

and omissions deny them rights guaranteed by the Sixth Amendment, the Due Process Clause, the Equal Protection Clause, and the Georgia Constitution.

2. The Defendant in this case (hereinafter capital “D”) is Fulton County. The Defendant has answered and has denied all of the material allegations in Plaintiffs' *Amended Complaint*. The terms “defendant” and “defendants” (small “d”) hereinafter refer to persons accused of non-homicide felony crimes in the Fulton County criminal justice system.

3. Pursuant to Federal Rules of Civil Procedure 23(b)(2), on June 13, 1996, the Court certified this action as a class action. The certified class consists of “all persons charged with non-homicide felony offenses within Fulton County who are not released on bond but who, instead, are incarcerated at the Fulton County Jail, and who, during the period up to, but not including, indictment or arraignment, are denied access to counsel.” *Order*, June 13, 1996.

4. This *Consent Order* (hereinafter also referred to as “*Order*”) is submitted and entered into as a complete settlement of the existing controversy between Plaintiffs and Defendant as to appropriate policies, procedures, and practices necessary to operate the Fulton County indigent criminal defense system in a manner that satisfies federal and state constitutional requirements. The purpose of this *Consent Order* is to afford members of the Plaintiff class effective and continuous legal representation, beginning from the time they are booked into the Fulton County Jail, in a manner that serves the interests of justice and public safety, limits unnecessary incarceration at the Fulton County Jail, and complies with all applicable rules and procedures of the state judiciary. This *Order* only affects the parties to this action and does not affect indigent defense programs or detention facilities other than Fulton County’s program and detention facility. This *Order* additionally provides for specific, definable, and good-faith actions

to be taken by Fulton County to achieve certain goals for implementing and enforcing this *Order* within specified periods of time. This *Order* satisfies and resolves the claims of the Plaintiff class for injunctive and declaratory relief. The parties have also agreed that Fulton County shall pay \$175,000 for Plaintiffs' attorneys' fees and costs and damages for the Plaintiff class representative Sam Stinson. The question of Rule 23(e) class notice shall be decided by the Court.

5. The parties agree and stipulate that because this case challenges the provision of indigent defense in Fulton County, none of the provisions of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996), apply.

6. By submitting and agreeing to this *Consent Order*, Defendant does not concede or admit any of the allegations by Plaintiffs or to any liability. The parties have agreed to the terms of this *Order* as a means to put a reasonable end to the controversy, and to avoid the costs, time, and risks which further litigation would involve for both parties.

7. The parties agree while this *Consent Order* reasonably addresses the claims alleged in this lawsuit, its scope is necessarily limited by the definition of the Plaintiff class and the authority of the Defendant. For instance, this lawsuit does not address the constitutional rights of persons accused of criminal offenses prior to the time they are bound over to the Fulton County Jail.

II. SUBSTANTIVE PROVISIONS

1. The parties understand that Fulton County has implemented and does maintain a Pre-Trial Services program. This program is designed, among other things, to expedite the appointment of defense counsel to eligible indigent individuals charged with criminal offenses. In response to the present action, Fulton County has provided substantial assistance to its Pre-Trial Services Program. At the beginning of 1998, the program had a total of six (6) employees. Seeing a need for increased assistance, Fulton County hired a program director and provided funding for thirty-six (36) employees. Additionally, the Pre-Trial Services program has been divided into two units: Intake and Supervision. The Intake Unit screens felony cases bound over to the Superior Court of Fulton County. With this increased staffing, the Intake Unit is able to interview indigent individuals charged with non-homicide felonies as they are being booked into Fulton County Jail and, thereby, effectuate an earlier bond hearing/release for these individuals. The Supervision Unit is responsible for the direct supervision of clients released into the community. The Supervision Unit will also provide an in-house education program for indigent individuals that will cover topics such as job readiness, GED preparation, drug treatment, and parenting skills. Both units are working closely with Fulton County's Drug Court to make early recommendations for intervention with indigent individuals who would benefit from intensive drug treatment.

2. Fulton County shall continue to maintain and adequately fund its Pre-Trial Services Program. In particular, Fulton County shall make good-faith efforts to ensure that a Pre-Trial Services officer will interview and evaluate for pre-trial release purposes — by the close of the next business day following booking into the Fulton County Jail — individuals arrested for non-homicide felony offenses.

3. As part of the interview, trained Pre-Trial Services officers shall determine whether the non-homicide felony defendant has retained a private attorney to defend him or her against the charged criminal offenses. If the defendant has not retained a private attorney, the Pre-Trial officer shall assign the Public Defender or the Conflict Defender to that defendant's case(s), where appropriate, and shall immediately inform the defendant of the assignment. The Pre-Trial Services officer shall also immediately notify the assigned office in writing. The assigned office shall promptly assign an attorney to handle that defendant's case and shall thereafter immediately notify the defendant of this assignment. Persons who inform Pre-Trial Services officers that they believe they will retain a private attorney for their defense shall be informed that they may subsequently reapply to the Pre-Trial Services Program for appointed counsel, if they do not in fact retain a private attorney.

