County of Santa Clara
Human Relations Commission

80776

DATE: April 26, 2016

TO: Board of Supervisors

FROM: Harry Adams, Chairperson

SUBJECT: Report on Forum for the Family and Friends of Inmates

RECOMMENDED ACTION

Receive report from Human Relations Commission relating to the Public Forum for the Family and Friends of Inmates. (Clerk of the Board)

FISCAL IMPLICATIONS

There are no fiscal implications associated with receiving the report.

REASONS FOR RECOMMENDATION

The attached report provides an overview of information received by the Human Relations Commission (HRC) in a public forum held on November 10, 2015, as well as recommendations in the areas of facilities, programs and services, staffing, jail observer program, oversight, and leadership.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

During the 2014 HRC Winter Retreat, the Justice Review Committee (JRC) recommended holding a public forum for inmates' families and friends as a step towards addressing the troubling spike in complaints from Santa Clara County inmates.

On November 10, 2015, the JRC hosted the "Public Forum for Family and Friends of Inmates" to hear public testimony from inmates' family and friends relating to their experiences with the Santa Clara County jail system. Written statements were also collected.

Following the public forum, the JRC prepared the attached report. At the March 10, 2016 HRC meeting, the Commission approved the framework and recommendations of the report. Following that, the final edits were made to the report.

The final report was approved by the HRC at a special meeting on April 3, 2016.

The Clerk of the Board serves as the ex-officio secretary of the HRC, and this report is forwarded on the Commission's behalf.

CONSEQUENCES OF NEGATIVE ACTION

The Board of Supervisors will not receive the report.

STEPS FOLLOWING APPROVAL

The Clerk of the Board will notify the Commissioners of action taken by the Board of Supervisors.

ATTACHMENTS:

- Public Forum for the Family and Friends of Inmates Report (PDF)
- Appendix A - Public Forum for Family and Friends of Inmates transcript - 2015 (PDF)
- Appendix B - Daily Jail Population Statistics - Feb 19 2016 (PDF)
- Appendix C - Jail Standards and Inspection Programs - Resource and Implementation Guide - 2007 (PDF)
- Appendix D - Sheriffs Guide to Effective Jail Operations - 2007(PDF)
- Appendix E - United Nations Standard Minimum Rules for the Treatment of Prisoners - 2015 (PDF)
- Appendix F - Human Rights and Prisons - A Pocketbook of International Human Rights Standards for Prison Officials - 2005 (PDF)
- Appendix G - Jail Conditions - Inmate Staff and Family Perspectives - Report to SCC Blue Ribbon Commission - Feb 20 2016 (PDF)
- Appendix H - Blue Ribbon Commission Presentation on Complaint and Grievance Process - Feb 20 2016 (PDF)

Letter from the Justice Review Committee

It is with a somber mind and heavy heart that the Justice Review Committee (JRC) of the Human Relations Commission (HRC) submits this report to the Santa Clara County Board of Supervisors. Like Marcellus, an officer of the palace guard in Shakespeare's *Hamlet*, who states, "Something is rotten in the state of Denmark," we say something is wrong with the culture, policies and practices of the Main Jail and Elmwood Facilities.

This report specifically addresses the public testimony of inmates' family and friends, the social and historical context for this testimony, and the legal and policy frameworks for custodial operations and international human rights of prisoners. In addition, the data that underlie our recommendations are consistent with the *Jail Conditions: Inmate, Staff & Family Perspectives* report presented to the Blue Ribbon Commission (BRC) by the law firm Moscone Emblidge & Otis, LLP. It is also consistent with consultant Aaron B. Zisser's report to the BRC on the grievance and complaint system in Santa Clara County jails (both reports are included as appendices to this report). Admittedly, the public forum held by the JRC was smaller in scope, yet we arrive at very similar conclusions with some unique emphases derived from family and friend's testimony.

Bryan Stevenson, founder of the Equal Justice Initiative and author of "Just Mercy," spoke on "Race and the Criminal Justice System" at Stanford University on January 13, 2016.[1] In his lecture, he made four key points that we believe are relevant to current Santa Clara County policy discussions:

1. There is power in proximity. We need to get close to the problems we see. We need to understand what's really happening and go where the problems are most manifest.
2. It's important to change the narratives that sustain inequality and injustice. If you are fearful and angry, you will tolerate inequality and injustice.
3. It's not enough to be proximate and change the narrative; we also have to protect our hope. Injustice prevails when you think you cannot make changes. It takes courage to be hopeful.
4. Bringing about change requires us to do uncomfortable things and sometimes even inconvenient things. We need to position ourselves in uncomfortable places and be witnesses to suffering.

Family and friends of inmates are close to the current situation in the Santa Clara County jail system. They have firsthand experiences, observations, and reports based on their connections with inmates and their interactions with County staff. The JRC was a witness to their testimony and we respectfully present our findings with this report.

- Carol Turpen, JRC Chair

[1] Sponsored by the Center for Comparative Studies in Race and Ethnicity (CCSRE) and OpenXChange.

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A) Santa Clara County Human Relations Commission, *Public Forum for Family and Friends of Inmates*, transcript (2015).

B) Santa Clara County Sheriff's Office / Department of Corrections, *Daily Jail Population Statistics* (Feb. 19, 2016).

C) U.S. Department of Justice, National Institute of Corrections, *Jail Standards and Inspection Programs: Resource and Implementation Guide* (2007).

D) U.S. Department of Justice, *Sheriff's Guide to Effective Jail Operations* (2007).

E) U.N. Economic and Social Council, Commission on Crime Prevention and Criminal Justice, *United Nations Standard Minimum Rules for the Treatment of Prisoners* ("Mandela Rules") (2015).

F) Office of the U.N. High Commissioner for Human Rights (OHCHR), *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials* (2005).

G) Moscone Emblidge & Otis, LLP, *Jail Conditions: Inmate, Staff and Family Perspectives – Report to Santa Clara County Blue Ribbon Commission* (Feb. 20, 2016).

H) Zisser, Aaron B., *Blue Ribbon Commission Presentation on Complaint and Grievance Process* (Feb. 20, 2016).

Santa Clara County Human Relations Commission
Report on the "Public Forum for Family and Friends of Inmates"

Presented to the Santa Clara County Board of Supervisors,
via Justice and Safety Committee
April 2016

I. Introduction

Section Authors: Carol Turpen, Richard Vierhus, Narendra Pathak, and Robert Chaykin
Santa Clara County Human Relations Commission,
Justice Review Committee

"When any part of the American family does not feel like it is being treated fairly, that's a problem for all of us."

> - President Barack Obama, *Final Report of the President's Task Force on 21st Century Policing*, May 2015.[2]

We, the Santa Clara County (SCC) Human Relations Commission (HRC) concur with the notion that our justice systems must reflect the constitutional and human rights principle of equality under the law. In keeping with our mission, we submit the following report and recommendations to the SCC Board of Supervisors (BOS) for formal review. In addition, we plan to make the report available to the public through the HRC website and appropriate media channels in order to inform public debate about the future of the SCC jail system, currently under the supervision of the County Sheriff's Office.

The mission of the HRC is to (a) advise the BOS on issues that affect the human and civil rights of all County residents, and (b) advocate for and take positive action to eliminate prejudice and discrimination in the County. The 15-member Commission is appointed by the BOS to represent Supervisors' respective districts. The HRC works closely with the SCC Office of Human Relations (OHR) to hear community concerns and to build positive inter-group relations. Within the HRC, the Justice Review Committee (JRC) is a standing committee chartered to "review and make recommendations regarding human rights concerns involving relations between law enforcement or Department of Corrections and Santa Clara County community members or inmates."[3] Due to the subject matter, the "Public Forum for the Family and Friends of Inmates" and its associated report fell under the primary responsibilities of the JRC.

The HRC also supports the work of the OHR Jail Observer Program (JOP), which provides a neutral, independent program for inmates, their families and friends, and the County of Santa Clara Department of Corrections (DOC) officers to report rights abuses suffered by inmates and jail staff. Collaboration between the HRC, OHR, and JOP occurs under the terms and conditions of a Memorandum of Understanding (MOU) with the DOC.

Over the last 30 years, the reports received by the JOP have tended to fall under the following categories or themes:

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[2] See full report here: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
[3] For complete information on the HRC's mission, standing committees, membership, and meetings, see: https://www.sccgov.org/sites/ohr/human%20relations%20commission/Pages/default.aspx.

- Issues associated with the safety and physical conditions of jail facilities;
- Officers' treatment of pretrial detainees and inmates;
- Staffing and training concerns of DOC staff;
- Insufficient or denial of inmate medical care;
- Insufficient or denial of inmate mental health care;
- Inappropriate diet and nutrition for inmates;
- Restrictions on and barriers to inmates' freedom of religious practice;
- Insufficient or non-existent access to legal counsel;
- Inmates' access to a complaint/concern system;
- Timeliness of DOC response to inmates' complaints/concerns;
- Barriers to visitation for family and friends;
- DOC policies and procedures regarding inmate mail;
- Inmates' freedom to report complaints/concerns to the JOP.

This report is presented in direct response to a disturbing pattern of public testimony and reports and private complaints regarding apparent abuses of inmates' rights at the Santa Clara County Main Jail and Elmwood Correctional Facility in 2014 and 2015.

Concerns about treatment and conditions at the SCC jail facilities began well before the "Public Forum for Family and Friends of Inmates." Throughout 2014, the HRC and the JOP received a large number of complaints from inmates, their families and friends, and inmate advocates, as well as testimony from program staff and volunteers who work in the jails and community organizations like Silicon Valley DeBug, PACT, and Sacred Heart Community Service. These complaints were reported via telephone calls and emails to the JOP, in-person appointments with the JOP Coordinator, and public presentations to the HRC and JRC.

Many of the complaints received in 2014 concerned the DOC's visitation request system and insufficient and/or inappropriate physical accommodations during visits.[4] Following a series of meetings with inmates' families and friends and subsequent visits to jail facilities by JRC representatives and the JOP Coordinator, a meeting was scheduled between the HRC and DOC administration to discuss concerns regarding visitation. Although the DOC made an effort to address these visitation concerns, problems with the scheduling software and accommodation of face-to-face visits were not so easily resolved.

In addition to complaints regarding visitation, the JOP and JRC received consistent complaints about the physical conditions of the Main Jail facility, the inmate classification system, insufficient accommodation for and abuse of LGBTQ inmates and mentally ill inmates, the lack of responsiveness to inmates' complaints, insufficient medical and mental health care, and abusive treatment from correctional officers (COs). It soon became clear that the significant increase in these concerns demanded official notice and action.

During the 2014 HRC Winter Retreat, the JRC recommended that the HRC hold a public forum for inmates' families and friends as a step to address the troubling spike in complaints. The planning for this forum included consultation with the DOC administration. Upon receiving

[4] Current regulations provide that "inmates are allowed 30-minute visits a week (Sunday being the first day of the week, Saturday the last). Only one visit per day is allowed; two adult visitors per visit." See Santa Clara County Sheriff's Office, "Visiting an Inmate at Elmwood Complex (Men & Women)," https://www.sccgov.org/sites/sheriff/pages/elmwood-visiting.aspx.

support from the DOC Chief of Corrections, the "Public Forum for Family and Friends of Inmates" (herein, the Forum) was approved as part of the HRC's 2015 work plan on April 9, 2015. Public presentation to the JRC May meeting also covered this topic with visitors Christine Clifford and Andrew Bigelow discussing family issues of incarcerated.

The HRC's 2015 work plan was submitted to the Children, Seniors and Families Committee (CSFC) of the BOS on May 7, 2015, and then to the full BOS on June 23, 2015. Formal planning for the Forum began during the third quarter of FY2014, and public outreach began in January 2015 in collaboration with Silicon Valley DeBug, PACT, and Sacred Heart Community Service. As planning for the Forum continued, reports of rights abuses in the SCC jails reached a climax during the summer of 2015, when three inmates died while in custody within approximately one month—including Michael Tyree, a mentally ill inmate who was allegedly beaten to death by three COs now charged with his murder.

On November 10, 2015, the HRC hosted the "Public Forum for Family and Friends of Inmates" in the BOS Chambers to hear public testimony from inmates' family and friends about their experiences with the SCC jail system.[5] Written statements were also collected in hard copy and via electronic submission.

The HRC and JRC held the Forum and collected public testimonies out of concern for our community and our mission to inform the BOS and County policies, and with the following objectives: (1) Understand the experiences of family and friends in interacting with inmates and the SCC jail system, and understand how these experiences affect the rights and lives of inmates, their families, and their communities; and (2) document and examine the specific requests, suggestions, and solutions presented by the public.

The report that follows represents a collaborative effort between the HRC and the San José State University Human Rights Program to present, analyze, and draw suitable policy recommendations from the collected testimonies of family and friends of inmates and their immediate communities.

In keeping with research standards on objectivity and appropriate institutional roles, Drs. Armaline and Kinney (SJSU Human Rights Program) provided the background research, legal framework, and primary qualitative data analysis for this report while in regular communication with the JRC. However, the report's justifications and final recommendations to the BOS are the exclusive work of the HRC.

In sum, this report provides:

- The ***social and historical context*** necessary to understand the impetus for the Forum and interpret the narratives under investigation.
- A detailed ***qualitative analysis of collected testimonies*** to identify and illustrate the most consistent themes in testimony narratives.

[5] See outreach material here: https://www.sccgov.org/sites/ohr/Documents/FriendsFamiliesOfInmates-Forum-111015.pdf.

- The local, Constitutional, and international ***legal frameworks*** through which jail policies and practices should be interpreted and revisions applied under the law. This includes the application of ***Constitutional and international human rights*** standards.
- A list of ***actionable recommendations*** on how to revise and improve policies and practices in the SCC jail facilities according to an appropriate legal framework and the information gathered through collected testimonies.

Above all, we hope this report will inform and mobilize immediate and long-term solutions to what amounts (from all available accounts) to a human rights crisis in our County jail facilities.

II. Social and Historical Context

Section Authors: William T. Armaline, Ph.D., and Edith Kinney, J.D., Ph.D.
SJSU Human Rights Program, Department of Justice Studies,

Why is this report necessary? How should it be understood in the appropriate social and historical contexts?

Three Deaths in 33 Days

The SCC jail system, run by the SCC Sheriff's Office Custody Division, is the fifth largest jail system in California and one of the 20 largest systems in the nation.[6]

Although complaints about civil and human rights abuses in SCC jail facilities have been surfacing for some time,[7] public backlash and media scrutiny peaked following the apparent beating death of a mentally ill inmate, Michael Tyree, at the hands of three COs in the Main Jail on August 27, 2015. Tyree, 31, suffered from bipolar disorder and other complicating medical conditions, and was being held in the Main Jail on a charge of petty theft. Though he had been assigned to a mental health facility for treatment, Tyree remained at the Main Jail due to the lack of available bed space for mental health treatment in Santa Clara County.

