

Andre Dickens, Mayor, City of Atlanta
55 Trinity Avenue S.W.
Atlanta, GA 30303

Doug Shipman, President, Atlanta City Council
Michael Julian Bond, Atlanta City Councilmember, At Large
Matt Westmoreland, Atlanta City Councilmember, At Large
Keisha Sean Waites, Atlanta City Councilmember, At Large
Jason Winston, Atlanta City Councilmember, District 1
Amir R. Farokhi, Atlanta City Councilmember, District 2
Byron Amos, Atlanta City Councilmember, District 3
Jason Dozier, Atlanta City Councilmember, District 4
Liliana Bakhtiari, Atlanta City Councilmember, District 5
Alex Wan, Atlanta City Councilmember, District 6
Howard Shook, Atlanta City Councilmember, District 7
Mary Norwood, Atlanta City Councilmember, District 8
Dustin Hillis, Atlanta City Councilmember, District 9
Andrea L. Boone, Atlanta City Councilmember, District 10
Marci Collier Overstreet, Atlanta City Councilmember, District 11
Antonio Lewis, Atlanta City Councilmember, District 12

Atlanta City Hall
55 Trinity Ave. S.W.
Second Floor East
Atlanta, GA 30303-3584

SENT VIA EMAIL

November 7, 2022

Re: Proposed Intergovernmental Agreement for the Transfer of People in Fulton County's Custody to the Atlanta City Detention Center

Dear Mayor Dickens and Members of the Atlanta City Council,

On behalf of the American Civil Liberties Union (ACLU), the American Civil Liberties Union of Georgia (ACLU-GA), and the Southern Center for Human Rights (SCHR), we write regarding the terms of Ordinance 22-O-1632, which authorized the City of Atlanta (City) to enter into an intergovernmental agreement (Agreement) with Fulton County and the Fulton County Sheriff, for the temporary transfer of people in Fulton County's custody to the Atlanta City Detention Center (ACDC), and the proposed Agreement posted on Fulton County's website.¹

Based upon our analysis of Ordinance 22-O-1632, it appears that the current proposed Agreement contains several provisions that impermissibly exceed the terms of the Ordinance, and should be stricken. Notably, these provisions extend the scope and duration of the Agreement with Fulton County, provide terms that unduly disadvantage the City of Atlanta, and undermine good governance for the City of Atlanta.

¹ [Fulton County - File #: 22-0584 \(legistar.com\)](#)

The ACLU, the ACLU-GA, and SCHR opposed the current plan to lease jail beds in ACDC. As we have noted, this plan fails to address the policies and practices that drive overcrowding at the Fulton County Jail. As the Agreement goes into effect, however, it is critical to ensure that the terms of the Agreement are not improperly extended beyond the original terms of the underlying Ordinance. In light of your role as stewards of the public interest, we recommend that you carefully review and ensure revision of the terms of the Agreement in light of the points below. Please note the following recommendations are not exhaustive; instead, they highlight the Agreement’s most pressing issues.²

1. Remove renewal options from Article 4.2 of the Agreement, as required by the enabling legislation.

Currently, Article 4.2 of the Agreement reads: “[t]he term of this Agreement shall be for up to four (4) years beginning from the Commencement Date. This Agreement, however, *may be extended by mutual agreement of the Parties*, for limited reasons such as to ensure the safety of the community.” (Emphasis added).

This clearly violates the enabling legislation, Ordinance 22-O-1632, which states “the term of this Intergovernmental Agreement shall be for a period not to exceed four (4) years *with no renewal options...*”.

The terms of the Ordinance are clear: the City Council has allowed a term of Agreement not to exceed four years. Any language that extends the length of the Agreement beyond that period is impermissible and should be revised to terminate the Agreement at the end of a four-year term.

2. Ensure inclusion of language that permits the City to terminate the Agreement at will.

A close reading of the Agreement reveals that the termination clause is vastly, and unreasonably tilted in favor of the County. The Agreement currently permits the County to terminate the Agreement at will, while only permitting the City to terminate the Agreement in the event of non-payment of fees by the County. *See* Article 5 of the IGA.

This language is clearly disadvantageous to the City’s interests, and unnecessarily commits the City to a lengthy arrangement that is rife with liability and risk. This risk is entirely foreseeable, given the County’s lengthy history of litigation due to human rights abuses in its facilities.³ In the event the City seeks to end this Agreement ahead

² For more recommended changes to the IGA, please see the Southern Center for Human Rights’ letter to the Atlanta City Council, dated August 8, 2022, attached hereto as an exhibit.

