

A. Sections 1302, 1321, and 1354.5: Room Confinement

Title 15 incorporates the requirements of Welfare and Institutions Code section 208.3, which limits the placement of youth in room confinement and mandates that facilities comply with certain documentation and planning requirements when youth are placed in room confinement for longer than four hours. (Cal. Code Regs., tit. 15, § 1354.5; see also Welf. & Inst. Code, § 208.3.) Previously, room confinement was defined to exclude confinement in a locked room or cell for brief periods necessary for required institutional operations. (Cal. Code Regs., tit. 15, § 1302; see also former Welf. & Inst. Code, § 208.3, subd. (a)(3), added by Stats. 2016, ch. 726, § 1, and amended by Stats. 2022, c. 781, § 1, eff. Jan. 1, 2023.) Last year, Welfare and Institutions Code section 208.3 was amended to provide that room confinement “does not include confinement of a minor or ward in a locked single-person room or cell for *a brief period lasting no longer than two hours* when it is *necessary for required institutional operations*.” (Welf. & Inst. Code, § 208.3, subd. (a)(3) [emphasis added].)

Room confinement, and particularly prolonged room confinement, has been shown to be damaging to youth’s mental health and development, to result in the denial of education and rehabilitative programming, and to damage relationships between youth and staff, resulting in increased negative behavior.¹ As discussed in detail below, youth in the juvenile justice system experience mental health issues at a rate higher than their peers—up to 70%, according to one meta-analysis.² Youth experiencing conditions such as PTSD or anxiety may be particularly vulnerable to psychological harm from being locked in a cell.³ Because of the harms to youth from the use of room confinement, the legislature has focused on reducing use of room confinement, and has prohibited its use “for the purposes of punishment, coercion, convenience, or retaliation by staff.” (Welf. & Inst. Code, § 208.3, subd. (b)(2).)

The new proposed language may be inappropriately interpreted to permit a facility to confine youth in locked cells for up to two hours a day for “required institutional operations,” such as normal daily shift changes and transitions. Facility administrators may also interpret the proposed revision as not limiting permissible room confinement to only when it is “necessary” (*not* for each shift change in a facility or for paperwork as a “convenience,” Welf. & Inst. Code, § 208.3, subd. (b)(2)) and to the amount of time actually required to accomplish required institutional operations. Moreover, the proposed regulation must ensure that periods of room confinement do not interfere with required daily education, eating, showering and grooming, bathroom use, programming, exercise, visitation, recreation and medical and mental health care,

¹ Council of Juvenile Correctional Administrators, *Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation* (Mar. 2015) p. 4 <<https://cjsa.net/wp-content/uploads/2022/04/CJCA-Toolkit-Reducing-the-Use-of-Isolation-1.pdf>> (as of Mar. 10, 2023).

² Office of Juvenile Justice and Delinquency Prevention, *Model Programs Literature Review: Intersection Between Mental Health and the Juvenile Justice System* (July 2017) p. 1 <<https://ojjdp.ojp.gov/mpg/literature-review/mental-health-juvenile-justice-system.pdf>> (as of Mar. 10, 2023) (hereafter Model Programs Literature Review).

³ E.g., Leonard, *What Are the Effects of Solitary Confinement on Health?* (Aug. 6, 2020) Medical News Today <<https://www.medicalnewstoday.com/articles/solitary-confinement-effects>> (as of Mar. 10, 2023).

and weekly visitation and religious services already protected by Title 15 and crucial for providing basic and minimally adequate rehabilitative care. (See, e.g., Cal. Code Regs., tit. 15, §§ 1370-1377, 1411, 1415-1417, 1433, 1435, 1437, 1460, 1486-1488.) Limitations inherent in the amendment must be clarified so that youth are not denied the aforementioned services and minimal care.

We propose language that will (1) define “necessary for required institutional operations” so that the total amount of time that youth can be confined in their rooms under this provision is appropriately limited; (2) ensure that such confinement does not interfere with the provision of services, programming, education, mental health and medical care, bathing, grooming, and bathroom use, eating, exercise, visitation, religious services, and outdoor recreation as set forth in Title 15, sections 1370-1377, 1411, 1415-1417, 1433, 1435, 1437, 1460, 1486-1488, and Welfare and Institutions Code section 224.71; (3) limit the permitted time in confinement to the minimum required and “necessary”, as already defined in section 1357, to ensure safety and security during required institutional operations; (4) require facilities to document use of room confinement as specified below; and (5) reiterate that insufficient staff levels are not a permitted reason for room confinement.

We provide the following draft language for consideration in section 1302:

“Room confinement” means the placement of a youth in a locked room with minimal or no contact with persons other than correctional facility staff and attorneys. Room confinement does not include confinement of a youth in a locked single person room for ~~brief periods as may be~~ *an occasional brief period not to exceed fifteen minutes, and no longer than two hours total, when it is necessary for required institutional operations. Room confinement is “necessary for required institutional operations” only when it is necessary to ensure the safety and security of youth, staff, others and the facility. Room confinement “necessary for required institutional operations” cannot result in the truncation or denial of any of the daily services, programs, or activities set forth in sections of these regulations that include 1370-1377, 1411, 1415-1417, 1433, 1435, 1437, 1460, 1486-1488 or in Welfare and Institutions Code Section 224.71.*

We provide the following draft language for consideration in section 1321:

Each juvenile facility shall:

- (a) have an adequate number of personnel sufficient to carry out the overall facility operation and its programming, to provide for safety and security of youth and staff, *to complete required institutional operations without the need to confine youth in a locked single person room, and to meet established standards and regulations*

We provide the following draft language for consideration in section 1354.5:

