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CONSTANCE R. WHITE  
COUNTY CLERK  
**NO: 23-2-05019-9**

IN THE SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY

THE AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION,

Plaintiff,

v.

KING COUNTY, a Washington municipality,  
and DOW CONSTANTINE, King County  
Executive, in his official capacity

Defendants.

No.

**COMPLAINT FOR BREACH OF  
CONTRACT**

**I. FACTUAL BACKGROUND**

1. King County opened the King County Correctional Facility (“KCCF”) in 1986.

2. Three years after KCCF opened, the American Civil Liberties Union of Washington filed a class action lawsuit on behalf of individuals incarcerated at KCCF and KCCF correctional officers challenging unsafe conditions and treatment at the facility caused by overcrowding, insufficient staffing, and lack of adequate medical and mental health care—*Hammer v. King County*.

3. The Parties settled the dispute and entered into a settlement agreement dated June 11, 1998, and to which the ACLU of Washington is a party (“Settlement Agreement”). *See Exhibit A.*

1           4.       In the Settlement Agreement, King County promised, among other items, to comply  
2 with specific and comprehensive standards for jail health care, limit the population in parts of the  
3 jail, minimize unsafe conditions at the KCCF, and to provide sufficient correctional staffing to  
4 maintain a safe facility environment—including sufficient staffing to transport people to external  
5 medical appointments and all court hearings.  
6

7           5.       In 2022, there were significant public discussions and news articles about  
8 conditions in KCCF that raised concerns about whether Defendant King County was complying  
9 with its obligations under the Settlement Agreement.<sup>1</sup>

10          6.       In August 2022, King County through Dwight Dively, Chief Operating Officer and  
11 Director, Performance, Strategy and Budget for King County, sent the ACLU of Washington a  
12 letter containing information about King County’s actions in KCCF that likely constituted serious  
13 breaches of the Settlement Agreement. *See Exhibit B.*  
14

15          7.       In its August 2022 letter, King County admitted that many incarcerated individuals  
16 are not receiving mental health care or follow-up treatment.

17          8.       In its August 2022 letter, King County provided information that showed that  
18 individuals incarcerated at KCCF were not receiving medical care as required by the Settlement  
19 Agreement.  
20

21          9.       In its August 2022 letter, King County admitted that individuals incarcerated at  
22 KCCF were not receiving mental health care as required by the Settlement Agreement.  
23

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24 <sup>1</sup> In early 2022, due to significant concerns about deteriorating conditions in KCCF, public  
25 defenders and corrections officers joined together to ask county leaders to address significant  
26 concerns about KCCF. *See King County Public Defenders & Corrections Officers See Eye-to-Eye  
27 on Covid Crisis in Jails, KUOW, [https://www.kuow.org/stories/king-county-public-defenders-  
corrections-officers-see-eye-to-eye-on-covid-crisis-in-jails](https://www.kuow.org/stories/king-county-public-defenders-corrections-officers-see-eye-to-eye-on-covid-crisis-in-jails) (last accessed February 13, 2023).*







1 38. Defendant King County Executive Dow Constantine is in breach of the Settlement  
2 Agreement.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff respectfully requests relief as follows:

5 A. A declaration finding Defendant King County in breach of the *Hammer v. King*  
6 *County* Settlement Agreement, *See Exhibit A*;

7 B. An order requiring Defendant King County and Defendant King County  
8 Executive to come into compliance with the Settlement Agreement by a date set by the Court.  
9

10 DATED this 24th day of February 2023.

11  
12 GORDON THOMAS HONEYWELL

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION

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# EXHIBIT A

SETTLEMENT AGREEMENT

BY AND BETWEEN

ACLU OF WASHINGTON, CALVIN HAMMER, EDWARD BOEKEL, MELTON  
ATKINS, WILBORN KELLEY STEVENS

AND

KING COUNTY

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## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 1998, between the ACLU of Washington, Calvin Hammer, Edward Boekel, Melton Atkins, Wilborn Kelley Stevens (hereinafter "Hammer Plaintiffs") and King County, Washington (hereinafter "King County").

### WITNESSETH:

WHEREAS the parties to this Settlement Agreement wish to finally resolve the issues raised in *Hammer, et al. v. King County, et al.*, United States District Court for the Western District of Washington No. C89-521R (hereinafter "*Hammer lawsuit*") and dismiss that cause of action;

WHEREAS the Court in the *Hammer lawsuit* previously entered orders on February 26, 1990, October 12, 1991, and June 4, 1991 and retained jurisdiction in order to supervise the implementation of those orders; and

WHEREAS these orders provide for the termination of jurisdiction by the United States District Court; and

WHEREAS further supervision by the United States District Court is unnecessary;

NOW THEREFORE, in consideration of the mutual promises made hereinafter and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, THE PARTIES DO HEREBY AGREE as follows:

### SECTION 1. DEFINITIONS

The following definitions shall apply to the terms used in this Settlement Agreement:

1.1. King County Correctional Facility (KCCF) means the facilities located on the 500 block of Fifth Avenue in Seattle, Washington. The KCCF does not include the work release facility on the twelfth floor of the King County Courthouse, the North Rehabilitation Facility, the Regional Justice Center Detention Facility or any other satellite facility, except with respect to transportation issues set forth in section 2.3. below.

1.2. Tower means the housing areas of floors 7, 8, 9, 10, and 11 of the KCCF. Tower, as defined, does not include the Intake, Transfer and Release (ITR) area of the KCCF.

1.3. West Wing means the housing areas on Floors 1, 2, 3, and 4 of the KCCF, including all 4<sup>th</sup> floor housing areas, whether located in the west wing of the KCCF, the north wing of the KCCF, or other portions of the KCCF on that same level.

1.4. Population for any area of the KCCF addressed in this Settlement Agreement shall be determined by reference to the King County Department of Adult Detention Daily Physical Population Count.

1.5. Close Security Split Housing Area means transition housing for inmates with behavior problems, either for pre- or post-administrative segregation.

