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Clerk of Circuit Court

1996CV001835



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COLLEEN FOLEY
Executive Director

June 14, 2019

The Honorable Marshall Murray
Milwaukee County Circuit Judge
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

Re: *Christensen et al. v. Sullivan et al.*, 1996 CV 1835
Status of Class Action Consent Decree

Dear Judge Murray:

The plaintiffs provide this report on the status of the Christensen class action pursuant to the Consent Decree and in advance of the June 18th status conference. We are providing the Court with report of the medical monitor, Dr. Ronald Shansky, report from his May 2019 on-site audit of the medical, mental health and dental care program. Additionally the plaintiffs provide limited commentary on the population and medical provisions of the Decree. There have not been significant changes with respect to Decree Part I (population control/population cap) since the plaintiffs' January 2019 status report.¹ Decree Part II (medical, mental health and dental care services) on the other hand is undergoing significant changes that are too new to meaningfully evaluate. As of April 1, a new private medical services provider ("Wellpath") began a two year contract which the County anticipates will pave the way for a return to a County-run or "in-house" program.

¹ A copy of the January report (without attachments) is attached hereto for reference.

The plaintiffs are not asking the Court to take any action in connection with this report or the June 18th status conference.² The parties have begun discussions on what structures and processes should be in place to safely sunset the Christensen Decree. In particular, the parties met on April 24th to discuss approaches and remaining challenges for both Jail population management and the medical/mental health care program to operate without the oversight and incentives of a court order. The parties have committed to continuing these discussions and are prepared to update the Court, and to involve the Court as it desires, as this process goes forward.

Part I - Population

The Decree as amended in 2007 caps the CJF (jail) population at 960 inmates. Substantial compliance ultimately requires a judicial determination that the Jail population can be maintained at safe and appropriate level without judicial oversight. The relevant factors for making this determination include degree of compliance with the numerical cap *and* the extent to which the Jail has had to rely on transfer of inmates to other facilities, usually the HOC, in meeting the cap. Specifically, Part III, paragraph B of the Decree provides that the decree:

shall remain in effect until there is substantial compliance with the terms, provisions and purposes of the decree, and that *there is no longer a need for the court's involvement to prevent future overcrowding*. Substantial compliance *shall be measured by the following factors*: 1) having maintained the jail at or below capacity without the need for court intervention for two years; and 2) the *number of days* the jail was run *at the maximum limit*; and 3) *increased use of other temporary jail facilities to house inmates*.

(emphasis added).

To further ensure safe operation of the jail with a population of 960, the Decree also requires that the Jail cannot reduce staffing levels or fail to provide adequate training and supervision of staff. See Decree, Part II, ¶ F (“County defendants shall maintain or enhance the present staffing levels of the jail and shall assure adequate training and supervision.”).

No Cap or Booking Room violations this year, but overflow of pretrial detainees to HOC appears to be increasing. The Sheriff has reported no violations of Jail’s 960 cap based on “midnight count” data provided to the plaintiffs. This is an improvement over the last six months of 2018 when there were seven reported midnight counts in excess of 960. Booking room violations (inmates held in booking are more than 24 hours in booking without action or held in booking over 30 hours for any reason) have been rare in recent years and there were no violations so far in 2019. The Jail is always full, however, as reflected in the continued high number of pretrial detainees sent to the HOC on a daily basis as overflow. According to reports of House of Correction population (which the defendants stopped providing to the plaintiffs in February 2019) the HOC had 532 combined felony and misdemeanor

² The plaintiffs, however, may ask the Court’s guidance on how the plaintiffs or the Court are to evaluate staffing and transfers of pretrial detainees to the House of Correction, factors which are part of how substantial compliance is measured, but for which plaintiffs must rely on defendants for information.

pretrial detainees, as of the last report provided to plaintiffs on February 6, 2019. At this time of year in the past three years the reported Jail overflow of pretrial detainees at the HOC was notably lower; 386 total felony and misdemeanor pretrial detainees at the HOC on June 20, 2018, 315 on June 21, 2017 and 343 on June 22, 2016, for example. While these apparent increases may in part reflect changes in data reporting on some parole violation "hold" inmates, defendants to date have not confirmed that this is the case.

Correction Officer vacancy and turnover at both the Jail and HOC remain a concern. In reports to the Court since 2016, plaintiffs have expressed concerns over high levels of correctional staff vacancies and rapid turnover at both the Jail and House of Correction. The current Jail and HOC administrations appear to be actively recruiting officers on an ongoing basis. In addition the current Jail administration has reported improved retention in some respects (e.g. by revising scheduling and forced overtime practices). Moreover, the defendants report that all posts on all shifts are staffed in spite of turnover and vacancy rate.

