U.S. Department of Justice
Civil Rights Division

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Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

March 4, 2014

Honorable Michael B. Giancola
County Executive Officer
Orange County Executive Office
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Sheriff-Coroner Sandra Hutchens
550 N. Flower Street
Santa Ana, CA 92703

Re: Investigation of the Orange County Jail

Dear Mr. Giancola and Sheriff Hutchens:

The Civil Rights Division of the United States Department of Justice ("DOJ") has completed its investigation of conditions in the Orange County Jail ("the Jail").[1] The investigation focused on protection from harm; use of force; unlawful searches; discriminatory treatment based on race, color, or national origin; medical and mental health care; and environmental conditions. Throughout the investigation we have provided you with our observations regarding operational deficiencies. The County has taken extensive remedial measures to address our concerns. Contained in this letter are additional recommendations, which we urge you to implement. Given your record of reform, we expect to be able conclude this investigation without the need for formal findings.

While we observe substantial improvements at the Jail, we must note, however, two important qualifiers to our otherwise positive review of Jail conditions. First, we conclude that specific systemic deficiencies remain related to use of force and medical care. While these deficiencies are more limited in scope than what existed at the beginning of our review, they reflect longstanding systemic issues and pose an ongoing and serious risk of harm to the

[1] We conducted the investigation pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997; the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141 ("Section 14141"); and the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act").

prisoners.[2] We discuss these deficiencies in detail below, together with recommended remedial measures to address them. Second, some improvements at the Jail are not yet fully institutionalized. This is especially true in regards to some of the more difficult issues such as staffing and overcrowding. Should the state's prison re-alignment, Jail budget problems, or other factors of similar scope alter conditions at the Jail, past improvements could easily disappear. Accordingly, we are prepared to conduct a limited assessment within six months to determine whether continued improvements have been made to ameliorate remaining deficiencies. If the County can demonstrate that it has implemented sufficient remedial measures, we expect to formally close this matter.

I. SUMMARY OF FACTUAL CONCLUSIONS

The Jail is a very different facility today than it was when we first notified the County about our investigation. During our initial round of inspections, we reported a number of serious deficiencies during our exit interviews. Our December 2012 letter to the County summarized some of the most problematic issues including – excessive use of force, inadequate mental health care, and unlawful racial segregation. Since we began our investigation, several developments have occurred, including significant leadership changes at the Sheriff's Department and a state-wide prison re-alignment which has shifted a significant number of state prisoners to county jails. Despite such developments, it is apparent from our most recent tour that Jail officials have been working to address many of the worst deficiencies during the pendency of this investigation. Our most recent round of inspections revealed a much improved facility.

Despite the significant improvements, we have identified the following six areas of concern that require further remediation to ensure reasonable safety and access to necessary healthcare, consistent with prisoners' federally-protected rights:

- The continued use of "carotid control holds" poses an unreasonable risk of serious harm to prisoners.
- The Jail lacks adequate weapon controls required to minimize the risk of excessive use of force.
- Staffing and housing configuration issues result in poor supervision of certain general population and special needs units.
- The current intake process does not provide sufficient privacy protection to ensure that initial medical screenings and assessments are accurate and complete.
- Existing medical policies lack clinical guidelines and components required to meet the needs of prisoners with serious chronic disease.
- A limited array of mental health treatment and housing options results in over-reliance on unsafe segregation cells and more restrictive interventions.

