

OIR Use of Force Review

UOF Review 3-1-22 YLA Unit 1



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Summary of Facts

On March 1, 2022, at approximately 4:47 p.m., Y1 and Y2 were seated next to each other at the same table as they ate dinner.¹ Deputy Juvenile Correctional Officer (DJCO) 1 heard one youth say something to the other youth and observed one of the youths abruptly get up from his chair. The other youth stood up in response. The youths then began to exchange closed fist punches aimed at each other's head and upper torso areas. DJCO 1 motioned towards the youth, and then dispersed a one-second spray of Oleoresin Capsicum (OC) towards Y1 from a distance of seven to ten feet. The spray made contact with Y1, but the youths continued to exchange closed-fist punches.

DJCO 1 attempted to separate the youths with the assistance of DJCO 2. DJCO 2 yelled "[s]top, stop! Get down! OC clear," and deployed a half-second burst of OC spray towards both youths. Both Y1 and Y2 continued to fight. DJCO 2 attempted to take one of the youths to the ground, but the youth resisted her attempts. DJCO 2 then deployed another half-second burst of OC towards both youths. DJCO 1 then applied a foot-block shoulder-drag in an attempt to get Y2 safely to the ground. As Y2 was being restrained, Y1 stomped on his stomach two or three times with his foot and yelled "Fuck you, fool! Trask fool!"

DJCO 3 arrived to assist in gaining control of Y1. Y1 then pushed food and liquid that was on the table towards DJCO 1 and Y2 and spit in DJCO 1's face three times. DJCO 3 then deployed a one-second burst of OC towards Y1 from approximately five feet away, and made contact with Y1's forehead, just above his right eye.

DJCO 4 arrived and assisted DJCO 1 in handcuffing Y2. DJCO 5 arrived and assisted DJCO 3 in handcuffing Y1. A Supervising Juvenile Correctional Officer (SJCO) arrived and provided staff with directions regarding where to take each youth for decontamination. Y1 and Y2 were escorted to the showers to begin the decontamination process. Y3, who was not involved in the altercation, but was affected by overspray, was escorted to the Youth Leadership Academy (YLA) 2 showers to decontaminate.

Lawful Requirements for Use of OC

In determining whether a particular use of force was appropriate, courts analyze the force "under the Fourth Amendment's prohibition against unreasonable seizures using the framework articulated in *Graham v. Connor*."² The reasonableness of a seizure turns on whether the use of force was "objectively reasonable in light of the facts and circumstances confronting [the user of force], without regard to their underlying intent or motivation."³ Reasonableness is determined by balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."⁴

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the "the quantum of force used."⁵ The second step is to measure "the governmental interests at stake by

¹ All information regarding the incident is taken from DJCO reports as no video of the incident was provided.

² *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

³ *Graham v. Connor* (1989) 490 U.S. 386, 397; *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 477.

⁴ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

⁵ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

evaluating a range of factors.”⁶ Finally, the third step is to balance the quantum of force used on the individual against “the government's need for that intrusion to determine whether it was constitutionally reasonable.”⁷

Quantum of Force

Assessing the quantum of force used requires analyzing the nature and quality of the intrusion on the individual's Fourth Amendment interests, which, in turn, requires the fact finder to evaluate both the type of force inflicted, and the amount of force used.⁸

Type of Force Used

In this incident, the force used was Oleoresin Capsicum (OC), commonly known as pepper spray. OC is an oily organic resin derived from the fruit of plants in the Capsicum genus, such as chili peppers.

The Ninth Circuit has clearly held that pepper spray is a form of “force capable of inflicting significant pain and causing serious injury.”⁹ “Pepper spray ‘is *designed* to cause intense pain,’ and inflicts ‘a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx,’ as well as ‘disorientation, anxiety, and panic.’”¹⁰ As such, pepper spray is regarded as “intermediate force” that, “while less severe than deadly force, nonetheless present[s] a significant intrusion upon an individual's liberty interests.”¹¹

Recommendation

Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.

