

Babu v. Ahern
Consent Decree Second Non-Confidential Status Report
Case No. 5:18-cv-07677-NC
Terri McDonald Consulting LLC
Sacramento, CA
March 7, 2023

The following are excerpts from the Consent Decree provisions assigned to Terri McDonald for monitoring. This document will have a summary of those provisions followed by the specific provision language and this Joint Expert’s findings and recommendations. Connected provisions have been combined for this status report; however, several will likely be separated in future reports as the County increases compliance. Additional recommendations may also be added in subsequent reports as additional information is gleaned during implementation. While this report is dated March 6, 2023, only information provided through December 31, 2022, has been included in this reporting period.

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

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

Summary of Ratings

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

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

Requirement	Current Rating	Prior Rating
768. Out of Cell Time in Therapeutic Housing Units	PC	INJR – N/A
773. De-escalation Training	PC	PC
800. Establishment of Incarcerated Person Advisory Council and Ombudsperson Program	NC	NC
1200. Development of Consent Decree Implementation Plan.	PC	PC

Commonly Used Acronyms

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

Associated Policies

The vast majority of the Provisions require an update to policies, forms, post orders and training. The Incarcerated Person Handbook requires updates to comply with the Consent Decree as well. Additionally, each entity¹ responsible for a provision may need their post orders, job descriptions or duty statements updated to comply. The following list of documents is not exhaustive but represents the status of pending or recently updated policies that apply to at least one provision in this report:

1.05 (GO) ²	Use of Force
1.20 (GO)	Taser X-2
1.21 (GO)	Less Lethal Weapons Systems
3.10 (DC)	Daily Attendance Report – Requires Update
3.21 (DC)	Personnel Selection, Promotions, Retention and Staffing – Requires Update
3.27 (DC)	Position Control – Requires Further Review
3.29 (DC)	Special Management Unit Staffing – Requires Update

¹ Includes ACSO, AFBH and Wellpath.

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

3.30 (DC) Mandatory and Voluntary Overtime Assignments – Will Require Updates

4.02 (GO) Training - Pending Further Review

4.01 (DC) Facility Training Plans – Requires Update

4.02 (DC) Facility Personnel Training -Requires Update

5.69 (GO) WRAP Device – Updated and Approved

6.01 (DC) Repair and Minor Construction ACSO – Pending Further Review

6.02 (DC) Facility Plant Maintenance – Pending Further Review

7.14 (GO) Prisoner Transportation, Restraint Device – Requires Update

8.09 (DC) Transportation/Movement and Use of Restraints – Requires Update

8.11 (DC) Emergency Medical Transportation – Requires Update

8.12 (DC) Incarcerated person Observation and Direct Visual Supervision – Requires Update

8.13 (DC) Use of Safety Cell – Requires Update

8.17 (GO) Body Worn Cameras – Pending Further Review

8.26 (DC) Use of Special Restraints – Requires Update

8.28 (DC) Resistant Incarcerated Person Management – Requires Update

8.29 (DC) Positional Asphyxia – Pending Further Review

9.01 (DC) Disciplinary Isolation – Requires Update

9.02 (DC) Administrative Segregation – Requires Update

9.07 (DC) Deprivation of Authorized Items or Activities – Requires Update

9.09 (DC) Special Incarcerated person Management Plan – Requires Update

9.10 (DC) Max Separation Incarcerated persons – Requires Review

10.02 (DC) Lieutenant/Watch Commander Post Order – Requires Update

10.02 (DC) Control Booth Post Order – Requires Update

10.03 (DC) Sergeant/Shift/Supervisor Post Order – Requires Update

10.04 (DC) Intake Deputy Post Order – Requires Update

10.05 (DC) Housing Unit Deputy Post Orders – Requires Update

10.08 (DC) Clinic Officer Post Orders – Requires Update

10.11 (DC) Intake, Transfer, Release (ITR) Technician Post Order – Requires Update

10.22 (DC) Special Projects Deputy Post Order – Requires Update

10.30 (DC) BHAT Deputy Post Orders – Requires Update

10.XX (DC) EHCAT Deputy Post Orders – Requires Development

11.01 (DC) Intro to Intake – Requires Update

11.02 (DC) Intake Procedure – Requires Update

12.08 (DC) Incarcerated Person Work Program – Requires Update

13.02 (DC) Access to Care Policy – Requires Update

13.06 (DC) Suicide Prevention – Requires Update

13.08 (DC) Transportation Policy – Requires Update

15.01 (DC) Sanitation Schedule – Requires Update

15.02 (DC) Safety and Sanitation Inspection – Requires Update

16.03(DC) Incarcerated person Grievance Procedure – Requires Update

18.01 (DC) Intro to Incarcerated person Services – Requires Update

18.02 (DC) Incarcerated person Operational Programs – Requires Update

18.05 (DC) Volunteer Services and Programs – Requires Update

18.07 (DC) Religious Services – Requires Update

18.09 (DC) Educational Program Planning – Requires Update

18.10 (DC) Vocational Training Programs – Requires Update

18.11 (DC) Social Services Programs – Requires Update

- 18.12 (DC) Recreation and Incarcerated person Activity Program – Requires Update
- 18.17 (DC) Parenting Program – Requires Update
- 20-02 Santa Rita Jail Mandatory Overtime Program – January 2020
- 20-17 Mandatory Overtime Frequently Asked Questions – October 2020
- 21.01 (DC) Use of Force Addendum In-Custody Use of Force – Reviewed and Approved – Requires Update
- 21.02 (DC) Force Incident Review and Routing Force Training and Compliance Unit– Reviewed and Approved – Requires Update
- 21.03 (DC) Force Training and Compliance Unit Force Incident Review and Routing – Reviewed and Approved

FINDINGS

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

Finding: Partial Compliance³

It is noted that the average number of custody staff available to work in the jail has slightly increased from the last reporting period, which is positive. As described in Provision 201, there has been an increase in the number of staff available to work in custody and that has corresponded to a slight increase in the average number of deputies working in the jail on a daily basis.

As documented in the First Monitoring Report, the average number of dayshift deputies (Team A and Team B) working in the jail during January-February 2022 was estimated to be 55.5 deputies. However, when assessing the period of July through December 2022, the average number of dayshift deputies has increased to 61, representing a 10% increase. There was no difference in the average number of technicians working daily from the first monitoring report.

As reflected in the prior report, ACSO has a policy regarding mandatory overtime assignments, a policy reflecting the goal to have five (5) sergeants and sixty (60) deputies working on dayshift and five (5) sergeants and fifty-six (56) deputies on overnight shift. Based on the review of the last six months of 2022, the County met its internal goal for dayshift, 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. The number of staff is driven by population, number of housing units open, design of the housing units, classification of the incarcerated persons (IPs) and the mission of the unit [for example, Therapeutic Housing Unit (THU) or Restricted Housing]. It is still too soon to monitor whether these staffing levels are adequate to support compliance with the Consent Decree but there has been a modest increase in staffing which is likely contributing to increased access to services, particularly in behavioral health units.

³ The Mental Health Expert will report on mental health hiring and staffing.

While it is positive to see a slight improvement since the last report, the percentage of deputies on overtime each shift continues to be roughly 50% of the workforce. This level of overtime exhausts the staff and does not afford stability in the housing units as the employees working in the units are frequently not regularly assigned and may not know the population. This is particularly challenging in the restricted and behavioral health units. The provision articulates a goal of retaining specially trained staff in the THUs for up to three (3) years, but currently half of the staff are not regularly assigned to the unit and many staff actually are assigned to patrol and are working in the jail on mandatory overtime.

Because ACSO has not reached the full staffing level required under provision 201, it is impossible for the number of staff working to be sufficient to meet the requirements of the provision. The inability to meet the out-of-cell mandates as referenced in Provisions 411 and 412 and the inability to activate the Emergency Health Care Access Teams (EHCAT) as required by Provision 203 are examples of where insufficient staffing is hampering substantial compliance. Until such time as the hiring is complete and data systems are refined to accurately measure the myriad of requirements in all provisions, the County will not be able to reach substantial compliance on this provision.

Recommendations:

1. Continue hiring associated with Provision 201.
2. *⁴Create 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. Work with the Joint Experts to prioritize available resources should that be the case.
3. *Create a standardized Watch Commander Report for all Teams to assist with establishing the number of staff redirected on a daily basis from the jail for emergency transportation or hospital guarding.

*(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;*⁵

Finding: Partial Compliance

Assessment:⁶

The County is moving forward with establishing position authority to comply with this provision. Based on the most recent bi-weekly staffing report, the County has established all but eight (8) positions with authority to fill. While the positions are authorized, it is understood that the provision recognizes the complexity of filling peace officer positions and affords a three (3) year period to complete hiring.

⁴ All recommendations that begin with an asterisk were noted in prior report.

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

⁶ These findings are specific to custody positions as mental health staffing analysis will be conducted by the Mental Health Expert.

Based on the bi-weekly staffing report ending December 10, 2022, it appears there are more sworn (badge) and non-sworn (non-badge) staff actively working in the jail (on-site) at the end of 2022 than were working in the jail when the staffing analysis was completed in 2020 and during the first monitoring report. It is important to note that this increase does not equate to a corresponding increase in staff working daily in the jail housing units as ten of these positions are newly established positions to comply with the Consent Decree [i.e., Compliance Unit, behavioral health access team (BHAT), Force Review Team]. However, those units combined do not equate to the growth in available staff since April 2022 (increase of 145 staff total sworn and non-sworn). It is unclear how the growth has been allocated because there is not a significant increase in staff working in the jail or a decrease in overtime. A greater understanding of how positions are allocated to work in the jail will be required to measure this provision in the future. This will be accomplished by a review of all staff assigned to a custody position (position control report) against the daily assignment of staff in the jail over a sample period in time.