(a) The facility administrator shall develop and implement written policies and procedures addressing the confinement of youth in their room that are consistent with Welfare and Institutions Code Section 208.3. *These policies and procedures shall also include documentation of each youth's placement in room confinement, including the reasons for placement, date and time of placement, and date and time of removal from room confinement. These policies and procedures shall also:*

(1) state that room confinement is "necessary for required institutional operations" only when it is necessary to ensure the safety and security of youth, staff, others and the facility;

(2) define required institutional operations that may result in placement of youth in locked single person rooms when "necessary to ensure the safety and security of youth, staff, others and the facility";

(3) set forth reasonable maximum time limits for those operations, not to exceed two hours total;

(4) provide that youth shall not be placed in locked single rooms for longer than necessary to ensure the safety and security of youth, staff, others and the facility;

(5) provide that required institutional operations resulting in placement in locked rooms shall not result in the truncation or denial of any requirements of Welfare and Institutions Code Section 224.71 or of this Title, including but not limited to the requirements of sections 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1411, 1415, 1416, 1417, 1433, 1435, 1437, 1460, 1486, 1487, and 1488.⁴ ...

"Required institutional operations" for purposes of Section 1354.5 ~~does not mean~~ ~~means~~ normal facility operations involving a reduction in available staff occurring during shift change. ~~They~~ However, it may ~~also~~ include brief periods of time, *not to exceed 15 minutes, needed* necessary to ensure the safety of youth and staff, which may include transitions from school, programs, and exercise or recreation. *Room confinement is "necessary for required institutional operations" only when it is necessary to ensure the safety and security of youth, staff, others and the facility.*

B. Sections 1311, 1321, 1354.5, and 1371: Suspension of Regulations

The current Title 15 regulations permit a facility administrator to temporarily suspend any Title 15 requirements in the event of an emergency that threatens the safety of the facility,

⁴ We note that in section 1354, subdivision (c), there is a proposal to amend language to state that separated youth shall not be denied any provisions of "this chapter." Throughout this comment letter, we use "Title" and "chapter" to mean Title 15.

youth, staff, or the public. They provide scant requirements for facilities to document or provide notice of suspension of regulations. Title 15 requires only that the BSCC be notified of any suspension lasting longer than 3 days and prohibits suspensions beyond 15 days without the approval of the BSCC chairperson. (Cal. Code Regs., tit. 15, § 1311.) Under regulations currently in effect, facility administrators could suspend regulations for up to two weeks on multiple occasions without documenting the suspension or providing notice to the Board or others affected, such as parents and public defenders. The lack of documentation and notice requirements make it difficult for the Board and the public to know when and why facility administrators are suspending regulations and which protections are being suspended.

The Title 15 regulations are intended to safeguard the health, safety, and welfare of youth detained in juvenile facilities, as well as to ensure the safety of the facility, staff, and the public. They provide critical protections that should only be suspended where suspension is the least restrictive means to protect the safety of a local juvenile facility, youth, staff, or the public.

We therefore propose that section 1311 be amended to clarify that suspension is only appropriate where suspension is the least restrictive means to protect the safety of the juvenile facility, youth, staff, or the public. It should also be updated to include requirements that any suspension of regulations be documented and that notice be provided to key stakeholders whenever a suspension extends beyond 24 hours. We further propose that the Board be required to undertake an investigation prior to approving any extension of a suspension beyond 15 days to ensure that the suspension is appropriate and to identify steps that must be taken to ameliorate any harmful effects of the suspension on youth welfare.

These proposed amendments will help ensure that the Board (and other monitoring agencies) can provide effective oversight of juvenile facilities, including by identifying patterns in a facility's use of emergency suspensions and providing corrective actions to address the root causes of suspensions and to reduce future incidence. These amendments will also help ensure that courts and youth's counsel receive important information that may inform judicial decision-making as to whether a youth's continued detention is appropriate. Parents and families will not be in the dark as to the standards that are governing the care and treatment of youth in custody, if basic daily access to outdoor recreation, programming, exercise, and schooling (among other services and rights) are suspended.

It is also important that the Title 15 regulations clarify that staffing shortages, standing alone, are insufficient to justify the suspension of any regulations, including the regulations governing room confinement. It is the responsibility of juvenile facilities to "ensure that no required services shall be denied because of insufficient numbers of staff on duty absent exigent circumstances;" a failure to fulfill this responsibility cannot result in the suspension of services to which youth are entitled. (Cal. Code Regs., tit. 15, § 1321, subd. (b).) Regulatory amendments should make clear that insufficient numbers of staff on duty does not constitute exigent circumstances.

In addition to section 1311's general suspension authority, section 1371, which governs programs, recreation, and exercise, includes a specific provision permitting the suspension of the requirements for up to 24 hours. (Cal. Code Regs., tit. 15, § 1371.) Programming, recreation, and exercise are integral to the rehabilitative purposes of juvenile detention. Research confirms that recreational programs contribute to increasing positive and reducing negative youth behavior and improving educational performance.⁵ Physical activity and exercise is important to youth's physical and mental well-being.⁶ Rehabilitative programming is important to help youth develop skills and positive relationships with adults and to improve mental and behavioral health. Programming, recreation, and exercise also contribute to the safety of youth, staff, and the facility by reducing boredom and idle time. Accordingly, any suspension of the requirements concerning programs, recreation, and exercise should be effected through the procedures and for the reasons identified in the general emergency suspension provision.

