

Babu v. Ahern
Consent Decree Second Status Report
Case No. 5:18-cv-07677-NC
James Austin, Ph.D.
March 3, 2023

The following are excerpts from the Consent Decree provisions assigned to James Austin for monitoring. This document will have a summary of those provisions followed by the specific provision language and this Joint Expert’s findings and recommendations. Connected provisions have been combined for this status report; however, several will likely be separated in future reports as the County increases compliance. Additional recommendations may also be added in subsequent reports as additional information is gleaned during implementation.

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

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

Classification and Restrictive Housing Consent Decree Summary Ratings

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

311. ACSO notifies AFBH with 24 hours of a BHI patient placed in Restrictive Housing	PC
314. Classification approves all cell transfers	SC
315. Protective Custody policies	PC
316. Development and implementation of policies and procedures on double celling	PC
317 Development and implementation of step-down protocols for RHU and THU	NC
318. Development and implementation of policies and procedures for inmates with disabilities	SC
319 Produce reports of: (1) of class members with SMI who have a release date within the next 12-36 hours and (2) regarding lengths of stay for people in restrictive housing,	NC
320. The RHC shall review reports regarding length of stay on a quarterly basis	SC
321. Appropriate due process in classification decisions	SC
322 Complete training for custody staff on the new classification system and policies	SC
400. Implement a new classification system, as outlined in Section III(C).	SC
401 - Restrictive Housing, Recreate Alone Status ("Step 1"):	PC
404. This population shall be evaluated within fourteen (14) days of placement in Step 1 for ability to return to general population or to transition to Step 2.	SC
406. Restrictive Housing, Recreate Together Status ("Step 2"):	SC
408 - Step 2 individual Initial and Re-evaluations	SC

15 Substantial Compliance - 9 Partial Compliance - 2 Non Compliance

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

Finding: Substantial Compliance

Policies: 12.01 Intake, 12.02 Reclassification, 12.04 Housing Plan

Training: Staff have been trained in the use of the new classification system including the initial and reclassification forms. This was accomplished during the time the new system was being pilot tested.

Metrics: Interviews with the Classification Unit staff.

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

Observations of the intake and reclassification process.

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

Review of the above referenced classification policies to determine if they have been updated as of 2022 to reflect the procedures required for the new classification system.

Assessment: ACSO has implemented the key components of the new classification system. Classification staff have been using the initial and reclassification forms for a) new admissions and b) those inmates who have to be reclassified every 60 days or due to new information that would trigger a reclassification instrument. All new admissions are being interviewed by staff who are trained in the new system.

The Monitor has received the requested inmate population snapshot with the requested data. It is still not possible to receive a data file showing the detailed scoring of the classification record. This capability should become available in 2023.

Table 1 shows the distribution of the current jail population by the major classification categories. There is a significant number of inmates who are in a variety of special population statuses (33% of the total jail population) although this is much lower than reported in the previous report (47%). The largest non-general population categories are inmates assigned to protective custody (19%) with 98 being assigned to the BHI caseload. The total BHI caseload is 1,335 (63%). There are few inmates assigned as ADA (4%) and relatively small percentage enrolled in a program (7%) or have a work assignment (16%).

If one looks at the classification custody levels for all inmates (Table 2) with the exception of the Ad Sep, the two gang units (Border Brothers and Sureños) and Civil detainees, the general population classification level distribution looks appropriate with most inmates in the minimum and medium custody levels (total of 70%).

Table 1. Alameda County Jail Population Classification Levels – November 30, 2022

	Population	%
General Pop	1,427	67%
Minimum	571	27%
Medium	408	19%
Maximum	448	21%
Protective Custody	413	19%
Minimum	86	4%
Medium	215	10%
Maximum	112	5%
PC BHI	98	5%
Restricted Housing	133	6%
Step 1	59	3%
Step 2	58	3%
Sureños	39	2%
Border Brothers	16	1%
Civil	2	0%
Unclassified	108	5%
Special Populations		
BHI Caseload	1,335	63%
ADA	83	4%
Assigned to Programs	152	7%
Assigned to Work	342	16%
Total	2,122	100%