Bi-Weekly Staffing Report

	March-April 4, 2020 ⁷	April 4- April 16, 2022 ⁸	November 27- December 10, 2022	Change from July 2020	Change from June 2022
Badge Positions Authorized	404	519	656	252	137
Non-Badge Positions Authorized	211	274	282	71	8
Badge On-Site	278	356	384	106	28
Non-Badge On-Site	182	196	215	33	19
Background Investigators	4	9	11 ⁹	7	2

The County continues to recruit and hire staff during an exceedingly difficult national trend of reduced peace officer applicants. This ability to continue to increase custody staff is partly attributed to the fact that the County continues to augment the background unit with 11 investigators, and the results appear to be positive. At the current rate, if sustained, the County is on target to hire sufficient staff to meet the agreement. However, the positions must be filled with active-duty custody staff working directly in the custody division and jail to be in compliance with the agreement.

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

The County reports this practice has ceased but has not provided proof or written certification as required by this provision [201(4)]. As mentioned, the County has provided a bi-weekly staffing report showing the number of authorized positions and the number of staff able to work in the jail as reflected in 201(1). Based on only this information, it is impossible to determine the extent to which staff assigned to custody positions are working in custody as there is no corresponding position control report to reflect who is assigned to those positions, their assigned work location and/or the reason they are not able to work in the jail if applicable. Because there is no certification or reconciliation between the number of positions authorized in the jail and how those staff are deployed in custody, it is unknowable whether the County is carrying division vacancies in custody vacancies or placing long-term sick staff not assigned to custody in custody

⁷ ASCO's Santa Rita Jail Target Staffing Analysis. CD-007273

⁸ Bi-weekly staffing report. CD-007229

⁹ Backgrounds consists of eight (8) regular staff and six (6) retired annuitants working part time (.50 position).

positions. The Expert will continue to work with the County to request an up-to-date and complete position control report to assess compliance.

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

The County has established a Compliance Unit, Force Review Team, and Behavioral Health Access Team since the onset of the Consent Decree. The teams are all committed and engaged in improving the system and overseeing incremental improvements. It is anticipated these units will remain intact, but it is highly likely many of the units are insufficiently resourced to fully support the Consent Decree. The County has a difficult balance, however, in increasing these units as staff assigned to specialized units are staff who are not assigned to routinely work in the housing units in the jail. It is certainly a delicate balance.

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

As documented in above in 201(2), the County has not provided a certification as required by this provision as the certification is not due until February 7, 2023.¹⁰ The Expert will work with the County and counsel to assist in completing this project during the next reporting period.

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

The County has not developed a plan to transition to a direct supervision model for the Restricted Housing Units or the Therapeutic Housing Unit (THU) but has begun the process of building clinical spaces and deputy work areas to configure the model closer to a direct supervision model. The County has also piloted THU units where the deputies are more engaged with the clinical teams through daily interactions and huddles.¹¹

In candor, direct supervision models can be staff intensive, and it will be complicated in the next rating period for the County to implement such a model. It is recommended that the focus in this next rating period be on hiring and baselining the custody positions and the plan to develop a strategy to direct supervision be delayed until the Fall of 2023. In the interim, the County can focus on training all staff to work more effectively with specialized populations and endeavor to stabilize the staff assigned to the THU and restricted housing unit to reduce daily fluctuation of staff.

Recommendations:

1. *Continue with hiring plan and utilization of retired annuitants and overtime to fill vacant posts.¹²

¹⁰ This report addresses compliance through December 31, 2022.

¹¹ Refer to Mental Health Expert's Second Report.

¹² It is noted that retired annuitants are not currently utilized to work in housing units but do assist with transportation, which lessens the impact on the redirection of housing unit staff and involuntary overtime. The

2. *Continue to retain Background Unit personnel and augment with retired annuitants as workload dictates.
3. *Continue with aggressive recruitment and retention strategies.
4. *If meeting hiring goals remains elusive, evaluate viability of some percentage of sworn personnel to be hired under Penal Code sections 830.2, 830.5, *et seq.* to be authorized to work only in custodial functions, including custody transportation.
 - a. 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 transition back to patrol or outside of custody operations.
5. *Review workload of deputy personnel to determine if any of existing deputy assignments can be effectively performed by non-sworn staff.
6. *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 developing the certification required under Provisions 201(4).
7. Identify deputy posts that are best filled by regular staff, keeping reliance on overtime in higher risk units to a lower percentage than the medium and low risk units.

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

Finding: Partial Compliance

Assessment:

As reported in the First Monitoring Report, the County established three (3) deputy positions to serve as BHAT deputies and maintained those positions during this rating period. A review of data provided revealed only one week from April-November 2022 in which the County failed to provide BHAT deputies, demonstrating a sustained commitment for escort personnel. The County utilizes the BHAT deputies to assist with individual escorts for personal clinical encounters, escorts for tele-psyche appointments and escorts for groups. The County has been tracking escort data since January 2022, including the number of IPs who refuse to attend their clinical appointment. The data provided by the BHAT deputies relative to

County is encouraged to consider the use of retired annuitants in housing units as well if that would assist with the vacancy challenges.

escorts as reflected by the chart below does not appear to match the data maintained by the AFBH, which reflects clinical encounters have increased, but it is noted that not all clinical encounters are handled by BHAT deputies, which may explain the variance. The Joint Experts will work with the County to establish clearer tracking mechanisms for tracking and reporting clinical encounters in future reports.¹³

	Completed Escorts	Refused Escorts	Tele-Psych Appts	% Appts Refused	% Tele-Psych
JAN	443	53	256	12%	58%
FEB	296	43	176	15%	60%
MAR	449	63	197	14%	44%
1st Report Average	396	53	210	13%	53%
April ¹⁴	344	36	52	10%	15%
May	343	32	75	9%	20%
June	341	40	70	12%	21%
July	184	18	41	10%	22%
August	253	29	28	11%	11%
Sept	176	20	37	11%	21%
Oct	254	21	50	8%	19%
Nov	300	40	7	13%	2%
2nd Report Average	274	30	36	11%	16%
Difference	-31%	-41%	-83%	-15%	-70%

The joint experts will work together this next rating period in an attempt to reconcile the BHAT and AFBH tracking reports. In the interim, it is most appropriate to rely on the mental health expert’s report for specifics relative to behavioral health care and clinical contacts as this report only reflects how many escorts the BHAT team did, not the escort activities of the housing unit deputies who also assist. If the BHAT deputy escort data is accurate, it is positive to note there has been a slight reduction in the percentage of IPs refusing to attend their clinical engagement during this rating period, which may be attributed to the BHAT deputies having more experience working with behavioral health populations. The joint experts observed the BHAT deputies during the October 2022 monitoring tour, and those staff appeared to be working effectively and collaboratively with the clinicians and the IPs.

It is also too soon to determine how many BHAT deputies may ultimately be needed once AFBH is able to increase clinical staff and the County is able to increase out-of-cell structured activities, although the need for additional BHAT deputies preliminarily appears likely. In the interim, it is positive that the County established these positions, provided the deputies additional training, developed post orders and is transparently providing metrics on their activities.

¹³ Refer to Mental Health Expert Report for additional information.

Recommendations:

1. *Continue tracking metrics for BHAT deputies to determine if the existing cohort is sufficient to meet the needs of the jail system. Ensure the metrics are coordinated with AFBH to ascertain the need if clinical resources are increased.
2. *Determine how BHAT deputy assignments will interplay in the Therapeutic Housing Unit and other specialized housing units.
3. *Continue working with the Joint Experts to refine the Advanced CIT training and complete discussions with Parties to present formally approved training to the BHAT deputies.¹⁵

(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: *Non-Compliance*

Assessment:

The County continues to maintain seven (7) deputies in the clinics, who supervise clinics and assist with escorting IPs from their living units to clinics. Housing unit deputies also occasionally assist with these escorts.

The County has been unable to establish the twenty (20) posts¹⁶ to activate the EHCAT to assist with off-base emergency transporting (all preplanned off-base medical and hospital coverage and transportation are currently handled by the Transportation Unit). The County reports they do not have sufficient staffing to establish full-time posts for this purpose and will continue to redirect staff, pay overtime, or utilize retired annuitants as appropriate for off-base transport and medical guarding coverage in local hospitals.

The challenge with the inability to activate these posts is the housing units lose coverage when staff are required to assist with transportation, which has a significant impact on access to care and out-of-cell time. However, the decision to delay is based on creating more stability in daily housing unit assignments and using redirects, overtime, and retired annuitants as appropriate for transportation as the workload is fluctuating. This is a reasonable strategy for this next reporting period based on that limitation.

It is believed, however, when evaluating the watch commander end of shift reports, the five positions per shift is not an overestimate of need as the daily average for redirecting staff to cover off-base transportation is at least 10-15 deputies a day. It is hopeful that with enhanced hiring, the County can begin to implement this provision, even if with only two deputies per shift.

Recommendations:

1. Address critical staff vacancies as reflected in Provisions 200 and 201.

¹⁵ Refer to Provision 773 regarding Crisis Intervention Training (CIT).

¹⁶ This equates to five posts covering the four shifts operated in the jail.

2. *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 transportation and hospital coverage. The tracking should include, at a minimum, the number of hours for the transport, number of staff, where staff were redirected from, if applicable. The Watch Commanders' reports are inconsistent in how this information is captured but reportedly ACSO maintains appropriate documentation to evaluate in the next rating period.
3. *Continue to work with the health care scheduling unit to streamline outside medical appointments to maximize the efficiency of transportation and outside appointments to maximize the efficiency of the transportation unit to assist with emergency medical appointments when they occur. The expert will likely evaluate this process in future reporting periods if redirection of housing unit staff continues at the current level.
4. Recommendations from prior reports are still important but the focus during this next rating period should be the recommendations listed above.

