

## SETTLEMENT AGREEMENT

### ORANGE COUNTY JAIL

#### I. Parties

The Parties to this Agreement are (1) The County of Orange, by and through the Orange County Sheriff's Department and the Health Care Agency ("County"); and (2) Disability Rights California ("DRC"), which represents and advocates on behalf of incarcerated people who are subject to the conditions, policies, and practices in the Orange County Jail system (the "Jail").

#### II. Purposes

The purposes of this Agreement are:

- A. To resolve disputed claims as set forth in the previous Agreement Regarding Orange County Jail, which was executed by the parties on November 21, 2019 (hereinafter the "Negotiations Agreement") and is attached hereto as **Exhibit A**, specifically:
  1. Whether the County's policies and practices for the housing, treatment, and programming opportunities for people with disabilities incarcerated in the Jail comply with federal and state law, including, but not limited to, the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the California Disabled Persons Act, the Unruh Act, and California Government Code § 11135, with particular attention to whether the County provides people with disabilities equal access to the Jail's services, programs, and activities, and placement in the most integrated, least restrictive setting appropriate, including as required by 28 C.F.R. § 35.152.
  2. 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, with particular attention 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.
  3. Whether the County's policies and practices for the housing, treatment, and programming opportunities for people incarcerated in the Jail who identify as Lesbian, Gay, Bisexual, Transgender, or Queer ("LGBTQ") 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, with particular attention to whether the County provides LGBTQ incarcerated people equal access to the Jail's services, programs, or activities, and placement in the most integrated, least restrictive setting appropriate.

- B. As used in Sections II.A.I, II.A.2, and II.A.3, the term "housing" means the cell location of an incarcerated person and the process through which the County uses its classification system to determine the cell location in which a person is placed. The term "treatment" means any medical and/or mental healthcare provided to an incarcerated person. The term "programming opportunities" means educational, recreational and therapeutic activities available to an incarcerated person. The term "restrictive housing" means any type of housing in the Jail that involves all three elements: (1) removal of an incarcerated person from the general population, whether voluntary or involuntary; (2) placement of an incarcerated person in a locked room or cell, whether alone or with another incarcerated person; and (3) the inability of the incarcerated person to leave the room or cell for the vast majority of the day, typically 22 hours or more.
- C. To ensure implementation of the Parties' negotiated Remedial Plan pertaining to the disputed claims set forth above. The Remedial Plan is attached hereto as **Exhibit B**.

### **III. Recitals**

- A. On March 22, 2018, DRC notified the County of its intent to monitor Orange County Jail facilities, as consistent with its federal and state law authority to monitor facilities with respect to the rights and treatment of individuals in California who have disabilities.
- B. DRC and its authorized agents conducted facility monitoring tours of the Jail on May 10-11, 2018, June 11, 2018, and January 30-31, 2019. DRC's monitoring included (1) interviews with leadership and staff from the Orange County Sheriff's Department (OCSD) and Correctional Health Services (CHS), (2) interviews and other communications with a substantial number of people in custody at the Jail during and outside of the above-mentioned monitoring tours, and (3) review and substantive analysis of relevant records, data, and policies.
- C. On March 8, 2019, DRC issued findings from its monitoring investigation of Orange County Jail facilities, including on issues related to the rights of incarcerated people with disabilities, the treatment of incarcerated people with mental health care needs, the use of restrictive housing, and the treatment of incarcerated people who identify as LGBTQ.
- D. Following the issuance of DRC's findings, the Parties engaged in discussions regarding a process to address the findings without need for adversarial litigation.

- E. On November 21, 2019, the Parties executed the above-mentioned Negotiations Agreement, which provided a procedural framework for resolving the disputed claims set forth in Section II.A.
- F. Consistent with the Parties' Negotiations Agreement, the Parties mutually agreed for Sabot Consulting ("Sabot") to serve as a neutral expert (1) to conduct a comprehensive, independent review of policies, procedures, and practices related to the topics set forth in Section II.A, and (2) to complete a report with findings and recommendations to address any identified deficiencies. The County retained Sabot to serve as the neutral expert pursuant to an agreement executed on January 25, 2020 (amended February 22, 2020).
- G. Sabot's team of experts conducted site visits at the Jail during the months of March, May, and June 2020. The assessment included interviews with incarcerated persons, sworn staff, and non-sworn staff working at the Jail, as well as extensive policy and data review.
- H. On March 19, 2021, Sabot submitted to the Parties its Final Report, *Orange County Sheriff's Department Custody Operations: Americans with Disabilities Act, Restrictive Housing, LGBTQI, and Healthcare Program Assessment* (hereinafter "Sabot Assessment Report").
- I. Consistent with the Parties' Negotiations Agreement, the Parties then engaged in careful negotiations of a Remedial Plan to address the findings of the Sabot Assessment Report and to implement its recommendations, as appropriate. Negotiations were substantially informed by DRC's ongoing review of relevant records, data, and other materials, information-sharing with the County, and communication with people incarcerated at the Jail.
- J. While Sabot's assessment and the Parties' negotiations were necessarily slowed by the circumstances of the COVID pandemic, the Parties' negotiations have proceeded as expeditiously as possible towards a resolution and final agreement. In consultation with DRC and its authorized agents, the County has already begun to implement several Sabot recommendations and related remedial actions during the period of negotiations.
- K. Through this Agreement and the previous Negotiations Agreement, the County agrees to implement the provisions set forth in the Remedial Plan, attached as **Exhibit B**, subject to monitoring by the designated Expert (discussed below) and by DRC with its authorized agents, and further discussions between the Parties.
- L. The County agrees to develop and implement appropriate and adequate plans, policies, and practices to ensure implementation of and compliance with the Remedial Plan. During the period of monitoring pursuant to the Parties' Agreement, the County shall submit such plans or policies to DRC for review and comment.

- M. DRC's March 2019 findings letter and the Sabot Assessment Report each identified concerns regarding the treatment of incarcerated people with mental health disabilities at the Jail.
1. Subsequent to those findings, the County has taken and continues to take steps to enhance Jail mental health care programming.
  2. Certain mental health-related issues are addressed in the Remedial Plan, including as related to disability-related accommodations and program access, reforms to restrictive housing/isolation practices, and reforms to disciplinary practices as they apply to people with mental health or other disabilities.
  3. The Parties agree that the Jail's mental health treatment programming requires further development to meet the needs of the population. The Parties further acknowledge that DRC and its authorized agents will continue to monitor the treatment of people with mental health disabilities at the Jail, including through monitoring processes set forth herein.
  4. If DRC identifies concerns with respect to the care and treatment of people with mental health disabilities, it will raise those concerns with the County and confer in good faith as to necessary remedial action to address any such problems. If DRC find that such concerns are not adequately addressed, it will so inform the County and may take any necessary action, including by any legal means, to protect the rights of people with mental health disabilities. Nothing in this Agreement shall be construed to limit DRC's ability to monitor the care and treatment of people with mental health disabilities and/or pursue legal remedies on their behalf.

#### **IV. Implementation and Monitoring of Remedial Plan**

- A. As set forth in the Remedial Plan, the County will fully implement all components of the Remedial Plan within 180 days of the effective date of this agreement, except if the Remedial Plan specifies a different implementation date or a component of the Remedial Plan will take longer than 180 days to implement due to the need for construction-related activities, Board of Supervisors' approval or other barriers to timely implementation. If a component cannot be implemented within 180 days for the reasons set forth above, the Parties will confer and agree upon a reasonable deadline for the County to implement the relevant component of the Remedial Plan.
- B. The Parties previously agreed to a process and framework for monitoring of implementation of the Remedial Plan. *See* Negotiations Agreement Section V.A-F. The Parties agreed in the Negotiations Agreement and continue to agree that Sabot will serve as the Parties' neutral Expert for purposes of monitoring Remedial Plan implementation (hereinafter "Expert"). Consistent with the Negotiations Agreement:

1. Within 180 days of the execution of this Agreement and every 180 days thereafter during the term of this Agreement, the Expert shall complete a comprehensive review of the County's implementation of the components of the Remedial Plan ("Compliance Review"). The Expert shall review whether the County has adequately implemented each component of the Remedial Plan and shall identify which components, if any, are not yet adequately implemented. In order to conduct the Compliance Review, the Expert will have the same access as set forth in Section IV.B of the Negotiations Agreement. If the Expert conducts a tour of any of the Jail facilities, the Parties shall have a right to accompany and observe the Expert during those activities.
2. All Parties shall be given reasonable advance notice of, and an opportunity to participate in, any and all communications with the Expert involving substantive discussion related to monitoring.
3. As part of the Compliance Review, the Expert shall issue a draft report ("Compliance Report") that states their opinion as to whether the County has adequately implemented the components of the Remedial Plan and which components, if any, are not yet adequately implemented. Within fifteen (15) days following the issuance of a draft Compliance Report, the Parties may provide written responses to the draft Compliance Report. If either Party submits a written response to the draft Compliance Report, the Expert will consider the response(s) and issue a final report within fifteen (15) days that will also address any written responses submitted by the Parties. If neither Party submits a written response to the draft report, the Expert's draft report will become the final report.
4. Within fifteen (15) days of the issuance of the Expert's final Compliance Report, the Parties will meet and confer to discuss the Expert's findings and recommendations.
5. Within thirty (30) days of the issuance of the final Compliance Report that includes a finding that the County has not adequately implemented one or more components of the Remedial Plan, the County shall develop a proposed plan that identifies the actions it will take to address the Expert's findings ("Action Plan"). The Parties will then have thirty (30) days to agree upon the County's proposed Action Plan or negotiate a revised Action Plan.
6. If the Expert issues two successive Compliance Reports finding that the County has adequately implemented the same component of the Remedial Plan, such a finding will result in a suspension of monitoring by the Expert of the corresponding component. The Expert may, however, continue to review whether the County has adequately implemented a component for which monitoring has been suspended pursuant to this provision if such

review is necessary for determining whether the County has adequately implemented other components of the Remedial Plan for which monitoring has not been suspended pursuant to this provision. If, during the term of the Agreement, DRC forms the good faith belief that the County is no longer adequately implementing a component of the Remedial Plan for which the Expert had suspended monitoring pursuant to this provision, DRC shall promptly so notify the County in writing and present a summary of the evidence upon which such a belief is based. Within 30 days thereafter, the County shall serve a written response stating whether it agrees or disagrees with DRC's position. In the event that the County agrees, monitoring by the Expert and DRC pursuant to this Agreement shall resume with respect to the Remedial Plan component(s) at issue. In the event the County disagrees, the Parties shall present to the Expert in writing their positions. The Expert will, within thirty (30) days, issue a written decision regarding whether to resume monitoring of the Remedial Plan component(s) at issue.

- C. In each Compliance Report, the Expert shall identify whether the County has adequately implemented each Remedial Plan provision. The Expert will make such findings utilizing the following definitions:

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

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

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

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

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

**Monitoring Suspended Based on Previous Findings of Compliance:** Used where two previous successive Compliance Reports have found that the provision has been adequately implemented, as described in Section IV.B.6, above.

- D. If, for any reason, Sabot can no longer serve in the role of monitoring, the Parties shall attempt to agree on who may serve in the Expert role. If the Parties do not agree, the Parties shall submit the dispute to a mutually agreed-upon mediator for dispute resolution. If the Parties cannot agree on the mediator, the Parties will ask that one be randomly assigned by JAMS. The County shall advance all costs and expenses for the dispute resolution process. The Parties shall participate in the dispute resolution process in good faith to select a substitute Expert.
- E. As previously agreed in the Negotiations Agreement, the Sabot Assessment Report and any future Compliance Reports are not confidential, shall be treated as public documents, and can be used by the Parties for any purpose not prohibited by this Agreement. The Parties shall work collaboratively and with the Expert to ensure that reports do not contain personal-identifying or other confidential information, or are redacted to the extent legally required to protect against disclosure of such information.
- F. As set forth in Section V.G of the Negotiations Agreement, the County acknowledges that DRC, as the protection and advocacy system for the State of California, found probable cause that abuse and/or neglect of people with disabilities has or may have occurred, as those terms are defined in DRC's authorizing statutes and regulations. As such, the Parties agree that DRC, as well as its authorized agents in this matter (currently, Law Office of Aaron J. Fischer and Rosen Bien Galvan & Grunfeld, LLP) are and will continue to be entitled to non-public records upon request, consistent with DRC's authorizing statutes and regulations, during the term of this Agreement. *See* 42 C.F.R. § 51.41(d); Cal. Welf. & Inst. Code §§ 4902, 4903. Consistent with this authority:
1. The County shall provide DRC and its authorized agents with lists of or other information regarding people incarcerated in the Jail upon request, and shall facilitate meetings with such people incarcerated in the Jail in a confidential setting upon reasonable notice to the County.
  2. With appropriate advance authorization obtained to comply with legal requirements (including the confidentiality of mental health or medical records), the County shall provide DRC and its authorized agents copies of requested records of incarcerated people.
  3. With reasonable advance notice, the County shall permit DRC and its authorized agents to tour the Jail, and to speak with a reasonable number of Jail staff. Such conversations will be conducted only with the consent of the employee. County Counsel reserves the right to be present during any such discussions with Jail employees.

## **V. Population and COVID-Related Matters**

- A. The Parties recognize that the COVID-19 public health emergency may impact the Expert(s) and DRC's ability to conduct on-site monitoring in the Jail facilities.

The parties will meet and confer as needed should public health needs related to the COVID-19 pandemic prevent timely completion of on-site monitoring as set forth in the Parties' Agreement. The Parties agree that, under such circumstances, all other aspects of monitoring and Remedial Plan implementation can and should continue, including production of requested data and information.

