



**Expert Monitor's Report  
Americans with Disabilities Act (ADA)**

**Babu v. Ahern  
Consent Decree Third Status Report  
Case No. 5:18-cv-07677-NC**

**Non-Confidential**

On-Site Review: June 12-14, 2023

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## Cover Letter

This document serves as an introduction to the attached third ADA Joint Expert report on the status of the Alameda County Sheriff's Office (ACSO) and the Adult Forensic Behavioral Health's (AFBH) implementation of the Babu v. County of Alameda, Consent Decree within the Santa Rita Jail (SRJ). This report addresses the Americans with Disabilities Act (ADA) related provisions that were assigned to Sabot Consulting to monitor and rate.

This third Expert report is based on document and data review, an onsite tour, as well as interviews with staff and incarcerated persons. Prior to and after conducting the tour, policies and various documents were requested and reviewed as outlined in the report.

The onsite tour was conducted from June 12-14, 2023. The onsite monitoring tour consisted of walking through areas of SRJ, interviewing staff and incarcerated persons, and assessing compliance with the ADA requirements pursuant to the Consent Decree's Provisions.

The ADA Joint Expert greatly appreciated the interaction and time spent with ACSO custody staff, Wellpath healthcare personnel, AFBH staff, and numerous incarcerated persons. The staff and incarcerated persons were generous with their time and appeared to be transparent and willing to discuss any related questions, concerns, and challenges related to the Consent Decree's ADA requirements that they may have encountered or had concerns about. Staff members were open in discussing related plans for continued overall improvement in working towards implementing the Consent Decree's ADA requirements. During the Joint Expert's onsite review, the ADA Joint Expert was afforded complete access to the SRJ, and all requests for information and Jail access were granted. Although related ADA documents were made available for review while onsite, per the agreement between the Parties and the Joint Experts, the documents were not removed from SRJ. Instead, the documents were subsequently produced confidentially by Defendants. Some of the documents requested were not provided because they are in the development or planning stage. The Joint Expert notes that since the last monitoring tour, ACSO and AFBH have revised and implemented some policies, procedures, and post orders. The Joint Expert also notes that the ACSO and AFBH staff continue to work with the team of Joint Experts in the development of additional policies, post orders, forms, training materials, development and implementation of a real-time networked tracking system and the identification process for incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities.

The ADA Joint Expert recognizes that ACSO and AFBH are still in the process of implementing some of the provisions of the Consent Decree. For future Joint Expert reviews, once policies, procedures, and applicable forms are in place, the County will need to provide completed documents, completed forms, tracking lists, disciplinary reports, completed ADA Request for Accommodation forms, grievances, etc., for the ADA Joint Expert to measure ACSO and AFBH's compliance with the requirements of the Consent Decree's provisions.

This report outlines areas within the Consent Decree provisions where policies, processes, documentation, forms, and training will need to be developed or revised/modified to meet the requirements of the Consent Decree.

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The Expert notes that since the first and second monitoring tours, the County has implemented some of the Consent Decree requirements, and the County continues to work collaboratively with the Expert in implementing the remaining ADA-related provisions. Some examples of the requirements that need to be implemented include:

- Document Production:
  - The Joint Expert will need ACSO/AFBH to produce requested documents (a reasonable sampling) as part of document production. The Joint Expert notes that multiple categories of documents were not produced to the Joint Expert for this report.
- Policy (General):
  - Continue updating/revising policies to reflect the requirements of the Consent Decree provisions. The Joint Expert notes the work that has been done to date to revise numerous related policies.
- ADA Coordinator:
  - As outlined in the report, the ADA Joint Expert's interpretation of the Consent Decree is that it is implied that the dedicated ADA Coordinator must be at a sergeant level or higher (or even a lieutenant level or higher). Currently, the only staff member dedicated to ADA responsibilities is a deputy who is considered the ADA Coordinator, under the direct supervision of a sergeant and the indirect supervision of a lieutenant, with oversight by the Compliance Captain. The Joint Expert notes comments received from the Parties in response to the draft report. The Joint Expert notes the Defendants' interpretation. The Joint Expert contends the language is certainly subject to different interpretation. As noted by Defendants', this issue has been discussed over time during the in-person tours, and the Joint Expert has taken a wait-and-see approach while still measuring compliance levels and allowing time for the Parties to consider the issue. As previously stated to the Parties, despite the Joint Expert's interpretation, the Expert is agreeable to monitoring based on any agreement from the Parties' on this Consent Decree provision. Unless an agreement otherwise is made between the Parties, or there is direction from the Court, for future monitoring tours the Joint Expert will monitor this provision based on the Expert's interpretation of the provision.
- Real-Time Networked Tracking System:
  - The Joint Expert notes that the ADA Unit has been working with the ATIMS vendor to expand the existing system to serve as a real-time tracking system and meet the requirements of the Consent Decree provisions. The ACSO reports they intend to provide access to all staff (all employee disciplines) as needed to understand which incarcerated persons have disabilities (including psychiatric disabilities) and their associated accommodation needs. Once the modifications to the existing Jail Management System are made, this will assist staff in complying with the Consent Decree Provision requirements and SRJ policies and procedures to help ensure staff can identify the intellectual, learning, and psychiatric disabled incarcerated persons and their accommodations to ensure they have equal access to SRJ programs, services, and activities. The Joint Expert notes ACSO has not provided

the Joint Expert with an anticipated date for implementation of the ATIMS modifications which was originally supposed to be completed within six months of the Effective Date of the Consent Decree, by August 8, 2022.

- Training:
  - Once the policies and procedures are implemented, the ACSO must develop a training curriculum and work with the Joint Experts and Class Counsel to review and provide input prior to the approval of training materials. The ADA Joint Expert understands this provision is a high priority for ACSO, and training material is predicated on the completion of the policies and related forms for the disability program and the Consent Decree requirements. As discussed during the monitoring tour, decisions will need to be made by the Parties as to who will conduct the training once the curriculum is developed and approved. Options that have been discussed include whether the ADA Joint Expert will provide the initial training to the custody and non-custody staff; whether the Joint Expert will provide a Train-The-Trainer's (TTT) course for SRJ staff; or combinations of the Joint Expert providing some of the training and co-teaching a select few classes with SRJ TTT trained instructors and observing a few select classes from the TTT certified instructors before acknowledging approval for continued training, etc.
- Adaptive Support Screening Form and Process:
  - Wellpath has drafted an Adaptive Support Needs Screening form (for initial screening of people with intellectual and cognitive disabilities). It is anticipated the new form and process will be rolled out soon.
- Comprehensive Intellectually Disabled Screening and Testing /Related Policies:
  - The Joint Expert notes that Wellpath has drafted Policy HCD – 100 X -01 Adaptive Support Needs. However, the County will need to develop a comprehensive screening and secondary testing/evaluation process to identify intellectually disabled incarcerated persons and their accommodations/adaptive deficits/supports. This includes screening instruments to assess cognitive abilities and adaptive deficits and the identification of adaptive supports.
- Monitoring/Management of Intellectually Disabled Incarcerated Persons:
  - The Joint Expert notes that Policy HCD – 100 X -01 Adaptive Support Needs contains language regarding monitoring requirements for staff (e.g., housing unit staff and work supervisors) as well as requirements and/or recommended frequencies for staff to provide supports such as coaching, assisting, monitoring, and prompting, tailored to each individual's needs. However, the Expert notes that ACSO does not have a policy that requires staff to log adaptive support services (prompting, monitoring, assisting, coaching).
- Effective Communication:
  - The Expert notes ACSO, Wellpath, and AFBH are actively working on separate stand-alone Effective Communication policies and forms. The policies and forms must be finalized and implemented.
- Reasonable Accommodations/Modifications:
  - The Expert recognizes there is a Request for Accommodation form in circulation, and the recently revised ACSO Inmate Rules and Information booklet (Orientation Jail Handbook) which briefly identifies the form and process. However, staff are widely unaware of the form, none of the incarcerated persons interviewed are

aware, and ADA Unit staff acknowledge the form is rarely used. Disabled incarcerated persons must be made aware of the process to ensure they are aware of how to request an accommodation. Additionally, the form must be readily available via paper copy and must be activated within the electronic tablet (it is not currently activated). Staff must also be instructed to assist disabled individuals in completing the form as needed and reasonable.

In presenting the attached report, the ADA Joint Expert wants to thank the Sheriff, ACSO, AFBH, Wellpath staff, County Counsel, and the incarcerated persons.

## Summary of Ratings

Requirement	Rating
508. Development of written policies and procedures.	PC
509. Disciplinary process for incarcerated persons designated as SMI.	PC
510. Practice of seeking an opinion on the level of discipline, use of disciplinary diets, timelines for disciplinary proceedings, and the imposition of Discipline. Placement in a higher classification.	SC
1000. Working with Joint Expert in the development and implementation of policies, procedures, forms, and training.	PC
1001. Employment of a full-time, dedicated ADA Coordinator.	PC
1002. ADA Coordinator and/or her or his staff personally meeting with each newly identified individual within 14 days of designation.	PC
1003. ADA-related training for staff.	INJR – N/A
1004. The ADA Coordinator staffing.	PC
1005. The ADA Unit staff certification course	SC
1006. Effective Communication Policy.	NC
1007. ADA staff meeting with incarcerated persons with SMI diagnosis or a cognitive, intellectual, or developmental disability in advance of any disciplinary.	NC
1008. Development and implementation of healthcare screening questions.	NC
1009. Referrals to the ADA Unit for incarcerated persons with Psychiatric Disabilities.	NC
1010. Issuance of the Jail Handbook orientation materials, including instructions on how to request disability-related accommodations, how to contact the ADA Coordinator, and how to file a grievance regarding ADA-related issues.	PC
1011. Provision of reasonable modifications and accommodations.	PC
1012. Provision of Effective Communication, therapeutic and/or protective housing unit, counseling/therapy (group and individual), medications, and Qualified Mental Health Professional input prior to removing privileges and/or otherwise imposing discipline and any modifications necessary to ensure equal access to programs.	PC
1013. Provision of reasonable accommodations for learning-related disabilities.	PC
1014. Provision of reasonable accommodations for individuals with cognitive, developmental, and/or intellectual disabilities.	PC
1015. Implementation of an electronic, real-time networked tracking system.	NC
1016. Provision of Psychiatric Disabilities report to Housing unit, education, and program office staff.	PC
1017. Security classification for incarcerated persons with Psychiatric Disabilities.	PC
1018. Access to yard and day room and recreation time for incarcerated persons with Psychiatric Disabilities.	PC

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1019. Equal access to all programs, activities, and services for incarcerated persons with Psychiatric Disabilities.	PC
1020. Requests for reasonable modifications independent of the grievance system ("ADA Request").	NC
1021. Grievance system that provides for prompt and equitable resolution of complaints by individuals with Psychiatric Disabilities who allege disability-related violations.	NC
1022. The ADA Coordinator and ADA Unit review of ADA-related grievances.	NC



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## Findings

The following are excerpts from the Consent Decree provisions assigned to Rick Wells (ADA Joint Expert) for monitoring. The specific provision language is followed by the Expert's findings and recommendations.

### Disciplinary Process

**508. Defendants shall develop written policies and procedures, as set forth in Section IV(A), which shall require meaningful consideration of the relationship between the individuals' behavior and any mental health or intellectual disability, the efficacy of disciplinary measures versus alternative measures that are designed to effectuate change in behavior through clinical intervention, and the impact of disciplinary measures on the health and well-being of prisoners with disabilities. The delivery of mental health treatment shall not be withheld from Behavioral Health Clients due to Discipline. Behavioral Health Clients shall also not be subject to Discipline for refusing treatment or medications, engaging in self-injurious behavior, or threats of self-injurious behavior.**

### Finding: Partial Compliance

(Note: this provision was previously rated as "Partial Compliance")

#### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 16.01 Disciplinary Procedure (Revision Date: August 28, 2023).
- ACSO Detention and Corrections Policy and Procedure - 13.01 Medical and Behavioral Health Care (Revision Date: March 1, 2020).
- ACSO Policy 1.14 Americans with Disabilities Act.
- The Expert notes that the revision of the policies is still in progress.

#### **Training:**

The development of related training materials by ACSO is still in progress. Note: The ADA Joint Expert Monitor will review all training materials and proof of compliance (training provided) for all respective personnel (ACSO/AFBH/Wellpath).

#### **Metrics:**

- ACSO Policy 1.14 Americans with Disabilities Act.
- ACSO Policy 16.01 Disciplinary Procedure.
- ACSO Policy 13.01 Medical and Behavioral Health Care.
- Staff Interviews.
- Blank ACSO Inmate Disciplinary Hearing Record (disciplinary hearing report/synopsis) PD-427 (previously provided) (no completed copies provided).

- Blank ACSO Inmate Disciplinary Interview - PD 206 (to be completed w/in 24 hours of the disciplinary report being signed by Sergeant) (Previously provided) (No completed copies provided).
- Blank ACSO Inmate Disciplinary Report PD-96a (Previously provided) (no completed copies provided).
- Blank ACSO Inmate Disciplinary Action Pending (Notice of Hearing) PD-411 (Previously provided) (no completed copies provided).

### **Assessment:**

ACSO Detention and Corrections Policy and Procedure - 16.01 Disciplinary Procedure was revised in August 28, 2023. As mentioned in both the initial and second ADA Joint Expert reports (Expert Monitor's Final Report – Americans with Disabilities Act [ADA] – First Status Report / Second Status Report), the initial report cited specific language from ACSO Policies 1.14 Americans with Disabilities Act, 16.01 Disciplinary Procedure, and 13.01 Medical and Behavioral Health Care, pertinent to this Consent Decree provision.

Policy 16.01 states in part, "If an inmate is illiterate, communicates in a language other than English or Spanish, or is unable to understand and/or comprehend the Inmate Rules and Information Handbook due to a disability, effective communication will be utilized to assist the inmate in understanding what is expected of them while incarcerated at the SRJ." Section C.8. of the policy states, "The delivery of medical or mental health treatment shall not be withheld from any inmate due to discipline." Section C.9. states, "Inmates shall not be subjected to discipline for refusing treatment or medications or for engaging or threatening to engage in self-injurious behavior. Section D.2. states, "Agency members seeking disciplinary action against BHCs/THIs shall, when appropriate, collaborate with AFBH qualified mental health professionals to measure the efficacy of discipline actions versus alternatives designed to effectuate change in behavior through clinical intervention, and the impact of disciplinary actions on the health and wellbeing of all BHCs." Further language indicates clinician inclusion in the disciplinary process for all individuals identified as THI or SMI. Language also states, "For BHCs/THIs not designated as having an SMI, Agency members initiating disciplinary action shall notify AFBH of the situation of the disciplinary process, including the basis for disciplinary action. AFBH-qualified mental health professionals shall be included in the disciplinary process for non-SMI BHCs/THIs when appropriate." However, the ADA Joint Expert notes there is no policy language pertaining to hearing officials refraining from taking phone and/or visiting privileges for BHI/SMI/IDI incarcerated persons that may cause further mental health concerns.

In a review of the ACSO SharePoint Disciplinary Misconduct folder, there were no copies of misconduct or hearing summaries provided for review (for the review period) for any incarcerated persons, including mentally ill, intellectually disabled, or learning disabled. Likewise, there were no completed AFBH Review forms [clinical consult-related documentation] produced for the ADA Joint Expert to measure ACSO/AFBH compliance with the related Consent Decree provision requirements. The Expert notes that some policy revisions and related forms are still in progress.

Information was provided regarding the 2023 DI Logs. The ADA Joint expert picked the months of January, April, and June to review. Each respective log included the Report #, PFN#, I/M Name,

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Date, Time, Location, Violations, Report Written By, Badge #, Notes (disposition), and whether the charged incarcerated person was identified as BHI, LD, or IDI. The specific data included the following:

- January 2023:
  - Lists approximately 260 names:
    - Lists approximately 51 BHI:
      - About 28 were dismissed.
      - About 15 indicated LOP (loss of privileges):
        - 13 of 15 were either for 3 or 7 days.
        - 1 was for 15 days.
        - 1 was for 45 days.
        - Note: the documentation did not identify what specific privileges were suspended.
    - None were listed as either LD or IDI.
- April 2023:
  - Lists approximately 106 names:
    - 2 were listed as BHI (both dismissed).
    - None were listed as IDI or LD.
- June 2023:
  - Lists approximately 45 names:
    - None were listed as BHI, LD, or IDI.

The ADA Joint Expert notes the extreme decline in the number of disciplinary reports written between January and April (and June) 2023. It is unclear whether the reporting for April and June is underreported, or whether staff used alternate means to deal with BHI, LD, and IDI individuals, and/or whether behavioral health staff were consulted and provided recommendations that charges be dismissed for many cases. Although the apparent drastic decline in the number of disciplinary reports being written is very encouraging, the Joint Expert cannot confirm the accuracy of the reporting without having the adjudicated disciplinary reports to reconcile against.

During an interview with a BHI/IDI incarcerated person, he indicated he had received disciplinary reports in the recent past, but he was not able to understand the process or his rights. He indicated he would not have a hearing, but they would impose sanctions such as loss of privileges. He stated that "staff would give me a piece of paper explaining" (assumed to mean disciplinary disposition), and they would read it to him. When asked, he indicated he does not remember the disciplinary timeframes and did not understand his rights during the process.

During the previous tour, an AFBH clinician stated that AFBH receives disciplinary information regarding "BHI" inmates after the hearing has been conducted (via a packet of documents). A clinician is assigned to research the patient/client and the circumstances of the disciplinary report. Previously, staff also indicated questions have been created for assigned clinicians to effectively assess written inmate misconduct violations. Staff also previously added that ACSO will soon begin sending AFBH the front page of disciplinary reports (via email) to ensure clinician assignment for consults and that AFBH will acknowledge the emails received and enter the information into the EHR. However, it is unclear whether this is happening yet.

From the documents reviewed (particularly from January 2023 to April and June 2023), on the surface it may appear that staff may have begun to strongly consider an individual's disability and may have started to find alternate methods as opposed to formal disciplinary action in dealing with incarcerated persons identified as BHI, LD, and IDI. However, with no documentation (other than the DI logs) having been produced for review, and no supporting staff interview information to this end, the Joint Expert cannot effectively determine whether this is happening. The ADA Joint Expert did not see any evidence that delivery of mental health is being withheld from BHI clients due to discipline. Likewise, the ADA Joint Expert did not see any evidence that BHI clients are subjected to discipline for refusing treatment or medications or if engaging in self-injurious behavior and threatening such.

For future reviews, ACSO must provide copies and all related disciplinary reports (for BHI, LD, and IDI individuals) if they were found guilty, pled guilty, or otherwise received any sanctions. SRJ must also provide proof that clinicians are being consulted and are involved in the disciplinary process.