Tyree's case is of particular concern for rights advocates because it highlights the disastrous effects of treating the mentally ill via the criminal justice system – a revolving door of arrest-incarceration-release that undermines effective treatment at high cost to the individual as well as the community. According to a recent Treatment Advocacy Report, individuals with severe mental illness (less than 4% of the U.S. population) occupy one in five jail and prison beds throughout the nation.[8] Moreover, the SCC Sheriff reports that almost half of the inmates in SCC jails suffer from mental illness.[9] Not only are those with mental illness more likely to be arrested and held in jail; those with acute mental illness *are 16 times more likely to be killed by law enforcement*.[10]

According to charges brought by the Santa Clara County District Attorney's office and to medical reports, Tyree was violently beaten by COs who entered his cell, and who then left him naked and bleeding for over an hour before medical attention was requested. Reports indicate that Tyree died over the course of approximately one hour due to internal lacerations to his spleen and liver; he also suffered bruises on his eye, chin, cheek, legs, back, and both hips, and a contusion behind his ear, all consistent with having been beaten on his head, legs, and body. The medical examiner found that 40% of Tyree's blood had leaked into the lining of his abdominal cavity, and that he had suffered a hemorrhage on the left side of his skull and a lacerated liver and spleen.[11] Three

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[6] See https://www.sccgov.org/sites/sheriff/Pages/custody.aspx.
[7] See http://www.mercurynews.com/crime-courts/ci_29282094/after-inmates-death-whats-really-going-inside-santa.
[8] See http://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf.
[9] See http://www.nbcbayarea.com/news/local/Text-Messages-Santa-Clara-County-Correctional-Deputies-Accused-of-Murdering-Inmate-328121321.html.
[10] See http://www.telesurtv.net/english/news/US-Police-16-Times-More-Likely-to-Kill-Mentally-Ill-People-20151210-0037.html.
[11] See http://www.mercurynews.com/breaking-news/ci_29361631/claims-detail-conscience-shocking-abuse-against-mentally-ill?source=autofeed#.

COs – Matthew Farris, 27, Jereh Lubrin, 28, and Rafael Rodriguez, 27 – currently face murder charges for Tyree's death, and have been released on $1.5 million bail each. Charging documents allege that the three officers beat Tyree to death in his cell during evening inspections, after he refused to take medications distributed by jail nursing staff.[12]

Days later, on August 31, 2015, a female inmate at Elmwood Jail died "of natural causes" while in custody. Weeks later, on September 28, a 33-year-old male inmate was found dead in his cell in the Main Jail facility. Investigations are still underway to determine whether or not his death was related to two cell extractions on September 21 and 22 that involved the use of pepper spray, less-lethal plastic projectiles, and ultimately forceful, hands-on extraction from his cell.[13]

In response to repeated complaints about SCC jail conditions, the in-custody deaths of three inmates in just 33 days, and the massive public outcry that followed, the BOS formed a Blue Ribbon Commission (BRC) to assess jail custody operations and recommend improvements.[14]

A series of investigative reports by the San Jose Mercury News also detailed the events leading to the creation of the BRC and the HRC's "Public Forum for the Family and Friends of Inmates," and provided additional insights based on interviews with current and former inmates and jail staff.[15] These investigations found that beating, coercion, intimidation, and denial of services to jail inmates—including inmates suffering from physical and mental illness—were commonplace:

> Inmates have a name… for a group of correctional officers on the night shift that included the three charged with murder in Tyree's death and beating a second inmate earlier that same summer night. They call them "the Wrecking Crew."… Guards have been accused of using force when inmates are mentally ill, handcuffed or shackled at the waist or feet. And those who complain say they often are ignored and sometimes retaliated against.
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> In one case, inmates described in written complaints how they urged the cellmate of a beating victim to leave a puddle of blood on the floor as evidence for Internal Affairs. "I left a five-minute recording," said inmate Jose Perez, who witnessed the beating. "I thought they would come the next day because it was serious. But nothing. No response. Nobody came."…
>
> A letter to this newspaper signed by 41 inmates said deputies constantly threaten inmates "that filing grievances will result in 'a war we cannot win.'" Inmate Daniel Reyes said in a legal claim that several guards pounded his head on a table and smashed him repeatedly against a wall after guards found a chewing gum wrapper stuffed in the lock of his cell, to which his cellmate later confessed….
>
> The only thing surprising about what happened to Tyree, inmates and community activists say, is that his beating was fatal. "When a dead body happens, you can't hide that," inmate Francisco Marmolejo said. "But when they beat someone up, no one cares."

As discussed in the data analysis section below, the narratives collected during the HRC's "Public Forum for the Family and Friends of Inmates" closely match the investigative reports described above, as well as other reports by County officials and outside legal consultants. In particular, the

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[12] See http://www.dailymail.co.uk/news/article-3226911/Three-prison-guards-charged-murder-mentally-ill-man-naked-beaten-death-cell.html#ixzz3yHHuBFfq.
[13] See http://www.sfgate.com/crime/article/Another-Santa-Clara-County-jail-inmate-death-6537985.php.
[14] See https://www.sccgov.org/sites/opa/nr/Pages/Blue-Ribbon-Commission-Set-to-Evaluate-Custody-Operations-.aspx.
[15] See http://www.mercurynews.com/crime-courts/ci_29282094/after-inmates-death-whats-really-going-inside-santa.

HRC's findings are consistent with the findings of:[16]

a) *Jail Conditions: Inmate, Staff and Family Perspectives – Report to Santa Clara County Blue Ribbon Commission*, by Moscone Emblidge & Otis, LLP;
b) *Blue Ribbon Commission Presentation on Complaint and Grievance Process*, by Aaron B. Zisser;
c) Investigative reports by the San Jose Mercury News; and
d) Reports by the Santa Clara County District Attorney and civil rights attorneys.

The consistency between the Forum testimony, the San Jose Mercury News investigations, and other official reports strengthens the validity of each data set.

Specifically, this report finds that violent coercion and denial of appropriate medical and mental health care are commonplace in SCC jail facilities, and that abuse by correctional officers tends to occur during evening/overnight hours and during cell extractions. Indeed, in December 2015, the Sheriff reported that COs on one particular night shift (the "D-Shift" on Wednesday through Saturday nights) were named in 43% of the use-of-force complaints filed by inmates during the year.

We present the following, still-emergent, stories of investigations and litigation from San Francisco and L.A. Counties to illustrate the larger human rights crisis in California's jails and prisons, and to provide the broader social and legal contexts in which to evaluate reports of excessive force and misconduct in Santa Clara County's jail facilities.

Racist, Violent Text Messages Among Correctional Officers

In the spring of 2015, multiple investigations exposed brutally racist, violent, and homophobic text messages exchanged among at least seven San Francisco police officers and their supervising sergeant. These officers narrowly escaped criminal charges in December 2015, due to expiration of the applicable statute of limitations (evidence from 2011-2012 was held for two years before any actions were taken).[17]

Similarly, in Santa Clara County, during an investigation of the Sheriff's Office's handling of the jail system that began prior to the three inmates' deaths in August and September 2015, **investigators uncovered hundreds of violently racist, sexist, and homophobic text messages sent among at least a dozen jail COs, including the head of the correctional officers' union and at least one of the officers charged in Michael Tyree's murder. These text messages appeared to condone and confirm the occurrence of violence, discrimination, and abuse toward inmates.**

According to investigative reports by the San Jose Mercury News:

> The first group of messages, which surfaced in an ongoing investigation that began well before three guards were charged this fall with the beating death of an inmate, vilify blacks and, to a lesser degree, Latinos, Vietnamese and Jews. In one text, an officer wrote to his colleagues, "We

[16] See Appendix for full BRC reports.
[17] See http://abc7news.com/news/sf-judge-7-sfpd-officers-cant-be-punished-for-racist-text-messages/1131589/. As an additional note, the SFPD is now under federal review as a result of these text messages, particularly as they relate to the fatal shooting of a 26-year-old African American man, Mario Woods. See http://www.latimes.com/local/lanow/la-me-ln-sfpd-federal-review-20160201-story.html.

> could hang a n----r in Haiti for about 75 bucks tops."
>
> Lance Scimeca, the head of the correctional officers union, is among the guards who sent and received many objectionable texts. In one message, he referred to a "k--e," using an ethnic slur against Jews and suggesting that lampshades be made from his "hide."
>
> By and large, the texts don't urge fellow guards to commit violent acts, but some do appear to applaud violence, particularly against blacks. "Cops have already killed 550 people in 2015," one guard texted to a group of guards that did not include Scimeca, prompting another to respond, "If they're black, it doesn't count."[18]

These text messages appear to provide further verification that an intolerant and intimidating subculture existed within SCC jails, and that COs engaged in racism, violence, and abuse within the jail facilities. Although the final findings and recommendations from the BRC and other investigations of these text messages have not yet been released, the evidence uncovered thus far provides some necessary context for the narratives and testimony presented in this report.

Disturbing Patterns Across California: Abuse in San Francisco and L.A. County Jails

Cities and counties across California are currently struggling to address crises in their local jails. Dilapidated, unsafe, and unsanitary jail facilities, longer jail sentences, and overcrowding have created deteriorating conditions for inmates, pretrial detainees, jail staff, and visitors to the jail. Lack of available mental health and behavioral health treatment within the community has also drastically increased the number of people with mental illness and addiction issues in jails throughout the state.

Several lawsuits and federal investigations of jails and detention facilities across California reveal a disturbing pattern of abuse, violence, and unconstitutionally deficient conditions that echo the testimony and incidents reported during the "Public Forum for Family and Friends of Inmates" in Santa Clara County. Recent incidents of abuse and violence by COs in San Francisco and L.A. County jails highlights how poor jail conditions can lead to human rights abuses, civil rights lawsuits, and federal investigations.

In the spring of 2015, an investigation by the San Francisco Public Defender's Office found that a deputy sheriff and several COs at San Francisco's main county jail had arranged "gladiator-style" jailhouse fights between inmates for officers' entertainment. Officers placed bets on the fights, promising hamburgers to the winners and threatening sexual violence, forced sodomy, beatings, pepper spray, Taser assaults, and transfer to dangerous housing units if inmates refused to fight. Inmates injured in these fights were threatened so that they would not request medical assistance or treatment.[19] San Francisco County Sheriff Ross Mirkarimi subsequently requested that the U.S. Department of Justice (DOJ) and the FBI conduct federal investigations into the scandal. The Sheriff also announced a program to require sheriff's deputies working as COs in San Francisco

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[18] See http://www.mercurynews.com/breaking-news/ci_29200016/racist-texts-at-center-probe-dozen-santa-clara.

[19] See "S.F. jail inmates forced to fight, public defender says," *SFGate*, March 26, 2015, http://www.sfgate.com/crime/article/S-F-jail-inmates-forced-to-fight-Adachi-says-6161221.php, and "San Francisco jail inmates allegedly forced into 'gladiator-style' fights," *The Guardian*, March 27, 2015, http://www.theguardian.com/us-news/2015/mar/27/san-francisco-prison-guards-forced-inmates-game-of-thrones-style-fights.

County Jail to wear body cameras.[20] The incidents of abuse also led to legal claims against San Francisco City and County by jail inmates accusing the S.F. Sheriff's Department of cruel and unusual punishment, intentional infliction of emotional distress, and civil rights violations. In addition, inmates' complaints revealed that one of the "ringleaders" of the "fight club"—Deputy Scott Neu—had a history of sexually abusing inmates. The city paid $97,500 to settle lawsuits brought by a female inmate and two trans* inmates who accused Neu of sexually assaulting them in 2005 and 2006.[21] These lawsuits revealed a climate of abuse, fear, and sexually- and racially-charged behavior by COs in the San Francisco jail, as well as official tolerance of such abuse and retaliation that contributed to a climate of impunity.

Similar institutional and personnel problems plague the L.A. County jail system, which has been monitored and investigated multiple times by federal officials for over 13 years due to poor confinement conditions, physical abuse and intimidation of inmates, and mistreatment of mentally ill inmates. As noted in a 2014 report by the Treatment Advocacy Center, "There are more seriously mentally ill individuals in the Los Angeles County Jail, Chicago's Cook County Jail, or New York's Riker's Island Jail than in any psychiatric hospital in the United States."[22]

According to ongoing investigative reports by the L.A. Times, "In the last two years, federal prosecutors have charged 10 deputies in three separate cases with crimes stemming from alleged assaults on inmates or jail visitors. The first of the cases to go to trial centered on the beating of [Gabriel] Carrillo."[23]

In February 2011, Gabriel Carrillo was beaten, pepper sprayed, and had his nose broken while he was handcuffed, in what he described as an unprovoked and excessive use of force by L.A. County Jail COs. The officers claimed that Carrillo attacked them and temporarily escaped scrutiny. However, after the L.A. District Attorney's office rejected Carrillo's claims of abuse, the U.S. Attorney's Office won convictions against five of the accused deputies in 2015 for beating and pepper spraying Carrillo without cause.

Troubling revelations about abuse, corruption, and incompetence within the L.A. County Sheriff's Department—specifically in its jail operations—have also resulted in staff turnover and legal scrutiny at the highest levels. L.A. County Sheriff Lee Baca recently stepped down after 48 years with the department amidst abuse and misconduct in the department – most recently as federal prosecutors announced charges against 18 current and former deputies accused of beating inmates and visitors to the jail and of obstructing an FBI investigation.[24]

In order to gather information on the L.A. County jail system following reports of corruption and abuse in 2011, the FBI "enlisted Anthony Brown, an inmate in the Men's Central Jail, to collect information on allegedly abusive and corrupt deputies." Sheriff's deputies – and now former Undersheriff Paul Tanaka – face obstruction of justice charges for moving Mr. Brown to

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[20] See "SF Sheriff: Deputy implicated in inmate fight club to be fired," *Bay City News*, May 1, 2015, http://abc7news.com/news/sf-sheriff-deputy-implicated-in-inmate-fight-club-to-be-fired/690493/.
[21] See Ho, "Former SF Inmates file claim that deputies forced them to fight," *SFGate*, July 31, 2015, http://www.sfgate.com/crime/article/Former-S-F-inmates-file-claim-that-deputies-6417960.php.
[22] See full report here: http://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf.
[23] See http://www.latimes.com/local/countygovernment/la-me-da-jail-abuse-20151226-story.html.
[24] See http://articles.latimes.com/2013/dec/10/local/la-me-sheriff-arrests-20131210.

another facility under an alias, while placing at least 13 deputies on duty to watch him "around the clock."[25]

The new L.A. County Sheriff, Jim McDonnell, who previously served as LAPD Assistant Chief and Long Beach Chief of Police, is now attempting to reform the L.A. County jail system, while former Undersheriff Paul Tanaka awaits trial on charges of obstruction of justice and several deputies have already faced charges.

The L.A. Times editorial board recently commented on Sheriff McDonnell's efforts:

> He has jails that are outdated, poorly designed and ill-suited to the task of properly treating thousands of inmates, many of whom are sick or addicted and might be more effectively housed and treated elsewhere. Replacement costs are shockingly high, and critics — including this page — have argued that his plans show too little commitment to non-custodial alternatives.[26]

Even under McDonnell's leadership, stories of abuse and questionable practices continue to emerge from the L.A. County jail system. Last December, the L.A. Times reported on the abusive use of "potty watch" practices by jail deputies, including as a written, required policy at one of the L.A. County jail facilities. "Potty watch," also known as contraband watch, is when inmates are shackled to the wall, partly or fully naked, for extended periods of time, while officers watch for contraband potentially concealed in the rectum to be excreted. In addition to the allegations regarding "potty watch" practices, the L.A. County jails have remained under media and public scrutiny for various abuses, including when "10 employees were relieved of duty after an inmate was handcuffed without food for 32 hours at the jail system's Inmate Reception Center" last July.[27]

These stories illustrate the current human rights crisis unfolding in jails and prisons throughout California, and the broader social and legal contexts in which reports of abuse and misconduct in Santa Clara County's jail facilities will be evaluated.

Echoing the reports of abuse and misconduct in other jails around the state, the narratives of abuse, harm, and indifference to inmates' health, safety, and humanity presented in this report are not only credible, but also have been further verified by other official investigations and legal proceedings that occurred subsequent to the Forum.