Table 2. Classification Levels Excluding Ad Sep, Border Brothers, and Sureños

Classification Level	Population	Percent
Minimum	657	36%
Medium	623	34%
Maximum	560	30%
Total	1,840	100%

The Monitor did complete a reliability test that consisted of auditing 100 randomly selected Initial classification and reclassification cases. The results showed the following:

1. Initial classification scores and over-rides are accurate;

2. Reclass scores and over-rides were less accurate but did not impact the accuracy of the final classification level;
3. Part of the reclass scoring errors were due to computer application which is now being corrected; and,
4. Staff were retrained on the reclassification and were re-tested showing improved accuracy.

Despite the overall compliance rating, there is only one major issue that needs to be resolved. Classification policies 12.01, 12.02 and 12.04 have been revised by the Classification staff and were provided to the Monitor who has approved them. However, according to the most recent update from the ASCO, these policies are still being reviewed internally by the ACSO. Once they are approved by ACSO they need to go out to Class Counsel for comments before they can be officially implemented.

Recommendations: In order to maintain a Substantial Compliance rating the ACSO needs to quickly complete its review of Classification policies 12.01, 12.02 and 12.04.

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

Finding: Substantial Compliance

Policies: 12.01 Intake

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

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

Interviews with the Classification Unit staff.

Statistical analysis of the snapshot and release data files to verify all inmates have a completed initial classification record.

Assessment: All inmates are now receiving an initial classification and reclassification interviews and are being scored on the new initial and reclassification instruments.

Recommendation: In order to maintain Substantial Compliance, the ACSO must quickly complete its internal review of Policy 12.01 so it can be reviewed by Plaintiff's legal counsel.

302. Development and implementation of new policies regarding classification, including replacing the prior scoring system with an updated additive point system that mirrors the National Institute of Corrections Objective Jail Classification system, and which requires a classification review including a face-to-face interview of all General Population Inmates in

Medium or Maximum settings every sixty (60) days. If it appears an inmate in a Minimum General Population setting may be placed in a higher classification, a face-to-face interview shall be conducted.

Finding: Substantial Compliance

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

Training: All staff have been trained in the use of the new classification forms (initial and reclassification) which also have been automated.

Metrics: Interviews with Classification Unit staff.

Review of updated classification policies.

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

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

Assessment: As indicated above all newly admitted inmates are being assessed based on the new system. All inmates who have been in custody for 60 days or more have been reclassified. In the past report it was indicated that a) reclassification events were not being conducted with a face-to-face interviews due to a lack of classification staff. This problem has been resolved as the Monitor's estimate of staff needed to operate the classification have been hired and retained. Further the Monitor is now receiving monthly snapshot data files to verify all inmates are properly classified.

Policy 12.02, Reclassification Policy, was updated and now includes specific verbiage that inmates will have their classification status reviewed every 30 days when the inmate contests their classification status.

There are specific classification deputies who task is to conduct the face-to-face reclassification interviews. During this process there is an explanation given on the inmate's current points, what the points mean, and walking them through Alameda County's current classification system as well as explaining how to contest their current level if requested.

Portable laptops have been issued to the classification unit. These were set up with ATIMs and are utilized to show the inmate their classification sheet and the specific criteria that resulted in placement in the current classification level.

The updated Policy 12.02 also requires housing movements be approved by the classifications unit as well as proper justification and documentation. It is also the practice for classification to

respond to housing units to explain to inmates why they are being moved from one section to another section due to changing classification levels. For a classification level to be changed it requires classification to interview the inmate prior to such a change.

Recommendation: In order to maintain Substantial Compliance, the ACSO must quickly complete its internal review of Policies 12.01, 12.02 and 12.04 so they can be reviewed by Plaintiff's legal counsel.

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

Finding: Substantial Compliance

Policies: 9.02. Administrative Separation, 9.03 Protective Custody, 12.01 Intake, 12.02 Reclassification, 12.04 Housing Plan

Training: Staff have been trained in the new classification system.

Metrics: Interviews with Classification Unit staff.

