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Report on Inspection of the San Diego Juvenile Detention Facilities (Conducted on September 24, 2015)

Dated February 23, 2016

EXECUTIVE SUMMARY

Disability Rights California (DRC) is the state and federally designated protection and advocacy agency charged with protecting the rights of people with disabilities in California. DRC has the authority to inspect and monitor conditions in any facility that holds people with disabilities. Pursuant to this authority, DRC conducted inspections of conditions in six county correctional facilities in 2015.

On September 24, 2015, a DRC attorney and an attorney from our authorized agent, the Prison Law Office, inspected the San Diego County Juvenile Halls. We toured the county's two maximum-security juvenile detention facilities: Kearny Mesa Juvenile Detention Facility and East Mesa Juvenile Detention Facility ("Juvenile Halls").

We appreciate how many staff made themselves available to meet with us before the tour. Probation Department staff were helpful and cooperative during our inspection. We observed some positive practices and programs. However, based on our monitoring visits on September 24, 2015, review of public documents, and interviews with youth, we also found evidence of the following violations of the rights of youth with disabilities:

1. Excessive Force
 - a. Pepper Spray
 - b. Use of Force

- c. Use of Restraints
- 2. Violations of the Americans with Disabilities Act (ADA)
 - a. Segregation of Youth using Wheelchairs or other Durable Medical Equipment (DME)
 - b. Lack of Accessible Bathrooms
 - c. Limited Communication Access for Youth with Hearing Impairments

Pursuant to our authority under 42 U.S.C. § 10805(a)(1) and 29 U.S.C. § 794(f)(3) and as a result of this initial inspection, we find there is probable cause to conclude that youth with disabilities are subjected to abuse and/or neglect in these areas in the San Diego Juvenile Halls.

We also have additional comments and concerns, discussed at the end of this report, which we will continue to monitor throughout 2016.

BACKGROUND

The San Diego County Probation Department operates two 24-hour, maximum security juvenile detention facilities and two minimum security juvenile rehabilitation facilities. We began our tour at the Kearny Mesa Juvenile Detention Facility (KMJDF) and ended at East Mesa Juvenile Detention Facility (EMJDF). The tour did not include the two minimum-security juvenile rehabilitation facilities: Girls Rehabilitation Facility and Camp Barrett.

Kearny Mesa Juvenile Detention Facility opened in 1954 and has a maximum capacity of 359. The day of our tour, the population was 142. Seven of the housing units were open – four male units and three female units.

East Mesa Juvenile Detention Facility opened in June 2004 and has a maximum capacity of 209. The day of our visit, the population was approximately 150.

Both facilities house male and female juveniles. Youth are housed in single cells. The majority of the cells at Kearny Mesa do not have toilets within them. Both facilities have large outdoor recreation areas, and staff said there will soon be a turf track and sand volleyball at Kearny Mesa. Both facilities have classrooms, a medical clinic area, and multipurpose rooms.

FINDINGS RE: ABUSE AND/OR NEGLECT OF YOUTH WITH DISABILITIES

1. Excessive Force

“Use of force” means an immediate means of overcoming resistance and controlling the threat of imminent harm to self or othersⁱ. Juvenile hall policies must emphasize the need to avoid the use of force whenever possible and allow only that force necessary to ensure the safety of youth and staffⁱⁱ. Probation staff should attempt a range of interventions before using force, restraints, or room confinementⁱⁱⁱ.

a. Use of Pepper Spray

Pepper spray, also known as oleoresin capsicum, or OC spray, is commonly used in the San Diego Juvenile Halls. Probation staff stated that pepper spray is routinely used and were nonchalant and unabashedly open about its use.

