

**CONSENT DECREES**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WIS.  
FILED

ISAAC JACKSON, et al.,  
individually and as representatives  
of similarly situated inmates at  
the Milwaukee County Jail,

Plaintiffs,

**BRIEF BANK**

vs.

Case No. 88-C-64

RICHARD ARTISON, et al.,

Defendants.

DEAN WILLIAMS-EL, et al.,

Plaintiffs,

vs.

Case No. 87-C-1128

RICHARD ARTISON, et al.,

Defendants.

**CONSENT DECREE**

The plaintiffs and the plaintiff class, representatives of present, former and future inmates at the Milwaukee County Jail, (821 West State Street), and the County defendants, in their individual and official capacities described in the complaint, agree that the following consent decree shall be submitted for approval by the Court to resolve the issues being litigated in 88-C-64 and 87-C-1128. The parties herein agree to the provisions contained as follow:

**I. GENERAL PROVISIONS**

Although this consent decree satisfies only the claims enumerated in this decree, this decree will require dismissal of these actions in their entirety.



JC-WI-002-001

A. This agreement is entered into to resolve the existing disputes between the plaintiffs, individually and as representatives of the class defined below, and the County defendants concerning appropriate conditions of confinement at the Milwaukee County Jail (MCJ) and to resolve such in a manner which will satisfy federal constitutional standards. This agreement satisfies and resolves the claims enumerated in this consent decree, excepting particularly attorneys' fees and costs of plaintiffs' counsel pursuant to 42 U.S.C. Sec. 1988. Defendants reserve the right to contest any application made by plaintiffs for attorneys' fees and costs. Respecting future attorneys' fees, on or before December 31st of each year, plaintiffs' counsel shall submit to the Special Master (described in Section III below) an attorney fee petition. Defendants shall file their objections, if any, to said petition with the Special Master within ten (10) days of receipt thereof. The Special Master's decision shall be reviewable by the District Court under the same standards as found under Section III paragraph F below.

B. This Court has jurisdiction of these actions pursuant to 28 U.S.C. Secs 1331 and 1343(3) and (4). Plaintiffs' causes of action arise under the First, Fourth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution and 42 U.S. C. Sec. 1983.

C. The Jackson plaintiffs moved that this case proceed as a class action by motion and supporting papers filed January 20, 1988. This motion requested a class consisting of all present or future inmates in the physical custody of the defendants at the Milwaukee County Jail, located at 821 West State Street. On April 25, 1990, the Court granted this motion for class certification as to the claims relating to declaratory and injunctive relief.

D. On April 23, 1990 the Court ordered the consolidation of the Jackson and Williams-El cases for the limited purpose of pursuing the plaintiffs' common claims for declaratory and injunctive relief, and appointed counsel for the Jackson plaintiffs as lead counsel for the plaintiffs in the consolidated cases.

E. Defendants are the individuals named in the complaint and their successors, including the Milwaukee County Sheriff, the Milwaukee County Jail Commander, the Milwaukee County Executive, and members of the Milwaukee County Board of Supervisors in their individual and official capacities.

F. Plaintiffs have alleged that the living conditions in the Milwaukee County Jail are inadequate and inhumane and that as a result of such conditions, plaintiff class has been and continues to be punished without justification, denied privileges and entitlements, denied liberty and all of its components, all in violation of the United States Constitution and particularly the Fourteenth Amendment.

G. Defendants do not admit, nor is there any judicial finding, that any constitutional rights of plaintiffs have been violated.

H. The defendants agree to operate the Milwaukee County Jail in a manner consistent with the terms of this agreement. This agreement in no way constitutes an adjudication or finding of any present or past unlawful practice by the defendants, it being fully understood that the defendants deny that any such acts or practices exist or have occurred. The parties have entered into this consent decree solely as means to put an end to these controversies, and to avoid the costs, time and risks which litigation would involve for all parties.

## II. CONDITIONS OF CONFINEMENT

### A. Population and Overcrowding

1. On each Monday during the life of the consent decree the defendants shall mail to American Civil Liberties Union of Wisconsin Foundation, as plaintiffs' counsels' designee, and to the special master the 11:59 reports from the prior week.

2. As of July 9, 1990, and thereafter all defendants and their employees, agents and successors are ordered to maintain the MCJ population at or below 459 (within the exceptions and procedures set forth below). The calculation and monitoring of this cap shall be the correct figure of all persons in custody in the MCJ at 11:59 p.m. daily and as posted as ADP on MCJ form 11:59.

