

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FREDERICK HARPER, et al.,
individually and on behalf of all present
and future inmates in the Fulton County
Jail in Atlanta, Georgia

Plaintiffs,

v.

FULTON COUNTY, GEORGIA, et al.,

Defendants.

THEODORE JACKSON, Fulton
County Sheriff, in his official capacity,

Defendant and Third-party
Plaintiff,

v.

JIM DONALD, Commissioner, Georgia
Department of Corrections, in his
official capacity, et al.,

Third-party Defendants.

CIVIL ACTION NO.

1:04-CV-1416-MHS

REPORT OF DEFENDANT THEODORE JACKSON

Comes now Defendant Theodore Jackson, Fulton County Sheriff (“Sheriff Jackson”), and, pursuant to the Court’s October 6, 2009 Order, submits his Report to the Court describing the steps he is taking to eliminate inmate outsourcing and to provide adequate space for all Fulton County inmates.

I. Current Population Figures

On December 27, 2009, Fulton County housed a total of 2,715 inmates. Of these, 1873 inmates, including those in the infirmary, were housed in the main jail located at 901 Rice Street (“Fulton County Jail”), 42 were housed in the Alpharetta facility, 193 were housed in the Bellwood facility, and 590 were outsourced to other counties.¹ The institutions to which inmates are outsourced at present are the Union City jail (173), the DeKalb County jail (36), the Hall County jail (282), the Oconee County jail (27) and the Pelham City jail (72). *See* Fulton County Jail Daily Snapshot, 12/27/09² (attached as Exhibit A). As this Court is aware, a project to upgrade the mechanical, elevator and plumbing systems at the Fulton County Jail had been underway for several months. That project has now been completed, with a resulting increase of 408 beds available to inmates. The first step of Sheriff Jackson’s plan with regard to outsourcing is to use these 408 beds to facilitate the return of inmates from institutions farthest away, that is, Oconee County and Hall County, to the Fulton County Jail as soon as possible.³

II. Acquisition of the Atlanta City Detention Center

On August 28, 2009, and November 13, 2009, Sheriff Jackson and Court Monitor Calvin Lightfoot toured the Atlanta City Detention Center (“ACDC”) to

¹ 83 inmates were loaned out to other jurisdictions.

² Figures calculated as of 12/28/09.

³ The inmates housed at the Pelham City Jail are State inmates who will be transferred from Pelham City to State institutions.

make a visual inspection of the facility. During his visits, Sheriff Jackson observed that the facility appeared to be in sound physical condition, an observation that was confirmed in conversations with ACDC Chief Jailer Frank C. Sizer, and documents revealing that the facility is undergoing a \$2 million renovation project.⁴ ACDC at full capacity houses 1314 inmates. Less than 400 inmates are being housed in the facility at present. In addition, ACDC is connected to a number of courtrooms at the City of Atlanta Municipal Court by way of a tunnel that connects the two facilities.

Sheriff Jackson considers the acquisition of ACDC to be a significant part of the short-term solution to the inmate population issue Fulton County faces. For this reason, the Sheriff has had an integral role in negotiations with officials of the City of Atlanta and Fulton County regarding the feasibility of Fulton County's purchase of the municipal jail. These discussions have proved fruitful.

On Wednesday, December 3, 2009, the Atlanta City Council Finance Executive Committee issued a resolution authorizing the City Council to prepare the necessary intergovernmental agreements for Fulton County to purchase ACDC from the City of Atlanta. *See* Resolution 09-R-2196, (the "Resolution") (attached as Exhibit B). The resolution contemplates a 15-year lease purchase agreement under which Fulton County would make 13 payments of \$3.2 million beginning

⁴ The roof of the facility has to be replaced, a project that the City of Atlanta is prepared to undertake.

July 1, 2010, and then would purchase the City Jail for \$10 at the end of the lease term. *Id.* at 2. Under the proposed agreement, 400 beds will be reserved for municipal inmates. *Id.* Over 900 beds will remain available to house Fulton County inmates, more than enough to eliminate outsourcing. The lease purchase agreement provides also for the County to have the use of four courtrooms at the nominal cost to the county of \$1 per annum. *Id.*

Acquiring ACDC appears to be cost-effective and financially feasible for Fulton County. First, the County would save an estimated \$10 million annually in outsourcing costs. Second, the agreement would provide for Fulton County to receive payment of \$71 per day from the City of Atlanta for each City inmate housed at ACDC. *Id.* The Sheriff would also have the option to consider leasing a portion of the beds to federal agencies. Further, as noted previously, the City has already begun and completed many necessary renovations of the facility. The lease purchase agreement contemplates that the City will complete the remaining renovations by the end of 2010. *Id.*

During the aforementioned negotiations, Fulton County commissioned another study of the feasibility of its acquisition of ACDC. The resulting report, dated November 25, 2009, concludes that: “[u]tilizing the Atlanta City Detention Center to offset population requirements is a very real option for Fulton County.” *See Hellmuth, Obata + Kassabaum, Feasibility Study of the City of Atlanta*

Detention Center, Nov. 25, 2009 (“HoK ACDC Study”), at 13, (excerpts attached as Exhibit C⁵). The report establishes further that ACDC’s facility is suitable for operation in compliance with the Consent Decree. *Id.* at 19-41.

