

First Monitoring Report on Restrictive Housing, Discipline, and Classification Practices in the Sacramento County Jails

Mays v. County of Sacramento

Case No. 18-02081

February 2021

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I. Executive Summary

The Consent Decree in this matter provides that Plaintiffs' counsel will issue written reports on Sacramento County's compliance with the restrictive housing components of the Court-ordered Remedial Plan. *See* Consent Decree, Doc. No. 85-1 at 8 (June 20, 2019); Order, Doc. No. 110 (Jan. 8, 2020) (adopting Consent Decree). As such, this report examines the practices and policies of Sacramento Sheriff's Office ("SSO" or "the Department") with respect to restrictive housing, classification, and discipline. This is the first monitoring report regarding restrictive housing practices, which have been a core concern in the negotiations between the parties since the initiation of the case.

At the outset, Plaintiffs' counsel acknowledges the challenges posed by the COVID-19 pandemic to the management of the Sacramento County Jails ("the Jails") and to the implementation of the restrictive housing provisions in the Remedial Plan. In particular, COVID-19 mitigation efforts have required the SSO to repurpose space in the Jails to provide for quarantine and isolation housing units. The additional demands for limited space, particularly at the Main Jail, require the SSO to house people in different classifications in the same housing units, making it even more difficult to provide adequate out-of-cell time and programming. Moreover, as part of the Department's COVID-19 mitigation efforts, custody staff are prevented from working when they have symptoms of illness, which has exacerbated serious and longstanding custody staffing deficits. Managing the pandemic also has required the significant, ongoing attention of Jail leadership, which may have diverted resources from efforts to implement the restrictive housing Remedial Plan.

Notwithstanding these challenges, the SSO has reduced the number of people who are living in restrictive housing (also known as segregation) over the past several years. SSO has a fairly unique classification and housing category known as "Total Separation" (or "TSEP"). People in this classification live and program alone, with no social contact with others, often for prolonged periods of time. This classification is distinct from administrative segregation (or "ad seg"), which is another form of restrictive housing in the Jails, in which people have limited out-of-cell time and freedom of movement, but are permitted to live in double cells and interact in small groups.

In July 2018, an expert retained by the County to assess its restrictive housing practices reported that there were 172 people classified as TSEP in the Main Jail. *See* Doc. No. 1-6 at 1. In December 2019, the SSO reported that there were 96 people classified as

TSEP and 35 people classified as administrative segregation at the Main Jail (131 total). On January 6, 2021, the Main Jail housed 37 people in TSEP and 61 people in administrative segregation (98 total).

For the people who remain in restrictive housing, the conditions are grave. In the Main Jail, in particular, many people have gone months without seeing sunlight or feeling fresh air. Dozens of people who are classified as TSEP are locked alone in their cells nearly around the clock, getting out of their cells no more than ten hours per week. They report serious adverse effects from the deprivations, such as racing thoughts, depression, and suicidal ideation. Many of them have significant underlying mental health needs, which are exacerbated by the social and sensory deprivations of their living conditions. Deputies and residents in the restrictive housing units in the Main Jail report that many people confined there exhibit signs of severe mental health decompensation – smearing feces on the walls, hoarding food items, and shrieking and banging on their cell doors. Some of these people cycle between the extremely deprived conditions of TSEP and the acute mental health unit (which itself provides limited treatment and programming), where they are housed for a brief period before being discharged to the very setting in which they decompensated.

Ongoing deficits in mental health resources continue to cause the SSO to overuse restrictive housing to manage its population of people with serious mental illness. The volume of people with serious mental illness who live and program alone in the Jails' restrictive housing units due to the lack of appropriate treatment settings for them, in turn, strains the physical plant limitations of the Main Jail and prevents the SSO from providing adequate out-of-cell time to meet its Court-ordered obligations. These serious problems cannot be addressed without a significant reduction of people with serious mental illness in the Jails or a substantial expansion of mental health resources in the Jails.

The Department is still substantially noncompliant with the classification provisions of the Remedial Plan. Classification staff fail to conduct in-person classification reviews or even to notify people of the outcomes of their classification reviews. Classification staff do not provide written notice of the reasons for placement in restrictive housing or the criteria under which a person can earn their removal from restrictive housing. The SSO continues to place and retain people in restrictive housing for reasons that do not comply with the Consent Decree's Remedial Plan.

The SSO also fails to comply with some of the disciplinary segregation provisions of the Remedial Plan. In particular, the Jail has not implemented the Remedial Plan provisions requiring mental health input into the disciplinary process. In several cases, it appears that

the SSO imposed excessive terms of discipline. Concerns also emerged about the placement of some class members in maximum security housing following disciplinary violations.

Jail leadership has made progress in reducing the restrictive housing population and has demonstrated a willingness to work with Plaintiffs' counsel to implement the Remedial Plan. However, the lack of staff training on the requirements of the Remedial Plan and the absence of clear policies to implement the Remedial Plan constrain the SSO's ability to come into compliance. Although the Consent Decree has been in effect for over a year, the SSO still issues grievance responses citing inapplicable standards and contradicting core tenets of the Remedial Plan.

In sum, despite areas of progress, the SSO remains largely noncompliant with the restrictive housing provisions of the Remedial Plan.

II. Background

The use of restrictive housing was a core concern in the remedial negotiations between the parties, which began in 2016 and culminated in a Court-approved Consent Decree in 2020. As part of the negotiations, the County retained national experts to assess restrictive housing and classification practices. The experts found, among other things, that people were retained in TSEP status despite the absence of significant disciplinary violations, that they were subject to excessively harsh conditions of confinement, and that the duration of their placement in TSEP was excessively long. *See* James Austin, Emmitt Sparkman, & Robin Allen, *Evaluation of the Sacramento County Jail Inmate Classification and T-SEP Systems* (2017), Doc. No. 1-6 at 8, 10. They criticized the lack of "a credible or transparent process by which inmates are assigned to the T-SEP status" and the absence of "structured criteria by which inmates can secure release based on their compliant behavior." *Id.* at 10. The experts raised concerns about the concentration of people with serious mental illness in restrictive housing units and the absence of sensory stimulation in their living conditions. *See id.* at 5, 10-11; Eldon Vail, *Sacramento County Jail Mentally Ill Prisoners and the Use of Segregation: Recommendations for Policy, Practice and Resources* (2016), Doc. No. 1-2 at 12-13, 16.

In early 2019, counsel for Plaintiffs filed a motion for summary judgment regarding the SSO's excessive and harmful use of solitary confinement for people with mental health needs. *See* Doc. No. 62 (Feb. 12, 2019). The motion argued that the SSO harms people with serious mental illness by subjecting them to extreme forms of solitary confinement and depriving them of sufficient mental health care. The motion was settled when the parties

reached agreement on a Remedial Plan to address restrictive housing and mental health care, among other subjects.