From a scholarly perspective, the testimonials from family, friends, religious leaders, and advocates of people detained and imprisoned in SCC jail facilities are unfortunately not an outlier, but rather are symptomatic of widespread patterns of systemic violence and rights abuses in U.S. jails and prisons. From a community perspective, these narratives of abuse and neglect of individuals detained or serving time in our local jail facilities highlight the negative social and economic impacts of incarceration on the partners, children, and parents of people held in our jails.

Why talk to the "family and friends" of inmates?

To understand the full effects of SCC jail policies and practices, it would be insufficient to limit

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[25] See http://www.latimes.com/local/lanow/la-me-ln-at-heart-of-sheriff-s-scandal-was-top-secret-operation-pandora-s-box-20160210-story.html.
[26] See http://www.latimes.com/opinion/editorials/la-ed-0110-sheriff-20160109-story.html.
[27] See http://www.latimes.com/local/countygovernment/la-me-sheriff-handcuffs-20151229-story.html.

our analysis to the experiences of those who are incarcerated. **From scholars to the highest levels of government, it is widely recognized that the far-reaching, systematic negative impacts of incarceration on the families and communities of those imprisoned are equally critical. In order to make recommendations that will truly improve policies and practices in our County jail systems, the collateral effects of incarceration on these broader communities must be taken into consideration.** Furthermore, families and friends typically serve as the only advocates for incarcerated individuals, outside of their legal counsel. Thus, any attempt to gather testimony on the experience of inmates—who are by definition limited in their ability to communicate their experiences with those "on the outside"—without speaking to their closest advocates who represent their interests would be highly questionable from a methodological perspective.

Effects of Incarceration on the Family and Community

In July 2015, President Obama became the first sitting U.S. President to visit a federal prison and speak directly to inmates when he visited El Reno Federal Penitentiary in Oklahoma. One of the primary concerns he raised in conversations with inmates and criminal justice professionals was the need for reforms to "keep families intact," due to the negative impacts of incarceration on the children and families of those imprisoned.[28] In the same week, President Obama spoke to the NAACP's national convention in Philadelphia about the race and class disparities that define our prison system. He recognized that criminal justice in the U.S. is "particularly skewed by race and by wealth, a source of inequity that has ripple effects on families and on communities and ultimately on our nation." Indeed, the highest levels of government now recognize that (1) the poor and people of color are disproportionately targeted for and burdened by arrest and incarceration; and (2) as a result, their families and communities become destabilized and survival in these communities becomes more precarious.[29]

For years, scholars and investigative journalists have demonstrated that the criminal justice system targets and punishes the poor and people of color—African Americans in particular—at alarmingly disproportionate rates. As a result, poor families, families of color, and their communities suffer the collateral effects of incarceration at similarly disparate rates.

In March of 2014, the Ella Baker Center for Human Rights, Forward Together, and Research Action Design launched a national study on the effects of incarceration on inmates' families and communities. Pointing to a lack of available quantitative and qualitative data on the subject, they conducted interviews, focus groups, and surveys with those impacted by incarceration in 14 states. In their report, titled *Who Pays? The True Cost of Incarceration on Families*, they found the following effects of incarceration on families and communities:

- "People with convictions are saddled with copious fees, fines, and debt at the same time that their economic opportunities are diminished, resulting in a lack of economic stability and mobility."

- "Many families lose income when a family member is removed from household wage earning and struggle to meet basic needs while paying fees, supporting their loved one financially, and bearing the costs of keeping in touch."

[28] For video coverage of President Obama's visit to El Reno Federal Penitentiary, see coverage by HBO and Vice News here: http://www.vice.com/read/fixing-the-system-prisons-obama-shane-smith-hbo.
[29] See https://chronicleofsocialchange.org/news-2/calling-for-reform-president-obama-notes-the-impact-of-incarceration-on-families/11424.

- "Women bear the brunt of the costs—both financial and emotional—of their loved one's incarceration."
- "… Families incur large sums of debt due to their experience with incarceration."
- "Despite their often-limited resources, families are the primary resource for housing, employment, and health needs of their formerly incarcerated loved ones, filling the gaps left by diminishing budgets for reentry services."
- "Incarceration damages familial relationships and stability by separating people from their support systems, disrupting continuity of families, and causing lifelong health impacts that impede families from thriving."
- "The stigma, isolation, and trauma associated with incarceration have direct impacts across families and communities." [30]

Further, the report found that all of these burdens are disproportionately shouldered by people of color and the poor, and noted that, "Almost one in every four women and two of five Black women are related to someone who is incarcerated… [and] about two-thirds of those in jail report incomes below the poverty line."[31]

In a recent article titled "Incarceration in Fragile Families," Christopher Wildeman and respected prison expert Bruce Western summarize their findings on the broad effects of mass incarceration as a policy solution, and how mass incarceration contributes to the disenfranchisement of poor communities and communities of color:

> As incarceration rates have soared, poor women and children have been left to deal with the separation, visitation, and return of their progeny, partners, and parents. A burgeoning research literature shows that incarceration, on average, impairs health and diminishes the earnings of adult men, many of whom are fathers. Incarceration also elevates the risk of divorce and separation, diminishes the financial resources and well-being of wives and girlfriends left behind, and is linked to increases in children's aggression, behavioral problems, and social marginalization.
>
> By further reducing the well-being of fragile families, mass imprisonment lays the ground work for a vicious cycle in which the criminal justice system does not diminish—and may even increase—addiction, abuse, and crime.[32]

Wildeman and Western join other criminologists in making the argument that incarceration—particularly when applied systematically to particular populations—destabilizes households and neighborhoods to such an extent that social problems and various forms of "crime" are actually exacerbated, ironically in the name of "public safety" and "crime reduction."

The research presented above illustrates the critical importance of taking into consideration the experiences of inmates' family, friends, and broader communities in order to improve incarceration policies and conditions. Moreover, this research strengthens the validity of the testimonies received during the "Public Forum for Family and Friends of Inmates" and analyzed in the subsequent section of this report, which appear to mirror the research findings. Forum

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[30] See full report here: http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf.
[31] See full report at page 13.
[32] See article at page 158; full text available at: http://www.futureofchildren.org/futureofchildren/publications/docs/20_02_08.pdf.

participants reported the same hardships found in national studies, including shouldering considerable economic burdens, suffering the anxiety of watching powerlessly as loved ones are abused or mistreated, and attempting to heal spousal and parental bonds all-but-broken by incarceration.

III. Data Analysis: Testimonies of SCC family and friends of inmates, including those who spoke on behalf of inmates

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The following data analysis is based on 35 oral and written testimonies of family, friends, and advocates of inmates. Testimonies were presented at the "Public Forum for Family and Friends of Inmates" and via written and electronic submission, and are also viewed and analyzed in the context of the 2014 Jail Observer Program's annual report. Although many of these testimonies were publicly presented, the identities of individual participants will remain anonymous in this report in order to preserve individual confidentiality and comply with standard qualitative methodological practice.

These testimonies illustrate what we believe is a civil and human rights crisis in the SCC jail system. Further, as previously noted, these testimonies mirror findings from other official, commission, and investigative reports in Santa Clara, San Francisco, and Los Angeles Counties. The most consistent and concerning themes that emerged from these testimonies included abuse of inmates by COs, inhumane living conditions, denial or absence of appropriate medical and psychiatric care, and general obstruction of contact between inmates and their families and friends. Degrading and abusive conditions and practices appear to be relatively commonplace in the jails, which produce great anxiety and fear for inmates and their families who struggle against an apparent environment of intimidation and violence.

In what follows, we present "primary" and "secondary" themes that emerged from the sum total of participants' testimonies. Primary themes are those that appeared with consistency (reported in at least half of submitted testimonies), and which present a considerable rights concern. Secondary themes are those that were mentioned by less than a majority of participants but still appeared with some regularity, and which also represent a considerable rights concern. Each theme is illustrated through direct quotes and paraphrased summaries of testimonies that best represent participants' individual and collective voices.

PRIMARY THEMES

Inadequate Physical Living Conditions

Participants consistently described what they believed were inadequate physical conditions inside the SCC jail facilities. Participants described everything from deteriorating buildings to the lack or denial of basic needs, including food, clothes, heat/shelter, and potable running water.

The mother of one inmate commented at length on conditions in the Main Jail:

> Main Jail South, as you know it is a very difficult place to live. I just saw my loved one over there. He is freezing. They are given a thermal. The air conditioning is on…. They live with cockroaches, water problems, and limited hot water. It's an old decrepit building. But in the meantime, people are living in these conditions and something needs to happen to keep them safe. And the staff, too, shouldn't have to work in such decrepit conditions…. [My son] is on lockdown 22, 23, 24 hours a day. He gets out three hours a week to go to the yard. He's taken out to shower. There's no programming.

Her observations match those of several others, who repeatedly described themselves (while incarcerated in SCC jails) or their detained loved ones going without proper clothing or heat. In addition, this mother was among the many participants who complained about the widespread use of solitary confinement or "lockdown" as a social control mechanism. Similarly, the mother of another inmate indicated that her son had not seen sunlight for seven months, since his "yard time" simply took place in another cell, rather than outdoors as intended and required.

Many participants who testified about inadequate physical conditions also described the complete lack of privacy that inmates have. For instance, participants criticized the fact that bathing areas are open to view, health care is often given without any physical privacy, and inmates often face discipline or retaliation for any attempt to create temporary cover (such as by blocking doors and windows) while undressed or bathing.

Some testimony described physical conditions, and neglect of those conditions by jail staff, that arguably amounted to "cruel and unusual punishment" (i.e. torture) under both Constitutional (Eighth Amendment) and international human rights (CAT, ICCPR) standards. Indeed, perhaps the most shocking and disturbing testimony collected in the entire data set involved the conditions of confinement and treatment of one young woman while she was in custody awaiting trial for a vandalism charge. We include the testimony below – which was presented at the Forum by a legal representative for the woman— at some length to illustrate the severity of reported conditions inside the jail, and to show how these conditions, along with abusive treatment, may amount to considerable rights violations.

> On January 15th, 2015, [she] was booked into the Elmwood Jail on charges of vandalism. On January 16th, [she] was transferred to the Main Jail in downtown San Jose, placed in Cell 13 in a single cell on Floor 8-A, where inmates seem to have mental health issues. On arrival, [she] was stripped of her clothing, placed in Cell 13 naked, no blanket, no toothbrush, no soap, no eating utensils, and no access to shower.
>
> On January 17th, a toilet overflowed and flooded the cell. There was nearly an inch of water and fecal matter covering the entire cell, and [she] remained in Cell 13 for two more days. During this time, because the water had been turned off to stop the flooding for three days, [she] had no access to clean, running water, and had to resort to drinking water from the toilet…. During this time in Cell 13, [she] developed severe diarrhea, had no functional toilet, [was] severely dehydrated, and experienced what she believed to be a fever in excess of 100 degrees. She was naked, cold, alone, and denied medical attention….
>
> On January 21st, [she] was removed from the flooded Cell 13 and placed in another cell and given jail-issued clothing and underwear. Because of the chronic and severe diarrhea, [she] quickly ran out of toilet paper. Over the next approximately 18 hours, she requested toilet paper 50 times.

According to the testimony, the treatment of this particular detainee escalated to include direct sexual harassment and severe physical abuse:

> Furthermore, guards periodically taunted [her] through making lewd, crude, and obscene comments about her—and I quote—"male genitalia." These verbal assaults were persistent and aggressive, causing [her] to be in constant fear she was going to be raped…. On January 27th, [a correctional officer] came to the jail cell with a pair of underwear which she threw in the cell. [The officer] entered the jail cell and grabbed her by the hair along with two other deputies…. Upon entering Cell 13, the three officers threw [her] on the floor, slammed [her] face against the floor. The only thing [she] remembers at the end of the attack is the [first correctional officer] saying, "I hope that hurt, bitch."

> [She] has no idea how long she was unconscious and laying on the floor. She was left naked from the waist down, bloody, with two severely swollen and blackened eyes, possible broken nose, swollen and bruised elbow, enlarging of organs, bruising on her arms, legs, and torso with a severe head injury…. [She] repeatedly requested medical attention and was not seen by medical staff for a period of five days.

Following the legal advocate's testimony above, the woman's sister repeated this story and presented pictures reportedly taken five days after the alleged assault, when the inmate was finally able to speak with medical staff. The pictures displayed the young woman's face and various body parts swollen and covered in bruises. The woman's sister also reported that partitions were intentionally placed in front of the woman's cell throughout the period of abuse so that no one could see her physical state or the conditions of the cell.

In sum, this particular detainee was allegedly held in brutally degrading and dangerous conditions for days at a time, sexually harassed, severely physically abused, and denied medical treatment—*all without having been convicted of a crime* (she was only charged and awaiting trial). This was the most extreme description of inadequate and manifestly inhumane physical conditions inside the jail facilities among all the collected testimony. However, stories of physical abuse—beatings by COs during evening shifts and cell extractions in particular—were repeatedly mentioned in testimony, and were described by some participants as "routine."

Violent Abuse by Correctional Officers

Reports of violence committed by jail COs were also prevalent in the submitted testimony, as was the anxiety inmates' family and friends experienced over the perceived physical safety of their loved ones. Reports of violence by COs illustrated specific patterns of conduct:

- Violent abuse often took place during evening shifts and during cell extractions, when an inmate is forcefully removed from a cell by several COs.
- In every case of violence described, more than one CO was involved (violence was committed in groups).
- Testimonies about violent abuse tended to include beatings and pepper spraying of inmates, at times while the inmate was handcuffed. In addition, several testimonies described inmates being choked with a towel by COs.

We note the consistency of these descriptions – just as we noted the incidents from other jail facilities in San Francisco and L.A. Counties – in order to demonstrate the credibility of the submitted testimony. A current inmate, whose written testimony was read by his family during the Forum, illustrated all of these common patterns in his narrative. He described a cell extraction that followed his attempt to protest what he and others thought were unfair practices:

> When it was my turn [for extraction], the door opened. I immediately laid down so as to demonstrate submission; that didn't work. I was met with a multitude of kicks and punches. I was eye gouged. I was maced first. My face was slammed forward, and then my head was forced back and held so the next person had a better angle. My legs/ankle were stomped on. When I was cuffed, the clamps were squeezed so tight—tight enough to cut right through my skin. I was told they weren't made for comfort. I was strangled with a towel…. My cellmate also said he was strangled the same way.

He continued: "…[T]his is routine."

The mother of another inmate described the similarly violent cell extraction of her son:

> He was beaten and extracted from his cell…. Twelve cops came in, and they took turns like he was an animal…. And my son has been locked up eight years, has never had any altercations with officers, was considered a role model inmate, has not been to trial for eight years…. In the meantime, when they beat him like he was an animal, kicked my son with their steel-toe boots while they all laugh, and choke my son with a towel, and say[] to the other inmates, "Look at [the inmate] screaming like a bitch." Excuse my French—but is that human?

Reports of violent abuse during cell extractions were fairly consistent, even in their descriptions of seemingly unique practices like choking inmates with a towel. From a qualitative methodological perspective, it would seem oddly coincidental for this description to be falsely included in multiple testimonies, thus suggesting the credibility of these reports.

