

KERN COUNTY PROBATION DEPARTMENT



TR Merickel
Chief Probation Officer

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(Via e-mail and First Class U.S. Mail)

Melinda Bird, Litigation Counsel
Disability Rights California (DRC)
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Re: Response to Disability Rights California's January 2018 Investigation Report: Kern County Juvenile Correctional Facilities

Dear Ms. Bird:

The Kern County Probation Department (the "Department") disagrees with the findings of Disability Rights California ("DRC") as set forth in its January 2018 Investigation Report ("Report"). As explained more fully below, the Report represents an unfair and inaccurate portrayal of the Department. The safety and welfare of the youth in the Department's facilities are the Department's and staff's highest priorities, as evidenced by the Department's numerous services and programs to assist and rehabilitate youth, new and improved programming, staff training, collaborative partnerships, on-going commitment to continually improving its processes and procedures, and staying in compliance with the law.

Despite the DRC's and Department's differences in opinions with regard to the Report, the Department is always interested in finding and adopting new and better ways to rehabilitate, educate and improve the lives of youth in its facilities, and is continually striving to make improvements. The Department recognizes that the DRC brings experience and insight in advocating for youth with disabilities within the facilities, and is willing to bring in an outside and independent expert to examine its policies, procedures and training in this regard.

It should be noted that DRC did not initiate its investigation into Kern County Juvenile Correctional Facilities based on any allegations or complaints against the Department. Further, it should be noted that the Department is regularly audited and reviewed by numerous outside and independent bodies, including: Board of State and Community Corrections ("BSCC"), Juvenile Justice Commission, Grand Jury, and Juvenile Court Judges. Pursuant to the Department's most recent BSCC audit, "...there are no issues of non-compliance." Further the audit report states, "...there is no corrective action

required at this time as your facilities are in compliance with Title 15 and Title 24 Regulations.”

The Department is always seeking ways to improve and stay current with best practices in the field of juvenile corrections. It should be noted, that a number of the recent improvements are completely independent of the DRC’s investigation.

The Department offers numerous positive programs and services in addition to mental health and educational services. These include a Juvenile Programming Unit consisting of Probation Program Specialists that provide evidence-based cognitive behavioral treatment and life skills to youth; numerous vocational and job training programs; community volunteering; field trips to museums, colleges and sporting events; incentives for good behavior such as access to a youth center with games, commissary and social activities; incoming volunteer services that offer many services including religious services, reading assistance, Miracle Mutts and much more. The Department and staff are wholly committed to ensuring the lives of the youth in its facilities are positively impacted. The Department and staff care greatly about the youth in the facilities. Staff enter the field of probation because they want to make a difference in people’s lives, and do so every day.

A. RESPONSES TO DRC’S SPECIFIC FINDINGS:

The majority of the allegations and findings in DRC’s Report are based on anonymous youth statements which the DRC cannot corroborate. During the course of the investigation, the DRC initially provided the Department the names of several youth whom it believed to be at serious risk of harm based on statements and allegations of named youth. In almost every case, the Department was able to disprove the allegations. In other cases, the Department took immediate action to resolve the concerns. For example: 1) One youth said they had not seen a mental health professional, when in fact, they had been seen on three separate occasions and was currently on a list to enter into an evidence-based program known as ART (Aggression Replacement Therapy); 2) One youth said they had not been able to see a doctor for their psychiatric medications, when in fact, the day the youth entered the facility, three separate referrals for psychiatric medications were submitted and the youth was seen by a nurse and then by a doctor the next day and began taking medications; 3) One youth said they were allergic to bees but was told there were no Epi-Pens in the facility, when in fact it had been determined by medical staff that no Epi-Pen was necessary; and further, when Epi-Pens are needed, they are prescribed and kept within the unit of the youth; 4) One youth felt they needed counseling or a mental health evaluation due to abuse from a family member, but was not receiving such counseling, when in fact, the youth had never disclosed information about the abuse to the Department, though the Department uses multiple screening and assessment tools including the MAYSI (Massachusetts Youth Screening Instrument) and a PREA (Prison Rape Elimination Act) assessment; 5) One youth told DRC that they

needed a mental health evaluation and had not received one, when in fact, the youth had been seen by Juvenile Probation Psychiatric Services (“JPPS”) for individual services on six (6) separate occasions the month prior and, had already had a psychiatric evaluation.

