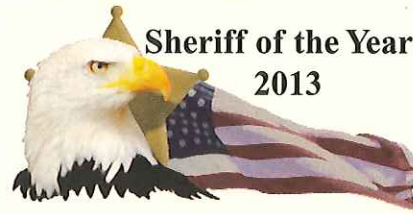




David A. Clarke Jr.
Sheriff

County of Milwaukee
Office of the Sheriff



Constitutional Sheriffs and Peace Officers Association

March 27, 2014

The Honorable Chris Abele
Milwaukee County Executive
Milwaukee County Courthouse
901 N. 9th Street, Room 306
Milwaukee, WI 53233

The Honorable Marina Dimitrijevic
Chairwoman, Milwaukee County Board of Supervisors
Milwaukee County Courthouse
901 N. 9th Street, Room 201
Milwaukee, WI 53233

County Executive Abele and Chairwoman Dimitrijevic:

The Sheriff's Office has a responsibility to inform County officials when circumstances arise which have the potential to expose the County to significant liability. Specifically, deputy and correctional officer staffing is at a critical emergency state due to ongoing mandated personnel cuts by the County Executive's Office. These cuts have impeded the Sheriff's Office's ability to meet the constitutional and statutory demands of the Office.

The 2014 recommended budget from the County Executive's Office cited that the cutting of Sheriff's Office deputies and correctional officers would result in improved efficiency within the Sheriff's Office. The cuts resulted in the exact opposite. The position cuts have placed public safety in jeopardy and have led to the physical burnout of deputies and correctional officers who are required to work an excessive amount of overtime. Quality of life issues for employees at all levels are deteriorating based on not receiving appropriate levels of off time. This excessive burden has the unintended consequence of lower performance, yet the County Executive's budget cites messages about the Sheriff's Office improving performance based on a reduction in personnel, an illogical conclusion.

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A reasonable person who chooses a career in law enforcement expects to make sacrifices in regards to their schedule. Dedicated law enforcement professionals know they will work on many holidays and occasionally on scheduled off days. Working overtime is an acknowledged necessity during summer and other events throughout the year. However, when a lack of authorized, budgeted positions results in deputies and correctional officers losing all of their off days and working double shifts on a regular basis to maintain public safety, it is an untenable position. The current state of the Sheriff's Office, due to the ongoing yearly budgeted personnel cuts, is placing the public at risk and exposing Milwaukee County to liability. The County's Department of Administrative Services implemented a naïve and uneducated budgeting approach in setting the public safety budget.

The Sheriff's Office requested budget for 2014 asked for an increase of 137 positions. The County failed to take into account the appropriate number of personnel recommended by professional law enforcement administrators and the proper relief factors for mandated staffing needs. The Sheriff's Office is subject to collective bargaining agreements, which include transfer notices and other factors that reduce certain options for flexible use of personnel. At the current budgeted staffing level, the Sheriff's Office lacks the flexibility to maintain services short of utilizing excessive amounts of overtime. Overtime is a management tool, but utilizing overtime as a normal course of business to cover unbudgeted positions to maintain the constitutionally mandated assignments of the Sheriff's Office is an inappropriate fiscal approach.

An appropriate number of budgeted positions are immediately needed to provide the Sheriff's Office the flexibility to meet the constitutional and statutory requirements of the Office. Positions are needed to assist in absorbing deputies and correctional officers who retire, are sick, injured, or on vacation, and we must account for sudden increases in workloads beyond the "normal," such as public safety emergencies. The hiring and training of new deputies and correctional officers takes approximately one year, thus showing the extreme sense of urgency required by those with the ability to positively impact the Sheriff's Office's ability to immediately start the hiring process. The exigency of the issue cannot be overstated.

A statutory mandate requires the Sheriff's Office to perform the service of civil process. The County appropriated only five positions for civil process, which in reality requires 16 deputies to cover the entire County on a daily basis. The importance of expeditiously serving legal documents, and specifically restraining orders, to meet the time sensitive deadlines is another generator of excessive overtime based on myopic budgeting practices.

The 2014 budget for the Courts Division provided 94 deputy sheriff positions in the adopted budget and three correctional officers. The Sheriff's Office does not have enough correctional officer staff in the jail to additionally use three correctional officers daily in the Courts Division. A policy decision to use the correctional officers in positions outside the jail--in the Courts Division for bailiff positions--is not acceptable. The Courts Division must fill 90 positions daily to meet mandatory work assignments in the Courts Division, which does include three positions

daily to staff visiting control (a post outside the secure jail with public contact and requiring the ability to make arrests). This leaves four deputies in reserve. Additional staff is oftentimes needed to cover enhanced security above the staffing previously needed for high profile trials, movement of inmates to/from court, etc.

