

Orange County Sheriff's Department Custody Operations

Americans with Disabilities Act, Restrictive Housing, LGBTQI, and Healthcare Program Assessment – Second Draft Report

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Executive Summary

This report is being written in order to attempt to resolve the Parties' disputes concerning the legality of the Orange County Sheriff's Department policies, procedures, and practices, regarding the Americans with Disabilities Act (ADA), Restrictive Housing, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex (LGBTQI), and access to medical, mental health and dental care treatment for individuals housed in Orange County Jails. Rosen, Bien, Galvan, and Grunfeld, Disability Rights California, and Orange County signed an agreement to protect the interests of the parties. As part of that agreement, the parties agreed to utilize the services of a third party neutral expert. Sabot Consulting (Sabot) was selected as the third party neutral expert in this matter. As a result, Sabot signed a contract with Orange County to conduct an assessment of Orange County Jails (OCJs) with respect to the following:

Whether the County's policies and practices for the housing, treatment, and programming opportunities for persons with disabilities incarcerated in the Jail comply with federal and state law, including, but not limited to, the ADA, the Rehabilitation Act, the California Disabled Persons Act, the Unruh Act, and California Government Code § 11135. Particular attention shall be paid to whether Orange County provides persons with disabilities equal access to the Jail's services, programs, and activities, and placement in the most integrated, least restrictive setting appropriate, and as required by 28 CFR § 35.152.

Whether the County's policies and practices for the housing, treatment, and programming opportunities for incarcerated people in restrictive housing comply with federal and state law, including, but not limited to, the Eighth and Fourteenth Amendments of the United States Constitution, the ADA, the Rehabilitation Act, Article 1, § 7 of the California Constitution, the Disabled Persons Act, the Unruh Act, California Gov't Code § 11135, and Title 15 of the California Code of Regulations. Particular attention shall be paid to the classification system used to place people in higher security and/or more restrictive housing and to the amount of out-of-cell time afforded to and access to programs for individuals in restrictive housing.

Whether the County's policies and practices for the housing, treatment, and programming opportunities for people incarcerated in the Jail who identify as LGBTQI comply with federal and state law, including, but not limited to, the Eighth and Fourteenth Amendments of the United States Constitution, Article 1, § 7 of the California Constitution, the Unruh Act, and California Gov't Code § 11135. Particular attention shall be paid to whether the County provides LGBTQI incarcerated people equal access to the Jail's services, programs, or activities, and placement in the most integrated, least restrictive setting appropriate.



The assessment included a review of the following documents related to incarcerated persons with disabilities (physical, intellectual, learning, and mental health), incarcerated persons housed in restrictive housing, incarcerated persons who identify as LGBTQI, incarcerated persons access to medical, mental health and dental care:

- Policies/Procedures;
- Lesson Plans/Training Curriculum/Training Attendance Records;
- Intake Screening Forms;
- Tracking Lists;
- Accommodations List;
- Local Jail Handbook/Manual;
- Classification Forms and Documents;
- Disciplinary/Misconduct Documents;
- Out-of-Cell Time (Yard and Dayroom) Logs;
- Work Assignments;
- Education Assignments;
- Programs;
- Grievances/Appeals;
- Sign Language Interpreter (SLI) Logs;
- Telecommunications Logs;
- Orientation Documents; and
- Transportation Logs.

The Assessment Team conducted site visits at the OCJs during the months of March, May, and June 2020. As part of the on-site assessment, the Assessment Team interviewed incarcerated persons, badge staff, and non-badge staff working in the Orange County Jails.

The Assessment Team observed and/or examined the following processes: Intake/Booking/Classification (and follow-up classification), incarcerated person assignments, incarcerated person education, programs, housing assignments, incarcerated person disciplinary proceedings, grievances, recreation activities, pod/dayroom time, outdoor exercise (yard) recreation time, as well as other out of cell activities. The TechCare system/process was also reviewed as it relates to incarcerated persons who have been identified as having mobility disabilities and non-mobility disabilities {i.e., intellectual/developmental disabilities (DD) and learning disabilities (LD)}. The Assessment Team also reviewed the restrictive housing process as well as LGBTQI classification, housing and program access, and incarcerated person access to medical, dental, and mental health care.

The Assessment Team would first like to commend the Orange County Sheriff, as well as the management team and all staff (both custody and non-custody), for



their welcoming, positive, and transparent interactions with our Assessment Team. We would also like to commend Health Care Agency (HCA) Adult Correctional Health Services (ACHS) management and staff. We particularly want to thank the following staff: Commander Balicki, Lieutenant Prince, Sergeant Crowson, Deputies Miller, Frederick, Murphy, Damian, Phillips, Correctional Services Assistant Smith, and Joanne Lim from HCA ACHS.

The Assessment Team fully recognizes the quality time staff spent in providing the requested documents, responding to questions, and showing or explaining processes to the Assessment Team. The Assessment Team was provided unfettered access, cooperation, and transparency for all applicable areas of the OCJ, which allowed the Assessment Team to maximize their time to conduct a comprehensive, meaningful assessment.

As a result, Sabot is pleased to provide this independent, comprehensive assessment of the OCJ programs, policies, procedures, and practices as they relate to the aforementioned agreed upon subject areas.

The Orange County Sheriff's Department houses incarcerated persons in the following facilities: the Orange County Central Jail Complex (CJX) and the Theo Lacy Facility (TLF). The CJX is located at 550 N. Flower St. Santa Ana, CA 92703, and the TLF is located at 501 The City Drive S, Orange, CA 92868. The CJX is comprised of three separate facilities that are interconnected by a series of tunnels and corridors. These include:

- Central Men's Jail (CMJ);
- Central Women's Jail (CWJ); and
- Intake Release Center (IRC).

The CMJ and the CWJ are traditional linear style (cell block and dormitory) facilities, which house both sentenced and pre-trial maximum-security incarcerated persons. The IRC is responsible for all processes that involve arrestees being booked and released. The IRC also houses incarcerated persons who suffer from severe mental, physical and medical issues. The TLF is a maximum-security jail complex situated on the banks of the Santa Ana Riverbed in the City of Orange. The TLF maintains the custody, care, and control over a diverse incarcerated person population (pre-trial detainees and sentenced incarcerated persons) ranging from misdemeanors to felonies as well as incarcerated persons who have been sentenced and are awaiting transfer to State Prison. Incarcerated persons incarcerated at the TLF are classified into various housing locations depending on their past confinement history, current charges, criminal sophistication, and a host of other indicators. Once classified, incarcerated persons are housed in areas ranging from multiple bunk dormitories to one or two-man cells.



The capacity and population of the OCJ facilities during the time of assessment are as follows:

March 9, 2020

CWJ Capacity – 386 CMJ Capacity – 1428 IRC Capacity – 903 TLF Capacity – 3442		CWJ Population – 340 CMJ Population – 1301 IRC Population – 446 TLF Population – 3075		
Total	6159	Total	5162	
June 16, 2020				
CWJ Capacity – 386 CMJ Capacity – 1428 IRC Capacity – 903 TLF Capacity – 3442		CWJ Population – 131 CMJ Population – 440 IRC Population – 336 TLF Population – 2033		
Total	6159	Total	2940	

The Sabot assessment included an on-site field review conducted on March 9th to March 16th, May 26th to May 29th, and June 15th to June 19th, 2020. As part of the on-site review, the Assessment Team conducted interviews of staff members assigned to the OCJs, medical staff assigned to HCA/CHS as well as approximately 97 randomly chosen male and female incarcerated persons incarcerated at the OCJs.

The specific scope of the review was to conduct a comprehensive assessment of the OCJ programs, services, and activities with respect to access by incarcerated persons with physical, psychiatric, intellectual/developmental, learning disabilities, LGBTQI, restrictive housing, medical, mental health and dental programs. The assessment consisted of a full review of policies/procedures, documentation, and associated practices. Those areas examined included but were not limited to:

- Intake and Booking Process;
- Classification/Housing Process;
- Tracking System;
- Health Care Services (including Disability Identification);
- Housing Units;
- Orientation;
- Law Library/Library Services;
- Religious Services/Activities;
- Academic and Vocational Education;



- Work Assignments;
- Application of Reasonable Accommodations;
- Training;
- Out-of-Cell Time;
- Misconduct/Disciplinary Process (and other due process-related events);
- LGBTQI;
- Restrictive Housing; and
- Grievances Process

The Assessment Team interviewed staff throughout the OCJ facilities who were directly involved in the processes and practices listed above, including randomly selected staff members assigned to some of the housing units and randomly selected custody and non-custody staff involved in the process listed above. The majority of the staff interviews were conducted in a confidential setting. Confidential interviews were also conducted with randomly selected incarcerated persons identified or suspected as having а physical, psychiatric, intellectual/developmental and/or learning disability, incarcerated persons who identify as LGBTQI and incarcerated persons housed in restrictive housing. In most cases, between two to three incarcerated persons were selected from each of the housing units.

The Americans With Disabilities Act, Section 504 of the Rehabilitation Act, and the United States Constitution, protect the rights of individuals with disabilities, including those housed in correctional facilities.

Title II of the ADA states: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

In accordance with Title 42 of the United States Code - Section 12101-12213, no qualified incarcerated person or parolee with a disability shall, because of that disability, be excluded from participation in or be denied the benefits of programs, services and activities of the department or its jails/facilities or be subjected to discrimination.

California Code - Section 11135 provides that no person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, which is funded directly by the state, or receives any financial assistance from the state.



Title II of the ADA covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding. Title II requires state and local governments provide individuals with disabilities an equal opportunity to benefit from all programs, services, and activities (e.g., education, employment, transportation, recreation, health care, and social services).

Although public entities are not required to take actions that would result in undue financial and administrative burdens, they are required to make reasonable modifications to policies, practices, procedures, and programs where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided. They are also required to provide: 1) auxiliary aids necessary to ensure effective communication (EC), 2) provide legally required architectural and programmatic access, and 3) provide programs, services, and activities in the most integrated setting available.

In order to ensure that incarcerated persons with disabilities housed in the county jails have equal access to the jail's programs, services and activities as required by the ADA regulations, the jail must have a process in place to identify the incarcerated persons with disabilities, identify their accommodation needs, and provide the necessary accommodations to them. Likewise, their healthcare needs must be identified and provided, as well.

ADA Title II Regulations, Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services – Definitions:

28 CFR § 35.108 *Disability* means with respect to an individual: (i) A physical *or* mental impairment that substantially limits one or more of the major life activities of such individual; (ii) A record of such an impairment; or (iii) being regarded as having such an impairment.

The term *physical or mental impairment* means:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.



Physical or mental impairments include, but are not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Human Immunodeficiency Virus (HIV) infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

The term *major life activities* includes, but is not limited to:

- (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and
- (ii) (ii) The operation of a *major bodily function*, such as the functions of the immune system, special sense organs, and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

28 CFR § 35.130 (General Prohibitions against Discrimination) (a) states;

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) states; A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; and
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement as that provided to others;

Title 42 (Public Health and Welfare), Chapter 126 (Equal Opportunity for Individuals with Disabilities), USC. § 12132 (Discrimination) states, "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or



activities of a public entity, or be subjected to discrimination by any such entity."

28 CFR § 35.130(b)(3) states, "A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; and
- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities."

28 CFR § 35.130(b)(7) states, "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

In order to comply with the Code of Federal Regulations and Title II of the ADA, the OCJ must have processes in place to identify a qualified individual that is processed into the jail, to identify the accommodation needs staff must provide in order to ensure the incarcerated person has equal access to the OCJ programs, services, and activities, and to track the disabled population. In order for custody and non-custody staff to be aware of the aforementioned disabled population and their accommodation needs, the OCJ must ensure the local policies and procedures are modified, ensure staff are trained on their responsibilities under the ADA as well as the rights of the disabled incarcerated person population regarding equal access to the OCJ programs, services, and activities, and to assure nondiscrimination.

Restrictive housing is used by correctional facilities to manage incarcerated persons who may be disruptive within and/or found guilty of violating the facility's rules. Restrictive housing involves physically removing incarcerated persons from the general population of a jail and imposing restrictions on their movement, program, and privileges.

The purpose of restrictive housing is to maintain control of the facility, ensure the safety of staff and incarcerated persons, ensure order of the facility is maintained, protect incarcerated persons who may be in danger, control gang activity, and manage incarcerated persons who may be an escape risk. Assignment to restrictive housing can result from an incident or may be based on a pattern of misconduct that is determined to be a threat to the safety and security of the facility.

In most facilities, incarcerated persons in restrictive housing are housed alone in a higher security cell, housing unit, module, or wing. Incarcerated persons are commonly given an hour per day of recreation/out-of-cell time in an enclosed



space. The authorized property in a restrictive housing unit is substantially less than incarcerated persons in the general population.

Recent challenges, both in court and in the form of incarcerated person protests are focused on the Eighth and Fourteenth Amendments and focus on whether the physical conditions of confinement constitute cruel and unusual punishment, but also include the use of force procedures, access to medical and mental health care. A report by the National Institute of Justice states, "The preservation of life is the most fundamental obligation of prison and jail officials. The provision of food, clothing, exercise, medical care, and shelter share the common objectives of the preservation of life and the avoidance of needless pain and suffering. The Eighth Amendment's prohibition of cruel and unusual punishment serves as the guardian of those obligations, though it is not a particularly zealous guardian. The Eighth Amendment is not used as a vehicle for mandating best practices in correctional settings, nor was it intended to be. The operative words of the amendment are "cruel" and "punishment." Thus, "cruel punishment" does not encompass discomfort or even every harm, nor does every pain equate with punishment.¹

The use of restrictive housing must ensure incarcerated persons placed in restrictive housing have access to mental health, medical, and dental care. There must be a process to address the exacerbation of psychiatric symptoms, taking into consideration the incarcerated person's intellectual disability, mental illness, self-injury risks, and misconduct/behavior. Incarcerated persons must also have access to out-of-cell time, religious services, and ensure the conditions of confinement in the restrictive housing units do not violate the First, Fourth, Eighth, and Fourteenth Amendments of the US Constitution.

Jail administrators are obligated under the Eighth Amendment to provide incarcerated persons with a minimum level of medical care for serious medical conditions. This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government. The failure to provide incarcerated persons with access to constitutional level of health care can result in tragedy and also violates the US Constitution. The US Supreme Court ruled in *Estelle v. Gamble* that ignoring a prisoner's serious medical needs can amount to cruel and unusual punishment, noting that "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death[.] ... In less serious cases, denial of medical care may result in pain and suffering, which no one suggests would serve any penological purpose." Although the OCJ is not

¹ National Institute of Justice Restrictive Housing in the US Issues, Challenges, and Future Directions CHAPTER 10 Restricted Housing and Legal Issues



currently accredited by the National Commission on Correctional Health Care (NCCHC), the Assessment Team used the NCCHC Standards for Healthcare Services in Jails (2018 Ed.) as best practices and compliance indicators to measure the OCJ compliance with the provision of medical care for incarcerated persons housed in the OCJ facilities. The report takes into consideration the logistical challenges and reasonable accommodations and modifications of standard approaches that are a direct result of the constraints and barriers for the provision of medical care in confinement settings. The facility's security needs should be minimal and rarely interrupt and never prevent access to the delivery of essential healthcare. The Assessment only measured the OCJs incarcerated persons access to medical care in the OCJ facilities, not the quality of the clinical care.

In the State of California, it is illegal to discriminate against those who identify as LGBTQI. In accordance with state law, a hate crime is defined as a criminal act committed because the victim's perceived disability, gender, nationality, race, or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. Gender identification is also protected. Additionally, since 2018 it has been legal in the State of California to change one's gender. As of January 1, 2019, with the passing of Assembly Bill 2504, the California Commission on Peace Officer Standards and Training is required to develop training for officers and public safety dispatchers related to sexual orientation and gender identity differences. Studies have shown that approximately two-thirds of LGBTQI incarcerated persons in California report being assaulted in prison. Various advocacy groups in California have recommended institutional policy recommendations in areas such as classification, PREA, healthcare, and re-entry services. In a recent case, a California County Sheriff's Department agreed to settle a lawsuit over the treatment of LGBTQI incarcerated persons in their county jail system. At issue was that LGBTQI incarcerated persons were held in cells up to 23 hours a day and prohibited from participating in job training, drug rehabilitation, religious services, and other iail programs. The Sheriff's department claimed the isolation was to protect the incarcerated persons from harassment. The National Center of Transgender Equality (NCTE) reported LGBTQI persons often face unique risks in these settings. LGBTQI persons are especially vulnerable to violence and other forms of mistreatment in correctional settings. NCTE also cites disproportionate contact with the criminal justice system and high levels of abuse in prisons and jails. They cite key issues facing LGBTQI incarcerated persons such as: violence by staff and other incarcerated persons, housing and placement; searches; showers; medical care; privacy; and equal treatment in visitation. The Assessment Team used Best Practices recommendations from the NCTE and the National Institute of Corrections (NIC). The best practices apply to all LGBTQI incarcerated persons, and not solely for transgender or intersex incarcerated persons. The Assessment Team understands the difficult challenges custody, healthcare, and other staff face



on a daily basis while operating a large county jail system. They have to maintain safety and security with a very diverse jail population with various needs. It is crucial that custody, healthcare, and other non-custody staff receive LGBTQI training on the jail's LGBTQI policies and procedures including training regarding the proper use of pronouns, sensitivity training, and proper procedures for searches, etc. The OCJ staff culture must be one that is knowledgeable and understanding regarding challenges LGBTQI incarcerated persons face in a jail environment, and staff must also be aware of their own hurdles in the workplace in order to safely and effectively ensure LGBTQI incarcerated persons are safe, have an opportunity to program effectively and safely, and ultimately are not discriminated against. The Assessment Team examined OCJ policies and practices against best practices in the following areas: Nondiscrimination Policy; Inmate Risk Assessment; Classification/Programming/Housing/Isolation Segregation; Operational Issues specific to Transgender/Intersex inmates; Searches: Clothing/Hairstyle/Grooming; Communications/Information Management: Medical/Mental Health: Privacy/Safety/Cross-Gender Supervision/Restroom/Showering; Visitation Rules; Policy Dissemination (Policy Training)/Inmate Education. The Assessment Team also examined LGBTQI general training/information. Although there was some PREA information overlap, the intent of the review was not PREA specific.

In late September 2020, the California Governor signed into law Senate Bill (SB) 132, which makes significant changes to the Penal Code with respect to the LGBTQI incarcerated population. Although the new legislation applies specifically to the California Department of Corrections and Rehabilitation (CDCR) and not county jails, it is likely that it will inform future policy, regulation, and litigation regarding the rights of LGBTQI incarcerated persons in county jail facilities as well.

The dental care of incarcerated persons is governed by the same constitutional standard of deliberate indifference as is medical care. The Assessment Team's focus of the review was not a clinical assessment of the dental health care delivery system, but rather to examine if incarcerated persons in the OCJ facilities had access to care for their serious dental problems. The Assessment Team used the NCCHC Standards for Health Services in Jails (2018) as best practices. The dental standards and compliance indicators used for this assessment are essential components to provide constitutionally adequate dental care. The ADA requires Dental policies and procedures to provide effective communication for incarcerated persons during clinical encounters, and also requires the dental treatment areas to be accessible to incarcerated persons with disabilities.

This detailed report outlines our general concerns, the changes needed for an ADA compliant/comprehensive incarcerated person disability program, the NCCHC standards as best practices to ensure Constitutionally adequate access to medical,



mental health and dental care, best practices and recommendations for the management of the LGBTQI population that are or will soon be required, and restrictive housing program including conditions of confinement.

We are not including the physical plant accessibility findings and recommendations in this report because they are not ripe for discussion and recommendations at this time.

Finally, while the ADA does not require: (1) a real-time comprehensive, networked ADA tracking system, (2) a comprehensive training program for all staff who have any incarcerated person contact, or (3) a revision of specific policies and procedures, duty statements and forms, it is our expert opinion that with these three best practice components being in place alongside a comprehensive disability identification process, the OCJ will have a greater chance of coming into and maintaining an ADA compliant program and facility.

The report of findings for each area reviewed is contained within the various sections of this document.



Summary List of Findings

Listed below is a summary of findings regarding the ADA, the restrictive housing program, the LGBTQI program, access to medical, mental health and dental care, gaps in the local policies/procedures, and/or, serious general concerns as noted by the Assessment Team:

Intake/Booking (Disability Identification)

- The medical intake screening and booking process does not include questions for custody and medical staff to inquire whether an incarcerated person may have a difficult time walking long distances, ambulating stairs/steps, require accommodations to shower (shower chair), or climbing on to a top bunk while in custody.
- Sabot recommends the ADA deputy add those incarcerated persons with speech disabilities and disabilities affecting dexterity/upper extremity disabilities to the list of incarcerated persons who need an interview. OCSD advised Sabot that as of 01/02/21, all incarcerated persons on the weekly CHS Special Needs List are interviewed by ADA Compliance deputies. The list includes those with mobility, dexterity, hearing, vision and developmental disabilities. This will be verified during monitoring.
- Sabot recommends the ADA Inmate Acknowledgment of Rights Programs form be revised to include a checkbox for the incarcerated person to acknowledge receipt of the disability grievance process and request for a disability accommodation.
- Sabot recommends the Case Management Unit track speech disabilities and disabilities affecting dexterity/upper extremity disabilities.
- Although there are OCJ intake screening questions, there is not an effective screening process in place to identify incarcerated persons with learning disabilities. At the time of the review there were no incarcerated persons listed on incarcerated persons with disabilities tracking list with a learning and/or a presumed learning disability (functionally illiterate). Based on this, Sabot recommends the OCJ establish a process where incarcerated persons with these disabilities are identified and their accommodation needs noted.



Delivery, Repair, Removal, and Use of Health Care Appliances/Assistive Devices/Durable Medical Equipment/ Medical Supplies

- The OCJ does not have a jointly approved (OCSD and HCA CHS) list of health care appliances/assistive devices/durable medical equipment (e.g., specific types authorized).
- There is no tracking system or list to identify healthcare appliances/assistive devices at the OCJ facilities {e.g., personallyowned being used, personally-owned being stored in storage/supply room, county-owned being used, county-owned and not being used (e.g., back-supply)} and any expiration dates for use (if applicable to any specific incarcerated persons).
- The Settlement Monitor observed that some incarcerated persons are being released from jail (through the release process) without their personally owned health care appliances/assistive devices (wheelchairs and walkers). The OCSD believes it is possible that some incarcerated persons may deny having a personal assistive device stored because they wish to leave with the county-issued device, which they are allowed to keep. CHS indicates that CHS Policy 5017 Hold Upon Release for Health Care Services addresses this issue and the Notification to Hold Inmate Upon Release form has been revised (subsequent to the onsite assessment) and is used to communicate with OCSD.
- OCSD search policies do not include a detailed search process for health care appliances/assistive devices and special accommodation considerations that may need to be provided during searches.
- Policies/procedures and practices do not include a process to ensure immediate issuance of alternative health care appliances/assistive devices in the event an incarcerated person's personally owned or prescribed device has been removed (when authorized). There must also be policy/procedure language and practices to ensure incarcerated persons are monitored during the period when their device has been removed and/or they have been issued an alternate accommodation. This is the only way to determine whether the incarcerated person is at risk of harm or otherwise can function adequately.
- Although this may have been an isolated incident (possibly not systemic), an incarcerated person was observed sitting in an IRC temporary holding cell alone with his assistive device leaning against the wall just outside the locked cell door. The OCSD advised the Assessment Team that this was an isolated incident. Subsequent to the assessment, CCOM Policy 1606.1(a)(3) was revised to address



this, and states that incarcerated persons "will be permitted to possess their assistive device in a temporary holding cell at all times."

There are no wheelchair inspection logs or identified search and logging processes for either functionality or safety/security inspection purposes. This process can be extended for other types of health care appliances/assistive devices. Periodic functionality checks should be conducted by medical personnel, while safety/security inspection checks should be conducted by OCSD custody staff. CHS advised the Assessment Team that their staff members conduct functionality checks of wheelchairs and other appliances during routine wound care appointments and monthly skin care checks. The status is documented in the individual's chart. At the time of the onsite assessment this information was not provided to the Settlement Monitor, nor was any such documentation observed. OCSD states that their ADA Compliance deputies perform a check on assistive devices/auxiliary aids during their monthly face-to-face interviews. At the time of the onsite assessment, the ADA Compliance deputies did not indicate this specific job duty, nor did they provide any documentation showing proof of practice. Incarcerated persons are advised to send a message slip to ADA Compliance or CHS if their device requires immediate repair.

Tracking

- The OCJ has multiple tracking systems in place to track incarcerated persons with disabilities and their accommodations, however, the systems in place do not currently track all incarcerated persons with disabilities and their accommodation needs.
- There is no comprehensive networked ADA tracking system that tracks all incarcerated persons with disabilities and their specific accommodation needs.
- Some housing unit staff, all program facilitators, and all work supervisors are not provided information on who the incarcerated persons with disabilities are and their accommodation needs.

Housing Placements

- The OCJ must ensure incarcerated persons with disabilities are housed in the most integrated setting appropriate to the needs of the incarcerated persons.
- Although it is the policy of OCJ to house incarcerated persons with disabilities based on their classification case factors, some incarcerated persons with disabilities with assistive devices and/or



who require ADA accessible housing at the OCJ are housed in the Mod O and Mod P of the medical housing units for the duration, or a part thereof, of their incarceration. This is in violation of 28 C.F.R. § 35.152 (b)(1) and (b)(2)(i), (ii), and (iii) of the Title II regulations. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that ADA incarcerated persons are not housed in medical housing if the person does not have a medical condition that requires medical housing. OCSD indicates Module O of the CMJ is a multi-purpose housing module that is wheelchair accessible and provides full access to programs/services for those whose classification is GP 5, 6 or 7. TLF Mod O, Sector 37 is also a multi-purpose housing module which provides dorm-style, ADAcompliant housing and allows full access to programs and recreation in green sector (the yard with grass) for persons whose classification is GP 5, 6 or 7. This will be examined further during future monitoring tours.

- The OCJ must not place incarcerated persons with disabilities in designated medical areas unless they are actually receiving medical care or treatment. The OCJ must not place incarcerated persons with disabilities in housing units that do not offer the same programs as those in housing units where they would otherwise be housed.
- The OCJ must identify housing locations that will be modified to ADA compliant housing to ensure incarcerated persons with disabilities are housed in the most integrated setting appropriate to the needs of the incarcerated persons.
- The OCSD and CHS administrations must work collaboratively and take a closer look to determine which incarcerated persons with mobility disabilities (other than full-time wheelchair-users) may benefit from in-cell fixed accommodations.
- Though possibly not a systemic problem, inoperable or possibly unsafe shower chairs were identified and being used. Subsequent to the assessment, the OCSD indicated that the shower chairs have been replaced.
- Staff do not know who the persons with learning disabilities or speech disabilities are (or what their accommodation needs are):
 - \circ $\;$ There are no identified lists for these individuals;
 - There must be a process in place to properly identify such disabilities and accommodation needs, and to track them accordingly;
 - If the OCSD opts to not specifically test for learning disabilities, then other mechanisms must be in place and actively followed to make necessary determinations;



- For example, a Test of Adult Basic Education (TABE) should be considered to be given to incarcerated persons who are expected to remain at the facility for at least a specified period of time (e.g., at least 30 days, or at least 90 days, etc.);
- Those who test at a reading level below a certain threshold (e.g., below 4.0 grade reading level) should be placed on a separate list so staff can simply query them prior to key communications such as due process events (e.g., administrative hearings, disciplinary processes/processes, parole processes, etc.) and clinical encounters to ensure their understanding or specific needs (e.g., allow for more time to comprehend and/or gather thoughts and ask questions, read and/or explain to them, and more time to assist understanding/comprehending them the in proceedings and outcomes); and
- Mechanisms must also allow for appropriate education or clinical staff to evaluate outside school district transcripts and/or Individualized Education Plan (IEP) reports for students who have a special education background, when an incarcerated person has transcripts sent to OCSD from an outside school district for review.

Access to Out-of-cell Time (Outside Recreation/Dayroom)

- OCSD must examine its outside exercise yard practices:
 - There needs to be a central authority figure to approve all yard (and dayroom) schedules for the respective facilities.
- OCJ must modify policies and practices, and house disabled incarcerated persons in the least restrictive housing commensurate to their custody/security classification (unless specific healthcare factors dictate otherwise) to ensure equitable access to outdoor exercise yard/activities in accord with their classification/security level. This is an issue at TLF:
 - This may afford them access to more opportunities like a much larger outdoor yard with grass (e.g., adjacent to the TLF barracks), and access to more sponsored outdoor activities such as additional sports activities, other group/team events, holiday events, or other coordinated activities. OCSD advises that TLF ADA incarcerated persons who are General



Population Level 5, 6 or 7 are offered full access to programs and the outdoor yard with grass.

- The OCJ must have a functional system for logging and tracking of out of cell time (dayroom and outdoor recreation) for all incarcerated persons. This will assist the OCJ in monitoring staff compliance with the requirements of Court and Custody Operations Manual (CCOM) Policy Section 2006, Recreation. At the time of the onsite assessment, the process only included logging the specific times that yard or dayroom was released. The Settlement Monitor noted that the process must be improved to also denote the duration for yard and dayroom being operated, and specific times when yard or dayroom has ended. However, subsequent to the assessment, the OCSD provided a revised CCOM Policy Section 2006 (c) Logging Outdoor Recreation and Dayroom, which now requires logging of the opening of dayroom (or when made available), when dayroom is closed, when outdoor recreation is offered, when outdoor recreation is closed, and when group activities are open/available.
- There needs to be a better effort made by staff to document yard (and dayroom) refusals via the OCSD electronic Activity Log process:
 - Not only that an incarcerated person refused but also to ascertain and log the reason(s) why. This is especially concerning if there is a pattern, there are mental health, or intellectual disability concerns, etc.
- With the exception of the TLF, the outdoor recreation yard (area) access appeared to be equitable in terms of type of yard access at each individual facility such as the CMJ, CWJ, and IRC. All incarcerated persons within each individual respective facility had yard access on the roofs at the IRC and Women's facilities, and the upstairs yards at the CMJ.
- Additionally, of specific concern (regarding TLF specifically) is related to outdoor recreation/exercise vards for those incarcerated with disabilities who are housed higher persons in classification/security level housing units solely due to their disability and/or prescribed health care appliance or reasonable accommodation needs. For example, those housed in CMJ Mod O or TLF Mod O, who are otherwise eligible to be housed in less restrictive housing. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that CCOM Policy 1201.13(a) and 1606.1(b) have been revised to address this. Specifically, CCOM 1201.13(a) states in part: "Being disabled in any way is not justification for a higher security classification." The



Assessment Team reviewed revised policy 1606.1 b) (ADA Procedures – Accessible Housing), which states in part;

- 1) Qualified inmates with a disability will have access to the same services, programs, and activities offered to other inmates of the same classification level.
- OCSD and CHS management need to examine the issue that none of the FOU mentally ill and medical patients in the FOU medical unit get approved for outdoor yard (including one incarcerated personpatient who had not seen outside daylight in over a year), and the use of a very small cell that has been converted into the unit dayroom. Subsequent to the assessment and draft report, OCSD advised the Assessment Team that individuals in observation units have access to outdoor recreation when they are not a danger to self or others. However, during the onsite assessment, CHS and custody staff could not provide examples or proof of any female inmates in the unit having been approved for outdoor yard currently or in the past. The OCSD also recently advised that the FOU at the Women's Jail closed in November of 2020.
- Staff must provide assistance to incarcerated persons with disabilities in wheelchairs so they may access the CMJ yard from the elevators and navigating the ramp leading to the yard. Staff must also ensure incarcerated persons with a mobility disability are provided access to an accessible restroom when on the CMJ yard.

Access to Programs, Services, and Activities

- The OCJ does not provide recreational reading material to incarcerated persons with disabilities in easy reading and large print book format for those who require these accommodations.
- The OCJ does not consistently provide assistance to incarcerated persons with disabilities who require assistance with reading or scribing documents.

Access to Education, Vocation, Reentry and Substance Abuse Programs

- The Assessment Team was not able to review proof of practice documentation specific to re-entry classes offered and attended by disabled incarcerated persons.
- Although there is a process in place to provide incarcerated persons with a copy of the "Correctional Programs Inmate Orientation Brochure", there were numerous complaints made by incarcerated persons with disabilities indicating they are not being made aware of programs and education classes offered. OCSD contends that ADA Compliance



deputies discuss this with each new ADA booking they meet. Each person signs the form acknowledging receipt of this information.

- OCJ must ensure incarcerated persons with disabilities who are housed in the Mod O housing units are provided access to and information (brochure) on the availability of programs. At the time of the review, only five incarcerated persons with disabilities are participating in education (programs), but it is unclear whether this number would be higher or whether there might be more interest in education programs if more incarcerated persons (including those with disabilities) were aware of or at least had a better understanding of opportunities available to them.
- OCSD needs to examine whether the contract staffing package is sufficient to adequately address the education and re-entry service needs of the incarcerated person population.
- Housing unit staff are inconsistent with documenting/logging in the electronic OCSD Activity Logs. Documentation should include all activity regarding education, re-entry and substance abuse classes.
- OCSD personnel need to provide class instructors/facilitators/volunteers for education courses, substance abuse classes, and re-entry services with a list or electronic access to a listing of incarcerated persons with disabilities and their respective reasonable accommodation needs, or preferred/primary method of communication needs.
- Education/re-entry/substance abuse instructors/facilitators/volunteers are not providing nor logging ADA reasonable accommodations nor preferred methods of communication for incarcerated persons during class/program.
- Many incarcerated persons who were interviewed from the CJX and TLF facilities stated that education, re-entry, and self-help classes are not offered to them. Subsequent to the onsite assessment and draft report, OCSD advised that all incarcerated persons listed on the CHS Special Needs List meet with the facility ADA Compliance deputy and receive, among other documents, the Correctional Programs Inmate Orientation Brochure which provides information about classes and resources.
- All disabled incarcerated persons housed in the OCJ must have equitable access to education opportunities. The Assessment Team noted there are four classrooms in the Inmate Programs Building at TLF (one of the classrooms is a computer lab).

Access to Work Assignments

• The incarcerated person job descriptions do not contain essential functions. Therefore, it is difficult to determine what jobs incarcerated



persons with disabilities could be assigned to based on their physical limitations and accommodation needs.

- Medical staff exclude incarcerated persons with disabilities from consideration for placement into work assignments and do not identify duty restrictions that would assist staff when placing incarcerated persons with disabilities into work assignments. OCSD advised Sabot that CHS they have implemented the practice of conducting assessments on individuals with disabilities and clearing them for appropriate work assignments. Sabot will monitor this during the monitoring process.
- The CCOM Policies do not outline whether incarcerated persons with disabilities will be or can be excluded from any specific assignments based on their disability or other criteria. As mentioned above, the current practice does not require a listing of essential job functions for each respective incarcerated person work assignment position.
- The custody Community Work Program (CWP) process has identified specific jobs and job sites that can accommodate disabled CWP workers and custody staff provide essential functions for job positions and custody staff conduct an inquiry into the incarcerated persons need for accommodations. However, medical staff are not approving an incarcerated person's placement into the CWP based on the incarcerated person's disability.

Effective Communication

- OCSD and HCA CHS must either incorporate a stand-alone comprehensive EC policy or incorporate necessary EC policy language into existing CCOM and CHS policies/procedures.
- Such policy/policies must articulate the separate requirements for encounters/events or significant types of communications that rise to the level of a higher standard for ensuring and documenting the provisions of EC {e.g., an incarcerated person's disciplinary process, healthcare encounters (to include medical, mental health and dental informed consent matters such as related dialogue and written authorization), education, religious services, probation/parole related processes, grievance process, etc.}, and those they do not (e.g., routine daily interactions where there is no treatment, or due process involved).
- All staff must be trained regarding any new or revised policies related to EC.
- OCSD and HCA CHS must ensure that staff are informed as to who the incarcerated persons with disabilities are and what their



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preferred/primary method of communication, reasonable accommodation, and/or adaptive support needs are.

- Examples of positions or areas of the facilities with a need to access this type of information includes, but is not limited to:
 - ADA Coordinator (and ADA Team);
 - Incarcerated Person Grievance staff;
 - Classification staff;
 - Incarcerated Person disciplinary staff;
 - Staff issuing copies (e.g., initial);
 - Investigator or Hearing Sergeant;
 - Classification Sergeant;
 - Medical staff;
 - Mental health staff;
 - Dental staff;
 - Case Management Team staff;
 - Incarcerated Person Services (programs) staff;
 - Including contract or county employees such as instructors/facilitators/volunteers;
 - Religious services staff;
 - Education staff (academic/vocational);
 - Re-entry services staff; and
 - Substance Abuse staff;
- Once a comprehensive EC policy, or appropriate EC language is incorporated into pertinent existing policies, the HCA CHS and OCSD must ensure staff receive ADA training to include the EC related requirements.
- HCA CHS must ensure healthcare professionals receive electronic alerts or are otherwise apprised of (or have and understand the process of looking-up) any EC required needs for incarcerated persons with disabilities prior to any healthcare encounters (medical, mental health, and dental).
- Other key staff/positions similarly must have access to the same information to ensure staff preparedness in ensuring EC is provided (e.g., grievance staff, incarcerated person disciplinary staff, incarcerated person programs staff, and parole/probation staff or staff who perform related duties).
- Not all health care professionals understand the purpose of the Video Remote Interpreting (VRI) equipment and technology, and how to request or utilize the VRI service. Training is needed.
- Some staff {such as health care professionals, disciplinary staff, and others (for significant types of communications or encounters)} do not provide EC to incarcerated persons with disabilities via his or her primary/preferred method of communication, but rather rely on



communicating through other means (such as secondary methods of communication).

- With few exceptions, OCSD and HCA CHS staff are not documenting the provision of EC for significant types of encounters {e.g., disciplinary processes, probation or parole related processes (even if just issuance of documents)} whether EC has been provided or not. Documentation of EC must include the type of disability, accommodation/preferred/primary method of communication needed, accommodation/method of communication provided, and how the staff person determined the incarcerated person understood the encounter, process, and/or proceeding.
- OCSD and HCA CHS should either consider revising forms and documents to build in EC areas on applicable forms/documents or revise related policies/procedures to describe how the provisions of EC will be documented.

Incarcerated Person Grievances

- Consideration must be given to establish a request for reasonable modification or accommodations process separate from the grievance process for incarcerated persons who are requesting ADA accommodations and modifications to access the OCJ programs, services and activities.
- There is not an expedited process for ADA grievances with specific timelines and processes.
- The CCOM Policy Section 1600.5 Inmate Grievance Procedure does not include a process for interim accommodations to be provided for incarcerated persons during the time the ADA grievance is being processed and responded to.
- Completed grievance responses are not effectively communicated to incarcerated persons with disabilities.

Incarcerated Person Disciplinary Process (Advisement of Punishment)

- Incarcerated persons with disabilities are not being provided EC during the incarcerated person disciplinary process:
 - There is no documentation contained in the incarcerated person disciplinary report that EC was established. Specifically, there is no documentation regarding:
 - Whether the respective incarcerated person has a disability affecting communication (e.g., hearing disability, vision disability, speech disability, learning



disability, developmental/intellectual disability, mental illness);

- What accommodation(s) were provided to ensure EC;
- Whether it was effective; and
- How the hearing sergeant determined EC was effective.
- Incarcerated persons with intellectual disabilities are being allowed to waive their time constraints during the incarcerated person disciplinary process (e.g., waiving their right to a minimum of 24 hours to prepare for the hearing). There is no evidence such a waiver is being done knowingly, willingly, or that it is done intelligently.
- OCSD incarcerated person disciplinary staff must carefully explain this process to incarcerated persons with disabilities and articulate the provisions of EC (to ensure his or her understanding) during the disciplinary process.
- The CCOM policy regarding the incarcerated person disciplinary process must be revised to contain appropriate information (or a stand-alone comprehensive EC policy for all areas/disciplines as applicable) regarding provisions of EC.
- OCSD and CHS do not have a policy and practice in place for clinical consults for the incarcerated person disciplinary process (it's only done in rare cases):
 - This should be in place for the incarcerated person disciplinary process for all mentally ill incarcerated persons as well as those identified as intellectually disabled;
 - Consideration should be given to revising disciplinary report forms (or modifying a supplemental report) to ensure there are check boxes and/or space to write (or type) EC information; and
 - This same recommendation exists for other types of documents outside the disciplinary process as well.

Incarcerated Person Orientation

- Although the ADA Unit conducts face-to-face interviews with some incarcerated persons with disabilities, the current OCJ orientation process including the face-to-face interviews with the ADA Unit does not provide incarcerated persons with disabilities with specific information related the OCJ ADA policies and process. The ADA Unit does meet with some incarcerated persons with disabilities and provide them with some information related to access to programs, services and activities. However, it does not include:
 - The purpose of the disability program;



- Availability of Title 15 and any pertinent existing and future disability-related forms or materials (in accessible formats to incarcerated persons with disabilities);
- Reasonable modifications or accommodations available to qualified incarcerated persons for high level encounters such as:
 - Sign Language Interpreters (SLIs) for due process settings (i.e., incarcerated person infraction hearings, notifications of charges, notices to appear),
 - Health care consultations, and
 - Classification interviews/processes;
- Information regarding access to staff assistance or scribes, availability of large print materials, and books on tape;
- The process of personal notification by staff for notification of announcements, visits, appointment, or messages in the housing unit;
- Access to a TeleType (TTY) or Video Relay Service (VRS) and volume control telephone;
- $\circ\,$ Access to a closed captioning television in the housing unit; and
- Information regarding emergency alarms, evacuations, announcements, and notices.
- Although the orientation video is presented with subtitles, incarcerated persons with disabilities at times require additional accommodations to understand the orientation (video and pamphlet). Deaf and/or Hard of Hearing incarcerated persons may not be able to read the subtitles of the video. Learning and intellectual incarcerated persons with disabilities may not be able to read the subtitles of the video or the pamphlet.
- Not all holding cells have a television for the presentation of the orientation video. All of the holding cells must have a television for incarcerated persons to view the orientation video.
- Effective Communication is not always being provided. Alternate or accessible methods are not being used when presenting the incarcerated person orientation materials or information.



Alarms/Emergencies

- Staff in the units do not have lists and/or are not aware of how to access a listing of incarcerated persons with disabilities and their reasonable accommodation, preferred method of communication, or adaptive support needs in the event of an emergency or evacuation. This is especially important for incarcerated people who have mobility, vision, hearing, and intellectual disabilities:
 - The obvious concern is that during an alarm or emergency this lack of knowledge or readily available information could prove problematic and jeopardize the safety of disabled incarcerated persons;
 - Some incarcerated persons have difficulty discerning public address announcements which could become a serious safety issue during alarms or emergencies;
 - Staff must be knowledgeable as to who these persons are or how to quickly identify them and ensure they receive pertinent alarm or emergency information as applicable; and
 - CCOM policy/procedure language should be modified to include brief but clear information for staff to be aware of their disabled incarcerated persons, their specific accommodation needs, and to assist them during emergencies (e.g., evacuations or mass movements).
- Currently the OCSD does not have a policy or procedure in place regarding identification vests for incarcerated persons with mobility, vision, or hearing disabilities. However, through interviews with staff and incarcerated persons, there is a practice in place for incarcerated persons with hearing and vision disabilities to wear identification vests. The Assessment Team observed incarcerated persons wearing identified vests:
 - The Assessment Team recommends the OCSD develop and implement a policy and procedure regarding identification vests for incarcerated persons with mobility, vision, and hearing disabilities.
- The Assessment Team highly recommends each housing unit where incarcerated persons with disabilities are housed maintain an updated binder to assist staff in the event of an emergency or evacuation. Binders should contain the following:
 - \circ $\;$ Tracking list of all incarcerated persons with disabilities in the unit
 - Tracking list should include name/number, housing cell/bunk, any related disabilities, reasonable accommodation needs/adaptive support needs/preferred method of communication needs; and



• There are additional items recommended for the binder as outlined in the ADA Coordinator section of this report.

Mechanical Restraints/Searches/Count

 The CCOM policy sections do not provide directives for staff to ensure the required accommodations are provided when restraining, searching, and conducting count of incarcerated persons with disabilities (including those with prosthetic limbs).

Release/Discharge/Transfer

- The Settlement Monitor observed that some Incarcerated persons are being released from jail (through the release process) without their personally owned healthcare appliance/assistive device (e.g., wheelchair, walker). The OCSD believes it is possible that some incarcerated persons may deny having a personal assistive device stored because they wish to leave with the county-issued device, which they are allowed to keep. CHS indicates that CHS Policy 5017 Hold Upon Release for Health Care Services addresses this issue and the Notification to Hold Inmate Upon Release form has been revised (subsequent to the onsite assessment) and is used to communicate with OCSD.
- OCSD and HCA CHS staff who are associated with the release process do not have lists (electronic or hard copy) available to them identifying incarcerated persons with disabilities and their specific reasonable accommodation/preferred/primary method of communication/needs (for health care appliance/assistive device and/or EC information).
- There needs to be continuity between all facilities as to how the release process is organized (e.g., Case Management on-site with custody staff at the actual time of incarcerated person release).

Transportation

- Incarcerated persons claim the OCJ does not always provide reasonable accommodations for incarcerated persons with disabilities during transport to court and medical appointments. Sabot was unable to verify these claims.
- Staff are removing incarcerated people's assistive devices (canes) while the incarcerated persons are placed in temporary holding cells with other incarcerated persons. OCSD advised Sabot and Sabot has confirmed that CCOM Policy 1606.1(a)(3) has been revised to address this issue.
- There are not enough accessible transportation holding cells.



Intellectual Disabilities

- HCA CHS needs to develop or adopt a comprehensive testing/screening instrument(s) for a trained clinician to effectively identify cognitive deficits and adaptive support deficits for incarcerated persons with intellectual/developmental disabilities.
 - HCA CHS must develop an applicable policy or revise existing Policy 8651 Developmentally Disabled Inmates (details outlined in the report);
 - Incarcerated persons with intellectual/developmental disabilities (those with cognitive and adaptive deficits) must be afforded equal access to programs and services;
 - Low cognitive functioning (usually IQ of 75 or below); and concurrent deficits or impairments in adaptive functioning (abilities necessary to care for oneself and to access programming/services in a correctional setting);
 - Screening an incarcerated person's cognitive abilities and adaptive functioning skills within a correctional environment (as opposed to a community setting) will identify incarcerated persons with intellectual/developmental disabilities;
 - Standardized instruments should be used to screen incarcerated persons;
 - Any developed or adopted screening instruments must test for cognitive skills (e.g., a Quick Test or Test of Non-Verbal Intelligence);
 - For example: A Quick Test may be used in a variety of settings to provide a rapid estimate of cognitive functioning;
 - May be used for incarcerated persons who are fluent in English and not deaf or hard of hearing;
 - The General Ability Measure for Adults (GAMA), WAIS-R, WAIS-III, or WASI are all also examples of types of cognitive screening instruments that may be used;
 - Any developed or adopted screening instruments must also examine for adaptive skills. This may be performed by a psychologist or social worker via a Correctional Adaptive Support Evaluation. Such examination includes observations, interactions, interviewing the subject, receiving verbal reports from jail deputies and other staff familiar with the incarcerated person, and reviewing available records;
 - Adaptive Deficits;



- Examples of areas in which adaptive deficits may be identified, and examples of the types of adaptive deficits that may be present, include;
 - Communication Skills;
 - Academic Skills;
 - Self-Care Skills;
 - Socialization Skills;
 - Self-Advocacy/Use of Resources;
 - Work;
 - Health and Safety;
 - Self-Direction; and
 - Leisure.
- Once a comprehensive evaluation/screening instrument(s) has been developed, and adaptive support services and monitoring frequencies have been determined, Case Management Teams or other multidisciplinary committees must periodically monitor intellectually incarcerated persons with disabilities including:
 - Whether their program needs, and adaptive support needs are being met;
 - Assessing staff responsibilities to provide coaching, assistance, monitoring, and prompting of intellectually incarcerated persons with disabilities.
- OCSD and HCA CHS staff must receive updated related training once the policies/procedures have been revised, and updated testing and adaptive support monitoring protocols are in place.
- OCSD and HCA CHS must ensure staff (especially housing deputies and work supervisors/teachers) are informed (e.g., a list) of intellectually incarcerated persons with disabilities and their specific adaptive support needs/requirements.
- OCSD and HCA CHS need to establish adaptive support logs for housing unit staff members (for designated housing units where intellectually incarcerated persons with disabilities are housed) and for work. Clear monitoring frequencies need to be established for housing unit staff and work supervisors to check-in on the intellectually incarcerated persons with disabilities with regard to their specific identified adaptive support needs:
 - Periodic monitoring of adaptive support needs (once recommended frequencies are determined) should include, but not be limited to, the following (depending upon a respective intellectually incarcerated persons with disabilities clinically identified adaptive deficits/adaptive support needs):



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- Personal hygiene (e.g., brushing teeth, showers, clean clothing);
- Cell/bunk cleanliness;
- Participation in laundry exchange;
- Commissary (e.g., monitoring commissary items [potential victimization], filling-out commissary slips/participating in process, ability to go to and from the commissary (if applicable) or in need of an escort (potential victimization);
- General victimization concerns;
- Time management and ability to report on time (e.g., work, education, programs, appointments); and
- Leisure activities (yard, dayroom).

Telecommunications (VRS-Videophones, Assistive Listening Devices, Telephone Amplification Devices, and Media Closed-Captioning)

- Deaf and/or Hard of Hearing incarcerated persons are not being provided equal access to telephones.
- Non-disabled incarcerated persons have access to telephones during their dayroom time and do not have to request access from staff. However, incarcerated persons with disabilities must ask staff for access and access is only given if staff are available.
- There are no telephone amplification devices available for incarcerated person use at the any of the OCJ facilities.

Sign Language Interpreters (SLI)/Video Remote Interpreting (VRI)

- SLI or VRI services are not always being provided during healthcare encounters when the incarcerated person's preferred/primary method of communication is sign language.
- OCJ and HCA CHS staff must ensure that incarcerated persons whose preferred/primary method of communication is American Sign Language (ASL) are provided access to either in-person SLI or access to VRI for all due process related encounters and clinical related encounters.
- The technology used for VRI connectivity must be upgraded to a larger screen as the iPhone screen currently used makes it difficult to see the interpreter on the iPhone screen.
- The technology should be upgraded to a larger screen technology such as an iPad.



ADA Training

- The OCJ ADA training requirements do not include the requirement that formalized ADA training be provided to all custody, medical and non-custody staff (managers, supervisors, and rank-and-file employees) who work in the jail facilities.
- The OCJ does not provide refresher (annual or biannual) ADA training for all staff.

ADA Coordinator

- The ADA Coordinator (and his ADA team) has not yet assumed oversight and/or monitoring for all aspects of the ADA program, including those that cross departments/disciplines. This needs to occur.
- There must be an approved ADA Coordinator duty statement or desk procedures (as well as for the entire ADA Team Assistant ADA Coordinator, ADA Deputies, ADA CSA) that reflect all relative oversight responsibilities.

Notices

 The CMJ, CWJ, IRC and TLF do not have Notices for interested individuals posted to make available the name, office address, and telephone number of the employee or employees designated as required by 28 CFR §35.106. OCSD reports that these notices have been posted in all dayrooms and public visiting areas. Sabot will monitor this during the monitoring process.

Custody Staff

• Post orders must be developed or revised to incorporate specific requirements of local OCSD policies pertaining to incarcerated persons with disabilities.

Accountability

- The OCJ does not have an oversight or a defined accountability or investigative mechanism to monitor and track staff ADA violations.
- The OCJ does not have an existing policy (or procedures) pertinent to monitoring, investigating, and tracking violations of Title II of the ADA. Nor do they have a mechanism to specifically capture ADA violations by staff (e.g., egregious or serious violations or repeat occurrences).



Americans with Disabilities Act Assets/Features

- The OCSD does not have a policy or practice to track the state of repairs for structural or fixed ADA assets and features:
 - OCSD needs to incorporate an electronic inventory of structural or fixed ADA assets and features.
- The OCSD needs to either consider establishing a specific priority work order code(s) for fixed ADA assets and features or should establish criteria that allows for at least certain ADA related work requests to automatically be elevated to "Priority 1." For example, when a grab-bar or transfer-bar inside a wheelchair user's assigned cell breaks or malfunctions it would automatically be categorized as a Priority 1.

Medical Care

- Information on Health Services:
 - Not all holding cells have a television for the presentation of the orientation video and some are not being provided information on health services.
- Emergency Services and Response Plan:
 - CHS does not conduct disaster drills with participation from each shift every 3-years. OCSD reports that CHS Policy 1012 Disaster Plan was updated on 07/02/20 to combine disaster training with OCSD. CHS will be part of the OCSD training that occurs every three years. Sabot will monitor this during the monitoring process.
- Health Training for Correctional Officers:
 - Correctional officers who work with incarcerated persons do not receive health-related training at least every two years as required by the standard. OCSD reports that a new CHS health training module for the Academy and refresher training for jail deputies (every 2 years) has been implemented. Sabot will monitor this during the monitoring process.

Mental Health Treatment (Access)

- Privacy of Care:
 - There needs to be a more concerted concentration on conducting mental health interviews/encounters in more private/confidential settings or in the most private/confidential setting feasible.
- Access to Care (Mental Health):



- Clinicians must cease conducting cell door (cell-front) clinical interviews;
- The HCA CHS must fill their mental health staffing positions that are currently vacant and those identified in the expansion of mental health programming plan. This is necessary for CHS to be able to adequately provide care and minimize mental health risks (examples cited below). Subsequent to the onsite assessment and draft report, CHS indicated they have an ongoing recruitment to fill mental health vacancies, and indicate that as of 01.31.21, Human Resources reports there are 19 vacancies for mental health positions with eight (8) of those vacancies pending job offers.
 - Responding to emergency calls and crisis intervention;
 - Responding to non-emergency requests and referrals (both electronically and physically/triage, and subsequent appointments as warranted);
 - The intake-triage process;
 - The Inmate Health Message Slip (pink slip) process including triage and appointment process;
 - The crisis intervention process;
 - To cease conducting cell door clinical interviews;
 - To provide the appropriate mental health services/activities;
 - Sufficient access to mental health prescribers;
 - Issuance of daily medications;
 - Lower the wait time to be seen by clinicians;
 - To deliver mental health group and individual programs/therapy;
 - Conduct sufficient discharge planning; and
 - Perform adequate Case Management and supportive services;
- The Assessment Team on numerous occasions observed incarcerated persons in the IRC RO and Sierra housing units on "safety cell" status in safety gowns. Mental Health staff stated the incarcerated persons are placed in the housing pending availability of mental health housing and/or discharge to general housing by a clinician's order. The incarcerated persons were observed housed in the temporary dorms and cells with their bedding on the floors inside small hard plastic-like boat-type objects. The living conditions were certainly concerning. However, subsequent to the onsite assessment, OCSD stated that the "boat-type" beds were removed in October 2020 and will be replaced with ligature-safe bunks.



- With the exception of male Lanterman Petris Short (LPS) incarcerated person-patients, there is limited group therapy facilitated by mental health professionals for mental health inpatient or outpatient (i.e., acute, chronic care, step down, and outpatient programs). However, subsequent to the onsite assessment and draft report, CHS and OCSD indicated they have since reopened group therapy, with modifications due to COVID-19, in other housing areas, in addition to the LPS units;
- There are no female LPS beds (or chronic care beds) in the CWJ FOU, and incarcerated person-patients requiring in-patient level of care must be transferred to a community hospital for treatment. Subsequent to the onsite assessment and draft report, the CHS and OCSD indicated that there are now five female LPS beds in Module K at the IRC;
- There were multiple concerns identified by mental health professionals in numerous housing units (as identified in the report section); and
- There were a few common incarcerated person complaints made during the Assessment Team's incarcerated person interviews, (e.g., too much telepsychiatry; mental health interviews/encounters conducted at cell doors; and limited group therapy outside of the LPS Unit).
- Inpatient Psychiatric Care (and Mental Health Programs and Residential Units):
 - Overall, there is insufficient mental health staffing to adequately provide the treatment and housing necessary for LPS, Acute, Chronic Care, Step Down Care, and outpatient treatment;
 - There are an insufficient number of related beds available;
 - Incarcerated persons need to be placed on waitlists for appropriate housing, treatment, and programs;
 - Regarding "Riese" Hearings: One of the mental health professionals stated there is a big concern in this area. The OCJ and HCA CHS reportedly came to an agreement with the local public defender's office regarding incarcerated person-patients who are going through the 1368 process and are appropriate and require LPS level of care. The attending psychiatrist is required to contact the public defender's office for each respective case before filing a Riese petition. The public defender's office then reviews the case(s) and advises whether to approve or object to the Riese petition filing. The mental health professional interviewed stated the local HCA CHS administration reportedly acknowledged the public defender's office does not have legal authority to approve or deny a psychiatrist filing for Riese petitions.



However, psychiatrists were told to follow the agreement. There was some uncertainty as to what would transpire if an incarcerated person was denied a Riese hearing. Reportedly there was at least one case where the public defender's office initially denied the petition, but it was later agreed upon and resolved. This process needs to be closely monitored. The Assessment Team notes the OCSD's official position is there is no such delegation to the Public Defender's Office to approve or deny a psychiatrist filing of a Riese petition. CHS states that the Riese process includes collaboration with the Public Defender's Office (PD). If the PD does not agree with the petition filing, CHS will still move forward with the filing. The collaboration provides an opportunity for CHS and the PD to work together for the benefit of the incarcerated person-patient;

- Limited group therapy facilitated by Mental Health staff with the exception of the male LPS. Subsequent to the onsite assessment and draft report, CHS advised the Assessment Team that groups have been expanded, with COVID-19 modifications;
- Lack of out-of-cell time for incarcerated persons housed in inpatient care. Subsequent to the onsite assessment and draft report, CHS advised the Assessment Team that this concern has been addressed in the observation units. The FOU in the Women's Jail is now closed;
 - An extreme example noted during the assessment included a female incarcerated person-patient in the FOU who had not seen daylight in over a year;
- No female LPS beds. Subsequent to the onsite assessment and draft report, the CHS and OCSD indicated that there are now five (5) female LPS beds in Module K at the IRC;
- No female Chronic Care (all in FOU are considered as Acute Care);
- No female Step-Down program (they are sent from FOU to regular outpatient housing);
- FOU only consists of 12 beds (cells) (the other 3 are designated for medical/ADA;
- Staff acknowledged concerns related to the lack of cleanliness of the FOU;
- Insufficient dayroom in the FOU (small, converted make-shift cell);
- Several Mental Health professionals from virtually all employee classifications have expressed real concern, frustration, and stress. The perception is that mental health administrators and key staff are not well accepted by the OCSD and HCA CHS administrations. Staff feel as if 'they don't have a seat at the table"



with regard to addressing high level mental health concerns. This must be addressed. Mental health staff indicate these concerns are negatively impacting staff morale. Subsequent to the onsite assessment and draft report, CHS advised the Assessment Team that the perception has changed with the change in key mental health management positions. This cannot be examined further at the present time but will be examined in the future;

- A female outpatient incarcerated person complained of the integration of incarcerated persons with mental illness. She stated she has had to live with female incarcerated persons with mental illness who don't shower, don't clean, and mentally "are not there." She believes these incarcerated persons need to be housed and treated in a higher level of care;
- Other incarcerated person complaints include lack of privacy/confidentiality due to cell-front clinical interviews, and also clinical interviews taking place in an office with the door open while incarcerated person workers walk past; and
- Many additional needs and concerns in this area were identified by staff (as detailed in the report section).
- Segregated Incarcerated Persons:
 - The assessment/evaluation must take place on the date of placement (prior to actual placement) so as to ensure the incarcerated person's mental health status has not deteriorated. Mental Health professionals do not generally conduct mental health assessments/evaluations on the dates of incarcerated person placement into restrictive housing. Instead, they are done in advance, and in some instances as much as seven days prior to placement; and
 - Mental Health staff conduct follow-up weekly assessments after placement. Given the reasonable possibility incarcerated persons-patients with mental illness may show mental deterioration, the weekly checks within disciplinary isolation housing are not reasonable. Strong consideration should be given by HCA CHS administration to modify local policy and practice to require a follow-up check within 24 hours after placement, with a clinical determination as to the incarcerated persons-patient's mental state, risk of decompensation, and a determination on follow-up monitoring assessments of the incarcerated persons-patients based on their mental state and well-being.
- Behavioral Consultation:
 - There is no policy or practice in place (except for occasional exceptions) for clinical consultations between disciplinary hearing



officials and mental health clinicians as part of the incarcerated person disciplinary process for incarcerated persons with mental illness or intellectual/developmental disabilities).

- Mental Health Staffing:
 - There are a large number of vacant mental health positions (as detailed in the report) and there is insufficient staffing in place to adequately satisfy all treatment needs for the over 1,800 incarcerated person-patients with mental illness housed at the OCJ facilities. The HCA CHS planned expansion of mental health programming (to include increased comprehensive assessments, discharge planning, a screening process, a new risk assessment system, increased group treatment modalities, enhanced individual treatment process and trauma informed care, and other expansions/additions to treatment and services) is predicated on increased staffing. Just a few of the specific concerns include:
 - At the time of the onsite assessment there were an insufficient amount of LPS beds (including patients having to wait for beds, and no FOU LPS beds or Acute Care). Subsequent to the onsite assessment and draft report, CHS and OCSD indicated that there are now five (5) female LPS beds in Module K at the IRC;
 - At the time of the assessment, there was no mental health facilitated group therapy (with the exception of the male LPS incarcerated person-patients and a few groups for incarcerated persons in outpatient mental health care). However, subsequent to the onsite assessment and draft report, CHS and OCSD indicated they have since reopened group therapy, with modification due to COVID-19, in other areas, in addition to the LPS units. This will need to be examined in the future;
 - Healthcare staffing information (e.g., "JCRP Flowchart Intake," "CHS Programs Process Review Flowchart," documentation pertaining to healthcare staffing for the FY 2019/2020 allocated positions, and the FY 2020/2021 requested positions) did not outline specific units where the positions would be placed (e.g., LPS, etc.) or otherwise how they will be specifically integrated into the mental health workflow amongst the facilities.
 - Numerous mental health professionals from several employee job classifications and the custody staff who work closely with them complained of heavy and overwhelming workload, stress (due in large part because of the staffing shortages), morale concerns, and fears of burnout;



- During onsite assessment staff interviews, healthcare staff at the main jail alleged that partial shifts (e.g., 3 hours, 4 hours) are sometimes not being reflected on staff work rosters as partial shifts. Instead, the rosters give the appearance that position(s) were filled for complete shifts. However, staff did not provide any specific rosters or examples showing this concern. Subsequent to the onsite assessment and draft report, CHS advised the Assessment Team that CHS has no information to indicate that partial shifts are not reflected on work rosters as partial shifts.
- CHS must continue to employ contract/registry personnel and hire overtime as required or needed;
- CHS must continue its recruiting efforts and continue to pursue innovative methods to attract mental health professionals. Likewise, similar efforts must be pursued to retain current valued employees. The filling of the aforementioned staff positions should enable the CHS to ease the heavy workload of its staff and enable them to complete their work assignments timely. This should greatly help reduce claimed staff fatigue, stress and even the feared burn-out that some staff have voiced.

Restrictive Housing/Disciplinary Isolation

- Based on the Assessment Team's review of logs, the Assessment Team was unable to determine the amount of dayroom and recreation time afforded to incarcerated persons. The Assessment Team notes that there is inconsistent logging of recreation and dayroom activities (specific inconsistencies are outlined in the report):
 - The OCJ must have a functional system for logging and tracking of out of cell time (dayroom and outdoor recreation) for all incarcerated persons. This will assist the OCJ to monitor staff compliance with the requirements of CCOM Policy Section 2006, Recreation.
- It is the Assessment Team's experience that incarcerated persons with mental health concerns are generally seen by jail staff to engage in behavior implicating disciplinary rules at a disproportionately higher level as compared to incarcerated persons with no mental health concerns; Of the total Disciplinary Isolation placements (186), 162 had a history of mental illness/contact, with 17 of the 162 incarcerated persons having multiple Disciplinary Isolation placements (two to three placements) in the three months of data reviewed (see the report for associated data findings cited by the National Institute of Justice Restrictive Housing in the U.S. Issues, Challenges, and Future Directions);



- The Assessment Team recommends the OCJ re-evaluate the practice of relocating an incarcerated person with mental health concerns from their housing location to disciplinary isolation at late hours of the night. This practice is not necessary, and may have detrimental effects on the incarcerated person;
- The Assessment Team recommends the disciplinary isolation safety checks be conducted every 30 minutes as required by the CCOM Policy Section 1716.3, at staggered intervals. Logs for safety checks reflect regular security checks being conducted every 30 to 60 minutes. The Assessment Team notes the nationally accepted standard for custodial rounds in restrictive housing is to conduct checks for all persons at least every 30 minutes at staggered intervals. This is a foundational suicide prevention measure, given that these units are known to be high-risk placements with respect to suicide and self-harm;
- There were inconsistencies noted (based on disciplinary housing logs reviewed) regarding showering and clothing exchange (see report for more details);
- Medical staff stated they conduct a visual and verbal welfare check every shift, and it is typically done during medication distribution. The Assessment Team notes the modern practice for security checks includes (at a minimum);
 - A conversation with each incarcerated person in disciplinary isolation,
 - A visual observation of the cell,
 - An inquiry of whether the incarcerated person would like to request a confidential meeting with a mental health or medical provider,
 - Steps taken to ensure effective communication and auditory privacy consistent with security needs.
- It is the Assessment Team's recommendation that the HCA CHS policies be revised to include the above mentioned requirements;
- OCJ has a current practice allowing incarcerated persons to be placed in disciplinary isolation on multiple terms as long as they are removed from disciplinary isolation and placed in the general population for three days. One incarcerated person has spent 925 days in disciplinary isolation in a 3-year period;
- The OCJ does not have a policy or process for mental health clinicians to have input in the disciplinary process;
- The medical assessment/evaluation for incarcerated persons being placed in disciplinary isolation at times is being completed up to seven days prior to an incarcerated person's placement into disciplinary isolation;



 OCJ has a current practice of placing incarcerated persons in disciplinary isolation with no access to any out-of-cell activities (dayroom/yard); and

Medical and Mental Health Training for Correctional Officers

- There are 21 hours of mental health academy training for deputies. However, the material is presented by a Deputy and not a Licensed Clinician:
 - Based on the content of the material being presented which includes signs and symptoms of mental illness, suicide prevention, and clinical terminology this training curriculum must be presented by licensed clinicians and/or co-presented with a licensed clinician; and
 - In addition to deputies who are assigned to the triage area and the LPS Units, deputies working in residential mental health units (step-down) should be provided the same training.
- The Assessment Team could not evaluate the on-boarding and annual mental health training:
 - The training must include the unique aspects of custody settings: confidentiality (and its limits), reporting requirements, safety and security requirements, civil commitment and emergency treatment, competency and informed consent, referral to other health providers, behavior management, and reentry.
- The medical related training for deputies must include refresher training at least every two years and must include (at a minimum) the topics identified in this report. OCSD reports that a new CHS health training module for the Academy and refresher training for jail deputies (every 2 years) has been implemented. Sabot will monitor this during the monitoring process.

LGBTQI

- Nondiscrimination Policy:
 - Although the policy was not provided to the Assessment Team prior to or during the on-site assessment, the OCSD has Policy 375 (Transgender Policy) in place regarding the prohibition and prevention of discrimination against transgender incarcerated persons and requires staff must ensure appropriate treatment of transgender individuals;
 - The OCSD should assert the duty of staff to ensure treatment of LGBTQI incarcerated persons with respect and dignity and to safeguard their physical and emotional well-being and ensure



staff accountability and enforce such policy requirements through the staff discipline process.

- Intake Risk Assessment:
 - Though only currently required for the California Department of Corrections and Rehabilitation (CDCR), the OCSD should consider adopting the new SB 132 requirements relative to the intake and classification process (among other provisions);
 - Medical staff are not always thoroughly following the medical intake screening questionnaire. The Assessment Team noted some applicable questions from the form were not always asked;
 - Subsequent to the on-site assessment, the OCSD provided a list titled, "OCJ LGBTI Inmate Roster" (dated 12/3/20). The list was only for LGBTQI incarcerated persons who were assigned the male gender at birth. The list of 52 LGBTQI incarcerated persons indicated all 52 persons as having their housing preference documented and were all housed in accordance with their preference. But based on additional data tables including classification and housing information, it is unclear whether an incarcerated person's housing preference is being considered. For example, transgender housing for males in female housing, and GP classification and possible Barrack's housing (less restrictive environment). Of the nearly 800 incarcerated male LGBTQI persons from 12/3/28 12/3/20, only 21 males were identified as GP;
 - Only four OCSD Voluntary Gender Identity Disclosure and Search Preference Forms were provided for review. There are concerns as to the consistency with which the form is being provided to LGBTQI new arrivals, and/or how the form is being maintained. The Assessment Team was informed the forms are maintained in the "jackets" for incarcerated persons who voluntarily complete the forms;
 - Although none of the LGBTQI incarcerated persons who were interviewed indicated they had concerns with being housed in more restrictive housing per se, most of them described a lack of programming opportunities, work assignment opportunities, and access to religious services.
- Classification (or LGBTQI Coordinator/Liaison/Committee):
 - Subsequent to the on-site assessment, the OCSD informed the Assessment Team they have assigned staff to oversee and monitor the LGBTQI incarcerated population. The CHS has a newly formed committee which ensures policies and practices are up to date with community standards. They also make connections with community resources to assist in a seamless



transition from jail to community. This is commendable. However, the Assessment Team was not provided any related policy information to review;

- The staff and committee must provide communication, monitoring, and resources for all LGBTQI incarcerated persons, including transgender and intersex incarcerated persons.
- Also, see Risk Assessment (above).
- Operational Issues Specific to Transgender and Intersex Incarcerated Persons:
 - See comments from the Classification section (above); and
 - See comments from the Intake Risk Assessment section (above) regarding restrictive housing comments.
- Searches:
 - There were a couple of related complaints by LGBTQI incarcerated persons;
 - Though currently only required for CDCR, it is recommended that the OCSD consider adopting language from SB 132 (unless otherwise already contained within policy); and
 - See comments from the Intake Risk Assessment section (above) regarding the OCSD Voluntary Gender Identity Disclosure and Search Preference Form and process.
- Clothing/Hairstyle/Grooming:
 - Subsequent to the on-site assessment, the OCSD informed the Assessment Team that policy has been revised to ensure incarcerated persons are provided their choice of undergarments based on their gender expression, and a briefing item has been completed. However, the OCSD did not provide the revised policy for review;
 - Local policy must be revised to specifically explain that transgender incarcerated persons may possess hygiene cosmetics, compression garments, religious items, and footwear (in appropriate sizes), in addition to other property items and other personal items appropriate for them to groom themselves in a manner consistent with their gender identities;
 - The Assessment Team also recommends the OCSD consider offering a gender-neutral commissary list. The list should include items associated with both men and women. All incarcerated persons, regardless of gender, should be able to request any item on the list. This will assist in preventing instances of LGBTQI related discrimination;
 - Local policy must be revised to specifically explain that transgender incarcerated persons may possess hygiene and



other personal items appropriate for them to groom themselves in a manner consistent with their respective gender identity; and

- Jail staff should examine the issues regarding lack of available razors for transgender incarcerated persons, and lack of functional hair clippers or means to have their hair cut/trimmed.
- Communication/ Information Management:
 - Subsequent to the on-site assessment, the OCSD provided the Assessment Team with OCSD Policy 375 Transgender Policy. There is no associated effective date listed, but there is a noted copyright date of 12/1/20. The policy language includes verbiage regarding:
 - Transportation of transgender arrestees:
 - Policy language covers safety and transporting transgender persons apart from other individuals when practical. It also contains language requiring staff to notify dispatch as to the name and DOB of a transgender incarcerated person as well as mileage to the tenth of the mile, point of departure, and destination. However, language does not specifically state that OCSD will contact the receiving facility to provide relevant transgender related information. The OCSD must ensure such information is provided to receiving agencies or facilities;
 - Contact (communications) with transgender individuals:
 - The policy provides clear expectations regarding communications and professionalism. However, most of the transgender incarcerated persons allege the majority of staff often harass and



disrespect them for being LGBTQI. The OCSD must:

- Continue to train staff on Policy 375 as well as other applicable policies and laws,
- Foster an environment whereas LGBTQI incarcerated persons feel free to raise related concerns,
- Conduct inquiries regarding any related allegations of staff misconduct,
- Ensure staff refrain from using demeaning or derogatory language with LGBTQI incarcerated persons, and
- Ultimately hold staff accountable for proven violations of these policies or laws.
- How to address a transgender individual:
 - Policy 375 contains language requiring staff to address transgender persons by their proper pronoun and gender identity;
 - Subsequent to the on-site assessment, the OCSD informed the Assessment Team that an OCSD briefing item has been completed regarding staff addressing LGBTQI incarcerated persons in an appropriate and professional manner, as required by policy;
- Documentation of transgender status information (e.g., preferred name and gender pronoun) for the purpose of ensuring continuity of appropriate treatment:
 - The OCSD allows LGBTQI incarcerated persons the opportunity to complete the OCSD Voluntary Gender Identity Disclosure and Search Preference Form, which includes a section for them to indicate their gender identity and preferred pronoun. This information is required to be tracked internally at the OCSD. It is imperative staff abide by these policies;
 - See comments from the Intake Risk Assessment section (above) regarding the OCSD Voluntary Gender Identity Disclosure and Search Preference Form and process and Assessment Team concerns; and
- The non-disclosure of transgender information except on a need to know basis.
- Medical/Mental Health Care:



- Based on review of policy CHS Policy 6206 Gender Nonconforming Health Care (as well as information obtained through healthcare staff interviews) it appears that CHS HCA staff continue gender-affirming hormones if the incarcerated person was previously undergoing the hormones in the outside community prior to incarceration;
 - The CHS policy must be specific with and/or specifically reference prevailing standards of care, such as those published by the World Professional Association for transgender Health (WPATH), or the University of California, San Francisco (UCSF); and
- CHS policy and practice should be clear that provision of transgender health must be based on individualized clinical assessment, irrespective of pre-incarceration treatment history.
- Privacy/Safety/Cross-Gender Supervision/Restroom/Showering:
 - With regard to CCOM Policy 1720.4 Cross Gender Supervision, and specifically the reference to "exigent circumstances," the Assessment Team recommends the policy be slightly modified to explain that such exigent circumstances be limited to safety issues. They should not include administrative convenience (e.g., reasons related to staffing limitations or availability);
 - OCJ policy must include language addressing that where nudity is unavoidable (e.g., when a staff member is required to observe an LGBTQI incarcerated person submit a urine sample for a drug test), the staff member assigned to observe the drug test process (and other similar situations) will be based on the transgender incarcerated person's signed OCSD Voluntary Gender Identity Disclosure and Search Preference Form (as to the sex of the staff member involved). The 'appropriate gender' of the staff member is the same as that of which was identified as explained in the section titled, "Searches;"
 - OCJ must ensure that decisions regarding the use of showers and bathrooms are individualized with the goal of protecting the privacy, dignity, and safety of transgender incarcerated persons within the context of a prison/jail setting. The OCSD must follow PREA Standard 115.42 Use of Screening Information and Placement of Residents (Prisons and Jails) (f) Transgender and intersex s shall be given the opportunity to shower separately from other inmates. Although this does not appear to be a concern at the OCJ, at least some level of consideration should be given for policy to be modified to allow transgender incarcerated persons the option of showering or using the bathroom at a different time than the rest of the incarcerated



persons. But in the event, such a change would be implemented, it must not lend itself to singling-out, or harassment of the individual;

- At TLF Mod I, two (2) incarcerated persons who identify as transgender noted they believe staff assigned to the "Bubble" can see their chest area over the half shower barrier from the shower area. Staff who were assigned to the "Bubble" indicated they cannot see the chest area over the shower barrier. Upon observation by the Assessment Team, there was no evidence to support the allegation; and
- Local policy should address how to increase privacy for transgender incarcerated persons when undressing. Policies should include identified language that ultimately would help ensure decreased viewing by different gendered staff for transgender incarcerated persons. For example, include language to permit transgender incarcerated persons to undress behind a privacy barrier (if feasible).
- Visitation Rules:
 - The OCSD must modify the visiting policy to include language citing the approval of visits by same-sex or other intimate partners of incarcerated persons;
 - There must not be any restrictions on the showing of affection between incarcerated persons and their same-sex or other intimate partner's contact visits (for those approved), unless these same restrictions apply to heterosexual couples (if contact visits are approved at any of the jail's facilities).
- Policy Dissemination (Policy Training)/Inmate Education:
 - Separate from PREA specific issues, the OCSD does not have a 0 comprehensive stand-alone policy for LGBTQI (which would include transgender/intersex). But rather the CCOM mentions transgender/intersex, gender non-conforming. LGBTQI, transgender search staff preference gender, and a few specific issues "scattered" amongst a few CCOM policy sections. Most of what is cited is lacking specific details (e.g., its purpose, and the "where" and "how," etc.). There are many key aspects regarding LGBTQI and transgender/intersex requirements (or what should be the OCJ requirements) that are not addressed in policy. Please see the section titled, "LGBTQI – Policy Dissemination Training)/Inmate Education" for specific (Policv policv development recommendations;
 - There is no comprehensive LGBTQI training (other than PREA related material) provided to custody staff;



- Incarcerated persons are not receiving orientation information, or resource information (whether in-custody or in the community); and
- Incarcerated persons don't have any available programs or classes to attend specific to LGBTQI issues, concerns, or interest.
- LGBTQI General Training Information:
 - The OCSD must have training curriculum in place for all custody and non-custody staff pertaining to LGBTQI policies and general related training material;
 - The OCSD provided the following general training material for review:
 - LGBTQI PowerPoint Presentation Titled "OC Accept" (Orange County Acceptance through Compassionate Care Empowerment and Positive Transformation);
 - Learning objectives (6) for a training course class titled, "Tx Considerations for Transgender Patients"; and
 - Learning objectives (5) for a class titled, "Incorporating Affirmative Therapy LGBTQI+."
 - The OCSD did not provide any formal lesson plans, course outlines, knowledge-based quizzes or assessments, or any associated materials for any of the three training courses;
 - With the exception of the aforementioned PowerPoint presentation, a PowerPoint presentation was not provided for either of the other two courses;
 - For the class titled, "Tx Considerations for Transgender Patients", the OCSD provided lists with the names of approximately 200 healthcare employees who completed the online training (through March 2020). Likewise, for the class titled, "Incorporating Affirmative Therapy Practices for LGBTQI Clients in a Correctional Setting", a list showing the names of 27 healthcare staff was provided. There were no similar documents provided for the "OC Accept" course;
 - For the three courses, it is unclear to which 0 as employees/employee classifications (i.e., from custody, healthcare, and non-custody [other than healthcare]) are required to attend each of the respective training classes, and what percentage of staff from the various disciplines have and have not attended the training (if required);
 - For the "Tx Considerations for Transgender Patients" and the "Incorporating Affirmative Therapy LGBTQI+" courses, with only having the listed learning objectives to review, the Assessment Team was unable examine the quality of the material or any potentially key missing elements;



- The "OC Accept" Power Point reads as very informative and necessary, but it only contained a few slides specific to the jail setting {e.g., "Challenges in Corrections", and Special Population (Transgender males and females)}";
- Whether through this specific course, the other two courses, and/or other LGBTQI training curriculum, training material must cover requirements outlined in the OCSD Policy 375 Transgender Policy, HCA Policy 6206 Gender Nonconforming Health Care Policy, and other related OCSD and HCA CHS policies;
- Training curriculum should also include various topics/elements discussed as well as associated recommendations made by the Assessment Team (as outlined throughout the LGBTQI section of this report);
- Staff who are assigned to designated LGBTQI housing units as well as other staff who work closely with LGBTQI population should receive such enhanced training (specifics are outlined in the body of the report); and
- The OCSD and HCA CHS must also have policy language in place as well as practice to ensure training updates are incorporated into all relevant training material on an ongoing basis as laws, policies, standards of healthcare, and accepted practices change, or evolve.



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Intake/Booking (Disability Identification)

<u> Standards / Best Practices</u>

The OCJ is required to provide incarcerated persons with disabilities the required accommodations and provide equal access to the OCJ programs, services, and activities as required by ADA. In order to identify incarcerated persons processed into the OCJ that have a qualified disability, there must be a comprehensive disability screening process as part of the intake/booking process. The disability screening must not only identify incarcerated persons with disabilities but also their accommodation needs. Without a comprehensive disability screening process in place, staff may not be aware of incarcerated persons with disabilities being processed into and/or housed in the county jail. In addition, staff may not be aware of the disabled incarcerated person's accommodation needs.

Policies / Procedures and Document Review

The policies and procedures for the OCJ intake/booking process and identification of incarcerated persons with disabilities and their accommodation needs are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1606 Inmates With Disabilities, 3000 Intake, 2500 Intake Booking Process, 2104.5 Developmentally Disabled, 2108.1 Screening Process, 7002.1 Medical Screening, and Health Care Agency (HCA) Correctional Health Services (CHS) Policies and Procedures 6101 Receiving Screening, 6405 Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS), 8555 Mental Health Screening and 8651 Developmentally Disabled Inmates:

- CCOM Policy Section 3000, "Intake" outlines the intake/booking process for incarcerated persons being processed into the OCJ and does not contain specific language related to incarcerated persons with disabilities.
- CCOM Policy Section 2500, "Intake Booking Process" outlines the incarcerated person records process for the incarcerated persons being booked into the OCJ and does not contain specific language related to incarcerated persons with disabilities.
- CCOM Policy Section 1606, "Inmates with Disabilities" outlines the intake and booking process for all incoming qualified incarcerated persons with disabilities being processed in the OCJ.
- CCOM Policy Section 2104.5 "Developmentally Disabled" outlines the requirement to screen incarcerated persons being processed into the OCJ for developmental disabilities.



