

Babu v. Ahern
Consent Decree Fourth Status Report
Case No. 5:18-cv-07677-NC
James Austin, Ph.D.
February 2024

The following is the compliance assessment of Consent Decree provisions assigned to James Austin for monitoring as of February 2024. For each provision, this Joint Expert’s methods for assessment, findings and recommendations are provided. These assessments take into account comments received from the Alameda County Sheriff’s Office (ACSO), Class Counsel and Defendants’ Counsel based on an earlier draft.

Please note that two provisions that were formerly assigned to Dr. Austin have been transferred to Dr. Montoya (#404 and #406).

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

- SC Substantial Compliance
- PC Partial Compliance
- NC Non-Compliance

Classification and Restrictive Housing Consent Decree Summary Ratings

Requirement	Compliance Rating
300. Implement a new classification system within 3 months of the Effective Date.	SC
301. All initial classification interviews at intake shall include a face-to-face, in- person, interview	SC
302. All re-classifications performs every 60 days with face-to-face interview for medium and higher custody levels, or, if an inmate is being reclassified from minimum to a higher level .	SC
303. Individuals are assigned to the General Population or to Administrative Housing	SC
304. Development and implementation of a formal process for the admission, review and release of individuals to and from Administrative Housing	SC
305. Development and implementation of a Restrictive Housing Committee (“RHC”)	SC
306. Individuals shall not be placed in Restrictive Housing unless they are referred to the RHC for review.	SC
307. The RHC shall conduct a formal review of referrals within seven (7) calendar days with face-to-face interviews with the RHC	SC
308 The RHC meets at least weekly to review referrals and reviews of placements and maintain records of their meetings	SC
309. Individuals shall be moved from Step 1 to Step 2, and from Step 2 to General Population, based on clearly outlined, written criteria to include an absence of serious assaultive behavior and no major disciplinary reports during the period of placement	SC

310. Individuals with SMI shall not be placed in Restrictive Housing, Recreate Alone Status (“Step 1”) unless the criteria outlined in Section III(D)(1) has been met	SC
311. ACSO notifies AFBH with 24 hours of a BHI patient placed in Restrictive Housing	PC
314. Classification approves all cell transfers	SC
315. Protective Custody policies	SC
316. Development and implementation of policies and procedures on double celling	SC
317 Development and implementation of step-down protocols for RHU and THU	SC
318. Development and implementation of policies and procedures for inmates with disabilities	SC
319 Produce reports of: (1) of class members with SMI who have a release date within the next 12-36 hours and (2) regarding lengths of stay for people in restrictive housing,	SC
320. The RHC shall review reports regarding length of stay on a quarterly basis	SC
321. Appropriate due process in classification decisions	SC
322. Complete training for custody staff on the new classification system and policies	SC
400. Implement a new classification system, as outlined in Section III(C).	SC
401 - Restrictive Housing, Recreate Alone Status (“Step 1”):	SC
408 - Step 2 individual Initial and Re-evaluations	SC

23 Substantial Compliance - 1 Partial Compliance - 0 Non Compliance

300. Defendants shall implement a new classification system, based upon the findings and recommendations contained in Dr. Austin’s expert report (Dkt. 111), within three (3) months of the Effective Date. The new classification system shall be approved by Dr. Austin prior to implementation. To the extent COVID-19 related measures require an individual to be temporarily housed in a more restrictive setting, such as a celled setting instead of a dorm for Medical Isolation or Quarantine purposes, they shall be returned to housing commensurate with their classification level as soon as deemed medically appropriate. This system shall, at a minimum, incorporate and/or include the concepts, processes, and/or procedures listed below.

Finding: Substantial Compliance

Policies: 12.01 Intake Classification, 12.02 Reclassification, 12.04 Housing Plan

Training: Staff have been trained in the use of the new classification system including the initial and reclassification forms. This was accomplished during the time the new system was being pilot tested. Classification staff receive further guidance in classification practices via the weekly staff meetings.

Metrics: Interviews with the Classification Unit staff.

Analysis of the snapshot data file to verify that the entire jail population absent people who have not completed the intake process have been classified either under the initial or reclassification instruments, and b), are housed according to the current classification system.

Observations of the intake and reclassification process.

Reliability test by the Monitor of a random sample of 100 inmates to verify they have been properly classified and that they were interviewed by classification staff.

Review of the above referenced classification policies to determine if they have been updated as of February 2024 to reflect the procedures required for the new classification system.

Assessment: ACSO continues to operate the key components of a reliable and valid classification system. Classification staff have been using the initial and reclassification forms for a) new admissions and b) those inmates who have to be reclassified every 60 days or due to new information that would trigger a reclassification instrument. All new admissions are being interviewed by staff who are trained in the new system. Reclassifications are also being completed in a timely manner and with the benefit of a face to face interview.

The Monitor continues to receive the requested inmate population snapshot with the requested data. It is still not possible to receive a data file showing the detailed scoring of the initial or reclassification record.

This year has shown a significant reduction in the jail population. This reduction seems to be linked to a reduction in jail bookings and the Length of Stay (LOS) that has declined from 30 to 23 days (Table 1). Jail population reductions reduce issues related to classification and basic jail operations (e.g., staff supervision, out of cell time, etc.) by increasing the security staff to jail population ratio.

Table 2 shows the distribution of the current jail population (December 2023) by the major classification categories. There is a significant number of inmates who are in a variety of special population statuses (30% of the total jail population) although this is much lower than reported in previous reports (47%). The largest non-general population categories are inmates assigned to protective custody (276 or 17%) with another 78 (5%) assigned to the THI but under a Protective Custody status. The total BHI caseload is 1,207 (76%) which is extremely high when compared to other jail and prison systems I am familiar with. The program caseload has increased significantly from 7% to 17%, there are few inmates assigned as ADA (4%) and a relatively small percentage enrolled in a program (7%) or have a work assignment (16%).

Table 1. Alameda County Jail Average Daily Population, Bookings and Length of Stay
2017- 2023

Year	ADP	Bookings	LOS in days
2017	2,078	34,908	22
2018	2,150	30,349	26
2019	2,372	34,115	25
2020	2,094	24,288	31
2021	2,145	24,550	32
2022	2,165	26,310	30
2023	1,606	25,829	23

Table 2. Alameda County Jail Population Classification Levels – December 31, 2023

Class Level	Population	%
Unclassified	36	2.3%
Non-General Population	475	29.8%
Border Brothers	8	0.5%
Northern Rider	4	0.3%
Sureños	13	0.8%
MS 13	4	0.3%
Protective Custody	276	17.3%
Protective Custody THI	78	4.9%
RHP	61	3.8%
SSI	31	1.9%
Gen Pop	825	51.6%
Max	215	13.5%
Med	317	19.8%
Min	293	18.3%
THI	252	16.3%
Max	77	4.8%
Med	130	8.1%
Min	55	3.4%
Total	1,598	100.0%
BCHS Caseload	1,207	75.5%
Program Caseload	206	17.1%
Work Assignment	149	9.3%

If one looks at the classification custody levels for all inmates (Table 2) with the exception of the Restrictive Housing program, the gang units, SSI, and Protective Custody population, classification level distribution looks appropriate with most inmates in the minimum and medium custody levels (total of 73%).