In its report dated September 8, 2009, the American Correctional Association stated that ACDC “is adequate to handle misdemeanor and first appearance cases with minimal, if any, difficulties.” *See* American Correctional Association, Office of the Fulton County Attorney Feasibility Study, Final Report, September 8, 2009, p. 5 (attached as Exhibit D). Similarly, the HoK feasibility study states that Fulton County may use ACDC as an intake and diagnostics center for most or all Fulton County criminal defendants. *See* HoK ACDC Study at 15-17. The Southern Center for Human Rights, counsel for the Plaintiffs, supports the acquisition of ACDC by Fulton County to be used as the facility to which arrestees are brought for first appearance hearings and bail determinations, with only those arrestees who are not released on bond ultimately being housed at the Fulton County Jail.

Sheriff Jackson agrees with the recommendations of the ACA and Plaintiffs’ counsel. Accordingly, in anticipation of the proposed acquisition, the Sheriff has begun to develop a plan for the use of ACDC consistent with these recommendations. Before finally deciding on a proposed use, however, the Sheriff

⁵ The Sheriff attached excerpts because the entire Study is voluminous. The Sheriff will submit the entire Study upon the Court’s request.

plans to work with his criminal justice partners to assess the viability of these and other proposals, such as the District Attorney's proposal that ACDC be used as a Restitution Center, should Fulton County acquire the municipal jail. *See* HoK ACDC Study at 15 (noting that the alternative uses for ACDC require further study).⁶

Fulton County's acquisition of ACDC is widely supported. In addition to Sheriff Jackson, Fulton County Public Defender Vernon Pitts, Fulton County District Attorney Paul Howard, and Fulton Superior Court Chief Judge Doris Downs approve of the purchase. The Court Monitor, in his Twelfth Quarterly Report, states "... the Monitor highly endorses Fulton County's purchase of the Atlanta City Jail ..." *See* Twelfth Quarterly Report of the Court Monitor, p. 13, (attached as Exhibit E). On December 7, 2009, the Atlanta City Council passed a resolution stating that the Council "vigorously supports the continued negotiation regarding the sale and /or lease of ACDC to Fulton County" and authorizing the "City Negotiation Team, including the New Mayor...to cause the intended Agreement to be presented to the Atlanta City Council for approval such that execution of said Agreement be accomplished within the 1st quarter of 2010 or as soon as practicable thereafter." *See* Resolution 09-R-2196, as substituted by full

⁶ The County would realize significant savings in transportation costs should ACDC be used as central housing for arrestees who would subsequently have their initial appearance hearings at the same location.

council (attached as Exhibit F). The Sheriff is prepared to finalize his plan in accordance with this timetable so as not to delay the process of putting the facility into use as soon as possible.

Sheriff Jackson will continue to be actively involved in these negotiations. However, the Sheriff is acutely aware that his Department lacks unilateral control over the population of the Fulton County Jail.⁷ Rather, Fulton County's judicial system is additionally responsible for population shifts at the jail. Sheriff Jackson therefore includes in the following section of this report the Criminal Justice Agencies' Jail Reduction Strategy which was developed during discussions in which the Sheriff participated.

III. Criminal Justice Agencies' Jail Reduction Strategy

Fulton Superior Court Chief Judge Doris Downs, Fulton County District Attorney Paul Howard, Fulton County Public Defender Vernon Pitts, Fulton County Court Administrator Cathelene Robinson, and Fulton County State Court Chief Judge Albert Thompson have agreed to a proposal designed to reduce the Fulton County Jail Population to 1200 inmates by July 1, 2010. (*Id.* at 3).⁸ The

⁷ To the extent that procedures at the jail contributed previously to increases in the number of inmates at the jail, the efficiency of these procedures has improved considerably. *See e.g.* Court Monitor's Twelfth Quarterly Report at 9 (stating that most delays of releases beyond the 24 hour period mandated by the consent decree were attributable to other law enforcement agencies.)

⁸ While the Sheriff agrees generally with these proposed efforts to reduce the jail population, the Sheriff is not a signatory because, *inter alia*, he has no means of

strategy's guiding principles includes the recognition that "the inability of the system to dispose of cases has exacerbated the jail overcrowding problem." Jail Reduction Strategy, p. 1, (attached as Exhibit G.)