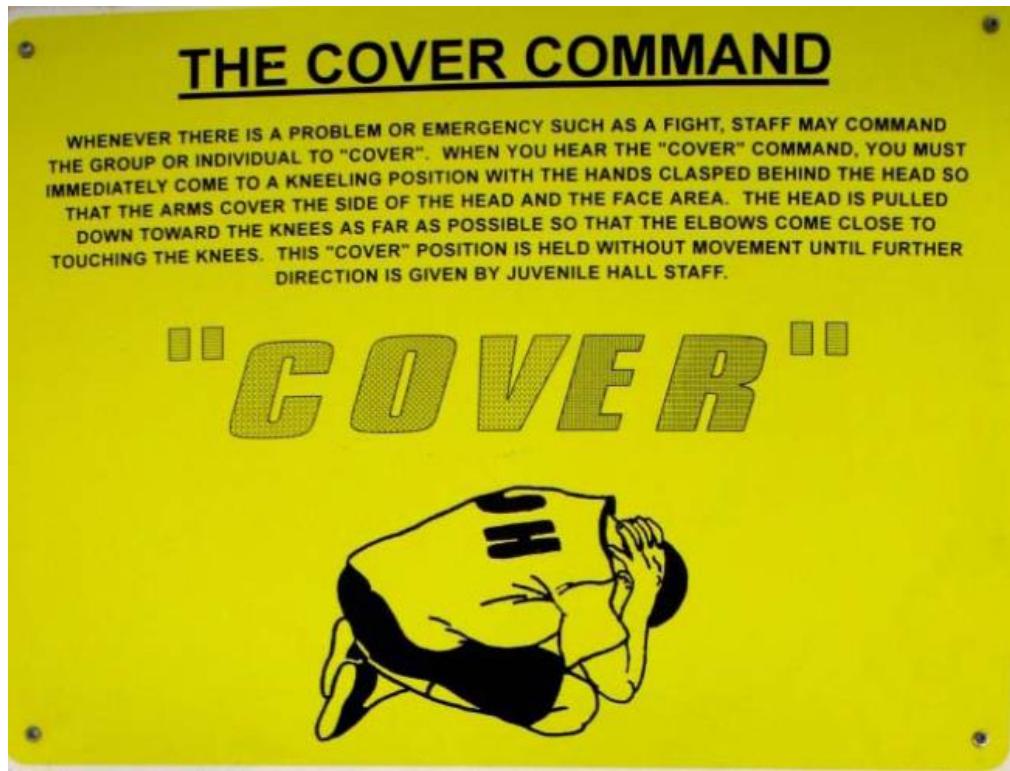
The use of pepper spray weakens the relationship between youth and staff. It also can lead to detrimental health effects such as blistering, inability to breath, deterioration of nerve tissue, permanent eye damage, and potential asphyxiation^{iv}. The reaction to pepper spray may be intensified if the person sprayed has medical or mental health diagnoses or takes certain medications^v. Additionally, youth with and without disabilities have an increased likelihood of negative effects with repeated exposure^{vi}.

While very harmful to those who are sprayed directly, pepper spray also affects those nearby through a phenomenon probation staff and youth

referred to as “overspray.” Probation staff explained that before they use pepper spray, they yell “cover” and the surrounding youth are expected to immediately kneel “with the hands clasped behind the head so that the arms cover the side of the head and the face area.” This command is meant to protect youth from the negative effects of overspray.

Throughout the facilities, there are large, bright yellow signs, shown below, depicting the “cover” command and explaining what youth are expected to do when staff yell, “cover.” The numerous signs posted throughout the facilities evidences the climate of control and intimidation that exists in the Juvenile Halls.

Figure 1 The Cover Command



The Probation Department recognizes that some youth are particularly sensitive to pepper spray and identifies those youth with a yellow wrist band (“yellow banders”). For example, a youth with asthma or a youth taking certain psychotropic medications should not be sprayed due to

potentially dangerous, or even lethal, reactions to pepper spray. However, youth, including yellow banders, reported symptoms from multiple occurrences of overspray.

According to the Council of Juvenile Correctional Administrators, only fourteen states allow the use of pepper spray in juvenile [facilities^{vii}](#). Only five of those states, including [California^{viii}](#), allow staff to carry it on their person, as is the case in San Diego.

Significantly, other juvenile halls in California do not use pepper spray, even though state law permits it. These facilities successfully control youth behavior without the use of pepper spray. For example, San Francisco's Juvenile Justice Center has an absolute ban on the use of pepper spray; its staff regard it as unnecessary and unsafe. Santa Cruz County, a Juvenile Detention Alternative Initiative Model Site, opted to test the use of pepper spray for a six month trial period, but decided to institute a formal ban on pepper spray, discontinuing all use of pepper spray after staff found that it was unnecessary and had not been used once during the trial [period^{ix}](#).

The use of pepper spray was a major concern raised in both a Department of Justice (DOJ) complaint filed by the Youth Law Center (YLC) in 2014 and in reports from the San Diego Juvenile Justice Commission in 2013, and again in 2015. Both groups advised the Probation Department to eliminate or reduce the use of OC spray. However, the San Diego Probation Department continues to regularly use pepper spray as a "de-escalation tactic." Although its use may have declined over the last few years, pepper spray is not appropriate to use on youth the juvenile justice system is trying to rehabilitate. Thus, it should be eliminated altogether.