- B. The County agrees to provide reasonably requested data and information to DRC on the County's ongoing response to the COVID-19 pandemic as it relates to implementation of the Remedial Plan as well as the health and safety of people with disabilities incarcerated at the Jail.
- C. The Parties agree that diversion and other alternatives to incarceration initiatives, designed consistent with public safety through evidence-based programs, are a cost-effective means to achieve and facilitate Remedial Plan implementation.
  - 1. To this end, the County continues to pursue its Integrated Services Strategy, which includes expansion of community-based mental health and substance use treatment services, collaboration with courts and relevant justice partners, improved reentry services and agency coordination, and expanded services for minors and transitional age youth.
  - 2. During the period of Remedial Plan implementation and monitoring, the Parties agree to confer as to whether staffing, space, or other systemic issues pose a significant barrier to successful Remedial Plan implementation. Where such barriers are identified, the Parties will meet and confer regarding diversion and other alternatives to incarceration initiatives that will facilitate implementation efforts.

## **VI. Individual DRC Constituent Concerns**

- A. DRC and its authorized agents may bring to the attention of the County concerns about individual people in the Jail, including, but not limited to, issues regarding health care, housing, placement in restrictive housing, disability accommodations, access, or discrimination, or safety/well-being. The County shall respond in writing within 10 calendar days unless the urgency of the issue requires a more expedited response. The Parties will work cooperatively to resolve individual concerns.
- B. This process is not meant to replace or circumvent the existing processes for requesting services or following the existing request and grievance processes in the Jail. People in the Jail will be encouraged to make use of those processes.

## **VII. Reasonable Attorneys' Fees and Costs**

- A. As recognized and agreed in the Parties' previous Negotiations Agreement, the execution of this Agreement is in lieu of filing a complaint in state or federal court. As such, the County has agreed to pay DRC and its authorized agents reasonable attorneys' fees and costs for pursuing this matter as set forth in the

Parties' agreements. The County acknowledges DRC and its authorized agents' entitlement to fees and costs in such instance but retains all rights to contest the amount of fees and costs under any grounds recognized under state or federal law.

- B. As previously agreed, the County will pay DRC and its authorized agents for all reasonable attorneys' fees and costs not to exceed \$125,000 per quarter. All requests for attorneys' fees and costs incurred during the term of this Agreement shall be supported by an itemization of what work was done and by whom.
- C. If any dispute or controversy arises with regard to the amount of fees and costs that the Parties are unable to resolve themselves, the Parties shall submit the dispute to JAMS for arbitration. The arbitrator shall be mutually agreed upon. If the Parties cannot agree on an arbitrator, the Parties will ask that one be randomly assigned by JAMS. The County shall advance all costs and expenses for the arbitration. The decision of the arbitrator may be appealed through the JAMS Optional Arbitration Appeal Process. However, the appealing Party will bear the full costs and expenses of such an appeal. This paragraph shall not apply to any dispute between the parties regarding attorneys' fees and costs incurred in litigation.
- D. The cap on attorneys' fees and costs set forth in Paragraph VII.B shall not apply to attorneys' fees and costs incurred in any litigation between the parties regarding this Agreement, including any lawsuit by DRC to enforce the Remedial Plan or any opposition by DRC to a declaratory relief action filed by the County. In any litigation regarding this Agreement, DRC shall be entitled to attorneys' fees and costs only if a court finds that (1) DRC's lawsuit or defense of the lawsuit was necessary to enforce substantial rights of incarcerated people in the Jail under the Eighth Amendment and Fourteenth Amendments of the United States Constitution, Article 1, § 7 of the California Constitution, the Americans with Disabilities Act, the Rehabilitation Act, the Unruh Act, the California Disabled Persons Act, or California Government Code § 11135, and (2) DRC attempted to resolve the matter and/or narrow the issues as much as possible, by engaging in the dispute resolution process set forth in Paragraph IX.B.1, before resorting to litigation. The County shall be eligible for an award of attorneys' fees and costs from DRC, and DRC shall receive none, in the event that the court finds that DRC's lawsuit or defense of a lawsuit was frivolous, unreasonable, or groundless, or that DRC continued to litigate it after it clearly became so.

### **VIII. Duration of Agreement**

- A. Unless this Agreement is terminated pursuant to another provision of this Agreement or by separate written agreement between the Parties, this Agreement will remain in effect until the Compliance Expert issues two successive Compliance Reports finding that the County has adequately implemented all components of the Remedial Plan. The County may also seek declaratory relief

that it has adequately implemented the Remedial Plan such that the agreement should terminate, as set forth in Section IX.B, below.

**IX. Release of Claims and Effect of Agreement**

- A. In consideration of the terms and conditions of this Agreement and except as otherwise expressly provided for herein, DRC agrees not to initiate or pursue new judicial proceedings against the County on the topics set forth in Section II.A while this Agreement is in effect.
- B. This release does not prevent DRC from pursuing all legal remedies available to enforce the terms of this Agreement, including but not limited to specific performance of any and all provisions of the Remedial Plan; DRC expressly retains its right to do so. Likewise, if the County forms a good faith basis that it has adequately implemented any or all provisions of the Remedial Plan despite the Expert's finding to the contrary, the County may seek declaratory relief through appropriate legal proceedings.
  - 1. Prior to either party seeking relief pursuant to Section IX.B, the Parties shall participate in a dispute resolution process with a mutually agreed-upon mediator. If the Parties cannot agree on the mediator, the Parties will ask that one be randomly assigned by JAMS. If DRC initiates the dispute resolution process under this Section, the Parties shall equally advance all costs and expenses for the dispute resolution process. If the County initiates the dispute resolution process under this Section, the County shall advance all costs and expenses for the dispute resolution process. The Parties shall participate in the dispute resolution process in good faith prior to seeking relief pursuant to Section IX.B in a court of law.
- C. This release does not prevent DRC from pursuing all legal remedies available to enforce its right to monitor implementation of this Agreement and the Remedial Plan, pursuant to the Negotiations Agreement and this Agreement; DRC expressly retains its right to do so.
- D. This release does not prevent DRC from pursuing all legal remedies available related to its monitoring and access authorities as the protection and advocacy system for the State of California, nor does it prevent DRC from pursuing all legal remedies available related to the care and treatment of people with mental health disabilities as set forth in Section III.M.4; DRC expressly retains its right to do so.

**X. Venue, Jurisdiction, and Choice of Law**

Any action or suit arising out of or relating to this Agreement shall be filed in the Superior Court for the County of Orange. This agreement shall be governed by and construed in accordance with the laws of the State of California.

**XI. Modification of Deadlines**

The Parties may, pursuant to an agreement in writing, modify any of the timeframes or deadlines set forth in this Agreement.

**XII. No Admission of Liability**

The Parties expressly recognize and agree that entering into this Agreement does not constitute an admission of liability or any wrongdoing by any Party.

**XIII. Rules of Construction**

Each Party has reviewed and participated in the drafting of this Agreement. This Agreement represents the entire understanding and agreement between the Parties as to the subject matter of this Agreement. This Agreement may be modified only by a separate writing executed by all Parties. Any rule of construction to the effect that ambiguities are construed against the drafting Party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement.

To the extent there is any inconsistency between provisions of this Agreement and the previously executed Negotiations Agreement (**Exhibit A**), the provisions in this Agreement shall control.

**XIV. Effective Date**

The effective date of this Agreement is the latest date of the signatures below.

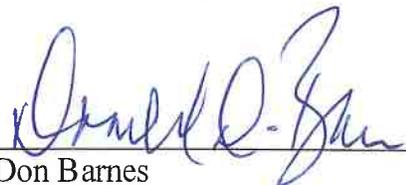
On behalf of the County of Orange:

Date: 3/30/22



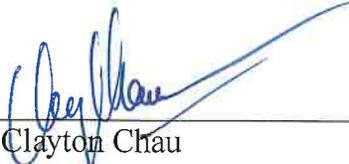
Frank Kim  
County Executive Officer  
County of Orange

Date: 3/31/22



Don Barnes  
Orange County Sheriff-Coroner

Date: 3/30/22

  
\_\_\_\_\_  
Dr. Clayton Chau  
Director  
Orange County Health Care Agency

Approved as to Form:

Date: 3/30/22

  
\_\_\_\_\_  
Office of the County Counsel  
County of Orange

On behalf of Disability Rights California:

Date: \_\_\_\_\_

\_\_\_\_\_  
Andy Imparato, Executive Director  
Disability Rights California

Approved and Acknowledged:

Date: \_\_\_\_\_

\_\_\_\_\_  
Sarah Gregory  
A.D. Lewis  
Disability Rights California

Date: \_\_\_\_\_

\_\_\_\_\_  
Aaron J. Fischer  
Law Office of Aaron J. Fischer  
(Disability Rights California Authorized Agent)

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael Freedman  
Rosen Bien Galvan & Grunfeld LLP  
(Disability Rights California Authorized Agent)

Date: 3/30/22

  
\_\_\_\_\_  
Dr. Clayton Chau  
Director  
Orange County Health Care Agency

Approved as to Form:

Date: 3/30/22

  
\_\_\_\_\_  
Office of the County Counsel  
County of Orange

On behalf of Disability Rights California:

Date: 04-01-2022

  
\_\_\_\_\_  
Andy Imparato, Executive Director  
Disability Rights California

Approved and Acknowledged:

Date: 4/1/2022

  
\_\_\_\_\_  
Sarah Gregory  
A.D. Lewis  
Disability Rights California

Date: 3/31/22

  
\_\_\_\_\_  
Aaron J. Fischer  
Law Office of Aaron J. Fischer  
(Disability Rights California Authorized Agent)

Date: 4/4/21

  
\_\_\_\_\_  
Michael Freedman  
Rosen Bien Galvan & Grunfeld LLP  
(Disability Rights California Authorized Agent)

## **AGREEMENT REGARDING THE ORANGE COUNTY JAIL**

### **I. Parties**

The Parties to this Agreement are (1) the County of Orange and the Orange County Sheriff's Department ("Sheriff's Department") (together, the "County"); and (2) Disability Rights California ("DRC") and Rosen Bien Galvan & Grunfeld LLP ("RBGG") (together, "Counsel"), who represent people subject to the conditions, policies, and practices in the Orange County Jail (the "Jail") system.

### **II. Purposes**

The purposes of this Agreement are:

- A. To protect the interests of all Parties during the term of this Agreement relating to disputed claims regarding:
  1. Whether the County's policies and practices for the housing, treatment, and programming opportunities for people with disabilities incarcerated in the Jail comply with federal and state law, including, but not limited to, the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the California Disabled Persons Act, the Unruh Act, and California Government Code § 11135. Particular attention shall be paid to whether the County provides people with disabilities equal access to the Jail's services, programs, and activities, and placement in the most integrated, least restrictive setting appropriate, including as required by 28 C.F.R. § 35.152.
  2. 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.
  3. Whether the County's policies and practices for the housing, treatment, and programming opportunities for people incarcerated in the Jail who identify as Lesbian, Gay, Bisexual, Transgender, or Queer ("LGBTQ") 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

LGBTQ incarcerated people equal access to the Jail’s services, programs, or activities, and placement in the most integrated, least restrictive setting appropriate.

As used in Paragraphs II.A.1, II.A.2, and II.A.3, the term “housing” means the cell location of an incarcerated person and the process through which the Sheriff’s Department uses its classification system to determine the cell location in which a person is placed. The term “treatment” means any medical and/or mental healthcare provided to an incarcerated person. The term “programming opportunities” means educational, recreational and therapeutic activities available to an incarcerated person. The term “restrictive housing” means any type of housing in the Jail that involves all three elements: (1) removal of an incarcerated person from the general population, whether voluntary or involuntary; (2) placement of an incarcerated person in a locked room or cell, whether alone or with another incarcerated person; and (3) the inability of the incarcerated person to leave the room or cell for the vast majority of the day, typically 22 hours or more.

- B. To explore whether the Parties’ disputes concerning the legality of the County’s policies, procedures, and practices regarding the topics set forth in Paragraph II.A can be resolved without the need for adversarial litigation.

### **III. Tolling of Federal and State Law Claims**

- A. The Parties recognize and agree that, as used in this Agreement, the term “Claim(s)” includes any and all claims related to the topics set forth in Paragraph II.A that could be brought either before an administrative agency or in a civil lawsuit in either state or federal court alleging violations of the Eighth and Fourteenth Amendments to the U.S. Constitution, the Americans with Disabilities Act (“ADA”), and other federal or state laws.
- B. To the extent that Counsel could assert a Claim or any Claims related to the topics set forth in Paragraph II.A under any state or federal statute or the state or federal constitution, such Claims will be tolled beginning with the effective date of this Agreement and will remain tolled while this Agreement remains in effect.
- C. The Agreement is not intended to revive and does not revive any Claims which would have been barred by the applicable statute of limitations prior to the effective date of this Agreement. Further, the purpose and effect of this Agreement is to stop the running of any applicable statute of limitations as of the effective date of the Agreement and to restart the running of any statute of limitations immediately upon termination of the Agreement.

#### **IV. Expert Assessment of Topics Covered by This Agreement**

- A. In order to attempt to resolve the Parties' disputes concerning the legality of the County's policies, procedures, and practices regarding the topics set forth in Paragraph II.A, the Parties agree to utilize the services of a third-party neutral expert or experts ("the Expert").
1. The Parties will consult and share information regarding retention of the Expert and attempt to reach a mutual agreement on the selection of the Expert.
  2. The Expert shall have demonstrated expertise on the matters set forth in Paragraph II.A, above.
  3. Within twenty-one (21) days of execution of this Agreement, the Parties shall exchange the names of qualified candidates to serve as the Expert. After meeting and conferring, and further exchanging names if necessary, the Expert shall be mutually agreed upon and retained by the County. The Expert shall be retained within sixty (60) days following the execution of this Agreement.
  4. The County shall bear all costs for the Expert.
  5. Counsel shall have the opportunity to review and provide input as to the Scope of Work for the Expert as consistent with Paragraph II.A.
- B. The Parties agree that the Expert shall conduct an assessment of the Jail with respect to the topics set forth above in Paragraph II.A, as follows:
1. The assessment shall be based upon the Expert's full review of policies, procedures, and practices related to the topics set forth in Paragraph II.A.
  2. In order to complete a comprehensive assessment, the Expert will be allowed full access to the Jail, including, but not limited to:
    - a) Full access to any written documents memorializing the policies, procedures, and practices of the Jail;
    - b) Full access to conduct interviews with people who have been or are held in restrictive housing and people incarcerated in the Jail who have disabilities or have been identified as LGBTQ;
    - c) Full access to individual records of people incarcerated in the Jail.
    - d) Full access to Jail staff in order to conduct interviews;
    - e) Full access to the facilities in order to evaluate physical plant, programming, and practices as they relate to the topics set forth in Paragraph II.A.