1.6. Continuous means that a particular post is staffed at all times except in specified emergency situations. Continuously staffed posts are to be provided relief for routine activities such as breaks, meals, and use of the restroom. A continuously staffed post will not be provided relief during an emergency response by the officer assigned to that post. An officer assigned to a continuously assigned post may vacate the post without relief only to assist in another area of the facility during a code blue, code red, or

code yellow emergency such as a fire, inmate fight, medical emergency, or escape attempt.

1.7. Dedicated means that a post is staffed at all times except in extreme emergencies. Dedicated posts are to be provided relief for routine activities such as breaks, meals, and use of the restroom. An officer assigned to a dedicated post will not under normal circumstances respond to a code blue, code red, or code yellow emergency. An officer assigned to a dedicated post will leave that post without relief only upon order of the ranking correctional supervisor on duty when that supervisor has determined that the undesirability of vacating the post is outweighed by the extreme nature of the emergency situation.

1.8. Intermittent means that a post will not be staffed at all times and may be vacated without relief for routine absences such as meals and breaks. "Intermittent" includes posts commonly described as providing relief and escort duties in the King County Correctional Facility (KCCF); officers assigned to these posts may also assist in other operational activities designated by management, including, but not limited to, security checks, inmate counts, inmate feeding, and emergency response.

1.9. Document means, without limiting its generality, correspondence, e-mail, telegrams, cables, teletype messages, mailgrams, reports, records, schedules, diaries, court dockets, court files and papers found therein, notes, summaries, memoranda, memoranda of telephone conversations, photographs, depictions, sketches, renderings, mechanical and electronic records of conversations or of statements or of telephone conversations, and all other printed, typewritten, written, recorded, or taped matter of any kind or description.

**1.10.** Jail Health Services (JHS) means the Jail Health Services program administered by the Seattle-King County Department of Public Health pursuant to any agreement, whether written or oral, with the King County Department of Adult Detention. In the event that health care in the King County Jail is at some future date provided by any other agency, whether public or private, the term Jail Health Services shall be construed to apply to whatever agency or entity is responsible for the provision of health care to inmates in the King County Correctional Facility.

**1.11.** National Commission on Correctional Health Care (NCCHC) is a non profit corporation which has developed standards and provides accreditation for medical care and health services in jails. All references hereinafter to standards for health services in jails shall mean a reference to the 1996 NCCHC standards, a copy of which is attached to this Settlement Agreement and incorporated by this reference. In the event that some organization is the successor to the National Commission on Correctional Health Care, just as the National Commission on Correctional Health Care is recognized as the successor of the American Medical Association with respect to the development of standards for health services in jails, then the term "NCCHC" shall be construed to apply to the successor organization.

**1.12.** American Correctional Association ("ACA") is a private, non-profit organization that has developed national standards for all components of adult local detention facilities. In the event that some organization is the successor to the ACA, then the term "ACA" shall be construed to apply to the successor organization.

**SECTION 2. STAFFING**

2.1. King County shall continue to maintain the following staffing pattern in the KCCF:

Floors 1, 2, and 3:

<u>Post</u> <u>Coverage</u>	<u>Shift</u>			<u>Days/Week</u>
	<u>1st</u>	<u>2d</u>	<u>3d</u>	
1 <sup>st</sup> Floor Officer Intermittent	1	1	1	7
Floor 2/3 Officer 1 Dedicated	1	1	1	7
Floor 2/3 Officer 2 Continuous	1	1	0	7
Floor 2/3 Officer 3 Intermittent	1	1	1	7

Fourth Floor:

<u>Post</u> <u>Coverage</u>	<u>Shift</u>			<u>Days/Week</u>
	<u>1st</u>	<u>2d</u>	<u>3d</u>	
North Unit Officer Dedicated	1	1	1	7
North Unit Activities Officer Intermittent	1	1	0	7
West Unit Officer Dedicated	1	1	1	7
West Unit Activities Officer Intermittent	1	1	0	7
4 <sup>th</sup> Floor Activities Officer Intermittent	0	0	1	7

Tower:

<u>Floor</u>	<u>Post Coverage</u>	<u>Shift</u>			<u>Days/Week</u>
		<u>1st</u>	<u>2d</u>	<u>3d</u>	
7	North Wing Officer Dedicated	1	1	1	7
	East Wing Officer Continuous*	1	1	1	7
	South Wing Officer Dedicated	1	1	1	7
	Infirmery Officer Continuous*	1	1	1	7
	Activities Officer Intermittent	2	2	1**	7

<u>Floor</u>	<u>Post Coverage</u>	<u>Shift</u>			<u>Days/Week</u>
		<u>1st</u>	<u>2d</u>	<u>3d</u>	
8	North Wing Officer Continuous*	1	1	1	7
	East Wing Officer Continuous*	1	1	1	7
	South Wing Officer Dedicated	1	1	1	7
	Activities Officer Intermittent	2	2	0	7
	9	North Wing Officer Continuous*	1	1	1
East Wing Officer Continuous*		1	1	1	7
South Wing Officer Dedicated		1	1	1	7
Activities Officer Intermittent		2	2	0	7
10		North Wing Officer Continuous*	1	1	1
	East Wing Officer Continuous*	1	1	1	7

	South Wing Officer Dedicated	1	1	1	7
	Activities Officer Intermittent	2	2	0	7
11	North Wing Officer Continuous*	1	1	1	7
	East Wing Officer Continuous*	1	1	1	7
	Activities Officer Intermittent	2	2	0	7

\* Coverage of these posts will be in accordance with the definition contained in Paragraph 1.2 of "Continuous" posts on first and second shifts and will revert to "intermittent" coverage during third shift.

\*\* The incumbent of this position during the third shift shall be utilized as designated by the shift commander.

