

STATEMENT OF
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BEFORE THE
COMMITTEE ON APPROPRIATIONS
COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES
“HOUSING FEDERAL PRISONERS IN LOCAL JAILS”
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Good morning Chairman Wolf, Ranking Member Fattah and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the housing of federal prisoners in local jails. My name is Joseph Summerill, and I have represented Sheriffs who contract with the U.S. Marshals Service for the housing of federal prisoners in local jails. I am also Pro Bono Counsel for the National Sheriffs Association and a former Commercial Law attorney for the Federal Bureau of Prisons. However, the opinions expressed today are my own and not the opinions of my clients.

During Fiscal Year 2010, the U.S. Marshals Service (USMS) housed federal prisoners in more than 1,000 different facilities located throughout the United States. More than half of these USMS prisoners were housed in a local jail operated by a local Sheriff. Historically, Sheriffs were reimbursed by USMS for the actual cost of housing a federal prisoner in a local jail under an Intergovernmental Agreements (IGA) executed by the Sheriff and the USMS. Each IGA listed a per diem rate which reimbursed the Sheriff for the costs of housing one federal prisoner per day.

These per diem rates could only include actual and allowable jail operating costs from the previous fiscal year. The process of calculating a per diem rate under this old system was complicated, and Sheriffs were susceptible to audits in which the federal government could retroactively demand reimbursement of monies already paid to the Sheriff. This situation created uncertainty and apprehension on the part of Sheriffs -- who erred on the side of undercounting costs, which in turn resulted in inaccurately low per diem rates for housing federal prisoners.

In 2006, the Department of Justice's Office of the Federal Detention Trustee (OFDT) revised the process by which USMS contracts with local Sheriffs. OFDT created the Detention Services Network (DSNetwork), an automated network which replaced the old, cumbersome process of calculating per diem rates. By November 2007, USMS retired the old system for negotiating IGAs and requested that Sheriffs replace their old IGAs with new "electronic Intergovernmental Agreements" (eIGA) under the DSNetwork.

Under the new DSNetwork system, USMS can now enter into a new firm fixed-price per diem rate contract with local governments for housing federal prisoners in local jails. However, prior to negotiations, sheriffs are required to submit Jail Operating Expense Information (JOEI) which includes such expenses as (1) jail/detention center personnel salary and benefits; (2) costs associated with inmate care such as food/kitchen supplies, medical supplies, and recreation services; (3) facility expenses such as utilities and insurance and (4) vehicle expenses such as maintenance and insurance.

The new DSNetwork System has improved the complex and cumbersome processes by which Sheriffs are compensated for housing federal prisoners in local jails. For example, under the old IGA system, Sheriffs could only submit costs from the previous fiscal year. Under the DSNetwork system, however, Sheriffs can now submit projected / future jail operating costs.

Additionally, Sheriffs can now seek an administrative fee for housing federal prisoners. In a March 2007 U.S. Department of Justice Office of the Inspector General Audit Division report,

the Office of the Inspector General and the OFDT agreed that “profit may be included in the calculation of the IGA rate” and that profit would be allowed under the eIGA program.

However, this new process is not without obstacles. As background, when USMS negotiates with a local Sheriff for a new per diem rate, the federal government now considers four factors: (1) comparison of proposed per diem rate with a “Core Rate” established by USMS; (2) comparison of the proposed per diem rate with rates of other state or local facilities; (3) comparison of proposed per diem rate with commercial contract rates; and (4) review of Sheriff JOEI cost data.

Unfortunately, the “Core Rate” used by the USMS is never adequately defined for the Sheriffs. Therefore, while the local Sheriff is required to provide cost data to USMS and a proposed per diem rate for housing a federal prisoner, USMS is never required to reveal what the government believes is a “fair and reasonable” price for housing a federal prisoner. This represents an unprecedented inequality in the negotiation of an intergovernmental agreement between the federal government and a local government. The problem is exacerbated by grants officers who conflate the concepts of a core rate and the prevailing econometric average rate in a region.

Second, the USMS comparison of the Sheriff’s proposed per diem rate with rates at other nearby local facilities ignores the fact that some local governments lack the understanding of the rules and regulations regarding the negotiation IGA rates. Therefore, disparities can exist between the federal per diem rates offered by neighboring Sheriffs.

Third, the preparation of JOEI Cost Data remains too cumbersome and burdensome for local Sheriffs compared to the value achieved through the eIGA negotiation process. For example, Sheriffs are required to submit detailed cost information in the JOEI form as a prerequisite to any negotiations with USMS, but USMS frequently refuses to accept this cost information as a basis for a new per diem rate, insisting instead on capping negotiations based on comparative rates.

However, most disturbing is the length of time which it takes to negotiate an eIGA. USMS grants officers purport to negotiate eIGAs in 90 days. However, my experience has been that most eIGAs take 12 – 14 months between the time the Sheriff begins collecting cost data to the effective date of the new eIGA. Further, once a new per diem rate is agreed upon, the Sheriff cannot seek retroactive compensation from USMS for the period of negotiations.

This Subcommittee should encourage OFDT and USMS to re-examine how the federal government contracts with local Sheriffs. A shorter application process, a less cumbersome means of submitting jail operating cost data, and a more fair methodology for negotiating eIGAs would greatly improve how local Sheriffs are paid for the federal government’s use of local jail space.

This concludes my statement. I thank you for your attention and will be happy to answer any of your questions.