Yet both the Jail and the House of Correction continue to experience very high turnover. A stable, trained and well-supported workforce is critically important to inmate (and staff) safety and well-being, and accordingly is required by the Decree. See Decree Part II, ¶ F. Given what some might characterize as a staffing crisis, the Court may wish to consider ordering defendants to report regularly on staffing levels and on their efforts to address pay or other issues that may be affecting those levels.

Part II - Medical, Mental Health and Dental Care

Dr. Shansky's audit report (attached) defers much of his evaluation until a next visit when Wellpath is more fully established at the Jail. His report reflects mostly his opportunity to engage with the new Wellpath medical program administrators and clinical leadership. In addition, he notes that the transition to Wellpath entails conversion to a new electronic medical records system and that this re-orientation has led to some mistakes of a kind that should improve with time and familiarity. Overall, his report reflects positive impressions of Wellpath's leadership and clinicians.

Wellpath's April 1 arrival immediately improved staffing of clinical leadership and RN staffing.

Wellpath provided an instant improvement over the prior program in that, at least at the outset, Wellpath has reduced the RN vacancy rate from Armor's 55% vacancy rate to 33% for RNs and an overall staff vacancy of at or below 20%. Notably Wellpath has filled key positions, including providing a full time lead psychiatrist, a PhD. Psychologist as the mental health administrator, and a new and apparently impressive medical director. Despite this good news, prior experience sounds a cautionary note: Armor, too, was fully staffed when it began but had difficulty over time retaining its leadership, providers and nurses.

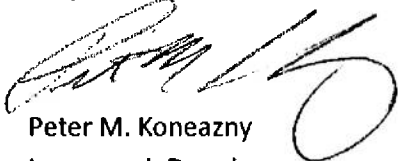
Contract with Wellpath is supplemented with a separate monitoring and consulting contract. The County's contract with Wellpath is supplemented by a separate contract to monitor the Wellpath Contract. The contract with NRI (NCCHC Resources Inc.), affiliated with the National Commission on Correctional Health Care (NCCHC), will provide oversight of Wellpath's compliance with its contract with

the County. The same consultant will be advising the County on transitioning to a County-run program. This support and oversight, by an agency with correctional clinical expertise, seems promising for building a high quality and sustainable program.

Conclusion

Plaintiffs remain optimistic that 2019 will see significant progress toward substantial compliance on both Part I and Part II of the Decree. Wellpath, combined with a contract monitor/consultant, will hopefully put the medical and mental health program on a firm road to sustained success as either a vendor or in-house program. Likewise, we are hopeful that the CJC's impressive work, with the support of the County and the Sheriff, will in the foreseeable future result in sustainable jail population control through a data-driven, evidence-based criminal justice system that uses its incarceration resources intentionally and for only those individuals for whom they are necessary.

Respectfully submitted



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REPORT ON SETTLEMENT AGREEMENT IN THE CHRISTENSEN CASE

MILWAUKEE COUNTY JAIL AND THE HOUSE OF CORRECTIONS

Site Visit May 22-24, 2019

Exit Meetings May 25, 2019

Introduction

I hope to meet with the new Sheriff by mid-June, but I am pleased to report that I met Ms. Denita Ball, who is the Chief Deputy and I also met regularly with D.I. Dobson, under whose leadership the operations continue to have a collegial approach with the health care program. There has been much upheaval at the Jail since there was a change in vendor, moving from Armor Correctional Health Care to Wellpath Correctional Health Care as of April 1, 2019. Additionally, disrupting the change or complicating it has been the introduction of a new electronic medical record. Therefore, the staff have undergone two relatively significant changes in their approach. Fortunately, the disruptions have been minimized and the service seems to have been maintained. However, because of the recent changes I decided to defer on my assessments in the outstanding categories. I also took significant time in interviewing and understanding the new leadership teams at both the Jail and the House of Corrections. With time spent trying to understand the people as well as the policies and procedures, I had less time to review records. I feel that with transitions, especially in record systems and vendors, there are expected errors or deficiencies which should be overcome by the time of my next visit in October 2019. Although I will defer on my assessments for certain areas, I am encouraged by other facts at hand.

