

February 12, 2019

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Board of Supervisors of the County of Los Angeles, California
Executive Office of the Board
Kenneth Hahn Hall of Administration, Suite 383
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Re: Letter of Support for Board Motion 19-0940

Phasing Out the Use of Oleoresin Capsicum Spray (OC) in County
Juvenile Facilities (Supervisors Kuehl and Ridley-Thomas)
February 19, 2019 Board Meeting

Dear Chairperson Hahn and Members of the Board of Supervisors:

The Pacific Juvenile Defender Center writes in support of Board Motion 19-0940, submitted by Supervisors Kuehl and Ridley-Thomas. The Motion would require a phased in elimination of Oleoresin Capsicum (OC) spray ("pepper spray") use in Los Angeles County juvenile facilities. It follows the scathing report from the Office of the Inspector General detailing rampant use of pepper spray on young people despite years of Department of Justice supervision and a series of failed attempts to reduce its use.

The Pacific Juvenile Defender Center (PJDC) provides support to more than 1000 juvenile trial and appellate lawyers, and youth advocates throughout California. We work to improve the quality of legal representation, assure fairness for youth in court proceedings, and promote practices that will produce good outcomes. As a regional affiliate of the Washington, D.C.-based National Juvenile Defender Center, we are also part of national efforts to improve the treatment of youth in the justice system. Several of our Board members are nationally recognized experts on conditions of confinement in juvenile facilities. They have helped to draft juvenile facility standards, and have written widely on use of force practices that traumatize youth and interfere with the goals of court intervention.

If this were the first whisper of problems with overuse of pepper spray, a more measured approach might be appropriate. But the findings of the Office of the Inspector General's February 4, 2019 (Max Huntsman, Inspector General, *Report Back on Ensuring Safety and Humane Treatment in the County's Juvenile Justice Facilities*) are nothing new. Overuse of pepper spray was a key element in the Department of Justice (DOJ) findings on Los Angeles juvenile halls nearly two

decades ago. In a letter detailing findings from an investigation beginning in 2000, DOJ stated that:

We found that staff at the facilities were using Oleoresin Capsicum (OC) spray excessively and without sufficient warning. Staff sprayed youth in situations in which such uses of force were not necessary, including situations that did not present serious threats of bodily harm, circumstances in which youth had already complied with staff’s directives, and circumstances in which staff already had control of the youth.

(Letter to Ms. Yvonne B. Burke Chair Los Angeles County Board of Supervisors from Ralph F. Boyd, Assistant Attorney General, “Los Angeles County Juvenile Halls” (Apr. 9, 2003) at pgs. 20-21.)

Disturbingly, the DOJ’s 2003 discussion of the inappropriate circumstances in which pepper spray was used back then is almost identical to the Inspector General’s list in 2019:

2003 DOJ Findings Letter	2019 Report of the Los Angeles OIG
<ul style="list-style-type: none"> • Use in situations that did not present serious threats of bodily harm • Use in circumstances in which youth had already complied with staff’s directive • Use on suicidal youth or youth with mental health disorders • Use on youth with underlying medical issues such as asthma • Use without proper prior warnings • Use causing harm to youth not involved in an incident • Use followed by inappropriate decontamination <p>(DOJ Apr. 9, 2003 letter to Yvonne B. Burke, <i>supra</i>, pages 21-22)</p>	<ul style="list-style-type: none"> • Use “where there did not appear to be actual or potential threat of harm by youth” • Use “involving youth who appeared only passively non-compliant” • Use involving “youth with identified respiratory conditions and youth taking psychotropic medications” • Use without proper warnings, and confusion over what constitutes proper warning • Use with “unintended OC exposure of bystanders” • Use followed by inappropriate decontamination <p>(Office of the Inspector General’s Feb. 4, 2019 report, <i>supra</i>, pgs. 6-8.)</p>

On this record, it is clear that whatever the Probation Department has attempted to do to stem the overuse of pepper spray has not worked. The Board Motion charts the most sensible approach in these circumstances.

