

**Electronic Monitoring can  
Achieve Substantive Savings  
for Milwaukee County, but  
Only if Pursued on a Large Scale  
with Satisfactory Compliance Rates**

**October 2013**

**Milwaukee County Office of the Comptroller  
Audit Services Division**

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# Milwaukee County

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October 1, 2013

To the Honorable Chairwoman  
of the Board of Supervisors  
of the County of Milwaukee

We have completed an audit, *Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates.*

In this report, we describe Milwaukee County's full array of programming devoted to pretrial jail diversion and alternatives to incarceration. The report also presents the views of key stakeholders in the Milwaukee County Criminal Justice System regarding alternatives to incarceration programming; historical trends in the County's jail population; identification of cost savings associated with electronic monitoring; a survey of comparable programming in other Wisconsin counties; and recommendations for enhancing stakeholders' ability to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System.

Based on a detailed cost analysis we conducted of the County's electronic monitoring/home detention experiences, we have determined that an average of at least 60 House of Correction (HOC) inmates must be placed on electronic monitoring (EM)/home detention in lieu of incarceration for the County to achieve substantive savings. We estimate the County can achieve savings ranging from approximately \$425,000 annually with an EM enrollment of 60 to \$2.6 million annually with an EM enrollment of 300. Those figures assume a satisfactory compliance rate that involves minimal law enforcement resources to maintain compliance with EM program requirements. If satisfactory compliance rates are not achieved, additional law enforcement resources could be required for a robust EM monitoring effort.

All stakeholders referenced in this report received preliminary draft copies of the audit report and their input is gratefully acknowledged. A response to the recommendations from the Milwaukee Community Criminal Justice Council and written comments from the Milwaukee County Office of the Sheriff are included as **Exhibit 3**. Additional written comments, if any, received from stakeholders after the printing deadline for report issuance will be posted to the Audit Services Division website at:

<http://county.milwaukee.gov/AuditReports2002tocu7878.htm>

We appreciate the cooperation extended by management and staff of all stakeholders during the course of this audit.

Please refer this report to the Committee on Finance, Personnel and Audit.

A blue ink signature of Jerome J. Heer.

Jerome J. Heer  
Director of Audits

JJH/DCJ/cah

Attachment

cc: Scott B. Manske, Milwaukee County Comptroller  
Milwaukee County Board of Supervisors  
Chris Abele, Milwaukee County Executive  
Milwaukee County Sheriff David A. Clarke, Jr.  
Don Tyler, Director, Department of Administrative Services  
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## **Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates**

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## Summary

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In this report, we describe Milwaukee County's full array of programming devoted to pretrial jail diversion and alternatives to incarceration. We also describe the need for a high degree of cooperation between key stakeholders in the Criminal Justice system in order to maximize the positive outcomes desired from that programming, including:

- Cost savings associated with fewer jail bed-days;
- Reduced recidivism rates for program participants;
- Lower social costs associated with chronic substance abusers.

Based on a detailed cost analysis we conducted of the County's electronic monitoring/home detention experiences, we have determined that an average of at least 60 House of Correction (HOC) inmates must be placed on electronic monitoring (EM)/home detention in lieu of incarceration for the County to achieve substantive savings. We estimate the County can achieve savings ranging from approximately \$425,000 annually with an EM enrollment of 60 to \$2.6 million annually with an EM enrollment of 300. Those figures assume a satisfactory compliance rate that involves minimal law enforcement resources to maintain compliance with EM program requirements. If satisfactory compliance rates are not achieved, additional law enforcement resources could be required for a robust EM monitoring effort.

### **Overview of Pretrial Assessments and Programming**

The Milwaukee County Criminal Justice System comprises a complex series of interactions between local law enforcement agencies, the District Attorney's Office, the Milwaukee County Circuit Courts, and numerous private agencies providing services on a contractual basis. The **Background** section of this report presents a brief overview of key programs implemented throughout the system that are relevant to a discussion of alternatives to incarceration. The presentation includes a description of:

- Pretrial Assessments
- Pretrial Programming
- Sentencing, Confinement and Electronic Monitoring

In total, the Milwaukee County Criminal Justice System has devoted an estimated \$4.9 million in resources beyond County personnel and facilities to jail diversion/alternatives to incarceration programming in 2013.

The remaining sections of this report present the views of key stakeholders in the Milwaukee County Criminal Justice System regarding alternatives to incarceration programming; historical trends in the County's jail population; identification of cost savings associated with electronic monitoring; a survey of comparable programming in other Wisconsin counties; and recommendations to enhance stakeholders' ability to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System going forward.

***With one key exception, views of officials and stakeholders in the Milwaukee County Criminal Justice System are supportive of alternatives to incarceration programming.***

A diverse group of stakeholders shape criminal justice system decision-making in Milwaukee County. In interfacing with the system, an individual will likely interact with several different people who report to a number of elected and appointed state, County and municipal officials. Given the breadth of officials working in the criminal justice system in Milwaukee County, there are bound to be varying philosophical beliefs. We reviewed public testimony and published comments and, in some cases, supplemented this with interviews, to summarize the following perspectives of various local officials surrounding the implementation of alternatives to incarceration programming. This examination led us to conclude that with the exception of the Sheriff, in general, local system stakeholders are largely supportive of alternatives to incarceration programming. The public record indicates:

- The Chief Judge has been a vocal advocate of electronic monitoring for pretrial defendants and sentenced populations as long as public safety is not compromised.
- The District Attorney is a strong proponent of the evidenced-based decision making model, community prosecution, restorative justice, dosage-based probation, and sees electronic monitoring as a valuable tool for pretrial populations.
- The Sheriff has overseen a robust home detention/electronic monitoring program in the past, he has publicly stated that he sees little use for it outside of a measure of population control.
- Milwaukee County has an active population of advocates, including contracted criminal justice program vendors, who have been supportive of the evidence-based decision making model, and robust use of electronic monitoring for both pretrial and sentenced populations.
- The County Executive's newly appointed House of Correction Superintendent has indicated support for alternatives to incarceration programming.

***Following a history of increasing inmate populations and overcrowded jail facilities, Milwaukee County's average daily system census peaked in 2001 and has declined significantly in recent years.***

Milwaukee County has a long history of legal and fiscal issues associated with the problem of jail overcrowding. Jail overcrowding issues forced the County to deploy numerous inmate population

management techniques throughout the 1990s and into the next decade. These included double-bunking, increasing the number of beds in HOC dormitories, the use of temporary overflow space, the construction of additional usable space to increase bed capacity, the use of electronic monitoring for home detention, and outright early release from incarceration.

During the period 2001 through 2009, annual Adopted Budgets explained the manner in which the County would enforce a strict cap on the number of inmates incarcerated in its facilities. Total system-wide average inmate population (including those on supervised home detention) in Milwaukee County peaked at 3,772 in 2001.

In a June 2011 published *Research Brief*, the Public Policy Forum (PPF), an independent non-profit research organization, offered several factors as potential causes of the declining trend in Milwaukee County's inmate population. Among the factors cited by the PPF was the development of a more robust set of jail diversion and alternatives options—and the willingness of judges and prosecutors to use those options. The PPF acknowledges that the long-term impacts of the types of jail diversion and alternative programming described in the **Background** section of this report on public safety and costs are not yet clear. However, it cites consensus among both advocates and critics of the programs that, at least in the short run, they have reduced the number and associated costs of inmates incarcerated in Milwaukee County facilities.

While the Public Policy Forum characterized its June 2011 *Research Brief* as primarily informational in purpose, it recommended that Milwaukee County step up efforts to collect, analyze and disseminate data regarding the effectiveness of jail alternatives/diversion programming in reducing recidivism and enhancing public safety. It noted a need for enhanced and improved data collection strategies to overcome a lack of hard evidence in demonstrating the effectiveness of such programming.

Two years after the PPF recommendation, we found two key impediments to effective program evaluation remain:

- A uniform definition of recidivism. Identifying specific criteria for use in establishing a consistent and meaningful measurement amenable to evaluating the effectiveness of various types of alternative and jail diversion programming poses a number of challenges. For instance, what is the time period established for identifying relapses? Once a time period is established, are all types of offenses counted as a relapse, or only the specific behavior or related behaviors?
- An infrastructure for conducting longitudinal tracking of program participants. Milwaukee County's array of alternatives to incarceration programs has grown in recent years, due in part to the aggressive pursuit of grant funding opportunities and the collaboration of system stakeholders through the Milwaukee Community Criminal Justice Council (CJC). The Division

of Courts-Pretrial Services has regularly tracked re-offense and failure-to-appear data for its population of supervised pretrial defendants. Grant funded initiatives such as Treatment Alternatives and Diversion program (TAD), also require reporting. However, overall recidivism is not tracked system-wide. Jail bed-day savings also remain difficult to track, a problem which is, in part, attributed to the Courts' antiquated database. According to Courts personnel, the database makes creating and pulling reports time-consuming and labor-intensive.

The Division of Courts-Pretrial Services has recognized the benefit of performance monitoring. The divisions' Request for Proposals for services, released in 2012 for the 2013 contract year, contained more specific and measureable program goals than in the past. Requesting this outcome data is a step in the right direction that needs to be maintained in order to truly analyze the value of the system's considerable investment in its programming. As previously noted, contracted funds devoted by Milwaukee County for pretrial and post-adjudication jail diversion/alternatives programming in 2013 is estimated to total approximately \$4.9 million. Reducing the demand for jail bed-days is by no means the only goal or measure of the effectiveness of pretrial programming, nor is reducing recidivism rates and demand for jail-bed days the only objectives of post-adjudication alternatives to incarceration and jail diversion programming. Reduced levels of incarceration are, however, an underlying objective of all such programs. Establishing uniform criteria for defining and measuring recidivism, as well as quantifying the number of jail bed-days avoided, would help criminal justice personnel analyze the success of their initiatives.

The Courts have recognized the benefits of improved data gathering capabilities. Included in its 2013 budget are improvements such as the development and implementation of 'dashboard reporting' to efficiently demonstrate pretrial services program outcomes, as well as the impact of Universal Screening on the jail population. According to the Chief Judge, the County's Information Management Services Division has scheduled a project to achieve these objectives, to begin before year-end.

***Increased use of electronic monitoring in lieu of incarceration can potentially achieve significant savings for Milwaukee County, but only if pursued on a relatively large scale with compliance rates consistent with past experience.***

We examined in detail the cost components of both inmate incarceration and electronic monitoring that are relevant to a determination of the fiscal impact of Milwaukee County utilizing one approach in lieu of the other. We identified a number of calculations that have been used to represent the cost of a 'jail bed-day' in Milwaukee County. These calculations ranged from \$3.54 to \$141.00 per inmate-day. Each calculation could have merit based on their underlying assumptions and the purpose for which they were developed.

***Only those costs that will vary with an increase or decrease in average daily inmate census should be considered in calculating the potential savings resulting from placing inmates on electronic monitoring in lieu of incarceration.***

The concept of calculating savings resulting from a proposed reduction in the inmate population should not be confused with the concept of the ‘average’ or ‘full’ cost of incarcerating an inmate. That is because many of the costs associated with incarceration are fixed regardless of the number of inmates housed. For instance, the cost of the position of Superintendent of the HOC will remain whether there are 2,000 inmates incarcerated at the facility or just 1,200. While the salary and benefits of the Superintendent would properly be included in a calculation of the average cost of incarcerating 2,000 inmates, none of those costs would be saved if 800 inmates were placed on electronic monitoring.

The HOC has a total of 36 inmate dormitories ranging in bed capacity from 22 to 70. The typical dormitory (25 of the 36) houses 60 inmates. Therefore, we conducted the following analysis based on potential savings attributable to the closure of a 60-bed dormitory, using actual cost data for 2012. We calculated the potential savings associated with closing a 60-bed dormitory is approximately \$580,000. This translates to an average cost per inmate-day of \$26.61, assuming the critical threshold of 60 inmates required to justify the closing of an HOC dormitory is achieved. For increments of less than 60 inmates, the savings per inmate-day is \$10.44.

***Additional costs associated with electronic monitoring must also be calculated as offsets to savings achieved from reduced inmate populations.***

At the time the current HOC Superintendent was confirmed in May 2013, there were no HOC inmates on electronic monitoring/home detention. By the end of August, the number had grown to 184 inmates. With no dedicated internal staff available to perform the monitoring function, or contracts to provide the EM hardware, HOC worked out a Memorandum of Understanding (MOU) agreement with each of two vendors currently providing EM services on a pretrial basis for the Courts. For the remainder of 2013, the vendors will provide the HOC with EM hardware, computer software for monitoring inmates’ compliance with required restrictions, and case management activities. At the threshold of 60 inmates necessary to close an HOC dormitory, we estimate total EM costs of \$156,868. However, because of fixed costs associated with staffing the recent expansion of the EM program, the incremental costs of additional inmates placed on EM become progressively smaller. For this reason, the use of EM in lieu of HOC incarceration must be pursued on a relatively large scale to achieve substantive savings. The report includes a table reflecting potential savings ranging from a net annual cost of \$16,800 for an average EM enrollment of 30, to a net annual savings of \$2.6 million for an average EM enrollment of 300.

The above calculations assume minimal law enforcement intervention for non-compliant EM participants. For the seven-week period August 1-September 18, 2013, there were 19 incidents of non-compliance with EM program requirements among an average daily population of 184, a daily compliance rate of 99.8%. Discussions with the District Attorney's Office indicate a robust EM program could require additional sworn investigator positions to apprehend absconders and pursue other suspected program violations. Coupled with other non-EM related duties such as pursuing convicted individuals that fail to appear for court-ordered sentences, witness intimidation crimes, and HOC escapees, among others, the DA's Office envisions the need for a unit of up to five investigators. Based on 2012 costs, we estimate five additional positions for these purposes would cost approximately \$400,000. While past and recent experience indicates the need for law enforcement intervention for EM monitoring to be minimal, an as yet undetermined portion of that cost would add to the fixed cost of EM monitoring.

Further, it bears mentioning that EM program participation in both pretrial and post-adjudication cases is based on careful screening and formal risk assessments. As such, the decision to place an individual on EM/home detention is not risk-free.

***Milwaukee County's arsenal of pretrial jail diversion and alternatives to incarceration programming is as or more robust than the next three most populous counties in Wisconsin.***

We conducted a telephone survey of Brown, Dane and Waukesha counties. In general, we found that Milwaukee County's jail diversion and alternatives programming efforts are as comprehensive as any of those other counties.

A comparison of the extent to which each county uses electronic monitoring/home detention to reduce its average inmate population shows Milwaukee County placed the least amount of reliance, in relative terms, on electronic monitoring of the four most populous Wisconsin counties. Milwaukee and Waukesha Counties' use of electronic monitoring has generally declined during the past five years, while the use of electronic monitoring has generally increased in Brown and Dane Counties.

Milwaukee County has recently resumed a practice common among the next three most populous Wisconsin counties by offering opportunities for qualifying inmates to perform community service as a means of reducing their time in confinement.

Recommendations for enhancing stakeholders' ability to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System are

included in **Section 5** of this report. All stakeholders referenced in this report received preliminary draft copies of the audit report and their input is gratefully acknowledged. A response to the recommendations from the Milwaukee Community Criminal Justice Council and written comments from the Milwaukee County Office of the Sheriff are included as **Exhibit 3**. Additional written comments, if any, received from stakeholders after the printing deadline for report issuance will be posted to the Audit Services Division website at:

<http://county.milwaukee.gov/AuditReports2002tocu7878.htm>

We would like to acknowledge the cooperation of staff from each of the stakeholders listed in this report during the course of our audit.

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## **Background**

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For a number of years, various criminal justice officials in Milwaukee County have worked to establish alternatives to incarceration programming. Recent efforts have focused on the incorporation of evidence-based decision making throughout the system. In 2010, Milwaukee County was selected as one of seven sites nation-wide to participate in Phase II of the National Institute of Corrections (NIC) and Office of Justice Programs Evidence-Based Decision Making Initiative. Evidence-based decision making seeks to utilize research, knowledge, and data to improve outcomes. According to NIC, the goal of the initiative is:

*...to equip criminal justice policymakers in local communities with the information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending. The initiative is grounded in two decades of research on the factors that contribute to criminal reoffending and the methods the justice system can employ to interrupt the cycle of re-offense.*

In 2012, the County Board passed a resolution (File No. 12-129) broadening the scope of a previously approved audit of the Office of the Sheriff to include a review of the effectiveness of alternatives to incarceration programs to divert individuals to less costly arrangements and save jail beds. This report fulfills that additional directive under separate cover from the *Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff* audit report issued in April of this year.

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### **Overview of Pretrial Assessments and Programming**

The Milwaukee County Criminal Justice System comprises a complex series of interactions between local law enforcement agencies, the District Attorney's Office, the Milwaukee County Circuit Courts, and numerous private agencies providing services on a contractual basis. Following is a brief overview of key programs implemented throughout the system that are relevant to a discussion of alternatives to incarceration.

#### **Pretrial Assessments**

With NIC's support, Milwaukee County received technical assistance with the validation of the Milwaukee County Pretrial Risk Assessment Instrument (MCPRAI) and the development of a Praxis (a practical application instrument) and Risk Assessment Report to guide front-end release decisions and determination of bail and release conditions. While still in the early stages of implementation and evaluation, Milwaukee County collects data from individuals who interact with the criminal justice system through a 'universal screen' using the evidence-based assessment tools.

Information obtained as a result of the assessments and screening process provides stakeholders with an individual's identified risk for pretrial misconduct. Pretrial misconduct is defined as failure to appear for a known scheduled court hearing and/or an arrest that results in the issuance of new criminal charges. Criminal justice professionals use the tools to make decisions regarding bail, release, and eligibility for Milwaukee County Early Intervention programming such as diversion and deferred prosecution agreements. Milwaukee County continues its participation with NIC in Phase III of the project.

### **Pretrial Programming**

The Milwaukee County Department of Combined Court Related Operations manages contracts with local providers for an array of pretrial programs and services rooted in the evidence-based decision making model. Eligibility for the various programs is determined by the application of the MCPRAI and Praxis during universal screening. **Table 1** contains a summary of the major pretrial programs and services offered in 2013.

