RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to enact laws and adopt policies prohibiting the use of chemical agents on young people in detention and corrections facilities; and

FURTHER RESOLVED, That the American Bar Association urges court systems, lawyers, law enforcement leaders, medical professionals, law schools and bar associations to promote awareness of the harmful effects of using chemical agents on young people in detention and correctional facilities; and

FURTHER RESOLVED, That the American Bar Association replaces ABA Juvenile Justice Standards, Standards Relating to Corrections Administration, Standard 7.8(B).
Relationship to Existing ABA Policy

The ABA has been a consistent voice calling for the elimination of harsh treatment of children and young people by anyone "under the color of law." There are two resolutions passed by the House of Delegates, August 3-4, 2020, which make this point.

In Resolution 103, Annual 2020, the ABA urged the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary and secondary students.

Resolution 111B, Annual 2020, called for the adoption of policies and contractual provisions which prohibit strip searches of children and youth, except in exceptional circumstances outlined in the resolution. The resolution prohibits body cavity searches of children and youth and calls upon court systems, lawyers, law enforcement leaders, medical professionals, law schools, and bar associations to promote awareness of the harmful effects of strip searches and body cavity searches of children and youth, including trauma and revictimization.

This Resolution is consistent with these principles. It specifically urges federal, state, local, territorial and tribal governments to enact laws and adopt policies prohibiting the use of chemical restraints on young people in detention or correctional facilities.

Definition of Children and Youth

For purposes of this Resolution, children and youth are defined as an individual who is (1) under the age of 18, or (2) under the age of 22 who remains under the jurisdiction of the juvenile court.¹

Definition of Chemical Agents²

Chemical agents irritate the mucous membranes in the eyes, nose, mouth and lungs.³ They incapacitate people by inducing multiple physiological reactions including a burning

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¹ See A.B.A MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT AND DEPENDENCY CASES 1, 2 (2011)
³ See CENTERS FOR DISEASE CONTROL, AND PREVENTION, FACTS ABOUT RIOT CONTROL AGENTS
sensation, temporary blindness, body spasms and difficulty breathing. The chemical agents used in correctional settings are:

- **Oleoresin Capsicum**: A substance derived from compounds found in the plants in the Capsicum genus, such as chili peppers. Known also as “pepper spray,” “OC” or “capsicum,” oleoresin capsicum can be administered as a liquid, gas, foam or powder.

- **2-Chlorobenzalmalonitrile Gas**: A substance produced through chemical synthesis. It is known more commonly as “CS gas” or “tear gas.”

- **Phenacyl Chloride**: A substance produced through chemical synthesis. Phenacylchloride, which is also known as “CN gas,” “Mace,” and “phenylchloromethylketone” is more toxic than CS gas and less commonly used in correctional settings.

**Chemical Agents in Juvenile Facilities**

A fundamental responsibility of juvenile facility administrators is to keep youth and staff safe. Most administrators fulfill that responsibility without using chemical agents such as pepper spray and tear gas. However, some continue to rely on painful and dangerous chemical agents instead of more effective and humane ways of managing interpersonal conflicts and youth misbehavior. Chemical agents jeopardize the safety of youth and staff. The health risks and misuse of such agents have been the subject of multiple lawsuits and investigations. In addition, when staff in juvenile facilities spray youth with painful and harmful chemicals, they make it impossible for youth to develop the trusting relationships with staff that are the foundation of the system’s goal of rehabilitation. Instead, youth feel anger and distrust towards adults. Accordingly, chemical agents have no place in juvenile facilities.

**Why Chemical Agents are Dangerous.**

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5 Mental Health America, formerly known as the National Mental Health Association, describes that interventions such as pepper spray are “detrimental to young people with emotional and behavioral disorders or those with histories of maltreatment.” NATIONAL MENTAL Health ASSOCIATION, PRIVATIZATION AND MANAGED CARE IN THE JUVENILE JUSTICE SYSTEM 25 (2007), http://www.1.nmha.org/children/jusjuv/juvenilejustice-privatization.pdf.
Chemical agents cause negative physical reactions that can be exacerbated in the locked and often cramped quarters of secure facilities. Chemical agents have been linked with the following short- and long-term effects in adult populations:

- Intense pain, swelling, and blistering of the skin;
- Wheezing and an inability to breathe or speak;
- Acute hypertension, which may lead to an increased risk of stroke or heart attack;
- The deterioration of nerve tissue and permanent corneal damage;
- Potential asphyxiation when used in conjunction with physical or mechanical restraint, or when used on individuals with respiratory conditions such as asthma;\(^6\)
- Respiratory failure possibly resulting in death;
- Immediate death from severe chemical burns to the throat and lungs; and
- Blindness and glaucoma.\(^7\)

**Long Term Effects of Chemical Agents**

There have been no studies of the effects of chemical agents on children. Therefore, there is no information available to determine whether a single or repeated exposure may have long-term consequences on the health of young people. There is reason to believe, however, that the effects of chemical agents are more pronounced in children. In 2018, the American Academy of Pediatrics reported that “children are uniquely vulnerable to physiological effects of chemical agents”\(^8\) because children are smaller in size, take more frequent breaths per minute, and have a limited cardiovascular stress response when compared to adults.\(^9\) Additionally, studies have shown that children are more vulnerable to severe injuries resulting from chemical toxicity.\(^10\)

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\(^9\) Id.

A 2009 review of the literature from the *British Medical Journal* noted that the effects of chemical agents were exacerbated in confined spaces and areas with poor ventilation\(^\text{11}\)—two features that are common in juvenile facilities. Additionally, in facilities that rely on chemical agents as a regular means to control behavior, youth and staff may suffer repeated exposure to chemical agents even if they are not direct targets of its use. Repeated exposure to chemical agents "may increase the chance of adverse effects."\(^\text{12}\)

**Staff Do Not Know Which Youth May be Particularly Vulnerable to Chemical Agents.**

Facility staff may not know which youth are especially vulnerable due to pre-existing conditions, such as asthma.\(^\text{13}\) Most facilities conduct intake screenings to learn about youths’ medical needs, but some youth have undiagnosed conditions or may not supply complete medical information. Staff in living units are often not informed of medical vulnerabilities of youth in their care. Research also suggests that pepper spray can increase the lethality of stimulants such as cocaine,\(^\text{14}\) which youth may have consumed prior to admission. In addition, staff usually administer chemical agents in a spray, which contaminates surrounding areas in the facility. Thus, even if not involved directly in an incident, other youth in the facility are at risk of the harmful effects of chemical agents.

**Staff Often Come to Rely on Chemical Agents to Respond to Behavior that is Annoying and Disruptive but not Threatening to Youth and Staff.**

Chemical agents are effective at quickly disabling disruptive individuals, but in many facilities the “agent of last resort” becomes the first one used. Investigations by the Special Litigation Section of the U.S. Department of Justice’s Civil Rights Division have revealed abusive uses of chemical agents on

- pregnant youth\(^\text{15}\),

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\(^{12}\) Marita Broadstock, *What is the Safety of “Pepper Spray” Use by Law Enforcement or Mental Health Service Staff?* 14 New Zealand Health Technology Assessment Tech Brief Series (Sept. 2002).

\(^{13}\) Smith & Stopford, supra note 6m at 272.

\(^{14}\) John E. Mendelson et al., *Capsaicin, An Active Ingredient in Pepper Sprays, Increases the Lethality of Cocaine*, 28 FORENSIC TOXOCOLOGY 33 (2009).

- youth with developmental delays;¹⁶
- youth exhibiting suicidal gestures and behaviors;¹⁷
- youth who refused to remove their clothes before being placed in isolation;¹⁸
- youth who failed to perform military-style exercises;¹⁹
- youth inside of secured cells who did not remove their arms from the food flaps in their doors.²⁰

**The Mental Health Dangers of Chemical Agents are also Significant.**

Disability Rights California reported that pepper spray is likely to result in disproportionate harm to “young people with disabilities such as mental illness, ADHD and intellectual and developmental disabilities.”²¹ Many behaviors that result in the use of pepper spray are manifestations of mental illness or developmental disabilities. Chemical agents can make it more difficult to calm down individuals with mental illness in the short term and may worsen their overall mental health.²² Chemical agents may interact dangerously with psychotropic medications, as both can affect blood flow, heart rate, and breathing. This interaction is especially concerning because a significant number of youth in the juvenile justice system experience mental health disorders. For example, a landmark study conducted at the juvenile detention center in Cook County, Illinois, found that 60% of males and more than two-thirds of females met diagnostic criteria and had a diagnosis-

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¹⁶ Id.


¹⁸ Id.