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

Assessment: Classification staff state, the snapshot data files, and the reliability test results listed above all show that inmates are now classified under the new system as required by the Consent Decree.

Recommendation: In order to maintain Substantial Compliance, the ACSO must quickly complete its internal review of Policies 9.02, 9.03, 12.01, 12.02 and 12.04 so they can be reviewed by Plaintiff's legal counsel.

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

Finding: Substantial Compliance

Policies: 9.02 Administrative Separation, 9.06 High Profile Inmates and 9.10 Maximum Separation Inmates

Training: Training has been completed on the updated policy 9.02. The RHC members conducted an orientation in February 2022 to review its procedures and policies.

Metrics: Review of revised ACSO policies governing Administrative Housing.

Audit of a representative sample of cases referred to the RHC to determine if the due process requirements have been met.

Interviews with the Classification Unit and RHC members.

Observations of the Restrictive Housing Committee meetings.

Tours of the Administrative Housing unit(s).

Review of Quarterly RHP Report.

Assessment: ACSO has updated Policy 9.02 and RHC meetings are being conducted on a weekly basis to determine whether inmates meet the criteria to be assigned to Step 1 or Step 2 or released from the RHP. This committee consists of members from AFBH of a supervisory level or higher, an ACSO sergeant, and a Classification deputy in charge of the RHP. A Classification Sergeant or Lieutenant is present and serves as the Committee Chair.

All inmates placed in restrictive housing are initially assigned Housing Unit 2 F Pod where they remain for up to 72 hours until they are reviewed by restrictive housing classification deputy to ensure they meet the initial admission criteria (See Classification 9.02 which is awaiting approval by the plaintiff's counsel). This initial screening process is over seen and approved by a Classification sergeant.

A similar review process is implemented for protective custody (PC) inmates. All PC inmates are initially placed into PC are placed in to a seventy-two-hour review queue. This is then reviewed by the classification deputy assigned to managing the PC population. These placements require a signature on a PC request form which means all PC placements are interviewed by a classification deputy to determine a root cause to the request and proper placement into the administrative housing setting. This process is over seen and approved by a sergeant.

All behavioral health (BHI) placements are initiated by AFBH via a standardized AFBH form initiating BHI status and indicating level of care. The placement and removal of BHI status and administrative housing is controlled by AFBH in consultation with Classification. If the inmate request to be considered for release from the BHI unit, an AFBH referral form is completed by Classification scanned, attached to the classification file and submitted to AFBH.

Since the last Monitor's report, a Therapeutic Housing Committee (THC) has been established and is now functioning. Similar to the RHC, BHI inmates are reviewed by the THC to determine suitability for placement in the THU and/or to return from the THU to the general population. This committee consists of members from Adult Forensic Behavioral Health of a supervisory level or higher, security side sergeant, and classification deputies in charge classification deputies in charge the BHI population.

All inmates placed into and removed from administrative housing have an administrative classification deputy in charge of managing that population and it is reviewed and reassessed. That inmate is then seen by a committee to confirm that placement and if possible, remove them from that administrative housing.

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

However, the requirement that an inmate must be given the opportunity to appear before the RHC or THC is not occurring. Also, while policies 9.02, 9.06 and 9.10 have been updated and contains all of the specific requirements established in this Consent Decree provision, the ASCO indicates it has not finalized them.

Recommendation: With regard to the inmate's appearing before the RHC and THC, there has been a suggestion by the ACSO to use virtual meeting technology as a substitute for the mandated face to face meeting with the RHC. This alternative coupled with a face-to-face post RHC interview to explain the placement decision to the inmate would be acceptable to the Monitor.

The ACSO also must quickly complete its internal review of the above referenced policies so they can be reviewed by Plaintiff's legal counsel.

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

Finding: Partial Compliance

Policies: 9.02 Administrative Separation, 9.06 High Profile Inmates and 9.10 Maximum Separation Inmates

Training: RHC members have received an orientation to the existing policies

Metrics: Review of revised ACSO policies governing Restricted Housing.

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

Interviews with the Classification Unit staff and RHC members.

