

***Babu v. Ahern***  
**Consent Decree First Status Report**  
**Case No. 5:18-cv-07677-NC**  
**Terri McDonald Consulting LLC**  
**Sacramento, CA**  
**July 8, 2022**

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.

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

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

**Summary of Ratings**

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

<b>Requirement</b>	<b>Rating</b>
414. Reconfiguration of Recreation Spaces Within Twenty-four(24) Months of the Effective Date of the Consent Decree	PC
415. Access to Bathroom Facilities During Out of Cell Time Activities	PC
417. Documenting Exceptions to Out of Cell Activities due to Unusual Circumstances	NC
418. Procurement and Activation of Electronic Information System to Track Out of Cell Time	INYS – N/A
419. Notification of Mental Health Staff When Incarcerated Person Repeatedly Refuse to Exit Cell or Neglect Basic Care	NC
420. Development of Plan to Reconfigure Recreation Spaces	INYS – N/A
421. Maximize Outdoor Recreational Time	NC
422. Behavioral Health Clients Involvement in Programming and Evaluation of Available Work Assigns to Increase Opportunities	PC
423. Equal Access to Programming for Behavioral Health Clients and Alternative Custody Opportunities.	PC
424. Evaluation of Potential Expansion for Programming Space.	NC
500. Update to Use of Force Policies and Training	PC
501. Use of Force Policy to Include Specific Mandates.	PC
502. Mental Health Staff Role in Pre-Planned Use of Force Incidents	PC
503. Use of Force Reviews and Expansion of Fixed Cameras	INYS – N/A
504. On-Going Refinement of Use of Force Policies and Training	INYS – N/A
505. Utilization of Special Restraints and Discontinuation of the WRAP device.	PC
506. Medical and Mental Health Staff Role When Specialized Restraints are Used	PC
507. Updates to the Special Restraint Policies and Training.	INYS – N/A
600. Access to Grievances and Grievance Trend Analysis.	PC
712. Alert System to Address Delays in Intake Processing	NC
749. Cleaning of Safety Cells.	PC
751. Working Call Buttons in Living Units	PC
754. Emergency Response Equipment and Access to Cut Down Tools.	PC
760. Clinicians Role in Restricting Property and Privileges Associated with Suicide Precautions.	NC
761. Training on Security Checks and Emergency Response to Suicide Attempts	NC
763. Supervisor Review of Security Checks.	PC
768. Out of Cell Time in Therapeutic Housing Units	INYS – N/A
773. De-escalation Training	PC
800. Establishment of Incarcerated Person Advisory Council and Ombudsperson Program	NC
1200. Development of Consent Decree Implementation Plan.	PC

## 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 programing, 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.*

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

**Finding:** Partial Compliance

**Assessment:**<sup>1</sup>

The County requested and received an independent custody staffing analysis, which recommended discontinuing filling vacant custody positions with extended leave staff from outside of the custody division and adding an additional 259 sworn staff and 72 non-sworn staff to work in the custody division by early 2025. This assessment was completed prior to the approval of the Consent Decree and was unable to determine if the additional positions approved for hiring would fully support the Consent Decree. It is too soon in monitoring to determine if sufficient custody positions and posts have been established to meet the myriad of requirements in the Consent Decree and this will be more closely assessed in subsequent reporting periods.

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<sup>1</sup> These findings are specific to custody positions as mental health staffing analysis will be conducted by the Mental Health Expert.

However, the County has increased staffing in custody and as proof of practice presented a current Bi-weekly staffing report as an update to the original staffing analysis. The County also presented a report that demonstrates the Background Unit has shown substantial growth in investigators since 2019 to assist with expedited hiring.

The following reflects the current status of filled positions compared to the Staffing report provided in 2020 to assist with the staffing assessment:

	2020	2022	Total Difference	Percent Difference
Badge Positions Authorized	404	519	115	28.5%
Non-Badge Positions Authorized	211	274	63	30%
Badge On-Site	278	356	78	28%
Non-Badge On-Site	182	196	14	7%
Background Investigators	4	9	5	125%

With the increase in Background Investigators and increase in the number of staff assigned to the jail, the Sheriff's Office is demonstrating progress in hiring, particularly during a challenging time nationally to recruit and retain law enforcement personnel. The allocation of these additional positions will be closely monitored to determine if the County is maximizing these limited resources in the most effective manner as it has not yet been determined if increased hiring has resulted in increased posts activated in the jail.

The Sheriff's Office has also established a variety of new units to assist with compliance with the Consent Decree which will be discussed later in the report, these include the Compliance Unit, Behavioral Health Access Team and the Force Review Team. During the next rating period, a review of position control reports will be requested to determine which staff are placed in the Custody Division positions and where those staff work within the jail.

It is noted that the number of custody staff hired has increased; yet 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. This is due to the fact that considerations, such as the number of housing units activated, number of incarcerated persons in custody, classification of incarcerated persons, and how those positions are allocated within the jail all factor in determining needs. As the Joint Experts continue to evaluate compliance, should insufficient staffing appear to be the primary reason for non-compliance, this issue will be evaluated in relation to the overall staffing resources and allocation. It is already the opinion of the Classification Expert that additional classification staff may be needed to reach compliance on the provisions the Classification Expert monitors.<sup>2</sup>

The County has a process to track staff on duty, overtime, hospital redirects, etc. through an End of Shift Report. These reports reflect 24/7 coverage, and these reports will be one of the primary mechanisms to monitor staffing fluctuations. These reports also reflect how staff are redirected from their regular position for other duties, such as hospital transportation. These reports will be

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<sup>2</sup> Refer to Classification Joint Expert Dr. Austin's First Monitoring Report. The County has not provided feedback or alternative solutions to this assessment at this point, so it is premature to weigh in on that opinion.

cross referenced for trends if there are problems noted, such as incarcerated persons not being given access to rehabilitative, educational, or recreational activities.

To assist with filling custody posts, the ACSO has a policy regarding mandatory overtime assignments which reflects that it is 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. The policy also provides direction, that to the extent possible, staff who are on overtime or retired annuitants should be redirect for hospital coverage to create stability in the housing units with regularly assigned staff. Further review will be required, and refinement of reports will be required to monitor whether this is occurring.

