

***Babu v. Ahern***  
**Consent Decree Third Non-Confidential Status Report**  
**Third Monitoring Report**  
***Case No. 5:18-cv-07677-NC***  
**Terri McDonald Consulting LLC**  
**Sacramento, CA**  
**October 25, 2023**

The following are excerpts from the Consent Decree provisions assigned to Terri McDonald for monitoring. This document will have a summary of those provisions followed by the specific provision language and this Joint Expert's findings and recommendations. Connected provisions have been combined for this status report; however, several will likely be separated in future reports as the County increases compliance. Additional recommendations may also be added in subsequent reports as additional information is gleaned during implementation. While this report is dated September 29, 2023, only information provided through June 30, 2023, has been included in this reporting period.

The below summary chart reflects an overview of the specific provisions, utilizing the following codes:

SC	Substantial Compliance
PC	Partial Compliance
NC	Non-Compliance
NR	Not Rated
INYR-N/A	Implementation Not Yet Required – Not Applicable

**Summary of Ratings**

<b>Requirement</b>	<b>Current Rating</b>	<b>Prior Rating</b>
200. Sufficient Custody Staff to Comply with Consent Decree	PC	PC
201. Filling Custody Positions	PC	PC
202. Creation of Behavioral Health Access Team	PC	PC
203. Creation of Emergency Health Care Access Team and Clinic Deputy Escorts	PC	INYR – N/A
402. Out of Cell Time for Recreate Alone (Step 1) Populations Following Yard Capacity Expansion.	INYR – N/A	PC
403. Structured Activity Time for Recreate Alone (Step 2) Populations Following Yard Capacity Expansion.	INYR – N/A	PC
405. Out of Cell Time for Step 2 Populations Following Yard Capacity Expansion,	INYR – N/A	PC
407. Structured Activity Time for Step 2 Populations Following Yard Capacity Expansion.	INYR – N/A	PC
409. Out of Cell Time for General Population – Celled Housing	PC	PC
410. Structured Activity Time for General Population – Celled Housing	PC	PC
411. Out of Cell Time and Structured Activity for Step 1 and Step 2 Populations Effective immediately	PC	PC

412. Out of Cell Time and Structured Activity for Step 1 and Step 2 Populations Beginning on the fourth month after the Effective Date of the Consent Decree	PC	INYR – N/A
414. Reconfiguration of Recreation Spaces Within Twenty-four(24) Months of the Effective Date of the Consent Decree	PC	PC
415. Access to Bathroom Facilities During Out of Cell Time Activities	SC	PC
417. Documenting Exceptions to Out of Cell Activities due to Unusual Circumstances	PC	NC
418. Procurement and Activation of Electronic Information System to Track Out of Cell Time	PC	INYR – N/A
419. Notification of Mental Health Staff When Incarcerated Person Repeatedly Refuse to Exit Cell or Neglect Basic Care	PC	NC
420. Development of Plan to Reconfigure Recreation Spaces	PC	INYR – N/A
421. Maximize Outdoor Recreational Time	PC	NC
422. Behavioral Health Clients Involvement in Programming and Evaluation of Available Work Assigns to Increase Opportunities	PC	PC
423. Equal Access to Programming for Behavioral Health Clients and Alternative Custody Opportunities.	PC	PC
424. Evaluation of Potential Expansion for Programming Space.	PC	NC
500. Update to Use of Force Policies and Training	PC	PC
501. Use of Force Policy to Include Specific Mandates.	PC	PC
502. Mental Health Staff Role in Pre-Planned Use of Force Incidents	PC	PC
503. Use of Force Reviews and Expansion of Fixed Cameras	PC	INYR – N/A
504. On-Going Refinement of Use of Force Policies and Training	SC	INYR – N/A
505. Utilization of Special Restraints and Discontinuation of the WRAP device.	PC	PC
506. Medical and Mental Health Staff Role When Specialized Restraints are Used	PC	PC
507. Updates to the Special Restraint Policies and Training.	PC	INYR – N/A
600. Access to Grievances and Grievance Trend	PC	PC
712. Alert System to Address Delays in Intake Processing	PC	NC
749. Cleaning of Safety Cells.	SC	PC
751. Working Call Buttons in Living Units	PC	PC
754. Emergency Response Equipment and Access to Cut Down Tools.	SC	PC
760. Clinicians Role in Restricting Property and Privileges Associated with Suicide Precautions.	PC	NC
761. Training on Security Checks and Emergency Response to Suicide Attempts	PC	NC
763. Supervisor Review of Security Checks.	SC	PC
768. Out of Cell Time in Therapeutic Housing Units	PC	INYR – N/A

773. De-escalation Training	PC	PC
800. Establishment of Incarcerated Person Advisory Council and Ombudsperson Program	PC	NC
1200. Development of Consent Decree Implementation Plan.	PC	PC

### Commonly Used Acronyms

ACSO	Alameda County Sheriff's Office
AFBH	Adult Forensic Behavioral Health
BH	Behavioral Health
BHI	Behavioral Health Incarcerated Person
DC	Detention and Corrections Division - ACSO
GO	General Order – ACSO Policy
IOL	Intensive Observation
IP	Incarcerated Person
ITR	Intake, Transfer and Release
NA	Not Applicable
RFID	Radio Frequency Identification Device
RH	Restricted Housing
SRJ	Santa Rita Jail
THU	Therapeutic Housing Unit
UNK	Unknown

### Associated Policies

The vast majority of the Provisions require an update to policies, forms, post orders and training. The Incarcerated Person Handbook requires updates to comply with the Consent Decree as well. Additionally, each entity<sup>1</sup> responsible for a provision may need their post orders, job descriptions or duty statements updated to comply. The following list of documents is not exhaustive but represents the status of pending or recently updated policies that apply to at least one provision in this report:

1.05 (GO) <sup>2</sup>	Use of Force
1.20 (GO)	Taser X-2
1.21 (GO)	Less Lethal Weapons Systems
3.10 (DC)	Daily Attendance Report – Requires Update
3.21 (DC)	Personnel Selection, Promotions, Retention and Staffing – Requires Update
3.27 (DC)	Position Control – Requires Further Review
3.29 (DC)	Special Management Unit Staffing – Requires Update
3.30 (DC)	Mandatory and Voluntary Overtime Assignments – Requires Update
4.02 (GO)	Training - Pending Further Review
4.01 (DC)	Facility Training Plans – Requires Update

<sup>1</sup> Includes ACSO, AFBH and Wellpath.

<sup>2</sup> General Orders 1.05, 1.20 and 1.21 are departmental policies with no recommended updates at this time. This could change depending on future reviews of custody use of force incidents.

<b>4.02 (DC)</b>	<b><i>Facility Personnel Training -Updated February 24, 2023</i></b>
<b>5.69 (GO)</b>	<b><i>WRAP Device – Updated and Approved</i></b>
6.01 (DC)	Repair and Minor Construction ACSO – <b><i>Updated October 10, 2022</i></b>
6.02 (DC)	Facility Plant Maintenance – <b><i>Updated October 10, 2022</i></b>
8.09 (DC)	Transportation/Movement and Use of Restraints – Requires Update
8.11 (DC)	Emergency Medical Transportation – <b><i>Updated April 20, 2023</i></b>
8.12 (DC)	Incarcerated person Observation and Direct Visual Supervision – <b><i>Updated June 1, 2023</i></b>
8.13 (DC)	Use of Safety Cell – <b><i>Updated April 6, 2023</i></b>
8.17 (GO)	Body Worn Cameras – Pending Further Review
8.26 (DC)	Use of Special Restraints – Requires Update
8.28 (DC)	Resistant Incarcerated Person Management – Requires Update
8.29 (DC)	Positional Asphyxia – Pending Further Review
8.31 (DC)	Selection of Housing Unit Inmate Workers – Requires Update
9.01 (DC)	Disciplinary Isolation – Requires Update
9.02 (DC)	Administrative Segregation – Requires Update
9.04 (DC)	Therapeutic Housing Policy – In Review Process
9.07 (DC)	Deprivation of Authorized Items or Activities – Requires Update
9.09 (DC)	Special Incarcerated Person Management Plan – Requires Update
9.10 (DC)	Max Separation Incarcerated persons – Requires Review
10.01 (DC)	General Security Post Order – Requires Update
10.02 (DC)	Lieutenant/Watch Commander Post Order – Requires Update
10.03 (DC)	Sergeant/Shift/Supervisor Post Order – <b><i>Updated May 3, 2023</i></b>
10.04 (DC)	Intake Deputy Post Order – Requires Update
10.05 (DC)	Housing Unit Deputy Post Orders – <b><i>Updated June 28, 2023</i></b>
10.08 (DC)	Clinic Officer Post Orders – <b><i>Updated March 16, 2023</i></b>
10.11 (DC)	Intake, Transfer, Release (ITR) Technician Post Order – <b><i>Updated May 23, 2023</i></b>
10.12 (DC)	Housing Control Post Orders – <b><i>Updated June 28, 2023</i></b>
10.18 (DC)	Yard Deputy Post Order – <b><i>Updated June 26, 2023</i></b>
10.22 (DC)	Special Projects Deputy Post Order – Requires Update
10.30 (DC)	BHAT Deputy Post Orders – Requires Update
11.01 (DC)	Intro to Intake – Requires Update
11.02 (DC)	Intake Procedure – Requires Update
12.08 (DC)	Incarcerated Person Work Program – Requires Update
13.01 (DC)	Medical and Behavioral Health Care – Requires Update
13.02 (DC)	Access to Care Policy – Requires Update
13.06 (DC)	Suicide Prevention – <b><i>Updated June 30, 2023</i></b>
13.12 (DC)	Behavioral Health Referral Form – Requires Update
15.01 (DC)	Sanitation Schedule – Requires Update
15.02 (DC)	Safety and Sanitation Inspection – Requires Update
16.01 (DC)	Incarcerated Person Discipline – <b><i>Updated July 11, 2023</i></b>
16.02 (DC)	Incarcerated Person Rules and Information – <b><i>Updated June 21, 2023.</i></b>
	<b><i>Incarcerated Person Handbook – Updated June 21, 2023</i></b>
16.03(DC)	Incarcerated person Grievance Procedure – Requires Update
18.01 (DC)	Intro to Incarcerated person Services – Requires Update
18.02 (DC)	Incarcerated person Operational Programs – Requires Update
18.05 (DC)	Volunteer Services and Programs – Requires Update
18.07 (DC)	Religious Services – Requires Update
18.09 (DC)	Educational Program Planning – Requires Update
18.10 (DC)	Vocational Training Programs – Requires Update
18.11 (DC)	Social Services Programs – Requires Update

- 18.12 (DC) Recreation and Incarcerated person Activity Program – **Updated March 9, 2023**
- 18.17 (DC) Parenting Program – Requires Update
- 20-02 Santa Rita Jail Mandatory Overtime Program – January 2020
- 20-17 Mandatory Overtime Frequently Asked Questions – October 2020
- 21.01.01 (DC) Use of Force Addendum In-Custody Use of Force – **Updated March 14, 2023**
- 21.01.02 (DC) Controlled Response to Resistant Inmate – Requires Update
- 21.03.01(DC) Force Training and Compliance Unit – **Instituted July 1, 2022**
- 21.03.02 (DC) Force Training and Compliance Unit Force Incident Review and Routing – **Instituted March 14, 2023**

## FINDINGS

*(200) Defendants shall maintain sufficient mental health and custody staff to meet the requirements of this Consent Decree, including maintaining sufficient mental health clinical staffing to provide for adequate 24-hour coverage, seven days a week, and sufficient custodial staff to ensure that programming, recreation, transportation and movement, out-of-cell and outdoor time and all other jail functions can proceed safely. To the extent possible, Custody staff assigned to positions where mental health training is required, including staff assigned to the Therapeutic Housing Units, shall be strongly encouraged to serve in these roles for at least three years to provide for consistency and to maximize the benefit of the training and expertise of the staff assigned to these areas.*

**Finding: Partial Compliance<sup>3</sup>**

Unfortunately, there has been no significant progress concerning custody staffing levels during this rating period as the staffing levels actually dropped slightly since December 2022 as will be further discussed in Provision 201. There is also a slight reduction in the number of available staff assigned to Custody as of June 2023 and that corresponds with a reduced number of deputies assigned to the jails during this rating period.

The Second Monitoring Report listed daily staffing averages for the period of July-December 2022 based on information provided by the County, which demonstrated there was an average of 61 deputies and 28 technicians on dayshift and average of 58 deputies and 38 technicians working the overnight shift. As reflected in prior reports, ACSO has a policy regarding mandatory overtime assignments, reflecting the goal to have five (5) sergeants and sixty (60) deputies working on dayshift and five (5) sergeants and fifty-six (56) deputies on overnight shift. As noted in the Second Monitoring Report, the County was able to meet this internal goal in the last six months of 2022.

**Average Daily Deputy and Technician Coverage  
Team A/B  
July – December 2022**

	Average Deputies on Duty	Average Deputy Overtime	Average % of Deputies on Overtime	Average Technicians on Duty	Average Technician Overtime	Average % Technicians on Overtime	Average Hospital Redirect
Dayshift	61	31	51%	28	5	19%	9
Overnight	58	28	48%	38	6	17%	6

<sup>3</sup> The Mental Health Expert will report on mental health hiring and staffing.

However, analyzing the same daily shift reports for a one week sample period each month from January through June 2023, it is evident the number of deputies working in the jails has decreased slightly since the last monitoring period. The average number of deputies working dayshift during this period was 59 and the overnight averaged 55 deputies. This represents a 4% reduction from 2022. The technician classification fared better with an increase of 3 technicians in a 24 hour period, representing a 5% increase.

**Average Daily Deputy and Technician Coverage  
January – June 2023  
Teams A, B, C, D**

	Average Deputies on Duty	Average Deputy Overtime	Average % of Deputies on Overtime	Average Technicians on Duty	Average Technician Overtime	Average % Technicians on Overtime	Average Hospital Redirect
Dayshift	59	26	44%	35	6	17%	10
Overnight	55	28	51%	34	6	18%	8

As mentioned, the change from the Second Monitoring report is a slight decrease in the number of staff working with a slight difference in the percentage of staff filling posts on an overtime basis. In the last six months of 2022, 50% of posts were covered with overtime while 48% of posts were filled with overtime in the first six months of 2023. The average number of posts filled in a 24 hour period has been reduced by 5 deputies since the prior reporting period and the number of deputies on overtime during that same period has reduced by 5, if overtime were retained at the prior level, there would be little or no reduction in staffing.

**Change from Q3/Q4 2022 to Q1/Q2 2023**

	Average Deputies on Duty	Average Deputy Overtime	Average % of Deputies on Overtime	Average Technicians on Duty	Average Technician Overtime	Average % Technicians on Overtime	Average Hospital Redirect
Dayshift	-2	-5	-7%	+7	+1	-2%	-1
Overnight	-3	0	+3%	-4	0	+1%	+2

As referenced in prior reports, the analysis of staffing needs is far too complicated to simply assess the number of positions approved as a measure of compliance with Provision 200. The number of staff is driven by population, number of housing units open, design of the housing units, classification of the incarcerated persons (IPs) and the mission of the unit (for example, Therapeutic Housing Unit or Restricted Housing). It is noted that the population has reduced slightly in 2023, which could equate to a reduction in staffing assuming a system operating at full capacity, which is not the situation in Alameda County.

It is critical to note that staying static or slightly below the last report is not the goal as the system is actually losing ground. The lack of deputies is the primary reason many of the provisions monitored by the various

experts are not achieving the level of progress expected. It is recognized that the County is focused on hiring and there is a nationwide challenge with recruitment and retention of peace officers, but the Sheriff should now take a hard look at internal priorities, recognizing the Constitutional requirements of the jail that do not exist in other divisions of the Sheriff's department. If hiring cannot increase, it is time to consider cancelling the federal detention hold contract and look at other divisions with the Sheriff's department whose mission is not as critical as the mission in the jail and begin to redirect resources into the jail until such time as hiring can increase. It is also critical that alternatives to the current staffing model be considered, such as the use of contract security in front entrance and processing areas, use of correctional deputies and safety pay for designated technician classification to assist in program areas and with security checks.

### **Recommendations:**

1. \*<sup>4</sup>Continue hiring associated with Provision 201.
2. Consider ending the contract to house federal inmates in the jail.
3. Evaluate non-Custody divisions of the Sheriff department to redirect staff into the jails until such time as hiring can increase.
4. \*Create a metrics report that trends daily staffing for all shifts and identifies any barriers that the number of available posts, vacancies or redirects have on programming or compliance with the Consent Decree.<sup>5</sup> Work with the Joint Experts to prioritize available resources should that be the case.

*(201) Defendants further agree to implement the recommendations contained in the Staffing Report, including: (1) making best efforts to hire a total of two hundred fifty-nine (259) sworn staff and seventy-two (72) non-sworn staff over a three-year period to work in the Jail in order to reach the minimum staffing levels required to safely operate the Jail without employing mandatory overtime, these positions shall be devoted solely to staffing the Jail, and the Sheriff shall certify annually that these positions are used solely for the Jail;<sup>6</sup>*

**Finding:        Partial Compliance**

### **Assessment:<sup>7</sup>**

The County continues to report a commitment to increasing staff in custody. The County showed good progress initially in hiring but has slowed during this rating period. As reflected in the prior report, the County has established all but eight (8) positions as authorized to fill to meet this provision and has a three (3) year period from the date of the Settlement Agreement to fill custody vacancies. However, Custody has slightly fewer staff working during this monitoring period than the prior report and has six fewer months to meet the mandates of the provision. Based on the bi-weekly staffing report ending June 10, 2023, it

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<sup>4</sup> All recommendations that begin with an asterisk were noted in prior report.

<sup>5</sup> The Joint Experts and/or the National Institute of Corrections (NIC) can assist.

<sup>6</sup> Note due to the complexity of this provision, the provision has been separated into five (5) subsections with the Finding documented below Provision (201)(1) and the Recommendations below in Provision (201)(5)

<sup>7</sup> These findings are specific to custody positions as mental health staffing analysis will be conducted by the Mental Health Expert.

appears there are three (3) more sworn (badge) and five (-5) fewer non-sworn (non-badge) staff actively working in the jail (on-site) at the end of this reporting period than six months.