Another trend in the descriptions of physical abuse was the delay or denial of medical attention afterwards. The mother of one 18-year-old inmate testified about him being beaten by COs and then denied medical attention:

> On April 4th, [2015], he was brutally beaten. As a result, his teeth were broken, his eye was really hurt, and his lip was also ripped and he lost two teeth. They created a false report and falsely accused him of resisting the confrontation—in the confrontation. When he tried to also do a claim regarding the injuries and the incident, the officials did not want to take it because they didn't want to be involved or be seen as involved in the incident. When he went to the dentist, he was given Tylenol and told everything was fine. However, he's still in pain and sometimes he [can] barely eat and [has] not been able to do anything else regarding the care of his teeth or medical care.

Indeed, the physical abuse of inmates seems to be exacerbated by the failure to provide adequate medical and/or psychiatric care. A current inmate's father described what he believed to be the connections between the physical abuse of his son and the failure to recognize and treat his medical and psychiatric needs:

> He got diagnosed in the jail with psychosis, which is from [radiation therapies as a child]. So his bad behavior was from that and we never got a diagnosis. So he was in and out of juvenile hall, in and out of jail. The last time he was here, he was beat up by the correctional officers. He's about five-foot-two—five-four? I don't know what he said or what, but they got him, picked him up, and threw him against a bed or bunk and he fell down and I don't know if he passes out or what…. The last time he was beat up, they—his finger [was] smashed down and his head was split open. He was taken to Valley Medical. The COs beat him up. I know a lot of his bad behavior is from his mental health issue. And instead of treating him with mental health issues, he was just beat up….

We discuss the denial of medical and psychiatric care as a separate theme below. However, we preface the point here to demonstrate the connection between the presence of violence and the absence of appropriate medical care in the jail facilities. This should also be understood as overlapping Constitutional and human rights violations, both in the arbitrary abuse and physical punishment of detainees without due process, and in the denial of adequate health care.

As a final point here, we illustrate that the violent abuse of inmates appears to have a consistent,

adverse effect on their families. Parents, siblings, and children of jail inmates consistently testified about their feelings of anxiety and helplessness in the face of what they described as abusive treatment of their detained loved ones. Moreover, the anxiety and family strain described in their collected testimonies mirrored the observations and findings of the Ella Baker Center's 2014 report on the effects of incarceration on inmates' families, discussed above.

- We're not allowed to hit our kids and beat our kids. If we do that, we go to jail. Domestic violence, that's what it's called. And that what these officers are doing.

- I'm 17, speaking on behalf of my brother in jail…. When I hear of people being murdered and tortured, it's horrible…. I don't think it's fair for moms, dads, brothers, sisters to worry if their relative is going to be okay or they're going to get hurt… we should learn and find and find ways to stop it.

- [My husband] was beaten by COs…. It's just horrible, the things that I hear. My children are scared. I'm afraid I'm going to see him with my children there visiting and they beat him.

- I'm here on behalf of my son…. On April 14, he was brutally beaten… as a result, I live in fear and I cannot rest if I do not receive a call from him. [I'm] always thinking about what's going to happen to him.

The family members of jail inmates reported that their anxieties were exacerbated by the fact that they had little or no confidence in the ability or intention of the SCC jails to provide their loved ones with appropriate health care, or to allow them access to see or advocate for their loved ones themselves. These two themes follow here.

Denial or Absence of Appropriate Medical and Psychiatric Care

The denial or absence of appropriate medical and/or psychiatric care was another dominant theme among all the submitted testimony. Participants described the denial of medical services, denial of necessary medications, failure to recognize and appropriately address mental illness, and delayed or inappropriate provision of medical care when required by medical necessity or requested by an inmate.

During the Forum, one mother testified on behalf of her son, whose symptoms from Hepatitis C are becoming more severe due to his reportedly being denied treatment:

> He's using some borrowed glasses taped at the sides that are not his prescription. He was given a court order in June to be taken to Valley Medical Center for an eye exam, and he has yet to go. He can't see his documents. He has frequent headaches, and there seems to be a big debate about who will pay to get his eye exams.

Many of the testimonies described the pursuit of medical attention as a daunting task for inmates, and written complaints consistently focused on the jails' lack of response to inmates' medical requests and seemingly arbitrary cancellation of inmates' medical appointments. In addition, inmates with chronic health conditions reported similar difficulties obtaining necessary medications. One former jail inmate of advanced age described his struggle to get necessary medications for his chronic heart condition:

> I just came in for a case that never got a conviction, and I was almost killed in jail for them withholding my medical. I have a heart condition, and they withheld all of my meds for six days… and I wasn't allowed access to the phone for six days, no medical, no medical treatment, no

> nothing.

Another inmate's father described the denial of appropriate medication and medical care for his son, who suffers from health problems from a previous surgery:

> When he was younger, he had a brain tumor removed. He had a metal plate and a shunt and he had migraine headaches. All the nurses tell him just to take Tylenol and get some rest. He needs medical care, and he hasn't got it since he's been there, three years.

The denial of necessary medications and appropriate care for chronically ill inmates presents a severe—and potentially fatal—threat. Such cases demonstrate why the provision of basic health care in custody is a Constitutional requirement—so that detention doesn't amount to a death sentence. This is particularly important in the context of pretrial detention, when suspects are presumably detained to *ensure* their appearance in court and have not been convicted of any crime for which they can be punished.

Inmates and their advocates also described the lack of appropriate psychiatric care—specifically for depression, anxiety, and post-traumatic stress disorder. A local pastor testified about the consistency of undetected and unaddressed mental illness in the County jails, which raises a further concern about how inmates' medical records are handled:

> On more than one occasion, I raised the issue of depression and anxiety. And always, I'm told—first time I thought this can't be true, but I've heard it enough to think it must be. [Inmates] won't ask for any medical attention for those kind of issues, because they say that the DA uses it against them. The records are not kept private – that they are subpoenaed or just gone through and any kind of prescription record is subject to show up in court. I just left Elmwood and spent 30 minutes with a young man, 22, sobbing. Just—that's all he could get out. He's a pretrial detainee who cannot make bail. He will not ask for help, because he's too afraid. So this must be a HIPAA violation; it must be.

Finally, inmates and their families protested the lack of dedicated, private space for inmates to consult with and receive treatment from medical staff. Participants described incidents of medical care and sensitive medical consultations taking place "in the open," with little regard for inmates' privacy or discretion. The mother of one current inmate described his traumatic experience from being examined in public:

> My son, one week before he got arrested, he got surgery right in the back of the cheeks and right in the middle [pointing to her back-side]. Until now, he's still bleeding. He went to the nurse down there, and the nurse wants my son to pull his pants down in front of everybody and bend over in front of everybody. And then my son—and my son cried. You know, until this point, one year until now… that's still bleeding.

The provision of basic medical and psychiatric care in correctional facilities is absolutely required by regulation and by Constitutional and international law. The collected testimony indicates that this basic care is often absent or denied in SCC jails. In addition, it appears that the SCC jails lack or fail to employ sufficient resources to ensure even minimum standards for private medical examinations, consultations, and general care.

Obstruction of Contact Between Inmates and their Families/Friends

The families and friends of SCC jail inmates consistently reported two barriers to visiting and communicating with their detained loved ones, both of which are consistent with the above-described research on the impact of incarceration on families. These barriers are (1) the financial cost of supporting, visiting, and communicating with loved ones in jail; and (2) the intimidation, poor treatment, and stigmatization of visitors to the jails.

According to participants, the financial burdens included the cost of bail, phone calls, lost wages, child-care, travel, parking, and commissary purchases:

- I'm a therapist at Elmwood…. I have a client who hasn't spoken to her family for 33 months, because they can't afford money on her books [commissary or "inmate welfare fund" account]. My understanding is that $25 gets you three phone calls. She has three envelopes until 2018.

- My boyfriend has been [in the Main Jail] for about three and a half years…. We spend about $150, $200 on phone bills monthly. And we can barely – we manage because we're struggling.

- It's extremely expensive for families to have someone incarcerated…. This is the wrong population to expect to come up with money to fund the inmate welfare fund. So we have, you know, very high costs for phones…. There's parking fees. If you're not in and out in a certain time, you have a $40 ticket.

- Profiting off inmates in any way is unconscionable…. That's one recommendation you can make is, like, going with the free phone call idea.

As noted, these narratives collected during the public Forum match previous research on the effects of incarceration on the families and communities of incarcerated individuals. These effects include the direct financial costs of incarceration (phone calls, commissary goods, travel, and parking fees—often at well above market rates), as well as the indirect costs caused by the loss of an adult in the household (lost income, lost benefits, need for child care). Consistent with the research findings, the testimonies of inmates and their families and friends described economic hardships that were exacerbated by the detention of their loved ones.

In addition to financial costs, the friends and families of SCC jail inmates reported stigma and poor treatment as another barrier to regular visits with their loved ones. Overall, participants described being treated "as criminals," and described the general attitude of disrespect from COs and jail staff toward inmates and their visitors:

> When you come and visit your son, and they treat you the same as [if] we are criminals too, as soon as you walk in those doors.

Another mother spoke of her treatment when visiting her son:

> I've heard more about people's union contracts than I ever want to hear again while sitting in these lobbies…. I don't want to be waved to a counter like this [waves hands]. I don't want to be hollered at. I don't want mothers with young children to be told if their kid isn't quiet, they have to leave.

Interestingly, the complaints about visitation were also shared by professionals whose job is to visit and work with inmates in custody, including social workers, NGO workers, and pastors or representatives of religious faiths. Many of these local professionals testified to being disrespected and impeded from regular visitation with inmates. They verified the accounts of inmates and their families of being stigmatized and disrespected during visits.

Finally, family members reported having their visits cut short due to various delays and procedural issues—including the alleged need to use visiting rooms as make-shift solitary confinement cells to punish inmates. One father commented:

> Just like the visits, we have to get there an hour early. They don't put the inmates out until 15 or 20 minutes later, and our visits are cut short. It's not right. And then the visiting room, you have inmates in there in housing there for six, eight hours because they didn't do something. My son was one of those inmates housed in there. He told me, Dad, we do something wrong, we have to be housed in the visiting booth for six to eight hours…. It's not right.

Visitation was also obstructed by last-minute and unannounced cancellations of visitation appointments. As a result, family members described their struggles to arrange travel and schedule visits, only to find that their appointments had been cancelled upon arrival. To no surprise, they described this experience as frustrating and costly, and recommended clearer communication with visitors on the status of their appointments.

SECONDARY THEMES

Inmate Classification

Classification of inmates in correctional facilities is typically done to determine the relative needs (such as psychiatric care) and security level (such as gang affiliation or protective custody) required for each inmate. Classifications can also signal an inmate's appropriate housing placement (for example, in the Main Jail, different floors house inmates of different classifications) and any earned privileges. In general, inmates' classifications are indicated by the color and pattern of their jail uniforms.

A major issue with inmate classifications is how they are used to identify inmates with some form of validated gang affiliation. Ironically, many inmates and their families felt that these classifications helped to exacerbate rather than disrupt "gang mentalities" in the jail. As one mother of an inmate stated, "The color system in the jail—it's not working—people are treated like gang members."

The founder of a local NGO that serves jail and prison inmates spoke at length about problems stemming from inmate classification practices. She reported that classifications reinforce gang mentalities: "What I have seen through my experience is classification is like a gang."

Incorrect and arbitrary classification practices are another major issue. The local NGO founder joined many others in observing that inmates are commonly classified incorrectly or arbitrarily, which results in failures to provide appropriate treatment and/or denial of privileges to some inmates. Furthermore, the testimonies noted that when classifications are incorrect, or when inmates meet the behavioral expectations necessary for reclassification, these reclassifications rarely occur. As one Forum participant said of her husband:

> Classification is another issue. Because of his charges, he hasn't gotten relief from the classification. He has no infractions since he's been there since the three years.

Since inmate classification determines the relative treatment and privileges of each inmate, it should be no surprise that problems stemming from incorrect or arbitrary classification are an important issue for inmates and their advocates. In the best case scenario, incorrect classification may result in the denial of earned privileges, but in the worst case, it can mean a failure to identify critical psychiatric, medical, or safety needs of particular inmates and detainees.

No Meaningful Public Accountability

The final consistent theme of all submitted testimony was criticism of what participants viewed as a lack of meaningful public accountability for SCC jail staff and the broader Sheriff's Office. Families and friends repeatedly reported that inmates' grievances and medical requests were routinely ignored, seemingly at all levels of command. While they voiced support for outside reporting programs (like the Jail Observer Program), they were frustrated by the fact that their issues were rarely answered with corrective actions. Inmates also reported being intimidated so as to not file grievances and complaints, with suggestions that they might "pay for it later."

Particularly during the public Forum, participants expressed an understandable distrust that their testimonies and suggestions for solutions—even at the Forum itself—would not be of any consequence. Their frustrations with being ignored were clearly communicated in their narratives and palpable in the room. Participants actually stopped the Forum to ask what was going to happen with their testimony and what actions would be taken, and many stated, "We don't need another report."

One participant, a self-described former jail site technician and law enforcement officer of over 25 years who now works with mentally ill patients, described what he believed was full awareness on the part of public officials about the problems detailed in this report:

> We don't need, you know, these commissions to study the things at the jail. We know what goes on at the jail. The Sheriff knows what goes on at the jail. The members of the Board of Supervisors know what goes on at the jail. The public defenders and the district attorney, deputy district attorneys, they know what goes on in the jail. People get whipped. People get kicked around—sometimes to death. [The death of Michael Tyree] wasn't an isolated incident.

Other inmates and their advocates described what they believed were conscious efforts by jail staff to hide abuse and to avoid video and other forms of surveillance purportedly designed for the safety of inmates and jail staff.

> What I want to raise is the cameras in [the jail facilities]. Because when my son was beaten, they have the camera on him when it was okay. But when he was getting beat brutally, the cameras weren't on…. This has been talked about over and over and over about the elevator abuse, when the cops are taking people inside the elevator and beating them.

Similar to reports from the L.A. County jails, inmates and their advocates described abusive practices taking place outside the view of surveillance cameras—often inside of individual cells or in other areas outside of camera view.

Before presenting the recommendations that stem from these collected testimonies, the following two sections provide the necessary legal framework or "lens" through which the policies,

practices, and experiences of family, friends, advocates, and inmates should be understood. Such a framework must include all levels of applicable law and standard. While the legal relevance of (national) Constitutional law and (local) municipal code is widely understood, the role of international law and human rights standards may require further explanation, as provided below.

IV. Role of Human Rights: Why apply a human rights framework to review or repair policy? Are human rights laws and standards relevant in the U.S.?

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International human rights principles apply to U.S. policy and governance in two ways:

(1) Legally: Through *binding international treaty law*, based on U.S. ratification of human rights instruments, and *customary law*, based on collective, long-standing respect for certain fundamental human rights.[33]

(2) Ethically: As a set of *international standards*, defined by human rights instruments and declarations, and informed by the *experience, research, and recommendations* of human rights scholars, NGOs, international legal experts, and U.N. oversight bodies working to implement human rights practices in the U.S.

International Human Rights Instruments Ratified by the U.S.

The U.S. played a leading role in the development of the United Nations Charter, the Universal Declaration of Human Rights (UDHR), and the International Criminal Court (ICC), and has signed every major international human rights instrument. However, to date, the U.S. has only ratified the Convention Against Torture (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR).[34]

When a state (i.e., nation or nation-state) *ratifies* a human rights instrument, it agrees to:

a) "Respect" the instrument. The state agrees to not manifestly violate the agreements, rights, rules, or standards articulated in the treaty.

b) "Protect" the rights of those falling under the authority of that state. The state agrees to guard the articulated rights against internal or external threats.

c) "Fulfill" the obligations of the instrument by creating an "enabling environment" in which the articulated rights can be reasonably enjoyed and standards can be reasonably met. For example, in agreeing to provide for the "right to education," based on ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the state agrees to ensure the existence of schools and infrastructure that make the right to education meaningful in practice.

