
**INVESTIGATION OF SOUTH CAROLINA
DEPARTMENT OF JUVENILE JUSTICE'S
BROAD RIVER ROAD COMPLEX**



United States Department of Justice
Civil Rights Division

United States Attorney's Office
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The United States Department of Justice (Department) provides notice, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601, that there is reasonable cause to believe, based on the totality of the conditions, practices, and incidents, that: (1) the conditions at the Broad River Road Complex (BRRC), South Carolina’s long-term, juvenile commitment facility, violate the Fourteenth Amendment; and (2) the violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Fourteenth Amendment. Specifically, the South Carolina Department of Juvenile Justice (DJJ) fails to keep young people reasonably safe from excessive force by staff at the BRRC. DJJ, through its policies and procedures, failure to train its staff, and inadequate investigations, seriously harms young people and places them at substantial risk of serious harm by staff.

Investigation

Since opening this investigation, the Department conducted three onsite tours of BRRC and visited DJJ offices across South Carolina. Department staff and expert consultants interviewed DJJ staff, including both line staff and management. Department staff and consultants also interviewed confined and previously confined young people and their family members. In addition to onsite observations and interviews, Department staff and consultants reviewed thousands of documents. Finally, Department staff and consultants reviewed available videos related to allegations of abuse.

This is the Department’s second report in this investigation of conditions at BRRC. On February 5, 2020, the Department issued the first report notifying the State of its conclusions regarding youth-on-youth harm and use of isolation at BRRC. In that report, we concluded that the Department had reasonable cause to believe that DJJ failed to keep the young people in its custody reasonably safe from assaults from other young people and that DJJ used prolonged and punitive isolation. The Department continued its investigation of use of force, reviewing documents and video related to hundreds of additional incidents in the intervening months. This report serves to notify South Carolina of the Department’s conclusions regarding use of force at BRRC.

Use of Force at BRRC

The Department has reasonable cause to believe that DJJ has engaged in a pattern or practice of failing to keep the young people in its custody reasonably safe from harm by staff, in violation of their Fourteenth Amendment rights. Use of unreasonable force violates the constitutional rights of incarcerated young people. *See, e.g., Milonas v. Williams*, 691 F.2d 931, 935, 942 (10th Cir. 1982) (enjoining the facility from “using physical force for any purpose other than to restrain a juvenile who is either physically violent and immediately dangerous to himself or others, or physically resisting institutional rules”). Unreasonable force and restraint violate both the *Youngberg* principle that guarantees safety and the *Bell* principle that limits restrictions on liberty of people in custody to those related to a legitimate government objective. *Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982); *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979); *see also Milonas*, 691 F.2d at 942. When determining whether force is reasonable in a facility setting, courts look at the facts of each case and consider the proportionality between the need for force and the use of force deployed, efforts made to avoid or temper force, the resulting injury, the

seriousness of the security threat, and whether the individual was resisting actively. *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015); *see also Coney v. Davis*, 809 F. App'x 158, 159 (4th Cir. 2020) (adopting the *Kingsley* standard in a pretrial detention case); *E.W. by & through T.W. v. Dolgos*, 884 F.3d 172, 179–80 (4th Cir. 2018) (considering age as a factor in evaluating reasonableness in a challenge to the handcuffing of a young child by a school resource officer).

We reviewed hundreds of uses of force spanning from 2017 to early 2020. The information showed officers using dangerous tactics on the young people at BRRC, often engaging them even when they were not violent or threatening. In many cases, the force appeared to be a staff response to previous youth misconduct that had already ceased. In addition to the abusive tactics, staff used force that was frequently disproportionate to the threat posed by the young person. Officers often used force on young people who were not engaging in physical violence or even threatening violence.

We found evidence of unreasonable uses of force by BRRC staff in the facility's own incident reports, use of force reports, investigations, injury reports, surveillance videos, and interviews. For example, incident reports written by staff reveal that staff hog-tied a boy using handcuffs and left him on the floor for hours,¹ forced a boy to the ground after staff engaged him in "horseplay," and punched a boy in the face without justification for that level of force. Similarly, corroborated grievances from young people allege that staff punched them and choked them. Among the completed investigations we reviewed, BRRC investigators confirmed abuses such as choking a boy and slamming him against the wall while he was in restraints, forcing a boy to the ground and putting body weight on him in retaliation for his disrespectful comments, hitting a teenage girl in the face, placing a boy in a chokehold in response to the boy reaching for a teacher's book, dragging a boy by handcuffs to move him, twisting and breaking a boy's arm, and biting a girl's face. DJJ incident reports and investigations document a pattern of unreasonable force.