There continues to be a sizable federal detainee population. As shown in Table 3, there were 320 Federal inmates housed in the jail as of March 13, 2023. A sizeable proportion of these inmates are classified as minimum, medium or PC. Removing these federal inmates would allow closure of a few housing units and probably reduce jail violence by having higher staffing levels in the housing units that remain open.

Table 3. Federal Cases by Classification Level November 30, 2023

Classification	Number	%
Gangs	10	3%
PC	41	14%
Maximum	44	15%
Medium	50	17%
Minimum	131	44%
RHP	9	3%
SSI	7	2%
THI	6	2%
Total	298	100%

The number of inmate-on-inmate and inmate-on-staff assaults are also being tracked. As shown in Figure 1, the number of such assaults steadily increased up until 2023 but have now declined. Part of the numeric decline is due to the above noted decline in the jail population. If one computes an assault rate per 100 jail population, one can see there has been a decline since June 2022 in the inmate on staff assault rate and stabilization in the inmate on inmate rate with a noticeable drop in December 2023 (Figure 2). A closer examination of these assaults shows that the vast majority of them are labeled as “minor” with no injury to the inmate or staff person.

In terms of the types of inmates who are involved in these assaults, about 40% of the inmate on inmate assaults are occurring in the BHI/THI units. About 90% of the inmate on staff assaults are being committed by BHI clients.

Figure 1. Inmate on Inmate and Inmate on Staff Assaults
January 2020-December 2023

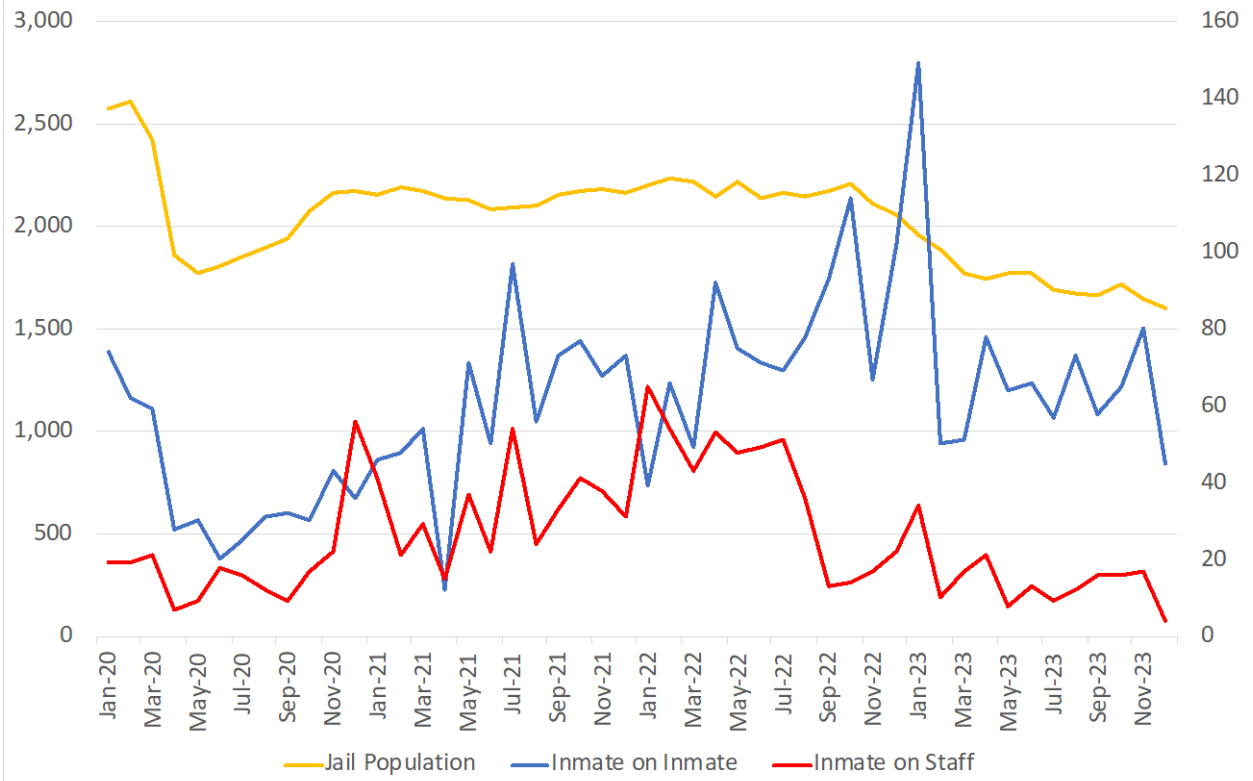
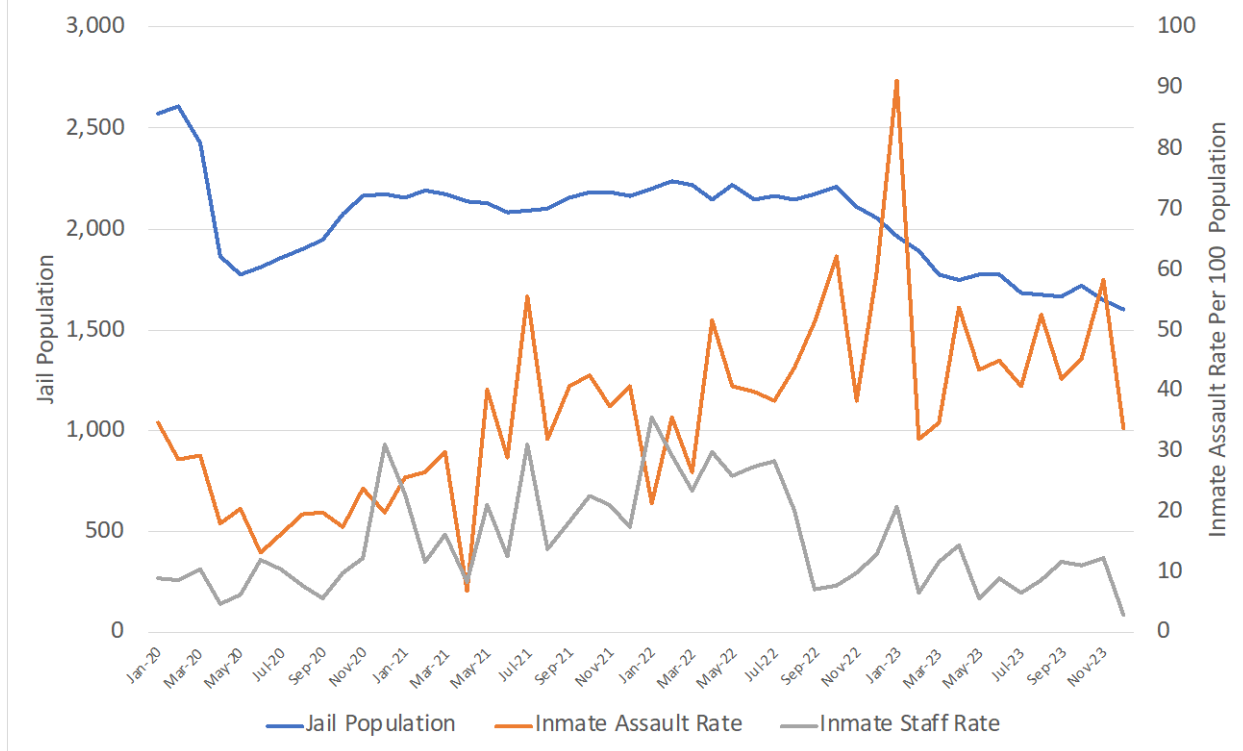


