



# Agreement Between County of Orange and Disability Rights California

## Expert Monitor's Report (First Round)

### Elimination of Harmful Restrictive Housing and Disciplinary Practices

On-Site Review: August 15-19, 2022

**Produced by:**

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## I. Introduction

On March 22, 2018, Disability Rights California (DRC) notified the County of Orange of its intent to monitor Orange County Jail facilities, as consistent with its federal and state law authority to monitor facilities with respect to the rights and treatment of individuals in California who have disabilities.

DRC and its authorized agents conducted facility monitoring tours of the Jail on May 10-11, 2018, June 11, 2018, and January 30-31, 2019. DRC's monitoring included (1) interviews with leadership and staff from the Orange County Sheriff's Department (OCSD) and Correctional Health Services (CHS), (2) interviews and other communications with a substantial number of people in custody at the Jail during and outside of the above-mentioned monitoring tours, and (3) review and substantive analysis of relevant records, data, and policies.

On March 8, 2019, DRC issued findings from its monitoring investigation of Orange County Jail facilities, including issues related to the rights of incarcerated people with disabilities, the treatment of incarcerated people with mental health care needs, the use of restrictive housing, and the treatment of incarcerated people who identify as LGBTQ.

Following the issuance of DRC's findings, the Parties engaged in discussions regarding a process to address the findings without the need for adversarial litigation.

On November 21, 2019, the Parties executed a Negotiations Agreement, which provided a procedural framework for resolving the disputed claims.

Consistent with the Parties' Negotiations Agreement, the Parties mutually agreed for Sabot Consulting to serve as a neutral expert (1) to conduct a comprehensive, independent review of policies, procedures, and practices related to the topics set forth in the Settlement Agreement, and (2) to complete a report with findings and recommendations to address any identified deficiencies. The County retained Sabot Consulting to serve as the neutral expert pursuant to an agreement executed on January 25, 2020 (amended on February 22, 2020 and August 1, 2022).

Sabot Consulting's team of experts conducted site visits at the Jail during the months of March, May, and June 2020. The assessment included interviews with incarcerated persons, sworn staff, and non-sworn staff working at the Jail, as well as an extensive policy and data review.

On March 19, 2021, Sabot Consulting submitted to the Parties its Final Report, Orange County Sheriff's Department Custody Operations: Americans with Disabilities Act, Restrictive Housing, LGBTQI, and Healthcare Program Assessment.

Consistent with the Parties' Negotiations Agreement, the Parties then engaged in careful negotiations of a Remedial Plan to address the findings of Sabot Consulting's Assessment

Report and to implement its recommendations, as appropriate. Negotiations were substantially informed by DRC's ongoing review of relevant records, data, and other materials, information-sharing with the County, and communication with people incarcerated at the Jail.

While Sabot Consulting's assessment and the Parties' negotiations were necessarily slowed by the circumstances of the COVID pandemic, the Parties' negotiations have proceeded as expeditiously as possible towards a resolution and formal agreement. In consultation with DRC and its authorized agents, the County has already begun to implement several of Sabot Consulting's recommendations and related remedial actions during the period of negotiations.

The County agreed to implement the provisions of the Remedial Plan, subject to monitoring by Sabot Consulting and by DRC with its authorized agents and further discussions between the Parties.

The County agreed to develop and implement appropriate and adequate plans, policies, and practices to ensure implementation of and compliance with the Remedial Plan. During the period of monitoring pursuant to the Parties' Agreement, the County is required to submit plans or policies to DRC for review and comment.

DRC's March 2019 findings letter and Sabot Consulting's Assessment Report each identified concerns regarding the treatment of incarcerated people with mental health disabilities at the Jail.

- Subsequent to those findings, the County has taken and continues to take steps to enhance Jail mental health care programming.
- Certain mental health-related issues are addressed in the Remedial Plan, including as related to disability-related accommodations and program access, reforms to restrictive housing/isolation practices, and reforms to disciplinary practices as they apply to people with mental health or other disabilities.
- The Parties agree that the Jail's mental health treatment programming requires further development to meet the needs of the population. The Parties further acknowledge that DRC and its authorized agents will continue to monitor the treatment of people with mental health disabilities at the Jail, including through monitoring processes.
- If DRC identifies concerns with respect to the care and treatment of people with mental health disabilities, it will raise those concerns with the County and confer in good faith as to necessary remedial action to address any such problems. If DRC finds that such concerns are not adequately addressed, it will so inform the County and may take any necessary action, including by any legal means, to protect the rights of people with mental health disabilities.

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## II. The Expert's Monitoring Role and Monitoring Activities

The Parties previously agreed to a process and framework for monitoring the implementation of the Remedial Plan. The Parties also agreed in the Negotiations Agreement and continue to agree that Sabot Consulting will serve as the neutral Expert for purposes of monitoring the Remedial Plan implementation.

The Expert is required to complete a comprehensive review (Compliance Review) of the County's implementation of the components of the Remedial Plan within 180 days of the execution of the Agreement and conduct a Compliance Review every 180 days thereafter during the term of the Agreement. The Expert is required to review whether the County has adequately implemented each component of the Remedial Plan and is required to identify which components, if any, are not yet adequately implemented.

As part of the Compliance Review, the Expert is required to issue a draft report (Compliance Report) that states their opinion as to whether the County has adequately implemented the components of the Remedial Plan and which components, if any, are not yet adequately implemented. Within fifteen (15) days following the issuance of a draft Compliance Report, the Parties may provide written responses to the draft Compliance Report. If either Party submits a written response to the draft Compliance Report, the Expert will consider the response(s) and issue a final report within fifteen (15) days. The final report will address any written responses submitted by the Parties. If neither Party submits a written response to the draft report, the Expert's draft report will become the final report.

Within 15 days of the issuance of the Expert's final Compliance Report, the Parties will meet and confer to discuss the Expert's findings and recommendations. Within 30 days of the issuance of the final Compliance Report that includes a finding that the County has not adequately implemented one or more components of the Remedial Plan, the County shall develop a proposed plan that identifies the actions it will take to address the Expert's findings (Action Plan). The Parties will then have 30 days to agree upon the County's proposed Action Plan or negotiate a revised Action Plan.

If the Expert issues two successive Compliance Reports finding that the County has adequately implemented the same component of the Remedial Plan, such a finding will result in a suspension of monitoring by the Expert of the corresponding component. The Expert may, however, continue to review whether the County has adequately implemented a component for which monitoring has been suspended pursuant to this provision if such review is necessary for determining whether the County has adequately implemented other components of the Remedial Plan for which monitoring has not been suspended pursuant to this provision. If, during the term of the Agreement, DRC forms the good faith belief that the County is no longer adequately implementing a component of the Remedial Plan for which the Expert had suspended monitoring pursuant to this provision, DRC shall promptly notify the County in writing and present a summary of the evidence upon which such a belief is based. Within 30 days thereafter, the County shall serve a written response stating whether it agrees or disagrees with DRC's position. In the event that the County agrees, monitoring

by the Expert and DRC pursuant to this Agreement shall resume with respect to the Remedial Plan component(s) at issue. In the event the County disagrees, the Parties shall present to the Expert in writing their positions. The Expert will, within 30 days, issue a written decision regarding whether to resume monitoring of the Remedial Plan component(s) at issue.

## **B. Monitoring Process**

In each Compliance Report, the Expert is required to identify whether the County has adequately implemented each Remedial Plan provision. The Expert is required to make the findings utilizing the following definitions:

**Adequately Implemented:** Implementation of all or most components of the relevant Remedial Plan provision, and no significant work remains to accomplish the goal of that provision.

**Partially Implemented:** Implementation of some components of the relevant Remedial Plan provision and significant work remains to reach adequate implementation.

**Not Implemented:** No implementation of most or all the components of the relevant Remedial Plan provision, and significant work remains to reach partial implementation.

**Un-ratable:** Used where the Expert has not been provided data or other relevant material necessary to assess implementation, or factual circumstances during the monitoring period, making it impossible for a meaningful review to occur at the present time.

**Not Assessed:** Used where the Expert has not assessed implementation with a particular provision during a monitoring period. This designation should be used only where circumstances make it infeasible for the Expert to complete the assessment during the monitoring period.

**Monitoring Suspended Based on Previous Findings of Compliance:** Used where two previous successive Compliance Reports have found that the provision has been adequately implemented.

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### III. Executive Summary

This is the first Expert Monitor Review to measure Orange County's compliance with the Settlement Agreement which addresses related mandates, including:

- I. Systemwide Increase of Minimum Out-of-Cell Time.
- II. Closure of Disciplinary Isolation (DI) Cells and Central Men's Sheltered Living Cells to End Housing of People in Areas of Extreme Sensory Deprivation and Lack of Programming Space.
- III. Creation of Special Management Unit (SMU) Status.
- IV. Prohibition on Discipline for Behaviors That Are Related to Mental Health or Other Disability, Prohibition on Sanctions That Pose Risk of Serious Harm.

The initial round of monitoring focused on the Theo Lacy Facility (TLF), Central Men's Jail (CMJ), Central Women's Jail/Men's Annex (CWJ), and the Intake Release Center & Transportation (IRC). The on-site Monitoring Review was conducted from August 15-19, 2022. The Monitoring Review included a review of pre-monitoring documents produced by the County of Orange (OC); on-site observations; interviews of sworn and non-sworn personnel (e.g., housing deputies, HCA CHS healthcare staff (medical and mental health) classification staff; and interviews of incarcerated persons housed at the OC jails).

An entrance meeting was conducted with representatives from the County of Orange (jail administration, HCA CHS staff, and representatives from the OC jails divisions/disciplines, and staff from the county counsel's office). DRC representatives were also present during the entrance meeting and during portions of the monitoring tour. An exit meeting was conducted via Zoom on August 25, 2022, with representatives from the County of Orange (jail administration and staff from the county counsel's office). DRC was also present during the exit conference.

The Expert would like to thank all OC jail staff for their assistance in facilitating access to the jails and coordinating the staff and incarcerated person interviews and the production of the pre-monitoring documents. The Expert found that staff were open and transparent in their responses during the staff interviews.

The Expert recognizes that the OC jails have been working under challenging conditions during the COVID-19 pandemic, while striving to obtain compliance with the Settlement Agreement and the applicable county policies and procedures.

The Expert finds that some of the provisions as set forth in the Settlement Agreement (and local policies/procedures) have been implemented. However, the Expert finds that more information and evidence is needed to make a determination of compliance for some of the required elements. A more thorough assessment will be made in future monitoring once policies/procedures are developed and implemented, proof of practice documentation (in various areas) is provided, relevant training material is developed and implemented. The

Expert is confident that once related policies, procedures, and training is developed and implemented staff will be better informed in an understanding of Settlement Agreement requirements and how that correlates to their respective job duties. As outlined in this report, there are requirements of the Settlement Agreement that are addressed in OCSD and/or HCA CHS policies, but other areas are not addressed, or the policies are in the development stage.

