



September 12, 2023

Linda Penner, Chair
Board of State and Community Corrections
2595 Venture Oaks Way, Suite 200
Sacramento, CA 95833
linda.penner@bscc.ca.gov
Via email only

Re: Settlement Discussions to Avoid Litigation Regarding the Board's Obligations to Investigate and Determine the Suitability of County Juvenile Facilities Pursuant to WIC § 209

Dear Chair Penner and Board Members,

As the Board prepares for its September 14, 2023, meeting, on behalf of our client, Children's Defense Fund, we want to address two items: one that is on the Board's agenda, Suitability and Corrective Action Plan Process; and one that is not, but should be, a determination as to the suitability of the Kings County juvenile facilities. Regarding Kings County, we ask that you add a suitability determination of Kings County's juvenile facilities to the Board's agenda because the County has failed "to meet its commitment to resolve noncompliance issues as outlined in its corrective action plan." Welfare and Institutions Code Section 209(d). The Board is now obligated by law to make a suitability determination at its next scheduled meeting, which is this Thursday, September 14, 2023.

I. Suitability and Corrective Action Plan Process (Agenda Item G)

As we indicated in prior letters, we believe that the Board requires a standard protocol and clear directives and timelines for handling issues of noncompliance, determinations of

suitability, and notices of unsuitability. We received a commitment from counsel and staff to address the matter and appreciate that counsel and staff have since reached out to discuss their efforts. Thus far, there has been a meaningful discussion and an atmosphere of mutual consideration in these discussions. We will not comment on the substance of those discussions in this letter, but we wanted to acknowledge the ongoing efforts of BSCC staff and note our appreciation. We are hopeful that this work will ultimately develop a level of certainty in the process; and that this clarity will prevent issues from arising in the future and ensure that the Board meets its legal obligations as to noncompliance and unsuitability.

While we are not commenting on the substance of our ongoing discussions, we do want to highlight several recent occurrences and discoveries that underscore the importance of developing clear, written practices and protocols to address noncompliance and unsuitability of juvenile facilities. The most significant of these recent situations is the current suitability determination with respect to Kings County's juvenile facilities, which is addressed in detail below.

First, the agenda for the Board's upcoming meeting includes, as Item H, "Local Detention Facilities Inspection Update." The document associated with this item contains links to "smartsheets" for outstanding items of noncompliance for adult facilities and for juvenile facilities. The "smartsheets" are evolving documents and therefore do not capture what will actually be presented to the Board at the meeting, and the likewise fail to maintain a record of what actually is presented to the Board. Notably, there are several "Corrected Items of Noncompliance" which were presumably presented to the Board previously, but there is no indication of when, and a review of old Board agendas shows links to the same "smartsheets" and thus only provides the current information. This presents a difficulty for anyone wishing to follow or review the Board's investigations and corrective action measures, and also presents an issue with respect to the Board's obligation to maintain meeting documents and public records. We believe that that these problems can be easily corrected, but they highlight the difficulty that a member of the public faces in tracking issues of noncompliance.

Since we last wrote to address this issue, notices of noncompliance were issued with respect to the following juvenile facilities: Los Padrinos Juvenile Hall in Los Angeles County, Barry J. Nidorf SYTF in Los Angeles County, San Joaquin County Juvenile Hall, San Joaquin County Camp, and Fresno County Juvenile Justice Campus. In each of these situations, the notice of noncompliance issued indicated the "date CAP due to BSCC" as 60 days from the date of the notice. As the Board is aware, upon receipt of notice of noncompliance the county must file "an *approved* corrective action plan" within 60 days. (Welf. & Inst. Code § 209(d) (emphasis added).) The Board's continuing practice of setting a due date on the 60th day following a notice of noncompliance, rather than setting that as the deadline for filing of an "approved" corrective action plan, risks repetition of the very problem that the Board found itself in with respect to

the County of Los Angeles' juvenile halls earlier this year. The Board consistently invites counties to submit their corrective action plans at a point in time when it is too late to timely approve them, or to address any issues that would lead to a denial, and it fosters confusion for counties that already seem to have difficulty following and understanding the deadlines associated with a noncompliance notice.

Indeed, the County of Los Angeles, despite having just experienced a protracted noncompliance and suitability process, and undoubtedly having direct lines of communication with Board staff, evidenced serious confusion with the timeline and next steps. In an August 14, 2023, letter to the County of Los Angeles Board of Supervisors, Interim Chief Probation Guillermo Viera Rosa said that the County CAP would not be due until after a "final inspection report" is completed in December of 2023. (Attached A). Chief Viera Rosa indicated receipt of what he called "a DRAFT preliminary inspection report," but noted that he had not received the "official pre-inspection report." The document that Chief Viera Rosa refers to as a DRAFT is the Board's Initial Inspection Report," dated August 10, 2023. (Attachment B).

The confusion in Chief Viera Rosa's letter is not limited to the date a corrective action plan is due, as the Chief goes on to describe the remaining process in a manner that does not align with the statutory scheme: "The process is that BSCC staff create a final inspection report – which should issue December 2023 at the earliest – with a recommendation to the Board, then a public hearing on the report and a suitability hearing is made. If an unsuitable finding is made by the Board, the County has 60 days to submit and implement a corrective action plan." The Board issued a notice of noncompliance for Los Angeles' Los Padrinos facility the following week. We sincerely hope that Los Angeles' confusion has been sufficiently addressed.

To better understand where the challenges in this process occur, we have reviewed numerous prior investigations and noncompliance issues, and suggest that members of the Board do the same. In our review, we've encountered numerous problems that further illustrate the Board's need for a formal process to ensure that it meets its own legal obligations and complies with the 2008 injunction. (Attachment C).

II. The Board is Obligated to Determine the Suitability of Kings County Juvenile Facilities at its Upcoming Meeting because the County Failed to Meet its Commitment to Resolve Noncompliance as Outlined in its CAP

The Board has a present legal duty to determine the suitability of Kings County's juvenile facilities: the Kings County Juvenile Center (a juvenile hall), the Kings County Juvenile Center Camp, and the Kings County Secure Youth Treatment Facility. The Board issued a notice of noncompliance as to all the Kings County facilities on April 27, 2023. (Attachment D). Kings

County timely submitted an approved corrective action plan in which it agreed to bring its facilities into compliance by August 27, 2023. (Attachment E).

Pursuant to Welfare and Institutions Code Section 209(d), a corrective active plan that a county must submit “shall outline how the juvenile hall, special purpose juvenile hall, camp, ranch, secure youth treatment facility, law enforcement facility, or jail plans to correct the issue of noncompliance and give a reasonable timeframe, not to exceed 90 days, for resolution, that the board shall either approve or deny.” Kings County’s CAP gave August 27, 2023, as the reasonable time by when it would correct noncompliance. The Board, having received that CAP and timeline was obligated to approve or deny it. The Board, through its staff, approved the CAP with the compliance deadline of August 27th.

Kings County failed to meet the commitment outlined in its CAP because it remained noncompliant as of the reasonable deadline set by the Board-approved CAP. There is no dispute that Kings County remained out of compliance as of August 27, and, indeed, does not seem to be any dispute that it remains out of compliance as of the writing of this letter. Because Kings County failed to meet its commitment under the CAP, the Board is obligated to make a determination of suitability at its next scheduled meeting, which will occur this week on Thursday, September 14, 2023.

After reviewing the CAP and confirming that Kings County failed to meet the commitments outlined in the CAP, we were disappointed not to find it on the Board’s upcoming agenda as required pursuant to Welfare and Institutions Code Section 209(d). We raised this with counsel and were informed that when the Board sent a letter to Kings County approving its CAP, including the reasonable deadline of August 27, it also took it upon itself to add 28 days to the compliance deadline, replacing Kings County’s timeline with the maximum allowable time for correcting noncompliance (rather than the “reasonable time” required by law). (Attachment F). Inexplicably, the Board chose to unilaterally offer Kings County even more time that it requested to correct serious violations the State’s minimum standards: “You will have 90 days from this approval to implement your CAP. Failure to meet your commitment to resolving noncompliance issues outlined in the Corrective Action Plan by September 24, 2023.”

The Board would appear to be interpreting the statute in a manner that allows it to set the compliance timeline on its own, or to invent a date from which it can simply add 90 days. This interpretation, and any practice that reflects that type of interpretation fails to give effect to the Legislature’s determination that the noncompliance should be effectuated within a “reasonable timeframe” rather than setting a standard number of days. It also fails to give any effect to the phrase “not to exceed,” as in “a reasonable timeframe, not to exceed 90 days.” An interpretation that county probation departments always have 90 days or a practice that

consistently results in 90 days regardless of other factors, both render the “reasonable timeframe” and the “not to exceed” language in the statute meaningless.