Figure 2. Alameda County Jail Population and Inmate on Inmate and Inmate on Staff Assault Rates January 2020 - December 2023



The Monitor did complete a reliability test on the classification scoring process that consisted of auditing 100 randomly selected Initial classification and reclassification cases. The results showed that there were few errors in the scoring of each assessment item and no errors on the final classification level designation.

Classification policies 12.01, 12.02 and 12.04 are now published and in practice.

The primary methods for training staff in new or revised policies is the Document Management System (DMS) which requires staff to read and acknowledge their understanding of the new or revised policy. This is followed up during the Classification unit weekly staff meetings during which new policies (and other matters) are reviewed and discussed with staff. This form of training took place policies 12.02 and 12.04 that were published in March 2023. The ACSO will have 90 days to complete this same level of training in Policy 12.01 once it is published. The Monitor finds this level and form of training to be adequate. The only missing element is a formal documentation that the subject matter of any new policy has been covered in the weekly staff “muster” training meetings. In March 2024, ACSO re-affirmed that classification staff have been trained in February 2024 via the DMS and muster staff training meeting for the released Policy 12.01.

Recommendation: None

301. All initial classification interviews at intake shall include a face-to-face, in-person, interview with the incarcerated individual in addition to review of any relevant documents.

Finding: Substantial Compliance

Policies: 12.01 Intake Classification

Training: Staff have been trained in how to use the initial classification instrument.

Metrics: Observation of the initial classification process during site visit.

Interviews with the Classification Unit staff.

Statistical analysis of the snapshot data files to verify all inmates have a completed classification record in a timely manner.

Assessment: Inmates are now receiving an initial classification interview and are being scored on the new initial instrument in a timely manner.

The primary methods for training staff in new or revised policies is the Document Management System (DMS) which requires staff to read and acknowledge their understanding of the new or revised policy. This is followed up during the Classification unit weekly staff meetings during which new policies (and other matters) are reviewed and discussed with staff. The ACSO will have 90 days to complete this same level of training in Policy 12.01. The Monitor finds this level and form of training to be adequate. The only missing element is a formal documentation that the subject matter of any new policy has been covered in the weekly staff meeting. In March 2024, ACSO re-affirmed that classification staff have been trained in February 2024 via the DMS and muster staff training meeting for the released Policy 12.01.

Recommendation: None.

302. Development and implementation of new policies regarding classification, including replacing the prior scoring system with an updated additive point system that mirrors the National Institute of Corrections Objective Jail Classification system, and which requires a classification review including a face-to-face interview of all General Population Inmates in Medium or Maximum settings every sixty (60) days. If it appears an inmate in a Minimum General Population setting may be placed in a higher classification, a face-to-face interview shall be conducted.

Finding: Substantial Compliance

Policies: 12.01 Intake Classification, 12.02 Reclassification, 12.04 Housing Plan.

Training: All staff have been trained in the use of the new classification forms (initial and reclassification) which also have been automated. Verification that staff have been fully trained on Policy 12.01 has not been received.

Metrics: Interviews with Classification Unit staff.

Review of updated classification policies.

Conduct a random sample of 100 inmates who are in the snapshot data file to verify accuracy of classification scoring process (reliability test).

Analysis of the current jail population data file that contains each inmate's current classification level.

Assessment: As indicated above all newly admitted inmates are being assessed based on the new system. All inmates who have been in custody for 60 days or more have been reclassified. Face-to-face interviews are being completed for all new admissions and for the reclasses of inmates who are not assigned to minimum custody.

Policies 12.01 (intake classification), 12.02 (reclassification) and 12.04 (housing) have been reviewed by all parties and published. Collectively, these three policies require housing movements be approved by the classification unit as well as proper justification and documentation. They are also based on the housing detail document that determines what types of inmates can be housed in what units. It is also the practice for classification to respond to housing units as needed to explain to inmates why they are being moved from one section to another section due to changing classification levels. For a classification level to be changed it requires classification to interview the inmate prior to such a change.

In March 2024, ACSO re-affirmed that classification staff have been trained in February 2024 via the DMS and muster staff training meeting for the released Policy 12.01.

Recommendation: None.

303. Individuals will either be assigned to the General Population or to Administrative Housing, which includes: Protective Custody, Incompatible Gang Members, Restrictive Housing, Therapeutic Housing, or the Medical Infirmary. Regardless of their population assignment, all incarcerated persons will also be assigned a custody level (Minimum, Medium or Maximum) as determined by either the initial or reclassification process.

Finding: Substantial Compliance

Policies: 9.02. Restrictive Housing, 9.03 Protective Custody, 12.01 Intake Classification, 12.02 Reclassification, 12.04 Housing Plan

Training: Staff have been trained in the use of the new classification system including the initial and reclassification forms. This was accomplished during the time the new system was being pilot tested. As current policies are modified, classification staff will need to be trained on any changes in current classification policies using the DMS system and briefings conducted as part of the weekly staff meetings.

Metrics: Interviews with Classification Unit staff.

Observation of initial and reclassification process during site visit

Review of monthly housing plan.

Statistical analysis of the snapshot data file to verify each inmate (with the exception of recent bookings) are classified under the new system.

Assessment: Classification staff statements, an analysis of the snapshot data files, and the reliability test results listed above all show that inmates are now classified under the new system as required by the Consent Decree. Inmates are housed according to the housing matrix. The ACSO also purified Housing Unit 1 so that it only has Restrictive Housing Program (RHP) unit inmates are assigned to it.

