Santa Clara County Office of Correction and Law Enforcement Monitoring

Follow-Up Report: Sheriff's Office Use of Chemical Agents in Planned Use of Force Incidents

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Introduction

On September 19, 2023, OCLEM presented to the Board of Supervisors its Report on the Sheriff's Office Use of Chemical Agents in Planned Use of Force Incidents.[1] At that meeting, the Board requested a follow-up report on five issues:

1. The status of the Sheriff's Office implementation of Recommendations 4, 5, 7, and 8; and Custody Health Service's implementation of Recommendation 6 from the OCLEM Report.

2. Review of jail practices regarding evacuation and decontamination of adjacent cells and surrounding areas prior to or after planned uses of force.

3. Policy options for limiting the use of cell extractions for facility maintenance to situations where the work is an emergency.

4. The decision by Custody Health Services to request that individuals be rehoused, particularly in cases 5-7 and 11-12 from our initial report, and any recommendations for improving the policy, procedure, and documentation surrounding those requests.

5. Potential alternatives to the use of ClearOut in acute psychiatric settings, including an examination of protocols and practices in hospital settings and assessment of whether those practices are transferable to a jail setting.

This report is intended to be responsive to that September 19, 2023 Board referral.

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[1] That report is dated August 29, 2023, to reflect the date it was originally intended to be presented to the Board.

To prepare this report, we met with Sheriff's Office officials and reviewed changes to Emergency Response Team (ERT) protocols intended to be responsive to our recommendations. We met with Custody Health Services personnel to discuss general decision-making practices around rehousing requests, and how those decisions are documented. And we reviewed the medical and mental health records from the five cases specified in the referral, to assess how the documentation reflected medical professionals' judgment about the necessity of the eventual housing moves.

We also spoke with one person who gave public comment when we presented our initial report. This individual had formerly been incarcerated and experienced the effects of chemical agents while in the jail. After speaking with him, we followed up with the Sheriff's Office to identify and review the incident he described.

Finally, we examined the methods that staff in the County's two acute psychiatric units, the Emergency Psychiatric Services (EPS) and Barbara Arons Pavilion (BAP), use to intervene when a patient is assaultive, uncooperative, threatening harm to others or him/herself, or creating a disturbance, to learn if these practices offered any lessons for the jail system.

We interviewed experts from the County's mental health system and visited EPS and BAP, and we spoke with command from the Sheriff's Protective Services Officer program to learn how Protective Services Officers (PSOs) respond and intervene in the hospital setting. And we reviewed incident reports where restraint procedures were used by County staff.

What remains clear after this additional work is that there are no easy or perfect solutions to these difficult scenarios in any setting. Also clear is the fact that a jail is a far less than ideal place in which to treat mental illness. Addressing the complex societal problems that lead to the incarceration of those in mental health crises is an ongoing challenge that requires long-term thinking and planning.

The day-to-day challenge for Custody Health and Sheriff's Office personnel is how to manage the significant number of individuals who experience serious mental illness in the custody environment, given the facilities that are currently available. This requires balancing the complex

housing, security, and treatment needs of a large and fluctuating population. In all but one of the 17 cases we reviewed for our initial report, the Sheriff's Office used chemical agents (usually ClearOut) as a last resort in efforts to respond to rehousing requests initiated by medical and mental health professionals. As we concluded in our initial report, the use of chemical agents in these scenarios was one reasonable option among other, also imperfect alternatives.

Implementation of Recommendations

Our August 29, 2023, report included eight recommendations. On September 19, 2023, the Board directed OCLEM to report to the Board in six months and 12 months regarding the status of implementation of Recommendations 4 through 8, but here we report on the status of implementation of all eight of the recommendations. Seven of these were directed to the Sheriff's Office and one (recommendation 6) related to Custody Health practices. Per the Board's request, this report serves as the six-month status report on these recommendations. We re-print them here for easy reference.