The reality is that the vast majority of juvenile facilities in the United States do not use pepper spray at all. A national survey by the Council of Juvenile Correctional Administrators (CJCA), found that that only six (12 percent) of the agencies authorize staff to carry chemical sprays in secure facilities, and only 15 (29%) allow the use of chemical sprays. (*Issue Brief: Pepper Spray in Juvenile Facilities*, Council of Correctional Administrators (May 2011).) CJCA also found that only 8 percent of juvenile facilities participating in its CJCA Performance-based Standards program reported any use of pepper spray, and noted 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. 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).) Although California juvenile facilities are unique in the extent of pepper spray use, Santa Clara, San Francisco, Solano, Marin, and Santa Cruz do not use it at all. And while statewide data is not officially collected, anecdotally, even those counties that allow it seldom actually use it.

While pepper spray may have its place in street law enforcement, it has no place in facilities that, by law, are supposed to provide a “safe and supportive homelike environment.” (Welfare and Institutions Code §851.) 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. It also recognizes the importance of restraint and coercion-free institutional practices in assuring a safe workplace for staff. The *Report* calls for juvenile justice systems to “Abandon juvenile justice correctional practices that traumatize children and further reduce their opportunities to become productive members of society.” *Defending Childhood, Report of the Attorney General’s National Task Force on Children Exposed to Violence* (2012), iii. xvii, 113 (Recommendation 6.2.).

As lawyers and advocates who work with young people on a daily basis, we have first-hand knowledge of the damage done through the use of pepper spray. It creates and “us-versus-them” dynamic with staff that is antithetical to building trust and support. It tells young people who are have already experienced trauma and rejection at every step in

their lives, that they are undeserving of humane treatment. And by imposing control by force, it interferes with young people's opportunities to learn how to control their own behavior and to exercise judgment. Eliminating the use of pepper spray is the right thing to do.

In addition, as the national juvenile justice system moves toward more developmentally appropriate care for youth in juvenile facilities, the few systems using pepper spray are going to become even more marginalized and subject to scrutiny through litigation. Los Angeles has been on notice for two decades about misuse of pepper spray in its juvenile facilities and this is a serious legal vulnerability. At the very least there is a 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.

We agree with and support the Board Motion's proposal (pages 5-6) that elimination of pepper spray be phased in according to a carefully developed plan, rather than requiring an abrupt termination. Even though most of the juvenile facilities in this country do not use pepper spray, staff in Los Angeles juvenile halls have spent their whole career using it, and many believe it is needed for their safety and the safety of young people. The concerns of staff expressed through the OIG Report should be carefully considered and addressed as the transition unfolds. Staff must have, and perceive that they have, the tools needed to safely care for young people in their care

Accordingly, the Department should allocate whatever resources are needed to support staff in the transitional period -- through comprehensive training, learning opportunities, and intensified staffing where needed. It should work with the Council of Juvenile Correctional Administrators and other correctional officials who have transitioned away from pepper spray use. It should also tap two local resources mentioned in the OIG Report and Board Motion -- the experienced staff who already have the skills to safely care for youth without pepper spray, and the staff at camp facilities where it is no longer used. The Department should continue to work for implementation of a more positive youth development focused model that moves away from punitive behavior management. It should also strengthen efforts to move youth with serious behavioral and mental health issues -- the youth most likely to be sprayed -- out of secure detention.

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We commend the Board for its attention to this important issue. Again, our organization has a number of people with extensive experience on these issues. We will be happy to meet or talk further with you and your staff as the work moves forward. Thank you for your consideration.

Sincerely,



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cc: Terri McDonald, Los Angeles County Chief Probation Officer
Max Huntsman, Los Angeles County Inspector General
Mary Wickham, Los Angeles County Counsel
Criminal Justice Deputies for the Supervisors