JCS Jail Consulting
James C. Sida

April 2, 2019

Ganter, Allison, Deputy Director (FSO)
2590 Venture Oaks Way
Sacramento, California 95833

Re: Title 15, CCR, Revision Process – Revision Recommendation

Dear Allison:

I noticed that the April 9, 2019, Board Agenda announces the request to proceed with Title 15, CCR., in accordance with the regular review and revision goals to support the changing correctional environment and maintain face validity and legal defensibility. As you may know that based on my work as a "Jail Consultant," particularly in the area of litigation I have noted a number of cases that I provided consulting services for local corrections agencies that involve jail deaths due to a variety of medical issues generally flowing from the use of withdrawal of opiates and other substances.

In this regard I would like to suggest a change(s) in regulations as they relate to persons who undergo opiate withdrawal in in order to protect those individuals from the potentially deadly impacts of the drug withdrawal process. Historically, even currently in many jurisdictions, persons who are known to be undergoing withdrawal from opiates or other substances (I am mostly focusing on opioids as potentially more deadly substance) receive only mild medical intervention to ease suffering from the symptoms.

I know that in California there are a number of jails that are conducting pilot investigations on Medication Assisted Withdrawal (MAT) protocols based on current research and reporting by among others the "National Sheriff's Association."[1] While these pilot projects will provide, by way of their experiences, what works, what doesn't or too many unintended consequences associated with this concept of treatment. While I applaud these efforts for their insight and courage to educate and perhaps change attitudes that run counter to safe and effective jail management other stop-gap measures should also be applied to these individuals.

The following are some concepts that should be introduced and discussed by the "SME Work Group" and the "Executive Steering Committee."

Correctional agencies should consider the following:

[1] https://www.ncsc.org/~/media/AC506DECF79746FCAAC20F0F9089D758.ashx

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- Title 15, CCR., § 1213. Detoxification Treatment. The responsible physician shall develop written medical policies on detoxification which shall include a statement as to whether detoxification will be provided within the facility or require transfer to a licensed medical facility. The facility detoxification protocol shall include procedures and symptoms necessitating immediate transfer to a hospital or other medical facility.

  Individuals cannot be compelled to accept medical treatment for their withdrawal symptoms, however whenever jail or medical staff are appraised that an inmate is undergoing withdrawal from opioids, other narcotics and/or alcohol, the jail medical staff MUST visually observe the inmate to check on their condition at least every hour with special attention to other medical problems that may be masked by the withdrawal symptoms.

  Whenever a person undergoing withdrawal symptoms and refuses treatment a form must be completed and signed by the inmate in the immediate presence of medical and custody staff. Simple radio communication of a refusal is prohibited. Refusal of treatment should be conducted face to face to ensure that the inmate understands the consequence of their refusal. The jail supervisor must be notified of the inmate refusal status as soon as practical.

  To the extent that space is available at the jail clinic or cells where medical staff have the ability to closely observe the condition of the inmate who is undergoing withdrawal.

  Medical staff will recommend to custody staff when the withdrawal symptoms have subsided sufficiently, and medical staff are satisfied that there are no underlying medical issues that may have been masked by the withdrawal symptoms. Based upon that notification by medical staff that the inmate has passed the time period withdrawal is no longer a significant health and safety threat the "Classification Officer" will rehouse the inmate, if necessary, to the general jail population under the regularly accepted time intervals for inmate safety checks.

  Facilities without medically licensed personnel in attendance shall not retain inmates undergoing withdrawal reactions judged or defined in policy, by the responsible physician, as not being readily controllable with available medical treatment. Such facilities shall arrange for immediate transfer to an appropriate medical facility.

- Persons known to be withdrawing from opioids and other substances should be visually observed by custody staff more often than once each hour depending on the severity of the withdrawal symptoms. Regularly scheduled hourly cell checks may resumed upon the advice of medical staff.

- Persons known to be withdrawing from opioids should not be required to clean their vomitus or other bodily fluids as a result of their severe withdrawal symptoms. The use of supervised inmate workers will be called to clean up messes as a result of the illness associated with withdrawal from opiates, other narcotics, and/or alcohol. Regular cleaning requirements may be resumed after the worst of the withdrawal symptoms subside.

- The responsible physician shall develop written medical policies on detoxification, with attention to new medical treatments based on the current understanding of opioid dependency, other narcotic substances and/or alcohol, with a focus on the reduction of in-custody deaths.

- Medical and custody staff will brief the oncoming relief shift personnel on safety and wellness issues involving inmates who are withdrawing from opioids, other narcotics, and/or alcohol.

I have attached a "White Paper" that provides areas of concern that have prompted the suggestions for Title 15, CCR., that reflect my personal experiences in dealing with in custody deaths as a result of withdrawal symptoms masking other medical maladies or in some cases inmates secreting drugs in vaginal/anal cavities and overdosing while in the jail.

Lastly, the language that I used to convey my suggestions for possible regulation revision are my own feeble attempt to articulate my concerns. I'll leave it to the highly competent BSCC staff to draft appropriate language in the event that there is an agreement that some changes be made to these areas of Title 15, CCR.