We provide the following draft language for consideration in section 1311:

(a) Nothing contained herein shall be construed to deny the power of any facility administrator to temporarily suspend any standard or requirement herein prescribed in the event of any emergency which threatens the safety of a local juvenile facility, youth, staff, or the public. *Regulations shall not be suspended due solely to insufficient numbers of staff on duty.* Only such regulations directly affected by the emergency may be suspended, *and regulations shall only be suspended if there are no less restrictive means to protect the safety of a local juvenile facility, youth, staff, or the public.*

(b) *All suspensions of regulations shall be documented in writing. Documentation shall include the specific regulation or regulations suspended, the basis for the suspension, the length of the suspension, and interim measures taken to address the emergency causing the suspension.*

(c) ~~The facility administrator shall notify the Board in writing~~ *In the event that such a suspension lasts longer than ~~three days~~ 24 hours, the facility administrator shall provide written notice to the parents or guardians of impacted youth, counsel for impacted youth, youth impacted by the suspension, the Juvenile Court, and the Board.*

(d) *In no event shall a suspension continue more than 15 days without the approval of the chairperson of the Board for a time specified by him/her. If a facility administrator requests that a suspension continue more than 15 days, the Board will undertake an investigation to determine whether continued suspension is appropriate, to assess the*

⁵ Witt & Caldwell, *The Rationale for Recreation Services for Youth: An Evidenced Based Approach* (2010) National Recreation and Park Association, p. 35
<https://www.nrpa.org/uploadedFiles/nrpa.org/Publications_and_Research/Research/Papers/Witt-Caldwell-Full-Research-Paper.pdf> (as of Mar. 10, 2023).

⁶ Brusseau et al., *Physical Activity and Health-Related Fitness of Adolescents Within the Juvenile Justice System* (2018) BioMed Research International,
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6076947/>> (as of Mar. 10, 2023).

impact of the suspension on the welfare of impacted youth, and to identify any corrective actions that must be taken to address those impacts.

We provide the following draft language for consideration in section 1321:

(b) ensure that no required services shall be denied *and that no regulations shall be suspended* because of insufficient numbers of staff on duty absent exigent circumstances;

We provide the following draft language for consideration in section 1354.5:

(8) This section does not apply during an extraordinary emergency circumstance that requires a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm to multiple staff or youth. This exception shall apply for the shortest amount of time needed to address this imminent and substantial risk of harm. *However, this exception shall not apply solely due to a lack of sufficient staffing as required by Section 1321, Staffing.*

We provide the following draft language for consideration in section 1371:

~~The administrator/manager may suspend, for a period not to exceed 24 hours, access to recreation and programs. The administrator/manager shall document the reasons why suspension of recreation and programs occurs.~~

C. Section 1357: Use of Force

Use of chemical agents, such as oleoresin capsicum (OC) spray, on youth is in significant tension with our state laws under which rehabilitation is the primary goal of the juvenile justice system and juvenile facilities should provide “a safe and supportive homelike environment.” (Welf. & Inst. Code, § 851; see also *id.* § 202.) By design, OC spray causes intense pain, swelling, and difficulty breathing. Where youth have underlying physical conditions, such as asthma and hypertension, the effects of OC spray are particularly pronounced, and may lead to asphyxiation and an increased risk of heart attack or stroke.⁷ This risk is particularly concerning given that youth involved in the juvenile justice system are at greater risk for asthma and hypertension than their non-justice-involved peers.⁸ These effects are exacerbated when OC spray is used in confined spaces with poor ventilation, which is characteristic of many juvenile facilities, and when youth are repeatedly exposed to OC spray.⁹ Troublingly, there have been no

⁷ Center for Children’s Law and Policy, *Fact Sheet: Chemical Agents in Juvenile Facilities* (May 14, 2012) pp. 1-2 <<http://www.cclp.org/wp-content/uploads/2016/06/Fact-Sheet-Chemical-Agents-Final-5-14-12.pdf>> (as of Mar. 10, 2023) (hereafter Fact Sheet).

⁸ Winkelman et al., *Health Conditions and Racial Differences Among Justice-Involved Adolescents, 2009 to 2014* (Mar. 12, 2017) 17 *Adversity Among Children and Youth* 723 <[https://www.academicpedsjnl.net/article/S1876-2859\(17\)30103-1/fulltext](https://www.academicpedsjnl.net/article/S1876-2859(17)30103-1/fulltext)> (as of Mar. 10, 2023).

⁹ Fact Sheet at pp. 1-2.

studies as to the safety, effectiveness, or long-term impact of OC spray use in juvenile facilities.¹⁰

OC spray is also harmful to youth's mental health and development. Studies have suggested that OC spray can make it more difficult to calm individuals who are experiencing mental health issues, can exacerbate existing mental health conditions, and can interact dangerously with psychotropic medications.¹¹ Given the extremely high rates at which justice-involved youth experience mental health issues—up to 70%, according to one meta-analysis¹²—these reactions strongly suggest that OC spray is unsuitable for use with this population. The use of OC spray can impede the development of positive relationships between youth and staff—relationships that are critical to the juvenile justice system's rehabilitative mission. And studies of the use of chemical agents have found that such restraints are associated with higher rates of safety problems in facilities and increased fear among youth.¹³

OC spray is not necessary to the safe management of juvenile detention facilities. Use of chemical agents is an outdated practice that places California increasingly out of step with the rest of the country. For over thirty years, guidance from the American Bar Association has counseled that chemical restraints should not be used within juvenile facilities because they are not necessary and because of the “consistent history of abuse” of chemical agents in juvenile facilities.¹⁴ Thirty-five states, and seven California counties, do not permit the use of OC spray in juvenile facilities.¹⁵ In fact, even twelve years ago, California was among only fifteen states to permit the use of OC spray in juvenile facilities and one of only six states to permit agency staff to carry chemical spray routinely in secure facilities.¹⁶

¹⁰ Council of Juvenile Correctional Administrators, *Issue Brief: Pepper Spray in Juvenile Facilities* (May 2011) p. 1 <https://cja.net/wp-content/uploads/2022/04/CJCA.Issue_Brief_OC_Spray-2.pdf> (as of Mar. 10, 2023) (hereafter Issue Brief).