To address the risks posed by these deficiencies, we recommend that the Jail take additional steps to avoid violating the Fourteenth Amendment's due process protections for pre-trial detainees, as well as the Eighth Amendment's protections for those convicted of a

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[2] This letter mostly references only the more recent incidents and facts reviewed during our 2013 tour. This letter does note, however, older incidents and facts as context. These related incidents and facts illustrate why we remain concerned about persistent deficiencies.

criminal offense. These Amendments prohibit jail officials from imposing conditions of confinement that pose a substantial risk of serious harm to prisoners. Farmer v. Brennan, 511 U.S. 825, 832-834 (1994). To address such risk, the Constitution obligates officials to take reasonable measures to ensure the safety of prisoners, and to satisfy prisoners' basic needs, including their needs for medical and mental health care. Farmer, 511 U.S. at 832-834; Estelle v. Gamble, 429 U.S. 97, 103-05 (1976); Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1187-1188 (9th Cir. 2002). The Constitution also prohibits the use of excessive force, allowing Jail officials to use force only to the extent reasonably required to maintain discipline and security. See Clement v. Gomez, 298 F.3d 898, 903 (9th Cir. 2002); Bryan v. MacPherson, 630 F.3d 805, 810 (9th Cir. 2010) (applying use of force standard to Tasers). Finally, the Constitution prohibits "invidious discrimination" through racial segregation, and requires strict scrutiny of race-based policies and practices. Johnson v. California, 543 U.S. 499 (2005).[3] While we have not made findings of systemic constitutional violations at this time, a continued failure to correct known, serious deficiencies may demonstrate the type of deliberate indifference prohibited by the Constitution. Farmer, 511 U.S. at 835-845. By issuing this letter, we hope to ensure the correction of any remaining deficiencies, which will serve both to protect prisoners from the risk of harm and as a basis for releasing the County from this investigation's purview.

II. INVESTIGATION

To complete this investigation, we conducted a series of inspections, with the most recent occurring from April 23-26, 2013. To assist with our inspections, we retained expert consultants in the fields of penology, correctional medicine, and correctional mental health. Our consultants inspected Jail facilities, reviewed documents, and interviewed both staff and prisoners. As during previous inspections, we made our consultants available for an exit interview, during which our consultants took questions and provided preliminary recommendations. Since our last tour, we have also examined additional documents and considered the County's written response to issues raised during our most recent inspection.

III. FACTUAL CONCLUSIONS

In providing the factual conclusions and technical assistance recommendations detailed in this letter, we have considered the County's remedial efforts, the persistence of any deficiencies, generally accepted standards, and the risks posed if no additional corrective action is taken. Given the totality of circumstances, we have identified six areas of concern.

A. Use of Force

The County continues to utilize policies and practices that implicate the Constitution's prohibition against the use of excessive force on prisoners. The Eighth Amendment's proscription against "cruel and unusual punishment" protects prisoners from use of excessive

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[3] Although racial segregation was a concern on past tours, the County appears to have changed housing and classification policies sufficiently to address the concern. We therefore do not formally find that the County violated the rights of prisoners in this regard. The County should continue, however, refining and updating its housing and classification policies to ensure that they are fully consistent with federal standards. Johnson v. California, 543 U.S. 499 (2005).

force. Hudson v. McMillian, 503 U.S. 1, 5-7 (1992). Courts may examine a variety of factors in determining whether the force used was excessive, including: (1) the extent of injury suffered by an inmate; (2) the need for the application of force; (3) the relationship between the need for force and the amount of force applied; (4) the threat, if any, reasonably perceived by responsible corrections officers; and (5) any efforts made to temper the severity of a forceful response. Hudson, 503 U.S. at 7-8; see Covington v. Fairman, 123 F. App'x 738, 740 (9th Cir. 2004) (finding that cell extraction teams' beating of prisoner "was out of proportion to the officers' legitimate need to end a nonviolent 'boarding up' incident"); Michenfelder v. Sumner, 860 F.2d 328, 336 (9th Cir. 1988) (noting that "[a] legitimate prison policy of carrying Tasers to enforce discipline and security would not warrant their use when unnecessary or 'for the sole purpose of punishment or the infliction of pain'") (quoting Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984)). The Due Process Clause of the Fourteenth Amendment affords pre-trial detainees at least the same, if not a higher, level of protection from use of force as the Eighth Amendment. See Redman v. County of San Diego, 942 F.2d 1435, 1440-41 ("Due Process clause protects a pretrial detainee from the use of excessive force that amounts to punishment.") (quoting Graham v. Connor, 490 U.S. 386 (1989)). In determining whether a jurisdiction has breached its constitutional duty, the Ninth Circuit examines whether the jurisdiction's officials have displayed "deliberate indifference." See Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting Wilson v. Seiter, 501 U.S. 294, 304 (1991) (internal citations omitted)). Force need not result in a serious injury to be unconstitutional when it is otherwise excessive. See Wilkins v. Gaddy, 559 U.S. 34, 37 (2010); Schwenk v. Hartford, 204 F.3d 1187, 1196 (9th Cir. 2000) (holding "no lasting physical injury is necessary" to establish a constitutional violation).