The vacancy rate has been reduced overall for the staff at the two facilities, from 31% to an overall vacancy rate of 20% out of 128.8 total positions. Unfortunately, the vacancy rate effects predominantly nursing positions. The vacancy rate at the Jail is 33% and at the House of Corrections, 25%. The vacancy rate at the House of Corrections is 25% for registered nurses and 6% for licensed practical nurses. In addition, I learned that 13.8 of the advanced registered nurse practitioner positions out of 14 had been filled. Therefore, all of the mental health ARNP positions have been filled as well as 9.8 out of 10 medical nurse practitioner positions have been filled. I also learned that the full-time Chief Psychiatrist position has been filled as well as the Ph.D. Clinical Psychologist position, who has the title of Director of Mental Health Services.

There is also a new Medical Director, with whom I had a lengthy conversation and I was impressed by her energy and concern for patient outcomes. She makes rounds regularly in the disciplinary unit as well as the special medical unit. She seems very energetic and committed to providing the best possible care. With the transition in electronic medical record programs I have some concerns with the new program called "ERMA." In reviewing records, I identified some problems which can be attributed to the problems with the electronic record. There is a report that tends to provide a list of records of people who have been in the facility more than two weeks without receiving a history and physical. By policy, all people residing in the facility must be offered a

history and physical within 14 days. In reviewing the record of a person who entered on April 7, 2019, he did not have a history or physical, but he was not on the list of individuals who were in the facilities more than 14 days without a history and physical. In reviewing his record, we identified that his record had been clicked "unavailable." Unfortunately, he was therefore not picked up to be offered the history and physical at a later date. The regional manager is going to have a discussion with the IT people in order to fix the problem. In addition, on a new intake physical, we became aware that a supervisor had completed a history and physical and signed off on the note without ever entering something in the last two categories on the history and physical. We were told that ERMA should prevent that by giving an error message noting that areas are incomplete when you try to sign a record that is incomplete. Unfortunately, this supervisor was allowed to sign off on the record with inadvertent incomplete categories left on the physical exam. Those categories were "summary" as well as "disposition." The regional manager will also discuss the problem with this particular case with IT at Wellpath. Unfortunately, I was only able to review a few records, but these problems are not encouraging for the accuracy of reports generated by ERMA.

Fortunately, Wellpath has chosen to retain in leadership positions the Health Services Administrator at the Jail as well as the Quality Improvement Coordinator for both sites. I have been very impressed with the commitment of the Health Services Administrator as well as the energy of the Quality Improvement Coordinator. I am encouraged by the decision to retain these key leadership staff.

I. HEALTH SERVICES PROGRAM STRUCTURE

Compliance Status: Substantial compliance.

Findings

The new vendor has a single Health Services Administrator over both facilities; however, there are two Directors of Nursing, one for each facility. I was unable to get Attachment A or Attachment B; however, I am seeking Attachment B, which is the total staffing for both facilities by position. The positions of Directors of Nursing at each facility are already filled, as is the Health Services Administrator position. The position of Chief Psychiatrist has been filled, although he is working Tuesday through Friday every other week and Wednesday through Saturday on alternate weeks. I believe he can fulfill the duties of the Chief Psychiatrist on this kind of schedule.

Recommendations: None.

A. Program Administrator

I have already described my belief in the Health Service Administrator, so I believe she is very capable, knowledgeable, and concerned for the facilities.

Recommendations:

1. Add one assistant to the HSA position, which will allow her to retain focus at both facilities.

B. Medical Director

I have already described the Medical Director as highly energetic and dedicated. I will also add that there is an appearance of self-confidence in her clinical skills that affected me.

Recommendations:

1. The Medical Director must perform professional performance reviews on any primary care physicians providing services, especially at the House of Corrections.
2. The Medical Director must also provide professional performance reviews for the primary care nurse practitioners who perform such tasks as intake histories and physicals, sick call, and chronic care, along with urgent/emergent care.

C. Physician HOC

I was told that there is in fact a physician in place with a full license. I did not meet him or her because of time constraints.

Recommendations:

1. The Medical Director should complete a review of this care before the next visit in six months.

D. Chief Psychiatrist

The same psychiatrist I had met six months before my last visit has been hired to perform the duties. I was impressed by his experience and he is capable of providing oversight for the psychiatric nurse practitioners. I do consider his addition as progress and I hope his hours work out for both the Jail and him personally. He is expanding his hours up to 40 hours per week, although some of them are not during prime time.

Recommendations: None.

E. Nursing Director

There are two Nursing Directors, one for each facility, and I did have an opportunity to interact with each of them. I just met the Nursing Director at the Jail and will withhold my comments on her. Also, I just met the Nursing Director at the House of Corrections and will withhold my comments on her.

