

Chemical Agents in Juvenile Facilities

Juvenile facility administrators have a fundamental responsibility to keep youth and staff safe. Most facilities fulfill that responsibility without using chemical agents such as pepper spray and tear gas. However, some facilities continue to rely on painful and dangerous chemical agents as a substitute for more effective and humane ways of managing youth behavior.

The use of chemical agents jeopardizes the safety of youth and staff. In recent years, numerous lawsuits and investigations have exposed the health risks and potential for misuse of such agents. Moreover, when staff charged with caring for youth spray them with painful and harmful chemicals, they undercut the juvenile justice system's goal of rehabilitating youth, and instead lead youth to feel anger and distrust toward adults.¹ Accordingly, chemical agents have no place in juvenile facilities.

This fact sheet highlights concerns associated with chemical agents, provides examples of states that have recently committed to ending their use in juvenile facilities, and offers strategies to reduce and eliminate the use of chemical agents.

What are chemical agents?

Chemical agents are compounds that irritate the mucous membranes in the eyes, nose, mouth, and lungs.² They are used to incapacitate individuals by inducing a variety of physiological reactions, including a burning sensation, temporary blindness, body spasms, and difficulty breathing. Although a wide variety of chemical agents exist, a handful are used in correctional settings:

- **Oleoresin Capsicum:** A substance derived from compounds found in plants in the *Capsicum* genus, such as chili peppers. Known also as "pepper spray," "OC," or "capsicum," oleoresin capsicum can be administered as a liquid, gas, foam, or powder.
- **2-Chlorobenzalmalonitrile Gas:** A substance produced through chemical synthesis. It is known more commonly as "CS gas" or "tear gas."
- **Phenacyl Chloride:** A substance produced through chemical synthesis. Phenacyl chloride, which is also known as "CN gas," "Mace," and "phenylchloromethylketone," is more toxic than CS gas and less commonly used in correctional settings.

Why is it inappropriate to use chemical agents in juvenile facilities?

Chemical agents generate adverse physical reactions that can be exacerbated in secure settings. Chemical agents have been linked with the following short- and long-term effects in adult populations:

- Intense pain, swelling, and blistering of the skin;
- Wheezing and an inability to breathe or speak;
- Acute hypertension, which may lead to an increased risk of stroke or heart attack;
- The deterioration of nerve tissue and permanent corneal damage;

- Potential asphyxiation when used in conjunction with physical or mechanical restraint, or when used on individuals with respiratory conditions such as asthma;³
- Respiratory failure possibly resulting in death;
- Immediate death from severe chemical burns to the throat and lungs; and
- Blindness and glaucoma.⁴

The effects of chemical agents on children have never been studied. Therefore, there is no information to determine whether a single or repeated exposure may have long-term consequences for young people's health. There is reason to believe, however, that the effects of chemical agents are more pronounced in children. In a 2018 release, the American Academy of Pediatrics claimed that "children are uniquely vulnerable to physiological effects of chemical agents."⁵ This is because children are smaller in size, take more frequent breaths per minute, and have a limited cardiovascular stress response when compared to adults.⁶ Additionally, studies have indicated that children are more vulnerable to severe injuries resulting from chemical toxicity.⁷

A 2009 review of the literature from the *British Medical Journal* noted that the effects of chemical agents were exacerbated in confined spaces and areas with poor ventilation⁸ – two features that are common in juvenile facilities. Additionally, youth and staff may suffer repeated exposure to chemical agents in facilities that rely on chemical agents as a regular means to control behavior, even if they are not direct targets of its use. Repeated exposure to chemical agents "may increase the chance of adverse effects," according to one study.⁹

Staff cannot predict which youth are likely to have severe or lethal reactions to chemical agents.

