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California's protection and advocacy system

January 5, 2023

Juvenile Title 15 and Title 24 Regulations Revision Executive Steering Committee
Board of State and Community Corrections
2590 Venture Oaks Way
Sacramento, CA 95833

Sent via email: Allison.ganter@bscc.ca.gov

Re: Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

Dear Executive Steering Committee Members:

Disability Rights California (DRC) writes to urge the executive steering committee (ESC) to prioritize banning chemical agents, particularly Oleoresin Capsicum (OC) spray ("pepper spray"), in juvenile detention facilities at your next meeting on January 10, 2023. The use of chemical agents is: (a) out-of-step with national norms, (b) demonstrably ineffective, and (c) damaging to youth's long-term health and rehabilitation. Importantly, the use of chemical agents also disproportionately affects youth of color and youth with disabilities. We are committed to ending this antiquated practice, and we strongly recommend that the Board of State and Community Corrections (BSCC) update its minimum regulations to reflect a more reasonable, constructive, and contemporary approach to managing youth behavior.

DRC also urges the ESC to eliminate "chair" or "hallway status," a punishment that requires youth to sit alone and silent in a chair in the hallway for hours or even a full day at a time, often for minor offenses such as poor effort or arguing. This practice is ineffective and out of line with

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

national norms that limit isolation to situations where youth present an immediate threat of harm to themselves or others.

DRC is the protection and advocacy system for the State of California, with authority under Welfare and Institutions Code Section 4900 *et seq.* to advocate for the rights of people with disabilities in California, to monitor their treatment in facilities and to investigate incidents of alleged abuse or neglect. As discussed below, our work includes advocating for the rights of youth with disabilities in juvenile facilities.

A. The use of chemical agents in juvenile facilities is out-of-step with national norms and prohibiting it will align California with more effective approaches to managing youth behavior.

Pursuant to DRC's mandate as California's protection and advocacy agency, we have conducted numerous investigations into the conditions of juvenile facilities in counties across the state including Kern, San Diego, Fresno, and San Francisco.¹ These investigations involve a close review of the use of pepper spray, especially as directed towards youth with disabilities who are disproportionately the recipients of chemical agents.

Unsurprisingly, chemical agents create a punitive, fear-based environment that is developmentally inappropriate for managing youth behavior. That is why the overwhelming majority of states in the U.S., as well as several California counties (Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Solano), have rejected the use of chemical agents in juvenile facilities. Additionally, the data suggests that eliminating chemical agents has no affect on the operational safety of the facilities.² The National Institute of Correction's Desktop Guide to Working with Youth in Confinement reiterated this point and explained that: "The fact that the

¹ Disability Rights California. Mental Health & Criminal Justice/Juvenile Detention Facilities. Reports. Found at: <https://www.disabilityrightsca.org/what-we-do/reports>. See Investigation Report: Kern County Juvenile Correction Facilities. We found that excessive use of pepper spray, which in turn creates significant liability for the county. Probation staff "used pepper spray on youth in response to non-violent acts such as verbal defiance and 'peer friction,' for symptoms of mental health needs such as self-injury and threats of self-harm, and in a punitive manner after youth had been restrained." Found at: https://www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf.

² American Civil Liberties Union Foundations. *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*. (May 2019). Found at: https://www.aclusocal.org/sites/default/files/aclu_socal_toxic_treatment_report_2019.pdf.

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

majority of state juvenile corrections agencies maintain safe facilities without using pepper spray is a powerful indicator that chemical weaponry is not an essential tool to the behavior management kit for juvenile confinement staff.”³ California is a national outlier when it comes to the use of chemical agents against youth, and it is one of only five states that allow facility staff to carry chemical weapons on their person, which is banned by 90% of juvenile correctional facilities across the nation.⁴

The BSCC can implement already existing crisis diffusion and use of force policies from within California (such as the Santa Clara County Crisis Diffusion Policy)⁵ to promulgate trainings for ending the use of chemical agents. Moreover, national resources can supplement state procedures by supplying guidance on facilities already operating without the use of chemical agents. Given the precedents available for alternatives to chemical agents, we are confident that California can safely and effectively end the use of chemical agents in juvenile facilities in furtherance of a developmentally proper vision for how to support our youth.