Recommendation: None.

304. Development and implementation of a formal process for the admission, review and release of individuals to and from Administrative Housing, including sufficient due process and transparency to provide the incarcerated person with a written basis for the admission within seventy-two (72) hours, explanation of the process for appealing placement in the unit, conditions of confinement in the unit, an ongoing 30-day review process, and the basis for release to the general population.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing and 9.06 High Profile Inmates.

Training: Training of Classification staff has been completed on the updated policy 9.02 via the DMS process and muster training meetings. The RHC members have received an orientation to the RHC procedures and policies prior to implementation of the RHC process.

Metrics: Review of revised ACSO policies governing Restrictive Housing.

Review of weekly cases referred to the Restricted Housing Committee (RHC) to determine if the due process requirements have been met.

Observation of RHC Referral decision notifications being delivered to each inmate at cell side and before the Restrictive Housing Committee (RHC).

Interviews with the Classification Unit and RHC members.

Observations of the RHC meetings while on site.

Tour of the RH units.

Review of the weekly RH Census Report.

Assessment: For this provision it has been agreed by the Monitors that Dr. Austin's report will only focus on the RHC and Dr. Montoya will address the Therapeutic Housing Committee (THC).

RHC meetings are being conducted on a weekly basis to determine whether inmates meet the criteria to be assigned to Step 1 or Step 2 or released from Restrictive Housing. This committee consists of members from AFBH of a supervisory level or higher, an ACSO sergeant, and a Classification deputy in charge of the Restrictive Housing program. A Classification Sergeant or Lieutenant is present and serves as the Committee Chair.

All inmates referred to RH are reviewed by the restrictive housing classification deputy to ensure they meet the initial admission criteria. The referral is then forwarded to the RHC for its weekly meeting.

There has been considerable discussion about the criteria for excluding people from RH due to their mental health status. Based on these discussion it has been determined that people who would otherwise be admitted to RH Step 1 but whose mental health status contraindicates placement in Step 1, will now be placed in the Contraindicated Pod. The RHC Referral form has also been modified to provide better documentation as to why placement in RH Step 1 is contraindicated and that such a determination has been made by the AFBH via an interview (and that a confidential setting was offered).

All protective custody (PC) inmates who are initially placed into PC are placed in to a seventy-two-hour review queue. This is then reviewed by the classification deputy assigned to managing the PC population. These placements require a signature on a PC request form which means all PC placements are interviewed by a classification deputy to determine a root cause to the request and proper placement into the restrictive housing setting. This process is overseen and approved by a sergeant. A recent audit by the Monitor was completed where 19 people assigned to protective custody were randomly sampled and audited. All sampled cases had a completed PC request form, and the classification officer and supervisor signatures were not missing.

Quarterly reports assessing the length of stay identify: (1) any individuals who have been in restrictive housing for thirty (30) or ninety (90) days or longer and (2) any patterns regarding classification members' placement and/or discharge continue to be produced.

A well-structured notification process is used where the classification staff assigned to the RHC notifies the inmate via an interview at cell side of both the RHC referral and subsequent placement decision. A similar process exists for the 30 day reviews.

Recommendation: None.

305. The formal process for admission to and discharge from the Restrictive Housing units shall require the development and implementation of a Restrictive Housing Committee (“RHC”) that shall approve all placements. The RHC shall be chaired by a sergeant or higher from the Classification Unit and include an AFBH representative at the supervisory level or higher and an ACSO representative from outside the Classification Unit at the sergeant level or higher.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing

Training: RHC members have received an orientation to the existing policies. Training of Classification staff who participate in the RHC has been completed on the updated policy 9.02 via the DMS process and muster training meetings.

Metrics: Review of revised ACSO policy 9.02

Audit of a representative sample of the inmates referred to Restricted Housing to determine if the due process requirements have been met.

Interviews with the Classification Unit staff and RHC members.

Observation of the RHC meetings.

Tours of the RH units.

Review of Minutes of the RHC meeting.

Review of RHC current and revised RH referral forms.

Assessment: The RHC meetings are being held on a regular basis with the appropriate people assigned to the RHC. Copies of complete referrals and Committee minutes were forwarded to the Monitor for review. Observations of the RHC meetings were also conducted by the Monitor as well as other interested parties. A recent review of the RHC referral forms has found that they are being properly completed. Policy 9.02 has been updated, reviewed by all parties and published. Relevant Classification staff have been trained in the policy via the DMS process and muster staff meetings.

Recommendation: None.

306. Individuals shall not be placed in Restrictive Housing unless they are referred to the RHC for review. Individuals may be referred based on the following circumstances: (1) recent assaultive behavior resulting in serious injury; (2) recent assaultive behavior involving use of a weapon; (3) repeated patterns of assaultive behavior (such as gassing); (4) where they pose a high escape risk; or (5) repeatedly threatening to assault other incarcerated persons or Staff. All referrals shall clearly document the reason for the referral in the form attached to the Consent Decree as Exhibit B. Incarcerated individuals shall not be referred to Restrictive Housing for rule violations beyond the five categories enumerated herein.

Finding: Substantial Compliance

Policies: Policy 9.02 Restrictive Housing.

Training: Classification Staff and the RHC members have been trained in the use of the referral process.

Metrics: Interview with Classification Unit staff.

Observations (recorded and actual) of the inmate notification process at cell side by the Classification officer

Review of RHC meeting minutes and completed RHC referral forms.

Assessment: As noted above, based on the RHC meeting minutes and a review of completed referral forms the RHC is functioning as required by the Consent Decree. To meet the face to face requirement, the Classification unit has initiated a process whereby the inmate is notified via an interview at cell side that a referral to the RHC has been made and the reason(s) for the referral. A copy of the referral forms is given to the inmate. The inmate is told that they can submit in writing any relevant information to the RHC. Once the RHC decision is made, the Classification officer conducts another face to face cell side interview to inform the inmate of the RHC decision. A copy of the RHC decision forms is given to the inmate and is told that an appeal can be made. Observations of this process both recorded via bodycam and while on site showed that this process is done very professionally by the Classification deputy. Efforts are made to ensure the inmates understand the RHC referral and decision process.

Policy 9.02 has been updated and published. Relevant Classification staff and other RHC members have been trained on the requirements of Policy 9.02 via the DMS system and muster staff training sessions.

As noted earlier under Provision 304, there has been considerable discussion about the criteria for excluding people from the RHP due to their mental health status. An adjusted process is now in place to ensure people who are contraindicated for placement in Step 1 of the RHP as determined by AFBH are being appropriately housed.

Recommendation: None.