> Recommendation 1: The Sheriff's Office should generally prohibit the use of chemical agents on individuals who have documented medical conditions that involve respiratory issues.
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> Recommendation 2: The Sheriff's Office should require its Emergency Response Teams to consider prior responses involving the same individual to learn what tactics and tools were most effective (or not), weigh that information when selecting force alternatives in Planned Force Events, and document their reasoning.
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> Recommendation 3: The Sheriff's Office should require that a lieutenant authorize all uses of chemical agents in cell extraction incidents.
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> Recommendation 4: The Sheriff's Office should explore the possibility of new technology that may allow for clear communication while also protecting employees from the adverse effects of chemical agents.
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> Recommendation 5: Sheriff's Office policy should require documentation of the length of time individuals are exposed to chemical agents, including intervals between first and second deployment and time between chemical deployment and ERT entry or voluntary compliance.

Recommendation 6: Custody Health Services should perform an after-action review following an incident in which Custody Bureau personnel use chemical agents or other force in a planned use of force event that was either initiated by or involved consultation with Mental Health or Medical staff.

Recommendation 7: The Sheriff's Office should require Emergency Response Teams to better document how it weighs the particular risks and benefits of deploying chemical agents in each activation.

Recommendation 8: The Sheriff's Office should add to its Custody Sergeant UOF Review Report a question or questions about the particular de-escalation and/or negotiation efforts deputies made prior to the use of force. If no de-escalation efforts were made, the report should document why not, and should identify any appropriate remedial measures.

The Sheriff's Office accepted each of the seven recommendations directed toward its operations and has implemented or made significant progress towards implementation of each.

In response to **Recommendation 1**, the Custody Bureau committed to changing its policy to prohibit the use of chemical agents on individuals who have documented medical conditions that involve respiratory issues. While policy development and change are slow and complex processes, in part due to the required approval of the federal consent decree monitors, Custody has issued a directive effectuating this change

Likewise, **Recommendation 3** is the subject of a new Custody Bureau directive, effective January 9, 2024, requiring a lieutenant or acting lieutenant to authorize any use of chemical agents in planned use of force incidents.

The Sheriff's Office implemented **Recommendation 4** by purchasing for its ERT leaders new gas masks that are equipped with voice projection units.

Recommendations 2, 5, 7, and 8 all relate to factors that ERTs should consider prior to planned uses of force, and how those decisions are documented. To address these concerns, the Sheriff's Office developed (with OCLEM's input and review) a set of 10 questions/subjects (with subparts) that ERT leaders will be required to complete following each planned use of force. These include the following:

1. Reason for activation?
2. Consideration of past Planned Force events
    a. To your knowledge, was the subject involved in prior planned uses of force?
    b. Was the effectiveness of prior tactics, tools, de-escalation techniques weighed before selecting force options for this incident? If so, explain.
3. Mental Health Response
    a. When was Mental Health contacted?
    b. When did Mental Health respond?
    c. What guidance was given by Mental Health?
    d. Was this a PC 2603 Force Medication? If Yes, Name of Psychiatrist authorizing PC 2603.
4. Medical Response
    a. Was Medical consulted?
    b. If yes, when did medical staff respond? Note name(s) of medical employee consulted.
    c. Did Medical advise of any medical concerns? If yes, explain.
5. MSD Response
    a. Was an MSD contacted/utilized for de-escalation? If not, note reasons why not.
    b. Was MSD de-escalation successful?
6. Module Contamination Considerations
    a. Were any adjacent inmates(s) offered an opportunity to relocate prior to deploying Chemical Agents? If so, did they choose to move or remain in their cell?
    b. If adjacent inmate(s) chose to remain in their cell, what measures were taken to prevent unintended collateral contamination?
    c. If adjacent inmate(s) agreed to temporarily relocated, where were they moved to?
    d. If there was collateral contamination, what steps were taken to decontaminate the inmates(s)?
7. Chemical Agents
    a. Were chemical agents utilized during this ERT activation?
    b. If so, which chemical agents?
    c. Were multiple rounds of chemical agents used during this incident?
    d. What was the time interval between each round of chemical agents?
    e. What was the approximate amount of time between the final round of chemical agent deployment, and voluntary compliance or ERT entry?
8. Decontamination of subject
    a. What method(s) of decontamination were offered?
    b. Did the subject refuse decontamination from chemical agents?
9. Impact Weapons
    a. Were impact weapons utilized during the ERT activation?
    b. If yes, which impact weapons were utilized?
10. Please provide a synopsis of the overall incident.