Recommendations:

1. Both facilities' Nursing Directors should provide professional performance reviews for their nurses based on the tasks assigned, such as booking at the Jail, sick call, urgent care, etc. This includes not only filling out the forms but also providing direct discussions with each individual nurse.
2. I would like to see professional performance reviews by each Nursing Director at each facility for each of their staffs.

F. Nurse Practitioners

There are 10 primary care nurse practitioner positions, of which 9.8 are currently filled. There are four mental health nurse practitioner positions, all of which are filled. Therefore, for the first time we have completely filled the nurse practitioner positions. I talked with the practitioners' supervisor for the primary care practitioners and I encouraged him to focus on initial hires and review each one's work and provide feedback to them so that they will improve their performance, both as clinicians and their facility with the electronic medical record.

Recommendations: None.

G. Staffing

Of the 128.8 full-time positions, there are 102.6 filled. This results in an 80% fill rate or a 20% vacancy rate. The Wellpath team is to be commended for accomplishing this reduction in vacancy rate in close to two months.

Recommendations:

1. Continue to recruit and fill positions for both facilities.

II. MEDICAL SERVICES

Compliance Status: Deferred.

Findings

A. Intake Screening

I reviewed a few records and also reviewed the QI studies. It was from the QI studies that we learned that the requirement to complete intake screening within four hours of booking the inmate creates some problems. First of all, booking is shut down by custody for a variety of legitimate reasons, which include the gender of the officer has to match the gender of the detainee, as well as intermittently there are problems in the area which custody has to address and during the time that it addresses those problems, custody is closing the booking process. The health care staff in the booking area at both facilities need to get together with the booking staff and work out minimizing the delays. For instance, at the House of Corrections there is a problem about state inmates being transferred to the House of Corrections. Those inmates are prebooked, potentially hours before they are received at the House of Corrections. For those inmates, rather than the time of booking to be used as the timeframe to start the clock and complete the screen within four hours, it should be the time they enter the facility as recorded by custody. Those details need to be worked out at each facility with custody so that performance can be accurately measured and integrity to the system be demonstrated. I am told that at the Jail all levels are reviewed as assigned by the registered nurse by an advanced level practitioner. There was a record in which a patient at the nurse screen denied an exam of the thigh wound and also at the history and physical, denied the practitioner an ability to examine the area. The practitioner must document that despite repeated attempts to examine the area the patient refused.

This is the same person who left blank two areas of the medical record but was allowed to sign off on the record.

Recommendations:

1. The regional manager should pursue with corporate IT the problems with reports generated by ERMA.

B. TB Screening

Compliance Status: Deferred.

Findings

I met with the new RN responsible for infection control and indicated to her what I would be looking for.

Recommendations: None.

C. Physical Examinations

Compliance Status: Deferred.

Findings Deferred.

Recommendations: Deferred.

D. Sick Call

Compliance Status: Deferred.

1. Nurse Sick Call
2. Advanced Level Provider Sick Call

Recommendations: Deferred.

E. Chronic Care

Compliance Status: Deferred.

Findings: Deferred.

Recommendations: Deferred.

F. Urgent/Emergent Care

Compliance Status: Substantial Compliance.

Findings

This area was not reviewed.

G. Specialty Services

Compliance Status: Substantial compliance.

Findings

This area was not reviewed.

H. Infirmary

Compliance Status: Substantial compliance.

Findings

This area was not reviewed.

I. Medication Distribution

Compliance Status: Substantial compliance.

Findings

This area was not reviewed.

J. Women's Health

Compliance Status: Substantial compliance.

Findings

This area was not reviewed.

K. Therapeutic Diets

Compliance Status: Substantial compliance.

Findings

This area was not reviewed.

Recommendations:

1. Consider establishing a heart healthy diet on the master menu.

III. Mental Health Services

Compliance Status: Deferred.

