

PRESS RELEASE

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**LEGAL ADVOCATES AND COMMUNITY GROUPS FILE DEPARTMENT OF JUSTICE COMPLAINT
OVER PEPPER SPRAY AND MISTREATMENT OF YOUTH IN SAN DIEGO JUVENILE HALLS**

A broad group of legal and community organizations today filed a formal complaint urging the U.S. Department of Justice (DOJ) to investigate the use of Oleoresin Capsicum spray (pepper spray) and other questionable practices used in San Diego County juvenile detention facilities. The complaint offers extensive evidence that pepper spray is routinely used in these facilities in violation of youths' constitutional rights to be free from excessive force and not to be incarcerated in conditions that pose a substantial risk of serious harm. These practices disproportionately impact youth of color. While Latino and African American youth make up 53% of San Diego County's total high school enrollment, they comprise 81% of all youth detained in the county's five juvenile detention facilities. The complaint was jointly filed by the **Youth Law Center**; **California Rural Legal Assistance, Inc.** and a San Diego area coalition of community organizations, **El Grupo**, the **NAACP San Diego Chapter**, **Border Angels**, **Latinos Organizing for Action**, **Alliance San Diego**, **CSA San Diego County**, **American Friends Services Committee-San Diego**, the **San Diego La Raza Lawyers Association** and **Kali Konnect**.

"We want to send a clear message to the County of San Diego that we, as community leaders, do not want our young people to be treated this way," declared civil rights attorney Victor Torres, on behalf of El Grupo, a coalition of community organizations. "We understand that young people who get into trouble need to be held accountable, but these extreme practices just make kids more hostile to authority and less able to accept the help that is offered." NAACP San Diego Chapter President Lei-Chala I. Wilson added that "The rampant use of pepper spray fosters a punitive, dehumanizing atmosphere that runs directly counter to what the system is trying to accomplish with young people." Youth Law Center attorney Sue Burrell agreed that the complaint is needed because San Diego County Probation is out of touch with accepted national practice and the underlying rehabilitative goals of the juvenile justice system. "This is a county that professes to be interested in positive youth development and trauma-informed care, but they are spraying young people as though they were ants."

The complaint details the reasons DOJ should act under its authority granted by the Civil Rights of Institutionalized Persons Act (CRIPA). It documents that pepper spray was inappropriately used on youth at risk of suicide or self-harm, youth who failed to follow verbal instructions, for room extractions, and on youth with sensitive medical conditions. The complaint also presents findings with respect to inadequate policies and procedures, the excessive amount of pepper spray used, and the failure to employ less restrictive alternative interventions first. The complaint charges that these deficiencies violate young

people's rights under the Fourteenth Amendment of the U.S. Constitution to be free of conditions that "amount to punishment" and substantially depart from accepted professional judgment. It discusses both the physical harm caused by pepper spray and the ways in which it interferes with what the juvenile justice system is supposed to be doing in rehabilitating young people.

The complaint follows years of negative media reports and previous threats of litigation. Nonetheless, in 2012, San Diego City Beat reported that pepper spray had been used 461 times in 2011. Recent data reveals that it was used 320 times during 2013. This is a shocking incidence of use, given national survey findings from the Council of Juvenile Correctional Administrators that only 29% of juvenile facilities use pepper spray at all, and that only a few permit staff to carry it on their person. In April 2013, Victor Torres and Youth Law Center attorneys met with key Probation Department Staff to urge them to change their practices. When Probation maintained that pepper spray was being used only when it was absolutely necessary to protect youth and staff from harm, Youth Law Center sought and obtained the actual incident reports of use for 2012 and 2013, and other documents related to pepper spray and behavior management in the facilities.

"The reality was much worse than we expected," said Youth Law Center Staff Attorney Deborah Escobedo. "They were routinely spraying youth on suicide watch, for room extractions, if a youth simply failed to follow verbal instructions -- and they even used it on a 12 year old. In many situations, other youth and staff were subjected to painful "overspray" as they were caught in the crossfire."

Although the primary focus of the complaint is on pepper spray use, it also urges DOJ to investigate additional issues that surfaced during the investigation. Reports revealed that staff routinely impose disciplinary (locked room) confinement of two or more days on youth who have been pepper sprayed – a troubling practice given the overwhelming evidence of harm caused by solitary confinement of juveniles. In addition to being pepper sprayed, suicidal youth may have their clothing physically cut off, and then may be subjected to disciplinary confinement. Other youth may be restrained in wrist chains, handcuffs and leg irons when they leave their rooms – even when showering. Youth in disciplinary confinement are not allowed to attend school and receive only minimal educational services in their cells. The facility staffing ratios fall below what is required by the Prison Rape Elimination Act, and facility practices do not appear to meet federal standards with respect to cross-gender supervision.

Under CRIPA, DOJ reviews complaints to determine whether the allegations of systemic violations of federal rights merit further investigation. The Attorney General then gives the jurisdiction notice and performs its own investigation. If violations are substantiated, the Attorney General sends a findings letter setting forth the violations, the evidence supporting the findings, and the minimum steps needed to correct the violations. The jurisdiction then has 49 days to take the necessary steps needed to correct the violations. If the DOJ is not satisfied with the response, it may then file suit. Although there are timelines for each step of the process, DOJ need not act at each point, and the process often takes much longer. Cases filed in court may proceed to trial or may result in court supervised settlement agreement, often utilizing special court monitors or panels to oversee corrective action.

Read the complaint at <http://www.ylc.org/2014/07/ylc-files-doj-complaint-over-use-of-pepper-spray/>

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