



PRISON LAW OFFICE

January 30, 2023

VIA EMAIL

Captain Frank Dal Porto
San Mateo County Sheriff's Office
400 County Center
Redwood City, CA 94063

**RE: Abuse/Neglect Investigation and Request for Corrective Action
San Mateo County's Use of Solitary Confinement and Mental Health System**

Dear Captain Dal Porto:

Disability Rights California ("DRC") has been investigating San Mateo County's ("the County") jail system pursuant to its authority as California's protection and advocacy system for people with disabilities. For purposes of this investigation, DRC has designated the Prison Law Office ("PLO") as its authorized agent. At this stage, the investigation focuses on the use of segregation – also known as solitary confinement – and the treatment of people with mental health care needs as relates to these practices.

On November 17, 2022, DRC and PLO teams visited the County's two main jail facilities, Maguire Correctional Facility ("MCF") and Maple Street Correctional Center ("MSCC"). We toured both jails, interviewed dozens of incarcerated individuals, and met with jail leadership, including with representatives from custody, medical and mental health care, programming, and other departments.

We would like to thank the Sheriff's Office and Correctional Health Services ("CHS") leadership and staff for their exceptional hospitality and professionalism during our visit. We are grateful for the departments' cooperation and candor. We were impressed by leadership and staff's willingness to share operational challenges, recognize areas for growth, and consider alternatives and strategies to resolve the issues we identified. We are confident that the County is invested in operating a humane jail and approaches these issues with a sincere desire to serve San Mateo's various communities.

As we discussed at the close of our visit, we believe there is a great deal of work to be done. In any correctional setting, segregation should be used only as a last resort, when no less restrictive intervention would be sufficient. Despite leadership and staff's intentions, the

County's segregation practices are out-of-step with this core requirement. We were alarmed by the extreme overuse of segregation for people with mental illness, the lack of adequate and appropriate services in less restrictive settings, the filthy and unsafe conditions of segregation cells, the lack of clear policies and criteria for placement in these cells and transfer out of them, the extraordinarily limited out-of-cell time, and the long durations of segregation, which in some cases exceeded one year. These practices violate the Eighth and Fourteenth Amendments and the Americans with Disabilities Act ("ADA").

Based on our investigation, we have concluded that there is probable cause to find 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.¹ These authorizing statutes and regulations allow DRC, and PLO as its authorized agent, to take next steps in an investigation, including accessing documents, facility premises, and incarcerated people. In light of our respect for jail leadership and staff and our promising initial discussions, we are hopeful that we can work cooperatively with you in this process, to implement meaningful reforms that bring the jail system's use of segregation into alignment with acceptable practices.

At the end of our visit, we shared a high-level summary of our concerns, essential practices, and other county jail policies that address some of these issues. We expand upon that summary in this letter. In Section I, we provide a brief description of San Mateo's system of segregation, as we understand it, as a backdrop to our findings. In Section II, we document our findings in more detail. While we do not hide our alarm at the conditions and practices we observed, we do believe that jail leadership and staff are prepared to address these concerns and implement reforms. In Section III, we lay out some critical practices for segregation in a county jail system, which should be the principles on which San Mateo bases its remedial measures.

We know jail leadership was eager to address our concerns following our visit, and we hope the County has begun to investigate current practices and possible remedial measures in the time since then. We look forward to such an update and to working together to develop effective, durable remedial measures.

¹ Disability Rights California is the protection and advocacy system for the State of California, with authority to investigate facilities and programs providing services to people with disabilities under the Developmental Disabilities Assistance and Bill of Rights ("PADD") Act, the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, and the Protection and Advocacy for Individual Rights ("PAIR") Act. The patients and clients we interviewed fall under the federal protections of the PADD Act and/or the PAIMI Act, and their implementing regulations. The PAIMI Act defines probable cause as "reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect." 42 C.F.R. § 51.2. The PAIMI Act and PADD regulations also contain definitions of abuse and neglect. *See* 42 C.F.R. § 51.2; 45 C.F.R. § 1326.19.

I. Background: San Mateo’s System of Segregation

To assess the scale of the problem, we asked leadership staff about the basic system of segregation in the two main jail facilities. We learned the following:

Maguire Correctional Facility (“MCF”) has a total bed capacity of 827. It contains administrative housing units, located on 3West A and B sides, 3East, and 4West, with a combined bed capacity of 270, or about one-third of the total jail capacity. MCF also maintains a disciplinary detention unit, on 3East C side, which are single-person cells, with a total bed capacity of just eight. MCF’s Behavioral Health Program (“BHP”) and Acute Stabilization Unit (“ASU”) each have a capacity of approximately 10 people. Administrative housing, disciplinary detention, and BHP at MCF are all designated for men. There is no unit specifically designated for protective custody classifications at MCF.