307. After receiving a referral, the RHC shall conduct a formal review within seven (7) calendar days to assess whether the individual meets the above criteria for placement in restrictive housing. The RHC shall base this review on a face-to-face interview with the incarcerated individual and a review of relevant documents including any documents provided by the incarcerated person in response to the referral. Incarcerated individuals can request an opportunity to have witnesses heard regarding factual disputes in response to the referral, to be permitted at the RHC's discretion. If the RHC determines, based on this review, that the incarcerated individual meets the criteria for restrictive housing, they will assign the individual for placement in Restrictive Housing Step 1 or Restrictive Housing Step 2 as appropriate.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing.

Training: The RHC members are well versed in this provision and its requirements.

Metrics: Review of RHC referrals.

Interviews with ACSO and AFBH RHC members.

Observations of the RHC weekly meetings.

Assessment: As noted above, reviews are being completed by the RHC and inmates are interviewed prior to and after the RHC makes its decisions. During the interview, the deputy explains the reasoning for the placement, the restricted housing process, and explains to the inmate how to get out of restricted housing. During these post RHC interviews, the inmate can raise any factual issues regarding the basis for the RHC decision including the right to list witnesses who can offer factual information regarding the basis for the RHC referral. As noted above, legal counsel for the parties have determined that this process satisfies the original requirement inmate to be physically present during the RHC.

Recommendation: Complete any addition training as needed and provide required documentation. The Monitor will also interview class members as part of future tours regarding their experiences in this interview process to ensure it meets the requirements of this provision.

308. The RHC shall meet at least weekly to review referrals, conduct scheduled reviews of individual placements as outlined in Section III(D)(1) (Out-of-Cell Time Section), and, in their discretion, review any requests for re-evaluation received from incarcerated individuals currently in Restrictive Housing. The RHC shall document these meetings in written notes including how many requests and/or referrals were reviewed, how many individuals were admitted to, released from, or moved between Steps in the Restrictive Housing Settings, and the reasons for the RHC's decisions as to each.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing

Training: There was an orientation meeting held in 2023 with the designated RHC members prior to the start of the RHC formal meetings. The RHC members have completed the DMS process and are well versed in this provision and its requirements. There has been no turnovers in the people assigned to the RHC.

Metrics: Interview with ACSO and AFBH members of the RHC.

Review of the RHC weekly minutes.

Review of the completed RHC referral forms.

Assessment: The RHC continues to function properly. It is meeting on a weekly basis and is keeping minutes of its meetings which include the disposition of each case. Notes are taken during the meeting and records of both are saved to the county drive. These minutes and the associated referral form are being forwarded to the Monitor for review on a weekly basis. The referral reasons and final decisions of the RHC are being effectively communicated to each inmate with copies of the referral form and subsequent decisions.

The existing policy 9.02 has been updated, reviewed by all parties and published. It contains all of the specific requirements as set forth in the Consent Decree and is being practiced.

Recommendation: None.

309. Individuals shall be moved from Step 1 to Step 2, and from Step 2 to General Population, based on clearly outlined, written criteria to include an absence of serious assaultive behavior and no major disciplinary reports during the period of placement immediately prior to the review. The presumption shall be that individuals are to be released as quickly as possible back into General Population, consistent with safety and security needs. The RHC has the authority to release any individual at any time to a General Population setting or to move an individual from Step 1 to Step 2 or Step 2 to Step 1 in accordance with the policies and procedures, set forth herein.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing

Training: RHC members were trained prior to the start of the RHC formal meetings 2022. The RHC members have completed the DMS process and are well versed in this provision and its requirements.

Metrics: Observations of the RHC review hearings while on site and those videos recorded.

Review of the weekly minutes and review of the completed RHC review forms.

Review of RHC referral and review forms

Assessment: The ACSO uses a one page pamphlet in both English and Spanish that clearly outlines the RH placement process and indicates how the inmate can progress from Step 1 to Step 2 and back to the General Population. This document, which is signed by the inmate, indicates that if one a) receives no major disciplinary reports and in the absence of serious assaultive behavior during the period of placement immediately prior to the review or b) other serious misconduct such as disobeying a direct order, c) attends all scheduled sessions with the AFBH and d) expresses a willingness to recreate with other inmates, he/she shall be moved to Step 2.

When inmates are initially placed into restrictive housing, they are reviewed by classification deputies within 72 hours to ensure they meet the criteria for such initial placement. The RHC then meets to determine if the person should be formally placed in RH. If the RHC determines placement in RH is appropriate, the inmate is then interviewed a classification deputy on the criteria for being promoted to Step 2 and eventual release from RH.

The ACSO reports that inmates who have no documented incidents for 30 days, the RHC moves them to a less restrictive setting (either Step 1 to Step 2 or out of restrictive housing altogether depending on the severity of the disciplinary behavior that placed them in RH). This is noted in the RHC minutes and review forms.

The existing policy 9.02 has been updated, published, and contains all of the specific requirements established for this provision of the Consent Decree.

Recommendation: None

310. Individuals with SMI shall not be placed in Restrictive Housing, Recreate Alone Status ("Step 1") unless the criteria outlined in Section III(D)(1) has been met and subject to the safeguards contained in that section.

Finding: Substantial Compliance

Policies: 9.02 Restrictive Housing.

Training: There was an orientation meeting held in February 2022 with the designated RHC members prior to the start of the RHC formal meetings in March 2022. The RHC members have completed the DMS process and are well versed in this provision and its requirements.

Metrics: Interview with Classification Unit staff.

Assessment of the snapshot data file.

Assessment: Using the snapshot data files there are several inmates in the RH that have been designated as SMI. As of January 2024, there were ten of the 42 males designated a SMI with four assigned to Step 1. All of these SMI patients have been approved by the AFBH for being assigned to RH and to the specific RH Step.

It's also clear from the observations of the RHC meetings, with representation from the AFBH, the RHC is carefully reviewing people who fit the profile of an SMI and not allowing them to be housed in the RHP if the patient's mental health status contraindicates such a placement.

The existing policy 9.02 has been updated, published and contains all of the specific requirements established for this Consent Decree provision.

I have also conferred with Dr. Montoya who has indicated that the SMI definition is now being properly applied to the jail population.

Recommendation: None.

311. ACSO shall notify and consult with AFBH clinical staff, as appropriate, within twenty-four (24) hours of placing any Behavioral Health Clients in Restrictive Housing at which time AFBH shall assess the individual to determine whether such placement is contraindicated due to mental health concerns. AFBH shall offer to conduct this assessment in a confidential setting. This assessment shall be documented and, if placement is contraindicated, ACSO shall work with AFBH to identify and implement appropriate alternatives and/or mitigating measures.

Finding: Partial Compliance

Policies: 9.02 Restricted Housing.

Training: There was an orientation meeting held in February with the designated RHC members prior to the start of the RHC formal meetings in March. The RHC members have completed the DMS process and are well versed in this provision and its requirements.