#### **Recommendations:**

- 1) For future reviews, SRJ must provide proof that clinicians are being consulted and/or are involved in the disciplinary process for incarcerated persons identified as BHC/THI/SMI/IDI per policy 16.01. This includes proof that disciplinary reports involving these identified individuals are forwarded to the AFBH manager and that the Adult Forensics Behavior Health (AFBH) section of the Communication Form for appropriateness of action.
- 2) For future reviews, ACSO must provide copies of disciplinary reports and hearing summaries for all adjudicated disciplinaries where there was a guilty finding, a plea of guilty, or where sanctions were taken.

**509. ACSO shall include Qualified Mental Health Professionals in the disciplinary process relating to SMI clients. For Behavioral Health Clients who are not SMI, ACSO shall notify a Qualified Mental Health Professional of the initiation of the disciplinary process, including the basis for disciplinary action, and shall include a Qualified Mental Health Professional as appropriate in the disciplinary process. Defendants shall develop a form for Qualified Mental Health Professionals to use that allows them to indicate the following:**

- (a) whether the reported behavior was related to mental illness or adaptive functioning deficits, including whether the behavior was related to an act of self-harm.**
- (b) any other mitigating factors regarding the individual's behavior, disability, or circumstances that should be considered.**
- (c) whether certain sanctions should be avoided due to the individual's underlying disability and/or mental health needs. The ACSO shall further ensure recommendations regarding whether the mental health of the individual impacted their actions are appropriately considered and proper interventions provided to Behavioral Health Clients and avoid punishing Behavioral Health Clients for manifestations of their disabilities. To the extent ACSO chooses to not follow the Qualified Mental Health Professional's recommendations, ACSO shall document and explain in writing why the recommendation was not followed.**

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**Finding: Partial Compliance**

(Note: this provision was previously rated as “Non-Compliance”)

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 16.01 Disciplinary Procedure (Revision Date: August 28, 2023).
- ACSO Detention and Corrections Policy and Procedure - 13.01 Medical and Behavioral Health Care (Revision Date: March 1, 2020).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 16.01 Disciplinary Procedure.
- Staff interviews (ACSO and AFBH personnel).

**Assessment:**

As identified in greater detail in rated item 508 (above), Policy 16.01 now addresses the requirement to include a Qualified Mental Health Professional as appropriate in the disciplinary process, as related to incarcerated persons identified as BHC/THI/SMI/IDI, however, as also noted above, staff explained during the tour “that ACSO will soon begin sending AFBH the front page of disciplinary reports (via email) to ensure clinician assignment for consults and that AFBH will acknowledge the emails received and enter the information into the EHR. However, it is unclear whether this is happening yet.”

In the previous review, SRJ reported that a form was in the process of being developed (edited and in the approval process) for future implementation for qualified mental health professionals to complete during the disciplinary process. However, the revised document was not provided for review, and if implemented, completed examples were not provided for review.

During previous reviews and onsite interviews, staff acknowledged that there are inconsistencies (at minimum) relative to clinical consults for the incarcerated person's disciplinary process.

**Recommendations:**

- 1) ACSO/AFBH must develop and implement a form (allowing for ADA Joint Expert and Class Counsel review and input) for a Qualified Mental Health Professional to use for the disciplinary process:

- a. To identify whether the reported behavior was related to mental illness or adaptive functioning deficits, including whether the behavior was related to an act of self-harm.
- b. To indicate whether there were any other mitigating factors regarding the individual's behavior, disability, or circumstances that should be considered.
- c. To identify whether certain sanctions should be avoided due to the individual's underlying disability and/or behavioral health/mental health needs. ACSO shall further ensure recommendations regarding whether the mental health of the individual impacted their actions are appropriately considered and proper interventions are provided to Behavioral Health Clients and avoid punishing Behavioral Health Clients for manifestations of their disabilities. To the extent ACSO chooses not to follow the Qualified Mental Health Professional's recommendations, ACSO shall document and explain in writing why the recommendation was not followed.

**510. Defendants shall limit the practice of seeking an opinion on the level of discipline that should be assessed from the ACSO staff authoring the report. Defendants shall cease the use of disciplinary diets in all cases other than food-related disciplinary cases. Defendants' policies shall include timelines for disciplinary proceedings and the imposition of Discipline. Placement in a higher classification, including placement to Restrictive Housing, is governed by the classification process outlined in Section III(C).**

**Finding: Substantial Compliance**

(Note: this provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 16.01 Disciplinary Procedure (Revision Date: August 28, 2023).
- ACSO Detention and Corrections Policy and Procedure - 14.04 Alternate Meals Service for Disciplinary Action (Revision Date: August 10, 2022).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 16.01 Disciplinary Procedure.

**Assessment:**

In a review of Policy 16.01, revised language in Section F.4. states in part, "The Agency member authoring the disciplinary report shall not provide a recommendation as to what disciplinary

action(s) should be imposed. This recommendation will be made by the IDHO." The Joint Expert notes former policy 14.04 Alternate Meal Services for Disciplinary Action has been archived, and ACSO no longer uses disciplinary diets. The Joint Expert also notes that Policy 16.01 contains language related to the timelines for disciplinary proceedings and the imposition of Discipline. This includes timelines for; writing the disciplinary report, service of the disciplinary report to the incarcerated person, hearing and waiting period, and appeals.

**Recommendations:**

No recommendations

**Americans with Disabilities Act (ADA)**

**1000. Defendants shall work with the agreed-upon joint subject matter Joint Expert, as discussed in Section IV(A), to develop and implement policies, procedures, and forms required to implement the provisions contained herein. All staff shall be trained on the topics, as discussed in Section IV(A), including any modifications to policies and procedures, described herein.**

**Finding: Partial Compliance**

(Note: this provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Dialogue with ACSO and ADA Joint Expert's ongoing review of draft policies.

**Assessment:**

The ADA Joint Expert notes that the County is working collaboratively with the ADA Joint Expert in developing and implementing policies, procedures, and forms required to implement the Consent Decree provisions. The ADA Joint Expert participated in meetings with ACSO and AFBH staff in November 2022 and March 2023. The meetings were productive, and hopefully, future meetings can be scheduled to assist the County with further development of policies, forms, and practices related to the various Consent Decree provisions. The ACSO is in the process of

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revising Policy 1.14 Americans with Disabilities Act. The first of several draft policies were provided for Joint Expert to review, to which comments and recommendations were provided. However, the ADA Joint Expert notes the policy has not been uploaded into ACSO's SharePoint folder for review or noted status. Expert recommendations will continue to be provided if additional draft policies are forwarded to Joint Experts for review.

#### **Recommendations:**

- 1) ACSO must continue to collaborate with the ADA Joint Expert to ensure understanding as to policy content, needed forms, and other types of documentation and to ensure staff are eventually trained to understand said policies, forms, documentation, and related Consent Decree provision requirements.
- 2) ACSO must revise Policy 1.14 Americans with Disabilities Act (or draft similar policy[ies]) for ADA Joint Expert review, comments, and recommendations before final approval and implementation.
- 3) Staff must be trained/knowledgeable pertinent to all ADA policies, procedures, forms, documentation, etc., within the requirements of the Consent Decree provisions.

#### **ADA Coordinator**

**1001. ACSO shall continue to employ a full-time, dedicated ADA Coordinator at the Jail who shall, among other ADA-related responsibilities, oversee the following issues related to individuals with Psychiatric Disabilities: monitoring of the ADA Tracking System, ADA-related training, grievances, disciplinary reports, Message Request forms, requests for accommodations, classification actions, orientation materials, touring housing units and discussing ADA-related issues with incarcerated persons and staff (e.g., housing unit deputies, medical staff, mental health staff, dental staff, education staff, re-entry services staff, inmate program staff, library staff, religious services staff, etc.) as set forth below and on an as-needed basis, and any other ADA-related responsibilities as appropriate. The ADA Coordinator shall be strongly encouraged to serve in that role for at least five (5) years to provide for consistency and to maximize the benefit of the training and expertise of the ADA Coordinator. ACSO shall consult with the ADA Joint Expert regarding the Post order for the ADA Coordinator, and Plaintiffs' counsel shall have an opportunity to review and provide input prior to ACSO finalizing the Post order. The ADA Coordinator shall report up the chain of command. Additionally, the Compliance Captain shall oversee the day-to-day activities of the ADA Coordinator but shall not have the ability to re-assign the ADA Coordinator away from their ADA-related duties.**

#### **Finding: Partial Compliance**

(Note: this provision was previously rated as "Partial Compliance")

#### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.



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### **Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- Reviewed ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.
- Compliance Unit Staff Interviews.
- ADA Coordinator Post Order 10.32.

### **Assessment:**

ACSO reports that ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019) is under further revision. The current version of Policy 1.14 Section III, B. (ADA Coordinator) states, "An employee of the Sheriff's Office tasked with ensuring compliance with the Americans with Disabilities Act within the Detention and Corrections Division of the Alameda County Sheriff's Office. The staff member assigned as the ADA Coordinator shall be responsible for reviewing all documentation and documenting responses to all disability-related requests. The ADA Coordinator shall maintain files of each ADA inmate and incorporate the previously listed information."

The ADA Joint Expert notes that the Americans with Disabilities Act Coordinator Post Order 10.32 is in the comment and review process. Some of the highlights from the draft (7-page) post order include:

- The ADA Coordinator shall be dedicated full-time to ADA-related duties and not assigned away from their ADA-related duties absent exigent circumstances.
- The Compliance Captain shall oversee the day-to-day activities of the ADA Coordinator.
- General effective communication-related information.
- Tracking of ADA inmates (including IDI) must be updated daily (excluding weekends and holidays).
- General training responsibilities.
- Contacts between ADA Unit and incarcerated persons (including effective communication and tracking).
- Information regarding Intake, orientation, and interviews:
  - Including 14-day initial interviews, 60-day interviews, and subsequent 60-day interviews (including IDI and psychiatric disabled individuals).
- Housing placements.
- ADA-related grievances.
- ADA-related message requests.

- Disciplinary reports. Face-to-face interviews (by ADA Unit staff) in advance of any disciplinary hearing that may result in an increase in security classification and/or placement in restrictive housing.
- Monthly inspections of electronic tablets.
- Review of Request for Accommodations (2275-CJ) forms received from the California Department of Corrections and Rehabilitation (CDCR).
- Document all interviews and approved accommodations on the ADA Unit Record of Contact form and update the information into the ADA/IDI Tracking Sheet.
- Assist the Training Unit in training newly hired Agency members, as well as provide bi-annual Standards and Training for Corrections (STC) training in areas related to ADA.
- Establish a working relationship with the management of the SRJ's contracted medical provider, AFBH, and the education services provider to address ADA issues pertaining to reasonable accommodations and methods of effective communication.

The ADA Joint Expert interviewed the ADA Coordinator and other ADA Unit staff while onsite. The assigned ADA Coordinator believes he has sufficient knowledge and ACSO Command staff support to ensure compliance and oversight of the ADA Program. The ADA Coordinator stated he tours the housing units and conducts informal face-to-face contact with disabled incarcerated persons. He cited the aforementioned ADA Coordinator Station Order (duty statement) as being in the process of being revised. ADA Unit staff also indicated the ADA Unit will soon have a civilian technician added to assist the current staff in administrative duties, which will free up the ADA Coordinator to dedicate more time to the ADA Unit's Consent Decree requirements.

The ADA Coordinator indicated he participates in monthly meetings with other SRJ disciplines, to which about two (2) or three (3) meetings have been conducted to date. Discussions regarding the Consent Decree is part of the meetings.

The ADA Unit staff also added that the ADA Coordinator is currently maintaining a list of incarcerated persons on the ADA List (for ADA unit follow-ups and monitoring as applicable), and the list will be provided to the ADA Joint Expert via the SharePoint on a monthly basis.

#### **Recommendations:**

1. As previously outlined in the initial ADA Joint Expert report, Policy 1.14 must be revised (or related policies/documentation must be implemented) to articulate the requirements of this Provision for the ADA Coordinator or ADA Unit staff to have oversight or monitoring responsibilities outlined in the Provision as well as other applicable ADA Coordinator duties.
2. For future monitoring periods, ACSO must provide the necessary documentation or logs to show proof of practice that the ADA Coordinator/ADA Unit staff are involved in the processes addressed in the provision and/or have oversight or monitoring responsibilities.

**1002. As soon as practical, but under no circumstances more than fourteen (14) days after an individual has been identified at Intake or post-intake as having a Psychiatric Disability, the ADA Coordinator and/or her or his staff shall personally meet with each newly**

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identified individual. In the meeting, the ADA Coordinator shall employ effective communication to assist the individual in understanding the rules of the Jail; explain how to request accommodations and what accommodations are available; ensure the individual has access to grievance forms to raise disability-related issues; and inform them that ADA Unit staff are available to assist the individual with disability-related needs. For any person identified as having a Psychiatric Disability who remains in the Jail for more than sixty (60) days, the ADA Coordinator and/or their staff shall meet with the individual to determine if their ADA-related needs are being met and at least every sixty (60) days thereafter. This meeting and any relevant notes regarding accommodation needs shall be documented in writing. Once the ADA Tracking System is implemented, this information shall be documented there.

**Finding: Partial Compliance**

(Note: this provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019). The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Completed Records of Contact Forms.
- Compliance Unit Staff Interviews.

**Assessment:**

As outlined in the first two (2) ADA Joint Expert reports, although Policy 1.14 does not contain language relative to the requirement for the ADA Coordinator (and/or her or his staff) to personally meet with a newly identified incarcerated persons, Section IV. E. Forms describes a Record of Contact form. The policy states, "The Record of Contact Form will be filed in the ADA Coordinator's inmate files. The form will be used to document interaction or discussions the ADA Coordinator has with the inmate, staff, or visitors regarding accommodations and ADA issues." The ADA Expert acknowledges Policy 1.14 is under revision.

ACSO did not produce any completed Record of Contact Forms (as part of pre-tour document production) for the ADA Joint Expert to determine if the ADA Coordinator or designee is meeting with incarcerated persons that have a psychiatric, intellectual/developmental, or learning disability within 14 days of being identified as having such a disability. Likewise, there was no such

documentation produced regarding disabled incarcerated persons who remain at the SRJ for more than 60 days (and every 60 days thereafter). However, while onsite, the ADA Coordinator produced a copy of his own internal tracking list, which captures a small percentage of individuals identified as mentally ill and IDI. The tracking list includes a column noting the date of contact (most recent interview, initial 14-day, subsequent 60-day interview). While onsite, the ADA Joint Expert discussed the form and the discrepancies and noted that there were numerous entries that had not been made (conducting 14-day initial interviews) despite the individuals having been at SRJ for more than 14 days. The ADA Unit staff acknowledged the concern and explained that there was recently an influx of new disabled cases and that the ADA Unit staff were actively conducting interviews to catch up from the recent backlog.

Although no specific examples of completed Record of Contact Forms were provided as part of document production, there were a couple of examples reviewed while onsite for newly identified disabled persons (behavioral/mental health, intellectually/developmentally incarcerated persons).

Prior to the onsite review, the ADA Joint Expert was able to review and provide comments on the latest draft of the ADA Unit Interview form. The form contains numerous check boxes for multiple types of disabilities and effective communication needs and types of accommodations provided to ensure effective communication. The form contains checkboxes (and write-in lines) to articulate the incarcerated person's understanding of jail rules (including PREA); access to the grievance forms to raise disability-related issues; inform incarcerated persons as to the availability of ADA Unit staff to assist with individual disability-related needs; an explanation as to how to access healthcare (medical, behavioral health, and classes). The form also contains check boxes for subsequent meetings (e.g., 60-day meetings), including a review of accommodation needs and whether ADA-related needs are being met. The form concludes with confirmation regarding staff determination that effective communication was achieved and for ADA Unit staff initials. Note: The ADA Joint Expert was slightly confused, as the form outlines the grievance process to also use to "raise disability-related issues," but as outlined in the bulleted information (below) from the ADA Joint Expert's observation of a 14-day initial interview, ADA Unit staff informed the incarcerated person as to both the grievance form/process, as well as the Disability Request for Reasonable Accommodation Request form/process. The ADA Unit staff also provided the individual with a blank copy of the Disability Request for Reasonable Accommodation Request form.

While onsite, the ADA Joint Expert observed the ADA Coordinator and another ADA Unit Deputy jointly conduct a 14-Day Initial Interview. Questions asked, information received, and observations included the following:

- Mental illness (been in Jail for 13 days).
- Provided a copy of jail rules:
  - Pointed out page 212 (Respect).
  - Asked if he had any questions about the rulebook.
- Asked about the history of write-ups:
  - Asked if he knew what to do if he is ever written up.
- Asked about rules and conduct.
- Asked about PREA and if he knew what it was:

- Had the individual read the top portion of the PREA information.
- Asked about mental health:
  - Denied any diagnosis.
- Asked about medications.
- Asked if he knew how to make and submit a request slip.
- Asked if he had an electronic tablet (he did not).
- Asked if he knew how to use the grievance process.
  - Explained the grievance form and process and the Disability Request for Reasonable Accommodation Request form and process:
    - Also explained that if he ever submitted one, the ADA Coordinator would interview him.
    - Gave him a copy of the Disability Request for Reasonable Accommodation Request form.
- Asked if he knew how to access medical and explained the process (including the tablet).
- Explained he could ask deputies for help with forms, etc.
- Asked if he knew how to request to see ADA Unit staff or how to contact ADA Unit staff:
  - Request Form:
    - Explained the form and the ADA check box.
- Asked about his education level:
  - Explained the process of requesting education classes.
- Asked if he knew how to access a job.
- Re-entry:
  - Asked if he needed resources (and if he would like a list of community resources) in preparation for going back to the community.
    - He said "yes" and needed housing, employment, and DMV information.
  - Discharge Planning:
    - Explained the discharge planning process.
  - ROOTS Program:
    - Asked if he knew about the ROOTS program resources, including housing, etc. Also, provided him a packet with numerous resources listed.
- Asked if he had any questions.

Based on a couple of completed examples of the Record of Contact form provided to the ADA Joint Expert for review (while onsite), the Joint Expert's observations of the 14-day initial interview, and the ADA Unit staff indicating they address the same material for each interview, and document such, the ADA Joint Expert believes that the requirements of this Consent Decree Provision in terms of the interviews are taking place (at least to some degree), and the required topics of discussion are possibly being met (when the interviews are conducted). However, as indicated above, there are concerns with timeliness (or consistency with such), and serious concerns with the lack of proof of practice documentation, as none were provided as part of document production. For future reviews, ACSO will need to provide documentation of either completed Record of Contact forms or the new ADA Unit Interview Forms (once approved and rolled-out for ADA Unit staff usage) for the rating period so the Joint Expert can confirm ACSO's compliance with the 14-day and 60-day interviews. This includes documentation showing compliance in covering all Consent Decree required topics (including effective communication)

and consistency with timeliness. To the extent there is a high volume of completed Record of Contact forms, the Expert will randomly select a manageable portion to review for the rating period.