The Youth Law Center alleged that pepper spray

...is utilized in a manner and with a frequency that results in injury and substantially departs from accepted juvenile detention practice and standards. . . . [S]taff use OC spray

as an all-purpose behavioral management tool [and] deploy OC spray in manifestly improper and dangerous situations^x.

They found pepper spray had been used in situations including fights/assaults, in-room extractions, and situations in which a self-harming youth refused to kneel into the “cover” position, change into a safety smock, or submit to a strip search. In the cases involving fights, there was no effort to de-escalate the situation before spraying the youth^{xi}.

These allegations were confirmed through our interviews with staff and youth. We urge the Probation department to immediately eliminate the use of pepper spray in juvenile halls and will continue to monitor the San Diego juvenile halls in this regard.

a. Use of Force

Youth we interviewed during our inspection reported further use of force and threats of force. Youth reported that probation staff were “rough” and that excessive force was used during Disciplinary Removals, where youth were handcuffed and moved to a different unit. They additionally reported that staff threaten that they will soon have Taser guns, in addition to pepper spray. These threats add to the atmosphere of violence and intimidation in the facility.

The reports from the youth we interviewed are consistent with findings from the Juvenile Justice Commission. The Commission heard allegations that staff physically assault youth^{xii} and verbally threaten youth^{xiii}.

b. Use of Physical and Mechanical Restraints

The Youth Law Center reported that in their review of the incident reports, they found multiple incidents where suicidal or youth with mentally ill were tied down in restraint chairs for long periods of time^{xiv}. Youth we spoke with reported that they had not seen the restraint chairs used frequently, but instead, probation staff would physically restrain

youth using three to five adults to simultaneously hold down the youth, a procedure known as “prone restraint.” These tactics create a risk of serious physical [injury^{xv}](#). We spoke to two youth who reported being injured by staff when being restrained. One youth reported that he suffered a broken thumb when he was pinned down, the other reported a knee injury.

Probation staff also reported leaving youth in handcuffs and other restraints when placed in the so-called “rubber [rooms](#).^{xvi}” The “rubber rooms” are ostensibly used when a youth is physically lashing out and hurting him/herself or another person. Rubber rooms are completely bare, with a shower drain hole in the middle of the room for urinating and defecating. There is no water source. If a youth wants to rest or sleep, s/he has to sleep on the hard floor. Youth are housed in the rubber room wearing a suicide smock, and are often handcuffed or in other restraints. This practice is unusual and should be eliminated.

We have concerns about the use of rubber rooms and suicide watch policies. As noted below, we will continue to monitor those issues.

2. Violations of the Americans with Disabilities Act (ADA)

The Americans with Disabilities Act provides that a person with a disability may not, "by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."^{xvii}

a. Segregation of Youth using Wheelchairs or other Durable Medical Equipment (DME)

We did not observe any accessible [cells](#)^{xviii} in any of the housing areas during our tour, and staff confirmed that a youth using a wheelchair or other durable medical equipment would have to be housed in the medical unit.

Department of Justice regulations provide that detention facilities must "ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals." 28 C.F.R. § 35.152(b) (2).

As such, youth with disabilities may only be placed in a medical unit if they are "actually receiving medical care or treatment," unless an exception is warranted. 28 C.F.R. § 35.152 (b) (2) (ii). Therefore, youth with disabilities should not be housed in the medical unit solely because of their disabilities, but should be moved into the most integrated setting available where they will receive equal access to all jail programs, services, and activities.

3. Lack of Accessible Bathrooms

In the Kearny Mesa hall, the only available accessible restroom is in the clinic. That restroom is equipped with an accessible toilet, lower shower head, grab bars, and a fold down seat in the shower. The only other accessible restroom, and the only accessible restroom in a living area, was located in Unit 1000, but was unavailable, as it was being used as a storage closet.

a. Limited Communication Access for Youth with Hearing Impairments

We observed a sign language interpreter assisting a youth^{xix}, and staff confirmed the youth was provided with an American Sign Language (ASL) Interpreter from 6:30am-9:30pm. The interpreters are provided by probation and the County Office of Education (COE). This accommodation is a model practice, and San Diego juvenile halls could be an example for other juvenile halls in this regard.