At the time of our visit, there were approximately 460 people at MCF across the whole facility (55.6% of capacity). We were told that 87 people were in administrative housing units, or close to one-fifth of the jail population. The disciplinary detention unit, with eight people, was at capacity. If more than eight people receive discipline, we were told they can be waitlisted until a bed becomes available. It appeared BHP was at or almost at capacity, with 11 participants and four or five on the waitlist. The ASU housed six men and two women.

Maple Street Correctional Center (“MSCC”) has a total bed capacity of 753. Its administrative housing unit is designated for women and located in 3Ocean A and B sides, with a capacity of 32 or fewer.² There is no dedicated disciplinary detention unit. Accordingly, it appears that if a woman receives disciplinary time, she either serves 24-hour lockdown in her regular housing unit or, more likely, a longer disciplinary term in administrative housing. A BHP unit designated for women is run in 3Ocean C side. There is no ASU at MSCC. At the time of our visit, we were told there were 525-550 people at MSCC across the whole facility. Twenty people were in administrative housing and four in BHP. There were approximately 100 women in custody.

For purposes of this investigation, we define segregation as circumstances in which a person is confined in their cell, alone or with others, for a substantially longer period of time each day than those in general population – no matter the reason the person is in this unit or the number of days they spend there. As explained below, given the extreme restriction on out-of-cell time in administrative housing and disciplinary detention, these units clearly constitute segregation.

II. Initial Findings

Generally, when our offices evaluate a jail system’s use of segregation, we look at four key areas: (1) who goes into segregation; (2) how long they stay; (3) how they get out; (4) the conditions while they are there; and (5) program-rich alternatives to segregation, especially for people with serious mental health needs. In each of these areas, San Mateo’s practices are

² The information the County previously produced on this point was ambiguous as to whether 32 is the capacity of A and B sides only or all of 3Ocean, which includes C side.

unconstitutional and unacceptable. They are outside of the norms of other locked facilities in California. San Mateo must reform these practices as a matter of urgency.

The County places people with serious mental illness in segregation, often for behavior that appears to be a manifestation of their disability.³ They remain in segregation for months and even years at a time, with no upper limit on how long they can remain and no instruction on what they can do to get out. People with disabilities languish in cells that are often filthy and unhygienic, experiencing little to no meaningful out-of-cell time or human interaction, and with few activities to relieve their sensory deprivation. Such conditions clearly exacerbate mental illness and risk decompensation. This extraordinary, pervasive misuse of segregation means the County is not only failing to provide treatment for people experiencing mental health crises; it is affirmatively making them worse. When mental health clinicians do visit, people in segregation are asked to engage non-privately at their cell door. Meanwhile, the jail system has insufficient mental health resources and programming for people with serious mental health needs and offers insufficient alternatives to segregation for this vulnerable population.

A. Placement in Segregation: San Mateo Places People with Serious Mental Illness in Segregation

Placing a person with mental illness in prolonged segregation is unconstitutional. It is also clearly deleterious to their mental health: countless studies and scholarly articles have enumerated the ways in which segregation leads to decompensation and causes or exacerbates mental health conditions.⁴

Against this backdrop, it was shocking to discover that so many people with serious mental health needs are in administrative housing and disciplinary detention. During our visit, the County did not deny that it houses people with serious mental health needs in these units. Indeed, jail leadership acknowledged that people on 3West have “severe mental illness” and seemed to decry their mental illness as necessitating the expansion of administrative housing units. Leadership explained the difference between the various administrative housing units in terms of mental health acuity. Thus, we were told 3West is the highest security for the most “problematic” population, with A side being the highest mental health acuity, and B side less acute. 3East was described as an informal step down. We were told 4West was opened just one

³ Placing a person in segregation for behavior that is a manifestation of their disability punishes people for their disability: just as it is inappropriate to place a person in segregation as punishment for *having* a disability, it is inappropriate to place a person in segregation for behaviors that are a manifestation of that disability. As described further below, such practices exacerbate serious mental health needs and can amount to discrimination on the basis of disability. For these reasons, we recommend mental health assessments prior to placement in segregation.

⁴ While people with serious mental health needs should not be housed in segregation, their placement in general population units may not always be appropriate for their clinical needs. As described in Section III.E, San Mateo should develop program-rich alternatives to segregation to meet the specific needs of this population. Sacramento County has implemented a program-rich alternative to segregation for people with serious mental health needs in its jails, called the High Security Intensive Outpatient (“IOP”) Unit.

to two months prior to our visit as “overflow,” because there were so many people requiring administrative housing.