The Board’s decision to alter the deadline, particularly when Kings County initially submitted its CAP on June 5, 2023, reflects a policy of automatically providing probation departments the maximum possible time (in this case 90 days) to correct issues of noncompliance, in direct conflict with the Board’s legal mandate to ensure that counties set a reasonable timeline for corrective action. It likewise reflects a deliberate indifference to the trauma suffered by children left in harmful, noncompliant facilities. Welfare and Institutions Code Section 209 codifies the Legislature’s determination as to the appropriate balance between giving probation departments time to correct violations and ensuring that children are removed from harm as quickly as possible. Rather than respect that balance, and value the children in these facilities to at least the same extent as the professionals charged with running them, the Board consistently works to extend the time afforded probations departments. Time and again, the Board stretches its legal interpretations, manipulates its internal “process” for addressing noncompliance, evidences a dangerously close relationships with those it is charged with investigating, fails to act on items before it, and manufactures technicalities to advantage probation departments—all while children who cannot address the Board are left to wait in unsafe conditions.

The current situation in Kings County, tragically, is a perfect example of the Board’s inclination to help probation avoid facing its own long-standing deficiencies at the expense of children remaining in dangerous and deeply harmful circumstances. A September 5, 2023, report (Attachment G) by Disability Rights California (DRC), which is designated pursuant to federal law as the protection and advocacy agency charged with protecting and advocating for the rights of Californians with disabilities, had this to say about Kings County facilities:

“Our investigation revealed that the County’s youth arrest and detention rates are excessive – among the highest per capita in the state by several measures... Youth with disabilities are held in the Kings County Juvenile Center for disability-related behavior that could have been addressed by County staff more effectively in the community at less cost. Mental health services for youth are inadequate, both in the facility and in the community...

... the youth detention center is prison-like and regimented, rather than the homelike, rehabilitative environment that state law requires. Youth are routinely pepper sprayed in their cells, day rooms and classrooms, often in their face and eyes. For minor infractions, youth are shackled and “body-slammed” by custody officers or forced to sit alone in hallways for hours at a time. Young people with mental health and

behavioral disabilities are disproportionately subject to these practices, which lead to serial discipline, court reports and extensions of their length of stay. Organized activities and outdoor exercise are limited, so youth endure forced idleness, or at best, hours of watching TV in the dayrooms. The incentive program is frustrating and confusing, especially for disabled youth. These conditions re-traumatize many youth with a history of trauma held at the facility.

... Probation staff in tactical gear improperly interfere in the J.C. Montgomery school at the detention facility, monitoring students' work and behavior without regard to students' special education accommodations. Unlike most other youth facilities, Probation, mental health and school staff have no regular process to review incident reports, discuss the needs of various youth, and coordinate supports to disabled youth."

The report goes on to describe the BSCC's findings which corroborate the findings of DRC's retained experts including "excessive use of pepper spray, unlawful use of solitary confinement, and inadequate programming and counseling services." Disturbingly, particularly in light of the Board's failure to timely address present noncompliance, the report also noted that "[m]any of the BSCC's findings were repeat concerns. In its 2021 inspection report, the BSCC found that youth in crisis spent days in solitary confinement due to the lack of on-site mental health staff. At the time, the Center had just two mental health clinicians that it shared with the 600-bed Kings County Jail next door."

The Board's own [2020-2022 Biennial Inspection Report](#) documented serious violations of Title 15, Section 1329, and indicated that it "worked with" the agency to address the issues, but found that there were impediments to immediate correction and described an ongoing situation amounting to noncompliance. It explained the inability to correct the violations this way:

"The hurdle is the lack of on-site mental health personnel. There are two clinicians shared between the Kings County Jail next door (600 inmates) and the youth at JH. There is a MFT assigned to the facility for 13 hours a week currently with a new proposal to increase this to 20 hours. This is severely lacking when a youth is in crisis as the jail clinicians work Monday through Friday during traditional hours (7am-5pm) and respond when available.

In the Suicide Watch incident reports read, the MH Clinician responded up to 5 hours after the watch was initiated and the youth are maintained in the Observation Room at Intake pending a return visit,

which in most cases is up to 24 hours or more. This leaves the youth on an extreme status with Suicide Prevention protocols for longer than necessary based on safety check comments and behaviors.”

Despite these findings, the Board did not issue notice of noncompliance. Quite the opposite, the Board wrote that it was “pleased with all operational aspects of the Kings County Juvenile Center and Camp.” It then closed out its 2020-2022 inspection of the Kings County facilities.

Given the Board’s failure to address noncompliance, it is no surprise that DRC found that the violations had persisted, and in some cases worsened, when it inspected the facilities later that year and through 2022. Nor is it a surprise that the situation had deteriorated by the time the Board returned in 2023, forcing it to finally issue the notices for noncompliance at issue now. The problems in Kings County are, in DRC’s words, “longstanding and systemic,” as is the Board’s pattern of failing to require correction of the deficiencies. It is past time for the Board to begin holding Kings County to the minimum standards, which are, after all, just the floor of what should be considered acceptable care and treatment of young people.

We appreciate the time staff and counsel for the Board have taken to meet to discuss this and other matters with us. As we have indicated, we remain hopeful that our continued discussions will serve to correct and improve the practices and procedures related to noncompliance and suitability determinations. Though we also want to remind the Board that the court-ordered injunction dealing with these processes was entered in 2008, and we are now discussing a plan for compliance 15 years later. We are committed to continuing our discussions and efforts to avoid litigating the Board’s pattern of violations of the injunction and the statutory provisions, if that is possible. That commitment, however, is, and always has been, predicated on our understanding and expectation that the Board will take great care to meet its obligations under the law, to say nothing of its obligations to children, during the pendency of discussions. The Board’s ongoing and consistent inattention to statutory deadlines and obligations, and the extended harm that children suffer in the face of such carelessness, makes us question whether the Board is truly making a good faith effort to address its compliance with both the statute and the 2008 injunction.

As we have indicated previously, while we understand that the timelines and requirements for correcting compliance issues may, at times, appear burdensomely short or inflexible to probation or the Board, they feel agonizingly long to children forced to live in dangerous facilities that are unable to meet the relatively low standards set forth in the laws and regulations. For children in Kings County, that wait has stretched into years.

We ask that the Board fulfill its current obligations to Kings County’s children, and that it not require them to wait an additional two months before the Board takes up the matter.

If you would like to discuss, we can make ourselves available at any point between now and the beginning of the September 14, 2023, meeting. Please feel free to contact us at the numbers below.

Sincerely,



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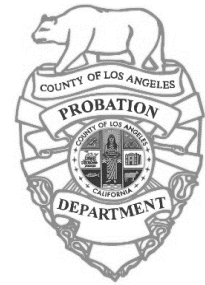
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COUNTY OF LOS ANGELES PROBATION DEPARTMENT

9150 EAST IMPERIAL HIGHWAY – DOWNEY, CALIFORNIA 90242
(562) 940-2501



GUILLERMO VIERA ROSA
Interim Chief Probation Officer

August 14, 2023

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors,

BOARD OF STATE AND COMMUNITY CORRECTIONS PRELIMINARY INSPECTION – BARRY J. NIDORF SECURE YOUTH TREATMENT FACILITY

This is to advise your Board that last week the Board of State and Community Corrections (BSCC) performed a preliminary inspection of the Barry J. Nidorf Secure Youth Treatment Facility (SYTF). This was a routine, preliminary inspections by the BSCC, and the preliminary findings can be used to help us adjust our procedures and make corrections in advance of later formal BSCC inspections. Friday, August 11, the BSCC issued a DRAFT preliminary inspection report to Probation finding 10 areas in need of improvement; I have not yet received the official pre-inspection report. Although the BSCC's formal inspection is not until December 2023, Probation intends to use these preliminary findings to work to immediately address compliance concerns and otherwise improve SYTF care. The BSCC's preliminary inspection does not involve any findings that the SYTF facility is "unsuitable" to house youth.

This is not a continuance of the prior unsuitability finding at Central Juvenile Hall or Nidorf. The clock has reset for the facilities. The process is that BSCC staff create a final inspection report – which should issue December 2023 at the earliest – with a recommendation to the Board, then a public hearing on the report and a suitability hearing is made. If an unsuitable finding is made by the Board, the County has 60 days to submit and implement a corrective action plan.

The BSCC also will be inspecting Los Padrinos Juvenile Hall this week, and other Probation facilities later this year. We expect during the pre-inspection phase at those facilities to require corrective action as well.