2.2. Control Positions. King County shall continue the operational functions currently performed by floor and central control officers, although those positions are not shown in the staffing pattern set forth in Paragraph 2.1. above. It is within King County's discretion to amend the KCCF staffing plan from time to time as circumstances change. If King County reduces the number of control positions or the positions set forth in the staffing pattern in paragraph 2.1. above, it shall notify the *Hammer* Plaintiffs' counsel of the change, the reason for the change, and the effective date of the change. Any review of such a decision to reduce the number of positions shall be limited to whether the reduction in positions will prevent King County from providing the post coverage indicated for those posts designated as "Dedicated" and "Continuous\*", or in the case of control positions, whether the operational functions currently performed by floor and central control officers are continued. This Settlement Agreement shall not be construed to prohibit King County from redeploying central and control posts; provided, the

operational functions currently performed by floor and central control officers are continued.

**2.3. Staffing for Inmate Transportation to Court Appearances.**

**2.3.1. Transportation to Courts of the State of Washington.** King County shall transport all inmates who have “scheduled court appearances” to those appearances in courts of the State of Washington, including Superior and District Courts, but not municipal courts, in the following manner. “Scheduled court appearances” means those court appearances for an inmate of which the Department of Adult Detention has been notified by 1 p.m., the day prior to the appearance or which occur on a regularly scheduled basis, such as omnibus, initial appearance, or arraignment calendars. “Scheduled court appearances” shall not include “add-ons” by judges or their staffs, schedule changes without the above specified notice, or unannounced departures from established court practice. King County shall provide sufficient resources to transport inmates to scheduled court appearances; provided, King County’s failure to transport an inmate to a “scheduled court appearance” due to delays, cancellations, or unexpected emergencies beyond its control shall not constitute a violation of this Settlement Agreement. Nothing stated herein shall derogate from the authority, power, and jurisdiction of judges of the courts of the State of Washington.

**2.3.2. Transportation to Seattle Municipal Court.** King County shall transport all inmates to all “scheduled court appearances”, as defined above in Paragraph 2.3.1., for all Seattle Municipal Court appearances in courtrooms located in the KCCF or the Public Safety Building for daytime hearings so long as King County and the City of Seattle have an agreement that King County will provide transportation for such

appearances; provided, the City of Seattle notifies the Department of Adult Detention by 4 p.m., the day prior to any scheduled court appearance in morning court or by 9 a.m., on the day of the scheduled court appearance in afternoon court. King County shall transport all inmates to “scheduled court appearances” in Seattle Municipal Court night court held in courtrooms located in the KCCF; provided, the City of Seattle provides notification to the Department of Adult Detention by 1 p.m., on the scheduled day and so long as King County has an agreement to provide such inmate transportation to night court.

King County will immediately notify the *Hammer* Plaintiffs’ counsel if King County and the City of Seattle renew or terminate any agreement for transportation of inmates to night court. King County will allow the *Hammer* Plaintiffs’ counsel an opportunity for participation and comment regarding currently pending and future negotiations between King County and the City of Seattle on any agreement for transportation of inmates to night court.

**2.3.3. Staffing for Inmate Transportation for Medical Care.** King County shall transport all inmates to medical care outside the KCCF pursuant to the following terms. The determination of an inmate’s medical condition and the necessity for outside medical care shall be made by jail medical staff. In cases of medical emergency, as determined by jail medical staff, the transport will receive the highest priority, including priority over court transports, non-emergency medical appointment transports, and the staffing of continuous and intermittent posts. In cases of non-emergency medical care, jail medical staff will schedule appointments for outside medical care for those inmates whose medical condition, as determined by jail medical staff, requires outside medical

care while in custody. Appointments for non-emergency medical appointments will be scheduled as far in advance as possible consistent with the inmate's medical needs. King County shall provide sufficient resources to transport inmates to non-emergency medical appointments scheduled by jail medical staff; provided, King County's failure to transport an inmate to a non-emergency medical appointment due to delays, cancellations, or unexpected emergencies beyond its control shall not constitute a violation of this Settlement Agreement.

### **SECTION 3. CLASSIFICATION**

#### **3.1. Pre-Classification System.**

**3.1.1. Inmates Transferred From Prisons.** King County will ask that Washington State Department of Corrections (DOC) facilities provide DAD with information whether individuals transferred to the KCCF from DOC have a history of violent institutional behavior. King County shall consider the information received from DOC in making its determination of where such an inmate shall be housed in the KCCF.

King County shall institute a policy to ensure that any inmate transferred to the KCCF from a federal prison or out-of-state prison shall not be housed with the general population of the KCCF until a classification specialist has made a determination that housing such an inmate with the general population is appropriate.

#### **3.1.2. Pre-Classification Identification of Inmates with Records of Violent, Assaultive or Ongoing Aggressive Behavior in KCCF.**

King County will maintain a procedure to identify and integrate within records systems inmates with documented violent, assaultive or ongoing aggressive behavior in KCCF. As part of implementation of this procedure, King County will develop a

“Disciplinary History Risk Code” to identify inmates with documented histories of such behavior. The Disciplinary History Risk Code will be entered in the KCCF information management system. The Disciplinary History Risk Code will be read by a corrections officer during the intake process for each incoming inmate. When a positive notation is read in the inmate’s Disciplinary History Risk Code, the corrections officer will contact a designated classification specialist for review and selection of an appropriate initial housing assignment consistent with the security requirements of the inmate in question.

**3.1.3. Disciplinary Hearings.** King County will maintain a procedure to prioritize disciplinary infractions to ensure that all serious infractions are heard within the time provided in the American Correctional Association (ACA) standards for local jail facilities. King County will make staffing available to ensure that disciplinary hearings are conducted and reported seven days per week. The *Hammer* Plaintiffs will raise no objection to efforts by King County to extend the permissible time frame for conducting disciplinary hearings to reflect that contained in the ACA standards.

A designated classification specialist will review all serious infraction hearings to identify those inmates whose violent, assaultive or ongoing aggressive behavior in the KCCF warrants the assignment of a positive “Disciplinary History Risk Code.” In addition, classification specialists who hear disciplinary infraction cases of lesser severity will forward to the designated classification specialist reports on those inmates whom they believe should be reviewed for consideration for the Disciplinary History Risk Code. King County will ensure that the Disciplinary History Risk Code will be entered into the KCCF information management system..