(402) [Following reconfiguration of recreation space] Individuals who are on "Recreate Alone" status (meaning they cannot recreate with other incarcerated persons) [Step 1] shall be offered at least fourteen (14) hours per week of out-of-cell time, which shall include at least some amount of Structured Time, as set forth below. ACSO shall use best efforts to offer individuals two (2) hours of out-of-cell time per day.¹⁷

(403) [Following reconfiguration of recreation space, Step 1] Defendants shall use best efforts to provide at least five (5) hours per week of Structured Time (which includes therapeutic, educational, substance abuse, self-help, religious or other structured programming), which will count towards the total out-of-cell time. Incarcerated persons may participate in these programs in handcuffs or other appropriate restraints only if necessary to ensure the safety and security of the Jail. If ACSO is unable to meet this requirement, the Parties agree to meet and confer regarding the reasons why and to examine methods of increasing the amount of Structured Time.¹⁸

(405) [Following reconfiguration of recreational space, Step 2] Individuals shall be offered at least twenty-one (21) hours per week of out-of-cell time, which shall include at least some amount of Structured Time, as set forth below. ACSO shall use best efforts to offer individuals three (3) hours of out of cell time per day.¹⁹

(407) [Following reconfiguration of recreational space] Defendants shall use best efforts to provide at least eleven (11) hours per week of Structured Time [for the Step 2 population], which will count towards the total out-of-cell time. Incarcerated persons will participate in Structured Time programs in restraints if necessary to ensure the safety and security of the Jail. Incarcerated persons may participate in these programs in handcuffs or other appropriate restraints only if necessary to ensure the safety and security of

¹⁷ This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

¹⁸ This Provision refers to Step 1 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

¹⁹ This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

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.²⁰

Finding: Implementation Not Yet Required – Rating N/A

The provisions are written in a manner that attempts to create a gradual increase in out-of-cell time and differentiate the requirements for the Step 1 and Step 2 restricted housing populations after enhanced spaces are constructed for out-of-cell opportunities. The provisions appear to recognize that the goals listed in Provisions 402, 403, 405 and 407 were likely unachievable until a yard and interior space reconfiguration could occur and that has proven accurate.

Because these provisions address requirements after construction is complete, this report will document the status of out-of-cell time and structured activities for Step 1 and Step 2 restricted housing populations in Provisions 411 and 412. The status of the yard and space reconfigurations are addressed in Provision 414.

Recommendations:

1. Refer to Provisions 411, 412 and 414.

(411) The above minimum out-of-cell times for individuals placed in Step 1 and Step 2 may not be fully achievable until reconfiguration of the Recreation Space (defined to include all outdoor recreation spaces and any interior space within the housing units that will need to be modified to ensure the provision of out-of-cell time), described below in subsection III(D)(2), is completed. Defendants agree to offer at least the following out-of-cell time minimums for the first three months following the Effective Date: (1) seven (7) hours of out-of-cell time, including structured and un-structured time to Restrictive Housing incarcerated persons on Rec-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 week; and (2) seventeen (17) hours of out-of-cell time, including structured and unstructured time to Restrictive Housing incarcerated persons on Co-Recreation status (Step 2) per week.

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

Assessment:

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

Step 1	Ten (10) Hours to include structured and unstructured time.
Step 2	Seventeen (17) Hours to include structured and unstructured time.

²⁰ This Provision refers to Step 2 populations in restricted or administrative separation housing. See Provision 411. This may not be achievable until reconfiguration of recreational space.

As discussed in the prior report, the County continues to focus on reducing reliance on restricted housing and continues to refine the process for categorizing the restricted housing population into Step 1 and Step 2 classifications.²¹ The County has also implemented a dayroom activity and yard tracking systems in all restricted housing units to assist with internal and external monitoring. That tracking system continues to be refined as it does not always clearly designate the Step 1 and Step 2 populations, making clear analysis of out-of-cell compliance impossible at this juncture. But the staff have done an ever-improving job of capturing out-of-cell time at the individual level in restricted housing.²² The Watch Commander has also begun tracking out-of-cell time in restrictive housing units as a portion of their end of shift report but there are limitations to that system as described in Provision 417.

During the last monitoring period, the Step 1 and Step 2 restricted housing (RH) population data was analyzed together in an attempt to baseline overall out-of-cell time in RH units as it was unclear which populations were in each step. The Step 1 and Step 2 populations are again averaged together as it is impossible at this time to be assured the populations are accurately identified by step level on the tracking log. Because the out-of-cell tracking for every jail unit is still being refined, this report will measure one week a month for the second half of 2022 to assess how the overall average has changed in restricted housing from the prior report. However, this analysis is forced to blend Step 1 and Step 2 populations and housing units, so using the averages as an absolute measure of compliance is not possible.

In the last report, an analysis of combined yard and dayroom out-of-cell time revealed for the months of January and February, incarcerated persons in RH Units 1 and 2 were averaging five (5) hours or less combined dayroom and yard time and actually yard time was negligible.²³ However, using the same statistical limitations on the sample, the average combined time for dayroom and yard increased to 10 hours a week, an increase of 100%, which is very positive but there is a real potential for what would appear to be backslide in future reports if and when the Step 1 and Step 2 populations can be identified and measured independently.

It is clear from the review of the sample weeks that ACSO has shown improvement from the prior report. This is to be commended and the County should continue striving to reach the target as it is clearly attainable based on several housing units meeting or exceeding expectations.

There are notable concerns however, such as Housing Unit 1 and Housing Unit 2 A and D pods are considerably lower than the other Housing Unit 2 pods. This is likely due to the Step 2 populations being clustered in the higher out-of-cell time units, but it is difficult to assess due to the lack of step identification on the logs. This should be resolved by the next reporting period.

The second area of concern continues to be the lack of full utilization of the small yards adjacent to the housing units (quasi-yards). The out-of-cell tracking logs routinely reflect no yard time for restricted housing populations, as do the watch commander end of shift reports, which reflects that available space was not used to full capacity. This issue has been repeatedly identified on tours and the solution oddly remains elusive for the County. This must be remedied as discussed in Provision 421.

A third issue is the fact that many weeks the units are not meeting the lowest requirement of ten (10) hours per week and if Step 2 populations are clustered in the higher out-of-cell average units where seventeen (17) hours per week are required, there are units not reaching the seventeen (17) hour mark. This may or may not be the result of blending Step 1 and Step 2 populations, which could result in a lower than 17 hour

²¹ Refer to Classification Expert's second report for further information.

²² Refer to Provision 418 for additional information on tracking systems.

²³ *Terri McDonald First Monitoring Report Babu v. Ahern*, p. 12.

average. Unit the populations can be clearly identified and averaged together (Step 1 populations with Step 1 populations and Step 2 populations with Step 2 populations), an accurate and meaningful compliance evaluation remains elusive.

The County has not created an individualized reporting system to measure structured activity time for each person in the RH units. The County elected to focus on tracking yard and dayroom activities through an excel spreadsheet during this reporting period and to wait until the implementation of the radio frequency identification (RFID) system to track structured activities. This is understandable based on the complexity and staff time in manually tracking the yard and dayroom time, the joint experts concur with this decision by recognizing the RFID system will be implemented in the next rating period. With the establishment of the RFID system, it is anticipated the next report will accurately measure the Step 1 and Step 2 populations independently.

Recommendations:

1. *Complete the implementation of the RFID tracking system and ensure the system can separate Step 1 and Step 2 populations for ease of auditing.
2. *Continue to evaluate the population to safely reduce the number of incarcerated persons in administrative separation.²⁴
3. *Safely continue to reduce the number of Step 1 incarcerated persons and continue to allow small group activity with the Step 2 population where safe to do so.
4. Conduct an analysis and workload study for the Housing Unit pods that are struggling to meet the 10- and 17-hour requirements.
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 in the restricted housing units and ensure Sergeants are monitoring and addressing non-compliance with the schedule.
6. *Expedite the construction projects associated with expanding yard opportunities as noted in Provision 414.
7. *Seek approvals as necessary to rapidly split the Quasi yards with the proposed installation of temporary bathroom fixtures and a security fence.²⁵
8. *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.
9. *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.
10. *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

²⁴ Refer to Classification Joint Expert Dr. Austin's Monitoring report.

²⁵ Likely requires approvals from both the Board of Supervisors and the State of California's Board of State and Community Corrections (BSCC)

Parties agree to meet and confer regarding the reasons why and to examine methods of increasing the amount of Structured Time.

Finding: *Partial Compliance*

Assessment:

As reported previously, this provision of the Consent Decree addresses out-of-cell time for incarcerated persons who are able to co-mingle in their housing units. 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 and copies of logbooks have been reviewed on tours, which also document out-of-cell activities. Group movement documentation is appropriate for the types of units affected by this provision.

As with the restricted housing units, the County has demonstrated progress in tracking out-of-cell time in units where groups of IPs program together, but the deputies have not always been consistent in documentation. The Compliance Team has been working with the housing units to standardize reporting and the housing officers are improving their documentation; however, utilizing months of data for statistical analysis is difficult for this report due to inconsistent reporting. Additionally, the focus between ACSO and custody expert during this rating period was primarily on the restricted housing unit trackers.

In reviewing a sample of Medium and Maximum Custody units for October and November 2022, the County has shown an improvement in affording yard and overall out-of-cell activities. In the First Monitoring Report, the sample units averaged less than 20 hours per week out-of-cell time and the units assessed in this period, while not the all the same units, reflect a significant increase. A random audit was conducted of Four maximum security units and five (5) medium security units for a two-week span in October and November 2022. This small sampling reflected for that limited assessment the maximum-security units averaged 42 hours of combined dayroom and yard time and the medium security units averaged 50 hours combined out-of-cell time.

It is noted, however, that two (2) of units sampled failed to meet the 28-hour weekly requirement, but the sample did not account for structured activities that may have occurred in the housing units to assist in reaching compliance. Unfortunately, during this reporting period, structured activities were not documented in a manner to support inclusion in this report's analysis. A review of worker rosters for the first nine (9) months of 2022, reflects there are not many workers assigned in the units sampled with the exception of several pod workers, but it is noted that IPs living in several of these units are engaged in rehabilitative programming.²⁶ The IP students assigned to these units are eligible to attend the Sandy Turner Classrooms as well.