3. The population may exceed 459 provided the increased population is at or below 500 and further provided the population on the prior two days was at or below 459 and further provided the population in excess of 459 is remedied within two days.

4. Nothing in Section II Paragraphs A.2, 3, & 5 of the consent decree shall prohibit the defendants, by counsel, from petitioning the Special Master for a short term emergency modification to these agreed upon inmate population caps, provided plaintiffs' counsel has immediate notification of such petition, and provided plaintiffs' counsel receives a written statement of the grounds for such petition within 24 hours and further provided that plaintiffs' counsel has the opportunity to be heard within a reasonable time not to exceed 48 hours. Defendants at all times carry the burden of proof and persuasion on the necessity for emergency relief.

5. The defendants agree that as of July 9, 1990, and thereafter the following maximum population figures for the following housing areas in the MCJ shall not be exceeded except in the circumstances noted in paragraphs 3 and 4 above and paragraph 6 below:

<u>AREA</u>	<u>MAX. NO. INMATES</u>
a) 5-East	103
b) Annex (upper and lower)	62
c) 3-West	29
d) Main Jail	256
e) Trustee Dormitory	9

6. Nothing in Section II.A.5. shall prohibit the defendants from making a request to the Special Master for a temporary change in the maximum number of inmates in a housing area in II.A.5., provided that the total population does not exceed 459, and provided that the population in any single housing area does not exceed 110% of the capacity in II.A.5.

7. In order to initially achieve compliance with paragraphs 1-5 above, the Special Master shall release a sufficient number of inmates to bring the jail population to 459 or below. The Special Master shall choose between the following release means:

- a) Electronic Bracelet Security Release Program, or
- b) Other means for release on the mutual agreement of counsel for the parties.

The defendants agree to provide sufficient resources to accommodate all inmates to be released in the Electronic Bracelet Security Release Program, and in the event they do not, the Special Master may order alternate means of release without the mutual agreement of counsel.

8. The Special Master shall be empowered at any time during the life of this consent decree to release inmates utilizing the means noted in paragraph 7 above to maintain compliance with paragraphs 1-5 above.

9. The special master may utilize but is not limited to the following criterion in determining which inmates to release:

- a) Present bail on inmate
- b) Nature of offense
- c) Gravity of offense
- d) Number of offense
- e) Potential penalty inmate faces
- f) Whether acts alleged were violent in nature
- g) Prior criminal record of inmate
- h) Character of inmate
- i) Health of inmate
- j) Residence of inmate
- k) Reputation of inmate
- l) Whether inmate is on probation/parole currently
- m) Whether inmate is on bail/subject to other conditions on pending cases
- n) Whether inmate in past forfeited bail
- o) Whether inmate in past violated a condition of release, and
- p) Whether inmate, when arrested, was a fugitive.
- q) Employment status of inmate
- r) Family ties to community of inmate
- s) Assets in community of inmate

10. As of July 9, 1990, and thereafter, when the population is at 459 or less, no inmate shall be required to sleep on a mattress on the floor, or on the floor.

11. As of July 9, 1990, and thereafter, when the population is at 459 or less, the dayrooms of the Main Jail, 5-East, 3-West, and the Annex shall not be used for overnight housing.

12. As of July 9, 1990, and thereafter, the basement bullpen (the Hole) shall not be used to hold any person for more than 10 consecutive days.

### **B. Staffing**

Throughout the life of this consent decree, the defendants shall maintain or enhance the staffing levels at the MCJ existing at the time of the execution of the decree.

### **C. Physical Exercise**

1. Throughout the life of this consent decree all inmates shall be permitted active off-tier physical exercise, which shall be on the roof weather permitting, according to the following:

- a) A minimum of three hours per week of activity for all inmates in the jail; and
- b) A requirement that this minimum exercise be on two or more days weekly.

2. As of July 9, 1990, and thereafter all inmates shall be permitted daily access to the dayrooms except during an emergency as described in Section II A Paragraph 4 or a lockdown lasting 24 hours or less.

### **D. Environmental Health**

1. All areas of the MCJ shall be properly and regularly inspected, cleaned, and sanitized as required by state codes applicable to all jails in the State of Wisconsin.

2. Applicable fire safety codes shall be met at all times.

## **III. ENFORCEMENT AND COMPLIANCE**

A. The parties request the appointment of a Special Master designated and selected by the parties. In the event the parties are unable to agree upon a Special Master, then the Court shall select one. The defendants shall pay the reasonable fees and expenses of the Special Master. In

the event that the Special Master is unavailable, the parties agree that a U.S. Magistrate shall have the powers of the Special Master.

