

Santa Clara County Office of Correction
and Law Enforcement Monitoring

Report on the Sheriff's Office
Use of Chemical Agents in
Planned Use of Force Incidents

August 29, 2023

OIR
GROUP

Michael Gennaco
Teresa Magula
Julie Ruhlin



323-821-0586
7142 Trask Avenue | Playa del Rey, CA 90293
OIRGroup.com

Table of Contents

Introduction	1
Chemical Agents and their Deployment Methods	5
ClearOut.....	5
OC Spray	7
Safety Considerations & Recommendations	8
Case Summaries	11
Administration of Court-Ordered Medication	12
Movement Into the Acute Psychiatric Unit	15
Imposition of Suicide Precautions	17
Other Mental Health Orders or Housing Movement	18
Medical Urgency	19
Custody-Initiated Housing Moves.....	21
Policy Considerations.....	24
Current Policy Guidelines	25
Additional Policy Considerations	26
Alternatives to Deploying Chemical Agents.....	31
After-Action Review	36
Conclusion	39
Recommendations.....	40

Introduction

Pursuant to Assembly Bill 481, law enforcement agencies are required to report to the jurisdiction's governing body on the types and uses of military equipment and to seek approval for the equipment's continued use.¹ In furtherance of that state law requirement, the Santa Clara County Sheriff's Office Annual Military Equipment Use Report ("Report"), first presented in May 2023, contains a complete list of all uses of chemical agents classified as military equipment by the Custody Bureau from May 1, 2022, to March 31, 2023. Under the category "Clear-Out," the Report lists 17 uses of certain chemical agents in situations where individuals refused to come out of their cells or follow other directives.

During its June 27, 2023, meeting, the Board of Supervisors directed OCLEM to evaluate these uses of chemical agents and report on whether there were other reasonable alternatives available to gain compliance, whether the incidents complied with relevant policies, and to make recommendations for any improvements to policies or practices. This report is intended to be responsive to the Board's referral.

In all but three of the 17 cases on the Clear-Out report, the Sheriff's Office was responding to requests from medical or mental health professionals who needed to have individuals removed from their cells for various reasons. Of the remaining three cases, two involved individuals who were in evident mental health crises.

It is difficult to watch the video of these incidents and not be impressed by a few things. First is the complexity of these situations – the individuals

¹ AB 481 classifies any supplies, equipment, and weapons that are part of the traditional military supply chain as "military equipment." This bill originated from a concern that local law enforcement agents were becoming increasingly militarized, and that the acquisition of military equipment and its deployment in communities has an adverse impact on the public's safety and welfare, with a disproportionate impact on communities of color. As such, the bill requires new levels of accountability and transparency for acquisition and use of this equipment.

who are not complying with directives seem that they are not acting rationally in their own best interest, and in many cases may not be capable of doing so. Medical and mental health staff have determined that the individuals need to be restrained or moved for their own safety and well-being, and have tried multiple times, often over hours or even days, to gain voluntary compliance.

Second, these incidents unfold over a number of hours. Our review of the video footage found that deputies and supervisors exhibited patience and calm demeanors while planning what they determined to be the most effective approach. These are not scenarios where deputies acted quickly and failed to account for the challenges presented by each case or the individuals' mental illnesses. They are planned events, where supervisors are exercising control and directing any use of chemical agents or other force.

Finally, there are no perfect solutions to these difficult scenarios. While the use of chemical agents presents the possibility of health risks to those they are used upon, each reasonable alternative produces its own set of costs and risks, and jail managers must balance these to try to arrive at the optimal outcome for each given circumstance.

This report examines each incident to assess the specific decision to use chemical agents, but also looks more broadly at the totality of the incident and the Sheriff's Office's response on a number of different levels. The "best practices" governing these situations generally have less to do with which particular type of chemical agent is used – or even whether they are deployed at all – and relate more to the surrounding circumstances:

- Scrutiny of the reason for the extraction and evaluation of alternatives
- Timing and quality of supervisory involvement and control
- Involvement of mental health and medical teams in communicating with the person in custody and in overall decision-making
- Involvement of deputies with specialized mental health training
- Consultation with medical staff regarding vulnerabilities of the person to be moved
- Video record of entire incident from various vantage points
- Decontamination and medical clearance after the use of chemical agents

- Articulation and documentation of all relevant decisions
- Holistic after-action review.

We were generally impressed by the Sheriff's Office approach to these incidents on each of these points. The ultimate decision to use chemical agents in the cases we reviewed was one piece of a larger effort to convince people to comply with directives that appeared to be necessary and reasonable. 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 conscientious and generally thorough and complete.

On the following pages, we discuss the various types of chemical agents used in custody settings, along with a description of the different types of deployment methods for those chemicals. We also provide a summary of each incident and address issues identified related to tactics, policy, documentation, and post-incident review. We make eight recommendations for ways in which the Sheriff's Office can improve its practices with respect to the use of chemical agents in these scenarios.

Our work on this project involved the review of reports written by Sheriff's Office staff and all the video associated with these 17 incidents. In most cases, the incidents were recorded by three different systems – deputies' body-worn cameras, hand-held cameras, and the fixed cameras located throughout the jail facilities. At our request, the Sheriff's Office provided us with documentation and video of 10 additional incidents that involved cell extractions performed by an Emergency Response Team without the use of chemical agents. These cases provided some additional context and interesting points of comparison. They also brought more crisply into view our conclusion that deputies should more thoroughly document the reasons for their decisions about deploying *or not deploying* chemical agents.

We also talked with Sheriff's Office executives to discuss questions that arose during that review and to gain insight into their internal review process and decision making about the various types of chemical agents used. We appreciated the cooperation of the Sheriff's Office on this project. We received all the materials we needed, and got prompt, candid, and thorough responses to all our questions.

We also spoke with a Custody Health executive, to better understand the perspective of Mental Health professionals on the challenges related to providing care in a custody setting and the importance of their ability to deliver emergency or court-ordered medication to patients who are not capable of making their own decisions about treatment.

Finally, we talked with representatives from other jail systems throughout California to better inform our assessment of Santa Clara's approach to cell extractions and use of chemical agents.

Chemical Agents and their Deployment Methods

The Custody Bureau uses two main chemical agents – ClearOut and OC spray – that can be deployed in various ways during Planned Force Events such as cell extractions.

All of Custody Bureau’s chemical agents are classified as military equipment pursuant to AB 481 except for the smaller, hand-held canisters of OC spray that are issued to and carried by every deputy. These are exempt because they are considered to be “standard issue equipment.”

