



# Agreement Between County of Orange and Disability Rights California

## Expert's Report (Third Round)

### Rights and Treatment of People Who Identify as Lesbian, Gay, Bisexual, Transgender, Queer or Intersex (LGBTQI)

On-Site Review: August 28 – September 1, 2023

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## Table of Contents

<b>I. Introduction .....</b>	<b>1</b>
<b>II. The Expert's Monitoring Role and Monitoring Activities .....</b>	<b>3</b>
<b>III. Executive Summary.....</b>	<b>5</b>
<b>IV. Findings.....</b>	<b>10</b>
<b>A. LGBTQI Nondiscrimination Policy, Staff Accountability.....</b>	<b>10</b>
<b>B. Transgender and Intersex Intake &amp; Classification Procedures .....</b>	<b>21</b>
<b>C. Least Restrictive Setting Appropriate for LGBTQI Population.....</b>	<b>25</b>
<b>D. LGBTQI Housing/Classification Review Procedures.....</b>	<b>37</b>
<b>E. LGBTQI Access to Programs, Services, and Activities.....</b>	<b>42</b>
<b>F. Searches.....</b>	<b>58</b>
<b>G. Medical and Mental Health Care.....</b>	<b>60</b>
<b>H. LGBTQI Training for Staff.....</b>	<b>68</b>
<b>V. Signature.....</b>	<b>71</b>

## 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 the above-mentioned 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).

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 (RP), 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 RA. 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 RP, 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.

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

The Parties previously agreed to a process and framework for monitoring the implementation of the (RP). 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 RP implementation.

The Expert is required to complete a comprehensive review (Compliance Review) of the County's implementation of the components of the RP 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 RP 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 RP 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 RP, 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 RP, 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 RP 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 RP 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. If the County agrees, monitoring by the Expert and DRC pursuant to this Agreement shall resume with respect to the RP 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 RP provision. The Expert is required to make the findings utilizing the following definitions:

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

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

**Not Implemented:** No implementation of most or all the components of the relevant RP 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.

### III. Executive Summary

This is the third Expert Review to measure Orange County's compliance with the Settlement Agreement (SA), which addresses related mandates, including:

- LGBTQI Non-discrimination Policy, Staff Accountability
- Transgender and Intersex Intake & Classification Procedures
- Least Restrictive Setting Appropriate for LGBTQI Population
- LGBTQI Housing/Classification Review Procedures
- LGBTQI Access to Programs, Services, and Activities
- Searches
- Medical and Mental Health Care
- LGBTQI Training for Staff

The third round of monitoring focused on the Theo Lacy Facility (TLF), Central Men's Jail (CMJ), Central Women's Jail (CWJ), and the Intake Release Center & Transportation (IRC). The on-site Monitoring Review was conducted from August 28 – September 1, 2023. The Monitoring Review included a review of pre-monitoring documents produced by the County of Orange (OC); on-site observations (including but not limited to observations of the Intake screening process and classification screening process); interviews of sworn and non-sworn personnel (e.g., housing deputies, HCA CHS healthcare staff (medical and mental health), classification staff, Inmate Services staff, Inmate Program staff, Transportation Unit staff, Training Unit staff, and interviews of LGBTQI incarcerated persons housed at the OC jails. In total, the Expert interviewed 24 incarcerated persons and 17 staff members from multiple disciplines and areas of responsibility.

An entrance meeting was conducted with representatives from the County of Orange (Jail ADA Compliance Unit staff 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 September 7, 2023, with representatives from the County of Orange (Jail Administration and staff from the County Counsel's Office). DRC Representatives were 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, coordinating the staff and incarcerated person interviews, and the production of the pre-monitoring documents. The Expert found that the staff was open and transparent in their responses during the interviews.

The Expert recognizes continued staff efforts to obtain or maintain compliance pursuant to the SA and RP and the applicable county policies and procedures.

The Expert finds that some of the provisions as set forth in the SA and RP (and local policies/procedures) have been implemented. However, the Expert finds that more information and evidence are needed to determine compliance with some of the required elements. For rated items found as "Not Adequately Implemented," a more thorough assessment will be made in future monitoring tours once the remaining policies/procedures are developed, provided, and

implemented, proof of practice documentation (in various key areas) is provided, relevant training material is developed and implemented, a related accountability plan is provided, plans for enhanced LGBTQI programming is introduced, and more access to programs, services, and activities is confirmed (to demonstrate equal access as compared to other incarcerated persons). The Expert is confident that once the items listed above are provided, staff will be better informed in their understanding of SA and RP requirements and how that pertains to their respective job duties.

As this was the third monitoring tour, all elements of the SA and RP were evaluated for compliance as the County strives to achieve and maintain "Adequately Implemented" status in the rated areas. For the current and future monitoring tours, rated items that are found as "Adequately Implemented" in two (2) consecutive rounds of monitoring will be moved to "Monitoring Suspended Based on Previous Findings of Compliance." The Expert will continue to review whether the County has adequately implemented a component for which monitoring has been suspended 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. Additionally, the Expert will follow the RP requirements and resume monitoring if areas that have been found as "Adequately Implemented" are identified by DRC as no longer adequately implemented and the County agrees with DRC's position. In the event the County disagrees, the Expert will review the Parties' position and provide a written decision regarding whether to resume monitoring of the remedial plan component(s) at issue.

Once again, all staff members were extremely helpful and accommodating to the Expert, and most of the sworn and non-sworn personnel appeared very knowledgeable regarding the LGBTQI population and their respective job duties as related to that jail population.

The Expert recommends that the County focus on the following areas:

- Complete revisions of policies (e.g., HCA CHS Policy 6206, CCOM policies as applicable).
- Upon completion of policies, develop and roll out LGBTQI training (including refresher training) for sworn and non-sworn personnel.
  - OCSD/HCA CHS to provide draft training materials to the Expert and DRC for review/comment/recommendations prior to implementation.
  - Update LGBTQI-related policies/procedures and ensure that clear OCSD and HCA CHS policies/procedures include related job responsibilities for sworn and non-sworn personnel.
  - OCSD/HCA CHS to provide draft policies/procedures to the Expert and DRC for review/comment/recommendations prior to implementation.
- Develop and roll out LGBTQI/transgender/intersex-related staff accountability plan.
- Ensure the SOMA tracking system (once implemented) includes all related LGBTQI information:
  - For example, names (including preferred names and pronouns for transgender incarcerated persons as applicable), search preference information for transgender incarcerated persons as applicable, related programming information for LGBTQI individuals, and provide staff the ability to track, monitor, and share (amongst staff) related information. Such a tracking mechanism should be



accessed by sworn and non-sworn personnel as applicable (e.g., staff assigned to housing units, healthcare, Programs or Inmate Services, court processing, transportation, etc.).

- Disseminate jail and community resource information to all LGBTQI incarcerated persons (that are interested) as related to LGBTQI programs and services.
- Make LGBTQI reading materials accessible to LGBTQI individuals (regardless of housing unit) if interested (even for housing units that are not predominately LGBTQI).

The Expert also makes the following recommendations:

- Update sworn staff post orders (for posted positions) and job descriptions/duty statements for all other positions (as applicable) with specific related job functions.
- Ensure orientation information is provided to LGBTQI incarcerated persons to ensure they understand related rules and understand their access to programs, services, and activities (as pertaining to LGBTQI and otherwise).
- Ensure that staff conducting key encounters (e.g., intake, classification, orientation, healthcare encounters, etc.) effectively communicate with LGBTQI incarcerated persons and fully explain related concerns (e.g., housing, programming, clothing, hygiene, etc.).
- Have a workable process to be able to track and identify (for review purposes) grievances filed by LGBTQI incarcerated persons (regardless of topic, LGBTQI related or not) and to track and identify grievances related to LGBTQI related issues (regardless of who submitted the grievance [whether a self-identified/known LGBTQI individual or otherwise]).
- Ensure equal access to all programs, services, and activities for LGBTQI incarcerated persons equal to other incarcerated persons (e.g., for work assignments, in-person education [including Rancho Santiago Community College], yard/recreation (including Green Sector for MOD I Sectors I, II, and III), etc.).
- Ensure classifications/re-evaluations of classification, placement, and programming assignments (for LGBTQI incarcerated persons) are conducted at least twice annually.
- Provide (through commissary, medical, or indigent kits) hair removal tools, creams, or related products.
- Provide more allowances for razors for transgender/intersex individuals.
- Ensure practices related to identification cards and incarcerated person photos do not lend themselves to LGBTQI individuals to be “outed” to other incarcerated persons:
  - OCJ LGBTQI incarcerated person names, identification photos/identification information must be updated across all platforms (electronic and otherwise) as related to custody (e.g., housing, transportation, programs/services, etc.) and non-custody systems/purposes/functions (e.g., medical, mental, dental, etc.).
- Classification deputies (or “uncuff” deputies) must ask all self-identified transgender new arrivals as to their search preference (staff gender) and must offer the OCSD Voluntary Gender Identity Disclosure and Search Preference Form.
- Pending the eventual development and roll-out of the formalized staff training curriculum, OCSD should ensure that staff is aware of and understand the OCSD Voluntary Gender Identity Disclosure and Search Preference Form, where/how to access the information, and their responsibilities regarding the information contained. The form and process must be in place at all jail facilities.

- Classification deputies must fully explain applicable classification and security options and ensure LGBTQI self-identified individuals fully understand the protective custody and general population classifications (and others as applicable) and the jail-wide dynamics associated with those classifications.
- Provide confirmation (examples) that Classification Unit intake staff explain to new arrivals (as applicable):
  - They will not be punished if they choose not to provide requested information pertaining to their gender identity, pronoun, honorific, and search preference.
  - Staff, contractors, and volunteers shall use a person's stated pronoun and honorific, and the failure to do so may be grieved and reported.
- OCSD recently informed the Expert that the PRIDE program has been moved to TLF, Mod I, Sector 3. OCSD will need to continue to update the Expert regarding any program expansion and specific recruitment efforts.
- OCSD has made some progress with providing jobs to some PRIDE program and other LGBTQI PC incarcerated persons. OCSD to continue to apprise the Expert of further progress (including access to jobs and programs for TLF Mod I Sectors I, II, and III), as well as for other LGBTQI incarcerated persons in various housing units and classification levels.
- Continue to examine all feasible options to allow LGBTQI individuals to attend in-person Rancho Santiago Community College classes.
- Ensure LGBTQI individuals who submit a grievance receive a copy (to enable them to appeal if not satisfied with the grievance response).
- Ensure LGBTQI persons are not discriminated against.

The above-listed bulleted points of recommendation are not an exhaustive list (please refer to each section of the report).

The Expert's report identifies areas deemed as Adequately Implemented, Partially Implemented, Not Implemented, Unratable, Not Assessed, and Monitoring Suspended Based on Previous Findings of Compliance. 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 38 major areas rated:

- Adequately Implemented - 0
- Partially Implemented - 28
- Not Implemented - 4
- Un-ratable - 4
- Not Assessed – 1
- Monitoring Suspended Based on Previous Findings of Compliance – 1

It is the Expert's belief that as the County implements vital components of the SA, 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 includes findings and recommendations/actions the County must make to move towards meeting the mandates of the SA.

## IV. Findings

### A. LGBTQI Non-discrimination Policy, Staff Accountability

- A. *OCSD Policy 375 (Transgender Policy) prohibits staff from discriminating against incarcerated individuals on the basis of gender, including one's gender identity, gender expression, and sexual orientation. The County requires that staff "shall treat transgender persons in a manner that shows respect for the individual's gender identity and gender expression, which includes addressing them by their preferred name and using gender pronouns appropriate to the individual's gender self-identity and expression."*

As previously reported, Orange County Sheriff's Department Manual Policy 375 Transgender Policy, Policy 328 Unlawful Harassment and Discrimination Policy, and Policy 402 Bias Free Policy contain related language.

The Expert notes the OCSD Action Plan for this provision: *"We will revise CCOM policy to address this requirement of the Remedial Plan."*

Custody and non-custody personnel interviewed continued to convey they treat all incarcerated individuals fairly and respectfully and do not discriminate against incarcerated persons, individuals identified as LGBTQI, transgender, or intersex. One (1) of the mental health nurses indicated that although it is not yet required per local policy, mental health staff are told to document preferred pronouns and gender identity information. When she was asked whether there is an alert system within the electronic unit health record (EUHR) to ensure this and other key information is documented without having the ability to proceed in completing EUHR entries, she stated there are no red-flag alerts to confirm healthcare staff document such information, and that it is possible to proceed without entering related documentation. However, she added that staff usually document this information. During the Expert's review of EUHRs (as is outlined in greater detail later in this report), it was evident that both medical and mental health staff are documenting gender identity and pronoun information in their progress notes. As has been the case since the initial monitoring tour, most staff acknowledge that they refer to all incarcerated persons by their legal last name and preferred pronouns. There have been a select few staff interviewed who refer to transgender incarcerated persons by their preferred name.

Most of the 24 LGBTQI incarcerated persons interviewed acknowledged that custody and non-custody staff are respectful and fair and treat them well, but there were some concerns noted. A few LGBTQI incarcerated persons stated there have been cases of disrespect and retaliation towards them in the form of gay slurs made toward them and housing pod and cell searches conducted. Some of the individuals stated some staff are professional while there are some that are not. During the interviews, there were multiple complaints voiced pertaining to a specific housing deputy as to harassment and that he acknowledged to some of the LGBTQI individuals in Theo Lacy Facility (TLF) Mod I that he was not comfortable working with the incarcerated persons assigned to TLF Mod I (transgender and more broadly incarcerated persons that identify as LGBTQI). One (1) of the complaints was that the same deputy called one of the incarcerated persons a

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"faggot." He stated he informed the pod sergeant but failed to submit a grievance as he had other issues, he had to grieve during the same time period to which he had to pick and choose which issue(s) to grieve. Note: subsequent to the Monitor's submittal of the draft report, and despite the LGBTQI individuals claim above, OCSD clarified that incarcerated persons do not have to pick and choose which issues to grieve, and that they may submit individual grievances on multiple issues. OCSD also added that while incarcerated persons are not required to use the grievance process to submit a complaint for sexual abuse or sexual harassment under PREA, they may do so, and these complaints may be filed at any time (CCOM Policy 2900.8[b]). One of the incarcerated person's other issues reportedly was that the same officer was allowing "inedible very hard" food to be delivered to the LGBTQI incarcerated persons in TLF Mod I, to which the reporting incarcerated person opted to grieve that issue rather than the deputy's conduct toward him and other LGBTQI incarcerated persons. Another incarcerated person also housed in TLF Mod I (but in a different pod) claimed a deputy called him the same gay slur. It is unclear whether this claim pertains to the same deputy. Another disturbing complaint was that a religious services volunteer while interviewing a transgender incarcerated person (about three [3] weeks prior to the Expert's on-site tour), told the incarcerated person she was "going to hell" because of her sexual orientation and gender identity and proceeded to condemn homosexuality to her. Note: The Expert provided information to OCSD for appropriate inquiry into the matters (i.e., the religious services volunteer and the housing deputy). There were requests by LGBTQI incarcerated persons (assigned to TLF Mod I) for the unit sergeant to tour more often. Multiple individuals expressed faith and professional trust in the sergeant and that he always follows up on their requests and concerns (including concerns with staff and their treatment), but that they don't see him enough. There were at least two (2) complaints of two (2) different incarcerated persons regarding treatment by staff during the IRC Intake Process. One (1) of the complaints (from a transgender) individual stated one (1) of the Intake deputies repeatedly called her "dude." The same incarcerated person also complained about another deputy who stated she was tired of paying tax money to pay for hormone treatment for transgender incarcerated persons. The names of the two (2) deputies were not known. Although it is unclear as to whether the reporting incarcerated persons believe it may be due to their LGBTQI status, there have been continued complaints about the 7 PM – 7 AM slamming of doors and not caring about the concerns of the LGBTQI population.

Previous complaints from the two (2) initial Expert tours (as further detailed in the initial report) pertained to some of the allowances made for other specialized housing unit/group programs versus the LGBTQI Program in IRC Mod J. Since the previous monitoring tour, OCSD has provided a microwave oven, and a television remote control. The mod also has a white dry-erase board, an increased number of LGBTQI paperback books, and food service and clothing handlers/workers within the mod. Note: the latter two (2) items are discussed in more detail later in this report. Though the privileges provided in the PRIDE program mod are not the same as some of the privileges provided in the other specialized units (i.e., Phoenix House, HUMV/Veteran's Unit), progress has been made. The Expert continued to note that OCSD indicated it is open to discussions with DRC regarding any further concerns and what may constitute discrimination. The

Expert maintains that the use of programming incentives and benefits that have been implemented in other specialized units are worth serious consideration.

The complaints raised (above) were not substantiated or refuted by the Expert.

