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October 14, 2021

Kathleen Howard, Executive Director
Board of State and Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, CA 95833 (by electronic transmission)

Re: Individualized Assessment for Restraints in Los Angeles County Juvenile Halls

Dear Executive Director Howard:

We write to bring to your attention an issue pertinent to the Board's September 16, 2021, finding of unsuitability of the Los Angeles County Juvenile Halls under Welfare and Institutions Code section 209, subdivision (d).

Just after the September 16 meeting, several juvenile defenders in our organization reported that, while Barry J. Nidorf had been found in compliance on the use of restraints in movement within the facility, their experience was that all youth housed in "The Compound" (for youth being tried as adults or on serious charges, and youth held for disposition in the "secure track") at Barry J. Nidorf are restrained when they are brought to the visiting area. This was confirmed by probation staff Felicia Cotton at the September 23, 2021, Probation Oversight Commission meeting. Ms. Cotton initially claimed that the youth are "assessed" but upon further questioning admitted that all youth in The Compound are restrained without regard to the individual youth's behavioral history. She spoke of such things as "time of day" and other activities in the facility as permissible justifications. Youth housed in The Compound are restrained at their wrists and/or their ankles in being moved to and from visiting with their attorney. Ms. Cotton appeared to believe that "flex ties" are somehow less intrusive than cuffs or shackles.

We urge you to watch this testimony and reconsider your response on the Barry J. Nidorf finding. Ms. Cotton placed a big emphasis on Ms. Southwell's inspection finding of no violation, but it is clear from the testimony that Ms. Southwell may not have been aware of the full picture and the routine practice of restraining youth housed in certain areas. If every youth in that area is shackled, there is no individualized assessment going on. To her credit, Ms. Cotton acknowledged that the questions raised valid points and that this was something they could take a look at. (The questioning and Ms. Cotton's testimony is viewable at <https://poc.lacounty.gov/MEETINGS>, Sept. 23 meeting, from 1:47 to 1:54.)

Title 15 Cal. Code of Regs. § 1358.5, subd. (c), requires an individual assessment of the need to apply restraints for movement or transportation that includes consideration of less restrictive alternatives, consideration of a youth's known medical or mental health conditions, trauma informed approaches, and a process for documentation and supervisor review and approval. The individualized assessment is to be made based on facts about the particular youth – not the bare fact that they are undergoing transfer proceedings or are charged with a serious offense.

Further, use of restraints cannot be based on factors such as the time of day or activities going on in the facility. The facility is expected to have adequate staffing and other policies needed to safely operate the facility without such draconian measures. The landmark case of *Tiffany A. v. Superior Court* (2008) 150 Cal.App.4th 1344, held that a blanket rule of shackling youth in court proceedings was unconstitutional. The Sheriff in that courthouse had instituted the policy because of staffing issues. The appellate court held that any decision to shackle a minor who appears in the juvenile court must be based on the non-conforming conduct and behavior of that individual minor, measured on a case-by-case basis.

Similarly, in litigation over due process at parole revocation hearings, the California Division of Juvenile Justice reversed its policy of shackling all youth at hearings, and adopted a policy calling for an individualized determination of the need for restraints based on evidence that the individual parolee's present behavior, apparent emotional state or other conditions present a reasonable likelihood that he/she may become violent or attempt to escape, or behavior while on parole or violent behavior during the period of incarceration for the alleged parole violation. (Policy CN 416, Safety and Security During Hearings 5.0 (2012).)

It is difficult to believe that current policy and practice truly reflect a belief that all of these youth are currently dangerous, since the restraints are removed when they get to the visiting room. Beyond that, these are youth held in a locked unit within a locked facility, surrounded by armed correctional staff, with security bolstered by institutional communication systems

We support the Board's decision on unsuitability and have no desire to interfere with the timelines for corrective action, but it appears that the finding of compliance on this issue was in error, and that it could be addressed within in the 60-day period. Please let me know if we can be of further assistance. Thank you for your consideration.

Sincerely yours,

Sue Burrell

Sue Burrell, Policy Director
Pacific Juvenile Defender Center
sueburrellpjdc@gmail.com
(415) 320-2150
P.O. Box 151387
San Rafael, CA 94915

Cc: Linda Penner, Chair
Aaron Maguire, General Counsel
Lisa Southwell, Field Representative
Allison Ganter, Deputy Director