics during the juvenile regulation revision process. The BSCC Board, the Executive Steering Committee, and the workgroups received many public comments about staffing ratios and spent numerous hours discussing the issue and considering alternatives among the many meetings. Unable to reach a consensus, the ESC provided the Board, at its February 2018 board meeting, with the following three options to address staffing ratios and asked the Board to make the final decision:</p> <ol style="list-style-type: none"> (1) maintain current staffing ratios (no changes); (2) change ratios to 1:8 (awake) and 1:16 (sleeping); or, (3) change ratios to 1:8 (awake) and 1:16 (sleeping) with a two-year waiver for facility administrators who cannot immediately meet the requirement. The Board would review and approve waivers. <p>The Board was provided with public comments received during the revision process and took comment on the matter during the Board meeting. Following a thorough discussion, the Board decided to move forward with option #1, choosing to make no changes to the existing staffing ratios because it would be a fiscal issue for facilities to increase spending for personnel in facilities; small counties in particular, would be adversely impacted and may never be able to meet the requirement of 1:8/1:16. Board members noted that they would continue the discussion in other BSCC committees and conduct further study on the subject.</p>