3. If the Expert conducts a tour of any of the Jail or interviews any Jail staff as part of his or her assessment, the Parties shall have a right to accompany and observe the Expert during those activities.
  4. All Parties shall be given reasonable advance notice of, and an opportunity to participate in, any and all communications with the Expert involving substantive discussion of the Expert’s assessment and report.
- C. The Parties agree that the Expert shall produce a draft report within sixty (60) days of being retained that includes the Expert’s findings based on the assessment and conclusions and recommendations to address any deficiencies with the policies, procedures and practices regarding the topics set forth in Paragraph II.A (“Assessment Report”). Within fifteen (15) days following the issuance of the Expert’s draft Assessment Report, the Parties may provide written responses to the draft Assessment Report. If either Party submits a written response to the draft Assessment Report, the Expert will consider the response(s) and issue a final Assessment Report within fifteen (15) days that will also address any written responses submitted by the Parties. If neither Party submits a written response to the draft Assessment Report, the Expert’s draft Assessment Report will become the final Assessment Report.
- D. Within thirty (30) days of the issuance of the Expert’s final Assessment Report, the County will propose a Remedial Plan for the implementation of the Expert’s recommendations. The Parties will then have forty-five (45) days to agree upon the County’s proposed Remedial Plan or negotiate a revised Remedial Plan. If the Parties are unable to reach an agreement on a Remedial Plan, this Agreement will terminate immediately and will no longer bind either Party.

**V. Monitoring of County’s Implementation of Remedial Plan**

- A. If the Parties reach agreement on a Remedial Plan, the County will fully implement all components of the Remedial Plan within 120 days, except if a component of the Remedial Plan will take longer than 120 days to implement due to the need for construction-related activities, Board of Supervisors’ approval, or other barriers to implementation. If a component cannot be implemented within 120 days for the reasons set forth above, the Parties will agree upon a reasonable deadline for the County to implement the relevant component of the Remedial Plan.
- B. Within 180 days after the parties reach agreement on a Remedial Plan and every 180 days thereafter during the term of this Agreement, the Expert shall complete a comprehensive review of the County’s implementation of the components of the Remedial Plan (“Compliance Review”). The Expert shall review whether the County has adequately implemented the components of the Remedial Plan and

identify which components, if any, are not yet adequately implemented. In order to conduct the Compliance Review, the Expert will have the same access as set forth in Paragraph IV.B. If the Expert conducts a tour of any of the Jail, the Parties shall have a right to accompany and observe the Expert during those activities. All Parties shall be given reasonable advance notice of, and an opportunity to participate in, any and all communications with the Expert involving substantive discussion of the Expert's assessment and report.

- C. As part of the Compliance Review, the Expert shall issue a draft report (“Compliance Report”) that states his or her opinion as to whether the County has adequately implemented the components of the Remedial Plan and which components, if any, are not yet adequately implemented. Within fifteen (15) days following the issuance of a draft Compliance Report, the Parties may provide written responses to the draft Compliance Report. If either Party submits a written response to the draft Compliance Report, the Expert will consider the response(s) and issue a final report within fifteen (15) days that will also address any written responses submitted by the Parties. If neither Party submits a written response to the draft report, the Expert's draft report will become the final report.
- D. Within fifteen (15) days of the issuance of the Expert's final Compliance Report, the Parties will meet and confer to discuss the Expert's findings and recommendations.
- E. Within thirty (30) days of the issuance by the Expert of a final Compliance Report that includes a finding that the County has not adequately implemented one or more components of the Remedial Plan, the County shall develop a proposed plan that identifies the actions it will take to address the Expert's findings (“Action Plan”). The Parties will then have thirty (30) days to agree upon the County's proposed Action Plan or negotiate a revised Action Plan.
- F. If the Expert issues two successive Compliance Reports finding the County has adequately implemented the same component of the Remedial Plan, such a finding will result in a suspension of monitoring by the Expert of the corresponding component. The Expert may, however, continue to review whether the County has adequately implemented a component for which monitoring has been suspended pursuant to this provision if such review is necessary for determining whether the County has adequately implemented other components of the Remedial Plan for which monitoring has not been suspended pursuant to this provision. If, during the term of the Agreement, Counsel form the good faith belief that the County is no longer adequately implementing a component of the Remedial Plan for which the Expert had suspended monitoring pursuant to this provision, Counsel shall promptly so notify the County in writing and present a summary of the evidence upon which such a belief is based. Within 30 days

thereafter, the County shall serve a written response stating whether it agrees or disagrees with Counsel's position. In the event that the County agrees, monitoring by the Expert and Counsel pursuant to this Agreement shall resume with respect to the Remedial Plan component(s) at issue. In the event the County disagrees, the Parties shall present to the Expert in writing their positions. The Expert will, within thirty (30) days, issue a written decision regarding whether to resume monitoring of the Remedial Plan component(s) at issue.

- G. The County acknowledges that DRC, as the protection and advocacy system for the State of California, found probable cause that abuse and/or neglect of people with disabilities has or may have occurred, as those terms are defined in DRC's authorizing statutes and regulations. The Parties agree that DRC, as well as RBGG as DRC's authorized agent, are and will be entitled to non-public records upon request, as consistent with DRC's authorizing statutes and regulations, during the term of this Agreement. *See* 42 C.F.R. § 51.41(d); Cal. Welf. & Inst. Code §§ 4902, 4903.
- H. The County shall provide Counsel with lists of or other information regarding people incarcerated in the Jail upon request, and shall facilitate Counsel meetings with such people incarcerated in the Jail in a confidential setting upon reasonable notice to the County.
- I. With appropriate advance authorization obtained to comply with legal requirements (including the confidentiality of mental health or medical records), the County shall provide to Counsel copies of requested records of incarcerated people.
- J. With reasonable advance notice, the County shall permit Counsel (and any authorized agents) to tour the Jail, and to speak with a reasonable number of Jail staff. Such conversations will be conducted only with the consent of the employee. County Counsel reserves the right to be present during any such discussions between Counsel and Jail employees.

## **VI. Concerns Related to Individual Incarcerated People**

Counsel may bring concerns about individual people in the Jail, including, but not limited to, issues regarding health care, housing, placement in restrictive housing, disability accommodations, access, or discrimination, or safety/well-being to the attention of the County. The County shall respond in writing within 10 calendar days, unless the urgency of the issue requires a more expedited response. The Parties will work cooperatively to resolve individual concerns. This process is not meant to replace or circumvent the existing processes for requesting services or following the existing request and grievance processes in the Jail. People in the Jail will be encouraged to make use of those processes.

## **VII. Reasonable Attorneys' Fees and Costs**

The Parties recognize that the execution of this Agreement is in lieu of filing a complaint in state or federal court. As such, the County has agreed to pay Counsel reasonable fees and costs for pursuing this matter through negotiations as set forth herein. The County acknowledges Counsel's entitlement to fees and costs in such instance but retains all rights to contest the amount of fees and costs under any grounds recognized under state or federal law.

The Parties acknowledge that DRC began its monitoring investigation of the Orange County Jails in March 2018, and that DRC designated RBGG attorneys as "authorized agents" for that monitoring investigation in October 2018, which included multiple on-site monitoring tours, review of records and other documents, meetings with staff and County representatives, and interviews with people incarcerated in the Jail. As part of this Agreement, Counsel will waive attorneys' fees and costs for work performed prior to April 15, 2019. If this Agreement terminates for any reason other than that, as set forth in Paragraph IX, the Expert issues two successive Compliance Reports finding that the County has adequately implemented all components of the Remedial Plan, the County acknowledges that Counsel may seek reasonable attorneys' fees and costs in litigation, including reasonable attorneys' fees and costs for work performed prior to April 15, 2019 and for work performed in excess of the "Cap" identified below.

The County agrees, as set forth below, to pay reasonable attorneys' fees and costs for work conducted by Counsel on or after April 15, 2019 pursuant to this Agreement.

The County agrees to pay Counsel \$84,000 (the "Initial Payment") for attorneys' fees and costs for work performed by Counsel for the period from April 15, 2019 to the effective date of this Agreement. Counsel agrees that the Initial Payment fully resolves any claim by Counsel to attorneys' fees and costs for work performed from April 15, 2019 to the effective date of this Agreement. The County will make the Initial Payment to Counsel by no later than fourteen (14) days following the effective date of this Agreement.

From the effective date of this Agreement until its termination, the County agrees to pay Counsel for all reasonable attorneys' fees and costs not to exceed \$125,000 per quarter (the "Cap"). All requests for attorneys' fees and costs incurred during the term of this Agreement shall be supported by an itemization of what work was done and by whom.

If any dispute or controversy arises with regard to the amount of fees and costs that the Parties are unable to resolve themselves, the Parties shall submit the dispute to JAMS for arbitration. The arbitrator shall be mutually agreed upon. If the Parties cannot agree on an arbitrator, the Parties will ask that one be randomly assigned by JAMS. The

County shall advance all costs and expenses for the arbitration. The decision of the arbitrator may be appealed through the JAMS Optional Arbitration Appeal Process. However, the appealing Party will bear the full costs and expenses of such an appeal.

#### **VIII. Waiver of Exhaustion Requirements**

Because the Parties agree that this Agreement is in lieu of Counsel pursuing administrative or legal remedies through litigation at this time, the County agrees to waive irrevocably and not assert in any civil lawsuit brought by Counsel any defense that any Proposed Class or named plaintiffs or proposed class representatives failed to exhaust administrative remedies pertaining, and in any way relating, to the topics described in Paragraph II.A. Putative class members are still expected to engage in the grievance process for the timely resolution of issues.

#### **IX. Duration of Agreement**

Unless this Agreement is terminated pursuant to another provision of this Agreement or pursuant to the second paragraph of this section, this Agreement will remain in effect until the Expert issues two successive Compliance Reports finding that the County has adequately implemented all components of the Remedial Plan.

If the Parties reach an impasse regarding any provision of this Agreement (excluding an impasse regarding issues governed by Paragraph VII), if either Party believes the other Party has breached a material term of this Agreement, or if either Party determines the other Party is no longer operating in good faith to abide by the terms of this Agreement, either Party may terminate the Agreement pursuant to the procedures set forth below. In this scenario, the Party must provide notice to the other Party of the grounds for termination and agree to participate in good faith in negotiation efforts lasting no less than fourteen (14) days from the date of the notice. In the event those negotiations fail to resolve the grounds for termination, the Party seeking to terminate the Agreement must provide written notice to the other Party that the Agreement is no longer effective. Upon provision of this notice, the Agreement is terminated and the Parties will no longer be bound by the Agreement.

#### **X. Filing of Complaint or Motion for Class Certification**

Counsel reserves the right to file a complaint in federal court at any time, following at least fourteen (14) days advance notice to the County. If Counsel files a complaint, either Party may terminate this Agreement. If Counsel files a complaint and neither Party terminates this Agreement, the Parties agree to jointly seek a stay of the litigation, except for any filings related to class certification, for the duration that this Agreement remains in effect. In the event that a complaint is filed and negotiations pursuant to this Agreement have been terminated, Counsel agrees to extend the time for

the County to respond to the complaint by at least thirty (30) days from the date that the response would have been initially due.

**XI. No Admission of Liability**

The Parties expressly recognize and agree that entering into this Agreement does not in any way constitute an admission of liability or any wrongdoing by any Party.

**XII. Confidential Settlement Communications**

The Parties and their attorneys agree that information discussed or exchanged during the negotiations contemplated by this Agreement that are not generally available to the public shall be treated as confidential settlement communications under Federal Rule of Evidence 408 and California Evidence Code sections 1115-1128 and 1152 and any other relevant sections of the California Evidence Code.

Any Remedial Plan and any final assessments and reports issued by the Expert, including the Assessment Report and the Compliance Reports, shall not be confidential, will be available to the public, and may be used in any subsequent proceedings.

**XIII. Modification of Deadlines**

The Parties can, pursuant to an agreement in writing, modify any of the timeframes or deadlines set forth in this Agreement.

**XIV. Rules of Construction**

Each Party has reviewed and participated in the drafting of this Agreement. This Agreement represents the entire understanding and agreement between the Parties as to the subject matter of this Agreement. This Agreement may be modified only by a separate writing executed by all Parties. Any rule of construction to the effect that ambiguities are construed against the drafting Party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement.

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**XV. Effective Date**

The effective date of this Agreement is the latest date of the signatures below. The Orange County Counsel's Office is required to seek Orange County Board of Supervisor's approval prior to signing this Agreement.

