COUNTY OF MILWAUKEE
Inter-Office Communication

Date: June 28, 2012

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

From: Jerome J. Heer, Director of Audits

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

Background

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

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

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

Analysis

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

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

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

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

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

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

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

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

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

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

Conclusions

This report is informational.

Jerome J. Heer, Director of Audits

JJH/cah

cc: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors
Judiciary, Safety and General Services Committee Members
Jeffrey A Kremers, Chief Judge, First Judicial District
David A. Clarke, Jr., Milwaukee County Sheriff
Chris Abele, Milwaukee County Executive
Scott B. Manske, Milwaukee County Comptroller
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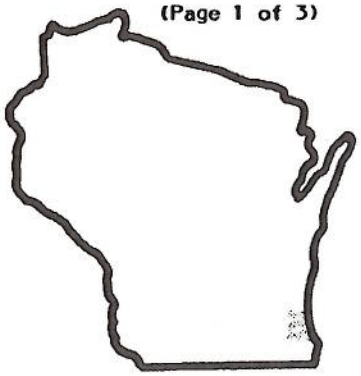

Dear Supervisors,

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

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

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March 30, 2012

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

Dear Sheriff Clarke:

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

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

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

My specific concerns relate to the following issues:

1. A reduction in defendants on electronic monitoring from over 200 per day to less than 40.

2. Resistance to placing all day reporting center inmates on GPS, despite the agreement that you and I reached a couple of years ago.

3. The transport of defendants to the CCC-South Facility prior to initial appearance resulting in sometimes several extra days in jail before making their court appearance and being released on bail.

4. Lengthy delays in placing court ordered Huber inmates into the Huber dorm.

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

Very truly yours,

Jeffrey A. Kremers
Chief Judge

JAK: dla

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MILWAUKEE COUNTY
OFFICE OF THE SHERIFF
Inter-Office Communication

DATE: June 13, 2012

TO: Marina Dimitrijevic, Chairwoman
Milwaukee County Board of Supervisors

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

FROM: Richard R. Schmidt, Inspector

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

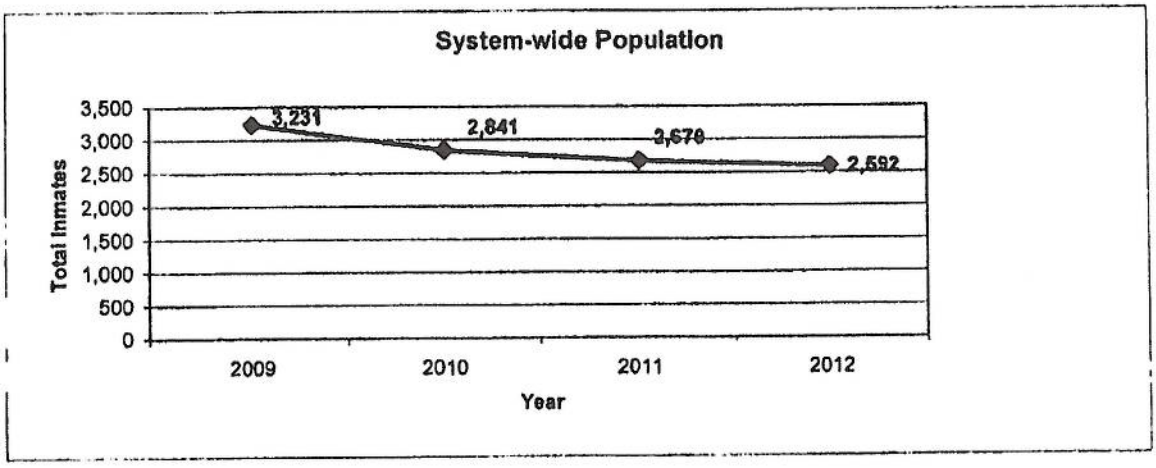
On April 12, 2012, Chief Judge Kremers wrote a cover letter to the Milwaukee County Board of Supervisors regarding his perception of an alleged increase in the inmate population at the jail. He attached a secondary letter outlining his undocumented perceptions of other jail-related issues. A significant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

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

Allegation of the Chief Judge – Increased Inmate Population

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

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



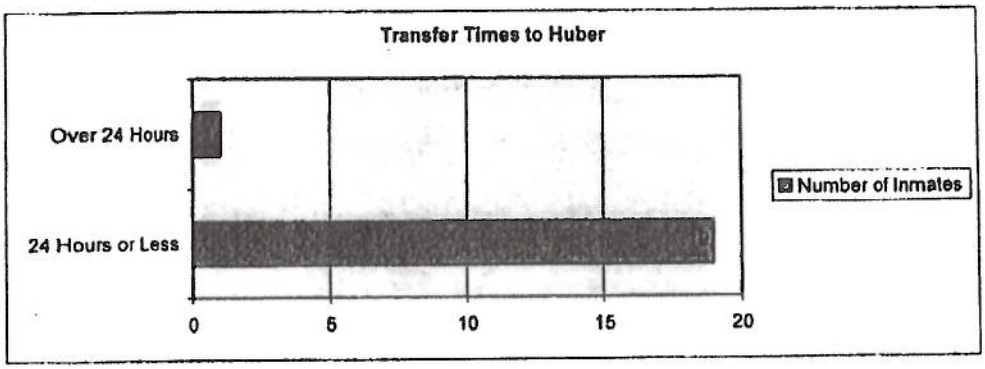
Source: Jail Population statistics obtained by L.E.A.D.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Conclusion:

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

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

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