

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, et al.,

Plaintiffs,

-v-

WILLIAM LUCAS, et al.,

Defendants.

Case No. 71-173217-CZ

Hon. Timothy M. Kenny
Presiding Judge - Criminal Division

OPINION

This civil matter is before the Court on a “Motion to Modify Consent Order and for Related Relief” filed by the defendant, the Wayne County Sheriff. For the reasons more fully explained below, the Court will deny the motion to modify the Consent Order, but will order compliance with the order.

I. PROCEDURAL HISTORY

Preliminarily, it should be noted that this case has a long history with many challenges for the parties, resulting in several modified consent orders. The consent order pertinent to the instant motion was originally entered into by the parties in 2005, followed by several modifications.

The 2005 Consent Order provided a staffing plan for all three jail divisions (hereinafter collectively, “the jail”) of 4 commanders, 18 lieutenants, 54 sergeants, and 767 police officers for a total of a uniformed staff of 843. Of the 767 police officers, 442 worked in security while 325 were support staff. Under the 2005 order, the Sheriff was

required to adhere to the plan and use the staff as the plan required except in emergency situations. At the time that the 2005 Consent Order was entered into, the case as a whole was dismissed with prejudice, while the Court retained jurisdiction over the enforcement of the Consent Order.¹

However, in the wake of the “Great Recession,” on October 24, 2008, the Sheriff filed a motion for an order to show cause and a preliminary injunction in the aftermath of layoffs of 76 officers. The motion for the order to show cause requested why the layoffs should not be set aside and why 31 vacant positions should not be filled. In an opinion stated on the record on November 21, 2008, the Court opined that it is not the Court’s role to be the administrator of the jail and the Consent Order should be adhered to unless alterations to it are approved by the Court. [Sheriff’s Proposed Findings of Fact and Conclusions of Law, Exhibit A, p 12, In 21 -25, p 13, In 1]. The Court explained that the purpose and intent of the Consent Order is to specify and control inmate population and staffing to maintain “an appropriate staff to inmate ratio.” The appropriate staff to inmate ratio must be maintained to meet “the legal requirements of adequate provision of basic jail services and necessities, protection of inmates, and personnel, and protection of public safety...” [Id at p 9, In 12-21, quoting the plaintiff’s brief]. The Court also asserted that the “County cannot present the court with a fait accompli” by “forcing a unilateral modification to the consent order by use of the budget process.” [Id at p 12, In 3-5]. The Court further held that all parties except the plaintiff inmates, had failed to

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At the time of that the 2005 Consent Order was entered, Hon. Michael F. Sapala had presided over the case.

“live up to their legal and constitutional requirements under the consent order.” [Id at p 14, ln 18-21].

Ultimately, the Court recognized the difficulties of the parties' in functioning within the confines of the 2005 Consent Order. This included the County's failure to fulfill its obligation to fund the jail at a sufficient and serviceable level as a result of the County's reduction in revenues due to extreme economic stress as well as the Sheriff's inability to fulfill his duty to maintain a serviceable jail in order to protect the public, the inmates, and jail personnel. The Court determined that the Consent Order had to be modified with the goal of maintaining public safety while at the same time recognizing the inmates' rights to constitutional protection. The Court denied the Sheriff's request that the Court order the laid-off officers back to work, but enjoined further lay-offs and dismissed the order to show cause. It further ordered that the parties work together and report back to the Court on January 6, 2009. The order of the Court was entered on December 2, 2008.

Thereafter, the Court held more evidentiary proceedings and gave its opinion orally on the record on May 21, 2009. The Court essentially held that the County has a statutory duty to fund the jail at a “suitable and sufficient level.” [Opinion, May 21, 2009, p 9, citing MCL 45.16²]. The County also has a constitutional duty to protect the public

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MCL 45.16 provides in relevant part:

Each organized county shall, at its own cost and expense, provide at the county seat thereof a suitable courthouse, and a suitable and sufficient jail and fireproof offices and all other necessary public buildings, and keep the same in good repair.

[Emphasis added].

through its governmental entities. [Id at p 5]; Const 1963, art 1, § 1³. The Court also held that consent orders, which are in the nature of contracts, generally can only be modified with the agreement of the parties, except in the extreme negative economic circumstance in which the County and Sheriff found themselves. The economic conditions made it impossible for the parties to perform their duties under the Consent Order.

An order modifying the 2005 Consent Order was entered on June 11, 2009. To summarize, the Court included the following provisions in the order:

- Reduction in the effective capacity of jail population from 2,588 to 2,076 by reducing effective capacity of Division I and Division II to 1,398 and Division III to 678. Those in pre-classification housing, the infirmary, or special housing were not to be counted in these numbers;
- Closure of three floors of Division I and two pods at Division III;
- Reduction of 63 officers and 5 sergeants in Division I/II and 15 officers in Division III. Elimination of one lieutenant. Non-civilian staffing consist of 4 commanders, 17 lieutenants, 49 sergeants, and 658 officers totaling 728 uniformed personnel with one lieutenant assigned to classification;
- Lifting and dissolving the temporary injunction;
- Provision of various reports to the County Executive, the Commission, the plaintiffs, and the Court;
- When effective capacity is reached, releasing hospitalized inmates who meet criteria for conditional release before other inmates who meet the same criteria if the Director of Jail Health Services and the committing judge approves;
- When effective capacity is reached, the Director of Jail Operations may conditionally release upon participation in the Court's pretrial services unit telephone monitoring program, if the individual does not require supervision under the tether program and if that person's conditional release is pending;

³ "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection." Const 1963, art. 1, § 1.

- Amendment of the conditional release priorities to reflect a change in Category 6 to read “Pretrial property or drug possession felons” and adding a new category 8 which shall be “persons committed for civil Friend of the Court violations.” Changing former Category 8 to Category 9 and changing former Category 9 to Category 10;⁴
- Submission to the Court of monthly census reports on the last day of each month including inmate releases under each category for effective capacity purposes;
- Except as provided in this amendment, the 2005 Consent Order remains in effect.

This modification order was later amended several more times. First, an interim order was entered on August 4, 2009, which was effective on July 31, 2009 and was to remain in effect until August 28, 2009. This order primarily permitted the release of 30 ordinance violators or misdemeanor prisoners on any given day during the term of the order. The order also allowed the release of 30 pretrial prisoners on any day as long as the Director of Jail Operations consulted with the Presiding Judge of the Criminal Division. The order urged the Wayne County Commission to revise ordinances relative to jail operations to correct impediments to effective jail operation.

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In 1990, Chief Judge Richard Kaufman along with the Wayne County District Judges’ Association, and the Wayne County Chiefs of Police reached a tentative agreement regarding the release of inmates and the prioritization for conditional release. They were prioritized in categories as follows:

- Category One - persons convicted of contempt
- Category Two - alternative work force violators from either the County program or other community work force program with a twenty day limit
- Category Three - pretrial violent felons
- Category Four - pretrial property felons with capias history
- Category Five - a misdemeanor allotment of 360 beds (50% to City of Detroit, 50% to other Wayne County communities)
- Category Six - pretrial property felons
- Category Seven - sentenced felons
- Category Eight - sentenced misdemeanants other than those included in the allotment
- Category Nine - pretrial misdemeanants other than those included in the allotment

This agreement provided that persons in the lower number categories would be given priority on available jail space. [Defendant’s Exhibit 26].