Date: 11/21/19

  
Orange County Counsel

Date: November 21, 2019

  
Rosen Bien Galvan & Grunfeld LLP

Date: 11/21/19

  
Disability Rights California

**REMEDIAL PLAN FOR THE ORANGE COUNTY JAIL REGARDING THE  
TREATMENT OF PEOPLE WITH DISABILITIES, RESTRICTIVE HOUSING,  
AND THE TREATMENT OF PEOPLE WHO IDENTIFY AS LESBIAN, GAY,  
BISEXUAL, TRANSEXUAL, QUEER OR INTERSEX (LGBTQI)**

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**REMEDIAL PLAN FOR THE ORANGE COUNTY JAIL REGARDING THE TREATMENT OF PEOPLE WITH DISABILITIES, RESTRICTIVE HOUSING, AND THE TREATMENT OF PEOPLE WHO IDENTIFY AS LESBIAN, GAY, BISEXUAL, TRANSEXUAL, QUEER, OR INTERSEX (LGBTQI)**

**DEFINITIONS**

- A. **“County”** refers to the Orange County Sheriff’s Department and the Orange County Health Care Agency’s Correctional Health Services.
- B. **“Disability”** means any physical, cognitive, developmental, intellectual, mental, or sensory impairment that substantially limits one or more major life activities.
- C. **“Effective Communication”** means that whatever is written or spoken must be as clear and understandable to the person with a disability as reasonably possible.
- D. **“Gender Identity”** refers to an individual’s internal, personal sense of their own gender, which may or may not be associated with a person’s assigned sex at birth.
- E. **“Gender Expression”** means gender-related traits that may or may not be consistent with those traits typically associated with a person’s assigned sex at birth.
- F. **“Gender-Variant”** refers to having gender-related traits that are not typically associated with a person’s assigned sex at birth.
- G. **“Intellectual/Developmental Disability”** is a disability characterized by significant limitations in intellectual functioning (such as learning, reasoning, and problem-solving) and in adaptive behavior (conceptual skills such as language, literacy, money, time, and self-direction; social and interpersonal skills; and practical skills such as personal care and schedules/routines). This includes people for whom the onset of the disability occurred before age 18 (developmental disabilities) and people for whom events later in life resulted in similar limitations (*e.g.*, traumatic head injury, stroke, or dementia).
- H. **“Intersex”** refers to people who are born with variations in chromosomes, genitals, or reproductive organs that do not align with typical definitions of female or male.
- I. **“LGBTQI”** is an abbreviation that refers to lesbian, gay, bisexual, transgender, queer, and intersex individuals.

- J. **“Restrictive Housing”** refers to any type of housing that involves all three of the following elements: “(1) removal of an incarcerated person from the general population, whether voluntary or involuntary; (2) placement of an incarcerated person in a locked room or cell, whether alone or with another incarcerated person; and (3) the inability of the incarcerated person to leave the room or cell for the vast majority of the day, typically 22 hours or more.”
  
- K. **“Serious Mental Illness”** means a mental disorder that may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation.
  
- L. **“Sex”** can refer to “assigned sex at birth,” which refers to the sex recorded on an individual’s birth certificate at the time of birth. **“Affirmed sex”** refers to the self-reported sex-based classification that aligns most closely with an individual’s gender identity. **“Gender marker”** or **“legal sex”** refers to an individual’s gender designation on legal documents.
  
- M. **“Transgender”** or **“trans”** is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. For example, a person who was assigned male at birth but is female may describe herself as a transgender woman, a trans woman, or a woman. This terminology includes individuals who are nonbinary, genderqueer, or agender, among other identities.

**TOPIC 1: RIGHTS OF PEOPLE WITH DISABILITIES**

**I. POLICIES AND PROCEDURES**

- A. It shall be the policy of the County to provide equal access to the Jail’s services, programs, and activities to incarcerated people with disabilities. No person with a disability, as defined in 42 U.S.C. § 12102 and under California law, shall, because of that disability, be excluded from participation in or denied the benefits of services, programs, or activities or be subjected to discrimination. It shall be the policy of the County to provide reasonable accommodations or modifications where necessary to provide equal access to services, programs, or activities, consistent with the Americans with Disabilities Act (“ADA”), 28 C.F.R. § 35.130, and other applicable federal and state disability laws.
- B. The County shall, within six (6) months of finalizing this Remedial Plan and in consultation with Counsel and the joint expert, complete revision of its policies, procedures, and practices to ensure compliance with the ADA, its implementing regulations, related federal and state disability laws, and to ensure compliance with the remedial provisions outlined herein. Implementation of revised policies, procedures, and practices will proceed expeditiously and consistent with the parties’ agreement. The six-month implementation deadline will not apply to the County’s development of a disability tracking system, addressed in Paragraph II.A.

**II. ADA TRACKING PROCEDURES**

- A. The County shall implement a centralized, real-time networked electronic system to identify and track all incarcerated people with disabilities and their specific accommodation needs (the “ADA Tracking System”). The County will make best efforts to implement the ADA Tracking System by January 1, 2023, and will provide notice of any delay to this timeline to allow the parties to confer and address the matter. Until the new ADA Tracking System is in place, the County shall continue to use its existing system for tracking incarcerated person’s disabilities and their specific accommodation needs (“Existing ADA Tracking System”).
- B. The ADA Tracking System shall identify:
  - 1. All types of disabilities, including but not limited to mental health, Intellectual/Developmental Disability, learning, speech, hearing, vision, mobility, dexterity, upper extremity, or other physical or sensory disabilities;
  - 2. Disability-related health care needs;

3. Barriers to communication, including but not limited to Intellectual/Developmental Disability, learning, and hearing, speech, or vision disabilities;
  4. Accommodation needs, including but not limited to accommodations related to housing, programming, classification, Effective Communication, adaptive supports, and health care appliances, assistive devices, and/or durable medical equipment (“HCA/AD/DME”);
- C. The ADA Tracking System’s information shall be readily accessible to and used by all custody, medical, mental health, program, and other staff who need such information to ensure appropriate accommodations, adaptive supports and meaningful access for persons with disabilities.
- D. The ADA Tracking System shall not be called the “Special Needs List.”

### **III. IDENTIFYING PEOPLE WITH DISABILITIES**

- A. The County shall, throughout a person’s time in custody, take steps to identify and verify each person’s disability and disability-related needs.
- B. During the medical intake screening conducted for every person booked into the Jail, CHS staff shall take steps to identify and verify each person’s disability and disability-related needs, including based on:
1. The individual’s self-identification or claim to have a disability;
  2. Documentation of a disability in the individual’s Jail health record and/or County (OCHCA) records;
  3. Staff observation/referral to ADA Unit regarding a person who may have a disability; or
  4. The request of a third party (such as a family member) for an evaluation of the individual for an alleged disability.
- C. When conducting the medical intake screening, staff shall determine if the individual has a disability affecting communication and, if yes, provide and document the provision of Effective Communication during the medical intake screening.
- D. CHS staff shall conduct medical intake screenings, including for disabilities, in settings that allow for reasonable privacy and confidentiality.
- E. When conducting screening and intake, CHS shall utilize evidence-based and Trauma-Informed practices that take into account that many incarcerated people have experienced trauma.
- F. If the medical intake screening identifies that the person in custody requires any accommodations (*e.g.*, housing, HCA/AD/DME), such

accommodations shall be provided promptly to the incarcerated person. The need for such accommodations shall also be communicated to all relevant staff and documented in the ADA Tracking System/Existing ADA Tracking System.

- G. Medical staff shall immediately notify custody staff and the ADA Compliance Unit regarding a person's disabilities and disability-related needs.
- H. All disabilities and disability-related accommodation needs identified during the intake process shall be tracked in the ADA Tracking System/Existing ADA Tracking System.
- I. CHS shall develop a process for conducting disability-related evaluations for persons in custody after the medical intake screening. Such evaluations can occur at the request of the person in custody, staff who observe a potential need for accommodation, or third parties. Like the medical intake screening, such evaluation shall be conducted by a qualified health care professional to determine whether a person has a disability and, if yes, any reasonable accommodations necessary for the person to have equal access to programs, services, and activities offered at the Jail.

#### **IV. ORIENTATION**

- A. The County shall ensure that persons with disabilities are adequately informed of their rights under the ADA, including but not limited to:
  - 1. The right to reasonable accommodations;
  - 2. The process for requesting a reasonable accommodation;
  - 3. The grievance process, location of the forms, and process for getting assistance in completing grievance process;
  - 4. The role of the OCSD and CHS ADA Coordinators and methods to contact them;
  - 5. Instructions on how persons with disabilities can access health care services, including the provision of Effective Communication and other accommodations available in accessing those services; and
  - 6. The availability of and process for requesting access to auxiliary aids, including sign language interpreters, and other accommodations for people with disabilities affecting communication.
- B. Upon booking, persons with disabilities shall receive, in an accessible format (including in Spanish language), an orientation video regarding rules or expectations. Once they are housed, persons with disabilities shall receive, in an accessible format (including in Spanish language): the Jail

rules, the ADA information brochure and the ADA inmate qualifications/ acknowledgement of rights/programs form as part of the initial ADA interview process conducted by the ADA Compliance deputies.

- C. The County shall ensure that all information from the orientation process is communicated effectively to people with communication-related disabilities. The County shall ensure that any orientation videos are available with closed captioning, and in Spanish language.
- D. The County shall post an ADA Rights Notice that provides information about incarcerated persons' rights under the ADA, reasonable accommodations, and contact information for the ADA Coordinator. The Notice shall be prominently posted in all housing units, in the booking/intake areas, in medical/mental health/dental treatment areas, and at the public entrances of all Jail facilities.
- E. The County shall ensure that staff orient and provide individualized support for persons who are blind, low vision, deaf, hard of hearing, or who have developmental or intellectual disabilities when the County initially places such people in housing or transfers such people to a new housing unit. The orientation must be effectively communicated to ensure that the person with a disability can safely navigate the housing unit and understands how to request assistance, including from staff working in the housing unit. The nature and extent of the orientation will depend on individual need.

## **V. EFFECTIVE COMMUNICATION**

- A. For people with disabilities affecting communication, the County shall assess each person's Effective Communication needs, and shall provide Effective Communication based on individual need.
- B. The County shall assess all people detained at the Jail for any period of time to determine if they have a disability that affects communication. A disability affects communication if it affects hearing, seeing, speaking, reading, writing, or understanding. Persons who have disabilities affecting communication include, but are not limited to, people who are blind or have low vision, who are deaf or hard of hearing, who have a speech, learning, Intellectual/Developmental Disability, who have traumatic brain injury, or who have a mental illness.
- C. In determining what accommodations are necessary to achieve Effective Communication, including what auxiliary aids and services may be necessary, the County shall give primary consideration to the preference of the person with Effective Communication needs.
- D. Effective auxiliary aids and services shall be provided when simple written or oral communication is not effective. Such aids may include, but are not

limited to, bilingual aides, qualified sign language interpreters, certified deaf interpreters, oral interpreters, readers, sound amplification devices, captioned television/video text displays, speech-to-text and real-time captioning, videophones and other telecommunication devices for deaf persons (TDDs), video relay services, video remote interpreting services, audiotaped texts, Braille materials, large print materials, screen readers, writing materials, written notes, and signage.

- E. The County shall ensure that staff provide Effective Communication such that persons with communication-related disabilities can participate as equally as possible in Jail programs, services, and activities for which they are qualified.
- F. The requirements in subsection (G) shall apply for Effective Communication in the following situations:
  - 1. Due Process Events
    - a. Classification processes;
    - b. Jail disciplinary hearing and related processes;
    - c. Service of notice (to appear and/or for new charges);
    - d. Release processes;
  - 2. Clinical Encounters
    - a. Obtaining medical history or description of ailment or injury;
    - b. Communicating diagnosis or prognosis;
    - c. Providing medical care (note: medical care does not include medication distribution);
    - d. Performing medical evaluations;
    - e. Providing mental health care;
    - f. Performing mental health evaluation;
    - g. Providing group and individual therapy, counseling and other therapeutic activities;
    - h. Providing patient's rights advocacy/assistance;

- i. Obtaining informed consent or refusal for provision of treatment;
  - j. Explaining information about: medications, medical or mental health procedures, treatment, or treatment options;
  - k. Explaining discharge instructions;
  - l. Providing clinical assistance during a medical/mental health round (note: this requirement does not apply to performing routine medical/mental health safety checks).
- G. In the situations described in subsection (F), above, Jail staff shall:
- 1. Prior to the encounter, access the ADA Tracking System or Electronic Health Record system (as applicable) and identify if the person requires reasonable accommodation(s) for Effective Communication;
  - 2. Provide reasonable accommodation(s) to achieve Effective Communication; and
  - 3. Document the method used to achieve Effective Communication and how the staff person determined that the person understood the encounter, process, and/or proceeding.
- H. Lip reading generally should not be used by staff as a means of Effective Communication. If an incarcerated person's preferred/primary method of communication is lip reading, then staff shall accommodate by speaking slowly and loudly.
- I. The County shall establish a process for logging all instances where sign language interpreters are provided to persons in custody. The County shall also log all instances where a sign language interpreter was needed but was not provided.

## **VI. INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

- A. OCSD and CHS shall develop and implement comprehensive and coordinated written policies and procedures on serving incarcerated people with Intellectual/Developmental Disabilities.
- B. CHS will develop and adopt a comprehensive screening process for trained clinical staff to identify Intellectual/Developmental Disabilities, including cognitive deficits, adaptive functioning deficits, and adaptive support needs.

