



## OFFICE OF CORPORATION COUNSEL

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Date: February 21, 2017

To: Honorable Supervisors of the County Board

cc: County Clerk George Christensen (c/o Janelle Jensen)  
County Executive Chris Abele  
Interested Parties

From: Deputy Corporation Counsel Colleen Foley

Re: Amendment 1A047 to 2017 Adopted Budget Amendments:  
Commitment Fees Charged to Municipalities

**Introduction/Background:** As part of the 2017 Adopted Budget Amendments, this honorable body referred Amendment 1A047 to the Corporation Counsel as follows:

Corporation Counsel, in coordination with the Office of the Sheriff, the House of Correction, the Office of the Comptroller, and the Department of Administrative Services – Performance, Strategy and Budget, shall prepare a report on the municipal commitment of prisoners at the jail and HOC. The report shall include applicable laws, current contracts, and the feasibility of increasing the daily commitment fees charged to municipalities. The report shall be presented to the County Board by the March 2017 committee cycle.

During the budget process, the Wisconsin Justice Initiative (WJI) requested a budget amendment to increase the House of Corrections (HOC) housing fee for municipal inmates. In particular, WJI proposed a \$100 daily fee for municipalities to house inmates at the HOC, asserting that higher rates would both increase county revenue and decrease municipal citations. *See* attached correspondence.

In preparing this memorandum, the Office of Corporation Counsel conferred with the HOC, the Milwaukee County Sheriff's Office (MCSO), the Office of the Comptroller, and the Department of Administration (DAS).

**Analysis – County Ability to Raise and Collect a Fee for Municipal Commitments:** Wis. Stat. § 302.18(1) provides for the commitment of municipal prisoners to the HOC involving terms not exceeding one year: “Every court of record authorized to commit any person to the county jail upon conviction of any offense, or authorized to sentence any person to imprisonment

in the Wisconsin state prisons for any term not exceeding one year, may, in lieu of the sentence, commit or sentence the person to the house of correction for an equivalent term, at hard labor.” Thereafter, all warrants of commitment are directed to the HOC superintendent, who is then responsible for those inmates’ detentions. *Id.*

There are no formal contractual arrangements in place between Milwaukee County and its nineteen municipalities, but most house eligible inmates at the HOC, with a small percentage housed at the jail. *See* attached 2016 HOC and MCSO data.

**County Collection Rights – Prisoners:** By statute, a county may seek reimbursement from a prisoner of not more than the actual *per diem* costs of maintaining that individual, including pretrial detention. Wis. Stat. § 302.372. A county may include administrative costs in determining the inmates’ financial status and any other expenses incurred to collect payments under that section. *See* Wis. Stat. § 302.372(2)(a)2 and 3. A county may also collect the value of the governmental unit paying the costs of medical or hospital care, regardless of whether the care is provided in-or-out of the jail or HOC. Wis. Stat. § 302.38. The costs of emergency services for crisis intervention for prisoners in the jail or HOC are payable per the § 302.38(2) criteria (prisoner liable but if unable to pay, then county liable). Wis. Stat. § 302.381. The county may seek payment from the prisoner per §§ 302.38 and 302.381 or under the general prisoner reimbursement provisions of § 302.372, which has been Milwaukee County’s practice (*per diem* costs averaged out across the prisoner population to arrive at a proportional daily cost).

**County Collection Rights – Municipalities:** Counties can seek direct reimbursement for those *per diem* municipal commitment costs from municipalities. Pursuant to Wis. Stat. § 303.18(2), “[e]ach city, village or town in the county shall, at a time designated by the county board, pay to the county the actual and reasonable costs of maintenance, as determined by ordinance of the county board, of all persons confined in the house of correction for the violation of any of the ordinances of the city, village or town during the preceding year.” (The City of Milwaukee alone receives differential treatment under the statutes regarding municipal commitments.<sup>1</sup>)

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<sup>1</sup>A county of 500,000 or more shall provide, as part of its county jail, for the confinement of all persons arrested for violation of state laws or municipal ordinances or otherwise detained by police officers of a 1st class city located within the county. Wis. Stat. § 302.336(1). The sheriff (or other keeper) is legally responsible for such prisoner’s confinement; maintenance; care, including medical and hospital care; release prior to an initial appearance in court; and the initial appearance before the circuit court or municipal court at a location within the county jail. Wis. Stat. § 302.336(2). An intergovernmental cooperation agreement under s. 66.0301 sub. (1) *may* provide for the city to reimburse the county for its cost of custody at the initial appearance before a municipal court located within the county jail for prisoners who are in custody exclusively for violation of a municipal ordinance. Wis. Stat. § 302.336(4). That agreement between the City of Milwaukee and Milwaukee County only addresses use of the municipal courtroom in the Criminal Justice Facility (CJC) for the period of August 12, 2014 through August 13, 2039. *See* attached. Again, the statute is permissive; there is no mandate that municipal commitment costs after that initial appearance be addressed in an agreement.