A sample review was conducted of the dayshift teams (Team A and Team B) as documented on the Watch Commander's End of Shift Report for the first seven days of each month from January-March 2022. This sample review demonstrated the following:

1. From January to March, there was a slight increase in the average of the number of Deputies on duty from 54 in January to 58 in March. There was also a minor increase, although fluctuating, in the Technician classification. The incarcerated person population and activated housing units appeared stable during this period. Therefore, it appears ACSO is working to meet the policy goals, at least on dayshift, for the number of staff assigned to the jail.
2. Unfortunately, these increases appear staffed through expanded use of overtime as the average number of Deputies assigned to Teams A/B in this quarter on overtime was approximately 52% of all posts.
  - a. The average number of posts filled with overtime from January to March increased by 11 posts – representing a 50% growth during that period.
  - b. The use of overtime at this level is not sustainable for employees and does not create the stability necessary in living units.
3. The Technician classification appears less reliant on utilizing overtime to fill vacancies, which is positive and helps with stabilizing the living units.
4. The average number of staff identified for redirection to outside medical transportation averaged 17 deputies; however, this number does not always reflect a 24-hour period, so the number of deputies redirected in a 24-hour period may be higher.
  - a. A review of the County's plan associated with Provision 203 reflects adding or allocating a total of five (5) deputies for outside medical transportation, which is significantly below the average 17 staff redirected during this period. However, additional tracking and analysis must occur as it is unknown if the average number of redirects during those weeks represent just dayshift or also includes the overnight shift. It is also unknown if the staff were redirected for a partial or entire 12-hour shift.
  - b. It is undetermined at this point if the outside medical transportation and hospital coverage redirects are impacting access to programming and compliance with the Consent Decree, but this will be an area closely monitored going forward.
5. It is clear the impact of COVID has been a challenge and during surges, the use of overtime staffing may increase and access to programming may decrease. Trending this on a daily basis will help determine the impact of COVID surges.
6. The Watch Commanders from Team A and Team B use slightly different End of Shift reports and document similar data differently, making statistical analysis difficult.

## Recommendations:

1. Continue with hiring plan and utilization of retired annuitants and overtime to fill vacant posts.
2. Continue to retain Background Unit personnel and augment with retired annuitants as workload dictates.
3. Continue with aggressive recruitment and retention strategies.
4. Establish clear hiring goals, by quarter, through 2025 to determine if the process is on target or requires additional resources to meet the target goals established.
5. 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. Consideration should be given to supervisors, who should develop strong custody expertise to oversee implementation of the reforms, rather than hiring new supervisors to promote and ultimately transition back to patrol or outside of custody operations.
6. Review workload of deputy personnel to determine if any of existing deputy assignments can be effectively performed by non-sworn staff.
7. Prepare a position control report, to be provided monthly, to reflect all budgeted custody positions by position number, the name of the staff assigned to that position number, and the current working location of that staff member. Provide the report to assist with monitoring.
8. 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>3</sup> Work with Joint Experts to prioritize available resources should that be the case.
9. Create a standardized Watch Commander Report for all Teams.

*(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*

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<sup>3</sup> The Joint Experts and/or the National Institute of Corrections (NIC) can assist.

*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 a small unit of BHAT deputies, comprised of three staff. Their current role is to facilitate clinical personnel in conducting rounds in the living units throughout the jail. Post orders have been developed and are being reviewed by the Joint Experts for related feedback. The County has also developed a tracking report for the BHAT deputies that requires further refinement in collaboration with the Joint Experts. The County also has not indicated how the County determined three (3) BHAT deputies are required, so further evaluation of the overall need will occur in the next rating period.

The County conducted a pilot training titled Advanced Crisis Intervention Training (CIT) and the Joint Experts were invited to remotely observe two days of that training on April 4 and April 6, 2022. While it is promising that the County began a pilot of the CIT training for the BHAT deputies, the Joint Experts have proposed a series of recommendations that should be explored and implemented prior to finalizing the CIT training proposal and presenting it to staff. The Joint Experts have met jointly with the Parties to discuss their recommendations and Joint Experts will continue supporting the County's efforts to finalize the training.<sup>4</sup>

As mentioned, the County is tracking metrics of the BHAT Deputy escorts and provided data for the First Quarter 2022 to assist with baselining services provided. Information provided demonstrated the following:

	<b>Completed Escorts</b>	<b>Refused Escorts</b>	<b>Tele-Psych Appts</b>	<b>% Appts Refused</b>	<b>% Tele-Psych</b>
JAN	443	53	256	12%	58%
FEB	296	43	176	15%	60%
MAR	449	63	197	14%	44%
<b>Ave</b>	<b>396</b>	<b>53</b>	<b>210</b>	<b>13%</b>	<b>53%</b>

**Recommendations:**

1. Continue tracking metrics for BHAT deputies to determine if the existing cohort is sufficient to meet the needs of the jail system.
2. Determine how BHAT deputy assignments will interplay in specialized housing units and the Therapeutic Housing Unit.
3. Continue working with Joint Experts to refine the Advanced CIT training and complete discussions with Parties to present a formally approved training to the BHAT deputies.

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<sup>4</sup> Mental Health Joint Expert Dr. Montoya serves as lead in assisting with refining the Advanced CIT training.

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

**Assessment:**

This provision integrates two separate access-to-care units within the jail: deputies assigned to clinic supervision and a new unit for outside medical transportation – the Emergency Health Care Access Team (EHCAT).

In addition to the BHAT deputies referenced in Provision 202, the jail has seven (7) deputies assigned to the clinic on weekdays who are assigned for clinic security and to assist with escorts for clinic appointments. However, it is not currently possible to determine the extent these clinic deputies assist in the escorts of incarcerated person/patients to jail appointments as there are no metrics available to reflect their role. A review of the post orders and available policies does not require clinic deputy assistance with escorts of incarcerated person/patients from the housing units to various appointments.

The EHCAT unit has not yet been established or required but incarcerated persons are currently being transported to outside medical services by redirecting housing unit staff to cover offsite medical transports, impacting living unit operations. The County reports they intend to establish a unit of five (5) deputies to serve as EHCAT deputies within the required six (6) month period. Post orders and policy establishing this unit have not yet been presented for the EHCAT deputies. It is unknown if five (5) positions will meet the need based on a review discussed in greater detail under Provision 200, but it is positive that five positions will be dedicated to a unit. The establishment of a specialized unit may also improve scheduling to reduce the overall need to redirect staff as transports are coordinated and combined within a single unit. The Joint Experts will work with the County to help develop a process that maximizes the five positions.

**Recommendations:**

1. Update policies, forms and post orders to reflect the role of clinic deputies assisting with internal access-to-care escorts.
2. Create policies, procedures, forms, post order and training for the EHCAT deputies conducting offsite medical transports and hospital coverage.
3. Create metrics to track both the need for escorts and the ability to complete those escorts for both internal clinic deputy escorts and outside medical transports and hospital coverage. The tracking should include, at a minimum, the number of hours for the transports, number of staff, where staff were redirected from, if applicable.
4. Work with the health care scheduling unit to streamline outside medical appointments to maximize the efficiency of the EHCAT.
5. Create and deliver training associated with these changes.