ClearOut

ClearOut is a manufactured chemical agent that is a mix of two components: a concentration of OC² and a common type of tear gas, CS.³

ClearOut comes in a 6-ounce aerosol canister. It looks like a typical can of hairspray. This 6-ounce canister reportedly contains enough chemical to effectively impact a cell with a single deployment. ClearOut also comes in a 2-ounce canister; these might be used if a subject is in a smaller

² “OC” is short for oleoresin capsicum, the active ingredient in pepper spray and 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.

³ “CS” is a synthetic product, 2-chlorobenzalmalononitrile, a common type of tear gas. In ClearOut and other chemical agents, CS – a white, microscopic crystal/powder – is suspended in a solution. When deployed, these microscopic particles irritate human mucus membranes and skin, most often impairing the eyes and nose, and one’s ability to breathe deeply. Studies have shown that CS is less inflammatory than OC.

space than a traditional cell but were not used in any of the cases we reviewed.⁴

The chemical compound can be deployed in one of three ways: a standard aerosol actuator, which releases aerosol much like any household spray, a “fogger,” which disseminates the aerosol over a larger area, or a hose attachment for deployment into small spaces with limited entry points (called “Keyholder” by the manufacturer). The first two are commonly deployed through a cell’s tray slot. The Keyholder may be deployed under a cell door. Deputies may choose the most appropriate deployment method for the situation.

According to the Sheriff’s Office, ClearOut is the preferred chemical agent for cell extractions because the components do not saturate the area or subject and are less likely to cross-contaminate an unintended area. Unlike straight OC spray, which we detail later, ClearOut remains suspended in the area where it is deployed. When fresh air is introduced, the aerosol quickly dissipates. As a result, decontamination is faster than when standard OC spray is used; ClearOut decontamination often does not require measures such as removing clothing, flushing mucous membranes (eyes, nose, and mouth) with water, industrial cleaning the individual cell, or clearing out entire modules.

Our review of video evidence showed individuals apparently quickly recover from any effects of ClearOut soon after they exit their cells and are taken to the sundeck for fresh air. Similarly, deputies who are affected by the chemical seemingly recover once they are in the open air.

Custody currently has a total of 93, 6-ounce ClearOut canisters and 35, 2-ounce canisters across the three deployment types in their inventory.

Per Sheriff’s Office policy,⁵ ClearOut can **only** be deployed:

- In Planned Force Events with supervisor approval; **and**

⁴ Custody did not report any uses of the 2-ounce canister in this annual reporting cycle. Because the AB 481 reporting process is intended to review the necessity of military equipment, the continued need for this specific item is worthy of additional consideration about whether the smaller canister is necessary.

⁵ We discuss the Sheriff’s Office policies in greater detail later in this report.

- On inmates who are passive non-compliant, actively resistant, assaultive, or life-threatening resistance and to prevent self-harm or substantial self-harm; **and**
- After providing verbal warnings and time to comply; **and**
- After considering any medical conditions that may contraindicate use of the chemical; **and**
- By POST-certified deputies.

OC Spray

The Sheriff's Office also has various products that contain only OC, versus ClearOut that contains a blend of OC and CS. These OC-only products have a slightly higher concentration of OC than ClearOut.

Custody Bureau has various methods to deploy OC spray.

The first method is the previously mentioned "standard issue" OC spray carried by every deputy. These are called "MK-3" or "MK-4" and are exempt from AB 481 reporting requirements. The Sheriff's Office reported that they deployed this OC spray 134 times from January 1 to August 14, 2023, during various Reactive Force Events.⁶ This standard issue OC spray is not typically used in cell extractions by the Sheriff's Office deputies.

In Planned Force Events, like cell extractions, the OC most often used is the "Phantom Fogger MK-9," a deployment method that creates an aerosol fog.

Custody may also use the "Cell Buster MK-9." This delivery mechanism has a wand attachment that allows deputies to deploy the OC through a small space, such as under a cell door. This option is often used when an individual has blocked a tray slot or if a cell does not have a tray slot.

⁶ A "Reactive Force Event" is a situation that requires the immediate use of force because the individual is engaged in conduct that poses a threat to safety or security that necessitates an immediate response.

Custody has 95 Phantom Foggers and 16 Cell Busters in its inventory.⁷

While it is similar to ClearOut, Custody leaders suggested that pure OC tends to “land” on surfaces such as cell floors or clothing and may travel through air vents to neighboring cells or into modules. The product is reportedly less effective from an officer and inmate safety perspective: it may make the floor slippery, may affect those in other cells or the module at large, and requires more decontamination (flushing with water, stripping clothing, industrial cleaning of cell).

Per policy, any size OC spray can be deployed:

- In Reactive Force Events without supervisor approval, on inmates who are actively resistant, assaultive, or life-threatening resistance and to prevent self-harm or substantial self-harm **or**
- In Planned Force Events, on inmates who are passively non-compliant, actively resistant, assaultive, or life-threatening resistance and to prevent self-harm or substantial self-harm;
- After providing verbal warnings and time to comply; **and**
- After considering any medical conditions that may contraindicate use of the chemical; **and**
- By deputies trained in its use.

Safety Considerations & Recommendations

The use of these chemical agents by law enforcement and in custody settings is common. Nonetheless, questions persist about their safety. But studies we have reviewed⁸ suggest that use of these chemical agents

⁷ Custody Bureau also has other OC applications, such as the handheld canister issued to every deputy (and not considered “military equipment”) and other larger volume canisters that deploy a stream of OC liquid versus the aerosol mist/fog and are not commonly used in cell extractions in Santa Clara County jails.

⁸ We consulted the following sources:

Petty, C. Deaths in Police Confrontation When Oleoresin Capsicum is Used. 1999. <https://www.ojp.gov/pdffiles1/nij/grants/204029.pdf>

does not have a long-term impact on health if exposure is limited (both in duration and deployment counts) and if the exposed individual does not have underlying or pre-existing health conditions that may be exacerbated by their use (e.g., asthma or other similar health concerns).

Studies focused specifically on the risks of these chemicals when used in the custody setting lead to the following conclusions:

- ***Use of chemical agents should be carefully considered if inmates have pre-existing medical conditions that may be triggered or exacerbated by the chemical agent.***

This consideration is already a requirement for use of any chemical agents by the Sheriff's Office in Planned Force Events such as cell extractions.

We discuss this consideration and adding additional guardrails to policy in our Policy section below.

- ***Deputies should always wear personal protective equipment when using chemical agents.***

We balance this with the understanding that other force applications, such as going hands-on, likely result in more frequent and severe deputy injuries than mere exposure to chemical agents.

