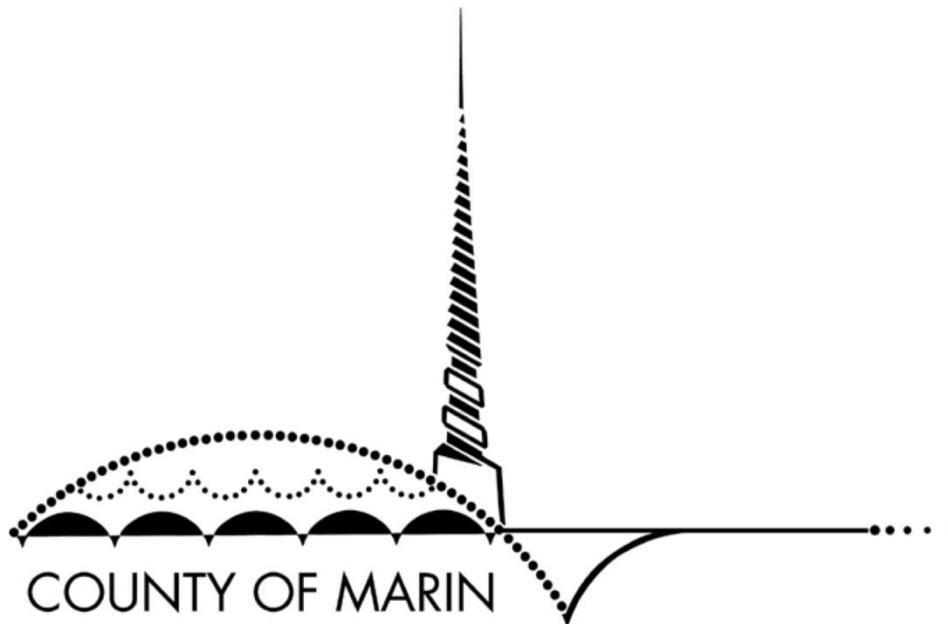


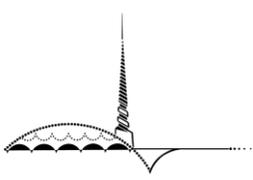
2017-2018 MARIN COUNTY CIVIL GRAND JURY

Mental Health Care in Marin County Jail Follow Up Report

Report Date: February 21, 2018

Public Release Date: February 28, 2018





Mental Health Care in Marin County Jail Follow-Up Report

SUMMARY

The 2016-17 Grand Jury's report on Care of Mentally Ill Inmates in Marin County Jail¹ was published in June of 2017 and is included here as Appendix I.

The 2017-18 Grand Jury has reviewed the responses of the Marin County Sheriff (Appendix II) and the Board of Supervisors (Appendix III) and remains concerned that the problem of care of the mentally ill in the Jail has not been adequately addressed. Moreover, it is the opinion of the Grand Jury that inadequate mental health treatment may expose the County to significant liability if left unaddressed. This report explores the adequacy of the previous responses and recommends that the respondents take further action.

The Grand Jury's investigation found that the Jail and the Marin County Department of Health and Human Services (HHS) have only recently begun to implement some of the changes recommended in reports^{2,3} previously commissioned by the Marin County Jail and HHS. The 2016-17 Grand Jury recommended the findings of these outside reviews be revisited and changes be implemented. The Grand Jury also had additional recommendations based on extensive investigation.

Of the 12 recommendations made to the Sheriff's Department only one has reportedly been implemented. (See Appendix II). The others were either rejected or were deferred to HHS.

Of the 13 recommendations made to the Board of Supervisors, nine were rejected as needing "further investigation," two were reported to have been implemented, and two were reported to have been partially implemented.

The 2017-18 Marin County Civil Grand Jury concludes that Marin County may be vulnerable to lawsuits that could lead to costly legal fees and onerous judgments, as has occurred in some other California jurisdictions. In addition, the 2016-17 report pointed to certain practices as violating the Constitutional prohibition against cruel and unusual punishment. It is the opinion of this Grand Jury that the recommendations in the 2016-17 report be implemented.

¹ ["Care of Mentally Ill Inmates in Marin County Jail" *Marin County Civil Grand Jury*](#), June 2017.

² Marin County, California Jail Population Projections and Assessment of the Mental Health Care System. JFA Institute, 2010.

³ "Marin County Detention Mental Health Services" Kathleen Page, Correctional Health Consultant, 2012.

BACKGROUND

The 2016-17 report found that despite a significant number of inmates in the Marin County Jail having severe mental health issues, mental health care in the Jail is inadequate, with insufficient mental health staffing, a high degree of turnover in the existing staff, and an overreliance on isolation in safety cells (sometimes referred to as padded cells) as a substitute for effective treatment. Further, the report found that safety cell isolation was being used in a manner that has been described by the courts as cruel and unusual punishment, in violation of an inmate's rights under the Eighth Amendment of the United States Constitution. In addition, the report identified problems with the Quality Assurance process in the Jail and with documentation of reviews of the Policy and Procedures Manual.

The 2017-18 Grand Jury has reviewed the responses of the Board of Supervisors⁴ and the Marin County Sheriff⁵ and remains concerned that the problem of care of the mentally ill in the Jail has not been adequately addressed. Moreover, the Grand Jury believes that these problems may expose the County to significant liability if left unaddressed. This report explores the adequacy of the previous responses and recommends that further actions be taken to address the situation.

In many of their responses, the Sheriff's Department deferred to the Department of Health and Human Services (HHS). Recommendations R 4, 6, 7, 8, 9, and 10 are all deferred entirely to HHS. However, it is the responsibility of the Sheriff, as the administrator, to ensure the provision of appropriate mental health services, as stated in Title 15, "...the facility administrator shall have the responsibility to ensure provision of emergency and basic health care services to all inmates."⁶

APPROACH

The 2017-18 Grand Jury conducted additional and repeat interviews of Sheriff's deputies and HHS personnel. Additional case law was also researched and is included in this current report to support the need to respond to and implement the previous and current recommendations.

DISCUSSION

In his response to the 2016-17 Grand Jury report on Care of Mentally Ill Inmates in Marin County Jail, the Marin County Sheriff relies heavily on California Code of Regulations Title 15, Minimum Standards for Local Detention Facilities.⁷ Title 15 expressly allows standards that exceed Title 15 itself. Case law in this area has required that Title 15 standards be exceeded.

⁴ [The Marin County Board of Supervisors' responses to Care of Mentally Ill Inmates](#), *County of Marin*, 12 Sep. 2017.

⁵ [Marin County Sheriff Responses to Care of Mentally Ill Inmates](#), *County of Marin*, 2 Aug. 2017.

⁶ [Minimum Standards For Local Detention Facilities Title 15 - Crime Prevention and Corrections Division I, Chapter 1, Subchapter 4, Section 1052.](#)

⁷ *Ibid.*

The following excerpt is taken from Title 15 text.

§ 1004. Severability.

If any article, section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Board, or otherwise inoperative, such decision shall not affect the validity of the remaining portion of these regulations.

Note: Authority cited: Section 6030, Penal Code.

Reference: Section 6030, Penal Code.

§ 1005. Other Standards and Requirements.

Nothing contained in the standards and requirements hereby fixed shall be construed to prohibit a city, county, or city and county agency operating a local detention facility from adopting standards and requirements governing its own employees and facilities; provided, such standards and requirements meet or exceed and do not conflict with these standards and requirements. Nor shall these regulations be construed as authority to violate any state fire safety standard, building standard, or health and safety code.

It is the conclusion of the Grand Jury that a reliance upon Title 15 creates potential liability issues that could significantly impact Marin County. This conclusion is based upon an examination of the extensive body of case law in this area.

Many of the citations below come from a landmark decision in the case *Hernandez v. County of Monterey*, United States District Court, Northern District of California, Case No. CV 5:13 2354 PSG. This decision will be referred to below as *Hernandez*. Other decisions will be referenced in the text.

Notably, in *Hernandez*, the Court rejected the argument of the County of Monterey that their policies and practices were adequate because they complied with Title 15 regulations, stating “that argument does not work. There is nothing inconsistent in complying with both the Constitution and Title 15... And even if there were a conflict, the Supremacy Clause makes it very simple: the Constitution controls.” (See citation above: § 1004. Severability.)

With regard to specific recommendations of the 2016-17 report:

Recommendation 1: Mentally ill inmates should not be kept in a safety cell longer than 24 consecutive hours unless the Jail psychiatrist certifies that no other remedy is available to prevent the inmate from harming themselves or others.

Sheriff’s response: “This recommendation requires further analysis. We currently follow the California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement. We defer to Health and Human Services for a determination of the appropriate level of review for this purpose.”

Board of Supervisors’ response: “This recommendation requires further analysis. Utilization of Safety Cells is subject to the Sheriff’s policies and procedures. For clarification, Title 15 now

requires a mental health clinician to provide consultation and recommendations to Jail custody staff every 12 hours regarding persons housed in Safety Cells. There is not a regulatory requirement that this consultation be completed by a psychiatrist or that resulting recommendations be enacted.”

Analysis: In the opinion of the Grand Jury, prolonged placement in safety cells provides substantial risk to the health and welfare of an inmate. The 2016-17 Grand Jury found the mean time of placement in safety cells to be almost 24 hours, and discovered multiple instances of inmates detained in safety cells for periods of 72 hours or more. The 2016-17 Grand Jury Report (page 17) found that one mentally ill inmate was kept in a safety cell in excess of 10 days and numerous instances where inmates were kept in safety cells for more than 7 days. Safety cells are small rooms with padded walls, devoid of furniture and adequate sanitary facilities, and lacking opportunities for diversion. Placement for prolonged periods would be highly detrimental to the mental state of an individual with a pre-existing mental illness. The courts have repeatedly ruled in ways that are consistent with this opinion. For example, in *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995), the court stated that “Placing [certain mentally ill prisoners] in the SHU [or solitary] is the mental equivalent of putting an asthmatic in a place with little air to breathe. The risk is high enough, and the consequences severe enough, that we have no hesitancy in finding that the risk is plainly unreasonable.”

Recommendation 2: Safety cells should never be used for mentally ill inmates as a substitute for adequate medication and/or other psychiatric treatment.

Sheriff’s response: “This recommendation has been implemented. Use of a Safety Cell may be needed to ensure the safety of the individual and/or other inmates and jail staff. The use of the Crisis Stabilization Unit (CSU), Marin General Hospital and California Psychiatric Transitions (CPT) have provided additional options to address the need of urgent psychiatric conditions.”

Board of Supervisors’ response: “This recommendation has been implemented. By policy, Safety Cells are only used when an inmate's behavior jeopardizes themselves, custody staff, other inmates, or the security of the facility regardless of whether or not an inmate has received adequate medication or psychiatric treatment.”

Analysis: The CSU, CPT, and Marin General are not options for inmates who have been convicted because the facilities are not considered secure. Only inmates eligible for Conditional Release can be released to these facilities. Since convicted mentally ill inmates do not currently receive professional therapy, and these inmates may not agree to taking medication, the safety cell is the only currently available remedy. Extraction to a facility that can provide involuntary medication may not be available. While the Jail has a recently executed contract with Atascadero State Prison for this purpose, it is the understanding of the Grand Jury that beds are rarely available at that facility. Severely mentally ill persons may refuse medication because they are

too ill to understand the need for the medications. Protocols need to be developed for inmates who fall into these categories that do not involve confinement to a safety cell.

As indicated in the 2016-17 report, “The safety cell described in Title 24, Part 2, Section 1231.2.5, shall be used to hold only those inmates who display behavior that results in the destruction of property or reveals an intent to cause physical harm to self or others. The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures governing safety cell use and may delegate authority to place an inmate in a safety cell to a physician. ... In no case shall the safety cell be used for punishment or *as a substitute for treatment.*” (Emphasis added.)

Recommendation 3: Any inmate placed in a safety cell should be evaluated by mental health staff within one hour for the appropriateness of the placement and the evaluation of possible alternative placements.

Sheriff’s response: “This recommendation will not be implemented because it is not warranted or reasonable. We currently follow the California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement.”

Board of Supervisors’ response: “This recommendation will not be implemented because it is not warranted or reasonable. Implementing this recommendation would not be the most cost-effective option to enhance mental health services in the Jail. Currently, Jail mental health staff assess inmates in Safety Cells during scheduled hours. After hours, the Jail Mental Health Supervisor is available by phone for consultation. Jail staff adhere to California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement.”

Analysis: Placement in a safety cell, as indicated above, should be done only when no other avenue for treatment exists. Prolonged placement should be made only when a qualified mental health professional determines that it is necessary, not upon the sole judgment of custodial personnel.

The Court-approved implementation plan in *Hernandez* requires that, in the case of an inmate who is placed in a safety cell because of suicide risk, a qualified mental health provider must promptly evaluate the inmate to determine the level of suicide precautions necessary in the immediate term (“promptly” is defined as immediately to no later than 4 hours). Thus, while the initial recommendation of the 2016-17 Grand Jury of one hour may not be feasible, the court’s requirement of “no later than 4 hours” should be adopted as the standard in the Marin County Jail.

Recommendation 4: The Jail should, within 6 months, establish or contract with a local facility where involuntary administration of psychiatric medication can take place.

Sheriff's response: "Defer to Health and Human Services, as they are responsible for contracting with such facility."

Board of Supervisors' response: "This recommendation has been partially implemented. HHS maintains a contract with Marin General Hospital-Unit A for hospitalization of inmates who are appropriate for release from the Jail on Conditional Release status approved by the Court, dismissal of legal charges, or other circumstances when detention status is not maintained."

Analysis: The remedies cited in the Board of Supervisors' response do not cover a critical situation: inmates who have been convicted of an offense and sentenced are not eligible for Conditional Release, dismissal of legal charges, or other circumstances when detention status is not maintained.

Inmates who have not been convicted may be "conditionally released" and then returned to the Jail after treatment. It is not uncommon to have inmates who are convicted and serving a sentence to become severely mentally ill while in jail and for those inmates it is critical to have the opportunity available for involuntary administration of drugs.

While a number of solutions to the problem of the involuntary administration of drugs have been tried, they involve transportation to remote locations. This is expensive when the time of Sheriff's Deputies is accounted for, as well as stressful for the inmate who is critically ill and the families who may not have the resources to visit loved ones.