³ *Georgia Advocacy Office v. Jackson*, No. 1:19-cv-01634 (N.D. Ga. Apr. 10, 2019) (challenging Fulton County Jail’s use of prolonged solitary confinement on individuals with mental disabilities); *Harper v. Bennett*, No. 1:04-cv-1416-MHS (N.D. Ga. June 25, 2004) (addressing chronic understaffing and overcrowding at the Fulton County Jail, as well as sanitation, maintenance of the jail’s failing physical plant, medical and mental health care, and other issues); *Foster v. Fulton County*, 223 F. Supp. 2d 1301 (N.D. Ga. 2002) (alleging poor conditions and inadequate medical care in Fulton County Jail); *Johnson v. Fulton County Bd. of Comm’rs*, No. 1-94-CV-240-GET (N.D. Ga. 1999) (alleging

of its scheduled expiration for any reason other than non-payment, its hands are tied by the express language of the Agreement. As responsible stewards of the City's interests, you should replace such contract terms with terms that allow the City to also terminate the Agreement at will.

3. Restructure fees and remove Article 6.4, which allows for the City to profit directly from the phone and commissary fees generated from indigent people in Fulton County's custody.

If the \$50/day per person detained is insufficient consideration for the City to enter in to the Agreement, the City should reopen discussions with the County to negotiate a higher rate.⁴ The City of Atlanta cannot at once be a beneficent democracy alleviating a humanitarian crisis while at the same time exploiting the incarcerated low-income, people of color it purports to help.

It is well-known that much of the jail's current population cannot afford bail, let alone the exorbitant rates to call their loved ones and the high costs of purchasing essentials.⁵ It follows then that the burden of phone call and commissary fees falls on the families of those incarcerated, who are often forced to choose between keeping in contact and paying for other needs. Recognizing this significant financial drain on low-income families, other jurisdictions have elected to not charge for these services at all.⁶ If Atlanta won't stop this predatory practice altogether, the least it can do is not take a commission on items/ services sold to indigent people in crisis.

We ask you to urgently consider and adopt all of the aforementioned suggestions and take all other necessary steps within your authority to revise the terms of the Agreement to comply with the terms of Ordinance 22-O-1632, and protect the interests of the City and *all* of its residents.

Thank you for your prompt attention to this serious matter.

Sincerely,

that overcrowding and poor conditions in Fulton County Jail were due to indigent defendants being denied access to counsel pre-indictment).

⁴ It is worth noting that the initial per diem rate set in 1995 when the facility opened was \$66.53. The last time the City of Atlanta leased ACDC jail beds to Fulton County in 2006, the City charged the County \$68/bed. http://www.atlaudit.org/uploads/3/9/5/8/39584481/departments_of_corrections_report_march_2009.pdf

⁵ <https://www.aclu.org/report/there-are-better-solutions-analysis-fulton-countys-jail-population-data-2022>

⁶ In 2019, San Francisco, California made county jail calls free and ended the markup of commissary items in the jail store. <https://sfgov.org/financialjustice/sites/default/files/2021-02/FJP%20Justice%20is%20Calling%202-18-21.pdf>. In October, 2022, the State of California made all phone calls from state prisons free. <https://www.washingtonpost.com/opinions/2022/10/17/free-prison-phone-calls-california/>. Connecticut, New York, and Louisiana have also taken similar action. <https://www.usatoday.com/story/news/nation/2021/06/22/connecticut-first-state-make-prison-phone-calls-free/5302390001/>.



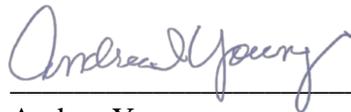
Julian Clark
Staff Attorney, Criminal Law Reform Project
American Civil Liberties Union



Terrica Redfield Ganzy
Executive Director
Southern Center for Human Rights



**SOUTHERN
CENTER FOR
HUMAN
RIGHTS**



Andrea Young
Executive Director
American Civil Liberties Union of Georgia



CONCERNS PERTAINING TO THE PROPOSED INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF ATLANTA, GEORGIA, THE FULTON COUNTY SHERIFF, AND FULTON COUNTY, GEORGIA, FOR THE TEMPORARY HOUSING OF DETAINEES AT THE ATLANTA CITY DETENTION CENTER

August 8, 2022

Tiffany Roberts, Director of Public Policy

Summary: Southern Center for Human Rights opposes approval of the above-named intergovernmental Agreement (“IGA” or “Agreement”) because it enables Fulton County’s continued human rights abuses and unjust cash bail practices. Below, we detail how the proposed language of the IGA diserves humanitarian interests, provides a pathway for Fulton County to preempt jail closure by occupying ACDC beyond the Agreement’s 4-year term, and disproportionately favors Fulton County to Atlanta’s detriment.