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[33] "Human rights instruments" refer to the various documents that define human rights under international law. These documents include *declarations* (non-binding documents, such as the Universal Declaration of Human Rights) and ratified *treaties* (such as the International Covenant on Civil and Political Rights). Binding human rights instruments have the same legal weight as other international treaties, in accordance with the 1969 Vienna Convention on the Law of Treaties.

[34] When a state *signs* an international treaty, it affirms its support for and intention to comply with the terms of the treaty, but it does not create a legally binding agreement. A treaty is only legally binding if it is *ratified* by the state. In the U.S., the President can *sign* a treaty, but the treaty must be approved by the Senate (by a two-thirds vote) before it can be *ratified* as binding law. (If the Senate approves a treaty, the President still must formally ratify it.) The Senate can also attach conditions to its approval of a treaty.

The U.S. has signed but *not ratified* the Convention on the Elimination of Discrimination Against Women (CEDAW), and is one of the three remaining countries in the world that refuse to ratify the Convention on the Rights of the Child (CRC). In addition, even though the U.S. has ratified the CAT, ICCPR, and ICERD, it included *reservations* claiming that the instruments are "not self-executing," which means that their legal relevance is to be decided on a case-by-case basis through U.S. judicial and legislative processes.[35]

In sum, although this means that the U.S. *agrees in principle* with every major human rights instrument as a state signatory – and although it has ratified three key human rights instruments – the U.S. has thus far *failed to ratify* any of them such that they automatically become the "supreme law of the land," as the U.S. Constitution requires for any international treaties. Instead, the rights of individuals detained in U.S. jails, prisons, and detention centers are protected by a patchwork of cases regarding the constitutional limits of excessive force and cruel and unusual punishment, civil rights and antidiscrimination statutes, and enforcement of administrative regulations.

The U.S. stands alone in this grand historical contradiction—promoting human rights rhetoric while deviating from compliance with human rights obligations—a phenomenon that human rights scholars call "American exceptionalism."[36] Nonetheless, this does *not* mean that international human rights law has no application in the U.S. Rather, it means that human rights and international law represent a contested terrain within the U.S. legal system, as well as a critical reference point for proposed reforms of U.S. criminal justice and corrections systems.

International Human Rights in U.S. Jail and Prison Operations

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture or CAT) is one of the central human rights instruments for evaluating jail and prison operations. Among its key principles, the CAT has a lower threshold for the definition of torture than the U.S. Constitutional standards under the Eighth Amendment (discussed below). Article 1 of the CAT defines torture as: "[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[37]

Although the U.S. ratified the CAT and accepted it into law in 1994, and although U.S. officials and the State Department voice critical opposition when other countries employ torture, the U.S. has failed to implement the treaty to its fullest extent. In particular, the U.S. has failed to implement policies that would address the use of torture and extreme punishment against people under U.S. jurisdiction, whether inside or outside of its borders. Moreover, the U.S. has failed to respond substantively to U.N. recommendations and international criticism regarding violence, abuse, sexual assault, and widespread use of long-term solitary confinement in jails and prisons

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[35] "Reservations" refer to the exceptions (the "fine print") that may accompany and qualify or condition a state's ratification of a treaty.

[36] Hertel, S., & Libal, K. (Eds.), *Human Rights in the United States: Beyond Exceptionalism*, Cambridge University Press (2011).

[37] For full text of the Convention Against Torture, see: http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf.

throughout the country. For example, U.S. reports to the U.N. Committee Against Torture, which monitors implementation of the CAT, indicated that there is "no systematic use of solitary confinement in the United States," despite evidence of widespread and extensive use of solitary confinement and isolation in U.S. jails, prisons, and detention centers, and the use of isolation against vulnerable inmates, including juveniles and individuals with mental disabilities.[38]

Based on its review of U.S. implementation of the CAT, the Committee Against Torture's 2014 *Concluding Observations* recommended that the U.S. "reintroduce[e] the Law Enforcement Torture Prevention Act, which contains a definition of torture and specifically criminalizes acts of torture by law enforcement personnel and others under the colour of law."[39] The Committee also urged the U.S. to withdraw its interpretations of and reservations to the CAT in order to "ensure that acts of psychological torture are not qualified as 'prolonged mental harm,'" and further noted that "serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity."[40]

The chart below summarizes other key human rights instruments relating to jails and prisons, and identifies specific human rights issues reported in the SCC jail system based on testimony received during the "Public Forum for Family and Friends of Inmates."

Key International Human Rights Law Relating to Jails and Prisons*

International Instrument & Year of U.N. Approval	U.S. Signature & Ratification Date	Pertinent Articles and Standards	Examples of Human Rights Issues from Forum Testimony
Universal Declaration of Human Rights (UDHR) (1948)	Declaration 1947	Everyone has the right to life, liberty, and security of the person (Art. 3). No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (Art. 5). No one shall be subjected to arbitrary arrest, detention, or exile (Art. 9). Presumption of innocence (Art. 11).	Abuse, discrimination, and violence against detainees and inmates by jail staff. Solitary confinement used as punishment. Lack of facilities, programming, and staff training to address the health, welfare, and security of mentally ill or distressed inmates. Long-term pretrial detention and lack of access to legal assistance.

[38] See U.N. Committee Against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America*, page 10, http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cat_us_concluding_observations_2014.pdf. For more information, see full press release from the U.S. Human Rights Network: http://www.ushrnetwork.org/news-updates/cat-concluding-observations-press-release.

[39] See *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America*, pages 2-3.

[40] See *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America*, page 3.

International Instrument & Year of U.N. Approval	U.S. Signature & Ratification Date	Pertinent Articles and Standards	Examples of Human Rights Issues from Forum Testimony
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1969)	Signature 1966 Ratification / Accession 1994	Prohibits racial discrimination.	Culture of intimidation and racist and/or dehumanizing name-calling by COs against inmates, staff, and families.
International Covenant on Civil and Political Rights (ICCPR) (1976)**	Signature 1977 Ratification / Accession 1992	"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." (Art. 10)	Holding mentally distressed individuals in isolation, naked, and without adequate food, water, or clothing. Sexual harassment and verbal intimidation. Long-term holding in county jail without due process and day in court.
International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1976)	Signature 1977 U.S. has signed but not ratified ICESCR	Freedom from hunger and adequate standard of living (Art. 11). Right to health (Art. 12). Right to primary education (Art. 14). Protection for and assistance to children (Art. 10).	Inadequate and unhealthy food. Lack of programming and educational opportunities. Lack of protection and assistance for children of inmates and detainees.
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981)	Signature 1980 U.S. has signed but not ratified CEDAW	Anti-discrimination (Art. 1). Guarantee of basic human rights and fundamental freedoms (Art. 3). Suppression of trafficking in women and exploitation of prostitution of women (Art. 6). Equal rights to participate in education, recreational activities, and cultural life (Arts. 10, 13).	Improper sexual relationships between staff and pretrial detainees and inmates. Impact of incarceration and jail conditions on mothers and their children. Lack of sanitary supplies for women. Discrimination on the basis of sex and sexual orientation. Inadequate nutrition for mothers and pregnant inmates.
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Signature 1988 Ratification / Accession 1994	"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for… any reason based on discrimination of any kind...	Long-term isolation and solitary confinement. Excessive force, punishment, and retaliation. Barriers to medical and psychiatric care and/or no care provided at all.

International Instrument & Year of U.N. Approval	U.S. Signature & Ratification Date	Pertinent Articles and Standards	Examples of Human Rights Issues from Forum Testimony
(CAT) (1987)		when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (Art. 1)	Culture of criminalization and punishment of inmates and their families—treated as "criminals" even when in pretrial detention. Lack of privacy for medical treatment. Inadequate staffing to support transfer to medical appointments and facilities. Lack of access to sunlight and exercise, and long-term detention in solitary confinement.
United Nations Standard Minimum Rules for the Treatment of Women Prisoners (Bangkok Rules) (2010)***	N/A	"Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children." (Rule 2.2) "The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating." (Rule 5) "1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities…. Prison authorities shall help such women to access legal assistance. 2. Whether or not the woman chooses to take legal action, prison authorities shall endeavor to ensure that she	Overreliance on jail and detention for low-level, non-violent offenses. Lack of access to trauma-informed, gender-sensitive programming, and inadequate training for staff. Sexual harassment and discrimination against female detainees, inmates, and visitors. Lack of visitation options for children and families of female detainees and inmates. Negative impact of mothers' incarceration on children, elder care, and domestic responsibilities. Homelessness and precarious housing and employment as a result of detention or incarceration. Lack of staff sensitivity, programming, treatment, and medical care to meet the needs of LGBTQ inmates. Inadequate support for reentry programming.

International Instrument & Year of U.N. Approval	U.S. Signature & Ratification Date	Pertinent Articles and Standards	Examples of Human Rights Issues from Forum Testimony
		has immediate access to specialized psychological support or counseling." (Rule 7) "Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs shall be made available for women prisoners with mental health care needs in prison or in non-custodial settings." (Rule 12) "Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children." (Rule 23)	
Convention on the Rights of the Child (CRC) (1990)	Signature 1995 US has signed but not ratified CRC	Protection against discrimination (Art. 2.1). "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members." (Art. 2.2)	Law enforcement discrimination and use of excessive force against youth (particularly youth of color) and alleged gang members. Discrimination against children due to status of parent(s) incarcerated in jail.
Convention on the Rights of Persons with Disabilities (CRPD) (2008)	Signature 2009 US has signed but not ratified CRPD	Persons with disabilities must enjoy the inherent right to life and equality with others (Art. 10). State actors must protect the physical and mental integrity of persons with disabilities; guarantee their freedom from torture and cruel, inhuman, or degrading treatment or punishment; and prohibit medical or scientific experiments without consent (Arts. 15, 17). Laws and administrative	Lack of access to adequate medical and mental health care. Discrimination and abuse against disabled and mentally ill inmates. Lack of training and resources for staff and COs in dealing with mental illness.

International Instrument & Year of U.N. Approval	U.S. Signature & Ratification Date	Pertinent Articles and Standards	Examples of Human Rights Issues from Forum Testimony
		measures must guarantee freedom from exploitation, violence, and abuse. In case of abuse, States shall promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse (Art. 16).	
United Nations Standard Minimum Rules of Treatment of Prisoners (SMR) (Mandela Rules) (2015)***	N/A	[See discussion below]	Refusals to provide inmates with clean drinking water, clothing, bedding, and necessary items to maintain basic hygiene, such as toilet paper. Lack of access to fresh air, exercise, and safe facilities. Inadequate or inaccessible programming; lack of programming for reentry preparation. Abuse of mentally ill detainees and inmates. Decrepit facilities with mold and cockroaches.

*** Note:** For specific protocols and procedures that provide guidance on implementing the various standards, legal principles, and norms related to criminal justice and corrections, including treatment of people detained or incarcerated in jails, see also: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[41] Basic Principles for the Treatment of Prisoners;[42] United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);[43] and United Nations Standard Minimum Rules of Treatment of Prisoners (Mandela Rules).[44]

** **Key Provisions of the ICCPR:** The ICCPR contains over twelve articles that specifically address the United States' obligations in relation to the criminal justice system. For example, Articles 2 and 26 of the ICCPR guarantee freedom from discrimination and the right to equal protection under the law; Article 14 guarantees due process and the presumption of innocence. The ICCPR addresses central concepts of the meaning and purpose of incarceration; the preservation and restoration of civil rights; restrictions on the use of harsh sentencing; guarantees of due process for all accused individuals before courts and tribunals; treatment of children separately from adults; and prohibitions on degrading treatment or punishment. Key provisions include:

- *"Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."* (Art. 10.3)
- *"The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it.... Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners."* (Art. 6)

[41] See http://www.un.org/documents/ga/res/43/a43r173.htm.
[42] See http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx.
[43] See http://www.un.org/documents/ga/res/45/a45r110.htm.
[44] See https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

- *"The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law abiding and self-supporting lives after their release and fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility."* (Art. 6.5)

- *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."* (Art. 7) (This is a non-derogable right, meaning that it cannot be violated under any circumstance.)[45]

*** **Key Provisions of the Bangkok Rules and Mandela Rules:** The Bangkok Rules and Mandela Rules are the primary source of international standards regarding the treatment of people detained in prisons or other forms of custody. The Rules are not "binding," but rather are advisory and internationally agreed-upon principles that provide guidelines that (nation-) states and officials should refer and aspire to in modeling their domestic legislation and correctional practices.

The Bangkok Rules were adopted by the Economic and Social Council resolution 2010/16 on July 22, 2010, which recommended to the General Assembly the adoption of the following draft resolution: United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).

The Mandela Rules were adopted by the United Nations Commission on Crime Prevention and Criminal Justice, and unanimously adopted by the plenary of the U.N. General Assembly on December 17, 2015.

The Mandela Rules (a newly revised version of the U.N. Standard Minimum Rules of Treatment of Prisoners) create guidance and international standards that promote strict regulations limiting intrusive searches and the imposition of solitary confinement. Several of the practices described in Forum testimony about current policies and practices in SCC jails regarding the use of solitary confinement to isolate mentally disabled individuals, the use of pre- and post-visitation body searches, and sexualized, degrading treatment during such intrusive searches would violate the standards detailed in the Mandela Rules.

The Mandela Rules standards do not give rise to individual rights of action, and state actors and officials do not have specific obligations arising under the Rules. However, several practices discouraged under the Mandela Rules are also prohibited under international legal agreements, such as CAT. Thus, the Mandela Rules can provide a framework for assessment and accountability of correctional policies and practices.

Relevance of Human Rights as a Legal Discourse and Framework

Despite the legal ambiguities that result from U.S. reservations in the ratification of international human rights instruments, human rights discourse is far from irrelevant when it comes to foreign and domestic U.S. policy. For example, recent U.S. Supreme Court decisions referenced international human rights laws and practices to rule that people who commit crimes as minors should not be subject to the death penalty or life without the possibility of parole. This reveals how international human rights norms and practices can inform the interpretation of domestic laws and regulations, and can provide a common reference point to evaluate and inform local practices.

Human rights offer a powerful, universal framework that provides a standard for government agencies and authorities to evaluate existing laws and policies and to develop programs that advance and strengthen human rights in local communities and institutions. Many strategies for implementing human rights practices in the U.S. are based on the ratification and recognition of human rights instruments as the benchmark for local government policy and practices. A 2012 study and report by Columbia Law School's Human Rights Institute, titled *Bringing Human Rights Home*, describes these strategies and their reasoning:

> [The following] recommendations apply to all state and local officials because authority to implement human rights belongs to all local decision-makers, including governors, mayors, state legislators, city council members, law enforcement, city, county and town executives, and boards

[45] See http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf.

of supervisors. Indeed, fulfilling the promise of human rights will ultimately require multiple strategies and collaboration among all levels of government.