October 6, 2009, another order was entered. This order vacated two sections of the original final judgment relative to medical and dental care. Essentially, this order adopted national standards for medical and mental health care in the jail setting published by the National Commission on Correctional Health Care in a publication entitled "Standards for Health Care in Jails."⁵ This order also required the closure of an additional housing unit in Division III and an additional one and a half floors at Division I and a staffing reduction of 63 officers, 53 of which were related to the housing closures. This order also permitted the County to hire a private contractor for food services in the jail.

A December 18, 2009 modified consent order expanded the authority of the Director of Jails to release inmates in particular categories.

After a hearing held on November 19, 2009, the Court again entered an order modifying the October 6, 2009 order. This modification order was entered on December 28, 2009. This order included changes to the October order authorizing the Director of Jails as follows:

- to release pretrial felony defendants who can pay bonds related to felony charges but cannot pay for bonds or have outstanding warrants related to violent misdemeanor or traffic offenses;
- holds and are eligible for alternatives to jail;
- to conditionally release sentenced felons, pretrial and sentenced misdemeanants, and ordinance violators to community based alternatives to jail, and with outstanding warrants related to nonviolent misdemeanor or traffic offenses;

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A July 23, 2013 order also created a "step-down" unit for mental health inmates.

The order also directed the parties to appear for a status conference on January 19, 2010 and for the Director of Jails to submit a compliance report relative to the order no later than the day before the hearing.

Finally, on July 25, 2011, another order was entered which created a new staffing plan. This staffing plan is currently in effect. The order included the following:

- Sworn officers totaling 642 includes 4 commanders, 17 lieutenants, 47 sergeants, 574 police officers;
- Closure of all housing floors at Division I except floor 4 (mental health inmates), floor 5 (female and mental health inmates), floors 13 to 14 (pre-classification);
- Closure of Old 1 and an additional one and one half floors at Division II;
- Closure of 3 pods at Division III

A July 23, 2012 order also created a “step-down” unit for mental health inmates by permitting the opening of a floor in Division I. There has been no approval by the County in its budget for 11 positions for the staffing of this unit. This order also provided that 6 Annex in Division II was to be closed.

On July 18, 2013, another modified consent order was entered providing that the Sheriff implement standards consistent with the Prison Rape Elimination Act, 42 USC § 15601, *et seq*, whereby those inmates under 18 years old cannot be housed with adult inmates. This order also provides an additional 10 officers to the staffing plan.⁶

According to the defendant Sheriff, as population increased in the jail due to the fact that the length of stay for inmates increased, it filed a motion to compel compliance

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This Court also entered a separate order on June 18, 2013 to isolate 17-year-olds from the adult population to conform to the Prison Rape Elimination Act, 42 USC § 15601, *et seq*. The Court also ordered the provision of 10 police officers for the minor population.

with the Consent Order on March 13, 2014. The Sheriff asserts that the increasing population has forced the opening of certain floors previously closed and an increase in overtime expenditures. The Sheriff then filed the instant motion to modify the Consent Order as a result of unsuccessful negotiations in the budget process for Fiscal Year 2014, a series of evidentiary hearings, as well as the parties' attempt to reconcile their differences in a series of discussions.

The Court notes that such a motion is, in reality, an attempt to reopen a budget dispute between the parties. The original case was dismissed with prejudice with this Court retaining jurisdiction only for enforcement and/or implementation of the Consent Order.

Due to recent statutory changes, currently, this Court does not have subject matter jurisdiction over a budget dispute. MCL 141.438 provides in relevant part:

6) An elected official who heads a branch of county government ... has standing to bring suit against the chief administrative officer of that county concerning an action relating to the enforcement of a general appropriations act for that branch of county government...

(7) ... any suit brought under subsection (6) or section 16(9)⁷ shall only be brought in the Michigan court of appeals within 60 days after 1 of the following:

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MCL 141.436(9) provides in part:

An elected official who heads a branch of county government ... has standing to bring a suit against the legislative body of that county concerning a general appropriations act, including any challenge as to serviceable levels of funding for that branch of county government or that court. ... The court hearing a suit shall consider the financial ability of the county to pay when considering any challenge as to serviceable levels of funding.

- (a) The adoption of a general appropriations act.
- (b) An amendment to a general appropriations act or an action relating to the enforcement of that general appropriations act ...

(10) The jurisdiction of the court of appeals over a suit brought under subsection (6) or section 16(9) is exclusive and that jurisdiction or any judicial duties inherent in that jurisdiction shall not be transferred to any other court. ...

[Emphasis added].

The Court of Appeals has exclusive jurisdiction over any new funding disputes and any attempt by the parties to revisit this issue cannot be decided by this Court. Moreover, this Court has no authority to direct appropriations because, under the separation of powers doctrine, appropriations are a legislative power and duty. *Cahalan v Wayne County Bd of Com'rs*, 93 Mich App 114, 121; 286 NW2d 62 (1979).⁸

In the motion, the Sheriff requests various modifications specified in more detail below and for the reasons explained more fully below, the Court will deny the request for modification. However, the Court will direct the parties to perform each of their duties as required by the Consent Order

II. STANDARDS FOR MODIFYING CONSENT ORDERS

Notwithstanding the fact that this Court does not have jurisdiction to entertain a new action concerning claims regarding inadequate budget appropriations, generally

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It is elementary that the separation of powers doctrine mandates the preservation of the legislative, executive and judicial branches of government as entities distinct from one another, Const.1963, art. 3, s 2. The judiciary will not interfere with the discretionary actions of legislative bodies.

Cahalan v Wayne County Bd of Com'rs, 93 Mich App 114, 121; 286 NW2d 62 (1979).

consent orders cannot be modified unless all parties agree to modification. However, a consent order, or judgment, has been characterized by courts as “of the nature of a contract, rather than a judicial order entered against one party. Furthermore, a settlement agreement...is a contract and is to be construed and applied as such. Absent a showing of factors such as fraud or duress, courts act properly when they enforce such agreements.” [Internal citations omitted] *Roberts v Farmers Ins Exch*, 275 Mich App 58, 73; 737 NW2d 332 (2007). The *Roberts* court explained that, in addition to factors such as fraud or duress, liability may be extinguished if a “contractual promise becomes objectively impossible to perform. There are two kinds of impossibility: original and supervening; supervening impossibility develops after the contract in question is formed.” [Citations omitted] *Id* at 74.

In the situation with which this Court is faced, impossibility can only be described as supervening and not an original impossibility. It is alleged to be a supervening impossibility because the Sheriff now contends that conditions have changed since the last modification of the Consent Order. To succeed with a claim of supervening impossibility, the factors creating such impossibility must be unexpected, fortuitous, and unavoidable. 17A Am Jur 2d Contracts § 659. Finally, it is for the trier of fact to reconcile any conflicting evidence of a claim of impossibility. *Barnes v B & V Const, Inc*, 137 Mich App. 595, 598–599; 357 NW2d 894 (1984).