On the other hand, however, the Department failed to provide this youth with a far easier accommodation - closed captioning on the videos shown in the common area of his living unit. Some videos were for entertainment, but others were produced for orientation and

programming purposes by the Probation Department itself. By failing to provide captioning, the Department denies young people who are deaf equal access in certain programming and recreational activities.

4. Additional Comments and Areas of Concern

The following comments and areas of concern are intended to summarize our observations and interviews. In addition to the problematic practices described above, we will continue to monitor the San Diego juvenile halls in the following areas.

a. Meals

The Grand Jury Report states that “[t]here nutritious meals plus snacks are provided daily.^{xx} Similarly, the Juvenile Justice Commission says a nutritionist, dietician, or other health professional participates in creation of the menu^{xxi}. According to that report, a youth who eats all the standard meals consumes approx. 2600-2800 calories^{xxii}.

However, every youth we interviewed complained of being hungry. They said that they do not receive enough food and are often denied second helpings as group punishment. The California regulations prohibit the use of group punishment^{xxiii}, and depriving youth of full nutrition is also not permitted^{xxiv}.

b. Room Confinement

Youth report being placed on room confinement without any due process, and/or as punishment for acts of self-harm or disability related behavior. We were told by youth that when placed on room confinement, they are not allowed out of their cells for education or programming. There appears to be little due process or written guidelines for when and under what circumstances youth are put on room confinement, or how they can come off of room confinement.

We urge the San Diego County Probation Department to change its policies to the standards set out in the Juvenile Detention Alternative

Initiative^{xxv}, to review the policies on room confinement recently adopted by Contra Costa County^{xxvi} and implement similar limitations, and monitor the use of isolation and solitary confinement. We plan to monitor the Juvenile Halls in this regard and look forward to further reforms in this area.

c. Training

In a recent report by the Juvenile Justice Commission, “inclusion methods for youth with disabilities or special needs” was the only box not checked under the “Staff Training, Licensing, and Credentialing” section^{xxvii}. Although Probation staff reported having many trainings each year, it was also reported that staff do not receive “refresher” trainings and there is a high level of turnover.

d. Medical Treatment

Medical care is provided through a contract with California Forensic Medical Group (CFMG). The medical director and probation department Contract Monitor said the contract has stringent staffing requirements and timeframe requirements such that there cannot be backlogs of youth waiting to be seen, and that a Registered Nurse (RN) is on duty at both Kearny and East Mesa 24/7.

Staff reported that the sick slips are triaged. According to the Juvenile Justice Commission report, of a random sample of 50 slips, all were responded to within 24 hours^{xxviii}. The youth confirmed that they are seen within a day of putting in a request to see the medical staff. Staff and youth also reported that youth can be taken to Rady’s Children’s Hospital for treatment. The medical director said the formulary was expansive.

We were told that probation is working on transitioning to an electronic record system, however, medical records are currently still on paper which leads to more errors and youth falling through the cracks in

specialty and chronic care. We encourage the Probation Department to move to an electronic medical record system.

Another concern involved medication administration, which consists of nurses pre-pouring the medication into paper envelopes at the clinic, then taking the envelopes to the housing units, distributing the medication, and then coming back to the clinic and signing off on each individual's medication administration record.

e. Mental Health Treatment

Mental health care is provided through the San Diego County Department of Behavioral Health. The mental health records are all electronic, and they are connected to the county's behavior health records. This is beneficial to youth, as it allows mental health staff to see what services, if any, the youth were getting from the county prior to incarceration, and/or can easily get set up the youth up with county-provided mental health care upon release. Unfortunately, a "very small number of minors with mental illness currently receive mental health services once they return [home.](#)"^{xxix}

Staff reported that there are multidisciplinary meetings for high risk youth, where individualized special protocols and behavior plans are discussed. However, many youth who reported being on medications could not report their diagnoses or what the medication was for.

There were also complaints about lack of programming, which is reflected in the Juvenile Justice Commission [reports^{xxx}](#). For examples, in 2013, the Juvenile Justice Commission recommended increasing anger management offerings. However, it continues at 2013 [levels.](#)^{xxxi}

Additionally problematic are the probation staff practices around the use of suicide watch, isolation, and restraints, and how those practices disproportionately affect youth with mental health diagnoses and induce mental health conditions. We will continue to monitor these issues.

f. Restrooms

The majority of cells in Kearny Mesa are dry – meaning they do not have a sink or toilet. Youth must push a button within the cell, which turns on a light in the hall above the cell door notifying staff the youth needs to use the restroom. Staff confirmed the policy is to respond within 5 minutes, but there is no protocol in place to ensure this timeline is being met. The San Diego 2015 Grand Jury report found that “[r]ooms without toilets could create stress and violates the human dignity of the youth.”^{xxxii} We spoke to youth who reported that staff take much longer than five minutes to respond to requests to use the restroom or staff would refuse to open the doors.

g. Education

Education is provided by the County Office of Education (COE). Staff explained that 41 of the 42 school districts in the county use the same electronic special education information system as COE, so educational records can be sent quickly.