B. The use of chemical agents is demonstrably ineffective, and moderate restrictions have not reduced abuses which disproportionately affect youth of color and youth with disabilities.

The BSCC should adopt state-wide regulations that ban the use of chemical agents in juvenile facilities. Several counties in California have already shown leadership on this issue and continue to operate their facilities safely and effectively. As demonstrated in DRC’s report on the San Francisco Youth Guidance Center (YGC) in 2016, the juvenile facility managed by the City and County of San Francisco runs safely without the use of pepper spray. Our report explained that: “YGC does not use these potentially dangerous interventions on youth and should be a model for other juvenile facilities in this regard . . . YGC has shown statewide leadership in its elimination of the use of pepper spray.” Additionally, as

³ Deitch, Michele. "Ch. 14 Behavior Management - Desktop Guide to Quality Practice for Working with Youth in Confinement. National Partnership for Juvenile Services and Office of Juvenile Justice and Delinquency Prevention (2014), available at <https://info.nicic.gov/dtg/node/21>.

⁴ Council for Criminal Justice Administration, *Pepper Spray in Juvenile Facilities*, (May 2011), available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/pepper-spray-juvenile-facilities>.

⁵ County of Santa Clara, Behavioral Health Services Policy. Found at: <https://bhscd.sccgov.org/programs-services/suicide-prevention-crisis/policy>.

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

noted above, Marin, Santa Clara, Santa Cruz, Sacramento, Solano, and Sonoma counties have all ended the use of pepper spray in juvenile facilities, and the state should follow suit by universally adopting these standards.

Notably, the BSCC's current regulations place restrictions on the use of chemical agents in juvenile facilities. However, these restrictions have failed to prevent pervasive, rampant, and widespread abuse in counties throughout California. As required under current BSCC guidance, chemical agents "shall never be applied as punishment, discipline, retaliation or treatment" and facilities that use chemical agents "shall include policies and procedures that . . . mandate that chemical agents only be used when there is an imminent threat to the youth's safety or the safety of others and only when de-escalation efforts have been unsuccessful or not reasonably possible."⁶ However, these restrictions have not prevented abuse and mistreatment against California's incarcerated youth.⁷

Furthermore, DRC's investigations have concluded that chemical agents are disproportionately used against youth with mental health, behavioral learning, and/or development disabilities. For example, in Kern County, probation staff used chemical agents "on youth in response to non-violent acts such as verbal defiance and 'peer friction,' for symptoms of mental health needs such as self-injury and threats of self-harm, and in a punitive manner after youth had been restrained."⁸ Staff routinely punish these youth—including with isolation, restraint, and chemical force—for behavior related to their disabilities. In 2018, the Office of the Inspector General (OIG) investigated chemical weapon use in Los Angeles County's juvenile facilities and found that despite policies showing that pepper spray was a last resort, the use of force incidents the OIG reviewed revealed "a consistent use of OC spray as an initial or intermediary force option, rather than as one that follows a failure to de-escalate."⁹

⁶ Board of State and Community Corrections. Juvenile Title 15 Minimum Standards § 1357. (Jan. 1, 2019).

⁷ *Supra* note 2. A report by the American Civil Liberties Union Foundations of California, based on public record act requests to all fifty-eight counties, found that staff in California juvenile facilities used chemical agents more than 5,000 times between January 2015 and March 2018.

⁸ Disability Rights California. Investigation Report: Kern County Juvenile Correctional Facilities (Jan. 2018), available at: https://www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf.

⁹ Los Angeles County Office of the Inspector General, Report Back on Ensuring Safety and Humane Treatment in the County's Juvenile Justice Facilities (Feb. 4, 2019).

