

January 6, 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 TO: allison.ganter@bscc.ca.gov

Re: Recommended Revisions to the Juvenile Titles 15 and 24 Minimum Standards for Juvenile Facilities

Dear Executive Steering Committee Members:

We are a group of youth justice advocates, community-based organizations, families and friends of incarcerated youth, and individuals with direct experience with California's county juvenile facilities and we write to urge this executive steering committee (ESC) to prioritize banning the use of chemical agents in juvenile facilities at your next meeting on January 10, 2023. We first want to thank you for your tireless efforts in modernizing California's regulations; we recognize that it is no small task to update these standards with evolving best practices without sacrificing the safety of youth and staff. In the case of chemical agents, the continued use of this outdated control weapon not only puts youth and staff safety at risk but also undermines California law, which calls for a public health approach to juvenile justice. Continuing the permissive state practice of deploying chemical agents against incarcerated youth is out of step with fundamental rights, best practices, and a developmentally appropriate, health-based approach to youth justice and we urge you to recommend to the Board of State and Community Corrections (BSCC) that the minimum regulations should be updated to ban chemical agents in all juvenile facilities.

Banning the use of chemical agents in juvenile facilities will align California with national norms and best practices regarding the most effective approaches to managing youth behavior and promoting positive youth development.

The harmful nature of chemical agents like tear gas makes their use counterproductive to the rehabilitative goals of the juvenile justice system. The use of these weapons creates a punitive, fear-inducing environment that impedes the development of trusting, healthy relationships between staff and youth that are essential to facility safety and successful reentry. A national survey by the Council of Juvenile Correctional Administrators observed that facilities that use pepper spray tend to be systems that adopt an overall more punitive and adult-correctional approach.¹ It comes as no surprise then that the use of chemical agents has been widely rejected by juvenile facility administrators across the country. Thirty-five other states and several California counties (Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz and Solano) have shown that chemical agents are not needed to safely operate a facility.² The National Institute of Correction's Desktop Guide to Working with Youth in Confinement describes the outdated nature of chemical agents as follows: "The fact that the 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 in the behavior management kit for juvenile confinement staff."³ California is not only an outlier in allowing chemical agents in facilities; more egregiously, California is one of only five states that allows facility staff

¹ Council for Criminal Justice Administrators, *Pepper Spray in Juvenile Facilities* (May 2011), available at: www.ojp.gov/ncjrs/virtual-library/abstracts/pepper-spray-juvenile-facilities

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

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>

to carry chemical weapons on their person despite the fact that 90% of juvenile correctional facilities across the nation ban this practice.⁴

Because most juvenile facilities nationally and seven counties within California already operate without using chemical agents, there is no need for California to reinvent the wheel when replacing these weapons with alternative practices that better align with positive youth development. The BSCC can use various crisis diffusion and use of force policies from within California (such as the Santa Clara County Crisis Diffusion Policy) to promulgate trainings for ending the use of chemical agents. These policies can be supplemented with national resources from the majority of states that are currently operating without using chemical agents. Given the numerous 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 appropriate vision for how to support our youth.

Chemical spray has serious health impacts on youth.

The most common chemical agent used in juvenile facilities is Oleoresin Capsicum, commonly known as “pepper spray” or “OC spray”. OC spray is so toxic that it is classified in California law as a tear gas weapon.⁵ It works by inflaming the respiratory tract and restricting breathing.⁶ The American Academy of Pediatrics has recognized tear gas poses a unique physiological risk to children because children have smaller bodies than adults, children breathe faster per minute than adults and “have a limited cardiovascular stress response when compared to adults.”⁷ In juvenile facilities throughout California, this weapon—which can cause not only intense pain but also blistering of the skin, coughing, sneezing, inflammation, respiratory arrest, and an increased risk of strokes and heart attacks—is particularly dangerous for those with cardiovascular or respiratory conditions such as asthma or those using psychotropic medications.⁸ These are conditions that may not be immediately apparent to facility staff, increasing the danger that OC spray is used on a young person with an underlying condition that can cause serious, long term and devastating consequences.

Using chemical agents, which severely impair the respiratory system, is even more dangerous in light of COVID-19 given the pathological findings that COVID-19 is associated with acute respiratory distress and death. Additionally, the recent outbreak of severe respiratory syncytial virus (RSV) among young people in the United States further compounds the health impacts of chemical agents considering the physical reactions to these weapons include intense coughing, sneezing, sputtering, and crying. Thus, any use of chemical agents can facilitate the spread of COVID-19 and other communicable illnesses both within the facilities and outside (as infected staff return home to their communities).⁹ The continued, widespread, and routine use and misuse of these chemical agents within the confinement of poorly ventilated juvenile facilities is an egregious practice that puts the health and safety of California youth at risk every single day.

