



PEPPER SPRAY IN JUVENILE FACILITIES

Overview

Pepper spray, or oleoresin capsicum (OC) spray, is a type of chemical restraint that contains capsaicinoids extracted from the resin of hot peppers. According to a report published by the National Institute of Justice, pepper spray, “incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes...and temporarily restricting breathing to short, shallow breaths.”¹ While OC spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use has been shunned by juvenile correctional agencies because of the harm it causes to youths and the negative impact on staff-youth relationships, the key to successful juvenile rehabilitative programming. Very few states authorize its use and in the states that allow its use in policy, most prohibit the use except as a last resort and with many conditions and few facilities put it into practice.

Most studies conducted on the safety and effectiveness of pepper spray focus on its use in law enforcement situations, and most existing studies have flaws or limitations that prevent conclusive results. Furthermore, existing studies have not focused on the safety, effectiveness or long-term impact of using pepper spray on children in juvenile confinement settings.²

While few studies focus specifically on pepper spray use in juvenile settings, recent research on other types of restraint use (physical and mechanical) in juvenile confinement settings shows that applying restraints disrupts correctional climates by creating anger and feelings of unfair use of authority, in addition to negatively impacting staff. One recent study found that restraints are often applied as punishment rather than in response to

Figure 1. Nearly 90 percent of juvenile correctional agencies do not authorize staff to carry chemical sprays in secure facilities

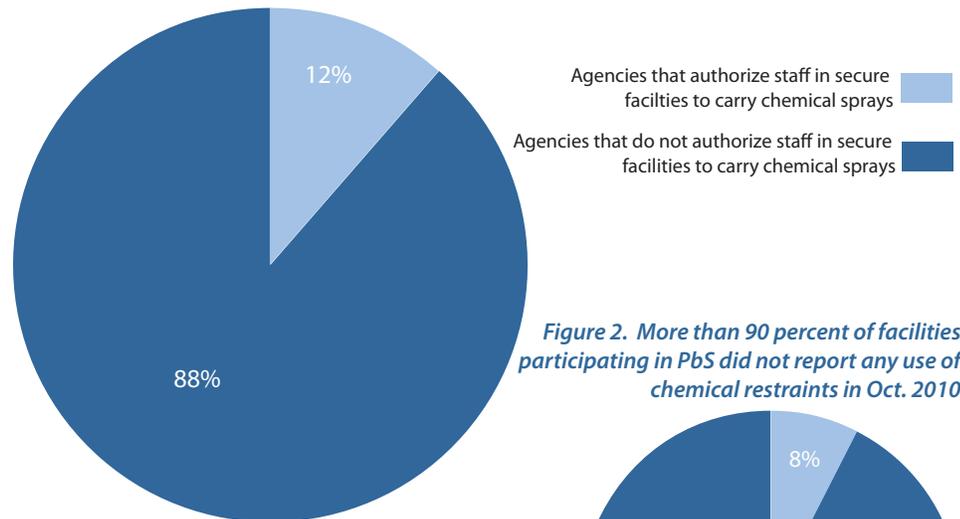
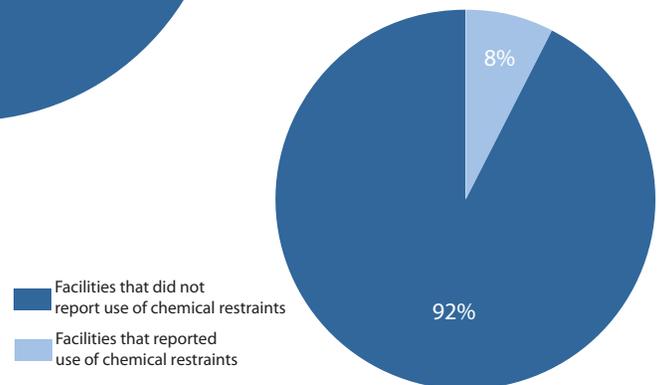


Figure 2. More than 90 percent of facilities participating in PbS did not report any use of chemical restraints in Oct. 2010



immediate threats of violence; youths describe incidents of restraint as causing physical and emotional pain; staff report an emotional impact of restraining youths.³ Another study found that facilities with high numbers of restraint incidents are more likely to have higher rates of safety problems, including youth and staff injury, suicidal behavior, youths injured by staff and fear among youths.⁴

Current Practices State Policies

The Council of Juvenile Correctional Administrators (CJCA) conducts an annual survey of all state juvenile correction agencies in the United States. Results from the survey show that only six (12 percent) of the agencies authorize staff to carry chemical sprays in secure facilities, and just 15 agencies (29 percent)

indicated that chemical restraints are authorized by their agency but staff are not necessarily authorized to carry spray on their person. In nine of these 15 agencies, chemical spray is available as a last resort measure, not carried on the person, to prevent serious injuries to youths and staff.