**Bi-Weekly Staffing Report  
Ending June 10, 2023**

	March-April 4, 2020	November 27- December 10, 2022	May 28, 2023 – June 10, 2023	Change from July 2020	Change from December 2022
Badge Positions Authorized	404	656	656	252	0
Non-Badge Positions Authorized	211	282	285	74	3
Badge On-Site	278	384	387	105	3
Non-Badge On-Site	182	215	210	28	-5
Background Investigators	4	11 <sup>8</sup>	11.5 <sup>9</sup>	7.5	.5

During the last rating period, the County was encouraged to demonstrate the reconciliation of the custody positions on the Bi-weekly staffing reports with actual staff allocation to working posts in the jails. During this rating period the County provided documentation demonstrating that positions reflected on the Bi-weekly staffing report are allocated to posts in the jail through a position reconciliation effect with the Custody Expert. A similar reconciliation will occur every six months in conjunction with future reports to confirm staff assigned to the jails have not been redirected as required by the Settlement Agreement.

It is recognized that the County is actively recruiting and continues to increase background staff to expedite the hiring process but has made no gains this review period. At this rate, the County is at risk of missing the three (3) year time frame associated with the Provision. However, it is conceivable that hiring efforts can certainly increase assuming applicants are applying. The challenges facing law enforcement locally and nationally are making recruitment and retention of staff in Alameda and across the nation increasingly difficult. As a result, the County must expand efforts to onboard new staff, evaluate all existing custody positions to determine if the function is a peace officer function and reconsider previously held notions about how to staff and manage the jails. There has been a hesitancy to even pilot or explore the use of Custody Deputies to help fill the vacancies, an area that seems unreasonable based on the challenges facing the County. The Sheriff must also make difficult decisions about non-custody or non-county required operations in the Sheriff's Department to determine if those functions should be curtailed until such time that hiring can improve.

*(201)(2) cease the practice of carrying out-of-division vacancies in the Detentions & Corrections division;*

As reported previously, the County provided a significant amount of documentation reflecting which positions and staff were assigned to Custody. The County also provided post assignment rosters and daily schedules to allow for an audit to determine whether the staff allocated to Custody are actually working in custody as well as to determine if long term sick employees from other divisions have been placed in

<sup>8</sup> Backgrounds consists of eight (8) regular staff and six (6) retired annuitants working part time (.50 position).

<sup>9</sup> Backgrounds consists of eight (8) regular staff and seven (7) retired annuitants working part time (.50 position).



custody positions. Based on a review of position control reports, assignment rosters and daily schedules, there is no evidence to suggest that division vacancies are being carried out in the Detentions and Corrections division. This area will be monitored every six months to ensure on-going compliance.

*(201)(3) establish and implement a Compliance Unit consisting of at least one sergeant, two lieutenants, and one captain, to oversee the following subject areas: ADA, Grievance and Appeals, the Prison Rape Elimination Act, revisions to and implementation of updated policies and procedures, Litigation Compliance/Internal Compliance including COVID-19 related issues, and Multi-Service Deputies;*

The County continues to maintain a Compliance Unit, which is comprised of one (1) captain, one (1) lieutenant, two (2) sergeants and two (2) sheriff technicians. The Compliance Unit's overall staffing exceeds the provision while it is recognized that it has one less lieutenant, the unit has one additional sergeant and two additional technicians. The Compliance Unit has been involved in implementation of the agreement, including updating policies and training as well as beginning the process of auditing out-of-cell time. The Compliance Unit will require additional analytical positions for full scale compliance monitoring, and it is recognized the pace of change in updating policies, procedures, lesson plans, etc. has been hampered by the overall size of the unit. The County is complying in concept with this Provision, but the requirements of the provision are less than the true need of the unit.

*(201)(4) provide an annual written certification, each year from the Effective Date, to be sent to Class Counsel pursuant to the Protective Order, by the Sheriff certifying the total number of authorized positions for the Jail, including a breakdown by rank and duties, and the total number of positions filled on an average basis over the past calendar year, including an explanation for any vacancies lasting longer than ninety (90) days; and*

The County submitted their certification on March 7, 2023, and the certification documentation mirrored the findings of the reconciliation of staff assigned to the jails and those working in the jails. The County complied with this subsection of the provision in this rating period.

*(201)(5) within six (6) months from the Effective Date, creating a plan to transition to a direct supervision staffing model for all Restrictive Housing Units and Therapeutic Housing Units. The Compliance Captain will be strongly encouraged to serve a minimum assignment of three (3) years.*

There has been no significant change in this subsection of the provision since the last report associated with custody staffing levels to assist with the establishment of a direct supervision model. However, the construction of the deputy workstation is in the design phase (see Provision 414 for additional information). The establishment of the workstation will allow the deputies the ability to work in an area with direct observation of the pods in many of the units. However, as mentioned in the previous report, direct supervision models can be staff intensive, and ensuring sufficient and consistent staff will be complicated until staffing levels raise, or population reduces to allow for the allocation of sufficient staff can to the units to implement a true direct supervision model. The fact that roughly half of the deputies are on overtime is counterintuitive to a direct supervision model, where stable and constantly available staff work in an environment of mutual trust and respect due to consistency and familiarity.

As referenced in the previous report, the County must continue to focus on hiring in this next rating period. However, it is reasonable to target the THUs to stabilize the assigned staff and minimize the overtime in the units while beginning to learn the tenants of direct supervision. This was recommended in the prior report and during the tour in June 2023, the staff working in the THUs and restricted housing unit reported they are generally assigned together in the unit, even if they are on overtime. This is a good approach and should be coupled with specialized training as discussed further in the report.

## Recommendations:

1. \*Continue with hiring plan and utilization of retired annuitants and overtime to fill vacant posts.<sup>10</sup>
2. \*Continue to retain Background Unit personnel and augment with retired annuitants as workload dictates.
3. \*Continue with aggressive recruitment and retention strategies.
4. \*If meeting hiring goals remains elusive, evaluate viability of some percentage of sworn personnel to be hired under Penal Code sections 830.2, 830.5, *et seq.* to be authorized to work only in custodial functions, including custody transportation.
  - a. Continue the process of retaining supervisors in custody, rather than transferring to patrol, to allow for consistency and skill development for the sergeants.
5. \*Review workload of deputy personnel to determine if any of existing deputy assignments can be effectively performed by non-sworn staff.
6. Identify deputy posts that are best filled by regular staff, keeping reliance on overtime in higher risk units to a lower percentage than the medium and low risk units.

*(202) Defendants have created a dedicated Behavioral Health Access Team ("BHAT"). Custody staff assigned to the BHAT shall be strongly encouraged to serve at least a three (3) year assignment to provide for consistency and to maximize the benefit of the training and expertise of the Custody staff assigned to this unit. The BHAT shall directly work with AFBH to facilitate: (a) clinical interactions in individual and group settings, (b) assist in facilitating evaluations in the Intake, Transfer, and Release Unit, and (c) group programs. Deputies assigned to the BHAT shall be provided with comprehensive Crisis Intervention/Behavioral Health training developed in coordination with AFBH regarding working with Behavioral Health Clients, including training on de-escalation techniques, problem solving, and particular issues that may be raised when interacting with Behavioral Health Clients. The duration and topics for the training shall be mutually agreed upon by the Parties within sixty (60) days of the Effective Date of the Consent Decree and may be combined with the trainings of all Staff to be conducted pursuant to Section IV(A). Deputies assigned to the BHAT will complete this training prior to beginning their BHAT assignment. Current BHAT deputies shall further receive an annual refresher training on the topics, the duration of which shall be mutually agreed upon by the Parties within sixty (60) days of the Effective Date.*

**Finding:        Partial Compliance**

## Assessment:

The County has established and maintained a BHAT program. The County began the program with three (3) assigned deputies and has been only able to fill two (2) deputies during the majority of this rating period. In reviewing the BHAT daily report for the period of January – June 2023, it appears that BHAT deputies were generally available except weekends and holidays with the exception of three days.<sup>11</sup> It is believed that the County intends to increase the BHAT team to five deputies in the next monitoring period, which is a positive step forward.

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<sup>10</sup> It is noted that retired annuitants are not currently utilized to work in housing units but do assist with transportation, which lessens the impact on the redirection of housing unit staff and involuntary overtime. The County is encouraged to consider the use of retired annuitants in housing units as well if that would assist with the vacancy challenges.

<sup>11</sup> 2023 Dates no BHAT – January 20, March 30-31.

In reviewing BHAT deputy statistics from 2022 to June 2023, it appears the average number of monthly escorts dropped from 308 in 2022 to 269 escorts in the first six months of 2023, representing a 13 percent reduction. This reduction should not be taken to assume there has been an overall reduction in mental health contacts as the BHAT deputies support the housing officers, who also assist with escorts for clinical care. Statistics concerning overall access to behavioral health are addressed in the Mental Health Expert's report. Her findings can be reviewed in her report, specifically Provisions 200, 204, 704 and 726.<sup>12</sup>

### **BHAT Monthly Escort Statistics**

**January-June 2023**

	<b>Completed Escorts</b>	<b>Refused Escorts</b>	<b>Tele-Psych Appts</b>	<b>% Appts Refused</b>	<b>% Tele-Psych</b>
2022 Average	308	36	90	11%	27%
JAN	265	26	14	10%	58%
FEB	240	25	26	10%	10%
MAR	256	41	23	9%	8%
April	311	43	N/A	9%	N/A
May	262	46	N/A	9%	N/A
June	306	44	N/A	9%	N/A
<b>Q1/Q2 2023</b>	<b>269</b>	<b>38</b>	<b>21</b>	<b>9%</b>	<b>16%</b>
<b>Difference</b>	<b>-13%</b>	<b>5%</b>	<b>N/A</b>	<b>-2%</b>	<b>N/A</b>

In addition to conducting escorts for face-to-face clinical appointments, the BHAT deputies assist with escorts for TeleCare groups and assisted with Tele-Psych consult escorts through March 2023 but no longer perform that function. Additional information concerning TeleCare groups are addressed in the Mental Health Expert's report. As reflected in the prior report, the total number of BHAT deputies required will need to be established commensurate with increases to the Adult Forensic Behavioral Health (AFBH) staffing as well as increases to the number of Therapeutic Housing Units (THU) as additional BHAT deputies will be required as ACSO is able to increase staffing. As a result, this provision is inextricably linked to Provisions 200 and 201.

The Crisis Intervention Training (CIT) for the BHAT deputies is pending final approval from the Joint Experts and Class Counsel. It is anticipated that the CIT training will resume in the next reporting period and the BHAT deputies should be prioritized for that training.

### **Recommendations:**

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<sup>12</sup> Refer to Mental Health Expert Report for additional information.

1. \*Continue tracking metrics for BHAT deputies to determine if the existing cohort is sufficient to meet the needs of the jail system. Ensure the metrics are coordinated with AFBH to ascertain the need if clinical resources are increased.
2. \*Determine how BHAT deputy assignments will interplay in the Therapeutic Housing Unit and other specialized housing units.
3. \*Continue collaborating with the Joint Experts to refine the Advanced CIT training and complete discussions with Parties to present formally approved training to the BHAT deputies.<sup>13</sup>

*(203) ACSO also maintains a team of deputies who are assigned to the clinics (“Clinic Deputies”) to transport incarcerated persons between the housing units and the clinic for medical, dental, and some behavioral health appointments. Further, within six (6) months of the Effective Date, ACSO shall develop a team of five (5) deputies per shift who shall be responsible for emergency, medical, and other off-base transportation for incarcerated persons on an as-needed basis (“Emergency Health Care Access Team”). These deputies shall receive training regarding interacting with Behavioral Health Clients.*

**Finding: Partial Compliance**

**Assessment:**

As mentioned in the last report, the County maintains seven (7) deputies who supervise clinics and assist with escorting IPs from their living units to medical appointments in the clinics. Housing unit deputies also occasionally assist with these escorts. Since the last report, the County has identified 20 posts<sup>14</sup> as identified escort personnel (EHCAT) to assist with off-base emergency transporting as all preplanned off-base medical and hospital coverage and transportation are currently managed by the Transportation Unit. To facilitate the establishment of the EHCAT program, five (5) deputy posts in the jails each shift have been preselected to conduct transport if the situation arises. If called upon, the ECHAT designated deputy will leave their assigned post and assist with the transport. When the transport is complete, the deputy will return to their assigned post. The County memorialized this new program in the *Emergency Medical Inmate Transportation Policy (8.11)*, which was published April 2023.

In reviewing a sample of Daily Schedules, it is noted that the watch commanders began consistently designating EHCATs deputies on the Schedule by early June. In addition, it is noted that the end of shift reports began documenting ECHAT deployments during the same time frame with notations on all end of shift reports occurring with all four teams by June 9, 2023. However, these reports are not standardized, and it is impossible to quantify the overall need based on the manner in which document of the EHCAT’s deputies is occurring, informing that a standardized and measurable reporting mechanism should be incorporated in the end of shift reports to assist with measuring need and compliance.

The County has developed the process to identify and deploy EHCATs deputies and updated the policy to officially establish the protocol. The County is documenting utilization of the EHCATs deputies on the end of shift reports to establish proof of practice. These are all excellent improvements this past rating period. The County has not yet been able to provide additional training to the EHCATs identified deputies but intends to do so following approval and implementation of the updated Crisis Intervention Training (CIT). The staff assigned to EHCATs will rotate, so targeted training for ECHATs designated deputies

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<sup>13</sup> Refer to Provision 773 regarding Crisis Intervention Training (CIT).

<sup>14</sup> This equates to five posts covering the four shifts operated in the jail.

will not be a priority over targeted training for staff assigned to high need units, such as the THU or restricted housing which is appropriate.

Once the EHCATs designated staff are trained in CIT, this provision can reach substantial compliance assuming the protocols established remain in effect.

### **Recommendations:**

1. Finalize the Crisis Intervention Training and begin training staff assigned for EHCAT duties.
2. \*Create a standardized Watch Commander Report for all Teams to assist with establishing the number of staff redirected on a daily basis from the jail for emergency transportation or hospital guarding.

*(402) [Following reconfiguration of recreation space] Individuals who are on “Recreate Alone” status (meaning they cannot recreate with other incarcerated persons) [Step 1] shall be offered at least fourteen (14) hours per week of out-of-cell time, which shall include at least some amount of Structured Time, as set forth below. ACSO shall use best efforts to offer individuals two (2) hours of out-of-cell time per day.<sup>15</sup>*

*(403) [Following reconfiguration of recreation space, Step 1] Defendants shall use best efforts to provide at least five (5) hours per week of Structured Time (which includes therapeutic, educational, substance abuse, self-help, religious or other structured programming), which will count towards the total out-of-cell time. Incarcerated persons may participate in these programs in handcuffs or other appropriate restraints only if necessary to ensure the safety and security of the Jail. If ACSO is unable to meet this requirement, the Parties agree to meet and confer regarding the reasons why and to examine methods of increasing the amount of Structured Time.<sup>16</sup>*

*(405) [Following reconfiguration of recreational space, Step 2 ] Individuals shall be offered at least twenty-one (21) hours per week of out-of-cell time, which shall include at least some amount of Structured Time, as set forth below. ACSO shall use best efforts to offer individuals three (3) hours of out of cell time per day.<sup>17</sup>*

*(407) [Following reconfiguration of recreational space] Defendants shall use best efforts to provide at least eleven (11) hours per week of Structured Time [for the Step 2 population], which will count towards the total out-of-cell time. Incarcerated persons will participate in Structured Time programs in restraints if necessary to ensure the safety and security of the Jail. Incarcerated persons may participate in these programs in handcuffs or other appropriate restraints only if necessary to ensure the safety and security of the Jail. If ACSO is unable to meet this requirement, the Parties agree to meet and confer regarding the reasons why and to examine methods of increasing the amount of Structured Time.<sup>18</sup>*

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<sup>15</sup> This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

<sup>16</sup> This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

<sup>17</sup> This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

<sup>18</sup> This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

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

Refer to the findings in the Second Monitoring Report as this provision is not yet subject to rating.

***Recommendations:***

1. *Refer to Provisions 411, 412 and 414.*

*(411) The above minimum out-of-cell times for individuals placed in Step 1 and Step 2 may not be fully achievable until reconfiguration of the Recreation Space (defined to include all outdoor recreation spaces and any interior space within the housing units that will need to be modified to ensure the provision of out-of-cell time), described below in subsection III(D)(2), is completed. Defendants agree to offer at least the following out-of-cell time minimums for the first three months following the Effective Date: (1) seven (7) hours of out-of-cell time, including structured and un-structured time to Restrictive Housing incarcerated persons on Rec-Alone status (Step 1) per week; and (2) fourteen (14) hours of out-of-cell time, including structured and unstructured time to Restrictive Housing incarcerated persons on Co-Recreation status (Step 2) per week.*

*(412) Beginning on the fourth month after the Effective Date, Defendants agree to offer the following out-of-cell time minimums: (1) ten (10) hours of out-of-cell time, including structured and un-structured time to Restrictive Housing incarcerated persons on Rec-Alone status (Step 1) per week; and (2) seventeen (17) hours of out-of-cell time, including structured and unstructured time to Restrictive Housing incarcerated persons on Co-Recreation status (Step 2) per week.*

***Finding: 411 Superseded by Provision 412 – Partial Compliance***

***412 Partial Compliance***

***Assessment:***

As of June 7, 2022, the requirements for out-of-cell time in restricted housing units are as follows:

Step 1            Ten (10) Hours to include structured and unstructured time.

Step 2            Seventeen (17) Hours to include structured and unstructured time.

The County engaged in a significant effort this reporting period to transition from paper tracking logs for out-of-cell time to the use of the Guardian radio frequency identification device (RFID) system to track both structured and unstructured time. While the deputies were learning the RFID system, the technicians continued to track pod time and yard time on the paper tracking system as a check and balance. The Compliance Unit also engaged in internal tracking and auditing of the Guardian RFID data and has refined the system to the point where future monitoring reports will rely solely on the Compliance Unit reporting with sample auditing of the raw RFID data for validation.

