

AMENDED IN ASSEMBLY MARCH 27, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1321**

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**Introduced by Assembly Member Gipson**

February 22, 2019

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An act to add Section 209.5 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as amended, Gipson. Juvenile facilities: use of chemical spray.

Existing law requires the Board of State and Community Corrections to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. Existing law requires the judge of the juvenile court of the county to annually inspect any jail or juvenile hall that was used for the confinement of any minor and to notify the operator of the jail or juvenile hall of any observed noncompliance with the minimum standards of the juvenile facility adopted by the board.

This bill would require the custodian of each juvenile facility to report *quarterly* to the board on the use of chemical agents in the facility. The bill would require the board to conduct inspections of juvenile facilities in the top quartile of chemical agent use. The bill would require the Legislative Analyst's Office to conduct a study on the use of chemical agents in juvenile facilities and report to the Legislature by June 1, 2021. By imposing the new reporting duty on local juvenile facilities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 209.5 is added to the Welfare and  
2 Institutions Code, to read:

3 209.5. (a) The Legislature finds and declares that the use of  
4 chemical agents in juvenile facilities is inconsistent with the  
5 rehabilitative purpose of the juvenile court. It is the intent of the  
6 Legislature that information regarding the use of chemical agents  
7 in juvenile facilities be collected in order to aid in the development  
8 of alternatives to ~~reduce and eventually eliminate~~ the use of  
9 chemical agents.

10 (b) ~~At least biannually, the~~ *On March 1, June 1, September 1,*  
11 *and December 1, of each year, the* custodian of each juvenile  
12 facility shall report to the Board of State and Community  
13 Corrections the following information regarding the use of  
14 chemical agents in the facility, which shall be posted on the Board  
15 of State and Community Corrections' internet website in a manner  
16 that is accessible to the public:

17 (1) The number of instances in which chemical agents were  
18 used in the facility and number of minors affected by the use of  
19 chemical agents.

20 (2) For each instance of use of a chemical agent, all of the  
21 following:

22 (A) Demographic information, including age, gender, and race,  
23 of minors affected by each use of chemical agents, whether the  
24 minors affected were predisposition or postdisposition, and whether  
25 the minors affected have a documented disability.

26 (B) The date, time, and location within each facility of each use  
27 of chemical agents.

- 1 (C) The efforts made to deescalate prior to the use of chemical  
2 agents.
- 3 (D) The stated reason for the use of chemical agents.
- 4 (E) Other physical force techniques used in conjunction with  
5 or after the use of chemical agents, and the techniques that were  
6 used.
- 7 (F) Decontamination procedures employed after the use of  
8 chemical agents.
- 9 (G) Injuries to minors resulting from the use of chemical agents,  
10 and of those, the number of injuries resulting in hospitalization.
- 11 (H) Injuries to staff caused by the use of chemical agents.
- 12 (3) The number of instances in which minors not involved in a  
13 precipitating incident were affected by chemical agents and number  
14 of minors affected.
- 15 (4) The facility's policies for all of the following:
- 16 (A) Use of force and the use of chemical agents.
- 17 (B) Identifying minors for whom the use of chemical agents is  
18 contraindicated.
- 19 (C) Deescalation prior to the use of force, including the use of  
20 chemical agents.
- 21 (D) Decontamination following the use of chemical agents.
- 22 (c) Commencing January 1, 2021, and on an annual basis  
23 thereafter, the Board of State and Community Corrections shall  
24 conduct inspections of the juvenile facilities in the top quartile of  
25 use of chemical agents per capita based on average daily population  
26 over the previous year and provide training and technical assistance  
27 regarding deescalation techniques and alternatives to the use of  
28 chemical agents.
- 29 (d) (1) The Legislative Analyst's Office shall conduct a study  
30 of the use of chemical agents in juvenile facilities. The study shall  
31 include all of the following:
- 32 (A) An analysis of the data provided to the Board of State and  
33 Community Corrections pursuant to this section.
- 34 (B) A study of the policies and practices of juvenile facilities  
35 that do not employ chemical agents.
- 36 (C) A study of the policies and practices of juvenile facilities  
37 in the top quartile of use of chemical agents per capita based on  
38 average daily population over the previous year.
- 39 (D) Consultation with stakeholders, including individuals  
40 currently or formerly detained in juvenile facilities.

1 (E) Consideration of the best practices of other states that have  
2 eliminated the use of chemical agents in juvenile facilities.

3 (F) Recommendations for the reduction or elimination of the  
4 use of chemical agents in juvenile facilities.

5 (2) The Legislative Analyst’s Office shall submit a report,  
6 including, but not necessarily limited to, the data and analysis  
7 required by this section to the Legislature on or before January 1,  
8 2021.

9 (3) (A) The requirement for submitting a report imposed under  
10 paragraph (2) is inoperative on January 1, 2025, pursuant to Section  
11 10231.5 of the Government Code.

12 (B) A report to be submitted pursuant to paragraph (2) shall be  
13 submitted in compliance with Section 9795 of the Government  
14 Code.

15 ~~(d)~~

16 (e) For purposes of this section, the following definitions apply:

17 (1) “Chemical agent” means a chemical-based agent designed  
18 to debilitate or incapacitate a person, or to cause a temporary  
19 burning sensation and inflammation of mucous membranes and  
20 eyes leading to involuntary closure, including, but not limited to,  
21 tear gas, mace, oleoresin capsicum, or pepper spray.

22 (2) “Minor” means a person who is any of the following:

23 (A) A person under 18 years of age.

24 (B) A person under the maximum age of juvenile court  
25 jurisdiction who is confined in a juvenile facility.

26 (C) A person under the jurisdiction of the Department of  
27 Corrections and Rehabilitation, Division of Juvenile Justice.

28 SEC. 2. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.