As this was the initial monitoring tour, all elements of the Settlement Agreement were evaluated for compliance as the County strives to achieve (and maintain) “Adequately Implemented” status in the rated areas. However, in this early juncture, the Expert is pointing out some specific areas the County must focus on in order to ensure the incarcerated persons are provided the required minimum out-of-cell time (dayroom and exercise/recreation), dayrooms and recreation yards are available for use from 0600-2300, document the provision/refusals of dayroom and recreation yard for each incarcerated person, offer additional dayroom and recreation yard when availability of dayrooms and recreation yard exists, creation of SMU status, and creation and implementation of policies and procedures for staff to make a meaningful consideration of the relationship of the relationship of disabled (mental health, intellectual/developmental) behavior and the efficacy of the disciplinary measures versus alternative interventions and the impact of the disciplinary measures on the health and well-being of the incarcerated persons with disabilities.

The Expert notes that the County has adequately implemented the following RP requirements:

- Providing incarcerated person access to toilet facilities during their dayroom time.
- Rotating the dayroom opportunity times daily.
- Documenting exigent circumstances, or when an incarcerated person is at court or an off-site medical appointment during their scheduled dayroom/recreation yard time.
- Consistent with safety and security needs, maximizing opportunities for incarcerated persons in celled housing to interact with others during out-of-cell time.
- Ensuring incarcerated persons are offered some opportunities for out-of-cell time during normal daylight hours each week.
- Closure of the DI cells in the CMJ, IRC, TLF and CWJ.
- Designation of a supervisory-level Disciplinary Hearing Officer for each OC jail facility.

The Expert also makes the following recommendations:

- The County must consistently provide the required three (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week.
- Ensure staff log sufficient information for the Expert to determine if the incarcerated persons are being provided the required daily three (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week.
- Ensure the logs reflect the incarcerated person identifiers (name and booking number), for cases where there are multiple incarcerated persons in a dorm/tank and the incarcerated person accepts and/or refuses dayroom.



- Ensure the dayrooms are consistently operating during the hours of 0600 through 2300.
- Ensure additional dayroom time beyond the three (3) hours per day is offered when the dayrooms are available (i.e., during the hours of 0600 through 2300).
- Ensure staff consistently provide the required three (3) hours minimum per week of outdoor exercise and/or recreation.
- Ensure staff log sufficient information for the Expert to determine if the incarcerated persons are being provided the required three (3) hours minimum per week of outdoor exercise and/or recreation.
- Ensure the logs reflect the incarcerated person identifiers (name and booking number) for cases where multiple incarcerated persons were offered and provided outdoor/exercise and/or recreation.
- Ensure that the recreation yards are available and in use from the hours of 0600 to 2300.
- Ensure that additional outdoor exercise and/or recreation time beyond the three (3) hours per week are offered and provided as scheduling and classification needs allow.
- Ensure that the outdoor space adjacent to the Theo Lacy Barracks (the “Green Sector”), is consistently in use by incarcerated people during daylight hours, except in cases of emergency and as necessary for particular events related to the safety and security of the institution.
- Ensure the recreation logs include documentation of the reasons that precluded the provision of the minimum outdoor time in a given week.
- Ensure the policies and procedures include the requirement for staff to accommodate individual needs regarding the time of day for out-of-cell time (e.g., for people with disabilities impacting fatigue, on sleep medications, etc.).
- Ensure supervisory staff conduct and document electronic audits at least weekly to ensure that OCSD is offering the required out-of-cell time consistent with the RP provisions.
- Ensure the electronic system documents and tracks the amount of out-of-cell time that each person in custody is offered and receives. The tracking system must have the capability/functionality to track the following:
  - Dayroom offered for every incarcerated person (date and time including weekly totals).
  - Dayroom provided for every incarcerated person (date and time including weekly totals).
  - Dayroom refusals for every incarcerated person (date and time including weekly totals).
  - Cases of emergent security circumstances (count, searches, and lockdowns) where the dayrooms were not open.
  - Cases where the incarcerated person is at court or an off-site medical appointment.
  - Scheduled program participation in the dayroom.

- Recreation yard offered for every incarcerated person (date and time including weekly totals).
- Recreation yard provided for every incarcerated person (date and time including weekly totals).
- Recreation yard refusals for every incarcerated person (date and time including weekly totals).
- Cases related to exigent circumstances or inclement weather that precludes the provision of the minimum outdoor time in a given week.
- Restriction of dayroom and recreation yard access related to infectious disease control.
- Ensure staff make a referral to CHS (urgent or higher) for assessment and appropriate clinical follow-up for cases where an incarcerated person refuses out-of-cell time repeatedly (e.g., more than 3 times in one week) and the reason for such refusals may be related to their mental health, medical, or disability status.
- Finalize the SMU policies and procedures and forms and activate the SMU status/program.
- Ensure the OCSD and CHS policies and procedures are revised to include the requirement for staff to conduct a meaningful consideration of the relationship of each person's behavior to any mental health disability or Intellectual/Developmental Disability, the efficacy of disciplinary measures versus alternative interventions, and the impact of disciplinary measures on the health and well-being of incarcerated people with disabilities.
- Ensure that OCSD and CHS provide staff assistants during the disciplinary hearing process for people with mental health or intellectual disabilities.
- Ensure the provision of effective communication and necessary assistance to people with disabilities at all stages of the disciplinary process.
- Ensure the Disciplinary Hearing Officer checks the ADA Tracking System and ensure provision of reasonable accommodations and effective communication during the disciplinary process.
- Ensure CHS designates a supervisory-level clinician for each jail facility, who shall be responsible for ensuring consistency in disciplinary practices and procedures.

The Expert's report identifies areas deemed as Adequately Implemented, Partially Implemented, Not Implemented, Unratable and Not Assessed. The areas deemed as Unratable are generally due to a lack of implementation and/or a lack of policy/procedures and/or other supporting documentation.

The following reflects the overall ratings given for the 23 areas rated:

- Adequately Implemented - Six (6)
- Partially Implemented - Five (5)
- Not Implemented - Twelve (12)
- Un-ratable - Zero (0)
- Not Assessed - Zero (0)

- Monitoring Suspended Based on Previous Findings of Compliance – Zero (0)

It is the Expert's belief that as the County implements vital components of the Settlement Agreement, including those outlined in this report, the areas found other than Adequately Implemented will progress to an Adequately Implemented rating.

This report details the pre-monitoring tour document review, on-site monitoring, and staff and incarcerated person interviews and also includes findings and recommendations/actions the County must make to move towards meeting the mandates of the Settlement Agreement.

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## IV. Findings

### A. Systemwide Increase Of Minimum Out-Of-Cell Time (Section I)

- A. *It is the intent of OCSD and CHS to provide as much out-of-cell time and programming to the incarcerated population as possible, consistent with security, classification, and operational needs.*
- B. *Absent exigent circumstances or exigent security concerns that are documented, the County shall offer each person in custody who is not housed in the Special Management Unit a minimum of twenty-four (24) hours out of their cell each week, as follows:*
1. *At least (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Under normal circumstances, inmates will be afforded the opportunity to use the dayroom for a minimum of three hours per day, unless specific and articulable reasons exist for a shorter time period.”

The Expert recognizes that, at times, COVID-19 impacted the ability of the County to provide the required three (3) hours per day of dayroom. This was due to the need for the OCSD to mitigate the effects of potentially spreading the virus.

The County produced the following OCSD Dayroom Logs:

- CMJ (Mods A, B, C, D, E, F, and O) for the Months of March 2022 to June 2022 CWJ (Mod P and Second Floor) for the Months of March 2022 to June 2022
- IRC (Mods J, K, L, M, and N) for the Months of March 2022 to June 2022
- TLF (Mods AE Barracks, F Barracks, G Barracks, H Barracks, Mods I, K, L, M, N, O, P, Q, and R)

The County also produced the OCJ Housing Tables for the TLF, CMJ, CWJ, and the IRC. The Expert notes that in some of the housing locations, which are open dorms/tanks, the incarcerated persons have access to dayroom/out-of-cell activities unless they are confined to their bunks. These housing locations include:

- TLF
  - Mod J Sectors 10-12
  - Mod O Sector 37 – GP Dorm
  - A/E Barracks
  - F Barracks
  - G Barracks
  - H Barracks

- CMJ
  - Module A Tanks 1, 2, 5, and 6
  - Module B Tanks 7-10 (all Tanks)
  - Module C Tanks 11, 12, 15, and 16
  - Module D Tanks 17, 18, 21, and 22
  - Module E Tanks 23-26 (all Tanks)
  - Module F Tanks 27, 28, 31, and 32
  - Module O Ward C and D
  - Module R Tanks 4 and 5
- CWJ
  - Module G Tanks 1-4 (all Tanks)
  - Module H Tanks 5-8 (all Tanks)
- IRC
  - Module J Sector 3

The Expert interviewed 37 incarcerated persons. Twenty (20) of the 37 incarcerated persons were housed in celled units: seven (7) reported they are provided 3 hours of (out-of-cell time) dayroom per day, while 13 reported they are not provided the required 3-hours of (out-of-cell time) dayroom per day. Seventeen (17) were housed in a dorm/tank with access to out-of-cell activities during their programming time.

Summarized below are the twenty (20) incarcerated persons who reported they were *not* provided the required 3 hours of dayroom per day:

Note: For clarity, "offered" is synonymous with "provided." For adequate out-of-cell time to be "provided," it must be offered in a meaningful way. Specifically, If a person is not "receiving" sufficient out-of-cell time, the County has responsibilities to (1) ensure the person does not require accommodations that will allow them to participate in the activities, and (2) contact CHS if a person may be refusing out-of-cell time due to an unmet MH, Medical, or ADA need.

#### IRC

- Mod K – Arrived 8/13/22; no dayroom offered
- Mod K – Arrived 1 year ago, dayroom provided 45 minutes a day
- Mod L – Arrived 2 months ago, dayroom provided 10 minutes a day
- Mod L – Arrived 1 year ago, dayroom provided 1 ½ hours a day
- Mod L – Arrived 5/16/22, dayroom provided 1 to 1 ½ hours a day

#### CMJ

- Mod O SL – Arrived 11/20/18, dayroom provided 1 to 1 ½ hours a day
- Mod O SL – Arrived 7/22, dayroom provided 2 hours a day
- Mod O SL – Arrived 2 months ago, dayroom provided 1 to 2 hours a day

#### TLF

- Mod O - Arrived 3 years ago; no dayroom offered
- Mod O – Arrived 2 years ago, dayroom provided 1 to 3 hours a day
- Mod O - Arrived 8/9/22; no dayroom offered
- Mod O – Arrived 3/9/22, dayroom provided 1 to 1 ½ hours a day
- Mod M – Arrived 8/11/22, dayroom provided 20 to 30 minutes a day

The Expert was not able to refute or confirm these claims.