This added level of documentation will address each of the concerns raised in Recommendations 2, 5, 7, and 8. The expectation is that ERT leaders, knowing they will have to respond to each area of inquiry following an incident, will use this as a sort of checklist when weighing force options. In particular, the new set of documentation requirements speaks directly to those areas where we noted specific room for improvement in some of the cases we reviewed:

- Consideration of the effectiveness of prior tactics, tools, and techniques during prior planned use of force events (Recommendation 2);
- Documentation of time intervals between first and second deployment of chemical agents and total amount of time individuals are exposed (Recommendation 5);
- Weighing of particular risks and benefits around each potential force option (Recommendation 7);
- Documentation of specific de-escalation and/or negotiation efforts deputies made prior to the use of force, and if none were made, the supporting reasoning (Recommendation 8); and
- Considerations surrounding the contamination of adjacent cells and the module (discussed more fully below).

We reiterate what we said in our initial report – our review of video footage showed deputies and supervisors exhibiting patience and calm demeanors while planning what they determined to be the most effective approach. Likewise, the actions taken after the uses of force – to clear the effects of the chemicals and provide medical assessment, and to document and review the incident – were generally thorough and complete. Nonetheless, we anticipate that the new documentation requirements will promote greater consistency and facilitate Custody's review of these incidents in a manner that ultimately enhances future decision making and performance.

Recommendation 6 was directed to Custody Health. We directed an inquiry about the status of this to the new management team. The team indicated agreement with the recommendation, along with an understanding that some form of after-action analysis may already be

occurring on a regular basis. We understand that Custody Health is in a significant transition period, with new management integrated fully into Santa Clara Valley Healthcare, the County's system of hospitals and clinics. Because our original recommendation was made just four months ago and based on our understanding of the challenges and pressures associated with this transition, we will defer any further reporting on the status of this recommendation to a future report.

Practices for Evacuation and Decontamination of Surrounding Areas

One of the issues raised during our September 19, 2023, presentation to the Board was the well-being of individuals in adjacent cells or elsewhere in a module who also were impacted by the use of chemical agents during a planned use of force. During our conversations, Sheriff's Office personnel reported that their practice has been to inform the people in adjacent cells that chemical agents may be used, use towels to block the holes under the doors of those cells, and accommodate any requests to move to a different location.

We saw this play out in one of the 17 cases we reviewed for our initial report (Case #9). As ERT members were waiting prior to using force, deputies removed an individual from the neighboring cell and escorted him away. This move was captured on camera, apparently by chance, and was not documented in any way. Reviewing video of this same incident, we observed towels or clothing items covering the openings under the doors of other cells in the module. We also received one body-worn camera video with footage after the incident, showing a deputy moving through a portion of the module and asking at each door whether the individual inside was ok. Two individuals, as captured on that video, said they were having difficulty breathing, and deputies removed them from their cells and escorted them to a sundeck, where they were offered tissues and water.

Notably, Case #9 was one of two cases in the group of 17 in which the ERT deployed the chemical agent OC[2] instead of using ClearOut. As we noted in our initial report, the deployment of OC (as opposed to ClearOut) generally causes a greater degree of pain and discomfort and is more difficult to fully decontaminate. According to Sheriff's Office personnel, ClearOut is less likely to have significant impact on other individuals in the module because it is aerosolized and dissipates more quickly, without saturating surfaces and clothing they way OC does. They report this as the reason for their preference for ClearOut over OC.

