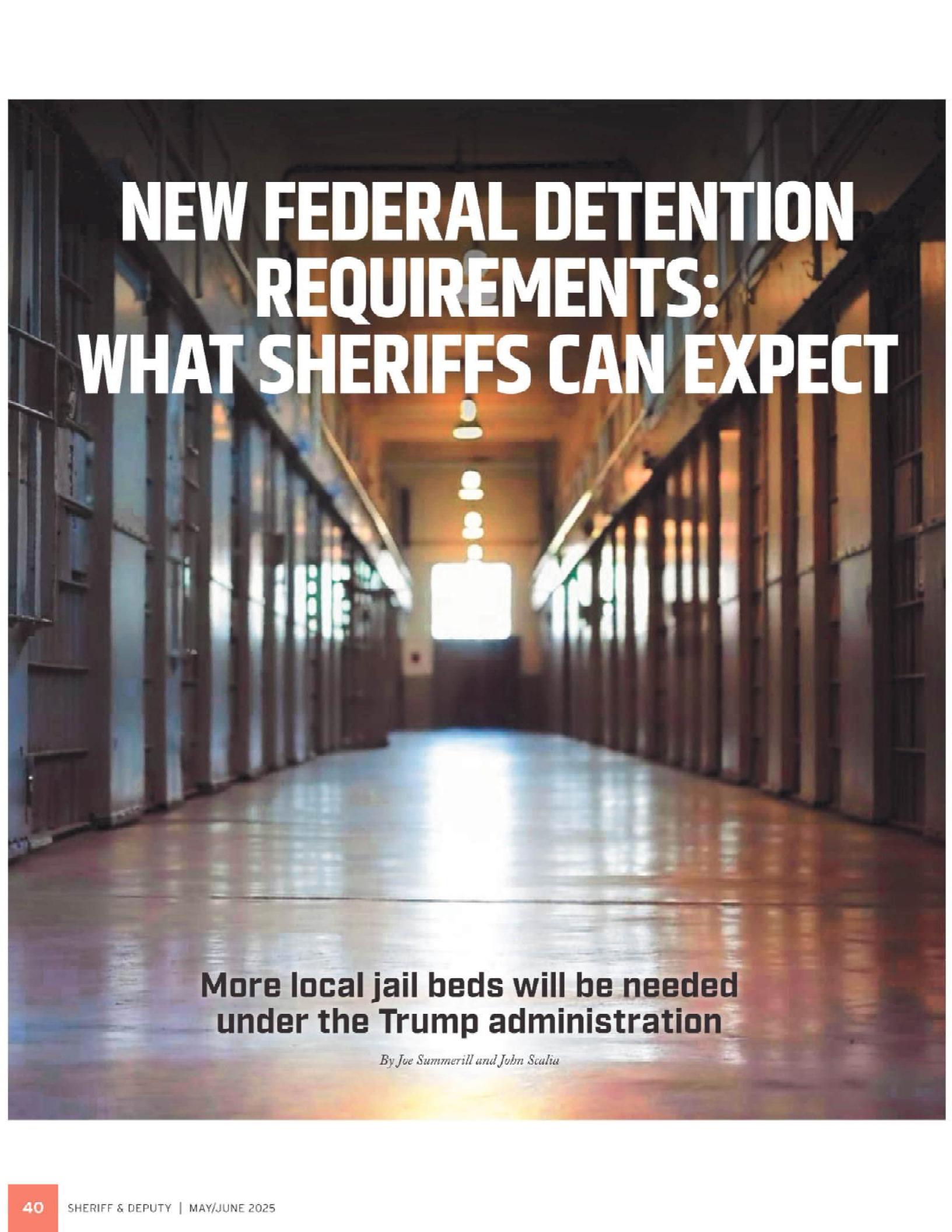




NEW FEDERAL DETENTION REQUIREMENTS: WHAT SHERIFFS CAN EXPECT

**More local jail beds will be needed
under the Trump administration**

By Joe Summerill and John Scalia

Local jails can expect federal detention bed space needs to increase significantly during the second Trump administration, calling on sheriffs with existing federal incarcerated populations to expand their current U.S. Marshals Service (USMS) or Immigration and Customs Enforcement (ICE) populations, and those sheriffs without a federal population to now make their bed space available. The policies and practices of the Biden administration reduced criminal apprehensions and immigration-related enforcement actions. President Trump's efforts to reverse these actions will depend heavily on the response of local sheriffs.