The Expert also reviewed a sampling of the logs. The findings are summarized below:

- CMJ Mod A 3/3/22
  - There are 14 cells in tank #3; the log does not reflect whether cells 1, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14 were offered three (3) hours of out-of-cell time (dayroom).
  - There are 14 cells in tank #4; the log does not reflect whether cells 2, 4, 5, 6, 8, 9, 11, 12, 13, and 14 were offered dayroom.
  - All incarcerated persons reflected on the log were provided the required three (3) hours of out-of-cell time (dayroom).
    - The County reports “All cells identified as “the log does not reflect cells were offered or provided three (3) hours of out-of-cell time” were vacant except Tank 4, cell 6, which was offered and refused per the log.” However, the Activity Log reflects incarcerated persons were housed in Tanks 1, 2, 5 & 6 as the Activity Log reflects these Tanks were FED.
- CMJ Mod A 4/20/22
  - There are 14 cells in tank #3; the log does not reflect whether cells 4, and 6-14 were offered three (3) hours of out-of-cell time (dayroom).
  - There are 14 cells in tank #4; the log does not reflect whether cells 2, 3, 4, 5, 6, 8, 12, 13, and 14 were offered three (3) hours of out-of-cell time (dayroom).
  - All incarcerated persons who are reflected on the log were provided the required three (3) hours of out-of-cell time (dayroom).
    - The County reports, “All cells identified as “the log does not reflect cells were offered or provided three (3) hours of out-of-cell time” were vacant.” However, the Activity Log reflects incarcerated persons were housed in Tanks 1, 2, 3 and 4 as the Activity Log reflects Hot Trays Distributed to Tanks 1, 2, 3, 4.
- CMJ Mod A 5/23/22

- There are 14 cells in tank #3; however, the log does not reflect whether cells 2, 5-9, and 11-14 were offered three (3) hours of out-of-cell time (dayroom).
- There are 14 cells in tank #4; however, the log does not reflect whether cells 3, 4, 6, 8, and 12-14 were offered three (3) hours of out-of-cell time (dayroom).
- One (1) incarcerated person who are reflected on the log was provided 2 hours of out-of-cell time (dayroom).
  - The County reports, “All cells identified as “the log does not reflect cells were offered or provided three (3) hours of out-of-cell time” were vacant except Tank 3, cell 2 which received 2.45 hours and one person was at court.” However, the Activity Log reflects incarcerated persons were housed in Tanks 5 and 6 as the Activity Log reflects Tanks 5 and 6 sent to chow.
- CMJ Mod A 6/7/22
  - There are 14 cells in tank #3; the log does not reflect whether cells 1-14 were offered three (3) hours of out-of-cell time (dayroom).
  - There are 14 cells in tank #4; the log does not reflect whether cells 2, 3, 4, 6, 8, 10, and 12-14 were offered three (3) hours of out-of-cell time (dayroom).
  - One (1) incarcerated person who are reflected on the log was provided 2 hours of out-of-cell time (dayroom).
    - The County reports, “All cells identified as “the log does not reflect cells were offered or provided three (3) hours of out-of-cell time” were vacant.” However, the Activity Log reflects incarcerated persons were housed in Tanks 1, 2, 4, 5 and 6 as the Activity Log reflects Roof call tanks 1 and 2, Hot trays distributed to tanks 1, 2 and 4 and Tanks 5 and 6 sent to chow.
- CMJ Mod B 3/13/22
  - There are four (4) tanks (8 cells in each tank); the log does not reflect the specific cells the incarcerated persons who were offered dayroom and whether they accepted or refused. The log reflects all cells were provided a minimum of three hours of out-of-cell time (dayroom).
    - The County reports and the Expert notes, “Each of the four tanks has an attached dayroom which all of the individuals assigned to the tank are allowed to use during the time indicated on the log.”
- CMJ Mod C 3/26/22

- There are 14 cells in tank #13; the log does not reflect whether cells 1, 4-8, 10-12, and 14 were offered three (3) hours of out-of-cell time (dayroom).
  - There are 14 cells in tank #14; the log does not reflect whether cells 1, 2, 4-9, 11, and 14 were offered three (3) hours of out-of-cell time (dayroom).
  - All incarcerated persons who are reflected on the log were provided the required three (3) hours of out-of-cell (dayroom).
    - The County reports, “Tank 13: cells 1, 4, 6, 8, 10, 11 & 12 were vacant, Cell 5 refused at 0600, cell 7 accepted at 0600 and Tank 14: cells 1, 2, 4, 5, 7, 8, 9, 11, 13, and 14 were vacant, cell 6 was provided 3 hours, 20 minutes of dayroom at 0600.” However, the Activity Log reflects incarcerated persons were housed in Tanks 11, 12, 15, and 16 (Tank 12 chow, Tank 11 worker to kitchen, Releases from Tanks 11, 15 and 16.
  - CMJ Mod D 3/21/22
    - There are 14 cells in tank #29; the log reflects all incarcerated persons in tank 29 were offered three (3) hours of out-of-cell time (dayroom).
    - There are 14 cells in tank #30; the log reflects all incarcerated persons in tank 29 were offered three (3) hours of out-of-cell time (dayroom).
  - IRC Mod J 3/2/22
    - Sectors 7-8 logged dayroom being provided all day, (without any documentation of count or other relevant events impacting dayroom provision, etc.), all other log entries incomplete and/or do not reflect the required 3-hours of out-of-cell (dayroom) was provided.

The County reports, “Major movement into the mod occurred on this day. Several sectors were empty the day before.
  - IRC Mod J 4/9/22
    - Sectors 7-8 logged dayroom being provided all day (without any documentation of count or other relevant events impacting dayroom provision, all other log entries reflect dayroom was provided from 33 minutes to 4 hours 38 minutes.
  - IRC Mod J 6/4/22
    - Sectors 7-8 logged dayroom being provided all day (without any documentation of count or other relevant events impacting dayroom provision, all other log entries reflect dayroom was provided from 50 minutes to 3 hours 13 minutes.
-



- IRC Mod K 3/4/22
  - The log does not reflect cells and incarcerated person data.
- IRC Mod K 4/24/22
  - The log does not reflect cells and incarcerated person data.
- IRC Mod K 4/24/22
  - The log is incomplete.
- IRC Mod L 3/4/22
  - Log reflects the incarcerated persons who were provided from 19 minutes to 1 hour 28 minutes of out-of-cell time (dayroom).
- IRC Mod L 4/14/22
  - The log is incomplete.
- IRC Mod L 6/10/22
  - Log reflects the incarcerated persons were provided from 30 minutes to 1 hour of out-of-cell time (dayroom). Some of the log is incomplete.
- IRC Mod M 3/11/22
  - Log reflects the incarcerated persons were provided from 14 minutes to 1 hour 52 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom Log reflects Sectors 22, 23, 25 and 26 as Quarantine and Sectors 21 and 24 are not.
- IRC Mod M 4/6/22
  - Log reflects the incarcerated persons were provided from 18 minutes to 3 hours 2 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom Log reflects Sectors 22, 23, 24, 25 and 26 as Quarantine and Sector 21 is not.
- IRC Mod M 6/10/22
  - Log reflects the incarcerated persons were provided from 25 minutes to 1 hour 24 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes all Sectors are listed as Quarantine.

- IRC Mod N 3/30/22
  - Log reflects the incarcerated persons were provided from 20 minutes to 3 hours of out-of-cell time (dayroom).
    - The County reports, “4 of the 6 sectors were used for quarantine/isolation housing. This impacted dayroom.” The Expert confirmed this.
  
- IRC Mod N 4/18/22
  - Log reflects the incarcerated persons were provided from 15 minutes to 3 hours of out-of-cell time (dayroom).
    - The County reports, “4 of the 6 sectors were used for quarantine/isolation housing. This impacted dayroom.” The Expert confirmed this.
  
- IRC Mod N 6/8/22
  - Log reflects the incarcerated persons were provided from 30 minutes to 3 hours 55 minutes of out-of-cell time (dayroom).
    - The County reports, “4 of the 6 sectors were used for quarantine/isolation housing. This impacted dayroom.” The Expert confirmed this.
  
- TLF Mod I 3/2/22
  - Log reflects all incarcerated persons were provided a minimum of 3 hours of out-of-cell time (dayroom).
  
- TLF Mod K 3/7/22
  - Log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, some incarcerated persons were only provided from 30 minutes to 1 hour and 36 minutes of out-of-cell time (dayroom).
    - The County reports, “Sector 16 was on exposure quarantine that day.” The Expert confirmed the Dayroom logs reflects this.
  
- TLF Mod L 3/13/22
  - Log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, some incarcerated persons were only provided from 1 hour 38 minutes to 2 hours and 59 minutes of out-of-cell time (dayroom).
    - The County reports, “Three of the six sectors were used for quarantine/isolation housing. This impacted dayroom.” The Expert confirmed this.

- TLF Mod M 3/20/22
  - Log reflects the incarcerated persons were provided from 1 hour 30 minutes to 2 hours 21 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod N 3/14/22
  - Log reflects the incarcerated persons were provided 1 hour 30 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod O 3/13/22
  - Log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, one (1) incarcerated person was only provided 1 hour 30 minutes of out-of-cell time (dayroom).
  
- TLF Mod P 3/17/22
  - Log reflects all incarcerated persons were provided a minimum of 3 hours of out-of-cell time (dayroom).
  
- TLF Mod Q 3/25/22
  - Log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, some incarcerated persons were only provided from 1 hour 30 minutes to 2 hours and 35 minutes of out-of-cell time (dayroom).
    - The County reports, “Sector 52 was used for quarantine housing.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod R 3/19/22
  - Log reflects the incarcerated persons were provided from 55 minutes to 2 hours 5 minutes of out-of-cell time (dayroom).
    - The County reports, The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod I 3/2/22
  - Log reflects the incarcerated persons were provided a minimum of 3 hours of out-of-cell time (dayroom).

- TLF Mod K 6/2/22
  - Log reflects the incarcerated persons were provided from 30 minutes to 3 hours 16 minutes of out-of-cell time (dayroom).
    - The County reports, “2 of the 6 sectors were on exposure quarantine on this day. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod L 6/6/22
  - Log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, one (1) incarcerated person was only provided 2 hours 27 minutes of out-of-cell time (dayroom).
  
- TLF Mod M 6/9/22
  - Log reflects all incarcerated persons were provided 30 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod N 6/4/22
  - Log reflects that incarcerated persons were provided from 30 minutes to 33 minutes of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.
  