Sincerely,

James C. Sida
Jail Consultant

## Opioid Crisis Comes to the Jail

According to the National Institute on Drug Abuse, every day, more than 115 people in the United States die after overdosing on opioids. Each year about 42,000 die as a result of the rampant and use and abuse of opioids. The misuse of and addiction to opioids—including prescription pain relievers, heroin, and synthetic opioids such as fentanyl—is a serious national crisis that affects public health as well as social and economic welfare. The Centers for Disease Control and Prevention estimates that the total "economic burden" of prescription opioid misuse alone in the United States is $78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement.

Oh yes, did I mention that the problem has already begun to impact local corrections agencies? An increase of persons withdrawing from opioids arriving to the jail create a host of problems for jail administrators/managers and the jail medical provider. Two of the most immediate problems of the opioid epidemic in the jail involves:

1. Jail deaths as a result of individuals withdrawing from powerful narcotics such as opioids in the jail. These deaths are generally associated with a co-occurring medical/mental health problem(s) and;

2. Jail deaths as a result an overdose from narcotics entering the jail. These deaths are exacerbated by the introduction of powerful narcotics like fentanyl and carfentanyl that are used to boost the narcotic effects of the opioid of choice.

### How Opioids Have Changed the Health and Criminal Justice System

In days gone by, addiction by the neighbor down the street was largely kept a family secret. Less fortunate persons were the stereotypical addicts coming from low income areas—how things have changed. As it has been widely reported, in the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and healthcare providers began to prescribe them at greater rates.

This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive. Opioid overdose rates began to increase. In 2015, thousands of Americans died as a result of an opioid overdose, including prescription opioids, heroin, and illicitly manufactured fentanyl, a powerful synthetic opioid. That same year, an estimated 2 million people in the United States suffered from substance use disorders related to prescription opioid pain relievers, and 591,000 suffered from a heroin use disorder (not mutually exclusive).

To put the impact of the current opioid crisis in America today in focus, persons dying from overdoses (primarily opioids) exceed deaths attributed to car accidents in the U.S. for the entire year of 2016. According to medical experts the numbers keep increasing and there has been a national call to action for healthcare providers... to start diversifying our approach to do more for the community in question. Unfortunately, like many of societies seemingly intractable problems like mental illness, the opioid crisis will be ultimately shuffled off to law enforcement and the local corrections officials to manage the problem.

**Case Studies Involving Jail Deaths as a Result of Opioid Withdrawals and Overdoses**

**Case #1 – The Death of Inmate Jane Doe.**

An individual 27-years old that will be referred as "Inmate Jane Doe, was arrested July 19, 2017, after she was pulled over on suspicion of speeding outside on a Nevada highway southeast of Capitol City.

The officer discovered Ms. Doe had failed to answer traffic tickets, and the report states that she refused to answer questions about her medical history when she was taken to jail. After learning she wouldn't make bail, she told the jail supervisor that she was addicted to opiates and suffered seizures when withdrawing.

The report documents that Ms. Doe told a deputy she needed to be taken to a hospital about four hours after she was booked. In response the deputy told her she wouldn't be given medical assistance unless he (custody staff) determined her life was at risk.

According to the news reporting, jail officials told Doe, "Unfortunately, since you're DT'ing (referring to the detoxification process), I'm not going to take you over to the hospital right now just to get your fix," the deputy told inmate Doe, according to the documentation initiated by the jailer. The jail deputy went on to tell Doe, *"That's not the way detention works, unfortunately. You are incarcerated with us, so you don't get to go to the hospital when you want."*

On July 22, 2017, custody staff gave Doe a new uniform and a mop and asked her to clean her vomit from the cell floor. The newspaper reviewed video showing Doe mopping the floor while sitting on her bed, trembling and stopping to rest during the process.

According to newspaper reports the video shows Doe less than an hour later lying in the fetal position and suddenly becoming rigid. She then convulses for several minutes and stops moving around 6:30 p.m. At around 12:30 a.m., custody staff found her unresponsive.

The report states nobody called for medical assistance after Doe was found unresponsive. Toxicology results later found she had heroin in her system.

**Case #2 – Death of Inmate Jim Doaks**

According to news reports, on or about June 23, 2011, an individual identified as Jim Doaks, was remanded into custody by the Superior Court of California and arrested for violation of Health and Safety Codes, Business and Profession Codes and Vehicle Codes. Mr. Jim Doaks was subsequently booked into the jail, operated by the county sheriff's department.

According to the documents relating to the booking medical screen, when medical staff asked, if Mr. Doaks used street drugs, Doaks said, "no." Additionally, when he was asked if he used alcohol Mr. Doaks replied that he did drink beer every day and that the last time that he had a beer was about two hours ago. The questionnaire specifically asks, "Do you have asthma?" Mr. Doaks affirmed to the booking officer that he had asthma and took a medication to relieve the symptoms of his asthma. Based on the medical questionnaire and other salient inquiries and observations at booking, Doaks was accepted into the jail, classified for general security housing and assigned a bed in an area of the jail.

According to medical records, the medical staff became aware of Mr. Doaks' heroin/opiate withdrawal although Doaks provided a false statement during the medical screening about drug addiction and

withdrawal. County records show Mr. Doaks told a deputy that he had vomited and was withdrawing from heroin, at which time the deputy notified the nursing staff. Once it was known that Jim Doaks was addicted to heroin, medical staff established a treatment plan. Medical records indicate the jail medical staff prescribed a number of medications responsive to Mr. Doaks complaint about his withdrawal from heroin including instructions to be sleep on the lower bunk in accordance with the nursing protocol.