Regarding the OCSD Action Plan for this provision, *"We will revise CCOM policy to address this requirement of the Remedial Plan,"* as part of document production, In the OCSD's document production, the OCSD notes Orange County Sheriff's Department Manual Policies 375, 328, and 402 have been revised, as well as CCOM 2900 PREA/LGBTQI Inmates. However, in review of the three (3) OCSD Manual policies, there are no revision dates, and there were no draft policies provided to the Expert for review and/or input. In the review of the three (3) OCSD Manual policies as well as CCOM 2900, the Expert notes the following language:

- Policy 375:
  - 375.1 Purpose; states in part, "The Department has been working with the LGBTQI (lesbian, gay, bisexual, transgender, and queer (and/or questioning) community to establish procedures that create mutual understanding, prevent discrimination, and conflict, and ensure the appropriate treatment of transgender individuals. This policy will apply to all Department members."
  - 375.3 Contact with Transgender Individuals; contains language relative to professional, respectful, and courteous interactions with transgender individuals. It states, "Department members shall not use demeaning language that references a person's gender identity, gender expression, or sexual orientation; showing respect and addressing by preferred name and using gender pronouns appropriate to the individual's gender self-identity and expression."
  - 375.4 Determining How to Address a Transgender Individual; contains additional language.
- Policy 328 Unlawful Harassment and Discrimination; contains language regarding types of harassing conduct (whereas employees can be liable), including regarding sexual orientation and gender identity, language pertaining to discrimination complaints, and staff responsibility to prevent harassment or discrimination. Note: Policy 328 appears to be written for personnel in mind and not for incarcerated persons.
- Policy 402 Bias-Free Policing; includes language pertaining to identity profiling and standards of conduct.
- CCOM 2900 PREA/LGBTQI Inmates; there is also language pertaining to LGBTQI incarcerated persons; however, it is unclear as to what language may have been revised or added.

The Expert continues to be hopeful that further development of policy/procedures and related staff training will assist in improving communication and understanding between LGBTQI-incarcerated persons and staff of all disciplines.

As was reported in the previous Expert's report, multiple LGBTQI incarcerated persons interviewed were unaware or not clear as to how to navigate the grievance process (or

don't have confidence in the grievance process [as outlined in greater detail later in this report]) or otherwise were unclear as how to submit complaints regarding discrimination. With that said, there were not as many of these complaints during this third-round monitoring tour.

Overall, the Expert continues to recommend that policies/procedures and staff practices continue to be examined to ensure discriminatory practices toward LGBTQI incarcerated persons do not occur.

### **Partially Implemented (Previous Rating - Partially Implemented)**

*B. The County shall develop and implement procedures to ensure accountability for its LGBTQI non-discrimination policy:*

- 1. The County shall develop a procedure to track complaints involving LGBTQI-involved discrimination, including as to housing placement, property, privileges, or health/mental health care. Such tracking will be used for continuous quality improvement purposes.*
- 1. The County shall develop an accountability plan intended to timely log and investigate allegations from any source that staff has violated the LGBTQI non-discrimination policies and procedures. Any staff member who the County finds to have violated such policies and procedures shall be subject to relevant, progressive discipline policy.*
- 2. The County shall ensure that any staff, contractors, agents, and incarcerated individuals may submit complaints regarding any failures to comply with LGBTQI non-discrimination policies and procedures or components stated herein.*
- 3. The County shall track and analyze for quality improvement purposes the final dispositions of LGBTQI-related complaints, including staff accountability/discipline outcomes.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy to address this requirement. We would welcome any example of an accountability plan that Sabot or DRC has found to be acceptable. It also should be noted that with the requirements of Senate Bill 2 (related to reporting complaints of serious misconduct to the Commission on Peace Officers Standards and Training), OCSD is required to track and report any complaints of serious misconduct by peace officers.”* The Expert notes that DRC provided a sample log that can be modified to meet OCSD/HCA needs and comply with the RP requirements.

*“Included in Penal Code section 13510.8’s definition of serious misconduct is the following: “Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.”*

Orange County Sheriff's Department's Policy Manual, Policy 375 Transgender Policy (Section 375.5), contains brief general language that requests for service or complaints by transgender individuals (including citizen complaints against sworn or non-sworn professional staff) shall be addressed or investigated in a manner that is consistent with Department Policy.

Orange County Sheriff's Department Policy 328, Unlawful Harassment and Discrimination, contains general information, but it appears to be written with personnel in mind and not for incarcerated persons.

In the OCSD's document production, OCSD confirms that neither Policy 375 nor any other policy has been revised regarding this provision since the previous monitoring tour. The OCSD's document production addresses this provision in part by indicating, "Provide Accountability Plan/policies/procedures and related logs/forms (including tracking forms - Policy See Items 6-10." Note: The Expert notes there are no items numbered either 9 or 10 within the documents provided for the monitoring tour.

- Item 6: Policy 328 Unlawful Harassment and Discrimination:
  - However, as stated above, it appears to be written with personnel in mind and not for incarcerated persons.
- Item 7: Policy 402 Bias-Free Policing:
  - 402.4 Standards of Conduct to Ensure Bias-Free Policing; states in part, "The Orange County Sheriff-Coroner Department shall investigate all complaints of alleged bias-based policing or racial or identity profiling against its members. Members found to be in violation of this policy are subject to discipline in accordance with this Department's disciplinary policy."
  - 402.7 Supervisor Responsibility; states in part, "Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaint Procedure (Policy 1020)."
    - OCSD did not provide Policy 1020 for review.
- Item 8: Policy 2900 – PREA/LGBTQI Inmates:
  - 2900.9 Staff Reporting and Response to Incidents of Sexual Abuse and Sexual Harassment contains language regarding incident reporting, no tolerance for retaliation, and other information.
  - 2900.11 Investigations contains language regarding investigations of sexual abuse and harassment.
  - 2900.13 Discipline contains information regarding disciplinary sanctions.
  - 2900.14 Review contains requirements pertaining to PREA Review Team protocols.

Regarding the Expert's previous request for a status update (e.g., via memorandum or through other means) as to any plans and anticipated timelines for the development and implementation of a staff accountability plan specific to LGBTQI incarcerated persons (including tracking related discrimination complaints, investigations/inquiries, progressive discipline, and ultimate dispositions/outcomes; and to provide related management quality improvement reviews [including data review information]), the OCSD's production



indicates “we will request to discuss with DRC.” During the week of the August 2023 site visit, the parties met to discuss approaches to implementing an adequate staff accountability plan. DRC provided the County with a sample accountability log that CDCR uses for incidents involving staff violation of ADA/Disability policies, which may serve as a helpful starting point for developing appropriate staff accountability structures as set forth in the ADA/Disability and LGBTQI remedial plans.

Regarding the Expert’s previous request to provide (or provide a status) as to examples of completed related tracking form(s) to track related complaints; to provide blank example(s) if there are no entries as of yet; a copy of any plan and completed forms that outline management or quality assurance reviews, plans of action (or if none of the above exist then to provide brief information as to any plans for possible development), the OCSD’s production indicates there are no records of completed tracking forms; there are no blank examples of tracking forms; a related policy is in development (name or title is not identified); and there are no records or completed plan that outlines management or quality assurance reviews, or plans of action. Likewise, the OCSD’s production indicated there has been no movement regarding the development of logs/forms/documents regarding investigations/inquiries into allegations of staff LGBTQI discrimination (which would be inclusive of tracking each step of the investigation/inquiry process, including final outcomes/dispositions. As outlined in the OCSD’s production, OCSD provided the following:

“Per California Senate Bill 2’s reporting requirements, all qualifying serious misconduct allegations by peace officers must be reported to the Commission on Peace Officer Standards and Training effective January 1, 2023. The definition of “serious misconduct” includes “[d]emonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.” Inmate grievances that contain allegations of serious misconduct are reported to Sergeant xxxxxx for notification to POST. Sergeant xxxxxx checked all POST records for SB 2 related incidents for OCSD from 12/01/22 - 6/1/23. He located 1 demonstrating bias allegation that falls under the LGBTQI category (JI #122222/0401 and POST2305560-1). The deputy was alleged to have called the inmate a “faggot.” The allegations were investigated by OCSD and determined to be “not sustained” (investigation failed to discover sufficient evidence to clearly prove or disprove misconduct).”

Note: Per OCSD, the lone complaint cited above is not one of the cases reported by the Expert.

While onsite OCSD staff reported the tablets would have grievance/appeal forms uploaded for incarcerated persons to file grievances/appeals (including LGBTQI incarcerated persons for discrimination (and other) reporting. However, subsequent to the Expert issuing the draft LGBTQI report, OCSD indicated there is no current plan to include these forms onto the tablet.

The Expert continues to request for OCSD to apprise the Expert as to future developments regarding an accountability plan pursuant to this provision. Once OCSD has a draft staff accountability plan (inclusive of related forms/logs), they must provide it to the Expert and DRC for review/comments/recommendations. Once an accountability plan has been approved and implemented, the County will need to provide all associated documents for the Expert's review, e.g., related policies/procedures, staff accountability plan/process, tracking mechanism to track discrimination complaints (inclusive of the investigation process and ultimate disposition/outcome), and information pertaining to OCSD administration personnel analyzing all related data for quality improvement for future monitoring tours. For the next monitoring tour, the Expert also requests OCSD to provide Personnel Complaint Procedure (Policy 1020) for review.

Future training material content should include at least general staff accountability-related information. Once the revised policy (and training) is drafted, the County must provide it to the Expert and DRC for review/comments/recommendations.

#### **Un-ratable (Previous Rating – Un-ratable)**

- C. *The County shall develop and implement procedures to protect against staff and contractors disclosing an individual's LGBTQI identity. The County shall limit disclosures to specific, limited circumstances as for purposes of the individual's safety, such as transporting someone.*

Orange County Sheriff's Department Policy 375 Transgender Policy (Section 375.4) contains brief (but clear) related language.

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address this requirement."*

Regarding the Expert's previous request for OCSD to provide any updated information as to what OCSD has done in relation to concerns identified in the Expert's initial report that multiple LGBTQI incarcerated persons have complained to DRC representatives that some staff (including medical, dental, and sworn personnel) have "outed" them in the presence of other incarcerated persons, the OCSD's production simply indicates there are no records, and policy is being developed. Likewise, in requesting OCSD to indicate any plans to follow up to ensure this (outing) does not happen in the future, the OCSD's production simply indicates no records and policy in development.

As was the case with the first two (2) monitoring tours, personnel who were interviewed were aware of the confidentiality concerns and the "need-to-know" basis regarding incarcerated persons who identify as LGBTQI or transgender.

Although there were not as many related complaints during the LGBTQI incarcerated person interviews for the third monitoring review, there were still complaints made pertaining to IRC Intake deputies "outing" them or misgendering them in front of other incarcerated persons.

As was the case with complaints expressed during the previous two (2) monitoring reviews, the identified complaints could not be substantiated or refuted by the Expert during the on-site monitoring review. A staff accountability plan (once developed, approved, and implemented), will be a key component of this issue and for the overall LGBTQI program.

The Expert continues to note the County's action plan to address the provision by policy revision (or development) and training. Once the revised (or new) policy (and training) is drafted, the County must provide it to the Expert and DRC for review/comments/recommendations.

Future training material content should include confidentiality and nondisclosure-related information.

#### **Partially Implemented (Previous Rating - Partially Implemented)**

- D. *Staff shall use (1) an individual's pronoun (including the third-person singular, they/them) appropriately and/or (2) the individual's preferred name or last name.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address this requirement. SOMA will assist with this tracking."* Note: OCSD has not provided a tentative timeline for activation for uploading LGBTQI-related information into the SOMA tracking system or when staff will be trained and have access to the information.

Orange County Sheriff's Department Policy 375 Transgender Policy (Sections 375.3 and 375.4) contains related language requirements for staff to follow. The policy generally addresses documentation of an individual's preferred name and pronoun, and that the information should be provided to relevant department members for the purpose of ensuring continuity of appropriate treatment.

Regarding the Expert's previous request for OCSD to indicate (via a brief memorandum or otherwise) whether any staff members (or any offices, divisions, or disciplines) are not trained or otherwise do not have access to an LGBTQI incarcerated person's listed preferred pronoun (such as the Voluntary Gender Identity Disclosure and Search Preference forms), the OCSD's production merely indicates there are no records, and policy is in development.

As was the case during the first two (2) Expert tours, most of the staff members interviewed stated that they refer to all incarcerated persons by their respective last names (regardless of whether they are self-identified as LGBTQI, transgender, or otherwise). A healthcare employee as well as a non-sworn (non-healthcare) employee both stated they use an individual's preferred name and pronoun (if known).

In contrast to the previous (second) Expert tour, while interviewing staff at TLF, the Expert reviewed two (2) random mod cards (from the same mod) for the purpose of confirming

whether search preferences and preferred name/pronoun information were contained. In both cases, all related information was documented.

As the Expert indicated in the previous (second) Expert report, and consistent with the County's expectation, future training material content should include the requirement for staff to use last names for all incarcerated persons but at least have a transgender individual's preferred name and pronoun available to view (e.g., via SOMA).

It is still assumed the SOMA tracking system (once online with LGBTQI information) will provide staff the ability to track, monitor, and share (amongst staff) related information (e.g., preferred pronouns [including the third-person singular they/them] and/or the person's preferred name or last name). Such a tracking mechanism should be accessed by sworn and non-sworn personnel as applicable (e.g., staff assigned to housing units, healthcare, Programs or Inmate Services, court processing, transportation, etc.).

Prior to implementing the LGBTQI component of SOMA, the County should provide the opportunity for the Expert and DRC to review/comment and make applicable recommendations.

#### **Partially Implemented (Previous Rating - Partially Implemented)**

- E. The County shall permit individuals (including people awaiting trial) to update their Jail ID names if they have obtained a legal name change and (in cases where there are pending charges) the criminal court has recognized the name change. The County shall permit individuals to seek legal name changes and to take appropriate steps to update legal documents. During the period of monitoring of remedial plan implementation, the County will notify DRC of any incarcerated person who obtains a legal name change.*

The Expert notes the OCSD Action Plan for this provision: *“Although this item has been implemented in practice, we will revise policy to address it and include the policy in training materials.”* Note: The OCSD’s production also notes there are no related records, and the policy is in development.

Court & Custody Operation Manual (CCOM), Section 1201.16 Identification Cards and Clothing, does not specifically address this requirement.

As part of document production, OCSD provided a couple of emails (Internal and external) regarding a Court order and a transgender incarcerated person's name and gender change, and completion of a new Gender Identity Form, and that all information has been captured in the SDS tracking system. OCSD also provided the corresponding Court's Register of Actions information and a Decree (dated January 26, 2023) Changing Name and Order Recognizing Change of Gender and For Issuance of New Birth Certificate. However, there was no information provided specific to the ordering or issuing of a new OCSD identification card (or whether an updated mod care was made for the respective housing mod reflecting the new name change, etc.).

As was the case with the previous (second) monitoring review, the staff interviewed stated that incarcerated individuals may update their jail identification cards if they have a legal name change.

The Expert interviewed a transgender incarcerated person from TLF Mod I who stated she recently inquired about obtaining a legal name change, and she was provided information. She indicated she had not yet followed up any further but was planning to do so.

Once the revised policy (and training) is drafted, the County must provide it to the Expert and DRC for review/comments/recommendations. The training material content should include the updating of jail identification cards (post legal name change) related information.

As reported in the first two (2) Expert reports, DRC has offered to provide technical assistance to the County on these procedures. The Expert continues to encourage the Parties to confer on these matters to ensure efficient and successful implementation.

#### **Partially Implemented (Previous Rating - Partially Implemented)**

- F. *The County shall permit transgender and intersex individuals (whether sentenced or un-sentenced) to update the photo on their jail ID. The County shall permit transgender individuals to update the photos on their ID to minimize the negative impacts of how such photos can "out" them (e.g., if their ID photo and their current gender expression are dissimilar) or cause psychological distress.*

The Expert notes the OCSD Action Plan for this provision: *"Although this item has been implemented in practice, we will revise policy to address it and include the policy in training materials."*

CCOM, Section 1201.16 Identification Cards and Clothing does not specifically address this requirement. The County did not provide any other relevant documentation for review (to demonstrate written policy or staff proof of practice).

In the Expert's previous request for a 6-month period of examples of all completed OCSD forms/documentation for transgender and intersex incarcerated persons to update their jail ID photo, the OCSD's production indicates there are "likely no records, will check with xxxxx and xxxxx (staff)." The OCSD's production also indicates that blank examples of related forms/documents do not exist.

As was the case during the previous (second) Expert report, staff interviewed stated that incarcerated individuals may request to have their photo updated for their identification card if they feel the need to do so.