Therefore, consent orders may only be modified if all parties agree to modification or if the trier of fact finds that certain terms of the agreement become “objectively impossible to perform.” *Id*; *Roberts, supra* at 74.

III. DUTIES MANDATED UNDER THE LAW RELATIVE TO THE JAIL

With regard to the Consent Order at issue in the instant motion, there are specific duties for both the County and the Sheriff relative to the operations maintenance and condition of the jail. A number of duties are mandated by law. Some take precedence over others.

First, there is a constitutional mandate that the Sheriff has certain powers and duties. "The office of sheriff is a constitutional office with duties and powers provided by law. When officers are named in the Constitution they have a known legal character. The Legislature may vary the duties of a constitutional office, but it may not change the duties so as to destroy the power to perform the duties of the office." [Authorities omitted] *Brownstown Tp v Wayne County*, 68 Mich App 244, 247-248; 242 NW2d 538 (1976); Const Art 7, § 5.

The legislature has also prescribed responsibilities for the Sheriff. Pursuant to statute, "Sheriffs have charge and custody of the county jail and its prisoners. *Id* at 249 citing MCL 51.75. ("The sheriff shall have the charge and custody of the jails of his county, and of the prisoners in the same; and shall keep them himself, or by his deputy or jailer." MCL 51.75. Similarly, the County has a duty to provide a "suitable and sufficient jail" and "keep the same in good repair." MCL 45.16. "In general, this Court does not interfere in a county board of commissioners' appropriations decisions absent a failure to budget funds to allow a county executive officer to fulfill statutory or constitutional duties." *Hackel v Macomb Co Com'n*, 298 Mich App 311, 336; 826 NW2d 753 (2012).

Since the Sheriff has a duty to provide, with the help of the undersheriff and deputy sheriffs, “all reasonable services within the jurisdiction of their offices,” MCL 45.407, and has “charge and custody of the jails, and of the prisoners,” the legislature may not change the duties to the extent that a change would destroy the power to perform the duties. *Brownstown Tp, supra* at 247-249.

The County and the County Commission must appropriate sufficient funds so as not to interfere with the Sheriff’s duties as required by law. *Hackel, supra*. Likewise, neither local ordinance nor court order may frustrate the legislative intent to prescribe the duties imposed on either the Sheriff to “fulfill statutory or constitutional duties” or the County to perform its duties to provide sufficient funds so that the Sheriff may perform those statutory or constitutional duties. *Id.*

Finally, the parties have agreed by Consent Order that they each can perform their individual duties within the parameters specified by the agreement and given the economic climate. As explained above, the Court cannot interfere with or modify the agreement absent a showing that performance of the terms of the agreement is objectively impossible. *Roberts, supra*.

IV. ANALYSIS

A. Relief Requested

The Sheriff has moved this Court to modify the consent agreement and has asked for significant alterations to the Consent Order. The Court notes that the request for relief contained in the motion itself contains requests of a general nature and differs widely from the specific requests for relief contained in the Sheriff’s Proposed Findings of Fact and Conclusions of Law.

The Sheriff contends that, to comply with responsibilities mandated by the constitution and by statute, the Consent Order must be modified to accommodate the rise in jail population and the resulting extraordinary overtime incurrence. The request for relief as specified in the Sheriff's motion includes the following:

- Opening all floors in all Divisions except 3 floors at Division I and 1-Old;
- Division II shall remain open;
- If Division II is closed, closure of floors in Division I must be reexamined;
- Adequate funding for residential rehabilitation contracts;
- Director of Jails to monitor population fluctuations and make adjustments as to floor closures and inform the Court of such closures and openings;
- If capacity exceeds rated capacity less closure of 3 floors in Division I and 1-Old with a 10% vacancy rate equaling 2,272 beds, the Director may open floors to maintain sufficient staffing ratios;
- If floors are opened due to excess population, the Director must inform the Court within 7 days of opening floors;
- Staff in closed floors will be redeployed to backfill overtime and to assist in safety and sanitation inspections;
- Increase in staffing:
 1. In Division I, 3 FTE⁹ roving officers for youthful offender units;

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FTE or "full time equivalent" is defined as "[t]he ratio of the total number of paid hours during a period (part time, full time, contracted) by the number of working hours in that period Mondays through Fridays. The ratio units are FTE units or equivalent employees working full-time. In other words, one FTE is equivalent to one employee working full-time.

2. In Division III, 3 FTE officers for federal detainees;
3. In Division I, 3 FTE officers for the Classification Unit, 4 FTE officers for the Bond unit, 8 FTE officers for escorting nurses during medication distribution, 3 FTE positions for distribution of supplies, linens, and inmate uniforms;
4. In Division II, 8 FTE officers for escorting nurses during medication distribution and 5 FTE positions for distribution of supplies, linens, and inmate uniforms;
5. In Division III, 9 FTE officers for booking and release of inmates and 6 FTE officers for the classification unit;
6. The Sheriff also maintains the right to increase support services staff to accommodate additional open housing units.
7. Additional staff for attendant functions including:
 - 1 FTE Deputy Chief;
 - 1 FTE lieutenant for special project;
 - 3 FTE officers, 1 FTE sergeant, a 1 FTE captain for internal affairs;
 - 7 FTE officers for community transport;
 - 2 FTE officers, 1 FTE sergeant, and 1 FTE deputy chief for training;
 - 1 FTE sergeant for Westland lockup;
 - 3 FTE officers and 1 FTE sergeant to comply with PA 511,¹⁰ MCL 791.401, *et seq*, the Community Corrections Act;

For example: You have three employees and they work 50 hours, 40 hours, and 10 hours per week – totaling 100 hours. Assuming a full-time employee works 40 hours per week, your full time equivalent calculation is 100 hours divided by 40 hours, or 2.5 FTE.”

<http://www.businessdictionary.com/definition/full-time-equivalent-FTE.html#ixzz3NgzKK01k> accessed on January 2, 2015.

It should be noted that, modifications to the workload will forecast how many FTEs will be required.

20 FTE officers, 3 FTE sergeants, 7 FTE project consultants for tether;

6 FTE officers for the phone bank;

3 FTE officers as union officers;

10 FTE officers and 3 FTE sergeants for communication and dispatch;

7 FTE civilians.

- Modify the Consent Order to include the above attendant functions;
- Expedite recruiting and hiring of unfilled positions;
- Include 16 hours of classroom and experiential education with the training program as well as 8 hours of e-training provided by the County's E-Learning system and the County is to provide a plan of implementation to the Court;
- The County shall develop and present a plan to the Court for regular maintenance of the jail facilities and develop and present to the Court a plan for hiring additional painters and skilled trades staff;
- The County shall develop and present to the Court a plan for compliance with the required 14-day health appraisals pursuant to R 791.732 and report to the Court on a bi-weekly basis;
- The County shall contract with a professional entity to conduct a relief factor¹¹ study for the Jails consistent with national standards and provide the study to the parties upon completion;

The purpose of PA 511 of 1988 is "to provide for the funding of community-based corrections programs through local governmental subdivisions or certain nonprofit agencies; to prescribe the powers and duties of certain state officers and agencies; to provide for community corrections advisory boards and prescribe their powers and duties; to create an office of community alternatives and a state community corrections board within the department of corrections and prescribe their powers and duties; and to provide for the promulgation of rules." MCL 791.401.

