

**Juvenile Justice Commission
County of Santa Clara**

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**Santa Clara County Juvenile Justice Commission
Use of Oleoresin Capsicum (OC) Spray in Juvenile Hall
November 4, 2014**

I. Introduction

The Santa Clara County Juvenile Justice Commission (JJC or Commission) is a state-mandated, court-appointed authority. The broad purpose of the JJC is to inquire into the administration of juvenile law in Santa Clara County. The JJC is dedicated to the promotion of an effective juvenile justice system operated in an environment of credibility, dignity, fairness and respect for the youth of Santa Clara County. To read more about the Juvenile Justice Commission or to read other reports go to http://www.scscourt.org/court_divisions/juvenile/jjc/jjc_home.shtml.

During its 2014 inspection of Juvenile Hall, the Commission was informed of a planned pilot to allow the use of Oleoresin Capsicum spray (OC), which is also known as Pepper Spray, when it has been determined that a youth shall be forcibly removed from his/her room. A few months later, the Commission was informed of a second pilot to allow the use of OC Spray on Boys Living Unit 9 to break up fights or protect staff and other minors during an assaultive situation.

Concerned about this proposed change in policy and practice, the Commission appointed a committee to review this issue. The committee conducted a literature review (see Section VI Sources below), met with Juvenile Hall administration, members of the nonprofit community and representatives of the probation bargaining unit (Local 1587), and reviewed data regarding fights, assaults, and room removals in Juvenile Hall. Commissioners also attended a Board of Supervisors Public Safety and Justice Committee meeting where members of the public spoke for and against use of OC spray.

II. History/Background

Two separate pilot programs allowing the use of OC Spray have been undertaken in Juvenile Hall. One pilot program allows the use of OC Spray during room removals (when minors are removed from their rooms for disruptive behavior after all attempts to obtain compliance have failed). The second pilot program allows use in Boys Unit-9 in case of self-

defense, to separate two or more persons involved in mutual combat, or to protect someone who is being assaulted. .

OC Spray Pilot for Room Removals

The current OC Spray pilot program for room removals commenced on August 4, 2014 in Juvenile Hall. In this pilot program, OC Spray may be used to enable removal of juveniles from their rooms when there is evidence of disruptive behavior that is interfering with the orderly operation of the unit, or if there is a threat of imminent danger to life or injury to staff or other persons. The room extraction pilot has a series of protocols that utilize a trained Room Removal Team (RRT) and includes medical evaluation of the youth and the presence of a member of the medical staff prior to use of the spray. According to Section 5.4 of the Probation Department Juvenile Hall Procedures Manual, OC Spray will not be used for room removal against the following:

1. Any youth admitted within the past 48 hours or less,
2. Any youth known to be under the influence of cocaine, methamphetamine, or anti-psychotic medications,
3. Any youth known to have a mental health history or psychiatric history,
4. Any youth known to have asthma, or other respiratory conditions, cardiopulmonary disorders or other convulsive disorders,
5. Any known pregnant youth.

This pilot will be conducted for six months. If OC Spray is not used two times during this six-month period, then it will run for an additional six months. At the end of the six month trial period if OC Spray is used at least two times or at the end of the 12 month period even if it is not used, the Probation Department will evaluate its use and make a decision about whether the pilot program should become ongoing practice and policy.

OC Spray Pilot Program on Boys Living Unit 9

A second OC Spray pilot program commenced October 20, 2014. This pilot allows staff to use OC Spray on Boys Living Unit 9 to intercede in fights or during assaults on staff or juveniles. In this case, the OC Spray will be secured at the unit desk.

The pilot was part of the collective bargaining process and the following language appeared in a January 14, 2014 transmittal to the Board of Supervisors:

“The County and Local 1587 shall meet during the term of the agreement to discuss the implementation of a six month pilot program for the appropriate use of OC Spray in one living unit in juvenile hall. Such pilot shall commence after all issues related to medical, legal, liability, and risk management as well as health and safety of minors and staff, have been thoroughly explored and satisfactorily resolved.”

The Santa Clara Department Juvenile Hall O.C. Pilot Program for Boys Unit-9 states: “When possible, verbal intervention will be used as the primary technique for controlling behavior which threatens the safety of staff and/or others. If verbal intervention is possible prior to the use of OC Spray, staff shall provide clear instructions to the minor regarding the expected behavior and a reasonable effort shall be made to verbally persuade voluntary compliance.