**Recommendations:**

1. As outlined in the first two (2) ADA Joint Expert reports, Policy 1.14 must be revised (or other policy) to include language requiring the ADA Coordinator (and/or her or his staff) to personally meet with a newly identified incarcerated person who has a psychiatric, intellectual/developmental, or learning disability as soon as practical but within 14 days after arrival or identification at the Intake process, or post-Intake process. Language must include the various requirements as outlined in the Consent Decree.
2. The ACSO must ensure the ADA Coordinator or designee routinely conducts initial meetings as soon as practical but within 14 days of arrival or identification of an incarcerated person having a psychiatric, intellectual/developmental, or learning disability and document (e.g., Record of Contact form).
3. The ADA Coordinator or designee must meet with incarcerated persons that have a psychiatric, intellectual/developmental, or learning disability who remain at the Santa Rita Jail for more than 60 days (and every 60 days thereafter).
4. For initial meeting encounters as described above, the ADA Coordinator or designee must ensure Effective Communication is provided and documented and articulate that, at minimum, the required topics as listed in the Consent Decree were discussed (e.g., jail rules, grievances, disability reasonable accommodation process, and the ADA Unit contact information/assistance available).
5. The information currently being tracked by the ADA Coordinator must soon be tracked in the comprehensive real-time networked tracking system (once the ATIMS system is modified).
6. The ADA Unit Interview form should be further revised to reflect that there is a separate Disability Request for Reasonable Accommodation Request form, and that form should be used to request disability-related accommodations.
7. For future monitoring reviews, ACSO must provide written proof of practice that the Initial 14-day and 60-day face-to-face interviews are being conducted as required under this Provision.

**1003. After the initial ADA training is provided by the ADA Joint Expert, the ADA Coordinator shall be charged with providing ADA-related training to staff and with monitoring programs and work assignments to ensure meaningful access for all individuals with Psychiatric Disabilities.**

**Finding: Implementation Not Yet Required – Rating N/A**

(Note: this provision was previously rated as “Implementation Not Yet Required - Rating N/A”)

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.

- The Expert notes that the revision of the policies and training material is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.

**Assessment:**

This Consent Decree rated item continues to be “Implementation Not Yet Required – Rating N/A” at this time.

This is the third ADA Joint Expert review, whereas this provision has been rated as "Implementation Not Yet Required – Rating N/A." The ADA Joint Expert acknowledges ongoing dialogue with the Parties as well as with ACSO regarding the requirement for the initial ADA training to be provided by the ADA Joint Expert or if the ADA Joint Expert will work with ACSO in the development of training material, and to conduct Train-The-Trainers training to qualified selected ACSO instructors, followed by in-class observations (and/or co-teaching) of classes taught by respective instructors to ensure each trained instructor understands the material to satisfactorily instruct the classes to Jail staff (as related to the Consent Decree provisions). The ADA Joint Expert understands that decisions still need to be made relative to this provision but also recognizes that defendants are still developing and revising relevant policies and procedures pursuant to the Consent Decree and must complete the revisions before training curriculum specific to ACSO/AFBH/Wellpath policies, forms, and processes can be developed and provided to the Joint Experts and Plaintiffs' for review prior to approval and implementation of staff training.

Note: The ADA Joint Expert will be looking for meaningful progress for this Consent Decree provision before the next scheduled Joint Experts onsite review, which should lend itself to a rating other than the current rating of “Implementation Not Yet Required - Rating N/A.”

Though separate from the Consent Decree provisions, and which does not satisfy the Consent Decree provisions, the ADA Joint Expert notes training that is captured. Defendants provided the following training-related information:

- 80-Hour Supplemental CORE Course Schedule – June 2023:
  - No attached lesson plans, PowerPoint presentations, or course outlines.
  - 2.0 hours Interpersonal and Effective Communication:
    - Not taught by ADA Unit staff.
  - No ADA or disability courses.
  - There is mental illness-related training.
- 2023 Civilian Staff Course: Training Schedule:
  - 8 hours:

- MH: 1 hour.
  - Consent Decree: 1 hour.
- Jail Orientation Schedule (May 29, 2023 – June 9, 2023) (approximately 73 hours):
  - Guardian: 1.5 hours.
  - Consent Decree: 1.5 hours.
  - ADA: 1 hour (ADA Coordinator Kidwell).
  - ATIMS: 1 hour.
- Academy Training Hours:
  - People with Disabilities (15 hours).
  - Part of the general course description indicates:
    - Use of verbal/non-verbal communication skills.
- CCPOST Basic Course Workbook Series Student Materials (Learning Domain 37 – People with Disabilities) Version 6.0:
  - Includes learning objectives.
  - Includes sections regarding.
  - Disability Laws.
  - Intellectual/Developmental Disabilities.
  - Mental Illness.
  - Not specific to Consent Decree or SRJ/Wellpath policies, procedures, forms, and practices.
- Crisis Intervention Behavioral Health SB11 Training (Revised 10/19/21) POST Course Outline.
- Crisis Intervention Team Training.

During the ADA Coordinator onsite interview, he reported that he provides the one hour of ADA training to all new staff (custody – academy and lateral transfers) that he conducts at SRJ via a PowerPoint presentation. He also added that he conducts refresher training to sworn staff (including lieutenants and sergeants).

#### **Recommendations:**

1. The ACSO must work with the Joint Experts and Class Counsel to provide review and input prior to the approval of interactive component training materials. The ADA Joint Expert understands this provision is a high priority for ACSO.

**1004. The ADA Coordinator shall have sufficient staffing to assist him or her (the “ADA Unit”). ACSO staff assigned to the ADA Unit shall be strongly encouraged to serve in that capacity for at least three years to provide for consistency and to maximize the benefit of the training and expertise of the Custody staff assigned to this unit. During any period where the ADA Coordinator is unavailable for any reason, a sergeant or higher-ranked individual shall fulfill the duties of the ADA Coordinator position until the ADA Coordinator becomes available, or a replacement is appointed to the position. The ADA Coordinator position shall not remain vacant for more than ninety (90) days.**

**Finding: Partial Compliance**



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(Note: this provision was previously rated as “Partial Compliance”)

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

N/A

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Interviews of ADA Unit Staff.

**Assessment:**

The ACSO currently operates with a Compliance Unit with the following positions:

- One (1) Compliance Captain:
  - Also serves as Consent Decree Project Manager.
- One (1) Compliance Lieutenant:
  - Currently has ADA, ACA accreditation, BSCC, and PREA-related duties.
- One (1) Compliance Sergeant:
  - Currently has ADA and ACA-related responsibilities.
- Two (2) Compliance Deputies:
  - One serves as the dedicated ADA Coordinator.
  - One deputy reportedly assists the ADA Coordinator and has other ADA, ACA, and PREA-related responsibilities.

The ADA Coordinator reported that a new civilian technician will soon be assigned to the ADA Unit to assist existing ADA Unit staff with administrative duties. ACSO also recently informed the ADA Joint Expert that a new ADA Deputy position may be approved soon (no other details were provided), and that all ADA Unit staff will have a bit more time to focus on ADA related matters, as Alameda County (Santa Rita Jail) will no longer be involved in the American Correctional Association (ACA) accreditation process. As such, all ADA Unit staff (other than the dedicated ADA Coordinator) will now only work on ADA and Prison Rape Elimination Act (PREA) related matters. As was discussed with the Parties and all attendees during the entrance meeting (on June 12, 2023) of the onsite review, ACSO has assigned a deputy as the ADA Coordinator and is the sole staff member from the ADA Unit that is dedicated solely to ADA-related duties. He serves under the direct supervision of a sergeant who maintains ADA and PREA-related duties. His indirect supervisor is a lieutenant who also maintains similar responsibilities, including Board of State and Community Corrections (BSCC) related responsibilities as well. The Compliance

Captain maintains daily management and oversight of the ADA Unit. During the monitoring tour entrance meeting, the ADA Joint Expert opened for discussion regarding the circumstances and possible concerns with having a rank-and-file deputy serve as the ADA Coordinator. The ADA Joint Expert notes there is disagreement by the Parties regarding Consent Decree Provision 1004 the rank of the staff serving in the role of the ADA Coordinator. However, as stated during the entrance meeting, the ADA Joint Expert will continue to defer to the Parties if an agreement can be reached. In the interim, the ADA Joint Expert will monitor this provision based on the Expert's interpretation unless a Court ruling or agreement between the Parties dictate otherwise.

The ADA Joint Expert recognizes that draft Post Order 10.32, Americans with Disabilities Act Coordinator Post Order, has been submitted for review (for the Joint Experts and the Parties) but has not officially been finalized. The draft language indicates the ADA Coordinator position shall be dedicated full-time to ADA-related duties under the supervision of the ADA Sergeant. It also indicates the Compliance Management Unit Captain shall oversee the day-to-day activities of the ADA Coordinator. It also provides that the ADA Coordinator will work with the Lieutenant and Captain of the Compliance Management Unit should the need arise to make necessary changes or modifications to the ADA Program. Although the post order makes references to various ADA Coordinator responsibilities, there is also language as to the ADA Unit responsibilities. However, there is no language as to other ADA Unit staffing (other than general references to unit supervisors and managers (as outlined in the paragraph – above). As bulleted in the Assessment section of this Consent Decree Provision (above), there is an additional deputy assigned to the ADA Unit that assists the ADA Coordinator, as well as having other duties related to PREA. This provision requires that the ADA Coordinator have "sufficient staffing to assist him or her (the "ADA Unit")." The ADA Joint Expert has not noted any evidence to determine that the ADA deputy assisting (at least part-time) coupled with the supervisor and managers (Sergeant, Lieutenant, and Captain) is not sufficient. However, the ADA Joint Expert also realizes that this is only the third monitoring review, and there is a lot of work left to be done within the program (as outlined throughout this report). One overarching concerning note is that despite this having been the third monitoring review, there are still many documents applicable to many of these Consent Decree Provisions that are not being provided the ADA Joint Expert. The Joint Expert cannot say with any certainty that this is attributed to the rank of the ADA Coordinator and/or the current size of the ADA Unit and the fact there is only one (1) dedicated staff member (ADA Coordinator), but this is concerning and will be carefully monitored, as will this Provision as-a-whole.

The County reported that the ADA Coordinator position was not vacant during the rating period.

#### **Recommendations:**

1. Recommend providing a job description for the remaining ADA Unit staff (aside from the ADA Coordinator) position (to also include the civilian Technician position, once established) and to identify specific related functions as pertaining to the Consent Decree requirements and an estimated percentage of time allotted to the Consent Decree provisions in working with the ADA Coordinator.
2. The ACSO must work with the Joint Experts (and Class Counsel) in reviewing, making recommendations, and finalizing any new or revised post orders, job descriptions, duty statements, policies, etc.

3. Either Policy 1.14 revisions, the ADA Sergeant's post order, job description, duty statement, or other policy or documents should indicate the ADA Sergeant's responsibility to fulfill the duties of the ADA Coordinator position until the ADA Coordinator becomes available, or a replacement is appointed to the position for occasions whereas the regularly assigned ADA Coordinator is unavailable for a-period-of-time.

**1005. Within one (1) year from their initial assignment, all sworn staff assigned as ADA Unit staff, including the ADA Coordinator, shall attend and complete a nationally recognized certificate course designed for ADA coordinators and obtain certification and maintain said certification with updates and continuing education courses. Any replacement ADA Coordinator, interim ADA Coordinator, or sworn staff assigned to the ADA Unit shall obtain their ADA certification within twelve (12) months of starting in the position.**

**Finding: Substantial Compliance**

(Note: this provision was previously rated as "Non-compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training: N/A**

**Metrics:**

- Reviewed ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.
- Staff interviews (ADA Unit).

**Assessment:**

The Santa Rita Jail ADA Coordinator and ADA staff have 12 months to obtain the certification from a nationally recognized certificate course designed for ADA Coordinators. The ADA Coordinator and ADA Deputy have been assigned to the ADA Unit for at least a year. The ADA Joint Expert is unclear whether the ADA Unit Lieutenant and Sergeant have been in the ADA Unit for a year yet but does not believe they have. Post draft report, ACSO provided the following proof of certification (completion of the University of Missouri ADA Coordinator Training Certification Program):

- ADA Unit Lieutenant: Effective July 5, 2023.
- ADA Unit Sergeant: Effective July 5, 2023.
- ADA Unit Coordinator:
  - Effective October 28, 2019 (initial certification).
  - Re-certification 2022.

- Re-certification 2023.
- ADA Unit Deputy:
  - July 5, 2023.

Post onsite tour, ADA Unit personnel informed the Joint Expert that the ADA Unit Lieutenant has recently been assigned to a different unit. The new ADA Unit Lieutenant will need to complete ADA Coordinator certification within the next 12 months.

**Recommendations:**

- 1) ADA Unit staff must maintain their certification via recertification while assigned to the ADA Unit, and the ACSO must show proof of practice once completed.
- 2) The ACSO Lieutenant recently assigned to the ADA Unit must complete the same or similar ADA Certification course within 12 months from the date he was placed into the ADA Unit, and ACSO show proof of practice once completed.

**Effective Communication**

**1006. In consultation with the ADA Joint Expert, and in accordance with Section IV(A), Defendants shall develop and implement policies and practices to ensure effective communication ("Effective Communication policy") with individuals with Psychiatric Disabilities at Intake and in due process events (e.g., grievance processes, classification processes, disciplinary processes, pre-release processes, and conditions of release process), religious activities, vocational and educational programs, and clinical encounters including mental health appointments. The Effective Communication policy shall include, at a minimum, processes for:**

- (a) identifying individuals whose cognitive, intellectual, or developmental disability pose barriers to comprehension or communication.**
- (b) promptly providing reasonable accommodation(s) to overcome the communication barrier(s); and**
- (c) documenting the communication including the method used to achieve effective communication and how the relevant staff person determined that the individual understood the encounter, process, and/or proceeding.**

**Finding: Non-Compliance**

(Note: this provision was previously rated as "Non-compliance").

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.
- Staff interviews (from multiple custody and non-custody disciplines).

### **Assessment:**

The ADA Joint Expert recognizes ACSO's report that Effective Communication has been referenced in several policies under "definitions." Previously, ACSO contended that Effective Communication may not need to be a stand-alone policy. The ADA Joint Expert has maintained a strong recommendation that an Effective Communication policy would be best served as multiple separate stand-alone policies, each for ACSO, AFBH, and Wellpath. It is the ADA Joint Expert's understanding that ACSO, Wellpath, and AFBH have all since agreed and reportedly are now working on their respective Effective Communication policies. The ADA Joint Expert has continued to work with ACSO, Wellpath, and AFBH toward this effort. As previously mentioned, there have been a couple of task group meetings (the latter in March 2023) which primarily centered around disability identification and tracking, but also the purposes for such, inclusive of the Consent Decree's Effective Communication-related provisions. This issue was also discussed while onsite during the recent review. The ADA Joint Experts have maintained verbal dialogue and email exchanges with ACSO, Wellpath, and AFBH and have provided examples of Effective Communication policy language and related information to assist ACSO, Wellpath, and AFBH in this effort and will continue to do so, as needed. The Joint Expert received a draft Effective Communication Policy from Wellpath and provided comments and recommendations but has not been provided draft policies from either ACSO or AFBH for review.

In the absence of an ACSO Effective Communication Policy for documenting Effective Communication (for various types of encounters), the ADA Joint Expert acknowledges the initiative and work the ADA Unit staff are performing. Though Effective Communication policies have not been finalized, the ADA Unit staff have developed a form to document Effective Communication and are actively using the form for encounters facilitated by the ADA Unit staff. Though completed copies of the form were not provided as part of document production, the ADA Joint Expert reviewed a few completed examples while onsite. The ACSO provided the Joint Expert a draft of the "Documentation of Effective Communication" form that will be used by ACSO for most due process encounters (e.g., classification, Restrictive Housing-related notifications, disciplinary-related notifications, etc.). This draft "Documentation of Effective Communication" form incorporates all of the Consent Decree requirements. Until ACSO, Wellpath, and AFBH approve and implement their respective Effective Communication policies and provide completed "Documentation of Effective Communication" forms for the next rating period (e.g., for Intake, orientation, disciplinary process, etc.) the Joint Expert will be unable to effectively evaluate this Provision.

The ADA Joint Expert notes the Effective Communication policy and associated forms, including staff training, are still in progress.

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## Recommendations:

- 1) Upon completion of drafting the stand-alone Effective Communication policies, ACSO, Wellpath, and AFBH must provide to the Joint Experts (and plaintiffs' counsel) for review and comment prior to finalizing:
  - a. Language) must articulate the requirements for staff to provide and log their Effective Communication efforts for significant types of encounters with incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities as required by the Consent Decree provision.
- 2) ACSO must ensure that the Effective Communication policy includes the following:
  - a. Identifying individuals whose psychiatric, intellectual/developmental, or learning disability pose barriers to comprehension or communication.
  - b. Promptly providing reasonable accommodation(s) to overcome the communication barrier(s).
  - c. Documenting the communication including the method used to achieve effective communication and how the relevant staff person determined that the individual understood the encounter, process, and/or proceeding.
- 3) ACSO, Wellpath, and AFBH must provide completed copies of the "Documentation of Effective Communication" form (or other similar forms or documentation consistent with future Effective Communication policies) for all applicable encounters during the next rating period.

**1007. For those individuals with a SMI diagnosis or a cognitive, intellectual, or developmental disability, who have effective communications needs, the ADA Unit shall meet with the individual in advance of any disciplinary hearing that may result in an increase in security level and/or placement in more restrictive housing. In order to provide Effective Communication, the ADA Unit shall discuss the upcoming event with the individual and ensure they are able to understand, participate, and communicate effectively.**

### **Finding: Non-Compliance**

(Note: this provision was previously rated as "Non-Compliance")

### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

### **Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- Policy 1.14 Americans with Disabilities Act.

- Staff interviews (custody [including ADA Unit] and non-custody staff from multiple disciplines.

#### **Assessment:**

The ACSO did not provide completed Record of Contact Forms, Documentation of Effective Communication forms, or any other documentation to support whether the Compliance Unit ADA staff are meeting with incarcerated persons with psychiatric, intellectual/developmental, or learning disabilities prior to disciplinary hearings that could result in an increase in security level and/or placement in more restrictive housing. During the onsite review, the ADA Unit staff admitted that the ADA Unit is not yet meeting with BHI, IDI, or LD individuals prior to disciplinary hearings, even if there is a possibility of an increase in security or classification level. For the previous monitoring review (second review), the ADA Unit staff had indicated they were not receiving advanced notification as to pending incarcerated person disciplinary hearings, which was the reason claimed as to why the interviews were not being conducted. However, at the present time, it is unclear whether the ADA Unit is still not receiving the information and whether there are other reasons why the interviews have not yet begun.