Amount of Force Used

The amount of “intermediate force” (OC) used in this case was moderate. In total there were four separate bursts of OC deployed by three different DJCOs. The reports indicate that each deployment of OC occurred while the youths were actively fighting each other, assaulting staff, or resisting staff's attempts to take them into custody. Each burst lasted between a half second to one second and was deployed from a minimum distance of four feet and maximum distance of ten feet.

Some courts have also held that the failure to act by not properly decontaminating a person exposed to OC can rise to the level of a constitutional violation.¹² Such is not the case here. Staff ensured the length of time that the youth felt the effects of the OC was limited. As soon as Y1 and Y2 were secured, they were taken directly to the unit showers to begin the decontamination process. Y3, who was affected by overspray, was immediately taken to the YLA 2 showers to decontaminate. The reports reflect that only four minutes elapsed from the time the first burst of OC was deployed and the time that Y1 began the decontamination process. Similarly, only five minutes elapsed from the time the first burst of OC was deployed and the time that Y2 and Y3 began the decontamination process.

⁶ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

⁷ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

⁸ *Miller v. Clark County* (9th Cir. 2003) 340 F.3d 959, 964.

⁹ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹⁰ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹¹ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹² *Wilson v. Bucato* (E.D.Cal. Dec. 7, 2023, No. 1:23-cv-00023-HBK (PC)) 2023 U.S.Dist.LEXIS 218539.

Governmental Interest

Intermediate force is a “significant level of force that must be justified by the governmental interest involved.”¹³ In evaluating the government’s interest in the use of force, courts look to: “(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight.”¹⁴

Severity of the Crime at Issue

The crimes at issue in this incident were violent crimes of assault and battery. Under California law, assault and battery are typically misdemeanor offenses.¹⁵ However, battery involving the infliction of serious bodily injury and assault by means of force likely to produce great bodily injury are both felony offenses.¹⁶ A felony battery charge focuses on the actual injury inflicted, while a felony assault charge focuses on the force used and not whether the force produced great bodily injury. “The crime of assault by means of force likely to produce great bodily injury is completed before any injury is inflicted.”¹⁷ “It is enough that the force used is likely to cause serious bodily injury. No injury is necessary.”¹⁸ Some courts have said that punching is “capable of inflicting significant pain and causing serious injury.”¹⁹

Here, the reports show that Y1 and Y2 were engaged in punching each other with closed fists. Both youths continued to fight each other even after being sprayed three times. In addition, Y1 continued to assault Y2 as staff members were restraining Y2 on the floor. Y1 also assaulted staff by throwing food and spitting on DJCO 1 even after being sprayed multiple times.

Whether the Suspect Posed an Immediate Threat to the Safety of the Officers or Others

Courts have said that the most important element of the *Graham* factors is whether the suspect poses an immediate threat to the safety of the officers or others.²⁰ Here, the reports make clear that Y1 and Y2 were throwing closed-fist punches at each other’s facial areas, and that they both continued to fight even after being sprayed multiple times. In addition, Y1 was assaultive and combative with staff. These facts establish that but for the DJCOs’ intervention, the fight would have continued. Therefore, at the time of the use of OC, Y1 and Y2 posed an immediate and ongoing threat to each other, and Y1 posed an immediate threat to staff.

Whether the Suspect was Actively Resisting Arrest or Attempting to Evade Arrest by Flight

While neither Y1 nor Y2 were attempting to evade the DJCOs, they were both clearly refusing to comply with DJCO 2’s commands to stop and get down. DJCO 2 indicated in her report that she gave commands to stop prior to the deployment of OC. The fact that Y1 and Y2 continued to fight after disobeying the command to get down shows that they were willfully refusing to comply with the force used to get them

¹³ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 826.

¹⁴ *Graham v. Connor* (1989) 490 U.S. 386 [109 S.Ct. 1865, 104 L.Ed.2d 443].

¹⁵ Pen. Code, §§ 240, 242, 243(a).