For this reporting period, the Compliance Unit utilized paper logs and the RFID system to report on restricted housing out-of-cell averages. Unfortunately, due to limitations with the RFID system early in implementation, the County was not able to separate out the Step 1 and Step 2 populations accurately, but this has been resolved with updates to the RFID system and the next monitoring report should be able to track the Step 1 and Step 2 restricted housing populations separately.

In the first report, it was believed that the male restricted housing populations were averaging five (5) hours a week of combined dayroom and yard time. In the second report, the sample data reflected that male restricted housing populations were averaging ten (10) hours per week combining the Step 1 and Step 2 populations. In this report, the sample data reflects the Step 1 and Step 2 males are averaging a combined nine (9) hours of dayroom and out-of-cell time. This demonstrates no improvement but the comparison between monitoring periods is impossible due to the dynamic changes in housing units designated as restricted housing and lack of identification of the Step 1 and Step 2 populations throughout the jail system. The analysis is also deceptive as there are pods that are not consistently achieving the 10 hour requirement in Housing Unit 1 as reflected in the table below. As mentioned, this challenge should be resolved for the next monitoring period.

Sample data regarding restricted housing out-of-cell time in the women's unit, Housing Unit 24, reflected the women are averaging slightly over 6 hours per day, combining the Step 1 and Step 2 populations, which requires additional focus by ACSO supervisors and managers. Comparison to 2022 data for restricted housing females is not possible due to inconsistent data collection during that period.<sup>19</sup>

**Out-of-Cell Activity  
Male Restricted Housing Units 1 and 2  
Combined Dayroom and Yard  
Q1/Q2 2023**

<b>Housing Unit 1</b>	<b>01/01/23-01/07/23</b>	<b>01/29/23-02/04/23</b>	<b>02/26/23-03/04/23</b>	<b>04/02/23-04/08/23</b>	<b>04/30/23-05/06/23</b>	<b>05/28/23-06/03/23</b>	<b>Average</b>
<b>A Pod</b>	12:35:00	8:15:00	N/A	17:53:17	19:13:15	12:43:20	14:15:00
<b>B Pod</b>	15:19:30	12:59:05	9:30:00	6:08:00	13:17:36	6:44:53	10:30:00
<b>C Pod</b>	6:16:15	4:49:56	3:53:46	6:41:05	6:16:00	10:21:30	6:30:00
<b>D Pod</b>	5:26:34	5:50:35	3:45:00	8:45:12	4:31:34	6:15:42	5:45:00
<b>E Pod</b>	N/A	20:14:00	14:24:15	4:56:53	4:18:27	6:57:30	10:15:00
<b>F Pod</b>	7:49:05	5:22:12	2:53:05	3:46:20	3:31:33	5:14:30	4:45:00
<b>Average Housing Unit 1</b>							<b>7:00:00</b>
<b>Housing 2</b>	<b>01/01/23-01/07/23</b>	<b>01/29/23-02/04/23</b>	<b>02/26/23-03/04/23</b>	<b>04/02/23-04/08/23</b>	<b>04/30/23-05/06/23</b>	<b>05/28/23-06/03/23</b>	<b>Average</b>
A Pod	6:29:07	10:19:17	7:35:07	19:56:27	10:55:12	12:03:45	11:00:00
<b>Average Restricted Housing Units 1 and 2</b>							<b>9:00:00</b>

<sup>19</sup> The sample data counts only incarcerated persons assigned to a cell for the entire week period.

**Sample Review of Out-of-Cell Tracker  
Female Restricted Housing Units 24  
Combined Dayroom and Yard  
Q1/Q2 2023**

<b>Housing 24</b>	<b>01/01/23- 01/07/23</b>	<b>01/29/23- 02/04/23</b>	<b>02/26/23- 03/04/23</b>	<b>04/02/23- 04/08/23</b>	<b>04/30/23- 05/06/23</b>	<b>05/28/23- 06/03/23</b>	<b>Average</b>
F Pod	5:50:50	7:35:20	5:38:11	6:54:00	6:13:07	4:56:52	<b>6:15:00</b>

In actuality, the County is providing more out-of-cell time than the tables above reflect as the County has not yet begun to track the individualized structured activities for each person in the RH units as the focus during this monitoring period was to implement the RFID system and collect accurate data on dayroom and recreation periods. The County accomplished this goal, and it is anticipated in the next reporting period the County will begin the process of tracking structured activity. Additionally, as anticipated in the last report, the County will also be able to separate the Step 1 and Step 2 populations for the next rating period. It is certainly possible that the County can reach the provision requirements for the Step 2 population and improve the hours for the Step 1 population through more aggressive use of dayrooms and the yard and capturing structured activities.

**Recommendations:**

1. \*Continue to evaluate the population to safely reduce the number of incarcerated persons in administrative separation.<sup>20</sup>
2. \*Safely continue to reduce the number of Step 1 incarcerated persons and continue to allow small group activity with the Step 2 population where safe to do so.
3. Conduct an analysis and workload study for the Housing Unit pods that are struggling to meet the 10- and 17-hour requirements.
4. \*ACSO to work with AFBH and the program staff to develop a standardized daily and weekly activity plan to increase out-of-cell structured programming. This should be documented in a master schedule of activities in the restricted housing units and ensure Sergeants are monitoring and addressing non-compliance with the schedule.
5. \*Expedite the construction projects associated with expanding yard opportunities as noted in Provision 414.
6. \*Seek approvals as necessary to rapidly split the Quasi yards with the proposed installation of temporary bathroom fixtures and a security fence.<sup>21</sup>
7. \*To expand out-of-cell opportunities, evaluate the available space in the unit program spaces, currently not being utilized for groups, even if that requires the procurement of programming chairs/tables. Examples include the dining areas and group units inside the housing units.
8. \*Conduct an internal staffing assessment to determine if sufficient posts have been activated to ensure maximum utilization of existing and easily expanded space and redirect staff, as necessary.
9. \*Update policies, procedures, forms, post orders and training to reflect provision requirements.

<sup>20</sup> Refer to Classification Joint Expert Dr. Austin's Monitoring report.

<sup>21</sup> Likely requires approvals from both the Board of Supervisors and the State of California's Board of State and Community Corrections (BSCC)



*(409) Individuals shall be offered at least twenty-eight (28) hours per week of out-of-cell time, which shall include at least some amount of Structured Time, as set forth below. ACSO shall use best efforts to offer individuals four (4) hours of out of cell time per day.*

*(410) Defendants shall use best efforts to provide at least fourteen (14) hours per week of Structured Time, which will count towards the total out-of-cell time. If ACSO is unable to meet this requirement, the Parties agree to meet and confer regarding the reasons why and to examine methods of increasing the amount of Structured Time.*

**Finding:        Partial Compliance**

**Assessment:**

As reported previously, this provision of the Consent Decree addresses out-of-cell time for incarcerated persons who are able to co-mingle in their housing units, even if only in smaller groups. The County tracks out-of-cell pod time for this population for both dayroom and yard activities primarily in group reports, rather than listing individual persons for the majority of units with a small percentage of complex units tracking at the individual level. The out-of-cell reports for these units have been provided and reviewed. Additionally, incarcerated persons interviewed during the June 2023 tour reflected out of cell time had occurred routinely in these units, while access to the larger yard had improved it was still limited for many units. However, it is also recognized that the ACSO expanded the use of the large recreational yards during this rating period and observations while on tour and utilizing the tracking reports reflects that ACSO is consistently utilizing the minimum and medium security large yards, a significant improvement from prior reports.

The County has improved consistency in documentation on tracking logs for these cohort but the transition to reporting utilizing the Guardian RFID system was not refined due to the focus on the specialized housing units. For this reporting period, paper logs were evaluated, which track only the dayroom and outdoor recreations activities and not the structured activities. The County also provided additional information concerning programming but unfortunately most of the information is not documented in a manner that allows for cross referencing. For example, the programming list which would demonstrate structured activities at the individual level does not list the housing assignment of the participants who attend the Sandy Turner School. The County does provide monthly schedules by housing unit for Religious Services, in-unit programming and library services but does not list the number of hours for such services to assist with calculations. Both of these issues are easily resolvable for future reports.

A review of the out-of-cell tracker for units addressed by these provisions was conducted for the following weeks: January 22 - February 4, 2023; February 26 – March 6, 2023; April 2 - 8, 2023; April 30 - May 6, 2023, and June 4 - June 10, 2023. During the periods reviewed from January-March, the ACSO generally provided approximately 28 hours on average of combined dayroom and recreation in the units covered by this provision but did not routinely exceed that average and struggled in some units to provide 28 hours. However, during the periods of review from April-June 2023, according to the tracking reports provided, the County far exceeded the 28 hours of out-of-cell unstructured activities in all units reviewed. This increase occurred for both in-pod dayroom activities and yard recreation.

If this provision only addressed unstructured out-of-cell activities, the County reached substantial compliance in this rating period. However, to measure structured activities in these units it will be critical that the ACSO collaborate with the Joint Experts during this rating period to agree upon a measurement of the structured activity measure the fourteen (14) hours required per week. Based on tours of the units and

review of available documentation, many units will reach this requirement also but there are several where it is likely the County will need to increase available programming.

The County experienced an average of nine (9) grievances per month in January-June 2023 related to access to out-of-cell time and/or programming but the grievance logs provided do not have a housing assignment on them, so it is difficult to know with certainty which grievances are related to the units addressed by this provision.

It will be the goal to quantify structured and unstructured activities in the impacted units in the next rating period utilizing samples of Guardian RFID data and including housing assignment in various reports and schedules.

**Recommendations:**

1. Work with the Custody Expert to develop a monthly report tracking combined structured and unstructured activities for these units.
2. Update the grievance logs and the monthly program report to include housing assignment.
3. \*Continue to address barriers to yard access, both the large yard and quasi-yards.
4. \*Update associated policies and the incarcerated persons' handbook to list the amount of activity required in these provisions.
5. \*Recommendations from Provisions 411-412 will assist with compliance with this provision.

*(414) Reconfiguration of all Recreation Spaces shall be completed no later than twenty-four (24) months from the Effective Date. The Parties agree to meet and confer within three (3) months of the Effective Date regarding interim timelines for completion of the following: (1) Installation of custody-grade security desks in Step 1 Housing Unit day rooms; (2) Reconfiguration of Quasi-Yard space, including in Step 1 and Step 2 Housing Units; (3) Creation of outdoor recreation space; and (4) any other reconfiguration projects necessary to effectuate the terms of this Consent Decree.*

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

**Assessment:**

As reflected in the last report, the County met with Joint Experts and Class Counsel regarding the plan to design and construct additional recreation spaces, install officer workstations in housing units, reconfigure the Quasi-Yard Space and create confidential interview spaces for clinical encounters. The County also provided a high level summary on the status of those projects during this rating period as described below:

- (1) Installation of custody-grade security desks and observation platforms. Due date August 22, 2023. The project is in the design phase, which should be complete by late 2023. The time associated with procurement of a contractor and construction is contingent on the final approved design.

- (2) Reconfiguration of the Quasi-Yard Space. Due date August 22, 2023. The projects are in the design phase with the anticipation of construction beginning in early 2024 with completion by late 2024. The Quasi-Yards will be completed after the additional outdoor recreation spaces to avoid reducing available out-of-cell opportunities during construction.
- (3) Additional small yard construction projects. Due date August 22, 2023. Same timeline as the Quasi-Yard Space but the new yard capacity will be constructed prior to the reconfiguration of the Quasi-Yards. See (2) above
- (4) Confidential interview spaces. Due date August 22, 2023. Same timeline as the Installation of custody-grade security desks and observation platforms. Completion date to be determined after design is complete.
- (5) Cell softening project to reduce suicide hazards and improve overall cell conditions. Currently in construction with an estimated completion date in late 2023.
- (6) Security Screen Project – Add additional security screening to upper tier of high risk housing units. Completed April 2023.
- (7) Accessibility Upgrade – In Construction. Final Completion Fall 2026. Refer to the ADA Expert Report for additional information.
- (8) Camera Expansion – In Procurement process with construction to begin in late 2023. Final completion estimated late 2026.
- (9) Mental Health Facility (SB 863) – In process of satisfying State requirements. Next steps will be procurement of design/build contractor – anticipated completion Fall 2023. Total completion is estimated to be early 2028.

In addition to providing an update to the various projects underway, the County also piloted utilizing the visiting booths for confidential interviews as a temporary solution. While not ideal or designated for all units required, it appears the use of visiting booths for clinical contacts will continue pending completion of the confidential interview spaces.

Status updates to all projects will be required for the next monitoring report.

**Recommendations:**

1. \*The ACSO, AFBH and GSA must develop a comprehensive and deliverable project plan to meet compliance with this provision.
2. \*The County should evaluate its ability to expedite construction through waivers, sole source and other commonly used strategies for complete priority and emergency projects.
3. The project overview should be updated and provided to Joint Experts and Class Counsel quarterly.

*(415) Individuals engaged in Out-of-Cell Activities, including, but not limited to, pod time, structured and unstructured time (including all out-of-cell programming), education, work, vocational training, and yard time (including quasi yard time), shall be provided reasonable access to bathroom facilities as needed.*

**Finding:**        **Substantial Compliance**

**Assessment:**

The County updated the Housing Officer post orders (10.05) and the Recreation and Program Policy (18.12) to reflect this requirement. According to the grievance logs for January – June 2023 there was one grievance filed related to bathroom access but there were no concerns raised by incarcerated persons interviewed during this tour period. Staff interviewed all stated they allow incarcerated persons to utilize the restroom during recreation, out-of-cell time and during work and program activities.

The County is considered in substantial compliance with this provision. Assuming continued compliance for one additional rating period, the recommendation in the next report should be to discontinue monitoring.

**Recommendations:**

1. Continue to comply with provision and monitor grievances for any issues that may arise.

*(417) These minimum requirements for out-of-cell time are subject to exceptions including, but not limited to, disturbances that require staffing to be re-directed to other areas of the Jail on an emergency and temporary basis, healthcare emergencies, natural disasters, and any other emergencies that restrict movement and out-of-cell time of incarcerated persons to preserve the safety and security of incarcerated persons and staff. Any limits on out-of-cell time due to the aforementioned exceptions shall be documented (to include the reason and length of the time limit), and the limits will last only as long as necessary to address the underlying reason for the exception and shall be approved and reviewed by the Watch Commander. Individuals in Restrictive Housing who are unable to safely participate in out-of-cell time because they are violent, combative, and/or assaultive are not subject to the minimum out-of-cell time requirements described in this section for such period of time as they are determined to be unsafe outside of their cell. This determination shall be documented and approved by the Restrictive Housing Committee and shall be revisited on a weekly basis. Individuals engaged in Out-of-Cell Activities, including, but not limited to, pod time, structured and unstructured time (including all out-of-cell programming), education, work, vocational training, and yard time (including quasi yard time), shall be provided reasonable access to bathroom facilities as needed.*

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

**Assessment:**

The Recreational Policy (18.12) has been updated to require documentation when recreation is cancelled but the Special Management Inmates Policy (9.07) requires update to articulate the policy when an individual incarcerated person is being denied access to recreation to incorporate the requirements of this provision into policy. Overall, the progress on providing proof of practice on this provision stalled during this monitoring period due primarily to the implementation of the Guardian RFID tracking system. The roll-out of the RFID program has taken an incredible amount of time, training and monitoring with routine

adjustments to address tracking challenges that have become evident from the utilization of the system. As mentioned during the last report, the County has assigned committed team members from the Compliance Unit to help identify training and process improvement needs regarding tracking out-of-cell time and during this rating period, the team has refined the tracking systems to help monitor compliance and identify units that require supervisory and managerial focus.

To demonstrate compliance with ensuring the Watch Commander was aware of an approved yard closures, in the second monitoring period the County provided a report attached to the Watch Commander's end of shift report reflecting yard access closures. However, that attachment was not provided for review during this period, but it should be noted that the report was not considered particularly helpful as it lacked detail and explanation as required by this provision.

While the attached report has not been provided for review, it is noted that occasionally when reviewing the sample Watch Commander's end of shift reports for the period of January – June 2023, there is a note concerning a particular unit or entire facility not permitted to operate yard for the shift and the reason for the closure. However, this process has not been standardized in the Watch Commander's end of shift or any other report to comply with this provision. There are too many discrepancies in cross referencing unit out-of-cell tracking reports where no yard is offered against the as a random review of out-of-cell logs reflected limited or no out-of-cell activity against the Watch Commander's end of shift report where there is no notation about the lack of out-of-cell activity or yard access. In the next reporting period, a sample analysis will be conducted to cross reference the daily out-of-cell reports against the Watch Commander's end of shift report (or alternative approved documentation reflecting out-of-cell restrictions) to determine if there is documentation on the Watch Commander's report when it is clear that was no utilization or an underutilization of out-of-cell time for a particular unit.

To date, there has been no notification to the Joint Experts of an incarcerated person in restricted housing who has been subject to an absolute restriction of out-of-cell activity based on the incarcerated person's inability to safely program outside of their cell. Unfortunately, the documentation concerning out-of-cell activity has not been refined to the point where the deputies are documenting not allowing an incarcerated person out of their cell on a particular shift due to acting out behaviors, which does occur, so it is unknown if the lack of out-of-cell time on any given shift was due to lack of staffing, or an individual incarcerated person being restricted from exiting their cell.

It is recognized that the County has placed individuals on modified out-of-cell activity due to multiple staff assaults when out of their cells and the modified program designs are discussed in the Restricted Housing Committee. These program modifications may require use of restraints while out-of-cell in the pod to allow staff to safely enter the area to conduct security checks or other work requirements and/or utilization of a shower with a security door that is available in the intake area.<sup>22</sup> These plans provide for unrestrained recreation on the quasi-yard, an areas staff do not have to access to conduct routine security checks.

Access to bathrooms while in programming has been facilitated and is discussed further in Provision 415.

### **Recommendations:**

1. The Watch Commanders should be reminded of their responsibility to document pod/unit out-of-cell restrictions and reason for the restriction in a standardized and comprehensive report. This document should be attached to the end of shift report and provided to the Joint Experts for monitoring.

2. \*Update all relevant policies, post orders, forms and training to comply with this provision.
3. \*Update Restrictive Housing Committee (RHC) policies and forms to comply with this provision.
  - a. Work with other Joint Experts to ensure that the RHC has a process for referral of routine refusals and ensuring documentation of clinical interventions is occurring and tracked.
4. \*Create master yard and dayroom schedule and create system for daily monitoring of compliance with mandatory documentation when there is significant deviation from the master schedule.
  - a. Include documentation in Watch Commander End of Shift or other location to ensure standardization in documenting deviation.