Security staff may not know which youth in their care are likely to have dangerous and potentially deadly reactions to chemical agents because of pre-existing conditions such as asthma.¹⁰ While most facilities conduct intake screenings to learn about youths' medical needs, sometimes youth do not know about their conditions or have yet to be diagnosed, and sometimes facilities do not keep security staff informed about the medical limitations of individual youth as they come and go. Research also suggests that pepper spray can increase the lethality of stimulants such as cocaine,⁷¹¹ which may be present in a youth's system upon admission. This unpredictability heightens the risks associated with the use of chemical agents. Even if facilities attempt to restrict use of chemical agents on youth with certain conditions, those youth may still be exposed to chemical agents by virtue of their proximity to a spray incident.

Staff may inappropriately rely on chemical agents to respond to non-threatening conduct and behaviors that are manifestations of mental illness or developmental disabilities.

Even when staff are trained to use chemical agents only as a last resort, opportunities for misuse are all too common. The Special Litigation Section of the U.S. Department of Justice's Civil Rights Division has investigated conditions of confinement in juvenile facilities throughout the country. These investigations have revealed the inappropriate and excessive use of chemical agents on:

- pregnant youth;¹²
- youth with developmental delays;¹³
- youth exhibiting suicidal gestures and behaviors;¹⁴
- youth who refused to remove their clothes before being placed in isolation;¹⁵
- youth who failed to perform military-style exercises;¹⁶ and
- youth inside of secured cells who did not remove their arms from the food flaps in their doors.¹⁷

Disability Rights California has found that the usage of pepper spray in youth facilities is likely to result in disproportionate harm to “young people with disabilities such as mental illness, ADHD and intellectual and developmental disabilities.”¹⁸ In facilities that make chemical agents available, staff have used them to respond when they did not understand how to handle youth manifesting symptoms of mental illness. Researchers warn that the use of chemical agents can make it more difficult to calm individuals with mental illnesses in the short-term¹⁹ and may worsen their overall mental health conditions.²⁰ Chemical agents may also interact dangerously with psychotropic medications, as both substances can affect blood flow, heart rate, and breathing.²¹ This is particularly problematic in view of the high rate of mental health disorders among youth involved in the juvenile justice system. For example, a study conducted at the Cook County, Illinois youth detention center found that 60% of males and more than two-thirds of females met diagnostic criteria and had a diagnosis-specific impairment for one or more psychiatric disorders, after excluding conduct disorders.²²

The use of chemical agents can subject an agency or facility to investigation and lawsuits.

Federal courts have concluded that the use of chemical agents in secure facilities can violate the U.S. Constitution.²³ For example, in August 2010, the U.S. Court of Appeals for the Eleventh Circuit held that the use of chemical agents on a mentally ill adult who was fully secured and who did not present a threat of immediate harm to himself or others constituted an “extreme deprivation[]” of his Eighth Amendment rights.²⁴

In September 2007, two advocacy organizations sued the Texas Youth Commission (TYC) regarding the use of OC spray as a behavior management technique.²⁵ The groups’ lawsuit, filed on behalf of three plaintiffs who had mental health needs or disabilities, alleged that the youth were injured after exposure to OC spray while in TYC’s care.²⁶ Shortly thereafter, TYC introduced guidelines to reduce the use of OC spray in its correctional facilities.²⁷

According to Texas Appleseed, one of the organizations that brought the lawsuit, TYC “subsequently reported a dramatic drop in the use of pepper spray.” For example, in the third quarter of fiscal year 2008, TYC reported 249 uses of OC spray at its secure facilities.²⁸ During that same period two years later, TYC reported just 13 uses of OC spray, a 95% drop.²⁹ Recent reports suggest that some Texas facilities are struggling to contain the use of pepper spray as officials limit secure care to youth who display the most challenging behavior and who present the most serious risk to public safety. Yet the effort in Texas demonstrates that officials can implement strategies that will significantly reduce the use of chemical agents.