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"The Relief Factor indicates how many persons it takes to fill a single job position for a single shift, taking into account vacation, sick leave, training days, and other types of leave. The factor varies among private companies and public safety comm centers, depending upon the employees' benefits ...and how the employees use their benefits ..."

- Enjoin mandatory furloughs for the 2014-2015 fiscal year.

The County argues that it cannot possibly accede to the Sheriff's proposed modifications due to the extraordinary costs associated with the additional staff request along with the County's stressed financial situation. The County also argues that, because the additional staff requested by the Sheriff requires additional funding, pursuant to MCL 141.438, this Court has no jurisdiction to entertain a new funding dispute and has jurisdiction only over the enforcement of the current Consent Order. The Court agrees with the County that the Court cannot invade the province of the County Commission and such an invasion would contravene the separation of powers doctrine. The court in *Brownstown Tp, supra* at 151-152 succinctly explained:

The Separation of Powers doctrine, US Const Arts I, II, III, s 1, and Const 1963, art 3, s 2, mandates the legislative, executive and judicial branches be preserved distinct and independent of each other. *Attorney General ex rel. Cook v. O'Neill*, 280 Mich 649; 274 NW 445 (1937). The Board of Commissioners have constitutionally been granted legislative and administrative powers and duties as provided by law. Const 1963, art 7, s 8. This power has been further implemented by legislation granting the Board the power to appropriate money and manage county affairs. MCLA s 46.11; MSA s 5.331. The judiciary will not control the discretion of administrative bodies acting within the limits vested in them by law, unless the action is so capricious and arbitrary as to evidence a total failure to exercise discretion. *Bischoff v County of Wayne*, 320 Mich 376; 31 NW2d 798 (1948).

[Footnote omitted] [Emphasis added].

Thus, unless the Commission has acted arbitrarily, the Court cannot interfere with the Commission's power to appropriate money and "manage county affairs."

B. Findings of Fact and Conclusions of Law

The Court heard testimony from the following witnesses:

- Jeriel Heard, Director of Jail Operations for the Wayne County Jail
- Daniel Pfannes, Undersheriff for Wayne County
- Suzanne Hall, Director of Administration for the Wayne County Sheriff's Office
- Dr. Keith Dcugokinski, Director of Jail Health Services
- Kevin Haney, Deputy Chief Financial Officer of Wayne County
- Laura Cox, Wayne County Commissioner
- Richard J. Nelson, Maintenance Manager for the Sheriff
- April Wendling, Public Health Sanitarian for all three jails
- Barrett M. Hairston, Housekeeper Supervisor for Jail Divisions I and II
- Tadarial Sturdivant, Director of Wayne County Department of Children and Family Services

The Court will not interfere with the County Commission's power of appropriation unless the Court finds that the Commission acted arbitrarily or capriciously "as to evidence a total failure to exercise discretion." *Brownstown Tp, supra*. The evidence presented to the Court indicates that the Commission acted in a manner that was neither arbitrary nor capricious.

As Commissioner Cox and Mr. Haney explained, the budget process takes several months and each County department is funded given the revenues available.

These revenues derive primarily from property taxes and, as Mr. Haney indicated, revenues over the past several years have been dramatically reduced due to the extensive losses in property values as a result of the “Great Recession.” Mr. Haney also indicated that, while revenues reduced, expenses such as health care and pensions increased due to inflation. According to the proofs, the County appropriation for the Sheriff is for \$114,654,000 out of a total General Fund budget of \$375,085,441. Hence, the Sheriff’s budget is nearly one-third of the total General Fund budget. Given the present economic climate, this allocation is neither arbitrary nor capricious. It also is noteworthy that much of the County’s other funding obligations are for departments that also have constitutionally and/or legislatively mandated duties such as the Third Circuit Court, the County Clerk, and the Prosecutor.

The Court will not modify the Consent Order to the extent that it requires any additional appropriation of money. However, the Court will enforce the Consent Order in the areas in which the parties have been deficient. The Court finds that, given the stresses on the County’s finances, the Commission has not acted arbitrarily, but has funded the Sheriff within the confines of its revenues with an eye to the Sheriff’s mandated jail duties. Regarding the Consent Order, the Court finds that none of the parties has demonstrated that it is impossible to fulfill their respective duties required in the Consent Order with the exception of the plaintiffs, Jail Inmates, who need not make such a showing.

Based upon the evidence presented at the evidentiary hearing, the Court has identified specific concerns or deficiencies in the parties’ adherence to the Consent Order. Those concerns are (1) the staff to inmate ratio due to fluctuating population and

redeployment of officers to duties other than jail duty; (2) excessive overtime due to redeployment of officers to duties other than jail duty; (3) the failure to perform health assessments on all inmates within 48 hours of booking; (4) lack of timely and adequate maintenance of the jail properties; and (5) an insufficiency of the provision of attendant functions.

1. The Staff to Inmate Ratio Due to Fluctuating Population and Redeployment of Officers to Duties other than Jail Duty

The Court notes that the effective capacity¹² of the jail, pursuant to the most recent Consent Order, is 1,776 inmates.¹³ The current inmate to staff ratio is approved by the Michigan Department of Corrections (MDOC) and is consistent with the American Correctional Association (ACA) standard. Director Heard testified, that, in Division I and II, the staffing ratio requires that there be 21 officers for every 128 inmates. In Division II, there should be 1 officer for every 30 inmates up to 45 inmates. As to floor staffing, Director Heard stated that there should be 5 staff per floor in Division I and there are 3 per floor with a rover for a 4th person in the mental health unit and 5th person in the female mental health unit. According to Director Heard, the CEO attempted to reduce this number to 3 per floor, but the MDOC rejected the reduction as unacceptable.

The Director of Jail Operations, Heard, testified extensively about the increase in jail population and asserted that the increase is generally due an increase in the

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“Effective capacity” is the number of beds authorized by court order. Rated capacity is the capacity approved by the Michigan Department of Corrections and is equivalent to the actual number of beds. Rated capacity for the jails is 2,951.

¹³ The effective capacity of the jail was increased from 1,764 to 1,776 with the creation of the mental health care step-down unit. It also should be noted that the number “1,778” is also sometimes referred to as the effective capacity of the jail. Director Heard testified that the number had changed from 1,764 to 1,778 due to the creation of the mental health step-down unit. [Transcript, December 16, 2013, p 8, ln 19-24].

average length of stay in the jail. A report generated by the Jail Inmate Management System computer shows that, between 2011 and 2013, there has been an upward trend in the average daily population (ADP) of the jail. [Exhibits 14 and 15]. In 2011, the ADP was 2,067, in 2012, it was 2,176, and in 2013, the ADP was 2,290. Director Heard also stated that the jail system as a whole has become less efficient in processing inmates. He attributed this to several factors including the setting of higher bonds, an increase in the number of competency and/or responsibility examinations, an increase in orders for independent medical examinations, and an increase in jury trials. In addition, many inmates, although otherwise eligible for the tether program, were homeless.