The Agreement:

1. **Permits the Sheriff to (re)define “overcapacity”** at any time during the term of the Agreement, leaving him full discretion to operate overcrowded facilities while also leasing beds in ACDC. *(Article 3)*
2. **Permits the County to terminate the Agreement at will** while only permitting the City to terminate the Agreement in the event of non-payment of fees by the County. *(Article 5)*
3. **Contemplates the unregulated extension of the Agreement** by permitting Fulton County to house incarcerated people in ACDC for an unspecified period beyond the 4-year term. *(Articles 6.3 & 6.4)*
4. **Does not provide for the review of disciplinary histories or personnel records of Fulton staff transferred to ACDC** and does not account for how those transfers will impact the care of those who remain in Fulton County facilities, especially in light of the staffing crisis currently faced by the County. *(Article 6)*
5. **Does not impose strict training requirements on Fulton County staff** and fails to require Fulton County staff to adhere to safety or even fire codes, thereby exposing the City and taxpayers to liability while also exposing incarcerated people to harm. *(Article 8)*
6. **Does not effectively define processes for the provision of care, transportation, or other services for incarcerated people**, which increases the potential for harm to incarcerated people and litigation between the County and City. *(Articles 6.8, 6.10, 6.12)*
7. **Deprioritizes the most crowded facilities and excludes youthful and medically vulnerable people** in Fulton County custody by prohibiting them from being transferred. *(Article 6.8)*
8. **Allows unlimited amendments** to the Agreement without requiring regular periodic review or public input for entire 4-year term. *(Article 14)*
9. **Does not set a commencement date or other standards** for the “staged withdrawal” process which opens the door for Fulton County to continue its occupation at will. *(Article 22)*
10. **Does not provide for the screening of Fulton County staff disciplinary histories** thereby exposing people in City of Atlanta custody and City of Atlanta employees to possible abuses.

Article 1. Purpose

1. Prohibits housing “youthful offenders” which is defined in Sub-Article 6.1 as “individuals who have not met the age of majority (18 years old).
 - a. The City of Atlanta Municipal Court routinely sentences children arrested from age 17. To the extent that young people suffer compounded trauma while incarcerated and while we deny that this Agreement can promote humanitarian interests, Council should inquire why they are explicitly excluded from reaping purported benefits from this Agreement.

Article 3. Definitions

3.1 Provides that “as needed” means “when Fulton County Jail exceeds its maximum capacity of detainees, as determined in the sole discretion of the Sheriff.

- This provision exposes City of Atlanta to enabling further overcrowding at the Fulton County Jail because if the Sheriff is authorized to redefine “overcapacity” at will, he is empowered to maintain a population deemed by experts to be unacceptably overcrowded while still housing people at ACDC.
- The failure of City of Atlanta to define “overcrowding” suggests that this Agreement is merely intended to provide Fulton County with additional jail beds, irrespective of overcrowding or capacity.

Article 5. Termination

5.1 Provides that the City may terminate the Agreement only *for cause* related to “the County of Sheriff fail[ing] to timely or fully pay an invoice amount when due...” In contrast, 5.2 provides that the Sheriff may “terminate this Agreement for their convenience upon ninety (90) days written notice to the City.”

- This is a one-sided provision barring the City to from terminating the Agreement for critical matters, including but not limited to those pertaining to:
 - Fulton County abuse of incarcerated people;
 - Fulton County’s abuse of City of Atlanta staff;
 - Fulton County’s failure to take other measures to address overcrowding at the facilities under it’s control;
 - Fulton County failing to abide by protocols required for accreditation;
 - Fulton County reducing it’s jail population; and
 - Fulton County failing to adhere to fire and other safety codes, etc.

Article 6. Services

6.1 (Housing) prohibits 17-year-olds arrested and detained from being transferred despite ACDC housing 17-year-olds arrested pursuant to offenses over which City of Atlanta Municipal Court has jurisdiction.