#### **Recommendations:**

- 1) The ACSO must revise Policy 1.14 (or incorporate it into a different policy) to include the Consent Decree provision requirement for staff from the ADA Unit to meet with individuals that have Effective Communication needs (prior to a disciplinary hearing being conducted) in cases where the hearing disposition may result in an increase in security level and/or placement in more restrictive housing.
- 2) During the meeting (cited in Recommendation #1 – above), staff must discuss the upcoming disciplinary hearing and ensure the individual is able to understand, participate, and communicate effectively for the scheduled hearing.
- 3) For future monitoring tours, the ACSO must provide completed Record of Contact Forms, Documentation of Effective Communication forms (or other relevant documentation) demonstrating proof of practice.
- 4) ACSO must provide information as to whether there is a breakdown in providing the ADA Unit the information necessary (or otherwise why they don't have access to such information) to schedule face-to-face meetings with charged incarcerated persons (in accordance with this Consent Decree Provision) prior to the disciplinary hearings being conducted.

#### **Intake & Orientation**

**1008. In consultation with the ADA Joint Expert, Defendants shall develop and implement healthcare screening questions in order to identify individuals with intellectual, developmental, psychiatric, or learning disabilities. These healthcare screening questions shall be asked of all newly booked persons and conducted in a reasonably confidential setting. If the initial screening identifies a possible intellectual, developmental, psychiatric, or learning disability, the individual shall be referred to a Qualified Mental Health Professional, including a Licensed Clinical Psychologist where appropriate, for a**

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**secondary screening and assessment to occur within sixty (60) days of booking. In the context of learning disabilities, the referral may be made to an appropriately qualified community provider, such as 5 Keys, for screening using a screening tool such as the Test of Adult Basic Education to occur within fourteen (14) days of booking. The date of the assessment, the nature of the individual's disability, and any accommodations authorized for the incarcerated person shall be promptly documented in the ADA Tracking System.**

**Finding: Non-Compliance**

(Note: this provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date: October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 11.02 Intake Procedure (Revision Date: December 1, 2019).
- ACSO Detention and Corrections Policy and Procedure - 13.02 Inmate Medical/Health Appraisal Screening, Special Clinics, Communicable Diseases, Quarantines, and Terminally Ill Inmates (Revision Date: October 20, 2020).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 11.02 Intake Procedure.
- Policy 13.02 Inmate Medical/Health Appraisal Screening, Special Clinics, Communicable Diseases, Quarantines, and Terminally Ill Inmates.
- Staff interviews (e.g., ITR and other areas).
- Observed the Custody Intake Screening process by an Intake Deputy (Note: observed during the initial Joint Expert onsite review).
- Observed the Behavioral Health Intake Screening process by a Marriage and Family Therapist (MFT).
- Observed the Medical Intake Screening process by a Nurse.
- A blank copy of Alameda County Behavioral Health Care Services Adult Forensic Behavioral Health (Santa Rita Jail) Brief Clinical Assessment Form.
- A blank copy of two (2) page Alameda County Sheriff's Office Intake/Receiving Screening Form (PD-803) (Revised July 8, 2019).
- A blank copy of Alameda County Behavioral Health Adult Forensic Behavioral Health Suicide Risk Assessment.
- A blank copy of Behavioral Referral Form 1312 (while onsite for the monitoring tour).
- Blank example of the Tracking Form DD 534 (while onsite for the monitoring tour).



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- Blank example of the Inmate Disability Evaluation Form (while onsite for the monitoring tour).
  - A blank copy of eight (8) page Wellpath Receiving Screening Alameda County Questionnaire.
  - A blank copy of the Intake/Receiving Screening Form.
  - A blank copy of the Classification Screening Form.
  - Separate lists of BHI incarcerated persons.
  - List of BHI, Cognitive (also described as “IDI”) and Learning-Disabled Incarcerated Persons.
  - January 2022 Armstrong v. Newsom Lists (from CDCR DAPO)  
(Note: no such lists [subsequent to January] were provided for review).
  - Five-Keys (School and Programs) Continuing Student Demographics Form  
(Note: observed during the initial Joint Expert on-site review).
  - Five-Keys (School and Programs) Student Enrollment Form  
(Note: observed during the initial Joint Expert on-site review).

**Assessment:**

The ADA Joint Expert notes that neither of the pertinent policies (1.14, 11.02, or 13.02) have been revised since the versions as outlined in the bulleted policies listed (above).

As referenced in the ADA Joint Expert’s previous report, the ADA Joint Expert’s initial report cited (in greater detail) Policy 1.14, Inmate Procedure – Identifying Disabled Inmates at Intake, and Policy 13.02 Inmate Medical/Health Appraisal Screening, Special Clinics, Communicable Diseases, Quarantines, and Terminally Ill Inmates. The language of the two (2) policies related to the medical screening process during Intake for the purpose of identifying disabilities, recording the information on the proper screening form, and further 14-day health appraisals, as well as additional related staff requirements.

However, the ADA Joint Expert notes that Wellpath recently provided the following documents for review and comment:

- Draft HCD-100\_X-01 Adaptive Support Needs Policy.
- Draft Adaptive Support Needs Flow Chart.
- Draft Wellpath Support Needs Screening.

The Joint Experts provided comments. The ADA Joint Expert notes these documents have not yet been finalized or implemented. Once the documents are finalized and implemented, the ADA Joint Expert will rate compliance levels accordingly.

The ACSO/AFBH did not provide any completed copies of the Intake forms (or other applicable forms) for the review for this monitoring period as related to Intake screening for incarcerated persons with possible psychiatric, intellectual/developmental, or learning disabilities. Likewise, the ACSO/AFBH did not provide any proof of practice documentation for the current document review period to confirm whether Intake staff is referring incarcerated persons for follow-up or secondary

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screening and assessment (when appropriate) within 60 days of booking to a Qualified Mental Health Professional (including a trained and Licensed Clinical Psychologist). As also reported from the initial report (as related to learning disabilities), ACSO/AFBH did not provide any proof of practice documentation to confirm if the Intake staff is referring incarcerated persons to 5-Keys education personnel (within 14 days of booking) for further screening, e.g., Test of Adult Basic Education.

As cited above, the ADA Joint Expert notes that the County is working collaboratively with the ADA Joint Expert in the development and implementation of healthcare screening questions in order to identify individuals with intellectual, developmental, psychiatric, or learning disabilities, including the process to refer cases to a Qualified Mental Health Professional, including a Licensed Clinical Psychologist where appropriate, for a secondary screening and assessment within sixty (60) days of booking and the referral process to a qualified community provider, such as 5 Keys, for screening using a screening tool such as the Test of Adult Basic Education within fourteen (14) days of booking.

As mentioned in the previous report and outlined in greater detail within the ADA Joint Expert's initial report, the ADA Joint Expert reviewed the eight (8) page Wellpath Receiving Screening Alameda County Questionnaire and asked pertinent questions of Wellpath personnel. The staff mentioned the completion of an ADA Assessment Form, electronic entering of such information into ATIMS, CorEMR, and the Gateway systems, behavioral health referrals, and weekly multidisciplinary meetings.

The ADA Joint Expert observed the pre-initial screening process in the ITR lobby, as well as the Intake medical screening process for two (2) new arrivals at SRJ. The medical screening observation for incarcerated person #1 did not include any questions being asked regarding any disabilities (including psychiatric, intellectual, or learning). The mental health observation for incarcerated person #2 included numerous questions regarding mental health, as well as general questions pertaining to intellectual disabilities and Autism. The ADA Joint Expert asked the MFT (conducting the interview) about IDI and regional center services. The MFT said if the individual was "developmentally disabled," she would ask him about past regional center services, and in the event the individual does not remember (or is not sure) about past regional center services, mental health staff would not necessarily contact a regional center (case-by-case basis). She added that not all developmentally disabled incarcerated persons have past Regional Center services history.

As outlined in the previous ADA Joint Expert report, the ADA Joint Expert's initial report identified the following:

- The Intake/Receiving Screening Form (filled out at the ITR law enforcement parking lot) contains general mental health-related questions.
- The Classification Screening Form contained general intellectual/developmental disability-related questions.
- The 5-Keys (School and Programs) Continuing Student Demographics Form (questionnaire and checkboxes) includes questions pertaining to IEP, 504 Plan, previous Resource class or other services received, education level, etc.

- The 5-Keys (School and Programs) Student Enrollment Form includes questions pertaining to past school and education information and special education-related questions.

The Expert notes that ACSO is working on the development of a real-time networked ADA Tracking System, specifically by enhancing the existing ATIMS system. The ACSO/AFBH/5-Keys personnel must have a means to accurately document the dates and types of assessments, the nature of an individual's disability, and any reasonable accommodations required or needed for the incarcerated person. To the extent feasible and until the new tracking system is implemented, appropriate staff must document the assessments, findings, and the incarcerated person's accommodation needs to show proof of practice. This documentation must be available for review by the ADA Joint Expert for future reviews.

The ACSO provided ADA lists for 2023 (through ATIMS). The lists (weekly lists) were provided for the months of January – June 2023. The ADA Joint Expert chose a particular week for the month of January and a particular week for the month of June to review. For January, there was a list for each week of the month. The list for the week of January 21-28, 2023, listed 78 individuals (all disabilities). Of the 78, 17 were listed as SMI (all were listed as "AFBH Referral," and one [1] had information regarding accommodation needs – "help read/write)" Seven (7) were listed as IDI (one [1] of the seven [7] was listed as IDI/TBI, and one [1] of the seven [7] was listed as IDI/BHI). Most of the seven (7) IDI incarcerated persons listed had adaptive support information included. For June 2023, the ADA Joint Expert reviewed a tracking list for the week of June 16-23, 2023. The list included names and information for approximately 109 disabled incarcerated persons (all disabilities). Of the approximate 109 names, about 48 were listed as SMI, and three (3) were listed as IDI (one [1] of the three [3] was listed as "LD").

The ADA Joint Expert understands that currently, the only IDI individuals listed are those named from lists provided by CDCR or through information obtained that an individual has been a past regional center consumer. The ADA Joint Expert further notes that ACSO/AFBH is working collaboratively with the ADA Joint Expert on implementing appropriate cognitive and adaptive support needs screening/testing. As a reminder, all future tracking lists must include required individual adaptive support needs and effective communication needs for individuals identified as IDI (as well as Autism and TBI) and reasonable accommodation/effective communication needs for individuals identified as learning-disabled incarcerated persons.

#### **Recommendations:**

- 1) For future monitoring tours, ACSO/AFBH must provide at least a reasonable sampling of completed copies of all Intake screening forms for the respective monitoring period (e.g., for a few selected days within each calendar month of the rating period) for disabilities identified as related to screening for psychiatric, intellectual/developmental, and learning disabilities:
  - a. This should include initial healthcare screening and the comprehensive (Secondary) evaluation/testing/screening conducted by qualified clinicians based on referrals.

- b. The comprehensive evaluation/screening/testing forms must appropriately identify the disability (or possible disability concerns) as well as the reasonable accommodations or adaptive support needs required for staff (e.g., custody, healthcare, Inmate Programs/Services personnel, etc.) to provide to the respective individuals.
- 2) For future monitoring tours, ACSO/AFBH must provide completed copies of all referral forms for the respective monitoring period related to referrals for follow-up and/or more comprehensive (Secondary) testing/screening/evaluation for psychiatric, intellectual/developmental, and learning disabilities.
- 3) For future tours, provide documented proof that ACSO is working in collaboration with other contracted partners (e.g., AFBH/Five-Keys, Wellpath) to provide completed copies of all referrals regarding psychiatric, intellectual/developmental, and learning disabilities.
- 4) Regarding language outlined in Policy 13.02, "Inmates who have, or suspected of having, developmental disabilities shall be separated from the general population pending assessment, to prevent their being victimization by predators,;" the ADA Joint Expert is still requesting clarity on this issue. The ACSO must provide information as to where this decision is made, what unit(s) and what type of unit(s) possible intellectual/developmental-disabled incarcerated persons are temporarily housed in, and how much time elapses (on average) before confirmation of the disability and victimization concerns. What is the process if the individual is not a prior Regional Center client and there is no Regional Center information available?
- 5) The ACSO/AFBH/Wellpath initial screening process must contain more appropriate questions to better identify whether the incarcerated person may have a possible intellectual/developmental or learning disability. Though comprehensive (Secondary) testing and evaluation will come after the referral, the Intake screening questionnaire must be revised to incorporate more meaningful questions to better ascertain possible intellectual/developmental and learning disabilities:
  - a. The ADA Joint Expert recognizes this is a work in progress and has provided recommendations to be considered.
- 6) For individual comprehensive (secondary) follow-up screening/testing/evaluations, the qualified clinician must not only identify specific adaptive support needs but should also provide for recommended monitoring frequencies for the types of adaptive support needs for staff (e.g., for housing unit staff and work supervisors):
  - a. For example, monitoring personal hygiene-related adaptive supports once per week; monitoring victimization concerns three (3) times per week; monitoring time management once per week, etc. Note: These staff requirements should be individualized to each IDI incarcerated person.
- 7) ACSO/Wellpath/AFBH5-Keys must ensure disability screenings and follow-up or more extensive testing/evaluations (for psychiatric, intellectual/developmental, and learning disabilities) are conducted in a reasonably confidential setting.
- 8) Once disabilities and adaptive support service needs or reasonable accommodation needs are identified, ACSO and Wellpath must work collaboratively to ensure all related information is included in the electronic tracking system.

**1009. Individuals identified at Intake as having a Psychiatric Disability shall be referred to the ADA Unit for follow-up as described in Section III(J)(1). Individuals not identified as**

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having **Psychiatric Disability at Intake** may request a **post-intake assessment at any time after they are processed into the Jail**. Staff may also refer individuals for a **post-intake assessment**. Individuals shall also be referred for an assessment where there is **documentation of a Psychiatric Disability in the individual's health record or prior correctional records or where a third party, such as an individual's community mental health provider or family member, where appropriate, makes a request for an assessment on the individual's behalf**.

**Finding: Non-Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 11.01 Introduction to Intake, Transfer, Release, and Records (Revision Date March 1, 2020).
- ACSO Detention and Corrections Policy and Procedure - 11.02 Intake Procedure (Revision Date December 1, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 11.01 Introduction to Intake, Transfer, Release, and Records.
- Policy 11.02 Intake Procedure.
- Post Order 10.32 Americans with Disabilities Act Coordinator.
- Blank example of Inmate Disability Evaluation Form (Revised April 2022).
- Staff Interviews (custody and non-custody staff from multiple disciplines).

**Assessment:**

The ADA Joint Expert notes that applicable policies 1.14, 11.01, and 11.02 have not been revised since the previous review. As indicated in the ADA Joint Expert's previous report, the initial report cited (in more detail) Policy 1.14 pertaining to medical screening, disability identification, and both the Pre-Booking Medical/Mental Health Screening Form and Inmate Disability Evaluation Form.

Policies 11.01 and 11.02 (nor any other policies reviewed) do not contain information pertaining to referrals (e.g., healthcare staff, custody staff, third party, etc.) to the ADA Unit or regarding post Intake assessments. While on-site, the ADA Joint Expert reviewed a blank example of an Inmate Disability Evaluation Form (Revised April 2022). The form provides separate sections that include

the following related information for entry by Intake medical staff: Reason for Initiation of the Form; Categories or Disability; Disabilities Affecting Placement; Activities of Daily Living; Classification Action; and Staff Comments/Observations. The ADA Joint Expert notes the distribution list (located at the bottom of the form) lists the ADA Coordinator (pink copy). However, the ADA Unit staff has not verbally confirmed they are receiving this information (and if so, whether consistently). ACSO did not provide any completed copies as part of document production or any other related information to demonstrate whether the ADA Unit is receiving completed copies as applicable.

As noted during the previous onsite review, referrals are reportedly conducted for psychiatric assessments; however, staff who were interviewed (at that time) informed the Expert that not all referrals are documented (e.g., some are done via phone calls or word-of-mouth). A healthcare staff member previously stated that a copy of the Medical Assessment Form is routed to the ADA Coordinator (as well as to Classification staff), but it is unclear whether this same process takes place for referrals (whether from healthcare or from other parties).

Wellpath staff previously stated they provide psychiatric disability information (post-screening) to the ADA Coordinator and to Classification personnel. ADA Unit staff interviewed previously provided information regarding referrals sent (e.g., to Wellpath, AFBH), referrals received (e.g., from CDCR DAPO), and various ADA Unit responsibilities, but they did not cite that referrals are received from Wellpath staff, nor did they cite they conduct follow-ups post-Intake (or post disability identification), only that as with other related questions asked, "it is a work-in-progress."

There was no related proof of practice documentation produced for review.

#### **Recommendations:**

- 1) The ACSO should incorporate language into the local policy (whether 1.14, 11.01, 11.02, or other policies, as well as for Post Order 10.32 Americans with Disabilities Act Coordinator) that individuals identified at Intake as having a psychiatric disability shall be referred to the ADA Unit for follow-up. Language should reference referrals by healthcare staff, but also post-Intake referrals for those individuals not identified as having a psychiatric disability at Intake and any referrals for an assessment from other staff or third parties.
- 2) For future reviews, the ACSO must provide proof of practice documentation showing the following:
  - a. Individuals identified at Intake as having a psychiatric disability shall be referred to the ADA Unit for follow-up.
  - b. Individuals not identified as having a psychiatric disability at Intake who requested a post-intake assessment at any time after they are processed into the Jail.
  - c. Cases where staff referred individuals for a post-intake assessment.
  - d. Cases where individuals were referred for an assessment where there was documentation of a psychiatric disability in the individual's health record or prior correctional records, or where a third party, such as an individual's community mental health provider or family member, where appropriate, made a request for an assessment on the individual's behalf.

- 3) For future reviews, ACSO must provide completed copies of the Inmate Disability Evaluation Form (as part of document production) or any other related information to demonstrate the ADA Unit is receiving completed copies as applicable.

**1010. During Intake, Defendants shall provide all incarcerated persons with a copy of the Jail handbook and any other orientation materials, including instructions on how to request disability-related accommodations, how to contact the ADA Coordinator, and how to file a grievance regarding ADA-related issues. Upon request, ACSO staff shall provide Effective Communication and assist incarcerated persons with Psychiatric Disabilities in understanding the rulebook and orientation materials. Where an individual has been flagged as having a severe cognitive, developmental, or intellectual disability, regardless of whether assistance is requested, ADA Unit Staff shall assist the individual in understanding the rules of the Jail.**

**Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 18.03 Inmate Orientation (Revision Date October 30, 2020).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities.
- ACSO Detention and Corrections Policy and Procedure - 18.03 Inmate Orientation.
- ACSO Inmate Rules and Information (Orientation Handbook – revised January 2023).
- Staff Interviews.
- Incarcerated Person interviews.
- Observed Intake Deputy Issue Inmate Rules and Information (Jail Orientation Handbook) during Intake process (from Joint Experts initial On-site review).