*(402) Individuals who are on “Recreate Alone” status (meaning they cannot recreate with other incarcerated persons) 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>5</sup>*

*(403) 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>6</sup>*

*(405) 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>7</sup>*

*(407) Defendants shall use best efforts to provide at least eleven (11) hours per week of Structured Time, 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>8</sup>*

*(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-Along 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-Along status (Step 1) per*

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<sup>5</sup> This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411 that may not be achievable until reconfiguration of recreational space.

<sup>6</sup> This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411 that may not be achievable until reconfiguration of recreational space.

<sup>7</sup> This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411 that may not be achievable until reconfiguration of recreational space.

<sup>8</sup> This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411 that may not be achievable until reconfiguration of recreational space.

*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:** Partial Compliance  
*Provision 412 Implementation Not Yet Required – Rating N/A*

**Assessment:**

These provisions are combined to reflect the amount of time incarcerated persons should be released from their cells in the administrative separation and restricted units for dayroom, outdoor recreation and structured activities. The provisions require the expansion of total out of cell time over time as well as articulate that incarcerated person in administrative separation will be categorized as Step 1 or Step 2.<sup>9</sup>

The County has existing policies regarding out of cell activities and various post orders reflect the current State mandated requirements, but those documents have not yet been updated to reflect the increased requirements. The specific hours in Provision, 402, are not expected to be reached until the County is able to build additional capacity for out-of-cell opportunities, which could require up to 24 months.<sup>10</sup> However, pursuant to Provision 411, the current requirement for out-of-cell time per week for Step 1 populations is a total of seven (7) hours and fourteen (14) hours for Step 2. Effective June 7, 2022, pursuant to Provision 412, the requirement increases to ten (10) and seventeen (17) hours per week respectively.

Working with the Classification Expert, the ACSO has reduced reliance on administrative separation units, and this is a very positive step and creates more out of cell time opportunity in those units with smaller populations. The ACSO has also begun the process of classifying the administrative separation populations into Step 1 or Step 2. The population who would be classified as Step 1 or Step 2, administrative separation status is currently housed in the following housing units (HU):

HU 1 Pods D, E, F

HU 2 Pods A-F

The County has been able to pilot individual out-of-cell logs for tracking within the restricted housing units, but those logs are workload intensive and reliant on staff manually entering data into a spreadsheet. The logs also do not currently define who the Step 1 and Step 2 populations are to determine compliance with the various provisions concerning these groups. The County is aware of this concern and is working on a temporary solution and refinement of tracking through the procurement of a movement tracking system, which will be further discussed in Provision 418.

A review of a sample of Out-of-Cell Logs associated with Restricted Housing Unit 1 for January/February 2022, demonstrates that incarcerated persons in those pods received an average of less than five (5) hours per week of out-of-cell time, either through dayroom or outdoor recreation time. In actuality, the restricted housing units demonstrated negligible access to outdoor recreation during this period as the Quasi yards were underutilized during this reporting period, so the vast majority of out-of-cell time occurred in the dayrooms.

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<sup>9</sup> Refer to Classification Expert James Austin, Ph.D. report for further detail on Step 1 and Step 2 designations.

<sup>10</sup> Refer to Provision 420 for additional information concerning construction and modifications for additional yard capacity.

The County also experienced incarcerated persons who routinely refused out-of-cell programming during the week, averaging three (3) incarcerated persons per week routinely not leaving their cell for dayroom or yard. Additionally, it was common that one or more incarcerated persons routinely did not leave their cell for more than one week in a row for dayroom or yard, which also equates to no shower access. The referral process to AFBH for people routinely refusing to leave their cells will be discussed further in Provision 417.

While the County did present logs for dayroom and outdoor recreation periods, the County was unable to produce a report for Structured Time for the first quarter of 2022 to supplement the reported average for dayroom and outdoor recreation. The County is assessing its ability to track out-of-cell time for other activities utilizing its offender management system (ATIMS) but has not been able to provide that information for this initial report.

The County was able to provide a Structure Activity Report for Telecare groups,<sup>11</sup> without specific names, that shows groups that were offered in the six restricted housing living units in 2021. It does not appear, however, that groups were offered in all six restricted living units in the 1<sup>st</sup> Quarter 2022 to support giving credit to the unit for those services.

According to the available information and a snapshot review of the Restricted Housing Unit data, the County has been unable to demonstrate compliance with provisions 402, 403, 405, 407 and 411. It is also not likely the County will reach the milestone of ten (10) and seventeen (17) hours for the Step 1 and Step 2 populations by mid-June 2022, as dictated in Provision 412. Efforts will continue with the County to assist them with developing policies and practices that maximize all available resources in this area.

### **Recommendations:**

1. Continue to evaluate the population to safely reduce the number of incarcerated persons in administrative separation.<sup>12</sup>
2. Safely continue to reduce the number of Step 1 incarcerated persons and begin providing Step 2 incarcerated persons group activities on the Quasi yards and in the dayrooms.
3. Immediately create a master yard schedule to maximum recreation yard usage in the main and Quasi yards.
4. The master schedule should also include dayroom and other structured activities times required in each living unit
5. 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 throughout the jail.
6. Require daily reporting from supervisors when the housing units do not adhere to the master schedule for dayroom, outdoor recreation, and structured time activities.
7. Expedite the construction projects associated with expanding yard opportunities as noted in Provision 414.
8. Seek approvals as necessary to rapidly split the Quasi yards with the proposed installation of temporary bathroom fixtures and a security fence.<sup>13</sup>

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<sup>11</sup> Telecare is an outside group who are contracted to provide specialized groups.

<sup>12</sup> Refer to Classification Joint Expert Dr. Austin's First Monitoring report.

<sup>13</sup> Likely requires approvals from both the Board of Supervisors and the State of California's Board of State and Community Corrections (BSCC)

9. 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.
10. Continue with the procurement of the tracking program to reduce workload associated with manual tracking as well as the potential for error that comes from manual reporting.
11. Ensure that all housing units are completing daily tracking of out-of-cell and structured activity time.
12. 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.
13. Update policies, procedures, forms, post orders and training to reflect provision requirements.

*(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:**

This provision of the Consent Decree addresses out of cell time for incarcerated persons who are able to co-mingle in their housing units. The County tracks out-of-cell pod time for this population for both dayroom and yard activities in group reports, rather than listing individual persons. The reports have been provided as have copies of logbooks reflecting out of cell activities. Group movement documentation is appropriate for the types of units affected by this provision.