Exhibit B: Remedial Plan (DRC, County of Orange)

1. If a person is known to have or suspected of having an Intellectual/Developmental Disability, the County shall provide a secondary screening performed by a licensed clinical psychologist within seven (7) business days.
  2. CHS will timely contact the appropriate Regional Center and request the person's current Individualized Program Plan (IPP), with the person's authorization. Once received, health care and custody staff will review the IPP to ensure that appropriate supports and services are provided.
  3. Whenever possible, Jail staff will work with the Regional Center and any relevant County agencies to move a person with an identified Intellectual or Developmental Disability out of custody and into a setting with appropriate supports to meet the person's individual needs.
  4. CHS and OCSD will timely provide relevant information and input about a person's Intellectual/Developmental Disabilities and related needs to OCSD Classification and ADA Compliance Unit staff, for appropriate consideration as to housing, work assignments, disciplinary measures, and other relevant matters.
- C. A multidisciplinary team that includes appropriate health care staff shall monitor and ensure appropriate care and support for people with an Intellectual/Developmental Disability. For each patient, the multidisciplinary team will develop an individualized plan that addresses: (1) safety, vulnerability, and victimization concerns, (2) adaptive support needs, and (3) programming, housing, and accommodation needs. The multidisciplinary team's plan will be reviewed quarterly. If a member of the team becomes aware that a person with an Intellectual/Developmental Disability has a change in (1), (2) or (3) above, the team will promptly review and, if necessary, update the person's plan.
- D. Relevant staff, including housing deputies, the ADA Compliance Unit, and work supervisors/teachers, shall be trained and informed, as appropriate, as to: (a) incarcerated people with Intellectual/Developmental Disabilities, their individualized plan, and related accommodation and adaptive support needs; and (b) staff responsibilities to provide for such needs as well as to monitor for and address any safety, vulnerability, or victimization concerns.
- E. People identified as having an Intellectual/Developmental Disability shall be provided with accommodations and adaptive supports tailored to their needs, including (but not limited to) communications at the appropriate comprehension level, more time to complete directions, and specific behavioral and activities of daily living (ADL) supports.

1. Jail staff will be assigned, as appropriate, to assist with health appointments, classification or disciplinary proceedings, housing/facility transfers, and other events involving potentially complex communications.
  2. The ADA Compliance Unit shall track provision of supports for people with Intellectual/Developmental Disabilities on the ADA Inmate Activity Log.
- F. Incarcerated people with Intellectual/Developmental Disabilities, as well as learning disabilities, will have access to easy reading books, magazines, and electronic tablet programs consistent with their reading and cognitive abilities, such that they have equal access to such materials as compared with other incarcerated people at the Jail.
- G. CHS and OCS D staff will provide discharge planning tailored to the needs of people with Intellectual/Developmental Disabilities, including appropriate and effective linkages to housing assistance and community-based service providers.

## **VII. HEALTH CARE APPLIANCES, ASSISTIVE DEVICES, DURABLE MEDICAL EQUIPMENT**

- A. The County shall immediately provide HCA/AD/DME to persons for whom HCA/AD/DME are a reasonable accommodation. The County shall ensure an individualized assessment by qualified health care staff to determine whether HCA/AD/DME is warranted and to ensure equal and meaningful access to programs, services, and activities in the Jail.
- B. The County shall track and document the inspection and maintenance of HCA/AD/DME. Such documentation shall include the following information for each device: whether the person has all assigned HCA/AD/DME; whether the person believes the assigned HCA/AD/DME is appropriate; whether the HCA/AD/DME is in good working order; and, if the HCA/AD/DME requires repair or replacement or is inappropriate for the person, a description of the actions taken (*e.g.*, to repair/replace HCA/AD/DME, evaluation for different HCA/AD/DME, *etc.*).
- C. The County shall ensure that all County-provided wheelchairs are in working order and have features consistent with individual needs.
- D. The County shall not charge people in custody for the provision, repair, or replacement of HCA/AD/DME.
- E. **Personal HCA/AD/DME.** The County shall allow people to retain personal HCA/AD/DME (including reading glasses, as allowed by current policy), unless there is an individualized determination that doing so would create an articulated safety or security risk.

Exhibit B: Remedial Plan (DRC, County of Orange)

1. Where Jail staff determine it is necessary to remove an individual's personal HCA/AD/DME for safety and security reasons, the County shall immediately provide an equivalent alternative Jail-issued device unless custody staff, with supervisory review, determine and document, based on an individualized assessment, that the device constitutes a risk of bodily harm or threatens the security of the facility.
  2. If such a determination is made, an ADA Coordinator or supervisory level designee shall document the decision and reasons for it, and shall consult with medical staff within 48 hours to determine an appropriate alternative device and/or accommodation.
  3. If an individual's personal HCA/AD/DME is in need of repair, the County shall either repair the HCA/AD/DME at the County's expense or provide the person with a replacement HCA/AD/DME at the County's expense while the person is incarcerated.
  4. Any HCA/AD/DME provided by the County to replace an individual's personal HCA/AD/DME shall be sufficient to provide the person with safe access to the Jail's programs, services, and activities.
  5. If the County repairs a personal HCA/AD/DME, the County shall provide the person with an interim HCA/AD/DME while the personal HCA/AD/DME is being repaired.
- F. **Prosthetics.** The County shall permit any person who has a prosthetic limb or similar device and needs such prosthesis full use of such prosthesis while in custody absent specifically identified security concerns.
1. If a prosthetic limb or device is removed, a health care provider will examine the person as soon as possible, and not later than the next sick call after the removal, in order to address any negative impact on the health or safety of the person and to provide an alternative device and/or accommodation.
  2. If a person requires repair or maintenance of a prosthetic limb or similar device, the County shall take prompt steps to resolve the issue, including providing interim accommodations as indicated.
  3. If CHS determines a person requires a prosthetic limb or similar device but does not have one, the County will take prompt steps to provide appropriate assessment and timely provision of prostheses or similar device. The County will provide an alternative assistive device, based on clinical assessment and meaningful consideration of the individual's stated preference, as an interim accommodation to facilitate equal access to services.

- G. The County shall not automatically remove HCA/AD/DME when incarcerated people are placed in temporary holding, sobering, or observation cells, and shall remove HCA/AD/DME only based on individualized security factors and only for the minimum time necessary.
- H. **HCA/AD/DME Upon Release.** The County shall take steps necessary to address a person's disability needs upon release. In no event will a person in need of HCA/AD/DME be released without access to HCA/AD/DME that is in good working order and appropriate for the person's needs.
  - 1. The County will ensure that any personally owned HCA/AD/DME that has been removed is returned to the incarcerated person prior to release from custody.
  - 2. Upon release, if an incarcerated person does not have personal HCA/AD/DME or came to the Jail with HCA/AD/DME that is not adequate for the person's needs, the County will permit the person to retain any HCA/AD/DME that the County provided to the person while in custody, or the County will provide a comparable device. Jail staff may alternatively coordinate with the incarcerated person, the person's family or friends, and/or other County agencies to secure HCA/AD/DME for the person prior to release.
  - 3. The County shall document this process in a manner that (a) can be reviewed for quality assurance and (b) ensures individual tracking and an adequate inventory of HCA/AD/DME.

### **VIII. HOUSING PLACEMENTS**

- A. The County shall house persons with disabilities in the most integrated setting appropriate, consistent with their individual security classification, in facilities that accommodate their disabilities and in which they have equivalent access to programs, services, and activities.
- B. The County shall provide persons with disabilities at all classification levels with access to out-of-cell time, programs, services, activities that is equivalent to the access provided to persons without disabilities with comparable security and classification profiles.
- C. The County shall maintain a housing assignment system that utilizes information in the ADA Tracking System/Existing ADA Tracking System for each person's disability needs, including, but not limited to:
  - 1. The need for ground floor housing;
  - 2. The need for a lower bunk;
  - 3. The need for grab bars in the cell;
  - 4. The need for a cell with sufficient clearance for a wheelchair;

Exhibit B: Remedial Plan (DRC, County of Orange)

5. The need for accessible toilets;
  6. The need for accessible showers;
  7. The need for no stairs or other obstructions in the path of travel;
  8. The need for level terrain; and
  9. The need for mental-health related accommodations.
- D. Classification staff shall not place persons with disabilities in:
1. Inappropriate security classifications simply because no ADA-accessible cells or beds are available;
  2. Designated medical areas unless the person is currently receiving medical care or treatment that necessitates placement in a medical setting; or
  3. Any location that does not offer the same or equivalent programs, services, or activities as the facilities where they would be housed absent a disability.
- E. Sheltered Living cells
1. The County agrees that the Sheltered Living cells behind the O Module at Central Men's Jail create operational difficulties, including with respect to the provision of adequate out-of-cell time, program access, and socialization for incarcerated persons with disabilities. OCSD will deactivate and no longer use these Sheltered Living cells for incarcerated persons with disabilities at the earliest date feasible given COVID-related housing demands (e.g., quarantine housing) and alternative accessible housing. OCSD will begin to re-house individuals with disabilities from Sheltered Living as soon as other accessible housing units are available.
  2. Until the Central Men's Jail Sheltered Living cells are deactivated, the County shall house a person with a disability in the Sheltered Living cells only if there is no other placement that is consistent with the person's classification/housing needs and meets the person's accessibility needs.
- F. The County shall assist incarcerated persons with disabilities (including in wheelchairs) to access the Central Men's Jail yard from the elevators and to navigate the ramp leading to the yard. Staff shall ensure incarcerated persons with mobility disabilities are provided access to an accessible restroom when on the Central Men's Jail yard.

- G. The County shall conduct periodic quality assurance audits to ensure that all people in custody who require accommodations in housing are placed in housing consistent with their needs.
- H. The County shall develop a process to expeditiously move people in custody with disability-related needs who are inappropriately housed in an inaccessible placement to an accessible placement.

**IX. ACCESS TO PROGRAMS, SERVICES, AND ACTIVITIES**

- A. The County shall ensure that all persons with disabilities, including those in ADA-accessible or other specialized housing, are informed of and have equal access to programs, services, and activities available to similarly situated persons without disabilities, consistent with their health and security needs. Such programs, services, and activities include, but are not limited to:
  - 1. Dayroom and out-of-cell time;
  - 2. Outdoor recreation and exercise equipment;
  - 3. Showers;
  - 4. Telephones;
  - 5. Reading materials;
  - 6. Reading and scribing documents;
  - 7. Religious services;
  - 8. Educational, vocational, reentry and substance abuse programs;
  - 9. Work Assignments, including the Community Work Program;
  - 10. Medical, mental health, and dental services and treatment;
  - 11. Public visiting; and
  - 12. Attorney visiting.
- B. The County shall provide appropriate assistance to persons with disabilities so that they can meaningfully participate in Jail programs, services, and activities for which they are qualified and medically cleared.
- C. The County shall assist persons with disabilities in reading or scribing documents (legal, medical, request forms, grievances, due process, *etc.*).
- D. The County shall provide equal access to library, recreational, and educational reading materials for persons with disabilities, including providing easy reading, large-print, and Braille books; a Braille writer audiobooks; accessible electronic tablet programming; and assistive technology, as necessary.

- E. The County shall log and track out-of-cell time and program participation to ensure that people with disabilities receive meaningful and equitable access to such programs and activities. At minimum, the system shall collect information as to:
1. When the County offers out-of-cell opportunities (dayroom and outdoor); whether the incarcerated person with a disability accepts or refuses the opportunity; and, if an incarcerated person accepts the opportunity, the amount of time spent out of cell;
  2. The ADA Compliance Unit shall interview incarcerated persons with disabilities on a monthly basis. If during the interview, the ADA Compliance Unit discovers that a person with a disability has refused offers for outdoor recreation three times in a row, or has refused offers for dayroom three times in a row, the ADA Compliance Unit shall inquire and document the reason(s) for the refusal. The ADA Compliance Unit shall inquire whether a disability accommodation, mental health referral or other action is needed to afford meaningful access, and shall document the action taken in the incarcerated person's ADA Inmate Activity Log. During the monthly meeting, the ADA Compliance Unit will also provide the incarcerated person with a message slip to contact the ADA Compliance Unit regarding any disability issues. If at any time prior to the monthly interview, any member of the ADA Compliance Unit becomes aware that an incarcerated person with a disability may need a disability accommodation, mental health referral or other action to afford meaningful access to out-of-cell opportunities, the ADA Compliance Unit will meet promptly with the incarcerated person and document the action taken in the incarcerated person's ADA Inmate Activity Log.
  3. The County shall conduct an annual review to determine whether the County offers structured programs and activities, including, but not limited to, religious, educational, vocational, reentry, and substance abuse programs, on an equal basis to people with disabilities and whether there are access/accommodation barriers to be addressed.

**X. ACCESS TO WORKER OPPORTUNITIES**

- A. The County shall ensure equitable work opportunities for incarcerated persons with disabilities. Incarcerated people with disabilities who can perform the essential functions of a position, with or without accommodations, shall be considered for and placed into work opportunities in the same manner as incarcerated people who do not have disabilities and who are similarly situated with respect to other factors

unrelated to disability (*e.g.*, classification level, individualized security considerations). To ensure equitable work opportunities for incarcerated people with disabilities, the County shall:

1. Ensure clear job descriptions that include the essential functions and clear hiring criteria that do not inappropriately screen out people with disabilities;
  2. Ensure that medical staff conduct an individualized assessment to identify work duty restrictions and/or physical limitations, in order to ensure appropriate work assignments and reasonable accommodations on the job;
  3. Ensure that staff supervising incarcerated workers consider, with input from the incarcerated person, reasonable accommodations that would make it possible for the incarcerated person to perform the essential job functions and/or consider whether the incarcerated person could, with or without reasonable accommodations, perform the essential job functions of another position.
  4. Ensure equitable work opportunities for incarcerated persons with intellectual disabilities, with appropriate accommodations and supports (*e.g.*, additional supervision and training, modified production expectations, expanded timeframes for completion of projects, etc.).
- B. Nothing in this section shall prohibit the County from excluding a person from a work opportunity who would be disqualified based on factors unrelated to the person's disability, including classification level and individualized security considerations that cannot be addressed through reasonable disability-related accommodations.