Findings

I met with the new mental health leadership team, which includes Dr. McWeeny, Chief Psychiatrist, Michelle, the Regional Mental Health Director, Kim Krachek, the Mental Health Director, and Katie Reed, the Mental Health RN. I am hoping that with the key positions filled the leadership team will insure not only timely but high quality mental health services to the patients. In my initial meeting with the staff I asked for their explanation of why, on a sick call complaint, the routine patients needed to be seen within 48 hours, but from intake, routine patients need to be seen within seven days. I was completely satisfied with the explanation because the sick call complaint is current symptoms whereas the routine, in mental health issues, is most likely prior history of mental health services. The approach seems quite reasonable. From intake, emergent is as soon as possible, urgent is within 24 hours and routine is within two days. There

were studies conducted by the Quality Improvement Coordinator which showed compliance from the booking area as well as compliance with the timeframes from sick call. I also asked about the chronic care program and was informed that the Director of Mental Health makes rounds in the mental health unit daily and patients are also seen daily in the special needs' unit. Patients in the general population need to be seen monthly by a prescriber with the exception being designated by the psychiatrist; he could see in up to 90 days, but these would be special designations. I discussed with him when he designates a patient needs to be seen within 90 days, there should be some field that is utilized in order to determine which patients he is requesting to be seen within that timeframe.

A. Intake and

B. Program

Findings

The timeliness of the program is documented in QI studies. However, the performance is needing a review in a qualitative way.

Recommendations:

1. Perform a study of intake measuring both transfer from Mendota versus from community providers as to whether the medications are continued as is on entry or whether they are changed.
2. Review the performance on intake and sick call and urgent/emergent care and chronic care for the quality of professional performance.

C. Pharmacy

Findings

This area was reviewed by the QI program for error rates and the rate of errors made by the pharmacy was extremely low, less than 1%.

Recommendations:

1. Continue monitoring errors by the pharmacy annually.

D. Urgent/Emergent and Emergency Psychiatric Services

Findings

There has not been enough time to perform a study and yet a study needs to be developed in working with the QI program. There are allegations going to the plaintiff attorney regarding changes of medications on the basis of cost or some other reason. I would suggest a study being conducted on intake such that records are identified where medications are changed or records are identified that the medications are continued so that there is data on this subject.

Recommendations:

1. Perform a study of the timeliness of emergency, which is same day, versus urgent, which is within 24 hours. Also, beyond the timeliness, evaluate the professional performance.

IV. Dental Services

Compliance Status: Deferred.

Findings

I sat down with the dentist who works both at the Jail and the House of Corrections. He indicated that access at the Jail was not a problem. He has been working with custody to improve access and that has been accomplished. When I looked at his records there were several days of nine of eleven patients seen and one in which 12 of 12 were seen. At the House of Corrections, he was concerned about the rumors that the movement officer would be assigned a different function and this would greatly inhibit movement to the House of Corrections' clinic. I talked with Dr. Hafemann and he indicated that he would look at alternatives to this change and not diminish access for either medical or dental services. I also discussed with the dentist the issue of the ratio of restorations to extractions. He indicated that he had been doing recent pulpotomies in order to save teeth, so I am counting either restorations or pulpotomies as part of the process of saving teeth versus extractions, in which a detainee loses a tooth.

Recommendations:

1. Continue to report the number of restorations versus extractions and include in the restorations number the procedures to perform pulpotomy.

V. Support Services

Compliance Status: Substantial compliance.

A. Medical Records

Findings

A new medical record, ERMA, is now being utilized. I have concerns about it but will withhold those concerns until my next visit.

Recommendations: None.

B. Pharmacy

Findings

The error rate appears to be extremely low. For that the pharmacy is to be commended.

Recommendations:

1. Continue intermittently monitoring the pharmacy performance.

VI. Miscellaneous

A. Physical Plant

Compliance Status: Substantial compliance.

Findings: None.

Recommendations: None.

B. Quality Improvement Council

Compliance Status: Deferred.

Findings

The new quality council has not met for three months since the transition occurred six weeks ago. The purpose of the minutes is to educate non-attending staff as to what was found and why changes are being made to assignments and maybe policies and procedures. I would hope that I would learn what is learned at the quality council meetings.

Recommendations:

1. Perform a study looking at the professional performance of booking and nurse intake screens and the assignment of the level in order to determine whether agency staff are performing at an equal or greater level than regular Wellpath staff and whether the staff who have been in the Jail at least a year, even though they are agency, have overcome the performance issues.
2. Have the Medical Director and the Nursing Director at the Jail review the levels assigned and determine whether they are consistent with the given definitions of acuity.
3. Review the timeliness of urgent/emergent mental health referrals as well as routine mental health referrals with regard to when they are initiated and when they are documented.
4. Look at the booking psychotropic medication orders as to whether or not they conform to continuity with what the patient has reported. There are legitimate reasons to change medications. The question is, are the legitimate reasons documented and performed by design as opposed to policy. "We do not provide that."
5. Perform a study within each major service area: intake, sick call, chronic care, specialty care, unscheduled offsite services, mental health care, medication administration, grievances, medical diets, etc.