Wisconsin faced a lawsuit that was settled in 2018 over conditions at its state-operated juvenile facilities. This lawsuit led to an agreement by the state to prohibit the use of OC spray and other chemical agents in youth facilities.³⁰ The plaintiffs alleged in the suit that staff at Wisconsin’s youth facilities were blasting them and other children with pepper spray. Those who were sprayed “describe[d] their suffering as burning their skin and eyes and impairing their breathing[,]” and youth who weren’t “sprayed directly ... suffered as a result of clouds of spray used on other children.”³¹ The state is mandated to close the youth facility, and its focusing efforts there.³²

The disparate use of chemical agents on individuals with disabilities also exposes facilities to potential legal liability. In 2018, Disability Rights Advocates filed a lawsuit in federal court alleging a California facility violated the Americans with Disabilities Act, along with other federal and state laws which prohibit discrimination on the basis of disabilities, due to their disparate use of

chemical agents on children with disabilities.³³

Administrators and staff can preserve the safety and security of youth and staff without relying on chemical agents.

In the most recent federal survey of the conditions of youth in residential placement, 30 percent of youth reported living in a unit where staff used pepper spray on one or more individuals.³⁴ The survey results demonstrate that juvenile facilities that employ chemical agents to control behavior are in the minority. A 2011 issue brief from the Council of Juvenile Correctional Administrators reported that juvenile justice agencies in just 15 states permit the use of chemical agents, and only 5 of the 15 permit staff to carry pepper spray in secure facilities.³⁵ The issue brief later went on to claim that the practice of using chemical agents is not accepted as appropriate for use in facilities with youths.³⁶ In fact, according to Vincent Schiraldi, an expert in juvenile corrections practice, the usage of chemical agents has “been associated with worse, not better, institutional and behavioral outcomes.”³⁷ As the next section of this fact sheet illustrates, many jurisdictions rely on alternative and more effective techniques to maintain the safety and security of their juvenile facilities, including verbal de-escalation, behavioral management systems, and other interventions.

How are states responding to concerns about the use of chemical agents?

Following is a list of states that have recently taken action to prohibit the use of chemical agents in juvenile facilities.

- **Los Angeles, California:** In 2019, the Los Angeles County Board of Supervisors voted unanimously to approve a phased elimination of pepper spray.³⁸ It is projected that the elimination of the use of pepper spray will be in full effect in September of 2020.³⁹ The County looked to other jurisdictions, including Louisiana and Oklahoma, to assist in implementing the change, and are committed to the steps it will take to eliminate its use in their facilities.⁴⁰
- **Oklahoma:** In 2017, Oklahoma’s Office of Juvenile Affairs voted unanimously to end the use of pepper spray on children in their care.⁴¹ Because their state law only allows the use of chemical agents per the regulations of the Office of Juvenile Affairs, their use has effectively been banned statewide.⁴²
- **Mississippi:** In 2015, Mississippi’s state legislature passed a bill ensuring that the written policies, procedures, and actual practices of juvenile detention facilities prohibit the use of chemical agents, including pepper spray, tear gas, and mace.⁴³
- **Louisiana:** The Louisiana Office of Juvenile Justice barred chemical agents in its facilities in 2007.⁴⁴ In 2012, the state’s Department of Children and Family Services promulgated standards prohibiting the use of use of “any chemical restraint” in local juvenile detention facilities.⁴⁵
- **New Hampshire:** In 2010, New Hampshire passed a statute prohibiting “the intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child” in a broad range of settings, including schools, group homes, shelters, detention centers, and commitment

facilities.⁴⁶

- **Wisconsin:** In 2010, the state's Department of Corrections promulgated regulations prohibiting the use of chemical agents for disciplinary purposes in juvenile detention facilities.⁴⁷
- **Florida:** In 2006, the state legislature required the Department of Juvenile Justice to adopt a policy that "[p]rohibit[ed] the use of aerosol or chemical agents, including, but not limited to, oleoresin capsicum spray and ammonia capsules, on a youth unless required for medical treatment of the youth by a licensed medical professional."⁴⁸
- **New Jersey:** In 2005, the state amended its administrative code to clarify that the use of "chemical and/or natural agents, such as mace, pepper spray, or other similar agents" is not allowed in juvenile detention facilities.⁴⁹
- **Kansas:** State regulations require that detention centers have policies and practices that "ensure that chemical agents are not used by center personnel."³⁴⁵⁰

What can facility administrators do to eliminate or reduce the use of chemical agents?