Metrics: Interview with Classification Unit staff.

Review of RHC minutes and copies of completed referral forms.

Documentation by AFBH that their assessments prior to the RHC meetings are being conducted in a private setting.

Assessment: All inmates who are referred to the RHC for possible placement in the RH are referred to AFBH prior to the RHC meeting. This requirement is reflected in the Policy 9.02 which has been reviewed by all parties and has been published. Observations of the RHC meetings showed that the AFBH representative is familiar with the inmate's current mental health status and communicates same to the full RHC.

In consultation with Dr. Montoya, the AFBH needs to provide documentation to the Monitor that their assessments are based on offering a face-to-face interview prior to the RHC meeting and that they are offering to conduct such interviews in a private/confidential setting.

However, during the Monitor's January 2024 tour, it was clear that confidential interviews when offered and agreed to by the incarcerated person were not always being conducted for people referred to the RHC prior to a meeting. Although such interviews may be occurring now, the fact that they were not being completed for most of the monitoring period renders a partial compliance rating. This rating should be changed to substantial compliance as evidence is provided by the AFBH via the revised RHC referral forms that require the AFBH to complete an interview based mental health assessment prior to the RHC meetings.

Recommendation: In order to reach substantial compliance, the AFBH will need to demonstrate that when such assessments are being offered and accepted by the incarcerated person, they are conducted via a face to face interview in a private/confidential setting prior to the RHC meetings.

314. Development and implementation of policies and procedures requiring the Classification Unit to formally approve all intra-and inter-housing unit cell transfers.

Finding: Substantial Compliance

Policies: 12.01 Intake Classification, 12.02 Reclassification and 12.04 Housing Plan.

Training: As indicated above, training has been completed for the newly published policies 12.02 and 12.04 via the DMS process and weekly staff briefings. Classification unit officials have indicated that similar training was completed for the newly published policy 12.01.

Metrics: Interviews with Classification Unit staff.

Review of published ACSO policy 12.01.

Audit of selected cases where internal transfers were completed.

Assessment: Policy 12.01 Reclassification was updated and published. Training was completed for all classification unit staff to explain this change in policy. This has also been enforced by ACSO command staff and is now standardized throughout the jail.

Recommendation: None.

315. Development and implementation of policies and procedures regarding continuation and discontinuation of protective custody status, including due process for releasing incarcerated persons who do not meet the requirements for protective custody status into general population status.

Finding: Substantial Compliance

Policy: 9.03 Protective Custody/ Gang Drop-out Inmates

Training: Training of classification staff has been completed on Policy 9.03

Metrics: Interviews with Classification Unit staff.

Review of Policy 9.03.

Audit of random sample (19) of current protective custody population.

Assessment: Policy 9.03 has been published as of September 2023. During this monitoring period, an audit of 19 people who had been assigned to Protective Custody to verify compliance with Policy 9.03. That audit found that the Classification Unit had properly documented the referral for Protective Custody and are monitoring their current placement in Protective Custody.

Classification unit administrators also reported that Classification staff must complete a formal review of the need for Protective Custody status as part of the formal 60 day reclassification event. This means that all inmates are being re-assessed for the need for Protective Custody and whether Protective Custody is needed every 60 days. The Monitor is unaware of any formal inmate grievances asking for but not being assigned to Protective Custody. Finally, as shown in Table 2 there is a large number (over 20%) of the jail population is assigned to Protective Custody which further indicates people who require Protective Custody are being so classified and housed in specialized units.

Recommendation: None.

316. Development and implementation of policies and procedures on double celling that takes into consideration criminal history/sophistication, willingness to accept a cellmate, size and age of the incarcerated persons in comparison to each other and reason for placement and in which cell assignments must be reviewed and approved by the Classification Unit with input from housing unit staff.

Finding: Substantial Compliance

Policy: Policies 12.01 (Intake Classification) and 12.02 (Reclassification).

Training: Staff have been trained in the documentation process for allowing a single cell assignment.

Metrics: Interviews with Classification staff.

Review of policies 12.01 (Intake) and 12.02 (reclassification).

Review of Plaintiff's Letter dated November 21, 2023

Assessment: Based on interviews with Classification staff there is not a formal policy that narrowly addresses the use of double celling. But Policy 12.01 does contain the following guidelines and requirements:

- a. All inmates, regardless of their required security level, will be appropriately classified with the intent of double occupancy.
- b. If following the classification interview it is determined the inmate requires a single cell placement, documentation explaining the need to single cell assignment is required. A sergeant assigned to the Classification Unit, or the on-duty watch commander in the absence of the Classification Sergeant, shall approve the single cell assignment.”

The Classification Unit controls single and double celling and documents when a single cell is required. As noted above in policy 12.01, the assumption is that all inmates are eligible for double celling unless there is a contraindication for the need to be single celled.

Currently, the only official exception to double celling is for inmates who are in Restricted Housing Step 1 who are transitioning from Step 1 to Step 2 or an inmate who has certain medical or ADA requirements. Inmates in these categories would require documentation by Classification explaining the need for such a request.

At the request of the Monitor, a single cell flag recently has been added to the ATIMS that will need a classification Sergeant or higher approval going forward. As of February 20, 2024, there were 63 prisoners who were single celled, 33 of whom were assigned to the RHP, 26 were assigned to Unit 2 where the SSI population is located, three in Unit 23F (protective custody) and two in Unit 24F (special housing). It is expected that those assigned to these RHP and SSI units are single celled.

It is noted that in a letter dated November 21, 2023, Plaintiffs raised the issue of double celling people who in particular, have a history of mental illness and are AFBH clients. They point to a recent incident where a BHI client was killed in his cell by his cellmate who also was a BHI client. This incident occurred in Unit 9 – THU where a large percentage of inmate-on-inmate assaults are occurring, and BHI clients are double-celled. As noted earlier almost half of the inmate-on-inmate assaults and 90% of the inmate on staff assaults are being committed by BHI clients. It is not possible to easily determine how many of these assaults are occurring in cells as opposed to common areas.

For these reasons, the Plaintiffs made the following recommendation:

“We therefore reiterate our request that Defendants implement policies and procedures to facilitate enhanced communication between mental health staff and classification staff for purposes of double celling assignments.”

In my interview with the Classification Unit staff, I was informed that AFBH staff in Unit 9 are routinely consulted by Classification prior to making a housing decision to determine if the client can be double celled and with whom. And AFBH staff do make requests to Classification to re-assign an inmate to another cell or transfer them to a restricted housing unit. The ultimate decision as to whether the inmate is single or double celled should rest with the Classification unit and not AFBH. However, the Classification staff does routinely consult the AFBH in making such housing decisions.