- TLF Mod O 6/5/22
  - The log reflects most incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, the log reflects ADA dayroom Sector 37 was cut short due to the amount of dayrooms.
  
- TLF Mod P 6/11/22
  - Log reflects all incarcerated persons were provided a minimum of 3 hours of out-of-cell time (dayroom).
  
- TLF Mod Q 6/6/22
  - Log reflects some incarcerated persons were provided a minimum of three (3) hours of out-of-cell time (dayroom); however, most incarcerated persons were only provided from 1 minute to 2 hours and 57 minutes of out-of-cell time (dayroom).

- TLF Mod R 6/7/22
  - Log reflects the incarcerated persons were provided from 30 minutes to 1 hour of out-of-cell time (dayroom).
    - The County reports, “The entire mod was used for quarantine/isolation housing. This impacted dayroom.” The Expert notes the Dayroom log does not reflect this.

The County does not consistently provide the required three (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week. At this time, COVID-19 quarantine, and isolation requirements are still in effect, impacting dayroom time. In addition, at times, staff do not log sufficient information for the Expert to determine if the incarcerated persons are being provided the required daily three (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week. Some of the logs do not reflect the incarcerated person identifiers (name and booking number), for cases where there are multiple incarcerated persons in a housing unit and the incarcerated person accepted and/or refused dayroom. Based on this, the Expert finds that the County has partially implemented the RP requirements.

#### **Partially Implemented**

- a. *OCSD will offer additional dayroom time beyond three (3) hours per day as scheduling and classification needs allow. To do so, OCSD will ensure that dayrooms in celled housing units will be available and occupied for use by incarcerated people from 0600 through 2300 hours daily, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (e.g., counts, searches). Once every incarcerated person in a celled housing unit has been offered use of the dayroom and, if they choose, used the dayroom for three hours in a day, OCSD shall offer another opportunity to use the dayroom to incarcerated people who already used the dayroom or were already offered but declined the opportunity to use the dayroom. OCSD shall make efforts to rotate these opportunities for additional dayroom among the incarcerated people in a housing unit or sector so that everyone in the unit or sector can have approximately equal additional dayroom time. If everyone in the unit or sector has had an opportunity for dayroom time and everyone refuses any subsequent offer of additional dayroom time, dayroom will be closed for two hours. Incarcerated persons will then be offered dayroom on a recurring two-hour cycle for the remainder of the day. If a pattern develops that an incarcerated person is refusing an offer of dayroom time in an apparent attempt to obtain a specific dayroom time, the incarcerated person will be informed that the specific dayroom time will not be offered and will be given the opportunity to accept the offered time.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “It is expected that dayrooms will generally be available for use by inmates from 0600 through 2300 hours daily. The schedule will rotate on a daily basis to

provide a variety of dayroom times for each inmate or group. If the inmate or group scheduled declines the dayroom opportunity, bypass the declining inmate or group and offer dayroom to the next inmate or group on the scheduled rotation. If all inmates decline dayroom, staff shall continue to offer dayroom in the scheduled rotation until an inmate or group accepts. This rotation will be ongoing until 2300 hours.”

In review of the Day Room Logs listed and commented on above, the Expert found that the dayrooms were nearly always not available from 0600 to 2300 Mod, including the following examples:

CMJ

- Mod B 3/13/22 – Dayroom open at 0745 (closed at 2300)
- Mod C 3/26/22 – Dayroom closed at 1600 (open at 0600)

IRC

- Mod M 3/10/22 – Day room open at 0630 (closed at 2300)
- Mod J 4/9/22 – Dayroom open at 0641 (closed at 2300)
- Mod K 3/4/22 – Dayroom closed at 1929 (open at 0600)
- Mod M 4/6/22 – Dayroom open at 1000 (closed at 2300)
- Mod K 6/7/22 – Dayroom closed at 2206 (open at 0600)
- Mod L 6/10/22 – Dayroom open at 0700 and closed at 2230
- Mod M 6/10/22 – Dayroom open at 0653 (closed at 2300)

TLF

- Mod I 3/3/22 – dayroom closed at 2140 (open at 0600)
- Mod L 3/13/22 – Dayroom open at 0640 and closed at 2210
- Mod M 3/20/22 – Dayroom open at 0700 and closed at 2211
- Mod P 3/17/22 – Dayroom open at 0637 and closed at 2150
- Mod L 3/25/22 – Dayroom open at 0700 (closed at 2300)
- Mod R 3/18/22 – Dayroom closed at 2033 (open at 0600)
- Mod I 6/2/22 – Dayroom open at 0630 (closed at 2300)
- Mod L 6/6/22 – Dayroom open at 0642 (closed at 2300)
- Mod M 6/9/22 – Dayroom open at 0625 and closed at 2239
- Mod N 6/4/22 – Dayroom open at 0630 and closed at 2155
- Mod P 6/11/22 – Dayroom open at 0640 (closed at 2300)
- Mod R 6/7/22 – Dayroom open at 0643 and closed at 1914

All of the incarcerated persons interviewed stated the County rotates the dayroom opportunities daily, and they have the opportunity to access the dayroom during the morning, afternoon, and evening. Six (6) of the incarcerated persons stated that the County offers additional dayroom opportunities on a rotating basis; however, only the CMJ logs reflect that additional dayroom time is offered. The logs also reflect particular events related to the safety and security of the institution (e.g., counts, searches) when the dayrooms are closed.

The Expert finds that the County is not consistently operating the dayrooms during the hours of 0600 through 2300. Additionally, at times, the County does not offer additional dayroom time beyond the three (3) hours per day when the dayrooms are available. Based on this, the Expert finds that the County has Partially Implemented the RP requirements.

### **Partially Implemented**

- b. When people are provided dayroom time, OCSD staff will ensure they have ready access to toilet facilities. This may be accomplished by staff opening their cell door promptly upon request (and allow them to return to dayroom after using the toilet/sink), or other appropriate procedure.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Inmates will be provided access to the telephones during outdoor recreation or during designated telephone use times. Inmates will be permitted to return to their cell to use the restroom unless restrooms are located in the dayroom area. If an inmate returns to their cell to use the restroom, the inmate will be permitted to return to the dayroom at the completion of their use of the restroom.

All incarcerated persons interviewed reported that staff provides access to toilet facilities (allow them to enter their cell) when they are participating in the dayroom program and that staff allows them to return to the dayroom as well.

Based on this, the Expert finds that the County has adequately Implemented the RP requirements.

### **Adequately Implemented**

- c. OCSD shall document if there are exigent circumstances, if a person is at court, or if the person is at an off-site medical appointment, so as to preclude the provision of minimum dayroom time on a given day.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Under normal circumstances, inmates will be afforded the opportunity to use the dayroom for a minimum of three hours per day, unless specific and articulable reasons exist for a shorter time period. In such cases, the reasons will be thoroughly documented in the guard station daily log by the respective deputy or correctional services assistant.”

In review of the logs, the Expert notes that staff document the cases where an incarcerated person is at court, however, there were no entries for cases where the incarcerated person was at an off-site medical appointment. There is a

possibility that for the dates the Expert reviewed the logs, there were no incarcerated persons who were at an off-site medical appointment.

Based on this the Expert finds that the County has adequately Implemented the RP requirements.

### **Adequately Implemented**

- d. Scheduled programming in the dayroom may be included in the three hours per day of dayroom time.*

The County reported that due to the impact of COVID-19, there were limited in-person programming opportunities and no cases where the County provided programming in the dayrooms. During future monitoring, the Expert will evaluate this requirement.

### **Not Assessed**

- 2. At least three (3) hours per week outdoors for exercise and/or recreation.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Staff shall afford each inmate the opportunity to participate in a minimum of three hours of outdoor recreation per week, distributed over at least two separate days. Security concerns may necessitate the cancellation or reduction of scheduled recreation time. In the event of a cancellation or failure to provide the minimum required opportunities for recreation, the watch commander shall be notified and the reason for the cancellation or failure shall be documented in the appropriate log.”

The Expert recognizes that at times, COVID-19 impacted the ability for the County to provide the required three (3) hours per week of recreation. This was due to the need for the OCSD to mitigate the effects of potentially spreading the virus.

The County produced the following OCSD Recreation Logs:

- CMJ (Mods A, B, C, D, E, F, and O) for the Months of March 2022 to June 2022 CWJ (Mod P and Second Floor) for the Months of March 2022 to June 2022
- IRC (Mods J, K, L, M, and N) for the Months of March 2022 to June 2022
- TLF (Mods AE Barracks, F Barracks, G Barracks, H Barracks, Mods I, K, L, M, N, O, P, Q, and R)

The Expert interviewed 37 incarcerated persons. Of the 37 incarcerated persons, eight (11) reported they are provided 3-hours of recreation yard per week, and nine (10) stated they chose not to go to the yard. Summarized below are the sixteen



(16) incarcerated persons who reported they were not provided the required 3 hours of yard per week:

IRC

- Mod L – Provided yard one (1) time for 40 minutes in the past 2 months
- Mod K – Yard is not offered

CMJ

- Mod O – Provided yard 1 hour one (1) time a month

TLF

- D Barracks – Provided yard one (1) time a week for 1 ½ hours
- D Barracks – Provided yard one (1) time a week for 1 ½ hours
- G Barracks – Provided yard one (1) time a week for 1 ½ hours to 3 hours
- Mod K – Yard not offered in 2 weeks
- Mod O – Yard not offered
- Mod O – Yard provided one (1) time a week for 2 hours
- Mod O – Yard not offered
- Mod O – Yard provided 45 minutes to 1 ½ hour per week
- Mod O – Yard not offered
- Mod O – Yard not offered
- Mod O – Yard offered one (1) or two (2) times a month
- Mod O – Yard offered one (1) time in one (1) month
- Mod M – Yard not offered

The Expert was not able to confirm or refute these claims.

The Expert also reviewed a sampling of the logs. Overall, the logs fail to document whether *each* individual was offered yard time, instead documenting only how many people actually went to yard (the “Takers”), Logs for several day have no entries at all. For example:

- CMJ
  - Mod A for June 1-7 – Logs only reflect the number of "Takers" and do not provide sufficient information to determine if the incarcerated persons were provided the required three (3) hours of recreation (yard).
  - Mod C for June 1-7 – In all but one (1) day, the logs only reflect the number of "Takers." Additionally, there are no entries for June 1st and 2nd.
  - Mod E for June 1-7 – Logs only reflect the number of "Takers" and do not provide sufficient information to determine if the incarcerated persons were provided the required three (3) hours of recreation (yard). Additionally, there are no entries for June 1st and June 5th thru 7th.