- See above (Article 1)

6.2 (Access to Facilities) Provides that the “Sheriff and designated staff shall have access to ACDC’s facilities to provide the following services: staffing of detention officers and others; detainee security and supervision; detainee medical care; detainee mental health care; detainee phone/commissary; kitchen and detainee food services; detainee transport services; laundry; detainee virtual encounter capability; life skills; GED program; Cosmetology program; canine program; competency restoration; pre-stabilization program - substance abuse; community-based mental health treatment; computer skills; substance abuse counseling/treatment; music/dance therapy; religious and chaplain services; anger and stress management counseling; law library services; re-entry program; and related miscellaneous services. The City will coordinate with Sheriff and designated staff to schedule availability and logistics in use of any additional space required for any of the foregoing activities.”

- This vague provision does not define providing “access to ACDC’s facilities for these services” which prevents the City and public from evaluating the financial cost or other burdens associated with the requirement. It is unclear whether Fulton County has provided documentation that these are services it *currently* provides to people in its custody. Furthermore, Council should request information from Fulton County documenting the (1) operational requirements related to the above-referenced services and (2) the programmatic details of each program

6.3 (Per Diem) Provides for a per diem of \$50.00 per day for the four-year term of the IGA and further provides for a balloon rate of \$150.00 per day for any period beyond the term of the IGA.

- This provision gives Fulton County license to house incarcerated people in ACDC for an indefinite term so long as the per diem is paid pursuant to the Agreement. Because the \$150.00 per day rate is not construed as a penalty for breach, it the IGA does not contemplate any remedies available to the City of Atlanta beyond the payment of funds. This provision alone can be used to pre-empt repurposing in perpetuity.

6.4 (Phone/Commissary) This provision provides that the City of Atlanta should receive 65% of commissary fees generated at ACDC by Fulton County detainees and requires fees to be used “solely for jail-related services.”

- The term “jail-related services” is not defined in the Agreement and could be construed to require to City of Atlanta to subsidize the cost of housing people from Fulton, rather than on the expenses of the City as authorized by the City’s executive and legislative branches.
- The City of Atlanta should be moving away from profiting from pretrial detention and toward models affording cost-free communication with the families and loved ones of incarcerated people in alignment with other progressive cities.

6.4 also provides for a balloon rate for the apportionment of fees for phone and commissary at the 4-year mark.

- This is like the per diem provision in 6.3, which does not designate this rise in cost as a penalty for a breach, signaling that the Agreement is intended to extend past the 4-year term.

6.5 (Audit) This provision provides that the parties have the right to audit financial data only upon request.

- Not maintaining a system and protocol for joint record-keeping and regular review of records exposes Atlanta taxpayers to abuses by Fulton County. Further, the process for requesting records is not outlined in the IGA and “reasonable written notice” is not defined, leaving the door open for significant delays in the provision of documentation to the City by the County.

6.6 (Background Information) This provision provides guidance related to the prioritization of incarcerated people designated to be transferred to ACDC as follows:

“1) Individuals transferred from Union City (South Annex)

(2) As part of an approved classification process, those detainees that present a low to medium custody level, to include, but not limited to, first or second offenders, honor dorm participants and those detainees actively engaged in programmatic opportunities (Ex: General Educational Development (GED) programming, drug and alcohol abuse programming, Culinary, Cosmetology, Thinking for a Change (re-entry program), Yoga, African Dance, Book Club, Basic Computer Application, etc.) or as approved by the City of Atlanta Chief of Corrections.”

- Paragraph 2 of this provision is vague and does not require the City of Atlanta to review documentation about the programs deemed appropriate for transfer. This provision may be creating an artificial standard to designate certain incarcerated people as more deserving of special treatment of others. There are no requirements in 6.6 detailing or defining the “approved classification process.”
- There is no requirement that Fulton County provide background information of employees the County plans to send to ACDC to supervise or otherwise service employees. The Council should be interested in the disciplinary histories and profile of every Fulton County employee sent to ACDC and should develop criteria to ensure that City of Atlanta employees and those otherwise in their custody are not exposed to abuse or misconduct.

6.7 (Normal Maintenance Services for Detainees) requires the City to provide to people in Fulton County custody “but not be limited to, all administrative type services, detainee library, educational services, and other related miscellaneous and incidental detainee services provided by the City for detainees housed in ACDC.”

- This provision is expansive and does not define “administrative type services,” which opens the door for unanticipated expenses imposed on Atlanta taxpayers and City of Atlanta employees.

6.8 (Medical Services) provides that the Sheriff and County are “medical services for Fulton County detainees housed at ACDC. The County shall be solely responsible for their detainees being housed at ACDC subject to this Agreement.”

- This provision does not provide information related to the site for medical treatment of incarcerated people sent to ACDC by Fulton County.
- The provision also appears to be somewhat incompatible with 6.2 which requires the City to provide space for medical care and mental healthcare.