As reflected in prior provisions, the next report should be able to rely on real time data from the RFID system to determine if structured activities, yard access and dayroom out-of-cell time are afforded in compliance with this provision. This is critical to address the series of grievances submitted each month complaining about inadequate yard and dayroom access and to generate unit-by-unit reports to determine if areas require additional support to comply. There are units that seem to have little challenge in meeting the requirement while others are below the 28-hour mandate. Leadership should address the disparity and resolve the factors that inhibit compliance.

²⁶ Refer to ADA Joint Expert Rick Wells' First Monitoring Report for additional information relative to workers and work assignments.

The next report will include an analysis of all applicable housing units covered by this provision.

Recommendations:

1. Complete the RFID roll-out to track out-of-cell time in real time to meet and exceed daily requirements.
2. Address barriers to yard access, both the large yard and quasi-yards.
3. *Update all policies, forms, post orders and training associated with this provision.
4. Recommendations from Provisions 411-412 will assist with compliance with this provision.
5. *Update the Orientation Handbook and Orientation Video to incorporate information about this and other applicable provisions.²⁷

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

Finding: Partial Compliance

Assessment:

While not within the three-month period, the County met with class counsel and experts as required by the provision and shared a series of preliminary plans for yard configurations, which were promising. The recreation yards were consistent with modern correctional practices, with several designs to allow for group recreation and installation of lighting and restrooms. The County also shared concepts for clinician and deputy workstations and privacy consultation booths which could be constructed and placed in units where the IP engagement at a table would not be appropriate for a private clinical consultation. Early concepts have been supported as a pilot until more substantial solutions can be implemented.

During this rating period, the County constructed clinical workspaces in several housing units as a pilot, which AFBH clinicians have begun using as workstations to complete charting and other document related tasks. AFBH does not intend to use these workstations to meet with clients at this time. ACSO should continue to work with AFBH to learn from the pilot and adjust as appropriate.

However, there has been little additional tangible work done to comply with this provision and there has been no reportable movement to reconfigure recreational spaces since the last reporting period. This is not solely the responsibility of ACSO as the County's General Services Agency (GSA) is the entity responsible for bringing these projects to fruition. At this pace, it is unlikely the County will adhere to the twenty-four-month requirement or meet the commitments of the County's representatives in temporary solutions unless there is real effort demonstrated during in the next rating period and waivers are granted to existing County bureaucracy. If tangible and effective movement is not realized in the next rating period, this provision will likely be in non-compliance in the next rating period.

Recommendations:

²⁷ 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.

1. The ACSO, AFBH and GSA must develop a comprehensive and deliverable project plan to meet compliance with this provision.
2. The County should evaluate its ability to expedite construction through waivers, sole source and other commonly used strategies for complete priority and emergency projects.
3. A project plan with timelines should be shared for all projects during this next rating period with class counsel and joint experts.

(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:

The County currently ensures access to restroom facilities during out-of-cell time as required by the provision. The recreational space reconfigurations include newly constructed recreation spaces that have restroom facilities available.²⁸ A review of grievances for the month of July-November failed to find any incarcerated person who complained about access to restrooms during out-of-cell time and there have been no complaints received about this issue during tours. However, it is important that staff working in housing units, supervising yard activities and overseeing educational and work assignments ensure access to restrooms and are trained on that requirement.

The County intends to update policies in this next year, and it is anticipated the appropriate policies, post orders and training can be updated to reflect this provision requirement. Once the County completes the process of anchoring this provision in policy and training, this provision should reach substantial compliance.

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. Training can be provided by written directive or briefings assuming proof or practice can be established.
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

²⁸ Refer to Provision 414.

of their cell. This determination shall be documented and approved by the Restrictive Housing Committee and shall be revisited on a weekly basis. Individuals engaged in Out-of-Cell Activities, including, but not limited to, pod time, structured and unstructured time (including all out-of-cell programming), education, work, vocational training, and yard time (including quasi yard time), shall be provided reasonable access to bathroom facilities as needed.

Finding: *Partial Compliance*

Assessment:

This is an area that requires additional focus from the County. It is noted that the County has developed several systems since the last reporting period to measure and track out-of-cell time but has not yet fully utilized the information to develop a strategy to address low utilization units and develop action plans to engage in incremental increases.

During this rating period, the Watch Commanders began attaching a daily restricted housing out-of-cell overview form to the end of shift report. This document reflects utilization of dayroom and yards as well as total number of refusals for the shift in each restricted housing pod. It is noted on most of these forms that restricted housing yard utilization is listed as zero (0), but there is no documentation that the failure to utilize the quasi-yard was addressed or approved by the watch commander. This daily yard form should be refined to document the reason why a yard cancellation was required, and the actions taken by the watch commander to address the cancellation if it was not approved.

The daily out-of-cell tracking logs the deputies maintain in restricted housing and specialized units include documentation regarding refusals for out-of-cell time. The form also has a small area to document why dayroom or yard was not utilized, but the deputies do not utilize that form to explain why they did not run out-of-cell activities and rely on the unit log books (red books) to document the rationale. This documentation in multiple places is very difficult to support an efficient compliance audit. As the County changes practice in this next rating period due to the activation of the RFID system, as discussed in Provision 418, a systemic and auditable system to address refusals and dayroom/yard closures must be developed and utilized by deputies and supervisors.

The County has shown good progress is assigning a specific staff member from the Compliance Unit to serve as the coordinator in the development of the out-of-cell tracker and in monitoring out-of-cell activities. The County is strongly urged to assign a dedicated supervisor to address all out-of-cell provisions to maximize the current program/recreational space to their full potential and hold ACSO accountable to ensuring out-of-cell time is a daily and constant priority during normal waking hours. If this occurs, there is no doubt the County will realize further increases in out-of-cell averages during the next rating period.

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.

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

Finding: Partial Compliance

Assessment:

The County has done an excellent job in procuring and installing the infrastructure for an RFID system during this last rating period. The system is well into the installation phase and a large cadre of staff (38) were trained by Mid-February 2023 to mentor other staff in the use of the system. As a result of ACSO's efforts, the program began as a pilot in March 2023.

In the interim as the RFID was being procured, the County implemented a unit based out-of-cell tracking system to document daily access to the dayroom and yard. The County assigned a smart and committed employee to design the paper tracking system and serve as the implementation project manager. This employee, who is assigned to the Compliance Unit, began internal auditing of the logs towards the end of 2022. Because of the efforts displayed during this rating period to train staff regarding the importance of accurate tracking and the installation of the RFID system, it is anticipated that future monitoring will provide accurate and timely review of out-of-cell information at the individual and unit level.

As mentioned in Provision 417, it is incumbent on the County to establish policies, training and auditing in this next rating period that includes the various requirements of the provisions, such as supervisory oversight, clinical support to address isolation, encouragement and prompting when an IP is refusing routinely, maximum utilization of existing space, etc. While it is recognized these are comprehensive changes to current practices, it is believed that this provision can reach substantial compliance in 2023 and the Expert will assist with completion of necessary policies, post orders, schedules and training lesson plans. The County should be commended for the commitment to track in real time the movement and out-of-cell activities of the IPs in all housing units, which will assist in all other aspects of this provision.

Recommendations:

1. Continue the RFID installation and training program.
2. *Begin to draft and update relevant policies, post orders and training to reflect the out-of-cell requirements for each category of incarcerated individuals.
 - a. AFBH will also require a policy for clinicians' role when referrals are received, including timelines for evaluation and support.

3. *Ensure adequate oversight from the Compliance Unit with internally developed reporting systems.

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

Finding: Partial Compliance

As mentioned, the County has developed and piloted an individualized out-of-cell tracking system to assist with monitoring when an incarcerated person has been offered and accepted out-of-cell time, which affords access to a shower. The County has assigned a dedicated member of the Compliance Unit to track and monitor those forms, which creates the mechanism to develop a mental health referral process that is easy to monitor and track. The housing unit staff do make referrals to mental health when they observe isolation or decompensation of an IP assigned to their unit, but the manner in which they do so is inconsistent and not codified in policy.

The County has also implemented a strategy to cluster high need IPs into THUs, where clinical staff are integrated with the custody staff in the units and discuss the behaviors of each IP assigned to the unit in daily huddles. In addition to the THUs, the County has also begun to cluster IPs requiring intensive observation (IOL) status and has been working with the joint experts to clarify both the THU and IOL programs into formal policy to then develop a training plan. Specifics regarding the status of these programs are described in the Mental Health Expert's current report.

The County has also done a better job of ensuring adequate sergeants are in the units. During tours, the sergeants are observed inside of the housing units, and they appear to know the staff and population they are supervising. This is a significant improvement from 2021. However, as discussed in Provision 200, while the sergeant assignments are listed on a daily roster it has not yet been determined if supervisors are being allocated based on position authority and deployed in the most efficient manner, utilizing trend information to target high need units. As reflected in Provision 200, the Expert will continue to work with the County in an effort to make the allocation of staff into posts a more transparent process.

While the County did not complete all recommendations from the prior report, both ACSO and AFBH have demonstrated significant progress in establishing the THU pilots, refining the IOL process, increasing supervisor presence in units and capturing and monitoring out of cell activities. It is anticipated that policies, post orders and training can be finalized during this next rating period to bring this provision in substantial compliance in 2023.

Recommendations:

1. *The County should work with the Joint Experts to formalize the notification process for repeated refusals with follow-up by AFBH.
 - a. *The process should be formalized in ACSO and AFBH policy, with a formal notification process and documentation from AFBH on the plan to assist with increasing socialization.

2. *The Compliance Unit should develop an auditing process to evaluate compliance and staff should receive documented training on the expectation.
3. *Policies, forms, post orders and training should be updated as appropriate.