### 3.2. Inmate Movement

King County will maintain procedures to ensure that all forms (currently known as Form 571's), which are used for the movement of inmates by corrections officers without the intervention of classification specialists, will be reviewed by a Sergeant to ensure that movement of the inmate by the corrections officer is appropriate under the circumstances. All such forms will be referred to the Classification Section for review within one shift after the movement has taken place.

### 3.3. Reclassification

King County will continue its policy of reclassification of inmates.

Reclassification may occur for the following reasons:

Persons who show emerging medical or mental health problems

A change in charge status, including sentencing

Problematic behavior

Protective custody status change

Incompatibility with others

Keep separate considerations

Administrative segregation reviews

Disciplinary behavior

Review for work release

Review for home detention

Review for North Rehabilitation Facility

Review for inmate worker status

Review for program consideration

Needs of the institution

Information received from other criminal justice agencies

Information received from outside sources, i.e., lawyers, parents, friends, etc.

Inmate requests for reclassification

Upon assignment to a close security split housing area, an inmate will be provided with an explanation of the procedures for requesting reclassification and the appropriate circumstances in which reclassification will occur.

### **3.4. Kite System**

King County will maintain the following procedures to ensure that inmate kites are received by the Classification Section of the KCCF in a timely manner: Classification kites will be readily identifiable by inmates and staff. A supply of classification kites will be made available on an ongoing basis in the KCCF housing areas. All filled out classification kites will be delivered directly to the classification specialist who is stationed on the floor on which the inmate is housed. King County will maintain receptacles for kites to be installed outside housing areas. Only jail staff will be authorized to pick up kites.

## **SECTION 4. BEDS**

### **4.1. 72 Hour Limitations:**

**4.1.1.** King County will limit the housing of inmates on mattresses on the floor to no more than a single seventy-two (72) hour period.

**4.1.2.** King County will implement a system to monitor inmates assigned to mattresses on the floor, to ensure that any such inmate is assigned to a mattress on the

floor for no more than a single seventy-two (72) hour period during each period of incarceration in the KCCF. This provision shall not apply to an inmate assigned to a mattress on the floor for medical or psychiatric reasons.

4.1.3. No inmate shall be assigned to a mattress on the floor in medical or psychiatric housing areas except upon the approval or direction of medical or psychiatric staff.

4.1.4. King County shall provide to the *Hammer* Plaintiffs' counsel copies of periodic cumulative reports generated by the system developed to monitor inmates assigned to mattresses on the floor pursuant to this section. Such periodic cumulative reports shall be generated at least once per month. King County shall grant access to the *Hammer* Plaintiffs' counsel upon request to information reflecting daily statistics regarding inmates assigned to mattresses on the floor.

#### 4.2. Capacity

4.2.1. King County shall not permit the population of the KCCF to exceed 1,697 for more than 24 hours. The population of the KCCF shall be measured by the number of persons housed in the KCCF exclusive of those persons in the Intake, Transfer and Release (ITR) area of the KCCF.

4.2.2. King County shall not permit the population of the Tower portion of the KCCF to exceed 1,262 for more than 24 hours. The population of the Tower portion of the KCCF shall be measured by the number of persons housed in the Tower exclusive of those persons in the Intake, Transfer and Release area of the KCCF.

4.2.3. King County shall not permit the population of the West Wing of the KCCF to exceed 435. The population of the West Wing of the KCCF shall be measured by the number of persons housed in that area of the facility.

4.2.4. King County shall not permit the population of the West area of the Fourth Floor of the West Wing of the KCCF to exceed 90. The population of the West area of the Fourth Floor of the West Wing of the KCCF shall be measured by the number of persons housed in that area of the facility.

4.3. Bed Limitations

4.3.1. All bunks installed in the KCCF shall have no anchor points.

4.3.2. King County shall not double cell inmates in those housing areas designated as pre-disciplinary segregation, disciplinary segregation or administrative segregation, or in close security split housing units.

4.3.3. In the units used for inmates who are assigned to a particular housing area for special custody needs, inmates will not be assigned to a mattress on the floor or an upper bunk bed if medical or psychiatric staff disapprove.

4.3.4. In those units where inmates under mental health observation are housed, the population shall not exceed the number of inmates equal to the number of beds in the unit as originally designed plus three additional inmates. No inmates under mental health observation shall be housed in any area of the Tower containing upper bunks.

4.3.5. All beds added to the original design of the KCCF shall be upper bunks installed over beds along the walls so as not to interfere with the lines of sight for correctional officers assigned to the south wing officer's stations or south wing core area.

4.3.6. King County shall not triple cell inmates in the North or East wings of the Tower.

4.3.7. King County shall not place inmates on the floor of the day rooms in the North or East wings of the Tower, except that during unforeseen peaking of the female inmate population, such use of the day rooms as an area to assign female inmate beds or mattresses shall be permitted for no more than a single seventy-two hour period in any fourteen day period.

4.3.8. King County shall maintain feeding slots in cell doors on the 11<sup>th</sup> floor of the KCCF so that all cell doors on that floor have feeding slots in them.

4.4. South Dormitory Population

4.4.1. King County shall limit the inmate population in each South Wing of the KCCF to no more than 160. King County shall further make a good faith effort to comply with a limit of 20 inmates per dormitory unit in each South Wing.

4.4.2. If the inmate population limit of 20 per dormitory unit in the South Wings is exceeded, the reason therefor shall be documented. King County shall promptly provide any documentation to the *Hammer* Plaintiffs' counsel with respect to overcrowding in the South Wing dormitory units upon request. The Director of the Department of Adult Detention shall promptly inform the *Hammer* Plaintiffs' counsel in the event of any unexpected emergency beyond King County's control which results in the population of any South Wing exceeding 160. King County shall reduce the population in the affected South Wing to 160 or fewer within three (3) days.

