

**Key Concepts for Evaluating
Options for Delivery of Services
Provided by the Milwaukee County
Office of the Sheriff**

April 2013

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April 8, 2013

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

We have completed an audit, *Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff*.

The report is primarily informational. It provides references to constitutional and statutory authority and responsibilities of Wisconsin County Sheriffs; compares services provided by the Milwaukee County Office of the Sheriff with other Wisconsin sheriff departments; provides trend analyses of resources and efficiency indicators of the Milwaukee County Office of the Sheriff; identifies areas of commonality in services provided by the Office of the Sheriff and municipal police departments in Milwaukee County; and compares relevant personnel cost structures of the Milwaukee County Office of the Sheriff and the police departments of the three largest municipalities in Milwaukee County.

A response from the Office of the Sheriff is included as **Exhibit 5**.

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

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
Kelly Bablitch, Chief of Staff, County Board Staff
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Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff

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Summary

The 2012 Adopted Budget for the Milwaukee County Office of the Sheriff included substantial reductions in overall expenditure authority (-7.1%), tax levy support (-7.9%) and funded positions (-8.7%), including overtime hours. The reductions in expenditure authority and tax levy support represent sharp departures from the general trend during the previous nine years of increases in annual budget appropriations for the Office of the Sheriff. The number of funded positions for the Office of the Sheriff was reduced each year during that same period. The 2013 Adopted Budget provided modest relief from the 2012 funding reductions. Overall expenditure authority in 2013 is increased from the 2012 budgeted level by 1.1%, including a 3.0% increase in tax levy support. Funded positions, including overtime hours, were slightly reduced, resulting in a total of 1,260 funded Full Time Equivalent (FTE) positions, a 0.5% reduction from the 2012 level. This audit was conducted in response to a directive in the 2012 Adopted Budget.

[Note: Management responsibility for the House of Correction (HOC) was transferred to the County Sheriff in 2009. The 2013 Adopted Budget returns the HOC to a separate department managed by a Superintendent reporting 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. That court challenge is pending. The County Board has delayed implementation of the transfer until resolution of that court challenge.]

Responsibilities of Wisconsin sheriffs are broadly defined and invite subjective interpretation.

The State of Wisconsin Constitution establishes sheriffs as constitutional county officers elected to four-year terms by county electors. Duties and responsibilities of sheriffs are not specified in the Wisconsin Constitution. However, over the years a history of court decisions has provided judicial clarification of the nature of the constitutional authority conferred upon the position of sheriff in Wisconsin. The Wisconsin Court of Appeals noted in *Washington County v. Washington County Deputy Sheriff's Association*, 2008 AP 1210:

The Wisconsin Constitution does not define the duties of a sheriff, but case law has described examples and a method of analysis. Initially, the definition of whether duties were part of the sheriff's constitutionally protected powers focused on a historical analysis of whether they were longstanding established duties of the sheriff at common law such as housing the county's prisoners in the jail.... But...the Wisconsin Supreme Court shifted the focus of the analysis to those duties that characterized and distinguished the office of sheriff, rather than whether they existed at common law.

The Wisconsin State Statutes provide greater clarity in identifying some of the duties to be performed by county sheriffs. However, they are quite broad and general in defining sheriffs' peacekeeping duties, clearly *requiring* them to keep and preserve the peace, but not *mandating* any particular type or level of service. Further, the presence of a constitutional or statutory mandate in and of itself does not prescribe the level of service required, nor does it preclude an entity other than the Office of the Sheriff from performing the function. Rather, it merely places responsibility for the function with the Sheriff. Given the broad authority granted to Wisconsin sheriffs and the relatively few duties specified in those authorizing documents, we were unable to identify a definitive listing of functions performed by the Milwaukee County Office of the Sheriff as 'mandatory' or 'discretionary.' It is within this context, with no definitive listing available, that we prepared our own listing, provided in **Table 3** (see p. 17) of this report, citing references supporting our judgments.

A comparison of the major functions performed by the sheriffs in other large Wisconsin counties can also help inform a discussion of the services currently provided by the Office of the Milwaukee County Sheriff. With the exceptions of emergency management coordinating services and operation of a county house of correction, there is significant commonality of functions performed by, or administered by, the Milwaukee County Sheriff and the sheriffs in the five next most populous counties in Wisconsin.

Data indicate the Milwaukee County Sheriff has maintained a consistent level of efficiency of operations under his control as staff resources have consistently declined during the past decade.

Acknowledging the assumption by the Sheriff of responsibility for operation of the House of Correction in 2009, little has changed in the number or type of functions performed by the Office of the Sheriff in 2012 compared to 2002. As total funded positions declined each year during that period, the organizational structure of the office has been streamlined while the overall management to staff ratio has remained essentially unchanged at approximately one manager for every nine non-management staff. We selected two major functional areas of the Office of the Sheriff for a more detailed examination of efficiency indicators. During 2012, staff hours charged to Detention and Expressway Patrol activities accounted for approximately 57.5% of total Office of the Sheriff workload.

During the period 2008 through 2012, the average staff hours per inmate day has remained stable, with significant reductions in both staffing levels and total average daily inmate census.

The average daily inmate census for the County has decreased steadily in recent years, from a total of 3,243 in 2008 to 2,484 in 2012, a reduction of 23.4%. This total figure reflects a reduction in average daily census of 9.9% at the County Correctional Facility-Central (CCF-C, or County Jail) and a reduction of 28.6% at the CCF-S (House of Correction). Comparing those same two years, the average number of Full Time Equivalent positions staffing an eight-hour shift system-wide decreased from 261.4 in 2008 to 205.2 in 2012, a nearly identical decline of 21.5%. This overall staffing reduction reflects a 10.4% reduction at the CCF-C and a 30.9% reduction at the CCF-S.

However, indicators of the Office of the Sheriff's reliance on overtime to staff the CCF-C and CCF-S during the same period does not show the same steady decline as the average census and staffing levels at the two facilities. A trend of decreasing reliance on overtime as a percentage of total staff hours was reversed in 2011 and continued increasing in 2012. From its low point of 5.2% in 2010, overtime as a percentage of total staff time system-wide increased to 7.9% in 2011 and to 12.7% in 2012. This may be, in part, due to continued reductions in staffing levels within the Office of the Sheriff (see **Figure 2**, p. 11 of this report). However, increased reliance on overtime is not necessarily a negative indicator of efficiency or an indication that staff reductions have been excessive. For example, paying a number of employees a premium for overtime, typically one and one-half times their standard hourly wage, can be less costly than adding an additional position with a full array of fringe benefit costs (e.g., vacation, health insurance, pension, etc.).

Recent history at the CCF-S (prior to the 2009 management transfer to the Office of the Sheriff) clearly illustrates, however, that too heavy a reliance on overtime can have adverse fiscal and operational impacts. In a March 2008 audit at the former House of Correction, we found that total hours worked on a regular straight time basis had decreased 13.0% in 2007 compared to 2003, while total overtime hours had skyrocketed by 206.7%. In the audit, we concluded that the data reflected a 'vicious cycle' of existing staff working a greater proportion of their workload on an involuntary overtime basis, increasing stress levels and leading to a greater reliance on unconventional means of obtaining time off (e.g., Family Medical Leave). In December 2009, after transfer of HOC management responsibility to the Sheriff, an independent corrections consultant with the National Institute of Corrections noted a vast improvement in the security and discipline of operations at the facility under the Office of the Sheriff.

The data provided in this report show that reliance on overtime for staffing levels at the CCF-S in 2012 was 13.9%, its highest level since the problematic staffing patterns exhibited in 2008.

Regardless of who manages the facility, it is critically important to actively monitor staffing patterns and behaviors at the CCF-S to avoid a repeat of the County's 2007/2008 experience.

During the period 2008 through 2012, data show the Office of the Sheriff's Expressway Patrol has maintained a consistent staffing level with stable response times.

Staff hours logged for the Expressway Patrol unit has remained very stable during the five-year period 2008–2012, although there was a greater reliance on overtime to maintain that level of road presence. Data provided in this report show the Expressway Patrol unit maintained generally stable average and median response times for a variety of categories of incidents during the period 2008 through 2012. The average response time is calculated by totaling all response time and dividing by the number of incidents. The median figure indicates the mid-point of all response times in a category. That is, half of all response times were greater than, and half of all response times were less than, the median response time. While the data presented in aggregate does not distinguish the variety of circumstances that affect response times, such as weather conditions, traffic volume, seasonality, etc., a general decline in Expressway Patrol unit efficiency would be reflected in an upward trend in response times. No such general trend is apparent in the 2008–2012 data.

The Office of the Sheriff has assembled a comprehensive database of statistical data to identify and predict trends that can assist management in making staff deployment and performance evaluation decisions.

Data available and tracked by the Office of the Sheriff Law Enforcement Analytics Division include, among other items, numerous statistics used by other Wisconsin sheriff's departments to generate annual reports of selected performance indicators for public consumption. The 2012 Adopted Budget contained the following directive:

The Office of the Sheriff will create and distribute an Annual Report for calendar year 2011, similar to that produced by the Dane County Sheriff and other Sheriffs nationwide. The report shall itemize accomplishments, work statistics, expenditures and revenues for the major discretionary and mandated programs, staffing levels, organizational charts, and other important information. The report shall be made available on the Sheriff's website and shall be presented to the Committee on Judiciary, Safety and General Services by the June 2012 cycle.

To date, the Office of the Sheriff has declined to produce such a report. The Wisconsin Supreme Court stated in *Andreski v. Industrial Commission*, 261 Wis. 234 52 N.W. 2nd 135 (1952):

Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county, though he may be removed by the Governor for cause. No other county official supervises his work *or can they require a report or an accounting from him concerning his performance of his duty.* [Emphasis added.]

The information system utilized by the Office of the Sheriff provides the capability to produce the statistical information commonly contained in the annual reports we reviewed. Whether or not the Office of the Sheriff chooses to produce an annual report, many of the components of such a report could be included in the annual Milwaukee County budget. Whereas the County Sheriff cannot be compelled to produce a report regarding the performance of his or her duty, the Sheriff must comply, barring specific statutory or court prohibitions, with requests for information generated from publicly funded and operated data systems.

Relevant personnel cost structures and national trends suggest future collaborations should explore consolidation at the County level rather than fragmentation among municipal police departments.

The premise underlying public calls for reducing or replacing various services performed by the Office of the Sheriff is that the services duplicate those provided by other entities, and/or that they could be performed at lower cost by others. Our review of services provided by the Office of the Sheriff and municipal police departments within Milwaukee County confirms there are a number of commonalities in services. This suggests that opportunities exist for potential collaboration and/or consolidation of services between the entities. However, in the absence of demonstrably enhanced efficiency gains, relevant personnel cost structures and national trends suggest future collaborations should explore consolidation at the County level rather than fragmentation among municipal police departments.

Milwaukee County legacy costs are legal obligations that must be met, but they are not relevant costs that should be considered in evaluating proposals to reduce or eliminate Office of the Sheriff functions.

The Office of the Sheriff carries two significant fringe benefit costs within its annual budgets that are truly fixed costs that must be set aside in making service level decisions. Those costs are health and unfunded pension costs for retired County employees, known as 'legacy' health care and 'legacy' pension costs. Milwaukee County legacy costs are real obligations that must be paid by the taxpaying public. However, in making policy decisions going forward, only relevant cost factors should be considered. For instance, paid lifetime health benefits were eliminated for Milwaukee County deputy sheriffs hired after June 30, 1995. As of August 2012, 155 of 275 active deputy sheriffs were eligible for the benefit. A deputy sheriff hired today would not add or subtract from the cost associated with the lifetime health benefit retained by the 155 deputy sheriffs. Further, since the lifetime health benefit is a vested retirement benefit after 15 years of service, each of the 155 eligible deputy sheriffs employed as of August 2012 has already achieved the minimum number of

service years required for that benefit. Thus, elimination of those positions would not affect the costs associated with those benefits. (Instead, the County has had some success in limiting legacy costs through benefit design modifications and financing techniques.)

Relevant personnel cost structures show that effective hourly compensation costs for Milwaukee County deputy sheriffs in 2012 were lower than those for police officers in the three largest Milwaukee County municipalities.

We compared major components of 2012 personnel cost structures of the three largest municipal police departments in Milwaukee County with those of the Office of the Sheriff. The police departments of the Cities of Milwaukee, West Allis and Wauwatosa serve a combined population totaling approximately 75% of the citizens of Milwaukee County. Our comparison of major personnel cost components for positions in the Office of the Sheriff and three municipal police departments was not intended to be a comprehensive compensation study.

However, great effort was made to identify comparable data and to apply judgments involved in gathering the data in a consistent and logical fashion. As a result, the effective hourly cost of compensation rates shown in this report demonstrate that the Milwaukee County Office of the Sheriff has a lower personnel cost structure than the three municipal police departments reviewed *for those personnel cost items most relevant in assessing proposals for performing Office of the Sheriff functions*. Effective hourly rates for the municipal police officers ranged from 6.6% to 30.7% higher than for County deputy sheriffs, depending on the length of service in the organization.

Potential areas of commonality in types of activities performed by the Office of the Sheriff and multiple municipal police departments in Milwaukee County, along with a lower relevant personnel cost structure, suggests that opportunities for consolidation be considered at the County level, rather than fragmented among the municipalities.

Our review of the types of activities performed by municipal police departments in Milwaukee County identified 13 areas of commonality that could indicate the potential for collaboration or consolidation for purposes of achieving increased overall efficiency. However, having properly set aside the County's fixed legacy costs, the Office of the Sheriff's relatively lower relevant personnel cost structure would suggest that in order to achieve taxpayer cost savings, a transfer of responsibilities to municipal police departments in Milwaukee County would require one of two conditions. Either demonstrable efficiencies would need to occur to achieve the same results with fewer service hours, or service hours would have to be reduced.

Further, the transfer of law enforcement responsibilities from the county to the municipal level is not a common occurrence nationwide. Rather, the concept of consolidating law enforcement efforts at the county level is consistent with efforts undertaken elsewhere, according to our research. In fact, we were unable to identify an example in which a municipal police department assumed responsibility for a function of a county sheriff.

Improved working relationships among Milwaukee County public officials is critical to successfully identify and implement optimal service delivery options for Milwaukee County Office of the Sheriff functions.

Consideration of any policy initiatives to downsize, eliminate or transfer services currently provided by the Milwaukee County Office of the Sheriff must include an acknowledgement of current realities that could limit or negatively affect their chances of successful implementation. These realities include the constitutional authority of the Milwaukee County Sheriff and a publicly displayed poor working relationship between the Sheriff and some County officials. These realities can render some unilateral policy decisions by the County Board of Supervisors and the County Executive difficult to achieve, or in some cases, nullify them altogether.

Constitutional Authority of the Sheriff

Due to the constitutional authority of his position, the Sheriff cannot be prevented from re-prioritizing authorized staffing levels by virtue of his deployment practices. This was demonstrated in 2012, when there were several examples of significant variance between the number of positions budgeted for specific functions and their actual deployment.

Poor Working Relationships

Clearly, strained interactions during 2012 have demonstrated the importance of cooperation among County officials to effectively implement policy initiatives involving services provided by the Office of the Sheriff. The need for an effective government to continuously analyze and adapt its organizational structure, operating procedures and service delivery models demands an improvement in the working relationships between these public officials.

In the event a cooperative working relationship between the above public officials cannot be achieved, one option available to policy makers is to de-fund all Office of the Sheriff services that are not explicitly mandated by statute or by the State of Wisconsin Constitution, as clarified by the Wisconsin Supreme Court. We estimate this would result in a reduction of approximately \$4.5 million in total expenditure authority, including \$3.7 million in property tax levy, based on 2012 Adopted Budget funding (see **Table 3**, p. 17) and elimination of 132 FTE funded positions.

Additional scrutiny could also be applied to the funding levels for mandated services and services we have classified as ancillary to mandated services.

Such a drastic measure would require municipal law enforcement agencies to absorb additional workload for police services on County properties within their jurisdictions, and would likely involve negotiation of some level of funding from the County. This option would also involve the loss of approximately \$7.4 million in Office of the Sheriff expenditure abatements currently charged to General Mitchell International Airport (GMIA) for security and law enforcement service. Unless a separate mitigating arrangement was made, this would increase County property tax levy by approximately \$1.1 million for associated legacy costs currently recouped from airline and passenger fees.

Future analyses of optimal service delivery options for functions performed by the Milwaukee County Office of the Sheriff should also include constructive collaborations with municipalities within Milwaukee County.

Based on the information assembled in this report, if the executive and legislative branches of Milwaukee County can work in a cooperative manner with the Office of the Sheriff and the Intergovernmental Cooperation Council (composed of representatives of the 19 municipalities within Milwaukee County), there are several opportunities for exploration of potential efficiencies. As previously noted, comparatively low relevant personnel cost structures and experience both locally and nationally suggest consideration of proposals to consolidate these functions at the County level.

A management response from the Office of the Sheriff is included as **Exhibit 5**.

Background

The 2012 Adopted Budget for the Milwaukee County Office of the Sheriff included substantial reductions in overall expenditure authority (-7.1%), tax levy support (-7.9%) and funded positions (-8.7%), including overtime hours. The reductions in expenditure authority and tax levy support represent sharp departures from the general trend during the previous nine years of increases in annual budget appropriations for the Office of the Sheriff. The number of funded positions for the Office of the Sheriff was reduced each year during that same period. As shown in **Table 1**, total annual expenditure authority for the Office of the Sheriff increased in seven of the previous nine budgets, with average annual increases of 2.9% during that period. Similarly, tax levy support increased in seven of the preceding nine years, with average annual increases of 4.4%.

The 2013 Adopted Budget provided modest relief from the 2012 funding reductions. Overall expenditure authority in 2013 is increased from the 2012 budgeted level by 1.1%, including a 3.0% increase in tax levy support. Funded positions, including overtime hours, were slightly reduced, resulting in a total of 1,260 funded Full Time Equivalent (FTE) positions, a 0.5% reduction from the 2012 level.

<u>Year</u>	<u>Funded Positions</u>	<u>OT*</u>	<u>Tot Exp Authority</u>	<u>Tax Levy</u>	<u>% Change Funded Pos.</u>	<u>% Change Total Exp</u>	<u>% Change Tax Levy</u>
2002	1,125.3	86.0	\$ 74,145,794	\$ 56,726,382			
2003	1,119.1	125.7	\$ 77,006,181	\$ 62,178,903	-0.5%	3.9%	9.6%
2004	1,042.5	106.7	\$ 83,591,050	\$ 69,598,765	-6.8%	8.6%	11.9%
2005	1,009.8	83.1	\$ 84,467,746	\$ 70,443,673	-3.1%	1.0%	1.2%
2006	986.1	64.1	\$ 84,559,727	\$ 72,090,121	-2.3%	0.1%	2.3%
2007	951.0	63.6	\$ 89,364,206	\$ 76,555,310	-3.6%	5.7%	6.2%
2008	935.2	51.3	\$ 88,091,678	\$ 73,415,307	-1.7%	-1.4%	-4.1%
2009**	1,438.9	93.7	\$ 143,518,014	\$ 123,093,721	-0.6%	1.9%	4.3%
2010	1,434.2	94.9	\$ 141,951,515	\$ 121,359,819	-0.3%	-1.1%	-1.4%
2011	1,385.9	64.2	\$ 152,515,945	\$ 132,473,004	-3.4%	7.4%	9.2%
2012	1,265.9	57.5	\$ 141,621,453	\$ 121,960,994	-8.7%	-7.1%	-7.9%
			<i>Average Annual Change, 2002–2011</i>		-2.5%	2.9%	4.4%

* Included in Funded Positions Total

** 2009 data includes Office of the Sheriff and the former House of Correction budgets combined. Percentage changes are calculated from 2008 combined totals.

Source: Milwaukee County Adopted Budgets 2002-2012.

[Note: Prior to 2010, the Office of the Sheriff and the House of Correction (HOC) 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 returns the CCF-S to a separate department managed by a Superintendent reporting 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.” That court challenge is pending. The County Board has delayed implementation of the transfer until resolution of that court challenge.]

The annual percentage changes in total expenditure authority and tax levy support for the Office of the Sheriff is shown graphically in **Figure 1**.

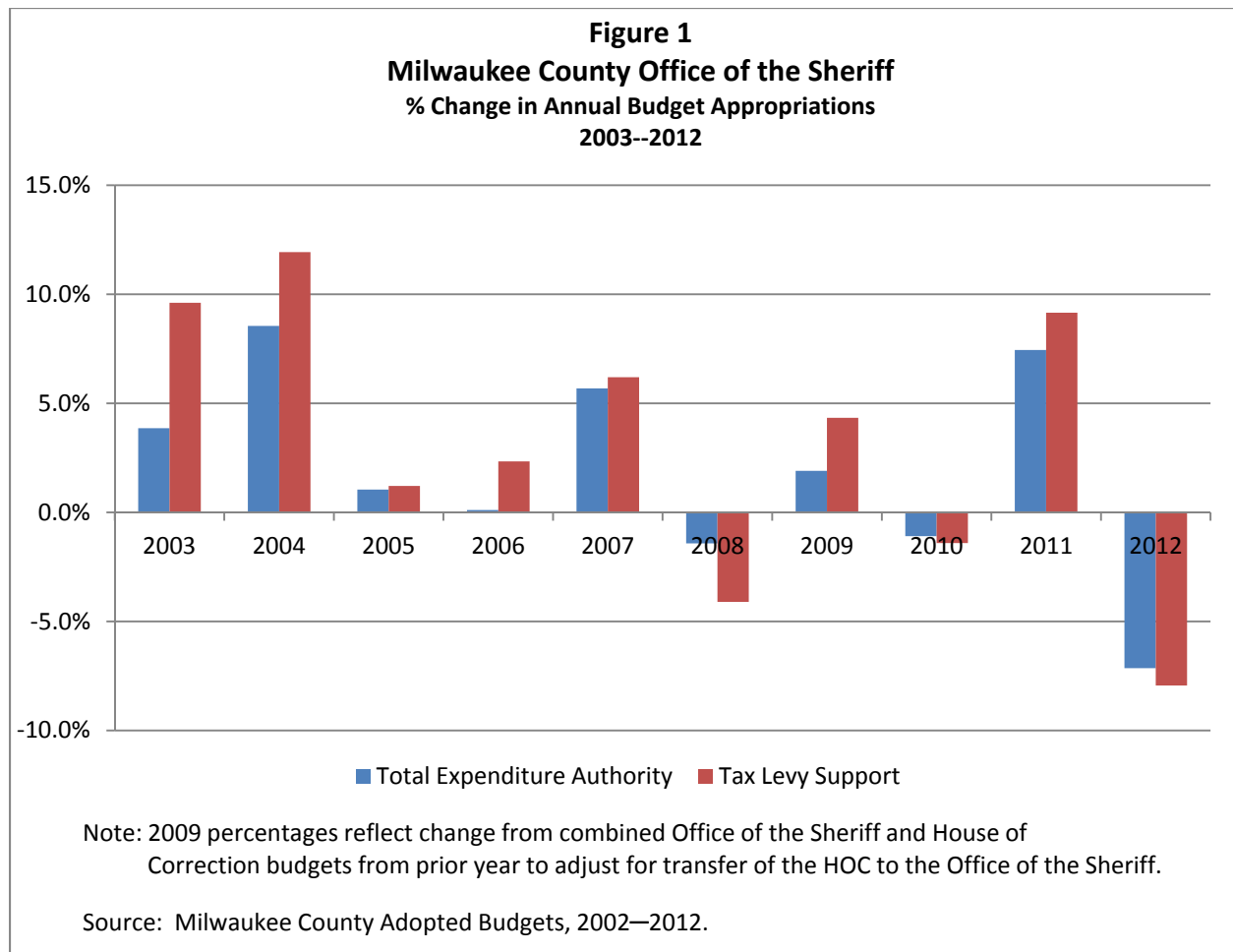
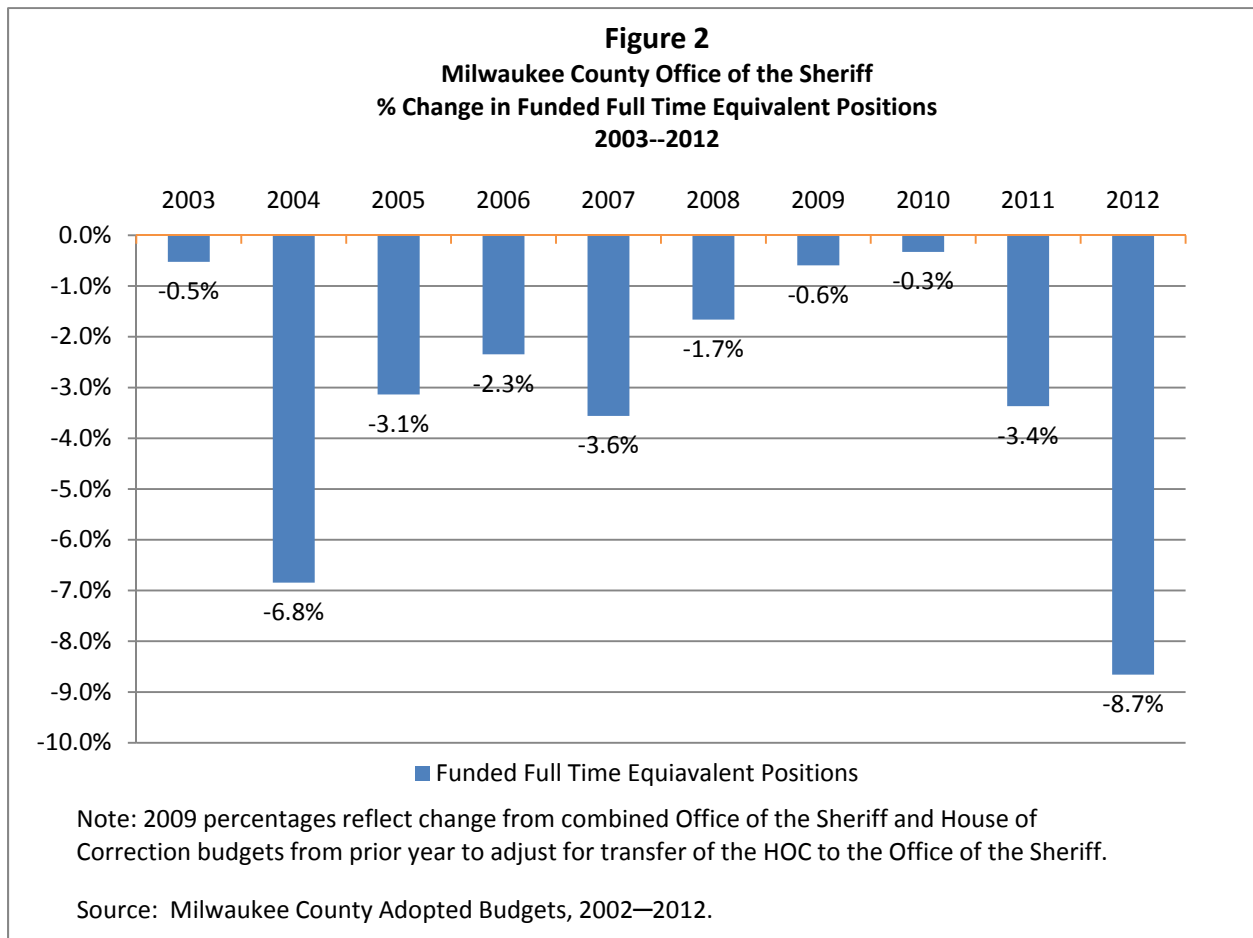


Table 1 also shows that, while the number of funded positions for the Office of the Sheriff reflects a consistently downward trend since 2002, the 8.7% reduction in the 2012 Adopted Budget was the largest percentage cut during that period. This data is shown graphically in **Figure 2**.