**Table 1**  
**Milwaukee County Criminal Justice System**  
**Pretrial Jail Diversion/Alternatives**  
**to Incarceration Programming**

<b><u>Program/2013 Contractor/Costs</u></b>	<b><u>Description</u></b>	<b><u>Desired Outcomes</u></b>
<b>Pretrial Universal Screening</b> <b>JusticePoint</b> <b>\$987,902</b>	Utilizes pretrial risk assessment tools to screen all persons booked into the Milwaukee County Correctional Facility-Central who are subject to bail, and issues risk assessment reports, including recommendations for bail and release conditions for use by the district attorney, defense attorney and judicial officer in front-end decision making.	<ul style="list-style-type: none"> <li>1) Assess 100% of the Universal Screening target population.</li> <li>2) Decrease by 10% the average length of stay for pretrial detainees.</li> <li>3) Decrease by 15% the average daily pretrial population.</li> </ul>
<b>Pretrial Supervision Program</b> <b>JusticePoint</b> <b>\$1,421,348</b>	Community supervision and monitoring of adult pretrial and drug treatment court defendants. This includes the verification and reporting of pertinent defendant information and activities, monitoring of court obligations and activities, and the referral to community-based service providers as needed.	<ul style="list-style-type: none"> <li>1) 90% of program participants will appear at all scheduled court hearings.</li> <li>2) 95% of participants will not be charged with a new offense during the pretrial period.</li> </ul>
<b>Pretrial GPS Monitoring</b> <b>JusticePoint</b> <b>\$222,392</b>	In conjunction with the Pretrial Supervision Program. Electronic monitoring for adult pretrial defendants, including the monitoring of defendant activity and court obligations. Contracted vendor actively reminds/encourages defendant to attend all scheduled court hearings and prepares and submits supervision status and violation reports.	<ul style="list-style-type: none"> <li>1) 95% of program participants will appear at all scheduled court hearings.</li> <li>2) 97% of participants will not be charged with a new offense during the pretrial period.</li> </ul>
<b>Repeat Intoxicated Driver Intervention Program</b> <b>Wisconsin Community Services (WCS)</b> <b>\$261,399</b>	Pretrial supervision and case management services to adult defendants charged with their second or subsequent Operating While Intoxicated (OWI) offense. Program includes structured program participation monitoring, data collection, monitoring of treatment status, and drug/alcohol testing. Monitoring of court obligations, supervision status and violations is also included.	<ul style="list-style-type: none"> <li>1) 95% of program participants will appear at all scheduled court hearings.</li> <li>2) 95% of participants will not be charged with a new offense during the pretrial period.</li> <li>3) Deter repeat OWI offenders from continuing to drive while intoxicated by referring them to appropriate community based interventions.</li> </ul>
<b>Continuous Alcohol Monitoring</b> <b>WCS \$155,401</b>	In conjunction with the Repeat Intoxicated Driver Intervention Program. Provides continuous remote alcohol monitoring for defendants ordered to the Repeat Intoxicated Driver Intervention Program and Milwaukee County Drug Treatment Court through the utilization of transdermal alcohol monitoring devices. Vendor is required to report consumption violations to the assigned case manager and/or court within 24 hours of occurrence.	<ul style="list-style-type: none"> <li>1) Attendance of at least 95% of all program defendants at all scheduled court hearings.</li> <li>2) Re-arrest rate of no more than 3% for program defendants during the pretrial monitoring period.</li> </ul>
<b>Drug Testing</b> <b>WCS \$170,491</b>	Conducts qualitative drug testing of pretrial program participants using a random selection process. Outside vendor provides the necessary staff, equipment, supplies and technology to perform drug testing while ensuring the chain of custody of specimens.	<ul style="list-style-type: none"> <li>1) ≤ 1,290 six-panel drug tests.</li> <li>2) ≤ 75 eleven-panel drug tests.</li> </ul>

**Table 1**  
(continued)

<b>Treatment Alternatives and Jail Diversion (TAD) Program JusticePoint \$362,155</b>	Provides jail diversion and deferred prosecution agreement opportunities for low/moderate to moderate risk/need, non-violent arrestees who have substance abuse and/or co-occurring mental health treatment needs. The program seeks to reduce recidivism and jail and prison costs by providing case management/services targeted at addressing an offender's identified criminogenic risk and needs. Monitoring of court obligations, supervision status, and violations is also included.	1) Reduce jail and prison populations by diverting non-violent offenders to community-based alternatives. 2) Reduce recidivism rates for participants.
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Note: Table Includes contract costs only. Does not include related County personnel or facility charges.

Source: Program descriptions taken from Milwaukee County Department of Combined Court Related Operations-Alternatives to Incarceration Request for Proposals #6723, issued April 13, 2012.

The Superintendent of the House of Correction currently oversees operation of Milwaukee County's Day Reporting Center (DRC), which is utilized by both deferred prosecution pretrial and sentenced inmates. The DRC offers supervision and programming to assist offenders in treatment and the development of skills to re-enter society. *[Note: The DRC was transferred to Courts in the 2011 Adopted Budget; the DRC was formerly known as the Criminal Justice Resource Center and was under the jurisdiction of the Sheriff from 2009-2010, and the Superintendent of the House of Correction prior to 2009. The DRC was transferred back to the Superintendent of the House of Correction effective July 1, 2013.]*

Apart from the DRC, which serves both pretrial deferred prosecution and sentenced individuals, the aforementioned programs and assessments are applied to pretrial defendants. Historically, the Milwaukee County Courts-Pretrial Services Division has utilized electronic monitoring to supervise a very small population of pretrial defendants. This population is distinct from the population of sentenced inmates who are placed on home detention/electronic monitoring post-adjudication as an alternative to incarceration. Budgeted contract expenditures (does not include a cost allocation of County-funded personnel or facility costs) for the pretrial jail diversion/alternatives to incarceration programming identified in **Table 1** total approximately \$3.6 million.

### **Sentencing, Confinement and Electronic Monitoring**

In Wisconsin, any person age 17 years and older who commits a felony or misdemeanor is considered an adult and may be sentenced to confinement or placed on probation, and/or fined. Offenders sentenced to one year or more of incarceration, are imprisoned in state correctional facilities; the State Department of Corrections is also charged with monitoring all individuals placed on probation. Offenders sentenced to confinement for less than a year generally serve their time in county jails or Houses of Correction.

Under State Statutes, judges may permit individuals sentenced to the House of Correction to maintain employment while confined. Huber Law (delineated in Wis. Stats. 303), allows inmates to leave jail on work days for work hours plus travel time. The statute outlines additional activities an individual could participate in under Huber Law, which include:

- Seeking employment;
- Employment training;
- Community service;
- Attending to the needs of a family member;
- Attending an educational institution;
- Receiving medical treatment;
- Obtaining counseling or treatment; and
- Parenting education.

Incarcerated defendants serving jail time as a condition of probation may be released for the same purposes. This is called Conditional Release or work release.

By itself, Huber and Conditional Release privileges do not constitute alternatives to incarceration because the inmate returns to jail and thus occupies a jail bed. However, many jurisdictions in the state focus on individuals in these populations as candidates for their post-adjudication home detention and electronic monitoring programs.

Historically, Milwaukee County has used a number of techniques to address chronic jail overcrowding issues (see **Section 2** of this report for a detailed description of County jail population management efforts). **Table 2** describes the major initiatives currently employed by the Milwaukee County Criminal Justice System to avoid or reduce incarcerations on a post-adjudication basis.

Program/2013 Contractor/Cost	<p style="text-align: center;"><b>Table 2</b>  <b>Milwaukee County Criminal Justice System</b>  <b>Post-Adjudication Alternatives to Incarceration</b>  <b>Programming</b></p> <p style="text-align: center;"><b>Roles of Various Officials Involved in Program</b></p>	Population Served
<p><b>Drug Treatment Court JusticePoint \$90,424</b></p> <p>Drug Treatment Court seeks to enhance public safety through the reduction of recidivism by coordinating effective and accountable substance abuse treatment and supportive services for offenders with substance abuse problems.</p> <p>Drug Treatment Court mandates intensive substance abuse services, comprehensive ancillary support services, and close judicial supervision and monitoring of all participants. Participants are required to enroll in job training, an education program or institution or employment for graduation, and are mandated to attend regular court appearances, supervision contacts, and random substance testing.</p> <p>The JusticePoint contract staffs the Drug Court Coordinator position.</p>	<p>The Drug Court planning team consists of representatives from the following agencies/organizations: judge, planning/court coordinator, prosecutor, defense attorney, treatment provider, community supervision, probation/parole, law enforcement, and evaluator. Their roles are detailed below.</p> <p><b>Judge:</b> Provides leadership to the program, presides over all proceedings, monitors the appropriate application of sanctions and incentives, and makes final programmatic/participant decisions.</p> <p><b>District Attorney:</b> Designates a prosecutor to be responsible for Drug Court eligibility determinations. Participating attorneys also make recommendations for termination and new charges, and ensure participant understanding of sanctions and rewards.</p> <p><b>Defense Attorney:</b> Meets with clients deemed appropriate participants to evaluate interest and acceptance of program, advises clients on legal rights, options, program conditions, and potential sentencing outcomes, and monitors client progress.</p> <p><b>Drug Court Coordinator:</b> Provides oversight for day-to-day operations and administration of the drug court program, and monitors whether the program is meeting its short and long-term goals.</p> <p><b>Drug Court Case Manager:</b> Provides case management services for all participants, including: referrals and assistance in obtaining treatment and support services as directed by the case plan, performs substance testing, monitors conditions of the Drug Court contract, performs random home visits to assess the participant's progress, coordinates any community service performed by the participant, and provides weekly input of compliance data.</p> <p><b>Drug Court Treatment Provider:</b> Identifies and/or provides a continuum of care for participants including: detoxification, residential treatment, outpatient treatment, and intensive outpatient treatment.</p> <p><b>Drug Court Law Enforcement Liaison:</b> Provides law enforcement support for drug court activities.</p>	<p>High risk/high need individuals who have significant substance abuse problems, and who meet all of the following criteria:</p> <ol style="list-style-type: none"> <li>1. Milwaukee County resident.</li> <li>2. 18 or older.</li> <li>3. AODA dependent (based on court assessment).</li> <li>4. Charged with a felony, or chronic/habitual misdemeanor.</li> <li>5. Score a minimum of 23 but not more than 35 on the Level of Service Inventory-Revised (LSI).</li> <li>6. Meet the federal definition of "non-violent offender" (and do not have a history of sex, weapons or firearms offenses).</li> <li>7. Be amenable to the drug treatment court program.</li> <li>8. Must be facing a recommendation from the DA of at least 9 months straight time at the HOC.</li> <li>9. Plead guilty to a drug charge; successful completion of the program will typically result in dismissal of case or reduction of a sentence to time served.</li> </ol>
<p><b>The Veterans' Treatment Initiative and Treatment Court (VTI)</b></p> <p><b>No Additional Contracted Costs—Memorandum of Understanding between Zablocki VA Medical Center, DA's Office, State Circuit Court-Milwaukee Branch and WI State Public Defender's Office</b></p>	<p><b>Contracted Vendor for Universal Screening:</b> Veterans are identified during the jail booking process/universal screening, and connected with the <u>Public Defender</u> and <u>Veterans Affairs</u>. If deemed appropriate, a veteran's justice outreach specialist helps link the individual with VA treatment and reports compliance.</p> <p><b>District Attorney:</b> The DA assesses the individual to determine whether a deferred prosecution program, Veterans Track in Drug Treatment Court or supervision by the <u>Department of Corrections</u> is the best option.</p> <p><b>Judge:</b> A circuit court judge is assigned to VTI.</p>	<p>Open to all veterans (excluding those charged with violent crimes or crimes involving a weapon).</p>

(continued next page)

	<b>Table 2</b> (continued)	
<p>Launched in December 2012, VTI links participants with combined programming provided by the Department of Veterans Affairs and other veterans organizations with court oversight and accountability specifically tailored to the risk and needs of the veteran.</p> <p>Successful completion of the program allows the veterans to address their needs and often avoid the stigma and hardship of a criminal conviction and associated penalties.</p>	<p><u>Local Veterans Organizations:</u> Veterans are matched with mentors through a non-profit veteran's services group called Dryhootch, LLC. The mentor meets with the veteran for peer support and outreach services. Dryhootch also offers a Family Legal Clinic where veterans and their families can receive free legal advice on non-criminal matters.</p>	
<p><b>Day Reporting Center (DRC) WCS \$761,897</b></p> <p>The DRC is an alternative sentencing program where individuals can participate in programs and services to promote positive growth and change so that they can re-enter society successfully.</p> <p>Programs administered at the DRC include: case management, AODA treatment, community service, adult basic education skills, employment readiness/job placement, life skills, cognitive intervention, community service, parenting classes, and fatherhood classes.</p>	<p><u>Court Personnel:</u> The DRC is currently administered by the Superintendent of the House of Correction.</p> <p><u>Judges:</u> Inmates can be sentenced with Huber privileges to attend the DRC for programming.</p> <p><u>Contracted Vendor:</u> Wisconsin Community Services is under contract to provide the programming and services at the DRC.</p> <p><u>Superintendent of HOC*:</u> Offenders are either released with Huber privileges from the HOC or placed on electronic monitoring/home detention.</p> <p>* The Sheriff had the authority to release individuals from the HOC/place them on EM from 2009-mid-2013 when he managed HOC operations.</p>	<p>Individuals who meet all of the following criteria are eligible:</p> <ol style="list-style-type: none"> <li>1. Charged with or convicted of a non-violent, non-assaultive misdemeanor or felony.</li> <li>2. Must have an LSI-CMI score between 11 and 29 (pretrial individuals must have an LSI-R score between 24 and 40).</li> <li>3. Charged in Milwaukee County with a verifiable Milwaukee County address.</li> <li>4. A minimum of 4 months to serve after good time and time saved credit.</li> </ol>
<p><b>Electronic Monitoring JusticePoint and WCS Est. \$476,580 June-Dec</b></p> <p>Electronic monitoring utilizes technology to remotely monitor inmates released to the community on home detention. JusticePoint uses GPS technology while WCS uses SCRAM equipment for continuous alcohol monitoring.</p>	<p><u>Superintendent of the House of Correction:</u> Per Wis. Stat. 302.425(3), the Superintendent of the HOC has the authority to determine when home detention is appropriate for an inmate sentenced to the HOC. The Superintendent monitors individuals on EM to ensure compliance with program requirements.</p> <p><u>Judges:</u> Judges may recommend that an inmate be placed on EM, though they cannot order it.</p> <p><u>Law Enforcement:</u> Law enforcement is needed to pick-up absconders.</p>	<p>The recently appointed Superintendent of the HOC determines eligibility for EM, currently on a case-by-case basis.</p>

Source: Program descriptions taken from Milwaukee County Department of Combined Court Related Operations-Alternatives to Incarceration Request for Proposals #6723, issued April 13, 2012.

Budgeted contract expenditures (does not include a cost allocation of County-funded personnel or facility costs) for the post-adjudication jail diversion/alternatives to incarceration programming identified in **Table 2** total approximately \$1.3 million. Coupled with the pretrial efforts identified in

**Table 1**, the Milwaukee County Criminal Justice System has devoted an estimated \$4.9 million in resources beyond County personnel and facilities to jail diversion/alternatives to incarceration programming in 2013.

Prior to 2009, the Milwaukee County Community Correctional Center (CCC) housed Huber and Conditional Release inmates and home detention monitoring programs. The 2009 Adopted Budget also included the following policy changes:

- Shifted control of the House of Correction (a secure lock-up facility in Franklin) from a Superintendent that reported directly to the County Executive, to the Sheriff.
- Directed the Sheriff to manage the administration of the Huber/work-release and home detention programs.
- Directed a work group composed of representatives from the Department of Administrative Services, Office of the Sheriff, Courts, and County Board staff to develop options for a new Huber/work release center.

Following the closure of the CCC, Huber and Conditional Release inmates were shifted to the downtown County Jail where they remained until 2011 when the Sheriff announced his decision to move them to the House of Correction.

With few exceptions, the Milwaukee County Sheriff shut down electronic monitoring for sentenced inmates in December 2011. In the following weeks, criminal justice system stakeholders, including the Chief Judge and several advocates and contracted service providers, decried the policy change, speaking in favor of continuing a robust electronic monitoring program in Milwaukee County. Several of the arguments in favor of electronic monitoring cited cost savings as a reason to continue its implementation.

The remaining sections of this report present the views of key stakeholders in the Milwaukee County Criminal Justice System regarding alternatives to incarceration programming; historical trends in the County's jail population; identification of cost savings associated with electronic monitoring; a survey of comparable programming in other Wisconsin counties; and Recommendations for enhancing stakeholders' ability to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System.

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## **Section 1: With one key exception, views of officials and stakeholders in the Milwaukee County Criminal Justice System are supportive of alternatives to incarceration programming.**

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*A diverse group of stakeholders shape criminal justice system decision-making in Milwaukee County.*

The criminal justice system in Milwaukee County is a complex web of processes and stakeholders. In interfacing with the system, an individual will likely interact with several different people who report to a number of elected and appointed state, County and municipal officials.

**A Community Criminal Justice Council was created in 2007 to bring the various system stakeholders together in a collaborative decision-making body to advise and promote a more effective and efficient criminal justice system.**

In 2007, the County Board approved a resolution (File No. 07-223) authorizing the creation of a Community Criminal Justice Council to bring the various system stakeholders together in a collaborative decision-making body to advise and promote a more effective and efficient criminal justice system. This action provided a forum for the diverging disciplines operating within the Milwaukee County criminal justice system to share information and discuss policies that impact the entire system, including alternatives to incarceration programs.

The mission statement of the Milwaukee County Community Justice Council (CJC), as delineated in Article III of the CJC Bylaws is:

*To efficiently and collaboratively coordinate services and to effectively allocate financial resources to ensure crime reduction, victim support, offender accountability, and restorative community-based programs. Through strategic planning and research the Council will identify, evaluate, and develop strategies to improve the justice system to enhance public safety and the quality of life in Milwaukee County.*

Given the breadth of officials working in the criminal justice system in Milwaukee County, there are bound to be varying

philosophical beliefs. We reviewed public testimony and published comments and, in some cases, supplemented this with interviews, to summarize the following perspectives of various local officials surrounding the implementation of alternatives to incarceration programming. This examination led us to conclude that with the exception of the Sheriff, in general, local system stakeholders are largely supportive of alternatives to incarceration programming.

***The Chief Judge: The Chief Judge has been a vocal advocate of electronic monitoring for pretrial defendants and sentenced populations as long as public safety is not compromised.***

The Chief Judge has been an active participant with the CJC in implementing alternatives for incarceration programming, and seeking grant funding to enhance programming. As depicted in the previous section, his office oversees an array of pretrial programming including electronic monitoring, case management and pretrial services.