The Remedial Plan institutes significant reforms to the SSO's restrictive housing and classification practices. Among other things, it eliminates the TSEP classification in favor of a two-phase administrative segregation system. It requires that people be housed in the least restrictive setting appropriate to their case factors. Sec. VIII.E.2. The Plan allows for the use of administrative segregation only where "objective evidence indicates that a prisoner participated in a recent assault and the assaultive behavior involved an assault on staff or visitors, serious injury, use of a weapon, gang removals, or multiple prisoner assaults," or where Jail leadership determines and documents that the person poses an "extraordinary safety risk." Sec. VIII.E.1. Placement in the first phase of administrative segregation is limited to 15 days except in specific circumstances where authorized and documented by Jail leadership. Sec. VIII.E.2(e). Placement in the second phase of administrative segregation is limited to 30 days unless the person commits a serious behavioral violation while in administrative segregation. Sec. VIII.E.3(c).

The Remedial Plan also requires reforms to classification processes. Class members are entitled to written notice of placement in restrictive housing, including the reasons for placement and a case plan describing the conduct required for release from that setting. Sec. VIII.E.2(c). The SSO must conduct face-to-face classification reviews with class members every 30 days to review compliance with their individual case plan. Sec. VIII.E.2(d).

The Remedial Plan requires everyone in the Jail to receive a minimum of 17 hours per week out of their cells. The only exceptions are for people serving disciplinary terms or in Administrative Segregation Phase 1, who must receive seven hours per week of out-of-cell time. The Remedial Plan strictly limits the duration of placement in those statuses because the Remedial Plan permits very limited out-of-cell time. The Remedial Plan requires everyone who is not serving a disciplinary term to receive phone privileges during business hours. It also addresses a range of issues relating to the conditions of disciplinary segregation (Sec. VIII.G) and protective custody (Sec. VIII.F) and the conditions for women classified as maximum security (Sec. VIII.A.1(c)).

In September 2020, seven class members wrote to the *Mays* Court regarding the conditions in restrictive housing units at the Main Jail. *See* Doc. Nos. 123 – 123-6 (Sept. 3, 2020). They charged that the SSO fails to comply with the core components of the *Mays* Remedial Plan. The class members reported that they are locked in their cells all but one hour every other day and that they "go without fresh air or seeing the sun up to a month

sometimes.” Letter, Doc No. 123 at 2. The class members charged that the SSO fails to adhere to the criteria for administrative segregation, to provide in-person classification reviews, or to observe the Remedial Plan’s time limits on placement in administrative segregation. *Id.* at 3-4. The class members described their conditions of confinement as “cruel, inhumane, degrading, and totally unacceptable.” *Id.* at 1.

The Court ordered class counsel to address these allegations in their written monitoring report. *See* Doc. No. 122 (Sept. 4, 2020). The class members’ allegations are addressed herein.

III. Methodology

The methodology for this report was greatly impacted by the COVID-19 pandemic and the monitors’ inability to tour the facility and meet in person with staff and class members. The report is based on interviews with Jail leadership, deputies, mental health staff, and people living in the jail. In December 2020, Plaintiffs’ counsel conducted phone interviews with the lieutenants at both jails, three sergeants, three deputies, and two representatives of the Jail Psychiatric Services (“JPS”). Plaintiffs’ counsel interviewed 28 class members living in restrictive housing units or serving disciplinary terms at the Main Jail and Rio Cosumnes Correctional Center (“RCCC”). Plaintiffs’ counsel also gathered information through ongoing correspondence with people living in the jails and dozens of surveys regarding out-of-cell time and conditions of confinement for people in restrictive housing. Plaintiffs’ counsel also reviewed out-of-cell logs and grievance responses produced by the SSO. SSO staff was helpful in facilitating interviews with class members and staff at both Jails and responding promptly to information and document requests.

This report focuses on conditions of confinement (Sec. VIII.B), administrative segregation (Sec. VIII.E), and classification practices (Sec. VIII.E.2). For this first monitoring report, Plaintiffs’ counsel did not assess the provisions of the Remedial Plan relating to release from jail directly from segregation (Sec. H), the use of restraint chairs (Sec. VIII.J), disciplinary segregation (Sec. VIII.G) other than as it relates to privileges and mental health input and mitigation (Sec. VIII.G.7 & 8), or protective custody (Sec. VIII.F). Those provisions will be addressed in future monitoring reports.

This report focuses largely on restrictive housing conditions in the Main Jail, which houses the vast majority of people in restrictive housing status. Concerns specific to RCCC are addressed below (see pages 12-14).

IV. Findings

A. Conditions of confinement

Conditions in the Jails' restrictive housing units do not comport with the Remedial Plan. Most notably, the SSO is consistently failing to provide class members in restrictive housing with the required number of out-of-cell hours. At the Main Jail, people are offered very few hours out of their cells each week at unpredictable hours. During the limited time of their cells, class members are provided few programming opportunities and, at least since October 2020, no outdoor recreation at all. As a result of the harsh conditions of restrictive housing at the Main Jail, class members report feelings of increased isolation, anxiety, and worsening depression.

Out-of-cell time: The most significant feature of restrictive housing at the Jail is the extremely limited number of out-of-cell hours. The Remedial Plan requires that all people at the Jail, except those subject to Administrative Segregation Phase 1 or Disciplinary Segregation, receive at least 17 hours of out-of-cell time per week. Section VIII.B.1.¹ But class members in restrictive housing reported—and the Jail's logs confirm—that people are receiving far fewer than 17 hours out of their cells per week.

In December 2020, when Plaintiffs' counsel interviewed several class members in restrictive housing, class members in the Main Jail's 8 West unit reported that they receive, at most, ten hours out of their cells per week and as few as one hour per week. The SSO's out-of-cell logs for those same class members confirm their reports. During the period of November 16 to December 20, 2020, the SSO's logs for the class members whom Plaintiffs' counsel interviewed indicate that most of them were offered about nine or ten hours out of their cells per week. In some cases, the deprivations were even more extreme. According to the SSO's logs, one class member on 8 West was offered about one hour per week out of his cell. When interviewed, that class member said that he is released only two or three days per

¹ As noted, the Remedial Plan requires the elimination of the TSEP classification in favor of a two-phase administrative segregation system with strict time limits for each phase. Jail leadership at RCCC still refer to people as TSEPs. At the Main Jail, classification staff have adopted the terminology of "Ad Seg 1" and "Ad Seg 2," but have not implemented the corresponding time limits (15 days in ad seg 1 and 30 days in Ad Seg 2, barring certain disciplinary offenses or extraordinary circumstances). As a result, TSEPs are sometimes referred to as "Ad Seg 1," but there is no limit on how long they may remain in that setting or the criteria for their retention, and their conditions of confinement largely are unchanged from the previous TSEP classification. "Ad Seg 2" refers to people who live in double-cells and program in small groups with others, but again, the time limits and limiting criteria have not been implemented.

week, usually for less than thirty minutes each time. During that time, he showers and makes a phone call, then returns to his locked cell for several more days, until he is again released for another half hour. The SSO logs for another class member on 8 West indicate that he was offered just over two hours per week out of his cell. When Plaintiffs' counsel interviewed this class member, he was housed in 8 West but had been on the waitlist for the Intensive Outpatient Program for enhanced mental health care over a month. In total, none of the class members whom Plaintiffs' counsel interviewed at Main Jail reported (and none of the corresponding SSO logs indicated) that they received the required 17 hours of out-of-cell time per week.