Sincerely,

Guillermo Viera Rosa
Interim Chief Probation Officer



BOARD OF STATE AND COMMUNITY CORRECTIONS



Initial Inspection Report 2020-2022 Biennial Inspection Cycle

Date of Exit Briefing: 8/11/2023**Inspection Type:** Targeted**County:** Los Angeles**Facility Name(s):** Barry J Nidorf SYTF**BSCC #(s):** 7205**BSCC Type:** Secure Youth Treatment Facility**Facility Representatives:** Tracy Novak, Marlon Barbarin, Curtis Miller, and Scott Sanders,**BSCC Field Representative:** Lisa Southwell**Corrective Action Plan Required?** YES**DATE CAP DUE TO BSCC:** 10/10/2023

Current Items of Noncompliance

Title 15. Section	Description
§ 1321. Staffing.	<p>Facility shift staffing forms were provided for the week of July 20-July 27, 2023.</p> <p>Some shifts were minimally staffed. Staff are routinely held over with no notice to cover shifts and report they continue to be exhausted as a result. Most staff believe the unscheduled, mandatory holdovers negatively impact attendance.</p> <p>We did note some positive progress in youth getting to school and youth who want to go outside for exercise which was positively confirmed by the youth. However, there continue to be times that youth are not participating in programs or recreation due to lack of staff.</p> <p>We noted instances in which youth were in dayrooms alone because staff were busy with operational requirements (in and out of the office or down the hallway) or they needed to use the restroom.</p> <p>Youth also report not feeling safe due to the lack of staff. Those we spoke to spoke highly of most staff but noted "we need more staff." It was also reported by some youth that they are urinating in receptacles in their rooms due to lack of staff.</p> <p>Staffing has been an ongoing issue.</p>
§ 1322. Youth Supervision Staff Orientation and Training.	<p>Unable to verify whether certain youth supervision staff have received the 40-hours of required facility-specific training; training records have not been provided.</p>

Title 15. Section	Description
§ 1324. Policy and Procedures Manual.	The 342-page Draft Secure Youth Treatment Facility (SYTF) Manual was provided the evening prior to the inspection; we were unable to review the manual prior to inspection. Additionally, the policies are in draft status and have not yet been formally approved by upper management. The manual is pending a full review by SYTF staff once approved.
§ 1328. Safety Checks.	A review of the Guard 1 system report indicates that safety checks exceed 15 minutes. We conducted a review of a random sample of video, which indicates inconsistencies with the Guard 1 report. We also noted that staff are not indicating late checks in the system, as required by policy, nor are there any audits or reviews being completed by seniors or supervisors as required by Directive 1490.
§ 1353. Orientation.	The documentation provided did not include information specific to the SYTF population.
§ 1357. Use of Force.	<p>This remains an ongoing issue. The directive/policy was implemented despite practices not being implemented. Staff have not been trained for Use of Force, including the use of OC; training requires initial training and an annual refresher. We are aware that training has been developed and scheduling is being planned.</p> <p>The incident documentation reviewed has improved; however, there were a few packets missing the incident debriefs or parent contact as required. This is being addressed through a training memo to the supervisors responsible for the tasks.</p>
§ 1360. Searches.	Room and facility searches are not being completed as required.
§ 1370. Education Program.	BSCC receives daily attendance reports from LACOE. While attendance has improved, youth continue to be late to school. We will continue to review LACOE reports; if attendance continues to improve this item will be removed from section 1370. It will, however, continue to be noted under 1321, Staffing.
§ 1371. Programs, Recreation, and Exercise.	<p>Recreation: The facility does not provide youth with age-appropriate, stimulating recreational activities to engage in during recreation. Youth do not have access to television or age-appropriate movies or entertainment.</p> <p>Programs: Programs are not consistently being provided. In some cases, sign-in sheets of youth attendance are being provided by program provider, but facility documentation does not consistently match sign-ins. We suggest that staff be retrained in how the form should be completed to ensure compliance going forward.</p>

Title 15. Section	Description
§ 1390. Discipline.	The facility lacks a suitable discipline process. The facility must develop a suitable age-appropriate incentive-based program to encourage positive behavior that includes disciplinary actions as appropriate.

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Attorneys for Plaintiff
 CANDACE WATERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CANDACE WATERS,

) Case No.: **CGC06-451449**

Plaintiff,

v.

) **NOTICE OF ENTRY OF JUDGMENT**
) **ORDERING PERMANENT INJUNCTION**

JAMES E. TILTON, Chairperson, Corrections
 Standards Authority (CSA); SCOTT KERNAN,
 Member, CSA; BERNARD WARNER, Member,
 CSA; DAVID BACIGALUPO, Member, CSA;
 ROBERT HERNANDEZ, Member, CSA; ED
 PRIETO, Member, CSA; GARY S. PENROD,
 Member, CSA; WILLIAM POWERS, Member,
 CSA; LINDA PENNER, Member, CSA; ADELE
 ARNOLD, Member, CSA; JOHN INGRASSIA,
 Member, CSA; MIMI H. SILBERT, Member, CSA;
 KIM PETERSEN, Member, CSA; CAROL
 BIONDI, Member, CSA; PAMALA M. GILYARD,
 Member, CSA; CLEOTHA ADAMS, Member,
 CSA; KARRIE ECKHARDT, Member, CSA;
 TRAVIS TOWNSY, Member, CSA; MAX L.
 SCOTT, Member, CSA; and CORRECTIONS
 STANDARDS AUTHORITY,

) Action Filed: April 19, 2006
) Trial Date: May 12, 2008

Defendants.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT, on March 12, 2008, the Court entered the Judgment
3 Ordering Permanent Injunction, a true and correct copy of which is attached hereto as Exhibit
4 A.

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6 Dated: March 13, 2008

CHAVEZ & GERTLER LLP

7 PRISON LAW OFFICE

8 BINGHAM MCCUTCHEN LLP

9 LATHAM & WATKINS LLP
10

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12 By: 
13 Mark A. Chavez

14 Attorneys for Plaintiff
15 CANDACE WATERS
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ENDORSED
FILED
San Francisco County Superior Court

MAR 12 2008

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

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CANDACE WATERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CANDACE WATERS,

Plaintiff,

v.

) Case No.: CGC06-451449

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JAMES E. TILTON, Chairperson, Corrections
Standards Authority (CSA); SCOTT KERNAN,
Member, CSA; BERNARD WARNER, Member,
CSA; DAVID BACIGALUPO, Member, CSA;
ROBERT HERNANDEZ, Member, CSA; ED
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TRAVIS TOWNSY, Member, CSA; MAX L.
SCOTT, Member, CSA; and CORRECTIONS
STANDARDS AUTHORITY,

) ~~PROPOSED~~ JUDGMENT ORDERING
PERMANENT INJUNCTION

) Action Filed: April 19, 2006

) Trial Date: May 12, 2008

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Defendants.

EXHIBIT A

1 The Stipulation for Entry of Permanent Injunction entered into by the parties in this
2 case having been considered by the Court, and good cause appearing therefore,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Corrections
4 Standards Authority ("CSA") shall be and hereby is permanently enjoined and restrained as
5 follows:

- 6 1. A juvenile hall or special purpose juvenile hall shall be found unsuitable by
7 CSA if, within 60 days of having received notice from CSA of noncompliance
8 with one or more of the minimum standards for juvenile facilities adopted
9 under Welfare and Institutions Code §§210 or 210.2, the juvenile hall or special
10 purpose juvenile hall has failed to file an approved corrective action plan with
11 CSA to correct the condition or conditions of noncompliance of which it has
12 been notified;
- 13 2. If a juvenile hall or special purpose juvenile hall is found unsuitable due to a
14 failure to file an approved corrective action plan with CSA to correct the
15 condition or conditions of noncompliance with one or more of the minimum
16 standards for juvenile facilities adopted under Welfare and Institutions Code
17 §§210 or 210.2 within 60 days of having received notice of noncompliance,
18 CSA shall give notice of its finding to all persons having authority to confine
19 minors in that juvenile hall or special purpose juvenile hall, and, commencing
20 60 days thereafter, the facility shall not be used for confinement of minors until
21 CSA finds, after reinspection of the facility, that the conditions that rendered
22 the facility unsuitable have been remedied, and that the facility is a suitable
23 place for confinement of minors;
- 24 3. In the event a juvenile hall or special purpose juvenile hall files an approved
25 corrective action plan within 60 days of having received notice from CSA of
26 noncompliance with one or more of the minimum standards for juvenile
27 facilities adopted under Welfare and Institutions Code §§210 or 210.2, but fails

1 to meet its commitment to resolve noncompliance issues outlined in its
 2 corrective action plan within a reasonable time frame, not to exceed 90 days,
 3 CSA shall make a determination of suitability at its next scheduled meeting;

