Date: November 19, 2014

TO: Santa Clara County Board of Education

FROM: Jon R. Gundry, County Superintendent of Schools

SUBJECT: Approval of Resolution in Opposition to the Use of Pepper Spray in Santa Clara County Court Schools

Associated Goal
GOAL 1: Improve student equity and reduce access discrepancies to high quality education
GOAL 3: Be a premier employer

Background
Santa Clara County has authorized a pilot program permitting the use of oleoresin capsicum commonly referred to as pepper spray in the Santa Clara County Court Schools. The Santa Clara County Office of Education operates school programs at Osborne School at Juvenile Hall and Blue Ridge School at James Ranch. Santa Clara County Office of Education employees provide the educational services at the court schools.

The attached Issue Brief: Pepper Spray in Juvenile Facilities from the Council of Juvenile Correctional Administrators from May 2011 provides an overview regarding the use of pepper spray in juvenile facilities.

The Youth Law Center in San Francisco has provided background information regarding the use of pepper spray in juvenile detention facilities. Specifically, the following information was provided:

- A national survey by the Council of Juvenile Correctional Administrators (CJCA) found that only 29 percent authorize the use of chemical restraints at all, and only 8 percent of juvenile facilities participating in the CJCA Performance-based Standards program reported any use of pepper spray. Thus, use of pepper spray is both unnecessary and out of step with accepted professional practice.
- 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. The use of pepper spray on children and youth may be 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.

- The California Welfare and Institutions Code Section 851 states that “Except as provided in Section 207.1, the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment.”

- Use of pepper spray subjects youth to a frightening, traumatic experience in which they experience both physical and emotional pain. It can contribute to chronic trauma.

- Use of pepper spray in juvenile facilities has been reported to create feelings of anger and of unfair treatment among youth. It also sets up a control dynamic between youth and staff that interferes with the development of trusting relationships needed to support safety in the facility. Use of pepper spray also exerts external control over youth instead of allowing them to learn to exercise internal control.

- The Attorney General’s Report, Defending Childhood, specifically calls for youth in juvenile facilities to receive treatment that is free from the use of coercive measures, 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.

Additionally, a meeting with the Santa Clara County Office of Education labor groups representing teaching and support staff that work in juvenile hall or the ranches about the potential use of pepper spray in their presence was not held.

Fiscal Implications
The passage of this resolution has no fiscal implications.

Requested Action
Approve the Resolution in Opposition to the Use of Pepper Spray in Santa Clara County Court School
RESOLUTION IN OPPOSITION TO THE USE OF PEPPER SPRAY IN
SANTA CLARA COUNTY COURT SCHOOLS

SANTA CLARA COUNTY BOARD OF EDUCATION
RESOLUTION No. #

WHEREAS, the Santa Clara County Board of Education supports the right of students and staff to attend schools that are safe; and

WHEREAS, providing a safe school environment that ensures both the physical and emotional safety of students and staff creates the conditions necessary to foster academic achievement; and

WHEREAS, the Santa Clara County Office of Education desires to provide a safe learning environment for incarcerated youth; and

WHEREAS, a pilot program permitting the use of oleoresin capsicum commonly referred to as pepper spray has been authorized for probation staff at the Santa Clara County Court Schools; and

WHEREAS, the Santa Clara County Board of Education is concerned about the absence of meet and confer with the labor groups of the Santa Clara County Office of Education representing teaching and support staff that work in juvenile hall or the ranch in Santa Clara County about the potential use of pepper spray in their presence; and

WHEREAS, a national survey by the Council of Juvenile Correctional Administrators (CJCA) found that only 29 percent of juvenile facilities in the United States authorize the use of chemical restraints at all, and only 8 percent of juvenile facilities participating in the CJCA Performance-based Standards program reported any use of pepper spray. Thus, use of pepper spray is both unnecessary and out of step with accepted professional practice; and

WHEREAS, the Santa Clara County Board of Education believes Pepper Spray use is potentially dangerous and harmful to the health and safety of our staff and students; and

WHEREAS, 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. The use of pepper spray on children and youth is potentially 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 risk to youth in juvenile facilities; and

WHEREAS, California Welfare and Institutions Code Section 851 states that juvenile hall shall be a safe and supportive homelike environment; then the use of pepper spray is inconsistent as it subjects youth to a frightening, traumatic experience in which they experience both physical and emotional pain and contributes to chronic trauma; and

WHEREAS, the Attorney General’s Report, Defending Childhood, specifically calls for youth in juvenile facilities to receive treatment that is free from the use of coercive measures, 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.

