



LEGAL ADVOCACY UNIT
350 S. Bixel St., Ste. 290
Los Angeles, CA 90017
Tel: (213) 213-8000
Fax: (213) 213-8001
TTY: (800) 719-5798
Intake Line: (800)776-5746
www.disabilityrightsca.org

MEMORANDUM

TO: Board of State and Community Corrections

FROM: Pamila Lew, Pamila.Lew@disabilityrightsca.org

RE: BSCC Adult Titles 15 and 24 Regulations Revision—
Recommendations from Disability Rights California

DATE: February 7, 2020

Disability Rights California is the nation's largest non-profit disability rights law firm and California's designated protection and advocacy agency, mandated under state and federal law to advance the rights of Californians with disabilities. DRC recommends the following revisions to Title 15 and Title 24. Attached for reference are the following documents:

- [*Mays et al. versus County of Sacramento* Consent Decree, including Exhibit A, Mays Remedial Plan](#)
- [DRC Investigation Report on Suicides in San Diego County Jail](#)
- [DRC Investigation Report on Adelanto Detention Facility](#)

1. ADA Compliance

- Currently: Title 15 does not reference the federal Americans with Disabilities Act (ADA) regulations. Title 24 (design and construction regulations) at Part 1, Section 13-102(c)(6)(B)(9) references “Spaces for persons with disabilities”, requiring day rooms and activity areas to be accessible to people with disabilities, and accessible showers for people with disabilities. Title 24, Part 2 regulations only reference making cells “accessible” to its occupants. See Title 24, Part, 1231.3.1, 1231.3.2, 1231.3.3.

- Revision:

Create a separate article in Title 15 to reference the ADA program access and ADA Accessibility Guidelines (ADAAG) standards that apply to California correctional facilities. See 28 C.F.R. § 35.152; 28 C.F.R. § 35.151(k), <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/adaag#DETENTION>; see also https://www.ada.gov/accessible_cells_prt.pdf (DOJ Accessible Cell Design Guide). The new article should also reference the ADA provisions that require an ADA coordinator and a grievance system to track and respond to disability issues. See 28 C.F.R. § 35.107; <https://www.ada.gov/pcatoolkit/chap2toolkit.htm>.

It is also important to ensure that the regulations make clear that physical plant and design features – including those implemented for suicide prevention purposes (e.g., ligature-free components for shower seating, toilet area, and housing areas) – provide adequate physical accessibility for people with disabilities.

- Rationale: There have been many lawsuits, consent decrees, and settlements in California dealing with correctional facilities’ failure to meet ADA standards. A reference to the ADA will help to remind local jurisdictions that they are required to meet the state and federal accessibility standards. This could save local

jurisdictions money in the long run in terms of renovations and litigation costs.

2. Restraint (§1058)

- Currently: “physical restraints should be utilized only when it appears less restrictive alternatives would be ineffective in controlling the disordered behavior.”
 - Revision: “physical restraints should be utilized only when all less restrictive alternatives, including verbal de-escalation techniques, have been attempted.”
 - Rationale: Jail staff frequently do not take the time to attempt alternatives to restraint. Verbal de-escalation, which is increasingly emphasized in the community for addressing individuals in crisis, can be effective in preventing the need for restraint. De-escalation is at the core of restraint reduction.

3. Restraint Chair

- Currently: No separate regulation governing restraint chair use.
 - Revision: Create a separate regulation for restraint chair use, that includes additional requirements: Conduct a medical and mental health assessment of an individual prior to the use of a restraint chair, or at the inception of its use; Require direct, continuous observation of any restrained individual; Allow the use of the restraint chair only for as long as needed to secure an incarcerated individual for transport for outside medical attention, but not to exceed two hours within a 24 hour time period; Video record use of the restraint chair; Require reporting to the BSCC the use of the restraint chair as part of its monthly jail report, including the number of times it was used, the incarcerated individuals restrained, and the duration of each restraint episode. Require reporting to BSCC all restraint related deaths.

- Rationale: Restraint chairs are particularly dangerous devices and prone to abuse because they are easily transportable. Incarcerated individuals have died in restraint chairs from pulmonary embolisms in California and nationally. Other states have severely restricted the use of the restraint chair. Restraint chair manufacturers recommend a two hour cap. Additional reporting to BSCC and data collection can highlight which jails are overly relying on restraint chair use.

4. Suicide Prevention (§1030)

- Currently: Requires jails to have a “comprehensive written suicide prevention program.”
 - Revision: Add annual re-training for staff on suicide prevention policies; add requirement that intake screening be completed by nursing staff (RN preferred).
 - Rationale: Standards and understanding of suicide prevention have changed significantly over recent years and are likely to continue to change. It is important that staff receive additional training on current policies. Intake screening should be completed by nursing staff to ensure accurate responses. Use of custody staff discourages some individuals from honestly answering questions, which heightening the risk of error. (See *generally* Mays Remedial Plan, pp. 41-50.)
- Currently: Requires jails’ suicide prevention program to include “(g) provisions for reporting suicides and suicides attempts” and “(h) Multi-disciplinary administrative review of suicides and attempted suicides as defined by the facility administrator.”
 - Revision: Provide additional guidance as to the definition of a “suicide attempt” to ensure consistency with respect to what incidents trigger reporting and review.

inmates and staff; 1082 outlines disciplinary options including “disciplinary segregation.”