4 4. If a juvenile hall or special purpose juvenile hall is found unsuitable due to a
 5 failure to meet its commitment to resolve noncompliance issues outlined in its
 6 corrective action plan within a reasonable time frame, not to exceed 90 days,
 7 CSA shall give notice of its finding to all persons having authority to confine
 8 minors in that juvenile hall or special purpose juvenile hall, and commencing
 9 60 days thereafter, the facility shall not be used for confinement of minors until
 10 CSA finds, after reinspection of the facility, that the conditions that rendered
 11 the facility unsuitable have been remedied, and that the facility is a suitable
 12 place for confinement of minors; and

13 5. Where a juvenile hall has sustained occupancy levels that are above the
 14 population capacity permitted by applicable minimum standards, and such
 15 facility is not in compliance with one or more of the minimum standards for
 16 juvenile facilities adopted under Welfare and Institutions Code §210, and the
 17 violation or violations are not directly related to overpopulation of the facility,
 18 CSA shall follow the applicable requirements of Welfare and Institutions Code
 19 §209, subdivisions (a) and (d), as outlined in paragraphs 1 through 4 above.
 20

21 **MAR 12 2008**

PATRICK J. MAHONEY

22 Dated: _____, 2008

23 THE HONORABLE PATRICK J. MAHONEY
 24 Judge of the Superior Court
 25
 26
 27
 28

PROOF OF SERVICE
(C.C.P. §1011)

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

I am employed in the County of Marin, State of California. I am over the age of 18 years and not a party to the within action; my business address is Chavez & Gertler LLP, 42 Miller Avenue, Mill Valley, CA 94941.

On March 13, 2008, I caused to be served the following document:

• **NOTICE OF ENTRY OF JUDGMENT ORDERING PERMANENT INJUNCTION**

Erin Peth
Nathan Barankin
Steven M. Gevercer
Office of the Attorney General
Erin.peth@doj.ca.gov
Nathan.Barankin@doj.ca.gov
Steven.Gevercer@doj.ca.gov

[X] **BY EMAIL:** The above mentioned document was served on the interested parties in this action by transmitting via email, addressed to the person to be served at the email address shown above.

Executed on March 13, 2008, at Mill Valley, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Cate L. Coelho



BOARD OF STATE AND COMMUNITY CORRECTIONS



Initial Inspection Report 2023-2024 Biennial Inspection Cycle

Date of Exit Briefing: 4/27/2023**Inspection Type:** Comprehensive**County:** Kings County**Facility Name(s):** Agency Wide**BSCC #(s):** 7162, 7163, 7164**BSCC Type:** Choose an item.**Facility Representatives:** Marc Cerda, Deputy Chief; Stacie Sellai, Juv. Corrections Manager**BSCC Field Representative:** Shay Molennor**Corrective Action Plan Required?** YES**DATE CAP DUE TO BSCC:** 6/26/2023

Current Items of Noncompliance

Title 15. Section	
§ 1329. Suicide Prevention Plan.	Youth are being placed in a holding room for up to 2 days and not receiving full program until cleared. This is room confinement. Youth on suicide watch are not receiving 5-minute safety checks as outlined in policy.
§ 1354. Separation.	Voluntary separation forms are not being consistently completed when youth self-separate. Youth being placed on separation for suicide watch up to 2 days and no documentation is provided why not receiving full program. This is room confinement.
§ 1354.5. Room Confinement.	Youth are being placed in holding room for up to 2 days while on suicide watch. Placed in a suicide smock and not receiving full programming. Room confinement is being documented to being used for constant misbehavior or for a cool down.
§ 1355. Institutional Assessment and Plan.	Institutional Case Plan is done utilizing the PACT. However, this assessment and case plan is not being shared with institution staff. Only available in a system accessible by PO.
§ 1356. Counseling and Casework Services.	Policy indicates youth will be seen by their assigned counselor on a weekly basis and it will be documented. This is not being done.
§ 1357. Use of Force.	Documentation is inconsistent or missing as to parent, mental health and medical notification, debrief of staff or youth, efforts to de-escalate, clear warning OC will be used, being left alone after being sprayed and how deployed.

NAME County Initial Inspection Report

Page 2

Title 15. Section	
§ 1371. Programs, Recreation, and Exercise.	Programs are not being offered to all youth on a daily basis. Programming needs fall in line with elements under 1371.



KINGS COUNTY PROBATION DEPARTMENT

Our mission is to protect the community we serve through enforcement of probation conditions, the use of risk/needs assessments and the supervision and treatment of the root causes of delinquency and criminality.

June 23, 2023

Shay Molennor, Field Representative (FSO)
Board of State and Community Corrections (BSCC)
2590 Venture Oaks Way Suite 200
Sacramento, CA 95833

Subject: Response to the BSCC Inspection – Kings County 2023-2024

Dear Mrs. Shay Molennor,

During the month of April 25-27, 2023, you inspected Kings County Probation's Juvenile Center Facility which incorporated the juvenile center, juvenile center camp and Secure Youth Track. I have reviewed the BSCC inspection report and have reviewed the needed corrections.

The inspection report for the facility identified the following areas of non-compliance.

1. 1329 SUICIDE PREVENTION PLAN
2. 1354 SEPARATION
3. 1354.5 ROOM CONFINEMENT
4. 1355 INSTITUTIONAL ASSESSMENT AND CASE PLAN
5. 1357 USE OF FORCE
6. 1371 PROGRAMS

The report comments regarding these areas are listed below, along with our corrective action plan to bring our facility back into compliance with BSCC regulations.

1329 SUICIDE PREVENTION PLAN

NON-COMPLIANCE:

- According to policy, youth need to have the least invasive manner consistent with the level of suicide risk.
- Youth under Suicide Watch need to be checked every 5-minutes and these checks were not occurring in line with established safety protocols.
- Youth under Suicide Watch were denied the opportunity to participate in facility programs, services and activities.

CORRECTIVE ACTION PLAN

However, it is noted since our inspection, immediate steps were put in place to make sure youth are reviewed before placement into a smock unless the youth is showing a acute suicidal ideation.

Leonard A. Bakker II, Chief Probation Officer

Probation Department: 1424 Forum Drive, Hanford, CA 93230 Office: (559) 852-2850 FAX: (559) 583-1467
Juvenile Center: 1450 Forum Drive, Hanford, CA 93230 Office: (559) 852-2970 FAX: (559) 585-0488



The policy and procedure regarding suicide prevention plan will be corrected in conjunction with our Medical and Mental Health Provider Well Path by August 27, 2023.

When youth are diagnosed to be on Suicide Watch under a specific acuity, 5-minute safety checks shall be random and varied. The department has already implemented procedures pending policy approval by County Counsel to include but not limited to addressing intervention protocols for youth identified at risk for suicide which may include, but not limited to: Housing consideration, treatment strategies, procedures to instruct youth supervision staff how to respond to youth who exhibit suicidal behaviors.

The department has also implemented a debriefing/training process of critical incidents related to suicides or attempts and process for administrative review of the circumstances and responses proceeding, during and after the critical incident, the process for a debrief event with affected staff and youth. Additionally, documentation processes have been developed to ensure compliance with this regulation. The department has implemented in-house training on suicide, safety interventions, communication, referral process and documentation. All formalized training will be completed by August 27, 2023.

The department in conjunction with on-going training will also have annual training on our policy as it relates to Suicide Prevention Plan and Room Confinement.

As of April 27, 2023, any youth placed on Suicide Watch has been given the opportunity to participate in facility programs, services and activities, which will be followed up by the Lead Supervision Officer and will be implemented immediately.

1354 SEPARATION

NON-COMPLIANCE:

- Department's voluntary separation forms are not being consistently filled out by staff and when referencing the department's safety check logs, it did not indicate any supporting documentation for reasons of self-separation.

CORRECTIVE ACTION PLAN

The department has already made changes to the Voluntary separation form to allow room for the time in and time out of room, reason for separation and youth signature. Additionally, youth supervision staff will be trained on the separation of youth for reasons that include but not limited to, medical and mental health conditions, assaultive behavior, disciplinary consequences and protective custody.

The department formalized training will be completed by August 27, 2023, on providing supporting documentation as needed.

. 1354.5 ROOM CONFINEMENT

NON-COMPLIANCE:

- Youth diagnosed on Suicide Watch were being placed in a holding room for up to two days with no authorizations, case planning, and reviews were not being conducted in line with the requirements of WIC 208.3.

CORRECTIVE ACTION PLAN

The department has developed and implemented written policies and procedures addressing the confinement of youth in their room that are consistent with Welfare and Institutions Code 208.3.

