

## **Jones v. Wittenberg**

United States District Court for the Northern District of Ohio, Western Division

September 17, 2015, Filed

Case No. C70-388

### **Reporter**

2015 U.S. Dist. LEXIS 138712

CHARLES JONES, et al, Plaintiff, -vs- SOL WITTENBERG, et al, Defendants.

**Prior History:** [Jones v. Wittenberg, 509 F. Supp. 653, 1980 U.S. Dist. LEXIS 16863 \(N.D. Ohio, 1980\)](#)

### **Core Terms**

inmates, Tier, nonviolent, eligible, pretrial, booking, inmate population, procedures, maximum capacity, requirements, mass-arrest, score, drug offense, state court, designation, recommended, detained, measured, services, violence, flag

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For William Metzger, Individually and as Sheriff, Homer Roberts, Individually and as Keeper, Lucas County Jail, Joe Latimer, Jr., Ronald Collins, William Sampson, Roderick Schweirking, Donald Atkinson, Defendants: Evy M. Jarrett Coy, Konieczny & Peppel, Toledo, OH; John A. Borell, Sr., LEAD ATTORNEY, Office of the Prosecuting Attorney-Lucas County-Adams, Toledo, OH; Kevin A. Pituch, Office of the Prosecuting Attorney-Lucas County-Adams, Toledo, OH.

For William M. Connelly Jr., in his capacity as Presiding and Administrative Judge of the Toledo [\*2] Municipal Court, Intervenor: Chad M. Thompson, Robert Charles Tucker, W. David Arnold, Robison, Curphey & O'Connell-Toledo, Toledo, OH.

For Timothy J. Doyle, Esq., Special Master: Timothy J. Doyle, Sr., LEAD ATTORNEY, Laphman & Doyle, Farmington, MI.

**Judges:** James G. Carr, SPECIAL MASTER.

**Opinion by:** James G. Carr

### **Opinion**

#### **ORDER OF THE SPECIAL MASTER REGARDING EMERGENCY RELEASE PROTOCOL**

In order to ensure that the Defendant Sheriff complies with the Court's Order of November 5, 2014 requiring that the general classified population of the jail not exceed 403 (the count to be taken at 3:00 p.m. each day) and further to ensure that the booking population not exceed 65 at any time, the following release procedures shall be followed:

1. **LCCC Population Control/Classification**-The Sheriff has the authority, in accordance with the criteria set out below, to release LCCC inmates in the General Population or in the booking area to satisfy the above referenced population requirements. Population management of the LCCC will rely on a three-tiered release strategy. The first tier includes inmates who may be released regardless of the LCCC population. The second and third tiers include inmates to be released by the Sheriff when the [\*3] LCCC has reached the maximum capacity in either the General Population or in booking after the appropriate state court (the court that has jurisdiction over the inmate) has had an

opportunity to review the list of inmates eligible for release.

The release plan considers the risk posed by the inmate of committing a new crime and of failing to appear in court, as well as the seriousness of the current charge(s). Table 1 below depicts the application of the risk assessment to the release process. Table 2, attached hereto and incorporated herein, is a matrix that depicts the six levels used to explicate risk within each tier.

The risk posed by the inmate is measured using the PSA tool. The PSA provides three separate risk indicators—new violent criminal activity, which is measured using a violence flag; new criminal activity (NCA) which is measured on a 6 point scale; and failure to appear at the inmate's next court appearance (FTA), which is also measured on a 6 point scale. Those inmates who have a risk indicator with a violence flag will not be released by the Sheriff under this Order. The seriousness of the offense is measured by the charge class (*i.e.*, minor misdemeanor, misdemeanor [\*4] — degrees 1-4, and felony — nonviolent, drug or property offenses in degrees 3, 4 and 5) and the charge type (*i.e.*, non-violent or violent).

## **2. Release of Inmates To Satisfy LCCC Population Requirements**

### **A. Introduction**

Table 1 below displays the release criteria for each tier in priority order (*i.e.*, LCCC inmates classified in Group A, the first to be released, through those in Group G, the last to be released within that tier). Each tier and the related sequential groups within each tier will be followed to ensure the jail population remains at or below capacity set forth above. Within each lettered group within each tier, inmates will be released in the order of the length of their incarceration, with the inmates who have been incarcerated at the LCCC the least amount of time being released first. The Sheriff will maintain the list of inmates eligible for release in the order in which they would be released, including this "last in, first out" principle within each lettered group.

If as of the 8 a.m. count on any day the inmate population reaches 90% of the maximum capacity for the General Population, the Sheriff will initiate the procedures set forth in this Order to bring the inmate [\*5] population into compliance.