¹¹ Fact Sheet at p. 2.

¹² Model Programs Literature Review at p. 1.

¹³ Issue Brief at p. 1.

¹⁴ Institute of Juvenile Administration and American Bar Association, *Juvenile Justice Standards: Standards Relating to Corrections Administration* (1980) Standard 7.8, pp. 145-146 <https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJ/JJ_Standards_Corrections_Administration.pdf> (as of Mar. 10, 2023).

¹⁵ Issue Brief at p. 2; see American Civil Liberties Union, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019) p. 26 <https://www.aclusocal.org/sites/default/files/aclu_socal_toxic_treatment_report_2019.pdf> (as of Mar. 10, 2023).

¹⁶ Issue Brief at p. 2. Nevada has since changed its policies to permit staff to carry OC spray in its juvenile facilities. However, in 2021, the federal Department of Justice opened an investigation into the use of OC spray in two Nevada juvenile facilities. (U.S. Department of Justice, Office of Public Affairs, *Justice Department Announces Civil Investigation into Chemical Restraint Use at Two Nevada Juvenile Facilities* (Jan. 7, 2021) <<https://www.justice.gov/opa/pr/justice-department-announces-civil-investigation-chemical-restraint-use-two-nevada-juvenile>> (as of Mar. 10, 2023).) In August 2022, Nevada updated its OC spray policies to place additional limitations on its use. These limitations include a provision stating that once a youth supervision staff uses OC spray, *no* youth supervision staff shall

Because of these significant concerns about the effects of chemical agents on the physical and mental health of youth in juvenile detention, as well as the overwhelming weight of practice across the country, we recommend that section 1357 be revised to further limit the use of chemical agents. In particular, we recommend that at minimum the use of chemical agents on youth in physical restraints, or youth for whom the use of chemical agents is medically contraindicated, be explicitly prohibited. To ensure that these prohibitions may be effectively implemented, we recommend that facility administrators be required to consult with the facility health and mental health administrators to develop policies for identifying youth for whom the use of chemical agents is contraindicated and ensuring that staff are aware of such youth.

In addition, Title 15 prohibits the use of force for the purpose of punishment, discipline, retaliation or treatment, and restricts the use of force to that which is reasonable and necessary to ensure the safety and security of youth, staff, others, and the facility. (Cal. Code Regs., tit. 15, § 1357, flush language & subd. (a).) We suggest that these provisions be amended to clarify that force may not be employed in the absence of a threat to facility security or the safety of persons.

We provide the following draft language for consideration in section 1357:

The facility administrator, in cooperation with the responsible physician *or psychiatrist*, shall develop and implement written policies and procedures for the use of force, which may include chemical agents. Force shall never be applied as punishment, discipline, retaliation or treatment. *Force shall only be used in response to a threat to facility security or the safety of persons and shall not be used in response to disrespectful or noncompliant behavior that does not pose such a threat. ...*

(b) Facilities that authorize chemical agents as a force option shall include policies and procedures that: ...

(3) prohibit the use of chemical agents on youth who are in physical restraints, including handcuffs, and youth for whom the use of chemical agents is medically contraindicated, including but not limited to pregnant youth, youth with respiratory and/or cardiovascular conditions, and youth with mental illnesses. The facility administrator, in cooperation with the health administrator and behavioral/mental health director, shall develop policies for identifying youth for whom the use of chemical agents is contraindicated and ensuring that staff are aware of such youth.

carry or use OC spray again until the incident is reviewed by a state review team. (State of Nevada, Division of Child and Family Services, Juvenile Justice Services, Statewide Youth Parole Bureau Policy YP-400.01, Safety – Use of Force, § IV, subd. 5.f. (eff. Aug. 15, 2022)
<https://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/JJS/400.01_Safety_-_UoF.pdf>
(as of Mar. 10, 2023).)

D. Sections 1302 and 1374: Visiting

Parental and family engagement has been demonstrated to improve outcomes for youth in the juvenile justice system. Strong relationships with family members and other supportive adults can act as a protective factor for youth, reducing the likelihood that youth will engage in future delinquent behavior.¹⁷ Youth who receive visits while detained have reported feeling greater connection to their families and have lower rates of behavioral incidents and improved school performance while detained.¹⁸ Greater rates of visitation are correlated with improved mental health and well-being for detained youth.¹⁹ Where a young person has had the opportunity to sustain and nurture supportive relationships while detained, that young person is more likely to experience a successful transition upon leaving detention and decreased recidivism.²⁰

Given these demonstrated positive effects of relationships with family and supportive adults, California law seeks to maximize detained youth's opportunities to maintain these relationships through regular visitation. Recently enacted Welfare and Institutions Code section 224.71(g) provides that youth confined in juvenile facilities have the right "[t]o maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members, through visits, telephone calls, and mail." (Welf. & Inst. Code, § 224.71, subd. (g).) We appreciate the proposed change in the definition of special visits to conform to this change in the law. However, in order make the Title 15 regulations governing visitation fully consistent with Welfare and Institutions Code section 224.71, subdivision (g), the regulations should also provide for regular visits by youth's siblings. Relegating sibling visits to special visits, which may or may not be provided at the discretion of the facility administrator, is inconsistent with the legislature's intention to provide detained youth with "frequent and continuing" contact with their siblings. (Welf. & Inst. Code, § 224.71, subd. (g).)