4.4.3. In the event that King County renovates or remodels a portion of the KCCF as described in paragraph 7.3. of this Settlement Agreement, King County may

request that the *Hammer* Plaintiffs' counsel meet and confer regarding the possibility of exceeding the limitations of this section for the time required to complete the renovation or remodel.

#### **SECTION 5. G DORM RENOVATION AND PROGRAMS**

Within 90 days of the execution of this Settlement Agreement, King County shall renovate the G dorm on the Fourth Floor of the West Wing of the KCCF for program space. Within 90 days of the completion of this renovation, King County shall provide a minimum of four hours per day, five days per week of new programs in G dorm. King County shall maintain A dorm, or a similar dorm in the West area of the Fourth Floor of the West Wing of the KCCF, as program space.

#### **SECTION 6. MEDICAL ISSUES**

##### **6.1. NCCHC Accreditation.**

**6.1.1.** King County shall maintain NCCHC accreditation and continue to meet all standards necessary to maintain NCCHC accreditation, including those standards designated as "essential" by the NCCHC and the following standards or their successors designated as "important" by the NCCHC:

- J-08: Privacy of care
- J-11: Grievance procedure
- J-23: Staffing levels
- J-29: Hospital care
- J-39: Mental health evaluation
- J-41: Assessment protocols

J-42: Continuity of care

J-54: Inmates with drug or alcohol problems

J-68: Right to refuse treatment

6.1.2. As part of compliance with essential standards J-04 (Policies and Procedures), J-18 and J-19 (Training), and J-36 (Emergency Services), King County shall: (1) maintain a system for inmate access to emergency healthcare; 2) describe in writing the responsibility of healthcare staff for emergency assessment and care as it relates to triage and timely referral; and 3) maintain and appropriately update ongoing training programs for all healthcare providers regarding emergency assessment and care.

One function of any quality assurance committee established in accordance with Standard J-05 will be to identify and bring to the attention of the Health Authority (as defined in the NCCHC standards) appropriate training needs and/or deficiencies. It shall be the responsibility of the Health Authority to consider and, when appropriate, incorporate such recommendations into the Jail Health Services training plan.

6.1.3. King County shall make available to the *Hammer* Plaintiffs' counsel upon request all technical assistance reports, recommendations and other documents to or from the NCCHC with respect to King County's compliance with NCCHC standards.

**6.2. Peer Review and Quality Assurance.**

6.2.1. Any and all peer review programs and quality assurance programs established in accordance with standard J-05, or its successor, shall involve the participation of regular faculty (as distinguished from clinical faculty) from the University of Washington in an appropriate healthcare field or a qualified healthcare professional not affiliated with the Seattle King County Department of Public Health. King County may

comply with this requirement through the participation of any Jail Health Services or Seattle-King County Department of Public Health staff who are appointed to the regular faculty of the University of Washington schools of Medicine, Nursing or Dentistry; however, in the event that no such faculty are on staff with Jail Health Services or with the Seattle-King County Department of Public Health, then King County shall undertake its best efforts to solicit members of all quality assurance or peer review committees from the University of Washington or a qualified health care professional not affiliated with the Seattle King County Department of Public Health.

**6.2.2.** The quality assurance committee or committees established pursuant to Standard J-05 shall review and monitor the following categories of records:

- a) Outpatient care charts.
- b) Infirmary care charts.
- c) Charts of individuals referred to outside medical facilities.
- d) Dental care charts.
- e) Psychiatric care charts, including care by psychiatric evaluators and psychiatric nurses.
- f) Charts of patients with chronic conditions.
- g) Information contained in charts with respect to nursing care.
- h) Information contained in charts with respect to physician care.
- i) Information contained in charts with respect to 14 day health assessments.

The foregoing list of categories is neither exhaustive nor does it carry an obligation that King County review any particular kind, number or category of charts or information at any given time. The determination of which information and/or records to be reviewed and the

scheduling of such review shall be left to the sole discretion of the relevant quality assurance committee or committees.

**6.2.3.** Policies and protocols shall be made available to the *Hammer* Plaintiffs' counsel upon request. This obligation to provide policies and protocols includes all policies and procedures to be utilized by the Quality Assurance Committee and any peer review committees established pursuant to Standard J-05. King County shall also provide to the *Hammer* Plaintiffs' counsel upon request copies of all training plans currently utilized, or to be utilized at any time hereafter.

**6.2.4.** King County shall provide the names and qualifications of all members of any quality assurance committee to the *Hammer* Plaintiffs' counsel upon request.

## **SECTION 7. MODIFICATION**

**7.1.** King County may, at its option, elect to achieve the objectives of any provision of this Settlement Agreement by complying with recognized national correctional standards of the ACA or its successor regarding that provision.

**7.2.** If any provision of this Settlement Agreement becomes impossible of performance or would work an unreasonable hardship on King County due to circumstances beyond King County's control, or if it appears that the objective sought can be better achieved through modification of such provision, then King County shall submit such proposed modification to counsel for the *Hammer* Plaintiffs for their review.

**7.3.** If King County proposes to renovate the KCCF or any portion thereof such that there are structural or other significant modifications to the housing units then the following provisions shall apply:

7.3.1. King County shall notify counsel for the *Hammer* Plaintiffs of the proposed modifications.

7.3.2. If the modifications proposed by King County comply with the ACA population or staffing standards adopted at the time of the proposed renovation, then the relevant capacities listed in paragraphs 4.2.1., 4.2.2., 4.2.3., and 4.2.4. above shall increase by the number of beds added to that portion of the facility when the renovation is completed and the staffing patterns set forth in paragraph 2.1. above may be modified consistent with ACA standards.

7.3.3. If the modifications proposed by King County do not comply with the ACA population or staffing standards adopted at the time of the proposed renovation, then the parties agree to negotiate in good faith King County's proposal and any corresponding increases in the relevant capacities set forth in paragraphs 4.2.1., 4.2.2., 4.2.3., or 4.2.4. and/or the staffing patterns set forth in paragraph 2.1 of this Settlement Agreement, with the intent of assuring that changes in capacities and/or staffing patterns shall provide comparable living space standards and security staffing that complies with the intent of the ACA standards and the intent of the other capacity and staffing provisions of this Agreement.