In mid-2012, the Chief Judge sent a memo to the Chairman of the County Board Committee on Judiciary, Safety, and General Services expressing his concern with recent changes in procedure and population management implemented by the Sheriff at the correctional facilities, including the reduction of inmates placed on electronic monitoring.

**The Chief Judge publicly supported the robust use of electronic monitoring.**

In testimony before several County Board committees, the Chief Judge publicly supported the robust use of electronic monitoring, stating that in other jurisdictions, officials report a 6:1 ratio in cost between incarceration and electronic monitoring.

***The District Attorney: The District Attorney is a strong proponent of the evidenced-based decision making model, community prosecution, restorative justice, dosage-based probation, and sees electronic monitoring as a valuable tool for pretrial populations.***

Overall, the published and spoken comments of the DA, which we reviewed, focused on support for alternatives to front-end decision-making and pre-conviction programming.

Several published articles, including a January 2013 piece profiling the District Attorney (DA) in *Milwaukee Magazine*, discuss the DA's support for community prosecution and expansion of the deferred prosecution program and dosage-based probation. The DA's stated goal is reducing crime and improving communities.

**The DA stated that he was a strong proponent of the evidence-based decision making model and the use of validated risk assessments.**

In an appearance before a Finance, Personnel and Audit Committee budget hearing in 2012, the DA stated that he was a strong proponent of the evidence-based decision making model, and the use of validated risk assessments. According to the DA, those models are "all enhanced if you have alternatives in the community." He further stated he believes electronic monitoring is a valuable tool and the County should be using it more than it currently does—though in describing the benefits of its use as releasing someone without cash, it can be inferred that in this instance his comments were directed toward the pretrial population.

The District Attorney was awarded the "Data-Driven Public Sector Management" award by the Public Policy Forum (PPF), a non-profit independent research organization, in 2013 for his work to implement the evidenced-based decision making initiative. According to the PPF award announcement, the DA's work "aimed at using justice system data to make better criminal justice decisions, thus reducing incarcerations, holding down costs, and making the community safer."

***The Sheriff: While the Sheriff has overseen a robust home detention/electronic monitoring program in the past, he has publicly stated that he sees little use for it outside of a measure of population control.***

**Philosophically, the Sheriff leans more towards punishment than rehabilitation.**

Philosophically, the Sheriff leans more towards punishment than rehabilitation. As detailed in **Section 3** of this report, the Office of the Sheriff previously devoted resources to home detention programming. For instance, an average of nearly 200 inmates was placed on electronic monitoring/home detention in 2010.

In December 2011, however, the Sheriff pulled inmates on electronic monitoring back, and virtually halted its use, with few exceptions for those with serious medical issues. The Office of the Sheriff publicly disputed claims that electronic monitoring results in significant savings. During deliberation of the 2013 budget, the Sheriff appeared before the County Board's Committee on Finance, Personnel and Audit, and stated that there is a need for the use of electronic monitoring, but primarily as an inmate population control technique.

**At a public budget hearing, the Sheriff referred to universal screening as “universal jail break.”**

In further comments at the hearing, the Sheriff referred to universal screening as “universal jail break” and stated that he is “not easily swayed by hardship cases.” He contended that inmates sentenced to the House of Correction serve sentences of less than a year, and given the limited timeline, he does not want to lower the standard for those placed on electronic monitoring.

His comments echoed the sentiments published March 1, 2012, in an editorial in the *Milwaukee Journal Sentinel* where he stated:

*...I feel comfortable in my steadfast support for the tough sentencing model...Programs with catchy names such as “alternatives to incarceration,” “second chance,” “community corrections” and “smart on crime” sound warm and fuzzy. The promoters of these initiatives fail to understand the criminal mind and criminal behavior and how deeply ingrained the behavior has become once a person is finally sent to prison, typically not until after his or her first, second or even third conviction.*

***The Advocates: Milwaukee County has an active population of advocates, including contracted criminal justice program vendors, who have been supportive of the evidence-based***

*decision making model, and robust use of electronic monitoring for both pretrial and sentenced populations.*

**The advocates philosophically lean towards rehabilitation and programming over punishment.**

Milwaukee County's criminal justice advocacy community largely consists of representatives from organizations providing programming and support to incarcerated populations. Overall, the advocates philosophically lean towards rehabilitation and programming over punishment.

Taken together, the advocates are actively involved in the CJC, and regularly testify on policy matters before the County Board's committees. Their vigorous support for transferring the management of the House of Correction from the Sheriff to an appointed Superintendent in the 2013 Budget was a significant factor in policymakers' decision to ultimately support the transition.

A common thread through interviews with several service providers and advocates was their view on the notion that incarceration alone is a good method of assuring public safety. They point to research that shows alternatives to incarceration is more effective in reducing recidivism and improving peoples' chances of succeeding in their communities.

***The County Executive's newly appointed House of Correction Superintendent has indicated support for alternatives to incarceration programming.***

While the County Executive did not initially fully support the transfer of the House of Correction to an appointed Superintendent early in 2013, his 2013 Recommended Budget included language directing that such a transition be studied and attempted to direct the Sheriff to utilize electronic monitoring through budgetary sanctions (dormitory closures). During 2013 budget deliberations, the representatives from the County Executive's Office stated that the County Executive believed that the community had a moral and ethical responsibility to release individuals with stability, jobs, and family commitments into the

community, but felt the system was too complex for an abrupt change in administration.

**The current HOC Superintendent pledged support for evidence-based programming and stated that electronic monitoring is a very cost effective way to monitor inmates who have jobs and homes.**

Following passage of the 2013 Milwaukee County Adopted Budget, which sought to shift control of the HOC back to an appointed Superintendent, the County Executive brought in an interim Superintendent. His appointment was later submitted to the County Board for confirmation. The newly confirmed HOC Superintendent has stated his support for alternatives to incarceration programming. At his confirmation hearing before the County Board Committee on Judiciary, Safety, and General Services, the County Executive's nominee pledged support for evidence-based programming, and stated that electronic monitoring is a very cost effective way to monitor inmates who have jobs and homes. The Superintendent acknowledged that programming and electronic monitoring would be directed to minimum risk inmates; some inmates would never be a part of programming because of their behavior or the seriousness of their charges. **Section 3** of this report contains an update of the Superintendent's expansion of electronic monitoring/home detention for suitable inmates at the HOC.

*Despite philosophical disagreements, local officials generally agree that the Sheriff had the authority to decide whether to release inmates sentenced to the House of Correction on electronic monitoring in 2012.*

While there may be slight and significant philosophical disagreements on the use of alternatives to incarceration/electronic monitoring programs, local officials are currently in general agreement regarding who has the authority to place sentenced individuals on electronic monitoring.

Home detention programs, which in practice employ electronic monitoring devices to observe inmates, are discussed in Chapter 302 of the Wisconsin State Statutes. Section 302.425(3) Wis.

Stats, provides that the Sheriff or Superintendent of the House of Correction may place a prisoner in a home detention program:

*PLACEMENT OF A PRISONER IN THE PROGRAM. The sheriff or superintendent may, if he or she determines that the home detention program is appropriate for a prisoner, place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or superintendent and be monitored by an active electronic monitoring system. The sheriff or superintendent shall establish reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the prisoner pay the county a daily fee to cover the county costs associated with monitoring him or her. The county may obtain payment under this subsection or s. 302.372, but may not collect for the same expenses twice.*

**As a matter of past practice, circuit court judges in Milwaukee County (and elsewhere state-wide) directed that certain individuals be given home detention privileges.**

As a matter of past practice, circuit court judges in Milwaukee County (and elsewhere state-wide) also directed that certain individuals be given home detention privileges.

In 2006, the District I Court of Appeals issued a decision in the case of the *State of Wisconsin v. Lynda Marie Connor*, which further clarified the intent of 302.425(3), Wis. Stats. The defendant in the case appealed the judgment convicting her of operating a motor vehicle while under the influence of an intoxicant, fourth offense, arguing, in part, that the trial court exceeded its authority by ordering that she serve her sentence without electronic monitoring. The Court of Appeals agreed that it was beyond the authority of the courts to determine the status of electronic monitoring. The decision stated:

*This Statute gives no authority to trial courts to determine which prisoners are to be electronically monitored, and indeed, directs that the sheriff or a superintendent of a house of correction make that determination....Thus, it is clear that once the trial court has sentenced an offender to jail, whether as a condition of probation or otherwise, the decision of who is to be electronically monitored is the sheriff's call. Indeed, the authority given the sheriff to place*

*any person in home detention is broad, as it includes anyone “who has been arrested for, charged with, convicted of, or sentenced for a crime.”*

In a separate 2009 case (State of Wisconsin v. John C. Hefte, Appeal Nos. 2009AP320-CR and 2009AP321-CR), the court of appeals upheld the circuit court’s sentencing of a defendant, convicted for operating while under the influence of an intoxicant, third and fourth offenses, to a combined total of 270 days in jail with Huber privileges for all but the first thirty days of his sentence.

While the defendant had argued that “the denial of Huber privileges during that time period violated the separation of powers in that it interferes with the *sheriff’s authority to place [a defendant] on home monitoring*,” the Court of Appeals concluded that the “court’s denial of Huber privileges for the first thirty days of Hefte’s sentence does not interfere with the Sheriff’s jail oversight responsibilities.” According to the Court of Appeals decision:

*The fact that the court denied Huber privileges for the first thirty days of Hefte’s sentence does not reflect an intent to prevent electronic monitoring, as was the case in Schell and Galecke. Rather, it indicates that the court believed that a denial of Huber privileges for thirty days was necessary to punish Hefte for what the court characterized as “aggravated offenses,” and to protect the public.*

**System stakeholders in Milwaukee County are in general agreement that the Sheriff (or HOC Superintendent) ultimately has the authority to place an individual on electronic monitoring.**

System stakeholders in Milwaukee County are in general agreement that while a judge may recommend home detention/electronic monitoring, the Sheriff (or HOC Superintendent) ultimately has the authority to place an individual on electronic monitoring. As a result, when efforts to lobby the Sheriff’s office for greater use of electronic monitoring failed, those in favor of the policy urged county policymakers to transfer the House of Correction back under the authority of an appointed Superintendent.

**A court may impose a sentence of home detention, but only in lieu of a sentence of imprisonment to the county jail.**

It should be noted, however, that Section 973.03(4)(a) of Wis. State Statutes states that a court may impose a sentence of home detention, but only in lieu of a sentence of imprisonment to the county jail:

*In lieu of a sentence of imprisonment to the county jail, a court may impose a sentence of detention at the defendant's place of residence or other place designated by the court. The length of detention may not exceed the maximum possible period of imprisonment. The detention shall be monitored by the use of an electronic device worn continuously on the defendant's person and capable of providing positive identification of the wearer at the detention location at any time. A sentence of detention in lieu of jail confinement may be imposed only if agreed to by the defendant. The court shall ensure that the defendant is provided a written statement of the terms of the sentence of detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the sentence of detention may include a requirement that the defendant pay a daily fee to cover the costs associated with monitoring him or her. In that case, the terms must specify to whom the payments are made.*

Utilizing the authority granted in Chapter 973, the judiciary could legally direct that an individual be placed on home detention; however, in practical terms, it is unclear under this statute how individuals would be monitored and apprehended in the event that the rules of detention are broken.

***Milwaukee County's response to perceived program leadership and management issues has been to shift program administration.***

As mentioned previously, given the broad views of the many criminal justice system stakeholders, there are bound to be philosophical disagreements from time to time.

In recent years, the County has responded to such issues in part by shifting administration of correctional facilities and programs multiple times.

For example, administration of the House of Correction was shifted from an appointed Superintendent to the Sheriff in 2009, and then back to an appointed Superintendent in 2013. The Day Reporting Center, originally under the auspices of the Superintendent of the House of Correction was shifted to the Sheriff in 2009, to Courts in 2011, and back to the House of Correction effective July 1, 2013.

**The frequent changing of administration can result in confusion for staff and clients, and poses challenges for recordkeeping, and the year-to-year analysis of program outcomes.**

The shifting of program administration from one official to the next is one way in which local officials and policymakers can attempt to control programming. It should be noted that the frequent changing of administration can result in confusion for staff and clients, and poses challenges for recordkeeping, and the year-to-year analysis of program outcomes. Such challenges were experienced first-hand during the process of retrieving historical program data.

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## **Section 2: Following a history of increasing inmate populations and overcrowded jail facilities, Milwaukee County's average daily system census peaked in 2001 and has declined significantly in recent years.**

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Milwaukee County has a long history of legal and fiscal issues associated with the problem of jail overcrowding. The current Milwaukee County Correctional Facility-Central (County Jail), located adjacent to the County Courthouse in the Criminal Justice Facility (CJF), opened in 1993 with a bed capacity of 798.

*Jail overcrowding issues forced the County to deploy numerous inmate population management techniques throughout the 1990s and into the next decade.*

**Several constraints, including physical space, construction costs and staffing/operating costs, were key factors in limiting the bed capacity of the current County Jail to 798 during the planning phase of the Criminal Justice Facility capital project.**

Several constraints, including physical space, construction costs and staffing/operating costs, were key factors in limiting the bed capacity of the current County Jail to 798 during the planning phase of the CJF capital project. Further, in exchange for funding \$11.8 million of the project, the City of Milwaukee was able to permanently close its 110-bed holding facility, located at the nearby Milwaukee Police Administration Building, and instead rely on space at the new County Jail. Thus, with the average daily population at the old Jail exceeding its rated 459-bed capacity on a regular basis and the 110-bed capacity City holding facility slated for closure, the County anticipated continued problems with jail overcrowding even after completion of the new County Jail in 1993.

For instance, as planning for the new County Jail proceeded as part of the CJF capital project in the late 1980s, the physical capacity of the old Jail was increased to 546 from its rated capacity of 459 by means of 'double-bunking' some cells. Additionally, Jail inmates were temporarily transported and

housed in an overflow situation at the County House of Correction, a secure lock-up facility in Franklin.

Continued upward trending in the inmate population resulted in a June 1990 federal consent decree limit of 459 inmates in the Jail, and the appointment of a Special Master to enforce the limit through issuance of emergency orders for the early release of inmates judged to present the least risk to public safety. The County also significantly expanded the bed capacity at the HOC during this period.

**Beginning in the late 1980s and throughout the next two decades, the County employed numerous techniques to address jail overcrowding.**

Beginning in the late 1980s and throughout the next two decades, the County employed numerous techniques to address jail overcrowding. These included double-bunking, increasing the number of beds in HOC dormitories, the use of temporary overflow space, the construction of additional usable space to increase bed capacity, the use of electronic monitoring for home detention, and outright early release from incarceration.

#### Christensen Consent Decree

In 1996, Milton Christensen filed a Writ of Prohibition in Milwaukee Circuit Court against Milwaukee County (Milton Christensen, et al v. Michael J. Sullivan, et al), alleging that as an inmate at the County Jail, he was subjected to dangerous conditions as a result of serious overcrowding. An attorney from the Legal Aid Society of Milwaukee was appointed to represent Christensen, and a civil class action was filed on behalf of all persons who were then, or would in the future be, confined in the Milwaukee County Jail. The plaintiffs were later joined by attorneys from the American Civil Liberties Union. Significant litigation ensued during the next few years and on May 29, 2001 the Court approved a detailed 48-page Consent Decree containing specific requirements agreed upon by the litigating parties.

The Consent Decree has two major parts, one dealing with inmate overcrowding and the other with the medical services provided to inmates. At the time of the agreement, a two-year horizon was contemplated by the parties for dismissal of the case based on establishing substantial compliance with the Consent Decree provisions.

**During the period 2001 through 2009, annual Adopted Budgets explained the manner in which the County would enforce a strict cap on the number of inmates incarcerated in its facilities.**

During the period 2001 through 2009, the annual Adopted Budgets for the Office of the Sheriff and/or the House of Correction contained the following narrative explaining the manner in which the County would enforce a strict cap on the number of inmates incarcerated in its facilities.

*Milwaukee County was a defendant in litigation (Milton Christensen, et al vs. Michael J. Sullivan, et al) wherein plaintiffs allege that overcrowded conditions exist in the County Jail. In recognition of perpetual overcrowded conditions in the County Jail, the Wisconsin Supreme Court has ruled that the State cannot force the County to house State probation and parole violators when, in the opinion of the Milwaukee County Sheriff, overcrowded conditions exist in the County Jail. The Sheriff and the Superintendent, House of Correction have advanced a safe and reasonable way of accommodating the incarceration needs of Milwaukee County by proposing a cap for the County Jail, which is tied to a system-wide cap which includes the County Jail and House of Correction. The capacity of the current system, which is defined as both the original design capacity and the expanded/modified capacity, is as follows: the County Jail has a design capacity of 744. It has an expanded rated capacity of 936. Its total bed space is 990. The House of Correction has a design capacity of 1,858. It has a rated capacity of 2,010. Its total bed space is 2,340. The entire system has a design capacity of 2,602. It has a rated capacity of 2,946. It has total bed space of 3,330. The cap proposal addresses the system's population in levels or thresholds, meaning that when the system reaches certain population levels, these levels would trigger the following necessary and appropriate actions by the criminal justice system in order for the system to operate safely:*

**LEVEL I: Criminal Justice Facility (CJF) = 1,000; System Wide (CJF and House of Correction combined) = 3,300**

HOC staff would: (1) Increase number of administrative modifications to electronic surveillance/home detention; (2) begin to identify people sentenced to community access with Operating While Intoxicated (OWI) convictions who have served less than fifty percent (50%) of their sentence; (3) add non-violent felons to the pool (it is estimated this action might open approximately 100 beds at the HOC); (4) refer persons who would otherwise qualify for electronic surveillance, but do not meet the telephone requirements to the in-house home detention program; and (5) request bail review and re-evaluations for everyone with bail of \$500 or less, with consideration of the numbers and categories of offenses involved.

**LEVEL II: CJF = 1,050; System Wide = 3,300**

(1) Review all unemployed sentenced misdemeanors with community access for administrative modification to electronic surveillance; (2) refer anyone identified who cannot meet the telephone requirements to the in-house detention program (approximately 250 people in this category); (3) seek bail review and re-evaluations for persons with bails up to \$750, with consideration of the numbers and categories of offenses involved; (4) give a future date to report and begin serving their sentence to all newly sentenced persons who are not in custody; (5) review persons serving municipal commitments and persons who have served a portion of their sentence for possible release; and (6) review and modify custody agreements as necessary.