- CCOM Policy Section 2108.1 "Screening Process" outlines the medical intake screening process for incarcerated persons being processed into the OCJ.
- CCOM Policy Section 7002.1 "Medical Screening" outlines the intake booking process for weekend commitments.
- HCA CHS Policy Section 6101 "Receiving Screening" outlines the medical intake screening process for incarcerated persons being processed into the OCJ. The policy addresses the following disabilities:
 - Mental Health;
 - Developmental Disability;
 - Mobility/Dexterity Impairments;
 - Hearing;
 - Vision; and
 - Inmates requiring low bunk.
- HCA CHS Policy Section 6405 "Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS)" outlines the accommodations that are medically necessary or are required under the ADA and include:
 - Work Restrictions;
 - No Work Status;
 - Criteria for bottom bunk/ground floor housing;
 - o Durable Medical Equipment/Supplies;
 - C-PAP/BIPAP;
 - Specialized Footwear;
 - Cotton Bedding;
 - Extra Mattress;
 - Eggcrate Mattress;
 - Eyeglasses; and
 - Dental Prosthetic Services.
- HCA CHS Policy Section 8555 "Mental Health Screening" outlines the Mental Health Screening process for incarcerated persons being processed into the OCJ.
- HCA CHS Policy Section 8651 "Developmentally Disabled Inmates" outlines the identification process for developmentally incarcerated persons with disabilities being processed into OCJ.
- HCA CHS Receiving Screening Addendum includes screening questions that HCA CHS medical intake staff use as part of the medical intake screening process for incarcerated persons being processed into the OCJ. The screening questions include questions related to the following disabilities:
 - Mental Health;
 - o Learning;



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- Developmental;
- o Vision;
- Hearing;
- Communication;
- Mobility; and
- Cognitive.
- HCA CHS "Function Performance Worksheet" completed by medical staff to determine if an incarcerated person requires assistance with activities of daily living such as:
 - Eating;
 - Walking;
 - Mobility (going out of cell and getting about);
 - Bathing (including getting supplies);
 - Dressing Toileting (grab bars need);
 - Grooming (shaving for men, hair dressing for women, nails, and teeth);
 - Use of Telephone; and
 - Able to fill out Health Message Slip.
- The "Function Performance Worksheet" also addresses assistive devices and includes the following questions:
 - Arrested with assistive device (If so, what device?)
 - Is the assistive device part of the patient's property?
 - If no, where is it located?
 - Upon release, does patient have a plan?
 - Who will pick him/her up?
- The ADA Deputy advised the Assessment Team that the "Function Performance Worksheet" is being revised to include information regarding communication and will include the following:
 - Communication;
 - Able to fill out incarcerated person health message slip;
 - Independent;
 - Needs Assistance;
 - Able to use telephone;
 - Independent;
 - Needs Assistance;
 - Able to express needs; and
 - Method of communication.
- HCA CHS "Mental Health Screening" form from TechCare. The screening includes questions asked of the incarcerated person and medical staff observations (oriented to, appearance, behavior, perception, thought process, state of consciousness, mood, affect, insight, and judgment), and Summary (plan, initial treatment/disposition, discharge needs, and follow-up).



- HCA CHS "Receiving Screening" form from TechCare. The screening includes questions asked of the incarcerated person and includes medical staff observations. The questions related to a disability include inquiry into chronic medical conditions, need for assistive devices, mental health, vision, hearing, speech, and developmental disability. The form also includes a disposition section and includes a "Cleared for Work" section (general, light-duty/no kitchen, kitchen, no work, no kitchen, hold for follow-up/recheck on date) and a "Treatment Plan Refer To" section (MD triage referral, dentist, MH triage, medical chronic care, off-site treatment and medical).
- HCA CHS "Statement of Booking Officer" includes questions related to the assistive device (wheelchair, cane, walker, and other) and disposition.
- CHS "Visual Complaints and Visual Acuity Testing Guidelines" include the guidelines medical staff use to record and document baseline visual acuity and gain an indication of any improvement or deterioration from the previous history and/or treatment(s).

Observations

Most incarcerated persons are processed into the OCJ at the Intake Release Center (IRC); however, incarcerated persons designated as "Weekender" are processed into the OCJ at the Theo Lacy Facility (TLF). The Assessment Team observed the entire IRC intake pre-booking and booking process on multiple days and various times of the day (morning/afternoon/evening) for male and female incarcerated persons. The Assessment Team was not able to observe the intake pre-booking and booking process for the "Weekender" incarcerated persons at TLF; however, the Assessment Team interviewed staff involved in this process. The observation of the intake pre-booking and booking process at IRC included the initial arrival of the incarcerated person, completion of the arresting officer's Crime Summary Information Probable Cause Declaration and Bail Setting Information, Pre-Booking Record, Property Inventory Receipt, Penal Code 853.6 Supplemental, Statement of Booking Officer, Orange County Jail Sheriff's Department Correctional Health Services Checklist (J-112), J-119 Information, Function Performance Worksheet, and the classification process. During the Assessment Teams' observations, with the exception of a nurse on the PM shift, custody (booking and classification) and medical staff complied with the CCOM Policy Sections 1606 Inmates With Disabilities, 3000 Intake, 2500 Intake Booking Process, 2104.5 Developmentally Disabled, 2108.1 Screening Process, 7002.1 Medical Screening, and HCA CHS Policies and Procedures section 6101 Receiving Screening, 6405 Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS), 8555 Mental Health Screening and 8651



Developmentally Disabled Inmates. The Assessment Team noted a nurse on the PM shift did not ask all the ADA related questions from the intake screening assessment in TechCare.

Upon an arresting agency's arrival at the IRC, incoming incarcerated persons are stationed in an outside seating area as the arresting officer completes the Crime Summary Information Probable Cause Declaration and Bail Setting Information, Pre-Booking Record, Property Inventory Receipt, Penal Code 853.6 Supplemental, Statement of Booking Officer (this is typically completed on a computer terminal). Upon completion of these required documents/forms, incarcerated persons are placed in a (queue) awaiting intake processing. The Statement of Booking Officer includes questions related to assistive devices (wheelchair, cane walker, and other) the incarcerated person has in his possession or any statement made by the incarcerated person if he/she uses and assistive device and the location of the assistive device.

Once the incarcerated person's name appears at the front of the queue, the incarcerated person is escorted into the IRC, where the medical screening prebooking process begins. The incarcerated person stands in front of a screened counter with a nurse on the other side of the counter conducting the medical intake screening. There are three stations; however, the middle station is left vacant, and only the two outer stations are used to conduct the screening. This is to allow more privacy during the medical screening process. In the event an incarcerated person undergoing the medical intake screening process has a mobility disability or a disability limiting their ability to stand during the medical intake screening process, they are allowed to sit on the concrete sitting area located in front of the medical intake screening counter. As the nurse is asking the intake screening questions, a separate medical staff member is taking the incarcerated person's vital signs. The medical intake screening is conducted using the electronic medical record TechCare. With the exception of a nurse on the PM shift, the Assessment Team observed the medical staff conducting the medical intake process ask all the guestions in the medical intake screening system. The medical staff, when asking the screening questions, took their time when asking the questions and were very thorough and ensured the incarcerated person understood the questions. As the incarcerated persons responded to the screening questions, their responses were entered into the TechCare system. The specific questions asked that would alert medical staff to a potential disability include:

- Do you have any of the following chronic conditions?
 - Depression;
 - Bipolar;
 - Psychosis;
- Have you ever been diagnosed with any other mental health problems?



- Have you been admitted to a hospital in the past year for a mental health reason?
- Is your mobility or dexterity restricted due to bandages, cast, deformity, splints, or injury?
- Do you have any visual, hearing, speech impairments, or developmental disabilities?
- Any need for glasses, contacts, artificial limbs, braces, dentures, or assistive equipment?
- What assistive devices are needed?
 - Wheelchair;
 - o Crutches;
 - Other (Hard/Soft/Silicone Contacts);
 - o Walker;
 - Prosthetic;
 - Cane;
 - Brace;
 - o Other;
- Any implanted devices?
- Have you ever considered suicide?
- Are you now considering suicide?
- Are you currently taking medications for a mental health problem?
- Do you know of any medical reason why you cannot work in jail?
- Have you ever had a head injury or head surgery that affected your activities of daily living?
- Have you ever received counseling for mental health problems?
- Have you ever received medication for mental health problems?
- Have you ever been hospitalized for mental health problems?
- Have you ever tried to harm yourself?
- Are you currently thinking about harming yourself?
- Have you ever tried to kill yourself?
- When was the last time you thought about killing yourself?
- Are you currently thinking about killing yourself?
- Are you having any thoughts of wanting to hurt someone at this time?
- Do you ever hear voices that others do not hear?
- Do you ever see things that others do not see?
- Do you believe someone can control your mind?
- Have you ever had difficulties learning?
- Do you have difficulty reading or writing?
- Have you ever had difficulties understanding written information?
- Have you received help for a developmental disability or learning disability?



During the medical intake screening process, medical staff also observe the incarcerated person for the following:

- Does the incarcerated person appear to be unsteady, confused, lethargic, and/or stuporous or have slurred speech or tremors?
- Is the incarcerated person oriented to people, place, and time?
- Does the inmate appear to be hearing voices, seeing things that are not there, or overly suspicious/paranoid?
- Does the arresting/transferring officer believe this inmate may be a suicide risk?
- Does patient appear to have barriers to communication?
- Physical Disabilities:
 - o Low Vision;
 - Hearing;
 - Communicating;
 - Mobility: LUE/RUE and/or LLE/RLE;
- Difficulty with Cognition:
 - Forming speech;
 - o Comprehension;
 - Focusing or concentration;
- Abnormal Behavior/Though Process:
 - Uncooperative;
 - Agitated;
 - Aggressive;
 - Answers questions inappropriately;
 - Lacks response when asked questions; and
- Emotional attributes that are inappropriate to the current situation.

If during the medical intake screening process, an incarcerated person is identified as having a potential disability, the incarcerated person is referred to medical or mental health triage for follow-up with a prescriber (nurse practitioner, doctor, or mental health clinician). The prescriber performs an evaluation, or in the case of an on-call prescriber, the prescriber is consulted for orders. If the incarcerated person is identified as disabled, medical staff initiate an Orange County Sheriff's Department Correctional Health Services Checklist (J-112), which is used to coordinate the incarcerated person's housing with custody and tracks the incarcerated person through the intake/classification process. The J-112 identifies the incarcerated person as Expedite, Medical, Mental Health, ADA, and/or Pregnant. The J-112 also includes the following information:



Reason for Review:

- ADA Impairments;
 - Mobility;
 - Dexterity;
 - Hearing;
 - Vision;
 - o Speech
 - Developmentally Disabled;
 - ADA Compliant Housing Required;
 - Housing Change;
 - Mandatory Transfer by Wheelchair;
 - Low Bunk/Tier;
 - o Days;
 - Indefinitely;

Medical/Mental Health Requests:

- Men's Jail;
 - Ward C;
 - Ward D;
 - Sheltered Living;
- Women's Jail;
 - **P-13**;
 - o **P-14**;
 - **P-IF (FOU)**;
 - Sheltered Living;
- Intake Release Center;
 - Safety Gown;
 - Observation;
 - Sierra 2;
 - Module K;
 - Module M;
 - Module K;
- Theo Lacy;
 - Module O;
- Regular Housing;
 - Cleared;

Mental Health Determination:

- Mentally ill (MI); and
- Mentally ill Lockdown (MIL).

If the incarcerated person requires assistance with activities of daily living, based on the provider's orders, a nurse completes an HCA CHS Function Performance



Worksheet. The activities and assistive devices information included on the Function Performance Worksheet include:

- Eating;
- Walking;
- Mobility (going out of cell and getting about);
- Bathing (including getting supplies);
- Dressing;
- Toileting (grab bars need);
- Grooming (shaving for men, hairdressing for women, nails, and teeth);
- Use of Telephone; and
- Able to fill out Inmate Health Message Slip.

Assistive Device:

- Arrested with assistive device (if so, what device?)
- Is the assistive device part of the patient's property?
- If no, where is it located?
- Upon release, does patient have a plan?
- Who will pick him/her up?

During the initial stages of the on-site review, CHS staff reported that the Function Performance Worksheet is completed by the Case Management staff during the initial contact; however, the Function Performance Worksheet is now required to be completed during the medical intake screening process with a follow-up by Case Management staff during the initial contact with the incarcerated person (typically the next working day).

CHS medical staff also complete a Miscellaneous Message Slip (MMS) to communicate specific health care needs or information to custody staff. The MMS form is used for accommodations that are medically necessary or are required under the ADA and include the following:

- Physical limitations that effect an incarcerated person's ability to perform specific work activities:
 - work restrictions;
 - **no work status**;
- Bottom Bunk/Ground Floor Housing;
- Durable Medical Equipment/Supplies;
 - C-PAP/BIPAP;
 - Specialized footwear;
 - Cotton bedding;
 - Extra mattress;
 - Egg Crate Mattress;
 - Eyeglasses;
 - Dental Prosthetic Services;



- Nourishment Snack/Nutritional Supplements; and
- Miscellaneous.

Incarcerated persons identified during the intake screening process with a mental health disability are referred to the mental health department for follow-up and treatment plan. Incarcerated persons identified with all other disabilities are referred to the Case Management Unit and the ADA deputy.

The Assessment Team observed the Case Management staff conduct face-to-face interviews of newly arrived incarcerated persons with disabilities. During the face-to-face interviews the Case Management staff ensured the incarcerated persons with disabilities were provided the accommodations prescribed by the providers and addressed all issues related to the disabled incarcerated person's placement and accommodation needs.

The Case Management teams (mental health specialists, social workers, and Marriage and Family Therapists) also begin assisting with the discharge planning process upon intake and the process continues until the incarcerated person is released. During the initial intake process, a triage nurse screens the new arrivals to determine if there are any medical or mental health concerns and a need to refer the incarcerated person to the appropriate healthcare division. The respective healthcare divisions and Case Management teams receive weekly lists of patients. Absent specific emergent concerns, or a need for inpatient housing, incarcerated persons with mental health concerns are seen approximately five to seven days after the intake triage process. Based on the level of care and housing, as well as the needs of the individual incarcerated person-patients, incarcerated persons are seen by clinicians and Treatment Teams regularly. Mental health professionals may see incarcerated persons daily, every other day, weekly, every other week, every 30, 60, or 90 days, or during sooner increments as warranted by mental health status.

The medical Case Management Team staff receive CDCR patient ADA information (inclusive of related medical and mental health status). The mental health Case Management Team staff are involved in Regional Center contacts as appropriate for identified or suspected past Regional Center clients (e.g., Orange County Regional Center). Prior to the COVID-19 pandemic, the Case Management Team ensured incarcerated person-patients had the opportunity to attend group therapy programs such as Anger Management, Thinking-for-a Change, Substance Abuse, and others. The programs are expected to resume soon.

The CCOM Policy Section 1606.5(a) "California Department of Corrections and Rehabilitation ADA Notifications" outlines the following process for CDCR Armstrong class members housed at the OCJ. The CCOM Policy states,



"Pursuant to Federal Court Order; the CDCR is required under Armstrong v. Brown to send daily electronic notifications to county jails regarding newly booked parolees, who are Armstrong class members, providing information about their disability status and accommodations previously provided while in state prison. Keep in mind the person's disability or accommodations may have changed since release from state incarceration or while on parole. The OCSD guidelines for sharing CDCR notifications are as follows:

- ADA Compliance and CHS Case Management staff receive CDCR notifications via email;
- Incarcerated person is located in OCSD Sheriff's Data System;
- ADA Compliance and CHS Case Management staff collaborate as necessary to determine course of action;
- CHS Case Management staff may follow up regarding medical issues. This may include a face to face interview with Case Management, including a follow-up appointment(s) with a nurse or doctor if needed;
- ADA compliance staff may follow up as necessary to provide appropriate housing and programming accommodations; and
- Every CDCR notification received is entered into a database maintained by OCSD ADA Compliance staff according to the department records retention schedule.

In April 2018 the HCA CHS implemented a Receiving Screening Addendum. The Receiving Screening Addendum was designed to allow CHS to better identify incarcerated persons with developmental disabilities, acute mental health problems, and incarcerated persons who require additional security measures for their safety and/or the safety of others. Gathering information from these questions aids CHS clinical staff in providing a clearer clinical treatment plan for incarcerated persons upon intake. Decisions as to what type of accommodations are needed are determined on a case-by-case basis. Examples of clinical actions CHS staff take based upon positive findings are detailed below:

- ADA Cases are referred to the ADA Deputy for any "Yes" responses to the following questions:
 - Have you ever had a head injury or head surgery that affected your activities of daily living?
 - Have you ever had difficulties learning?
 - Do you have difficulty reading or writing?
 - Have you ever had difficulties understanding written information?
 - Have you received help for a developmental disability or learning disability?



- Any observation of the following physical disabilities or difficulties with cognition including:
 - low vision (low vision is a visual impairment, not corrected by standard eyeglasses, contact lenses, medication, or surgery, which interferes with the ability to perform everyday activities);
 - o hearing;
 - o **communication**;
 - o mobility;
 - difficulty forming speech;
- Mental Health Cases are referred to Mental Health Triage Staff for any "Yes" responses to the following questions:
 - Are you currently thinking about harming yourself?
 - Are you currently thinking about killing yourself?
 - Are you having any thoughts of wanting to hurt someone at this time?
 - Do you ever hear voices that others do not hear?
 - Do you ever see things that others do not see?
 - Do you believe someone can control your mind?
- Any observation of the following:
 - answering questions inappropriately;
 - o **agitated**;
 - o **uncooperative**;
 - lacks response when asked questions; and
 - emotional attributes are inappropriate to the current situation (i.e., laughing).
- CHS provides notification to OCJ custody staff and immediate action is taken for safety of incarcerated persons/others for any "Yes" responses to the following questions:
 - Are you currently thinking about harming yourself?
 - Are you currently thinking about killing yourself?
 - Are you having any thoughts of wanting to hurt someone at this time?

CHS also provides appropriate accommodations (i.e., housing, low bunk, durable medical equipment, sick calls, referrals, and notifications) based upon clinical findings and CHS policies and procedures.

Staff Interviews

The Assessment Team interviewed medical and mental health staff assigned to the intake screening and triage process and medical staff assigned to the Case Management Unit. Medical staff in booking stated that during the medical intake



process, incarcerated persons are asked the questions from the medical intake screens in TechCare. An incarcerated person is referred to mental health and/or medical triage based on their responses to the screening questions, staff observations, historical information contained in the electronic medical record or information from the arresting agency, indicating the incarcerated person should be identified as having a disability (mental health, cognitive, or physical).

Mental health staff assigned to the Mental Health Triage area stated incarcerated persons identified with potential mental health or cognitive disabilities are further evaluated, including an evaluation by a clinician to determine the appropriate treatment plan and housing based on the incarcerated person's risk factors. The treatment plan can include placement in a higher level of mental health care housing, including suicide precaution, suicide watch, inpatient, outpatient in addition to medication, and individual and/or group therapy. Mental health staff also coordinate housing placement with classification staff.

Medical staff assigned to the Medical Intake Triage area stated that incarcerated persons identified with a potential physical disability are evaluated by a Medical Intake Triage practitioner (Nurse Practitioner or Medical Doctor). The practitioner will conduct an evaluation and verify the disability and determine the need for any accommodations including:

- Assistive Devices cane, wheelchair, walker, crutches, splints, etc.;
- Housing Accommodations Low Bunk, Low Tier, ADA compliant cell, etc.;
- Activities of Daily Living;
- Durable Medical Equipment/Supplies;
- Work Status; and
- Accommodations Sign Language Interpreter (preferred method of communication), assistance with reading and writing, telecommunication accommodations (VRS/TTY/TDD), etc.

Staff stated the practitioner writes the order for the accommodations, and a nurse (RN/LVN) or medical assistant transcribes the order onto a J-112, MMS. Effective June 16, 2020, the Function Performance Worksheet is also completed during the Medical Intake screening and triage process. If there are changes after the Intake Medical Screening Triage process and after the incarcerated person is housed, the provider is required to complete a new J-112 reflecting the changes (additions/deletions).

A medical practitioner stated the order for accommodations is a temporary 14-day order, and the incarcerated person is scheduled for a re-evaluation via sick call or Case Management Unit review.



Staff stated that if during the medical intake screening process, a deaf and/or hard of hearing incarcerated person was being processed, they would provide a sign language interpreter, primarily a custody staff member. The OCJ produced a Sign Language Report (1-23-20). The report reflects that the OCSD currently has seven staff receiving bilingual pay for American Sign Language interpreting. Of the seven staff, three are assigned to the OCJ facilities. In addition to staff being used to provide SLI services, the OCJ uses Video Remote Interpreting (mobile Apple telephone and VRS technology in the classification area) in addition to on-site contract services. For a detailed discussion of the EC/SLI practices refer to the Effective Communication section of this report.

If an incarcerated person requires an assistive device, they are immediately placed into a wheelchair and issued an orange wrist band (which is used to identify the incarcerated persons as ADA) and processed as ADA (placed in ADA compliant holding cells with modified classification/fingerprint process).

Medical staff assigned to the Medical Intake Screening stated incarcerated persons with the following disabilities are referred to Medical Case Management and notification is made to the ADA Deputy (during non-business hours a telephonic voicemail message is made):

- Mobility;
- Dexterity
- Learning Disability;
- Developmental Disability;
- Deaf and/or Hard of Hearing; and
- Blind/Vision.

Custody staff stated that following the medical intake screening process, the incarcerated person is cleared for booking at the Receiving Guard Station. The incarcerated person is then searched, property and money are processed, and the incarcerated person is photographed, thumb printed, and placed in the medical observation cell. If the incarcerated person is remaining in custody, the incarcerated person is processed through the Booking Corridor, where the following processes are completed; chest x-ray, advisement of charges (formal booking), LiveScan fingerprinting, classification, identification, shower, issuance of clothing, orientation (video), and housing. Incarcerated persons that require medical housing and incarcerated persons with disabilities in wheelchairs are expedited through the booking process. There are separate areas for male and female incarcerated persons.

Medical and mental health staff conduct the TLF pre-booking for the "Weekender" commitments and "Re-Acts" reactivations or washouts from the Community Work



Program. These are conducted using the same screening forms, questions, and processes as the intake bookings conducted at the IRC. If an incarcerated person is identified as disabled and/or states they use an assistive device, medical staff educate the incarcerated person and instruct the incarcerated person to bring the assistive device when they self-commit during the "Friday Night Booking." Medical staff stated they complete a J-112 and J-105 and enter the information into TechCare for reference during the "Friday Night Booking" process.

Medical and mental health staff stated that "Friday Night Booking" typically takes place from 8:00 p.m. to 12:00 a.m. on Friday nights. As the incarcerated persons arrive in the TLF "Booking Loop," medical staff take the incarcerated person's vitals, and if the incarcerated person is identified as disabled and/or requires accommodations including assistive devices, the incarcerated person is referred to a medical and/or mental health provider for further evaluation. This is typically done telephonically. If the provider orders specific accommodations (assistive device, LB/LT, etc.) or ADA housing, the provider issues the order, and the medical staff enter the orders into TechCare. The incarcerated person is placed into a wheelchair for the remainder of the booking process and their personal assistive device is stored in their personal property. If ADA housing is required, the incarcerated person is taken to "Mod O" where the incarcerated person is issued a county-owned assistive device. The incarcerated person is referred for a followup appointment during sick call the following day. The case is also referred to case management, and case management sends a Function Performance Worksheet to the medical staff in the unit the incarcerated person is housed. The medical staff in the incarcerated person's housing unit completes the Function Performance Worksheet. Incarcerated persons that are identified as requiring a higher level of mental health care during the booking process are transferred to the IRC for the mental health triage process.

Custody staff stated that following the medical intake screening process, the incarcerated person is cleared for processing. The incarcerated person is then searched, property and money are processed, and the incarcerated person is photographed, and thumb printed and placed in the holding cells. The following processes are completed; LiveScan fingerprinting, classification, identification, shower, issuance of clothing, and housing. Incarcerated persons that require medical housing and incarcerated persons with disabilities in wheelchairs are expedited through the booking process.

The ADA Deputy for the Central Jail Complex (CJX) which includes the Central Men's Jail (CMJ), Central Women's Jail (CWJ) and IRC stated that once a disabled incarcerated person is identified during the medical intake and booking process, medical staff will alert the ADA Unit via phone call (including voicemail during non-business hours) and at times with an email notification. The disabilities that the ADA Unit is notified about include:



- Mobility;
- Dexterity
- Learning Disability;
- Developmental Disability;
- Deaf and/or Hard of Hearing; and
- Blind/Vision.

Based on the notification, the ADA Deputy stated the ADA Unit conducts a faceto-face interview with the incarcerated person within 24-48 hours of arrival. The ADA Unit completes an ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs. The ADA Inmate Interview Worksheet includes the following specific ADA information that is asked and/or provided to the incarcerated person:

- Type of disability;
- Mode of transportation to court;
- Assistive device (type, location, upon discharge can family bring to the jail);
- Questions regarding (Triage/Medical/Classification/fingerprint/holding cell); and
- Information on Programs and Services (showers, dayroom, visiting, recreation, transportation, education, religious and work in custody).

The ADA Inmate Qualifications Acknowledgement of Rights/Programs is used to document the incarcerated persons understanding of the programs and services available to the incarcerated person based on security classification and include:

- Classification;
- Recreation;
- Education classes;
- Religious services;
- Visiting; and
- Medical restrictions.

The ADA Inmate Qualifications Acknowledgement of Rights/Programs is used for the incarcerated person to acknowledge receipt of the OCSD Inmate Jail Rules and Correctional Programs brochure.

The ADA Deputy for the TLF stated that once a disabled incarcerated person is identified during the medical intake and booking process, he receives a notification via email from the CJX ADA Deputy, CJX ADA CST or medical. The disabilities that the ADA Unit is notified about include:

- Mobility;
- Dexterity



- Learning Disability;
- Developmental Disability;
- Deaf and/or Hard of Hearing; and
- Blind/Vision.

Based on the notification, the ADA Deputy stated he conducts a face-to-face interview with the incarcerated person. He stated he does not conduct a face-to-face interview with developmentally disabled incarcerated persons with disabilities or Hard of Hearing incarcerated persons, only incarcerated persons identified as deaf (the ADA Deputy later stated he now interviews developmentally disabled incarcerated persons with disabilities). He completes an ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs. The ADA Inmate Interview Worksheet includes the following specific ADA information that is asked and/or provided to the incarcerated person:

- Type of disability;
- Mode of transportation to court;
- Assistive device (type, location, upon discharge can family bring to the jail); and
- Questions regarding (Triage/Medical/Classification/fingerprint/holding cell)
- Information on Programs and Services (showers, dayroom, visiting, recreation, transportation, education, religious and work in custody).

The ADA Inmate Qualifications Acknowledgement of Rights/Programs is used to document the incarcerated persons understanding of the programs and services available to the incarcerated person based on security classification and include:

- Classification;
- Recreation;
- Education classes;
- Religious services;
- Visiting; and
- Medical restrictions.

The ADA Inmate Qualifications Acknowledgement of Rights/Programs is used for the incarcerated person to acknowledge receipt of the OCSD Inmate Jail Rules and Correctional Programs brochure. The incarcerated person is also provided two other documents: the ADA Information Brochure and the Inmate Orientation Brochure.

Case Management staff stated the ADA Unit and Case Management coordinate in ensuring incarcerated persons with disabilities are provided the accommodations prescribed by the providers and in the coordination of discharge planning. Case Management and the ADA Unit conduct face-to-face interviews of incarcerated



persons with disabilities the next business day after arrival. Case Management staff create a tracking log that identifies the following:

- Impaired Mobility Inmate name, booking number, housing, and assistive device;
- Impaired Dexterity Inmate name, booking number, housing, device, and interview date;
- Impaired Hearing/Vision Inmate name, booking number, housing and impairment; and
- Developmental Disability Inmate name, booking number, housing, and Regional Center.

OCSD advised Sabot that as of 01/02/21, all incarcerated persons on the weekly CHS Special Needs List are interviewed by ADA Compliance deputies. The list includes those with mobility, dexterity, hearing, vision and developmental disabilities. Sabot will be monitor this during the monitoring process.

Conclusions/Recommendations

The OCJ uses information obtained from the arresting agency, incarcerated person interviews during the medical intake screening process, and staff observations to identify incarcerated persons with potential disabilities. The types of disabilities that are identified include:

- Physical;
 - o Mobility;
 - o Vision;
 - Hearing;
- Mental Health;
- Cognitive;
- Developmental;
- Learning;
- Speech; and
- Dexterity.

After the identification of a potential disability, the OCJ via the Medical/Mental Health Triage process identifies the accommodations the OCJ must provide based on the incarcerated person's disability. Accommodations prescribed by the medical and mental health providers include:

- Assistive Devices cane, wheelchair, walker, crutches, splints, etc.;
- Housing Accommodations Low Bunk, Low Tier, ADA compliant cell, etc.;
- Activities of Daily Living;
- Durable Medical Equipment/Supplies;



- Accommodations Sign Language Interpreter (preferred method of communication), assistance with reading and writing, telecommunication accommodations (VRS/TTY/TDD), etc.;
- Mental Health Treatment Plan;
- Work Restrictions; and
- Accommodation needed during transportation.

A qualified disability includes individuals currently identified based on the OCJ medical intake screening process. It also includes disabilities that can either be a congenital or acquired with age, the consequence of disease, or a disabling condition, or other health impairment. These individuals with physical disabilities often will have a difficult time walking long distances, ambulating stairs/steps, may require accommodations to shower (shower chair), and in some cases, climbing on to a top bunk. The physical disability the person experiences may be either congenital or a result of injury, muscular dystrophy, cerebral palsy, amputation, multiple sclerosis, pulmonary disease, heart disease, or other reasons. Some people may experience non-visible disabilities that may include respiratory disorders, epilepsy, or other conditions. The medical intake screening and booking process do not include guestions for custody and medical staff to inquire whether an incarcerated person while in custody may have a difficult time walking long distances, ambulating stairs/steps, require accommodations to shower (shower chair), or climbing on to a top bunk. Without these questions included as part of the medical intake screening process, the OCJ is not identifying these disabilities that impact an incarcerated person's ability to access the OCJ's programs, services, or activities and therefore are not aware of the qualified incarcerated persons with disabilities and their accommodation needs.

In addition, once the incarcerated person with disabilities and their accommodation needs are identified, the information is not always available to custody, medical and program staff so that they can ensure the incarcerated person are provided the required accommodations. This will be addressed in further detail in the Tracking section of this report.

It is recommended that the medical intake screening questions include specific questions such as:

- Do you have difficulty walking long distances?
- Do you have difficulty walking up/downstairs?
- Do you have difficulty stepping up/down into/from a van/bus?
- Do you have difficulty stepping over a 6" shower barrier?
- Do you have difficulty standing while in a shower without holding on to the wall?
- Do you have difficulty climbing to a top bunk?
- Do you have difficulty sitting for a long period of time?



- Do you have difficulty standing for long period of time?
- If you have been in CDCR, were you a member of the Armstrong/Clark/Coleman case?

Sabot recommends the ADA deputy also interview those incarcerated persons with speech disabilities and disabilities affecting dexterity/upper extremity disabilities.

Sabot recommends the ADA Inmate Acknowledgment of Rights Programs form be revised to include a checkbox for the incarcerated person to acknowledge receipt of the disability grievance process and request for a disability accommodation.

Sabot recommends the Case Management Unit track speech disabilities and disabilities affecting dexterity/upper extremity disabilities.

The OCJ intake screening process includes the following questions;

- Have you ever had a head injury or head surgery that affected your activities of daily living?
- Have you ever had difficulties learning?
- Do you have difficulty reading or writing?
- Have you ever had difficulties understanding written information?
- Have you received help for a developmental disability or learning disability?

Unfortunately, this alone is not an effective screening process to identify incarcerated persons with literacy concerns. At the time of the review there were no incarcerated persons listed on incarcerated persons with disabilities tracking list (with a learning and/or a presumed learning disability or functionally illiterate). Based on this, Sabot recommends the OCJ establish a process where incarcerated persons with these disabilities are identified including their accommodation needs.



Delivery, Repair, Removal, and Use of Health Care Appliances/Assistive Devices/Durable Medical Equipment/ Medical Supplies

<u>Standards / Best Practices</u>

The provision and retention of assistive devices is essential for the safety of incarcerated persons with disabilities e.g., mobility, blind/vision, and deaf and/or hard of hearing incarcerated persons with disabilities). Assistive devices/health care appliances/durable medical equipment include but are not limited to; wheelchairs, walking canes, tapping canes, eyeglasses; walkers, hearing aids, prosthetics, orthotics, braces, immobilizers, tens units, dentures, CPAP machines, and prosthetics. The OCJ must ensure policies, procedures, and practices allow for proper issuance, use, retention, repair/replacement, and removal (only under specific circumstances) of health care appliances/assistive devices/durable medical equipment. Examples of related topics/material that should be covered within various policies/procedures may include:

- Listing of specific or general types of OCJ authorized assistive devices;
 - Includes custody management approval process of assistive devices;
- In-stock supply process for assistive devices;
- Intake screening (including related forms) to initially identify a disability (or potential disability) and assistive device need;
 - Includes intake issuance of assistive devices or acknowledgment of personally owned assistive device in their possession;
- Medical appointment and evaluation process to identify/confirm a disability and assistive device need;
- Medical orders/medical authorization for assistive devices or special accommodations;
- Related outside medical consults;
- Outside coordination processes for the medical department to acquire assistive devices;
- Standardized process for incarcerated person request process for obtaining assistive devices;
- Accountability of assistive devices;
 - Assistive device logging system;
 - Includes those issued to incarcerated persons;
 - Includes those maintained in-stock (OCJ medical department);
 - Expiration and/or renewal (if applicable) of prescribed devices;
- Logging system for maintenance/repair/replacement of assistive devices;



- Process and logging system (medical staff) of wheelchair inspections (for functionality);
- Process for the searching (custody staff) of assistive devices;
 - Including logging of searches (e.g., for functionality, accountability, and contraband);
- Requirements/process regarding removal of assistive devices:
 - Including restrictive housing or specialized housing units;
 - Medically prescribing and issuing alternate devices;
 - Mental health crisis;
- Process for monitoring the heath condition of incarcerated persons with disabilities whose assistive devices have been removed in restrictive or specialized housing;
- Allowance for in-cell use of assistive devices;
- Purchase of assistive devices for indigent incarcerated persons;
- Assistive devices shall be retained and maintained by incarcerated persons:
 - Includes while in temporary holding cells, upon housing relocation, while transferring (to another jail or prison), and upon release from OCJ;
- Available commissary and/or vendor package options for devices (if applicable), e.g., eyeglasses, hearing aid batteries;
- Donations or outside source options to acquire devices (e.g., Friends Outside or Catholic Charities);
- Assistive devices documented as property of an incarcerated person;
- Incarcerated persons shall not be deprived of an owned or prescribed assistive device that was in the incarcerated person's possession upon entry into the OCJ or was otherwise properly obtained at the OCJ;
 - Unless for documented safety or security reasons or a physician determines the appliance is no longer medically necessary or appropriate;
- Identifiable wristbands;
- Hearing aid battery exchange process;
- Request form process; and
- Safety cells/Restraint chairs.

28 CFR 35.130(b)(7) requires that a public entity has an affirmative obligation to make a reasonable modification to its policies, practices, and procedures to avoid discrimination against persons with disabilities. The policy must require a case-by-case analysis as to whether the assistive devices are needed to ensure a given individual is provided meaningful access to programs, services, and activities offered by the county jail. In sum, the standard for the provision of assistive devices is access, not simply medical necessity.



28 CFR Appendix B to Part 35 – Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability (Code of Federal Regulations), which provides Section-by-Section Analysis of the ADA regulations, states in part (pursuant to "Direct Threat"), "The determination that a person poses a direct threat to the health and safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective, to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline*. Such an inquiry is essential if the law is to achieve its goal of protecting disabled individuals from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks."

28 C.F.R. § 35.130(h) prohibits a public entity from imposing safety requirements unless they "are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities."

Policies / Procedures and Document Review

The policies and procedures regarding health care appliances/assistive devices/durable medical equipment is outlined in the HCA CHS policies and procedures as well as in the OCSD CCOM policies and procedures.

CCOM Section 2108.1(h) Screening Process: With regard to Orthopedic or Prosthetic Appliance/Assistive Devices, it states in part, "Inmates who enter any facility with orthopedic or prosthetic appliance for their personal use shall be allowed to retain the appliance based on the following:

- Security check by custody staff will determine that the appliance does not contain contraband and does not constitute an immediate risk of bodily harm to any person in the facility or threatens the security of the facility; and
- The appliance has been prescribed by a physician or dentist and approved by CHS staff."

CCOM Section 2108.1(m) Removal of Orthopedic Prosthetic Appliances, states in part, "if custody staff believes that possession of the orthopedic appliance constitutes an immediate risk of bodily harm to any person in the facility or threatens the security of the facility, the Watch Commander will be notified. If the Watch Commander has probable cause to believe possession of such orthopedic or prosthetic appliance constitutes an immediate risk of bodily harm to any person



in the facility or threatens the security of the facility, such appliance may be removed (Penal Code Section 2656[b]):

- If such appliance is removed, the inmate shall be deprived of such appliance only during such time as the facts which constitute probable cause for its removal continue to exist; if such facts cease to exist, then the Watch Commander shall return such appliance to the inmate;
- When such appliance is removed, the inmate shall be examined by a physician within 24 hours after such removal;
- If the examining physician determines that removal is or will be injurious to the health or safety of the inmate, he/she shall inform the inmate and the Watch Commander; and
- Upon receipt of the physician's opinion, the Watch Commander shall either return the appliance to the inmate or refuse to return the appliance to the inmate, informing the physician and inmate of the reasons for such refusal and promptly providing the inmate with an Orthopedic or Prosthetic Appliance Removal Petition Form."

CCOM Policy Section 1600.2 (M) Orange County Jail Rules (Property), cites general information regarding property items authorized (including amount) as well as pertinent contraband/confiscation language. However, there is no language pertaining to assistive devices.

CCOM Policy Section 1600.3 (F) Orange County Jail Rules (Prescription Eyeglasses and Contact Lenses), cites general information regarding eyeglasses, frames, and contact lenses.

CCOM Policy Section 1606.2 Inmates with Disabilities (Programs and Services), contains brief general language regarding staff providing wheelchairs, crutches, canes and other assistive devices when necessary.

CCOM Policy Section 1710.4 Body Searches of Inmates, cites general information regarding body searches. However, there is no specific language relative to incarcerated persons with disabilities or accommodations or special considerations to be provided during searches regarding searching or removal of an assistive device.

CCOM Policy Section 1710.5 Search of Inmate Property, cites general information regarding incarcerated person property searches. However, there is no language regarding the searching or removal of assistive devices.

CCOM Policy Section 1710.6 Documentation and Disposition, outlines the process for items removed if found to be evidence in a crime. However, there is nothing



specific to assistive devices or alternate devices prescribed/issued in the event a device is removed.

CCOM Policy Section 2102.2 Prosthetics, briefly states medical and dental prosthetics will be provided when the health of the incarcerated person would otherwise be adversely affected as determined by the examining medical personnel.

CCOM Policy Section 2106.5 (c) Medical Approval for Inmates Shoes, cites that CHS staff may also approve the use of orthotic inserts to be used in the Orange County Jail and issued canvas shoes based on the incarcerated person's medical need.

CCOM Policy Section 3002.4 Receiving Inmates, cites that prostheses are disallowed inside security unless approved by CHS doctor and the Watch Commander. The prosthesis will be placed into the incarcerated person's property. The incarcerated persons will be accommodated by medical staff (i.e., wheelchair, etc.). In cases where the prosthesis is allowed, the incarcerated person will be housed separately.

CCOM Policy Section 7002.4 Friday Evening Processing, cites that whenever someone requiring an assistive device checks himself in to begin the booking process at Theo Lacy, the Lobby staff will immediately contact the Receiving Guard station in order to expedite the booking process for that person. Staff will escort the person to the Receiving Guard sally port where the booking process will begin.

Observations

The Assessment Team conducted tours and observed virtually all areas of the CJX and TLF facilities (e.g., housing units, outside exercise yards, main clinics/infirmaries, satellite clinics, programs areas, etc.). The Assessment Team observed incarcerated persons in possession of assistive devices, health care appliances and durable medical equipment Assistive Device, Health Care Appliance, Durable Medical Equipment (AD/HCA/DME). On one occasion an incarcerated person was observed in a holding cell with his cane sitting outside the cell door. This was the only instance where this was observed. Staff confirmed that this is not the normal practice. Subsequent to the onsite assessment and draft report, the OCSD advised the Assessment Team that this was an isolated incident. Subsequent to the assessment, CCOM Policy 1606.1(a)(3) was revised to address this, and states that incarcerated persons "will be permitted to possess their assistive device in a temporary holding cell at all times." Staff reported that neither the custody administration nor the CHS has a list of approved types of health care



appliances/assistive devices for the incarcerated persons for the jail facilities. AD/HCA/DME is authorized individually on a case-by-case basis by the respective physician or nurse practitioner. With regard to the release process, the Case Management team works collaboratively with custody and CST/CSA staff to ensure they are released with their personally owned health care appliance or assistive device.

While touring the TLF Jail Mod O storage room (#2), the Assessment Team noted that there was a supply of assistive devices and other items available for issuance to incarcerated persons. Inside the storage room there were nine wheelchairs (different sizes), seven walkers, eleven walking canes (no tapping canes for the blind), thirteen pairs of crutches (though normally these are for temporary injuries and use and not usually associated with permanent disabilities), and three portable commode chairs. Additionally, in the clinic area there were three wheelchairs (staged near the clinic area), miscellaneous soft splint materials, and numerous ace bandage wraps. The Assessment Team also toured the TLF Mod I Bulk Storage Room, where incarcerated person owned health care appliances/assistive devices are stored while the incarcerated person is incarcerated at the jail. These items are labeled with the incarcerated person's name and booking number. New incarcerated person arrivals who enter with their personally owned appliance or device have them stored and swapped out by OCJ custody staff or CSA/CST, after intake medical staff conduct their screening. Inside the TLF Bulk Storage Room there were health care appliances/assistive devices belonging to eight different incarcerated persons. Custody staff checked the names and booking numbers and confirmed that five of the eight incarcerated persons had been released from custody while three were still housed at the jail. The following specific information was obtained:

- Incarcerated person "A" (Walker):
 - No walker on initial property inventory;
 - He signed that he received all items upon release;
 - According to Statement of Booking Officer (SOBO) inmate did not have an assistive device at booking initially;
 - Receiving screen indicates that patient uses a walker for medical issues;
 - Patient released prior to provider sick call;
 - No orders for walker or donated item placed in property;
- Incarcerated person "B" (Wheelchair):
 - Signed that he received all property items upon release;
 - According to SOBO patient did not have an assistive device at booking;
 - Receiving screen indicates patient uses a walker for medical issues (unclear whether the information received should have indicated a wheelchair rather than a walker);



- Patient released prior to provider sick call;
- No orders for walker or donated item in property (unclear whether the information received should have indicated a wheelchair rather than a walker);
- Incarcerated person "C" (Wheelchair):
 - No wheelchair on initial property inventory;
 - Signed he received all items upon release;
 - Patient was booked in with own wheelchair (according to medical receiving screen);
- Incarcerated person "D" (Walker):
 - No walker on initial property inventory;
 - Signed he received all items upon release;
 - Patient identified in the medical receiving screen that he was booked in with his own walker;
- Incarcerated person "E" (Walker):
 - No walker on initial property inventory;
 - Signed he received all items upon release;
 - Patient identified in the medical receiving screen as he uses a wheelchair, but it was stolen and did not get booked in with his personal property; and
 - Patient was released to Illumination Foundation and a donated wheelchair was provided.

Some of the general explanations provided by OCJ staff included:

- Some incarcerated persons were released with county assistive devices,
- Incarcerated persons no longer required device upon release,
- Incarcerated persons were donated a device by HCA, and/or
- Human error.

The Assessment team also examined the similar storage areas at the CJX complex but did not conduct a reconciliation of health care appliances/assistive devices.

Staff Interviews

The Assessment Team conducted interviews of custody, CSAs/CSTs, and medical staff at the CJX and TLF facilities regarding health care appliances/assistive devices. Both custody and medical staff confirmed there is not a standard list of custody or medical approved or acceptable health care appliances, and appliances are issued on a case-by-case basis. Custody staff stated prescribed health care appliances/assistive devices are only confiscated or removed if they are altered, used as a weapon, or it is considered as evidence in a crime. If an incarcerated person is placed in disciplinary isolation housing and a prescribed health care



appliance/assistive device is removed (due to reasons identified above) the incarcerated person is placed on singe cell status, and medical staff issue an alternate health care appliance/assistive device as an accommodation. Staff stated the alternative device is generally the same exact type of device.

Medical staff assigned to the Medical Intake Triage area stated incarcerated persons identified with a potential physical disability are evaluated by Medical Intake Triage practitioner (Nurse Practitioner or Medical Doctor). The practitioner will conduct an evaluation and verify the disability and determine the need for any accommodations including:

- Assistive Devices cane, wheelchair, walker, crutches, splints, etc.; and
- Durable Medical Equipment/Supplies.

Staff stated the practitioner writes the order for the accommodations, and a nurse (RN/LVN) or medical assistant transcribes the order onto a J-112, MMS. Effective June 16, 2020, the Function Performance Worksheet is also completed during the Medical Intake screening and triage process. If there are changes after the Intake Medical Screening Triage process and after the incarcerated person is housed, the provider is required to complete a new J-112 reflecting the changes (additions/deletions).

A medical practitioner stated the order for accommodations is a temporary 14-day order, and the incarcerated person is scheduled for a re-evaluation via sick call or Case Management Unit review.

If an incarcerated person requires an assistive device, they are immediately placed into a wheelchair and issued an orange wrist band (which is used to identify the incarcerated persons as ADA) and processed as ADA (placed in ADA compliant holding cells with modified classification/fingerprint process.

Medical staff assigned to the Medical Intake Screening stated incarcerated persons prescribed an AD/HCA/DME are referred to Medical Case Management and notification is made to the ADA Deputy (during non-business hours a telephonic voicemail message is made).

Classification staff stated incarcerated persons that are prescribed an AD/HCA/DME are typically housed in the Mod O at CMJ, Mod O at the TLF or Mod P in the CWJ.

Medical staff stated prescribed health care appliances/assistive devices are issued to the incarcerated person in their assigned housing unit (e.g., Mod O), and a staff member would push an incarcerated person via wheelchair to the assigned housing unit whereas staff would then issue the prescribed health care



appliance/assistive device. The medical department maintains a stock of devices for issuance.

Housing unit staff stated a J-112 form along with a Mod card informs staff as to prescribed assistive devices. The staff was not aware of any tracking list or other type of list or documentation (electronic or hard copy) noting the prescribed devices or incarcerated persons. When asked, staff stated custody staff only remove prescribed devices from an incarcerated person in the event it was altered or was deemed to be contraband, such as having been used in a crime and therefore considered as evidence.

Medical staff acknowledged there is no approved list of health care appliances or assistive devices (either jointly between medical and custody, or solely from medical, or solely from custody). Medical providers acknowledged there is no reason why health care appliances/assistive devices can't be used in other units (i.e., other than Mod O at the Men's Central Jail and Mod O at the TLF facility). The custody administration currently dictates which units are authorized to house incarcerated persons with prescribed health care appliances/assistive devices (e.g., Mod O). The medical provider attempts to prescribe and issue a health care appliances/assistive device that is most beneficial to a particular incarcerated person, but also tries to give the incarcerated person-patients a choice as to what works best for them (e.g., walker versus a wheelchair). Staff also added there are acceptable medical alternatives to metal knee braces. There are also special shoes for diabetics (e.g., neuropathy).

With regard to the release process, staff stated incarcerated persons are released with their personal health care appliance/assistive device. Staff also indicated in the event a disabled incarcerated person is being released (e.g., mobility disabled) and their personal health care appliance/assistive device cannot be located, then a county owned device is given to them, and under no circumstances will they be released without their required health care appliance/assistive device.

Incarcerated Person Interviews

None of the incarcerated persons who were interviewed at any of the CJX or TLF facilities complained of their health care appliances or assistive devices being removed. However, other incarcerated persons interviewed reported the following;

- Incarcerated person housed in TLF stated he has a walker but also needs a cane for support when he has a better day and doesn't need his walker;
- Incarcerated person housed in TLF stated he has had to have the rubber tip replaced on his cane and the nurse threatened to take his cane away because he had to have the rubber tip replaced 2 times;
- Incarcerated person housed at TLF stated it takes 2 days for hearing aid batteries to be replaced;



- Incarcerated person housed at TLF stated he has been in custody since 2013. In 2016, based on the results of an audiogram, he was prescribed hearing aids. However, to date they have not been provided and the only accommodation medical staff have provided him is a "pocket talker." He also stated the "pocket talker" does not work like hearing aids would as the "pocket talker" just distorts the announcements;
- Incarcerated person housed at the CWJ stated when she is escorted to the holding tanks in the loop, staff remove her cane when she is in a holding tank with other incarcerated persons. She stated she has to hold on to the wall to access the toilet in the holding tank;
- Incarcerated person housed at CWJ stated she is prescribed a wheelchair and some days she is more mobile and would like to have a walker to be able to move around more freely. She stated her wheelchair needed repair (footrest) and she had to wait two weeks for her wheelchair to be repaired; and
- Incarcerated person housed in CMJ who is prescribed a wheelchair for long distances stated the wheelchair used to transport him typically does not have footrests.

Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that incarcerated persons are encouraged to complete an Inmate Health Message Slip to make their medical needs known. Incarcerated persons may also relay requests to the ADA Compliance deputies. For issues requiring immediate attention, incarcerated persons may notify their module Deputy or Correctional Services Assistant.

Conclusions/Recommendations

The custody and CHS administrations should produce a joint approved listing of specific types of health care appliances/assistive devices that will be authorized to be used by incarcerated persons inside the jail facilities.

Staff must ensure all personally owned health care appliances/assistive devices are noted on the property inventory forms, and when incarcerated persons are released from jail, staff must ensure they leave with their personally owned health care appliance/assistive device. Subsequent to the onsite assessment and draft report, the OCSD advised the Assessment Team that it is possible that some incarcerated persons may deny having a personal assistive device stored because they wish to leave with the county-issued device, which they are allowed to keep. CHS indicates that CHS Policy 5017 Hold Upon Release for Health Care Services addresses this issue and the Notification to Hold Inmate Upon Release form has been revised (subsequent to the onsite assessment) and is used to communicate with OCSD.



Policies/procedures and practices must include a process to ensure immediate issuance of alternative health care appliances/assistive devices in the event an incarcerated person's personally owned or prescribed device has been removed (if authorized). There must also be included policy/procedure language and practices to ensure incarcerated persons are monitored during the period where their device has been removed and/or they have been issued an alternate accommodation, in order to determine whether the incarcerated person is at risk of harm or otherwise can function adequately.

OCSD staff must permit incarcerated persons with prescribed health care appliances/assistive devices to retain them when in temporary holding cells, and at all other times while at the jail, except for authorized removal occasions as outlined in policy. OCSD advised the Assessment Team, to which the team confirmed that CCOM Policy 1606.1(a)(3) has been revised to address this issue. The Assessment Team will monitor this during the monitoring process."

The CHS should implement a periodic wheelchair inspection and logging process (for general functionality and safety purposes). This would be separate from custody staff searching for contraband or for security reasons. Subsequent to the onsite assessment and draft report, CHS advised the Assessment Team that their staff members conduct functionality checks of wheelchairs and other appliances during routine wound care appointments and monthly skin care checks. The status is documented in the individual's chart. At the time of the onsite assessment this information was not provided to the Settlement Monitor, nor was any such documentation observed. OCSD states that their ADA Compliance deputies perform a check on assistive devices/auxiliary aids during their monthly face-toface interviews. At the time of the onsite assessment, the ADA Compliance deputies did not indicate this specific job duty, nor did they provide any documentation showing proof of practice. Incarcerated persons are advised to send a message slip to ADA Compliance or CHS if their device requires immediate repair. The process will be monitored for future monitoring tours. The CHS should also implement an internal tracking process to track the specific number and types of health care appliances/assistive devices, to include any expiration dates of prescription (as feasible).

OCSD custody and CHS management should strongly consider opening up other housing units (e.g., other than Mod O) at all CJX and TLF facilities for incarcerated persons with disabilities who have prescribed health care appliances/assistive devices where there are no required in-cell fixed accommodations. For example, incarcerated persons who use a walker or cane.

Search policies and practices should include language relative to search processes for healthcare appliances/assistive devices, and special considerations



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to be provided during searches regarding searching or removal of an assistive device.



Tracking

Standards / Best Practices

Because regulations implementing the ADA require a public entity to accommodate persons identified as disabled, a tracking system is a necessary part of compliance. The OCJ must ensure incarcerated persons with disabilities and their required accommodations are properly identified in order to ensure staff are aware of incarcerated persons with disabilities and their accommodation needs and ensure the provision of the accommodations as required by the ADA. In addition, the OCJ must be aware of the disabled population and their accommodation needs in the event of the need to evacuate the incarcerated person population during an emergency. If the OCJ staff is not aware of the incarcerated persons with disabilities and their accommodation needs during an emergency, the incarcerated persons are put at a heightened risk for harm. OCSD reports that as of 02/25/21, the Daily Inmate Tracking List is posted in all housing areas with disabled incarcerated persons. This information is also listed in OCSD's SDS System. Sabot will monitor this during the monitoring process.

28 CFR § 35.130 (a) requires that no qualified individual with a disability shall, on the basis of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. To ensure that the OCJ detention facilities comply with this requirement, there must be a comprehensive networked tracking system to alert staff of qualified individuals and their accommodation needs.

Policies / Procedures and Document Review

The policies and procedures for the tracking of incarcerated persons with disabilities housed in the OCJ are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1606 Inmates with Disabilities, 7016.2 Module/Staffing Responsibilities. The HCA CHS Policies and Procedures do not contain language specific to tracking of incarcerated persons with disabilities housed in the OCJ.

CCOM Policy Section 1606, Inmates with Disabilities includes requirements for the tracking of the intake and booking process for all incoming qualified incarcerated persons with disabilities being processed in the OCJ. This includes the requirement for the ADA Deputy to forward a current list of qualified incarcerated persons with disabilities to each area where the incarcerated persons with disabilities are housed and the requirement for tracking logs to be maintained for qualified incarcerated persons, with disabilities to track and log outdoor recreation times and locations,



dayroom, shower access (if separate from dayroom), and any other specific information documenting accommodations made for the incarcerated person.

As part of document production, HCA CHS provided an Excel Spreadsheet "Special Needs List 1/20/20." The list includes the following spreadsheets:

- Impaired Mobility includes name, booking, housing and assistive device (56 incarcerated persons listed);
- Impaired Hearing-Vision includes name, booking, housing, and impairment (11 incarcerated persons listed);
- Developmental disability includes name, booking, housing and regional center (12 incarcerated persons listed); and
- Impaired Dexterity includes name, booking, housing, device and interview date 24 incarcerated persons listed).

As part of document production, OCJ Custody provided a .pdf document that contains four separate lists. The list is dated 1/29/20 and includes the following:

- Impaired Mobility includes name, booking, housing and assistive device (41 incarcerated persons listed);
- Impaired Hearing-Vision includes name, booking, housing, and impairment (13 incarcerated persons listed);
- Developmental disability includes name, booking, housing and regional center (14 incarcerated persons listed); and
- Impaired Dexterity includes name, booking, housing, device and interview date 24 incarcerated persons listed).

Staff Interviews

The Assessment Team interviewed custody officers from housing units, staff assigned to medical intake triage, classification staff, staff that provides medical, mental health and dental treatment, staff assigned to the education department, program facilitators/providers, work supervisors, Case Management staff, and ADA Unit staff.

Medical staff assigned to the Medical Intake Triage area stated that once an incarcerated person with a disability is identified, the disability and accommodations are documented on an Orange County Sheriff's Department Correctional Health Services Checklist J-112, Miscellaneous Message Slip, and Function Performance Worksheet. These documents are used to complete the intake booking and classification process. The documents are forwarded to the Case Management staff, and telephonic notification is made to the ADA Unit for the following disabilities:

Mobility;



- Learning Disability;
- Developmental Disability;
- Deaf and/or Hard of Hearing; and
- Blind/Vision.

The ADA Deputy stated that during the face-to-face interview with the incarcerated person, the ADA Unit completes an ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs. Based on this interview and documentation received from medical staff, the ADA Unit creates a tracking list CJX ADA Inmate Tracking List (CJX) and Preferred Transportation for Special Needs Inmates (TLF). These lists are distributed to the Deputies assigned to Mod "O," Transportation, Classification, and ADA Unit staff. The ADA Unit also creates and maintains an ADA Interview/Activity Log for incarcerated persons listed on the CJX ADA Inmate Tracking List. This log is used to track and log outdoor recreation times and locations, dayroom, shower access, and any other specific information documenting accommodations made for the incarcerated person as required by CCOM Policy Section 1606, Inmates with Disabilities. The ADA Unit also maintains a tracking log for incarcerated persons with disabilities housed in Mod "O" (Ward "C" and "D" and Sheltered Living that is created by CHS Case Management staff.

The Case Management staff stated that once notified of a disabled incarcerated person, including their accommodation needs, an interview/evaluation is conducted with the incarcerated person. Information from this evaluation/interview and documents received from the medical intake process are used to create tracking lists for the following disabilities:

- Impaired Mobility;
- Impaired Dexterity;
- Impaired Hearing/Vision; and
- Developmental Disability.

These tracking lists are distributed to the ADA Unit; however, they are not distributed to the housing unit, program facilitators, work supervisors, or medical providers.

The classification staff interviewed stated that during the classification process, if the Orange County Sheriff's Department Correctional Health Services Checklist J-112 reflects a disability, an "ADA flag" is entered into Inmate Tracking Reporting and Tracking (ITRAC) OCJ's electronic incarcerated person tracking system. Any changes to the Orange County Sheriff's Department Correctional Health Services Checklist J-112 that would warrant removal of the "ADA flag" are forwarded to the Classification Unit, and the "ADA flag" is removed.



Custody staff members interviewed stated incarcerated persons with disabilities are typically not assigned to general population units and are assigned to ADA housing. The custody staff members' responses to the question of how they would identify incarcerated persons with disabilities housed within the unit varied from unit to unit. Some of the responses included:

- Reviewing the J-105;
- Reviewing the ADA list posted outside the dorm;
- Information listed on the Mod Card;
- ITRAC ADA Icon;
- Low Bunk/Low Tier Chrono;
- Word of mouth from other staff;
- Check with medical staff;
- CJX Mobility Impaired ADA Inmate list;
- J-119;
- J-112;
- Based on interaction with incarcerated persons;
- ADA Deputy; and
- The incarcerated person would have to advise.

The Mod O housing deputy at TLF stated, there is a Chrono (a medical record) with copies at the Guard Station in the Mod book) and he has to "flip through" the Mod book to obtain any information for incarcerated persons with disabilities and their accommodation needs.

For Intellectual, Learning, Hearing, and Speech disabilities, most custody staff stated there is no mechanism in place to alert them of incarcerated persons with these disabilities. Some staff stated the only way they would be aware of the incarcerated persons with disabilities would be by interacting with the incarcerated persons. About half of the custody staff interviewed stated they are not aware of the disabled incarcerated person's accommodation needs. Some staff stated they would be aware of the disabled incarcerated person's accommodation needs by reviewing the J-105, incarcerated person verbalizing, word of mouth, or reviewing the Chrono. The staff that was interviewed in housing units whereas incarcerated persons on the OCJ tracking list were identified as developmentally disabled were not aware of who the incarcerated persons with disabilities were.

Medical staff (dental, mental health, and medical) stated they would review the incarcerated person's electronic medical record to identify the incarcerated persons with disabilities and their accommodation needs. Medical staff assigned to the medical housing unit at TLF stated they maintain a list of incarcerated persons housed in the TLO. The list includes the "reason for housing (diagnosis)." This list reflects information related to disability, assistive devices, and accommodations.



Program facilitators and work supervisors stated the only way for them to identify incarcerated persons with disabilities assigned to their programs or work area would be based on their observations or the incarcerated person self-reporting. Some program staff stated there had been occasions where the ADA Unit staff has verbally informed them of incarcerated persons with disabilities being assigned to the program and their accommodation needs (Deaf and/or Hard of Hearing incarcerated persons who require a sign language interpreter/video remote interpreter). Program staff and work supervisors stated they would not be aware of incarcerated persons with disabilities' accommodation needs other than when an incarcerated person self-reports those needs to them.

The CDCR provides notification to OCJ in compliance with the August 28, 2012, Federal court order (County Jail Plan for addressing Armstrong Class Members housed in county jails), ADA unit staff stated that following notification, the incarcerated persons are interviewed and referred to medical staff for evaluation to determine if the accommodation needs listed by CDCR are needed by the incarcerated person while housed in OCJ. If the incarcerated person is identified as disabled, the incarcerated person is added to the tracking list maintained by Case Management. The ADA Deputy also maintains a tracking list with the following:

- Notification Date;
- Booking Number;
- CDCR Number;
- Name;
- DPP Code;
- DPP Code;
- Housing Restrictions;
- Durable Medical Equipment;
- Physical Limitations to Job or Other; and
- Date Last Released from Prison.

Staff assigned to the Jail Management System (JMS) unit stated the OCJ currently uses the Sherriff's Data System and the ITRAC system. However, the OCJ is in the process of developing a new IJMS (Integrated Jail Management System) using the ATIMS software platform. The new IJMS system has a 14-month timeline for rollout and will be integrated with TechCare and ITRAC and will include functionality to track and manage ADA incarcerated persons, accommodations, and placement.

The ADA Unit is working with the JMS Unit and is requesting functionality in the IJMS include the capability to share information from TechCare to the ATIMS system end-user (CSA, SSO, Deputy) and a comprehensive "real-time" jail



management system capable of communicating ADA specific information. This will allow a module deputy to access the ITRAC or ATIMS system and view an "ADA/Special Needs" tab and access/view the incarcerated persons' ADA needs/accommodations for incarcerated persons housed in the Mod.

The ADA Unit is requesting that the following information be included and available for staff viewing:

- ADA Impairments:
 - Mobility;
 - **Dexterity**;
 - Hearing;
 - Vision;
 - Speech; and
 - Developmental Disability.
- Assistive Devices:
 - o Cane;
 - Crutches;
 - \circ Walker;
 - o F.W. Walker;
 - o Wheelchair;
 - Prosthetic;
 - Tapping Cane; and
 - \circ Other.
- Other Medical Equipment:
 - Compression Stockings;
 - o Boot;
 - Brace/AFC;
 - Splint;
 - o Sling;
 - Sleeve;
 - Jail Issued-Canvas Shoes;
 - Personal Shoes;
 - Extra Mattress; and
 - Other.
- Housing Restrictions:
 - Low Bunk;
 - Low Bunk/Low Tier;
 - ADA Housing; and
 - o Other.
- Auxiliary Aids:
 - Hearing Aids;
 - Active Listening Device; and
 - Other.



- Effective Communication (For Deaf/H.H):
 - Reads Lips;
 - Written Notes;
 - Sign Language (ASL); and
 - Other.
- Accommodations (explain):
 - e.g., speak slowly;
 - o e.g., needs assistance with writing; and
 - Other.
- Restrictions:
- Roof;
- Visits;
- Dayroom;
- Education Classes;
- o Church; and
- \circ Other.

Observations

During the on-site review, the Assessment Team had a custody housing unit Deputy access the ITRAC system and navigate the program to the incarcerated person profile screen and select the ADA icon to determine what ADA specific information was available to the housing unit staff. Based on this, it was determined there is no specific disability-related information (the type of disability and accommodation needs) displayed when selecting the ADA icon on the incarcerated persons with disabilities' ITRAC profile.

The Assessment Team requested tracking lists/reports (March 16, 2020) from the Case Management and the ITRAC system. The Case Management tracking list had 121 incarcerated persons with disabilities listed (75 Impaired Mobility, 19 Impaired Dexterity, 15 Impaired Hearing/Vision, and 12 Developmental Disability). The ITRAC ADA report had 86 incarcerated persons with disabilities listed (no specific disability listed). In comparing the report/list, it was found that eight of the incarcerated persons listed on the ADA ITRAC report were not listed on the Case Management disability tracking lists, and 35 incarcerated persons on the Case Management disability tracking lists were not listed on the ITRAC ADA report. The following information is included in the Case Management disability tracking lists:

- Impaired Mobility assistive device (wheelchair, brace, orthotic shoes, walker, cane, and crutches) and accommodations (wheelchair) to court;
- Impaired Dexterity device (sling, brace, splint, and cast) and disability (missing hands/arm amputee);
- Impaired Hearing/Vision impairment (hard of hearing, blind, deaf, etc.) and assistive devices (pocket talker, hearing aids, and vest); and



• Developmental Disability - Regional Center consumer.

It is also noted that the ADA ITRAC report does not contain any disability-related information or the incarcerated persons with disabilities' accommodation needs. The Ward "D" and Sheltered Living Housing Roster includes a column that identifies an incarcerated person as disabled and a column that lists the incarcerated persons with disabilities' prescribed assistive device.

TLO Housing Roster maintained by TLF "Mod O" medical staff includes the "reason for housing (diagnosis)." This list reflects information related to disability, assistive device, and accommodations. It includes:

- Prosthetic;
- ADA Cane;
- ADA W/C;
- ADA Walker;
- Blind;
- Crutches;
- Knee Brace;
- Splint;
- Eye Patch; and
- Hearing Impaired.

The Sheltered Living, Ward D Housing Roster and Ward C Housing Roster includes the following ADA related information:

- Ward D Housing Roster and Sheltered Living:
 - Reason for Housing (i.e., Deaf, Impaired Mobility);
 - Assistive Device (Walker, Cane, Wheelchair, and Crutches); and
 - Note (ADA).
- Ward C Housing Roster:
 - ADA (Cane, FWW, Overflow, Wheelchair, Cane).

A review of the J-105 Notice of CHS Restrictions lists assistive devices. However, it appears the J-105 is intended to alert custody staff of restrictions, authorized medical prescribed assistive devices, medical observation, mattress, and single-cell housing for incarcerated persons in mental health housing and is not intended to alert staff of an incarcerated person's disability and required accommodations.

Conclusions/Recommendations

The OCJ has multiple tracking systems in place to track incarcerated persons with disabilities and their accommodations. However, the systems in place do not currently track all incarcerated persons with disabilities and their accommodation needs. In addition, some housing unit staff, and all program facilitators and work



supervisors are not provided information on who the incarcerated persons with disabilities are and their accommodation needs. Therefore, incarcerated persons may not be provided with the required accommodations to ensure equal access to OCJ programs, services, and activities. The OCJ must ensure all incarcerated persons with disabilities and their accommodations are tracked in a single robust tracking system. The information must be accessible to all staff either electronically or with the distribution of reports/lists. This will ensure staff is aware of all incarcerated persons with disabilities and accommodations required by the ADA. The regulations governing the ADA require a public entity to accommodate persons identified as disabled; therefore, a tracking system is a necessary part of compliance. The OCJ should ensure the IJMS includes the functionality requested by the ADA Unit to track the incarcerated persons with disabilities and their accommodation needs.



Housing Placements

Standards / Best Practices

The OCJ must have policies, procedures and practices in place relative to classification and housing placements of incarcerated persons. All housing placements for incarcerated persons with disabilities must be done while maintaining jail safety and security and ensuring such housing is not restrictive solely due to an incarcerated person's disability or reasonable accommodation needs. All incarcerated persons with disabilities shall be housed in a manner which allows for access to available programs, services and activities commensurate to their security/custody level and availability of programs and resources. Such housing must also allow for ADA reasonable accommodations to be provided/accessible (e.q., auxiliary aids/services, preferred method of communication, and required adaptive supports, etc.).

Local OCJ policies and procedures should address housing placements (including classification related language). Examples of related topics/material that should be covered within various policies/procedures may include, but not be limited to:

- Classification plan/process to identify an incarcerated person's:
 - Level of security;
 - Classification code;
 - Housing assignment:
 - including housing to allow for participation in correctional programs and out-of-cell activities offered at the OCJ;
- A process and practice of housing incarcerated persons with disabilities that does not lend itself to discrimination;
- Being disabled in any way is not justification for a higher security classification (e.g., for housing and program assignment);
- Identified ADA or disability housing units (e.g., housing matrix) for incarcerated persons with disabilities (whether an incarcerated person has a prescribed/owned assistive device and/or has other reasonable accommodation and/or preferred method of communication needs);
- A process for housing incarcerated persons with disabilities in designated housing and the most integrated housing possible that is consistent with their custody/security/classification level, and not housing in medical, outpatient, or special housing solely due to their disability and/or accommodation needs;
- A process and designated housing for incarcerated persons with disabilities who need assistance with performing basic life functions on a daily basis;
- A process for lower bunk/lower tier housing assignments;



- A process to ensure in-cell accommodations such as raised toilet seats, grab bars, and transfer bars for incarcerated persons as needed (e.g., full-time wheelchair users);
- A process for housing intellectual/developmentally incarcerated persons with disabilities;
- A process for housing incarcerated persons with mental illness (including designated housing);
- A process for clustering or partially clustering incarcerated persons with disabilities for housing purposes (e.g., intellectual/developmentally incarcerated persons with disabilities);
- Physically accessible and ADA compliant housing for incarcerated persons with disabilities such as a mobility disability (including those with wheelchairs), blind/vision incarcerated persons with disabilities (including those with tapping canes) etc.;
- A process for incarcerated persons with medical or psychiatric aspects of their case/classification/security level handled and housed in accordance with their healthcare orders as long as those orders do not conflict with facility security needs;
- A process for medical department approval of all housing placements into designated special housing units;
- A process regarding resolution and authority of housing conflicts between the OCJ custody administration and CHS management;
- Requirements and processes regarding infirmary or medical housing;
- Requirements and processes regarding mental health or other special housing;
- Requirements and processes to house incarcerated persons in the least restrictive housing possible while maintaining a secure environment for incarcerated persons, staff, and the community;
- A process to identify and separate (for housing purposes) the high-risk incarcerated persons from the general population; and
- A process for administrative rehousing of incarcerated persons.

28 C.F.R. § 35.137 (a) requires a public entity permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

28 C.F.R. § 35.152 (b)(2)(i)(ii)(iii) states public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity, shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available. A public entity shall not place inmates or detainees with disabilities in designated medical areas



unless they are actually receiving medical care or treatment. A public entity shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed.

Policies / Procedures and Document Review

CCOM Policy Section 1200.5 Classification Instrument and Initial Classification Assessment, outlines the requirement for classification staff to use the Inmate Classification Form (J-200), which includes the following information/sections:

- Health and mobility screening information;
- Arrest history;
- Violence history;
- Previous State, County, and/or Federal Commitments;
- Institutional behavior;
- Escape history;
- Safety concerns;
- Prison Rape Elimination Act (PREA); and
- Gang association of involvement.

CCOM Policy Section 1200.6 Housing Matrix, outlines the requirement for the housing matrix which apply factors related to:

- GP levels 1-7;
- High Security (HS);
- Administrative Housing (AH), levels 1-3;
- Protective Custody (PC), levels 1-3;
- Protective Custody Administrative Housing (PC-AH);
- Mentally III (MI); and
- Mentally III Lockdown (MIL).

CCOM Policy Section 1200.9 Medical and Mental Health Housing, outlines the requirements for medical and mental health housing:

- General population (GP) 1-7 may be housed and program together; and
- Specialty Housing Inmates (AH, HS, PC, etc.) of the same classification may be housed and program together.

CCOM Policy Section 1200.10 Housing Assignment and Changes, outlines the requirements for housing changes.

CCOM Policy Section 1200.11 Inmate Transfers, outlines the requirements for housing changes.



CCOM Policy Section 1201.2 Specialty Housing Inmates, includes High Security (HS); Administrative Housing (AH), levels 1-3; Protective Custody (PC), Levels 1-3; Protective Custody Administrative Housing (PC-AH); Mentally III (MI); Mentally III Lockdown (MIL); Civil Commitments (Civil-6600/CPC-1332/CC-1209); and Problem Inmates (PIM).

CCOM Policy Section 1201.7 Mentally III (MI) Inmates states, "MI inmates are mentally unstable. Classification staff may refer an inmate to Correctional Health Services (CHS) staff to evaluate an inmate for MI status. Classification staff and Correctional Health Services staff shall coordinate on the classification and housing of MI inmates by use of a Correctional Health Services Checklist form (J-112)."

CCOM Policy Section 1201.8 Mentally III Lockdown (MIL) Inmates states, "MIL inmates are unpredictable, violent, or may pose a safety risk to others due to their mental condition. Classification staff and Correctional Health Services (CHS) staff shall coordinate on the classification and housing of MIL inmates by use of a Correctional Health Services Checklist form (J-112). CHS staff will determine the programming and out-of-cell activities for MIL inmates on a case-by-case basis."

CCOM Policy Section 1201.13 Inmates with Disabilities states, "Classification staff shall ensure inmates with disabilities are housed appropriately. The Inmates Classification Form (J-200) has a Health and Mobility Screening section that applies directly to the inmate's medical and mental health factors, as well as any needs ensuring compliance with the Americans with Disabilities Act (ADA)."

CCOM Policy Section 1600.2 (e) Orange County Jail Rules (Housing Assignments and Movement), outlines the requirements for housing changes.

CCOM Policy Section 1606.1 Inmates with Disabilities Accessible Housing, addresses housing and special needs while still receiving access to programs, services, and activities. Language indicates ADA Compliance staff assist in determining appropriate housing (as well as other ADA related items). It also states that staff will not place inmates in a housing or holding area that is not designed to accommodate the inmate's specific needs.

CCOM Policy Section 1606.4 ADA Procedures identifies the following housing for disabled inmates:

Theo Lacy Facility (TLF) Module O:

• Module O at the TLF will house only male incarcerated persons. Inmates requiring accessible housing will be housed in accessible areas. Accessible areas are defined as locations that have accessible toilets, fixtures, showers



and sufficient space for an inmate using a wheelchair to turn around. The following housing areas in Module O have accessible housing;

- Sector 37 (Dorm);
- Sector 37 Cells 4 and 6; and
- Sector 42 Cells 1, 2, and 3.

Intake Release Center (IRC) Module K:

- Module K at the IRC will house only female inmates. Inmates requiring accessible housing will be housed in accessible areas. Accessible areas are defined as locations that have accessible toilets, fixtures, showers and sufficient space for an inmate using a wheelchair to turn around. The following housing sector in Module K offers accessible housing;
 - K-13, cells 3, 5 and 7.

Intake Release Center (IRC) Module L:

- Male Inmates who require accessible housing and who also have mental disabilities requiring specialized care will be housed in accessible areas. Accessible areas are defined as locations that have accessible toilets, fixtures, showers and sufficient space for an inmate using a wheelchair to turn around. The following housing sector in Module L offers accessible housing;
 - L-17 cell 7.

Central Women's Jail (CWJ):

- The CWJ will house only female inmates. Inmates requiring accessible housing will be housed in accessible areas. Accessible areas are defined as locations that have accessible toilets, fixtures, showers and sufficient space for an inmate using a wheelchair to turn around. The following housing areas at the CWJ offer accessible housing;
 - Sheltered Living cells 1 and 2;
 - Disciplinary Housing cell 1;
 - Infirmary cell 10; and
 - **P-13 Dorm**.

Central Men's Jail (CMJ):

- Module O at the CMJ will house only male inmates. Inmates requiring accessible housing will be housed in accessible areas. Accessible areas are defined as locations that have accessible toilets, fixtures, showers and sufficient space for an inmate using a wheelchair to turn around. The following housing areas in Module O offer accessible housing
 - Ward C;
 - Ward D; and
 - Sheltered living cells 1,3,4,5,7,8,9,10,11,13,14,15,17,18.



As part of document production, OCJ Custody provided a list of ADA Housing. The list the following information on ADA housing:

- CMJ (60 Beds):
 - Ward C (18 low bunks);
 - Ward D (18 low bunks);
 - S/L (24 low bunks Total);
- TLF (26 Beds):
 - o TL-Mod O;
- CWJ:
 - o SL;
 - o INF;
 - o DI;
 - **P-13**;
- IRC Men's Psych:
 - o L-17;
- IRC Females: K-13.

As part of document production, OCJ Custody provided a .pdf document that contains four separate lists:

- Impaired Mobility;
- Impaired Hearing-Vision;
- Developmental disability; and
- Impaired Dexterity.

The list is dated 1/29/20 and includes the following housing placements:

- Impaired Mobility 41 incarcerated persons (13 CMJ Mod O Sheltered Living, 4 CMJ Mod O Ward C, 13 CMJ Mod O Ward D, 10 TLF Mod O, 1 MJ E);
- Impaired Hearing-Vision 13 incarcerated persons (1 CMJ Mod O Sheltered Living, 2 CMJ Mod O Ward D, 4 TLF Mod O, 6 various CJX/TLF housing units);
- Developmental Disability 14 incarcerated persons (1 CMJ Mod O Sheltered Living, 13 various CJX/TLF housing units); and
- Impaired Dexterity 24 incarcerated persons (6 CMJ Mod O Sheltered Living, 1 CMJ Mod O Ward C, 1 CMJ Mod O Ward D, 10 TLF Mod O, 6 various CJX/TLF housing units).

As part of document production, OCJ Custody provided a .pdf document OCH Housing Tables. The document identifies the following MH housing:

IRC Mod K Sector 9 (MI) 16 cells; IRC Mod L Sector 15 (MI) 16 cells;



IRC Mod L Sector 16 (MIL) 16 cells; IRC Mod L Sector 17 (MIL) 16 cells; IRC Mod L Sector 18 (MIL) 16 cells; IRC Mod L Sector 19 (MIL) 16 cells; and IRC Mod L Sector 20 (MI) 16 cells.

CWJ Infirmary (MIL) 9 cells.

IRC MH (temporary housing) RO (Mental Health Cells) 8 Cells (Total Capacity 27).

Sierra 1 (Total Capacity 6).

Sierra 2 (Total Capacity 6).

Observations

The Assessment Team initially reviewed the OCJ Housing Tables chart (dated 1/30/20). The chart indicated detailed housing information (unit/sector classifications) for the CJX facilities and TLF.

The Assessment Team conducted walk through tours of all areas at the CJX and TLF facilities. This included the housing units where the majority of incarcerated persons with disabilities are housed as well as infirmary housing. Incarcerated persons with a mobility disability who have prescribed health care appliances/assistive devices (e.g., wheelchairs, walking boots, canes, walkers, and crutches) are exclusively housed in Men's Central Jail, Mod O, TLF Mod O, and Women's Central Jail Mod P. As part of the Assessment Team's preassessment document request, CHS staff provided a list titled, '1-29-20 Impaired Mobility'. The list specifically identifies 30 male incarcerated persons with prescribed health care appliances/assistive devices housed in the Men's Central Jail, Mod O. There was one incarcerated person on the list who had been housed in Mod E (prosthetic leg/crutches) but had since been released prior to the on-site assessment. There were no other names on the list denoting any other housing units where male incarcerated persons with a mobility disability are housed at the Central Men's Jail. The list also shows ten male incarcerated persons with prescribed health care appliances/assistive devices housed in the TLF, Mod O. Likewise, the list demonstrates incarcerated persons with a mobility disability at TLF are exclusively housed in this unit. There were no female incarcerated persons at any of the facilities identified as having a mobility disability with prescribed health care appliance/assistive device. After the Assessment Team's arrival for the on-site assessment, an updated list was produced with virtually the same information. However, the updated list reflects a few female incarcerated persons with a mobility disability were housed in Mod P. There are wheelchair accessible cells with in-cell fixed accommodations for both Mod O units (at Men's



Central Jail and TLF Mod) and the Women's Central Jail Mod P. For example, designated cells contain fixed grab bars and transfer bars. There appears to be a culture or somewhat common belief amongst staff that health care appliances/assistive devices need to be isolated or restricted to the smallest number of areas possible for safety and security reasons. The Assessment Team did not see a concern with incarcerated persons with disabilities being housed on upper tiers or bunks (e.g., mobility, vision disabled incarcerated persons). There are often incarcerated persons with mobility disabilities who need or can benefit from in-cell accommodations who are not permanent wheelchair users. For example, intermittent wheelchair users and other incarcerated persons with mobility disabilities are often in need of in-cell accommodations.

Staff Interviews

Classification staff indicated incarcerated persons with mobility disabilities are exclusively housed in the Central Men's Jail Mod O, TLF Mod O, and the infirmary as outlined in the housing matrix/chart.

Staff acknowledged the exception to the housing practice includes cases where the medical department makes determinations regarding "Assistance with Daily Living," and "Veteran's" dormitory housing assignments. Housing unit staff are apprised via a J-112 form along with a Mod card form which informs staff as to prescribed health care appliances/assistive devices. Other than the J-112 or Mod card, most staff are not aware of a specific list (electronic or hard copy) which identifies an incarcerated person's disability (regardless of type of disability) and specific prescribed health care appliance/assistive device.

With regard to deaf and/or hard of hearing incarcerated persons, there were ten incarcerated persons. For TLF; Two were housed in Mod O, two in Mod I, and one in Mod E. For the Men's Central Jail; two were housed in Mod O, and two in Mod R. for the female incarcerated persons, one was housed in Mod N.

With regard to persons with dexterity disabilities; five were housed at TLF Mod O, one at TLF Mod I, two at Men's Central Jail Mod F, and on at Women's Central Jail Mod I.

With regard to blind/vision disability, three incarcerated persons were identified who are all housed at TLF Mod O.

