

November 8, 2013

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Mike Griffiths, TJJD Executive Director
Texas Juvenile Justice Department
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Austin, Texas 78758

Re: Proposed Changes to Pepper Spray Regulations

Dear Executive Director Griffiths:

We write to express our concerns about the proposed changes to Texas Juvenile Justice Department rules to expand the authority of county juvenile probation agencies to use pepper spray on aggressive youth offenders in secure facilities. Our office, the Youth Law Center, is a national non-profit, public interest law firm that protects the rights of children and youth in the child welfare and juvenile justice systems. We have litigated dozens of cases involving the treatment of youth in juvenile facilities; written books, articles and training materials on conditions law; and consulted with juvenile system professionals around the country.

When we read the media reports about the proposed changes, we were gratified at the news that you have decided to hold off on a decision until you can more carefully consider the proposed changes. This letter is written to provide background information that may help to dissuade you from making it easier to use pepper spray. In our experience, pepper spray is not needed to run a safe facility, and the problems that result in a desire to use it should be addressed in a less traumatic, more humane manner. Any changes that make it easier to use pepper spray on youth in juvenile facilities are a step in the wrong direction.

1. Pepper Spray Use is Rare in Juvenile Facilities Across the Country

Use of pepper spray is out of step with accepted professional practice. A national survey of correctional administrative staff by the Council of Juvenile Correctional Administrators (CJCA) found that only 12 percent of the agencies surveyed authorize staff to carry chemical sprays on their person, and only 29 percent authorize the use of chemical restraints at all.¹ The survey also found that only 8 percent of juvenile facilities participating in the CJCA Performance-based Standards program reported any use of

¹ *Issue Brief: Pepper Spray in Juvenile Facilities*, Council of Correctional Administrators (May 2011), <http://cjca.net/index.php/resources/cjca-publications/70-issue-briefs/172-issue-brief-pepper-spray-in-juvenile-facilities>.

pepper spray. Similarly, only 7 percent of youth in juvenile facilities that responded to OJJDP's Survey of Youth in Residential Placement said that staff had used pepper spray on them.² The CJCA survey commented that the systems that use pepper spray tend to be systems that have an over all more punitive and adult-correctional approach to managing youth in facilities.

2. Pepper Spray Use is Dangerous to Youth

The National Institute of Justice has found that pepper spray, "incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes...and temporarily restricting breathing to short, shallow breaths."³ The use of pepper spray on children and youth is especially dangerous, given the prevalence of asthma, undiagnosed heart conditions, and other health conditions that may be severely impacted by pepper spray. Because these conditions may be undiagnosed or unknown to staff, pepper spray creates significant danger to youth in juvenile facilities.⁴

Also, being pepper sprayed is a frightening, traumatic event in which youth have no control over what is happening to them, and they experience both physical and emotional pain. It confirms their perception that they are worthless, and exacerbates their sense of rejection. Their emotions may then turn inward toward self-destruction and depression, or outward in anger and frustration.⁵

3. Pepper Spray Use is Antithetical to the Rehabilitative Goals of the Juvenile System

Whatever its use may be in street law enforcement situations, pepper spray has no place in a system whose purpose is rehabilitation. The CJCA report noted that use of restraints in juvenile confinement settings creates anger and feelings of unfair use of authority, in addition to negatively impacting staff. The report noted CJCA's collective experience that overreliance on restraints, whether they be chemical, physical, or mechanical,

² Andrea J. Sedlak and Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement*, OJJDP Bulletin (May 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

³ U.S. Department of Justice, National Institute of Justice, *Oleoresin Capsicum: Pepper Spray as a Force Alternative* (NCJ 181655, 1994), <http://www.ncjrs.gov/pdfiles1/nij/grants/181655.pdf>.

⁴ See, e.g., Michael Cohen, *The Health Effects of Pepper Spray: A Review of the Literature and Commentary*, 4 *Journal of Correctional Health Care* 73 (1997).

⁵ See, e.g., Sue Burrell, *Trauma and the Environment of Care*, National Child Traumatic Stress Network (2013), http://www.nctsnet.org/sites/default/files/assets/pdfs/jj_trauma_brief_envirofocare_burrell_final.pdf.

compromise relationships between staff and youths – one of the critical features of safe facilities.

Certainly exerting punitive control through pepper spray interferes with the underlying goals of the system in helping youth to learn and exercise internal control. Also, given the rampant disproportionality of Black and Latino youth in the system, this dehumanizing practice is being perpetrated primarily on youth of color, many of whom have already experienced serious trauma in their lives.