The department will continue to re-train youth supervision staff with a formalized training addressing definition of Room Confinement and when/how it is used. Front line supervisors will be responsible for the auditing of all documentation as it related to Room Confinement. Re-mediation training will be conducted if necessary and as needed.

The department will formally train youth supervision staff on documenting the reasons for room confinement and the basis for extension. Develop an individualized plan that includes the goals and objectives to be met in order to integrate the youth to general population and making sure that obtained documentation authorizing by the facility Superintendent or his/her designee every four hours.

The department formalized training will be completed by August 27, 2023, on providing supporting documentation as needed.

1355 INSTITUTIONAL ASSESSMENT AND CASE PLAN

NON-COMPLIANCE:

- The youths' institutional case plan was not being shared with facility staff nor accessibly made available to facility staff to ensure that the plan is implemented.

CORRECTIVE ACTION PLAN

Since the inspection, the department has already made every youth's case plan readily available to all facility staff. Each case plan has been filed in each of the youth's institutional file and each youth's institutional counselor has been trained on the results of each case plan and how to ensure that it is implemented. This is an on-going training with all facility staff.

The facility front line supervisors will be responsible for auditing and training youth supervision staff on documentation into our case management system. All formalized training will be completed by August 27, 2023.

1357 USE OF FORCE

NON-COMPLIANCE:

- The department's documentation regarding the application of Use of Force/Use of Chemical Agents is inconsistent to the relation of notification to parent/legal guardian, medical and mental health, debriefing of youth and staff, de-escalation efforts, clear warning signals and method of application.

CORRECTIVE ACTION PLAN

The department has reviewed Title 15 section 1357 and the areas of non-compliance and as a result, the department's Use of Force Report form has been modified to address sections (a)(5), (7). In regard to section (b) (2-5), all Juvenile Center Staff will be trained/re-trained on the utilization of chemical agents, timeline of decontamination, and proper documentation as it relates to efforts of de-escalation prior to use by August 27, 2023.

The training will consist of the use of force to that which is deemed reasonable and necessary to ensure the safety and security of youth, staff, others and facility; outline the force options available to staff including both physical and non-physical options; develop a standard reporting format and to include an administrative review and system for investigation unreasonable use of force.

The training/remedial training will also consist of the use of Chemical Agents. This will include how chemical agents are only to be used when there is an imminent threat to the youth's safety or the safety of others, de-escalation methods, chemical agent application, decontamination methods, follow-up procedures. The department's frontline supervisors will be responsible for auditing and reviewing reports monthly. This training will be completed by August 27, 2023.

Additionally, the department will be conducting annual training in de-escalation and documentation.

1371 PROGRAMS

NON-COMPLIANCE:

- Programs are not being offered in line with Section (a) which requires all youth to be provided with the opportunity for at least one hour of daily programming.

CORRECTIVE ACTION PLAN

The department has been conducting programming for the detained youth however the youth have not been receiving 7 hours a week of programming. We have implemented a programming schedule which indicates the time and specific units who will be receiving programming in the institution.

The department will be looking into bringing in Community Based Organizations to address the following: trauma informed care, best practice interventions that are culturally relevant and linguistically appropriate, victim awareness,

juvenile justice system etc. The department is also looking into utilizing Ted Talks and utilizing other community-based organizations through the Office of Education.

The department will continue to work with collaborative agencies and trained staff to implement programming to all youth in line with Title 15 Section 1371 Section (a).

The department formalized training will be completed by August 27, 2023, on providing supporting documentation as needed.

Sincerely,

for



Marc Cerda
Deputy Chief Probation Officer- Institution Services

CC: Leonard A. Bakker II, Chief Probation Officer



June 26, 2023

Leonard Bakker II, Interim Chief Probation Officer
Kings County Probation Department
1400 W. Lacey Boulevard
Hanford, CA 93230

**SUBJECT: REGARDING KINGS COUNTY'S CORRECTIVE ACTION PLAN FOR
JUVENILE CENTER, JUVENILE CENTER CAMP, AND SECURE YOUTH
TREATMENT FACILITY**

Dear Chief Bakker:

The Board of State and Community Corrections (BSCC) is in receipt of the Corrective Action Plan (CAP) submitted June 23, 2023, by the Kings County Probation Department for the items of noncompliance identified in the April 27, 2023, initial inspection report that was part of the 2023-2024 biennial inspection of the Juvenile Center, Juvenile Center Camp, and Secure Youth Treatment Facility. After review, we have determined that this CAP is sufficient to address the areas of noncompliance and is approved.

You will have 90 days from this approval to implement your CAP. Failure to meet your commitment to resolving noncompliance issues outlined in the Corrective Action Plan by September 24, 2023, will result in the Board making a determination of suitability at the next scheduled Board meeting.

* * *

Please email me at shay.molennor@bscc.ca.gov or call (916) 708-2062 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Shay I. Molennor".

SHAY MOLENNOR
Field Representative
Facilities Standards and Operations Division

ON BEHALF OF

ALLISON GANTER
Deputy Director
Facilities Standards and Operations Division

Leonard Bakker II, Chief Probation Officer
Page 2

Cc: Presiding Judge, Kings County Juvenile Court*
Chair, Juvenile Justice Commission, Kings County*
Chair, Board of Supervisors, Kings County*
County Administrator, Kings County*
Marc Cerda, Deputy Chief (electronic copy)
Stacie Sellai, Juvenile Corrections Manager (electronic copy)



Youth in Crisis

How Kings County Locks Up Youth With Disabilities

Introduction

Disability Rights California and Disability Rights Advocates conducted a multi-year investigation into conditions at the Kings County Juvenile Center. This locked youth detention center is in Hanford, California and houses between 20 and 30 youth who are detained or incarcerated. We were assisted in our investigation by two nationally recognized experts on juvenile criminal justice and education in secure juvenile justice facilities. This report documents our findings. We provided these findings to the County in September 2022, but since then, the County has refused to offer a meaningful response or even agree to a meeting.

September 5, 2023

Our investigation revealed that the County's youth arrest and detention rates are excessive – among the highest per capita in the state by several measures. The County lacks any diversion program and detains youth who pose little risk, including for status offenses¹ such as truancy. With few re-entry supports, youth are repeatedly re-detained for minor probation violations, throwing them into a vicious cycle that disrupts their education and employment. Youth with disabilities are held in the Kings County Juvenile Center for disability-related behavior that could have been addressed by County

staff more effectively in the community at less cost. Mental health services for youth are inadequate, both in the facility and in the community.

Second, the youth detention center is prison-like and regimented, rather than the homelike, rehabilitative environment that state law requires. Youth are routinely pepper sprayed in their cells, day rooms and classrooms, often in their face and eyes. For minor infractions, youth are shackled and “body-slammed” by custody officers or forced to sit alone in hallways for hours at a time. Young people with mental health and behavioral disabilities are disproportionately subject to these practices, which lead to serial discipline, court reports and extensions of their length of stay. Organized activities and outdoor exercise are limited, so youth endure forced idleness, or at best, hours of watching TV in the dayrooms. The incentive program is frustrating and confusing, especially for disabled youth. These conditions re-traumatize many youth with a history of trauma held at the facility.



Photo: The exterior of the detention center.

Third, Probation staff in tactical gear improperly interfere in the J.C. Montgomery school at the detention facility, monitoring students' work and behavior without regard to students' special education accommodations. Unlike most other youth facilities, Probation, mental health and school staff have no regular process to review incident reports, discuss the needs of various youth, and coordinate supports to disabled youth.



Photo: Probation staff wear tactical vests.

"Anything we do, we get in trouble. If we wear extra clothes when we are cold, or cuff our pants, or try to share food, the guards write us up."

In July 2023, we learned that the Board of State and Community Corrections' ("BSCC") also made findings that corroborate the issues that our experts identified last year. The BSCC report called out excessive use of pepper spray, unlawful use of solitary confinement, and inadequate programming and counseling services, just as our experts did. Many of the BSCC's findings were repeat concerns. In its 2021 inspection report, the BSCC found that youth in crisis spent days in solitary confinement due to the lack of on-site mental health staff. At the time, the Center had just two mental health clinicians that it shared with the 600-bed Kings County Jail next door.

Federal and state law prohibit discrimination against youth with disabilities. The practices described below violate the Constitutions of the United States and California, Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Cal. Gov't Code § 11135, among other authorities. These conditions cannot be allowed to continue.