¹⁷ Office of Juvenile Justice and Delinquency Prevention, *Model Programs Literature Review: Protective Factors Against Delinquency* (Dec. 2015) pp. 4-5 <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/protective_factors.pdf> (as of Mar. 10, 2023).

¹⁸ Office of Juvenile Justice and Delinquency Prevention, *Model Programs Literature Review: Family Engagement in Juvenile Justice* (Feb. 2018) pp. 7-8 <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/family_engagement_in_juvenile_justice.pdf> (as of Mar. 10, 2023) (hereafter Family Engagement in Juvenile Justice); Agudelo, *The Impact of Family Visitation on Incarcerated Youth's Behavior and School Performance* (April 2013) Vera Institute of Justice, p. 1 <https://www.njjn.org/uploads/digital-library/impact-of-family-visitation-on-incarcerated-youth-brief_VERA_April-2013.pdf> (as of Mar. 10, 2023).

¹⁹ Family Engagement in Juvenile Justice at p. 8; Young & Hay, *All in the Family: An Examination of the Predictors of Visitation Among Committed Juvenile Offenders* (June 20, 2019) 18 *Youth Violence & Juvenile J.* 1, 54 <<https://journals.sagepub.com/doi/10.1177/1541204019857123>> (as of Mar. 10, 2023).

²⁰ Young & Hay, *All in the Family: An Examination of the Predictors of Visitation Among Committed Juvenile Offenders* (2020) 18 *Youth Violence & Juvenile J.* 1, 54 <<https://journals.sagepub.com/doi/10.1177/1541204019857123>> (as of Mar. 10, 2023).

We further recommend edits to ensure consistency between the proposed edits to the definition of special visits and the provisions of section 1374 that govern the visits youth are entitled to receive. The proposed edits to the definition of special visits, consistent with Welfare and Institutions Code section 224.71, provide that visits by extended family members and spouses of youth are not considered special visits. In order to be consistent with this definition, section 1374 should be amended to require that visits with extended family members, spouses, and siblings of youth be provided *without* special approval by the facility administrator. Finally, we support proposed changes to the regulations to provide for regular visits by spouses of youth. As a result of the return of youth from Department of Juvenile Justice facilities to local jurisdictions and the development of local Secure Youth Treatment Facilities, youth may now be detained in juvenile facilities up to age 25. Because of the increased age of youth who may be detained, it is appropriate to ensure that youth are able to receive regular visits from their spouses.

We provide the following draft language for consideration in section 1302:

“Special visits” mean visits by persons other than parents or guardians, those standing in loco parentis, ~~and extended family members, siblings of the youth,~~ children of the youth, ~~and spouses of the youth,~~ as outlined in Section 1374 of these regulations.

We provide the following draft language for consideration in section 1374:

The facility administrator shall develop and implement written policies and procedures for visiting; that include provisions for special visits. Youth shall be allowed to receive visits by parents, guardians or persons standing in loco parentis, ~~and children of youth,~~ ~~Other family members, such as grandparents and siblings, and supportive adults, E~~ extended family members, ~~and siblings of the youth, including minor siblings, and spouses of the youth.~~ ~~may be allowed to visit with the approval of the facility administrator or designee, and in conjunction with the youth's case plan or in the best interest of the youth.~~

E. Section 1302: Behavioral Health

We are pleased to see that the Board is considering updating the definition of behavioral health to recognize the impact that trauma has on behavioral health. We recommend that the definition also be amended to recognize that behavioral health may be affected by adverse childhood experiences and experiences of racism and other forms of oppressive discrimination. In order to ameliorate the harmful effects of trauma and adverse childhood experiences on children’s behavioral health, it is first important to recognize those effects. This is particularly important in implementing effective behavioral health interventions for youth involved in the juvenile justice system. Justice-involved youth have experienced high levels of childhood trauma and adverse childhood experiences, with studies estimating that approximately 70-90% of youth

involved in the juvenile justice system have experienced at least one type of trauma.²¹ Moreover, the experience of detention is itself traumatic, and youth with prior trauma are particularly vulnerable to stress or trauma resulting from detention in secure facilities.²²

Experiencing racism and other forms of oppressive discrimination, too, can negatively impact behavioral health. Young adults who have experienced discrimination, including racism and sexism, are at higher risk for mental illness and drug use.²³ Similarly, LGBT youth experience elevated rates of depression and mood disorders, anxiety, and alcohol use connected with their experiences of stigma and discrimination.²⁴ Particularly as youth of color and LGBT youth are both overrepresented in the juvenile justice system, it is critical to recognize the impact of these young people's experiences of discrimination on their behavioral health.²⁵

²¹ Branson et al., *Trauma-Informed Juvenile Justice Systems: A Systematic Review of Definitions and Core Concepts* (Nov. 2017) 9(6) *Psychol. Trauma* 635 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664165/>> (as of Mar. 10, 2023); Folk et al., *Adverse Childhood Experiences Among Justice-Involved Youth: Data-Driven Recommendations for Action Using the Sequential Intercept Model* (Feb.-Mar. 2021) 76(2) *Am. Psychol.* 268 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8281579/>> (as of Mar. 10, 2023); Wyrick & Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System* (Apr. 29, 2021) National Institute of Justice <<https://nij.ojp.gov/topics/articles/examining-relationship-between-childhood-trauma-and-involvement-justice-system>> (as of Mar. 10, 2023); Ford et al., *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions* (June 2007) National Center for Mental Health and Juvenile Justice, p. 1 <<https://www.courts.ca.gov/documents/BTB25-1G-02.pdf>> (as of Mar. 10, 2023); Kerry Jamieson, *ACEs and Juvenile Justice* (Nov. 7, 2019) Center for Child Counseling <<https://www.centerforchildcounseling.org/aces-and-juvenile-justice/>> (as of Mar. 10, 2023).