**LEVEL III: CJF = 1,075; System Wide = 3,400**

(1) Review all persons with community access sentences for administrative modification of the sentence to electronic surveillance; (2) refer anyone identified who cannot meet the telephone requirements to the in-house detention program; (3) continue to give a future report date to anyone out-of-custody and newly-sentenced to a community access sentence; (4) seek bail review and re-evaluations for persons with bails up to \$1,000, with consideration of the numbers and categories of offenses involved; (5) release all municipal commitments; (6) seek early release and modification of sentences to time served for persons who have served seventy-five percent (75%) of their sentence with good time; (7) seek additional jail space, including utilization of 5-East as well as renting space in other jails; (8) review new admissions, and, where appropriate, cite and release persons from custody;

*and (9) identify vacant buildings for use as custody space.*

***LEVEL IV: CJF = 1,075; System Wide = 3,400 (for 5 consecutive days)***

*(1) Review all straight time misdemeanor sentences for administrative modification to electronic surveillance; (2) refer anyone identified who cannot meet the telephone requirements to the in-house detention program; (3) identify persons serving community access sentences to have sentences interrupted, to return later to resume serving their sentence; (4) seek bail review and re-evaluations for persons with bails up to \$2,500, with consideration of the numbers and categories of offenses involved; and (5) include in requests for sentence modification all persons who have served up to fifty percent (50%) of their original sentence.*

In a January 4, 2006 ruling denying Plaintiffs' motion for monetary damages, the Branch #3 Circuit Court found that Milwaukee County had breached provisions of the Christensen Consent Decree on numerous occasions. In its ruling, the Court cited the County's acknowledgement that on approximately 16,000 occasions between November 2001 and April 2004, it violated a 30-hour Consent Decree limit on holding inmates in a booking/open waiting area. The Court described conditions alleged by some members of the Plaintiff class that were not directly contradicted by the County as "...unacceptable, if not appalling."

**In addition to the inmate population management measures described in the 2001—2009 budget narratives, the County undertook numerous efforts at the pre-adjudication stage of the criminal justice system to help reduce overall incarceration levels.**

In the same ruling, the Court recognized that "...Milwaukee County has made strides in keeping the overall population down and improving the medical care provided at the Jail."

In addition to the extraordinary inmate population management measures described in the 2001—2009 budget narratives, the County undertook numerous efforts at the pre-adjudication stage of the criminal justice system to help reduce overall incarceration levels. Many of these early efforts were precursors to the programs described in the **Background** section of this report.

For instance, the 1993 Adopted Budget for the Office of the Sheriff contains the following notation with regard to its ongoing efforts to manage inmate population caps:

*...the County is continuing funding for the Special Master, the revolving low-bail fund, Wisconsin Correctional Services' screening, bail evaluation, monitoring and supervision services, In-House Correctional Services' intensive supervision program, the House of Correction's electronic monitoring program, the Justice System Review Coordinator and staffing for specialized courts (Homicide, Violent Crimes, Drugs, Sexual Assault, Felony Spin-Off) to speed case processing to control the number of pretrial inmates.*

**In recent years, Court monitoring of compliance with Christensen Consent Decree requirements has focused primarily on ensuring adequate medical services for inmates.**

In recent years, Court monitoring of compliance with Christensen Consent Decree requirements has focused primarily on ensuring adequate medical services for inmates. The Court has recently approved a motion by the Milwaukee County Sheriff to contract, on an emergency basis, with a private firm to provide inmate medical services after continued failed attempts by the County to recruit and retain sufficient qualified medical staff.

**Table 3** shows the changes in bed capacity and average daily inmate populations for Milwaukee County from 1990 through 2010 in five-year snapshots, along with 2012 data.

**Table 3**  
**Milwaukee County Jail Bed Capacity**  
**and Average Daily Inmate Populations**  
**1990-2012**

	Facility	Design	Physical	Average	Variance	Variance	Avg. Daily Early
		Capacity	Capacity*	Daily Population	Design Capacity	Physical Capacity	Release and/or Elec. Monitoring
1990	Jail	459	546	508	(49)	38	
	HOC	556	1,300	1,389	(833)	(89)	
	Total	1,015	1,846	1,897	(882)	(51)	61
1995	Jail	798	800	1,169	(371)	(369)	
	HOC	1,070	1,400	1,400	(330)	0	
	Total	1,868	2,200	2,569	(701)	(369)	205
2000	Jail	798	990	1,081	(283)	(91)	
	HOC	1,850	2,400	2,297	(447)	103	
	Total	2,648	3,390	3,378	(730)	12	261
2005	Jail	798	990	855	(57)	135	
	HOC	1,850	2,010	2,095	(245)	(85)	
	Total	2,648	3,000	2,950	(302)	50	249
2010	Jail	798	960	888	(90)	72	
	HOC	1,650	2,038	1,939	(289)	99	
	Total	2,448	2,998	2,827	(379)	171	198
2012	Jail	798	960	804	(6)	156	
	HOC	1,650	2,038	1,641	9	397	
	Total	2,448	2,998	2,445	3	553	25

\* Physical Capacity of facilities frequently exceeded rated bed capacity by means of double-bunking and use of temporary overflow space.

Note: HOC capacity figures for 1990 through 2005 include satellite work release facilities in use and overseen by the HOC Superintendent during that time period.

Sources: Milwaukee County Adopted Annual Operating Budgets and Office of the Sheriff Law Enforcement Analytics Division data.

As shown in **Table 4**, total system-wide average inmate population (including those on supervised home detention) in Milwaukee County peaked in 2001.

**Table 4**  
**Average Daily Inmate Populations**  
**Milwaukee County**  
**2000-2012**

<u>Year</u>	<u>Jail</u>	<u>HOC</u>	<u>Incarceration</u>	<u>Electronic Monitoring</u>	<u>Grand Total</u>
2000	1,081	2,297	3,378	261	3,639
<b>2001</b>	<b>1,106</b>	<b>2,335</b>	<b>3,441</b>	<b>331</b>	<b>3,772</b>
2002	982	2,309	3,291	271	3,562
2003	1,066	2,076	3,142	249	3,391
2004	1,066	2,095	3,161	249	3,410
2005	855	2,095	2,950	249	3,199
2006	864	2,023	2,887	310	3,197
2007	886	2,173	3,059	253	3,312
2008	896	2,178	3,074	171	3,245
2009	930	2,171	3,101	223	3,324
2010	888	1,939	2,827	198	3,025
2011	874	1,903	2,777	184	2,961
2012	804	1,641	2,445	25	2,470

Note: Highlighted figures reflect peak inmate population during period.

Sources: Milwaukee County Adopted Annual Operating Budgets and Office of the Sheriff Law Enforcement Analytics Division data.

In a June 2011 published *Research Brief*, the Public Policy Forum (PPF), an independent non-profit research organization, offered the following factors as potential causes of the declining trend in Milwaukee County's inmate population:

- **Fewer crimes are being committed.** The PPF cited a sharp reduction in the number of reported incidents in all categories of violent and property crimes in the City of Milwaukee from 2007 through 2010 as an indicator of this factor.
- **The development of a more robust set of jail diversion and alternatives options—and the willingness of judges and prosecutors to use those options—is bearing fruit.** The PPF acknowledges that the long-term impacts of the types of jail diversion and alternative programming described in the **Background** section of this report on public safety and costs are not yet clear. However, it cites consensus among both advocates and critics of the programs that, at least in

the short run, they have reduced the number and associated costs of inmates incarcerated in Milwaukee County facilities.

- **Detention population trends may be influenced most by societal factors and are not directly linked to crime reduction or jail diversion efforts.** The PPF noted that factors ranging from an aging population to the economic downturn (a proposition that people stay home more during tough economic times and thus have a dampening effect on such crimes as Operating While Intoxicated) have been credited with the general reduction in crime rates and detention populations, both of which are national trends.

**The Public Policy Forum recommended that Milwaukee County step up efforts to collect, analyze and disseminate data regarding the effectiveness of jail diversion, deferred prosecution, and alternatives programming in reducing recidivism and enhancing public safety.**

While the Public Policy Forum characterized its June 2011 *Research Brief* as primarily informational in purpose, it recommended that Milwaukee County step up efforts to collect, analyze and disseminate data regarding the effectiveness of jail diversion, deferred prosecution, and alternatives programming in reducing recidivism and enhancing public safety. It noted a need for enhanced and improved data collection strategies to overcome a lack of hard evidence in demonstrating the effectiveness of such programming.

We echo the PPF call for improved data collection and program measurement strategies. Two years after the PPF recommendation, we found two key impediments to effective program evaluation remain:

- A uniform definition of recidivism. The generic concept of recidivism is easily defined as a relapse into criminal behavior after an initial encounter with the Criminal Justice System. Reducing recidivism rates of program participants is an underlying goal of each Milwaukee County alternative to incarceration program. However, identifying specific criteria for use in establishing a consistent and meaningful measurement amenable to evaluating the effectiveness of various types of alternative and jail diversion programming poses a number of challenges. For instance, what is the time period established for identifying relapses? Once a time period is established, are all types of offenses counted as a relapse, or only the specific behavior or related behaviors?

According to Courts staff, the Evidence-Based Decision Making Initiative Early Intervention Workgroup defined recidivism as a new arrest that results in the issuance of new criminal charges. However, that definition has not been formally adopted by the Milwaukee Community Criminal

Justice Council or by the Courts for incorporating into contract language for purposes of consistently measuring the effectiveness of alternative and jail diversion programming.

- An infrastructure for conducting longitudinal tracking of program participants. Milwaukee County's array of alternatives to incarceration programs has grown in recent years, due in part to the aggressive pursuit of grant funding opportunities and the collaboration of system stakeholders through the CJC. The Division of Courts-Pretrial Services has regularly tracked re-offense and failure-to-appear data for its population of supervised pretrial defendants. Grant funded initiatives such as Treatment Alternatives and Diversion program (TAD), also require reporting. However, overall recidivism is not tracked system-wide. Jail bed-day savings also remain difficult to track, a problem which is, in part, attributed to the Courts' antiquated database. According to Courts personnel, the database makes creating and pulling reports time-consuming and labor-intensive.

Attic Correctional Services provided programming at the DRC through 2012. Its contract was not renewed in 2013, and was instead awarded to another vendor through the competitive bidding process. Their report format was largely consistent throughout 2009-2012, though a recidivism measure that was included in the 2009 report was dropped in subsequent years.

For the other contractors, we were told that the vendors do not supply written reports, but instead enter data directly into the Court's database. Courts personnel can then run their own reports from the database. Though this practice may be necessary in the short-term to supply real-time data and assessments to Courts personnel, the current practice does not appear to be sufficient to efficiently monitor and report the performance of pretrial programs in the long-term, especially given complaints regarding Courts' database.

**The Division of Courts-Pretrial Services has recognized the benefit of performance monitoring.**

The Division of Courts-Pretrial Services has recognized the benefit of performance monitoring. The recent collaborations with NIC on the Evidence-Based Decision Making Initiative include efforts to systematically measure program outcomes. Lessons learned from the initiative were applied to the Pretrial Services Alternatives to Incarceration programs Request for Proposals, released in 2012 for the 2013 contract year, which contained more specific and measurable program goals (the programs and desired outcomes are displayed in **Table 1** in the **Background** section of this report). The RFP stated that overall:

*...these programs are designed to reduce recidivism, pretrial failure to appear and re-arrest rates, enhance public safety, reduce overcrowding at the County Correctional Facilities—Central and South [HOC], and enhance the processing of criminal cases. [Note: The RFP included both pre- and post-adjudication programming.]*

**Contracted funds devoted by Milwaukee County for pretrial and post-adjudication jail diversion/alternatives programming in 2013 is estimated to total approximately \$4.9 million.**

Requesting this outcome data is a step in the right direction that needs to be maintained in order to truly analyze the value of the system's considerable investment in its programming. Contracted funds devoted by Milwaukee County for pretrial and post-adjudication jail diversion/alternatives programming in 2013 is estimated to total approximately \$4.9 million. Reducing the demand for jail bed-days is by no means the only goal or measure of the effectiveness of pretrial programming, nor is reducing recidivism rates and demand for jail-bed days the only objectives of post-adjudication alternatives to incarceration and jail diversion programming. Reduced levels of incarceration are, however, an underlying objective of all such programs. Establishing uniform criteria for defining and measuring recidivism, as well as quantifying the number of jail bed-days avoided, would help criminal justice personnel analyze the success of their initiatives.

***Recent developments will affect both average daily jail populations and alternative programming participation. This will further complicate an already challenging task of measuring the effectiveness of alternative programming.***

At its meeting on June 14, 2012, the Committee on Judiciary, Safety and General Services discussed an informational report from the Chief Judge of the Milwaukee County Circuit Court. In the report, the Chief Judge expressed concerns over procedural changes invoked by the Milwaukee County Sheriff that the Chief Judge stated “*...have resulted in an artificial increase in the jail population.*” The Chief Judge alleged that the Sheriff was incurring unnecessary costs associated with incarceration through a number of procedural changes/processing delays,

and in particular by restricting the number of inmates released from confinement on electronic monitoring/home detention. The Chief Judge noted that the Sheriff had refused to meet to discuss the Chief Judge's concerns and also expressed concern over other actions he attributed to the Sheriff that discouraged participation by eligible inmates in alternative programming. These included:

- Resistance to placing all Day Reporting Center inmates on GPS (electronic monitoring), despite an agreement the Chief Judge noted that the Sheriff and he had reached approximately two years prior.
- The transport of defendants to the House of Correction prior to initial appearance in court, resulting in sometimes several extra days in jail before being released on bail.
- Lengthy delays in placing court-ordered Huber inmates into the Huber dormitory at the House of Correction.

The Office of the Sheriff responded with a report that:

- Cited the general decline in Milwaukee County's average daily inmate census figures.
- Asserted the Sheriff's authority to exclusively make decisions on the use of electronic monitoring as an alternative to incarcerating convicted inmates in his custody.
- Trumpeted substantial taxpayer savings associated with the Sheriff's management of the House of Correction since he assumed management responsibility for its operation in 2009.

*[Note: A complete analysis of the Chief Judge's report and the Office of the Sheriff response was presented to the Committee on Judiciary, Safety and General Services in a memo dated June 28, 2012, from the Audit Services Division. That analysis is included as **Exhibit 2** in this report.]*

**The average number of inmates on electronic monitoring decreased from 184 in 2011 to 25 in 2012, resulting in an increase of 159 in the average daily inmate census over what it would likely have been without changing electronic monitoring program eligibility criteria.**

It is clear from the data in **Table 4** that the number of inmates on electronic monitoring decreased from a daily average of 184 in 2011 to 25 in 2012, resulting in a corresponding increase of 159 in the average daily inmate

census over what it would likely have been without changing electronic monitoring program eligibility criteria.

Transfer of Management Responsibility for HOC Operations

Prior to 2010, the Office of the Sheriff and the House of Correction were separately budgeted organizational units. With passage of the 2009 Adopted Budget, management responsibility for the HOC was transferred to the County Sheriff, who renamed the facility the County Correctional Facility-South (CCF-S). The organizational units were formally combined in the 2010 Adopted Budget. The 2013 Adopted Budget returned the CCF-S to a separate department managed by a Superintendent reporting directly to the County Executive, effective April 1, 2013. On December 12, 2012, the Milwaukee County Sheriff filed a legal challenge to that action in Milwaukee County Circuit Court, citing the Sheriff's Wisconsin Constitutional authority to "...perform the traditional duties and functions of taking care and custody of County Correctional Facility-Central and County Correctional Facility-South and the prisoners therein, free of interference."

**On May 1, 2013, the Court denied the Sheriff's assertion of authority over the House of Correction and as of late in the evening on May 6, 2013, the Superintendent assumed management responsibility for the HOC.**

While the Sheriff's court challenge was pending, representatives from the Office of the Sheriff declined invitations to participate in meetings with a transition team assembled by the County Executive. Further, the Sheriff refused to grant the County Executive's nominee for HOC Superintendent access to the facility. On May 1, 2013, the Court denied the Sheriff's assertion of authority over the House of Correction and as of late in the evening on May 6, 2013, the Superintendent assumed management responsibility for the HOC.

Almost immediately, the HOC Superintendent declared that he would resume placing inmates with work release privileges that meet appropriate criteria on electronically monitored home detention. He also implemented improved transportation

service to inmates participating in Day Reporting Center programming.

As of late July 2013, there was no impact noted in the average daily attendance records maintained for the DRC. However, according to Wisconsin Community Services staff administering the DRC programming, logistical obstacles that had discouraged participation (e.g., 3:00 a.m. wake-ups; conveyance to temporary holding cells to await public transportation to the DRC and a timetable that forced participants to forgo any hot meals on days of DRC attendance) have been eliminated. WCS staff indicated that HOC staff now provides direct transportation from the HOC to the DRC in a timely fashion, and expressed confidence that DRC attendance will increase significantly once the permanence of the improved conditions has been established.

**As of late August, there were 184 inmates on electronic monitoring that were formerly occupying a bed at the HOC. This would permit the closing of three dormitories at the HOC.**

In addition, as of late August, there were 184 inmates on electronic monitoring that were formerly occupying a bed at the HOC. This would permit the closing of three dormitories at the HOC. However, according to the Assistant Superintendent, there have been no associated reductions in staff. Rather, the staff has been re-assigned to other duties, including staffing for a recent unexpected inmate overflow from the County Jail.

In the next section of this report, we address the cost implications of the number of inmates placed on electronic monitoring/home detention.

*Milwaukee County's historical and recent experience suggest a cooperative working relationship between the Milwaukee County Office of the Sheriff and an independent House of Correction is essential.*

A downward trend in incarcerations has provided relief in Milwaukee County's chronic jail overcrowding problems in recent years. However, the County remains subject to the court-approved Christensen Consent Decree that imposes hard limits

on the inmate population at the Jail. The HOC has been a critical component of the County's ability to manage fluctuations in the inmate population by providing additional secure beds in an overflow situation. Further, there have been significant economies achieved, particularly in recent years, by operating the County Jail and the House of Correction as a unified system. Such economies range from sharing inmate food service and medical care, deploying correctional staff as needed between two facilities operating on a 24/7 basis, to consolidating inmate trust accounts and sharing fiscal staff.

As a result, retaining as many of the shared service arrangements as possible should be a high priority for both the Office of the Sheriff and the new HOC department.

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### **Section 3: Increased use of electronic monitoring in lieu of incarceration can potentially achieve significant savings for Milwaukee County, but only if pursued on a relatively large scale with compliance rates consistent with past experience.**

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As noted in the previous sections of this report, several initiatives have been implemented over the years to help manage the County's jail population, both on a pretrial basis and after sentencing. The impetus for these programs was the need to address chronic jail overcrowding and related inmate housing cost issues.