We also understand that the use of PPE may limit a deputy's ability to communicate with individuals. We understand that some deputies choose to forgo their masks to ensure that commands, verbal de-escalation, and warnings are clearly heard and understood. We discuss this in greater detail below.

Fraunfelder, FT. Is CS gas dangerous? Current evidence suggests not but unanswered questions remain. 2000. <https://pubmed.ncbi.nlm.nih.gov/10678840/>

Smith, G. Health Hazards of Pepper Spray. 1996. <https://pubmed.ncbi.nlm.nih.gov/10495655/>

Carron, P. & Yersin, B. Management of the effects of exposure to tear gas. 2009. <https://pubmed.ncbi.nlm.nih.gov/19542106/>

- ***The Sheriff's Office should continue to monitor and limit the length of exposure to chemical agents while more thoroughly documenting the time intervals between actions.***

In many of the cases we reviewed, time intervals were clearly noted by deputies and supervisors. In some others, though, the documentation could have been better. While we could see from our review of video that individuals were not exposed to chemical agents for excessively long periods of time, best practice would be to include these time intervals in written reports. We discuss this in greater detail in our Policy section, below.

Case Summaries

We reviewed and evaluated the 17 cases listed under the category “Clear-Out” in the Sheriff’s Office’s Military Equipment Use Report.⁹ In nine of the 17 cases, individuals voluntarily complied with instructions after deployment of chemical agents. In the other eight, an Emergency Response Team (ERT) entered the cell and used some level of physical force to restrain and remove the individual.

In more than half of the cases (11 of 17), deputies deployed a second round of chemical agents. In five of these 11, deputies deployed the OC “Phantom Fogger” after the initial use of ClearOut proved ineffective to gain compliance. In the other six, deputies used a second application of ClearOut after the initial canister proved ineffective. We detail each of these incidents below. But with respect to the various chemical agents deployed, we observed that the OC was generally more effective at getting individuals to comply with subsequent directives. In four of the five deployments of the Phantom fogger, individuals immediately complied. A second round of ClearOut brought compliance in just two out of six applications.

There are various potential explanations for this and different implications. The most obvious is that, as we detailed above, straight OC spray may be more difficult to tolerate, for even the most determined individual.

Other than the pain and discomfort caused by the chemicals, there were no reported injuries to individuals resulting from any of these force incidents.

In 14 of these incidents, deputies were responding to a request from medical or mental health personnel. Four of those related to a need to

⁹ Two of these incidents did not involve ClearOut but were uses of the OC “Cell-Buster.”

administer court-ordered medication pursuant to Penal Code section 2603;¹⁰ three were to facilitate a move to the Acute Psychiatric Unit (APU); three were in response to the need to impose suicide precautions; one involved the need to move an individual from an unsanitary cell and administer emergency medications; one was in response to a medical emergency (the individual claimed to have swallowed metal); and two related to the need to move individuals into less restrictive mental health housing.

The Sheriff's Office Military Equipment Use Report characterized many of these incidents as resulting from an individual's "Refusal to Follow Directive," a minimal level of detail that led to confusion since it failed to fully represent the challenges and difficult choices presented to jail staff.

In order to provide context for our conclusions about Custody's use of chemical agents in the cases at issue, we discuss the details of each of these incidents by category below.

Administration of Court-Ordered Medication

Case #1¹¹

An individual housed in Main Jail's APU was ordered by the court to take medication pursuant to PC 2603. Over the course of about 90 minutes, a deputy assigned to the APU, a Multi-Support Deputy (MSD),¹² mental

¹⁰ This section of the Penal Code allows for the involuntary treatment of an individual with a serious mental disorder, only when certain conditions are met, including that the individual is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others.

¹¹ The case numbers in this report do not correspond to the "Use Numbers" in the Sheriff's Office Annual Military Equipment Use Report, as this report presents categories of factual scenarios together to demonstrate similar practices and responses.

¹² Multi-Support Deputies are specially selected to assist other deputies and mental health professionals to address the needs of the seriously mentally ill. They work closely with CHS throughout the jail facilities, responding to requests for assistance

health clinician, and medical staff all tried to convince him to voluntarily take his medication. He refused. Two sergeants responded and also tried to talk the individual into taking his medication, warning him that force may be used against him if he did not take it. After he again refused, a sergeant activated ERT and initiated a 10 minute “cooling off period.”¹³

The ERT arrived about 30 minutes later. After making final efforts to gain compliance verbally, the ERT leader directed the use of ClearOut. The individual did not come to the door as directed, and after five minutes, the deputy deployed a second can of ClearOut. When that still did not gain the individual’s compliance, the deputy was directed to use his hand-held OC spray, which also did not lead to compliance. The ERT entered the cell and after a brief struggle, took physical control of the individual.

The nurse then gave the individual an injection while the deputies were physically controlling him. They then walked him to the outdoor recreation area (or “sundeck”) where they decontaminated him with water and fresh air. Medical assessed the individual and cleared him to return to a new cell.

Case #2

About a week after Case #1, the same individual again refused to take his court-ordered medication. Again, personnel – including the same Multi-Support Deputy, nurses, and a sergeant – attempted to gain voluntary compliance prior to activating the ERT. After the required cooling-off period, the ERT deployed two rounds of ClearOut, then ultimately entered the individual’s cell to physically restrain him.

Deputies removed the individual and walked him to the sundeck, where he refused the offer of water to decontaminate his face. The impact of the chemical agent on the individual appeared to dissipate quickly. A nurse assessed him and injected the prescribed medication.

with individuals who are in crisis or who need care and attention that a module deputy may not be able to provide.

¹³ A “cooling off period” is when no employee makes direct contact with the individual. An employee (deputy or medical staff) may observe the individual, especially if there are overall concerns over the individual’s safety and well-being. This time is intended to allow all parties to “cool off” and plan next steps.

This second incident occurred almost exactly like it did in the previous incident, one week prior. This raised some questions for us about the extent to which each decision to use a chemical agent was tailored to the particular circumstances. Here, the individual had proven a certain level of resistance to the ClearOut just a week earlier, while the nurse in that earlier case expressed a desire to enter the cell to give the injection rather than wait until the individual was on the sundeck. It was worth considering whether it would have been more effective to enter the cell and take physical control of the individual and let the nurse administer the medication in the cell rather than introduce chemical agents. Instead, it seemed like the ClearOut here was deployed as part of a standard protocol rather than based on an individual assessment of the circumstances presented. We address this issue further below.

Case #3

An individual refused to voluntarily take medication that had been ordered by the court. Deputies, a mental health clinician, and medical staff made multiple attempts to talk to the individual over the course of more than an hour. Ultimately, the sergeant activated the ERT.