**Assessment:**

The ADA Joint Expert notes that neither of the applicable policies (1.14 or 18.03) has been revised since the previous monitoring tour. However, the ACSO Inmate Rules and Information (Jail Handbook) was recently revised (January 2023).

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As outlined in greater detail in the ADA Joint Expert's initial report, Policy 18.03 addresses the Orientation video, including a description of the grievance procedure and where and when the video will be aired. The policy further requires that incarcerated persons receive the Inmate Rules and Information booklet, which includes information on inmate programs, services, and activities.

The ADA Joint Expert reviewed the ACSO Inmate Rules and Information (Orientation Jail Handbook – recently revised January 2023). The ADA Joint Expert's initial report outlined in greater detail the list of ADA-related information contained within the Orientation Jail Handbook that is required by the Consent Decree. As previously reported, the Orientation Jail Handbook contains information on how to request disability-related accommodations and how to file a grievance regarding ADA-related issues, as well as much more applicable information. The ADA Joint Expert acknowledges the Orientation Jail Handbook now includes information that incarcerated persons can contact the ADA Unit by completing a Message Request form (ML-76) and indicates they can be requested from a deputy. There is a half-page of information titled "Americans with Disabilities Act (ADA). Information includes general ADA rights (e.g., inmates with disabilities are entitled to the same privileges as other "inmates," and persons with disabilities may not be refused participation in services, programs, or activities by reason of their disability (unless a there is a direct threat). The material also indicates the right to file a request for an accommodation (whether the disability is documented by medical staff or not) and that requests can be written in the form of a message request, grievance form, or Request for an Accommodation form, and that all such forms are available in the housing units. Information also indicates that ADA-related grievances will be reviewed by the ADA Coordinator and that the individuals submitting should mark the "ADA Related" box in the upper right corner of the grievance form. It also states that if an individual requires assistance filling out the form due to a disability, a deputy will assist. The material also provides similar information relative to the request form process in terms of marking the "Disability Related" box and needing assistance in completing the form.

As outlined in the previous Joint Expert reports, the Inmate Rules and Information (Jail Orientation Handbook) is provided to all new arrivals via hard copy and is available on the electronic tablet. Reportedly, incarcerated persons can also further request another hard copy from an agency member and/or through the message request process.

During the on-site review, the ADA Joint Expert interviewed Classification and Custody Intake personnel regarding Orientation. Classification staff stated the Orientation Jail Handbook (Jail Rule & Regulations) is given (or at least offered) to all new arrivals (since early September 2021) and that the information is also contained within the electronic tablets. Staff stated there is currently no video or verbal Orientation provided. Staff stated that all new arrivals are required to sign an Intake Classification Form that acknowledges receipt of the Orientation Jail Handbook. Custody Intake staff also stated that all incarcerated persons entering the Jail receive a copy of the Orientation Jail Handbook.

The ADA Joint Expert interviewed eight (8) incarcerated persons. Six (6) of the eight (8) were in the behavioral/mental health program; five (5) of the eight (8) were identified as IDI (and a sixth is possibly IDI, though not identified). Information on the ADA list included adaptive support information, including their inability to read/write. Most of the eight (8) individuals interviewed



indicated they never received the Orientation Jail Handbook at Intake or at all. One (1) individual indicated he received it later from the ADA Deputy. Most of the individuals interviewed claimed they did not have an assigned electronic tablet or did not have access to a tablet. One (1) IDI individual that did report having a tablet indicated he can't read and has never received any help from staff, so he just looks at pictures. A second individual (IDI) who claimed to have tablet access said another incarcerated person taught him how to use the tablet. A third individual (IDI) does not yet have tablet access but also has never been instructed on how to use the tablet. The individuals interviewed also indicated there is no verbal orientation being provided, and most indicated there is no video orientation.

None of the individuals interviewed that were asked about the Disability Request for Reasonable Accommodation Form were aware of the form or process. Regarding the grievance process, some of the complaints included: "staff play games," and I have been waiting for two (2) months for a written staff response; staff won't help, and I can't read or understand the written responses, but staff won't help. Regarding the regular informal request process, some of the complaints include the following: staff not helpful; sometimes we don't get any written responses; I am not sure about the process; and staff help, but only if I push the issue, and it still depends on who the staff member is.

ACSO did not provide any documented proof or completed examples of forms or documents showing that incarcerated persons are provided with a copy of an Inmate Rules and Information (Jail Orientation Handbook) or whether they refused to accept a hard copy of the Orientation Jail Handbook (e.g., as possibly noted via a checkbox or by other means through related documentation/forms). Likewise, there was no documentation provided relative to staff assisting and effectively communicating information pertaining to the contents of the Inmate Rules and Information (Jail Orientation Handbook). Staff stated they assist when asked.

The ADA Joint Expert notes that the ADA Unit staff are conducting the 14-day initial interviews and covering the related information, including the grievance process, Disability Request for Reasonable Accommodation Form" (and process), ADA Unit contact information, and much more. The ADA Unit staff are also confirming whether the Orientation Jail Handbook was provided at Orientation. However, this should serve merely as a fallback and not preclude Intake staff from providing Orientation information and doing so while ensuring Effective Communication.

### **Recommendations:**

- 1) The ACSO must ensure that all incarcerated persons are provided (or at least offered) a hard copy of the Inmate Rules and Information (Orientation Jail Handbook) during the Intake process. Upon request (or if the individual has been "flagged" as having a severe cognitive, developmental, or intellectual disability, regardless of whether assistance is requested), custody staff shall provide Effective Communication and assist incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities in understanding the rulebook and orientation materials. It is recommended that proof of practice documentation is made for such encounters. Staff must also provide similar assistance for the same types of incarcerated persons that may need assistance navigating an electronic tablet, including reading and understanding its contents.

- 2) For the next monitoring review, ACSO must provide appropriate proof of practice documentation (or at least a reasonable sampling of documentation), such as for a few days within a calendar month.

### **Provision of Reasonable Modifications**

**1011. Defendants shall provide reasonable modifications and accommodations as necessary to ensure that qualified individuals with Psychiatric Disabilities have equal access to programs, services, and activities that are available to similarly situated individuals without disabilities. The process for submitting ADA-related requests for modifications and accommodations is contained in Section III(J)(9)(a). The specific type of modification required shall be based on an individualized assessment of the needs of the individual and the program, service, or activity at issue. In the context of vocational programs, the assessment shall also take into account the essential job functions and whether the individual can meet those functions with reasonable modifications.**

### **Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

### **Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Staff Interviews (ACSO and staff from Inmate Services/Programs).
- Incarcerated Person Interviews.

### **Assessment:**

As outlined in the ADA Joint Expert's previous report, the ADA Joint Expert previously reviewed and cited Policy 1.14 in the initial report, which included information pertaining to the definition of reasonable accommodation; ADA Coordinator Review Form (and its purpose); Record of Contact Form (and its use) and other information; and message requests; disciplinary process; reasonable accommodations, and Effective Communication.

The ADA Joint Expert notes that ACSO has indicated that the applicable forms (as bulleted below) are in use by incarcerated persons and/or staff as applicable. However, during the monitoring

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period, ACSO did not provide any completed examples of the following related forms for review for incarcerated persons with psychiatric, intellectual/developmental, or learning disabilities as related to complaints or requests for accommodations or modifications:

- Inmate Disability Evaluation Form.
- ADA Grievances with Requests for ADA Accommodations or Modifications.
- Message Requests for ADA Accommodations or Modifications.
- ADA Coordinator Review Form.
- Record of Contact Form.

For future reviews, the ADA Joint Expert will carefully assess whether custody and non-custody staff are providing reasonable accommodations/modifications to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to ensure equal access to all programs, services, and activities. The ADA Joint Expert will also monitor whether accommodations/modifications are based on individualized assessments pertaining to the needs of the individual and the program, service, and/or activity at issue.

In addition to the types of documents bulleted (above), ACSO has not provided any documentation, policy, or other evidence to demonstrate whether incarcerated person job descriptions (e.g., for regular work assignments or for vocational education assignments) have been written and approved and contain related essential function information. Staff that was interviewed acknowledged that except for a few specific assignments (possibly), none of the SRJ incarcerated person assignments have any corresponding job descriptions.

### **Recommendations:**

- 1) For future monitoring tours, the ACSO must provide completed copies of the following forms pertaining to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities. Note: For the types of related documents that may lend themselves to an extremely large volume of documents, at minimum, a sufficient sampling of completed documents must be provided for review (e.g., completed documents for a few selected dates within each month of the review period).
  - a. The ADA Coordinator Review Form:
    - i. Copies must be provided for occurrences where accommodations have been denied, a grievance has been filed, an alternate accommodation is proposed, a safety or security issue exists related to the accommodation request, or when there is a financial or administrative issue related to the Provision of an accommodation.
  - b. The Record of Contact Form:
    - i. For occurrences showing documented interaction or discussions, the ADA Coordinator had with an individual, staff, or visitors regarding accommodations and ADA issues.
  - c. The Message Request Form (for ADA-related Accommodations or Modifications):
    - i. As pertaining to ADA issues and maintained by the ADA Coordinator.
  - d. The Disability Request for Reasonable Accommodation Form.
  - e. ADA Grievances with Requests for ADA Accommodations or Modifications.

- 2) Staff must provide reasonable accommodations/modifications to incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to ensure equal access to all programs, services, and activities:
  - a. This includes but is not limited to healthcare services (medical, behavioral health, and dental), Intake, Classification, Orientation, disciplinary process, request for accommodation/modification process, academic and vocational education classes and processes, religious activities, reentry services, self-help groups/processes, and release process, etc.
- 3) Reasonable accommodations/modifications must be based on individualized assessments pertaining to the needs of the individual and the program, service, or activity at issue.
- 4) The ACSO must develop job descriptions inclusive of essential functions for each respective incarcerated person's job assignment. All job assignments, including vocational education programs/assignments, must consider the essential job functions for assessing reasonable accommodation/modification requests and whether the individual can meet those functions with reasonable modifications.

**1012. Examples of possible reasonable modifications/accommodations include, but are not limited to, providing Effective Communication, designated therapeutic and/or protective housing unit appropriate counseling/therapy (group and individual), reliable access to necessary medications, Qualified Mental Health Professional input prior to removing privileges and/or otherwise imposing discipline, and any modifications necessary to ensure equal access to programs.**

**Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Staff Interviews (custody and non-custody staff from multiple disciplines).
- Incarcerated Person Interviews.

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### **Assessment:**

The ADA Joint Expert notes (as identified earlier in this report) that ACSO is working with the ATIMS vendor on enhancing the ATIMS to serve as a real-time networked tracking system to capture all applicable Consent Decree Provision requirements. The ADA Joint Expert has interviewed custody and non-custody staff from different employee classifications and disciplines. Most staff do not receive information (list or report) of reasonable accommodation needs for behavioral/mental health, intellectually/developmentally, and learning-disabled incarcerated persons. Such a list/report should be based on clinical assessments and evaluations. During the review, staff acknowledged not having such a list/report. Staff stated accommodations are provided through various means for this population, e.g., providing Effective Communication for healthcare encounters (medical, behavioral health, and dental), various due process-related events (e.g., probation processes, classification processes, disciplinary processes, etc.), and various significant types of events, (e.g., religious services, reentry/transitional services, education assignments, work assignments, etc.). Although staff claims to provide Effective Communication when they are aware of an incarcerated person's needs, they admit that it is not generally documented and is a work in progress. As cited earlier in the report, SRJ does not currently have an Effective Communication Policy, but ACSO, Wellpath, and AFBH are working on separate stand-alone Effective Communication policies. There was no related documentation provided for the ADA Joint Expert's review.

All eight (8) incarcerated persons interviewed are behavioral health patients and/or categorized as IDI, and some were dual diagnosed for both. There were conflicting incarcerated persons' statements or responses as to whether staff are helpful in assisting them to receive equal access to programs, services, and activities. The majority complained of a lack of staff assistance. Some of the individuals admitted that overall, the communication from staff overall is generally effective. Concerns regarding the reported lack of effective communication during the Orientation process is outlined earlier in this report.

The ADA Joint Expert observed an Inmate Disciplinary Interview conducted in the Restrictive Housing Unit for an incarcerated person identified as BHI. During the interview, the deputy identified the incarcerated person, read the notice of hearing, and explained in detail the rights which are included in the ACSO Notice of Disciplinary Action Pending. The ADA Expert notes that the ACSO Notice of Disciplinary Action Pending includes the following, "If you are illiterate, or if the complexity of the issue makes it unlikely that you will be able to collect and present necessary for an adequate defense of the case, you may have the right to Counsel Substitute." However, it is unknown how the deputy would make this determination. Additionally, the ADA Expert notes that the Inmate Disciplinary Interview was conducted cell front and, in this case, an incarcerated person in the adjacent cell was banging and kicking the cell door and screaming, making it difficult to hear the conversation through the cell door and ensure Effective Communication was achieved.

Due to the lack of overall proof of practice documentation, this Provision will need to be carefully examined during the next scheduled review.

### **Recommendations:**

- 1) The ACSO should incorporate policy language to capture reasonable accommodation requirements to include the various methods for staff to provide reasonable accommodation/modifications.
- 2) Staff must have access to a real-time networked tracking list system (list) that outlines general reasonable accommodations needs (e.g., Effective Communication).
- 3) For future reviews, the ACSO must provide proof of practice documentation to capture the accommodations/modifications that are provided by custody and non-custody staff through various means.

**1013. For individuals with learning-related disabilities, possible reasonable accommodations may include, but are not limited to, providing notetakers, providing extra time to allow the individual to understand instructions/forms and repeating and/or clarifying as needed, or explaining how to fill out written forms (ADA request for Accommodations, Grievance, and Appeal forms) and/or in using the electronic tablets including providing assistance if needed.**

**Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 18.09 Educational Program Planning (Revision Date December 1, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act.
- ACSO Staff Interviews.
- Incarcerated Person Interviews.
- List of Learning-Disabled Incarcerated Persons.

**Assessment:**

The ADA Joint Expert notes that neither applicable policy (18.09 or 1.14) has been revised since the inception of monitoring. As the ADA Joint Expert noted in the previous reports, neither Policy (or any other policy provided for review) contained any comprehensive Effective Communication

information and provisions for special education classes, learning disabilities, and related accommodations.

As stated earlier in this report, the ADA Joint Expert understands that ACSO is still in the process of developing separate stand-alone Effective Communication Policies (for ACSO, Wellpath, and AFBH). Providing or ensuring reasonable accommodations to learning-disabled individuals correlates to Effective Communication provisions. As also previously addressed, the ADA Joint Expert has met with ACSO staff (including ADA Unit personnel) and has discussed Effective Communication as related to the Consent Decree provisions, and will continue to work with ACSO, Wellpath, and AFBH toward the development and implementation of an Effective Communication Policy. Equally, the ADA Joint Expert is available to discuss any questions or concerns that 5-Keys staff may have regarding the Consent Decree provision requirements.

The ADA Joint Expert notes that ACSO identifies learning-disabled individuals as "IDI." The majority of the individuals currently identified as "IDI" are intellectually disabled, and ACSO received the information either from CDCR or from a Regional Center where an individual was a previous consumer. The ADA Joint Expert is optimistic that the screening/evaluation/testing processes being implemented will begin to capture intellectually disabled individuals and their specific adaptive support deficits and adaptive support needs. The ADA Joint Expert also notes that the tracking list also identifies learning-disabled individuals as "IDI." It is recommended that learning-disabled incarcerated persons be identified as learning-disabled (LD). Though there may be some similarities regarding required accommodation for IDI and LD, for the most part, there will be differing types of accommodation needs for learning-disabled individuals versus intellectually disabled incarcerated persons.

The Joint Expert's previous report cited concerns that none of the previous tracking lists (listing up to four [4] learning-disabled persons) identified specific reasonable accommodation needs. The Expert noted there were fewer identified learning-disabled individuals during this review period. The lone individual identified as LD had accommodation needs listed.

There was no documentation provided regarding the specific testing for learning disabilities or other information identifying how incarcerated persons are otherwise placed on a learning-disabled tracking list (e.g., confirmation of education records/IEPs based on incarcerated persons' request for access and review).

The ADA Joint Expert interviewed an academic teacher from 5-Keys who provided the following information:

- 5-Keys maintains a separate electronic student database:
  - No IDI incarcerated persons currently assigned:
    - Doesn't believe she has had one before.
    - No exclusionary criteria for IDI individuals to be assigned to education.
- No mentally ill individuals assigned to education (unclear as to whether she was referring only to individuals identified as SMI):
  - Unit X has distance learning.
- IDI Individuals:

- “We don’t receive any such acronym or any information from custody.”
  - We don’t know to provide accommodation needs unless the individual has an IEP on record.
- CTE:
  - Unit X offers CTE-related programs.
- Recruitment:
  - Recruitment efforts need to improve.
  - Individuals can sign-up via a tablet or can ask their housing deputy.
- SRJ Orientation:
  - Material may include 5-Keys information, but many individuals cannot read or comprehend to understand access to the program (unless they receive help from staff).
- ADA Unit Deputy:
  - Has a checklist to go over, including 5-Keys information and the request process during the 14-day initial interview.
- Mental Health/Behavioral Health:
  - Sometimes 5-Keys students don’t receive their mental health medications.
  - Sometimes students must choose between going to pod time or yard versus education classes.

As reported in the ADA Joint Expert’s previous report, during 5-Keys education staff interviews, staff admitted they do not generally receive referrals (e.g., from ACSO or AFBH) for testing or confirmation for learning disabilities, but they have confirmed learning disabilities via outside school districts. Note: the ADA Joint Expert has not received any information to lead the Joint Expert to believe that anything has changed since the previous on-site review. Staff stated they inform the ADA Unit once confirmation of a confirmed disability(ies) is received. However, neither the 5-Keys nor ACSO has provided any such proof of practice documentation. Staff also stated they currently do not use the Test of Adult Basic Education (TABE) or other types of assessments to determine education grade level. It is still unclear as to how ACSO/AFBH/5-Keys plans to identify learning disabilities and corresponding reasonable accommodations for individuals that may have learning disabilities and who were not previously identified or whose records are not obtainable.

Also, from the previous on-site review, 5-Keys staff reported that ADA Unit staff do not follow up with 5-Keys staff after 5-Keys staff provide learning disabled information (once confirmed). From the recent on-site review (and documents produced), the ADA Joint Expert has not received any information to lead the Expert to believe that anything has changed.