Although no concerns or information related to this provision was provided to the Expert during the staff and incarcerated person interviews, during the previous (second) Expert review, relevant information was provided describing the process for issuance of a new

photo and identification card (with a name change), with updated information reportedly having been entered into the SDS system, I-TRAC, and the individual's history card, with a copy of the new identification card issued to the individual.

As was outlined in the previous (second) Expert report, once the revised policy (and training) is drafted, the County must provide it to the Expert and DRC for review/comments/recommendations. The Expert understands the provision requirements have been implemented in practice, but the related policy and training should include all related requirements, including that when a jail identification photo is updated, the photo is also updated within the various jail tracking systems as applicable. Future training material content should cover permitting transgender and intersex incarcerated persons to update the photo on their jail identification card.

### **Partially Implemented (Previous Rating - Partially Implemented)**

G. *A person's self-identification as LGBTQI at any point is sufficient to trigger the protections and procedures specific to LGBTQI individuals, as set forth herein. Documentation of a medical diagnosis or legal documentation of an individual's identity, including their gender marker or legal sex, is not required for staff to respect or confirm an individual's gender identity, except in cases where there is specific evidence that a person has falsely asserted a gender identity:*

- 1. The fact that a person has not completed a legal name change or has not obtained a government-issued identification that reflects their affirmed sex, gender identity, or name shall not constitute evidence to justify staff not respecting the individual's gender identity.*
- 2. The absence of the completed County's Voluntary Gender Identity Disclosure and Search Preference Form shall not constitute evidence to justify staff not respecting the individual's known gender identity.*

The Expert notes the OCSA Action Plan for this provision: *"We will revise policy and implement training to address this requirement."*

Orange County Sheriff's Department Policy 375 Transgender Policy (Sections 375.1, 375.2, and 375.3) contains related language.

As was the case during the Expert's first two (2) monitoring tours and staff interviews, staff contend that they respect and protect individuals who self-identify as transgender or LGBTQI.

As was the case for the previous (second) monitoring tour, most of the incarcerated persons interviewed indicated they are protected and treated respectfully by staff. During the most recent (third) monitoring tour, there were complaints of LGBTQI individuals being misgendered at IRC Intake. There are recurring complaints of staff purposely providing incorrect-sized female clothing for transgender females and staff slamming doors. As addressed earlier in this report, there were two (2) incidents reported to the

Expert where staff called two (2) separate LGBTQI incarcerated persons (from two [2] separate mods) "faggot" there was an incident where the entire LGBTQI mod (TLF Mod I) food service workers (solely for Mod I Sectors 1-3) were removed from their jobs and were told they would not get their jobs back. Note: They were all reinstated to their positions the following day. The Expert was not able to confirm or refute the claims, and some of the claims were reported to OCSD for investigation.

Once the revised policy (and training) is drafted, the County must provide it to the Expert and DRC for review/comments/recommendations. Future training material content should include respect, safety, and protection-related information for LGBTQI-incarcerated persons commensurate to the requirements outlined in this section.

### **Partially Implemented (Previous Rating - Partially Implemented)**

## **B. Transgender and Intersex Intake & Classification Procedures**

### *A. During intake and classification, Jail staff shall:*

- 1. Offer each transgender or intersex individual the option to complete the OCSD Voluntary Gender Identity Disclosure and Search Preference Form and continue to maintain documentation of an individual's gender identity, pronoun, honorific, and search preference.*
- 2. Explain that the individual will not be punished if they choose not to provide such information.*
- 3. Explain that staff, contractors, and volunteers shall use a person's stated pronoun and honorific and that the failure to do so may be grieved and reported.*
- 4. Effectively communicate how gender identity impacts classification and housing placement determinations.*
- 5. Ask for information about the individual's preferred housing placement (e.g., male-/female-designated unit, general population/protective custody).*
- 6. Ensure that the above inquiries and information are communicated in a private setting.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address these requirements."*

The following policies/procedures and/or related forms/documentation contain applicable information as follows:

- CCOM, Section 1710.4 Body Searches of Inmates (Gender Restrictions).
- CCOM Policy/Section 1200.4 Location of Classification Interviews.
- CCOM Section 1200.10 Housing Assignments and Changes address housing for gender non-conforming or non-binary individuals.

The County provided approximately 25 completed Orange County Sheriff's Department Voluntary Gender Identity Disclosure and Search Preference Forms for the period from December 2022 – July 2023 for transgender/intersex individuals:

The following policies/procedures and/or related forms/documentation either were not provided or do not contain applicable information as follows:

- The County did not provide a Classification Plan or other Classification policies (other than what is identified above):
  - It is unclear whether there is a separate existing Classification Plan other than the CCOM Sections as outlined in this section of the report.
- The County did not provide any policies/procedures related to items A.1, A.2, or A.3.

The Expert interviewed two (2) Classification deputies. One (1) of the deputies said that if a new arrival is LGBTQI, he asks if they want PC or GP. He explains GP versus PC and that it's often difficult to go from PC to GP. He also said he explains if they are afraid in GP, they can talk to their deputy to be referred back to Classification for rehousing consideration. He further stated they complete the search preference and gender identity form for transgender incarcerated persons (optional for the individuals to provide the info). A second classification deputy stated housing is based on their "plumbing" and indicated transgender incarcerated persons are automatically housed in PC. Both classification deputies were unclear on whether semi-annual LGBTQI classification reviews are happening (one [1] indicated only PREA assessments are being done). The housing deputies interviewed were aware of the OCSD Voluntary Gender Identity Disclosure and Search Preference Form. As was the case for the previous monitoring tour, not all staff knew where to access the information. As was also the case from the previous monitoring tour, the housing deputies interviewed indicated they do (or would) honor an individual's search preference by the staff of the requested gender.

From the incarcerated person interviews, there were multiple complaints (from transgender and more broadly from LGBTQI individuals) that Classification deputies did not discuss the meaning of general population versus protective custody (PC), including how gender identity impacts classification and how programming is different (including out-of-cell time and programming), and gender congruent housing (including how to ask for such). One (1) of the transgender individuals indicated she was not asked about the Voluntary Gender Identity and Search Disclosure Form (including search preference [gender]).

It is still unclear whether semi-annual reviews are occurring.

For Item A.2 (described above), the OCSD's production indicates in March 2023, OCSD began informing transgender individuals will not be punished if they choose not to provide requested information pertaining to an individual's gender identity, pronoun, honorific, and search preference. However, there was no proof of practice documentation provided.



For Item A.3 (described above), the OCSD's production indicates there are no records (proof of practice), but the policy is in development.

For Item A.4 (described above), the OCSD's production indicates there are no records (proof of practice), but the policy is in development.

For Item A.5 (described above), the OCSD's production indicates there are no records (proof of practice), but the policy is in development. However, the OCSD's production also refers to document production materials, including SHR, Class reviews, OCSD Specialty Housing Requests, and OCSD Inmate forms (screening). As was the case from the initial Expert tour, from interviews with Classification staff, and in a review of the Classification forms, the forms lend themselves to ensuring Classification deputies ask about the individual's preferred housing placement (e.g., male/female designated unit, general population/protective custody).

As part of document production, the County provided many completed examples of Specialty Housing Requests (Classification interviews). Classification deputies acknowledge the LGBTQI, transgender, or intersex status of the individual, and both ask and consider the individual housing placement requests and make recommendations (to a classification sergeant) accordingly.

Once the revised policy, forms, and training material are drafted, the County must provide them to the Expert and DRC for review/comments/recommendations.

The Expert's remaining recommendations in this area are continued recommendations from the Expert's initial monitoring tour (pending revised policy and forms [as applicable] and training).

1. Classification deputies (or "uncuff" deputies) must ask all self-identified LGBTQI new arrivals as to their search preference (staff gender) and must offer the OCSD Voluntary Gender Identity Disclosure and Search Preference Form.
2. Pending the eventual roll-out of the formalized staff training curriculum, the County should ensure that staff is aware of and understand the OCSD Voluntary Gender Identity Disclosure and Search Preference Form, where/how to access the information documented on that form, and their responsibilities regarding the information contained. The form and process must be in place at all jail facilities.
3. Classification deputies must fully explain applicable classification and security options and ensure LGBTQI self-identified individuals fully understand the protective custody and general population classifications (and others as applicable) and the jail-wide dynamics associated with those classifications.
  - e.g., must include the meaning of PC, how PC classification impacts programming, out-of-cell time, work, etc.
  - Gender-congruent housing (transgender).
4. The County must ensure that Classification Unit staff comply with OCSD policies and refrain from having a blanket or across-the-board practice of housing transgender or intersex incarcerated persons in housing based on their assigned sex at birth (with appropriate consideration of classification factors, as well as the

- individual's own housing preference). More work is necessary, including development of Classification policies that provide guidance on the consideration of gender congruent housing for transgender or intersex incarcerated persons at any period during incarceration.
5. To the extent the County can provide documented evidence for future monitoring tours, the County should provide confirmation (examples) that Classification Unit intake staff explain to new arrivals (as applicable):
    - They will not be punished if they choose not to provide requested information pertaining to their gender identity, pronoun, honorific, and search preference.
    - Staff, contractors, and volunteers shall use a person's stated pronoun and honorific, and the failure to do so may be grieved and reported.
  6. As related to Items A.4 and A.5 (above), modify CCOM Section 1200.10 Housing Assignments and Changes to clarify that the policy and jail practices regarding addressing housing for gender non-conforming and non-binary individuals also include incarcerated persons who identify as transgender.

Future training material should include related information as outlined in this section.

#### **Partially Implemented (Previous Rating - Partially Implemented)**

- B. The County shall revise the Voluntary Gender Identity Disclosure and Search Preference Form to specify the following:*
1. *The purpose of the form is to ensure that the County adheres to its own policies concerning transgender and intersex individuals.*
  2. *An individual may update the form at any time by requesting a new form from custody/ classification staff, sending a message slip, or submitting a grievance without fear of retaliation or discipline.*
  3. *The form may be accessed by custodial and classification staff only for purposes of ensuring compliance with Jail policies.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy and implement training to address this requirement.”*

As part of document production, the County provided approximately 25 completed examples of the Voluntary Gender Identity Disclosure and Search Preference Forms. There are no identified dates or revision dates located on the forms, and the Expert notes the current form version does not capture the requirements for this provision. None of the forms observed contained the required revision language as identified in A.1 – A.3 (above).

The OCSD’s production notes the form (Voluntary Gender Identity Disclosure and Search Preference) has not been revised yet.

Once the revised policy, forms, and training) is revised/drafted, the County must provide it to the Expert and DRC for review/comments/recommendations.

The Expert notes the County's action plan in that the policy and form are currently under revision.

**Not Implemented (Previous Rating - Not Implemented)**

### C. Least Restrictive Setting Appropriate for LGBTQI Population

- A. *The County recognizes that LGBTQI individuals and people whose appearance or manner does not conform to traditional gender expectations should not be placed in more restrictive custodial settings based solely on such identification or status or because they receive gender dysphoria treatment.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address this requirement."*

Previously, CCOM Section 1200 Inmate Classification Procedures did not contain language specific to housing identified LGBTQI individuals, but it did address housing individuals according to classification level or according to Correctional Health Service (CHS) staff recommendations.

Regarding the Expert's previous request that to the extent there is a policy(ies)/procedures that specifically address the housing of LGBTQI incarcerated persons, then provide the policy(ies)/procedures in the OCSD's production, OCSD indicated Policy 1201.2(c) has been updated. As part of document production, OCSD provided Policy 1201.2(c). The policy states in part:

- c) "If an inmate is identified by Classification Staff (via historical record review) as being Lesbian, Gay, Bisexual, Transgender, Queer, or Intersex (LGBTQI), or if the inmate self-identifies as LGBTQI during their classification interview, Classification Staff shall notify them of the following housing options:
1. General Population (GP) housing, only if ALL of the following criteria are met:"
    - a. Note: the section contains three (3) subsections of criteria.
  2. "PC Main-line housing, only if ALL of the following criteria are met:"
    - a. Note: the section contains two (2) subsections of criteria.
  3. "PC LGBTQI housing, only if one or more of the following criteria are met:"
    - a. Note: the section contains two (2) subsections of criteria.
  4. "For LGBTQI inmates, Program housing (PRIDE Program), only if ALL of the following criteria are met:"
    - a. Note: the section contains four (4) subsections of criteria.
- d) "If an inmate desires placement into the PRIDE Program, they shall be housed temporarily in PC LGBTQI housing, pending screening and follow-up interview by PMU. For more information regarding the screening and placement of inmates into the PRIDE Program, refer to CCOM Section 1204.5(b).

Regarding the Expert's previous request that OCSD provide proof of practice or an explanation (e.g., via a brief general memo to the Expert) as to how the administration or Classification management personnel monitor Classification activities to ensure LGBTQI individuals are made aware of the jail dynamics associated with them being classified as general population versus protective custody and in being housed as such; the OCSD's production indicates there is no formal process in place yet, and that policy and training are in development.

As has been the case for the three (3) Expert reviews, Classification Unit staff interviewed stated they house LGBTQI incarcerated persons (as well as individuals whose appearance may not appear to conform to traditional gender expectations) in accordance with their classification level and factors, the housing matrix, and specialty housing requests (when applicable) and do not house these individuals in more restrictive housing settings (including program access) than their classification level and factors otherwise dictate. The Expert notes that housing in PC or LGBTQI PC generally results in reduced out-of-cell and programming opportunities.

A recurring concern (as confirmed through LGBTQI interviews) is that multiple LGBTQI incarcerated persons were not clear (at the time of intake classification) as to the level of programming or lack of programming that would be available once housed at PC or LGBTQI PC, including work assignments, other programming; or how gender identity impacts classification (e.g., the meaning of being classified as protective custody, or the impact/meaning of being classified as PC, and how gender identity or protective custody status impacts classification). For example, as stated in the previous (second) report, there is no explanation as to any differences between programming in PC versus LGBTQI-PC (PRIDE Program) versus GP, and no explanation as to any differences in access to out-of-cell time work assignments and other programs, services, and activities in PC versus LGBTQI-PC (PRIDE Program) versus GP.

As the Expert previously expressed, Classification personnel must ensure newly arrived and identified LGBTQI incarcerated persons are made aware of the jail dynamics associated with being classified as general population versus protective custody (or other classifications) and in being housed as such, including how it may impact classification processes in future facilities (CDCR, other jail systems, etc.). This will allow the individuals to make a better-informed request as to their future housing and programming status.

Approximately 90 percent (69 individuals) of the approximately 77 identified LGBTQI individuals housed at the jail complexes (at the time of the third on-site tour) were housed in protective custody for various reasons. As previously expressed, in requesting housing placement, LGBTQI persons should not have to choose (if they have a choice about protective custody) between their own safety versus equal access to programs, services, and activities that non-LGBTQI and/or non-protective custody individuals are afforded. LGBTQI-incarcerated persons should have equal access to the jail's programs, services, and activities (e.g., re-entry services, academic/vocational education, work assignments, religious services, etc.). The jail administration should consider expanding offerings for protective custody and/or the LGBTQI population (whether assigned to the general

population or protective custody housing) to comply with equal access requirements under the Settlement Agreement and anti-discrimination laws. The Expert recognizes the County's position that incarcerated persons are classified as PC for various reasons, including criminal history and conduct while in custody.

On a positive note, OCSD provided a list showing the names, booking numbers, and housing assignments for 14 LGBTQI incarcerated persons (TLF:12, WJ: 1, MJ:1). Of the TLF individuals, ten (10) are classified as PC (9 PC 3s, and 1 PC 1), and two (2) are GP 7s, and the lone WJ individual is GP 6. Though no specific assignments are listed, it is believed that four (4) individuals are food and clothing workers solely for TLF Mod I Sectors 1-3, and the five (5) individuals assigned to TLF Barracks work the midnight kitchen crew.

As was the case with the previous (second) monitoring tour, Classification documents reviews (e.g., OCSD Specialty Housing Requests) largely reflect that Classification Unit staff strongly consider the housing requests of LGBTQI individuals. Although many LGBTQI incarcerated persons are satisfied with their housing placement, others indicated they were not properly informed of the programming limitations that come with being on PC status. A couple of individuals interviewed acknowledged they may have opted for GP status had they known the limitations and/or permanent status that often comes with being classified as PC.

Classification deputies must ensure LGBTQI new arrivals have the pertinent information to make informed requests for their future housing and programming. Some progress has been made, but OCSD should continue efforts to create more opportunities for LGBTQI individuals in all units, especially those assigned to protective custody housing units where there is a lack of (or limited) access to in-person education classes, work assignments, etc.

Future training material should include related information.

