

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, <i>et al.</i> , and)	
THE UNITED STATES OF AMERICA,)	
PLAINTIFFS)	Civil Action No. 2:12-cv-00859
v.)	Section I, Division 5
)	Judge Lance M. Africk
MARLIN GUSMAN, Sheriff,)	Magistrate Judge Michael B. North
)	
DEFENDANT.)	
)	

**Report No. 11 of the Independent Monitors
January 19, 2020**

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Compliance Report #11
LASHAWN JONES, et al., and the United States of America v.
Marlin Gusman, Sheriff

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Compliance Report # 11 - Introduction

This is Compliance Report #11 submitted by the Independent Monitors providing assessment of the Orleans Parish Sheriff's Office's (OPSO) compliance with the Consent Judgment of June 6, 2013. Report #11 reflects the status of OPSO's compliance as of September 19, 2019. This Report is based on incidents and compliance-related activities between January 2019 and June 2019. It is also based on the observations of the Monitors during the site visit.

The OPSO's jail is under the leadership of Darnley R. Hodge, Sr., who was appointed by the Court on January 29, 2018, as the Independent Compliance Director (ICD) on an interim basis and was appointed to the position permanently on October 12, 2018. In February 2019, Byron LeCounte joined the OPSO administrative staff as the Chief of Corrections. Chief LeCounte and Director Hodge both have substantial knowledge of jail operations and have worked diligently to achieve compliance with the Consent Judgment.

In summary, the Monitors find that safety, medical and mental health care, and

environment conditions of inmates held in both the Orleans Justice Center (OJC) and the Temporary Detention Center (TDC) has made meaningful and noteworthy improvement since Compliance Report #10 provided to the Court in March 2019. While there is still significant work to be done to properly staff the facility, finalize training on policies, curb violence, and improve medical and mental health care, the positive trends continue. The specific initiatives are addressed in this report.

A. Summary of Compliance

The requirements of the Consent Judgment represent accepted correctional practice, while providing flexibility for OPSO to address its mandates. Achievement of compliance with Consent Judgment, Stipulated Agreements, and Stipulated Order will bring the Orleans Parish Sheriff's Office (OPSO) and its correctional facilities -- Orleans Justice Center (OJC) and the Temporary Detention Center (TDC) closer to operating and sustaining a Constitutional jail system.

The Consent Judgment contains 174 provisions which are separately rated. Based on the current assessment, OPSO has achieved substantial or partial compliance with 97% of the provisions. Substantial compliance has been achieved for 59% of the provisions. Thirty-eight percent (38%) of the provisions are in partial compliance. Five (3%) of the 174 provisions remain in non-compliance. All of the ratings of non-compliance are in the medical/mental health care areas. The improvement since the last assessment is noteworthy when only 37% of the provisions were in substantial compliance while 6% of the provisions were in non-compliance.

To progress from partial compliance to substantial compliance (and to sustain substantial compliance), OPSO must continue to build its work done to date. The ability to maintain sustained compliance in all provisions is essential as the Consent Judgment requires maintenance of substantial compliance in each and every provision for a 24-month period. OPSO must consistently implement policies and procedures, develop and provide the training necessary for staff to adhere to the policies and procedures, develop supervisors and mid-managers to lead both staff and operations, analyze data in a meaningful and useful manner to inform activities, and engage in root cause reviews and self-critical assessments.

Documentation of on-going compliance requires organized, complete, and accurate report of the OPSO's organizational and management strategies to the Monitors. Such initiatives will allow the Monitors to measure compliance and allow the OPSO leadership to make the improvements necessary to operate the OPSO correctional facilities in a Constitutional manner and to sustain compliance with the Consent Judgment and Stipulated Agreements. OPSO has made significant strides in its reporting to the Monitors and has improved in root cause reviews and self-critical assessments. However, the reviews and assessments have room for significant improvement both in terms of quantity and quality so as to inform decisions.

The Monitors are pleased to report that OPSO, under the leadership of Director Hodge and Chief LeCounte, continues to examine its strategies to obtain and sustain compliance and make the structural and organizational changes necessary to achieve compliance.