## **XI. ACCESS TO COMMUNITY WORK PROGRAM**

- A. The County shall ensure equal access to the Community Work Program (CWP) for people with disabilities. People with disabilities who can perform the essential functions of a CWP position, with or without accommodations, shall be considered for and placed into CWP opportunities in the same manner as people who do not have disabilities and who are similarly situated with respect to other factors unrelated to disability (*e.g.*, classification level, individualized security considerations). To ensure equitable CWP opportunities for people with disabilities, the County shall:
1. Ensure clear job descriptions that include the essential functions and clear hiring criteria that do not inappropriately screen out people with disabilities;

2. Ensure that medical staff conduct an individualized assessment to identify work duty restrictions and/or physical limitations, in order to ensure appropriate CWP assignments and reasonable accommodations on the job;
  3. Ensure that staff supervising CWP workers consider, with input from the incarcerated person, reasonable accommodations that would make it possible for the person to perform the essential job functions and/or consider whether the person could, with or without reasonable accommodations, perform the essential job functions of another CWP position.
  4. Ensure equitable CWP opportunities for incarcerated persons with intellectual disabilities, with appropriate accommodations and supports (e.g., additional supervision and training, modified production expectations, expanded timeframes for completion of projects, etc.).
- B. The County shall end its practice of medical staff not approving people with disabilities for participation in the CWP based on a person's disabilities absent meaningful consideration of essential job functions and reasonable accommodations.
- C. The County shall provide reasonable accommodations to enable incarcerated persons with disabilities to participate in work opportunities, including the CWP.
- D. Nothing in this section shall prohibit the County from excluding a person from the CWP who would be disqualified based on factors unrelated to the person's disability, including classification level and individualized security considerations that cannot be addressed through reasonable disability-related accommodations.

## **XII. DISABILITY-RELATED GRIEVANCE PROCESS**

- A. The County shall ensure that grievance policies and procedures are readily available and accessible to all persons.
1. The County shall inform people of the disability grievance procedures, including, but not limited to, by posting notices throughout the Jail, ensuring the grievance procedures are explained in the orientation packet, and discussing the procedures with people with disabilities during the meeting with staff from the ADA Compliance Unit that occurs within seven days of a person being identified as having a disability.

Exhibit B: Remedial Plan (DRC, County of Orange)

2. The County shall ensure that the disability grievance procedures are effectively communicated to persons with disabilities affecting communication.
- B. The County shall track all grievances that request disability accommodations and/or raise any disability-based discrimination or violation of the ADA, this Remedial Plan, or Jail ADA-related policy.
- C. The County shall ensure that all persons, including people with disabilities, have meaningful access to the grievance process and to grievance forms.
1. The County shall ensure that grievance forms are readily available to people in custody, either by placing grievance forms in the housing units in areas accessible to people in custody or ensuring that staff provide grievance forms promptly upon request, irrespective of the type of grievance raised.
  2. Jail staff can and should attempt to address grievances informally but may not, under any circumstances, refuse to provide a requested grievance form, destroy a grievance form, or otherwise obstruct or interfere with a person's ability to submit a grievance form.
  3. Jail staff shall assist people in custody who require accommodations to submit a grievance or to appeal a grievance response (*e.g.*, people who are blind, have an Intellectual/Development Disability, have a learning disability, or who have physical disabilities that make it difficult or impossible for them to write, or are illiterate).
- D. Responses to Grievances
1. The Housing Sergeant who receives the grievance or appeal shall screen all ADA-related grievances and appeals within one day of receipt to determine whether the grievance presents an urgent issue regarding a person's safety or well-being. For grievances and appeals that present an urgent issue, the County shall either (a) immediately provide an interim accommodation that addresses the urgent issue pending a final response to the grievance or (b) resolve the grievance promptly with participation of health care staff, as appropriate. For grievances that raise significant and imminent health or safety risks, the County shall address the grievance immediately.
  2. The Facility Administrative Sergeant, in consultation with the ADA Compliance Unit, shall investigate all non-urgent ADA-related grievances and appeals and provide a written response within fourteen days of receipt.

3. In limited circumstances where the County is unable to resolve the grievance within fourteen days (e.g., the incarcerated person must be referred to a specialist and the appointment will not occur within fourteen days or the grievance involves a personnel complaint), the County should still provide a response within fourteen days. The response should communicate why the County cannot resolve to the grievance within the fourteen-day deadline and, if relevant, provide information regarding any subsequent events scheduled to resolve the grievance (e.g., a specialist appointment) and address, as appropriate, provision of interim accommodations pending resolution .
4. If the grievance is a request for an accommodation, the response must articulate whether the County is granting the requested accommodation, providing an alternative accommodation, or is declining to provide any accommodation. If the County is not providing the requested accommodation, the response must explain the reasoning for the decision. If the County is providing an accommodation (either the requested accommodation or an alternative), the County must document that it has provided the granted accommodation.
5. The County shall ensure that, in responding to an ADA-related grievance, the ADA Compliance Unit receives input from all sources, including OCS and CHS staff, as necessary to respond to the grievance. Input from CHS staff may be required in circumstances where the grievance raises a question regarding whether the grievant has a disability or whether an accommodation requested by the grievant is reasonable. CHS staff may provide input based on a records review and/or in-person evaluation conducted for purpose of responding to the grievance, as circumstances warrant.
6. When necessary, the ADA Compliance Unit shall interview people in custody regarding their requests for accommodations to gather information about or to clarify the nature of the request for accommodation.
7. All grievance responses shall include an explanation of the process for appealing the grievance response.
8. The County shall ensure that it effectively communicates all grievance and appeal responses to the grievant/appellant.
9. When a person files a grievance or appeal of a grievance response, the County shall provide a copy of the grievance or appeal to the grievant.

- E. The County shall ensure that incarcerated persons do not face any retaliation for requesting accommodations or submitting grievances.

### **XIII. ALARMS/EMERGENCIES/ANNOUNCEMENTS**

- A. The County shall accommodate people with disabilities with respect to alarms and emergencies.
- B. Relevant policies related to accommodations for alarms and emergencies shall be communicated to persons with disabilities using Effective Communication.
- C. The County shall communicate effectively and appropriately with persons who have disabilities that may present barriers to communication during emergencies or alarms.
- D. In order to facilitate appropriate accommodations during alarms or emergencies, the County shall offer, but shall not require, people who have disabilities to wear visible markers to identify their disability needs (e.g., identification vests). The County shall also maintain a list, posted in such a way to be readily available to Jail staff in each unit, of persons with disabilities that may require accommodations during an alarm or emergency.
- E. The County shall ensure that people who are deaf or hard of hearing receive effective communication during alarms and emergency announcements. Staff will prioritize these persons during alarms, emergency announcements and any evacuation.
- F. Staff shall ensure that they effectively communicate all verbal announcements to persons with disabilities that affect communication. For example, staff may need to communicate verbal announcements in writing or electronic means (e.g., pager) to deaf incarcerated people.
- G. Staff shall ensure that they effectively communicate all written notices to persons with disabilities that affect communication. For example, staff may need to read a written notice to blind or low vision incarcerated people or provide such notices in large print.

### **XIV. SEARCHES, RESTRAINTS, AND COUNTS**

- A. The County shall ensure that incarcerated people with disabilities, including those with prosthetic limbs, receive reasonable accommodations with respect to the following:
  - 1. All searches, including pat searches and searches without clothing;
  - 2. Application of restraint equipment; and
  - 3. During counts.

- B. Incarcerated persons with disabilities who cannot be restrained, searched, or counted using the standard methods/processes, including but not limited to persons with certain mobility or upper extremity disabilities, using HCA/AD/DME, using prosthetic limbs, and in need of Effective Communication accommodations, must be provided reasonable accommodations.

## **XV. TRANSPORTATION**

- A. The County shall provide reasonable accommodations for persons with disabilities when they are in transit, including during transport to court, between Jail facilities, or to outside health care services.
- B. Prescribed HCA/AD/DME, including canes, for persons with disabilities shall be available to the person at all times during the transport process.
- C. The County shall use accessible vehicles to transport persons whose disabilities necessitate special transportation, including by maintaining a sufficient number of accessible vehicles. For scheduled transportation (e.g., court appearances and non-emergency outside medical appointments), the County shall schedule the accessible transportation in advance. The County shall ensure that, to the greatest extent practicable, persons who require accessible transportation are not required to wait longer for transportation than people who do not require accessible transportation. The County shall ensure that transportation staff do not ask persons who require accessible transportation to accept inaccessible transportation.
- D. Persons with mobility impairments shall, when necessary, be provided staff assistance getting on and off transport vehicles.

## **XVI. ADA TRAINING, ACCOUNTABILITY, AND QUALITY ASSURANCE**

- A. The County shall ensure all custody, health care, and other Jail staff receive annual ADA training appropriate to their position.
  - 1. The County shall provide to all staff appropriate training on disability awareness, including the use and purpose of accommodations and modifications in accordance with the ADA and other federal and state disability law.
  - 2. The County shall provide to all staff appropriate training on Trauma-Informed Care, which will be included in the ADA training and Crisis Intervention training (CIT).
  - 3. The ADA training shall include: formalized lesson plans and in-classroom or real-time virtual training for staff (including managers, supervisors, and rank-and-file staff) provided by certified or

otherwise qualified ADA trainers. Self-directed study may be paired with real-time ADA training.

4. CHS and OCSD staff shall receive periodic training on the range of potential accommodation and adaptive support needs of people with Intellectual/Developmental Disabilities.
- B. ADA instructors shall have appropriate ADA training and subject matter expertise necessary to effectively provide ADA training to staff.
  - C. The County shall, in consultation with Counsel and the joint expert, develop and implement written policies and procedures regarding monitoring, investigating, and tracking staff violations (or allegations of violations) of ADA requirements and Jail ADA policies.
  - D. The County shall develop an ADA accountability plan intended to timely log and investigate allegations, from any source, that staff have violated the ADA or Jail ADA-related policies and procedures. OCSD staff who OCSD finds have violated the ADA or Jail ADA-related policies and procedures shall be subject to OCSD's progressive discipline policy. CHS staff who the Health Care Agency finds to have violated the ADA or Jail ADA-related policies and procedures shall be subject to the Health Care Agency's discipline policy.

**TOPIC 2: ELIMINATION OF HARMFUL RESTRICTIVE HOUSING AND DISCIPLINARY PRACTICES**

**I. SYSTEMWIDE INCREASE OF MINIMUM OUT-OF-CELL TIME**

- A. It is the intent of OCSD and CHS to provide as much out-of-cell time and programming to the incarcerated population as possible, consistent with security, classification, and operational needs.
- B. Absent exigent circumstances or exigent security concerns that are documented, the County shall offer each person in custody who is not housed in the Special Management Unit a minimum of twenty-four (24) hours out of their cell each week, as follows:
  - 1. At least (3) hours per day in a dayroom or other common area, for a total of at least twenty-one (21) hours per week.
    - a. OCSD will offer additional dayroom time beyond three (3) hours per day as scheduling and classification needs allow. To do so, OCSD will ensure that dayrooms in celled housing units will be available and occupied for use by incarcerated people from 0600 through 2300 hours daily, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (*e.g.*, counts, searches). Once every incarcerated person in a celled housing unit has been offered use of the dayroom and, if they choose, used the dayroom for three hours in a day, OCSD shall offer another opportunity to use the dayroom to incarcerated people who already used the dayroom or were already offered but declined the opportunity to use the dayroom. OCSD shall make efforts to rotate these opportunities for additional dayroom among the incarcerated people in a housing unit or sector so that everyone in the unit or sector can have approximately equal additional dayroom time. If everyone in the unit or sector has had an opportunity for dayroom time and everyone refuses any subsequent offer of additional dayroom time, dayroom will be closed for two hours. Incarcerated persons will then be offered dayroom on a recurring two hour cycle for the remainder of the day. If a pattern develops that an incarcerated person is refusing an offer of dayroom time in an apparent attempt to obtain a specific dayroom time, the incarcerated person will be informed that the specific dayroom time will not be offered, and will be given the opportunity to accept the offered time.

Exhibit B: Remedial Plan (DRC, County of Orange)

- b. When people are provided dayroom time, OCSD staff will ensure they have ready access to toilet facilities. This may be accomplished by staff opening their cell door promptly upon request (and allow them to return to dayroom after using the toilet/sink), or other appropriate procedure.
  - c. OCSD shall document if there are exigent circumstances, if a person is at court, or if the person is at an off-site medical appointment, so as to preclude the provision of minimum dayroom time on a given day.
  - d. Scheduled programming in the dayroom may be included in the three hours per day of dayroom time.
2. At least three (3) hours per week outdoors for exercise and/or recreation.
- a. OCSD will offer additional outdoor exercise and/or recreation time beyond three (3) hours per week as scheduling and classification needs allow. To do so, OCSD will ensure that all outdoor recreation areas are in use by incarcerated people from 0600 through 2300 hours daily, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (*e.g.*, counts, searches). For the outdoor space adjacent to the Theo Lacy Barracks (the “Green Sector”), where artificial lighting is unavailable, OCSD will ensure that the Green Sector is in use by incarcerated people during daylight hours, except in cases of emergency and as necessary for particular events related to the safety and security of the institution (*e.g.*, counts, searches). Once every incarcerated person has been offered use of the outdoor recreation area and, if they choose, used the outdoor recreation area for three hours per week, OCSD shall offer additional opportunities to use the outdoor recreation area to incarcerated people who already used the outdoor recreation area or were already offered the opportunity to use the outdoor recreation area. OCSD shall make efforts to rotate these opportunities for additional outdoor recreation among the incarcerated people so that everyone can have approximately equal additional outdoor recreation time. If everyone in the unit or sector has had an opportunity for outdoor recreation time and everyone refuses any subsequent offer of additional outdoor recreation time, outdoor recreation will be closed for two hours. Incarcerated

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

- b. OCSD shall document if exigent circumstances or inclement weather affecting the safety of the outdoor recreation area preclude the provision of the minimum outdoor time in a given week.
3. OCSD will offer additional programming, including through electronic tablets, that will be available for use when people are confined to their cells, among other times. OCSD expects that the electronic tablet program will be rolled out by the first quarter of 2023, and that tablets will be provided. OCSD will take affirmative steps to ensure that electronic tablet programming is accessible to people with disabilities (*e.g.*, vision).
- C. Consistent with safety and security needs, the County shall take steps to maximize opportunities for people in celled housing units to interact with others during out-of-cell time.
  - D. The County will make best efforts to accommodate individual needs regarding the time of day for out-of-cell time (*e.g.*, for people with disabilities impacting fatigue, on sleep medications, *etc.*).
  - E. The County will make best efforts to ensure that all people are offered some opportunities for out-of-cell time during normal daylight hours each week.
  - F. The County shall utilize an effective electronic system for documenting and tracking the amount of out-of-cell time that each person in custody is offered and receives with respect to each of the above categories.
  - G. The County shall conduct electronic audits at least weekly to ensure that OCSD is offering the required out-of-cell time consistent with the provisions set forth herein. Supervisory staff will regularly review this data for quality assurance and take steps to address any deficiencies.