In addition, if the population in the booking area reaches 100% of the booking area capacity of 65, the Sheriff will use the procedures set forth in this Order to bring the inmate population into compliance. Specifically, if at any time the population in the booking area reaches 65 inmates, the Sheriff shall, within a reasonably prompt period, remove a sufficient number of inmates from the booking area to reduce the population to 65 by either moving inmates upstairs to a General Population area or, if such a move is not possible because of capacity constraints in the General Population areas or is not feasible for any other reason, releasing inmates who are eligible for release pursuant to the population control plan in this Order.

The tiered release plan considers the PSA violence flag (as noted above, no inmate with a violence flag will be released under this procedure), the risk level which represents a combination of the NCA and FTA 6 point scale results (see Table 2), the charge class, and the charge type.

### **B. Release Procedures**

The procedures for release are as follows. The Sheriff will maintain a continuously updated list that depicts all inmates who are [\*6] eligible for release under any of the three tiers, in the order in which they would be released. When the inmate population in the General Population areas reaches 90% of 403 as of any 8 a.m. count, as soon as possible after 8 a.m. the Sheriff will (i) notify the presiding judges of the Lucas County Court of Common Pleas and the Toledo Municipal Court that the inmate population has reached 90% of capacity and (ii) provide the judges with the list of inmates eligible for release under this population control plan. Those courts will establish internal mechanisms consistent with their administrative practices and policies to circulate the list of eligible inmates.

If the Sheriff has initiated the release procedures because the population in the General Population areas has exceeded 90%, each court will communicate with the Sheriff by 2 p.m. that day whether the court desires to continue to detain any inmate on the list of eligible inmates. For any such designation of continued detention, the designating court must designate another inmate detained in the LCCC for release, even if such inmate is further down the eligible inmate list. For the sake of clarity, no inmate who is eligible for [\*7] release and is otherwise in a group ready to be released will be detained based on a designation from a court unless

that court designates another inmate for a one-for-one swap. If a court chooses to release a different inmate to ensure that another stays incarcerated, the Sheriff will note that decision on the eligible inmate list. A court may also choose to send an inmate to CCNO (if population allows) in pretrial status.

Once the Sheriff has received input from the courts he will release a sufficient number of inmates to reduce the population in the General Population areas to no more than 403. Any pretrial inmate for whom the PSA does not recommend release must agree to an S.O.R. bond as a prerequisite to being released. Inmates for whom the PSA recommends release must agree to the conditions stated on the PSA. All inmates released pursuant to this provision shall be ordered to report to the pretrial services division in person immediately upon release. Pretrial inmates shall remain under the supervision of the pretrial services division until the disposition of their case.

If after the Sheriff releases all inmates eligible for release under this release plan, through all three tiers, [\*8] the population in either the General Population areas or the booking unit is not in compliance with the maximum capacity allowed in each area, the Sheriff will release additional inmates based on the risk score calculated from the PSA. The risk score will be determined by adding the NCA and FfA scores on each inmate's PSA. Inmates will be released in order of risk score, with the inmates with the lowest score released first. If more than one inmate has an identical score, the inmates will be sorted using the "last in, first out" principle.

**Tier I**—Regardless of the jail population count, pretrial defendants in Tier I who are booked into the LCCC and who meet the specified criteria to obtain a recommendation for release on the PSA will be identified and released on their own recognizance with a condition of pretrial supervision if recommended by Lucas County Pretrial Services.

**Tier II**—Once the Sheriff has received input from the state court judges (or if 2 p.m. has passed without such input), he has the authority to release defendants in Tier II in priority order (*i.e.*, Group A first, Group B second, Group C third and so on). The Sheriff's Office will continue to release inmates in the [\*9] group order described above until the inmate population has been reduced to 100% of the maximum capacity in both the General Population and in booking. Tier II defendants will be released on their own recognizance with conditions recommended by Lucas County Pretrial Services.

**Tier III**—If, after releasing all defendants in Tier II the LCCC population remains at or above the maximum capacity in either area, the Sheriff will release Tier III defendants on their own recognizance with a condition of pretrial supervision along with any special conditions ordered by the Court.