In regards to our concerns regarding excessive force at the Jail, we wish to expressly acknowledge that the County has significantly improved use of force practices over the course of our review. The County has improved use of force investigations, made important changes to use of force policies, and increased staff supervision to reduce the use of excessive force. Such improvements have made a noticeable impact on actual use of force in the Jail. However, two significant problems remain – 1) policies permit the use of carotid control holds against prisoners who are not posing a significant risk of serious injury or death; and 2) the County has not adopted adequate administrative safeguards on the use of force. As discussed in more detail below, these deficiencies are of continuing concern because of the seriousness of the potential risks and Jail history.

First, at the time of our inspection, Jail policies continued to allow the use of carotid control holds in inappropriate circumstances. In our view, the Jail is permitting a dangerous practice in circumstances where the type of force used is likely to be excessive and not commensurate to the need. See Covington, 123 F. App'x 740; see also Agster v. Maricopa County Sheriff's Office, 144 F. App'x 594, 596 (9th Cir. 2005) (finding detainee's "lack of cooperation was no justification for the application of force which was foreseeably dangerous to his life and in fact was fatal," where officers restrained detainee to the point of positional asphyxia). Carotid control holds result in pressure to the carotid artery, which can result in cardiac arrest and death. The risk of fatal results means that the technique should only be used in limited circumstances, when someone is at imminent risk of serious bodily harm or death. At the time of our tour, the Jail had not restricted carotid hold use to such very limited circumstances.

We discussed this issue with Jail administrators during a joint review of a recent use of force incident. During the incident, multiple staff applied force on a single prisoner who had been exhibiting fairly common disruptive behavior. When staff responded to the disruption, their use of force included application of a carotid hold. The prisoner appeared to go into cardiac arrest as a result, and staff then had to call for medical assistance. The staff used an automated external defibrillator ("AED") on the prisoner. Fortunately, the prisoner recovered consciousness, but the incident illustrates, at minimum, how serious a carotid hold can be.[4] Supervisory staff should also carefully consider whether this level of force was appropriate in light of the circumstances.

Given the other options available to them, staff should rarely, if ever, use carotid holds in a jail setting. Indeed, many jurisdictions entirely prohibit their use. We recommend that at minimum, Jail policies and training should consistently reflect that carotid holds are a step less dangerous than lethal force. The technique should be considered more dangerous than other prisoner control methods.[5]

Second, we also conclude that the County has not fully implemented all of the more general policy changes required to prevent inappropriate use of force. In determining whether a jurisdiction is deliberately indifferent to a practice which poses a serious risk of harm, courts will consider whether the party took steps to prevent the harm. Frost, 152 F.3d at 1128-1129. A supervisor may be held constitutionally liable "for his own culpable action or inaction in the training, supervision, or control of his subordinates" and "his acquiescence in [a] constitutional deprivation." Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir.1998) (internal quotations omitted). While much improved, the Jail's use of force policies and practices still do not include certain important administrative safeguards.[6] This general deficiency exists at two stages - the pre-deployment of force and the post-deployment review. Pre-deployment, the Jail allows staff to access and use an array of devices, including pepper guns and electronic control weapons ("ECWs" commonly referred to as Tasers, a manufacturer of the weapon), without safeguards such as supervisor control over weapons, individualized weapon check-out procedures, and inventory controls.