Jail staff also acknowledged that many people in administrative housing and disciplinary detention either were receiving or needed psychiatric medication, and even that at least one person had been approved for transfer to the state psychiatric hospital.⁵ In information the County produced to us in advance of our visit, Correctional Health Services reported that 28 people across 3East, 3West and 3Ocean were receiving psychiatric or other mental health medications in those units. Some people we spoke to exhibited symptoms of serious mental illness in our interviews, for example, describing active delusions and paranoia. Others we interviewed talked about how they were told they needed to be forcibly medicated, or that a court was trying to order their medication, suggesting the County is aware of the high level of acuity of their mental health needs and is choosing to place them in segregation all the same. When we went door-to-door in these units, almost everyone we spoke to appeared to be in severe emotional or psychological distress. Incarcerated people described hearing shrieking and banging on cell doors at all hours of the day and night; they said that people with serious mental illness in the housing units routinely flood their cells and smear feces on the walls.

In administrative housing and disciplinary detention alike, it appears that the underlying behavior that results in placement in these units is often related to or caused by the individual’s disabilities. For example, one person reported that he was in disciplinary housing because of continuing self-harm behaviors, stemming from mental illness. The County appears to have no process to identify behaviors that result from a disability and to determine what the appropriate, non-discriminatory response to these symptoms should be. No multidisciplinary committee or other interdepartmental approach appears to address recurrent behaviors that result in discipline or administrative housing placements. Indeed, when we spoke to clinicians within Forensic Mental Health, we learned that there is no formal protocol for evaluating whether the move to administrative housing or disciplinary detention is appropriate in light of the person’s mental illness. Specifically, there is no policy requiring evaluation by mental health staff of whether the behavior at issue resulted from or should be mitigated by the person’s disability; whether the person understands their behavior or can understand a punitive sanction; or whether placement in administrative housing or disciplinary detention will exacerbate the person’s mental health condition.

Once in administrative housing, people with serious mental illness are not clearly receiving the range of mental health services they require. For example, we heard of a significant lack of patient privacy in these units. Almost all providers see patients cell side within earshot of other staff and incarcerated people. It is unclear how often mental health providers see people in administrative housing or in disciplinary housing outside of the presence of custody officers. Confidentiality is the cornerstone of health care, and mental health appointments are less likely to be therapeutically effective when a patient is inhibited from sharing all pertinent information. Although segregation rounds may supplement other care plans, it is not clinically appropriate to conduct mental health evaluations or provide mental health services cell-side.

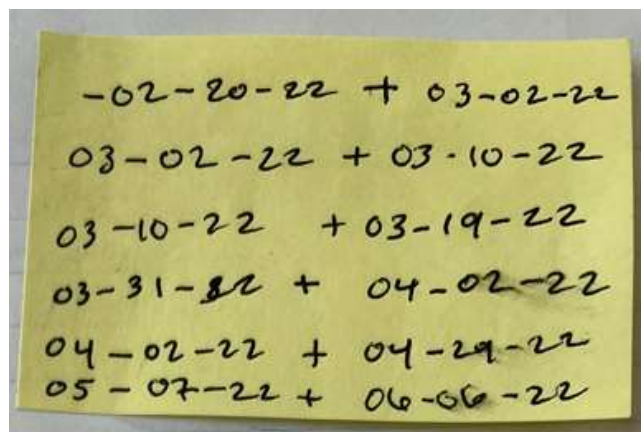
⁵ We were told 29 people in the jail system had been approved for transfer to the state hospital system but were awaiting beds: 18 at MCF and 11 at MSCC.

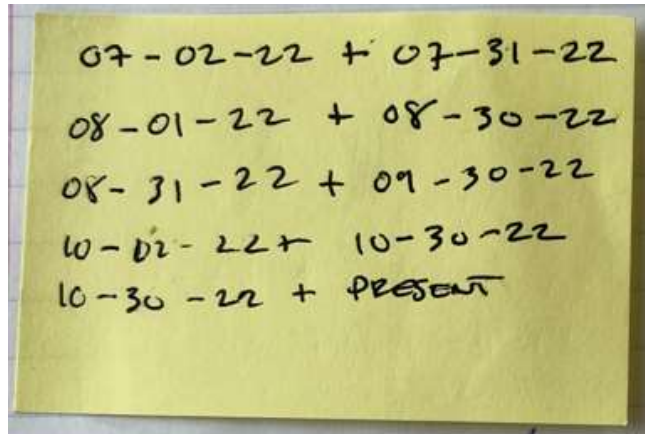
San Mateo must urgently reform its practices and implement new protocols to ensure that members of vulnerable populations, including people with disabilities, are not placed in segregation; that mental health staff conduct assessments prior to any person's placement in segregation, to ensure the person is not being punished for behavior that is a manifestation of disability; and that people in segregation have access to mental health providers in confidential settings. We set forth principles for exclusion of vulnerable populations, mental health assessments prior to placement, and mental health checks during segregation in Sections III.A and Section III.D. We hope that we can work on these new protocols together with jail leadership and CHS.