The SSO reports that it is unable to provide class members the required number of out-of-cell hours due to the large number of people on restrictive classification statuses and the minimal programming space. As of January 6, 2021, the Main Jail housed 37 people on T-SEP status and 61 people on Administrative Segregation Phase 2 status. Many of those people are housed in the 8 West housing pods and share limited dayroom space. Because of their classification statuses, each person programs alone or in very small groups. But with so many people programming separately, the SSO is unable to provide the required out-of-cell time per week for each person.

To maximize limited space, the SSO runs dayroom at night and also during the day. However, on account of frequent lockdowns and modified programs (discussed below) and competing demands for dayroom space, class members may go several days without accessing the dayroom during the daytime. As a result, they cannot call their families and loved ones during normal waking hours. This practice violates the Remedial Plan, which expressly requires the SSO to provide all class members in non-disciplinary restrictive housing with at least five hours or three weekdays per week of phone access "during normal business hours." Sec. VIII.B(3).

Staffing and lockdowns: In addition to the constraints related to the size of the restrictive housing population and limited space in the Main Jail, restrictive housing units frequently are locked down or on "modified programming," periods during which no out-of-cell time is provided as a general matter. Class members report that their units are locked down several times a week for a variety of reasons, most commonly because there is insufficient custody staff available to run programming. If a particular unit falls below a given deputy-to-inmate ratio, then the entire unit must be locked down, according to Jail policy. During times of particularly low custody staffing levels, two deputies escorting a person to an outside medical facility ("med run"), for example, will result in a lockdown and

loss of programming opportunities for the entire unit. If staffing remains low for the full day, then the unit will also remain locked down for that entire day, during which time no one can leave their cells to program. Jail staff confirmed that lockdowns are a challenge for achieving compliance with the Remedial Plan at the Main Jail.

The frequent lockdowns result in people at the Main Jail being offered out-of-cell time sporadically and at unpredictable hours. Although the SSO purports to have a rotating schedule of out-of-cell time for class members, so that each person has an opportunity to be out of their cell at various times of the day, the lockdowns happen so often that there is no clear or consistent schedule governing out-of-cell time for class members. Consequently, class members are confined to their cells for days at a time with no reliable indication of when they will be let out next.

Below is a reproduction of a self-reported out-of-cell log from a class member in 8 West 400-pod at the Main Jail, which illustrates the irregular and limited out-of-cell opportunities:

Saturday, Dec. 19, 2020	No out-of-cell time — Lockdown for short staffing
Sunday, Dec. 20, 2020	No out-of-cell time — Lockdown for short staffing
Monday, Dec. 21, 2020	No out-of-cell time — Lockdown for short staffing
Tuesday, Dec. 22, 2020	10:30 AM to 11:30 AM; no evening programming
Wednesday, Dec. 23, 2020	No out-of-cell time — Lockdown (unknown reason)
Thursday, Dec. 24, 2020	No out-of-cell time — Lockdown (unknown reason)
Friday, Dec. 25, 2020	No out-of-cell time — Lockdown (unknown reason)
Saturday, Dec. 26, 2020	12:30 PM to 1:30 PM; no evening programming
Sunday, Dec. 27, 2020	2:00 PM to 3:00 PM; no evening programming

Over a period of 216 hours, this class member was confined to his cell for all but three hours. During that nine-day period, he was unsure which days, if any, he would be allowed out of his cell or what time of day he would be allowed out. He was not offered evening programming once during that period. For the three hours he was allowed out of his locked cell, he showered and programmed alone in the dayroom, and then was brought back to his cell.

Custody staffing deficits are a long-standing and entrenched problem for the SSO. In 2018, a neutral expert retained by Sacramento County determined that “[t]he level of custody staffing for both jails is startlingly and dangerously low for even their current operation and as a result they operate in a state of near perpetual emergency.” Doc. No. 1-2 at 8. The expert concluded that the extremely harsh conditions for people in restrictive housing conditions “are being driven by the lack of Deputies assigned to supervise those units.” *Id.* at 34. In October 2018, Sheriff’s Department then-Chief Deputy Jennifer Freeworth acknowledged that staffing shortages prevent the SSO from providing “the adequate number of out-of-cell time. *See* Plaintiffs’ Motion for Summary Judgment, Doc. No. 61-1 at 19. Custody staffing shortages cannot justify unconstitutional conditions of confinement and must either be addressed through substantial population reduction or through significant increases to staffing levels.

Programming and activities: At the Main Jail, class members have a very limited range of activities to participate in when they are released from their cells. The Remedial Plan requires the Department to provide reasonable access to a variety of programming opportunities, including personal calls, education and rehabilitative materials, personal and legal visits, and religious services, among others. Sec. VIII.B.3. The SSO currently provides only a few of those programming opportunities and in a limited fashion. When people in restrictive housing are allowed out of their cells, it is their only opportunity to shower, make personal calls, order commissary, and spend their remaining time in the dayroom. For people that are only allowed out of their cells for 30 minutes at a time, they must choose which of those activities they want to participate in. Class members report that at times, they must forego personal calls so that they can shower.

The SSO also has failed to provide some of the programming services that the Remedial Plan requires. For example, class members report that they cannot access religious services. At the Main Jail, a tablet that allows access to minimal educational and rehabilitative material is provided to some class members in restrictive housing. But the tablet is not provided to class members consistently enough to allow them to progress meaningfully in their education or rehabilitative programs. Many class members in restrictive housing at the Main Jail report that they receive the tablet infrequently, that the tablets often are not charged when they are distributed, and that some cells have no reception for the tablets. One class member said that he could theoretically earn a high school diploma on the tablet, but that advancing even one grade level would take years because of how infrequently he receives the tablet. Another class member reported that he does not receive the tablet, but he

has never been given a reason why he is excluded from the tablet program, nor is he provided alternative educational or rehabilitative programming opportunities. Concerns about the tablet program are of primary importance to class members, who report that the tablets help them cope with the sensory deprivations to which they are subjected.

Outdoor recreation: Class members on 8 West at the Main Jail have not been provided any outdoor recreation since October 2020, even though the Remedial Plan requires that “the opportunity to exercise shall be provided to prisoners seven (7) days per week, including outdoors/recreation time when feasible.” Section VIII.B.2. The SSO reports that a lead abatement construction project on the recreation yard shared between the seventh and eighth floors of the jail has prevented class members on those floors from accessing the outdoors at all for months. One class member, who was booked at the Jail in September 2020 and spent his first couple weeks in quarantine at the Jail before moving to 8 West, said that he had not seen the sun in the several months since he was arrested.