After final warnings about the consequences of not complying, the ERT introduced ClearOut into the cell. After five minutes, the team deployed a second can of ClearOut. The individual then came to the cell door and was handcuffed through the tray slot with no resistance. He was taken to the sundeck for fresh air and decontamination, then escorted to the APU to receive his court-ordered medication.

Case #4

Deputies, as well as mental health and medical personnel, communicated for approximately two hours with an individual in an attempt to get him to voluntarily take his court-ordered medication. The individual refused repeatedly. ERT was activated for a planned use of force.

ERT provided additional warnings and time to comply. An ERT deputy ultimately deployed ClearOut and the individual immediately came to the cell door to be handcuffed. He was taken to the sundeck for fresh air and decontamination, then escorted to the APU to receive his court-ordered medication.

Movement Into the Acute Psychiatric Unit

Case #5

Mental Health personnel determined that an individual needed to be moved into the APU to receive a higher level of mental health care. Over more than 24 hours, deputies (including Multi-Support Deputies or MSDs), mental health clinicians, sergeants, and a lieutenant all spoke with the individual to try to get him to voluntarily move from his cell. He seemed largely unresponsive to these attempts.

After Custody staff learned from a Mental Health clinician that the individual's mental health care needs were increasingly urgent and critical, ERT was activated. The ERT followed its protocols for warnings and giving the individual a final opportunity to comply. The team administered ClearOut, which appeared to have little effect on the individual. After six minutes, they introduced a second can of ClearOut, and the individual voluntarily came to the cell door to be handcuffed.

The individual was escorted to the sundeck for fresh air and water. Medical staff cleared him to be housed in the APU.

Case #6

Mental Health personnel requested that Custody move an individual to the APU. Over the next nine hours, multiple mental health clinicians, deputies, MSDs, and sergeants attempted to negotiate with him to gain his compliance for the move. Ultimately, a sergeant activated the ERT.

After giving several warnings and additional time to comply, the ERT lead deputy deployed one can of ClearOut. This appeared to have no effect on the individual. After four minutes, ERT deployed a second can of ClearOut, which still did not gain compliance. After another minute, the ERT entered the cell and secured the individual with minimal force. They escorted him to the sundeck for decontamination with fresh air. Medical staff assessed him and he was escorted to the APU for housing.

Case #7

This was a complex incident that stretched out over two days. On the first day, video shows the individual acting erratically and throwing an object. Deputies directed a lock-down, but this individual refused to lock-down. Deputies deployed OC spray, which resulted in the individual running into his cell. The individual refused decontamination efforts and refused contact with medical personnel while also intermittently yelling that deputies had punched and kicked him. After many attempts to interact with the individual, Mental Health personnel eventually advised Custody staff that the individual needed to be transferred to the APU.

Over the next 24 hours, mental health clinicians and Custody personnel attempted to communicate and negotiate – offering extra food and other incentives – to gain the individual’s compliance for the move. He refused all these attempts.

The sergeant ultimately activated the ERT, which also attempted to negotiate to gain compliance. After providing required warnings and time to comply, the ERT deployed ClearOut. The individual showed little sign that the chemical was having an impact. The ERT deployed a second round of ClearOut, and the individual picked the can up and put it in the toilet, rendering it ineffective.

The individual was aggressive toward deputies and threw an unknown liquid at the door. The individual punched the cell door and yelled.

The ERT eventually entered the cell and the individual started to throw punches at the deputies. Deputies took him to the ground, while the lead deputy demonstrated careful command and control by reminding the team to maintain its composure. Deputies got physical control of the individual and took him to the sundeck for fresh air and medical assessment before transferring him to the APU. Neither the individual nor the deputies were injured in this incident.

Imposition of Suicide Precautions

Case #8

Mental Health staff directed that an individual be moved to a new housing unit, to be placed on suicide precautions. The individual said he didn't want to go and would fight anyone who tried to move him. He blocked vision into his cell by placing paper over the window. As mental health clinicians, deputies, and a sergeant attempted to communicate with him, the individual shouted profanities and challenged the deputies.

The ERT was activated more quickly than in other incidents, about 30 minutes after the Mental Health directive. About an hour after activation, ERT introduced the OC "Cell-Buster" through the bottom of the door. The individual quickly complied with commands and was handcuffed and escorted to the sundeck for decontamination. He was assessed by medical staff and moved into a new housing unit.

Case #9

Mental Health personnel ordered that an individual be placed in a suicide prevention gown, but he refused to give up his clothing. Over the next nine hours, various Mental Health clinicians and deputies met with the individual, who continued to refuse and resisted any attempts to negotiate.

The ERT was eventually activated. The individual became combative, using profanity and claiming to have a weapon in his cell. Before chemical agents were deployed, a nurse made one final attempt to get the individual to change out his clothes. He continued to refuse.

The ERT introduced OC "Cell-Buster" and continued to give commands. After five minutes, the deputy deployed a second round of OC, after which the individual complied and was handcuffed through the tray slot. Deputies led him to the sundeck, where he refused to accept any water for decontamination. He was assessed and cleared by medical before being escorted to a new cell, where his clothing was taken and exchanged for the suicide prevention gown.

Other Mental Health Orders or Housing Movement

Case #10

Mental Health staff in the APU noted trash and fecal matter throughout an individual's cell and directed that the individual be removed from the cell, given emergency medication, and placed in a clean cell. For over an hour, mental health clinicians and deputies – including an MSD – talked to the individual in an attempt to obtain voluntary compliance. The individual was resistant to all these efforts, frequently swearing and threatening personnel.

The ERT was activated and followed its protocols for providing warnings and time to comply. A deputy deployed one can of ClearOut, and the individual immediately complied and submitted to handcuffing. The individual was escorted to the sundeck and refused water for decontamination but seemed to recover quickly from the effects of the chemicals. The individual received medication, was cleared by medical, and was returned to a clean cell.

Case #11

Mental Health personnel advised Custody staff that an individual in mental health housing at Main Jail was sufficiently stabilized to be rehoused at Elmwood. The individual refused to leave his cell for the move. Mental Health clinicians, deputies and supervisors spent six hours trying to convince him to move, but ultimately ERT was activated.

The individual was adamant about not leaving his cell. When the ERT told him they would use chemical agents and maybe force to move him, he said, "go ahead."

After a deputy deployed ClearOut, the individual immediately followed directions and was handcuffed, decontaminated in the sundeck, medically cleared, and moved to Elmwood without further incident.