Unfortunately, the one school district, San Diego Unified School District (SDUSD), that doesn’t use the information system is the largest one in the county, and the home district of most of the youth in the hall. There is a Memorandum of Understanding between SDUSD and COE about information sharing, including credits, but youth reported that their Individualized Education Programs (IEPs) were not being implemented for weeks after arriving at the hall.

Staff and youth interviews confirmed that youth start school within a day of entering the hall, and online college courses are offered through Grossmont Community College. We observed graduation decorations in the classroom and on graduates’ cell doors.

However, the Juvenile Justice Commission recommends additional training in “child find”^{xxxiii} and Educationally Related Mental Health Services (ERMHS) assessments.^{xxxiv} Additionally, youth reported that if

a fight occurs during school hours, school ends and the entire class has to return to their cells without further educational services.

h. Complaint Procedure

There are locked boxes for sick call slips and grievances throughout the facility. However, there is no ADA complaint procedure, and the Juvenile Justice Commission found that the Juvenile Manual does not include the title and contact information of the staff member to whom one can report a grievance or [complaint](#).^{xxxv}

SUMMARY OF INITIAL RECOMMENDATIONS

1. Excessive Force
 - a. Immediately stop the use of pepper spray and implement other non-physical de-escalation techniques.
 - b. Provide training to probation staff to shift from a climate of intimidation to one of rehabilitation.
 - c. Eliminate the use of restraint chairs entirely and eliminate the use of restraints in the “rubber rooms.”
2. Americans with Disabilities Act (ADA)
 - a. Add wheelchair accessible cells in different housing areas.
 - b. Add closed captioning to all videos, so they are accessible to youth with hearing impairments.
 - c. Appoint an ADA coordinator, establish an effective ADA complaint system, conduct a self-evaluation and develop a transition plan to achieve ADA compliance.
 - d. Develop informational materials for youth with disabilities about how to request accommodations
 - e. Expedite the shift from paper to electronic health records.

3. Use of Isolation

- a. Change policies to limit room confinement to the standards set out in the JDAI.
- b. Review the policies recently adopted by Contra Costa County.
- c. Exclude youth with mental illness from any isolation settings.
- d. Develop a system to continuously monitor compliance with standards for out-of-cell time and outdoor recreation.

*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to [http://www.disabilityrightsca.org/
Documents/ListOfGrantsAndContracts.html](http://www.disabilityrightsca.org/Documents/ListOfGrantsAndContracts.html).*

ⁱ 15 C.C.R. sec. 1302. [“Return to Main Document”](#)

ⁱⁱ 15. C.C.R. sec. 1357(a)(1). [“Return to Main Document”](#)

ⁱⁱⁱ Juvenile Detention Alternatives Initiative (JDAI), A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment, 2014 Update p 76 (2014), available at <http://www.aecf.org/resources/juvenile-detention-facility-assessment>

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^{iv} Fact Sheet: Chemical Agents in Juvenile Facilities, Center for Children’s Law and Policy (May 14, 2012), available at <http://www.cclp.org/documents/Conditions/Fact%20Sheet%20-%20Chemical%20Agents%20-%20Final%20-%205-14-12.pdf>

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^v Id. [“Return to Main Document”](#)

^{vi} Id. [“Return to Main Document”](#)

^{vii} In nine of these 15 agencies, chemical spray is available as a last resort measure to prevent serious injuries to youths and staff and is not carried on person.