The Department has not compensated for the lack of outdoor recreation with expanded dayroom time, the introduction of indoor exercise equipment, or enhanced rehabilitative programming. Instead, class members simply are confined to their cells for even longer hours and are not afforded any meaningful opportunity to exercise.

Sanitation: Many class members reported concerns about the unclean and malodorous conditions in the Main Jail’s restrictive housing units. Class members and staff members acknowledged the strong smell of feces in several pods of 8 West, especially 100 pod, which houses numerous people with serious mental illness classified as TSEPs. (The use of restrictive housing for this population violates the Remedial Plan, as discussed in Section D below.) The odor reportedly is worst on Tuesdays and Wednesdays because the generators turn on and air circulation in the units is reduced. In addition to the foul smell on the unit, class members report that the dayroom is “filthy,” “grimy,” and “disgusting.” Several class members remarked on the presence of trash on the dayroom floor.

Numerous class members also reported that upon placement in restrictive housing, their cells were filthy, with feces on the walls and trash on the floors. This practice violates the Remedial Plan provision intended to address this very issue. Sec. VIII.B.5 (“The County shall establish procedures so that all housing unit cells are searched and cleaned prior to a prisoner’s placement in the cell.”).

Impact of isolation: With so few social and recreational opportunities, the harsh conditions of restrictive housing at the Jail significantly impact class members’ mental and physical health. People reported that the extreme and isolating environment, especially for

individuals on TSEP status who program completely alone, increases their anxiety and depression. In a letter to the Court, one class member explained that the “isolation ... is making us wors[e], boxed in like a caged animal 23 hours a day with no opportunity to interact or socialize, driving a great number of us to a mental breakdown . . . or . . . suicidal thoughts.” Doc No. 123 at 5. Several class members reported to Plaintiffs’ counsel that they try to pass the time each day by sleeping. Many described symptoms of depression and anxiety, such as racing thoughts and feelings of hopelessness. Other class members said that they dwell on their criminal charges all day because they have nothing else to do to occupy their time and no one to interact with. These conditions do not promote rehabilitation or prosocial conduct.

8 West 400-Pod: The conditions are particularly harsh for individuals housed in the 8 West 400-pod. Since summer 2019, the Jail has used that pod to house a group of seven to ten people who are co-defendants in the same criminal case. The SSO has classified all of them as TSEP, but their conditions of confinement are even more restrictive than other TSEPs. For example, there is a padlock on each cell door in addition to the normal locking mechanism that other cell doors are equipped with. Whenever these class members are released from their cells, officers must remove the padlock, which can take several minutes to do. If an emergency were to occur at the Jail that required immediate evacuation, custody staff would need to individually unlock each person’s padlocked cell. Padlocks are also placed on the visiting booths that these class members occupy for personal or legal visits. These measures raise questions about whether these class members are being housed in the “least restrictive” manner appropriate to their individual factors. *See* Remedial Plan, Sec. VIII.A.

The SSO requires class members in this pod to move cells every few weeks. They are moved at random and, at times, in the middle of the night. The cell moves are initiated and executed with no prior notice to the class members. During the cell move, officers remove one of the class members from his cell and take him to a different floor to undergo an x-ray. Officers then search through the class member’s entire cell and his belongings. The class member’s property is then packed, and he is moved to a different cell in the 400-pod. Several class members in the 400-pod reported that the cells they are moved into are often unsanitary and have not been cleaned before the move, as noted above.²

² Class members in 8 West 400 and their attorneys also report that the visiting booths used for confidential attorney-client meetings are not soundproof. When conducting attorney-client

As discussed in greater detail below, these deprivations are of particular concern because these class members appear to have been placed indefinitely in TSEP status, in violation of the Remedial Plan.

RCCC: As of November 16, 2020, RCCC housed 21 people classified as TSEP (including seven housed in the IOP mental health program) and two classified as administrative segregation.³ (In early January 2021, all the people classified as TSEP or administrative segregation at RCCC were transferred to the Main Jail to make space for quarantine and isolation in response to a COVID-19 outbreak at the RCCC.) Interviews with people on TSEP status at RCCC indicated they are offered more out-of-cell time than those at the Main Jail. They have regular access to an outdoor recreation yard, and their out-of-cell time is provided in a more routine manner, without interruptions based on lockdowns or other factors. But, even still, class members generally report that they receive less than 17 hours out-of-cell time each week. In particular, people on both TSEP and administrative segregation status at RCCC report that they are offered around one to two hours of dayroom time every day, along with two or three hours of outdoor recreation each week, amounting to about ten to 14 hours of out-of-cell time per week. This does not meet the Remedial Plan requirement.

Women classified as General Population Maximum Custody (“GP Max”) at RCCC raised concerns about their conditions of confinement. The Remedial Plan requires the SSO to “review the housing and restrictions of female prisoners classified as high security to ensure that this population is not subject to Segregation conditions of confinement.” Sec. VIII.A.1(c). Notwithstanding this provision, conditions for women classified as GP Max are markedly more restrictive than for other members of the general population. They are generally confined to their cells, unlike people in the other housing units for females at RCCC, who can move freely throughout the dorm. Like people classified as PC, women on GP Max status are prohibited from participating in group rehabilitative, educational, and vocational programs. They report that they generally are permitted out of their cells for an hour in the nighttime to shower and use phones and for an hour or two during the day to

interviews in one visiting booth, class members report that they can hear the conversation happening in the next booth.

³ Unlike the Main Jail, which has implemented the administrative segregation phase system at least in terminology, RCCC still used the basic categories of “TSEP” and “administrative segregation” at the time of reporting.

exercise outside. These conditions resemble those of restrictive housing, in violation of the Remedial Plan.

Women report that they are retained in GP Max status for excessive periods of time, often pursuant to “keep separate” alerts (also called “keep seps”) that require them to be separated from other women housed at the jail due to past conflicts or other interpersonal issues. With relatively few female housing units, some women are classified as GP Max because they have “keep seps” with people in each of the three female GP dorms. These “keep sep” alerts can be placed by any deputy, and no formal process exists for class members to challenge their accuracy or current relevance. The SSO notes that the Classification Unit removes keep sep alerts whether there is no further documentation of the issue “if it is discovered.” An express policy regarding the use and review of keep sep alerts would be advisable.

Several class members housed in the Ramona housing unit also raised concerns about conduct by some custody staff members. In particular, multiple class members said that some deputies refer to them as “nasty bitches” and use other offensive language toward them. One class member reported that a deputy recently told her that she was “a sorry excuse for a human being.” The class members reported this treatment mostly comes from deputies who work the B shift at night. Plaintiffs’ counsel has reported these concerns to Jail leadership, which has indicated it has investigated the matter and provided verbal counseling. Plaintiffs’ counsel will continue to monitor this serious issue.

Class members at RCCC also raised concerns about the conditions in the Protective Custody (“PC”) units. People classified as PC are placed in specialized housing to address potential concerns about their own safety in the general population, not because they pose a heightened risk to others. They generally should not face harsher restrictions with respect to their living conditions due to their PC needs. The Remedial Plan provides that “the County will not operate Protective Custody (PC) units with Segregation-type conditions of confinement. Prisoners placed in Protective Custody shall have the same programs and privileges as general population prisoners, absent exceptional circumstances that are documented.” Sec. VIII.F.2.