- Revision: Regulations should require a generalized exclusion for people with serious mental illness or developmental/intellectual disabilities.
 - Rationale: Placement of people with SMI and people with cognitive disabilities has been consistently found to violate the U.S. Constitution. *See, e.g., Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995); see also Indiana Protection & Advocacy Services Commission v. Commissioner, 2012 WL 6738517 (S.D. Ind., Dec. 31, 2012)* (holding that the Indiana Department of Correction’s practice of placing prisoners with serious mental illness in segregation constituted cruel and unusual treatment in violation of the Eighth Amendment). A generalized exclusion is appropriate, absent exigent circumstances (*Mays Remedial Plan, p. 53*).
- Revision: Requirement of an individualized assessment of security risk and need for separation (*Mays Remedial Plan, p. 51*). Add language that segregation should not be used in place of rehabilitation and/or appropriate programming. Add limitations on direct release to community from segregation units. (*Mays Remedial Plan, p. 59*).
 - Rationale: Physical and psychological effects of isolation are well-documented and hinder rehabilitation and likeliness to safely reenter society. States that have limited segregation have shown reduced violence and recidivism.

6. Safety Cell (§1055)

- Currently: Property destruction/intent to cause physical harm to self or others. Not for punishment or treatment. Medical assessment within 12 hours of placement or at next daily sick call. Medically

cleared every 24 hours thereafter. Direct visual observation at least twice every 30 minutes.

- Revision: Impose 6 hour limitation on time in a safety cell (*Mays Remedial plan*, p. 45). Clinical staff should have authority, based on individualized clinical judgment and input from custody staff, regarding the duration of placement, conditions, property, and privileges (including use of the “safety garment”) for people requiring precautions based on suicide risk. (*Mays Remedial plan*, p. 45-49).
 - Rationale: Safety cells are not conducive to clinically appropriate treatment and monitoring, which can be accomplished in other settings. They should be used for only very short periods because the conditions are so dismal and discourage suicidal individuals from requesting assistance if they experience thoughts of self-harm or suicide again. A person should be placed in the least restrictive setting appropriate to their individual needs, with any removed property and privileges restored at the earliest possible time.

7. Out of Cell Time—titled “Exercise and Recreation” in the regulations (§1065); also §1231.2 Exercise Area, Dayroom and Outdoor Recreation Space.

- Currently: Minimum 3 hours per week.
 - Revision: Implement standards that prevent conditions of solitary confinement (21-22 or more hours per day in cell) by requiring exercise and recreation time every day, consistent with recent court-approved settlements;; require minimum outdoor time with access to sunlights.
 - Rationale: Current regulation does not provide appropriate guidance to systems regarding compliance with constitutional minimums. Compliance with Title 15 regulations should more closely approximate compliance

with current legal and constitutional requirements. *Hernandez v. Cnty. of Monterey*, 110 F. Supp. 3d 929, 946 n.105 (N.D. Cal. 2015) (citing *Spain v. Mountanos*, 690 F.2d 742, 746 (9th Cir. 1982) ("Under the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite contravening state laws.")). See Sacramento County Jail's 17 hours per week, including some out-of-cell time every day. (*Mays Remedial Plan*, p. 51); 24 hours per week minimum in San Bernardino County Jail (*Turner v. San Bernardino*, Restrictive Housing Plan).

8. Mental Health Care-in Title 15, Article 11, and at §§ 1207.5, 1208, 1209, 1210, 1214 and 1217

- Currently: Requirements for screening, a plan for access to treatment, written treatment plans for people found eligible, access to psychotropic medications.
 - Revision: Should include more specificity regarding the mental health services that jails must provide, including but not limited to:
 - Access to all levels of psychiatric care (e.g. acute, enhanced/intensive outpatient, etc) and types of psychiatric care (e.g. individual therapy, group therapy, etc) and within what timeframe
 - Availability of mental health staff at all times and timeframes for review of individuals in need of assessment
 - Availability of confidential meeting areas
 - Continuation of pre-incarceration medications and upon re-entry
 - Requirements to provide the most integrated setting appropriate for individuals with mental health needs, consistent with 28 C.F.R. § 35.152
 - Role of mental health staff in classification and disciplinary decisions
 - Rationale: Constitutional minimums require jails to provide appropriate mental health services to all those incarcerated.

Multiple counties lack appropriate care, within reasonable timeframes, and have been sued for it. BSCC should provide additional guidance to assist counties to comply with the Constitution and reduce the likelihood of litigation.