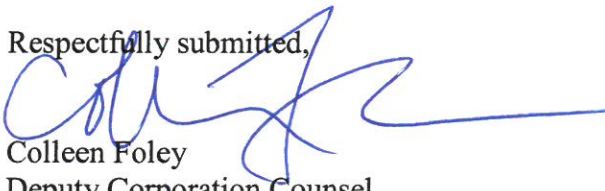
MCGO 20.01 tracks that statutory language. It provides that the superintendent and sheriff shall bill cities and villages for the maintenance of their prisoners confined for violation of city or village ordinances, resolutions or bylaws. The rate is the *per diem* cost of each establishment as set by DAS each April 1 and based upon out-of-pocket (OOP) expenses of the preceding calendar year for each institution. DAS last reviewed the *per diem* rate in approximately 2007, at which time the rate was \$26.25 for the jail and \$25.82 for the HOC.

**Reasonable, Actual Inmate Costs:** A county cannot unilaterally set *per diem* rates for municipal commitments to achieve a policy objective. Such charges must relate to actual, reasonable inmate maintenance costs. The Wisconsin Supreme Court addressed that issue in its decision, *City of Milwaukee v. Milwaukee County*, 27 Wis. 2d 53, 133 N.W.2d 393 (1965). There, the Court clarified that proper OOP expenses include food, medical care, laundry, and like items, as well as related salaries and other personnel costs, but not administrative expenses or other fixed overhead costs of operating the jail and HOC (heat, light, gas, water, insurance, supplies, etc.). *Id.* at p. 62. Similarly, the county can include costs in its *per diem* actual cost calculation that derive from medical staff salaries and personnel costs for prisoner maintenance.

**Conclusion:**

Current ordinance tracks state statute and provides for assessment of an annual *per diem* rate to municipalities based upon actual, permissible prisoner-related maintenance costs for HOC/jail confinement. DAS's annual review process has been dormant for the past ten years, so there is presumably room to increase fees so long as tied to actual, reasonable costs. Milwaukee County otherwise lacks authority to increase municipal commitment fees based upon a policy initiative to decrease municipal commitments.

Respectfully submitted,



Colleen Foley  
Deputy Corporation Counsel

# Wisconsin Justice Initiative

P.O. Box 100705 Milwaukee, WI 53210

County Supervisor Sheldon A. Wasserman  
Milwaukee County Courthouse  
901 North 9th Street  
Room 201  
Milwaukee, WI 53233

Oct. 20, 2016

Dear Supervisor Wasserman,

A simple budget amendment can help the county increase revenue and decrease its participation in a debtor's prison system that subsidizes municipal overuse of the House of Correction as punishment for poor people who cannot afford to pay their municipal court fines.

The county should substantially increase the daily fee that municipalities pay to house inmates in the HOC. The move could increase county revenue by more than \$1 million annually while decreasing the daily population at the House.

Municipalities have the right to jail municipal court defendants who refuse to pay their fines or who do not attend indigency hearings offered to determine their ability to pay. WJI believes, however, that some municipal court judges do not hold the indigency hearings in a timely fashion, before fines are assessed. In addition, given high mobility rates in some areas of the county, it is extremely likely that many defendants never receive mailed notices of their indigency hearings.

The 2016 HOC budget is \$63 million and the average daily population is budgeted at 1,325. That works out to an about 483,625 inmate days per year, at a cost of about \$130 per day per inmate. Yet the HOC bills municipalities just \$25.40 per day per inmate, far less than the actual cost incurred.

Last year, the HOC billed municipalities a total of \$384,530.60 for boarding inmates for 15,139 days.


By raising the fee to \$100 per day, the county could have realized \$1,513,900 in revenue. The county would come out ahead even if municipalities reduced by 25% the number of people they sent to the house. In that case, at \$100 per day for 11,354.25 days, county revenue would be \$1,135,425.

Significantly increasing the daily rate to at least \$100 would both increase county revenue and make municipalities think twice about dumping indigent defendants in the House. It's a win-win for the county and county taxpayers. The only losers would be the municipalities that overuse the House.

WJI asks that you support a budget amendment to increase the HOC housing fee. WJI understands that municipal court fines and collections are complex issues and not all aspects are easily resolved. Locking up people who can't afford to pay fines for not paying fines, however, is a losing, unjust proposition that Milwaukee County should reject.

Thank you for your attention to this matter.

