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Juvenile justice

## State, youth advocates reach deal to limit pepper spray

**But proposed new policy could turn back gains, advocates warn.**

By Mike Ward  
AMERICAN-STATESMAN STAFF  
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After months of blistering criticism and litigation, Texas Youth Commission officials have agreed to restrict the use of pepper spray on unruly youths.

But the fix could be short-lived because the agency is proposing a new policy that juvenile justice experts said Thursday would again liberalize the use of pepper spray.

Among the problems with the proposed rule, they say: It drops wording that specifically prohibits the use of pepper spray for "convenience" of staff in controlling unruly youths and approves the use of crowd-sized canisters of pepper spray, instead of the much smaller ones mainly used in the past.

"It will take us back to square one on this issue," said Deborah Fowler, legal director for Texas Appleseed, which sued the Youth Commission over an August policy change that allowed wider use of pepper spray in the state's youth lockups. "We've been trying to encourage them to pull down the proposed rule. ... That has not happened."

The agency has scheduled a public hearing Monday on proposed changes to its use of force policy. Under the changes, incarcerated youths could be pepper-sprayed only in cases of imminent danger or harm and "only to the extent necessary to gain compliance and/or to prevent harm."

Under the just-negotiated deal, pepper spray can be used only after Youth Commission guards and staff determine that imminent harm exists and that manual restraints are not a practicable method of defusing an altercation or unruly situation. In addition, it prohibits spraying youths who have respiratory ailments or mental impairments that could be aggravated by pepper spray and those who are not posing an imminent threat.

The proposed policy mandates a chain of circumstances that must occur before pepper spray can be used: verbal de-escalation or mechanical restraint such as handcuffs.

But the fact that it could be used before physical restraint is what has juvenile justice advocates continuing

to sound an alarm.

Youth Commission officials say the proposed policy would ensure fewer injuries. They said Thursday that they have no plans to withdraw the proposed policy or to stick with the consensus wording hammered out in court-ordered negotiations.

"There are folks who just don't want us to use pepper spray at all. That's what's really going on here," agency spokesman Jim Hurley said. "We think there is an appropriate use for pepper spray. ... The new policy just says it can be used if the situation justifies it."

Noting that the consensus covers only the old policy, Hurley said that the agency looks forward "to obtaining public comment at the hearing on Monday regarding the new use of force policy that we are proposing."

Indications Thursday were that they could get an earful.

"This is train wreck waiting to happen if they proceed with adopting the new rule," said Richard Lavallo, lead attorney for Advocacy Inc. "They're using violence and intimidation to control youth ... and they don't have to do that."

A report released Thursday by the Texas Criminal Justice Coalition, another advocacy group, argued against the new policy, as well. Among its findings, the report argued that pepper spray "has been found to increase youth's violent behavior toward others, post-traumatic stress disorder and suicidal behavior."

And, the report concluded, national research suggests that the application of deterrent sanctions such as pepper spray "may actually result in a counterproductive 'deteriorating cycle of defiance.' "

Improved rehabilitation and treatment programs hold greater promise for reducing recidivism and violence, the report says.

Since Youth Commission officials liberalized the use of pepper spray last summer, its use has skyrocketed. More than 1,200 uses of pepper spray in Youth Commission lockups were reported through October, compared with fewer than 200 in all of 2006.

Steve Martin, an Austin-based corrections consultant with more than two decades of experience, said pepper spray "is not the most effective way to deal with these situations they are facing. ... It just becomes the most convenient method, and that's not good."

While Texas has increased its use of pepper spray in juvenile lockups, other states are doing the opposite, Martin and others say.


Like others, Martin said he thinks the proposed policy, by potentially allowing more youths to be sprayed, "raises a real constitutional issue. The way they have worded it is like waving a big red flag in front of a bull, saying, 'Come on, sue me.' "

"I'm sure people will," he said.

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