However, as illustrated in the exchange of perspectives between the Chief Judge and the Office of the Sheriff in the previously-referenced correspondence included as **Exhibit 2**, actual cost savings associated with reducing Milwaukee County inmate populations through alternatives such as electronic monitoring are far from settled. The two perspectives are captured in the following quotation from the Office of the Sheriff's memo dated June 13, 2012:

*When all of the [electronic monitoring] costs are added up there are little to no savings to the taxpayers of Milwaukee County. The Chief Judge has cited that it costs \$140 to \$150 a day to house an inmate at the County Correctional Facility-South [House of Correction]. That figure is grossly inaccurate....the \$140 to \$150 cost per inmate is a meaningless calculation often used by advocates. It is based on the annual tax levy cost of operating a facility, divided by the number of inmate days in a year. This calculation is not the incremental cost of adding or subtracting an inmate from the system.*

In this section of the audit report, we examine in detail the cost components of both inmate incarceration and electronic monitoring that are relevant to a determination of the fiscal impact of Milwaukee County utilizing one approach in lieu of the other.

***There are different forms of electronic monitoring used for ensuring compliance with alternative to incarceration program restrictions; each has different associated costs.***

**Electronic monitoring (EM) provides the justice system with the ability to verify that an inmate released from jail is abiding by restrictions placed upon the inmate by the courts or the Office of the Sheriff/HOC while in the community.**

Electronic monitoring (EM) provides the justice system with the ability to verify that an inmate released from jail is abiding by restrictions placed upon the inmate by the courts or the Office of the Sheriff/HOC while in the community. EM devices are generally attached to an inmate's ankle, and must remain in place at all times. There are several different forms of EM, each with features designed to gather and report specific information to those monitoring the inmates. The types of EM devices used currently and in the recent past by Milwaukee County include:

- Global Positioning System (GPS) – GPS devices come in two types, active and passive monitoring. A GPS bracelet attached to an offender's ankle emits an electronic signal that is received by a computer system. With an active monitoring system, select information is uploaded continuously or at designated intervals to a monitoring software application. The system analyzes the data, and if the offender deviates from established limits, an alert is sent to program monitors. A passive GPS system differs in that it collects GPS data throughout the day, but the data is transmitted through a landline phone connection only when it is connected to base for charging.
- Voice Print – Voice printing uses unique information about a person's vocal tract and speaking pattern for authentication. A telephone computer system randomly calls the offender's residence to assure the person is home at the time of the call. The system matches the offender's voice with a voice print obtained previously to confirm the offender's identity.
- Secure Continuous Remote Alcohol Monitor (SCRAM) – The County uses SCRAM devices for inmates with alcohol-related issues. SCRAM is a lightweight, tamper-proof bracelet attached at the ankle that provides continuous 24/7 transdermal alcohol detection. The device analyzes a person's skin to determine the blood alcohol content on an established frequency of up to twice per hour. The device notifies officials of the presence of alcohol automatically as it collects, stores, then uploads all collected data from the bracelet to a base station linked to the offender's land line phone. The base station stores and later transmits alcohol readings, tamper alerts, and diagnostic data to SCRAM's computer software system on a pre-determined schedule (at least once a day) for detailed analysis and reporting.

- Radio Frequency (RF) Monitoring – Traditional curfew and house arrest programs use RF communications between a tamper-resistant bracelet and a stationary unit to detect when the distance between the two exceed established parameters during pre-determined timeframes. If the client leaves the defined area, the system alerts the monitoring agency.

Both the Courts in their pretrial diversion efforts and the Sheriff for adjudicated cases have entered into contracts over the years with outside vendors to provide various forms of electronic monitoring devices and/or the support staff to perform the actual monitoring.

#### Courts' Electronic Monitoring Programs

**Table 1**, in the **Background** section of this report, previously described the Courts' pretrial diversion programs, including two contracts involving the use of electronic monitoring. Vendors provide both the equipment and staff to monitor inmate activity in these contracts. One current contract provides electronic monitoring for up to 62 pretrial defendants as ordered by the courts. The contract also requires the vendor to provide reports on the defendant's status and compliance with court-ordered conditions at every court hearing; notify the courts of any noncompliance with court-ordered conditions; and ensure defendants ordered for drug testing are tested. The cost for this pretrial monitoring is \$9.95/day per defendant, with a maximum of \$222,392 for 2013.

The Courts have also continued contracting for the Pretrial Repeat Intoxicated Driver Intervention Program. The vendor (currently Wisconsin Community Services, or WCS) provides intense supervision for up to 250 defendants per day, of which up to 37 offenders may be required to wear SCRAM bracelets. The 2013 contract for \$416,800 earmarks \$155,401 for SCRAM units for up to 37 inmates at \$11.50 per defendant per day.

#### Previous Office of the Sheriff Electronic Monitoring Efforts

Before reversing its policy on the use of EM, the Office of the

Sheriff had also entered into two contracts with outside vendors to provide EM technology for adjudicated inmates. Until responsibility for the HOC was transferred from the Office of the Sheriff, monitoring was performed by Correctional Officers at the CCF-S.

- *Justice 2000* – This contract provided GPS technology to monitor inmate activity at varying per day rates based on the frequency that the GPS data was transmitted to the monitor for analysis. The original two-year contract period for \$240,000 ran from May 1, 2010 through April 30, 2012, and included two one-year renewal options. A contract extension date April 19, 2012 extended the agreement another year, and added \$320,000 (\$180,000 for 2012 and \$140,000 for 2013). The Sheriff unilaterally terminated the contract as allowed by contract provisions, effective December 31, 2012.

The contract provided for the following types of EM technology and the associated per day rates.

- **GPS** – The rates for GPS monitoring varied, depending on how many times per hour the system uploaded data to the computer software for analysis. The frequency was predicated by risk factors applicable to the defendant. Billing rates ranged from \$3.99 per day for passive GPS to \$11.50 per day for continuous GPS.
- **RF Electronic Monitoring** – The contract included payment of \$2.99/day to monitor defendants restricted to their residents through the use of radio frequency technology.
- **Voice Print** – The vendor was paid 25 cents for each time a contact was made with a defendant, such as when the defendant called in, or a numeric page was sent.

The contract also contained a ‘shelf fee’ provision that paid the vendor \$2/day for each GPS unit provided to the Sheriff but not placed in service. Given the variable nature of the number of inmates on EM, a buffer of 10% of all units on hand was included in the contract. Thus, \$2 per unit per day was charged for each unused unit in excess of 10% of the total units available to the Sheriff. For example, if the Sheriff had 150 units on hand but only 110 were in use, then 25 of the 40 unused units would be subject to the shelf cost of \$2/day after taking into consideration the 10% buffer (10% of 150 = 15 units).

A review of invoices covering 2011 activity showed the Sheriff was billed for shelf fees for 7,051 units (\$14,102). In terms of GPS units, this correlates to having an average of 213 GPS units on hand throughout the year, and using an

average of 173 units. Stated another way, the Sheriff used an average 80.9% of the units at his disposal.

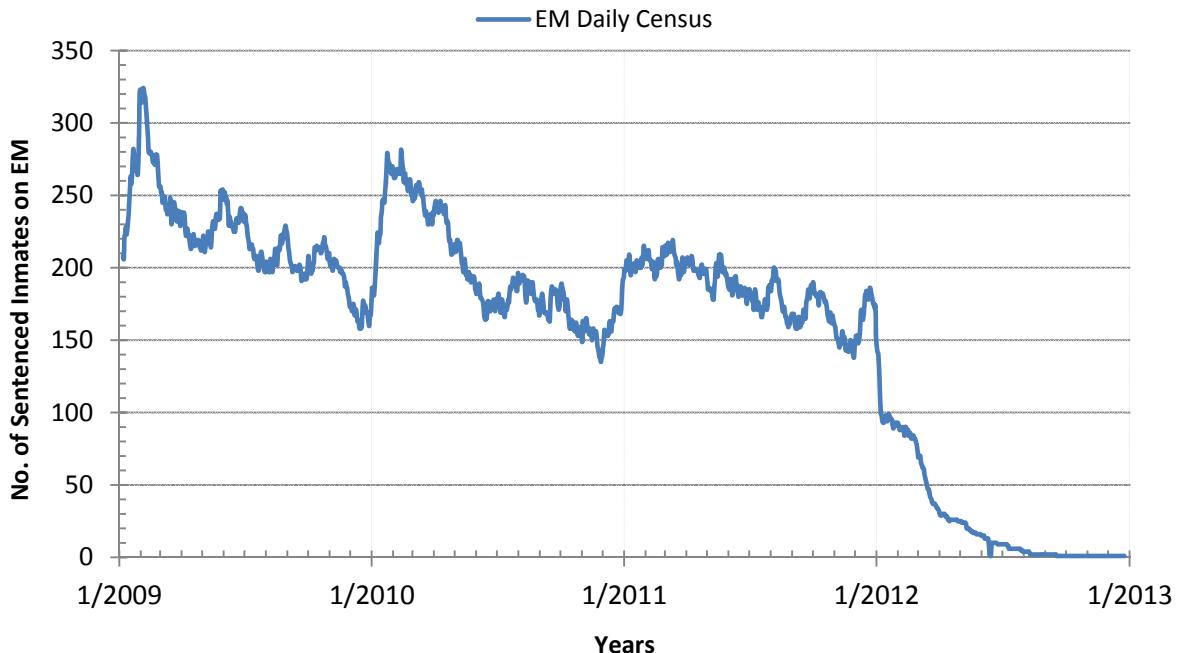
The shelf fees for 2012 were significantly higher, indicating the potential to better manage the number of GPS units on hand by returning excess units when the known demand significantly dropped. For the 10 months of activity for the year, the Office of the Sheriff incurred \$21,514 in shelf fees, largely due to the recall of many inmates at the end of 2011 when the Sheriff implemented a policy that significantly restricted the use of electronic monitoring. Much of the shelf fee costs could have been saved by timely returning unneeded units once the policy change had taken effect.

- WCS – The contract was to provide SCRAM bracelets and associated base stations at a cost of \$8.25 per day, with no charge for unused equipment stored on the shelf. The original two-year contract period ran from May 1, 2010 through April 30, 2012, and included two one-year renewal options. A one-year renewal option extended the contract to April 30, 2013. However, the Sheriff unilaterally terminated the contract as allowed by contract provisions, effective December 31, 2012.

#### EM Enrollment Data

As previously noted, electronic monitoring was used extensively for sentenced inmates prior to 2012. **Figure 1** shows the daily number of sentenced inmates released from jail with EM devices for the period 2009 – 2012.

**Figure 1**  
**Sentenced Inmates on  
 Electronic Monitoring**  
**2009 - 2012**



Source: Office of the Sheriff daily census data.

**The number of sentenced inmates on EM dropped dramatically after the Sheriff made a policy decision to essentially discontinue the program in late 2011.**

As Figure 1 shows, the number of sentenced inmates on EM dropped dramatically after the Sheriff made a policy decision to essentially discontinue the program in late 2011. During 2012, the daily census of sentenced inmates on EM dropped from 146 inmates to zero by the end of December. Most of that drop occurred over the early part of the year, indicated by a census of only 25 inmates as of April and four inmates at the end of July.

*We identified a number of calculations that have been used to represent the cost of a 'jail bed-day' in Milwaukee County. These calculations vary significantly based on their underlying assumptions and the purpose for which they were developed.*

Calculations of the cost of a jail bed-day can vary widely, depending on what costs are used and the underlying assumptions used to make the calculation. Different perspectives, based on different assumptions, have resulted in

the calculation of a wide range of daily costs per inmate for jail bed space, as noted below:

**\$3.54** – At the most extreme assumption, the Office of the Sheriff has noted that the only costs saved by releasing a small number of inmates on EM is the out-of-pocket cost of inmate meals. At the current contracted rate of \$1.18 per meal, this amounts to \$3.54 daily. This assumes that the number of released inmates does not reach the threshold where other more significant variable costs, such as staff, utilities, overhead, etc. could be reduced by proper cost management principles.

**\$17.61—\$27.58** – In August 2012, the Public Policy Forum responded to a request by the Milwaukee County Justice Reinvestment Initiative to help determine an appropriate methodology for calculating the approximate cost of a jail bed-day. Using 2012 budget data, it calculated the cost of operating a single 60 inmate dormitory, divided by the number of available inmate census days. The range is based on the inclusion or exclusion of certain variable costs, such as overtime, medical costs, and various supplies costs.

**\$25.40** – This is the rate attributable to the HOC currently being used to bill municipalities for inmate boarding costs. Per Chapter 20.01 of the County Ordinances, the rate is to be determined annually by DAS based on out-of-pocket housing expenses incurred the preceding year. However, practice has been for the Sheriff's Office to make the calculation, with DAS reviewing the calculations for propriety.

**\$51.46** – This is the current rate charged to the State of Wisconsin for housing state prisoners. Fiscal staff stated the rate has remained the same for many years, but were unsure how the amount was determined.

**\$81.00** – This is the current contracted rate charged for housing federal prisoners. Fiscal staff believed the rate has been in effect for as many as three years. As with the State rate, it was unknown how the amount was determined.

**\$141.00** – Daily rate cited by advocates in calculating program savings related to diversion programs. This amount had been calculated by dividing all HOC costs by total inmate jail days.

According to the Sheriff's Office, there has been no formal calculation of an average daily rate. Management noted that such a 'fully loaded' calculation is not meaningful since it would take into account all operating costs, including fixed costs such

as depreciation and administrative costs that would not likely be reduced with a relatively minor reduction in its inmate census.

***Only those costs that will vary with an increase or decrease in average daily inmate census should be considered in calculating the potential savings resulting from placing inmates on electronic monitoring in lieu of incarceration.***

**The concept of calculating savings resulting from a proposed reduction in the inmate population should not be confused with the concept of the ‘average’ or ‘full’ cost of incarcerating an inmate.**

The concept of calculating savings resulting from a proposed reduction in the inmate population should not be confused with the concept of the ‘average’ or ‘full’ cost of incarcerating an inmate. That is because many of the costs associated with incarceration are fixed regardless of the number of inmates housed. For instance, the cost of the position of Superintendent of the HOC will remain whether there are 2,000 inmates incarcerated at the facility or just 1,200. While the salary and benefits of the Superintendent would properly be included in a calculation of the average cost of incarcerating 2,000 inmates, none of those costs would be saved if 800 inmates were placed on electronic monitoring.

However, due to the physical configuration of dormitories used to house inmates at the HOC, certain costs become variable once certain thresholds of inmate reductions are achieved.

The HOC has a total of 36 inmate dormitories ranging in bed capacity from 22 to 70. The typical dormitory (25 of the 36) houses 60 inmates. Therefore, we conducted the following analysis based on potential savings attributable to the closure of a 60-bed dormitory, using actual cost data for 2012.

As shown in **Table 5**, the potential savings associated with closing a 60-bed dormitory based on actual 2012 financial data is approximately \$580,000.

**Table 5**  
**Net Reduction in Incarceration Costs from  
Closing a 60-Bed Dormitory  
at the Milwaukee County House of Correction  
(2012 Actual Cost Data)**

## **Expenditures**

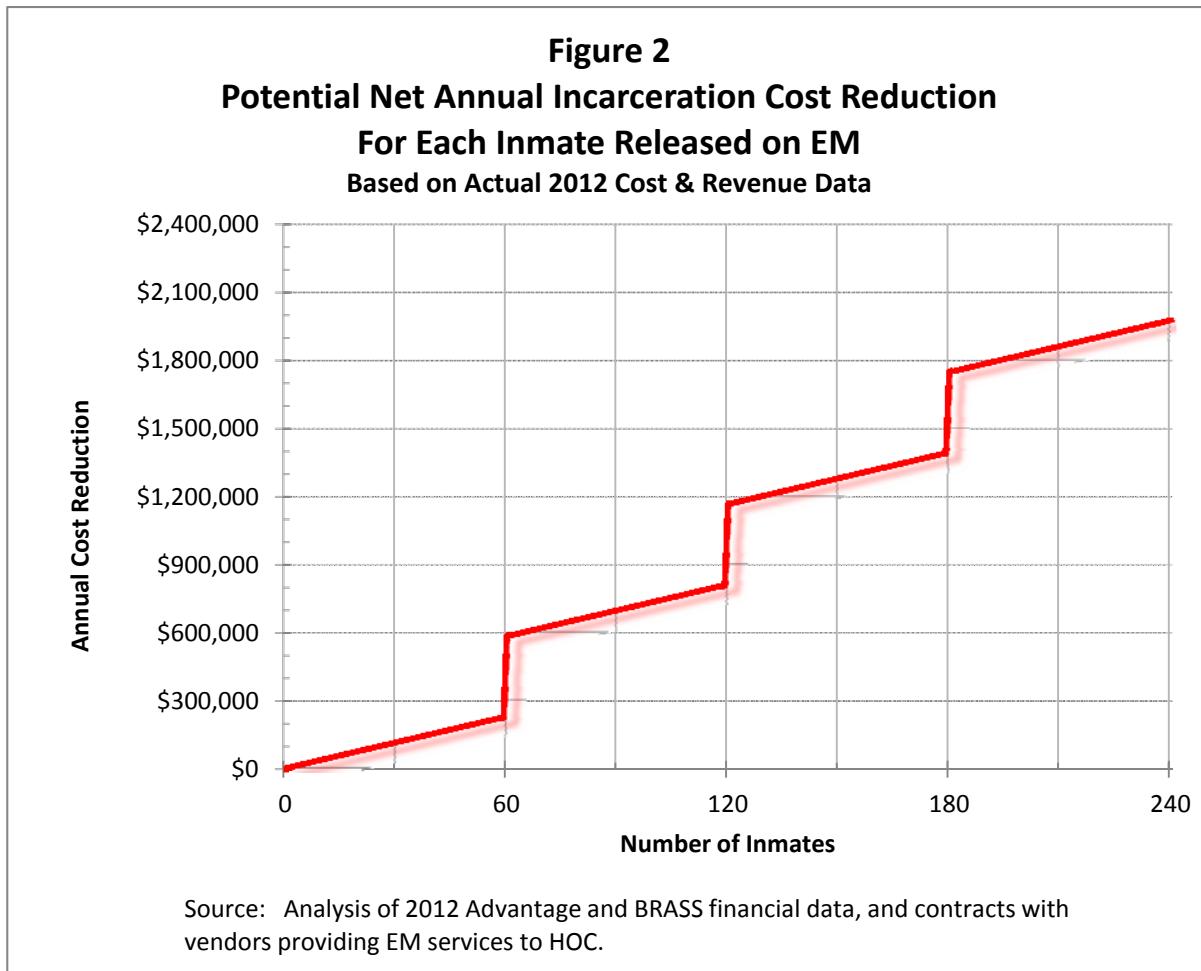
Direct Personnel Costs for Continuous 24 hr. Coverage:	
Correctional Officer Staff (5.04 FTE)	\$204,636
Social Security	15,655
Fringe Benefits	90,548
Overtime	<u>7,100</u>
<b>Total Direct Personnel Costs</b>	<b>\$317,939</b>
Utilities	36,033
Inmate Meals*	77,526
Medical Costs*	195,028
Other Services*	20,775
Commodities*	<u>18,984</u>
<b>Total Expenditures</b>	<b>\$666,285</b>
 Revenues Foregone by Closing One Dormitory:	
Commissary*	\$10,426
Telephone*	61,540
Inmate Room Charges*	<u>11,615</u>
<b>Total Revenues</b>	<b>\$83,581</b>
<b>Net Cost Reduction from Closing a 60-bed Dormitory</b>	<b>\$582,704</b>
<b>Daily Cost Per Inmate (Increments of 60)</b>	<b>\$26.61</b>

\* Includes only those costs and revenues that vary with the addition or reduction of inmates in increments of less than 60 and therefore do not result in the closing of a dormitory.