With regard to persons with speech or learning disabilities, there is no identified list of these incarcerated persons. Not having an identified list of incarcerated persons with speech disabilities, or those with learning disabilities is certainly concerning. Staff simply do not know who these people are, or their



accommodation needs. There must be a process in place to properly identify such disabilities and accommodation needs, and to track them accordingly. If the OCSD opts to not specifically test for learning disabilities, then other mechanisms must be in place and actively followed to make necessary determinations. For example, a Test of Adult Basic Education (TABE) should be considered to be given to incarcerated persons who are expected to remain at the facility for at least a specified period of time (e.g., at least 30 days, or at least 90 days, etc.). Those who test at a reading level below a certain threshold (e.g., below 4.0 grade reading level) should be placed on a separate list so that staff can simply query them prior to key communications such as due process events (e.g., administrative hearings, disciplinary processes/related processes, parole processes, etc.) and clinical encounters to ensure their understanding or specific needs (e.g., allow for more time to comprehend and/or gather thoughts and ask questions, read and/or explain to them, and more time to assist them in understanding/comprehending the proceedings and outcomes). Mechanisms must also allow for appropriate education or clinical staff to evaluate outside school district transcripts and/or IEP reports for students who have a special education background, when an incarcerated person has transcripts sent to OCSD from an outside school district for review.

Incarcerated persons with intellectual disabilities who are identified as prone to victimization are housed based on a case-by-case determination and typically housed in CMJ Mod O Sheltered Living. The Assessment Team noted that incarcerated persons with intellectual disabilities were housed throughout the facilities.

Staff stated that incarcerated persons with mental health disabilities that require a higher level of care are housed in the Mod L at the CMJ and the FOU at the CWJ. Incarcerated persons with mental health disabilities that do not require a higher level of care are housed throughout the facilities. Staff stated all incarcerated persons who require a higher level of mental health care are transferred from the TLF to the CJX.

Most staff who were interviewed indicated they would provide any assistance or accommodations for incarcerated persons with disabilities if they knew who they were and what their specific reasonable accommodation needs were. Nearly all staff who were interviewed indicated they would refer a disabled or possibly disabled incarcerated person to medical or mental health if they noticed they were having obvious difficulties.

Incarcerated Person Interviews

The Assessment Team interviewed numerous incarcerated persons with disabilities who reported that they would prefer to be housed in a housing location



based on their custody designation as this would allow them to access programs (education) and work assignments.

Other incarcerated persons reported the following:

- An incarcerated person housed in TLF Mod "O" who is prescribed a cane stated staff do not allow him to use the elevator to access the yard, visiting and chapel; and
- An incarcerated person housed in TLF Mod "O" stated he needs grab bars to access the toilet. However, they are not installed, and he has to hold on to the sink to access the toilet.

Conclusions/Recommendations

Please refer to the sections titled, "Access to Out-Of-Cell Time (Outside Recreation/Dayroom)", and "Access to Education, Vocation, Reentry, and Substance Abuse" for information regarding the correlation between assigned housing units (including higher level housing units or disabled incarcerated persons housed in more restrictive environment based on their disability or accommodation needs) versus access to out-of-cell activities as well as access to education, reentry, and substance abuse programs.

The OCJ must ensure incarcerated persons with disabilities are housed in the most integrated setting appropriate to the needs of the incarcerated persons. Additionally, the OCJ must not place incarcerated persons with disabilities in inappropriate security classifications because no accessible cells or beds are available. The OCJ must not place incarcerated persons with disabilities in designated medical areas unless they are actually receiving medical care or treatment. The OCJ must not place incarcerated persons with disabilities in housing units that do not offer the same programs as the housing units where they would otherwise be housed. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that CCOM Policy 1201.13(a) and 1606.1(b) have been revised to address this. Specifically, CCOM 1201.13(a) states in part: "Being disabled in any way is not justification for a higher security classification." This will be monitored during future monitoring tours. Although it is the policy of OCJ to house incarcerated persons with disabilities based on their classification case factors, some incarcerated persons with disabilities with assistive devices and/or who require ADA accessible housing at the OCJ are housed in the Mod O and Mod P of the medical housing units for the duration, or a part thereof, of their incarceration. This is in violation of 28 C.F.R. § 35.152 (b)(1) and (b)(2)(i), (ii), and (iii) of the Title II regulations. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that ADA incarcerated persons are not housed in medical housing if the person does not have a medical condition that requires medical housing. OCSD indicates Module O of the CMJ is a multi-purpose housing module that is wheelchair accessible and provides full access to



programs/services for those whose classification is GP 5, 6 or 7. TLF Mod O, Sector 37 is also a multi-purpose housing module which provides dorm-style, ADAcompliant housing and allows full access to programs and recreation in green sector (the yard with grass) for persons whose classification is GP 5, 6 or 7. This will be examined during future monitoring tours.

The OCJ must identify housing locations that will be retrofitted as ADA compliant housing to ensure incarcerated persons with disabilities are housed in the most integrated setting appropriate to the needs of the incarcerated persons.

The OCSD and CHS administrations must work collaboratively and take a closer look to determine which incarcerated persons with disabilities (other than full-time wheelchair-users) may benefit from in-cell accommodations.

At the time of the onsite assessment and with regard to persons with speech or learning disabilities, there was no identified list of this population provided. At the time of the assessment, at the time staff did not know who these people were or what their accommodation needs were. Subsequent to the assessment and draft report, CHS advised that CHS' Special Needs List includes incarcerated persons with developmental disabilities. There must be a process in place to properly identify such disabilities and accommodation needs, and to track them accordingly. If the OCSD opts to not specifically test for learning disabilities, then other mechanisms must be in place and actively followed to make necessary determinations. For example, a Test of Adult Basic Education (TABE) should be considered to be given to incarcerated persons who are expected to remain at the facility for at least a specified period of time (e.g., at least 30 days, or at least 90 days, etc.). Those who test at a reading level below a certain threshold (e.g., below 4.0 grade reading level) should be placed on a separate list so that staff can simply query them prior to key communications such as due process events (e.g., administrative hearings, disciplinary processes/processes, parole processes, etc.) and clinical encounters to ensure their understanding or specific needs (e.g., allow for more time to comprehend and/or gather thoughts and ask guestions, read and/or explain to them. and more time to assist them in understanding/comprehending the proceedings and outcomes). Mechanisms must also allow for appropriate education or clinical staff to evaluate outside school district transcripts and/or IEP reports for students who have a special education background, when an incarcerated person has transcripts sent to OCSD from an outside school district for review.

Lastly, and though not an apparent systemic issue, staff need to ensure that features (including non-fixed) such as shower chairs are available where needed and functional. Subsequent to the assessment, OCSD indicated that the shower chairs have been replaced.



Access to Out-of-cell Time (Outside Recreation/Dayroom)

Standards / Best Practices

All incarcerated persons with disabilities (e.g., mobility, deaf/hard of hearing, blind/vision, speech, intellectual/developmental, learning, and mentally disabled) are required to have equal access to OCJ's outside recreation/exercise yards as well as indoor dayrooms and related activities.

The OCJ must have policies, procedures and practices in place to outline the requirements for providing access to a comprehensive indoor and outdoor recreational program that includes both organized and leisure-time activities. Examples of related topics/material that should be covered within various policies/procedures may include, but not be limited to:

- Process to ensure indoor dayroom and outdoor recreation/exercise yard schedules are as equitable for incarcerated persons with disabilities as they are for non-incarcerated persons with disabilities, and the schedules meet or exceed minimum standards;
 - The scheduling of out-of-cell activity at all facilities and in all units must be done so that incarcerated persons are offered the maximum amount of exercise and recreation time available within the constraints of the unit operation, but no less than the minimum standard (e.g., within a given week);
- Access to inside dayroom activities, including games and other items for check-out or use;
- Access to outside recreation/exercise yard including availability and use of any fixed moveable equipment, games, and other items for check-out or use;
- Production of centralized/standardized inside dayroom and outside recreation/exercise schedules (including administrative approval of schedules);
- Process for Programs department staff to work collaboratively with the housing unit staff and incarcerated persons to ensure scheduling of programs and activities as well as to ensure the availability of games and equipment (for use) for both inside dayroom and outside exercise yard activities;
- Ensure incarcerated persons with disabilities and their assigned housing units have equal opportunity to sign-up for and participate in special events (e.g., sporting events, games, tournaments, competitions, holiday activities, and special programs such as musical concerts, horticulture, art, etc.), and have access to independent recreation activities such as board games (e.g., dominoes, checkers, cards, hobby crafts, and television, etc.);
 - Programs department and housing unit staff must provide relative



verbal announcements and post written notices/announcements for upcoming organized activities (including sign-up sheets) for incarcerated persons;

- Ensure all activities and equipment are as equitable and accessible for incarcerated persons with disabilities as they are for incarcerated persons without disabilities, and ensure any necessary modifications are made to any equipment as necessary. For example, any exercise apparatus (if applicable) such as dip bars, pull-up bars, set-up/crunch boards, etc., to be modified for wheelchair users or other incarcerated persons with mobility disabilities (if necessary);
- Process to ensure disabled incarcerated person refusals or failures to attend offered indoor dayroom and/or outside recreation/exercise yard time is monitored and tracked:
 - Although this is important for all incarcerated persons with disabilities, it is especially critical for incarcerated persons with mental illness as well as those with intellectual/developmental disabilities;
 - At minimum, continued or patterned refusals or failures to attend must not only be logged, but the specific reason(s) as to why the incarcerated person refused or failed to participate should be logged as well;
- Ensure incarcerated persons with intellectual/developmental disabilities are prompted (as needed and commensurate to their identified adaptive support needs) for opportunities to participate in outdoor recreation/exercise yard as well as indoor dayrooms and related leisure activities;
- Ensure incarcerated persons with disabilities are permitted to maintain their owned or prescribed assistive devices while attending outdoor recreation/exercise yard and indoor dayroom activities, and not be subjected to attend alternative yard or dayroom areas solely due to their disability or assistive device; and
- Ensure incarcerated persons with disabilities assigned to medical or other specialized housing units (due to medical reasons or other factors) receive equivalent outdoor recreation/exercise and indoor recreational opportunities as incarcerated persons receive in non-medical or non-specialized housing units.

42 U.S.C. § 12132 states, "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

28 CFR § 35.130(a) states, "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the



services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

Policies / Procedures and Document Review

CCOM Policy Section 1600.2 Section (K), Orange County Jail Rules (Dayrooms/Recreation Areas), pertains to OCJ dayroom/recreation area protocols. There is language pertaining to staff regulating approved schedules, but there is no specific language as to how this is done or oversight responsibilities. There is no language pertaining to out of cell specific space for outside recreation yards or indoor dayrooms.

CCOM Policy Section 1600.2 (L), Orange County Jail Rules (Games and Recreation), pertains to OCJ dayroom/recreation area protocols.

CCOM Policy Section 1600.3 (M) Orange County Jail Rules (Recreation Programs), contains language pertaining to minimum schedules for outdoor recreation and available dayroom activities. It cites a minimum of three (3) hours of outdoor recreation time each week. The policy also identifies types of activities authorized for indoor dayroom and outside recreation yard.

CCOM Policy Section 1600.4 (I) Inmate Rights, contains language pertaining to minimum time for outdoor recreational opportunities (minimum of 3 hours weekly).

CCOM Policy Section 1604.5 (I) Inmate Services, contains language pertaining to minimum time for outdoor recreational opportunities (minimum of three hours weekly).

CCOM Policy Section 1606 Inmates with Disabilities addresses incarcerated persons with disabilities' equal access to OCJ programs, services, and activities.

CCOM Policy Section 1606.2 Programs and Services states, "Qualified inmates with disabilities will have access to visiting, church services, inmate programs, dayroom/recreation, etc. consistent with their classification level. Staff will provide reasonable modifications to jail rules, policies, and practices to enable inmates to participate in the services, programs, and activities offered to other inmates of the same classification level."

CCOM Policy Section 1606.4 ADA Procedures cites that incarcerated persons housed in areas identified as accessible will be provided with equal opportunity for outdoor recreation if their medical status and mental health conditions permit.

• ADA Procedures TLF states, "Inmates in Module O will be offered a full range of inmate programming opportunities if their medical status and mental health conditions permit. This will be accomplished by providing



programs in the Module and in the Inmate's Programs Building, or alternative locations, if necessary;"

- ADA Procedures IRC states, "Inmates in Module K will be offered a full range of inmate programming opportunities in accessible areas if their medical status and mental health conditions permit;
- ADA Procedures IRC "Module L" states, "Inmates housed in this area will be offered the full range of inmate programs and services if their medical status and mental health conditions permit"; and
- ADA Procedures CWJ states, "Inmates will be offered a full range of inmate programming opportunities if their medical status and mental health conditions permit."

CCOM Policy Section 2006 Recreation, contains language pertaining to recreational opportunities and equipment, both indoor and outdoor, including staff logging requirements. There is no language regarding logging of refusals and as to the reason(s) for refusals. In January 2020, the OCJ revised Section 2006 Recreation (b) Dayrooms and (c) Logging Outdoor Recreation and Dayroom, to state the following:

- b. Dayrooms:
 - 1) Under normal circumstances, inmates will be afforded the opportunity to use the dayroom for a minimum of three hours per day, unless specific and articulable reasons exist for a shorter time period. In such cases, the reasons will be thoroughly documented in the guard station daily log by the respective deputy or correctional services assistant. It is expected that dayrooms will generally be available for use by inmates from 0600 through 2300 hours daily. The sergeant responsible for the housing area shall review dayroom usage as part of the required housing area checks and ensure the three hour day room minimum has been met. If the three hour dayroom minimum has not been met, the sergeant will confirm the reason(s) are clearly documented in the guard station daily log.
 - 2) Staff may temporarily close the dayroom only for as long as necessary to facilitate the daily operations of the housing area, such as counts, safety checks, meals, searches, clothing exchange, commissary, med call, etc., and shall reopen the dayroom when the activity is complete. All activities shall be documented in the guard station daily log.
 - 3) An inmate's poor behavior or violation of jail rules does not justify loss of his/her dayroom time, unless their actions pose a threat to the safety and security of the facility. These facts shall be documented in the guard station daily log. This does not apply to inmates who have received loss of dayroom privileges through the disciplinary process.
 - 4) Documented security concerns may necessitate the reduction or cancellation of scheduled dayroom time. A sergeant or the watch commander must approve any changes prior to implementation. If an



exigency prevents prior approval, staff will notify a supervisor as soon as practical for approval. The reduction or cancellation will be documented in the guard station daily log along with the name of the approving supervisor. If an inmate has an Individual Inmate Activity Log, the cancellation or reduction will also be documented there.

- 5) Inmates may only use the dayroom in their assigned housing area, unless otherwise directed by staff. Only those inmates who are compatible with each other will be allowed into the dayroom together. In housing areas where security concerns, classification restrictions, or separation orders prevent the inmates from using the dayroom together, staff shall follow a set schedule to ensure the equitable distribution of dayroom among inmates or groups. The schedule will rotate on a daily basis to provide a variety of dayroom times for each inmate or group. Staff shall not deviate from the schedule. If the inmate or group scheduled declines the dayroom opportunity, the dayroom shall remain empty for that dayroom period. If time remains after the last group finishes, staff shall begin the dayroom schedule again from the day's first group.
- 6) Dayroom activities will include television viewing, newspaper and book reading, tabletop games, and telephone access if the telephones are located in the dayroom. If there are no telephones in the dayroom, inmates will be provided access to the telephones during outdoor recreation or during designated telephone use times. Inmates in the dayroom must be in full jail issue.
- 7) Correctional Health Services (CHS) may place temporary restrictions on dayroom access, such as for inmates with contagious diseases or inmates who pose a danger to themselves or others.
- 8) See CCOM 1204(b) for civil detainee dayroom information.

c. Logging Outdoor Recreation and Dayroom

- 1) Open Housing Areas.
- 2) In housing areas where all inmates in the housing area are allowed access to outdoor recreation or dayroom together, staff shall make an entry in the guard station daily log whenever:
 - i. The dayroom(s) are opened or made available;
 - ii. The dayroom(s) are closed;
 - iii. Outdoor recreation is offered;

iv. Outdoor recreation is closed, or when the inmates return from outdoor recreation, depending on the housing area's configuration; and

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



- 4) In module housing areas, staff shall document the following information on the guard station daily dayroom log:
 - i. Inmate's name.
 - ii. Booking number.
 - iii. Start time/end time.
 - iv. Any refusal of dayroom and reason for refusal.

v. Any inmate who requests to "lock it down" before their three hour minimum expires.

- 5) Inmates with Individual Inmate Activity Logs:
 - Staff shall log the start and end times of all offered opportunities for outdoor recreation and dayroom, and whether the inmate accepted or declined, in the inmate's Individual Inmate Activity Log.

CCOM Policy Section 2007 Shower Call, contains language pertaining to shower opportunities afforded during indoor dayroom activities.

CCOM Policy Section 2008.2 Television Viewing Guidelines, contains information pertaining to televisions available for viewing during indoor dayroom activities. There is no language pertaining to closed captioning.

CCOM Policy Section 3000 Intake Release Center addresses access to programs services and activities for incarcerated persons housed at the Intake and Release Center.

CCOM Policy Section 4000 Central Men's Jail addresses access to programs services and activities for incarcerated persons housed at the CMJ.

CCOM Policy Section 5000 Central Women's Jail addresses access to programs services and activities for incarcerated persons housed at the CWJ.

CCOM Policy Section 7000 Theo Lacy Facility addresses access to programs services and activities for incarcerated persons housed at the TLF.

Observations

The Assessment team toured the majority of housing units at all CJX and TLF facilities. For the CJX facilities, male and female incarcerated persons use respective concrete exercises yards. There are functional elevators to escort incarcerated persons to and from the upstairs exercise yards. For the TLF Mods there are outdoor concrete exercise yards within each respective Mod (downstairs). All of the outside yards for all facilities appeared to have adequate space (given the number of incarcerated persons assigned to and attending the yard), and each contained a basketball court (female incarcerated persons have a volleyball court). The yards had various levels of sunlight as some were totally



exposed to the sun from the air, some were partially exposed to the sun from the air, while other units had sunlight from the side of the exercise yard. But all lighting appeared sufficient. Incarcerated persons were observed playing basketball, handball, playing board games, doing various physical exercises and walking. Incarcerated persons are permitted to check-out games as well as nail/hair clippers. It was noted that the TLF Mod O basketball backboard and rim has been removed. Of specific concern related to outdoor recreation/exercise yards pertains to those incarcerated persons with disabilities who are housed in higher classification/security level housing units solely due to their disability and/or prescribed health care appliance or reasonable accommodation needs. Specifically, this includes those housed in CMJ Mod O or TLF Mod O, who are otherwise eligible to be housed in less restrictive housing. If the OCJ would house incarcerated persons with disabilities in the most integrated, least restrictive setting, these types of individuals would have the opportunity to attend outdoor exercise yard/recreation activities commensurate to their security/classification level, and thus may have access to more opportunities. For example, much larger outdoor yard with grass (adjacent to the TLF barracks areas), access to more sponsored outdoor activities such as additional organized sports activities, other group/team events, holiday events, concerts, or other coordinated activities. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that CCOM Policy 1201.13(a) and 1606.1(b) have been revised to address this. Specifically, CCOM 1201.13(A) states in part, "Being disabled in any way is not justification for a higher security classification." The Assessment Team reviewed revised policy 1606.1 b) (ADA Procedures – Accessible Housing), which stats in part, "Qualified inmates with a disability will have access to the same services, programs, and activities offered to other inmates of the same classification level. OCSD also advised the Assessment Team that TLF ADA incarcerated persons who are General Population Levels 5, 6 or 7 are offered full access to programs and the outdoor yard with grass. Regarding day room activities, all dayroom areas appeared to have sufficient space. Incarcerated persons were observed playing dominoes and board games, showering, watching television, reading, walking, and using the telephones.

Of special concern is the FOU (females) medical housing where the small number of seriously mentally ill and medical patients are housed (15 beds total). None of the incarcerated persons assigned to this unit are authorized (per clinical and custody staff) to participate in outdoor recreation. In fact, there is one incarcerated person assigned to the unit who has not seen daylight in over a year. Moreover, the make-shift dayroom used in the unit is a converted cell. The cell does contain a phone, television, reading books, a seat, and contains some notice postings. But the size of the room is very small and certainly does not allow for room to walk or exercise. Incarcerated persons who attend this make-shift dayroom do so alone without any other incarcerated persons. In essence there is no interaction with others, no daylight or outdoor activities, and non-sufficient room in the celled



dayroom with no room for any meaningful exercise. Subsequent to the assessment and draft report, OCSD advised the Assessment Team that individuals in observation units have access to outdoor recreation when they are not a danger to self or others. However, during the onsite assessment, CHS and custody staff could not provide examples or proof of any female inmates in the unit having been approved for outdoor yard currently or in the past. The OCSD also recently advised that the FOU at the Women's Jail closed in November of 2020.

The OCJ provided copies of outside recreation yard schedules, indoor dayroom schedules, "Guard Station Logs" (January 8, 2020 to January 22, 2020) for CMJ (Mod A, B, C, D, E, F, and O), CWJ (Mod P, and Second Floor), IRC (Mod K, L, M, and N), TLF (Barracks AE, F, G, and H), and TLF (Mod I, J, K, L, M, M, O, P, Q, and R), and TLF Recreation. In examining the logs, the Assessment Team cannot determine the amount of dayroom and recreation time afforded to incarcerated persons. The Assessment Team notes there is inconsistent logging of recreation and dayroom activities. Some of the inconsistencies include:

- Cases where three hours of dayroom not provided, and no reason noted by the officer or sergeant;
- Activity log only reflects when recreation yard "Roof Call" was called and no return time;
- No notation of dayrooms open;
- No notation on activity log when dayrooms are closed; and
- No end time for dayroom logged.

It is the Assessment Team's position that the OCJ must have a functional system for logging and tracking of out of cell time (dayroom and outdoor recreation) for all incarcerated persons. This will assist the OCJ in monitoring staff compliance with the requirements of CCOM Policy Section 2006, Recreation.

There is currently no process in place to have centralized approval over yard and dayroom schedules. Each area in essence monitors their own scheduling. Another major concern is the time of day (early mornings) where staff offer outside yard. It is quite common in many units for staff to offer outside yard to a particular person or yard group at approximately 0600 hours or within the general vicinity of that time slot. The Assessment Team noted a very high volume and percentage of incarcerated person refusals at that time of the morning. This is concerning as it pertains to any incarcerated person but is compounded further when one factors in incarcerated persons with mental illness. Many of whom are on psychotropic medications and have difficulties rising at such an early time and also to be expected to program. Another serious concern is staff are not widely documenting individual refusals. Staff do (for the most part) document in general whether there were zero 'takers' or two 'takers' for yard at 0620 hours, etc. But this is not tracked for specific individuals.



Another related concern is what the Assessment Team observed and reviewed through housing unit yard logs/activity reports. Outside exercise yards are quite often vacant for several hours at-a-time. For example (hypothetically) outside yard is offered at 0610 hours and all six incarcerated persons assigned to yard group 'A' refused. The yard then often remains vacant for hours without those same incarcerated persons who earlier refused (or a different yard group of incarcerated persons) being offered a later time slot. The question must be raised, what activities are going on in the unit where outside yard cannot be offered at 0800 hours, or 0930 hours, or 1100 hours, etc.

The Assessment Team noted a notice in the area leading into the yard as you exit the elevators in the CMJ roof yard (both elevators) that states, "Reminder Staff Must Push Inmates in Wheelchair over floor curbs."

Staff Interviews

Housing unit and other staff who were interviewed informed the Assessment Team that they comply with the minimum yard and dayroom requirements. All recreation activity/times are logged into the activity log. Many of the staff interviewed explained yard and dayroom time slots are rotated usually by alternating weeks and approved (signed off) by the respective Shift Sergeants. Not all units offer their yard time identically, but some offer it every other day for one hour, a minimum of three hours per week is offered to each incarcerated person or yard group. Most units offer indoor dayroom seven days per week, usually for about three hours each. Staff stated they log all yard and dayroom offered, specifically by logging on a hand-written log, and electronically on an Activities Sheet (Excel). Yard/dayroom groups are assigned by classification deputies. Incarcerated persons are either assigned to a yard group (based on their classification factors), or they are assigned to "walk-alone" status. However, all incarcerated persons are reportedly offered equivalent yard and dayroom access time.

Incarcerated Person Interviews

Almost without exception, all of the incarcerated persons interviewed indicated they did not have any complaints about the dayroom, the amount of time offered for dayroom, or the activities associated with dayroom time. There were a couple of complaints that at times showers are interrupted during dayroom activities when staff have shut down dayroom and shower activities while they tour the units. By far the biggest complaint has to do with outside yard often being offered so early in the morning where the incarcerated persons refuse to go. Many incarcerated



persons also stated outside yard is often vacant for hours at a time where nobody has been offered the yard time.

Incarcerated persons interviewed reported the following:

- Some incarcerated persons in Mod "O" stated yard is only offered in the early morning (6:00 am) and based on this they do not go to yard because it is too cold;
- All incarcerated persons said access to dayroom is three hours every day;
- An incarcerated person housed at CMJ who is prescribed a wheelchair stated staff do not provide assistance in accessing the yard and he has to navigate the wheelchair over a "lip/bump" by the elevator to access the yard;
- Female incarcerated persons at the CWJ (P-13) stated yard is only offered early morning (0500-0600);
- Another incarcerated person housed at CMJ stated staff do not provide assistance by pushing his wheelchair and he has to navigate the wheelchair over the "lip/bump" by the elevator and also has to navigate the wheelchair down and up the ramp on the yard without assistance; and
- Another incarcerated person housed at CMJ stated staff do not provide assistance by pushing his wheelchair and he has to navigate the wheelchair over the "lip/bump" by the elevator and also has to navigate the wheelchair down and up the ramp on the yard without assistance and staff to not allow access to the accessible restroom on the yard.

Conclusions/Recommendations

From a positive standpoint, incarcerated persons with disabilities at all facilities do not have any major concerns with dayroom time or activities. In review of numerous CCOM Policies regarding outdoor recreation and dayroom activities, the local standard amongst all facilities and housing units for outdoor yard/recreation is a minimum of three hours weekly (broken up to no less than at least two days per week), and at least three hours per day for dayroom activities. From review of the OCJ outdoor yard/recreation and dayroom schedules as well as a sampling of Guard Station Logs (cited above), the OCSD administration must improve the process for housing unit staff to better track and log yard and dayroom time to note not only when yard or dayroom was released, but for how long of a duration for each occurrence, as to what time yard or dayroom activities ended, names of the those who refused (particularly if there is a noted pattern), and to ascertain as to the reason(s) why (particularly if there is a pattern noted, or mental health or intellectual disability concerns, etc.).

With the exception of the TLF, the outdoor recreation yard (area) access appeared to be equitable in terms of type of yard access at each individual facility such as the CMJ, CWJ, and IRC, as all incarcerated persons within each individual



respective facility had yard access on the roofs at the IRC and Women's facilities, and the upstairs yards at the CMJ. However, the Assessment Team was unable to assess overall equity amongst the different CJX and TLF facility and housing units in terms of outdoor yard/recreation and indoor dayroom timed activities. The OCJ must incorporate a functional system for logging and tracking of out of cell time (dayroom and outdoor recreation) for all incarcerated persons. This will assist the OCJ in monitoring staff compliance with the requirements of CCOM Policy Section 2006, Recreation.

Additionally, regarding TLF specifically, there is concern related to outdoor recreation/exercise yards for those incarcerated persons with disabilities who are housed in higher classification/security level housing units solely due to their disability and/or prescribed health care appliance or reasonable accommodation needs, such as those housed in CMJ Mod O or TLF Mod O, who are otherwise eligible to be housed in less restrictive housing. Subsequent to the onsite assessment and draft report, OCSD revised CCOM Policy 1201.13(a) and 1606.1(b) which address this issue. CCOM Policy Section 1201.13(a) states in part, "Being disabled in any way is not justification for a higher security classification." Policy Section 1606.1 (b) ADA Procedures – Accessible Housing states in part, "Qualified inmates with a disability will have access to the same services, programs, and activities offered to other inmates of the same classification level."

The OCJ must modify policies and practices to ensure incarcerated persons with disabilities are housed in the most integrated, least restrictive settings commensurate to their security/custody level in order to allow them the opportunity to attend outdoor exercise yard/recreation activities in accordance with their security/classification level, and thus afford them access to more opportunities. For example, much larger outdoor yard with grass (adjacent to the TLF barracks areas), access to more sponsored outdoor activities such as additional organized sports activities, other group/team events, holiday events, concerts, or other coordinated activities.

The OCSD needs to examine their outside exercise yard practices. First, there needs to be a central authority figure to approve all yard (and dayroom) schedules for the respective facilities. This could be a shift sergeant or another staff member. Management must take a closer look at the practice of offering outside yard at such early hours in the morning resulting in vacant yards for hours. This early start time is the major contributing factor for the very high number of regular incarcerated person refusals. The Assessment Team identified that OCSD and CHS management must examine the issue that FOU mentally ill and medical patients in the FOU medical unit do not get approved for outdoor yard (including one incarcerated person-patient who has not seen daylight in over a year). There is a very small converted-cell used as their dayroom. Again, this does not offer any



meaningful opportunity to exercise. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that individuals in observation units have access to outdoor recreation when they are not a danger to self or others. However, during the onsite assessment, CHS and custody staff could not provide examples or proof of any female inmates in the unit having been approved for outdoor yard currently, or in the past. OCSD also recently advised that the FOU at the Women's Jail closed in November 2020. Lastly, though this is an isolated issue (not systemic) it was noted that the TLF, Mod O basketball backboard and rim has been removed and needs to be replaced. Staff must provide assistance to incarcerated persons with disabilities in wheelchairs in accessing the CMJ yard from the elevators and also navigating the ramp leading to the yard. Staff must ensure incarcerated persons with mobility disabilities are provided access to an accessible restroom when on the CMJ yard.



Access to Programs, Services, and Activities

Standards / Best Practices

The OCJ is required to make all programs, services, and activities accessible to incarcerated persons with disabilities. Incarcerated persons with disabilities shall not be excluded from participation in or be denied the benefits of the jail's programs, services, and activities. The OCJ is required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the jail can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. Programs, services, and activities include but are not limited to, education, religious, work assignments, vocational assignments, visiting (social and attorney), exercise, shower, dining, etc.

"Correctional and detention facilities commonly provide a variety of different programs for education, training, counseling, or other purposes related to rehabilitation. Some examples of programs generally available to inmates include programs to obtain GEDs, computer training, job skill training, and on-the-job training, religious instruction and guidance, alcohol and substance abuse groups, anger management, work assignments, work release, referrals to halfway houses, and other programs. Historically, individuals with disabilities have been excluded from such programs because they are not located in accessible locations, or inmates with disabilities have been segregated in units without equivalent programs. In light of the Supreme Court's decision in *Yeskey* and the requirements of Title II, however, it is critical that public entities provide these opportunities to inmates with disabilities."²

Policies / Procedures and Document Review

The policies and procedures that address access to programs for inmates housed in the OCJs are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1606 Inmates With Disabilities, 1600 Orientation and Jail Rules, 1604 Inmate Rights, 2002 Commissary, 2006 Recreation, 2007 Shower Call, and 2010 Legal Books and Library Services. In addition, CCOM Policy Sections 3000 Intake Release Center, 4000 Central Men's Jail, 5000 Central Women's Jail, and 7000 Theo Lacy Facility address incarcerated person access to programs services and activities for each specific OCJ facility.

² Title II Regulations 2010 Guidance and Section-by-Section Analysis page 146



CCOM Policy Section 1606 Inmates with Disabilities addresses incarcerated persons with disabilities' equal access to OCJ programs, services, and activities.

CCOM Policy Section 1600 Orientation and Jail Rules addresses program access for incarcerated persons housed in the OCJ's.

CCOM Policy Section 1604 Inmate's Rights addresses program access for incarcerated persons housed in the OCJs.

CCOM Policy Section 2002 Commissary addresses access to commissary services for incarcerated persons housed in the OCJs.

CCOM Policy Section 2006 Recreation addresses access to recreation activities for incarcerated persons housed in the OCJs.

CCOM Policy Section 2007 Shower Call addresses access to showers for incarcerated persons housed in the OCJs.

CCOM Policy Section 2010 Legal Books and Library Services addresses access to legal books and library services for incarcerated persons housed in the OCJs.

CCOM Policy Section 3000 Intake Release Center addresses access to programs services and activities for incarcerated persons housed at the Intake and Release Center.

CCOM Policy Section 4000 Central Men's Jail addresses access to programs services and activities for incarcerated persons housed at the CMJ.

CCOM Policy Section 5000 Central Women's Jail addresses access to programs services and activities for incarcerated persons housed at the CWJ.

CCOM Policy Section 7000 Theo Lacy Facility addresses access to programs services and activities for incarcerated persons housed at the TLF.

OCJ Custody provided a sampling of two weeks of "Guard Station Logs" (Excel Spreadsheets). The logs include the following tabs:

- Safety Check Log No specific disability-related information is contained in this tab;
- Activity Log Entries include programs and activities offered and provided (yard, religious, showers, commissary, etc.);
- Dayroom Log Log of dayroom offered and provided;
- Inmate Movement Log No specific disability-related information is contained in this tab; and



Inventory Log - No specific disability-related information is contained in this tab.

OCJ Custody provided the Inmate Services – Correctional Programs Facility Schedules for the IRC, CMJ, CWJ, and TLF. The schedules include religious programs provided and locations.

OCJ Custody provided the Orange County Sheriff's Department Inmate Services Division Programs and Services list. The list includes the programs provided at the OCJ facilities and the program descriptions, location of programs, and program facilitators.

OCJ Custody provided a list of incarcerated persons with disabilities housed in specialized housing who requested law library services from November 2019 to January 2020. The list reflected 21 incarcerated persons with disabilities who requested and were provided with law library services.

Observations

CCOM Policy Section 1606.2 Programs and Services states, "Qualified inmates with disabilities will have access to visiting, church services, inmate programs, dayroom/recreation, etc. consistent with their classification level. Staff will provide reasonable modifications to jail rules, policies, and practices to enable inmates to participate in the services, programs, and activities offered to other inmates of the same classification level."

CCOM Policy Section 1606.4 ADA Procedures TLF states, "Inmates in Module O will be offered a full range of inmate programming opportunities if their medical status and mental health conditions permit. This will be accomplished by providing programs in the Module and in the Inmate Programs Building, or alternative locations, if necessary. Religious services will be provided in the Module or in the chapel."

CCOM Policy Section 1606.4 ADA Procedures IRC states, "Inmates in Module K will be offered a full range of inmate programming opportunities in accessible areas if their medical status and mental health conditions permit. Programs currently offered at the IRC will be available to inmates in the chapel/classroom of the CWJ or IRC, by selecting the facility that best accommodates the inmate. Religious services will be made available to inmates in the same manner as programming opportunities."



CCOM Policy Section 1606.4 ADA Procedures IRC "Module L" states, "Inmates housed in this area will be offered the full range of inmate programs and services if their medical status and mental health conditions permit."

CCOM Policy Section 1606.4 ADA Procedures CWJ states, "Inmates will be offered a full range of inmate programming opportunities if their medical status and mental health conditions permit. This will be accomplished by providing programs and religious services in the CWJ second floor accessible classroom."

CCOM Policy Section 1606.4 ADA Procedures CMJ states, "Inmates will be offered a full range of inmate program opportunities if their medical status and mental health conditions permit. This will be accomplished by providing programs and religious services located in the second-floor classrooms of the CMJ."

The Assessment Team toured all housing units at each facility, including the inmate visiting areas, recreational areas (e.g., television, recreational reading, and game room areas). The Assessment Team also toured the areas where religious services are often conducted, e.g., classrooms and multi-purpose rooms.

Religious Services

The Assessment Team reviewed the Inmate Services – Correctional Programs Facility Schedules for religious services and religious programs for the IRC, CMJ, CWJ, and TLF. The following is a breakdown of the program areas and type of religious services and programs available:

Intake Release Center:

- 2nd Floor Multipurpose Room;
 - Discipleship;
 - Catholic Service;
- Mod J Room A Closed;
- Mod J Room B Closed;
- Mod K Room A;
 - Protestant Services;
 - Protestant Bible Study;
 - Catholic Service;
 - o Christian Science
- Mod K Room B None Offered;
- Mod L Room A None Offered;
- Mod L Room B None Offered;
- Mod M Room A;
 - Catholic Bible Study;
 - Catholic Service;
 - Protestant Services;



- Protestant Bible Study;
- Christian Science;
- Mod M Room B None Offered;
- Mod N Room A;
 - Women of Purpose;
- Mod N Room B;
 - Protestant Services;
 - Protestant Bible Study;
 - Catholic Services;
 - Catholic Bible Study;
 - Restoring Lives; and
 - Christian Science

Men's Central Jail:

- 2nd Floor Classroom #1;
 - Protestant Bible Study;
 - Malachi Men;
 - Catholic Diocese;
- 2nd Floor Classroom #2;
 - Protestant Service;
 - Christian Science;
 - Catholic Service;
 - Protestant Bible Study;
 - Jewish Service; and
 - Catholic Diocese.

Theo Lacy Facility:

- Classroom #1;
 - Malachi Men;
 - o Catholic Service;
- Classroom #2 None Offered;
- Classroom #3 None Offered;
- Classroom #4 None Offered;
 - Catholic Bible Study;
- Classroom #5;
 - Bible Discipling;
- Chapel;
 - Catholic Service;
 - Christian Science Bible Study;
 - Protestant Service;
 - Protestant Bible Study;
 - Catholic Bible Study;



- Mod I Multipurpose Room B;
 - Catholic Service;
 - Protestant Service;
 - Protestant Bible Study;
 - Catholic Bible Study;
- Mod J Multipurpose Room A;
 - Catholic Service;
- Mod J Multipurpose Room B;
 - Protestant Service;
 - Catholic Bible Study;
 - Protestant Bible Study;
 - Catholic Service;
- Mod K Multipurpose Room;
 - Catholic Service;
 - Protestant Service;
 - Catholic Bible Study;
 - Muslim Service;
 - Protestant Bible Study;
- Mod L Multipurpose Room;
 - Catholic Service;
 - Protestant Service;
 - Jewish Service;
 - Catholic Bible Study;
 - Protestant Bible Study;
- Mod M Multipurpose Room;
 - Catholic Service;
 - Protestant Service;
 - Protestant Bible Study;
 - Catholic Bible Study;
- Mod N Multipurpose Room;
 - Catholic Service;
 - o Protestant Service;
 - Protestant Bible Study;
 - Jewish Service;
 - Catholic Bible Study;
- Mod O Multipurpose Room;
 - o Catholic Service;
 - Protestant Bible Study;
 - Protestant Service;
- Mod P Multipurpose Room;
 - Catholic Service;
 - Protestant Bible Study;
 - Muslim Service;



- Catholic Bible Study;
- Protestant Service;
- Mod Q Multipurpose Room;
 - Catholic Service;
 - Protestant Service;
 - Protestant Bible Study;
 - Catholic Bible Study;
- Mod R Multipurpose Room;
 - Catholic Service;
 - Protestant Bible Study;
 - Protestant Service;
 - Catholic Bible Study;

Women's Central Jail:

- Classroom A;
 - Bible Study Discipleship;
- Classroom B;
 - Protestant Service;
 - Catholic Service;
 - Faith-Based Parenting; and
 - Christian Science Service.

All religious services are conducted in classrooms or at TLF in the Chapel, which are accessible to incarcerated persons with disabilities.

Of concern is access to group religious services for incarcerated persons with disabilities housed in Mod O (CMJ and TLF). This is based on multiple classification and security designations being housed in Mod O that require separation. Access to group religious services is shared amongst these groups and incarcerated individuals with disabilities only have the opportunity to attend religious services with their specific group. If the OCJ would house incarcerated persons with disabilities in the most integrated, least restrictive setting, they would have the opportunity to attend group religious services more often as they would not have to share the program space with multiple security classifications.

Showers

The Assessment Team examined the showers in every housing unit. The team found that showers in CMJ Ward "C" and "D," Sheltered Living, TLF Mod "O," Mod "M," Mod "L," CWJ First Floor, IRC Mod "L" and Mod "K" have accessible showers. None of the other housing units/Mods at the OCJ facilities maintain shower chairs, grab bars, shower hoses, or lowered nozzles for incarcerated persons with disabilities who may have difficulty standing while talking a shower.



Library

The Assessment Team noted that there is no physical library access as each housing unit/Mod maintains a selection of recreational reading material that is managed by staff. The selection of books varies from each housing unit/Mod. The selection of books did not contain easy reading or large print books for incarcerated persons with disabilities, and in some of the units, there was no book selection available. The Assessment Team notes there is a library in the Programs Building at TLF. The library is used to store books that are delivered to the housing units. The library also does not contain a selection of easy reading or large print books.

Law Library

Law Library access is provided for incarcerated persons and can be requested through a message slip (request).

CCOM Policy Section 1606 Inmates with Disabilities defines Reasonable Accommodation as "Any change in the facility or field environment, policies, procedures, or the manner in which tasks are completed that enables a qualified individual with a disability to participate in and receive the same benefits from a program or service. This includes ensuring a qualified individual's opportunity to receive the same benefit of service. Reasonable accommodation does not require fundamental alteration of the nature of a program or activity."

CCOM Policy Section 1606 Inmates with Disabilities states Auxiliary Aids and Services, "Includes, but is not limited to, assistive communication devices for the deaf, hard of hearing, and visually impaired (e.g., TDD/TYY, closed caption video as necessary and appropriate, Braille, audio technology, large print); a qualified interpreter (or, in some circumstances, an interpreter who demonstrates proficiency adequate to the task); providing a reader or note taker; use of an elevator by mobility-impaired inmates to enable access to programs; and modification or acquisition of adaptive equipment and devices."

Visiting

CCOM Policy Section 1606.4 ADA Procedures TLF states, "Accessible visiting booths are located in Module O, booth 1, and in general visiting on the first floor of TLF, booths 5 and 35."

CCOM Policy Section 1606.4 ADA Procedures IRC states, (IRC Module K) "Visiting for inmates who are wheelchair-bound, mobility impaired, or unable to climb stairs will take place in an accessible booth on the first floor of the CWJ."

CCOM Policy Section 1606.4 ADA Procedures IRC states, (IRC Module L) "Visiting for inmates who are wheelchair-bound, mobility impaired or unable to



climb stairs will take place in an accessible booth that appropriately accommodates their disability."

CCOM Policy Section 1606.4 ADA Procedures CWJ states, (CWJ) "Visiting for inmates who are wheelchair-bound, mobility impaired or unable to climb stairs will take place in an accessible booth on the first floor of the CWJ."

CCOM Policy Section 1606.4 ADA Procedures CMJ states, "Accessible visiting booths are located in the CMJ general visiting area, booths 1 and 12."

All social visiting at the OCJ is non-contact (semi-contact at the CMJ). All visiting areas (social and attorney) in the Mods at TLF are not accessible to incarcerated persons with mobility disabilities who cannot ambulate a flight of stairs. The visiting area in the "Mod O" is accessible to incarcerated persons with mobility disabilities via an elevator; however, the visiting booths are not accessible for a wheelchair user. Incarcerated persons that require accessible visiting areas are provided visiting in the general visiting area at TLF. There are four accessible visiting booths at TLF.

The CWJ has 16 visiting booths (11 general population and four secure) with one accessible for a wheelchair user. The CWJ has nine attorney visiting booths with one accessible for a wheelchair user.

All visiting areas (social and attorney) in the Mods at IRC are not accessible to incarcerated persons with mobility disabilities who cannot ambulate a flight of stairs. There is a total of 9 visiting booths (2 official and seven non-contact).

There is a total of 50 visiting booths and five attorney visiting booths at the CMJ. Of the 50 visiting booths, eight are non-contact. There are no accessible visiting booths at the CMJ.

Commissary

Incarcerated persons order commissary by submitting a commissary order slip. The commissary is delivered to the incarcerated persons in the housing units/Mods.

Staff Interviews

The Assessment Team interviewed housing unit deputies and additional staff members, including program staff who coordinate program services for the OCJ facilities and staff from the ADA Unit. Staff from the ADA Unit stated that during the face-to-face interview, incarcerated persons with disabilities are provided information on programs (religious and visiting) available to incarcerated persons with disabilities. The incarcerated persons are also provided a Correctional Programs Inmate Orientation Brochure that details programs available to



incarcerated persons at the OCJ and how to request participation. The incarcerated persons initial and sign an ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs acknowledging understanding of the information provided.

Library

The following information was obtained from the Correctional Programs staff. Correctional Programs staff are responsible for managing the recreational reading materials for incarcerated persons. The books are donated to the county or purchased through the Inmate Welfare Fund. Once a week, the Correctional Programs staff distribute the books to the housing units/Mods. The books are exchanged on a one-for-one basis. There are no large print or easy reading books available for incarcerated person use.

Law Library

The following information was obtained from the Correctional Programs staff. An incarcerated person can request Law Library material by submitting an incarcerated persons message slip addressed to the Law Library. Incarcerated persons may also request books from the County Law Library by submitting a written request to the Law Librarian. The books are delivered to the incarcerated person's housing unit/Mod.

Showers

Housing unit staff stated that all incarcerated persons, with the exception of incarcerated persons in Disciplinary Isolation, have the ability to shower during their dayroom time. There are no shower chairs located in housing units/Mods that do not house incarcerated persons with disabilities. There are accessible showers in the housing units that house incarcerated persons with disabilities (Mod O and FOU).

Commissary

Housing unit/Mod deputies stated that incarcerated persons could order commissary by submitting a commissary order form. The commissary is typically delivered to the housing unit/Mod 3 times per week.

Visiting

Housing unit/Mod staff stated that visiting is conducted Friday through Monday from 0800 to 1800. All incarcerated persons are eligible for visits unless their visiting privileges have been suspended due to disciplinary reasons. OCJ staff



also stated that incarcerated persons with disabilities are provided access to OCJ visiting per CCOM Policy Section 1606 Inmates with Disabilities. Incarcerated persons with disabilities that require accessible visiting are allowed access to the General Visiting area at TLF, CMJ accessible visiting booths at the CWJ and Mod O.

Religious Services

The following information was obtained from the Correctional Programs staff regarding religious services for the OCJ. Religious services are either a religious service or bible study in the chapel or classroom setting. Incarcerated persons that cannot attend religious services due to classification and security reasons are provided religious services 1-on-1. Religious material is also delivered to the Mods/housing units based on incarcerated person requests. Incarcerated persons can also request religious counseling by submitting an inmate message slip. The 1-on-1 religious services are provided in the attorney/bonds visiting booths are the classrooms when available. Program staff stated that the housing unit officers decide which group attends the religious service when it is offered. In cases where the incarcerated persons request a large print bible; the program's staff has an inventory for distribution. The religious program coordinator stated VRI/SLI services have never been requested or provided for incarcerated persons with disabilities. The Correctional Programs staff stated that all religious program volunteers complete an Orange County Sherriff's Department Inmate Services Division, Correctional Programs Volunteer Program Participation Sheet. The sheet documents the facility, location of the religious program, date, time, type of program (service), names of volunteers, and the number of incarcerated persons who attended. The information collected also includes the name, booking number, and housing location for all incarcerated persons in attendance. At the conclusion of the program, the information is entered into the Orange County Sherriff's Department Volunteer Services Log by program staff. A review of the Volunteer Service Logs for the dates of January 11, 2020, to February 26, 2020, reflects that the following group religious services were provided for housing areas where incarcerated persons with disabilities are housed:

- CWJ Housing Unit "P" 11 times (Christian Science 1, and Protestant 10);
- TLF Mod O 18 times (Christian Science 3, and Protestant 15);
- CMJ Ward C 9 times (Protestant 9); and
- CMJ Ward D 9 times (Protestant 5, Catholic 4).

No data was provided for group religious services provided at the IRC (Mod L). Additionally, it could not be determined if the incarcerated persons housed in Mod O Sheltered Living attended the group religious services with CMJ Ward C and D.



Incarcerated Person Interviews

The Assessment Team interviewed numerous incarcerated persons from housing units/Mods throughout the OCJ facilities. Incarcerated persons interviewed included those with the following disabilities or conditions (or suspected disabilities or conditions): mental illness, developmental, learning, mobility, vision, and deaf and/or hard of hearing.

Although many of the incarcerated persons interviewed provided positive feedback regarding their access to OCJ's programs, services, and activities, a number of them gave negative feedback regarding these and other subject areas. This section of the report primarily captures the concerns levied, many of which have been corroborated throughout this report based on policy and other document reviews, staff interviews, and the Assessment Team observations, while other allegations or claims could not be substantiated. The following outlines information received during interviews as related to religious services, recreational reading, showers, etc.

Most mentally incarcerated persons with disabilities assigned to Mod L complained about an overall lack of programming activities available to them, specifically religious services.

A few specific interviews yielded the following information:

Showers

- Incarcerated persons stated the shower bench in the IRC (Sheltered Living) is broken (this was not confirmed); and
- An incarcerated person in Mod "O" at TLF stated he needs to hold on the shower wall when showering because there is not a shower chair/bench available.

Library

- Most incarcerated persons stated books are delivered to the housing units/Mods regularly; however, some incarcerated persons stated that there are no easy reading or large print books available; and
- An incarcerated person who is blind and is housed at TLF stated he is not provided access to books on tape.

Law Library



• Incarcerated persons with developmental and learning disabilities or incarcerated persons that cannot read or write reported they are not aware of the process to request law library access.

Religious Services

- Incarcerated persons that are classified as higher custody (Sheltered Living) and cannot attend religious services with other lower custody groups claim that no religious services are being offered and stated religious services are only offered every 3 to 4 months.
- Deaf and/or Hard of Hearing incarcerated persons claim no SLI is provided for religious services.

Visiting

• There were no issues related to access to visiting.

Commissary

• Some incarcerated persons claim that they are not able to fill out the commissary slip due to a disability, and the staff does not assist them.

Conclusions/Recommendations

With the exception of religious services for higher custody incarcerated persons, the number of groups competing for the group religious services in Mod O (CMJ and IRC), and the lack of easy reading and large print books, based on the current housing locations of incarcerated persons with disabilities, incarcerated persons with disabilities are provided access to OCJ programs, services, and activities. Once the incarcerated persons with disabilities are housed throughout the facilities to ensure incarcerated persons with disabilities receive equal access to the OCJ programs, services, and activities, e.g., access to library materials, equal access to religious services, access to accessible showers, and ADA features (shower chair, shower hose, etc.).

Incarcerated persons with disabilities are provided access to OCJ visiting per CCOM Policy Section 1606 Inmates with Disabilities. Incarcerated persons with disabilities that require accessible visiting are allowed access to the General Visiting area at TLF, CMJ accessible visiting booths at the CWJ and Mod O. There were no complaints from incarcerated persons with disabilities regarding access to accessible visiting and accommodations for the visiting program.



The OCJ must provide equal access to recreational reading material for incarcerated persons with disabilities (easy reading and large print books for incarcerated persons with disabilities who require these accommodations). When touring the housing units there were no "easy reading" and "large print" format available in the housing units. The ADA deputy did have magnification sheets available, however, these magnification sheets must be in the housing units so that they are readily available for the incarcerated persons to use. Additionally, housing unit staff must be aware of this accommodation and OCSD policy must also address this accommodation.

The OCJ must ensure program staff are aware of Auxiliary Aids and Services available for incarcerated persons with disabilities. Program facilitators (religious programs and law library staff) must ensure incarcerated persons with disabilities are provided assistive communication devices for the deaf and/or hard of hearing, and vision disabled (e.g., braille, audio technology, large print), a qualified interpreter, a reader or note taker, use of an elevator, and modification or acquisition of adaptive equipment and devices to ensure equal access to OCJ's programs.

The OCJ must ensure assistance is provided to incarcerated persons with disabilities who require assistance with reading or scribing documents.



Access to Education, Vocation, Reentry and Substance Abuse Programs

<u> Standards / Best Practices</u>

The OCJ is required to make all programs, services and activities available/accessible to incarcerated persons with disabilities. These incarcerated persons shall not be excluded from participation in, or be denied the benefits of the OCJ's programs, services and activities. The OCJ is required to make reasonable modifications in policies practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the OCJ can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. Programs, services and activities include academic education assignments, vocational assignments, re-entry programs, and substance abuse programs.

Correctional and detention facilities commonly provide a multitude of various programs for education (e.g., academic and vocational), substance abuse counseling, and re-entry classes, etc., for rehabilitative purposes. Often, incarcerated persons with disabilities are excluded or unable to fully enjoy from these types of programs due to a lack of reasonable accommodation(s) being provided and/or locations are such that they are not physically accessible to incarcerated persons.

28 CFR § 35.130(a) states, "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

Policies / Procedures and Document Review

CCOM Policy Section 1600 Orientation and Jail Rules addresses program access for incarcerated persons.

CCOM Policy Section 1600.6 Orange County Correctional Programs, contains a listing of both academic and vocational education programs/classes offered, development programs classes (e.g., substance abuse class), and information pertaining to the Re-Entry Center.



CCOM Policy Section 1604.2 Inmates Rights addresses program access for incarcerated persons. This includes incarcerated person program and services (including education programs).

CCOM Policy Section 1606.2 Inmates with Disabilities – Programs and Services, addresses incarcerated persons with disabilities' equal access to OCJ programs, services, and activities.

CCOM Policy Section 2000.2 Inmate Services and Program - Social Service Program addresses counseling programs for Alcoholics Anonymous and Narcotics Anonymous.

CCOM Policy Section 2012 Education addresses education information.

CCOM Policy Section 3000 Intake Release Center addresses access to programs services and activities for incarcerated persons housed at the Intake and Release Center.

CCOM Policy Section 4000 Central Men's Jail addresses access to programs services and activities for incarcerated persons housed at the CMJ.

CCOM Policy Section 5000 Central Women's Jail addresses access to programs services and activities for incarcerated persons housed at the CWJ.

CCOM Policy Section 7000 Theo Lacy Facility addresses access to programs services and activities for incarcerated persons housed at the TLF.

OCSD Custody provided a Brochure (English and Spanish versions) titled, "Correctional Program Inmate Orientation Brochure" containing general information regarding the Correctional Programs Unit, listing of academic programs/classes, developmental programs/classes, vocational education programs, Great Escape Program, Re-Entry Center, and the Criminon Program, and other programs.

The Inmate Services (Programs) Unit Provided a sample seven-day weekly schedule of Education programs.

The Inmate Services (Programs) Unit provided education rosters, transcripts, sample of the Wisconsin Needs Assessment, and miscellaneous written correspondence information regarding incarcerated persons with disabilities.

The Inmate Services (Programs) Unit provided copies of education class rosters for the months of October – December 2019 (for all CJX and TLF facilities).



The Inmate Services (Programs) Unit provided copies of the IRC seven-day education class schedule.

The Inmate Services (Programs) Unit provided copies of the Men's Central Jail seven-day education class schedule.

The Inmate Services (Programs) Unit provided copies of the Women's Central Jail seven-day education class schedule.

The Inmate Services (Programs) Unit provided copies of the TLF seven-day education class schedule.

The Inmate Services (Programs) Unit provided a copy of the Rancho Santiago Community College District Education Classes Programs Interest Form/Education Classes Form:

- One for IRC;
- One for the 'MJ' (the intent is believed to mean Men's Central Jail); and
- One for the "WJ" (Women's Central Jail).

The OCSD provided a listing (as of 1/15/20) of all education programs, vocational programs, general services programs for each respective facility.

The Inmate Services (Programs) Unit provided a sample copy (for TLF) of an Inmate Program Request Form for academic and vocational programs/schedules.

HCA CHS provided a trifold titled, 'Resources for Community Re-Entry' containing information pertaining to housing, benefits, education, basis needs, employment, identification, legal resources, and health and wellness.

OCSD provided an Activity log - Entries include program and activities offered and provided.

Observations

The Assessment Team toured all housing units at each CJX and TLF facility, including the designated program areas, whether multi-purpose rooms in the Mods, or other central locations, e.g., programs classes, and TLF barracks chapel, etc. The team also reviewed numerous documents provided by the Inmate Services (Programs) Unit, Rancho Santiago Community College District, and from the OCSD.

The following is a breakdown of the information as related to education (academic and vocational), re-entry services, and substance abuse:



Education

- Reports of Volunteer Services provided during the months of January and February 2020:
 - o Men's Central Jail:
 - For Mod O (WD) (Conducted at Mod O or Mod O incarcerated persons scheduled to attend in another unit);
 - 1/4/20 NA (English) 1 Student/1 hour;
 - 1/4/20 AA (English) 7 Students/1 hour;
 - 1/11/20 NA (English) 1 Student/1 hour;
 - 1/15/20 AA (English) 8 Students/1 hour;
 - 1/20/20 NA (English) 5 Students/1 hour;
 - 1/25/20 AA (English) 3 Students/1 hour;
 - 2/19/20 AA (English) 2 Students/1 hour;
 - 2/22/20 AA (English) 0 Students/1 hour;
 - 2/22/20 NA (English) 4 Students/1 hour;
 - 2/26/20 AA (English) 9 Students/2 hours;
 - For Mod O (WC) (Conducted at Mod O or Mod O incarcerated persons scheduled to attend in another unit);
 - 1/11/20 AA (English) 1 Student/1 hour;
 - 1/15/20 AA (English) 8 Students/1 hour;
 - 1/20/20 NA (English) 5 Students/1 hour;
 - 1/25/20 AA (English) 1 Student/1 hour;
 - 2/8/20 AA (English) 1 Student/3 hours;
 - 2/8/20 AA (English) 6 Students/1 hour;
 - 2/22/20 AA (English) 0 Students/1 hour; and
 - 2/26/20 AA (English) 9 Students/2 hours.
 - o Women's Central Jail:
 - For Mod P (Conducted at Mod P or Mod P incarcerated persons scheduled to attend in another unit);
 - 1/25/20 AA (English) 8 Students/1 hour;
 - 1/25/20 NA (English) 10 Students/2 hours;
 - 1/18/20 AA (English) 10 Students/1 hour;
 - 1/18/20 NA (Spanish) 7 Students/1 hour;
 - 1/11/20 AA (English) 4 Students/1 hour;
 - 1/12/20 NA (English) 8 Students/4 hours;
 - 1/5/20 NA (Spanish) 5 Students/1 hour;
 - 2/29/20 AA (English) 16 Students/2 hours;
 - 2/22/20 AA (English) 13 Students/1 hour;
 - 2/21/20 NA (English) 7 Students/1 hour;
 - 2/7/20 AA (English) 20 Students/2 hours;
 - 2/9/20 NA (English) 10 Students/1 hour;



- 2/16/20 NA (English) 13 Students/2 hours;
- 2/15/20 AA (English) 4 Students/1 hour; and
- 2/2/20 NA (English) 9 Students/2 hours;
- Theo Lacy Facility:
 - For Mod O (Conducted at various areas);
 - 1/31/20 AA (English) 10 Students/1 hour (Chapel);
 - 1/28/20 NA (Eng) 15 Students/1 hour (Programs);
 - 1/27/20 AA (English) 4 Students/1 hour (Mod L);
 - 1/27/20 AA (English) 3 Students/2 hours (Mod K);
 - 1/21/20 AA (English) 4 Students/1 hour (Mod J);
 - 1/23/20 AA (English) 7 Students/1 hour (Mod J);
 - 1/23/20 AA (English) 14 Students/1 hour (Mod I);
 - 1/21/20 NA (Eng) 21 Students/1 hours (Classroom);
 - 1/14/20 AA (English) 5 Students/1 hour (Mod K);
 - 1/14/20 AA (English) 5 Students/1 hour (Chapel);
 - 2/29/20 NA (Eng) 3 Students/1 hour (Classroom);
 - 2/29/20 AA (English) 8 Students/3 hours (Library);
 - 2/28/20 AA (English) 11 Students/2 hours (Chapel);
 - 2/27/20 AA (Eng) 14 Students/2 hours (Programs);
 - 2/18/20 NA (Eng) 14 Students/1 hour (Programs);
 - 2/7/20 AA (English) 5 Students/1 hour (Chapel);
 - 2/6/20 AA (Eng) 10 Students/1 hour (Classroom);
 - 2/6/20 AA (Eng) 5 Students/1 hour (Mod J);
 - 2/4/20 NA (Eng) 16 Students/1 hour (Chapel);
 - 2/3/20 AA (Eng) 4 Students/2 hours (Mod K);
 - 2/3/20 AA (Spanish) 1 Student/1 hour (Mod J); and
 - <u>2/3/20 AA (Eng) 3 Students/1 hour (Mod L).</u>

The Settlement Monitor cross-referenced the aforementioned TLF education/programs schedule against the TLF electronic unit activity log. Eight random dates in the month of February were examined whereas there were scheduled Mod O classes. Only two of the eight dates chosen were noted on the TLF Mod O housing unit electronic activity log. Subsequent to the onsite assessment and draft report, OCSD advised that it should be noted that at times classes may be cancelled due to situations happening within the Mod or if the volunteer conducting the class is unable to attend. However, there was no evidence reviewed or presented to demonstrate whether either of these scenarios were the cause for the missing classes as listed on the TLF electronic activity logs. This will be examined further in upcoming monitoring tours.



The Inmate Services (Programs) Unit provided rosters for the Women's Central Jail's Great Escape' class. The following is a breakdown of the information:

- <u>Women's</u> Central Jail (second floor classroom);
 - 1/3/20 Attendance Sheet 32 incarcerated persons assigned (most attended);
 - 1/10/20 Attendance Sheet 34 incarcerated persons assigned (most attended);
 - $\circ~$ 1/17/20 Attendance Sheet 37 incarcerated persons assigned (most attended); and
 - 1/24/20 Attendance Sheet 30 incarcerated persons assigned (most attended.

Note: 27 attendance rosters were provided from the month of January. However, there is no name for the specific classes on the roster, and the Assessment Team is unclear as to what the noted codes represent. Therefore, the Assessment Team was unable to fully understand the documents.

The Inmate Services (Programs) Unit provided Education/Class Rosters for all facilities, for the time period of October 2019 – December 2019. There are no class titles or specific dates on the rosters. The Assessment Team was unable identify whether each page is for a separate class/program (though not identified) or whether the entire listing is a master list of all incarcerated persons assigned to one of more education classes. It appears that the list is a master list which shows all incarcerated persons who attended one or more education classes at any time between October – December 2019.

The following is a breakdown of the information:

- <u>IRC:</u>
 - Approximately 240 female incarcerated person names;
- Men's Central Jail
 - Approximately 325 incarcerated person names;
- <u>TLF:</u>
 - Approximately 425 incarcerated person names;
- <u>Women's Central Jail:</u>
 - Approximately 275 incarcerated person names.

The Inmate Services (Programs) Unit provided seven-day sample schedules for Education classes/programs. The following is summary for each facility:



- <u>IRC:</u>
 - Sunday:
 - Restoring Lives;
 - F.B. Parenting (Through Church);
 - NA (English);
 - Finding The Way (English);
 - F.B. Healthy Families;
 - Monday:
 - Parenting (through Programs);
 - Food Prep;
 - Attitudes for Success;
 - All In Program (4 x);
 - Tuesday:
 - Great Escape;
 - Substance Abuse;
 - AA (English);
 - Substance Abuse;
 - All In Program (4x);
 - Wednesday:
 - GED;
 - Seeking Safety;
 - Anger Management;
 - AA -Big Book;
 - Anger Management (3 x);
 - All In Program (4 x);
 - AA (Big Book);
 - AA (English);
 - Thursday:
 - Food Prep;
 - Money Matters;
 - All In Program (3x);
 - Inside Out;
 - Restoring Lives;
 - Friday:
 - HiSet Testing;
 - GED;
 - Workforce Prep;
 - All In Program (4x);
 - F.B. Parenting;
 - Finding the Way (Spanish);
 - Saturday:
 - AA (English) (2x); and
 - Women of Purpose.



- <u>Central Men's Jail:</u>
 - Sunday:
 - F.B. Parenting/Malachi Men;
 - o Monday:
 - Food Prep;
 - Academic Skills;
 - Attitudes for Success;
 - Intro to Software App;
 - Tuesday:
 - Great Escape;
 - Academic Skills;
 - GED;
 - Literacy Tutoring;
 - Medi-Cal;
 - Kinship 101;
 - Intro to Software App;
 - Wednesday:
 - Workforce Prep;
 - Substance Abuse;
 - Money Matters;
 - AA (Big Book);
 - Intro to Software App;
 - Thursday:
 - Back on Track;
 - Academic Skills;
 - Parenting;
 - Education Counseling;
 - Literacy Tutoring
 - CBT;
 - Intro to Software App;
 - o Friday:
 - Academic Skills;
 - GED;
 - HiSet Testing;
 - Intro to Software App;
 - Saturday:
 - AA (English);
 - Finding the Way (English);
 - NA (English);
 - Finding the Way (Spanish); and
 - AA (Spanish).



- <u>TLF:</u>
 - Sunday:
 - AA (Spanish);
 - Monday:
 - GED Testing;
 - Medi-Cal;
 - Money Matters;
 - HCA Substance Abuse;
 - Academic Skills;
 - Intro to Software App;
 - GED Instruction;
 - Substance Abuse;
 - AA (Spanish) (2x);
 - High School Classes (3x);
 - AA (English) (2x);
 - NA (English);
 - o **Tuesday**:
 - Academic Skills;
 - Food Service;
 - Intro to Software App;
 - GED Instruction;
 - Attitude for Success;
 - NA (English) (3x);
 - AA (English) (2x);
 - High School Classes (3x);
 - Life Skills;
 - NA (Spanish);
 - Wednesday:
 - Academic Skills;
 - Food Services;
 - Intro to Software App;
 - Parenting;
 - Re-Entry;
 - High School Classes (3x);
 - Thursday:
 - GED Testing;
 - Malachi Men;
 - Academic Skills;
 - Intro to Software App;
 - Parenting;
 - GED Instruction;
 - Re-Entry;
 - AA (English) (3x);



- High School Classes (3x);
- Friday:
 - GED Instruction;
 - Substance Abuse;
 - AA (English);
 - High School Classes (3x);
 - Life Skills;
- Saturday:
 - NA (English).
- <u>Women's Central Jail:</u>
 - Sunday:
 - NA (English);
 - Faith Based Parenting;
 - Monday:
 - HiSet Testing;
 - Parenting;
 - Money Matters;
 - Tuesday:
 - Intro to Software App;
 - Academic Skills;
 - Substance Abuse;
 - Wednesday:
 - Intro to Software App;
 - Academic Skills;
 - GED Instruction;
 - Thursday:
 - Attitudes for Success;
 - College Counseling;
 - GED Instruction;
 - o **Friday**:
 - Great Escape;
 - P.E.P.;
 - Workforce Prep;
 - Saturday:
 - Women of Purpose; and
 - AA (English).

The Inmate Services (Programs) Unit provided a copy of Rancho Santiago Community College District Education classes interest form for each facility:

- <u>IRC</u> (classes offered include):
 - GED;
 - Food Services;



- Substance Abuse;
- Money Matters;
- Parenting;
- Workforce Prep;
- Attitudes for Success;
- Additional Classes (not through Rancho Santiago);
 - Faith Based Parenting;
 - Great Escape (Re-entry); and
 - Seeking Safety (Substance Abuse Recovery).
- Men's Central Jail:
 - o GED;
 - Academic Skills;
 - Attitudes for Success;
 - Food Services;
 - Substance Abuse;
 - Money Matters;
 - Computers;
 - Parenting;
 - Workforce Prep;
 - Additional Classes (not through Rancho Santiago):
 - AA (Big Book);
 - Malachi Men;
 - Kinship 101;
 - Finding the Way (English & Spanish); and
 - TUMI (Bible Discipleship Seminary Course).
- Women's Central Jail:
 - Attitudes for Success;
 - o GED;
 - Substance Abuse;
 - Money Matters;
 - Computers;
 - Parenting;
 - Workforce Prep;
 - Additional Classes (not through Rancho Santiago);
 - Faith based Parenting;
 - Great Escape (Re-entry); and
 - PEP (Personal Empowerment Program Overcoming Domestic Violence).

The OCSD Inmate Services (Programs) Division provided a description list (dated 1/15/20) of educational and vocational classes available at all facilities:



- Educational Programs:
 - Attitudes for Success (available at all facilities);
 - GED (available at all facilities);
 - HiSet Testing (available at facilities);
 - OCOE (available at IRC & TLF only males and females);
 - Assists incarcerated persons with obtaining final class credits to earn high school diploma;
 - Academic Skills (available at MCJ & TLF only);
 - Inside Out (available at IRC only);
 - Vanguard University 12-18-week course);
 - Money Matters (available at all facilities);
 - Voices Creative Writing Class (available at IRC only);
 - 10-week program on writing short stories;
 - WIN Tutoring (Reading) (Not offered at WCJ);
- Vocational Programs;
 - Intro to Software Applications (Not offered at IRC); and
 - Institutional Food Preparation (Not offered at WCJ).

Re-Entry

Inmate Services provided a brochure regarding Re-Entry services (prop 47 funded) offered for incarcerated persons at the OCJ facilities. Three programs created from the funding source include:

- System Navigators in the Orange County IRC, who provide in-reach, greet persons with supportive resources as they are released from the jail, and assist with linkages to service;
- Mental health and substance use counseling and medication support; and
- A "Safe Haven" program operated by Project Kinship which includes after hours linkage, transportation, and other immediate supports for individuals leaving the IRC. Project Kinship also provides re-entry services such as case management counseling, linkage, job training. housing, and other supports to the target population.

Types of re-entry services include education assistance, benefits assistance (e.g., Medi-Cal), housing, employment assistance, basic needs, identification assistance, legal resources, and health and wellness. Many of the individuals in these programs are referred directly from the Orange County IRC, Probation, and the Public Defender's Office.

The Assessment Team observed TLF MOD O (Sectors 37-42), and Mod M (Sectors 25-30) during the walkthroughs. The upstairs areas both contain program multi-purpose/classroom areas where education, re-entry, and substance abuse



classes are sometimes held. The classrooms appear to have a capacity for approximately eight to ten incarcerated persons at a time. Staff and incarcerated persons stated that prior to the COVID-19 pandemic, classes such as Parenting, Hi-Set, and AA were conducted in those rooms.

The Assessment Team noted that there are 4 classrooms in the Inmate Programs Building at TLF (1 of the classrooms is a computer lab). The educational classrooms have a television with no other equipment other than tables and chairs. There is also a library that is used to store the recreational reading material that is delivered to the housing units.

Staff Interviews

Custody staff assigned to TLF informed the Assessment Team that Mod O incarcerated persons receive equivalent access to programs, services, and activities (e.g., education, re-entry, and substance abuse programs) as non-incarcerated persons with disabilities receive who are housed in other units. Mod O has a maximum capacity of 120 incarcerated persons, and currently houses 78 incarcerated persons. All academic education classes, re-entry services, and self-help groups are reportedly offered "on a rotational basis" in the Programs Room (multi-purpose) which is located upstairs in the unit. The multi-purpose room is accessible via an elevator. In the event a disabled incarcerated person with a vision disability is assigned, staff would provide a SLI vis VRI.

The Assessment Team also spoke to staff from the Inmate Services (Programs) Unit. Staff stated that academic and vocational educational program classes are held in the multi-purpose classrooms upstairs in each mod. Programs Unit staff also confirmed that the multi-purpose classrooms are accessible via an elevator, and that incarcerated persons who use sign language as their preferred method of communication would be provided such services through a sign language interpreter or via VRI. Substance Abuse classes are offered to low classification level offenders in the barracks. Mod O incarcerated persons are not exempt from attending. All classes offered are considered as continuing education classes, and are either through Santiago Canyon College, or the Orange County Department of Education. Individuals who successfully pass the HiSet exam receive a certificate of completion. Individuals who complete the Serv Safe program (food services certification) receive a certificate of completion as well. Incarcerated persons assigned to the Mod I Veteran's unit as well as those living in the barracks are permitted to attend programs/classes in the barracks chapel, as well as the programs building (four [4] classrooms plus the library). Class rosters (incarcerated person names) are contained in a data base. However, there is not disability tracking list available for staff or instructors to identify which incarcerated person/students have a disability or reasonable accommodation need. One of the



staff members interviewed believes that instructors/facilitators still do their best to attempt to provide reasonable accommodations during classes. Instructors are not documenting Effective Communication provided (if provided). Currently only five (5) known TLF incarcerated persons with disabilities participate in education, and staff do not believe there are any learning disabled or intellectual incarcerated persons with disabilities presently assigned (though they are not positive). Due to the COVID-19 pandemic, teachers are not on site working, and therefore were not available to be interviewed. Regarding possible disabilities, an assigned instructor/facilitator would talk with the education coordinator who in turn would notify the Corrections Program Supervisor I, who would then notify ADA Deputy Frederick to ascertain more information.

With regard to Re-Entry Services Programs, Classification staff clear/approve incarcerated persons for Re-Entry services eligibility/participation. Incarcerated persons who reside in Mod O and the barracks areas can attend Re-Entry services (if approved by Classification staff). As is the case with education, there also is also not a disability tracking list available for the instructors for re-entry services.

Re-Entry classes are offered in the programs building under the direction of two Correctional Programs Technicians. For in-custody incarcerated persons, there are two class sessions offered per week (Pre-Release Planning). Re-Entry services staff provide information to incarcerated persons regarding outside organizations, and program is not directly affiliated with the outside organizations other than providing general resource information. A Corrections Program Technician assess incarcerated persons who have been identified as high risk to reoffend using the PROXY tool during the booking process. A risk assessment for re-offending is completed. During the assessment interviews, she asks the incarcerated persons about any disabilities, accommodation needs, and previous Individualized Educations Programs (plans). There is no script for the Corrections Program Technician to follow regarding the assessment process. Incarcerated persons who are in-custody may be eligible to enroll in on-site programs, and they are provided with resources for outside services. Resources provided include links or information regarding healthcare, housing, and drug treatment after jail release. A discharge plans is also created for the incarcerated persons. The OCJ case management teams reportedly refer incarcerated persons to the Corrections Programs Technicians. Some of the Re-Entry classes taught include Goal Setting, Great Escape, Domestic Violence, Anger Management, Employment, Discharge Planning, Drug Treatment Program/Substance Abuse Education, Housing, and Food/Clothing. To be eligible for the program incarcerated persons must be 30-60 days from their expected release date. Classes vary, but they generally meet three times weekly for 2.5 hours each day. Some classes are taught by one of the Corrections Program Technicians, while other classes are facilitated by other instructors. Barracks incarcerated persons can participate in Re-Entry services in the programs building (4 classes) or the library, and Mod O incarcerated persons



can participate in Re-Entry services in the Mod multi-purpose room. For TLF Mod O (Sectors 37-42) there was no proof of practice provided to demonstrate that Reentry classes were actively being provided and whether there were any incarcerated persons with disabilities currently eligible and approved (by classification staff) to attend and participate in Re-entry services.

With regard to Substance Abuse Programs there is also not a disability tracking list available for the instructors to reference. Substance abuse classes are offered to low classification level offenders and Offered through Rancho Santiago College. There is on average about fifteen (15) incarcerated person participants per class from the barracks (or Mod O). Classes are conducted in the Programs building), and Mod O incarcerated persons are escorted to the area. Substance Abuse Counselors/instructors are contractors. When asked by the Assessment Team staff stated that they ask potential students about intellectual disabilities, as it is part of the assessment questions associated with the Wisconsin Assessment Form which is used. This form reportedly asks about physical and mental disabilities.

The Education Coordinator at TLF stated that she does not receive a list of the incarcerated persons with disabilities assigned to the programs area or their accommodations. Incarcerated persons must self-identify their disability and accommodation needs. In the event an incarcerated person self identifies their disability and accommodation needs, the program facilitators would be advised, and the accommodations would be provided. The Assessment Team observed a notice in the program office directing staff to contact the ADA deputy in the event an incarcerated persons with disabilities attending classes in the Inmate Programs Building from Mod "O" (2 with a cane and 2 with sleep apnea).

Incarcerated Person Interviews

The Assessment Team interviewed numerous incarcerated persons with disabilities at all CJX and TLF facilities regarding programs. The most common complaint or comment is that incarcerated persons are widely unaware as to the class schedules and what is offered.

Incarcerated persons interviewed reported the following:

- Most incarcerated persons with disabilities interviewed in Mod O (CJX and TLF) stated that programs (Education, Reentry and Self Help) are not offered; and
- Incarcerated person housed in the CWJ stated that at times the deputies will not escort her to the classroom on the 2nd floor in a timely fashion and at times she must wait 30 to 45 minutes.



Conclusions/Recommendations

The aforementioned policies pertain to academic and vocational education courses, substance abuse classes, and re-entry services. Some of the information contained includes enrollment as well as equal opportunity for participation. There are also some brief examples of types of course required to be offered at the facilities. The Assessment Team found that the required types of classes are being offered at the CJX and TLF facilities, and the courses offered actually extend further than the example cited in the policies. The policies do not differentiate as to what is required at each individual facility or housing unit.

Overall, the OCJ facilities provide education, re-entry, and substance abuse classes to the incarcerated persons. However, although there is a process in place to provide incarcerated persons with a copy of the aforementioned "Correctional Programs Inmate Orientation Brochure", there were numerous complaints made by incarcerated persons, with disabilities that they are not aware of programs and education classes offered. In fact, many incarcerated persons who were interviewed from the CJX and TLF facilities stated that education, re-reentry, and self-help classes are not offered to them. OCJ must ensure that incarcerated persons with disabilities who are housed in the Mod O housing units are provided access to and information (brochure) on the availability of programs. Currently only 5 incarcerated persons with disabilities are participating in education (programs), but it is unclear whether this number would be higher or whether there might be more interest in education programs if more incarcerated persons with disabilities were aware or at least had a better understanding of opportunities available to them. Subsequent to the onsite assessment and draft report, OCSD advised that OCSD still contends that ADA Compliance deputies discuss this with each new ADA booking incarcerated person they meet. Each person signs the form acknowledging receipt of this information. This issue will be examined further in upcoming monitoring tours. It is important that the new arriving incarcerated persons at least have a general understanding of the orientation information provided.

Due to the COVID-19 pandemic related restrictions, including no on-site academic instructors to interview, no classes to observe, and unavailable or uncodable proof of practice documentation to review, the Assessment Team was largely unable to conduct a precise reconciliation of programs being offered and attended by disabled incarcerated persons amongst the various units. For example, as cited above, for TLF, the Assessment Team cross-referenced а TLF education/programs schedule against the TLF electronic unit activity log. Eight random dates in the month of February were examined whereas there were scheduled Mod O academic classes. Only two of the eight dates chosen were



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noted on the TLF Mod O housing unit electronic activity log. As stated above, subsequent to the onsite assessment and draft report, OCSD advised that it should be noted that at times classes may be cancelled due to situations happening within the Mod or if the volunteer conducting the class is unable to attend. However, there was no evidence reviewed or presented to demonstrate whether either of these scenarios were the cause for the missing classes as listed on the TLF electronic activity logs. This will be examined further in upcoming monitoring tours. In review of education class rosters provided by the Inmate Services (Programs) Unit (for all facilities) for the time period of October 2019 – December 2019, there were no class titles or specific dates listed on the rosters. The Assessment Team was unable to identify whether each page is for a separate class/program or whether the entire listing is a master list of all incarcerated persons assigned to one of more education classes. However, from reviewing the education schedules for the CJX and TLF facilities, the Assessment Team was able to discern that at least the schedule appears to be fairly equitable. For example, the IRC has approximately 22 different classes offered; CMJ has approximately 19 various classes offered, CWJ has about 16 classes offered, while TLF has roughly 19 different classes. Many of the class titles are the same, while there are some slight differences amongst the different facilities. All facilities offer education classes through the OCSD Inmate Services (Programs) Division, as well as others through the Rancho Santiago Community College District. As outlined above, many classes/programs offered are the same, while there are some slight variations between the different facilities. Classes are added or modified pursuant to interest by incarcerated persons.

Classes including Substance Abuse and Re-entry are offered to low classification level offenders housed in the TLF barracks (4 classes in Programs building or Library). Mod O incarcerated persons can attend classes in the Mod multi-purpose room, but reportedly can attend in the Programs building or library once approved by classification staff. To be eligible for the program incarcerated persons must be 30-60 days from their expected release date. The Assessment Team did not have a list of disabled incarcerated persons who would be eligible for Re-entry services based on the aforementioned criteria and was otherwise not provided any proof of practice documentation to confirm any active participants.

The Assessment Team noted that there are four classrooms in the Inmate Programs Building at TLF (one of the classrooms is a computer lab). The Assessment Team did not observe similar computer lab access for incarcerated persons housed at the CMJ. However, subsequent to the onsite assessment and draft report, OCSD advised that all incarcerated persons, including those with disabilities, who are housed at the CMJ receive full access to the computer lab



classroom located on the second floor of the CMJ. This will be examined during the next monitoring tour to confirm equitable access.

Class rosters (incarcerated person names) are contained in a data base. However, there is not a disability tracking list available for staff or instructors (i.e., re-entry, education, or substance abuse personnel or volunteers) to identify which incarcerated person/students have a disability or reasonable accommodation needs. This was confirmed via interviews with staff from the Inmate Services (Programs) Division. In fact, staff that were interviewed did not believe that there is currently any learning disabled or intellectually disabled incarcerated persons assigned to any of the education, re-entry, or substance abuse classes currently. Subsequent to the onsite assessment and draft report, OCSD advised that the CHS Special Needs List is now distributed to staff and instructors. This will be examined during future monitoring tours.

Some of the Incarcerated person Services (Programs) staff admitted that there may not be sufficient staffing currently in place to meet the actual demands of classes that incarcerated person would desire to take if afforded the opportunities. But staff are facilitating the classes that are currently offered at the CJX and TLF facilities. Housing unit staff need to ensure they log (into the electronic OCSD Activity Logs) all activity regarding education, re-entry and substance abuse classes. Class instructors/facilitators must be provided a list of incarcerated persons with disabilities and their respective reasonable accommodation, or preferred method of communication needs.



Access to Work Assignments

Standards / Best Practices

The OCJ must ensure incarcerated persons with disabilities have the opportunity to participate in the OCJ work assignments, including volunteer assignments.