We encourage Kings County to resolve these problems, reform conditions in the detention center, and stop the revolving door that returns too many youth to secure detention for non-violent offenses. It can do so by implementing the following nine recommendations:

Recommendations

Kings County Probation Department

1. Reduce the excessive use of force by re-training Probation staff to act as counselors rather than merely guards;
2. Eliminate the use of pepper spray by first placing sharp limits on its use;
3. Reform the discipline system;
4. Convene weekly meetings between Probation, its mental health contractor and school staff to address the needs of individual youth with disabilities and reduce their disproportionate discipline;
5. Reduce the excessive youth detention rate by funding independently run, community-based diversion programs and investing in defense-based advocacy;
6. Reduce recidivism by expanding re-entry services and coordinating with the County Office of Education to support youth with school problems;

7. Discourage arrests for status offenses and do not detain youth for non-violent offenses, including violation of probation;
8. Eliminate the involvement of Probation staff in school discipline.

Kings County Behavioral Health System

1. Expand community-based mental health and much-needed drug treatment for youth, including by providing crisis intervention and stabilization without law enforcement involvement.

Report on the Kings County Juvenile Center

Background

Kings County is in California's Central Valley, with a population of 155,000. The County Probation Department operates the Kings County Juvenile Center (KCJC), a 65-bed complex with two classrooms and three living areas, divided by security level. The County has received state funds for a new facility but will continue to house youth in the existing facility and operate both together. Approximately 20 to 30 youth are housed in the facility at any time. Disability Rights California and Disability Rights Advocates began this investigation in 2019 after receiving complaints about conditions there.

We retained two nationally recognized experts: the Center on Juvenile and Criminal Justice ("CJCJ") and Dr. Peter Leone. CJCJ is a nonprofit nonpartisan organization that has provided technical assistance and policy analysis for over three decades.² CJCJ partners with national, state, and local jurisdictions as well as nonprofit and advocacy organizations to promote a balanced and humane criminal justice system designed to reduce incarceration and enhance long-term public safety. CJCJ conducts data-driven research and policy analysis promoting effective approaches to criminal and juvenile justice policies. In providing analysis for us, CJCJ analyzed publicly available data, Kings County documents obtained through our investigation and conducted interviews with Probation Department staff and incarcerated youth in Kings County facilities. Their analysis sheds a critical light on the practices of the Probation Department.

"I was first locked up after I had a fight with my grandmother and ran away, but I keep coming back because I skip school."

Dr. Peter Leone is one of the most respected national experts on education in secure juvenile justice facilities. The County Office of Education, in conjunction with Probation, provides education services

to youth in the detention center at the on-site J.C. Montgomery School. Dr. Leone participated in this investigation, inspected the facility and school, interviewed staff, youth and their families and reviewed extensive documents. He concluded that Probation staff improperly interfered at J.C. Montgomery School.



Photo: A hallway at KCJC.

BSCC Inspections of the Facility

Our findings are consistent with the result of inspections by the California Board of State and Community Corrections (BSCC). This state agency conducts biennial inspections of county juvenile detention facilities to determine compliance with state licensing requirements. In its 2021 report, BSCC found that the detention center did not have sufficient mental health staff to respond to youth in crisis. Youth on suicide watch were placed in solitary confinement until a mental health clinician could respond, which often took more than 24 hours. At the time, the Facility shared just two clinicians with the 600-bed adult jail next door.

In its inspection report dated April 27, 2023, the BSCC raised similar concerns and found the Kings County out of compliance with licensing regulations.³ Some of the board's main findings include:

- Youth on suicide watch were now spending up to 2 days in solitary confinement waiting for a clinician. Probation denied these youth access to programming and services as its standard practice.
- Probation staff unlawfully used room confinement to punish youth for minor misbehaviors.
- The detention center failed to provide youth with adequate counseling and casework services.

- Probation staff did not properly document use of force incidents and left youth alone in their room after spraying them with pepper spray.
- Probation failed to provide youth with the required one hour of programming and activities per day.

Although Kings County Probation has committed to implement new policies and practices addressing these deficiencies, the problems are longstanding and systemic. Systemic reforms, such as those recommended in this report, are needed, or new policies will have little effect.

Finding 1: Probation and school practices and excessive and harmful rates of detention and recidivism create a “revolving door” for troubled youth.

The Kings County Probation Department detains youth in its locked facility at a far higher rate than comparable counties and California as a whole.⁴ Kings County’s youth detention rate is approximately 12% - twice the state average of 6%.⁵ This difference cannot be justified, as a comparable rural county – Imperial – detains only 3% of the youth who are arrested there. The county’s high arrest rates contribute to this high detention rate, and many arrests are for status offenses such as truancy that would not merit a police response elsewhere. Status offense arrests in Kings County are four times higher than the state average. Another comparable county, Imperial, has a larger youth population but reported no status arrests in 2020 and 2021 and only one in 2022.

"I'm 18 and had a job, but my PO locked me up on a probation violation because I didn't attend video calls with a counselor."

The high rate of status offense and misdemeanor arrests and high detention rate is also driven by the absence of any diversion programs, and a failure to utilize alternatives such as school-based programs or crisis services. This was confirmed by interviews with youth in the facility, who reported that their first detention was often the result of a personal or educational crisis. Youth are eventually released to the same school and family situation with no additional support but with strict conditions of probation. In our interviews, disabled youth described multiple arrest and reincarceration detentions for minor status offenses or probation violations with no support or services in between. Youth do not see their Probation officers as helpful, viewing them instead as looking for reasons to revoke their probation and return them to the detention center. Although we did not have access to recidivism data, youth interviews and review of student records confirmed that many youth had repeated stays at the detention center, often beginning as early as ages 12 or 13.

Reentry services are also limited, with few supports in the community. Mental health and drug treatment services are minimal. Several youth commented on the difficulty accessing therapy in the

community, saying that the treatment they got at the detention center was better than in the community. This reflects a bias for spending funds only on institutional care that perpetuates recidivism and costs the County more in the long run. Further, the average length of stay for youth in Kings County awaiting an out-of-home placement is among the longest in the state relative to other counties. Kings County has failed to develop community-based placements to meet the needs of these youth, who often have behavioral disabilities. These long waits post-disposition are extremely harmful to youth with disabilities.



Photo: A section of the yard at KCJC.

Additionally, youth with disabilities are inevitably harmed by any unnecessary detention or re-detention for probation violations. Harsh enforcement and inadequate community-based service options means that youth with mental and behavioral health needs are found in violation of probation more often than their non-disabled peers. Putting youth, who are already traumatized and at risk of self-harm into repeated detention situations where they are also subject to discipline for disability related behavior (see below) is particularly harmful to this vulnerable population.

"I've been here so many times, I'll never get out."

Responsibility for these troubling outcomes must fall on Kings County. The County is not responsible for arrests by city police, but it has failed to develop the diversion and reentry programs that would give local police an alternative to arresting troubled youth. County Probation decides which youth to detain. The data shows that youth who pose no threat to public safety are detained at far higher rates than other similar counties and state-wide.⁶ The County Behavioral Health Department has not developed an effective youth crisis response system or adequate mental health and drug treatment services for youth, with remarkably low service utilization. Needlessly detaining excessive numbers of youth in secure detention is far more costly to Kings County than providing upstream services to support youth in the community.

The CJCJ report details how the Probation Department must “narrow its front door” and “widen its exits” by increasing its crisis services, creating diversion programs at point of arrest, pre- and post-arrest, and funding defense based advocacy.⁷ As we recommend below, The County should assume leadership to bring down these arrest and detention rates by developing, expanding, and coordinating needed community-based services from its agencies. The Probation Department should reconfigure its community-based Probation officers to focus on supporting re-entry and preventing recidivism for justice-involved youth, rather than repeatedly revoking their probation.

Finding 2: Conditions of confinement at the Kings County Youth Detention Center are needlessly punitive and traumatizing to youth.

Under California law, the youth detention center is required to promote rehabilitation in a “safe and supportive homelike environment” for the youth in its custody. See Cal. Welf. & Inst. Code § 851. The Probation Department’s own records and our interviews with youth detained at the facility indicate that instead, the conditions at the detention facility have the effect of punishing, isolating, and intimidating the young people there, while depriving them of crucial educational and rehabilitative opportunities. The facility responds to minor misbehavior and rule violations with escalating sanctions, isolation, and court reports that extend the length of their incarceration. The facility’s harsh response triggers already traumatized youth, who in turn escalate their behavior, making rehabilitation more difficult and increasing overall violence and disruptive conditions. Additionally, youth all reported that food was inadequate in amount, cold, and unappetizing. They reported being constantly hungry, being punished for trying to save or share food with others and asked their interviewers for extra food. This also contributed to a hostile, anxious tone in the facility.

“After a bunch of us were pepper sprayed, I had to wait two hours to wash it off. I was so desperate I stuck my head in the toilet while I waited.”