Facility administrators who prohibit the use of chemical agents rely on a number of alternative strategies to respond to youth behavior. These include:

- Developing a full schedule of programming to keep youth busy so that they are less likely to become bored and have fewer opportunities to fight;
- Ensuring that staff receive regular training on alternative behavior response techniques, conflict management, de-escalation of confrontations, crisis intervention, adolescent development, developmental disabilities, mental health disorders, trauma-informed care, approved physical force techniques, and appropriate use of restraints;
- Requiring that staff actively engage with youth under their supervision to identify conflicts before they escalate;
- Ensuring that facilities are adequately staffed to permit interaction with youth that can help identify problems; and
- Staffing the facility with enough mental health professionals to respond to youths' needs.

Jurisdictions may begin their transition away from use of chemical agents by phasing out their use. In addition to following the steps above, facility administrators can reduce the use of chemical agents by:

- Keeping chemical agents in the facility administrator's office instead of on units or with direct care staff;
- Requiring authorization by a facility administrator before use;
- Adopting a clear policy that chemical agents should only be used as a last resort, and only in riot situations;
- Adopting policies that ban the use of chemical agents on particularly vulnerable populations,

- such as pregnant youth, youth with respiratory conditions, and youth with mental illnesses;
- Bringing staff together to discuss each incident involving the use of chemical agents and⁵¹ discussing alternative ways of responding to a youth's behavior; and
- Holding staff accountable for inadequate supervision practices and for failing to follow de-escalation procedures.

For more information, please contact:

Jason Szanyi, Deputy Director
 Center for Children's Law and Policy
 1701 K Street, NW, Suite 1100, Washington, DC 20006
 (202) 637-0377, x108
jszanyi@cclp.org
www.cclp.org

¹ Mental Health America, formerly known as the National Mental Health Association, describes that interventions such as pepper spray are "detrimental to young people with emotional and behavioral disorders or those with histories of maltreatment." NATIONAL MENTAL HEALTH ASSOCIATION, PRIVATIZATION AND MANAGED CARE IN THE JUVENILE JUSTICE SYSTEM 25 (2007), <http://www1.nmha.org/children/justjuv/juvenilejustice-privatization.pdf>.

² See CENTERS FOR DISEASE CONTROL AND PREVENTION, FACTS ABOUT RIOT CONTROL AGENTS (2003) 1, available at http://www.bt.cdc.gov/agent/riotcontrol/pdf/riotcontrol_factsheet.pdf; Eugene J. Olajos & Harry Salem, *Riot Control Agents: Pharmacology, Toxicology, Biochemistry and Chemistry*, 21 J. APPLIED TOXICOLOGY 355 (2001).

³ C. Gregory Smith & Woodhall Stopford, *Health Hazards of Pepper Spray*, 60 NORTH CAROLINA MED. J. 268 (1999).

⁴ *Facts About Riot Control Agents* Center for Disease Control and Prevention (2018), <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>.

⁵ Colleen A. Kraft, *AAP Statement in Response to Tear Gas Being Used Against Children at the U.S. Southern Border* (2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Statement-in-Response-to-Tear-Gas-Being-Used-Against-Children-at-the-U-S-Southern-Border.aspx>.

⁶ *Id.*

⁷ *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*, The International Network of Civil Liberties Organizations, (2019), https://www.aclu.org/sites/default/files/field_document/weaponreport_final_web_1.pdf.

⁸ Pierre-Nicholas Carron & Bertrand Yersin, *Management of the Effects of Exposure to Tear Gas*, 338 BRITISH MED. J. 1554, 1556 (2009).

⁹ Marita Broadstock, *What Is the Safety of "Pepper Spray" Use by Law Enforcement or Mental Health Service Staff?* 14, New Zealand Health Technology Assessment Tech Brief Series (Sept. 2002).

¹⁰ Smith & Stopford, *supra* note 3, at 272.

¹¹ John E. Mendelson et al., *Capsaicin, An Active Ingredient in Pepper Sprays, Increases the Lethality of Cocaine*, 28 FORENSIC TOXICOLOGY 33 (2009).