On or about June 25, 2011, Mr. Doaks refused to go to the scheduled sick call appointment and cited as a reason for this refusal, "No." "I'm good."

On or about June 26, 2011, a sheriff's deputy, while accompanying jail medical staff on "pill call" noted that Inmate Jim Doaks did not respond to the door of the module to receive his medication. Jail staff directed another inmate, to summon Doaks to his medical call and shortly, thereafter, returned to the deputy and nursing staff member and advised that Mr. Doaks did not want to get up and that he might be having some type of problem, described only as being a "man down."

The floor deputy summoned additional custody and medical assistance to the scene and upon securing the housing area, then went into the cell to check on Doaks and noticed that he was unresponsive. The Medical Examiner determined that the cause of ***death was due to an acute asthma attack.***

A Federal lawsuit brought on behalf of the deceased inmate Jim Doaks resulted in a verdict for the plaintiff and the County was ordered to pay a judgement in excess of about 3-million dollars in damages and an unknown amount for attorney fees and court costs.

**Case #3 – Death of Inmate John Doe**

According to a report prepared by State Police, on or about April 26, 2012, an individual identified as John Doe, 25-years old, was remanded into custody by a City Municipal Court and was committed to serve 10-days in the jail. Mr. Doe was subsequently booked into the jail by a city Police Officer William Doright. The jail is owned by the City and operated under the authority of the Chief of Police.

The Police Department operates a city jail that would approximate a California Type II jail facility consisting of pretrial and sentenced inmates. The primary supervision of inmates is provided by CCTV system that can be observed by the public safety dispatcher in the police building but not directly in the jail. Patrol officers are required to stop into the jail every hour to conduct cell checks.

On April 27, 2012, at about 8:17 P.M. Officer Jane Smith, learned that Mr. Doe was ill and had the police dispatcher summon the County Fire and Rescue paramedics to evaluate Mr. Doe. In the "Deep History" log of the jail information system, the police department dispatch entered, "MEDIC REQ'D FOR SUBJ FOR DRUG WITHDRAWAL. SUBJ HAS DIM LOC AND IS VOMITING UNCONTROLLABLY."

Emergency response personnel from the Fire & Rescue Department arrived at the jail and conducted a medical evaluation of Mr. Doe that they listed on their dispatch report form "Nature of Call" as "abdominal pain." Paramedics logged in their report that Mr. Doe had been feeling ill since the morning of April 27, 2012 and that Doe reported vomiting 2 times and that he had the chills. Paramedics also reported that Mr. Doe advised them that he was withdrawing from his methadone addiction and that he hasn't been this long without his methadone and said that he needs a fix. The assessment of Mr. Doe's condition as noted at the bottom of this report indicated that he was suffering from "delirium tremens.

As a matter of cost reduction, the inmate Jim Doe was given a jail furlough and told to seek his own medical treatment for his withdrawals from opioids and then surrender himself back to the jail once he received medical treatment. For those familiar with how opioids affect people including the process of withdrawing from the drug, generally understand that releasing a heroin addict in withdrawal to seek his own medical treatment might be problematic. Indeed, Doe did get, at least temporarily, relief from his symptoms by visiting his local drug dealer thanks at least in part to the jail policy of granting medical furloughs as a cost reduction strategy.

Doe was subsequently arrested a number of days later and charged with a failure to return to the jail after his furlough had expired. Doe became so sick for what was believed to be his opioid withdrawal that he could not get up for his court appearance. The city judge and city attorney went inside the jail held court in Doe's jail cell due to Doe's medical condition. The judge in this case sentenced him to additional jail time for not returning to the jail after his furlough had expired.

On May 5, 2012, the police dispatcher requested a paramedic response to the city jail with a report of an unresponsive inmate. When paramedics arrived, Jim Doe was pronounced dead by paramedics. The County Medical Examiner's Office was called to the jail to conduct a death investigation into this matter. A complete autopsy was performed by the forensic medical examiner who concluded that the ***cause of death was aspiration pneumonia.***

Plaintiff's prevailed in this matter for over $500,000 and the cost of defense amounted to many hundred thousand dollars.

**Case #3 – Death of Inmate Joan Smith**

On or about October 25, 2016, Ms. Joan Smith a resident of Fishigon, Michigan was arrested by the County Sheriff's Office for what is described in documents as a drug related charge and was booked into the county jail on the same date. After Ms. Smith's original arrest, she pled guilty to the court for embezzlement (related to the drug arrest) and sentenced to 1-year in the county jail. Ms. Smith was booked into the county jail by a correctional officer who, in accordance with the Sheriff's Policy and Procedure conducted a pre-booking health screening in accordance with sheriff's policy. The pre-booking medical screening is generally performed by custody personnel.

During the evening hours of Saturday October 29, 2016, inmates housed with Ms. Smith recalled that they observed Smith experiencing severe stomach pains. According to inmate's housed with Ms. Smith, Inmate #1 and Inmate #2 reported that Smith did not eat any food on October 29, 2016 and did not eat any meals for the remainder of the time that she was in jail (seven consecutive meals). These inmates who were also housed in the same housing in the jail testified that Ms. Smith was visibly suffering and described Ms. Smith as sequestering herself in her cell and writhing and moaning in pain. These inmates also testified seeing Smith hunched over and saw her as unsteady on her feet stumbling and holding onto the wall when she got up to receive her daily medication.