It is the Department’s strong position that if provided the names of youth whose statements were used as a basis for the DRC’s allegations and findings in its Report, the Department would be able to similarly disprove such allegations, and/or address such concerns in an immediate and expeditious manner.

To specifically address some of the complaints raised in the report:

1. Use of Force, Isolation and Probation’s Punitive Non-Rehabilitative Culture.

a. Pervasive Use of Pepper Spray:

The use of Oleoresin Capsicum Spray, aka, O.C. Spray (“Pepper Spray”), is legal for use in juvenile detention facilities in the State of California. The use of pepper spray is not only legally allowed, but in many circumstances necessary, when objectively reasonable, for the safety and security of staff and youth within the facilities. In fact, appropriate use of pepper spray can reduce injury to both staff and youth by eliminating or reducing the need for physical force. Department staff are trained in the use of pepper spray and other use of force tactics through Standards and Training for Corrections (“STC”), State approved classes.

Furthermore, the Department’s policies and procedures concerning the use of Pepper Spray within the facilities are within the law. Contrary to the DRC’s misinterpretation of the Department’s policies and procedures concerning the use of Pepper Spray, use of Pepper Spray on youth that are non-violent or subdued in restraints is forbidden by policy. Pepper Spray is not permitted for “mere verbal threats of violence.” Furthermore, there is an extensive administrative review process for all incidents involving use of force, including the use of pepper spray. If staff use Pepper Spray on youth that are non-violent or subdued the incident would be investigated, and the appropriate level of discipline would be imposed.

The DRC’s Report provides that “Probation records on the use of pepper spray confirm that it is used in response to non-violent acts, such as ‘defiance,’ ‘threats,’ ‘unit disturbance, and ‘peer friction,’” as well as “to address threats of self-harm and suicide attempts.” However, a thorough review of the reports associated with the Pepper Spray logs, reveal that the use of Pepper Spray was warranted as youth posed a safety and security risk. For example, a youth who was physically assaulting another youth and was defiant in listening to staff instruction to stop the assault could be pepper sprayed in order to stop the assault. However, it would be outside of policy for a youth to be pepper sprayed for a mere non-violent defiant act. The totality of all circumstances must be considered.

The Report also provides that, "In practice, youth are often not adequately decontaminated immediately after being pepper sprayed." However, in fact, policy dictates that decontamination be offered to the youth as soon as possible. Furthermore, policy provides that staff indicate the manner in which the youth was decontaminated and the duration thereof.

The DRC's philosophy is that "Use of Pepper Spray is Harmful and Should Be Prohibited," however, such prohibition is not a legal requirement. As support for its position, the DRC provides that the "Juvenile Detention Alternative Initiative (JDAI) prohibit the use of pepper spray in juvenile facilities." JDAI is an initiative of the Annie E. Casey Foundation, a private philanthropy group. JDAI standards are not legal requirements. Notwithstanding, the Department is willing to explore ways in which it can reduce the use of Pepper Spray in its facilities and include additional documentation in its reports when Pepper Spray is used.

b. Prone Restraint, In Particular of Non-Violent Youth:

As with Pepper Spray, the use of "prone restraint" is a legally permissible tactic used in many juvenile detention facilities in the State of California and elsewhere. As with Pepper Spray, the use of "prone restraint" is not only legally allowed, but in many circumstances necessary, when objectively reasonable, for the safety and security of staff and youth within the facilities. Department staff are trained in the proper way to effectively use "prone restraint" and other use of force tactics through STC State approved classes.