A sample review of pods in three separate living units for the months of January and February 2022 reflects that the County has been unable to provide clear documentation of affording a minimum of 28 hours per week for all individuals addressed in this provision. A standardization and refinement of tracking systems for yard, pod, work, visiting, and groups is necessary to gain an accurate baseline picture of each housing unit addressed in this provision. A review of a random sample of the 3 units<sup>14</sup> demonstrated that those units averaged less than 16 hours of combined dayroom and outdoor recreation per week, substantially below the Consent Decree requirement of 28 hours.

There are additional structured activities available in these units to provide out-of-cell opportunities. For example, as reported in Provision 402/403, Telecare provided limited groups during this rating period, which would support demonstrating the provision of structured activity time. However, to make a legitimate determination, the Joint Experts would need a clearer

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<sup>14</sup> Housing Units 8 C/D/E; 14 A/B/C and 35 D/E/F

understanding of who the groups are offered to.<sup>15</sup> As currently documented, it is difficult to give credit for structured activities for these units at this time, but this can be resolved for future reporting.

A review of the incarcerated person worker roster for the period of February 1 – March 31, 2022, reflected approximately 300 incarcerated person workers assigned in the jail during this period, mostly from Housing Units 24, 31 and 33. A unit-by-unit plan regarding the assignment of incarcerated person workers should be developed, in partnership with AFBH where appropriate.<sup>16</sup>

The County also provided a report on faith-based services for review for the month of December 2021 and that report reflected in-person and telephonic services were provided in all three units reviewed. It will be important in the future to have a greater understanding of how these services are offered and tracked to assist with measuring out-of-cell time.

The County has a history of services available through incarcerated person signups, but there has been no information provided on incarcerated persons serviced by the Sandy Turner Education Center or other providers due to COVID closures. However, there are a range of services that ACSO does provide and is focused on expanding, including the addition of a landscaping/horticulture program and a dog training program. ACSO also added two vocational programs recently, programming that will assist with structured time. It will be critical for the County to work with the Joint Experts to quantify tracking these services, as well as address barriers, if any, that may inhibit Behavioral Health Incarcerated persons and other likely eligible people from enrollment in these services.

It is important to point out that the County has been restricted in structured activities as the system has been required to control the COVID-19 virus, so programming will need to be assessed in conjunction with public health orders and any restriction on programming.

### **Recommendations:**

1. Update all policies, forms, post orders and training associated with this provision.
2. Improve tracking metrics for all out-of-cell time and structured activities to afford an enhanced unit-by-unit review for compliance.
3. Recommendations from Provisions 402, 403 and 421-423, will also assist with implementation of this provision.
4. Update the Orientation Handbook and Orientation Video to incorporate information about this and other applicable provisions.<sup>17</sup>

*(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-*

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<sup>15</sup> It appears particular people are selected to attend the group by AFBH or the provider, rather than offering the group to the entire living unit.

<sup>16</sup> Refer to ADA Joint Expert Rick Wells' First Monitoring Report for additional information relative to workers and work assignments.

<sup>17</sup> Recommendation will not be repeated with each applicable Provision, but the entire handbook should be updated to incorporate all relevant Provisions, including those monitored by other Experts.

*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:**

The County has shared a series of preliminary plans and ideas concerning recreation space, security desks, cell renovations and clinical encounter space with the Joint Experts for feedback and has begun the process of discussing those concepts with Class Counsel. While the concepts presented are promising and address a myriad of issues, the plan presented is not yet sufficient to provide critical information, such as project timelines. The Joint Experts will continue to work with parties to assist in refining the overall plan.

**Recommendations:**

1. Work with the Joint Experts to develop a comprehensive and integrated project plan.
  - a. The project plan should have timelines, deliverables, services provided based on daily and weekly schedules, staffing analysis, etc.
  - b. Meet and confer with Class Counsel on plan.
2. Once the project plan is created and approved by the appropriate County parties, create a monthly status report on all projects.

*(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:** Partial Compliance

**Assessment:**

While it appears all current locations for out-of-cell time afford access to a bathroom, current policies and training do not clarify the expectation that access will be facilitated.

**Recommendations:**

1. Update all relevant policies and procedures to ensure clarity in expectations relative to affording the population access to bathroom facilities when engaged in programming or outside of their cell or dorm.
2. Complete training after the policies and post orders have been updated.
3. 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:** Non-Compliance

**Assessment:**

A review of out-of-cell tracking logs reflects numerous days in which there were periods of time in which dayroom pods or recreational yards did not have documented utilization. No formal justification or documentation for not utilizing the space or referring individuals to the Restricted Housing Committee has been shared with the Joint Experts for consideration.

**Recommendations:**

1. Update all relevant policies, post orders, forms and training to comply with this provision.
2. 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.
3. 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.
4. Compliance Unit should develop a process for internal monitoring.

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

**Assessment:**

The County piloted and implemented a daily tracking log for individuals housed in restricted housing units and tracking of group pod time in units where people are permitted to program in larger groups. This is a manual entry into a computer spreadsheet or documented in a unit log and is both staff workload intensive and subject to error. The County is in the procurement process for purchasing a system that will track individual movement throughout the jail based on a radio frequency (RFID) system. In the interim, sufficient data is available to monitor compliance with the agreement.

**Recommendations:**

1. Continue with procurement of RFID system to help monitor and track out-of-cell and structured activities.
2. Work with the Joint Experts to continue to refine current tracking systems for dayroom, yard time, and structured activities with the goal to improve compliance and accuracy and identify units or pods that are struggling to meet compliance.
3. Ensure there is a clear process and documentation for referral for identified incarcerated persons to be referred to the RHC and/or AFBH clinicians when they are isolating and refusing to engage in out-of-cell activities.
4. 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.
5. The Compliance Unit should have a process to monitor compliance weekly with out-of-cell time in each living unit to quickly identify areas that require support.

*(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:** Non-Compliance



**Assessment:**

A review of out-of-cell logs for one Restricted Housing unit for January/February 2022 demonstrated that an average of 3 incarcerated persons per week routinely refused out-of-cell opportunities. While staff interviewed on the tour articulated they would advise AFBH of the issue, there was no formal policy mandating compliance, no proof of practice or evidence to demonstrate that routinely occurred. The County also does not currently have a policy or process for notification to supervisors or AFBH if an individual is routinely refusing to engage in out-of-cell activities or are neglecting their basic care. ACSO reports they are in the process of developing a process in partnership with AFBH that should be implemented within 90 days.