Issue Brief: Pepper Spray in Juvenile Facilities, COUNCIL OF JUV. CORRECTIONAL ADMINISTRATORS (May 2011),

<http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf>

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^{viii} Other states include Illinois, Indiana, Minnesota, and Texas. Id. [“Return to Document”](#)

^{ix} Eric Kurhi, Santa Clara County: Kept in the Can, Juvenile Hall Pepper Spray Pilot Program Ends, SAN JOSE MERCURY NEWS (May 15, 2015), http://www.mercurynews.com/crime-courts/ci_28118160/santa-clara-county-kept-can-juvenile-hall-pepper. [“Return to Document”](#)

^x Complaint from Youth Law Center to Jonathan M. Smith, Chief, U.S. Dept. of Just. 3–4 (July 25, 2014), <http://www.ylc.org/wp/wp-content/uploads/DOJ%20Complaint.pdf> [“Return to Document”](#)

^{xi} Id. at 4. [“Return to Document”](#)

^{xii} Memorandum from San Diego County Juven. Just. Comm. on Kearny Mesa Juven. Detention Facility (JJC KM) to the Board of St. and Community Corrections 20 (Apr. 15, 2015),

<http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/juvenile3/juvenilejusticecommission/jcreports/2015%20jc%20facility%20inspection%20-%20kearny%20mesa.pdf>

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^{xiii} Id. at 21. The Juvenile Justice Commission heard other troubling allegations that staff touch juveniles inappropriately, comment on physical appearance of youth, and enter juveniles' rooms outside scope of job duties. [“Return to Main Document”](#)

^{xiv} Youth Law Center, *supra* note 6, at 29. [“Return to Main Document”](#)

^{xv} See Disability Rights California, *The Lethal Hazard of Prone Restraint: Positional Asphyxiation* (2002), available at <http://www.disabilityrightsca.org/pubs/701801.pdf>.
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^{xvi} Also called “safety cells” or “suicide watch cells.” [“Return to Main Document”](#)

^{xvii} 42 U.S.C. § 12132; see also *Pierce v. County of Orange*, 526 F.3d 1190, 1214, 1221 (9th Cir. 2008) (explaining that a violation of the ADA occurs when a county jail denies otherwise qualified prisoners with disabilities access to programs, activities, or services). [“Return to Main Document”](#)

^{xviii} For accessibility standards, see ADA Accessibility Guidelines (ADAAG), available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/adaag#4.17>; see also U.S. Department of Justice, Civil Rights Division, ADA/Section 504 Design Guide: Accessible Cells in Correctional Facilities, available at <http://www.ada.gov/accessiblecells.htm>.
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^{xix} The youth was wearing an orange vest. Staff explained the youth was deaf and the orange vest was to help staff identify him. [“Return to Main Document”](#)

^{xx} San Diego County Grand Jury 2014/2015, Juvenile Detention Facilities 1 (June 2, 2015),

<http://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2014-2015/JuvenileDetentionFacilitiesReport.pdf>. [“Return to Main Document”](#)

^{xxi} Memorandum from San Diego County Juven. Just. Comm. on East Mesa Juven. Detention Facility (JJC EM) to the Board of St. and Community Corrections 11 (Apr. 15, 2015),

<http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/juvenile3/juvenilejusticecommission/jcreports/2015%20jc%20facility%20inspection%20-%20east%20mesa.pdf>

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^{xxii} Id. [“Return to Main Document”](#)

^{xxiii} 15 C.C.R. sec.1390; see also 15 C.C.R. sec. 1461 (minimum diet).

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^{xxiv} Id. [“Return to Main Document”](#)

^{xxv} Juvenile Detention Alternatives Initiative (JDAI), A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment, 2014 Update 177-80 (2014), available at <http://www.aecf.org/resources/juvenile-detention-facility-assessment/>.

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^{xxvi} Class Action Settlement Agreement, G.F. et al. v. Contra Costa County et al, Case No. C13-3667 MEJ (N.D. Cal 2015). [“Return to Main Document”](#)

^{xxvii} JJC EM, supra, note 14 at I.2 [“Return to Main Document”](#)

^{xxviii} JJC KM, supra note 8, at 16; see also JJC EM, supra note 14 at 16.

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^{xxix} JJC KM, supra note 8, at 2. [“Return to Main Document”](#)

^{xxx} JJC EM, supra note 14, at 13-14. [“Return to Main Document”](#)

^{xxxi} JJC KM, supra note 9, at 1. [“Return to Main Document”](#)

^{xxxii} Id. at 5. [“Return to Main Document”](#)

^{xxxiii} School districts have an obligation to “identify, locate and evaluate” all children with disabilities who may be eligible for special education, including those who are attending private schools or are homeless or wards

of the court. 34 C.F.R. Sec. 300.111; Cal. Ed. Code Secs. 56300 & 301.

This is called “child find.” [“Return to Main Document”](#)

xxxiv Id. at 2. [“Return to Main Document”](#)

xxxv Id. at 5. [“Return to Main Document”](#)