B. The general function of the Special Master is as follows:

1. To resolve disputes between the parties regarding the application of the consent decree;

2. To resolve disputes between the parties regarding the implementation of the consent decree;

3. To hear emergency requests for short-term modifications of the population capacities agreed upon in this consent decree;

4. To release inmates from custody pursuant to the provisions in Section II A Paragraphs 7-9 above.

C. The parties agree that disputes which cannot be resolved informally shall be submitted to the Special Master for resolution.

D. With the exception of petitions pursuant to Section II.A.4. above, all issues submitted to the Special Master shall be in writing, with contemporaneous notice to counsel for the opposing party.

E. The Special Master may, and shall upon the request of counsel for either party, conduct evidentiary hearings and make findings of fact and conclusions of law. Decisions of the Special Master shall be issued as orders, and shall have immediate effect, subject to review as described in F below. Any proceeding before the Special Master may be recorded, and shall be transcribed by a court reporter upon the request of counsel for any party.

F. Any party seeking review of an order of the Special Master must submit a written request for review with supporting documentation to the parties and to the Court within 10 days after receipt of the Special Master's order. The Court shall give due deference to the findings of fact and conclusions of law by the Special Master, and shall affirm those findings and conclusions if they are supported by substantial evidence.

G. Counsel for any party believing an order of the Special Master has been violated, may petition the Special Master to request the Court's enforcement which may include but is not limited to, a recommendation of contempt. Such petition shall be contemporaneously served on opposing counsel. After appropriate hearing, the Special Master shall submit a recommendation for final resolution to the Court.

H. For the life of this consent decree, counsel for the parties shall conduct semi-annual inspections and prepare reports indicating the status of defendants' compliance with the provisions of this consent decree, and shall provide such reports to the Special Master and counsel for the parties. Plaintiffs' counsel shall conduct the first of these inspections on or before August 1, 1990.

I. The Court shall retain jurisdiction for purposes of enforcing this consent decree until the MCJ's 5-East, Annex and 3-West sections are no longer used for inmate housing, or the opening of the new jail, whichever occurs later. Nothing stated herein shall prevent plaintiffs from moving the Court (or Special Master) for additional or further relief upon a claim of non-compliance.

J. Until the Court relinquishes jurisdiction in these cases, American Civil Liberties Union of Wisconsin Foundation, as plaintiffs' counsels' designee, shall have access to and shall receive copies of documents which effectuate the implementation of this consent decree. Counsel for plaintiffs shall have access to all plaintiffs at reasonable times and under reasonable circumstances. Plaintiffs' counsel and their experts shall have reasonable access at reasonable times to all staff and the Milwaukee County Jail, upon reasonable notice to defendants' counsel.

K. Defendants shall explain, as soon as practicable, the terms of this consent decree to the MCJ staff, deputy sheriffs, and all other personnel involved in the operation of the MCJ, in order to ensure their understanding of the requirements of this consent decree. Defendants shall require continuing training of all staff regarding this consent decree.



L. Members of the plaintiff class agree not to engage in any act which would result in noncompliance with any terms of this consent decree through no fault of the defendants.

M. Notice to the plaintiff class shall be provided in accordance with the notice provisions approved by the Court and separately submitted by the parties. In order to ensure continuing notice of this consent decree, each new inmate shall be notified of the terms of this decree and of the identity of counsel for plaintiffs throughout the life of the consent decree by receipt of a written summary of the consent decree upon intake into the MCJ and posting of the same summary in every day room.

N. At the time this consent decree is executed, all issues and claims raised in plaintiffs' complaint other than overcrowding, staffing, exercise, and environmental health, are dismissed without prejudice. Plaintiffs' claims regarding overcrowding, staffing, exercise and environmental health will be dismissed with prejudice when the consent decree expires.

O. The parties agree that nothing in this consent decree is intended to prevent defendants from implementing new programs or changes in physical conditions which do not decrease the plaintiffs' rights under this consent decree or which existed prior to this consent decree pursuant to valid defendants' policies, procedures, or other lawsuit settlements; nor shall it abrogate any substantive rights or procedural protection plaintiffs may now have or thereafter acquire under state or federal statutes. The defendants shall carry out every provision of this consent decree in good faith.

P. This order represents a compromise of disputed claims within the meaning of Rule 408, Fed. R. Evid. and Section 904.08, Wis. Stats. In signing this order, no party makes any admission whatsoever, and the undersigned defendants expressly deny any liability whatsoever with respect to the subject matter of the pending litigation.