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MOTION BY SUPERVISORS SHEILA KUEHL AND MARK RIDLEY-THOMAS

PHASING OUT THE USE OF OLEORESIN CAPSICUM (OC) SPRAY IN COUNTY JUVENILE FACILITIES

The use of Oleoresin Capsicum (OC) spray, more commonly known as “pepper spray,” has been declining across the country as a means of protection for probation officers who staff our nation’s juvenile halls and camps or as a means of discipline for juvenile inmates. In fact, California is 1 of only 15 states that continue to permit its use, and is 1 of only 5 states that allow probation officers to carry OC cans on their persons at all times (*Report by Legislative Counsel to the State Assembly Committee on Public Safety, April 2018*). In the past several years, methods of disciplining incarcerated youth have pivoted from physical discipline and forced isolation toward a more comprehensive and holistic approach. At the heart of this departure from a culture of punishment and control to one of support and rehabilitation is the growing awareness concerning the effects and treatment of trauma and what is effective in addressing and healing it. The fact that so many of the young people in our facilities have extensive trauma histories must be taken into account when considering how best to evaluate their needs and

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determine the kinds of practices staff employ when working with them. Trauma-informed techniques—including verbal de-escalation, cognitive behavioral therapy, multidisciplinary team involvement, and other alternatives enable youth to respond more positively and develop healthy coping skills that can have lasting effects on their behavior and ultimately, their outcomes. In the establishment of Campus Kilpatrick, Los Angeles County has helped to lead this change, with implementation of effective practices that have made the use of OC spray in that facility obsolete. Currently, the use of OC spray is only permitted in the County's three Juvenile Halls and 2 of its Juvenile Camps in the Challenger Youth Center (Camps Onizuka and McNair). Many counties in California, including Santa Clara, San Francisco, Solano and Sonoma, have banned the use of OC spray in all their juvenile facilities. It is time for the use of this spray in our juvenile facilities to be entirely eliminated, in a deliberate and progressive manner, and replaced with alternate forms of behavior management, increased staffing and staff training, evidence-based programming, and independent oversight.

On December 18, 2018, this Board, alarmed by the dramatic upswing in the use of OC spray in our Halls and Camps, and concerned about potential violations of Probation policy, directed the Office of the Inspector General (OIG) to investigate uses of force, particularly of OC spray, determine if its use was within Probation's policies and procedures, and to make recommendations consistent with its findings. That report, released on February 4th, 2019, details numerous abusive and possibly criminal violations of Probation policies surrounding uses of OC spray by Probation staff against many youth who posed no physical threat, who had not been warned, and who may have had medical and mental health conditions that, under current Probation policies, called for them to be protected from its use.

Currently, Probation's policies permit the use of OC spray as "the final and ultimate authorized" method to gain control of violent or dangerously out of control youth. It forbids its use on youth who are, among other things, taking psychotropic medications, suffer from asthma or other respiratory conditions, have a history of seizures, are pregnant, or clinically obese. It is permitted only to be deployed to the extent that "is necessary and appropriate to restore order and/or achieve and maintain control," and not as punishment or retaliation (Probation Safe Crisis Management Policy Directive). Unfortunately, the OIG report detailed numerous violations of these policies.

Youth were sprayed in the face, the back, and the buttocks. Youth were inadvertently or accidentally sprayed. Youth were sprayed for longer than the policy permitted. In at least two instances following an assaultive spraying, youth were locked and isolated in their cells, and deliberately denied access to water and other forms of decontamination. In some instances, only hot water and hot towels, which exacerbate the effects of OC spray, were provided.

Perhaps most significantly, the OIG reported that, rather than being the last resort in a continuum of actions, the use of OC spray was often looked to as the default or intermediary force option. In addition, the OIG report details that, following an OC spray assault, further punitive action was taken against some of the youth, as decontamination, nurse observation, medical treatment and de-escalation counseling was denied to them, all significant violations of Probation's policies.