NOW, THEREFORE, BE IT RESOLVED, that the Santa Clara County Board of Education opposes the use of pepper spray in Santa Clara County juvenile facilities.

PASSED AND ADOPTED by the Santa Clara County Board of Education at a meeting held on November 19, 2014 by the following vote:

AYES: ____________________________________________
NOES: ____________________________________________
ABSTAIN: ____________________________________________
ABSENT: ____________________________________________

______________________________  ____________________________
Leon Beauchman, President  Jon R. Gundry
Santa Clara County Board of Education  County Superintendent of Schools
Overview

Pepper spray, or oleoresin capsicum (OC) spray, is a type of chemical restraint that contains capsaicinoids extracted from the resin of hot peppers. According to a report published by the National Institute of Justice, 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.” While OC spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use has been shunned by juvenile correctional agencies because of the harm it causes to youths and the negative impact on staff-youth relationships, the key to successful juvenile rehabilitative programming. Very few states authorize its use and in the states that allow its use in policy, most prohibit the use except as a last resort and with many conditions and few facilities put it into practice.

Most studies conducted on the safety and effectiveness of pepper spray focus on its use in law enforcement situations, and most existing studies have flaws or limitations that prevent conclusive results. Furthermore, existing studies have not focused on the safety, effectiveness or long-term impact of using pepper spray on children in juvenile confinement settings.

While few studies focus specifically on pepper spray use in juvenile settings, recent research on other types of restraint use (physical and mechanical) in juvenile confinement settings shows that applying restraints disrupts correctional climates by creating anger and feelings of unfair use of authority, in addition to negatively impacting staff. One recent study found that restraints are often applied as punishment rather than in response to immediate threats of violence; youths describe incidents of restraint as causing physical and emotional pain; staff report an emotional impact of restraining youths. Another study found that facilities with high numbers of restraint incidents are more likely to have higher rates of safety problems, including youth and staff injury, suicidal behavior, youths injured by staff and fear among youths.

Current Practices
State Policies

The Council of Juvenile Correctional Administrators (CJCA) conducts an annual survey of all state juvenile correction agencies in the United States. Results from the survey show that only six (12 percent) of the agencies authorize staff to carry chemical sprays in secure facilities, and just 15 agencies (29 percent) indicated that chemical restraints are authorized by their agency but staff are not necessarily authorized to carry spray on their person. In nine of these 15 agencies, chemical spray is available as a last resort measure, not carried on the person, to prevent serious injuries to youths and staff.

Related policies and practices in those states show they have adopted an overall more punitive and adult-corrections approach to managing youths in facilities. Those states generally authorize other restrictive sanctions to respond to misbehavior- separate segregation units removing youths from regular programming and longer allowable times youths can be placed in isolation. Some states’ juvenile justice policies have been carried over from when the agency was part of the adult corrections department and others have been a result of pressure from staff, unions and polita.
# Table 1. Behavior Management

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Agency uses specialized living units to separate youths from the general population</th>
<th>Maximum time a youth can be held in isolation</th>
<th>Agency authorizes use of chemical restraints</th>
<th>Agency authorizes staff to carry chemical spray in secure facilities</th>
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<th>Agency authorizes staff to carry chemical spray in secure facilities</th>
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<td>Wyoming</td>
<td>NA</td>
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</tbody>
</table>

* Agency has not yet responded to 2011 survey; 2010 responses shown in table.