*(418) In order to properly track out-of-cell time, Defendants shall replace the prior practice of using paper logs with an electronic information technology system to allow for comprehensive tracking of out-of-cell time and refusals within twelve (12) months of the Effective Date. In the interim, Defendants shall develop and implement a process for tracking out-of-cell time in the restrictive housing units including a paper for each person incarcerated on the unit showing out-of-cell time including program hours, showers, dayroom, outdoor recreation times, and visiting for a period of no less than one week at a time. These logs, and the information technology system once implemented, are intended to assist ACSO and AFBH Staff in evaluating socialization needs and identifying persons who are isolating or at risk of mental health decompensation. ACSO Supervisors shall also review programming and out-of-cell logs in the administrative separation units and any other Restrictive Housing Units and Therapeutic Housing Units to determine whether any incarcerated persons are not being afforded out-of-cell time opportunities pursuant to policy or whether routine refusals are occurring. Defendants shall further update their policies and training to include a requirement that staff must attempt more than once to meaningfully communicate the importance of out-of-cell time where individuals initially refuse to come out of their cells.*

**Finding:           Partial Compliance**

**Assessment:**

As mentioned, the County procured and implemented an RFID system to track and monitor out-of-cell time. During this rating period, the County focused on improving staff training on RFID policy compliance and engaging in internal monitoring. While the deputies became more familiar with the RFID system, the control booth technicians assumed the role of completing paper tracking of unstructured activity, which proved critical for periods when a deputy failed to utilize the RFID system, particularly to track returning an incarcerated person to their cell following pod time.

During this rating period, the County's Compliance Unit began to use the RFID data to create trend reports and identify units appearing to struggle with compliance. Those trend reports should be refined in the next monitoring period to allow for supervisory and managerial review to address barriers to compliance and target support and resources, as necessary. The next reporting period should also have a mechanism to ensure proof of practice regarding referral for behavioral health for those not existing their cells for three (3) consecutive days.

The data for the first six months of 2023 documented in Provisions 411 and 412 are taken from a report generated by the Compliance Unit and validated utilizing the paper logs maintained by the Control Booth Technicians. The data is considered dependable by the Custody Expert due to cross review of paper audits and the number of hours reported mirroring visual observation and feedback from incarcerated persons.

The County has demonstrated meaningful progress with real time and transparent tracking for out-of-cell time. The challenge going forward is ensuring the deputies are tracking all movement via the RFID to allow for the discontinuation of the paper tracking logs. The County has also improved the RFID system to differentiate the Step 1 and Step 2 populations as previously reported.

The County updated the recreational policy but is at the point where the policies and procedures should be updated to reflect the target goals for out-of-cell recreation time. The Housing Deputy and Sergeant Post orders have been updated to reflect the use of the RFID system, but the policies do not direct the staff regarding the target goal of unstructured activity times for both shifts and that should occur in the next revision.

### **Recommendations:**

1. \*Continue the RFID refinement and training program.
2. \*Begin to draft and update relevant policies, post orders and training to reflect the out-of-cell requirements for each category of incarcerated individuals.
  - a. AFBH will also require a policy for clinicians' role when referrals are received, including timelines for evaluation and support.
3. Establish a formal process to conduct supervisory and managerial reviews of the tracking reports prepared by the Compliance Unit.

*(419) Defendants shall also develop and implement policies requiring ACSO Staff to notify supervisors and AFBH Staff when incarcerated persons are, on a repeated basis, refusing to come out of their cells, refusing to shower, or are clearly neglecting other basic care and grooming and where they visually appear to be depressed, withdrawn or delusional. Once notified, AFBH Staff shall follow-up with the incarcerated person within twenty-four (24) hours of receiving the initial notification or change in status. Defendants shall also ensure there is sufficient supervisory presence in all housing units and that supervisors play a pronounced role in monitoring out-of-cell and program activities and are visibly present in the units.*

### **Finding: Partial Compliance**

The County has not yet finalized associated ACSO and AFBH policies to comply with this provision but continues to demonstrate a commitment to compliance through the THU pilot programs and consistent presence of sergeants in THUs and restricted housing units. The Behavioral Health Clients and Therapeutic Housing Policy – (9.04) is in the review process and anticipated to be complete by the next rating period.

During tours of the facility, the unit sergeants are present on the restricted housing units and THUs and all sergeants interviewed are the regular sergeants assigned to the units. The deputies report they are able to receive the support of a sergeant quickly as needed. The deputies also report that they notify AFBH if an incarcerated person is isolating or struggling with maintaining their activities of daily living (ADL), such as showering, eating and maintaining a clean cell, but do not always receive support immediately due to AFBH staff unavailability. The deputies in the THU report they advise on-site AFBH staff, and the staff assigned to restricted housing units when an incarcerated person appears decompensating, but the deputies vary in the method they report notifying AFBH and documenting that notification. It is important that the County refine and standardize the process for notification to ensure consistency and ease of internal and external monitoring.



AFBH staff in the THUs report they respond the day of notification and those assigned to the restricted housing units varied in their response regarding next steps when notified of an incarcerated person who is isolating and neglecting ADLs. Until such time that AFBH has a formal process of notification, it will be difficult for the Mental Health Expert to monitor the required 24 hour response time. However, in the next rating period, the Custody Expert will provide the Mental Health Expert examples of incarcerated persons not existing their cells for three (3) consecutive days pursuant to the out-of-cell logs and the Joint Experts will evaluate documentation of custody notification to AFBH and AFBH response.

**Recommendations:**

1. \*The County should collaborate with the Joint Experts to formalize the notification process for repeated refusals with follow-up by AFBH.
  - a. \*The process should be formalized in ACSO and AFBH policy, with a formal notification process and documentation from AFBH on the plan to assist with increasing socialization.
2. \*The Compliance Unit should develop an auditing process to evaluate compliance and staff should receive documented training on the expectation.
3. \*Policies, forms, post orders and training should be updated as appropriate.

*(420) Defendants shall provide Class Counsel their plan to reconfigure the Recreation Space within six (6) months of the Effective Date and meet and confer with Class Counsel regarding the plan and any additional methods of expediting construction and/or maximizing out-of-cell time in the interim, in accordance with the terms of this Consent Decree. The plan shall include a timeline for reconfiguring the large yard within twenty-four (24) months of the Effective Date. Due to the urgency of reconfiguring the Recreation Space, the County shall take all steps necessary to expedite all planning and construction activities. Reconfiguration of the Recreation Space shall include, but not be limited to, dividing Recreation Space to allow for multiple incarcerated persons to recreate simultaneously, increasing lighting for evening recreation, and using recreational therapists or other clinicians for Behavioral Health Clients. In the absence of conditions that would preclude outdoor access, including, but not limited to, severe or unsafe inclement weather, disturbances (as defined above), healthcare emergencies, natural disasters, and any other emergencies that restrict movement and out-of-cell time of incarcerated persons to preserve the safety and security of incarcerated persons and staff, all incarcerated persons shall be provided access to outdoor recreation. Any limits on out-of-cell time due the aforementioned exceptions will last only as long as necessary to address the underlying reason for the exception and shall be documented and approved by the Watch Commander.*

**Finding:**        *Refer to Provisions 414 and 417 for assessment and recommendations*

**Assessment:**

The reconfiguration of recreation space is addressed in Provision 414. Cancellation of yard and the role of the watch commander is addressed in Provision 417. Further assessments and recommendations will be included when the reconfiguration of the recreations spaces is more viable.



*(421) Outdoor recreation time is included within the minimum amount of out-of-cell time listed above. Defendants shall implement policies and procedures to ensure that outdoor recreation time is maximized to the extent feasible for all people including those in restrictive housing.*

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

**Assessment:**

The County has shown progress during this reporting period, particularly in the general population units utilization of the large recreational spaces. In March 2023, the County updated Recreational and Inmate Programming Policy 18.12 to reflect increased utilization of the main recreational yards. Additionally, the Housing Officer posts orders were updated to remind the deputies of their responsibility to adhere to out-of-cell expectations, including use of the quasi yards.

Unlike prior tours, during the March and June 2023 on-site visits it was observed the use of the outdoor recreation spaces had improved. For example, most quasi-yards had at least one person exercising or had just finished an exercise period and the minimum and medium security large yards were operational. This had not been observed on any prior tours. However, until such time the County can address critical staffing shortages, the full utilization of existing spaces will prove allusive, and the expansion of spaces will be at risk as it will take additional staff to supervise the expansion and provide escort to the new yard spaces.

The County is encouraged to continue to develop yard schedules that demonstrate the maximum utilization of all recreation spaces. The Compliance Unit should begin to utilize the RFID data to track adherence to the yard schedules and any barriers should be addressed in weekly or monthly management reviews.

**Recommendations:**

1. \*Conduct an in-depth evaluation of all available outdoor recreation spaces and create a master schedule that can be implemented and monitored daily by supervisors.
2. \*Require the Watch Commander and Sergeants to monitor daily utilization and address any barriers to yard access every shift.
3. \*Create a formal report to the Compliance Unit documenting the reason the outdoor recreation area was not used and all efforts to return to normal operations.
4. \*Provide training and corrective follow-up to ensure compliance.

*(422) Defendants shall provide programming within the facility consistent with classification level, including providing access to the Sandy Turner Education Center and Transition Center services for Behavioral Health Clients, as a means of suicide/self-harm prevention and in order to provide equal access to incarcerated persons with disabilities. AFBH will designate an individual to coordinate identification and implementation of internal and external group resources and partnerships. In evaluating current and future programming and work opportunities for incarcerated persons, Defendants shall evaluate worker assignments for incarcerated individuals to determine whether additional work opportunities could be created to assist with facility improvements and programming, such as creating programs for deep cleaning, student tutor/merit masters, and access to program support aides. Defendants shall further establish a daily tracking system for programs provided and incarcerated individuals who attended.*

*(423) When appropriate and consistent with individual clinical input, Behavioral Health Clients shall have equal access and opportunity to participate in jail programming, work opportunities, and education programming for which they are qualified. Similarly, Behavioral Health Clients shall further receive, at minimum, privileges consistent with their classification level regardless of where they are housed. Defendants shall review and update any policies and practices related to program eligibility to maximize the number of persons eligible for programming. Defendants shall consult with various incarcerated person services providers, including educational providers, faith-based providers, and mental health providers, to evaluate and expand program offerings throughout the Jail. ACBH, including AFBH, shall continue to cooperate with the Alameda County Behavioral Mental Health Court and to seek options for alternatives to custody through community-based organizations and treatment providers.*

**Finding:        Partial Compliance**

**Assessment:**

The County has not yet begun the update of policies associated with these two provisions. Updates to the following policies should be considered: Intro to Inmate Services (18.01), Inmate Programs and Services (18.02), Educational Program Planning (18.09) and Vocational Training Programs (18.10). Relevant post orders should also be updated to correlate with any changes to policies.

Despite not having updated the policies, the County continues to afford behavioral health incarcerated persons access to programming available in their assigned housing units, at the Sandy Turner Education Center, in the Chapel, in the Transition Center and through distance learning. The County continues to track daily attendance to programming and identifies the behavioral health population on the monthly tracking reports. It is hopeful that the County can ultimately rely on reports generated from the Guardian RFID system to monitoring but if that is not possible, it is anticipated that the Guardian RFID system can be used to confirm attendance in random samples during the next rating period, but the housing location of the participants needs to be included in the monthly program reports.

While the monthly reports are informative, there are concerns of potential double entries occurring, so a quality review of the monthly reports is critical for the Program Services Unit and if a student takes two different classes on one day offered in the same location, the tracking system should document this to avoid the perception of double counting. The Joint Experts will work with the Program Services Unit in the next reporting period to refine the monthly reports.

Based on a small snapshot in November of 2022, the Second Monitoring report documented that it appeared for a sample week in November 2022 there was a total of 804 program slots during the week with 48% of those slots being occupied by incarcerated persons listed on the behavioral health caseload. The review in November 2022 reflected there was no apparent disparity in behavioral health incarcerated persons receiving services off of the housing unit in the Sandy Turner Educational Center.

For this report, a week from each month was evaluated to determine if it appeared a proportionate number of behavioral health incarcerated persons were assigned to programming and if that programming was available outside of the housing unit. The following chart reflects the findings based on the monthly programs reports:

**Program Participation  
January – June 2023  
One Week Sample**

	<b>Housing Unit Programming</b>			<b>Off Unit Programming</b>			<b>Distance Learning</b>			<b>Transition Center</b>			<b>Total</b>		
<b>2023</b>	<b>All</b>	<b>BHI</b>	<b>%</b>	<b>All</b>	<b>BHI</b>	<b>%</b>	<b>All</b>	<b>BHI</b>	<b>%</b>	<b>All</b>	<b>BHI</b>	<b>%</b>	<b>All</b>	<b>BHI</b>	<b>%</b>
<b>Jan 9-15</b>	497	233	47%	318	138	43%	129	39	30%	15	7	47%	959	417	43%
<b>March 6-12</b>	387	39	10%	300	21	7%	32	4	13%	66	3	5%	785	67	9%
<b>April 10-16</b>	380	223	59%	352	257	73%	103	59	57%	28	15	54%	863	554	64%
<b>May 8- 14</b>	485	293	60%	383	323	84%	81	47	58%	11	5	45%	960	668	70%
<b>June 5- 11</b>	409	235	57%	378	302	80%	62	39	63%	0	0	0%	849	576	68%
<b>Average</b>	<b>360</b>	<b>171</b>	<b>39%</b>	<b>289</b>	<b>174</b>	<b>48%</b>	<b>68</b>	<b>31</b>	<b>37%</b>	<b>20</b>	<b>5</b>	<b>25%</b>	<b>736</b>	<b>380</b>	<b>42%</b>

Based on this review, it appears that 48 percent of the program day slots occurring off of the housing unit were filled by incarcerated persons receiving behavioral health services. It also appears that 42 percent of all program slots have been occupied by incarcerated persons on the behavioral health caseload. The one area that warrants additional review is the Transition Center, where only behavioral health incarcerated persons utilized 25 percent of the slots. Additionally, it is important that for future reports and to demonstrate substantial compliance that the County, Joint Experts and Counsel all trust that the monthly reports are accurate.

The Joint Experts and County representatives did discuss the Alameda County Behavioral Health Court and alternatives to custody programming during on-site meetings in March and June 2023, but data has not been made available to better understand the Court's activities and the impact in the jails. Further conversations will need to occur with the county justice partners in an attempt to report on the status.

The County has made good strides in ensuring equal access to programs and there is much to build upon. As the County updates the associated policies, it will create the opportunity to address other aspects of the provisions, such as AFBH's role in assisting with the provision of programming and seeking additional resources. The policy update should also address identification and expansion of job opportunities for incarcerated person on the behavioral health caseload who are approved by their clinician to work. While efforts are reportedly underway to increase outside program provision, collaboration is required between AFBH and ACSO to streamline the background clearance process to support those efforts.

It is anticipated for the next reporting period that these two provisions can be separated and addressed individually.

**Recommendations:**

1. \*Continue the refinement of program tracking and include the housing locations where those programs are offered or the location where the IP participants reside.
2. \*Work with the Joint Experts to standardize monthly reports for all programming and work assignments occurring in the jails.
3. \*Begin to highlight or identify the workers in the monthly worker report who are assigned to the behavioral health caseload.

4. \*The Compliance Unit should begin the process of evaluating monthly trends regarding programs offered and work assignments afforded to show growth over time.
5. \*The County to begin to report on alternatives to custody efforts for the behavioral health populations.
6. \*Previous recommendations from the First Monitoring Report are noted but deferred to focus on refining data and baselining programming.
7. Update associated policies, post orders, training and orientation information to comply with provisions.

*(424) Defendants shall ensure there is adequate space for program offerings including evaluating whether additional classroom capacity can be created through modular construction or other means, such as relocating administrative space.*

**Finding: Partial Compliance**

**Assessment:**

The County is not yet in a position to conduct a comprehensive space analysis. It is noted that current spaces in the Sandy Turner Center and the Housing Unit group rooms are underutilized during the day, evenings and weekends due to a lack of staffing to provide services and security coverage.

Additionally, the County is reporting progress on the construction of a new Mental Health Facility with the jail complex, which will have clinical office space and space for groups. That facility has not yet begun the design phase, slated for 2025, and that design plan will inform any other space reconfigurations or expansion necessary in the jail complex.

At this point, the County has adequate space based on current staffing and services and additional space analysis will occur during the design phase for the new Mental Health Facility. The County will definitely need to expand utilization of existing spaces to meet the Settlement Agreement, and further analysis will occur as the mental health program is expanded and the Mental Health Facility begins the design phase process.

**Recommendations:**

1. \*Continue to refine the daily program offering report the County developed since the last reporting period. The report reflects the location for the programming, which is excellent.
2. \*Conduct an existing space assessment to determine if the opportunity exists to expand programming in underutilized spaces, such as the classroom space in the various housing units.