²² *Trauma-Informed Juvenile Justice Systems: A Systematic Review of Definitions and Core Concepts* (Nov. 2017) 9(6) *Psychol. Trauma* 635 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664165/>> (as of Mar. 10, 2023); VandenWallBake, *Considering Childhood Trauma in the Juvenile Justice System: Guidance for Attorneys and Judges* (Nov. 1, 2013) American Bar Association <https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol_32/november-2013/considering-childhood-trauma-in-the-juvenile-justice-system--gui/> (as of Mar. 10, 2023).

²³ Lei et al., *Discrimination and Subsequent Mental Health, Substance Abuse, and Well-Being in Young Adults* (Dec. 2021) 148(6) *Pediatrics* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9126825/>> (as of Mar. 10, 2023); see also Gordon, *Discrimination Can Be Harmful to Your Mental Health* (Jan. 13, 2016) UCLA Newsroom <<https://newsroom.ucla.edu/stories/discrimination-can-be-harmful-to-your-mental-health>> (as of Mar. 10, 2023).

²⁴ Russel & Fish, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth* (Mar. 2016) 12 *Ann. Rev. Clin. Psychol.* 465 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4887282/>> (as of Mar. 10, 2023).

²⁵ California Department of Justice, *Juvenile Justice in California* (2019) Tables 18-22 <<https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/Juvenile%20Justice%20In%20CA%202019.pdf>> (as of Mar. 10, 2023); Hunt & Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth*

We provide the following draft language for consideration in section 1302:

“Adverse childhood experiences” means potentially traumatic events that occur in childhood, and can include experiencing violence, abuse, or neglect; witnessing violence in the home or community; growing up in a family with mental health or substance abuse problems; having a parent or family member in jail; parent separation or divorce; death of a parent or sibling; and experiences of social inequities such as living in poverty, family separation, being the target of racism, or experiencing discrimination because of sexual orientation or gender identity, national origin or immigration status.

“Behavioral health” means mental and emotional well-being and/or actions that affect wellness. Behavioral health problems include: may be affected by substance use disorders, alcohol and drug addiction, and serious psychological distress, suicide, and suicidal ideation, trauma, mental disorders, adverse childhood experiences, and experiences of racism and other forms of oppressive discrimination.

F. Section 1322: Youth Supervision Staff Orientation and Training

Current Title 15 regulations provide for required training of youth supervision staff prior to assuming supervision responsibilities. (Cal. Code Regs., tit. 15, § 1322.) The regulations should require additional training on trauma, adverse childhood experiences, adolescent development, and positive behavior management systems. As discussed in further detail above, youth involved in the juvenile justice system have experienced higher levels of trauma and adverse childhood experiences relative to their non-justice-involved peers. It is critical that youth supervision staff receive training not only on facility policies related to these issues, but on the impacts of trauma and adverse childhood experiences on youth. With such training, staff will be equipped to respond appropriately to manifestations of trauma and to understand the difficulties that many youth in their care are facing.

Similarly, the science of adolescent development has, in the past two decades, become increasingly important in assessing appropriate treatment for youth in the juvenile justice system and in understanding youth behavior.²⁶ Ensuring that youth supervision staff have an understanding of adolescent development and its impacts on youth behavior—including adolescents’ increased sensitivity to rewards-based systems as opposed to punitive systems—will improve supervision staff’s ability to appropriately address youth behavior and misbehavior. Relatedly, recognizing the importance and effectiveness of positive behavior management

in the Juvenile Justice System (June 29, 2012) Center for American Progress, p. 1
<http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf>
(as of Mar. 10, 2023).

²⁶ See Cavanagh, *Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions* (July 7, 2022) 16(3) *Child Development Perspectives* 141
<<https://srcd.onlinelibrary.wiley.com/doi/full/10.1111/cdep.12461>> (as of Mar. 10, 2023); Steinberg, *Adolescent Development and Juvenile Justice* (2009) 5 *Ann. Rev. Clin. Psychol.* 459
<<http://commissiononsexoffenderrecidivism.com/wp-content/uploads/2014/09/Steinberg-Laurence-2009-Adolescent-development-and-juvenile-justice.pdf>> (as of Mar. 10, 2023).

approaches, Title 15 already requires that facility administrators develop policies that include the use of positive behavior interventions and supports. (Cal. Code Regs., tit. 15, § 1390.) Staff should be required to be trained in these policies and procedures prior to assuming responsibility for the supervision of youth.

We provide the following draft language for consideration in section 1322:

(b) Prior to assuming any responsibility for the supervision of youth, each youth supervision staff member shall receive a minimum of 40 hours of ~~facility-specific~~ orientation *related to juvenile facility operations*, including:...

(6) ~~review of policies and procedures referencing~~ trauma and trauma-informed approaches, *adverse childhood experiences, adolescent development, and a review of policies and procedures referencing the same;*

(7) *policies and procedures regarding positive behavior interventions and supports;*

G. Section 1324: Policy and Procedures Manual and Non-Discrimination

Title 15 requires that a facility's policies and procedures include a non-discrimination provision to ensure that all youth within the facility have fair and equal access to all available services, placement, care treatment, benefits, and housing. (Cal. Code Regs., tit. 15, § 1324, subd. (k); see also § 1352, subd. (e).) Due to the closure of DJJ, some youth with more serious prior adjudications or pending petitions who would previously have been detained by the state will soon be detained in local juvenile facilities. It is critical that all youth, including youth with more serious prior adjudications or pending petitions, are provided all services and care required by law and that all youth have access to any rehabilitative programs or services offered by the facility. In addition, where a youth's prior adjudications or pending petitions may result in a safety concern for that youth, that youth should be housed safely while also maintaining access to care, services, treatment, and benefits. Finally, youth who are placed in protective custody, whether based on their prior adjudications, pending petitions, or other factors, should not be denied access to services, supports, and protections required by Title 15.