¹⁶ Pen. Code, §§ 242, 243(d), 245(a).

¹⁷ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

¹⁸ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

¹⁹ *Reaza v. County of Riverside* (C.D.Cal. Oct. 26, 2022, No. 5:20-cv-01188-MEMF (SPx)) 2022 U.S.Dist.LEXIS 198653.

²⁰ *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432.

to submit to the DJCOs' authority to restrain them. Ultimately, to restrain the non-compliant combative youths, the DJCOs had to do more than simply place compliant youths into handcuffs.

Balancing the Force Used Against the Need for Such Force

Finally, to determine if force was excessive, courts "balance the gravity of the intrusion on the individual against the government's need for that intrusion."²¹ Put another way, does the government's need for the force used, based on the severity of the crime, the threat to safety, and the resistance of the subject, outweigh the type and amount of force used?

The Ninth Circuit has said that the law is clearly established "that police officers employ excessive force in violation of the Fourth Amendment when they use pepper spray upon an individual who is engaged in the commission of a non-violent misdemeanor and who is disobeying a police officer's order but otherwise poses no threat to the officer or others."²² That is not the situation that confronted the DJCOs in this incident.

As previously stated, the youths were engaged in, at a minimum, a violent misdemeanor, and potentially a violent felony, and they clearly disobeyed the DJCOs' order to get down and continued to fight after being sprayed. The most important distinction, however, is the fact that by continuing to fight, the youths clearly posed a threat to the DJCOs as well as to each other.

Here, the youths involved in the fight were under the custody and care of the Probation Department. As such, the Probation Department had an obligation to protect them from harm. Prior to the deployment of OC, the youths posed an immediate threat to each other. Additionally, the harm that could have occurred to one or more of the involved youths from closed-fist strikes justified the use of a one-second burst of OC when the youths failed to follow commands to "[s]top, stop! Get down!" The continued combative and assaultive behavior of the youths justified additional deployments of OC to protect further harm to the youths as well as to staff, one of whom had been assaulted by Y1.

Compliance with Department Procedure

State Law

The State of California has set forth the requirements that a facility, which authorizes the use of chemical agents as a force option, must have in their policies and procedures.²³ Those requirements include, in part, that the policies mandate that chemical agents only be used when there is an imminent threat to the youth's safety or the safety of others and only when de-escalation efforts have been unsuccessful or are not reasonably possible;²⁴ that the policy outline the facility's approved methods and timelines for decontamination from chemical agents including that youth who have been exposed to chemical agents shall not be left unattended until that youth is fully decontaminated or is no longer suffering the effects of the chemical agent;²⁵ that the policy define the role, notification, and follow-up procedures required after a use of force incident involving chemical agents for medical, mental health staff and parents or legal guardians;²⁶ and that the policy provide for the documentation of each

²¹ *Espinosa v. City & County of San Francisco* (9th Cir. 2010) 598 F.3d 528.

²² *Silva v. Chung* (9th Cir. 2018) 740 F.App'x 883.

²³ Cal. Code Regs., tit. 15, § 1357 – Use of Force.

²⁴ Cal. Code Regs., tit. 15, § 1357(b)(2).

²⁵ Cal. Code Regs., tit. 15, § 1357(b)(3).

²⁶ Cal. Code Regs., tit. 15, § 1357(b)(4).

incident of use of chemical agents, including the reasons for which it was used, efforts to de-escalate prior to use, youth and staff involved, the date, time and location of use, decontamination procedures applied and identification of any injuries sustained as a result of such use.²⁷

Department Procedure

Imminent Threat and De-escalation

The Probation Department has two procedures that address the use of OC by DJCOs in the course and scope of their duties.²⁸ The OC Procedure provides that OC spray may “only be used when there is an imminent threat to the youth’s safety and/or the safety of the officer or others and only when de-escalation efforts have been unsuccessful or are not reasonably possible.”²⁹ This verbiage is consistent with state law.