Case #12

Mental Health advised Custody staff that an individual should be moved to a less restrictive mental health housing module. He refused to go. Mental Health staff allowed him to stay an extra day in an effort to gain voluntary compliance. The next day, he still refused to relocate. For over two hours, mental health clinicians, an MSD, and other deputies all spoke with him, trying every angle to get him to move. The MSD, in particular, communicated with him calmly and patiently, through an open door. He offered extra food, spoke about the benefits of being in a different housing unit, and took other measures to accommodate the individual's preferences (for example, the individual refused to wear the uniform he was supposed to be wearing because he didn't like the color, so the MSD got him a different uniform).

In the end, the individual still would not voluntarily leave his cell. ERT was activated and, after following all usual protocols, introduced ClearOut in two separate deployments. The individual still did not comply, so the ERT entered the cell and secured him by physical force. Deputies walked him to the sundeck for decontamination. After medical assessment, he was taken to his new housing module.

Medical Urgency

Case #13

During a routine welfare check, an individual housed in a mental health unit showed a deputy that he had a piece of metal and threatened to swallow it. Deputies, sergeant, and Mental Health personnel tried to negotiate with the individual to give up the piece of metal, to no avail.

On a subsequent welfare check, a deputy observed the individual had a laceration on his arm and the individual said he had swallowed the metal. Mental Health advised Custody staff that he needed to be sent to the hospital to confirm whether he had swallowed the metal.

The individual refused to be handcuffed, so ERT was activated. The ERT attempted further communications to gain voluntary compliance, but the individual refused. Following the protocols for providing warnings and time to comply, the sergeant directed the use of ClearOut. It had no

apparent effect on the individual, so the sergeant directed the use of the OC, “Phantom Fogger,” which was immediately successful. The individual complied with directives and was transported to the medical facility.

This case raised questions about whether deputies had done all they could do to convince the individual to comply with directives and surrender the metal. Unlike in most of the other cases we saw, there seemed to be little effort to negotiate with the individual; at least, those efforts were not fully documented. We discuss this issue further below.

Case #14

A deputy walked by an individual’s cell and observed a weapon, while the individual was out for his regular program time. The deputy secured the weapon, located the individual, and attempted to handcuff him. The individual resisted, ran away from the deputy, and retreated to his cell, covering his cell windows with cardboard.

The individual stated that he was suicidal. The deputy requested a Mental Health response, but the individual refused an evaluation. After speaking with a sergeant, the individual complied with the request to move voluntarily into a higher observation mental health housing.

After he was secured in his new cell, the individual began to bang his head on the cell door and brandished a piece of metal. ERT was quickly activated pursuant to a request from medical staff, as the individual refused to comply with requests to secure him and remove him from his cell. The typical “cooling off” period was skipped because of the perceived medical emergency.

The ERT learned that the individual suffered from a respiratory condition, but a sergeant, after consulting with medical, determined that chemical agents could be used nonetheless. Medical staff was prepared to provide assistance for the individual’s respiratory condition, and EMTs were staged in case of medical emergency from use of chemicals. The ERT deployed ClearOut, and the individual quickly complied with commands. Deputies secured him in an assessment chair¹⁴ and conducted an

¹⁴ Also referred to as a “restraint chair,” it uses straps to physically restrain a violent or combative individual.

extensive search for weapons¹⁵ before transporting him to the hospital for emergency care.

This case raised a couple of questions. First, the individual was secured in an assessment chair for an extended time during an extensive search for weapons. This delay was inconsistent with the sense of medical urgency that had been driving the incident up until then. This issue was identified by the internal review process and appropriately addressed.

We also were concerned about the decision to use chemical agents despite knowledge of the individual's respiratory condition. While precautions were taken to ensure there would be a quick response to any emergency caused by introduction of chemicals, we recommend that Custody reconsider its policy around deployment of chemical agents in cases where medical personnel identify particular concerns about the potential impact of chemicals on an individual's health.

Custody-Initiated Housing Moves

Case #15

The same individual from Case #14 had to be moved after he caused flooding in his cell and throughout the module. The individual refused to comply with directions, and said he was talking to others and would fight any deputies who entered his cell. He blocked his cell windows, preventing visual checks, and refused to speak with a Mental Health clinician.

ERT was activated, though the clinician continued to try to speak to the individual. After providing warnings and time to comply, the ERT deployed ClearOut. It had no apparent effect on the individual. Deputies then attempted to use Phantom Fogger but were thwarted by a mattress the individual had wedged against the door.

The ERT then entered the cell. The individual was bent over at the door. Because of limited visibility into the cell, the deputy in the front inadvertently struck the individual in the head with the shield; this did not

¹⁵ Circumstances specific to this individual made an extensive search necessary to determine whether he was hiding any weapons.

result in any obvious injury nor complaint of injury by the individual. The individual was secured, removed from the cell, and taken to the sundeck for fresh air and decontamination.

The individual then yelled that deputies were using force on him, twisting his arm and breaking his wrist. The handheld video recording focused on his wrists to show that deputies were controlling his hands using pain compliance techniques only to force his movement when needed in response to his resistance. There was no evidence of any injury as a result of the control holds used by deputies.

Case #16

All ten individuals in a module were rehoused to accommodate crews who were repainting all of the cells. Nine of the ten went without incident, but one individual refused. In negotiations and communications that lasted over six hours, two different Mental Health clinicians, a sergeant, and various deputies tried to talk him into complying. The ERT was ultimately activated early the following day.

After providing required warnings and time to comply, the team deployed ClearOut. The individual did not comply, but wrapped his pants around his head, moved his mattress to the floor and laid face down. ERT deployed a round of Phantom fogger. The individual continued to lay on his mattress. ERT entered the cell and handcuffed him without incident. Deputies then moved him to the sundeck for decontamination. He was assessed and cleared by medical staff, then moved to a new housing module.

In the reports regarding this incident, there is no detail provided about why Custody needed to move everyone out of the module. When we raised this with Custody, we learned the movement was required as part of an effort to paint all the cells on the floor. Individuals would be systematically moved from one module to another to accommodate this work. Custody agreed that it should have done more in this instance to document the reasons for the required movement.

Case #17

Two incarcerated individuals assaulted a third individual and then retreated to their cell, securing the door. They yelled and were belligerent, ultimately breaking the glass in the door with their tablets. The sergeant activated ERT, which followed all protocols for providing warnings and time to comply. The ERT introduced ClearOut, and the individuals complied with orders to be handcuffed through the tray slot.

Policy Considerations

We concur with the Sheriff's Office findings that the uses of chemical agents in the 17 cases we reviewed were all consistent with current policy.¹⁶ Deputies articulated and documented sufficient rationale to meet the policy's required thresholds in the cases we reviewed. While the Sheriff's Office appropriately identified other issues during their after-action command reviews, none of these was directly related to the decision to use chemical agents.