*(500) Defendants shall work with the agreed-upon joint subject matter expert, as discussed in Section IV(A), to develop and implement an updated written use-of-force policy, and any necessary forms as well as associated training materials, for those persons incarcerated at the Jail, within six (6) months of the Effective Date. The updated use-of-force policy shall address the issues identified in the McDonald expert report for all uses of force both planned and un-planned. Under that policy, use of force shall only be authorized in the type, amount, manner, and circumstances authorized by that policy. When force must be used, ACSO staff shall only use that amount of force that is objectively reasonable and appears necessary to control the situation or stop the threat, and the force must be in the service of a legitimate correctional objective. Staff shall be trained on any and all updated policies and forms as detailed in Section IV(A) and Defendants shall consult with joint expert Terri McDonald on the content and provider of de-escalation*

*training to address and reduce ACSO staff using force, to include striking and kneeling during use-of-force scenarios at the Jail.*

*(501) The use-of-force policy shall include at least the following components: (1) reiterate supervisory and managerial responsibility to address tactical mistakes or unnecessary or excessive force in a steadfast and unapologetic manner; (2) require consistent use of the ACSO Personnel Early Intervention System ("PEIS"), which has the capability to track use of force and prevalence rates as one of the metrics evaluated in a use of force review; (3) require clinical engagement by AFBH where appropriate in developing behavior plans with incarcerated individuals who are engaged in multiple force incidents; (4) be clear that incarcerated individuals shall not be hit on the head or face nor kneed or kicked absent extenuating circumstances where there is a deadly threat or assaultive behavior, defined consistent with Section 240 of the California Penal Code as intent coupled with the present ability to inflict violent injury; (5) address the pre-planned use of force on individuals with known Psychiatric Disabilities, including coordinating with AFBH on de-escalation measures, such as use of cooling down periods or other appropriate methods, to avoid or otherwise limit the use of force as much as possible; and (6) training on best practices for staff who conduct use of force reviews.*

**Finding:        Partial Compliance**

**Assessment:**

As reflected in the prior report, the County updated the emergent use of force policy for custody staff (21.01.01) and provided initial training to the staff on that policy. However, the County has yet not completed the pre-planned force or Controlled Use of Force Policy (21.01.02) but has presented a completed draft and check-off sheet to the Joint Experts and Class Counsel for feedback, and it anticipated that policy will be implemented with the onset of training during the next rating period.

The County intends to update and integrate training on use of force to include aspects of both the Joint Experts and Class Counsel will review the emergent and controlled force policies and that training once the Controlled Use of Force Policy is approved.

The staff continue to improve in decision making, de-escalation, summoning a supervisor or AFBH when needed and stepping in to take lead when a staff member has become the target of an incarcerated person's frustration, or a staff member should be removed from the area. The use of diversionary strikes continues to lessen and the supervisory review when hand or knee strikes are utilized is more thoughtful at the initial review and by the Force Training and Compliance Team (FTC). The summoning of AFBH to assist in pre-planned events has improved but the failure of AFBH to respond due to staff shortages remains an area of concern and must be addressed.

There are areas that continue to require refined training and policy considerations, examples include:

- Situations where the incarcerated person will not permit the securing of the cell door food port.
- In-cell decontamination protocols.
- Non-compliant and agitated incarcerated person in non-controlled area, such as a dayroom.
- Escort techniques and restraint removal for non-compliant incarcerated person.

The FTC has begun the process of tracking outcomes from their force reviews to inform policy and training revision recommendation and the FTC trend information will be integrated in the next review period. The draft FTC tracking includes the most common training issues identified, force trends by housing location

and time and timeliness of reviews. This information should be used by managers and supervisors for continuous process improvements and updated to policy, training, forms and equipment as well as resource allocation for both custody and AFBH in attempt to reduce force incidents in high utilization areas. The FTC and AFBH should engage in routine meetings to discuss resource needs and complex incidents.

Monitoring of the response to trend analysis will be included in the next monitoring period and the two provisions will be separated in future reports.

### **Recommendations:**

1. \*Continue to work collaboratively to update all custody use of force policies, forms and associated training as trends emerge.
  - a. Include addressing non-secure food slots in updates.
  - b. \*In-cell decontamination policy should be retrained as non-compliance is routinely identified.
  - c. Continue to provide de-escalation training and group approach options to non-compliant incarcerated person.
  - d. Provide additional training on safe removal of restraints when working with non-complaint or historically non-compliant incarcerated person.
  - e. Finalize the Restricted Housing Policy (9.02) to address safe entrance in pods to conduct programming when occupied by historically aggressive incarcerated person.
  - f. Continue to work with AFBH to address complex incarcerated persons to develop meaningful behavioral plans.
2. \*Continue to focus on supervisory review of incidents, which will result in improved outcomes by providing direct and focused feedback to assist staff in decision making and de-escalation as well as informing policy and training revisions that are necessary.
3. \*Continue to Ensure policy and training reviews are an aspect of the supervisory review to continue to refine as trends and concerns arise.
4. \*See Provisions 502-504 for additional recommendations.

*(502) Defendants shall ensure AFBH clinical staff is present in advance of all pre-planned use-of-force incidents so that they may attempt to de-escalate the situation. Defendants shall document all de-escalation attempts. To the extent possible, AFBH staff shall not be present during the actual use of force, in accordance with their MOU.*

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

**Assessment:**

As recognized in the last report, ACSO routinely contacts AFBH to assist with de-escalation prior to a planned entry but this does not occur in every incident and AFBH does not respond to a percentage of the incidents. For example, during this review period, 16 pre-planned use of force incidents were reviewed for the period of October 2022 through March 2023. In eleven (11) of these incidents (69%), the incident report documents that an AFBH clinician responded to the unit to assist with de-escalation. The remaining five incidents reflect the following:

1. At approximately 0400 hours, an incarcerated person refused to exit his cell for transport to a state hospital. There is no documentation of AFBH involvement or being contacted.
2. Prior to ACSO completing an extraction, an AFBH clinician responded to the unit and prepared to talk to the incarcerated person in the dining area. The incarcerated person refused, and the clinician elected not to go cell front to assist.
3. At 0140 hours, an incarcerated person was extracted from the intake center for housing in the outpatient housing unit. No documentation of AFBH involvement or being contacted.
4. At 1520 hours, an incarcerated person refused a cell move and was extracted for rehousing. No documentation of AFBH involvement or being contacted.
5. At 1513 hours, an incarcerated person refused a cell move and was extracted for rehousing. No documentation of AFBH involvement or being contacted. Note that this incident occurred immediately prior to #4 above

The draft Controlled Force policy mandates the responsibility to contact AFBH for assistance. The newly developed pre and post controlled force incident check list associated with reviewing cell extractions has an audit question so that reviewing supervisors are aware AFBH support is required and require documentation for any deviations from the policy.

One area where the County needs improvement is to include a copy of the video and associated reports where de-escalation is attempted, either by a supervisor or AFBH, in the use of force packages for review. The cameras can be muted during the clinical encounter to afford privacy but as proof of practice of AFBH involved, the video should routinely be included in the file. Additionally, supervisor's verbal de-escalation attempts should be included in the review process to determine if additional training is needed.

While fewer, there continue to be incidents reviewed where staff had sufficient time to summon a supervisor or behavioral health but failed to do so. Fortunately, the initial sergeant and FTC reviews are doing much better job in identifying those incidents to provide immediate training to staff, which is likely the reason for the noted improvement and apparent increase in controlled use of force incidents.

It is anticipated that the Controlled Use of Force policy will be complete in the next monitoring period and associated training will begin.

**Recommendations:**

1. \*Update both ACSO and AFBH policies, forms, post orders, duty statements and training to reflect the provisions.
2. Include video of supervisory and AFBH de-escalation attempts in the use of force file.
3. \*The Force Training and Compliance Unit (FTC) should improve evaluation of AFBH involvement in de-escalation and elevate non-compliance issues by AFBH to AFBH leadership.

- a. The quality of those clinical engagements should be assessed by AFBH leadership, and the Clinical Expert has been engaged in a review of several incidents where it appeared additional training is warranted for AFBH clinicians.
4. \*AFBH and ACSO leadership should engage in a monthly review of these types of incidents with the intention of determining the type of clinical support needed to reduce these numbers of cell extractions involving people in mental health crisis.

*(503) Defendants shall further: (a) ensure there is supervisory review of all use-of-force incidents; (b) develop an independent custodial use-of-force review team within the Compliance Unit to identify and address systems and training issues for continuous quality improvement to include de-escalation techniques; (c) work with ACSO Support Services to regularly review the use-of-force policy with respect to the circumstances when less lethal impact weapons are warranted and to determine when chemical agents may be used in cell extractions; and (d) ensure fixed cameras are placed throughout the Jail for security and monitoring purposes with priority for cameras to be placed in intake areas and areas with highest prevalence of force.*

**Finding:        Partial Compliance**

**Assessment:**

This is a complex provision, best broken down by the various elements:

*(a) ensure there is supervisory review of all use-of-force incidents;*

The County has complied with this subsection of the provision and has provided proof of practice on reviews of requested use of force packages. The quality of those reviews is addressed in *(b)*.

*(b) develop an independent custodial use-of-force review team within the Compliance Unit to identify and address systems and training issues for continuous quality improvement to include de-escalation techniques;*

The County has maintained an FTC, currently comprised of one (1) lieutenant, three (3) sergeants and (1) analyst. This represents an increase of one (1) sergeant since the last reporting period as the unit was previously struggling to maintain timeliness of reviews based on the workload. However, during this rating period, the FTC has largely cleared the backlog of force review cases and was able to present completed force reviews up to April 2023 for this report. The FTC is developing a draft monthly report for analyzing force incidents and those findings will be incorporated in the next report.

As previously reported, the County completed their force review policy, updated FTC review forms and trained sergeants and lieutenants on the new review process and the expectations concerning completing quality reviews of use of force packages. The County is also in the final draft of the Controlled Force policy, which also has review worksheets to guide quality post force evaluations.



As described in the last report, the Unit Sergeant and Unit Lieutenants utilize the Blue Team software to conduct reviews of all force incidents and are the final review of most Category I incidents.<sup>23</sup> The FTC is responsible to independently review all Category II and III incidents as well as no less than 10% of Category I incidents. During this rating period, the Custody Expert reviewed a random sample of Category I incidents, a high percentage of completed Category II incidents and all Category III incidents.

The overall process continues to improve. The initial review sergeants are doing a better job of identifying serious violations of policy and are more thorough in their assessments and feedback to the staff. The one area of concern is when the reviewing sergeant was also involved in the force incident. While the policy was updated to require an uninvolved supervisor to conduct the review, the ACSO continues to experience the involved sergeant completing the review. These reviews have proven to be problematic in several instances and that will be described below.

For this review period, the Custody Expert has requested a total of 98 completed use of force packages for the period of October 2022-April 2023 to allow time for the packages to complete the review process. The County submitted all but two of the packages for review, which is a profound improvement over the last report. One unsubmitted incident is pending internal affairs but the video has been reviewed. The second unsubmitted incident the associated forms were not included for review, but the video was reviewed with no concerns relative to the utilization of unnecessary or excessive force, so further request for documentation became unnecessary.

In attempting to determine how well the review process is working, the first area to consider is how well the initial reviewing sergeants are doing when conducting the Blue Team reviews. The Blue Team reviews are completed for all use of force incidents, not just Category I. The FTC then conducts an additional review of the majority of use of force incidents. Based on a review of the FTC evaluation of the Blue Team reviews, the FTC concurred with 38 percent of the Blue Team findings, partially agreed with 52 percent of those reviews and disagreed with 10% of the final Blue Team reviews.

**FTC Evaluation of Initial Use of Force Package  
October 2022 – April 2023**

Month	Reviewed	Concur	Partial	Disagree	
October 22	14	1	9	4	
November 22	16	6	8	2	
December 22	18	10	7	1	
January 23	10	3	7	0	
February 23	6	3	2	1	
March 23	10	4	6	0	
April 23	11	5	5	1	
<b>Ave/Percent</b>	<b>12</b>	<b>38%</b>	<b>52%</b>	<b>10%</b>	

It is to be expected that the FTC will find additional areas for consideration when conducting a review as the FTC team is specially trained and has the ability to learn from reviewing a range of incidents. The area of concern that has to continue to be monitored is when the FTC finds what appears to be serious

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<sup>23</sup> Category I use of force incidents are generally physical force and ground takedowns; Category II is generally use of personal body weapons, chemical agents, impact weapons, group incidents involving more than five (5) IPs or injuries to staff or IPs as a result of force not considered a serious bodily injury; Category III are serious bodily injuries due to the incident, impact weapons strikes to the head or other head strikes likely to cause serious bodily injury; use of impact weapons, chemical agents or strikes on a restrained IP.

violations of policy and those issues were not identified by the Unit Sergeant or Unit Lieutenant, which continues to occur.

Similarly, the Custody Expert conducts a review of unit sergeant reviews of Category I incidents not reviewed by the FTC as well as completed FTC reviews. During this rating period, the Custody Expert concurred with the final findings in 36 percent of the reviews, partially concurred in 30 percent of reviews and disagreed with an important finding in 34 percent of the reviews but it is important to understand the disagreement may not have been surrounding the need for or the level of force used. A brief description of the disagreement will follow the table below depicting the monthly reviews by the Custody Expert:

**Custody Expert Review of Completed Force Review Packages  
October 2022-April 2023**

Month	Requested	Reviewed	Category			Reviewer^		Concur		Disagree	
			I	II	III	Sgt.	FTC	Overall	Partial	BT	FTC
October	17	15	1	12	2	1	14	6	3	0	6
November	16	16	4	12	0	3	13	6	6	1	3
December	24	23	5	17	1	5	18	8	10	2	3
January	13	12	2	9	1	3	9	6	3	2	1
February	6	6	0	5	1	0	6	2	2	0	6
March	13	13	3	12	0	3	10	4	5	1	3
April	14	14	3	11	0	3	11	5	4	1	4
<b>Total/Ave</b>		<b>96</b>						<b>36%</b>	<b>30%</b>	<b>34%</b>	

^ The reviewer is the final review in the process. BT = Blue Team review by the Unit Sergeant and Unit Lieutenant. FTC = Force Training and Compliance Team

**Comments on Disagreement with Final Review<sup>24</sup>**

**October 2022**

- Four incidents of insufficient de-escalation and/or failure to summon a supervisor.
- Two incident in which the employee's use of force decisions/actions warranted formal corrective action, in addition to the recommended training. One of the incidents should have resulted in an internal affairs investigation, rather than a record of discussion.

**November 2022**

- One review failed to address all force used in the incident.
- Two incidents in which the review failed to identify force likely outside of policy or not proportional to the threat.
- One incident in which the employee's force utilization warranted formal corrective action, in addition to the recommended training.

<sup>24</sup> Unless stated, the disagreement does not involve the use of force, level of force or force options but rather an adjacent issue that may have contributed to the need to use force.

## **December 2022**

- Two incidents in which the review failed to identify force likely outside of policy or not proportional to the threat.
- Two incidents of poor or insufficient de-escalation.
- One incident of inadequate medical assessment post force incident and inaccurate documentation.

## **January 2023**

- Two incidents in which de-escalation was not adequately employed or the force option should have been further evaluated.
- One incident in which the deputy acted unprofessionally and likely exacerbated the situation warranting formal corrective action, in addition to the recommended training.

## **February 2023**

- One incident in which the sergeant failed to adequately supervise and then completed the Blue Team Review.
- One incident in which the force appeared outside of policy warranting formal corrective action, in addition to the recommended training.

## **March 2023**

- Two incidents of poor restraint/escort techniques that contributed to incarcerated person taking advantage, resulting in force that may have not been required with greater control.
- One incident of personal body weapon utilized without tactical effect and not addressed in review.
- One incident of poor de-escalation by sergeant, who then completed the Blue Team review.

## **April 2023**

- Two incidents of poor restraint/escort techniques that contributed to incarcerated person taking advantage, resulting in force that may have not been required with greater control.
- One incident of poor de-escalation tactics.
- One incident in which sergeant failed to supervise, poor tactics employed creating an opportunity for incarcerated person to assault staff, resulting in force. The same sergeant completed the Blue Team review.
- One incident of personal body weapon (knee strikes) outside of policy warranting formal corrective action, in addition to the recommended training.

Improvements noted this monitoring period:

- Deputies continue to improve their de-escalation skills and step in when it appears an incarcerated person is focused on one staff member.
- Use of personal body weapons continues to diminish in situations where they are not effective or not warranted.
- Group incident response has improved.
- The deputies are contacting a supervisor more routinely, resulting in fewer non-urgent force situations being treated as an emergency.
- There is recognition by the reviews when staff engage in excellent de-escalation and demonstrate humanity after force was required.
- The Unit Sergeant and Unit Lieutenant Blue Team reviews continue to improve.
- The timeliness of FTC reviews has improved substantially without a loss in the quality of reviews.
- The FTC has completed a monthly trend report for inclusion in future monitoring reports.

The policy issues that have arisen or continue to arise during the reviews:

- There remains a hesitancy to provide formal written correction on serious errors of judgement regarding force. This is not an “unapologetic” approach. Too much reliance on training as the sole approach toward employee unacceptable behavior.
- Insufficient de-escalation reflecting the urgency to complete the CIT training.
- Sergeants conduct reviews of incidents they were personally directing or involved in.
- Inappropriate deployment of OC through food slots and poor in-cell decontamination.
- Lack of strategic planning to address staff entering pods where an unstable and potentially assaulting incarcerated person is exercising.
- Lack of appropriate equipment for transports, such as foldable gurneys and gurneys with wheels.
- Failure to develop a policy to address incarcerated person allegations of unnecessary or excessive force.
- Failure to develop policy or protocol for consideration to redirect staff who are subject to internal affairs investigation for potential excessive or unnecessary force.
- Inadequate staff training to address complex restraint application and removals in restricted housing units.
- Force packages do not contain video of de-escalation attempts by custody or AFBH.
- AFBH continues to have insufficient staff to respond to controlled situations to assist with de-escalation.
- Sergeants failing to provide custodial leadership in several situations, either due to cultural behavior of allowing the deputies to lead or due to insufficient training in correctional practices.
- Too many staff respond to contained or small scale incidents, impacting the overall security and programming in the jail. An alarm response policy and training are necessary.

The FTC and first line sergeants are doing a much better job of analyzing and addressing issues during force reviews but there are issues that have to be addressed from policy, cultural and training perspectives. For example, all serious incidents of potential excessive or unnecessary force must be addressed formally, even if the staff had been assaulted or recognize and admit their actions were outside of policy. Training is simply insufficient in these circumstances and, while seemingly rare events, compliance with this policy will require a cultural shift when these situations occur. Staff also continue to be engaged in escorts after they have used force on an incarcerated person or remain in the area and this is not being routinely addressed in either the first line or FTC reviews despite video evidence of the staff presence contributing to on-going agitation of the incarcerated person. Reminder training to address this issue is required.

For the reasons stated above, on-going monitoring is required.

The County reports that the camera expansion project remains in process and is addressed in Provision 414.