The deputies work Monday–Friday with their off days being the weekends. Overtime is required daily to cover deputies extended for courts operating past the normal eight-hour shift. The 94 deputies have 4-6 weeks of vacation, which requires additional funded positions for the relief factor. The provision of the four deputies in “reserve” accentuates the poorly constructed logic used in the County’s budgeting process to cover sick absences, doctor appointments, vacations, high security trials, unanticipated security issues, and in-service training. Frequently, 20 deputies, or 21% of the staff, are on overtime in the courts to cover the positions.

Deputies from the Patrol Division and the Airport Division are mandated to either work on off days or work double shifts to cover the Courts Division. Those who have to work double shifts are either extending 3rd shifters (having already worked throughout the night) or requiring 2nd shifters to come into work before their regular shift. The 2nd shifters must remain at the Courts Division until the end of the Courts workday, which then daily forces 1st shifters from both the Airport Division and the Patrol Division to be mandated to stay until the 2nd shifters are released from the Courts. In the instance of 3rd shifters being extended, they are working from 10 p.m. the previous night and by 10 a.m. have worked 16 hours. When possible they are relieved and sent home, but seldom does this occur, which then forces them beyond 16 hours to complete the work day. Or, the agency has to disrupt other work areas by taking their personnel and reassigning them to the courts to keep the Courts Division working.

In the meantime, the mandated work volume in those areas is negatively impacted and causing deficits there. These regular extended hours are negatively impacting safety due to fatigue. This is forcing the Sheriff’s Office to basically employ a “rob from Peter to pay Paul” analogy on a regular basis. This complicated explanation accentuates the extreme conditions placed upon officers to compensate for the lack of authorized budgeted positions required to properly tend to the courts, a constitutional and statutory mandate of the Sheriff’s Office. It further contradicts the statement by the County Executive of creating efficiencies within the Sheriff’s Office.

The 2014 budget authorizes 245 deputy sheriffs. The Sheriff’s Office currently has 256 positions filled, with the caveat that the eleven “extra positions” are abolished upon vacancy. There are currently nineteen (19) deputy sheriffs not working due to light duty, extended leave, and worker’s compensation or pending disability. This does not take into account those on intermittent Family Medical Leave (FML) and on sick leave (SA). The authorized 245 positions do not provide the appropriate number of deputies required to provide a reasonable level of resources for public safety.

The budgetary limitations further resulted in the Sheriff's Office not having the ability to hire deputy sheriffs since 2002. The youngest deputy is 33.2 years of age, and the oldest deputy is 62.9 years of age, resulting in the average age of a deputy sheriff for this agency being 46. Sixty-eight (68) deputy sheriffs are 48 years of age or older, which accounts for 27% of positions currently filled. A random suburban agency within Milwaukee County of 50 or more sworn officers was polled. The survey included every sworn position, including supervision, into their calculation and determined the average age was 39.3 years. If supervision were taken out of the equation, the average age would be lower. If we use this agency as an example and if we said this was optimal for illustration purposes only, the Milwaukee County Sheriff's Office staffing only has 11% of the currently filled positions (256) that fall within this average age or lower.

At the point when the Sheriff's Office receives the authorized funding to hire new deputy sheriffs and correctional officers, there will be a significant period of time before they are ready to work on their own. There first must be recruitment, testing, establishing a certification list, background investigations, an interview process, job offering, and training academy certification through Wisconsin Training & Standards (520- hour program and soon to become 700 hours). Once a deputy sheriff graduates from the training academy and is state certified, each deputy must undergo extensive field training. This process, under the best circumstances, could be twelve months on the low end. We are also only able to properly field train a certain number of deputy sheriffs at one time. Mass hiring and compromising standards for new employee evaluation will lead to serious issues to which Milwaukee County would be liable. Ultimately, these issues negatively influence public safety.

Appropriate levels of supervision were decimated in the 2014 budget. The 2014 adopted budget only funds 13 Correctional Officer Lieutenant positions to supervise 256 Correctional Officer 1 positions in the Sheriff's budget. The 2014 adopted budget for the House of Correction (HOC) funded 23 Correctional Officer Lieutenant positions to supervise 238 Correctional Officer 1 positions. The County budget analysts understood the necessity of providing adequate supervisory staff in the County Executive-run facility, but not in the Sheriff's Office Jail. The disparate number accentuates the intent of the County Executive's budget personnel.