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

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

Assessment:

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

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

Finding: *Non-Compliance*

Assessment:

Outdoor recreation is included in the out-of-cell tracking and the County has developed a yard schedule for the large yard but not a systemic schedule for the quasi-yards. As mentioned previously, it is clear from out-of-cell logs and tours that the yards are not being utilized to their full potential and the recommendations in the various out-of-cell provisions could assist with compliance with these provisions if implemented. It is noted there was a slight increase in use of quasi-yards in non-restricted units but no significant change in the use of the main yard or access to the quasi-yards in the restricted housing units. There simply has been an insufficient strategy to maximize what is currently available or there are not enough staff to maximize the existing spaces, so they are left underutilized despite this issue being repeatedly addressed on tours and in the prior monitoring report.

As the County earnestly addresses this provision, it is important to reconsider practices of not allowing IPs to access outdoor recreation when it is raining or cold. In inclement weather, IPs should not be forced outdoors, but appropriate cold weather clothing should be made available for those who do wish to go outdoors unless the conditions are extreme or threaten institutional security, such as extreme fog, heavy smoke or high winds.

Recommendations:

1. *Conduct an in-depth evaluation of all available outdoor recreation spaces and create a master schedule that can be implemented and monitored daily by supervisors.
2. *Require the Watch Commander and Sergeants to monitor daily utilization and address any barriers to yard access every shift.
3. *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 day light hours, except when doing so would jeopardize institutional security. Similar expectations should exist for dayroom activities, with the exception they can be operated in the evening and inclement weather.
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:

The County has focused on identifying the behavioral health population involved in programming and is becoming more sophisticated in the manner in which inclusion is tracked and reported.

When monitoring began, ACSO provided lists of workers and rehabilitative program schedules, but it was unclear how these documents could be used to measure structured out-of-cell time or to ascertain if the programs included IPs on the behavioral health caseloads. Following discussions regarding refining documentation and proof of practice, ACSO has been updating reporting systems in the last several months to document direct IP involvement and whether the IP is a behavioral health client.

For example, in October 2022, ACSO reports that 78 incarcerated persons received re-entry support and case planning provided by Alameda County Probation, ACSO's Re-entry team or a Community Based Organization. Of this group, 39 were identified as being in the behavioral health caseload. For this one month, 50% of the participants involved in re-entry planning provided by an entity other than AFBH or Wellpath were in the behavioral health caseload.

As with re-entry services data, the County provided a report in November 2022 reflecting daily involvement in programming offered in locations such as the Sandy Turner Educational Center, a housing unit, via distance learning or via correspondence course. Reviewing the first week in November, it appears that IPs on the behavioral health caseload represent approximately 48% of students in the programs captured on this report. It was also noted behavioral health caseload IPs were permitted to attend the Sandy Turner school and the chapel.

It is anticipated that the County can continue to provide this level of detail and self-analyze access to programming and services and seek opportunities to expand and improve. The joint experts will continue working with ACSO to add additional information to the chart to include a housing location to determine what programming is being offered to THU and other higher need behavioral health populations.

The County also provides monthly lists of workers for review, but it has not yet been revised the document to identify workers on the behavioral health caseload. Based on tours of units and review of monthly worker reports, it is known that IPs on the behavioral health caseloads are assigned to jobs, but until the computer-generated report can be updated, it is difficult to accurately report the percentage of work assignments filled by the behavioral health population. It is anticipated that ACSO will continue to refine information and improve tracking and trend analysis in the next reporting period.

The provision language concerning alternatives to custody was not evaluated during this rating period. The Joint Experts will meet with the County in the next rating period to have a better understanding of current efforts, how to quantify those efforts and opportunities to expand.

Recommendations:

1. Continue the refinement of program tracking and include the housing locations where those programs are offered or the location where the IP participants reside.
2. Work with the Joint Experts to standardize monthly reports.
3. Begin to highlight or identify the workers in the monthly worker report who are assigned to the behavioral health caseload.
4. The Compliance Unit should begin the process of evaluating monthly trends regarding programs offered and work assignments afforded to show growth over time.
5. The County to begin to report on alternatives to custody efforts for the behavioral health populations.
6. Previous recommendations from the prior report are noted but deferred to focus on refining data and baselining programming.

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

Finding: Partial Compliance

Assessment:

The County currently provides a range of services, some of which are facilitated in the Sandy Turner Education building or small classrooms in housing units and dayrooms. Programming was observed occurring in Sandy Turner, in housing unit classrooms and in dayrooms during the October 2022 tour, representing a marked difference from prior tours conducted during the COVID-19 pandemic. It was positive to see the programming restored in various locations throughout the facility.

The County has also shown good progress in quantifying the programs and services being offered on a daily basis in various locations, which will assist in the long run in establishing whether additional program space is needed or if existing space can be fully maximized by scheduling to full potential, such as using unused spaces and expanding programming in the evening and weekends.

The Joint Experts would like to see the County continue to quantify the services being provided daily and assess existing space to determine if an opportunity exists to expand utilization of current space. The evaluation of potential expansion through modular construction and other means should be deferred until such time the County and the Joint Experts are confident the existing space is being fully utilized and then any reconfigurations should also explore clinical needs in a comprehensive strategy.

During the last review period, the joint experts were advised that the County was in the process of hiring a program manager to oversee non-clinical rehabilitative services to support the sergeant and deputy who oversee the programming at this point. This position was filled by allowing the previous program manager, who was hired as deputy sheriff, to remain assigned to the programs unit. It is recognized that this is not specifically required by the consent decree.

Recommendations:

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

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

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

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

Finding: Partial Compliance

Assessment:

As reflected in the prior report, the County updated the emergent use of force policy and provided training to the staff on that policy. However, the County has not completed the pre-planned use of force policy, despite a draft being reviewed several months ago. It is anticipated the pre-planned use of force policy will be complete for review by the joint experts and class counsel in the next 60 days. Once the pre-planned use of force training is complete, the monitor will work with the County to complete the overall use of force policy training, including enhancing training and scenarios on de-escalation.

The emergent force policy approved by the expert and class counsel included all requirements from this provision, including but not limited to the requirement to attempt de-escalation when circumstances permit, restrictions on staff’s use of personal body weapons (i.e., striking, knees and kicking) and duty to intervene and report if observing what the staff believe to be force utilized outside of approved policy. As mentioned in the last report and Provision 773, the County has provided de-escalation training and provided tactical training in physical strengths and holds as an alternative to the use of distractionary striking and personal body weapons, but the de-escalation training provided was a pilot and is in the process of revision.

There have been ample use of force incidents reviewed where staff are using force consistent with industry standards, utilizing effective de-escalation techniques and are stepping in to redirect a staff member who was assaulted or may be frustrated by the IP and should be replaced by an uninvolved staff. However, there continue to be troubling staff actions in force scenarios and poor decision making by the staff, who fail to consider alternatives to force and/or the summoning of a supervisor or mental health staff to assist. The review of these incidents will be discussed further in Provisions 503 and 504.

The system is improving. Staff are observed in videos and as documented in reports, attempting to de-escalate situations and resolve issues without force. The use of diversionary strikes to gain compliance to submit to handcuffs has reduced and when it occurs outside of policy, the issue is being identified by supervisors. Staff are stepping in if their peers require support to step away from the incident and deputy leaders are heard in many instances providing calming and clearer direction to gain compliance, rather than many staff yelling aggressive commands that only added more tension to the situation. But there continue

to be incidents concerning force being used in the first place when none appeared necessary or what appeared to be uncontrolled engagement when force was necessary. Additionally, the lack of an updated pre-planned force policy has far too many staff engaging physically when an IP refuses a direct order, and it appears the situation may have been resolved with better communication. When updating the pre-planned policy, the issue of how to address IPs not allowing staff to close a food slot should also be addressed, as there are several incidents of staff inappropriately engaging in force with an IP via an open food slot when stepping back and attempting to de-escalate was the more appropriate response.

Recommendations:

1. *Continue to work collaboratively to update all custody use of force policies, forms and associated training.
 - a. Include addressing non-secure food slots and uninvolved staff conducting the escort in updates.
 - b. In-cell decontamination policy should be developed.
2. *Continue to focus on supervisory review of incidents, which will result in improved outcomes by providing direct and focused feedback to assist staff in decision making and de-escalation as well as informing policy and training revisions that are necessary.
3. *Ensure policy and training reviews are an aspect of the supervisory review to continue to refine as trends and concerns arise.
4. *See Provisions 502-504 for additional recommendations.

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

Finding: Partial Compliance

Assessment:

As mentioned in the last report, 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 but that is a practice and observed routinely prior to a pre-planned use of force. The language in the policy states: *The supervisor shall contact the medical and/or behavioral health staff.* Regardless, the staff do rely on AFBH clinicians to help resolve and de-escalation situations.

Unfortunately, as listed above there continue to be incidents reviewed where staff had sufficient time to summon a supervisor and/or behavioral health to assist and the lack of an updated pre-planned force policy is contributing to staff lack of clarity when a supervisor or behavioral health should be summoned. The completion of the policy and training will be a priority project in the next rating period to help bring this provision into compliance. As mentioned, ACSO has been refining the policy, but it has not yet been presented to the joint experts and class counsel for formal review. It is anticipated that will occur in the Spring of 2023.

Recommendations:

1. *Update both ACSO and AFBH policies, forms, post orders, duty statements and training to reflect the provisions.

2. *The Force Training and Compliance Unit (FTC) should evaluate all such incidents.
 - 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 support 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: Partial Compliance

Assessment:

The County has maintained an FTC, currently comprised of one (1) lieutenant, three (3) sergeants and (1) analyst. This represents an increase of one (1) sergeant since the last reporting period as the unit has struggled to maintain timeliness of reviews based on the workload. The County also completed their force review policy, updated FTC review forms and trained sergeants and lieutenants on the new review process and the expectations concerning completing quality reviews of use of force packages.