*(c) work with ACSO Support Services to regularly review the use-of-force policy with respect to the circumstances when less lethal impact weapons are warranted and to determine when chemical agents may be used in cell extractions; and*

The FTC reviews all cell extractions, including the force options deployed during those extractions. Of the sixteen (16) cell extractions reviewed during this rating period, none involved the use of chemical agents during the cell extraction. In each of these incidents, except one, the sergeant directed the use of a shield for containment followed by physical strength and holds. It is noted during these extractions, the staff are generally working together and employing the appropriate amount of force proportional to the threat. In many of the scenarios, the incarcerated persons offered little, or no resistance and the level of force was minimal during those events.

In four of the cell extraction incidents reviewed it is noted that less-lethal options were available and visible (i.e., taser, 40 mm launcher, sting ball grenade) and in one of those was the less-lethal option deployed. The County should carefully evaluate the circumstances when less-lethal options are displayed and maintained by the cell extraction team or support staff to the extraction team. It is reasonable to have options available based on the totality of circumstances, but staff assigned to utilize those options might best be utilized to physical strength/holds and may be restricted or limited in doing so due to the need to control the less-lethal option.

In one cell extraction, the Expert does not concur that the deployment of a sting ball grenade into the cell of an incarcerated person on the behavioral health caseload was appropriate and this was not addressed by the FTC or the overall review process. Upon deployment, a sting ball grenade will emit a loud sound, a flash of light and disperse small pellets, the number varying by manufacturer but generally 100-200 small pellets. The device can create intense stinging at the impact site and penetrate beneath the skin at close range. Eye injuries have occurred from the pellets.

Sting balls may be necessary during large disturbances or when an incarcerated person has a weapon that can bludgeon or penetrate the skin. In this scenario, the incarcerated person had been throwing potential body fluids on staff and the decision to remove the incarcerated person from the cell to remove further instruments for gassing as well as collect evidence was appropriate. Custody and AFBH staff attempted de-escalation and were unsuccessful. Reportedly the incarcerated person threatened staff but was also verbally incoherent at times during the process. The staff articulated the use of the sting ball was to reduce staff injury due to gassing and verbal threats, but options must be explored to weigh the various risks and potential approaches. Deploying a sting ball in that small space is a higher risk than deploying chemical agents, which has a lower potential for injury and is less traumatic to the incarcerated person who is the target and those residing on the tier near the incident. It has been recommended that the County review the policy and training concerning deployment of less-lethal options during cell extractions.

*(d) ensure fixed cameras are placed throughout the Jail for security and monitoring purposes with priority for cameras to be placed in intake areas and areas with highest prevalence of force.*

The County reports the camera project is in process. The project is currently in the procurement phase with build out of the existing camera system to begin by the end of 2023, potentially continuing through late 2026. The FTC has done an excellent job of tracking locations for use of force incidents and can use this

information to prioritize expansion once construction begins. Monitoring of the placement plan will begin at the completion of procurement.

**Recommendations:**

1. Update the Use of Force Review policy or other identified policy to include the following:
  - a. \*Formalize a process to address IP complaints of unnecessary or excessive force and how to address in the use of force review process.
  - b. \*Include a section in the policy or other related policy regarding evaluation of the redirection of staff when a force incident appears to have significantly outside of policy.
  - c. \*Remind reviewing supervisors to address uninvolved staff escort if there are sufficient staff to assume that role.
  - d. Review the controlled force policy and associated training address the situations where less-lethal force options are most appropriate.
2. \*Continue to train all existing custody supervisors and managers on the new policies.
3. \*Provide an accurate project plan for expansion of fixed cameras in the jail based on use of force trends.

*(504) Defendants shall also evaluate all policies and training associated with every use-of-force review to determine if updates or revisions are necessary as a result of those reviews and shall ensure the documentation process for use-of-force review reflects that a review of policies and training has occurred. Defendants agree to maintain adequate resources to ensure appropriate independent use of force reviews, training, and auditing to comply with the terms of this Consent Decree.*

**Finding:**        ***Substantial Compliance***

**Assessment:**

The County is doing a good job of reviewing the use of force policies, as well as adjacent policies, when conducting use of force reviews. For example, during this rating period the FTC has identified that policy revisions or creation of new policies have been necessary regarding in-cell decontamination, controlled force and safe entry of dayrooms during out-of-cell time for potentially aggressive or combative incarcerated persons. The FTC review form has a section requiring consideration of policy revisions and the FTC review staff have addressed that question in 100 percent of the force reviews assessed this rating period. Additionally, both the Blue Team reviews conducted by a unit sergeant and lieutenant and the FTC reviews have training issues identified, either from an individual level, a unit level or systemic level. Training needs assessments have been identified in nearly all of the completed use of force packages reviewed. There have been times, however, when a recommendation for additional training or policy consideration is provided by the Custody Expert during the review process.

During the previous review, the FTC did not have adequate resources to conduct timely reviews and a recommendation was made to address the delay. During this rating period, the County has done a good job of adding resources to address the backlog of reviews as well as maintain reviews, allowing a timelier assessment of completed force review packages during this rating period.

The quality of reviews continues to improve, and it is believed each round of monitoring will demonstrate increased sophistication by the staff in addressing complex situations with more thorough and thoughtful analysis by the reviewing supervisors and FTC. Additionally, assuming the County continues to allocate

resources to ensure the majority of force reviews are completed within 30 days by the units sergeants and FTC within 30 days of receipt, the County will maintain substantial compliance.

It is conceivable this provision could receive a recommendation to discontinue monitoring in the next rating period assuming quality and timeliness of reviews continues.

**Recommendations:**

1. Maintain quality and timeliness of reviews.
2. Ensure Blue Team Reviews incorporate evaluation of policy when conducting Category 1 reviews.

*(505) Restraint Devices shall be applied for only the amount of time reasonably necessary and shall never be applied as a punishment or as a substitute for treatment. Defendants have discontinued the use of WRAP devices at the Jail and shall not resume their use at the Jail.*

**Finding:        Partial Compliance**

It is positive to report that the County updated one policy associated with this provision since the last review period: Inmate Observation (8.12) and is in the process of updating the Use of Restraint Policy (8.26). The County also continues to provide documentation concerning two separate types of restraint incidents: restraint chair placement and retention of an IP in restraints (handcuffs, waist restraints and/or leg restraints) when not under escort.

As with the prior report, the only documented reason for placements in a restraint chair from the period of January - June 2023 was active self-abuse. The two main reasons for retention in restraints during the same period was the refusal of the IP was too combative or agitated to safely remove the restraints (54%) or the IP refused to relinquish restraints (46%).

An analysis of the documentation provided demonstrates there was a slight change in the monthly averages for this report (January-June 2023) compared to the findings in the Second Monitoring report (March-November 2022). There was an 18 percent increase in the average number of incarcerated persons placed in a restraint during this rating period but that may be driven by one incarcerated person who was placed in a restraint chair on six (6) different occasions in May 2023.<sup>25</sup> The average hours for restraint chair average utilization of four hours remained unchanged since the last report. However, it is positive to report the average number of incarcerated person retained in restraints in a cell reduced by 50 percent during this reporting period. Additionally, the average time in restraint was reduced by 33 percent.

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<sup>25</sup> It was noted this person was also send to the outside hospital during this period on two (2) separate occasions in an attempt to stabilize him.

For comparison, the following chart reflects the average monthly incidents of restraint chair or restraint retention reported in the Second Monitoring Report for the period of March – November 2022:

**Restraint Log Analysis – Second Monitoring Report  
March-November 2022**

	<b>Restraint Chair</b>		<b>Restraints</b>		
<b>Month</b>	<b>Placements</b>	<b>Average Hours</b>	<b>Retention in Restraint</b>	<b>Average Hours</b>	<b>Reason<sup>26</sup></b>
<b>Average</b>	<b>2.7</b>	<b>4:00</b>	<b>4</b>	<b>2:15</b>	<b>50% R/R; 24% COM; 21% SX, 5% INV</b>

The following chart reflects the average monthly incidents of restraint chair or restraint retention reported for the Third Monitoring Report for the period of January – June 2023:

**Restraint Log Analysis – Third Monitoring Report  
January – June 2023**

	<b>Restraint Chair</b>		<b>Restraints</b>		
<b>Month</b>	<b>Placements</b>	<b>Average Hours</b>	<b>Retention in Restraint</b>	<b>Average Hours</b>	<b>Reason<sup>27</sup></b>
January	2	3:45	7	2:00	4 Com; 3 – Ref
February	2	3:30	1	2:30	1 – Ref
March	2	4:15	2	:30	2 – Com
April	3	1:30	3	1:25	1 – Com, 2 Ref
May	7	6:45	0		
June	3	2:30	0		
<b>Average</b>	<b>3.2</b>	<b>4:00</b>	<b>2</b>	<b>1:30</b>	<b>54% Com; 46% ref</b>

During this rating period, there only one restraint chair retentions beyond eight (8) hours and in that incident there was sufficient documentation that both AFBH and Wellpath were assessing the incarcerated person. The Mental Health Expert is the best person to address the quality of those assessments, but it was recommended in the last report that incidents of repeated placements in a restraint chair of a single person should be carefully evaluated by an interdisciplinary treatment team, including treating clinicians from the community hospital if transported out for emergency treatment.

As previously reported, the retention of incarcerated people in handcuffs behind their backs for extended periods is not appropriate. The County has a policy concerning the requirement to document the rationale as well as documenting 15 minute security checks. However, despite recommending that the policy be updated to involve a supervisor, medical staff and AFBH if the incarcerated person continues to refuse to relinquish restraints or is too agitated to safely remove the restraints if the incident is nearing one hour no policy has been submitted during this rating period for review. While it is noted the average time in these

<sup>26</sup> **COM** = Combative or Aggressive; **INV** = Investigation; **R/R** = Refuse to relinquish restraints; **SX** = Suicide Attempt or pending transport to John George Hospital; **UNK** = No documentation provided

<sup>27</sup> **COM** = Combative or Aggressive; **INV** = Investigation; **R/R** = Refuse to relinquish restraints; **SX** = Suicide Attempt or pending transport to John George Hospital; **UNK** = No documentation provided



circumstances reduced in this rating period and in one of the incidents the staff did seek support of medical and AFBH, there were five (5) incidents reported during January-June 2023 where the IP was restrained for more than two (2) hours and there is no documentation on the logs or reports provided that a supervisor and/or AFBH clinician attempted to de-escalate the situation.

The County has been doing well on this provision, but an unintended monitoring challenge associated with the use of the Guardian RFID tracking system to document security checks has arisen during this period, resulting in a lower quality of data sharing than was available in the prior monitoring period. The staff have been improving significantly in handwriting security checks, clinical rounds, range of motion, access to the bathroom, water and food. However, when the system changed from the paper log tracker to the Guardian tracking system, the deputies did not do as good of a job of documenting these activities and, as a result proof of compliance with the policy has suffered. In seven (7) of the nineteen (19) restraint chair placements reviewed during this rating period, the documentation was insufficient to demonstrate compliance with the policy. The County is aware of the issue and has provided additional training and assurance that the Guardian RFID has the ability to track these important services, but if that is not the case, the County may fail to demonstrate substantial compliance in future rating periods not because they work is not occurring but because the proof of practice is not available. It is hopeful this will be resolved in the next reporting period.

The County has discontinued the WRAP device and no new restraint equipment has been utilized or anticipated in the jail.

#### Recommendations:

1. \*Finalize the Use of Restraint Policy (8.26)
2. Resolve the lack of consistency in documentation utilizing the Guardian RFID or resume use of the restraint logs approved with the policies.
3. \*AFBH and ACSO should work with Wellpath on a policy for clinical evaluations when an IP has been retained in restraints for more than 1 hour and does not appear to be resolving. Ensure those clinical encounters are documented on the restraint log.<sup>28</sup>
4. \*Work with the Mental Health Expert to review the incidents of multiple placements in a restraint chair to determine if other clinical options may have been possible to improve training and future outcomes.

*(506) AFBH and medical staff shall be alerted any time a restraint log is initiated for a Behavioral Health Client. Once notified, medical staff shall review the individual's health record and provide an opinion on placement and retention in the Restraint Device. A Qualified Mental Health Professional shall conduct an assessment, as soon as practicable, but in any event within four (4) hours of initiation of the restraint log.*

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

The Wellpath staff continue to show excellent response when an incarcerated person is initially placed in a restraint chair and consistently as placement continues. Wellpath has been documenting the provision of fluids, assessment of vital signs and distribution of medication on the security check log for ease of auditing. However, in the next reporting period, a request for medical records will be necessary if the Guardian RFID continues to be the mechanism used to document observations as the electronic health record will be the

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<sup>28</sup> Likely General Order 7.14 – Prisoner Transportation, Restraint Devices.

location where Wellpath staff documents their assessments. Counsel should opine on whether a medical expert is required to engage in those reviews.

While Wellpath is being responsive when the use of a restraint chair is required, AFBH continues to struggle with timely assessments and rounds. In seven (7) of the nineteen (19) placements during this review period, the incident report documents a lack of AFBH staff availability to assess the incarcerated person prior to initial and within four hours of placement into a restraint chair. This remains a problem during the evenings and overnight, but it was positive to learn on two (2) of the nineteen (19) incidents occurring on the overnight shift that an AFBH representative (contract mental health provider) was available to assist from the hours of midnight to 8:00 a.m., which is an improvement from the last report. Until such a time AFBH staffing is increased, and on-duty clinicians are reminded of the priority of conducting an assessment within four (4) hours, this provision will not reach substantial compliance.

As mentioned in Provision 505, the County departments and Wellpath need to engage in further discussions about the clinical assessment and rounds for those incarcerated persons who are in restraints for longer than one (1) hour and the reason for retention in restraints does not appear to be resolving. Similar clinical and supervisory assessment documentation should appear on the restraint log so that custody is aware that rounds have occurred.

#### Recommendations:

1. \*Ensure there are adequate health care clinicians on the overnight shift.
2. Reiterate to clinical staff the priority of assessing incarcerated persons placed in a restraint chair, preferably prior to placement in the event that higher acuity care is required.
3. \*Refer to recommendations in Provision 505.

*(507) Defendants shall develop, in consultation with the Joint Expert(s) and as discussed in Section IV(A), policies, procedures, and training regarding the appropriate use of other Restraint Devices, including appropriate medical monitoring, provision of fluids, restroom breaks, and guidelines for release from restraints. Defendants shall provide such training within six (6) months of the Effective Date and shall provide recurring training on an annual basis.*

**Finding:        Partial Compliance**

#### Assessment:

The County is in the process of updating the Use of Restraint Policy (8.26) and feedback has been provided by the Joint Experts. The County previously updated the Observation Policy (8.12) and the improvement of documentation on the paper logs demonstrates the staff are generally complying the current policy as well as recommended changes that have not yet been formalized into policy.

The Second Monitoring Report was able to baseline compliance with the restraint chair policy and found that the documents provided demonstrated that medical assessment prior to placement and consistent medical rounds were consistent with policy. However, because the paper logs are not being maintained and the Guardian RFID documentation is insufficient, the medical record may need to be reviewed in the next rating period to make an assessment. The Second Monitoring report also evaluated documentation of mental health rounds, provision of food/water, access to restrooms, range of motion offered and watch

commander rounds. However, with the challenges associated with the changeover to the Guardian RFID system, there is too much missing data in this review period to provide an accurate and fair assessment. Review for compliance percentage assessments in these areas will need to resume in the next rating period in a complex review of the Guardian RFID systems and disparate health care records maintained by AFBH and Wellpath. Of the paper logs available for review, the vast majority documented access to fluids, meals, restroom and medical rounds, so it is believed those systems remain functional, but the County is unable to demonstrate compliance with the existing RFID documentation. It is anticipated the next monitoring report will resume compliance measurement based on reviews of the observations logs and the electronic unit health records.

It would be helpful to the County if the Compliance Unit or designated supervisors would begin internal monitoring of this provision to provide the staff with real time feedback and identify non-compliance areas that may be resolved with individual training.

### **Recommendations:**

1. \*See recommendations in Provision 505.
2. \*Consider assigning internal monitoring to the Compliance Unit to identify training issues as they occur, targeting missed restraint chair log documentation in the areas of mental health rounds, access to the bathroom, watch commander rounds and range of motion with the goal of reaching substantial compliance on this provision.

*(600) Defendants shall evaluate the tracking and metrics system for grievances to seek formats that better inform management on timeliness, trends, problem areas, etc. Where grievances are available for completion on tablets, incarcerated persons shall continue to have the option of accessing paper forms, and the tablets shall allow individuals to submit grievances without deputy assistance or approval. Defendants shall ensure supervisors are conducting and documenting daily rounds in housing units to ensure access to grievance systems, including that paper forms are readily available to incarcerated persons on their housing unit or pod. Defendants shall also keep statistics regarding the kinds of grievances filed, any corrective actions taken, and any staff issues that arise from this process. The Compliance Captain shall report through the chain of command on any such systemic or staff issue(s) promptly.*

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

### **Assessment:**

While the County continues to maintain a grievance system and the unit is stable with the same committed lieutenant and team, there has been limited change since the last report concerning the grievance policy with the exception that the Sergeant and Shift Supervisor Post Order (10.03) was updated in May 2023 to require the supervisors ensure that grievances are responded to timely and available in the housing unit during daily tours.

According to the grievance tracking report provided by the County for the period of January – June 2023, the County is receiving an average of approximately 250 grievances per month. This represents an apparent reduction from the last report where it was believed the monthly average for the first eleven (11) months in 2022 was in excess of 600 grievances per month. However, without clear analysis of monthly grievances it is feared the 2022 numbers are overstated as the grievance tracker lists the same grievance number more

than once if the grievance is a staff complaint and more than one staff member was identified in the grievance. Until such a time that the County can develop and create a meaningful monthly grievance report, it is difficult to provide a deeper analysis of grievance trends.

It is positive to report that there were extremely limited verbal complaints received from incarcerated persons during the June 2023 tour concerning access to grievances. All incarcerated persons interviewed articulated how to file a grievance both on the tablet and on paper. The incarcerated people would generally point to the area where the grievances were maintained if they chose to file a paper grievance. Deputies and Sergeants alike articulated their responsibility to ensure access to the system, including assisting with grievances if needed. Grievance forms were observed in housing units throughout the jail. Therefore, it is believed that ensuring access to grievances has reached the substantial compliance measure.