In addition, the 2014 adopted budget only funded 12 Deputy Sheriff Sergeant positions, abolishing eight sergeant positions to cover three shifts in seven divisions, plus multiple specialty units. There is a need for 24/7 Deputy Sheriff Sergeant supervisors at the Airport and Patrol Divisions. There is a need for three Deputy Sheriff Sergeant supervisors in the Courts Division, plus at least one Deputy Sheriff Sergeant supervisor is needed in General Investigations and Civil Process. The Targeted Enforcement Unit needs a minimum of two Deputy Sheriff Sergeant supervisors.

County Executive Abele and Chairwoman Dimitrijevic
Page Five
March 27, 2014

The County Board restored many of the draconian and micromanagement cuts presented in the County Executive's originally proposed 2014 budget for the Sheriff's Office. Despite the Board's efforts, for which they are sincerely thanked, our 2014 budget started in January 2014, with a \$4.5 million dollar structural deficit. The shortsighted and poorly researched work performed by the County Executive's budget staff, for what the Executive claimed was his most important focus, resulted in an unrealistic, punitive budget for public safety.

The Sheriff's Office requires a minimum of 137 new non-supervisory positions, including 102 Deputy Sheriffs and 35 Correctional Officers, as requested in our 2014 budget proposal, for the Sheriff's Office to meet the constitutional and statutory obligations in an effective manner. The Sheriff's Office also requires a minimum of an additional 10 Correctional Officer Lieutenant positions to adequately supervise the jail, as well as 10 additional Deputy Sheriff Sergeant positions to properly supervise multiple divisions, shifts and units throughout the Sheriff's Office.

The Band-Aid approach of using excessive amounts of overtime requires the emergency application of a tourniquet of new positions. Therefore, I am requesting immediate approval and funding to hire the needed staff to mitigate the staffing crisis. Failure to provide an expeditious approval to move forward in hiring needed personnel leaves no choice but to contemplate legal action.

Sincerely,

A handwritten signature in blue ink that reads "David A. Clarke Jr." The signature is fluid and cursive, with the first name "David" and last name "Clarke" being more prominent than the middle initial "A." and the suffix "Jr."

David A. Clarke Jr., Sheriff
Milwaukee County

encs.

c w/encs.: Corporation Counsel Paul E. Bargren
Amy Pechacek, Director, Risk Management
Mark Kass, Editor-in-Chief, Milwaukee Business Journal
Milwaukee Deputy Sheriffs' Association



David A. Clarke, Jr.
Sheriff

County of Milwaukee
Office of the Sheriff

DATE: March 27, 2014

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

SUBJECT: Authority of the Milwaukee County Sheriff

As a constitutional officer of the state, but an elected official of the county, case law and statute have aided in establishing the nature and limits of the sheriff's roles and responsibilities. Generally speaking, the sheriff has a degree of autonomy not granted county department heads. The county board has budget authority over the sheriff's office but must fund the office sufficiently to meet state mandates and provide law enforcement. There are several notable statutory citations and court cases on the Milwaukee County Sheriff's authority, which have come to define the duties of this sheriff:

The Wisconsin State Constitution, Article VI, County officers; election, terms, removal; vacancies.

Coroners, registers of deeds, district attorneys, and all other elected county officers, except judicial officers, sheriffs, and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

Beginning with the first general election at which the governor is elected which occurs after the ratification of this paragraph, sheriffs shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years.

Sheriffs may not hold any other partisan office.

When a vacancy occurs in the office of sheriff, the vacancy shall be filled by appointment of the governor, and the person appointed shall serve until his or her successor is elected and qualified.

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'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...

Andreski v. Industrial Commission et al (1952)

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.

In the *Andreski* case the court was very clear, firm, and definitive when describing the Sheriff's authority. Even though the *Andreski* decision was made a half-century ago, it is often referenced in other court and Attorney General opinions. The *Andreski* case reinforced

the Sheriff's authority by saying "a Sheriff's work, his methods and his hours, are carried out as he sees fit." In this case we do not deal with a subordinate municipal employee who is duplicated over and over but with one who is sui generis.

Wis. Stats. § 59.22, which states (in part): **Compensation, fees, salaries and traveling expenses of officials and employees:**

The compensation established shall not be increased nor diminished during the officer's term and shall remain for ensuing terms unless changed by the board.

The board shall establish the annual compensation of the sheriff as straight salary. No portion of that salary may include or be based on retention of fees by the sheriff. No portion of that salary may be based on providing food to prisoners.