Recommendation 5: The Jail should identify and adopt, within 6 months, policies that ensure mentally ill inmates are provided a minimum of one hour per day outside their cell, with a minimum of seven hours per week, while meeting adequate clinical and custodial standards of care.

Sheriff's response: "This recommendation will not be implemented. Based on the physical layout and the multiple classification of inmates housed at the Jail, this recommendation is not feasible, nor is it required by California Code of Regulations Title 15 Minimum Standards for local detention facilities."

Board of Supervisors' response: "This recommendation will not be implemented because it is not warranted or reasonable. Based on the physical layout of the Marin County Jail and the multiple classifications of inmates housed at the Jail, this recommendation is not feasible nor is it required by California Code of Regulations Title 15 Minimum Standards for local detention facilities."

Analysis: The Grand Jury contends that none of these reasons can be used to avoid the restrictions against cruel and unusual punishment. In fact, in *Brown v. Plata*, 131 S.Ct. at 1928-29, the court concluded that one "may not allow constitutional violations to continue simply

because a remedy would involve intrusion into the realm of prison administration.” Further, this court ruled “...Failure to properly consider the mental state of class members requires the court to act. If defendants fail to meet their Eighth Amendment obligations, this court must enforce compliance.”⁸

Courts have repeatedly found that prolonged isolation violates the rights of convicted prisoners under the Eighth and Fourteenth Amendments: for example, *Hutto v. Finney*;⁹ *Toussaint v. McCarthy*;¹⁰ *Madrid v. Gomez*;¹¹ *Ashker v. Brown*.¹²

Structured and unstructured out-of-cell time for administratively segregated and/or mentally ill inmates is a common component of court-ordered remedial plans. For example, the Settlement Agreement in *Hernandez* requires that all inmates in administrative segregation cells be offered: 3 hours per week for exercise and socialization; 14 hours per week for “socialization time” where at least one other inmate is in the common area at the same time; and 2 hours per week of programming. Per another Settlement Agreement, Los Angeles County Jails are required to provide seriously mentally ill prisoners with 10 hours of unstructured out-of-cell time as well as 10 hours of structured therapeutic or programmatic time per week. (See *United States of America v. County of Los Angeles and Los Angeles County Sheriff, Joint Settlement Agreement Regarding the Los Angeles County Jails, CV No. 15-5903.*)

Recommendation 6: A psychiatrist should be available at the Jail 8 hours per day, 5 days per week, and be available by telephone 24 hours per day, 7 days per week.

Sheriff’s response: “Defer to Health and Human Services.”

Board of Supervisors’ response: “This recommendation has partially been implemented. Coverage has increased from 20 hours per week to 28 hours per week. Increase in psychiatric coverage from the current 28 hours/week to 40 hours a week requires further analysis. It is worth noting that telephonic consultation is available 24 hours/day, seven days/week.”

Analysis: The Grand Jury considers this to be an adequate response.

⁸ *Brown v. Plata*, 131 S.Ct. at 1928 (citing *Hutto v. Finney*, 437 U.S. 678, 687, n. 9, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978)).

⁹ *Hutto v. Finney*, 437 U.S. 678 (1978).

¹⁰ *Toussaint v. McCarthy*, 801 F.2d 1080, 1098 (9th Cir. 1986).

¹¹ *Madrid v. Gomez*, 889 F. Supp. 1146, 1246 (N.D. Cal. 1995).

¹² *Ashker v. Brown*, No. 09-5796, 2013 WL 1435148 (N.D. Cal. Apr. 9, 2013).

Recommendation 7: A Mental Health Crisis Specialist or a Psychiatric Nurse should be available at the Jail 24 hours per day, 7 days per week.

Sheriff's response: "Defer to Health and Human Services."

Board of Supervisors' response: "This recommendation requires further analysis. We would need to compare this option among other enhancement options to determine if this is the most effective option. There would need to be a substantial increase in staffing in order to provide 24-hour coverage. An analysis of utilization patterns is necessary to determine if this level of staffing is warranted."

Analysis: In response to recommendations 6 and 7, the Department of Health and Human Services has committed to adding 1.5 Full Time Equivalent (FTE) Crisis Specialist positions. These positions have not at this time been filled. While these additions are a good first step, it is the opinion of the Grand Jury that they do not meet the level of staffing that would be required to conform to recommendations 1, 3, 5, and 8 as necessary to meet the standard of care set out by the courts.

Recommendation 8: The Jail should immediately institute programs to provide appropriate professional mental health (non-medication) therapy to all mentally ill inmates, particularly those incarcerated for longer than 7 days.

Sheriff's Response: "Defer to Health and Human Services."

Board of Supervisors' response: "This recommendation requires further analysis and is under consideration. The Marin County Board of Supervisors recently moved to participate in the national Stepping Up Initiative. This has the goals of reducing incarceration of persons with behavioral health issues, reducing the length of incarceration of these individuals, assessing and providing appropriate behavioral health interventions during incarceration, and reducing recidivism. Health and Human Services has been working with the Board of Supervisors and County Administrator to consider policy options in a phased approach for expanded Jail mental health services. The first of these, which currently is currently *[sic]* under consideration, is the establishment of a full time Jail Mental Health Supervisor position and the addition of 1.5 FTE mental health practitioners. We anticipate consideration of this option within approximately six months."

Analysis: Incarceration of a mentally ill inmate with no therapeutic intervention only increases the chance that upon release the inmate will soon find him- or herself back in the Jail. Accordingly, court approved remedial plans for jails have often contained provisions requiring therapy. As only one example, the remedial plan governing the Riverside County Jails provides daily therapeutic contact: "inmates who are receiving mental health services and are housed in

administrative segregation shall be evaluated daily by mental health staff at the clinical therapist level or higher.”¹³

Other cases have been settled with more specific requirements for therapeutic treatment. The remedial plan regarding the Muscogee County (Georgia) Jail requires officials to provide seriously mentally ill inmates “two scheduled out-of-cell sessions of structured individual or group therapeutic treatment and programming Monday through Friday and one session on Saturdays, with each session lasting approximately one hour, with appropriate duration to be determined by a qualified mental health professional and detailed in that inmate’s individualized treatment plan.”¹⁴

Recommendation 9: Booking of inmates should at all times include screening for mental illness by a nurse using an accepted mental health screening tool.

Sheriff’s response: This recommendation was implemented prior to the Grand Jury’s review of mental health services in the Jail. During the medical screening process, a Jail nurse who is a certified RN, follows a medical screening tool that includes questions pertaining to the mental health status of the arrestee/inmate at the time of his/her booking.

Board of Supervisors’ response: “This recommendation has been implemented. Jail Medical Nurses include a mental health screening in its integrated health screening tool which is completed at the time of booking. With implementation of the new electronic health record (Sapphire), this will be expanded and include entries by Jail Mental health staff.”

Analysis: The nursing staff at the Jail does ask questions of inmates during the booking process. It is during this screening that inmates with mental illness are initially identified and referred to the mental health professionals for further assessment. Currently the Jail mental health staff use a SIRP format for follow up after referral. SIRP stands for Situation, Intervention, Response, and Plan.

Recommendation 10: Classification of inmates as mentally ill should be reviewed by a member of the mental health staff within one hour of booking.

Sheriff’s response: “Defer to Health and Human Services.”

Board of Supervisors’ response: “This recommendation requires further analysis. Among the enhancement options for expanded mental health services in the Jail being considered is the addition of a mental health practitioner to be available at the time of booking to make recommendations about treatment and housing needs. However, it is not anticipated that this would be feasible 24 hours/day, seven days/week but would be available during hours of the highest need.”

¹³ Gray v. County of Riverside, Consent Decree, Case 5:13-CV-00444.

¹⁴ U.S. v. Columbus, Georgia, Memorandum of Agreement between the United States Department of Justice and the Consolidated Government of Columbus, Georgia Regarding the Muscogee County Jail.

Analysis: The court-ordered settlement in *Hernandez* provided that “in the case of an inmate who is placed in a safety cell because of suicide risk, CFMG shall promptly evaluate the inmate to determine the level of suicide precautions necessary in the immediate term (promptly defined as immediately to no later than 4 hours).” It is prudent to apply this same standard to all inmates classified as mentally ill, as without such an analysis, no professional determination has been made of the risk of suicide of the inmate. Accordingly, we revise the previous recommendation to read “...within 4 hours of booking.”

Recommendation 11: All policies and procedures in the Sheriff's Manual related to the care of inmates should be reviewed and updated within 6 months and following that, as necessary, at least biennially.

The Sheriff and the Board of Supervisors each replied with the identical text: “This recommendation will not be implemented. The Marin County Sheriff's Office Custody Division Policy and Procedure Manual is reviewed on a regular and ongoing basis and that process is reviewed annually to ensure adequacy by the Board of State and Community Corrections.”

Analysis: It is true that the Board of State and Community Corrections does audit California jails on a regular basis. This is done as a site visit with the purpose of ensuring the practices in jails in California are meeting the minimum standards of Title 15. It is unreasonable to believe an auditor would have the time and ability to read through all of the procedures in the Jail Policies and Procedures Manual in the one day the auditor is on site.

In addition, the Grand Jury is mandated by California Penal Code Section 919 to “inquire into the condition and management of the public prisons within the county.”

919. (a) The grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

(b) The grand jury shall inquire into the condition and management of the public prisons within the county.

(c) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county. Except as provided in Section 918, this subdivision does not apply to misconduct that involves a shooting or use of excessive force by a peace officer described in Section 830.1, subdivision (a) of Section 830.2, or Section 830.39, that led to the death of a person being detained or arrested by the peace officer pursuant to Section 836.

(Amended by Stats. 2015, Ch. 175, Sec. 2. Effective January 1, 2016.)

Title 15. Crime Prevention and Corrections Division 1, Chapter 1, Subchapter 4 clearly states the requirement that all policies and procedures be reviewed and updated at least biennially.

§ 1029. Policy and Procedures Manual.

Facility administrator(s) shall develop and publish a manual of policy and procedures for the facility. The policy and procedures manual shall address all applicable Title 15 and Title 24 regulations and shall be comprehensively reviewed and updated at least every two years. Such a manual shall be made available to all employees.

Below are just two examples of the many procedures found in the Jail Policies and Procedures Manual.

Example One is an example of a procedure that has been properly documented and dated. Note it includes the date and the reason for the update. Per Division 1, Chapter 1, Subchapter 4, the next review is required to be May 10, 2018. If no changes are required the review is simply dated as reviewed with no changes required.

Example One:

The following procedure CUS 4-1 Initial Classification was updated as required because of change in the code.
CUS 4-1

RELATED STANDARDS:

Prison Rape Elimination Act Standards 28 CFR §115.14 28 CFR §115.41-43

Title 15, Article 5, Section 1050

Title 15, Article 5, Section 1051

Chapter 4, Section 6

Chapter 4, Section 7

Chapter 4, Section 8

DATE REVISED

08-19-08

02-18-10

05-10-16

By order of

BUREAU COMMANDER

The text shown below is taken from the Title 15 updates to the code in 2010 to be implemented by 2012. The strikethrough indicates text deleted, the underline indicates text added.

§ 1044. Incident Reports.

Each facility administrator shall develop written policies and procedures for the maintenance of written records and reporting of all incidents which result in physical harm, or serious threat of physical harm, to an employee or inmate of a detention facility or other person. Such records shall include the names of the persons involved, a description of the incident, the actions taken, and the date and time of the occurrence. Such a written record shall be prepared by the staff assigned to investigate the incident and submitted to the facility manager or his/her designee ~~within 24 hours of the event of an incident.~~

NOTE: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

2010 Adult Title 15 Regulations

Effective 9/2012 25 v.10/2012

Example Two is an example of a procedure that has not been properly documented and dated. Note the procedure was established August 8, 1994.

Example Two:

MARIN COUNTY SHERIFF'S DEPARTMENT
CUSTODY DIVISION POLICY AND PROCEDURE MANUAL
CHAPTER 1 - ADMINISTRATIVE DATE CUS - 1 - 7 Date: 8-3-94
RELATED STANDARDS:
Title 15, Article 4, Section 1044
MCSO General Orders Section 510.32
MCSO General Orders Section 520.12
DATE REVISED
None
By order of
BUREAU COMMANDER

Failure to update the policies and procedures manuals is not limited to the Jail. The Grand Jury found that HHS is not updating the HHS Detention Medical and Mental Health Services Marin County Jail Policy and Procedures Manual.

It is also incumbent upon HHS to request notification of changes to policies and procedures that affect HHS and to be aware of changes in the law that affect HHS policies and procedures that impact inmates of the Jail.

See two examples below.

Example One:

The following section is taken from the DETENTION MEDICAL AND MENTAL HEALTH SERVICES MARIN COUNTY JAIL POLICY AND PROCEDURES MANUAL 1205 — Mentally Disordered Inmates:

“Inmates who have an acute psychiatric illness who cannot be safely treated in the facility, are transferred to Santa Clara Jail Psychiatric Facility. In addition, a psychiatrist is on-call for phone consultation 24 hours per day.

In a psychiatric emergency and in the absence of the Crisis Specialist, the duty Sgt. in collaboration with nursing consult with the on-call Psychiatrist and PES On Duty Administrator to determine the inmates disposition.

Legal Basis: Title 15, Section 1052, California Code of Regulations

Reference: Chapter 4, Section 4-7 Custody Division Policy and Procedure Manual: Subclassification of Mental Health Inmates.”

The contract with the Santa Clara Psychiatric Facility ended in early 2015. The Marin County Jail Policy and Procedures Manual was updated to reflect this change in 2017. It is clear HHS depends on the Jail manual to update the HHS Marin County Jail Policy and Procedures Manual. It is incumbent upon the Jail to inform HHS of procedural changes that affect HHS policies and procedures.

Example Two:

The following section also shows failure to update the procedures as required, the text shown is taken from the:

DETENTION MEDICAL AND MENTAL HEALTH SERVICE MARIN COUNTY JAIL POLICY AND PROCEDURES MANUAL 1207 — Transfer of Mentally Disordered Inmates

References: Title 15, Section 1207; IMQ Standards 302, 109

Revised: 11/08, 8/13

Recommendation 12: The Jail should develop, implement, and enforce a quality improvement procedure and establish a quality improvement plan for mental health services.