## **SECTION 8. OTHER MATTERS**

8.1. No Admission of Liability. This Settlement Agreement is executed by the parties specifically for the purposes of resolving the *Hammer* Plaintiffs' equitable claims in the *Hammer* lawsuit. It is expressly understood and agreed that this Settlement Agreement shall not constitute or be construed as an admission of liability on the part of King County

or any of the defendants in the *Hammer* lawsuit or as evidencing any admission of the truth or correctness of any claim asserted, or of any violation of law alleged by the *Hammer* Plaintiffs.

**8.2. Issues Resolved.** This Settlement Agreement resolves the equitable issues raised in the *Hammer* lawsuit and the issues involving the ongoing federal court supervision. Nothing in this Settlement Agreement shall be deemed to waive the rights of any person to seek damages or other relief.

**8.3. Prior Agreements.** This Settlement Agreement modifies, supersedes and replaces any and all contractual provisions, promises, or covenants contained in any previous settlement agreements, stipulations, judgments, or orders signed or agreed to by the parties.

**8.4. Court Approval.** It is understood and agreed by the parties that if the Court fails or refuses to approve this Settlement Agreement or fails or refuses to dismiss the *Hammer* lawsuit, this Settlement Agreement shall become null and void and without any force or effect, and none of the parties shall be bound by it.

**8.5. Effective Date.** The terms of this Settlement Agreement shall be effective on the date that the *Hammer* lawsuit is dismissed by the United States District Court.

**8.6. Integration.** This Settlement Agreement contains the entire understanding between the parties and shall not be modified in any manner except by written agreement executed by all parties.

**8.7. Severability** If any provision of this agreement or its application to any person or circumstance is held invalid, the remainder of this Agreement or the application of its provisions to any other person or circumstance shall not be affected.

8.8. Enforcement. This Settlement Agreement is a contract and may be enforced according to the law of contracts of the State of Washington in a court of competent jurisdiction. All remedies available under the laws of the State of Washington, including but not limited to specific performance, shall be available.

8.9. Dispute Resolution. In the event the parties disagree over King County's performance of their obligations under this Settlement Agreement, the parties shall first meet and confer in an effort to resolve the disagreement. If the parties are unable to resolve the matter by meeting and conferring, the parties shall submit the matter to a mediator, to be chosen by the agreement of the parties, to mediate the issues raised by the parties prior to either party referring the matter to Court.

8.10. Identification of Counsel. ACLU-W shall keep King County informed of the names and addresses of cooperating counsel responsible for the implementation of this Settlement Agreement.

8.11. Interpretation. The table of contents and the section and subsection captions of this Settlement Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Settlement Agreement.

8.12. Authority to Sign. Each signatory to this Settlement Agreement represents that he or she has the authority to enter into this Settlement Agreement.

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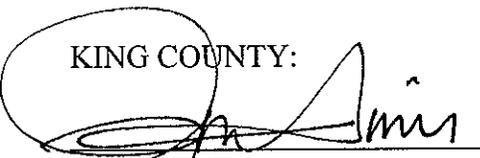
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IN WITNESS WHEREOF, this Settlement Agreement is agreed to and executed  
by the parties this 11 day of June, 1998.

ACLU-W:

  
KATHLEEN TAYLOR  
ACLU-W Executive Director

KING COUNTY:

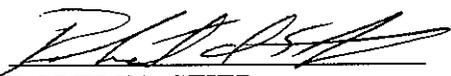
  
RON SIMS  
King County Executive

WILBORN KELLEY STEVENS

Approved as to form only for King County:

  
KATHLEEN TAYLOR  
ACLU-W Executive Director  
(Pursuant to a Limited Power of  
Attorney executed on January 20, 1989)

NORM MALENG, Prosecuting Attorney

  
ROBERT I. STIER  
Senior Deputy Prosecuting Attorney

MELTON ATKINS

  
KATHLEEN TAYLOR  
ACLU-W Executive Director  
(Pursuant to a Limited Power of  
Attorney executed on February 14, 1989)

EDWARD BOEKEL

  
KATHLEEN TAYLOR  
ACLU-W Executive Director  
(Pursuant to a Limited Power of  
Attorney executed on February 7, 1989)

CALVIN HAMMER

  
KATHLEEN TAYLOR  
ACLU-W Executive Director  
(Pursuant to a Limited Power of  
Attorney executed on December 29, 1988)

# EXHIBIT B



## King County

Office of Performance, Strategy and Budget

Chinook Building  
401 Fifth Avenue, Suite 810  
Seattle, WA 98104

August 16, 2022

TO: John Midgley – Senior Staff Attorney – America Civil Liberties Union of Washington Foundation

FROM: Dwight Dively   
Chief Operating Officer and Director, Performance, Strategy and Budget – King County

SUBJECT: **King County Jail Staff Shortage**

Dear Mr. Midgley,

As with most correctional facilities and congregate settings across the state and nation, the COVID-19 pandemic has affected operations at the King County Correctional Facility. The pandemic continues to cause unprecedented staff shortages for King County while also requiring operational changes that are more labor-intensive.

Since the beginning of the pandemic, the health and safety of employees and those in custody has been King County's top priority. For that reason, King County Executive Dow Constantine (the Executive) worked diligently to decrease the Average Daily Population (ADP) in the King County jails. In March 2020, the Executive implemented booking restrictions that appropriately balanced the safety of our community and of those who are incarcerated in our jails, to include no longer booking people arrested on misdemeanor charges unless they present a serious public safety concern, delaying misdemeanor commitment sentences, and no longer accepting people booked for violating their Department of Corrections community supervision. The Executive also worked with criminal legal system partners to further reduce the in-custody population by encouraging consideration of alternatives to secure detention or release for those who are eligible. Through the Executive's various efforts, King County was able to reduce the ADP from 1,950 to 1,350.