For this report, we sought to review additional video that might show similar movement, either prior to or after the introduction of chemical agents in the 17 cases we initially reviewed. However, several factors made this task unfeasible. First, the fixed camera system does not record audio, so it is impossible to determine with any clarity the reason a particular individual is being moved. Second, there are numerous cameras covering any given area of the jail, so pulling and reviewing video of an entire module over a given period of time was overly burdensome and, given the lack of audio, ultimately would have been unproductive. Finally, any additional housing moves apparently either did not happen or were not captured on body-worn camera or the handheld cameras used to record the planned use of force incidents.

As we detailed above, going forward (and as a result of the Board's expressed concern about collateral contamination) ERT leaders will be required to document the steps taken to address any collateral contamination issues, including whether individuals in adjacent cells were given the opportunity to relocate, what measures were taken to prevent collateral contamination, and what steps were taken to decontaminate any individuals who suffered from collateral contamination.

To address this question, we also reached out to one individual who had direct personal experience with chemical use in jail. During public comment at the September 19, 2023, Board meeting, several individuals

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[2] "OC" is short for oleoresin capsicum, the active ingredient in pepper spray, derived from the naturally occurring compound in chili peppers. OC is an inflammatory agent, which results in near-instant inflammation to the body's mucus membranes, often causing a runny nose, watery eyes, the need to close the eyes, difficulty breathing, upper respiratory pain and inflammation, and coughing. It can also cause a burning sensation on skin.

talked about the effects of chemical agents deployed by law enforcement in various scenarios, largely focusing on the impacts of the use of chemical agents in protest scenarios.[3] One individual's statements, however, seemed particularly relevant to this discussion, and we reached out to him for additional details. He agreed to speak with us.

This individual described a situation during his time at the County's Main Jail when another individual in his module experienced deterioration of his mental health and deputies performed a cell extraction using chemical agents. He said deputies "maced" the other individual until that patient came out of his cell. He reported that everyone in the module was asking to come out of their cells because of the impact of the chemicals, but that it took at least an hour until they were all pulled out of their cells and taken to fresh air. He described the experience as being very painful, with the feeling of having his breath snatched away.

We worked with Sheriff's Office personnel to identify the incident he described. We located one incident that lined up with the individual's housing history and matched other descriptors provided. Coincidentally, it was Case #9 from our August 29, 2023, report, in which the deputies used OC, not ClearOut. Our video review of this incident, as noted above, showed that at least one deputy began pulling individuals from other cells in the module and taking them to the sundeck almost immediately after the ERT had removed the subject individual from his cell. This was a slow and meticulous process, however, with individuals being removed one at a time, and only a portion of it was captured on video.

The public commenter's experience of being left in his cell for at least an hour waiting to get out of the module into fresh air is not inconsistent with the video. And his description of the pain and inability to breathe freely is consistent with the impacts we observed on others in the video, and with the impacts of OC as described by the Sheriff's Office.

We are grateful to this individual for sharing his personal story.

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[3] Chemical agents used by law enforcement in protest scenarios differ significantly from the ClearOut or other chemical agents used in a jail setting because they are designed for outdoor use, where the effects dissipate more quickly, and contain different concentrations of chemical agent.

His experience highlights the importance of addressing concerns about collateral contamination *prior* to the introduction of chemical agents. The new reporting protocols adopted by the Sheriff's Office are intended to ensure that greater consideration is given to those who might be impacted by chemical agent deployments and provide an opportunity to avoid these unintended consequences.

Cell Extractions for "Facility Maintenance"

In Case #16 from our initial report, we described a situation in which an individual was removed from his cell in a planned use of force to accommodate efforts to have the entire module painted. During our September 19, 2023, presentation, the Board raised concerns about force being used solely for purposes of jail maintenance efforts.

Since presenting our initial report, we have learned additional details about this incident that add a layer of complexity not captured in our first report. The module where the subject individual was located was designated as a Special Management Unit, housing high security level individuals diagnosed with severe mental illness. Accordingly, that module received more frequent visits from mental health clinicians and was subject to security checks every 30 minutes (instead of each hour, as in a general population module). The other nine individuals from that unit had already moved to a different module with freshly-painted cells. Negotiations and communications with the one hold-out lasted a full day. Custody records reflect that Custody and Custody Health staff determined that leaving that individual in a cell in what was to be transitioned to a general population module would not have been safe for him, given his mental illness and the need for extra monitoring and additional treatment. The planned use of force occurred after two different mental health clinicians attempted – over the course of many hours – to convince the individual to move voluntarily. Notably, this same individual was ultimately determined to need a higher level of care and was moved to the jail's Acute Psychiatric Unit two months later.