The reports regarding this incident make clear that Y1 and Y2 were engaged in mutually combative behaviors involving closed-fist punches aimed at each other’s head and upper torso. As a result, at the time of the first use of OC, there was an imminent threat to the safety of the youths that were involved in the physical fight.

As it relates to de-escalation, DJCO1’s UOF Report form indicates “Yes” to the prompt “Verbal commands (eg. Get down/OC clear).” However, the main SIR narrative written by DJCO 1 does not contain any reference to her attempts to de-escalate the situation by providing any verbal commands or counseling or attempting to physically separate the involved youths. DJCO 1’s narrative states that she “was about 10 feet away when the incident began so [she] immediately responded and motioned towards the youth as they were engaging in a physical altercation.” DJCO 1’s narrative does not elaborate or explain how she “motioned towards the youth,” and it does not indicate that any verbal commands were given. DJCO 1’s narrative goes on to state, “[o]nce I got closer to the youth who were fighting, I dispersed a one second spray of Oleoresin Capsicum (OC pepper spray) towards [Y1] and made successful contact...”

The appropriateness of DJCO 1’s OC deployment is not necessarily negated by the fact that her narrative report failed to clearly articulate the verbal commands indicated in her UOF form. However, if DJCO 1’s narrative is accurate, it conflicts with her UOF form, and DJCO 1 did not give a warning or attempt to de-escalate before deploying the OC spray burst.

Conversely, according to their reports, DJCO 2 did provide verbal commands to both youths upon her arrival on scene. DJCO 2 commanded both youths to “[s]top, stop! Get down!” and warned the youths that OC would be deployed by stating “OC clear!” DJCO 2’s de-escalation efforts ultimately proved unsuccessful at ending the fight. DJCO 3 also gave the youths verbal commands to “[s]top! Get Down!” and warned the youths that he would deploy OC spray by stating “OC Clear!”

Recommendation

Provide additional training that reminds line staff, and supervisors, that all Special Incident Reports (SIR), where OC spray was deployed, should include a discussion of whether de-escalation was attempted and

²⁷ Cal. Code Regs., tit. 15, § 1357(b)(5).

²⁸ Procedure Manual Item 3-1-056 Oleoresin Capsicum (OC) Spray – Facilities;
Procedure Manual Item 3-1-015 Use of Force – Facilities.

²⁹ Procedure Manual Item 3-1-056 I(C) General Information.

whether warnings were given. Additionally, if efforts to de-escalate, and warnings, were not given prior to the deployment of OC spray, then the SIR should articulate why.

Decontamination

The Probation Department's OC Procedure requires that "[f]or youth exposed to OC spray, through a direct spray or over spray, decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained."³⁰ The OC Procedure further states that youth shall be placed, "fully clothed, into a shower, at a sink, or on the patio with the garden hose, allowing cold water to freely fall onto the youth until the youth no longer feels the effects of the OC spray."³¹ The youth will then remove contaminated clothing and be issued clean clothing. The contaminated clothing shall be disposed of in a marked plastic bag.³²

According to DJCO 1, Y1 and Y2 were affected by the OC spray, and Y3 was affected by overspray. DJCO 1's report indicates that immediately after each youth was secured, they were taken directly to the shower area to begin the decontamination process. A review of the timeline included with DJCO 1's report shows that all three youth began the decontamination process within five minutes of when the first burst of OC was deployed.

A review of the SIRs related to this incident indicated that Y1 "was escorted into the restroom and into a shower stall" by DJCO 3 and DJCO 6. Y1's handcuffs were removed and DJCO 3 directed Y1 "to step forward and to remove his clothing." DJCO 3 closed the shower stall door when Y1 stepped forward. Y1 "then removed his clothing and placed them outside the shower stall." The decontamination procedure began at 4:51 p.m. and concluded at 5:50 p.m. DJCO 6 remained at the shower door supervising the decontamination procedure. DJCO 3 collected Y1's "contaminated clothing and placed them in a bag." DJCO 3 then "sealed the bag and labeled it 'OC Pepper Spray'" and removed it from the restroom.