However, this provision addresses more than access and the County has not allocated proper resources to the Grievance Unit to ensure timely and meaningful responses to grievances. The County currently tracks grievances in broad categories but has not presented an improved and meaningful monthly tracking report that covers critical issues. Challenges with the current system include:

- Lack of counting rules on how to categorize grievances as often issues can overlap and there is no consistency regarding which category a grievance will be listed under. For example, a complaint about the deputy not providing a grievance may be categorized in one tracker under “grievance” and in another tracker as a “staff complaint.”
- The timeliness for grievances are not kept up to date and there is no report concerning areas where grievances are not being responded to in a timely manner to assist management in allocating resources to address.
- There is no clear process to track grievances that are elevated by the incarcerated person to the next level of review.
- The Grievance tracker is not kept up to date with findings and lacks a column for housing of the incarcerated person to identify trends in particular living areas
- The grievance system lacks strong outcome tracking and outcome measures, such as using language on whether grievances were affirmed, partially affirmed or denied or other language that allows for outcome tracking.
- The grievance tracker does list the involved staff but there has been no analysis presented to determine if additional training or potential investigation of that staff member has been undertaken when the individual complaint has proven to have merit or there is a pattern of complaints that appear to have merit.
- There is no continuous quality improvement report presented for review by the medical or mental health team concerning grievances and grievance trends.
- The grievance tracker does not list if the grievance was a tablet or paper grievance and there are missing grievance numbers that are not explained. For example, the log may have grievance #23-0001 and #23-0003 but does not have #23-0002 and there is no explanation. The tracking log should document the grievance was withdrawn, destroyed, a duplicate, error in assigning tracking, etc. to ensure integrity in the system.

It is believed that the Grievance Unit is committed to meaningful reviews of grievances, but there is a disconnect between the health care team and custody on responding to health care related grievances. The issue was discussed with the health care and custody teams in May and June 2023, and it appears a solution has been developed but that will not be determined until the next review period.

The grievance policy requires update, and the Joint Experts are available to assist in facilitation of the update. However, when updating the policy, the County should alter the timeline for response to a grievance from the current policy decision that a response must be provided within 30 days. This is not a reasonable timeframe when the average time in jails is less than 30 days and the ACSO is aware of the concerns of the Joint Experts. The reason for the unreasonable long response period is due to insufficient staffing resources in the Grievance Unit and this is an unacceptable explanation for such an important issue. Grievances are designed to resolve concerns at the lowest level, but they are also the mechanism for incarcerated persons to seek protection of their rights, including their right to access the court. Responses to grievances should occur within 14 days and there should be an emergency provision to the grievance system for issues that cannot wait, such as over-detention.

The grievance system is management's tool to determine if trends exist that require additional support. The delay of 30 days in investigating and responding to grievances coupled with inadequate tracking and reporting grievances is grossly outside normal correctional practices in well-functioning systems. Management should be demanding quality responses and quality trend analysis to identify areas that require management support and that simply is not occurring in this county.

The County is strongly encouraged to put into policy and practice a response timeliness of less than 10-14 days at the initial level, improve tracking mechanisms and begin to utilize grievance trend information to inform management practices.

#### **Recommendations:**

1. Ensure adequate resources are available to provide timely and meaningful responses to grievances. Set into policy and practice initial responses to grievances within 10-14 days.
2. \*Work with the Joint Experts to revamp the monthly Grievance Report to comply with this provision.
3. Prior recommendations concerning updating policies, forms and training remain a priority but recommend focusing on the first two recommendations in this next rating period.

*(712) Develop and implement a new alert system (computerized or otherwise) to advise the Intake, Transfer and Release Lieutenant (or Watch Commander, when the Intake, Transfer and Release Lieutenant is unavailable or off duty) when a person is held in the intake area for more than four (4) hours. Once alerted, the notified lieutenant shall follow-up every ninety (90) minutes thereafter to ensure the incarcerated person is processed as expeditiously as possible. Defendants shall process individuals through intake within eight (8) hours, except where it is impossible due to mass arrests, serious disturbances, critical incidents, or other emergencies that divert significant staffing resources, in accordance with the classification system.*

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

#### **Assessment:**

While the County has not yet finalized the process for the Watch Commander to be electronically notified regarding delays in intake processing, the County has shown progress on this requirement during this rating period. The County has procured a RFID system as a potential tracking solution and continues to assign additional custody and contract mental health staff to the intake area to improve processing times.

The County was hopeful that the RFID system could serve as the alert system, but the vendor has not yet refined the system to the point it will serve that function, so the County is re-evaluating the utility of the RFID for this purpose and is exploring other potential technological solutions. In the meantime, it appears from a limited comparison of data available in 2022 against more robust data available in 2023 that there has been reduction in the average number of incarcerated persons retained in the intake area for more than eight hours.

Currently, the number of incarcerated persons held in the intake area beyond eight (8) hours is tracked on the Intake, Transfer and Release (ITR) end of shift report. In 2022, a limited number of ITR end of shift reports were provided for Expert review, so only the period of August 3-6, 2022, was evaluated. In that review, the average number of incarcerated persons in the ITR beyond eight (8) hours at 4:30 a.m. was 42 persons. By 3:30 p.m. the average number increased to 44 persons. The following chart reflects information from the ITR end of shift report for the sample period in August 2022 documenting the number of incarcerated persons maintained in the ITR beyond eight (8) hours:

**2022 ITR End of Shift Report Data  
Processing Delays**

Number IPs held in ITR beyond 8 hours		
Date	4:30 a.m.	3:30 p.m.
Aug 3	56	50
Aug 4	35	40
Aug 5	29	48
Aug 6	48	39
<b>Average</b>	<b>42</b>	<b>44</b>

During this monitoring period, ACSO, AFBH and Wellpath began to address the contributing factors to the delays, primarily reported as insufficient availability of custody and mental health staff. As a result, custody staffing increases and AFBH increased mental health staff, primarily through a service contract. Due to these efforts, there have been considerable improvements from the August 2022 sample period. From the period of January – June 2023, the average number of incarcerated persons in the ITR beyond eight (8) hours at 4:00 a.m. was 15 persons. By 3:30 p.m. the average number decreased to 11 persons. This represents a 64 percent reduction at the 4:30 a.m. measure and a 75 percent reduction at the 3:30 p.m. measure.

The following chart reflects the daily average of incarcerated persons maintained in the ITR based on the ITR end of shift reports for sample periods January-June 2023:

**2023 ITR End of Shift Report Data  
Processing Delays**

Number IPs held in ITR beyond 8 hours		
	4:00 AM	2:30 PM
Jan 8-11	20	8
Feb 5-8	33	23
Mar 5-8	9	12
Apr 4-7	11	8
May 7-10	4	6
June 4-7	11	9
<b>Average</b>	<b>15</b>	<b>11</b>

The County has not been able to demonstrate substantial compliance with the technology solution required by this provision but has done a good job of beginning to address the underlying factors giving rise to the need for a tracking mechanism to alert the Watch Commander concerning ITR processing delays. If the County can address the delays, the need for a tracking mechanism is far less critical and may be able to be addressed by an alternative method if such a system becomes too elusive. This will require discussion with Class Counsel if the County reaches a point where it seems too difficult to procure or refine a tracking system and proposes an accountable paper system. In the meantime, the County is encouraged to maintain focus and system improvements that are realizing significant gains.

**Recommendations:**

1. \*Ensure adequate resources continue to be available to engage in timely processing, including overnight behavioral health clinicians.
2. \*Update policies, forms, post orders and training to comply with this provision.
3. \*Seek viability in including automatic notification and tracking via the RFID section discussed in Provision 418.
4. \*Refine Watch Commander End of Shift or other report to provide greater clarification on the notification to the Watch Commander when holding a person in the ITR for more than 4 hours and the reasons for holding someone in ITR more than 8 hours and the steps taken to address.
5. \*The Compliance Unit and AFBH should monitor daily delays and develop corrective action plans as necessary based on established trends and systemic barriers.

*(749) Defendants shall ensure that the safety cell is clean prior to the placement of a new individual in the safety cell. Safety cells shall also be cleaned on a normal cleaning schedule when not in use. Defendants shall provide individuals housed in safety cells with a safety mattress, safety eating utensils, toilet paper, and feminine hygiene products.*

**Finding:           Substantial Compliance**

**Assessment:**

The County has made excellent progress on this provision. As previously reported, the County updated Outpatient Housing Unit Deputy Post Order 10.08 to require that the safety cells be cleaned daily. Additionally, during this monitoring period, the Safety Cell policy (8.13) has been updated to reflect the requirement that the safety cells be constantly maintained in a clean condition. During tours of the jail in May and June 2023, safety cells were evaluated and were noted to be clean and free of unpleasant odors.

As reflected in the Mental Health Expert's report, the County has virtually eliminated the use of safety cells and when they are clinically required, the incarcerated person is in the cell for no more than two (2) hours pursuant to the new policy. It is remarkable that in the period from January-June 2023, there was only one safety cell placement and that was for under 6 hours.

**Safety Cell Placement  
January-June 2023**

<b>Date Placed in Safety Cell</b>		<b>Total Time</b>	<b>BHI</b>	<b>ADA</b>	<b>Cell Cleaned</b>	<b>Medical Eval</b>	<b>MH Eval</b>	<b>Food Water</b>	<b>Comments</b>
1/19/23		5.75	Unk	Unk	Yes	Yes	Unk	No	IR not available for review

BHI – Behavioral Health Client

MH = Mental Health Clinical Contact

IR = Incident Report

The County should be commended for reducing the reliance on safety cells with the implementation of other suicide prevention protocols. The County is also commended for updating policies limiting the amount of time in a safety cell and requiring that the cell be maintained in a sanitized condition at all times. Tours of the jail during this rating period found the cells to be unoccupied and clean. If the County can maintain the current progress for an additional rating period, a recommendation will be made to discontinue monitoring this provision.

**Recommendations:**

1. Maintain current progress

*(751) Defendants agree to continue to ensure that there are working call buttons in all cells and shall continue to conduct periodic checks of call buttons in all units and address any maintenance issues as soon as possible. If a call button is found to be inoperable, the individual shall be moved to a cell with a working call button as soon as practicable. Defendants shall develop and implement policies, procedures, and forms required to implement the provisions contained herein.*

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

**Assessment:**

Since the last report, the County has continued to demonstrate compliance with this provision. As mentioned, updated policies, procedures and post orders address the majority of the requirements of this provision. The one area that has not been codified in policy is related to the movement of the incarcerated person if the call button is not operational and clarifying the documentation process when that occurs.



During this monitoring period, County improved the reporting system regarding the submission and completion of work orders to allow for monitoring. A review of the work order log for the period of January-June 2023 reflects that there were 60 work orders submitted regarding call buttons and intercoms. Of those, 23 were directly related to a housing unit cell, versus an entry door, a dayroom intercom or an isolation cells.

Of the 23 cell related work orders, none of them document whether the incarcerated person was relocated or retained in the cell. While it is clear the provision requires the relocation of the incarcerated person if the call button is found non-operational, the intent is when the call button cannot be repaired in a timely manner. Of the 23 cell related work orders during this rating period, six (6) were completed within 24 hours and two (2) additional were repaired on a Monday. Of the remaining 15 work orders, not all repair timeframes were listed but where there was a date of completion the repair timeframe varied from five days to over 2 months. In only one incident did it appear the cell remained occupied during the non-operational period. In addition to listing individual work orders, the log reflects a systemwide review of intercoms and call buttons occurring during the period of May 20-May 22, 2023.

A review of the grievance logs provided for the first six months of 2023 revealed 18 grievances were logged concerning the call button/intercom system. None of the complaints were concerning an inoperable button but one complaint could have been an inoperable button as it was alleged there was no response after activation. The majority of grievances surrounded professional conduct when the incarcerated person activated the system for support.

During a series of tours, there have been no significant complaints from incarcerated persons about inoperable call buttons. All Control Booth Technicians interviewed on the June 2023 tour articulated their responsibility to respond to inoperable buttons by submitting a work order and documenting the issue in the unit logbooks.

The sole issue remaining concerns implementation of a policy addressing relocating an incarcerated person if the call button cannot be repaired in a timely manner. It is believed that the policy is scheduled for inclusion in the Watch Commander post order (10.02) revision. The ACSO should also work with the Custody Expert to ensure proof of practice regarding relocation of an incarcerated person is documented in a single location for ease of monitoring and proof of practice. This should be facilitated in the next monitoring round which should result in a finding of substantial compliance in the next rating period.

### **Recommendations:**

1. \*Continue with current practice of Control Booth Technician doing a daily check on communication systems and submitting work orders where necessary.
2. \*Clarify in policy/post orders the expectation that a cell move may be necessary should a call button not be able to be repaired in a timely manner and the mechanism for staff to document and elevate this concern to a supervisor.
3. \*The Compliance Unit should evaluate timeliness of repair with a monthly report evaluating the average time from awareness to repair.
4. The County should prepare or provide a report or other form of proof of practice concerning deactivation of a cell when the system cannot be repaired in a timely manner.

*(754) Defendants shall ensure cut-down tools are securely located and accessible to custody staff in all incarcerated person areas, especially in the housing units, including appropriate emergency materials that may be needed to respond to suicide attempts in close proximity to all housing units.*

**Findings:      Substantial Compliance**

**Assessment:**

The County has updated the associated custody policies to comply with this provision: Specifically Incarcerated Person Direct Observation Policy (8.12), Housing Officer Post Order (10.05) and Housing Control Post Orders (10.12). The County maintains appropriate cut down tools located in accessible locations and most deputies in the jail also carry personal cut down tools. The County has AED and first aid equipment in the housing unit areas and a mechanism to audit and inspect this equipment was codified in policy during this rating period. The majority of the staff interviewed were aware of the locations of the defibrillators (AED), first aid kits and cut down tools or presented a personal cut down tool for inspection.<sup>29</sup>

In review of emergency response situations, it is clear staff maintain personal cut down tools and medical is responding to medical emergencies with first aid supplies and equipment. For example, there were two suicide attempt incidents reported during this monitoring period where the responding deputies had on their person a cut down tool and were able to immediately remove a ligature from around an incarcerated person's neck without delay. There were no critical incidents reviewed during this rating period where staff responded to a medical emergency without appropriate equipment.

The County has reached substantial compliance on this provision but the failure of three patrol deputies working overtime who were interviewed during the June 2023 tour failure to either carry a cut down tool or know where one could be accessed requires a remedy. The overwhelming number of deputies carry or know where to access a cut down tool results in the rating of substantial compliance, but this is an area that needs to be remedied before a recommendation to discontinue monitoring can occur. Based on the high percentage of overtime in the units, it is conceivable that two overtime patrol deputies would be working in the same unit and encounter a suicide attempt, and neither is able to quickly respond, potentially losing valuable time to address the suicide attempt. Additional training for patrol deputies concerning the location of cut down tools should remedy this issue prior to the next monitoring report.

**Recommendations:**

1. *Ensure all staff working in the jails on overtime from patrol have on their person a cutdown tool or know where cut down tools are stored in the units.*

*(760) Cancellation of privileges for individuals on suicide precautions shall be avoided whenever possible and utilized only as a last resort. Individuals on suicide precautions shall be offered out-of-cell time consistent with Section III(G)(6) unless a Qualified Mental Health Professional determines it is specifically contraindicated due to their treatment needs. Where such a determination is made, individuals on suicide precaution shall be offered sufficient daily out-of-cell time to allow them to shower, use the phone, and access the dayroom and/or outdoor yard to the maximum extent possible. Incarcerated persons on suicide precautions shall be evaluated by a Qualified Mental Health Professional to determine whether denial of access to property is necessary to ensure the incarcerated person's safety. Individuals on suicide*

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<sup>29</sup> Two overtime deputies assigned to patrol could not articulate where the cut down tools were located when questioned on the June 2023 tour.

*precautions shall receive privileges consistent with their classification when it is deemed safe to do so by a Qualified Mental Health Professional. If a Qualified Mental Health Professional determines that certain property or privileges must be withheld based on the suicide risk assessment, this determination shall be documented including the reasons why the particular property or privilege poses an actual risk. The individual shall be reassessed for such privileges by a Mental Health Provider at least every three (3) days, with the determination and reasoning documented in writing, and the privileges restored at the earliest clinically appropriate time possible based on actual suicide risk.*

**Finding:        Partial Compliance**

**Assessment:**

Two policies were updated during this rating period to comply with this provision: Incarcerated Person Observation (8.12) and Suicide Prevention (13.06). The policies provide guidance concerning use of a safety cell, restraint chairs and three levels of Intensive Observation (IOL) – specifically, constant observation, close observation and modified observation. These policies clarify that mental health staff are responsible for the restriction of privilege or property unless custody is required to make an initial decision and then a clinician is required to evaluate the incarcerated person within four (4) hours. Working with the Mental Health Expert, the County continues to refine the suicide observation protocols and collaborate between AFBH and ACSO in determining the programming and restrictions for those incarcerated persons placed on suicide observations, particularly those on IOL status. It is the goal that all parties embrace the level of care system (LOC) and movement of incarcerated persons on suicide observation to the THUs unless a higher level of care or observation is deemed clinically necessary

During this monitoring period, the vast majority of suicide prevention placements occurred in general population housing units on IOL status. The County has done a good job clustering most IOL incarcerated persons into similar housing units and affording out-of-cell time for all IOL status incarcerated persons. The County continues to maintain a modified IOL designation, in which a clinician can expand privilege and property issuance from the more restrictive levels of constant and close observation.

During the June 2023 tour, it was noted that the IOLs continue to program in the dayrooms and recreation yard consistent with their IOL status and the IOL populations continue to be clustered in housing units for ease of monitoring and access to clinicians. Those who are on modified IOL access out-of-cell activities together and those who are on close IOL status program separately from the modified IOL cohort. There have been no reported “constant IOL” status designations during this rating period as those candidates likely were transported out for assessment or placed in a safety cell or restraint chair.

The lingering of incarcerated persons on IOL continues to be a concern as well as the difficulty the County has encountered quantifying IOL populations for monitoring and internal trend analysis. When attempting to determine who has been placed on an IOL status and the duration of the IOL, the information available on the Guardian/RFID system and the Advanced Technology Information System (ATIMS)<sup>30</sup> is inconsistent. The County continues to work on tracking various IOL levels of supervision in ATIMS but as reported in the out-of-cell and other provisions, the effort and focus required to implement the Guardian/RFID system has interfered with addressing the documentation challenges in ATIMS. The County continues to seek methods to reconcile the information as the data in the Guardian RFID system continues to not directly align with the ATIMS reports on IOL levels.