B. Lengths of Stay in Segregation: San Mateo Routinely Imposes Over-Long Stays in Segregation

Given the horrific conditions in the units we observed, we are deeply disturbed by how long some people remain in administrative housing. There is no upper limit on how long a person can stay in administrative housing, and people we spoke to talked about stays of multiple months. According to jail leadership, at the time of our visit, one person at MCF had been in administrative housing almost continuously for 1,137 days, or more than three years. Another person, who leadership confirmed was on the mental health caseload, had been in administrative housing continuously since May 2021. Jail leadership told us that the maximum disciplinary term is 30 days but explained that a person can serve any amount over 30 days so long as they have one day out every 30 days. In practice, it appears that the 24-hour break from disciplinary housing is served in administrative housing: thus, the only benefit of that day break is the opportunity to have up to 30 minutes more out-of-cell time (*see* Section II.D). If a person repeatedly gets disciplinary charges, they may end up spending months mostly-consecutive in discipline on C side.

One person we spoke to on C side told us he had been in administrative housing for more than eight months, and that every 30 days, he would be sent for a "24-hour break" to 3West A or B sides and then would come back to C side for another 30 days. He said his most recent disciplinary detention had reset on October 30. Given how dirty the cells were there, he said he did not consider the 24-hour trip to administrative housing a break. A corrections officer confirmed that this individual had entered the jail on February 16, 2022, and spent the vast majority of his days on C side since then. On November 17, the officer wrote his dates of disciplinary detention on post-it notes for us as follows:





[Photographs 1 and 2: Notes from a corrections officer in 3West written for PLO, reflecting one individual's consecutive terms in disciplinary housing]

In other words, in the approximately nine months since this individual entered jail custody, he had been restricted to a cell for 24 hours or 23 hours and 50 minutes for all but a handful of weeks. The same officer confirmed to us that the person had serious mental illness and had already been approved for transfer to a state psychiatric hospital, but was waiting on a bed to open.

Although jail staff and people we interviewed on 3West C side appear to believe there is a policy for consecutive 30-day stints in disciplinary detention, with a 24-hour break every 30 days, it is unclear to us where this policy originates, or how it is justified or justifiable. Jail staff and incarcerated people we spoke to did not appear aware of any upper limit on the number of times a 30-day disciplinary term on 3West could reset. We were also surprised to hear that MSCC does not have disciplinary housing and, thus, that there is no unit designated for women serving discipline in the jail system. We are concerned that this may result in the *de facto* use of administrative housing at MSCC for discipline terms of potentially indefinite length.

San Mateo must immediately implement upper limits on the number of consecutive days a person can remain in disciplinary detention and administrative housing, as well as the total number of non-consecutive days a person can be placed in these units over a period of months. The current practices and “24-hour break” are far from the appropriate standards, which we outline in Section III.B.

C. *Removal from Segregation*: San Mateo Lacks Clear Policies and Criteria for Placement, Retention, and Removal from Segregation

On July 8, 2022, we submitted a Public Records Act (“PRA”) Request seeking, among other documents, any and all policies and procedures pertaining to the use of restrictive housing and disciplinary detention units, and conditions of confinement in these units. On November 15, two days before our visit, the County produced a Corrections Procedures Manual, copywritten by Lexipol, LLC on October 7, 2022. We reviewed this manual carefully. Based on our meetings with jail leadership and conversations with staff across departments, it does not appear that the jail is implementing the terms of this manual; indeed, much of what we heard contravened it. We

are not recommending that the jails adopt these policies; to the contrary, we hope to work with the County to remedy its specific issues and implement solutions responsive to its particular needs. However, the lack of clear policies governing the use of segregation is another area of concern.

Notably, the County does not appear to utilize classification criteria for placement, retention, and discharge from administrative housing. Jail leadership told us that people are placed in administrative housing when they are “problematic,” when they “cannot function in normal general population,” when they have gang affiliations, or otherwise for their own protection. At MSCC, where there is no disciplinary unit, it seems clear that women are formally or informally disciplined with placement in Ocean administrative housing. We were told that a combination of custody and mental health staff make weekly rounds to people in administrative housing, which occur cell-side, where people are able to request to be moved out of administrative housing. However, people are expected to know they should simply make this request during rounds: there is no formal process for challenging administrative housing placement or seeking release from it. We were also told custody and mental health staff meet weekly to internally discuss whether to continue each person’s placement in administrative housing. We participated in that meeting on site and found the process to involve excessive discretion for custody staff with no clear guidelines to inform their decisions.