Post-deployment, the Jail does not ensure that the use of force reviews include certain information that is necessary to determine the severity of force used. For instance, when deputies use ECWs, the number of times they each discharge the ECW is a significant reporting element. While using an ECW may initially be appropriate, repeated applications after a

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[4] There is some question whether the prisoner actually required an AED. The problem with carotid holds is that such higher risk events are an inherent consequence of allowing their use.

[5] After our inspection, Jail officials advised that they have rewritten the policy. We have not received a copy of the new policy and cannot confirm implementation. The status of this matter illustrates why we have adopted the format used for this letter. On the one hand, the County's practice is troubling, and left unaddressed, would reflect deliberate indifference to a serious deficiency. On the other hand, the County has informally committed to correcting the problem, and in the past, has demonstrated good faith in implementing similar policy changes. We cannot find that this deficiency is harmless. However, assuming the County has made changes as we request, we anticipate prompt resolution of this issue.

[6] Our view regarding such safeguards is consistent with the recommendations adopted by other law enforcement agencies. See 2011 Electronic Weapon Control Guidelines (March 2011) (joint project of the Police Executive Research Forum and the DOJ Office of Community Oriented Policing Services).

prisoner has been restrained may not be. So, such data should always be included in use of force reports. Similarly, use of force reviews should regularly incorporate at least a short summary from medical staff regarding their post-incident exam of the prisoner. This type of information is an important check and balance, and protects both deputies and prisoners. The medical summary allows supervisors to gauge the severity of force without relying only on security staff and prisoner reports. It also provides better data for investigators.

In concluding that such safeguards are required for safe operations, we believe it is useful to consider the Jail's history. Before the County implemented a number of improvements to use of force policies, the Jail had an unfortunate reputation for use of excessive force. Earlier in our investigation, we found numerous examples of prisoner harm from use of excessive force. The Jail's internal records documented many of the details, putting administrators on notice of troubling practices. For instance, staff used to regularly discharge ECWs repeatedly on prisoners who were handcuffed or otherwise restrained. Staff fired pepper guns in confined spaces. Staff used force on prisoners with mental illness, when less restrictive and less dangerous alternatives existed. In one particularly serious 2008 example, a communication problem between medical and security staff resulted in the maiming of a prisoner with mental illness. Although both security staff and a medical technician believed the prisoner was no threat to himself or others, other staff apparently directed that they transfer the prisoner to a so-called safety cell. The cell extraction triggered a violent response, and security staff then responded with multiple uses of force. All told, during this one incident, staff used an ECW, pepper gun, and 40 mm bean bag gun. Staff fired multiple rounds from the bean bag gun alone. As a result, the prisoner suffered a serious eye injury. At that point, medical staff directed security staff to return the prisoner to his original cell. Only a handful of the 12 deputies involved submitted incident reports, and one of those was submitted as late as 17 days after the incident. The prisoner ultimately lost his eye.

Use of force policies and practices have certainly improved substantially since that time, especially under the current leadership of the Orange County Sheriff's Department. Yet, we must consider that a series of 2010 incidents similarly involved multiple uses of ECWs and other devices on prisoners with mental illness. In a recent 2012 incident, a prisoner reported that the hospital staff told him he had suffered broken ribs from use of force, but the incident review did not apparently include a hospital record review to determine whether this report was true.[7] More generally, the Jail's general tactical approach when dealing with unruly prisoners still reflects past practices. When a prisoner acts out, multiple deputies respond with multiple weapons in circumstances that can potentially escalate into a wide melee. Training, the quality of deputies, and leadership may still deter abuse in such circumstances. But when it occurs, the Jail will have difficulty ensuring individual staff accountability without better administrative safeguards.