Sheriff's response: "This recommendation requires further analysis by Health and Human Services; however, the Marin County Sheriff's Office will work in partnership with Marin Health and Human Services to identify areas in need of improvement."

Board of Supervisors' response: "This recommendation requires further analysis. Health and Human Services will continue to work in partnership with the Marin County Sheriff's Office to develop, implement and enforce a quality improvement procedure for mental health services within the Marin County Jail. Health and Human Services has initiated a quality improvement plan specific to Behavioral Health and Recovery Services' provision of mental health services in the Jail."

Analysis: The Quality Assurance Meetings are defined in the Detention Medical and Mental Health Services, Marin County Jail Policy and Procedures Manual, Section 1104 - Quality Assurance Meetings. These meetings do not satisfy the documented requirements of the procedure as they have not adequately addressed the issues of severely mentally ill inmates.

The procedure's legal basis is sourced from "Standards for Health Services in Jails", September, 1981 and defined in the Detention Medical and Mental Health Services, Marin County Jail Policy and Procedures Manual as: "Health Services (including psychiatric) are discussed at least quarterly at documented administrative meetings between the Health Authority and the Official, legally responsible for the facility or their designees."

Although the care of inmate's medical and psychiatric needs are the responsibility of HHS it is clearly the responsibility of the head of administration of the Jail to ensure these meetings are properly and effectively conducted.

Recommendation 13: The County should provide adequate funding to implement these recommendations.

Sheriff's response: The Sheriff was not required to respond to this recommendation.

Board of Supervisors' response: "This recommendation requires further analysis. The County spends approximately \$1.3 million annually to provide adequate behavioral health consistent with state and federal health and safety standards. In addition, the County spends additional state realignment funds to provide transitional services to inmates, including those inmates with mental health needs. Over the next few months, we will be considering proposals to enhance mental health services and potential funding sources. As part of the Stepping Up initiative the Board of Supervisors has asked HHS to bring recommendations for expanding services. These proposals are being developed and will be brought to the Board for funding consideration."

Analysis: As discussed in relation to other recommendations above, the courts have repeatedly found that a failure to provide adequate mental health care cannot be excused by a lack of facilities, personnel or funding.

FINDINGS

- F1. Lack of full compliance by the Sheriff and the Board of Supervisors with the recommendations of the 2016-17 Grand Jury report *Care of Mentally Ill Inmates in Marin County Jail* creates a situation for mentally ill inmates that could be characterized as cruel and unusual punishment as defined by multiple court cases.
- F2. Lack of full compliance by the Sheriff and the Board of Supervisors with the recommendations of the 2016-17 Grand Jury report *Care of Mentally Ill Inmates in Marin County Jail* may expose the County to significant liability.
- F3. HHS is not timely updating the HHS Detention Medical and Mental Health Services Marin County Jail Policy and Procedures Manual.

RECOMMENDATIONS

- R1. The Marin County Jail, together with the Board of Supervisors and the Department of Health and Human Services, should ensure that mentally ill inmates are not kept in a safety cell longer than 24 consecutive hours unless the Jail psychiatrist certifies that no other remedy is available to prevent the inmate from harming themselves or others.
- R2. Safety cells should never be used for mentally ill inmates as a substitute for adequate medication and/or other psychiatric treatment.
- R3. Any inmate placed in a safety cell should be evaluated by mental health staff within four hours for the appropriateness of the placement and the evaluation of possible alternative placements.
- R4. The Board of Supervisors should, within 6 months, establish or contract with a local facility where sentenced inmates can receive involuntary administration of psychiatric medication.
- R5. As provided in the joint settlement agreement regarding the Los Angeles County Jails, the Marin County Jail should identify and adopt, within 6 months, policies that ensure mentally ill inmates are provided with 10 hours of unstructured out-of-cell time as well as 10 hours of structured therapeutic or programmatic time per week.
- R6. The Marin County Jail, together with the Board of Supervisors and the Department of Health and Human Services, should ensure that a psychiatrist be available at the Jail 8 hours per day, 5 days per week, and be available by telephone 24 hours per day, 7 days per week.

- R7. The Marin County Jail, together with the Board of Supervisors and the Department of Health and Human Services, should ensure that a Mental Health Crisis Specialist or a psychiatric nurse be available at the Jail 24 hours per day, 7 days per week.
- R8. The Marin County Jail, together with the Board of Supervisors and the Department of Health and Human Services, should immediately institute programs to provide appropriate professional (non-pharmacological) mental health therapy to all mentally ill inmates, particularly those incarcerated for longer than 7 days.
- R9. The Marin County Jail, together with the Board of Supervisors and the Department of Health and Human Services, should ensure that classification of inmates as mentally ill be reviewed by a member of the mental health staff within four hours of booking.
- R10. All policies and procedures in the Sheriff's Manual related to the care of inmates should be reviewed and updated within the next 6 months. As required by law, they should be reviewed and updated biennially thereafter. An immediate review should take place whenever code changes are made.
- R11. The County should provide adequate funding to implement these recommendations.
- R12. The Jail should inform HHS of procedural changes that affect HHS policies and procedures in the Jail.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- The Marin County Board of Supervisors (R1-R12)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individuals:

- The Marin County Sheriff (R1-R12)

The Grand Jury invites the following to respond:

- Director, Marin County Department of Health and Human Services
- Chief Probation Officer, Marin County Department of Probation
- Marin County Public Defender
- Secretary, California Department of Corrections and Rehabilitation
- Secretary, California Health and Human Services Agency
- Chairperson, Executive Committee, California Mental Health Planning Council
- Executive Director, Board of State and Community Corrections
- Executive Director, California Psychiatric Association
- Executive Director, NAMI California
- President, California State Bar Association
- President, Disability Rights California
- President, California Mental Health Services Authority
- President, Mental Health America of California

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

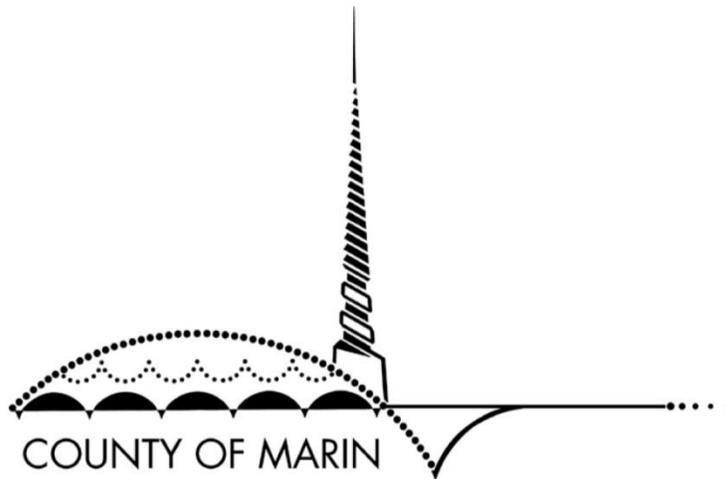
APPENDIX I

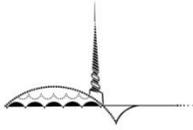
2016–2017 MARIN COUNTY CIVIL GRAND JURY

Care of Mentally Ill Inmates in Marin County Jail

Report Date: June 8, 2017

Public Release Date: June 15, 2017





Marin County Civil Grand Jury

Care of Mentally Ill Inmates in Marin County Jail

SUMMARY

Today in the United States there are nearly 10 times as many mentally ill persons in prisons and jails as there are in mental hospitals. A particularly severe burden has been placed on California's county jails by the closing of most of the state's mental hospitals and changes in California laws that have resulted in an increased number of felons being sentenced to jails rather than prisons.

In 2010 and 2012 the Marin County Jail and Department of Health and Human Services commissioned reviews of the care received by the mentally ill in the Jail. These reviews suggested that numerous changes be made in the Jail to raise the level of care of mentally ill inmates to meet community standards. The Grand Jury's investigation found that the Jail and the Department of Health and Human Services have only recently begun to implement some of the changes recommended in these reports. These changes, however, have not yet resulted in adequate improvement of conditions. Furthermore, some practices in the Jail, particularly the isolation of mentally ill inmates and the placement of inmates in safety cells for extended periods of time, might be judged to be cruel and unusual punishment, potentially violating the constitutional rights of these individuals.

Certain steps being taken constitute some progress, including increases in staffing and a recent resolution of the Marin County Board of Supervisors to join a program entitled the "Stepping Up Initiative," a national initiative to reduce the number of people with mental illness in jails.

This report describes the Grand Jury's investigation of the treatment of mentally ill inmates in the Jail. A significant improvement in mental health care within the Jail must be a high priority for the County. Current staffing, provision, and organization of mental health care in the Jail are inadequate and mental health care does not conform to community care standards.

The County must find resources to provide mental health care to inmates in Marin County Jail that meets the requirements of both the law and accepted clinical practices.

BACKGROUND

Why this investigation was conducted

The institutional care of persons with mental illness has changed dramatically over the past 50 years. Today, California has more severely mentally ill persons incarcerated in correctional facilities than in mental hospitals. This has put a significant burden on the criminal justice system, particularly on county jails, which were not designed to care for persons with mental illness.

The 2013–2014 Marin County Civil Grand Jury addressed several aspects of this issue in their report, “Jail Checkup: What’s the Price of a Clean Bill of Health.” The report criticized the methods used by the Marin County Jail to provide emergency involuntary medication. Three years later, this specific issue has still not been resolved.

Scope of Investigation

This investigation was limited to the care of mentally ill persons while incarcerated in the jail. Other related and important issues, such as the continuity of care for mentally ill inmates after their release into the community, were beyond the scope of this investigation.

Focus of Findings

This report identifies policy, organizational, management, and staffing issues in the Jail that need to be addressed in order to provide appropriate care for mentally ill inmates. The Grand Jury was very favorably impressed by the professionalism, dedication, and competence of the Jail’s clinical and custodial staff. The professional mental health staff in the Jail (psychiatrist, nurses, crisis specialists) provide high quality care, but the overall mental health care of inmates is hindered by the issues described in this report.

METHODS

The Grand Jury examined numerous documents, including:

- Historical documents and descriptions of the care of persons with severe mental illness, particularly those in institutional care
- Documents from the scientific and clinical literature identifying best practices in the care of persons with severe mental illness, including both community practice and care for incarcerated persons
- Laws concerning general and specific requirements for the treatment of mentally ill incarcerated persons
- Laws concerning involuntary administration of psychiatric medications to persons in jails

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- Court records and documents describing and analyzing judicial rulings regarding the medical and mental health care of incarcerated persons
- Reports commissioned by the Jail and the Department of Health and Human Services about care of inmates with mental illness in the Marin County Jail.
- Marin County Jail policies and procedures
- Policies and procedures of other California jails

The Civil Grand Jury conducted interviews that included:

- Clinicians and administrative employees of the Marin County Department of Health and Human Services
- Marin County Jail employees
- Marin County Probation Department employees
- Marin County Public Defender employees
- Experts in the care of persons with mental illness
- An expert in jail and prison law
- A community mental health advocate

The Grand Jury thanks the County staff and the experts and others who met with us, responded to our requests for information, and provided important information and candid insights that form the basis of much of this report.

INVESTIGATION RESULTS

Institutionalization of the Mentally Ill: Transition from Hospitals to Correctional Facilities

Today in the United States there are nearly 10 times as many mentally ill persons in prisons and jails than there are in mental hospitals.¹ Both nationally and in California, prisons and jails have become the de facto institutional home for persons with severe mental illness, particularly as mental health-related hospital beds have decreased over time. Marin County Jail, and jails in other California counties, are struggling with the effects and outcomes of the closing of most of California's state mental hospitals.

The shutdown of many of California's mental institutions began in the late 1950s, when there were 14 such hospitals. Today there are five state hospitals with a population that is only about 10 percent of what it was 60 years ago. There were a number of reasons for the closing of

¹ [Torrey EF, Zdanowicz MT: The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey. Treatment Advocacy Center, April 8, 2014](#)

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California's mental hospitals, including the financial burden of maintaining these facilities. In addition, advances in treatment, especially the introduction and use of new and revolutionary antipsychotic medications in the 1950s,² suggested that many persons with severe mental illness might be able to function adequately outside of mental hospitals. Advocates for the mentally ill argued that it was more humane to care for those with mental illness in the community. Mental health clinics were developed in many communities with financial help provided by the State's implementation of the Short-Doyle Act in 1957.

The shift from mental hospital to community care was given additional impetus by the enactment of the Lanterman-Petris-Short Act (LPS) in 1968, which ended involuntary hospitalization for those with mental illness, developmental disabilities, and chronic alcoholism without a full and timely clinical evaluation and judicial hearing.³ LPS changed the state's mental-commitment laws to limit involuntary detention of all but the most gravely mentally ill and provided a "patient's bill of rights" regarding treatment.⁴

The intent of the LPS Act was to end inappropriate lifetime commitment of people with mental illness and firmly establish the right to due process in the commitment process while significantly reducing state institutional expense.⁵

The hoped-for adequate care of mentally ill persons in the community, as envisioned in the Short-Doyle and LPS acts, never fully materialized. In retrospect, while there were many humane reasons for discharging patients from the state's mental hospitals to community care, the closing of state hospitals also contributed to a large increase in homelessness and other negative social consequences.

The closing of the hospitals and inadequate community care resources left many mentally ill persons without proper psychiatric care. The mentally ill often lapsed into psychosis, some committing misdemeanor or felony offenses resulting in their arrest. Some mentally ill are taken to jail because their erratic behavior is considered annoying to the public, not because they are a threat to public safety. Others end up in jail when their families cannot find help and call law enforcement. Still others are taken to jail because treatment centers cannot care for them due to violent or uncontrollable behavior.

Constitutional Rights of Mentally Ill Inmates

The rights of mentally ill inmates in the County Jail are set out in a number of statutes, but flow initially from the Eighth Amendment to the U.S. Constitution which reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The

² Shen WW: A history of antipsychotic drug development. *Compr Psychiatry*. 1999;40:407-14.

³ [California Welfare and Institutions Code, §§ 5000-5120](#)

⁴ Jaffe, SB. "Good Aims, Poor Results." *Los Angeles Times*. 22 Mar. 1987.