**Recommendations:**

1. The County should work with the Joint Experts to formalize the notification process for repeated refusals and 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.
  - b. When incarcerated persons continue to refuse, despite initial AFBH support, they should be referred to a Therapeutic Housing Unit (THU) clinician or the Therapeutic Housing Committee (THC) for potential THU placement unless a higher level of care is clinically determined.
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:** Implementation Not Yet Required – Rating N/A

**Assessment:**

The County is in the process of internal assessment of yard space reconfiguration strategies to increase out-of-cell time. While still in development and refinement, the County has shared schematics for a range of yard configurations on the minimum, medium and maximum-security yards to meet the needs of out-of-cell time for the various populations in the jail. No written plan or timelines have been provided as of this date and it is noted that the provision reflects such planning must be presented by mid-August 2022. Meet and confer on the plan has begun with Class Counsel and remains on-going.

Please refer to response in Provision 417 concerning exceptional circumstances to provision of recreational time as this response will focus on the utilization of existing recreational space and plans to augment existing capacity.

**Recommendations:**

1. The County should continue meet and confer discussions with Class Counsel.
2. This Joint Expert will continue to work with the County to assess whether the proposed yard spaces, in combination with existing capacity, will meet the overall needs of the jail based on a statistical analysis.
3. The County should seek exemptions of processes, where appropriate, to expedite the construction process.
4. The County should continue to develop a range of yard solutions, including that all have lighting for evening yard and direct access to a bathroom and sink to minimize escort personnel.
5. The County must assess the staffing needs to provide security when the yards are in operation as well as the escort personnel to walk the incarcerated people to and from the yards from their respective housing units.

*(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:** Non-Compliance

**Assessment:**

ACSO does include outdoor recreation in the minimum amount of out-of-cell time reporting. However, during tours of the jail, observing both individual yards and group yards, it was frequently observed that no activity was occurring in many locations. Interviews with incarcerated persons in restricted housing, specialized units and general population all reflect common complaints of having limited or no access to outdoor recreation. A review of out-of-cell logs reflects underutilization of available individual and group yard spaces. There is no master yard and dayroom schedule to create expectations for staff and incarcerated persons about when those activities should be occurring.

## Recommendations:

1. Conduct an in-depth evaluation of all available outdoor recreation space 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. Update post orders and policies to reflect the expectation that unless a Watch Commander-approved closure exists, the yards will be utilized daily and during daily light hours, except when doing so would jeopardize institutional security. Similar expectations should exist for dayroom activities.
4. 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.
5. 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:

As referenced in Provisions 409/410, there has been significant disruption to programming due to COVID-19, including services in the Sandy Turner Education Center and Transition Center. Therefore, current data may not reflect historical practices.

The County reports the behavioral health population is served and eligible for services in both locations, but insufficient data was provided to evaluate. The data regarding workers, which was

available, did not demonstrate that incarcerated persons identified in behavioral health units were assigned to jobs. However, information was not available regarding whether any of the incarcerated workers housed outside of the behavioral health units are behavioral health clients. AFBH is in the process of identifying and classifying all behavioral health populations by their level of care to advise ACSO so that lists can be generated that show how many and what percentage of people assigned to Sandy Turner, work assignments and other off-unit programs are also being treated as behavioral health clients.

The Joint Experts will work with the County this next rating period to improve tracking systems to better quantify status of compliance with this provision. Future reports will begin to quantify the percentage of incarcerated person involved in school, work and other programming who are also behavioral health clients.

**Recommendations:**

1. Revamp all policies, procedures, forms and training associated with this provision.
2. ACSO and AFBH to work collaboratively to identify and encourage participation in educational and rehabilitative services by the behavioral health population when they are able to do so.
3. Eliminate barriers that inhibit incarcerated persons from all non-restricted housing units from involvement in services provided by the Sandy Turner Educational Center, whether those services occur on or off unit.
4. The out-of-cell and metrics tracking solutions discussed in Provision 418 should be explored to determine how new systems can address tracking a myriad of activities and assist with proof of compliance on this provision.
  - a. In the interim, the County should work with the Joint Experts to improve paper tracking reports of the variety of programming provided in all living units.
5. Implementation of recommendations pursuant to Provision 424 will support compliance with this provision.

*(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:** Non-Compliance

**Assessment:**

The County currently provides a range of services but has not conducted an overall assessment of space needs and is in the process of hiring a Program Manager for the educational/vocational and self-help programs. The County currently lacks the ability to quantify the overall risk and needs of the population and does not have an integrated report on all services currently being provided in the jail. It is important that the planning for services is based on the needs of the population utilizing validated needs assessment tools, an area the ACSO is not yet familiar with.

## **Recommendations:**

1. Fill the funded program manager position to assist in developing, implementing, and overseeing rehabilitative programming in correctional settings.
2. The County partners responsible for providing rehabilitative services in the jail must collaborate to conduct a space needs assessment, integrating all aspects of rehabilitative services being provided in the jail into a comprehensive space allocation plan relying on daily activity schedules for all program areas.

*(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 unplanned. 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:**        *Implementation Not Yet Required – Rating N/A*

## **Assessment:**

The County is in the process of updating use of force policies and associated training. To date, three revised policies have been provided for review, which is in-process: 21.01.01 Custody Use of Force Addendum; 21.03.01 Force Training and Compliance Unit and Force Incident Review and Routing and 21.03.02. A Station Order was also issued on March 28, 2022, requiring Watch Commander approval to use less lethal impact weapons (FN 303 and 40-mm launcher) and only

allowing such use when a weapon is present. A lesson plan draft concerning 21.01 Custody Use of Force has also been provided for review. Feedback has been provided by Class Counsel on the three (3) draft revision policies.

The ACSO has also begun training on alternatives to the use of personal body weapons (strikes, kicks, elbows) and discussing the changes that will be coming based on the Consent Decree. More formalized training will be developed but it is an excellent step to advise the staff what is expected and provide safe alternatives to existing practices of diversionary striking and increasing staff de-escalation training.

**Recommendations:**

1. Continue to work collaboratively to update all custody use of force policies, forms and associated training.
2. Improve 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. 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:**

The ACSO policy on pre-planned use of force incidents, Resistant Inmate Management, does not specifically require AFBH clinical staff to be present in advance of pre-planned use of force incidents. The language in the policy states: *The supervisor shall contact the medical and/or behavioral health staff.*

Despite the lack of specific language, a requested sample of pre-planned tactical incidents reviewed reflect a consistent pattern of AFBH staff being summoned and attempting to engage with the incarcerated person/patient prior to the use of force. All of the incidents reviewed ultimately ended in a use of force, but ACSO does not currently document when a de-escalation effort resulted in resolving the issue without force.

A review of several pre-planned incidents occurring within the last six (6) months reflects that in all but one incident, AFBH staff were on-site prior to the use of force. Even in that event, ACSO did summon AFBH but eventually ended up conducting a forced entry after nearly two (2) hours without the benefit of AFBH assistance due to insufficient AFBH staff. In a second incident, an AFBH clinician did report but provided insufficient assistance to support the ACSO staff. That incident was referred to AFBH leadership and the Clinical Expert for review.