** Agency has not responded to 2011 or 2010 surveys; 2009 responses shown.

1 24 hours without additional authorization
2 Pre-hearing segregation, 20 hours; 72 hours may be issued by a hearing officer.
3 Shortest time possible (decided by staff with the safety of juvenile and staff priority)
4 30 days for serious offenses such as Escape.
5 No more than 3 days pre-disciplinary hearing and up to 5 additional days for disciplinary sanction.
6 If a youth is placed in Administrative Detention due to an alleged violation of a major prohibited act(s) or pending an investigation of a possible violation of a major prohibited act(s), he/she will normally either be served with a copy of the disciplinary report or released from Administrative Detention within twenty-four (24) hours of their placement in Administrative Detention. No juvenile will be confined in Administrative Detention for longer than forty-eight (48) hours, exclusive of weekends and holidays, prior to a hearing.
7 See Policy #VII.1 at [http://www.mdhs.state.ms.us/pdfs/dsynewpol/dsysec071/dsysec071.pdf](http://www.mdhs.state.ms.us/pdfs/dsynewpol/dsysec071/dsysec071.pdf)
PEPPER SPRAY IN JUVENILE FACILITIES

Please see Table 1 on the opposite page for more details on state agency behavior management policies reported to the CJCA Yearbook survey (preliminary 2011 data except where noted) and gathered from state statutes and administrative rules.

Facility Practices

As research and experience has shown, a written policy does not necessarily translate into practice as intended when implemented in facilities. Most of the anecdotal information about use of restraints that is made public are reports of abuse and dangerous practices, investigations and litigation.

However nearly 200 facilities across the country voluntarily participate in the national Performance-based Standards (PbS) program and report all types of restraint practices used during two data collections a year. PbS' facility practice data from October 2010 shows a similar small minority of facilities use chemical restraints (15 facilities or eight percent of all participants, whom include facilities in four of the six states that authorize staff to carry chemical spray.) Looking at the individual facilities that reported using chemical restraints, 90 percent of the users came from one state, again showing the practice is not accepted as appropriate for use in facilities for youths. The 15 facilities reporting use of chemical restraints were comprised of three detention centers, 11 correctional facilities and one assessment center. The single state reporting the majority of usage — 90 percent of all usage reported — was reporting on two detention centers and six correctional facilities.

PbS requires participants to report practices in the context of a blueprint of operations to achieve safe and healthy facility cultures that rehabilitate youths and prevent future crime. PbS provides more than 100 outcome measures and works with facilities to monitor all aspects of operations and better understand how practices affect conditions. Facilities conduct surveys of youths and staff members as part of the data collection for PbS. Two of the key outcomes these surveys inform include Safety 13, percent of youths who report that they feared for their safety within the last six months, and Safety 14, percent of staff who report that they feared for their safety within the last six months.

Two of the three detention sites that reported instances of chemical restraint had percentages of youth and staff who feared for their safety that were above the detention field average for October 2010. Similarly, eight of the 11 corrections sites reported percentages of youths fearing for safety that were well above the corrections field average (22.4 percent). Five of the 11 corrections sites also reported percentages of staff fearing for safety that were well above the corrections field average (23 percent).

CJCA's collective experience shows that overreliance on restraints, whether they be chemical, physical, mechanical or other, compromise relationships between staff and youths, one of the critical features of safe facilities. International and national standards related to chemical restraint use reinforce the fact that chemical sprays should never be used as a form of punishment, and that if use is authorized, strict rules are applied for usage, reporting and post-use practices (see following page).

Suggestions for Further Reading


Suit seeks to ban pepper spray at Texas juvenile prisons, Associated Press, Sept. 13, 2007

Texas Youth Commission shifts inmate pepper spray policy, Steve McGonigle, The Dallas Morning News, Nov. 28, 2007

The Use of Pepper Spray in Texas Youth Commission Facilities (Letter #1, Letter #2), Dana Shoenberg and Mark Soler, 2007


The Effectiveness and Safety of Pepper Spray, U.S. Department of Justice, National Institute of Justice, 2003

What is the safety of “pepper spray” use by law enforcement or mental health service staff?, New Zealand Health Technology Assessment, Department of Public Health and General Practice, Manita Broadstock, 2002

Fact Sheet: Needed UDPA Reforms to Protect Incarcerated Youth, Act 4 Juvenile Justice, no date

References:

6. PbS is a set of national standards and goals setting the highest expectations for juvenile facility operations. PbS uniquely includes data collection twice a year and the reporting of outcome measures to continually monitor practices at facilities, whether they are aligned with agency policies and philosophy and reflect best practices. The data is provided to facilities as part of a self-improvement process to continually promote and integrate effective services and approaches for youths in custody. For more information please visit: http://cjca.net/cjcaresources/93/Phs_InfoPacket.pdf
STANDARDS RELATED TO USE OF CHEMICAL AGENTS IN JUVENILE CONFINEMENT SETTINGS

All language listed in this section has been excerpted from the cited source (see notes at bottom).