Related policies and practices in those states show they have adopted an overall more punitive and adult-corrections approach to managing youths in facilities. Those states generally authorize other restrictive sanctions to respond to misbehavior- separate segregation units removing youths from regular programming and longer allowable times youths can be placed in isolation. Some states' juvenile justice policies have been carried over from when the agency was part of the adult corrections department and others have been a result of pressure from staff, unions and politics.

TABLE 1. BEHAVIOR MANAGEMENT

Jurisdiction	Agency uses specialized living units to separate youths from the general population	Maximum time a youth can be held in isolation	Agency authorizes use of chemical restraints	Agency authorizes staff to carry chemical spray in secure facilities	Jurisdiction	Agency uses specialized living units to separate youths from the general population	Maximum time a youth can be held in isolation	Agency authorizes use of chemical restraints	Agency authorizes staff to carry chemical spray in secure facilities
Alabama	✓	24 hrs ¹			Montana	✓	24 hrs		
Alaska		NA			Nebraska	✓	5 days		
Arizona	✓	72 hrs	✓		Nevada	✓	5 days		
Arkansas		NA			New Hampshire	✓	5 days		
California	✓		✓	✓	New Jersey	✓	5 days	✓ ⁸	
Colorado		NA			New Mexico		NA		
Connecticut*		NA			New York		NA		
Delaware		NA			North Carolina		NA		
District of Columbia	✓	72 hrs ²			North Dakota		NA		
Florida*	✓				Ohio	✓	8 days ⁵		
Georgia	✓	72 hrs	✓		Oklahoma	✓	3 hrs	✓	
Hawaii*		NA			Oregon	✓	5 days		
Idaho	✓	³	✓		Pennsylvania		NA		
Illinois*	✓	30 days ⁴	✓	✓	Puerto Rico**		NA	✓	✓
Indiana	✓	3 days	✓	✓	Rhode Island		NA		
Iowa**	✓				South Carolina*	✓	8 hrs		
Kansas	✓	30 days			South Dakota	✓	48 hrs ⁶		
Kentucky		NA			Tennessee	✓		✓	
Louisiana	✓	72 hrs			Texas		NA	✓	✓
Maine		NA			Utah**		NA		
Maryland	✓	72 hrs			Vermont**		NA		
Massachusetts		NA			Virginia	✓	5 days		
Michigan	✓	72 hrs			Washington	✓	24 hrs	✓ ⁹	
Minnesota	✓		✓	✓	West Virginia	✓			
Mississippi	✓	72 hrs	✓ ⁷		Wisconsin	✓	6 days	✓	
Missouri	✓	24 hrs			Wyoming		NA		

* Agency has not yet responded to 2011 survey; 2010 responses shown in table.

** Agency has not responded to 2011 or 2010 surveys; 2009 responses shown.

1 24 hours without additional authorization

2 Pre-hearing segregation, 20 hours; 72 hours may be issued by a hearing officer.

3 Shortest time possible (decided by staff with the safety of juvenile and staff priority)

4 30 days for serious offenses such as Escape.

5 No more than 3 days pre-disciplinary hearing and up to 5 additional days for disciplinary sanction.

6 If a youth is placed in Administrative Detention due to an alleged violation of a major prohibited act(s) or pending an investigation of a possible violation of a major prohibited act(s), he/she will normally either be served with a copy of the disciplinary report or released from Administrative Detention within twenty-four (24) hours of their placement in Administrative Detention. No juvenile will be confined in Administrative Detention for longer than forty-eight (48) hours, exclusive of weekends and holidays, prior to a hearing.

7 See Policy #VII.1 at <http://www.mdhs.state.ms.us/pdfs/dysnewpol/dyssec07/dyssection071.pdf>

8 See New Jersey Administrative Code 13:95-3.9 at <http://www.michie.com/newjersey/lpext.dll?f=templates&fn=main-h.htm&cp=>

9 See Washington JRA Policy 2 at <http://www.dshs.wa.gov/pdf/jra/bulletin02.pdf>

Please see Table 1 on the opposite page for more details on state agency behavior management policies reported to the CJCA Yearbook survey (preliminary 2011 data except where noted) and gathered from state statutes and administrative rules.

Facility Practices

As research and experience has shown, a written policy does not necessarily translate into practice as intended when implemented in facilities.⁵ Most of the anecdotal information about use of restraints that is made public are reports of abuse and dangerous practices, investigations and litigation.