- Making Aspirational Commitments to, and Raising Awareness of, Human Rights
- Reframing Local Concerns as Human Rights Issues
- Fostering Participatory Governance
- Reporting on Local Compliance with Human Rights Treaties; and
- Conducting Human Rights Based Audits and Impact Assessments.[46]

A human rights framework is especially useful in that it:

- Places a focus on proactively identifying and addressing problems.
- Empowers and elevates public service.
- Fosters partnerships and promotes inclusivity.
- Enhances responsiveness and accountability.
- Emphasizes addressing systemic causes of discrimination.
- Provides opportunities to demonstrate leadership locally and globally [often in solidarity networks].[47]

In addition, organizations representing U.S. civil society have been increasingly engaged at the international level, linking local social problems to broad, problematic trends in U.S. policy. In 2014, during the U.N. Committee Against Torture's review of the U.S.' record under the CAT and the Human Rights Commission's Universal Periodic Review, representatives from U.S. civil society joined the international community, the Committee Against Torture, and other experts in exposing and pressuring the U.S. government regarding its human rights violations at Guantánamo Bay; torture in U.S. prisons, jails, immigration detention, and juvenile facilities; and the troubling pattern of police violence against mentally ill people and people of color.[48] The international attention to and criticism of these concerning trends increase the relevance of human rights in U.S. policy discourse and provide tools to incorporate human rights in practice.

Universal and Inalienable Human Rights: International and Human Rights Laws Protect People Detained in Jails, Prisons, and Detention Centers

Human rights are universal and derived from the inherent dignity of the human person. All people, regardless of their alleged or convicted crimes, retain fundamental, universal human rights. States assume obligations and duties to respect, protect, and fulfill human rights by ratifying international instruments, or treaties. International human rights law is binding on all states and agents of the state, including officials in law enforcement and correctional institutions. As a result, prison and jail officials must know and apply human rights laws and standards to protect the human rights of people in their custody.

Human rights are inalienable – they cannot be extinguished, waived, or taken away without cause. Fundamental rights, such as the right to liberty, can only be restricted with due process under certain conditions. For example, a person's liberty may be restricted if s/he is found guilty of a crime by a court after a fair trial with the presumption of innocence, or if s/he accepts a guilty

[46] See report at page 1; full report available at: https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf.
[47] See report at page 6.
[48] For a detailed discussion of these hearings and links to the CAT review documents, see the following from the U.S. Human Rights Network: http://www.ushrnetwork.org/events/cat-review-us.

plea. People may also be deprived of some liberty through jail detention, for example, if they are unable to raise sufficient money for bail, or if courts impose a sentence to be served in jail after due process and a fair trial. *Nonetheless, people who are detained or sentenced to confinement in a jail or prison do not forfeit their fundamental human rights and civil rights.*

To reiterate, inmates and detainees retain their fundamental and inalienable rights, including the right to physical and moral integrity; right to an adequate standard of living; rights to health, including medical and mental health care; rights to safety and protection; as well as rights to read, write, speak, exercise religious freedom, and communicate with lawyers and others in the outside world. Finally, human rights and constitutional rights require that inmates and detainees have access to procedures for objecting to their treatment, for example, through access to a grievance or complaint system, independent ombudsperson, or review board.

Yet as reflected in the Forum testimony, the systems currently in place to protect the rights of detainees and inmates in SCC jails are inadequate, difficult to access, present a very real risk of retaliation, and are unlikely to produce substantive reforms that address the reported problems in living conditions, access to medical care, and investigation of misconduct or abuse by correctional officials.

The next section provides an overview of the legal framework that governs the treatment of different categories of people housed in SCC jails, including individuals who have been arrested but cannot post bail, individuals in pretrial detention awaiting hearings or trials, and individuals who have been convicted of crimes and sentenced to serve time in jail.

V. Legal Framework: Relevant laws, regulations, and standards governing the operation of county/municipal jails and treatment of prisoners and their families in the U.S.

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From Bail to Jail: The Legal Context of Pretrial and Post-Conviction Jail Populations

The following sections describe the different legal standards that apply to individuals held in pretrial detention compared those who are convicted and serving sentences of months or years in SCC jails.

On any given day, the SCC jail system holds between 3,500 and 4,000 people, making it one of the largest jail populations in the U.S. The SCC Main Jail houses people convicted of misdemeanors and felonies who have been sentenced to incarceration in county jail, with sentences ranging from months to years. In addition, the jail temporarily houses arrestees until they are able to post bail, are released on their own recognizance (O.R. release), appear for arraignment, or appear for trial.

Daily counts of the number of people detained in SCC jail facilities and inmate demographics are available through the SCC Sheriff's Office's "Daily Jail Population Statistics" reports ("daily population sheets").[49] For example, on February 19, 2016, the jails held 3,529 total inmates, including individuals in pre-trial detention and those who have been convicted of misdemeanors and felonies, who are housed in the same facilities. Statistics for that date also revealed that:

- The jail holds far more men (3,076) than women (453).
- The average length of stay for inmates is approximately 214 days.
- **Approximately 75% of men and 69% of women detained in the jail are currently unsentenced**, and are in jail due to some form of pretrial or preventative detention.[50] That is, many people held in the jail are waiting for hearings or trials, and have not yet been convicted or sentenced for a crime.

The vast majority of people held in Santa Clara County jails are in pretrial detention for weeks or months, often simply because they do not have sufficient money for bail.[51]

The Impact of Pretrial Detention

Pretrial detention can be devastating for defendants and their families. Forum testimony from spouses, children, parents, grandparents, and friends of people detained in the jail described how the inability to raise money for bail and lengthy pretrial detention caused numerous problems for defendants and their families, including the following: Inability to travel to work results in job loss, leaving dependent family members and children to fend for themselves. Those unable to pay

[49] See daily population sheets here: https://www.sccgov.org/doc/Doc_daily_pop.pdf.
[50] According to the 2/19/16 "Daily Jail Population Statistics" report, among the unsentenced males in the jail, 2,057 (67%) were detained on felony charges, and 257 (8%) were detained on misdemeanor charges; among the unsentenced females, 224 (49%) of were detained on felony charges, and 89 (20%) were detained on misdemeanor charges.
[51] This finding reflects recent research concluding that in the U.S., approximately half a million people are in jail awaiting resolution of the charges against them – whether innocent or not. Nearly 30% of state court defendants with bonds of less than $5000 are detained.

rent are evicted from their apartments and unable to find alternative housing. Children are separated from their parents, and sick or elderly friends and family may be left to suffer without caretakers.

Pretrial detention not only threatens economic and social disaster for individual defendants and their families, but also costs billions of dollars each year. In 2011, the U.S. Attorney General estimated that nationwide, the annual cost of pretrial detention to taxpayers is **nine billion dollars**.[52]

Pretrial Detainees in Jail: "The Process is the Punishment"[53]

The realities of our overburdened justice system and complicated legal filing deadlines mean that defendants often have to choose between their right to a speedy trial and their right to a fair trial. The prospect of a lengthy stay in jail while awaiting court hearings increases the likelihood that defendants will accept guilty pleas rather than accept the costs and risks of availing themselves of their right to trial.

For example, if a person is arrested for a misdemeanor and remains in custody at arraignment, and she asserts her right to a speedy trial at the very first court appearance, she is supposed to be granted a trial within 30 days. If the person is out of custody at arraignment, she is supposed to be granted a trial within 45 days. In a felony hearing, prosecutors have 15 calendar days to file charges against the defendant, and, once arraigned, the defendant has the right to a speedy jury trial within 60 days.

Thus, in the case of a person who maintains their innocence against a felony charge and is not released on bail, s/he may have to spend a minimum of several months in jail before the case goes to trial. Faced with lengthy periods of pretrial detention while awaiting hearings and trial, many defendants decide to accept plea bargains—thus undermining their rights to a fair and speedy trial.

Moreover, defendants' right to a speedy trial must be balanced with concerns regarding the fairness of the trial. For particularly complex cases or cases involving expert testimony and technical evidence (such as DNA testing), defendants may prefer to waive their right to a speedy hearing or trial in order to better prepare their defense. As a result, they may spend many more months in jail while awaiting their opportunity for a trial.

As a result of these factors, many people detained in SCC jails have not been convicted of a crime, but instead are being held in custody while awaiting their day in court.

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[52] See Eric Holder, Attorney Gen., U.S. Dep't of Justice, *Address at the National Symposium on Pretrial Justice* (June 1, 2011), http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-110601.html (noting that many pretrial detainees have been "charged with crimes ranging from petty theft to public drug use," and that they are detained "because they simply cannot afford to post the bail required—very often, just a few hundred dollars—to return home until their day in court arrives").

[53] See Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court*, Russell Sage Foundation (1979). Little has changed since Feeley's 1979 analysis of plea bargaining in criminal courts, in which defendants' commonly waived their due process rights and accepted plea bargains to avoid the costs and burdens involved in demanding a full jury trial, e.g., lost wages from missed work, attorney's fees, wasted time, and bail commissions.

The Impact of Money Bail

Individuals are legally entitled to "reasonable" bail. Bail is supposed to be set at an amount that ensures the defendant will return to court hearings. In making the determination as to whether a defendant should be released on bail or on his/her own recognizance, courts assess the defendant's ties to the community, flight risk, and whether or not the s/he poses a danger to the community. However, as discussed below, judges are unlikely to conduct an independent analysis of the defendant's economic means, and instead rely on pre-determined baseline figures (defined in county and state "bail schedules") when setting a defendant's bail.[54]

Some individuals are denied bail and detained in the jail awaiting trial based on a judge's determination that they present a danger to the community. Defendants with a history of criminal offenses are unlikely to be released on bail. In addition, defendants who are homeless, mentally ill, or who have addictions, but who pose little danger to the community, are often denied bail as a matter of convenience to the court, in order to ensure that they appear for their scheduled hearing or trial. However, a significant number of non-dangerous but impoverished defendants are eligible to be released on bail, but remain detained in jail for weeks or months simply because they are unable to raise sufficient money for bail.

Continued reliance on a money bail system has created two distinct justice systems: one for the rich and another for the poor. Defendants released on their own recognizance must not only be able to raise and post bail, but must also convince a judge that they have sufficient "ties to the community" (often assessed in terms of employment and stable housing) such that they do not present a flight risk.

Although judges arraigning defendants and setting bail have the discretion to assess a defendant's individual circumstances and set bail accordingly, judges are unlikely to deviate from the Santa Clara County Superior Court's standardized bail schedule—a chart of standard bail amounts for various offenses.[55] Overworked public defenders with overwhelming caseloads are unlikely to push for such individualized assessment, and judges are unlikely to grant such requests, as individuals who fail to appear clog the court's docket and calendar.

Consequently, many of the defendants detained in the jail are not dangerous to themselves or others, present no significant flight risk, and could otherwise be released in the community to wait for their trial date – were it not for their economic inability to afford bail. Forum testimony from family members repeatedly highlighted the negative impact of the money bail system and pretrial detention for non-violent, non-dangerous offenders.

Conditions of Pretrial Detention

Since pretrial detainees have not been convicted, they may not be punished until proven guilty. But because pretrial detention is not legally considered "punishment," the Eighth Amendment

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[54] For the Santa Clara County 2015 Criminal Bail Schedule, see: http://www.scscourt.org/documents/criminal_bail.pdf. For the Santa Clara County 2015 Traffic Bail Schedule, see: http://www.scscourt.org/documents/traffic_bail.pdf. For the California 2015 Uniform Bail and Penalty Schedules, see: http://www.courts.ca.gov/documents/2015-JC-BAIL.pdf.

[55] See Superior Court of Santa Clara County, 2015 Criminal Bail Schedule, http://www.scscourt.org/documents/criminal_bail.pdf.

prohibitions against cruel and unusual punishment that generally govern claims regarding unconstitutional treatment or conditions in jails and prisons do not apply. Instead, individuals detained in jail awaiting arraignment or trial retain fundamental due process rights under the Fifth Amendment and Fourteenth Amendment, and may file civil rights lawsuits against specific agencies or officials (including individual COs) responsible for committing excessive force violations, discrimination, and other abuses against them.

However, as highlighted by testimony at the public Forum, and corroborated by reports and presentations to the BRC (see *Jail Conditions: Inmate, Staff & Family Perspectives* report and appointed expert Aaron Zisser's *Blue Ribbon Commission Presentation on Complaint and Grievance Process*, both included as appendices), it appears that many cases of abuse and violence against people detained in the SCC jails go unreported, uninvestigated, and unresolved.

Pretrial detainees also face procedural and practical obstacles to asserting their rights. If an individual in pretrial detention is abused in jail, s/he must file a complaint within 180 days (approximately six months) to preserve his/her administrative remedies. However, from a safety perspective, detainees who remain under the control of COs may be unwilling or unable to file grievances and complaints for fear of retaliation. And even if it is unsafe for detainees to report abuse, there is no way to toll the 180-day deadline for filing a complaint. Instead, detainees must make a formal complaint to the Sheriff, which triggers an investigation. However, even when detainees follow these procedures, there is little follow up with individual detainees (or their lawyers) to notify them regarding the outcome of the investigation.

Only after exhausting these administrative remedies can an individual bring a civil rights lawsuit to address abuse during pretrial detention (discussed below). From an economic standpoint, however, pretrial detainees who cannot afford to pay for bail are unlikely to be able to secure a lawyer to file such a lawsuit. Moreover, the practical challenges of bringing such a case—including difficulties interviewing witnesses who are also in custody or who may be released but are reluctant to testify against COs, and legal battles between a detainee's lawyer and attorneys for the correctional officers' union and the County—also impede the legal remedies available to individuals who suffer violence, discrimination, or civil rights abuses in pretrial detention. Consequently, abuse in jails is rarely uncovered. Nonetheless, the existence of abuse is clearly illustrated by incidents like the death of Michael Tyree, in which there is a dead body as undeniable evidence of misconduct.

Constitutional Standards and Case Law

Human rights build upon the rights enshrined in the U.S. Constitution and Bill of Rights, as well as other key historical documents such as the Magna Carta and the French Declaration of the Rights of Man. Fundamental rights, such as the right to a fair trial and the right to be free from torture, create basic protections for individuals accused and/or convicted of crimes.

The U.S. Constitution protects the fundamental human right of *habeas corpus*, the right of a person to challenge the authority of the court that imposed his/her sentence or the jail/prison official who detains him/her. In 1791, the Eighth Amendment of the Bill of Rights codified the right of individuals convicted of crimes to be free from excessive bail or fines and from cruel and unusual punishment. Under the U.S. Constitution, the Eighth Amendment protects people convicted of crimes and sentenced to serve time in jail or prison. Courts interpreting Eighth Amendment claims have held that inmates are entitled to a minimum standard of living, medical care, and freedom from abuse. However, for pretrial detainees who have not yet been convicted, courts review claims regarding jail conditions and treatment under the Due Process Clause of the

Fifth and Fourteenth Amendments, which protect against state actors (including police and prison staff) depriving individuals of life, liberty, or property without due process of law. In addition, the Fourth Amendment guarantees individuals the right to be free from "unreasonable searches and seizures," including arrestees subjected to excessive force by police.

In addition to these constitutional protections, convicted inmates and pretrial detainees are protected against violation of their civil rights by federal and state statutes. In 1963, the U.S. Supreme Court held that Title 42, Section 1983 of the Federal Civil Rights Act of 1871 enabled prisoners to sue correctional officials directly for civil rights violations experienced in prison. Section 1983 provides that "Any person acting under the color of law who deprives anyone of a right secured by the Constitution or laws of the United States shall be liable to the injured party." Corrections officials, the sheriff, and jail/prison staff acting under the "color of law" may be sued under Section 1983, creating the legal basis for federal courts to intervene in local jail issues.

In the U.S., federal and state courts review claims regarding the constitutionality of conditions of confinement in jails and prisons, as well as claims regarding violation of inmates' civil rights by correctional officials. The movement to recognize and protect prisoners' rights emerged in the wake of the civil rights movement. During the 1960s and 1970s, federal courts heard lawsuits brought by inmates challenging inhumane conditions, including cases involving abuse, torture, violence, rape, and discriminatory practices in prisons and local jails. Court decisions on the rights of inmates were generally grounded in the First, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution to address injustices in the day-to-day operation of prisons and jails. These cases addressed staffing, the use of force and disciplinary segregation (isolation), access to legal resources, lawyers, medical care, reading materials and programming, medical services, and rights to due process. In sum, cases during this period set a baseline to assess the constitutionality of conditions and operations of jails and prisons.