Because there are no time limits on length of stay in administrative housing, and no clear criteria for how discretion to retain or discharge a person is to be applied, people’s terms in administrative housing are indefinite and – in some cases – apparently never-ending. There is no information provided to incarcerated people about these classification decisions. Criteria for administrative housing does not appear to be incorporated into the jails’ inmate handbook or orientation manual. It does not appear people are provided advance notice of their administrative housing placement with an opportunity to challenge that placement, and they do not have the opportunity to meaningfully participate in decisions to continue their placement. People we interviewed in administrative housing at both jails told us they did not know what to do to get out of those units.

As set forth in Sections III.A and III.C, the County must develop clear criteria and strategies to minimize the overreliance on restrictive conditions in administrative segregation and disciplinary detention and to ensure that people understand why they are placed in segregation and when and how they will be removed from it.

D. *Conditions in Segregation: Conditions in San Mateo’s Disciplinary Detention and Administrative Housing Units Are Unsafe and Inhumane*

Conditions in disciplinary detention at MSCC and in administrative housing at MCF and MSCC are among the worst we have seen in a county jail system. Out-of-cell opportunities in these units are severely restricted – and, in disciplinary detention, nearly non-existent – resulting in a large number of vulnerable people languishing in segregation with little to no activities to mitigate their sensory deprivation.

i. *Disciplinary Detention*

Out-of-cell time in the eight disciplinary cells on 3West C side is among the most restrictive we have encountered in *any* jail discipline system. Jail leadership explained that the practice is to provide people on discipline *ten minutes* out of their cell *every other day*. People we interviewed confirmed this practice.

People on C side get their 10 minutes out all alone. The doors of the cells, as with all the administrative housing cells we saw at both jails, are made of metal, with a small plexiglass window. It was difficult for us to hear people and be heard through these doors when we tried to speak to people through them. Even if people choose to speak to each other through the doors during their 10 minutes out, this is not meaningful social interaction. People on C side are thus effectively in 24-hour, constant social isolation.

In their 10 minutes out every other day, people on C side do not have access to a TV or other stimulation. There is absolutely nothing in the small dayroom space outside their cells to occupy themselves or to recreate. There is not even a place to sit. People on discipline are not entitled to “outside” recreation and have their property restricted, such that they had even fewer personal items to occupy their senses in their cell. People on C side reported that they lack adequate hygiene supplies, including soap, toothpaste, and haircare products like shampoo.

ii. *Administrative Housing*

Administrative housing units at MCF and MSCC have extraordinarily limited out-of-cell time, typically 30 minutes per day, or at most 45 minutes per day, meaning that people in administrative housing spend more than 23 hours in their cell each day. On MCF 3West A and B sides, a person has out-of-cell time alone. Because people generally are single-celled, this means that they spend all of their time in administrative housing without meaningful human interaction. On 3East, people are let out of their cells with others, but only a few at a time. During our visit, we did not hear of any groups or programming in administrative housing.

In the half-hour people get out of their cells daily, they are expected to shower and make any phone calls to loved ones. If they have extra time, there is little to occupy their senses: we saw no games, tables, recreation equipment, or other activities available to people in the tier or dayroom spaces. We were told by jail staff that people may use tablets during out-of-cell time; however, at least in 3West, people we interviewed said they do not have access to tablets.

In 3West, people sometimes get 30 minutes of “outside” recreation. Some reported that they only go outside every few weeks, if at all. This outside recreation is not actually outside or actually recreation: the County places individuals in a row of single-person cages in a separate room. Some fresh air flows into the cage, but the area is within an enclosure that is closer to an indoor than an outdoor space (*see* Photograph 3 below). There is no recreation equipment in these cages. People are placed alone in each cage. In 3West, we heard allegations that officers routinely offer incarcerated people extra food items if they agree to forego their recreation time.



[Photograph 3: 3West recreation cages]

In 3East, people are allowed their 30 minutes out-of-cell with other people, but only a few at a time. We were told that the reason people cannot have more out-of-cell time is because so many people have to be let out in a 24-hour period. As a result, time in the dayroom is limited, and some people are offered it at night. This is particularly concerning for individuals with disabilities who may be unable to take dayroom at any time of day due to medical conditions. In this unit, jail leadership told us people had access to a recreation yard. However, the yard is a concrete box with little to no equipment. While individuals can see the sky from the yard, they told us it only gets direct sunlight for a limited time each day, and some people told us they are consistently let out only at night. We were told dayroom operates on a 24-hour cycle.

The cells in which people spend more than 23 hours each day are ghastly, especially in 3West. The County's lack of cell cleanliness had been noted in recent BSCC reports. We, too, noted excessive build-up of dirt and grime when we visited; the cells appeared unhygienic, as though they had not been cleaned for long periods of time. Some people we interviewed explained that the cells had not been cleaned before they were moved into them. They said the cells had clouded windows, filthy walls, and insects buzzing around when they entered them. We saw old food waste, wrappers, and other debris in the cells throughout 3West at MCF, and even outside the doorway of one cell in 3Ocean at MSCC. In the communal showers in both facilities, we saw dirt and grime build-up and standing water.