ACSO staff interviewed continue to claim they provide reasonable accommodations to learning-disabled individuals (and intellectually disabled individuals) if they are aware of their accommodations needs or would provide such accommodations in the event they would be interacting with a learning-disabled person. However, without a proper identification process and tracking system that identifies learning disabilities (and intellectual disabilities), and more importantly, the specific accommodation needs required for the disabled incarcerated persons to have equal access to programs, services, and activities, custody and non-custody staff will not be aware of what accommodation(s) to provide to them.



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## Recommendations:

- 1) ACSO must ensure a process is in place to identify learning disabilities and associated reasonable accommodation needs for individuals with documented learning disabilities.
- 2) The listed accommodations must be based on individual testing or evaluations or documentation from outside sources confirming learning disabilities and associated accommodation needs:
  - a. Note: Until the real-time networked tracking system is developed and implemented, the ACSO must track identified learning-disabled persons so that all appropriate custody and non-custody staff have access to the information and are aware of the learning-disabled population and their accommodation needs.
- 3) ACSO must have a process in place (including policy language) to ensure staff members provide assistance (as necessary) to incarcerated persons with learning disabilities (and intellectual disabilities). The policy (or other documentation) must address or explain the types of accommodations that learning-disabled incarcerated persons may require or need. Note: The ADA Joint Expert notes Defendants' position that this information is covered in Agency written directives and further directs Agency members to assist incarcerated persons in understanding/completing certain forms within reason when necessary. This will be examined for the next monitoring tour.
- 4) ACSO (in conjunction with 5-Keys as necessary) must incorporate a jail-wide learning-disabled list, inclusive of specific accommodations needs for those individuals on the list.
- 5) ACSO/5-Keys must confirm which levels of individuals categorized as behavioral health have access to classroom education, distance learning, or no access at all.
- 6) ACSO must provide information as to why 5-Keys staff are not alerted as to new IDI or LD 5-Key placements or whether this is because, since the inception of the Consent Decree, no known individuals categorized as IDI or LD have been assigned to 5-Keys (either for classroom or distance learning).
- 7) ACSO must coordinate with 5-Keys to improve education recruitment and inform the ADA Joint Expert.
- 8) ACSO must coordinate with 5-Keys staff to improve education opportunities such that enrolled individuals do not have to choose between yard or pod time versus going to class. Note: The ADA Joint Expert notes Defendants' position that this would be a significant challenge to coordinate. Education scheduled change from semester to semester, and yard schedules may also vary. The Joint Expert maintains the recommendation that this issue at least be examined.
- 9) ACSO must coordinate with 5-Keys, Wellpath and AFBH as appropriate to ensure students categorized as behavioral health/mental health students/patients receive their prescribed medications such that it does not reasonably interfere with their ability to participate and benefit from education classes (whether in-person or distance learning). Note: The ADA Joint Expert notes Defendants' position that the incarcerated persons in question still receive their medications following their return to their assigned living areas. This will be examined for the next monitoring tour.
- 10) ACSO/AFBH/5-Keys must establish a process to identify incarcerated persons with learning disabilities, their corresponding reasonable accommodation needs (including for individuals who were not previously identified or whose records are not obtainable).

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**1014. For individuals with cognitive, developmental, and/or intellectual disabilities, possible reasonable accommodations may include providing designated housing in a therapeutic unit appropriate to the individual's classification level, prompts for adaptive support needs (including but not limited to prompts to take showers, clean cells, attend appointments, etc.), ensuring Effective Communication, explaining how to fill out written forms (ADA request for Accommodations, Grievance, and Appeal forms, forms to request medical or mental health services and any other written forms the Jail implements for incarcerated persons use) and/or in using electronic tablets and providing assistance if needed, assistance with commissary (e.g., observing the individual post commissary purchase for possible victimization concerns), assistance with laundry exchange, and obtaining input from a Qualified Mental Health Professional prior to conducting disciplinary/misconduct hearings.**

**Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Disability Tracking Form (list).
- Staff Interviews (custody and non-custody staff from multiple disciplines).
- Incarcerated Person Interviews.

**Assessment:**

The ADA Joint Expert notes that Policy 1.14 has not been revised since the inception of monitoring. However, the Expert also realizes that policy revisions are still ongoing. ACSO recently drafted a comprehensive policy pertaining to incarcerated persons with intellectual/developmental disabilities, including the screening/testing/evaluation process and the requirements for housing officers and work supervisors to provide adaptive support services to ensure equal access to programs, services, and activities for those individuals. Specifically, as outlined earlier, Wellpath has drafted Policy HCD-100 X-01 Adaptive Support Services (effective July 1, 2023), Adaptive Support Needs Flow Chart, and an Adaptive Support Needs Screening form. Although the policy indicates a revision date of July 1, 2023 (and was previously reviewed by the Experts, and comments/recommendations were provided by the Experts), the document

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was not included in the completed (or pending policies) as part of document production. As previously addressed in this report, the Expert also recognizes that ACSO, Wellpath, and AFBH are all working on stand-alone Effective Communication policies.

The Wellpath Adaptive Needs Screening form (1 page) pertains to the initial Intake screening process (or from a referral) and inquires as to a possible history of receiving services from a Regional Center or has resided in a "group home." The form also asks about seven (7) questions regarding reading ability, past IEP (in education), safety/vulnerability-related questions, and other related questions.

The eight (8) page policy pertains to adaptive support screening and secondary (more comprehensive) screening/evaluation/testing for cognitive and adaptive support abilities/deficits. The policy identifies the secondary (comprehensive) screening/evaluation/testing process and specific instruments for a qualified psychologist to conduct standardized intelligence tests such as the Quick Test (QT) and the Test of Nonverbal Intelligence-4 (TONI)-4, and the Adaptive Support Evaluation (ASE) for a qualified psychologist to review collateral information such as criminal history, parole/probation reports, court documents/facility reports, sophistication of crimes, functioning in the community, education history, employment history, and mental health evaluation. Upon completion of the psychological evaluation, the qualified psychologist shall indicate whether the patient has adaptive support needs as well as identify the specific adaptive support deficits and adaptive supports the patient will likely need while in custody. The policy further identifies that the qualified psychologist shall develop an adaptive support needs plan for all patients who require one, incorporating behavioral interventions and specific recommendations to meet the needs of the patient. The qualified psychologist is encouraged to include minimum frequencies for all staff (including custody) to monitor, prompt, assist, and/or coach the individual as appropriate. The policy includes examples of adaptive deficits (e.g., communication skills, academic skills, self-care skills, self-advocacy/use of resources, work, health and safety, self-direction, and leisure) and examples of adaptive support services (commensurate to the listed examples of adaptive deficits) that may be provided as applicable to individuals identified as intellectually disabled incarcerated persons. Although the policy indicates it was revised in July 2023, it is unclear whether the policy is currently being followed, as Wellpath has not yet provided any relevant documentation to demonstrate the secondary (comprehensive) screening/evaluation/testing is taking place, and the policy was not provided within the folders of policies (either complete or in-progress).

Once the new evaluation/identification process begins in accordance with the new policy, the ADA Joint Expert is hopeful that SRJ will be able to better capture the disabled population as pertaining to intellectual disabilities and that disability and associated adaptive support needs information (as well as applicable effective communication) will be transferred to the ADA Tracking System for all staff to review as warranted.

As noted in the previous Joint Expert monitoring reviews, it is unclear whether ACSO plans to use a clustering or semi-clustering housing approach (for incarcerated persons identified and categorized as "IDI.") in the future. Reportedly the Classification Unit works collaboratively with AFBH to identify appropriate housing. Along with all security and classification factors examined,

this population normally does well in a semi-clustered environment, and more particularly, the individuals with moderate and severe adaptive support needs.

### **Recommendations:**

- 1) The ACSO must confirm when the new policy requirements are enacted (e.g., initial intake screening (the new form used); the secondary (comprehensive) screening/evaluation/testing commences with the approved instruments (as outlined in policy); related disability and adaptive support information provided to the ADA Coordinator and tracked via the electronic tracking system so that all staff have access to the information as warranted; recommended frequencies for housing officers to monitor, prompt, assist, and coach intellectually disabled individuals in accordance a qualified psychologist's recommended frequencies for each individual (individualized base-by-case basis); and staff providing (and documenting) adaptive support services (to also include effective communication), particularly housing officers and work supervisors as applicable.
- 2) The ADA Joint Expert recognizes that ACSO previously indicated that ADA Unit staff currently tracks all accommodations provided and needed (when known). However, with the new policy and enhanced comprehensive screening/evaluation/testing process, inclusive of identified adaptive deficits and adaptive support needs, SRJ must provide logs or documentation to demonstrate that housing unit officers and work supervisors are proving the required/needed monitoring, prompting, assisting, and coaching in accordance with an individual's (IDI) adaptive support needs as identified by a qualified psychologist.
- 3) Post orders for housing units designated to house individuals identified/categorized as IDI, as well as post orders for work supervisors, must be revised to include the requirements to understand the tracking system to be able to access disability and accommodation information (including for IDI, behavioral health, and learning-disabled persons), to provide adaptive support services in accordance with a qualified psychologist's recommended frequencies, and to document such (at least document in accordance with the minimum recommended frequencies).

### **Tracking**

**1015. Defendants shall implement an electronic, real-time networked tracking system including a grievance module ("ADA Tracking System") to document and share internally information regarding an individual's disability(ies) and disability-related accommodations within six (6) months of the Effective Date. The ADA Tracking System shall have the following functional capabilities:**

- (1) to store historical information regarding an individual's accommodation needs in the event the individual is returned to custody multiple times;**
- (2) to list the current types of accommodations the individual requires; and**
- (3) to track all programs, services, and accommodations offered to incarcerated persons with Psychiatric Disabilities throughout their incarcerations including any accommodations they refused.**

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**Access to the ADA Tracking System shall be made available to and shall be used by ACSO staff at the Jail who need such information to ensure appropriate accommodations and adequate program access for people with Psychiatric Disabilities. At a minimum, Classification Staff, the ADA Coordinator, and their staff, the Facility Watch Commander, Division Commander, Administrative Sergeant, Program Managers, and AFBH and medical staff shall have access to the ADA Tracking System. Clinical and ADA Unit staff shall be responsible for adding or modifying information regarding the nature of an individual's Psychiatric Disability and necessary accommodations, including accommodations identified at Intake and throughout the individual's incarceration. Clinical and ADA Unit staff may delegate the actual data entry piece to non-clinical or non-ADA Unit staff where appropriate. Prior to any due process events and clinical encounters, clinical and ADA Unit staff shall be required to view the information in the system to determine if the individual has a disability and what accommodations are to be provided. All housing unit deputies, clinicians, and program managers who interact with incarcerated persons shall be trained to properly use the ADA Tracking System within six (6) months of the roll-out of the ADA Tracking System.**

**Finding: Non-Compliance**

(Note: this Provision was previously rated as "Non-compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- ACSO Staff Interviews.
- Current Disability Tracking Form (list).

**Assessment:**

The ADA Joint Expert notes that Policy 1.14 has not been revised since the inception of monitoring but also acknowledges that policy revisions are currently ongoing. The ADA Joint Expert is aware that within six (6) months of the Effective Date of the Consent Decree, the ACSO was required to develop and implement an electronic, real-time networked tracking system, including a grievance module ("ADA Tracking System") to document and share internal information regarding an individual's disability(ies) and disability-related accommodations.

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Reportedly, ADA Unit staff have had at least three (3) conference calls (November 2022, as well as in March and June 2023) with the ATIMS vendor to expand the capabilities of the current ATIMS system to meet the requirements of the Consent Decree Provisions. The ADA Unit provided the vendor with the basic framework and information needed, including a flow-chart description of the needs along with a copy of the Consent Decree for a real-time networked tracking system that can be built to fit the needs of ACSO/Wellpath/AFBH. While on-site for the monitoring review, the ADA Joint Expert observed the third meeting (video conference) and provided recommendations.

For the current ATIMS JMS tracking process, medical staff reportedly provide the completed Disability Evaluation Forms (whether from Intake or from disability verification/confirmation from individuals already housed at SRJ) to the ADA Coordinator. There are medical alert flags within the current system to alert the reader as to an individual's disability status and accommodation needs. The ADA Coordinator updates his own tracking list from this information (once per week), reportedly emails the list (every Monday), and stores the list within the Shared folder. However, presently, only managers, supervisors, and ADA Unit personnel have access to the information. Reportedly, a copy of the weekly updated list is also sent to ITR, Transportation, Medical, and Re-Entry and Support Services. The ADA Coordinator also stated that all deputies are qualified to conduct disciplinary hearings, so they have access to the disability and accommodation information in ATIMS. The ADA Coordinator confirmed that there is no separate "LD" category/designation for learning-disabled individuals, as they coded as "IDI" along with intellectually disabled persons. Note: The ADA Joint Expert made applicable recommendations earlier in the report. The ADA Coordinator stated there currently is no requirement to document adaptive support services provided (for individuals identified as "IDI"), but that staff are providing them. Another concern is that the ADA Unit is only tracking a relatively small number of individuals in the behavioral health program. With the new system of four (4) different levels of behavioral health categories, it is unclear as to which levels will be tracked. The ADA Joint Expert contends that all four (4) levels must be tracked, along with their accommodation needs (as applicable).

The ACSO must keep the Joint Experts (and plaintiffs' counsel) apprised of continued updates as to the progress of the expanded ATIMS tracking system project, including anticipated timelines for roll-out and any possible concerns with being able to meet the requirements of the Consent Decree Provisions. A real-time electronic tracking system is crucial for operations and compliance with the Consent Decree Provisions. The system will allow for current information (as opposed to information up to a week old) and for staff of all employee disciplines to access the information to better understand a disabled individual's disability and accommodation needs and to be able to best perform their respective job duties. Custody and non-custody personnel that work programs, services, ITR, Classification, housing units, work supervisors, healthcare, management/supervisors, and staff from other areas must have access to the current information. Whether Policy 1.14 or other policy(ies) as appropriate must be revised (or developed) to articulate the requirements of this Provision, including the requirement to train all staff to access the expanded tracking system and to utilize the information within their respective job duties.

**Recommendations:**

- 1) The ACSO must develop and implement an electronic, real-time networked tracking system, including a grievance module ("ADA Tracking System") to document and share internal information regarding an individual's disability(ies) and disability-related accommodations (in accordance with this Consent Decree Provision).
- 2) Policy (whether 1.14 or other policy[ies]) must be revised to include the tracking requirements of this Provision.
- 3) All staff must be trained on how to access the real-time tracking system and how to use that information in the performance of their assigned duties.

**1016. Housing unit, education, and program office staff shall be provided with a report listing all individuals with Psychiatric Disabilities in the relevant unit or program, as well as any needed accommodations. The information provided shall be limited to identifying the individuals who have a disability and what accommodations shall be provided. It shall not contain any information beyond the minimum required to ensure the individual's disability needs are accommodated. Until the electronic ADA Tracking System is fully implemented, this report shall be updated and provided to staff in written form at least once per week. Once the ADA Tracking System is fully implemented the report shall be updated electronically, in a manner accessible to housing unit deputies, daily.**

**Finding:**

**Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Staff Interviews (custody and non-custody staff from multiple disciplines).
- Current Disability Tracking Form (list).

**Assessment:**

As outlined earlier in the report and as part of document production, ACSO provided numerous weekly tracking lists for BHI, learning disabled, and intellectually/developmentally disabled individuals. (Note: previous lists have also included individuals identified with Traumatic Brain Injury (TBI), Autism, and Asperger's). The current and recent tracking lists also include individuals

identified to have various other disabilities outside the purview of the Consent Decree. The ADA Joint Expert has had an ongoing concern as to why so few individuals identified as BHI were on the ADA Coordinator's tracking list. Note: the ADA Joint Expert notes Defendants' position that the "BHI" label doesn't necessarily equate to a psychiatric disability, and that AFBH is working to identify patients as "SMI" which provides more information than merely a BHI label. In the past, all or most of the select few individuals identified as BHI were dually diagnosed as intellectually disabled (IDI). However, for the current monitoring period, the Expert notes that the number of BHI-identified individuals greatly increased on the tracking list. As stated earlier, the June 16-23 tracking list contained 109 names identified as all disabilities (48 of the 109 specifically identified as SMI). It is unclear as to why the individuals are not classified as to their designated BHI levels (1, 2, 3, or 4). Except for one (1) individual, none of the BHI-identified persons had any corresponding accommodation needs information listed within the tracking list.

As has been the case in the past, based on staff interviews, there is still some confusion amongst some staff as to who the psychiatric, intellectual/developmental, and learning-disabled individuals are, as well as their accommodation needs. Some staff did not have lists, while some acknowledged they could access them electronically. The ADA Joint Expert notes that revisions to ATIMS are being developed to address this concern.

#### **Recommendations:**

- 1) Until the new electronic ADA Tracking System is fully implemented, the tracking lists for psychiatric disabled (and learning disabled and intellectually/developmentally disabled) incarcerated persons must include their respective accommodation needs and be updated and provided to staff in written form at least once per week with updates as changes are made (e.g., housing assignment changes, accommodation changes). Once the ADA Tracking System is fully implemented, the report shall be updated electronically in a manner accessible to housing unit deputies and other key staff daily. The interim and future tracking systems must include disability information as well as required adaptive support services, Effective Communication, and reasonable accommodations-related information (to the extent the Jail has such information pending implementation of comprehensive screening/testing/evaluation processes).
- 2) Include the new BHI levels of care (1, 2, 3, and 4) within the tracking system that correlates to each respective individual identified as BHI or provide an explanation as to why the codes are not being used/tracked. Also, provide an explanation if there are any BHI (or any individuals with mental illness) who are not currently being tracked within the current ADA Coordinator tracking system and the reason(s) for such (if applicable).

#### **Housing Placements**

**1017. The fact that an individual has a Psychiatric Disability and/or requires reasonable accommodations for that disability shall not be a factor in determining the individual's security classification. Individuals with Psychiatric Disabilities shall be placed in housing that is consistent with their security classification and disability-related needs. Individuals with Psychiatric Disabilities shall be screened for potential victimization and vulnerability concerns and those factors shall be considered when determining appropriate housing;**



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however, their disabilities shall not be used to justify placing an individual in a more restrictive privilege level than that in which they would have otherwise been classified except as provided herein. Individuals with severe or profound cognitive, intellectual, or developmental disabilities shall not be housed in a more secure setting unless it is determined by the Classification Unit and mental health staff that there are no other viable alternatives to prevent the individual from being victimized. This decision shall be based on an individualized assessment of the person's needs and the specific safety and/or security concerns affecting the individual, including whether the person is able to function safely in a dormitory environment. To the extent possible, individuals housed in more secure settings due to victimization concerns shall receive the same privileges, access to programs, and out-of-cell hours that they would otherwise receive. The reason for housing an incarcerated person with a severe or profound cognitive, intellectual, or developmental disability in a more secure setting due to victimization concerns shall be clearly justified and documented in the ADA tracking system and classification documents and shall be reevaluated at least every sixty (60) days.

**Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 12.04 The Santa Rita Jail – Housing Unit Classification (Revision Date May 4, 2023).

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 12.04 The Santa Rita Jail – Housing Unit Classification.
- ACSO Staff Interviews.
- ACSO Housing Matrix.

**Assessment:**

The ADA Joint Expert notes that Policy 1.14 has not been revised since the inception of monitoring but also recognizes that policy revisions are still ongoing. The ADA Joint Expert's initial report identifies (in greater detail) Policy 1.14 requirements as pertaining to Classification staff housing considerations, least restrictive housing, and ADA Coordinator notifications regarding the housing of disabled incarcerated persons.

Classification staff has continued to report that housing placement is based on multiple factors, including but not limited to custody factors, assistance with daily living needs (e.g., if severe), violence history, disciplinary history, commitment or charged offenses, disability accommodation needs, etc. The ADA Joint Expert understands AFBH has been undergoing a change in the various levels of care for behavioral health/psychiatric individuals, which also correlates to housing and programming. The Expert reviewed the current ACSO housing matrix and noted that the current housing matrix identifies numerous housing units for individuals with psychiatric disabilities. Those with learning disabilities appear to be designated to be housed in any unit commensurate to their security classification case factors. As outlined earlier in the report, it is presently unclear as to which housing units are designated for intellectual/developmental incarcerated persons, but it appears these individuals may be housed in any unit as their security classification dictates. It is still unclear whether ACSO plans to use a clustering or semi-clustering approach for the intellectual/developmental population, especially those with moderate or severe adaptive deficits. Once ACSO/AFBH employs a comprehensive testing and evaluation process, it is likely that the number of those identified will increase and having at least two (2) or three (3) units for semi-clustering purposes may prove beneficial for proper monitoring and safety of the individuals.

Through observations of the Intake process coupled with staff interviews (from all on-site reviews conducted), the Classification staff inquires about victimization/vulnerability/predatory concerns, and they consider that information when making housing decisions. The healthcare screening processes for both medical and behavioral health include questions of new arrivals pertaining to potential victimization concerns, to which the information is shared with the Classification Unit immediately and prior to housing and program assignment.

The ADA Joint Expert continues to have concerns that incarcerated persons with intellectual/developmental disabilities (as well as other psychiatric disabled individuals) are or may be placed in more restrictive housing environments at minimum until the disability and accommodation needs can be confirmed. Reportedly, this information is covered during the Restrictive Housing Committee Meeting process.

**Recommendations:**

- 1) Recommend ACSO/AFBH consider at least a semi-clustering approach to housing intellectually/developmentally disabled incarcerated persons (at least those identified as moderately and severely intellectually/developmentally disabled). A semi-clustering approach allows for the intellectually/developmentally disabled population to reside with the non-intellectual/developmental disabled population (though still screened for predatory/victimization concerns), whereas there can be valuable learning of everyday living skills from the other individuals, but yet can allow for trained and carefully screened staff to work such units to better enable staff to effectively monitor and provide the necessary prompts and assistance as needed.
- 2) In the event there are no other feasible options other than to house an individual in a more restrictive housing environment due to victimization or other safety concerns, staff must justify the decision in writing (via the ADA Tracking System) and ensure the individual has equivalent access to programs, services, and activities (e.g., outside yard time, indoor

pod/dayroom time, etc.) as he/she would have if they were housed in a different unit based on the security classification factors had the person not had a disability or associated accommodation needs:

- a. The ACSO must evaluate such cases at least every 60 days.
- 3) ACSO will need to revise its housing matrix to coincide with the plan to categorize the four (4) different levels of behavioral health and to identify housing for intellectually/developmentally disabled individuals (if the recommended semi-clustering approach is adopted). Note: the ADA Joint Expert notes Defendants' response that this is currently in practice. Those with LOC 2-4 are housed in a Therapeutic Housing Unit. LOC 1 individuals may be housed within the general population based on their other classifications needs/assessment.

### **Access to Out-Of-Cell Time and Yard**

**1018. Defendants shall ensure that individuals with Psychiatric Disabilities are offered equal access to yard and day room exercise and recreation time as non-disabled individuals in comparable classification levels. Refusals of out-of-cell time and yard shall be documented consistent with Section III(D). Minimum out-of-cell time requirements apply to all incarcerated persons unless specifically contraindicated by a mental health treatment plan due to suicide precautions.**

### **Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 18.12 Recreation and Inmate Activity Program and Planning (Revision Date March 9, 2023).
- The Expert notes that the revision of the policies is still in progress.

### **Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- Policy and Procedure - 18.12 Recreation and Inmate Activity.
- ACSO Staff Interviews.
- Incarcerated Person Interviews.
- Out of Cell Tracking Logs.

### **Assessment:**

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The ADA Joint Expert notes that Policy 18.12 was revised on March 9, 2023. The Expert also notes that out-of-cell time and the tracking of such is closely monitored by other experts relative to other Consent Decree Provisions.

The ADA Joint Expert randomly selected six (6) disabled incarcerated persons (SMI/IDI) from six (6) separate housing units from the ADA Coordinator tracking list for a one (1) week period from June 2023, and reconciled the date against the out-of-cell logs provided. The information obtained included the following:

One (1) of the individuals only received two (2) hour of pod time, and there was one (1) refusal. However, he was noted as being out-to-court (OTC) for most of the week. Of the other five (5) individuals, pod time for the week ranged between 41.00 to 49.00 hours each. Regarding yard time, the individual that went OTC form most of the week did not receive yard (but there was one [1] noted refusal), and of the other five (5) incarcerated persons, the range was between 5:40 to 24:42 hours (5:40, 8:55, 19:40, 22:45, 24:42), with no noted refusals.

From the recent interviews of class members, the following represents related claims by incarcerated persons regarding out-of-cell time. Note: the claims could not be substantiated or refuted and could not be compared against other individuals without disabilities or the same disabilities.

Quasi yard:

- Not offered in last two (2) weeks.
- Offered most days, but I refuse.
- Offered 2-3 times daily (2-3 hours each) and times rotate.
- Not offered, but not sure if I am assigned a yard group.
  - Note: ADA Joint Expert confirmed he is assigned to a yard/pod group.
- Not scheduled or offered, I have to ask the deputy (I ask almost daily and receive 1-2 times per week, for about one [1] hour each).
- Offered once per month (don't remember last time).
- Choice between yard time or pod time and receive about five (5) hours daily.
- 2-3 times per week (usually 3-4 hours each, but sometimes 1-2 hours each).

Main Yard/Big Yard:

- Most individuals interviewed stated they were not eligible and/or were not offered main yard/big yard.
- One (1) individual stated he has been offered twice and went on both occasions.

Pod Time (Note: not all individuals were asked about pod time):

- Daily for four (4) hours.
- Supposedly 1 hour daily (none yesterday), offered 5 times in a 7-day period.

- Almost daily for 1 hour each (went yesterday).
- Almost daily for about 4-5 hours each, sometimes in the AM and sometimes in the PM.
- Offered and went 2-3 times total in the past 2 weeks.

#### **Recommendations:**

- 1) The ACSO must continue to track out-of-cell time, including yard and pod time to ensure there is no disparity between outdoor and indoor recreation time offered to psychiatric, intellectually/developmentally disabled incarcerated persons and other individuals in relation to the assigned security levels and housing units.

#### **Access to Programs and Work Assignments**

**1019. Defendants shall ensure that individuals with Psychiatric Disabilities have equal access, as compared to non-disabled individuals, to all programs, activities, and services including, but not limited to, educational, vocational, work, recreational, visiting, medical, mental health, substance abuse, self-improvement, religious, electronic tablets, and reentry programs, including Sandy Turner Center and Transition Center programs, consistent with their classification and for which they are qualified. To the extent they do not currently exist, Defendants shall develop job descriptions and the essential job functions associated with each position. Defendants shall inform individuals with Psychiatric Disabilities, using Effective Communication, of the programs and worker assignments that are available to them, any job descriptions/essential job functions, how to contact the ADA Coordinator, that they have a right to request reasonable accommodations, and how to do so using the ADA Request form. To the extent a person is denied access to a program or worker assignment, they shall have the right to file an ADA-related grievance and/or otherwise appeal that decision. Programming staff shall access the ADA Tracking System to determine whether participants in a program have a disability and their accommodation needs. Until the ADA Tracking System is in place, the ADA Unit shall, on a weekly basis, provide program staff with a list of individuals with disabilities and their accommodation needs.**

#### **Finding: Partial Compliance**

(Note: this Provision was previously rated as "Partial Compliance")

#### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Introduction to Inmate Services 18.01 (2 pages) (revised 12/1/19).
- Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Inmate Operational Programs and Services 18.02 (2 pages) (revised 10/30/20).
- Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Commissary Procedure 18.06 (9 pages) (revised 10/12/21).

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- Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Religious Programming 18.07 (3 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Library Services 18.08 (2 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Educational Program Planning 18.09 (4 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Vocational Training Programs 18.10 (3 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Social Services Programs 18.11 (3 pages) (revised 3/1/20).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Recreation and Inmate Activity Program and Planning 18.12 (3 pages) (revised 3/9/23).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Inmate Entertainment Systems 18.13 (3 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Inmate Tablet Access 18.14 (3 pages) (revised 2/9/23).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Services for Released Inmates 18.16 (2 pages) (revised 10/12/21).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Parenting Program 18.17 (5 pages) (revised 12/1/19).
  - Alameda County Sheriff's Office Detention and Corrections Policy and Procedure: Legal Assistance Program 18.21 (3 pages) (revised 12/1/19).
  - The Expert notes that the revision of the policies is still in progress.

### **Training:**

Development of related training materials by ACSO is in progress.

### **Metrics:**

- Staff Interviews (custody and non-custody staff from multiple disciplines).
- Incarcerated Person interviews.
- Various Document Reviews.
- Policy 1.14 Americans with Disabilities Act.
- Policy 18.01 Introduction to Inmate Services.
- Policy 1802 Inmate Operational Programs and Services.
- Policy 18.06 Commissary Procedure.
- Policy 18.07 Religious Programming.
- Policy 18.08 Library Services.
- Policy 18.09 Educational Program Planning.
- Policy 18.10 Vocational Training Programs.
- Policy 18.11 Social Services Programs.
- Policy 18.12 Recreation and Inmate Activity Program and Planning.
- Policy 18.13 Inmate Entertainment Systems.
- Policy 18.14 Inmate Tablet Access.

- Policy 18.16 Services for Released Inmates.
- Policy 18.17 Parenting Program.
- Policy 18.21 Legal Assistance Program.

### **Assessment:**

The ADA Joint Expert notes that Policies 18.12 and 18.14 have been revised since the previous on-site review. The ADA Joint Expert recognizes that other policies are still pending revision.

Outlined below is some general information obtained from observations made during the on-site review, on-site interviews of incarcerated persons, and document reviews. In many cases, there is a lack of documentation to conduct a true comprehensive assessment. Most of the bulleted items in the Recommendations section (below) are attributed, at least in part, due to a lack of related documentation or incomplete documentation.

### 5-Keys (Schools and Programs) – Education:

Reportedly all incarcerated persons are eligible to take distance learning courses, and most classes have now re-opened (post-COVID-19). Most in-person classes are offered Mondays thru Fridays from 0800-0930, 1000-1130, and 1300-1430 hours. The Sandy Turner Education Center's small classroom allows for 10 students, while the large classroom accommodates 15 students per class.

Flyer 5-Keys (Schools and Programs) Opportunities/Programs include High School Completion (Diploma, GED, HiSET), Transition to College and Financial Aid Supports, Career Training Education, English as a Second Language/ESL, Adult Basic Education, and Academic Counseling.

Staff (teachers) continue to report that they do not receive an ADA tracking list (from ACSO or AFBH). There is also conflicting information as to whether individuals identified as BHI or mentally ill incarcerated persons are assigned to classroom instruction. Staff also indicated they do not currently have any individuals identified as IDI (or LD) assigned to education classes, and they have never had any IDI individuals assigned (though there are no exclusionary criteria based on disability alone). Staff have previously acknowledged that an individual identified as IDI has been enrolled in education classes previously. Education staff are not made aware (by ACSO, AFBH, or Wellpath) of any disabilities or accommodation needs. To the extent teachers become aware of any accommodation needs, they reportedly provide the accommodations. Such information would have to be obtained from outside sources or from interviewing and working with a respective student. As previously reported, the 5-Keys Continuing Student Demographics Form contains a questionnaire and checkboxes for the student applicant to self-identify prior IEP, 504 Plan, Resource Class or other services, education level (whether completion of a high school diploma, GED, HiSet, or TASC, other high school equivalency, and last high school attended). The 5-Keys Student Enrollment Form questionnaire and checkbox information inquire as to past school information, prior special education services/classes, pull-outs for Resource Classes or Directed Studies, IEP, 504 Plan, level of education, and any prior college courses. There is also a Five-Keys Request for Transcripts Form.

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5-Keys staff does not conduct TABE or similar testing but will confirm learning disabilities with outside sources if requested. If confirmation of a learning disability is received, the information is reportedly forwarded to the ADA Coordinators' office (This will need to be confirmed by the ADA Unit. The ADA Joint Expert will review this for the next scheduled monitoring review).

5-Keys staff reportedly actively recruit by touring the housing units, but staff admitted that recruitment efforts need to improve and added that prospective students can sign-up via electronic tablets.

Some of the comments or complaints from some of the incarcerated persons interviewed included: our unit is not permitted to go to classes (only distance learning); wasn't aware of any education-related opportunities/options; computer classes are available, but I don't know how to sign-up (multiple complaints); and not sure if education is available.

#### Reentry Programs:

Reentry staff were interviewed and provided updated information. Reportedly the Reentry Assessment is now on Tablet, and Housing Unit X deputies (Reception) do the initial assessment (for LOC X and LOC 1 clients only (not LOC 2-4). Within 12-24 hours of arrival at ITR, staff contact the incarcerated persons and offer a reentry questionnaire on the Tablet. Reportedly staff asks (on the Tablet) if the individual would like to talk to a service provider, and there are specific questions asked of them, e.g., Do you want CalAIM (California Advancing and Innovating Medi-Cal), and other questions. The information is uploaded on a spreadsheet to the Transition Center. A supervisor (sergeant) also receives the information for education recruiting purposes. Approximately 90 days prior to release, the individuals are automatically interviewed to determine their interests. Staff informed the ADA Joint Expert that the 90-day interviews were slated to begin "next week" when the new deputy who was hired into the position and begins the assignment. Staff also added that a 900K vocational grant was awarded. Staff were hopeful the trades programs would be "up and running within six (6) months." Staff also stated the program would provide staff the opportunity to issue them Social Security Cards and DD-214s (as applicable) to individuals.

A second staff member provided some related information as well. Due to AB 109 funding, the Transition Center (probation and community-based) offers employment and education needs. Pre-release planning and activities generally commence 30 days prior to the release date/expected release date). ACSO has indicated they have implemented a proactive approach to this process. Reportedly, as of April 2023, ACSO asks all mainline incarcerated persons what their needs are (e.g., housing, medical, behavioral health, education) upon their arrival to the Reception Center in housing unit 03 pending their final classification and medical evaluation process. This is a pilot program and will likely expand to all newly booked individuals in the future. The Joint Expert will continue to examine this program. Religious services and education programming such as for 5-Keys and Chabot College (includes various self-help groups); Substance Abuse (under 5-Keys); Alcoholics Anonymous/Narcotics Anonymous (scheduled to restart on July 8, 2023 - volunteers begin training on June 22, 2023); and Chabot College (Ethnic Studies and English). Organized Recreational Activities (operated by two [2] staff members, include special events (frequencies of events have increased since COVID-19, to 1-2 nights per



week) such as basketball, ping-pong, coloring, board games, puzzles, connect-4, prizes, awards, speech contest, slam books/poems. As for yard activities, staff indicated a more “dialed-in” yard schedule process, including a weekly yard schedule that indicates the times and who comes out, and staff is reportedly working to ensure individuals don’t have to choose between yard versus education. The Inmate Request for Services Report is reportedly turned in monthly, which tracks all participation of all programs (but does not yet track program refusals (only positive attendance).

New information provided by staff during the monitoring tour is that a Vocational Team is being developed to work in collaboration with 5-Keys personnel. The programs will allow successful class participants to earn OSHA Certification, gain eligibility to receive a California Driver’s License and assist in obtaining their DD-214 for proof of military service. Staff stated that various trades unions come to the Jail to conduct job interviews.

ACSO provided the following reentry services schedule and information for June 2023: Services/activities were scheduled for all business days during the month of June (except for June 29<sup>th</sup> and 30<sup>th</sup>). Services/activities included: Community Works (4), CEO (2), LAO (4), Felton (4), La Familia (4), Center Point (4), Veteran Services (4), BOSS (4), Youth Employment Program (4), DVP (4), Open Gate (4), and Center Force (2). Staff also indicated there is a recreation handout fulfillment per inmate request (daily), organized activity (daily, Tuesdays through Fridays), sports equipment is replaced throughout the facility as needed (no specifics), and message requests are checked and responded to daily. ACSO also provided the following schedule for June 2023: HU X: 0; HU X: 0; HU X: 3 Anger Management (1), Parenting (1), Financial Literacy (1); HU X: 8 Parenting (2), Cosmetology/Barbering (1), Cosmetology/Barbering Theory (2), Substance Abuse (3); HU X: 1 Parenting; HU X: 0; HU X: 8 Parenting (2), Cosmetology/Barbering (2), Financial Literacy (2), Substance Abuse (1), Anger Management (1); HU X: 2 Substance Abuse (1) – Distance Learning Class, Anger Management (1) - Distance Learning Class; HU X: 8 Gardening (2), Cosmetology/Barbering (1), Cosmetology/Barbering Theory (1), Parenting (2), Financial Literacy (2); HU X: 2 Computers (2); HU X: 2 Parenting (2); HU X: 3 Parenting (1), Anger Management (2); HU X: 2 Substance Abuse (2); HU X: 2 Parenting (2); HU X: 8 Substance Abuse (1), Computers (2), Anger Management (2), Cosmetology/Barbering Theory (1), OSHA/First Aid/CPR (2); HU X: 1 Anger Management (1) – Distance Learning; HU X DEF: 2 Anger Management (2); HU X: 3 Substance Abuse (3); HU X East PC: 3 Anger Management (1), Computers (2); HU X Min: 2 Substance Abuse (2); HU X: 7 Computers (2), Parenting (2), Job Readiness (2), Substance Abuse (1); HU X: 3 Computers (2), Gardening (1); HU X E&F: 2 Computers (2); HU X: 8 OSHA/First Aid/CPR (2), Anger Management (2), 7 Habits (2), Healing & Trauma (2); HU X ABC: 2 Computers (2); and HU X DEF: 1 Computers (1).