We provide the following draft language for consideration in section 1324:

(k) a non-discrimination provision that provides that all youth within the facility shall have fair and equal access to all available services, placement *and housing*, care, treatment, and benefits, and provides that no person shall be subject to discrimination or harassment on the basis of actual or perceived race, ~~ethnic group identification~~ *ethnicity*, ancestry, national origin, *language*, immigration status, color, religion, gender, sexual orientation, gender identity, gender expression, mental or physical disability, or HIV status, including restrictive housing or classification decisions based solely on any of the above mentioned categories. *Where a youth's prior adjudications or pending petitions may result in a safety concern for that youth, facility staff shall consider options for*

safely housing that youth, while also ensuring that youth are not subject to discrimination or harassment and have fair and equal access to all available services, care, treatment and benefits.;

We provide the following draft language for consideration in section 1354:

(c) separated youth shall not be denied ~~normal privileges~~ *any provisions of this chapter* available at the facility, except when necessary to accomplish the objective of separation. *Youth who are separated for the purposes of protective custody shall not be denied any provisions of this chapter available at the facility.*

H. Section 1328: Safety Checks

Regular safety checks are critical to the safety of detained youth. Studies have shown a high prevalence of suicidal ideation, suicide attempts, and self-injurious behavior among youth in detention.²⁷ Ensuring that youth are regularly observed while in their rooms is an important tool to protect youth from this behavior and to quickly respond to medical crises; documentation of safety checks, in turn, is an important tool to ensure that safety checks are actually occurring. We are pleased to note that the Board is considering strengthening requirements for documentation of safety checks, including a provision for supervisory review. We observe that the review process should mitigate not only documentation and timeliness issues, but also any identified failure to complete required checks. Further, where video is available, supervisory review should include review of video to confirm the veracity of written documentation.

We provide the following draft language for consideration in section 1302:

(g) A documented process by which safety checks are reviewed at regular defined intervals by a supervisor or facility manager, including methods of mitigating patterns of inconsistent documentation, failure to complete, or untimely completion of, safety checks. Such supervisory review shall include review of video where available.

I. Sections 1324 and 1361: Grievances and Abuse Reporting

Title 15 requires that facilities provide a grievance procedure, including methods to report sexual abuse and harassment. (Cal. Code Regs., tit. 15, § 1361.) Where a youth is reporting allegations of physical or sexual abuse, it is critical that measures be taken to ensure the youth's safety while those allegations are fully investigated. The failure to do so could not only expose facility staff and administration to liability, but also place youth at risk of further harm and of retaliation. The requirement for interim protective measures in similar contexts has

²⁷ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Suicide in Confinement: A National Survey* (Feb. 2009) pp. 3-4 <<https://www.ojp.gov/pdffiles1/ojdp/213691.pdf>> (as of Mar. 10, 2023).

long been effective in protecting those who come forward with allegations of abuse.²⁸ In addition, facility policies and procedures should clearly state that staff have a duty to immediately report any suspicion or allegation of physical or sexual abuse or harassment and that all such allegations shall be thoroughly investigated and responded to, including reports by youth. Finally, it is important that youth be able to confidentially report their grievances through multiple means, to anonymously report grievances, and to report grievances to staff who are not the subject of the grievances. Providing multiple avenues will help to address youth concerns about possible retaliation for filing a grievance and help ensure that issues, including complaints of physical or sexual abuse or harassment, are brought to the attention of facility staff to be resolved.

We provide the following draft language for consideration in section 1324:

(n) establishment of a policy that prohibits all forms of sexual abuse, sexual assault, ~~and~~ sexual harassment, *and physical abuse*. The policy shall *provide for a Compliance Coordinator who is trained in identifying, investigating and responding to allegations of sexual abuse, assault, harassment, and physical abuse* and include an approach to preventing, detecting and *promptly* responding to such conduct and any retaliation for reporting such conduct, as well as a provision for reporting, *investigating, and responding to all suspicions or reports of* such conduct by youth, staff or a third party, *including reports of physical or sexual abuse contained in grievances filed by youth. The policy shall also state that all staff have a duty to immediately report any suspected physical or sexual abuse or harassment to the Compliance Coordinator or their designee for timely investigation and, if allegations are substantiated, a written response and remedial and corrective measures that stop the abuse or harassment, remedy harm, and prevent recurrence.*

We provide the following draft language for consideration in section 1361:

(b) *provision for multiple methods* for youth ~~shall have the option~~ to confidentially *and/or anonymously* file the grievance ~~or~~ *and the option for youth* to deliver the form to any youth supervision staff working in the facility;

(i) *provision for the development and implementation of interim measures to protect youth reporting physical or sexual abuse;*

J. Section 1370: Education

The Probation Department and facility staff bear significant responsibility for the provision of education services in juvenile detention facilities. (Cal. Code Regs., tit. 15, § 1370.) The County Board of Education is required to “provide for the administration and operation of juvenile court schools *in conjunction with the Chief Probation Officer.*” (Cal. Code Regs., tit. 15,

²⁸ See, e.g., 34 C.F.R. §§ 106.30, 106.45, subd. (b) (defining and addressing supportive measures for individuals complaining of sexual assault or harassment in institutions receiving federal funding).