In reviewing budgeted resources for the Office of the Sheriff, it is important to understand that as an independently elected Constitutional Officer, the Sheriff is free to determine his staffing assignments as he sees fit, depending on deployment priorities that change based on fluid circumstances. Therefore, actual staff resources deployed by the Sheriff for a given function may vary significantly from budgetary allocations. For example, while the 2012 Park/Tactical Enforcement Unit was funded with 35 Full Time Equivalent (FTE) positions, including overtime, actual deployment of staff for the Park/TEU function was approximately 13.3 FTE, or about 60% less than the budgeted amount.

The current Milwaukee County Sheriff began his tenure in March 2002. **Table 2** shows actual expenditures and the year-end surplus/deficit position of the Office of the Sheriff from 2002 through 2012.

<u>Year</u>		<u>Actual Expenditures</u>	<u>Surplus/(Deficit)</u>
2002	\$	66,687,090	\$ (1,866,789)
2003	\$	68,924,637	\$ (2,393,755)
2004	\$	74,235,034	\$ 1,510,200
2005	\$	72,786,735	\$ 1,363,322
2006	\$	74,110,296	\$ 442,806
2007	\$	75,744,434	\$ 1,296,949
2008	\$	89,826,032	\$ 52,338
2009*	\$	140,631,173	\$ 1,380,056
2010	\$	153,976,297	\$ 1,420,322
2011	\$	154,972,141	\$ 237,127
2012**	\$	138,655,434	\$ (631,890)

*2009 data includes Office of the Sheriff and the former House of Correction budgets combined, reflecting the transfer of management responsibility for the HOC to the Office of the Sheriff.

**2012 data are preliminary year-end totals and are subject to revision.

Source: Milwaukee County Office of the Comptroller Year-End Budget Position Reports, 2002-2011 and Advantage Fiscal Report 2012.

This audit was conducted in response to a provision of the 2012 Adopted Budget that directed the Audit Services Division to:

...perform an analysis of the mandated services provided by the Sheriff, focusing on efficiency and service levels. The audit will also focus on which non-core or discretionary services could be reduced or provided more efficiently, either by the Sheriff or by municipalities.

Section 1: Responsibilities of Wisconsin sheriffs are broadly defined and invite subjective interpretation.

Over the years a history of court decisions has provided judicial clarification of the nature of the constitutional authority conferred upon the position of sheriff in Wisconsin.

Article VI, Section 4 of the State of Wisconsin Constitution establishes sheriffs as constitutional county officers elected to four-year terms by county electors. The State Constitution also provides that sheriffs may be removed from office for cause by the Governor and vacancies in the office of the sheriff are filled by appointment of the Governor until such time as a successor is elected and qualified. Duties and responsibilities of sheriffs are not specified in the Wisconsin Constitution. However, over the years a history of court decisions has provided judicial clarification of the nature of the constitutional authority conferred upon the position of sheriff in Wisconsin.

In *Wisconsin Professional Police Association v. Dane County*, 106 Wis.2d 303 (1982), the Wisconsin Supreme Court provided a good summary of the court's prior record of clarifying the constitutional powers of sheriffs, stating, in part:

The office of the sheriff is one of the most ancient and important in Anglo-American Jurisprudence. Its origins pre-date the Magna Carta. Walter H. Anderson, in *A Treatise On The Law of Sheriffs, Coroners and Constables*, describes the sheriff's common law authority as follows:

"In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he (the sheriff) represents the sovereignty of the State and *he has no superior in his county.*" (Emphasis added.)

....While the sheriff's powers are not delineated in the Constitution, this court early set forth its interpretation of the scope of the sheriff's constitutional powers in *State ex rel. Kennedy v. Brunst*, 26 Wis. 412 (1870), in which the court declared unconstitutional a statute transferring "exclusive charge and custody" of the Milwaukee county jail from the sheriff to the inspector of the house of correction.

“...Now, it is quite true that the constitution nowhere defines what powers, rights and duties shall attach or belong to the office of sheriff. But there can be no doubt that the framers of the constitution had reference to the office with those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted. Among those duties, one of the most characteristic and well acknowledged was the custody of the common jail and of the prisoners therein.”

...The scope of the sheriff’s constitutional powers were further defined in *State ex rel. Milwaukee County v. Buech*, 171 Wis. 474, 177 N.W. 781 (1920), wherein this court held that a statute providing for civil service appointment of sheriff’s deputies was not an unconstitutional infringement of the sheriff’s authority.

...“We think [Brunst] should be confined to those immemorial principal and important duties that characterized and distinguished the office.”

The Wisconsin Court of Appeals aptly characterizes the degree of judicial clarification in the following excerpt from *Washington County v. Washington County Deputy Sheriff’s Association*, 2008 AP 1210:

The Wisconsin Constitution does not define the duties of a sheriff, but case law has described examples and a method of analysis. Initially, the definition of whether duties were part of the sheriff’s constitutionally protected powers focused on a historical analysis of whether they were longstanding established duties of the sheriff at common law such as housing the county’ prisoners in the jail.... But...the Wisconsin Supreme Court shifted the focus of the analysis to those duties that characterized and distinguished the office of sheriff, rather than whether they existed at common law.

The Wisconsin State Statutes provide greater clarity in identifying some of the duties to be performed by county sheriffs.

The Wisconsin State Statutes provide greater clarity in identifying some of the duties to be performed by county sheriffs. For instance, Wis. Stats. § 59.27(1) provides that the sheriff shall “Take the charge and custody of the jail maintained by the county and the persons in the jail, and keep the persons in the jail personally or by a deputy or jailer.” Wis. Stats. § 59.27(3) is

similarly clear in stating that the sheriff shall “Attend upon the circuit court held in the sheriff’s county during its session....”

However, another provision of the statutes is quite broad and general in defining sheriffs’ peacekeeping duties. Wis. Stats. § 59.28(1) states:

“Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they consider necessary.”

Clearly, the broad authority granted sheriffs in this statutory provision *requires* them to keep and preserve the peace throughout their respective counties, but does not *mandate* any particular type of service.

The presence of a constitutional or statutory mandate in and of itself does not prescribe the level of service required.

Further, the presence of a constitutional or statutory mandate in and of itself does not prescribe the level of service required, nor does it preclude an entity other than the Office of the Sheriff from performing the function. Rather, it merely places responsibility for the function with the Sheriff. For instance, the Milwaukee County Office of the Sheriff currently contracts with a private vendor for inmate food services at both the County Correctional Facility-Central and the County Correctional Facility-South. Inmate transportation between the two facilities is also performed by a private vendor under contract with the Office of the Sheriff.

Given the broad constitutional and statutory authority granted to Wisconsin sheriffs and the relatively few duties specified in those authorizing documents, we were unable to identify a definitive listing of functions performed by the Milwaukee County Office of

the Sheriff as 'mandatory' or 'discretionary.' It is within this context, in the absence of any definitive listing, that we prepared our own listing. In that process, it became apparent that some activities performed by the Office of the Sheriff, while not specifically mandated by law, are a practical necessity at some level in order to fulfill a mandated obligation. We categorized such activities, such as administration, as 'ancillary to mandated.'

This information is shown in **Table 3**, citing references supporting our judgments. Additional detail of the information provided in **Table 3** is included at the end of this report, including a brief description of each service and text from the legal references we cite in support of our judgments regarding the classification of a service as mandatory (see **Exhibits 2** through **4**).

**Table 3
Classification of
2012 Milwaukee County
Office of the Sheriff Functions**

Administration Bureau

<u>Reference</u>	<u>State Const.</u>	<u>Category</u>	<u>Org Unit</u>	<u>Name</u>	<u>Budgeted Tax Levy</u>	<u>FTE's</u>	<u>Total Budgeted Expenditures</u>			
MCGO s. 99.02(1) Wis. Stats. §165.85(1)		Mandated	4010	EMERGENCY MANAGEMENT	\$373,911	4.41	\$832,304			
Wis. Stats. §59.27(2)		Mandated	4077	TRAINING	\$5,386	7.04	\$259,251			
Wis. Stats. §59.27(3)	X	Mandated	4082	CENTRAL RECORDS	\$324,611	3.02	\$393,611			
Wis. Stats. §59.27(3)	X	Mandated	4084	COURT LIASION	\$370,609	3.11	\$378,109			
Wis. Stats. §59.27(4)	X	Mandated	4086	CIVIL PROCESS SERVICE	\$2,028,260	19.57	\$2,304,872			
		Ancillary to Mandated	4002	ADMINISTRATION	\$5,619,541	36.43	\$6,523,866			
		Ancillary to Mandated*	4029	COMMUNICATIONS	\$4,007,031	30.71	\$4,007,031			
		Ancillary to Mandated	4312	BUSINESS OFFICE	\$1,305,204	13.19	\$1,316,652			
		Discretionary	4030	COMMUNITY RELATIONS	\$63,209	0.00	\$63,209			
Administration Bureau Total					\$14,097,762	100%	117.48	100%	\$16,078,905	100%
Administration Mandated					\$3,102,777	22%	37.15	32%	\$4,168,147	26%
Admin. Ancillary to Mandated					\$10,931,776	78%	80.33	68%	\$11,847,549	74%
Administration Discretionary					\$63,209	< 1%	0.00	0%	\$63,209	< 1%

Detention Bureau

<u>Reference</u>	<u>State Const.</u>	<u>Category</u>	<u>Org Unit</u>	<u>Name</u>	<u>Budgeted Tax Levy</u>	<u>FTE's</u>	<u>Total Budgeted Expenditures</u>			
Wis. Stats. §59.27(3)	X	Mandated	4031	COURT DISPOSITIONS	\$193,936	3.00	\$193,936			
Wis. Stats. §59.27(4)	X	Mandated	4032	WARRANTS	\$683,112	11.00	\$683,112			
Wis. Stats. §59.27(1)	X	Mandated	4034	BOOKING RELEASE INMATE	\$2,727,219	37.29	\$2,727,219			
Wis. Stats. §59.27(1)	X	Mandated	4036	TRANSPORTATION	\$2,011,213	0.00	\$2,011,213			
Wis. Stats. §59.27(1)	X	Mandated	4038	COUNTY CORRECTIONAL FACILITY-CENTRAL	\$27,728,223	284.63	\$33,448,266			
Wis. Stats. §302.38(1)	X	Mandated	4039	INMATE MEDICAL SERVICES	\$10,207,974	99.75	\$10,227,974			
Wis. Stats. §302.38(1)	X	Mandated	4041	PSYCHIATRIC SERVICES	\$1,227,343	17.23	\$1,227,343			
Wis. Stats. §59.27(3)	X	Mandated	4081	COURT SERVICES	\$10,279,925	97.21	\$10,279,925			
Wis. Stats. §302.37(1)	X	Mandated	4332	INMATE FOOD SERVICE	\$2,225,549	0.00	\$2,225,549			
Wis. Stats. §303.19(1)		Mandated*	4353	GRAPHICS SHOP	\$378,972	4.04	\$462,472			
Wis. Stats. §302.37(1)	X	Mandated	4354	LAUNDRY	\$618,011	10.42	\$618,011			
Wis. Stats. §303.17(1)		Mandated*	4372	CCFS DORMITORIES	\$34,288,509	336.43	\$37,834,416			
		Ancillary to Mandated	4311	CCFS ADMINISTRATION	\$1,592,180	9.33	\$1,592,180			
		Ancillary to Mandated	4313	CCFS CANTEEN	(\$498,177)	1.07	\$141,823			
		Ancillary to Mandated	4314	WAREHOUSE	\$72,036	1.01	\$72,036			
		Ancillary to Mandated	4315	MAINTENANCE	\$2,074,148	12.52	\$2,102,148			
		Ancillary to Mandated	4316	POWER PLANT INDUSTRIES	\$1,194,585	7.64	\$1,194,585			
		Ancillary to Mandated	4351	ADMINISTRATION	\$0	0.00	\$0			
		Ancillary to Mandated	4374	CCFS VISITING	\$244,539	1.32	\$244,539			
		Discretionary	4371	CCFS CANINE UNIT	\$710,351	7.66	\$710,351			
		Discretionary	4377	DOTS	\$66,616	0.00	\$66,616			
Detention Bureau Total					\$98,026,264	100%	941.55	100%	\$108,063,714	100%
Detention Mandated					\$92,569,986	94%	901.00	96%	\$101,939,436	94%
Detention Ancillary to Mandated					\$4,679,311	5%	32.89	3%	\$5,347,311	5%
Detention Discretionary					\$776,967	1%	7.66	1%	\$776,967	1%

Police Services Division

Reference	State Const.	Category	Org Unit	Name	Budgeted Tax Levy	FTE's	Total Budgeted Expenditures			
Wis. Stats. §59.84(10)(b)		Mandated	4021	EXPRESSWAY PATROL	\$2,985,482	59.68	\$8,851,357			
Wis. Stats. §59.27(11)		Mandated	4026	DIVE UNIT	\$21,821	0.02	\$21,821			
Wis. Stats. §59.27(10)		Mandated	4058	BOMB DISPOSAL UNIT	\$0	0.79	\$83,071			
Wis. Stats. §59.27(11)		Mandated	4064	SWAT/GRIP UNIT	\$0	0.90	\$102,880			
		Ancillary to Mandated	4052	GENERAL INVESTIGATIONS	\$2,313,286	24.15	\$2,703,786			
		Ancillary to Mandated	4066	HIDTA DRUG UNIT	\$206,843	2.19	\$294,843			
		Discretionary	4013	SHERIFF FORFEITURE	\$0	0.00	\$0			
		Discretionary**	4016	AIRPORT SECURITY	\$0	66.34	\$55,200			
		Discretionary**	4017	COUNTY GROUNDS SECURITY	\$595,046	11.57	\$1,203,046			
		Discretionary	4018	CANINE UNIT	\$0	4.86	\$200,500			
		Discretionary	4019	PARK PATROL / TEU	\$3,297,247	35.32	\$3,545,247			
		Discretionary	4027	TRANSIT SECURITY INFORMATION TECH	\$0	0.00	\$0			
		Discretionary	4037	UNIT	\$417,241	1.00	\$417,241			
Police Services Bureau										
Total					\$9,836,966	100%	206.82	100%	\$17,478,992	100%
Police Services Mandated					\$3,007,303	31%	61.39	30%	\$9,059,129	52%
Police Svcs Ancillary to Mandated					\$2,520,129	26%	26.34	13%	\$2,998,629	17%
Police Services Discretionary					\$4,309,534	44%	119.09	58%	\$5,421,234	31%
Grand Total					\$121,960,992	100%	1,265.85	100%	\$141,621,611	100%
Total Mandated					\$98,680,066	81%	999.54	79%	\$115,166,712	81%
Total Ancillary to Mandated					\$18,131,216	15%	139.56	11%	\$20,193,489	14%
Total Discretionary					\$5,149,710	4%	126.75	10%	\$6,261,410	4%

* Indirect mandate through County Board Adopted Budget policy.

** Currently obligated in whole or in part by contract or agreement.

Notes: Does not include approximately \$16.8 million in expenditures abatements from other County organizational units. For example, org unit 4016 Airport Security was budgeted for approximately \$7.4 million charged to General Mitchell International Airport.

Ancillary to Mandated indicates function is not mandated but is a practical necessity at some level in order to provide a mandated service. Percentage totals may not add due to rounding.

Sources: Audit Services Division Interpretations of Wisconsin State Constitution, State Statutes and County Ordinances; Budget data from and FTE's from County BRASS system.

A comparison of the major functions performed by the sheriffs in other large Wisconsin counties can also help inform a discussion of the appropriate entity to deliver various services currently provided by the Office of the Milwaukee County Sheriff. **Table 4** presents a checklist of major activities performed by the sheriffs in Milwaukee, Racine, Kenosha, Waukesha, Dane and Brown Counties, respectively.

Table 4
Comparison of Activities Performed
Selected Wisconsin County Sheriffs

Milwaukee County Sheriff 2012 Service	Dane County Sheriff (Madison)	Brown County Sheriff (Green Bay)	Kenosha County Sheriff	Racine County Sheriff	Waukesha County Sheriff
Airport Security	✓	Incident Response Only	No-City Owned	No-Private Owner	✓
Background Investigation Unit	✓	✓	✓	✓	✓
Bomb Disposal Unit	✓	Collaboration	✓	Use Milwaukee & Kenosha Sheriffs	Use Milwaukee Sheriff & MPD
Business Office	✓	✓	✓	✓	✓
Canine Unit	✓	✓	✓	✓	✓
Central Records	✓	✓	Collaboration	✓	✓
Civil Process Service	✓	✓	✓	✓	✓
Communications	Collaboration	Collaboration	Collaboration	Collaboration	Collaboration
Community Relations	✓	✓	✓	✓	✓
Correctional Fac. (Jail)	✓	✓	✓	✓	✓
Correctional Fac. (HOC)	Not Applicable	Not Applicable	✓	Not Applicable	Not Applicable
Court Dispositions	✓	✓	✓	✓	✓
Court Liaison	✓	✓	No	✓	✓
Court Services	✓	✓	No-Court Provides Bailiffs	No-Court Provides Bailiffs	✓
Dive Unit	✓	✓	✓	Collaboration	✓
Electronic Monitoring Unit	✓	✓	No	✓	✓
Emerg. Management Br.	No	No	✓	No	No
Expressway Patrol	✓	✓	✓	✓	✓
Extraditions	Collaboration	Contracted Out	Contracted Out	Contracted Out	Contracted Out
General Investigations	✓	✓	✓	✓	✓
HIDTA Drug Enf. Unit (Collaboration)	✓	✓	✓	✓	✓
Information Tech. Unit	Collaboration	Collaboration	Collaboration	✓	✓
Inmate Food Service (Contracted Out)	Contracted Out to a Separate Govt. Dept.	Contracted Out	✓	Contracted Out	Contracted Out
Inmate Medical Services	Contracted Out	Contracted Out	Contracted Out	Contracted Out	Contracted Out
Inmate Mental Health Services	Contracted Out	Contracted Out	Contracted Out	Contracted Out	Contracted Out
Inmate Transportation (Contracted Out)	✓	✓	✓	✓	✓
Park Patrol/Targeted Enf.	✓	✓	✓	✓	✓
Patrol Boat	✓	✓	✓	✓	✓
Sheriff Forfeiture	✓	✓	✓	✓	✓
SWAT Unit	Collaboration	Collaboration	✓	✓	Collaboration
Training	✓	✓	✓	Collaboration	✓

Note: Milwaukee County is the only county in Wisconsin that is statutorily obligated to police the interstate expressway system within its borders.

Source: Data collected by the Audit Services Division

There is significant commonality of functions performed by, or administered by, the Milwaukee County Sheriff and the sheriffs in the five next most populous counties in Wisconsin.

As shown in **Table 4**, with the exceptions of emergency management coordinating services and operation of a county house of correction, there is significant commonality of functions performed by, or administered by, the Milwaukee County Sheriff and the sheriffs in the five next most populous counties in Wisconsin.

The Milwaukee County Ordinance Designating the Sheriff as the County's Emergency Management Director does not Comply with the Authorizing State Statute.

In researching the authority for the Office of the Sheriff to direct Emergency Management Services for Milwaukee County, we discovered a discrepancy between s. 99.02 of the Milwaukee County Ordinances and §323.14 of the Wisconsin State Statute addressing the function.

According to the Ordinance:

In accordance with ch. 166.03(4)(b), Wis. Stats., the county executive shall hereby designate the sheriff as the county emergency management director.

§166.03(4)(b), Wis. Stats, was re-numbered in 2009 as §323.14(1)(a)2, Wis. Stats. which states:

Each county board shall designate a head of emergency management. In counties having a county executive under s. 59.17, the county board shall designate the county executive or confirm his or her appointee as county head of emergency management.

Prior to 1998, the County Board had properly designated, by ordinance, the County Executive as the director of emergency management for Milwaukee County. However, the 1997 County Executive Recommended Budget included a proposal to merge the County Executive-Emergency Management Department into the Office of the Sheriff by creating a new division of Emergency Management under the purview of the Sheriff. The proposal also noted that the Sheriff would replace the County Executive as the designated County Emergency Government Director. That

proposal was implemented with the County Board's approval of the 1998 Adopted Budget. However, it appears the language used to revise s. 99.02 of the County Ordinance does not comply with the statutory directive that the County Board "...designate the County Executive or confirm his or her appointee as county head of emergency management."

As noted in the 1998 Adopted Budget, the transfer of responsibilities for Emergency Management was made to enhance cooperative efforts and to create new synergies in the delivery of Emergency Management services. These included centralizing fiscal and budget operations within the Office of the Sheriff, as well as physical relocation of Emergency Management to be adjacent to the new communications center within the Office of the Sheriff. The logic behind the 1998 transfer remains valid today.

To comply with Wisconsin State law, we recommend:

1. *The Milwaukee County Board of Supervisors amend s. 99.02 of the General Ordinances of Milwaukee County to comply with §323.14(1)(a)2, Wis. Stats.*
2. *The Milwaukee County Executive designate the Milwaukee County Sheriff as director of emergency management for Milwaukee County, subject to confirmation by the Milwaukee County Board of Supervisors.*

In the remaining sections of this report, we will present indicators of the efficiency with which the Milwaukee County Office of the Sheriff has provided major services, and review factors to consider in evaluating the optimal entity to provide such services in Milwaukee County.

Section 2: Data indicate the Milwaukee County Sheriff has maintained a consistent level of efficiency of operations under his control as staff resources have consistently declined during the past decade.

In 2002, the Department of Audit (predecessor of the Audit Services Division) issued a series of reports that reviewed the organizational structures of County departments most affected by a large number of anticipated retirements. The Milwaukee County Office of the Sheriff was included among those departments reviewed at that time. Data presented in the July 2002 management structure review of the Office of the Sheriff provides a basis from which to compare, in broad terms, the organizational structure and management to staff ratios reflected in the current organization.