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- Mod O for June 2-8 – Logs for Ward C and D reflect the number of "Takers" and do not provide sufficient information to determine if the incarcerated persons were provided the required three (3) hours of recreation (yard). For the Sheltered Living (SL) unit, most incarcerated persons refused.
  - Mod O for May 1-7 – Logs for Ward C and D reflect "Refused" with no specific identifiers and do not provide sufficient information to determine if the incarcerated persons were provided the required three (3) hours of recreation (yard). For the SL unit, more than half of the incarcerated persons refused.

The Expert notes the County has, under the SA, agreed to close the SL unit, but is not yet in a position to do so due to physical plant limitations (i.e., alternative placements for people with disabilities).

- IRC
  - Mod J for June 5-11 – Staff maintains a running log for all recreation yard offered and provided. The log reflects the incarcerated persons were provided from 1 hour and 7 minutes to 2 hours and 27 minutes for the week.
  - Mod L June for June 5-11 – The logs reflect that not all incarcerated persons were offered yard.
  - Mod M for June 5-11 – The logs reflect that only five (5) incarcerated persons were offered/provided recreation (yard). The Expert notes that the census in Mod M ranged from 42 to 67 incarcerated persons and the Recreation Logs reflect the only day yard was provided was June 8, 2022.
  - Mod N for June 5-11 – The logs reflect that only incarcerated persons housed in Sector 32 (and none from the other five sectors in Mod N) were offered/provided recreation (yard).
- TLF
  - AE Barracks for June 6-12 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all incarcerated persons in the unit were offered the required three (3) hours of recreation (yard). The Expert notes that on June 6, 2022 the census was 124. Additionally, the logs reflect that the incarcerated persons who did go to yard were provided from 1 hour and 15 minutes to 1 hour and 57 minutes of recreation (yard) for the week.
  - F Barracks for June 5-11 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons in the unit were offered the required three (3) hours of recreation (yard). Additionally, the logs reflect that the

- incarcerated persons who did go to yard were provided from 1 hour and 39 minutes of recreation (yard) for the week.
- H Barracks for June 5-11 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard). Additionally, the logs reflect that the incarcerated persons were provided from 1 hour and 56 minutes of recreation (yard) for the week.
  - Mod I for June 5-11 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard).
  - Mod L for May 8-14 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were provided the required three (3) hours of recreation (yard).
  - Mod M for May 22-28 - Logs reflect "Unable to complete outdoor rec due to Mod movement and facility operations" on May 25-27.
  - Mod N for May 1-7 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard). Additionally, there are no log entries for May 1-4.
  - Mod O for May 1-7 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard).
  - Mod P for May 8-14 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard).
  - Mod Q for May 1-7 – Some logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard).
  - Mod R for May 15-21 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard). Additionally, there are no log entries for May 1-4.
  - Mod R for May 15-21 - Logs only reflect the number of "Takers" and do not provide sufficient information to determine whether all the incarcerated persons were offered the required three (3) hours of recreation (yard). Additionally, there are no log entries for May 19-21.

The RP requires the County to utilize an effective electronic system for documenting and tracking the amount of out-of-cell time that each person in custody (1) is offered and (2) receives. This is essential to show compliance with this provision and to comply with other requirements regarding incarcerated persons who refuse or otherwise do not participate in out-of-cell activity (see, e.g., ADA Plan Section IX.E). The Expert recommends that the County ensure staff document detailed information so that the County can track and log the RP requirements. Additionally, for future monitoring, the Expert requests that the County provide the logs maintained by staff who supervise the outdoor recreation areas at the CJX “Roof” and the “Green Sector.”

The County does not consistently provide the required three (3) hours minimum per week of outdoor exercise and/or recreation. In addition, at times, staff do not log sufficient information for the Expert to determine whether all the incarcerated persons are being offered the required three (3) hours minimum per week of outdoor exercise and/or recreation. Some of the logs do not reflect the incarcerated person identifiers (name and booking number) for cases where multiple incarcerated persons were provided outdoor/exercise and/or recreation, and the logs simply reflect the number of "Takers." Based on this, the Expert finds that the County has partially implemented the RP requirements.

In addition, the Expert recommends a Corrective Action Plan to increase participation among SL unit-housed individuals in all out-of-cell activities and evaluate providing other activities or other incentives.

### **Partially Implemented**

- a. *OCSD will offer additional outdoor exercise and/or recreation time beyond three (3) hours per week as scheduling and classification needs allow. To do so, OCSD will ensure that all outdoor recreation areas are in use by incarcerated people from 0600 through 2300 hours daily, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (e.g., counts, searches). For the outdoor space adjacent to the Theo Lacy Barracks (the “Green Sector”), where artificial lighting is unavailable, OCSD will ensure that the Green Sector is in use by incarcerated people during daylight hours, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (e.g., counts, searches). Once every incarcerated person has been offered use of the outdoor recreation area and, if they choose, used the outdoor recreation area for three hours per week, OCSD shall offer additional opportunities to use the outdoor recreation area to incarcerated people who already used the outdoor recreation area or were already offered the opportunity to use the outdoor recreation area. OCSD shall make efforts to rotate these opportunities for additional outdoor recreation among the incarcerated people so that everyone can have approximately equal additional outdoor recreation time. If everyone in the unit or sector has had an opportunity*

*for outdoor recreation time and everyone refuses any subsequent offer of additional outdoor recreation time, outdoor recreation will be closed for two hours. Incarcerated persons will then be offered outdoor recreation on a recurring two-hour cycle for the remainder of the day. If a pattern develops that an incarcerated person is refusing an offer of outdoor recreation time in an apparent attempt to obtain a specific outdoor recreation time, the incarcerated person will be informed that the specific outdoor recreation time will not be offered and will be given the opportunity to accept the offered time.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation does not address these requirements.

Most of the incarcerated persons interviewed reported that they are not offered and provided additional outdoor exercise and/or recreation time beyond three (3) hours per week. The incarcerated persons reported that the recreation yards, at times, remain vacant throughout the day (this is primarily at the TLF). The incarcerated persons also reported that they are not regularly provided access to outdoor recreation. The Expert was not able to confirm or refute the claims.

In review of the Recreation Logs, the Expert found cases where the outdoor recreation yards were not in use during the required hours of 0600 through 2300

A summary of the findings is as follows.

- CMJ
  - The Expert could not measure compliance as the Recreation Logs provided were from the Modules and not the “Roof” recreation area.
- TLF
  - Green Sector – Earliest time the recreation yard was open was 0815, and the latest the recreation yard was open was 1531
  - Mod I - Earliest time the recreation yard was open was 0600 (one day only), and the latest the recreation yard was open was 2003. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
  - Mod L - Earliest time the recreation yard was open was 0707, and the latest the recreation yard was open was 2130. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
  - Mod M - Earliest time the recreation yard was open was 1635, and the latest the recreation yard was open was 1849. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
  - Mod N - Earliest time the recreation yard was open was 1707, and the latest the recreation yard was open was 1927. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.

- Mod O - Earliest time the recreation yard was open was 0800, and the latest the recreation yard was open was 2255. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
- Mod P – Earliest time the recreation yard was open was 0600, and the latest the recreation yard was open was 2228. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
- Mod Q - Earliest time the recreation yard was open was 0800, and the latest the recreation yard was open was 2000. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.
- Mod R - Earliest time the recreation yard was open was 0700, and the latest the recreation yard was open was 1900. The logs reflect the recreation yard was not in use for extended periods of time with no documentation of the reason.

The Expert notes on multiple dates the yards remain vacant and not in use for extended periods of time. On these dates, the logs reflect the recreation yards are in use at times for only 2 hours. The County must ensure that the recreation yards be available and in use from the hours of 0600 to 2300 as required by the RP. The County must ensure that additional outdoor exercise and/or recreation time beyond the three (3) hours per week are offered and provided as scheduling and classification needs allow. The County must also ensure that the outdoor space adjacent to the Theo Lacy Barracks (the “Green Sector”), is in use by incarcerated people during daylight hours, except in cases of emergency and as necessary for particular events related to the safety and security of the institution.

OCSD Policy 2006 needs to be updated and training provided so that staff are aware of the expectations as to recreation yard utilization and documentation pursuant to the RP. Based on the data for Mod M and Mod N at TLF reflecting less than 2.5 hours of open recreation yard per day, at the maximum, the Expert recommends the County develop a specific Corrective Action Plan for these two Mods.

Based on this, the Expert finds that the County has not implemented the RP requirements.

**Not Implemented**

- b. OCSD shall document if exigent circumstances or inclement weather affecting the safety of the outdoor recreation area preclude the provision of the minimum outdoor time in a given week.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Under normal circumstances, inmates will be afforded the opportunity to use the dayroom for a minimum of three hours per day, unless specific and articulable reasons exist for a shorter time period. In such cases, the reasons will be thoroughly documented in the guard station daily log by the respective deputy or correctional services assistant. Documented security concerns may necessitate the reduction or cancellation of scheduled dayroom time. A sergeant or the watch commander must approve any changes prior to implementation. If an exigency prevents prior approval, staff will notify a supervisor as soon as practical for approval. The reduction or cancellation will be documented in the guard station daily log along with the name of the approving supervisor. If an inmate has an Individual Inmate Activity Log, the cancellation or reduction will also be documented there.”

In review of the Recreation Logs, the Expert found that there are some cases where staff logged the reasons the required outdoor recreation was not available/operational. However, the logs reviewed reflect multiple times where the required recreation time was not provided, and no documentation is included in the logs reflecting the reasons that precluded the provision of the minimum outdoor time in the given week.

OCSD Policy 2006 needs to be updated and training provided so that staff are aware of the expectations as to recreation yard utilization and documentation pursuant to the RP.

Based on this, the Expert finds that the County has not implemented the RP requirements.

**Not Implemented**

3. *OCSD will offer additional programming, including through electronic tablets, that will be available for use when people are confined to their cells, among other times.*

OCSD expects that the electronic tablet program will be rolled out by the first quarter of 2023 and that tablets will be provided. OCSD will take affirmative steps to ensure that electronic tablet programming is accessible to people with disabilities (e.g., vision). Rollout will be reviewed in future monitoring reports.

**Not Implemented**

- C. *Consistent with safety and security needs, the County shall take steps to maximize opportunities for people in celled housing units to interact with others during out-of-cell time.*

The County reports that based on classification case factors, incarcerated persons, and routinely evaluated for placement within compatible groups. This includes incarcerated persons with higher classification factors and safety and security needs (Protective Custody and Administrative Housing).

Based on this, the Expert finds that the County has adequately implemented the RP requirements.

### **Adequately Implemented**

- D. The County will make best efforts to accommodate individual needs regarding the time of day for out-of-cell time (e.g., for people with disabilities impacting fatigue, on sleep medications, etc.).*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation does not address these requirements.

There were no complaints from the incarcerated persons related to the lack of accommodations regarding the time of day for out-of-cell time for people with disabilities impacting fatigue, on sleep medications, etc.