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

⁵ Ca. Penal Code Sections 22810 *et seq.*

⁶ U.S. Department of Justice, National Institute of Justice. *Oleoresin Capsicum: Pepper Spray as a Force Alternative* (NCJ 181655) (1994).

⁷ Szanyi, J. *Chemical Agents in Juvenile Facilities*. Center for Children's Law and Policy (2019), available at <https://cclp.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/>

⁸ Texas Criminal Justice Coalition, *Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendation* (Nov. 2007), available at: <http://www.njcn.org/uploads/digital-library/pepper.pdf>

⁹ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Feb. 2021), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

Placing restrictions on chemical agents has been ineffective at curbing abuses and these abuses disproportionately impact youth with disabilities.

The BSCC’s current regulations place restrictions on the use of chemical agents in juvenile facilities, however these restrictions have failed to prevent rampant, widespread abuse of these weapons. Section 1357 of the Title 15 Minimum Standards states 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 are not reasonably possible.”¹⁰ However, these restrictions have not prevented the overuse and abuse of chemical agents against incarcerated youth. A report by the American Civil Liberties Union Foundations of California, based on public record act requests to all 58 counties, found that staff in California juvenile facilities used this weapon more than 5,000 times between January 2015 and March 2018.¹¹ The number of incidents is likely much higher since 13 counties failed to provide data on how often it was utilized.

In addition to overuse, we know that chemical agents are often used in violation of minimum standards. Reports from 2016 and 2017 document staff inappropriately responding to youth in mental health crises with force, with documented justifications including: “self-harm”, “suicidal gesture”, “hitting herself”, “banging head against wall”, and “refused to follow staff direction, became defiant, refused to go to room.”¹² Investigations into conditions in juvenile facilities in Kern, San Diego, Fresno, and San Francisco (prior to the ban on chemical agents) counties found that chemical agents are often directed disproportionately against youth with mental health, behavioral learning, and/or developmental disabilities—including many who are survivors of significant trauma—and constitutes abuse and neglect of these young people.¹³ Probation staff have been found to use 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.”¹⁴ 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 stating that OC spray was only to be used as 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.”¹⁵ In its report, the OIG highlighted an incident where OC spray was used on a youth in mental health crisis who “was engaging in self-harming behavior, and was OC sprayed in the groin and buttocks.”¹⁶

Placing restrictions on the use of chemical agents in juvenile facilities does not work to prevent the overuse and abuse of this outdated practice. Despite policies and procedures to the contrary, we know that if facility staff have access to chemical agents, these weapons will be abused at the expense of the safety and well-being of our most vulnerable youth. Because restrictions on use have proven to be ineffective and inadequate, we urge this ESC to revise Title 15, Section 1357 to ban the use of chemical agents in all juvenile facilities.

We recognize that this ESC is committed to improving the lives and outcomes of justice-involved youth and all of you are striving for nuanced, effective changes toward that end. Next week, you have an

¹⁰ Board of State and Community Corrections, Juvenile Title 15 Minimum Standards § 1357 (January 1, 2019)

¹¹ American Civil Liberties Union Foundations, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 2019), available at: https://www.aclusocal.org/sites/default/files/aclu_socal_toxic_treatment_report_2019.pdf.

¹² *Id.*

¹³ For full reports, see: <https://www.disabilityrightsca.org/what-we-do/priorities/adult-and-juvenile-detention-facilities>

¹⁴ Disability Rights California, *Investigation Report: Kern County Juvenile Correctional Facilities* (Jan. 2018), available at: www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf

¹⁵ Los Angeles County Office of the Inspector General, Report Back on Ensuring Safety and Humane Treatment in the County’s Juvenile Justice Facilities (February 4, 2019).

¹⁶ *Id.*

opportunity to bring California into alignment with a majority of the nation and truly embody California's dedication to a health-first approach to the juvenile system. We request that you take advantage of this opportunity to revise the Title 15 and 24 regulations to improve health, safety, and emotional and mental well-being for incarcerated youth to the greatest extent possible by adopting our recommendation to ban the use of chemical agents within California's county juvenile facilities.

Sincerely,

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Advance Peace Fresno

Eric Morrison-Smith, Executive Director
Alliance for Boys and Men of Color (ABMoC)

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Arts for Healing and Justice Network

Natalya Bomani, Criminal Justice and Student
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Kelsey Reedy, Youth Organizer - Policy & Advocacy
Humboldt County Transition Age Youth
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Raylene Brown, Outreach Coordinator
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Margaretta Lin, Executive Director
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Tatiana Lewis, Policy Advocate at community-based
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