42 U.S.C. § 12132 states, "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

28 CFR § 35.130(a) states, "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

28 CFR § 35.130(b)(8) states, "A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered."

28 CFR § 35.152(b)(1) states, "Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

Policies / Procedures and Document Review

The policies and procedures that address access to work assignments and criteria including the medical screening criteria for work assignments for incarcerated persons in the OCJs are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 2004 Inmate Workers, and HCA CHS Policies and Procedures 6405 Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS).

CCOM Policy Section 2004 Inmate Workers addresses the selection, ineligibility, work available work assignments, and worker privileges for incarcerated persons housed in the OCJ's.



CCOM Policy Section 1205 Community Work Program addresses the selection eligibility criteria, screening, assignment, and removal process for the CWP.

HCA CHS Policy Section 6405 Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS) addresses the physical limitations that affect an incarcerated person's ability to perform specific work activities and work restrictions identified by medical staff.

CCOM Policy Section 1606 Inmates With Disabilities does not contain any specific language for incarcerated person workers other than the requirement that incarcerated persons with disabilities housed in the OCJ's are entitled to the same rights, privileges, and services as other incarcerated persons of the same classification level.

HCA CHS Policy Section 6104 Community Work Program Eligibility contains the medical eligibility criteria for the CWP.

OCJ Custody provided a Theo Lacy Work Assignments List – The list includes the housing location for incarcerated person each specific job assignment for workers housed in A, B, C and D Barracks.

OCJ Custody provided an IRC Female Work Assignments List– The list includes the housing location for incarcerated person each specific job assignment for workers housed in Module M.

OCJ Custody provided a Central Women's Jail Work Assignments List– The list includes the housing location for workers housed in Module H Tanks 7 and 8 (specific work assignments are not listed).

OCJ Custody provided a Central Men's Jail Work Assignments List – The list includes the housing location for workers housed in Module A Tanks 1 and 2 and Module C Tanks 11 and 12 (specific work assignments are not listed).

OCJ Custody provided incarcerated person job descriptions for the following incarcerated person work assignments:

- Bakers;
- Kettle Cook;
- Diet Cook;
- Storeroom;
- Line server;
- Pot and Pan Scullery;
- Linebacker;



- Vegetable Prep; and
- Utilities.

The job descriptions include duties and safety requirements; however, they do not include essential functions.

HCA CHS Policy Section 6405 Inmate Comprehensive Accommodation-Use of a Miscellaneous Message Slip (MMS) includes information related to work restrictions and work status.

Observations

CCOM Policy Section 1205.9 Screening CWP Inmates states, "Medical Screening: All inmates placed on CWP must be medically fit for work. If the CWP staff does not know the inmate's medical status, he/she will contact the jail Medical Staff for verification."

HCA CHS Policy Section 6104 Community Work Program Eligibility states, "Inmates assigned to the Community Work Program (CWP) will be evaluated by CHS clinical staff for health clearance. CWP assignments may involve strenuous physical work for an eight to ten hour duration. Inmates assigned to this program will not be under direct medical or nursing supervision. OCSD staff will submit a list of potential inmates for the community work program to CHS clinical staff for health clearance. CHS clinical staff will conduct a health screening by reviewing the inmate's electronic health record. Health conditions that exclude inmates from CWP include:

- Uncontrolled chronic health conditions that require frequent clinical visits with a physician (i.e., seizure disorder, respiratory disorders, and cardiac conditions);
- Any health condition that limits physical activity for an eight to ten (8-10) hour duration (i.e., orthopedic disabilities);
- Serious and persistent mental health illness (i.e., psychotic disorder);
- Mental health clinical staff shall screen for appropriateness;
- If CHS clinical staff feels that the inmate does not qualify for the work program because of obvious medical, dental, or psychiatric problems, it will be the responsibility of the nurse to document his/her reason for this decision in the inmate's electronic health record."

Staff Interviews

The Assessment Team interviewed the deputies and correctional services assistants who are involved in the selection of incarcerated person work crews and CWP workers (work coordinators), correctional service technicians who supervise



incarcerated person workers, work supervisors assigned to the laundry and kitchen areas.

A work coordinator stated that only abled bodied incarcerated persons are considered for job assignments. Incarcerated persons with disabilities are excluded from being considered for job assignments based on the medical screening process. Incarcerated persons being considered for job assignments must be cleared by medical staff. If an incarcerated person is requesting to be considered/placed into a work assignment position, they submit an incarcerated person message slip to the work coordinator. The work coordinator submits the list of incarcerated persons requesting placement into a work assignment to medical staff. The medical staff provides the list with the approval/denial of the medical clearance. The incarcerated person is then placed into an available work assignment and moved to the worker's housing unit/Mod. In cases where an incarcerated person advises staff or staff observe the incarcerated person cannot perform the essential functions of the work assignment; the work coordinator considers placing the incarcerated person on a "light duty" assignment if the incarcerated person wants to work.

A work coordinator stated she is not aware if incarcerated persons with disabilities can be assigned to a work assignment. She stated an incarcerated person requesting to be considered/placed into a work assignment position must submit an incarcerated person message slip. The incarcerated person is screened by medical and mental health staff. If the incarcerated person is cleared, they are moved to the worker's housing unit and placed into a work assignment.

Supervising cooks stated they do not receive any ADA related information for incarcerated persons assigned to the kitchen. They stated that the incarcerated person would have to advise them of their disability and accommodation needs. They stated in the event a disabled incarcerated person is assigned or notifies them of a disability or need for accommodations, they would attempt to accommodate the incarcerated person before advising the work coordinator.

A CST who supervises a paint crew stated he does not receive ADA related information for incarcerated persons who are assigned to his crew. He stated he selects incarcerated persons for his crew from the approved list after the medical screening and work coordinator screening process has been completed. Incarcerated persons requesting consideration to be placed into a work assignment position must submit an incarcerated persons message slip to the work coordinator. He stated in the event an incarcerated person advised him of a disability and accommodation need he would accommodate the incarcerated person. He stated in the past the incarcerated persons with disabilities (hearing and an incarcerated person that limped) were assigned to his paint crew.



Supervising CST's stated they do not receive ADA related information for incarcerated persons who are assigned to the work crews. They stated incarcerated persons are placed in the work crews list after the medical screening by the work coordinator. Incarcerated persons requesting consideration to be placed into a work assignment position must submit an incarcerated persons message slip to the work coordinator. They also stated in the event an incarcerated person advised them CST work supervisor of a disability and accommodation need they would accommodate the incarcerated person. They stated in the past, incarcerated persons with disabilities have been assigned to work positions; however, incarcerated persons who are housed in "Mod O" are not eligible to work.

A nurse who conducts the medical screening for work assignments stated the incarcerated persons with the following conditions would not be cleared for a work assignment based on policy:

- Seizures;
- Pregnant;
- Chronic Medical Condition; and
- Incarcerated persons with disabilities (mobility, hearing, vision, developmental).

A nurse at TLF stated incarcerated persons with disabilities are not medically cleared for work (work crew and CWP) if they have been identified as disabled.

A deputy that oversees the incarcerated persons that meet stated custody placement eligibility criteria are evaluated for placement consideration. If the incarcerated person meets eligibility criteria based on case factors and charges, they are screened for any in/out of county warrants. If the incarcerated person meets the eligibility screening criteria, they are screened by medical staff for medical clearance. A nurse that conducts the medical screening stated if the incarcerated person is identified as disabled, he/she cannot participate in the CWP. The CWP deputy stated he had identified specific assignments within the CWP that incarcerated persons with disabilities can be assigned to; however, unless medical staff clear the incarcerated person for participation, incarcerated persons with disabilities cannot be considered or assigned to the CWP. The CWP deputy provided a copy of the CWP Job Duty Reference Sheet for Medical that reflects the following:

- Vehicle/ boat maintenance:
 - Wash, wax, and vacuum patrol vehicles/ boats;
- Basic office administration:
 - Checking in visitors;
 - Sort, file, and shred paperwork;
- Occasional lifting items:



- Weight up to 50 lbs;
- Basic janitorial duties:
 - Sweeping;
 - mopping;
 - Removing trash;
 - Wiping windows;
 - **Dusting**;
 - Disinfecting office spaces and restrooms;
 - Painting;
 - Clean A/c vents;
- Operate basic power tools:
 - Construct and deconstruct furniture;
- Basic warehouse duties:
 - Stock shelves;
 - Assist in moving pallets of supplies;
 - Breakdown cardboard boxes;
- Outside/Landscape maintenance:
 - Raking;
 - Pulling weeds;
 - o Lawn mowing;
 - Use chain saw to cut down limbs;
 - Use of power washer;
 - Dig trenches/holes;
 - Move, setup, and break down table's chairs and tents; and
 - Use of a ladder.
- Laundry duties:
 - Load and unload laundry carts/washer and dryers;
 - Sort and fold laundry;
 - Stencil onto clothing;
- Firing range duties:
 - Move ammunition;
 - Sort and collect ammunition;
 - Load and unload paper and steel targets; and
 - Pick up brass casings.

The CWP deputy also provided a list titled "CWP Job Sites That Accommodate ADA Workers." The list includes the following:

- Theo Lacy:
 - \circ Visiting;
 - Laundry;
 - Shredding;
 - Newspaper organization;



- Main:
 - Stenciling;
 - Shredding;
 - Commissary:
 - Organization and packaging or small items;
- Supply:
 - Shredding.

The Orange County Sherriff's Department Community Work Program Inmate Information sheet includes the following question under the Americans with Disabilities Act (ADA) section of the sheet:

• Do you need reasonable accommodations to perform the essential functions of the job?

Incarcerated Person Interviews

Female incarcerated persons housed in P-13 stated they are willing to work; however, jobs are not offered to them. OCSD reported that several females housed in P-13 were precluded from work due to their classification level, not their disability status. One female was cleared to work, but she decided not to work. This was documented by ADA Compliance staff and CHS staff.

Male incarcerated persons with lower-level classification who are housed in Mod "O" (C and D) and Mod "O" at TLF stated, work assignments are not offered to them.

Conclusions/Recommendations

Incarcerated persons with disabilities housed in MOD O (CMJ and TLF) and Mod P-13 at CWJ do not have equal access to work assignments. OCJ must ensure that all incarcerated persons with disabilities have equal access to work assignments. OCSD reports that inmates with disabilities are now offered worker positions tailored to their individual ability level. Sabot will monitor this during the monitoring process.

CCOM Policy Section 1606 Inmates With Disabilities does not include work assignments as a program, services, or activity incarcerated persons with disabilities have equal access to.

The ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs do not include work assignments as a program, services, or activity available to incarcerated persons with disabilities.



The incarcerated person job descriptions produced by OCJ do not contain essential functions identified and listed; therefore, it is difficult to determine what jobs incarcerated persons with disabilities could be assigned to, based on their physical limitations and accommodation needs.

Medical staff excludes incarcerated persons with disabilities from consideration for placement into work assignments and do not identify duty restrictions that would assist staff when placing incarcerated persons with disabilities into work assignments. OCSD advised Sabot that CHS has implemented the practice of conducting assessments on individuals with disabilities and clearing them for appropriate work assignments. Sabot will monitor this during the monitoring process.

The CCOM Policies do not outline whether incarcerated persons with disabilities will be or can be excluded from any specific assignments based on their disability or other criteria. As mentioned above, the current practice does not require a listing of essential job functions for each respective incarcerated person work assignment position.

Although the custody CWP process has identified specific jobs and job sites that can accommodate disabled CWP workers and custody staff provide essential functions for job positions and custody staff conduct an inquiry into the incarcerated persons need for accommodations, medical staff is not approving an incarcerated person's placement into the CWP based on the incarcerated person's disability.

The CCOM Policies should be modified to provide language or references regarding equitable job opportunities and hiring practices between incarcerated persons with disabilities and non-disabled incarcerated persons.

The CCOM Policies should be modified to contain language or references regarding:

- Incarcerated persons with disabilities, reasonable accommodations or modifications, evaluation by appropriate medical staff for physical limitations (if any), and accessibility for incarcerated persons with disabilities in the workplace;
- Equitable hiring practices, or ensuring that incarcerated persons with disabilities are hired or considered for hire in all work areas available to non-incarcerated persons with disabilities;
- Work coordinators using clear hiring criteria;
- Staff avoid using hiring practices that screen out, or tend to screen out incarcerated persons with disabilities; and
- Essential job functions listed for each respective incarcerated person work position.



Work supervisors must ensure incarcerated persons with disabilities receive reasonable accommodations during their work hours (e.g., being allowed to stand periodically or folding laundry in a seated position).

When hiring practices are modified, incarcerated persons with intellectual disabilities assigned to work positions must be provided additional supervision and training to help them meet the requirements of the assignment, such as lower production expectations, expanded time frames for completion of projects, etc.

Medical staff must identify an incarcerated person's physical limitations and provide the information to custody staff to allow custody staff to place an incarcerated person into a position based on the physical limitations and essential functions of the position.



Effective Communication

<u>Standards / Best Practices</u>

The OCJ must either have a stand-alone comprehensive written Effective Communication (EC) policy, or appropriate EC language must be embedded within various existing OCJ policies as pertinent. A single stand-alone EC policy (or an EC section within a comprehensive disability program policy) is generally most effective and is recommended. Applicable OCJ policies/procedures must define EC, address the events or circumstances when EC is required, address how staff ensure that the incarcerated person understood the encounter or process, and how staff must document the information. The OCJ policies, procedures, and practices must help ensure that staff make all reasonable attempts to achieve EC for all circumstances. This includes daily or routine interactions between staff and incarcerated persons as well as for special processes, encounters and interactions whereas there is a heightened need to ensure EC.

For many incarcerated persons with disabilities there may be a barrier to overcome in order to achieve EC (e.g., deaf and/or hard of hearing, blind/vision, speech, intellectual/developmental, learning, and mentally disabled). Overcoming this barrier is important for all encounters, but it is obviously more vital for encounters that may involve healthcare, liberty interests, religious services, education, etc.

For routine daily encounters/interactions, staff must make reasonable attempts to communicate with the incarcerated persons with disabilities via an incarcerated person's preferred method of communication (if feasible), or via a secondary method if necessary. If a secondary method is utilized then it must be via a mode that works for the particular incarcerated person (e.g., written notes exchanged via paper and pencil). Daily or routine communications should not warrant documented proof of the interaction.

There is a higher standard for providing and achieving EC relevant to interactions or processes such as: clinical encounters (i.e., mental health, medical, or dental); due process events (e.g., classification processes, incarcerated person disciplinary processes, pre-release processes, parole processes, probation processes, grievance interviews [particularly if it involves a due process or healthcare or related issue], issuance of forms related to conditions of release or Notice of Charges, etc.); and for other types of activities such as education; library services; self-help groups (e.g., substance abuse programs, parenting classes, anger management, etc.); re-entry programs; and religious activities. For these types of encounters staff must communicate with the incarcerated person via his/her preferred/primary method of communication. For example, if a deaf and/or hard of hearing incarcerated person, or a person with a speech disability has been



identified as using American Sign Language, or Exact English (signing), or other sign language dialect as their preferred/primary method of communication, then staff must secure the services of an appropriate qualified on-site sign language interpreter (e.g., local contract provider), or via video remote interpreting. Likewise, if an incarcerated person's preferred/primary method of communication is lip reading, then staff must accommodate by speaking somewhat slowly and more pronounced. There are other types of communications that may be a particular incarcerated person's preferred/primary method, e.g., written notes exchanged, speaking in a louder voice tone.

It is important to remember the higher standard of EC must include: identifying an incarcerated person's disability (such as reviewing an ADA tracking list consisting of the identified disability and reasonable accommodation, adaptive support, or preferred/primary method of communication needs) whereas there may be a barrier to comprehension or communication and therefore a reasonable accommodation(s) may be necessary; providing a reasonable accommodation(s) that is effective to overcome the communication barrier; and documenting the EC. Documentation of EC must include the type disability. of accommodation/preferred/primary method of communication needed. accommodation/method of communication provided, and how the staff person determined that the incarcerated person understood the encounter, process, and/or proceeding. For example (hypothetically); for the disciplinary hearing, Sergeant A. Smith reviewed the ADA tracking list and determined that incarcerated person B. Johnson 987654 is identified as hard of hearing, is totally deaf in his right ear, wears a hearing aid in his left ear, and communicates via lip reading and speaking in a somewhat loud tone as his preferred/primary method of communication. It was noted that incarcerated person Johnson had his left hearing aid in during the hearing. Throughout the hearing I spoke in a somewhat loud tone and did so slowly to allow for lip reading. Based on the back and forth dialogue throughout the hearing I was satisfied that incarcerated person Johnson understood what we were discussing as well as the outcome of the hearing. Incarcerated person Johnson was able to articulate back to me in his own words his understanding of the hearing, what was discussed, the outcome, and his understanding of his grievance/appeal rights.

The OCSD and HCA CHS Policies, procedures, and practices must also outline a requirement to provide auxiliary aids (whether for daily/routine activities/interactions, or for special encounters) which are reasonable, effective, and appropriate to the needs of an incarcerated person when simple written or oral communication is not effective. Such aids that could be included into policy could include but not be limited to; qualified interpreters, readers, assistive listening devices, telephone amplification devices, captioned television/video text displays, video remote interpreting, video visiting, Telecommunication Devices for the Deaf



(TDD)/Teletypewriter (TTY), audiotaped texts, Braille materials, large print materials, and signage.

With regard to incarcerated persons with learning disabilities and/or those with literacy concerns, OCJ policy, procedures, and practices must ensure there is a general trigger (e.g., reading level) for purposes of querying the incarcerated persons for clinical encounters, due process events, and other key types of communications to identify any assistance that may be needed to ensure EC. Simply put, staff must identify what type of assistance may work for a particular incarcerated person, e.g., reading/writing, explaining in simple words or phrases, repeating sentences or phrases, allowing more time for an incarcerated person to gather his/her thoughts and respond/explain, etc. To obtain such information, staff must first refer to an OCJ list that identifies incarcerated persons with known intellectual/developmental disabilities, learning disabilities, and those with literacy concerns (e.g., reading level at 4.0 or below) to help identify potential communication barriers and/or understand the need to query the individuals to identify any assistance or accommodations needed to achieve EC. In the event OCJ does not have a particular incarcerated person on a list or does not have any available related information, staff must query the incarcerated person if the incarcerated person self-identifies, or if staff have reason to believe there may be a possible communication barrier or a possible intellectual/developmental disability, learning disability, or a potential literacy concern. Note: There will be additional specific related information pertaining to intellectual/developmental disabilities within the 'Intellectual Disabilities (Housing Unit Adaptive Supports)' section of this report.

28 CFR § 35.160 – General, (a)(1) states, "A public entity shall take appropriate steps that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others"; (b)(1) states, "A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity."

ADA Best Practices Tool Kit for State and Local Governments

Chapter 3

General Effective Communication Requirements Under Title II of the ADA

A. Providing Equally Effective Communication



"Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others.³ This requirement is referred to as *effective communication*⁴ and it is required except where a state or local government can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden."

"What does it mean for communication to be *effective*? Simply put, *effective communication* means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. This is important because some people have disabilities that affect how they communicate."

"How is communication with individuals with disabilities different from communication with people without disabilities? For most individuals with disabilities, there is no difference. But people who have disabilities that affect hearing, seeing, speaking, reading, writing, or understanding may use different ways to communicate than people who do not."

U.S. Department of Justice Civil Rights Division Disability Rights Section Commonly Asked Questions About The Americans With Disabilities Act and Law Enforcement:

V. Modifications of Policies, Practices, and Procedures:

23. Q: What types of modifications in law enforcement policies, practices, and procedures does the ADA require?

Example – "A department modifies the procedures for giving <u>Miranda</u> warnings when arresting an individual who has an intellectual disability. Law enforcement personnel use simple words and ask the individual to repeat each phrase of the warnings in her or his own words. The personnel also check for understanding, by asking the individual such questions as what a lawyer is and how a lawyer might help the individual or asking the individual for an example of what a right is. Using simple language or pictures and symbols, speaking slowly and clearly, and asking

³ Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. Part 35, § 35.160 (2005). The Department's Title II regulation is available at www.ada.gov/reg2.htm.

⁴ See Department of Justice Americans with Disabilities Act Title II Technical Assistance Manual II-7.1000 (1993). The Technical Assistance Manual is available at www.ada.gov/taman2.html.



concrete questions, are all ways to communicate with individuals who have intellectual disabilities."

Policies / Procedures and Document Review

CCOM Policy Section 1106.2 Staff/Inmate Communications, outlines the requirement for communication between staff and incarcerated persons. There is no specific Effective Communication language contained.

CCOM Policy Section 1606 Inmates with Disabilities. This addresses reasonable accommodations, auxiliary aids, and other key information in general, but there is no information specific to Effective Communication.

Observations

The OCSD or HCA CHS does not have a written EC policy, or specific EC language embedded within existing policies as appropriate. Specifically, there is no EC policy relative to daily encounters/interactions, healthcare encounters, due process events, or for other services or processes such as religious activities, education, prerelease/re-entry, substance abuse classes, or other key events or types of communications. There is not a comprehensive policy as pertaining to the requirement to ensure reasonable accommodations are provided for incarcerated persons with mental illness, intellectual/developmental disabilities, or learning disabilities (as well as other disabilities).

The Assessment Team observed many processes and interviewed many staff and incarcerated persons. Some of the processes observed to examine the provisions of EC included but were not limited to: intake booking (medical), intake/booking (mental health), intake/booking (classification), Case Management Team, medical, mental health, dental, the incarcerated person disciplinary process, and Inmate Services (Programs). Most staff who were observed did a good job communicating, but nearly all staff who were observed and/or interviewed admitted that they do not document EC, and many of the staff who were interviewed did not have lists of the incarcerated persons with disabilities or otherwise did not know whether the incarcerated persons had a disability or more importantly what their accommodation or preferred/primary method of communication was. Not knowing incarcerated person disability and accommodation information is the key problem with the majority of staff (from all disciplines).

Staff Interviews

As stated above, nearly all custody and non-custody staff who were interviewed at the CJX and TLF facilities acknowledged that they usually do not receive or have access to ADA lists showing disability and accommodation information. Most staff



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

indicated that they use patience or would if needed in order to ensure they communicate properly with incarcerated persons. Some of the classification staff stated that they have never had to provide effective communication to new arrivals during classification interviews, but would if they needed to, and would document the information into the electronic ITRAC system (miscellaneous notes or acknowledgment tab). One of the classification deputies indicated that he recently had to provide EC to a disabled incarcerated person and that he entered the information into ITRAC. However, when asked to show the Assessment Team the ITRAC notes, he was unable to remember the incarcerated person's name or booking number to look-up the information. None of the custody staff (as well as non-custody staff) have received adequate training regarding EC. Some staff are confused as to the meanings and differences between mental illness, intellectual disabilities, and learning disabilities, and their specific reasonable accommodation needs.

The Assessment Team interviewed three dentists and five registered dental assistants pertaining to EC. Information obtained from one of the particular interviews from one of the registered nurses include the following: When asked whether she or the other staff have any type of alerts that informs them that a particular incarcerated person-patient has a disability and EC concerns, one of the registered dental assistants stated, "I believe my supervisor has an alert to show who is due for dental work only". She admitted that other than the dentists, they do not have or use a tracking list that would indicate incarcerated person disabilities or reasonable accommodation, or EC needs. She stated that the dentists log EC information within the 'dental notes' folder within the TechCare system. When asked, she was unable to show me an example. If she becomes aware of a disability accommodation need, she tells the dentist verbally. She was not aware of the VRI process. She admitted that for the most part dental staff do not document EC provisions. She said added that they have provided accommodations via written notes back and forth with incarcerated personpatients. When asked whether she has had any ADA training, she responded "no."

One of the dentists who was interviewed provided related EC information: He receives some on-line training each year which includes some general ADA related training. He admitted he does not receive or possess a disability tracking list. He also indicated that if he detects a disability or communication concern then he would refer the incarcerated person for a medical or mental health evaluation, but he was unable to cite any specific occurrences where he submitted such a referral. When asked hypothetically about a deaf or hard of hearing incarcerated person-patient, he stated he has allowed incarcerated person-patients to read and write notes to communicate. But when asked, he could not recall any specific instances, or incarcerated person-patient names, numbers, or dates to produce to me for verification. He also mentioned that he would request through medical staff for a sign language interpreter but stated he has not had to use a sign language



interpreter or VRI services "because they were able to write." He stated none of the incarcerated person-patients requested sign language interpreter services. Regarding incarcerated person-patients with possible intellectual disabilities, he stated he would refer the incarcerated persons to healthcare services "so they can provide communications."

When the Assessment Team interviewed medical staff from the Intake/Booking area, staff stated that if during the medical intake screening process, a deaf and/or hard of hearing incarcerated person was being processed, they would provide a sign language interpreter, primarily a custody staff member The OCJ produced a Sign Language Report (1-23-20). The report reflects that the OCSD currently has seven staff receiving bilingual pay for American Sign Language interpreting. Of the seven staff, three are assigned to the OCJ facilities. In addition to staff being used to provide SLI services, the OCJ uses Video Remote Interpreting (mobile Apple telephone and VRS technology in the classification area) in addition to on-site contract services.

Incarcerated Person Interviews

- Incarcerated person housed at TLF stated he cannot hear the announcements on the intercom and public address system and custody staff do not provide face-to-face personal notifications;
- Incarcerated person housed at TLF stated he cannot hear the announcements and custody staff do not provide face-to-face personal notifications and he has to rely on the other incarcerated persons to inform him of the announcements;
- Incarcerated person housed in the CMJ who is deaf stated he was not provided an interpreter during the classification process and medical encounters; and
- Another Incarcerated person housed in the CMJ who is deaf stated he was not provided an interpreter during the classification process and medical encounters and staff communicate with him by writing even though his preferred method of communication is signing.

Conclusions/Recommendations

With few exceptions, the OCSD and HCA CHS staff are not documenting the provisions of EC for significant types of encounters (e.g., disciplinary process, probation or parole related processes, [even if only issuing documents/forms]), and other processes, whether EC has been provided or not. OCSD and HCA CHS must either incorporate a stand-alone comprehensive EC policy or incorporate necessary EC policy language into existing CCOM or CHS policies/procedures. Such policy/policies must articulate the separate requirements for



encounters/events or significant types of communications that rise to the level of a higher standard for ensuring and documenting the provisions of EC (e.g., incarcerated person disciplinary process, probation/parole related processes, grievance process, education, religious services, and healthcare encounters (to also include medical, mental health, and dental informed consent matters such as related dialogue and written authorizations), as well as for those types of communications that do not rise to the level of ensuring the higher standard (e.g., routine daily interactions where there is no treatment, or due process involved).

All staff must be trained regarding any new or revised related policies. This will help ensure that preferred/primary method of communication/reasonable accommodations are provided, and EC is achieved and appropriately documented (when necessary) for key communications/processes, such as healthcare encounters, due process events, etc. The Assessment Team also recommends that OCSD consider revising pertinent forms and documents to build-in EC areas to document EC provided, or revise relative policies/procedures to describe how the provisions of EC will be documented. Documentation of EC must include the type of disability, accommodation/preferred/primary method of communication needed, accommodation/method of communication provided, and how the staff person determined that the incarcerated person understood the encounter, process, and/or proceeding.

The OCSD and CHS must ensure staff are informed as to who the incarcerated persons with disabilities are and what their preferred/primary method of communication or reasonable accommodation needs are. Examples of types of staff or areas of the facilities where there is a need to access this type of information includes but is not limited to:

- ADA Coordinator (and ADA Team);
- Incarcerated person grievance staff;
- Classification staff;
- Incarcerated person disciplinary staff;
 - Staff issuing copies (e.g., initial);
 - Investigator or Hearing Sergeant;
 - Classification Sergeant (for disciplinary process);
- Medical staff;
- Mental health staff;
- Dental staff;
- Case Management Team staff;
- Inmates Services (programs) staff;
 - Including contract or county employees such as instructors/facilitators/volunteers;
 - Religious services staff;
 - Education staff (academic/vocational);



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- o Re-entry services staff;
- Substance Abuse staff; and
- Library staff.

The HCA CHS must ensure staff receive ADA training, to include EC related requirements, once related policies are developed/revised. HCA CHS must ensure healthcare professionals receive electronic alerts or are otherwise apprised of any EC required needs for incarcerated persons with disabilities prior to any healthcare encounters (medical, mental health, and dental). Other key staff/positions similarly must have access to the same information to ensure staff preparedness and that EC is provided (e.g., grievance staff, incarcerated person disciplinary staff, incarcerated person services staff, parole/probation staff or those who perform related duties). Health care professionals must be trained to understand the purpose of the VRI equipment and technology, and how to request or utilize the VRI service. Staff must also be trained to understand and provide EC to a disabled incarcerated person via his or her preferred/primary method of communication, and not rely on communicating through other means (with the exception of during an urgent or emergent situation whereas if would not be feasible. For example, if a deaf or hard of hearing patient's documented preferred/primary method of communication is sign language, then health care professionals must not communicate through other means, e.g., written notes back and forth, hand gestures, or otherwise, unless the incarcerated person voluntary waives that option, to which is must be documented. Staff must refrain from attempting to convince a disabled incarcerated person to communicate with them in a manner other than the incarcerated person's preferred/primary method of communication. Healthcare (and all other staff) must be trained to understand that it is not appropriate to simply refer an incarcerated person to the medical or mental health departments when there is an EC need for the encounter. Rather, staff must provide the EC, and it is not the respective incarcerated person's obligation to ask for his or her required accommodation (preferred/primary method of communication). In the event healthcare staff need to contact another department or staff member to secure VRI or VRS services then that is acceptable.



Incarcerated Person Grievances

Standards / Best Practices

One of the most important tools for any jail is the grievance process provided to incarcerated persons. It enables incarcerated persons to file complaints regarding conditions as well as events in the jail where the incarcerated person believes their rights are violated, including violations of the ADA and requests for accommodations. The grievance process must be a meaningful grievance process that seriously considers the validity of incarcerated person complaints.

28 CFR § 35.107(b) states, *Complaint procedure*. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

Policies / Procedures and Document Review

The policies and procedures that address ADA related grievances are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1600.5 Inmate Grievance Procedure, 1606 Inmates With Disabilities and HCA CHS Policies and Procedures 1013 Grievance Process.

CCOM Policy Section 1600.5 Inmate Grievance Procedure includes specific processes for ADA related grievances submitted by incarcerated persons housed in the OCJ's.

CCOM Policy Section 1606 Inmates With Disabilities addresses the process for incarcerated persons housed in the OCJ's to file disability discrimination allegations via the incarcerated person grievance procedure.

HCA CHS Policy Section 1013 Grievance Process addresses the general medical grievance process and does not include a specific process for disability related grievances.

CHS Guidelines for Handling Grievances includes specific guidelines for medical staff for handling grievances.

OCJ Custody provided eight grievances for the Men's Jail/Women's Jail. Of the eight grievances, two were disability related with one being a California Department of Corrections and Rehabilitation Form 2265 CJ Form Request for Reasonable Modification or Accommodation for Access to Housing and/or Program(s) in a County Jail.



OCJ Custody provided five grievances from the IRC and TLF. Of the five grievances, two were disability related with one being a California Department of Corrections and Rehabilitation Form 2265 CJ Form Request for Reasonable Modification or Accommodation for Access to Housing and/or Program(s) in a County Jail.

HCA CHS provided an Excel Spreadsheet "Medical Grievances New OCSD System" that includes grievances from 8/8/19 to 2/14/20. Information in the spreadsheet includes the synopsis and final narrative for 153 grievances. Of the 153 grievances 26 are disability related.

HCA CHS provided an Excel Spreadsheet "Medical Grievances Previous OCSD System" that includes grievances from 8/18/19 to 12/17/19. Information in the spreadsheet includes the synopsis and final narrative for 41 grievances. Of the 41 grievances four are disability related.

Observations

CCOM Policy Section 1600.5 Inmate Grievance Procedure states, "If the grievance is about a medical or disability issue, the sergeant will enter the grievance into the database and forward it to the facility administrative sergeant.

The administrative sergeant is the facility Americans with Disabilities Act (ADA) coordinator.

The administrative sergeant will forward medical grievances to the Correctional Health Services (CHS) administrative manager for resolution.

The CHS support services manager will notify the administrative sergeant at the facility where the grievance originated when the grievance has been resolved.

If the grievance is received from CDCR via ADA Compliance Staff.

The ADA Compliance deputy will obtain a Jail Incident Number from the 24-hour log where the incarcerated person is housed and enter the grievance in the database.

ADA Compliance deputy will reply to CDCR with a scanned copy of the grievance receipt from the system.

Receipt copies of the grievance will be provided to the inmate and the inmate's records file.

The grievance will be handled per CCOM 1600.5 and staff will involve CHS Medical and the facility Administrative Sergeant as necessary to address the grievance."



Additionally, the policy states, "Illiterate, disabled, or non-English speaking inmates shall be provided assistance, upon request."

CCOM Policy Section 1606.3 Disability Discrimination Allegations states, "Any qualified inmate with a disability who believes that he/she is the subject of disability discrimination should use the grievance procedure described in Jail Operations Manual 1600.5 and posted in all housing areas. The inmate must indicate in the box provided on the grievance form that the grievance is disability related. The grievance should be addressed to the facility Administrative Sergeant, who is the designated ADA coordinator for each facility."

CCOM Policy Section 1606.5(b) California Department of Corrections and Rehabilitation ADA Grievance Notifications states, "Pursuant to Federal Court Order, under Armstrong v. Brown, CDCR Parole/Notice Agents are required to ask Armstrong class members to self-identify any disability needs related to assistive devices, housing and programming. They will provide class members with a Reasonable Modification or Accommodation Request CDCR form and a selfaddressed, postage-paid envelope. CDCR Parole/Notice Agents inform Armstrong class members they can use the form to file a grievance if they believe they are not receiving assistive devices, housing or programming accommodations in the county jail. Upon receipt of a CDCR Grievance from an Agent of CDCR, OCSD, and more specifically the ADA Compliance Team will follow the processing outlined in CCOM 1600.5.

The OCJ custody provided the Assessment Team with the Sherriff Department Orange County Santa Ana, California Grievance/Appeal Form J190. The Grievance/Appeal Form has an area for the incarcerated person submitting the grievance/appeal to identify if the grievance is related to a disability. The OCJ custody provided the ADA related grievances submitted and responded to from November 1, 2019 to January 31, 2020. Some of the grievances produced were determined to not be ADA related. A detailed summary of the grievances determined to be ADA related are as follows:

- CMJ/CWJ Incarcerated person states she was in a non-ADA cell, had a difficulty using the restroom, and was not allowed use of a cane. The response states, "Upon reviewing your grievance, we have readdressed our policy and procedures regarding ADA housing on the booking loop and court transfer." The response was completed in 8 days;
- TLF Incarcerated person requested ADA accommodations (cane) due to a medical condition (CDCR 2275-CJ). The response states, "I/M was transferred to Mod O Sector 37 (ADA/WC compliant) and issued a cane on 1/16/20." No details included for response time;



- CMJ Incarcerated person states medical staff has not placed him in the appropriate housing area for his disability. The response states, "IM was seen by healthcare staff on 12/19/19 reference concern about access to shower. Deputy escort stated IM would be allowed daily shower. Housing concerns should be addressed through OCSD response. On 12/13/19, Deputy R. Miller, ADA Deputy, submitted the inmate's completed pink MMS slip to medical staff to address the issues with a provider. IM is housed in an appropriate housing location MJ F-29 (single-cell) due to his classification level (PC AH-legs/chains). He is also housed in a low bunk to accommodate his medical issue (arm splint). IM is able to perform all activities of daily living. Medical staff should have this addressed in a few days." No details included for response time; and
- CMJ Incarcerated person states, "I am grievance medical for not putting in medical housing or giving me a shower every day because my state of house. I am ADA and have a broken arm." No response was provided.

The Orange County Sheriff's Department Custody Operations, Inmate Orientation Pamphlet contains a section on the grievance procedures that informs incarcerated persons they can submit issues related to disability discrimination as an incarcerated person complaint/grievance.

Staff Interviews

The Assessment Team interviewed the grievance coordinators for the CJX facilities and the TLF facility. The grievance coordinators Administrative Lieutenant and Administrative Sergeant stated once an incarcerated person submits a grievance the staff member receiving the grievance places the grievance in the grievance lockbox or "hand" it to a sergeant. Sergeants remove the grievances from the lockbox once per shift. The sergeant conducts a review and if they are able to address and resolve the grievance, they "handle" it and enter the information (grievance issue and action/response) into the Grievance Tracking System. There are 22 categories which include:

- Attorney/Visiting;
- Cashier;
- CDCR;
- Classification;
- Clothing;
- Commissary;
- Conditions of Confinement;
- Programs;
- Dayroom/Recreation;
- Disciplinary;
- Food Services;



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- Transportation;
- Law Library;
- Mail;
- Medical;
- Pro Per;
- Property;
- Records;
- Religious;
- Staff Misconduct;
- Telephone; and
- Shower.

Screenshots of the OCSD Grievance data system reflect an ADA category. The data system also includes an area for staff to enter if the grievance is ADA related. If the grievance is marked as disability related, the grievance is forwarded to the Grievance Sergeant/Administrative Sergeant and the ADA Deputy. The grievances are typically responded to within seven to 30 days. If the incarcerated person is not satisfied with the response (sergeants' response) they can appeal the issue to the lieutenant level and if they are not satisfied with the first level appeal, they can appeal the issue to the 2nd level (captains' level). The grievance coordinators stated there is no method for them to be alerted if the incarcerated person who submitted the grievance requires accommodations to ensure effective communication when staff interview the incarcerated person or issue the copy of the grievance response. The only way staff would be alerted to the effective communication needs would be by identifying the accommodation needs during the interaction with the incarcerated person or the incarcerated person alerting staff. The grievance coordinators stated the Patient's Rights Advocacy may assist in providing accommodations to incarcerated persons during the issuance of the grievance response. The grievance coordinators stated the incarcerated person receives the grievance response via intra facility mail and in some cases, the ADA Deputy issues the grievance response to the incarcerated person. However, when interviewed, the CJX ADA Deputy stated the only grievance responses he issues to incarcerated persons are responses to the CDCR 1824 and CDCR/1175-CJ and grievance responses are issued to incarcerated persons by administrative staff. sergeants or deputies. The TLF ADA Deputy stated he issues the final copies to incarcerated persons with disabilities unless the issue pertains to medical or mental health.

The ADA Deputy stated, he provides the grievance coordinator/administrative sergeant information for the grievance response. For grievances submitted by CDCR Armstrong class members, he enters the grievances into the Grievance Tracking System, interviews the incarcerated person, coordinates the response with medical staff and issues the response to the incarcerated person.



About half of the housing unit officers interviewed stated they would not assist incarcerated persons in completing grievances. The officers stated they would direct the incarcerated person to programs, mental health, or the ADA Unit for assistance in completing the grievance.

Incarcerated Person Interviews

More than 50 percent of the incarcerated persons interviewed stated that they either did not know how to access the grievance process, other incarcerated persons informed them of the grievance process, or they needed assistance in completing and submitting grievances. These incarcerated persons also stated staff had not explained the grievance process to them and they had to rely on other incarcerated persons to explain the grievance process to them.

Conclusions/Recommendations

One of the most important tools for any jail is the grievance process provided to incarcerated persons in order to file complaints regarding conditions as well as events in the jail where the incarcerated person believes their rights are violated, including violations of the ADA. By providing incarcerated persons with a proper grievance process, the jail administration can resolve issues within the jail environment before the conditions or events lead to litigation. For the grievance process to be effective, incarcerated persons must be made aware of the process. Although the OCJ has adopted and published a grievance process, incarcerated persons claim they are not being made aware of the grievance process.

Although the CCOM Policy Section 1600.5 Inmate Grievance Procedure addresses "Emergency Grievances," disability related grievances should be included. There should be an expedited process for ADA grievances with specific timelines and processes.

The CCOM Policy Section 1600.5 Inmate Grievance Procedure does not include a process for interim accommodations to be provided for incarcerated persons during the time the ADA grievance is being processed and responded to.

Some incarcerated persons with disabilities may not have the ability to express themselves in writing and they will likely have difficulty with any task requiring reading or processing written material. In particular, they may have difficulty with the grievance process which requires reading and understanding. Accordingly, correctional staff is duty-bound to provide reading and writing assistance to incarcerated persons with disabilities who need assistance. Although, CCOM Policy Section 1600.5 Inmate Grievance Procedure requires Illiterate, disabled, or non-English speaking incarcerated persons be provided assistance with the



grievance process upon request, about half of the staff interviewed indicated they would not assist incarcerated persons with disabilities in accessing the grievance process. OCJ must ensure staff are trained in this requirement. Staff must ensure incarcerated persons with disabilities who require assistance can submit grievances and staff must provide the necessary assistance to all incarcerated persons with disabilities on a case-by-case basis to ensure those who have difficulty communicating in writing will be provided reasonable access to the grievance process. The right of meaningful access to grievance procedures is particularly important because an incarcerated person must exhaust the jails administrative remedies by complying with that procedure before he can access the courts.

Completed grievance responses are must be effectively communicated to incarcerated persons.

Consideration must be given to establish a request for reasonable modification or accommodations process separate from the grievance process for incarcerated persons who are requesting ADA accommodations and modifications to access the OCJ programs, services and activities.



Incarcerated Person Disciplinary Process

Standards / Best Practices

The OCJ must have policies, procedures, and practices in place to outline the requirements for ensuring due process rights are afforded to incarcerated persons/detainees during the incarcerated person disciplinary process. As part of these rights, disciplinary staff (i.e., staff who issue disciplinary reports, investigators, and hearing officials) must identify (e.g., through OCJ tracking lists) any disabilities where there may be a communication barrier (e.g., intellectual/developmental, learning, mental illness, deaf or hard of hearing, blind/vision, or speech). Staff must make all reasonable attempts to overcome any communication barriers and provide necessary reasonable accommodations/adaptive supports/preferred/primary method of communication. Likewise, involved staff must be able to reasonably identify any possible literacy concerns for incarcerated persons who are illiterate or having difficulties understanding and communicating during the disciplinary encounters. This can be done via a reading level list (e.g., reading level of 4.0 or below) or by generally querying incarcerated persons who don't appear to read/write and/or fully understand and communicate at a reasonable level. OCJ policies, procedures, and must also require staff to document the reasonable practices accommodations/preferred/primary method of communication/adaptive supports provided as well as any guery conducted along with any associated accommodations provided (e.g., extra time for the incarcerated person to listen, understand and communicate back to the hearing official: repeat phrases, spoke in simple language). Documentation must also include whether the incarcerated person understood the process/encounter, and how the staff member (e.g., hearing official) determined that the incarcerated person understood. There must also be a clinician consult process in place for mental health clinicians to be consulted during the incarcerated person disciplinary process (prior to the disciplinary hearing) whereas an assigned clinician reviews the circumstances of the misconduct/disciplinary report as well as the incarcerated person/detainee's present mental health or intellectual/developmental disability state and/or needs. The assigned clinician must provide his/her professional recommendations (e.g., whether the incarcerated person fully understood the nature of his/her actions at the time of the disciplinary charge and alleged actions) to the hearing official who in turn must at least give strong consideration to the recommendations prior to ruling on the charge and issuing any sanctions).

28 CFR§ 35.152(b)(1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be



subjected to discrimination by any public entity.

28 CFR § 35.130(b)(7) states that a public entity shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

U.S. Department of Justice Civil Rights Division Disability Rights Section Commonly Asked Questions About The Americans With Disabilities Act and Law Enforcement

II. Interacting with People with Disabilities

8. Q: What steps should officers follow to communicate effectively with an individual who is blind or visually impaired?

A: It is important for officers to identify themselves and to state clearly and completely any directions or instructions -- including any information that is posted visually. Officers must read out loud in full any documents that a person who is blind or visually impaired needs to sign. Before taking photos or fingerprints, it is a good idea to describe the procedures in advance so that the individual will know what to expect.

III. Effective Communication

11. Q: If the person uses sign language, what kinds of communication will require an interpreter?

A: The length, importance, or complexity of the communication will help determine whether an interpreter is necessary for effective communication.

- In a simple encounter, such as checking a driver's license or giving street directions, a notepad and pencil normally will be sufficient;
- During interrogations and arrests, a sign language interpreter will often be necessary to effectively communicate with an individual who uses sign language;
- If the legality of a conversation will be questioned in court, such as where <u>Miranda</u> warnings are issued, a sign language interpreter may be necessary. Police officers should be careful about miscommunication in the absence of a qualified interpreter -- a nod of the head may be an attempt to appear cooperative in the midst of



misunderstanding, rather than consent or a confession of wrongdoing; and

• In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.

18. Q: Procedures at my office require citizens to fill out forms when reporting crimes. What if the person has a vision disability, a learning disability, mental retardation or some other disability that may prevent the person from filling out a form?

A: The simplest solution is to have an officer or clerk assist the person in reading and filling out the form. Police officers have probably been doing this for years. The form itself could also be provided in an alternative format. Providing a copy of the form in large print (which is usually as simple as using a copy machine or computer to increase type size) will make the form accessible to many individuals with moderate vision disabilities.

V. Modifications of Policies, Practices, and Procedures

23. Q: What types of modifications in law enforcement policies, practices, and procedures does the ADA require?

A: The ADA requires law enforcement agencies to make reasonable modifications in their policies, practices, and procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved. There are many ways in which a police or sheriff's department might need to modify its normal practices to accommodate a person with a disability.

Example: A department modifies the procedures for giving <u>Miranda</u> warnings when arresting an individual who has mental retardation. Law enforcement personnel use simple words and ask the individual to repeat each phrase of the warnings in her or his own words. The personnel also check for understanding, by asking the individual such questions as what a lawyer is and how a lawyer might help the individual or asking the individual for an example of what a right is. Using simple language or pictures and symbols, speaking slowly and clearly, and asking concrete questions, are all ways to communicate with individuals who have mental retardation.



Policies / Procedures and Document Review

CCOM Policy Section 1112.1 Management Reports, outlines the requirement for Jail Operations Incident Reports/crime reports. Indicates disciplinary reports will be handled in accordance with current division policy.

CCOM Policy Section 1600.4 Orange County Jail Rules – Violation by Inmates, describes minor violations, major violations, the disciplinary process, and criminal conduct. There is no language regarding incarcerated persons with disabilities or Effective Communication.

CCOM Policy Section 1602 Discipline, identifies that incarcerated person misconduct will be documented, disciplinary hearing processes, sanctions may be imposed, and defines staff responsibilities. There is brief general language pertaining to incarcerated person assistance when incarcerated persons are illiterate, or the issues are complex. There is general information regarding interpreters (but not specific to sign language interpreters). There is no specific language pertaining to incarcerated persons with disabilities or Effective Communication.

Observations

The Assessment Team made several requests to observe the incarcerated person disciplinary process. Specifically, the Assessment Team requested to observe at least a couple of disciplinary hearings from each facility, and preferably regarding a mentally ill, intellectual disabled, learning disabled, blind/vision disabled, deaf and/or hard of hearing, or speech disabled incarcerated person. However, during the dates the Assessment Team was on-site, there were no disciplinary hearings scheduled for any incarcerated persons who fit the criteria. The Team also asked if we could observe the initial issuance (first copy of the disciplinary hearing for a non-disabled incarcerated person, if none were scheduled for a disable incarcerated person. Unfortunately, the Assessment Team was unable to observe any activity.

In reviewing the OCSD policies, there is no written language specific to providing or documenting Effective Communication (EC) for disciplinary proceedings. There is information regarding assistance to be provided when issues are complex and/or the charged incarcerated person is illiterate.

Staff Interviews

During the Assessment Team's interviews, the ADA Deputies acknowledged they do not review (for general knowledge purposes) the disciplinary reports or



disciplinary hearing summaries/results for incarcerated persons with disabilities. The ADA Deputies also stated (when asked) that there is no built-in mental health clinician consult as part of the incarcerated person disciplinary process for incarcerated persons with psychiatric or intellectual disabilities. The Assessment Team interviewed a Scheduling Sergeant and three Classification Sergeants between the various facilities. The designated Classification Sergeants oversee the disciplinary and classification processes. The OCJ currently uses the Automated Jail System. Misconduct actions are initially recorded on a jail Incident Report. Staff identified the following steps to the incarcerated person disciplinary process: A deputy or another staff member observes a rule violation.

Offenses may be construed as major or minor violations, and the violations are logged into the Sheriff's Data System (SDS). For minor violations the punishment (if found guilty) is generally a verbal reprimand. An OCJ deputy will first obtain a jail Incident Report log number from main control. The involved deputy then writes/types up a disciplinary report. Desk report log numbers are obtained for district attorney referrals as well as for outside medical referral cases. The typed disciplinary report is sent from the reporting deputy to the respective housing sergeant for review/approval. The deputy then fills out the Notification of charges form and serves a copy to the charged incarcerated person. There are no OCJ time constraint requirements for serving the initial copy to the charged incarcerated person. The deputy who issued the initial copy of the report to the charged incarcerated person then places the report in the locked 'Bin Box'. A Sergeant checks the bin box periodically throughout each shift. Once retrieved, the Sergeant will examine the report for dates and times. Mod or housing assignments, and time constraints (to conduct the investigative hearing). The charged incarcerated person has the right to waive the minimum of 24 hours to prepare for the hearing, but the hearing must take place within 72 hours from time of the occurrence. Upon receipt of the report (from the bin box) the respective Sergeant begins the investigation/hearing process. The Sergeant reviews the report and any supplemental reports or documentation, reviews photos and/or video footage, and interviews staff and incarcerated person witnesses. The Sergeant then fills-out the disciplinary hearing report inclusive of the findings and assessed penalties and places the completed disciplinary report (findings) in the unit 'discipline box' for the Classification Sergeant to retrieve. The Classification Sergeant (for the respective shift) checks the discipline box daily to ensure time constraints (i.e., 24 hours and/or 72 hours) are not missed for any reports. The Classification Sergeant reviews the housing unit Sergeant's investigation/hearing recommendations. The Classification Sergeant does not appear before the incarcerated person but is the one who provides the adjudication of the charged violation and ensures all time constraints have been met. He/she can affirm the findings or reduce the recommended penalty. The Classification Sergeant does not have the authority to dismiss the charge but can assess no penalty instead of a recommended assessed penalty. The Classification Sergeant operates under the guidelines of a



progressive discipline matrix. He/she then enters the findings into the Sheriff's Data System via an Inmate Advisement of Punishment form. This is also sent electronically to the respective Mod guard station printer, whereas A respective Mod deputy retrieves the form, serves it to the incarcerated person, and has the incarcerated person sign and date it. The charged incarcerated person's appeal rights are listed on the form. Of note is that there is not a built-in area within the form to document Effective Communication. The appropriate deputy places a signed copy (with incarcerated person signature) of the Advisement of Punishment form into the 'bin box' for retrieval by the Classification Sergeant. The classification Sergeant then initials the form, attaches it to the disciplinary packet, and hand delivers it to the Watch Commander. The Watch Commander reviews the entire packet and maintains final approval authority. The Watch Commander can dismiss the charges/findings or make any relative modifications to the charges or punishment in accordance with policy. The Classification Sergeant notes any adjustments made by the Watch Commander, and enters into the Sheriff's Data System, and ensures the charged incarcerated person receives a final copy. When asked, the Classification Sergeant acknowledged that there are no Effective Communication alerts, or tracking lists available for review which lists disabilities, reasonable accommodation needs, adaptive support needs, or preferred method of communication. Staff admitted that the respective housing Sergeant would have to know the particular incarcerated persons and provide any Effective Communication is the information is known. He indicated that hopefully incarcerated persons with disabilities with possible communication barriers would self-identify to staff during the disciplinary process.

The Classification Sergeant acknowledged there is not an OCSD requirement to document EC, and it is not being done with some rare exceptions. When asked whether there is a clinician consult process for disciplinary reports that involve incarcerated persons with psychiatric or intellectual disabilities, the classification Sergeant replied, "no."

Incarcerated Person Interviews

Very few of the incarcerated persons with disabilities who were interviewed had prior disciplinary actions taken against them. A couple of the incarcerated persons who had received prior write-ups indicated there is no EC or information provided at initial issuance. Another incarcerated person indicated that in the past he did not totally understand the proceedings or outcome of his hearing. Incarcerated persons interviewed provided the following information:

- Incarcerated person on the Developmentally Disabled tracking list who is housed in TLF stated he did not understand the disciplinary process and was not provided any staff assistance;
- Incarcerated person on the Developmentally Disabled tracking list who is housed in TLF stated he has received five misconduct reports and he did



not understand the disciplinary process and was not provided any staff assistance; and

 Incarcerated person on the Developmentally Disabled tracking list who is housed in TLF stated he has received three major misconduct reports and 10 minor misconduct reports. He stated he did not understand the disciplinary process and was not provided any staff assistance and was placed in disciplinary isolation for 10 days on one misconduct and 20 days on another.

Conclusions/Recommendations

The Assessment Team reviewed a small sampling of five disciplinary reports/hearing summaries for incarcerated persons with psychiatric or intellectual disabilities. Incarcerated persons with disabilities are not being provided EC during the incarcerated person disciplinary process. There is no documentation contained in the incarcerated person disciplinary report that EC was established. Specifically, there is no documentation regarding:

- Whether the respective incarcerated person has a disability affecting communication (e.g., hearing disability, vision disability, speech disability, learning disability, developmental/intellectual disability, or mental illness);
- What accommodation(s) were provided to ensure EC;
- Whether it was effective; and
- How the hearing sergeant determined it was effective.

Incarcerated persons with intellectual disabilities are being allowed to waive their time constraints during the incarcerated person disciplinary process (e.g., waiving their right to a minimum of 24 hours to prepare for the hearing). OCSD disciplinary staff at minimum must carefully explain this process to incarcerated persons with intellectual disabilities and articulate the provisions of EC (to ensure his or her understanding was knowing, voluntary, and intelligent) during this portion of the disciplinary process.

CCOM incarcerated person disciplinary related policies/procedures must have appropriate language incorporated regarding EC (or a stand-alone comprehensive EC policy for all areas/disciplines as applicable). There are several disabilities where there could easily be a barrier to communicating. It is essential staff involved in the incarcerated person disciplinary proceedings are aware of who the incarcerated persons with disabilities are and what their reasonable accommodations or preferred/primary method of communication is. This includes the deputy who issues the initial copy of the report, the sergeant who conducts the investigation/hearing, and the Classification Deputy who administers the findings. Staff must ensure EC is provided and documented at each phase of the process (from issuance of the initial copy to issuance of the final copy). The ADA Coordinator (or his team) should at least periodically review disciplinary reports



and hearing summaries of disciplinary reports for incarcerated persons to examine the provisions of EC throughout the process.

The OCSD and CHS must jointly incorporate a process for a clinical consult component to the incarcerated person disciplinary process. This should be in place for disciplinary processes for incarcerated persons with mental illness or intellectual disabilities. Consideration should be given to revising disciplinary report forms (or modifying a supplemental report) to ensure there are built boxes or space to write (type) EC information. This same recommendation exists for other types of documents outside the disciplinary process.



Incarcerated Person Orientation

Standards / Best Practices

Incarcerated person orientation is essential in advising incarcerated persons of services available (social services, recreation, grievances, etc.) in addition advising incarcerated persons of rules and regulations of the jail. The absence of an orientation process is problematic for many incarcerated persons with disabilities (whether they have been identified or not through disability evaluation/screening processes). It is important that incarcerated persons receive the necessary information that would enable them to know what services are available, to know how to seek assistance, and to learn what accommodations they may have access to and how to request accommodations they need.

Policies / Procedures and Document Review

The policies and procedures that address incarcerated person orientation are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1600 Orientation and Jail Rules and 7002.9 Transfers from Central Jail Complex.

CCOM Policy Section 1600 Orientation and Jail Rules includes the orientation process for new arriving incarcerated persons at the OCJ's.

CCOM Policy Section 7002.9 Transfers from Central Jail Complex includes the orientation process for incarcerated persons who transfer to the TLF.

CCOM Policy Section 1606 Inmates With Disabilities addresses the requirement for the ADA Deputy to provide a copy of the jail rules and correctional programs brochure to incarcerated persons with disabilities housed in the OCJ.

OCJ Custody provided the Orange County Sherriff's Department Custody Operations Inmate Orientation pamphlet. The pamphlet does not include information related to disabilities and accommodations other than the Inmate Grievance Procedures allow incarcerated persons to submit issues related to disability discrimination as an incarcerated person complaint/grievance.

OCJ Custody provided the Jail Orientation and PREA mp.4 (video). The video is both in English and Spanish and contains about 18 minutes of orientation information and seven minutes of PREA information. The orientation segment is also presented with sub-titles, however, the PREA segment is not presented with subtitles. The only disability related information contained in the orientation



segment is a reference that disability related discrimination can be submitted as grievances.

OCJ Custody provided a copy of the Orange County Sherriff's Department Custody Operations Inmate Orientation Brochure and the Acknowledgement of Telephone Recording and Receipt of the Inmate Orientation Pamphlet.

Observations

At the IRC the Assessment Team observed the entire intake, booking, medical and mental health screening, and housing (including "dress-in") process. On different dates and shifts, the Assessment Team observed numerous incarcerated persons go through the entire process from beginning to end. Additionally, the Assessment Team observed several other incarcerated persons go through various parts of the process, whether intake, booking, medical screening, mental health screening, or housing. Note: in many of the latter cases, Assessment Team representatives would alternate observing particular incarcerated persons go through each phase of the process, meaning several more of these incarcerated persons were observed through the entire process.

Orientation is conducted during the booking loop. The orientation video is shown in the holding cells as incarcerated persons are waiting for classification/housing placement, however, not all holding cells have a television to present the orientation. Of the 24 holding cells in the male booking loop, seven holding cells have a television. Of the seven holding cells that have a television, two of the televisions are inoperable. Of the two holding cells used for incarcerated persons with disabilities only one has a television. Of the eight holding cells in the female booking loop, three holding cells have a television. All of the televisions are operational. The one holding cell used for incarcerated persons with disabilities has a television.

The Orientation Video addresses the following:

- Smoking Prohibition;
- Jail Rules;
- Grievances;
- Contraband;
- Disciplinary Process;
- Classification;
- Inmate Message Slip;
- Intercom Use;
- Sick Call/Medical Message Slip;
- Court Appearances;
- Dayroom;



- Television;
- Outdoor Recreation;
- Visiting;
- Telephones;
- Mail/Legal Mail;
- Accounting/Funds;
- Clothing Exchange;
- Meals;
- Commissary;
- Religious Services;
- Inmate Programs/Re-Entry;
- Law Library;
- Recreational Reading/Games/Newspapers; and
- Office of Independent Review.

The orientation video is presented with sub-titles. The only disability related information contained in the orientation segment is a reference that disability related discrimination can be submitted as grievances.

Incarcerated persons are provided a copy of the Orange County Sherriff's Department Custody Operations Inmate Orientation Pamphlet during the intake/booking process at the IRC and TLF booking area during the classification process. The brochure addresses the following:

- Inmate Message Slip;
- Court Appearances;
- Classification;
- Visiting;
- Telephone;
- Mail;
- Indoor Recreation (dayroom);
- Outdoor Recreation;
- Obeying Staff;
- Rules and Regulations;
- Criminal Violations;
- Major Violations;
- Minor Violations;
- Contraband;
- Disciplinary Procedures/Major Violations;
- Grievance Procedures;
- Programs/Education/Re-Entry, and Activities;
- Religious Services;



- Food Services;
- Commissary;
- Inmate Property;
- Medical Request;
- Prison Rape Elimination Act;
- Financial (inmate account);
- Clothing/Linen Exchange;
- Intercom Use;
- Law Library;
- Hygiene Items; and
- Inmate Voting.

During the classification process, the Assessment Team observed classification staff having incarcerated persons sign the Acknowledgement of Telephone Recording and Receipt of the Inmate Orientation Pamphlet form.

The Assessment Team noted the CCOM Policy Section 1600 Orange County Jail Rules posted throughout each facility in the dayrooms and outdoor recreation areas. Some of the Mods at the TLF also had the Orange County Sherriff's Department Custody Operations Inmate Orientation Pamphlet posted in the Mods.

Staff Interviews

The Assessment Team interviewed deputies assigned to the intake, booking, and property area. The Assessment Team also interviewed custody staff. This included deputies from various housing units.

All deputies interviewed indicated incarcerated persons are provided incarcerated person Orientation during the booking process (video and pamphlet). Staff also indicated that incarcerated persons can read the Inmate Orientation Pamphlet that is posted throughout the facilities in the housing units and other areas. Some of the deputies mentioned they provide verbal orientation to incarcerated persons, however, this is not documented. Some staff stated they provide the rules of the unit or basic expectations (e.g., medical message slip, emergency button, grievances) and also refer the incarcerated person to the rules posted in the dayroom.

The ADA Deputy stated that during the face-to-face interview with the incarcerated person, the ADA Unit completes an ADA Inmate Interview Worksheet and ADA Inmate Qualifications Acknowledgement of Rights/Programs and provides the incarcerated person with a copy of the Orange County Sherriff's Department Custody Operations Inmate Orientation Pamphlet. The ADA Inmate Qualifications



Acknowledgement of Rights/Programs is used to document the incarcerated person's acknowledgement of receiving a copy of the OCSD Inmate jail rules.

The ADA Deputy stated he is in the process of developing and incorporating an ADA Information Brochure "Inmates with Disabilities" to be used to provide incarcerated persons with disabilities specific ADA information during the face-to-face interview with the incarcerated persons with disabilities. The ADA Information Brochure "Inmates with Disabilities" will include the following sections:

- Americans with Disabilities Act;
- Inmate Rules and Regulations;
- Searches;
- Service Animals;
- Access to Healthcare;
- Inmate Message Slip;
- Books/Library;
- Telephone Access;
- Inmate Services/Programs;
- Inmate Workers;
- Mobility Devices;
- Sign Language Interpreters;
- ADA Inmate Property;
- Prison Rape Elimination Act; and
- Disability Discrimination Allegation,

Incarcerated Person Interviews

During the incarcerated person interviews, about two-thirds of the incarcerated persons interviewed indicated they do not remember being provided orientation (pamphlet or orientation video). The incarcerated persons that stated they remember being provided orientation stated they were provided orientation information during the intake process (watched the video and were issued a pamphlet) or were provided with the pamphlet by the ADA Deputy. Some incarcerated persons claimed they had to rely on other incarcerated persons informing them about jail processes (grievances and medical).

Based on this the Assessment Team requested that OCJ provide the Assessment Team the Acknowledgement of Telephone Recording and Receipt of the Inmate Orientation Pamphlet form for 15 incarcerated persons that claimed they were not provided orientation information. Of the 15 incarcerated persons identified, and the Acknowledgement of Telephone Recording and Receipt of the Inmate Orientation Pamphlet form requested, the OCJ stated that no forms were available for four incarcerated persons. The OCJ provided the signed forms for four



incarcerated persons and OCJ staff stated the remaining incarcerated persons forms were not available due to their release from custody.

Conclusions/Recommendations

Although the ADA Unit conducts a face-to-face interview with some incarcerated persons with disabilities, the current OCJ orientation process including the face-to-face interview with the ADA Unit does not provide incarcerated persons with disabilities with specific information related the OCJ ADA policies and process. Although the ADA Unit meets with some incarcerated persons with disabilities and provides them with some information related to access to programs, services and activities it does not include:

- The purpose of the disability program;
- Availability of Title 15 and any pertinent existing and future disabilityrelated forms or materials (in accessible formats to incarcerated persons with disabilities);
- Reasonable modifications or accommodations available to qualified incarcerated persons, e.g., SLIs for due process settings (i.e., incarcerated person infraction hearings, notifications of charges, notices to appear) health care consultations, and classification interviews/processes;
- Information regarding access to staff assistance or scribes, availability of large print materials, and books on tape;
- The process of personal notification by staff for notification of announcements, visits, appointment or messages in the housing unit;
- Access to a TTY/VRS and volume control telephone;
- Access to a closed captioning television in the housing unit; and
- Information regarding emergency alarms, evacuations, announcements and notices.

Although the orientation video is presented with subtitles, incarcerated persons with disabilities at times will require additional formats to understand the orientation (video and pamphlet). Deaf and/or Hard of Hearing incarcerated persons may not be able to read the subtitles of the video, learning and intellectual incarcerated persons with disabilities may not be able to read the subtitles of the video or the pamphlet.

Not all holding cells have a television for the presentation of the orientation video. All of the holding cells must have a television for incarcerated persons to view the orientation video.

Effective Communication is not always being provided or alternate or accessible methods are not being used when presenting the incarcerated person orientation



materials or information. Title II Effective Communication (EC) regulation lists two requirements for EC. First, public entities must "take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." Second, public entities must "furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity."

Because a disabled incarcerated person's literacy level can impede his/her ability to use jail services, participate in jail activities or programs, and understand processes, the regulations implementing the ADA require public entities to take appropriate steps to ensure the communication of information concerning jail services, activities, and programs is as effective for the disabled as it is for the nondisabled. In doing so, the jail must provide such services as are necessary to afford an individual with a disability an equal opportunity to participate in jail programs and activities and to determine what services are necessary. Jail staff must give primary consideration to the requests of the individual. Only by providing EC can staff guarantee that incarcerated persons with disabilities have meaningful access to these proceedings.

Additionally, incarcerated persons with developmental disabilities may have poor ability to express themselves in writing and they will likely have difficulty with any task requiring reading or processing of written material. In particular, they may have difficulty with disciplinary, classification, orientation, and/or appeal processes that require reading and understanding. Accordingly, correctional staff are dutybound to provide reading and writing assistance to incarcerated persons with disabilities who need assistance. Staff must ensure notices, orientation, announcements, and similar printed materials are accessible to incarcerated persons with developmental disabilities.

In order for the OCJ to ensure incarcerated persons with disabilities are provided equal access to the orientation process staff must ensure the following:

- The incarcerated person orientation process must be comprehensive and provided in accessible formats;
- Incarcerated persons with a vision disability and deaf/hearing disability as well as those with learning disabilities must be accommodated with alternate forms of communication, e.g., verbal communication, video/audio presentation, and written material (large print), use of SLI, in order to ensure EC in presentation of the information;
- Staff must effectively communicate the contents of the Orange County Sheriff's Department Custody Operations Inmate Orientation Pamphlet and related materials to all incarcerated persons. This includes incarcerated persons who are Deaf and/or Hard of Hearing, blind or with a vision



disability and those for whom written language is not an effective means of communication;

- Staff may meet this obligation by providing a video of a qualified interpreter signing the contents of the Orange County Sherriff's Department Custody Operations Inmate Orientation Pamphlet, or by using on on-site interpreter or an interpreter through video interpreter services; and
- Appropriate technology for viewing the video must be utilized.

The following information should be incorporated as part of the incarcerated person orientation for incarcerated persons with disabilities:

- The purpose of the disability program;
- Availability of Title 15 and any pertinent existing and future disability-related forms or materials (in accessible formats to incarcerated persons with disabilities);
- The incarcerated person grievance process and location of the forms;
- Reasonable modifications or accommodations available to qualified incarcerated persons, e.g., SLIs for due process settings (i.e., incarcerated person misconduct hearings, notification of charges) health care consultations, and classification interviews/processes;
- Information regarding access to staff assistance or scribes, availability of large print materials, and books on tape;
- The process of personal notification by staff for notification of announcements, visits, appointment or messages in the housing unit;
- Access to a TTY/VRS and volume control telephone;
- Access to a closed captioning television in the housing unit; and
- Information regarding emergency alarms, evacuations, announcements and notices.



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

Alarms/Emergencies

Standards / Best Practices

The OCJ must have policies, procedures, and practices in place to ensure incarcerated persons with disabilities (e.g., mobility, deaf and/or hard of hearing, and blind/vision, speech, intellectual/developmental, learning, and those with missing digits/amputee) effectively receive housing unit emergency and nonemergency announcements, they are safely and effectively evacuated (when necessary), and they are provided reasonable accommodations during alarms and emergency situations (as necessary). Currently the OCSD does not have a policy or procedures in place regarding identification vests for incarcerated persons with mobility, vision, or hearing disabilities. However, through interviews with staff and incarcerated persons, there is a practice in place for incarcerated persons with hearing and vision disabilities to wear identification vests. The Assessment Team witnessed incarcerated persons wearing identified vests.

Staff must have a current ADA tracking list/roster (electronic or hard copy) of all incarcerated persons with disabilities (e.g., assigned housing units and cells/bed areas, work assignments, and education assignments, etc.) and their accommodation needs, including those with mobility disabilities or EC concerns. Special needs may include personal notification for hearing incarcerated persons with disabilities, or assistance provided to vision or incarcerated persons with mobility disabilities, or EC to ensure instructions/directions are understood, etc. Housing unit staff should also have a picture board or photos of all incarcerated persons with disabilities assigned to their respective housing units. This is highly recommended and may prove vital during emergencies, particularly with staff who are not familiar with the unit or with the incarcerated persons with disabilities housed in the units. Having the photos and/or tracking list(s) will help ensure staff (e.g., housing unit officers, work supervisors, and education instructors) are adequately prepared to provide non-emergency and emergency announcements and be able to effectively monitor/supervise incarcerated persons with disabilities during alarms, emergencies, and evacuations. Staff must be prepared to provide any accommodations as necessary or required. In the event the OCSD develops and implements an identification vest policy (e.g., for incarcerated persons with mobility, vison, or hearing disabilities), then housing unit officers must also ensure such persons are issued the vests as warranted, and that they are worn in conjunction with any new OCJ policy/procedural requirements (once implemented).

With regard to non-emergency announcements; policies, procedures, and practices must include specific requirements of staff. Examples for staff to use to facilitate non-emergency (or emergency) announcements may include public address system, flickering lights, electronic message signs, chalkboard/dry-erase board, and/or personal notification e.g., verbal face-to-face contact with incarcerated persons with disabilities. Staff must personally make all personal



notifications to incarcerated persons with disabilities whether the announcements are routine and/or non-emergencies, or whether the announcements pertain to alarms, emergencies and/or evacuations. Staff must not rely on other incarcerated persons to provide the information to incarcerated persons with disabilities.

Specifically, regarding alarms, emergencies, and/or evacuations; staff must ensure all incarcerated persons with disabilities are aware of relevant emergency/evacuation policies/procedures or rules, including location of evacuation maps/instructions, and that such posted material is accessible for reading, understanding, and in alternate formats (as necessary). Staff must ensure incarcerated persons with disabilities are knowledgeable as to whether they (incarcerated persons) are required to sit or stand-in-place during an alarm; and whether the incarcerated persons are required to return to their assigned cells/bed areas or to other central locations during alarms. Staff must be knowledgeable as to emergency or evacuation practices, and how to effectively alert incarcerated persons with disabilities {e.g., notifications via public address system, and/or conduct personal notifications at the cell doors/bed areas (or both). Staff must also know whether to individually release/escort incarcerated persons with disabilities prior to releasing/escorting non-disabled incarcerated persons. This will ensure proper assistance, adequate time for movement, and safe evacuation, This will also avoid releasing/escorting incarcerated persons with disabilities first and provide any necessary assistance at the time of release/escort of all incarcerated persons and simply ensure they are moved safely and accommodated as necessary.

For count time purposes, the OCJ must have policies, procedures, and practices in place to ensure incarcerated persons with disabilities who may need prompting and/or special accommodations to abide by count time requirements receive such assistance from staff, or special allowances as necessary (e.g., wheelchair users and other incarcerated persons with a mobility disability may not be able to stand for a 'standing count' requirement).

Policies / Procedures and Document Review

CCOM Policy Section 1600.2 (h), Orange County Jail Rules (Count), cites brief requirements pertaining to incarcerated person count. OCJ does not use standing counts.

CCOM Policy Section 1600.3 (h), Orange County Jail Rules (Emergencies), cites brief relative information. There is no language pertaining to incarcerated persons with disabilities.

CCOM Policy Section 1606.2 Inmates with Disabilities (Programs and Services), contains brief general language regarding emergency evacuation plans and drills.



CCOM Policy Section 1719,1 Count Overview, contains general language regarding incarcerated person counts and emergency counts. OCJ does not require standing counts.

Observations

The Assessment Team was unable to see any real-time evacuations, alarms or critical public address announcements within any of the housing units. Though they were spot-checked at various housing units at the CJX and TLF facilities, there were evacuation notices posted for incarcerated person viewing.

Staff Interviews

Numerous custody staff were interviewed regarding emergencies, evacuations, and announcements. Several deputies stated that during alarms, incarcerated persons are expected to lay on the ground in a prone position on their stomachs. However, as a reasonable accommodation, incarcerated persons with disabilities (e.g., those with a mobility disability) are permitted to squat, stand-in-place, or otherwise stand out of the way of the incident or away from staff response movement. Regarding housing unit announcements, one of the housing unit Mod deputies stated housing unit announcements are made via the intercom system (speaker inside the cells). He indicated that in the past when needed for incarcerated persons with literacy or disability concerns, he has met with them at their assigned cell doors, and has also provided announcement information via face-to-face conversations, and has even communicated information through written notes. With regard to alarms, staff reportedly afford incarcerated persons with disabilities (e.g., mobility disability) any necessary accommodations or allowances if they are unable to maneuver to the ground. For evacuations, primary and secondary evacuation routes are posted in the housing units. All of the staff interviewed stated that they would provide assistance to incarcerated persons with disabilities as needed. When asked whether there is any verbal information provided to incarcerated persons (e.g., disabled incarcerated persons) regarding evacuations, all staff stated, "no." When asked a hypothetical scenario regarding a housing unit evacuation; the housing unit deputy stated staff would push incarcerated persons in their prescribed wheelchairs during evacuation movement (and during other times as needed). He also added that incarcerated persons could be summoned to help push the wheelchairs during evacuations if needed.



Incarcerated Person Interviews

Though relative questions were asked, none of the incarcerated persons who were interviewed had any concerns in this area.

Conclusions/Recommendations

The Assessment Team did not have the opportunity to observe any evacuations, alarms, or significant announcements. Therefore, the Assessment Team did not observe any specific concerns in this area. However, as stated in other sections of this report, there are noted concerns regarding some staff being unaware of disabled incarcerated persons who have specific reasonable accommodation or preferred method of communication needs. The obvious concern here is that during an alarm or emergency this lack of knowledge or readily available information could prove problematic and jeopardize the safety of disabled incarcerated persons. Also, at issue is that some incarcerated persons have difficulty discerning public address announcements which could also become a serious safety issue during alarms or emergencies. Again, staff must be knowledgeable as to who these persons are or how to guickly identify them and ensure they receive pertinent alarm or emergency information as applicable. As such, it is important to ensure staff have lists/rosters (whether electronic or hard copy) listing the disabled incarcerated persons (especially mobility, blind/vision, deaf and/or hard of hearing, and intellectual disabled) and their specific reasonable accommodation, preferred method of communication, or adaptive support needs. This is especially critical during times of emergencies. As such, the Assessment Team highly recommends that OCSD institute OCJ Disability Program binders for each housing unit designated to house any incarcerated persons with disabilities (e.g., mobility, learning, speech, blind/vision, deaf/hard of hearing, intellectually disabled). The binders will be very helpful to staff for all incarcerated persons with disabilities for several reasons, and they would certainly be valuable in the event of an emergency situation or if there were an evacuation. Binders should contain at least the following: tracking list inclusive of incarcerated person names/numbers, cell/bunk numbers, and reasonable accommodation/preferred/primary method of communication/adaptive support needs. There are additional recommended items for the binders (as detailed in the ADA Coordinator section of the report).

CCOM policy/procedure language should at least contain brief but clear information for staff to be aware of their disabled incarcerated persons, their specific accommodation needs, and to assist them during emergencies e.g., evacuations or mass movement. The Assessment Team recommends the OCSD develop and implement a policy regarding identification vests for incarcerated persons with mobility, vision, and hearing disabilities.



Mechanical Restraints/Searches/Count

Standards / Best Practices

Incarcerated persons with disabilities that cannot be restrained, searched or counted using the standard methods/processes must be provided reasonable accommodations.

Policies / Procedures and Document Review

The policies and procedures that address application and use of mechanical restraints, incarcerated person searches and count are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 1800.3 Security Restraints, 9000.2 Transportation of Inmates, 1710.4 Body Searches of Inmates, 1719 Inmate Counts, and 1600.2 Orange County Jail Rules.

CCOM Policy Section 1800.3 Security Restraints addresses the restraint procedures for OCJs.

CCOM Policy Section 9000.2 Transportation of Inmates addresses the restraint procedures for OCJs during transportation.

CCOM Policy Section 1710.4 Body Searches of Inmates addresses the search (clothed and unclothed) procedures for OCJs.

CCOM Policy Section 1719 Inmate Counts addresses the count procedures for OCJs.

CCOM Policy Section 1600.2 Orange County Jail Rules addresses the rules and requirements for incarcerated persons during count and do not contain specific accommodations for incarcerated persons with disabilities.

CCOM Policy Section 1800.5 Restraint Chair addresses the policies and procedures for the use of the restraint chair.

HCA CHS Policy Section 8610 Pro-Straint Restraint Chair addresses the medical related processes for the application, assessment and removal of the Pro-Straint/Restraint Chair.

HCA CHS provided Course Completion History for training course "Pro-Straint Restraint Chair." The history report reflects 91 medical staff completed the on-line training.



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

Observations

All of the aforementioned CCOM Policy Sections and HCA CHS Policy Sections are silent regarding accommodations for incarcerated persons with disabilities during the application of restraints, searches and count. There is no information regarding accommodations for incarcerated persons with disabilities (including those with prosthetic limbs), such as those incarcerated persons whose disabilities may prevent the application of restraint equipment in the ordinarily prescribed manner or Deaf and/or Hard of Hearing incarcerated persons who require use of their hands for signing. Reasonable accommodations must be applied in these instances as warranted. There is no policy or procedure verbiage with respect to mechanical restraints being applied to ensure effective application while reasonably accommodating the incarcerated person's disability.

None of the policy sections contain procedures for custody staff to follow relative to incarcerated persons with disabilities during the pat-down or strip search process. There is no information pertaining to incarcerated persons who use wheelchairs and/or who have severe mobility disabilities and are unable to perform standard strip search maneuvers to be afforded reasonable accommodation to ensure a thorough search.

None of the policy sections contain information or direction to staff relative to prosthetic devices, dental plates, or other removable items. There is no language pertaining to modifications for pat-searches or strip-searches, for incarcerated persons who have a disability (mental or physical) that prevents the employment of standard search methods.

None of the policy sections contain procedures as to what to do in the event an incarcerated person does not voluntarily remove or relinquish his/her prosthetic device during the unclothed body search process.

None of the policy sections contain procedures for incarcerated persons with disabilities who cannot stand for the incarcerated person counts.

None of the policy sections contain any language pertaining to incarcerated persons with disabilities, or prosthetic limbs, or directions for custody staff to follow regarding application of restraints on an incarcerated person with a prosthetic limb prior to being placed in a Restraint Chair.

The Assessment Team did not observe any physical restraints being actively applied to incarcerated persons, searches of incarcerated persons, or incarcerated person counts.



Staff Interviews

Most of the deputies interviewed were not aware of any specific procedures pertaining to special accommodations for incarcerated persons with disabilities during the search, restraint, and count process. However, most deputies indicated they would conduct searches in a separate setting (except during emergencies), would preserve the incarcerated person's dignity, and solicit assistance from medical staff. Most of the staff indicated they would accommodate incarcerated persons as necessary (e.g., using a chair next to the wheelchair to transfer back and forth during the search process, allow the incarcerated person to sit during count, etc.).

Incarcerated Person Interviews

During the incarcerated person interviews all incarcerated persons stated they have not experienced any issue with being accommodated during the application of restraints, during count, and during the search process.

Conclusions/Recommendations

Although staff state incarcerated persons with disabilities would be accommodated during the application of restraints, searches and count, the CCOM policy sections do not provide directives for staff when restraining, searching and conducting count of incarcerated persons with disabilities (including those with prosthetic limbs) to ensure the required accommodations are provided.

It is essential directives be incorporated into the CCOM and training, and staff are trained on the requirements. The CCOM should include language regarding incarcerated persons with disabilities and information relative to accommodations for incarcerated persons with disabilities (including those with prosthetic limbs), such as for those incarcerated persons whose disabilities may prevent the application of restraint equipment in the ordinarily prescribed manner and language that incarcerated persons will be provided reasonable accommodations as warranted.

CCOM language should articulate that when applying mechanical restraints staff must ensure effective application while reasonably accommodating the incarcerated person's disability.

CCOM should include procedures for custody staff to follow in the event an incarcerated person does not voluntarily remove or relinquish his/her prosthetic device during the strip search process.



CCOM should contain information for staff to follow relative to incarcerated persons with disabilities (including wheelchair users, and those with prosthetic limbs, etc.) during the clothed body search process.

CCOM should contain information pertaining to incarcerated persons who use wheelchairs and/or who have severe mobility disabilities and are unable to perform standard strip search maneuvers to be afforded reasonable accommodation to ensure a thorough search.

CCOM should contain information pertaining to accommodations for Deaf and/or Hard of Hearing incarcerated persons whose preferred/primary method of communication is sign language, so they are restrained in a manner that allows them use of their hands to communicate.



Release/Discharge/Transfer

Standards / Best Practices

There must be policies, procedures and processes in place for the disposition of incarcerated persons with disabilities prescribed health care appliances/assistive devices/durable medical equipment upon their release and transfer from the OCJ to ensure the incarcerated persons' accommodation needs are being met. Specifically, the OCJ must have policies, procedures, and practices in place to ensure the following:

- Coordination efforts exist between classification, medical, transportation, and OCJ release staff to ensure incarcerated persons with disabilities are identified in a manner that would be apparent to transportation and release/discharge staff as well as staff who work at receiving facilities (e.g., county jails, state prisons);
- Release/discharge/transfer/transportation staff review ADA tracking lists that contains the names of incarcerated persons with disabilities and their identified owned or prescribed assistive devices;
 - Staff confirm owned or prescribed assistive devices;
- Pertinent staff review a disabled incarcerated person's OCJ personal property documentation prior to release/discharge/transfer;
- The proper release/discharge/transfer process for incarcerated persons with disabilities that ensures retention of their owned or prescribed assistive devices (as applicable);
 - Inclusive of a verification (or checks and balances) process that incarcerated persons with disabilities are being released with their owned or prescribed assistive device;
- Prior to being released or discharged, incarcerated persons with disabilities with assistive device needs should be issued or provided replacement assistive devices (when necessary) from excess OCJ stock or from outside charities (prior to being released);
- Pertinent staff are aware of all authorized areas designed to store assistive devices, e.g., property room(s), and lost and found, etc.;
 - Note: Such areas must not be used for the purpose of storing confiscated or removed assistive devices that were not done so via authorized means with corresponding supporting documentation as to the reason(s) why;
 - If confiscation or removal was authorized, then medical staff must issue an alternate assistive device.



