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Groups file lawsuit targeting Texas Youth Commission's use of pepper spray

Lawsuit claims new policy has caused use of spray to skyrocket.

By [Mike Ward](#)

AMERICAN-STATESMAN STAFF

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A growing battle over the use of pepper spray by the Texas Youth Commission landed in court Thursday as two advocacy groups alleged in a lawsuit that the new chief of the scandal-racked agency illegally authorized the practice at youth lockups.

The accusation is the latest in recent weeks suggesting that official missteps are continuing at the troubled youth criminal justice agency just six months after the governor shook up its management amid a sex abuse and cover-up scandal.

Harshly criticizing the agency's new leaders, Texas Appleseed and Advocacy Inc. filed a lawsuit in state court in Travis County seeking to overturn an early August directive that allows pepper spray to be used before other methods of controlling unruly youths.

Previously, pepper spray could be used only as a last resort, after physical restraints, and no children with mental and emotional impairments or other medical issues could be sprayed.

In the 1980s, to settle a federal lawsuit over scandalous conditions and mistreatment of youths, state officials promised to use chemical agents such as pepper spray only to quell a riot.

The advocacy groups said at a Capitol news conference that pepper-spray use has skyrocketed in Youth Commission lockups since the change and unfairly targets youths with disabilities, who are more likely to act out. In just six weeks, the groups said, 196 incidents of pepper-spray use have been logged, compared with 193 during all of 2006.

"These kids are trapped," said Jim George, an Austin attorney who leads the Appleseed board. "This new policy promotes punishment and intimidation ... rather than rehabilitation and treatment."

Richard LaVallo, senior attorney for Advocacy Inc., said, "The system is broken when pepper spray is used as a first response to restore control in violation of TYC's own use-of-force policy."

Youth Commission spokesman Jim Hurley said he could not comment on the lawsuit. But, he said, "We have not changed the policy. We have some latitude to issue directives on policies. ... The original policy is still in place."

Acting Executive Director Dimitria Pope earlier defended the policy change as necessary to curb increasing staff and youth injuries caused by the use of physical restraints, which she said would save the agency money. She insisted that she has the authority to change policies.

Plaintiffs in the lawsuit are three 15-year-old incarcerated youths with mental disabilities: a boy who has been sprayed three times and received skin burns for engaging in "self-injurious behavior," another boy who has been sprayed and a girl who has been threatened with pepper spray.

The lawsuit alleges that Pope altered the policy in violation of a state law that requires public notice of such changes. Instead, George said, the agency "went behind closed doors and enacted a policy that is detrimental to the kids."


The lawsuit seeks a court order to invalidate Pope's policy change.

George said a hearing is set for Oct. 2.

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