



200 Pine Street, Suite 300  
San Francisco, CA 94104  
Phone: 415.543.3379  
Fax: 415.956-9022  
www.ylc.org

September 25, 2014

Executive Director  
JENNIFER RODRIGUEZ

Senior Director  
Strategic Initiatives  
CAROLE SHAUFFER

Managing Director  
MARIA F. RAMIU

Staff Attorneys  
SUSAN L. BURRELL  
ALICE BUSSIÈRE  
DEBORAH ESCOBEDO

Equal Justice Works Fellow  
VIRGINIA CORRIGAN  
Sponsored by:  
Baker & McKenzie & Intel

Julius Glickman Fellow  
CATHERINE McCULLOCH

Special Projects Fellow  
TYLER WHITTENBERG

Special Projects Manager  
BENJAMIN RICHEDA

Administrator  
MEHRZAD KHAJENOORI

Administrative Assistant  
ROBIN BISHOP

*Via U.S. Mail and Electronic Mail*

Supervisor Mike Wasserman, President  
Santa Clara County Board of Supervisors  
70 W. Hedding, East Wing, 10th Floor  
San Jose, CA 95110

Dear Supervisor Wasserman:

This letter is written on behalf of the Youth Law Center to express our concern about the forthcoming use of pepper spray in Santa Clara County Juvenile Halls. We were unaware of the “pilot program” embodied in a recent union contract until we were contacted for a comment on it by the Mercury News this week.

The Youth Law Center is a San-Francisco-based national non-profit, public interest law firm. We work nationally on conditions of confinement issues, and have helped to develop facility standards for California’s Minimum Standards for Juvenile Facilities, and for the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI). Our office has been involved in dozens of lawsuits over conditions of confinement, and we have served as inspectors and consultants in juvenile facilities around the country. We inspected your Juvenile Hall when the County was a part of JDAI, and were part of the follow-up team after the DOJ Investigation in 2003.

The decision to allow pepper spray to be used in Santa Clara County juvenile facilities was made without input from important stakeholders. Even the Juvenile Court judges did not learn about this until after the fact. A union representative admitted to the Mercury News that they have been trying to make this happen since 2003, when the Department was under scrutiny from the Department of Justice in relation to over-use of force. The fact that they made this successful push in the interim between Chief Probation Officer Sheila Mitchell leaving and Chief Probation Officer Laura Garnette assuming her position is troubling. The total lack of input from key community stakeholders or experts contributes further to the appearance of a back door deal that was successful only because those people were not consulted.



Beyond the fact that the discussions prior to the approval of this plan were less than inclusive, we are unaware that the union made any factual showing of need – either baseline data indicating that existing practices are insufficient to deal with disruptive behavior, or evidence that pepper spray is an appropriate solution. We are filing a Public Records Act request simultaneously with this letter to obtain the record of exactly what the Board did consider in approving the use of pepper spray.

In fact, pepper spray use is out of step with accepted professional practice, and California is one of the only states where it is used at all. A national survey by the Council of Juvenile Correctional Administrators (CJCA) found that only 29 percent authorize the use of chemical restraints, and that only 12 percent authorize staff to carry chemical sprays on their person.<sup>1</sup> The CJCA survey also found that only 8 percent of juvenile facilities participating in its CJCA Performance-based Standards program reported any use of pepper spray. The CJCA survey commented that the systems that use pepper spray tend to be systems that have an overall more punitive and adult-correctional approach to managing youth in facilities.

As Supervisors, you need to be concerned about litigation and liability in connection with pepper spray use. Because it is so intrusive and so rarely used elsewhere, what you are about to do will invite increased scrutiny of your facilities. You have already been the subject of Department of Justice investigation for over-use of force, and surely do not want to go down that road again. The Department of Justice has had several investigations involving the use of pepper spray in juvenile facilities, and our office recently asked them to open another case in relation to its use in San Diego County. There is also the danger of individual lawsuits filed on behalf of youth or staff whose underlying asthma, heart condition, mental health issues or other health conditions were exacerbated by exposure to pepper spray.

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 exposure to violence 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

---

<sup>1</sup> *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>. Similarly, only 7 percent of youth in juvenile facilities that responded to an OJJDP Survey of Youth in Residential Placement said that staff had used pepper spray on them. 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>.

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.”<sup>2</sup> As the national juvenile justice system moves toward more developmentally appropriate care for youth in juvenile facilities, those systems using pepper spray are going to become even more marginalized and subject to scrutiny through litigation.

We are very disappointed at this turn of events because Santa Clara County has been a leader in reducing unnecessary detention and developing programs that focus on producing success rather than treating young people like adult prison inmates. Using pepper spray (or running programs that rely on the threat of pepper spray) creates an Us Versus Them dynamic that undercuts the kinds of positive relationships needed to help youth move successfully forward in their lives.

The safety of youth and staff in Juvenile Hall is critically important, but using pepper spray is not the right solution. Kids are just as violent and just as likely to act out just in the many big city detention centers that operate safely and humanely without it. We urge you to explore other ways of helping staff to feel safe. In our experience, the perceived need for greater control measures can be dealt with in many other ways. Sometimes it is simply that extra staffing is needed in high risk units. Or it may be that the process for providing immediate backup to staff is not working, and can be improved. Sometimes revamping housing and classification decisions for particular youth can help. Sometimes improved training on de-escalation and non-physical interventions changes staff perceptions about the need to use force. Sometimes everyone feels safer when there is a quality process for debriefing and exploring other ways to handle difficult situations. Sometimes it helps to have mental health staff more involved on the living unit. Sometimes it turns out that kids are acting out because they are bored silly and that programming can be improved.

We strongly object to pepper spray use in Santa Clara County juvenile facilities, and do not for a minute believe that the pilot program is as contained as it is being represented to be. A union representative told the Mercury News that, “He hopes that at the end of the pilot program the spray will be allowed at other juvenile holding facilities as well.”

We support Judge Patrick Tondreau’s call for a public hearing on the use of pepper spray. In the interim, we urge the Board to rescind the pilot program for failure to resolve the issues surrounding pepper spray use in the unit related to “legal, liability, and risk

---

<sup>2</sup> *Defending Childhood, Report of the Attorney General’s National Task Force on Children Exposed to Violence* (2012), iii. xvii, 113 (Recommendation 6.2.).

Supervisor Mike Wasserman  
September 25, 2015  
Page 4 of 4

management, as well as health and safety of minors and staff.” (Memorandum of Agreement ratified by the Board on January 14, 2014.)

Thank you for your attention to this important issue. We look forward to hearing what, if any, action you will take in response to this letter. The Public Records Act request for the contract and the documents supporting the decision to allow the pilot program is attached herewith.

Sincerely yours,



Sue Burrell, Staff Attorney  
Maria Ramiu, Managing Attorney  
YOUTH LAW CENTER

cc: *Via electronic mail:*  
Santa Clara County Board of Supervisors (Cindy Chavez, Dave Cortese, Ken Yeager, Joe Simitian)  
Santa Clara County Chief Probation Officer Laura Garnette  
Honorable Patrick Tondreau, Presiding Judge of the Juvenile Court, Santa Clara County Superior Court  
Santa Clara County Chief Executive Officer Jeff Smith  
Mark Murray, Santa Clara County Probation Peace Officers' Union  
Lou Silver, Silver and Katz