Policy should provide sufficient guardrails and considerations for use of chemical agents in cell extractions while also allowing supervisors, deputies, and medical staff to plan (and document) the approach deemed most necessary and reasonable for each use case. Based on our review of cases, we recommend additional policy guidelines to ensure that all uses are carefully measured against the best safety protocols: more explicit use restrictions on individuals who have known medical contraindications, the prior effectiveness of chemical agents on the same individual, requiring higher-level authorization for deployment, consideration of protective equipment for involved deputies, and additional guidelines for documentation and reporting.¹⁷

¹⁶ When these 17 cases occurred, the Sheriff's Office was under a now-retired Use of Force policy, **Policy 9.01**. The Sheriff's Office and OCLEM evaluated the 17 cases under those policy guidelines. We also evaluated if any case would be out of policy today under Custody's new use of force policy, **Policy 511**; we determined that these cases would also be found to be in policy under the new policy, which retained the old policy's guidelines in an updated and more readable, "user-friendly" format.]

¹⁷ Because the use of ClearOut and certain other chemical agents qualify as "military equipment," state law requirement that the governing body approve policy is intended to ensure that expectations for when and under what circumstances such equipment can be deployed are clearly and thoroughly described.

Current Policy Guidelines

All uses of force, including use of all chemical agents, are guided by **Policy 511: Use of Force** in the Custody Manual. This policy, which replaces **Policy 9.01**, was recently approved after nearly two years of review by the Sheriff's Office, the Prison Law Office, and the Consent Decree Monitors.

Policy 511 details the use of military-grade chemical agents – ClearOut and OC spray deployed via methods other than the small, hand-held canisters in Planned Force Events. Their uses include cell extractions for specific reasons, including court-orders, involuntary medication orders, transfer to the Acute Psychiatric Unit at the direction of mental health staff related to dangers to self or others or grave disability, and needing to remove an individual to access the cell/immediate area.

In Planned Force Events, these chemical agents are used under supervisor authorization and direction and can only be deployed by trained and POST-certified deputies.

The policy requires time, de-escalation, and other verbal approaches to gain voluntary compliance and requires that various employees, including Sheriff Office personnel of various ranks and medical and mental health professionals, engage in these efforts. It requires consideration of safety measures and identified vulnerabilities.

And, as we have highlighted through this report, the policy appropriately requires thorough documentation and after-action review.

The policy also requires that, as with all uses of force, the deployment of chemical agents for cell extractions be necessary, reasonable, and proportional.

Because ClearOut, Cell Buster, and Phantom Fogger are classified as military equipment per AB 481,¹⁸ their authorized uses must also be listed

¹⁸ As noted in our introduction, AB 481 classified any supplies, equipment, and weapons that are part of the traditional military supply chain as "military equipment." Under AB 481 "category 12," any tear gas, OC spray, and pepper balls, excluding standard, service-issued handheld pepper spray, are classified as military equipment.

and/or referenced in the Sheriff Office's Military Use Policy, formerly **Policy 10.08** and recently re-numbered to **General Order 706**. We found that the Authorized Use section of **Policy 10.08** accurately reflects the deployment guidelines found in **Policy 511**.

Additional Policy Considerations

While the current policies set out important criteria for uses of chemical agents in cell extractions, we identified several areas for further consideration.

First, the Sheriff's Office should add more guardrails when presented with medical contraindications. **Policy 511** requires deputies to "consult with medical staff about whether the person has a medical condition that will be negatively impacted by using chemical agents." This is also listed as a supervisor's responsibility in all Planned Force Events.¹⁹ This consultation was done consistently in the cases we reviewed. But the policy does not give any additional instruction on use if the individual *does* have such a medical condition.

For example, in Case #14 above, personnel took careful precautions when deputies chose to deploy ClearOut into the cell of an individual who had a respiratory condition, declared that he was suicidal and possibly had a makeshift weapon; after discussion and medical consult, they determined that the risk of the medical emergency outweighed the risk of exacerbating his respiratory condition.

Here, we credited the precautionary staging of medical staff (a nurse prepared to assist with the respiratory condition and EMTs staged in the basement). And we noted the individual was physically large and combative, factors that weigh in favor of using chemical agents in the hope of avoiding physical force, which could have exacerbated medical conditions in different ways. But we also observed that, ultimately, ERT entered the individual's cell to gain compliance. Was the risk of chemical agent, then, a reasonable and necessary one given the possible alternatives (going hands-on) and ultimate outcome? There is no "right"

¹⁹ Policy 511.7.c.6: Supervisor's Responsibilities: "Consult with medical staff to determine whether the person has any medical conditions that may impact staff's decisions about the Force Option to be used."

answer to this question, but like so many other factors that we have discussed, it requires a calculated balance.

In the 10 cases we reviewed where ERT extracted an individual from a cell without the use of chemical agents, we noted two cases where medical personnel advised against the use of chemicals; in one case the individual may have been pregnant, and in another the individual suffered from allergies.

We urge the Sheriff's Office to reconsider its policy on using chemical agents in cases where medical personnel identify particular concerns about the potential impact of chemicals on an individual's health, to generally prohibit their use when the medical condition involves respiratory issues. For any other medical condition, policy should require documentation of the risk-benefit calculations, consideration of other feasible alternatives to chemical agents, and a medical stand-by in case of immediate medical need.

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.

A second area for added policy guidance relates to an individual's prior reaction to chemical agents. Various Sheriff's Office policies require deputies and supervisors to consider an individual's behavior management plan, if any, for strategies about how to engage the person. This requirement indicates that all employees should consider past successes or failures in planning the present incident (for example, if an individual previously reacted favorably to being promised early access to a tablet or to verbal direction from a certain employee, that approach should be attempted again).

But policy does not explicitly require this type of consideration related to chemical agents; that is, were prior deployments of chemical agents effective in gaining compliance? And, if they were not, should they be tried again? We reviewed three sets of cases where deputies used chemical agents on the same individuals. In two of those sets of deployments, the chemical agents did not result in voluntary compliance.

Though we acknowledge that this referral to past incidents will be simplified greatly with the addition of an electronic Jail Management System, the documentation currently exists: the Sheriff's Office reported that it is required to provide such data to its Consent Decree Monitors and compiles it regularly.

This concept applies beyond chemical agents. When planning a new force event on the same individual, the deputies should consult past force applications on that individual to learn what was, and was not, effective. That a certain force tool was not previously effective does not necessarily mean that it will not be effective the next time. But, with respect to chemical agents, prior ineffective applications might indicate that the individual has a high tolerance to that type of force, and the ERT should consider alternatives.