The Attorney General’s Report, *Defending Childhood*, specifically calls for youth in juvenile facilities to receive treatment that is free from the use of coercion, restraints, seclusion, and isolation, and that is designed specifically to promote recovery from the adverse impacts of violence exposure and trauma on physical, psychological, and psychosocial development, health, and well-being. The report also recognized the importance of restraint and coercion-free institutional practices in assuring a safe workplace for staff. The report specifically called for juvenile justice systems to “Abandon juvenile justice correctional practices that traumatize children and further reduce their opportunities to become productive members of society.” (Recommendation 6.2.)⁶

4. Pepper Spray Use Exposes Facilities to Liability

The juvenile system in Texas has had more than its share of crisis and scandal in the past decade. Tremendous reform efforts have been undertaken to resolve abuses in state and local systems and to prevent future problems. Pepper spray use has repeatedly surfaced as an issue in Texas litigation and been a part of reform agendas. The current proposal to expand pepper spray use suggests that the intended reforms have not yet truly taken hold.

Youth detained in Texas facilities have a right to reasonably safe conditions of confinement and freedom from undue bodily restraint, and nationally, pepper spray use has been widely litigated. A court in Ohio recently banned the use of pepper spray after it became apparent that a juvenile system was not following its own policies.⁷ The Department of Justice currently has at least 3 investigations that involve the use of pepper spray in juvenile facilities. This is not going to change. As the national juvenile justice system moves toward more developmentally appropriate care for youth in juvenile

⁶ *Defending Childhood*, Report of the Attorney General’s National Task Force on Children Exposed to Violence (2012), iii. xvii, 113.

⁷ Associated Press, *Judge blocks pepper spray use in youth lockups* (Oct. 18, 2011).

facilities, systems using pepper spray are going to become even more marginalized and subject to scrutiny through litigation.

5. Safety is Better Achieved through Staffing, Training, Programming and Classification

In more than thirty years of experience in juvenile institutional work, we have encountered a number of situations in which facilities were having problems with fights or other disruptions leading them to believe they needed to increase their use of some form of restraint. Sometimes the perceived need was linked to having an increase in youth with a more serious criminal background, and other times, having more youth with mental health problems. Staff in these facilities did not feel safe, and their immediate response was to request more hardware to do the job.

But upon closer examination, employing more hardware is not the only way to go, and for the reasons previously discussed in this letter, it is not the right way to go. In our experience, addressing the following issues is the best way to prevent fights and head off meltdowns that result in the need to use pepper spray.

Staffing

The best way to reduce pepper spray use is to prevent situations from escalating or intervene before they present an imminent danger to staff and youth. Facilities should have 1:8 or better staffing ratios, and in some units, may need to have even more staff either temporarily or permanently, depending on the population or the needs of individual youth. The trend is toward even lower ratios such as 1:6 (Massachusetts) or 2:11 (Missouri).

Training and Supervision

Systems sometimes provide lots of training on how to apply force or restraints, but not so much on crisis intervention, de-escalation, and non-force ways to handle youth who are aggressive or out of control. Written policies are not always clear about the expectation that less restrictive options be employed whenever possible, and that use of such interventions must be limited to extraordinary situations in which there is an imminent danger of harm to the youth or others. Good quality training and clear policies can go a long way to help staff to feel more confident about their skills and to have a bigger repertoire of tools to use in preventing the need for interventions such as pepper spray.

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Also, when incidents do occur, it is critically important that there be debriefing with the staff and youth to better understand what happened; whether some other intervention would have been effective; and what might be done to prevent future such incidents. Also, parents should be notified, and brought into the discussion about what kinds of things trigger their child's behavior and what might work to help calm him or her or prevent acting out.

Programming

Youth who are actively engaged in education or recreational activities are much less likely to get into fights or self-destructive behavior. Thus, in looking at how to reduce violence and use of force, it is critically important to make sure that institutional programming is good quality and that youth are not getting into trouble simply because they are bored or under-stimulated.

Classification

While TJJD facilities surely vary in terms of size and living unit configuration, another way to reduce use of force and restraint is to improve the classification system under which youth are assigned to living units and programs. Sometimes moving even one or two youth to a different location can make a huge difference in the level of tension in the facility.

We know that juvenile facilities can be safely operated without pepper spray because most of the facilities in the country do not use it. We hope the Department will reconsider making it easier to use pepper spray and move toward eliminating it altogether. Thank you for your consideration. We will be glad to respond to any specific questions you may have.

Sincerely yours,



Sue Burrell, Staff Attorney
YOUTH LAW CENTER