In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court ruled that the Eighth Amendment prohibition on cruel and unusual punishment applied not only to federal authorities, but also to the states and individual state actors "incorporated" via the Fourteenth Amendment's due process clause. As a result, conditions in jails and state prisons must not violate the Eighth Amendment's prohibition on "cruel and unusual punishment." **Correctional officers and other custody staff may be held liable if they exhibit "deliberate indifference" towards their duties to protect, supervise, and provide "due care" to address conditions in the jail that place inmates at risk of harm.**

In *Bell v. Wolfish*, 441 U.S. 520 (1979), the U.S. Supreme Court held that jail conditions amounting to punishment of a detainee violate due process. However, regulations that have a valid administrative or security purpose and are "reasonably related" to officials' interests in maintaining security in the jail will not be viewed as unconstitutional punishment, even if they impose severe discomfort or stress to detainees. Consequently, people who have not been convicted of a crime may be kept isolated in segregation or solitary confinement. For a detainee to raise a constitutional challenge regarding poor conditions or jail regulations, s/he must either show that the prison administration or individual officer intended to punish the detainee, or demonstrate that the regulation is not reasonably related to a legitimate goal. However, because courts are very deferential to "legitimate concerns" articulated by correctional officials as necessary for staff safety and internal order and discipline, it is extremely difficult for detainees to enforce their rights through the courts, from both a legal and practical perspective.

Nonetheless, the U.S. Supreme Court's recent decision in *Kingsley v. Hendrickson*, 135 S. Ct. 1039 (2015), underscores the requirement that **law enforcement officials must not use**

unreasonably excessive force against detainees or incarcerated people. The *Kingsley* case involved a man who was arrested and jailed on a drug-related charge, and was held in jail awaiting trial. After the man refused to remove a piece of paper that covered the light over his bed, police officers handcuffed him and moved him to a holding cell where they "smashed his head into a concrete bunk," beat him, Tased him while he was handcuffed, and left him alone in his cell for fifteen minutes before removing his handcuffs. Kingsley's suit for excessive force was grounded in one of the most fundamental provisions of the *Magna Carta* and U.S. Constitution – the right to due process that bars any state actor from depriving "any person" of "life, liberty or property without due process of law." Kingsley argued that liberty included the right to be free from unreasonable force during pretrial detention.

The constitutional question involved in Kingsley's case was what standard a pretrial detainee must meet to demonstrate unconstitutionally excessive force – whether he must only show that the guards' conduct was *objectively* unreasonable, or whether he must also provide evidence of a *subjective* intent to harm the detainee, i.e., that the officers *knew* their actions would harm him but continued anyway. The Supreme Court's 5-4 decision in Kingsley's favor held that, to prove an excessive force claim under Section 1983, **a pretrial detainee must only show that the officers' use of force was *objectively unreasonable***. Of particular note, the Court found that "individuals awaiting trial are particularly vulnerable to government abuse and should not be forced to prove that their alleged abusers intended to harm them in order to claim their rights were violated." The Court reasoned that "the Due Process clause protects a pretrial detainee from the use of excessive force that amounts to punishment."

The *Kingsley* decision brought the U.S. in line with international human rights standards and is similar to the standards of the European Court of Human Rights (ECHR). The ECHR standards do not require proof of "intent to harm," but instead hold that the use of force – even excessive force – is permissible only when it is "absolutely necessary" to achieve a legitimate purpose. When law enforcement officers do not expressly state an intent to punish, "a pretrial detainee can prevail by providing only objective evidence that the challenged government action is not rationally related to a legitimate [non-punitive] governmental objective or that it is excessive in relation to that purpose." **Legal scholars anticipate that the *Kingsley* case may mark a new trend in applying similar *objective unreasonableness* standards to analyze prisoners' Eighth Amendment claims regarding their treatment.**

The Court's reasoning in the *Kingsley* decision also brings the U.S. closer in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules," included as an appendix to this report), which urge correctional officials to provide protection for pretrial detainees and require that "in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman, or degrading treatment or punishment."[56]

Thus, although correctional facilities may restrict pretrial detainees' and inmates' liberties to ensure safety and security, incarcerated people retain fundamental rights that must be respected and protected: people detained in jails and prisons may not be subjected to physical abuse or punishment, sexual abuse, inhumane conditions, torture, or deprivation of their rights to religious expression. In addition, federal laws like the 2003 Prison Rape Elimination Act (PREA) aim to prevent and encourage reporting of rape and sexual assault in correctional facilities, both between inmates and between COs and inmates in their custody. In Santa Clara County, inmates and third parties can report sexual abuse, sexual harassment, or sexual misconduct in person, through the

[56] See https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/295/06/PDF/N1529506.pdf?OpenElement.

grievance and complaint system, or by writing a confidential letter to the facility captain, the Chief of Corrections, or the Internal Affairs Unit.[57]

In addition to the prohibitions against abusive treatment and conditions, correctional officials have additional "affirmative duties" to uphold the safety and well-being of the inmates in their custody. For example, sheriffs and jail officials have a duty to exercise "due care" to protect incarcerated people against conditions that create a risk of harm, including staff violence, medical and mental health conditions, self-harming behavior, environmental hazards, and inadequate provision of security or supervision. The U.S. Supreme Court has also interpreted statutory law to hold that the protections of the Americans with Disabilities Act (ADA) apply to inmates, thus allowing individuals with disabilities to challenge the conditions of their confinement with regard to disability accommodation, and has held that no "public entity" may discriminate against disabled individuals due to their disability (see *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1988)).

Access to medical and mental health care for people in jail is a critical issue that affects the safety and well-being of inmates and detainees. Inmates' access to adequate medical and mental health care is directly impacted by jail conditions, including overcrowding and outdated, dilapidated jail facilities. Moreover, current jail practices that include the use of solitary confinement as both punishment and "protective custody" for vulnerable or mentally unstable individuals can further provoke and exacerbate mental illness.

The U.S. Supreme Court's ruling in *Brown v. Plata*, 563 U.S. 493 (2011), upheld a ruling that required California to reduce its state prison population and found that serious overcrowding in California's prisons was a "primary cause" of Eighth Amendment violations, including substandard medical and mental health care. In response to the Supreme Court's ruling, the California state legislature adopted new "Realignment" laws to reduce overcrowding in state prisons by shifting some non-sexual, non-violent, and non-serious offenders to local jails to serve their sentences, in contrast to the historic practice of offenders serving sentences of over one year in state prison. As a result of "Realignment," local jails are now housing inmates who would have previously served their sentences in state prisons. As a result, local jails are experiencing overcrowding of inmates, a new population of offenders serving longer sentences in facilities designed for short-term stays, and insufficient public resources to provide adequate services and programming in jail facilities. This combination of pressures on local jails creates a climate wherein the civil and human rights of detained individuals are likely to be violated.

Solitary Confinement: A Form of Torture

Testimony presented at the public Forum revealed that pretrial detainees and other inmates are subjected to solitary confinement in SCC jails—apparently including the highly questionable practice of using visiting booths as make-shift solitary punishment cells. As currently practiced, solitary confinement of individuals violates fundamental human rights. International bodies, experts, and monitors, including the U.N. Human Rights Committee, U.N. Committee Against Torture, and U.N. Standard Minimum Rules for the Treatment of Prisoners all identify solitary confinement for longer than fifteen days as tantamount to torture. Moreover, the Mandela Rules—a nonbinding but emerging global consensus on minimum standards for the humane treatment of prisoners—also prohibit solitary confinement of people with mental or physical disabilities when such confinement would exacerbate their condition.

[57] https://www.sccgov.org/sites/sheriff/Documents/PREA%20Website%20FAQs.pdf.

To wit, prolonged solitary confinement of more than 15 consecutive days is prohibited as a form of torture. Moreover, the physical conditions of solitary confinement, and the use of solitary confinement for the mentally ill and youth offenders, constitute human rights abuses.

Recent lawsuits have challenged the practice of indefinite, long-term isolation in solitary confinement – also known as administrative segregation or "Secured Housing Units" ("the SHU") – in California prisons and jails as violations of due process rights and the Eighth Amendment prohibition on cruel and unusual punishment. The California Department of Corrections and Rehabilitation (CDCR) recently settled a class action lawsuit by individuals held in long-term solitary confinement, including some who had been isolated in the "SHU" for decades.[58] The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, served as an expert in the case and reported that the conditions of solitary confinement constituted cruel, inhuman or degrading treatment or punishment (torture). While the limited use of solitary confinement under certain conditions does not violate international law, arbitrary, indefinite or indeterminate isolation is prohibited, as is the use of solitary confinement for youth and people with mental disabilities.[59]

Here in Santa Clara County, the Prison Law Office recently filed a lawsuit challenging the use of solitary confinement in SCC jail facilities as a violation of constitutional and civil rights.[60] This litigation builds on momentum from the recently-settled case to end long-term, indeterminate confinement in Pelican Bay State Prison's "Secured Housing Units" (as described in the preceding paragraph).

Unlike California's "supermax" state prisons, county jail facilities were not planned or built to hold individuals for long terms or in solitary confinement. As a result, when inmates in SCC jails are sent to isolation – whether for assaulting staff, violating jail rules, or for "protective" custody – they are imprisoned in tiny, concrete cells as small as six by seven feet for weeks, months, or years at a time. Inmates held in such conditions have very little human contact and no access to sunlight, fresh air, exercise, or programming, which can provoke or exacerbate mental illness. Indeed, the one hour of "yard" time allotted to individuals in lockdown in the jail involves allowing the inmate to walk around an empty cell (without bed or desk). The Prison Law Office lawsuit argues that these conditions of confinement are constitutionally deficient and in violation of inmates' Eighth and Fourteenth Amendment rights. The suit also alleges a pattern of CO brutality and inadequate health care in SCC jails—consistent with the findings of this and other reports noted herein.

At the Forum, several community members and the families of SCC jail inmates also testified about the horrific treatment of inmates and detainees in solitary confinement, including abuse and long-term isolation of mentally ill people.

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[58] See *Ashker v. Brown*, filed May 31, 2012 (Northern Dist. of Cal.), settled Sept. 1, 2015.
[59] See Mendez Expert Report, *Ashker v. Brown* (March 6, 2015): https://ccrjustice.org/sites/default/files/attach/2015/07/Mendez%20Expert%20Report.pdf.
60 See Prison Law Office, "Santa Clara County Sued for Unconstitutional use of Solitary Confinement," http://prisonlaw.com/news/santa-clara-county-jail-class-action/

U.N. Standard Minimum Rules for the Treatment of Prisoners[61]

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules, or SMR) were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council in resolutions in 1957 and 1977. These standards are broadly considered to be the universally acknowledged minimum standards for the treatment of individuals detained in correctional facilities.

The rights of detainees and prisoners were further elaborated through the adoption of international treaties, such as the ICCPR and CAT, and statements of principles and procedures for implementing these human rights commitments and norms, including the SMR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Basic Principles for the Treatment of Prisoners (1990), and the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990).

The U.N. Commission on Crime Prevention and Criminal Justice recently revised the SMR and adopted the "Mandela Rules" (the revised Standard Minimum Rules) in 2015. The Mandela Rules aim to "[s]et out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management."[62]

The resolution adopting the Mandela Rules addresses nine thematic areas:

- Respect for prisoners' dignity and value as human beings;
- Medical and health services;
- Disciplinary action and punishment;
- Investigation of deaths in custody and allegations of torture;
- Protection of vulnerable groups;
- Access to legal representation;
- Complaints and independent inspections;
- Replacing outdated terminology; and
- Training staff to implement the SMR.[63]

The Mandela Rules aim to protect the human dignity of imprisoned people, including untried individuals in pretrial detention and convicted inmates. The guidelines include separating different categories of inmates (e.g., separating men from women, juveniles from adults, civil and criminal offenders, pretrial detainees and convicted inmates). The Mandela Rules also underscore that "untried prisoners" in the custody of police and correctional officials should be held in a safe environment, have the right to wear their own clothing, and have access to legal materials and legal advisers to prepare their defense.

In addition, the Mandela Rules articulate standards for cells and accommodations that meet basic requirements for health, hygiene, sanitary facilities, and inmate safety; guidelines on punishment and the use of force and restraints; and recommendations to provide education and recreation

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[61] See full document in Appendix or at: http://wwww2.ohchr.org/english/law/pdf/treatmentprisoners.pdf. See also Standard Minimum Rules (1955) at page 5; CJCA report (2011) at page 4.
[62] See Mandela Rules at page 8; see full document in Appendix or at: http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf.
[63] See Mandela Rules at page 4.

programming for all prisoners.[64] The Standard Minimum Rules also require that jail and prison staffing includes medical officers with knowledge of psychiatry – an increasingly pressing problem in U.S. prisons and jails, including in Santa Clara County. Notably, the Standard Minimum Rules also urge correctional officials to ensure that prisoners are allowed to maintain contact with family, friends, and the outside world, as well as accommodations for the free exercise of religion.

Applying a Human Rights Framework to Santa Clara County's Jails

The testimony from family and friends of inmates in SCC jails seems to indicate that poor conditions and treatment in the jails violate inmates' and detainees' rights to health, safety, and human dignity. Reports of inadequate access to medical and mental health care; filthy and unhygienic cells; abuse by COs and staff; long-term solitary confinement in inhumane conditions; and highly problematic practices like violent "cell extractions," all point to violations of inmates' civil and human rights.

The following sub-section provides the key laws and internationally recognized standards for the treatment of individuals detained and incarcerated in jails and prisons. These standards underlie our recommendations for the SCC jail system, as described in the next section of this report.

Requirements for State Officials

State officials and agents must be sure to protect the human rights of those detained in their care. Prisoners and detainees retain the right to be free from conditions of confinement that amount to cruel, inhuman, or degrading treatment or punishment (UDHR, Art. 5). All people are protected against torture (UDHR; ICCPR; CAT).

International human rights law is binding on all states and state agents, including jail and prison officials (ICCPR, Art. 2, para. 3). "Law enforcement and corrections officials are obliged to know and apply international standards for human rights," including the following:

- Law enforcement officials must be fully informed and educated about the prohibition against torture and that orders from a superior officer may not be invoked as a justification of torture.

- Law enforcement officials must be fully informed and educated about the prohibition against cruel, inhuman, or degrading treatment or punishment.

- Any statement made as a result of torture (e.g., during coercive confessions) shall not be invoked as evidence in any proceedings, except as evidence to bring the perpetrators to justice.

- Officials may use force only when it is strictly necessary.

[64] See summary of Mandela Rules at:http://www.unodc.org/newsletter/pt/perspectives/no02/page004a.html.

- All interrogation rules, instructions, methods and practices pertaining to detained and imprisoned persons shall be kept under systematic review with a view to preventing torture.[65]

Rights of Family Members of Prisoners

- The families, legal representatives, and, if appropriate, diplomatic missions of prisoners are to receive full information about the fact of their detention and where they are held. (Principles on Detention or Imprisonment, principle 12; Principles on Summary Executions, principle 6)

Medical Examination and Treatment Rights Upon Admission to Jail

- All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission. (Principles on Detention or Imprisonment, principle 24; SMR, rule 24)

Right to Health and Medical Services

- "At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality." (SMR, rule 22.1)

- "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers." (SMR, rule 22.2)

- "(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment." (SMR, rule 25)

Detainees' and Prisoners' Right to an Adequate Standard of Living

- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

- All persons deprived of their liberty shall have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing, and bedding.