#### Electronic (Wireless) Tablet:

Regarding the electronic tablets, a new vendor was contracted effective in April 2023, and reportedly the Tablet will be larger. SRJ has a specified number of tablets that are distributed to incarcerated persons (once the individuals get to the units). In reception, they get use of a tablet for the 1 (one) day they are there. Staff acknowledged that currently, there are not enough tablets for all incarcerated persons, and deputies receive minimal tablet training (only informally during muster). During the onsite interviews, staff indicated there is no tablet education material or information (within orientation material) that indicates help can be available to navigate the Tablet.

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However, in the review of the revised Inmate Rules and Information (Orientation Jail Handbook – revised January 2023), there is an ADA section and a section titled "Wireless Tablet Access" that provides general instructions. Staff confirmed that the Disability Request for Reasonable Accommodation form is not on the tablets (only grievances and requests) and that it is only in the profile but not currently active. Regarding Effective Communication, Programs/Services staff and facilitators do not have disability or Effective Communication information (custody, AFPB, and Wellpath) and have access to ATIMS. The ADA Joint Expert noted this is contrary to information reported by the ADA Unit, as outlined earlier in this report. Regarding Library Services, there is a contract with the County Library. The book carts are located in the housing units/pods, and once per month, the library is re-stocked, and exchanges and pod re-stocks take place within the pods. Individuals can request two (2) books per month. Regarding easy-read books, the Joint Expert has not seen any proof they are provided, will examine this further for the next scheduled monitoring review.

Incarcerated persons interviewed had the following complaints/comments regarding the tablets: No tablets available yet; deputies provide assistance; on the waitlist; other inmates have helped me in the past, staff never help; no access, and I believe my mental health is deteriorating and suffering; don't know how to use; I have one, but I can't read, so I just look at pictures, and I have not received any help to read or operate it; have not had access; I learned how to use a tablet from another inmate.

#### Incarcerated Person Work Assignments:

The ADA Joint Expert acknowledged that currently, based on housing assignment, some individuals are not eligible to work or are limited to work assignments such as housing unit workers. Some of the individuals interviewed made the following related comments or complaints; not eligible to work; not eligible to work except for a unit worker; not interested in being a unit worker; have tried to be a unit worker but have always been denied; and not sure how to get a job. The ADA Expert did reconcile the ACSO Work Crew Assignment List against a recent disability tracking list. In the past, there was only one (1) individual from the ADA Coordinator's tracking list that was assigned to a work position (unit worker). The ADA Joint Expert is hopeful that with the new comprehensive screening/evaluation/testing process and soon-to-be expanded tracking system for all psychiatric disabilities, more qualified individuals coded as SMI, IDI, and LD will be provided more opportunities for job consideration and placement equivalent to non-disabled persons (in accordance with mental health and other considerations).

As previously detailed in this report, Re-Entry and Support Services/Programs staff interviewed acknowledged there are no job descriptions or documents listing essential functions for incarcerated person positions at SRJ (except for possibly a couple of assignments). Staff continued to state they would accommodate any individuals that had reasonable accommodation needs on the worksite if they were aware of their required accommodations.

#### **Recommendations:**

- 1) The ACSO must develop job descriptions for all incarcerated person job assignments with listed essential job functions for each position. The ACSO must work with the ADA Joint

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Expert(s) (and Class Counsel) in the development to allow for review, comments, and recommendations:

- a) For future monitoring tours, the ACSO must provide examples for all work areas for proof of practice and review.
- 2) The ACSO must have a process in place that allows for incarcerated persons with psychiatric, intellectual/developmental, and learning disabilities to receive reasonable accommodations for their disability while on the job:
  - a) The ACSO should provide proof of practice documentation (as applicable) for future monitoring tours.
- 3) Until the real-time network ADA Tracking System is in place, the ADA Unit shall, on a weekly basis, provide program/services staff as well as 5-Keys staff with a list of individuals with psychiatric, intellectual/developmental, and learning disabilities and their accommodation needs (e.g., Effective Communication, adaptive supports) so that staff can provide reasonable accommodations as required.
- 4) Recommend 5-Keys staff maintain dialogue with ACSO/AFBH as applicable to ensure referrals (as necessary) are done and any testing for individuals who may not currently be identified as having a disability or accommodation needs but are deemed by education staff as possibly having a psychiatric, intellectual/developmental, or learning disability.
- 5) Provide an update as to how disabled individuals (particularly psychiatric disabled individuals) are trained and/or are provided assistance by staff.
- 6) Provide an update regarding the placement of the Disability Request for Reasonable Accommodation form on the tablet system.
- 7) Provide an update as to the status of available easy-read books/reading material.

### **ADA Grievances and Requests**

#### **ADA Requests:**

**1020. Defendants shall provide and maintain a readily available mechanism for individuals to make a request for reasonable modifications independent of the grievance system ("ADA Request"). This ADA Request form must be available in hardcopy as well as on electronic tablets to the extent that electronic tablets are provided to individuals for use. All ADA Requests shall be routed to the ADA Coordinator or a member of their team for review. The ADA Coordinator or a member of the ADA Unit shall review all ADA Requests within seven (7) days to evaluate them for any emergent issues that require an expedited response. Where an emergent issue is identified, the ADA unit shall respond within 48 hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed. For non-emergent issues, the ADA Unit shall provide a response within thirty (30) days of receipt of such a request. All ADA Requests and responses shall be documented in the ADA tracking system. Defendants shall inform individuals with Psychiatric Disabilities of the process for submitting ADA Requests in a manner that is effectively communicated. Where an individual is unable to submit written or electronic requests, the individual may make a request orally, and the Multi-Service deputy, housing unit staff, and/or the ADA Unit shall assist the individual in submitting the request in writing.**

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**Finding: Non-Compliance**

(Note: this provision was previously rated as “Non-Compliance”)

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 17.05 Inmate Message Requests (Revision Date December 1, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 17.05 Inmate Message Requests.
- ACSO Staff Interviews.
- Incarcerated Person Interviews.

**Assessment:**

As previously reported, the ADA Joint Expert's initial report outlined Policy 1.14 (in greater detail) as related to Inmate Message Requests, routing, Disability Related checkboxes, forwarding Disability Related or marked checkboxes to the ADA Coordinator, the ADA Coordinator's responsibility to address related claimed issues, and providing staff assistance to disabled inmates during the process.

The ADA Unit reports there is a Disability Request for Accommodation form, but it is seldom used. As previously outlined, the ADA Joint Expert observed the ADA Coordinator and an ADA Unit Deputy conduct a 14-day initial interview with a new arrival (BHI). During the interview, the ADA Unit staff discussed the grievance and request for accommodation processes and provided a copy of the accommodation request form to the individual. This is not discussed verbally during intake/orientation. The ADA Joint Expert notes that in the revised Orientation Jail Handbook (January 2023), there is now a reference to the Request for Accommodation form. The Orientation Jail Handbook identifies the option to use the Request for Accommodation form, message requests, or grievance. Similar to the previous review period, the ACSO did not provide any completed Request for Accommodation forms or disability-related requests submitted on other forms. Staff are widely unaware of the stand-alone Request for Accommodation form. All incarcerated persons interviewed claimed they were not aware of the Request for Accommodation form. Comments regarding the informal request form process included the following: I fill out the form, and staff respond, no concerns; staff do a good job; inmates help me, but not staff; no

guarantee we will get a response back; not sure how to use the form; staff will help if I push the issue, but it depends on the staff person.

### **Recommendations:**

- 1) The ACSO must incorporate the Request for Accommodation form and process into policy.
- 2) The ACSO must ensure that ADA Request forms are available in hardcopy as well as on electronic tablets.
- 3) For the next scheduled tour, ACSO must provide proof that ADA Unit staff review all ADA Requests within seven (7) days to evaluate them for any emergent issues that require an expedited response:
  - a. Including proof of response time within 48 hours of review and facilitating (for emergency issues), as needed, obtaining any information required from AFBH to provide a response, and/or scheduling an emergency appointment with AFBH staff as needed.
  - b. Including for non-emergent issues, the ADA Unit must provide a response within thirty (30) days of receipt of such a request.
- 4) All ADA Requests and responses must be documented in the soon-to-be-expanded ATIMS ADA tracking system.
- 5) For future monitoring tours, ACSO must provide all ADA Requests (including ADA Coordinator or staff responses) for psychiatric, intellectual/developmental, and learning-disabled incarcerated persons for the respective monitoring tour period (whether submitted via Request for Accommodation form, informal request form, or grievance).

### **ADA Grievances:**

**1021. Defendants shall provide and maintain a grievance system that provides for prompt and equitable resolution of complaints by individuals with Psychiatric Disabilities who allege disability-related violations. Defendants' grievance form shall continue to include a checkbox or similar means to identify that the grievance is ADA-related. Defendants shall train grievance staff to route "ADA" grievances appropriately even if the individual who filed the grievance did not check the "ADA" checkbox. Once implemented, the ADA Tracking System shall route grievances relating to class members who are Behavioral Health Clients to AFBH for their review in case there are underlying mental health issues that are driving the grievances. ADA staff shall consult with AFBH prior to imposing any grievance-related restrictions on class members who are Behavioral Health Clients. Until the ADA Tracking System is implemented the ADA Unit shall review and route grievances filed by individuals with SMI electronically to AFBH for review. AFBH shall assist as necessary in resolving issues raised by class members in grievances, including meeting with the grievant as needed.**

### **Finding: Non-Compliance**

(Note: this provision was previously rated as "Partial Compliance")

### **Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 16.03 Inmate Grievance Procedure (Revision Date December 29, 2020).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 16.03 Inmate Grievance Procedure.
- ADA Grievances (from Joint Experts' initial review).
- ACSO Staff Interviews.
- Incarcerated Person Interviews.
- Blank Alameda County Sheriff's Office Inmate Grievance Form (ML51) (Rev 3/19).
- Blank Inmate Grievance Response form (ML52) (Rev 2/2022).
- Blank Inmate Grievance Response Supplemental Information form (ML53) (Rev 10/14).
- Blank Alameda County Sheriff's Office Notice of Extension for Grievance form (Spanish version) (ML54) (Rev 3/15/21).

**Assessment:**

The ADA Joint Expert's initial report outlines Policy 1.14 (in greater detail) as pertaining to the grievance process, including submittal, understanding, and completing the grievance process (including providing assistance, especially for individuals with mental illness or intellectual/developmental disabilities), Disability Related check box process, and forwarding a copy of the grievances to the ADA Coordinator.

Regarding document production, ACSO provided the following information (note the ADA Joint Expert selected the months of January, April, and June 2023).

- January 2023:
  - Excel Spreadsheet Grievance Monthly Breakdown.
  - 165 submitted (but Monthly Grievance Chart shows 657 submitted).
  - 43 different codes/categories:
    - ADA – 0.
- January Individual Grievances provided – 4:
  - Response times were immediate (same day), 2 days, 3 weeks, and about 41 days.
  - Issues were:
    - Complaints regarding access, HIPAA, and staff complaints.
- April 2023:

- Excel Spreadsheet shows:
  - 335 submitted.
  - Issues were:
    - HIPAA/ADA staff, RHU placement, Classification.
    - Not related to ADA, but Consent Decree related.
  - Response times: 4 within a week.
- June 2023:
  - Excel Spreadsheet shows 274 submitted.
- June Individual Grievances provided – 1:
  - Response times: No final response, just that the issue is under investigation.
  - Issues were:
    - Complaint regarding Privacy and emergent BH issues.
- Memo (April 26, 2022):
  - Subject: March 2022 Grievance Report for Santa Rita Jail:
    - There was an increase in grievances submitted (672) due to housing unit 6 inmates submitting for tablet chargers not functioning properly.

The Grievance Unit staff reported that in cases where the “ADA Box” is not checked on the grievance, the grievance staff forward the grievance to the ADA Unit. However, the Grievance Unit staff reported that the “ADA Category” is currently not used. The Grievance Unit staff also reported that the process to route grievances submitted by BHI clients to AFBH for their review is being worked on and is currently not in place. The Grievance Unit staff also reported that in the event a BHI client is placed on a "Restrictive Grievance Management Plan," the grievances are still reviewed and processed by staff and forwarded to the Grievance Unit and in the event the issues are emergent or related to safety and security concerns the grievances are addressed by staff.

#### **Recommendations:**

- 1) For future monitoring tours, ACSO must provide all grievances (including staff responses) for psychiatric, intellectual/developmental, and learning-disabled incarcerated persons (for those individuals verified and tracked within the tracking system (for the respective monitoring tour period. ACSO must also confirm how ADA-related grievances are being categorized, routed, and handled (addressed) appropriately.
- 2) For the next review period, provide proof of practice that ADA staff consult with AFBH prior to imposing any grievance-related restrictions on class members who are Behavioral Health Clients.
- 3) For the next review period, and until the ADA expanded Tracking System is implemented, provide proof the ADA Unit reviews and routes grievances filed by individuals with SMI electronically to AFBH for review.
- 4) Recommend revising Policy 16.03 Inmate Grievance Procedure to include the requirements of related Consent Decree provisions.

**1022. The ADA Coordinator or a member of the ADA unit shall:**  
**(i) review all ADA related complaints;**

- (ii) assign an ADA-trained staff person to investigate the complaints, and/or interview the individual to the extent his or her complaint or requested reasonable modification is unclear or consult with AFBH as appropriate; and
- (iii) provide a substantive written response.

The ADA Coordinator or a member of the ADA Unit shall review all ADA-related grievances within seven (7) days to evaluate them for any emergent issues that require an expedited response. Where an emergent issue is identified, the ADA unit shall respond within forty-eight (48) hours of review and facilitate, as needed, obtaining any information required from AFBH to provide a response and/or scheduling an emergency appointment with AFBH staff as needed. For non-emergent issues, the total response time for all ADA-related grievances shall be thirty (30) days from receipt. All ADA-related grievances and responses, including the provision of interim reasonable modifications, shall be documented and tracked in the ADA Tracking System Grievance Module.

**Finding: Non-Compliance**

(Note: this provision was previously rated as “Partial-Compliance”)

**Policies:**

- ACSO Detention and Corrections Policy and Procedure - 1.14 Americans with Disabilities Act (Revision Date October 31, 2019).
- ACSO Detention and Corrections Policy and Procedure - 16.03 Inmate Grievance Procedure (Revision Date December 29, 2020).
- ACSO Detention and Corrections Policy and Procedure - 17.05 Inmate Message Requests (Revision Date December 1, 2019).
- The Expert notes that the revision of the policies is still in progress.

**Training:**

Development of related training materials by ACSO is in progress.

**Metrics:**

- Policy 1.14 Americans with Disabilities Act.
- Policy 16.03 Inmate Grievance Procedure.
- Policy 17.05 Inmate Message Requests.

**Assessment:**

The ADA Joint Expert notes that none of the related policies have been revised since the inception of monitoring but recognizes that policy revisions are still ongoing. As outlined in greater detail in the initial report, Policy 1.14 addresses the grievance form; reasons for use; providing staff assistance to incarcerated persons, especially those with a psychiatric disability; Disability



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Related check box (for coding/categorization); and copy of grievances (including final copy with staff response) to the ADA Coordinator.

The ADA Joint Expert notes there were no related documents (documented complaints) provided for the review period, whether submitted via grievance form or message request form. Based on this, the ADA Joint Expert could not measure the County's compliance with the Consent Decree requirements.

During the recent onsite review, ADA Unit staff once again indicated they receive all ADA-related grievances and complaints (whether they are ADA related or submitted by a disabled individual). Staff was clear this includes grievances related to incarcerated persons coded as SMI, but it is not clear whether ADA Unit staff receive grievances pertaining to BHI individuals (other than SMI). With the new BHI levels of care (1, 2, 3, and 4), it is unclear for which levels or for which individuals the ADA Unit received grievances for. ADA Unit staff maintain that SRJ staff send the grievances to the ADA Unit, even if the grievances are not marked (check box) as ADA-related. ADA Unit staff stated that generally, they (or the assigned responder) do not interview the grievant. In the past, staff reported that such interviews are conducted if clarification is needed from the Grievance office or from the assigned responder. Regarding Effective Communication, staff still maintain that when conducting a face-to-face interview or when issuing a copy of a staff response to a disabled individual, Effective Communication is not currently a requirement for staff to perform, but it is being done. The ADA Joint Expert understands the separate stand-alone Effective Communication policies (ACSO, Wellpath, and AFBH) are in the process of being written, approved, and implemented, but encourages staff of all disciplines to provide Effective Communication for significant types of encounters/communications, including for the grievance and Request for Accommodations processes when there is a face-to-face encounter. Lastly, ADA Unit staff admitted that currently, grievances are not being routed to AFBH. Note: the ADA Joint Expert notes ACSO's position that Effective Communication is defined in numerous policies including the requirement to use Effective Communication to ensure comprehension is achieved, and that the stand-alone Effective Communication Policy (D&C P&P 9.11 [ACSO]) is currently going through the approval process.

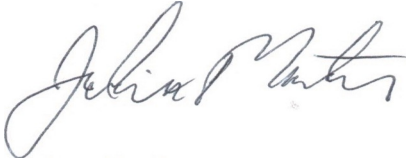
**Recommendations:**

- 1) ACSO must provide all related grievances and grievance responses for future Joint Expert reviews.
- 2) For the next scheduled tour, ACSO must provide proof that ADA Unit staff review all ADA-related grievances within seven (7) days to evaluate them for any emergent issues that require an expedited response (Note: the Joint Expert notes ACSO's comment that this is being tracked by the ADA Unit):
  - a. Including proof of response time within 48 hours of review and facilitating (for emergency issues), as needed, obtaining any information required from AFBH to provide a response, and/or scheduling an emergency appointment with AFBH staff as needed.
  - b. Including for non-emergent issues, the ADA Unit must provide a response within thirty (30) days of receipt of such a request.

- 3) All ADA Requests and responses must be documented in the soon-to-be expanded ATIMS ADA tracking system and still tracked internally until the roll-out of the expanded system.
- 4) For the next review period, provide proof of practice that the grievance office or ADA Unit assigns an ADA-trained staff person to investigate the complaints and/or interview the individual to the extent his or her grievance is unclear or consult with AFBH as appropriate.
- 5) For the next review period, provide proof that grievances are routed to AFBH for review (as applicable).

## Signature

Submitted on behalf of Sabot Technologies, Inc. dba Sabot Consulting to the County of Alameda, and Alameda County Sheriff's Office

A handwritten signature in black ink, appearing to read "Julian Martinez". The signature is written in a cursive style with a large, looping initial "J".

October 25, 2023

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Julian Martinez  
Director  
Sabot Consulting  
[Julian.martinez@sabotconsult.com](mailto:Julian.martinez@sabotconsult.com)

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Date