⁵ ["The Lanterman-Petris-Short Act."](#) *California Hospital Association*.

Care of Mentally Ill Inmates in Marin County Jail

prohibition against cruel and unusual punishment has been explicated in extensive legal action; a detailed description of the jurisprudence relating to this issue as regards mentally ill inmates is beyond the scope of this report. In California, important rulings relating to the rights of mentally ill inmates have been decided in a series of court cases originally filed in 1990 and now called *Coleman v. Brown*. In these cases, various courts have ruled that California's treatment of the mentally ill violated the Eighth Amendment rights of mentally ill inmates and prisoners in regard to overcrowding, use of force, disciplinary measures and segregation. Most significantly, courts have ruled that segregation of the mentally ill is harmful.

A problem exists regarding segregation of the mentally ill, which has been determined to be cruel and unusual punishment in the *Coleman* case mentioned above. We note in particular that several experts in this field told us that mental illness can only be exacerbated by isolation, and that segregation of inmates is a gamble on the part of a jail. Segregation is described in greater detail below.

Recent Policy Changes Affecting California's Mentally Ill Population

Major changes in California state laws, codes and policies regarding care of persons with serious mental illness have occurred in the past 30 years. These changes have placed more responsibility on California's counties for the care of these persons, have increased the burden of this care on county jails, and have defined more precisely the ability of jails to provide emergency involuntary medications. Serious mental disorder (see Glossary for full definition) may cause behavioral functioning that interferes with the primary activities of daily living.

1991 Mental Health "Realignment." In 1991, in response to state fiscal issues, California transferred financial and administrative responsibility to the counties for care of persons with mental illness.^{6,7} The legislation, which changed the California Welfare and Institutions Code (WIC), requires counties to provide a minimum set of services to mentally ill children and adults, as defined in WIC section 5600.2.⁸

⁶ [Legislative Analyst's Office State Spending Plan for 1992-93](#)

⁷ ["A Complex Case: Public Mental Health Delivery and Financing in California"](#). July 2013

⁸ [California Welfare and Institutions Code Section 5600.2](#)

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AB 1907 authorizes the Department of Corrections and Rehabilitation and county jails to initiate involuntary medication on an emergency basis if it is determined that an inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medication, or is a danger to self or others.

Reports Concerning Care of Mental Illness in Marin County Jail

Between 2010 and 2015 county officials commissioned reports prepared by independent experts to review policies and procedures related to health and mental health care in Marin County Jail.

JFA Institute Report.¹⁴ In 2010 the Jail asked the JFA Institute in Washington, DC to conduct a study titled “Marin County, California Jail Population Projections and Assessment of the Mental Health Care System.” The study had two specific goals. The first goal was to establish population projections that reflected current trends. These findings could not have anticipated the impact of AB 109 and the resulting increase in the jail population.

The second goal was to assess the Jail's then-existing mental health screening and treatment. The authors noted a number of deficiencies in the existing system and that the mental health system did not meet “best practices.” The report highlighted problems in risk assessment, inadequate mental health staff, lack of formal treatment planning, and long delays in addressing the mental health needs of inmates. The major findings of this study are shown in Table 2.

¹⁴ [Marin County, California Jail Population Projections and Assessment of the Mental Health Care System'. JFA Institute, 2010](#)

Table 2
***“Marin County, California Jail Population Projections
and Assessment of the Mental Health Care System”***
JFA Institute, 2010
Report Findings

- Although the jail continues to meet the minimum requirements promulgated by the California Correctional Standards Authority, there are a number of areas that should be improved upon.
- A standardized risk assessment instrument in determining which inmates should be referred for mental health assessment by the custody staff is needed.
- Mental health staff approaches the issue of mental health assessments in an idiosyncratic manner. Consequently, a standardized system for such assessments is needed.
- There is a lack of formal treatment planning.
- There are no ongoing therapeutic services to the mentally ill inmates except for medication(s).
- There is no formal discharge planning is a serious omission that directly contributes to increased recidivism rates for mentally ill inmates. Even in a system with rapid turnover of inmates, some type of formal mental health follow-up in the community for seriously mentally ill inmates is a basic requirement of good mental health care.
- The overwhelming majority of the patients that are on the mental health caseload are being released from the jail without being “cleared” by staff.
- There is insufficient staff to perform the basic requirements of a competent in-custody mental health system. Also, there is no provision for “staff backup” when the staff is away from work for any reason. Based on this review of the current system, staffing pattern could easily be doubled.
- The jail should have a 1.0 FTE psychiatrist, the crisis specialist staff should be increased to provide 12 hours per day, 7 days per week; a FT mental health nurse; and a clerical person dedicated to support the mental health staff.
- There also need to be an effort to recruit culturally competent Spanish-speaking staff due to the large number of monolingual, Spanish-speaking inmates.
- Inmates requiring involuntary psychotropic medication, are now being transferred to the Santa Clara County Jail located in San Jose. This is a very expensive policy (over \$466,000 per year) which needs to re–evaluated and probably terminated.

Care of Mentally Ill Inmates in Marin County Jail

Kathleen Page Report. In 2012, after implementation of AB 109, the Marin County Department of Health and Human Services commissioned a study by Kathleen E. Page, a Correctional Health Consultant, to identify which parts of the Jail’s mental health program were efficient and cost-effective, and which areas could be improved. The report from this study is titled “Marin County Detention Mental Health Services.” In it, many of the shortcomings addressed in the 2010 JFA report were once again found to be problematic, notably inadequate mental health screening and insufficient staffing levels. The major findings of this study are shown in Table 3.

Table 3
“Marin County Detention Mental Health Services”
Kathleen Page, Correctional Health Consultant, 2012
Findings and Recommendations

Findings

- Mental health, drug, and alcohol services need to be expanded
- The mentally ill face higher parole revocation rates; this will increase the number of inmates with mental health issues in the jail system
- It will be important to continue monitoring the number of AB 109 inmates and assess impact... Most of these inmates have a greater need for mental health and drug and alcohol services.
- Mental Health staffing levels are inadequate and need to be increased.
- Lack of evening staff causes insufficient back-up.
- There is a need for targeted preventative mental health intervention for patients who are likely to go into crisis.

Recommendations

- Increase mental health staffing ... Increase 1.0 FTE crisis specialist to cover weekends and to provide coverage during the evening hours.
- Utilize telemedicine for evaluations ... and/or hire a Psychiatric Mental Health Nurse Practitioner (PMHNP).
- All inmates need an initial mental health screening ... This process is essential... This will involve developing improved screening question content ...
- Work actively with a local university to establish the jail as a clinical assignment site for advanced psychology students.

JFA called for a full-time psychiatrist position and crisis specialist staffing 12 hours a day, 7 days a week. Page called for an increase of one full time employee in crisis specialist staffing for weekends and evenings. To date, these objectives have not been met.

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Current psychiatric staffing in the Jail is available 28 hours per week, combining a part-time contracted on-site psychiatrist (20 hours per week) and eight hours of outside assistance from two UCSF Forensic Fellows (four hours each for one year).

Crisis specialist staffing has increased, but weekend coverage only extends to 2:00 PM (Sunday) and 3:00 PM (Saturday). Weekday evening staffing ends at 8:00 PM. To accomplish these additional hours for coverage, three part-time crisis specialists were hired.

In summary, both reports stressed the importance of proper mental health screening, which the 2010 JFA report described as being approached in an “idiosyncratic manner.” Screening is still not consistently done by mental health staff. No standardized assessment tool is used; thus, each mental health employee assesses an inmate’s mental health status based on their own experience and training.

Current Staffing in Marin County Jail

In 2010, the JFA Institute report on the Marin County Jail said, “There is insufficient staff to perform the basic requirements of a competent in-custody mental health system.” As can be seen in Table 4, mental health staffing has expanded since that time, supported in part by funding provided by the State as a result of the AB 109 realignment. A total of 2.05 total Full Time Equivalent (FTE) employees in 2010 has now expanded to 4.35 total FTE employees. In addition, 1.4 FTE Crisis Specialists have become a total of 3.4 FTE; however, one FTE Crisis Specialist does not have clinical mental health responsibilities in the Jail. The Psychiatrist position has expanded from 0.4 to 0.7 FTE. It is worth noting that this includes two University of California, San Francisco psychiatry fellows working together one day per week. With this increase in staffing, some of the issues described in the 2010 report have been addressed.

Even with the improved current staffing situation, mental health care is still problematic. Following initial classification of a mentally ill inmate (which may be done by a member of the custody staff, a nurse, or a crisis specialist) an inmate recognized as mentally ill and/or on psychiatric medication is referred to the psychiatrist. The only treatment available to the psychiatrist is administration of medication, and if the inmate refuses medication there is no current protocol for involuntary administration. An inmate who refuses medication and is considered in psychiatric crisis is placed in a safety cell or in isolation until such time as the crisis passes.

One consequence of inadequate staffing is that it is possible for an inmate to be booked into the jail but not seen by mental health staff for as long as 16 hours. For example, during a Grand Jury visit to the Marin County Jail, an inmate was confined to a safety cell in the booking area. This individual was considered to be suicidal at the time of booking and subsequently placed in a safety cell at 8:00 PM on a Sunday evening. There was no mental health staff available to

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evaluate the inmate until 9:00 AM the next day. Clearance by mental health staff is required prior to releasing an inmate from a safety cell. The evaluation by mental health staff in this case began after the individual had already been confined to a safety cell for 13 hours.

Table 4
Jail Services, Budgeted Full-Time Equivalent Employees, 2010 – 2017

Staff Responsibilities	Fiscal Year							
	2010	2011	2012	2013	2014	2015	2016	2017
Health								
Administration	2.00	2.00	2.00	2.00	2.00	1.00	1.00	1.00
Physical Health								
Physician (Contract)	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30
Detention Nurse Practitioner	1.40	1.40	1.40	1.40	1.40	2.40	2.40	1.40
Detention Nurse Supervisor	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Nursing (RN)	13.35	13.35	14.05	11.75	10.35	10.15	9.75	9.75
Nursing (LVN/Other)					1.00	2.50	2.30	2.30
Nursing Services Manager	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Mental Health								
Psychiatrist (County Employee)	0.40	0.40	0.40					
Psychiatrist (Contract)				0.53	0.53	0.53	0.70	0.70
Mental Health Unit Supervisor	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
Crisis Specialist	1.40	1.40	1.40	1.40	1.40	1.40	1.40	1.40
Licensed Mental Health Practitioner (AB 109 funded)		1.00	1.00	1.00	1.00	1.00	1.00	1.00
Licensed Crisis Specialist (AB 109 funded)							1.00	1.00
Probation								
Administration	18.00	17.00	18.00	18.00	18.00	18.00	18.00	19.00
Adult Services	NA	39.00	38.00	40.00	43.66	43.66	47.66	47.66
Custodial	108.80	106.80	105.80	104.80	103.80	NA	102.80	103.80

Source: Marin County Department of Health and Human Services, Probation Department, and Sheriff's Office
NA: Not available

Beyond the issue of hours of coverage by mental health staff, staffing deficiencies result in an inability to address critical issues. Among these are the fact that intake evaluations are not done by mental health professionals, and there are no therapeutic services available to the mentally ill

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beyond medication. Our investigation also found that inadequate staffing and a high turnover of mental health supervision is taking a toll on the morale of the mental health staff.

Burden of Mental Illness in Marin County Jail

An assessment of the number of inmates with severe mental illness in the Marin County Jail is important to an understanding of the clinical burden of mental illness in the Jail. Because the Grand Jury did not have the clinical expertise or capability to address this issue directly, an indirect indicator was used: the type of medications being prescribed for inmates in the Jail, which is a relatively good proxy for the categories and types of illness being treated.

The Grand Jury asked the Marin County Department of Health and Human Services, which delivers clinical care in the Jail, to provide us with the number of inmates who received one of the major types of psychotropic medications (as defined in the Marin County Jail Drug Formulary) during February and August 2016 (to account for seasonal or other changes).

This information, shown in Table 5, implies a significant mental health burden in the Jail. During the two months studied, approximately 20 percent of inmates received one or more psychotropic medications. About seven percent were receiving anti-depressant agents. In February 2016 there were 32 inmates, over 10 percent of the jail population, who received anti-psychotic agents, which are generally prescribed for only very severe mental illness.

Psychotropic Medication Type**	February	August
Anti-Anxiety Agents Diazepam (Valium)	4	4
Anti-Depressant Agents Amitriptyline (Elavil), Citalopram (Celexa), Fluoxetine (Prozac), Paroxetine (Paxil), Sertraline (Zoloft), Venlafaxine	21	24
Anti-Manic Agents Divalproex DR (Depakote), Lithium Carb - (Eskalith or Lithotabs), Valproic Acid (Depakene)	10	11
Anti-Psychotic Agents Haloperidol (Haldol), Perphenazine (Trilafon), Prochlorperazine (Compazine), Risperidone (Risperdal), Ziprasidone (Geodon)	32	16
Miscellaneous Anti-Cholinergics Benztropine (Cogentin)	2	7
ANY Psychotropic Medication***	68	57
Total Month Inmate Census	309	324

*Source: Marin County Department of Health and Human Services

**Per Marin County Jail medication formulary

***Note that an inmate may be taking multiple psychotropic medications.

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Intake Process

The intake process is a very critical time for the arrestee. Decisions made at this time can affect the health and well-being of the individual. It is also important to understand that the arrestee at this point is accused of and not convicted of a crime.

When an arrestee is brought to the Jail by a peace officer, a sheriff’s deputy does a cursory evaluation of the detainee to determine if s/he should be admitted to the jail. For example, if the detainee is visibly ill or injured, the peace officer is directed to take the detainee to the emergency room at Marin General Hospital. When the medical issue is resolved, the detainee is returned to the jail for booking. A typical daytime booking is followed by a nurse’s evaluation of the detainee, which includes a series of questions similar to those asked prior to admission to a hospital. The detainee is screened for communicable diseases and mental health status. The detainee is then classified and becomes a resident of the jail. Typically, this is acceptable with a routine arrestee during hours when mental health staff is available. During hours when mental health staff is not on duty, classification is left to the booking staff.