### **Partially Implemented (Previous Rating - Partially Implemented)**

- B. The County shall not house LGBTQI individuals in more restrictive housing than otherwise indicated because of their actual or perceived sexual orientation, gender expression, gender identity, or intersex status. The County shall house LGBTQI people in the least restrictive housing allowed by their classification and security designation.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address this requirement."*

The Expert notes (per the OCSD's production) CCOM Policy 1200 (1201.2[c]) Inmate Classification Procedures have been revised (as outlined in greater detail in the previous section [above]). Additionally, as previously reported, CCOM section 1200.10 Housing Assignment and Changes addresses that gender non-conforming or non-binary individuals will be housed in male or female housing after classification deputies have determined that proper classification and housing location. CCOM Section 1200.1

Classification Plan addresses housing individuals according to classification level or according to Correctional Health Service (CHS) staff recommendations.

A major concern was cited earlier in this report regarding the housing of transgender individuals (e.g., housed according to their "plumbing"). Aside from this serious concern and based on a review of numerous OCSD Specialty Housing Requests and staff interviews, the Classification deputies house LGBTQI incarcerated persons in accordance with their classification level and factors and consider an individual's request/preferred housing and not house these individuals in more restrictive housing settings than their classification level and factors otherwise dictate. It is important to reemphasize the requirement and importance to explain all housing options to LGBTQI new arrivals.

As outlined in an earlier section of the report, the Expert reviewed random Specialty Housing Requests – Classification) as provided as part of document production. It appears that classification staff is strongly considering LGBTQI incarcerated person housing requests when recommending housing and program placement to a classification sergeant.

There were LGBTQI incarcerated person complaints regarding lack of out-of-cell time, particularly some mods having many yard/dayroom groups within a given sector, such as five (5) of six (6) within a sector, allowing less time for each individual yard/dayroom group. Although there has been some noted improvement and efforts on the part of OCSD, there are still some concerns and complaints regarding the lack of work and programming opportunities being housed in protective custody. A lack of educational opportunities is still a recurring concern with LGBTQI-incarcerated persons.

Future training material should include related information.

### **Partially Implemented (Previous Rating - Partially Implemented)**

- C. *The County will establish a voluntary GBTQI Program Sector unit once the use of the housing unit is no longer necessary for social distancing, isolation, or quarantine of incarcerated persons due to COVID-19. The unit will provide expanded out-of-cell time (i.e., doors open during daytime hours), access to jobs in the sector, and enhanced programming activities. Attached as Appendix 1 is the County's planned GBTQ+ Program Sector Pilot overview and programming schedule.*

- 1. Once the GBTQI Program Sector unit has been fully operational for 90 days, the County will provide a status report on the program. The Parties will then discuss whether the County will terminate the program or whether there are any appropriate program modifications, including efforts towards adequate inclusion of transgender individuals consistent with safety and other applicable considerations.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy and implement training to address this requirement. Class instruction potentially all going online via the tablets, instead of in-person, continues to be a point of discussion."*

In response to the Expert's request and as part of document production, OCSD provided revised policies 1201.2(c) and 1204.5. LGBTQI Inmates, and updated programming schedules.

Policy 12.04.5 addresses LGBTQI housing and programming assessments/assignments; LGBTQI incarcerated person screening/consideration for "PRIDE Program" placement; consideration of removal or re-entry into the program; and incarcerated person request for entry, removal, or re-admission into the program.

Note: Policy 1201.2(c) was detailed earlier in this report (pertains to classification and housing placement (e.g., PRIDE Program, PC, PC Mainline, GP).

The LGBTQI PRIDE Program has moved from IRC Mod J (Sector 3) to TLF Mod I Sector 3. Though there were early discussions of possible program expansion, OCSD has since confirmed there are no such plans as the County currently does not have incarcerated persons on a waiting list for the PRIDE program. The Expert encourages OCSD to examine the feasibility for future expansion. Reportedly, the program has been operating with between 12 to 15 individuals. PRIDE program staff have maintained that the desired numbers (LGBTQI incarcerated persons) for maximum effectiveness is between 8-12 participants. TLF, Mod I, Sector 3, contains 16 cells/32 beds.

OCSD provided an updated PRIDE Program Schedule – TLF Mod I Sector 3:

#### PRIDE Program Schedule

##### Monday:

- 0800-1000: Process Group (Inmate Programs staff):
  - A space allowing participants to express issues surrounding programming, classes, and any other areas of concern.
- 1300-1500: Art Classes (OCSD Correctional Programs Staff/Guest Presenters):
  - Provides enrichment to participants in artistic creativity, expanding their imagination and healthy expression using different forms of aesthetic principles.
- 1900-2000: AA Panel:
  - Alcoholics Anonymous is a fellowship of men and women who share their experience, strength, and hope with each other that they may solve their common problem and help others to recover from alcoholism.

##### Tuesday:

- 0800-1000: RECLAIM (APAIT Facilitators):
  - Addresses experiences prevalent within the LGBTQI community related to substance abuse/use, mental health, and trauma.
- 1300-1500: Great Escape:
  - Pre-release planning class that provides resources and referrals to a variety of community-based organizations and county agencies, including direct linkage to residential substance abuse treatment upon release, if needed.

Group facilitation includes topics on substance abuse, relapse prevention, and life skills.

- 1900-2000: Rancho Santiago Community College District:
  - Offers Correspondence courses to all who are interested.
  - Classes are available upon request and include:
    - Money Matters
    - Substance Abuse
    - High School Equivalency Test
    - Workforce Readiness
    - Effective Parenting
    - Food Service Handler Test Prep
    - Basics of Leadership 1 & 2
    - ESL

Wednesday:

- 0800-1000: Affirmative Therapy Process Group (OCHCA clinician):
  - A space allowing LGBTQI-identifying participants to explore issues surrounding gender, relationships, and current events.
- 1300-1500: Mindfulness/Yoga (Yoga Project):
  - In-person yoga and mindfulness sessions guided by facilitators experienced in offering trauma-informed yoga and mindfulness practices.
- 1900-2000: Rancho Santiago Community College District:

Thursday:

- 0800-1000: Book Study:
  - Offers an opportunity for participants and staff to read the same books and have structured conversations as they move through the books.
- 1300-1500: Workforce Preparation (Santa Ana Work Center):
  - Employment workshops specializing in:
    - Assessments
    - basic skills
    - vocational readiness and transferable skills
    - Identifying career goals
    - Developing/enhancing skills
    - Labor market information
    - Supportive services
- 1900-2000: Rancho Santiago Community College District:

Friday:

- 0800-1000: Street Law/ Life Skills (OC Pub Def):
  - Help to understand the criminal court process, criminal law, our Constitution, and addressing one's record. The class will also cover topics to help participants transition back to life out of custody (11 AM to Noon).
- 1300-1500: Individual Case Management:
  - One-on-one case management to assist participants with discharge planning, provide resources, and facilitate access to the post-custody treatment program.
- 1900-2000: Rancho Santiago Community College District



A tracking log is maintained to monitor all incarcerated persons in the program and is updated daily by Classification Staff. The log includes all incarcerated persons who were interviewed for the program (PMU), the reason for placement (or non-placement) into the program (PMU), and the reason for the removal (Classification – "Released from custody," "Inmate requested removal," "Staff removal," etc.).

OCSD provided a listing of all LGBTQI incarcerated persons enrolled in classes/programs:

- PRIDE Program: 14 individuals
  - TLF Mod I Sector 3
- Back on Track packets: Eight (8) individuals
  - TLF Mod I Sectors 1, 2, 3, TLF Mod N.
- Great Escape packets: Nine (9) individuals:
  - TLF Mod I Sectors 1, 2; TLF Mod L; TLF Mod N; TLF A Barracks; IW-N.
- Academic Skills Correspondence packets: One (1) individual:
  - IM-J
- Parenting Correspondence packets: Two (2) individuals:
  - IM-J, TLF Mod I Sector 2.
- Malachi Women: One (1) individual:
  - IW-N
- Money Matters Correspondence packets: One (1) individual.
  - IW-N
- Substance Abuse Correspondence packets: Two (2) individuals:
  - MJ-O, TLF Mod I Sector 2.
- GED Correspondence packets: Two (2) individuals:
  - MJ-O, TLF Mod I Sector 1.
- Leadership Correspondence packets: Two (2) individuals:
  - MJ-O, TLF Mod I Sector 2.
- Workforce Prep packets: One (1) individual:
  - TLF Mod I Sector 1.
- Food Service Correspondence packets: One (1) individual:
  - TLF Mod I Sector 2.
- Food Service: One (1) individual:
  - WJ-G.
- TAY Program: One (1) individual:
  - WJ-G.
- VR Headset Program: One (1) individual:
  - WJ-G.
- Attitudes for Success: One (1) individual:
  - WJ-G.
- Leadership: One (1) individual:
  - WJ-G.
- Cell Dogs: One (1) individual:
  - WJ-H.

Based on LGBTQI incarcerated person interviews, coupled with a review of the Excel report listing program and class assignments, the Expert maintains concerns that the LGBTQI individuals housed in TLF Mod I Sectors I and II have limited or no opportunities for programming (aside from some of the remote study/packets as outlined). The same concern is maintained as there are very few or no job opportunities available for individuals within Sectors I and II as well.

The Expert interviewed a non-sworn staff member regarding the TLF Mod I Sectors I-3 as well as regarding the LGBTQI program as-a-whole. The staff member provided the following information:

- There is now a library of reading material.
- New Orientation (for individuals in TLF Mod I only):
  - A list is run weekly to determine new LGBTQI individuals to a respective sector.
  - Orientation is conducted at cell-front (acknowledges some possible confidentiality concerns).
  - The LGBTQI book list and resource information is provided.
  - Inform the individual as to the services available.
    - Note: the individual is not yet informed of the PRIDE program until classification deputies inform staff if the individual is eligible.
  - A new orientation is conducted (staff and LGBTQI incarcerated persons sign a form).
- Individuals are concerned about being "outed," so they are afraid to put in a request slip for any information or assistance because other incarcerated persons control what request slips go in and out of some of the respective mods/sectors.
- When asked whether message slips are available on the electronic tablet, the staff member was not sure.
- OCSD purchased LGBTQI reading material as recommended by DRC:
  - Related information is provided during orientation, including how to order authorized books.
  - Up to five regular books and one (1) LGBTQI book are permitted in a cell at a given time.
  - An estimated 35 authorized paperback books are in circulation.
- Don't receive any LGBTQI list other than TLF Mod I, so no way of knowing if anyone else may want a book.
- LGBTQI individuals on units other than TLF Mod I do not have access to LGBTQI-specific information/resources.
- Indicates it could be possible to be able to upload LGBTQI books in a PDF format into the electronic tablet.
- Currently, about 14 individuals in TLF Mod I Sector 3:
  - An in-person class under Rancho Santiago Community College District "Workforce Prep now occurs on Wednesday evenings, and all individuals in the sector participate.
- Outside of the PRIDE program, CHS manages APAIT classes in some sectors.
- For TLF Mod I Sectors 1 and 2, weekly recruitment takes place for AA Panels.
- Religious services are offered.

- Nair hair removal can now be purchased through the commissary.
- I am not sure about the razor blade concerns, as deputies deal with that issue.
- TLF Mod I Sector 3 now has meals/clothing exchange workers (solely for sectors 1, 2, and 3).
  - Unclear as to the selection/hiring process.
- Grievances are routed to me if they are related to the GBTQI program or LGBTQI concerns within TLF Mod I Sectors 1, 2, or 3:
  - Most of the complaints are not about the program.
- PMU deputies determine who is eligible for PRIDE.
  - We will then interview them.
  - A security concern is more than 16 would be interested at a time.
  - If more than 16, individuals would be placed on waitlists.
- If the PRIDE program were to be extended to include the PC 2 classification, then OCSD would need a couple of additional case managers for the program.
- Staffing and books for the program are funded through the Welfare Fund.
  - There is money available within the fund, and OCSD is trying to hire Correctional Program Technicians (CPTs) but is struggling to fill.
  - One (1) individual is undergoing a background investigation.
  - Additional interviews were conducted about two (2) weeks ago.
- The microwave oven was donated.
- A creative idea for possible additional LGBTQI incarcerated person job opportunities could be to paint walls, which has been done in the past.

The Expert interviewed a second non-sworn staff member regarding the TLF Mod I Sectors I-3. The staff member provided the following information:

- LGBTQI individuals are entitled to dayroom, recreation, access to grievances and message slips, commissary, LGBTQI authorized book list, religious services, and an LGBTQI Resource Pamphlet (community).
- No known concerns regarding individual concerns pertaining to searches/search preferences for transgender individuals.
- I complete the Voluntary Gender Identity and Search Preference Forms; then, the forms go to the guard station.
- Note: she cited some of the PRIDE classes/programs (as outlined earlier in this report).
- I don't handle grievances unless I am personally involved in the issue.
- Common complaints are panties/underwear and wrong sizes.
- Note: The same recruiting (including passing out a PRIDE flyer) and orientation processes were described as detailed above.
- I facilitate study groups (open discussions)
- My case management focuses on re-entry, probation, court dates, intake assessments, and formulating a release program:
  - Housing.
  - Possible treatment:
    - Action Alliance (sober living housing placement) assists them.
- I work with Project Kinship staff (they visit and interview the individuals).

- We provide board games, movies, music, microwave oven, and television remote control. Whiteboard/markers, all-day dayroom, workers now, and self-help books are available.

Some of the comments provided by LGBTQI-incarcerated persons assigned to the PRIDE Program include the following:

- Dayroom (0600-2300 hours).
- Enjoy classes.
- Evening staff are rude and slam doors.
- We have workers now (food service and clothing exchange).
- PRIDE program staff are good.
- I have requested and received LGBTQI books.
- No concerns with grievances, message slips, or searches.
- Resource information is helpful.
- Some of our LGBTQI books (purchased by OCSD Programs Unit) were taken during a search. Some of the books were returned.
- A possible "sleeper" in the unit (the individual isn't here for the right reasons):
  - There should be tighter oversight on who gets to come into this program.
- Need more program involvement from some of the non-sworn staff and management.
- We don't receive a cc on our grievances, so when our grievances are not responded to (which is often), we can't follow up to the next level of appeal.
  - Note: Despite the individual claim, after issuance of the Expert's draft LGBTQI report, OCSD indicated the grievance forms are in triplicate, and that CCOM Policy 1600.5(c) and (d) require that a copy of the original grievance and response be returned to the incarcerated person.
- Medical and mental health encounters are done at the cell front or at the nurse's station with the door open, a deputy standing in the immediate area, and other incarcerated persons sitting (inline) on the stairwell and can often hear everything (no confidentiality).
- Unit orientation is also done at the cell front.
- Classification did not explain PC versus GP and the lack of programming opportunities.
- PM shift treats us terribly.
- Would like to see the sergeant more often (he is very helpful).

The Expert has some recommendations as the County moves forward.

The Expert's recommendations are as follows:

- Provide further details regarding possible additional work, education, and programming opportunities for PRIDE program individuals.
- Recommend the County consider creative methods to maintain in-person programming and to deliver it to LGBTQI individuals at the jail. For example, exploring the feasibility of PRIDE program participants to attend classes with other like-classified (i.e., PC) individuals from different housing units.

- Ensure that searches are conducted professionally and do not destroy program materials or property.
- Track searches and outcomes, and assess whether search protocols in LGBTQI units and for LGBTQI individuals are appropriate and consistent with protocols in other programs (TAY, HUM-V) and housing units generally, with corrective action taken if warranted.

### **Partially Implemented (Previous Rating – Partially Implemented)**

*D. The County shall continue its efforts to ensure that lesbian and transgender/intersex individuals housed in the Jail's women-designated housing units are placed in the least restrictive setting with programming access as appropriate to their individual circumstances.*

The Expert notes the OCSJ Action Plan for this provision: *"We will revise policy and implement training to address this requirement."*

The County did not provide any policies/procedures (or related forms with applicable language) to alert staff or incarcerated persons of such requirements.

At the time of the on-site monitoring tour, two (2) incarcerated LGBTQI female incarcerated persons were housed at the women's jail.

The Expert interviewed two (2) identified LGBTQI-incarcerated persons housed in the women-designated housing units. One (1) of the individuals provided the following information:

- Assigned kitchen worker.
- Substance abuse classes are available.
- Re-entry classes are available.
- Roof outdoor recreation is offered daily or every other day (90 minutes each).
- Dayroom offered "all day."
- Access to LGBTQI reading materials for books that have been sent in, but nothing provided from the County.
- Regular book exchange weekly, but there is a shortage of books.
- No concerns with the grievance or message request processes.

There do not appear to be any provision-related concerns.

The Expert notes the County's action plan in that the requirements of this provision will be addressed in policy revision.

Once the revised policy is completed, the County must provide it to the Expert and DRC for review/comments/recommendations.

