



Consent Decrees at a Cost

Author: Mariann Mckee, Chief Clinical Officer, Healthworks Analytics



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While those that are incarcerated lose their right to vote, they are still protected by our constitution, particularly The Eighth Amendment. The Eighth Amendment to the constitution states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” When there are class action cases against prison and Jails in the United States, they can often times go on for years. In an effort to ensure that constitutional rights are not violated, and the case has some level of resolution, the courts may enter a negotiated agreement as a court order, or better known as a consent decree.

“At any given time, some of the largest police departments and **jail systems** in the United States are operating under consent decrees.”^[i] Many of these consent decrees go on for years or even decades, creating jobs for court appointed monitors, attorneys and those necessary to create drafts to meet the arduous reporting requirements.

While a consent decree can be considered a court appointed performance improvement plan, the burden on the jail and prison systems to operationalize the requirements of a consent decree, can be costly, overwhelming, and unreachable. When you take a look at the long-term effects of these consent decrees, a different perspective is realized. “This consent decree has been in place



for over seven years, cost millions of dollars, and failed to make our state’s largest city safer or improve officer retention,” Harrell wrote.”^[ii]

When a consent decree is put into place to improve the medical care of an inmate or detainee, such as Duvall vs. Lee, (then becoming Duvall vs. Hogan, originally put into effect in 1977), there appears to be no end in sight.

*The court appointed independent correctional mental health and medical care experts to conduct inspections of the jail, review documentation, and provide two reports per year as to whether the health care system is improving. Since 2016, the experts’ reports have consistently shown a failure by the State to implement the promised reforms. We returned to the court in **2020 and 2021** and asked that the State be ordered to take additional steps to abide by our settlement. In **May 2021** Judge Hollander directed the State to provide a plan to achieve compliance by December 2023. In **May 2022**, she extended the deadline for the State to achieve compliance to June 30, 2024.^[iii]*

While there is no published cost for this 46-year endeavor, it has obviously cost millions and millions of dollars over the course of time. The financial and human resources necessary to end the court oversight of this consent decree and others like it, are overwhelming, to say the least. Vested parties have to be willing to do business differently, creating internal monitoring and oversight in a manner that allows tracking of actionable data and consideration of the use of scarce resources. Until this time, facilities can plan on decades of consent decrees to come.

[i] Vera.org, Vera Institute of Justice

[ii] Associated Press, May 23, 2022

[iii] ACLU.org