Wis. Stats. § 59.27, which states (in part): **Sheriff; duties:** The sheriff of a county shall do all of the following:

- Take the charge and custody of the jail maintained by the county...
- Attend upon the circuit court held in the sheriff's county...
- 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.
- In counties having a population of 300,000 or more, assign one deputy, to be mutually agreed upon by the sheriff and the district attorney, to the office of the district attorney.
- Conduct operations within the county and, when the board so provides, in waters of which the county has jurisdiction...for the rescue of human beings and for the recovery of human bodies.
- Enforce all city, or village, ordinances in a city, or village, in which the sheriff provides law enforcement services under a contract

Wis. Stats. § 59.28(1), which states (in part): **Peace maintenance; powers and duties of peace officers**

"Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties..."

Wis. Stats. § 59.84(10)(b), which states (in part): **Expressways and mass transit facilities in populous counties:** Policing of expressways¹

¹ Note: It is helpful to provide two key definitions (from statute) when considering this issue, to wit:

Expressway means a divided arterial highway for through traffic with full or partial control of access and, generally, with grade separations at intersections.

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...

Wis. Stats. § 349.02(1), which states (in part): **Police and traffic officers to enforce law**

It is the duty of the police, sheriff's and traffic departments of every unit of government and each authorized department of the state to enforce chs. 346 to 348 and 350.

Wis. Stats. § 302.425 which states (in part): **Prisons; State, County and municipal; Home detention programs.**