United Nations Standard Minimum Rules for the Treatment of Prisoners

33. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
(b) On medical grounds by direction of the medical officer;
(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

Performance-based Standards (PbS) for Juvenile Correction and Detention Facilities
Order Standard 2: Minimize use of restrictive and coercive means of responding to disorder.

Expected Practices:

OEP8: Staff follows a continuum of responses, from least restrictive to more restrictive, to respond to disorder.
OEP9: Youth care staff demonstrate competence in de-escalation and other non-physical intervention techniques.
OEP10: Youths are not cuffed to walls, beds, fixtures or fences.
OEP11: Staff, not youths, respond to youths' disorder, misbehavior or disruption of programming.
OEP12: Chemical restraints and restraint chair/bed are used only as a last resort following appropriate protocol.
OEP13: stun-guns are not part of the facility's response continuum.

Processes:

OPS: Policies govern the use of restraints
OP6: Staff training covers safe and appropriate use of restraints.
OP7: Staff is trained in the proper use of restraints.
OP8: Staff and youth are trained in de-escalation and non-physical intervention techniques.
OP9: A system exists to investigate, review, and make recommendations after incidents of disorder.

If a facility permits the use of chemical restraints, they should only be used as a last resort after other techniques have failed to subdue the youth. Qualified medical personnel must institute decontamination procedures immediately after application of chemical restraints. Restraints should never be used as punishment for misconduct.

American Correctional Association (ACA) Standard on Use and Control of Chemical Agents

Juvenile Correctional Facilities (4-JCF-2A-27)
The level of authority, access, and conditions required for the availability, control, and use of chemical agents and equipment related to its use must be specified. Chemical agents are used only with the authorization of the facility administrator, medical director, or designee.

1. Chemical agents and equipment related to its use are inventoried at least monthly to determine their condition and expiration dates.
2. Personnel using chemical agents to control juveniles submit written reports to the facility administrator or designee no later than the conclusion of the tour of duty.
3. All persons contaminated in an incident involving the use of a chemical agent must receive immediate medical examination and treatment.

Juvenile Detention Facilities (3-JDF-3A-26)
Written policy, procedure and practice govern the availability, control and use of chemical agents and related security devices and specify the level of authority required for their access and use. Chemical agents are used only with the authorization of the facility administrator or designee.

Institute of Judicial Administration - American Bar Association (ABA) Standards for Juvenile Justice, Standards Relating to Corrections Administration

7.8 Limitations on restraints and weapons.

A. Mechanical restraints.
Given the small size of programs, it should not be necessary to use mechanical restraints within the facility. The program director may authorize the use of mechanical restraints during transportation only.
B. Chemical restraints.
In extreme situations, chemical restraints may be used under strict controls. The department should develop regulations governing their use.
C. Weapons.
Under no circumstances should personnel take any weapons into the facility.

Commentary
The standard holds that mechanical and chemical restraints should not be used within facilities. The rational for this position is: 1. given the small size of the program these methods are not necessary; and 2. there has been a consistent history of abuse of these methods in juvenile corrections settings...In extreme situations a facility may use chemicals as a restraint. The department should develop regulations governing use...such regulations should contain stringent controls on access, and provide that chemical restraints may be used only to prevent serious injury to persons or property.

Juvenile Detention Alternatives Initiative (JDAI) Detention Facility Self-Assessment Standards

VI. Restraint, Isolation, Due Process, and Grievances
A. Physical Force, Mechanical Restraints, and Chemical Agents
3a. Written policies, procedures, and actual practices prohibit use of chemical agents, including pepper spray, tear gas, and mace.