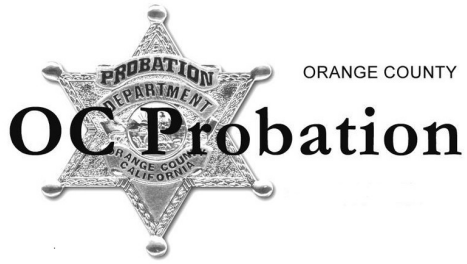


Probation Department Response



Office of Independent Review
601 N. Ross St., 2nd Floor
Santa Ana, CA 92701

Robert P. Faigin, J.D., MPA
Executive Director



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May 7, 2025

Via Email and U.S. Mail

Mr. Robert Faigin
Executive Director
Office of Independent Review
601 N. Ross St., 2nd Floor
Santa Ana, CA 92701
Robert.Faigin@ocgov.com

Re: Independent Review of the Probation Department's usage of Oleoresin Capsicum in Juvenile Detention Facilities in 2022 (May 2025).

Dear Mr. Faigin:

We received the report prepared by the Office of Independent Review (OIR) of the Orange County Probation Department's (OC Probation) usage of oleoresin capsicum (OC spray) in juvenile detention facilities in 2022. The OIR's final determinations strongly reflect OC Probation's continued dedication to the safety and well-being of the youth entrusted to our care.

Our foremost priority throughout this process has been and still emphatically remains full compliance with all applicable laws and regulations designed to protect both our staff and the youth. Each recommendation from the OIR has been reviewed with diligence and humility, with our enduring responsibility to safeguard and support our youth at the forefront of our approach.

The OIR's conclusion that all initial uses of OC spray were lawful and consistent with Title 15 of the California Code of Regulations, the California Penal Code, applicable Supreme Court rulings and case law affirms OC Probation's rigorous training standards and detailed policies governing the appropriate use of OC spray. Additionally, each incident reviewed by the OIR was determined to be justified, based on the Deputy Juvenile Correctional

Officer's (DJCO) genuine concern of an immediate threat to a youth's safety or safety of others prior to utilizing OC spray.

Notably, only 19% of the 142 incidents involving physical altercations or immediate, ongoing threats of violence resulted in the use of OC spray.

All documentation and training-related recommendations have been or are in the process of being implemented with the utmost attention to detail and a firm commitment to best practices. Mental health related recommendations are being addressed in collaboration with our partner agency, in addition to the robust healthcare already provided to youth in our juvenile facilities and with respect to regulations and policies governing the administration of health care services. We defer to our healthcare partners' clinical expertise that guides their decision making and have implemented all applicable recommendations pertaining to timely notification of mental health staff within the operational scope of our department.

Following a comprehensive review of the report, my team and I are aligned on adopting all but one of the recommendations. OC Probation maintains that the department's existing policy provides clear and sufficient guidance on the use of OC spray and does not necessitate the additional need to classify OC spray as an "intermediate" use of force. Our current policy outlines specific circumstances under which OC spray may be utilized and emphasizes the seriousness and deliberation required in each instance.

It is critical to note that OC spray represents the highest level of force permitted in our juvenile facilities. Assigning it a new categorical label such as "intermediate" could inadvertently diminish the perceived severity of its use, despite the absence of any more extreme force options within our facilities.

In addition, the OIR report found that OC spray was not used preemptively or after voluntary compliance by youth was obtained. This, as well as its use in only a small percentage of physical altercation incidents, supports the conclusion that staff already exercise appropriate discretion and deliberation, reinforcing our view that OC spray is currently understood and treated as a serious and consequential measure.

Many of the recommendations had already been identified by our internal Use of Force Review Board and were implemented. OC Probation also respectfully underscores the legal distinction between the application of case law for use of force in field settings versus custodial environments when considering the circumstance of use of force.

While we will take it under advisement, regarding the OIR's inclusion of a recommendation to evaluate gender disparity in OC spray usage, OC Probation believes the recommendation stems from a severely limited evaluation of a single variable. Ignoring all other possible variables renders this inference unscientific and could be related to correlation rather than causation. To infer that gender of officers may play a role in OC

spray use based on a comparison to the overall facility gender breakdown of nearly half male and half female is an inherent limitation of the evaluation. Drawing conclusions based solely on gender, without accounting for other relevant variables could lead to unintended consequences, including potential concerns around discrimination or harassment. Any such analyses should adhere to data best practices and include appropriate controls to ensure accuracy and completeness.

Lastly, the OIR included a county-to-county comparison of OC spray incidents for several large counties in California. While the Orange County Probation Department had the lowest number of incidents, this method of measure and reporting is limited by the exclusion of any accounting for the average daily population of each agency. Differences in the number of youth in each system would no doubt have influence on the number of incidents encountered.

The Orange County Probation Department truly appreciates the collaborative and cooperative relationship shared with the OIR during the course of this evaluation process. As recommendations were identified over the past three years, we worked together to implement those immediately rather than at the conclusion of the report.

I remain firmly committed to ongoing collaboration and transparency with the OIR. The OIR's independent guidance continues to provide critical value to the Board of Supervisors, and to our department, in our shared mission to ensure that the youth in our care are treated with the respect, dignity, and the quality of care they rightly deserve.

Sincerely,

DocuSigned by:
Daniel Hernandez
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Daniel Hernandez
Chief Probation Officer