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McHenry County jail rental program with feds hard to quantify

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Note to readers: This is the first in a three-part series examining McHenry County's longtime jail bed-rental program with two federal agencies. Some county officials question whether the program should expire toward the end of 2015.

WOODSTOCK – A 10-year-old agreement to house federal detainees in the county jail is a ticking time bomb, some McHenry County officials said, as disagreements over math have left some questioning whether local taxpayers are subsidizing the federal detention program.

The agreement inked with the U.S. Marshals Service and Immigration and Customs Enforcement is set to expire in October.

Better known as the bed-rental program, for years it was considered a boon for the county. Since 2005, the program has brought in \$73.2 million, according to figures provided by county officials. This was on top of the \$6.4 million that was authorized to finish the third floor of the jail, which was just a shell when the deal was signed in 2003.

As for ICE, which historically has filled the most beds in the jail, the sharing program also has been beneficial.

“[ICE] enjoys a positive relationship with McHenry County Jail as we work toward the common goal of providing a safe, secure and sanitary detention facility for individuals in ICE custody,” the agency said in a statement.

But it appears that relationship is beginning to sour – at least locally – as county officials debate whether the program is costing local taxpayers, and if so, how much.

The problem is, the math is quite murky.

The problem with the math

It's a seemingly simple question, but one with many different answers.

Ask county officials what it costs to house an inmate each day at the McHenry County Jail and you're not likely to get a straight answer.

Over and over: “There are too many variables.”

“It's fluid.”

“It's not simple arithmetic.”

“It's not an easy answer.”

Here's the sticking point: McHenry County must have a jail regardless, and that's an expensive endeavor. So whatever revenue is brought in from the federal bed-rental program goes straight to the

county coffers. It's not easy to break out the associated costs, county officials said, because expenses such as heat, electricity, staffing, food and health are built into the overall jail budget, and can't be attributed solely to the federal program.

Let County Administrator Peter Austin explain it: "It's not fixed, it changes every day," Austin said. "Truly, the cost of an inmate changes every day. ... Our costs are pretty much the same each day, but the number of inmates changes each day, so by default, the cost of an inmate changes each day.

"Because we're an Illinois county, we have to house inmates," Austin said. "We have to have a jail. We have to have an intake unit. We have to have booking. We have to have a kitchen. We have to have drug-sniffing dogs. We have to have pepper spray and rapid response teams. We have to have all of this infrastructure to run a jail."

In other words, as Austin said: "We have to turn the oven on whether we're making 200 biscuits or 400 biscuits."

Critics of the bed-rental program are pointing to a lobbyist report as the rallying cry to end the program. Some County Board members are saying that the cost to house a federal detainee far outpaces any revenue brought in.

Summerill report

By 2008, the per diem rate charged to the federal government was \$85. Although county officials could ask for a rate increase – and they did ask – there was nothing in the contract that said the feds were obligated to give them one – and they didn't.

"There is no built-in schedule or rate increase. There's nothing built in for [cost of living increases] or anything," said David Devane, the new head of the county's jail operations.

As the jail costs increased – particularly the cost of employing corrections officers – the per diem rate stagnated. For a while, that was offset by a large number of daily detainees. But that hasn't been the case recently.

"We were making up for that real high volume for a while," Austin said. "But that volume has tapered off. The fact that we haven't seen that number go up, has sort of made this problem bigger, and it's made it more challenging."

So, after routinely being rejected or ignored in their request for a higher daily bed rate, county officials tried something new. In April 2013, they hired lobbyist Joseph Summerill to plug in the county's costs into a prescribed federal formula, kick out a suggested per diem, and make a pitch to the Marshals and ICE for an increase.

In a preliminary report to county officials in April 2013, before he was hired, Summerill's math reflected the cost of an inmate each night was \$131.38. Based on Summerill's presentation, county taxpayers were on the hook for \$46.38 a detainee a day.

That number has been troubling for some county leaders.

"We're talking between \$40 and \$50 million over a seven-year period. ... This never should have happened," McHenry County Board member Donna Kurtz said. "Government is not designed to be a consistent generator of positive cash flow with outside programs. Knowing what we know now, we shouldn't have gotten into this jail bed-rental program."

That figure is largely exaggerated, others said. However, in fiscal 2014, county officials underestimated how much revenue the federal bed rental program would bring in by \$3 million. Austin said they were overly ambitious about when they would get a per diem increase, and how much it would be.

It appears Summerill took the jail's \$24 million budget, divided it by the average daily number of prisoners, then divided it again by 365.

"That is not a fair representation of what it costs to house a federal inmate," Austin said, because not all costs of the jail can be attributed to the bed rental program."

The 17-page Summerill presentation has since been called by county officials a marketing tool designed to get the county's business.

Once he was hired, Summerill was tasked with coming up with a dollar amount for an official application for a new rate. The county sought a \$101.84 per diem rate in 2014, that was expected to rise to \$112.47 by fiscal 2015.

Austin pointed out that there are certain factors that the federal formula allows you to take into consideration, such as the sheriff's salary, for example. Obviously, McHenry County will have a sheriff regardless of whether it has a federal bed-rental program.

U.S. Marshals eventually agreed to a \$10 a day rate increase that was approved by the County Board in May, bringing the per diem rate to \$95.

The very next day, U.S. Marshals pulled all their inmates from McHenry County.

"Lesson learned from the Summerill report, you better be careful what you ask for because the unintended consequences are pretty bitter pills," former County Board member Ersel Schuster said at a July County Board meeting.

ICE detainees always have made up the vast majority of beds filled through the contract, so the effect wasn't as disastrous as it could have been. In 2012, as an example, the average daily bed population for ICE was 241 detainees to the Marshals' 45. The county collected about \$7.1 million from the bed-rental program in 2014.

By the numbers

The number of federal detainees peaked in 2011, with the average daily population between ICE detainees and U.S. Marshals inmates at 350 a night. Each year has seen that average drop. By 2012, the county was seeing signs of a decline in the number of beds filled each night. The average daily bed population was 180 in 2014, although numbers for December weren't factored in.

ICE officials offered a possible explanation.

"The ICE population at McHenry has decreased overall as part of a broader change in areas of bed space utilization across the country," a statement from the agency read. "Additionally, in the fiscally constrained environment of the past couple of years, field offices have worked to find cost savings where possible, and the McHenry County facility is one of the most expensive facilities in the Chicago region."

The closest facilities, in Kenosha and Dodge counties in Wisconsin, charge \$70 and \$65 a night, respectively.

County officials have said tough choices will have to be made in the coming months in deciding whether they will pursue the contract when it expires in October.