The Expert recommends that the County incorporate these requirements in the OCSD Custody & Court Operations Manual (CCOM).

Based on this, the Expert finds that the County has partially implemented the RP requirements.

### **Partially Implemented**

- E. The County will make best efforts to ensure that all people are offered some opportunities for out-of-cell time during normal daylight hours each week.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “In housing areas where security concerns, classification restrictions, or separation orders prevent the inmates from using the dayroom together, staff shall follow a set schedule to ensure the equitable distribution of dayroom among inmates or groups. The schedule will rotate on a daily basis to provide a variety of dayroom times for each inmate or group.”

The incarcerated persons interviewed stated that they are offered and provided opportunities for out-of-cell time during normal daylight hours each week. They also confirmed that the out-of-cell schedule rotates during the week. Additionally, based on the review of Dayroom and Recreation Logs, the Expert confirmed that incarcerated persons are offered some opportunities for out-of-cell time during normal daylight hours each week.



Based on this, the Expert finds that the County has adequately implemented the RP requirements.

### **Adequately Implemented**

- F. The County shall utilize an effective electronic system for documenting and tracking the amount of out-of-cell time that each person in custody is offered and receives with respect to each of the above categories.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation requires the logging of Outdoor Recreation and Dayroom as follows:

“Open Housing Areas - In housing areas where all inmates in the housing area are allowed access to outdoor recreation or dayroom together, staff shall make an entry in the guard station daily log whenever:

- The dayroom(s) are opened.
- The dayroom(s) are closed.
- Outdoor recreation is offered.
- Outdoor recreation is closed or when the inmates return from outdoor recreation, depending on the housing area's configuration.
- Groups

In housing areas where inmates are separated into groups for security purposes, staff shall log the start and end times of all offered opportunities for outdoor recreation and dayroom in the guard station daily log. The entry will include which cells make up the group.

In module housing areas, staff shall document the following information on the guard station daily dayroom log:

- Inmate's name
- Booking number
- Start time/end time
- Any refusal of dayroom and reason for refusal
- Any inmate who requests to lock it down before their three-hour minimum expires.
- Inmates with Individual Inmate Activity Logs
- Staff shall log the start and end times of all offered opportunities for outdoor recreation and dayroom, and whether the inmate accepted or declined, in the inmate's Individual Inmate Activity Log..”

The County currently tracks the out-of-cell time for incarcerated persons using an electronic Dayroom Log and Recreation Log. The Dayroom log includes the following data fields:

- Overall Start/End
- Break 1 Start/End
- Break 2 Start/End
- Break 3 Start/End
- Break 4 Start/End
- Groups/Cells
- Notes Entered By
- Total DR Time

The Recreation Log includes the following data fields:

- Start
- End
- Group Cells
- Notes
- Entered By
- Total

In review of the Dayroom Logs, the Expert notes that:

- Some of the Dayroom Logs only reflect the cell numbers with no incarcerated person identifier
- CMJ Mod B – Staff names who enter the data are not reflected
- TLF Mods I, K, M, N, Q, R, and L (at– At times, logs only reflect "Takers," and at times, the Total DR Time field is blank
- IRC Mods K and M (at– At times, logs only reflect "Takers," and at times, the Total DR Time field is blank

In review of the Recreation Logs, the Expert notes that:

- Some of the Recreation Logs only reflect the cell numbers with no incarcerated person identifiers
- TLF Mods R, Q, P, O, N, M, L, and I – At times, logs only reflect "Takers"
- TLF Barracks H, F, and AE – At times logs only reflect "Takers"
- IRC Mods L, M, N, J, O, and E (incomplete– Incomplete entries, no data in the end time, and at times, the Total DR Time field is blank
- CMJ Mods E, C, and A (incomplete entries, no data in the end time, and at times, the Total DR Time field is blank

The RP requires the County to utilize an effective electronic system for documenting and tracking the amount of out-of-cell time that each person in custody is offered and receives. The County is also required to conduct electronic audits at least weekly to ensure that OCSD is offering the required out-of-cell time consistent with the RP provisions. The current electronic system, as used, does not effectively document and track the amount of out-of-cell time that each person in custody is offered and receives. The Expert recommends that the County consider

implementing a tracking system that tracks each incarcerated person's individual out-of-cell time offered and received. The tracking system must have the capability/functionality to track the following:

- Dayroom offered for every incarcerated person (date and time including weekly totals)
- Dayroom received for every incarcerated person (date and time including weekly totals)
- Dayroom refusals for every incarcerated person (date and time including weekly totals)
- Cases of emergency (count, searches, and lockdowns) where the dayrooms were not open
- Cases where the incarcerated person is at court or an off-site medical appointment
- Scheduled program participation in the dayroom
- Recreation yard offered for every incarcerated person (date and time including weekly totals)
- Recreation yard provided for every incarcerated person (date and time including weekly totals)
- Recreation yard refusals for every incarcerated person (date and time including weekly totals)
- Cases related to exigent circumstances or inclement weather that precludes the provision of the minimum outdoor time in a given week
- Restriction of dayroom and recreation yard access related to infectious disease control

The County must also ensure that staff document detailed information in the tracking logs. Because the current tracking system does not effectively document and track the amount of out-of-cell time that each person in custody is offered and receives, the Expert finds the County has partially implemented the RP requirements.

### **Partially Implemented**

- G. *The County shall conduct electronic audits at least weekly to ensure that OCSD is offering the required out-of-cell time consistent with the provisions set forth herein. Supervisory staff will regularly review this data for quality assurance and take steps to address any deficiencies.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “The sergeant responsible for the housing area shall review dayroom usage as part of the required housing area checks and ensure the three-hour dayroom minimum has been met. If the three-hour dayroom minimum has not been met, the sergeant will confirm the reason(s) are clearly documented in the guard station daily log.”

In review of the Activity, Recreation, and Dayroom Logs, the Expert determined that the County is not conducting the required weekly electronic audits to ensure that OCSD is offering the required out-of-cell time consistent with the requirements of the RP. The County must ensure supervisory staff conducts the audits for quality assurance and, in addition, take steps to address deficiencies.

Based on this, the Expert finds that the County has not implemented the RP requirements.

### **Not Implemented**

- H. OCSD, in coordination with CHS, may place temporary restrictions on dayroom and outdoor recreation access, such as for issues related to infectious disease control.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Correctional Health Services (CHS) may place temporary restrictions on dayroom access, such as for inmates with contagious diseases or inmates who pose a danger to themselves or others.”

In review of the Dayroom Logs, the Expert noted that there were cases where temporary restrictions were placed on dayroom access due to COVID -19.

Based on this, the Expert finds that the County has adequately implemented the RP requirements.

Note: This section offers clarifications as to the scope of other requirements in the Settlement Agreement and inform the analysis of the dayroom/outdoor recreation Settlement Agreement requirements. The narrative is only as contextual considerations in assessing implementation of IV.A.1, IV.A.1.a (dayroom), IV.A.2, IV.A.2.a (outdoor recreation. Based on this, a Compliance rating is not warranted.

- I. OCSD may place temporary restrictions on dayroom and outdoor recreation access for the count, the escort of CHS or other non-custodial personnel, and for any lockdown of a facility/housing unit for security reasons.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Security concerns may necessitate the cancellation or reduction of scheduled recreation time. In the event of a cancellation or failure to provide the minimum required opportunities for recreation, the watch commander shall be notified and the reason for the cancellation or failure shall be documented in the appropriate log.” In addition, the OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation states, “Staff may temporarily close the dayroom only for as long as necessary to facilitate the daily operations of the housing area, such as counts, safety checks, meals, searches, clothing exchange, commissary, med call, etc., and shall reopen

the dayroom when the activity is complete. All activities shall be documented in the guard station daily log.”

In review of the Recreation and Dayroom Logs, the Expert noted that custody staff routinely documents the closure of the dayrooms and recreation yards due to count and in cases of lockdowns and/or security reasons.

Based on this, the Expert finds that the County has adequately implemented the RP requirements.

Note: This section offers clarifications as to the scope of other requirements in the Settlement Agreement and inform the analysis of the dayroom/outdoor recreation Settlement Agreement requirements. The narrative is only as contextual considerations in assessing implementation of IV.A.1, IV.A.1.a (dayroom), IV.A.2, IV.A.2.a (outdoor recreation. Based on this, a Compliance rating is not warranted.

*J. In cases where a person refuses out-of-cell time repeatedly (e.g., more than 3 times in one week) and the reason for such refusals may be related to their mental health, medical, or disability status, Jail staff will make a referral to CHS (urgent or higher) for assessment and appropriate clinical follow-up.*

The OCSD Custody & Court Operations Manual (CCOM) 2006 – Recreation does not address these requirements. The County reports this requirement is in the draft OCSD Custody & Court Operations Manual (CCOM) 8000.

During the incarcerated person interviews, nine (9) incarcerated persons stated they chose not to go to the yard and, at times, did not participate in out-of-cell activities (dayroom). Additionally, the Recreation and Dayroom Logs reflect that multiple incarcerated persons refused recreation and dayroom; however, the County did not produce any custody-initiated referrals to CHS staff for assessment and clinical follow-up.

The County must incorporate this requirement into the OCSD and CHS policies and procedures and ensure that custody staff is trained in the RP requirements. Based on this, the Expert finds that the County has not implemented the RP requirements.

**Not Implemented**

## **B. Closure Of Disciplinary Isolation (DI) Cells And Central Men’s Sheltered Living Cells To End Housing Of People In Areas Of Extreme Sensory Deprivation And Lack Of Programming Space (Section II)**

- A. It is the intent of OCSD to end the system of DI that has historically applied in Orange County jails. This commitment includes ending the use of the 72 DI cells, including 24 cells at the Intake and Release Center (IRC), 32 cells at Theo Lacy, 12 cells at Central Men’s Jail, and 4 cells at Central Women’s Jail.*
- B. The DI cells at IRC were recently deactivated and will no longer be used for disciplinary or any other form of housing effective. The DI cells at IRC are designated to be repurposed for meeting space available for people in custody (legal counsel meetings, mental health contacts, etc.).*
- C. OCSD recently deactivated and will no longer use the DI cells at Theo Lacy, Central Men’s Jail, and Central Women’s Jail for disciplinary or any other form of housing.*
- D. Notwithstanding the above, OCSD may use the above-referenced cells on a temporary basis for infection control or exigent security reasons.*

The County produced Disciplinary Isolation Logs that reflect the use of the DI cells. The logs reflect the most recent dates the County used the DI as follows:

- IRC – June 7, 2021
- CWJ – November 3, 2020
- TLF – June 22, 2021
- CMF – March 12, 2021

During the on-site tour, the Expert toured the Disciplinary Isolation that OCSD historically used. The Expert noted that the OCSD DI cells were not in use. Additionally, the Expert noted that some of the cells had been converted to storage. The County also advised the Expert that the DI cells had not been used on a temporary basis for infection control or exigent security reasons.