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

A complete ban on the use of chemical agents in juvenile facilities will have no affect on operational safety, and it will end the patchwork of county-specific guidelines by adopting universal procedures across California.

C. The use of chemical agents in juvenile facilities is damaging to the long-term health and rehabilitation of California's incarcerated youth.

Under California law, pepper spray's toxicity classifies it as a tear gas weapon,¹⁰ which works by inflaming the respiratory tract and severely restricting one's ability to breathe. The American Academy of Pediatrics has recognized the unique psychological risk that tear gas poses to children because of their smaller bodies, faster breathing, and "limited cardiovascular stress response when compared to adults."¹¹ In juvenile facilities throughout California, this weapon is particularly dangerous for vulnerable youth with cardiovascular or respiratory conditions or those using psychotropic medications. Moreover, these conditions may not be immediately clear to facility staff, increasing the danger that pepper spray used on a young person with an underlying condition can cause serious, long-term consequences.

Undoubtably, the use of chemical agents in juvenile facilities is damaging to the long-term health and rehabilitation of incarcerated youth, and it is antithetical to California's goal of using a public-health approach to juvenile incarceration.

D. In addition to eliminating OC spray, DRC urges the ESC to prohibit "chair status," which is the practice of forcing youth to sit silently in a chair outside their cell for hours at a time.

¹⁰ Ca. Penal Code Sections 22810 *et seq.*

¹¹ Szanyi, J. Chemical Agents in Juvenile Facilities. Center for Children's Law and Policy (2019), available at <https://ccjp.org/wp-content/uploads/2019/07/Fact-Sheet-Chemical-Agents-Final-2019.pdf> citing Colleen A. Kraft, AAP Statement in Response to Tear Gas Being Used Against Children at the U.S. Southern Border (2018), available at <https://www.aap.org/en/news-room/news-releases/aap/2018/aap-statement-in-response-to-tear-gas-being-used-against-children-at-the-us-southern-border/>.

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum Standards for Juvenile Facilities

Finally, DRC urges the ESC to eliminate “chair status” (sometimes called “hallway status”), which is a punishment that requires youth to sit alone and silent in a chair in the hallway for hours or even a full day at a time. We have found that facilities order youth to chair status for minor offenses. Kings County, for example, permits chair status for up to one day for minor rules violations like horseplay, profanity, or being out of an assigned area.

While facilities use chair status to circumvent room confinement restrictions, it is no less isolating than being alone in a cell. A growing consensus recognizes that the isolation of any kind is inappropriate, dangerous, and counterproductive to the goal of rehabilitating incarcerated youth. Chair status is a form of isolation that is particularly harmful to youth with disabilities, including those with ADHD. Staying silent and upright in a chair and refraining from interacting with staff or youth, while listening to others participate in recreation activities such as watching TV, playing games, and making phone calls, is effectively impossible and can leave them stuck in a cycle of extended isolation.

DRC has seen facilities successfully phase out chair status through robust programming and alternative sanctions. Kern County, for example, has implemented a full schedule of programming that eliminated youth’s idleness and boredom and led to a reduction in misbehavior. Sanctions for misbehavior are now more individual-focused and include interventions such as mental health counseling referrals. These reforms show that chair status is neither necessary or effective and should be phased out.

Conclusion

We recognize and applaud the ESC’s commitment to improving the lives of California’s incarcerated youth. Criminal legal issues are often nuanced, and we understand the need to balance a variety of interests. However, the use of chemical agents against children is archaic and immoral. Next week, the committee has an opportunity to align our state with the rest of the nation by banning chemical agents in juvenile detention facilities. We strongly recommend that the BSCC update its minimum regulations to reflect a more reasonable, constructive, and contemporary approach to managing youth behavior in California.

DRC - Recommended Revisions to Title 15 and Title 24 - Minimum
Standards for Juvenile Facilities

Sincerely,

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