Several class members who are classified as PC at RCCC reported concerns about their conditions of confinement. One class member reported that he was able to go outdoors just three times in two weeks. He has no television or tablet in his cell and reports that he spends at least 20 hours per day locked in his cell with little to do. Another class member, who is housed in PC because he dropped out of a gang, reported as follows: “We

are in cells and twice a day each tier is let out for an hour and three times a week we get yard in an enclosed area. The pod itself is small with two skylight windows. . . . Not being able to see outside or the sky tends to drive you crazy.” By contrast, he wrote, people in the general population dorms “have free access to the outdoors most of the day.” He continued: “My question is why we are being treated differently when the GP when our only difference is we chose not to be active gang members?”

The SSO responds that conditions in PC units at RCCC generally are akin to those in the equivalent security levels in the general population housing units. For example, freedom of movement is relatively limited in maximum security units for both PC and GP populations. Those populations live in a cells, without unrestricted access to showers, phones, and other dayroom features. One exception is for medium security populations, where a dorm setting exists for people classified as GP, but not for those classified as PC. Access to programming and privileges for people classified as PC will be a key focus of the second monitoring report.

Training: A key concern with respect to the conditions of confinement in restrictive housing units is inadequate staff training about the requirements of the Remedial Plan. While Jail leadership is knowledgeable about the Remedial Plan, many staff members interviewed by Plaintiffs’ counsel did not appear to know how many hours of out-of-cell time should be provided to people held in the jail and did not demonstrate familiarity with other basic components of the Remedial Plan.

This deficiency is reflected in the SSO’s grievance responses, which routinely fail to cite the correct governing standards. For example, a class member who lives on 8 West filed a grievance in August 2020 about having inadequate time to shower, make legal and personal calls, and order commissary items. The grievance response, signed by both a deputy and a sergeant, states: “You have been allotted more than the 3 hour mandated time” out of cell per week—perhaps referring to the Title 15 requirement that jails provide “a minimum of three hours of exercise distributed over a period of seven days.” Cal. Code Regs, tit. 15 § 1065. This grievance response is misleading and misinformed; the SSO is under a federal court order to provide 17 hours per week of out-of-cell time.

Plaintiffs’ counsel also raised concerns about a grievance response issued in August 2020 in which the SSO stated: “We are working to comply with all aspects of the consent decree, however at this time it is a recommendation.” Again, the grievance response conveys inaccurate information about the nature of the Consent Decree and the SSO’s obligations.

Because jail deputies rotate in and out of the jails and frequently change assignments within the jails, the task of ensuring that they are fully trained in the requirements of the Consent Decree is substantial. It is nonetheless essential to ensure that deputies understand their obligations under the Consent Decree.

B. Classification practices

Classification staff at both jails expressed a commitment to reducing the size of the restrictive housing population, and, as noted, they have made progress to that end. At the Main Jail, the classification sergeant described robust, ongoing efforts to review case factors for every person classified as TSEP in order to determine whether they could safely live and program with at least one other person. The goal is to re-classify these individuals as Administrative Segregation so they can program in small groups and work toward placement in the general population. Classification staff report that they are generally supported by Jail leadership in reducing the number of people living in restrictive housing.

Despite these efforts, the SSO fails to comply with the Remedial Plan's procedural requirements regarding classification. Classification leadership and staff at both jails reported that classification reviews for people in restrictive housing are done in 30-day intervals, but it is a "computer review." The person whose classification is under review does not participate. There is no process to notify the person of the date of their upcoming classification review. There is no process to notify the person of the outcome of their classification review. Classification staff provide no statement of reasons for retention in restrictive housing and no plan or criteria for the person's removal from restrictive housing.

In some cases, classification deputies interview people about classification issues, but generally only in response to written grievances. Even then, there is no systematic process by which classification staff establish or document benchmarks regarding the person's retention in administrative segregation.

Moreover, the grievance responses reviewed by class counsel universally fail to provide adequate information. In one case, a class member grieved his retention in administrative segregation. The grievance response stated the date of the person's next classification review, but failed to provide any reasons why he was in administrative segregation at that time or how he could get out. The class member did not participate in the subsequent classification review and did not receive any information about the outcome of that review. The grievance therefore failed to convey necessary information about the person's placement in administrative segregation.

Unsurprisingly, many people in restrictive housing units report that they do not understand why they are in restrictive housing or what conduct is required for them to be released from restrictive housing. Many expressed frustration, confusion, and hopelessness. Several class members said they do not believe there is anything they could do to be removed from restrictive housing.

By failing to communicate with class members about the reasons for their placement in restrictive housing and the criteria for their removal, the SSO fails to comply with the requirements of the Remedial Plan. It also misses an opportunity to incentivize good conduct among people living in restrictive housing units. As the County's custody expert opined in 2016: "[I]nmates in segregation need to have incentives for positive behavior and need access to programs to help them gain control of their behavior. It is a simple carrot and stick approach." Doc. No. 1-2 at 17.

The SSO is in the process of implementing a new classification system, through ATIMS Jail Management Software, which will allow for certain reforms to the classification system. Jail staff is optimistic about the implementation of ATIMS, which they believe will allow many people in the general population to move to lower classification levels than they have been assigned under the current Northpointe system. Jail staff reported that they anticipate many people who currently are classified as "GP medium" and "GP high" will transition to lower classification levels, which will permit greater programming opportunities and allow more people to transfer to RCCC and vacate scarce space at the Main Jail.

These are important developments, but greater action is needed to bring the Jails' classification practices into compliance with the Remedial Plan. The SSO must develop written policies governing its classification procedures that implement the Remedial Plan. It also must develop and implement training about the requirements of the Remedial Plan so that classification staff understand their obligations.

C. Administrative segregation

Despite progress reducing the restrictive housing population, the SSO remains out of compliance with the administrative segregation provisions of the Remedial Plan. The Remedial Plan is specific about the circumstances under which a person may be placed and retained in administrative segregation. While Jail leadership have taken steps to eliminate the TSEP classification in favor of the "Ad Seg 1" terminology at the Main Jail, the SSO continues to place people in restrictive housing for reasons that do not comport with the Remedial Plan and to retain them there for too long.

The Remedial Plan provides that people can be placed in administrative segregation only under a limited set of circumstances – specifically, participation in a “recent assault and the assaultive behavior involved an assault on staff or visitors, serious injury, use of a weapon, gang removals, or multiple prisoner assaults.” Sec. VIII.E. There is an override process in which the Compliance Commander can authorize the use of administrative segregation for “extraordinary safety risks” that are not captured by recent disciplinary infractions, but that authorization requires a specific process, which is not described or required by any current SSO policy. Sec. VIII.E(c). (Even in those cases, the Remedial Plan expressly limits the duration of retention in administrative segregation.)