Despite these deficiencies, the Court finds that the Director of Jail Operations has diligently labored to manage the jail population to conform to the effective capacity of the jail, albeit with the incurrence of extensive overtime and the use of the tether program.¹⁴

Proofs taken at the hearing indicate that the County added 45 new police officer positions into the Sheriff's budget. [Id]. Eight of the positions were to be added to the tether unit, ten were to be added to comply with the Consent Order regarding youthful offenders, and twenty-five were intended for floor security. [Id at fn 7]. Also, \$11 million was added to the Sheriff's budget and this amount was to include \$1.1 million for contractual services for tether monitoring, \$2 million for a new Jail Management

¹⁴ Even so, for fiscal year 2014, the Sheriff made a budget proposal of \$116,000,000 out of which \$112,000,000 would be allocated to the jail. [Wayne County's Post-Hearing Brief, p 28]. Mr. Haney testified that it was impossible to fulfill this request, but attempted to "incorporate whatever they [could] into the budget that the department [asked] for." [Id at p 29].

The Court notes that July 23, 2012 order for the step-down mental health unit and July 28, 2013 order funding the to comply with Prison Rape Elimination, 42 USC § 15601, *et seq*, is evidence of County's willingness to address the special needs of the jail.

System, \$1.4 million to reduce a deficit in the Sheriff's drug fund, 6 retired deputies to perform and expedite background checks, converting officers to housekeeping positions, doubling the temporary officer pool to 50 officers, and reserving \$500,000 for residential housing for those eligible for administrative release. [Id at 30].

Despite these purported additions, Undersheriff Pfannes, who provides oversight of all of the Sheriff's operations including the jail, Internal Affairs, Discipline, and Field Operations, testified that only 6 of the 45 new positions have been filled. Filling positions has been extraordinarily slow due in large part to the fact that only the CEO can administer the hiring process (not the Sheriff) and that the wage rate of \$13.50 per hour is too low to attract applicants. He stated that there are currently 13 applicants in the background check process. He further stated that the requisition for the positions was \$1,007,425 for Division I and Division II and \$599,438 for Division III. The Undersheriff believes that, by the end of the 4th quarter of the current fiscal year, only 20 of the 45 positions will be filled.

2. Excessive Overtime Due to Redeployment of Officers to Duties Other than Jail Duty

As a result of the increased population due to inefficiencies in the system, an excessive amount of overtime has been incurred, which increases the Sheriff's expenditures at a more rapid rate than without overtime. This quickly creates an overtime budget deficit.

The County argues that other strategies may be used to decrease overtime and address the population increase. Most of those suggestions involve moving deputies from non-jail duty locations to the jail. For example, the CEO suggests eliminating

certain units which are not constitutionally or legislatively mandatory. Those units include the Municipal Road Patrol, Secondary Road Patrol, the Marine Patrol, the Wayne County Community College District unit, and the Deeds Investigation unit. [Wayne County's Post-Hearing Brief, p 30-31]. Although the Sheriff argues that road patrols are grant funded contracts, they nevertheless cause the use of excessive overtime incurred in jail operations when officers are taken from the jail to perform other duties. The Court agrees with the County that these non-jail related units, while of value to the community, are not mandated functions *Brownstown Tp, supra* at 251,¹⁵ and should only be performed when the constitutionally and statutorily mandated functions are fulfilled.

The Director of Jails explained the use of overtime. There are two types, voluntary and mandatory. First, the Director asks for volunteers. If there is an insufficient number volunteering for overtime, the Director may order overtime up to 56 hours per week. He stated that he ordered that sergeants, lieutenants, and captains do overtime when they were ineligible to volunteer for overtime. The Union later agreed to allow those officers to volunteer. Due to the increased salaries of the higher ranking officers, overtime is more expensive, and draws down the overtime budget more rapidly. The

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Our review of the authorities leads us to hold that neither the common law nor Michigan statutory authority impose a duty on the sheriff to supply a full-time road patrol on all county roads and highways.

[Emphasis added].

Brownstown Tp v Wayne County, 68 Mich App 244, 251; 242 NW2d 538 (1976).

The Court further notes that it finds that those grant fund contracts are "objectively impossible" to perform because the Sheriff must perform his other mandated duties one of which includes operating the jail. *Roberts v Farmers Ins Exch*, 275 Mich App 58, 73-74; 737 NW2d 332 (2007).

Union refused to allow others from outside business units to volunteer for overtime duty in the jail. Undersheriff Pfannes testified that the Sheriff attempted to collapse services on weekends and increased lockdowns when security staff was reduced. He also stated that the CEO has refused to allow the Sheriff's request to move money from the salary line item to the overtime line item. In short, Undersheriff Pfannes stated that he agrees with the Director's staffing plan and that the Sheriff cannot comply with the 2011 Consent Order or the budget appropriation ordinance.

Suzanne Hall, Director of Administration for the Sheriff's Office, provided insight into the budget process and various factors that impact the budget. She explained that the CEO and the Sheriff each submit budget proposals to the Ways and Means Committee. The Committee holds hearings on the proposals and then compares the two budgets and adjusts it according to feasibility. The full Wayne County Commission then votes on the version produced by the Ways and Means Committee. Mr. Haney and Ms. Hall analyzed the overtime in the jail and concluded that there was 218 FTE of overtime in both March, 2013 and April, 2014. She testified that she reported to the Commission that there were 64 unstaffed positions in floors that were open, but had been ordered closed. However, she ultimately was unable to explain the excess of overtime and admitted that the overtime was "not associated with the population increase." [Transcript, January 22, 2014, at 44]. A chart depicting overtime and daily population for the months of March and April in 2011, 2012, and 2013, readily shows that overtime fluctuated in those months, but that the overtime did not correlate with population increases or decreases during those various months. [County's Post-Hearing Brief, p 40]. Ms. Hall did, however, testify that, in December, 2013, 11 officers were

returned to jail duty after having been deployed to non-jail related duties. She estimated that, by returning those officers to the jail, a savings of approximately \$1,000,000 of overtime costs would be realized including fringe benefits.

The Sheriff additionally contends that an inappropriate relief factor accounts for the excess in overtime. Director Heard testified that the overtime results in officer fatigue, more officers calling in sick, and an increase in non-compliance with procedural requirements whereby shortcuts are taken to complete tasks. As a result of the excessive overtime, the officers perform poorly, and poor performance creates a risk of the occurrence of accidents and threats to the safety of other jail employees and to the inmates. When there is a staffing shortage, all inmates must be kept in their cells.

According to the Sheriff, the relief factors currently in use for staffing the jail is 1.6 for 7-day posts and 1.2 for 5-day posts. Evidence suggests that Oakland County uses a 1.82 relief factor for corrections officers in the Oakland County Jail. Undersheriff Pfannes testified that a relief factor that was too low would result in overtime issues. Although this may be true, any order by this Court to increase the relief factor would directly affect the staffing levels and thereby affect expenditures and appropriations by the County. Furthermore, as explained above, any order by this Court that would affect appropriations would be impermissible.