Recommendation: For people assigned to the THU units, the current practice of and need for Classification staff to consult with the AFBH staff assigned to those units to determine if the person should be temporarily single celled should be re-emphasized.

317. Development and implementation of step-down protocols for the Restrictive Housing Units and Therapeutic Housing Units that begin integration and increase programming opportunities with the goal to safely transition incarcerated individuals to the least restrictive environment as quickly as possible.

Finding: Substantial Compliance

Policy: None is required as it is part of the overall RHU and THU process.

Training: No formal training has been completed as there is no formal policy in place.

Metrics: Interviews with Classification staff.

Review of RHC meetings and minutes

Consultation with Dr. Montoya

Assessment: The RHC is taking into consideration the AFBH case plan and classification security needs of the inmate when determining where to house upon release from RH. AFBH is consulted from the very first RHC meeting through the last which generates the RH release. There are several inmates who are classified as a Special Security Inmate (SSI) and are being transferred to the SSI unit. These are people who have completed the requirements of RH but cannot be safely released to the General Population, or who refuse to be moved to a General Population unit. Such decisions are made by the RHC and Classification Unit in consultation with the AFBH.

Recommendation: Relative to the Restrictive Housing program, there are no recommendations.

318. Development and implementation of policies and procedures to ensure that inmates with disabilities (including but not limited to SMI) are not over-classified and housed out-of-level on account of their disability, including that an individual’s Psychiatric Disability shall not be considered as a basis for classification decisions outside of the process for placing individuals in an appropriate Therapeutic Housing Unit consistent with their underlying classification level.

Finding: Substantial Compliance

Policy: 1.14 Americans with Disabilities Act (ADA) effective October 31, 2019.

Training: Classification staff has been trained on this policy.

Assessment: The ACSO uses the current Policy 1.14 “American with Disabilities Act” in relation to inmates with disabilities which has not been revised since October 31, 2019. Detailed in this are the policies and procedures for identifying and dealing with inmates with disabilities. Furthermore, the Classification Unit has added multiple hazard flags that are utilized by both Wellpath and AFBH to identify inmates with cognitive and physical disabilities. Those flags include both IDI and ADA.

The December 30, 2023 snapshot data file lists 127 people as ADA which is significantly higher than the 80-85 inmates reported as qualifying for ADA status. An audit of the RH population found that 16 of these people are listed as ADA. Of these 16 people, eight were assigned to the most restrictive Step 1. All of the 16 people were designated as SMI which appears to be the basis for the ADA category.

I do not find any evidence that the ACSO is over-classifying or mis-housing these 16 inmates. Nor is there any evidence the ADA designation being considered as a basis for classification decisions outside of the process for placing individuals in the THU.

Class Counsel has disagreed in the past with this rating arguing that until Policy 1.14 is revised, published and staff are trained in the revised policy, a substantial compliance rating cannot be made. The ACSO has indicated that it is in the process of updating Policy 1.14 and that the revised policy will be forwarded to the Monitor for their review. However, this does not negate the fact that classification staff are taking into account the known inmate’s disabilities in making classification and housing decisions.

Recommendation: The ACSO needs to finalize its proposed revisions to Policy 1.14 and staff trained in it. If this is not completed in the next monitoring period, the substantial compliance rating will be lowered to partial compliance.

319. Implementation of a system to produce reports: (1) of class members with SMI who have a known release date within the next 12-36 hours for use in discharge planning and (2) regarding lengths of stay for class members in restrictive housing, particularly with respect to class members with SMI.

Finding: Substantial -Compliance

Policies: There are no specific policies that address this requirement as set forth in the Consent Decree. But the ACSO has implemented the practice of submitting a report that lists SMI patients within 12-36 hours of a known release date.

Training: There is no policy in place to train staff on.

Metrics: Review of ACSO reports on SMI class members who are within 12-36 hours of a known release date.

Consultation with Dr. Montoya

Assessment: As noted above the requirement is that the ACSO must develop a “system to produce reports” that lists people identified as SMI who are within 12-36 hours of release. As noted above, the ACSO and the AFBH now have an active list of all people with an SMI designation. Each week the Monitor receives a list of the SMIs in custody and whether they have known release date. Thus far none of these people have known release dates as they are in pretrial status. Unless sentenced, these people will not receive a release date until they return from a court hearing during which the court issues a release order.

So the ACSO is complying with item 1 of this provision, but it is not meaningful since there are few known release dates. What would be useful is the development of a different strategy and process where SMI clients who return from court with a release order are referred to the AFBH who can then contact the relevant county mental health provider to notify it them one of their clients is being released from custody and will require mental health services.

With regard to item #2, the Classification Unit is producing a detailed census of the current RHP population that shows the SMI status of each person, their booking date, RHC referral date, RHC admit date, Step 1 admit ate, Step 2 admit date, and length of stay in RH to date.

Recommendation: Technically, the ACSO is in compliance with this Consent Decree provision in that the required reports are being produced. A more meaningful process should be implemented where there are assurances that there is a handoff of any SMI patients being released to the community to a community based mental health provider.

320. The RHC shall review reports regarding length of stay on a quarterly basis to identify: (1) any individuals who have been in Restrictive Housing for thirty (30) days or longer and (2) any patterns regarding class members’ placement and/or discharge. Defendants shall take any corrective actions needed, including revising policies and looking into individuals’ cases to identify interventions aimed at reducing their length of stay in Restrictive Housing. Individuals who have been in Restrictive Housing for more than ninety (90) days shall have their placement reviewed by an AFBH manager and by the ACSO Classification Lieutenant or higher.

Finding: Substantial -Compliance

Policy: 9.02 Restricted Housing (effective August 25, 2023)

Training: Relevant Classification Staff had been trained in the requirements of this provision.

Metrics: Interview with Classification staff

Production of daily RHP census reports

Assessment: The ACSO has now developed a Restrictive Housing census report that is updated daily and meets the requirements of this Consent Decree provision. This report lists the length of stay in the both the RHP as well as the total time in the jail system. The Classification Unit Lt. and Sgt are continuously reviewing the status of each person in the RHP on a weekly basis which includes those people who have been in the program for more than 90 days.

Formal training of the Classification staff on the updated policy 9.02 has been completed via the DMS system and weekly staff meetings.

Recommendation: None.

321. Appropriate due process in classification decisions as well as oversight including methods for individuals to grieve and/or otherwise appeal classification-related decisions. This shall include the ability to appeal classification decisions directly to the Classification Supervisor on the basis of lack of due process, for example failure to conduct a required face-to-face interview, or based on factual error such as the use of incorrect information regarding the individual's identity, charges, gang affiliation, and/or correctional history, or other errors. The Classification Supervisor shall respond within seven (7) days from receiving the appeal and shall correct any factual errors and/or request additional information as appropriate.