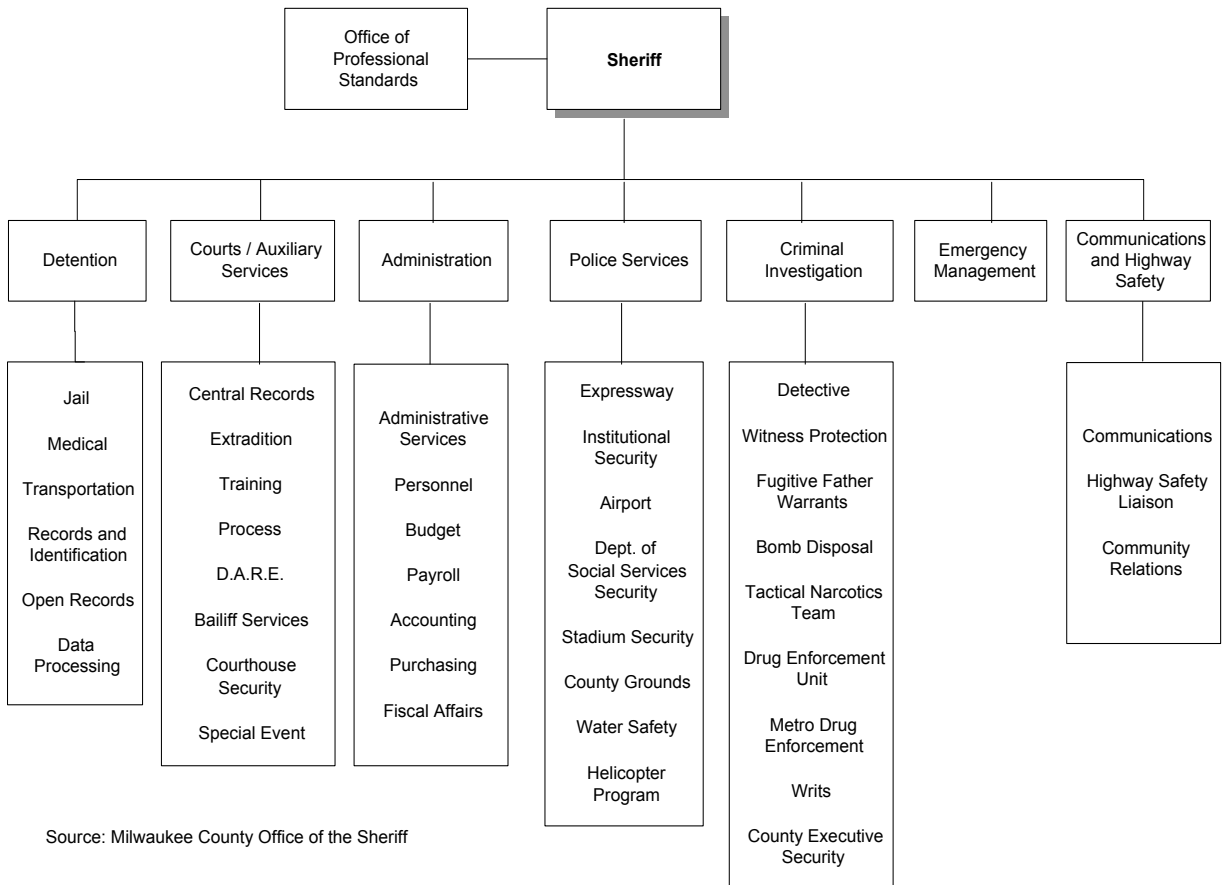
The organizational structure of the Office of the Sheriff has been streamlined while the overall management to staff ratio has remained essentially unchanged since 2002.

Acknowledging the assumption by the Sheriff of responsibility for operation of the House of Correction in 2009, little has changed in the number or type of functions performed by the Office of the Sheriff in 2012 compared to 2002. However, as shown in the following figures, the organizational structure of the office has been streamlined while the overall management to staff ratio has remained essentially unchanged.

As shown in **Figure 3**, the 2002 organizational structure of the Office of the Sheriff included seven bureaus. The 2012 Office of the Sheriff organizational structure, while very similar in functionality, reflects consolidation into three bureaus, as shown in **Figure 4**.

Figure 3

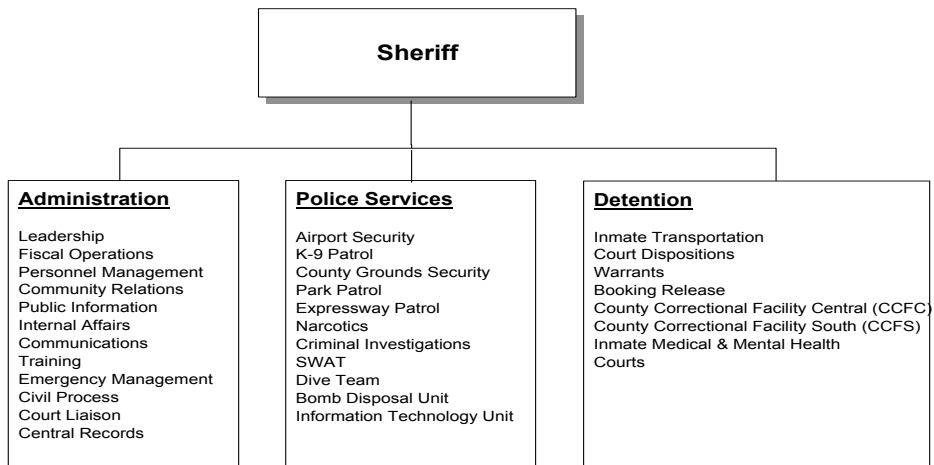
**Organizational Chart
2002 Sheriff's Department
(Office of the Sheriff)**



Source: Milwaukee County Office of the Sheriff

Figure 4

**Organizational Chart
2012 Office of the Sheriff**



Source: Milwaukee County 2012 Adopted Budget

Table 5 shows the percentage of total Office of the Sheriff staff comprising management positions in 2002 and 2012, respectively. The data show approximately the same percentage of management staff under both the 2002 (10.2%) and 2012 (10.0%) organizational structures. Those percentages reflect a management to staff ratio of approximately one management position for every nine line staff.

Table 5
Milwaukee County Office of the Sheriff
Management to Staff Ratios
2002 and 2012

2002					
<u>Division</u>	<u>Total Staff</u>	<u>Non-Mgmt. Staff</u>	<u>Mgmt. Staff</u>	<u>Percent Management</u>	<u>Management to Staff Ratio</u>
Admin. Services	132	111	21	15.9%	1 : 5.3
Police Services	215	186	29	13.5%	1 : 6.4
Detention	652	600	52	8.0%	1: 11.5
Total	999	897	102	10.2%	1 : 8.8
2012					
<u>Division</u>	<u>Total Staff</u>	<u>Non-Mgmt. Staff</u>	<u>Mgmt. Staff</u>	<u>Percent Management</u>	<u>Management to Staff Ratio</u>
Admin. Services	101	77	24	23.8%	1 : 3.2
Police Services	184	167	17	9.2%	1 : 9.8
Detention	790	723	67	8.5%	1.10.8
Total	1075	967	108	10.0%	1 : 9.0

Note: 2012 data reflects transfer of management responsibility for the former House of Correction to the Office of the Sheriff in 2009. In 2002, the HOC was a stand-alone department; HOC staffing level data is not included in the 2002 figures in this table.

Source: Milwaukee County payroll records.

We selected two major functional areas of the Office of the Sheriff for a more detailed examination of efficiency indicators. During 2012, staff hours charged to Detention and Expressway Patrol activities accounted for approximately 57.5% of total Office of the Sheriff workload.

During the period 2008 through 2012, the average staff hours per inmate day has remained stable, with significant reductions in both staffing levels and total average daily inmate census.

The average daily inmate census for the County system of incarceration has decreased steadily in recent years.

As shown in **Table 6**, the average daily inmate census for the County system of incarceration has decreased steadily in recent years, from a total of 3,243 in 2008 to 2,484 in 2012, a reduction of 23.4%. This total figure reflects a reduction in average daily census of 9.9% at the CCF-C (County Jail) and a reduction of 28.6% at the CCF-S (House of Correction). Comparing those same two years, the average number of Full Time Equivalent positions staffing an eight-hour shift system-wide decreased from 261.4 in 2008 to 205.2 in 2012, a nearly identical decline of 21.5%. This overall staffing reduction reflects a 10.4% reduction at the CCF-C and a 30.9% reduction at the CCF-S.

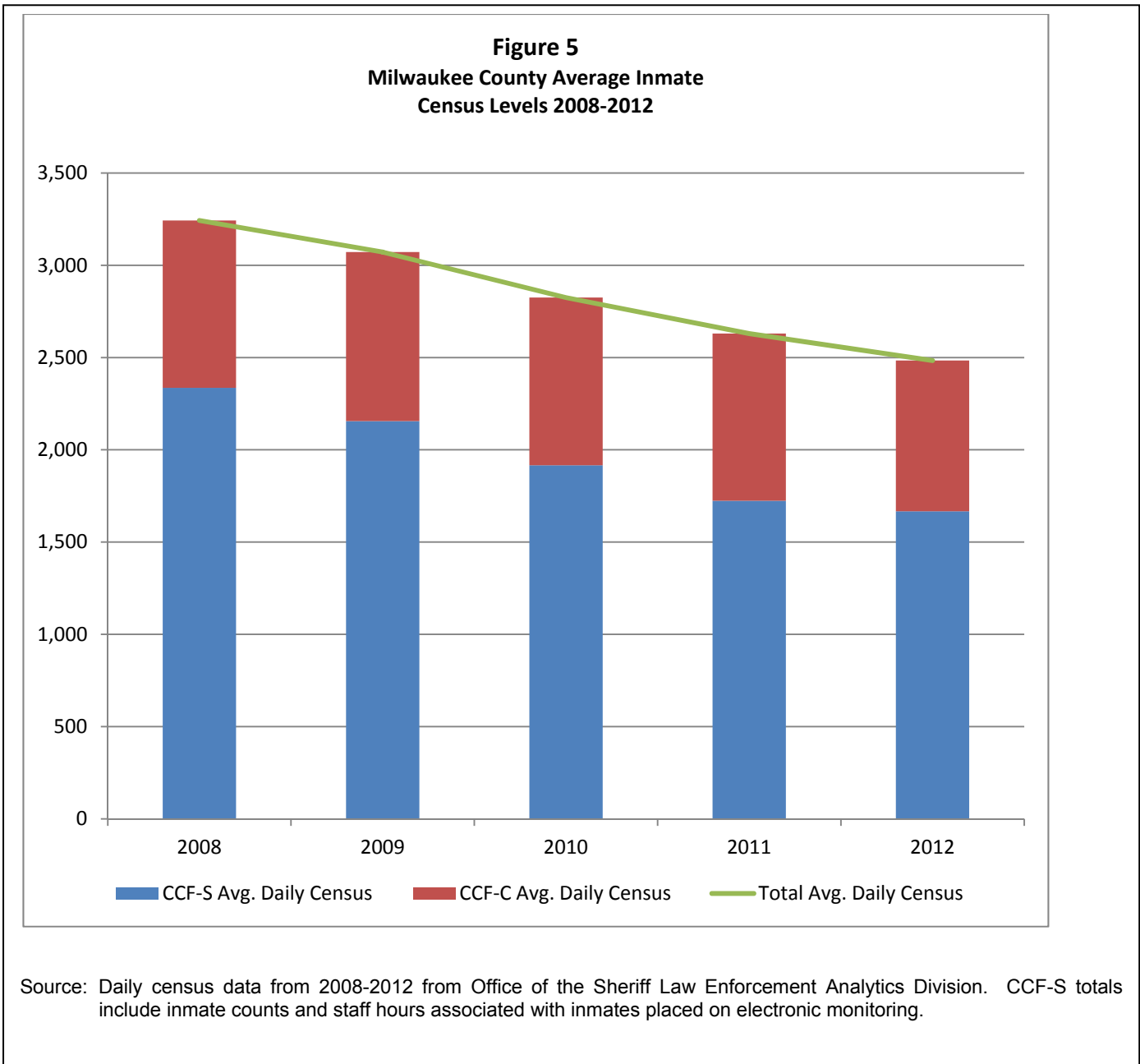
**Table 6
Office of the Sheriff
Detention Statistics
2008—2012**

	<u>Total Inmate Days</u>	<u>Average Daily Inmate Census</u>	<u>Total Staff Hrs. Including OT</u>	<u>Avg. Staff Hrs. Per Inmate Day</u>	<u>Average FTE Per Shift</u>	<u>OT as % of Total Hours</u>
2008						
CCF-C	331,896	907	627,942	1.9	119.6	4.7%
CCF-S	855,017	2,336	744,217	0.9	141.8	17.4%
2008 Total	1,186,913	3,243	1,372,159	1.2	261.4	11.6%
2009						
CCF-C	334,284	916	663,822	2.0	126.4	5.0%
CCF-S	786,853	2,156	617,517	0.8	117.6	8.4%
2009 Total	1,121,137	3,072	1,281,339	1.1	244.1	6.6%
2010						
CCF-C	331,723	909	656,953	2.0	125.1	6.0%
CCF-S	699,325	1,916	617,517	0.9	117.6	4.1%
2010 Total	1,031,048	2,825	1,274,470	1.2	242.8	5.2%
2011						
CCF-C	330,822	906	653,966	2.0	124.6	8.4%
CCF-S	629,333	1,724	493,375	0.8	94.0	7.1%
2011 Total	960,155	2,630	1,147,341	1.2	218.5	7.9%
2012						
CCF-C	299,014	817	562,895	1.9	107.2	11.5%
CCF-S	610,280	1,667	514,406	0.8	98.0	13.9%
2012 Total	909,294	2,484	1,077,301	1.2	205.2	12.7%
% Change 2008-2012						
CCF-C	-9.9%	-9.9%	-10.4%	-0.5%	-10.4%	142.5%
CCF-S	-28.6%	-28.6%	-30.9%	-3.2%	-30.9%	-19.9%
Total	-23.4%	-23.4%	-21.5%	2.5%	-21.5%	9.1%

Note: In 2002, the former House of Correction was a stand-alone department. In 2009, management responsibility for the HOC, including 486 Full Time Equivalent positions, was transferred to the Office of the Sheriff..

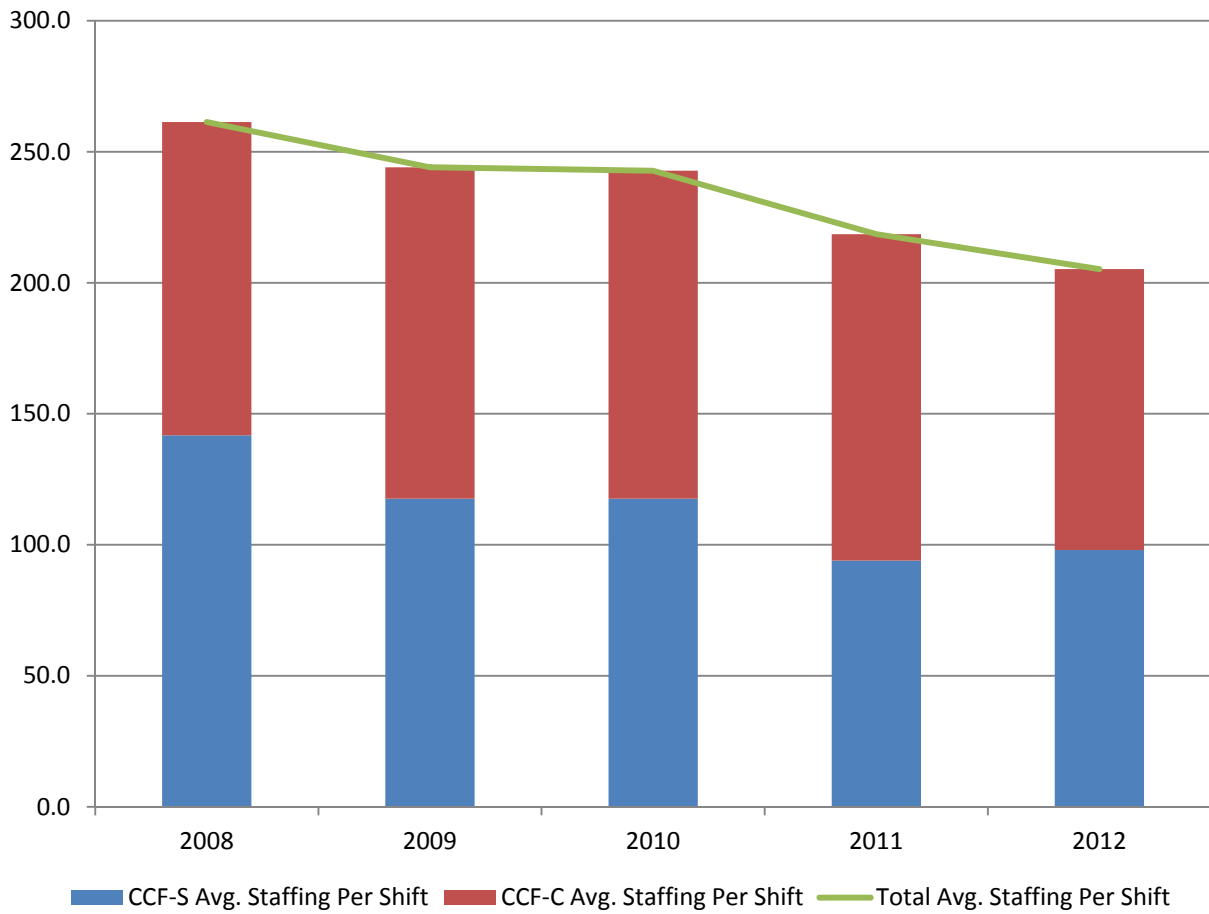
Source: Daily census data from 2008-2012 from Office of the Sheriff Law Enforcement Analytics Division. CCF-S totals include inmate counts and staff hours associated with inmates placed on electronic monitoring. Staffing information from Milwaukee County job costing fiscal report data.

The steady year-by-year decline in both average daily inmate census is more readily apparent by viewing the information in graphic form, as shown in **Figure 5**.



A similarly steady year-by-year decline in average staffing levels is shown in **Figure 6**.

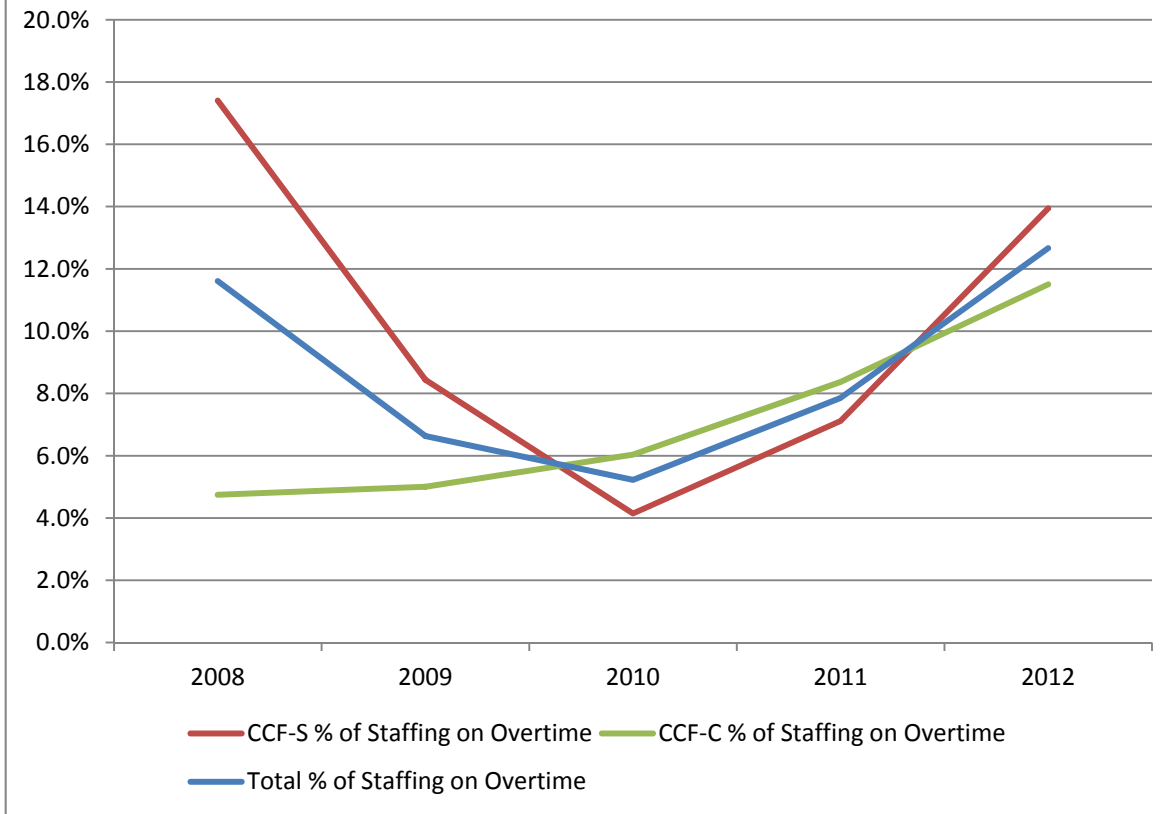
Figure 6
Milwaukee County Average
Detention Staffing Levels 2008-2012



Source: Staffing information from Milwaukee County job costing fiscal report data.

Indicators of the Office of the Sheriff's reliance on overtime to staff the CCF-C and CCF-S during the same period does not show the same steady decline as the average census and staffing levels at the two facilities. The percentage of total staff time logged as overtime is detailed in **Table 6** and presented graphically in **Figure 7**.

Figure 7
Milwaukee County Office of the Sheriff
Percentage of Incarceration
Staffing Levels on Overtime 2008-2012



Source: Milwaukee County job costing fiscal report data.

The trends depicted in **Figure 7** reflect several conditions:

- There was significant reduction in the percentage of staff time logged as overtime at the CCF-S from 2008 (17.4%) to 2010 (4.1%). This coincides with the transfer of operational responsibility for the former House of Correction from a stand-alone department to the Office of the Sheriff in 2009.
- Once operations of both the CCF-C and CCF-S were under the management control of the Office of the Sheriff, a more coordinated approach to staff deployment was reflected. The Sheriff gained additional flexibility in transferring jailer staff among the two facilities over time due to a 2005 initiative that began replacing Deputy

Sheriff 1 positions at the CCF-C with Correctional Officer 1 positions through attrition. Previously, only Deputy Sheriffs staffed the CCF-C. Thus, while the percentage of staff time logged as overtime rose somewhat at the CCF-C during the period 2008-2010 (4.7% to 6.0%), overtime as a percentage of staffing system-wide declined sharply (11.6% to 5.2%).

The system-wide trend of a decreasing reliance on overtime as a percentage of total staff hours was reversed in 2011 and continued increasing in 2012.

- The system-wide trend of a decreasing reliance on overtime as a percentage of total staff hours was reversed in 2011 and continued increasing in 2012. From its low point of 5.2% in 2010, overtime as a percentage of total staff time system-wide increased to 7.9% in 2011 and to 12.7% in 2012. This may be, in part, due to continued reductions in staffing levels within the Office of the Sheriff (see **Figure 2** on page 11 of this report). However, increased reliance on overtime is not necessarily a negative indicator of efficiency or an indication that staff reductions have been excessive. For example, paying a number of employees a premium for overtime, typically one and one-half times their standard hourly wage, can be less costly than adding an additional position with a full array of fringe benefit costs (e.g., vacation, health insurance, pension, etc.). Except for applicable payroll taxes, additional overtime does not incur additional fringe benefit costs.

Recent history at the CCF-S (prior to the 2009 management transfer to the Office of the Sheriff) clearly illustrates, however, that too heavy a reliance on overtime can have adverse fiscal and operational impacts.

Too heavy a reliance on overtime can have adverse fiscal and operational impacts.

As noted in *An Audit of the Milwaukee County House of Correction Correctional Officer Staffing (March 2008)*:

At its meeting on September 27, 2007 the Milwaukee County Board of Supervisors passed a resolution [File No. 07-368] directing the Department of Audit (predecessor of the Audit Services Division) to review hiring practices and the application of County employment policies at the House of Correction (HOC). As noted in the resolution, members of the Personnel Committee "...expressed deep concern regarding the demands placed on staff at the HOC, noting that unless vacancies were filled and the number of available Corrections Officers was increased, the

institution was at considerable risk for a major disruption....”

The circumstances that prompted passage of the resolution directing the commencement of this audit included testimony and reports before the Personnel Committee, as well as coverage in the local media, that detailed highly stressful working conditions for Correctional Officers at the House of Correction. Chief among the problems cited was staff members’ inability to obtain relief from working mandatory double shifts and long stretches of consecutive days without time off. Management reported high rates of absenteeism due to Family Medical Leave and position vacancies due to turnover and slow recruitment processes as reasons for the forced overtime situation.

During that audit, we found that total hours worked on a regular straight time basis had decreased 13.0% in 2007 compared to 2003, while total overtime hours had skyrocketed by 206.7%. We estimated there was a shortage of approximately 40 FTE positions resulting from management errors related to staffing more posts than were budgeted and using outdated information for calculating post relief factors. In the audit, we concluded that the data reflected a ‘vicious cycle’ of existing staff working a greater proportion of their workload on an involuntary overtime basis, increasing stress levels and leading to a greater reliance on unconventional means of obtaining time off (e.g., Family Medical Leave).

At about the same time, an independent corrections consultant with the National Institute of Corrections reviewed operations at the House of Correction and identified a number of serious security and management concerns. The consultant recommended that “...county decision makers should thoughtfully analyze the possibility of combining CJF (County Correctional Facility-Central) and HOC as a single jail organization, either as part of the Sheriff’s Office or as a County Department of Corrections.” In the 2009 Adopted Budget,

responsibility for operation of the House of Correction was transferred to the Office of the Sheriff. A follow-up report by the same consultant in December 2009 noted a vast improvement in the security and discipline of operations at the facility under the Office of the Sheriff. According to the report:

The positive and comprehensive transformation of that facility in less than a year's time is nothing short of miraculous. That is not hyperbole but is the carefully considered conclusion of the author based on over thirty years of observing and studying changes in correctional facilities.

Reliance on overtime for staffing levels at the CCF-S in 2012 was 13.9%, its highest level since the problematic staffing patterns exhibited in 2008.

The data in **Table 6** show that reliance on overtime for staffing levels at the CCF-S in 2012 was 13.9%, its highest level since the problematic staffing patterns exhibited in 2008. The Sheriff has publicly expressed concerns with the quality of recent Correctional Officer 1 hires and in September 2012 began the process of calling back laid-off Deputy Sheriffs to bolster staffing levels at the CCF-C. As previously noted, the Sheriff has challenged the legal authority of the County Board to return management control of the CCF-S to a Superintendent of the House of Correction, operating as a stand-alone department that reports to the County Executive effective April 1, 2013. The County Board has delayed implementation of the transfer until resolution of that court case. Regardless of who manages the facility, it is critically important to actively monitor staffing patterns and behaviors at the CCF-S to avoid a repeat of the County's 2007/2008 experience.