3. Failure to Perform Health Assessments on all Inmates within 48 Hours of Booking

A crucial component of the jail consent agreement is the Sheriff's department's ability to perform health assessments quickly and to provide timely physical and mental health services. Compliance with these provisions safeguards staff, the public and

inmates from exposure to contagious disease (e.g. tuberculosis, measles, or even worse, Ebola), reduces the likelihood and expense of inmate hospitalization, and helps reduce the risk of inmate suicides.

Over the past several years, the Director of Jail Health Services has been seriously hindered in his department's ability to perform health assessments on all inmates within 48 hours of booking inmates into the jail. Dr. Dcugokinski, the current Director of Jail Health Services, testified regarding his assessment of performance regarding health screenings. He stated in a compliance report he generated on September 12, 2013 that overtime and temporary staffing support was used on a regular basis to accommodate for employees on sick leave or vacation, but that overtime could not cover for multiple vacancies. [Transcript, January 15, 2014, p 6, ln 7-12]. In his report, he recommended the timely hiring of new nurses to achieve compliance with all medical standards of care. [Id at ln 14-16]. Not only are the 48-hour assessments not being provided, but physical examinations are not being completed within the required 14 days. Dr. Dcugokinski further testified that, as of December, 2013, there were eight nursing vacancies and three social work vacancies. [Id at p 12, ln 4-7]. He also stated that salaries and benefits packages are 22 percent below market rates, but that the compensation packages are "limited by the compensation package agreed upon in the CBA," [Id at p 10, ln 13-14], and that the hiring process is controlled by Wayne County Central Personnel. [Id at p 8, ln 5-7]. He continued on to express his concerns that Jail Health Services was unable to accomplish assessments when inmates enter the jail. [Id at p 27]. He had requested an additional four positions which

were medical assistant positions in the 2014 budget, but the positions were eliminated in the budget. [Id at 28, ln 2-6].

The health assessment of inmates within 48 hours of booking is, in this Court's view, essential to protect the health of inmates, sheriff's deputies, staff and the general public. It is the standard recommended health assessment timeline for inmates booked into a jail. If a health assessment were to be performed on an inmate with tuberculosis 15 days after booking, the public health consequences could be substantial and/or catastrophic. Families of inmates, deputies, jail visitors, and jail and court staff could become infected and spread the illness to others in the community. The longer the delay in performing the health assessment corresponds directly to a risk of the greater danger to the public health.

The Court notes that, given the fact that compensation packages are well below market value in other health care arenas, the County must make concerted and more streamlined efforts to hire for jail health care vacancies in a more timely fashion. Failure to perform these health assessments is not only a failure in compliance with medical standards, but also may result in an increase in overtime due to a lack of staff from the staff possibly contracting illnesses from inmates.

During the evidentiary hearing however, Dr. Dcugokinski stated that compliance with the required 48-hour assessments had been successful and that retention of registered nurses had been better in recent months due to retention bonuses having been given in January and July. He also said that there would always be a certain segment of the medical personnel population that would not work in an environment like a jail. Although he stated that the 48-hour assessment program was successful, he did

say that overtime and temporary staffing was required to accomplish the requirement. [Transcript, January 16, 2014, p 110, ln 4-6].

The Court will order that the timelines of 48-hour assessments and 14-day physical examinations be strictly followed in order to comply with the Consent Order and to fill vacancies with expediency.

4. Lack of Timely and Adequate Maintenance of the Jail Properties

The jail consent agreement and the series of amendments to it have all recognized the plaintiff inmates' need to be housed in facilities that are timely and adequately maintained. Over the last several years, however, the County has failed to live up to this requirement.

In 2011, Wayne County began efforts to build a new jail. The proposed new facility, known as the Consolidated Jail Project, was designed to house all Wayne County Jail inmates in one building. For various reasons, the new jail structure has not been completed. There is no evidence to believe completion is imminent.

Testimony presented during the evidentiary hearing leads this Court to conclude that staffing to perform timely and adequate maintenance at Divisions I, II and III was reduced or eliminated once the County decided to go forward with the Consolidated Jail Project. Maintenance has been virtually eliminated due to skilled trade staff reductions at the jail properties. Timely and adequate maintenance has been replaced by repairs of what has already been broken or non-functioning.

Compliance with the Consent Order requires an immediate commitment to timely, adequate maintenance of the jail properties. Lack of staffing and financial commitment to the maintenance of the jail elevators, fire alarm panels, heating and

cooling equipment, kitchen conditions, and plumbing concerns all pose health and safety concerns for inmates, deputies, jail employees and the visiting public.

The Court heard the testimony of Richard J. Nelson, Maintenance Manager for the Sheriff, April Wendling, the Public Health Sanitarian for all three jails, and Barrett M. Hairston, Housekeeper Supervisor for Jail Divisions I and II.

Mr. Nelson testified that there are no tradespeople dedicated to work in the jail and that the Wayne County Buildings Division provides maintenance staff for the jail as well as maintenance staffing for other Wayne County buildings. He said that he could not control how many tradespeople were provided and the number was not based upon the number of work orders he submitted. Essentially, the Buildings Division decided when, if, and how many people were sent to the jail. Sometime prior to 2007, there had been a maintenance staff dedicated to the jail system. Currently, there are three electricians assigned to the three jail facilities and they are assigned three days for each jail facility and two days for other County facilities. [Transcript, January 16, 2014, p 8, In 23-25 and p 9, In 1]. The electricians are present in the in the jails 5 days in a two-week period of time. The three jail facilities have a staff of two pipe fitters who are also shared with the approximately 30 other county facilities. Mr. Nelson said that the County has four electricians, five plumbers, three pipe fitters, five painters, and four carpenters including a foreman for all the County facilities. The three jail buildings are taken care of by one carpenter. The carpenter works in Division I and II on a part-time basis. Two painters are assigned to the jails.

Currently, there is one plumber assigned to each jail facility and they are available five days per week unless they are called to another Wayne County facility.

Mr. Nelson stated that, when the Buildings Division had more personnel, replacements would be provided in the event that one of the regular tradespeople took sick or vacation time. [Id at ln 22-25].

By way of example, Mr. Nelson testified that in September, 2013, there were 648 work orders submitted and 514 of them were completed with 134 pending completion. This was a 79% completion rate. Another example was June, 2013 when 688 work orders were submitted and 418 were completed with 270 pending. This was a 61% completion rate. He also stated that there is no overtime budget for maintenance and many problems such as kitchen problems can only be rectified during off work hours. He attributes the lack of an overtime budget to lack of long term maintenance of the jail properties and that they are falling behind in maintaining the jail facilities. In effect, no preventative maintenance is currently being provided. Repairs and painting are done only during exigent situations and without regularity. [Id at p 16, ln 4-25]. As of today, there is no preventative maintenance plan.