Sergeant Barbara Three-Stripes is a supervisor assigned to the County Sheriff's Office and has been employed in the jail for about 17-years, starting out as a correctional officer and promoting over the years to her current role. Sergeant Three-Stripes attended a 160-hour basic training course approximately 20-years ago. Sergeant Three-Stripes testified that she had no medical training whatsoever in her history or

background. Despite her lack of medical training Sergeant Three-Stripes on her own volition administered a strong laxative (sodium citrate similar to preparation for a colonoscopy) to Ms. Smith. Additionally, Sergeant Three-Stripes took Smith vital signs, although the purpose in doing so is unknown since Sergeant Three-Strips had no medical training whatsoever.

Jail medical staff are generally scheduled for inmates from Monday – Thursday, with no coverage during the weekend (medical staff work 4-10's). The County contracts with a local urgent care center where they can be examined and provide treatment to inmates with serious medical conditions.

As the weekend wore on through Sunday, October 30, 2016 and Monday October 31st Ms. Smith continued to suffer from serious pain. It wasn't until Monday, November 1, 2016 that Smith was examined by the jail nurse who documented Smith condition in her case notes. In her notes, the jail nurse reports that Ms. Smith had not eaten in four days and that Smith stool was all water when she had a bowel movement. The jail nurse documented that Ms. Smith was rolling from side to side holding a blanket to her abdomen and the inmate was taken to the hospital.

From November 1st to November 5th, 2016, Ms. Smith underwent three surgeries to identify and treat among other things a perforated appendix that had become gangrenous and as a result Ms. Smith suffered from the deadly effects of sepsis. Physicians at a Michigan Hospital determined that due to the nature of her illness and the overwhelming sepsis (because of Smith untreated condition) that Joan Smith's life was unsalvageable. Ms. Smith died on November 5, 2016, and ***the cause of death was determined to be fulminant sepsis, peri-appendiceal abscess and perforated gangrenous appendix.***

This case was settled for an amount believed to be in excess of 1-million dollars. The cost for attorney fees and court cost is unknown but estimated to be at least $500,000.00 or more.

**Case #4 – Death of Inmate Jane Doaks**

On or about August 29, 2015, at about 11:57 AM., law enforcement officers employed by the city police department made contact with Ms. Doaks, who was seen loitering in an area frequented by drug users. In her case report, Officer Bernice Wilkerson, identified Ms. Doaks as a result of other law enforcement related contacts with her.

Based on Officer Wilkerson's' personal knowledge and identification of Ms. Doaks, a check was made for warrants and criminal information. In her report Wilkerson stated that Doaks had been previously arrested for petty theft with priors, which is a felony/misdemeanor offense and subsequently was on probation with general search conditions. Because of the conditions of Doaks' probation status, Officer Wilkerson conducted a search of her backpack and discovered three syringes with a brown residue on them. Prior to this arrest, Ms. Doaks had been arrested eight times from 2009, up to her last arrest in August 2015, for numerous violations of theft, theft with priors, possession of stolen property, and assault and battery.

Officer Wilkerson arrested Jane Doaks for violations of the California Penal Code for false impersonation of another and for violation of the Health and Safety Code, possession of drug paraphernalia. As a result of these law violations Officer Wilkerson arrested and transported Ms. Morris to the Imperial County Jail where she was subsequently booked. Upon her arrival at the jail and in accordance to Sheriff's jail policy a "Pre-Entry Health Screen" was conducted.

Based on the information contained in the "Pre-Entry Health Screen" form, Jane Doaks told the arresting Officer Wilkerson that she had been diagnosed as having cancer. Additionally, Doaks reported that she was using the opiate "heroin" and "methamphetamine." Doaks told Wilkerson that she expected to experience withdrawal problems.

On August 31, 2015, at about 4:45 PM, a custody officer was conducting a security check in the housing area and noticed that inmate Jane Doaks was on her bunk in the cell. The custody officer observed that Doaks was in the same position on the bed that she had seen here during the last check. The concerned correctional officer opened the cell door to check on Doaks, shouting "Hey lady," several times to get a response. Getting no verbal response, the correctional officer approached Ms. Doaks and shook Doaks' but still did not observe a response from Doaks.

A short while later additional officers responded to the scene and began to assist by locking down the inmates who were on the tier. One of the responding correctional officers who entered the cell checked for a pulse on Ms. Doaks arm and then her neck. Ms. Doaks had no pulse and was not breathing. Doaks was transported to a hospital but was pronounced dead on her arrival. According to the Imperial County Coroner, Ms. Doaks did not die from the effects of withdrawal but according to the Coroner's Report Morris ***died of acute methamphetamine intoxication***. It is surmised that Doaks had possession of narcotics as a result of carrying of methamphetamine into the jail smuggled in a body cavity.

Current case law sets a very high bar in terms of probable cause to conduct a "body cavity search" (not to be confused with a "strip search." A body cavity search entails trained medical professionals searching body cavity areas such as a woman's vagina or anus. Some body cavity searches such as Xrays can also detect items of contraband carried in body cavities such as the stomach contents.

**Case #5 – Death of Inmate John Doe**

This case involves an inmate identified as John Doe who was confined to the custody of a California sheriff's office for multiple drug offenses. Mr. Doe was discovered in his housing unit in the county jail, on January 15, 2014, at about 10:40 A.M., by custody staff where it was determined that he was in physical distress with labored breathing. After attempting lifesaving actions by custody staff and medical staff it became apparent that Mr. Doe had stopped breathing and died as a result.