In one incident, a staff member used excessive force to restrain and force a boy onto a transport bus, resulting in serious injury to the boy. The force was used after a group incident had settled down and the boy was standing near the bus. The staff member went to escort him onto the bus and the boy asked the staff member not to place his hands on him. The staff member then grabbed and twisted the boy's arm behind his back and, according to the boy's statement to the investigator, deliberately tripped him. This force was disproportionate to the risk posed and for the purpose of getting him on a transport vehicle. The staff member then fell on the boy and, according to the young person, told him, "You want to be grown, then you can

¹ The Federal Bureau of Investigation investigated this incident and the Department of Justice brought criminal charges, resulting in the conviction of a former DJJ correctional officer. *U.S. v. Samples*, ECF No. 3:17-cr-00574 (D. SC. Aug. 1, 2018); *See Michael Majchrowicz, SC Juvenile Officer Who Hogtied Inmates Gets a Year of Prison Time, Post and Courier* (Aug. 2, 2018), https://www.postandcourier.com/news/sc-juvenile-justice-officer-who-hogtied-inmates-gets-a-year/article_13063a26-965b-11e8-a219-ffd03adf6cbb.html; Kendall McGee, Former DJJ Officer Indicted after 'Excessive Force' Used on 2 Juveniles, *WBTW* (Jun. 22, 2017), <https://www.wbtw.com/news/former-djj-officer-indicted-after-excessive-force-used-on-2-juveniles/868539643>.

take a grown man a** whooping.” The boy experienced a broken arm requiring surgery to implant two metal plates and nine screws. Ultimately, a DJJ investigation resulted in the staff member’s suspension for physical abuse of the boy.

Several incidents involved unreasonable force that occurred outside the view of the BRRC surveillance cameras, which staff failed to report. DJJ failed to complete investigations of some of the incidents as a result. We reviewed multiple such incidents that occurred in the strip search room of the Laurel Building’s Crisis Management Unit (CMU), where there are no surveillance cameras. In one incident, multiple staff retaliated against a boy after he assaulted an officer. The boy alleged that six officers took him to the strip search room in the CMU in handcuffs, put him in a choke hold until he passed out and fell to the ground, hitting his head and eye; punched him; and kicked him. In addition to the incident report documenting the boy’s allegations, we reviewed photographs of the boy’s injuries showing his eye swollen shut and abrasions on his cheek. We also received multiple reports of the abuse from third parties who spoke with him in the days after the incident. Although he reported the incident to a staff member who completed an incident report, BRRC did not investigate his complaint.

In another incident occurring outside of the view of the surveillance cameras, a young woman was taken to the strip search room after an attempted escape. Once in the strip search room, she asked the officer to take off her handcuffs so that she and the officer could fight. The officer removed the girl’s handcuffs and a fight ensued. During the fight, the officer bit the girl on her cheek, breaking her skin. The officer did not file an incident report and denied the incident happened. Based on the medical records and other available evidence, DJJ’s investigation concluded that the officer engaged in physical abuse.

Consistent with this pattern of unreasonable force, we observed instances of facility staff engaging in force that was excessive because it was disproportionate to the threat, if any, being posed by the young people in their custody. While facilities may appropriately implement policies and procedures that preserve order and maintain institutional security, the Constitution does not permit excessive force against children in custody. *See Hewett ex rel. H.C. v. Jarrard*, 786 F.2d 1080, 1085–86 (11th Cir. 1986) (finding violation of young person’s Fourteenth Amendment rights when officer in juvenile detention center shoved boy against a wall for giggling at another boy’s conduct and protesting another boy’s isolation where there was no indication of a threat of harm to property, employees, or other youth).

BRRC’s use of force reports reveal that staff initiate force on young people when they are calm or when they are non-compliant with directives but do not pose an immediate risk of harm. BRRC staff escalated confrontations by using physical force to respond to verbal refusals to comply. Interviews by Department attorneys with BRRC staff confirmed that staff often use force when the young people are “non-compliant” or disruptive. In one incident, four officers responded to a boy who was alleged to have “unauthorized playing cards.” Because the boy did not comply with an officer’s request to voluntarily put his arms behind his back to be handcuffed, the four officers forced him down on the ground and restrained him with handcuffs and leg irons. In another incident, a boy in isolation was refusing to close the flap of his door; it is unclear how this posed an imminent threat, but officers entered his cell, took him to the ground

and placed him in handcuffs. The generally accepted practice for responding to verbal refusals to comply is to engage calmly with the young person to help de-escalate the behavior.

DJJ facility staff also used restraint tactics that deprive young people in their custody of reasonably safe conditions of confinement. Some examples from reports include descriptions of staff restraining a boy against the ground after he was already in handcuffs, staff leaving young people in cells while in restraints, staff dragging a non-violent but verbally resistant young person across the floor, and staff applying body weight to a boy who was on his stomach on the ground. DJJ managers reviewed and signed use of force reports describing such actions, but did not require or impose any disciplinary action.²

In one incident, staff members handcuffed a boy and locked him in isolation for five hours after he verbally refused to return to the isolation cell and then physically attempted to prevent staff from closing his door. Locking a young person in a room while they are in mechanical restraints risks harm to the young person who struggles against the restraints out of sight. Such a response is also punitive and disproportionate to the threat posed by the boy. Despite the serious risk of harm, DJJ did not investigate this incident or impose any discipline on the officers.