Observation of the RHC meetings.

Tours of the Restricted Housing unit(s).

Review of Minutes of the RHC meeting.

Review of RHC referral forms.

Audit of inmates currently assigned to Steps 1 and 2.

Assessment: The RHC meetings are being held on a regular basis with the appropriate people assigned to the RHC. Copies of complete referrals and Committee minutes were forwarded to the Monitor for review. Observations of the RHC meetings were also conducted by the Monitor as well as other interested parties. There were two critiques that have been communicated to the RHC. First, the participation of the AFBH representative in reviewing each case was not as strong as it should be. The AFBH staff have important information that needs to be communicated to the entire RHC. Second, the basis for the RHC referral is not being noted in many cases.

The existing policies 9.02, 9.06 and 9.10 have been updated and contains all of the specific requirements established in this Consent Decree provision. However, the ACSO reports it has not yet completed its internal review.

A recent review of the RHC referral forms has found that some of them are not properly completed. Specifically, they do not show the precise reason for the referral. To correct for this issue, new forms and procedures have been adopted.

Recommendation: The completed RHC referral form needs to clearly mark the basis for the referral with a copy forwarded to the inmate. AFBH staff assigned to the RHC need to be actively involved in the decision-making process. These administrative issues are sufficient to negate a prior Substantial Compliance rating.

The ACSO also must quickly complete its internal review of the above referenced policies so they can be reviewed by Plaintiff's legal counsel.

306. Individuals shall not be placed in Restrictive Housing unless they are referred to the RHC for review. Individuals may be referred based on the following circumstances: (1) recent assaultive behavior resulting in serious injury; (2) recent assaultive behavior involving use of a weapon; (3) repeated patterns of assaultive behavior (such as gassing); (4) where they pose a high escape risk; or (5) repeatedly threatening to assault other incarcerated persons or Staff.

All referrals shall clearly document the reason for the referral in the form attached to the Consent Decree as Exhibit B. Incarcerated individuals shall not be referred to Restrictive Housing for rule violations beyond the five categories enumerated herein.

Finding: Partial Compliance

Policies: Policy 9.02 Administrative Separation.

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

Metrics: Interview with Classification Unit staff.

Review of RHC meeting minutes and completed RHC referral forms.

Assessment: Based on the RHC meeting minutes and a review of completed referral forms as noted above the RHC is functioning as required by the Consent Decree with the exception that inmates are not appearing before the RHC. The results of the RHC are generally being communicated to the inmate after the RHC has rendered its decision. The referral form is being completed with the basis for the referrals is now being completed. However, as noted above a recent audit and information provided by Class Counsel suggests there are some cases where the inmate's RHC referral form is not being completed and concerns that all inmates placed in the RH program are not being notified of the basis for their placement in the RH Program.

Policy 9.02 has been updated and contains all of the specific requirements established in this Consent Decree provision. However, the ACSO has not yet completed its internal review.

Recommendation: To achieve Substantial Compliance the revised RHP referral form needs to clearly mark the basis for the referral with a copy forwarded to the inmate.

The ACSO also must quickly complete its internal review of the above referenced policies so they can be reviewed by Plaintiff's legal counsel.

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

Finding: Partial Compliance

Policies: 9.02 Administrative Separation.

Training: There was an orientation meeting held in February with the designated RHC members. The RHC members are well versed in this provision and its requirements.

Metrics: Review of RHC referrals.

Interviews with ACSO and AFBH RHC members.

Observations of the RHC weekly meetings.

Assessment: As noted above, reviews are being completed by the RHC but inmates are not appearing before the RHC. Rather, inmates are interviewed prior to and after the RHC makes its decisions. During the interview, the deputy explains the reasoning for the placement, the restricted housing process, and explains to the inmate how to get out of restricted housing. During these post RHC interviews, the inmate can raise any factual issues regarding the basis for the RHC decision. As noted above, legal counsel for the parties are determining if this satisfies the requirement or if the inmate has to physically be present during the RHC.

The policy has been updated to meet the specific requirements established in this Consent Decree provision. However, the ACSO has not yet completed its internal review.