Indeed, we saw this type of balancing at work in one of the extraction cases that did not involve chemical agents. There, the ERT leader noted in his report:

"This is the 4th ERT activation for Inmate [], force medication, in the last five days. . . . in the last one, chemical agents were ineffective in gaining his compliance."

This was a commendable, effectively documented decision that we encourage to become standard practice.

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.

Third, we note that the current policy requires "supervisor" authorization for use of ClearOut in Planned Force Events. In our case review, the authorization to use any chemical agent in cell extractions was most often issued by the sergeant on scene who was directing the incident. We also commonly observed that a higher-ranking employee, typically a lieutenant, was often on hand to direct and observe.

We advise that the Sheriff's Office require that a lieutenant authorize the use of any chemical agent in cell extractions. This recommended policy

change should also be reflected in policy 10.08 (to adhere to AB 481 standards).

Recommendation 3: The Sheriff's Office should require that a lieutenant authorize all uses of chemical agents in cell extraction incidents.

Fourth, and as we discussed in our safety considerations section above, we (along with internal reviewers) noted that some deputies were not wearing gas masks during deployment of chemical agents. Sheriff's Office leaders reported that this was most often because the traditional gas mask creates a communication barrier, making it difficult for individuals inside of a cell to clearly hear the warnings and commands being issued at a critical moment in the incident. While acknowledging the importance of clear communication, we also highlight deputy safety. In one case, we observed a deputy who was not wearing protective equipment cough and choke, making it difficult for him to communicate with his team and the individual in the cell. In another, we observed a deputy – who was also not wearing a gas mask while recording the incident – react to the chemical agent and need to be relieved from duty temporarily.

We advise that the Sheriff's Office research new technology that may allow for clear communication while also protecting employees from the adverse effects of chemical agents.

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.

Finally, there is room for improvement in the policy guidelines for documentation and reporting of use of chemical agents, with respect to written documentation of the length of time an individual was exposed to chemical agents. In the cases we reviewed, deputies were mindful of the time intervals between deployment of chemical agents and the ultimate removal of an individual from their cell. The longest exposure was around ten minutes. In many of the cases we reviewed, these time intervals were clearly noted by deputies and supervisors. In some others, though, the documentation could have been better. While we could see from our

review of video that deputies did not wait excessively long periods of time, best practice would be to include these time intervals in written reports.

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.

Alternatives to Deploying Chemical Agents

Forcibly removing an individual from their cell should always be a last resort, after all other resources and efforts to gain the individual's cooperation have been exhausted. And, pursuant to AB 481, military equipment – here, chemical agents – should only be used if no reasonable alternative can reach the same objective. Inherent in this notion of a “last resort” is the question – why does the individual need to be removed, and are chemical agents the most reasonable choice?

In 14 of the 17 cases we reviewed, Custody was responding to requests or directives from Mental Health or Medical personnel. Custody generally does not question these directives, and appropriately does not question the judgment of medical professionals, nor include medical or mental health records in its use of force documentation. Based on our review of the video of each of these incidents, the decision to move individuals appeared to be necessary and legitimate. Nonetheless, we suggest that Custody Health should perform its own after-action review of incidents in which deputies use chemical agents or other force to assist with administration of medication or facilitate a mental health-related housing move.

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.

In the remaining three cases involving Custody-initiated housing moves, the exigencies that gave rise to the uses of chemical agents to remove individuals from their cells were likewise necessary and legitimate.

In the cases we reviewed, we found the deputies and their supervisors to have exercised patience, often communicating and negotiating with the individuals over the course of multiple hours, and to have generally utilized available resources, including MSDs and mental health clinicians. Once those efforts proved unsuccessful, supervisors provided final warnings and implemented “cooling off” periods before activating Emergency Response Teams.

Once these incidents progressed to the point of ERT activation and decisions about whether to use chemical agents to facilitate the removal of an individual from their cell, there remained only a few options:

- ERT enters the cell with shields and a baton and physically restrains the individual;
- ERT introduces chemical agents into the cell to encourage the individual to follow instructions; or
- Continue to wait and do nothing.

Each of these alternatives has a cost to individuals’ well-being. Entering a cell and using physical force to restrain someone may be more likely to lead to injury to both the incarcerated individual and the deputies. Chemical agents cause pain and discomfort, and create the need to decontaminate both the individual and the cell.

In almost all the 17 cases we reviewed, continuing to wait for voluntary compliance likewise would have had significant downsides. Those who posed a risk of suicide could not be left alone, for reasons that are obvious. Other housing moves may have been less urgent (moves into step-down mental health housing or the need to repaint a module, for example), but we found those cases to be the ones in which deputies and clinicians mitigated the lack of urgency with a higher degree of patience.

Individuals who needed medication or more intensive mental health care would have continued to decompensate, complicating future treatment efforts while, in some cases, leaving them in filthy, unsafe, inhumane surroundings. We appreciate the urgency of these situations, where not providing the prescribed medication creates significant risks of self-harm in various forms, and from which people are not going to emerge without intervention. According to current Mental Health staff, continuing to wait and doing nothing is not an acceptable option.

Facing difficult scenarios with no perfect outcomes, officials are left to weigh the risks and benefits of various options. Most other agencies we have been in contact with, like the Sheriff's Office, choose to use chemical agents in scenarios similar to the ones we reviewed. None of those agencies use ClearOut in these scenarios,²⁰ but instead opt for various applications of OC.

Between ClearOut and OC (delivered by either the Phantom fogger or Cell-Buster mechanism), the deployment of OC may be more effective at gaining individuals' compliance, *because it causes a greater degree of pain and discomfort.*

Unlike other agencies that use OC for cell extractions, the Sheriff's Office chooses ClearOut for these scenarios because it does not land on surfaces or saturate clothing the way OC does, making it easier to decontaminate both individuals and cells. As we saw during our video review, when an individual is moved out of the area and into fresh air, they recover quickly from the effects of the ClearOut. Those exposed to OC products seem much more impacted by the chemical, and need to have their eyes, nose, and mouth flushed with water before the effects dissipate.

Given the challenges of cross-contamination of cells and the difficulty of clean-up, some agencies report hesitation to use chemical agents in some scenarios. For example, an executive from one agency we spoke with reported that, if an individual refuses to voluntarily take court-ordered medication, an ERT will enter the cell and force the individual to the ground to restrain him while a nurse enters and administers the medication. For that agency, the risks of injury from that use of force do not outweigh the costs associated with the use of chemicals, namely the potential for cross-contamination and the time it takes to decontaminate.