DRC's Report provides that, "The U.S. Department of Education has stated that "prone restraint" should never be used on children and youth because they can cause serious injury or death"; however, the link provided appears to be a resource used for the education setting, and not a directive to youth detention facilities whose staff are specially STC trained in the proper way to use "prone restraint." The Report also provides that "JDAI guidelines prohibit "restraining youth in a prone position and putting pressure on the youth's back." As stated above, JDAI standards are not legal requirements, and the Department is in compliance with all legal requirements as evidenced by its most recent BSCC report which found the Department to be in compliance with Title 15 and Title 24 Regulations. Notwithstanding, the Department is willing to explore ways in which it can reduce the use of "prone restraint" in its facilities.

c. Prolonged Isolation:

While the DRC Report goes into great length about the Department's isolation practices observed by and/or reported to them by anonymous youth, it also states that, "We are encouraged by many of the provisions in these new policies, and are hopeful that they represent a meaningful step away from reliance on harmful isolation practices." Further, that, "In particular we applaud Probation's commitment that room confinement shall not

be used as discipline; its creation of a mechanism to develop individualized strategies for youth who present recurring behavior management challenges for staff; and its involvement of Kern County Superintendent of Schools (“KCSOS”), mental health staff, parents and guardians, and youth in the formulation of those strategies.”

When the DRC began their inspections in June 2017, the Department was already in the process of revising its policies in anticipation of Senate Bill 1143 (codified as Welfare and Institutions Code section 208.3), effective January 1, 2018, which places restrictions on the use of room confinement of youth who are confined in juvenile facilities. As of January 1, 2018, the Department is in full compliance with SB 1143, therefore, the approximate seven (7) pages in the DRC’s Report devoted to “Isolation” is moot. Even prior to the Department’s implementation of SB 1143, the Department was in full compliance with Title 15 and Title 24 Regulations.

With the passage of SB 1143, the Department took the initiative to not only comply with the new law, but to totally revamp its behavior management systems (“BMS”) in all three of its facilities. The new BMS is a pro-social, incentive based model that encourages good behavior while still calling for accountability within the framework of SB 1143.

Another area the Department has made great strides in, is recognition and incorporation of disabilities and accommodations. This is accomplished through the Department’s weekly Special Cases Meetings consisting of representatives from the Department, KCSOS, Mental Health staff, and medical staff. During these meetings, disabilities, accommodations, medical needs, and behaviors involving youth are discussed and plans are developed. This information is kept in the units so that all staff are aware of a particular youth’s specific circumstances and it can be utilized throughout the day, including in all levels of discipline. ADA coordinators have also been appointed at each of the facilities. ADA coordinators work with each units’ staff to ensure that each youth’s disability and accommodations are understood, and that the youth’s disability is taken into account when dealing with their behavior. This is an evolving process that will continue to improve as the Department moves forward.

The Report also expresses concern that even under the revised policies, “youth with disabilities remain at serious and disproportionate risk of extended periods of isolation, which may exacerbate their disabilities and put their mental health at risk.” The Report goes on to provide a hypothetical circumstance in support of its concern, which has no basis in reality. It is the Department’s belief that the new program and Weekly Special Cases Meeting will alleviate any such concern expressed by DRC in its hypothetical.

The Report erroneously provides that disability status and “aggravating/mitigating circumstances, such as a youth’s disabilities . . . as well as a youth’s mental health history,” are only taken into consideration for “level 3 misconduct” at Crossroads. In fact,

as was pointed out to the DRC, disability status is taken into consideration for all three levels of misconduct.

2. Failure to Meet the Educational Needs of Youth with Disabilities.

KCSOS oversees and operates court schools at each of the Department's facilities. Please see the KCSOS's separate response to the DRC's allegations contained within its Report.

The Department has a long-standing history of positive collaboration with the KCSOS. The Department will continue to work with KCSOS to effect positive change in detained youth and to operate in conformance with federal and state laws.

3. Failure to Meet the Mental Health Needs of Youth with Disabilities.

The Department disagrees with DRC's allegations that the Department has failed to meet the mental health needs of youth with disabilities. DRC's Report does however, recognize that, "revised draft procedures may increase the coordination between mental health providers, KCSOS and Probation via the new behavior management system and the weekly special cases meetings at Crossroads and Juvenile Hall." The Report, however, omits that the special cases meetings also occur at Camp Erwin Owen.

a. Inadequate Mental Health Care at Juvenile Hall:

Mental Health Care at Juvenile Hall is provided by Kern County Behavioral Health and Recovery Services' ("Kern BHRS") JPPS team. DRC's Report provides that, "Youth had reported high satisfaction with the individual counseling they received at Juvenile Hall . . ." and that they "particularly valued that they could see a counselor frequently if they were in crisis and needed support." However, the report goes on to state that "Recently, youth have reported new reductions in access to the JPPS team at Juvenile Hall."