The Sheriff's Office reports that it does not and would not perform a cell extraction solely for routine or non-emergency maintenance, absent the sort of complexities seen in this case. We do not doubt this: The hours-long process of a planned use of force – including locking down the facility, negotiations, engagement with mental health and medical staff, activating ERT, decontaminating cells and individuals, and documenting and reviewing the incident – would be difficult to justify for routine maintenance.

We also note that our recommendation to require lieutenant authorization and the improved documentation measures noted above will serve as safeguards against the use of chemical agents in non-emergency situations. Current Custody Bureau policy requires supervisors overseeing a cell extraction (or other potential planned use of force) to develop a plan that evaluates "the exigency and importance of the need to use force prior to approving and executing any Planned Response Event." To provide further certainty and consistency to these scenarios, and following the Board's questions during the presentation of our initial report, the Sheriff's Office recently issued a directive that states: "Effective immediately, chemical agents will not be used to remove anyone from their cell for the sole purpose of routine facility maintenance."

And OCLEM will be reviewing these use of force incidents on an ongoing basis, adding another layer of assurance against the over-use of chemical agents in these scenarios.

Custody Health Decision Making and Documentation

In most of the incidents we reviewed for our August 29, 2023, Report, Custody personnel were responding to requests or directives from Mental Health or Medical professionals about the need to move an individual out of their cell. Our review focused on the processes surrounding the housing moves once these had been directed, and the extent that personnel made all reasonable efforts to gain the individual's voluntary cooperation prior to the use of force.

In its request for this follow-up report, the Board asked us to examine and make recommendations for improvements to the policy, procedure, and documentation around Custody Health requests for rehousing when a cell extraction may be involved. Specifically, the Board directed OCLEM to work with Custody Health to review the documentation for rehousing requests in cases 5 through 7, 11, and 12 to see whether the need for rehousing was urgent enough to warrant a cell extraction and to evaluate the extent to which Custody Health and Custody personnel communicate regarding the individual's level of resistance to rehousing.

We met with a Custody Health professional to discuss these five cases and reviewed the medical and mental health records for a span of five days surrounding each incident. In all cases, we found consistency between the Sheriff's Office reports, associated video, and the Custody Health records regarding timing and level of intervention.

We also saw evidence of a high level of ongoing cooperation between Custody and Medical/Mental health staff. The process is not a simple, one-way directive: We learned that medical staff does much more than prepare a written rehousing request to Custody and leave it to Custody staff to carry out the request. Rather, when medical staff determines there is a need to move an individual, that assessment is communicated verbally to Custody staff, who then talk to the patients and, in many cases, simply escort them to their new housing location. When a patient refuses to be rehoused voluntarily, that refusal is communicated to the medical/mental health personnel, who will then also talk to the patient. In non-emergency cases, clinicians communicate to deputies that the move can wait, and personnel begin talking and negotiating with the patient. As we saw in our review of both the video and medical records, mental health staff has a clear understanding of the ultimate potential outcome – deputies may remove a patient from a cell by use of force, including chemical agents.

Three of the five cases (nos. 5 through 7 in our August 29, 2023, Report) for which we reviewed medical records involved individuals in a state of decline. As discussed in our prior report, mental health staff had advised Custody staff that these individuals needed to be moved to the APU. In our review of the medical records associated with these cases, we found that these cases demonstrate a great deal of care coordination between Custody and Medical/Mental health staff following the initial rehousing

request, including contemporaneous documentation in the medical record of care coordination meetings and an acknowledgement that the individuals will need to be forcibly removed from their cells.