The Medical Examiner reported his finding that inmate Doe***, died of an overdose on the opioid drug heroin.*** The day before Mr. Doe died, 3-inmates in the same housing assignment in the jail were transported to the hospital emergency room for symptoms of an opioid overdose. In a subsequent search of the housing area custody officers discovered a used syringe and other paraphernalia.

Plaintiff's in this case have charged that the county jail's medical and inmate supervision issues were the cause of inmate Doe's death. Defense attorney's claim that Mr. Does' death was a direct ***result of his use and overdose of illegal narcotics (heroin) in the jail which were deemed to be the cause of death.***

This case was grinding slowly through the system during the past 3-years resulting in high costs for both the Plaintiff's and the County. The case was eventually settled for an undetermined amount.

**Issues Relating to the Opioid Epidemic and the Jail**

1. Awareness based on known events.

    a. Administrative, management, supervisory personnel should be briefed on the opioid epidemic and acknowledge that this epidemic is working its way through jail systems throughout the United States.

    b. Archaic attitudes about persons addicted to opioids must be addressed by the agency leadership. The common view that addiction is a character issue and the notion if people don't want to experience withdrawals then they should not use opioids. While this may have elements of truth those attitudes can get in the way of an effective response to medical issues. Jail administrators and supervisors should tamp down those attitudes by staff and educate them on the consequences of opiate withdrawal on the inmate and potential for litigation.

    c. California has, in the past, been spared the worst of the opioid epidemic, however, the introduction of "Fentanyl" and "Carfentanyl" being introduced into the cohort of opioid users has impacted California much the same way it has in other States.

    d. Custody and jail staff need to be knowledgeable on the phases of withdrawal from opiates, as many addicted persons do not alert staff at booking in the inmates' hope of managing their own addiction.[1] Additionally, if some addicted persons were to reveal that they had been using illegal narcotics then those persons might be admitting to a criminal offense that might influence their parole or probation conditions.

2. Opioid crisis is moving predictably to the jail based on anecdotal data from the past 5-years (BSCC might consider working with the State Sheriffs to conduct an analysis cases in California.)

    a. Are these events collectively indicate a trend? If we can anticipate the trend we can proactive in our supervision of persons addicted to or withdrawing from opiates (including alcohol and other substances).

    b. What are the demographics or what is the cohort of the population that is most impacted by the opioid epidemic?

    c. What the hell is going on here (a very good question that sometimes does not get adequately asked or answered)?

3. Drug withdrawal. **Drug and alcohol withdrawal are serious medical needs.** Kelley v. County of Wayne, 325 F.Supp.2d 788 (B.D. Mich. 2004) (heroin), Morrison v. Washington County, 700 F.2d 678 (11th Cir. 1983) (alcohol). Painful symptoms

[1] Inmates often hide their addiction at booking fearing additional charges or a violation of parole or probation requirements.

associated with methadone withdrawal can be serious medical needs. Foelker v. Outagamie County} 394 F.3d 510 (7th Cir. 2005.

a. This may be the most challenging of issues relating to the supervision of inmates who are withdrawing from opiates or other drugs/alcohol that withdrawing from opiates and other drugs. I am not satisfied that in the globally sense, jail administrators, jail managers, supervisory and line staff do not regard the process of withdrawal as posing a significant medical risk (see item #5).

b. While the sudden withdrawal from opioids is generally not life threatening, in and of itself, the symptoms can be quite serious and impact other medical maladies. This is primarily a medical issue with important custody and classification interests. Custody staff should not play medical staff in these instances as we know that at times a person withdrawing from narcotics like heroin may have co-occurring disease that can be hidden by a custody staff's taking medical conditions into their own hands. Likewise, if jail staff become aware that a medical staff person may be cynical in the treatment of drug users. It is critical to understand that the sheriff or owner of the jail can be held liable for the acts or omissions of medical staff in the jail.

c. As is the case in many of the studies presented here, they demonstrate that the withdrawal from opioids is problematic as it may be hiding other very serious medical concerns that have resulted in death. A pejorative mindset about opioid addiction can cause custody and medical staff to miss other medical issues that are masked by the effects of withdrawal from the drugs.

d. In days gone by the use of addictive drugs like heroin was largely limited to persons living I areas of high crime, populated by minorities, poor education and health contribute to the problem. Today, persons who use and are addicted to opioids defy old notions of who is using the drug. Opioid use and addiction cut through all economic strata, race, or community. While we hate to admit it, a person with an opioid addiction could be a family member, neighbor, friend or even a co-worker.

4. Inmate deaths almost always trigger a wrongful death lawsuit claiming violations of prisoners' constitution rights and a failure to protect by the Sheriff's Department and the County.

a. These cases almost always present issues with the delivery of medical care, particularly for smaller agencies in more rural areas.

b. These lawsuits are very expensive as they often call for experts from the corrections or more precisely medical field that can be incredibly expensive.

c. Failure to provide adequate medical care can result in cruel and unusual punishment. The legal test comes from an early Supreme Court decision that involved a Texas prison

inmate who was injured when a bale of cotton fell on him. Estelle v. Gamble, 429 U.S. 97 (1977). The question, according to the Supreme Court, is whether officials were "deliberately indifferent to a ***serious medical need***." Remember, the courts have ruled that withdrawals from drugs and alcohol presents a serious medical need.

d. One of the consequences of putting someone in jail or prison is that the government takes on the duty for ***providing some level of care***. The tough questions are: (I) when is medical attention needed and (2) how much is enough? Farmer v. Brennan held that jail and prison officials have a duty under the Eighth/Fourteenth Amendment to provide humane conditions of confinement. Jail administrators must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must protect prisoners from violence at the hands of other prisoners.