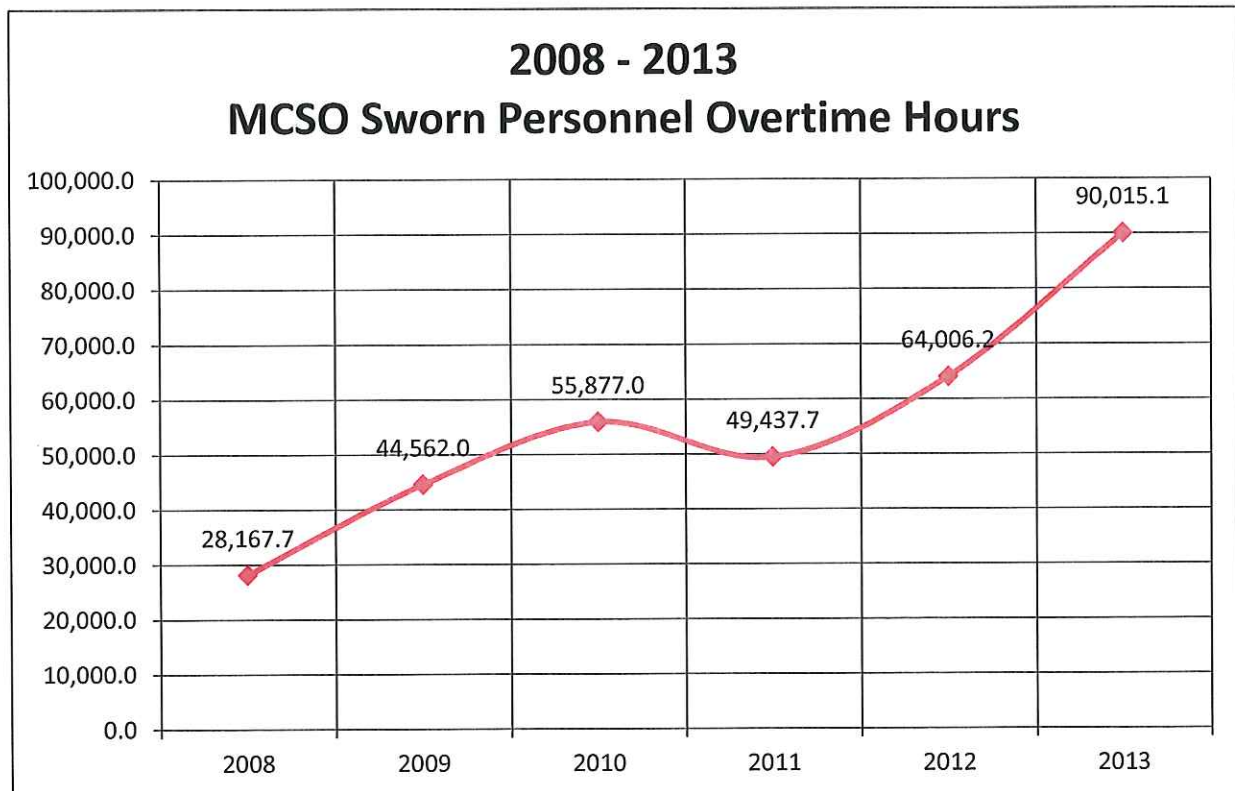
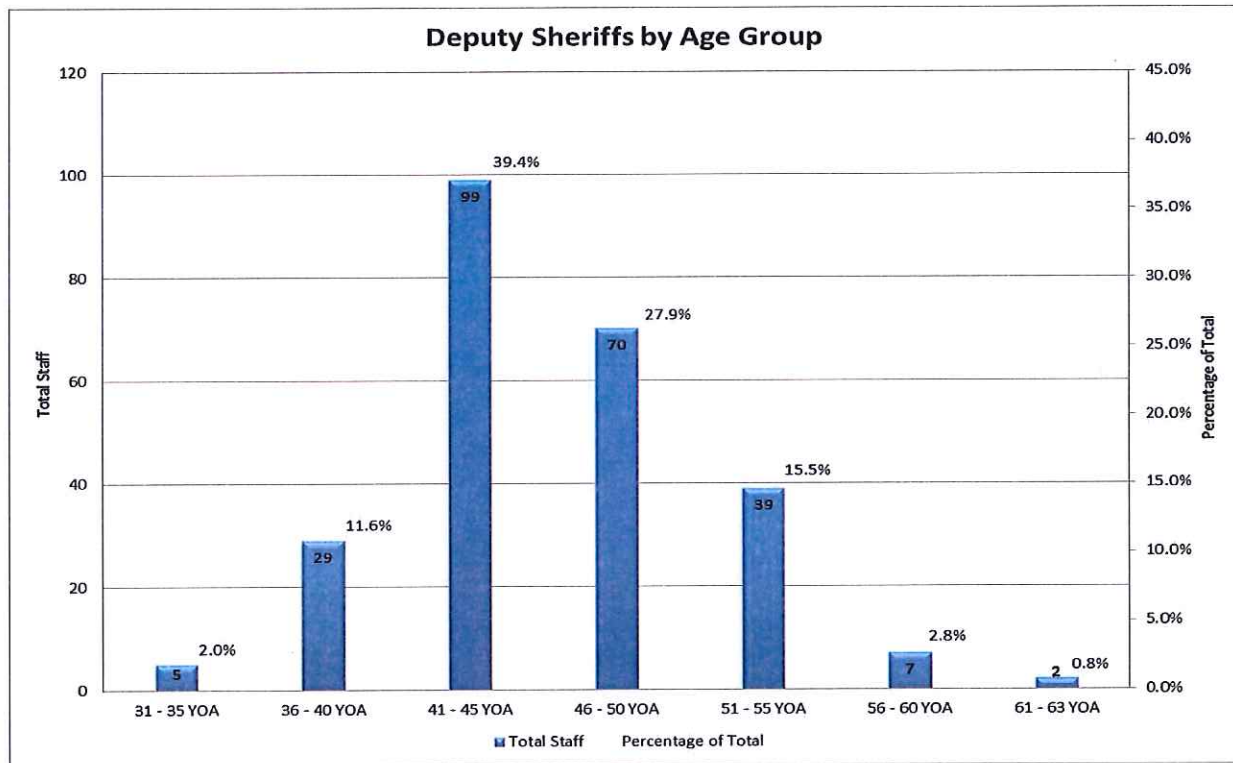
Sheriff's or superintendent's general authority. A county sheriff or a superintendent of a house of correction may place in the home detention program any person confined in jail. The sheriff or superintendent may transfer any prisoner in the home detention program to the jail.

The sheriff or superintendent may, if he or she determines that the home detention program is appropriate for a prisoner, place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or superintendent and be monitored by an active electronic monitoring system.