Source: Advantage and BRASS cost data for 2012.

Staffing for dormitory security is provided by one correctional officer. Since coverage is always required, this translates into the need for 5.04 full-time equivalent correctional officer positions, according to past requested budgets submitted by the Office of the Sheriff. All other costs were 2012 actual expenditures, pro-rated to an average daily rate per inmate based on actual daily census figures, then multiplied by 60.

**Figure 2** is a graph depicting the manner in which the incremental threshold of 60 is key to accumulating potential savings from reductions in the HOC inmate population.



***Additional costs associated with electronic monitoring must also be calculated as offsets to savings achieved from reduced inmate populations.***

While the cost of operating the HOC is significantly reduced by the release of inmates on EM, other costs are incurred that would not otherwise be needed, partially offsetting those savings. For example, the 2009 Adopted Budget for the Office of the Sheriff included funding for six Correctional Officer 1 positions to manage and monitor activity of inmates on EM, and an additional four Correctional Officer 1 positions to fund the Absconder Unit, responsible for responding to all serious violations of home detention conditions and regulations. These

costs were in addition to contracts for EM hardware, a necessary component of the EM program, and drug testing supplies for testing inmates for compliance with court orders related to inmates with drug offenses.

**At the time the current HOC Superintendent was confirmed in May 2013, there were no HOC inmates on electronic monitoring/home detention. By the end of August, the number had grown to 184 inmates.**

At the time the current HOC Superintendent was confirmed in May 2013, there were no HOC inmates on electronic monitoring/home detention. By the end of August, the number had grown to 184 inmates. With no dedicated internal staff available to perform the monitoring function, or contracts to provide the EM hardware, HOC worked out a Memorandum of Understanding (MOU) agreement with each of two vendors currently providing EM services on a pretrial basis for the Courts. For the remainder of 2013, the vendors will provide the HOC with EM hardware, computer software for monitoring inmates' compliance with required restrictions, and case management activities.

For inmates requiring specialized EM due to alcohol-related offenses, HOC has an MOU with WCS to provide SCRAM bracelets and associated monitoring on a sliding scale. The cost per day per inmate is lowest (\$10.50/day/inmate) when 60 or more inmates are using SCRAM devices.

For all other inmates, HOC has an MOU with JusticePoint to provide GPS monitoring services. The total cost of \$751,854 is based on a maximum caseload of 200 inmates. At that level, the daily cost per inmate is \$10.30. Due to a fixed number of six staff and various start-up costs for the program, daily rates for a small caseload will be much higher than for a larger caseload, and will be somewhat higher for the initial year of the program. According to HOC management, the number of inmates on GPS has not yet reached the maximum level, thus the average daily cost per inmate has been higher (\$12.58 as of the end of August).

According to HOC management, generally two-thirds of the inmates released on EM at a given time will be using a GPS device, with the remaining one-third monitored via the SCRAM device. **Table 6** summarizes the additional EM monitoring costs for 2013 assuming this percentage breakdown of EM device usage. For illustrative purposes, we have shown the daily cost for inmates based on the minimum number of 60 required to close an HOC dormitory. The actual daily cost will fluctuate based on the actual number of inmates on EM at any given time. (See **Table 7** for a broad range of potential savings achievable under a number of EM enrollment scenarios.)

**Table 6**  
**Additional Annual Costs of Electronic Monitoring**  
**Based on 60 Inmates on EM**

<b>EM Hardware, Monitoring &amp; Supervision Costs</b>	
MOU with JusticePoint for Inmates on GPS Monitoring	
40 inmates @ \$29.56/day/inmate*	\$431,643
MOU with WCS for SCRAM Monitoring:	
20 inmates @ \$12.50/day/inmate	<u>91,250</u>
<b>Total Additional EM Costs</b>	<b>\$522,893</b>
<b>Less Offsetting Revenues:</b>	
70% of EM costs (per 2014 HOC Budget Request)	(\$366,025)
<b>Net Additional Cost of EM Monitoring for 60 Inmates</b>	<b><u>\$156,868**</u></b>

\*Note – The above calculations assume a mix of two-thirds inmates on GPS and one-third on SCRAM, per HOC management. The contract with WCS calls for a daily rate per inmate of \$12.50 for enrollment of 1-39; \$11.50 for enrollment of 40-59; and \$10.50 for enrollment of 60 or more. The contract with JusticePoint is based on actual costs, including a fixed number of staff, with a contract maximum of \$751,854 for a maximum caseload of 200 inmates. As a result, the daily cost per inmate drops considerably with a larger caseload. At the maximum caseload level of 200 inmates, the daily cost per inmate of \$10.30. See **Table 7** for a range of potential savings achievable under different EM caseloads.

\*\*Note 2 - The above calculations assume minimal law enforcement intervention for non-compliant EM participants. Discussions with the District Attorney's Office indicate a robust EM program could require additional sworn investigator positions to apprehend absconders and pursue other suspected program violations. Coupled with other non-EM related duties such as pursuing convicted individuals that fail to appear for court-ordered sentences, witness intimidation crimes, and HOC escapees, among others, the DA's Office envisions the need for a unit of up to five investigators. Based on 2012 costs, we estimate five additional positions for these purposes would cost approximately \$400,000. While past and recent experience indicates the need for law enforcement intervention for EM monitoring to be minimal, an as yet undetermined portion of that cost would add to the fixed cost of EM monitoring.

Source: HOC management, 2014 HOC Requested Budget, and MOUs with cited outside contractors.

The costs in **Table 6** constitute the bulk of the additional costs related to the EM program. Some HOC staff time is needed to review inmates' circumstances to determine their suitability to participate in the EM program. Time is also spent following up on alerts that are generated by EM equipment. Alerts can be generated for a number of reasons ranging from equipment malfunction to actual inmate non-compliance with program restrictions. All alerts must be investigated to detect and deter circumvention of EM program restrictions.

According to HOC management, nearly all alerts are handled without the need to task law enforcement staff with the responsibility of tracking down and forcibly returning the inmate to jail. Such instances have been rare since the EM program has been reinstated in May 2013. According to HOC management, there have only been two instances where that type of response was taken. Based on that experience, HOC has not needed to allocate resources to an 'absconder unit.' Instead, HOC has been working with the District Attorney's Office to use its sworn investigative staff when such action is needed.

We reviewed HOC weekly management reports for the period August 1 through September 18, 2013. The reports include summary data of EM program participants' incidents of substantive non-compliance with program requirements, such as alcohol/drug consumption or straying into geographically restricted areas. The reports include a category 'escape from custody,' which includes incidents of disabling monitoring bracelets or failure to report to case managers when summoned (as previously mentioned, not all of which require law enforcement intervention). For the seven-week period reviewed, there were 19 such incidents (including 4 'escape from custody') among an average daily population of 184, a daily compliance rate of 99.8%.

**HOC has been working with the District Attorney's Office to use its sworn investigative staff when such action is needed.**

HOC management credits its upfront approach of clearly communicating the ramifications of breaking established rules for inmates released on EM, followed by their swift reaction to re-arrest inmates found not to be in full compliance with the EM program requirements, with a negligible absconder rate that negates the need to staff such a unit internally.

The most recent EM program data reflected in the HOC weekly management reports also shows approximately 25% of EM program participants are convicted felons, although program criteria prohibit anyone with the following offenses from qualifying for EM/home detention:

1. Sexual Assault
2. Any Domestic Violence Charge
3. Physical Abuse of Children or Elderly
4. Child Neglect
5. Felon in Possession of a Firearm
6. 1<sup>st</sup> and 2<sup>nd</sup> Degree Reckless Endangerment of Safety
7. Armed Robbery
8. Robbery – Party to a Crime
9. Causing Great Bodily Harm by Use of a Vehicle
10. Burglary While Armed
11. Escape
12. Operating While Intoxicated 5<sup>th</sup> Offense or Above

**Five additional DA investigator positions for both EM program compliance and non-EM purposes would cost approximately \$400,000. While past experience indicates the need for EM intervention is minimal, an as yet undetermined portion of that amount would add to the fixed costs of EM monitoring.**

The calculations presented in **Table 6** assume minimal law enforcement intervention for non-compliant EM participants. Discussions with the District Attorney's Office indicate a robust EM program could require additional sworn investigator positions to apprehend absconders and pursue other suspected program violations. Coupled with other non-EM related duties such as pursuing convicted individuals that fail to appear for court-ordered sentences, witness intimidation crimes, and HOC escapees, among others, the DA's Office envisions the need for a unit of up to five investigators. Based on 2012 costs, we estimate five additional positions for these purposes would cost

approximately \$400,000. While past and recent experience indicates the need for law enforcement intervention for EM monitoring to be minimal, an as yet undetermined portion of that cost would add to the fixed cost of EM monitoring.

***Based on our analysis of HOC variable incarceration costs and the costs associated with electronic monitoring, Milwaukee County could achieve substantive savings if suitable HOC inmates could be placed on electronic monitoring in lieu of incarceration, on a large scale.***

Potential savings associated with the transfer of HOC inmates in varying increments are shown in **Table 7**.

**Table 7**  
**Range of Potential Savings**  
**Placing Current HOC Inmates**  
**On Electronic Monitoring/Home Detention**

No. of HOC Inmates on EM	Incarceration Cost Reduction	EM Added Cost*	Net Cost/(Savings)
30	(\$114,367)	\$131,173	\$16,806
60	(\$582,706)	\$156,868	(\$425,838)
90	(\$697,072)	\$182,563	(\$514,509)
120	(\$1,165,411)	\$203,878	(\$961,533)
150	(\$1,279,778)	\$228,478	(\$1,051,299)
180	(\$1,748,117)	\$246,509	(\$1,501,608)
210	(\$1,862,483)	\$270,014	(\$1,592,470)
240	(\$2,330,822)	\$271,925	(\$2,058,897)
250	(\$2,368,944)	\$279,127	(\$2,089,817)
270	(\$2,445,189)	\$294,144	(\$2,151,045)
300	(\$2,913,528)	\$316,363	(\$2,597,165)

Note: Highlighted line features approximate savings associated with an EM population roughly equivalent to the average EM population during the period 2000 through 2011.

\* The above calculations assume minimal law enforcement intervention for non-compliant EM participants. Discussions with the District Attorney's Office indicate a robust EM program could require additional sworn investigator positions to apprehend absconders and pursue other suspected program violations. Coupled with other non-EM related duties such as pursuing convicted individuals that fail to appear for court-ordered sentences, witness intimidation crimes, and HOC escapees, among others, the DA's Office envisions the need for a unit of up to five investigators. Based on 2012 costs, we estimate five additional positions for these purposes would cost approximately \$400,000. While past and recent experience indicates the need for law enforcement intervention for EM monitoring to be minimal, an as yet undetermined portion of that cost would add to the fixed cost of EM monitoring.

Source: Calculations prepared by Audit Services Division based on data sources cited in Tables 5 and 6.

It is important to note that all inmates incarcerated at the HOC are not suitable risks for electronic monitoring/home detention.

The decision for placing an inmate in EM should always be based on public safety considerations and appropriate risk assessment, not the pursuit of potential fiscal savings.

Policymakers may also wish to re-evaluate the wisdom of proceeding with a capital project, currently in the planning stages, for building a new Huber Work Release facility, should EM enrollment levels be sustained at high levels.

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## **Section 4: Milwaukee County has a robust array of alternatives to incarceration/jail diversion programming in comparison to other jurisdictions.**

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*Milwaukee County's arsenal of pretrial jail diversion and alternatives to incarceration programming is more robust than the next three most populous counties in Wisconsin.*

To compare the types of pretrial jail diversion or alternatives to incarceration programming utilized by Milwaukee County with other populous counties in Wisconsin, we conducted a telephone survey of Brown, Dane and Waukesha counties. In general, we found that Milwaukee County's jail diversion and alternatives programming efforts are as comprehensive as any of those other counties. The results of our survey are summarized in **Table 8**.

**Table 8**  
**Alternative Programming Survey Information**

	Program or Activity	Who	Saves Jail bed-days	Milwaukee	Brown	Dane	Waukesha
1	Pretrial Assessment/Initial Risk Assessment	Courts (Contracted)	Yes	X	No	No	X
2	Bail	Judge	Yes	X	X	X	X
3	Treatment Alternative Jail diversion/ Deferred Prosecution Agreements	Judge/DA	Yes	X	No	X	No
4	Supervised Release/Electronic Monitoring (Pretrial)	Judge	Yes	X	X	X	X
5	Probation	Judge	Yes	X	X	X	X
6	Huber/Work Release	Judge/Sheriff or HOC Supt.	No *	X	X	X	X
7	Day Reporting Center	Judge/Sheriff or HOC Supt.	No*	X	No	No	X
8	Drug Court/Supervised Treatment	Judge/Courts (Contractors)	Yes	X	X	X	X
9	Electronic Monitoring/Home Detention	Judge/Sheriff or HOC Supt.	Yes	X	X	X	X
10	Community Service/Sentence Reduction Option	Sheriff or HOC Supt.	Yes	X	X	X	X
11	Veterans Court	Judge/Courts (Contractors)/Veterans Affairs	Yes	X	X	No	No

\* Huber Work Release and DRC do not save jail bed-days unless accompanied by home detention privileges.

Sources: Telephone survey of Milwaukee, Brown, Dane and Waukesha counties (various departments).

**Milwaukee County placed the least amount of reliance on electronic monitoring, in relative terms, of the four most populous Wisconsin counties in 2012.**

A comparison of the extent to which each county uses electronic monitoring/home detention to reduce its average inmate population shows Milwaukee County placed the least amount of reliance on electronic monitoring, in relative terms, of the four most populous Wisconsin counties in 2012. As shown in **Table 9**, Milwaukee and Waukesha Counties' use of electronic monitoring has generally declined during the past five years, while the use of electronic monitoring has generally increased in Brown and Dane Counties.

**Table 9**  
**Relative Use of Electronic Monitoring**  
**Milwaukee, Brown, Dane and Waukesha Counties**  
**2008—2012**

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Milwaukee Incarcerated	3,074	3,101	2,827	2,777	2,445
Milwaukee EMU	171	221	198	184	25
Milwaukee Total	3,245	3,322	3,025	2,961	2,470
Milwaukee % EMU	5.3%	6.7%	6.5%	6.2%	1.0%
Dane Incarcerated	912	792	767	793	759
Dane EMU	116	130	104	107	145
Dane Total	1,028	922	871	900	904
Dane % EMU	11.3%	14.1%	11.9%	11.9%	16.0%
Waukesha Incarcerated	628	620	610	587	560
Waukesha EMU	38	27	21	21	14
Waukesha Total	666	647	631	608	574
Waukesha % EMU	5.7%	4.2%	3.3%	3.5%	2.4%
Brown Incarcerated	N/A	N/A	664	678	649
Brown EMU	N/A	N/A	51	61	82
Brown Total	N/A	N/A	715	739	731
Brown % EMU	N/A	N/A	7.1%	8.3%	11.2%

Sources: Milwaukee County annual Adopted Budgets and data from respective counties' Sheriff's Departments.

*Milwaukee County has recently resumed a practice common among the next three most populous Wisconsin counties by offering opportunities for qualifying inmates to perform community service as a means of reducing their time in confinement.*

During the time that the HOC was operated under the management authority of the Milwaukee County Sheriff, Milwaukee County was unique among the four most populous Wisconsin counties in not offering an option for inmates to reduce their sentences through some form of community service.

**Waukesha County offers one day off of eligible inmates' sentences for every eight hours worked in a supervised Parks, Public Works or community service organization assignment.**

For instance, Waukesha County offers one day off of eligible inmates' sentences for every eight hours worked in a supervised Parks, Public Works or community service organization assignment.

The initiative is part of the Community Service Options Program administered by Wisconsin Community Services. Inmates sentenced to the Waukesha Huber Work Release Facility participate on a voluntary basis and are screened for eligibility by the Waukesha Sheriff's Department. According to WCS, 144 Huber inmates worked a total of 32,993 hours under the program in 2012. This reduced the inmates' sentences by a total of 4,083 days.

Typical tasks performed by inmate work crews under the supervision of Waukesha County Parks and Public Works staff include:

- Trash pick-up along highways.
- Cutting grass and removing brush in parks.
- Painting.
- Washing squad cars and county trucks.

Tasks performed for local non-profit organizations participating in the Community Service Options Program include:

- Housekeeping duties.
- Stocking shelves, pricing items and setting up store displays.
- General grounds maintenance.
- Light carpentry.
- Food service activities.

- General office tasks (e.g., filing).

The WCS administrator that oversees the program reports minimal problems with inmate behavior or compliance with program rules.

The recently appointed HOC Superintendent has reinstated a prior HOC inmate program that provided opportunities to participate on work crews for public service projects, and is currently looking for appropriate settings to expand the effort. That initiative includes the incentive of reducing inmates' sentences by one day (24 hours) for every 24 hours worked.