Inadequate Mental Health Care and Unsafe conditions for Youth with Behavioral Disabilities and Trauma

High quality mental health care is critical to the well-being and safety of Kings County youth while they are in custody. Studies estimate that as many as 60% of youth in juvenile detention or correctional facilities have some type of diagnosable mental health and behavioral disability. Our investigation found that the population of youth with mental health and behavioral disabilities in detention is even higher in Kings County than this national average. During our 2022 inspection, mental health staff identified 22 of the 27 youth as needing mental health services, i.e. more than 80% of youth at the detention center.⁸ Youth involved in juvenile corrections also have much higher

levels of post-traumatic stress disorder than non-corrections involved youth. Many youth we interviewed reported a history of trauma and require an environment where they feel safe.

However, our review of incident reports and interviews with youth indicated that the attitudes of staff and the institution itself are harmful and traumatizing to youth with mental health and behavioral disabilities. This manifests in staff-imposed punishment and isolation and inappropriate and excessive use of force (see sections below). Deputies see themselves only as guards; although some might want to act more as counselors, they are not trained to identify and properly communicate and empathize with youth experiencing trauma and other mental health and behavioral disabilities.⁹ Such staff education and training is critical to the care and well-being of youth in custody.

Most disturbingly, we found evidence that staff as well as peers belittled and bullied youth with disabilities. Youth with intellectual disabilities reported being provoked and degraded by staff, and one disabled youth informed us that staff revealed his alleged offense (a sexual offense) to other youth, which led to harassment and isolation. Staff often failed to stop bullying by peers, stating that this would teach youth how to act properly.¹⁰ Our investigation revealed serial punishments meted out to youth with disabilities including isolation and being sent to max. Our investigation also uncovered a failure to provide attainable behavioral plans for youth with disabilities, and a failure to coordinate accommodations for youth in school and custody.

More generally, mental health care in the detention facility is inadequate. Youth complain that they need more individual counseling and cannot wait weeks between appointments. Group counseling is conducted by the same Probation staff who discipline them. Youth report that staff insist they discuss past trauma (not a recommended approach), and if they refuse, they are disciplined for “failure to program.”¹¹ Suicidal ideation is common; staff respond by handcuffing youth and isolating them in a holding cell for long periods until mental health staff are available, which adds to their feelings of despair and isolation.

Overuse of Pepper Spray

Probation staff carry pepper spray at all times just as guards do in adult prisons. Staff routinely use pepper spray to control and subdue detained youth after minimum provocation, including in response to non-violent acts such as talking back, being non-compliant, banging on the inside of a closed cell door,¹² or being angry or frustrated. The facility manual directs that custody staff spray youth directly in their face and eyes, a practice that youth confirmed in interviews.¹³ Our investigation revealed that staff sometimes employ pepper spray on youth who are compliant, have already been subdued, or are otherwise restrained. This use appears to be punitive rather than necessary to protect health and safety. Probation staff also routinely threaten youth with the use of pepper spray, which intimidates youth and contributes to the unsafe atmosphere that pervades the detention facility. Staff’s

widespread use of pepper spray to control and intimidate youth creates the impression among youth that they are in constant danger of being sprayed at any time for reasons outside their control.

Pepper spray is very painful and youth should be immediately given chemical wipes to decontaminate. Youth at the detention facility reported no access to decontamination wipes and were often locked in their cells for long periods after an incident without the chance even to shower. Youth reported being so desperate to stop the burning that they dunked their faces in the toilet bowl in their cell.

"When I tried to take some cookies to my room, the guard slammed to ground, cuffed me and made me lay on my stomach until he removed the cuffs."

Probation staff's frequent use of pepper spray disproportionately affects youth with disabilities. Youth with behavioral, mental health, learning, intellectual and/or developmental disabilities have trouble conforming their behavior to strict rules, such as those at the detention center. They are more likely to be threatened with pepper spray and to be sprayed, and to be targeted by staff based on their disability-related behavior. The frequent use of pepper spray also has detrimental impact on health, particularly for youth and staff with asthma, heart conditions, and other physical and mental health conditions that pepper spray can exacerbate. Youth with disabilities, particularly youth with mental health-related disabilities and a history of trauma, are particularly vulnerable since the experience itself can exacerbate preexisting mental health conditions such as posttraumatic stress disorder. The routine use of pepper spray in the detention facility not only causes physical and psychological harms for the youth it is deployed against, but also undermines attempts to create a more therapeutic environment as required by California law, and contributes to distrust, resentment, and violence.

For this reason, most states across the nation ban the use of pepper spray in juvenile facilities; California is one of only 6 states that permits this. Nearby counties are actively reducing its use and some counties already ban it. The Juvenile Detention Alternatives Initiative (JDAI) has developed standards that are used in more than 300 sites in 39 states, form the basis for federal and state legislation in the juvenile detention realm and have been employed by the U.S. Department of Justice in its investigations. These standards require juvenile justice facilities to strictly prohibit the use of chemical agents like pepper spray.¹⁴ Kings County should do the same.

Frequent and Disproportionate Use of Force

The Juvenile Detention Alternative Initiative standards make clear that staff may not use physical force as a form of punishment, and that youth should "feel safe from victimization by staff and youth,

including abuse, threats of violence, bullying, theft, sexual abuse, sexual harassment, and assault.”¹⁵ Yet, Probation staff routinely use excessive physical force, sometimes “body-slamming” youth to the ground for minor violations such as defiance. Staff also use mechanical restraints such as handcuffs, leg irons, and full body “WRAP” devices to control youth under their care, including youth with disabilities and those experiencing mental health crises. An earlier state inspection revealed that restraints – including leg shackles and the full-body WRAP – were used on youth who posed no threat to themselves, others, or to even to property, and that Probation staff likely undercounted use of force incidents because they were not properly identifying use of restraints as a use of force. Discipline logs show that youth are sometimes placed on “leg-iron status” for days at a time.



Photo: Another cell at KCJC as seen through the small door window.

Probation reported roughly two use of force incidents per month for every ten youth detained at the facility – a high rate that includes the use of force in response to self-harming behavior. Youth with behavioral, mental health, learning, intellectual, and/or developmental disabilities are more likely than youth who do not have such disabilities to engage in conduct that precipitates the use of physical force by Probation staff. Further, youth with disabilities, especially youth with mental health-related disabilities and a history of trauma, are particularly vulnerable to the adverse effects of the use of physical force, which can also exacerbate preexisting mental health conditions such as PTSD.

Isolation and “Hallway Status”

State law restricts the use of isolation in juvenile detention facilities and prohibits the use of isolation “for purposes of punishment, coercion, convenience, or retaliation by staff.”¹⁶ The state code further prohibits the use of isolation “to the extent that it compromises the mental and physical health of the

minor or ward.”¹⁷ Despite these restrictions, our investigation revealed that Probation staff at the detention facility punished youth by isolating them from their peers for extended periods of time, including for minor infractions such as speaking during meals or turning their heads while walking. This punishment is called “reassigned seating” or “hallway status” or “hallway assignment”.¹⁸

Our review of incident logs indicates that youth are often punished by being made to sit on a hard chair in the hallway outside their cell or in the hall of the unit out of sight of the common room. This appears to be a tactic to get around state law restricting “room confinement” to no more than four hours and not for punitive reasons.¹⁹ In the logs, we reviewed youth remaining on hallway status for days. This was not an unusual occurrence, and it was corroborated by interviews with youth. Youth were confined to chairs for a myriad of minimal infractions such as disrespecting staff, talking back, or sharing food. We also were able to corroborate through other documents and interviews with youth that youth with disabilities at the detention facility, especially those with ADHD and mental and behavioral health conditions, are disproportionately punished with hallway status and denied access to program time due to their disability-related behavior.

Furthermore, we found that Probation staff disproportionately use hallway status as isolation to control youth with disabilities, including in response to behavior related to their disabilities instead viewing these youth as “acting out.” Staff do not effectively take youths’ disabilities into account before isolating and segregating them from others or punishing them for behavior; i.e. youth who have a disability are being punished for behavior related to their disability and not within their control. Isolation through either room confinement or hallway status risks exacerbating existing mental health and behavioral conditions and makes it more likely that youth with disabilities subjected to these practices will again engage in disability-related behaviors likely to lead to further punishment. Under Juvenile Detention Initiative guidelines, any isolation of this kind should be used as a last resort and as a temporary response to youth behavior that threatens immediate harm for the youth or others. Kings County does not follow these guidelines.