- H. OCSD, in coordination with CHS, may place temporary restrictions on dayroom and outdoor recreation access, such as for issues related to infectious disease control.
- I. OCSD may place temporary restrictions on dayroom and outdoor recreation access for the count, the escort of CHS or other non-custodial personnel, and for any lockdown of a facility/housing unit for security reasons.
- J. In cases where a person refuses out-of-cell time repeatedly (*e.g.*, more than 3 times in one week) and the reason for such refusals may be related to their mental health, medical, or disability status, Jail staff will make a referral to CHS (urgent or higher) for assessment and appropriate clinical follow-up.

**II. CLOSURE OF DISCIPLINARY ISOLATION (DI) CELLS AND CENTRAL MEN’S SHELTERED LIVING CELLS TO END HOUSING OF PEOPLE IN AREAS OF EXTREME SENSORY DEPRIVATION AND LACK OF PROGRAMMING SPACE**

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

**III. CREATION OF SPECIAL MANAGEMENT UNIT (SMU) STATUS**

- A. With the deactivation of the Disciplinary Isolation cells, OCSD shall revise its Disciplinary system to instead utilize a Special Management Unit (SMU). The SMU will be in designated general modular housing unit(s) and serve as housing for people on a temporary housing status for prescribed periods of time, due to a disciplinary violation. SMU will be utilized for only egregious and violent rule violations.

Exhibit B: Remedial Plan (DRC, County of Orange)

- B. OCSD and CHS will implement new procedures to limit the number and length of placements in the SMU, including as set forth below.
- C. OCSD shall utilize a disciplinary matrix of penalties that will include alternatives to SMU disciplinary housing status. The matrix shall set forth maximum penalties for each disciplinary violation. SMU disciplinary housing status shall be reserved for offenses involving violence, escape, possession of drugs or weapons, or posing a serious threat to the facility's safety and security or by encouraging others to engage in such misconduct.
- D. No SMU disciplinary term for a rule violation will exceed 30 days. Disciplinary SMU placements for violations that arise out of the same episode shall be served concurrently.
- E. CHS will be notified prior to the placement of any person in the SMU. A medical evaluation will be conducted within 72 hours prior to a person's placement in the SMU. A mental health evaluation will be conducted within 24 hours prior to a person's placement in the SMU.
- F. No person will be placed in the SMU prior to a disciplinary hearing, except in rare cases in which there is a current threat to safety and security of the facility that requires immediate SMU placement.
  - 1. Such placement may occur only with approval of the Watch Commander. CHS will conduct a medical and mental health evaluation within eight hours of the placement.
  - 2. Placement in the SMU pending a disciplinary hearing will not include the loss of any regular privileges.
- G. Upon placement in the SMU, OCSD will provide each individual, in writing and with effective communication accommodations as needed, notice as to the conditions, privileges, expectations, and incentive-based system that applies in the SMU. OCSD staff shall document that this information is communicated effectively to individuals with disabilities affecting communication.
- H. Conditions and Incentive-Based System in the SMU
  - 1. A person placed in the SMU will be offered a minimum of two (2) hours per day of out-of-cell time, with opportunities for interaction with others (*e.g.*, shared dayroom time) consistent with safety and security needs.

Exhibit B: Remedial Plan (DRC, County of Orange)

2. When a person is placed in the SMU, certain privileges may initially be suspended, as determined at the disciplinary hearing.
3. OCSD will develop an incentive-based system to facilitate reinstatement of privileges based on compliance with Jail regulations. The incentive-based system will include consideration – at the Weekly Review (discussed below) – of early discharge from the SMU and/or reinstatement of privileges based on positive behavior, including:
  - a. Outdoor recreation
  - b. Dayroom time beyond the required two (2) hours per day
  - c. Public visiting
  - d. Access to commissary items
  - e. Access to newspapers, magazines and more than one book (the one book will be in addition to any religious materials, with a process for book exchange promptly upon request)
  - f. Access to personal telephone calls
  - g. Electronic tablets
  - h. Cards or games
  - i. Return of personal property items
4. OCSD will develop clear rules that are effectively communicated to incarcerated persons held in the SMU that explain under what circumstances a person can achieve early release from the SMU and/or reinstatement of privileges.
5. Any person placed in the SMU will not be denied exercise of religion. OCSD will ensure that people in the SMU may participate in religious programming, absent a specific security concern that is documented.
6. Access to showers will not be restricted in the SMU. Additional showers will be provided upon reasonable request and in cases where personal hygiene and sanitation warrant, including where necessary to accommodate people with disabilities (e.g., extra showers for individuals with incontinence). OCSD will ensure

adequate documentation as to the provision of showers to each person in the SMU.

7. Any person placed in the SMU will have normal personal mail/correspondence privileges except in cases where the person has been found to have violated correspondence regulations, in which case correspondence may be suspended for no longer than seventy-two (72) hours without the review and approval of the Administrative Captain.
8. Any person placed in the SMU will have access to the telephone on request to contact an attorney, the courts, or for personal emergencies.
9. Access to legal counsel shall not be restricted as a disciplinary measure.
10. Any person in the SMU will always be permitted one book from the Orange County Jail Library, which can be exchanged for another book promptly upon request.

I. Regular Classification Review Process in SMU

1. For each person held in the SMU, custody staff will conduct a review at least every seven (7) days (the “Weekly Review”), regardless of any assessed SMU term imposed, to evaluate the person’s current circumstances and determine whether the person should be removed from the SMU and/or have some or all privileges reinstated.
2. The Weekly Review will include a face-to-face interview in a private, out-of-cell setting, consistent with individual security needs, to discuss progress and compliance with the SMU-detained person’s individual case plan.
3. As part of the Weekly Review, custody staff shall confer with mental health and medical staff about whether the SMU setting and/or denial of privileges/property is causing harm or risk of harm to the individual’s well-being and if so, the appropriate steps to address the issue (including removal from SMU or reinstatement of privileges/property (in particular, phone contact/visits with family/loved ones or access to reading/writing/art materials) pursuant to the incentive-based system). Mental health and medical staff input should be documented.

4. Completion of the Weekly Review process will be overseen by the Watch Commander or other Commander-level-or-higher staff.
5. Absent extraordinary circumstances that include a person's persistent failure to comply with facility regulations in a manner that poses a specific threat to safety and security, no SMU placement will exceed thirty (30) days.
6. If a person is held in the SMU for 28 days, the Administrative Captain will conduct a review (the "28-Day Review"), which shall include a face-to-face interview with the person in a private out-of-cell setting (consistent with individual security needs), consultation with mental health and medical staff, and consultation with custody staff in the housing unit.
7. If a person is retained in the SMU following completion of a Weekly Review or 28-Day Review, OCSD will document and provide the person with written notice explaining (a) the reasons for retention in the SMU, and (b) clear expectations for how the person may earn reinstatement of privileges and progress to a less restrictive setting. This information will be effectively communicated to the individual consistent with any applicable communication- and/or disability accommodation-related needs.
8. Appropriate SMU Review form(s) will be implemented consistent with the provisions set forth herein.

J. Hygiene Items and Writing Supplies

1. OCSD will ensure that persons placed in the SMU receive a welfare pack containing appropriate personal hygiene items and writing supplies.
2. Staff will provide replacement items for all allowable hygiene items and writing supplies promptly upon request, except in cases where the individual is using a particular item improperly.
3. OCSD will ensure complete and adequate documentation of initial and replacement provision of welfare pack items, including all requests and any refusals.
4. Any person placed on SMU restrictions will be provided reasonable access (including promptly upon request) to nail clippers, with appropriate restrictions and supervision based on individualized safety concerns.

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

documented, and the personal property will be held in a secure location until returned.

2. Return of personal property should be considered during the period of discipline as part of the incentive-based system.
3. OCSD will return all personal property that was taken during the SMU disciplinary period promptly following the end of the SMU disciplinary period (i.e., within 24 hours). OCSD will document the return of property.

**IV. PROHIBITION ON DISCIPLINE FOR BEHAVIORS THAT ARE RELATED TO MENTAL HEALTH OR OTHER DISABILITY, PROHIBITION ON SANCTIONS THAT POSE RISK OF SERIOUS HARM**

- A. OCSD and CHS policies and procedures shall require meaningful consideration of the relationship of each person's behavior to any mental health disability or Intellectual/Developmental Disability, the efficacy of disciplinary measures versus alternative interventions, and the impact of disciplinary measures on the health and well-being of incarcerated people with disabilities.
- B. People alleged to have committed a rules violation shall be reviewed by a qualified mental health professional if any of the following apply:
  1. The person is housed in, or is currently referred for placement in, any designated Mental Health Unit.
  2. The Disciplinary Hearing Officer or other jail staff have reason to believe the person's behavior was unusual, uncharacteristic, or a possible manifestation of mental illness, including where referral for CHS evaluation is warranted.
  3. The person is on the mental health caseload and may be subject to (a) Special Management Unit (SMU) placement, or (b) loss of good time/work time credit as a consequence of the disciplinary violation as charged.
  4. If any of the above criteria is met, a mental health clinical staff member who is *not* the treatment provider for the patient shall complete a Rules Violation Mental Health Review form, indicating:
    - a. Whether or not the reported behavior was related to mental illness, adaptive functioning deficits, or other disability.

- b. Whether the person's behavior is, or may be, connected to any of the following circumstances:
    - i. An acute or otherwise significant psychiatric episode
    - ii. An act of self-harm or attempted suicide
    - iii. A cell extraction related to provision of medical/mental health treatment
    - iv. Placement in clinical restraints or seclusion.
  - c. Any other mitigating factors regarding the person's behavior, disability, and/or circumstances that should be considered.
  - d. Whether particular disciplinary sanctions should be avoided in light of the person's mental health disability or intellectual disability, treatment plan, or adaptive support needs (*e.g.*, the potential adverse mental health impact of denial of phone contact/visits with family members).
  - e. CHS staff will consider issues of brain development and psychosocial development for young adults (generally, anyone 24 years old or younger) as part of this evaluation, including as they relate to the appropriateness of discipline for the behavior and the potential adverse impacts of particular disciplinary sanctions.
- C. Consideration of Mental Health Input and Other Disability Information in Disciplinary Process
- 1. The Disciplinary Hearing Officer shall ensure that incarcerated people are not disciplined for conduct that is related to their mental health disability or Intellectual/Developmental Disability.
  - 2. The Disciplinary Hearing Officer shall consider the mental health clinician's findings and any other available disability information when deciding what, if any, disciplinary action should be imposed.
  - 3. The Disciplinary Hearing Officer shall consider the qualified mental health professional's input on minimizing the deleterious effect of disciplinary measures on the person in view of their Serious Mental Illness, any other relevant disability, or adaptive support needs.

4. OCSD shall not subject any person to discipline for refusing treatment or medications, or for engaging in self-injurious behavior or threats of self-injurious behavior.

D. Disability-Related Accommodations During the Disciplinary Process

1. OCSD and CHS shall provide reasonable accommodations (e.g., staff assistant) during the hearing process for people with mental health or intellectual disabilities.
2. OCSD and CHS shall take reasonable steps to ensure the provision of effective communication and necessary assistance to people with disabilities at all stages of the disciplinary process.
3. The Disciplinary Hearing Officer will check the ADA Tracking System and ensure provision of reasonable accommodations and effective communication during the disciplinary process.

E. Supervision and Oversight of Disciplinary Processes

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

**TOPIC 3: RIGHTS AND TREATMENT OF PEOPLE WHO IDENTIFY AS LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER OR INTERSEX (LGBTQI)**

**I. LGBTQI NONDISCRIMINATION POLICY, STAFF ACCOUNTABILITY**

- A. OCSD Policy 375 (Transgender Policy) prohibits staff from discriminating against incarcerated individuals on the basis of gender, including one’s gender identity, gender expression, and sexual orientation. The County requires that staff “shall treat transgender persons in a manner that shows respect for the individual’s gender identity and gender expression, which includes addressing them by their preferred name and using gender pronouns appropriate to the individual's gender self-identity and expression.”
- B. The County shall develop and implement procedures to ensure accountability for its LGBTQI non-discrimination policy.
1. The County shall develop a procedure to track complaints involving LGBTQI-involved discrimination, including as to housing placement, property, privileges, or health/mental health care. Such tracking will be used for continuous quality improvement purposes.
  2. The County shall develop an accountability plan intended to timely log and investigate allegations, from any source, that staff have violated the LGBTQI non-discrimination policies and procedures. Any staff member who the County finds to have violated such policies and procedures shall be subject to the relevant progressive discipline policy.
  3. The County shall ensure that any staff, contractors, agents, and incarcerated individuals may submit complaints regarding any failures to comply with LGBTQI non-discrimination policies and procedures or components stated herein.
  4. The County shall track and analyze for quality improvement purposes the final dispositions of LGBTQI-related complaints, including staff accountability/discipline outcomes.
- C. The County shall develop and implement procedures to protect against staff and contractors disclosing an individual’s LGBTQI identity. The County shall limit disclosures to specific, limited circumstances, as for purposes of the individual’s safety, such as transporting someone.