However nearly 200 facilities across the country voluntarily participate in the national Performance-based Standards (PbS)⁶ program and report all types of restraint practices used during two data collections a year. PbS' facility practice data from October 2010 shows a similar small minority of facilities use chemical restraints (15 facilities or eight percent of all participants, whom include facilities in four of the six states that authorize staff to carry chemical spray.) Looking at the individual facilities that reported using chemical restraints, 90 percent of the uses came from one state, again showing the practice is not accepted as appropriate for use in facilities for youths. The 15 facilities reporting use of chemical restraints were comprised of three detention centers, 11 correctional facilities and one assessment center. The single state reporting the majority of usage — 90 percent of all usage reported — was reporting on two detention centers and six correctional facilities.

PbS requires participants to report practices in the context of a blueprint of operations to achieve safe and healthy facility cultures that rehabilitate youths and prevent future crime. PbS provides more than 100 outcome measures and works with facilities to monitor all aspects of operations and better understand how practices affect conditions. Facilities conduct surveys of youths and staff members as part of the data collection for PbS. Two of the key outcomes these surveys inform include Safety 13, percent of youths who report that they feared for their safety within the last six months, and Safety 14, percent of staff who report that they feared for their safety within the last six months.

Two of the three detention sites that reported instances of chemical restraint had percentages of youth and staff who feared for their safety that were above the detention field average for October 2010. Similarly, eight of the 11 corrections sites reported percentages of youths fearing for safety that were well above the corrections field average (22.4 percent). Five of the 11 corrections sites also reported percentages of staff fearing for safety that were well above the corrections field average (23 percent).

CJCA's collective experience shows that overreliance on restraints, whether they be chemical, physical, mechanical or other, compromise relationships between staff and youths, one of the critical features of safe facilities. International and national standards related to chemical restraint use reinforce the fact that

chemical sprays should never be used as a form of punishment, and that if use is authorized, strict rules are applied for usage, reporting and post-use practices (see following page).

- 1 U.S. Department of Justice, National Institute of Justice. (1994). *Oleoresin Capsicum: Pepper Spray as a Force Alternative* (NCJ 181655). Retrieved May 2, 2011, from <http://www.ncjrs.gov/pdffiles1/nij/grants/181655.pdf>
- 2 See Broadstock, M. (2002). *What is the safety of pepper spray use by law enforcement or mental health service staff?* New Zealand Health Technology Assessment, Department of Public Health and General Practice. Retrieved May 2, 2011, from http://nzhta.chmmeds.ac.nz/publications/pepper_spray.pdf. See also Pinney, L. (2007). *Pepper spray in the Texas Youth Commission: Research review and policy recommendations*. Texas Criminal Justice Coalition. Retrieved May 2, 2011, from http://www.criminaljusticecoalition.org/files/userfiles/juvenilejustice/tcjc_publications/Pepper_Spray_in_TYC.pdf
- 3 Smith, M. & Bowman, K.M. (2009). The restraint spiral: Emergent themes in the perceptions of the physical restraint of juveniles. *Child Welfare* 88: 57-83.
- 4 Snyder, R.B. & Kupchik, A. (2011). *Performance-based Standards for Youth Correction and Detention Facilities: 2011 Research Report*. Report to the Council of Juvenile Correctional Administrators.
- 5 Parent, D.G., Lieter, V., Kenney, S., Livens, L., Wentworth, D. & Wilcox, S. (1994.) *Conditions of confinement: Juvenile detention and corrections facilities* (NCJ 145793). Office of Juvenile Justice and Delinquency Prevention.
- 6 PbS is a set of national standards and goals setting the highest expectations for juvenile facility operations. PbS uniquely includes data collection twice a year and the reporting of outcome measures to continually monitor practices at facilities, whether they are aligned with agency policies and philosophy and reflect best practices. The data is provided to facilities as part of a self-improvement process to continually promote and integrate effective services and approaches for youths in custody. For more information please visit: http://cjca.net/cjcaresources/93/PbS_InfoPacket.pdf

Suggestions for Further Reading

[Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendations, Texas Criminal Justice Coalition, 2007](#)

[Suit seeks to ban pepper spray at Texas juvenile prisons, Associated Press, Sept. 13, 2007](#)

[Texas Youth Commission shifts inmate pepper spray policy, Steve McGonigle, The Dallas Morning News, Nov. 28, 2007](#)

The Use of Pepper Spray in Texas Youth Commission Facilities ([Letter #1](#), [Letter #2](#)), Dana Shoenberg and Mark Soler, 2007

[Oleoresin Capsicum: Pepper Spray as a Force Alternative, U.S. Department of Justice, National Institute of Justice, 1994](#)

[The Effectiveness and Safety of Pepper Spray, U.S. Department of Justice, National Institute of Justice, 2003](#)

[What is the safety of "pepper spray" use by law enforcement or mental health service staff?, New Zealand Health Technology Assessment, Department of Public Health and General Practice, Marita Broadstock, 2002](#)

[Fact Sheet: Needed JJDPA Reforms to Protect Incarcerated Youth, Act 4 Juvenile Justice, no date](#)

STANDARDS RELATED TO USE OF CHEMICAL AGENTS IN JUVENILE CONFINEMENT SETTINGS

All language listed in this section has been excerpted from the cited source (see notes at bottom).