Conclusion

I have sufficient reason to believe that the hiring problems have been mitigated to a significant extent. I would hope my expectations are confirmed at the next visit. I would also hope that the intake health care staff can work closer with custody in order to achieve appropriate timeliness rates. I also am expecting that the reassignment of the movement officer at the House of Corrections does not in any way diminish access to

services. I look forward to coming back and reviewing the program the third week in October.

Respectfully submitted,

R. Shansky, MD

RS/kh



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COLLEEN FOLEY
Executive Director

January 16, 2019

Via Electronic Filing

The Honorable Marshall Murray
Milwaukee County Circuit Judge
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

Re: *Christensen et al. v. Sullivan et al.*, 1996 CV 1835

Dear Judge Murray:

This letter supplements the plaintiffs' December 3, 2018 filing of medical monitor Dr. Ronald Shansky's second audit report of 2018 (as to Decree Part II – Medical Services). While this letter is primarily to address jail population control (Part I – Population), we note that 2019 will most likely see a significant change in the medical program, at the same time the Jail operations will be under the authority of a new Sheriff (Earnell Lucas was sworn in January 7, 2019).

The County has reportedly selected a new vendor for provision of medical, mental health and dental care, while the County Board is encouraging returning those functions to being managed directly by Milwaukee County. Armor's contract will extend to cover the first three months of 2019 to allow for a transition, most likely to the County's new choice of vendor. While an in-house (rather than vendor-run) program may be the ultimate goal, it is unclear whether the County will be in a position to take over the program in the near future.

A new medical services vendor may, at least initially, improve on the staffing challenges (notably the heavy reliance on temporary RNs and lengthy vacancies in psychiatry leadership) that Armor experienced over the past two years. Long term success, however, may well depend on the vendor's and the County defendants' commitment to competitive wages and to maintaining the Jail and HOC as safe, attractive and supportive work environments.

The plaintiffs hope that Sheriff Lucas will build on improvements initiated by outgoing Sheriff Richard Schmidt and jail commander D.I. Aaron Dobson, following the departure of long-time Sheriff David A. Clarke. Corrections Officer (C.O.) vacancies, turnover and forced overtime, matters brought before this Court in 2017 appear to have improved at the jail in 2018. Command level "wellness officers" enhanced inmate safety and reflected a renewed commitment to an environment of respect and professionalism. Reduced use of segregation (23 hours/day lock-in within the Jail's disciplinary unit "4D") was an additional sign of concern for inmate well-being and a more healthy Jail and workplace environment.

Workplace improvements notwithstanding, C.O. recruitment and retention appear to be a serious challenge, and one that raises concerns over future Decree compliance. Anecdotally, Milwaukee County loses a significant percentage of the C.O.s that it trains to other law enforcement agencies and many of its existing C.O.'s to other regional employers.¹ Staffing at the HOC is not directly covered by the Decree, but significant staffing vacancies were reported in 2018 for the HOC. To the extent staffing is low at the HOC, HOC bed space for Jail overflow may be limited and thus limit the Jail's ability to routinely transfer low risk inmates from the Jail to the HOC.²

Compliance Progress under Consent Decree Part I - Population

The central requirement of decree Part I is that the defendants maintain population within the Jail (officially the Criminal Justice Facility or CJF) at or below 960 inmates.³ In addition to the total population cap and limits on holding inmates in the "booking" area of the Jail, Part I requires the Jail to be fully staffed throughout the duration of the Decree. Decree Part I § IIF ("Staffing: Throughout the life of the consent decree, County defendants shall maintain or enhance present staffing levels at the jail and shall assure adequate training and supervision.")

Part I is to remain in effect until the defendants can demonstrate "substantial compliance" with the decree. A determination of substantial compliance will take into account the defendant's history of running the Jail below maximum capacity and the extent to which it was necessary to house Jail inmates in other facilities. Ultimately, the Court must determine that the defendants have demonstrated that "there is no longer a need for the court's involvement to prevent future overcrowding." See Decree Part I §IIIB.

¹ Early in Sheriff Clarke's tenure, he committed to de-unionizing the correctional workforce; gradually replacing sworn deputies with non-sworn and presumably lower paid C.O.s. One would assume that the lower pay and prestige of non-sworn officers and potential differences in job security and benefits for non-union positions are factors that have affected recruitment and retention. Veterans of the system have described the correctional workforce as having shifted away from "career" law enforcement professionals to individuals who may consider work in the Jail to be a transient commitment at best.