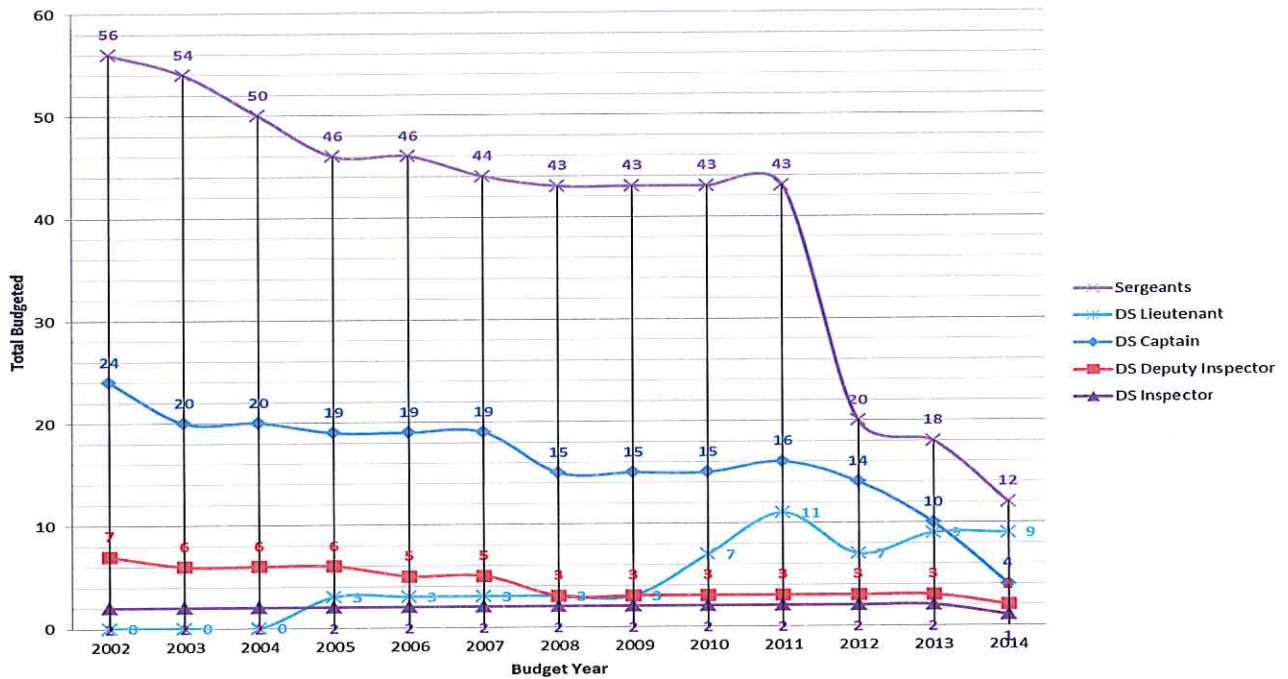
S:// Edward H. Bailey, I7

Edward H. Bailey, Inspector

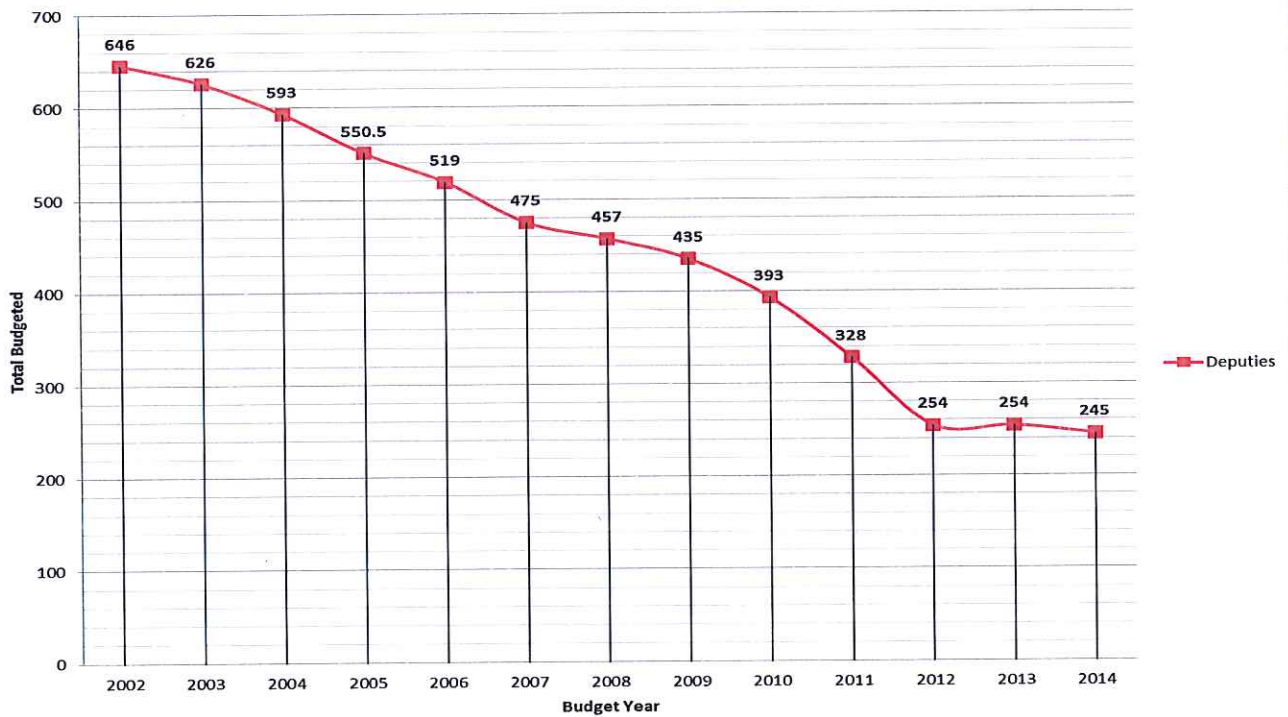
Milwaukee County Office of the Sheriff



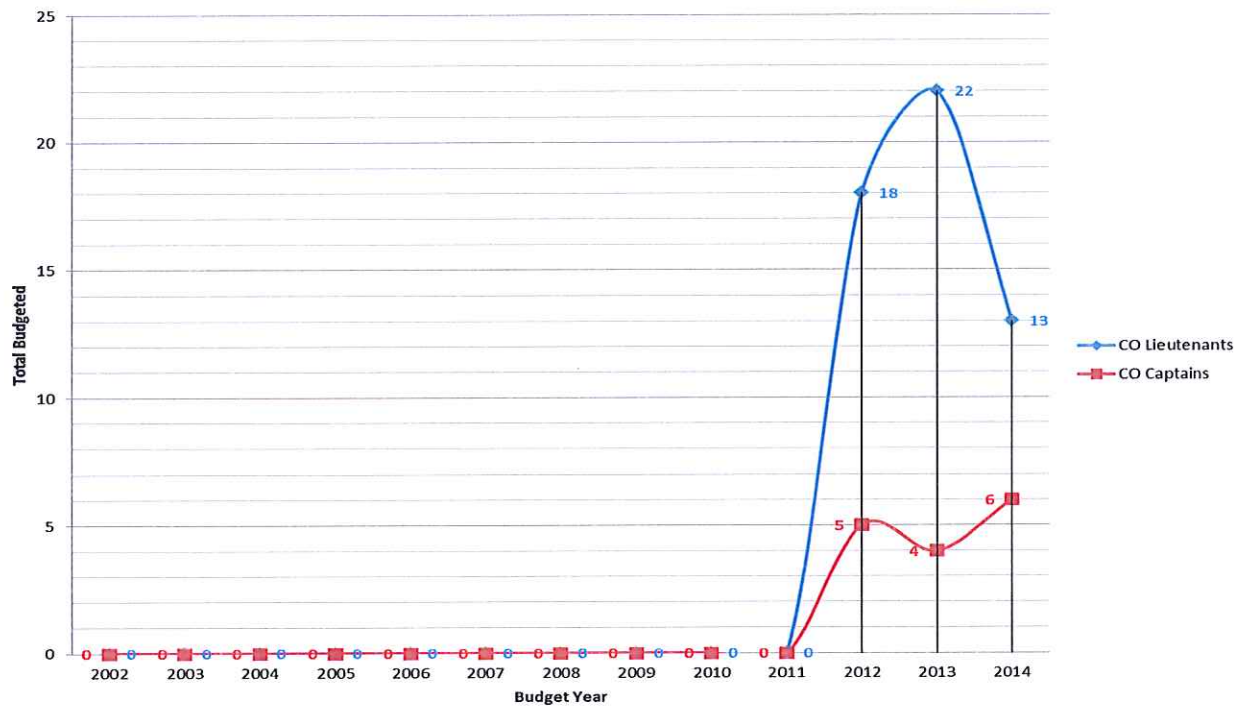
Budgeted Deputy Sheriff Sworn Supervisors 2002-2014



Budgeted Deputy Sheriffs 2002-2014



Budgeted CO Supervisors 2002-2014



SHERIFF'S OFFICE UNIFORMED STAFF

Title	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Title
Co	0	0	0	37.5	50	92	114	142	184	253	250	270	258	Co
Co Lt	0	0	0	0	0	0	0	0	0	0	18	22	13	Co Lt
Co Managers	0	0	0	0	0	0	0	0	0	0	5	4	6	Co Managers
Deputies	647	626	593	550.5	519	475	457	435	393	328	254	254	245	Deputies
Sergeants	56	54	50	46	46	44	43	43	43	43	20	18	12	Sergeants
D S Lieutenant	0	0	0	3	3	3	3	3	7	11	7	9	9	D S Lieutenant
Captain	24	20	20	19	19	19	15	15	15	16	14	10	4	Captain
DI	7	6	6	6	5	5	3	3	3	3	3	3	2	DI
Inspector	2	2	2	2	2	2	2	2	2	2	2	2	1	Inspector
Sheriff	1	1	1	1	1	1	1	1	1	1	1	1	1	Sheriff
Total Staff	737	709	672	665	645	641	638	644	648	657	574	593	551	Total Staff