While the County has shown improvement in pre-planned use of force incidents, there is considerable opportunity to address non-planned use of force incidents to provide staff greater guidance on when the situation is stable enough to summon support. Several incidents have been discussed with the County that appear to potentially have had sufficient time to summon a supervisor and AFBH staff prior to using force. This should be addressed in future policy development and training. While not consistent, another positive aspect in the improvement regarding force is in the supervisory review on several of the incidents, in which supervisors identified areas for improvement, which is an improvement from prior reviews.

There is significant need for ACSO and AFBH to collaborate on post incident reviews on pre-planned use of force incidents on incarcerated persons in a mental health crisis. In most of the pre-planned incidents, the incarcerated person appeared to be experiencing a mental health crisis when the force occurred, and the incarcerated person had been in the jail for a period of time. These types of cases have been and will continue to be referred to AFBH and the Clinical Expert for assessment.

**Recommendations:**

1. Update both ACSO and AFBH policies, forms, post orders, duty statements and training to reflect the provisions.
2. The Force Review Team should evaluate all such incidents and create a check-off sheet that specifically assesses the presence of AFBH.
  - 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.
3. AFBH and ACSO leadership should engage in a monthly review of these types of incidents with the intention of determining the type of clinical supports needed to reduce these types of incidents 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.*

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

**Assessment:**

The County has established a Force Review Team (FRT) comprised of one (1) lieutenant and two (2) sergeants. The County has also collaborated with this Joint Expert concerning the policies associated with the unit as well as the review process on use of force incidents and a draft of those policies has been shared with Class Counsel for feedback. The associated forms and metrics concerning the FRT review process and use of force reporting have not been finalized and are in process.

During the first monitoring round, following Expert reviews of use of force incidents, significant feedback has been provided to the Compliance Unit and FRT regarding expectations on thorough, meaningful and systemic reviews of use of force incidents. As a result of ongoing discussions and post incident reviews, it is anticipated there may be further refinements to the policies and training as time and experience dictate.

**Recommendations:**

1. Complete policy, form and lesson plan development to implement the policy reforms discussed.
2. Work with the Joint Experts to implement a metrics system to evaluate use of force incident trends and information gleaned from improved review process.
3. Train all existing custody supervisors and managers on the new policies.

*(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.*

*(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.*

*(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  
*Provision 507 - Implementation Not Yet Required – Rating N/A*

**Assessment:**

The ACSO has existing policies and training on the use of the restraint chair and discontinued the use of the WRAP device in Custody settings pursuant to General Order 5.69. However, it is not



clear in the *Prisoner Transportation, Restraint Devices* policy<sup>18</sup> if the WRAP can be used on a custody incarcerated person being transported from the jail either to court or to an outside clinical appointment. That issue will require clarification and likely policy revision.

A review of the Restraint Device logs for the period of February 2022 reflects that ACSO and AFBH require immediate training as well as revision of the restraint policy and associated forms. A summary of an audit for this period reflects:

- One incarcerated person was placed in a restraint chair on three (3) occasions during the month of February. The average time for placement was seven hours and the documentation of clinical intervention was insufficient at times, as was range of motion, access to food and water and access to the bathroom. This information was shared with AFBH and the Mental Health Expert due the concerns as well as the repeated use of a safety chair on a single person.
- Three individuals refused to relinquish handcuffs and were placed in a secure location until the situation could be safely resolved. The average time to resolve was two hours and all three appear to have been rehoused to their units without issue. One incident lasted 4.5 hours and although both medical and behavioral support were requested to assist, the documentation was not clearly present on the log.
- One individual was held in a room in restraints until investigators could arrive to interview him. The duration appeared to be two hours
- One individual was held in a holding cell for over 13 hours, but the documentation is insufficient to understand the rationale or even if the person was restrained or simply detained in the holding cell unrestrained.

It was noted during the review that a variety of policy and training issues were evident, requiring further action by the County and working with the Joint Experts to refine the policy, training and associated forms. Examples include the lack of clarity on the placement status associated with the restraint log as it was unclear at times if the log was for a safety cell placement or a restraint chair. The lack of documentation on the log implies non-compliance in many areas associated with clinical encounters. From the documentation, it appears in a variety of incidents, people placed in a restraint chair may not have been afforded adequate range of motion, meals, water or access to a bathroom. The use of a restraint chair on a single person three times in one month should be reviewed from a clinical perspective as this appears unusual.

#### **Recommendations:**

1. The County should work rapidly with the Joint Experts to refine the policies, training and forms associated with this provision.
2. The Compliance Unit and AFBH or other entity should engage in monthly quality assurance assessments on the use of safety cells and placement beyond four (4) hours or multiple placements in a month should receive a mutual AFBH/ACSO analysis similar to a critical incident review.

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<sup>18</sup> General Order 7.14

*(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:**

The County has a grievance process and existing monthly report. During 2021, an average of 455 grievances were filed per month and the County tracks in broad categories the nature of the grievances and the average response times and outcomes.<sup>19</sup> During tours of the units, interviews of staff reflected their understanding of the requirement to have paper grievances available and paper grievances were found in housing units when requested to review. The electronic tablets are also another avenue for a grievance to be filed. Most incarcerated persons interviewed stated they knew how to access the grievance system, but few felt as though the grievance system was functional or resolved their issue.

A review of unit logs maintained in control booths reflected documentation of supervisors touring the unit but there were no specific notations that grievance form availability had been evaluated and the supervisory post orders do not yet reflect this requirement.

The County recognizes that the current monthly report does not meet the requirements of this provision and has been evaluating grievance systems and reports from other jurisdictions. The County also has a current process of seeking a response from Wellpath and/or other partners and then responding to the grievance and is evaluating whether that practice should be adjusted with a direct response from the health and other providers. This Expert will work with the County and the other Joint Experts on the overall process as the County implements improvements.

**Recommendations:**

1. Update policies, procedures, post order, forms and training to reflect supervisory role to comply with this provision.
2. Work with the Joint Experts to revamp the monthly Grievance Report to comply with this provision.
3. Provide the Joint Experts with monthly logs of individual grievances and refine this report in partnership with the Joint Experts.

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<sup>19</sup> Refer to ADA Joint Expert Rick Wells' First Monitoring Report for additional information.

*(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:** Non-Compliance

**Assessment:**

The County currently tracks the number of incarcerated persons retained in the Intake, Transfer, Release (ITR) beyond 8 hours at the 0400 and 1530-hour mark through the ITR End of Shift Report. A limited review of statistics for a 3-day period in January reflects a range of 5-12 incarcerated persons maintained in the ITR beyond the eight (8) hour period.