- D. Staff shall use (1) an individual’s pronoun (including the third-person singular, they/them) appropriately and/or (2) the individual’s preferred name or last name.
- E. The County shall permit individuals (including people awaiting trial) to update their Jail ID names if they have obtained a legal name change and (in cases where there are pending charges) the criminal court has recognized the name change. The County shall permit individuals to seek legal name changes and to take appropriate steps to update legal documents. During the period of monitoring of remedial plan implementation, the County will notify DRC of any incarcerated person who obtains a legal name change.
- F. The County shall permit transgender and intersex individuals (whether sentenced or unsentenced) to update the photo on their jail ID. The County shall permit transgender individuals to update their photos on their ID to minimize the negative impacts of how such photos can “out” them (*e.g.*, if their ID photo and their current gender expression are dissimilar) or cause psychological distress.
- G. A person’s self-identification as LGBTQI at any point is sufficient to trigger the protections and procedures specific to LGBTQI individuals, as set forth herein. Documentation of a medical diagnosis or legal documentation of an individual’s identity, including their gender marker or legal sex, is not required for staff to respect or confirm an individual’s gender identity, except in cases where there is specific evidence that a person has falsely asserted a gender identity.
  - 1. The fact that a person has not completed a legal name change or has not obtained a government-issued identification that reflects their affirmed sex, gender identity, or name shall not constitute evidence to justify staff not respecting the individual’s gender identity.
  - 2. The absence of completed County’s Voluntary Gender Identity Disclosure and Search Preference Form shall not constitute evidence to justify staff not respecting the individual’s known gender identity.

## **II. TRANSGENDER AND INTERSEX INTAKE & CLASSIFICATION PROCEDURES**

- A. During intake and classification, Jail staff shall:
  - 1. Offer each transgender or intersex individual the option to complete the OCSD Voluntary Gender Identity Disclosure and Search

Preference Form, and continue to maintain documentation of an individual's gender identity, pronoun, honorific, and search preference.

2. Explain that the individual will not be punished if they choose not to provide such information.
3. Explain that staff, contractors, and volunteers shall use a person's stated pronoun and honorific, and that the failure to do so may be grieved and reported.
4. Effectively communicate how gender identity impacts classification and housing placement determinations.
5. Ask for information about the individual's preferred housing placement (*e.g.*, male-/female-designated unit, general population/protective custody).
6. Ensure that the above inquiries and information are communicated in a private setting.

B. The County shall revise the Voluntary Gender Identity Disclosure and Search Preference Form to specify the following:

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

### **III. LEAST RESTRICTIVE SETTING APPROPRIATE FOR LGBTQI POPULATION**

- A. The County recognizes that LGBTQI individuals and people whose appearance or manner does not conform to traditional gender expectations should not be placed in more restrictive custodial settings based solely on such identification or status, or because they receive gender dysphoria treatment.
- B. The County shall not house LGBTQI individuals in more restrictive housing than otherwise indicated because of their actual or perceived sexual

orientation, gender expression, gender identity, or intersex status. The County shall house LGBTQI people in the least restrictive housing allowed by their classification and security designation.

- C. The County will establish a voluntaryGBTQI Program Sector unit once the use of the housing unit is no longer necessary for social distancing, isolation or quarantine of incarcerated persons due to COVID-19. The unit will provide expanded out-of-cell time (*i.e.*, doors open during daytime hours), access to jobs in the sector, and enhanced programming activities. Attached as **Appendix 1** is the County’s plannedGBTQ+ Program Sector Pilot overview and programming schedule.
  - 1. Once theGBTQI Program Sector unit has been fully operational for 90 days, the County will provide a status report on the program. The Parties will then discuss whether the County will terminate the program or whether there are any appropriate program modifications, including efforts towards adequate inclusion of transgender individuals consistent with safety and other applicable considerations.
- D. The County shall continue its efforts to ensure that lesbian and transgender/intersex individuals housed in the Jail’s women-designated housing units are placed in the least restrictive setting with programming access, as appropriate to their individual circumstances.
- E. The County shall not place LGBTQI individuals in LGBTQI-specific housing without the individual’s consent to such housing.

#### **IV. LGBTQI HOUSING/CLASSIFICATION REVIEW PROCEDURES**

- A. The County shall house LGBTQI individuals in LGBTQI-designated housing only if an individual requests such housing. If an individual requests such housing, the County may deny such a request if the individual would present specific, articulable threats to the security or safety of other individuals in such a placement.
  - 1. The County shall conduct individual housing/classification assessments for each transgender and intersex individual. The County shall give “serious consideration” to each individual’s views of their own safety regarding the prospective housing placement (*i.e.*, male vs. female housing for transgender and intersex individuals; LGBTQI-specific housing vs. non-LGBTQI housing) and classification (*i.e.*, general population vs. protective custody).

2. Denial of a transgender or intersex individual's stated preference is permissible only where there is a determination that the individual's stated preference presents specific and articulable management or security concerns and that the County's alternative placement ensures the individual's health and safety."
  3. The County shall document decisions described in subsection (2), above, and the Classification Sergeant will review and approve of the decision.
  4. The County shall not consider an individual's status of transition, or inquire into the individual's genitalia when determining housing placement.
  5. The County shall document all denials of a transgender or intersex individual's stated preference for housing including classification staff's and supervisor's rationale for the decision. Such denials shall be reviewed periodically for continuous quality improvement purposes.
  6. If the County denies a transgender or intersex individual's preferred housing placement, the County shall inform the incarcerated individual of the right to file a grievance about the decision.
  7. The County shall prohibit retaliation against LGBTQI individuals who grieve or appeal housing placement or classification decisions.
- B. The County shall re-evaluate classification, placement, and programming assignments of each transgender or intersex individual at least twice a year, including as part of any regular classification reviews.
1. At each review, the County shall inquire as to the transgender or intersex individual's current preferences and shall re-assess the individual's classification, placement, and programming assignments, consistent with the process in Section IV.A, above.
- C. If an individual self-identifies as LGBTQI at any time after intake and states a preference to be assigned to a different housing placement, the County shall conduct a classification review and evaluate the individual's housing preference within 24 hours of receipt of a classification review form.
- D. If an individual requests housing reassignment based on LGBTQI status, the County shall develop and implement a safety plan for that individual pending review and any reassignment. The interim placement shall not be

Special Management Unit, “Total Sep,” or other restrictive housing or classification, unless the individual requests such a placement for their own safety, or unless serious, specific, and articulable security or management concerns require such placement.

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

**V. LGBTQI ACCESS TO PROGRAMS, SERVICES, AND ACTIVITIES**

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

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

- B. The County shall offer regular in-custody programs and support groups specifically serving the needs of LGBTQI individuals (*e.g.*, APAIT).
  - 1. The County shall make such LGBTQI-specific programming available to all LGBTQI individuals (*i.e.*, pretrial, pre-sentenced, and sentenced; general population and restrictive custody, etc.) consistent with individualized safety and security assessments.
  - 2. The County shall identify and collaborate with LGBTQI community groups to deliver programming in the Jail facilities.
- C. The County, with input from DRC, shall identify and procure LGBTQI community resource information and disseminate such information to incarcerated LGBTQI individuals.
- D. The County shall identify, procure, and make accessible LGBTQI reading materials to LGBTQI individuals.
- E. Showers
  - 1. Transgender and intersex individuals shall be given an opportunity to shower separately from others – *i.e.*, at a separate time and/or with appropriate physical separation.
  - 2. Transgender and intersex individuals shall be permitted to use showers with privacy screens.
- F. Commissary
  - 1. The County shall, in consultation with DRC, facilitate transgender and intersex individuals to access gender-affirming commissary items, hygiene products, and beauty products.
  - 2. The County shall provide transgender and intersex individuals additional allowances of personal hygiene products (*i.e.*, razors) to alleviate the negative mental health impact of body hair for some individuals, consistent with jail safety and security.
- G. Clothing
  - 1. The County shall provide gender-affirming clothing, including, but not limited to:
    - a. Undergarments, including bras, underwear, and boxer shorts depending on the individual's stated preference;

- b. Footwear in all sizes;
  - c. Binders and chest compression garments, and other types of compression garments;
  - d. Religious items in accordance with their gender; and
  - e. Make-up, hair products, hair removal tools, and other gender affirming hygiene products.
2. The County shall apply grooming standards based on an individual's gender identity. For example, if the County permits non-transgender women to wear their hair at a certain ponytail length, transgender women shall be allowed to wear their hair similarly.

H. Visitation

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

**VI. SEARCHES**

A. Policy

1. For incarcerated persons who are transgender or intersex, or whose appearance or manner does not conform to traditional gender expectations, the County shall allow the individual to identify the preferred gender of Jail staff who will perform pat and strip searches of them, including through the use of the Voluntary Gender Identity Disclosure and Search Preference Form.
  - a. The County shall conduct searches in accordance with the individual's search preference, except in exigent circumstances (*i.e.*, "temporary and unforeseen circumstances that require immediate action in order to address a threat to safety or institutional security") or when performed by medical practitioners in a hospital setting.
  - b. If an individual's search preference cannot be determined, the search shall be conducted in a manner consistent with their gender identity or expression.

- c. Temporary staffing issues (e.g., not enough staff on the unit of a specific gender) shall not meet the criteria for “exigent circumstances.”
2. The County shall ensure that strip searches of transgender and intersex individuals occur with enhanced and appropriate privacy (e.g., outside the view of others not participating in the search).
3. The County shall not conduct genital inspections (visual or pat) to determine a transgender or intersex person’s anatomy, to otherwise harass or embarrass the individual, or for any other improper purpose.
4. The County shall not conduct searches to punish or retaliate against incarcerated people, including people who identify as LGBTQI.

## **VII. MEDICAL AND MENTAL HEALTH CARE**

- A. The County’s standards of care for transgender and gender-variant individuals shall reflect community-based standards of care, including relevant UCSF guidelines and World Professional Association for Transgender Health (WPATH) Standards of Care.
- B. The County’s standards of care and practice shall ensure that documentation or evidence of prior gender-affirming care is *not* a prerequisite to receiving gender-affirming care while in Jail custody.
- C. The County shall ensure that medical and mental health staff have specific knowledge of and training on gender dysphoria, and the treatment thereof, including as to the WPATH Standards of Care.
- D. The County shall ensure that a qualified medical professional and a qualified mental health professional coordinate to evaluate, diagnose, and treat patients for gender dysphoria.
- E. The County shall give transgender and intersex patients uninterrupted access to clinically indicated hormone therapy based upon an individualized assessment of the patient’s medical needs in accordance with community-based standards of care.
  1. If a patient arrives at the jail on hormone therapy, the patient shall be supplied with a prescription for hormones as a bridge, and shall be scheduled for an assessment for continued gender dysphoria care as soon as possible. Hormone therapy shall not be interrupted absent a clinical evaluation and individualized assessment of need.

2. The County shall accept an individual's self-attestation concerning historical hormone use. Self-attestation permits individuals to access hormone therapy immediately until an assessment for gender dysphoria is completed.
- F. Sex reassignment surgery should be considered on a case-by-case basis and provided when determined to be medically necessary for a patient.
- G. The County shall prohibit psychotherapy such as "reparative" or "conversion" therapy or attempts to alter gender identity.

### **VIII. LGBTQI TRAINING FOR STAFF**

- A. The County shall provide at least biennial live/real-time training to staff and contractors, including anyone who has contact with LGBTQI individuals in custody, on LGBTQI policy, procedures, and legal requirements, including as to the following topics and as appropriate to their position:
1. The County's non-discrimination policy;
  2. The County's complaint and grievance process for reporting alleged incidents of abuse and harassment;
  3. The Prison Rape Elimination Act;
  4. How to communicate with LGBTQI individuals professionally, effectively, and consistent with this Agreement;
  5. The impact of discrimination against LGBTQI incarcerated people;
  6. Classification, housing, programming, education, work opportunities, and integration of LGBTQI individuals in the jails;
  7. Basic information about gender identity, sexual orientation, gender expression, and privacy rights.
- B. Training, including refresher training as appropriate to their position, will be provided to all staff at least biennially. The County shall maintain records of training history.
- C. The County shall provide DRC draft LGBTQI training materials (including any updates or revisions) and shall meaningfully consider any DRC input on the content and method of delivery of the training. DRC agrees to

Exhibit B: Remedial Plan (DRC, County of Orange)

complete a prompt review (*e.g.*, within 30 days) of draft training materials to accommodate the County's training and operational needs.

# GBTQ+ Program Module J

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>8:00 AM - 10:00 AM</b>		<b>Individual Case Management</b>	<b>Pride Process Group</b>	<b>Reentry Planning</b>	<b>Substance Abuse Group</b>	<b>Bibliotherapy</b>	
		One-on-one case management to assist inmates with discharge planning, provide resources, and facilitate access to post-custody treatment program.	A space allowing LGBTQIA+ identifying inmates to explore issues surrounding themselves and current events.	Individual discharge planning to support inmate reintegration to the community.	Group therapy to promoting recovery from drug and alcohol addiction.	A therapeutic approach that will support program curricula. Books selected will contain LGBTQIA+ theme.	
<b>1:00 PM - 3:00 PM</b>		<b>APAIT</b>	<b>Employment Readiness</b>	<b>Health &amp; Wellness</b>	<b>Healthy Relationships/ Communication</b>	<b>Self-Care</b>	
			Prepare inmate to enter the workforce upon release from custody. Identify barriers to employment, provide resources to education and training programs, and setting realistic career goals.	Increase awareness on health issues affecting the LGBTQ+ community.	Address issues related to domestic violence, anger management, and developing effective communication skills.	Improve physical and mental health. Enhance self-esteem and promote mindfulness.	
<b>5:30 PM - 8:00 PM</b>			<b>Attitudes for Success (College)</b>	<b>Money Matters (College)</b>	<b>HiSet/GED (College)</b>		
			Provides students with classroom discussion and information about attitudes and behaviors that influence success in their personal, educational, and career development.	Designed to provide basic financial literacy and information on budgeting.	Provide preparation for HiSet or GED exam.		