The monitoring of the CMJ Sheltered Living Cells will be addressed in the ADA Report Section VII.E.

### **Adequately Implemented**

### **C. Creation Of Special Management Unit (SMU) Status (Section III)**

The County reported that the SMU is not operational at this time due to the need for the County to finalize policy and forms. In addition, the County reported that due to the impact of COVID-19, the County has not implemented the RP requirements of the SMU. The County reported that based on this, incarcerated persons who are found guilty of Jail Rule Violations are currently not assessed and prescribed periods of time in the SMU as punishment for the most egregious rule violations as set by the disciplinary bail schedule. In all cases where an incarcerated person is assessed penalties such as loss of privileges during the disciplinary hearing, the incarcerated person serves the loss of privileges in their current housing location/module. The Expert notes the current policies address some of the RP requirements, such as:

- The OCSJ has a Jail Rule Violation Discipline (Bail Schedule). The Bail Schedule defines “Egregious Offenses” that may result in loss of privileges and SMU placement, Major Jail Rule Offenses, and Minor Jail Rule Offenses that may result in loss of privileges. The Bail Schedule also includes recommended sanctions/penalties for 1<sup>st</sup>, 2<sup>nd</sup>, and Habitual Violators (3<sup>rd</sup> violation or more) for all three (3) categories and each specific offense. The Bail Schedule states that for Habitual Violators (3<sup>rd</sup> violation or more) progressive discipline will be assigned no less than discipline recommended for a 2<sup>nd</sup> offense.
- The Bail Schedule reflects that no SMU disciplinary term for a jail rule violation exceeds 30 days. The OCSJ Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “No inmate, under any circumstances, will spend more than thirty (30) consecutive days on SMU status without three (3) days relief.”
- The OCSJ Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “A medical evaluation of the inmate will be conducted within 72 hours prior to the inmate’s placement into the SMU and a mental health evaluation of the inmate will be conducted within 24 hours prior to the inmate’s placement into the SMU.”
- The OCSJ Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “No inmate will be placed in the SMU prior to a disciplinary hearing held by the Disciplinary Officer and without permission from the Watch Commander. Correctional Health Services (CHS) will be notified prior to an inmate being housed in a SMU cell.” The OCSJ Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) also states, “Placement of an inmate in SMU pending a disciplinary hearing will not include the loss of any regular privileges such as commissary, public visiting, dayroom or outdoor recreation (Full-Privileges).” However, the requirement for CHS to conduct a medical and mental health evaluation within eight hours of the placement is not included in the policy.
- The OCSJ Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) also states, “Inmates housed in SMU will be offered a

minimum of 2 hours per day of out of cell time unless specific and articulable reasons exist for a shorter time period.”

- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “An inmate will not be denied the exercise of religion. Exclusion from group religious services may only be based on security concerns, which will be documented.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “Correspondence privileges shall not be withheld except in cases where the inmate has violated correspondence regulations, in which case correspondence may be suspended for no longer than seventy-two (72) hours without the review and approval of the Division Commander. In no case shall the mail privileges with any members of the State Bar, holders of public office, the courts or Division Commander be suspended.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “Telephone use will be made available on request to contact an attorney, the courts, or for personal emergencies.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “Access to legal counsel shall not be suspended as a disciplinary measure.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “Inmates housed in the SMU will be permitted one book from the Orange County Jail Library, which may be exchanged for another book.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “The Disciplinary Sergeant will conduct a review to determine if SMU is still necessary for the offender. This review will occur every 7 days that the inmate is housed in SMU.” Additionally, the OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) “After an inmate has completed thirty (30) consecutive days in SMU, there shall be a review by the Division Commander before the SMU status is continued.” The Expert notes the RP requirements for the 28-day review, reinstatement of privileges, requirement for a face-to-face review out-of-cell, conferring with medical and mental health staff, and provision of a written notice are not addressed in the policy.
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, “A Correctional Health Services staff member will check the status of all inmates housed in SMU at least once per shift. The visit will be to inquire to the inmate's health and/or need for medical services. These checks will be recorded on the Daily Inmate Activity Log and SMU Master Log. A Correctional Health Services staff member will check the mental health status of any inmate housed in SMU on a weekly basis to determine whether the disciplinary status is to continue.”
- The OCSD Custody & Court Operations Manual (CCOM) 1602.7 – Special Management Unit (SMU) states, : “If CHS staff believe that the inmate is unable



to control his/her behavior or is unable to understand the consequences of his/her behavior due to a disability or mental health condition, the inmate will not be housed in the SMU, and this will be documented in the disposition of punishment. For more information, reference CCOM Policy 2104.1(c) - Psychiatric Evaluation.”

- A. *With the deactivation of the Disciplinary Isolation cells, OCSD shall revise its Disciplinary system to instead utilize a SMU. The SMU will be in designated general modular housing unit(s) and serve as housing for people on a temporary housing status for prescribed periods of time, due to a disciplinary violation. SMU will be utilized for only egregious and violent rule violations.*
- B. *OCSD and CHS will implement new procedures to limit the number and length of placements in the SMU, including as set forth below.*
- C. *OCSD shall utilize a disciplinary matrix of penalties that will include alternatives to SMU disciplinary housing status. The matrix shall set forth maximum penalties for each disciplinary violation. SMU disciplinary housing status shall be reserved for offenses involving violence, escape, possession of drugs or weapons, or posing a serious threat to the facility’s safety and security or by encouraging others to engage in such misconduct.*
- D. *No SMU disciplinary term for a rule violation will exceed 30 days. Disciplinary SMU placements for violations that arise out of the same episode shall be served concurrently.*
- E. *CHS will be notified prior to the placement of any person in the SMU. A medical evaluation will be conducted within 72 hours prior to a person’s placement in the SMU. A mental health evaluation will be conducted within 24 hours prior to a person’s placement in the SMU.*
- F. *No person will be placed in the SMU prior to a disciplinary hearing, except in rare cases in which there is a current threat to safety and security of the facility that requires immediate SMU placement.*
  - 1. *Such placement may occur only with approval of the Watch Commander. CHS will conduct a medical and mental health evaluation within eight hours of the placement.*
  - 2. *Placement in the SMU pending a disciplinary hearing will not include the loss of any regular privileges.*
- G. *Upon placement in the SMU, OCSD will provide each individual, in writing and with effective communication accommodations as needed, notice as to the conditions, privileges, expectations, and incentive-based system that applies in the SMU. OCSD staff shall document that this information is communicated effectively to individuals with disabilities affecting communication.*

#### *H. Conditions and Incentive-Based System in the SMU*

- 1. A person placed in the SMU will be offered a minimum of two (2) hours per day of out-of-cell time, with opportunities for interaction with others (e.g., shared dayroom time) consistent with safety and security needs.*
  - 2. When a person is placed in the SMU, certain privileges may initially be suspended, as determined at the disciplinary hearing.*
  - 3. OCSD will develop an incentive-based system to facilitate reinstatement of privileges based on compliance with Jail regulations. The incentive-based system will include consideration – at the Weekly Review (discussed below) – of early discharge from the SMU and/or reinstatement of privileges based on positive behavior, including:
    - a. Outdoor recreation*
    - b. Dayroom time beyond the required two (2) hours per day*
    - c. Public visiting*
    - d. Access to commissary items*
    - e. Access to newspapers, magazines and more than one book (the one book will be in addition to any religious materials, with a process for book exchange promptly upon request)*
    - f. Access to personal telephone calls*
    - g. Electronic tablets*
    - h. Cards or games*
    - i. Return of personal property items**
  - 4. OCSD will develop clear rules that are effectively communicated to incarcerated persons held in the SMU that explain under what circumstances a person can achieve early release from the SMU and/or reinstatement of privileges.*
  - 5. Any person placed in the SMU will not be denied exercise of religion. OCSD will ensure that people in the SMU may participate in religious programming, absent a specific security concern that is documented.*
  - 6. Access to showers will not be restricted in the SMU. Additional showers will be provided upon reasonable request and in cases where personal hygiene and sanitation warrant, including where necessary to accommodate people with disabilities (e.g., extra showers for individuals with incontinence). OCSD will ensure adequate documentation as to the provision of showers to each person in the SMU.*
  - 7. Any person placed in the SMU will have normal personal mail/correspondence privileges except in cases where the person has been found to have violated correspondence regulations, in which case correspondence may be suspended for no longer than seventy- two (72) hours without the review and approval of the Administrative Captain.*
  - 8. Any person placed in the SMU will have access to the telephone on request to contact an attorney, the courts, or for personal emergencies.*
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9. *Access to legal counsel shall not be restricted as a disciplinary measure.*
10. *Any person in the SMU will always be permitted one book from the Orange County Jail Library, which can be exchanged for another book promptly upon request.*

#### *I. Regular Classification Review Process in SMU*

1. *For each person held in the SMU, custody staff will conduct a review at least every seven (7) days (the "Weekly Review"), regardless of any assessed SMU term imposed, to evaluate the person's current circumstances and determine whether the person should be removed from the SMU and/or have some or all privileges reinstated.*
2. *The Weekly Review will include a face-to-face interview in a private, out-of-cell setting, consistent with individual security needs, to discuss progress and compliance with the SMU-detained person's individual case plan.*
3. *As part of the Weekly Review, custody staff shall confer with mental health and medical staff about whether the SMU setting and/or denial of privileges/property is causing harm or risk of harm to the individual's well-being and if so, the appropriate steps to address the issue (including removal from SMU or reinstatement of privileges/property (in particular, phone contact/visits with family/loved ones or access to reading/writing/art materials) pursuant to the incentive-based system). Mental health and medical staff input should be documented.*
4. *Completion of the Weekly Review process will be overseen by the Watch Commander or other Commander-level-or-higher staff.*
5. *Absent extraordinary circumstances that include a person's persistent failure to comply with facility regulations in a manner that poses a specific threat to safety and security, no SMU placement will exceed thirty (30) days.*
6. *If a person is held in the SMU for 28 days, the Administrative Captain will conduct a review (the "28-Day Review"), which shall include a face-to-face interview with the person in a private out-of-cell setting (consistent with individual security needs), consultation with mental health and medical staff, and consultation with custody staff in the housing unit.*
7. *If a person is retained in the SMU following completion of a Weekly Review or 28-Day Review, OCSD will document and provide the person with written notice explaining (a) the reasons for retention in the SMU, and (b) clear expectations for how the person may earn reinstatement of privileges and progress to a less restrictive setting. This information will be effectively communicated to the individual consistent with any applicable communication- and/or disability accommodation-related needs.*
8. *Appropriate SMU Review form(s) will be implemented consistent with the provisions set forth herein.*