Circumstances can occur that could endanger the well-being of the arrestee. If no mental health professional is available for evaluation, a deputy is charged with making critical decisions. Experts interviewed by the Grand Jury recommended that only medically-trained staff should determine the mental condition of an inmate. Someone who might appear to be 'just' intoxicated might be suffering from diabetic shock, mental illness, or the effects of street drugs. Even someone clearly under the effect of alcohol is at risk of potentially life-threatening delirium tremens if not properly evaluated and treated.

Classification Process. Based on a set of specific criteria defined in the Jail’s policy manual, each detainee is classified into one of seven groups (Table 6), which determine the inmate’s housing area, uniform type, and time allowed out of the cell. (Note that in this classification system, “Mental Health” means that an inmate is mentally ill; similarly, “Medical” indicates that the inmate is physically ill.)

Table 6	
Types of Inmate Classification*	
1.	General Population
2.	Administrative Segregation
3.	Maximum Security General Population
4.	Protective Custody
5.	Mental Health
6.	Medical
7.	Civil Commitment

Source: Marin County Jail Policy Manual
 *For definitions of each category see Appendix A

Care of Mentally Ill Inmates in Marin County Jail

When an inmate is defined as mentally ill, the sub-classifications shown in Table 7 apply. These sub-classifications are determined by the mental health staff who make a recommendation to the custody staff for placement of the inmate. These recommendations are not always followed. Deputies can override mental health staff recommendations.

Table 7
Sub-Classification Levels of Mental Health (Class 5) Inmates

- II** Inmates with low to moderate psychiatric symptoms and who may have occasional bizarre and unpredictable behavior. They share recreation time out with the Medical classified inmates and other Level II inmates. Allowed out of their cell during general unlock 2 to 4 hours per day, or a minimum of 3 hours per week.
- III** Inmates who have psychiatric symptoms with a potential for violence and need constant supervision. Includes suicide watches. Allowed out of their cell for 30 minutes to 1 hour per day, or a minimum of 3 hours per week, while the rest of the Pod is in lockdown status.
- IV** Inmates with assaultive behavior and are a danger to staff and/or other inmates will be housed in Administrative Segregation.
- V** An inmate displaying such psychiatric symptoms as would require the inmate be considered 5150 WIC. An inmate considered 5150 needs to be transferred to a facility designed to hold and treat severely mentally ill persons.

Note: There is no mention of Level I in the Jail sub-classification procedures.

There are serious consequences for inmates classified as Mental Health Levels III, IV and V.

Mental Health Level III. Inmates classified as Level III are restricted to their cell for 23 to 23½ hours a day. Mental health professionals interviewed by the Grand Jury, as well as the American Psychiatric Association¹⁵ state that keeping anyone confined for 23 to 23 1/2 hours per day for even a small number of days is likely to cause significant mental health damage. As one expert interviewed by the Grand Jury stated, “Keeping a mentally ill person confined like that only makes the mental illness worse.” The expert also said, “There are studies that show the effects with this type of treatment. If they are not already mentally ill, it will cause mental illness. ... I would go crazy if I had to stay in a cell 23 ½ hours a day.”

Other than medication, no other treatment or therapy is provided. There is no clinical remedy available for inmates who refuse medication.

¹⁵ American Psychiatric Association (2016). *Psychiatric Services in Correctional Facilities*. 3rd Edition. Arlington, VA

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Mental Health Level IV. No instances of Level IV were found during the Grand Jury's inspection of the Jail. However, any inmate classified as Mental Health Level IV would be housed in Administrative Segregation where inmates are restricted to their cells for 23 ½ hours per day.

Mental Health Level V. The Jail does not currently have the capability to hold and treat severely mentally ill inmates classified as Level V.

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Drugs are the only form of treatment of mental illness used in the Jail, and then only if the inmate is willing to take them. Only those medications on the Jail's drug formulary are given to inmates, whether or not the inmate was being successfully treated with a non-formulary medication before being incarcerated. No individual or group psychotherapy is provided by mental health professionals. No occupational therapy is available and there is no social, educational, or recreational time.

An inmate may request to see a mental health professional. The consultation is generally done through a food port in the cell door, which does not allow for privacy. It is not structured, and not a regularly scheduled event.

A problem also arises when an inmate is violent or suicidal because of severe mental illness. The inmate is placed in a safety cell, the jail psychiatrist is contacted, and medication may be prescribed. If the inmate refuses medication, there is currently no alternative other than to keep the inmate in a safety cell until they are no longer a danger to themselves or others. *There is no time limit on the number of days an inmate can be confined in a safety cell.*

Safety Cells. Safety Cells are used to house and control inmates or arrestees who are a danger to themselves or others. The cell is padded and designed to hold only one person. All fixtures, such as security-type lighting, are mounted either outside the cell or are made inaccessible to the detainee. A grated hole in the floor serves as a toilet.

An inmate may be put into a safety cell because he or she is severely mentally ill, suicidal or high on drugs or alcohol; these conditions could result in violent or unsafe behavior. Safety cells are not intended to be used for punishment or as treatment but rather to keep the person safe from harm to themselves or others. While in a safety cell, inmates are offered food (no utensils) at regular mealtimes and water in a paper cup every two hours. A deputy or medical staff observes the inmate regularly to ensure safety.

Care of Mentally Ill Inmates in Marin County Jail

While the purpose of the safety cell is to keep the inmate and the staff safe, there can be significant downsides. Mentally ill persons can be quite adversely affected by the lack of privacy and the lack of any comfort items, such as shoes, clothing, a blanket or bed. This can exacerbate an already critical situation, where the arrestee may already be suffering from severe mental illness. There are products available to help alleviate some of the humiliation and distress caused by the lack of comfort items and warmth. Such beds, blankets, slippers, and body covers are designed to be suicide proof and are virtually indestructible.



Safety Cell in Marin County Jail

It is important to note that California Title 15 states:¹⁶

“The safety cell described in Title 24, Part 2, Section 1231.2.5, shall be used to hold only those inmates who display behavior which results in the destruction of property or reveals an intent to cause physical harm to self or others. The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures governing safety cell use and may delegate authority to place an inmate in a safety cell to a physician. ... *In no case shall the safety cell be used for punishment or as a substitute for treatment.*” (Emphasis added.)

Safety Cell Use. In the Marin County Jail, safety cells are used primarily for inmates who are violent or suicidal, many of whom are mentally ill. Given the unavailability of other mental health facilities, such inmates may remain in a safety cell for an indefinite number of days.

In calendar year 2016, there were 331 separate instances of inmates being confined to safety cells (Table 8). Mentally ill inmates were confined 143 times and non-mentally ill inmates 188 times. Mentally ill inmates spend considerably longer times in safety cells, averaging 23.4 hours per incident compared with 8.3 hours for non-mentally ill inmates. Similarly, median time in safety cells for mentally ill inmates was more than double the median time for non-mentally ill inmates (17.7 hours vs. 6.5 hours). There were 35 incidents where a mentally ill inmate spent more than 24 hours in a safety cell, compared with 4 for non-mentally ill inmates. All stays in safety cells longer than 72 hours were by mentally ill inmates (stays of 89.2, 93.8, 127.7, and 248.7 hours).

¹⁶ [California Title 15](#)

Care of Mentally Ill Inmates in Marin County Jail

Table 8
Safety Cell Use
Marin County Jail, 2016
Length of Time per Confinement

Time in Safety Cell	Number of Confinements	
	Mentally Ill Inmates	Non-Mentally Ill Inmates
< 12 hours	33	153
> 12 to 24 hours	75	31
> 24 to 48 hours	24	3
> 48 to 72 hours	7	1
>72 hours	4	0
Average Stay	23.4 hours	8.3 hours
Median Stay	17.7 hours	6.5 hours
Total Number	143	188

Note: Data provided by Marin County Sheriff's Office

Long term use of Safety Cells, in which inmates do not leave their cell at all, and the procedure for Level III inmates, which requires 23 ½ hours per day inside the cell, is considered “extreme isolation.” This type of isolation can potentially worsen an inmate's mental health, causing them “to lapse in and out of a mindless state” or at “a heightened risk for suicide.”¹⁷

Example 1. As reported in the *Los Angeles Times* in 2016,¹⁸ “In nearly three years, Dominic Walker rarely looked another human being in the eye. Except for showers, he left his cell at Men’s Central Jail in downtown Los Angeles only once a week, to exercise in a small cage resembling a dog kennel. His conversations were typically shouted through cell bars to other inmates in his row. ‘It makes you feel like nobody. I’m here, the walls are closing in. It makes you hallucinate,’ said Walker, 34, who was released in June after prosecutors dropped his armed robbery charge. Mr. Walker spent three years in jail as a pre-trial inmate, before having the charges against him dropped.”

Example 2. More than a century ago, in an 1890 opinion in a case challenging a Colorado inmate’s placement in solitary confinement, U.S. Supreme Court Justice Samuel Freeman Miller described a Philadelphia jail “experiment” that found that inmates placed in isolation

¹⁷ [Davis v. Ayala - Supreme Court of the United States](#) (U.S. June 18, 2015) (Kennedy, J., concurring)

¹⁸ “[Los Angeles Times](#)”, 25 Sep. 2016

Care of Mentally Ill Inmates in Marin County Jail

for “even a short confinement” fell into “a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide.”¹⁹

Long term use of isolation remains a problem. A settlement was reached in a Franklin County, Washington lawsuit that alleged inmate mistreatment. The settlement requires that changes be made to stop the practice of inmates being locked in their cells 23 hours a day.²⁰

The United States Supreme Court has ruled that there are six basic, essentially common sense, components of a minimally adequate prison mental health care delivery system.²¹ The components are: screening, staffing, recordkeeping, medication, suicide prevention, and “a treatment program that involves more than segregation and close supervision of mentally ill inmates.”²²

Marin County Jail policies may comply with most aspects of California Code of Regulations Title 15 governing Crime Prevention and Corrections, and Title 24, the sections of California law governing correctional institutions. However, procedures like those used in the Jail have not prevented inmates or inmate advocates from filing successful lawsuits against prisons and county jails in similar circumstances. While most of these cases were responses to treatment of inmates in prisons, it should be noted that many cases have been brought to the courts by plaintiffs who are or have been confined in county jails.

Involuntary Administration of Psychiatric Medication in Marin County Jail

AB 1907 specifically allows jails to administer involuntary medication to severely mentally ill inmates. (See Glossary for more complete description of AB 1907.) Previously, under a three-year contract with the Santa Clara County Jail any severely mentally ill inmate in crisis in Marin County Jail who refused to take psychiatric medications could be transferred to Santa Clara for involuntary administration of medication. During that period, an average of 10–12 individuals per year were transferred to Santa Clara. Since the contract ended, Marin County Jail has not had a procedure that would allow involuntary administration of psychiatric medication, even in an emergency. As a result, inmates who refuse medications are put into safety cells for their protection and the protection of other inmates and staff until such time as the crisis has passed or the inmate accepts medication. This practice is contrary to Title 15, which prohibits the use of safety cells as an alternative to treatment, whether voluntary or involuntary.

Recently a contract with California Psychiatric Transitions (CPT) was signed, ostensibly for replacing the Santa Clara Jail facility. This alternative is inadequate, however. Like Santa Clara,

¹⁹ [In re Medley, 134 U.S. 160 1890](#)

²⁰ [“Tri-City Herald” 16 Feb. 2016](#)

²¹ [Coleman v. Brown, 938 F. Supp.2d 955, 970 \(E.D. Cal. 2013\).](#)

²² [Report on Inspection of Sonoma County Main Adult Detention Facility](#), Disability Rights California, 2015

Care of Mentally Ill Inmates in Marin County Jail

it is expensive; currently \$1,450,000 per year is budgeted for CPT. Similarly, CPT is located at a considerable distance from San Rafael (over 100 miles), which places severe hardship and cost on relatives and county employees who need to travel to visit or manage inmates who are committed to CPT. Unlike Santa Clara, CPT is not a jail facility.

Even after repeated questioning, officials familiar with CPT were unable to confirm to the Grand Jury whether or not a convicted inmate serving a sentence at the Jail would be eligible to be transferred to CPT. The facility is not designed to care for convicted inmates, nor could inmates experiencing a mental health emergency be transported to CPT safely and in a timely manner.

In the Jail's policy manual²³ the procedure still refers to transferring inmates to Santa Clara, even though the contract was terminated at the end of 2015. Many of the policies and procedures have not been updated or reviewed for as many as 12 years.

Addressing the need to be able to administer medications on an involuntary basis for the health and welfare of a mentally ill inmate in crisis is not adequately addressed by transporting an inmate to a distant facility. As mental health experts told the Grand Jury, it is far from optimal to transport an inmate over 65 miles to receive involuntary medication in Santa Clara, let alone 125 miles to a facility in California's Central Valley. Not only does this type of transport disrupt an inmate's family and social support system, it is also very costly to the Jail. Local solutions to address this issue should be identified and implemented.

According to the American Psychiatric Association, "Each facility or administrative authority should prepare a regularly updated quality improvement plan that systematically sets out to review and improve the quality of mental health services."²⁴ No mention of involuntary administration of psychiatric medications appears in the Jail's Quality Assurance meeting minutes. The minutes contain little mention of increasing quality of care for the severely mentally ill. The Grand Jury found no evidence of a quality improvement plan for mental health services in the Jail.

²³ Marin County Jail Policy Manual, CUS-4-7-Sub-Classification of Mental Health-1052

²⁴ American Psychiatric Association (2016). *Psychiatric Services in Correctional Facilities*. 3rd Edition. Arlington, VA

DISCUSSION

Marin County has a responsibility to provide acceptable mental health care for the ever-increasing mentally ill population in its jail. This responsibility has been defined by California law and a series of court cases that interpret that law. In addition, the Eighth amendment to the US Constitution, prohibiting “cruel and unusual punishment,” has been interpreted as circumscribing the ways that mentally ill inmates can be treated. An examination of the treatment of mentally ill inmates has led us to conclude that changes are necessary in a number of key areas regarding this treatment. While the Grand Jury recognizes the difficulties that may be encountered by Marin and other small counties in providing legally adequate mental health services, it is nonetheless necessary to protect the rights of inmates to receive adequate mental health services. The County should address this issue as soon as possible.