² Since the inception of the Decree in 2001, the Jail has used the HOC as a safety valve for the overflow of pretrial detainees from the Jail, the County's pretrial detention facility, in order to meet the Christensen population cap.

³ This "cap" number was initially 1100. In 2007, the cap was lowered to 960, to allow more flexibility, following a finding that the Sheriff was in contempt for holding 16,000 inmates in excess of 30 hours in the booking area between 2002 and early 2004.

While the County (through the vehicle of the inter-agency Community Justice Council or "CJC") has done important work in several areas and has enhanced the system's capacity to gather and analyze inmate population data, we have yet to see significant success in reducing the population of pretrial detainees, the core intended population of the Jail as the County's pretrial facility. Total pretrial detention, including those held at the Jail and the overflow pretrial population at the HOC, has not declined. And 2018 data suggest that the total pretrial population, and the pretrial overflow to the House of Correction, may have significantly increased in 2018, compared to 2017.⁴

The daily challenge to reduce the Jail population below the 960 cap reflects both commendable staff effort but also the effect of an enforceable limit.

Based on midnight count numbers consistently near, and occasionally over, the maximum of 960 inmates (or the *de facto* limit of 896 inmates during the weeks in 2018 in which 64 bed housing units were closed for repairs, one unit at a time) and the daily process of screening and transferring lower risk detainees to the House of Correction, cap compliance manifestly requires considerable staff effort. To their credit, D.I. Dobson's staff has been able to meet the cap number with only a few exceptions and with only one reported instance of being over the cap on consecutive days.⁵ The fact that this is a daily struggle, however, underscores the continuing necessity of having a judicially enforced cap on the Jail's population to incentivize these efforts.

Pretrial detention numbers have remained high, requiring excessive use of the House of Correction as a pretrial facility for relatively low risk individuals.

A significant concern, affecting whether Milwaukee County is close to demonstrating the ability to operate the Jail without judicial supervision, is that in spite of reduction in some *post-sentence* populations, pretrial populations at the jail and the HOC have not decreased and may actually have increased significantly in 2018.⁶ After averaging approximately 900 pretrial detainees per day (combined Jail and HOC) in 2017, the 2018 reports reflected pretrial detention numbers frequently over

⁴ For 36 weekly reports plaintiffs received since May of 2018 the total pretrial population averaged 1,187. By comparison, 16 sampled reports from 2017 reflected an average daily pretrial population of about 900.

⁵ In the last six months of 2018 the midnight Jail total inmate count exceeded 960 the following days: August 14, 15 & 16, September 3 & 6, November 29 and December 6. For approximately four months during this period, the Jail had different 64 bed housing units closed for renovation and repair, effectively reducing the cap goal to around 900. During the weeks with reduced capacity there appear to have been at least two occasions with more than 900 inmates at the midnight count.

⁶ The spike in pretrial detention (persons held pending trial on felony and misdemeanor charges) may have begun in late December 2017, when a report included 1065 total pretrial detainees and 456 pretrial detainees as overflow to the HOC, in contrast to total pretrial numbers typically around 900 earlier in 2017. The 456 overflow detainees at that the HOC were in contrast to mostly mid-300s for pretrial detainees at the HOC for most of 2017. Due to a changeover in the Sheriff's data systems, there were no weekly reports provided to plaintiffs for the first five months of 2018. The cause of this change remains unclear. It may reflect changes in coding, changes in practices with regard to which pretrial detainees are held at which facility, or factors outside the jail's direct control affecting the size of pretrial population. As noted below, we continue to make inquiries about the apparent pretrial population spike and will update the court if more information becomes available.

1200.⁷ This is remarkable -- and ominous -- because, over the past three years in particular, criminal justice system stakeholders have been actively engaged in an effort to *reduce* jail population.⁸

Increase in total pretrial detention and overflow pretrial numbers at the HOC may in part be due to a change in data reporting for inmates in various "VOP" (violation of probation) categories.

The total combined Jail and HOC population has decreased over time, from daily population averages over 2300 prior to 2016 to a total population count typically around 2000 in 2017-18. It is hard to determine, from the Sheriff's population reports alone, however, to what extent any of the declines were related to changes in jailing practices, as opposed to moving some State inmates held in County facilities for violations of probation (VOP) or other sanctions into DOC custody. One notable drop in Milwaukee County's system population in late 2015 appears to have been directly connected to reduction in the number of Department of Correction inmates, such as those designated "VOP" (for holds based on violation of probation or supervision). The various "VOP" - related categories had been in the 600s in 2014 and 2015, but shifted to a lower plateau (in the 200s and 300s) starting in late 2015 and continuing through 2017.