The jail reduction strategy recommends the removal of inmates convicted of state crimes from the Fulton County Jail after a maximum period of 10 days and the elimination of outsourcing of inmates by February 1, 2010. *Id.* at 3. The strategy also includes a plan to implement a Temporary Emergency Court and a multi-departmental jail reduction team to work with the Sheriff's staff to monitor the jail population in order to maintain the population at 1200 inmates once it is reduced to that number. *Id.* Case processing standards set a time frame for housing inmates after which the inmate would be eligible for bond if his or her case is not disposed of and the delay is not attributable to the defendant. *Id.* at 4.⁹ Finally, the strategy recommends that the criminal justice agencies support the acquisition of ACDC to be used as the initial screening location for arrestees, with a portion of

implementing aspects of the strategy such as eliminating the outsourcing of inmates by February 1, 2010, and removing inmates convicted of state crimes from the jail after a maximum period of 10 days. The Sheriff is not authorized to remove such inmates from the jail without a court order.

⁹ Sheriff Jackson notes that in 2009, the Georgia General Assembly enacted O.C.G.A. § 17-6-1.1, which allows a Court to authorize release of criminal defendants to an electronic pretrial release and monitoring program. This new law will likely reduce the jail population. Its precise margin of impact is unclear due to the inability of many indigent defendants to meet the statutory requirement that they pay "a reasonable, nonrefundable fee for program enrollment, equipment use, and monitoring to the provider of such program." O.C.G.A. § 17-6-11.1(h).

the facility used as a restitution center for all low-risk inmates. *Id.* at 3.

A number of other strategies have been implemented previously in an effort to reduce the jail population. For example, in March, 2009, Sheriff Jackson caused the Sheriff's Department to enter into an agreement with Fulton County Superior Court Pretrial Services ("Pretrial Services") to coordinate the release procedures for those defendants granted a signature bond. *See* Memorandum of Agreement between Sheriff Jackson's Office and Pretrial Services, (attached as Exhibit H). The Courts have commenced an aggressive effort to reduce the extensive backlog of pre-trial inmates with the support of a \$1.3 million federal backlog grant and the Felony Fast Track program, approximately two years old, which accelerates the process of resolving certain cases. Additionally, beginning in April, 2009 Pretrial Services initiated its Intensive Supervision program, allowing individuals who otherwise would not qualify for bond and supervised release under Pretrial Services's usual criteria to be released on bond.¹⁰ These strategies and the acquisition of ACDC by Fulton County, if realized, will alleviate the problem of overcrowding at the jail significantly.

¹⁰ Another important Court-related project is the Comprehensive Justice Information System (CJIS), which will integrate various information systems at the Courts and the jail. Once in place, this system will improve processing rates for the intake and release of inmates, and will enable the Sheriff's Department to eliminate substantial time-consuming paperwork currently necessary.

IV. Fulton County Jail Complex Master Planning Report (the “Master Planning Report”)

Sheriff Jackson agrees generally with the Master Planning Report’s recommendation that additional housing will be required to meet the future needs of the Fulton County jail population. However, the Sheriff notes that many of the population-related deficiencies identified in the Master Planning Report are likely to be remedied by the acquisition of ACDC, the jail reduction strategies discussed above, and additional ongoing improvements within the Department, if they are successful and are sustained.

This being the case, in the Sheriff’s view, the projections presented on pages 1-9 and 1-16 of the Master Planning Report should be revisited. The Master Planning Report recognizes that the construction of additional housing may be delayed or may become “a last resort” with increased efficiency of the criminal justice system, specifically the implementation of programs recommended by the Justice Management Institute (“JMI”). *See* Master Planning Report Overview at 3-4 (attached as Exhibit I).¹¹ Many of JMI’s recommendations such as eliminating the backlog of old felony cases, rapidly resolving low-level felony cases and providing alternatives to detention such as intensive supervised release, are

¹¹ The Master Planning Report is a lengthy, full-color spiral bound document already in the possession of the Court. Accordingly, the Sheriff has not attached it in its entirety, but would be happy to supplement the record if the Court so requests.

components of jail reduction strategies which have already been implemented or are about to be implemented. The report's projections do not account for these initiatives adequately and do not consider the potential impact of programs this Sheriff is implementing in an effort to reduce inmate recidivism, such as the recently begun GED program at the jail.

Recognizing the inherent difficulty in quantifying long-term projections for inmate population, and in acknowledgement of the fact that the aforementioned initiatives and programs had either not been implemented or their impact could not yet be determined at the time the Master Planning Report was drafted, Sheriff Jackson Sheriff is hesitant to adopt the Master Planning Report's recommendations formally at this time. However, the Sheriff agrees that additional housing will be necessary in the future and anticipates using the amended projections and proposals as a point for consultation regarding additional housing recommendations.