Plaintiffs’ counsel’s review of classification files yielded multiple examples of people housed in administrative segregation despite the lack of qualifying criteria. In one case, classification staff reported that a class member was placed in administrative segregation because he was found drunk on a general population floor and used offensive language toward a deputy. In another case, a class member was placed in restrictive housing due to an allegation that he had hit another person in his housing unit. The alleged victim was never located, and the class member was found not guilty of the charge, but nonetheless he was moved to 8 West and placed on TSEP status. In one case, the reason supplied for a class member’s placement in administrative segregation was that “this inmate is a level 3 with CDCR, almost a level 4”—a particularly remarkable and troubling justification for placement in administrative segregation, since being Level 3 in the California Department of Corrections and Rehabilitation (“CDCR”) is not a form of restrictive housing and generally involves vastly more out-of-cell time, access to programming, and freedom of movement as compared to the Jails’ restrictive housing units.

In many cases, the rationale supplied by the SSO for placement and retention in administrative segregation relates to gang affiliation during previously completed terms in the state prison system. For example, the SSO stated that one class member was housed in administrative segregation because he was a “validated Mexican Mafia assoc [sic]” while in the CDCR, though it also notes that “he was never housed in the Security Housing Unit.” SSO records for another person housed in same administrative segregation on 8 West indicate the same rationale. SSO classification records for another class member on 8 West supply the following reason for initial placement in restrictive housing: “prison gang member.”

A senior classification deputy at the Main Jail reported that all people who have been validated by CDCR for affiliation with prison gangs are automatically housed in

administrative segregation for the duration of their placement in SSO custody. Jail leadership later disputed that its policy requires all people with CDCR gang validations to be housed in administrative segregation and reported that this policy no longer exists. Regardless of whether this is a formal policy, the practice of housing people in administrative segregation based on a prior CDCR validation of prison gang affiliation – identified by the County’s neutral classification expert in May 2017 – persists and continues to raise serious concerns. *See* Doc. No. 1-6 at 8.

First, as set forth above, the Remedial Plan requires that placement in restrictive housing be based on recent conduct, not past behavior or affiliation. Second, indefinite placement in restrictive housing violates the Remedial Plan. Moreover, the practice is irrational and obsolete. CDCR itself does not impose such draconian conditions on validated gang affiliates. In the past, CDCR had a practice of sending gang affiliates to the Security Housing Unit for indefinite terms regardless of whether they had violated a prison rule. That practice was abandoned pursuant to litigation, in part due to defects in the gang validation process upon which Sacramento County Jail continues to rely. Now, CDCR only imposes restrictive housing on people with gang validations if they are found guilty of serious offenses. Even then, the terms of restrictive housing are not indefinite. It is unacceptable for the SSO to rely on a CDCR process to impose a harsher and longer penalty than would result from CDCR’s own process.

Concerns regarding the retention of class members in restrictive housing are reflected in the Jails’ grievance responses as well. For example, in one case, someone living in 8 West filed a grievance requesting “to be removed from TSEP.” The SSO’s response, issued in August 2020, states that “you will remain a T-SEP inmate for the duration of your stay at the Sacramento County Main Jail.” This is a troubling response. As noted, Jail leadership has discretion to retain people in administrative segregation beyond the prescribed time limits in extraordinary circumstances. However, this process cannot take place implicitly or informally, but rather must be documented and justified. At present, no policy exists to ensure a process that complies with the Remedial Plan.

D. Use of restrictive housing for people with serious mental illness

Among the most substantial hurdles to compliance with the Remedial Plan is the ongoing use of restrictive housing for people with serious mental health needs. The Remedial Plan expressly prohibits the use of restrictive housing for people with serious

mental illness except in “exceptional and exigent circumstances,” but all parties agree—and medical and custody records demonstrate—that the units continue to house dozens of people with serious mental illness, at a rate that far exceeds this group’s representation across the Jail system.

Indeed, SSO classification staff and floor deputies report that many people in the TSEP classification are there because of “severe psych” needs. Class members and custody staff describe people living in restrictive housing on 8 West who shriek, smear feces, bang on cell doors, and experience extreme delusions and paranoia. Some of them live in restrictive housing while awaiting scarce treatment beds in 2P or the IOP program. Others cycle back and forth between designated mental health units and restrictive housing.

The story of one class member, who was booked into the Main Jail in October 2020, captures this harmful cycle. At the time he was booked into the jail, the patient was identified as having a serious mentally illness and given a diagnosis of schizophrenia. Medical records indicate that he was unkempt, delusional, and had pressured speech. Soon after booking, the class member was transferred to 8 West for restrictive housing on account of an allegation that he fought with another incarcerated person. (The allegation was never substantiated, and no guilty finding resulted.)

Once housed on 8 West, the class member received no group mental health treatment and very limited individual mental health care. All of his mental health contacts were provided at cell-front, across a locked cell door. Despite his known mental health needs and vulnerabilities, he was subject to the same harsh and highly deprived conditions of confinement as everyone else in the unit—no access to direct sunlight or fresh air, extremely limited out-of-cell time, and no social contact with others.

In that setting, the class member decompensated. He refused to take his prescribed psychiatric medications. Medical records indicate that he struggled to attend to personal hygiene and continued to suffer from delusions. Mental health staff referred him for placement in the Intensive Outpatient Program, but there were 39 other people on the waitlist at the time, including several who had been waiting for over two months. In the meantime, the mental health interventions provided to him while he was housed on 8 West were inadequate to address his declining state of mental health.

While housed on 8 West, the patient reported to Plaintiffs’ counsel that he did not know why he was there or what he could do to get out of restrictive housing. He reported that he could not access the phones and was only permitted to shower twice a week. He experienced significant symptoms of mental health decompensation. In January 2021,

deputies documented in an incident report that while the patient was in the dayroom on 8 West one day, he “was going to every other inmate’s cell, kicking vigorously on their doors. He was stating that it was his birthday, and asking them for presents, however, it was not his birthday.” On the same day, the patient also reportedly “took off all his clothes, getting completely naked, and stood on one of the pod tables with his hands on his hips.”

The patient continued to decompensate in restrictive housing to the point of meeting criteria for involuntary psychiatric placement. About two weeks after the dayroom incident, he was transferred to the Jail’s acute psychiatric unit (2P) on account of being gravely disabled and posing a danger to himself. He remained in that unit for eight days before being transferred directly back to the eighth floor as an Ad Seg 1 (TSEP).

After less than three weeks back on 8 West, the patient decompensated to the point of again meeting criteria for involuntary psychiatric placement. He was placed on the waitlist for 2P. He remained in 8 West for five days waiting for an available bed in the acute unit. He was in the acute mental health unit for eight days before being returned directly back to 8 West once again, where he remains to date.

This patient’s case captures the interplay between Jails’ overtaxed mental health program and its restrictive housing practices. It also demonstrates substantial noncompliance with critical components of the Consent Decree.