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<sup>30</sup> The ATIMS system is the jail management system by policy where the clinicians are to designate the IOL status.

The County has shown progress during this monitoring period by completing the policies and implementing IOL codes in the Guardian RFID system. However, to reach substantial compliance, the County demonstrate adequate clinical resources are available to conduct timely reviews of IOL status as well as consistently document those reviews and any changes in property or privileges directed by the clinical team member(s).

It was anticipated in the prior report that the County may be able to reach substantial compliance in this rating period but that was overly optimistic without understanding the workload associated with the implementation of the Guardian/RFID system. Until such a time the County can demonstrate consistent review of persons placed on IOL status and accurate and consistent tracking of the various levels of IOL status on any given day, the County will remain in partial compliance.

#### **Recommendations:**

1. \*Ensure adequate clinical resources are available to assess the population and ensure Custody staff are aware of the clinical decision for property/program restrictions for all IPs on suicide precaution.
2. \*Continue to refine the process of AFBH notifying custody of any restrictions via the jail management system. Update Observation Logs/Guardian RFID to make clear the requirement that a clinical assessment is necessary to determine restrictions.
3. \*Provide training to all relevant custody and clinical staff once the revised training, policies, forms and post orders are updated.
4. \*The Compliance Unit and AFBH should engage in monthly quality assurance assessments on the use of safety cells and placement of incarcerated persons on suicide precaution and Intensive Observation as well as reviewing the quality of associated documentation.

*(761) Defendants shall develop and implement updated policies and associated training for all custody staff, as well as training for custody staff newly hired and/or assigned to the Jail, regarding how to conduct quality security checks for incarcerated persons placed on suicide precautions and regarding suicide prevention and precautions generally. The training shall include the creation of a video to model appropriate security check observations as well as in-person training and shall address at least the following topics: (a) avoiding obstacles (negative attitudes) to suicide prevention; (b) review of recent suicides and serious suicide attempts at the jail within the last two years and any patterns or lessons learned (c) why facility environments are conducive to suicidal behavior; (d) identifying suicide risk despite the denial of risk; (e) potential predisposing factors to suicide; (f) high-risk suicide periods; (g) warning signs and symptoms; (h) components of the jail suicide prevention program; (i) liability issues associated with incarcerated person suicide; and (j) crisis intervention including practical exercises regarding the proper response to a suicide attempt and the proper use of cut-down tools.*

**Finding:** *Partial Compliance*

#### **Assessment:**

While the County has not been able to create a training video to comply with this Provision, the County did complete and publish the *Inmate Observation and Direct Supervision Policy* (8.12) since the last reporting period as this policy update is required prior to the development of the video. Additionally, the Sergeant and Shift Supervisor Post Orders (10.05) have been updated requiring sample audits on the quality of safety checks (refer to Provision 763).

The County has not been able to develop a plan for the creation of a video to depict meaningful security checks and, as reported previously, anticipates beginning the video training project in the fall of 2023, which is reasonable based on other provisions that must be completed before spending the time and funds to create a video. Because the foundational work required prior to video development is complete, the rating increased to Partial Compliance for this rating period. However, if there is no movement towards video design in the next monitoring period, this could be reduced to substantial compliance.

#### **Recommendations:**

1. Assign a supervisor to develop a video production strategy to incorporate training from the approved Inmate Observation and Direct Supervision policy.

*(763) Defendants shall continue to ensure supervisory oversight in reviewing quality and timeliness of security checks and require regular auditing of safety check logs against video recordings. Defendants shall also consider using Sheriff's Technicians to assist with security checks.*

**Finding:**        **Substantial Compliance**

#### **Assessment:**

The County updated the Direct Observation Policy (8.12) and Sergeant and Shift Commander Post Orders (10.03) during this rating period. These policies require quality, timely and documented security checks. The Guardian/Rfid has been placed on-line to document security checks and the Sergeants are now required to conduct random reviews of the quality of security checks. The policy requires that the documentation of the review be placed in the Watch Commander's end of shift report.

A review of the Watch Commander's end of shift reports for the period of June 4 – June 10, 2023, reveals the process was taking effect as the supervisory review of the quality of security checks was documented in 12 of the 14 reports.<sup>31</sup> It was also noted that the audits selected different units and different times. This is an excellent beginning, and it is anticipated that the County can continue to improve the quality of documentation in the end of shift reports and self-audit for compliance during this next rating period. Assuming the County continues to follow the policy and ensure quality and randomized audits, this provision should maintain substantial compliance with the recommendation to discontinue auditing in the next review period.

The County has reported that it has considered and is not electing to utilize Sheriff Technicians to assist with security checks. Staffing challenges are best addressed in this and future reports under provisions 200 and 201, which will continue to encourage evaluations of utilization of civilians, Technicians, Correctional Deputies and Contract Security in non-contact assignments.

#### **Recommendations:**

1. Continue to comply with sergeant security check review policy, improve and standardize documentation in the end of shift reports and engage in self-auditing for compliance.
2. \*Continue with camera expansion project reflected in Provision 503 to assist with the process.

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<sup>31</sup> No entry June 4 and June 5, 2023 – B Team

3. \*Work with the Joint Experts concerning how hiring additional Technicians or Custody Deputies pursuant to Penal Code Section 850.2, 850.5 could assist in the role of security checks. This is best addressed going forward in Provisions 200 and 201.

*(768) The following amounts of out-of-cell time shall apply to incarcerated persons housed in the Therapeutic Housing Units, unless a Qualified Mental Health Professional determines that such amounts of time are clinically contraindicated: Individuals who are housed in the most restrictive setting within the Therapeutic Housing Units shall be offered at least one (1) hour per day of structured time and three (3) hours per day of unstructured time. Individuals housed in the less-restrictive, transitional units within the Therapeutic Housing Units shall be offered at least two (2) hours per day of structured time and three (3) hours per day of unstructured time. Individuals in the least restrictive areas of the program shall generally be allowed eight (8) hours per day out of cell.*

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

**Assessment:**

The ACSO and AFBH continue to operate Therapeutic Housing Units in units 9, 24 and 35 but the female population was temporarily rehoused to Unit 21 in June 2023 to allow for renovations in unit 24. For the male population, the most restricted unit is Unit 9, Pod A and for the females the most restrictive units are located in Unit 24, Pods D and E. The least restrictive THU for males is Unit 35 but Unit 9 Pods B-F also house THU males where the occupants engage in out-of-cell activities in groups, versus the more controlled individual and small group programming conducted in 9A and 24D and 24E.

As mentioned in prior provisions, the County has been utilizing paper logs to track out-of-cell time and most recently began analyzing out-of-cell time captured in the Guardian RFID system. To analyze THU out-of-cell during this rating period, the paper tracking logs were reviewed for five separate weeks from the period of January-June 2023. These logs track only the unstructured time, which should be at minimum 21 hours per week for 9A, 24D and 24E.

The table on the following page reflects the finding for this rating period.

**2023 THU Out-of-Cell Unstructured Activity  
HU 9A, 21 D/E, 24 D/E**

<b>Week</b>	<b>Unit</b>	<b>Dayroom Offer</b>	<b>Yard Offer</b>	<b>Refusals</b>	<b>Comments</b>
1/29-2/4	HU 9 A	6	0	1,2,5,11,13	
	24D	18	0.75	1,2	Limited PM activity
	24E	16.25	0.5	8, 12	
2/26-3/4	HU 9 A	15	1.5	2, 13	Same IPs as Jan
	24D	12.5	1.25	2, 7, 14	
	24E	14	0.5	0	
4/9-4/15	HU 9 A	23.75	0.25	2, 11, 13	Same IPs as Jan
	24D	11.5	0.5		
	24E	8	2.5		
4/30-5/6	HU 9 A	20	0.5	11,13	Same IPs as Jan
	24D	22	1		
	24E	10.5	1.25		
6/11-6/17	HU 9 A	20	0	2	Same IPs as Jan
	21D	13.5	2		
	21E	12.5	1.5	Limited PM Activity	
<b>Average</b>		<b>18.5</b>	<b>1</b>	<b>Combined Ave</b>	<b>19.5</b>

For the Second Monitoring Report, the County was able to provide four weeks of tracking for HU 9. Based on a limited review of 2022 data, it was estimated that the HU9A populations were averaging 20.5 hours of unstructured activity per week, which is one hour greater than the 2023 random sample weeks.

The next level of THU units analyzed are located in HU 9 Pods B-F. The incarcerated persons in these pods can program in groups generally consisting of at least the lower or upper tier in the dayroom or yard at the same time and sometimes the entire unit. While the information is not available for structured activities, pods B-F in HU9 exceeds Pod A, likely based on the manner in which the incarcerated persons are able to recreate together in larger groups. The average unstructured out-of-cell time for this cohort exceeded 31 hours per week during the first six months of 2023 as reflected in the chart on the following page.

**2023 THU Out-of-Cell Unstructured Activity  
HU 9 B-F**

<b>Week</b>	<b>Unit</b>	<b>Dayroom Offer</b>	<b>Yard Offer</b>	<b>Comments</b>
1/29-2/4	HU9 B-F	28	2.25	HU 9 yard used 12.5 hours in week
2/26-3/4	HU 9 B-F	27	0.5	HU 9 yard used 3.5 hours in week
4/9-4/15	HU 9 B-F	27	2.5	HU 9 yard used 14.5 hours in the week
4/30-5/6	HU 9 B-F	28.5	0.5	HU 9 yard used 3.5 hours in week
6/11-6/17	HU 9 B-F	40.75	0.5	HU 9 Pod Yard used 3.25 hours in week
<b>Total</b>		<b>30.25</b>	<b>1.25</b>	<b>Combined Average 31.5</b>

The least restrictive THU Unit for males is HU 35. While each pod in HU 35 experiences different out-of-cell and recreational time, overall, these units averaged 40 hours of unstructured activities per week for dayroom and recreation time combined. These average hours do not factor in structured activities, such as work, educational programming or TeleCare groups. Once that data can be quantified, the average out-of-cell time for HU 35 will certainly increase. The table on the following page reflects a random sample of out-of-cell unstructured activity for HU 35.

*Remainder of page intentionally left blank*



**2023 THU Out-of-Cell Unstructured Activity  
HU 35**

<b>Week</b>	<b>Unit</b>	<b>Dayroom Offer</b>	<b>Yard Offer</b>	<b>Combined</b>	<b>Comments</b>
1/29-2/4	35A	14	4	18	
	35B	13.75	4	17.75	
	35C	13.75	5.25	19	
	35D	43.75	8	51.75	
	35E	43.75	7.75	51.5	
	35F	43.75	7.75	51.5	
2/26-3/4	35A	14.25	2.75	17	
	35B	13	0	13	
	35C	13.5	1	14.5	
	35D	35.5	6.5	42	
	35E	43	6.5	49.5	
	35F	44	6.5	50.5	
4/9-4/15	35A	15.25	0.75	16	
	35B	14	0	14	
	35C	15.25	1	16.25	
	35D	41.25	10.75	52	
	35E	41.25	10.75	52	
	35F	41.25	10.75	52	
4/30-5/6	35A	43.5	16.5	60	
	35B	43.5	16.5	60	
	35C	43.5	16.5	60	
	35D	43.5	17.5	61	
	35E	43.5	17.5	61	
	35F	43.5	17.5	61	
6/11-6/17	35A	37.5	5	42.5	No Day entries Thurs-Sat, No pm entry sat
	35B	37.5	6.5	44	
	35C	37.5	6.5	44	
	35D	33	7.5	40.5	
	35E	33	7.25	40.25	
	35F	33	7.25	40.25	
<b>Total</b>		<b>33</b>	<b>8</b>	<b>40</b>	

As mentioned, the THUs also provide structured activities, which are not yet tracked for inclusion in the weekly average. It is known, however, that the County contracts for small groups in the THUs and provides

information concerning the time of the groups, number of groups, total participants and the location of those groups. While the Mental Health Expert's report addresses mental health services, it is noted in the first six months of 2023 the TeleCare contract expanded service locations as well as increased the total number of groups and average participants. As with other out-of-cell tracking provisions, it is hopeful in the next rating period the County can collaborate with the Joint Experts to quantify structured activities for inclusion in tracking.

**TeleCare Groups  
Therapeutic Housing Units 2023**

Month	Housing Units Seen	Total Groups	Total Participants
January	9,24,35	73	245
February	9,24,35	64	228
March	9,24,35	102	314
April	9,24,35	87	234
May	9,23,24,35	95	307
June	9,21,23,24,35	71	202
<b>Average</b>		<b>82</b>	<b>255</b>

**Recommendations:**

1. Refer to Recommendations in Provisions 411, 412 and 418.

*(773) Defendants shall develop and implement custodial staff training on de-escalation and patients experiencing mental health crisis, which shall be provided to all current ACSO jail staff. Class Counsel shall be provided with an opportunity to review the proposed training materials and to provide input. Class Counsel shall also be permitted to attend the initial training to observe and may attend additional training upon request. The training shall, at minimum, including discussion of any relevant policies and procedures, de-escalation techniques, crisis intervention, identifying people in mental health crises, interacting with individuals with mental illness, appropriate referral practices, suicide and self-harm detection and prevention, relevant bias and cultural competency issues, confidentiality standards, and approaches on how to respond to individuals in crisis, with an emphasis on developing and working in teams with AFBH as much as possible. The training shall include an assessment component, such as using interactive practice scenarios, to measure staff comprehension. Class Counsel shall be provided an opportunity to review and comment on all training materials and may attend the training to observe upon request. This training shall also be provided to all new staff and current staff shall complete refresher training on these topics on a biennial basis.*

**Finding:        Partial Compliance**

**Assessment:**

The CIT training developed by the County to comply with this provision is in the process of Joint Experts review and the County intends to make necessary changes and present the lesson plan to Class Counsel during the next monitoring period. In the interim, it is clear that the language and goal of de-escalation continues to expand in the system based upon use of force reviews and conversations with staff while on tours.

For example, the use of force review process identifies positive de-escalation strategies and areas for staff improvement and those observations are shared with staff. This has been confirmed through the use of force reviews and during discussions with custody staff while on tour. All custody staff interviewed state that the supervisors debrief critical incidents, and in those debriefs the staff discuss missed opportunities to avoid the incident or minimize the incident through various de-escalation techniques. This is positive but it is also recognized that during this reporting period incidents have been identified where effective de-escalation strategies were not employed, highlighting the importance of the CIT training roll-out, particularly in high force utilization areas.

**Recommendations:**

1. \*Complete the refinement of the CIT training currently underway with the Mental Health Expert.
2. \*Once the initial and refresher curricula is developed and approved, present a formalized training plan for all staff working in the jail, including those who are redirected or hired on an overtime basis from outside of custody division to cover posts.
  - a. The training should be custody-specific and designed to afford staff the ability to practice learned skills.
3. \*Work with the Joint Experts and Class Counsel to clarify which de-escalation courses are provided to which categories of staff and determine frequency and modality for refresher training.

*(800) Defendants shall establish an Incarcerated person Advisory Council and Ombudsperson Program, in consultation with the Joint Experts as provided in Section IV(A), to work with the aforementioned Compliance Unit and senior Jail staff to provide individuals incarcerated at the Jail a venue to raise and address new and ongoing concerns and possible ways to improve living conditions at the Jail. The Incarcerated person Advisory Council shall strive to have representation from all housing units and classifications at the Jail.*

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

**Assessment:**

The County has assigned a sergeant to serve as the project manager for the implementation of the Incarcerated Person Advisory Council and the County Human Resources Department is in the process of establishing an Ombudsman position, which is a new classification for the Sheriff's department. Both of these are positive and should be able to be more fully realized in the next reporting period.

There is cautious optimizing on this rating but in candor if more tangible progress is not made in the next rating period, this provision will likely return to non-compliance.

**Recommendations:**

1. \*The County should select at least one female and one male housing unit to pilot an IP Advisory Program.
2. \*The County should send the designated sergeant to a local state prison to observe an advisory committee meeting in action as the Sergeant develops the pilot plan.
3. \*The Custody Expert will support the designated project management in development of policies and forms once the pilot is established.
4. The County should complete the hiring process for an Ombudsman in the next rating period who can then develop an action plan to establish an Ombudsman program for custody operations.

*(1200) Within three (3) months of the Effective Date, the Parties shall develop a detailed plan setting forth key benchmarks for implementation of the terms of this Consent Decree. This shall include a timeline with identifiable goals and any necessary interim measures that will need to be taken. It is the Parties' intent to provide, in as much as detail as possible, the deliverables that will be identified for monitoring purposes both during the interim period and thereafter. The Parties shall update the implementation plan on a quarterly basis for the first two (2) years following the Effective Date to adjust benchmarks and deadlines and to address any issues regarding implementation.*

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

**Assessment:**

The County has project plans that were developed for both AFBH and ACSO as well as a policy project plan for ACSO. The challenge has been to ensure they are comprehensive and up to date as the County continues to show progress on implementation but also receives meaningful recommendations from Joint Experts in consistent Monitoring Reports. The Compliance Unit and AFBH leadership simply have insufficient resources to maintain and update the project plans in a meaningful way. During the Second Monitoring Report discussions, it was recommended that the County update the project plans to include recommendations from the Joint Expert reports for inclusion in the County plans but that did not occur.

The purpose of project plans is to ensure all departments are aware of the complex tasks associated with compliance with the Settlement Agreement and that interdisciplinary teams are routinely meeting to discuss status of projects to celebrate completions and target support to areas that are not meeting goals.

The County is encouraged to support AFBH and ACSO in maintaining up-to-date and quality project plans.

**Recommendations:**

1. \*Continue to collaborate with the Joint Experts and Counsel to create an integrated, comprehensive and dynamic project plan.
2. Include recommendations from Second Monitoring reports from all experts.
3. \*Maintain consistent updates to the plan with standing collaborative meetings to discuss status, policy decisions needed and barriers.
4. \*Ensure linkage to standalone plans, such as construction project plans, and accessibility to those plans for monitoring.