



**LEGISLATION AND
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 3, 2019

Honorable Reginald Byron Jones-Sawyer, Sr.
Chair, Public Safety Committee
California State Assembly
Capitol Building, Room 2117
Sacramento, CA 95814

RE: AB 1321 (Gipson) as amended March 27, 2019 – SUPPORT

Dear Assembly Member Jones-Sawyer, Sr.:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, **supports AB 1321**. This bill is scheduled for hearing in the Assembly Public Safety Committee on April 9, 2019.

AB 1321 takes an important step and would require the custodian of each juvenile facility to report quarterly to the Board of State and Community Corrections (Board) on the use of chemical agents in the facility. It would require the board to conduct inspections of juvenile facilities in the top quartile of chemical agent use and require the Legislative Analyst's Office to conduct a study on the use of chemical agents in juvenile facilities and report to the Legislature by June 1, 2021. While the bill does not prohibit the use of pepper spray in juvenile facilities, it does seek to provide the legislature with additional information on its use.

The most common chemical used in facilities is Oleoresin Capsicum, commonly known as "pepper spray." The use of pepper spray on youth is inconsistent with the requirement that juvenile halls not be operated as penal institutions and instead provide "a safe and supportive homelike environment (Welf. & Institution Code Section 851)." The use of burning,

stinging gas does not foster a “homelike environment” for youth.

YOUTH WITH DISABILITIES ARE DISPROPORTIONATELY AFFECTED BY ANY USE OF PEPPER SPRAY

Pursuant to its mandate as California’s protection and advocacy agency, DRC has conducted investigations into conditions in juvenile halls in Kern, San Diego, Fresno and San Francisco and has issued reports on our findings: <https://www.disabilityrightsca.org/what-we-do/topics/adult-and-juvenile-detention-facilities>. These investigations have included a close review of the use of pepper spray, especially as directed towards youth with disabilities. We have found that pepper spray is often directed disproportionately against youth with disabilities and that its use constitutes abuse and neglect of these young people.

For example, DRC conducted an investigation into conditions in the Kern County juvenile facilities and released a report on our findings. Investigation Report: Kern County Juvenile Correctional Facilities, dated January 2018, available from https://www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf. We found excessive use of pepper spray, which in turn creates significant liability for the county. Probation staff “used pepper spray 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 threats of self-harm, and in a punitive manner after youth had been restrained.” Most significantly, we found that:

Youth with disabilities appear to be disproportionately affected by the use of pepper spray in [Kern] facilities. For example, in January 2017, seven of the nine reported pepper spray incidents involved special education students with documented disabilities. Youth with ADHD and bi-polar disorder appear to have been pepper-sprayed for behavior related to their disabilities, over which they have little control. Pepper spray use also disproportionately impacts youth with mental illness and risk of self-injury.

Following the release of the report, DRC and its co-counsel, Disability Rights Advocates, filed a lawsuit in federal court, T.G. v. Kern County, et al., Case 1:18-at-00121, U.S.D.C., E.D. Cal, filed 02/21/18. This lawsuit

alleges that Kern County Probation violated the Americans with Disabilities Act and other federal and state laws that prohibit discrimination based on disability through its use of pepper spray, among other policies and practices.

The complaint states that Probation staff use pepper spray “on youth who are nonviolent, youth who are already restrained, youth who are compliant, and youth who are unlucky enough to be in the way.” This situation is all the more difficult for the many young people with mental health, behavioral, learning, and/or developmental disabilities held in Kern County’s juvenile detention facilities, including many who are survivors of significant trauma. Staff routinely punish these young people – including with isolation, restraint, and chemical force – for behavior related to their disabilities. DRC and its co-counsel are currently working with the parties to resolve the issues raised in the federal court complaint.

DRC also found that pepper spray was used excessively in the juvenile halls and camps in San Diego County. DRC Report on Inspection of the San Diego Juvenile Detention Facilities, February 23, 2016, available from https://www.disabilityrightsca.org/system/files/file-attachments/703001_1.pdf. Following the release of this report, the new probation chief in San Diego adopted new policies that limit pepper spray use and has engaged national experts to implement broad reform; DRC continues to monitor the effectiveness of these initiatives.

CALIFORNIA COUNTIES HAVE SAFELY ELIMINATED THE USE OF PEPPER SPRAY IN JUVENILE FACILITIES

DRC found that the juvenile facility operated by the City and County of San Francisco operates safely without the use of pepper spray. DRC Report on San Francisco Youth Guidance Center (“YGC”), February 23, 2016, available from https://www.disabilityrightsca.org/system/files/file-attachments/702901_1.pdf. We noted that the facility policies prohibited the use of pepper spray or tasers: “YGC does not use these potentially dangerous interventions on youth, and should be a model for other juvenile facilities in this regard. YGC has shown statewide leadership in its elimination of the use of pepper spray.”

Santa Clara, Solano and Sonoma counties also prohibit the use of pepper spray in juvenile facilities. Additional counties that also ban its use are

Santa Cruz, Marin and Sacramento. Los Angeles County recently followed suit.

THE MAJORITY OF JUVENILE DETENTION FACILITIES IN THE UNITED STATES OPERATE SAFELY WITHOUT USING PEPPER SPRAY.

California is one of very few states where pepper spray is used at all. A national survey by the Council of Juvenile Correctional Administrators (CJCA) found that more than 70 percent of state juvenile correctional agencies ban the use of chemical restraints; even those that do allow pepper spray only do so as a measure of last resort. Only 12 percent of juvenile correctional agencies authorize staff to carry chemical sprays on their person. The CJCA survey also found that only 8 percent of juvenile facilities participating in its CJCA Performance-based Standards program (referred to as “PbS”) reported any use of pepper spray. The CJCA survey observed 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. This is consistent with our observations of and interviews with youth at California juvenile facilities.

For these reasons, DRC supports this bill. Please contact me if you have any questions about our position or if I can provide any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis Child". The signature is fluid and cursive, with the first name "Curtis" being more prominent than the last name "Child".

Curtis Child
Legislative Director
Disability Rights California

cc: Honorable Members, Assembly Public Safety Committee
Gregory Pagan, Chief Counsel, Assembly Public Safety Committee
Honorable Mike Gipson, California State Assembly
Esthela Pacheco, Legislative Director, Office of Assembly Member
Gipson
Gary Olson, Consultant, Assembly Republican Caucus Committee