Table 1 – Summary of Compliance – All Compliance Reports¹

Compliance Report/Date	Substantial Compliance	Partial Compliance	Non-Compliant	NA/Other	Total
#1 – December 2013	0	10	85	76	171
#2 – July 2014	2	22	149	1	174
#3 – January 2015	2	60	110	2	174
#4 – August 2015	12	114	43	4	173
#5 – February 2016	10	96	63	4	173
#6 – September 2016	20	98	53	2	173
#7 – March 2017	17	99	55	2	173
#8 – November 2017	23	104	44	2	173
#9 – June 2018	26	99	46	2	173
#10 – January 2019	65	98	8	2	173
#11-September 2019	103	66	5	0	174

The status of compliance with the two stipulated agreements (February 11, 2015 and April 22, 2015) is as follows:

¹ See Appendix A for historical detail of compliance, by paragraph.

Table 2 – Status of Compliance with 2015 Stipulated Agreements

	Substantial Compliance	Partial Compliance	Non-Compliance	NA	Total
August 2015	21	12	1	0	34
February 2016	21	12	1	1	34
September 2016	26	7	1	0	34
March 2017	28	4	1	1	34
November 2017	21	11	1	1	34
June 2018	23	8	2	1	34
January 2019	28	5	0	1	34
September 2019	28	5	0	1	34

B. Opportunities for Continued Progress

The Monitors summarize below the areas identified in preparation of this report regarding OPSO's compliance with the Consent Judgment.

1. Foundational Work - The essential, core work required to achieve compliance includes:

- a. Policies and Procedures – OPSO has completed all drafts of the essential policies and procedures and a large percentage have been finalized. While there is still some work to be done to finalize the policies, staff have expended a tremendous amount of effort staff to refine these drafts to ensure the policies and procedures prescribe how the facility operates and to assure inmate and staff safety, in accordance with the Consent Judgment and accepted correctional practice. Essential is the development, approval, and implementation of lessons plans that correspond with each of the policies. OPSO's policy governing its written directive system has significantly improved the policy/procedure process. This process allows for organizational components to develop specific operational practices for reviewed by OPSO administration. Adherence to the policies, procedures, and training is essential. OPSO has yet to develop a reliable process to consistently audit adherence.
- b. Inadequate staffing – Despite improved staffing levels due to increased

hiring, and even more importantly, decreased turnover, inadequate staff in the facilities (OJC and TDC) and support functions (transportation, courthouse security, investigations) continues to hamper OPSO's ability to comply with the Consent Judgment. OPSO continues to use employee overtime to address the staff shortages. Even with substantial overtime, frequently, there are housing units and control rooms with no assigned staffing. Further, almost daily, assigned staff leave housing units and control pods unattended for meal breaks and other duties. Recent promotions have helped to address the staffing deficiencies at the supervisory level. As previously reported, in February 2019, Byron LeCounte joined OPSO as Chief of Corrections. Chief LeCounte has the appropriate background and expertise to oversee daily operation of OPSO facilities and assist in compliance efforts. Vacancies at the upper management level (rank of Major) need to be addressed. Another challenge is to implement a pay scale which provides for adequate compensation to increase retention of staff and assist recruitment efforts.

- c. Training – Employee training, both pre-service and in-service, has become more in line with OPSO policies and procedures. Foundational work, such as preparation of lesson plans to provide for a consistent instruction content, instruction by qualified individuals, and demonstration and documentation of students' knowledge gained, needs to continue. Providing a policy without training is not effective implementation. Once effective training has been provided, there needs to be auditing of staff adherence to policies.
- d. Supervision – Safe operation of OPSO's facilities requires an adequate number of sufficiently trained first line and mid-management supervisors. Director Hodge implemented the unit management approach and continues to provide training and mentoring for the managers. Recently, a systematic promotional process for sergeants and lieutenants was developed and implemented. This process has

resulted in a significant reduction in vacancies at supervisory positions. OPSO is encouraged to finalize its organizational chart. Currently, there are vacancies at the upper management level (rank of Major). It is highly likely that at least one of those positions needs to be filled as the functions are currently being performed by the Chief of Corrections and Chief of Security in addition to their other duties. Another challenge is to provide the essential training and mentoring for the new supervisors.

