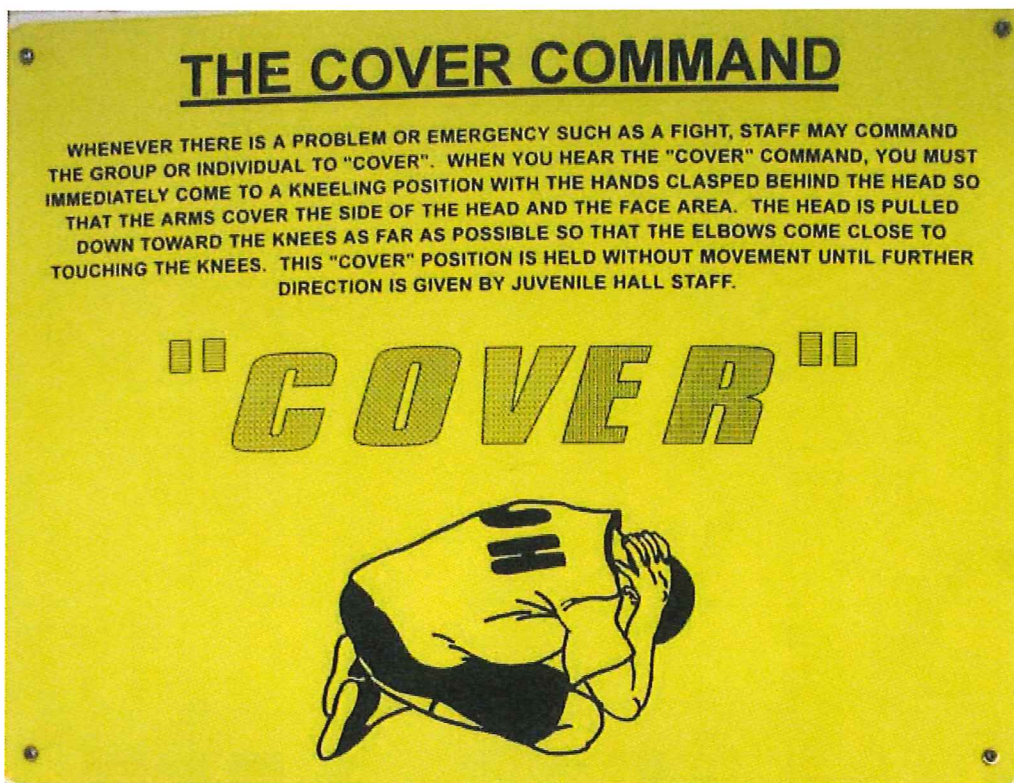


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Civil rights groups blast San Diego County over pepper spray in juvenile halls

Justice Department asked to investigate and force county to eliminate 'inhumane and abusive' practices

By [Dave Maass](#), [Kelly Davis](#)



A sign posted at San Diego County juvenile detention facilities showing the position detainees must take before pepper-spray is deployed.

The girl sat on the bunk in her cell in one of San Diego County's female juvenile-detention units as staff members explained that she was being placed on suicide watch. They told her she had to strip naked in front of them—including in front of a male staff member.

She refused, twice. So, they sprayed her in the face with pepper spray, then shut the door to her cell.

Two minutes later, they asked if she was going to cooperate. She refused, and they sprayed her a second time and again shut the door.

Minutes later, they opened the door and sprayed her again. She vomited. They then sprayed her yet once more.

After the fourth blast of pepper spray, the girl finally submitted. Probation staff ordered her to crawl out of the cell, where they handcuffed her, forcibly removed her clothing, cut off her shirt and bra, strip-searched her, put her in a gown and placed her in solitary confinement for 48 hours.

This account is one of dozens of abuses of pepper spray by the San Diego County Probation Department at its East Mesa and Kearny Mesa juvenile facilities revealed today by the Youth Law Center (YLC), a San Francisco legal advocacy nonprofit. [In a 34-page formal complaint](#) supported by more than 170 individual exhibits, YLC has asked the U.S. Department of Justice's Civil Rights Division to investigate the probation department and order it to end the use of pepper spray and other practices that YLC says violate youths' constitutional rights. Nine groups co-signed the complaint, including California Rural Legal Assistance, El Grupo, the San Diego branch of the NAACP, Border Angels, Latinos Organizing for Action, Alliance San Diego, CSA San Diego, American Friends Service Committee San Diego and the San Diego La Raza Lawyers Association.

"We are particularly concerned that the youth subjected to what we consider inhumane and abusive practices are disproportionately youth of color," the complaint says, "in particular Latino and African American youth."