OUTSOURCING OF FEDERAL DETENTION

Unlike the Federal Bureau of Prisons, which owns and operates its own facilities, USMS and ICE house their incarcerated individuals almost exclusively in nonfederal detention facilities. While ICE typically houses a greater proportion of its incarcerated population in privately operated detention facilities, USMS has historically housed more than half of its incarcerated population in facilities operated by local governments, including sheriffs' offices. With intergovernmental agreements established with approximately 2,000 state and local governments, USMS and ICE routinely house detainees in more than 1,000 facilities operated by state departments of corrections or sheriffs' offices. Typically, these agencies house an average of 50 incarcerated individuals in their facilities.

At the state or local level, the detention population is impacted by macrosocietal factors such as changing demographics, economic conditions and poverty rates, employment participation rates, illicit drug use, and policing practices. By contrast, federal incarcerated populations tend to vary from one presidential administration to the next. For example, based on statistics reported by USMS in its Fiscal Year (FY) 2025 Congressional Budget Request describing detainees received into custody, federal criminal prosecution decreased during the Biden administration to approximately half of the number prosecuted annually during the Obama and first Trump administrations.

While some of the decrease can be attributed to the COVID-19 pandemic, once President Biden declared the COVID-19 pandemic over, federal criminal prosecutions did not increase to the levels seen in the previous administrations. More specifically, when compared with pre-pandemic historical levels, the number of incarcerated individuals received into USMS custody for violent, drug trafficking, and weapons offenses remained approximately 20% below historical levels, while the number of people prosecuted for immigration offenses was 75% below the historical level.

Similarly, as a result of policy changes made by the Biden administration regarding the prioritization of immigration-related administrative enforcement actions, the number of people taken into ICE custody pending removal from the United States substantially decreased after the first Trump administration. More specifically, during the Biden administration, immigration enforcement officers were directed to prioritize the removal of immigrants lacking permanent legal status deemed threats to national security, public safety, or border security. Accordingly, based on ICE statistics, compared with FY 2019 pre-pandemic levels, the number of people taken into ICE custody decreased by more than 40%, on average, between FY 2022 and 2024.

SIGNIFICANT CHANGE IN DIRECTION

A centerpiece for the second Trump administration is immigration enforcement. During his March 2025 address to a joint session of Congress, Trump stated: "Since taking office, my administration has launched the most sweeping border and immigration crackdown in American history, and we quickly achieved the lowest numbers of illegal border crossers ever recorded."

Trump has been clear that the success of his federal criminal and immigration policies will depend heavily on the willingness of local law enforcement to partner with the Department of Justice and Department of Homeland Security.





However, the second Trump administration has begun to pursue an aggressive, zero-tolerance criminal prosecution policy that can be expected to balloon the USMS detention population. In his address to Congress, Trump told the legislators that he seeks “a new crime bill, [which will get] tough on repeat offenders.”

When such federal offenders are re-manded to USMS custody by the federal judiciary, the agency has no discretion in deciding whether to release them, regardless of USMS’ funding availability. Historically, when the agency faced funding shortfalls, the Department of Justice “reprogrammed” funding from other DOJ agencies to ensure USMS met the needs of the federal judiciary.

To achieve this, the president rescinded the immigration enforcement policies issued by the Biden administration, and in their place, he established policies that focus on apprehending, detaining, and prosecuting immigrants lacking permanent legal status who have violated federal or state law. The president has also directed the U.S. attorney general to “prioritize public safety and the prosecution of violent crime,” and once the new U.S. attorneys have been confirmed, they are expected to pursue stiffer penalties for such convicted individuals. As a direct result, USMS and ICE are expected to increase their bed space needs to house the additional offenders arrested by federal law enforcement agencies.

Projecting the increase of the USMS and ICE detention population will be challenging for the federal agencies. Further, despite the aggressive changes the second Trump administration is promoting, it may take several months for new policies and enforcement practices to be fully realized.

While increases in the number of people received into custody will be more immediately observed, the long-term increase in the detention bed space needs will be determined by the length of time an incarcerated person is housed. For example, those received into USMS custody for violent, drug, or weapons offenses are typically detained longer than people received into custody for immigration offenses or property-related offenses. Similarly, individuals detained by ICE who consent to a voluntary departure or expedited removal leave the United States shortly after apprehension. They are detained for relatively short periods, maybe overnight. By contrast, those who require formal removal or deportation proceedings—or transportation to countries unwilling to receive repatriated citizens—may be detained several months pending their removal or deportation.

ANTICIPATE A RETURN TO ZERO TOLERANCE

Based on USMS historical data and projections of people received into USMS custody reported in its FY 2025 Congressional Budget, it was anticipated under the Biden administration that the USMS incarcerated population would increase to approximately 60,000 by March 2026, up from its current level of approximately 55,000.

