

Wednesday, November 28, 2007

Contact: TEXAS APPLESEED  
**Deborah Fowler**, Legal Director  
(512) 473-2800 x 105  
**Janis Monger**, Communications  
Director, (512) 2968043

FOR IMMEDIATE RELEASE

## Texas Appleseed & Advocacy Inc. Reach Compromise with TYC on Pepper Spray Use

AUSTIN – Attorneys for **Texas Appleseed** and **Advocacy Inc.** today praised the willingness of the **Texas Youth Commission** to hammer out a compromise policy clarifying that *pepper spray is NOT to be used as a first response* against incarcerated youth with respiratory, mental, and emotional health issues, or in security settings.

“This new policy addresses our major issues and, if enforced consistently over the long term by TYC staff, it will better protect incarcerated youth in the state’s care,” said Texas Appleseed Board Chair **Jim George**, lead counsel in the suit.

**Richard Lavallo**, lead attorney for Advocacy Inc., said, “We would hope that TYC will give this policy a chance to work before moving forward with any proposed change in its use of force rules. Judge Gisela Trianna was instrumental in requiring both sides to work together and, in the last 10 days, we were able to reach agreement.”

TYC has scheduled a December 3<sup>rd</sup> hearing on the agency’s proposed new use of force rules. **Deborah Fowler**, Legal Director for Texas Appleseed, said what has been proposed “in no way reflects the progress made under the new compromise pepper spray policy.”

“We believe that the Texas Youth Commission is now on record as supporting a more enlightened approach that reserves pepper spray use to those situations in which it is necessary to prevent serious bodily harm or loss of life,” she said.

Texas Appleseed Executive Director **Rebecca Lightsey** said TYC has an opportunity to squelch this controversy and enforce a policy that protects both youth and staff. “With adequately trained staff, we would expect to see the numbers of pepper spray incidents drop under this new, clearly defined policy. TYC is to be commended for taking this step,” she said.

Texas Appleseed and Advocacy Inc. initially reached a settlement agreement with TYC in late September over their lawsuit challenging the legality of an August 2, 2007, executive directive instructing employees to use pepper spray to maintain order before other less restrictive interventions, including physical restraints, were used.

The suit alleged that TYC failed to follow the Administrative Procedure Act in changing the pepper spray policy—noting that three young plaintiffs with mental and emotional disabilities had been physically and/or psychologically harmed by pepper spray. Also known as OC spray, this substance can cause skin burns, disorientation, panic, and breathing difficulties.

With evidence that the Youth Commission was not following the terms of the settlement agreement, Texas Appleseed and Advocacy Inc. filed a motion to enforce on November 19<sup>th</sup>. Today’s court order resolves that issue. Major elements of the new compromise policy include:

- Youth with respiratory /health problems that contraindicate use of OC spray will be identified and placed on a “no-spray” list, which will be circulated to all staff authorized to use pepper spray.
- As a general rule, pepper spray should not be used in the TYC facility in Corsicana, which houses youth with mental and emotional issues, unless necessary prevent loss of life or serious bodily injury.
- If a youth’s mental condition would contraindicate the use of OC pepper spray, a mental health professional must be given an opportunity to establish control of the situation before OC spray is used. The only exception is if use of the spray is necessary to prevent serious bodily injury or loss of life.
- For youth confined in a room in a security unit or an isolation room, pepper spray can only be used when necessary to prevent serious bodily injury or loss of life.
- TYC cannot use OC spray unless a youth’s behavior poses a risk of “imminent harm.” This requires non-verbal aggressive behavior. In the absence of non-verbal aggressive behavior, TYC has agreed that manual restraint must be attempted prior to the use of OC spray.

In order for TYC staff to use OC pepper spray to protect youth, staff, or others from imminent harm or to prevent an escape, TYC must determine that it is not possible, with the means at hand and in that particular set of circumstances, to use manual restraints without “imminent harm”—meaning serious risk of death, permanent disfigurement, or protracted loss or impairment of a limb or organ.

**For more information:**

Deborah Fowler – (512) 473-2800 x 105; (512) 757-1458 (Legal Director – Texas Appleseed)  
Rebecca Lightsey – (512) 473-2800 x 111 (Executive Director – Texas Appleseed)  
Richard Lavallo – (512) 454-4816; (512) 633-9818