First, the Remedial Plan expressly states that people with serious mental illness who meet the criteria for a Designated Mental Health Unit (2P, IOP, OPP) will not be placed in segregation (Sec. VIII.D.1). This patient was placed and retained in 8 West despite clear indications of serious mental health needs and despite being on the waitlist for IOP. *See* First Report of Compliance in Mental Health Services Based on Consent Decree, Dr. Mary Perrien, Doc. No. 136-2 (Jan. 20, 2021) at 39-40 (noting that 58% of the people in the Jails’ restrictive housing units have serious mental illness notwithstanding the Remedial Plan provisions prohibiting their placement in that setting).

Second, the Remedial Plan requires that people with serious mental illness who are placed in restrictive housing “shall be assessed by a qualified mental health professional within 24 hours of placement to determine whether such placement is contraindicated.” Sec. VIII.C.1. It requires that “[a]ny decision to place prisoners with Serious Mental Illness in Segregation shall include the input of a qualified mental health professional who has conducted a clinical evaluation of the prisoner in a private and confidential setting.” *Id.* There is no indication that mental health staff assessed this patient for exclusion from

segregation, despite the express recognition that he has serious mental health needs and despite medical records documenting his recent and marked decompensation in that setting.

Third, the Remedial Plan provides that in the “rare” case where someone with serious mental illness is placed in segregation because the person “presents an immediate danger or significant disruption to the therapeutic milieu, and there is no reasonable alternative,” a series of protective measures must be implemented to ensure that the conditions of confinement do not cause harm. In particular, the patient must receive commensurate out-of-cell time and programming as provided for patients in IOP and OPP (ten hours per week of group treatment and seven hours per week of unstructured out-of-cell time) and a daily opportunity to shower. Sec. VIII.D.2(a-b). Here, the patient was placed in restrictive housing without a documented finding that he presented “an immediate danger or significant disruption.” Once there, he was afforded none of the protections set forth in the Remedial Plan. He was not offered group treatment and reported getting out of his cell just twice a week. He also did not receive enhanced confidential clinical contacts to document “the effect of the current placement on his or her mental health and determine whether the prisoner has decompensated or is at risk of decompensation.” Sec. VIII.D.2(b).

Fourth, the Remedial Plan requires that if someone does “suffer[] deterioration in his mental health” while in restrictive housing, mental health staff is supposed to assess the patient and recommend appropriate housing. Sec. VIII.D.3. This patient decompensated in restrictive housing to the point of warranting acute psychiatric unit placement on account of being gravely disabled. Yet there is no indication that JPS assessed him for alternative appropriate housing. This likely is because there simply is not enough “appropriate housing” available in the Jails for the patients who require it. *See* Mental Health Report, Doc. No. 136-2 at 39 (observing waitlists for all levels of mental health care and “insufficient space to provide [necessary mental health] treatment”); *id.* (concluding that additional IOP beds are necessary in order to move people with serious mental illness “out of restrictive housing and into treatment with a goal of a less restrictive environment as treatment progresses”).

This class member’s experience is not unique. One SSO staff member reported in December 2020 that nine of the eleven TSEPs housed on 8 West 100 pod and seven of the eight TSEPs housed on 8 West 200 pod are in TSEP because they are “very psych.” The staff member reported that these people are housed as TSEPs on the eighth floor (and also on 3 East) because there simply is not enough space in IOP or other mental health programs for them. Another SSO staff member estimated that at any given time, ten to twenty patients cycle between restrictive housing on 8 West and the inpatient psychiatric unit. The staff

member described this population as “frequent fliers” and spoke of the challenges of meeting their considerable mental health needs in a unit designed for restriction and separation.

This problem is serious and long-standing. JPS staff and custody staff agree that the activation of IOP beds has been a primary factor in the reduction of the TSEP population. IOP beds provide a non-restricted setting for people with acute mental health needs to receive enhanced mental health treatment and, with the assistance of mental health providers, to transition to lower custody levels. JPS informed Plaintiffs’ counsel that there are currently waitlists for every level of mental health care—acute care (2P), IOP, and OPP. In other words, there are not enough treatment spaces or resources to provide humane and appropriate conditions for people with mental health needs in the Jails. In the absence of these resources, people decompensate in restrictive housing and suffer needlessly.

Five years since the onset of remedial negotiations focused in large part on the conditions of confinement for people with serious mental health needs, it is clear that the County cannot come into compliance with the Remedial Plan without reducing the population of people with serious mental illness in the Jails and increasing the resources within the Jail for those who remain.

E. Disciplinary segregation

The Remedial Plan sets forth a number of provisions regarding disciplinary segregation, including with respect to the process for placement and limits on the duration of placement. Those provisions will be addressed in future monitoring reports. However, several areas of noncompliance emerged from this review.

Mental health input into the disciplinary process: Under the Remedial Plan, mental health staff must assess whether there is “a possibility of a nexus between the inmate’s mental illness/symptoms and/or developmental disability/functioning deficits and the behavior(s)” at issue in any disciplinary allegation. *See* Sec. V.A-C; *see also* Doc. No. 85-1 at 96. Mental health staff also must identify what, if any, penalties “may have an adverse impact on inmate’s mental health condition or functioning” so that if the hearing officer makes a guilty finding, the officer can impose sanctions that are consistent with the patient’s mental health needs and treatment plan. *Id.* The intention of these provisions is to prevent people from being disciplined for manifestations of their mental illnesses and to prevent hearing officers from imposing disciplinary measures that will harm class members or undermine their mental health treatment plans.

Plaintiffs' counsel identified incidents in which deputies appropriately chose not to issue discipline when it appeared that a person's actions were related to their mental health symptoms. However, JPS staff and SSO staff confirmed that the SSO currently does not comply with the remedial provisions requiring mental health involvement in the disciplinary process. There currently is no process or practice in place to solicit mental health input into the disciplinary system. Although hearing officers may elect to mitigate sanctions based on their observations of a person's mental health needs, no policy requires them to do so or informs them how they should incorporate mental health input into the disciplinary process. *See* Mental Health Report, Doc. No. 136-2 at 49-51 (finding noncompliance with Remedial Plan provisions regarding discipline). This failure is of particular concern because people with serious mental illness are overrepresented in restrictive housing. The need for mental health input into the disciplinary system was a core finding of the County's retained expert on restrictive housing in 2016, *see* Doc. No. 1-2 at 26. The Remedial Plan attaches a carefully drafted and extensively negotiated form, JPS – Rules Violation Mental Health Review (Exhibit A-3), which is foundational to reaching compliance with several provisions of the Remedial Plan.

Significant efforts in this area must be made during the next monitoring period, including as part of efforts to reduce the disproportionately high number of people with serious mental illness in restrictive housing units.

Imposition of excessive discipline: The imposition of disciplinary sanctions was not a core area of inquiry for this report, but Plaintiffs' counsel became aware of a number of concerning situations recent months that raise questions about the overuse of disciplinary sanctions and restrictive housing placements in the Jails.