2. **Medical and Mental Health Care** – Despite improvement in the areas of medical and mental health care, the Medical and Mental Health Monitors report challenges remain in the provision of basic case, staffing, and recordkeeping, as well as the need for improved collaboration with custody/security staffing. Resources from Tulane University continue to be particularly helpful in providing mental health care. The long-term solution is the design and construction of Phase III, a specialized building which contain an infirmary and housing for inmates with acute mental health issues.
3. **Inmate Safety and Protection from Harm** - Providing a safe and secure jail continues to be a challenge.
 - a. Unit Management—The Unit Management approach is being used in the supervision of the OPSO housing units. Each floor of the OJC, IPC, and TDC have been designated as a “unit”. The purpose of this strategy is to enhance accountability for both staff and the inmates by allowed the staff to get to know the inmates, coordinating management of housing unit operations, and ensuring among staff. While the Unit Management approach has shown to be helpful, there are inconsistencies and lack of uniformity in the areas of staff discipline and application of facility rules to inmates. Efforts to refine and successfully implement the strategy require additional training, mentoring, and accountability.
 - b. Violence – There are still significant incidents of violence occurring

within the facilities – including inmate on inmate assaults and assaults on staff. Disorder and non-compliance to the institutional rules result in staff having to use force to gain control and compliance. There has been a decrease in substance abuse overdoses. There was not a death of an inmate during the calendar year of 2019.

- c. Inmate Classification – The inmate classification processes require continued attention to ensure housing decisions and placements are consistent with OPSO policies and objective classification principles. Auditing, which is credible, needs to focus on identifying issues and correcting placements. Consistent and adequate training was identified as an issue in compliance and a plan to address the issue has been agreed upon between OPSO and the Monitors.
- d. Inmate grievances – Inmates’ questions and concerns using the grievance process, require attention as to the timeliness and adequacy of responses. The system is intended to provide fixes to systems as well as to individual inmate’s needs. In order to intensely focus on the areas of the grievance process which are lacking, each of the subdivisions will be rated separately.
- e. Incident Reporting - Collaboration efforts to improve reporting of incidents continues among the Monitors, OPSO, and the attorneys for the Plaintiff class/DOJ. As discussed in this Report, progress toward promptly reporting incidents has improved, but continues to require attention. There remain serious incidents for which no report or no timely report is prepared by OPSO staff; including incidents in which staff had to be physically restrained to keep the staff member from assaulting an inmate. There are reports which are incomplete and do not provide the necessary information for the reader to determine what occurred and why it occurred. Analysis of incident reports and development of corrective action plans occurs to a limited degree, but would benefit from staff dedicated to the effort.
- f. Jail Management System – An integral part of the jail’s operational

improvements is tied to an effective jail management system. Such capacity provides on-demand, routine, and periodic data to inform critical leadership and management decisions. Such an information system has not been implemented. OPSO cancelled the contract with the provider who was to supply a new JMS when it became apparent that the system would not interface with the Orleans Parish court system. The current plan is for the City of New Orleans to purchase a JMS which will interface the Orleans Parish court system and the OPSO information systems, but there does not appear to be a definite timeline for that process. In the meantime, OPSO has modified its current system to provide more of the required JMS functions.

4. **Sanitation and Environment Conditions** – Challenges remain regarding the public health and inmate/staff safety risks. The staff working on these issues are extremely dedicated and have made significant gains, but the inability to fill support positions identified in OPSO’s staffing analysis negatively impacts the ability of OPSO to develop and sustain the requirements of the Consent Judgment and align with accepted correctional practice.
5. **Youthful Inmates** – The Monitors acknowledge and commend the educational program established in OJC. Provision of age appropriate mental health services has improved with the addition of the Tulane University resources. Due to lack of adequate housing options, a female youthful inmate(s) must be housed alone in TDC; often by herself. This creates a double quandary; the young woman faces isolation and the OPSO staffing challenges are intensified. The design of the Phase III facility must address this issue as there are no feasible options within OJC and TDC will cease to be occupied once Phase III is opened.
6. **Inmate Sexual Safety** – OPSO underwent its required audit of compliance with the Prison Rape Elimination Act of 2003 (PREA). OPSO received word that it had passed its audit. OPSO must consistently follow the policies and procedures which were exhibited during the audit. If the policies and procedures are not adhered to in the absence of the PREA Auditors,

substantial compliance will not be maintained. Continued internal collaboration among OPSO security, classification, and the medical/mental health provider is needed for the assessments of inmates' potential for sexual victimization and aggression.