The pattern of unreasonable force we identified in BRRC's documents is likewise reflected in the data it collects and reports through the Performance-based Standards (PbS), a program designed to assist juvenile facilities across the country by tracking key metrics to identify problem areas.³ Facilities participating in the program receive reports comparing their performance on those metrics to the performance of their peers. Facilities receive a "red flag" for indicators on which their performance is at least 25 percent worse than the national average. BRRC's Spring 2019 PbS data for injuries to youth by staff and injuries to youth during application of physical or mechanical restraints resulted in red flags. The PbS data also indicated a trend of increasing use of physical restraints at BRRC.

DJJ Investigations

DJJ's own findings downplay its use of excessive force due to a failure to properly investigate. Of the 214 use of force incidents reported between January 2019 and April 2020, DJJ's Inspector General completed initial reviews of 102 uses of force. However, DJJ only completed 27 full investigations, with only 11 of the cases substantiated. But of the 187 use of force incidents that DJJ did not fully investigate, we and our experts identified a substantial number of additional excessive force incidents. DJJ failed to investigate or fully investigate incidents for a variety of reasons, including delays in initiating the investigations, leading to a

² BRRC leadership is required to review and sign the Use of Force forms, but there is no place for the leadership to indicate that an officer should receive training or counseling in light of the information leadership reviewed.

³ The facility generates and tracks its own PbS data. The facility then enters it into a database so the information can be compared to data from other facilities participating in the program.

loss of access to the witnesses; an inadequate video retention policy and practice; inadequate scrutiny of incidents that did not generate complaints; and non-reporting by staff.

In some instances, slow investigations impeded substantiation of abuse. In one incident where a boy alleged that an officer choked and punched him, the investigation was not completed for seven months. By the time the investigation was conducted, the boy was no longer in custody and refused an interview. While the pace of investigations appears to have improved in the past year, there continue to be delays in some investigations that limit their effectiveness.

Inadequate video surveillance and retention also limits investigators' work. Between January 2019 and March 2020, there were at least 18 force incidents that were not investigated because the incident occurred in a space without video, the recording system was not working, or the recording was not retained. Even when an investigation was initiated, the unavailability of video hampered its effectiveness. In these cases, only the availability of other sources enabled DJJ to substantiate the excessive force. In one such incident, a boy was punched in the face multiple times by staff. Video of the punching was not available because of inadequate camera coverage. Only the fact that multiple other young people witnessed and reported the incident enabled DJJ to substantiate the abuse.

In addition, we identified multiple uses of force that DJJ did not investigate ostensibly because there was "no complaint of assault," the "camera does not show use of force," or there was "no observable excessive/inappropriate use of force." Many incident reports that were not investigated for these reasons describe uses of force that DJJ should have investigated. Some of these uses of force were instances where a young person was restrained for verbal defiance rather than any physical violence, as described above. Similarly, we identified a number of cases where an investigation was closed when a young person declined to prosecute charges after alleging abuse. Such investigations should proceed with interviews of other young people and staff and review of video and medical records to determine whether staff need retraining or discipline regardless of whether young people decline to prosecute.

Finally, DJJ's findings of excessive force were underinclusive because of officers' failure to report uses of force. For example, neither the officer who broke the boy's arm in the incident described on page two, nor the officers who observed the incident, completed a report on the use of force. Similarly, there was no report completed about the incident on page three in which an officer fought with a girl and bit her on the cheek. In those incidents, and others we reviewed, it was only the young person's allegation that led to an investigation and, ultimately, a finding of abuse. With better reporting on incidents and more timely, comprehensive investigations, a higher number of uses of force would have been deemed improper or excessive.

Remedial Measures

DJJ should implement the following remedial measures to correct the violations identified in this report and keep young people reasonably safe from harm.

1. Revise use of force policy to emphasize age-appropriate interactions and de-escalation techniques. Make clear that force may be used only to prevent imminent potential harm to staff or others, require timely reporting and review of all uses of force, and require immediate training and corrective action where staff action does not conform to the policy.
2. Train staff on age-appropriate interactions with young people and adolescent development, de-escalation techniques, positive behavior management responses, and the revised use of force policy.
3. Conduct timely investigations of allegations of staff -on -youth harms, including retention of all relevant video footage. At the conclusion of each investigation, conduct necessary training to prevent future harms and impose discipline, as appropriate, for abuses of young people.

Conclusion

We appreciate South Carolina's cooperation in this matter. We believe we have a shared interest in ensuring the safety of the young people at BRRC and look forward to working together to correct the constitutional violation identified in this report.