“Officers shall not be limited to the use of verbal intervention when doing so would be an unreasonable expectation toward preventing physical injury to themselves or others, such as in the case of a sudden or unexpected assault.

“OC Spray may be suitable for such incidents as:

- a. Self-defense: reasonable cause to believe there is an immediate need to defend one’s self from an imminent threat of serious physical injury inflicted by the minor(s). However, this does not include a minor that has taken an aggressive stance, but is not advancing on staff
- b. Separating two or more persons involved in mutual combat or an assault on another person.”

The policy also includes prohibitions against using it with minors with known conditions similar to those in the room removal procedures. However a check with medical personnel is not required prior to its use.

This pilot program will be reviewed by Probation Department administration after six months and the department will make a determination to continue, modify or terminate the OC spray pilot program.

III. Overview of OC Spray and its Use

Oleoresin Capsicum (OC) Spray – also known as pepper spray – contains capsaicinoids extracted from the resin of hot peppers. OC Spray incapacitates subjects by inducing a burning sensation of the skin. Additionally, it causes burning, swelling and tearing of the eyes. When inhaled, the respiratory tract is inflamed and this leads to swelling of the mucous membranes, temporarily restricting breathing to short, shallow breaths.¹

In a survey conducted in May 2011, by the Council of Juvenile Correctional Administrators, it found that California is one of only 15 states that allow the use of OC Spray in juvenile facilities. Six states, including California, authorize staff to carry chemical restraints in secure facilities.² Of the seven Bay Area Counties, only Alameda, Contra Costa and Santa Clara Counties have authorized the use of OC spray in juvenile correction facilities.³

IV. Local Data and Issues Related to the Use of OC Spray

Commissioners considered many issues related to the use of OC Spray. These are discussed in this section.

¹“Issue Brief, Pepper Spray in Juvenile Facilities.” Council of Juvenile Correctional Administrators (CJCA). May 2011.

² Ibid.

³ JJC conversation with SCC Deputy Chief of Probation. September 2, 2014.

Increase of Fights, Assaults and Riots in Juvenile Hall

One of the reasons cited for the need for use of OC Spray in Juvenile Hall is increased injury to staff intervening with youth and an increase in the incidence of violence in Juvenile Hall. The president of the probation officers' bargaining unit spoke in support of use of OC Spray at the September 17, 2014 Public Safety and Justice Board of Supervisors Committee meeting. During his comments he stated, "Unfortunately, the youth in our care often engage in gang related violence, jeopardizing both their own safety as well as the safety of my members. Despite a reduced juvenile hall population, the incidence of violence has increased significantly."

The Commission has done an analysis of violent incidents at Juvenile Hall and has not found a significant increase in violence. The table below shows the average number per month of the following violent incidents: All Assaults, Assaults on Staff, All Fights, Fights with Multiple Minors, and Riots. It also shows how many times physical restraints were used, an indicator of the occurrence of violent or disruptive behavior. The table also shows the average number of youth per month who were put on the "control" program. Youth are put on the control program when they are exhibiting challenging behavior that may later escalate into disruptive or violent behavior. While the number of incidents per youth has increased (due to the declining number of youths in Juvenile Hall), the number of incidents per month has not increased. In all areas, except for incidents involving the use of physical restraints, the average monthly occurrence of these difficult behaviors has decreased slightly from 2011 to 2014.

Average Number of Incidents in Juvenile Hall per Month 2011 – 2014

Data retrieved from the Monthly Salient Features Report provided to the Commission by Juvenile Hall management.

Type of Incident	2011	2012	2013*	2014** (Jan – Sep)
All Assaults	4.3	4.7	5.0	3.5
Assaults on Staff	1.3	.6	1.0	.3
All Fights	3.8	4.8	3.8	2.4
Fights with Multiple Minors	.5	.2	.3	.1
Riots (5+ involved in fight)	.8	.2	.3	.1
Physical Restraint Used	11	10.9	13.2	12.6
Youth on Control Program	27.7	34.4	27.3	26.1
<p>* We were not able to access the Oct. 2013 Salient Features Report. ** We were not able to access the July 2014 Salient Features Report.</p>				

Staff Injury Reduction.