Finding: Substantial Compliance

Policies: 12.01 Intake Classification and 12.02 Reclassification.

Training: Classification staff have been trained in in the use of the new classification system including the initial and reclassification forms. This was accomplished during the time the new system was being pilot tested. They have also been trained in the overall requirements of this Consent Decree provision.

Metrics: Interview with Classification staff

Reliability test of 100 randomly selected inmates.

Review of contested classification cases

Assessment: Since the prior review, the number of classification deputies has increased which allows for face-to-face interviews every 60 days. A review of the monthly snapshots show that all but very recently admitted inmates have been classified.

During these interviews, the classification deputy uses a laptop computer and explains the inmate's current classification, shows the inmate his class sheet and explains the implemented classification model. The inmate is then allowed ask any questions about the assigned classification level and to contest any factual information used to make the classification decision. Any concerns raised by the inmate are documented and submitted to a classification sergeant for review for suitability of modifying the classification decision (see Policy 12.02 "Reclassification" Section II).

Collectively, these practices and policies allow the inmate to not only understand the classification placement, to allow full transparency for the classification process, but also to allow the inmate to have a say in their placement. To date the Monitor has not received any grievances regarding an inmate's classification level. There has been one case where placement in RH was contested. This case was reviewed by the Monitor with the opinion that placement in RH was appropriate.

The reliability test of 100 cases also found a high degree of accuracy in the scored and final classification level.

Recommendation: None.

322. Training for custody staff on the new classification system and policies listed above as outlined in Section IV(A).

Finding: Substantial Compliance

Policy: There is no relevant policy(s) for this Consent Decree provision.

Training: Classification staff have been formally trained on the new classification system

Metrics: Interviews with Classification staff

Observation of Initial and Reclassification events

Assessment: Classification staff have been fully trained in the current classification system and existing policies.

Recommendation: As new classification policies are published, classification staff will need to be continually trained on them via the DMS system and the weekly classification staff meetings to ensure any changes in current practices are implemented.

400. Defendants have agreed to implement a new classification system, as outlined in Section III(C). This new classification system is designed to produce two objective classification decisions that will guide the housing of each incarcerated person: (1) custody level (Minimum, Medium, and Maximum), and (2) population assignment (e.g., General Population, Incompatible Gang Member, Protective Custody, Behavioral Health, Medical, or Restrictive Housing).

Finding: Analysis and a rating of Substantial Compliance has already been covered under Consent Decree Provision #300.

401 - Restrictive Housing, Recreate Alone Status (“Step 1”): (i) This is the most restrictive designation. Individuals with SMI should not be placed in Step 1 except where: (1) the individual presents with such an immediate and serious danger that there is no reasonable alternative as determined by a Classification sergeant using the following criteria; whether the individual committed an assaultive act against someone within the past seventy-two (72) hours or whether the individual is threatening to imminently commit an assaultive act; and (2) a Qualified Mental Health Professional determines that: (a) such placement is not contraindicated, (b) the individual is not a suicide risk, and (c) the individual does not have active psychotic symptoms. If an incarcerated person with SMI placed in Step 1 suffers a deterioration in their mental health, engages in self-harm, or develops a heightened risk of suicide, or if the individual develops signs or symptoms of SMI that had not previously been identified, the individual will be referred for appropriate assessment from a Qualified Mental Health Professional within twenty-four (24) hours, who shall recommend appropriate housing and treatment. The Qualified Mental Health Professional will work with Classification to identify appropriate alternate housing if deemed necessary and document the clinical reasons for the move and the individual’s treatment needs going forward. Classification shall ensure that the person is moved promptly and document the move.

Finding: Substantial Compliance

Policy: 9.02 Restrictive Housing

Assessment: As indicated above, the RHC and the Restrictive Housing program are functioning. Since the last review, a “Step 1” recreate alone status was created and utilized for inmates who meet that criteria and are approved by the RHC. Furthermore, Classification has implemented a “RHP STEP 1” hazard flag to indicate which inmates are “Recreate Alone Status”.

Policy 9.02 has been modified by the ACSO, reviewed by the parties and published effective November 21, 2023.

As noted earlier, there has been considerable discussion on whether AFBH is properly screening candidates prior to placement in RH and whether there are people where placement in RH is contraindicated, as determined by AFBH. For example, as of November 17, 2023, there were seven people in Restrictive Housing who had been deemed “contraindicated” by AFBH. ACSO has maintained that placement in the THU – Unit 9, which as noted earlier, is experiencing a high number of assaults, would also be contra-indicated from a safety and security perspective.

A compromise was reached, consistent with the terms of the Consent Decree, whereby individuals who are contraindicated due to psychosis may be assigned to Restrictive Housing, Step 2, under certain circumstances. Other contraindicated individuals are placed in the Contraindicated Pod within Housing Unit 2. AFBH also agreed to ensure that meaningful treatment services will be delivered to these clients. Any evidence that the client was deteriorating in their mental health condition as a result of being assigned to the RHP would be brought before the RHC to make the appropriate transfer to an alternate location.

Recommendation: The ASCO and the AFBH are now working together to ensure that no person who meets the criteria set forth in this provision are assigned to RH Step 1. Continued monitoring of this process will be made (unless exigent circumstances require immediate relocation) to ensure the substantial compliance rating is warranted.

408. Step 2 individuals who already received an initial review within fourteen (14) days (while in Step 1) shall be reevaluated for placement in the general population at least every thirty (30) days. Step 2 individuals who have not received an initial review shall receive an initial review within fourteen (14) days of placement in Step 2.

Finding: Substantial Compliance

Policy: 9.02. Restrictive Housing

Training: Classification staff are trained in the requirements of this Consent Decree provision.

Metrics: Interview with Classification staff

Observation of the RHC meetings

Review of RHC minutes

Audit of snapshot data file dated December 8, 2023 for people currently assigned to the RHP.

Assessment: Based on interviews with Classification Unit staff, all people placed in Restrictive Housing Step 2 have been screened by AFBH staff prior to admission and have been cleared for such a placement and are being reviewed every 30 days. While there is not a formal 14 day review

by the RHC, the Classification Deputies make weekly visits to the house as part of their normal duties. The Classification Lt. and Sgt. review also review the RH population on a continuous basis with an emphasis on any changes to the person's LOC, whether placement has been contraindicated by the AFBH staff, any disciplinary incidents that triggered the RH placement have subsequently been dismissed since being placed in RH, any inmate grievances contesting placement after they were admitted into Step 1, and current lengths of stay in RH.

This Monitor did consult with the Mental Health Monitor to verify that the SMI label is being properly assigned to the jail population.

Formal training of the Classification staff on the updated policy 9.02 has been completed via the DMS system and muster staff meetings.

Recommendation: None.