Two other cases (nos. 11 and 12) involved individuals moving in the other direction. As discussed in our prior report, personnel determined that the individuals needed to be moved from their current housing to less restrictive settings. One involved a patient discharged from the APU and approved to be moved into a less restrictive mental health housing unit (known as a Special Management Unit or SMU); one involved an SMU patient set to be rehoused at Elmwood. In both cases, mental health staff were involved in decisions to delay the planned move in the face of the patient's refusal. And as with the other three cases, our review of the medical records associated with these cases revealed a high level of care coordination following the initial rehousing request and a clear understanding by Mental Health staff that force, including chemical agents, may ultimately be used to effectuate the move.

We spoke with a Custody Health executive about these two cases in particular and, more generally, about why people would refuse to leave a mental health unit, or the Main Jail, even though it would mean living in a less restrictive environment. We learned that for many individuals with mental illness in custody, the SMU or the single-cell setting of Main Jail[4] may present a safer environment than general population – individuals generally don't have cellmates, there are fewer incarcerated individuals and more staff members, and the SMUs are typically free of gang and racial/ethnic dynamics. The executive also reported that for an individual who has been stabilized and is doing relatively well, remaining in an SMU might provide the opportunity for that patient to take advantage of those who are in a more vulnerable position.

Ultimately, these housing decisions highlight the uncomfortable realities of running a mental health facility inside a jail. Beds in the APU and SMUs are in high demand. There is always more than one person who meets the criteria for admission into one of these units waiting elsewhere for a cell to be vacated. Forcibly removing a mentally ill person from a cell they are not inclined to leave is not an optimal outcome, but allowing the

[4] There is an SMU at Elmwood, but it differs from the Main Jail SMU in that the individuals have lower-level security classification and live in a dorm setting.

person to stay can create different sets of problems, including preventing a patient who has greater needs from being able to take advantage of the limited APU and SMU spaces and resulting high level of care.

As we said in our initial report, there are no perfect solutions to these difficult scenarios. What can fairly be demanded of the medical and mental health professionals tasked with addressing these problems is a thoughtful and careful consideration of the risks and benefits associated with each possible outcome, and a meaningful after-action review of the decision-making involved in each incident. We saw that level of consideration in the cases we reviewed, and we look forward to continuing to work with Custody Health to ensure that it thoroughly reviews those incidents in which Custody Bureau personnel use chemical agents or other force in a planned use of force event involving housing decisions it has instigated.

Protocols and Practices in Hospital Settings

The Board's September 19, 2023, referral asked us to research and report on alternative force options to ClearOut in acute psychiatric settings, including an examination of best practices.[5] We examined methods that staff in the County's two acute psychiatric units, the Emergency

[5] As detailed above, the referral requested OCLEM to review other mental hospital systems to identify any practices that might be considered by the Santa County Sheriff's Office. Unfortunately, confidentiality concerns generally shield the practices of other Counties and how they manage disruptive mental health patients. OCLEM has no special relationship with those entities that provides us the access we would need to conduct a well-informed review of those systems. Accordingly, because the Board has provided us special access to Santa Clara County's health care system, we focused our inquiry on County facilities and learned from those responsible for providing care to patients in its hospital facilities. We understand, though, that the Pro-Act training we discuss below is a standard program that is employed by many hospital systems and other therapeutic settings throughout the state and country. It is also used in schools and other institutional settings where non-law enforcement personnel may be required to intervene in certain situations to restrain a threatening or assaultive individual.

Psychiatric Services (EPS) and Barbara Arons Pavilion (BAP),[6] use to intervene when a patient is assaultive, uncooperative, threatening harm to others or him/herself, or creating a disturbance, to learn if these practices offered any lessons for the jail system.

As part of our work, we toured EPS and BAP and interviewed experts from the County's mental health system. We spoke with command staff from the Sheriff's Protective Services Officer program to learn how and when PSOs respond and intervene in the hospital setting. And we reviewed incident reports where restraint procedures were used by County staff.