Recommendation: Legal counsel for both parties need to reach an agreement that the face-to-face interview before the RHC is not required to reach substantial compliance. The Monitor is not opposed to this change but would have to monitor the interview process before a substantial compliance rating can be issued.

The ACSO also needs to quickly complete its internal review of Policy 9.02.

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

Finding: Substantial Compliance

Policies: 9.02 Administrative Separation

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

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

Review of the RHC weekly minutes.

Review of the completed RHC referral forms.

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

The existing policy 9.02 has been updated and contains all of the specific requirements as set forth in the Consent Decree. However, the ACSO reports that its internal review process has not yet been completed.

Recommendation: The ACSO needs to quickly complete its internal review of Policy 9.02.

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

Finding: Partial Compliance

Policies: 9.02 Administrative Separation

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

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

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

Assessment: As noted in the prior report, there should an affirmative statement made to the inmate that if one a) receives no major disciplinary reports and in the absence of serious assaultive behavior during the period of placement immediately prior to the review or b) other serious misconduct such as disobeying a direct order, c) attends all scheduled sessions with the AFBH and d) expresses a willingness to recreate with other inmates, he/she shall be moved to Step 2.

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

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

All of these processes and procedures have been incorporated in the drafted Policy 9.02. This policy is currently awaiting review and approval by the plaintiffs.

An informational form has been drafted by the ACSO that explains the criteria for progression within the RHP. This form has been reviewed by the Plaintiffs with suggested changes, most of which have been incorporated in the revised draft.

The existing policy 9.02 has been updated and contains all of the specific requirements established for this Consent Decree provision. However, the ACSO reports that its internal review process has not yet been completed.

Recommendation: . Once the informational form is approved and Policy 9.02 is finalized, the compliance rating will move to Substantial Compliance.

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

Finding: Partial Compliance

Policies: Policy 9.02 Administrative Separation.

Training: Classification Unit and AFBH staff have been trained in policies governing the RHC.

Metrics: Interview with Classification Unit staff.

Assessment of the snapshot data file.

Assessment: Currently there is a problem with the SMI designation. The AFBH is shifting to a level of care system (1 through 4) and plans to modify how the SMI label will be applied. Until all inmates are clearly labeled by the AFBH, it will not be possible to precisely determine if severely mentally ill patients are being place in the RHP. However, using the snapshot data files there are no inmates in Units 1 and 2 (the RHP locations) that are also assigned to the BHI caseload.

It's also clear that the RHC, with representation from the AFBH, is carefully reviewing people who fit the profile of an SMI and not allowing them to be housed in the current RHP. Specifically, the ACSO states that no inmate is being placed into restrictive housing unless they meet the criteria outlined in the consent decree as outlined under Section III(C) . Furthermore, inmates who are identified by AFBH as having a significant mental health disorder and have not been involved in assaultive behavior are not being placed into the RHP.

The existing policy 9.02 has been updated and contains all of the specific requirements established for this Consent Decree provision. However, the ACSO reports that its internal review process has not yet been completed.

Recommendation: To achieve substantial compliance, the AFBH needs to complete its leveling of the entire jail population and ensure that all RHC referrals are properly diagnosed. The prior SMI designation needs to be redefined based on the new AFBH level system.

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

Finding: Partial Compliance

Policies: 9.02 Restricted Housing.

Training: Training has been completed for the Classification Unit on the 9.02 policies. All RHC members have been trained on this Consent Decree provision and are aware of its requirements.

Metrics: Interview with Classification Unit staff.

Review of RHC minutes and copies of completed referral forms.

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

Assessment: All inmates who are referred to the RHC for possible placement in the RHP are referred to AFBH prior to the RHC meeting. This is reflected in the Policy 9.02 which is still being reviewed by the ACSO. Observations of the RHC meetings showed that the AFBH representative is familiar with the inmate's current mental health status and communicates same to the full RHC. It is not clear if the AFBH has conducted a recent assessment in a confidential setting for such referrals.