Several factors have exacerbated the problems of mentally ill inmates in recent years. Jails have historically been “short stay” facilities, with typical lengths of stay varying from days to months. This situation is no longer the case for many inmates. The passage of AB 109 resulted in longer average lengths of stay since many felons with long sentences are now being housed in county jails. This new class of inmates requires a level of attention not previously needed. Both staffing and procedures need to change to meet their needs.

The physical and mental health care of inmates in county jails are the county’s responsibility. Persons in state prisons and county jails have a constitutionally-derived right to treatment for their serious medical needs, including treatment for serious mental illness.²⁵ The failure to provide such treatment to incarcerated individuals with serious mental illness has been deemed cruel and unusual punishment by the US Supreme Court. The care that is provided must meet the “community standard” of care that is provided to non-incarcerated persons.

There are several possible local alternatives to the Santa Clara Jail for the treatment of acute and emergency psychiatric episodes, including performing these services within the Marin County Jail. With appropriate clinical staffing, and some modification in facilities, both clinical best practice and the law require that appropriate emergency mental health care be administered in the Jail.

In our discussions with staff of the Department of Health and Human Services, there appears to be a basic misunderstanding of clinical and legal requirements for these services in the Jail. According to both clinical and legal advice that the Grand Jury received, such appropriate services can be provided within the jail and do not require additional special waivers or designations for the Jail. This should be given appropriate and extensive consideration by the Jail, the Department of Health and Human Services, and the Board of Supervisors.

²⁵ Psychiatric Services in Correctional Facilities. *American Psychiatric Association*. 2016

Care of Mentally Ill Inmates in Marin County Jail

Other local alternatives should also be given serious consideration, including contracting with Marin General Hospital, and/or Novato Community Hospital, and/or Kaiser Permanente to provide emergency services to mentally ill inmates who are in danger of hurting themselves or others.

Marin General Hospital currently has a mental health ward that is generally at capacity and is not sufficiently secure to house inmates. While Marin General Hospital's current facility may not be able to accommodate this type of care without renovation, the hospital is currently in the early stages of building a new \$534 million hospital, with the help of a \$390 million general obligation bond measure approved by Marin County taxpayers. Given Marin General Hospital's responsibility to the people of Marin, both as a district hospital and as a beneficiary of taxpayer dollars, this would be an appropriate time for the people of Marin, through the Board of Supervisors, to ask that the new hospital include appropriate facilities to provide inpatient care for Marin County Jail inmates.

Another potential alternative is Novato Community Hospital, which currently has an unused eight-bed, locked ward previously used for San Quentin prisoners. In addition, Marin County may be able to join with other adjacent northern Bay Area counties to resolve this issue locally.

A local solution to the issue of providing adequate emergency mental health services for Jail inmates, whether within the Jail or at another local Marin County facility, would be far preferable to transporting inmates in crisis to a distant and costly care facility. Such possible local resources include the Department of Health and Human Services' Crisis Stabilization Unit located at Marin General Hospital, and the locked psychiatric ward at MGH. Because of the attractiveness of such a local solution, the Grand Jury spent considerable time and effort trying to understand the feasibility of a solution that might include these resources, whether separately or in combination. The more people we talked with about this issue, however, the more varied was the information that we received. Not only did the answers differ among respondents, on occasion the same respondent provided different answers at different times. Therefore, while the Grand Jury still believes that some combination of these resources would be the best solution, we are unable to make a specific recommendation in this area. The Grand Jury would point out, however, that this uncertainty, and possible confusion, among our sources of information may be symptomatic of a deeper problem: a lack of understanding, communication, and policymaking regarding this issue within the Department of Health and Human Services and the Jail.

In January 2017, along with 52 of the 58 other counties in California, Marin County participated in a conference about the "Stepping Up Initiative" to reduce the number of mentally ill persons in jails. While this is a welcome acknowledgment of the problem, it is only a start. As yet there are few details and no timeline as to how or when the County plans to achieve the goals of the Initiative.

Care of Mentally Ill Inmates in Marin County Jail

None of these possible local alternatives could be implemented immediately, but the Grand Jury believes that the Board of Supervisors and the Department of Health and Human Services should promptly begin planning for the development, funding, and implementation of a long term local solution that provides appropriate emergency and inpatient care for mentally ill inmates in Marin County Jail.

CONCLUSION

Although identifying and committing adequate resources to provide appropriate mental health care in Marin County Jail may be difficult for the County, there are important reasons that a significant enhancement of mental health care in the Jail should be a high priority. Current staffing and organization of mental health care in the Jail is inadequate, and appears not to conform to California law and code nor to court rulings regarding the care that should be provided to incarcerated persons. In particular, delays in assessment and treatment of recently booked mentally ill inmates, lack of adequate local processes to address emergency mental health crises, inadequate 24/7 clinical coverage, and the use of safety cells for acute mental illness episodes need to be addressed as soon as possible. There appear to be clear violations of the rights of inmates to adequate care based on, and equivalent to, “community standard” care.

Marin is one of the richest counties in the nation. Surely the County can find adequate resources to provide humane mental health care to inmates in Marin County Jail that meets the requirements of the law and accepted clinical practices.

Care of Mentally Ill Inmates in Marin County Jail

FINDINGS

- F1. A significant number of inmates in the Marin County Jail have severe mental illness.
- F2. The Jail's clinical and custodial staff are highly professional, dedicated, and competent.
- F3. Due to deficiencies in policies, organization, management, and staffing levels, mental health care in Marin County Jail is inadequate.
- F4. No mental health staff are on site for large parts of every day.
- F5. The Jail experiences a high level of turnover in the mental health staff.
- F6. Inmates with severe mental health issues are placed in isolation, being allowed outside of their cells for only 30 minutes per day or a minimum of 3 hours per week.
- F7. Mentally ill inmates are often placed in safety cells (commonly known as padded cells) for periods longer than 24 hours, a practice that has been described by the courts as cruel and unusual punishment.
- F8. The mental health status of inmates at the time of booking is often performed by deputies rather than mental health staff.
- F9. In the case of emergency psychotic events, inmates who refuse medication are often placed in safety cells rather than being treated by involuntary administration of medication, which is allowed by California law and is the common community standard.
- F10. Since the termination of the County's contract with Santa Clara in 2015, the Jail and the Department of Health and Human Services have not yet established adequate processes to provide involuntary psychiatric medication in an emergency situation.
- F11. Neither individual nor group psychotherapy is provided by professional mental health staff.
- F12. The Jail's clinical quality assurance process does not adequately address mental health issues in the Jail.
- F13. The County's use of state funds associated with AB 109 does not adequately address the increased mental health care burden on the Jail of longer term inmates that resulted from the enactment of AB 109.
- F14. Multiple documents in the Marin County Sheriff's Department Custody Division Policy and Procedures Manual have not been reviewed or updated for up to 12 years.

RECOMMENDATIONS

- R1. Mentally ill inmates should not be kept in a safety cell longer than 24 consecutive hours unless the jail psychiatrist certifies that no other remedy is available to prevent the inmate from harming themselves or others.
- R2. Safety cells should never be used for mentally ill inmates as a substitute for adequate medication and/or other psychiatric treatment.
- R3. Any inmate placed in a safety cell should be evaluated by mental health staff within one hour for the appropriateness of the placement and the evaluation of possible alternative placements.
- R4. The Jail should, within 6 months, establish or contract with a local facility where involuntary administration of psychiatric medication can take place.
- R5. The Jail should identify and adopt, within 6 months, policies that ensure mentally ill inmates are provided a minimum of one hour per day outside their cell, with a minimum of seven hours per week, while meeting adequate clinical and custodial standards of care.
- R6. A psychiatrist should be available at the jail 8 hours per day, 5 days per week, and be available by telephone 24 hours per day, 7 days per week.
- R7. A Mental Health Crisis Specialist or a Psychiatric Nurse should be available at the jail 24 hours per day, 7 days per week.
- R8. The Jail should immediately institute programs to provide appropriate professional mental health (non-medication) therapy to all mentally ill inmates, particularly those incarcerated for longer than 7 days.
- R9. Booking of inmates should at all times include screening for mental illness by a nurse using an accepted mental health screening tool.
- R10. Classification of inmates as mentally ill should be reviewed by a member of the mental health staff within one hour of booking.
- R11. All policies and procedures in the Sheriff's Manual related to the care of inmates should be reviewed and updated within 6 months and following that, as necessary, at least biennially.
- R12. The Jail should develop, implement, and enforce a quality improvement procedure and establish a quality improvement plan for mental health services.
- R13. The County should provide adequate funding to implement these recommendations.

Care of Mentally Ill Inmates in Marin County Jail

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- The Marin County Board of Supervisors (R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individuals:

- The Marin County Sheriff (R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12)

The Grand Jury invites the following to respond:

- Director, Marin County Department of Health and Human Services
- Chief Probation Officer, Marin County Department of Probation
- Marin County Public Defender
- Secretary, California Department of Corrections and Rehabilitation
- Secretary, California Health and Human Services Agency
- Chairperson, Executive Committee, California Mental Health Planning Council
- Executive Director, Board of State and Community Corrections
- Executive Director, California Psychiatric Association
- Executive Director, NAMI California
- President, California State Bar Association
- President, Disability Rights California
- President, California Mental Health Services Authority
- President, Mental Health America of California

Note: At the time this report was prepared, information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

Types of Inmate Classification

Source: Marin County Jail Policy Manual

General Population: Inmates who are capable of functioning in large groups and are not considered a security risk.

Administrative Segregation: Inmates who present a threat or danger to other inmates, staff, property, security or order of the facility. Administrative Segregation No Mix classification is for inmates who are either extremely dangerous, sophisticated or so disruptive that they cannot be mixed with other Administrative Segregation inmates for the purpose of temporary holding in court holding cells.

Maximum Security General Population: Inmates with a security level just below Administrative Segregation. These inmates cannot function in an open pod setting with minimal supervision, but are not generally dangerous to staff.

Protective Custody: Inmates whose personal safety is in jeopardy, due to the nature of their charges, physical stature, threats, or it is determined by staff they could be considered to be in danger. Protective custody No Mix classification are inmates who require the added protection from other PC inmates either due to an inability to get along with the other protective custody inmates or due to gang status, threats, elevated victim potential, or ineligible to be housed in Lockdown.

Mental Health: Inmates who require medication to stabilize their behavior, and/or admit to a prior participation in a jail mental health program, or exhibit a bizarre behavior patterns. These inmates will be further sub-classified by the Pod Deputy and mental health staff.

Medical: Inmates who are exhibiting symptoms or are suspected of having a communicable disease and/or need more constant medical attention than available in other Pods. Inmates with medical disability who require constant care or assistance will be housed in Medical. All Medical housing will be directed by the medical staff.

Civil Commitment: Inmates who legally require complete segregation from other inmates. These inmates are not housed for a criminal charge, but are committed as a punishment for disobedience to the orders of the court

GLOSSARY

[AB 109](#) In 2011, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 109 and AB 117, historic legislation that has helped California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by the Three-Judge Court and affirmed by the U.S. Supreme Court. All provisions of AB 109 and AB 117 are prospective and implementation of the 2011 Realignment Legislation began October 1, 2011. No inmates in state prison have been or will be transferred to county jails or released early.

[AB 117](#) Makes statutory changes necessary to implement the Public Safety Realignment portions of the 2011-12 budget by making additional substantive and technical changes relevant to AB 109 (Budget Committee), Chapter 15, Statutes of 2011, pertaining to the realignment of certain low-level felony offenders, and adult parolees from state to local jurisdiction.

[AB 1907](#) This bill revises the provisions authorizing the Department of Corrections and Rehabilitation to seek to initiate involuntary medication on a nonemergency basis only if specified conditions are met by instead requiring that the psychiatrist make a determination that the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medication, or is a danger to self or others.

“SEC. 3. Section 2603

(a) Except as provided in subdivision (b), no person sentenced to imprisonment in a county jail shall be administered any psychiatric medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d).

(c)...

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency

Care of Mentally Ill Inmates in Marin County Jail

continues to exist. If the clinicians of the county department of mental health, or other designated county department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. Treatment of the inmate in a facility pursuant to Section 4011.6 shall not be required in order to continue medication under this subdivision unless the treatment is otherwise medically necessary. The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c). The order may be issued ex parte upon a showing that, in the absence of the medication the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist or psychologist showing specific facts. The inmate and the inmate's appointed counsel shall have two business days to respond to the county department's ex parte request to continue interim medication, and may present facts supported by an affidavit in opposition to the department's request. A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held."

Food Port. A small opening in a jail cell door through which food is passed to incarcerated inmates. Also used for handcuffing dangerous inmates prior to opening the cell door by reaching through the port to attach the handcuffs.

Jail. A place of confinement for persons held in lawful custody; *specifically*: such a place under the jurisdiction of a local government (as a county) for the confinement of persons awaiting trial or those convicted of minor crimes.

LPS. The Lanterman-Petris-Short Act. Part of the [Welfare and Institutions Code \(WIC\)](#) section 5000–5121. Specifically, Section 5150 of the Welfare and Institutions Code. Provides guidelines for handling involuntary civil commitment of individuals to mental health institutions in the State of California.

Prison. A place of confinement especially for lawbreakers; *specifically*: an institution (as one under state jurisdiction) for confinement of persons convicted of serious crimes.

Care of Mentally Ill Inmates in Marin County Jail

Title 15. California Code of Regulations Title 15, Crime Prevention and Corrections. Sections 3351 and 3364 define the requirements for involuntary administration of medications to severely mentally ill inmates.

Riese Hearing. (Medication Capacity Hearing, WIC 5332 or antipsychotic medication capacity hearing). A facility-based hearing to determine if a person on any of the LPS holds, other than a conservatorship, has the capacity to refuse psychiatric medications.

Serious Mental Disorder. The California Welfare and Institutions Code 5600.3 (b) (2) defines serious mental disorder as:

“For the purposes of this part, “serious mental disorder” means a mental disorder that is severe in degree and persistent in duration, which 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 for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.

... (b) (4) For the purpose of organizing outreach and treatment options, to the extent resources are available, this target population includes, but is not limited to, persons who are any of the following: (A) Homeless persons who are mentally ill. (B) Persons evaluated by appropriately licensed persons as requiring care in acute treatment facilities including state hospitals, acute inpatient facilities, institutes for mental disease, and crisis residential programs. (C) *Persons arrested or convicted of crimes.*” (Emphasis added)

5150. Welfare and Institutions Code Section 5150–5155.

“(a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision

Care of Mentally Ill Inmates in Marin County Jail

(e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service. ...”