According to the complaint, YLC and El Grupo initiated an investigation of pepper-spray use in San Diego County juvenile facilities in 2012 after *San Diego CityBeat*, in collaboration with [TheCrimeReport.org](#), reported that pepper spray, also known as oleoresin capsicum, or OC spray, had been used on juveniles 461 times in a single year. As we noted then, and is noted in the complaint, only a handful of states allow juvenile-detention staff to carry pepper spray. More than 70 percent of facilities nationwide ban its use entirely. Many jurisdictions, including Los Angeles County, the California Department of Corrections and Rehabilitation's Division of Juvenile Justice and the Texas Youth Commission have been forced to reduce pepper-spray usage after legal pressure from civil rights groups and youth advocates.

In San Diego juvenile facilities, probation officers have wide discretion to use pepper spray, whether it's the small bottles they carry or the large canisters, nicknamed "Big Berthas," designed to quell riots. Before deploying pepper spray, officers call out the "Cover" command; every youth within earshot is required to assume a crouch position, with hands clasped over their head to avoid getting sprayed.

In April 2013, YLC attorneys and Victor Torres from El Grupo, a Latino civil-rights organization, met with county probation officials to discuss reports of excessive pepper-spray use on juvenile detainees. YLC staff attorney Sue Burrell says they followed up with a formal records request to find out if probation officials were sincere in their claim that pepper spray was used only when there were no alternatives to bring combative detainees under control.

"The county's consistent public position was that it was a shame the youth fight so much, so staff are forced to resort to pepper spray," Burrell says. "The vast majority of juvenile facilities in the United States do not use pepper spray at all, and the San Diego kids are not any more violent or sophisticated than the kids in those places."

The documents released to YLC, which the Probation Department previously denied to *CityBeat*, revealed that probation staff were using pepper spray routinely and indiscriminately as a first resort to gain compliance rather than only as a last resort for stopping fights.

YLC identified dozens upon dozens of cases of improper use of pepper spray. Probation staff sprayed youth at risk of suicide; youth who simply were disobedient; youth with respiratory, cardiovascular and skin problems; and youth being treated with psychotropic medication.

They used it to gas-out detainees who refused to leave their cells. They sprayed detainees as young as 12 years old. They sprayed multiple girls who refused to strip at the request of male staff.

YLC documented evidence of 147 youths who weren't doing anything wrong but were nonetheless exposed to pepper spray because staff had used too much on other detainees. In five separate incidents, staff used at least a pound of pepper spray. Torres says he was stunned by the brutality exhibited in the incident reports.

"My jaw dropped," he says. "I was reading these things thinking to myself, Holy moly, are these for real? It was astounding, the level of callousness and lack of understanding. How do you rehabilitate people when you cage them like animals and treat them like dogs?"

When *CityBeat* first reported on the issue in 2012, Chief Probation Officer Mack Jenkins downplayed concerns, with his spokesperson claiming that *CityBeat's* reporting was "inaccurate" and "not very balanced" in its portrayal of the department's use of pepper spray. The department insisted that "OC spray is used only after directions and/or counseling attempts have not stopped the threat." YLC's investigation confirmed nearly all of the allegations that appeared in *CityBeat's* stories.

"My office goes into facilities all over the country, and we have seen some pretty terrible things, but these incident reports stand out in the field of troubling conditions" YLC's Burrell says. "They do cell extractions like you would find in a maximum-security adult prison—if you don't come out of your cell when they call you, you get pepper-sprayed. If you don't follow staff instructions, you get pepper-sprayed. Even in the fight situations, there was no attempt to de-escalate the situation. They would just yell the pepper-spray command and then spray. It was so mean and so dehumanizing."

The purpose of juvenile detention, the complaint notes, is not to punish youth, but to rehabilitate them. Children and teens lack the maturity of adults, and many who wind up in the juvenile-detention system are there due to trauma, mental illness or difficult situations at home.

Instances in which pepper spray is used for punishment—and not to quell violence or the immediate threat of harm—violate young detainees' constitutional rights, the complaint argues. The Probation Department, it says, "routinely uses OC spray in situations in which there is no imminent and serious threat to physical safety and without engaging in prior attempts at de-escalation."

The incident reports summarized in the complaint depict just how often pepper spray is used on youths who pose no immediate threat. The suicidal girl who was sprayed four times in her cell "remained seated on her bunk in a non-threatening manner" and "did not display any physically aggressive behavior." One detainee who "had her fists clenched by her shoulders" was sprayed in the face by three staff members at the same time. Minors were

sprayed for using profanity or for not responding to commands fast enough. Neither does the department's stated reason for using pepper spray—to keep staff and detainees safe—hold up to scrutiny. The complaint documents a number of incidents where OC spray failed to end a fight, forcing staff to physically intervene.