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## **Section 5: Additional steps are needed to enhance stakeholders' ability to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System.**

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In this report, we have described Milwaukee County's full array of programming devoted to pretrial jail diversion and alternatives to incarceration. We have also described the need for a high degree of cooperation between key stakeholders in the Criminal Justice system in order to maximize the positive outcomes desired from that programming, including:

- Cost savings associated with fewer jail bed-days;
- Reduced recidivism rates for program participants; and
- Lower social costs associated with chronic substance abusers.

A typical listing of options for policymakers in addressing resource allocation decisions would involve identifying the costs and benefits associated with increasing or decreasing the resources devoted to specific programming initiatives. For instance, based on the detailed cost analysis we conducted of the County's electronic monitoring/home detention experiences, we have determined that an average of at least 60 HOC inmates must be placed on EM/home detention in lieu of incarceration for the County to achieve substantive savings. As detailed in **Tables 5 through 7**, we estimate the County can achieve savings ranging from approximately \$425,000 annually with an EM enrollment of 60 to \$2.6 million annually with an EM enrollment of 300. Those figures assume a satisfactory compliance rate that involves minimal law enforcement resources to maintain compliance with EM program requirements. If satisfactory compliance rates are not achieved, additional law enforcement resources could be required for a robust EM monitoring effort.

**We estimate the County can achieve savings ranging from approximately \$425,000 annually with an EM enrollment of 60 to \$2.6 million annually with an EM enrollment of 300. Those figures assume a satisfactory compliance rate that involves minimal law enforcement resources to maintain compliance with EM program requirements.**

To the extent that additional inmates currently incarcerated at the HOC can safely be placed on electronic monitoring/home detention, our analysis indicates significant savings could be achieved. The Brown County Sheriff's Department uses a 9-point risk assessment scale known as Northpointe to screen potential EM candidates and has determined that inmates scoring less than six will fail to comply with program restrictions. Data shows that in 2012, 11.2% of Brown County's inmates were placed on EM, compared to 1% in Milwaukee County, a year that EM efforts were consciously restricted by the Milwaukee County Sheriff.

**An argument can be made that with a more robust pretrial diversion program, a smaller percentage of Milwaukee County detainees will qualify for EM because individuals will be diverted prior to incarceration.**

A return to previous program levels of approximately 250 would be consistent with the Brown County percentage and could potentially save nearly \$2.1 million. Toward that end, policymakers may wish to encourage the current HOC Superintendent's planned expansion of EM to achieve those savings. However, it must be emphasized that only appropriate candidates should be placed on EM. An argument can be made that with a more robust pretrial diversion program, a smaller percentage of Milwaukee County detainees will qualify for EM because individuals will be diverted prior to incarceration.

**More data and analysis is necessary to quantify outcomes achieved from Milwaukee County's annual investment of approximately \$5 million in contractual obligations for pretrial and post-adjudication jail diversion/alternative to incarceration programming.**

Further, it bears mentioning that EM program participation in both pretrial and post-adjudication cases is based on careful screening and formal risk assessments. As such, the decision to place an individual on EM/home detention is not risk-free.

The availability of hard data related to the relative costs of incarceration and EM made the above analysis possible.

However, as we've noted in this report, the various jail diversion and alternatives to incarceration programming employed by Milwaukee County cannot clearly demonstrate their cost effectiveness in reducing the demand for jail bed-days and, with respect to sentenced individuals, reducing recidivism. More data

and analysis is necessary to quantify outcomes achieved from Milwaukee County's annual investment of approximately \$4.9 million in contractual obligations for pretrial and post-adjudication jail diversion/alternatives to incarceration programming.

Advocates point to research that indicates treating the following 'Big 8' factors plays a part in reducing the likelihood of a person returning to custody:

1. Anti-social attitudes
2. Anti-social peers or criminal associates
3. Anti-social thoughts, cognitions and ways of thinking (Behavioral)
4. Antisocial personality
5. Anti-social Family (Marital Status)
6. Lack of Achievement in Education/Employment
7. Lack of Social Leisure and recreational activities
8. Substance abuse

**A University of Wisconsin Population Institute study that concluded "...for every \$1 invested in TAD (Treatment Alternatives and Jail Diversion programming), it yields benefits of \$1.93 to the criminal justice system through averted incarceration and reduced crime."**

Addressing those risk factors to reduce the likelihood of recidivism is part of the evidence-based decision making framework. A State Office of Justice Assistance publication quotes a University of Wisconsin Population Institute study that concluded "...for every \$1 invested in TAD (Treatment Alternatives and Jail Diversion programming), it yields benefits of \$1.93 to the criminal justice system through averted incarceration and reduced crime." Data from Milwaukee County's TAD programming was included in that study.

The Courts have recognized the benefits of improved data gathering capabilities. Included in its 2013 budget are improvements such as the development and implementation of 'dashboard reporting' to efficiently demonstrate pretrial services program outcomes, as well as the impact of Universal Screening on the jail population. According to the Chief Judge, the County's Information Management Services Division has

scheduled a project to achieve these objectives, to begin before year-end.

To enhance the ability for stakeholders to quantify the effectiveness of alternatives to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System, policymakers may wish to consider requesting that the Milwaukee Community Criminal Justice Council:

1. *Formally establish a uniform definition or conceptual framework for defining recidivism suitable for establishing program-specific measures of effectiveness for alternative to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System.*
2. *Develop a strategy for consistent annual tracking of recidivism rates for alternatives to incarceration and jail diversion programs, as well as longitudinal tracking of individual program participants.*
3. *Develop a methodology for calculating the number of jail bed-days saved and include such calculation as a program measurement for applicable alternative to incarceration and jail diversion programming.*

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## Audit Scope

County Board Resolution 12-129 directed the Audit Services Division of the Office of the Comptroller to review the effectiveness of alternatives to incarceration programs in diverting individuals to less costly arrangements. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our review to the areas specified in this Scope Section. Our review focused on 2012 activity, but included inmate population and related data from prior periods.

During the course of the audit, we:

- Reviewed research literature regarding alternatives to incarceration programs.
- Researched the history of jail overcrowding and alternatives to incarceration programs implemented by Milwaukee County.
- Interviewed staff from the Office of the Sheriff, Courts, House of Correction, District Attorney's Office and advocacy agencies to gain insight into alternatives to incarceration programs implemented in Milwaukee County.
- Identified the perspectives of key stakeholders in the Milwaukee County Criminal Justice System regarding alternatives to incarceration programming.
- Reviewed the process by which individuals enter the Milwaukee County Criminal Justice System and are identified for possible intervention using jail alternative/diversion programs.
- Interviewed key individuals involved in the judicial and incarceration processes, including the Chief Judge and other judges to identify the strengths and weaknesses of current policies and procedures, discuss experiences with current practices or processes, and recommend changes that could improve the efficiency and effectiveness of alternatives to incarceration programs.
- Interviewed management of contractors charged with overseeing alternative to incarceration programs for Milwaukee County for their perspectives on how the programs are operated.
- Obtained and analyzed inmate census data from 2008 to the present related to County Jail and HOC, including individuals placed on electronic monitoring/home detention.
- Analyzed cost data related to operating HOC inmate dormitories and electronic monitoring for determining potential savings related to closing one or more dormitories resulting from expanding the use of electronic monitoring/home detention in lieu of incarceration.
- Surveyed/contacted the next three most populous Wisconsin counties regarding their alternatives to incarceration programming.

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COUNTY OF MILWAUKEE  
Inter-Office Communication

**Date:** June 28, 2012

**To:** Supervisor Mark A. Borkowski, Chairman  
Committee on Judiciary, Safety and General Services

**From:** Jerome J. Heer, Director of Audits

**Subject:** Review of June 13, 2012 Memo from the Office of the Sheriff [File No. 12-359]

### Background

At its meeting on June 14<sup>th</sup>, 2012, the Committee on Judiciary, Safety and General Services discussed an informational report (**Attachment 1**) from Chief Judge Jeffrey A. Kremers regarding a request to meet with Sheriff David A. Clarke, Jr. to discuss jail population and inmate movement concerns. The report consisted of an undated cover memo and a March 30<sup>th</sup>, 2012 memo to the Sheriff. Also discussed was a memo (**Attachment 2**) from Inspector Richard R. Schmidt, Office of the Sheriff, to the Chairwoman of the County Board of Supervisors and the Chairman of the Committee on Judiciary, Safety and General Services, responding to the concerns raised by the Chief Judge.

The Committee referred the memo generated by the Office of the Sheriff to the Audit Services Division of the Office of the Comptroller for analysis prior to the July meeting cycle.

The issues discussed in the above-referenced reports from the Chief Judge and Office of the Sheriff are the subject of an audit in progress on the effectiveness of Alternatives to Incarceration Programs, including their impact on the jail population. This informational report, in response to the Committee's request from the June meeting cycle, is based on our review of the information contained in the Office of the Sheriff's memo. A more complete and detailed analysis of the issues will be presented in our audit report.

### Analysis

The Office of the Sheriff's memo begins the first of its four specific refutations under the heading "**Allegation of the Chief Judge – Increased Inmate Population.**" The memo proceeds to display a graph with data showing a decrease of 24.6% in the system-wide average yearly inmate population from 2009 through 2012 year-to-date.

However, a direct comparison of the concerns expressed in the Chief Judge's report and the Office of the Sheriff's paraphrasing in that first heading suggests the Chief Judge's underlying concerns were mischaracterized in the paraphrasing. This allows the paraphrased concern to be refuted with data that is accurate, but not relevant in addressing the actual, correctly stated, concern. A complete and objective reading of the Chief Judge's informational report indicates the Chief Judge expressed concerns over procedural changes invoked by the Sheriff that the Chief Judge stated "...have resulted in an artificial increase in the jail population."

In other words, the Chief Judge's expressed concern is that the Sheriff's procedural changes have increased the jail population over what it would be had the procedural changes not occurred. That concern is neither dispelled nor confirmed by data on average annual inmate trend. A related specific concern expressed by the Chief Judge—"A reduction in defendants on electronic monitoring from over 200 per day to less than 40."—was not directly addressed in the Office of the Sheriff's memo.

Supervisor Mark A. Borkowski, Chairman  
Committee on Judiciary, Safety and General Services  
June 28, 2012  
Page Two

The second refutation in the Office of the Sheriff's memo is under the heading "**Allegation of the Chief Judge—He is "concerned about what appears to be unnecessary delays in the release of defendants to court-ordered programs.**" The memo provides data showing that 19 of the 20 inmates (95%) currently assigned to the Day Reporting Center were moved into a Huber dorm within 24 hours of notification. The names and transfer times of the 20 inmates are provided as additional detail supporting the refutation. The measurement of timeliness in the Office of the Sheriff's memo is based on the time elapsed between notification to the CCF—South of inmates' Huber privileges, and actual placement of the inmates in a Huber dorm.

However, the data provided in the Office of the Sheriff's memo does not include the effective dates that the court-ordered Huber privileges were extended. Additional preliminary data from the Courts suggest that there are delays between the effective dates of the court orders and the notification of the CCF—South. It is those delays that the Chief Judge wishes to identify and remedy.

The third refutation in the Office of the Sheriff's memo is under the heading "**Allegation of the Chief Judge—The transport of defendants to the CCF—South Facility prior to initial appearance resulting in sometimes several extra days in jail before making their court appearance and being released on bail.**" The memo cites a lack of supporting data from the Chief Judge and proceeds to make two points regarding the general inmate population. One point is that inmates are classified according to State Department of Correction criteria and in accordance with specific mandates of the *Christensen Consent Decree*. A second point is that two dorms in the CCF—Central are currently unavailable for occupancy due to remodeling, part of a capital project that will result in two dormitory closures throughout the remainder of the year. Thus, capacity at the downtown facility is reduced from normal levels.

The Office of the Sheriff's memo suggests video conferencing as a possible remedy to the Chief Judge's expressed concern. That suggestion may have merit and deserves consideration by the Courts.

The Office of the Sheriff's memo does not address the portion of the Chief Judge's concern that indicates the transport of inmates from the CCF—South to the downtown facility, (a distance of approximately 20 miles) can sometimes result in several extra days in jail,

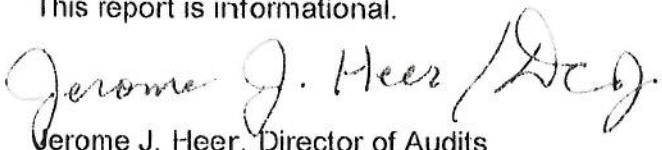
The fourth refutation in the Office of the Sheriff's memo is under the heading "**Allegation of the Chief Judge—He is "unclear as to the reasons for the dramatic change in who is allowed on electronic monitoring and the rules going forward for determining eligibility for the program.**" The memo proceeds to respond to this concern as if the Chief Judge questioned who is responsible for ordering an inmate to be placed on electronic monitoring (the memo cites case law making it clear this is the sole responsibility of the Sheriff), rather than the expressed concern about the lack of clarity regarding changes in the criteria for who is allowed on electronic monitoring, and the reasoning behind the Sheriff's imposition of those changes.

The memo goes on to challenge cost benefit assertions regarding electronic monitoring that the memo attributes to the Chief Judge. We have not examined the specific cost figures included in the memo. However, we concur with the Office of the Sheriff's conceptual argument that to determine the incremental cost of a change in the jail inmate population, costs must be evaluated in the context of whether they are fixed or variable. As previously noted, we are currently performing an audit of the effectiveness of Alternatives to Incarceration Programs, including their impact on the jail population. That audit will include a detailed analysis of costs, including both fixed and variable.

Supervisor Mark A. Borkowski, Chairman  
Committee on Judiciary, Safety and General Services  
June 28, 2012  
Page Three

### Conclusions

This report is informational.



Jerome J. Heer, Director of Audits

JJH/cah

cc: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors  
Judiciary, Safety and General Services Committee Members  
Jeffrey A Kremers, Chief Judge, First Judicial District  
David A. Clarke, Jr., Milwaukee County Sheriff  
Chris Abele, Milwaukee County Executive  
Scott B. Manske, Milwaukee County Comptroller  
Kelly Bablitch, Assistant Director, Intergovernmental Relations  
Jennifer Collins, Research Analyst, County Board Staff  
Janelle M. Jensen, Committee Clerk, County Board Staff

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Attachment 1  
(Page 1 of 3)

**JEFFREY A. KREMERS**  
Chief Judge  
Telephone: (414) 278-5116

**DAVID A. HANSHER**  
Deputy Chief Judge  
Telephone: (414) 278-5340

**MAXINE A. WHITE**  
Deputy Chief Judge  
Telephone: (414) 278-4482

**BRUCE M. HARVEY**  
District Court Administrator  
Telephone: (414) 278-5115

**BETH BISHOP PERRIGO**  
Deputy District Court Administrator  
Telephone: (414) 278-5025

STATE OF WISCONSIN  
**FIRST JUDICIAL DISTRICT**

MILWAUKEE COUNTY COURTHOUSE  
901 NORTH NINTH STREET, ROOM 609  
MILWAUKEE, WISCONSIN 53233-1425

TELEPHONE (414) 278-5112  
FAX (414) 223-1264



Dear Supervisors,

Attached is a letter that I delivered to Sheriff Clarke on March 30<sup>th</sup> requesting a meeting to discuss my concerns about the jail and some recent changes in procedure within the department that I felt were contributing to an increase in its population. Approximately one week after delivering the letter I was informed by Inspector Richard Schmidt that the Sheriff would not meet with me.

I feel that I now have no choice but to bring these matters to your attention. I have also asked to put this on the calendar for the next meeting of the Judiciary committee.

VTY  
JAK

**JEFFREY A. KREMERS**  
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901 NORTH NINTH STREET, ROOM 609  
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TELEPHONE (414) 278-5112  
FAX (414) 223-1264



March 30, 2012

Sheriff David A. Clarke Jr.  
Office of the Sheriff  
Safety Building, Room 107

Dear Sheriff Clarke:

I am concerned about what appear to be unnecessary delays in the release of defendants from the jail on court ordered programs and the transfer of defendants to the CCC-South Facility prior to their first court appearance. Additionally, I am unclear as to the reasons for the dramatic change in who is allowed on electronic monitoring and the rules going forward for determining eligibility for the program.

Taken together, these changes in procedure have resulted in an artificial increase in the jail population. Conversely, the universal screening/bail monitoring program appears to be having a significant downward impact on the pre-trial population in the jail.

I am asking for a meeting with you and any members of your command staff that you wish to have present to discuss these issues. It is my hope that we can agree on a number of consistent strategies to ensure a jail population that protects public safety, which is everyone's first concern, and yet is mindful of the cost in public dollars.

My specific concerns relate to the following issues:

1. A reduction in defendants on electronic monitoring from over 200 per day to less than 40.
2. Resistance to placing all day reporting center inmates on GPS, despite the agreement that you and I reached a couple of years ago.
3. The transport of defendants to the CCC-South Facility prior to initial appearance resulting in sometimes several extra days in jail before making their court appearance and being released on bail.
4. Lengthy delays in placing court ordered Huber inmates into the Huber dorm.

**(Page 3 of 3)**

I can provide you with case names and specific instances at our meeting. Many of these have already been provided to members of your staff, but the situations seem to keep happening. I look forward to meeting with you at your earliest convenience.