5250. Welfare and Institutions Code Section 5250-5259.3 Section 5250 provides for a person deemed to have certain mental disorders following being involuntarily held for 72 hours under a Section 5150 hold to be held for an additional 14 days. The hold is placed by psychiatric staff who deems a person to have a mental disorder that poses a danger to him or herself and/or others, or to be gravely disabled and requires more than a 72-hour hold for treatment.

Short-Doyle Act. The Short-Doyle Act seeks to encourage the treatment of a patient suffering from a psychiatric disorder in his home community, with the assistance of local medical resources. One corollary of this program is the closer working together of the psychiatrist and the rest of the medical profession. A second goal of the act is the application of the public health principles to mental illnesses and mental retardation. Educational and consultative services provide implementation of these principles.

Appendix II: Marin County Sheriff's Response to 2016-17 Report



MARIN COUNTY SHERIFF'S OFFICE

1600 Los Gamos Drive, Suite 200, San Rafael, CA 94903

ROBERT T. DOYLE
Sheriff - Coroner
MICHAEL J. RIDGWAY
Undersheriff

August 2, 2017

Marin County Civil Grand Jury
Jay Hamilton-Roth, Foreperson
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

Reference Response by Sheriff Robert T. Doyle to the Civil Grand Jury Report Entitled "Care of Mentally Ill Inmates in Marin County Jail"

Dear Mr. Hamilton-Roth:

Pursuant to Penal Code Section 933.05 (f) I am responding to the above-mentioned Grand Jury Report dated June 8, 2017 and released to the public on June 15, 2017.

Finding 1: A significant number of inmates in the Marin County Jail have severe mental health issues.

I agree with this finding.

Finding 2: The Jail's clinical and custodial staff are highly professional, dedicated and competent.

I agree with this finding.

Finding 3: Due to the deficiencies in policies, organization, management, and staffing levels, mental health care in Marin County Jail is inadequate.

I disagree with this finding. The Marin County Jail staff follows or exceeds all standards, and regulations set forth in California Code of Regulations Title 15 Minimum Standards for local detention facilities. Adding additional Jail Mental Health staff could improve our mental health services. We continue to work with our county partners through the Stepping Up Initiative to reduce the mental health population in our Jail.

AREA CODE 415

24-HOUR NUMBER
479-2311

FAX
473-4126

ADMINISTRATION
473-7250

CIVIL
473-7282

COMMUNICATION
SERVICES
473-7243

CORONER
473-6043

COURTS
473-7393

EMERGENCY
SERVICES
473-6584

INVESTIGATIONS
473-7265

JAIL
473-6655

MAJOR CRIMES
TASK FORCE
884-4878

PATROL
473-7233

RECORDS
473-7284

WARRANTS
473-7297

"In Partnership with our Communities"

www.marinsheriff.org

Finding 4: No mental health staff are on site for large parts of every day.

I agree with this finding. Currently there is no onsite mental health coverage for 10 hours a day Monday through Friday, and 17 hours a day Saturday and Sunday. There is on-call assistance available by the acting mental health supervisor during these hours.

Finding 5: The Jail experiences a high level of turnover in the mental health staff.

I agree with this finding. There has been significant turnover in the mental health supervisor position, and some turnover within the mental health staff members assigned to the Jail.

Finding 6: Inmates with severe mental health issues are placed in isolation, being allowed outside of their cells only 30 minutes per day or a minimum of 3 hours per week.

I disagree with this finding. Mental Health Inmates considered severe and low functioning, are outside of their cells for a minimum of 3.5 hours a week. Mental Health Inmates, who are high functioning, are outside of their cells for approximately 15 hours a week. Due to multiple classifications and segregation in our Special Housing Unit, the severe and low functioning mental health inmates spend more time in their cell to protect them from being exposed to other mentally ill inmates that may present a danger to their safety.

Finding 7: Mentally ill inmates are often placed in safety cells (commonly known as padded cells) for periods longer than 24 hours, a practice that has been described by the courts as cruel and unusual punishment.

I disagree with this finding. The placement of Mental Health Inmates in a safety cell for a longer period than 24 hours is not cruel and unusual punishment. Inmates are placed into a safety cell to control and protect the inmate or arrestee when their behavior jeopardizes themselves, custody staff, other inmates, and/or security of the jail facility. At no time will the safety cell be used as a form of discipline or punishment. All inmates who are placed into the safety cell for mental health reasons are directly observed every fifteen minutes and regularly provided water and food by staff. Jail medical staff conducts an initial placement review and completes medical assessments throughout the entire placement. Jail Mental Health also completes a Mental Health assessment on placement or within 12 hours. Inmates are immediately removed from the safety cell once Mental Health staff and deputies determine that they are no longer a danger to themselves or others.

Finding 8: The mental health status of inmates at the time of booking is often performed by deputies rather than mental health staff.

I disagree with this finding. As part of the pre-booking process, the arresting officer and the Jail booking deputy ask an initial series of medical questions, which include some questions pertaining to the mental health status of the arrestee/inmate. This is considered an initial medical screening and is not deemed a mental health assessment. Prior to being housed in the Marin County Jail, all inmates complete a medical intake screening with a registered nurse. During that confidential medical intake screening process, more detailed questions are asked about the mental health status of the inmate. If medical staff and/or deputies determine at any time during the overall intake process that a specific mental health assessment made by a mental health professional is appropriate, the inmate will be referred to Jail Mental Health.

Finding 9: In the case of emergency psychotic events, inmates who refuse medication are often placed in safety cells rather than being treated by involuntary administration of medication, which is allowed by California law and is the common community situation.

I partially disagree with this finding because involuntary administration of medication is not the common community situation. The Marin County Sheriff's Office and Marin Health and Human Services do not involuntarily force medication on mental health inmates housed at the Marin County Jail. The Marin County Jail was not constructed to adequately care for inmates who are forced to take psychotropic medication and does not have an infirmary that would be required to house inmates who are in psychiatric psychosis and have had medication forced upon them. No other Jail in the Bay Area involuntarily forces medication on an inmate in custody either. If the Superior Court rules that an inmate be forced to take medication, they are transferred to an outside medical facility designed for this practice.

Finding 10: Since the termination of the County's contract with Santa Clara in 2015, the Jail and the Department of Health Services have not yet established adequate processes to provide involuntary psychiatric medication in an emergency situation.

I partially disagree with this finding. A collaborative effort between the Presiding Judge, District Attorney's Office, Public Defender's Office, Health and Human Services, and Sheriff's Office, was organized to develop interim steps that ensure access and administration of involuntary psychiatric medication to required inmates. It is important to note that the only reason that contract with Santa Clara County came to

an end was because the Sheriff of that county closed the medical housing unit in which those involuntary medications were provided.

Finding 11: Neither individual nor group psychotherapy is provided by professional mental health staff.

I agree with this finding.

F12. The Jail's clinical quality assurance process does not adequately address mental health issues in the Jail.

Defer to Health and Human Services.

Finding 13: The County's use of state funds associated with AB 109 does not adequately address the increased mental health burden on the Jail of longer term inmates that resulted from the enactment of AB 109.

I disagree with this finding. AB 109 funding is used to help address the mental health burden on the Jail. In fact, AB 109 currently provides \$647,348 of funding specifically designated to staff a Jail social worker, crisis specialist, two re-entry deputy positions, as well as a part-time Jail mental health practitioner. The two deputies, social worker, crisis specialist, and mental health practitioner collaboratively work with numerous county and non-profit organizations to assist people currently housed in the Marin County Jail to achieve a healthy transition into the community and reduction in recidivism. This staff also works with different committees such as the Marin County Forensic Multi-Disciplinary Team, Marin County Chronic Alcohol with Justice Involvement Project and Community Court to assist mentally ill inmates with their transition into the community from the Jail or to an appropriate placement facility that can better assist them.

Currently, there are 121 AB109 probationers in Marin County, of which 39 of those are currently incarcerated in the Marin County Jail. Of the 39 currently incarcerated, 6 are diagnosed as SMI (serious mental illness).

Finding 14: Multiple documents in the Marin County Sheriff's Department Custody Division Policy and Procedures Manual have not been reviewed or updated for up to 12 years.

I disagree with this finding. The Marin County Sheriff's Office Custody Division Policy and Procedures Manual is constantly being reviewed, updated, and revised as necessary. Only policies that are found to be in need of revision receive a new date of issue, perhaps leading to the misconception that some policies have not been reviewed for a number of years.

In June of 2016, the Board of State and Community Corrections completed an in-depth analysis of our Policy and Procedures Manual, as they do on an annual basis. Refer to the Board of State and Community Corrections, which found that our Policies and Procedures are in full compliance as outlined in Title 15 and Title 24 of California Code of Regulations.

Recommendation 1: Mentally ill inmates should not be kept in a safety cell longer than 24 consecutive hours unless the Jail psychiatrist certifies that no other remedy is available to prevent the inmate from harming themselves or others.

This recommendation requires further analysis. We currently follow the California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement. We defer to Health and Human Services for a determination of the appropriate level of review for this purpose.

Recommendation 2: Safety cells should never be used for mentally ill inmates as a substitute for adequate medication and/or other psychiatric treatment.

This recommendation has been implemented. By policy, safety Cells are only used when an inmate's behavior jeopardizes themselves, custody staff, other inmates, or the security of the facility regardless of whether or not an inmate has received adequate medication or psychiatric treatment.

Recommendation 3: Any inmate placed in a safety cell should be evaluated by mental health staff within one hour for the appropriateness of the placement and the evaluation of possible alternative placements.

This recommendation will not be implemented because it is not warranted or reasonable. We currently follow the California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement.

Recommendation 4: The Jail should, within 6 months, establish or contract with a local facility where involuntary administration of psychiatric medication can take place.

Defer to Health and Human Services, as they are responsible for contracting with such facility.

Recommendation 5: The Jail should identify and adopt, within 6 months, policies that ensure mentally ill inmates are provided a minimum of one

hour per day outside their cell, with a minimum of seven hours per week, while meeting adequate clinical and custodial standards of care.

This recommendation will not be implemented. Based on the physical layout and the multiple classification of inmates housed at the Jail, this recommendation is not feasible, nor is it required by California Code of Regulations Title 15 Minimum Standards for local detention facilities.

Recommendation 6: A psychiatrist should be available at the Jail 8 hours per day, 5 days per week, and be available by telephone 24 hours per day, 7 days per week.

Defer to Health and Human Services.

Recommendation 7: A Mental Health Crisis Specialist or a Psychiatric Nurse should be available at the Jail 24 hours per day, 7 days per week.

Defer to Health and Human Services.

Recommendation 8: The Jail should immediately institute programs to provide appropriate professional mental health (non-medication) therapy to all mentally ill inmates, particularly those incarcerated for longer than 7 days.

Defer to Health and Human Services.

Recommendation 9: Booking of inmates should at all times include screening for mental illness by a nurse using an accepted mental health screening tool.

This recommendation was implemented prior to the Grand Jury's review of mental health services in the Jail. During the medical screening process, a Jail nurse who is a certified RN, follows a medical screening tool that includes questions pertaining to the mental health status of the arrestee/inmate at the time of his/her booking.

Recommendation 10: Classification of inmates as mentally ill should be reviewed by a member of the mental health staff within one hour of booking.

Defer to Health and Human Services.

Recommendation 11: All policies and procedures in the Sheriff's Manual related to the care of inmates should be reviewed and updated within 6 months and following that, as necessary, at least biennially.

This recommendation will not be implemented. The Marin County Sheriff's Office Custody Division Policy and Procedure Manual is reviewed on a regular and on-going basis and that process is reviewed annually to ensure adequacy by the Board of State and Community Corrections.

Recommendation 12: The Jail should develop, implement, and enforce a quality improvement procedure and establish a quality improvement plan for mental health services.

This recommendation requires further analysis by Health and Human Services; however, the Marin County Sheriff's Office will work in partnership with Marin Health and Human Services to identify areas in need of improvement.

Yours truly,


ROBERT T. DOYLE
SHERIFF-CORONER

Appendix III: Board of Supervisors' Response to 2016-17 Report



OFFICE OF THE
COUNTY ADMINISTRATOR



September 12, 2017

Matthew H. Hymel
COUNTY ADMINISTRATOR

Daniel Eilerman
ASSISTANT COUNTY
ADMINISTRATOR

Angela Nicholson
ASSISTANT COUNTY
ADMINISTRATOR

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Response to 2016-2017 Grand Jury Report "Care of Mentally Ill Inmates in Marin County Jail" (June 8, 2017)

Dear Board Members:

Marin County Civic Center
3501 Civic Center Drive
Suite 325
San Rafael, CA 94903
415 473 6358 T
415 473 4104 F
CRS Dial 711
www.marincounty.org/cao

RECOMMENDATION: Concur in and adopt the attached proposed response to the FY 2016-2017 Marin County Civil Grand Jury Report regarding the care of mentally ill inmates in the Marin County Jail, and authorize the Board President to forward the response to the Presiding Judge of the Marin County Superior Court.

SUMMARY: The 2016-2017 Civil Grand Jury Report published a report on June 8, 2017 entitled "Care of Mentally Ill Inmates in Marin County Jail." The report included a request for response from the Board of Supervisors to Recommendations R1-R13. This response includes review and input from the Departments of Health and Human Services, Probation and the Public Defender.

Attached for your consideration, in accordance with §933 of the California Penal Code, is a proposed response from your Board. A copy of the Grand Jury report is also attached for your information.

FISCAL IMPACT: None.

ALTERNATIVE: The Board may amend any suggested response.

Respectfully submitted,

Charlotte Jourdain
Administrative Analyst

Reviewed by,

Matthew H. Hymel
County Administrator



Response to Findings and Recommendations
"Care of Mentally Ill Inmates in Marin County Jail"
June 8, 2017

FINDINGS

F1. A significant number of inmates in the Marin County Jail have severe mental illness

Response: Agree. A significant number of inmates have some degree of mental illness, ranging from mild to moderate. Approximately 15% are diagnosed with serious to severe mental illness.