Recommendation: The AFBH needs to provide documentation to the Monitor that their assessments are based on a face-to-face interview that is being conducted in a private/confidential setting. The ACSO also needs to complete its internal review of policy 9.02.

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

Finding: Substantial Compliance

Policies: 12.01 Classification

Training: Training has been completed on the draft policy.

Metrics: Interviews with Classification Unit staff.

Review of ACSO draft policy 12.01.

Audit of selected cases where internal transfers were completed.

Assessment: Policy 12.01 Reclassification was updated to reflect that all intra and interunit moves are to be approved by classification and require proper justification and documentation for that move.

Training was completed for all classification unit staff to explain this change in policy. This has also been enforced by ACSO command staff and is now the set standard across the jail. Although this policy is currently awaiting final approval by the parties, the Monitor is satisfied that the current practices meet the requirements of the Consent Decree. It is noted that there was another incident where an inmate was improperly transferred by a Captain without the knowledge and input of the Classification Unit. While the Captain has the authority to do so, they should consult the Classification Unit before making such a transfer. This is viewed as an isolated incident that has been addressed.

Recommendation: Policy 12.01 needs to be formally approved by the ACSO in order to remain in compliance with this provision.

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

Finding: Partial Compliance

Policy: 9.03 Protective Custody/ Gang Drop-out

Training: Training has not been completed on this policy which is yet to be completed.

Metrics: Interviews with Classification Unit staff.

Review of existing ACSO formal policies.

Audit of cases where protective custody transfers (admissions and releases were completed).

Assessment: Based on interviews with Classification staff this policy is not yet formally developed. The Classification Unit controls these admissions and releases and documents them. However, a more formal process will be required which they continue to acknowledge.

Recommendation: Existing ACSO policies on protective custody (9.03) will need to be finalized. A formal audit of such transfers will also have to be completed by the Monitor before a finding of substantial compliance can be made.

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

Finding: Partial Compliance

Policy: None have been developed but it is expected this issue will be included in policies 12.01 and 12.02.

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

Metrics: Interviews with Classification staff.

Review of draft policy once it has been prepared

Assessment: Based on interviews with Classification staff this policy is not formally yet developed. Informally, the Classification Unit controls double celling and documents them when it is used. They report taking into consideration the following factors:

- a. Age;
- b. Build;
- c. Security level (Minimum, Medium, Maximum);
- d. Keep Separates; if applicable;
- e. Criminal sophistication;
- f. Criminal History;

- g. In Custody History;
- h. Institutional knowledge and behavior (CDCR History);
- i. Disabilities (Physical, mental, etc.); and ,
- j. PREA vulnerabilities or predatorial behavior.

However, a more formal process will be required which they acknowledge.

Recommendation: Existing ACSO policies on double celling will need to be finalized next year. A formal audit of such transfers will also have to be completed by the Monitor this year.

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

Finding: Non-Compliance

Policy: None have been developed but it is expected this issue will be included in policies 12.01 and 12.02.

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

Metrics: Interviews with Classification staff.

Review of draft policy once it has been prepared.

Assessment: Based on interviews with Classification staff this policy is not yet developed. The RHC and THC are reported to be taking into consideration the AFBH case plan and classification security needs of the inmate when determining where to house a releasee from the RHP or the THU. But a more formal process is required. For example, there should be a formal recommendation from the AFBH in terms of on-going mental health services for people on the BHI caseload that is presented to both the RHC or THC and to the inmate.

Recommendation: Existing ACSO policies on step-down protocols will need to be finalized later this year. The Monitors will work with the ACSO and AFBH in developing the policy and practices.

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

Finding: Substantial Compliance

Policy: 1.14 Americans with Disabilities Act (ADA)

Training: Classification staff have been trained on this draft policy.

Assessment: The ACSO uses the current Policy 1.14 “American with Disabilities Act” in relation to inmates with disabilities. Detailed in this is the policies and procedures for identifying and dealing with inmates with disabilities. Furthermore, the Classification Unit has added multiple hazard flags that are utilized by both Wellpath and AFBH to identify inmates with cognitive and physical disabilities. Those flags include both IDI and ADA.