Furthermore, the OIG reports, these uses of OC spray were often inaccurately reported, some containing untrue information that a youth "moved aggressively" in attempts to assault staff, when video review did not support that claim. It appears that, since these abuses of the Department's OC policy have come to light, Probation is in

the process of reviewing and revising its Safe Crisis Management and Critical Incident Review policies; however, the flaws pointed out in the OIG report do not appear to justify the apparent disregard for the safety of youth in Probation's care over the past year.

While the abusive and unjustified uses of OC spray raise the greatest alarm, even when used in a manner authorized by Probation policy, OC spray is now viewed by many juvenile justice experts as counter-productive, needlessly punitive, and potentially both seriously medically and psychologically harmful. The fact that the majority of Los Angeles County Probation Camps no longer employ it is a significant indicator that elimination of its use in all Probation facilities, when accompanied by intentional and well-considered alternatives, comprehensive staff training and support, and independent oversight, is more than possible. It is necessary and appropriate.

OC spray is measured in "Scoville" units. One Scoville is equivalent to the heat of a single jalapeno pepper. The heat of law enforcement issued OC spray is over a thousand times more powerful than the heat from a jalapeno pepper, and significantly more powerful than commercially available mace sprays, making the term "pepper spray," a quaint misnomer. An assault by OC spray will cause a person's eyes to immediately close, due to a "bubbling or boiling sensation," which is followed by temporary blindness and intense eye pain. The short term effects can last from 30 to 45 minutes, and include burning in the throat, wheezing, gagging, gasping, inability to breathe, and blistering of the skin (Center on Children's Law and Policy, *Fact Sheet, Chemical Agents in Juvenile Facilities, 2012*). Long term effects include acute hypertension, deterioration of nerve tissue and corneal damage, and in rare cases, cyanosis, a bluish discoloration of the skin that indicates a lack of blood flow and oxygen

(Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendations, Tex. Crim. Justice Coalition, 2007, Leah Pinney). Apnea and respiratory arrest may also occur, as those with asthma have a higher chance of complications related to being dosed with OC spray. It can reasonably be inferred that both the short and long-term effects on youth may be even more severe, long-lasting, and traumatizing, and it is difficult to predict whether a youth may have a severe or deadly reaction to OC spray (Chemical Agents in Juvenile Facilities Fact Sheet, Jason Szanyi, 2012). There is research that suggests that the use of OC spray can actually increase violence, as well as create liability for local governments, due to its improper use, such as that described in the OIG report (Leah Pinney, *ibid*).

Jurisdictions in California that no longer allow the use of OC spray in their juvenile facilities have turned to alternate methods that have, at their core, an overriding concern for both the youth and staff working and living there. All facilities in the County should follow suit. Options to consider should include comprehensive staff training and education regarding adolescent development, cognitive behavioral techniques, non-threatening verbal and non-verbal communication, and evidence based programming such as a rewards system, and mandatory annual re-education. Review of use of force and reporting policies should expose the weak areas of enforcement that allowed the abuse to go on undetected for so long. In order for youth to be free from the threat of this dehumanizing and violent discipline method, it is necessary for the staff to be thoroughly trained in appropriate alternative options, and for the Department to support necessary culture change.

WE, THEREFORE, MOVE that the Board of Supervisors direct:

(1) The Chief Probation Officer, (Probation), in collaboration with County

Counsel, the Office of Inspector General, the Department of Mental Health, the Public Defender, Alternate Public Defender, Independent Juvenile Defender Program, Los Angeles County Office of Education, Probation staff and community advocates, to utilize the findings from the Probation Reform Implementation Team special hearing, to report back in 60 days on a plan for the phased elimination of the use of OC spray in all Los Angeles county camps and Halls before the end of calendar year 2019; and

(2) Probation, along with the County Departments and stakeholders set out above, to create a plan that considers best practices for options for physical discipline, both short and long-term, and includes mandatory training for all Probation staff working in the Halls and Camps, implementation of pilot programs at all Halls and Camps currently using OC spray, the restriction of access to OC spray while being phased out, and a timeline for implementation of alternate forms of supervision and behavior management.