F2. The Jail's clinical and custodial staff are highly professional, dedicated, and competent.

Response: Agree.

F3. Due to deficiencies in policies, organization, management, and staffing levels, mental health care in Marin County Jail is inadequate.

Response: Disagree. Policies and procedures required by the Board of State and Community Corrections: Title 15 Minimum Standards for Local Detention facilities are in place. Staffing meets these required standards. Although the service level is adequate and consistent with state standards, we do agree that inmates with behavioral health diagnoses could benefit from an expansion of treatment services.

F4. No mental health staff are on site for large parts of every day.

Response: Partially disagree. Mental Health staff provide coverage to the jail from 6am to 8pm Monday through Friday and 9am to 4pm on Saturday and Sunday. The Acting Mental Health Supervisor is on-call 24 hours per day, seven days per week to consult with custody staff regarding persons housed in Safety Cells and to assist with emergent mental health issues.

F5. The Jail experiences a high level of turnover in the mental health staff.

Response: Partially Disagree. There has been turnover in the Program Supervisor assigned to the jail, but there has not been significant turnover in other clinical staff.

F6. Inmates with severe mental health issues are placed in isolation, being allowed outside of their cells for only 30 minutes per day or a minimum of 3 hours per week.

Response: Disagree. According to the Sheriff's Office, Mental Health Inmates considered severe and low-functioning are outside of their cells for a minimum of 3.5 hours per week. Mental Health Inmates who are high-functioning are outside of their cells for approximately 15 hours per week. Due to multiple classifications and segregation in the Jail's Special Housing Unit, severe and low-functioning mental health inmates spend more time in their cells to protect them from being exposed to other mentally ill inmates that may present a danger to their safety.



Response to Findings and Recommendations
"Care of Mentally Ill Inmates in Marin County Jail"
June 8, 2017

F7. Mentally ill inmates are often placed in safety cells (commonly known as padded cells) for periods longer than 24 hours, a practice that has been described by the courts as cruel and unusual punishment.

Response: Disagree. For clarification, the courts have described the use of isolation as cruel and unusual punishment, but not the use of Safety Cells. Inmates with significant mental illness sometimes are placed in Safety Cells in order to ensure the safety of themselves and other inmates. The period in a Safety Cell can exceed 24 hours, with mental health consultation occurring every 12 hours of detainment.

According to the Sheriff's Office, at no time will a safety cell be used as a form of discipline or punishment. All inmates who are placed into the safety cell for mental health reasons are directly observed every fifteen minutes and regularly provided water and food by staff. Jail medical staff conduct an initial placement review and complete medical assessments throughout the entire placement. Jail Mental Health also completes a Mental Health assessment on placement or within 12 hours. Inmates are immediately removed from the safety cell once Mental Health staff and deputies determine that they are no longer a danger to themselves or others.

F8. The mental health status of inmates at the time of booking is often performed by deputies rather than mental health staff.

Response: Disagree. Determination of mental health status is determined by Registered Nurses part of the Jail Medical Services Program. According to the Sheriff's Office, as part of the pre-booking process, the arresting officer and the jail booking deputy ask an initial series of medical questions, which includes some questions pertaining to the mental health status of the arrestee/inmate. This is considered an initial medical screening and is not deemed a mental health assessment.

Prior to being housed in the Marin County Jail, all inmates complete a medical intake screening with a registered nurse. During that confidential medical intake screening process, more detailed questions are asked about the mental health status of the inmate. If medical staff and/or deputies determine at any time during the overall intake process that a specific mental health assessment made by a mental health professional is appropriate, the inmate will be referred to Jail Mental Health.

F9. In the case of emergency psychotic events, inmates who refuse medication are often placed in safety cells rather than being treated by involuntary administration of medication, which is allowed by California law and is the common community standard.

Response: Partially disagree. Neither the Marin County Sheriff's Office nor Health and Human Services staff involuntarily forces medication on mental health inmates housed at the Marin County Jail. If the Superior Court rules that an inmate be forced to take medication, they are transferred to an outside medical facility designed for this practice. No other jail in the Bay Area involuntarily forces medication on an inmate in custody, so we do not agree that this is the common community standard.

County of Marin Response to Grand Jury Findings and Recommendations Page 3 of 8



Response to Findings and Recommendations
"Care of Mentally Ill Inmates in Marin County Jail"
June 8, 2017

For clarification, inmates in acute psychiatric distress are not placed in Safety Cells for refusal of medications but because of safety concerns.

F10. Since the termination of the County's contract with Santa Clara in 2015, the Jail and the Department of Health and Human Services have not yet established adequate processes to provide involuntary psychiatric medication in an emergency situation.

Response: Disagree. Health and Human Services (HHS) adheres to jail policies and procedures regarding the use of involuntary psychiatric medications in the jail. For clarification, involuntary medications historically were administered during treatment at the Santa Clara forensic mental health facility, but once returned to the Marin County Jail only voluntary medications were administered.

HHS, in conjunction with the Presiding Judge, District Attorney, Public Defender and Sheriff's Office, developed a protocol in Spring 2017 to evaluate inmates thought to be in need of acute psychiatric care and transfer them, when appropriate, to Marin's Crisis Stabilization Unit for further assessment, stabilization and potentially hospitalization. Efforts will continue to identify additional Forensic Mental Health facilities, but at this time none are available.

If an inmate is not appropriate for the above due to the nature and severity of legal charges and/or concerns about safety to the community, the inmate is evaluated for transfer to California Psychiatric Transitions (CPT), which has both a Forensic Mental Health Unit and a Restoration to Competency Unit. Involuntary medications may be prescribed at CPT based on recommendations from an evaluating psychiatrist and/or psychologist which are accepted by the Court.

F11. Neither individual nor group psychotherapy is provided by professional mental health staff.

Response: Agree. These services are not required by the Board of State and Community Corrections: Title 15 Minimum Standards for Local Detention Facilities, which governs required services in a jail. Providing these services would require a significant increase in behavioral health staffing.

F12. The Jail's clinical quality assurance process does not adequately address mental health issues in the Jail.

Response: Disagree. To ensure that mental health issues are effectively addressed in the future, Health and Human Services has an established Quality Improvement Committee consisting of Behavioral Health and Recovery Services (BHRS) program and administrative staff and community based organizations. It is staffed and organized by the BHRS Quality Manager.



Response to Findings and Recommendations
"Care of Mentally Ill Inmates in Marin County Jail"
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F13. The County's use of state funds associated with AB 109 does not adequately address the increased mental health care burden on the Jail of longer term inmates that resulted from the enactment of AB 109.

Response: Disagree. For clarification, the number of inmates detained for longer periods in the Marin County Jail and eligible for AB 109 services is relatively small, with a reported average of 8-10 individuals at any given point in time. AB 109 funding is used for counseling services provided to these individuals by a licensed psychologist and discharge planning by a clinical care coordinator.

AB 109 currently provides approximately \$647,000 of funding designated to help staff a jail social worker, crisis specialist, two re-entry deputy positions, as well as a part-time jail mental health practitioner. These staff work collaboratively with numerous County and non-profit organizations to assist people currently housed in the Marin County Jail to achieve a healthy transition into the community and reduction in recidivism.

F14. Multiple documents in the Marin County Sheriff's Department Custody Division Policy and Procedures Manual have not been reviewed or updated for up to 12 years.

Response: Disagree. According to the Sheriff's Office, its Custody Division Policy and Procedures Manual is constantly being reviewed, updated and revised as necessary. Only policies that are found to be in need of revision receive a new date of issue, perhaps leading to the misconception that some policies have not been reviewed for a number of years.

In June of 2016, the Board of State and Community Corrections completed an in-depth analysis of the Sheriff's Policy and Procedures Manual, as they do on an annual basis. Refer to the Board of State and Community Corrections, which found that Marin's Policies and Procedures are in full compliance as outlined in Title 15 and Title 24 of California Code of Regulations.

RECOMMENDATIONS

The Marin County Civil Grand Jury recommends the following:

R1. Mentally ill inmates should not be kept in a safety cell longer than 24 consecutive hours unless the jail psychiatrist certifies that no other remedy is available to prevent the inmate from harming themselves or others.

This recommendation requires further analysis. Utilization of Safety Cells is subject to the Sheriff's policies and procedures.

For clarification, Title 15 now requires a mental health clinician to provide consultation and recommendations to jail custody staff every 12 hours regarding persons housed in Safety Cells. There is not a regulatory requirement that this consultation be completed by a psychiatrist or that resulting recommendations be enacted.

R2. Safety cells should never be used for mentally ill inmates as a substitute for adequate medication and/or psychiatric treatment.

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Response to Findings and Recommendations
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June 8, 2017

This recommendation has been implemented. Use of a Safety Cell may be needed to ensure the safety of the individual and/or other inmates and jail staff. The use of the Crisis Stabilization Unit, Marin General Hospital and California Psychiatric Transitions have provided additional options to address the need of urgent psychiatric conditions.

R3. Any inmate placed in a safety cell should be evaluated by mental health staff within one hour for the appropriateness of the placement and the evaluation of possible alternative placements.

This recommendation will not be implemented because it is not warranted or reasonable. Implementing this recommendation would not be the most cost-effective option to enhance mental health services in the jail. Currently, jail mental health staff assess inmates in Safety Cells during scheduled hours. After hours, the Jail Mental Health Supervisor is available by phone for consultation. Jail staff adhere to California Code of Regulations Title 15, which requires a mental health opinion/consultation on placement and retention within 12 hours of placement.

R4. The Jail should, within 6 months, establish or contract with a local facility where involuntary administration of psychiatric medication can take place.

This recommendation has been partially implemented. HHS maintains a contract with Marin General Hospital-Unit A for hospitalization of inmates who are appropriate for release from the jail on Conditional Release status approved by the Court, dismissal of legal charges, or other circumstances when detention status is not maintained.

At this time, there is no local facility available to provide involuntary medications only. Involuntary medications may be provided at Marin's Crisis Stabilization Unit, Marin General Hospital or California Psychiatric Transitions as part of stabilization of an acute psychiatric condition.

R5. The Jail should identify and adopt, within 6 months, policies that ensure mentally ill inmates are provided a minimum of one hour per day outside their cell, with a minimum of seven hours per week, while meeting adequate clinical and custodial standards of care.

This recommendation will not be implemented because it is not warranted or reasonable. Based on the physical layout of the Marin County Jail and the multiple classifications of inmates housed at the Jail, this recommendation is not feasible nor is it required by California Code of Regulations Title 15 Minimum Standards for local detention facilities.

R6. A psychiatrist should be available at the jail 8 hours per day, 5 days per week, and be available by telephone 24 hours per day, 7 days per week.

This recommendation has partially been implemented. Coverage has increased from 20 hours per week to 28 hours per week. Increase in psychiatric coverage from the current 28



Response to Findings and Recommendations
"Care of Mentally Ill Inmates in Marin County Jail"
June 8, 2017

hours/week to 40 hours a week requires further analysis. It is worth noting that telephonic consultation is available 24 hours/day, seven days/week.

R7. A Mental Health Crisis Specialist or a Psychiatric Nurse should be available at the jail 24 hours per day, 7 days per week.

This recommendation requires further analysis. We would need to compare this option among other enhancement options to determine if this is the most effective option. There would need to be a substantial increase in staffing in order to provide 24-hour coverage. An analysis of utilization patterns is necessary to determine if this level of staffing is warranted.

R8. The Jail should immediately institute programs to provide appropriate professional mental health (non-medication) therapy to all mentally ill inmates, particularly those incarcerated for longer than 7 days.

This recommendation requires further analysis and is under consideration. The Marin County Board of Supervisors recently moved to participate in the national Stepping Up Initiative. This has the goals of reducing incarceration of persons with behavioral health issues, reducing the length of incarceration of these individuals, assessing and providing appropriate behavioral health interventions during incarceration, and reducing recidivism.

Health and Human Services has been working with the Board of Supervisors and County Administrator to consider policy options in a phased approach for expanded jail mental health services. The first of these, which currently is currently under consideration, is the establishment of a full time Jail Mental Health Supervisor position and the addition of 1.5 FTE mental health practitioners. We anticipate consideration of this option within approximately six months.

R9. Booking of inmates should at all times include screening for mental illness by a nurse using an accepted mental health screening tool.

This recommendation has been implemented. Jail Medical Nurses include a mental health screening in its integrated health screening tool which is completed at the time of booking. With implementation of the new electronic health record (Sapphire), this will be expanded and include entries by Jail Mental health staff.

R10. Classification of inmates as mentally ill should be reviewed by a member of the mental health staff within one hour of booking.

This recommendation requires further analysis. Among the enhancement options for expanded mental health services in the jail being considered is the addition of a mental health practitioner to be available at the time of booking to make recommendations about treatment and housing needs. However, it is not anticipated that this would be feasible 24 hours/day, seven days/week but would be available during hours of the highest need.



Response to Findings and Recommendations
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June 8, 2017

R11. All policies and procedures in the Sheriff's Manual related to the care of inmates should be reviewed and updated within 6 months and following that, as necessary, at least biennially.

This recommendation will not be implemented because it is not warranted or reasonable. The Marin County Sheriff's Office Custody Division Policy and Procedure Manual is reviewed on a regular and on-going basis and that process is reviewed annually to ensure adequacy by the Board of State and Community Corrections.

R12. The Jail should develop, implement, and enforce a quality improvement procedure and establish a quality improvement plan for mental health services.

This recommendation requires further analysis. Health and Human Services will continue to work in partnership with the Marin County Sheriff's Office to develop, implement and enforce a quality improvement procedure for mental health services within the Marin County Jail. Health and Human Services has initiated a quality improvement plan specific to Behavioral Health and Recovery Services' provision of mental health services in the Jail.

R13. The County should provide adequate funding to implement these recommendations.

This recommendation requires further analysis. The County spends approximately \$1.3 million annually to provide adequate behavioral health consistent with state and federal health and safety standards. In addition, the County spends additional state realignment funds to provide transitional services to inmates, including those inmates with mental health needs. Over the next few months, we will be considering proposals to enhance mental health services and potential funding sources. As part of the Stepping Up initiative the Board of Supervisors has asked HHS to bring recommendations for expanding services. These proposals are being developed and will be brought to the Board for funding consideration.