¹² Findings Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Yvonne B. Burke, Chair, Los Angeles County Board of Supervisors (Apr. 9, 2003), available at http://www.justice.gov/crt/about/spl/documents/la_county_juvenile_findlet.pdf.

¹³ *Id.*

¹⁴ Findings Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Ronnie Musgrove, Governor, State of Mississippi (June 19, 2003), available at http://www.justice.gov/crt/about/spl/documents/oak_colu_miss_findingletpdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Findings Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Phil Bryant, Governor, State of Mississippi (Mar. 20, 2012), available at <http://www.justice.gov/crt/about/spl/documents/walnutgrovefl.pdf>.

¹⁸ Melinda Bird, *DRC letter supporting phasing out pepper spray in juvenile facilities*, Disability Rights California (Feb. 2019), <https://www.disabilityrightsca.org/post/drc-letter-supporting-phasing-out-pepper-spray-in-juvenile-facilities>.

¹⁹ Smith & Stopford, *supra* note 3, at 273.

²⁰ Michael Cohen, *The Health Effects of Pepper Spray: A Review of the Literature and Commentary*, 4 J. CORRECTIONAL HEALTH

CARE 73 (1997).

²¹ Texas Criminal Justice Coalition, *Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendations* (Nov. 2007), available at <http://www.njcn.org/uploads/digital-library/pepper.pdf>.

²² Linda A. Teplin et al., *Psychiatric Disorders in Youth in Juvenile Detention*, 59 *Archives Gen. Psychiatry* 1137 (2002).

²³ See *Thomas v. Bryant*, No. 09-11658, 2010 U.S. App. LEXIS 17419 (11th Cir. Aug. 20, 2010) (policy and practice of spraying mentally ill inmate with chemical agents when fully secured in his seven-by-nine foot cell and not presenting a threat of immediate harm to himself or others constituted “extreme deprivations violating the broad and idealistic concepts of dignity, civilized standards, humanity and decency embodied in the Eighth Amendment”) (internal quotation marks omitted); *Alexander S. v. Boyd*, 876 F. Supp. 773, 786 (D.S.C. 1995), *aff’d in part and rev’d in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 880 (1998) (use of chemical spray acceptable only for protection of staff or others when less intrusive methods of restraint are not reasonably available; Constitution does not permit use for protection of property or to “enforce orders”); *Morales v. Turman*, 364 F. Supp. 166, 173-74 (E.D. Tex. 1973); 383 F. Supp. 53, 77 (E.D. Tex. 1974), *rev’d on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev’d* 430 U.S. 322 (1977), *remanded for reh’g* 562 F.2d 993 (5th Cir. 1977) (use of chemical agents in juvenile facilities beyond situations involving an imminent threat to human life or an imminent and substantial threat to property violates the U.S. Constitution).

²⁴ *Thomas*, 2010 U.S. App. LEXIS 17419 at *60.

²⁵ See Texas Appleseed, Project Background, http://www.texasappleseed.net/index.php?option=com_content&view=article&id=12:texas-youth-commission-reform&catid=32:texas-youth-commission-reform&Itemid=276.

²⁶ *Id.*

²⁷ See Texas Juvenile Justice Department General Administrative Policy 97.23, available at <http://www.tjjd.texas.gov/policies/gap/97/gap9723.htm>.

²⁸ Texas Juvenile Justice Department, Office of Inspector General, Incident Reporting Center: 3rd Quarter Fiscal Year 2008 – OC Spray by Secure Facility, https://www.tjjd.texas.gov/oig/reports/oig_FY08_Qtr3_ocspray.html.

²⁹ Texas Juvenile Justice Department, Office of Inspector General, Incident Reporting Center: 3rd Quarter Fiscal Year 2010 – OC Spray by Secure Facility, https://www.tjjd.texas.gov/oig/reports/IRC_Q3_FY10/IRC_Q3_FY10.pdf.