**Table 1. Tiered Release Criteria**

<b>Tier</b>	<b>Step</b>	<b>Violence Flag</b>	<b>Risk Level</b>	<b>Charge</b>	<b>Class Charge Type</b>
I	A.	NA	NA	MM	Not Applicable
	A.	No	1,2,3,4	M	No human victim or sexually oriented offense <sup>1</sup>
II	A.	No	1	F3, F4 or F5	Non-violent; for F3, only property or nonviolent drug offenses
	B	No	2	F3, F4 or F5	Non-violent; for F3, only property or nonviolent drug offenses
	C	No	1	M	HV or SOO (No DV)
	D	No	2	M	HV or SOO (No DV)
	E	No	3	M	HV or SOO (No DV)
	F	No	3	F3, F4 or F5	Non-violent; for F3, only property or nonviolent drug offenses
	G	No	4	M	HV or SOO (No DV)
III	A	No	4	F3, F4 or F5	Non-violent; for F3, only

Tier	Step	Violence Flag	Risk Level	Charge	Class Charge Type
	B	No	5	M	property or nonviolent drug offenses
	C	No		F3, F4 or F5	RV or SOO (No DV) <sup>2</sup>
					Non-violent; for F3, only [*10]
					property br nonviolent drug offenses

1 Rule 22 of the Toledo Municipal Court defines certain offenses as involving a human victim (HV) or as a sexually oriented offense (SOO). The court adopts the definitions contained in Rule 22 and incorporates them in this release plan.

2 Inmates in category III.B who are released will be subject to enhanced supervision, such as participation in the Electronic Monitoring Unit.

### C. Additional Release Requirements

In addition to the release procedures set out above, the Sheriff shall implement the following requirements:

- i. all "technical" parole violators (detainees who have no new criminal charges pending) will be treated as Tier II, Group A inmates and will be released unless a state court judge with jurisdiction over that inmate vetoes that release, provided, however, that no "technical" parole violator will be detained for longer than 30 days in any event; and
- ii. each inmate who has been sentenced to serve a term of incarceration in a state facility, and who has no holders pending, will be transported to the state facility within five calendar days of the inmate's sentencing.

### 3. Information Maintenance and Communication

The Sheriff shall maintain all information necessary [\*11] to effectively implement this Order. The Sheriff and his or her staff shall make this information readily available to the Special Master, who shall act as liaison between the Sheriff and the courts within Lucas County as well as the Ohio Adult Parole Authority. The Special Master will, in addition, coordinate the information flow between the appropriate state courts, the pre-trial services division, the LCCC, and, where necessary, this Court.

### 4. Mass-Arrest Event

Should there be a "mass-arrest event" as defined herein, the Sheriff will have the authority to detain inmates at

LCCC in excess of the maximum capacity for the General Population and/or the booking area. A "mass-arrest event" is defined as "an event over which the Sheriff or the LCCC has no control but which results in 10 or more arrests." The term "mass-arrest event" may include, but is not limited to, increased LCCC inmate population due to criminal activity after riots, unrest, or other commotion; natural disasters resulting in criminal activity; or law enforcement activity leading to a large number of arrests such as sweeps for at-large offenders. A mass-arrest event is not a vehicle for the Sheriff to evade the maximum [\*12] inmate population requirements of this Order. When the Sheriff believes that a mass-arrest event has occurred, he shall contact the Special Master and may exceed the population requirements of this Order only for the time reasonably necessary to have those detainees processed through an initial state court appearance or transferred to other housing.

### 5. Effective Date

The above emergency release plan is to be implemented immediately upon its entry on the Court's docket. The Special Master shall monitor the implementation and use of this plan to determine its effect on the LCCC inmate population. The Special Master acknowledges that the emergency release procedure set forth above is a newly-created plan developed in connection with the 2015 PSA used by the courts within Lucas County and, following implementation of the emergency release plan contained in this Order, amendment or alteration of that plan may be necessary. As a result, the parties may seek leave of Court to do so.

This Order does not, and cannot, modify the Court's Order of November 5, 2014. This Order is intended solely to modify previous Orders regarding release procedures; and all previous Orders, not inconsistent herewith, [\*13] shall remain in full force and effect.

IT IS SO ORDERED.

/s/ James G. Carr

## SPECIAL MASTER

**Table 2. Risk Levels Derived from the FTA and NCA  
Results of the Public Safety Assessment**

	<b>NCA 1</b>	<b>NCA 2</b>	<b>NCA 3</b>	<b>NCA 4</b>	<b>NCA 5</b>	<b>NCA 6</b>
FTA 1	Level 1	Level 1				
FTA 2	Level 1	Level 1	Level 2	Level 3	Level 4	
FTA 3		Level 2	Level 2	Level 3	Level 4	Level 6
FTA 4		Level 2	Level 2	Level 3	Level 4	Level 6
FTA 5		Level 3	Level 3	Level 4	Level 5	Level 6
FTA 6				Level 6	Level 6	Level 6