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September 14, 2021

Linda Penner, Chair  
Board of State and Community Corrections  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833 (by *electronic transmission*)

### Re: Unsuitability of Los Angeles County Juvenile Halls

Dear Chairperson Penner:

This letter is written on behalf of the Pacific Juvenile Defender Center. We have reviewed your letter of August 19, 2021, giving notice of the Board's intention to make a determination of suitability of the Los Angeles County juvenile halls under Welfare and Institutions Code section 209, subdivision (d) at its September 16 meeting. We have also reviewed the September 2, 2021, "response" to your letter.

The Board should make a finding of unsuitability at the September 16, 2021, meeting for the following reasons: First, the statutory scheme calls for the Board to make a finding of unsuitability in just this situation. Los Angeles has used up its corrective action time, and has not yet resolved the violations of Title 15 identified in the 2021 inspection. Second, the Board needs to make a finding of unsuitability to ensure the integrity of the inspection system. And third, if there were any leeway, this is not a system deserving of another chance.

#### 1. Time is Up for Los Angeles County

The County of Los Angeles asks the Board to "trust us," and provides no evidence that they have actually made the required changes or will do so by mid-September. Telling you that they are auditing the identified issues on a daily basis is not the same as providing proof that they have done so.

Los Angeles was notified of the non-compliance issues after the time of the February 11, 2021, inspection. Its April 2021 corrective action plan started the 90-day clock for correction of the issues of noncompliance (Welf. & Inst. Code, §202, subd. (d)), and that time expired on July 11, 2021. Your August 19, 2021, letter laid out the many opportunities Los Angeles has had to correct the identified issues, and gave notice of the intention to make a determination of suitability on September 16, 2021. Los Angeles County has failed to address the issues of noncompliance in a timely manner.

#### 2. BSCC Must Guard the Integrity of the Inspection Process

The statutory scheme does not afford the Board any flexibility in the finding of suitability. It says that if the hall is not in compliance with "one or more" of the minimum standards for juvenile halls and fails to correct the issues within the statutory timelines, the board *shall* make a determination of suitability at its next scheduled meeting. (Welf. & Inst. Code, §202, subd. (d).) Los Angeles County is concededly not in compliance with one or more of the minimum standards.

If the BSCC oversight process is to have any integrity at all, the Board should issue a finding of unsuitability on September 16. Your staff have clearly documented a series of noncompliance issues. Failing to find unsuitability would undermine the statute itself and the diligent efforts of your staff to assure that minimum standards of care are provided to young people in Los Angeles County facilities.

And as you know, the predecessor agency to BSCC was successfully sued for failure to exercise its powers on suitability in the past. In 2008, the Corrections Standards Authority was specifically enjoined to comply with the statutory provisions on suitability. (*Waters v. Tilton*, San Francisco Superior Court, No, CGC06-451449, Notice of Entry of Judgment Ordering Permanent Injunction (May 12, 2008).) Failure to act now, could subject the Board to additional legal scrutiny.

### **3. Los Angeles is Undeserving of Any Possible Leeway**

While the statutory language demands a finding of unsuitability on these facts, the Board should be well-satisfied that this is a system deserving of strong sanctions. The Los Angeles County juvenile halls have had serious conditions issues through many decades and under the oversight of successive agencies – the Board of Corrections, Corrections Standards Authority, and now, BSCC. Among the many investigations and lawsuits against the Los Angeles facilities:

- In the mid-1970's a civil rights lawsuit was filed against Los Angeles Central Juvenile Hall, and in 1979, the federal district court found violations on several conditions issues. (*Manney v. Cabell*, No. 79-2360 (C.D. Cal.), Judgment Apr. 12, 1979.) The County appealed, and the suit did not go forward because the federal court believed the issues should be resolved under state law. (*Manny v. Cabell* (1980) 654 F.2d 1280.)
- In 2001, the U.S. Department of Justice, Civil Rights Division (USDOJ) undertook an investigation into the conditions at the Los Angeles County Juvenile Halls pursuant to Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq. and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

The USDOJ concluded that the conditions and practices at the juvenile halls violated constitutional and statutory rights of juvenile residents in medical and mental health care, sanitation, use of chemical spray, insufficient protection from harm, inadequate rehabilitative services, education, telephone use, religious programming, translation services for Limited English Proficient youth, and grievance procedures. In 2003, the USDOJ issued a findings letter detailing the violations. The County entered into a settlement agreement in 2004. In 2007, the County and the County Office of Education were still out of compliance with 21 paragraphs of the settlement agreement. The USDOJ monitored compliance for many years.

- In April 2005, the Board of Corrections (a predecessor to BSCC) issued a letter of non-compliance on a series of Title 15 violations in the Los Angeles juvenile halls.
- In June 2008, the Corrections Standards Authority (predecessor to BSCC) issued a letter of non-compliance on a series of Title 15 violations in Los Angeles County juvenile halls.
- The Los Angeles County CEO requested that the County Auditor continue to monitor compliance with the DOJ settlement issues. In 2013, the County Auditor reported a series of ongoing problems in the juvenile halls on issues that supposedly had been fixed through the DOJ settlement.
- In 2018, the Los Angeles County Board of Supervisors asked the County Office of the Inspector General to look into pepper spray use, and upon learning of rampant use, issued a resolution in 2019 calling for an end to pepper spray use. The Office of the Inspector General also issued a report in 2019 detailing serious deficiencies in the treatment of youth with serious mental health needs, use of restraints, use of force, staffing, physical plant, and staff training.
- Most recently, in 2018, the California Attorney General filed a complaint against Los Angeles County and the Los Angeles County of Education for a series of conditions issues. Many of the legal claims were based on violation of Title 15 regulations. In 2021, the parties entered into a settlement agreement governing use of force, use of pepper spray, youth safety, staffing, use of restraints, room confinement, need for homelike environment, mental health and medical care, programming, exercise, recreation, and religious services, access to bathroom use, bedding and other basic needs, educational services, and grievances. (*People v. Los Angeles County* (Los Angeles Superior Court, No. 21STCV01309, Stipulated Judgment for Defendant County of Los Angeles (Jan. 21, 2021)); and separate settlement with LACOE, and see <https://oag.ca.gov/news/press-releases/attorney-general-becerra-los-angeles-county-enter-groundbreaking-settlements>.)

In other words, this is not a system that just went through a brief period of difficulties. The many substantiated conditions issues over several decades – which have often directly referred to Title 15 violations – should help to strengthen the Board’s resolve in relation to unsuitability.

### **Conclusion**

The 2021 inspection was abbreviated because of Covid-19. It is very likely that if the inspection could have been more robust, many of the issues included in the Attorney General’s case against the facilities would have also been identified in the Title 15 context. While a finding of unsuitability is surely a big step, the law is clear that once a county fails to take the requested corrective action within the specified time, the Board must find the facility unsuitable. There is absolutely no excuse for

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the largest county in Los Angeles, with thousands of employees not to be able to update its policies in the three years since the updated regulations took effect.

Our members represent the vast majority of young people held in Los Angeles County juvenile facilities. The county's failure to provide updated policies reflecting current minimum standards with respect to classification, orientation, room confinement, treatment plans, use of restraint devices, programs, recreation, and exercise are not just technical details. Without them, there is no way to assure that staff understand what is expected of them, or that the policies are implemented. The noncompliance issues go to the very core of humane treatment for confined youth.

The Board should issue a finding of unsuitability on September 16. Thank you for your consideration.

Sincerely yours,

*Sue Burrell*

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