Despite the decrease in ADP, the COVID-19 pandemic continues to require changes in jail and jail health operations that are more labor intensive.

- **Testing.** Pursuant to new COVID protocols implemented at the MRJC in August 2020 and at the KCCF in September 2020, every person who is booked is given a COVID rapid test; this testing is performed 24/7 over three shifts and requires additional nursing staff.

Surveillance testing was also implemented beginning in January 2021 for inmate-workers; this testing required a dedicated Certified Nursing Assistant (CNA) to travel between facilities to perform the testing. Quarantine testing is also conducted on day 4 and day 10 for all individuals who have been exposed. Additional safety protocols were implemented including testing prior to external appointments, transfers, and release to community programs and providers; this testing is performed by the nursing team in addition to their normally scheduled patient care and may require follow-up for other clinical teams.

- **Vaccinations.** A new COVID vaccination program was implemented in April 2021 to provide ongoing education about vaccines and administration of vaccines to people in custody; this program requires dedicated teams at KCCF and MRJC. Vaccines are offered at each clinical encounter at both facilities and administered by teams consisting of RNs and CNAs.
- **Isolation and quarantine.** Medical staff are required to monitor, treat and test patients throughout isolation and quarantine. Clinical management of COVID+ housing and subsequent isolation of high risk/vulnerable and quarantine housing requires increased vitals checks, deck calls due to self-reported symptoms, requests for medications, clinical encounters, clearance by a medical provider, and the need for corrections officers.
- **Enhanced sanitation protocols.** In order to help maintain safe and healthy facilities, new equipment and supplies were purchased to minimize the impact of the pandemic virus. Staff assignments were redeployed to sanitation projects and ultimately had impacts to other areas of jail operations.
- **Contact tracing.** Each time a person in detention tests positive for COVID, an investigation/contact tracing of those exposed to the patient is conducted. This process has required an increase in nurse staffing and oversight. Contact tracing follows each movement of the patient within the facility to identify close contacts that are moved to quarantine status. Contact tracing is performed 7 days per week.
- **Release planning.** COVID+ patients are provided education and connection to community resources upon release. The care of COVID+ patients at release is in addition to standard, pre-pandemic services provided for release planning to the most vulnerable patients in the facilities.

Simultaneously, the Department of Adult and Juvenile Detention (DAJD) and Jail Health Services (JHS) have seen reductions in staff over the last two years because of the COVID-19 pandemic. As experienced by other workforces throughout the nation, this shortage has been caused by staff contracting COVID-19, needing to isolate or quarantine from exposures, suffering from fatigue, or separating from County employment altogether because of pandemic-related mandates that are in place to keep staff and those in our care safe. Together, the effects have been significant. Today, despite recent hirings, DAJD has over 90 unfilled officer positions (19% of its corrections officer workforce) and JHS has over 60 unfilled health staff positions (23% of its workforce).

Working in partnership with our employees and their labor unions, DAJD and JHS have worked diligently and creatively to address staffing challenges, to include:

- **Adopting retention bonuses.** DAJD recently negotiated a retention bonus of \$4,000 for corrections officers and sergeants who remain actively employed through April 30, 2023.
- **Increasing wages.** The Officer of Labor Relations and DAJD recently reached an agreement on a successor collective bargaining agreement with the King County Corrections Guild through 2024. The Guild ratified this contract late last week. This successor collective bargaining agreement will include increased wages for corrections officers and sergeants, which will not only help with retention of existing staff but also with King County's recruitment efforts. Jail Health Services is working with Human Resources and other King County offices to review salaries of difficult-to-fill positions and create new classifications or increase salaries of existing classifications where able.
- **Easing requirements for the rehiring of former COs.** King County and the King County Corrections Guild recently entered into an agreement to hire for a short-term temporary corrections officer classification with the goal of rehiring former retired officers into temporary on-call corrections officer positions.
- **Expanding recruitment efforts.** DAJD has launched new recruitment efforts through local radio stations, digital billboards and other media. DAJD offers new COs with no prior experience signing bonuses of \$7,500, and \$15,000 to those with enough experience to qualify as a lateral hire. JHS expanded efforts through utilizing paid recruiting platforms, including platforms designed for specific health services professionals when available, and recruiting through community organizations where appropriate.
- **Building pipeline for future employees.** DAJD is offering \$3,500 bonuses to employees who refer successful candidates for CO positions. The Public Health Office of Nursing regularly recruits at universities for future nursing staff. The JHS nursing team now allows for hiring of newly licensed nurses and provides mentorship to new nurses, and JHS is in the process of requesting a new "moonlighting" classification for newly graduated psychiatric providers.
- **Utilizing contracted staff.** JHS currently has 38 contracted staff who support patient care for existing vacancies, relief factor, and new and changing programs. While contracted staff do provide coverage for patient care needs, contracted staff do not offset vacancies on a one for one basis, don't necessarily work full time, and are often limited in which posts/responsibilities they can cover.
- **Providing voluntary overtime incentives.** The new contract with the Corrections Guild includes a temporary increase in the rate of compensation for voluntary overtime worked by corrections officers and corrections sergeants.
- **Negotiating alternative shift arrangements for improved staffing coverage.** The new contract with the Corrections Guild also includes an evaluation of the potential of providing alternative shifts to Corrections Officers and Sergeants to reduce the reliance on mandatory overtime, provide existing employees with a better work-life balance, and help with the recruitment of new employees by providing better working hours.
- **Providing hotel vouchers to staff who need to work double shifts.** DAJD recently implemented a temporary hoteling and on-site dry-cleaning service for corrections officers

and sergeants who work additional overtime shifts following their regularly assigned work shifts.