### **Partially Implemented (Previous Rating – Un-ratable)**

- E. *The County shall not place LGBTQI individuals in LGBTQI-specific housing without the individual’s consent to such housing.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy to address this requirement. Classification will also be revising its script to ensure LGBTQI self-identified individuals fully understand the protective custody and general population classifications (and others as applicable) and the jail dynamics associated with those classifications.”*

The OCSD’s production indicates this provision is addressed in the January 2023 policy update CCOM 1201.2I(3)(ii), the next update to CCOM 1200 will include remedial plan language verbatim from III.E. Regarding the Expert’s request to provide completed forms (e.g., incarcerated person consent forms of any type) for the period from December 1, 2022 to May 31, 2023 that inform LGBTQI individuals as to the requirement not to place LGBTQI individuals in LGBTQI-specific housing without the individual’s consent, OCSD indicated there is no form or consent. The Expert notes language from CCOM 1201.2(c)(3)(ii) refers to housing criteria concerning PC LGBTQI housing (if certain criteria are met). However, it does not directly address the provision. The Expert notes that OCSD has agreed to incorporate the provision language verbatim during the next CCOM revision.

The Expert notes the County’s action plan in that the requirements of this provision will be addressed in policy revision. Further, the County will revise its “script” to explain applicable classification and security options and ensure LGBTQI self-identified individuals fully understand the protective custody and general population classifications (and others as applicable) and the jail-wide dynamics associated with those classifications.

Classification staff maintain they would refrain from forced placement into LGBTQI-specific housing without consent to do so from identified LGBTQI individuals.

There were no LGBTQI incarcerated person complaints regarding forced LGBTQI housing placement or regarding housing without the individual’s consent. Documentation (OCSD Specialty Housing Requests) continues to demonstrate Classification staff are asking the LGBTQI incarcerated persons about their housing preference, whether PC mainline, PC LGBTQI, or GP, and staff are strongly considering an individual’s request and seeking and ultimately gaining approval from a Classification sergeant. One (1) of the incarcerated individuals interviewed expressed concerns that if he had to do it over again, he would have opted to remain quiet as to his sexual identity/LGBTQI status to not be compelled to be labeled and classified as protective custody.

The Expert will review the updated Classification deputy script and CCOM 1200 upon completion of the revision.

**Partially Implemented (Previous Rating – Partially Implemented)**

## D. LGBTQI Housing/Classification Review Procedures

- A. *The County shall house LGBTQI individuals in LGBTQI-designated housing only if an individual requests such housing. If an individual requests such housing, the County may deny such a request if the individual would present specific, articulable threats to the security or safety of other individuals in such a placement.*
- 1. The County shall conduct individual housing/classification assessments for each transgender and intersex individual. The County shall give “serious consideration” to each individual’s views of their own safety regarding the prospective housing placement (i.e., male vs. female housing for transgender and intersex individuals; LGBTQI-specific housing vs. non-LGBTQI housing) and classification (i.e., general population vs. protective custody).*
  - 2. Denial of a transgender or intersex individual’s stated preference is permissible only where there is a determination that the individual’s stated preference presents specific and articulable management or security concerns, and that the County’s alternative placement ensures the individual’s health and safety.”*
  - 3. The County shall document decisions described in subsection (2) above, and the Classification Sergeant will review and approve the decision.*
  - 4. The County shall not consider an individual’s status of transition or inquire into the individual’s genitalia when determining housing placement.*
  - 5. The County shall document all denials of a transgender or intersex individual’s stated preference for housing, including the classification staff and supervisor’s rationale for the decision. Such denials shall be reviewed periodically for continuous quality improvement purposes.*
  - 6. If the County denies a transgender or intersex individual’s preferred housing placement, the County shall inform the incarcerated individual of the right to file a grievance about the decision.*
  - 7. The County shall prohibit retaliation against LGBTQI individuals who grieve or appeal housing placement or classification decisions.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy to address this requirement. Classification will also be revising its script to ensure LGBTQI self-identified individuals fully understand the protective custody and general population classifications (and others as applicable) and the jail dynamics associated with those classifications.”*

The OCSD’s production indicates the Classification Review Form and Specialty Housing Requests are used for this process. Regarding all sub-bullets (above), OCSD indicated language will be added to CCOM 1200, with an estimated completion and implementation in Q1 2024. In the Expert’s request to provide confirmation that OCSD approved housing based on gender identity (either by providing proof of practice [if available] or a brief memo acknowledging the practice), OCSD provided the following response:

*“We do not approve housing “based on” gender identity but based on multiple factors as part of an individualized assessment of each person, their preference, and safety/security needs. Per Section IV.A.1 of the LGBTQI section of the Remedial Plan, “The County shall*

conduct individual housing/classification assessments for each transgender and intersex individual. The County shall give 'serious conditions' to each individual's view of their own safety regarding the prospective housing placement (i.e., male vs female housing for transgender and intersex individuals; LGBTQI-specific housing v. non-LGBTQI housing) and classification (i.e., general population vs. protective custody)."

OCSD provided numerous examples of OCSD Classification Review Forms for review. Listed below are three (3) random examples chosen for review:

- Example LGBTQI Incarcerated Person #1:
  - The individual told housing deputies he identified as LGBTQI and was uncomfortable in his present location. He was brought to the Booking Loop for a classification interview.
  - Classification interviewed her (transgender female):
    - She requested rehousing (safety)
    - Personal pronouns "they/them"
    - From PC-3 non-LGTQI housing to PC-3 LGBTQI housing
- Example LGBTQI Incarcerated Person #2:
  - The individual stated he is homosexual and believes other incarcerated persons found out.
  - Classification interviewed him. He stated he was gay and wanted to be in protective custody, and requested LGBTQI housing,
  - Classification told him he could be homosexual in GP, but he stated he had safety concerns in GP.
  - The classification deputy recommended a classification change and a housing change.
  - Documentation does not show final disposition or supervisor approval.
- Example LGBTQI Incarcerated Person #3:
  - Individual submitted an Inmate Message slip stating the other incarcerated persons found out he is gay and said he had been threatened for his safety.
  - On the same day, he was seen by a Classification deputy and provided the same information.
  - He stated he has safety concerns in the GP and requested PC housing.
  - The housing deputy reclassified him to PC 3. The supervisor (sergeant) approved the classification and housing change.

The Expert interviewed a Classification deputy who provided the following information:

- If a new arrival into Booking self-identifies as LGBTQI, I ask if they want GP or PC housing, and I explain GP versus PC, and if they choose PC, I explain that it's often difficult to be changed from PC to GP.
- I explain that once he or she is afraid in GP, they can talk with their assigned unit deputy, and the individual would be referred back to Classification for rehousing/reclassification consideration.
- When asked if gender-congruent housing is considered or offered if requested for transgender individuals, the Classification deputy indicated J-119s are completed for transgender individuals, but housing placement is done based on their "plumbing."



- When asked if semi-annual LGBTQI Classification reviews are occurring, the Classification deputy said it is not happening by Classification personnel, but that PREA assessments were being done.

The Expert interviewed a second Classification deputy who provided the following information:

- Transgender individuals are automatically placed on PC status and in PC housing.
- For LGBTQI (non-transgender) individuals, their housing preference as to PC or GP is considered, but also consider automatic PC status depending on charged offense(s) and possible past PC (or CDCR SNY) status.

There are still concerns pertaining to LGBTQI incarcerated persons (new arrivals) not being properly informed by Classification staff as to the dynamics and long-term effects associated with agreeing to protective custody status.

For the next monitoring tour, the County should provide the following:

- Revised CCOM 1200
- Document all denials of a transgender or intersex individual's stated preference for housing, including the classification staff's and supervisor's rationale for the decision.
- Copies of periodic reviews (for quality improvement purposes) or information pertaining to denials of a transgender or intersex individual's stated preference for housing, including classification staff's and supervisor's rationale for the decision.
- If applicable, proof that if OCSD denies a transgender or intersex individual's preferred housing placement, the County shall inform the incarcerated individual of the right to file a grievance about the decision.

The Classification deputies appear to be knowledgeable in some areas; the OCSD Specialty Housing Requests and the OCSD Classification Review Forms widely show the Classification deputies are making informed decisions regarding classification and housing while considering the safety of LGBTQI and transgender individuals as well as their housing preferences. However, there were some concerns with some of the verbal interview responses, most notably in terms of the lack of consideration for gender-congruent housing.

Policy revision, revision to the Classification script (as outlined above), staff training, and close collaboration with supervisory staff and jail leadership in charge of these aspects of remedial plan implementation will be essential to achieve compliance.

**Partially Implemented** (Previous Rating – Partially Implemented)

- B. The County shall re-evaluate the classification, placement, and programming assignments of each transgender or intersex individual at least twice a year, including as part of any regular classification reviews.*

1. *At each review, the County shall inquire as to the transgender or intersex individual's current preferences and shall re-assess the individual's classification, placement, and programming assignments, consistent with the process in Section IV. A above.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy to address this requirement."*

Regarding the Expert's previous request for OCSD to provide the following: completed semi-annual classification reviews or classification placement and programming of all transgender persons; proof that the semi-annual reviews are, in fact, being conducted at least every six (6) months; and if they are not being conducted, then the reasons. The OCSD's production indicates (for this provision) the information and processes as requested have not yet been implemented, and the policy and procedures are being developed.

Classification staff also confirmed that transgender/intersex incarcerated persons are not being classified twice per year.

The transgender/intersex incarcerated persons interviewed confirmed that they are currently not being reclassified or are not being classified twice annually.

For the next monitoring tour, the County must provide relevant policy/procedures pertaining to conducting classifications/re-evaluations of classification, placement, and programming assignments at least twice annually (as outlined in Section IV. A [above]).

#### **Not Implemented (Previous Rating – Not Implemented)**

- C. *If an individual self-identifies as LGBTQI at any time after intake and states a preference to be assigned to a different housing placement, the County shall conduct a classification review and evaluate the individual's housing preference within 24 hours of receipt of a classification review form.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy to address this requirement."*

In the Expert's request for OCSD to provide completed classification review forms for all incarcerated persons who self-identify as LGBTQI after the Intake process and request to be assigned to different housing, the OCSD's production indicates "PMU will provide records. Documentation of LGBTQI identification and housing placement determination is on the class review form. Sabot will have to cross reference class review documents (time-stamped) against historical housing assignments (SDS, time-stamped) to establish time frames from initial identification to housing placement. However, SDS purges time stamps after 30 days post-release (but keeps the dates), so certain records may be incomplete. This will be reviewed for the next monitoring period." The OCSD's production also indicates that CCOM 1201.4(e) has been updated. It states in part, "If an inmate self-identifies as LGBTQI at any time after

intake and states a preference to be assigned to a different housing placement, a classification review to evaluate the inmate's housing preference shall be conducted within 24 hours of receipt of a Classification Review Form. For more information on LGBTQI inmates, refer to CCOM Sections 1201.2(c) and (d) – Inmate Classification Form and CCOM Section 1204.5 – LGBTQI Inmates.

As was the case during the previous Expert tour, the housing unit deputies interviewed indicated they would immediately refer LGBTQI individuals back to the Classification Unit for all requests for different housing assignments. Classification staff interviewed indicated they would conduct another classification interview to examine such requests and all factors involved in making a housing/programming decision, including the individual's request.

Though unclear as to the 24-hour window, there are examples of completed OCSD Specialty Housing Requests (Classification interviews), including one (1) example outlined earlier in this report pertaining to an individual self-identified as transgender (post-intake) and requested LGBTQI housing. It is unclear as to the example given whether a Classification Deputy reviewed the case within the required 24 hours. Another example provided earlier in this report pertains to an incarcerated person (not previously identified as LGBTQI at intake) who self-identified post-intake and requested LGBTQI housing.

For the next monitoring tour, OCSD should provide the following:

- The necessary documents to enable the Expert to reconcile class review documents (time stamped) against historical housing assignments (SDS, time-stamped) to establish time frames from initial identification to housing placement.

#### **Partially Implemented (Previous Rating – Not Implemented)**

- D. *If an individual requests housing reassignment based on LGBTQI status, the County shall develop and implement a safety plan for that individual pending review and any reassignment. The interim placement shall not be Special Management Unit, "Total Sep," or other restrictive housing or classification unless the individual requests such a placement for their own safety or unless serious, specific, and articulable security or management concerns require such placement.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy to address this requirement."*

In response to the Expert's request for OCSD to provide related policy(ies)/procedures for the requirements of this section, and to provide all completed individual Safety Plans conducted for individuals that requested housing reassignment in the OCSD's production, OCSD indicates this is done in practice and covered more generally in Classification policy for all inmates, but for more specific language policy is still in development. Regarding the Expert's request to provide a

blank copy of all related forms/documents as related to the process (if none have been completed yet), the OCSD's production indicates that no specific document exists.

Upon development, OCSD should provide the Expert and DRC with related policies/procedures governing a safety plan as related to LGBTQI individuals requesting housing reassignment, including any interim housing placements (including specific types of units) and any associated safety concerns.

#### **Not Implemented (Previous Rating – Not Implemented)**

- E. *If Jail staff identify serious, specific, and articulable security or management concerns regarding an LGBTQI individual in their housing placement, staff shall document the basis for their concerns, and the housing determination shall be referred for a classification review, consistent with the above procedures.*

The Expert notes the OCSD Action Plan for this provision: *"We will revise policy to address this requirement."*

In response to the Expert's request for OCSD to provide related policy(ies)/procedures for the requirements of this section, the OCSD's production indicated this is done in practice for all inmates and documented in Classification Reviews, but more specific policy and procedures are still in development.

Regarding the Expert's request to provide all completed related documentation regarding staff concerns and referrals forwarded to the Classification unit, numerous OCSD Specialty Housing Requests were completed by classification staff to satisfy this provision.

Housing deputies indicated they would refer LGBTQI incarcerated persons through their chain of command and to the Classification Unit if they determine there is a serious security concern related to their housing placement.

The Classification Unit continues to maintain they follow up on all requests for housing changes, whether submitted by staff or incarcerated persons.

This will continue to be monitored.

#### **Partially Implemented (Previous Rating – Not Implemented)**

### **E. LGBTQI Access to Programs, Services, and Activities**

- A. *The County shall ensure that all LGBTQI persons are informed of and have equal access to programs, services, and activities available to similarly situated individuals, consistent with their health and security needs and classification level. Such programs, services, and activities include, but are not limited to:*
- 1. Dayroom and out-of-cell time;*

2. *Outdoor recreation and exercise equipment;*
3. *Showers;*
4. *Telephones;*
5. *Television;*
6. *Reading materials;*
7. *Religious programming;*
8. *Educational, vocational, re-entry, and substance abuse programs;*
9. *Work Assignments, including the Community Work Program;*
10. *Self-help groups and similar programs;*
11. *Medical, mental health, and dental services and treatment;*
12. *Public visiting;*
13. *Attorney visiting;*
14. *Commissary.*

The Expert notes the OCSD Action Plan for this provision: *"We have developed an interview questionnaire for an orientation by our LGBTQI coordinator; the questionnaire is being reviewed by DRC. After we have their comments, we will share with Sabot."*

The Expert's previous report (second) provided more detailed information bulleted information regarding the following:

- CCOM Sections 1600, 1710, 2002, 2900, and 6206 (and various subsections within each section) address some of these areas.
- OCSD Custody Operations Inmate Orientation Pamphlet (and Orientation video).
- Orange County community provider information available to in-custody LGBTQI incarcerated persons.
- Listing of various classes/programs offered (an updated list is provided earlier in this report).
- List of available resources for LGBTQI individuals.
- Orange County Inmate Orientation booklet.

For the third Expert review, OCSD produced eight (8) examples of completed LGBTQI+ Inmate Interview Worksheets (orientation), which include the following checklist information:

- Housing location.
- Classification.
- Sexual orientation.
- Gender identity.
- Preferred pronoun.
- Search preference.
- OCSD Voluntary Gender Identity Disclosure & Search Preference Form.
- Preferred housing placement.
- Information provided on PRIDE Program.
- Showers (1x daily).

- Dayroom 1x daily).
- Recreation (3 hours weekly).
- New Body Orientation.
- Public visits (on F, S, S, M).
- Commissary.
- Grievance process.
- Message slip process.
- LGBTQI Booklist
- Church services are available.
- Education classes available
- AA/NA
- APAIT group (mental health).
- Chaplain visits/religious services.
- LGBTQI-specific resources.
- Rancho Santiago Community College correspondence courses:
  - Academic Skills.
  - Money Matters.
  - Substance Abuse.
  - High School Equivalency Test.
  - Workforce Readiness.
  - Effective Parenting.
  - Food Service Handler Test Prep.
  - Basics of Leadership.
  - ESL.

Earlier in the report, the Expert provided data regarding LGBTQI-incarcerated persons assigned to work, classes, and programs. About 90 percent of the LGBTQI jail population has limited access to many program opportunities when classified as PC.