5. Assumptions about persons withdrawing from opioids. Opioid withdrawal can mask other very serious medical issues.

    a. Based on the case studies presented above it would be prudent for correctional officials and the jail medical team to establish protocols for ALL person booked into the jail and who are experience withdrawals from drugs or alcohol be closely monitored for about 7 to 10 days. This monitoring should include the following strategies:

        i. An immediate examination by a qualified medical staff take place as soon as staff are informed or observe a person who is withdrawing from drugs (opiates) and/or alcohol. If jail medical staff are not available, then send them to the hospital for evaluation. Persons who are in a state of withdrawal may hide symptoms of a more serious medical issue or emergency. In some cases the withdrawal experience (although rare) can occur.

        ii. If possible, inmates should be temporarily housed where they can be observed by medical staff during the first 56 to 72 hours. Reassignment can be considered after this time period based on the individual's response to their withdrawal symptoms. Temporary housing should in no way be used a punishment but rather to provide very close monitoring and care for about 7 to 10 days.

        iii. Medical staff should be required to visit, and physically observe, the person undergoing withdrawals and carefully document date, time and condition of the inmate in medical terms. Statements by the inmate refusing treatment should be documented and signed by the inmate. While individuals cannot be forced to receive medical care, the facility management can require that the individual be checked on more regularly and documented. While inmates have a right to refuse medical treatment medical and custody staff should continue to demonstrate due diligence by assertive supervision and frequent face to face contact with the inmate suspected of withdrawal symptoms.

iv. Custody staff should be required to conduct a cell check more often than 1-hour (a California regulation for the general inmate population) for individuals during the withdrawal period. While this may amount to a staffing and cost issue, alternative housing like an observation cell adjacent to the medical services may be perfectly acceptable to use holding cells that allow for better supervision, particularly near medical staff. It is critical that custody staff be aware that inmates have a right to medical services, including when a person is withdrawing from alcohol/drugs. Additionally, the officer should be trained on the management of persons withdrawing from opioids and guided by jail and medical policy.

v. Review and establish new policies to deal with persons who are withdrawing from drugs or alcohol for both custody and medical staff if needed. Policies should include issues relating to an inmate's refusal of medical services. Any refusal of medical services must be documented and signed by the inmate refusing treatment. If an inmate refuses to sign the form, then the policy should include a notice of such on the refusal form and a copy of that form should be routed to the jail manager/administrator.

vi. Insure by policy and assertive supervision that custody and medical staff conduct a thorough change of shift briefing occurs and that the status of inmates who are withdrawing from opiates/alcohol to insure continuity of supervision and care of the inmate.

6. Use training to guide staff behavior and agency response strategies. Training need not be overly expensive or burdensome. Short interval training (8 to 10 minutes daily) that focus specifically on jail policies. I recommend some form of testing or transfer of knowledge is documented for the participating custody staff. Note: I would urge caution in the use of testing to solely in support employee discipline. The construction of defensible tests in this regard is too complicated and expensive. This would probably be a bridge too far.

7. Continuous assertive supervision by jail sergeants, lieutenants and the jail administrator when handling inmates who are withdrawing can signal to custody staff that this is an important part of the custodial environment and must be taken seriously. Supervisors and managers get what they inspect and not with they simply expect. When supervisors/managers conduct the occasional inspection should make sure that they document their activities in the jail log.

8. Perhaps the most difficult assignment for the jail administrator is the attempt to moderate long held beliefs about drug addiction. This will require an agency cultural shift that can only be accomplished by an assertive and well devised plan to shift attitudes. Understanding the complexities of substance abuse is not signal that custody staff approves of drug use but rather as correctional officers they must tolerate people with different values that include substance

abuse problems. in the interest of protecting the community from the crushing cost of litigation and...well...It's just the right and humanitarian thing to do.

Obviously, there are more issues that can be covered, and which would be benefitted by a committee of SME's to flesh out other ideas, share policies and practices, discuss ongoing litigation that may be happening in California cities and counties. Some of the areas that might be subject to a reimagination of the problem and attempts by the custody and jail medical staff to aggressively respond. Some ideas worthy of discussion are:

- Policy changes, supervision and training to raise awareness and provide guidance in the effort to protect the inmate population from problems described above.
- Policy and practices that encourages regular and random searching for drugs and other contraband in the jail, housing units, common areas and on the persons of inmates incarcerated in the jail.
- Housing strategies that support close supervision by custody and medical staff when a person is actively suffering from withdrawal from narcotics.
- Revisit a discussion that involves other medical interventions such as the use of "Suboxone" or "Methadone" as a treatment option as a Medication Assisted Transition (MAT). There are likely good medical reasons to reject this type of change in treatment due to the environment in the jail, staffing and work issues. This being the case the jail managers and medical administrators should discuss the issue, avoiding a premature conclusion on this issue.

# 2019 BSCC Survey

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Thank you for your time and participation!

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## Name:

Jeff Bell

Title:

Captain

Department or Agency:

Shafter Police Dept

Contact Information:

[redacted]

1. Please list the subject area(s) in which you would like to see revision. If you are unsure of the subject area, you may leave this question blank.