Y2 was also escorted to the showers to begin the contamination process. DJCO 4 "removed the handcuffs and gave the youth a fresh pair of clothing. The youth's decontamination began at 4:52 and ended at 4:58 by choice." Following the shower, Y2 put on the fresh clothing. According to the SIR, Y2's contaminants were placed in a water-soluble bag and labeled.

Staff are also required to be with "the youth throughout the entire decontamination process."³³ None of the reports specifically state that staff were with each youth during the entire decontamination process. According to one of the reports, Y1's decontamination was supervised by as many as three DJCOs, however none of them prepared written reports stating that staff were with Y1 during the entire decontamination process. The SIR prepared by DJCO 5, who assisted with the decontamination for Y2, states that Y2 "turned off the water and informed us he was done." Similarly, the SIR prepared by the DJCO assisting Y3 states that Y3 "ended his shower by choice." These sentences imply that someone was present for each youth to alert them to the fact that they were voluntarily ending their

³⁰ Procedure Manual Item 3-1-056 II(F)(3) Decontamination/Aftercare Procedures. (The Department's Use of Force Policy, Procedure Manual Item 3-1-015 VIII(E) Medical and Mental Health Considerations, has been renumbered and amended to include language that decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained.)

³¹ Procedure Manual Item 3-1-056 II(F)(4) Decontamination/Aftercare Procedures.

³² Procedure Manual Item 3-1-056 II(F)(7) Decontamination/Aftercare Procedures.

³³ Procedure Manual Item 3-1-056 II(F)(10) Decontamination/Aftercare Procedures.

decontamination. However, it is unclear whether a DJCO was continuously present during each youth's decontamination.

Recommendation

Update the portion of the Use of Force/Restraint SIR form relating to Pepper Spray and Decontamination to add an entry field that requires the report writer to specifically indicate which DJCO(s) stayed with each youth during the entire decontamination process.

Notifications and Procedures Required After Use of Force Incidents

The OC Procedure requires that a DJCO who discharges an OC canister notify his or her supervisor as soon as possible.³⁴ The OC Procedure also makes clear that "[t]he staff member who sprayed the individual is responsible for advising medical personnel or others of the decontamination procedures."³⁵ The responsibility for contacting the youth's parent or legal guardian is assigned to the SJCO/Duty Officer or designee.³⁶ Lastly, while the OC Procedure requires that the youth must be referred to Mental Health staff immediately following decontamination, it does not specifically identify whose responsibility it is to ensure that this section of the procedure is followed.³⁷

The SIRs indicate that at least three SJCOs were present on scene and aware of the deployment of OC. DJCO 1's report also documented the time medical staff were notified and the time they arrived to evaluate the youths. According to the reports, Y1 refused all medical evaluation and did not appear to be in distress. Y2 was evaluated and placed on head injury precaution. The SIR for Y3 also includes the times that medical was called and that he was seen by medical staff. The reports also documented that a staff member notified the guardians of Y1 and Y2. Noticeably absent from the reports, however, is whether a staff member notified Y3's guardian of the OC exposure. Finally, the timeline establishes that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident. One SIR indicated that Y1 was seen by Mental Health at 9:13 p.m.

Recommendation

Update PMI 3-1-056 to clearly articulate who has the responsibility to refer youth to Mental Health Staff following decontamination. This change would put DJCOs on notice as to whose responsibility it is to ensure that Mental Health staff are contacted.

Documentation

Department procedure related to use of force provides that any DJCO involved in, or a witness to, a use of force, which includes the use of Chemical - Oleoresin capsicum (OC) spray, shall write and submit a Special Incident Report (SIR).³⁸ Further, the procedure requires that a SIR and Use of Force Report must include a clear and factual justification for the use of OC, efforts to de-escalate prior to use and reasons why de-escalation was not reasonably possible, the youth and staff involved, the date, time and location of use, decontamination procedures applied, and identification of any injuries and medical treatment.³⁹

³⁴ Procedure Manual Item 3-1-056 II(E)(1) Notification and Documentation.