Other than anonymous youth statements, there is no basis to conclude a reduction in youth's access to JPPS services. In contrast, to ensure JPPS is staffed appropriately, caseloads sizes are monitored and when there is a high demand for services that require additional staffing, other therapists from the CSOC (Children's System of Care) are redirected to JPPS to ensure needs are met. Kern BHRS Human Resources works diligently to ensure that filling of vacancies is expedited.

DRC's Report further provides that they have "noticed a discrepancy in availability of mental health services depending on a youth's unit at Juvenile Hall." As an example, the Report provides that, "Young women in the Pathways program reported that they participated in group sessions on a regular basis. However, young men detained in Juvenile Hall in the 200A, 200B, and 300B units reported no similar access to group programming."

The difference in services provided to the various youth is not based on the unit youth is housed in, but rather is based on their mental health needs, and the length of time that youth will be incarcerated. For example, youth that are committed per court order to a treatment program (i.e. Pathways, Camp Erwin Owens, Kern Crossroads Facility) are typically incarcerated for several months, which is clinically conducive to evidence-based models of group treatment. Youth that have not yet been legally adjudicated, and are being housed at Juvenile Hall pending their legal trial, can be housed at the Juvenile Hall 200 or 300 units anywhere from a few hours to a few weeks. Most of these youths have a very brief and short stay at Juvenile Hall. Youth that stay at Juvenile Hall for longer periods of time are provided with a full array of mental health services including individual therapy, family therapy, case management/coordination, crisis and psychiatric services.

b. Inadequate Mental Health Care at Crossroads:

Mental health care at Crossroads is provided by Phoenix House, who is contracted with the Department. DRC's Report provides that, "the mental health care provided falls far short of that in a true treatment facility," and that "access to mental health counseling ... is inadequate, according to youth." The Department disagrees with this characterization of Phoenix House's services.

Phoenix House is a comprehensive program that utilizes evidence-based approaches and best practices within the field, case management, individual and group counseling and intensive family services to better serve the needs of the youth and their families. Phoenix House utilizes Motivational Interviewing, Cognitive-Behavioral Therapy, Aggression Replacement Training, Cognitive Behavioral Intervention-Substance Abuse, Strengthening Families Program, 24:7 Dad Fatherhood, Thinking for a Change, and Getting Away from Gangs, among other services.

DRC also reported that youth complained they would repeat certain treatment programs. This may be true based on the youth's criminogenic needs or if a youth did not utilize practical application of skills learned in a group. Therefore, at times it is necessary to place them in the same group for rehabilitative purposes.

As to DRC's allegations that Phoenix House "uses a different electronic record system and cannot access the record system used by JPPS and the provider at Camp Owen," the Department will look into this matter to see if it is possible to ensure Phoenix House has access to Kern BHRS's electronic record system utilized by JPPS and Camp Owen. In the interim, however, all stakeholders are in discussion to improve access to necessary mental health information in the form of a "transfer summary" document.

c. Inadequate Mental Health Care at Camp Owen:

Mental health care at Camp Owen is provided by College Counseling Services (CCS) who is contracted with Kern BHRS. DRC's only complaint about mental health care at

Camp Owen is that, “youth on ORP [Owen Reentry Program] are prevented from attending group counseling.” No youth was ever removed from treatment as a result of discipline. However, previously, youth in ORP had their school and work schedules modified and as a logistical consequence at times this would disrupt their treatment schedule. The Department recognizes this issue and has revised policy to ensure no youth will be removed from a treatment group for logistical reasons.

B. RESPONSE TO DRC’S RECOMMENDATIONS:

In response to DRC’s recommendations enumerated below, the Department responds as follows:

1. Implement the Missouri Approach and Change the Punitive Culture at KCJC Facilities.

The Department is not required by law to follow the Missouri Approach. Further, the Department rejects DRC’s allegations that there is a punitive culture at KCJC (Kern County Justice Center) Facilities. Moreover, the Department has received training on Trauma-Informed care and has more training scheduled for all correctional staff. There have been several projects related to home-like environments with more planned in the near future.