- The vagueness of this provision exposes City of Atlanta and its taxpayers to unanticipated costs and could potentially impose unintended responsibilities on City of Atlanta medical staff.

6.10 (Transportation) requires the Sheriff and County to be responsible for transporting incarcerated people sent to ACDC by Fulton County for court appearances and healthcare and provides that the City cannot provide transportation services even in event of emergency.

- In the event that Fulton County repeatedly fails to meet its statutory or constitutional obligations related to transporting incarcerated people, there is no provision enabling the City of Atlanta to take action to terminate the IGA or seek other remedies caused by Fulton County's failure.
- This Agreement also fails to require written protocols governing the arrangement and provision of transport by the County which could frustrate the normal day-to-day operation of ACDC in a way that might negatively impact the best interests of incarcerated people and the staff required to address their needs.

6.12 (Food) requires Fulton County provide those in its custody with the American Correctional Association's required two hot and one cold meals.

- The Agreement does not require written protocols related to providing meals to all persons incarcerated at ACDC and does not appear to contemplate how both entities will ensure that all incarcerated people receive timely and proper nutrition.

Article 8. Security Training

This provision permits two models of correctional training to be utilized in ACDC by staff—ACDC is accredited by ACA which mandates that its facilities employ the Direct Supervision Method while Fulton County does not have the same requirement. This section only requires Fulton County to agree to “some level of staff training in this method” for the purposes of supervision.

- Permitting a level of supervision not explicitly adopted by City of Atlanta should be deemed incompatible with the City's values. Persons housed in buildings paid for by the taxpayers of Atlanta should be afforded the same level of care regardless of legal custodian.

Article 9. Responsibility for Claims and Liability

This provision describes how liability should be apportioned between the City and County in the vent of claims or actions brought by third parties.

- Although the language serves as a stipulation purporting to protect both parties by providing that “each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligent actions or omissions of its own agents, officers, and employees,” the Agreement does not adequately define the respective responsibilities of the City and County. Thus, any lawsuit brought by third parties—including incarcerated people—has the distinct potential to draw the City into litigation because of the action or inaction of the County.

Article 10. Initial Detainee Transfer and Mobilization

This provision precludes any women housed in the South Fulton Annex from being transferred “if they are diagnosed with major medical issues and unmanageable diseases.”

- By failing to define “major medical issues” and “unmanageable diseases” the City is permitting the County to apply a subjective standard for designating people for transfer. This provision suggests that the intent of the Agreement is not to provide care to the most vulnerable incarcerated at this facility. This runs contrary to the stated purpose of the IGA contained in the whereas clauses of the Agreement.

Article 11. Subsequent Detainee Transfer

This provision outlines how incarcerated will be transferred after women from the South Fulton Annex are transported to ACDC.

- Like Article 10, this provision provides that people shall not be transferred if diagnosed with or suffering from “serious medical conditions.” The term “serious medical conditions” is not defined, opening the door for subjective and potentially arbitrary decisions by Fulton County. The requirement also appears to run counter to the purported intent of the IGA to provide protection to vulnerable people who are not adequately cared for in facilities operated by Fulton County.

Article 14. Amendments

This provision states that the Agreement may be modified at any time by mutual written consent of the parties.

- This provision does not contain any regular review or reporting period during the 4 year term, precluding any structured opportunity for legislative bodies to be advised regarding the state of the Agreement.
- This provision also precludes any opportunity for public input from advocates, community members and/or the families of persons incarcerated pursuant to this Agreement.

Article 22. Staged Withdrawal

This provision states, “Parties agree that this Agreement should cease at the end of the referenced term. In advance of the conclusion of this term, parties agree to strategically plan for the safe and timely transfer of temporary detainees out of ACDC.”

- This language does not provide a date certain on which all persons sent to ACDC from Fulton County must vacate ACDC. Considering the balloon rate provisions in Articles 6.3 (per diem) and 6.4 (phone/commissary), the Agreement can be construed as internally inconsistent because some articles contemplate Fulton County being permitted to house people in ACDC past the 4-year term of the IGA.
- This withdrawal provision also fails to define penalties for any failure of Fulton County to timely and responsibly transfer incarcerated people out of ACDC.

- This IGA provides no damages clauses whatsoever that protect City of Atlanta in the event of Fulton County malfeasance.

The Southern Center for Human Rights is working for equality, dignity, and justice for people impacted by the criminal legal system in the Deep South. SCHR fights for a world free from mass incarceration, the death penalty, the criminalization of poverty, and racial injustice.