The Sheriff's Office (and other jails in the state) has made a different calculation of the various risks and benefits, and we find that outcome to be reasonable. We caution, though, against allowing the deployment of

²⁰ One agency reported they use ClearOut in response to disturbances in larger dorms, but believe OC works better for individual cell extractions. Another agency reported they previously used ClearOut for cell extractions but find that OC is more effective because individuals found ways to defeat ClearOut.

chemical agents to become part of a scripted response to certain incidents. There might be instances where ERT leaders determine that chemical agents are not the best choice in a given scenario. For example, as we suggest above, the ERT should weigh the outcomes of prior activations involving the same individual and should consider any medical vulnerabilities (including and beyond those that may impact breathing) when deciding whether to use chemical agents.

ERT leaders should thoughtfully consider the pros and cons of chemical agent deployment in each case, based on the unique circumstances presented. Policy requires this type of attention to the details of each scenario, and Custody leaders report that ERT teams make determinations about chemical deployment on a case-by-case basis.

After we completed our review of the 17 ClearOut cases in the Sheriff's Office Military Equipment Use Report, we asked to see cell extraction cases that did not involve chemical agents, to assess whether ERT teams were indeed carefully weighing various factors before deciding to deploy chemicals. In the 10 non-chemical agent cases we received and reviewed, we sometimes saw this type of balancing:

- In two incidents, the ERT leader documented that the individuals did not display behavior that warranted the use of chemical agents.
- In one case, ERT elected not to use chemical agents because they had been ineffective in past recent deployments.
- In two cases, chemical agents were not used because of the individual's particular vulnerabilities (pregnancy and allergies).

In some other non-chemical agent cases, though, it was not clear why ERT decided to enter a cell without first introducing chemical agents.²¹ And we noted in all these cases, the individuals were ultimately secured without injury.

And in the 17 cases in which chemical agents were used, we did not often see documentation of this consideration and balancing and recommend that ERT leaders regularly articulate the reasons for using chemical

²¹ In two of the 10 cases, the individual was in a dayroom, where introduction of chemical agents would have had a broad impact on many others.

agents in each case. This does not need to be a burdensome requirement. We saw some cases where the ERT recorded its planning session on body-worn or handheld cameras; in others the sergeant expressly included some articulation of factors on the video recording the entire incident. As reviewers, we found this to be a helpful way of documenting the thought processes behind the decision to deploy chemicals.

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.

After-Action Review

Deployment of chemical agents (as with any use of force) should be reviewed for policy compliance and a determination of whether deputy performance was consistent with Sheriff's Office expectations. Beyond that, though, every incident warrants a level of holistic scrutiny that extends past the basic question of policy compliance. Supervisors should look at both what went well and what could have gone better, asking whether there are any lessons to be learned to guide future incidents.

For most of the cases we reviewed, the Sheriff's Office use of force review process required sergeants to complete an Administrative Incident Report (AIR), which was routed to the Watch Commander, and then to Division Administration for review and additional comment. In 2023, the format of this review changed, and now provides greater structure in the form of a series of 19 questions the sergeant must answer as part of the incident write-up.

We found the Sheriff's Office review process to be thorough in many ways. For example, the following issues were identified and remedial actions taken in the cases we reviewed:

- In one internal review, the sergeant noted the individual complained of pain to his wrist during escort. The sergeant met with ERT deputies and reviewed the video with them. While the control hold techniques used were within policy, their debrief counseling included reinforcing their training regarding appropriate control holds during escorts. This counseling was documented in an email to the lieutenant.
- In multiple cases, supervisors noted that deputies had not worn gas masks and appeared to have been impacted by exposure to ClearOut. They addressed the importance of wearing PPE through briefings and counseling.

- One internal review noted that supervisors had failed to document any communication with medical staff about the individual's vulnerabilities prior to deploying chemical agents. The issue was addressed through counseling.
- Supervisors in one case identified issues with how the ERT performed its takedown and control of the individual, noting that they were sending that team to additional training to remedy the concerns.
- The command-level review of one incident evaluated the supervisors' command and control of the incident and directed additional training regarding operational planning, decision making, and the importance of keeping medical personnel out of contaminated environments.
- In one case, a head strike with shield was determined to be unintentional. The supervisor provided counseling and a team debriefing.
- In multiple cases, there were issues with the batteries in handheld cameras. These were addressed with counseling. None of the incidents went entirely un-recorded, because the jail has fixed cameras and deputies had activated their body-worn cameras.
- The Sheriff's Office also devised appropriate interventions relating to two specific concerns noted in its review of these incidents:
 - Failing to wear a sleeve to cover visible tattoos; and
 - Failing to activate a body-worn camera.

We did find some room for improvement, however. As we noted above, we recommend that reports also more explicitly document time intervals. And we found that review documentation should more explicitly address questions about de-escalation and provide better documentation of whether deputies did all they could to avoid the use of force.

For example, in Case # 13, a deputy saw the incarcerated individual in his cell with a piece of metal; the individual said he would swallow it if he didn't get some coffee. The reports state that various deputies and clinicians spoke with him to try to gain compliance in giving up the metal,

with no further details provided. We questioned why personnel did not try to negotiate with the individual, as we saw in some other cases.²² We learned during our review that this individual is an outlier in the degree and frequency of his interactions with deputies and medical staff that have required extraordinary interventions. This explained the different approach in this case, but it would have been preferable to have clearer documentation of these issues.

One way to address this shortcoming would be to add a question about de-escalation to the list of questions supervisors are required to answer as part of their incident summary on the Use of Force Review documentation.

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.

²² For example, in many other cases, we saw deputies offer individuals extra food in exchange for compliance; in one, they offered food, coffee, and magazines.

Conclusion

AB 481 provides a level of transparency surrounding (among other things) the use of military-grade chemical agents in the County jails that has not previously existed. It has created opportunities for oversight entities and County leaders to meaningfully dialogue with law enforcement about the appropriate uses of these chemicals, and the types of limits and restrictions that may be warranted in their community. The Board's referral that led to this report is an example of this type of healthy engagement.

Finally, another broader reaction from our review is distress around the fact that the individuals involved in these incidents are housed in the County's jails rather than a more therapeutic setting. We acknowledge the County's ongoing work to address the prevalence of people with serious mental illness in its jails, and credit its efforts in continuing to look for alternatives to incarceration for such individuals.

Recommendations

- 1: The Sheriff's Office should generally prohibit the use of chemical agents on individuals who have documented medical conditions that involve respiratory issues.
- 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.
- 3: The Sheriff's Office should require that a lieutenant authorize all uses of chemical agents in cell extraction incidents.
- 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.
- 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.
- 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.

- 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.
- 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.