The Department will continue to work with its valued partners including KCSOS, Kern BHRS, Phoenix House, Kern Medical and others to do all it can to build upon its successful programs. The Department recognizes that improvement and examination is an important part of any organization and has taken into consideration many of DRC’s points with great deliberation. The Department plans to bring in an outside and independent expert in the field of juvenile criminal justice to provide even further input regarding positive changes that can be made in the areas of programming, use of force, pepper spray, ADA issues, mental health services, and more.

2. Eliminate Use of Pepper Spray, Prone Restraint, other Excessive Force and Harsh and Arbitrary Discipline.

The Department is not required by law to eliminate the use of Pepper Spray or “prone restraint.” Further, the Department is not required to follow JDAI standards.

However, as stated above, the Department recognizes that improvement and examination is an important part of any organization and has taken into consideration DRC’s points concerning Pepper Spray and “prone restraint” with great deliberation. The Department plans to bring in an outside and independent expert in the field of juvenile criminal justice to provide even further input regarding positive changes that can be made in the areas of use of force and pepper spray. The Department is open to reducing the use of such tactics as long as it does not compromise the safety and security of staff or

youth, providing more training in these areas, and providing for additional documentation in these areas.

The Department already has zero tolerance for excessive force and harsh and arbitrary discipline and objects to DRC's allegations that such are acceptable within the Department. Any allegations of excessive force or harsh and arbitrary discipline are investigated and appropriate disciplinary action is taken. The same principle holds true for respectful language by staff toward youth.

3. Eliminate Extended Disciplinary and Administrative Isolation.

DRC's recommendation related to eliminating extended disciplinary and administrative isolation is moot. As of January 1, 2018, the Department is in full compliance with SB 1143, and has already eliminated extended isolation of youth in conformance with this law. The Department has also already developed and implemented policies and procedures to account for disability and disability-related needs in administering discipline and incentive programs, as well as administering work details and other programs that afford youth the opportunity to exit their rooms and/or dorms.

However, as stated above, the Department recognizes that improvement and examination is an important part of any organization and has taken into consideration many of DRC's points with great deliberation. The Department plans to bring in an outside and independent expert in the field of juvenile criminal justice to provide even further input regarding positive changes that can be made in the areas of discipline, programming, and work details.

4. Provide Adequate Education, Including Adequate Special Education Services, to Youth.

See response from KCSOS.

5. Increase and Improve Access to Mental Health Services.

It is the Department's position that it does provide adequate mental health staff as needed to ensure that youth may obtain mental health counseling in crisis and on an as-needed basis. Additionally, information from mental health staff is already included when considering disciplinary decisions and that appropriate accommodations are made for disability-related behavior; youth at Crossroads already have ready access to psychiatric services; and, multi-disciplinary team meetings with the Department and KCSOS are held on a regular basis.

As stated above, the Department will continue to explore ways in which to ensure that mental health staff at Crossroads have access to a youth's treatment records from Juvenile Hall and Camp Owen. In the meantime, all stakeholders are in discussion to

improve access to necessary mental health information in the form of a "transfer summary" document.

Additionally, as stated above, the Department will continue to work with its valued partners including KCSOS, Kern BHRS, Phoenix House, Kern Medical and others to do all it can to build upon its successful programs. The Department recognizes that improvement and examination is an important part of any organization and has taken into consideration many of DRC's points with great deliberation. The Department plans to bring in an outside and independent expert in the field of juvenile criminal justice to provide even further input regarding positive changes that can be made in the areas of programming, ADA issues, mental health services, and more.

C. CONCLUSION:

While the Department disagrees with many of the philosophies, concerns and allegations raised by DRC in its Report, it agrees that the safety and welfare of youth in its facilities, and improving the lives of youth in its facilities, are our shared highest priorities and main goals and objectives. As stated above, the Department recognizes that DRC brings experience and insight into advocating for youth with disabilities within the facilities, and is willing to bring in an outside and independent expert to examine its policies, procedures and training. The Department believes that working in conjunction with an outside and independent expert will be a great benefit to the Department and the youth in its facilities.

Sincerely,



TR Merickel, Chief Probation Officer

cc: Carly Munson, Senior Staff Attorney, Disability Rights California
Thomas Zito, Senior Staff Attorney, Disability Rights Advocates
Freya Pitts, Staff Attorney, Disability Rights Advocates
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