I'd actually like to see a separate scaled down version or section that applies to Temp Holds as it is my opinion that much of the regulations apply but aren't needed or realistic because they are not within the normal parameters of Temp Hold facility practices.

2. Please list the specific Title 15 or 24 section(s) that should be revised, e.g., Title 15, Section 1006, Definitions. If not applicable or you are unsure, you may leave this question blank.

See my above answer

3. Describe the revision(s) you would make and explain why the change is necessary. If applicable, describe any operational or fiscal changes that would be implemented as a result of this revision. You may also submit files or documents directly to: regulations@bscc.ca.gov

I'm not always in the Title sections, but there are many sections that technically apply to TH's, but aren't activities/actions that are completed by TH's.

4. Additional comments. If you have any special requests, comments, or concerns that you would like the Executive Steering Committee to consider, please list them here.

As I mentioned, it has been my opinion that the Regulations become overly weighty for TH's and ought to be streamlined for TH daily practices. What's important is important, but some aspects just seem to burden the agency with non-essential regulations. One quick example, the regulations pertaining to restraint chairs. Well we don't have/use one, so then IMHO the training component on them ought to be eliminated if the agency doesn't use. But, we still have policy on it, and it's something that we briefly mention in our in-house training, and it's a waste of time. We need to ensure that the big things are the big things as applied to the specific types being addressed. I think there ought to be some specifics layed out in training areas as it relates to TH's and not require lengthy training on subject matter that for the most part isn't going to be conducted or handled by a TH agency. Let's streamline, and get realistic for TH's and deal with the larger facilities differently or with additional requirements as needed.

Would you like to receive email notification of future meetings and updates regarding the 2019-2020 Adult Titles 15 and 24 Regulations Revision?

- [x] Yes
- [ ] No

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## Name:

John Hendon

## Title:

Regulation Compliance Officer

## Department or Agency:

Merced County Sheriff's Office

## Contact Information:

[redacted]

## 1. Please list the subject area(s) in which you would like to see revision. If you are unsure of the subject area, you may leave this question blank.

1. Inmate yard time for small correctional facilities. 2. Required legal material for library services. 3. Word change for Administrative segregation regarding time allowed before notification is required. 4. Inmate discipline time for review and investigations. 5. (new) add a specific term for Administrative Lock Downs.

## 2. Please list the specific Title 15 or 24 section(s) that should be revised, e.g., Title 15, Section 1006, Definitions. If not applicable or you are unsure, you may leave this question blank.

Title 15 Sections: 1012 (Emergency suspension of standards or requirements),1027 (Safety checks), 1050 (Classification plan),1053 (Administrative segregation) ,1063 (Correspondence), 1064 (Library service), 1065 (Exercise and Recreation).

3. Describe the revision(s) you would make and explain why the change is necessary. If applicable, describe any operational or fiscal changes that would be implemented as a result of this revision. You may also submit files or documents directly to: regulations@bscc.ca.gov

Revisions / suggestions sent in word document.

4. Additional comments. If you have any special requests, comments, or concerns that you would like the Executive Steering Committee to consider, please list them here.

Review of the overall classification process based on new level of inmates being housed in local adult detention facilities after AB109.

Would you like to receive email notification of future meetings and updates regarding the 2019-2020 Adult Titles 15 and 24 Regulations Revision?

- [x] Yes
- [ ] No

To: California Board of State and Community Corrections (BSCC)
From: Juliet Leftwich, Attorney and Criminal/Social Justice Advocate
Re: Title 15 Revisions
Date: November 25, 2019

PUBLIC COMMENT

Background

I am an attorney and the former Legal Director of the Giffords Law Center to Prevent Gun Violence, where I worked for more than 20 years on the enactment and defense of state and local gun safety laws. I have extensive experience researching and drafting legislation, and appearing before legislative bodies in legislative hearings. In 2016, I worked closely with then-Lt. Governor Gavin Newsom on Prop. 63, a comprehensive gun safety measure that was passed overwhelmingly by California voters.

I am currently the Chair of Berkeley's Commission on the Status of Women (COSW). The COSW has been studying conditions at Santa Rita Jail in response to a request by a former City Councilmember who was concerned about allegation of mistreatment of female inmates at the Jail. I am also a member of the Alameda County Mental Health Advisory Board (MHAB) and Co-Chair of its Criminal Justice Committee. The Committee and MHAB have been investigating the treatment of inmates at Santa Rita and how conditions at the facility affect inmates with mental illness.

As part of my work with the COSW and MHAB, I have reviewed the complaints in several lawsuits against the Alameda County Sheriff and others alleging inhumane treatment of inmates at Santa Rita Jail. I have met with attorneys representing plaintiffs in some of those suits and, in September 2019, I toured Santa Rita Jail with other members of the MHAB. I also serve on Berkeley's Police Review Commission (PRC).

Please note that these public comments are submitted in my individual capacity and not on behalf of the COSW, MHAB or PRC.

Title 15 Revisions

I urge BSCC to consider the following revisions to Title 15:

1. **Revise Article 5, Section 1055 to limit the amount of time an inmate may be held in a safety cell**. Section 1055 currently allows inmates to be held in a safety cell for an indefinite amount of time. A growing body of research demonstrates, however, that solitary confinement is extremely damaging to an inmate's mental health. I would

recommend that BSCC revise Section 1055 to state that an inmate may not be held in a safety cell for more than 24 hours. I understand that the San Francisco Jail has such a policy in place.