¹⁹ Id.


specific impairment for one or more psychiatric disorders, after excluding conduct disorders.\textsuperscript{24}

\textbf{Use of Chemical Agents in Youth Facilities has Prompted Investigations and Lawsuits, and States and Counties have Prohibited the Use of Chemical Agents in Juvenile Facilities.}

Federal courts have held that use of chemical agents in secure facilities, including youth facilities, is unconstitutional.\textsuperscript{25} States and counties across the country have prohibited the use of chemical restraints in juvenile facilities, including Oklahoma\textsuperscript{26}, Mississippi\textsuperscript{27}, Louisiana\textsuperscript{28}, New Hampshire\textsuperscript{29}, Florida\textsuperscript{30}, New Jersey\textsuperscript{31}, and Kansas\textsuperscript{32}. Use of chemical restraints in juvenile facilities is also prohibited by standards such as the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) Juvenile Detention Facility Assessment Standards.\textsuperscript{33}

\textbf{Chemical Agents are Unnecessary. There are More Effective Strategies for Responding to Youth Disruption and Misbehavior.}

Chemical agents are harmful and counterproductive. Effective strategies for responding to youth behavior include:

\textsuperscript{24} Linda A. Teplin et al., \textit{Psychiatric Disorders in Youth Detention}, 59 Archives Gen. Psychiatry 1137 (2002).
\textsuperscript{28} L.A.C. § 67: V.7517©(a)(n) (2012)

\textsuperscript{29} NH St. § 126-U:4 (2010)
\textsuperscript{30} Fla. Stat.§ 985.645 (2010)
\textsuperscript{31} N.J.A.C § 13:92-7.5(q) (2005)
\textsuperscript{32} K.A.R. 28-4-355b (c)(8) (1993).

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● Developing a full schedule of programming to keep youth busy so that they are less likely to become bored and have fewer opportunities to argue;

● Ensuring that staff receive regular training on alternative behavior response techniques, conflict management, de-escalation of confrontations, crisis intervention, adolescent development, developmental disabilities, mental health disorders, trauma-informed care, approved physical force techniques, and appropriate use of restraints;

● Requiring that staff actively engage with youth under their supervision to identify conflicts before they escalate;

● Creating a behavior management system that is primarily based on incentives rather than punishments;

● Adopting an effective grievance system that can bring youth concerns to the attention of facility administrators;

● Ensuring that facilities have adequate numbers of staff and staff-to-youth ratios (1:8) to permit personal interaction with youth that can help identify problems; and

● Bringing in mental health professionals at the beginning of a potential conflict situation so they can intervene with youth.

Jurisdictions can begin their transition away from use of chemical agents by phasing out their use. In addition to following the steps above, facility administrators can reduce the use of chemical agents by:

● Keeping chemical agents in the facility administrator’s office instead of on units or with direct care staff;

● Requiring authorization by a facility administrator before use;

● Adopting a clear policy that chemical agents should only be used as a last resort, and only in riot situations;

● Adopting policies that ban the use of chemical agents on particularly vulnerable populations;

● Bringing staff and clinicians together to discuss each incident involving the use of chemical agents and alternative ways staff could have responded; and

● Holding staff accountable for inadequate supervision practices and for failing to follow de-escalation procedures.

**International Law.**

Children have the right to be treated with dignity and humanity. The U.N. Convention on the Rights of the Child mandates treatment of children consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for human rights.
and fundamental freedoms of others and which takes into account the child’s age and the
desirability of promoting the child’s reintegration and the child’s assuming a constructive
role in society.34

The Convention also requires treatment with humility and “respect for the inherent dignity”
of the child, taking into account the particular needs of the child.35 Similarly, the United
Nations Rules for the Protection of Juveniles Deprived of their Liberty establishes
children’s rights to facilities and services that meet all requirements of health and human
dignity.33 The institution is required to minimize any differences between prison life and
life at liberty which tend to lessen the responsibility of the prisoners or the respect due to
their dignity as human beings.36

**Conclusion**

Children are our most valuable resource, yet we do not prize them and treasure them
as we should, but treat them as disposable items. Children across the globe daily are
abused physically, mentally and sexually; forced to work in harsh and unbearable
conditions; forced to bear witness to violence and war; suffer from preventable diseases;
go without education; live in hunger. And while we may treasure and value those within
our sight, we must not fail those in which we cannot see, as all children are resources
to be treasured.

