



**LEGISLATION &
COMMUNICATIONS UNIT**

1831 K Street
Sacramento, CA 95811-4114

Tel: (916) 504-5800

TTY: (800) 719-5798

Intake Line: (800) 776-5746

Fax: (916) 504-5807

www.disabilityrightsca.org

April 12, 2021

The Honorable Mike Gipson
Assemblymember, District 64
State Capitol
P.O. Box 942849
Sacramento, CA 94249

**Re: Assembly Bill 1165 (Gipson)—Tear Gas Ban in Juvenile
Facilities—CO-SPONSOR**

Dear Assemblymember Gipson:

Disability Rights California is proud to co-sponsor Assembly Bill 1165, authored by Assemblymember Mike Gipson. This bill would prohibit the use or storage of chemical agents in juvenile facilities.

The use of chemical agents like tear gas has been widely rejected by facility administrators across the country due to physical and emotional harm caused to youth and staff, its detrimental effects on staff-youth relationships, and their experience showing it is unnecessary to protect the safety of youth and staff. California is out of step with fundamental rights, best practices, and a developmentally appropriate vision for how to support our youth. Since the murder of George Floyd by police in Minneapolis, Minnesota, the United States and California have refocused on the cruel, violent, and racist inequities of policing and incarceration, including unwarranted, inappropriate, and disproportionate uses of tear gas. The widespread and routine use and misuse of these weapons within the confinement of poorly ventilated juvenile facilities is even more egregious.

Ending the use of chemical agents is a central issue in the fight for disability justice, and Disability Rights California has advocated for the end of its use against kids for years. We have unique access authority to locations where people with disabilities reside or are detained in, including juvenile corrections facilities. In our investigations, we found that chemical spray was often used to punish behaviors manifesting from mental illness or behavioral health conditions, and not as a last resort. Over 75% of the kids who were subject to chemical agent use had an existing mental/behavioral health condition, and the trauma of being pepper sprayed compounded these disabilities. Additionally, kids who were sprayed also suffered physical disabilities including serious chemical burns, vision impairment, and respiratory complications.

The harmful nature of chemical agents makes their use counterproductive to the rehabilitative goals of the juvenile justice system. Use of chemical agents on youth is inconsistent with the requirement that juvenile halls not be operated as penal institutions and instead “shall be a safe and supportive homelike environment.”¹ Permitting juvenile facility staff to carry and use destructive chemical agents creates a punitive, fear-inducing environment, which impedes the development of trusting, healthy relationships between staff and youth that are essential to facility safety and facilitating successful reentry.

The most common chemical agent used in juvenile facilities is Oleoresin Capsicum, commonly known as “pepper spray.” Pepper spray is so toxic that it is classified in California law as a tear gas weapon.² It works by inflaming the respiratory tract and restricting breathing.³ In juvenile facilities throughout California, this weapon—which can cause not only intense pain but also blistering of the skin, coughing, sneezing, inflammation, respiratory arrest, and an increased risk of strokes and heart attacks—is particularly dangerous for those with cardiovascular or respiratory conditions such as asthma or those using psychotropic medications.⁴ A report by the American

¹ Ca. Welfare & Institutions Code § 851. [“Return to Main Document”](#)

² Ca. Penal Code Sections 22810 *et seq.* [“Return to Main Document”](#)

³ U.S. Department of Justice, National Institute of Justice. *Oleoresin Capsicum: Pepper Spray as a Force Alternative* (NCJ 181655) (1994). [“Return to Main Document”](#)

⁴ Texas Criminal Justice Coalition, *Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendation* (Nov. 2007), available at: <http://www.nijj.org/uploads/digital-library/pepper.pdf> [“Return to Main Document”](#)

Civil Liberties Union Foundations of California, based on public record act requests to all 58 counties, found that officials in California juvenile facilities used this weapon more than 5,000 times between January 2015 and March 2018.⁵ The number of incidents may be much higher, because 13 counties failed to provide data on how often it was utilized.