As we have stated previously, there is no ideal solution or risk-free tactical response in any setting; our review of the hospital facilities and discussions with subject matter experts further cemented this conclusion. Further, we found that it is difficult to directly apply the techniques used in a hospital setting to the jail setting. While they are oftentimes serving a similar patient population, the physical setting and underlying philosophy of care differs significantly, resulting in different intervention styles and strategies that are not readily interchangeable.

Hospital Response: Pro-ACT

When faced with an assaultive, uncooperative, or self-harming patient, hospital staff in County hospital facilities respond with methods taught in Professional Assault Crisis Training, referred to as "Pro-ACT." In these instances, a team of five staff members is called to the location via the hospital's intercom system. The team first attempts verbal de-escalation. If this is not effective, Pro-ACT teaches a specific restraint method in which a team of four secure the extremities of a patient (arms and legs) under the direction of the fifth team member. The patient may be taken to the ground. The patient may then be moved into a physical soft restraint device and/or into a seclusion room until the patient calms down. In some

[6] Emergency Psychiatric Services is the only 24-hour locked psychiatric emergency room in Santa Clara County. Nearly all patients there are admitted on involuntary psychiatric holds. Barbara Arons Pavilion (BAP) is the inpatient acute psychiatric unit of Santa Clara County Valley Medical Center. Some of those who are admitted to EPS but need further medication and subsequent hospitalization for further stabilization are transferred to BAP, if and when a bed is available.

cases, a nurse might administer involuntary medication to assist with this process, either during the restraint procedure or immediately after.

The procedure may be done by any Pro-ACT trained personnel, including nurses, mental health workers, or other staff. If PSOs are called to assist, they work under the direction of the clinical staff.

The Pro-ACT restraint procedure is not without risk, especially for staff. Anecdotally, Sheriff's Office command staff who work in the hospital setting reported that the restraint procedure often caused injuries to hospital employees, including PSOs. To verify this, we requested and reviewed Sheriff's Office Incident Reports that involved assaultive, combative, or uncooperative subjects housed in EPS or BAP in 2023. Six of these cases involved the use of the Pro-ACT restraint techniques or an attempt to deploy the technique by staff. Of these six, five cases resulted in injuries to staff or PSOs that were the direct result of the restraint technique. These injuries ranged from bruises or cuts from a patient kicking, biting, or punching, to a severely torn muscle.

As with any use of force, the patients subjected to this type of force also suffer the risk of being injured and/or traumatized during the incident. And in addition, those patients who engage in assaultive behavior also may be subjected to a direct legal consequence – staff who are injured often seek criminal charges, resulting in these patients being detained in County jail, and creating further complications with the criminal justice system.

Limitations Created by the Physical Setting

In examining the applicability of techniques used in the acute psychiatric hospital setting to those used in the jail, the first and most obvious observation is that the two physical settings are so distinct that tactical responses are not easily comparable. Patients in the hospital spend much of their time in larger communal spaces with soft-edged furniture, while jail patients are mostly confined to a cell with hard-edged, metal fixtures (with only occasional access to common spaces and open areas).

While hospital patients in BAP do have shared rooms, these rooms differ from jail cells in notable ways. The rooms are significantly larger than jail cells with wider doorframes for easier entry and exit of teams of individuals. The interior of the room contains no hard-edged surfaces

(e.g., all furniture is soft plastic with rounded edges). The room door does not lock, and room doors are kept ajar when a patient is inside.

Finally, hospital staff reported that the greater challenges involve sending patients *into* their rooms, not extracting them from rooms. Rooms are sometimes used for "time outs" for patients. In a hospital setting, seclusion to an individual room is used as a form of physical restraint that often successfully diffuses tensions. Further, patients are not required to leave their rooms if they choose to remain inside and are not causing harm to self or others. In the custody setting, among the cases we previously reviewed, the problem was reversed: patients who were already confined to their cells refused to leave and force was required to move them out.

These physical design features – both in the common spaces and in rooms – make the Pro-ACT restraint technique better suited to the hospital setting as it requires space, typically a takedown to the ground, and at least five staff persons.