Herbert Hoover
31st U.S. President

Use of chemical restraints on children and youth in detention and corrections facilities is
not a therapeutic intervention. Chemical restraints are painful and dangerous and should
not be used because they do not further the goals of rehabilitation and positive youth
development and are in contravention to the rights of the children and youth to be treated
with dignity, humility and respect.

Respectfully submitted,

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para 1. The United States has not yet ratified the Convention on the Rights of the Child, but it is a
Justice and National Self-Righteousness, 50 Emory L.J. 775, 778 (2001). The United States, South
Sudan and Somalia are the only countries in the world that have not ratified the Convention.
35 Id. Art.37(c).
April Frazier-Camara, Chair
Criminal Justice Section

August 2021
1. **Summary of the Resolution(s).**

   This resolution urges governments to end the use of chemical agents on children and youth in juvenile and correctional facilities; and encourages court systems, law enforcement officers, medical personnel and educators to make others aware of the harm that use of chemical agents has – including revictimization and trauma – on children and youth in detention and correctional facilities.

2. **Indicate which of the ABA’s Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.**

   The resolution serves goals four.

   The resolution is consistent with the rule of law. The UN Declaration on the Rights of the Child urges that children should be treated with humility and “respect for the inherent dignity” of the child, taking into account the particular needs of the child.32 Similarly, the United Nations rules for the protection of children who are deprived of their liberty establishes children’s rights to facilities and services that meet all requirements of health and human dignity.

3. **Approval by Submitting Entity.**

   The Criminal Justice Council approved this resolution on April 10, 2021.

4. **Has this or a similar resolution been submitted to the House or Board previously?**

   The ABA has been a consistent voice calling for the elimination of harsh treatment of children and young people by anyone “under the color of law.”

   There are two resolutions passed by the House of Delegates, on August 3-4, 2020, which make this point.

   In Resolution 103, Annual, 2020, the ABA urged the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary and secondary students.
Resolution 111B called for the adoption of policies and contractual provisions which prohibit strip searches of children and youth, except in exceptional circumstances outlined in the resolution. The resolution prohibits body cavity searches of children and youth and calls upon court systems, lawyers, law enforcement leaders, medical professionals, law schools, and bar associations to promote awareness of the harmful effects of strip searches and body cavity searches of children and youth, including trauma and revictimization.

5. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

Please see above. This resolution is consistent with ABA policies.

6. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

Not applicable.

7. **Status of Legislation. (If applicable)**

Not applicable.

8. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

Implementation of this policy will occur by publication of the policy to juvenile and correctional facilities, state legislatures, juvenile and correctional agencies, and programming by the Section, other ABA entities that are focused on children and youth and other national and state organizations focused on children and youth.

9. **Cost to the Association. (Both direct and indirect costs)**

No direct cost. Indirect cost of staff time.

10. **Disclosure of Interest. (If applicable)**

Not applicable

11. **Referrals.**

Center on Children and the Law  
Government and Public Sector Division  
Health Law Section  
Section of International Law Government and Public Sector  
Judicial Division
Section of Litigation
Section of Science & Technology Law
Law Practice Division
Solo, Small Firm and General Practice Division
Commission on Hispanic Legal Rights and Responsibilities
Commission on Homelessness & Poverty
Commission on Immigration
Commission on Racial & Ethnic Diversity in the Profession
Commission on Youth at Risk
Center for Human Rights
Coalition on Racial & Ethnic Justice
Standing Committee on Legal Aid and Indigent Defendants
Standing Committee on Federal Judiciary
Young Lawyers Division

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). Be aware that this information will be available to anyone who views the House of Delegates agenda online.

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Linda.Britton@americanbar.org

13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

This resolution urges governments to end the use of chemical agents on children and youth in juvenile and correctional facilities; and encourages court systems, law enforcement officers, medical personnel and educators to make others aware of the harm that use of chemical agents has – including revictimization and trauma – on children and youth in detention and correctional facilities.

2. Summary of the issue that the resolution addresses.

The resolution addresses the need to end the use of chemical agents on juveniles in correctional facilities.

3. Please explain how the proposed policy position will address the issue.

This proposed policy will encourage the US to continue to move forward with reform of the juvenile and criminal justice systems.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

Minority views or opposition within the ABA is unknown. The resolution is favored by all entities that focus on children and youth. Opposition outside the ABA generally consists of uninformed juvenile and correctional agencies and officials who mistakenly believe that chemical agents are necessary to provide order and do not harm children and youth.