April Wendling echoed Mr. Nelson's concerns. (She is responsible for compliance with health and sanitation in the jail facilities.) She stated that there are issues, not with food safety, but with the physical plant and equipment. [Id at p 51]. For example, she stated that the floor in the kitchen was in extremely poor condition with large chunks of the floor missing. The MDOC gave the jail a waiver for the floor's condition because of the new jail being built. Some of the missing floor was then filled with cement, but much of the floor has not been repaired or replaced. [Id at p 52, ln 14-16]. According to Ms. Wendling, due the deteriorating condition of the floor, it cannot be properly cleaned or sanitized to prevent the infestation of insects and rodents. In

addition, a problem with roach infestation and drain flies had been discovered in a locked maintenance room. She also mentioned that there is a problem with drain fly larvae and organic matter in the inmate showers, particularly when 20 inmates, some of whom have hygiene problems, all share a shower the size of a "phone booth." [Id at p 56, ln 10-20].

Ms. Wendling testified about numerous problems with various pieces of equipment, problems with standing water, shower pan problems, lack of sanitation of inmate mattresses, cleanliness issues in the infirmary showers, as well as laundry transportation problems. She also said that the jail elevators were constantly non-functioning and that there are cooling issues in the summer, particularly in Division I and II. She indicated that the policies of the jail are good and sound policies, but implementation of those policies is difficult due to the lack of resources. For example, she has attempted to establish a plan for regular drain cleaning with the jail pest control contractor, but has no authority to order the plan and can only make recommendations. She must await a management decision to implement the plan.

Barrett M. Hairston, Housekeeper Supervisor for Jail Divisions I and II, also testified. He is responsible for housekeeping of all floors of both Divisions I and II. His duties include cleaning, sanitation, trash, and supply and stocking the floors. He currently has a staff of 16 civilian housekeepers. Prior to today, officers would do the housekeeping for the areas where inmates are located, and he was only responsible for the areas of administration, public areas, and deputy locker rooms.

There are 13 floors in Division I and 7 floors in Division II and housekeeping is to be provided on 24-hour, 7-day per week basis. Trash is collected daily, extensive

cleaning of floors is done approximately once per month, cleaning of public areas is done daily, thorough and extensive cleaning of the medical area is not done as extensively as Mr. Hairston would like because the area is always congested. He stated that to strip and wax floors, he must incur overtime and has not done this in the medical area for two months. When a floor is closed, his staff does an extensive cleaning of that floor. If needed, that area would also be painted.

Mr. Hairston stated that he is unable to maintain a regular rotating schedule of cleaning showers, day rooms, and fulfilling supplies because he rarely has a full staff. In 1992, when he was responsible for only the areas of administration, public areas, and deputy locker rooms, he had a staff of 21 on three shifts. In 2007, the staff for those areas dropped to four. He now has 13 on staff for all areas.

For all practical purposes, the jail maintenance and housekeeping staffs have been reduced. It is difficult to perform regular maintenance and cleaning without either the implementation of a plan or the resources to do so.

The County's response to the above statements is that compliance reports for sanitation, vermin control, clothing, and linens show that standards are either being met or that there is partial compliance with the standards. The County also maintains that the Sheriff presented no actual work orders and/or showed no analysis of the types of work orders submitted with an assessment of how long each type took to fulfill.

In the Court's view, it is apparent that 33% of work orders will be pending at any given time¹⁶ in an aging structure that has been allowed to progressively deteriorate. It is also apparent that the equipment and structure of the jail facilities is antiquated and

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Wayne County's Post-Hearing Brief, p 54, ¶ 289.

require regular care and maintenance. Moreover, the County has demonstrated that, when required, it is able to overcome these problems. It has not shown that it cannot provide timely and adequate maintenance of the jail properties, but has, thus, far only been concerned with exigent situations.

Therefore, in the absence of any showing that timely and adequate maintenance of the jail properties is objectively impossible, the Court will order that the County shall forthwith comply with the maintenance staffing requirements set forth in the consent agreement.

The Court also finds that there is no consent order or amendment which addresses the timely and adequate maintenance of Division III, the newest jail property. As the conclusion of this opinion will indicate, the parties will be ordered to develop a maintenance plan for Division III within 90 days of this court's opinion and submit it to the court for approval.

5. Attendant Functions

The last area of concern the Court will address is the area of attendant functions. These functions include transportation, internal affairs, tether, training, lock-up at secondary roads facilities, and communications/dispatch.

As indicated above, in his motion, the Sheriff has requested an additional 82 people to perform attendant functions. The County's position is that these attendant functions were not included in the Consent Order, and the Court cannot, therefore, order staffing for them. The County also states that it cannot afford additional funding for these positions.

The Director of Jail Operations testified that officers who perform attendant functions are in budgeted positions. During cross-examination, Undersheriff Pfannes testified, using a chart prepared by the County Commission, [Exhibit 381], that there are there are certain functions which are considered discretionary and some that are mandated, either by state law or by federal law. Some of the attendant functions, according to the prepared chart, are also mandated by County ordinance. [Transcript, April 15, 2014, p 84-86].

First, transportation is the transport of inmates to and from courts or from courts to MDOC facilities. Seven people are assigned to transportation. The chart lists transportation as a discretionary function. However, in the Court's view, transportation is an essential function of the operations of the jail because, once a person is arraigned, he or she is then placed in the custody of the Sheriff. *Brownstown Tp, supra* at 248-249.¹⁷ Seven people are assigned to transportation and the Sheriff has not requested any additional positions for transportation.

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Michigan's most authoritative case on the duties of the sheriff at common law is *White v East Saginaw*, 43 Mich 567, 570; 6 NW 86 (1880). That case quoted approvingly from *People v Edwards*, 9 Cal 286 (1858).

"(T)he duties of sheriff, as such, relate to the execution of the orders, judgments, and process of the courts; the preservation of the peace; the arrest and detention of persons charged with the commission of a public offense; the service of papers in actions, and the like; they are more or less directly connected with the administration of justice; they have no relation to the collection of revenue."

Brownstown Tp v Wayne Co, 68 Mich App 244, 248-249; 242 NW2d 538 (1976).

Next, Internal Affairs concerns investigations of inmate on inmate violence, inmate on deputy sheriff violence, contraband in the jail setting, and excessive force situations. There are currently two budget positions for Internal Affairs, but the Sheriff has requested five budgeted positions for Internal Affairs.

The tether unit currently has 12 approved positions while the Director has requested an additional 11 positions. He contends that while the staff to inmate ratio in the jail is 21 officers per 128 inmates, the tether unit requires 23 officers per 500 to 600 inmates on tethers.¹⁸ Although the Court may not order additional staff, the Court's view is that, in order to strive for a reduction in the jail population, the tether unit is essential for the purpose. Monitoring those released on tether is in the best interest of the public safety.

Third, training is a requirement of the Consent Order. Currently, there is one budgeted position. The Consent Order requires 24 hours of training and the Michigan Commission on Law Enforcement Standards (MCOLES) training requires 20 hours. This training is partially funded by the \$12 booking fee for each inmate. \$10 is retained and \$2 is given to Michigan Sheriffs' Coordinating and Training Council (MSCTC). Under PA 302,¹⁹ MCL 18.421, *et seq*, funds may also derive from tickets which have a \$5 assessment attached which can help fund training. The Sheriff has requested that 4 positions be budgeted for training. Training is also essential to the safety of both

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The Sheriff has also requested an additional 7 project consultants for the tether unit.