The increase in pretrial detainees in 2018 also appears to correspond to another drop in inmate numbers in the VOP-related categories.⁹ It appears that the VOP and extended supervision (ES) sanction populations hovered in the 185-220 range over the second half of 2018. It appears that inmates categorized as VOP have been replaced (or displaced) by rising numbers of pretrial detainees. One possible explanation for the increase in the overall pretrial detainee count and the higher numbers of pretrial detainees in the HOC is that inmates that had been categorized as "VOP with other charges" (i.e. detained on a probation "hold" but under circumstances that may entail a new criminal charge) have been re-categorized as simply "pretrial." A second, less welcome, explanation might be that various types of "VOP" inmates have been transferred directly to the State's custody (perhaps to one or possibly two 64 bed units on the HOC grounds that have been rented or given to the State, to effectively expand the capacity of the Milwaukee Secure Detention Facility (MSDF)) and that the loss of these VOPs allowed for more pretrial detainees. Unfortunately, plaintiffs were not able to get clarification of the 2018 changes in pretrial detention and VOP populations prior to submission of this report. We continue to make inquiries and will update the Court with any new information at the status conference scheduled for January 31, 2019.

The CIC and MacArthur Grant -- long awaited data system upgrade may improve population tracking.

⁷In 2015 and 2016 pretrial detention numbers were as high as the mid-900s but going back to 2013-2014 typical pretrial detention numbers were consistently in the 700s and 800s.

⁸Milwaukee County is in the third year of technical assistance and funding from the MacArthur Foundation, under its "Safety and Justice Challenge," with the specific focus on reduction of local incarceration by 15-18% by 2019.

⁹When the reporting to plaintiffs resumed in June 2018, the various State inmate categories (VOPs, VOP with other charges, etc.) were described differently than in the older format.

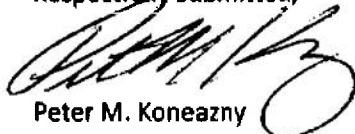
The Community Justice Council was formed in 2008, to enhance cooperation among criminal justice system stakeholders and to move toward an evidence based and data driven approach to criminal justice and incarceration. The CJC has had notable success in establishing a risk-based (universal screening) approach to pretrial jailing decisions, following a 2010 population study that confirmed an overrepresentation of detainees held on relatively low cash bail. The CJC has been able to attract grants and consultancies through the National Institute of Corrections and the MacArthur Foundation that have allowed more close scrutiny of some of our criminal justice processes, particularly those that impact defendants with mental illness. The CJC started a pilot mental health court and a pilot program for "post-booking stabilization" for people with mental illness, along with expanded use of "crisis response teams" to deter jailing individuals manifesting symptoms of mental illness. Other important initiatives, with potential to reduce jailing, include expanded use of deferred prosecutions and encouraging the Milwaukee Police Department's use of a "book and release" approach that avoids individuals unnecessarily being brought into the Jail for processing. CJC work has also significantly decreased the use of arguably illegal "commitments" for individuals unable to pay civil forfeitures for municipal ordinance offenses.

As noted above, however, the CJC initiatives have not significantly reduced pretrial detention numbers. Moreover, the goal of a "data driven" system to enable ongoing population analysis and control has not yet been fully realized. Recently, however, the CJC Director has indicated that we are close to implementing a comprehensive criminal justice data system and data "dashboard" in 2019. Plaintiffs look forward to this system improvement and hopefully, beginning this year, Jail population scrutiny can be an ongoing CJC staff and committee function.

Conclusion

The plaintiffs are cautiously optimistic that changes at the Sheriff's department and the medical services vendor will lead to progress on the medical program staffing issues. We hope that the continued work of the CJC, with renewed participation by the Sheriff's department, will contribute to the ultimate goal of reducing the Jail and HOC population. We also look forward to working with Sheriff Lucas's administration and with whatever changes take hold in the medical program. Finally, we hope that the addition of high quality data analysis capacity to the CJC's work will allow us to better understand Jail population dynamics and make significant progress in reducing the role of race, poverty and mental illness as drivers of Jail population pressures. However, until staffing and pretrial detention population concerns are resolved in a sustainable manner, this Court's supervision will remain crucial.

Respectfully submitted,



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