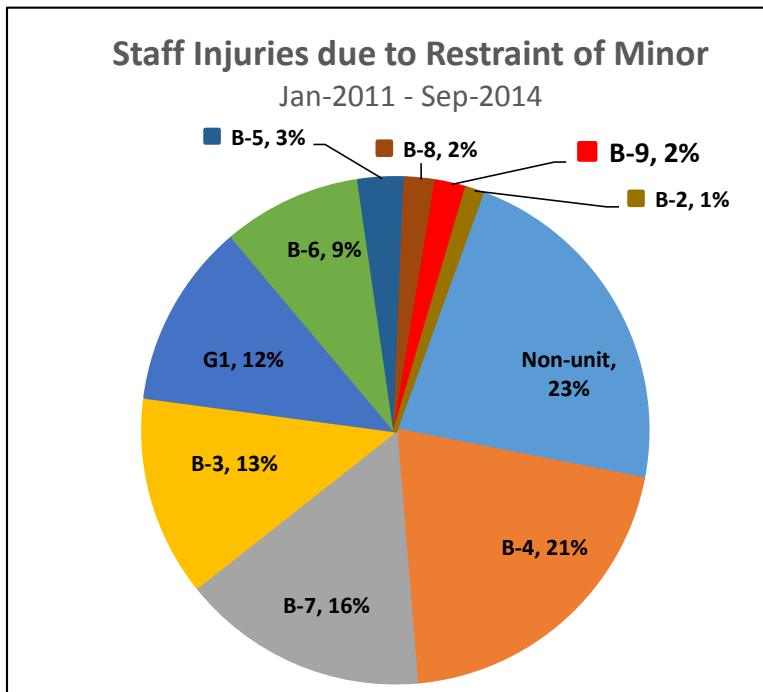
In discussions with the Deputy Chief of Probation and probation union representation, one of the stated reasons for the need for OC Spray has been the increasing number of injuries to staff.

The Commission analyzed Juvenile Hall Incident Reports (IRs) from 1/1/2011 through 8/26/2014 in which staff suffered an injury as a result of applying restraint to a minor. The intent of the analysis was to determine the number and locations of incidents and injuries, and to understand how the use of OC Spray might impact these numbers.

Over the preceding 3-2/3 years ending Sept 2014, there have been 102 reported injuries as a result of 82 separate incidents. Analysis showed that of the 102 injuries:

- 23 (23%) occurred outside of the units – the dining room, a hallway, and the JH waiting room – locations where OC Spray would not be readily available or appropriate for use.
- 21 (21%) occurred in unit B-4. Since unit B-4 is the Transition Unit, where boys with mental health issues are placed, OC spray would not be used according to policy.

This means that OC Spray would not be available for use in 44% of the incidents where staff was injured. (See chart below.)



Staff Injuries due to Restraint of Minor Jan 2011-Sep 2014	
Location	# of Injuries
Non-unit	23
B-4	21
B-7	16
B-3	13
G-1	12
B-6	9
B-5	3
B-8	2
B-9	2
B-2	1
Total	102

The Incident Report analysis also found that just 4% (4) of the total staff injuries were the result of incidents in Boys Units 8 and 9, the two secure boys units. The anecdotal justification for introducing OC spray into Juvenile Hall Boys Unit-9 has been that with the reduction in the population in Juvenile Hall over the past three years, the proportion of violent youth in Juvenile Hall has increased, thereby increasing the need for staff to have additional control tools. However, the 4% injury rate sustained in Boys Units 8 and 9 does not support this position.

A further understanding of the potential for reducing staff injuries can be obtained by a review of the literature. J.M MacDonald, et al, reports that following a review of 24,380 cases, "...the prevalence of officer injuries did not vary significantly by OC use." In fact, the study goes on to report that "... the odds of officer injury increased slightly when spray was used."⁴

An additional staff safety issue with OC Spray is the concern about respiratory, skin, and eye irritation risks that could result from the use of OC Spray. Except for room extractions, where officers have an opportunity to don protective gear, the vast majority of situations are those where the demand for immediate intervention develops without warning. If OC Spray is used, staff is frequently exposed to a similar degree as the minors involved. As a result, Smith and Stopford concluded that, "Due to growing concerns over potential health risks to ... officers, researchers recommend the discontinuation of such practices."⁵

Lastly, depending on how much spray is actually delivered, most surrounding surfaces including the floor can become slippery, increasing the risk of falls to staff. Anecdotally, increased risk of slipping on OC Spray was a concern in San Luis Obispo County and resulted in a decision to roughen the floors for increased traction.⁶

Safety Issues for Minors

Concerns related to respiratory, skin, and eye irritation risks to minors have been raised repeatedly by researchers and citizens' groups nation-wide.