¹⁹

PA 302 is:

AN ACT to create the Michigan justice training commission and the Michigan justice training fund; to provide the powers and duties of certain state agencies; to provide for the distribution and expenditure of funds; and to provide for the promulgation of rules.

inmates and officers and provides personnel with the tools to deal with unfamiliar or difficult situations as well as legal requirements when working in the jail environment.

Currently, with regard to lock-up at secondary road facilities, it does not appear to the Court that there is any budgeted position. The Sheriff has requested one budgeted position for this function. Though the Court views this as a valuable function, it is not mandated. Priority should be given to the staffing of jail Divisions I, II and III.

According to the Undersheriff, communications in the Sheriff's department refers to the Regional Dispatch Center which "maintains communications with all Sheriffs Units that have radios, [and] maintains records management..." These communications operations are for both inside and outside of the jail. The Regional Dispatch Center must comply with "federal and state mandates (sic) with the Law Enforcement Information Network, the National Crime Indexing Center, some other confirmations of Warrants, cancellations of Warrants, modification and alterations to remedy deficiencies that are discovered in the Warrants." [Transcript, April 15, 2014, p 85, In 13-22]. Again, the chart lists this function as a discretionary one. [Id at p 86, In 13-14]. There are 10 budgeted positions for communications. The Sheriff has requested 13 budgeted positions for communications in addition to another 6 for the jail telephone bank.

The Court believes that communications is an essential function of the operation of the jail both for the safety of the officers and the public as a whole, particularly when inmates are being transported from one place to another. The Sheriff must know at all times where and when his officers are and their status at any given time.

Therefore, the Court believes that transportation, communication/dispatch, training, and tether are essential functions for jail operations, with Internal Affairs as

somewhat less important. However, though the Court would stress to all parties the importance of these functions for the Sheriff to carry out his mandated duties as concerning the jail, the Court is also constrained from ordering additional funding as requested by the Sheriff.

V. CONCLUSION

Therefore, the Court finds that the parties have not shown that it is objectively impossible to perform the terms of the Consent Order. *Barnes, supra; Roberts, supra*. Moreover, because the instant case was dismissed with prejudice and the Court retained jurisdiction over the case only for enforcement of the Consent Order, this Court has no jurisdiction over any new funding dispute. The Court of Appeals has exclusive jurisdiction over any new funding dispute between the parties. This Court also has no authority to direct appropriations because, under the separation of powers doctrine, appropriations are a legislative power and duty. *Cahalan, supra*. Thus, the Court will deny the defendant Sheriff's motion to modify the Consent Order, but will order the enforcement of the Consent Order with respect to hiring, maintenance, and medical evaluations.

In order for the Sheriff to perform his constitutionally and legislatively mandated duties, the Court will also order that all personnel hired into positions which are jail budgeted positions must perform their work in the jail, and not be deployed to non-jail duty, such as road patrol or the Wayne County Community College.

As explained above, the Court finds that the Director of Jail Operations has used many creative options to manage the jail population to conform to the effective capacity

of the jail. He has managed the jail population effectively, albeit with the incurrence of extensive overtime and the use of the tether program.

The Court also finds that the use of officers for non-mandatory units causes the use of excessive overtime in jail operations when officers are taken from the jail to perform other duties. *Brownstown Tp, supra* at 251. The Court also finds that the six-month hiring time for new officers is extreme and imposes too many barriers to apply and gain clearance to begin employment.

The Court finds that the Director of Jail Health Services has been seriously hindered in this department's ability to perform health assessments on all inmates within 48 hours of booking. Finally, the Court finds that, thus far, a comprehensive maintenance plan for the jail facilities has not yet been implemented and the properties have been allowed to seriously deteriorate.

Therefore, the Court will order the parties to develop a plan within in 60 days for hiring unfilled medical staff positions. The Court will order that this plan include a method for providing a constant full staffing of medical personnel. The parties shall develop a list of available resources for interim and temporary contractual medical personnel who can be called upon immediately to work in a vacant position upon notification of a medical personnel vacancy. The Court will also order that no vacancy shall remain unfilled. Upon notice of any vacancy, the parties shall immediately seek applicants for the position and hire an interim medical worker to fill the vacancy until it is filled.

The Court will also order that the parties develop a plan for hiring unfilled officer positions within 60 days. This plan shall be an aggressive and constant marketing plan

to recruit applicants to fill the growing number of vacancies. The plan developed must include a sufficient but expedited background check process. In order to expedite the hiring process, the application process must also be “user friendly” such as an electronic application process. The Court also orders that no officer vacancy shall remain unfilled. Further, the Court orders the parties to address the high number of sick leave calls that are not investigated, (e.g. over 45 sick call-ins during a big snow fall in January, 2014), and to develop a plan for addressing this issue. The Sheriff and his deputies are first responders and the jail must be staffed on a 24- hour, 7-day per week basis.

The Court will also order the parties to work together to develop a comprehensive maintenance plan within 90 days which would cover the physical plant as well as all machinery and equipment used to operate all divisions of the jail.

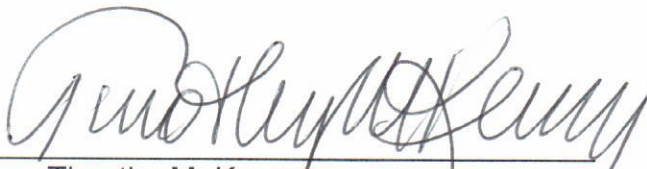
Most importantly, the Court needs to address the current excessive use of overtime and the effective capacity of the jail. The Court finds that, given the statistics, the average daily population of the jail has never reached the Consent Order’s effective capacity of 1,776. As the Sheriff opines and this Court agrees, that number can only be characterized as “a goal” and, because it is unrealistic, an effective capacity cannot possibly be a mandate as the County would seem to believe. The Court believes that the County will incur increasing and excessive overtime expenditures by clinging to the notion that an effective capacity of 1,776 is achievable. As Ms. Hall noted, the County could save approximately 50% of the overtime cost by hiring new officers as opposed to paying for overtime to higher paid high ranking officers. Hence, this Court would

impress upon the County and urge it to consider the need for more staff in order to reduce the rapidly increasing cost of overtime.

Finally, the Court will reiterate that it recognizes the Consent Order's determination of a population of 1,776 inmates. This population, however, is merely a target figure. Nothing in the evidence presented indicates that 1,776 is a realistic jail population figure. The parties should continue to strive to reach the 1,776 figure, but it currently represents a budget funding number and not an accurate assessment of the jail's average daily population.

Cooperative and creative efforts by the parties over the past eighteen months have helped reduce the average daily population and costs to the county taxpayer. Therefore, the Court will order the continuation of the monthly meetings in which the parties have participated.

January 30, 2015
Date



Hon. Timothy M. Kenny
Presiding Judge - Criminal Division
The Third Judicial Circuit Court of Michigan