In one case, in July 2020, a class member at RCCC classified as medium security reportedly made mocking comments about deputies wearing face masks while officials from another agency were touring the facility. According to the SSO's incident report, the class member said, "We're dogs in cages. They won't provide us masks." Other people in the housing unit began "making similar comments" and some "began to cough, as if to make a mockery of the corona virus." The class member was charged with "inciting a riot." He was found guilty and placed on a ten-day term of disciplinary segregation. Late that same night, the class member became upset about being housed overnight in a cell in the Medical Housing Unit in the wake of the first incident, and reportedly made threats and used profanity toward staff. The class member was found guilty of making criminal threats and

was assessed 10 additional days of disciplinary segregation, to run consecutively with the first 10-day term, for total disciplinary term of 20 days.

This series of events runs counter to the letter and spirit of the Remedial Plan provisions requiring that “no Disciplinary Segregation term for non-violent rules violations will exceed 15 days” and that a policy be implemented “to limit placements in Disciplinary Segregation conditions to no more than 15 days, absent cases of serious violations stemming from distinct incidents and with Watch Commander-level approval.” Sec. VIII.G(7) & (8).

The class member’s term ultimately was reduced to 15 days after Plaintiffs’ counsel raised concerns about the excessive nature of the sanction and the failure to review mental health considerations in the disciplinary process. Troublingly, however, when the class member’s 15-day disciplinary segregation term ended, he was placed in a maximum-security unit rather than being returned to his medium-security housing unit. For the class member, conditions in the post-disciplinary segregation maximum security unit were much more similar to disciplinary segregation conditions than the medium-security housing unit he had been in previously. His mental health deteriorated in the ensuing months he was held in maximum security, leading to more behavioral issues and further discipline.

Plaintiffs’ counsel’s investigation revealed that this sort of maximum-security placement following disciplinary terms is in many cases automatic. This practice should be reviewed and modified, consistent with the Remedial Plan requirements to reduce the use and misuse of restrictive housing conditions and provide placements in the least restrictive setting appropriate based on individualized assessments.

In another case, in August 2020, a class member at RCCC was assessed 15 days of disciplinary segregation for a dispute with a deputy that started when the class member refused to return an extra thermal shirt. The situation escalated when the deputy opened the closed cell door and tried to grab the shirt from the class member. According to the SSO incident report, the class member “balled his fists and took a bladed stance,” which was followed by the deputy engaging in use of force taking the class member to the ground. Plaintiffs’ counsel, upon review of the video of the incident, found this use of force to be unnecessary and avoidable. There was no documented mental health input into the disciplinary sanction that resulted from the incident (for “Assault, Cursing, and Insubordination”). Given the context of this incident, it makes little sense that the incident would result in the maximum disciplinary segregation term permitted by the Consent Decree and suggests the need for greater attention to this area.

The use of discipline and disciplinary segregation will be reviewed more systemically in the next monitoring period.

Minimum property allowances for people in disciplinary segregation: The Remedial Plan requires that people “in Disciplinary Segregation shall, absent an individualized assessment of security risk that is documented be provided at least one book (which prisoners may regularly exchange), legal documents, hygiene materials, legal phone calls, and legal visits.” VIII.G.6. The SSO’s current practice in the Main Jail is to confine people to their living quarters for disciplinary terms rather than transferring them to specific disciplinary units, except in exceptional cases. This practice minimizes movement within the Jail and limits possible COVID-19 transmission. Because they remain in their own cells, most people are able to retain their personal property during their duration of their placement in disciplinary segregation. However, a sergeant at the Main Jail reported to Plaintiffs’ counsel that people are not entitled to books other than the Bible when they are in disciplinary segregation because Title 15 does not require the SSO to provide a book. This statement suggests that the sergeant is not aware of or has not been trained on the requirements of the Remedial Plan, which supersede those of Title 15 and squarely govern this issue.

F. The Court’s September 4, 2020 Order

As noted in the executive summary, seven class members wrote to the Court on September 3, 2020 with concerns about the conditions in the restrictive housing units at the Main Jail. In particular, they raised concerns about lack of out-of-cell time, lack of exercise, lack of educational and rehabilitate programming, and noncompliance with the notice and procedural requirements regarding placement and retention in administrative segregation. Doc. No. 123. Those subjects are addressed in turn in this report.

With respect to the specific custody status of each writer, one has been released from custody and two have been reclassified and re-housed in the Jail’s general population housing units. The remaining four reportedly have declined to be moved to general population settings and remain in administrative segregation on 8 West at the Main Jail.

V. Conclusion

Despite areas of improvement, the SSO faces substantial obstacles to compliance with the Remedial Plan’s provisions regarding restrictive housing. Meaningful progress toward compliance will require concerted effort by the SSO to develop and implement

policies that reflect the requirements of the Remedial Plan. It will also require a broader review of the housing and treatment of people with serious mental illness in the Jails' custody. Staffing shortages and physical plant limitations further serve to undermine progress towards compliance on these topics. These deficiencies must be addressed.

As documented in the Consent Decree nearly two years ago:

The parties agree that the custodial and health care staff must be increased to meet minimal constitutional and statutory standards. Presently, there are insufficient deputies to supervise out-of-cell activities for people in the general population and administrative segregation, and to provide security for health-related tasks. The parties agree that reduction in jail population is a cost-effective means to achieve constitutional and statutory standards.

Sec. II.B. The parties further "agree[d] that population reduction of the jails will facilitate compliance with this Remedial Plan." Sec. II.B.1. The court-approved Consent Decree provides that "[i]f through the monitoring process it is determined that the County is not fulfilling the provisions of this Remedial Plan due to staffing deficiencies, the parties will meet and confer regarding what steps to take to reduce the population of the jail, including available resources to facilitate population reduction." Sec. II.B.2.

Ongoing shortages of space and staffing continue to pose serious obstacles to compliance with the restrictive housing provisions of the Remedial Plan. Given the scope and depth of the challenges facing the County in complying with the Remedial Plan, it is Plaintiffs' counsel's position that discussions about durable population reduction are warranted and in the interest of all parties.

VI. Summary of Compliance with Restrictive Housing Remedial Plan

Remedial Plan Sec. VIII.A	
1	Partial compliance
2	Partial compliance
3	Not assessed
Sec. VIII.B	
1	Partial compliance
2	Noncompliance
3	Partial compliance
4	Not assessed
5	Partial compliance
6	Not assessed
Sec. VIII.C	
1-3	Not assessed – see First Report of Compliance in Mental Health Services Based on Consent Decree, Doc. No. 136-1
Sec. VIII.D	
1-3	Not assessed – see First Report of Compliance in Mental Health Services Based on Consent Decree, Doc. No. 136-1
Sec. VIII.E	
1	Partial compliance
2	Noncompliance
3	Noncompliance
Sec. VIII.F	
1-5	Not assessed
Sec. VIII.G	
1-5	Not assessed
6	Partial compliance
7-11	Not assessed
Sec. VIII.H	
1-2	Not assessed
Sec. VIII.I	
1	Substantial compliance
Sec. VIII.J	
1-3	Not assessed