United Nations Standard Minimum Rules for the Treatment of Prisoners¹

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

Performance-based Standards (PbS) for Juvenile Correction and Detention Facilities²

Order Standard 2: Minimize use of restrictive and coercive means of responding to disorder.

Expected Practices:

- OEP8:** Staff follows a continuum of responses, from least restrictive to more restrictive, to respond to disorder.
- OEP9:** Youth care staff demonstrate competence in de-escalation and other non-physical intervention techniques.
- OEP10:** Youths are not cuffed to walls, beds, fixtures or fences.
- OEP11:** Staff, not youths, respond to youths' disorder, misbehavior or disruption of programming.
- OEP12:** Chemical restraints and restraint chair/bed are used only as a last resort following appropriate protocol.
- OEP13:** Stun-guns are not part of the facility's response continuum.

Processes:

- OP5:** Policies govern the use of restraints
- OP6:** Staff training covers safe and appropriate use of restraints.
- OP7:** Staff is trained in the proper use of restraints.
- OP8:** Staff and youth are trained in deescalation and non-physical intervention techniques.
- OP9:** A system exists to investigate, review, and make recommendations after incidents of disorder.

If a facility permits the use of chemical restraints, they should only be used as a last resort after other techniques have failed to subdue the youth. Qualified medical personnel must institute decontamination procedures immediately after application of chemical restraints. Restraints should never be used as punishment for misconduct.

American Correctional Association (ACA) Standard on Use and Control of Chemical Agents³

Juvenile Correctional Facilities (4-JCF-2A-27)

The level of authority, access, and conditions required for the availability, control, and use of chemical agents and equipment related to its use must be specified. Chemical agents are used only with the authorization of the facility administrator, medical director, or designee.

1. Chemical agents and equipment related to its use are inventoried at least monthly to determine their condition and expiration dates.
2. Personnel using chemical agents to control juveniles submit

written reports to the facility administrator or designee no later than the conclusion of the tour of duty.

3. All persons contaminated in an incident involving the use of a chemical agent must receive an immediate medical examination and treatment.

Juvenile Detention Facilities (3-JDF-3A-26)

Written policy, procedure and practice governs the availability, control and use of chemical agents and related security devices and specify the level of authority required for their access and use. Chemical agents are used only with the authorization of the facility administrator or designee.

Institute of Judicial Administration - American Bar Association (ABA) Standards for Juvenile Justice, Standards Relating to Corrections Administration⁴

7.8 Limitations on restraints and weapons.

A. Mechanical restraints.

Given the small size of programs, it should not be necessary to use mechanical restraints within the facility. The program director may authorize the use of mechanical restraints during transportation only.

B. Chemical restraints.

In extreme situations, chemical restraints may be used under strict controls. The department should develop regulations governing their use.

C. Weapons.

Under no circumstances should personnel take any weapons into the facility.

Commentary

The standard holds that mechanical and chemical restraints should not be used within facilities. The rationale for this position is: 1. given the small size of the program these methods are not necessary; and 2. there has been a consistent history of abuse of these methods in juvenile corrections settings...In extreme situations a facility may use chemicals as a restraint. The department should develop regulations governing use...such regulations should contain stringent controls on access, and provide that chemical restraints may be used only to prevent serious injury to persons or property.

Juvenile Detention Alternatives Initiative (JDAI) Detention Facility Self-Assessment Standards⁵

VI. Restraint, Isolation, Due Process, and Grievances

A. Physical Force, Mechanical Restraints, and Chemical Agents

3a. Written policies, procedures, and actual practices prohibit use of chemical agents, including pepper spray, tear gas, and mace.

¹ See page 5 of United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at <http://www2.ohchr.org/english/law/pdf/treatmentprisoners.pdf>

² Performance-based Standards Learning Institute. (2011). *Goals, Standards, Outcome Measures, Expected Practices and Processes*.

³ American Correctional Association (2008). *Performance based Standards for Juvenile Correctional Facilities (4th ed.)* and American Correctional Association (1991). *Standards for Juvenile Detention Facilities (3rd ed.)*.

⁴ See pages 145-146 of IJA-ABA Juvenile Justice Standards Relating to Corrections Administration, Standard 7.8, available at http://www.americanbar.org/groups/criminal_justice/pages/JuvenileJusticeStandards.html

⁵ See pages 89-90 of Annie. E. Casey Foundation, Juvenile Detention Alternatives Initiative, Detention Facility Self-Assessment (A Practice Guide to Juvenile Detention Reform). (2006). Available at <http://www.aecf.org/upload/PublicationFiles/jdai0507.pdf>