§ 1370, subd. (a) [emphasis added].) Facility administrators must “develop and implement written policy and procedures to ensure communication and coordination between educators and probation staff.” (*Ibid.*) The facility administrator is required to request an annual review of the education program, review each item in the annual review with the Superintendent of Schools, and “take whatever corrective action is necessary to address each deficiency and to fully protect the educational interests of all youth in the facility.” (*Ibid.*) The facility administrator, in conjunction with education staff, must ensure that “operational procedures do not interfere with the time afforded for the minimum instructional day,” and education must be provided to all youth in the facility, “regardless of classification, housing, security status, disciplinary or separation status, including room confinement, except when providing education poses an immediate threat to the safety of self or others.” (Cal. Code Regs., tit. 15, § 1370, subds. (b)(6), (7).)

Positive behavior management strategies in the school setting must “be integrated into the facility’s overall behavioral management plan and security system,” and school staff must “be advised of administrative decisions made by probation staff that may affect the educational programming of students.” (Cal. Code Regs., tit. 15, § 1370, subds. (c)(1), (2).) The facility administrator is responsible for developing “policies and procedures that address the rights of any student who has continuing difficulty completing a school day.” (Cal. Code Regs., tit. 15, § 1370, subd. (c)(4).) The Chief Probation Officer is also required to “develop policies and procedures to meet the transition needs of youth, including the development of an education transition plan,” and the facility administrator “should, whenever possible, collaborate with local post-secondary education providers to facilitate access to educational and vocational opportunities for youth that considers the use of technology to implement these programs.” (Cal. Code Regs., tit. 15, § 1370, subds. (g)(1), (h)(1).)

Education is a critical intervention for youth in detention. Studies demonstrate that continuing education for youth while they are detained significantly affects recidivism rates, with one study showing that participation in prison education reduced recidivism by more than 40%.²⁹ Providing quality education may also improve conditions in detention facilities by improving relationships between youth.³⁰ Ensuring that youth in detention receive a robust education program is particularly critical, as youth in juvenile detention facilities are disproportionately likely to have experienced grade retention, special education, suspensions, and expulsions, and to be functioning below grade level.³¹ When education is delivered effectively in juvenile institutions, youth’s educational outcomes improve: students’ math and reading scores, and high school completion, increase.³²

²⁹ Sullivan, *Education Systems in Juvenile Detention Centers* (2018) 2018(2) *BYU Educ. & L.J.* 71, 76.

³⁰ *Id.* at 77-78.

³¹ Leone & Fink, *Raising the Bar: Creating and Sustaining Quality Education Services in Juvenile Detention* (May 2017) National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth, p. 3 <<https://files.eric.ed.gov/fulltext/ED594445.pdf>> (as of Mar. 10, 2023).

³² Office of Juvenile Justice and Delinquency Prevention, *Model Programs Literature Review: Education for Youth Under Formal Supervision of the Juvenile Justice System* (Jan. 2019) pp. 12-13

Youth detained in juvenile facilities are under the custody and care of probation. (See, e.g., Welf. & Inst. Code §§ 630, subd. (a), 636, subd. (d)(3)(B), 730.) Probation departments are already responsible for ensuring that youth attend school for the full school day. (See Ed. Code § 48200 [requiring that “each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday”].) However, the regulations should also explicitly delineate the probation department’s duty to ensure that youth attend school, including requirements that youth are timely transported to and/or made available for school. (See, e.g., Ed. Code § 48200 et seq. [“person having control or charge of the pupil” is responsible for on-time school attendance and delineating penalties for failures].) We propose that the Title 15 education regulations further clarify the specific duties that probation or any agency with custody and care of detained students has to send students to full-time school as required by law. In addition, we propose that the Title 15 education regulations provide additional specificity as to the steps to be taken when a youth “has continuing difficulty completing a school day.” (Cal. Code Regs., tit. 15, § 1370, subd. (c)(4).)

We provide the following draft language for consideration in section 1370:

(c) School Discipline

(4) The facility administrator, in conjunction with education staff will develop policies and procedures that address the rights of any student who has continuing difficulty completing a school day, *including provision for joint meetings between education staff, probation staff, and, where applicable, mental health staff to assess the needs of such a student and develop a plan to facilitate the student’s school attendance.*

(b) Required Elements

(6) The minimum school day shall be consistent with State Education Code Requirements for juvenile court schools. The facility administrator, in conjunction with education staff, must ensure that operational procedures do not interfere with the time afforded for the minimum instructional day. *The facility administrator is responsible for ensuring that youth are available for and transported timely to school for the full time designated for the length of the schoolday. The facility administrator shall develop policies and procedures to ensure that school attendance is a priority and youth are timely transported to and available for school for the full time designated for the length of the schoolday.* Absences, time out of class or educational instruction, both excused and unexcused, shall be documented.

<https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf> (as of Mar. 10, 2023).

K. Sections 1480 and 1485: Clothing and Personal Care Items

We are pleased to see that the Board is considering updating section 1480 to require that youth's clothing be substantially free of stains and section 1485 to require that personal care items be culturally sensitive. We strongly support the proposed regulatory amendments to ensure that youth receive reasonably stain-free clothing and personal care items that are culturally appropriate (for example, hair care products that are appropriate for African-American youth), which is important to maintaining the dignity and self-esteem of detained youth.

The Attorney General's office appreciates the continuing efforts of the Board to update the Title 15 regulations and to ensure that youth detained in juvenile facilities are housed in safe, rehabilitative, and supportive conditions. We appreciate your consideration of these recommendations on ways to strengthen Title 15 regulatory protections.

Sincerely,



ROB BONTA
Attorney General