7. **Compliance, Quality Reporting, and Quality Improvement** – An essential element of inmate safety is OPSO's timely review of all serious incidents. This ensures assessment of root cause(s) and then the development, implementation, and tracking of action plans to address the issue(s). This activity focuses on repairing systems. OPSO has made efforts to undertake this function but would benefit from a more robust effort. Systemic issues, which remain unaddressed, will continue to create risks to institutional safety and security. While progress is being made, the Monitors encourage OPSO to dedicate more time and knowledgeable resources to quality improvement. Impediments include the lack of staff with the skills and/or time to devote to the task. Utilizing one of the vacant Major positions to fulfill this role is suggested.
8. **Stipulated Agreements 2015** – OPSO should review its on-going compliance with the two Stipulated Agreements from 2015.
9. **Construction Projects** –
 - a. The Docks – Construction of the renovations on the Docks, providing court-holding, has continued. The Docks will be ready for occupancy by January 2020. OPSO has begun identifying staff for operation of the Docks. OPSO has been encouraged to have a robust training plan for the operation of the Docks and to not take possession until all system are in proper working order.
 - b. Phase III – Progress on the project continues and is now in the design development stage. The Monitors continue to urge the City to seek the input of the various stakeholders and the Monitors are decisions are being made about the design and construction of the facility. The process would be greatly enhanced if the City would adhere to the agreement to hold quarterly executive committee meetings with the

stakeholders. The construction and occupation of Phase III is critical to the provision of mental and medical health services in accordance with the Consent Judgment. The Temporary Detention Center (TDC) is being renovated to house and provide programming for both female and male inmates who suffer from acute mental illness in the interim. Renovation of TDC is slated for completion in April 2020. Extensive training for staff will be necessary to facilitate the successful transition of inmates from Hunt to TDC.

C. **Review Process of Monitors' Compliance Report #11**

A draft of this report was provided to OPSO, Counsel for the Plaintiff Class, and the Department of Justice (DOJ) on November 25, 2019. Comments were provided by OPSO, Counsel for the Plaintiff Class, Wellpath (OPSO's medical contractor) and DOJ on December 13, 2019.

D. **Communication with Stakeholders**

The Monitors are committed to providing as much information as possible regarding the status of OPSO's efforts to comply with all orders of the Court. The www.nolajailmonitors.org website came on-line in September 2014. Joining all other reports, the finalized version of Compliance Report #11 will be posted on that site.

E. **Recommendations**

Only "new" recommendations are included within the body of this report.

F. **Conclusions and Path Forward**

OPSO has been operating under the provisions of the Consent Judgment since June 2013; monitoring began in Fall 2013. During the past year and a half, under the leadership of Director Hodge, significant improvements are acknowledged by the Monitors. The hiring of Byron LeCounte as Chief of Corrections in February 2019 has been beneficial to the vital work which remains to comply with the provisions of the Consent Judgment. His additional expertise and experience have allowed Director Hodge to focus on the Consent Judgment.

Serious incidents and harm to inmates continue to occur. OPSO efforts to identify and address sources of contraband have facilitated its ability to decrease

the amount of narcotic contraband from being smuggled into the facility. However, the amount of other contraband discovered continues to be an issue. There has been some improvement in OPSO's data collection routines which should allow for better problem solving with a goal of a sustainable reduction in inmate-on-inmate assaults, inmate-on-staff assaults, uses of force, contraband and property damage. However, OPSO requires additional subject matter expertise as the skills for the analysis of the data and root cause reviews are lacking.

For meaningful training to occur, OPSO policies, procedures, and post-orders must be finalized, and appropriate lesson plans prepared.

Medical and mental health care initiatives continue to progress toward the requirements of the Consent Judgment. Wellpath has improved in the development and implementation of a clear path forward with measurable benchmarks.

The Monitors remain committed to the Court, and the parties to collaborate on solutions that will result in significant improvement towards compliance with the provisions of the Consent Judgment and achievement of constitutional conditions.

The Monitors again thank and acknowledge the leadership, guidance and support of The Honorable Lance M. Africk and The Honorable Michael B. North.