Some of the related comments made by LGBTIQ incarcerated persons include the following:

- Staff:
  - Sergeant xxxxx is very good and works well with us (TLF Mod I Sectors 1-3 would like to see him more)
  - Deputy xxxxxx has a great attitude. She acts on our needs and requests right away. She is very respectful.
  - Deputy xxxxxx is amazing and very helpful.
  - CSA xxxxxx does a great job working with us (e.g., securing clean greens, white t-shirts, and food that he ensures is prepared properly)
  - No discrimination.
  - The staff are professional and respectful.
  - PM staff are not professional, slam doors, and treat us badly.
  - Called gay slurs by a deputy.
  - Told I was going to hell (for being transgender) by a religious service volunteer.

- Some Intake deputies are disrespectful (because of my LGBTQI status)
  - An Intake deputy knew I was transgender female and kept making it a point to call me "dude."
  - PM/late-night crew treat us unprofessionally.
  - Retaliation (e.g., searches), and one (1) individual has his artwork destroyed.
  - Staff harassed us this week, threatened us, and took our food handling and clothing exchange assignments after some of us were being interviewed by The Expert and DRC:
    - We lost our jobs for 24 hours, but after we complained, the sergeant stepped in and made sure we got our jobs back.
  - Classification:
    - Did not tell me about GP (I didn't know that was an option).
    - I wasn't told I was PC until I got to my new unit, and other incarcerated persons told me (I had to ask them what it meant)
    - Feel safe in my unit.
    - I was not told the differences between PC and GP, how that would affect my programs or lack of programs, and the long-term effects.
    - I didn't understand PC status until it was too late, and my wife had to research it and explained it to me via telephone.
  - LGBTQI Program/Programming:
    - I completed the APAIT 6-week program, no other programs are available to me.
  - LGBTQI (PRIDE) program (Note: some issues are repeated for other areas – below):
    - Great staff and program
    - Now have a television remote and microwave oven
    - Was moved to the PRIDE program without me agreeing to it (no longer in the program)
  - LGBTQI Resource Information:
    - Nothing.
    - Received information, but I can't read or understand, and I did not receive any help (I need release planning)
    - MH staff help.
    - The resource information is very helpful and informative.
  - Work Assignments:
    - Foodservice/clothing issue jobs available (to work for TLF Mod I Sectors 1-3)
    - None are available to us.
  - Yard:
    - Five (5) yard/dayroom groups in my unit, not enough out-of-cell time.
    - Six (6) yard/dayroom groups
    - Three (3) hours weekly (over two [2] days)
    - Once weekly for three (3) hours
  - Dayroom
    - One (1) to three (3) hours daily
    - Supposed to get three (3) hours, but we only get two (2) hours.
-

- Showers/shower access:
  - Privacy concern (bottom tier shower) – The shower door only comes to my shoulders, and my concern is staff in the bubble can see the top part of my body.
  - The top shower overflows and builds up dirty water.
  - No concerns
- Legal
  - I inquired about a legal name change and received information right away.
- Searches:
  - Name Change:
    - Wants information.
  - Some transgender persons interviewed reported that they were not provided with a Voluntary Gender Identity and Search Preference Disclosure Form or asked questions pertaining to gender preference for staff searches and regarding preferred name/pronouns. (Note: the Expert notes there has been improvement or fewer related complaints.)
- Electronic Tablets
  - Our sector has them
- Religious Services
  - 1-2 times weekly
  - Nothing offered.
- Reading Books (Non-LGBTQI)
  - No consistency in the book exchange process
- Reading Books (LGBTQI):
  - No access to LGBTQI reading material (would be interested).
  - We have about 15 books.
  - We usually get out books within two (2) days of request.
    - Can have them for a week and then extend them if needed.
  - I was not aware the jail has LGBTQI books.
- Classes/Education/Programs/Self-Help:
  - Signed up for a parenting faith-based class three (3) weeks ago but have not heard back.
  - In-person and distance education available
  - Only distance learning is available through Rancho Santiago Community College District.
  - Nothing is offered.
  - No self-help groups/programs are offered.
  - AA 1 time weekly
  - No re-entry services are available
  - Re-entry services are helpful.
  - Unclear whether I have access to APAIT.
  - Project Kinship is helpful.
- Jobs
  - None-available
  - Food serving/clothing exchange.
  - Food services



- Grievances:
    - No concerns
    - No confidence in the process
    - Everything gets denied.
    - We don't receive copies of our written/submitted grievances.
      - When we don't receive a written response, we can't appeal to the next step.
    - We don't file grievances out of fear of retaliation (retaliation happens a lot)
  - Message Requests:
    - Nobody responds or follows up.
    - Responses are "hit and miss."
    - Submitted a request regarding law books, and I never heard back.
  - Commissary
    - A lot of items are always out of stock
      - Note: Despite the individual's claim, after the Expert issued the draft LGBTQI report, OCSD indicated this is not a true statement regarding the commissary items.
  - Electronic Tablets
    - Staff yell at us and take our tablets.
    - It's 12:15 PM, and we still have not received our tablets today.
  - Clothing/Gender-Affirming Clothing Products/Grooming/Hygiene:
    - Only have one (1) pair of underwear, and have to constantly wash:
      - Warehouse/clothing does not have boxers.
    - Transgender females have to wear green male pants.
      - Note: Despite the individual's claim, after the Expert issued the draft LGBTQI report, OCSD indicated Jail clothing is the same color for male/female and based on classification. This will be further examined during the next onsite tour.
    - Panties and bras (for transgender females) are either much too big or extremely small.
    - Dull and cheap razors/can only be exchanged 1-for-1 weekly.
    - Nair hair removal is now in commissary (but expensive)
    - No makeup in the commissary
    - Greens and whites are not getting cleaned properly.
    - As a transgender female, I have been denied women's underwear.
      - I have submitted three (3) separate message requests.
    - No concerns with hair clippers and nail clippers
    - Feminine Products:
      - Only get two (2) pads, no Tampons
      - Note: Despite the individual's claim, after the Expert issued the draft LGBTQI report, OCSD indicated Tampons are available for incarcerated persons. This will be further examined during the next onsite tour.
  - Intake:
    - I was offered and completed the Voluntary Identity and Search Preference form.
-

- I was searched by a male, but I am transgender and told them I preferred to be searched by female staff.
- Mental Health:
  - MH staff for the PRIDE program do a great job.
  - No confidentiality (sometimes at the cell door)
- Medical:
  - No privacy (deputy at the door)
  - Conducted at the cell front.
  - Conducted at nurses' office/station (door open, staff in immediate area, other incarcerated persons waiting close by).
  - I have refrained from health care visits due to a lack of privacy/confidentiality.
  - Resumed hormone treatment, and medical was quick to re-start my medications.
    - But other incarcerated persons have heard my conversations with medical as there is no privacy, and the door remains open.
  - Hormone shots weekly
- Dental:
  - Had to wait three (3) weeks to be seen for an impacted tooth.
  - I was supposed to get a cleaning, but dental never followed up with me.
- Food:
  - Not enough
  - Hard food not edible (or barely edible)

Though most of the comments varied and could not be confirmed, many of the various complaints were made by multiple individuals and often from different housing units. To the extent these are legitimate concerns, the County should examine the apparent disparity and lack of equal access to some of the programs, services, and activities offered to LGBTQI-incarcerated persons versus other individuals. Obviously, the piloted LGBTQI (PRIDE) program, as outlined earlier in this report, is one creative avenue, but the Expert encourages the County to explore additional means to ensure the LGBTQ, transgender, and intersex population enjoys equivalent access to the many programs offered to other individuals throughout the facilities.

One potential avenue is to expand the LGBTQI (PRIDE) program to additional sectors and to other classification levels, like PC2s, and to develop ways to re-classify PC individuals based on behavior in the jail over time.

The Expert heard from many transgender women that they lacked adequate laundry, including garments that were very small or very large, and from many LGBTQIA people that non-LGBTQIA workers discriminated against their units when swapping laundry and that they sometimes were unable to access clean laundry or swap towels, laundry, etc.; this is an area that the County should address and remediate.

Core components of this remedial plan provision that require concerted attention are *educational, vocational, re-entry, and substance abuse programs (#8) and work assignments, including the Community Work Program (#9).*

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Regarding outdoor recreation, DRC indicated some LGBTQ individuals at TLF raised concerns that they do not have access to the Green Sector, and for the PRIDE PC3 classification specifically, they would be classified as GP-6 or 7 if not PC, and would otherwise have access to Green Sector (if not PC/LGBTQ). The Expert agrees. This issue was recently discussed between the Expert, OCSD, and DRC. I also recently discussed this issue with Expert with monitoring oversight for Elimination of Harmful Restrictive Housing and Disciplinary Practices. We both agree and acknowledge the PRIDE program is in the same Mod as the HUMV, Phoenix House, and the TAY programs, and reportedly all three (3) are able to recreate in the Green Sector, but the PRIDE program incarcerated persons currently do not have such access. The Expert requests OCSD consider providing the PRIDE program access to the Green Sector in the most equitable and safest manner feasible, including providing the Expert and DRC any plans and anticipated timelines for such action.

#### **Partially Implemented (Previous Rating – Partially Implemented)**

- B. *The County shall offer regular in-custody programs and support groups specifically serving the needs of LGBTQI individuals (e.g., APAIT).*
- 1. The County shall make such LGBTQI-specific programming available to all LGBTQI individuals (i.e., pretrial, pre-sentenced, and sentenced; general population and restrictive custody, etc.), consistent with individualized safety and security assessments.*
  - 2. The County shall identify and collaborate with LGBTQI community groups to deliver programming in the Jail facilities.*

The Expert notes the OCSD Action Plan for this provision: *“The PRIDE Program unit has been provided with a microwave and a remote to control the volume of the television. Our Programs staff continue to work on programming opportunities for LGBTQI persons.”*

As part of document production, OCSD provided a list of 14 LGBTQI individuals assigned to work positions, including persons from TLF Mod I (Sector 3), TLF Mods H and J, TLF Barracks B, C, and D, and MJ C. OCSD also provided. OCSD also provided a list of approximately 63 names, Booking numbers, and housing units of LGBTQI incarcerated persons currently enrolled/active in one (1) or more classes/programs. Note: the list of specific classes/programs (approximately 18) is listed in detail earlier in this report. LGBTQI individuals assigned to one (1) or more classes are housed in the following units: IM J, IM M, IW K, IW N, TLF I (Sectors 1-3), TLF J, TLF H, TLF Barracks A, B, C, and D, MJ C, MJ F, MJ O, and MJ 4R.

As described in greater detail in the previous (second) Expert's report, OCSD provided a memorandum (regarding the PRIDE program), GBTI Program Sector

Procedures, PRIDE Program (LGBTQIA+ Community Resource Guide) to help satisfy requirements from this provision.

The Expert toured the OCSD jail complex, interviewed staff, and interviewed LGBTQI (including transgender incarcerated persons) from the following housing units:

- TLF I (Sectors 1-3)
- TLF H,
- TLF L
- TLF N
- TLF O
- IW K
- IW N
- WJ G
- IM M

Once again, the consensus amongst the PRIDE program participants was very positive in terms of the program itself and the staff facilitators. There has been some slight turnover of involved staff, but the progress and success of the program has not faltered. There have been some modifications to the PRIDE schedule since the previous onsite review. Note: the complete calendar schedule is identified earlier in this report. One of the facilitators was out (reportedly temporarily) at the time of the onsite review. Multiple PRIDE program participants expressed their appreciation for her and are hopeful of her return. However, all of the individuals interviewed (from the PRIDE program) also praised the work of the current staff (both experienced and new) within the program. OCSD continues to collaborate with outside organizations within the LGBTQI community.

OCSD provided a document that indicated PRIDE program participants do not currently attend or participate in Rancho Santiago Community College in-person classes or the Cell Dogs program. The document indicates that participation in classes and the Cell Dog Program is dependent on Classification (though no specifics were provided).

As was reported in the first two (2) Expert reports regarding LGBTQI individuals housed in TLF, they were happy to have the APAIT program. However, a common complaint was that it's a one (1) time 3–6-week program that rotates from one (1) yard/dayroom group to another. Another complaint was that after completion of APAIT, there are no other meaningful LGBTQI-related programs to participate in.

The Expert recognizes that OCSD has shown they are actively working with outside LGBTQI community organizations to provide valuable programs and resources to LGBTQI incarcerated persons.

The general programming curriculum provided to the entire PRIDE Program unit contains substantial religious content, including biblical stories and lessons.

People in the program report feeling compelled to participate and uncomfortable with the religious content. While it is perfectly fine to offer religious programming in this or any other unit, it should be separate from the general curriculum used for all PRIDE Program participants.

As acknowledged earlier in this report, OCSD Moved the GBTQI (PRIDE) program to TLF, Mod I, Sector 3.

The Expert provides the following recommendations:

- As was recommended in the Expert's initial report, the County should examine ways to expand the programs (e.g., GBTQI [PRIDE] Program, APAIT, or similar programs) to make them available to all LGBTQI individuals (e.g., pretrial, pre-sentenced, and sentenced; general population and restrictive custody, etc.) with appropriate modifications to meet different groups' safety, security, and other needs. The classification team should work closely with LGBTQI programming staff to expand the number of individuals eligible for this programming by offering the program to more classification groups (including PC-2s), working with individuals to step down into lower classification groups, and considering eligibility based on individual case factors (similar to what is done in the mental health units), etc.
- As was recommended in the Expert's initial report, the County should examine all reasonable avenues to maintain the programs without lengthy lapses between program offerings and with programming opportunities that are most consistent and ongoing.
- As was recommended in the Expert's initial report, the County should continue its efforts towards ensuring that specialized LGBTQI programs (PRIDE) have resources and amenities similar to the jail's other special program units. Note: The Expert recognizes the strides that have recently been made to this end (e.g., white dry-erase board and markers, television remote control, and microwave oven).

### **Partially Implemented (Previous Rating – Partially Implemented)**

- C. *The County, with input from DRC, shall identify and procure LGBTQI community resource information and disseminate such information to incarcerated LGBTQI individuals.*

The Expert notes the OCSD Action Plan for this provision: *“We have developed a resource brochure, which was sent to DRC for review. “*

For the previous (second) Expert report, the Expert notes that OCSD provided the PRIDE Program (LGBTQI+ Community Resource Guide) pamphlet, which contains various community resource information, but there were no related policies.

For the third Expert review, OCSD provided CCOM 1204.5 LGBTQI Inmates and LGBTQI Community Resource information that is contained within flyers/pamphlets and/or provided during the discharge/release process. The OCSD LGBTQI+ Resource Guide (two [2] page pamphlet) produced by the Inmate Services Division - Correctional Programs, includes (but is not limited to) the following information regarding services available: employment, legal, housing, suicide and crisis hotlines, support services (in-custody, including PRIDE Program Case Manager, grievances, medical or mental health care, PREA hotlines), basic needs (food, health insurance, support groups), health and wellness (low cost clinics, transgender services, HIV/AIDS), recovery (residential, outpatient and twelve step).

Regarding CCOM 1204.5, there is no contained language pertinent to this provision. In the OCSD's production, OCSD indicates OCSD is modifying policy.

Staff program facilitators interviewed from the Correctional Programs Unit and Correctional Mental Health Programs unit still indicate they provide LGBTQI-related resource information, as does staff from APAIT. Though it is unclear, possibly the Orange County Health Care Agency may also provide valuable resource material.

As was the case for the previous Expert review (Second review), LGBTQI-incarcerated persons interviewed had differing responses as to whether outside community LGBTQI information is provided or available. Some stated there is good information available, while some indicated there is minimal or no related information provided to them at all.

It is unclear as to the missing pamphlet information.

The Expert notes the County's action plan in that the County reportedly will discuss the community resource issue with DRC representatives. As stated above, with the missing resource (pamphlet information), it is unclear whether OCSD has inquired about and/or received resource information from DRC, as cited as a previous action item for this provision.

The Expert provides the following recommendations:

- Provide the current resource information and/or update the Expert on the outcome of related discussions with DRC and any new community resource materials introduced that result from the discussions.
- Revise/update CCOM 1204.5 (and/or other relevant policies/procedures) applicable to this provision.
- To the extent it might exist, provide documentation showing issuance/distribution of said pamphlets containing resource information, e.g., at discharge/release or at any other time.

**Partially Implemented (Previous Rating – Partially Implemented)**

- D. *The County shall identify, procure, and make accessible LGBTQI reading materials to LGBTQI individuals.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy. The LGBTQI coordinator provides a list of LGBTQI books to LGBTQI incarcerated persons as part of her interview process.”*

As cited in the previous (Second) Expert’s report, OCSD produced a listing of authorized LGBTQI-related reading materials but did not provide any relevant policies/procedures.

In the OCSD’s production, OCSD indicates policy is being modified. However, it is unclear as to which policy. CCOM 1204.5 LGBTQI Inmates does not contain language, nor does Policy 2900 PREA/LGBTQI Inmates.