The FTC began official reviews of force packages beginning July 1, 2022, and is responsible to independently review all Category II and III incidents as well as no less than 10% of Category I incidents.²⁹ After reviews are complete, the Custody Expert intends to review all completed Category II and Category III incidents and a random sample of Category I incidents.

The FTC is in the process of creating a monthly report analyzing force incidents, both force statistics and the review process findings. The Custody Expert has been in discussion with the FTC about the report, but a final version has not been provided during this rating period for inclusion in this report. It is anticipated that will be completed by the next report.

²⁹ Category I use of force incidents are generally physical force and ground takedowns; Category II is generally use of personal body weapons, chemical agents, impact weapons, group incidents involving more than five (5) IPs or injuries to staff or IPs as a result of force not considered a serious bodily injury; Category III are serious bodily injuries due to the incident, impact weapons strikes to the head or other head strikes likely to cause serious bodily injury; use of impact weapons, chemical agents or strikes on a restrained IP.

In general, the process is going well but the reviews are not being conducted in a timely manner. The FTC conducts thorough and comprehensive reviews and the training of sergeants and monitoring of the first level of reviews has resulted in more complete and thorough assessments by the assigned sergeant before the FTC review. However, based on their independent reviews, the FTC has identified incidents and forwarded them to internal affairs to investigate potential serious violations of policy that may not have been identified by the first level review. Additionally, there were incidents where the reviewing supervisor and FTC identified serious issues that they did not forward for an internal affairs investigation or recommend direct disciplinary action where the Custody Expert believes the staff's actions appeared to be significantly outside of departmental policy and there was no recommendation for an internal affairs investigation or formal employee corrective action when warranted.

For this review period, the Custody Expert has requested a total of 64 completed use of force packages for the period of July-September 2022 to allow time for the packages to complete the review process. The County submitted all but three of the July packages (13) and eight of twenty-two (36%) of the August packages for review. None of the September packages have been presented for review reportedly due to insufficient staffing in the FTC to complete timely reviews. The three (3) July packages not provided are pending review for possible investigation, but the incidents have been reviewed on videotape and the referral for further investigation is warranted in the Custody Expert's opinion.

Quality use of force reviews will uncover training issues, policy violations and occasionally unnecessary or excessive force no matter how intensive the staff training. As would be expected, the system that ACSO has established is uncovering issues in a manner that was not present prior to the Consent Decree. The systemic approach that ACSO has taken will result in reduced serious policy violations in the long run as the staff realize that intemperance and abuse will not be tolerated. However, a quality and clear-eyed review of video will virtually always identify opportunities to train staff in different approaches they could have taken in the situations, even when the force was necessary and appropriate, the same way professional coaches use video to train athletes to improve their performance. Therefore, the measure of how well the County is doing is more related to the review process than the findings, unless it becomes clear that serious violations of nationally recognized correctional force standards continue to occur, which is not anticipated at this point.

It is too early in the assessment process to determine how well the review system is working. During the next review period, the Custody Expert will continue to assess how well the FTC is doing in reviewing the first line supervisor's initial review of the force package and occasionally the first line supervisor's review if the incident was not reviewed by the FTC. As insufficient packages were provided for review, an overall finding would be premature this rating period.

The Custody Expert's reviews will also assess how well the first line sergeant is doing in the initial review based on the subsequent review by the FTC unit. Of the 20 packages reviewed by the Custody Expert, the FTC reviewed 13 packages (65%) and the FTC concurrence rate with the initial sergeant review increased from July to August as it was clear that the initial sergeant reviews had improved in just one month. It is anticipated the concurrence rate will continue to improve as sergeant training increases.

Policy issues as a result of reviewing use of force packages have arisen during this rating period that should be addressed by ACSO. For example, incidents have occurred where the sergeant overseeing or responding during an active use of force incident also served as the first line review sergeant and failed to identify areas of policy violations or poor tactics. This highlights that sergeants should not review incidents they are directly involved in, and those incidents should be assigned to an uninvolved supervisor. Additionally,

ACSO does not have an effective policy on how to address abuse allegations from the IP when completing the use of force package and/or use of force review and that should also be remedied.

It was also noted in this rating period that the County does not have a solid process regarding the redirection of staff when there is a serious or potentially legitimate allegation regarding force. One incident came to light where force appeared significantly outside of policy and the incident was referred to internal affairs for investigation but the staff were not immediately redirected from the unit pending investigation. The important decision regarding the placement of staff pending investigation when leadership determines there is a serious concern must be addressed as it is inappropriate to leave staff in a unit with an IP who makes an allegation of physical abuse and that allegation appears to have merit or cannot be immediately refuted. When serious enough and available evidence supports a referral to internal affairs, the staff should have no IP contact until the investigation is complete.

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

The County reports that the camera expansion project remains in process. Additional proof of practice on status has been requested but was not provided in this rating period.

Recommendations:

1. Clear up backlog of FTC review packages.
2. Provide the joint experts with timely access to completed use of force packages.
3. Update the Use of Force Review policy or other identified policy to include the following:
 - a. Uninvolved supervisor to conduct review when the unit supervisor is involved in utilizing force or directing a force response.
 - b. Formalize a process to address IP complaints of unnecessary or excessive force and how to address in the use of force review process.
 - c. Include a section in the policy or other related policy regarding evaluation of the redirection of staff when a force incident appears to have been excessive or unnecessary.
 - d. Remind reviewing supervisors to address uninvolved staff escort if there are sufficient staff to assume that role.
4. *Work with the Joint Experts to implement a metrics system to evaluate use of force incident trends and information gleaned from improved review process.
5. *Continue to train all existing custody supervisors and managers on the new policies.
6. Provide an accurate project plan for expansion of fixed cameras in the jail.

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

Finding: Partial Compliance

The County has made considerable effort in this rating period to update the policies, training and tracking logs associated with the use of the restraint chair and retention in restraints. While not yet complete, it is anticipated these policies can be updated and complete in the next rating period.

The County initiates restraint logs under two conditions: Placement in a restraint chair or retention of an IP in restraints (handcuffs, waist restraints and/or leg restraints) when not under escort. The only documented reason for placements in a restraint chair from the period of March – November 2022 was active self-abuse. The four main reasons for retention in restraints during the same period was the refusal of the IP to relinquish the restraints (50%), the IP was too combative or agitated to safely remove the restraints (24%), the IP is retained in restraints pending placement into a suicide prevention cell or transport to John George Psychiatric Hospital for inpatient assessment (21%) or there is a pending investigation (5%).

During this rating period, there were an average of less than 3 placements in a restraint chair per month for an average of 4 hours. There were no restraint chair retentions beyond eight (8) hours and in all circumstances, there is sufficient documentation that both AFBH and Wellpath were assessing the IP. The quality of those assessments is best addressed by the Mental Health Expert, but the documentation on the restraint logs of clinical engagements has improved significantly since the last monitoring period. There were, however, several IPs who were in a restraint chair on more than one occasion and that should be further evaluated.

In addition to restraint chair evaluation, the use of mechanical restraints for periods other than during transportation is documented and tracked. It was noted in the period of March-November 2022, the County averaged four (4) IPs per month maintained in restraints in a cell for an overall average of 2:15 hours. The retention of people in handcuffs restrained behind their back is not appropriate for longer durations. It is noted in reviews of restraint logs, the staff frequently place those IPs who staff determined required on-going controls into waist restraints, rather than leaving an IP restrained behind their back. This is positive, but it is recommended that ACSO update the policies and training to make clear expectations for a supervisor and clinical staff to assist when a restraint is reaching the one-hour period and the behavior does not appear to be resolving. It was noted there were several incidents during this rating period of a restraint lasting 4-6 hours reportedly due to the incarcerated person refusing to relinquish restraints. However, these occurred without any documentation of de-escalation or clinical involvement during the multi-hour restraint.

The County is doing well on this provision and should be commended but should carefully review incidents in which restraints remain on a person in a cell or holding area for more than one hour. AFBH should also work with the Mental Health Expert to review the IP clients where multiple incidents of placement in a restraint chair occurred to determine if there were other clinical options to address the self-abusive behavior.

It is expected that the draft policy reviewed by the Joint Experts can be finalized in this next rating period. ACSO has already piloted and implemented new restraint logs to improve documentation. The Joint Experts will work with the County to update the restraint policy to memorialize the policy expectations regarding assessment and documentation when a restraint exceeds one (1) hour, and the IP behavior does not appear to be resolving.

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

Recommendations:

1. Complete draft revisions to Policies 8.26 and 8.12.
2. Ensure staff utilize the newly designed restraint log as it is noted even in November staff were utilizing the old form.
3. AFBH and ACSO should work with Wellpath on a policy for clinical evaluations when an IP has been retained in restraints for more than 1 hour and does not appear to be resolving. Ensure those clinical encounters are documented on the restraint log.
4. Work with the Mental Health Expert to review the incidents of multiple placements in a restraint chair to determine if other clinical options may have been possible to improve training and future outcomes.

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

Finding: Partial Compliance

The County and Wellpath have shown considerable improvement in this area. In reviewing incident reports and restraint chair logs for the months of March-November 2022, in 100% of the incidents the IP was assessed by medical upon placement into a restraint chair and then routinely when the placement exceeded 2 hours. Evidence that a mental health clinician assessed the IP within 4 hours of placement was found documented in the incident report or on the restraint chair log 90% of the time. The incidents with no documentation that a mental health clinician assessed the IP generally involved placements on the overnight/graveyard shift. This is very problematic as it is critical that behavioral health staff are available to assess and support incarcerated persons in crisis, rather than allow them to remain unevaluated for hours.

The County has presented draft updated policies regarding safety cell placement and has updated the restraint chair logs to improve the systems and comply with the provisions. As a result of their efforts, AFBH and Wellpath have improved their documentation on the restraint chair log substantially since the last period. Based on a review of the incident reports and restraint chair logs:

- Wellpath documented rounds on the restraint chair log 100% of the time.
- AFBH rounds were documented on the restraint chair log 79% of the time. It is noted that AFBH assessed the IP in over 90% of the restraint chair placements based on information maintained in the incident report but AFBH is encouraged to continue to train the clinicians to document rounds on the restraint chair log.