Sincerely,



Gretchen Schuldt  
Executive Director  
414-331-0724  
gretchen@wjiinc.org

*WJI's mission is to improve the quality of justice in Wisconsin by educating the public about legal issues and encouraging civic engagement in and debate about the judicial system and its operation.*



HOUSE OF CORRECTION  
*Milwaukee County*

Michael Hafemann • Superintendent

February 21, 2017

Colleen Foley  
Deputy Corporation Counsel  
Milwaukee County Courthouse  
901 North 9<sup>th</sup> Street  
Milwaukee, WI 53233

Percentage of 2016 municipal commitments at the House of Correction:

Bayside	0.11%
Brown Deer	5.77%
Cudahy	1.70%
Fox Point	0.82%
Franklin	7.19%
Glendale	11.98%
Greendale	8.39%
Greenfield	1.79%
Hales Corners	0.00%
Milwaukee	2.07%
Oak Creek	4.35%
River Hills	0.06%
Shorewood	0.00%
South	
Milwaukee	4.90%
St Francis	6.16%
Wauwatosa	2.51%
West Allis	42.18%
West	
Milwaukee	0.00%
Whitefish Bay	0.00%
<b>Grand Total</b>	<b>100.00%</b>

The per diem board cost is calculated as followed and will be verified by DAS by 4/1.

The HOC is responsible for the costs of medical, food, and laundry services for both the HOC and the Milwaukee County jail. Therefore, the HOC calculates those per diems for both facilities. The MCSO and HOC have to then add proper staffing and other costs to the aforementioned costs to arrive at a total per diem.

The medical cost is calculated by taking the total annual cost of those services and dividing it by the average daily population (ADP) total for both facilities, as costs are combined. This total is then divided by days in the year (i.e. 366 in 2016 because it was a leap year) to arrive at a cost per inmate per day.

While the HOC pays the food service bill for both facilities, the invoice already separates the meals at each facility. Therefore, the annual food costs for each facility are divided by their respective ADP to arrive at a per diem per inmate.

Laundry is separated by weight, so the annual costs is separated for each facility and divided by their respective ADP. Staffing and other costs are unique to each facility. Each facility has different assumptions on those costs.



Michael Hafemann  
Superintendent  
House of Correction



County of Milwaukee  
**Office of the Sheriff**

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David A. Clarke Jr.  
Sheriff

February 21, 2017

Colleen Foley  
Deputy Corporation Counsel  
Milwaukee County Courthouse  
901 North 9<sup>th</sup> Street  
Milwaukee, WI 53233

Dear Colleen,

Percentage of municipal commitments at the Milwaukee County Jail Facility:

Bayside	.6%
Brown Deer	9.2%
Cudahy	1.3%
Franklin	8.0%
Greendale	6.7%
Greenfield	1.8%
Milwaukee	3.2%
North Shore	20.0%
Oak Creek	8.2%
South Milwaukee	3.1%
St. Francis	8.1%
Wauwatosa	3.6%
West Allis	26.2%
Grand Total	100.0%

The per diem board cost has been calculated by the HOC, as it is responsible for the costs of medical, food and laundry services for both the HOC and the Milwaukee County Jail and calculates the per diems for both facilities.

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The annual number of commitments to average daily population in the Milwaukee County Jail Facility is less than 7% and the individuals serving commitments are accepted into the general population and not provided specialized attention. The cost of staffing cannot be identified by specific Correction Officer positions and actual calculation would require further study and computation based upon the percent of commitments to the average daily population by expense type.

Sincerely,



William R. Lethlean, CPA MBA  
Public Safety Fiscal Administrator

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**Intergovernmental Agreement between the City of Milwaukee and Milwaukee  
County regarding the use of the Municipal Courtroom in the Criminal Justice  
Facility**

Whereas, on February 10, 1989, the City and County entered into a Final Agreement for the construction and operation of a new Criminal Justice Facility including a Municipal Courtroom; and,

Whereas, the twenty-five year Final Agreement expired on February 11, 2014, and was temporarily extended by the City and County until August 11, 2014, and will expire and be null and void thereafter; and,

Whereas, pursuant to Wis. Stats. 66.0301, the City and County desire to extend their long-standing intergovernmental cooperation regarding the City's use of the Municipal Courtroom in the Criminal Justice Facility in this new agreement; and,

Whereas, the City and County both receive substantial benefits and reductions in costs from the City's use of the Municipal Courtroom in the Criminal Justice Facility;

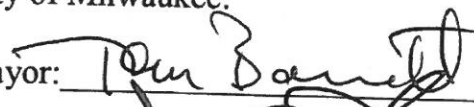
Whereas, those substantial benefits and cost reductions are the only consideration necessary to the City and County for an extension of their long-standing intergovernmental cooperation; and,

Whereas, the citizens of the their shared jurisdictions will benefit substantially from this new agreement; now, therefore,

The County and City mutually agree that, consistent with Wis. Stats. 302.336:

The City shall be entitled to use the Municipal Courtroom in the Criminal Justice Facility for Municipal Court purposes for a period of twenty-five years commencing on August 12, 2014, and ending on August 13, 2039.

City of Milwaukee:

Mayor: 

City Clerk: 

Milwaukee County:

County Executive: 