The Expert notes (from staff and incarcerated person interviews, the list of approved LGBTQI books has increased to approximately 35 books. OCSD has been working with DRC on this item.

As was the case during the Expert’s previous two (2) onsite reviews, the Expert observed LGBTQI-related books in the PRIDE unit as well as in TLF Mod I sector 1 and 2), but according to incarcerated persons interviewed from other units (all OCSD jails), none of the housing units had any LGBTQI-related books or reading materials. There were a few individuals from units outside of TLF Mod I Sectors 1-3 who indicated they would be interested in LGBTQI-approved books if they were to be made available to them.

The Expert provides the following recommendations:

- For the next monitoring tour (or upon completion), the County should identify the appropriate policy/procedures pertaining to identifying, procuring, and making accessible LGBTQI reading materials to LGBTQI individuals (regardless of housing unit), and revise as appropriate.
- The County will need to apprise the Expert and DRC of the progress.
- Although the list of approved LGBTQI-approved books has grown, OCSD will need to identify any updates in working with DRC or other resources in an effort to increase the volume of LGBTQI-approved books.

### **Partially Implemented (Previous Rating – Partially Implemented)**

- E. *Showers*

1. *Transgender and intersex individuals shall be given an opportunity to shower separately from others – i.e., at a separate time and/or with appropriate physical separation.*
  2. *Transgender and intersex individuals shall be permitted to use showers with privacy screens.*
-

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy to address this requirement.”*

As cited in the previous (Second) report, CCOM 2900.3 Prevention Planning was provided relative to this provision, however, it does not specifically address this issue as related to transgender and intersex individuals being afforded the option of showering separately from others and/or with physical separation.

The OCSD’s production indicates policy will be updated for this provision. Regarding the previously identified concern (from the Second Expert report) for OCSD relative to privacy screens for showers/bathrooms, OCSD indicated they have added to affected modules.

The Expert notes most of the concern from the transgender population regarding showers/bathrooms and privacy has gone down tremendously due to privacy/modesty screens installed. As cited earlier in this report, there was one (1) related complaint during the onsite review (height of shower screen) and concern that staff working inside the "bubble" may be able to view the person's upper body.

As has been the case with the previous Expert reviews, staff, and transgender individuals acknowledged that transgender persons shower individually, and all have the option of showering at times of the day that may be different from the time period that others shower (if they so choose).

The Expert provides the following recommendations:

- Provide a related policy/procedures (pertaining to showering and privacy screens as related to transgender or intersex incarcerated persons).
- Clarify which units/mods/sectors/tanks are pending construction or the addition of shower barriers/modesty or privacy screens.

### **Partially Implemented (Previous Rating – Partially Implemented)**

#### *F. Commissary*

1. *The County shall, in consultation with DRC, facilitate transgender and intersex individuals to access gender-affirming commissary items, hygiene products, and beauty products.*
2. *The County shall provide transgender and intersex individuals additional allowances of personal hygiene products (i.e., razors) to alleviate the negative mental health impact of body hair for some individuals, consistent with jail safety and security.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy to address these requirements.”*

As noted in the Expert’s previous (second) report, the CCOM Section 2002 Commissary and Inmate Welfare Fund does not address gender-affirming



commissary items, hygiene products, or beauty products. Likewise, it does not address additional allowances of razors for transgender and intersex individuals.

The OCSD's production indicates that OCSD is updating policy, including as applicable to the additional allowances of razors for transgender/intersex individuals and to gender-affirming commissary items, hygiene products, or beauty products. The Expert notes no new policy/policy language has been provided for review yet.

Although not specifically bulleted in the LGBTQI incarcerated person interview concerns (earlier) in this report, most transgender individuals interviewed stated that not much has changed since the previous (Second) onsite review. Issues specifically identified (and bulleted in the previous report) include:

- The commissary does not offer makeup, hair removal tools, creams, or hair products.
- Denied "Vaniqa" by a doctor for facial hair growth.
- Need more access to razors and more shaving cream (two [2] razors per commissary draw is not sufficient).
  - This complaint was common amongst the large majority of the LGBTQI population.
  - Some pod officers allow transgender individuals to trade in razors in between commissary deliveries, but it is at the discretion of individual officers.
- I was recently told by jail administration staff that our razor allotment would be increased to be unlimited (should at least be 7 per week), but nothing has changed yet.
- Only hair removal cream is available (that is made for African-American men). I tried it, and it "ripped my skin off."
- Commissary only offers Noxzema and one (1) hair burner, which causes me a rash and breakout (I need more options).
- Asked the nurse practitioner for hair cream (for hair removal), but it was denied.
- No options to purchase hair wraps or "scrunchy" hair ties (I use a t-shirt).

Note: As stated earlier, the Expert recognizes the commissary sells Nair hair removal, though there were complaints regarding the price. Many transgender individuals (like others at the jail) lack financial means to afford high-priced commissary items. The County should consider a process to ensure that transgender individuals have access to hair removal products (including through reduced prices or no-cost provision of the product if recommended by clinical staff) when it is determined that such access supports their clinical needs.

The Expert provides the following recommendations:

- The County should provide policy/procedures or other documentation that addresses gender-affirming commissary items, hygiene products, or beauty

products, and the allowance of razors for transgender and intersex individuals:

- Once implemented, the County will need to show proof of practice.

### **Not Implemented (Previous Rating – Not Implemented)**

#### *G. Clothing*

1. *The County shall provide gender-affirming clothing, including, but not limited to:*
  - a. *Undergarments, including bras, underwear, and boxer shorts, depending on the individual's stated preference;*
  - b. *Footwear in all sizes;*
  - c. *Binders and chest compression garments and other types of compression garments;*
  - d. *Religious items in accordance with their gender and*
  - e. *Makeup, hair products, hair removal tools, and other gender-affirming hygiene products.*
  
2. *The County shall apply grooming standards based on an individual's gender identity. For example, if the County permits non-transgender women to wear their hair at a certain ponytail length, transgender women shall be allowed to wear their hair similarly.*

The Expert notes the OCSJ Action Plan for this provision: *"We will revise policy to address these requirements. Footwear is already provided in all sizes. Chest compression garments have already been ordered."*

The Expert's previous (Second) report (in greater detail) identifies that neither CCOM 1600.2 Jail Clothing nor CCOM 2002 Commissary specifically address footwear in all sizes; binders and chest compression garments, and other types of compression garments; religious items in accordance with their gender; and makeup, hair products, hair removal tools, and other gender affirming hygiene products. OCSJ also never provided policy language relative to grooming. During the onsite tour, the County reported that the County now has binders available.

The OCSJ's production indicates a policy is pending.

Jail staff have maintained that transgender/intersex incarcerated persons are permitted to maintain the jail clothing of choice regardless of their gender or gender identity, including undergarments.

During interviews of transgender/intersex incarcerated persons, they indicated they are permitted to wear clothing compatible with the gender with which they identify. However, there were some related concerns expressed.

- No chest compression garments yet:
  - The Expert notes this item has been approved and will be offered soon.

- Only have one (1) pair of underwear, and have to constantly wash:
  - Warehouse/clothing does not have boxers.
- Transgender females have to wear green male pants.
  - Panties and bras (for transgender females) are either much too big or extremely small.
- Dull and cheap razors/can only be exchanged 1-for-1 weekly.
- Nair hair removal is now in commissary (but expensive)
- No makeup in the commissary
- Greens and whites are not getting cleaned properly.
- As a transgender female, I have been denied women's underwear.
  - I have submitted three (3) separate message requests.
- No concerns with hair clippers and nail clippers

The Expert provides the following recommendations:

- Update the policy (as cited above)
- To the extent there may be validity to the allegations, staff must issue properly sized undergarments to transgender (and all LGBTQI) individuals.

**Partially Implemented (Previous Rating – Partially Implemented)**

*H. Visitation*

1. *The County shall ensure that rules on contact and affection during visiting are the same for LGBTQI and non-LGBTQI individuals, including in-person visitation and approved contact visits.*

The Expert notes the OCSD Action Plan for this provision: “We will revise policy to address this requirement.”

For the previous (second) report, the Expert identified specific areas of CCOM 1600.3 Orange County Jail Rules (Visiting and Communications) or other policies that need to be addressed.

There were no specific concerns expressed during the incarcerated person interviews.

The Expert provides the following recommendations:

- Update policy

**Partially Implemented (Previous Rating – Partially Implemented)**

## F. Searches

### A. Policy

1. *For incarcerated persons who are transgender or intersex or whose appearance or manner does not conform to traditional gender expectations, the County shall allow the individual to identify the preferred gender of Jail staff who will perform pat and strip searches of them, including through the use of the Voluntary Gender Identity Disclosure and Search Preference Form.*
  - a. *The County shall conduct searches in accordance with the individual’s search preference, except in exigent circumstances (i.e., “temporary and unforeseen circumstances that require immediate action in order to address a threat to safety or institutional security”) or when performed by medical practitioners in a hospital setting.*
  - b. *If an individual’s search preference cannot be determined, the search shall be conducted in a manner consistent with their gender identity or expression.*
  - c. *Temporary staffing issues (e.g., not enough staff on the unit of a specific gender) shall not meet the criteria for “exigent circumstances.”*
2. *The County shall ensure that strip searches of transgender and intersex individuals occur with enhanced and appropriate privacy (e.g., outside the view of others not participating in the search).*
3. *The County shall not conduct genital inspections (visual or pat) to determine a transgender or intersex person’s anatomy, to otherwise harass or embarrass the individual, or for any other improper purpose.*
4. *The County shall not conduct searches to punish or retaliate against incarcerated people, including people who identify as LGBTQI.*

The Expert notes the OCSD Action Plan for this provision: *“We will revise policy and implement training.”*

The Expert notes the OCSD’s production did not include any OCSD action items for this provision.

The Expert’s previous (Second) report contained more detailed information regarding a lack of specific language within CCOM 1710.4 pertaining to staffing gender concerns and exigent circumstances relative to enhanced privacy for strip/unclothed body searches of transgender or intersex individuals.

The Expert interviewed two (2) Classification deputies (and observed the Intake classification process). Both acknowledged the OCSD Voluntary Gender Identity Disclosure and Search Preference Form is used for transgender or intersex incarcerated persons and is voluntary. If the individual agrees to complete the form, a Classification deputy enters the information into the electronic I-TRAC system.

The Expert interviewed several pod officers from TLF and the CJX complex. There remains confusion amongst the officers as to where the officers obtain the search preference information (and other information, e.g., preferred name and pronouns). There remains confusion regarding the OCSD Voluntary Gender Identity Disclosure and Search Preference Form. Some staff acknowledged the form but indicated it would be a HIPAA violation for them to review it; others had not heard of the form or were not sure how to obtain it. One (1) of the deputies stated he would contact his supervisor if he had a request from a transgender individual to be searched by a female deputy. However, most deputies interviewed said they would accommodate such requests and have done so in the past. Some of the deputies stated the mod cards did not contain such information. However, the Expert confirmed in one (1) housing unit that two (2) randomly selected mod cards contained the search preference and preferred name/pronoun information for two (2) transgender persons.

During interviews of LGBTQI incarcerated persons, some related concerns included:

- Searches:
  - Intake did not ask about my search preference.
  - The staff are professional.
  - I was searched by a male at Intake, but he knew my preference was for a female deputy to search me,
  - Some transgender persons interviewed reported that they were not provided with a Voluntary Gender Identity and Search Preference Disclosure Form or asked questions pertaining to gender preference for staff searches and regarding preferred name/pronouns. (Note: the Expert notes there has been improvement or fewer related complaints.)

The Expert provides the following recommendations:

- Update policies
  - Pertinent to temporary staffing issues (e.g., not enough staff on the unit of a specific gender) that meet the criteria for "exigent circumstances."
  - Enhanced privacy requirements for strip searches of transgender or intersex individuals.
- During the Intake/Classification processes, staff must be consistent in completing the OCSD Voluntary Gender Identity Disclosure and Search Preference Form and entering the information into the I-TRAC system.
- Staff must be trained regarding where to locate the information contained in the OCSD Voluntary Gender Identity Disclosure and Search Preference Form, e.g., the I-TRAC system (SOMA)
- All staff that conduct searches of transgender/intersex incarcerated persons (e.g., housing deputies, sworn staff that works court processing, transportation deputies, etc.) must be trained on related policies/procedures and ensure transgender/intersex individuals are searched in accordance with their search preference (staff gender), with enhanced and appropriate measures as to privacy.

**Partially Implemented (Previous Rating – Partially Implemented)**

## G. Medical and Mental Health Care

- A. *The County's standards of care for transgender and gender-variant individuals shall reflect community-based standards of care, including relevant UCSF guidelines and World Professional Association for Transgender Health (WPATH) Standards of Care.*

The Expert notes the OCSD Action Plan for this provision: "CHS will respond separately."

The Expert notes that the CHS Action Plan for this provision: "*CHS training calendar, attendance logs, and curriculum will be provided in document production for August 2023 Sabot tour.*"

The CHSs document production did not contain a CHS training calendar, attendance logs, or curriculum, or any other related action items for this provision. Note: The only curriculum produced were seven (7) PREA and Classification-related PowerPoint presentations, and a PowerPoint presentation titled, LGBTQI TREM (Trauma Recovery & Empowerment Model). Further, for these presentations, there was no associated documentation to identify who received the training, or what classifications of employees are required to take this training. Moreover, it does not appear that said training satisfies or was intended to satisfy training requirements for this provision.

The Expert notes the County's previous action plan (for the Second Expert review) that the County will address the related concerns (proof of related biennial training on gender diverse/LGBTQI+ patient care) as identified in the Expert's initial (first) report. The County indicated that initial related training of Clinical Staff was done with a doctor during the 2022 Skills Fair in September, and the County contracted with APAIT for education and training. The first round of training will start in January 2023.

The Expert's previous reports cite HCA CHS Policy 6206 Gender Diverse/LGBTQIA+ Patient Health Care (effective date 1/12/23) in greater detail. It is unclear whether Policy 6206 is still under revision.

The Expert interviewed five (5) HCA CHS healthcare professionals, including medical and mental health/behavioral health staff members and management personnel. Staff indicated they are trained and work under HCA CHS Policy 6206 Gender Diverse/LGBTQIA+ Patient Care and the community-based standards of care, including relevant UCSF guidelines and World Professional Association for Transgender Health (WPATH) Standards of Care.

The Expert provides the following recommendations:

- HCA CHS to identify all current and future required training components (e.g., training curriculum) and provide documented proof of biennial training (e.g., training calendar, and training logs) that has been conducted (first round) on

gender diverse/LGBTQI+ patient care to meet all aforementioned guidelines and standards of care for HCA CHS staff (as applicable).

- The County must also provide a calendar year or fiscal year schedule for the remaining staff to be trained. The training material must be consistent with WPATH Standards of Care and UCSF LGBT Health Guidelines. The County must share all training materials with the Expert and DRC for review and comment.

### **Partially Implemented (Previous Rating – Partially Implemented)**

*B. The County’s standards of care and practice shall ensure that documentation or evidence of prior gender-affirming care is not a prerequisite to receiving gender-affirming care while in Jail custody.*

The Expert notes the OCSD Action Plan for this provision: *“CHS will respond separately.”*

The Expert notes that CHS Action Plan for this provision: *“CHS policy will reflect these requirements and training materials will be provided in document production for the August 2023 Sabot tour.”*

The CHSs document production did not contain revised Policy 6206 (dated February 17, 2023, or any other date post the January 12, 2023, version) or otherwise contain any related action items for this provision.

The Expert’s previous reports cite HCA CHS Policy 6206 Gender Diverse/LGBTQIA+ Patient Health Care (effective date 1/12/23) in greater detail, including as pertaining to Gender Affirming Medical and Surgical Management. It is unclear whether Policy 6206 is undergoing additional revisions.

It was previously reported that Policy 6206 was on hold while OCSD was working on training material and that the policy will be rolled out once staff training is done by February. It was then later reported there is a revised policy with an effective date of February 17, 2023. However, as stated above, the revised version was not provided as part of the document review. Both the revised policy and training material (upon receipt) will be reviewed and addressed for the next monitoring review.

Consistent with previous interviews from earlier Expert reviews, healthcare staff indicated they perform gender-performing care without required or needed evidence to show prior poor gender-affirming care.

The Expert provides the following recommendations:

- Provide revised Policy 6206 (revision after 1/12/23).
- Provide documented proof of biennial training (e.g., training calendar, and training logs)

### **Partially Implemented (Previous Rating – Partially Implemented)**

- C. *The County shall ensure that medical and mental health staff have specific knowledge of and training on gender dysphoria and the treatment thereof, including as to the WPATH Standards of Care.*

The Expert notes the OCSD Action Plan for this provision: “CHS will respond separately.”