One concern is the scarcity of data that relates to the physical effects of OC Spray on minors. OC Spray will adversely affect the respiration, skin, and eyes of minors as it does staff. However, due to their (typically) smaller size and level of physical development, the effect on minors is likely to be disproportionately greater. The Commission was unable to find data that conclusively demonstrated negligible long-term physical effects. Also, at this time, the long-term physical effects of OC Spray on minors are unknown.

In addition to the physical issues associated with the use of OC Spray, there can be psychological consequences to the minors involved as well. In a 2014 complaint from the U.S. Department of Justice (DOJ) to San Diego County, the DOJ listed numerous examples of OC Spray being used on youth at risk of suicide or self-harm, on youth who had failed to follow

⁴ MacDonald, J.M., et al. "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events." *American Journal of Public Health*. December 2009; 99(12): 2268–2274.

⁵ Smith, C. and Stopford, W. "Health Hazards of Pepper Spray." *North Carolina Medical Journal*. Sept/Oct 1999, Volume 60, No. 5, 268-274.

⁶ JJC conversation with SCC Deputy Chief Probation Officer. September 2, 2014.

instruction or for verbal defiance, and on medically-contraindicated youth.⁷ In addition, due to “overspray” (this occurs when those not involved in the incident are exposed to OC Spray due to their proximity), nearby minors with psychological issues may be adversely affected. In summary, the use of OC Spray has not increased safety, but has led instead to “... more safety issues, fear from youth, and more suicidal behavior.”⁸

Trauma, the Therapeutic approach of JH and the Use of OC Spray

The intent of juvenile justice systems is to be rehabilitative. Santa Clara County has adopted many practices to focus on supporting youth in behavior change. Examples of this include the utilization of cognitive behavior management techniques, motivational interviewing, trauma-informed practice and a focus on diversion from detention in Juvenile Hall.

In a letter dated November 8, 2013 to the Texas Juvenile Justice Department, the Youth Law Center writes:

“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 [United States] 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.)”⁹

Legal Issues regarding Use of OC Spray

The law has progressed over the years regarding treatment of those under the age of eighteen. The United States Supreme Court has recognized that teenagers are too immature to be held accountable for crimes they have committed in the same manner than they could be, were they adults: that they are neurologically less culpable than adults because of a lack of impulse control. (*Roper v. Simmons*, 543 US 551 (2005) overruling the use of the death penalty for crimes committed by a minor as cruel and unusual punishment.) The court further extended this logic to overruling Life without the Possibility of Parole as cruel and unusual punishment for juveniles. (*Graham v. Florida*, 130 S. Ct. 204 (2010) The 9th Circuit has recognized that the use

⁷ Youth Law Center. “Complaint Against the County of San Diego Department of Probation Regarding the Excessive Use of Pepper Spray and Other Civil Rights Violations in San Diego Juvenile Detention Facilities.” July, 25, 2014.

⁸ “Pepper Spray is a Dangerous & Ineffective Security Measure in Juvenile Justice Facilities.” American Civil Liberties Union, Texas. Nov. 2013. www.aclutx.org

⁹ Burrells, Sue. “Letter to Texas Juvenile Justice Department on the use of Pepper Spray in Facilities.” Youth Law Center. November 8, 2014.

of pepper spray (in that case against passive protesters) can violate constitutional protections. (*Headwaters Defense v. Humboldt County*, 276 F.3d 1125 (2002.))