Policies / Procedures and Document Review

CCOM Policy Section 1300.2, Court Transfer Guard Station/Departure, cites the requirements pertaining to court transfers. There is no language pertaining to incarcerated persons with disabilities or those with assistive devices.

CCOM Policy Section 1300.3, Transportation Deputies, cites the requirements pertaining to transfer and movement of incarcerated persons. There is no language pertaining to incarcerated persons with disabilities or those with assistive devices. The policy sites that "special housing" incarcerated persons will be loaded last and will be secured in security compartments in the front of buses or front seat in the passenger compartment in vans.

CCOM Policy Section 1300.4, Inmates Returning from Court, cites the requirements pertaining to incarcerated persons who are being returned from court. There is no language pertaining to incarcerated persons with disabilities or those with assistive devices. The policy sites that "Females and Special Housing" incarcerated persons will be loaded removed from the vehicles before general population court incarcerated persons.

CCOM Policy Sections 1400.1, Pre-Release Release File Preparation and Property Retrieval, and 1400.2 Inmate File Preparation, cite the process regarding the pre-release process and file preparation. There is no language pertaining to incarcerated persons with disabilities or assistive devices or relative to a list of those incarcerated persons and assistive devices (only personal clothing items).

CCOM Policy Sections 1400.3 Release Out of Custody cites the process regarding release process, including personal clothing/changing clothing, incarcerated person signing the clothing form, inventory of the incarcerated person's property, and verification of the incarcerated person's identity. There is no language pertaining to incarcerated persons with disabilities or assistive devices or relative to a list of those incarcerated persons and assistive devices (only personal clothing items).

CCOM Policy Sections 1400.10 Final Release Transaction (Computer) cites the Release procedures for the Release Guard station and Court Transfer Station to use. There is no language pertaining to incarcerated persons with disabilities or assistive devices or relative to a list of those incarcerated persons and assistive devices.

CCOM Policy Sections 1400.12 Release of Clothing and Property, cites relative clothing and property procedures for the release Guard Station and visiting guard station staff to follow. There is no language pertaining to incarcerated persons with disabilities or assistive devices.



CCOM Policy Sections 1606.4 ADA Procedures, provides language relative to staff providing reasonable accommodations (including accessible cells) during the release process.

CHS Policy 5017 Hold Upon Release for Health Care Services, provides language relative to CHS clinical staff utilizing a *Notification to Hold Upon Release* form to communicate to OCSD personnel that an inmate should be held upon release to coordinate health care, including releasing with durable medical equipment.

Observations

The Assessment Team interviewed staff members from the Transportation Unit, deputies, CSAs/CSTs who work the release process, and medical staff. The Team also observed the release process at the Central Men's Jail and at TLF. During the release observations, there were no incarcerated persons with mobility disabilities who were prescribed a health care appliance/assistive device. The Assessment Team also had the opportunity to observe the transportation process at the IRC. However, there were no incarcerated persons with mobility disabilities nor any who otherwise may have needed assistance entering or exiting a transportation vehicle.

During the TLF release process, three deputies conducted the release. Unlike the process at the IRC (where it was a collaborative effort between healthcare/Case Management staff and custody release staff) there were no healthcare staff present during the actual release process. Although staff did explain that although Case Management/healthcare staff are not involved at the actual time of release, they are involved in the process leading up the release dates of those incarcerated persons being released. The release process was conducted at the Release Bubble. Pre-release packets (plastic bags) were made and ready for distribution upon incarcerated person release. As each incarcerated person was called up to an individual window (sent either individually or with another incarcerated person of the same or similar classification status) a release deputy asked pertinent questions to each incarcerated person, confirmed their identity, examined their county issued identification cards, and took their photographs. Each incarcerated person signed several forms. Release deputies handed each incarcerated person a packet and informed them not to open the contents until after they departed the release area.

The Assessment Monitor noted some discrepancies regarding incarcerated person owned health care appliances/assistive devices that were observed sitting in the TLF Mod I Property Bulk Storage Room. Please refer to the section of this report titled, 'Delivery, Repair, Removal, and Use of Health Care Appliances/Assistive Devices/Durable Medical Equipment/Medical Supplies' for specific detailed information.



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Staff Interviews

Following the conclusion of the incarcerated person release process, the Assessment Team interviewed all three staff members who performed the incarcerated person TLF release process. Staff explained the release order protocols as follows: The first step in the process is records staff produce printouts of those incarcerated persons scheduled for release to the Mod deputies and release deputies. Healthcare staff assist in preparing the release packets for the release staff. Some of the information provided by the Case Management Team as part of the release packet and information includes; client release guide, information regarding social services, Social Security Administration, veteran's services, public defender's office, Novel Coronavirus, Medi-Cal, contact information to community clinics, behavioral health information links, housing resources (e.g., emergency shelters, Salvation Army, Domestic Violence Woman's Shelter), homeless, sober living, various benefits resources, disability services (healthcare), behavioral health programs, alcohol and drug out-patient programs, free food pantries, Project Kinship, and other miscellaneous information. The packets also contain booking and other custody information. Staff explained that personally owned health care appliances/assistive devices that were previously swapped out (per medical staff instructions) for county owned devices at the time of arrival (and stored in the Mod I bulk storage room) are then retrieved by the clothing room CST and taken to the release staff prior to the release process each day (as applicable). When asked about providing disability identification, reasonable accommodations, and providing EC during the release process (for incarcerated persons with disabilities who have or may have a communication barrier), staff stated the following: they would be able to identify incarcerated persons with a vision disability and deaf and/or hard of hearing- incarcerated persons from their assigned vests that they wear. They explain the release process and all related information to the incarcerated persons. The Assessment Team interviewed a clothing room CST. He pulls the pre-release roster electronically, pulls the respective incarcerated person clothing cards (property cards), and retrieves any incarcerated person owned health care appliances/assistive devices from the TLF Mod I property bulk storage room (there is a similar process at the main jail). When asked (hypothetically) what would happen if an incarcerated person owned a health care appliance/assistive device, and it could not be located at the time of release? He stated that the county would immediately give the incarcerated person a county owned device.

The Assessment Team interviewed Project Kinship staff (county contracted staff). Two behavioral health clinicians worked a three-person booth outside the perimeter of the facility during the release process. A total of three behavioral health clinicians work the Project Kinship release process. The clinicians explained that eligibility for the Project Kinship program stems from Proposition 47, and it's a voluntary program for the incarcerated persons. Incarcerated persons



released to CDCR parole status are not eligible for the program, as CDCR has their own similar programs. Specific programs and resources pertain to mental health, substance abuse, and others. The assigned behavioral health clinicians described themselves as 'middle persons' in the process. They conduct screening and provide relative program information to the incarcerated persons. The behavioral health clinicians obtain release dates ahead of time for OCJ incarcerated persons with mental illness (from the mental health department). The respective assigned Mental Health Case Managers screen incarcerated persons for program eligibility. Qualifiers for the program include mild-to-moderate mental illness and/or those with substance abuse problems. Those with outside housing needs are also considered for the program. Note: Prior to the COVID-19 pandemic, the behavioral health clinicians conducted pre-screening of eligible incarcerated persons and spoke to them at that time (prior to their release dates). However, currently (during the COVID-19 pandemic) the behavioral health clinicians interview the incarcerated persons as they are released and walk out of the jail. The behavioral health clinicians read related material to the released incarcerated persons and provide any needed explanations to them.

Conclusions/Recommendations

With one major exception, the Assessment Team was impressed with the release process at the IRC and TLF. The prior planning, collaboration between Case Management/healthcare, and the release deputies and the CST is impressive. The packet/discharge planning information that is provided is extremely useful, and the on-site Project Kinship staff (as well as other groups) are very helpful and knowledgeable. There are two recommendations: 1) Release staff need to have a list (electronic or hard copy) available to them to include the incarcerated persons with disabilities and their specific accommodation or preferred/primary method of communication needs (EC needs) as well as to identify which incarcerated persons have health care appliance/assistive device, and 2) there should be continuity between all facilities as to how the process is organized (e.g., Case Management on-site with custody staff at the actual time of incarcerated person release). The major concern is that incarcerated persons are being discharged/released without their personally owned health care appliance/assistive device (e.g., wheelchair, walker). This must be corrected and closely monitored. Subsequent to the onsite assessment and draft report, OCSD advised that Assessment Team that OCSD believes it is possible that some incarcerated persons may deny having a personal assistive device stored because they wish to leave with the county-issued device, which they are allowed to keep. CHS indicates that CHS Policy 5017 Hold Upon Release for Health Care Services addresses this issue and the Notification to Hold Inmate Upon Release form has been revised (subsequent to the onsite assessment) and is used to communicate with OCSD. This issue will be examined closely during subsequent monitoring tours.



Transportation

Standards / Best Practices

Based on the severity of their disability, incarcerated persons with disabilities may require accommodations to access the transport vehicle and during the transport. The accommodations include assistance in accessing the transport vehicle, use of prescribed HCA/DME/AD, and use of an ADA accessible transport vehicle.

Policies / Procedures and Document Review

The policies and procedures that address incarcerated person transportation processes are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Section 9000.2 Transportation of Inmates.

CCOM Policy Section 9000.2 Transportation of Inmates addresses the transportation procedures for OCJ incarcerated persons.

OCJ Custody provided a pdf copy of OCSD Transportation Bureau Mobility Impaired Transport Log October 1, 2019 through December 31, 2019. The log reflects 658 mobility-disabled transports to the following activity types:

- Medical;
- Courts;
- Hospital-appointments; and
- Swimmers. (Intra Facility Transfers).

Observations

During the time of the assessment, there were no incarcerated persons with disabilities being transported, therefore, the Assessment Team did not observe the transport loading/unloading process of incarcerated persons with disabilities.

The Assessment Team inquired about the vehicles used to transport wheelchair users. There are currently two vehicles used to transport incarcerated persons with disabilities that require an accessible transfer vehicle. Vehicle #2231 can accommodate one wheelchair user with additional seating area for three incarcerated persons, vehicle #2034 can accommodate one wheelchair users with additional seating area for six incarcerated persons. The transport vehicles have a wheelchair lift and required safety straps/belts for securing the wheelchair and incarcerated person during the transport, and they appear to meet safety and ADA regulations.



A review of the OCSD Transportation Bureau Mobility Impaired Transport Log October 1, 2019 through December 31, 2019 and the Impaired Mobility tracking list reflects that 19 of the 41 incarcerated persons listed on the tracking list are listed on the OCSD Transportation Bureau Mobility Impaired Transport Log.

The Assessment Team noted that there are 25 male transportation holding cells and 16 female transportation holding cells used to hold incarcerated persons being transported and returned to the CJX. There is one accessible male and one accessible female transportation holding cell. Transportation and ADA Unit staff stated that when a disabled incarcerated person is being transported, staff attempt to time the transport so the incarcerated person can move directly to the transportation vehicle or back to the incarcerated persons housing location. In the event the incarcerated person requires placement in the holding cells staff attempt to have the incarcerated person stay in the holding cell the shortest amount of time possible.

Staff Interviews

The Assessment Team asked questions of various deputies, including those assigned to court transportation, off compound transportation (medical), and long haul (transport to outside agencies/CDCR).

The transportation scheduling deputy stated the identification of incarcerated persons with disabilities that require wheelchair accessible transportation is based on a review of the court manifest received from records. Incarcerated persons who require transport in a wheelchair accessible vehicle are coded with an "H" (in the Sheriffs Data System) on the court manifest. This practice is not contained within the CCOM Policy Section 9000 Transportation of Inmates. The Assessment Team reviewed a copy of the Orange County Sherriff Coroner Automated Jail System Activity Roster that reflects the "H" designation. If the court transport for the day requires a wheelchair accessible vehicle, the OCSD Transportation Trip Log is stamped with "ADA" stamp in red. The Assessment Team reviewed 11 OCSD Transportation Trip Logs that reflected the "ADA" stamp. This alerts the transporting officer that the transport requires an accessible vehicle. In cases whereas a disabled incarcerated person does not have an "H" code identifying him/her as needing an accessible vehicle for the transport or the incarcerated person cannot navigate the steps of the transportation bus (has a cane or walker etc.), the transportation staff make a determination if the incarcerated person can be transported in a car or van or if an accessible vehicle will be required. If an incarcerated person advises staff that they require assistance to board the bus, staff will provide assistance. If an incarcerated person cannot safely board the bus with staff's assistance, the incarcerated person would be transported in an alternate vehicle (car or accessible vehicle). Staff also stated they would provide assistance to incarcerated persons by pushing incarcerated persons in



wheelchairs. If a disabled incarcerated person with an assistive device (cane, walker etc.) is being transported, they are allowed to retain their assistive device until they are seated. The transporting officer then stores the assistive device until the incarcerated person arrives at his/her destination. Once at the destination, the incarcerated person can again use the assistive device to disembark the transportation vehicle.

For incarcerated persons being transported "Off Compound" (medical appointments) incarcerated persons who require an accessible vehicle are identified the night before. The clinic list for the next day is provided to the transportation staff with handwritten information that is entered by a Correctional Service Assistant (CSA) assigned to classification. The CSA queries the Sherriff's Data System to identify incarcerated persons coded as "H" and who require accessible transportation.

For incarcerated persons being transported to other agencies the same process is followed to identify incarcerated persons that require accessible transportation. In cases where OCJ transportation staff are transporting an incarcerated person from another agency (CDCR) information on the need for an accessible vehicle is obtained from the agency prior to the transport.

The transportation staff stated that the ADA Deputies provide the transportation unit with a list of the incarcerated with disabilities and the method of transportation the incarcerated person requires (CJX ADA Inmate Tracking List [CJX] and Preferred Transportation for Special Needs Inmates [TLF]). The lists (in addition to the process listed above) are used to identify if an incarcerated person requires accommodations and/or accessible transportation for the transport. A review of the lists reflects no incarcerated persons with disabilities who require accessible transportation. The Assessment Team requested transportation staff run a query of the accessible vehicle use in the transportation Access database. The report reflects the accessible vehicles were used on 193 trips (this may include outgoing and incoming trips). If the report reflects both trips it is likely that the OCSD transportation unit used the accessible vehicles to transport incarcerated persons with mobility disabilities requiring accessible transportation about 96 times. However, as reported by OCJ transportation staff the accessible vehicles are also used to transport non-disabled incarcerated persons and there is no way to distinguish if the incarcerated persons listed on the guery were -incarcerated persons with mobility disabilities who required accessible transportation. The Assessment Team noted that two of the incarcerated persons listed in the query had a method of transportation as "car" and not accessible transportation. The Assessment Team requested the OCSD Transportation Trip Logs for eight incarcerated persons who were interviewed and were observed in wheelchairs and/or stated they required accessible transportation. Of the Trip Logs requested, 12 Trip Logs were provided. All Trip Logs reflect that non-accessible vehicles were



used for the transport (vehicle number 2216, 2207, 5057, 6036, 1652, 1758, 6022, 6069). The ADA Deputies stated that the method of transportation the incarcerated person requires is obtained during the incarcerated person interview and is based on the incarcerated person's self-identification. The Case Management staff stated the method of transportation is identified by Case Management staff and provided to custody staff (ADA Deputies).

Incarcerated Person Interviews

During the incarcerated person interviews some incarcerated persons with disabilities stated deputies provide accommodations during the transportation process such as, assisting them up the vehicles and providing assistance in pushing wheelchairs. However, some reported the following issues and concerns regarding the transportation process:

- Incarcerated person housed in CWJ stated it was difficult to board the bus and staff did not provide her assistance or a step;
- Incarcerated person housed in CWJ stated when she is placed in a holding cell in the booking loop when being processed for court staff remove her assistive device (cane) when she is placed in the holding cell. She states it is very difficult to move around and walk to the toilet and she has to hold on to the walls of the holding cell when walking from the bench to the toilet;
- Incarcerated person housed in CWJ stated she is issued a wheelchair, however, transportation staff asked her if she could get on the bus and was transported on the bus;
- Incarcerated person housed in CMJ stated on four or five occasions he had to hop onto the transportation van and on one occasion he had to hop on to the bus even though he uses a wheelchair;
- Incarcerated person housed in CMJ stated an incarcerated person pushes him in his wheelchair from the housing unit to transportation. Transportation staff ask him if he can get on the bus. If he says yes, he has to get on the bus, if he says no, they transport him on a van or SUV. States he has never been transported in an accessible vehicle;
- Incarcerated person housed in CMJ stated transportation staff ask him if he can get on the bus. He has never been transported in an accessible vehicle. Has been transported four times in a bus and two times in a van;
- Incarcerated person housed in CMJ stated he has been forced to go to court five times in a non-accessible vehicle;
- Incarcerated person housed in CMJ stated there was one occasion when he was transported to TLF in a van even though he has a wheelchair;
- Incarcerated person housed at TLF stated that he is transported to court in a car and at times there is delays in the transportation to court that he attributes to the use of a car. Based on the delays he has missed court appearances because of the delays;



- Incarcerated person housed at TLF stated that he is transported to court in a sedan/SUV and at times there is delays in the transportation to court that he attributes to the use of the sedan/SUV. Based on the delays he has missed court appearances;
- Incarcerated person housed in CMJ stated transportation staff do not provide assistance to him when boarding the transportation vehicle;
- Incarcerated person who is blind and housed at TLF stated staff at times do not transport him in a wheelchair to his dialysis appointments; and
- Incarcerated person housed at CMJ stated he is transported in a nonaccessible vehicle even though he requires an accessible vehicle. The incarcerated person stated this occurred on three occasions.

Conclusions/Recommendations

The OCJ does not always provide reasonable accommodations for incarcerated persons with disabilities during transport to court and medical appointments.

Staff are removing the incarcerated person's assistive devices (canes) while the incarcerated persons are placed in temporary holding cells with other incarcerated persons. OCSD advised Sabot and Sabot has confirmed that CCOM Policy 1606.1(a)(3) has been revised to address this issue. Sabot will monitor this during the monitoring process.

There are insufficient accessible transportation holding cells.

With the lack of a tracking system to identify incarcerated persons with disabilities and their accommodation needs, incarcerated persons are being required to access the courts without the necessary accommodations as staff rely on manual review of information systems to identify incarcerated persons with disabilities and their accommodation needs.

CCOM policy and practices should ensure that prescribed canes for incarcerated persons with disabilities are maintained in the possession of the respective incarcerated person at all times.



Intellectual Disabilities

Standards / Best Practices

The OCJ must have a comprehensive policy, procedure, and practices in place relative to intellectual/developmentally disabled incarcerated persons, or various existing policies/procedures must be modified. Intellectual/developmental disability information that must be addressed in local policies/procedures include:

- A comprehensive screening/testing process with recognized instruments, to allow psychiatrists, psychologists, or LCSW's to determine whether incarcerated persons are intellectually (developmentally) disabled. The testing must include an examination for:
 - Low cognitive functioning (usually IQ of 75 or below);
 - Concurrent deficits or impairments in adaptive functioning (the abilities necessary to care for oneself and to access programming and services in the jail setting);
- An electronic disability tracking system to identify incarcerated persons with disabilities (including intellectual disabilities), their required accommodation needs (including adaptive support services), any physical limitations, and other pertinent information;
- Staff responsibilities regarding safety/vulnerability/victimization issues, special concerns, and accommodations needs of this population;
 - This includes classification screening for predator/victimization concerns with other incarcerated persons within the housing unit, as well as other related responsibilities;
- Housing protocols for intellectually incarcerated persons with disabilities (possible clustering/semi-clustering approach);
- Incarcerated person disciplinary process as related to intellectual disabilities;
 - Including responsibilities for deputies, sergeants, work supervisors, mental health staff, etc.;
 - Clinical consult process for incarcerated person write-ups;
 - Monitoring of patterns or numerous individual write-ups;
 - Monitor possible placement in isolation or housing for intellectually incarcerated persons with disabilities, possibly as a result of receiving write-ups and being found guilty, but not being afforded procedural due process rights, or their required adaptive support needs;
 - Multi-disciplinary committee or support team specific to periodically monitoring intellectually disabled incarcerated persons, their ongoing potential for victimization, and whether they can function safely; monitor programming; ensure



incarcerated persons' accommodation needs are being met and ensure that incarcerated persons are functioning at an acceptable level in the jail environment; and

Monitorina may include but not be limited to safety/victimization/vulnerability, commissary, write-ups. personal hygiene (e.g., showering, brushing teeth, clean clothes), work, education, program activities, yard/dayroom, leisure activities and ensuring that housing unit deputies and supervisors are providing adaptive work support accommodations.

An ADA training component must be developed and implemented regarding disabilities (including intellectual/developmental disabilities) to provide custody and non-custody staff the tools and knowledge to ensure all incarcerated persons with disabilities are not discriminated against on the basis of their disabilities, and to ensure equal access to all programs, services and activities offered. Staff must be trained to:

- Be aware of safety and victimization concerns and uphold a policy of zero tolerance for incarcerated persons or staff belittling or name calling individuals with intellectual disabilities;
- Be proactive to engage intellectually incarcerated persons with disabilities verbally (sometimes in confidential settings), provide accommodations, assistance, and adaptive support services, and not delegate this to incarcerated persons;
- Understand that this population may have difficulties advocating for themselves, and may be reluctant to ask for help;
 - Understand that many intellectually disabled incarcerated persons may have a dual diagnosis, with either medical and/or mental health concerns, and those concerns must also be met, whether or not the incarcerated person seeks assistance;
- Understand that incarcerated persons with disabilities cannot arbitrarily be rehoused or moved without a thorough examination of associated events/circumstances, and they must be treated fairly and equally; and
- Understand that intellectually disabled incarcerated persons may be confused at times, and may need constant or periodic instructions, or simple reminders to complete a task or to understand.

Custody staff post orders should also reflect assigned duties as applicable to this population.



Policies / Procedures and Document Review

CCOM Policy 1606 Inmates with Disabilities, provides information regarding discrimination and examples of major life activities (adaptive support services).

HCA CHS Policy 8651 Developmentally Disabled Inmates provides information regarding intake screening, notification of Regional Center, special needs, and discharge planning.

Observations

The CCOM policy and HCA CHS policy identified in this section so not reflect the more serious concerns with the intellectual disabled incarcerated person population. There is applicable policy language or current comprehensive evaluation instrument to determine cognitive and adaptive functioning levels and deficits. Specifically, there is not currently a testing instrument or process in place to examine for inclusion into an Intellectual Disability Program (regardless of the age or onset), where the following are both present:

- Low cognitive functioning (usually IQ of 75 or below); and
- Concurrent deficits or impairments in adaptive functioning (the abilities necessary to care for oneself and to access programming and services in the jail setting).

Such an evaluation would identify specific areas of adaptive deficits, including victimization/vulnerability concerns as well as other specific adaptive support needs of the individual, as well as frequencies to where the intellectual disabled incarcerated person may need to be provided the adaptive supports, or at least he/she must be monitored by staff. Housing unit staff and work supervisors/teachers should also be apprised of specific adaptive support needs once Identified.

Overall, staff have not received sufficient training regarding intellectual incarcerated persons with disabilities. For a few exceptions, most staff do not know who the intellectual disabled incarcerated persons are. This ties back in proper clinical identification, tracking, and staff being made aware via a tracking list that identifies the clinically identified adaptive support needs. Example areas in which adaptive supports may be present include:

- Health and Safety:
 - The intellectually disabled incarcerated persons may appear naïve about maintaining health in terms of eating; identifying, treating, or preventing illness; basic safety considerations, such as following rules or seeking assistance. These incarcerated persons will likely use inappropriate behavior with others and have difficulty



communicating choices/needs and participating in social interactions;

- Socialization Skills:
 - The intellectually disabled incarcerated persons may show difficulty establishing and maintaining positive relationships. They may give up possessions to other incarcerated persons. They may become vulnerable to sexual predators, manipulation by other incarcerated persons, and/or be recruited for gang activities. The intellectually disabled incarcerated persons may engage in a repetitive cycle of disciplinary infractions involving other incarcerated persons or correctional officers. This could be suggestive of a lack of judgment and failure to understand the consequences of their actions;
- Academic Skills:
 - The intellectually disabled incarcerated persons may show evidence of poor cognitive abilities/skills related to learning, such as reading, writing, and using basic mathematical concepts;
- Communications Skills:
 - The intellectually disabled incarcerated persons may have poor ability to express themselves verbally or in writing;
- Leisure:
 - The intellectually disabled incarcerated persons may not have acquired many leisure and recreational interests that reflect personal preferences and choices;
- Self-Advocacy/Use of Incarcerated person Resources:
 - The intellectually disabled incarcerated persons may have difficulty advocating for themselves during classification interviews/processes, disciplinary proceedings, the incarcerated person grievance process, and may waive their rights without understanding what they are doing;
- Self-Care Skills:
 - The intellectually disabled incarcerated persons may show evidence of poor self-care; e.g., seldom bathing, soiled or unkempt clothing, poor eating habits, and/or the incarcerated person's cell may be disorganized/dirty;
- Self-Direction:
 - The intellectually disabled incarcerated persons may have difficulty making choices; learning and following a schedule; initiating activities appropriate to particular settings, conditions, schedules, and personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems in familiar and unfamiliar situations; and demonstrating appropriate assertiveness and self-advocacy skills; and
- Work:



• The intellectually disabled incarcerated persons may have difficulty maintaining a work assignment due to inappropriate social behavior and a lack of related work skills.

A multi-disciplinary committee or support team such as the Case Management Team is an effective tool to periodically monitor intellectually disabled incarcerated persons, monitor the on-going potential for victimization and whether they can function safely, monitor their programming, ensure their accommodation needs are being met, and ensure the incarcerated persons are functioning at an acceptable level in the jail environment.

While conducting housing unit tours/walkthroughs of all units in all CJX and TLF facilities, the Assessment Team noted that none of the housing units had an easy read (low level reading) books that could be used by some of the intellectual disabled incarcerated persons.

Staff Interviews

Most staff acknowledged they have not received much training specific to intellectual disabilities. The ADA deputies acknowledged they only recently began interviewing intellectual disabled incarcerated persons, but don't commonly informal interviews unit walkthroughs to monitor conduct or intellectual/developmentally disabled incarcerated persons or their related accommodation needs or issues. When asked, most housing deputies and other staff do not know what adaptive support needs or adaptive support services are. Most staff do not inspect, or view cells or beds areas assigned to intellectual incarcerated persons with disabilities. Some Classification staff (numerous deputies interviewed simultaneously) stated they have never encountered intellectual disabled incarcerated persons (or learning disabled incarcerated persons). One of the deputies assigned to Mod O admitted that he does not know anything about intellectual disabilities (or learning disabilities) or incarcerated persons who have intellectual disabilities (or learning disabilities) or any related needs.

- When asked a hypothetical scenario whereas an incarcerated person has difficulty understanding or following staff instructions (e.g., an intellectual disabled incarcerated person); one of the staff stated he would investigate and refer the incarcerated person to the medical department, and if needed the medical department in-turn could refer the incarcerated person to mental health staff. He would also try to communicate with such an incarcerated person by speaking on a simple level;
- When hypothetically asked about possible victimization or vulnerability concerns, he indicated that GP 7's and GP 6's program together and that he frequently checks on them;



- When asked whether he monitors property or commissary items for such individuals (such as an intellectually disabled incarcerated person who may have victimization concerns) he stated "no", and that incarcerated persons with intellectual disabilities are "individually housed" and that their property and commissary items are delivered to their cells by a CST staff member;
- When hypothetically asked about an unkempt incarcerated person or one who has difficulty maintaining personal hygiene and/or his cell/bed area: He stated that he would advise the incarcerated person to shower (or shower more often), provide him free soap, and refer the incarcerated person to the mental health department;
- When hypothetically asked about an incarcerated person who may have difficulties or be unable to read and/or write (e.g., an intellectual disabled incarcerated person), he stated that he would help the incarcerated person read and write if he was asked; and
- When hypothetically asked about an incarcerated person who is continually or usually tardy (e.g., to appointments, in following instructions, etc.) and/or needs frequent or occasional reminders, he stated that he would refer such an incarcerated person to the mental health department.

Some of the housing unit deputies stated they do not or did not believe they had any incarcerated persons with intellectual disabilities (or learning disabled) in their housing units but admitted they would not know unless an incarcerated person self-identified.

Incarcerated Person Interviews

At the time of the on-site assessment, there were 13 identified incarcerated persons with intellectual disabilities housed between TLF and the CJX complex. The majority (nine) were housed at TLF amongst four separate housing units. Some of the more serious concerns included being pressured to hold drugs and give away commissary items. A few of the incarcerated persons appeared to have victimization concerns. Some of the incarcerated persons had claimed difficulty understanding staff expectations. Incarcerated persons interviewed admitted they sometimes need reminders be on time or for various activities. Specific issues reported by the incarcerated persons interviewed include:

- Incarcerated person housed in TLF stated he does not understand processes/rules needs explanations in simple English. Custody staff are not aware of his disability. Claims he has to rely on incarcerated persons for assistance (write grievances and letters home) and has to pay them for helping him (soups);
- Incarcerated person housed in TLF stated incarcerated persons make him hold drugs and "pruno" for them and they also make him pass the "pruno" for them. He also violates the jail rules (being on the top tier during dayroom)



because incarcerated persons call him to the top tier, and he does not want them to be mad at him. Claims incarcerated persons help him write letters home and he has to pay them with "store." States his commissary has been stolen from him and incarcerated persons always ask him for his commissary and if he does not give it to them, they will just take it, so he just gives it to them, so he does not have to fight them; and

• Incarcerated person housed in TLF stated it takes a while for him to understand instructions and he does not understand and know all the rules. Stated that incarcerated persons and custody staff make fun of him and mock him because of his disability.

Conclusions/Recommendations

HCA CHS needs to develop or adopt a comprehensive testing/screening instrument(s) for a trained clinician to effectively identify cognitive deficits and adaptive support deficits for incarcerated persons with intellectual/developmental disabilities (please see above for specific information).

- The following should be considered:
 - Incarcerated persons with intellectual/developmental disabilities (those with cognitive and adaptive deficits) must be afforded equal access to programs and services;
 - Low cognitive functioning (usually IQ of 75 or below); and concurrent deficits or impairments in adaptive functioning. Adaptive functions are defined as abilities necessary to care for oneself and to access programming/services in a correctional setting;
 - Screening incarcerated person's cognitive abilities and adaptive functioning skills within a correctional environment (as opposed to a community setting) will identify incarcerated persons with intellectual/developmental disabilities;
 - Standard instruments should be used to screen incarcerated persons;
 - Any developed or adopted screening instruments must test for cognitive skills (e.g., a Quick Test or Test of Non-Verbal Intelligence);
 - For example: A Quick Test may be used in a variety of settings to provide a rapid estimate of cognitive functioning;
 - May be used for incarcerated persons who are fluent in English and not deaf or hard of hearing;



- The General Ability Measure for Adults (GAMA), WAIS-R, WAIS-III, or WASI are all also examples of types of cognitive screen that may be used;
- Any developed or adopted screening instruments must also examine for adaptive skills. This may be performed by a psychologist or social worker via a Correctional Adaptive Support Evaluation. Such examination includes observations, interactions, and interviewing the subject, and receiving verbal reports from jail deputies and other staff familiar with the incarcerated person, reviewing available records;
 - Adaptive Deficits:
 - Examples of areas in which adaptive deficits may be identified, and examples of the types of adaptive deficits that may be present, include:
 - Communication Skills;
 - Academic Skills;
 - Self-Care Skills;
 - Socialization Skills;
 - Self-Advocacy/Use of Resources;
 - Work;
 - Health and Safety;
 - Self-Direction; and
 - Leisure.

HCA CHS must develop an applicable policy or revise existing Policy 8651 "Developmentally Disabled Inmates." Between the OCSD CCOM polices and HCA CHS policies as applicable, the following types of information should be contained within local policies/procedures: Evaluation instrument for a trained clinician to identify cognitive and adaptive deficits and to identify adaptive support service needs; responsibilities of staff regarding monitoring for victimization and adaptive support needs (e.g., brushing teeth, hygiene/clothing/cleanliness, reminders, use of commissary, work, leisure activities, cell/bunk cleanliness, participation in laundry exchange, victimization concerns, and time management/reminders, etc.); housing protocols (whether to cluster, or semi-cluster); Case Management or other multi-disciplinary committee to periodically monitor incarcerated persons with intellectual disabilities including their program needs and adaptive support needs being met; and responsibilities of staff to provide coaching, monitoring, assistance and prompting of incarcerated persons with intellectual disabilities. Staff must also receive updated related training once the policies/procedures have been revised, and updated testing and adaptive support monitoring protocols are in place. Staff (especially housing deputies and work supervisors/teachers) must be informed



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(e.g., a tracking list) of incarcerated persons with intellectual disabilities and their specific adaptive support requirements. OCSD must also collaborate with mental health staff to jointly identify an acceptable range for frequencies to have housing deputies monitor the adaptive support needs of incarcerated persons with intellectually disabilities. Each incarcerated person's needs and level of functioning will vary; therefore, frequencies of monitoring needs will vary from incarcerated person-to-incarcerated person as well. But there must an agreed upon range identified. Housing deputies and work supervisors will need to be tasked with periodically logging adaptive supports on an approved adaptive support log for housing unit staff and for work supervisors. The aforementioned monitoring frequencies should be identified on the adaptive support logs.



Telecommunications (VRS-Videophones, Assistive Listening Devices, Telephone Amplification Devices and Media Closed-Captioning)

A public entity must ensure it provides equal access to its programs, services and activities. In order to provide equal access, a public entity is required to make available appropriate auxiliary aids and services where necessary to ensure equal access to telephone and media communication for the disabled. Auxiliary aids and services include a wide range of services and devices that promote equal access to telecommunications and media. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, open and closed captioning, telecommunications devices for deaf persons (TDD/TTY), and video phone technology.

Standards / Best Practices

28 CFR § 35.160 requires the public entity to take appropriate steps to ensure that communications are as effective as communications with others and to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, the public entity is required to give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

Policies / Procedures and Document Review

The policies and procedures that address telecommunications (VRS-videophones, assistive listening devices, telephone amplification devices and media closed-captioning) are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Sections 3000.1 Telephones for New Bookings, 1904 Inmate Telephone Calls, 1904.4 Special Use Telephones, and 1606 Inmates with Disabilities.



CCOM Policy Section 3000.1 Telephones for New Bookings addresses access to telephones for incarcerated persons being booked into the OCJ.

CCOM Policy Section 1904 Inmate Telephone Calls addresses access to telephones for incarcerated persons housed in the OCJ.

CCOM Policy Section 1904.4 Special Use Telephones addresses access to video interpreting services for incarcerated persons who are deaf and/or hard of hearing and alternate conventional phones (cordless) for mobility disabled incarcerated persons housed medical housing units.

CCOM Policy Section 1606 Inmates with Disabilities addresses auxiliary aids and services (TDD/TYY, closed caption video) available for deaf and/or hard of hearing incarcerated persons housed in the OCJ.

OCJ Custody provided Purple VRS Call Usage from November 1, 2019 to January 22, 2020 reflects 207 calls made with only 11 calls lasting more than 10 minutes (two of these calls are logged two times). Most call reflect they lasted less than one minute.

While on-site OCJ provided the Assessment Team with a Theo Lacy Facility Purple VRS Call History Report for 05-01-20 to 06-10-20. The report reflects 182 calls were made with the calls ranging from zero seconds to 244 minutes.

While on-site OCJ provided the Assessment Team with a Central Jails 2nd Guard/IRC Classification Purple VRS Call History Report for 05-01-20 to 06-10-20. ADA Unit staff stated the report reflects call made from the VRS phone located near the 2nd Guard Station and the IRC Classification. The report reflects 102 calls were made with the calls ranging from zero seconds to 145 minutes.

Observations

The Assessment Team noted there are telephones located in the "booking dock" area for incarcerated persons undergoing new booking to use. There are no TDD/TTY VRS/Videophones available in the "booking dock" area. CCOM Policy Section 3000.1 Telephones for New Bookings includes the following language that addresses access to TDD/TTY in the "booking dock" for use of the Deaf and/or Hard of Hearing Telephone. "A TDD "Porta Printer Plus" hearing impaired telephone device will be maintained inside the Watch Commander's office at the IRC. When a hearing-impaired arrestee is received, he/she will be advised that the device is available for use if desired. (The party being called must have a similar device in order to communicate). Hearing impaired incarcerated persons housed in the CJX will be made aware of the availability of the device. Incarcerated person



requests to use the hearing-impaired telephone will be handled as soon as practicable at the IRC's Receiving area. When a request to use the device is received, the device will be picked up from the Watch Commander's office, taken to the required area (Booking or Housing Guard Station), and returned to the Watch Commander's office when its use is completed. The hearing-impaired incarcerated person requesting to use the device should be familiar with its operation. Booking Deputies and Guard Station Deputies will familiarize themselves with the device. Operating instructions are contained inside the carrying case. A "Porta Printer Plus" hearing-impaired telephone unit will also be made available for any persons in the Visiting Lobby. A sign will be posted in the Visiting Lobby advising of the availability of the "Porta Printer Plus" hearing impaired telephone."

The Assessment Team observed the telephone process in many of the housing units. Telephones are located in the dayrooms in housing units. There are volume control functions that allow incarcerated persons using the phones to increase the volume of the if needed. There are no TDD/TTY or videophones available for incarcerated person use in the general housing units. There is a TTY phone in the Mod I disciplinary isolation area. There is a videophone terminal located on the 2nd floor of the CMJ in an area adjacent to the 2nd Floor Guard Station. The videophone is used by incarcerated persons housed in the IRC, CMJ and CWJ. There is a videophone located in "MOD O" and the A/E Barracks (A/E Barracks was closed).

CCOM Policy Section 1904.4 Special Use Telephones includes the following language that addresses access videophones and cordless telephones in medical housing. "Each facility will maintain video interpreting services for hearing impaired inmates' use. Requests to use video interpreting services will be honored at the convenience of jail staff, but as soon as reasonably possible. During booking, hearing impaired arrestees will be advised that video interpreting services are available for use. A hearing-impaired inmate in housing may use video interpreting services during regular telephone hours or pursuant to an approved emergency request. A cordless telephone is available in medical housing for inmate access, if needed. The cordless telephone is to be utilized only in the extraordinary event an inmate is non-ambulatory, has an urgent need to make a call, and cannot access any other inmate telephone. The deputy will keep the inmate using the telephone under direct visual observation at all times and only provide the telephone for the time necessary to complete the call. When the call is completed, the deputy will collect the telephone, disinfect it if necessary, and return it to the charger in the guard station. These telephones are recorded in the same manner as all other inmate telephones."

CCOM Policy Section 1606.2 Programs and Services includes the following language that addresses access to TDD and VRS. "Staff will provide reasonable



modifications to jail rules, policies, and practices to enable inmates to participate in the services, programs, and activities offered to other inmates of the same classification level. Some examples of reasonable accommodations include:

- Providing Telecommunications Devices for Deaf Persons (TDDs), Video Relay Services (VRS), or other texting devices to allow deaf inmates to make telephone calls. These devices, and directions for usage, are maintained inside the Central Jail Watch Commander's office; and
- The device used to provide VRI and texting usage for deaf and/or hard-ofhearing inmates will be stored in a lock box, located in the Central Jails Watch Commander's office. The directions for usage will be located inside the lock box. Watch Commander's approval is required for its usage. This device must be used under direct supervision of a deputy. The deputy must remain with the device during the entire length of its use."

The policy does not address TDD/TTY and videophone access for incarcerated persons housed at TCF.

The Assessment Team noted that there are no phone sign-ups nor is there close monitoring of telephone usage by staff.

Staff Interviews

The ADA Deputy at the CJX stated in the event a new arriving incarcerated person undergoing booking requests to use the TDD/TTY to make a call staff will retrieve the TDD "Porta Printer Plus" deaf and/or hard of hearing telephone device from the watch commander's office. If the incarcerated person requires the use of the videophone, the incarcerated person will be escorted to the 2nd floor of the CMJ and allowed to use the videophone/VRS. There is also a TTY telephone jack adjacent to the 2nd Floor Guard Station. The ADA Deputy at TLF stated there is a TTY terminal in Mod I disciplinary isolation area, a videophone in Mod O and a mobile videophone in the barracks area.

Staff stated If an incarcerated person housed at the CJX (CMJ, CWJ or IRC) would have to request the use of the TDD/TTY and videophone/VRS. The TDD/TTY would be retrieved from the watch commander's office for incarcerated person use. For access to the videophone/VRS, the incarcerated person would have to request to use. Female incarcerated persons would be escorted from the CWJ to the CMJ and incarcerated persons housed at the IRC would also be escorted to the CMJ for the videophone/VRS access. Incarcerated persons housed at the CMJ would be given access to the videophone/VRS by staff. Staff stated incarcerated persons have access to the videophone/VRS is based on incarcerated person request and based



on staff availability. Staff stated there are no telephone amplification devices available to be issued to incarcerated persons if requested.

"Mod O" housing unit staff stated that incarcerated persons who required use of the videophone could access it any time they have access to the dayroom similar to the conventional phones.

Most staff reported that the closed-captioning function on the televisions would be on if Deaf and/or Hard of Hearing incarcerated persons were housed in the unit, however, some staff stated they did not know the policy and had to refer to policy or incarcerated persons had to request that the closed captioning function be turned on.

Incarcerated Person Interviews

A Deaf and/or Hard of Hearing incarcerated person (CJX) stated he can request access to the videophone/VRS during his dayroom timeout, however, access to the videophone/VRS is based on staff availability. Incarcerated persons at TLF stated they can access the videophone during their dayroom time out.

Conclusions/Recommendations

Deaf and/or Hard of Hearing incarcerated persons are not being provided equal access to telephones. Non-disabled incarcerated persons have access to telephone during their dayroom out time and do not have to request access from staff, however, incarcerated persons with disabilities must ask staff for access and access is only given if staff are available. The policy of requests to use video interpreting services being honored at the convenience of jail staff, but as soon as reasonably possible is not providing incarcerated persons with disabilities equal access to telephones as incarcerated persons that use conventional phones can use them at any time during their dayroom out time. There are also no amplification devices available for incarcerated person use at the any of the OCJ facilities.

OCJ must install TDD/TTY and videophone technology in housing units that are designated to housing Deaf and/or Hard of Hearing incarcerated persons.

OCJ must make telephone amplification devices available for incarcerated persons that require this accommodation when using the conventional telephones.

OCJ must revise CCOM Policy Sections to include language that ensures Deaf and/or Hard of Hearing incarcerated persons are afforded equal access to telephone communication (TDD/TTY, videophone/VRS).



OCJ must revise CCOM Policy Sections to include language that closed captioning function must remain on in housing units where Deaf and/or Hard of Hearing incarcerated persons are housed.

OCJ must ensure staff are trained on the requirements once the CCOM Policy Sections are revised.



Sign Language Interpreters(SLI)/VRI

Standards / Best Practices

A public entity must ensure that it provides equal access to its programs, services and activities. In order to provide equal access, a public entity is required to make available appropriate auxiliary aids and services where necessary to ensure equal access to telephone and media communication for the disabled. Auxiliary aids and services include a wide range of services and devices that promote equal access to telecommunications and media. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include video remote interpreting (VRI), and Video Relay Service (VRS), and videophone technology.

28 CFR § 35.104 Definitions defines that a qualified interpreter "means an interpreter who, via a video remote interpreting service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral translators and cued language translators.

Policies / Procedures and Document Review

CCOM Policy Section 1606.2 Inmates with Disabilities (Programs and Services), contains language regarding staff providing reasonable accommodations such as using a sign language interpreter, video remote interpreting, and other means to ensure effective communication with deaf incarcerated persons; and contains language relative to video relay service. No language regarding EC for incarcerated persons with disabilities other than deaf incarcerated persons.

Contract Summary for VRI Services (Purple Communications, Inc.).

OCJ VRI Log (6 calls) completed in January 2020.

Instructional page (for Classification staff) to operate VRI (through Purple).

Purple VRI Quick Guide for VRI (expires 8/22/22).

One-page HCA CHS document identifying contact information for translator/interpreter services.



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Observations

The Assessment Team actively participated in a VRI call through a county-owned iPhone. The Assessment Team conducted an in-person interview of a deaf incarcerated person at the Men's Central Jail who uses American Sign Language as his preferred/primary methods of communication. This fact is well documented in the TechCare and ITRAC electronic systems. The Assessment Team reviewed existing documentation which indicates the incarcerated person periodically receives VRI services for healthcare encounters as well as other key types of communications. During the VRI call with the incarcerated person, the Assessment Team member was speaking to an interpreter through the contracted group, 'Purple Communications Inc'. The interview took approximately one hour in order to complete all of the disability related questions the Team member was effective, however there were some periods of difficulties as the call (from our end) took place in the corner of one of the outdoor exercise yards, and therefore we had a weak signal. But the incarcerated person was able to answer all of the questions.

The Assessment Team observed a program being facilitated by a Behavioral Health Clinician at the CMJ. The program had a disabled incarcerated person who is Deaf and/or Hard of Hearing and his preferred method of communication is SLI participating in the program. The Assessment Team noted that the program facilitator was using the VRI technology (iPhone) for communication. The facilitator stated he is aware of incarcerated persons with disabilities assigned to the program by reviewing the flags in TechCare. He stated he does not receive a list of incarcerated persons with disabilities or their accommodation needs. He stated that he would document the EC provided during the program in the group progress notes and not the incarcerated persons individual progress notes. The Assessment Team notes that the screen used for the VRI is less than five inches and it is difficult to see the individual signing.

The Assessment Team requested that medical staff query the progress notes in TechCare to determine if medical staff documented EC for clinical encounters. The Assessment Team identified two incarcerated persons whose preferred method of communication was SLI and had medical staff query the progress notes where medical/mental health care was provided. The query resulted in four clinical (medical) encounters where there was no documentation in the progress notes where staff identified the disability or provided the SLI during the clinical encounter. The query resulted in one clinical encounter (mental health) where the clinician identified and documented the disability and the EC provided (written notes) and not the incarcerated persons preferred method of communication (SLI).

There were no concerns noted regarding the VRI contract or regarding the VRI operating instructions.



A review of the VRI call history (January 2020) shows six completed VRI calls.

Staff Interviews

During the interviews staff confirmed that Mod O deputies at both Men's Central Jail and TLF have access to an iPhone (e.g., Watch Commander's office) for VRI connectivity. Custody staff also confirmed that medical staff do use the VRI with one of their patients who signs in American Sign Language. Even incarcerated persons who are placed on disciplinary isolation status will have access to VRI if needed. Although the current VRI/VRS contract with 'Purple' does not expire until 2022, OCSD is working to secure a new five-year contract. The TLF booking loop staff confirmed that in the event they needed to use VRI they would allow for it. All Classification staff (regardless as to which facility) have VRI log-on capabilities through their computers. When logged on, Classification deputies turn their computer screens to allow the deaf and/or hard of hearing or incarcerated person with a speech disability to view the computer screen to view the sign language interpreter. However, when interviewed, some of the Classification staff admitted that they have not been trained on the use of the technology and have never used it. But again, they all have written directions.

Incarcerated Person Interviews

When interviewing an incarcerated person at the OCJ who communicate via American Sign Language, the Assessment Team noted that there were some 'pockets' of hearing difficulties due to the poor signal, overall, it was very effective and effective communication was established.

• Incarcerated person housed in the CMJ who is deaf stated he was not provided an interpreter during the classification process and medical encounters.

Conclusions/Recommendations

Staff are not always providing access to VRI/SLI for incarcerated persons with disabilities whose preferred/primary method of communication is ASL. OCJ and HCA CHS staff must ensure that incarcerated persons whose preferred/primary method of communication is ASL are provided access to either in-person SLI or access to VRI for all due process and clinical encounters. The technology used for VRI connectivity must be upgraded to a larger screen as the iPhone screen currently used makes it difficult to see the interpreter on the iPhone screen. The technology should be upgraded to a larger screen technology such as an iPad. Subsequent to the onsite assessment and draft report, OCSD advised the Assessment Team that TLF already has two (2) iPads with VRI capability, and iPads for the CJX facilities are on order. During the lone incarcerated person



interview where an iPhone was used, an ADA Deputy was present and did not indicate that there were iPads available. This will be examined further at future monitoring tours.



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ADA Training

<u>Standards / Best Practices</u>

In accordance with the spirit of Title II of the ADA, and the 1991 Section-by-Section Analysis, the OCJ must develop and incorporate a comprehensive ADA training component for custody and non-custody staff. The ADA or incarcerated person disability program/plan must have a comprehensive training regimen consisting of: formalized lesson plans, certified or otherwise qualified ADA expert trainers, close monitoring of the training program, and curriculum consisting of all major aspects of the ADA, including but not limited to: disability identification/verification, tracking system, housing, HCAs/ADs/DME (including removal/non-removal), reasonable accommodations, equal access, transportation, searches, mechanical restraints, incarcerated person grievances, orientation, work/industries/job assignments, education, alarms, notices, emergencies, evacuations, religious services, and visiting. Quite simply, a quality ADA training program must be in place to ensure staff are appropriately trained to perform their job duties and to help ensure incarcerated persons with mobility disabilities are provided equal access to programs, services and activities provided at the jail facilities, and thus not discriminated against.

The OCJ ADA training program must ensure staff is knowledgeable with respect to disabled incarcerated person accommodation needs. The training should help foster an understanding that providing accommodations or modifications does not deter staff from accomplishing their job duties and does not create an additional workload, but rather puts the incarcerated person with a mobility disability on a level playing field and provides equal access to that of non-disabled incarcerated persons in accordance with the ADA.

Policies / Procedures and Document Review

The policies and procedures that address ADA specific training requirements for staff are outlined in the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) Policy Section 1606 Inmates with Disabilities and HCA CHS Policies and Procedures 2004 Training for Correctional Personnel.

CCOM Policy Section 1606 Inmates with Disabilities outlines the ADA related training requirements for the Administrative Sergeants, general custody staff and transportation personnel, programs staff members, and security staff members assigned to housing locations where incarcerated persons with disabilities are housed.



HCA CHS Policy 2004 Training for Correctional Personnel outlines training provided to custody staff by CHS.

OCJ Custody provided the Orange County Sherriff's Department Americans With Disabilities Act and Pierce v. County of Orange 4-Hour Lesson Plan.

OCJ Custody provided the Training and Testing Specifications for Learning Domain #37 Persons With Disabilities (February 15, 2017).

OCJ Custody provided the Orange County Sherriff's Regional Training Academy RBC Academy Schedule (November 2019). The schedule reflects 15 POST hours for LD 37 Persons With Disabilities.

OCJ Custody provided the Classification Manual. The Manual includes sections for the following:

- Americans with Disabilities Act (ADA);
- Medical and Mental Health Housing;
- Specialty Housing Inmates;
- Mentally III (MI) Inmates;
- Mentally III Lockdown (MIL) Inmates; and
- Inmates with Disabilities.

OCJ Custody provided the Orange County Sherriff's Department Training Division, Hourly/Curriculum Breakdown Standards Training and Corrections for calendar years 2015 to 2019. The Hourly/Curriculum Breakdown does not include any disability related training.

OCJ Custody provided the Orange County Sherriff's Department Training Division, Hourly/Curriculum Breakdown for the Correctional Service Assistant Academy (including PC 832 A) and Correctional Officers Core Course (CCOC/Jail Academy). The Hourly/Curriculum Breakdown reflects a 4-hour training block for the Correctional Service Assistant Academy.

HCA CHS provided an Excel Spreadsheet "Course Completion History" for training plan titled "Review of Policies and Procedures on Special Needs Inmates." The spreadsheet reflects 219 staff completed the online course.

Observations

CCOM Policy Section 1606 Inmates with Disabilities states, "The Administrative Sergeant at each facility will serve as the ADA compliance officer for their respective facility. The Administrative Sergeants will receive training on accessibility standards, their application in jail settings, and the compliance



officer's responsibilities to process and respond to requests for accommodation and/or complaints of denial of access to programs and services."

CCOM Policy Section 1606 Inmates with Disabilities states, "Initial training will be given to all safety personnel through the Jail Academy, to ensure that they are aware of the guidelines in this administrative directive and their duties, if any, related to it. Updated training for transportation personnel, programs staff members, and security staff members assigned to housing locations where inmates with disabilities are housed will be provided as necessary."

The OCSD requires all deputies assigned to the OCJ to attend and complete a 200-hour Board of Corrections Curriculum Program titled Correctional Officers Core Course (CCOC Jail Academy). This course is for officers who completed the Orange County Sheriff's Regional Training Academy and are newly assigned to OCJ. The course is designed to complete competencies in the following topics:

- California Criminal Justice System Orientation;
- Codes, Statutes, and Other Legal Documents;
- Professionalism and Ethics;
- Classification of Inmates;
- Contraband;
- Interpersonal/Tactical/Practical Communication;
- ACT (includes 8 hrs. of Cell Extractions);
- Booking and Receiving;
- Releasing;
- Maintaining Security;
- Reporting and Records Keeping Unit;
- Supervising Inmates;
- Dist. of Supplies/Commissary;
- Monitoring Psychological and Physical Health;
- Management of Inmate Workers;
- Screening and Monitoring of Visitors;
- Screening and Distribution of Mail Unit;
- Transport Outside of Facility;
- Emergency Procedures;
- Testifying in Court;
- Physical Tasks; and
- First Aid/CPR.

In addition to the CCOC curriculum listed above, the OCSD requires all Correctional Service Assistants (CSA) to complete the 600-hour CSA Academy (including PC 832 A).



The CSA Academy includes the following additional topics:

- Leadership, Professionalism & Ethics;
- Criminal Justice System;
- Policing in the Community;
- Intro. to Criminal Law;
- Law of Arrest;
- Search and Seizure;
- Presentation of Evidence;
- Investigative Report Writing;
- Use of Force;
- Preliminary Investigation;
- Arrest and Control/Baton;
- Crimes Against the Justice System;
- Cultural Diversity/Discrimination;
- 800MHz;
- Admin Time;
- Americans with Disabilities;
- Arrest/Control Techniques;
- Basic Leadership;
- Communication Skills Test (8);
- Control Panel Training;
- Custody & Court Operations Manual (CCOM);
- Drug Symptomology;
- Emotional Wellness;
- ICS Training;
- Immigration and Customs Enforcement Training (ICE);
- Jail Culture;
- Less Lethal Orientation;
- Logging/AJS;
- OCSD Use of Force/Liability Issues;
- Physical Training;
- Prison Rape Elimination Act;
- Remedial Instruction Reports; and
- Tactical/Scenario Training.

Although the CCOC Jail Academy does not contain specific ADA-related information, OCJ staff are required to attend the Americans with Disabilities Act and Pierce v. County of Orange 4 Hour Training that is included in the CSA Academy. The class was developed to provide training to Orange County Sheriff's Department staff and personnel on the Americans with Disabilities Act and *Pierce v. County of Orange* lawsuit. The purpose of the training is to inform the participant of the legal aspects of the ADA and its application in a correctional setting. The



training also provides information regarding the *Pierce v. County of Orange* ADA lawsuit.

The learning objectives of the training include:

- Understand the aspects of the Americans with Disabilities Act of 1990;
- Understand the purpose of the ADA;
- Know the 5 titles of the ADA;
- Recognize what entities are covered by Title II of the ADA;
- Generate a definition of the term "disability";
- Understand the term "major life activities";
- Recognize various types of physical and mental impairment(s) covered under the ADA (including various diseases);
- Define the term, "qualified individual with a disability";
- Identify disability exclusions;
- Provide examples of reasonable accommodation(s);
- Describe the term "accessible";
- Understand the implications of the Yeskey v. Penn. Dept. of Corrections Federal Lawsuit;
- Identify the difference between an "assistive device" and an "auxiliary aid";
- Recognize the various programs and services provided to disabled inmates;
- Understand the aspects of the *Pierce v. County of Orange* Lawsuit;
- Understand the term "Pierce Class Members";
- Know the Pierce exclusions;
- Identify ADA accessible housing locations at the CMJ, IRC and Theo Lacy Facilities;
- Understand the ADA procedures for programs, recreation, and public visit accessibility;
- Understand the ADA procedure for court transfer and transportation with regards to Pierce Class Members;
- Know the consequences of non-compliance; and
- Identify, troubleshoot and remedy various types of ADA-related grievances.

Based on the review of the lesson plan the training course does not appear to address the accommodations for learning, developmental (cognitive/intellectual) incarcerated persons with disabilities.

The OCJ did not provide a course completion history for the course therefore the Assessment Team could not determine if all required staff had attended the training. Staff who have attended the training include Deputies, CSA's and only one staff member from the Case Management Unit.



A review of the Orange County Sheriff's Department Training Division Hourly/Curriculum Breakdown Standards of Training and Corrections for years 2015 to 2019 found that no specific ADA training was provided to staff.

The HCA CHS medical staff (219 staff) completed an on-line course titled "Review of Policies and Procedures on Special Needs Inmates." No other formalized ADA training records were provided for medical staff. During an April 2019 Staff Meeting, staff were provided information on the following topics:

- Process for ADA Compliance Office notifications; and
- Remind staff to contact Deputy Miller for any new ADAs patients.

In the month of April 2018, 119 clinical staff received informal training on the ADA Receiving Screenings Addendum (the newly implemented ADA screening) during the April staff meeting.

Staff Interviews

Most Deputies who were interviewed could recall specific ADA training they had received either at the academy or on site at the jail. Medical and support staff could not recall specific formal ADA training they had attended, however, stated they would receive informal ADA training. The ADA Deputy who conducts the training stated only Deputies and CSA's have been provided the ADA training. The ADA Deputy stated the only medical staff that has attended the training is the Case Management Unit LVN.

Conclusion/Recommendations

In accordance with the spirit of Title II of the ADA, and the 1991 Section-by-Section Analysis, the OCJ has incorporated a comprehensive ADA training component for custody staff, however, the training is not provided to clinical and support staff that interact with the disabled incarcerated person population. The ADA or incarcerated person disability program/plan cannot and will not function unless the comprehensive training regimen consisting of formalized lesson plans, certified or otherwise gualified ADA expert trainers, close monitoring of the training program, and curriculum consisting of all major aspects of ADA, including but not limited to; disability identification/verification, tracking system, housing, HCAS/ADs/DME (including removal/non-removal), reasonable accommodations, equal access, transportation, searches, mechanical restraints, incarcerated person grievances, orientation, work assignments, education, alarms, notices, emergencies, evacuations, library operations/equipment, religious services, and visiting. Quite simply, a quality ADA training program must be in place to ensure staff are appropriately trained to perform their job duties and to help ensure incarcerated



persons with disabilities are provided equal access to programs, services and activities provided at the jail facilities, and thus not discriminated against.

The OCJ ADA training requirements must include the requirement that formalized ADA training be provided to all custody, medical and non-custody staff (managers, supervisors, and rank-and-file employees) who work in the jail facilities.

The OCJ must provide refresher (annual or biannual) ADA training for all staff.

Additional ADA training must be developed that is specific to any CCOM Policy Section and local policies and procedures revisions related to incarcerated persons with disabilities.



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ADA Coordinator

<u> Standards / Best Practices</u>

The OCJ must have policies, procedures, and practices in place regarding the ADA Coordinator responsibilities. There must either be a position solely dedicated to ADA Coordinator duties and responsibilities, or there must be a clear distinction as to the percentage of work time as well as the specific responsibilities of the assigned ADA Coordinator. There may be an assistant ADA Coordinator and/or additional ADA compliance staff assigned to work under the supervision of the ADA Coordinator.

It is essential that ADA Compliance is achieved and continuously monitored. It is essential that the ADA Coordinator position have a sufficient civil service classification/rank to raise pertinent issues to executive level management and affect change or modifications to the ADA incarcerated person disability program as warranted. The ADA Coordinator must also have normal 'hands on' day-to-day oversight and involvement over the ADA or incarcerated person disability program.

The ADA Coordinator duties are commonly varied and comprehensive. The assigned ADA Coordinator must be involved in every aspect of the ADA program whether by direct 'hands-on' involvement or though on-going supervision or oversight. There must be an ADA Coordinator duty statement or desk procedures that reflect all relative oversight responsibilities. The many associated duties must include, but may not be limited to: ensuring equal access to programs, services, non-discrimination: and activities: ensure ensure reasonable accommodations/adaptive services/preferred/primary method support of communication is provided as required; ensure modifications to facilities and programs as necessary; work with the training coordinator to ensure staff are trained as needed: ensure incarcerated persons with disabilities are oriented/educated or otherwise informed as to their rights as well as the OCJ Incarcerated person Disability Program, including access to programs, services, activities, as well as their right to receive reasonable accommodations for their disabilities; at least periodically review all related documentation as necessary (e.g., grievances, disciplinary reports, tracking lists, list of new arrivals [incarcerated persons with disabilities], request forms, etc.); confer with management and other staff as necessary (e.g., regarding medical, mental health, classification, parole, probation, programs, education, work supervisors, etc.); ensure auxiliary aids are functional and provided as required; ensure telecommunications devices/equipment are functional and provided as required; ensure sign language interpreter services are provided as required; ensure assistive devices/health care appliances/durable medical equipment are provided to incarcerated persons with disabilities as required and not removed except for the rare exceptions as authorized per policy; ensure there is clearly identified criteria and follow-up measures for removal of health care appliances/assistive



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devices/durable medical equipment including an alternate assistive device issued and staff monitoring of such an incarcerated person's well-being during the time the original device was removed; ensure outside Regional Center services staff are contacted as appropriate (regarding intellectual/developmental incarcerated persons with disabilities); ensure there are no concerns with the visiting process; ensure sufficient and equitable outside yard and indoor dayroom activities are provided; ensure all fixed ADA assets/features are tracked and monitored for functionality; ensure there is a work order process in place for ADA related items; monitor and interview incarcerated persons with disabilities (both scheduled and unscheduled interviews); ensure ADA tracking lists (including accommodation needs) are accurate and current; tour all areas of the jails where incarcerated persons with disabilities are present (e.g., designated housing units [or other units where one or more incarcerated persons with disabilities may be housed], restrictive housing units, medical/infirmary housing, and mental health housing units), outdoor exercise yards, indoor dayrooms, dining halls, program areas (e.g., chapel or religious services areas, education classes, re-entry classes, substance abuse classes; self-help groups/classes); monitor CDCR disability information that is provided to the OCJ electronically; monitor accessibility issues as well as program and activity space; monitor overall program effectiveness for individual intellectually incarcerated persons with disabilities. That is: not just what is available to them as-a-whole, but individually as to how well they are programming, receiving their prescribed adaptive support services, and adapting in their respective individual programs, activities, housing, work, etc. Lastly, the ADA Coordinator must conduct periodic internal OCJ Disability Program assessments and ensure the ADA deputies inform/orient all incarcerated persons with disabilities as to the OCJ incarcerated person disability program, their rights as a disabled incarcerated person, and the availability to access programs, services, and activities.

The OCSD and ADA Coordinator should develop and incorporate ADA binders for each housing that are designated to house any incarcerated persons with disabilities (regardless of disability). The following information is recommended for placement into the binders:

- Updated tracking list identifying the incarcerated persons with disabilities;
- Assigned cells/bunks;
- Listed reasonable accommodations/adaptive support needs/preferred methods of communication;
- Photos of each disabled incarcerated person (this is particularly important for incarcerated persons whose disability might make it difficult for them during an emergency or evacuation, e.g., intellectually disabled, blind/vision disabled, deaf or hard of hearing, and mobility disabled);
- A copy of a stand-alone comprehensive ADA policy or EC policy (if implemented) or, a reference page listing all related policies (e.g.,



telecommunications, work orders, incarcerated person disciplinary process, work, etc.); and

• Quick reference page or brief training material on use of telecommunications equipment/technology.

28 CFR § 35.107(a) states, "*Designation of responsible employee*. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph."

Policies / Procedures and Document Review

CCOM Policy Section 1606 Inmates with Disabilities outlines the following systemwide functions, roles and responsibilities regarding the OCJ ADA Coordinator and compliance:

- The JCATT Lieutenant will manage the Sheriff's Department's ADA compliance;
- The Administrative Sergeant at each facility will serve as the ADA compliance officer for their respective facility. The Administrative Sergeants will receive training on accessibility standards, their application in jail settings, and the compliance officer's responsibilities to process and respond to requests for accommodation and/or complaints of denial of access to programs and services;
- In addition to the facility Administrative Sergeants, one deputy from the Central Jail Complex (CJX) and one deputy from the Theo Lacy Facility (TLF) will be assigned to monitor ADA compliance under the Jail Compliance and Training Team Supervisor;
- Inmates identified by CHS staff will be interviewed by the facility ADA Deputy. Each incarcerated person will be notified in writing regarding what level of programs and services he/she is eligible to receive based on classification level and medical needs. In addition, each will receive a copy of the jail rules and correctional programs brochure;
- Each week, the ADA Deputy will forward a current list of qualified inmates with disabilities to each area where they are housed. The list will specify what level of programs each inmate is eligible to participate in based on his/her classification level and medical needs;
- Initial training will be given to all safety personnel through the Jail Academy, to ensure that they are aware of the guidelines in this administrative directive and their duties, if any, related to it. Updated training for



transportation personnel, programs staff members, and security staff members assigned to housing locations where disabled inmates are housed will be provided as necessary;

- Tracking logs will be maintained for qualified inmates with disabilities. The logs will include outdoor recreation times and locations, dayroom, shower access (if separate from dayroom), and any other specific information documenting accommodations made for the . The log will also include the dates, times, and locations of public visits;
- Documentation will be maintained according to the department records retention schedule for that type of information; and
- Documentation of staff training will be maintained according to the department records retention schedule for that type of information.

Observations

Staff reported that the OCJ ADA Coordinator position and related responsibilities has been under a transition process. Currently a Lieutenant is assigned as the ADA Coordinator, with a Sergeant serving as the Assistant ADA Coordinator. Presently there is not a duty statement, desk procedures or other documentation existing that describes or lists related duties or oversight responsibilities for either position. Two assigned deputies have been serving as the defacto ADA Coordinators in terms of performing daily 'hands on' responsibilities within the program. An ADA Deputy has responsibilities for the Central Men's Jail, Central Women's Jail, and the IRC. A second ADA Deputy serves in the same capacity at the TLF.

In reviewing examples of electronic CDCR *Armstrong* notifications titled, "Possible Need for an Inmate/Parolee Accommodation or Disability (as sent by CDCR personnel), contained information includes: Disability Placement Program (DPP) codes, housing restrictions, durable medical equipment prescribed or needed; physical limitations (e.g., for possible job placement within a prison or jail environment), sign language interpreter requirements, learning disability status and accommodation needs, kidney dialysis status, and date last released from CDCR, and other information.

Both ADA Deputies developed internal memorandums (in late May 2020) listing their ADA Deputy Activities/Responsibilities. This may not be official as of yet, this is very good start. Both ADA Deputies are to be commended. The document outlines various daily, weekly, and monthly duties. Rather than list out the other specific ADA duties that should be incorporated into an official duty statement, the Assessment Team recommends that the ADA Coordinator, Assistant ADA Coordinator, and both ADA Deputies review this report in its entirety and discuss and agree as to what the four respective duty statements and overall



responsibilities shall entail. Both ADA Coordinators have been interviewing disabled incarcerated person arrivals and transfer within one business day of their arrivals. This is also very important. The two deputies recently (and appropriately so) expanded that list of the types of incarcerated persons with disabilities they interview and subsequently will monitor. It's important meet with all incarcerated persons with disabilities, ensure they understand the jail rules, their rights and a disabled incarcerated person at OCJ, programs, services and activities of the jail, and to ensure they understand there is a disability program in place. It is assumed that since the ADA Deputies are working to expand their respective roles (though unofficial) that the items they log on their interview logs will expand accordingly. Obviously, all roles and responsibilities are going to be modified as the ADA Coordinator and Assistant ADA Coordinator get acclimated into their new roles. Also, of note is that there is not any ADA contact information posted in the housing units, libraries, exercise yards, program areas, or anywhere else.

Staff Interviews

The Assessment Team interviewed the ADA Lieutenant, ADA Sergeant, and ADA Deputies regarding the OCJ ADA program and their related duties. All four (4) employees admittedly have other responsibilities outside the scope of ADA. The ADA Lieutenant and ADA Sergeant both acknowledged that other than recent coordination efforts in working with the expert Assessment Team (in both pre-assessment documentation gathering as well as for on-site review coordination efforts) they have not had much involvement in the ADA or incarcerated person disability program as of yet, but they are in the process of clearly defining their roles as well as that of the two assigned deputies. The ADA Lieutenant also acknowledged that he receives electronic CDCR *Armstrong* notifications titled, "Possible Need for an Inmate/Parolee Accommodation or Disability." The CDCR also provides the same electronic notifications to the law offices of Rosen, Bien, Galvan & Grunfeld LLP as well as to the OCJ compliance office.

For the TLF, the Assessment Team interviewed the assigned ADA Deputy. He indicated that he has approximately 28 ½ years of service for the OCSD and has been assigned to the TLF since 2012. He identified his ADA related duties as: helping incarcerated persons with reasonable accommodations; housing; transportation; program access; with access to assistive devices/health care appliances; and other duties such as helping out medical staff or assisting with medical related issues. He acknowledged that there is not a duty statement, desk procedure, or other approved document detailing or outlining his related job responsibilities. While the Assessment Team was on-site (in late May) the ADA Deputy developed a general list of related job duties for his work position.

The medical department sends emails to the ADA Coordinators on ADA related issues for incarcerated persons with disabilities as needed or requested, such as



for new arrivals or transfers who have identified disabilities. The ADA Deputies ensure housing unit deputies receive mobility disability lists to housing units where disabled incarcerated persons live, e.g., Mod o, Mod P, and Mod O.

The ADA Deputies confirmed they interview newly arrived incarcerated persons with disabilities within one day of receiving emails notification as to arrival or new diagnosis (from the medical department). The ADA Deputies admitted that they only recently began interviewing known intellectual/developmentally incarcerated persons with disabilities (please see the Intellectual Disabilities section of this report for greater detail), and that acknowledged there is no OCJ list of learningincarcerated persons with disabilities, therefore they are unable to identify or interview them. In the past the ADA deputies did not focus on conducting any periodic informal meetings/interviews with incarcerated persons with disabilities. This is very important for the success of the program. ADA staff must know their incarcerated persons with disabilities, talk with them formally at times and informally on occasion, review their grievances, review their disciplinary write-ups. understand their accommodation needs, ensure they are adequately apprised or education on the OCJ disability program, converse with non-custody staff about the disabled population as the feasible, etc. The ADA deputies did mention that they communicate medical staff prior to the interviews they conduct in order to identify and specific disabilities and accommodation needs that are known, and often speaks with family members via telephone regarding any assistive device and special issues or accommodation needs. The ADA deputies have not routinely followed a written script of guestions (although they have the ADA Qualifications Acknowledgment form) as a source for their interviews. A balance of scripted questions (so at to cover all key points) coupled with adjusting to the incarcerated person's own questions should be helpful. The ADA deputies indicated they generally discuss programs; housing; reasonable accommodations; recreation activities; showers; education; and visiting. The scan and maintain the completed forms and signed acknowledgments in (from the incarcerated person interviews) in a folder. In addition to the initial interviews, the incarcerated persons with disabilities are often interviewed about once per month. After receipt of the DAPO notification (via email). I review the information and wait for medical staff to put the incarcerated person name on the tracking list, then interview the incarcerated person. The ADA Deputies also receive from CDCR DAPO, copies of CDCR 1824 Reasonable Modification or Accommodation Requests, and also OCJ related ADA grievances, Either the ADA Deputies or medical staff respond as required.

The ADA Coordinator indicated that he directly reports to Jail Commander, and the ADA Sergeant reports directly to him (ADA Lieutenant). Neither the ADA Lieutenant, ADA Sergeant, or ADA Deputies have any certifications for ADA Coordinators. Although the CJX ADA Deputy has been proactive with obtaining outside ADA training. Both the ADA Lieutenant and ADA Sergeant reportedly will be receiving ADA Coordinator certification training soon.



The ADA Coordinator stated that his role is to facilitate ADA compliance within the Custody Division, and to supervise and work with the Assistant ADA Coordinator and the two ADA Deputies. The ADA Coordinator believes he has sufficient command authoritv to affect change (as warranted) and modify policies/procedures, etc. Currently the ADA Coordinator and Assistant ADA Coordinator are "in the awareness stage of ADA things." They acknowledged they aware of some problems and generally what the OCJ ADA landscape is. They have had "some involvement," but in moving forward what has been the past and current responsibilities of the two ADA Deputies will "fall on our shoulders" (meaning the ADA Coordinator and Assistant ADA Coordinator). He acknowledged that he would need to ensure there are oversight checks and balances in place to ensure that all ADA requirements are met.

Incarcerated Person Interviews

None of the incarcerated persons with disabilities interviewed knew who the name of the ADA Coordinator. However, most mobility, hearing and vision incarcerated persons with disabilities knew the name of their respective ADA deputy.

Conclusions/Recommendations

The OCJ needs to develop policies/procedures and have practices in place regarding the ADA Coordinator responsibilities. The first page of this section (ADA Coordinator) lists numerous responsibilities that should be incorporated into policy and duty statements. In general, the ADA Coordinator must have sufficient command authority to affect policy and practice changes and secure adequate funding and disability program resources as needed. Having a direct reporting line to the Jail Commander should allow this to happen. The ADA Coordinator and his ADA team must have some level of oversight and/or monitoring for all aspects of the ADA program, even those that cross disciplines.



Notices

Standards / Best Practices

28 C.F.R. § 35.106 requires a public entity to make available to applicants, participants, beneficiaries and other interested persons information regarding the provisions of Title II and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by Title II of the ADA.

28 CFR § 35.107(a) states, "*Designation of responsible employee*. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph."

These Notices are required to advise incarcerated persons with disabilities and other interested persons of information regarding the provisions of Title II of the ADA and its applicability to services, programs, or activities and to make the information available in a manner necessary to apprise individuals of the protections against discrimination assured them by the ADA. The Notices are also required to make available to all individuals the name, office address, and telephone number (for the public) of the employee designated to coordinate compliance with the ADA.

Policies / Procedures and Document Review

A review of the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) and HCA CHS Policies and Procedures found that the policies and procedures do not address the requirement for ADA related postings.

Observations

The Assessment Team conducted a site assessment and review of all incarcerated person housing units and public entrances at the CMJ, CWJ, IRC and TLF. The site assessment revealed that the ADA Notices are not prominently displayed in any of the housing units in the CMJ, CWJ, IRC and TLF. The public entrances at the CMJ, CWJ, IRC and TLF do have ADA Public Notices posted. The ADA Notices refer individuals as follows:



- TLF- Theo Lacy Watch Commander or the County ADA Coordinator Vicki L. Stewart CEO/Risk Management;
- CMJ/IRC April Chase County ADA Coordinator or Janet Hayes Department Coordinator; and
- CWJ Central Jail Watch Commander or the County ADA Coordinator Vicki L. Stewart CEO/Risk Management.

CCOM Policy Section 1606 Inmates with Disabilities states, "the JCATT Lieutenant will manage the Sheriff's Department's ADA compliance. The Administrative Sergeant at each facility will serve as the ADA compliance officer for their respective facility."

Staff Interviews

The ADA Unit staff stated they conduct a face-to-face interview with incarcerated persons identified as disabled within 48 hours of arrival and periodically every 30 days.

Conclusions/Recommendations

Although the ADA Deputy meets face-to-face with some of the incarcerated persons with disabilities, the CMJ, CWJ, IRC and TLF do not have Notices posted to make available to all interested individuals the name, office address, and telephone number of the employee or employees designated as required by 28 CFR §35.106. As a result, incarcerated persons are not provided information regarding the provisions of Tittle II of the ADA and its applicability to the services, programs, or activities. They are not apprised of the protections against discrimination assured them by the ADA, and they are not informed as to the name, office address, and telephone number of the employee or employees as the JCATT.

The OCJ must ensure the name, office address, and telephone number of the employee or employees designated to coordinate compliance with the ADA. OCSD reports that these notices have been posted in all dayrooms and public visiting areas. Sabot will monitor this during the monitoring process.



Custody Staff

<u> Standards / Best Practices</u>

All staff must have a working knowledge of and comply with all existing policies, procedures, practices, post orders, and directives. Post orders must contain specific post-related instructions and requirements and are typically required to remain at the specific post site. Post orders must clearly outline duties, responsibilities, and expectations of staff. Without post orders, there is limited accountability for staff performing their day-to-day responsibilities/duties.

28 CFR § 35.105 (a) requires that a public entity evaluate its current policies and practices, and to the extent that modification of any such policies and practices is required, the public entity shall proceed to make the necessary modifications if they do not or may not meet the requirements of Title II.

Policies / Procedures and Document Review

CCOM Policy Section 1606 Inmates with Disabilities. There is no specific information pertaining to the ADA Coordinator or designated responsibilities.

Observations

The Assessment Team was not provided any post order for review. In the absence of post orders or duty statements, it could not be determined whether post orders contain any language relative to staff requirements and duties regarding incarcerated persons with disabilities, providing reasonable accommodations, etc.

Conclusions/Recommendations

Post orders must be developed or revised to incorporate specific requirements of local OCSD policies pertaining to incarcerated persons with disabilities. Just a few examples of information that should be included are evacuations, reasonable accommodations, non-discrimination, Effective Communication, health care appliance/assistive devices, and auxiliary aids.



Accountability

Standards / Best Practices

§ 35.107 A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

The 2010 Guidance and Section-by-Section Analysis states the above paragraph "in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee."

Policies / Procedures and Document Review

A review of the Orange County Sheriff's Department Court & Custody Operations Manual (CCOM) and HCA CHS Policies and Procedures found that the policies and procedures do not address a process to ensure staff are held accountable for violations of the ADA.

Observations

There is no specific policy or procedure to formally track ADA-related grievances or issues (either by egregious, serious, or repeat allegations or violations, or by housing unit, nature of complaint, team/shift, date, or other criteria) in order to monitor disability-related problem areas for immediate or on-going attention.

Conclusions/Recommendations

The OCJ does not have an oversight or a defined accountability or investigative mechanism to monitor and track staff ADA violations. It is paramount that the OCJ develop and implement a policy and practice relative to accountability and investigations specific to ADA and incarcerated persons with disabilities.

The OCJ does not have an existing policy (or procedures) pertinent to monitoring, investigating and tracking violations of Title II of the ADA. Nor do they have a mechanism to specifically capture ADA violations by staff (e.g., egregious or serious violations or repeat occurrences).



The OCJ currently handle incarcerated person grievances and staff complaints in accordance with existing CCOM Policy Section 1600.5 Inmate Grievance Procedure. However, this process only captures alleged violations as a result of incarcerated person grievances filed. This process does not capture events where supervisors, managers or other staff identify violations of Title II of the ADA (or any violations relative to future CCOM policies).

The OCJ must ensure a new policy (and related procedures) are written and implemented regarding monitoring, investigating and tracking staff violations or allegations of violations of Title II of the ADA (as well as violations or allegations of violations of future local ADA-related policies).



Policies and Procedures

<u> Standards / Best Practices</u>

§ 35.105 Self-evaluation. (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

§ 35.130A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Policies / Procedures and Document Review

The Assessment Team reviewed the Orange County Sherriff's Department Courts and Custody Operations Manual and HCA CHS Policies and Procedures, that specifically pertain to or should pertain to incarcerated persons with disabilities. The following list details the Custody and Medical policies that require revision with ADA-specific requirements for incarcerated persons with disabilities.