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

Recommendations:

1. Ensure there are adequate health care clinicians on the overnight shift.
2. Refer to recommendations in Provision 505.

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

Finding: *Partial Compliance*

Assessment:

ACSO, Wellpath and AFBH have all demonstrated a significant improvement in the documented rationale and care when utilizing a restraint chair. When evaluating incident packages and restraint chair logs for the period of March – November 2022, each placement was associated with serious self-abuse when less restrictive solutions, such as placement in a safety cell or on IOL status, were ineffective. In each placement, the incident report reflected active self-abuse.

The County updated the observation logs during this rating period to improve documentation associated with provision of fluids, restroom breaks, clinical encounters and range of motion. It is also clear that training has occurred for clinicians and custody staff as the documentation has improved significantly from the onset of monitoring. The rationale for placement and medical round documentation in the files reviewed were at 100% compliance. However, the documentation on timely mental health rounds, the provision of food/liquids, access to a restroom and completion of range of motion all fell below expected standards and require improvement.

The County has presented a draft policy for review and feedback has been provided. It is anticipated that the policy can be updated and completed in this next reporting period. It is also anticipated that with internal auditing by ACSO, AFBH and Wellpath individual training issues can be identified to address any requirements listed above that are struggling to reach a rating of 100%.

Recommendations:

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

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

Finding: *Partial Compliance*

Assessment:

As reflected in the last report, the County has a grievance process and a monthly grievance report, which has not been considered to be a meaningful report. During this rating period, the County has also begun providing raw data on grievances for review, an improvement from the prior report. The County has a committed Lieutenant overseeing the Grievance Unit who has been focused on increasing her knowledge of effective grievance systems and improving the ACSO system.

IPs have access to file a grievance via the tablet and paper grievances are noted to be available during tours, including in restricted housing units. The paper grievances create a carbon copy, and the IP is given a copy when submitting the grievance. Most IPs interviewed on tours in October 2022 articulated their understanding of how to file a grievance and the feedback from the population were far more positive regarding responsiveness to grievances than all prior tours. Several IPs did complain they had not received a response to their grievance, but the October 2022 tour was the first tour where most of the IPs interviewed stated they would get a response to their grievance, although most stated the issue was not resolved to their satisfaction.

Supervisors conduct rounds in housing units and during the October 2022 tour, most units had a supervisor present or in an adjacent unit. The supervisors interviewed did not specifically state they look for grievance forms when in the unit, but all articulated their understanding and commitment to ensuring access to grievances and timely responses.

It is noted that the monthly average of grievances rose in 2022 from 2021. In 2021, an average of 455 grievances were filed per month but in the first eleven (11) months of 2022, the average number of grievances per month increased to 619 per month, a 36% increase. The County has historically tracked grievance trends in broad categories, the nature of the grievances, the average response times and outcomes. It does not appear from those trends that any one area led to the increase. Population increases do not seem to be a factor as the population, while up slightly, has not increased 36%.

It is positive that grievances are available and, based on monthly grievance logs, it appears IPs in all housing units are able to file a grievance. The real challenge for the County is timely and meaningful responses to the grievances, which is the most important aspect of a healthy grievance system. The County is in the process of revamping the grievance system, including improving the trend report that has historically been presented as proof of practice with the recognition by the ACSO that the report requires refinement. As reflected in prior reports, the monthly trend reports, while somewhat helpful, require additional metrics tracked and evaluated. The joint experts will work with the grievance coordinator during 2023 to help refine the tracking and trend systems.

Recommendations:

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

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

Finding: Partial Compliance

Assessment:

During the last report, there was no mechanism for notification to the Watch Commander if an IP was retained in the Intake, Transfer and Release (ITR) area for more than eight (8) hours. However, the County has engaged in considerable effort to procure and install an RFID system as described in Provision 418. It is anticipated with adjustments this system can be used as a tracking mechanism to notify the Watch Commander of delays at the four (4) hour mark. It is noted that the County reports adding additional custody posts in the ITR to assist with processing and recently AFBH has increased support in the ITR to address excessive delays in processing.

The County also reported there has been a reduction in the number of IPs maintained in the ITR beyond four hours, but no proof of practice has been provided to assess. A limited review of data available in August 2022 reflects an average of 40 people a day are not being processed through intake in eight (8) hours. The Joint Experts will evaluate the various bottleneck points while on site at the next site visit to determine if further efficiencies in health care or classification can assist with reducing delays in the intake area.

The tracking of people in the intake processing area utilizing the RFID system, if possible, will assist the Watch Commander in knowing in real time whether there are delays to provide support to the area. The tracking should also help with monitoring as tracking the average time in the ITR has proven elusive to this point.

Recommendations:

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

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

Finding: Partial Compliance

Assessment:

It is noted that the County recently updated Outpatient Housing Unit Deputy Post Order 10.08 to reflect the requirement that the safety cells be cleaned daily. Additionally, the Safety Cell policy is in development and has draft language concerning ensuring the cells are cleaned prior to occupancy and every 8 hours if occupied. The associated safety cell observation logs have been updated to require cleaning twice in a 24-hour period, and the Safety Cell Policy update will also require specific language to comply with the provision. During tours of the facility, the safety cells have generally been clean, with the exception of one incident where the IP was hoarding, and the deputies had asked the behavioral health staff to assist in compliance and the assessment was pending the clinician's arrival.

During the previous report, it was reported that in January and February 2022, the County averaged 9.5 safety cell placements per month for an average of 36 hours. Notably, a review of safety cell logs for the period of March through November 2022 demonstrates the average monthly placement in a safety cell was under 2 placements per month for an average of approximately 16 hours. This is a significant reduction from the first reporting period. During the March through November 2022 review period, one placement residing in a safety cell for nearly three (3) days significantly skewed the average upward. If that placement is removed, the average time in a safety cell was approximately 11 hours. Of the seven (7) IPs who were in the safety cell for more than 8 hours, none of the safety cell logs documented cell cleaning, including the one IP who spent nearly three days in the cell.

The policy is in refinement since the last report, and it is anticipated the safety cell policy will be complete by the next report. It is also hopeful that AFBH and ACSO begin internal compliance auditing on placements to improve the documentation of service provision while an IP is in a safety cell. It is recognized there has been a significant reduction in the number of individuals placed in a safety cell and the average time in the cell since the prior report. The County is encouraged to continue in a positive direction.

Recommendations:

1. *Finalize the Safety Cell policy and associated training.
2. *The Compliance Unit and AFBH should engage in monthly quality assurance assessments on the use and tracking of safety cells.
3. *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) hours³⁰ or those who have repeated placements in safety cells.

³⁰ 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.

(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:

As reported previously, the County has policies, procedures and forms regarding expectations concerning operational call buttons and intercoms and 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 June through December 2022 reflects an average of 9 work orders submitted per month for call button repair. This documentation also reflected preventative maintenance in this period in Housing Units 8, 9, 31, the ITR and the interview rooms. Unfortunately, the report did not provide information concerning timeliness of repair or the deactivation of a cell if the repair could not be completed in a timely manner. It is hopeful that information will be provided during the next monitoring round.

A review of the grievance reports provided for the last six months of 2022 revealed six (6) grievances concerning an inoperable call button or a combined complaint of no response to a call button that reflected the IP thought the button may be ineffective. In only one grievance located did an IP allege that the call button was inoperable on more than one day. It is noted, however, that there are several grievances filed each month concerning lack of responsiveness to an activated call button. During a series of tours, there have been no significant complaints from IPs about inoperable call buttons. All Control Booth Technicians interviewed on the October tour articulated their responsibility to inoperable buttons by submitting a work order and documenting the issue in the unit logbooks.

It is anticipated the County is at or near substantial compliance, but one additional round of monitoring to compare the work order request, time to complete the work order and the unit logbook is required to determine if the IPs in the cell were relocated if the call button was not repaired in a timely manner.

Recommendations:

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

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

Findings: Partial Compliance

Assessment:

The County does have cut down tools located in accessible locations and most deputies in the jail carry personal cut down tools. The County has defibrillators (AED) and first aid equipment in the housing unit areas. All staff interviewed either presented a personal cutdown tool or were aware of where to access one quickly as well as the locations of the defibrillators, first aid kits and cut down tools. ACSO has an inventory process for cut down scissors and defibrillators, but needs a clearer written policy on the placement, inventory and maintenance of first aid, defibrillator and emergency transportation equipment, including transportation equipment designed to assist with transport from a second-floor area. It is recognized that the policy revisions are pending and will work with the County in updating. In the interim, equipment is available, and staff are aware of the location to access the equipment in an emergency.

It is anticipated the County can reach substantial compliance in the next rating period with proof of practice on compliance with the below recommendations.

Recommendations:

1. *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.
2. *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.
3. Wellpath to conduct routine and documented audits of first aid kits maintained in the housing units and incorporate expectation in policy.

(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: Partial Compliance

Assessment:

The County continues to refine the suicide observation protocols and partnership between AFBH and ACSO in determining the programming and restrictions for those persons placed on suicide observations, whether placed in safety cell or intense observations status (IOL).

It is positive to report that there has been only one incarcerated person identified who was maintained on extended safety cell status for more than 24 hours since the last reporting period. However, the fidelity of tracking safety cell placement and the associated observations logs has not been refined to a point to earn the trust of the joint experts that the data is accurate. The County commits to working to resolve discrepancies identified during the next rating period.

As with the last report, the vast majority of suicide prevention placements occurred in general population housing units on IOL status. The County has done a good job clustering most IOL incarcerated persons into similar housing units and affording out-of-cell time for all IOL status IPs. Since the last report, the County also refined the IOL status into phases, one is which property and clothing are restricted and the other phases where personal property and tablets are expanded based on a clinician's directive. This expanded access to property and tablets is referred to as "modified" IOL as the clinician has modified their property issuance to increased access.