During the period 2008 through 2012, data show the Office of the Sheriff's Expressway Patrol has maintained a consistent staffing level with stable response times.

As shown in **Table 7**, staff hours logged for the Expressway Patrol unit has remained very stable during the five-year period 2008–2012, although there was a greater reliance on overtime to maintain that level of road presence.

Table 7
Milwaukee County Office of the Sheriff
Expressway Patrol Unit Staffing Data
2008—2012

<u>Year</u>	<u>Staff Hours</u>	<u>FTE</u>	<u>% OT</u>
2008	113,629	64.9	8.4%
2009	110,900	63.4	11.5%
2010	110,752	63.3	12.7%
2011	111,769	63.9	13.7%
2012	111,595	63.8	13.3%

Source: Milwaukee County job costing fiscal report data.

The Expressway Patrol unit maintained generally stable average and median response times for a variety of categories of incidents during the period 2008 through 2012.

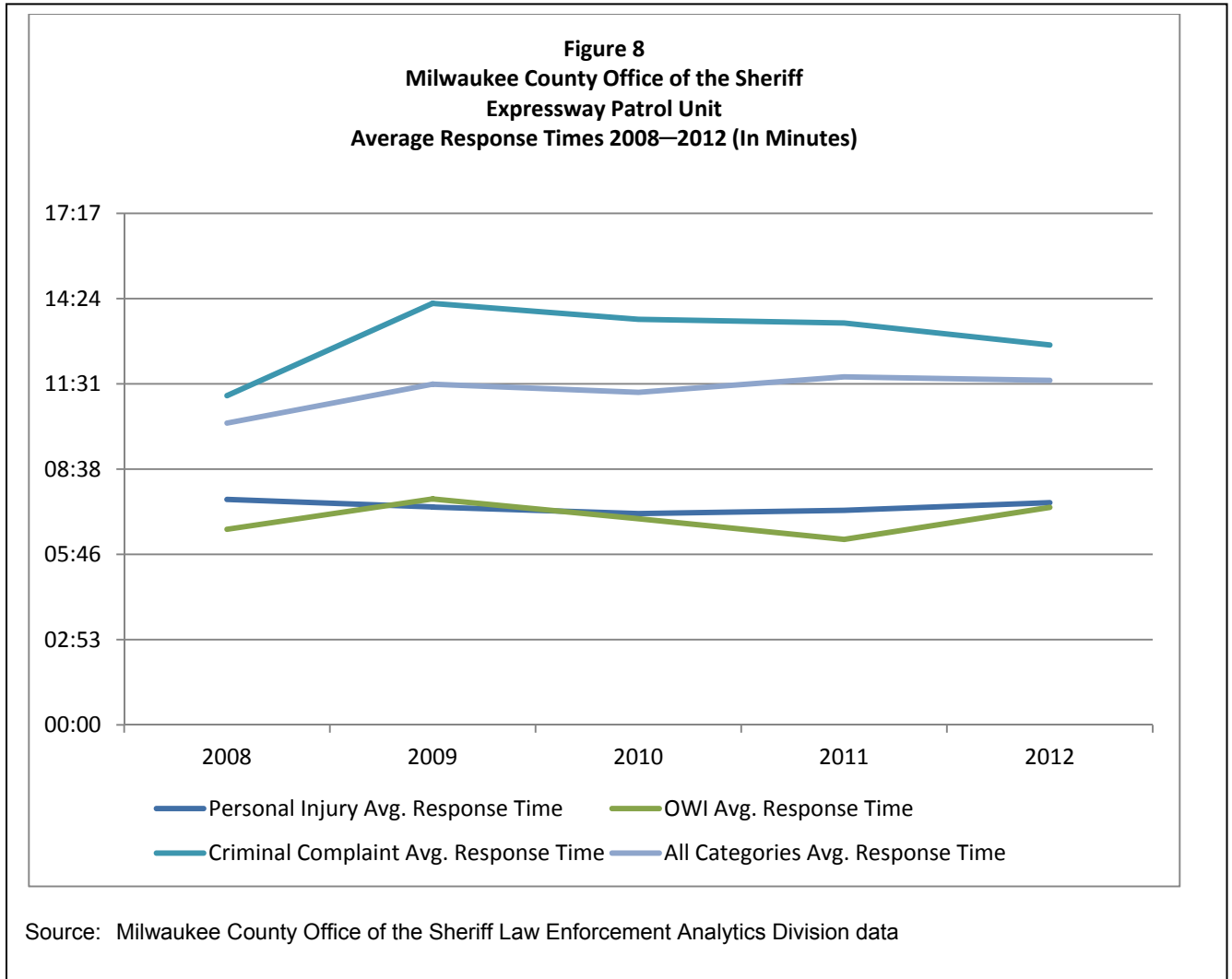
Table 8 shows the Expressway Patrol unit maintained generally stable average and median response times for a variety of categories of incidents during the period 2008 through 2012. The average response time is calculated by totaling all response time and dividing by the number of incidents. The median figure indicates the mid-point of all response times in a category. That is, half of all response times were greater than, and half of all response times were less than, the median response time.

Table 8
Milwaukee County Office of the Sheriff
Expressway Patrol Unit Response Times (In Minutes)
2008—2012

	2008			2009			2010			2011			2012		
	<u>Total</u>	<u>Mean</u>	<u>Median</u>	<u>Total</u>	<u>Mean</u>	<u>Median</u>	<u>Total</u>	<u>Mean</u>	<u>Median</u>	<u>Total</u>	<u>Mean</u>	<u>Median</u>	<u>Total</u>	<u>Mean</u>	<u>Median</u>
All Categories	17,771	10:12	07:50	15,520	11:31	07:40	17,030	11:14	07:32	16,876	11:45	07:27	15,446	11:38	07:28
Accidents:															
Fatal	2	11:07	08:25	4	06:08	06:05	7	07:23	06:36	4	04:18	04:15	2	01:25	01:25
Personal Inj.	793	07:37	06:17	646	07:21	06:14	750	07:08	05:57	731	07:15	06:18	668	07:30	06:32
OWI	145	06:36	05:35	150	07:38	06:24	154	06:58	05:50	135	06:16	05:06	145	07:21	05:17
Property Dmg.	3,537	09:57	07:29	3,033	10:05	07:59	3,361	09:57	07:51	3,380	09:37	07:30	3,082	10:31	07:39
Disturbances	403	07:26	04:46	425	08:24	05:39	509	07:35	05:34	535	08:08	05:18	428	06:34	04:09
Rpt. Debris	966	07:25	06:30	802	07:07	06:14	1,116	07:33	05:34	1,067	07:39	06:47			
Complaints:															
Criminal	544	11:07	07:41	367	14:14	08:53	260	13:42	08:52	274	13:35	10:01	203	12:50	07:38
Non-Criminal	295	10:12	07:50	220	11:33	08:05	236	11:36	09:28	261	12:52	09:06	222	09:42	07:11

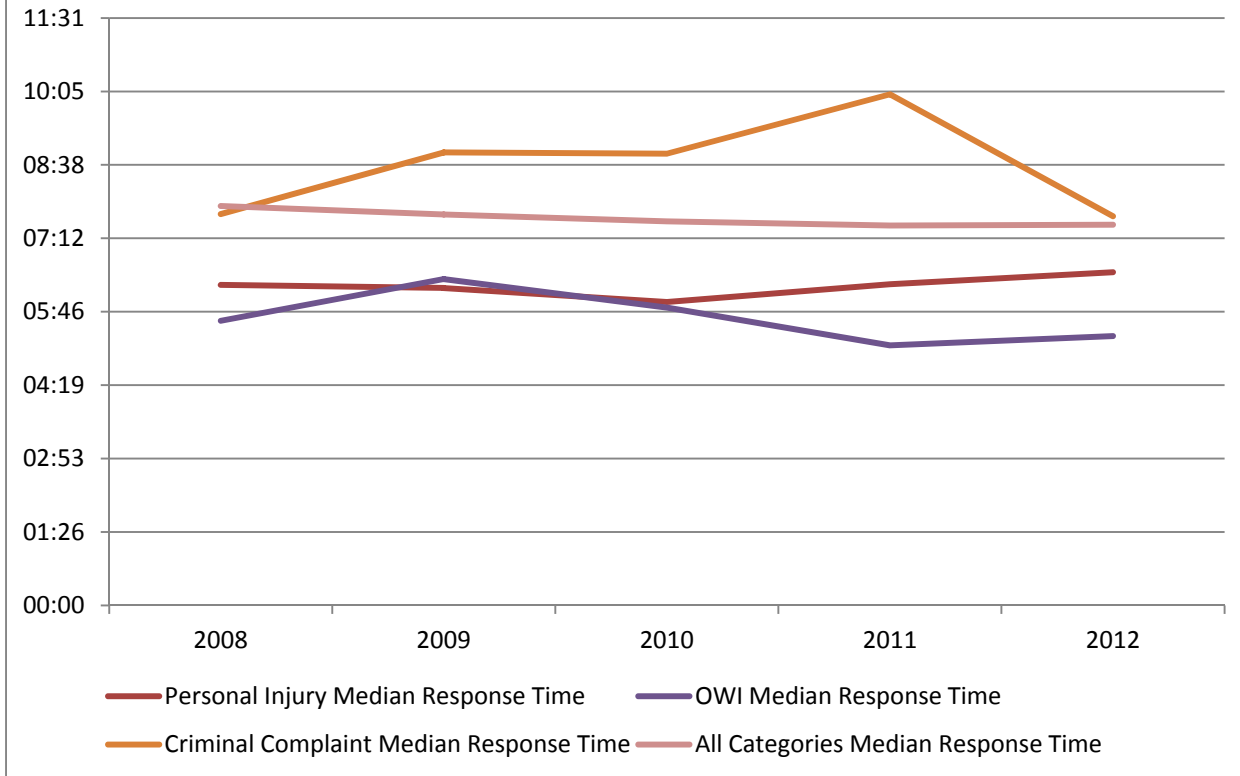
Source: Milwaukee County Office of the Sheriff Law Enforcement Analytics Division data.

The average and median response time trends for selected categories of incidents shown in **Table 8** are presented graphically in **Figures 8** and **9**, respectively.



While the data presented in aggregate does not distinguish the variety of circumstances that affect response times, such as weather conditions, traffic volume, seasonality, etc., a general decline in Expressway Patrol unit efficiency would be reflected in an upward trend in response times. No such general trend is apparent in the 2008–2012 data.

**Figure 9
Milwaukee County Office of the Sheriff
Expressway Patrol Unit
Median Response Times 2008–2012 (In Minutes)**



Source: Milwaukee County Office of the Sheriff Law Enforcement Analytics Division data

Milwaukee County is alone among Wisconsin counties in its statutory obligation to police the interstate expressway system within its boundaries. According to §59.84(10)(b), Wis. Stats:

59.84 Expressways and mass transit facilities in populous counties.

(10) MAINTENANCE AND OPERATION

...(b) *Policing of expressways.* Expressways shall be policed by the sheriff who may, when necessary, request and shall receive cooperation and assistance from the police departments of each municipality in which expressways are located, but nothing in this paragraph shall be construed to deprive such police departments of the power of exercising law enforcement on such expressways within their respective jurisdictions.

For 2013, the County has budgeted approximately \$3.5 million of tax levy support for the Expressway Patrol unit.

In all other Wisconsin counties in which an interstate highway is located, the Wisconsin State Patrol assumes primary law enforcement responsibility. While the State provides some additional transportation aid to Milwaukee County for expressway patrol purposes, such funding has historically been inadequate to cover Milwaukee County's operational costs. In *An Audit of the Sheriff's Office Expressway Patrol Unit (January 2006)*, we noted that 2004 Milwaukee County tax levy support for the unit exceeded \$800,000. At that time, we recommended the County request additional State funding sufficient to eliminate local tax levy support for expressway patrol in Milwaukee County. For 2013, the County has budgeted approximately \$3.5 million of tax levy support for the unit, or about \$2.3 million if approximately \$1.2 million in legacy fringe benefit costs not directly related to current service is excluded.

The Office of the Sheriff has assembled a comprehensive database of statistical data to identify and predict trends that can assist management in making staff deployment and performance evaluation decisions.

According to the University of Maryland's Institute for Governmental Service and Research (IGSR), CompStat (comparative statistics) is a data-driven management model, initially introduced in 1994 by the New York City Police Department. The model has been credited with decreasing crime in New York City. IGSR, which leads an initiative to implement and institutionalize CompStat in the state of Maryland, notes that across the nation CompStat has become a widely embraced management model focused on crime reduction. Key principals of the model include:

- Accurate and timely intelligence. Crime intelligence relies on data primarily from official sources, such as calls for service, crime, and arrest data. This data is used to produce crime maps, trends, and other information to identify crime problems to be addressed.

In June 2012 the Office of the Sheriff began transitioning from its previous CompStat software to a new web-based information system referred to as ARMED.

- Effective tactics. Relying on past successes and appropriate resources, command staff and officers plan tactics that will respond fully to the identified problem. A CompStat meeting provides a collective process for developing tactics as well as accountability for developing these tactics.
- Rapid deployment. Contrary to the reactive policing model, the CompStat model strives to deploy resources to where there is a crime problem now, as a means of heading off the problem before it continues or escalates.
- Follow-up and assessment. CompStat meetings provide a forum for evaluating current and past strategies in addressing identified problems. Problem-focused strategies are normally judged a success by a reduction in or absence of the initial crime problem. This review process provides knowledge of how to improve current and future planning and deployment of resources.

In June 2012 the Office of the Sheriff began transitioning from its previous CompStat software to a new web-based information system referred to as ARMED, short for:

- **Analyze Data.**
- **Review Findings.**
- **Mobilize Resources.**
- **Evaluate Performance.**
- **Document Results.**

According to a command staff member, while the CompStat analytics model is retained, ARMED provides superior accuracy and efficiency because it pulls information directly from various databases used by the Office of the Sheriff in virtual real time, whereas the previous system required manual inputs from officers. Data sources accessed by ARMED include, among others:

- Ceridian for County personnel and payroll information.
- Phoenix CAD (Computer Aided Dispatch) and Motorola, systems used by the Communications Center for dispatch.
- Criminal Justice Information System (CJIS), used to access an array of criminal, court and inmate tracking records.
- State Motor Vehicle data.

Four of the five county sheriff departments we examined in detail produce annual reports.

Annual Reports

Data available and tracked by the Office of the Sheriff Law Enforcement Analytics Division include, among other items, numerous statistics used by other Wisconsin sheriff's departments to generate annual reports of selected performance indicators for public consumption. Among the five county sheriff departments we examined in detail (Brown, Dane, Kenosha, Racine and Waukesha counties), all but the Brown County Sheriff's Department produce annual reports.

The 2012 Adopted Budget contained the following directive:

Annual Report

The Office of the Sheriff will create and distribute an Annual Report for calendar year 2011, similar to that produced by the Dane County Sheriff and other Sheriffs nationwide. The report shall itemize accomplishments, work statistics, expenditures and revenues for the major discretionary and mandated programs, staffing levels, organizational charts, and other important information. The report shall be made available on the Sheriff's website and shall be presented to the Committee on Judiciary, Safety and General Services by the June 2012 cycle.

To date, the Office of the Sheriff has declined to produce such a report. The Wisconsin Supreme Court stated in *Andreski v. Industrial Commission*, 261 Wis. 234 52 N.W. 2nd 135 (1952):

Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county, though he may be removed by the Governor for cause. No other county official supervises his work or can they require a report or an accounting from him concerning his performance of his duty. [Emphasis added.]

Table 9 lists the most commonly reported statistics and performance indicators contained in the annual reports produced by the Wisconsin sheriff's departments in Dane, Kenosha,

Racine and Waukesha counties. The table also includes a column indicating whether or not the Milwaukee County Office of the Sheriff tracks similar categories of statistics and performance indicators.

Table 9
Comparison of Performance Indicators Commonly Published
In County Sheriff Department Annual Reports and
Those Tracked by the Milwaukee County Office of the Sheriff

Performance Indicator	-----Data is Published in Annual Report-----				Data is Tracked
	Dane County	Kenosha County	Racine County	Waukesha County	Milwaukee County
No. of Calls for Service	✓	✓	✓	✓	✓
No. of Civil Processes Served	✓	✓		✓	✓
No. of Bookings into the Jail	✓		✓	✓	✓
Average Daily Population in Jail	✓		✓	✓	✓
No. and Type of Traffic Citations	✓	✓	✓	✓	✓
No. of Search Warrants Executed	✓	✓	✓	✓	✓
No. of Arrests (Drug)	✓	✓	✓	✓	✓
No. and Type of Charges (Drug)	✓		✓	✓	✓
No. of Arrests (Patrol)		✓	✓	✓	✓
No. of Traffic Fatalities			✓	✓	✓
No. of County Ordinance Citations		✓	✓	✓	✓

Sources: County Sheriff annual reports and the Milwaukee County Office of the Sheriff ARMED information system.

As shown in **Table 9**, the ARMED information system utilized by the Office of the Sheriff provides the capability to produce the statistical information commonly contained in the annual reports reviewed. Benefits of producing an annual report include:

- Public transparency and the resulting public accountability for performance; and
- Readily accessible information for public and policymaker consumption.

Arguments against the production of annual reports include:

- Administrative effort and cost is incurred summarizing and presenting data that is already continuously monitored for internal purposes; and
- Depending on the form and distribution of the final product, an annual report generated internally by the Office of the Sheriff could be used or viewed as a mechanism to benefit an elected Sheriff's political career.

Whether or not the Office of the Sheriff chooses to produce an annual report, many of the components of such a report could be included in the annual Milwaukee County budget. Whereas the County Sheriff cannot be compelled to produce a report regarding the performance of his or her duty, the Sheriff must comply, barring specific statutory or court prohibitions, with requests for information generated from publicly funded and operated data systems. For instance, the 2013 Milwaukee County Adopted Budget contains some basic statistical and performance measurement data generated by the Office of the Sheriff, such as traffic citations issued, expenditures per inmate day, criminal complaints issued, service hours worked by function, as well as others.

Section 3: Relevant personnel cost structures and national trends suggest future collaborations should explore consolidation at the County level rather than fragmentation among municipal police departments.

In his 2013 recommended budget, the Milwaukee County Executive proposed a Memorandum of Understanding (MOU) between the City of Milwaukee and Milwaukee County for the Milwaukee Police Department to provide park patrol and cellular 911 response services within the City of Milwaukee. The proposal included the elimination of the Office of the Sheriff's Park Patrol/Tactical Enforcement Unit (a reduction of 35 Full Time Equivalent positions, including overtime); a reduction of approximately seven FTE in the Communications Unit, and annual payments to the City of Milwaukee and suburban municipalities (\$1.66 million and \$125,000, respectively, in 2013). The Office of the Comptroller estimated the savings attributable to the County Executive's proposal to be approximately \$1.5 million compared to 2012 budget appropriations.

The County Board rejected the transfer of park patrol responsibilities from the Office of the Sheriff to the Milwaukee Police Department.

The County Board rejected the transfer of park patrol responsibilities from the Office of the Sheriff to the Milwaukee Police Department, but approved an MOU for transfer of the cellular 911 response services for calls generated within the City of Milwaukee. Comments during the County Board's Finance, Personnel and Audit Committee budget hearing at which the County Executive's proposal was discussed suggest that the potential loss of responsiveness to County concerns was a major factor in the rejection of the park patrol portion of the proposal.

Earlier in the year, the County Executive informally suggested the possibility of outsourcing security/law enforcement for General Mitchell International Airport to the Milwaukee Police

Department. Such an arrangement would be a departure from the longstanding practice of the County airport, which capital and operating costs are fully paid by commercial airlines and passenger surcharges, contracting with the Office of the Sheriff for security and law enforcement.

The County Executive's proposals follow a comprehensive report, issued in January 2010 by the Public Policy Forum, which analyzes the viability of downsizing or eliminating Milwaukee County government in light of the County's significant fiscal and programmatic pressures. The Public Policy Forum, an independent non-partisan research organization, was commissioned by the Greater Milwaukee Committee, a private sector civic organization, to conduct the analysis.

An analysis by the Public Policy Forum focused on transferring functions or operational control of functions from the Office of the Sheriff to the State of Wisconsin or to other jurisdictions.

The report, *Should It Stay or Should It Go*, included an overview of the County's structural deficit – defined as the gap between expenditure needs and anticipated revenues – at the time, with particular concern identified for the mounting costs of employee fringe benefits. The report section on the Office of the Sheriff did not make specific recommendations but discussed both pros and cons associated with the elimination or reduction of various Office of the Sheriff activities. In its analysis, the Public Policy Forum focused on transferring functions or operational control of functions from the Office of the Sheriff to the State of Wisconsin or to other jurisdictions.

The premise underlying each of these calls for reducing or replacing various services performed by the Office of the Sheriff is that the services duplicate those provided by other entities, and/or that they could be performed at lower cost by others. Our review of services provided by the Office of the Sheriff and municipal police departments within Milwaukee County confirms there are a number of commonalities in services. This suggests that opportunities exist for potential collaboration and/or

consolidation of services between the entities. However, in the absence of demonstrably enhanced efficiency gains, relevant personnel cost structures and national trends suggest future collaborations should explore consolidation at the County level rather than fragmentation among municipal police departments.

Milwaukee County legacy costs are legal obligations that must be met, but they are not relevant costs that should be considered in evaluating proposals to reduce or eliminate Office of the Sheriff functions.

Any cost that is fixed—that is, a cost associated with performing a service remains whether or not the service is reduced or eliminated—should not be considered in making a decision to reduce or eliminate the service.

The concept of fixed versus variable costs is a key factor in calculating the potential cost savings associated with any proposed elimination, reduction or replacement of functions currently performed by the Office of the Sheriff. Any cost that is fixed—that is, a cost associated with performing a service remains whether or not the service is reduced or eliminated—should not be considered in making a decision to reduce or eliminate the service.

For instance, if an individual leases a motor vehicle for a base rate of \$200 per month plus 15 cents per mile, the base rate of \$200 per month is a fixed cost, remaining constant during the effective period of the lease, while the 15 cents per mile is a variable cost that increases or decreases with the actual mileage incurred. In this example, if the individual leasing the car wishes to calculate the potential savings associated with riding the bus to work each day, he or she would compare the added cost of bus tickets against savings that would result from the reduced mileage placed on the vehicle, at a value of 15 cents per mile. If the individual paid a daily parking fee at an unreserved lot, he or she would also calculate the savings from reduced parking fees on the days a bus ride is substituted for driving the car to work. In this example, a cost that would not be considered is the fixed cost of the \$200 per month base lease rate. This is because the

individual will incur the \$200 fee whether he or she drives the car to work everyday, or if a bus ride is substituted every work day.

This fixed versus variable cost concept is particularly relevant in evaluating proposals regarding the replacement of services provided by Milwaukee County Deputy Sheriffs with municipal police officers. This is because the Office of the Sheriff carries two significant fringe benefit costs within its annual budgets that are truly fixed costs that must be set aside in making service level decisions. Those costs are health care and unfunded pension costs for retirees, known as 'legacy' health care and 'legacy' pension costs.

In its report *Should It Stay or Should It Go*, the Public Policy Forum identified a total of \$23.3 million in combined Office of the Sheriff and House of Correction expenditures in 2008 that:

“...were not directly connected to the cost of providing or administering law enforcement and corrections services, but instead were county legacy costs distributed to the department by the central budget office. This tells us that if a different entity had provided the same services, secured administrative overhead at the same price, and paid the same wages and benefits to its active employees in 2008, it potentially could have provided law enforcement and corrections services for \$23.3 million less if it was not responsible for the sheriff's share of the county's legacy costs.”

While that statement is true, it does not follow that taxpayers would have saved \$23.3 million had a different entity provided the law enforcement and correctional services. This is because, just as the \$200 base monthly payment in the car lease example previously described was a fixed cost, the \$23.3 million legacy cost obligation is a fixed cost for Milwaukee County. Specifically, the \$23.3 million legacy cost would remain with Milwaukee County (or the entity responsible for the County's legal

obligations should it be eliminated) even if the State of Wisconsin or several municipal police departments took responsibility for all of the Office of the Sheriff's functions.

Milwaukee County legacy costs are real obligations that must be paid by the taxpaying public.

Milwaukee County legacy costs are real obligations that must be paid by the taxpaying public. However, in making policy decisions going forward, only relevant cost factors should be considered. For instance, paid lifetime health benefits were eliminated for Milwaukee County deputy sheriffs hired after June 30, 1995. As of August 2012, 155 of 275 active deputy sheriffs were eligible for the benefit. A deputy sheriff hired today would not add or subtract from the cost associated with the lifetime health benefit retained by the 155 deputy sheriffs. Further, since the lifetime health benefit is a vested retirement benefit after 15 years of service, each of the 155 eligible deputy sheriffs employed as of August 2012 has already achieved the minimum number of service years required for that benefit. Thus, elimination of those positions would not affect the costs associated with those benefits. (Instead, the County has had some success in limiting legacy costs through benefit design modifications and financing techniques.)

Relevant personnel cost structures show that effective hourly compensation costs for Milwaukee County deputy sheriffs in 2012 were lower than those for police officers in the three largest Milwaukee County municipalities.

With the understanding that legacy costs should not be considered in evaluating proposed service delivery models for Office of the Sheriff functions, the primary category of variable costs is the personnel used for the services. For most government law enforcement agencies, personnel costs account for up to 90% of operating costs. We reviewed 2012 budget data for 17 of the 19 municipal police departments in Milwaukee County and for the group as a whole, personnel costs averaged 92.6% of operating costs.

For the 19 municipal police departments in Milwaukee County, personnel costs averaged 92.6% of operating costs.