V. Steps Toward Jail Master Plan

The Sheriff is taking the following steps toward implementing an appropriate jail master plan:

- **Active support of Fulton County's purchase of ACDC.** This important first step will eliminate outsourcing and have a significant impact on the county's future inmate housing needs. In addition, Sheriff Jackson hopes that the acquisition of ACDC will allow the Sheriff's Department to close the Bellwood facility (*see* HoK ACDC Study at 121), a goal that is supported by the Plaintiffs in this case.

- **More effectively addressing the needs of inmates with mental health issues.** Recent statistics show that from January to October, 2009, 24% of the inmates brought to the Fulton County Jail were prescribed psychotropic medication for a serious mental health diagnosis. Sheriff Jackson has directed the Chief Jailer and the jail's Medical Director to work toward the development of an in-jail mental health treatment plan that would have as one of its components the possible renovation and use of the Marietta Street Annex to house and stabilize some inmates with mental health issues. Enhancing capabilities for addressing problems posed by mentally ill persons and the establishment of stabilization centers is one of the recommendations made by JMI, the implementation of which may delay the need for additional housing, according to the Master Planning Report. *See* Master Planning Report Overview at 3-4.
- **Coordination with Fulton County Superior Court Pretrial Services.** The Sheriff has entered into a Memorandum of Agreement with Fulton County Superior Court's Pretrial Services Department, which aims to improve the process of getting inmates out of jail and into pretrial services supervision programs. *See* Exhibit H.
- **Hiring and recruitment.** The Sheriff has recently made several significant staffing changes to address inefficiencies in the Department. Additionally, he has implemented a recruitment and hiring process designed to accelerate the filling of vacancies within the department while attracting and retaining qualified individuals to work for the Sheriff's Department. The hiring protocol includes thorough background checks of each candidate and no candidate with a criminal record is considered for employment. The number of vacancies has been reduced considerably.
- **Inmate Programs.** The Sheriff is in the process of instituting several educational and vocational programs geared toward preventing recidivism, which will include training in culinary arts and custodial cleaning techniques for inmates. On December 7, 2009, the Sheriff implemented a GED program in which approximately 500 inmates will participate. Sheriff Jackson is working toward the development of other programs such as offender reentry programs that should also reduce the recidivism rate among offenders.
- **Maintaining protocol for release in less than 24 hours.** The Sheriff has implemented strategies to minimize release time, with substantial

success. Except for inmates who await transfers to other facilities, the Fulton County Jail has achieved compliance with the Consent Decree's requirement that inmates be released within 24 hours. *See Release Tracking Report*, for Nov. 22-30, 2009, (attached as Exhibit J.)¹²

These steps are designed to increase the efficiency and effectiveness of the day-to-day and future operations of the Fulton County Jail and are mentioned here because they have or will have a direct impact on the jail population. Sheriff Jackson intends to work in cooperation with Fulton County Officials to implement the initiatives yet to be realized, such as the renovation of the Marietta Annex should its use as a mental health facility be deemed feasible. Further, when a final determination has been made regarding the acquisition of ACDC and the projections of the Master Planning Report are updated as discussed above, the Sheriff will pursue discussions regarding the Master Planning Report's recommendations for future expansion of the Fulton County Jail with Fulton County officials as he did regarding the proposal to acquire ACDC.

Conclusion

Sheriff Jackson respectfully submits the foregoing Report as directed by the Court in its October 6, 2009 Order. Should the Court have additional questions or areas of concern, the Sheriff will supplement this Report as necessary.

¹² The report shows that every inmate who was not released within 24 hours during that time period was an inmate who had not been picked up by a state or federal agency, with the exception of four inmates whose releases were delayed by the Courts. Every other inmate who was ordered released to the community was released within 24 hours.

This 4th day of January, 2010.

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CERTIFICATE OF COMPLIANCE WITH LR 7.1(D)

This is to certify that the foregoing **REPORT OF DEFENDANT THEODORE JACKSON** was prepared using Times New Roman, 14 point type, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

/s/ Yonette Sam-Buchanan
Attorney for Defendant and
Third-party Plaintiff
Theodore Jackson

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CERTIFICATE OF SERVICE

I, Yonette Sam-Buchanan, hereby certify that on January 4, 2010, I caused a copy of the foregoing **REPORT OF DEFENDANT THEODORE JACKSON** to be electronically filed with the Clerk of the Court using the CM/ECF electronic

filing system, which will automatically send electronic notification of such filing to the following attorneys of record:

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