4. If an indigent non-homicide felony defendant is not released on bond, but is detained in the Fulton County Jail, a Legal Assistant Specialist or paralegal from the appointed office (Public Defender or Conflict Defender), who shall be knowledgeable regarding applicable law and criminal procedure, and who shall be supervised by and shall report directly to a licensed member of the Georgia Bar, shall consult with the defendant in person within two (2) business days following said appointment. Fulton County shall provide the attorneys of the Fulton County Public Defender and Fulton County Conflict Defender, Inc. with a level of resources sufficient to ensure that all indigent defendants receive such a consultation within two (2) business days following said appointment. (This *Consent Order* does not create an enforceable third-party beneficiary right in any entity. Only the Plaintiff class has standing to compel enforcement of this *Order*.) All information obtained from the defendant, along with applicable documents, where

such documents are then available, shall be immediately forwarded to the defense attorney assigned to the case pursuant to Section II, Paragraph 3 of this *Consent Order*, or, if no specific attorney has yet been assigned, to the appointed office's supervising attorney, who shall direct that appropriate actions or investigations take place, and who shall thereafter forward all obtained information and documents to the defense attorney assigned to the case.

5. Fulton County shall provide the Public Defender and the Conflict Defender with personnel, physical facilities, equipment, and supplies reasonably needed to perform Fulton County's obligations under this Order.

6. Fulton County agrees to make good-faith efforts to ensure that the Fulton County Public Defender's Office and Fulton County Conflict Defender's Office achieve an average annual non-homicide felony caseload (total non-homicide felony cases assigned to that office divided by total of participating attorneys) of not greater than one hundred ninety-five (195) felony cases per calendar year, by the end of twelve (12) months following the entry of this *Consent Order*; an average annual felony caseload of not greater than one hundred eighty-five (185) per calendar year, by the end of twenty-four (24) months following the entry of this *Consent Order*; and an average annual felony caseload of not greater than one hundred seventy-five (175) per calendar year, by the end of thirty-six (36) months following the entry of this *Consent Order*. For purposes of this *Consent Order*, a "case" is a single defendant charged with one or more counts arising out of a single event. Based on current caseload levels for the Fulton County Public Defender, the parties expect that Fulton County will satisfy its obligation under this provision by increasing the number of Public Defender attorneys (currently, 53 authorized attorney positions) by at least five (5) new attorney positions within twelve (12) months following the entry of this

Consent Order, by at least an additional seven (7) new attorney positions within twenty-four (24) months following the entry of this *Consent Order*; and by at least an additional eight (8) new attorney positions within thirty-six (36) months following the entry of this *Consent Order*. At a minimum, “good-faith efforts” is defined as increasing the number of new additional positions (funded) within the Public Defender’s Office by at least twenty (20) within three years of entry of this *Consent Order*.

III. GENERAL PROVISIONS

1. Every six (6) months for the three years following entry of this *Order*, the Defendant shall file with the Court, and serve on Plaintiffs’ counsel, a status report stating the progress of Fulton County in the implementation of this *Order*. In each status report, the Defendant shall include for the previous reporting period:

A. The number of non-homicide felony cases assigned to, respectively, the Fulton County Public Defender, Fulton County Conflict Attorney, Inc., and other appointed indigent defense attorneys;

B. The number of attorneys and investigators handling non-homicide felony cases at, respectively, the Fulton County Public Defender and Fulton County Conflict Defender, Inc.;

C. The number of persons charged with non-homicide felonies within Fulton County who are then incarcerated in the Fulton County Jail;

D. The number of persons charged with non-homicide felonies within Fulton County incarcerated in the Fulton County Jail who have not been indicted within sixty (60), one hundred twenty (120), and one hundred eighty (180) days following booking; and,

E. The amount of funds budgeted and expended by the Fulton County Board of Commissioners for the operation of the Fulton County Public Defender, Fulton County Conflict Defender, Inc., and Pre-Trial Services Program for fiscal years 2000, 2001, and 2002.

2. Counsel of record for Plaintiffs shall not be denied access to copies of non-privileged documents, records, and recordings that relate to implementation of this *Order*. Counsel of record for Plaintiffs shall be allowed to meet with and interview class members in accordance with the orders previously entered by the Court.

3. Fulton County shall immediately provide copies of this *Consent Order* to the Sheriff of Fulton County, the Administrator of the Superior Court of Fulton County, the Director of the Public Defender, and the Director of the Conflict Defender, and to any of these officials' successors, and shall, where appropriate, explain this *Order* to them and the need for their compliance with its requirements.

4. If Fulton County fails to comply with the terms and conditions of this *Consent Order*, Plaintiffs' counsel may apply to the Court for a finding of contempt or other appropriate relief. Prior to making any such motion or application, however, Plaintiffs' counsel shall advise the Chairman of the Fulton County Board of Commissioners and the Fulton County Attorney by certified mail of the alleged violation, and the County shall have thirty (30) days to provide a written response to Plaintiffs' counsel. After Fulton County responds, the parties shall meet in an effort to resolve the dispute. If the dispute cannot be resolved within ten (10) days following the County's response, the parties shall submit the dispute to the Court for resolution.

5. After twelve (12) months have passed from entry of this *Consent Order*, either Plaintiffs or Fulton County may move the Court at any time to modify any provisions in this

Order that do not further its stated purposes. The nonmoving party shall have twenty (20) days to respond to such a motion. This provision does not purport to change either the pre-existing right of the parties to seek modification at any time in response to unforeseen changes in fact or law or the Court's inherent authority to modify injunctive judgments, as codified by Federal Rule of Civil Procedure 60(b).

SO ORDERED, this _____ day of _____, 1999.

**Hon. G. Ernest Tidwell, Chief Judge
United States District Court
Northern District of Georgia**

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