We compared major components of 2012 personnel cost structures of the three largest municipal police departments in Milwaukee County with those of the Office of the Sheriff.

We compared major components of 2012 personnel cost structures of the three largest municipal police departments in Milwaukee County with those of the Office of the Sheriff. The police departments of the Cities of Milwaukee, West Allis and Wauwatosa serve a combined population totaling approximately 75% of the citizens of Milwaukee County. The following cost components and adjustments were included in our comparison:

- Base hourly wage rates.
- Principal fringe benefit items
 - Health care costs (net of employee premium contributions). City of Wauwatosa and City of West Allis health care costs include some retiree claims costs (for 'bridge' coverage ending at age 65) imbedded in their rates but are included because new hires remain eligible to receive those benefits and thus add to their costs. The City of Milwaukee also provides bridge coverage benefits for retired police officers but those costs are not imbedded in the rates used. Consequently, City of Milwaukee health care costs are somewhat understated. Milwaukee County does not provide bridge coverage to deputy sheriffs.
 - Pension normal costs (net of employee contributions). Normal costs are actuarially-determined costs of pension benefits earned by current employees for the current year. Due to different provisions for duty-related disabilities, duty disability costs are excluded from the municipal comparison group figures but included in the Milwaukee County rates.
- Employer share of Federal Insurance Contributions Act (Social Security) & Medicare Taxes. FICA taxes are not applied to City of Milwaukee police officer wages because they are exempt; Medicare taxes of 1.45% do apply for officers hired after April 1, 1986 and are included.
- Adjustments for Paid Time Off including holiday, vacation, personal or other time off. Because of differences in the amount of paid time off provided by the various entities, the annual cost of the above compensation items must be adjusted to show what the entity is paying per hour of service provided. These adjusted hourly compensation rates, or *effective hourly rates*, will provide the basis for a direct comparison of the primary cost factors, expressed as average cost per hour, for law enforcement service provided by each entity under the terms of their respective collective

bargaining agreements and local ordinances. No adjustments were made for paid sick time. Contract terms addressing paid sick leave did not vary significantly between the County, the City of Milwaukee and the City of Wauwatosa; the City of West Allis invokes a short term disability program after absences of five consecutive days.




It should be noted that these major cost structure components identified are subject to change over time. We used 2012 data for each entity. In instances where collective bargaining agreements called for changes during 2012, we used the latest terms applicable during the year. Therefore, annualized cost figures are based on the wage rates and employee contribution rates applicable at year-end 2012.

As shown in **Table 10**, 2012 base hourly wage rates for deputy sheriffs were lower than comparable staff level police officers in each of the three municipalities reviewed.

**Table 10
2012 Hourly Wage Rates for County Deputy Sheriffs
and Police Officers in Milwaukee County's
Three Largest Municipalities**

Milwaukee County Step	Milwaukee County Sheriff Dep 1	City of Milwaukee Police Officer	Wauwatosa Police Officer	West Allis Patrol Officer
1	\$20.1000	\$23.9358 - \$24.4820	\$22.8100	\$20.9760
2	\$21.0700	\$26.2109 - \$26.7570	\$25.3300	\$24.2820
3	\$22.0400	\$29.1546 - \$29.7009	\$27.8400	\$26.4150
4	\$23.0100	\$30.2839 - \$30.8301	\$29.8600	\$28.5450
5	\$23.9800	\$32.0223 - \$32.5686	\$30.7200	\$30.1580
6	\$24.9500	\$32.0223 - \$32.5686	\$31.3600	\$31.5260
7	\$25.9200	\$32.0223 - \$32.5686	\$32.0600	\$31.5260
8	\$26.8900	\$32.0223 - \$32.5686	\$32.0600	\$31.5260
9	\$27.8600	\$32.0223 - \$32.5686	\$32.0600	\$31.5260
10	\$28.8300	\$32.0223 - \$32.5686	\$32.0600	\$31.5260

Variance from Milwaukee County Deputy Sheriff Hourly Wage Rate

		City of Milwaukee Police Officer	Wauwatosa Police Officer	West Allis Patrol Officer
 Minimum		19.1% - 21.8%	13.5%	4.4%
 Mid-Range		19.2% - 21.4%	22.1%	12.3%
 Maximum		11.1% - 13.0%	11.2%	9.4%
1 Year		19.1% - 21.8%	13.5%	4.4%
5 Years		33.5% - 35.8%	28.1%	25.8%
10 Years		11.1% - 13.0%	11.2%	9.4%

Sources: Applicable collective bargaining agreements from the respective government entities. Wage rates shown are those in effect at the end of calendar year 2012.

The County deputy sheriffs' base wage rates were consistently lower than their municipal counterparts.

Whether comparing base hourly wage rates at the minimum, mid-range or maximum levels of their respective pay ranges, the County deputy sheriffs' base wage rates were consistently lower than their municipal counterparts. Similarly, comparisons of wage rates paid to employees with 1, 5 or 10 years of experience showed the County deputy sheriffs' rates were the lowest of the entities reviewed.

Annualizing the base hourly wage rate shows an even larger gap between the annual base compensation of County deputy sheriffs and City of West Allis patrol officers, as shown in **Table 11**. This is because the City of West Allis pays its patrol officers at the rate of time and one-half to work on 11 designated holidays per year.

Table 11
2012 Annualized Base Wages for County Deputy Sheriffs
and Police Officers in Milwaukee County's
Three Largest Municipalities

Step	Milwaukee County Sheriff Dep 1	City of Milwaukee Police Officer	Wauwatosa Police Officer	West Allis Patrol Officer
1	\$41,808	\$49,786 - \$50,923	\$47,445	\$46,504
2	\$43,826	\$54,519 - \$55,655	\$52,686	\$53,833
3	\$45,843	\$60,642 - \$61,778	\$57,907	\$58,562
4	\$47,861	\$62,990 - \$64,127	\$62,109	\$63,284
5	\$49,878	\$66,606 - \$67,743	\$63,898	\$66,860
6	\$51,896	\$66,606 - \$67,743	\$65,229	\$69,893
7	\$53,914	\$66,606 - \$67,743	\$66,685	\$69,893
8	\$55,931	\$66,606 - \$67,743	\$66,685	\$69,893
9	\$57,949	\$66,606 - \$67,743	\$66,685	\$69,893
10	\$59,966	\$66,606 - \$67,743	\$66,685	\$69,893

Variance from Milwaukee County Deputy Sheriff Annualized Base Wages

	City of Milwaukee Police Officer	Wauwatosa Police Officer	West Allis Patrol Officer
Minimum	19.1% - 21.8%	13.5%	11.2%
Mid-Range	19.2% - 21.4%	22.1%	19.7%
Maximum	11.1% - 13.0%	11.2%	16.6%
1 Year	19.1% - 21.8%	13.5%	11.2%
5 Years	33.5% - 35.8%	28.1%	34.0%
10 Years	11.1% - 13.0%	11.2%	16.6%

Note: West Allis figures include 11 holidays worked annually and paid at the rate of one and one-half times hourly base wage rate.

Sources: Applicable collective bargaining agreements from the respective government entities. Wage rates used are those in effect at the end of calendar year 2012.

Combining the major fringe benefit costs of health care (net of employee premium contributions), pensions (normal cost, net of employee contributions) and Social Security/Medicare taxes add considerably to the total cost of a law enforcement position. **Table 12** shows the total cost per position of these major fringe benefit costs for each of the entities compared. For reasons elaborated on pages 44-46, for purposes of this analysis, legacy costs of \$17,942 are not included in the Milwaukee County figures.

Table 12
2012 Cost of Major Active Fringe Benefit Items
for County Deputy Sheriffs and Police Officers
in Milwaukee County's Three Largest Municipalities

Milwaukee County	City of Milwaukee		Wauwatosa	West Allis
Step Sheriff Dep 1	Police Officer		Police Officer	Patrol Officer
1	\$ 19,796.23	\$ 21,225.45 - \$21,370.31	\$ 25,821.93	\$ 29,130.76
2	\$ 20,035.51	\$ 21,828.81 - \$21,973.64	\$ 26,846.66	\$ 30,783.54
3	\$ 20,274.80	\$ 22,609.49 - \$22,754.36	\$ 27,867.32	\$ 31,849.90
4	\$ 20,514.09	\$ 22,908.97 - \$23,053.83	\$ 28,688.74	\$ 32,914.77
5	\$ 20,753.38	\$ 23,369.99 - \$23,514.88	\$ 29,038.45	\$ 33,721.16
6	\$ 20,992.66	\$ 23,369.99 - \$23,514.88	\$ 29,298.70	\$ 34,405.07
7	\$ 21,231.95	\$ 23,369.99 - \$23,514.88	\$ 29,583.35	\$ 34,405.07
8	\$ 21,471.24	\$ 23,369.99 - \$23,514.88	\$ 29,583.35	\$ 34,405.07
9	\$ 21,710.53	\$ 23,369.99 - \$23,514.88	\$ 29,583.35	\$ 34,405.07
10	\$ 21,949.81	\$ 23,369.99 - \$23,514.88	\$ 29,583.35	\$ 34,405.07

Variance from Milwaukee County Deputy Sheriff 2012 Cost of Major Active Fringe Benefits

	City of Milwaukee	Wauwatosa	West Allis
	Police Officer	Police Officer	Patrol Officer
Minimum	7.2% - 8.0%	30.4%	47.2%
Mid-Range	8.3% - 9.0%	37.4%	55.1%
Maximum	6.5% - 7.1%	34.8%	56.7%
1 Year	7.2% - 8.0%	30.4%	47.2%
5 Years	12.6% - 13.3%	39.9%	62.5%
10 Years	6.5% - 7.1%	34.8%	56.7%

Note: Does not include Milwaukee County legacy costs of approximately \$17,942 per position. See discussion p. 44-46. Fringe benefit costs include health care costs net of employee contributions, pension costs net of employee contributions and federal payroll taxes.




Sources: Applicable collective bargaining agreements, budget information and supplementary data from the respective government entities.

Paid time off varied by entity and by years of service. Paid time off categories included vacation, holiday, personal and 'floating' holiday time. Total annual time off provided by each law enforcement entity compared is shown in **Table 13**.

Table 13
2012 Annual Hours of Paid Time Off
for County Deputy Sheriffs and Police Officers
in Milwaukee County's Three Largest Municipalities

Years Completed	Milwaukee County	City of Milwaukee		Wauwatosa	West Allis
	Sheriff Dep 1	Police Officer		Police Officer	Patrol Officer
1	188	176	176	176	88
2	188	176	176	176	88
3	188	176	176	176	88
4	188	176	176	176	88
5	228	176	176	216	96
6	228	176	176	216	96
7	228	216	216	216	96
8	228	216	216	216	136
9	228	216	216	216	136
10	268	216	216	216	136
11	268	216	216	216	136
12	268	256	256	216	160
13	268	256	256	256	160
14	268	256	256	256	160
15	308	256	256	256	160
16	308	256	256	256	176
17	308	256	256	256	176
18	308	256	256	256	176
19	308	256	256	256	176
20	348	296	296	296	192
21	348	296	296	296	200
22	348	296	296	296	208
23	348	296	296	296	224
24	348	296	296	296	224
25+	348	296	296	296	232

Variance from Milwaukee County Deputy Sheriff Annual Paid Time Off

		City of Milwaukee		Wauwatosa	West Allis	
		Police Officer		Police Officer	Patrol Officer	
	Minimum	-6.4%	-6.4%	-6.4%	-53.2%	
	Mid-Range	-1.4%	-1.4%	-10.8%	-26.6%	
	Maximum	-14.9%	-14.9%	-14.9%	-33.3%	
<table border="1" data-bbox="215 1589 643 1623"><tr><td>1 Year</td></tr></table>	1 Year		-6.4%	-6.4%	-6.4%	-53.2%
1 Year						
<table border="1" data-bbox="215 1627 643 1661"><tr><td>5 Years</td></tr></table>	5 Years		-22.8%	-22.8%	-5.3%	-57.9%
5 Years						
<table border="1" data-bbox="215 1665 643 1698"><tr><td>10 Years</td></tr></table>	10 Years		-19.4%	-19.4%	-19.4%	-49.3%
10 Years						

Notes: Excludes paid sick leave. West Allis Patrol Officers are paid time and one-half base wages to work 11 holidays annually. That compensation was included in the annualized base wage data in Table 11.

Sources: Applicable collective bargaining agreements.

Our comparison of major personnel cost components for positions in the Office of the Sheriff and three municipal police departments was not intended to be a comprehensive compensation study.

Paid time off has the effect of increasing personnel costs because the total cost of compensation must be spread over a smaller number of hours for which service is actually provided. This is a particularly important variable to consider in law enforcement because many tasks require staffing on a 24-hour, 7-day-a-week basis. **Table 14** shows the effective hourly rates for the annual cost of compensation for Milwaukee County deputy sheriffs and for police officers for the Cities of Milwaukee, West Allis and Wauwatosa.

It should be noted that our comparison of major personnel cost components for positions in the Office of the Sheriff and three municipal police departments was not intended to be a comprehensive compensation study. Due to differences in the manner in which fringe benefit costs are budgeted and allocated by the four government entities compared, we selected only the largest components for review and the results should therefore not be considered all-inclusive.

However, great effort was made to identify comparable data and to apply judgments involved in gathering the data in a consistent and logical fashion. As a result, the effective hourly cost of compensation rates shown in **Table 14** demonstrate that the Milwaukee County Office of the Sheriff has a lower personnel cost structure than the three municipal police departments reviewed *for those personnel cost items most relevant in assessing proposals for performing Office of the Sheriff functions*. As shown in **Table 14**, effective hourly rates for the municipal police officers ranged from 6.6% to 30.7% higher than for County deputy sheriffs, depending on the length of service in the organization.

Table 14
2012 Effective Hourly Cost of Compensation Rates
For County Deputy Sheriffs and Police Officers
in Milwaukee County's Three Largest Municipalities

Years Completed	Milwaukee County		City of Milwaukee		Wauwatosa	West Allis
	Sheriff Dep 1		Police Officer		Police Officer	Patrol Officer
1	\$ 32.56	\$ 37.30	\$ 37.97	\$ 38.48	\$ 36.36	
2	\$ 33.75	\$ 40.10	\$ 40.77	\$ 41.77	\$ 40.68	
3	\$ 34.95	\$ 43.72	\$ 44.40	\$ 45.05	\$ 43.47	
4	\$ 36.14	\$ 45.12	\$ 45.79	\$ 47.69	\$ 46.25	
5	\$ 38.14	\$ 47.26	\$ 47.93	\$ 49.86	\$ 48.54	
6	\$ 39.36	\$ 47.26	\$ 47.93	\$ 50.71	\$ 50.34	
7	\$ 40.58	\$ 48.27	\$ 48.96	\$ 51.65	\$ 50.34	
8	\$ 41.79	\$ 48.27	\$ 48.96	\$ 51.65	\$ 51.33	
9	\$ 43.01	\$ 48.27	\$ 48.96	\$ 51.65	\$ 51.33	
10	\$ 45.21	\$ 48.27	\$ 48.96	\$ 51.65	\$ 51.33	
11	\$ 45.21	\$ 48.27	\$ 48.96	\$ 51.65	\$ 51.33	
12	\$ 45.21	\$ 49.33	\$ 50.03	\$ 51.65	\$ 51.94	
13	\$ 45.21	\$ 49.33	\$ 50.03	\$ 52.78	\$ 51.94	
14	\$ 45.21	\$ 49.33	\$ 50.03	\$ 52.78	\$ 51.94	
15	\$ 46.23	\$ 49.33	\$ 50.03	\$ 52.78	\$ 51.94	
16	\$ 46.23	\$ 49.33	\$ 50.03	\$ 52.78	\$ 52.36	
17	\$ 46.23	\$ 49.33	\$ 50.03	\$ 52.78	\$ 52.36	
18	\$ 46.23	\$ 49.33	\$ 50.03	\$ 52.78	\$ 52.36	
19	\$ 46.23	\$ 49.33	\$ 50.03	\$ 52.78	\$ 52.36	
20	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 52.78	
21	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 53.00	
22	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 53.21	
23	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 53.65	
24	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 53.65	
25+	\$ 47.30	\$ 50.44	\$ 51.15	\$ 53.96	\$ 53.87	

Variance from Milwaukee County Deputy Sheriff Effective Hourly Rate

	City of Milwaukee Police Officer	Wauwatosa Police Officer	West Allis Patrol Officer
Minimum	14.5% - 16.6%	18.2%	11.7%
Mid-Range	16.5% - 18.1%	24.8%	29.2%
Maximum	6.6% - 8.2%	14.1%	13.9%
1 Year	14.5% - 16.6%	18.2%	11.7%
5 Years	23.9% - 25.7%	30.7%	27.3%
10 Years	6.8% - 8.3%	14.2%	13.5%

Sources: Applicable collective bargaining agreements budget information and supplementary data from the respective government entities.

There is considerable commonality in types of activities performed by the Office of the Sheriff and those of several municipal police departments within Milwaukee County.

Our review of the types of activities performed by municipal police departments in Milwaukee County identified a number of areas of commonality that could indicate the potential for collaboration or consolidation for purposes of achieving increased overall efficiency. **Table 15** contains a list of activities performed by both the Office of the Sheriff and by ten or more of the 19 municipalities within Milwaukee County.

**Table 15
Common Types of Activities Performed by
the Office of the Sheriff and 10
or More Municipal Police Departments**

<u>Milwaukee County Sheriff Activities</u>	<u>No. of Milwaukee County Municipalities Performing Activities</u>
Background Investigations	19
Central Records	19
Communications/Dispatch*	19
Community Policing	19
Community Relations/Public Information Office	19
Criminal Investigations	19
Information Technology/Data Analysis	19
Inmate Transportation	19
Park/Neighborhood Patrol	19
Civil Process Unit	14
Targeted Drug Enforcement	11
SWAT - Special Weapons and Tactics**	10
Canine (K9) Unit	10

* Bayside Police Department provides communications services in collaboration with six other municipalities.

** Five of the municipalities have collaborative arrangements among two or more municipalities and there is considerable reliance on cooperation with the County and City SWAT units among those that do not have dedicated units.

Sources: Municipal budgets, websites and staff interviews.

While numerous areas of commonality exist, and cooperation among law enforcement agencies within Milwaukee County for isolated cases or specific purposes is common, only a small number of formal collaborations exist. One formal collaboration

is in the area of communications, where the Bayside Police Department provides dispatch services for seven other entities including the North Shore Fire Department. According to the Bayside Chief of Police, total savings to taxpayers of approximately \$4 million are anticipated over the next 10 years from this effort, including \$450,000 for Bayside taxpayers.

It is noteworthy that each of these collaborative efforts consolidates services into a larger geographic area, rather than fragment services among smaller jurisdictions.

Other collaborations exist in the area of Special Weapons and Tactics (SWAT). For example, the Greendale and Franklin police departments collaborate in this area, and a separate collaboration exists between the police departments of Cudahy, St. Francis and South Milwaukee. It is noteworthy that each of these collaborative efforts consolidates services into a larger geographic area, rather than fragment services among smaller jurisdictions.

Potential areas of commonality in the types of activities performed by the Office of the Sheriff and multiple municipal police departments in Milwaukee County, along with a lower relevant personnel cost structure, suggests that opportunities for consolidation be considered at the County level, rather than fragmented among the municipalities.

Having properly set aside the County's fixed legacy costs, the Office of the Sheriff's relatively lower relevant personnel cost structure would suggest that in order to achieve taxpayer cost savings, a transfer of responsibilities to municipal police departments in Milwaukee County would require one of two conditions. Either demonstrable efficiencies would need to occur to achieve the same results with fewer service hours, or service hours would have to be reduced.

Further, the transfer of law enforcement responsibilities from the county to the municipal level is not a common occurrence nationwide. Rather, the concept of consolidating law enforcement efforts at the county level is consistent with efforts

undertaken elsewhere, according to our research. There are numerous examples of county sheriff's departments providing policing services to municipalities within their jurisdiction, such as those included in **Table 16**.

Table 16
Examples of County Sheriff's Departments
Providing Policing Services to Municipalities
Within Their Jurisdictions

<u>State</u>	<u>County</u>	<u>County Population</u>	<u>No. of Municipalities Contracting Services</u>
Arizona	Maricopa	3,817,117	7
California	Orange	3,010,232	13
California	San Mateo	718,451	5
Florida	Pinellas	916,542	12
Florida	Volusia	494,593	4
Michigan	Oakland	1,202,362	16
Minnesota	Renville	15,730	2
North Carolina	Union	201,292	3
Oregon	Clackamas	375,992	4
Washington	Chelan	72,453	4
Wisconsin	Brown	248,007	4
Wisconsin	Dane	488,073	10
Wisconsin	Kenosha	166,426	2
Wisconsin	Waukesha	389,891	7

Source: Various Sheriff Department Annual Reports; internet research; U.S. Census Bureau data.

We were unable to identify an example in which a municipal police department assumed responsibility for a function of a county sheriff.

In fact, we were unable to identify an example in which a municipal police department assumed responsibility for a function of a county sheriff. The Director of Operations for the National Association of Sheriffs was unable to identify any such arrangements, noting that it is much more common for sheriffs to collaborate and share responsibilities with municipal police departments, while maintaining control of those relationships. Similar answers were provided by eight state sheriffs' associations in the East and Midwest that responded to inquiries.

Section 4: Improved working relationships among Milwaukee County public officials is critical to successfully identify and implement optimal service delivery options for Milwaukee County Office of the Sheriff functions.

Consideration of any policy initiatives to downsize, eliminate or transfer services currently provided by the Milwaukee County Office of the Sheriff must include an acknowledgement of current realities that could limit or negatively affect their chances of successful implementation.

These realities include the constitutional authority of the Milwaukee County Sheriff and a publicly displayed poor working relationship between the Sheriff and some other County officials. These realities can render some unilateral policy decisions by the County Board of Supervisors and the County Executive difficult to achieve, or in some cases, nullify them altogether.

Constitutional Authority of the Sheriff

This report has already detailed the wide latitude afforded county sheriffs in their deployment of resources legislatively provided for the performance of their duties (see discussion, p. 13-15). That latitude was demonstrated in 2012, when:

- The 2012 Adopted Budget for the Office of the Sheriff included funding for 35.3 FTE positions (including overtime) for the Park Patrol/Tactical Enforcement Unit, but actual deployment was approximately 13.3 FTE, a variance of -62%.
- The 2012 Adopted Budget included funding for 66.3 FTE for Airport Security, while actual deployment was approximately 48.2, a variance of -27%.
- The 2012 Adopted Budget included funding for 24.2 FTE for General Investigations, but actual deployment was approximately 35.8 FTE, a variance of 48%.

Thus, while the County Board can establish budget priorities for staffing through the adoption of annual budgets, it cannot prevent the Sheriff from re-prioritizing authorized staffing levels by virtue of his deployment practices. While all Executive Branch department heads have considerable discretion in assigning staffing priorities within their overall departmental budget allocations, the Sheriff's constitutional authority provides autonomy from either executive or legislative directives that would exceed the discretion of the other department heads.

Poor Working Relationships

There have been several publicly displayed examples of a poor working relationship between the Milwaukee County Sheriff and other County officials. For instance:

There have been several publicly displayed examples of a poor working relationship between the Milwaukee County Sheriff and other County officials.

- At a public hearing on the 2012 County Executive's Recommended Budget, the Sheriff indicated he was presented inadequate advance notice of the County Executive's significant budget cuts and policy initiatives for the Office of the Sheriff, stating that an invitation to meet and discuss the proposals was extended by the County Executive in a timeframe too late to make any revisions, after the recommended budget had already been sent to the printing press. He elaborated that the recommended budget was put together without meaningful input from the Office of the Sheriff and without knowledge or regard for adverse consequences. The County Executive's staff countered that the Sheriff walked out of the meeting called by the County Executive before any serious discussion could take place.
- At its June 2012 meeting, the County Board's Committee on Judiciary, Safety and General Services discussed separate informational reports submitted by the Chief Judge of Milwaukee Circuit Court and the Office of the Sheriff regarding issues surrounding a significant reduction in the number of County Correctional Facility-South inmates approved by the Sheriff for home detention privileges under an Electronic Monitoring Surveillance (EMS) program. In his report, the Chief Judge alleged that there were negative financial consequences to the County as a result of an abrupt change in the Sheriff's criteria for approving inmates for the program, and further alleged that the Sheriff refused to meet to discuss the reasons or implications of the change.

In its informational report, the Office of the Sheriff disputed the allegation of adverse financial consequences to the Sheriff's actions and referenced two State of Wisconsin Appellate Court decision affirming that the Sheriff has the sole authority to determine if an inmate shall be placed on electronic monitoring. *[Issues raised in these discussions of the Electronic Monitoring Surveillance program are the subject of a separate Audit Services Division report to be released in the near future.]*

- The 2012 Adopted Budget included a provision for development of a transition plan to transfer inmate medical and mental health services from the Office of the Sheriff to the Department of Health and Human Services (DHSS). A transition planning work group, consisting of staff from DHHS, the Office of the Sheriff, the Department of Administrative Services and Corporation Counsel was directed to provide monthly reports beginning in March 2012 to two County Board committees, with the transfer scheduled for July 1, 2012. This transition never occurred. In late May, the Milwaukee County Sheriff filed a legal motion with the circuit court in the matter of the long-standing *Christianson Consent Decree*, related to inmate conditions at the CCF-C, to recognize his constitutional authority to unilaterally contract with a provider for inmate medical services. That motion was denied. Testimony at a June 2012 Health and Human Needs Committee included the Director of Health and Human Services asserting a lack of good-faith cooperation by the Office of the Sheriff in planning for the transfer.
- Sharply critical press releases were issued by Milwaukee County Board Supervisors and the Milwaukee County Sheriff, early in 2012. The press releases exchanged acrimonious statements about the Sheriff's level of deployment of deputies on a collaborative security detail for a presidential visit, and the County Board's 2012 Adopted Budget reductions for the Office of the Sheriff.
- In January 2012, the Milwaukee County Office of the Sheriff requested that the County Board direct the Office of Corporation Counsel to contract with a private attorney to represent the Office of the Sheriff in all legal matters. The Office of the Sheriff cited a judicial finding of a conflict in which the Office of Corporation Counsel represented the County against the Sheriff in a case initiated by the County Executive over the Sheriff's delays in implementing deputy sheriff layoffs included in the 2012 Adopted Budget. The court cited a conflict because the Office of Corporation Counsel represented the Sheriff in similar litigation or concerning similar legal issues.