Thirty-five other states and several California counties (Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and pending in Los Angeles) recognize that chemical agents are not needed to safely operate a facility.⁶ Operated by the City and County of San Francisco, the Youth Guidance Center juvenile facility “does not use these potentially dangerous interventions on youth, and should be a model for other juvenile facilities in this regard.”⁷ A national survey by the Council of Juvenile Correctional Administrators observed that facilities that use pepper spray tend to be systems that adopt an overall more punitive and adult-correctional approach.⁸ This is consistent with experiences of youth at California juvenile facilities.

Investigations into conditions in juvenile facilities in Kern, San Diego, Fresno, and San Francisco counties found that chemical agents are often directed disproportionately against youth with mental health, behavioral learning, and/or developmental disabilities—including many who are survivors of significant trauma—and constitutes abuse and neglect of these young people.⁹ Probation staff have been found to use chemical agents “on youth in response to non-violent acts such as verbal defiance and ‘peer friction,’ for symptoms of mental health needs such as self-injury and

⁵ American Civil Liberties Union Foundations, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 2019), available at: https://www.aclusocal.org/sites/default/files/aclu_social_toxic_treatment_report_2019.pdf “Return to Main Document”

⁶ *Ibid.* “Return to Main Document”

⁷ Disability Rights California, *Report on Inspection of the San Diego Juvenile Detention Facilities* (Feb. 2016), available at: www.disabilityrightsca.org/system/files/file-attachments/703001_1.pdf “Return to Main Document”

⁸ Council for Criminal Justice Administrators, *Pepper Spray in Juvenile Facilities* (May 2011), available at: www.ojp.gov/ncjrs/virtual-library/abstracts/pepper-spray-juvenile-facilities “Return to Main Document”

⁹ For full reports, see: <https://www.disabilityrightsca.org/what-we-do/priorities/adult-and-juvenile-detention-facilities> “Return to Main Document”

threats of self-harm, and in a punitive manner after youth had been restrained.”¹⁰ Staff routinely punish these youth—including with isolation, restraint, and chemical force—for behavior related to their disabilities. Excessive use of chemical agents in turn creates significant liability for counties.

Eliminating chemical agents from juvenile facilities is also a matter of racial justice. As compared to white youth, African-American youth are 7.5 times more likely to be ordered to institutional placement, and Latinx youth are 2.5 times more likely.¹¹ The harms of chemical agents in juvenile facilities thus disproportionately impact youth of color, particularly Black, Latinx, and Indigenous youth.

Using chemical agents, which severely impair the respiratory system, is even more dangerous during the current COVID-19 pandemic, given pathological findings that COVID-19 is associated with acute respiratory distress and death. Because physical reactions to chemical agents include intense coughing, sneezing, sputtering, and crying, any use of chemical agents can facilitate the spread of COVID-19 both within the facilities and outside (as infected staff return home to their communities).¹² The COVID-19 pandemic necessitates the elimination of the use of chemical agents in juvenile facilities in order to effectively protect the safety of both youth and staff.

The continued use of chemical agents does not align with creating environments that support the trusting relationships between staff and youth that are essential to promoting healthy and positive growth for young people. Disability Rights California is grateful for your steadfast leadership

¹⁰ Disability Rights California, *Investigation Report: Kern County Juvenile Correctional Facilities* (Jan. 2018), available at: www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf “Return to Main Document”

¹¹ Wong, A. & Ridolfi, L., *Unlocking opportunity: How race, ethnicity and place affect the use of institutional placements in California 4* (Jan. 2018), available at: https://burnsinstitute.org/wp-content/uploads/2020/09/Unlocking-Opportunity_compressed.pdf “Return to Main Document”

¹² Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Feb. 2021), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> “Return to Main Document”

on this urgent issue and is honored to co-sponsor AB 1165 to prohibit the use or storage of chemical agents in juvenile facilities.

Sincerely,

A handwritten signature in black ink that reads "Gregory Cramer". The signature is written in a cursive, flowing style.

Gregory Cramer
Senior Legislative Advocate
Disability Rights California

Cc: Honorable Members, Assembly Public Safety Committee
Honorable Mike Gibson, California State Assembly
Brianna Leon, Office of Assemblymember Mike Gipson
Wesley Saver, GLIDE