Despite the simple tracking, currently there is no mechanism for Watch Commander notification by the ITR staff to help expedite movement when a person has been maintained in the ITR near or beyond 8 hours. The End of Shift Report also does not currently provide a comprehensive explanation listing the individuals who were held beyond 8 hours in the ITR, the reason for the delay or the actions taken to resolve.

**Recommendations:**

1. Update policies, forms, post orders and training to comply with this provision.
2. Seek viability in including automatic notification and tracking via the RFID section discussed in Provision 418.
3. Refine Watch Commander End of Shift or other report to provide greater clarification on the reasons for holding someone in ITR more than 8 hours and the steps taken to address.
4. 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:** Partial Compliance

**Assessment:**

A review of 19 safety cell logs during the months of January and February 2022 reflected there is no documentation on the certification of a cell being cleaned prior to the placement of an incarcerated person in the cell, during the time the person is in the cell, and upon discharging a person from the cell. The safety cell log specifically requires sanitation twice a day, but on the forms reviewed, there was no documentation of sanitation being offered, despite the fact that the average time in the safety cell for these 19 people was approximately 36 hours. In one incident,

it was noted that the incarcerated person had smeared feces in the cell but no documentation that the cell had been cleaned.

During a tour of the facility, none of the safety cell logs reviewed noted cell sanitation prior to the placement of a person in the cell or while housed in the cell. There were several cells that maintained excess food and trash items that were brought to the attention of staff during the tour. Staff interviewed all report they attempt to retrieve excess food and trash items and would advise AFBH if they were unsuccessful. The empty safety cells were generally clean.

**Recommendations:**

1. The County should work with the Joint Experts to refine the policies, training and forms associated with this provision.
2. Training should be updated to reflect changes and address systemic and individual issues when identified.
3. The Compliance Unit and AFBH should engage in monthly quality assurance assessments on the use of safety cells.
4. Working with the Mental Health Expert, AFBH/ACSO should develop a protocol and process for critical incident reviews of incarcerated persons maintained in a safety cell more than eight (8) hours<sup>20</sup> or those who have repeated placements in safety cells.

*(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:**

The County has policies, procedures and forms regarding expectations concerning operational call buttons and intercoms. It is the responsibility of the Control Booth Technician to report an inoperable system utilizing established work order forms. Work order forms and completion of projects are monitored on a tracking sheet which is available for monitoring. A review of work orders concerning inoperable call buttons for the period of January 1 – March 31, 2022, reflects an average of 10 work orders submitted per month for call button repair. This documentation also reflected preventative maintenance in February in several living units.

A review of the grievance reports provided for the last quarter of 2021 clustered all related grievances into one category “Facility Conditions,” so it is unknown by the grievance reports provided if there were any specific grievances about inoperable call buttons. During the tour, no incarcerated person raised a specific complaint of a broken or ineffective intercom but not all incarcerated persons were interviewed on the tour. Control Booth Technicians interviewed were aware of their responsibility to submit work orders and none stated there was a substantial delay

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<sup>20</sup> This recommendation is based on Provision 747 providing guidance relative to limiting the length of time a person is maintained in a safety cell. This recommendation may change in the future as the safety cell limit reduces to four (4) hours and as the Mental Health Expert provides further guidance.

in repair of call buttons, but did state is not uncommon for buttons to be broken or become non-operational.

The County has an assigned deputy to liaison with facilities maintenance to assist with addressing physical plant issues. This Deputy was not interviewed on the tour but will be interviewed in subsequent reviews.

**Recommendations:**

1. Continue with current practice of Control Booth Technician doing a daily check on communication systems and submitting work orders where necessary.
2. Submit monthly grievance logs beginning January 1, 2022, to evaluate incarcerated person complaints concerning non-operational call buttons.
3. 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.
4. The Compliance Unit should evaluate timeliness of repair with a monthly report evaluating the average time from awareness to repair.

*(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.*

**Finding:** Partial Compliance

**Assessment:**

The County has an inventory process for cut down scissors and defibrillators (AED). A review of the April 2022 log reflects completed daily inventories as well as assessment of replacement dates of the AED. While the County currently has cut down scissors available in living units, generally those tools can be less effective when encountering a very tight object. Recommend the County replace with institutional grade cut down tool. The County also needs a clearer written policy on the placement, inventory and maintenance of first aid, defibrillator (AED) and emergency transportation equipment, including transportation equipment designed to assist with transport from a second-floor area.

**Recommendations:**

1. Replace utility scissors with industrial grade emergency cutting tools.
2. Clarify in policy, procedures, post orders, forms and training the required emergency response equipment available in all living areas and work areas. This should include daily inventories of emergency equipment.
3. Establish in policy the process to evaluate and maintain inventories of all emergency response equipment at least monthly and codify in policy, post orders, forms and training.
4. Conduct training once new policy is approved.

*(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 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:** Non-Compliance

**Assessment:**

Existing Policy must be updated to comply with this provision as it is not clear that a Qualified Mental Health Professional will make a case-by-case determination regarding out-of-cell time or the denial of property or privileges or that this assessment will occur at least every three (3) days. It is the practice that incarcerated persons placed in a safety cell are significantly restricted in the allowance of property or out of cell time. Incarcerated persons placed on Intensive Observation status may be allowed to retain some items and may be allowed to participate in out of cell activities, but the practice of conducting a clinical assessment and case-by-case determination for these privileges does not currently exist.

A review of 19 safety cell logs during the month of January and February 2022 reflected there is no documentation that a clinician made a case-by-case assessment of the out-of-cell opportunities or property restrictions as the property issuance is the same for all incarcerated persons in a safety cell. Additionally, despite the fact the average time in a sample review for safety cell placement was 36 hours, there was no documentation in the logs that the incarcerated person was afforded a shower or out of cell time or those activities were clinically restricted.<sup>21</sup> It is important to note that the County reports a significant reduction in the use of safety cells, which is excellent, but this will require additional evaluation in future reports.

During the tour, incarcerated persons on Intensive Observation were interviewed and most stated they were permitted out to the dayroom for activities, access to the phone and showers, but the policy is not clear how this is assessed and approved or restricted by a clinician on a consistent basis. No documentation was provided on the IOL logs reflecting a clinician's role in determining out of cell, property or privilege restrictions for incarcerated persons on intense observation status.

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<sup>21</sup> Refer to Provision 749 for additional information.