Knowing that the COVID-19 pandemic has impacted the health and wellbeing of those in our custody, DAJD and JHS have also prioritized improving the living situations of people in custody, to include:

- **Providing increased virtual visits.** DAJD began offering free video visits and offering additional free phone calls.
- **Ordering tablets.** DAJD is working with a vendor to bring tablets in for all inmates at all detention facilities (including the CFJC) that would provide access for everyone to make phone calls on their own tablets. The tablets would also provide access to things like GED, betterment programming, podcasts, legal research, 50,000 book titles, etc.

Altogether, King County has dedicated substantial financial resources to support operations in the jail, including adding approximately \$9 million of incremental appropriations for DAJD and JHS to help respond to the pandemic in the current (2021-2022) biennium and an additional \$4 million already approved to be included for the 2023-2024 biennium. Since the start of 2022, DAJD and JHS has been able to hire 40 Corrections Officers and 23 Jail Health staff respectively.

Despite these many efforts and available funding, the ongoing COVID-related staff shortages remain. Simultaneously, the ADP has recently increased by nearly 300 inmates (reaching 1600) largely due to the ongoing and significant criminal legal system backlog of criminal cases caused by the pandemic, fewer inmates being released, and more serious crimes occurring in the community. Combined, these new challenges have resulted in significant operational challenges for DAJD.

- **Transport to weekend court appearances has been affected.** DAJD Court Detail has faced challenges transporting inmates to District Court and Seattle Municipal Court on Saturdays (when there are typically fewer officers available) and making inmates available for telephonic hearings (which require additional officers to escort/guard those inmates.) Court Detail has been able to work collaboratively with the Superior Court to accommodate that Court's requests to have inmates brought to court five (5) days a week.
- **Transport to non-emergency medical appointments has also been affected.** DAJD staff shortages have affected the transport of inmates to scheduled non-emergent medical appointments outside of the jail (ex: to specialty clinics at the Harborview Medical Center.) DAJD remains able to handle all transports for emergent medical care.
- **Infrequent delays to accessing legal counsel.** Although DAJD has continued to provide defense attorneys with 24/7 access to their clients, some attorneys have had to wait longer to see their clients. Similarly, a small number of defense expert evaluations have had to be rescheduled due to officers not being available to transport the inmate. We have provided escalation paths for attorneys if they are told they must wait to see their clients. DAJD has also made all attorney video visits and calls free to both the client and DPD

and purchased cell phones for both facilities in order to help, when possible, connect attorneys and clients, and has provided laptops at both locations if video is needed.

- **Intermittent posts have been inconsistent.** DAJD has not been able to consistently staff “intermittent” posts on all floors where inmates are housed. As a result, even though “continuous” and “dedicated” posts have been staffed every day and during every shift, relief has not consistently been provided to such posts during routine activities (e.g. during breaks, meals and when using the restroom).
- **“Out of cell” time for inmates.** The shortage of DAJD officers in Restrictive Housing units has resulted in some inmates receiving less “out of cell” time. In response, DAJD has worked diligently to ensure that loss of time out of cell is not experienced by any inmate on consecutive days.

JHS Staff shortages have likewise forced JHS to temporarily prioritize which non-emergent medical services can be provided to inmate patients. Such reprioritization is being accomplished by temporarily pausing access to optional medical services and redeploying available resources from certain practices to others. The following operational changes have temporarily become necessary:

- Suspension of the Clinical Practice Guideline for Chronic Hepatitis (HBV and HCV);
- Potential delay of provider orders of follow-up for medical chronic illness for patients who are “stable”;
- Suspension of follow-up and treatment for certain other medical conditions (with caveats), to include:
  - Excessive cerumen (no symptoms, not impacted);
  - Allergic rhinitis (not associated with asthma or more generalized symptoms—e.g., “stuffy or runny nose” only);
  - Irritable bowel syndrome / food intolerance (no report of severe allergy or evidence of malabsorption);
  - Chronic pain (where there is no sign of functional loss, and patient is not receiving confirmed long-term medical treatment);
  - Suspension of Preventive Care visits;
  - Deferral or delay of all new referrals outside of significant instability;
  - Deferral or delay of follow up and lab orders when possible;
  - Suspension of psychiatric clinic follow-up (other than emergent);
  - Suspension of SUD specialist initial intake;
  - Delay of inpatient treatment assessments (other than emergent); and

- Suspension of follow-up for psychiatric conditions for patients not admitted to psychiatric housing units.

The COVID-19 pandemic has placed DAJD and JHS in the challenging position of having insufficient staff to address all the needs in the manner that King County intends. During this period, King County fully aims to continue its efforts to promptly address its jail staff shortages and resulting operational impacts.

DAJD and JHS are continuing to pursue all opportunities to work internally and in partnership within the criminal legal system to respond to this ongoing situation by:

- Initiating and coordinating meetings with criminal legal system partners – Department of Public Defense, Prosecuting Attorney’s Office, Superior Court, District Court, the City of Seattle, and the Sheriff’s Office;
- Consolidating the footprint of the total jail population by temporarily closing booking at the MRJC, temporarily closing two units at the MRJC and moving staff and inmates to the KCCF;
- Reviewing the housing grid to maximize available space while making sure that appropriate housing is available for all inmates;
- Meeting with Presiding Judges and the Prosecuting Attorney to identify individuals who could be released safely, as well as keeping ultra- and max- security case assignments in Seattle in order to reduce staffing impacts of frequent travel.
- Coordinating with the PAO to begin operational discussions about the possibility of having a senior prosecutor at the booking counter overnight during the highest traffic times in order to make real-time release decisions.
- Negotiating with the Corrections Guild in order to encourage staff to volunteer for more hours, thereby allowing for more capacity.
- Increasing the Electronic Home Detention capacity from 75 (at the start of the pandemic) to 350.
- Working with the State Department of Social and Health Services to identify opportunities to speed up competency evaluations and restorations.

We are confident that this situation is temporary and will be promptly addressed as additional staff are hired and trained. Nevertheless, King County wanted to proactively reach out to you in the interest of transparency and ongoing collaboration.

We are available to further discuss these challenging times with you.

Cc: Allen Nance, Director, DAJD  
Danotra McBride, Director, JHS