³⁰ Riley Vetterkind, *Lincoln Hills youth prison continues use of pepper spray, strip searches*, *Wisconsin State Journal*, Apr. 18, 2019, https://madison.com/wsj/news/local/govt-and-politics/lincoln-hills-youth-prison-continues-use-of-pepper-spray-strip/article_aec31459-5c63-5537-869d-c7d789e6bf03.html; Stipulation for Consent Decree and Permanent Injunction at 6, *J.J. et al. v. Jon E. Litscher*, No. 17-CV-47 (W.D. Wis. 2017), https://www.aclu-wi.org/sites/default/files/field_documents/lincolnhillssettlementagreement.pdf.

³¹ Plaintiff’s Brief in Support of Motion for Preliminary Injunction at 8, *J.J. et al. v. Jon E. Litscher*, No. 17-CV-47 (W.D. Wis. 2017), https://jlc.org/sites/default/files/case_files/2017.4.19%20Brief%20in%20Supp.%20Mo.%20for%20Preliminary%20Injunction%20-%20FILE%20STAMPED.pdf.

³² Riley Vetterkind, *Lincoln Hills youth prison continues use of pepper spray, strip searches*, *Wisconsin State Journal*, Apr. 18, 2019, https://madison.com/wsj/news/local/govt-and-politics/lincoln-hills-youth-prison-continues-use-of-pepper-spray-strip/article_aec31459-5c63-5537-869d-c7d789e6bf03.html

³³ Melanie Bird, *DRC Letter Supporting Phasing Out Pepper Spray in Juvenile Facilities*, *Disability Rights California* (2019), <https://www.disabilityrightsca.org/post/drc-letter-supporting-phasing-out-pepper-spray-in-juvenile-facilities>.

³⁴ Andrea J. Sedlak, Introduction to the Survey of Youth in Residential Placement (Mar. 2010), available at <http://www.ncjrs.gov/pdffiles1/ojdp/218390.pdf>.

³⁵ Council of Juvenile Correctional Administrators, Issue Brief: Pepper Spray in Youth Facilities (May 2011).

³⁶ *Id.*

³⁷ Plaintiff’s Brief in Support of Motion for Preliminary Injunction at 10, *J.J. et al. v. Jon E. Litscher*, No. 17-CV-47 (W.D. Wis. 2017), https://jlc.org/sites/default/files/case_files/2017.4.19%20Brief%20in%20Supp.%20Mo.%20for%20Preliminary%20Injunction%20-%20FILE%20STAMPED.pdf.

³⁸ Matt Stiles, *L.A. supervisors ban pepper spray in juvenile detention halls after reports of abuse*, *Los Angeles Times*, (Feb. 2019), <https://www.latimes.com/local/lanow/la-me-pepper-spray-la-county-juvenile-ban-20190219-story.html>.

³⁹ Maya Lau, *Plan to phase out pepper spray this year at L.A.’s juvenile halls hits a potential snag*, *Los Angeles Times*, June 25, 2019, <https://www.latimes.com/local/lanow/la-me-pepper-spray-juvenile-detention-officer-county-violence-youth-20190625-story.html>

⁴⁰ *Id.*

⁴¹ Graham Lee Brewer *Oklahoma Office of Juvenile Affairs to End Use of Pepper Spray*, *The Oklahoman* (2017), <https://newsok.com/article/5545313/oklahoma-office-of-juvenile-affairs-to-end-use-of-pepper-spray>.

⁴² 10A OK Stat § 10A-2-7-604(E)(2016).

⁴³ 2015 Bill Text MS S.B. 2758 (IV)(A)(4)(a) (2015).

⁴⁴ State of Louisiana, Youth Services: Office of Juvenile Justice, History of Juvenile Justice in La., *available at* <http://ojj.la.gov/index.php?page=sub&id=229>.

⁴⁵ L.A.C. § 67:V.7517(C)(a)(n) (2012).

⁴⁶ NH St. § 126-U:4 (2010).

⁴⁷ Wis. Adm. Code § 347.47 (2010).

⁴⁸ Fla. Stat. § 985.645 (2010).

⁴⁹ N.J.A.C. § 13:92-7.5(q) (2005).

⁵⁰ K.A.R. 28-4-355b(c)(8) (1993).