Currently there are about 80-85 inmates listed as qualifying for ADA status. An audit of the RHP found that none of these people are assigned to the RHP. The Monitor is aware that there may be an issue of under-reporting the ADA population.

Recommendation: The ACSO needs to quickly finalize its revisions to Policy 1.14.

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

Finding: Non-Compliance

Policies: The existing relevant policies have not yet been updated to reflect the requirements as set forth in the Consent Decree.

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

Metrics: Review of drafted policy.

Review of ACSO internal daily reports on SMI class members who are within 12-36 hours of a known release date

Assessment: Based on interviews with Classification staff this policy is not yet developed. The issue that needs to be resolved is how the SMI label will be communicated to the ACSO and stored in the ACSO data system. Until that matter is resolved it will not be possible to measure compliance.

Recommendation: The ACSO, AFBH, and Monitors need to reach a consensus on how the SMI label will be made known to the ASCO so the required reports can be generated. Once that agreement is reached the Monitor will work with the ASCO to produce the required reports.

320. The RHC shall review reports regarding length of stay on a quarterly basis to identify: (1) any individuals who have been in Restrictive Housing for thirty (30) days or longer and (2) any

patterns regarding class members' placement and/or discharge. Defendants shall take any corrective actions needed, including revising policies and looking into individuals' cases to identify interventions aimed at reducing their length of stay in Restrictive Housing. Individuals who have been in Restrictive Housing for more than ninety (90) days shall have their placement reviewed by an AFBH manager and by the ACSO Classification Lieutenant or higher.

Finding: Substantial -Compliance

Policy: There is no policy that is needed for this provision.

Training: There is no training needed for this provision

Metrics: Interview with Classification staff

Production of quarterly report as required by this Consent Decree provision.

Assessment: The ACSO has now developed a quarterly report that meets the requirements of this Consent Decree provision (see latest report below).

Recommendation: Continue to produce the quarterly report and verify that people spending more than 90 days are reviewed by the AFBH manager and ACSO Classification Lieutenant.

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

Finding: Substantial Compliance

Policies: 12.01 Initial Classification and 12.02 Reclassification.

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

Metrics: Interview with Classification staff

Reliability test of 100 randomly selected inmates.

Review of contested classification cases

RHU Population Quarterly Report

	July 1 2022	30-Sep-22	Change
Step 1	74	62	-12
Step 2	35	53	18
Total	109	115	6
Race			
White	26	21	-5
Black	49	66	17
Hispanic	43	39	-4
Asian	1	3	2
Other	5	7	2
LOS to date			
Average	78	65	-13
Median	57	38	-19
> 30 days	35	47	12
> 90 days	49	46	-3
MH Level			
4	N/A	N/A	N/A
3	N/A	N/A	N/A
2	N/A	N/A	N/A
1	N/A	N/A	N/A
None	N/A	N/A	N/A
Admissions, Releases and LOS			
	Past Quarter	Current Quarter	Change
Referrals	148	318	170
Admissions	114	234	120
Releases	94	139	45
LOS			
Average	57	33	-24
Median	30	11	-28

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

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

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

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

The only outstanding issue of the pending review of the Policies 12.01 and 12.02 by the ACSO which has not been completed.

Recommendation: The ACSO needs to complete its internal review of Policy 12.02.

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

Finding: Substantial Compliance

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

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

Metrics: Interviews with Classification staff

Observation of Initial and Reclassification events

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

Recommendation: As new classification policies are formalized staff will need to be trained on them as well.

400. Defendants have agreed to implement a new classification system, as outlined in Section III(C). This new classification system is designed to produce two objective classification

decisions that will guide the housing of each incarcerated person: (1) custody level (Minimum, Medium, and Maximum), and (2) population assignment (*e.g.*, General Population, Incompatible Gang Member, Protective Custody, Behavioral Health, Medical, or Administrative Separation).

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

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

Finding: Partial Compliance

Policy: 9.02 Administrative Separation

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

There are very few assaults occurring in the RHP. In the past six months only 26 out of 832 (3 %) inmates on inmate assaults occurred in Housing Units 1 and 2.