³⁵ Procedure Manual Item 3-1-056 II(F)(13) Decontamination/Aftercare Procedures.

³⁶ Procedure Manual Item 3-1-056 II(F)(18) Decontamination/Aftercare Procedures.

³⁷ Procedure Manual Item 3-1-056 II(F)(17) Decontamination/Aftercare Procedures.

³⁸ Procedure Manual Item 3-1-015 VIII(F) DJCO Responsibilities.

³⁹ Procedure Manual Item 3-1-056 II(E)(2) Notification and Documentation.

DJCO 1 completed the main SIR for this incident, and seven other DJCOs prepared supplemental incident reports. The main SIR identified the youth involved as well as the actions taken by DJCO 1, DJCO 2 and DJCO 3 prior to the use of force. The reports identified the reason for the deployment of OC and the effect of the OC, or lack thereof, on the affected youth. The included timeline clearly laid out the activities that occurred after the use of force, except for continuous presence during decontamination and parental notification for Y3.

As indicated above, DJCO 1's SIR narrative failed to mention her giving of verbal commands prior to the deployment of OC Spray. If the omission of verbal commands in the SIR narrative was because no verbal commands were given, then a conflict exists between DJCO 1's SIR narrative and the UOF form. The fact that DJCO 1's narrative is devoid of any indication that she gave verbal commands is a glaring deficiency in her SIR narrative that should have been addressed.⁴⁰

Finally, although not mandated by procedure, the three DJCOs who were also present during Y1's decontamination did not prepare reports.

Use of Force Review Board

On April 21, 2022, the Department's Use of Force Review Board Convened and reviewed this use of force incident. The Board's Summary also recognized that it was "not noted that the parent/guardian of" Y3 was notified and recommended corrective action, as the failure to contact the parent/guardian, or document the contact, was not in compliance with procedure. However, it appears that while the findings of the Board were concurred with, no further action was taken.

Other recommendations were also made including that "one staff be identified to write a 'main body' SIR, to include all details from an incident, in addition to individual DJCOs reports. This would assist in all information being included and in verifying all required and necessary steps were taken." The Board also recommended that "staff include the same information in their written reports as is included on the UOF form. For example: DJCO [1] checked "yes" as to verbal commands, but none were noted in her written report."

Finally, the Review Board addressed the above documentation concerns related to the decontamination procedure by recommending "that staff who supervise youth during the decontamination process complete an SIR documenting the steps of the decontamination process," and "that staff who witness that the steps were followed should document compliance with the procedure in an SIR."

Conclusion

A review of the SIR and Use of Force reports establish that the uses of OC spray by DJCO 1, DJCO 2, and DJCO 3 were reasonable and appropriate. DJCO 2 and 3's deployments of OC, which included warnings and commands to stop, were within policy. Due to the poor documentation related to verbal commands in DJCO 1's SIR narrative, the OIR is unable to conclude that DJCO 1 complied with policy requiring the use of de-escalation prior to deployment.

⁴⁰ DJCO 1's report was approved by a supervisor. The report should not have been approved without a description of the verbal commands that were given.

Recommendations

1. Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.
2. Provide additional training that reminds line staff, and supervisors, that all SIRs, where OC spray was deployed, should include a discussion of whether de-escalation was attempted and whether warnings were given. Additionally, if efforts to de-escalate, and warnings, were not given prior to the deployment of OC spray, then the SIR should articulate why.
3. Update the portion of the Use of Force/Restraint SIR form relating to Pepper Spray and Decontamination to add an entry field that requires the report writer to specifically indicate which DJCO(s) stayed with each youth during the entire decontamination process.
4. Update PMI 3-1-056 to clearly articulate who has the responsibility to refer youth to Mental Health Staff following decontamination. This change would put DJCOs on notice as to whose responsibility it is to ensure that Mental Health staff are contacted.