During tours of the units housing IOL status IPs, the IOL status IPs were out in the dayrooms and allowed access to the yard if it was operating. While in the dayroom, the IOL status IPs had access to showers, but razors might be restricted during that timeframe. Full IOL and modified IOL population programmed separately in the unit to avoid passing contraband to persons the clinicians did not authorize to have additional property items.

The timeliness of clinical re-evaluation has not been solidified as it appears some IPs languish in that status for a protracted period, and the frequency of clinical reevaluation is an aspect of the policy revision in discussion. However, it is extremely positive to report that the majority of male IOLs are housed in Housing Unit 9, one of the pilot Therapeutic Housing Units, which creates greater exposure to clinicians and collaboration between ACSO and AFBH. Since July 2022, there have been multiple grievances related to the return of property following release from IOL status but only two (2) noted concerning being placed or retained on IOL status.

The County has also been working on the jail management system to improve tracking and reporting on IOL status IPs to ensure consistent communication between the clinical team and custody regarding each IOL status. The County piloted utilizing three (3) different tracking mechanisms in the jail management system: Intense IOL, Modesty IOL and Tablet IOL to document for custody the property allowances as approved by the clinicians. It was noted, however, on the tour that the number of IOLs documented in the jail management system did not match the number of IOLs identified during the tour. The County recognizes the current challenges in up-to-date information and will evaluate how the RFID system might be used to support this effort.

The County submitted a draft updated IOL policy during this last rating period and has been updating the IOL observation log documentation process. The refinement of the IOL policy and observation logs should be complete by the next rating period. It is anticipated the County could reach substantial compliance in the next rating period on this provision assuming the policies and training can be accomplished, and adequate clinical resources are available for timely clinical reviews.

Recommendations:

1. Ensure adequate clinical resources are available to assess the population and ensure Custody staff are aware of the clinical decision for property/program restrictions for all IPs on suicide precaution.
2. *The County should continue to work with the Joint Experts to refine the policies, training and forms associated with this provision.
3. *Continue to refine the process of AFBH notifying custody of any restrictions via the jail management system. 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:

As reported in the prior monitoring report, the County does provide training for security checks and the requirements are listed in a myriad of policies and post orders. The County submitted a draft policy *Inmate Observation and Direct Supervision* (8.12) for initial review and the joint experts are awaiting a final draft for submission to Class Counsel for additional feedback. It is anticipated that will occur within 60 days of this report. Once the policy is approved, the training can be assessed.

The County has not been able to develop a plan for the creation of a video to depict meaningful security checks. The County anticipates beginning the video training project in the fall of 2023, which is reasonable based on other provisions that must be completed before spending the time and funds to create a video.

Recommendations:

1. Finalize Policy 8.12 – Inmate Observation and Direct Supervision.
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.

3. Assign a supervisor to develop a video production strategy once the policy and training are complete and approved.

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

Finding: Partial Compliance

Assessment:

The County has informal protocols to oversee security checks and includes evaluation of the quality of security checks in post incident reviews, such as serious suicide attempts or use of force incidents. The County has video available to conduct random sample reviews on the quality of security check and the quality has been evaluated by the joint experts while on site and when reviewing video. Generally, the staff engage in adequate checks. However, the checks are on paper logs and there is no proof of practice on formal reviews by a supervisor. The County is the final phases of making changes to the current policy, *Inmate Observation and Direct Supervision* (8.12), based on initial joint experts' feedback and it is expected the final draft can be submitted to the joint experts and class counsel for review in the next 60 days. It is noted, however, until cameras are installed in all housing units, the County will not reach substantial compliance on this provision.

No efforts have been explored in this rating period concerning the role of utilizing custody assistants to assist with security checks due to the change in the Alameda County Sheriff. This issue will be discussed with leadership in the next rating period.

Recommendations:

1. Develop a process for designated supervisors to audit documented security checks against available video for both timeliness and quality.
2. Ensure the 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.
5. Meet with Sheriff and County Human Resources to explore viability of establishing a pilot for custody assistants to assist with security checks, particularly in lower security housing units.

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

Finding: Partial Compliance

Assessment:

The ACSO and AFBH collaborated and activated pilot Therapeutic Housing Units in units 9, 24 and 35 as the policies and training continue to be refined with support from the joint experts and class counsel.³¹ Housing Unit 9 is also the unit that houses a high percentage of IOL males and Housing Unit 24 houses IOL females. All of the THU units afford out-of-cell time for dayroom and inconsistently for the quasi-yard. During a tour of the facility in October 2022, incarcerated persons were noted out of their cells for dayroom, yard and occasionally structured activities in all units.

As Housing Unit 9 was one of the first units established as a THU, for this report it is used to evaluate THU out-of-cell dayroom and yard for the month of November 2022. It is noted that there was insufficient use of the yard for all units and average weekly out of cell time for the IOL Pod was 20.5 hours, below the 28 hours per week required. The other THU pods averaged almost 26 hours per week, closer to the required 28 hours per week. It is noted on the unit out-of-cell tracking logs that generally there are four different out-of-cell opportunities each day but not all IPs are afforded access for each session.

It is positive to report in the THU, during the four weeks reviewed there was no IP in the IOL units who refused all out-of-cell activity for more than two (2) consecutive days. The other pods did not track this information at the individual level.

The County contracts for small groups in the THUs and provides information concerning the number of groups, total participants and the location of those groups.

**TeleCare Groups
Therapeutic Housing Units 2022**

Month	Housing Units Seen	Total Groups	Total Participants	Avg. Participants
January	24,35	21	63	3
February	9,24,35	42	162	3.6
March	9,24,35	67	248	3.7
April	9,24,35	72	248	3.4
May	9,24,35	53	210	3.6
June	9,24,35	34	96	3
July	9, 24, 35	33	100	3
August	9,24,35	55	188	3.5
September	9,24,35	55	164	3
October	9,24,35	34	75	2.2
November	9,24,35	85	151	1.8
December	9,24,35	118	292	2.5
Average		56	166	

³¹ Refer to Mental Health Expert’s Second Report for additional information.

It is noted that the average number of groups per month dropped slightly in 2022 from 2021 (56 groups per month 2022 versus 61 groups per month in 2021) with a more notable reduction in the average total participants per month in 2022 (166) down from 2021 (231).³² As previously mentioned, the County does not track structured activity time at the individual level in any unit, including the THUs, so it is impossible to measure an average structured activity time for this report. However, the RFID system deployment should provide the ability to audit routine out-of-cell and structured activity time during the next rating period.

Recommendations:

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

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

Finding: Partial Compliance

Assessment:

As previously reported, the County does provide a range of training for existing and new employees, including de-escalation training. The County also provided a multiday de-escalation training (Crisis Intervention Training) when monitoring began. While that training had value, it was not approved to comply with this provision and the County has been working with the Mental Health Expert to refine that training prior to conducting another series of CIT training. The Mental Health Expert met with ACSO training staff in October 2022 concerning the training, but no additional updates have been received from ACSO as of December 31, 2022.

The County updated the emergent use of force policies, reiterating in policy that de-escalation is required unless unsafe to do so. Again, the County implemented immediate training regarding the policy, but the formal use of force policy training has not been approved pending completion of the pre-planned use of force policy completion.

³² Refer to the Mental Health Expert’s Second Report for further information.

While the training has not been finalized and approved, it is positive that in addition to focusing on improving training, the use of force review packages have improved significantly during this rating period where many of the first reviewing supervisors routinely address whether de-escalation was attempted or effective and the Force Compliance Team (FTC) also does a review of de-escalation techniques with 100% of the reviews done by the FTC addressing de-escalation. Refer to Provisions 501 and 502 for additional information.

The County formal lesson plans were not complete in this rating period, but it is anticipated that this can be accomplished in the next rating period with the training beginning in the Summer of 2023. In the interim, the County has not been indifferent to this requirement and is consistently reiterating in briefings and post incident reviews the requirement to slow down, communicate and seek support when addressing a situation in which there is time to do so.

Unfortunately, there are still far too many incidents in this Expert's opinion where the deputies had time to slow down, communicate more effectively and seek support of a peer, supervisor and/or clinician prior to engaging in force. There are definitely improvements noted but it is critical that the County complete the lesson plan development and work with the Joint Experts and Class Counsel to finalize and quantify a training plan.

Recommendations:

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

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

Finding: Non-Compliance

Assessment:

The County has not been able to make progress on this provision in this rating period and it has been determined the focus should be to implement a pilot IP Advisory Council during this next rating period. The goal will be to pilot in at least one male and one female unit where a higher percentage of the population are AB 109 sentenced persons so that there is some stability in the population representing their peers. It is anticipated the pilot can be implemented by May 1, 2023, to determine how best to expand the program in the fall of 2023, which may require the assistance of County Human Resources.

Recommendations:

1. The County should select at least one female and one male housing unit to pilot an IP Advisory Program.
2. An experienced custody sergeant or lieutenant should be assigned to implement the pilot and engage the population from those units in the design of the program and selection of the IP representatives.
3. The County should send the designated sergeant to a local state prison to observe an advisory committee meeting in action as the Sergeant develops the pilot plan.
4. The Custody Expert will support the designated project management in the development of policies and forms once the pilot is established.
5. All other recommendations concerning the establishment of an Ombudsman program identified in the first monitoring report remain but the target for the next rating period will be the pilot IP Advisory Program.

(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:

Both AFBH and ACSO have developed project plans and have shared them with the Experts and Class Counsel. Neither document has been updated in the last quarter, however, AFBH's last updated report is the most current. ACSO's project plan is under redesign and has been shared for feedback but at this point is more of a policy update chart than a comprehensive project plan and requires significant input.

It is advisable to wait until the monitoring reports are submitted for this reporting period and update the plans in March 2023 to incorporate recommendations from the Joint Experts with an update completed before the next monitoring report.

Recommendations:

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