CCOM Policies

Policy 1200 – Inmate Classification Procedures

Policy 1205 - Community Work Program

Policy 1300 - Court Transfer

Policy 1400 – Release

Policy 1600 - Orange County Jail Rules

- 1600 Orientation and Jail Rules
- 1600.5 Inmate Grievance Procedure
- 1600.6 Orange County Correctional Programs
- 1602 Discipline
- 1604.5 Inmate Services
- 1606 Inmates with Disabilities

Policy 1700 – Security and Control

- 1710 Inspections, Searches & Contraband
- 1717 Electronic Scanning Devices
- 1718 Personal Property
- 1719 Inmate Counts

Policy 1800 - Use of Force

• 1800 - Force and Restraints



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Policy 1900 - Communications, Mail, and Visiting

- 1902 Visiting
- 1904 Inmate Telephone Calls
- Policy 2000 Inmate Services and Programs
 - 2000 Overview/Social Service Programs
 - 2002 Commissary
 - 2004 Inmate Workers
 - 2006 Recreation
 - 2007- Shower Call
 - 2008.2 Viewing Guidelines
 - 2010 Legal Books and Library Services
 - 2012 Education
- Policy 2100 Medical and Health Services
 - 2102.2 Prosthesis
 - 2104.3 Safety Cell
 - 2104.5 Developmentally Disabled
 - 2108.1 Screening Process
- Policy 2400 Sanitation and Maintenance
 - 2406 Facility Maintenance and Repairs
- Policy 2500 Inmate Records
 - 2500 Intake Booking Process
- Policy 2600 Safety and Emergency Procedures
 - 2602 Fire Safety and Evacuation Procedures
- Policy 2900 PREA/LGBTI Inmates
 - 2900.6 Inmate Education
- Policy 3000 Intake Release Center
- Policy 4000 Central Men's Jail
- Policy 5000 Central Women's Jail
- Policy 7000 Theo Lacy Facility
- Policy 9000 Transportation
- HCA CHS Policies
- Policy 1003 Access to Health Care
- Policy 1011 Transportation Emergency Appointments
- Policy 1013 Grievance Process
- Policy 1019 Definition of Terms
- Policy 1020 Cultural Competency
- Policy 3009 Medication Distribution Self Carry Medications
- Policy 5000 Consent to Treatment
- Policy 5001 Refusal to Accept Treatment
- Policy 5006 Do Not Resuscitate
- Policy 5007 Advance Directives/Living Will



Policy 5014 Hunger Strikes Policy 5015 Prison Rape Elimination Act Policy 6000 Management of Health Care Requests and Services Policy 6004 Health Encounters – Sick Call Policy 6010 Communication on 's Health Needs Policy 6100 Pre-Booking Medical Clearance Policy 6101 Receiving Screening Policy 6102 Annual Health Appraisals Policy 6103 Work Status Policy 6104 Community Work Program Eligibility Policy 6105 Conservation Camp Program Policy 6106 Receiving Medical and Mental Health Observation Cells Policy 6201 Diabetics Policy 6303 Sobering Cells Policy 6401 Preparation for Surgery and Special Exams Policy 6402 Medical and Mental Health Housing Assignments Policy 6404 Intra-Facility Transfers Policy 6405 I/M Comprehensive Accommodations – Miscellaneous Message Slip Policy 6406 Obtaining Inmate Personal Property Policy 6602 Disciplinary Housing Health Assessment Policy 6604 Oleoresin Capsicum (OC) Pepper Spray Form 7220C Involuntary Patient Advisement Form 7225A Psychotropic Medication Consent Form Policy 7230 Inmate Rights Policy 7235 Advance Planning Directives Form 7235A Advance Directive Form Policy 7240 Firearms Prohibition Form 7240B Patient Notification of Firearms Prohibition and Right to Hearing Form 7240C Patient Notification of Firearms Prohibition and Right to Hearing Policy 7260 Discharge Procedure (LPS) Form 7260A LPA After Care Plan Form 7260B Notice & Acknowledgment of Receipt CA Welfare & Inst Code 5332 Policy 7305 Tuberculosis Screening Policy 7305 LPS Rights and Limits of Confidentiality Policy 7330 LPS Initial Psychiatric Evaluation Policy 7340 History and Physical (LPS) Policy 7350 Vital Signs Policy 7370 Interdisciplinary Treatment Plan – Cover Sheet (LPS) Form 7370A Interdisciplinary Treatment Plan Policy 7400 Evaluation Prior to Court Policy 7402 Initiating Isolation Policy 7410 Denial of Rights (LPS) Form 7410A Denial of Rights Form Policy 7450 Involuntary Holds – 5150 (LPS)



Form 7450A Involuntary Patient Advisement Policy 7455 Involuntary Holds – 5250 Form 7455D Request for Writ Form Policy 7460 Involuntary Holds – 5260 Policy 7470 Involuntary Holds – 5300 Policy 7475 Involuntary Holds – 5350 Temporary Conservatorship Policy 7490 Seclusion and/or Restraints Policy 7495 Involuntary Holds 5270 Policy 7501 Ectoparasite Control Policy 7510 Medication Consents and Refusals Policy 7530 Riese Hearings (LPS) Policy 7601 CHS LPS Unit Grievances Policy 7660 Interpreters (LPS) Policy 8551 Initiation of Mental Health Services Policy 8555 Mental Health Screening Policy 8557 Medication Evaluation, Treatment, and Consent Policy 8558 Mental Health-Assessment and Evaluation Telepsychiatry Policy 8607 Psychiatric Observation and Stabilization Units Policy 8609 Safety Cells Policy 8610 Restraint Chair Policy 8651 Developmentally Disabled Inmates Policy 8653 Transfer of inmates from Regular Housing to Acute MH Housing Policy 8655 Discharge Planning - Referrals Policy 8700 Conservatorships Policy 9011 Dental Screening Policy 9022 Dental Informed Consent - Refusal Form 9022A Authorization for Dental Treatment

Conclusions/Recommendations/Recommendations

In order to provide incarcerated persons with disabilities with equal access to the OCJ's programs, services and activities, the OCJ and HCA/CHS must revise the policies and procedures identified above adding specific ADA language and requirements, as they relate to incarcerated persons with disabilities and effective communication.



Americans with Disabilities Act Assets/Features

Standards / Best Practices

28 C.F.R. § 35.133 mandates that a public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by qualified individuals with disabilities (e.g., inmates with mobility disabilities).

28 CFR § 35.152(b)(3) requires public entities to implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe and appropriate housing.

Policies / Procedures and Document Review

CCOM Policy Section 1606.4 ADA Procedures, contains language regarding Theo Lacy, IRC, Central Women's Jail, and Central Men's Jail accessible areas. There is no specific language regarding fixed assets features or where they are located, e.g., raised toilet seats, sinks, shower heads, grab bars, transfer bars, etc.

Observations

The OCSD does not maintain any policies or procedures that are specific to the identification and tracking of fixed ADA Structural assets and features, e.g., grab bars, transfer bars, raised toilet seats, etc. There is also no policy regarding identification of specific priorities to ADA related work request/work orders.

Staff Interviews

The Assessment Team interviewed several Facility Operations staff members from the OCSD Research and Development (R&D) Division. Facility Operations staff stated the Computerized Management Maintenance System (CMMS) is used for all jail/facility maintenance work orders. The department locations are located:

- North Shop is located at the Theo Lacy Facility;
- Central Shop is located at the Central Jail Complex; and
- South Shop is located at the Minimum-Security Farm, which is currently suspended.

There are no Facility Operations incarcerated person workers.



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

With regard to maintenance work orders; work orders are provided from jail staff either through the CMMS, or by telephone. Either the reporting staff member or a facility operations staff member enters the requested maintenance information into the system electronically through their respective computer terminal. OCJ staff members may access the Facility Operations Maintenance Request screen titled, 'Get It' via the intranet. It's the interface between the users and the CMMS. Staff input the respective location of the maintenance concern(s) and a description of the problem(s). Facility Operations data entry (IPT) staff receive an electronic request, then the IPT data entry staff turn the maintenance requests into a work order. IPT date entry staff assign each work order with a priority code, then submit the work order to the appropriate maintenance shop. The respective shop supervisor assigns the work order to a specific shop employee for resolution. There are at least four Priority Codes, including Priority 1 (Emergencies). However, there are no ADA (or ADA related) priority codes. Reportedly it depends how the work request is written up that will dictate which priority level it will be assigned. Maintenance staff must rely on the description of the work request in order to assign an appropriate priority level to it

Conclusions/Recommendations

The OCSD should develop a policy to track the state of repairs for structural or fixed ADA assets and features. OCSD should incorporate an inventory of structural or fixed ADA assets and features. Lastly, the OCSD should either consider establishing a specific priority work order code for fixed ADA assets and features or should establish criteria that allows for at least certain ADA related work requests to automatically be elevate to priority 1. For example, what if a grab-bar or transfer bar inside a wheelchair user's assigned cell breaks or malfunctions.



ADA Accessibility (Physical Plant)

Currently, Sabot's ADA Accessibility Expert is working closely with the OC Research and Development team to develop findings and recommendations that will be presented once an accessibility barrier removal corrective action plan has been developed. Julian Martinez and Paul Bishop are scheduled to meet with the Orange County Sheriff's Department, and the Research and Development Team on August 12th and 13th 2020 in an effort to finalize this very important work. This report will be amended to include the final product at some point in the near future.

It is important to acknowledge the tremendous spirit of cooperation demonstrated by the Research and Development team, the Orange County Command staff, the Orange County Counsel, and the Orange County ADA Team in pursuit of a workable solution to these challenges.



Restrictive Housing/Disciplinary Isolation

<u>Standards / Best Practices</u>

Restrictive housing is housing that is referred to as "administrative segregation," "security housing units," and "disciplinary isolation." This type of housing is used by correctional facilities to manage incarcerated persons who may be disruptive within their facilities or as a penalty imposed for a finding of guilt in a disciplinary hearing for violation of jail rules. Incarcerated persons placed in restrictive housing often experience sensory deprivation and are offered few or no educational, vocational, or rehabilitative programs. Incarcerated persons placed in restrictive housing are physically removed from the general population of the jail, separating them from other incarcerated persons, and includes imposing restrictions on their movement, and privileges (property and out-of-cell time). While in restrictive housing, incarcerated persons must continue to receive medical and mental health care as well as access to the courts, hygiene (showers), mail, and meals. Based on incarcerated persons with mental illness being particularly vulnerable to the effects of restrictive housing, the federal courts have found that the placement of incarcerated persons with mental illness in restrictive housing is unconstitutional⁵. The United States Department of Justice (USDOJ)⁶ defines restrictive housing as any type of detention that involves three basic elements:

- Removal from the general inmate population, whether voluntary or involuntary;
- Placement in a locked room or cell, whether alone or with another inmate; and
- Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

The USDOJ identifies five (5) purpose-based categories of segregation, and they are as follows:

Investigative segregation - Most correctional systems allow for the immediate placement of an incarcerated person in restrictive housing, while officials attempt to determine whether longer-term placement is appropriate for one of the reasons discussed below. Investigative segregation is considered non-punitive, much like pre-trial detention in a criminal proceeding. An incarcerated person remains in investigative segregation until officials adjudicate the longer-term need for

⁵ See, e.g., Madrid, 889 F. Supp. at 1265-66; Ruiz v. Johnson, 37 F.Supp.2d 855, 915 (S.D. Tex. 1999), 243 F.3d 941 (5th Cir. 2001), adhered to on remand, 154 F.Supp.2d 975 (S.D. Tex. 2001).

⁶ U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing Final Report January 2016



restrictive housing—at which point the incarcerated person either remains in segregation for the specified reason or returns to the general population.

Disciplinary segregation - Disciplinary segregation is designed to punish an incarcerated person for violating a specific disciplinary rule. The incarcerated person is typically placed in segregation for a determinate term—akin to a prison sentence in a criminal proceeding—and then either released back to the general population or transferred to another facility. Disciplinary segregation is one of several types of punishment typically available in the prison disciplinary system, along with the revocation of incarcerated person privileges and other sanctions.

Protective segregation (or protective custody) - Protective segregation is designed to protect an incarcerated person from a real or perceived threat within the prison. The incarcerated person is typically placed in segregation for an indeterminate term and returned to the general population once the threat dissipates.

Preventative segregation - Preventative segregation is designed to prevent an incarcerated person from threatening the safety and order of the institution. Unlike disciplinary segregation, this form of restrictive housing is not used to punish a specific disciplinary violation but instead relies on the belief that an incarcerated person is simply "too dangerous" to be housed in the general population. The incarcerated person is typically placed in preventative segregation for an indeterminate term, which lasts until prison officials conclude that the incarcerated person can be housed safely in a less restrictive setting. (Some scholars refer to this practice as "administrative segregation, "3 a phrase that we decline to use primarily to avoid confusion with "administrative detention," the Bureau's term for a broader range of non-punitive restrictive housing).

Transitional segregation - At the end of an incarcerated person's stay in restrictive housing for one of the reasons stated above, some institutions will keep the incarcerated person in segregation for a period of time while waiting to transfer him or her to a new location, often when bed space is not available at the destination facility. Transitional segregation is non-punitive and indeterminate, although typically relatively brief.

In the U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing Final Report, January 2016, the USDOJ includes a section on "Guiding Principles." The "Guiding Principles" are intended as best practices for correctional facilities within the American criminal justice system, and the aspirational principles should serve as a roadmap for correctional systems seeking direction on future reforms. The "Guiding Principles" for Post-Adjudication (Disciplinary Segregation) include:



- Incarcerated persons who violate disciplinary rules should be placed in restrictive housing only as necessary, and only after officials have concluded that other available sanctions are insufficient to serve the purposes of punishment;
- Disciplinary sanctions, regardless of whether they involve a period of segregation, should be applied in a manner that is swift, certain, and fair;
- Correctional systems should establish maximum penalties for each level of offense. These penalties should always include alternatives to disciplinary segregation. The maximum penalties should be graded based on the seriousness of the offense. If used for punishment, restrictive housing should be reserved for offenses involving violence, involving escape, or posing a threat to institutional safety by encouraging others to engage in such misconduct. Policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct;
- An incarcerated person should be sentenced to a term of disciplinary segregation only after officials conduct a disciplinary hearing, and the incarcerated person is adjudicated guilty of the alleged violation. The hearing should be conducted by a correctional official outside the regular chain of command at the institution where the incarcerated person is housed;
- When a disciplinary hearing officer is confronted with an incarcerated person who demonstrates symptoms of mental illness, the officer should refer the incarcerated person to a qualified mental health professional to provide input as to the incarcerated person's competence to participate in the disciplinary hearing, any impact the incarcerated person's mental illness may have had on his or her responsibility for the charged behavior, and information about any known mitigating factors in regard to the behavior. The disciplinary hearing officer should also consult a mental health professional, preferably the treating clinician, as to whether certain types of sanctions, (*e.g.*, placement in disciplinary segregation, loss of visits, or loss of phone calls) may be inappropriate because they would interfere with supports that are a part of the incarcerated person's treatment or recovery plan. Disciplinary hearing officers should take the clinician's findings into account when deciding what if any, sanctions to impose;
- Ordinarily, disciplinary sentences for offenses that arise out of the same episode should be served concurrently; and
- To incentivize conduct that furthers institutional safety and security, incarcerated persons who demonstrate good behavior during disciplinary segregation should be given consideration for early release from segregation, where appropriate.



The "Guiding Principles" for Conditions of Confinement include:

- Correctional systems should seek ways to increase the minimum amount of time that incarcerated persons in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other incarcerated persons;
- As correctional systems reduce the number of incarcerated persons in restrictive housing, they should devote resources towards improving the conditions of those remaining in segregation. In particular, correctional systems should take advantage of lower staff-to-incarcerated person ratios within restrictive housing units by providing the remaining incarcerated persons with increased out-of-cell time;
- Correctional systems should provide out-of-cell, confidential psychological assessments and visits for incarcerated persons whenever possible, to ensure patient privacy and to eliminate barriers to treatment;
- Restrictive housing units should maintain adequate conditions for environmental, health, and fire safety; and
- The denial of basic human needs such as food and water, should not be used as punishment, whether alone or in conjunction with the use of restrictive housing.

The "Guiding Principles" for incarcerated persons with serious mental illness include:

- Generally, incarcerated persons with serious mental illness (SMI) should not be placed in restrictive housing;
- An incarcerated person with SMI should not be placed in restrictive housing, unless:
 - The incarcerated person presents such an immediate and serious danger that there is no reasonable alternative⁷; or
 - A qualified mental health practitioner determines:
 - That such placement is not contraindicated⁸;

⁷ "Immediate and serious danger" might arise during an emergency, such as a large-scale prison riot, but would only last as long as emergency conditions are present. "Immediate and serious danger" also includes the "extraordinary security needs" described in Institution Supplement FLM 5310.16A, Treatment and Care of Inmates with Mental Illness, dated July 22, 2015. *See supra* note 25.

⁸ A qualified mental health practitioner might conclude that placement in restrictive housing is not contradicted, when, for example, the practitioner determines that the inmate is stable, responding well to medication, unlikely to remain in restrictive housing for more than a short period of time,



- That the incarcerated person is not a suicide risk;
- That the incarcerated person does not have active psychotic symptoms; and
- In disciplinary circumstances, that lack of responsibility for the misconduct due to mental illness or mitigating factors related to the mental illness does not contraindicate disciplinary segregation.
- Incarcerated persons with SMI who are diverted from restrictive housing should be placed in a clinically appropriate alternative form of housing, such as a secure mental health unit or other residential psychology treatment program;
- If an incarcerated person with SMI is placed in restrictive housing:
 - Mental health staff should conduct a mental health consultation at the time of the incarcerated person's placement in restrictive housing;
 - The incarcerated person should receive intensive, clinically appropriate mental health treatment for the entirety of the incarcerated person's placement in restrictive housing;
 - The incarcerated person should receive enhanced opportunities for in-cell and out-of-cell therapeutic activities and additional unstructured out-of-cell time, to the extent such activities can be conducted while ensuring the safety of the incarcerated person, staff, other incarcerated persons, and the public;
 - At least once per week, a multidisciplinary committee of correctional officials should review the incarcerated person's placement in restrictive housing;
 - At least once per week, a qualified mental health practitioner, assigned to supervise mental health treatment in the restrictive housing unit, should conduct face-to-face clinical contact with the incarcerated person, to monitor the incarcerated person's mental health status and identify signs of deterioration; and
 - After 30 days in restrictive housing, the incarcerated person should be removed from restrictive housing, unless the warden of the facility certifies that transferring the incarcerated person to an alternative housing is clearly inappropriate.⁹ In making this determination, the

and likely to decompensate if transferred away from the inmate's current mental health treatment team.

⁹ In determining the appropriateness of the inmate's continuing placement, wardens should be guided by the principles outlined above regarding the placement of inmates with SMI in restrictive housing.



warden should consult with mental health staff, who should conduct a psychological evaluation of the incarcerated person beforehand.

- Incarcerated persons in restrictive housing should be screened for signs of SMI. Correctional systems should implement policies, procedures, and practices to ensure that:
 - Prior to an incarcerated person's placement in restrictive housing (or when that is infeasible, as soon as possible and no later than within 24 hours of placement), staff can promptly determine whether the incarcerated person has been previously designated as seriously mentally ill or at risk of developing SMI;¹⁰
 - Multiple times per day, correctional officers, trained in identifying signs of mental health decompensation, conduct rounds of the restrictive housing unit;
 - At least once per day, medical staff conduct medical rounds of the restrictive housing unit;
 - After 30 days in restrictive housing, and every 30 days thereafter, all incarcerated persons in restrictive housing receive a face-to-face psychological review by mental health staff; and
 - If, at any point, an incarcerated person shows signs of psychological deterioration while in restrictive housing, the incarcerated person should be immediately evaluated by mental health staff. At the conclusion of this review, mental health staff should recommend whether the incarcerated person requires immediate transfer to a medical facility or another treatment center, as well as whether the incarcerated person should receive enhanced mental health services and/or should be referred to a clinically appropriate alternative form of housing.

The "Guiding Principles" for Incarcerated persons with medical needs include:

- All incarcerated persons in restrictive housing should have access to appropriate medical care, including emergency medical care; and
- When an institution lacks the capacity to provide appropriate medical care to an incarcerated person in restrictive housing, that incarcerated person should be transferred to an appropriate facility where he or she can receive necessary treatment.

In the U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing Final Report January 2016, the USDOJ encourages

¹⁰ A correctional system could make this determination by, for example, creating an index, or "hot list," of inmates previously designed as having serious mental illness. When a correctional system lacks this capacity, staff should conduct a psychological review of the inmate at the time of placement to make this determination.



other correctional systems to change its policies and practices regarding the use of restrictive housing. Some of these policies include:

- Provide SHU and SMU incarcerated persons at least two hours of out-ofcell time per day;
- Increase the minimum of out-of-cell recreation from 5 hours per week to 7 hours per week;
- Enhance out-of-cell programming for restrictive housing incarcerated persons by changing the way incarcerated persons are restrained during programs; and
- Modifying 28 C.F.R. § 552.22(h)(4), which would allow for the use of "secure programming chairs" for educational and group therapy programming for restrictive housing incarcerated persons allowing incarcerated persons to receive in-person educational and mental health programming in a less restrictive manner than currently used.

In the same report the U.S. Department of Justice includes "Guiding Principles," which are intended as best practices for correctional facilities within the American criminal justice system. The report states, "These aspirational principles should serve as a roadmap for correctional systems seeking direction on future reforms. When a correctional system possesses the resources, staffing, and legal authority to fully implement these principles, it should do so. When a correctional system lacks the resources, staffing, or legal authority, it should develop a clear plan for building the necessary capacity and then proceed expeditiously toward that goal. Officials at prisons and jails should work with policymakers, correctional officer labor unions, advocacy organizations, and other stakeholders to develop responsible and humane restrictive housing policies that both protect inmates and enhance officer safety." Some of the "Guiding Principles" include:

"Restrictive Housing, Generally:

- Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public;
- Correctional systems should always be able to clearly articulate the specific reason(s) for an inmate's placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement;
- Restrictive housing should always serve a specific penological purpose. When drafting or implementing policy authorizing the use of restrictive housing, correctional systems should clearly articulate the purpose(s) for employing restrictive housing in the authorized circumstances;
- An inmate's initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should



include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals;

- For every inmate in restrictive housing, correctional staff should develop a clear plan for returning the inmate to less restrictive conditions as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, others, or the public;
- All correctional staff should be regularly trained on restrictive housing policies. Correctional systems should ensure that compliance with restrictive housing policies is reflected in employee-evaluation systems; and
- Correctional systems should establish standing committees, consisting of high-level correctional officials, to regularly evaluate existing restrictive housing policies and develop safe and effective alternatives to restrictive housing.

Conditions of Confinement:

- Correctional systems should seek ways to increase the minimum amount of time that inmates in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates;
- As correctional systems reduce the number of inmates in restrictive housing, they should devote resources towards improving the conditions of those remaining in segregation. In particular, correctional systems should take advantage of lower staff-to-incarcerated person ratios within restrictive housing units by providing the remaining inmates with increased out-of-cell time;
- Correctional systems should provide out-of-cell, confidential psychological assessments and visits for inmates whenever possible, to ensure patient privacy and to eliminate barriers to treatment;
- Restrictive housing units should maintain adequate conditions for environmental, health, and fire safety; and
- The denial of basic human needs—such as food and water—should not be used as punishment, whether alone or in conjunction with the use of restrictive housing.

Inmates with Serious Mental Illness:

- Generally, inmates with serious mental illness (SMI) should not be placed in restrictive housing;
- An inmate with SMI should not be placed in restrictive housing, unless:
 - The inmate presents such an immediate and serious danger that there is no reasonable alternative; or
 - A qualified mental health practitioner determines:
 - That such placement is not contraindicated;



- That the inmate is not a suicide risk;
- That the inmate does not have active psychotic symptoms; and
- In disciplinary circumstances, that lack of responsibility for the misconduct due to mental illness or mitigating factors related to the mental illness do not contraindicate disciplinary segregation.
- Inmates with SMI who are diverted from restrictive housing should be placed in a clinically appropriate alternative form of housing, such as a secure mental health unit or other residential psychology treatment program;
- If an inmate with SMI is placed in restrictive housing:
 - Mental health staff should conduct a mental health consultation at the time of the inmate's placement in restrictive housing;
 - The inmate should receive intensive, clinically appropriate mental health treatment for the entirety of the inmate's placement in restrictive housing;
 - The inmate should receive enhanced opportunities for in-cell and out-of-cell therapeutic activities and additional unstructured out-ofcell time, to the extent such activities can be conducted while ensuring the safety of the inmate, staff, others, and the public;
 - At least once per week, a multidisciplinary committee of correctional officials should review the inmate's placement in restrictive housing;
 - At least once per week, a qualified mental health practitioner, assigned to supervise mental health treatment in the restrictive housing unit, should conduct face-to-face clinical contact with the inmate, to monitor the inmate's mental health status and identify signs of deterioration; and
 - After 30 days in restrictive housing, the inmate should be removed from restrictive housing, unless the warden of the facility certifies that transferring the inmate to an alternative housing is clearly inappropriate. In making this determination, the warden should consult with mental health staff, who should conduct a psychological evaluation of the inmate beforehand.
- Inmates in restrictive housing should be screened for signs of SMI. Correctional systems should implement policies, procedures, and practices to ensure that:
 - Prior to an inmate's placement in restrictive housing (or when that is infeasible, as soon as possible and no later than within 24 hours of placement), staff can promptly determine whether the inmate has been previously designated as seriously mentally ill or at risk of developing SMI;



- Multiple times per day, correctional officers, trained in identifying signs of mental health decompensation, conduct rounds of the restrictive housing unit;
- At least once per day, medical staff conduct medical rounds of the restrictive housing unit;
- After 30 days in restrictive housing, and every 30 days thereafter, all inmates in restrictive housing receive a face-to-face psychological review by mental health staff; and
- If at any point an inmate shows signs of psychological deterioration while in restrictive housing, the inmates should be immediately evaluated by mental health staff. At the conclusion of this review, mental health staff should recommend whether the inmates requires immediate transfer to a medical facility or other treatment center, as well as whether the inmates should receive enhanced mental health services and/or should be referred to a clinically appropriate alternative form of housing."

The following sections of the Minimum Standards for Local Detention Facilities Title 15 - Crime Prevention and Corrections Division 1, Chapter 1, Subchapter 4 2010 Regulations (Effective September 19, 2012) address the placement of incarcerated persons into administrative segregation and disciplinary isolation who are housed in the OCJ's:

§ 1053. Administrative Segregation:

Except in Type IV facilities, each facility administrator shall develop written policies and procedures which provide for the administrative segregation of inmates who are determined to be prone to escape; assault staff or other inmates; disrupt the operations of the jail, or likely to need protection from other inmates, if such administrative segregation is determined to be necessary in order to obtain the objective of protecting the welfare of inmates and staff. Administrative segregation shall consist of separate and secure housing but shall not involve any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff.

§ 1081. Plan for Inmate Discipline:

(c) Major violations or repetitive minor acts of non-conformance or repetitive minor violations of institutional rules shall be reported in writing by the staff member observing the act and submitted to the disciplinary officer. The inmates shall be informed of the charge(s) in writing. The consequences of a major violation may include but are not limited to, loss of good time/work time, placement in disciplinary isolation, disciplinary isolation diet, or loss of privileges mandated by regulations.



§ 1082. Forms of Discipline:

The degree of punitive actions taken by the disciplinary officer shall be directly related to the severity of the rule infraction. Acceptable forms of discipline shall consist of, but not be limited to, the following:

- (a) Loss of privileges;
- (b) Extra work detail;
- (c) Short term lockdown for less than 24 hours;
- (d) Removal from work details;
- (e) Forfeiture of "good time" credits earned under Penal Code Section 4019;
- (f) Forfeiture of "work time" credits earned under Penal Code Section 4019;
- (g) Disciplinary isolation; and
- (h) Disciplinary isolation diet.

§ 1083. Limitations on Disciplinary Actions:

The Penal Code and the State Constitution expressly prohibit all cruel and unusual punishment. Additionally, there shall be the following limitations:

(a) If an inmate is on disciplinary isolation status for 30 consecutive days, there shall be a review by the facility manager before the disciplinary isolation status is continued. This review shall include a consultation with health care staff. Such reviews shall continue at least every fifteen days thereafter until the disciplinary status has ended. This review shall be documented.

(b) The disciplinary isolation cells or cell shall have the minimum furnishings and space specified in Title 24, Part 2, 1231.2.6, and 2.7. Occupants shall be issued clothing and bedding as specified in Articles 13 and 14 of these regulations and shall not be deprived of them through any portion of the day except that those inmates who engage in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive inmates of such articles of clothing and bedding shall be reviewed by the facility manager or designee during each 24-hour period.

(c) Penal Code Section 4019.5 expressly prohibits the delegation of authority to any inmates or group of inmates to exercise the right of punishment over any other inmate or group of inmates.

(d) In no case shall a safety cell, as specified in Title 24, Part 2, 1231.2.5, or any restraint device, be used for disciplinary purposes.

(e) No inmates may be deprived of the implements necessary to maintain an acceptable level of personal hygiene, as specified in Section 1265 of these regulations.

(f) Food shall not be withheld as a disciplinary measure.



(g) The disciplinary isolation diet described in section 1247 of these regulations shall only be utilized for major violations of institutional rules.

(1) In addition to the provisions of Section 1247, the facility manager shall approve the initial placement on the disciplinary isolation diet and ensure that medical staff is notified.

(2) In consultation with medical care staff, the facility manager shall approve any continuation on that diet every 72 hours after the initial placement.

(h) Correspondence privileges shall not be withheld except in cases where the inmate has violated correspondence regulations, in which case correspondence may be suspended for no longer than 72 hours, without the review and approval of the facility manager.

(i) In no case shall access to courts and legal counsel be suspended as a disciplinary measure.

§ 1065. Exercise and Recreation:

(a) The facility administrator of a Type II or III facility shall develop written policies and procedures for an exercise and recreation program, in an area designed for recreation, which will allow a minimum of three hours of exercise distributed over a period of seven days. Such regulations as are reasonable and necessary to protect the facility's security, and the inmates' welfare shall be included in such a program. In Type IV facilities, such a program can be either in-house or provided through access to the community.

The principles contained in the National Commission on Correctional Health Care (NCCHC) Position Statement: Solitary Confinement (Adopted April 2016) provides the following guides for correctional health professionals in addressing issues about solitary confinement:

- Prolonged (greater than 15 consecutive days), solitary confinement is cruel, inhumane, and degrading treatment, and harmful to an individual's health;
- Juveniles, individuals with mental illness, and pregnant women should be excluded from solitary confinement of any duration;
- Correctional health professionals should not condone or participate in cruel, inhumane, or degrading treatment of adults or juveniles in custody;
- Prolonged solitary confinement should be eliminated as a means of punishment;
- Solitary confinement as an administrative method of maintaining security should be used only as an exceptional measure when other, less restrictive options are not available, and then for the shortest time possible. Solitary confinement should never exceed 15 days. In those rare cases where



longer isolation is required to protect the safety of staff and/or other inmates, more humane conditions of confinement need to be utilized;

- Correctional health professionals' duty is the clinical care, physical safety, and psychological wellness of their patients;
- Isolation for clinical or therapeutic purposes should be allowed only upon the order of a health care professional and for the shortest duration and under the least restrictive conditions possible and should take place in a clinically designated and supervised area;
- Individuals who are separated from the general population for their own protection should be housed in the least restrictive conditions possible;
- Health staff must not be involved in determining whether adults or juveniles are physically or psychologically able to be placed in isolation;
- Individuals in solitary confinement, like other inmates, are entitled to health care that is consistent with the community standard of care;
- Health care staff should evaluate individuals in solitary confinement upon placement and, thereafter, on at least a daily basis. They should provide them with prompt medical assistance and treatment as required;
- Health care staff must advocate so that individuals are removed from solitary confinement if their medical or mental health deteriorates or if necessary, services cannot be provided;
- Principles of respect and medical confidentiality must be observed for patients who are in solitary confinement. Medical examinations should occur in clinical areas where privacy can be ensured. Patients should be examined without restraints and without the presence of custody staff unless there is a high risk of violence. In situations where this cannot occur, the patient's privacy, dignity, and confidentiality should be maintained as much as possible. If custody staff must be present, they should maintain visual contact, but remain at a distance that provides auditory privacy;
- Health care staff should ensure that the hygiene and cleanliness of individuals in solitary confinement and their housing areas are maintained; that they are receiving sufficient food, water, clothing, and exercise; and that the heating, lighting, and ventilation are adequate;
- Adults and juveniles in solitary confinement should have as much human contact as possible with people from outside the facility and with custodial, educational, religious, and medical staff;
- Appropriate programs need to be available to individuals in confinement to assist them with the transition to other housing units or the community if released from isolation to the community; and
- In systems that do not conform to international standards, health care staff should advocate with correctional officials to establish policies prohibiting the use of solitary confinement for juveniles and individuals with mental illness and limiting its use to less than 15 days for all others.



The NCCHC "Spotlight on the Standards"¹¹ defines segregated inmates as those who are isolated from the general population and who receive services and activities apart from other inmates.

NCCHC Standard J-G-02 Segregated Inmates defines the degrees of isolation in the standard's compliance indicators as:

- Extreme isolation refers to situations where inmates are seen by other staff or other inmates fewer than three times a day;
- The middle degree of isolation, which is the most common, refers to inmates who are segregated and have limited contact with staff or other inmates; and
- The least restrictive category refers to inmates who are allowed periods of recreation or other routine social contact among themselves while segregated from the general population.

The NCCHC "Spotlight on the Standards" provides the rationale behind the standard, the intended outcomes, and compliance concerns for the review and monitoring of segregated inmates.

"The intent of the standard is to ensure that inmates placed in segregation maintain their medical and mental health while physically and socially isolated from the rest of the inmate population. To ensure this, appropriate monitoring and health record review procedures should be in place.

The first step is the health record review. Compliance indicator 1 states: "Upon notification that an inmate is placed in segregation, a qualified health care professional reviews the inmate's health record to determine whether existing medical, dental or mental health needs contraindicate the placement or require accommodation. Such review is documented in the health record."

Custody and health staff should have an effective system to communicate when an inmate is about to be or has just been placed in segregation. It is important for health staff to quickly determine whether there are contraindications or necessary accommodations to the segregation to minimize the risk of harm to the inmate's health. Documentation of this review (in the health record) prior to, or soon after, the placement is vital. NCCHC recommends that the responsible health authority be involved in the development of segregation policies and procedures so that appropriate accommodations for health conditions can be addressed.

Due to the complex conditions of segregation, health staff should review the health status of their patients prior to their placement into segregation to ensure continuity

¹¹ https://www.ncchc.org/spotlight-on-the-standards-26-2



of care and services. Take care when reviewing the health records of inmates with serious mental illnesses to assess the risk of exacerbation of the mental illness. Medical staff reviewing the record should notify mental health staff when the inmate is currently under the care of mental health services.

Next, frequent monitoring based on the degree of isolation should be initiated. Inmates under extreme isolation should be monitored daily by medical staff and at least once a week by mental health staff (category 2a). Segregated inmates who have limited contact with staff or other inmates should be monitored three days a week by medical or mental health staff (category 2b). Inmates in category 2c should be checked weekly by medical or mental health staff.

The quality of the health round in segregation is key. Checks by health staff ensure that each inmate has the opportunity to request care for medical, dental, or mental health problems. These individual visits also enable health staff to ascertain the inmate's general medical and mental health status. Inmates often experience irritability, anxiety, or a dysphoric mood within weeks of placement in social isolation. Special attention should always be given to vulnerable populations, such as adolescents and people with mental illness. Due to the possibility of injury and depression during isolation, the evaluations by health staff should include notation of bruises or other trauma markings, comments regarding the inmate's attitude and outlook (particularly as they might relate to suicidal ideation) and any health complaints.

Inmates with serious mental disorders often experience an exacerbation of their underlying illness when segregated. NCCHC recommends that the health rounds on patients with serious mental illness in segregation take place at the beginning, middle, and end of each week to decrease the likelihood of problems during weekend hours.

Simply initialing a housing roster upon entering the unit is not enough. Segregation rounds should be documented on individual logs or cell cards (and when filled should be filed in the inmate's health record) or in the health record and include date and time of contact and the signature or initials of the health staff member making the rounds. Significant findings should be documented in the health record. Health staff should note every time they make rounds, whether or not there is a health-related interaction or observation. However, necessary clinical encounters should not take place cell side but in an appropriate clinical setting and noted in the patient's health record. When a segregated inmate requests health care, arrangements should be made for triage, examination, and treatment in an appropriate clinical setting. Note that the segregation rounds are required in addition to whatever mechanism is in place for inmates to request health services daily (see E-07 Nonemergency Health Care Requests and Services)."



Policies / Procedures and Document Review

CCOM Policy Section 1602, Discipline addresses the placement of incarcerated persons into Disciplinary Housing as a result of a result of a finding of guilt of a major jail rule violation. The policy section also includes the requirements for placement, medical and mental health reviews (prior to placement and during continued placement), length of placement, suspension of and allowance of privileges during Disciplinary Isolation, and personal hygiene items provided during Disciplinary Isolation.

HCA CHS Policy Section 6602 Disciplinary Isolation Health Assessment includes the initial and ongoing medical, mental health screening, and review for incarcerated persons being placed and housed in Disciplinary Isolation.

OCJ Custody provided a .pdf document OC Housing Tables (1/30/20). The OC Housing Tables reflects the following Disciplinary Isolation cells:

- Theo Lacy Facility:
 - Module I 8 cells;
 - Module K 8 cells;
 - \circ Module N 16 cells;
- Intake Release Center:
 - 2nd Floor North 8 cells (closed);
 - \circ 2nd Floor South 6 cells (closed);
 - Module K 5 cells (closed);
 - Module J- 5 cells (closed);
- Central Men's Jail:
 - Disciplinary Isolation 12 cells;
- Central Women's Jail:
 - Disciplinary Isolation 4 cells.

HCA CHS Policy 6602 Disciplinary Housing Health Assessment states, "Inmates who are placed in disciplinary housing will have regular access to Correctional Health Services (CHS) clinical staff to ensure that their placement is not contraindicated based on the inmate's medical and mental health conditions. CHS clinical staff will conduct an initial as well as ongoing health evaluations during an inmate's placement into disciplinary housing." The policy also outlines the Initial Health Assessment required prior to an inmate's placement into disciplinary housing and the requirement for medical staff to conduct welfare checks and ongoing health evaluations. Visual and verbal contact welfare checks are required to be conducted once per shift, and mental health evaluations are required to be conducted on a weekly basis.



HCA CHS provided Course Completion History for the training course "Dis Isolation Health Assessment." The history report reflects 168 medical staff completed the on-line training.

Observations

In January 2020, the OCJ revised CCOM Policy Section 2006, Recreation (b) Dayrooms to state the following;

- "1. Under normal circumstances, inmates will be afforded the opportunity to use the dayroom for a minimum of three hours per day, unless specific and articulable reasons exist for a shorter time period. In such cases, the reasons will be thoroughly documented in the guard station daily log by the respective deputy or correctional services assistant. It is expected that dayrooms will generally be available for use by inmates from 0600 through 2300 hours daily. The sergeant responsible for the housing area shall review dayroom usage as part of the required housing area checks and ensure the three hour day room minimum has been met. If the three hour dayroom minimum has not been met, the sergeant will confirm the reason(s) are clearly documented in the guard station daily log.
- 2. Staff may temporarily close the dayroom only for as long as necessary to facilitate the daily operations of the housing area, such as counts, safety checks, meals, searches, clothing exchange, commissary, med call, etc., and shall reopen the dayroom when the activity is complete. All activities shall be documented in the guard station daily log.
- 3. An inmate's poor behavior or violation of jail rules does not justify loss of his/her dayroom time, unless their actions pose a threat to the safety and security of the facility. These facts shall be documented in the guard station daily log. This does not apply to inmates who have received loss of dayroom privileges through the disciplinary process.
- 4. Documented security concerns may necessitate the reduction or cancellation of scheduled dayroom time. A sergeant or the watch commander must approve any changes prior to implementation. If an exigency prevents prior approval, staff will notify a supervisor as soon as practical for approval. The reduction or cancellation will be documented in the guard station daily log along with the name of the approving supervisor. An Individual Inmates Activity Log may also note the cancellation or reduction.
- 5. Inmates may only use the dayroom in their assigned housing area, unless otherwise directed by staff. Only those inmates who are compatible with each other will be allowed into the dayroom together. In housing areas where security concerns, classification restrictions, or separation orders prevent the inmates from using the dayroom together, staff shall follow a set schedule to ensure the equitable distribution of dayroom among inmates



or groups. The schedule will rotate on a daily basis to provide a variety of dayroom times for each inmate or group. Staff shall not deviate from the schedule. If the inmates or group scheduled declines the dayroom opportunity, the dayroom shall remain empty for that dayroom period. If time remains after the last group finishes, staff shall begin the dayroom schedule again from the day's first group.

- 6. Dayroom activities will include television viewing, newspaper and book reading, tabletop games, and telephone access if the telephones are located in the dayroom. If there are no telephones in the dayroom, inmates will be provided access to the telephones during outdoor recreation or during designated telephone use times. Inmates in the dayroom must be in full jail issue.
- 7. Correctional Health Services (CHS) may place temporary restrictions on dayroom access, such as for inmates with contagious diseases or inmates who pose a danger to themselves or others.
- 8. See CCOM 1204(b) for civil detainee dayroom information.
- c) Logging Outdoor Recreation and Dayroom:
 - 1. Open Housing Areas.
 - 2. In housing areas where all inmates in the housing area are allowed access to outdoor recreation or dayroom together, staff shall make an entry in the guard station daily log whenever:
 - i. The dayroom(s) are opened or made available.
 - ii. The dayroom(s) are closed.
 - iii. Outdoor recreation is offered.

iv. Outdoor recreation is closed, or when the inmates return from outdoor recreation, depending on the housing area's configuration. v. Groups.

- 3. In housing areas where inmates are separated into groups for security purposes, staff shall log the start and end times of all offered opportunities for outdoor recreation and dayroom in the guard station daily log. The entry will include which cells make up the group.
- 4. In module housing areas, staff shall document the following information on the guard station daily dayroom log:
 - i. Inmate's name
 - ii. Booking number
 - iii. Start time/end time
 - iv. Any refusal of dayroom and reason for refusal

v. Any inmates who requests to lock it down before their three-hour minimum expires.

5. Inmates with Individual Inmate Activity Logs

Staff shall log the start and end times of all offered opportunities for outdoor recreation and dayroom, and whether the inmates accepted or declined, in the inmate's Individual Inmate Activity Log."



The OCJ provided the Assessment Team with "Guard Station Logs" (January 8, 2020 to January 22.2020) for CMJ (Mod A, B, C, D, E, F, and O), CWJ (Mod P and Second Floor), IRC (Mod K, L, M, and N), TLF (Barracks AE, F, G, and H), TLF (Mod I, J, K, L, M, N, O, P, Q, R) and TLF Recreation.

Based on the Assessment Teams review of the logs the Assessment Team cannot determine the amount of dayroom and recreation time afforded to incarcerated persons. The Assessment Team notes that there is inconsistent logging of recreation and dayroom activities. Some of the inconsistencies include:

- Cases where 3 hours of dayroom not provided, and no reason noted by the officer or sergeant;
- Activity log only reflects when recreation yard "Roof Call" was called and no return time;
- No notation of dayrooms open;
- No notation on activity log dayrooms open (Open Dorms);
- No notation on activity log when dayrooms are closed; and
- No end time for dayroom logged.

It is the Assessment Team's position that the OCJ must have a functional system for logging and tracking of out of cell time (dayroom and outdoor recreation) for all incarcerated persons. This will assist the OCJ to monitor staff compliance with the requirements of CCOM Policy Section 2006, Recreation.

Based on incarcerated persons housed in general population units generally being provided three hours per day of dayroom access and three hours of outdoor recreation access per week, the Assessment Team has determined the only restrictive housing used at the OCJ is the Disciplinary Isolation housing units. The incarcerated persons interviewed all reported that they generally receive more than three hours of dayroom per day.

In the National Institute of Justice Restrictive Housing in the U.S. Issues, Challenges, and Future Directions the NIJ cites the following research (Steiner et al., 2014; Steiner & Cain, in press) which states, "The factors associated with an increased risk of misconduct and violence perpetration are age (younger), a history of antisocial behavior (e.g., drug use, prior criminal justice involvement), antisocial peers or gang involvement, and mental health problems." It is the Assessment Team's experience that incarcerated persons with mental health concerns are generally seen by jail staff to engage in behavior implicating disciplinary rules at a disproportionately higher level as compared to incarcerated persons with no mental health concerns.

The Disciplinary Isolation housing units are located in the following areas:



Theo Lacy Facility –	Module I (8 Cells); Module K (8 Cells); Module N (16 Cells);	
Intake Release Center -	2 nd Floor North (8 Cells) Closed; 2 nd Floor South (6 Cells) Closed; Module K (5 Cells) Closed; Module J (5 Cells) Closed;	
Central Men's Jail -	Disciplinary Isolation (12 Cells);	
Central Women's Jail	Disciplinary Isolation (4 Cells);	
At the time of the assessment, the disciplinary isolation census was:		

Theo Lacy Facility –	Module I – 7 incarcerated persons; Module K – 6 incarcerated persons; Module N – 2 incarcerated persons;
Central Men's Jail -	Disciplinary Isolation – 3 incarcerated persons;
Central Women's Jail	Disciplinary Isolation – 2 incarcerated persons;

All incarcerated persons (all classification levels) who are not housed in Disciplinary Isolation are, according to the policy, afforded the opportunity to use the dayroom for a minimum of three hours per day, have access to outdoor recreation, are permitted to participate in programs (religious and educational) and may participate in visiting.

The Disciplinary Isolation cells at TLF have the following configurations; concrete walls with a solid steel cell door. The cell doors have a window for staff observation into the cell and a food-port. The cells are illuminated by electrical lighting with no natural light.

The Disciplinary Isolation cells at IRC have the following configurations:

The Disciplinary Isolation cells at the IRC (North and South) have the following configurations: concrete walls with a solid steel cell door. The cell doors have a window for staff observation into the cell and a food-port. The cells are illuminated by electrical lighting with no natural light. The Disciplinary Isolation cells at the IRC (J and K) have the following configurations: concrete walls with a solid steel outside cell door and an open bar sliding door. The cell doors have a window for staff observation into the cell and a food-port in the sliding open bar door. The cells are illuminated by electrical lighting with no natural light.



The Disciplinary Isolation cells at CMJ have the following configurations.

The Disciplinary Isolation cells at the CMJ (401-408) have the following configurations: concrete walls with a solid steel cell door. The cell doors have a window for staff observation into the cell and a food-port. The cells are illuminated by electrical lighting with no natural light. The Disciplinary Isolation cells at the IRC (409-412) have the following configurations: concrete walls with a solid steel outside cell door and an open bar sliding door. The cell doors have a window for staff observation into the cell and a food-port in the sliding open bar door. The cells are illuminated by electrical lighting with no natural light.

The Disciplinary Isolation cells at CWJ have the following configurations:

The Disciplinary Isolation cells at the CWJ have the following configurations: concrete walls with a solid steel outside cell door with a small four-pane window for staff observation and a steel hinged mesh inside door with a food port. The cells are illuminated by electrical lighting with no natural light.

Below is a summary of the Disciplinary Housing policy and practices at the time of the Assessment Team's review.

CCOM Section 1602.7 Disciplinary Housing states, "Disciplinary Housing means a temporary housing status which confines inmates to designated rooms or cells for prescribed periods of time as punishment for major rule violations. This policy is considered integral to maintaining a safe environment for the inmates and jail personnel by providing a system of consequences for behavior that jeopardizes day-to-day jail operations. Disciplinary Housing cells may also be used as alternative housing (i.e., medical quarantine, facility safety and security, other appropriate circumstances) after receiving approval from the Watch Commander. b) No inmates will be placed in Disciplinary Housing prior to a disciplinary hearing held by the Disciplinary Officer and without permission from the Watch Commander. Correctional Health Services (CHS) will be notified prior to an inmate being housed in a Disciplinary Housing cell. CHS medical and mental health staff will clear the inmates prior to being housed in a Disciplinary Housing cell (see CCOM section 2104.1(c) for further details).

According to jail policy, based on the nature of the violation, an incarcerated person may be moved to a Disciplinary Housing cell pending his/her hearing. Placement of an incarcerated person in Disciplinary Housing pending a disciplinary hearing does not (and should not) include the loss of any regular privileges such as commissary, public visiting, dayroom, or outdoor recreation (Full-Privileges). If an incarcerated person is moved to another housing location, the Classification/Housing Review Form (J-203) will be completed.



An incarcerated person may be assigned to Disciplinary Housing, as a result of jail discipline, for a period of time determined by the Disciplinary Sergeant based upon the severity of the violation and incarcerated person's disciplinary history. Frequent jail rule violators shall be assigned progressive discipline.

A Correctional Health Services staff member will check the status of all incarcerated persons housed in disciplinary housing at least once per shift /two to three times in a 24 hour period. The visit will be to inquire to the incarcerated person's health and/or need for medical services. These checks will be recorded on the Daily Inmate Activity Log and Disciplinary Housing Master Log.

A Correctional Health Services staff member will check the mental health status of any incarcerated person housed in Disciplinary Housing on a weekly basis to determine whether the disciplinary status is to continue.

After an incarcerated person has completed thirty (30) consecutive days in Disciplinary Housing, there shall be a review by the Division Commander before the Disciplinary Housing status is continued. This review shall include a consultation with the medical and mental health staff. Such reviews shall continue at least every fifteen (15) days thereafter until the disciplinary status is discontinued.

No incarcerated person, under any circumstances, will spend more than thirty (30) consecutive days on Disciplinary Housing status without three (3) days relief. During the three (3) days of relief, the incarcerated person shall be on full privileges in the housing location to which he/she is assigned.

An incarcerated person assigned to Disciplinary Housing (discipline) will have the following privileges suspended:

- Dayroom or television;
- Outdoor recreation;
- Public visiting (Official visits are permitted);
- Personal telephone calls;
- Commissary ordering, delivery, consumption or use;
- Newspapers, magazines or other publications (Exception-One book from the Orange County Jail Library);
- Cards or games;
- Unnecessary inmate movement outside of the cell; and

An incarcerated person will not be denied exercise of his religion. Exclusion from group religious services may only be based on security concerns. Telephone use will be made available on request to contact an attorney, the courts, or for personal



emergencies. Correspondence privileges shall not be withheld except in cases where the incarcerated person has violated correspondence regulations, in which case correspondence may be suspended for no longer than seventy-two (72) hours without the review and approval of the Division Commander. Access to legal counsel shall not be suspended as a disciplinary measure."

CCOM Section 1602.8 Personal Hygiene Articles in Disciplinary Housing states, "All inmates shall be issued a welfare pack upon placement into Disciplinary Housing. The welfare pack will minimally contain:

- One Toothbrush;
- One Toothpaste;
- One Comb;
- One Bar of soap;
- One Pencil;
- Two Inmate Message Slips; and
- Two Stamped Envelopes each w/ 2 sheets of lined paper.

If the inmate runs out of allowable personal hygiene articles, the deputies will provide the articles from a welfare pack upon request. Inmates will not be permitted to keep a shaving razor in their cell; however, they will be permitted to shave daily unless otherwise ordered by the facility administrator (Title 15, Minimum Jail Standards, Section 1267). Deputies will furnish an electric razor or a safety razor to inmates requesting to shave and supervise the inmate's use of the razor."

Review of Data on Disciplinary Isolation Placements (January 2020 to March 2020):

The Orange County Jail provided the Assessment Team with historical cases of Disciplinary Isolation placements for the months January 2020 through March 2020 for the CJX and TLF, with identification of whether each individual was on the mental health (MH) caseload. The information reviewed reflects the following:

January 2020 CJX – 39 placements:

- Male 26 (15 MH) (1 unknown);
- Female 13 (13 MH);

February 2020 CJX – 18 placements:

- Male 12 (8 MH);
- Female 6 (6 MH);

March 2020 CJX – 37 placements:

- Male 17 (8 MH);
- Female 20 (13 MH);



January 2020 TLF – 38 placements:

• Male 38 – (All 38 MH);

February 2020 TLF – 32 placements:

• Male 32 – (All 32 MH);

March 2020 CJX – 22 placements:

• Male 22 (All 22 MH).

Of the total Disciplinary Isolation placements (186), 162 had a history of mental illness (87% of placements), with 17 incarcerated persons having multiple Disciplinary Isolation placements (two to three placements) in the three months of data reviewed. This data supports the findings cited in the National Institute of Justice Restrictive Housing in the U.S. Issues, Challenges, and Future Directions which states, "From two recent systematic reviews show that the background characteristics of inmates, their institutional routines and experiences, and the characteristics of the facilities in which they are confined are each relevant to an explanation of misconduct and violence (Steiner et al., 2014; Steiner & Cain, in press). The factors associated with an increased risk of misconduct and violence perpetration are age (younger), a history of antisocial behavior (e.g., drug use, prior criminal justice involvement), antisocial peers or gang involvement, and mental health problems."

Staff Interviews

Classification staff stated that following a finding of guilt on a major rule violation where the disciplinary hearing officer imposes a term of confinement in disciplinary housing and the penalty is approved by the facility manager, the incarcerated person is issued an "Inmate Advisement of Punishment – Disciplinary Isolation." The maximum term of disciplinary housing that can be imposed by a hearing official on a major jail rule violation is 30 days. Classification staff stated that following the issuance of the Inmate Advisement of Punishment – Disciplinary Isolation, the incarcerated person is allowed 14 days to appeal the disposition of the punishment. During these 14 days, classification staff stated that notification is made to CHS; the incarcerated person is scheduled to begin disciplinary isolation and requires mental health and medical clearance prior to being placed in disciplinary isolation. The notification is sent via email and includes the following information: "The following inmates were assigned their discipline and are scheduled to begin DIS-ISO soon. These inmates require Mental Health and Medical Clearance. These inmates need to be seen as soon as possible." Staff log and track the incarcerated persons being placed into disciplinary housing on a CHS Isolation Roster tracking sheet. Classification staff stated that in the event custody does not receive medical clearance from CHS, the incarcerated persons



are issued a new Inmate Advisement of Punishment – Disciplinary Isolation with corrected dates.

Once the clearance is received on the date, the Disciplinary Isolation is scheduled to begin; the incarcerated person is escorted from the general population to the disciplinary isolation housing. This typically occurs around midnight. (The Assessment Team recommends that the OCJ re-evaluate this practice, as relocating an incarcerated person, particularly someone with mental health concerns, from their housing location to disciplinary isolation at this time of the night may have detrimental effects on the incarcerated person.)

The incarcerated person being placed into disciplinary housing is issued the basic issue, which includes:

- One toothbrush;
- One tube of toothpaste;
- One comb;
- One pencil;
- Two Inmate Message Slips;
- Two Pre-stamped Envelopes;
- Two pages of blank paper.

Deputies document the issuance of the items on a Sherriff's Department Orange County Corrections Disciplinary Isolation Basic Issue Checklist. The checklist includes the following information:

- Inmates name;
- Booking number;
- Cell;
- Date transferred into Disciplinary Isolation;
- Date transferred out of Disciplinary Isolation;
- Condition of cell (entry and exit);
- Inmate's signature; and
- Deputy signature.

A review of six completed checklists found that two were completed with all information noted, and four were incomplete. The four that were incomplete were missing the following information:

- No notation of condition of cell;
- No notation of issuance of basic items, no notation of condition of cell;
- No notation of condition of the cell, no incarcerated persons or deputy signature; and
- No notation of issuance of basic items, no notation of condition of the cell, no deputy signature.



Custody staff interviewed stated that during placement in disciplinary housing, incarcerated persons are provided clothing/linen exchange two times per week, showers three times a week, meals three times a day. Staff also stated that during disciplinary isolation, incarcerated persons do not receive the following programs or activities and the incarcerated persons remain in their cell 24 hours a day for the duration of the disciplinary isolation period:

- Dayroom;
- Outdoor recreation;
- Public visiting (only official visits are permitted);
- Personal telephone calls; and
- Commissary ordering, delivery, consumption or use.

Custody staff stated that incarcerated persons are evaluated by medical staff during every shift and evaluated by mental health staff once per week.

Custody staff also use the following logs to document activities, observations, and items issued to incarcerated persons during their time in disciplinary isolation, Disciplinary Isolation Master Log, ISO Materials Log, Daily Inmate Activity Log, and Central Men's Jail Safety Check Log.

The Disciplinary Isolation Master Log reflects entries for the following:

- Check;
- Count;
- Chow;
- Meds; and
- Shower.

CCOM Policy Section 1716.3 - Frequency of Safety Checks states,

- "a) Staff will conduct safety checks to verify the status of inmates in their area of responsibility within the following timeframes. More frequent checks are encouraged.
- 1. Disciplinary Housing Cells Each check must begin within thirty minutes of the beginning time of the previous check."

The logs reflect regular security checks being conducted every 30 minutes to one hour. The Assessment Team notes that the nationally accepted standard for custodial rounds in restrictive housing is to conduct checks for all persons at least every 30 minutes at staggered intervals, a foundational suicide prevention measure, given that these units are known to be high-risk placements with respect



to suicide and self-harm. ¹² The Assessment Team recommends that the disciplinary isolation safety checks be conducted every 30 minutes, as required by the CCOM Policy Section 1716.3, and at staggered intervals to align with recognized practice guidance.

The ISO Materials Log reflects entries for the following:

- Toilet Paper;
- Fish kit;
- Soap;
- Shower/Refused;
- Razor In/Out; and
- Book exchange.

The Daily Inmate Activity Log reflects entries for the following:

- Chow;
- Count;
- Meds;
- Mental Health;
- Phone;
- Mental Health;
- Clothing Exchange; and
- Shower/Refused.

A review of six completed logs for incarcerated persons who were housed in disciplinary housing form reflects the following:

- 4/14/20 to 4/22/20 two showers and no clothing exchanges logged (seven days in Disciplinary Isolation);
- 4/21/20 to 5/5/20 three showers and two clothing exchanges logged (14 days) in Disciplinary Isolation;
- 4/3/20 to 5/2/20 six showers and four clothing exchanges logged (30 days in Disciplinary Isolation);
- 4/3/20 to 4/17/20 three showers and three clothing exchanges logged (14 days in Disciplinary Isolation);
- 4/10/20 to 4/19/20 two showers and one clothing exchange logged (nine days) in Disciplinary Isolation; and
- 4/3/20 to 4/12/20 one shower and one clothing exchange logged (10 days) in Disciplinary Isolation.

¹² See, e.g., Mays v. County of Sacramento Remedial Plan at 53; Murray v. County of Santa Barbara Remedial Plan at 52; American Correctional Association (ACA) Standards (5th Ed.), No. 5-4A-4257.



Although all incarcerated persons interviewed did not raise concerns with the provision of showers and clothing/linen exchange, the documentation provided by OCJ does not reflect that incarcerated persons are being provided showers and clothing/linen exchange as required.

Custody staff also stated that it is the practice and policy that incarcerated persons who have been assessed a term of disciplinary housing for multiple rule violations are removed from disciplinary housing and placed in the general population for three days and then returned to disciplinary housing to serve the additional term.

A review of the Disciplinary Isolation Master Log, ISO Materials Log, and Daily Inmate Activity Log and Safety Log Check found there was no record of incarcerated persons in disciplinary isolation being provided access to religious services (one on one by a religious provider). Programs staff interviewed stated she could not recall custody staff requesting or incarcerated persons being provided religious services in the disciplinary isolation housing units.

Custody staff stated there is currently an incarcerated person that has multiple disciplinary isolation assessments and that he could be in disciplinary isolation through March 2023.

A review of the Orange County Sherriff-Coroner Automated Jail System Housing Changes for this incarcerated person for the period of March 22, 2017, to March 4, 2020, found the following disciplinary isolation placements:

March 22, 2017, to April 12, 2017 – May 7, 2017, to June 6, 2017 – June 8, 2017, to July 9, 2017 – July 14, 2017, to October 30, 2017 –	22 days in DI (25 days out) 21 days in DI (2 days out) 32 days in DI (4 days out) 109 days in DI (2 days out) 3 days was placed in L-Mod
November 2, 2017, to November 17, 2017 –	16 days in DI (2 days out)
November 20, 2017, to December 5, 2017 –	16 days in DI (2 days out)
December 8, 2017, to January 7, 2018 –	31 days in DI (2 days out)
January 10, 2018, to April 29, 2018 –	110 days in DI (2 days out)
November 20, 2018, to December 5, 2018 –	16 days in DI (2 days out)
May 2, 2018, to June 1, 2018 –	31 days in DI (2 days out) 3 days was placed in L-Mod
June 5, 2018, to July 4, 2018 –	30 days in DI (2 days out)
July 7, 2018, to July 29, 2018 –	23 days in DI (2 days out)
August 26, 2018, to September 25, 2018 –	31 days in DI (27 days out)
October 2, 2018, to November 30, 2018 –	31 days in DI (5 days out) 3 days was placed in L-Mod and A
December 5, 2018, to January 2, 2019 –	29 days in DI (4 days out)



January 5, 2019, to February 4, 2019 -31 days in DI (7 days out) 1 day was placed in L-Mod February 12, 2019, to February 12, 2019 -DI for 2 hours March 12, 2019, to April 11, 2019 – 31 days in DI (30 days out) April 20, 2019, to May 14, 2019 -25 days in DI (8 days out) May 17, 2019, to May 31, 2019 -15 days in DI (2 days out) June 3, 2019, to July 3, 2019 -31 days in DI (2 days out) July 7, 2019, to July 18, 2019 -12 days in DI (3 days out) July 21, 2019, to August 20, 2019 -31 days in DI (2 days out) August 24, 2019, to September 5, 2019 -13 days in DI (2 days out) September 19, 2019, to September 19, 2019 – DI for 12 hours September 25, 2019, to October 25, 2019 -31 days in DI (5 days out) 1 day was placed in L-Mod 31 days in DI (7 days out) October 28, 2019, to November 27, 2019 -November 30, 2019, to December 29, 2019 -30 days in DI (2 days out) January 9, 2020, to January 30, 2020 -22 days in DI (10 days out) February 5, 2020, to March 4, 2020 -29 days in DI (5 days out)

This data reflects that out of 1,095 days, this incarcerated person has spent 925 days in disciplinary isolation with no access to any out-of-cell time, outside recreation, visiting, group religious services, or program participation.

Medical and mental health staff stated that following notification of an incarcerated persons pending placement into disciplinary housing, the incarcerated person is scheduled for a medical and mental health appointment for completion of the medical and mental health evaluation that is required prior to placement into disciplinary housing. Staff reported that they follow the requirements of the HCA CHS Policy 6602 Disciplinary Housing Health Assessment. Medical and mental health staff stated that the evaluations are typically conducted within two days of an incarcerated person's placement into disciplinary isolation; however, due to scheduling, at times, the evaluations are completed up to 11 days prior to an incarcerated person's placement into disciplinary isolation. Once the medical/mental health evaluations/clearances are completed, custody staff is advised via email notification.

Detailed below are the results of a review of progress notes from TechCare for ten randomly selected cases.

Date Disciplinary Housing	May 17, 2020
Date medical evaluation	May 12, 2020
Date mental health evaluation	May 11, 2020
Date Disciplinary Housing	May 22, 2020
Date medical evaluation	May 12, 2020



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Date mental health evaluation	May 11, 2020
Date Disciplinary Housing	May 27, 2020
Date medical evaluation	May 26, 2020
Date mental health evaluation	May 28, 2020
Date Disciplinary Housing	May 14, 2020
Date medical evaluation	May 4, 2020
Date mental health evaluation	May 12, 2020
Date Disciplinary Housing	June 11, 2020
Date medical evaluation	June 7, 2020
Date mental health evaluation	June 6, 2020
Date Disciplinary Housing	June 11, 2020
Date medical evaluation	June 7, 2020
Date mental health evaluation	June 6, 2020
Date Disciplinary Housing	June 11, 2020
Date medical evaluation	June 7, 2020
Date mental health evaluation	June 6, 2020
Date Disciplinary Housing	June 11, 2020
Date medical evaluation	June 7, 2020
Date mental health evaluation	June 6, 2020
Date Disciplinary Housing	June 11, 2020
Date medical evaluation	No medical clearance provided
Date mental health evaluation	June 6, 2020
Date Disciplinary Housing	May 21, 2020
Date medical evaluation	May 14, 2020
Date mental health evaluation	May 14, 2020

Mental health staff stated that once the incarcerated person is placed into disciplinary housing, the incarcerated person is evaluated on a weekly basis (cell front). Medical staff stated they conduct a visual and verbal welfare check every shift. This is typically done during the medication pass.

The Assessment Team notes the modern practice for the welfare checks includes, at a minimum, a conversation with each incarcerated person in disciplinary isolation, a visual observation of the cell, and an inquiry of whether the incarcerated person would like to request a confidential meeting with a mental health or medical provider, with steps taken to ensure effective communication and auditory privacy



consistent with security needs. Based on this, it is the Assessment Team's recommendation that the HCA CHS policies be revised to include these requirements.

A review of medical and mental health progress notes, Disciplinary Isolation Master Log, and Daily Inmate Activity Log found that medical and mental health staff are conducting the currently required daily and weekly medical and mental health checks for incarcerated persons housed in disciplinary isolation.

Incarcerated Person Interviews

All incarcerated persons interviewed stated they were issued the Inmate Advisement of Punishment – Disciplinary Isolation prior to being placed into disciplinary isolation. All incarcerated persons stated they were issued the fish kit with all required items. All incarcerated persons stated they are not afforded access to the following programs, services, or activities:

- Outside recreation;
- Dayroom;
- Programs; and
- Commissary.

All incarcerated persons stated they are afforded showers (three times a week), linen clothing exchange (two times per week), meals (two hot and one cold each day), and book exchange (one for one exchange). All incarcerated persons also stated that medical staff contact daily checks and mental health staff conduct weekly checks.

All incarcerated persons stated medical and mental health staff conduct a medical/mental health evaluation/clearance prior to being placed into disciplinary isolation. Listed below is the timeframe of when the evaluation clearance was conducted prior to being housed in disciplinary isolation:

Date Disciplinary Housing	May 21, 2020
Date medical evaluation	one week before
Date mental health evaluation	one week before
Date Disciplinary Housing	May 21, 2020
Date medical evaluation	one week before
Date mental health evaluation	one week before
Date Disciplinary Housing	April 29, 2020
Date medical evaluation	one week before
Date mental health evaluation	one week before



Date Disciplinary Housing	May 14, 2020
Date medical evaluation	three days before
Date mental health evaluation	one day before
Date Disciplinary Housing	March 5, 2020
Date medical evaluation	five days before
Date mental health evaluation	two days before
Date Disciplinary Housing	May 21, 2020
Date medical evaluation	one day before
Date mental health evaluation	one day before
Date Disciplinary Housing	May 22, 2020
Date medical evaluation	one day before
Date mental health evaluation	two days before

An incarcerated person at CMJ stated he has been in disciplinary isolation 50 times since his arrival at OCJ. He states that he regularly is removed from disciplinary isolation and placed in the general population for three days and moved back to disciplinary isolation. He stated that at times he has moved to Mod L (Mental Health) and then moved back to disciplinary isolation. He stated that been assessed disciplinary isolation terms that will retain him in disciplinary isolation through 2021.

An incarcerated person at TLF stated he had served three disciplinary isolation terms back to back with him being released to the general population for three days before being returned to disciplinary isolation.

Incarcerated persons interviewed did not express concerns about the conditions of confinement in the disciplinary isolation units, with the exception of not having access to any out of cell activities and being locked down 24 hours a day for the duration of disciplinary isolation confinement.

Conclusions/Recommendations

Placement

The Minimum Standards for Local Detention Facilities Title 15 - Crime Prevention and Corrections Division 1, Chapter 1, Subchapter 4 2010 Regulations (Effective September 19, 2012) allows for the placement of incarcerated persons into disciplinary isolation as a result of a finding of guilt for a rule violation. The standards also require that if an incarcerated person is on disciplinary isolation status for 30 consecutive days, there shall be a review by the facility manager before the disciplinary isolation status is continued. This review shall include a



consultation with health care staff. The CCOM Section 1602.7 Disciplinary Housing aligns with the requirements of the Minimum Standards for Local Detention Facilities Title 15. Incarcerated persons are placed into disciplinary isolation after a finding of guilt on a rule violation report and penalty assessment by a hearing official and approval by a watch commander. The maximum term allowed is 30 days. However, it is the practice at OCJ that incarcerated persons can be placed into disciplinary isolation on multiple terms as long as they are removed from disciplinary isolation and placed in the general population for three days. As an example, an incarcerated person referenced in the report has spent 925 days in disciplinary isolation in a 3-year period. This incarcerated person is also a participant in the OCJ mental health program.

It is recognized that many persons with serious mental illness have a difficult time complying with jail rules, which may result in disciplinary actions and ultimately placement in disciplinary isolation for behaviors that are manifestations of a mental health disability. It is also believed that the placement of individuals with mental illness in restrictive housing may lead to a deterioration of their mental health. The OCJ does not have a policy or process for mental health clinicians to have input into the disciplinary process. It is important for incarcerated persons identified as having a serious mental illness and receiving major rule violation reports for behavioral disruptions to be evaluated by a mental health professional postincident and prior to adjudication of the rule violation report. The role of the mental health professional is to determine whether or not there were mitigating factors (such as mania, delirium, delusions, etc.) that contributed to the behavior; determination if the incarcerated person can tolerate the conditions of confinement if they are placed in disciplinary isolation; and, determination if the incarcerated person requires clinical interventions/treatment. The mental health clinician should complete an assessment and forward it to the disciplinary hearing officer for consideration during the disciplinary hearing and the type of penalty that will be imposed.

Incarcerated persons who violate jail rules should be placed in disciplinary isolation only when necessary, and only after it has been concluded that other available sanctions are insufficient to serve the purposes of punishment and correct the behavior.

OCJ should establish maximum penalties for each level of offense. These penalties should always include alternatives to disciplinary isolation. The penalties should be based on the seriousness of the offense. Disciplinary isolation should be reserved for offenses involving violence, escape, or posing a threat to the facility's safety and security or by encouraging others to engage in such misconduct.



In cases where an incarcerated person demonstrates symptoms of mental illness or the incarcerated person is a participant in the OCJ mental health delivery system, the incarcerated person should be referred to a qualified mental health professional to provide input as to the incarcerated person's competence to participate in the disciplinary hearing, make a determination if the incarcerated person's mental illness may have contributed to the misconduct, and provide the hearing officer information about any known mitigating factors in regard to the behavior. There should also be a consultation with a mental health professional, as to whether certain types of sanctions, (*e.g.*, placement in disciplinary isolation, loss of visits, or loss of phone calls) may be detrimental to the incarcerated person's mental health because they would interfere with supports that are a part of the incarcerated person's treatment or recovery plan. The hearing officers should take the clinician's findings into account when deciding what, if any, sanctions to impose.

Disciplinary sanction/penalties for offenses that arise out of the same episode should be served concurrently.

To incentivize conduct that furthers the facility's safety and security, incarcerated persons who demonstrate good behavior during a disciplinary period should be given consideration for early release from disciplinary sanctions, when appropriate.



Initial Medical Screening

Medical staff conducts an initial health assessment/evaluation prior to an incarcerated person's placement as required by HCA CHS Policy 6602 Disciplinary Housing Health Assessment. The policy states, "Prior to placement into disciplinary housing, CHS nursing staff shall obtain, at minimum, the following:

- Vital signs;
- Address any complaints mentioned by inmates (i.e., altercation, self-harm, etc.); and
- Targeted visual inspection/examination based on acute complaint."

The medical assessment/evaluation at times is being completed up to seven days prior to an incarcerated person's placement into disciplinary isolation. The assessment should be conducted the same day of placement into disciplinary isolation. OCSD reports that CCOM Policy 1602.7(b) has been revised to require that a medical evaluation of the person be conducted within 72 hours prior to the person's placement in disciplinary housing. Sabot has verified the CCOM Policy revisions and will monitor this during the monitoring process.

Initial Mental Health Screening

Mental health staff conducts an initial mental health assessment/evaluation prior to an incarcerated person's placement as required by HCA CHS Policy 6602 Disciplinary Housing Health Assessment.

The mental health assessment/evaluation at times is being completed up to seven days prior to an incarcerated person's placement into disciplinary isolation. The assessment should be conducted the same day of placement into disciplinary isolation as the incarcerated person's mental health status can change, leading up to the date of placement. OCSD reports that CCOM Policy 1602.7(b) has been revised to require that a mental health evaluation of the person be conducted within 24 hours prior to the person's placement in disciplinary housing. Sabot has verified the CCOM Policy revisions and will monitor this during the monitoring process.

On-going Medical and Mental Health Reviews

Medical and Mental health staff are conducting on-going medical and mental health evaluations/welfare checks after an incarcerated person's placement into disciplinary isolation as required by HCA CHS Policy 6602 Disciplinary Housing Health Assessment. These evaluations/welfare checks are being logged in the TechCare system. The mental health evaluation is required on a weekly basis; however, an incarcerated persons placement into a restrictive housing setting can have a negative impact on an incarcerated persons mental health; therefore, it is



recommended that within 24 hours of placement the incarcerated person be evaluated by a mental health clinician to determine if there are risks of the incarcerated person's mental health decompensating. The medical and mental health welfare checks should include, at a minimum, a conversation with each incarcerated person in disciplinary isolation, a visual observation of the cell, and an inquiry of whether the incarcerated person would like to request a confidential meeting with a mental health or medical provider, with steps taken to ensure effective communication and auditory privacy consistent with security needs. The HCA CHS policies should be revised to include these requirements.

Access to Medical/Mental Health/Dental

Incarcerated persons are provided access to medical, mental health, and dental care while in disciplinary isolation. Medical staff conduct daily (every shift) welfare checks and medication passes, and incarcerated persons can request medical, mental health, and dental care during the medical contact.

Conditions of Confinement/Out-of-Cell Time/Yard/Programs

The OCJ's practice of placing incarcerated persons in disciplinary isolation with no access to any out-of-cell activities amounts to what some experts state is cruel and unusual punishment. There are many concerns about the psychological impact of restrictive housing that arises from the lack of human contact. The international human rights experts and bodies have also condemned indefinite or prolonged solitary confinement, recommending that the practice be abolished entirely and arguing that solitary confinement is a human rights abuse that can amount to torture. In 2011, the U.N. Special Rapporteur on torture concluded that even 15 days in solitary constitutes torture or cruel, inhuman, or degrading treatment or punishment and that any longer in solitary can cause irreversible harmful psychological effects.¹³

The NCCHC in a position statement states, "In many cases, individuals with mental health problems who have difficulty conforming to facility rules but are not violent or dangerous, end up being housed in these units. Continued misconduct related to their underlying mental health issues, which is often exacerbated by their isolation, can result in their being held in solitary confinement indefinitely."

It is well established that persons with mental illness are particularly vulnerable to the harms of solitary confinement. As a result, federal courts have repeatedly found

¹³ Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice



the solitary confinement of people with mental illness to be unconstitutional, and in 2012, the American Psychiatric Association adopted a policy opposing the "prolonged" segregation of prisoners with serious mental illness, which it defined as longer than 3 to 4 weeks.

The inherent restriction on meaningful social interaction and environmental stimulation and the lack of control adversely impacts the health and welfare of all who are held in solitary confinement. While there is a school of thought that suggests that solitary confinement in facilities that meet basic standards of humane care has relatively little adverse effect on most individuals' mental or physical health, this is not the view of most international organizations. The World Health Organization (WHO), United Nations, and other international bodies have recognized that solitary confinement is harmful to health. The WHO notes "that effects can include gastrointestinal and genitourinary problems, diaphoresis, insomnia, deterioration of eyesight, profound fatigue, heart palpitations, migraines, back and joint pains, weight loss, diarrhea, and aggravation of preexisting medical problems. Even those without a prior history of mental illness may experience a deterioration in mental health, experiencing anxiety, depression, anger, diminished impulse control, paranoia, visual and auditory hallucinations, cognitive disturbances, obsessive thoughts, paranoia, hypersensitivity to stimuli, posttraumatic stress disorder, self-harm, suicide, and/or psychosis. Some of these effects may persist after release from solitary confinement. Moreover, the very nature of prolonged social isolation is antithetical to the goals of rehabilitation and social integration." ¹⁴

The NCCHC has adopted position statements and principles to guide correctional health professionals in addressing issues about solitary confinement:

- Prolonged (greater than 15 consecutive days), solitary confinement is cruel, inhumane, and degrading treatment, and harmful to an individual's health;
- Juveniles, individuals with mental illness, and pregnant women should be excluded from solitary confinement of any duration;
- Prolonged solitary confinement should be eliminated as a means of punishment;
- Solitary confinement as an administrative method of maintaining security should be used only as an exceptional measure when other, less restrictive options are not available, and then for the shortest time possible. Solitary confinement should never exceed 15 days. In those rare cases where longer isolation is required to protect the safety of staff and/or other inmates, more humane conditions of confinement need to be utilized;

¹⁴ NCCHC Position Statement - Solitary Confinement (Isolation) (2016)



- Health care staff must advocate so that individuals are removed from solitary confinement if their medical or mental health deteriorates or if necessary, services cannot be provided;
- Health care staff should ensure that the hygiene and cleanliness of individuals in solitary confinement and their housing areas are maintained; that they are receiving sufficient food, water, clothing, and exercise; and that the heating, lighting, and ventilation are adequate;
- Adults and juveniles in solitary confinement should have as much human contact as possible with people from outside the facility and with custodial, educational, religious, and medical staff;
- Appropriate programs need to be available to individuals in confinement to assist them with the transition to other housing units or the community if released from isolation to the community; and
- In systems that do not conform to international standards, health care staff should advocate with correctional officials to establish policies prohibiting the use of solitary confinement for juveniles and individuals with mental illness and limiting its use to less than 15 days for all others.¹⁵

OCJ should consider establishing a step-down program for incarcerated persons who consistently violate jail rules. The step-down program should have incentives for the incarcerated person to earn based on his/her behavior, including while in disciplinary isolation. The incentives would include access to out-of-cell activities (dayroom and yard) on a gradual basis.

For incarcerated persons with mental health concerns or who are deteriorating while in disciplinary isolation, they should be removed from disciplinary isolation and transferred to an appropriate mental health setting. If they are returned to disciplinary isolation, they should be provided adequate structured and unstructured activities. The treatment should be responsive to the level of care clinically required and occur in appropriate programming space.

¹⁵ NCCHC Position Statement - Solitary Confinement (Isolation) (2016)



Medical and Mental Health Training for Correctional Officers

Policies / Procedures and Document Review

The OCSD mandates that each deputy successfully complete 80 hours of Basic Jail Training. Additionally, CSTs, SSOs, Deputies, Sergeants, Lieutenants and Captains must successfully complete 24 hours of annual update training. The OCSD also provides Crisis Intervention Training to OCSD personnel. The OCSD CCOM also requires that all employees, volunteers and contractors who may have contact with incarcerated persons, be trained on the Department's zero-tolerance policy regarding sexual abuse and sexual harassment upon new hire/contract, and refresher training every two years.

HCA CHS Policy 2004 Training for Correctional Personnel states, "Correctional Health Services provides education to all correctional personnel involved in the direct supervision of inmates." The policy states in part:

The curriculum provided to correctional personnel includes, but is not limited to:

- Identification of the mentally ill inmates, detection of potentially suicidal inmates, suicide prevention, and appropriate intervention, including referral to CHS. Training is provided:
 - During the basic jail academy (full day);
 - At security briefings throughout the year, especially at shift rotation and preceding the winter holidays;
 - Yearly for the Crisis Stabilization Unit security and mental health staff;
 - At the nursing skills fair for training on suicide prevention;
 - At in-services as requested for training on mental health issues; and
 - CHS provides all security staff with a Suicide Prevention Quick Tip card to carry in their uniform pockets.

The training is presented by a variety of qualified CHS personnel. In addition, the Sheriff's Department, under the auspices of the Standards and Training in Correctional program, also provides training/information on a number of health-related issues to their security personnel.

CCOM Policy Section 2100.6 - General Policies states, "Jail personnel will be required to attend classes taught by CHS staff during the Basic Jail Academy. Personnel are also required to attend yearly CPR training and first aid instruction." The procedures also state in part:



- The curriculum includes, but is not limited to:
 - Identification of the mentally ill inmates, detection of potentially suicidal inmates, suicide prevention, and appropriate intervention including referral to CHS. Training is provided:
 - During the basic jail academy (full day);
 - At security briefings throughout the year, especially at shift rotation and preceding the winter holidays;
 - Yearly for the Crisis Stabilization Unit security and mental health staff;
 - At the nursing skills fair for training on suicide prevention;
 - At in-services as requested for training on mental health issues; and
 - CHS provides all security staff with a Suicide Prevention Quick Tip card to carry in their uniform pockets.
 - The training is presented by a variety of qualified CHS personnel; and
 - In addition, the Sheriff's Department, under the auspices of the Standards and Training in Correctional program, also provides training/information on a number of health-related issues to their security personnel.

HCA CHS Policy 2002 Staff Development and Training, states "All Correctional Health Services staff receives an orientation and on-going training appropriate to their job activities." Corresponding procedures include the following language:

- CHS Training Department, together with the respective managers, are responsible for the implementation and development of these programs. The orientation program includes an introduction to:
 - Physical layout of facility;
 - Security procedures;
 - CHS Policies and Procedures applicable to position;
 - Emergency/disaster response;
 - Management of various inmates behaviors;
 - California Code of Regulations, Title 15, Article 11;
 - PREA standards of care;
 - Suicide Prevention;
 - Hunger Strike Recognition and Evaluation;
 - HCA and County wide mandatory trainings (i.e., Compliance, Safety trainings); and
 - Required technical skills specific to jail and position.
- Annual training is appropriate to job classification, and may include:
 - Nursing Skills Fair;
 - Mental Health Skills Fair;
 - Nursing Continued Competency Exam;



- CPR training;
- AED training;
- Bloodborne Pathogens and Tuberculosis Control;
- Respiratory Protection Plan;
- Suicide Prevention;
- Hunger Strike Recognition;
- o PREA;
- Educational In-services.
- Records of orientation of new employees, annual trainings, regulatory and mandatory education in-services will be maintained by Staff Development; and
- Ongoing education and training needs will be assessed through staff input, Quality Management committee recommendations, and recommendations from HCA management.