2. **Revise Article 11 to provide minimum standards governing the treatment of pregnant inmates, as required by Penal Code Section 6030, and to prohibit administrative segregation of inmates who are in the last trimester of pregnancy.** Although Article 5, Section 1058.5 limits the use of restraint devices on pregnant inmates, and Article 6, Section 1122.5 governs the treatment of pregnant minors, Title 15 does not generally address the needs of adult pregnant inmates. BSCC should adopt new minimum standards to address the important needs of this population, as required by Penal Code Section 6030, and specifically prohibit administrative segregation of inmates who are in the last trimester of pregnancy. The need for the creation of these standards is evidenced by the fact that a pregnant inmate was forced to give birth alone last year at Santa Rita Jail.

3. **Revise Title 15 to provide minimum standards regarding the provision of transportation for inmate who are released late at night.** The need for the creation of these standards is evidenced by the fact that an inmate who was released from Santa Rita Jail last year at 1:30 a.m. was found dead at the BART station at 4:30 a.m. No arrangements for transportation had been made on her behalf and she was left to walk to BART alone.

Finally, although I do not have a specific recommendation in this regard, I would like to see BSCC consider potential ways to increase its ability, and the ability of inmates, to enforce the provisions of Title 15.

Thank you very much for your consideration. I hope to have the opportunity to work with you in the future.

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## Name:

Juliet A. Leftwich

## Title:

Attorney and Criminal/Social Justice Advocate

## Department or Agency:

I am answering this survey in my individual capacity, but I serve on the Alameda County Mental Health Advisory Board, the Berkeley Commission on the Status of Women and the Berkeley Police Review Commission.

## Contact Information:

[redacted]

## 1. Please list the subject area(s) in which you would like to see revision. If you are unsure of the subject area, you may leave this question blank.

I am interested in revisions regarding the use of safety cells. I am also interested in the addition of minimum standards regarding the treatment of pregnant inmates and the provision of transportation for inmates released late at night.

## 2. Please list the specific Title 15 or 24 section(s) that should be revised, e.g., Title 15, Section 1006, Definitions. If not applicable or you are unsure, you may leave this question blank.

Title 15, Section 1055 should be revised, relating to safety cells. My other recommendations relate to proposed additions to Title 15.

3. Describe the revision(s) you would make and explain why the change is necessary. If applicable, describe any operational or fiscal changes that would be implemented as a result of this revision. You may also submit files or documents directly to: regulations@bscc.ca.gov

I would urge BSCC to limit the use of safety cells to 24 hours, given the well-established psychological damage caused to inmates who are placed in solitary confinement. I would also urge BSCC to: 1) develop minimum standards regarding conditions for pregnant inmates, with special attention given to inmates in their last trimester, in light of the fact that a woman was forced to give birth alone at Santa Rita Jail last year; and 2) develop minimum standards for the transportation of inmates who are released late at night, in light of the fact that an inmate who was released from Santa Rita Jail last year at 1:30 a.m. was found dead at the BART station at 4:30 a.m. after she was forced to walk there alone.

4. Additional comments. If you have any special requests, comments, or concerns that you would like the Executive Steering Committee to consider, please list them here.

I would be very interested to hear about ways to increase the ability of BSCC and individual inmates to enforce the provisions of Title 15.

Would you like to receive email notification of future meetings and updates regarding the 2019-2020 Adult Titles 15 and 24 Regulations Revision?

- [x] Yes
- [ ] No

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## Name:

Gretchen Newby

Title:

Executive Director

Department or Agency:

Friends Outside

Contact Information:

[redacted]

1. Please list the subject area(s) in which you would like to see revision. If you are unsure of the subject area, you may leave this question blank.

inmate programs and services

2. Please list the specific Title 15 or 24 section(s) that should be revised, e.g., Title 15, Section 1006, Definitions. If not applicable or you are unsure, you may leave this question blank.

Paragraph 1070

3. Describe the revision(s) you would make and explain why the change is necessary. If applicable, describe any operational or fiscal changes that would be implemented as a result of this revision. You may also submit files or documents directly to: regulations@bscc.ca.gov

Friends Outside has been providing programs and services in California jails since the 1950's, including Santa Clara County, Los Angeles County, Sonoma County, San Joaquin County and others. We suggest that all programs and services should be evidence based, with the exception of recreation programs, and that there should be a clear differentiation between recreation and rehabilitation, with the latter always based on sound evaluation for effectiveness. In addition, all inmates should undergo an assessment of criminogenic needs and assigned to the appropriate programs based on those needs, and combined with a risk assessment to determine whether there is an appropriate level of risk to justify the particular program. Programs should be determined based on duration and intensity, at the very least. Family services should also be provided by an appropriate service provider who represents the appropriate education, experience and licensing, if appropriate.We would also suggest attention be paid to appropriate attention to the needs of children of incarcerated parents and that this be codified.

4. Additional comments. If you have any special requests, comments, or concerns that you would like the Executive Steering Committee to consider, please list them here.

We have seen the great progress in jail programming over the decades, and applaud the efforts of the BSCC to make those improvements. Now it's time to codify the requirements for inmate programs, including the use of validated assessment instruments provided by trained people and provision of only those programs and services that are evidence based.

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- [x] Yes
- [ ] No