And, even despite the more open conditions, we reviewed two hospital incidents where insufficient space resulted in less effective execution of the Pro-ACT method. In one incident, a patient had backed into a small space in the communal area. When staff attempted the Pro-ACT method, the team did not have enough space to grab each limb and only restrained the patient's arms. The patient kicked and tripped staff members, and eventually pulled away forcefully, causing significant injury to a PSO. In another case, staff were only able to secure the patient's arms due to space constraints. When the patient kicked at staff, a third staff person secured both patient's legs by grabbing them in a bear hug. The patient grabbed that staff person's hair and pulled. When a fourth staff member arrived to assist, the patient bit that staff person, drawing blood.

Philosophy of Care

Beyond the physical space considerations, subject matter experts shared that the hospital and custody setting differ in their overall "philosophy of care."

A hospital setting is wholly therapeutic in nature and all interventions are designed to promote a "therapeutic milieu." Hospital subject matter experts reported that the hospital setting is designed to prevent and avoid

the need for physical restraint. But should incidents that require restraint arise – and they frequently do – any actions taken by hospital staff to intervene, which include restraint, involuntary medication, and seclusion, are also intended to be therapeutic in nature. These practices are referred to as "Therapeutic Strategies and Interventions," or TSIs.[7] Calling for any law enforcement intervention is the last resort for hospitals. And even when law enforcement is called, the predominant intention is for deputies to *assist* hospital staff in performing TSIs, rather than to take over with traditional law enforcement tactics. In fact, in our review of cases from County facilities, we noted that deputies most often arrived after the hospital staff had successfully resolved the incident.

The jail setting, even in those units designed to provide mental health treatment and rehabilitation, has a different underlying philosophy, given the carceral setting and the fact that individuals are being detained there because of their involvement in the criminal justice system. The interventions in a jail setting are predominantly intended for law enforcement personnel, directed by the Sheriff's Office use of force policy. But even in the jail, our review showed that the Sheriff's Office *also* used law enforcement intervention as a last resort. As we reported previously, our review showed that the Sheriff's Office collaborated extensively with Custody Health clinicians in an attempt to provide the most therapeutic response to patients who refused to leave their cells before resorting to force.

The limitations of the jail's physical setting and the differing philosophies of care are deeply entwined. The jail – designed to house those accused or convicted of crime – relies to a large extent on seclusion as a means of restraint and control. At BAP and EPS, individuals largely move freely around the common spaces. Despite frequent outbursts by patients that

[7] California's Department of State Hospitals (DSH) defines TSIs as: "the practice of strategies and interventions that, when used for patients, promote a therapeutic milieu, help DSH employees to recognize, prevent and appropriately intervene in dangerous behavioral situations, and protect the patient's health and safety, while preserving his or her dignity, rights, and well-being." These actions occur *prior* to calling for law enforcement intervention.

required staff intervention, we observed relative stability among these patients.[8]

The differing philosophy is also due in part to differences between the populations of the jail and hospital's psychiatric units. Custody health reports that the psychiatric patients at the jail present more significant risks – they are often newly-arrested and unstable, and, as noted above, sometimes arrive from the County hospital when their assaultive behavior at those facilities leads to arrest and detention.

In our conversations with experts, we heard often about the "revolving door" between the streets, jail, and the County's hospitals. Those problems are multi-faceted and obviously beyond the scope of this report. Working towards an ideal where individuals with mental illness are treated in a therapeutic setting rather than housed in jail is a laudable goal. But it bears repeating that the complexity of these issues lacks an easy or perfect response. In all but one of the 17 cases we reviewed for our initial report, the Sheriff's Office was called on to assist mental health professionals in their management of patients. So long as society continues to rely on the criminal justice system as part of its systemic response to mental health crises, law enforcement agencies tasked with managing aging jail systems not designed as mental health facilities will struggle to find the right balance between compassionate, humane housing and treatment and the overall safety and security of its facilities.

[8] A hospital subject matter expert reported that most patients are prescribed preventative medications to reduce their agitation, which contributes to successfully managing risk.