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March 27, 2018

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

RE: AB 2010 (CHAU) – 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 2010**. This bill is scheduled for hearing in the Assembly Public Safety Committee on April 3, 2018.

AB 2010 takes the important and, we believe, critical step to prohibit the use of chemical sprays in juvenile detention facilities. 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.

DRC released an investigation report on the Kern County Juvenile Correctional Facilities in January of this year:
https://www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf (hereinafter “Report”). Pursuant to DRC’s authority to inspect and monitor conditions of any facilities that serve persons with disabilities, we conducted monitoring

inspections of the three Kern County Juvenile Correctional Facilities over three days last year. As part of that inspection we conducted confidential interviews of more than 50 youth held in the Kern facilities and many of their parents and guardians. We reviewed more than 10,000 pages of documents including policies, incident reports, logs of pepper spray use and medical records. As part of our report, we found evidence that 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.¹

Specifically, the DRC report noted that Probation staff regularly uses pepper spray on detained youth. Virtually every youth interviewed reported exposure, either as a target or from over-spray. Staff at Kern Juvenile Correctional Facilities carry cans of pepper spray on their belts, and employ its use in living areas and on youth who are securely in their cells. The spray is used directly on the face, eyes and ears of youth. The frequent threat of the use of pepper spray creates ongoing intimidation and creates a feeling among youth that they are in constant danger of being pepper-sprayed for reasons outside of their control (Report at p. 13).

Additionally, the Kern report concluded that their pepper spray policies are confusing and internally inconsistent (Report at pp. 13-14). For example, the report noted that policy precludes the use of spray for the “mere verbal threats of violence” but on the other hand, officers are given broad discretion to use physical force, such as spray, for any incident where a youth has not responded to verbal commands and a show of authority. Policy does not prohibit staff to pepper-spray youth directly in their eyes, nose, face and ears (Report at p. 14). Pepper spray is also used on youth who are not violent or dangerous.

The indiscriminate use of pepper spray is not limited to the Kern County Juvenile Correctional Facilities. DRC also issued a report in February 2016, under the same authority as the Kern investigation, and found that Probation staff stated that pepper spray is routinely used and were nonchalant and unabashedly open about its use:

¹ The Kern County Probation Department has submitted a letter, dated February 13, 2018, that does not dispute the use of pepper spray in the Kern juvenile facilities but asserts that it is used “within the law.” https://www.disabilityrightsca.org/system/files/file-attachments/ProbationResponse2018Feb13_Accessible.pdf “Return to Main Document”

https://www.disabilityrightsca.org/system/files/file-attachments/703001_0.pdf

DRC has found that there is a disproportionate impact of the use of pepper spray on youth with disabilities. For example, in January 2017, seven of the nine reported pepper spray incidents involved special education students with documented disabilities. Youth with ADHD and bipolar disorder appear to have been pepper-sprayed for behavior related to their disabilities, over which they have little control (Report at p. 14). Pepper spray use also disproportionately impacts youth with mental illness and risk of self-injury. Staff use pepper spray to respond to “self-harm” and suicide attempts, according to Probation records and reports by youth. Probation logs regarding pepper spray confirm that it has been used to address threats of self-harm and suicide attempts on multiple occasions (Report at pp. 14-15).

The vast majority of juvenile detention facilities in the United States operate safely without using pepper spray. California is one of very few states where it 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 Kern facilities. It should be noted that a report on a DRC inspection at the San Francisco Youth Guidance Center we noted that the Center does not use pepper spray as an intervention tool.

Any use of pepper spray is harmful to already vulnerable youth, causing them physical and emotional pain. The practice contributes to the chronic trauma experienced by the vast majority of confined youth. AB 2010 takes the appropriate approach of prohibiting staff in juvenile facilities from having pepper spray in their possession (while allowing it to suppress a riot or in situations where de-escalation tactics have failed or are not possible) and

requires documentation of any use.

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.

Sincerely,

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

Curtis Child
Legislative Director
Disability Rights California

cc: Honorable Ed Chau, California State Assembly
Matt Cremins, Legislative Aide, Office of Assembly Member Chau
Honorable Members, Assembly Public Safety Committee
David Billingsley, Counsel, Assembly Public Safety Committee
Lucy Salcido Carter, Policy Advocate, Youth Law Center