

Memorandum in Support

New York State Bar Association Task Force on Racial Injustice and Police Reform

TFRIPR #1

February 20, 2021

A. 5449
S. 4002

By: M. of A. Meeks
By: Senator Brouk
Assembly Committee: Governmental Operations
Senate Committee: Codes
Effective Date: Immediately

AN ACT to amend the executive law, in relation to prohibiting the use of chemical agents by police officers against minors.

LAW AND SECTIONS REFERRED TO: Paragraph (d) of Subdivision 4 of Section 840 of the Executive Law.

This bill prohibits the use of chemical agents against minors by police officers.

Under existing law, police officers may deploy chemical agents against a person under use of force guidelines and in the interests of protecting the public and/or incapacitating a person who poses a threat to themselves and/or others. Chemical agents are effective less than lethal tools for police officers because they provoke an inflammatory response in the body. The mucous membranes in the persons eyes, nose, throat and lungs are irritated causing immediate respiratory inflammation, including uncontrollable coughing, retching, shortness of breath and gasping for air, dilation of the capillaries, and instant closing of the eyes through swelling of the eyelids, immediate burning sensations to the mucous membranes, skin and inside the nose and mouth.¹ Fully grown adults are routinely incapacitated from a single exposure to a chemical agent and often require medical attention or even hospitalization. For minors who have developing respiratory systems, exposure to chemical agents may lead to chronic health complications such as asthma, nerve, or brain damage².

Recent body camera footage from an incident in Rochester in January of 2021 showed a 9-year-old who was pepper-sprayed directly in the eyes while restrained with her hands behind her back, and while sitting in the back of a police car. Immediate and intense screams of pain emanating from the minor can be heard following the administration of the chemical agent to the eyes of the restrained minor. In this and similar circumstances where a minor may interact with a police officer, any perceived benefits of the use

¹Thompson, Richard M., II. Police Use of Force: Rules, Remedies, and Reforms, report, October 30, 2015; Washington D.C.

² <https://www.northcarolinahealthnews.org/2020/11/03/pepper-spray-more-dangerous-for-children-experts-say/>

of chemical agents against the minor are far outweighed by the risk of potential injury to the minor especially when considering available alternative interventions.

Disturbingly, police officers throughout the country are well documented deploying chemical agents simply to assert dominance or to command compliance from a detainee that is already in physical restraints or who poses no credible threat to themselves or others.

Based on the foregoing, the New York State Bar Association Task Force on Racial Injustice and Police Reform **SUPPORTS** this legislation.