The Orange County Sherriff's Office provided the Assessment Team with the following training materials:

- Behavioral Health: Signs and Symptoms of Substance Abuse Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (Two-Hour Lesson Plan, 23 pages):
 - Performance Objectives;
 - Recognize recent trends in substance abuse;
 - Distinguish between different street drugs and prescription drugs;
 - Classify symptoms to specific types of substances used;
 - Recognize medical symptoms that resemble the effects of substance abuse;
- Behavioral Health: Trauma Lesson Plan (ACO) Board of State & Community Corrections (Two-Hour 30 minute Lesson Plan, 24 pages):
 - Performance Objectives;
 - Recognize signs and symptoms of those affected by trauma;
 - Identify how behaviors and actions of staff may inflict trauma on individuals under our supervision or in our custody;
 - Identify appropriate classification/housing for someone who has suffered trauma;
 - Recognize the signs and symptoms of current trauma and past trauma;
 - Identify signs of human trafficking and services available for victims;
- Behavioral Health: Intervention and Resources Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (Four-Hour Lesson Plan, 44 pages):
 - Performance Objectives;



- Identify techniques for effective interviewing of offenders;
- Recognize the behavioral and verbal cues that will require mental health intervention;
- Recognize verbal de-escalation techniques through scenarios
- Identify the rights of an MHBI offender;
- Determine appropriate responses when dealing with an emotionally upset person;
- Identify triggers of violence;
- Behavioral Health: Stigma and Bias Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (One-Hour Lesson Plan, 23 pages):
 - Performance Objectives;
 - Recognize the stigma regarding the misconceptions around Mental Health / Behavioral Issues (MHBI);
 - Identify the factors that influence the stigma and bias we carry;
 - Recognize who is impacted by bias and/or stigma to comprehend the potential consequences of stereotyping;
 - Recognize the myths about the causes of Mental Health / Behavioral Health Issues (MHBI);
 - Identify the consequences of various forms of bias;
 - Identify what actions (informal/formal) should be taken when recognizing the elements of stigma in a professional environment;
- Behavioral Health: Roles and Responsibilities Lesson Plan (ACO, JCO) Board of State & Community Corrections (Two-Hour Lesson Plan, 33 pages):
 - Performance Objectives;
 - After viewing a video scenario, write a report. (WST);
 - Identify the Title 15 mandates that refer to the psychological treatment of offenders;
- Behavioral Health: Liability Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (One-Hour Lesson Plan, 20 pages):
 - Performance Objectives;
 - Identify the mandates around access to MHBI services;
 - Identify the liability for refusing access to MHBI services;
 - Identify potential liabilities resulting from a suicide;
- Behavioral Health: Suicide Prevention Lesson Plan (ACO) Board of State & Community Corrections (Two-Hour 30 minutes Lesson Plan, 28 pages) Developed by the University of Colorado at Colorado Springs:
 - Performance Objectives;
 - Determine the best means to identify the emotional/mental state of an offender;
 - Recognize triggers and potential triggers (feelings, events, time, place, etc.) associated with suicidal behaviors;



- Identify differences between self-harm and suicidal ideations/attempts;
- Recognize high risk behaviors associated with suicide;
- Evaluate suicide risk level and execute appropriate procedures;
- Identify suicidal risk factors;
- Identify strategies to mitigate suicide attempts;
- Identify the responsibilities of the officer when dealing with suicide risk offenders;
- Behavioral Health: Foundations and Definitions Signs and Symptoms Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (Two-Hour 30 minutes Lesson Plan, 30 pages):
 - Performance Objectives;
 - Identify common Behavioral Health terminology;
 - Identify specific characteristics of MHBI disorders commonly encountered among the offender population;
 - Identify specific characteristics related to dementia, autism spectrum disorders, and neurological disorders;
 - Identify the most common behaviors associated with mental health issues;
 - Identify abnormal physical or emotional behaviors which might be indicative of a mental health concern;
 - Discern between possible indicators of mental illness, intellectual disability, medical conditions and substance abuse.
 - Identify decompensation when it occurs;
 - Identify safety risks, disabilities, and danger to self-and/or others;
 - Differentiate between irrational/erratic mental health indicators and antisocial/assaultive behavior;
 - Identify offenders who are exhibiting drug/alcohol use which may be a manifestation of their mental illness or medication;
- Behavioral Health: Safety Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (One-Hour 30 minutes Lesson Plan, 18 pages):
 - Recognize the potential consequences of improper management of an offender in psychological distress;
 - Identify risk of victimization/manipulation of mentally ill offenders;
 - Identify indicators that a mentally ill offender is the manipulator;
 - Identify how behavioral health issues may increase risk of being abused or neglected;
 - Identify self-harm behavior that MHBI offenders may engage in;



- Recognize the potential consequences of improper monitoring of MHBI offenders;
- Behavioral Health: Emotional Survival Lesson Plan (ACO, JCO, PO) Board of State & Community Corrections (Two-Hour Lesson Plan, 23 pages):
 - Performance Objectives;
 - Identify signs and symptoms of emotional distress for the officer;
 - Define signs of secondary and vicarious trauma (as it relates to staff);
 - Identify appropriate responses to a critical incident to ensure staff emotional health is addressed;
 - Identify the factors an officer should consider related to secondary trauma while preserving a crime scene;
 - Identify EAP services and how stigma can affect an officer's willingness to access them;
- Signs and Symptoms of Substance Abuse Adult Corrections Officer Core Course Lesson Plan (One-Hour Lesson Plan, 6 pages):
 - Performance Objectives;
 - Recognize recent trends in substance abuse. MCT;
 - Distinguish between different street drugs and prescription drugs. MCT;
- Trauma Adult Corrections Officer Core Course Lesson Plan (Two-Hour Lesson Plan, 8 pages):
 - Performance Objectives;
 - Recognize signs and symptoms of those affected by trauma. MCT;
 - Identify how behaviors and actions of staff may inflict trauma on individuals under our supervision or in our custody. MCT;
 - Identify appropriate classification/housing for someone who has suffered trauma. MCT;
 - Recognize the signs and symptoms of current trauma and past trauma. MCT;
 - Identify signs of human trafficking and services available for victims. MCT;
 - Recognize barriers to reporting trauma. MCT;
- Intervention and Resources Adult Corrections Officer Core Course Lesson Plan (Two-Hour Lesson Plan, 16 pages):
 - Performance Objectives;
 - Identify techniques for effective interviewing of offenders;
 - Recognize verbal de-escalation techniques through scenarios
 - Determine appropriate responses when dealing with an emotionally upset person;
 - Identify triggers of violence;



- Roles and Responsibilities Adult Corrections Officer Core Course Lesson Plan (Two-Hour Lesson Plan, 7 pages):
 - Performance Objectives;
 - After viewing a video scenario, write a report. (WST);
 - Identify the Title 15 mandates that refer to the psychological treatment of offenders. (MCT);
- Liability Adult Corrections Officer Core Course Lesson Plan (One-Hour Lesson Plan, 7 pages):
 - Performance Objectives;
 - Identify the mandates around access to MHBI services. (MCT);
 - Identify the liability for refusing access to MHBI services. (MCT);
 - Identify potential liabilities resulting from a suicide. (MCT);
- Suicide Prevention Adult Corrections Officer Core Course Lesson Plan (Two-Hour 30 Minutes Lesson Plan, 10 pages):
 - Performance Objectives;
 - Determine the best means to identify the emotional/mental state of an offender. (MCT);
 - Recognize triggers and potential triggers (feelings, events, time, place, etc.) associated with suicidal behaviors. (MCT);
 - Identify differences between self-harm and suicidal ideations/attempts. (MCT);
 - Recognize high risk behaviors associated with suicide. (MCT);
 - Evaluate suicide risk level and execute appropriate procedures. (MCT);
 - Identify suicidal risk factors. (MCT);
 - Identify strategies to mitigate suicide attempts. (MCT);
 - Identify the responsibilities of the officer when dealing with suicide risk offenders. (MCT);
- Foundations and Definitions: Signs and Symptoms Adult Corrections Officer Core Course Lesson Plan (Two-Hour Lesson Plan, 8 pages):
 - Performance Objectives;
 - Identify common Behavioral Health terminology. (MCT);
 - Identify the most common behaviors associated with mental health issues. (MCT);
 - Identify abnormal physical or emotional behaviors which might be indicative of a mental health concern. (MCT);
 - Identify decompensation when it occurs. (MCT);
 - Identify offenders who are exhibiting drug/alcohol use which may be a manifestation of their mental illness or medication. (MCT);



- Safety Adult Corrections Officer Core Course Lesson Plan (One-Hour 30 Minutes Lesson Plan, 9 pages):
 - Identify risk of victimization/manipulation of mentally ill offenders. (MCT);
 - Identify indicators that a mentally ill offender is the manipulator. (MCT);
 - Identify how behavioral health issues may increase risk of being abused or neglected. (MCT);
 - Identify self-harm behavior that MHBI offenders may engage in. (MCT);
 - Recognize the potential consequences of improper monitoring of MHBI offenders. (MCT);
- Emotional Survival Adult Corrections Officer Core Course Lesson Plan (Two-Hour Lesson Plan, 10 pages):
 - Performance Objectives;
 - Identify signs and symptoms of emotional distress for the officer. (MCT);
 - Define signs of secondary and vicarious trauma (as it relates to staff). MCT);
 - Identify appropriate responses to a critical incident to ensure staff emotional health is addressed. (MCT);
 - Identify the factors an officer should consider related to secondary trauma while preserving a crime scene. (MCT);
 - Identify EAP services and how stigma can affect an officer's willingness to access them. (MCT);
- DEP Behavioral Health PowerPoint 327 slides:
 - Slide #2 includes a link a video "Inmates with Mental Illness Tell Their Stories I AVID Jail Project (8 Minute Video) <u>https://www.youtube.com/watch?v=Hjfu2VR62tY</u>
 - Slides #3 to #36 (19.1 Signs and Symptoms of Substance Abuse);
 - Objectives;
 - Recognize recent trends in substance abuse;
 - Distinguish between different street drugs and prescription drugs;
 - Slides #37 to #71 (19.2 Trauma);
 - Objectives;
 - Recognize signs and symptoms of those affected by trauma;
 - Identify how behaviors and actions of staff may inflict trauma on individuals under our supervision or in our custody;
 - Identify appropriate classification/housing for someone who has suffered trauma;
 - Recognize the signs and symptoms of current trauma and past trauma;



- Identify signs of human trafficking and services available for victims;
- Recognize barriers to reporting trauma;
- Slides #72 to #132 (19.3 Interventions and Resources);
- Objectives;
 - Identify techniques for effective interviewing of offenders;
 - Recognize verbal de-escalation techniques through scenarios;
 - Determine appropriate responses when dealing with an emotionally upset person;
 - Identify triggers of violence;
- Slides #133 to #157 (19.4 Roles and Responsibilities);
- Objectives;
 - After viewing a video scenario, write a report;
 - Identify the Title 15 mandates that refer to the psychological treatment of offenders;
- Slides #158 to 178 (19.5 Liability);
- Objectives;
 - Identify the mandates around access to services.
 - Identify the liability for refusing access to services.
 - Identify potential liabilities resulting from a suicide.
- Slides #179 to #214 (19.6 Suicide Prevention);
- Objectives;
 - Determine the best means to identify the emotional/mental state of an offender;
 - Recognize triggers and potential triggers (feelings, events, time, place, etc.) associated with suicidal behaviors;
 - Identify differences between self-harm and suicidal ideations/attempts;
 - Recognize high risk behaviors associated with suicide;
 - Evaluate suicide risk level and execute appropriate procedures;
 - Identify suicidal risk factors;
 - Identify strategies to mitigate suicide attempts;
 - Identify the responsibilities of the officer when dealing with suicide risk offenders;
- Slides #215 to #271 (19.7 Foundations and Definitions: Signs and Symptoms);
- Objectives;
 - Identify common Behavioral Health terminology;
 - Identify the most common behaviors associated with mental health issues;
 - Identify abnormal physical or emotional behaviors which might be indicative of a mental health concern;



- Identify decompensation when it occurs;
- Identify offenders who are exhibiting drug/alcohol use which may be a manifestation of their mental illness or medication;
- Slides #272 to #297 (19.8 Safety);
- Objectives;
 - Identify risk of victimization/manipulation of mentally ill offenders;
 - Identify indicators that a mentally ill offender is the manipulator;
 - Identify how behavioral health issues may increase risk of being abused or neglected;
 - Identify self-harm behavior that MHBI offenders may engage in;
 - Recognize the potential consequences of improper monitoring of MHBI offenders;
- Slides #298 to #327 (19.9 Emotional Survival);
- Objectives;
 - Identify signs and symptoms of emotional distress for the officer;
 - Define signs of secondary and vicarious trauma (as it relates to staff);
 - Identify appropriate responses to a critical incident to ensure staff emotional health is addressed;
 - Identify the factors an officer should consider related to secondary trauma while preserving a crime scene;
 - Identify EAP services and how stigma can affect an officer's willingness to access them;
- Orange County Jail Correctional Health Services Mental Health Housing PowerPoint Presentation (2-Hours 65 slides);
 - CHS Mental Health Training to Deputies in Triage and LPS Units;
 - o Purpose;
 - The purpose of this class is to put both OCSD and CHS personnel on the "same page" in their interactions with inmates housed in mental health locations;
 - Introduction to the state of mental health care in California and our jails;
 - There is no associated Lesson Plan;
 - Summary of Slides;
 - Slides #3 to #6 Mental Health History and Statistics;
 - Slide #7 Use of Force;
 - Slides #8 and 9 Suicides in Custody;
 - Slide #10 Mental Health Housing;
 - Slide #11 Crisis Stabilization Unit;



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5. 2021

- Slides #12 to #28 Types of Mental Illness;
- Slides #29 to #44 Policies and Procedures for Mental Health;
 - CHS 905 Suicide Risk Assessment;
 - CHS 915 Safety Cells;
 - CHS 925 Mental Health Observation;
 - CHS 930 Safety Gown;
 - CHS 935 Restraint Chair;
 - CHS 7490 Restraint and Seclusion for LPS Unit;
 - OCSD 1800.3 Use of Force and Security Restraints;
 - 2104.1 Evaluation;
 - 2104.2 Emergencies;
 - 2104.3 Safety Cells;
- Slides #45 to Day to Day Operations: The Routine and Crisis Situations;
 - Module Routine;
 - Basic De-Escalation Techniques;
 - Crisis Situations;
 - Restraint Chair;
- Crisis Intervention Training Orange County Sheriff;
 - PDF with 15 slides;
 - Target audience appears to be for Enforcement Deputies
- CIT I Suicide -Suicide by Cop;
 - PDF with 86 slides;
 - Andrew Gulcher & Darrell Belthius;
- Orange County Community Court;
 - PDF with 10 slides;
 - Target audience appears to be for Enforcement Deputies;
- Mental Health Orange County Sheriff;
 - PDF with 13 slides;
 - Target audience appears to be for Enforcement Deputies;
- Crisis Intervention Training Orange County Sherriff Community Policing;
 PDF with 27 slides;
 - Target audience appears to be for Enforcement Deputies;
 - CIT I Basic Introduction to Mental Illness;
 - PDF with 15 slides;
 - o Brian Hatfield Irvine Police Department;
- Crisis Intervention Training I Orange County Sheriff's Department;
 - \circ PDF with course agenda 2 day course;
 - o Purpose;

•

 The purpose of the course is to train law enforcement officers to handle crisis situations involving people of all ages with serious mental illnesses and developmental disabilities.



Topics include crisis and suicide intervention, officer and public safety, overview of mental health services, cultural and linguistic diversity, legal issues, and disposition options;

- Course Objectives;
 - Identify signs and symptoms of mental illness;
 - Recognize various developmental disabilities;
 - Identify the community resources available to law enforcement personnel to help people with a crisis situation involving mental illness or a developmental disability;
 - Identify effective crisis intervention skills;
 - Identify effective officer safety and public safety techniques;
 - Identify and appropriately respond to high-risk encounters;
 - Distinguish mental illness procedures within the judicial system and the health care system;
- Crisis Intervention Training II Orange County Sheriff's Department;
 - PDF with course agenda 1 day course;
 - o Purpose;
 - The purpose of the course is to train law enforcement officers to handle crisis situations involving people of all ages with serious mental illnesses and intellectual and developmental disabilities;
 - Course Objectives;
 - Review of Crisis Intervention;
 - Distinguish signs and symptoms of mental illness, intellectual disabilities and substance use disorder;
 - Group discussions and feedback from field experiences (perspective/issues of stigma and cultural differences);
 - Deaf and Hard of Hearing People (presented by Deaf and Hard of Hearing Instructor with Interpreter);
 - Autism;
 - Intellectual/Developmental Disabilities;
 - Legal Updates;
 - Interactive Video Simulation (IVST) Life size interaction with scenarios depicting various encounters. Instructor guided review and discussion with participants.
- Crisis Intervention Training II Approach to People With Developmental Disabilities;
 - PDF with 68 slides;
 - Presented By: Sara Bollens, PH.D., Regional Center of Orange County;
- CIT II: Intermediate;
 - PDF with 3 slides;
 - Ryan Dedmon, MA CIT Coordinator;



- Crisis Intervention Training III Orange County Sheriff's Department;
 - PDF with course agenda 2 day course;
 - Purpose;
 - The purpose of the course is to train Peace officers to know that their role in the community is to work in partnership with community leaders to resolve or reduce problems for the benefit of our citizens and the intersection between law enforcement and the mentally ill is one in which many problems are known to exist;
 - Course Objectives;
 - The student will be able to describe an understanding of at least one systemic short-coming in evidence for the treatment of mentally ill citizens and comment on their place within the process of better interventions;
- CIT Verbal Intervention Strategies;
 - PDF with 24 slides;
- Tactical;
 - PDF with 34 slides Communication;
- Crisis Intervention Training Level III Advanced 2 day Course;
 - PDF with 19 Slides;
 - Course Agenda;
 - Introduction;
 - Orange County's Grand Jury Reports 2014 2016;
 - Homeless Encounters 101;
 - Orange County Service Resources Panel;
 - Community Organizations Panel Discussion;
 - Collaborative & Community Courts / Laura's Law;
 - Community Leadership/Problem Solving;
 - Scenario Role Play Exercise;
 - Graduation Certificate Presentation;
- PTSD Prevention and Interventions Implications in Veteran and First Responder Populations;
 - PDF with 42 slides;
 - Dr. Deborah Silveria;
- Crisis Intervention Training for Law Enforcement 5150 W&I Legal Issues & Liability;
 - PDF with 90 slides;
 - Ron La Velle Sergeant Retired Seal Beach Police Department;
- Suicide Prevention Laminated Cards;
 - Includes identifiers/characteristics of high risk suicide;
 - Contact phone numbers for Mental Health Staff;
- Suicide Prevention Review (Handout during OCSD briefings);



- Health Care Refresher Course for Correctional Officers Adult Corrections
 Officer Core Course;
 - PDF with Lesson Plan (2 hour course);
 - Objectives;
 - A refresher course to understand medical and mental health in a correctional setting;
 - Describe legal and liability issues as it relates to correctional staff;
 - Recognize signs and symptoms of common life threatening health issues in the corrections;
 - Describe actions to be taken when life threatening symptoms are identified;
 - Topics
 - Legal issues;
 - Deliberate indifference;
 - Potential Liabilities;
 - Medical;
 - Emergent vs. Urgent;
 - Medical Emergency/Red flags that need to be referred to Healthcare;
 - Officers' role in emergency response;
 - Mental Health/Mental Illness;
 - Suicide prevention;
 - Interventions;
- Mental Health In Corrections;
 - PowerPoint with 28 slides.

The OCSD did not provide the Assessment Team with rosters of completed training (new hire/annual refresher). The HCA CHS did not provide training curriculum for mental health staff. OCSD reports that CHS, has developed a new training that will be for all mental health nurses and clinicians, as well as OCSD staff working in Intake and mental health housing units (Mods J, K, L, and O). The training is based on the DSM-V Mood Disorders, Anxiety Disorders, and Thought Disorders: Prevalence, causal factors, assessment, symptoms, and behavioral and pharmacological treatment. The first sessions are scheduled for 3/15 and 3/22.

OCSD/CHS advises there is also training in the following:

- Cultural Competency
- Crisis Prevention Institute training
- 5150LPSdesignation(bi-annual renewal)
- Bloodborne Pathogen
- Compliance



- CHS P & Ps
- Documentation in person

The Assessment Team could not determine if the CIT is required as part of the academy training or if the CIT is provided to select staff. The CIT is conducted in three (3) sessions with a total of 40 hours of instruction. The Board of State & Community Corrections training is conducted in ten (10) training sessions with a total of 21 hours of instruction. The Adult Corrections Officer Core Course training is conducted in nine (9) training sessions with a total of 16 hours of instruction. The Orange County Jail Correctional Health Services Mental Health Housing - CHS Mental Health Training for Deputies assigned to Triage and LPS Units is conducted in a two (2) hour training session. The Board of State & Community Corrections and Adult Corrections Officer Core Course mental health training appear to be facilitated by a Deputy and not a licensed clinician. The Orange County Jail Correctional Health Services Mental Health Housing County Jail Correctional Health Services Mental Health training appear to be facilitated by a Deputy and not a licensed clinician. The Orange County Jail Correctional Health Services Mental Health Housing CHS Mental Health Training to Deputies in Triage and LPS Units and the Health Care Refresher Course for Correctional Officers - Adult Corrections Officer Core Course are facilitated by licensed clinicians.

Conclusions/Recommendations

There is 21 hours of mental health academy training for deputies, however, the material is presented by a Deputy and not a licensed clinician. Based on the content of the material being presented which includes signs and symptoms of mental illness, suicide prevention, and clinical terminology this training curriculum must be presented by licensed clinicians and/or co-presented with a licensed clinician. In addition to deputies who are assigned to the triage area and the LPS Units, deputies working in residential mental health units (step-down) should be provided the same training. The Assessment Team could not evaluate the onboarding and annual mental health training. The training must include the unique aspects of custody settings: confidentiality (and its limits), reporting requirements, safety and security requirements, civil commitment and emergency treatment, competency and informed consent, referral to other health providers, behavior management, and reentry. Some training can be differentiated based on specific duties. The medical-related training for deputies must include refresher training at least every two years and must include, at a minimum:



- Administration of first aid;
- Cardiopulmonary resuscitation including the use of an automated external defibrillator;
- Acute manifestations of certain chronic illnesses (e.g., asthma, seizures, diabetes);
- Intoxication and withdrawal;
- Adverse reactions to medications;
- Signs and symptoms of mental illness;
- Dental emergencies;
- Procedures for suicide prevention;
- Procedures for appropriate referral of inmates with medical, dental, and mental health complaints to health staff;
- Precautions and procedures with respect to infectious and communicable diseases; and
- Maintaining patient confidentiality.



LGBTQI

As part of the Assessment Team's evaluation of the OCSD and HCA CHS, an examination of LGBTQI (inclusive of transgender identity and intersex identity incarcerated persons) related policies and practices was conducted. Although there was some overlap in material, the intent was not to specifically assess PREA policies, practices, and concerns.

The standards or best practices used for the assessment and report are critical components to ensuring that the OCJ affords all LGBTQI incarcerated persons (who are held at the jail facilities) their rights under the U.S. Constitution and under state and federal statutes and regulations. Understanding how these rights apply to LGBTQI incarcerated persons can help the OCSD and HCA CHS professionals develop (or revise) policies and procedures that provide for the safety of LGBTQI incarcerated persons and can also help the OCSD and its staff meet their legal obligations. The Assessment Team used Best Practices recommendations from the National Center for Transgender Equality (NCTE) and the National Institute of Corrections. The assessment in no way was specific only to transgender identity or intersex identity incarcerated persons, but rather for all incarcerated persons who identify as LGBTQI and related policies and practices.

Prior to the onset of the site assessment, the OCSD provided the Assessment Team with a multitude of requested documents. Included in the document production was a breakdown of all housing units at the IRC, CMJ, CWJ, and TLF facilities. The housing related documentation (dated 1/28/20) identified the following with regard to housing areas that housed one or more LGBTQI incarcerated persons:

- TLF
 - A Barracks (102 bunks) (Assigned Workers);
 - 1 LGBTQI incarcerated person;
 - C Barracks (102 bunks) (Assigned Workers);
 - 2 LGBTQI incarcerated persons;
 - F Barracks (102 bunks x 2 [East side & West side]) (GP 7);
 - 1 LGBTQI incarcerated person;
 - Mod I (2-person cells) (LGBTQI, PC 2, PC 3, GP 4, Veterans Unit);
 - 59 LGBTQI incarcerated persons;
 - Note: OCSD later produced a housing list from the OCSD Automated Jail System (dated 5/26/20) that only listed 24 LGBTQI incarcerated persons in this housing unit;
 - Mod K (2-person cells) (GP 4);
 - 1 LGBTQI incarcerated person;
 - Mod L (2-person cells) (PC 2);



- 4 LGBTQI incarcerated persons;
 - Note: OCSD later produced a housing list from the OCSD Automated Jail System (dated 5/26/20) that only listed 1 LGBTQI incarcerated person in this housing unit;
- Mod N (2-person cells) (PC 2);
 - 4 LGBTQI incarcerated persons;
- Mod O (2-person cells, 4-person cells, and a 22-person dorm) (GP 1 -7, PC 1);
 - 1 LGBTQI incarcerated person;
 - Note: OCSD later produced a housing list from the OCSD Automated Jail System (dated 5/26/20) that only listed 1 LGBTQI incarcerated person in this housing unit;
- Mod Q (2-person cells) (PC 1-2);
 - 2 LGBTQI incarcerated persons;
- IRC (Males);
 - Mod K (2-person cells) (MI, GP Overflow, PC Overflow);
 - 5 LGBTQI incarcerated persons;
 - Mod L (1-person cells) (MI, MIL);
 - 3 LGBTQI incarcerated persons;
- IRC (Females);
 - Mod M (2-person cells) (Workers, GP Overflow, GP 3-5);
 - 3 LGBTQI incarcerated persons;
 - Mod N (2-person cells) (AH, PC Overflow, PC 2-5);
 - 3 LGBTQI incarcerated persons;
- Central Men's Jail;
 - Mod A (Dorms & Cells) (Workers, AH);
 - 1 LGBTQI incarcerated person;
 - Mod E (Small Dorms/Rooms) (GP 5);
 - 1 LGBTQI incarcerated person;
 - Mod R (Single cells) (Civil 6600 SVP, Civil 1209);
 - 1 LGBTQI incarcerated person;
- Central Women's Jail;
 - Mod G (40-Person Dorms) (GP 6-7);
 - 1 LGBTQI incarcerated person;
 - Mod H (40-Person Dorms) (GP 6, Workers, GP Overflow);
 - 1 LGBTQI incarcerated person.

Subsequent to the on-site assessment, the OCSD provided a document titled, "OCJ LGBTI Inmate Roster" (dated 12/3/20). The document lists the following:

- TLF:
 - 47 LGBTQI Incarcerated Persons;



- TLF Mod I 41 total;
 - PC3 19 total (all celled housing);
 - All listed as having their housing preference documented;
 - All listed as being housed according to preference;
 - PC2 22 total (all celled housing);
 - All listed as having their housing preference documented;
 - All listed as being housed according to preference;
- TLF Mod J 1 total (celled housing);
 - PC2 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;
- TLF Mod L 2 total (both celled housing);
 - PC2 2 total;
 - Both listed as having housing preference documented;
 - Both listed as being housed according to preference;
- TLF Mod O 1 total (celled housing);
 - PC3 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;
- TLF Mod R 2 total (celled housing);
 - PC 3 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;
 - PC2 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference.

- CMJ:
 - 2 LGBTQI Incarcerated Persons;
 - CMJ Mod C 1 total (celled housing);
 - PC-AH 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;



- CMJ Mod F 1 total (dorm housing);
 - PC3 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference.
- IRC (Males):
 - 5 LGBTQI Incarcerated Persons;
 - IRC Mod J 2 total (celled housing);
 - PC-AH 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;
 - PC2 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference;
 - IRC Mod L 1 total (celled housing);
 - PC2 1 total;
 - Listed as having housing preference documented;
 - Listed as being housed according to preference.

As recently as January 2021, the OCJ provided the Assessment Team with additional requested documents related to LGBTQI housing history. The OCJ provided a spreadsheet/LGBTI Data Table listing 964 "LGBTI" incarcerated persons at the OCJ between 12/3/18 - 12/3/20. Of the 964, there were 41 LGBTI incarcerated persons (40 male and 1 female) released prior to housing. The data table listed 945 of the names as male, and 19 as female. With consideration to the 41 LGBTQI incarcerated persons identified as being released prior to housing, there were approximately 904 LGBTQI names listed as male housed at the OCJ between 12/3/18 – 12/3/20. However, some of the names had multiple bookings, so the more realistic number is estimated to be in the high 700s (this number was supported by additional documentation provided). From the list of the nearly 800 actual male LGBTQI individuals for the two-year period, only 21 of them were classified as GP. Over 700 of the listed LGBTQI males were classified at various levels of PC (e.g., PC1, PC2, PC3, PCO, PC-AH, etc.), and there were a few listed as SVP. Of the 21 male GP LGBTQI listed names, 13 of them were housed in dormitories, and 10 were housed in cells. The OCJ identifies dorms as any enclosed housing unit with more than eight bunks. Anything with eight or less bunks is considered a cell. Of the 13 housed in dormitories, eight were housed in TLF Barracks housing (TL-F:4, TL-H:2, TL-G:2), three were housed at the CMJ, and two were housed at TLF dormitories other than Barrack's housing (TL-J:1, and TL-B:1).



Also extracted from the data is that 282 of the nearly 800 LGBTQI incarcerated persons listed were classified as PCO (Protective Custody – Other). This code was reportedly used in the old classification system for all incarcerated persons who self-identified as LGBTQI or were "overtly LGBTI." The data table does not give a complete housing history for each individual (during their entire incarceration), so it is unknown whether any additional LGBTQI incarcerated persons (above and beyond the aforementioned listed eight LGBTQI individuals listed as "male") were housed in dorm/Barracks housing at any time during the two year period. From the data table, there are 60 listed names of LGBTQI individuals housed at the OCJ as a point of time in January 2021.

For all 60 in custody at that time, the table/spreadsheet indicates there is Housing Preference documentation for all of them. But the table notes that because LGBTQI incarcerated person housing preference is documented in a narrative form on their classification interview page, the information for all incarcerated persons would have to be researched one at a time to determine what their housing preference was, and whether the deputy approved their preference. The data table indicates that depending on the circumstances, a deputy or sergeant may deny an incarcerated person's housing preference for their safety, or the safety of other incarcerated persons. As a result, the Assessment Team does not have all data/information available to assess to what degree the LGBTQI incarcerated persons' stated preferences are being considered during the classification process for housing and programming purposes. For example, Barrack's housing where there is a less restrictive environment for programming and recreation (including access to additional space, including outdoors). Likewise, the Assessment Team is unable to fully gauge to what extent transgender incarcerated persons are being housed in accordance with their preference of housing (gender). The data table indicated "N/A" for "Housed According to Preference" for all of the nearly 800 LGBTQI individuals on the spreadsheet.

After reviewing the list, the Assessment Team noted there were no incarcerated persons from the CWJ or IRC (females) on the list. The Assessment Team inquired with the OCSD. The OCSD responded that the list only included persons who were assigned the male gender at birth. The OCSD data extraction did not capture those assigned the female gender at birth. The Assessment Team was informed that OCSD staff would attempt to extract that information from its databases. However, the Assessment Team has not received the updated information.

The findings and recommendations as outlined in the report sections below are based on a review of the OCSD and HCA CHS policies/procedures and practices, as well as staff and LGBTQI incarcerated person interviews. It is important to pointout some key elements to a legally sound and effective policy. All policies should be based on the following guiding principles:



- Respectful interactions between incarcerated persons and staff, and between incarcerated persons;
- Do no harm;
- Safety of vulnerable incarcerated persons;
- Adoption of accepted correctional/jail practices;
- Accountability in operations; and
- Recognition of the agency's legal obligations.

In addition, all policies should include the following elements:

- Statement of purpose;
- Enumeration of included groups;
- Prohibitions;
- Requirements;
- Scope of applicability;
- Definitions;
- Responsibilities;
- Enforcement and sanctions (for both staff and incarcerated persons); and
- Training and dissemination methods.

The following areas should be addressed when developing, revising, or implementing policies to ensure the safety of LGBTQI incarcerated persons in custodial settings:

- Nondiscrimination;
- Intake screening;
- Risk assessment, classification, and housing;
- Program participation;
- Respectful communication with LGBTQI populations;
- Medical care;
- Mental health care;
- Privacy and safety;
- Transportation;
- Incarcerated person orientation;
- Staff training; and
- Volunteer and contractor training.

Policies should fill the gap between what is required under the law and what should be done as good correctional practice.

Subsequent to the Assessment Team's on-site review, in late September 2020, the California Governor signed into law Senate Bill (SB) 132, which makes significant changes to the Penal Code with respect to the LGBTQI incarcerated population. Although the new legislation applies specifically to the California



Department of Corrections and Rehabilitation (CDCR) and not county jails, it is likely or possible that it will inform future policy, regulation, and litigation regarding the rights of LGBTQI incarcerated persons in county jail facilities as well.

SB 132 establishes a number of requirements for the CDCR including:

- During initial intake and classification, and in a private setting, personnel must ask each individual to specify the individual's gender identity, whether the individual identifies as transgender, nonbinary, or intersex, and their pronoun and honorific;
- The facility may not discipline a person for refusing to answer or not disclosing complete information in response to these questions;
- Incarcerated persons should be permitted to update the above information;
- Staff, contractors, and volunteers may not consistently fail to use a person's stated preferred gender pronoun and honorific;
- Searches of incarcerated persons who are transgender, nonbinary, or intersex must be conducted pursuant to specified search policy, including based on the individual's search preference; and
- Incarcerated persons should be housed in a facility designated for men or women based on the individual's preference, except in limited circumstances.

The Assessment Team recommends that the OCSD be proactive to develop and/or consider modification of existing policies to reflect the aforementioned SB 132 CDCR requirements (if not otherwise already captured in existing local policies).

Recommended LGBTQI resource material for OCSD includes:

- National Center for Transgender Equality, Policies to Increase Safety and Respect for Transgender Prisoners, available at: <u>https://transequality.org/sites/default/files/docs/resources/Policiesto</u> <u>IncreaseSafetyandRespectforTransgenderPrisoners.pdf</u>.
- The Fenway Institute, Emerging Best Practices for the Management and Treatment of Incarcerated Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Individuals (November 2019), available at: <u>https://fenwayhealth.org/wp-content/uploads/TFIP-33_Best-Practices-for-LGBTI-Incarcerated-People-Brief_web.pdf</u>.
- Steuben County (NY) Jail Policy In June 2020, consistent with a settlement reached in a federal lawsuit, Steuben County Jail issued a new policy on *Transgender, Intersex, Gender Non-Binary, and Gender Nonconforming People in Custody*. The policy provides a useful model to ensure compliance with legal requirements and current standards of care.



Nondiscrimination Policy

<u> Standards / Best Practices</u>

Non-Discrimination Policies

Agencies should develop, adopt, and enforce policies that explicitly prohibit discrimination and mistreatment of incarcerated persons on the basis of sex, age, race, national origin, disability, and actual or perceived sexual orientation and gender identity. These policies should specifically prohibit harassment, abuse, rudeness, and unprofessionalism of incarcerated persons by staff or other incarcerated persons based on gender identity or sexual orientation. Such policies should be designed to ensure staff treat LGBTQI incarcerated persons with respect and dignity, to safeguard their (incarcerated persons) physical and emotional wellbeing, ensure staff accountability, and enforce such policy requirements through the staff discipline process.

Non-Discrimination Statements

Prison and jail policies must have a clear non-discrimination statement within local written policy as pertaining to LGBTQI incarcerated persons. Such policy language should specifically prohibit discrimination as well as physical, verbal, and sexual harassment of LGBTQI incarcerated persons due to an actual or perceived gender identity or sexual orientation.

Policies / Procedures and Document Review

Subsequent to the on-site review, the OCSD provided Policy 375 (Transgender Policy) to the Assessment Team. The policy does not contain an effective or revised date but shows a copyright date of December 1, 2020. Section 375.1 (Purpose), states, "The Orange County Sheriff's Department is committed to working with the diverse communities it serves. The Department has been working with the LGBTQ (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. Department Members are also required to comply with Policy 328 (Policy Against Unlawful Harassment and Discrimination) and Policy 402 (Bias Free Policing)." Policy 375, Transgender Policy, Section 375.2 (Policy), states, "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits differential treatment of similarly situated people based on certain protected characteristics, including sex, transgender status, and perceived failure to conform to gender stereotypes. Discrimination against transgender and



gender-nonconforming people is also prohibited in virtually every area of life in California including housing, employment, education, insurance, and public accommodations."

The OCSD did not provide Policy 328 (Policy Against Unlawful Harassment and Discrimination) or Policy 402 (Bias Free Policing) to the Assessment Team for review.

The OCSD Policy Section 2900.1 PREA/LGBTI Inmates – General/Definitions, states in part, "The Prison Rape Elimination Act (PREA) of 2003 is a federal law that provides guidelines to detect, prevent identify and deter incidents of sexual abuse and sexual assault in detention facilities. The law was enacted to establish a zero-tolerance standard for incidents of sexual assault/rape in correctional facilities and establishes national standards for the detection, prevention, reduction, and punishment of sexual assault/rape in a custodial setting.

HCS CHS Policy 5015 Prison Rape Elimination Act Procedures, states in part, "Correctional Health Services and Orange County Sheriff's Department has a zerotolerance policy relating to illegal sexual acts, sexual harassment, or sexual misconduct in any Orange County jail facility. OCSD will investigate all allegations of sexual assault or misconduct whether reported by staff, inmate, family member, fellow inmates, attorney, or any other advocate."

Observations

The OCSD Policy 375 (Transgender Policy) includes language pertaining to prevention of discrimination and that such action against transgender and gendernonconforming persons is prohibited, and that staff must ensure appropriate treatment of transgender individuals. The OCSD did not provide any policy or policy language relative to staff accountability and the staff disciplinary process for related violations.

The aforementioned OCSD Policy Section 2900.1 PREA/LGBTI Inmates – General Definitions, and HCS CHS Policy 5015 Prison Rape Elimination Act Procedures contain information regarding a zero-tolerance standard for PREA related violations.

Staff Interviews

All of the custody and healthcare staff who were interviewed were well aware that there is an LGBTQI incarcerated person population at the OCJ facilities. Some staff were aware as to the LGBTQI primary housing clusters (though they are not exclusively housed in cluster) while others did not. Some staff are keenly aware of the incarcerated persons under their supervision including those who identify as



LGBTQI, while others have LGBTQI incarcerated persons living in their assigned housing units. Nevertheless, all employees who were interviewed indicated that they treat all incarcerated persons equally and fairly and would provide any assistance or guidance to an LGBTQI incarcerated person if asked or needed.

Incarcerated Person Interviews

The Assessment Team interviewed numerous LGBTQI incarcerated persons from several housing units who identify as LGBTQI. Most were gender conforming but three of the incarcerated persons were non-gender conforming. Whether gender conforming or not, the majority of the incarcerated persons interviewed expressed continued frustration with assigned housing deputies. Some of the concerns raised specifically pertained to harassment and discrimination. Claims were made that staff verbally belittle them and make rude and unprofessional comments toward them, sometimes speaking directly to them while on other occasions speaking within "ear-shot." Some of the alleged comments were specific to their sexual orientation. A couple of the LGBTQI incarcerated persons stated they are treated different than other incarcerated persons in a negative sense. One example given was that non-LGBTQI male incarcerated persons are allowed to walk around in their respective dayrooms with loose restrictions on attire while in the dayroom, whereas LGBTQI incarcerated persons are told to "cover up" when inside their dayroom.

Conclusions/Recommendations

Although the policy was not provided to the Assessment Team prior to or during the on-site assessment, the OCSD has Policy 375 (Transgender Policy) in place regarding discrimination against transgender incarcerated persons being prohibited, and that staff must ensure appropriate treatment of transgender individuals. The OCSD Policy 375 (Transgender Policy) includes language pertaining to prevention of discrimination and that such action against transgender and gender-nonconforming persons is prohibited, and that staff must ensure appropriate treatment of transgender individuals. The OCSD did not provide any policy or policy language relative to staff accountability or the staff disciplinary process for related violations. The OCSD must have a policy and practice in place to track complaints and violations of discrimination (including discrimination against transgender incarcerated persons) and to employ the staff discipline process for those who are found to have violated related laws and/or policies.

The OCSD Policy Section 2900.1 PREA/LGBT Inmates – General Definitions, and HCS CHS Policy 5015 Prison Rape Elimination Act Procedures contain information regarding a zero-tolerance standard for PREA related violations.



LGBTQI Intake Risk Assessment

<u>Standards / Best Practices</u>

Intake/Identification Procedures/Risk Assessment

The intake screening process is the first time where jail staff (e.g., healthcare and custody) come in contact with a new arrival. Before any housing or programming can take place, there must be a careful healthcare and custody screening/risk assessment done on each new incarcerated person to identify any potential vulnerabilities or safety/security concerns. Identifying LGBTQI incarcerated persons at the front-end of incarceration is the initial step that must take place in order to reduce any safety risks to the new arrival as well as to other incarcerated persons and staff. Such intake screening/risk assessments must include questions pertaining to transgender identity or intersex identity of incarcerated persons and more broadly "LGBTQI", sexual orientation, and gender identity. Prisons and jail classification screenings must carefully consider whether it is safe to place a transgender incarcerated person into a dormitory or open bunk setting as these settings may in some cases be unsafe for transgender incarcerated persons. However, this does not infer that classification or housing staff should arbitrarily assign an LGBTQI incarcerated person to a more restrictive general population housing unit solely due to the person's LGBTQI status. All factors must be considered, including safety, security, classification score/status, the LGBTQI incarcerated person's preference, etc. Nor does the aforementioned infer that isolation to any extent is appropriate. To the contrary, LGBTQI incarcerated persons must be placed in the least restrictive housing feasible. Commensurate to overall classification and security factors. LGBTQI incarcerated person housing and program requests need to be considered when making these decisions.

As previously outlined in the beginning of the LGBTQI section of this report, the Assessment Team provided relevant information pertaining to SB 132, which was enacted subsequent to the on-site assessment, and currently only required for CDCR, but may inform future policy, regulation, and litigation impacting county jails. The legislation establishes a number of requirements relative to intake and classification (as well as for other areas as outlined above). Specific to intake and classification, it states in part:

- "During initial intake and classification, and in a private setting, personnel must ask each individual to specify the individual's gender identity, whether the individual identifies as transgender, nonbinary, or intersex, and their pronoun and honorific;
- The facility may not discipline a person for refusing to answer or not disclosing complete information in response to these questions;



- Incarcerated persons should be permitted to update the above information; and
- Incarcerated people should be housed in a facility designated for men or women based on the individual's preference, except in limited circumstances."

Policies / Procedures and Document Review

HCA CHS Policy 6206 Gender Nonconforming Health Care, includes procedure language regarding Gender Self-Identification Screening. Specifically, it states in part, "The triage nurse will follow triage procedure and obtain a brief health history upon intake regarding sexual activity, sexual orientation, and gender identity. If OCSD personnel inform CHS that the inmate's genital status is unknown, CHS clinical staff shall speak with the inmate privately to try to determine current genital status, or by reviewing medical records, or as part of a broader health exam as necessary."

HCA CHS Policy 5015 Prison Rape Elimination Act Procedures, states in part, "Upon intake CHS clinical staff screen inmates for prior sexual victimization, in the community or an institutional setting, and for history of perpetuated sexual abuse. CHS clinical staff shall, as appropriate, ensure the inmate is immediately referred to a qualified medical or mental health CHS prescriber for an evaluation and followup." It also states, "OCSD classification deputies also provide screening of inmates during intake and upon transfer to find inmates who are at risk of being sexually abused or being sexually abusive."

CCOM Policy Section 1200.5 Inmate Classification Procedures – Classification Instrument and Initial Classification Assessment, states in part, "Classification staff shall ensure the classification instrument (Inmate Classification Form J-200) is properly and thoroughly completed during the initial classification assessment." This form includes and screening process includes questions pertaining to health and mobility screening information, violence history, institutional behavior, safety concerns, PREA, and other information.

CCOM Policy Section 1200.8 Inmate Classification Procedures – Classification Reviews and Classification Review Form, states in part, "Classification staff shall consider the inmate's discipline history, assaultive behavior toward staff or other inmates, gang involvement, and staff observations when conducting a classification review."

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information, states in part, "The Classification screening will consider, at minimum, the inmate's physical build, inmates physical



characteristics (build and appearance),......whether the inmate is perceived to be LGBTQI or gender non-conforming, whether the inmate has previously experienced sexual victimization, the inmate's own perception of vulnerability, or concerns expressed by the inmates. A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration."

CCOM Policy Section 2900.7 Prison Rape Elimination Act (PREA) – Screening for Risk of Sexual Victimization and Abusiveness and Use of Screening Information, states in part, "All inmates will be screened to assess their risk of being sexually abused by other inmates or sexually abusive towards other inmates. The Department will use information from the screening to inform housing, bed, work, education and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive."

HCA Receiving Screening Addendum asks screening questions related to being transgender, ever physically or sexually abused on the street, in the community or during a previous incarceration.

OCSD Inmate Classification Form J-200 includes intake classification screening questions pertaining to violence history, institutional behavior, safety concerns, PREA Victimization and Abusiveness Screening, gang involvement, and other questions.

OCSD Classification Housing Matrix J-202

OCSD Inmate Classification Form (J-200) (Revised 1/2020)

OCSD Specialty Housing Request Form J-201 (Revised 07/2019)

Orange County Health Care Agency Receiving Screening Addendum

Orange County Health Care Agency Mental Health Screening Form

OCSD Classification Factors/Level Form

Housing Matrix (for all CJX and TLF housing units)

Orange County Sheriff's Department Voluntary Gender Identity Disclosure and Search Preference Form (no form number contained)



Observations

In reviewing the Orange County Health Care Agency Receiving Screening Addendum (to be completed by intake medical staff), the form contains several related screening questions that are asked of the newly arrived incarcerated person, including but not limited to:

- Are you Transgender?
 - o If yes, what is your gender self-identification?
 - What transition related care have you had?
- Have you been a victim of physical abuse?
 - If yes, is this experience currently causing significant distress or impairment in your life?
 - If yes, please explain?
- Have you ever witnessed or experienced an event that involved actual or threatened death or serious injury?
 - If yes, is this experience currently causing significant distress or impairment in your life?
 - If yes, please explain?

In reviewing the Orange County Health Care Agency Mental Health Screening Form, the form contains several related screening questions that are asked of the newly arrived incarcerated person, including but not limited to:

- Do you believe you were ever abused when you were growing up?
- Have you ever been physically or sexually abused on the street, in the community or during a previous incarceration?
- There are other mental health related questions as well.

The OCSD Inmate Classification Form (J-200) (3-page document) contains numerous safety and PREA related questions regarding the incarcerated person being classified/interviewed. Applicable questions include but are not limited to:

- Safety Concerns:
 - Any concerns requiring a classification other than general population?
- PREA Victimization and Abusiveness Screening:
 - Inmate's physical build?
 - o Inmate has previously experienced sexual victimization?
 - Inmate has been previously incarcerated?
 - o Inmate is a former victim of institutional rape within the last 10 years?
 - Inmate is confirmed or perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming?
 - Define
 - What is the inmate's own perception of their own vulnerability as it relates to sexual harassment or sexual victimization?



- Inmate Comment:
 - Is there anything else you would like to tell me that would assist me with classifying you?
 - There is a space for the inmate (incarcerated person) signature.

The OCSD Specialty Housing Request Form (J-201) (one page document) contains a section for Specialty Housing Justification (findings/recommendations). The form is completed by the Classification Deputy and signed and approved by a Classification Sergeant.

The OCSD Classification Factors/Level Form contains a matrix for housing classifications, including various PREA concerns.

The Assessment Team observed the intake booking process at the IRC on several occasions. Medical, mental health, and classification staff explained that based on the initial medical screening (Orange County Health Care Agency Receiving Screening Addendum form), mental health staff (if applicable) and classification staff are provided the pertinent information from the form questionnaire and medical staff assessment. This is to ensure complete information is obtained and provide continuity to ensure appropriate classification and housing. As outlined above, related questions are asked by medical and classification staff, as well as by mental health staff (if applicable).

During the intake booking processes for both medical and classification screening, and consistent with the respective classification and healthcare screening instruments, nurses and classification deputies asked questions related to PREA, sexual victimization, mental health, and general safety and security. However, it must be pointed out that at least a couple of the medical staff who conducted the intake screenings did not always completely follow the questionnaire. Some questions that should have been asked in fact were not asked.

Unless there are overriding medical or mental health related concerns, the classification unit makes housing decisions based on the outcome of the screening process based on the OCJ housing matrix for each facility. The programming and housing requests of LGBTQI incarcerated persons are considered (by classification staff) along with their overall classification security level. Classification staff enter all classification and housing information into the electronic JMS.

The Assessment Team also noted that LGBTQI incarcerated persons (once identified through the intake process) sign a form titled, "Orange County Sheriff's Department Voluntary Gender Identity Disclosure and Search Preference Form (no form number contained). The form reads in part, "It is the policy of the Orange



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County Sheriff's Department to receive, evaluate, house and provide secure, safe and humane custody of all persons who are in custody at an Orange County Jail or a courthouse holding facility. Every inmate/detainee, including transgender, gender non-conforming, and non-binary individuals will be individually assessed and provided appropriate housing based on classification standards designed to provide safety, security, and the ability to access programs." The upper half of the form includes boxes or lines for "Inmates Legal Name, Booking Number, Gender Identity, Preferred Pronoun, and Preferred Title (e.g., Ms., Mr.)." The lower half of the form states, "While in the custody of the Orange County Sheriff's Department, I prefer to be searched by a deputy of the below indicated gender whenever possible. I understand that this preference will be respected, unless the situation is an emergency, or the failure to conduct a search will jeopardize the safety of the staff or inmates." The lower half of the form also contains the following boxes or lines (for search preference): Female, Male, No Preference, Inmate Signature and Date, Witnessing Deputy Name and Signature, and Classification Sergeant Signature.

Subsequent to the on-site assessment, the Assessment Team requested completed copies of the form for the previous two years. The Assessment Team was informed that staff from the OCSD Records Department is searching to obtain additional examples for review but obtaining two years of documents would be too cumbersome for staff to obtain. To date, the Assessment Team has received four completed examples for review. Three of the four examples were completed between October – November 2020, and one was completed in December 2019.

It is still somewhat unclear as to why there were only four examples provided. This raises questions for the Assessment Team as to the consistency (or lack thereof) for this specific process. Of the four completed forms, three listed their (LGBTQI incarcerated person's) gender identity as female, and all indicated a search preference of female staff. The fourth completed form was for an incarcerated person who listed the gender identity as male, and he checked the "No Preference" box for search preference for staff. OCSD administration staff stated that the form is voluntary for LGBTQI incarcerated persons to complete, but once completed, the form is placed into their "jacket."

Staff Interviews

Custody and healthcare staff who were interviewed were knowledgeable regarding the screening/risk assessment tools they use, the overall screening/risk assessment process, and clearly understand the nature or seriousness of obtaining all necessary information to ensure all incarcerated persons (including LGBTQI incarcerated persons) are provided the level of healthcare needed and ultimately are housed and program in accordance with their health and security level considerations.



Incarcerated Person Interviews

The Assessment Team interviewed approximately ten LGBTQI incarcerated persons from several housing units, including TLF Mod I, Central Women's Jail Mod H, and IRC Mod L. Patterned questions asked included:

- Have you ever received training/information (regarding LGBTQI issues, resources, programs, related policies, etc.)?
- Any concerns with your cellmate/bunkie?
- Do you feel safe here (facility, housing unit)? How do other inmates treat you?
- Do housing unit officers talk to you and check on you to make sure you are safe and being respected in the housing unit?
- How do staff treat you? Do staff communicate with you professionally and effectively?
- Do you ever approach staff with any related concerns? Or would you if needed?
- How do staff members address you? By your last name, preferred name, etc.?
- Any concerns with clothing, grooming, hair style, hygiene, commissary/canteen items, etc.?
- Are you involved with any outside community organizations (while incarcerated), or are you aware of outside resources available?
- Explain the shower and bathroom process? Privacy? Any concerns?
- Explain the search process, e.g., do you prefer male or female staff search you, and do staff accommodate you? Any concerns?
- Any concerns with visiting?
- When talking with medical or mental health staff, do they ask you if you are safe, feel safe, and are being respected in the jail?
- Optional to answer: Are you in the 'Transitioning' process? If so, any concerns with staff or health care processes?
- Are you involved in any special programs available for LGBTQI inmates, or are you aware of any? If so, explain the sign-up and participation process?
- Do you have a job assignment or go to school? Do you have access to volunteer assignments? Any concerns?
- Any concerns with access/participation in religious services/activities?
- Any concerns with access/participation in programs (e.g., remote programs, re-entry, self-help, education, etc.)?

Many of the responses were similar to that of non-LGBTQI incarcerated person responses (as documented in other areas of this report as pertaining to access to



programming, etc.). Many responses as specific to LGBTQI issues are outlined as applicable in various sub-sections of the overall LGBTQI section. But specifically, regarding the OCSD screening/risk assessment process, none of the incarcerated persons interviewed who identify as LGBTQI voiced any specific concerns or complaints.

Although none of the LGBTQI incarcerated persons voiced any concerns that they believed they were being housed in an incorrect, inappropriate, or more restrictive housing unit, most of them had legitimate concerns with regard to accessing programs, work assignments, and religious services, etc. The Assessment Team understands that COVID-19 restrictions to some level have an effect on some programming activities. Some of the concerns also extended to the pre-COVID-19 period. The vast majority of these concerns paralleled the same concerns echoed by non-LGBTQI incarcerated person in the same as well as other housing units throughout the facilities. As stated above, other specific LGBTQI concerns are outlined throughout other sub-sections from the LGBTQI section of this report.

As detailed earlier in this section of the report, and subsequent to the on-site assessment, the OCJ provided a document titled, "OCJ LGBTI Inmate Roster" which listed the names of 52 LGBTI incarcerated persons. The list identifies that all 52 persons as having their housing preference documented, and that they are all housed in accordance with their preference. However, the Assessment Team was not provided any documents to review from where this data originated. As previously outlined, the post-site assessment list of 52 LGBTQI incarcerated persons who were assigned the female gender at birth. The Assessment Team requested the information but has not received it.

Conclusions/Recommendations

The OCSD and HCA CHS policies and classification housing matrix address the intake screening and housing of all incarcerated persons, including those who identify as LGBTQI. Questions asked addressed victimization, transgender-related issues, sexual vulnerability, PREA in general, disability information, and various safety and security-related screening and classification questions.

Upon arrival to the OCSD, once LGBTQI incarcerated persons are screened/classified, and housed appropriately, the OCSD must ensure that LGBTQI incarcerated persons receive equal and adequate access to programs, services, and activities, e.g., work assignments, education, religious services, self-help groups/programs, etc. The OCJ may consider adopting the new SB 132 requirements relative to the intake and classification process (currently only required for CDCR). The Assessment Team observed that medical staff are not



always thoroughly following the medical intake screening questionnaire, as some questions from the form that were applicable were not asked.

Subsequent to the on-site assessment, the OCSD provided a list titled, "OCJ LGBTI Inmate Roster" (dated 12/3/20). The list was only for LGBTQI incarcerated persons who were assigned the male gender at birth. The list of 52 LGBTQI incarcerated persons indicated all 52 persons as having their housing preference documented and were all housed in accordance with their preference. But as stated throughout the LGBTQI section of this report, there are concerns that LGBTQI incarcerated persons could possibly be housed in more restrictive general population housing units than their classification factors would otherwise dictate.

Based on only four OCSD Voluntary Gender Identity Disclosure and Search Preference Forms being provided for review, it raises concern as to the consistency with which the form is being provided to LGBTQI new arrivals, and/or how the form is being maintained. The Assessment Team was informed that the forms are maintained in the "jackets" for incarcerated persons who voluntarily complete the forms.

Although none of the LGBTQI incarcerated persons who were interviewed indicated they had concerns with being housed in more restrictive housing per se, most of them expressed a lack of programming opportunities, work assignment opportunities, and access to religious services. With regard to work/job assignments, subsequent to the on-site assessment, the Assessment Team requested the number of LGBTQI incarcerated persons with work/job assignments and enrolled in other jail programs/activities, broken down by job and program/activity. However, the OCSD did not provide the data/information.



LGBTQI-Classification/Programming/Housing/Isolation-Segregated Housing

Standards / Best Practices

Prisons and jails must have policies in place regarding classification and housing placement for all incarcerated persons, including those who identify as LGBTQI. PREA standards require that housing placements for transgender incarcerated persons must be reassessed at least twice each year in order to review threats of safety. Prison and jail policies must allow for a housing and programming plan for incarcerated persons who identify as LGBTQI. Prisons and jails must refrain from having policies and practices for use of segregated/restrictive/isolation housing for incarcerated persons who identify as LGBTQI. Studies have shown that isolation is not unique to LGBTQI individuals, but it tends to affect them in a highly disproportionate way.

Policies must be free of blanket requirements for restrictive or isolated housing of LGBTQI individuals; they should not refer to the LGBTQI population as sexual offenders or otherwise; such policies and staff practices should not contribute to the incarcerated persons being treated as or made to feel as if they are sexual offenders; and local policy must not contain language or inferences that transgender incarcerated persons must be housed based on their genitalia or gender assigned at birth as opposed to the gender with which identify and may desire to be housed. Prisons and jails must not have units specifically designed or used to house LGBTQI incarcerated persons as an alternative to identifying and placing them in appropriate housing without being singled-out. Incarcerated persons must not be placed in more restrictive general population housing (e.g., with less programming opportunities, less out-of-cell time, less space for indoor and outdoor programming) solely due to their LGBTQI status. Housing determinations shall be individually tailored and based on classification and custody factors as well as an evaluation of the incarcerated person's emotional and physical well-being.

The incarcerated person's preference must also be factored into housing and programming decisions. Arrestees or incarcerated persons must have the opportunity to request placement in a sex-segregated unit (i.e., men's or women's unit) that is consistent with that person's gender identity. Jail personnel shall make a reasonable effort to grant such a request if it is in accordance with local security (whether for requirements. Any request denials health care or custody/classification reasons) must be documented, and must not be discriminatory (e.g., anatomy or genitalia, sexual orientation, or due to complaints of others). Incarcerated persons who identify as LGBTQI may grieve/appeal any housing decisions made (if desired). If they report any safety related concern(s), it



must be reported through the appropriate chain of command, and an appropriate safety plan must be established.

In order to ensure proper programming and monitoring of the LGBTQI incarcerated population and related concerns, prisons and jails should assign a staff member or a committee of staff to oversee, monitor, and address related programming, activities and concerns.

Prisons and jails should have local practices in place pertaining to special incustody programming classes/activities for LGBTQI incarcerated persons or programs/activities specific to common LGBTQI issues, whether outside community related or specific to incarceration. Related policies and practices should also include providing LGBTQI resource information for in-custody programming/matters as well as for outside community organizations.

Facility classification staff tasked with housing determinations and well as housing unit staff must factor in PREA Standard 115.42 Use of Screening Information and Placement of Residents, as related to the housing of LGBTQI incarcerated persons, consistent with the following:

"Prisons and Jails:

(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration.



(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates."

Policies / Procedures and Document Review

CCOM Policy 1200 Inmate Classification Procedures – Introduction, states in part, "Inmate classification is defined as the evaluation and placement of inmates in housing areas with inmates of similar backgrounds and characteristics. The screening instrument utilized by Classification staff will identify specific characteristics and needs of inmates booked into our custody. These characteristics and needs all relate to the health, safety, security, and conditions of confinement for inmates, as well as the safety and security of staff within our jails."

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information, states in part, "The Classification screening will consider, at minimum, the inmate's physical build, inmates physical characteristics (build and appearance),......whether the inmate is perceived to be LGBTQI or gender non-conforming, whether the inmate has previously experienced sexual victimization, the inmate's own perception of vulnerability, or concerns expressed by the inmate. A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration."

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information, states in part, "Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTQI) inmates will have housing and programming assigned by individual assessment on a case by case basis after consideration of whether the placement will ensure the inmates' health and safety and whether the placement would present management or security problems."

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information, also states in part, "Inmates at high risk of sexual victimization shall not be placed in involuntary segregated housing unless a review of all available housing alternatives has shown that there are no other means of protecting the inmate." It also states, "Housing and programming for LBGTI inmates will be reassessed every 6 months on an individual basis to review any threats to safety experienced by the inmates."



CCOM Policy Section 1200.10 Classification – Housing Assignments and Changes, states in part, "Gender non-conforming or non-binary inmates will be housed in male or female housing after classification deputies have determined the proper classification and housing location."

As part of document production, OCJ provided a pdf document (LGBTQI Inmates, on 1-28-20). The document reflects the following LGBTQI census:

TLF – Count of 77:

- 59 housed in Mod I (LGBTQI designated housing);
- 18 housed in various housing units;

IRC (males) – Count of 10:

• 10 housed in various housing units;

IRC (females) – Count of 6:

- 3 housed in Mod M;
- 3 housed in Mod N;
- CMJ Count of 3:
 - 3 housed in various housing units;

CWJ – Count of 2:

• 2 housed in various housing units.

As outlined earlier in the report, subsequent to the on-site assessment, the OCSD provided a recent document titled, "OCJ LGBTQI Inmate Roster" (dated 12/3/20) which lists 52 LGBTQI incarcerated persons. The list only contains the names of those assigned the male gender at birth. The OCJ did not provide the names (or numbers) for LGBTQI incarcerated persons assigned the female gender at birth. 47 of the 52 persons are housed at TLF, two are housed at the CMJ, and three at the IRC (males). This information is previously outlined in greater detail.

Observations

In review of the aforementioned policies, OCJ has policies regarding classification and housing placement for all incarcerated persons, including those who identify as LGBTQI. The policy includes a housing and programming plan for all incarcerated persons, including those who identify as LGBTQI. However, local policy should contain the housing criteria as outlined above.

As stated above, CCOM Policy Section 1200.10 Classification – Housing Assignments, allows classification staff to assign gender non-conforming or nonbinary incarcerated persons to male or female housing after classification deputies have determined the proper classification and housing location.



CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information ensures that LGBTQI incarcerated persons are not placed in restricted or isolated housing unless no other options are available in order to keep the incarcerated person safe (as outlined in the policy).

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information requires that not only transgender incarcerated persons, but more broadly 'LBGTI' incarcerated persons will be reassessed every 6 months on an individual basis to review any threats to safety experienced by the incarcerated persons. Classification demonstrated examples of LGBTQI incarcerated persons who have been classified every 6 months.

The OCJ does not have policies or practices in place in which LGBTQI incarcerated persons are directly or indirectly referred to as sexual offenders.

There are no existing policies or practices pertaining to special in-custody programming classes for LGBTQI incarcerated persons or specific to common LGBTQI issues, whether outside community-related or specific to incarceration. The only thing incarcerated persons receive is a pamphlet and video information specific to PREA and the jail's zero tolerance policy.

At the time of the on-site assessment, there were no policies requiring a staff position (whether a dedicated position or not) or inter-disciplinary committee to oversee and monitor the LGBTQI incarcerated person population, programming and related matters. However, subsequent to the on-site assessment, the Assessment Team was apprised that the OCSD now has assigned staff to oversee and monitor the LGBTQI incarcerated person population. Furthermore, CHS has a newly formed committee which reportedly ensures policies and practices are up to date with community standards. The committee also makes connections with community resources to assist in a seamless transition from jail to community. However, the Assessment Team was not provided any related policy information.

In observing LGBTQI incarcerated persons in both semi-clustered housing units as well as at non-clustered units, there was no evidence to suggest that any of the LGBTQI incarcerated persons or other incarcerated persons housed within the same units were screened inappropriately. As such, it appears that the LGBTQI population safely participates in normal programming activities and as equivalent to non-LGBTQI incarcerated persons. LGBTQI incarcerated persons are not being singled out, isolated or otherwise placed in restrictive housing due to their LGBTQI status. Likewise, there was no evidence to show that staff (custody or non-custody) treat them as sexual offenders, and do not participate in sexual offender programs due to their LGBTQI status. However, as outlined earlier in the LGBTQI section of the report, there are some concerns that so few LGBTQI incarcerated persons are



classified as GP, and very few LGBTQI individuals (identified as male) over the two-year period (12/3/18-12/3/20) were housed in Barracks housing at TLF. Barrack's housing would allow for a less restrictive environment for programming and recreation (if their classification level would otherwise dictate such placement). It is unclear as to how much consideration is given to an LGBTQI incarcerated person's request for housing during the classification process, particularly for those who desire to program in a less restrictive environment such as Barracks or dorm housing.

Staff Interviews

From the many custody and non-custody personnel who were interviewed, including classification and housing deputies as well as jail Programs Unit staff, there is no evidence to support that LGBTQI incarcerated persons are assigned inappropriate classification custody levels, placed in unsafe environments, improperly housed, or otherwise not programming properly – although again, it is necessary to explore whether LGTBQI can be and are considered for less restrictive settings at the jail, including commensurate to existing Barracks or dorm housing and programming.

However, part of the assessment process was to identify whether there are special programming activities and resources provided to LGBTQI incarcerated persons specific to their needs, and whether there are resources provided to them regarding outside community organizations/programs. Of all of those interviewed, all of them either identified that there are not any special programs offered, or they were unaware of them, or were not certain. The assessment specifically sought out to interview a staff member who in essence serves as the LGBTQI Coordinator (whether a dedicated position or not) or otherwise oversees and/or monitors LGBTQI related activities, or, to interview members of a committee (possibly an inter-disciplinary committee) who would oversee and/or monitor related activities. However, the Assessment Team was informed that no such positions exist. The PREA Coordinator was interviewed and was very knowledgeable and helpful as related to specific PREA information. But he admitted that his job responsibilities do not include specific monitoring or involvement with LGBTQI incarcerated persons or issues, unless they specifically intersect with PREA concerns. When asked whether LGBTQI (not PREA specific) incarcerated person grievances are tracked and monitored separately (e.g., its own tracking category, similarly to other specific tracking categories such as food, property, staff complaints, etc.), he stated "no." Staff reported that LGBTQI individuals are primarily housed in TLF Mod I if specific LGBTQI housing is requested by the individual. If the individual prefers not to be housed in the designated LGBTQI housing the individual is housed based on their classification case factors.



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Incarcerated Person Interviews

With regard to overall programming, the LGBTQI incarcerated persons indicated there are no real concerns with programming. They acknowledged they are not isolated and do participate in regular program activities. Aside from specific LGBTQI matters, some of them complained of a lack of available general classes and programs offered at the jail, and that this was compounded during the COVID-19 pandemic. But when asked whether there are specific programs, classes, resource material, etc., every incarcerated person interviewed stated there is nothing offered to them, and nothing in existence that they know of. There are no classes offered, no outside speakers from the community, no interest questionnaires to recruit or otherwise garner interest for possible programs and classes to be offered in the future.

They all confirmed there is no LGBTQI-related resource information provided to them relative to in-custody programming or from outside community organizations. When asked if they would be interested in this type of programming and resource information, almost unanimously they answered affirmatively. When asked whether they receive any related resource information at all (even if just verbally), every one of them stated that they do not. When asked whether they were involved in related outside community organizations prior to being incarcerated, several of them indicated that they had. For those who affirmed, they were all asked whether they somehow are able to maintain involvement or contact from inside the OCJ, to which they said, "no."

One of the incarcerated persons who was interviewed indicated the law library has the "Rainbow Dictionary." Incarcerated persons can check-it-out for a three-day period. He indicated he has checked-it-out in the past. When asked how he was made aware of the book, he stated another incarcerated person had told him about it. When asked whether staff have ever mentioned it, he stated, "no."

Conclusions/Recommendations

For housing and gender non-conforming information please refer to the section titled, 'Searches (below).

There are policies and practices in place to help ensure proper classification, housing, general programming, and the overall health and safety of LGBTQI incarcerated persons. LGBTQI incarcerated persons are being classified, placed in housing based at least in part on safety and custody level, and participating in general jail programming within the respective areas they are housed. However, there are concerns that LGBTQI incarcerated persons may not always be housed in the least restrictive general population housing units commensurate to their classification and custody level. The numbers of LGBTQI incarcerated persons that are placed in Barrack's housing appears to be low. It is unclear as to what degree an LGBTQI incarcerated person's request for a type of housing is



considered. LGBTQI incarcerated persons must be classified and housed in accordance with PREA Standard 115.42 Use of Screening Information and Placement of Residents (Prisons and Jails) as well as other criteria as outlined above. The OCSD must refrain from housing LGBTQI incarcerated persons in more restrictive housing (including more restrictive general population units) solely due to LGBTQI status, unless the person makes such a request or there are documented safety reasons identified through individualized assessment.

Classification demonstrated examples of LGBTQI incarcerated persons who have been classified every six months. Part of the reasoning for such a policy is to ensure the safety of LGBTQI incarcerated persons, that they are not placed in restricted or isolated housing (including more restrictive general population housing), and not programming in a more restrictive environment due solely to their LGBTQI status. Classification staff must ensure this is followed. LGBTQI incarcerated persons are not treated as, or referred to as, sexual offenders or otherwise made to feel as if they are sexual offenders, although there were no identified policies that specifically address the issue. It is recommended that policy language be added to address the topic. Although not articulated in this section of the report, the Assessment Team noted in a previous section that most of the LGBTQI incarcerated persons interviewed complained of harassment and disrespect by staff specifically due their LGBTQI status.

Subsequent to the on-site assessment, the OCSD informed the Assessment Team that they assigned staff to oversee and monitor the LGBTQI incarcerated population, and CHS has a newly formed committee which ensures policies and practices are up to date with community standards. They also make connections with community resources to assist in a seamless transition from jail to community. This is commendable. The Assessment Team was not provided any related policy information to review.



Operational Issues Specific to Transgender/Intersex Incarcerated Persons

<u> Standards / Best Practices</u>

Prisons and jails must have clear policies in place regarding transgender incarcerated persons and their housing placements. Policy and practice must ensure they are housed in the least restrictive setting possible, and not allow for transgender incarcerated persons to end up being placed by default in a men's or women's facility or housing unit based on their genitalia. They must have a choice while keeping within prison/jail security housing criteria. The classification process must include a built-in mechanism to ensure safety of the jail as well as for its staff and incarcerated persons. Prisons and jails must have an authority to make programming and housing decisions. Prisons and jails should have policies and practices which allow for an inter-disciplinary committee (e.g., transgender committee or LGBTQI committee) to be involved in processes as specifically related transgender and intersex incarcerated persons. As part of the process, numerous safety-related questions must be included. This also includes case-bycase decisions that factor in a transgender incarcerated person's own views with respect to his or her own safety (please refer to the section titled, 'Classification & Programming' [above] for more information). Based on all included classification factors, transgender and intersex incarcerated persons must not be discriminated against in their assigned housing, programming, and treatment. Transgender incarcerated persons should be treated consistent with their gender identity, not their assigned sex at birth, for all purposes. Transgender incarcerated persons must have the right to decide whether they desire to live and program in a prison or jail and specific housing unit due their birth assigned sex, or their identified gender. Requests from transgender incarcerated persons to be placed in the same cells with another transgender incarcerated person should be honored when possible.

Policies / Procedures and Document Review

CCOM Policy Section 1200.10 Classification – Housing Assignments, allows classification staff to assign gender non-conforming or non-binary incarcerated persons to male or female housing after classification deputies have determined the proper classification and housing location.

CCOM Policy Section 2900.7 Classification - Screening for Risk of Sexual and Abusiveness and Use of Screening Information ensures LGBTQI incarcerated persons are not placed in restricted or isolated housing unless no other options are available in order to keep the incarcerated person safe (as outlined in the policy).



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

Observations

Subsequent to the on-site assessment, and per request, the OCSD provided the Assessment Team with a spreadsheet titled, "Requests for Less Restrictive Housing" dated 12/3/30. The information appears to have been pulled primarily from grievances. The document contained a list of ten incarcerated person names and numbers. Of the ten names, only one is identified as an LGBTQI incarcerated person (Incarcerated Person #1). Regarding Incarcerated Person #1, the synopsis portion of the document indicates that the person (from TLF) completed his 14 days of initial guarantine and is seeking to get cleared for rehousing (no specific unit or program identified as being requested). The spreadsheet document indicates medical staff will determine rehousing when appropriate, and the related grievance was assigned to the medical services department. The other nine incarcerated persons had requests to be rehoused based on medical, mental health, ADA, and enemy situations. Of the other nine cases, only one appeared to be possibly related to wanting a less restrictive environment (although the document did not specifically state such). This person was housed in TLF Mod K and requested to be rehoused to the Barracks. This person was not identified as an LGBTQI incarcerated person.

At the time of the on-site assessment, the majority of the incarcerated persons identified as LGBTQI were housed at TLF Mod I (59 of 94 identified LGBTQI incarcerated persons). There were an additional 13 LGBTQI incarcerated persons assigned to other TLF Mods (A, C, F, K, N, and TR). The remaining 22 of those identified were assigned to the IRC, CMJ and CMJ facilities. Housing related documentation for a two-year period (12/3/18 - 12/3/20) for nearly 800 incarcerated LGBTQI individuals shows only 21 LGBTQI incarcerated persons identified as male being classified as GP, and only eight were ever housed in Barrack's housing.

Of possible concern is that LGBTQI incarcerated persons are being placed in more restrictive housing environments then their security/custody/classification placement would otherwise dictate. It is unclear to what degree an LGBTQI incarcerated person's housing preference is considered. OCSD policies and practice must allow for such consideration and placement, as well as considering the requests of the individual. Barracks housing offers individuals the opportunity to reside and program in the most integrated and least restrictive setting within the will allow for more opportunities commensurate to iail, and their security/classification level, e.g., larger living guarters, more access to job opportunities, possible outdoor work crews (if qualified), greater access to self-help groups, reentry services, much larger outdoor yard/recreation area with a large grass area, and access to more sponsored outdoor activities such as additional organized sports activities, other group/team events, holiday events, concerts, or other coordinated activities.



The Assessment Team had recommended that a committee or staff members be assigned to provide oversight/monitoring duties for all LGBTQI incarcerated persons, to include programming, housing, identity, and other concerns. Subsequent to the on-site assessment, the OCJ reportedly has assigned staff to oversee and monitor the LGBTQI incarcerated person population, and reportedly now has a committee to ensure policies and practices are up to date.

The committee or involved staff members must work with the population on the various concerns and needs. One of those concerns must be to ensure housing of LGBTQI incarcerated persons in the least restrictive environment possible commensurate to their security/custody/classification levels. Such processes must not lend itself to placement in more restrictive environments solely because the incarcerate person self-identifies as, or appears to be, an LGBTQI incarcerated person. Classification staff must take all factors into consideration to include the request or preference of the individual, unless there are overriding disciplinary, medical, mental health or other significant factors that would preclude housing placement in a particular setting. Again, if the incarcerated person does not feel safe in such an environment, then classification staff must factor that into any housing decision.

Staff Interviews

Classification and housing unit staff interviewed were knowledgeable in this area for incarcerated persons with transgender identity or intersex identity, regarding non-restrictive housing, discrimination, incarcerated persons to be treated in accordance with their gender identity and being able to 'cell-up' with another incarcerated person with transgender identity or intersex identity so long as both incarcerated persons are in agreement and there are no identified security concerns. When asked about housing decisions and assignments for LGBTQI identified persons, classification staff stated that they house according to classification criteria and consider safety as well as incarcerated persons' requests (including those who identify as LGBTQI). But staff also stated that there currently was no LGBTQI incarcerated person housed in TLF Barracks housing. One classification deputy stated that Mod I is the primary housing area where the LGBTQI population is housed, and that they generally do not want to be housed in the Barracks area.

Incarcerated Person Interviews

The incarcerated persons who were interviewed acknowledged they are being permitted to cell together if requested. There were no related complaints or concerns raised (except those outlined in other sections of this report).



Conclusions/Recommendations

For transgender identity and intersex identity classification related information, please refer to the section titled, Classification & Programming (above).

Subsequent to the on-site assessment, the OCJ reportedly has assigned staff to oversee and monitor the LGBTQI incarcerated person population, and reportedly now has a committee to ensure policies and practices are up to date. The Assessment Team had previously requested the OCJ develop and implement policies/procedures for the process, but it is unclear whether any have been developed. The committee or involved staff members must work with the population on the various concerns and needs (as outlined in other sections of the report). But one of those concerns must be to ensure that housing of LGBTQI incarcerated persons by classification staff is accomplished by assigning the least restrictive environment possible commensurate to their security, custody, and classification levels. Such processes must not lend itself to placement in more restrictive environments solely because the incarcerated person self-identifies as, or appears to be, an LGBTQI incarcerated person. Classification staff must take all factors into consideration to include the request or preferences of the individual, unless there are overriding disciplinary, medical, mental health or other significant factors that would preclude housing placement in a particular setting. Again, if the incarcerated person does not feel safe in such an environment, then classification staff must factor that into any housing decision. Barracks housing offers individuals the opportunity to reside and program in the most integrated and least restrictive setting within the jail, and will allow for more opportunities commensurate to their security/classification level, e.g., larger living guarters, more access to job opportunities, possible outdoor work crews (if qualified), greater access to self-help groups, reentry services, much larger outdoor yard/recreation area with a large grass area, and access to more sponsored outdoor activities such as additional organized sports activities, other group/team events, holiday events, concerts, or other coordinated activities.



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LGBTQI Searches

Standards / Best Practices

Prisons and jails must have policies that protect the privacy, dignity, and safety of transgender and more broadly the LGBTQI incarcerated person population, and in essence not to single-them-out. Policies should provide guidance to facility staff on how to handle pat down (clothed body) and strip (unclothed) body searches of transgender incarcerated persons. Staff must remain cognizant that searches, especially strip searches, even when conducted in a professional manner, are extremely unpleasant and often humiliating experiences for any incarcerated person. The search process must be conducted respectfully and in a professional manner. Policies must specifically require that cross-gender pat (clothed-body) and strip (unclothed body) searches will be not be applied solely based on an incarcerated person's housing assignment or anatomy. Strip searches of transgender incarcerated persons should be prohibited for the purpose of othermining genital status or for other non-legitimate purposes such as to punish or humiliate the transgender incarcerated person or to amuse staff members.

Policies should also include language that ensure transgender incarcerated persons will be afforded increased privacy for strip searches. Policies should include directions on determining the sex of the staff member who will conduct strip searches of a transgender incarcerated person. PREA is clear that male staff shall not strip search female incarcerated persons. Specific guidance is available via the PREA National Resource Center (https://www.prearesourcecenter.org/node/3927).

The best practice is to allow a transgender incarcerated person to state his or her preference for the gender of the staff to conduct any searches shortly after intake. This usually happens when the newly admitted incarcerated person completes a form that allows him or her to state preferences related to searches, name, and pronoun, and classification, etc. Policies must state that the incarcerated person's documented preference will be used. Policies must also address who should conduct searches in cases where a transgender incarcerated person states no preference or before the incarcerated person has the opportunity to complete the form.

Policies / Procedures and Document Review

OCSD Policy 375 Transgender Policy, Section 375.6 Field Searches Involving Transgender Individuals, states:

- "A search shall not be performed for the sole purpose of determining an individual's anatomic gender;
- Transgender individuals shall not be subject to more invasive search procedures than non-transgender individuals;



- When an individual is identified as a transgender person, Department members shall respect the gender identification expressed by the individual;
- Deputies should not inquire about the intimate details of an individual's anatomy or surgical status to determine an individual's gender because no proof of an individual's gender is required. For specific considerations related to booking and classification, refer to CCOM;
- Requests to remove appearance related items, such as prosthetics, clothing, that conveys gender identity, wigs, and cosmetics shall be consistent with requirements for the removal of similar items for non-transgender individuals;
- A Deputy shall not refuse to search a transgender arrestee based upon the arrestee identifying as transgender."

CCOM Policy Section 1710.4 (a & b) Body Searches of Inmates – General, states "Staff will conduct searches in a professional and dignified manner. Staff will not make degrading or insulting remarks. Staff will not use searches to punish, harass, or embarrass any inmate."

CCOM Policy Section 1710.4 (b) Body Searches of Inmates – General, states, "If there is prior knowledge that an inmate is gender non-conforming or has a gender identity which differs from their genital status, staff will do the following when determining the appropriate staff to conduct the body search: staff will take into account the gender identity offered by the inmate.....; Staff will ask the inmate their preference regarding the gender of staff who will conduct the search, the preference will be documented on the Search Preference Form; Staff will conduct the body searches utilizing staff of the same gender as the inmate's gender identity or gender expression, while also considering the preference of the inmate indicated above; and It is not a cross gender body search if an inmate is searched by staff who is of the same gender as the inmate's gender identity, even if the inmate's genital status differs from their gender identity."

CCOM Policy Section 1710.4 (m) Body Searches of Inmates – Gender Non-Conforming Inmates, states "If there is prior knowledge an inmate is gender nonconforming or has a gender identity which differs from their genital status, deputies should take the following steps to determine the appropriate staff to conduct the strip search:

- Deputies will take into account the gender identity offered by the inmate. If the inmate declines to state their gender identity, deputies will take into account the gender expression of the inmate;
- Deputies will ask the inmate their preference regarding the gender of deputies who will conduct the search. This preference will be documented on the Search Preference Form;



- Deputies will conduct strip searches utilizing deputies of the same gender as the inmate gender identity or gender expression, while also considering the preference of the inmate indicated above; and
- Gender non-conforming inmates will only be searched individually and not in groups."

Orange County Sheriff's Department Voluntary Gender Identity and Search Preference Form, includes information to self-identify gender identity, preferred pronoun, preferred title, gender preference for staff who search their person (or whether they do not have a specific preference).

Observations

The Assessment Team did not observe any searches of LGBTQI incarcerated persons. All pertinent policy language elements are contained in the listed policies. The OCSD only provided four completed copies of the Orange County Sheriff's Department Voluntary Gender Identity and Search Preference Form for review. Three were from 2020 and one from 2019. The OCSD indicated that one completed by the incarcerated person, they are placed and maintained in their "jackets." Three of the four documents were for LGBTQI incarcerated persons who identify as female and prefer to be searched by female staff. The fourth LGBTQI incarcerated person identifies as male and indicated "no preference" on the form. The OCJ had informed the Assessment Team that additional completed copies would be provided for review if Records Department staff locate any.

Staff Interviews

All staff who were interviewed were versed in the OCJ search policies and indicated that searches are done professionally. When asked hypothetical search questions pertaining to cross-gender searches, searches of incarcerated persons whose gender identity differs from their sex assigned at birth, how pat and strip searches are conducted, and privacy and dignity concerns, all staff gave appropriate responses.

Incarcerated Person Interviews

The large majority of LGBTQI incarcerated persons who were interviewed did not have any concerns with the search process. Most indicated they are done professionally and generally in the most private settings as reasonably possible. However, there were a few incarcerated persons who cited some concerns.

One incarcerated person stated that staff conduct the pat searches too forcefully, and another incarcerated person claimed staff are unprofessional when they conduct the searches, but he did not elaborate.