**Recommendations:**

1. The County should work with the Joint Experts to refine the policies, training and forms associated with this provision.
2. Develop standardized forms for clinical staff to advise custody personnel of any necessary restrictions of property, privileges or out of cell activity due to a clinical assessment and the timeframe for reassessment.
3. Update Observation Logs to make clear the requirement that a clinical assessment is necessary to determine restrictions.
4. Provide training to all relevant custody and clinical staff once the revised training, policies, forms and post orders are updated.
5. 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:** Non-Compliance

**Assessment:**

Staff currently conduct security checks and references to the requirement are noted in a variety of documents, including post orders. However, a formal training on conducting security checks, supported by a video to reflect the requirements in the Provision, have not yet been developed.

**Recommendations:**

1. Work with the Joint Experts to develop a Lesson Plan to be transitioned into a training video.
2. Once approved, conduct training for all custody and other staff who work in the jail with a training plan for routine refresher training and training for all new staff assigned to the jail.

*(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 use of Sheriff's Technicians to assist with security checks.*

**Finding:** Partial Compliance

**Assessment:**

Post Orders reflect the requirements for security checks, staff do conduct security checks in the jail and the requirements appear to be well-known. For example, in several use of force incidents, the incident began with the inability for staff to conduct a quality security check due to the window of the cell being blocked, which demonstrates the staff understanding that they must be able to see inside of a cell during a security check.<sup>22</sup>

The County reportedly has a process for overseeing the evaluation of security checks. However, when reviewing security checks associated with restraint chair or safety cell placements, virtually all security check logs had missing security checks. While the inability to complete all security checks must be addressed, the positive aspect is the staff left the space blank, reflecting the security check was missed, rather than listing a check was complete when it was not. During tours of the facility, observation of security checks occurred in multiple housing units and generally the checks were conducted within industry standards.

The Supervisor's Post Orders and associated training do not currently require specific oversight and documentation of a review of the timeliness and quality of security checks against video recording. The County will need to develop and implement a process.

Currently, Technicians do not engage in security checks in the living units as the classification is a non-contact classification working in administrative functions or control booths. There are jurisdictions that use a similar classification to support sworn personnel with additional safety incentive pay and this should be explored. Additionally, as previously recommended, serious consideration should be given to hiring a percentage of sworn staff as Correctional Deputies, which could assist with critical vacancies and staff shortages.

**Recommendations:**

1. Develop a process for designated supervisors to audit documented security checks against available video for both timeliness and quality.
2. Ensure a policy, forms, post orders and training are updated to reflect the new expectation.
3. Continue with camera expansion project reflected in Provision 503 to assist with the process.
4. 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.

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<sup>22</sup> This does not imply that resulting use of force was consistent with best practices.



*(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:**

Implementation Not Yet Required – Rating N/A

**Assessment:**

The ACSO and AFBH have meet with Joint Experts and Class Counsel to begin discussions on a Therapeutic Housing Unit (THU) program. The County has reported they are in the process of piloting a THU concept for males in Housing Unit 9 and a THU for females in Housing Unit 1, targeting higher security level populations. While this is a positive step, THU housing will be required at various classification levels and a formal program guide, policies, training, staffing plan, etc. will need to be developed and approved. This provision is not currently subject to a rating and the County is moving earnestly forward in developing a THU in conjunction with Joint Experts.

**Recommendations:**

1. Continue to work with the Joint Experts to develop and implement THU units for male and female incarcerated person/patients for various populations at all classification levels in need of THU services.
2. Create and/or update applicable policies, procedures, post orders, daily schedules, tracking systems, and training to comply with provision.
3. Metrics and Quality Assurance will need to be developed to evaluate the program and outcomes.

*(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 trainings 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 a refresher training on these topics on a biennial basis.*

**Finding:** Partial Compliance

**Assessment:**

The County provides a range of training to all new deputy personnel and those assigned to the jail. The County also presented associated lesson plans with a variety of these classes, including Advanced Crisis Intervention Training (CIT). The Joint Experts and Class Counsel were invited to observe two days of four days of the piloted Advanced CIT during the month of March. While the County is not beginning from scratch and has demonstrated efforts to provide staff a range of training to assist with de-escalation, the training does not yet meet the requirements of this provision.

**Recommendations:**

1. Work with the Joint Experts, Counsel and other nationally recognized entities to refine the Advanced CIT course and other de-escalation courses to ensure the training represents best practices in working with individuals experiencing a mental health crisis by assisting staff with developing and refining tangible de-escalation skills.
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:** Non-Compliance

**Assessment:**

The County reports they have begun to explore options relative to the establishment of an Incarcerated Person Activity Council and Ombudsperson Program; however, there has been limited tangible movement in this area.

**Recommendations:**

1. The County should explore best practices in the establishment of an Ombudsperson(s) in a correctional setting to develop a tangible plan and seek resources to establish the program.

2. The County should also explore best practices in the establishment of an Incarcerated Person Advisory program and potential models will be shared to pilot a program during calendar year 2022, potentially focusing on the AB 109 sentenced population as the pilot advisory group.
3. Incarcerated Persons should be engaged in the development of the programs.
4. Working with the Joint Experts, the County should present tangible plans for implementation in the next rating period, which must include policies, forms, training, post orders, incarcerated person notification processes, etc.

*(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 established a Compliance Unit overseen by a Captain and supported by one (1) lieutenant, two (2) sergeants and two (2) technicians. The County reports the procurement of an electronic project management software solution and that they are in the process of continuous update of the project plan. The County has provided a draft and in-process project plan, which has been shared with the Joint Experts. However, insufficient time has been afforded to review the plans with the County. The County has also confirmed the leadership from ACSO and AFBH who will serve as the agreement coordinators.

During the first monitoring tour, AFBH, Wellpath and ACSO leadership were present and appeared aligned with implementation of the provisions. After the initial tour and joint meeting, the County provided a documented overview and status on a variety of Provisions demonstrating that steps towards implementation in various areas began prior to finalizing the Consent Decree. This overview also provided information regarding collaborative planning efforts occurring with various departments.

Both ACSO and AFBH will be required to present project plans pursuant to this provision and may require some training and support in project management. Each of the provisions have a myriad of complex steps that must anchor reform in clear policy, intensive training, focused auditing, critical incident reviews, and standing meetings to evaluate outcome measures to determine where aspects of the Consent Decree are on target and where adjustment is needed. Standalone plans, such as construction project plans, should be referenced as they are critical to understanding how new design will support the programs (i.e., yard space, treatment space, program space).

**Recommendations:**

1. Building on the work done to date, collaborate with the Joint Experts and Counsel to create an integrated, comprehensive and dynamic project plan.
2. Determine if project management training would support AFBH and the Compliance Unit in this effort.
3. Ensure each provision is carefully reviewed and addressed in the Project Plan.
4. Maintain consistent updates to the plan with standing collaborative meetings to discuss status, policy decisions needed and barriers.
5. Ensure linkage to standalone plans, such as construction project plans, and accessibility to those plans for monitoring.