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Pepper spray use at Youth Commission draws fire

Critics say policy violates 1984 court order, won't reduce injuries.

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Texas Youth Commission employees are using pepper spray to control unruly youths in state lockups, a move critics say could violate a 1984 court order prohibiting the use of mace and tear gas except to control riots.

Although pepper spray previously was allowed as a last resort, a recent directive allows employees to use the chemical agent before trying physical restraints, which have resulted in numerous injuries to staff and youthful offenders.

National experts are questioning whether expanded use of chemical agents will limit injuries or cause further trouble inside Texas' juvenile lockups.

"It's not a reform at all. It's a step in the other direction," said Patricia Arthur, a senior staff attorney at the National Center for Youth Law who is considered an expert on chemical agents in juvenile lockups.

"It doesn't address a problem. It will only compound it."

Steve Bercu, an Austin bookstore executive who was a lead attorney in a landmark lawsuit two decades ago against the state over unconstitutional conditions in Texas' juvenile lockups, was more blunt: "That's something they shouldn't be doing. It's definitely a violation of the settlement agreement. No question."

Youth Commission officials said Thursday that its lawyers are looking at whether the change conflicts with the 23-year-old court settlement and said the pepper spray is a water-based formula that is milder than the one used at Texas' adult prison system.

"Too many people were getting hurt before, and we'll see if this reduces the injuries," said agency spokesman Jim Hurley, who volunteered to have himself doused with pepper spray at agency headquarters this month to test its effects. "If it's between this and a physical restraint,

with a shoulder out of socket or a broken arm, this is a walk in the park \u2014 although I don't think I'd go back to that park again."

Though Youth Commission policies for several years had allowed the use of chemical agents to quell major disturbances or life-threatening situations, the agency's acting executive director, Dimitria Pope, greatly expanded its use in an Aug. 2 directive.

"While the Texas Youth Commission's \u2026 overall philosophy that force should only be used as a last resort remains unchanged, we must change the way force is applied to reduce the number and severity of injuries to youth and staff," the directive states.

The staff logged 447 injury claims in little more than a year because of restraint-related incidents. In just nine months, 913 incarcerated youths were injured while being physically restrained by correctional officers and other staff, many of them with dislocated shoulders and broken bones, medical officials disclosed at a legislative hearing this year.

The directive allows the use of pepper spray \u2014 also known as OC or oleoresin capsicum spray \u2014 by trained staff before any physical restraint "whenever practical."

Hurley said the directive is part of an ongoing review by the agency of all of its use-of-force policies, a review that he said will include deciding whether pepper spray should continue to be used. A week before the directive was issued, Will Harrell, the Youth Commission's ombudsman, registered his "grave concerns" about the policy change.

"Courts have found the use of OC spray to deal with merely uncooperative or unresponsive kids violates the Constitution," Harrell wrote in a July 25 memo. "The (1984 court) settlement agreement explicitly prohibits the use of pepper spray in most instances."

Indeed, a special report by Prairie View A&M University juvenile justice experts that was forwarded to Youth Commission officials in late July noted that "several states have either banned or severely limited the use of chemical agents such as OC pepper spray. \u2026 The Child Welfare League of America has posted the position that all chemical restraints should be banned from use in the juvenile justice system."

Soon after the directive went out, complaints began coming in.

Houston resident Rose Sanchez said her 17-year-old grandson, Ryan, was pepper-sprayed two weeks ago after he scuffled with and kicked a staff member in the chest. "Two other boys were sprayed, too, and they were allowed to wash off. My grandson had his clothes taken off, and he was locked in a cell and not allowed to wash off," she said. Youth Commission officials denied that, saying the youth was "decontaminated" according to policy.

Rhonda Garrett, whose 19-year-old son is at the Giddings State School, said he told her about one youth who was sprayed because he did not stop running, as a guard had ordered. The spray

"bounced off one kid and hit another," she quoted her son as saying. She added: "This just seems to be to be encouraging a worse atmosphere in these institutions."

At several youth lockups, correctional staff insist privately that though they are not thrilled with the expanded use of chemical agents, they see little alternative. The reason, they say, is that behavioral programs have been canceled and sidelined amid the continuing turmoil within the agency, and physical restraints that might result in injury are discouraged.

All said they could not be quoted by name because agency officials have instructed them to remain quiet.

Barry Krisberg, president of the National Council on Crime and Delinquency, said he was surprised by the policy change, partly because a blue-ribbon panel of juvenile corrections experts empaneled last spring to help Texas chart a course for reform, recommended against the use of pepper spray.

"Pepper spray is not a good idea," Krisberg said. " The fact that they think they need it probably indicates inadequate staff training, a deteriorating environment inside these facilities, some breakdown in control."

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