We must also acknowledge the fact that crowding issues remain a persistent concern and exacerbating factor. A number of the largest general population units cannot be easily supervised due to their physical configuration (e.g., linear tiers without cameras in the Central Men's Jail) and staffing limits. Deputies are not able to easily do rounds, and if an emergency occurs, the situation can escalate to a larger scale disturbance. Rounds for prisoners with special

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[7] The Jail does interview prisoners (including on camera) after the use of force. This is a commendable practice, but is insufficient. Prisoner self-reporting is both incomplete and too easily dismissed without corroboration.

needs remain somewhat erratic, given the acuity of the prisoners' needs.[8] When a facility has these types of issues, improvements to prisoner supervision and use of force patterns can be easily undone by shifts in population, staffing levels, or leadership changes. So we advise that the County adopt our stricter view as to the risks involved.

B. Medical and Mental Health Care

The Constitution requires jurisdictions to provide prisoners with "a system of ready access to adequate medical care," including mental health treatment. See Estelle, 429 U.S. at 103-105; Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982), abrogated on other grounds by Sandin v. Conner, 515 US 472 (1995); Gibson, 290 F.3d at 1187-1888. Generally, the county's medical provider and Jail staff have implemented a system that provides effective sick call, pill call, emergency care, and access to a variety of different medical services. For episodic care, such as when a prisoner feels ill and requests to see a nurse, the Jail generally meets federal standards. Also, even before we issued this letter, the County took a number of steps to address concerns identified during the course of our investigation. These are all positive considerations. Based on our most recent inspection, however, we still have three concerns. The Jail needs - 1) a more structured chronic care program; 2) improved treatment programs for prisoners with mental illness; and 3) improved privacy protection for prisoner medical information.

First, the Jail still does not manage prisoners with chronic diseases in a systemic manner. The Jail does not maintain chronic care rosters; nor does it utilize chronic care guidelines or have a system for the routine monitoring of chronically ill prisoners. Prisoners with chronic illness should also have problem lists included in their charts, but the Jail does not maintain such lists. Without such procedures, there is no fully functioning "system of ready access" to chronic care. We recognize that the Jail's system for providing episodic care does have some positive elements that mitigate this deficiency. For instance, Jail physicians are well-credentialed, and have made efforts to order appropriate testing and other follow-up for chronically ill prisoners. The availability of skilled nurses and mid-level practitioners also helps serve prisoner needs. But even so, the current system for *episodic* care is not an adequate substitute for a *chronic* care system. One needs to consider that some prisoners, such as those suffering from mental illness, may not be able to effectively utilize the sick call process, while others have conditions they cannot monitor on their own. Others may develop serious symptoms without a doctor or nurse ever having seen them. The statewide prison realignment is also changing the profile of prisoners in county facilities. According to public reports, there are growing numbers of prisoners serving longer terms of imprisonment in county jails. Without a chronic care management program, there is a serious risk that prisoners with chronic illness will be overlooked and suffer harm. For instance, during our most recent inspection, we learned that only 230 prisoners have rescue inhalers, compared to our estimate that as many as 550 may need

[8] We believe prisoners who require special observation may require rounds that range from one time every half hour to constant supervision. The Jail provides some degree of heightened observation for special needs prisoners, but implementation is erratically documented. There is also some confusion as to who may put a person on observation, and whether medical staff supplement security staff to provide more frequent checks than are documented.

such inhalers. We have flagged this issue before on past inspections, but despite improvements to medical care generally, the Jail still is not meeting all the needs of chronically ill prisoners.[9]