The Expert notes that CHS Action Plan for this provision: “CHS training material and attendance logs will be provided in document production for August 2023 Sabot tour.”

The CHSs document production did not contain CHS Training material or attendance logs, or any other related action items for this provision.

HCA CHS Policy 6206 indicates all CHS clinical staff receive refresher training on gender dysphoria and its treatment.

Healthcare previously indicated they receive training regarding gender dysphoria and related treatment, including a 2-hour training course (although mostly general LGBTQI-related information) and a separate training on hormone therapy.

The Expert interviewed six (6) transgender incarcerated persons who provided a wealth of information pertaining to the provisions of the Settlement Agreement and Remedial Plan. Much of the same concerns were expressed during the Expert’s interviews regarding what is important for staff to know about working with transgender and gender-diverse people (WPATH Standard 4.1 – 4.3). Most of the individuals indicated they must not be discriminated against, to be treated equally and fairly, for staff to use their preferred pronouns and names (most said they are accepting of the use of their last names), for staff to acknowledge their identity, ensure their safety, for staff to be trained to work with them and understand their issues and concerns, and for staff to honor their search preference requests (if applicable).

As noted in the Expert’s previous (Second) report, the Parties indicated CHS was utilizing Transgender Care training developed by the UCI Gender Clinic. On October 10, 2022, DRC counsel provided feedback as to that training. CHS has stated it intends to utilize LGBTQI training developed by APAIT moving forward. However, it is unclear as to the status of training for healthcare personnel.

The Expert provides the following recommendations:

- Provide training materials and documentation proof of training/refresher training (e.g., training log) for HCA CHS personnel (as applicable), inclusive of Policy 6206, and gender dysphoria and related treatment.
  - The training material must be consistent with WPATH Standards of Care and UCSF LGBT Health Guidelines.



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**Partially Implemented (Previous Rating – Partially Implemented)**

- D. *The County shall ensure that a qualified medical professional and a qualified mental health professional coordinate to evaluate, diagnose, and treat patients for gender dysphoria.*

The Expert notes the OCSD Action Plan for this provision: “CHS will respond separately.”

The Expert notes that CHS Action Plan for this provision: “CHS has an agreement with UCI Gender Clinic and CHS physicians are aware they can refer patients to the clinic, as needed. CHS has a resource packet for LGBTQI-incarcerated individuals, which is addressed in CHS policy. Policy and resources will be produced in document production for August 2023 Sabot tour.”

The OCSD and CHSs document production does not contain any related action items for this provision. OCSD provided a spreadsheet titled, “UCI Health Gender Transition Services.” The spreadsheet provides the following information regarding services available from UCI: plastic surgery (top surgery, facial feminization/masculinization/non-binary surgery), General/OB/GYN (comprehensive gynecologic care, cervical cancer screening, breast cancer screening, contraception counseling, abnormal uterine bleeding evaluation and treatment, menstrual suppression, preconception counseling and referral to reproductive endocrinology and infertility specialists based on fertility plans, and female to male pelvic gender affirming surgery using minimally invasive gynecologic surgical techniques), Urogynecology (complications associated with male to female reassignment surgery, vaginal stenosis, granulation tissue, rectovaginal or vesicovaginal fistula, and urethral strictures, and male to female bilateral orchiectomy), Pelvic Floor Physical Therapists (rehabilitation process following male to female surgery, and guidance with vaginal dilation), Urology (orchiectomy), Primary Care/Endocrinology (hormone replacement therapy, LGBTQ-specific primary care, gender diversity program, patient and family counseling, puberty suppression, gender-affirming hormone therapy, sexual health education and HIV prevention, community connections and support, school and community engagement, and provider and trainee education). Note: document production contained numerous completed LGBTQI+ Inmate Interview Worksheets signed by LGBTQI incarcerated persons, thus acknowledging receipt of LGBTQI Resource Brochure, LGBTQI Book List, and Rancho Santiago Community College District Registration Form.

The Expert’s previous (Second) report described (in greater detail) that HCA CHS Policy 6206 captured key staff requirements relative to this provision.

The Expert interviewed six healthcare professionals (four [4] medical and two [2] mental health/behavioral health). The Expert began some of the interviews by asking what (if anything) has changed in terms of healthcare delivery relative to the Settlement Agreement and Remedial Plan (as pertaining to this and all provisions) since the previous monitoring review. I was provided with the following information (Note: some of the relayed information is new, and some of the information is clarification of existing processes):

- Hormone Therapy:

- If an individual requests therapy, we provide and document in the EUHR.
- Nothing else has changed.
- Medicine is administered via injections or pill form.
  - Staff no longer consider the patch option.
  - For individuals being discharged/released, they are provided a short supply in pill form (Estradiol).
- For mental health, we coordinate with a psychiatrist and medical doctor for hormone treatment.
- Gender-Affirming Surgery:
  - If an individual asks for surgery, we provide and document in the EUHR.
  - Hypothetically: If an individual wanted surgery, we would provide counseling to discuss dynamics (including time and jail/prison factors).
  - Two (2) individuals asked for information, and they were provided educational materials, and both then decided against it.
    - The education material provided was from "UpToDate" (a medical subscription-based resource).
  - Before referring someone out to a specialty clinic/hospital for surgery, HCA CHS would consult with the U.C. Irvine Transgender Clinic.
    - Note: none have been yet.
    - The process would be a lengthy one.
- Medical Encounters:
  - No longer done at the cell door (at least for one of the staff members), but conducted in the medical room in the mods:
    - Use a screen to cover the individual for privacy reasons (although, admittedly, the door remains open).
    - Note: at least one (1) medical professional does not believe a white-noise machine would be effective and doesn't believe there is any privacy concerns with the current process,
    - In general, I believe our patients receive better care here than they would receive in the community.
- Non-Binary Individuals:
  - Have only dealt with a couple of them.
    - One (1) of them was released from jail, and then we referred the other to U.C. Irvine, but then that individual was also released from jail.
    - We follow their lead, so to speak.
    - None have requested hormones.
- Hair Removal:
  - No Vaniqa.
  - No outside vendors for electrolysis, but that would be the best solution ("especially for African American skin").
  - Custody was supposed to provide unlimited or extra razors:
    - Q (from Expert): "Would Chronos for extra razors be possible?"
    - A: "I don't think it is a good idea."
  - We provide Vitamin A and ointment.

- Mental Health Referrals:
  - If depression, suicidal ideations, anxiety, hormone requests, and sometimes if they have already been seen (or are seen) by mental health staff.

Note: During the Expert’s previous monitoring review, four (4) transgender incarcerated persons were specifically asked a series of questions pertaining to WPATH Standards. However, for the recent (third) onsite tour, the Expert asked the questions to one (1) LGBTQI individual as the others interviewed were captured in the previous report. Regarding the lone individual who specifically asked the WPATH questions, the questions were inconsistent and incomplete. The Expert will re-visit the related questions at the next onsite tour with transgender incarcerated persons who have not been asked the specific questions previously.

A review of three (3) Tech Care electronic health records (progress notes / SOAP notes)

The Expert provides the following recommendations:

- For the next Expert monitoring review, produce:
  - A copy of the agreement with UCI Gender Clinic.
  - A copy of the resource packet for LGBTQI incarcerated persons,
- Ensure LGBTQI-related resource information (including as related to transgender/intersex individuals) is provided to all LGBTQI-incarcerated persons.
- Monitor all LGBTQI requests and HCA CHS staff responses for LGBTQI-related issues (including requests for hormone therapy or requests for related information).
- CHS must ensure LGBTQI incarcerated persons receive access to care in a timely manner as related to Hormone Replacement Therapy and other healthcare related to gender dysphoria in a timely manner.
- CHS must ensure that its staff use clinically updated information; “Gender Identity Disorder” was phased out of the DSM-V in 2012. Gender Dysphoria (DSM-V) or Gender Incongruence (ICD-10) are appropriate clinical terms.

### **Partially Implemented (Previous Rating – Partially Implemented)**

- E. The County shall give transgender and intersex patients uninterrupted access to clinically indicated hormone therapy based upon an individualized assessment of the patient’s medical needs in accordance with community-based standards of care.*

The Expert notes the OCSD Action Plan for this provision: “CHS will respond separately.”

The Expert notes that CHS Action Plan for this provision: “CHS policy and training material will be provided in document production for August 2023 Sabot tour.”

As cited above, CHSs ’s document production does not contain applicable training materials or any related action items for this provision.

The Expert's previous (Second) report discussed (in greater detail) that HCA CHS Policy 6206 provides related language to this provision.

The Expert interviewed six (6) medical professionals who provided the related information. (see Section GD [above]) for related information. Note: The Expert's previous (Second) report provided a much longer list of specific related information and processes to get a complete understanding of the related processes and job duties of multiple healthcare staff duties. From the Expert's current review, the following information was provided:

Hormone Therapy:

- If an individual requests the therapy, we provide the document in the EUHR.
  - Nothing else has changed.
  - Medicine is administered via injections or pill form.
    - Staff no longer consider the patch option.
    - For individuals being discharged/released, they are provided a short supply in pill form (Estradiol).
- For mental health, we coordinate with a psychiatrist and medical doctor for hormone treatment.

Note: For the Expert's previous monitoring review, four (4) transgender incarcerated persons were specifically asked a series of questions pertaining to WPATH Standards. However, for the recent (third) onsite tour, the Expert asked the questions to one (1) LGBTQI individual as the others interviewed were captured in the previous report. Regarding the lone individual who specifically asked the WPATH questions, the questions were inconsistent and incomplete. The Expert will re-visit the related questions at the next onsite tour with transgender incarcerated persons who have not been asked the specific questions previously.

The Expert provides the following recommendations:

- Monitor all LGBTQI requests and HCA CHS staff responses for LGBTQI-related issues (including requests for hormone therapy or requests for related information).
- CHS must ensure LGBTQI incarcerated persons receive uninterrupted access to care in a timely manner as related to Hormone Replacement Therapy.
- Provide updated policy (6206).
- For the next Expert monitoring review, produce related training materials.

**Partially Implemented (Previous Rating – Partially Implemented)**

*F. Sex reassignment surgery should be considered on a case-by-case basis and provided when determined to be medically necessary for a patient.*

The Expert notes the OCSD Action Plan for this provision: *“CHS will respond separately.”*

The Expert notes that CHS Action Plan for this provision: *“CHS policy and training materials will be provided in document production for August 2023 Sabot tour.”*

HCA CHS Policy 6206 indicates requests for gender-affirming surgery shall be reviewed on a case-by-case basis by the medical director or assigned designee.

The Expert interviewed six healthcare professionals (four [4] Medical and two [2] Mental Health) and provided related information:

- Gender-Affirming Surgery:
  - If an individual asks for surgery, we provide and document in the EUHR.
  - Hypothetically: If an individual wanted surgery, we would provide counseling to discuss dynamics (including time and jail/prison factors).
    - Two (2) individuals asked for information, and they were provided educational materials, and both then decided against it.
    - The education material provided was from "UpToDate" (a medical subscription-based resource).
  - Before referring someone out to a specialty clinic/hospital for surgery, HCA CHS would consult with the U.C. Irvine Transgender Clinic.
    - Note: none have been yet.
    - The process would be a lengthy one.

Note: For the Expert's previous monitoring review, four (4) transgender incarcerated persons were specifically asked a series of questions pertaining to WPATH Standards. However, for the recent (third) onsite tour, the Expert asked the questions to one (1) LGBTQI individual as the others interviewed were captured in the previous report. Regarding the lone individual who specifically asked the WPATH questions, the questions were inconsistent and incomplete. The Expert will re-visit the related questions at the next onsite tour with transgender incarcerated persons who have not been asked the specific questions previously.

The Expert provides the following recommendations:

- Monitor all LGBTQI requests and HCA CHS staff responses for LGBTQI-related issues (including requests for gender-affirming surgery or requests).
- Provide updated Policy 6206 (post 1/23/23)

### **Not Assessed (Previous Rating – Partially Implemented)**

- G. *The County shall prohibit psychotherapy such as "reparative" or "conversion" therapy or attempts to alter gender identity.*

Two previous successive Compliance Reports have found that the provision has been adequately implemented. Therefore, monitoring of this provision is suspended.

### **Monitoring Suspended Based on Previous Findings of Compliance (Previous Rating Adequately Implemented)**

## H. LGBTQI Training for Staff

- A. *The County shall provide at least biennial live/real-time training to staff and contractors, including anyone who has contact with LGBTQI individuals in custody, on LGBTQI policy, procedures, and legal requirements, including the following topics and as appropriate to their position:*
- 1. The County's non-discrimination policy.*
  - 2. The County's complaint and grievance process for reporting alleged incidents of abuse and harassment.*
  - 3. The Prison Rape Elimination Act.*
  - 4. How to communicate with LGBTQI individuals professionally, effectively, and consistently with this Agreement.*
  - 5. The impact of discrimination against LGBTQI incarcerated people.*
  - 6. Classification, housing, programming, education, work opportunities, and integration of LGBTQI individuals in the jails.*
  - 7. Basic information about gender identity, sexual orientation, gender expression, and privacy rights.*

The Expert notes the OCSD Action Plan for this provision: *"Once the policy is finalized, we will work on revisions to the training."*

The OCSD's document production simply indicates training will be rolled out "after the policy is finalized."

OCSD and/or HCA CHS did not provide any updated policies (e.g., Policy 6206 [post 1/12/23] as HCA CHS indicated the 1/12/23 policy was pending further revisions). OCSD and/or HCA CHS did not provide pertinent training materials or proof of training for sworn, healthcare, or non-sworn (non-healthcare staff). The only training materials provided were the following:

- PPT PREA Briefing Training.
- PPT PREA for Managers.
- PPT PREA for Supervisors.
- PPT CCOM 2900.
- PPT What is PREA?
- PPT Classification 9.0.
- PPT Classification Training Manual.

There was no information provided to identify what specific training is under development, anticipated timelines for approval and roll-out, and what staff (staff disciplines will be required to attend (including refresher training).

Note: from the Expert's previous (second) monitoring review, OCSD had provided an OCSD external memo (dated 7/12/22), which indicated that next fiscal year (July 2023), the training would be included in the annual STC training block. Jail administration at that time reportedly planned to have the training conducted at the

jails before and after the briefing, and LGBTQI materials were (and apparently still are) pending completion. After completion and approval (along with the ADA training materials), OCSD reportedly was to begin planning with the jails to conduct the training onsite.

Note: For the Expert's previous (second) monitoring review, healthcare provided the information regarding LGBTQI staff training, including Course Completion HCA Skills Fair CHS Staff, Course Completion Overview of LGBTQIA+ Cultural Competence Completions, PREA Course Completion, and APAIT training. No updated or other training-related information was provided by healthcare personnel.

The Expert provides the following recommendations:

- OCSD must provide an update as to anticipated policy completion (identify policies and anticipated dates).
- Identify specific training materials being developed (including refresher courses) with anticipated timelines for both CHS and OCSD (in conjunction with APAIT or other organizations), future fiscal or calendar year training schedules, and confirmation of training certifications through STC.
- Training materials should be shared with the Expert and DRC for review and comment.

#### **Un-ratable (Previous Rating – Un-ratable)**

- B. Training, including refresher training as appropriate to their position, will be provided to all staff at least biennially. The County shall maintain records of training history.*

The Expert notes the OCSD Action Plan for this provision: *"Once the policy is finalized, we will work on revisions to the training."*

The OCSD's document production simply indicates training will be rolled out "after the policy is finalized."

OCSD and healthcare have informally indicated a refresher course is (or will be) under development. Reportedly, the course will be designed for two (2) hours ADA and two (2) hours LGBTQI, to be required biennially for both sworn and non-sworn personnel.

For recommendations, see Section HA (above).

#### **Un-ratable (Previous Rating – Un-ratable)**

- C. The County shall provide DRC draft LGBTQI training materials (including any updates or revisions) and shall meaningfully consider any DRC input on the content and method of delivery of the training. DRC agrees to complete a prompt review (e.g., within 30 days) of draft training materials to accommodate the County's training and operational needs.*

The Expert notes the OCSD Action Plan for this provision: *“Once the policy is finalized, we will work on revisions to the training. All proposed drafts will be shared with DRC and Sabot for their input.”*

The OCSD’s document production simply indicates training will be rolled out "after the policy is finalized."

Training staff and other key County personnel stated that all LGBTQI training materials (including any future revisions) would be reviewed by DRC to allow for their review and input.

The Expert notes the County’s action plan in that the County is revising policy and developing training and will share those materials with the Expert and the DRC team.

**Un-ratable (Previous Rating – Un-ratable)**





## 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, appearing to read "Julian Martinez".

November 27, 2023

\_\_\_\_\_  
Julian Martinez  
Director  
Sabot Consulting

\_\_\_\_\_  
Date