According to the Corporation Counsel, there is disagreement with the Sheriff on the scope of the conflict. The Corporation Counsel indicated her Office is the appropriate party to represent the legal interests of Milwaukee County in cases involving the Office of the Sheriff, unless the Corporation Counsel or a court determines a conflict of interest exists in any given matter. The County Board denied the request to direct Corporation Counsel to contract with private counsel to represent the Office of the Sheriff in all matters.

Nevertheless, the Office of the Sheriff has retained private counsel for selected matters. In at least one of those matters, a court found that a conflict of interest exists requiring counsel for the Sheriff separately from the Office of Corporation Counsel. In some matters, the Office of the Sheriff confirmed with the Office of Corporation Counsel prior to retaining separate counsel that the Corporation Counsel would have a conflict of interest in representing the Sheriff and asserting the legal claims that the Sheriff wished to assert. In other matters, the Office of the Sheriff retained separate counsel without consultation with the Office of Corporation Counsel and without any prior determination of a conflict of interest by a court. In some of those matters, the Sheriff retained separate counsel in order to initiate litigation on his behalf, against the County or others, in contrast to cases where the Sheriff retained counsel to defend litigation filed against the Sheriff. In none of the individual matters has the Office of the Sheriff sought approval from the County Board for the professional services contracts for separate counsel.

- As previously noted, the Milwaukee County Sheriff has retained private legal counsel to file a legal challenge to the County Board's 2013 Adopted Budget policy initiative to transfer administration of the County Correctional Facility-South from the Office of the Sheriff to a Superintendent reporting directly to the County Executive. At its December 6, 2012 meeting, the Committee on Judiciary, Safety and General Services discussed a letter from the Fiscal and Budget Administrator. The letter requested policy clarification from the County Board regarding shared services and the cooperation necessary between the Office of the Sheriff and the Executive Branch in facilitating the administrative transfer of the CCF-S. It was noted during the discussion that representatives from the Office of the Sheriff had declined invitations to participate in meetings with a transition team assembled by the County Executive.

Strained interactions during 2012 have demonstrated the importance of cooperation among County officials.

Clearly, strained interactions during 2012 have demonstrated the importance of cooperation among County officials to effectively

implement policy initiatives involving services provided by the Office of the Sheriff. The need for an effective government to continuously analyze and adapt its organizational structure, operating procedures and service delivery models demands an improvement in the working relationships between these public officials.

One option available to policy makers is to de-fund all Office of the Sheriff services that are not explicitly mandated by statute or by the State of Wisconsin Constitution.

In the event a cooperative working relationship between the above public officials cannot be achieved, one option available to policy makers is to de-fund all Office of the Sheriff services that are not explicitly mandated by statute or by the State of Wisconsin Constitution, as clarified by the Wisconsin Supreme Court. We estimate this would result in a reduction of approximately \$4.5 million in total budget appropriations, including \$3.7 million in property tax levy, based on 2012 Adopted Budget funding (see **Table 3**, p. 17) and elimination of 132 FTE funded positions. Additional scrutiny could also be applied to the funding levels for mandated services and services we have classified as ancillary to mandated services.

Such a drastic measure would require municipal law enforcement agencies to absorb additional workload for police services on County properties within their jurisdictions, and would likely involve negotiation of some level of funding from the County. This option would also involve the loss of approximately \$7.4 million in Office of the Sheriff expenditure abatements currently charged to General Mitchell International Airport (GMIA) for security and law enforcement service. Unless a separate mitigating arrangement was made, this would increase County property tax levy by approximately \$1.1 million for associated legacy costs currently recouped from airline and passenger fees.

Future analyses of optimal service delivery options for functions performed by the Milwaukee County Office of

the Sheriff should also include constructive collaborations with municipalities within Milwaukee County.

Based on the information assembled in this report, if the executive and legislative branches of Milwaukee County can work in a cooperative manner with the Office of the Sheriff and the Intergovernmental Cooperation Council of Milwaukee County (composed of representatives of the 19 municipalities within Milwaukee County), there are several opportunities for exploration of potential efficiencies. These include the items of commonality identified in **Table 15** of this report (see p. 56). In particular:

- **Communications/Dispatch.** The substantial capital investment required and the current level of collaboration among municipalities in Milwaukee County makes this an attractive candidate for consolidation.
- **Background Investigations.** Disparate levels of demand among the municipalities for this relatively routine activity suggests consolidation could yield the benefits of economies of scale.
- **Law Enforcement Data Analytics.** The substantial capital investment required, the specialized nature of the skills involved and the potential benefits of strategizing responses to crime patterns across municipal lines indicates this function would be a good candidate for collaboration.
- **SWAT Units.** The specialized training and equipment necessary for an effective SWAT Unit, along with the current level of collaboration in Milwaukee County, suggests addition consolidation and/or collaboration could easily be achieved.
- **Canine Units.** With the Office of the Sheriff and 10 of the 19 municipalities currently maintaining individual canine units, there may be opportunities for consolidation of this specialized service.

As previously noted, comparatively low relevant personnel cost structures and experience both locally and nationally suggest consideration of proposals to consolidate these functions at the County level.

Optimal service delivery options cannot be defined by cost factors alone. Service quality and local responsiveness are key factors that must be considered and addressed.

Service quality and local responsiveness must be carefully considered and addressed by policy makers in assessing any service delivery change proposal.

This report shows that major relevant personnel cost factors, commonality of services and standard practice nationwide favors consolidation of some law enforcement activities at the county level rather than dispersion of current Office of the Sheriff functions to local municipalities throughout Milwaukee County. However, two key factors must be carefully considered and addressed by policy makers in assessing any service delivery change proposal. Those factors are service quality and local responsiveness.

These were key items of discussion in the County Board's deliberations on the County Executive's 2013 budget proposal to transfer County Park Patrol responsibilities from the Office of the Sheriff to the City of Milwaukee and, to a much lesser degree, other municipalities (see discussion, p. 42). While the proposal included provisions for access to and reports on performance measures, concerns were raised about the Milwaukee Police Department's intent to staff major portions of the activity through overtime, rather than additional dedicated police officers. Concerns were also raised about the level of responsiveness to County officials' concerns once the direct link of government oversight authority was relinquished.

Similar concerns would undoubtedly be raised from any policy maker presented with a proposal to improve efficiency through consolidation or collaboration with other entities. Proposals should include, to the extent possible:

- Minimum guaranteed staffing levels and/or performance measures with quantifiable and demonstrable cost savings resulting from economies and/or efficiencies. This is needed to guard against savings resulting from reduced service levels.

- Periodic reporting of performance measures and an ability to rectify poor performance or terminate the agreement on reasonably short notice.
- A qualified individual to act as a 'contract administrator' to monitor and evaluate performance under the proposed agreement. This aspect of accountability has proven critical in past audits of Milwaukee County's experience with contracting for services.

Audit Scope

The objectives of this audit were to identify the mandated services provided by the Office of the Sheriff, focusing on efficiency and service levels, and to examine issues relevant to evaluating proposals regarding the optimal delivery of discretionary services provided by the Office of the Sheriff.

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. During the course of the audit, we:

- Reviewed annual budget appropriations, funded positions and actual expenditures for the Office of the Sheriff for the years 2002 through 2012, as well as the 2013 Adopted Budget for the office.
- Researched the Wisconsin State Constitutional and statutory authority of Wisconsin sheriffs.
- Researched the legal authority and basis for all activities performed by the Office of the Sheriff in 2012.
- Applied judgment in identifying Office of the Sheriff activities performed in 2012 as 'mandatory,' 'discretionary,' or 'ancillary to mandated.'
- Compared major activities performed by the Milwaukee County Office of the Sheriff in 2012 to those performed by sheriffs' departments in the next five most populous counties in Wisconsin.
- Compared organizational structure and management to staff ratios of the Office of the Sheriff in 2012 vs. 2002.
- Calculated efficiency/service level and reliance on overtime trends of two functional areas comprising more than half of total workload for the Office of the Sheriff during the period 2008 through 2012.
- Reviewed statistical data tracked by the Milwaukee County Office of the Sheriff and compared it to statistical data published annually by four of the five sheriffs' departments in the next most populous Wisconsin counties.

- Compared the types of activities performed by the Office of the Sheriff in 2012 with those of the 19 municipal police departments in Milwaukee County.
- Compared relevant personnel cost structures of the Office of the Sheriff to the police departments in the three largest municipalities in Milwaukee County. The population of the three municipalities combined total approximately 75% of the Milwaukee County population.
- Researched the nature of law enforcement collaborations across the United States.
- Provided examples of the publicly displayed working relationships between the Milwaukee County Sheriff and other County officials.

**Description of 2012 Services
Milwaukee County Office of Sheriff**

Low Org.	Description MANDATED	Reference
4010	Emergency Management Bureau provides direction and guidance to all County and municipal agencies, as well as the private sector, in the development of individual emergency plans, in support of unified, County-wide emergency preparedness.	Wis. Stats. §323.14 (1)(a)2 and MCGO s. 99.02(1)
4021	Expressway Patrol provides immediate 24-hour response to emergency situations involving protection, safety and law enforcement throughout Milwaukee County.	Wis. Stats. §59.84(10)(b)
4026	Dive Unit rescue human beings and recover human bodies in Milwaukee County waters.	Wis. Stats. §59.27(11)
4031	Court Dispositions provides data entry and other administrative support services necessary to track and record the disposition of court orders related to the inmate population. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(3)
4032	Warrants are orders of arrest issued by judges and served by deputies. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §968.04(1) and Wis. Stats. §59.27(4)
4034	Booking & Release is the administrative process of inmate intake and release. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(1)
4036	Inmate Transportation provides safe and secure transport of inmates primarily between CCF-S and the courthouse, which is contracted out to G4S. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(1)
4038	County Correctional Facility Central (CCF-C) is a secure detention facility for holding accused felons and misdemeanants until they are released on a pretrial basis or are adjudicated, and a small number of sentenced offenders awaiting transfers or hearings on new charges. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(1)
4039	Inmate Medical Services are available to the inmates at the CCF-C and CCF-S. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §302.38(1)
4041	Psychiatric Services are available to the inmates at the CCF-C and CCF-S. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §302.38(1)
4058	Bomb Disposal Unit safeguards life and property by successfully identifying and rendering safe any Improvised Explosive Device (IED) or incendiary device located in Milwaukee County, and the Explosive Ordinance Disposal Technicians assist local, state, or federal law enforcement agencies in these specialized areas.	Wis. Stats. §59.27(10)
4064	SWAT/GRIP Unit responds to calls for services from Milwaukee County Sheriffs and from regional Police Departments to increase the margin of safety in critical incidents.	Wis. Stats. §59.27(11)
4077	Training Academy provides recruit training, firearms training and in-service training for Sheriff's personnel and outside agencies.	Wis. Stats. §165.85(1)
4081	Court Services provides bailiff services in the various branches of the circuit courts in the Courthouse, Safety Building, Criminal Justice Facility and Children's Court Center to maintain safe and secure courtrooms. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(3)
4082	Central Records performs processing and data entry of civil process papers, traffic and parking citations, accident reports, and incident and offense reports including inquiries and requests for reports.	Wis. Stats. §59.27(2)
4084	Court Liaison core function is to ensure that the criminal cases of in-custody inmates get processed; and results of charging conferences between law enforcement and the District Attorney's office are quickly and accurately reported correctly to the CCF-C Records Office. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §59.27(3)
4086	Civil Process Service is responsible for the timely serving of state-mandated civil writs such as subpoenas, temporary restraining orders, injunctions, summons, complaints, commitments to mental health, body attachments, Writs of restitution/assistance, executions and evictions, etc. Some civil process papers will be served utilizing	Wis. Stats. §59.27(4)

	State Process Service where appropriate. Part of the Sheriff's State Constitutional Authority	
4332	Inmate Food Service administered by Aramark, prepares meals for the inmates at the CCF-S, CCF-C, and for special events held on County property. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §302.37(1)
4353	Graphics Shop is a service offered in the Inmate Industries Division that provides basic training in vocational jobs and meaningful work experience in business and industrial operations to inmates.	Wis. Stats. §303.19(1)
4354	Laundry is responsible for the personal cleanliness of prisoners by ensuring that clothing is properly laundered. Part of the Sheriff's State Constitutional Authority.	Wis. Stats. §302.37(1)
4372	CCF-S Dormitories receives and maintains custody of sentenced prisoners in Milwaukee County committed by authorized courts for periods not to exceed one year and maintain custody of pretrial prisoners from CCF-C, and prisoners from other jurisdictions are accepted as authorized by County ordinance.	Wis. Stats. §303.17(1)
	ANCILLARY TO MANDATED	
4002	Administration performs management and support functions for the Sheriff including leadership, personnel management, fiscal operations, community relations, public information, and internal affairs, etc.	
4029	Communications Center handles cellular 9-1-1 phone calls in suburban municipalities and provides dispatch services for Sheriff's deputies.	
4052	General Investigations is responsible for investigating a variety of criminal activity such as violent crimes, warrant sweeps, weapon offenses, sexual assaults, battery, drug arrests, sexual predators, sudden death, stolen vehicles, witness intimidation, and graffiti / tagging.	
4066	HIDTA Drug Unit is the High Intensity Drug Trafficking Areas (HIDTA) multi-jurisdictional program designed to target significant Drug Trafficking Organizations in Southeastern Wisconsin; and the Milwaukee County Sheriff's Office has supported this endeavor by assigning personnel to the various initiatives since 1998.	
4311	CCF-S Administration performs management and support function for CCF-S.	
4312	Business Office performs on-site fiscal operations at CCF-S.	
4313	CCF-S Canteen is part of the Aramark contractual responsibility to supply sundry and commissary items to inmates.	
4314	Warehouse is the storage and support of CCF-S operation.	
4315	Maintenance utilizes Time and Material Contracts for facility work performed at CCF-S.	
4316	Power Plant is the maintenance and operation of power source at CCF-S.	
4351	Industries Administration employs approximately 200 inmates and consists of a graphics print shop, laundry, recycling center, kitchen and maintenance program, to provide basic training in vocational jobs and meaningful work experience in business and industrial operations.	
4374	CCF-S Visiting is an office where visitors can register and/or schedule visits with inmates.	
	DISCRETIONARY	
4013	Sheriff Forfeiture funds are generated primarily by the amount of cash and assets seized by the Sheriff's Drug unit, which permits the Sheriff to make expenditures for items such as employee wearing apparel, travel and equipment for the Detective Bureau.	
4016	Airport Security at the General Mitchell International Airport (GMIA) has been the primary responsibility of the MCSO since 1973 and includes safety and security of the airport complex, and patrols of city streets surrounding the airport.	
4017	County Grounds Security provides a safe and secure environment in the Milwaukee County Park System, County Zoo and on the County Grounds.	
4018	Canine Unit has Explosives Detection K-9 teams that are used to deter and detect the introduction of explosive devices into the transportation system at the General Mitchell International Airport, and they provide Mutual Aid to local, state and federal agencies throughout Wisconsin.	
4019	Park Patrol / TEU provides a safe and secure environment patrolling county parks.	
4027	Transit Security focus on crime related incidents on buses, respond to emergency calls for assistance especially cases of imminent danger, and deploy deputies to ride problem bus routes.	

4030	Community Relations consists of community contact and outreach to children and adults, open and honest relationships with media, attendance at various community events including school events to speak about personal safety, drug education, and safe driving techniques, etc.	
4037	Information Technology Unit provides oversight of the many information technology systems operated by the Sheriff's Office including maintaining computer systems, run ad hoc reports and perform special projects.	
4371	CCF-S Canine Unit consists of one canine unit for inmate control purposes.	
4377	Discipline, Order, Training, Structure (DOTS) is an Inmate Boot Camp Program phased out in 2012.	

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**Judicial Decisions Clarifying the Constitution
Authority of Wisconsin County Sheriffs**

Wisconsin Professional Police Ass'n (WPPA) v. Dane County, 106 Wis.2d 303 (1982)
316 N.W.2d 656, 114 L.R.R.M. (BNA) 2153

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by BECK V. COUNTY OF SANTA CLARA, Cal.App. 6 Dist., September 16, 1988

106 Wis.2d 303
Supreme Court of Wisconsin.

WISCONSIN PROFESSIONAL POLICE ASSOCIATION (WPPA) as successor to Teamsters Union Local 695, Petitioner-Respondent,

v.

COUNTY OF DANE, Respondent,
William H. Ferris, Appellant.

No. 81-023. | Argued Nov. 3, 1981. | Decided March 2, 1982.

Union instigated contempt of court proceedings and moved for order that sheriff be held in contempt for failure to comply with order confirming arbitration award directing that court officer work be returned to member of nonsupervisory bargaining unit. The Circuit Court, Dane County, P. Charles Jones, J., ordered sheriff to comply with order or be held in contempt, and sheriff appealed. Parties petition for leave to bypass the Court of Appeals was granted. The Supreme Court, Day, J., held that: (1) sheriff's powers under State Constitution may not be limited by collective bargaining agreement entered into by county and labor union representing deputy sheriff, and (2) it could not be determined whether duty performed by "court officer" fell within sheriff's powers in relation to the court.

Reversed and remanded.

Abrahamson, J., dissented and filed opinion.

West Headnotes (4)

[1] **Contempt**
Validity of Mandate, Order, or Judgment

93Contempt
931Acts or Conduct Constituting Contempt of

Court
93k19Disobedience to Mandate, Order, or Judgment
93k21Validity of Mandate, Order, or Judgment

Sheriff was not barred from challenging order whose violation would subject him to contempt citation. W.S.A. 785.01(1)(b).

7 Cases that cite this headnote

[2] **Sheriffs and Constables**
Nature and Extent of Authority in General

353Sheriffs and Constables
35311Powers, Duties, and Liabilities
353k77Nature and Extent of Authority in General

Legislature may not, through statute authorizing collective bargaining by county board and union, deprive sheriff of his authority, under State Constitution, to select who among his deputies shall act in his stead in attendance on court. W.S.A. Const. Art. 6, § 4.

23 Cases that cite this headnote

[3] **Labor and Employment**
Determination
Labor and Employment
Remand

231HLabor and Employment
231HXIIILabor Relations
231HXII(H)Alternative Dispute Resolution
231HXII(H)5Judicial Review and Enforcement
231Hk1627Determination
231Hk1628In General
(Formerly 232Ak486 Labor Relations)
231IILabor and Employment
231HXIIILabor Relations
231HXII(H)Alternative Dispute Resolution
231HXII(H)5Judicial Review and Enforcement

231Hk1627Determination
231Hk1629Remand
(Formerly 232Ak486 Labor Relations)

Record was insufficient to determine whether duties performed by "court officer" fell within sheriff's common-law powers in relation to courts so that sheriff could not be restricted by collective bargaining agreement as to whom he appointed to perform functions of "court officer," and therefore, order that sheriff comply with arbitrator's award enforcing collective bargaining agreement would be reversed and case remanded for determination of duties of "court officer" and whether those duties fell within constitutional powers of sheriff. W.S.A. 59.23(3), 111.70-111.77, 111.70(1)(a, d), (3); W.S.A. Const. Art. 6, § 4.

25 Cases that cite this headnote

[4] **Labor and Employment
Construction**

231HLabor and Employment
231HXIIILabor Relations
231HXII(E)Labor Contracts
231Hk1268Construction
231Hk1269In General
(Formerly 232Ak257.1, 232Ak257 Labor
Relations)

While agreement achieved as result of bargaining under Municipal Employment Relations Act may not violate the law, contract and related statutes should be harmonized whenever possible. W.S.A. 111.70-111.77.

1 Cases that cite this headnote

Attorneys and Law Firms

****656 *304** Robert M. Hesslink, Jr., Madison, argued, for appellant; Anthony R. Varda and DeWitt, Sundby, Huggett & Schumacher, S. C., Madison, on brief.

***305** Richard V. Graylow, Madison, argued, for petitioner-respondent; Lawton & Cates, Madison, on brief.

Opinion

DAY, Justice.

This case is before us by grant of a joint petition to bypass the Court of Appeals made on behalf of appellant William H. Ferris and petitioner-respondent Wisconsin Professional Police Association, from an order of the Circuit Court for Dane County, Hon. P. CHARLES JONES, Circuit Judge.

The issue is whether the sheriff is limited in his selection of a "court officer" by a collective bargaining agreement entered into between a union representing the nonsupervisory deputies on the sheriff's staff and Dane county operating through the county board.

****657** We conclude that under the Wisconsin Constitution the sheriff has the power and prerogatives which that office had under the common law, among which were a very special relationship with the courts. These powers may not be limited by a collective bargaining agreement entered into by the county and a labor union representing deputy sheriffs. However, we cannot determine from the record before this court whether the duties performed by the "court officer" fall within the sheriff's common law powers in relation to the courts. We therefore reverse the order of the trial court which ordered the sheriff to comply with an arbitrator's award enforcing the collective bargaining agreement and remand the case to the trial court for a determination of the duties of the "court officer" and whether those duties fall within the constitutional powers of the sheriff.

The history of this litigation is as follows: On December 19, 1976, Dane county and Teamsters Union Local 695,¹ representing the nonsupervisory deputy sheriffs *306 of Dane county, entered into a collective bargaining agreement. The agreement provided that "bargaining unit work" could be assigned only to members of the union. On January 15, 1979, Dane County Sheriff William H. Ferris (hereinafter "sheriff") appointed a deputy sheriff who was a member of the supervisory, rather than

the nonsupervisory bargaining unit as court officer. These duties had previously been performed by a member of the nonsupervisory bargaining unit. The union filed a grievance, and arbitration proceedings were conducted between the union and Dane county. On December 19, 1979, the arbitrator issued an award directing that the court officer work be returned to a member of the nonsupervisory bargaining unit. This award was confirmed by Dane County Circuit Judge P. Charles Jones in an order dated March 19, 1980.

The sheriff did not participate in any of the aforementioned proceedings and refused to accept service of the above order, stating the following reasons:

"(1) The order is not addressed to me in my capacity or name as sheriff of Dane County;

"(2) I am not signatory to any union contract;

"(3) The County cannot direct me in the management of the office."

The union instigated contempt of court proceedings, and moved for an order that the sheriff be held in contempt of court for failure to comply with the March 19, 1980, order confirming the arbitration award.

The motion was heard by Judge Jones on April 22, 1980. The sheriff appeared at this hearing. On December 1, 1980, Judge Jones ordered the sheriff to comply with the March 19, 1980, order or be held in contempt *307 of court. The sheriff appealed to the Court of Appeals. Both parties petitioned this court for leave to bypass the Court of Appeals, which was granted.

[1] We note at the outset that the sheriff has not been held in contempt of court, but that the December 1980, order which is the basis for this appeal states that he will be held in contempt of court pursuant to section 785.01(1)(b), Stats.1979-80,2 if he does not comply with the March 19, 1980, order. Accordingly he is not barred from **658 challenging the order whose violation would subject him to a contempt citation.³

The law governing review of arbitration awards was summarized in *Milwaukee Bd. Sch. Dirs. v. Milwaukee Teacher's Ed. Asso.*, 93 Wis.2d 415, 422, 287 N.W.2d 131 (1980) as follows:

"This court has held that an arbitrator's award is

presumptively valid, and it will be disturbed only where invalidity is shown by clear and convincing evidence. *Stradinger v. City of Whitewater*, 89 Wis.2d 19, 37, 277 N.W.2d 827 (1979); *Sherrer Constr. Co. v. Burlington Mem. Hosp.*, 64 Wis.2d 720, 735, 221 N.W.2d 855 (1974). This court has also stated that it has a 'hands *308 off' attitude toward arbitrator's decisions. *Glendale Prof. Policemen's Asso. v. Glendale*, 83 Wis.2d 90, 98, 264 N.W.2d 594 (1978); *Jt. School Dist. No. 10 v. Jefferson Ed. Asso.*, 78 Wis.2d 94, 117, 253 N.W.2d 536 (1977); *WERC v. Teamsters Local No. 563*, 75 Wis.2d 602, 611, 250 N.W.2d 696 (1977). This court has said that:

"Judicial review of arbitration awards is very limited. The strong policy favoring arbitration as a method for settling disputes under collective bargaining agreements requires a reluctance on the part of the courts to interfere with an arbitrator's award upon issues properly submitted...."

"Thus, the function of the court upon review of an arbitration award is a supervisory one, the goal being merely to ensure that the parties receive the arbitration that they bargained for...." *Milw. Pro. Firefighters Local 215 v. Milwaukee*, 78 Wis.2d 1, 21, 22, 253 N.W.2d 481 (1977).

"The decision of an arbitrator will not be interfered with for mere errors of judgment as to law or fact, but the court will overturn an arbitrator's award if there is perverse misconstruction or positive misconduct plainly established, or if there is a manifest disregard of the law, or if the award itself is illegal or violates strong public policy."