Authorized and funded but does not account for unfunded positions

Budgeted Jail Officers	v&t	net after v&t
2011	297 253 co 1; 44 ds 1	-2
2012	247 co 1	-20
2013	265 co 1	-20
2014	253 co 1	-25
		295
		227
		245
		238



After Abele says hold the line, Clarke asks for 100 more deputies

Milwaukee County sheriff seeking 137 new positions in 2014 budget request

By Steve Schultze of the Journal Sentinel
July 4, 2013

Milwaukee County Sheriff David A. Clarke Jr. wants to add 137 positions to his staff next year, which would more than make up for a two-year trend of reductions imposed by County Executive Chris Abele and the County Board.

About 100 of the extra positions would be deputies, who would be used for new drunken-driving and drug interdiction units in the sheriff's freeway patrol division, as well as to enhance the rosters for criminal investigations, courtroom security, airport protection, community relations and other areas.

Clarke also is seeking 35 more correctional officers for the county jail and three jobs he says are needed because of this year's separation of the House of Correction from the sheriff's oversight. Clarke objected to that change but lost a challenge in court.

The expansions are detailed in Clarke's 2014 budget request and would mean a 17% increase, or \$15 million, in tax levy support over his existing budget. That would bring his budget to \$99.6 million for next year.

The office's budget guideline for next year, issued by an Abele staffer, called for no levy increase — in line with the guidance given to most county departments.

Abele declined to comment on the sheriff's budget request, which is likely to undergo significant revision by the county executive and County Board.

Clarke did not respond to a request for comment.

Efficiency measures pushed by Abele since 2012 have led to deep disagreement between the sheriff and the county executive. In February, Clarke even accused Abele of "penis envy" in an interview.

Abele has said he'll reintroduce his plan next year to turn over patrol of lakefront and other county parks in the city to the Milwaukee Police Department. Abele has said the job could be done better and cheaper through a service agreement with city police, saving taxpayers money.

The board sided with Clarke on the issue during deliberations for the 2013 budget last fall, which resulted in restoration of 27 deputy jobs that Abele had wanted to cut. For 2012, 48 deputies lost their jobs to budget cuts.

Clarke's budget plan for next year details a proposed hiring binge.

Among the expansions: He'd add seven staffers in his "analytics division" to review crime data, at a cost of \$556,000; 35 more deputies for freeway alcohol and drug enforcement, for an extra \$4 million; add four staffers to beef up dispatching — for an increase of \$327,000 — even though cellphone 911 calls are now rerouted to the Milwaukee Police Department, and add 16 positions for investigations, for an extra \$1.5 million.

Splitting the jail and House of Correction will necessitate hiring 41 staffers, mainly correctional officers, at a cost of nearly \$2.1 million, the sheriff's request says. Part of the explanation for the extra officers: an anticipated uptick in the inmate population and the reopening of two mothballed jail housing units.

The hiring plans were hailed by Roy Felber, president of the deputies union, who said no new deputies have been hired in a decade. The department now has 274 deputies, fewer than half the number from a decade ago, when Clarke began replacing deputies with less costly correctional officers as a cost-saving measure.

Staff shortages have led to large overtime costs in the last two years, Felber said. Overtime for 2011 and 2012 totaled almost \$12 million — about double what was budgeted, county records show.

Supervisor Theo Lipscomb Jr., chairman of the County Board Judiciary, Public Safety and General Service Committee, said there was "no way" Clarke would get all the positions he's seeking. Clarke's request must be considered in conjunction with other departmental requests, Lipscomb said.

Supervisor Mark Borkowski, who describes himself as a Clarke backer, said he expected Clarke and Abele to continue their feud over the sheriff's budget.

"It's going to come down to the board" to settle things, Borkowski said.

The County Board was the only unit of county government to fail to submit a budget request to Abele for next year.

County Board Chairwoman Marina Dimitrijevic sent a letter saying it was impossible to figure out a board budget until full ramifications of Act 14 are known. That law cuts the board's budget through a complicated formula aimed at forcing cuts to staff and other areas.

"Since it is not possible right now to determine next year's tax levy, I am requesting the maximum amount of budgeted expenditures allowable under the state limitation," Dimitrijevic says in her letter to the county budget director.

The board also has voted to hire an outside legal firm to possibly mount a legal challenge to Act 14. The law also requires a binding referendum next spring on cutting supervisor pay in half to about \$24,000.

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☐ Check the box to include the list of links referenced in the article.