There is a problem of not being able to clearly identify the SMI population. This issue will need to be clarified by AFBH and Dr. Montoya. The RHC has a member of the AFBH who along with the classification staff carefully assess the appropriateness of placing a person in the RHP.

Recommendation: The AFBH will need to provide documentation on a) whether there have been any SMI patients in Steps 1 who have suffered any deterioration in their mental health status and b) what actions were taken by the RHC to address that situation. Further, the issue of clearly identifying whether a person is an SMI patient and ensuring that label is part of the information system so that this provision can be properly monitored needs to be quickly resolved.

404. This population shall be evaluated within fourteen (14) days of placement in Step 1 for ability to return to general population or to transition to Step 2. Inmates retained in Step 1 following initial review will be evaluated no less than every thirty (30) days thereafter. Incarcerated persons with SMI placed in Step 1 for longer than thirty (30) days shall have their cases reviewed by the Classification Lieutenant and Assistant Director of AFBH, or their designee, weekly following the initial thirty (30) days. If continued placement on Step 1 is approved by the Classification Lieutenant and Assistant Director of AFBH the reasons for doing so must be documented.

Finding: Substantial Compliance

Policy: 9.02. Administrative Separation

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

Metrics: Interview with Classification staff

Audit of snapshot data file for people assigned to Pods 1 and 2

Assessment: In the last report, it was noted that the formal review of all persons placed in the RHP was not occurring. Since then, a new policy has been implemented where a classification deputy assigned to the RHP reviews all people so housed 72 hours of their placement. This is to determine if the inmate meets the criteria for restrictive housing, Step 1 or Step 2. If the inmate remains in restrictive housing based on that initial review, they are referred to the RHC and reviewed within 7 days of their placement. The data system is also setup to identify all inmates in the RHP who are under the less than 72 hour and 14-day review statuses. As of October 30, 2022 there were 2 under the 72-hour review and 29 under the 14-day review status.

Recommendation: This practice needs to be incorporated in Policy 9.02 which is now being updated by the ACSO. The previously noted issue of ensuring SMI label is being applied to the jail population and is part of the ACSO information system needs to be quickly resolved.

406. Restrictive Housing, Recreate Together Status (“Step 2”): (ii) If an incarcerated person with SMI placed in Step 2 suffers a deterioration in their mental health, engages in self-harm, or develops a heightened risk of suicide, or if the individual develops signs or symptoms of SMI that had not previously been identified, the individual will be referred for appropriate

assessment from a Qualified Mental Health Professional, within twenty-four (24) hours, who shall recommend appropriate housing and treatment and shall provide the recommended treatment.

Finding: Substantial Compliance

Policy: 9.02. Administrative Separation

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

Metrics: Interview with Classification staff

Observation of the RHP and THU housing units

Audit of snapshot data file for people assigned to Pods 1 and 2

Assessment: Since the last report, a “Step 2 recreate together” status has been created for inmates who meet that criterion and are approved by the RHC. Furthermore, Classification has implemented a “RH STEP 2” hazard flag and a “RESTRICTIVE HOUSING REC TOGETHER” hazard flag to indicate which inmates are “Recreate Together Status”. A static pod time log is also utilized to further indicate the pairings and groupings of inmates who are recreate together groups.

Regarding referrals to AFBH for people that experience a rapid deterioration in their mental health status, there are no hard figures on the number of such incidents. Observations of the housing units and interviews with Classification staff indicate that AFBH are making daily rounds in the units to help ensure such situations are quickly detected.

Recommendation:

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

Finding: Substantial Compliance

Policy: 9.02. Administrative Separation

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

Metrics: Interview with Classification staff

Observation of the RHP and THU housing units

Audit of snapshot data file for people assigned to Pods 1 and 2

Assessment: Based on interviews with Classification Unit staff, all people placed in the Restricted Housing Step 2 have been screened by AFBH staff prior to admissions and have been cleared for such a placement and are being reviewed every 30 days. They are also now receiving a 14 day review.

Recommendation: This practice needs to be incorporated in Policy 9.02 which is now being updated by the ACSO.