Very truly yours,

Jeffrey A. Kremers  
Chief Judge

JAK: dla

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Attachment 2  
(Page 1 of 6)

#3

MILWAUKEE COUNTY  
OFFICE OF THE SHERIFF  
Inter-Office Communication



**DATE:** June 13, 2012

**TO:** Marina Dimitrijevic, Chairwoman  
Milwaukee County Board of Supervisors

Mark Borkowski, Chairman  
Judiciary, Safety, and General Services Committee

**FROM:** Richard R. Schmidt, Inspector

**SUBJECT:** Response to Letters to the Milwaukee County Board of Supervisors  
from Chief Judge Jeffrey Kremers

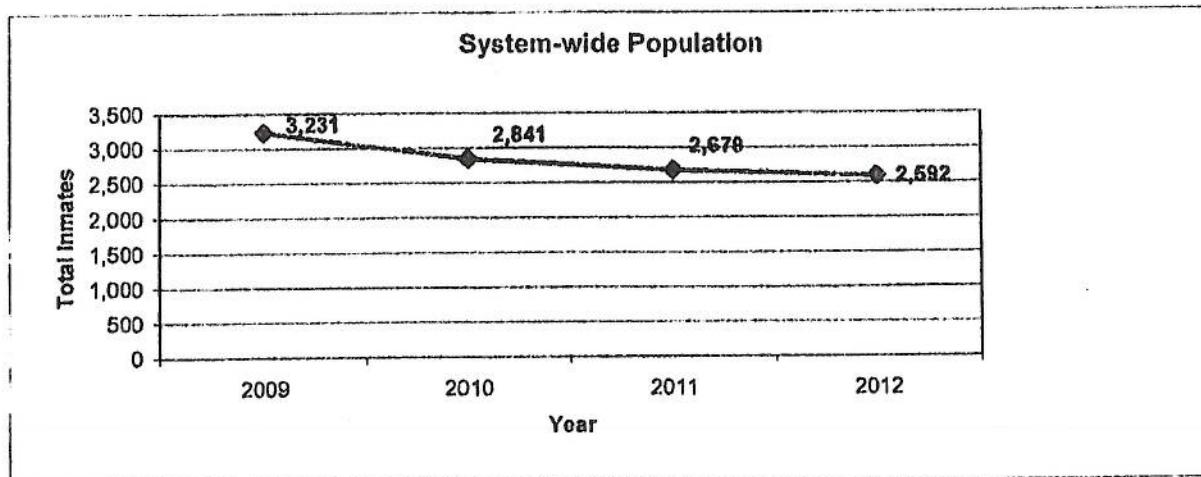
On April 12, 2012, Chief Judge Kremers wrote a cover letter to the Milwaukee County Board of Supervisors regarding his perception of an alleged increase in the inmate population at the jail. He attached a secondary letter outlining his undocumented perceptions of other jail-related issues. A significant fact is that Chief Judge Kremers was offered a meeting with the leadership of detention services and myself to discuss the issues he brought forth in his letter dated March 30, 2012, a process that we have used in the past to address other concerns of the Chief Judge. In this case, Judge Kremers refused to meet with our staff when given the offer in early April. However, on Monday, May 14, 2012, the Chief Judge agreed to meet with detention services leadership, including myself, where his concerns were addressed.

The issues presented will be addressed on three levels. Those levels include actual data, the constitutional authority of the Sheriff, and the expertise of the Sheriff's Office in handling public safety, including correctional facilities, as contrasted with those outside the law enforcement venue.

**Allegation of the Chief Judge – Increased Inmate Population**

The first issue is easily resolved by examining the actual data regarding the inmate population at the County Correctional Facility-South and the County Correctional Facility-Central. Attached is a graph of the system-wide inmate population under the Sheriff's watch since 2009.

FACT: The average yearly inmate population has decreased 24.6% in the past three years. FACT: The system-wide inmate population today is 2,508 inmates.



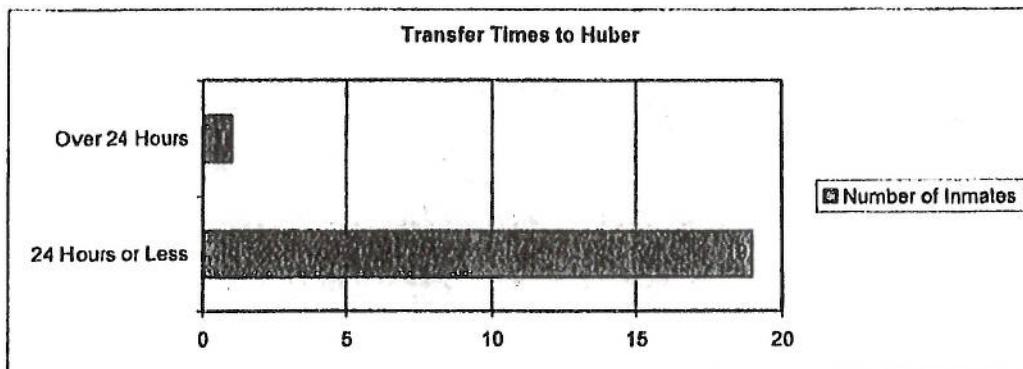
Source: Jail Population statistics obtained by L.E.A.D.

Specifically, since 2009, the system-wide jail population has decreased by 24.6%.

**Allegation of the Chief Judge – He is “concerned about what appears to be unnecessary delays in the release of defendants to court-ordered programs.”**

The Chief Judge's office provided no data. Therefore, Sheriff's Office staff did fact-finding on the 20 inmates currently assigned to the Chief Judge's Day Reporting Center, to determine what potential delays exist. The data reveals that 19 of the 20 inmates or 95% of the in-custody Day Reporting Center inmates were moved into a Huber dorm within 24 hours of notification. Once again, the data should dissuade any concerns regarding the timely movement of the few inmates assigned to the Day Reporting Center. In addition, the names of the inmates are included in this report with the transfer times to provide additional data to document the movement. Any concerns that the Sheriff's Office has inhibited the Day Reporting Center, which operates under the Courts, from

filling its stated goal of having 125 participants for the \$950,000 program should be set to rest based on the data.



DRC INMATE NAME	DORM/BED	BOOKING NUMBER	DATE CCFS NOTIFIED	DATE IN HUBER
BANNECKE, WILLIAM	A6 01	108911404	3/14/2012	3/15/2012
LEWIS, ROY	A6 14	279840620	4/24/2012	4/24/2012
ROSARIO, JULIO	A6 15	135092307	4/24/2012	4/24/2012
BEETS, ALONZO	A6 16	245050529	4/6/2012	4/7/2012
DAVIS, CLARENCE	A6 17	216604120	3/4/2012	3/4/2012
ROSCHA, NICHOLAS	A6 22	238414413	5/9/2012	5/9/2012
BATTLE, ROBERT	A6 26	208702925	3/6/2012	3/6/2012
HAMILTON, LARRY	A6 32	193980325	3/5/2012	3/5/2012
SMITH, MAURICE	A6 37	165555630	2/21/2012	3/4/2012
LEWIS, KENNETH	A6 40	229681028	3/29/2012	3/29/2012
RAYFORD, MILTON	A6 44	101835321	3/29/2012	3/29/2012
PASZKIEWICZ, CARY	A6 46	285433801	3/17/2012	3/17/2012
RODRIGUEZ, ANTONIO	A6 48	280155517	4/24/2012	4/24/2012
GAY, RICHARD	A6 52	266203602	5/9/2012	5/9/2012
DRAKE, TOMMIE	A6 53	288272523	4/28/2012	4/28/2012
WILSON, LAWRENCE	A6 54	120114811	3/4/2012	3/4/2012
LIGON, MONTAGUE	A6 55	221852827	3/29/2012	3/29/2012
MICHALOWSKI, JARRET	A6 50	291082804	5/10/2012	5/11/2012
KARRIKER, JAMES	A6 56	296904808	5/10/2012	5/11/2012
GUZMAN, DONA	B6 36	249474710	4/24/2012	4/24/2012

**Allegation of the Chief Judge - "The transport of defendants to the CCF-South Facility prior to initial appearance resulting in sometimes several extra days in jail before making their court appearance and being released on bail."**

Once again there was no data supplied by the Chief Judge. Therefore, the only way to answer this issue is with the facts regarding the inmate population. There are very specific classification tools that are used to determine the appropriate housing assignments of inmates that are mandated by the Department of Corrections. In addition, there are absolute mandates that must be followed based on the *Christensen Consent Decree*. This results in lower level summary arrest inmates being shipped to the County Correctional Facility-South, when there is no appropriate housing available in the high-security downtown County Correctional Facility-Central.

The downtown facility currently has two dormitories closed for workstation and electronic remodeling, based on a capital project that was funded by the County Board. All of the dormitories will be upgraded this year, resulting in the consistent closure of two dormitories at a time.

A viable solution to the transportation of inmates from Franklin to the downtown jail for court is a significant expansion in the use of video conferencing. The Courts have the equipment necessary to immediately expand their use of video conferencing technology, resulting in a potentially significant decline in the transportation of inmates between the County Correctional Facility-South and Central. The expanded use could also result in a decrease in the number of inmates being transported back and forth between other facilities around the state. The increased use of the available 21<sup>st</sup> Century technology by the Courts could have a significant impact in reducing the time and money required for inmate transportation and the security risks that are inherent in moving inmates between facilities. This is a large-scale solution that is waiting to revolutionize the judicial system.

**Issue of the Chief Judge - He is "unclear as to the reasons for the dramatic change in who is allowed on electronic monitoring and the rules going forward for determining eligibility for the program."**

The Chief Judge has had multiple conversations with the Sheriff's Office regarding who is responsible for ordering an inmate to be placed on electronic monitoring. Two appellate court decisions affirmed that the Sheriff has the sole authority to determine if an inmate shall be placed on electronic monitoring. Therefore, the Court cannot order the Sheriff to place an inmate on electronic monitoring. *See Court of Appeals of Wisconsin Published Opinion, 2005 WI APP 172, Case Number 2004AP779-CR and State of Wisconsin Court of Appeals Decision, Appeal Number 2006AP1884-CR.*

The Chief Judge has publicly stated in multiple forums that placing an inmate on "electronic monitoring" results in significant savings. That is not a factual statement. There are significant costs involved in putting an inmate on electronic monitoring, based on the type of offense and criminal history associated with the inmate. An inmate that has a history of alcohol and drug abuse must be tested and monitored on a continual basis while on electronic monitoring. In addition, any inmate convicted of Operating While Intoxicated would be placed on an alcohol monitoring system and GPS, which has daily costs equal to the incarceration costs. There are officers required to set up the inmates for electronic monitoring; there are officers who must monitor the whereabouts of the inmates twenty-four hours a day; there are officers who must perform drug tests randomly on the inmates, and there are supervisors who must make sure those assigned to the electronic monitoring program are performing.

When all of the costs are added up there are little to no savings to the taxpayers of Milwaukee County. The Chief Judge has cited that it costs \$140-\$150 a day to house an inmate at the County Correctional Facility-South. That figure is grossly inaccurate. The actual cost of a 60- to 70-inmate dormitory at the County Correctional Facility-South is approximately \$400,000 a year, not the \$3,832,000 that the Chief Judge has stated it costs the taxpayers. With the recent completion of a transition from Deputy Sheriffs in CCF-C to a full Correctional Officer complement in that division, the cost of operating a dorm in each division (CCF-C and CCF-S) is remarkably similar. Regardless, the \$140 to \$150 cost per inmate is a meaningless calculation often used by advocates. It is based on the annual tax levy cost of operating a facility, divided by the number of inmate days in a

year. This calculation is not the incremental cost of adding or subtracting an inmate from the system.

**Put another way:** There is a tax levy cost of maintaining the County Parks. You could compute a cost per person who uses the parks system. Would this have any meaning? If one less person used the parks would the costs go down? If one more person used the parks, would the cost go up? These calculations, as a cost basis, are meaningless.

**Conclusion:**

Anecdotal, speculative and undocumented allegations attempting to spark a political debate outside of one's area of expertise is an unproductive exercise. The time and cost to taxpayers to respond to the Chief Judge's letters, when all of the issues were discussed at the May 14<sup>th</sup> meeting with the Chief Judge, has been the only unnecessary and inefficient use of taxpayer money.

Sheriff Clarke has documented savings of \$6 million in one year after the former County Executive placed the Sheriff in charge of the County Correctional Facility-South in 2009. Saving large sums of money under the leadership of Sheriff Clarke has been a constant over the past ten years. The fiscal responsibility exercised by the Sheriff, while maintaining the highest standards possible for public safety, has been a hallmark of the past ten years.

The Constitutional authority of the Sheriff and the Wisconsin Statutes further accentuate that the current Sheriff, a law enforcement professional for over 34 years, shall oversee the inmates assigned to his care. Unless there is a change in the Constitution or the Wisconsin statutes, the issue of who is making the decisions is settled; and in the case of Sheriff Clarke, that is a tremendous value to the taxpayers of Milwaukee County.

September 30, 2013

Scott B. Manske, CPA  
Milwaukee County Comptroller  
Milwaukee County Courthouse, Room 301  
901 N. 9<sup>th</sup> Street  
Milwaukee, Wisconsin 53233

Re: Audit Report: "Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates"

Comptroller Manske:

The Community Justice Council acknowledges receipt of the Audit Report on Alternatives to Incarceration and further acknowledges the recommendations made to the CJC at the conclusion of the report.

We appreciate the thorough work presented in the report and will be taking up the recommendations at a future CJC Executive Committee meeting.

Sincerely,



Nathaniel Holton, J.D., MPA  
Milwaukee County Community Justice Council



*County of Milwaukee*  
**Office of the Sheriff**

---

**David A. Clarke, Jr.**  
*Sheriff*

**DATE:** September 30, 2013

**TO:** Jerome J. Heer, Director of Audits

**FROM:** Edward H. Bailey, Inspector, Milwaukee County Office of the Sheriff

**SUBJECT: Response to *Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates*, conducted by Milwaukee County Office of the Comptroller, Audit Services Division**

The Office of the Sheriff has reviewed the *Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates* document as prepared by the Milwaukee County Office of the Comptroller Audit Services Division.

This report seeks, in scope, to "...review the effectiveness of alternatives to incarceration programs to divert individuals to less costly arrangements and save jail beds." The audit puts it right out there that it seeks, at its core, to "achieve substantive savings" for Milwaukee County. Because this audit isn't about public safety. It's about money.

The audit talks about safety...

It tells us that the current Chief Judge is "a vocal advocate of electronic monitoring for pretrial defendants and sentenced populations *as long as public safety is not compromised.*"

It tells us that in May 2013, when the current HOC Superintendent was confirmed, there were no HOC inmates on electronic monitoring/home detention. But that by August, "the number had grown to 184 inmates." It tell us that the Superintendent is, "support(tive) for alternatives to incarceration programming" as a "cost-effective way to monitor inmates who have jobs and homes." It doesn't talk much about his other views on public safety, but does offer that under his careful watch "... electronic monitoring would be directed to minimum risk inmates; some inmates would never be a part of programming because of...the seriousness of their charges."

The audit goes on to reassure us that even though "...25% of EM program participants are convicted felons" (which most people whom you stop on the street would tell you is the very definition of a serious charge), many categories of crime would never qualify, including

Jerome J. Heer, Director of Audits  
September 30, 2013  
Page Two

Sexual Assault, Armed Robbery, Armed Burglary, and Drunk Drivers...as long as it's their 5<sup>th</sup> offense or higher...

And as Hamlet might have observed, there's the rub...

You see, while our agency has twice this past month, on August 1 and again on August 15, traveled to Madison to join the state legislature's committee on Judiciary as they considered a series of six bills introduced by Milwaukee area legislators Jim Ott and Alberta Darling to strengthen our drunk driving laws, the County Executive and Superintendent are opening the cell doors and are handing out the bracelets...if not the actual car keys.

Those bills, which seek to make a third drunken-driving conviction a felony, punishable by more than a year of incarceration, also seek to mandate jail time...for an OWI 3<sup>rd</sup>, at least 45 days in jail. That sounds like public safety to us...and to no less than the Milwaukee Journal Sentinel's Editorial Board too, who opined:

Good for them for holding the hearings. Too often in the past, such bills never got this far. Now, lawmakers need to actually pass something. Everyone knows the statistics. Wisconsin has one of the worst records in the nation for drunken driving. At least 220 people have been killed in alcohol-related crashes in the state every year for a decade. More than 51,000 people have been injured. Wisconsin is the only state that doesn't criminalize the first offense; it doesn't make drunken driving a felony until the fourth offense. Wisconsin leads the nation in binge drinking, and we're near the top in drivers who admit driving drunk. Studies show — and we've known all along — that Wisconsin's drinking culture takes a terrible toll in wasted lives and wasted dollars.

Sheriff Clarke agrees. You see, this issue has risen to a head because he wouldn't put any drunk drivers, but particularly the deadliest group, repeat drunk drivers, out on electronic bracelets for the often-nominal period of custodial time that they were actually receiving. Sheriff Clarke understands that every night that a repeat drunk driver spends in the county jail is one night of protection that the public receives. It's one night that the drunk can sit and think about changing their deadly behavior. Sheriff Clarke took all the tough talk judges dish out at sentencing and converted it to action.

So there's no miracle here. Pull back the curtain, it's easy to see...In just 3 short months, EM is the reality for not just first-time offenders, but by my August count **97 repeat drunk drivers** as well, including 59 OWI 2; 21 OWI 3; 17 OWI 4ths. What a joke. On one hand we sit in Madison and talk about changing people's perceptions about how the system views drunk driving...and quietly, behind the scenes and with the cameras turned off, they open the side door to the jailhouse.

Jerome J. Heer, Director of Audits  
September 30, 2013  
Page Two

Even for an OWI drunk convicted of Recklessly Endangering Safety, Joshua P. Klawikowski, who in November 2012 drove the wrong way down I-43 on a Saturday morning, leading Milwaukee County sheriff's deputies on a chase to the Racine County line, reaching speeds of 100 mph and forcing cars to swerve out of the way before pulling a U-turn south of Ryan Road. He subsequently blew a .18!

In March 2013, in Case 12CF005627 Judge Michael Guolee sentenced Klawikowski to serve 1 year in the House of Correction; but stayed the sentence and placed him on Probation for a period of 18 months. But, Judge Guolee did require that he first serve 6 months condition time in the House of Correction (with Huber privileges for work). Luckily for Klawikowski the HOC was stripped from the MCSO by County Executive Abele ...Now he doesn't even need to do the 6 months conditional time! It a bracelet, and nights at home in a warm bed.

We know about drunk driving at the Sheriff's Office. We see the wrecks, and comfort the grieving families of the dead. In this year alone, my agency has already made 937 OWI arrests; a 70% increase over the same time last year; including 115 for OWI 2nd; 57 for OWI 3rd (which we are now tough talking making a felony offense in Wisconsin) and 25 for OWI 4th or higher.

Looks like with the current state of affairs (and an audit on how to put more inmates out on EM) Milwaukee County may need to buy a lot more bracelets. That, or the legislature better step up those bills. Because here in Milwaukee County, the current goal is pegged dead on by the audit team:

Reducing the demand for jail bed-days is by no means the only goal or measure of the effectiveness of pretrial programming, nor is reducing recidivism rates and demand for jail-bed days the only objectives of post-adjudication alternatives to incarceration and jail diversion programming.

*Reduced levels of incarceration are, however, an underlying objective of all such programs.*

So we can save a little money. Or we can just save all the money. Last week, I saw the 2014 Milwaukee County Recommended Operating Budget from Chris Abele. It's a one-year MCSO hit of more than \$12 million, and gets rid of 69 employees, mostly cops.

When public safety isn't your goal, despite what you say publicly, you can save a bag of money. But that cost is tolled somewhere. And generally in communities that can least afford to pay that freight.

S:// Edward H. Bailey, I7

**Edward H. Bailey, Inspector**  
**Milwaukee County Office of the Sheriff**