Inside a person's administrative housing cell, there is little to occupy the time or to engage the senses. We heard that individuals rarely get to select books to read and, if they are able to, that the books frequently are damaged. In 3West A side, the TV was broken. Incarcerated people in the unit said that the TV had not worked in six months. Staff said that the

TV is frequently broken and attributed this to behavior by people in the unit with unmet mental health needs. Even if the TV had been functional, it is placed high on the wall and at an angle. It was hard to imagine being able to watch TV through the small plexiglass window in the metal cell door, or even from the floor of the dayroom if a person had time after showering and making phone calls during their 30 minutes out of cell. We did not notice TVs on in any of the administrative housing units we visited.

These conditions of segregation must be remedied as a matter of urgency. We outline principles for remedial measures related to conditions in Section III.D.

E. *Alternatives to Segregation for People with Serious Mental Health Needs: San Mateo's Jail System Offers Insufficient Mental Health Resources and Programming*

The County's resources and programming for individuals with mental health conditions are insufficient to meet the wide range of needs, from acute services and care to mitigation and treatment. Currently, the jails have two main programs: ASU and BHP. The ASU is run separately from the remainder of the jail. The County contracts with Liberty HealthCare for the ASU, whereas Correctional Health Services/Forensic Mental Health services the remainder of the jail population. We were told during our visit that this is meant to avoid therapeutic conflicts and the erosion of trust, because the ASU involves forced medication.

CHS and FMH run the Behavioral Health Program. The criteria for admission to BHP is extraordinarily stringent: on the one hand, it is available only to individuals with major psychiatric diagnosis such as schizophrenia, schizoaffective disorder, bipolar, major depression, or PTSD. On the other hand, it is available only if these individuals are already compliant with and even, it seems, proactive in their treatment. As a criteria for admission to BHP, staff explained that individuals must be taking medication for their disorder, must be in therapy, and must be willing to do programs.

Thus, the ASU is available only to those who are in such dire crisis and so non-compliant with treatment plans that they require forced medication, and BHP is available only to those who would potentially be in dire crisis except that they are already compliant and willing to engage in programming. This creates a significant service gap for the population of people with serious mental health needs who do not rise to the level of forced medication but who either do not comply with their treatment or, as is often a symptom of mental illness, are not willing to acknowledge their diagnoses. The County uses administrative housing to fill this gap: segregation is the fallback for people with serious mental illness who are not acute enough for ASU nor treatment compliant enough for BHP. Segregation is contraindicated for people with serious mental illness. The County's current practice is fundamentally unlawful.

We are glad that CHS/FMH and custody staff alike appear to acknowledge this gap between ASU and BHP eligibility and the fact that administrative housing is neither an effective *status quo* nor a desirable long-term solution. Custody and CHS leadership need to develop better programs to fill the gap between ASU and BHP. Leadership told us they were trying to work with custody to operate a mental health pod, which the jail maintained before the pandemic. Indeed, we were told 4West used to be a "pre-BHP" space but was converted into

more administrative housing because of the “need” for additional administrative housing space. While we are not able to assess the efficacy of that pod pre-pandemic, it is critical that the County minimize its use of administrative housing now.

Although we do not yet have sufficient information to evaluate the efficacy of the BHP, our initial observation is that the program appears to be too small, and criteria to access it are too narrow. Whether it calls it BHP, “pre-BHP,” or by another name, **the County must increase its capacity to treat and care for individuals with mental health diagnoses in less restrictive settings than administrative housing, including specifically those who are particularly at risk and might otherwise not be medication-compliant.** The County’s program should include people who are not ready for full participation in treatment and those who are not in therapy.

More broadly, we urge the County to consider taking concerted action to reduce the size of the jail population and, in particular, the number of people with serious mental illness in custody. We encourage the County to consider alternatives to incarceration, opportunities for release, and diversion mechanisms to reduce the number of people who require mental health treatment in the jails. Sacramento County recently has taken action to substantially reduce the number of people in custody to address longstanding deficiencies in restrictive housing practices and the provision of mental health care, among other things. We encourage the San Mateo County Sheriff’s Office to consider decarcerative strategies and to begin such discussions in partnership with patrol, prosecutors, San Mateo County Behavioral Health and Recovery Services, and the Board of Supervisors, as appropriate. We address each of these recommendations, among others, in Section III.E below.

III. Practices and Principles for Remedial Measures

San Mateo should undertake remedial measures to substantially reform its use of segregation and to ensure people with serious mental health needs are provided program-rich alternatives. In addition to the specific recommendations described above, the following practices and principles should be incorporated in order to address the violations of the Eighth and Fourteenth Amendments and the ADA, and to protect individual with disabilities from further abuse and neglect. Some of these principles are reflected in county jail policies throughout the state or in other state systems, including, as discussed on site, in Santa Clara and Sacramento. While these principles are not exhaustive, we hope they provide a helpful framework for our subsequent discussions.