Second, the County needs to evaluate Jail housing and treatment programs for prisoners with mental illness, and adopt a more integrated therapeutic model. The Constitution requires a level of treatment that goes beyond just having the most acutely ill patients seen by medical staff. See Hoptowit, 682 F.2d at 1253. The system of care must be sufficient to actually screen for and treat prisoners' serious needs. Id., see also Helling v. McKinney, 509 U.S. 25, 32-34 (1993) (right to care to extends to preventing "unreasonable risk of serious damage to [a prisoner's] future health"); Madrid v. Gomez, 889 F.Supp. 1146, 1256-57 (N.D. Cal. 1995) ("While a functioning sick call system can be effective for physical illnesses, there must be a 'systemic program for screening and evaluating prisoners in order to identify those who require mental health treatment.'") (internal quotations omitted).[10] The Jail has substantially improved many aspects of the mental health system (e.g. providing access to psychiatric care), but the system still relies heavily on placing the most seriously ill prisoners in isolation cells and offering therapeutic treatment only to these most acutely ill individuals. This approach raises a number of related issues. One, it means that therapeutic treatment may not reach prisoners who may be quite ill, but are not the most obviously in need of mental health care. This type of deficiency is thus similar to the broader problem of an inadequate chronic care system. The Jail needs to act to prevent mental health crises and provide adequate transition programs, not just to deal with the most immediate urgent events. Two, the current system leads to high risk prisoners being housed in unsafe physical settings that are neither therapeutic nor readily supervised (e.g. Central Men's Jail 3rd and 4th floor isolation cells).[11] Three, the approach does not provide for a cohesive system of therapy and treatment, which can lead to transition problems for mentally ill prisoners at different stages of their illness and result in the use of unnecessary, restrictive practices (e.g. forced medications).[12] We should also note that the types of treatment available to female prisoners are even more limited than the programs offered to males.

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[9] Medical staff seemed to agree that the standard of care requires more than is currently provided at the Jail. A new electronic medical record system could theoretically address much of the problem, and the provider plans to bring the system on-line in the next several months.

[10] The County has made some effort to improve the living conditions of prisoners with mental illness and disabilities over the course of this investigation. We should note, however, that the County needs to continue improving these conditions. The County should take care in ensuring that prisoners with disabilities are not routinely confined in the most restrictive settings unless clinically appropriate. Discriminatory treatment and segregation of disabled prisoners can be legally problematic in its own right. In this area, the constitutional rights of prisoners with disabilities can overlap with rights guaranteed by other federal statutes. Specifically, Title II of the ADA, 42 U.S.C. §§ 12131-12134, prohibits a public entity from discriminating against qualified individuals with disabilities on account of their disabilities and "unambiguously" extends to prisoners. Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 213 (1998). Corrections officials violate the ADA when disabled prisoners are "improperly excluded from participation in, and denied the benefits of, a prison service, program, or activity on the basis of [their] physical handicap[s]." Armstrong v. Wilson, 124 F.3d 1019, 1023 (9th Cir.1997).

[11] Jail documentation is unclear as to whether staff are consistently increasing the frequency of rounds in areas used to house prisoners with mental illness (e.g. medical observation cells). This issue is particularly acute for women prisoners. Because their housing and treatment options are even more limited than the men's, they tend to face more restrictive and untherapeutic conditions.

[12] The Jail uses involuntary medications about 200 times a year. We do not assert that these figures are facially excessive. Indeed, a number of the Jail's mental health statistics, such as the suicide rate, were very positive. Nonetheless, the ADA reflects a federal policy of requiring counties to use less restrictive and effective approaches when reasonable to do so. The County bears some burden for justifying the use of restrictive practices

Finally, the Jail's intake process requires staff to interview prisoners about their medical conditions in close proximity to other prisoners. This is both a physical plant and operations issue. The booking area has very limited space for waiting prisoners, and staff has numerous operational challenges when processing large numbers of prisoners through the booking and classification areas. In current interviewing conditions, the risk is that prisoners are less likely to report serious illnesses or other important facts, such as a history of mental illness or an infectious disease. So an otherwise acceptable process, which includes thorough interviews by qualified medical staff, may not be entirely effective. In addition to the impact on the quality of care, the County assessment practices also potentially violate privacy laws. See e.g. Health Insurance Portability and Accountability Act of 1996 Pub.L. 104–191, 110 Stat. 1936 ("HIPAA"); 45 C.F.R. Part 160, 162, 164. HIPAA's Privacy and Security Rules require safeguarding of medical information and restrict a covered entity from sharing private medical information with anyone other than the patient and in a few narrowly defined circumstances specifically permitted by statute (e.g. sharing data with a government oversight agency). We are not aware of any exception allowing healthcare workers to discuss a patient's sensitive information in front of other patients, especially in a correctional setting.