In *Alexander v. Boyd*, 876 F. Supp. 773 (1995) The court was reviewing the use of South Carolina's CS spray (essentially tear gas, described in the body of the opinion as having properties the same as OC Spray,) "[Found] the use of CS gas upon juveniles is counterproductive. It causes more anger in juveniles towards adults who are supposed to be caring for them... [In that case the use of CS gas was allowed to be used also as a form of punishment, but the logic applies to its use in general and] teaches the victims to inflict pain as a method of controlling others and makes juveniles more volatile, more aggressive and less likely to respond properly to authority figures. The indiscriminate use of CS gas violates the juveniles' constitutional rights under the Due Process Clause. (at 787)"

Alternatives to the Use of OC Spray

There are many alternatives to the use of OC Spray to control the behavior of the youth in Juvenile Hall. These include, but are not limited to:

- Reconfiguring the living units. For example moving one youth off a living unit may change the dynamic of the unit.
- Instituting a 'facility-climate' change through strategies such as Positive Behavior Interventions and Support (PBIS).
- Increase staffing on units where youth are higher risk or have mental health issues. Provide one-to-one supervision if necessary.
- Conduct intensive debriefing with staff after use of force or restraints to identify opportunities to de-escalate situations before they become violent or dangerous.

Shifting practice is another approach and has shown success in Juvenile Hall as demonstrated in the approach taken on Living Unit B-4 described below.

In the 2011 Juvenile Inspection Report, Commissioners discussed Living Unit B-4, designated as the Transition Assessment Unit (TAU) with programming designed for boys with a history of emotional and behavioral health issues. At the time, the unit usually had 24 or fewer youth (as opposed to the 30 located on other units) and the behavior modification program was applied with a less aggressive approach than in other units. Probation Department staff worked closely with Mental Health Department staff to achieve better outcomes for the youth on this unit. Other strategies implemented on B-4 included weekly case-conferencing meetings.

Commissioners found a reduction in incident reports for "Disruptive Conduct," "Insubordination," or "Disrespect," and only four of fifty-three incidents for these behaviors reported in October were issued in B-4.

The report states, "*Considering the behavioral issues with which youth in this unit struggle with, one would expect a disproportionate number of incidences of this nature on B-4. Instead, there are fewer incidents of this type reported in B-4 than in the other units. This seems to be an indicator of the success of the strategies adopted on this unit.*" Additionally, the JJC recommended, "*Identify the strategies implemented in the B-4 Unit that have led to successful*

outcomes for the youth in the unit and expand the implementation of these strategies throughout other Juvenile Hall living units.”¹⁰

The example of B-4 discussed above, demonstrates that it is possible to defuse challenging behaviors and prevent them from escalating even when the proportion of youth with those behaviors is high.

Local Opposition to the Use of OC Spray in Juvenile Hall

Many juvenile justice stakeholders have expressed concern about the use of OC spray in Juvenile Hall. These are listed below:

1. On May 14, 2014, the Silicon Valley Council of Nonprofits sent a letter to the Commission opposing the use of OC Spray and requesting the Commission to investigate this issue.
2. At the Public Safety and Justice Board Committee on September 17, 2014 representatives from NAACP, De-Bug, Silicon Valley Council of Nonprofits, Kids in Common and the Asian Law Alliance spoke against the use of OC Spray in Juvenile Hall. (A representative of the Local 1587 Bargaining Unit spoke in support of the use of OC Spray at this meeting.)
3. On September 23, 2014, the president of the Association of County Educators (teaching in the court schools and alternative education programs) spoke during the public comments portion of Board of Supervisors meeting. He said, “I’m here today to protest the decision by the county office of probation regarding the use of pepper spray at juvenile hall. We realize it’s a six-month pilot, but there was no notification to the county office of education for this action. No dialogue with the stakeholders in this decision, and no consultation with administration or staff of juvenile hall regarding protocol or the plan for evacuation of the affected. . . . The youngest of our charges is 13. Currently probation utilizes flack vests, helmets with shields, secondary shields, batons, combat boots, and other protective clothing to protect its personnel in the event of a room extraction. Pepper spray in juvenile hall will set a dangerous precedent opening containment policies to further lethal containment actions. Again, the Association of County Educators is going on record as protesting this decision.”
4. In a letter to the Mercury News Editor on September 19, 2014, Judge Patrick Tondreau, Presiding Judge of Juvenile Justice Court wrote, "The Juvenile Court Judges do not and will not support this decision. We did not know about this decision until after the fact and, like the public, were not given an opportunity for input before the decision was made. Pepper spray can be very dangerous, especially to those with respiratory problems. Its use contaminates the environment and can cause harm to all who are near, including the counselors. Its use runs counter to a therapeutic approach, which attempts to control behavior through building relationships, trust and awarding positive behavior."

¹⁰ “Juvenile Hall Inspection Report.” Santa Clara County Juvenile Justice Commission. Jan. 2011.