We look forward to working with you to operationalize these principles into discrete policies and procedures to meet San Mateo’s specific needs and to remedy the issues we have identified in Section II.

A. Placement in Segregation

In every case, segregation should be used only as a last resort, when no less restrictive intervention would be sufficient.

Generally speaking, it is acceptable to separate individuals for short periods of time as necessary for safety and security, but the use of isolation should be avoided. Isolation should be

used only as absolutely necessary, for the shortest period of time possible, and subject to strict time limits. Segregation for administrative or management reasons should be used only when the person exhibits real threats of violence based on behavior and conduct, and the risk of violence is imminent and ongoing. Segregation should not be used in response to merely antisocial, disrespectful or behaviorally challenging conduct toward jail staff or others.

Insofar as segregation is used as a short-term disciplinary measure, it should be used only in response to acts of serious violence. It should be accompanied by a clear disciplinary matrix, or schedule of sanctions, that specifies that only certain violent acts may be disciplined with a short period of segregation. The jail should always consider non-segregation sanctions first, such as the loss of other privileges. As an essential component of any discipline program, the jail must establish a robust procedure for ensuring that people are not disciplined for behavior that results from their mental, intellectual or developmental disabilities, and that mental health considerations are taken into account as mitigation and in assessing the appropriateness of any punitive sanction.

The following are core principles with respect to placement of people in segregation:

- ***Exclusion of Vulnerable Populations.*** Some people should never be placed in segregation, including but not limited to:
 - People with mental or physical disabilities;
 - People with other serious medical conditions that cannot be adequately treated in or are otherwise contraindicated with segregation;
 - People who are pregnant, in post-partum recovery, or who have recently suffered a miscarriage or terminated a pregnancy;
 - People who are younger than a certain age or older than a certain age (we recommend under age 25 and over age 60).
- ***Mental Health Assessments Before Placement.*** Every person placed in segregation should undergo documented mental health screenings prior to placement in segregation in order to ensure no contraindications to segregation (including but not limited to membership in a vulnerable population, as described above) and establish a baseline of health against which to compare any deterioration or decompensation. Assessments should occur in a private and confidential setting.
- ***Evidence for Placement in Segregation and Related Process Protections.*** Placement in segregation should be supported by significant, verified evidence and accompanied by related process protections.
 - The jail bears the burden of proof.
 - Placement should not be based solely on confidential information considered by jail staff but not provided to the incarcerated person.
 - The incarcerated person should have fair and meaningful opportunities to contest the placement, including the right to an initial hearing within 72 hours and process protections at that hearing.
- ***Protective Custody.*** People should not be placed in segregation for their own protection.

- A person who is LGBTQI, who is a so-called gang drop-out, or whose crime is notorious should not be placed in segregation for that reason only. Instead, people requiring protection should be transferred to a more appropriate custody unit that ensures full access to out-of-cell time, programming, and other services available to the rest of the incarcerated population.
- People who are active in gangs or who have keep-separates should not be placed in segregation for that reason alone, unless such affiliations result in violence requiring segregation for disciplinary or administrative and management reasons as outlined above.

B. Lengths of Stay in Segregation

- **Maximum Consecutive Days.** There must be a maximum number of consecutive days a person can remain in segregation. We recommend 15 days at maximum, as supported by international standards (*see* United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules).
- **Maximum Non-Consecutive Days.** There must be a maximum number of non-consecutive days a person can remain in segregation during a certain months-long period. We recommend 45 total days in a 180-day period at maximum. Multiple months of segregation, separated by one or several day “breaks,” is impermissible.

C. Removal from Segregation

- **Regular Reviews.** Reviews should be conducted regularly at set intervals to assess the ongoing need for segregation, with face-to-face participation by the incarcerated person. These reviews should be documented.
- **Criteria for Removal.** People in segregation should be provided written criteria for removal from segregation.
- **Step Down and Reintegration in General Population.** Mental health staff and other programming staff, as appropriate, should provide step-down services for people being released from segregation to general population, such as additional therapeutic and clinical supports after release, to assist in reintegration and additional property privileges and increased out-of-cell time in the final days of segregation.
- **Release to Community.** The jail should endeavor to ensure people are not released directly from segregation into the community and utilize step-down or alternative housing arrangements where possible.

D. Conditions in Segregation

- **Out-of-Cell Time.** There must be certain minimum conditions regarding hours, space, activities, and social interaction.
 - **Hours.** People in segregation cannot be isolated for 24 hours per day and require a minimum number of hours out-of-cell per day. Daily out-of-cell time should be long enough to allow for activities beyond showering and placing a

phone call and should be documented in daily logs.