The complaint notes that sometimes detainees were pepper-sprayed with no warning. In at least three cases, there was no initial "Cover" command, and in other instances, it wasn't clear whether staff gave detainees enough time to comply with the cover command before deploying the spray. Such action, the complaint says, "deviates radically from accepted professional standards" and is, in fact, counterproductive when it comes to the goals of safety and rehabilitation.

"Everything we know about how to produce success with youth involves working with them as caring adults and helping them to develop internal controls and good judgment," Burrell says. "Use of pepper spray substitutes external brute force that serves to make youth mistrustful and afraid of staff. Having staff wearing belts with pepper spray and handcuffs does not create the 'safe and supportive homelike environment' called for in California law."

"These kids are traumatized so many times in their lives," Torres says, "and you're just piling on more trauma."

It's not just the use of pepper spray that YLC attorneys found troubling. The Prison Rape Elimination Act says that detention facility staffing must be at a level that ensures female detainees aren't subjected to strip searches in front of male staff, but incident reports show this happening repeatedly in county facilities. The complaint also raises questions about the use of restraint chairs—which violate "accepted professional standards," it says—and solitary confinement, a practice that's increasingly drawing criticism.

The American Academy of Child and Adolescent Psychiatry has publicly opposed solitary confinement for juveniles, and as part of its Juvenile Detention Alternatives Initiative, the Annie E. Casey Foundation has recommended that confinement should be limited to four hours and never used as a disciplinary measure.

In San Diego County facilities, the attorneys found pepper spray and solitary confinement often went hand-in-hand, with minors being placed in a locked room for up to three days. If they need to leave their rooms, their arms and legs are shackled, even during shower time. And, the report notes, there's no requirement that they receive any sort of educational

instruction while confined and it's not clear whether segregated detainees receive mental-health services.

What is clear is the impact confinement has on troubled kids. According to one account, a nurse found one suicidal girl who'd been confined to her room for 72 hours and placed in administrative segregation for two days "rocking back and forth with her arms folded and crying."

So far, the two main agencies tasked with overseeing San Diego County's juvenile halls have failed to conduct deep probes into the pepper-spray practices.

As *CityBeat* previously reported, in 2012, the county's Juvenile Justice Commission agreed to "add questions relating to the use of OC" to the questionnaires that guide facilities inspection, **but then failed to do so**. The San Diego County Grand Jury, which is charged with inspecting all county detention facilities, said in its most recent report that it "**found no incidents of excessive use of OC [oleoresin capsicum], and no violations of existing policies**"—this after *CityBeat's* numerous reports and after Sue Quinn—who headed the county's Citizens Law Enforcement Review Board (CLERB) between 1995 and 1997 and served as president of the National Association for Civilian Oversight of Law Enforcement—filed a complaint with the Grand Jury, seeking a formal investigation.

County supervisors have also downplayed concerns over the use of pepper spray. Three supervisors who were asked to respond to *CityBeat's* initial reporting expressed confidence in Jenkins. Supervisor Dianne Jacob said she was "satisfied that the county's current practices are responsible and reasonable measures to protect the safety of detention staff and juveniles in custody." Supervisor Greg Cox praised Jenkins as someone who "continuously evaluates new ways of serving the public better." And Supervisor Ron Roberts said in a statement that the policies governing the use of pepper spray seemed "proper."

"It reduces the risk of physical injury to both the youth and members of the staff," Roberts said. "Many of those incarcerated are users of crystal methamphetamine, which is known to cause brittle bones."

In contrast, the YLC investigation identifies numerous occasions where staff acknowledged that the use of pepper spray may have been inappropriate. In one such case, staff used

pepper spray on a juvenile for moving too slowly. In other cases, staff sprayed a girl who was already lying on the ground and a boy who was sitting down and posing no threat.

The complaint notes that use of pepper spray has declined in San Diego juvenile facilities from 461 incidents in 2011 to 394 in 2012 and 320 in 2013. But, the complaint also notes the average daily population in county juvenile facilities has declined as well, from 764 detainees in 2011 to 678 in 2013.

The Probation Department seems to have ceased using pepper spray in room extractions, since no such reports were filed involving room extraction in 2013. However, the YLC complaint notes there have been no changes to policy suggesting the tactic has been permanently banned. "Accordingly," the complaint says, "there is a well-founded concern that OC spray will be used in future room extractions."

CityBeat asked Torres if it's possible that in the year since he and YLC attorneys met with probation officials, things have changed. No, he says. The incident reports reveal a lack of training and supervision that runs deep—a "spray first, write a report later" culture, as the complaint puts it.

"Their position is, 'We're not doing anything wrong. We're following our policy,'" Torres says. "I just can't agree with them."

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