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[65] OHCHR, *Human Rights & Prisons*, 2005, citing ICCPR, Art. 2, para. 3; Code of Conduct for Law Enforcement Officials, Art. 2.

- Accommodation for prisoners shall provide adequate cubic content of air, floor space, lighting, heating, and ventilation.

- Prisoners required to share sleeping accommodation shall be carefully selected and supervised at night.

- Adequate food and drinking water are human rights.[66]

Inmates' Rights to Physical and Moral Integrity

- Right to freedom from torture (any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions).

- Right to freedom from cruel, inhuman, or degrading treatment or punishment.

- Individuals who allege that they have been subjected to torture have the right to complain and to have the case promptly and impartially examined by competent authorities.

- Prisoners have the right to be provided with written information about the regulations that apply to them and about their rights and obligations.

- Prisoners retain protections against medical or scientific experimentation.

- Vulnerable inmates, such as youth and mentally ill people, require specialized protections according to their individual development.[67]

Punishment

The U.N. Standard Minimum Rules prohibit the following forms of discipline and punishment:

- "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences." (SMR, rule 31)

- "(1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31. (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health." (SMR, rule 32)

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[66] See Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials, 2005, http://www.ohchr.org/Documents/Publications/training11Add3en.pdf

[67] See Human Rights Watch and American Civil Liberties Union (ACLU), *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the U.S.* (2012), https://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf.

In the following section, we demonstrate how the human rights, Constitutional, statutory, and regulatory laws and standards described above can be applied as solutions to the many problems facing the SCC jail system at present. To this end, the HRC seeks to offer specific recommendations for bringing SCC jail practices into line with these law and standards, so as to ensure legal and humane treatment of individuals in jail custody.

VI. Recommendations

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SCC Human Relations Commission, Justice Review Committee

The HRC Justice Review Committee planned for the "Public Forum for Family and Friends of Inmates" in FY2014 and included it in the FY2015 work plan as a normal part of the committee's focus. However, the impetus for making the Forum part of the work plan was based on an awareness of rising community concerns from family, friends, and advocates who were experiencing disturbing interactions with inmates and staff in the Santa Clara County jail system throughout 2014.

This report makes a case for ensuring the respect, protection, and fulfillment of human rights practices in SCC jails as a minimum standard of custody operations. In addition, we reiterate that, by law, all applicable Constitutional, statutory, and regulatory legal protections and standards must be applied in the SCC jail facilities.

The Justice Review Committee is only one voice to reach the Board of Supervisors. As a standing committee of the Human Relations Commission, the JRC is chartered to "review and make recommendations regarding human rights concerns involving relations between law enforcement or Department of Corrections and Santa Clara County community members and inmates, and to gather input from the community, monitor and document findings and work closely with the Office of Human Relations [OHR]."

Taking into consideration the testimonies of inmates' family and friends, the social and historical context of jail operations in California, the human rights and legal framework presented above, and the consistency of our collected testimonies with those collected by the Blue Ribbon Commission and the ongoing operation of the Jail Observer Program, we hereby offer the following recommendations to the Santa Clara County Board of Supervisors. Our recommendations are meant to facilitate effective and lasting changes in SCC jail policies and practices so that they align with all applicable rights standards. We also identify three key areas where changes most need to be implemented – facilities, programs and services, and staffing – as well as recommended expansion of the JOP.

Facilities		
Direct Facilities and Fleet Department (FAF) to immediately resolve poor plumbing, water temperature, heating, lighting, and access to water both for consumption and shower use. Inmates should not have to wait for a new building to be constructed to resolve this human rights concern.	Ensure that HD digital cameras are placed throughout the facility and operated legally and consistently with best practices: • Cameras in jail visiting areas; • Complete ("blanket") coverage of jail facilities, no blind spots; • Frame rate of 30 frames per second; • Footage stored for 24 months. Implement cameras with a policy of "write, review, amend,"	Implement a classification system that conforms to best practices for housing different categories of inmates, including male and female, juvenile and adult, pretrial and convicted, mentally ill, physically ill, disabled, etc.

Facilities		
	whereby correctional officers can view footage *after* they write up standard reports and can amend their reports if they see something they missed. However, review of footage would be halted during any use-of-force investigation, and the footage would only be made available to the investigator.	
Ensure that jail facilities accommodate able-bodied and disabled inmates' daily access to outside spaces and sunlight.	Ensure that equipment required by disabled inmates is readily available, maintained, and provided during intake assessment and as prescribed by medical personnel.	Ensure that jail facilities are well maintained, clean, and free of mold, pests, and bacteria that may cause harm to inmates and staff.
Ensure that inmates are allocated sufficient and effective cleaning supplies to maintain the hygiene and safety of their cells and dorms.	Ensure that medical care and behavioral health care delivery systems have adequate space for in-facility urgent care, and ensure that prescribed equipment is on hand to avoid delays in accommodating temporarily or permanently physically disabled inmates.	Ensure that visitation accommodations for inmates, legal counsel, and family and friends are established, including: • Sufficient space for the volume of visits, based on the inmate population; • Accommodations that are supportive of all parties' interest in establishing and maintaining the human dignity of inmates and families; and • An easily accessible visitation appointment and cancellation system.

Programs & Services		
Ensure that medical and behavioral health care needs of inmates, as reported by inmates and in court orders, are responded to in a timely fashion based on medical and behavioral health best practices.	Ensure that inmates' access to and provision of preventative and urgent medical and behavioral health care are based on best practices for short-term and long-term needs.	Establish and develop inmate programming for both pretrial detainees and inmates convicted and serving sentences. Programming should increase inmates' capacity to return to the community, participate effectively in family life and work environments, and curtail recidivism. Programming should accommodate inmates' capacity for learning, linguistic needs, and ADA requirements, and should

Programs & Services		
		provide certification(s) of completion.
Ensure that inmates receive clear, easily accessible, and language-appropriate information about the inmate classification classification system and inmates' rights and responsibilities.	Ensure that inmates are familiar with and have access to grievance and complaint processes, including the Jail Observer Program (JOP), and that inmates are guaranteed confidentiality, consistent application, and timely, impartial responses when accessing these processes.	Ensure that prices of phone calls by inmates to their families, legal counsel, chaplains, advocates, and friends facilitate effective communication and expeditious processing of cases, and are based on legitimate costs that prevent vendor profiteering.
Ensure that a new inmate classification system is based on best practices that clearly conform to inmates' charges, behavior, and mental and physical abilities.	Ensure that the inmates and DOC staff are familiar with the inmate classification system and all rights and duties associated with the effective housing and management of inmates.	Ensure that office hours for pretrial detainees and their families are easily accessible and staffed to facilitate timely responses to questions about the inmates' stay in the jail facilities, navigation of the criminal justice system, and access to court appointed attorneys, advocates, or an ombudsman.

Staffing		
Ensure that a positive and safe working and custodial environment and culture is established and maintained for staff and inmates, that and any inclinations to intimidate or retaliate against an officer or inmate are swiftly and effectively responded to in a manner based on zero tolerance (see also *Developing the Organization's Culture*, figure 1, below).	Ensure that officer recruitment, selection, retention, and progressive discipline are based on best practices, the DOC's mission, and effective training.	Ensure that staffing levels meet best practice standards, effectively support safety and programming, facilitate the delivery of all services, ensure timely transportation of inmates within jail facilities and to necessary service locations, and improve the culture of DOC operations.
Ensure that staff are adequately trained in, understand, and consistently apply the Prison Rape Elimination Act (PREA) legal requirements.	Ensure that the supervision of staff is appropriate, with clear and consistent policies and procedures that reflect Constitutional law, applicable regulations, and human rights standards. Ensure that staff incentives support this same culture and practices.	Ensure that the provision of staff training is appropriate, timely, and sufficient to meet staffing needs and to improve and maintain jail security and officer and inmate safety. Staff training should promote the rehabilitation of inmates and contribute to reducing recidivism.
Ensure the development and use of humane inmate discipline practices, based on clearly	Ensure adequate documentation and accessibility of DOC policies and procedures. Implement an	Establish effective shift change communication procedures and staffing levels.

Staffing		
documented and communicated policies, procedures, and training of officers. A special emphasis on appropriate use of force should be included in policies, procedures, and the training of staff.	upgrade of computers, software, and security technology to meet best practices and standards for county jails.	

Jail Observer Program (JOP) and associated MOU with SCC, DOC, OHR and HRC		
Expand the current MOU for the Jail Observer Program to include up to 5 OHR staff members who will have security clearance and the ability to act in an ombudsman role with inmates, their families and county staff.	Provide for the hiring of 2-3 more JOP lawyers/paralegals with a background in mediation and ombudsman practices who will join the OHR staff. The current JOP program is understaffed, and the County can clearly benefit from additional staff to act as a neutral, outside resource for all those interested in the well-being and efficiency of the SCC corrections system.	Expand the current MOU to include additional signatories, or create two additional MOUs related to JOP oversight with county medical and behavioral health entities, to facilitate ongoing improvements and best practices in inmate health care.

Figure 1

Source: U.S. Department of Justice, "Sheriff's Guide to Effective Jail Operations," page 14 (2007).

Developing the Organization's Culture

Anticipatory Stage

1. Use agency advertising: the media, including news articles; and high school and college job fairs.
2. Use model jail officers in recruiting efforts.
3. Clearly state the organization's vision, mission, goals, and policies and procedures during the recruiting and selection process and explain the consequences of violations.
4. Develop selection requirements that emphasize professionalism and education.
5. Use psychological, social, and value-based instruments and interviewing in the selection process.

Formal Stage

1. Increase the amount of preservice training.
2. Increase the training emphasis on ethics and professionalism.
3. Develop or reorganize the Field Training Officer (FTO) program.
4. Implement a first-line supervisor training program that emphasizes problem solving and accountability.
5. Clarify the organization's vision, mission, goals, and policies and procedures. Clearly state the consequences of violations.
6. Implement a progressive disciplinary process for officer infractions.
7. Terminate repeat or serious offenders.
8. Terminate new officers who are not professional during the FTO and probationary stage.
9. Promote and reward officers who are productive, professional, and opinion leaders.
10. Reward officers who recruit professional applicants.

Informal Stage

1. Identify jail staff opinion leaders and include them in training programs.
2. Identify officer safety and security issues and needs.
3. Reduce low staffing and inmate crowding.
4. Involve middle managers and first-line supervisors in problem solving and strategy meetings.
5. Terminate or demote staff who do not support or implement solutions.
6. Initiate a collaborative conflict resolution process using small groups of officers to identify the safety and security needs of officers and the needs of the administration.
7. Create officer problem-solving teams to identify solutions to inmate control problems.

Source: P. Katsampes, 2004, "The Tail that Wags the Dog," Norwich University, Masters of Justice Administration Homepage, *http://grad.norwich.edu/.*

Finally, **the JRC recommends two additional changes in Custody Operations in Santa Clara County.**

The first is that Santa Clara County create an independent oversight agency that will regularly audit Santa Clara County Custody Division. This agency would also administer an officer and inmate grievance process as an independent entity from the custody system. The County would need to decide on the type of agency that would best serve the community (such as a Solicitor General, Independent Auditor, Community Commission, Federal Oversight or any combination of the above). We recommend that a small committee work on the agency designation. The committee should be made up of representatives from the County Administration, JOP, JRC, and potentially members of the BRC, Silicon Valley Debug, and PACT.

Cities and counties in California with oversight agencies:[68]

Anaheim
Berkeley
Claremont
Davis (city) and UC Davis
Fresno
Inglewood
Long Beach
Los Angeles (city) and Los Angeles County
National City
Novato
Oakland
Palo Alto
Richmond
Riverside
Sacramento
San Diego (city) and San Diego County
San Francisco (city) and SF BART
San Jose
Santa Cruz
Sausalito
Tulare

The second is that we urge for new leadership in Custody Operations. The JRC has heard testimony recommending that the Sheriff's office be removed from administering the jails. In research we have done, it is clear that the DOC and the Sheriff's office have both operated the jails in prior decades. And it is common for a county Sheriff to be responsible for Custody Operations. But we feel that trust in leadership is a key mandate for this role and that trust has been grievously eroded. The community, staff, inmates and family and friends of inmates all attest to this to the HRC, JRC and to the Blue Ribbon Commission. We feel this trust has eroded to such a degree that we cannot move forward in making necessary changes under the current leadership. In setting up new leadership for Custody Operations, clear lines of authority and accountability need to be established. Currently, it seems to be an ineffective relationship and operation between the DOC and Sheriff. This may also take a committee to work on to reach significant reform. **However, reform cannot occur with the current leadership in place.**

[68] See https://nacole.org/resources/u-s-oversight-agency-websites/.

VII. Conclusion

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In the *Final Report of the President's Task Force on 21st Century Policing*, Pillar Two focuses on policy and oversight, stating that:

> If police are to carry out their responsibilities according to established policies, those policies must reflect community values. Law enforcement agencies should collaborate with community members, especially in communities and neighborhoods disproportionately affected by crime, to develop policies and strategies for deploying resources that aim to reduce crime by improving relationships, increasing community engagement, and fostering cooperation.[69]

While the context of this quote is about broader policing practices and not necessarily custody operations, the concept of community involvement and oversight is still relevant. The SCC jail system is supported by taxpayers and local and state funds, and custody staff cannot manage a healthy and safe detention facility without public transparency and goodwill.

At the Forum, one family member described it this way:

> People are living in these conditions and something needs to be done to keep them safe. And the staff, too, shouldn't have to work in such decrepit conditions.

The recommended reforms that the HRC is advocating for in this report will likely create a safer work environment for custody staff, from COs to medical and psychiatric personnel, as well as inmates.

Santa Clara County values positive inter-group relations and human rights, and if we hold these values to be true, the time for action is now. As one community member testified at the Forum:

> I beg you guys to do what's right.... You tell them: "This needs to be done." Demand it for us. Because these commissions – if you guys aren't going to be our voice like you say you are, you don't need to be real easy on the Board of Supervisors…. We want action now because too many families are being affected by it; our children are being affected by it.

We cannot let another year go by without addressing the current custodial culture, accommodations, processes, and practices in Santa Clara County Custody operations. These areas that have been urgent in the past are now at a crisis level, and the County must act to address and redress them.

[69] See full report here: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

VIII. Appendices

A) Santa Clara County Human Relations Commission, *Public Forum for Family and Friends of Inmates*, transcript (2015).

B) Santa Clara County Sheriff's Office / Department of Corrections, *Daily Jail Population Statistics* (Feb. 19, 2016).

C) U.S. Department of Justice, National Institute of Corrections, *Jail Standards and Inspection Programs: Resource and Implementation Guide* (2007).

D) U.S. Department of Justice, *Sheriff's Guide to Effective Jail Operations* (2007).

E) U.N. Economic and Social Council, Commission on Crime Prevention and Criminal Justice, *United Nations Standard Minimum Rules for the Treatment of Prisoners* ("Mandela Rules") (2015).

F) Office of the U.N. High Commissioner for Human Rights (OHCHR), *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials* (2005).

G) Moscone Emblidge & Otis, LLP, *Jail Conditions: Inmate, Staff and Family Perspectives – Report to Santa Clara County Blue Ribbon Commission* (Feb. 20, 2016).

H) Zisser, Aaron B., *Blue Ribbon Commission Presentation on Complaint and Grievance Process* (Feb. 20, 2016).