#### *J. Hygiene Items and Writing Supplies*

1. *OCSD will ensure that persons placed in the SMU receive a welfare pack containing appropriate personal hygiene items and writing supplies.*

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2. *Staff will provide replacement items for all allowable hygiene items and writing supplies promptly upon request, except in cases where the individual is using a particular item improperly.*
  3. *OCSD will ensure complete and adequate documentation of initial and replacement provision of welfare pack items, including all requests and any refusals.*
  4. *Any person placed on SMU restrictions will be provided reasonable access (including promptly upon request) to nail clippers, with appropriate restrictions and supervision based on individualized safety concerns.*
- K. *OCSD shall not restrict access to Inmate Request forms or Grievance forms in the SMU.*
- L. *CHS health care staff will conduct rounds in the SMU at least once per shift, and mental health staff will conduct rounds in the SMU at least once per week.*
1. *These contacts will include, at a minimum: (a) conversation with each person housed in the SMU; b) visual observation of the person's cell, including the cleanliness of clothing and bed linens; (c) inquiry into whether the person would like to request a confidential meeting with a mental health or medical provider.*
  2. *If a person requests a confidential medical or mental health care contact or staff identify a mental health or medical need warranting follow-up, staff shall arrange for timely evaluation and treatment in an appropriate confidential setting.*
- M. *In recognition of the distinct risks of Restrictive Housing placement in detention, OCSD will not place people with the following risk factors in the SMU absent rare and extraordinary circumstances in which such placement is necessary to address current, specific safety concerns that are documented, with Watch Commander review and approval, and in such cases only for the minimum time necessary to identify an alternative appropriate placement:*
1. *People diagnosed with Serious Mental Illness or who have an Intellectual or Developmental Disability;*
  2. *People with significant medical or daily nursing care needs, consistent with CHS's clinical input;*
  3. *People who are pregnant, post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy, consistent with CHS's clinical input.*
- N. *Safety checks to maintain the safety and health of the persons in SMU and the security of the facility shall be conducted for all individuals on SMU status at least every 30 minutes, at staggered intervals. Completion of safety checks will be timely documented.*
- O. *Return of Personal Property Taken During SMU Status*

- 1. Any personal property that is taken from an individual who is subject to SMU disciplinary status will be clearly logged and documented, and the personal property will be held in a secure location until returned.*
- 2. Return of personal property should be considered during the period of discipline as part of the incentive-based system.*
- 3. OCSD will return all personal property that was taken during the SMU disciplinary period promptly following the end of the SMU disciplinary period (i.e., within 24 hours). OCSD will document the return of property.*

Based on the County reporting that the SMU is not operational at this time due to the need for the County to finalize policy and forms, the Expert finds the RP requirements for the Creation Of Special Management Unit (SMU) Status (A-O) are Not Implemented.

**Not Implemented**

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## **D. Prohibition On Discipline for Behaviors That Are Related To Mental Health Or Disability, Prohibition On Sanctions That Pose Risk Of Serious Harm (Section IV)**

- A. OCSD and CHS policies and procedures shall require meaningful consideration of the relationship of each person’s behavior to any mental health disability or Intellectual/Developmental Disability, the efficacy of disciplinary measures versus alternative interventions, and the impact of disciplinary measures on the health and well-being of incarcerated people with disabilities.*

The Expert notes that the OCSD Custody & Court Operations Manual (CCOM) 1602.5 – Discipline Policy does not include this requirement. Additionally, the CHS policies related to the disciplinary process were not produced to the Expert.

The parties report that CHS provided draft policies, forms, and related materials to DRC on August 25, 2022. DRC’s counsel provided feedback to these draft materials on September, 30, 2022. By agreement of the parties, this process would take place prior to the Expert’s review. The parties report positive progress on CHS’s policies, forms, and related materials pertinent to this section.

### **Not Implemented**

- B. People alleged to have committed a rules violation shall be reviewed by a qualified mental health professional if any of the following apply:*

1. The person is housed in, or is currently referred for placement in, any designated Mental Health Unit.
2. The Disciplinary Hearing Officer or other jail staff have reason to believe the person’s behavior was unusual, uncharacteristic, or a possible manifestation of mental illness, including where referral for CHS evaluation is warranted.
3. The person is on the mental health caseload and may be subject to (a) Special Management Unit (SMU) placement, or (b) loss of good time/work time credit as a consequence of the disciplinary violation as charged.
4. If any of the above criteria is met, a mental health clinical staff member who is not the treatment provider for the patient shall complete a Rules Violation Mental Health Review form, indicating:
  - a. Whether or not the reported behavior was related to mental illness, adaptive functioning deficits, or other disability.
  - b. Whether the person’s behavior is, or may be, connected to any of the following circumstances:
    - i. An acute or otherwise significant psychiatric episode
    - ii. An act of self-harm or attempted suicide
    - iii. A cell extraction related to provision of medical/mental health treatment

- iv. Placement in clinical restraints or seclusion.
- c. Any other mitigating factors regarding the person's behavior, disability, and/or circumstances that should be considered.
- d. Whether particular disciplinary sanctions should be avoided in light of the person's mental health disability or intellectual disability, treatment plan, or adaptive support needs (e.g., the potential adverse mental health impact of denial of phone contact/visits with family members).
- e. CHS staff will consider issues of brain development and psychosocial development for young adults (generally, anyone 24 years old or younger) as part of this evaluation, including as they relate to the appropriateness of discipline for the behavior and the potential adverse impacts of particular disciplinary sanctions.

The Expert notes the CHS policies related to the requirement for a qualified mental health professional to conduct a review of incarcerated persons alleged to have committed a rules violation process were not produced. Additionally, the Expert notes that the OCSD Custody & Court Operations Manual (CCOM) 1602.5 – Discipline Policy does not include this requirement. The County (CHS) produced a Mental Health Review Form; however, the form reflects that the Violation Mental Health Review form will be completed by mental health staff prior to admission to the Special Management Unit (SMU). The RP requires that in cases where an incarcerated person is alleged to have committed a rules violation, a qualified mental health professional must conduct a review if any of the following apply:

- The person is housed in, or is currently referred for placement in, any designated Mental Health Unit.
- The Disciplinary Hearing Officer or other jail staff have reason to believe the person's behavior was unusual, uncharacteristic, or a possible manifestation of mental illness, including where referral for CHS evaluation is warranted.
- The person is on the mental health caseload and may be subject to (a) Special Management Unit (SMU) placement or (b) loss of good time/work time credit as a consequence of the disciplinary violation as charged.

On a positive note, the County reported that staff typically do not write jail rule violations in cases where incarcerated persons who are housed in mental health units and for the incarcerated persons who have been identified as intellectually/developmentally disabled. However, the County needs to ensure the policies and procedures include the RP requirements.

The County must develop policies and procedures, including applicable forms, to ensure the RP requirements are met.

The parties report that CHS provided draft policies, forms, and related materials to DRC on August 25, 2022. DRC’s counsel provided feedback to these draft materials on September, 30, 2022. By agreement of the parties, this process would take place prior to the Expert’s review. The parties report positive progress on CHS’s policies, forms, and related materials pertinent to this section.

### **Not Implemented**

#### *C. Consideration of Mental Health Input and Other Disability Information in Disciplinary Process.*

1. The Disciplinary Hearing Officer shall ensure that incarcerated people are not disciplined for conduct that is related to their mental health disability or Intellectual/Developmental Disability.
2. The Disciplinary Hearing Officer shall consider the mental health clinician’s findings and any other available disability information when deciding what, if any, disciplinary action should be imposed.
3. The Disciplinary Hearing Officer shall consider the qualified mental health professional’s input on minimizing the deleterious effect of disciplinary measures on the person in view of their Serious Mental Illness, any other relevant disability, or adaptive support needs.
4. OCSD shall not subject any person to discipline for refusing treatment or medications, or for engaging in self-injurious behavior or threats of self-injurious behavior.

The Expert notes that the OCSD Custody & Court Operations Manual (CCOM) 1602.5 – Discipline Policy does not include this requirement.

The County must develop policies and procedures, including applicable forms, to ensure the RP requirements are met.

The parties report that CHS provided draft policies, forms, and related materials to DRC on August 25, 2022. DRC’s counsel provided feedback to these draft materials on September, 30, 2022. By agreement of the parties, this process would take place prior to the Expert’s review. The parties report positive progress on CHS’s policies, forms, and related materials pertinent to this section.

### **Not Implemented**

#### *D. Disability-Related Accommodations During the Disciplinary Process*

1. OCSD and CHS shall provide reasonable accommodations (e.g., staff assistant) during the hearing process for people with mental health or intellectual disabilities.



2. *OCSD and CHS shall take reasonable steps to ensure the provision of effective communication and necessary assistance to people with disabilities at all stages of the disciplinary process.*
3. *The Disciplinary Hearing Officer will check the ADA Tracking System and ensure provision of reasonable accommodations and effective communication during the disciplinary process.*

The Expert notes that the OCSD Custody & Court Operations Manual (CCOM) 1602.5 – Discipline Policy states, “The inmate shall have access to staff or inmate assistance when the inmate is illiterate, or the issues are complex.” The policy does not include the following RP requirements:

- That OCSD and CHS must provide staff assistants during the hearing process for people with mental health or intellectual disabilities;
- Ensure the provision of effective communication and necessary assistance to people with disabilities at all stages of the disciplinary process; and,
- The requirement for the Disciplinary Hearing Officer to check the ADA Tracking System and ensure provision of reasonable accommodations and effective communication during the disciplinary process.

The County must develop policies and procedures, including applicable forms, to ensure the RP requirements are met.

### **Not Implemented**

#### *E. Supervision and Oversight of Disciplinary Processes*

1. *OCSD shall designate a supervisory-level Disciplinary Hearing Officer for each facility, to be responsible for ensuring consistency in disciplinary practices and procedures as set forth herein.*

OCSD reported that the following staff have been designated as the supervisory-level Disciplinary Hearing Officer:

Central Jail Complex – Classification Sergeant  
Theo Lacy Facility – Classification Sergeant

### **Adequately Implemented**

2. *CHS shall designate a supervisory-level clinician for each jail facility, who shall be responsible for ensuring consistency in disciplinary practices and procedures as set forth herein.*

CHS did not report the staff that has been designated as the supervisory-level clinician who is responsible for ensuring consistency in disciplinary practices and procedures for each jail facility.

**Not Implemented**



## V. Signature

Submitted on behalf of Sabot Technologies, Inc. dba Sabot Consulting to the County of Orange and Orange County Sheriff's Office

A handwritten signature in black ink that reads "Julian Martinez".

November 8, 2022

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Julian Martinez  
Director  
Sabot Consulting

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Date