In *Glendale Prof. Policeman's Asso.*, 83 Wis.2d at 98, 264 N.W.2d 594, this court declared that, although it has adopted a "hands-off" attitude toward arbitration awards, it would vacate an award where the arbitrator has exceeded his authority, stating:

"An arbitrator exceeds his authority in enforcing an illegal contract. ... Because a contract provision that violates the law is void, a dispute arising out of a violation of that provision is not arbitrable."

The sheriff argues that the arbitrator's award is illegal and void because it orders him to comply with a provision of a collective bargaining contract entered into between the union and Dane county that infringes upon his powers as sheriff.

*309 The office of sheriff is one of the most ancient and important in Anglo-American Jurisprudence. Its origins pre-date the Magna Carta. Walter H. Anderson, in *A Treatise On The Law of Sheriffs, Coroners And Constables*, describes the sheriff's common law authority as follows:

"In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he (the sheriff) represents the sovereignty of the State and *he has no superior in his county.*" (Emphasis added.)⁴

This comports with the role of the office as described by Blackstone:

"As the keeper of the kings peace, both by Common law and special commission, he is the first man in the county, and **659 superior in rank to any nobleman, therein, during his office."⁵

The position of sheriff is provided for in the Wisconsin Constitution, Article VI, section 4, which provides, in part:

"Sheriffs ... shall be chosen by the electors of the respective counties once in every two years.... Sheriffs shall hold no other office; they may be required by law to renew their security from time to time, and in default of giving such new security their office shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The governor may remove any [sheriff] ... giving to [him] ... a copy of the charges against him and an opportunity of being heard in his defense. All vacancies shall be filled by appointment and the person appointed to fill a vacancy shall hold only for the unexpired

portion of the term to which he shall be appointed and until his successor shall be elected and qualified."

*310 While the sheriff's powers are not delineated in the Constitution, this court early set forth its interpretation of the scope of the sheriff's constitutional powers in *State ex rel. Kennedy v. Brunst*, 26 Wis. 412 (1870), in which the court declared unconstitutional a statute transferring "exclusive charge and custody" of the Milwaukee county jail from the sheriff to the inspector of the house of correction. The court discussed the constitutional powers of the sheriff as follows:

"The office of sheriff, in a certain sense, is a constitutional office; that is, the constitution provides that sheriffs shall be chosen by the electors of the respective counties, once in every two years and as often as vacancies shall happen. Sec. 4, art. 6. Now, it is quite true that the constitution nowhere defines what powers, rights and duties shall attach or belong to the office of sheriff. But there can be no doubt that the framers of the constitution had reference to the office with those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted. Among those duties, one of the most characteristic and well acknowledged was the custody of the common jail and of the prisoners therein. This is apparent from the statutes and authorities cited by the counsel for the respondent. And it seems to us unreasonable to hold, under a constitution which carefully provides for the election of sheriffs, fixes the term of the office, etc., that the legislature may detach from the office its duties and functions, and transfer those duties to another officer. In this case it is said that the legislature has attempted to take the largest share of the duties of sheriff, in point of responsibility and emolument, and to commit it to an officer selected by the county board of supervisors. If the legislature can do this, why may it not deprive the sheriff of *all* the duties and powers appertaining to his office, and transfer them to some officer not chosen by the electors? It would certainly be a very idle provision of the constitution, to secure to the electors the right to choose their sheriffs, and at the same time leave to the legislature the power to detach from the office of sheriff all the *311 duties and functions by law belonging to that office when

Next

the constitution was adopted, and commit those duties to some officer not elected by the people. For this would be to secure to the electors the right to choose a sheriff in name merely, while all the duties and substance of the office might be exercised by and belong to an officer appointed by some other authority. We therefore conclude that it was not competent for the legislature to take from the constitutional office of sheriff a part of the office itself, and transfer it to an officer appointed in a different manner, and holding the office by a different tenure from that which was provided for in the constitution." *State ex rel. Kennedy*, 26 Wis. at 414-15.

**660 The scope of the sheriff's constitutional powers were further defined in *State ex rel. Milwaukee County v. Buech*, 171 Wis. 474, 177 N.W. 781 (1920), wherein this court held that a statute providing for civil service appointment of sheriff's deputies was not an unconstitutional infringement of the sheriff's authority. The decision declared:

"It is contended by appellant that the so-called civil service law is unconstitutional in so far as it applies to the office of sheriff of any county. It is said that at common law the sheriff had power to appoint deputies and it is not competent for the legislature to detract materially from the powers, duties, and liabilities of the sheriff, and reference is made to the case of *State ex rel. Kennedy v. Brunst*, 26 Wis. 412.... We think [Brunst] should be confined to those immemorial principal and important duties that characterized and distinguished the office. While at common law the sheriff possessed the power to appoint deputies, it was not a power or authority that gave character and distinction to the office. Many other officers as well as sheriffs possessed the power. It was more in the nature of a general power possessed by all officers to a more or less extent and was not peculiar to the office or sheriff. It should not be held, in our judgment, that the constitution prohibits any legislative change in the powers, duties, functions, and liabilities of a sheriff as they existed at common law. If that were true, a constitutional amendment *312 would be necessary in order to change the duties of sheriffs in the slightest degree and, in this respect, 'the state would be stretched on a bed of Procrustes.' " *Buech*, *supra*, 171 Wis. at 481-482, 177 N.W. 781.

The trial court in the case before us concluded that

the assignment of deputies to particular jobs is not " 'peculiar to' nor gives 'character and distinction to' the office of sheriff." Therefore the constitution did not preclude Dane county from bargaining this matter with the union representing the deputy sheriffs. However, the trial court over-generalized the issue. The real question is whether the duties performed by the "court officer" are among the principal and important duties which characterized the office of sheriff so that the sheriff may not be restricted as to whom he appoints to perform the functions. It is the nature of the job assigned rather than the general power of job assignment which must be analyzed in light of the sheriff's constitutional powers.

Blackstone points out that the duties of the sheriff in relation to the courts include:

"Bailiffs, or sheriff's officers, ... attend the judges and justices at the assises, and quarter sessions..."⁶

Anderson says:

"It is one of the many duties of the sheriff to attend sessions of particular courts. It is sufficient for the sheriff to fulfill the duty ... by a qualified deputy ... when the sheriff attends the court he attends as an officer of the court...."

"It is the duty of the sheriff to be present himself, or through a deputy and provide sufficient deputies to carry out the Court's orders."

"It is likewise the duty of the sheriff not only to see peace and quiet are maintained in the court but also to see that his deputies, constables, and other officers in the *313 court perform the duties assigned to them. The sheriff is the immediate officer of the court and should see that all of its orders in its behalf are properly carried out and obeyed..."⁷

"[The sheriff] ... appoints court officers although subject to the approval of the court. The court cannot interfere with the sheriff's discretion in appointing bailiffs or reduce the number provided by statute, but the sheriff is liable for contempt in appointing persons offensive to the court's order and decorum under pretense of exercising his statutory discretion and the court may enforce the exclusion **661 of such appointees from its presence."⁸

[2] "Attendance on the Court" is in the same category of powers inherent in the sheriff as is

running the jail. Just as this court held in *State ex rel. Kennedy v. Brunst*, 26 Wis. at 415, that the legislature cannot deprive the sheriff of control of the jail, neither can the legislature through a statute authorizing collective bargaining by the county board and a union deprive the sheriff of his authority to select who among his deputies shall act in his stead in attendance on the court.

Counsel for the union in oral argument before this court stated that under the collective bargaining agreement, the sheriff himself could not "attend" the court unless a member of the union accompanied him. This interpretation would substantially limit the sheriff's ability to perform his official duties as he sees fit, forcing him to either forbear personally performing one of his functions or be accused of "featherbedding" by taking along an unneeded deputy. Such a restriction is inconsistent with the traditional nature of this office, as stated by this court in *Andreski v. Industrial Comm.*, 261 Wis. 234, 240, 52 N.W.2d 135 (1952):

*314 "Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it. He divides his time according to his own judgment of what is necessary and desirable but is always subject to call and is eternally charged with maintaining the peace of the county and the apprehension of those who break it. In the performance of this duty he is detective and patrolman, as well as executive and administrator, and he is emphatically one of those who may serve though they only stand and wait. We recite these qualities and characteristics of the office not because they are novel but because they are so old

that they are easily forgotten or unappreciated."

[3] From a review of the above authorities, we conclude that attending on the courts is one of the duties preserved for the sheriff by the Wisconsin Constitution. We are unable, however, to determine whether the "court officer" position at issue here falls within the above-mentioned powers of the sheriff.

The record in this case is meager as to the function of the court officer. The collective bargaining agreement is not part of the record. Whether or not the duties of the "court officer" are described therein or from what deputies the sheriff is supposed to choose is not shown. There is no transcript of the hearing before the arbitrator and so anything said there about the functions of the court officer is not available to us. The arbitrator's decision, which is part of the record, describes the duties of the "court officer" as follows:

"Prior to January, 1979, one of the positions in the Sheriff's Department was that of court officer. Classified as deputy sheriff II, the court officer monitored the arrest reports of other deputies, made certain that work *315 of the Sheriff's Department was completed in cases where probable cause for prosecution appeared, and assisted in extradition proceedings and other matters within the jurisdiction of the office of the district attorney."

Neither party argued that the above is a complete description of the court officer's duties. Counsel for the sheriff argued in its brief that "[t]he delegated authority at issue here is that of attending on court," citing section 59.23(3), Stats.1979-80.9

"59.23 Sheriff, duties... (3) Attend upon the circuit court held in the sheriff's county during its session, and at the request of the court file with the clerk **662 thereof a list of deputies for attendance on the court...."

During oral argument before this court, and in response to questions from the bench, counsel for the union also treated the court officer position as involving "attendance" on the court. If the court officer performs the functions set

forth in section 59.23(3) or is required to represent the sheriff in court, such matters are reserved to the sheriff by the Wisconsin Constitution and therefore the county may not limit the sheriff's discretion by a provision in a collective bargaining agreement. What the facts are with respect to the court officer's duties are to be resolved by the trial court.

If the functions of the court officer are not reserved to the sheriff by the Constitution, then the sheriff may be bound by the collective bargaining agreement entered into between the county and the union by virtue of the Municipal Employment Relations Act (MERA), sections 111.70-77, Stats.1979-80.10

*316 MERA imposed upon Dane county an obligation to collectively bargain with its public employees unions. The county board has the power to bargain on behalf of the county by virtue of sections 59.07 (intro.) and (5), Stats.1979-80:

"59.07 General powers of board. The board of each county may exercise the following powers, which shall be broadly and liberally construed and limited only by express language....

"(5) GENERAL AUTHORITY. Represent the county, have the management of the business and concerns of the county in all cases where no other provision is made, apportion and levy taxes and appropriate money to carry into effect any of its powers and duties."

[4] While the agreement achieved as the result of this bargaining may not violate the law, *WERC v. Teamsters Local 563*, 75 Wis.2d 602, 613, 250 N.W.2d 696 (1977), the contract and related statutes should be harmonized *317 whenever possible, *Glendale Prof. Policemen's Assoc. v. Glendale*, 83 Wis.2d 90, 103-104, 264 N.W.2d 594 (1978).

The sheriff argues that section 59.23(3), Stats., accords him statutory powers which may not be limited by a collective bargaining agreement. Section 59.23(3) codifies the sheriff's constitutional duty to attend on the court. Accordingly, the statutory authorization adds nothing to his constitutional powers discussed above. If the court officer does perform the functions set forth in section 59.23(3), the collective bargaining agreement may not limit the sheriff's discretion in assigning a deputy to that position. However, were it not for the

constitutional basis for the statutory authorization, then the statute would be no bar to enforcement of the collective bargaining agreement even though they arguably conflict. The statute appears to confer unlimited discretion on the sheriff to appoint the court officer while the collective bargaining agreement limits the selection of the deputy **663 who may be so appointed to members of a particular bargaining unit. Although the county board may not bind the sheriff to a collective bargaining provision which explicitly contradicts his constitutional or statutory powers and duties, a provision which can be reasonably interpreted to not conflict with the sheriff's statutory powers should be given effect.

This court dealt with a similar situation in *Glendale Prof. Policeman's Asso.*, 83 Wis.2d 90, 264 N.W.2d 594, in which the Glendale chief of police argued that a collective bargaining provision that any vacancy must be filled by promotion of the most "senior" qualified employee was void because it limited the police chief's powers set forth in section 62.13(4)(a), Stats.1975.11 This court, applying *318 the rule that the collective bargaining agreement and the statute should be harmonized if possible, held that the agreement was not incompatible with the statute since it did not require the chief to appoint an unqualified person, and the seniority requirement would only come into effect if there were more than one qualified candidate for promotion. The court recognized that in entering into the collective bargaining agreement, the city limited some of the discretion which the chief might otherwise have, but that narrowing, as opposed to totally removing, the chief's discretion was compatible with the statute.

"Although by entering into the collective bargaining agreement the City relinquished some of the discretion the Chief and the Board enjoyed previously concerning appointments and promotions, it has not transferred from the Chief or the Board the authority to determine who is qualified, and it has not transferred away the appointing authority.

"Our construction gives effect to both the Chief's power under sec. 62.13(4)(a) and the municipality's duty to bargain under sec. 111.70, Stats. Sec. 62.13(4)(a) is enabling legislation which places the exercise of discretion in a certain office, while sec. 111.70 permits the City to limit the scope of

this discretion through a collective bargaining agreement. The Common Council has not, as the City contends, bargained away a power possessed by the Chief that is not the City's to bargain. In ratifying the agreement, the Council has effectuated the municipal employer's statutory duty to bargain on conditions of employment and has preserved the statutory requirement that only qualified persons be appointed." *Glendale Prof. Policemen's Assn.*, 83 Wis.2d at 107, 264 N.W.2d 594.

Again, however, *Glendale* is inapplicable to the extent that the sheriff's authority is based upon his constitutional *319 rather than merely statutory powers. While MERA permits a collective bargaining agreement to limit the sheriff's statutory powers to the extent set forth in *Glendale*, it provides no basis for so limiting the powers and duties of the sheriff which are based upon his constitutional status.

We, therefore, remand this case to the trial court for a determination of the duties of the court officer and whether those duties are among those preserved to the sheriff by the Wisconsin Constitution. If they are, then the arbitrator's award is invalid and the sheriff is not bound by it. If not, then the sheriff is bound by the collective bargaining agreement and the court may order him to comply with it.

The order of the circuit court is reversed and the cause is remanded for further proceedings consistent with this opinion.

ABRAHAMSON, Justice (dissenting).

The dispute in the case at bar focuses on what duties of the Office of Sheriff are so crucial and peculiar to the maintenance of the constitutional role of that office that the duties cannot be regulated by the legislature or the county through power delegated to it by the legislature.

**664 Although the court officer may perform tasks which are peculiar to and characteristic of the Office of Sheriff, I dissent because I conclude, as did Circuit Judge P. Charles Jones, that the *assignment* of a deputy to act as a court officer is not a duty peculiar to and characteristic of the Office of Sheriff. Judge Jones concluded that the

sheriff's appointment of the court officer can be regulated by the legislature, reasoning as follows:

"Taken together, these decisions [*Brunst, supra* and *Buech, supra*] establish that 'important' duties, functions and powers 'generally recognized ... [as] belonging to *320 [the sheriff] ... when the constitution was adopted,' which are 'peculiar to' and give 'character and distinction to the office' of Sheriff, repose exclusively in the Sheriff and may not be exercised by, nor delegated to, any other official or body.

"I believe that under this test, work assignment labor relations issues are not relegated by Art. VI, Sec. 4 solely to the authority of Sheriffs. The legislature is thus free to allocate power to bargain on these issues between Sheriffs and Counties as it sees fit.

"While internal management of the Sheriff's Department is doubtless 'important', and quite possibly a power generally recognized as 'belonging to the Sheriff when the Constitution was adopted,' I believe it neither is 'peculiar to' nor gives 'character and distinction to' the office of Sheriff. Under the reasoning in *Buech, supra*, numerous other officials, both elected and appointed, are responsible for the internal management of their offices. Indeed, to require a constitutional amendment for every change in Sheriff's Department internal management would be to stretch the state 'on a bed of Procrustes.' *Buech, supra* at 482 [177 N.W. 781].

"Thus, Art. VI, Sec. 4, *Wis. Const.*, does not restrain the legislature from rendering Sheriffs agents of counties for purposes of collective bargaining regarding deputies' work assignments." Memorandum decision of the Circuit Court at 7-8.

The majority holds that more facts are needed to determine the functions of the court officer. I conclude that regardless of whether the court officer "attends upon the court" or represents the sheriff in court, the assignment of a deputy as a court officer can be reasonably regulated. While the duties performed by a court officer may be part of the constitutional duties of the Office of Sheriff (as is the operation of a jail), the assignment of the deputy to act as court officer may be regulated by the legislature (as is the assignment of a deputy to work in the jail).

Although there is an important relationship between the circuit court and the deputy sheriff who attends *321 upon the court, this case does not pose the issue of the powers of the circuit court over its attendant.

Parallel Citations

316 N.W.2d 656, 114 L.R.R.M. (BNA) 2153

For the foregoing reasons, I dissent.

Footnotes

- 1 The Teamsters were succeeded as bargaining agents by the Wisconsin Professional Policeman's Association, (WPPA), the petitioner-respondent in this action. Both the WPPA and the Teamsters will be referred to throughout this opinion as the "union."
- 2 "785.01 Definitions. (1) 'Contempt of court' means intentional: ...
"(b) Disobedience, resistance or obstruction of the authority, process or order of a court; ..."
Sheriff Ferris died while this action was pending before this Court. At Oral Argument, counsel for both parties informed the Court that they had agreed that his successor, Sheriff Jerome Lacke, be substituted for Sheriff Ferris. Counsel for the sheriff also informed us that Sheriff Lacke did not intend to comply with the March 19, 1980, order confirming the arbitrator's award and so was also subject to being held in contempt of court.
- 3 See *Anderson v. Anderson*, 82 Wis.2d 115, 118-119, 261 N.W.2d 817 (1978) and *Getka v. Lader*, 71 Wis.2d 237, 247, 238 N.W.2d 87 (1976) for statements of the general rule that the facts that a court order is clearly erroneous does not preclude being held in contempt for violation of the order.
- 4 1 W. Anderson, *A Treatise on the Law of Sheriffs, Coroners and Constables*, (section 6, p. 5 (1940).
- 5 1 W. Blackstone, *Commentaries on the Law of England*, 4th ed., (Clarendon Press, Oxford, England, 1770), p. 343.
- 6 *Id.*, at 345.
- 7 1 Anderson, *supra*, at sections 325, 327, pp. 320, 321.
- 8 *Id.*, at section 65, p. 59.
- 9 Sheriff's reply brief at page 4.
- 10 The portions of MERA relevant to this action are section 111.70(1)(a), (d) and (3), Stats:
"111.70 Municipal employment. (1) DEFINITIONS. As used in this subchapter:
"(a) 'Municipal employer' means any city, county, village, town metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employe and includes any person acting on behalf of a municipal employer within the scope of his authority, express or implied....
"(d) 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement....
"(3) PROHIBITED PRACTICES AND THEIR PREVENTION. (a) It is a prohibited practice for a municipal employer individually or in concert with others: ... (5) To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours, and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them."
- 11 "62.13 Police and fire departments... (4) SUBORDINATES: REEMPLOYMENT. (a) The chiefs shall appoint subordinates subject to approval by the board. Such appointments shall be made by promotion when this can be done with advantage, otherwise from an eligible list provided by examination and approval by the board and kept on file with the clerk."

Wisconsin Professional Police Ass'n (WPPA) v. Dane County, 106 Wis.2d 303 (1982)
316 N.W.2d 656, 114 L.R.R.M. (BNA) 2153

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2009 WI APP 116

**COURT OF APPEALS OF WISCONSIN
PUBLISHED OPINION**

Case No.: 2008AP1210

†Petition for Review filed.

Complete Title of Case:

WASHINGTON COUNTY, A MUNICIPAL EMPLOYER,

PLAINTIFF-RESPONDENT,†

v.

WASHINGTON COUNTY DEPUTY SHERIFF'S ASSOCIATION, A LABOR

ORGANIZATION,

DEFENDANT-APPELLANT.

Opinion Filed:	June 16, 2009
Submitted on Briefs:	December 2, 2008
Oral Argument:	—

JUDGES:	Fine, Kessler and Brennan, JJ.
Concurred:	—
Dissented:	—

Appellant ATTORNEYS:	On behalf of the defendant-appellant, the cause was submitted on the brief of <i>Nola J. Hitchcock Cross of Cross Law Firm, S.C.</i> of Milwaukee.
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Respondent ATTORNEYS:	On behalf of the plaintiff-respondent, the cause was submitted on the brief of <i>Alyson K. Zierdt of Davis & Kuelthau, S.C.</i> of Milwaukee.
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**COURT OF APPEALS
DECISION
DATED AND FILED**

June 16, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2008AP1210
STATE OF WISCONSIN**

Cir. Ct. No. 2007CV26

IN COURT OF APPEALS

WASHINGTON COUNTY, A MUNICIPAL EMPLOYER,

PLAINTIFF-RESPONDENT,

V.

**WASHINGTON COUNTY DEPUTY SHERIFF'S ASSOCIATION,
A LABOR ORGANIZATION,**

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Washington County:
PAUL V. MALLOY, Judge. *Reversed and cause remanded.*

Before Fine, Kessler and Brennan, JJ.

¶1 BRENNAN, J. The Washington County Deputy Sheriff's Association (WCDSA) appeals the trial court's order prohibiting arbitration of its grievance against the Sheriff. The trial court declared that the Sheriff's decision to staff the security screening station at the Washington County Justice Center with

special deputies was part of the Sheriff's constitutionally protected powers and could not be limited by a collective bargaining agreement. We reverse because we conclude that staffing the x-ray and metal detector security screening station is not one of those "certain immemorial, principal, and important duties of the sheriff at common law that are peculiar to the office of sheriff and that characterize and distinguish the office." *Kocken v. Wisconsin Council 40*, 2007 WI 72, ¶39, 301 Wis. 2d 266, 732 N.W.2d 828.

BACKGROUND

¶2 Washington County started the planning for a new justice center in 2005. The design included a new secure entrance, which did not exist previously. The purpose for the building was to bring the courts and other offices all into one wing of Washington County's court complex. During the 2006 county budget process, Sheriff Brian Rahn proposed to the County Board Committee that the security screening station be staffed with two full-time deputy sheriffs for the additional security needs of the newly constructed justice center. He made the request partly due to some security concerns expressed by judges. The County Board Committee, without reaching a conclusion, then discussed with Sheriff Rahn the possibility of privatizing the staffing of the security screening station. Sheriff Rahn reworked his proposal and came back to the County Board Committee with an alternative proposal of staffing the security screening station with two part-time special deputies. The County Board Committee approved the alternate proposal. Sheriff Rahn testified at his deposition that he would have preferred the full-time deputy sheriffs and only made the alternate proposal because the County was considering privatizing the staff for the security screening station. He testified that the final decision on hiring the special deputies was his own.

¶3 In May 2006, the WCDSA filed a grievance claiming that the hiring of the part-time special deputies, who were non-union, was a violation of the collective bargaining agreement. The WCDSA petitioned the Wisconsin Employment Review Commission (“WERC”) for arbitration. The County filed a declaratory judgment lawsuit and a petition for an injunction to prevent the arbitration. The parties submitted briefs and affidavits, and the trial court held a hearing on the County’s motions. The trial court made a factual finding, which is undisputed by the parties, describing the nature of the job involved in the grievance:

The nature of the job to which Sheriff Rahn assigned the Special Deputies was performing courthouse entrance security screening duties, *including manning a walk-through metal detector and an x-ray machine to look for weapons and other things that were not permitted in the Justice Center.*

(Emphasis added.)

¶4 The trial court granted the County’s motion declaring that the grievance was not substantively arbitrable because the decision to staff the security screening station with special deputies was part of the Sheriff’s constitutionally protected duties. The trial court granted the County’s injunction request and ordered the WCDSA to withdraw the grievance. WCDSA appeals.

¶5 The facts in this case are undisputed, with one exception. WCDSA contends that the County Board Committee made the decision that special deputies would be hired. The County contends that the Sheriff made that decision. The trial court’s order of February 28, 2008, included the specific factual finding that the Sheriff made the decision to staff the security screening station with special deputies.

STANDARDS OF REVIEW

¶6 We review the trial court's decision granting the County's motion for declaratory judgment without deference to the decision of the trial court. *See Ball v. District No. 4, Area Bd.*, 117 Wis. 2d 529, 537, 345 N.W.2d 389 (1984).

¶7 We review the disputed issue of fact in this case, whether the County or the Sheriff made the decision to staff the security screening station with part-time special deputies, under the "clearly erroneous" standard. *See Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983). The finding is not "clearly erroneous" when there is credible evidence in the record to support it. *See Insurance Co. of N. Am. v. DEC Int'l, Inc.*, 220 Wis. 2d 840, 845, 586 N.W.2d 691 (Ct. App. 1998).

I. The Trial Court's Disputed Factual Finding Is Not "Clearly Erroneous"

¶8 WCDSA argues that the decision to staff the security screening station with special deputies was really made by the County Board Committee and, therefore, the staffing decision was not part of the Sheriff's exercise of his constitutionally protected powers. The County argues that the Sheriff made the staffing decision. The trial court found that the Sheriff made the staffing decision. That finding was not clearly erroneous.