Conclusions/Recommendations

OCJ search-related policies are in place. There were a couple of complaints regarding the search process. The SB 132 information (outlined at the beginning of the LGBTQI Section [above]) contains search related provisions that the OCSD administration and staff should consider (if not otherwise contained in local policies). Useful resources on the subject matter are available at:

Guidance in Cross-Gender and transgender Pat Searches, National
 PREA Resource Center, at
 <u>https://www.prearesourcecenter.org/file/3328/guidance-cross-gender-and-transgender-pat-searches</u>.

The OCSD has a document titled, "Orange County Sheriff's Department Voluntary Gender Identity and Search Preference Form." It includes information to selfidentify gender identity, preferred pronoun, preferred title, gender preference for staff who search their person (or whether they do not have a specific preference). The Assessment Team was only provided four examples for review, which raises some concern regarding the consistency utilizing the form or informing newly arrived LGBTQI incarcerated persons of the form.



LGBTQI Clothing/Hairstyle/Grooming

<u> Standards / Best Practices</u>

Access to gender-appropriate clothing and personal items, and the ability to groom oneself in a manner consistent with one's gender identity, can be essential for all transgender and gender nonconforming incarcerated persons, especially those who are housed based on their sex assigned at birth. In determining policy, prisons and jails must determine and consider what types of clothing the facility issues to female incarcerated persons versus male incarcerated persons and whether there are restrictions on the types of clothing incarcerated persons can buy and possess.

Policies must clearly allow transgender incarcerated persons to possess undergarments that are provided to incarcerated persons of the gender identity of which they more closely identify with. This policy and practice must be in effect regardless of the transgender incarcerated person's housing preference or location. For prisons and jails that allow for personal clothing, transgender incarcerated persons should be allowed to possess clothing (not just undergarments) for their identified gender, regardless of the prison, jail, or type of housing unit they are assigned. Policies and practices should also permit transgender incarcerated persons to possess hygiene and other personal items appropriate for them and to groom themselves in a manner consistent with their gender identities. With the transgender population, it is important to ensure they have access to cosmetics, compression garments, religious items, and footwear (in appropriate sizes), in addition to other property items.

The Assessment Team also recommends the OCSD consider offering a genderneutral commissary list, such that the list includes items associated with both men and women, and all incarcerated persons, regardless of gender, may request any item on the list. This will assist to prevent instances of LGBTQI-related discrimination.

Policies / Procedures and Document Review

CCOM Policy Section 1600.2 Orange County Jail Rules, states in part, "Men's full issue of clothing consists of: underwear, t-shirt, socks, jumpsuit or pants and shirt, and shoes." It also states, "Women's full jail issue clothing consists of underwear, bra, jumpsuit or pants and shirt, t-shirt, sweatshirt (optional), socks, and shoes." CCOM Policy Section 1604.5 Inmate Services – Jail Clothing and Hygiene, states, "Bed sheets, towels, under/outer garments, and socks are exchanged two times each week. Blankets will be exchanged every three months, or as needed. Inmates are required to shower regularly to prevent an offensive and unhealthful condition of body hygiene. Personal grooming items are provided to inmates who do not have money."



Observations

OCSD Policy Section 1600.2 Orange County Jail Rules lists the full issue of clothing for male and female incarcerated persons. The clothing issue for women includes underwear and a bra, and for men it includes underwear.

Subsequent to the on-site assessment, the OCSD informed the Assessment Team that policy has been revised to ensure that incarcerated persons are provided their choice of undergarments based on their gender expression, and a briefing item has been completed. However, the OCSD did not provide the revised policy for review.

Staff Interviews

All staff who were interviewed stated the policy and practice is that female incarcerated persons are issued bras and women's underwear, while the men are issued boxer shorts. When asked whether transgender incarcerated persons can be issued and wear underwear pursuant to their gender identity, most of the staff indicated that those who are transgender females (assigned male at birth) are permitted bras but not female underwear. They must wear boxers. Some of the staff indicated that incarcerated persons who are transgender males (assigned female at birth) are permitted to wear boxer shorts. However, most of the staff were unaware as to whether these incarcerated persons are required to wear a bra. Staff did not cite any issues or known LGBTQI or transgender incarcerated person complaints regarding hair style, grooming, or personal hygiene/hygiene items. Staff stated that there are no hairstyle restrictions.

Incarcerated Person Interviews

In speaking with numerous male and female incarcerated persons, the full clothing issue for women includes female underwear and bra, and for males it includes men's boxer shorts. Of the numerous LGBTQI incarcerated persons interviewed, three do not identify with their sex assigned at birth. Specifically, two of the incarcerated persons were transgender females (assigned male at birth), while one was transgender male (assigned female at birth). All three have continued gender-affirming hormones for years. The two incarcerated persons who are transgender females (assigned male at birth) are both permitted to wear bras (and both have them), but they are only permitted to wear men's boxer shorts as opposed to women's underwear. When asked whether they would prefer women's underwear, both responded, "yes." The third incarcerated person who is transgender male (assigned female at birth) has boxer shorts, but he is forced to wear a bra. When asked whether he desires to wear a bra, he stated "no." Regarding hair style, grooming, and hygiene/hygiene items, none of the incarcerated persons had any complaints regarding hair style or grooming products.

There were at least three incarcerated persons who complained that there are not enough razors (though they can be purchased through commissary) for



transgender females (assigned male at birth). Reportedly they need the use of razors more so than availability allows. One of the three incarcerated persons who raised the issue is LGBTQI, but he is not transgender; he noted that it is a big concern in the jail with the transgender population. Another issue that was raised by numerous LGBTQI incarcerated persons (including transgender persons) housed in TLF Mod I, is that the hair clippers have been broken and when they do work there is nobody available to cut their hair.

Conclusions/Recommendations

OCSD policy must clearly state that transgender incarcerated persons are generally permitted to wear undergarments consistent with their preference. The policy must specifically spell out that transgender females (assigned male at birth) have the option of choosing female undergarments to include both bras and female underpants. Similarly, policy language regarding transgender males (assigned female at birth) must cite that they have the *option* of choosing male boxer shorts and must not be compelled to wear a bra (possibly unless there are legitimate documented medical reasons to the contrary). Subsequent to the on-site assessment OCSD provided the Assessment Team (on 10.30.20) CCOM Policy 1600.2(g), which provides language to ensure that incarcerated persons are provided their choice of undergarments based on their gender expression.

With the transgender population, it is important to ensure they have access to cosmetics, compression garments, religious items, and footwear (in appropriate sizes), in addition to other property items.

The Assessment Team also recommends that the OCSD consider offering a gender-neutral commissary list, such that the list include items associated with both men and women, and all incarcerated persons, regardless of gender, may request any item on the list. This will assist to prevent instances of LGBTQI-related discrimination.

Local policy must be revised to specifically identify that transgender incarcerated persons may possess hygiene and other personal items appropriate for them to groom themselves in a manner consistent with their respective gender identity.

Jail staff should examine the issues regarding lack of available razors for transgender incarcerated persons, and lack of functional hair clippers or means to have their hair cut/trimmed.



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LGBTQI Communication/Information Management

<u>Standards / Best Practices</u>

Prison and jail policies and practices must require that staff and volunteers always use respectful language and terminology when talking to or about incarcerated persons and should not use language in the workplace that is demeaning or conveys bias or hatred towards LGBTQI incarcerated persons or other individuals. Staff shall not use demeaning or derogatory language with LGBTQI incarcerated person including not referring to transgender incarcerated persons as "he-she" or "it." Policies should provide facility staff direction on what name and pronoun to use when referring to transgender incarcerated persons, as well what name to include in facility records. Facility staff should refer to transgender incarcerated persons by the name and pronoun they prefer, even if this name differs from their legal name. Prisons and jails should maintain documentation on file where this information has been provided by the incarcerated person, along with gender identity information, search preference, and housing preference. Policies should also allow the use of an incarcerated person's preferred name and pronoun without requiring the incarcerated person to have completed a legal name change or have changed his or her gender marker on any identification documents.

Policies should include language that information about an incarcerated person's sexual orientation and gender identity is considered private information and sharing this information broadly could create unnecessary risks to an LGBTQI incarcerated person's physical safety and emotional wellbeing. Policies should provide staff with guidance on how to protect the confidentiality and privacy of LGBTQI incarcerated persons. Information concerning an incarcerated person's transgender status or sexual orientation is protected by the constitutional right to privacy and may not be arbitrarily disclosed. The decision to reveal information about an incarcerated person's sexual orientation and gender identity generally belongs to the incarcerated person alone. While it may be necessary to share this information with other staff members in the facility for the benefit of the incarcerated person, any such disclosure should include only the information necessary to achieve this benefit and should only be disclosed to the staff members who need to be informed. Including information about privacy in the facility's policy is recommended. For transgender incarcerated persons in particular, their housing placement may effectively "out them" (e.g., if they are a woman in a men's facility), however the facility must still protect the individual's privacy to the extent possible, e.g., with regard to the specifics of an incarcerated person's medical history.



Policies / Procedures and Document Review

OCSD Policy 375 Transgender Policy (no listed effective date, but a copyright date of 12/1/20):

- Section 375.7 Transporting of Transgender Arrestees, states;
 - "When transporting a transgender individual, deputies shall give the dispatcher the name, DOB, mileage to the tenth of the mile, point of departure, and destination; and
 - Whenever practical, a transgender individual shall be transported apart from other arrestees."
 - Section 375.3 Contact With Transgender Individuals, states;
 - "Department Members' contacts with transgender individuals shall be professional, respectful, and courteous;
 - Department Members shall not use language that a reasonable person would consider demeaning to another person, in particular, language that references a person's gender identity, gender expression, or sexual orientation; and
 - Department Members 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."
- Section 375.4 Determining How to Address A Transgender Individual, states,
 - "When a person identifies himself/herself as transgender, Department Members shall respect the expressed gender;
 - If the individual does not self-identify as transgender, the following shall apply;
 - When the intention of a person's gender presentation is clear to a reasonable person (based on attire and other clues), it is appropriate to use this as a basis for gender determination;
 - When a person's gender is unclear or the Department Member is not certain of the person's gender identity, it is appropriate to inquire how the individual wishes to be addressed (e.g., Sir, Ma'am) and the name by which the individual wishes to be addressed. The name shall be noted as an "also known as" (AKA) if it differs from the individual's legal name;
 - If a transgender person is unwilling to provide information that enables the Department Member to know what name and/or gender is preferable, then the Department Member should make a determination about the person's gender based on the person's gender expression (i.e., clothing,



language, demeanor) and any other evidence available to the Department Members. For example, if the person is clearly dressed like a woman and is presenting as a woman, then the person should be recognized and addressed as a woman;

- Any information obtained about an individual's transgender status (e.g., preferred name and gender pronoun) should be documented and provided to relevant Department Members for the purpose of ensuring continuity of appropriate treatment; and
- Under no circumstances shall Department Members disclose to non-involved persons that an individual is transgender. As with other policies, a need to know basis should guide decisions about disclosure."

CCOM Policy Section 2900 PREA/LGBTQI provides related information.

CCOM Policy Section 9000 Transportation provides related information.

Observations

The Assessment Team observed custody and health care staff speaking professionally with LGBTQI and transgender incarcerated persons. In most cases the staff referred to them by their last names. There were two separate deputies who were observed addressing two separate transgender incarcerated persons by the incarcerated persons' preferred name, which obviously was acceptable to both incarcerated persons.

Subsequent to the on-site assessment, the OCSD informed the Assessment Team that an OCSD briefing item has been completed about addressing LGBTQI incarcerated persons in an appropriate and professional manner, as required by policy.

Staff Interviews

Most of the staff acknowledged they refer to all incarcerated persons by their last names, including the LGBTQI population. They also said that they maintain privacy with regard to speaking to other staff about their status, unless absolutely necessary during the course of their duties for general safety reasons and do so only with the appropriate staff.

Incarcerated Person Interviews

The overwhelming majority of the incarcerated persons interviewed stated they are regularly disrespected and ridiculed or harassed by staff due to their status. These concerns came from a range of LGBTQI incarcerated persons, including those who



identify as transgender. The incarcerated persons conveyed that staff call them "freaks," "hey you," "it," "that thing," and other derogative terms or general comments. The incarcerated persons interviewed were adamant they suffer from regular harassment from a lot of staff members. Other than the claimed harassment by staff, most of the incarcerated persons agreed staff normally refer to them by their last names (the same as they do for all other incarcerated persons), which all of the incarcerated persons said was acceptable.

Conclusions/Recommendations

Subsequent to the on-site assessment, the OCSD provided the Assessment Team with OCSD Policy 375 Transgender Policy. There is no associated effective date listed, but there is a noted copyright date of 12/1/20.

The policy language includes verbiage regarding transportation of transgender arrestees; contact (communications) with transgender individuals; how to address a transgender individual; documentation of transgender status information (e.g., preferred name and gender pronoun) for the purpose of ensuring continuity of appropriate treatment; and non-disclosure transgender information except on a need to know basis.

With regard to transports and as identified above, policy language covers safety and transporting transgender persons apart from other individuals when practical. It also contains language requiring staff to notify dispatch as to the name and DOB of a transgender incarcerated person as well as mileage to the tenth of the mile, point of departure, and destination. However, language does not specifically state that OCSD will contact the receiving facility to provide relevant transgender related information. The OCSD must provide such information to receiving agencies or facilities.

The policy provides clear expectations regarding communications and professionalism. However, as outlined above, most of the transgender incarcerated persons complained that the majority of staff often harass and disrespect them for being LGBTQI. The OCSD must continue to train staff on Policy 375 as well as other applicable policies and laws, foster an environment whereas LGBTQI incarcerated persons feel free to raise related concerns, conduct inquiries regarding any related allegations of staff misconduct, and ultimately hold staff accountable for proven violations of these policies or laws. Staff must refrain from using demeaning or derogatory language with LGBTQI incarcerated persons. Policy 375 contains language requiring staff to address transgender persons by their proper pronoun and gender identity.

Subsequent to the on-site assessment, the OCSD informed the Assessment Team that an OCSD briefing item has been completed about addressing LGBTQI incarcerated persons in an appropriate and professional manner, as required by policy.



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The OCSD allows LGBTQI incarcerated persons the opportunity to complete the OCSD Voluntary Gender Identity Disclosure and Search Preference Form, which includes a section for them to indicate their gender identity and preferred pronoun. This information is required to be tracked internally at the OCSD. It is imperative that staff abide by these policies.



LGBTQI Medical/Mental Health Care

Standards / Best Practices

LGBTQI incarcerated persons shall have equal access to health care and as related to some key issues. Some key issues, such as HIV care, treatment for anxiety and post-traumatic stress, treatment following allegations of abuse, and patient confidentiality are particularly important issues for LGBTQI persons. For example, LGBTQI individuals may experience anxiety, depression, or post-traumatic stress as a result of harassment or abuse, and their requests to be evaluated by a mental health provider may not be taken seriously. Or, a patient's HIV status may be discussed casually in front of others, or medication may be delivered in a careless way that could disclose their status.

Transgender and intersex persons may have additional needs with regard to primary care, including routine preventive screenings, which may not be typical for persons of the gender with which they are housed. Facilities must provide adequate care for all serious medical needs, and all parts of the body, without regard to a person's birth-assigned or self-identified gender. For example, a transgender woman over fifty may need both breast and prostate care.

With regard to transition-related health care for transgender persons, prison and jail policies should include language relative to evaluating and treating gender dysphoria. Gender dysphoria is a serious medical condition for which treatment is both medically necessary and effective. Treatment for gender dysphoria can involve counseling, social gender role transition (sometimes called a "real life experience"), hormone therapy, and any of a variety of possible surgical treatments. Related policies should include:

- Treatment decisions are made by health care providers (not administrators);
- Treatment decisions should not be based on the level of care received prior to arrival;
- Medications should not be interrupted absent a medical provider's clinical determination (e.g., incarcerated persons taking hormone replacement medication therapy should be maintained on such medications pending a medical evaluation, regardless of whether they were prescribed by a licensed health provider);
- Evaluations and treatment provisions should be conducted by, or in consultation with, a competent provider; and
- Incarcerated persons should be permitted to express and be treated according to their gender identity.

Policies / Procedures and Document Review



HCA CHS Policy 1003 Access to Care, states, "Inmates have the ability to have unimpeded access to professional health care to meet their medical, dental, mental health or developmental disability needs while housed at the Orange County Jail. CHS clinical staff respond to requests in a timely manner by triaging inmate's health upon intake, conducting routine and emergent sick call, providing chronic care services, medication and treatment regimens, and providing unscheduled and scheduled off-site services."

HCA CHS Policy 5015 Prison Rape Elimination Act, states, "Correctional Health Services and Orange County Sheriff's Department has a zero-tolerance policy relating to illegal sexual acts, sexual harassment, or sexual misconduct in any Orange County jail facility. OCSD will investigate all allegations of sexual assault or misconduct whether reported by staff, inmate, family member, fellow inmates, attorney, or any other advocate." It also states, "CHS staff will receive sexual abuse and harassment in-service training upon orientation and annually on PREA standards of care to help identify signs of sexual abuse and sexual harassment, preserving physical evidence of sexual abuse, and proper reporting of allegations of sexual abuse and harassment that is consistent with community standards of care."

HCA CHS Policy 6206 Gender Nonconforming Health Care, states, "Correctional Health Services shall treat gender nonconforming inmates in a manner that respects their biomedical and psychological needs. Inmates are addressed based on their gender preference." The corresponding procedures address gender selfidentification screening, medical and surgical management, and mental health evaluations and counseling services.

HCA CHS Policy 6208 HIV, states, "It is the policy of Correctional Health Services to foster earlier detection of HIV infection, identify and counsel persons with unrecognized HIV infection, and link them to clinical services. CHS will treat inmates with HIV based upon national guidelines and criteria."

HCA CHS Policy 8555 Mental Health Screening, states "Mental health clinical staff will use a Mental Health Screening form when inmates are seen for a rapid assessment or when documentation of a brief encounter is necessary. Mental Health Screenings are conducted in a manner to promote inmate's open responses and full disclosure."

HCA CHS Policy 8556 Initial Psychiatric Evaluation, states "It is the policy of Correctional Health Services – Mental Health (CHS Mental Health) to provide readily accessible documentation of the psychiatric initial evaluation of each CHS Mental Health inmate who has an open chart."

Excel Spreadsheet, titled "Course Completion Report Transfer Considerations for Transgender Patients."



- Shows list of staff who completed the course between 1/1/20 2/23/20;
 Approximately 200 staff members;
- Required for all staff.

HCA CHS Training Sign-in Sheet for mandatory class/workshop titled, "Incorporating Affirmative Therapy Practices for LGBTQI Clients in Correctional Settings – 2/11/20

• HCA CHS also provided a flyer advertising the training.

HCA CHS List of Clinicians Possessing Special Training/Certification in Treating LGBTQI Inmates – Particularly Mental Health Providers and Medical Providers

• Identifies three clinicians.

PowerPoint Presentation Titled, "OC Accept" Pertaining to LGBTQI

• Presented by Behavioral Health Services.

Observations

From the document review of all related policies, there is no evidence to suggest transgender identity, intersex identity, or more broadly LGBTQI incarcerated persons are not benefitting from equal access to primary or specialty health care at the OCJ. Their necessary key healthcare issues for HIV care are being addressed. Including treatment for anxiety and post-traumatic stress and treatment following allegations of sexual or physical abuse, etc. HCA CHS healthcare staff treat patients for gender dysphoria and continue with gender-affirming hormones and any related medications. Especially when patients were previously undergoing this treatment in the outside community prior to incarceration.

Staff Interviews

Numerous healthcare staff were interviewed and confirmed patient primary care and specialty care is provided by the HCA CHS provider. Medical and mental health care are both provided. Healthcare professionals also confirmed they continue gender-affirming hormones for those "transitioning."

Incarcerated Person Interviews

The three transgender incarcerated persons who were interviewed all confirmed they are continuing with their gender-affirming hormones while continuing the transition process. Numerous LGBTQI incarcerated persons as well as the transgender incarcerated persons all have positive comments regarding the medical and mental health services they receive. There were no complaints or concerns raised.



Conclusions/Recommendations

Based on review of policy CHS Policy 6206 Gender Nonconforming Health Care, as well as information obtained through healthcare staff interviews, it appears that CHS HCA staff continue gender-affirming hormones if the incarcerated person was previously undergoing the hormones in the outside community prior to incarceration. The CHS policy must be specific with and/or specifically reference prevailing standards of care, such as those published by the World Professional Association for transgender Health (WPATH), or the University of California, San Francisco (UCSF). Related resources include:

- https://www.wpath.org/publications/soc
- https://transcare.ucsf.edu/guidelines
- Edmo v. Corizon, Inc., 935 F.3d 757, 793 (9th Cir. 2019), cert. denied (affirming finding of constitutional violation where prison failed to provide medically necessary transgender care); Norsworthy v. Beard, 87 F. Supp.3d 1164 (N.D.Cal.2015).
- Statement of Interest of the United States, *Diamond v. Owens*, No. 5:15-CV-50 (MTT), 2015 WL 5341015 (M.D. Ga Sept. 14, 2015), available at
 - <u>https://www.splcenter.org/sites/default/files/documents/doj_stateme</u> <u>nt_of_interest_diamond.pdf</u>
 - "Freeze-frame policies are facially unconstitutional under the Eighth Amendment"); *Hickin v. Precynthe*, No 4:16-CV-01357-NCC,2018
 WL 806764 (E.D. Mo. Feb. 9, 2018).

CHS policy and practice should be clear that the provision of transgender health must be based on individualized clinical assessment, irrespective of preincarceration treatment history.



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LGBTQI-Privacy/Safety/Cross-Gender Supervision/Restroom/Showering

Standards / Best Practices

Prisons and jails must preserve privacy (to the extent possible) and monitor the safety of LGBTQI incarcerated persons when considering showering facilities/protocols, using a multi-user bathroom, changing clothing, being searched, or tested for drug use. Prisons and jails should have a policy that explains how to avoid subjecting transgender incarcerated persons to unnecessary risk of physical and emotional harm during these and other activities. Prison and jail policies must include language addressing that where nudity is unavoidable (e.g., such as when a staff member is required to watch an LGBTQI incarcerated person submit a urine sample for a drug test), the staff member assigned to observe the drug test process (and other similar situations) will be based on the transgender incarcerated person's signed Voluntary Gender Identity Disclosure and Search Preference Form (as to the sex of the staff member involved). The "appropriate gender" of the staff member is explained in the section titled, "Searches" (above). Limiting cross-gender supervision will make it less likely staff members of a different sex (than the incarcerated persons in the unit) will view these incarcerated persons unclothed.

Decisions regarding the use of showers and bathrooms should be individualized with the goal of protecting the privacy, dignity, and safety of transgender incarcerated persons within the context of a prison/jail setting. Prison/jail staff must examine the physical layout related to showers and multi-user bathrooms and the level of privacy that can be afforded to those incarcerated persons while showering or using a toilet. Separate stalls with privacy shields (or semi-privacy shields) may prove sufficient. For shower facilities which include one large room with showerheads, local policies and practices will need to address how to ensure safety and privacy for transgender/intersex incarcerated persons. The concept holds true with respect to multi-user bathrooms with several toilets next to each other without any stall walls, partitions, or doors. Policies and practices should allow transgender incarcerated persons the option of showering or using the bathroom at a different time than the rest of the incarcerated person. But in cases where this is considered, it must not lend itself to singling-out, or harassment of the individual. The OCSD must follow PREA Standard 115.42 Use of Screening Information and Placement of Residents (Prisons and Jails) "(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates." Such situations should be handled on a case-by-case basis with consideration given to the requests of the individual incarcerated person. Another option that can be considered is allowing these individuals to use showers and toilets in medical units or somewhere else that can provide some level of privacy. The individual incarcerated person's preference (along with prison/jail layout and



security concerns) must be considered; policy should avoid implementation of a blanket practice.

Prison and jail policies should address how to increase privacy for transgender incarcerated persons when undressing. Policies should include identified language that ultimately would help avoid viewing by different gendered staff for transgender incarcerated persons. For example, include language to permit transgender incarcerated persons to undress behind a privacy barrier (if feasible).

Policies / Procedures and Document Review

CCOM Policy Section 1720.1 Cross Gender Supervision, states staff shall acknowledge an incarcerated person's bodily privacy rights. It also states staff will remain professional at all times and respect the dignity of each incarcerated person. It also addresses the requirement (as a general rule) that each shift will be sufficiently staffed to provide staff of the same gender as the incarcerated persons in a specific housing/work location.

CCOM Policy Section 1720.4 Cross Gender Supervision, states "Staff of the opposite gender of inmates will be required to announce their presence when entering an area where inmates are likely to be showering, performing bodily functions, or changing clothing. Inmates shall be able to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine safety checks."

CCOM Policy Section 2007 Shower Call addresses shower. No information regarding privacy of LGBTQI incarcerated persons.

Observations

The Assessment Team viewed the housing unit sectors (pods) from inside the housing deputy/CST 'bubble booth' in one of the housing units (TLF Mod I) where there were complaints by two transgender incarcerated persons regarding a lack of privacy for the shower area. It did not appear a staff member could see the chest area of an incarcerated person (e.g., transgender incarcerated person) from the identified vantage point.

With regard to CCOM Policy 1720.4 Cross Gender Supervision, and specifically the reference to "exigent circumstances", the Assessment Team recommends that the policy be slightly modified to explain that such circumstances should be limited to safety issues, and should not include administrative convenience, such as issues related to staffing limitations or availability.



Staff Interviews

In response to a question asked of them, the housing unit deputies and CST working the 'bubble booth' in TLF Mod I, indicated that from inside the 'bubble booth' one would not be able to see the chest area of an incarcerated person (e.g., transgender incarcerated person).

Incarcerated Person Interviews

None of the transgender (or more broadly LGBTQI) incarcerated persons interviewed expressed any concerns regarding safety, or cross-gender supervision in the units. However, there were complaints pertaining to transgender incarcerated persons and lack of privacy in the restrooms and showers. Some of the complaints involved half partitions in the showers. Some of the incarcerated persons believed deputies or CSAs in the 'bubble booths' could see their chest areas.

Conclusions/Recommendations

OCJ policy must include language addressing that where nudity is unavoidable (e.g., such as when a staff member is required to observe an LGBTQI incarcerated person submit a urine sample for a drug test), the staff member assigned to observe a drug test process (and other similar situations) will be based on the transgender incarcerated person's signed OCSD Voluntary Gender Identity Disclosure and Search Preference Form (as to the sex of the staff member involved). The "appropriate gender" of the staff member is the same as explained in the section titled, "Searches."

OCJ must ensure decisions regarding the use of showers and bathrooms are individualized with the goal of protecting the privacy, dignity, and safety of transgender incarcerated persons within the context of a prison/jail setting. The OCSD must follow PREA Standard 115.42 Use of Screening Information and Placement of Residents (Prisons and Jails) "(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates." Although this does not appear to be a concern at the OCJ, at least some level of consideration could be given for policy to be modified to allow transgender incarcerated persons the option of showering or using the bathroom at a different time than the rest of the incarcerated persons. But in the event, such a change would be implemented, it must not lend itself to singling-out, or harassment of the individual. At TLF Mod I, two incarcerated persons who identify as transgender complained that they believed staff assigned to "Bubble" can see their chest area over the half shower barrier from the shower area. Staff who were assigned to the "Bubble" indicated they cannot see the chest area over the shower barrier. Upon observation by the Assessment Team, there was no evidence to support the two claims. Although Assessment Team observation as well as staff interview information obtained was unable to confirm staff are able to see the chest areas of



LGBTQI incarcerated persons while showering in the unit, the OCSD should conduct as assessment on whether privacy screens or walls are needed in the housing units, or, in the event such an assessment has been done, provide the results and pertinent recommendations or plans, if any.

Local policy should address how to increase privacy for transgender incarcerated persons when undressing. Policies should include identified language that ultimately would help ensure decreased viewing by different gendered staff for transgender incarcerated persons. For example, include language to permit transgender incarcerated persons to undress behind a privacy barrier (if feasible).

With regard to CCOM Policy 1720.4 Cross Gender Supervision, and specifically the reference to "exigent circumstances," the Assessment Team recommends the policy be slightly modified to explain that such circumstances should be limited to situations with specific safety issues, and should not include administrative convenience, such as issues related to staffing limitations or availability.



LGBTQI Visitation Rules

Standards / Best Practices

Prison and jail policies must allow for visits by same-sex or other intimate partners of incarcerated persons, and they must not have restrictions on showing affection between incarcerated persons and their same-sex or other intimate partners during visits, unless these same restrictions apply to heterosexual couples.

Policies / Procedures and Document Review

CCOM Policy Section 1600.3 Orange County Jail Rules - Visiting and Communications. There is no language relative to LGBTQI incarcerated persons, or visits with same-sex partners.

CCOM Policy Section 1600.4 Inmate Rights, states "Visitation with family members and friends in a visiting area that is limited only by those facility requirements necessary to maintain order and security. Private areas are available for official visitation between inmates and attorneys, except where the restriction can be properly justified. Official visits shall be granted during any reasonable hour."

Observations

The Assessment Team did not actively monitor the incarcerated person visiting process.

Staff Interviews

The staff who were interviewed indicated all incarcerated persons are treated the same and abide by the same visiting rules. No concerns were identified.

Incarcerated person interviews

When asked, none of the LGBTQI incarcerated persons interviewed had any concerns with the visiting process.

Conclusions/Recommendations

The OCSD must modify the visiting policy to include brief language citing the approval of visits by same-sex or other intimate partners of incarcerated persons, and there must not be any restrictions on showing affection between incarcerated persons and their same-sex or other intimate partners contact visits (for those approved), unless these same restrictions apply to heterosexual couples.



LGBTQI Policy Dissemination (Policy Training)/Incarcerated Person Education

Standards / Best Practices

In order for a policy to be effective, incarcerated persons and staff need to know about it, understand it, and be able to reference it. Policymakers will need to determine how and when incarcerated persons are told about the policy and other ways the policy is disseminated.

Pursuant to PREA, there are requirements to provide basic PREA information to all incarcerated persons during intake regarding the reporting of abuse as well as comprehensive education about agency policies and procedures regarding sexual abuse prevention and response. Though this PREA requirement of education information does not specifically extend to LGBTQI incarcerated persons and/or for specific LGBTQI issues, prison and jail policies should include this requirement either as part of the intake process, or at a different time and location as deemed appropriate by local administration (e.g., upon being housed, during incarcerated person orientation). Policies should specifically identify how incarcerated persons will be informed of this information.

LGBTQI related policies should be posted at each facility's designated area where important policies are posted in order to ensure incarcerated persons and staff are aware of them. Areas such as intake/reception, housing unit common areas within housing units, common areas that incarcerated persons from different units have access to (e.g., libraries, cafeterias), etc.

In order to ensure staff members at the facility are aware of LGBTQI policies, all new staff members and volunteers should receive copies during their orientation. In addition, a copy should be placed in any electronic folders or binders that contain other important policies so staff members can refer to it when needed. Contractors should also be informed about the nondiscrimination and non-harassment aspects of the policy (or policies) and be required to abide by them when they sign contracts to work with the facility.

Management and supervisors must monitor compliance to ensure staff members are following and implementing the provisions properly. The policy should include guidance on how administrators and supervisors can measure staff compliance in evaluation procedures and when making determinations related to promotion, discipline, and termination. Staff members who are not abiding by the policy should receive additional training, targeted supervision, and other support to ensure future policy compliance. If appropriate, staff should be subject to disciplinary measures for non-compliance with policy. The policy should also include regularly scheduled



reviews of the policy to ensure compliance with other laws as well as to provide opportunity for improvement.

Training is an essential step to ensure that staff members understand the requirements of the new policy and have the tools and skills to put the policy into everyday practice. All facility staff and administrators should receive training regarding the policy and LGBTQI persons during orientation and as part of continuing education or training requirements. A training curriculum should include at a minimum, the following topics: 1) the goals and requirements of the facility's LGBTQI policy; 2) how to manage LGBTQI incarcerated persons in a respectful, fair, and non-discriminatory manner; and 3) how to prevent and respond to harassment and abuse against LGBTQI incarcerated persons. These trainings should be taught by professional trainers with experience training on this topic.

In order to help staff members conduct searches of transgender and gender nonconforming incarcerated persons in the most respectful and professional manner possible, training on appropriate methods for conducting searches of this population should be provided to all of those who may be conducting both pat searches and strip searches.

Policies / Procedures and Document Review

CCOM Policy Section 2900.5 Training of Employees, Volunteers, and Contractors states provides information regarding training requirements for staff, volunteers, and contractors, regarding PREA and the zero-tolerance policy. However, there is no related language for LGBTQI or transgender incarcerated persons.

• 51 slides.

Observations

OCJ policy addresses staff training requirements relative to PREA, but not specific transgender/intersex or LGBTQI as a whole.

Staff Interviews

The Assessment Team interviewed two deputies who were assigned to units where LGBTQI incarcerated persons were housed. They were not aware of any related LGBTQI policies. When asked, both employees stated they had never received any specialized training pertinent to the LGBTQI community, incarcerated persons, or related issues. One of the deputies had training approximately one year earlier. The training was one-hour in length, and covered some procedural information, housing, classification, clothing, how they identify as LGBTQI or transgender, or gender non-conforming. The second deputy could not recall any



specific training. He thought he may have had some training on intake screening as related to identifying LGBTQI incarcerated persons.

Incarcerated Person Interviews

A few of the LGBTQI incarcerated persons interviewed stated they believed staff, in general, need some training to better understand LGTBQI incarcerated persons, their needs, and issues they deal with in a jail environment. Some of the incarcerated persons cited a perceived disconnect or lack of caring by custody staff.

Conclusions/Recommendations

The OCSD does not have a comprehensive stand-alone policy for LGBTQI (which would include transgender/intersex). But rather the CCOM mentions LGBTQI, transgender/intersex, gender non-conforming, transgender search preference staff gender, and a few specific issues 'scattered' amongst a few CCOM policy sections. Most of what is cited is lacking specific details (e.g., its purpose, etc.). There are many key requirements regarding LGBTQI and transgender/intersex requirements (or what should be OCJ requirements) that are not addressed in policy. The Assessment Team highly recommends the following:

- In collaboration between the OCSD and HCA CHS develop and implement a comprehensive LGBTQI policy (separate from PREA) or separate OCSD and HCA CHS LGBTQI policies:
 - Policies should include all key areas discussed throughout the LGBTQI section of this report;
 - The policy (or policies) should specifically identify how incarcerated persons will be informed of this information;
 - The policy (policies) should be posted at each facility's designated area(s) where important policies are posted in order to ensure incarcerated persons and staff are aware of them;
 - Provide copies to all new staff members and volunteers during their orientation;
 - Contractors should also be informed of the nondiscrimination and non-harassment aspects of the policy (or policies);
 - Management and supervisors must monitor compliance to ensure staff members are following and implementing the provisions properly;
 - If appropriate, staff should be subject to disciplinary measures for non-compliance with policy (policies);
 - The policy (policies) should also include regularly scheduled reviews of the policy to ensure compliance;



- All facility staff and administrators should receive training regarding the policy and LGBTQI individuals during orientation and as part of continuing education or training requirements; and
- Relevant training curriculum should include at a minimum, the following:
 - The goals and requirements of the facility's LGBTQI policy;
 - How to manage LGBTQI incarcerated persons in a respectful, fair, and non-discriminatory manner;
 - How to prevent and respond to harassment and abuse against LGBTQI incarcerated persons; and
 - These trainings should be taught by professional trainers with experience training on this topic.



LGBTQI General Training Information

The following is a summary of LGBTQI training information received from CHS health care staff. Training information includes classes completed by healthcare staff (including Mental Health staff).

HCA CHS:

- LGBTQI PowerPoint Presentation Titled "OC Accept" (Orange County Acceptance through Compassionate Care Empowerment and Positive Transformation);
 - o 51 Slides;
 - Includes but not limited to;
 - Ethical Considerations;
 - Selected History & Milestones of LGBTQI Community;
 - LGBTQI Statistics;
 - What does LGBTQI Mean?
 - Terminology;
 - LGBTQI Youth;
 - Challenges in Corrections;
 - Special Population (Transgender males and females);
 - Eighth Amendment;
 - PREA;
 - Affirmative Therapy Interventions;
 - Affirmative Therapist;
 - Creating a Welcoming Environment;
 - Stereotypes;
 - Issues Underlying Discrimination;
 - Thoughtful Culture Considerations;
 - Coming Out;
 - Stage I: Identity Confusion;
 - Stage II: Comparison (Where do I belong?);
 - Stage III: Identity Tolerance (I may be);
 - Stage IV: Identity Acceptance (I am);
 - Stage V: Identity Pride;
 - Stage VI: Identity Synthesis (Being....is one part of me);
 - What is OC Accept?
 - Client Referral Contact info; and
 - References.
- The OCSD did not provide any sign-in sheets or lists or numbers of custody or healthcare staff who attended or did not attend the training:
 - The Assessment Team was unable to determine the number of custody and medical staff who attended the training and were unable



to identify the personnel required to attend the training that have not attended.

- Excel Spreadsheet regarding class titled "Tx Considerations for Transgender Patients:"
 - Lists approximately 200 healthcare staff who completed online training (through March 2020);
 - It is unclear whether these approximately 200 healthcare employees account for all healthcare staff required to attend this training;
 - The Assessment Team was also unable to determine whether custody staff are required to attend the training.
- Learning Objectives for class titled, "Tx Considerations for Transgender Patients:"
 - Includes six objectives (but no lesson plan, PowerPoint presentation, or class participant handouts was provided for review);
 - 1) Introduce the concept of trans persons;
 - 2) Review the identification of transgender patients;
 - o 3) Explain the assessment process for transgender patients;
 - 4) Examine the treatment of identified transgendered patients;
 - 5) Identify issues that obfuscate treatment; and
 - o 6) Review CHS policy on Gender Nonconforming Health Care.
- Sign-in sheets for class titled "Incorporating Affirmative Therapy Practices for LGBTQI Clients in a Correctional Setting":
 - Classes through 2/11/20;
 - Lists approximately 27 healthcare staff that attended the training;
 - It is unclear whether these 27 healthcare employees account for all healthcare staff required to attend.
- Learning Objectives for class titled, "Incorporating Affirmative Therapy LGBTQI+":
 - Includes five objectives (but no lesson plan, PowerPoint presentation, or class participant handouts was provided for review);
 - 1) Define common terms;
 - 2) Identify the mental health needs of the LGBTQI community;
 - o 3) Identify 5 ways to be an affirmative psychotherapist;
 - 4) Identify 3-5 behavioral interventions in working with LGBTQI clients: and
 - $\circ~$ 5) Identify and describe Cass's 6 stages of identity development model.



OCSD:

- Orange County Sheriff's Regional Training Academy Training Schedule;
 No LGBTQI training;
- OCSD Training Division;
 - No LGBTQI training (only PREA);
- Standards of Training and Corrections (STC) Hourly Curriculum Breakdown; and
 - No LGBTQI training.

Staff Interviews:

The Assessment team interviewed two deputies who work two different housing units from two different facilities regarding training. One of the deputies could not recall having ever been trained regarding LGBTQI material. The other deputy stated that he had received a one-hour training class approximately one year ago. He stated that the class content was primarily pertaining to OCJ related policies, clothing, housing, classification, and how LGBTQI incarcerated persons identify. He stated he has not had any specialized training.

Conclusions/Recommendations:

The OCSD must have training curriculum in place for all custody and non-custody staff pertaining to LGBTQI policies and general related training material. The OCSD provided some general training material for review. Specifically, the OCSD provided an LGBTQI PowerPoint Presentation Titled "OC Accept" (Orange County Acceptance through Compassionate Care Empowerment and Positive Transformation); learning objectives (6) for a training course class titled, "Tx Considerations for Transgender Patients"; and learning objectives (5) for a class titled, "Incorporating Affirmative Therapy LGBTQI+". The OCSD did not provide any formal lesson plans, course outlines, knowledge-based quizzes or assessments, or any associated materials for any of the three training courses. With the exception of the aforementioned PowerPoint presentation, one was not provided for either of the other two courses. For the class titled, "Tx Considerations for Transgender Patients", the OCSD provided lists with the names of approximately 200 healthcare employees who completed the online training (through March 2020). Likewise, for the class titled, "Incorporating Affirmative Therapy Practices for LGBTQI Clients in a Correctional Setting", a list showing the names of 27 healthcare staff was provided. There were no similar documents provided for the "OC Accept" course. For the three courses, it is unclear which employees/employee classifications (i.e., from custody, healthcare, and noncustody [other than healthcare]) are required to attend each of the respective training classes, and what percentage of staff from the various disciplines have and have not attended the training (if required).



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For the "Tx Considerations for Transgender Patients" and the "Incorporating Affirmative Therapy LGBTQI+" courses, with only having the listed learning objectives to review, the Assessment Team was unable examine the quality of the material or any potential key missing elements. The "OC Accept" Power Point reads as very informative and necessary, but it only contained a few slides specific to the jail setting (e.g., "Challenges in Corrections", and Special Population (Transgender males and females)". Whether through this specific course, the other two courses, and/or other LGBTQI training curriculum, training material must cover requirements outlined in the OCSD Policy 375 Transgender Policy, HCA Policy 6206 Gender Nonconforming Health Care Policy, and other related OCSD and HCA CHS policies. Training curriculum should also include various topics/elements discussed as well as associated recommendations made by the Assessment Team (as outlined throughout LGBTQI section of this report). Such material must be incorporated into training even if not yet in local policy or current practice. The OCSD should strongly consider the recommendations throughout the LGBTQI section of this report, incorporate the related information into local policies and/or enhance existing policies as needed, and incorporate the material into training curriculum accordingly. Staff who are assigned to designated LGBTQI housing units as well as other staff who work closely with LGBTQI population should receive such enhanced training. The OCSD must ensure training curriculum includes the following topics or information: policy dissemination (for all related policies); key definitions; impact of discrimination (and nondiscrimination policy); classification/intake risk assessment; housing (including refraining from housing in lesser restrictive environments based solely on LGBTQI status); programming, available LGBTQI related education/materials/resources (for community and in-custody); work opportunities; integration of LGBTQI incarcerated persons in the prison setting; gender-identity; searching; crossgender supervision; privacy; safety; visitation; transportation of transgender incarcerated persons; restroom; showering; medical care; mental health care; communication and information management (including how to professionally communicate and interact with transgender incarcerated persons and more broadly LGBTQI incarcerated persons); clothing; hairstyle; grooming; operational issues specific to transgender/intersex incarcerated persons; references to name/preferred pronouns; and other topics.

The OCSD and HCA CHS must also have policy language in place as well as practice to ensure training updates are incorporated into all relevant training material on an ongoing basis as laws, policies, standards of healthcare, and accepted practices change, or evolve.

The aforementioned training topics are separate from required PREA training topics (e.g., zero-tolerance policy; common reactions to sexual harassment and abuse; detection and response to signs of sexual abuse; incarcerated persons



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right to be free from sexual abuse/harassment; and how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities).



Information on Health Services

Observations

The Assessment Team noted that orientation is conducted during the booking loop process. An orientation video is shown in the holding cells as incarcerated persons are waiting for classification/housing placement; however, not all holding cells have a television to present the orientation.

Male Booking:

Of the 24 holding cells in the male booking loop, seven holding cells have a television. Of the seven holding cells that have a television, two of the televisions are inoperable. Of the two holding cells used for disabled incarcerated persons, only one has a television.

Female Booking:

Of the eight holding cells in the female booking loop, three holding cells have a television. All of the televisions are operational. The one holding cell used for disabled incarcerated persons has a television.

The Orientation Video addresses the following:

- Smoking Prohibition;
- Jail Rules;
- Grievances;
- Contraband;
- Disciplinary Process;
- Classification;
- Inmate Message Slip;
- Intercom Use;
- Sick Call/Medical Message Slip;
- Court Appearances;
- Dayroom;
- Television;
- Outdoor Recreation;
- Visiting;
- Telephones;
- Mail/Legal Mail;
- Accounting/Funds;
- Clothing Exchange;
- Meals;
- Commissary;
- Religious Services;



- Inmate Programs/Re-Entry;
- Law Library;
- Recreational Reading/Games/Newspapers; and
- Office of Independent Review.

Conclusions/Recommendations

Not all holding cells have a television for the presentation of the orientation video. All of the holding cells must have a television for incarcerated persons to view the orientation video. Some incarcerated persons claimed they were not provided orientation and/or could not remember being provided the orientation (pamphlet or video). Staff must ensure incarcerated persons are provided the information, and staff must ensure effective communication is provided for incarcerated persons who have difficulty communicating (e.g., non-English speaking, intellectually or developmentally disabled, illiterate, mentally ill, visually impaired, deaf).



Emergency Services and Response Plan

Observations

HCA CHS policy 6151 Emergency Services states, "CHS provides twenty-fourhour emergency health care services to inmates, employees, contract staff, volunteers, and visitors in the Orange County Jail system. OCSD personnel and/or health care personnel will respond to health-related emergencies within four (4) minutes." The policy includes procedures for transferring individuals via ambulance, suicide attempts, and drug overdoses. Although the HCA CHS policy 1012 Disaster Plan references the CHS Disaster Plan Manual, the CHS did not provide the referenced manual for review. The CHS provided the HCA Safety Program Emergency Action Plan that is specific to disasters and not medical emergencies and response plan.

Conclusions/Recommendations

The OCJ's provide 24-hour emergency medical, dental, and mental health services, and facility staff provides emergency services until qualified health care professionals arrive. There is no specific emergency response plan in place. CHS does not conduct mass disaster drills, health emergency mandown drills.

CHS must develop an emergency response plan, and the plan must be approved by the responsible health authority and facility administrator. The emergency response plan must include, at a minimum:

- Responsibilities of health staff;
- Procedures for triage for multiple casualties;
- The predetermination of the site for care;
- Emergency transport of the patient(s) from the facility;
- Use of an emergency vehicle;
- Telephone numbers and procedures for calling health staff and the community emergency response system (e.g., hospitals, ambulances);
- Use of one or more designated hospital emergency departments or other appropriate facilities;
- Emergency on-call physician, dental, and mental health services when the emergency health care facility is not nearby;
- Security procedures for the immediate transfer of patients for emergency care;
- Procedures for evacuating patients in a mass disaster;
- Alternate backups for each of the plan's elements;
- Time frames for response; and



• Notification to the person legally responsible for the facility.

CHS must conduct disaster drills with participation from each shift every 3years. CHS must conduct health emergency man-down drills once a year on each shift where health staff is regularly assigned, including satellites. CHS must critique the mass disaster and man-down drills, and the results must be shared with all health staff and ensure recommendations for health staff are acted upon. OCSD reports that CHS Policy 1012 Disaster Plan was updated on 07/02/20 to combine disaster training with OCSD. CHS will be part of the OCSD training that occurs every three years. Sabot will monitor this during the monitoring process.



Privacy of Care (Medical and Mental Health)

Observations (Medical)

The Assessment Team observed privacy screens and curtains in the treatment and examination rooms.

Conclusions/Recommendations (Medical)

Although there are valid security and safety concerns, CHS staff must be cognizant of ensuring discussions of protected patient health information and clinical encounters be conducted in private. CHS ensures incarcerated person privacy is afforded during physical exams by having privacy screens, curtains, and conducting treatment and exams in a private area.

Observations (Mental Health)

CHS Policy 6004 Health Encounters-Sick Call, corresponding procedure, Section B. Sick Call, states in part, "In as much as it is possible, CHS clinical staff will take precautions to promote private communications regarding health information between themselves and the inmate. Security personnel may be present when an inmate poses a probable risk to the safety of CHS clinical staff."

The Assessment Team observed that most mental health appointments/interviews/consultations take place in office settings or behind privacy screens and curtains e.g., during IRC telemedicine interviews.

Conclusions/Recommendations (Mental Health)

CHS mental health staff overall attempt to maintain confidentiality for all mental health encounters to the extent possible given the serious security concerns that often exist. However, staff should be reminded to be aware of the clinical areas, their surroundings, incarcerated person escorts being conducted at times, and overall to protect patient health information by ensuring expected privacy during patient interviews/encounters.



Access to Care (Mental Health)

Observations

Incarcerated persons are regularly placed in temporary beds due to a lack of appropriate beds. The Assessment Team on numerous occasions observed incarcerated persons in the IRC RO and Sierra housing units on safety cell status in safety gowns. Mental Health staff stated the incarcerated persons are placed in the housing pending availability of mental health housing and/or discharge to general housing by a clinician's order. The incarcerated persons were observed housed in the temporary dorms and cells with their bedding on the floors inside small hard plastic-like boat-type objects. The living conditions were certainly concerning.

The CHS mental health staff stated incarcerated persons identified as requiring psychiatric observation are typically housed in the temporary housing locations due to the lack of available observation cells (Mod L and FOU). Mental health staff stated incarcerated persons placed in the temporary cells are expedited to the observation units and in some cases cleared for general housing. Mental health staff stated that at times there are 20 incarcerated persons housed in the temporary observation cells. The OCJ provided logs of the incarcerated persons housed in the temporary observation cells for the dates of 2/23/20 to 3/9/20. The following is a summary of the logs:

- 2/23/20 21 incarcerated persons
- 2/24/20 16 incarcerated persons
- 2/25/20 14 incarcerated persons
- 2/26/20 13 incarcerated persons
- 2/27/20 13 incarcerated persons
- 2/28/20 9 incarcerated persons
- 2/29/20 15 incarcerated persons
- 3/1/20 18 incarcerated persons
- 3/2/20 9 incarcerated persons
- 3/3/20 13 incarcerated persons
- 3/5/20 12 incarcerated persons
- 3/6/20 13 incarcerated persons
- 3/7/20 17 incarcerated persons
- 3/8/20 11 incarcerated persons
- 3/9/20 12 incarcerated persons

The Assessment Team notes most incarcerated persons are removed from the temporary observation cells (transferred to another MH unit or transferred to general housing) within 24 to 48 hours, however, the Assessment Team also notes



some incarcerated persons (11 cases) remain in the temporary observation cells from three days up to 10 days (one occasion).

With the exception of group therapy for the existing LPS beds, there is limited group therapy facilitated by mental health staff for chronic care patients or incarcerated person-patients with mental illness. This was one of the common complaints made during the incarcerated person interviews. Other incarcerated person complaints included: sometimes having difficulties seeing a psychiatrist; too much telepsychiatry; and clinicians sometimes see and speak to the incarcerated person-patients through cell door windows rather than taking a seat at atable or conducting the appointment/interview in an office. There are no female LPS beds in the CWJ FOU and incarcerated persons requiring in-patient level of care must be transferred to a community hospital for treatment.

Conclusions/Recommendations

Clinicians must cease conducting cell door (cell-front) clinical interviews.

Virtually all aspects of mental health care are affected by the large staffing shortages. In addition to the aforementioned areas, this includes intake-triage process (e.g., timeliness of completion of the screening, and brevity or lack of thoroughness as to some of the observed intake-screenings); and the Inmate Health Message Slip (pink slip) process including triage and appointment process.

A major concern identified by the Assessment Team includes incarcerated personpatients are regularly placed in temporary beds due to a lack of appropriate beds. The Assessment Team on numerous occasions observed incarcerated persons in the IRC RO and Sierra housing units on safety cell status in safety gowns. Mental Health staff stated the incarcerated persons are placed in the housing pending availability of mental health housing and/or discharge to general housing by a clinician's order. The incarcerated persons were observed housed in the temporary dorms and cells with their bedding on the floors inside small hard plastic-like boattype objects. The living conditions were certainly concerning. However, subsequent to the onsite assessment, OCSD advised the Assessment Team that the "boat-type" objects were removed in October 2020 and will be replaced with ligature-safe bunks." Also, as outlined above, with the exception of group therapy for the existing LPS beds, there is limited group therapy facilitated by mental health staff for incarcerated person-patients in acute, chronic care, step down care, or those out-patients assigned to regular housing. This was one of the common incarcerated person complaints made during the incarcerated person interviews. However, subsequent to the onsite assessment and draft report, CHS and OCSD advised the Assessment Team that they have since reopened group therapy, with modifications due to COVID-19, in other housing areas, in addition to the LPS units. Other incarcerated person complaints included: sometimes having difficulties seeing a psychiatrist; too much telepsychiatry; and clinicians sometimes



see and speak to the incarcerated person-patients through cell door windows rather than taking a seat at a table or conducting the appointment/interview in an office. Another major concern during the assessment was that there were no female LPS beds (or chronic care beds) in the CWJ FOU. At the time of the assessment, female incarcerated person-patients requiring in-patient level of care were to be transferred to a community hospital for treatment. However, subsequent to the onsite assessment and draft report, CHS and OCSD advised the Assessment Team that there are now five (5) female LPS beds in Module K at the IRC.

Some of the concerns acknowledged by mental health staff who were interviewed which directly or indirectly contribute to a lack of access to mental health care included:

- FOU (Females):
 - No female LPS or chronic cells/beds (the Assessment Team acknowledges the new female LPS beds as mentioned above);
 - In addition to staffing shortages at least two psychiatrist positions at the jail were cut from 40 hours per week to 32 hours per week;
 - Sometimes RN positions are left vacant;
 - No female mental health step-down program;
 - Female incarcerated persons move from FOU to regular GP housing (or other unit based on security/custody level);
 - Incarcerated persons are often medicated and cleared via telepsychiatry/telemedicine;
 - Not enough mental health clinicians;
 - Mental health patients need more monitoring (e.g., those on observations/safety gown status); from the nurses;
 - Difficulties speaking (effectively communicating) to patients through the very small square mesh hole in the cell doors;
 - One employee stated, "Sometimes I go home and feel like I was unable to do my job;"
- LPS (Males):
 - Sometimes mental health medications don't get refilled (or refilled timely) which has contributed to chronic care patients ending up in acute status and housing;
 - Overall patient care often suffers;
 - Nurses often have to delay entering their progress note information regarding patients; and
 - Registered Nurse conducting sick calls must sometimes be delayed;
 - Sometimes must call triage nurse for assistance.



The Assessment Team does want to point out there were no noted concerns relative to deterrents or punishments for incarcerated person's seeking care; there is no evidence to support any negative stigmatization toward incarcerated person-patients with serious mental illness; there are no fees incurred for mental health treatment. There did not appear to be any unreasonable delays with outside consults or appointments. Again, it is vital that the HCA CHS fill the approved budgeted positions for FY 2019/2020 as soon as possible and continue to seek the funding for the requested positions for FY 2020/2021.



Inpatient Psychiatric Care

Observations

Mental health staff interviewed stated clinicians provide information summaries relative to mental health treatment provided to the incarcerated person-patients, including any specific instructions about the signs, symptoms, or conditions that require return to the hospital or any follow-up information as necessary.

The following information was also obtained specific to the housing units, treatment and programs:

CSU/LPS/Acute – Mod L – staff stated:

- High security;
- 5150's;
- Riese Hearings;
- Group therapy;
- Individual therapy;
- Decompensation;
- The CHS Mental Health Programming chart indicates;
 - o DTS;
 - o DTO;
 - o GD;
 - Active symptoms of psychosis;
 - Four groups per day;
 - Seen by mental health clinician/prescriber daily;
 - Nursing: daily rounds;

Chronic Units – Staff stated:

- Mod L (but CHS Mental Health Programming chart indicates IRC Mods M and K, and TL);
 - Severely mentally ill;
 - Unable to effectively program in regular (out-patient) housing;
 - The CHS Mental Health Programming chart indicates;
 - Mods M & K, and TL;
 - For incarcerated person-patients recently housed in Mod L Acute;
 - Discharged from CSU;
 - May require prompting to complete ADLs;
 - May require multiple prompts to respond to directives;
 - Multiple failed placements in regular (out-patient) housing;
 - SPMİ;
 - No longer DTS/DTO/GD;
 - One group per day;
 - Seen by mental health clinicians once per week;
 - Seen by prescriber every two weeks; and



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- Nursing: sees incarcerated person-patients once per week.
- Step Down Units Staff stated:
 - Will eventually be at TLF, and currently at IRC Mods M and K;
 - They will receive group therapy at TLF (once per week);
 - Incarcerated person-patient will be seen at least every 30 days;
 - More intensive treatment will be offered;
 - The CHS Mental Health Programming chart indicates;
 - Mods M & K, and TL;
 - HX of Mod L/FOU admissions;
 - Difficulties with managing in regular housing due to persistent;
 - Mental illness, poor insight and judgment in social and behavioral skills;
 - Individuals that may require higher level of mental health treatment i.e., 1368/1370, T-Con, developmentally disabled, Geri-Psych;
 - Patient must be able to complete ADLs i.e., showering, eating, follow basic directives;
 - Must be able to double-bunk;
 - One group per week;
 - Mental health follow-up every 30 days;
 - Seen by prescriber every 60-90 days; and
 - Nursing: seen by IMMS and as needed,
- Regular Housing (Outpatient) Staff stated:
 - They receive initial mental health evaluations;
 - Incarcerated person-patients cans be seen by mental health clinicians every 30, 60, or 90 days;
 - They are seen by prescribers every 60-90 days;
 - Group therapy classes include Anger Management, Thinking for a Change, and Cognitive behavioral Therapy; and
 - For TLF, classes in the programs building had been temporarily suspended due to the COVID-19 pandemic and is expected to resume soon.

Mental health staff conduct CSU treatment meetings and discuss patient treatment plans. Mental health staff perform "teaming" to review patient history (e.g., declining mental health/decompensation, medications, group activities, and possible housing changes, etc.).

Three staff members from the FOU were interviewed. The FOU serves as the female inpatient psychiatric unit at the OCJ. The following information was obtained:

• No LPS beds/program in the FOU for female patients;



- All female psychiatric patients housed in the FOU are considered to be on Acute status;
- No Chronic Care or cells for female patients in the FOU;
- No step-down program;
 - Female incarcerated person-patients are sent from the FOU to regular housing units;
- The FOU consists of 15 single bed cells;
 - 12 of the 15 cells are designated for mental health inpatient care;
 - Three of the 15 cells are designated for medical/medical-ADA;
 - If there happens to be a lack of FOU cells available at any given time, then the female incarcerated person-patients are housed in the IRC triage area (to the rear of the IRC adjacent to where telepsychiatry takes place);
- Unable to do 5150s for females;
- There are female incarcerated person-patients in the FOU on suicide watch status;
 - The contract psychiatrist checks on them at least once per shift;
- One of the staff who was interviewed indicated cells in the unit are not cleaned often enough by OCSD and incarcerated persons at times have had to live in "filth," and one particular incarcerated person reportedly had to live in such conditions for up to five months;
- Specific needs or concerns identified in the unit included the need for;
 - A mental health deputy;
 - LPS beds/program for female patients;
 - Staff to undergo more mental health training;
 - More cells for overall mental health care;
 - Deputies reportedly have up to 24 hours to "change-out" the clothes for female incarcerated person-patients being released from safetygown status, but a non-custody staff member reported that custody staff purposely take the entire 24-hour period for incarcerated persons that they "don't like", and occasionally exceed the time limit;
 - The Assessment Team was unable to review any related documents to either substantiate or refute the staff member's claim, and also acknowledges the OCSD administration's claim that the incarcerated person-patients are being clothed in a timely manner pursuant to local policy upon release from safety-gown status;
 - There needs to be another unit outside of the small FOU to place behavioral problem female incarcerated person-patients instead of remaining in the FOU;
 - There is a need for a chronic care unit for females;
 - None of the incarcerated persons have been cleared for outside yard. This is an ongoing problem. One of the incarcerated persons has not seen natural daylight in over a year, and there is a second



incarcerated person who has had a couple of stints in the FOU, and only briefly between stints was able to have any outside activity;

- The FOU uses a small, converted cell as a make-shift dayroom;
 - The converted dayroom is very compact and contains a television, telephone, bulletin board with various notices e.g., PREA zero-tolerance policy, seated bench, reading books, color books, deck of cards, toilet with grab bars, sink, desk (cement). The dayroom is offered daily;
- Psychiatrists, clinicians, and nurses conduct interviews at the celldoors with no reasonable expectation of privacy or confidentiality;
- Unlike the male incarcerated person-patients in other units who reportedly have concrete beds, the female patients have metal famed beds and sometimes hide underneath them which makes it difficult for staff to see them;
- Reportedly deputies lack mental health training;
- Incarcerated persons are often medicated via telepsychiatry and often cleared via telepsychiatry;
- Unit patient turn-over would reportedly be quicker if contract psychiatrists were able to medicate patients;
- Although this has been a jail-wide issue (not merely specific to FOU) there are acknowledged concerns regarding no hot meals having been served during the extended COVID-19 pandemic period;
- Overall, incarcerated person-patients need more monitoring (including observation and safety-gown patients), and staff need more access to their patients;
 - This ties in to staffing shortages and workload;
- Must communicate with incarcerated person-patients through the cell doors via a small square mesh hatch or cut-out in the doors;
- Staff have difficult time seeing incarcerated persons in two of the cells (cells #6 and 7) due to the angles of the cells (these are medical cells); and
- Staff have never seen religious services one-on-one interviews/counseling.

The Assessment Team interviewed mental health staff who work the LPS and Chronic Care units. They provided the following information:

Acute Care Unit:

- LPS Patients;
 - Five beds (male);
 - Mod L Sector 18;
 - The most acute patients;
 - Seen every 15 minutes by nursing staff;



- Seen by psychiatrist or psychiatric nurse practitioner, and/or LCSW every other day; and
- Four group sessions daily (seven days per week).
- Acute patients:
 - Seen by psychiatrist or clinician daily;
 - Limited group therapy;
 - $\circ~$ No out-of-cell time except for visiting, medical appointments, and showers;
 - Primary goal is to stabilize the patients;
 - 30-minute deputy security checks; and
 - All interviews conducted at the cell doors if the patients are not willing to leave the cell, otherwise they are conducted at tables in the middle of the respective sectors (a deputy is present for security purposes).

Chronic Care Units:

- Mod L Sectors 15 & 20, and Mod K (Sector 9) (single celled except a couple of bunks in sector 15) (Chronic care and step down from Mod L);
 - Approximately 64 beds;
 - Goal is to stabilize the patients and move them to a step-down program or to TLF;
 - Deputies and nurses conduct 30-minute checks; and
 - Seen by clinicians weekly.

Step Down Units:

- Mods M, K, TL, and Ward D;
- Criteria for consideration of admission includes difficulties with managing in regular housing due to persistent mental illness, poor insight and judgement in social and behavioral skills;
- Individuals that may require higher level of mental health treatment i.e., 1368/1370, T-Con, Developmentally Disabled, Geri-psych;
- Patient must be able to complete ADL's i.e. (showering, eating, follow basic directives);
- Must be able to double-bunk;
- Treatment Approach is supposed to include;
 - Individual counseling: CHS mental health clinical team will provide a minimum of 30-day individual counseling and supportive services;
 - Group treatment: Patients will receive one group per week facilitated by JCRP Case Management and/or CHS clinicians;
 - Psychiatric: Patients will be seen every 60-90 days by prescriber; and
 - Nursing: Patient will have access to nursing and seen by IMMS and as needed.



Outpatient Housing:

• Numerous general population housing units throughout the facilities.

With the lack of sufficient mental health staffing positions filled, there are not enough mental health professionals to provide the treatment and housing necessary for LPS, acute, chronic care, step-down programs, or outpatient treatment. Additionally, there are an insufficient number of related beds available. Incarcerated persons must be placed on waitlists for appropriate housing, treatment, and programs.

Conclusions/Recommendations

As described in previous mental health sections, severe staffing shortages are contributing to some programs and treatments either not being provided or not being provided timely. Some of the larger concerns identified via document reviews as well as through interviews of mental health staff and incarcerated persons include the following:

- Concerns with Riese hearings (see below);
- Limited group therapy facilitated by mental health professionals outside of the LPS incarcerated person-patient population;
- Timelines or intervals that SMI patients are seen by prescribers, clinicians, and nurses (including follow-ups);
- No step-down units in place yet at TLF;
- No female LPS beds (the Assessment Team acknowledges that CHS/OCSD has since advised that there are five (5) new female LPS beds in Module K at the IRC);
- No female Chronic Care in the FOU;
- Only 12 FOU cells designated for serious mentally ill patients;
- Contract Psychiatrist unable to handle 5150 cases;
- One of the staff who was interviewed indicated cells in the FOU are not cleaned often enough by OCSD staff, and incarcerated persons at times have had to live in "filth", and one particular incarcerated person reportedly had to live in such conditions for up to five months;
- Specific needs or concerns identified in the FOU included the need for;
 - A mental health deputy (the Assessment Team acknowledges that this is no longer a concern due to the closure of the CWJ FOU in November 2020);
 - Staff to undergo more mental health training;
 - More cells for overall mental health care;
 - Deputies reportedly have up to 24 hours to "change-out" the clothes for female incarcerated person-patients being released from safetygown status, but a non-custody staff member reported custody staff



purposely take the entire 24-hour period for incarcerated persons that they "don't like," and occasionally exceed the time limit;

- The Assessment Team was unable to review any related documents to either substantiate or refute the staff member's claim, and also acknowledges the OCSD administration's claim that the incarcerated person-patients are being clothed in a timely manner pursuant to local policy upon release from safety-gown status;
- There needs to be another unit outside of the small FOU to place behavioral problem female incarcerated person-patients instead of remaining in the FOU;
- None of the incarcerated person-patients have been cleared for outside yard. This is an ongoing problem. One of the incarcerated person-patients has not seen natural daylight in over a year, and there is a second incarcerated person who has had a couple of stints in the FOU, and only briefly between stints was able to have any outside activity;
- The FOU uses a small, converted cell as a make-shift dayroom;
 - The converted dayroom is very compact and contains a television, telephone, bulletin board with various notices e.g., PREA zero-tolerance policy, seated bench, reading books, color books, deck of cards, toilet with grab bars, sink, desk (cement). The dayroom is offered daily;
- Psychiatrists, clinicians, and nurses conduct interviews at the celldoors with no reasonable expectation of privacy or confidentiality;
- Unlike the male incarcerated person-patients in other housing units who reportedly have concrete beds, the female patients have metal framed beds and sometimes hide underneath them which makes it difficult for staff to see them;
- Reportedly deputies lack mental health training;
- Incarcerated persons are often medicated via telepsychiatry and often cleared via telepsychiatry (both mental health staff and incarcerated persons have identified this as a concern);
- Unit patient turn-over would reportedly be quicker if contract psychiatrists were able to medicate patients;
- Although this has been a jail-wide issue (not merely specific to FOU) there are acknowledged concerns regarding no hot meals having been served during the extended COVID-19 pandemic period, and this seems to have a greater effect on mentally ill incarcerated person-patients;
- Overall, incarcerated person-patients need more monitoring (including observation and safety-gown patients), and mental health staff and nurses need more access to their patients;
 - This ties into staffing shortages and workload;



- Must communicate with incarcerated person-patients through the cell doors via a small square mesh hatch or cut-out in the doors;
- Staff have somewhat of a difficult time seeing incarcerated persons in two of the cells (cells #6 and 7) due to the angles of the cells (these are medical cells); and
- Staff have never seen religious services one-on-one interviews/counseling.

A female outpatient incarcerated person in one of the CWJ housing units commented on the integration of incarcerated persons with mental illness in the units. She stated those who are not stable end up causing problems with other incarcerated persons. Reportedly she has had to live with female incarcerated persons with mental illness who don't shower, don't clean, and mentally "are not there." She believes these incarcerated persons need to be housed and treated at a higher level of care. Another female incarcerated person (outpatient) stated mental health staff interview them in an office with an open door while assigned incarcerated person workers pass back and forth, and they don't feel there is any sense of confidentiality. Several male and female incarcerated persons voiced the same complaints.

With regard to the bullet above, "Riese Hearings", one of the mental health professionals stated there is a big concern in this area. The OCJ and HCA CHS reportedly came to an agreement with the local public defender's office regarding incarcerated person-patients who are going through the 1368 process and are appropriate and require LPS level of care. The attending psychiatrist is required to contact the public defender's office for each respective case before filing a Riese petition. The public defender's office then reviews the case(s) advises whether to approve or object to the Riese petition filing. The mental health professional interviewed stated the local HCA CHS administration reportedly acknowledged that the public defender's office does not have legal authority to approve or deny a psychiatrist filing of Riese petitions. However, psychiatrists were told to follow the agreement. There was some uncertainty as to what would transpire next if an incarcerated person was denied a Riese hearing. Reportedly there was at least one case where the public defender's office initially denied the petition, but it was later agreed upon and resolved. This process needs to be closely monitored. CHS states that the Riese process includes collaboration with the Public Defender's Office (PD). If the PD does not agree with the petition filing. CHS will still move forward with the filing. The collaboration provides an opportunity for CHS and the PD to work together for the benefit of the incarcerated person-patient.

As outlined earlier in the mental health section of this report, various mental health professionals from virtually all employee classifications have expressed concern, frustration, and stress as mental health administrators and key staff are not being well-accepted with the OCSD and HCA CHS administrations, and staff feel as if



'they don't have a seat at the table" with regard to addressing high level mental health concerns. This must be addressed. Staff report this affects staff morale.

The Excel Spreadsheet titled, CJX CM List 1-15-20 (also includes TLF mental health housing) showed the following mental health housing where incarcerated persons were located as of 1-15-20:

- IRC:
 - 94 male Acute Care incarcerated person-patients (all in L-20);
 - o 31 male Outpatient Care incarcerated person-patients; and
 - 162 female Outpatient Care incarcerated persons.
- CMJ:
 - 341 Outpatient Care incarcerated person-patients.
- CWJ:
 - o 13 Acute Care incarcerated person-patients (WJP SL); and
 - 189 Outpatient Care incarcerated persons.
- TL:
 - 1,053 male Outpatient Care incarcerated person-patients.

Information obtained showed the following designated housing for mentally ill incarcerated persons:

- IRC Mod L (Sectors 15-20):
 - Five male LPS beds; and
 - 96 total male Acute beds.
- IRC Mod K (Tank 9):
 - 17 male Acute beds (one is double bunked); and
 - Housing for Acute and Chronic incarcerated person-patients.
- CWJ Mod P (FOU/Infirmary Tank IF):
 - 12 MI cells (3 are designated for medical/ADA);
 - No female LPS beds/program; and
 - Housing for Acute of Chronic Care incarcerated person-patients.
- IRC Mod M (female):
 - Matrix does not identify and cells/beds as MI or MIL, but the CHS Mental Health Programming chart identifies Mod M as Chronic Care housing.
- Ward D:
 - Chronic Care incarcerated person-patients.

With the lack of sufficient mental health staffing positions filled, there are not enough mental health professionals to provide the treatment and housing necessary for LPS, acute, chronic care, step-down programs, as well as outpatient treatment, and there is an insufficient number of related beds available. Incarcerated persons need be placed on waitlists for appropriate housing, treatment, and programs.



The HCA CHS must fill all vacant positions as approved and budgeted for and address all related issues and must ensure that treatment and programs are provided as needed for people with mental illness.



Segregated Incarcerated Persons

Observations

The CHS Policy 6602 Disciplinary Housing Health Assessment states, "Inmates who are placed in disciplinary housing will have regular access to Correctional Health Services (CHS) clinical staff to ensure their placement is not contraindicated based on the inmate's medical and mental health conditions. CHS clinical staff will conduct an initial as well as ongoing health evaluations during an inmate's placement into disciplinary housing."

The corresponding procedures include requirements regarding the initial health assessment as well as welfare checks and ongoing health evaluations. Specifically, Section A, Initial Health Assessment, states in part, "Upon notification of an inmate's need for admission to disciplinary housing, the inmate's health record will be reviewed by CHS nursing staff to determine whether existing medical, dental or mental health needs contraindicate placement or require accommodation. This review will be documented in the inmate's health record." It also states, "Upon identification of any special medical needs or mental health concerns, arrangements will be made to provide timely examination, assessment, and treatment. If there are medical or mental health contraindications to placement into disciplinary housing, a Senior Nurse, mental Health service Chief, or assigned designee on duty will notify Sheriff's personnel." Section B, Welfare Checks and Ongoing Health Evaluations, states the following, "Visual and verbal contact welfare checks will be made with each inmate in disciplinary housing by CHS nursing staff at least once per shift. Inmates voicing health needs will be referred to the appropriate clinical staff for evaluation. Welfare checks are logged on the form provided by security staff and shall include the date, time, inmate's status, and the signature of nursing staff completing the disciplinary housing check. Mental health evaluations shall be conducted by mental health clinical staff on a weekly basis. Sheriff's personnel are notified whenever CHS clinical staff determines that the inmate's health is unstable to remain in disciplinary housing. Health confidentiality shall be maintained."

A review of progress notes from TechCare for randomly selected cases as well as from disciplinary isolation logs found mental health staff conducts an initial assessment/evaluation of incarcerated persons prior to them being placed into disciplinary isolation (in accordance with local policy). However, at times the premental health assessments/evaluations are not taking place on the date of placement. In some cases, they take place up to seven days prior to the date of disciplinary isolation placement. This is a concern. The assessment/evaluation must take place on the date of placement (prior to actual placement) so as to ensure the incarcerated person's mental health status has not deteriorated.



Subsequent to the initial mental health assessment/evaluation, on-going assessments are conducted. Mental health clinicians are required to perform on-going monitoring assessments on at least a weekly basis after initial placement. Given the reasonable possibility that incarcerated person-patients with mental illness may show mental deterioration, the weekly checks within disciplinary isolation housing are not reasonable.

Strong consideration should be given by HCA CHS administration to modify local policy and practice to require a follow-up check within 24 hours after placement, with a clinical determination as to the incarcerated person-patient's mental state, and risk of decompensation, and a determination on follow-up monitoring assessments of the incarcerated person-patients based on their mental state and well-being. The initial assessment/evaluation as well as all subsequent monitoring assessments are logged accordingly into the electronic TechCare system. A review of medical and mental health progress notes, Disciplinary Isolation Master Log, and Daily Inmate Activity Logs found that medical and mental health staff are current required initial and weekly conducting the mental health assessments/evaluations for incarcerated persons housed in disciplinary isolation.

Conclusions/Recommendations

The Assessment Team identified that CHS staff members conduct a review of the incarcerated person's health record and a face-to-face initial assessment/evaluation prior to incarcerated persons being placed into disciplinary isolation. However, this is often happening days in advance (sometimes as much as seven days prior to placement into disciplinary isolation housing). Policy and practice need to be modified to ensure the initial mental health assessment/evaluation takes place prior to, but on the same date as disciplinary isolation placement. It is imperative for mental health (and custody staff) to identify whether there has been any mental decompensation with the incarcerated person. OCSD reports that CCOM Policy 1602.7(b) has been revised to require that a mental health evaluation of the person be conducted within 24 hours prior to the person's placement in disciplinary housing. Sabot has verified the CCOM Policy revisions and will monitor this during the monitoring process.

Subsequent to the initial mental health assessment/evaluation, on-going assessments are being conducted. Mental health clinicians are required to perform on-going monitoring assessments on at least a weekly basis after initial placement. Given the reasonable possibility that incarcerated person-patients with mental illness may show mental deterioration, the weekly checks within disciplinary isolation housing are not reasonable. Strong consideration should be given by HCA CHS administration to modify local policy and practice to require a follow-up



check within 24 hours after placement, with a clinical determination as to the incarcerated person-patient's mental state, and risk of decompensation, and a determination on follow-up monitoring assessments of the incarcerated person-patients based on their mental state and well-being.

The initial assessment/evaluation as well as all subsequent monitoring assessments are logged accordingly into the electronic TechCare system. A review of medical and mental health progress notes, Disciplinary Isolation Master Log, and Daily Inmate Activity Logs found that medical and mental health staff are conducting the current required initial and weekly mental health assessments/evaluations for incarcerated persons housed in disciplinary isolation. CHS staff document the rounds in an incarcerated person's health record, and include:

- The date and time of the contact; and
- The signature or initials of the health staff member making the rounds.

If significant health findings are identified, they are documented in the incarcerated person's health record, and custody staff is informed of any incarcerated person who is physically or psychologically deteriorating or exhibiting other signs or symptoms of failing health.



Behavioral Consultation

Observations

The Assessment Team did not observe any disciplinary consultations between custody and clinical staff. However, the Assessment team requested copies of all adjudicated incarcerated person disciplinary reports for the past 60-90 days involving incarcerated persons with mental illness and intellectual/developmental disabilities. The Assessment Team was provided six examples. None of the examples demonstrated there was a clinical consult at any stage of the disciplinary process, nor was there any evidence that any attempts were made by hearing officials to consult with mental health clinicians. Neither CCOM Policy 1602 Discipline, or any other policy reviewed addressed clinical consultations (or community/specialty resource consultations) as part of the incarcerated person disciplinary process.

Conclusions/Recommendations

Neither CCOM Policy 1602 Discipline, or any other policy reviewed addressed clinical consultations (or community/specialty resource consultations) as part of the incarcerated person disciplinary process. The Assessment Team did not observe any disciplinary consultations between custody and clinical staff. However, the Assessment team requested copies of all adjudicated incarcerated person disciplinary reports for the past 60-90 days involving incarcerated persons with mental illness and intellectual/developmental disabilities. The Assessment Team was provided six examples. None of the examples demonstrated a clinical consult at any stage of the disciplinary process, nor was there any evidence that any attempts were made by hearing officials to consult with mental health clinicians. With some rare exceptions (usually if an incarcerated person is acting-out or likely to act-out), CHS mental health staff are not summoned by disciplinary hearing officials to consult as part of the incarcerated person disciplinary process. Systemically, the clinical consult process is widely missing from the incarcerated person disciplinary process. The OCSD and CHS must have a policy and practice for hearing officials to consult with mental health clinicians (prior to the disciplinary hearing) to provide their professional input regarding the charged incarcerated person and his/her mental health status.



Mental Health Staffing

Observations

The HCA CHS has been forthright with their significant mental health staffing shortages and the difficulties they are experiencing in recruiting qualified psychiatrists, clinicians, and other professionals. The Assessment Team reviewed the "JCRP Flowchart Intake" and "CHS Programs Process Review Flowchart" as well as other documentation pertaining to healthcare staffing including the FY 2019/2020 allocated positions as well as the FY 2020/2021 requested positions. The documentation provided important information such as the specific positions allocated or requested, and the initiative to determine the staffing needs and to request allocation of the resources is commendable.

However, the HCA CHS did not provide a clear plan as to how the newly allocated positions as well as how the requested positions pending approval will be specifically integrated into the mental health workflow amongst the facilities. For example, there was not a specific plan provided to show where (what facilities, areas and units) the positions will be allocated to; and how the new staffing will directly tie in to the LPS treatment and housing, overall group therapy and individual therapy for incarcerated person-patients with mental illness (not just LPS patients), comprehensive assessments, discharge planning, and other treatment.

Likewise, it is unclear as to how the new mental health staffing package will affect on-site coverage 24-hours per day and seven days per week, as well as for on-call psychiatry. The CHS must hire the positions that have been approved. There currently is not sufficient mental health staffing to ensure all incarcerated personpatients who need to be on LPS status and placed in LPS beds are placed and treated accordingly. There are no female LPS beds in the FOU unit nor sufficient staffing to treat accordingly. With the exception of the existing LPS beds, the serious lack of staffing of mental health professionals has been a barrier for CHS to offer and provide group therapy treatment. Outside of the LPS incarcerated person-patients, there is limited group therapy offered by mental health staff. Due to the staffing shortages, tele-psychiatry is widely used (e.g., the IRC).

Due to the serious staffing shortages, the HCA CHS is not abiding by the MOU as agreed to between the OCSD and HCA. Specifically, CHS is not able to fully provide mental health services, including emergency mental health services to all incarcerated persons as required or needed, or for 24-hours per day, seven days per week. The HCA CHS acknowledged in the document they provided to the Assessment Team, documentation titled, "CHS Expand Mental Health Programming", that increased staffing will allow them to provide comprehensive assessments, individualized and group treatments, and discharge planning. There



are acknowledged gaps in providing comprehensive assessments, individual incarcerated person-patient therapy, group therapy, and discharge planning. As outlined above, funding the mental health positions for FY 2019/20 (as described above) have been approved (123 healthcare positions, at least 34 of which are specific to Mental Health), and mental health positions for FY 2020/21 are pending approval (54 healthcare positions, at least 16 of which are specific to mental health).

Conclusions/Recommendations

The CHS must continue its recruiting efforts and to continue pursuing innovative methods to attract mental health professionals. Likewise, the same efforts must be exhausted toward retention of its valued employees. In the interim, CHS must continue to employ contract/registry personnel and hire overtime as required or needed. The CHS must fill the vacant positions. In filling the positions (as outlined in the FY 2019/2020 funded healthcare positions, as well as FY 2020/2021 requested positions pending approval (once approved), the CHS must:

- Abide by the MOU as agreed to between the OCSD and HCA;
- Fill the need of LPS patients, beds and treatment;
- Ensure adequate female FOU LPS beds and treatment as well as Acute Care bed and treatment;
- Mental health staff provide adequate group therapy to mental health patients (not just the LPS incarcerated person-patients);
- Provide adequate individual therapy for incarcerated person-patients with mental illness;
- Provide emergency mental health services to all incarcerated persons as required or needed, or for 24-hours per day, 7-days per week;
- Provide comprehensive assessments;
- Ensure there are no gaps in discharge planning;
- Ease the heavy workload of its staff and enable staff to complete their work assignments timely;
- Reduce claimed staff fatigue, stress and reported fears of "burn-out";
- Ensure healthcare positions are filled for complete shifts (not just for two, three, or four hours during a shift); and
- Ensure more on-site psychiatrists with less reliance on tele-psychiatry.



ORANGE COUNTY SHERIFF'S DEPARTMENT CUSTODY OPERATIONS AMERICANS WITH DISABILITIES ACT, RESTRICTIVE HOUSING, LGBTQI, AND HEALTHCARE PROGRAM ASSESSMENT FEBRUARY 5, 2021

Signature

Submitted on behalf of Sabot Technologies, Inc. dba Sabot Consulting to the Orange County Sheriff's Department Custody Operations.

February 5, 2021

Date

Mike Brady Director Sabot Consulting