Prolonged isolation is widely known to have detrimental effects on the physical and psychological well-being of those to whom it is applied.²⁰ Youth on hallway status reported to us that in many ways it is worse than being confined to their cell because they could almost see and could always hear all the other activities that other youth were engaged in – such as video games or movies. Isolation is known to be especially harmful when deployed against youth, leading to heightened risk of suicide and suicide attempts,²¹ and is even more harmful for those with disabilities.²² Even without the danger to a young person’s mental health, prolonged isolation of youth compromises efforts to rehabilitate them by blocking their access to educational and rehabilitative programming. Furthermore, isolation of youth can undermine and break down trust with adults, resulting in paranoia, anger, and hatred. As a result, youth reintegrating from isolation have difficulty forming the therapeutic relationships necessary to address mental health or behavioral concerns resulting from or exacerbated by the isolation they have experienced.

Additional Probation Issues Identified

Youth also reported that they were denied reasonable and adequate phone calls to family members. They also reported that phone calls were almost always listened in on and the calls were terminated when they tried to talk about conditions in the facility with family members. This silences youth and inflicts greater trauma on them. Listening in on phone conversations violates JDAI standards.

Youth also complained to us in every visit we have made of cold food, small portions and unappetizing food. Youth are punished for sharing food, saving food, or trying to get a second helping.

Lastly, youth reported that the grievance process is inconsistent and that complaints about staff are immediately shared with the staff which then exposes youth to retaliation. Many youth described the grievance system as a “total joke” and feared retaliation. Youth reported disturbing incidents of staff demanding to review grievances before they submitted the grievance.

Finding 3: Kings County fails to meet the general and special education needs of students.

Our observations and those of Dr. Leone confirm that Probation failed to provide adequate resources and interfered with the program at J.C. Montgomery.

First, students are subjected to inappropriate discipline. Probation staff in the classroom, rather than the teacher or aide, look over students’ work on their laptops from the back of the room, and intervene directly if they think a student is not paying sufficient attention. Youth reported that when they try to take a break as permitted by their individual special education plans, Probation staff will reprimand them, write up their behavior in court reports and remove them from the classroom. Unlike most other youth facilities, Probation staff and school staff have no regular process to review incident reports, discuss the needs of various youth, and coordinate supports to disabled youth. Moreover, Dr. Leone found that several youth had behavior support plans that were “tabled” or otherwise ignored at the detention center. A review of incident reports also revealed that Probation staff conduct informal school removals by keeping them on the unit or removing them from the classroom.



Photo: An interview room at KCJC as seen

through the closed door.

Second, students in the MAX unit are educated in the common room rather than a separate classroom. As this is the day room, other non-student youth may be present and create distractions for students just being present, or in their transit to the bathrooms which are also directly off the common room. Additionally, the station for Probation staff in the unit is in this common room and also distracts students. The MAX unit “classroom” is wholly inadequate for students and especially students with learning disabilities.

Conditions and Practices at the Kings County Juvenile Detention Center Violate State and Federal Law

Youth in detention have important rights and legal protections:

- **The 8th and 14th amendments to U.S. Constitution** protect youth in detention facilities regarding isolation, use of force, access to educational services and other conditions of confinement.
- **Title II of the Americans with Disabilities Act** (the ADA), protects people from disability-based discrimination by public entities, which includes the County. 42 U.S.C. § 12132. **Section 504 of the Rehabilitation Act of 1973** protects people from disability discrimination in federally funded programs, which also includes the County and the Probation Department. 29 U.S.C. § 794; 28 C.F.R. § 42.503(a), (b). These laws prohibit the County from excluding youth with disabilities from, denying the benefits of, or denying equal access to its programs and services. The Supreme Court has ruled that the ADA requires government to ensure that services are provided in the most integrated setting appropriate to the needs of the disabled individual. See *Olmstead v. L.C.*, 527 U.S. 581 (1999).
- State law also provides protections. California Government Code section 11135 similarly prohibits disability discrimination in state programs. Cal. Welf. & Inst. Code § 851 requires that juvenile detention facilities such as the Kings County Juvenile Center be a “safe and supportive homelike environment” to promote rehabilitation.

"Most of us have ADHD and anger issues. The guards provoke us and we lose all our privileges, which just makes us more upset."

The County is ignoring these protections. By disproportionately detaining youth with disabilities and failing to provide adequate community supports, the County is not meeting its obligation to provide services in the most integrated setting for these youth.²³ In dealing with youth with disabilities inside the facility, Probation staff disproportionately use excessive chemical and physical force, impose isolation and disciplinary sanctions, and deny them access to education programs and other services provided to non-disabled youth. Probation staff impose these sanctions for disability-related behavior over which youth have no control, and for which they require accommodations, not punishment. Further, these practices exacerbate their disabilities and lead to additional force, isolation, and sanctions. This compounds the detention center's denial of access to their educational and rehabilitative programs, services, and activities, in violation of state and federal law.

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1. Status offenses are actions by a minor that would not be a crime if committed by an adult, such as truancy and running away from home.
 2. Center on Juvenile and Criminal Justice, "Kings County Juvenile Center Investigation Report," December 2022, page 1 (referred to as "CJCJ Report").
 3. Report of the Board of State and Community Corrections, on file with DRC and DRA.
 4. CJCJ Report at 3-4.
 5. CJCJ Report at 5. Before the California Division of Juvenile Justice closed its doors, Kings' commitment rate to state DJJ facilities is more than three times the state average. Presumably this high commitment rate will now apply to the Kings County Juvenile Center.
 6. CJCJ Report, pages 8-12. Probation's screening instrument relies heavily on evidence of a prior arrest, which is all too common in this high-arrest rate county. More importantly, Probation has not developed programs for community supervision without the need to first detain youth.
 7. CJCJ Report, pages 32-35.
 8. CJCJ Report, page 19.
 9. CJCJ Report, pages 19-20.
 10. CJCJ Report, pages 19-20.
 11. CJCJ Report, pages 21-22.
 12. Pursuant to a routine inspection, a representative of the California Board of State and Community Corrections reported found that Probation staff inappropriately employed pepper spray into an individual youth's cell in response to an incident of self-harm.
 13. The facility's own records indicate that pepper spray was frequently used in the Max Unit's classroom, creating additional barriers to education for youth detained there.
 14. Juv. Detention Alternatives Initiative, Juvenile Detention Facility Assessment – Standards Instrument 2014 Update, 104 (2014), available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (hereinafter JDAI Assessment Standards (2014)).
 15. CJCJ Report, pages 25-28.
 16. Cal. Welf. & Inst. Code § 208.3.
 17. Id.
 18. CJCJ Report, pages 16-17.
 19. Id.
 20. <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>; <https://www.ncchc.org/solitary-confinement>

21. Lindsay M. Hayes, Characteristics of Juvenile Suicides in Confinement, U.S. Dept. of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin (Feb. 2009), <https://www.ncjrs.gov/pdffiles1/ojjdp/214434.pdf>; see also Letter from Kenneth Zimmerman, Executive Director & Craig Levine, Senior Counsel & Policy Director, of the New Jersey Institute for Social Justice, et al. to Valerie Edgar, Deputy Attorney General, Special Assistant to the Executive Director, New Jersey Juvenile Justice Commission, 4 (Sept. 16, 2005), <http://www.njisj.org/document/testimonyyouthdetention-9-16-05.pdf> (citing Lindsay M. Hayes, Juvenile Suicide in Confinement: A National Survey, National Center on Institutions and Alternatives (Feb. 2004), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/206354.pdf> (urging New Jersey to adopt regulations restricting the use of isolation for juveniles in detention and correctional facilities, in part, because of the substantially increased risk of suicide among youth who are isolated)); see also Lindsay M. Hayes, Juvenile Suicide in Confinement: A National Survey, National Center on Institutions and Alternatives (Feb. 2009), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf>.
22. https://www.aclu.org/sites/default/files/field_document/alone_and_afraid_complete_final.pdf; See, e.g., Rodney A. Ellis, et al., Issues in the Seclusion and Restraint of Juveniles: Policy, Practice and Possibilities, 2 Advances In Social Work 50, 58 (2001) (citing Rodney A. Ellis, et al., Profile-based Intervention: Developing Sensitive Treatment for Adolescent Substance Abusers, 10 Research On Social Work Practice 327 (2000) (describing the negative reactions that youth with psychiatric, intellectual and developmental disabilities often have when they are isolated due to their behaviors and that the professional literature has found that such practices may exacerbate already maladaptive behaviors)).
23. See U.S. Dep't of Just., Investigation of Nevada's Use of Institutions to Serve Children with Behavioral Health Disabilities (Oct. 4, 2022); Letter from Kristen Clarke, Assist. Att'y General, to Janet Mills, Governor of Maine, re: United States' Investigation of Maine's Behavioral Health System for Children Under Title II of the Americans with Disabilities Act (Jun. 22, 2022) (finding that states likely violated integration mandate under Title II of the ADA by failing to provide community-based supports (including crisis intervention services) for youth with mental health disabilities)