¶9 There is evidence in the record supporting the trial court's finding that the Sheriff was the one who made the decision. In his deposition testimony, Sheriff Rahn stated that he was the first to propose two full-time deputy sheriffs to staff the new security screening station. He agreed that if the County Board Committee had approved his initial proposal to hire two new full-time deputies, he would have staffed the security screening station with the new deputies. He

acknowledged that he only revised the proposal because the County officials required him to do so. But on redirect by the County's attorney, Sheriff Rahn testified that he revised the proposal because the County officials advised him to come back with additional options after they had discussed privatization of the staff at the security screening station. When directly asked who made the decision to staff the secure entrance with the special deputies, he said he did.

¶10 WCDSA argues that by discussing privatization of the positions, the County, in effect, was making the decision to staff the security screening station with special deputies. But this argument ignores two obvious facts. First, the County only discussed, and did not order, privatization. And second, the topic being discussed was hiring private-sector security officers, not part-time special deputies of the Washington County Sheriff's Department. WCDSA does not offer any evidence from the record demonstrating that it was the County that initiated or ordered the special deputies. Accordingly, the record supports the trial court's finding that it was the Sheriff who decided to staff with special deputies; and we cannot say that finding was clearly erroneous.

II. The Sheriff's Constitutionally Protected Duties

¶11 The main issue on appeal is whether the Sheriff's decision to staff x-ray and metal detector machines with part-time special deputies is one of the Sheriff's constitutionally protected duties. A sheriff cannot be constrained by a collective bargaining agreement if he acts on his constitutional powers. See *Wisconsin Prof'l Police Ass'n v. Dane County*, 106 Wis.2d 303, 305, 316 N.W.2d 656 (1982) (*WPPA I*); *Dunn County v. WERC*, 2006 WI App 120, ¶15, 293 Wis. 2d 637, 718 N.W.2d 138. If the Sheriff's decision to staff the security screening station with special deputies was not part of his constitutionally

protected duties, then it is substantively arbitrable under the collective bargaining agreement.

¶12 The Wisconsin Constitution does not define the duties of a sheriff, but case law has described examples and a method of analysis. Initially, the definition of whether duties were part of the sheriff's constitutionally protected powers focused on a historical analysis of whether they were longstanding established duties of the sheriff at common law such as housing the county's prisoners in the jail. See *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 414 (1870). But, in *State ex. rel. Milwaukee County v. Buech*, 171 Wis. 474, 177 N.W. 781 (1920), the Wisconsin Supreme Court shifted the focus of the analysis to those duties that characterized and distinguished the office of sheriff, rather than whether they existed at common law. See *Buech*, 171 Wis. at 481-82. "If the duty is one of those immemorial principal and important duties that characterized and distinguished the office of sheriff at common law, the sheriff 'chooses his own ways and means of performing it.'" See *Wisconsin Prof'l Police Ass'n v. Dane County*, 149 Wis. 2d 699, 710, 439 N.W.2d 625 (Ct. App. 1989) (*WPPA II*) (quoting *WPPA I*, 106 Wis. 2d at 314).

¶13 To properly determine whether the assigned job is within constitutional protection, we first examine the nature of the job or duty. See *WPPA I*, 106 Wis. 2d at 312. The trial court made a finding here on the nature of the security screening station job:

The nature of the job to which Sheriff Rahn assigned the Special Deputies was performing courthouse entrance security screening duties, including manning a walk-through metal detector and an x-ray machine to look for weapons and other things that were not permitted in the Justice Center.

¶14 Neither party has disputed this finding on appeal. Accordingly, we must determine whether manning the walk-through metal detector and x-ray machine to look for weapons and other things that are not permitted in the Justice Center are duties that are “one of these immemorial principal and important duties that characterized and distinguished the office of sheriff at common law.” *See WPPA II*, 149 Wis. 2d at 710.

¶15 No Wisconsin case has yet addressed whether the staffing of security screening stations is part of the sheriff’s constitutionally protected duties. Part of the reason for this is that such stations have not existed until recent times. Now, however, it is common to see metal detector screening stations at airports, schools, sporting events and both private and public building entrances. The record states clearly that the Washington County Justice Center secure entrance is new with the 2006 opening of the building. Certainly, it cannot be said that staffing the security screening station at the Washington County Justice Center is a time immemorial duty of the sheriff.

¶16 Nonetheless, the County argues that staffing the screening station machines is part of the Sheriff’s inherent constitutional powers because it is similar to: (1) “attendance upon the courts,” which the Wisconsin Supreme Court has determined to be part of the Sheriff’s constitutional powers, *see WPPA I*, 106 Wis. 2d at 313 (court security officer is part of sheriff’s constitutionally protected duties) (citing *Brunst*, 26 Wis. at 415; *see also* WIS. STAT. § 59.27(3) (2007-08)); and (2) the sheriff’s general law enforcement powers, which our supreme court has also found to be constitutionally protected, *Washington County v. Deputy Sheriff’s Ass’n*, 192 Wis. 2d 728, 741, 531 N.W.2d 468 (Ct. App. 1995) (assigning municipal officers to patrol Harleyfest is part of the sheriff’s constitutionally protected duties).

¶17 We first address the County’s argument that manning the security screening station machines is similar to “attendance upon the courts.” In *Dunn County*, we held that the assignment of bailiffs to attend upon the court and supervision over their schedules is one of the sheriff’s constitutionally protected duties. *See id.*, 293 Wis. 2d 637, ¶15 (citing *WPPA I*, 106 Wis. 2d at 312).

¶18 More recently, in a series of three decisions, we have held that execution of orders issued by the county’s judges is part of the sheriff’s constitutionally protected duty of attendance upon the court. In *WPPA II*, we held that “when the sheriff executes an arrest warrant issued by the court to bring a prisoner before the court the sheriff attends upon the court.” *Id.*, 149 Wis. 2d at 707.¹ In *Brown County Sheriff’s Department Non-Supervisory Labor Ass’n v. Brown County*, 2009 WI App 75, ___ Wis. 2d ___, 767 N.W.2d 600, we held that transportation of the county’s prisoners was part of the sheriff’s constitutionally protected duties. *See id.*, ¶8. And, in *Milwaukee County Deputy Sheriff’s Ass’n v. Clarke*, No. 2008AP2290, slip op. (WI App June 2, 2009, recommended for publication), we held that transporting prisoners and effectuating other orders of the county’s judges is part of the sheriff’s constitutional duty to attend upon the courts. *See id.*, ¶29. The exception to this line of cases is where the sheriff is transporting prisoners from other jurisdictions as a revenue-generating operation. *Ozaukee County v. Labor Ass’n of Wis.*, 2008 WI App 174, ¶31, 315 Wis. 2d

¹ We note, with some irony, that because the duty is part of the sheriff’s constitutional powers, he is permitted to delegate the task to an entity outside his department—here the U.S. Marshal’s Service.

102, 763 N.W.2d 140. When the sheriff is executing orders from jurisdictions other than his own, he is not acting within his constitutional powers. *Id.*

¶19 The nature of the job of security screening is not similar to these other examples of attendance upon the courts. Operating the metal detector and x-ray machine at an entrance to the Washington County Justice Center, which houses offices, as well as courts, is not at all comparable to being the court's security officer within the courtroom. The visitors of the Justice Center include visitors and employees of the housed offices, as well as the courts. The deputies at the security screening station are not stationed *in* the courts nor do they patrol or monitor the courtrooms in any way. The security screening station deputies have no function that relates to executing judges' orders. And, screening for things *other than weapons* "and other things not permitted in the Justice Center" is too far a stretch to meet the description of attending upon the courts. None of the security screening station deputies' duties compares in any way to those duties of the sheriff that we have held are constitutionally protected as part of the Sheriff's recognized duty to attend upon the courts.

¶20 The County next argues that manning the screening station machines here is part of the Sheriff's constitutional duties because they are similar to other duties that have been found to be constitutionally protected, such as providing law enforcement. The Wisconsin courts have determined that maintaining law and order and preserving the peace are parts of the sheriff's constitutionally protected duties. See *Manitowoc County v. Local 986B*, 168 Wis. 2d 819, 830, 484 N.W.2d 534 (1992) (per curiam) (reassignment of deputy from patrol to undercover drug investigations); *Washington County*, 192 Wis. 2d at 741 (sheriff's assignment of municipal officers to augment his county-wide law enforcement duty for Harleyfest).

¶21 Here, waiving the metal-detecting wand or listening for the buzzer to ring at the county's combined-use office building is a far cry from the sheriff's county-wide law enforcement responsibilities noted above. It is a function frequently performed by private security guards at airports, schools, movie theaters, retail stores and public buildings.

¶22 The nature of the job of security screening is really administrative. Duties of the sheriff that are excluded from constitutional protection have been described as "internal management and administrative duties" or "mundane and common administrative duties." *Heitkemper v. Wirsing*, 194 Wis. 2d 182, 193, 533 N.W.2d 770 (1995). Examples of "internal management and administrative duties" are: (1) preparation of food for inmates in the jail, *Kocken*, 301 Wis. 2d 266, ¶75; (2) hiring and firing procedures of deputy sheriffs, *see Buech*, 171 Wis. at 482; *Heitkemper*, 194 Wis. 2d at 193; (3) day-to-day scheduling of overtime and emergency coverage and limited-term employee coverage other than court officers, *Dunn County*, 293 Wis. 2d 637, ¶23; and (4) money-generating transport of federal prisoners in the county's jail under a rental contract with the federal government, *Ozaukee County*, 315 Wis. 2d 102, ¶¶32-33.

¶23 All of the above determined administrative duties have some connection to the sheriff's constitutionally protected duties, but cannot be said to be tasks that lend character and distinction to the office of sheriff. Operating the machines involved in screening is a mundane task that is done in many places by private security officers. These have not traditionally been the sheriff's tasks to perform. They are too far removed from the courtroom itself, the orders of the judges and the function of law enforcement. Because staffing metal detector and x-ray machines is similar to the duties that the courts have considered "mundane

and commonplace,” “internal management and administrative,” *Heitkemper*, 194 Wis. 2d at 193, we reverse the order of the trial court.

By the Court.—Order reversed and cause remanded.

STATUTORY REFERENCES

<p>Wis. Stats. §59.27(1)(2)(3)(4) (10)(11)</p>	<p>59.27 Sheriff; duties. The sheriff of a county shall do all of the following:</p> <p>(1) Take the charge and custody of the jail maintained by the county and the persons in the jail, and keep the persons in the jail personally or by a deputy or jailer.</p> <p>(2) Keep a true and exact register of all prisoners committed to any jail under the sheriff's charge, in a book for that purpose, which shall contain the names of all persons who are committed to any such jail, their residence, the time when committed and cause of commitment, and the authority by which they were committed; and if for a criminal offense, a description of the person; and when any prisoner is liberated, state the time when and the authority by which the prisoner was liberated; and if any person escapes, state the particulars of the time and manner of such escape.</p> <p>(3) Attend upon the circuit court held in the sheriff's county during its session, and at the request of the court file with the clerk thereof a list of deputies for attendance on the court. The court may by special order authorize additional deputies to attend when the court is engaged in the trial of any person charged with a crime. Except as otherwise provided in this section, the board shall establish the rate of compensation and the level of services to be provided. The sheriff or one or more deputies shall attend the court of appeals when it is in session in the sheriff's county. The state shall reimburse the county from the appropriation under s. 20.660 (1) for the actual salary paid to the sheriff or deputies for the service provided for the court of appeals.</p> <p>(4) Personally, or by the undersheriff or deputies, serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff.</p> <p>(10) To enforce in the county all general orders of the department of safety and professional services relating to the sale, transportation and storage of explosives.</p> <p>(11) Conduct operations within the county and, when the board so provides, in waters of which the county has jurisdiction under s. 2.04 for the rescue of human beings and for the recovery of human bodies.</p>
<p>Wis. Stats. §59.28(1)</p>	<p>59.28 Peace maintenance; powers and duties of peace officers, cooperation.</p> <p>(1) Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they consider necessary.</p>
<p>Wis. Stats. §59.84(10)(b)</p>	<p>59.84 Expressways and mass transit facilities in populous counties.</p> <p>(10) MAINTENANCE AND OPERATION. (b) <i>Policing of expressways.</i> Expressways shall be policed by the sheriff who may, when necessary, request and shall receive cooperation and assistance from the police departments of each municipality in which expressways are located, but nothing in this paragraph shall be construed to deprive such police departments of the power of exercising law enforcement on such expressways within their respective jurisdictions.</p>
<p>Wis. Stats. §165.85(1)</p>	<p>165.85 Law enforcement standards board.</p> <p>(1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety, and welfare of the people of this state and is of such a nature as to require training, education, and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement, jail or juvenile detention officers, persons who are serving as these officers in a temporary or probationary capacity, and persons already in regular service.</p>
<p>Wis. Stats. §302.37(1)</p>	<p>302.37 Maintenance of jail and care of prisoners.</p> <p>(1)(a) The sheriff or other keeper of a jail shall constantly keep it clean and in a healthful</p>

	<p>condition and pay strict attention to the personal cleanliness of the prisoners and shall cause the clothing of each prisoner to be properly laundered. The sheriff or keeper shall furnish each prisoner with clean water, towels and bedding. The sheriff or keeper shall serve each prisoner 3 times daily with enough well-cooked, wholesome food. The county board shall prescribe an adequate diet for the prisoners in the county jail.</p> <p>(b) The keeper of a lockup facility shall constantly keep it clean and in a healthful condition and pay strict attention to the personal cleanliness of the prisoners. The keeper shall serve each prisoner with clean water, towels and food.</p>
<p>Wis. Stats. §302.38(1)</p>	<p>302.38 Medical care of prisoners.</p> <p>(1) If a prisoner needs medical or hospital care or is intoxicated or incapacitated by alcohol the sheriff, superintendent or other keeper of the jail or house of correction shall provide appropriate care or treatment and may transfer the prisoner to a hospital or to an approved treatment facility under s. 51.45 (2) (b) and (c), making provision for the security of the prisoner. The sheriff, superintendent or other keeper may provide appropriate care or treatment under this subsection for a prisoner under 18 years of age and may transfer a prisoner under 18 years of age under this subsection without obtaining the consent of the prisoner's parent, guardian or legal custodian. The sheriff, superintendent or other keeper may charge a prisoner for the costs of providing medical care to the prisoner while he or she is in the jail or house of correction. If the sheriff or other keeper maintains a personal money account for an inmate's use for payment for items from canteen, vending or similar services, the sheriff or other keeper may make deductions from the account to pay for the charges under this subsection.</p>
<p>Wis. Stats. §303.17(1)</p>	<p>303.17 Administration and management.</p> <p>(1) The county board of supervisors shall control the management of a house of correction under s. 303.16, pursuant to such regulations and under the direct supervision and control of such officers as the county board of supervisors prescribes. No such regulation may be finally adopted on the day on which it is first presented to the county board of supervisors for consideration, nor until it has been considered and reported upon by the proper committee of the county board of supervisors. The county board of supervisors may by ordinance place the management of the house of correction under the control of the county department under s. 46.21 or 46.23, whichever is applicable, and in that event s. 46.21 or 46.23, so far as applicable, shall control. The county board of supervisors may by ordinance resume control of the management of the house of correction. The county board of supervisors shall, in accordance with the civil service law, prescribe the number and compensation of all personnel needed for the administration of the house of correction, and fix their duties.</p>
<p>Wis. Stats. §303.19(1)</p>	<p>303.19 Employment of prisoners; time credits, earnings and rewards.</p> <p>(1) The superintendent of the house of correction shall place all inmates at such employments, and shall cause all inmates who are minors to be instructed in such branches of useful knowledge, as shall be prescribed by the county board, but no goods manufactured therein shall be offered for sale or sold in the open market, except creative art, literary, musical, handicraft or hobby craft products produced by a prisoner at leisure.</p>
<p>Wis. Stats. §323.14(1)(a)2</p>	<p>323.14 Local government; duties and powers.</p> <p>(1) ONGOING DUTIES. (a) 1. Subject to subd. 3., each county board shall develop and adopt an emergency management plan and program that is compatible with the state plan of emergency management under s. 323.13 (1) (b). 2. Each county board shall designate a head of emergency management. In counties having a county executive under s. 59.17, the county board shall designate the county executive or confirm his or her appointee as county head of emergency management. Notwithstanding sub. (2) (b), an individual may not simultaneously serve as the head of emergency management for 2 or more counties.</p>
<p>Wis. Stats. §968.04(1)</p>	<p>968.04 Warrant or summons on complaint.</p> <p>(1) WARRANTS. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint or after an examination under oath of the complainant or witnesses, when the judge determines that this is necessary, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the judge shall issue a warrant for the arrest of the defendant or a summons in lieu thereof. The warrant or summons shall be delivered forthwith to a law enforcement officer for service.</p>

<p>Milwaukee County Ordinance 99.02 (1)</p>	<p>Sec. 99.02. - County emergency management director.</p> <p>(1) In accordance with ch. 166.03(4)(b), Wis. Stats., the county executive shall hereby designate the sheriff as the county emergency management director. In addition to the duties herein set forth, the sheriff shall coordinate and direct, all administrative and management functions of the county emergency management program in accordance with s. 59.031, Wis. Stats.</p>
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David A. Clarke, Jr.
Sheriff

County of Milwaukee
Office of the Sheriff

DATE: April 5, 2013

TO: Jerome J. Heer, Director of Audits

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

SUBJECT: **Response to Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff, conducted by Milwaukee County Office of the Comptroller, Audit Services Division**

The Office of the Sheriff has reviewed the Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff document as prepared by the Milwaukee County Office of the Comptroller Audit Services Division. Noting that the document contains no recommendations by the Audit Services Division warranting responses, our response will focus on issues of methodology and the judgments of Audit.

Much like Alice, the 2013 audit *Key Concepts for Evaluating Options for Delivery of Services Provided by the Milwaukee County Office of the Sheriff* would have us popping into a discomfiting new world.

Commissioned roughly a year ago it sought, in scope, not to verify accounting; or measure performance; or spot-check quality of work issues. It sought instead to "...identify the mandated services provided by the Office of the Sheriff, focusing on efficiency and service levels, and to examine issues relevant to evaluating proposals regarding the optimal delivery of discretionary services provided by the Office of the Sheriff." To reach conclusion, this task required that the audit team, in their own words, "Appl(y) judgment in identifying Office of the Sheriff activities...as mandatory...(or)...discretionary."

It is in this area, the substitution of the judgment of the audit team to that of the thrice-elected and decade long serving current Sheriff of Milwaukee County, a 35-year law enforcement officer in whom the people of Milwaukee County have placed their electoral trust, that our response focuses.

To the audit team's credit, much of their fact-finding reveals key truths about MCSO operations during the administration of Sheriff Clarke:

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- Widely-reported increases in annual budget appropriations for the Office of the Sheriff over the prior decade ignore substantial cuts to the number of funded positions each year during the same period, from 1,125 positions in FY2002 to the 935 positions held in FY2008, as the MCSO came to incorporate the personnel and operation of the former HOC. The agency has seen continued personnel losses in each year since.
- A review of effective hourly cost of compensation rates confirms that the Milwaukee Office of the Sheriff presents tremendous value to the taxpayer, in that the MCSO has a lower personnel cost structure than the three municipal police departments reviewed, whose costs ranged from 6.6% to 30.7% higher than for deputy sheriffs.
- As opposed to the often touted “inmate population problem” in Milwaukee County, the inverse is true: The daily average inmate census level has dropped significantly, from a steadily declining daily average of @ 3300 inmates system-wide at the start of the audit (FY 2008) to the ending average of under 2500 inmates per day. This drop is mirrored by a decrease in Detention staffing levels, more than suggesting not only a good-value operation, but a well-managed one as well.

And to their further credit, the audit team focused on the primary court cases, and statutory authority, that have come to define the duties and responsibilities of sheriffs and which I will touch on only briefly:

Wisconsin Professional Police Association v. Dane County (1982):

“In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he (the sheriff) represents the sovereignty of the State and he has no superior in his county.”

Washington County v. Washington County Deputy Sheriff’s Association (2008):

The Wisconsin Constitution does not define the duties of a sheriff, but case law has described examples and a method of analysis. Initially, the definition of whether duties were part of the sheriff’s constitutionally protected powers focused on a historical analysis of whether they were longstanding established duties of the sheriff at common law such as housing the county’ prisoners in the jail...But...the Wisconsin Supreme Court shifted the focus of the analysis to those duties that characterized and distinguished the office of sheriff...

And most to our point, **Wis. Stats. § 59.28(1)**, which states (in part): “Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties...”

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Shall. Not may; Shall.

Interestingly, while the audit team identified the landmark **Andreski v. Industrial Commission et al (1952)**, they quoted only narrowly from its soaring language:

The position of sheriff is one of great antiquity and honor. He was the deputy of the king in his shire and was accountable to no one but the king to whom he was responsible...

He was accompanied by his court, composed as was the king's court, of representative nobles, freeholders and burglers, before whom his officers brought persons accused of crime. Trial was had under the supervision of the sheriff and if conviction resulted the sheriff imposed the sentence and executed it. Although in rank some noblemen might be higher, in temporal power and authority within his shire and within his term of office the sheriff was legally superior to them all. He was the representative of the king, accountable only to the king and the king's authority lay in him.

Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county...

No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. He chooses his own ways and means of performing it. He divides his time according to his own judgment of what is necessary and desirable but is always subject to call and is eternally charged with maintaining the peace of the county and the apprehension of those who break it. In the performance of this duty he is detective and patrolman, as well as executive and administrator...

We recite these qualities and characteristics of the office not because they are novel but because they are so old that they are easily forgotten or unappreciated...

The sheriff's hours of work are such as he deems necessary. So, too, are his methods.

Into this discussion, under the auspices of a section entitled *Responsibilities of Wisconsin sheriffs are broadly defined and invite subjective interpretation* the audit team offers an interesting construct that, in an instant, substitutes their inspection and judgment for that of this ancient and honored position: *Given the broad constitutional and statutory authority granted to Wisconsin sheriffs and the relatively few duties specified...we were unable to identify a definitive listing of functions performed by the Milwaukee County Office*

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of the Sheriff as 'mandatory' or 'discretionary.' It is within this context, in the absence of any definitive listing, that we prepared our own listing.

Readers of the ensuing list, *Table 3: Classification of Milwaukee County Office the Sheriff Functions*, will need to resolve the interesting dichotomies, trichotomies and more that result:

- In running a more than \$140 Million dollar public service organization, having an Administration function is labeled “Ancillary to Mandated”, or “...a practical necessity at some level...” as opposed to “Mandated”
- The Detention function is “Mandated”...but having dormitories, management, inmate commissary or, in fact, visiting, is termed “Ancillary to Mandated”. At least that’s a better outcome than befell DOTS (Discipline, Order, Training, Structure, the primary inmate programming program at CCFS)... That status fell to “Discretionary.”
- Law enforcement services (and one recalls the aforementioned “shall keep and preserve the peace in their respective counties”) such as Expressway patrolling, SWAT and a Bomb Unit are “Mandated”; but a competent team of experienced detectives to make their work meaningful only “Ancillary to Mandated”. Even more bizarrely, County Grounds policing, the law enforcement services of note on an area of primary county jurisdiction, fell all the way to “Discretionary” in this analysis.

In a great leap of scope, the audit team offers this insight:

“Clearly, strained interactions during 2012 have demonstrated the importance of cooperation among County officials to effectively implement policy initiatives involving services provided by the Office of the Sheriff. The need for an effective government to continuously analyze and adapt its organizational structure, operating procedures and service delivery models demands an improvement in the working relationships between these public officials. In the event a cooperative working relationship between the above public officials cannot be achieved, one option available to policy makers is to de-fund all Office of the Sheriff services that are not explicitly mandated by statute or by the State of Wisconsin Constitution, as clarified by the Wisconsin Supreme Court. We estimate this would result in a reduction of approximately \$4.5 million in total expenditure authority, including \$3.7 million in property tax levy, based on 2012 Adopted Budget funding...and elimination of 132 FTE funded positions.”

For those looking for such an outcome, the audit team has provided a target: \$4.5 million, and 132 county employees. Gone, that is, unless “...a cooperative working

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relationship between the...public officials” can be achieved.

It can. Trust the judgment, expertise, and abilities of the experienced and long-serving Sheriff to run this agency in the best interests of the people of Milwaukee County. And for the audit team as well: The MCSO has “continuously analyze(d) and adapt its organizational structure, operating procedures and service delivery models...”

5 Bureaus down to 3; hundreds less employees; yearly surpluses returned like clockwork; the miraculous turn-around at CCF-S (to borrow the language of an oft-quoted expert, the National Institute of Corrections Jeffrey A. Schwartz, Ph.D.)

I close with this observation: The audit notes that “...the transfer of law enforcement responsibilities from the county to the municipal level is not a common occurrence nationwide. Rather, the concept of consolidating law enforcement efforts at the county level is consistent with efforts undertaken elsewhere, according to our research. In fact, we were unable to identify an example in which a municipal police department assumed responsibility for a function of a county sheriff.”

It goes on to conclude that, “Based on the information assembled in this report, if the executive and legislative branches of Milwaukee County can work in a cooperative manner with the Office of the Sheriff and the Intergovernmental Cooperation Council...there are several opportunities for exploration of potential efficiencies. As previously noted, comparatively low personnel cost structures and experience both locally and nationally suggest consideration of proposals to consolidate these functions at the County level.”

Whether the Milwaukee County Board of Supervisors, in their policy-making role, or the elected Sheriff of the County, in his stewardship of his office, wish to pursue such an assumption of even greater and additional duties by the Sheriff may not have been necessarily considered at the commissioning of this audit.

But it is what we have found down this particular rabbit’s hole.

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