5. In an editorial on September 24, 2014, the Mercury News wrote, “County supervisors and probation officials say pepper spray is no big deal and is commonly used in juvenile halls in California. But most other states ban its use on juveniles. It is a giant step back from the enlightened policies Santa Clara County has struggled to implement over the past decade: incarcerating fewer low-level offenders and, for the rest, using a therapeutic approach that rewards good behavior and attempts to build trust.”
6. Silicon Valley De-Bug interviewed youth about the use of pepper spray in juvenile hall. Their responses appeared in the Oct. 7, 2014 De-Bug e-newsletter. One youth wrote, “I do not think it is a good idea because it is going to lead to more violence. Pepper spray not only gets people mad but it also hurts their eyes and could be dangerous. I personally thinking [sic] that breaking up a fight, like with staff breaking them apart would be more effective than pepper spray. I feel like pepper spray would cause more rebellious inmates.”¹¹

V. Conclusion

The following language appears in a January 14, 2014 transmittal to the Board of Supervisors:

“The County and Local 1587 shall meet during the term of the agreement to discuss the implementation of a six month pilot program for the appropriate use of OC Spray in one living unit in juvenile hall. *Such pilot shall commence after all issues related to medical, legal, liability, and risk management as well as health and safety of minors and staff, have been thoroughly explored and satisfactorily resolved.*” (Emphasis added.)

Given the community response to the use of OC Spray, the Commission does not believe all the issues related to its use have been satisfactorily resolved. Additionally, the Commission believes that the use of OC spray is not merely a program decision, but is a change in policy for Santa Clara County's treatment of the youth housed in its juvenile facilities. Though a pilot, this use of OC Spray can be seen as a first step toward the use of OC Spray to control the behavior of the youth throughout the facility. This represents a major regression in the treatment of our youth and does not take into account progress and improved outcomes that have been achieved through the implementation of best practices for our youth in the Juvenile Justice system.

There is no data to support the claim of increased violence in the facility. In an analysis of injuries to staff, the Commission found that the use of OC Spray would not have been appropriate in many of the incidents because of the location of the incident or because the youth fits into one of the disqualifying categories. Plus with only 4% of the injuries occurring on Boys Units 8 and 9, it seems its use is unlikely to have any effect on staff injury reduction.

In a review of the literature, the Commission did not find evidence that OC Spray would prevent injury to staff and one study suggested that it may actually lead to a slight increase of injuries to staff. Additionally, the subsequent cost of decontaminating all surrounding surfaces,

¹¹ “San Jose Youth Respond to Use of Pepper Spray in Juvenile Hall.” De-Bug. October 7, 2014.

ventilating the environment, and cleaning the clothing and personal effects of all involved would seem to make this a poor cost-benefit tradeoff.

Lastly, without a clear understanding of the immediate and long term effects of OC Spray on juveniles, the use of OC Spray in Juvenile Hall seems to take an unnecessary risk, particularly since there is not clarity on the issue its use is trying to address.

The Juvenile Justice Commission believes that use of Oleoresin Capsicum (OC) Spray in Juvenile Hall is counterproductive to the therapeutic approach that underlies the treatment of youth in custody and may even create a safety hazard.

The Commission is particularly concerned about the risk of using OC Spray on Boys Living Unit 9. In this situation, where the decision to use OC Spray will be made on the spot, there is a concern that there will be no time to evaluate the existing medical and mental health issues of the youth and staff in the proximity of the incident. The use of the spray for fighting would potentially expose the entire unit (juveniles and probation personnel) to the side effects of the spray. Without the benefit of a medical evaluation and the presence of medical personnel, there would be the potential for harmful side effects in the application of the spray.

V. Recommendation

The Juvenile Justice Commission recommends that the use of OC Spray in Juvenile Hall, both in the case of room removals and on Boys Living Unit 9, be discontinued immediately.

VI. Sources

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- "Pepper Spray in Juvenile Detention Centers. A Look at the Effects of Use and Potential Alternatives." Silicon Valley Council of Nonprofits. May, 2014.
- "Pepper-spray kids in juvie? First let's talk." San Jose Mercury News Editorial. September 25, 2014.
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Approved by the Santa Clara County Juvenile Justice Commission on November 4, 2014.

Penelope Blake, Chairperson

Date