- **Space.** Out-of-cell time can occur in a combination of dayroom, recreation yard, and/or program office or classroom if such office or classroom is the site of programming in which the person participates.
 - Out-of-cell time should not be limited to the space of a tier only (i.e., the space outside cells).
 - The space must be sufficiently large to allow opportunities for movement and activity.
 - Out-of-cell time cannot occur in a cage or similar module.
- **Activities.** Some or all of the out-of-cell time should involve the opportunity to engage in activities that involve sensory and physical stimulation.
 - This may include TV and other entertainment, physical exercise and recreation equipment, cards, art, games, individual or group programming, and/or educational opportunities.
 - The activities may be self-directed or jail-facilitated but must offer opportunities to do more than simply walk, stand, or sit in the out-of-cell space, should the person wish.
- **Social Interaction.** Out-of-cell activities must provide the opportunity for social interaction with other incarcerated people beyond a person's cellmate.
- ***In-Cell Opportunities for Sensory Stimulation.*** People in segregation should retain all other privileges of the incarcerated population, unless a loss of privileges is imposed as the result of concurrent discipline, including access to books and other reading and writing instruments, commissary items, and radios, tablets and any other devices permitted in general population.
- ***Mental Health Checks.*** A qualified mental health professional should meet with the person in segregation regularly, no less than once weekly, to assess and document their health status and make referrals as necessary. If mental health staff believe a person's continued placement in segregation is substantially affecting their health condition, they may recommend removal from segregation.
- ***Custody Checks.*** Custody staff should perform checks multiple times per day (up to every half hour). If the person demonstrates unusual behavior or indicates suicidality or self-harm, custody should notify mental health and checks should be increased to every 15 minutes or to constant watch.
- ***Cleanliness.*** Segregation cells should be routinely cleaned, including before and after a person is moved into or out of them and whenever the need is identified by custody, medical or mental health staff during visual observations of the cell.

E. Alternatives to Segregation for People with Serious Mental Health Needs

- ***Diversion and Release.*** The County should take concerted action to reduce the size of the jail population and, in particular, the number of people with serious mental illness

in custody. Sheriff's department and jail leadership should partner with patrol, prosecutors, County behavioral health services, the County Board of Supervisors, and other stakeholders to consider alternatives to incarceration, opportunities for release, and diversion mechanisms to reduce the number of people who require mental health treatment in the jails.

- **Program-Rich Alternatives.** For those who are not diverted or released, the jail should develop program-rich alternatives to segregation for people with serious mental health needs, to ensure they have access to treatment in the most integrated and least restrictive settings.

F. Documentation and Training

- **Written Policies.** Each of the above principles and topics should be memorialized in a written policy and procedure.
- **Notice of Policies.** Notice of these policies should be provide at intake and again upon placement into segregation. Inmate handbooks and/or orientation manuals should include summaries of the policy provisions. Anyone placed in segregation should be notified of the relevant provisions and provided full access to the written policy upon request.
- **Training.** The jail should routinely train custody, health services, and other staff on relevant policy provisions.
- **Audits.** The jail should conduct CQI reviews and audits as appropriate.
- **Data Collection and Publication.** The jail should collect and, with appropriate redactions, make publicly available data on its use of segregation.

IV. Conclusion

We reiterate our gratitude to the Sheriff's Office and CHS leadership and staff for the hospitality, cooperation, and commitment to addressing the challenges we have identified. We believe the conditions of confinement in the San Mateo County Jails must be addressed with urgency to bring the County in line with basic legal and humanitarian standards. At the same time, we are confident that the County is prepared and willing to take on this work. We look forward to a productive collaboration to make changes that will benefit the people incarcerated in the jails, the people who work in the jails, and the San Mateo community more broadly.

We propose a meeting with leadership from custody and CHS in February via Zoom or Teams platform to discuss this letter and any progress you have made since our November 17, 2022 visit. We would then hope to meet in person and conduct another visit thereafter.

Please let us know when you are available to meet with us next month. Thank you for your ongoing cooperation and courtesy.

Sincerely,

/s/ Jennifer Stark

Jennifer Stark
DISABILITY RIGHTS CALIFORNIA
1831 K Street
Sacramento, CA 95811-4114
(916) 504-5800
www.disabilityrightsca.org

/s/ Donald Specter

Donald Specter
Tess Borden
A.D. Lewis
Margot Mendelson
PRISON LAW OFFICE
General Delivery
San Quentin, CA 94964
(510) 280-2621
www.prisonlaw.com

Cc: Tara Heumann, Deputy County Attorney
Paul Sheng, Deputy County Attorney
Carlos Morales, Director, Correctional Health Services
Michael del Rosario, Deputy Director, Correctional Health Services