IV. REMEDIAL MEASURES

To address the remaining areas of concern at the Jail, we recommend that the County implement the following remedial measures:

A. The County should ensure that staff practices are consistent with a policy that treats carotid holds as a higher order of force and limits their use accordingly.

B. The County should assess and develop an inventory control process for all security equipment used in the Jail, including ECWs, bean bag guns, and chemical sprays. The County should modify use of force policies and procedures to ensure greater individual staff accountability and supervisory oversight for the check-out and use of security equipment.

C. The County should ensure sufficient staffing to conduct and document frequent rounds in all housing units. Staff should conduct rounds at irregular intervals to make them less predictable to prisoners. For general population, staff should conduct rounds at least one time every hour. Staff on higher security units (e.g. segregation and suicide observation) should conduct rounds at least once every half hour. For the most actively suicidal, Jail policies should give medical staff and supervisors the option of ordering even more frequent, and even constant, observation. More specifically, the County should give particular attention to assigning more rovers to the Central Men's Jail so there are constantly deputies walking the perimeter of the linear units. The County should also consider adding cameras to supplement

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when other alternatives are readily available. Over the years, the County has not been able to do so for some of its mental health practices. The use of hazardous cells for suicide observation reflects this persistent problem. We have warned for some time that some of the suicide cells do not sufficiently mitigate the risks for suicidal prisoners. Indeed, at least one successful suicide and a number of serious attempts have occurred in the most problematic housing areas cited in this letter.

supervision in the Jail. The County should not use cameras to substitute for actual staff presence on those units, but such cameras may supplement existing staff.

D. The County should proceed with plans to develop an electronic medical record system. In developing an electronic medical record system, the County should work with its vendor to ensure that the chronic care process provides for adequate assessment, treatment, testing/monitoring, follow-up scheduling, and continuity of care.

E. The County should continue to improve mental health services to provide a more integrated system of care. In managing the housing and treatment of prisoners with mental illness, the County should avoid using difficult to observe cells (e.g. the 4th Floor isolation cells) for housing prisoners with mental illness. The County should work with the medical provider to broaden the array of treatment and housing options. The most acutely ill prisoners will require the most intensive supervision, but the Jail also needs more intermediate levels of care and supervision for prisoners who may be more stable, but are still unable to live safely in general population. The County should give particular attention to expanding programs for female prisoners.

F. The County should modify intake operations or expand the booking space, so that staff can conduct prisoner medical interviews in private.

V. CONCLUSION

We hope to continue working with County officials in an amicable and cooperative fashion. In the past, officials have implemented improvements responsive to our concerns. We appreciate these proactive efforts and, in particular, recognize the Sheriff and medical provider's leadership on these matters. Nonetheless, the systemic problems we have discussed in this letter pose serious risks and should be remedied.

We are confident that continued cooperation from the County will allow case resolution in the near future. The attorneys assigned to this investigation will be contacting your counsel to discuss this matter in further detail. If you have any questions regarding this letter, please feel free, however, to contact Jonathan Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-6255, Acting Deputy Chief Luis Saucedo (213) 894-6117, or the lead attorney on this matter, Christopher Cheng, at (202) 514-8892.

Finally, please note that this letter is a public document. It will be posted on the Civil Rights Division's website. We will also provide a copy of this letter to any individual or entity upon request.

Sincerely,

Jonathan M. Smith
Chief
Special Litigation Section

cc: Hon. Shawn Nelson
Chairman
Orange County Board of Supervisors

Nicholas Chrisos
Orange County Counsel

Nicole Sims
Senior Deputy County Counsel