By contrast, while increased immigration enforcement is underway, growth in ICE’s incarcerated population has historically been constrained by funding. Absent supplemental funding from Congress, as reported in ICE’s FY25 Congressional Budget Request, the requested appropriation will support an average daily population of around 30,500 incarcerated individuals, approximately the current population level. By comparison, during the first Trump administration, ICE housed as many as 51,000 people on an average daily basis.

Accordingly, based on the ICE detention population levels observed during the first Trump administration as reported to Congress in ICE’s FY 2025 budget overview, at least a 30%–40% increase in ICE detention can be expected.

IDENTIFYING NEW DETENTION BED SPACE

Planning for detention space capacity requirements has historically been a difficult task for USMS and ICE. The agencies must respond to numerous diverse and complex challenges to secure sufficient capacity within their areas of operation. USMS has specific geographic restrictions when selecting detention facilities. Because USMS detainees are engaged in active court proceedings, USMS must house them as close as practical to the federal court city where they are being prosecuted. To limit burdens on the court community, most USMS detainees are housed within 25 miles of the court city.

By comparison, since ICE does not have the same geographic restrictions as USMS, the agency generally houses its incarcerated individuals in facilities located proximate to the international borders and in metropolitan areas where DOJ operates its immigration courts. However, some local governments are unwilling to detain immigrants lacking permanent legal status who are deemed threats to national security, public safety, or border security. Thus, ICE faces challenges with securing space in some areas with critical detention requirements.

Based on USMS and ICE historical data reported to Congress, provided utilization of state and county detention facilities returns to peak historical levels, utilization could increase by as many as 7,000 detention beds: 5,000 beds by USMS and 2,000 beds by ICE.

INTERGOVERNMENTAL AGREEMENTS

If you have an intergovernmental agreement (IGA) with USMS or ICE, review your current agreement's per diem rate and transportation and hospital guard service rate. Detention facilities are labor-intensive operations. Total employment costs (wages and benefits) have increased at an average annual rate of 3.4% since 2020, according to the Bureau of Labor Statistics. Additionally, the consumer price index, which measures the cost of goods and services, increased at an average annual rate of 4.8%. If your facility has not received a per diem rate increase during the past three years, start the process of negotiating new rates. But plan ahead because it can take the federal agencies 90–120 days to process a request for a rate adjustment.

If you don't have an IGA and your facility has excess detention capacity, contact your local USMS or ICE field office director about establishing an IGA. The local marshal or ICE field office director will coordinate the application process with headquarters staff. As part of the IGA process, USMS or ICE staff will review facility expenses to establish an appropriate per diem rate. Prior to finalizing the IGA, they will conduct an on-site review to ensure the facility is operating consistently with agency detention standards.

REVIEW STAFFING LEVELS

Staffing is a particular challenge for local jail administrators. Because of budget constraints, staffing typically comprises about two-thirds or more of facility costs. However, operating a facility with insufficient staff compromises safety for staff, incarcerated individuals, and potentially the public. Good staffing levels decrease potential liability and ensure costly staff resources are used efficiently. Accordingly, to the extent your facility anticipates an increase in population, updating your facility's staffing plan to account for the increase is a required task.

ASSESS YOUR MEDICAL CAPABILITIES

USMS and ICE rely on the medical capabilities of the facilities for basic screenings and routine services for federal detainees. The cost of in-house medical services is included in the basic per diem rate paid by the agencies pursuant to the IGA. USMS and ICE require that all incarcerated people receive an initial medical and mental health screening by qualified health care staff upon admission, followed by a comprehensive examination within 14 days. Tuberculosis screenings should be completed within 72 hours, with the results reported to the agencies in a timely manner.



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When an incarcerated person requires more advanced or specialized medical treatment, necessary care is coordinated between facility medical staff and the agencies. Incarcerated individuals requiring outside medical care are sent to local health care facilities for treatment, with the agencies assuming responsibility for the cost of care.

ASSESS FACILITY OPERATIONS AND CONFINEMENT CONDITIONS

Accreditation by organizations such as the American Correctional Association (ACA) is not a requirement to establish an IGA with USMS or ICE. However, prior to establishing an IGA, the agencies will review whether the facility is operating consistently with agency detention standards. While USMS and ICE core detention standards generally correspond to those promulgated by ACA and the National Commission on Correctional Health Care, both agencies have augmented those core standards with standards that specifically address the requirements of federal detainees and that are mandated by federal law, executive order, or agency policy.

Sheriffs housing federally incarcerated individuals must understand USMS and ICE detention standards, which can be found here:

- USMS Detention Standards: www.usmarshals.gov/resources/guideline/federal-performance-based-detention-standards
- ICE Detention Standards: www.ice.gov/detain/detention-management/2019

Trump has been clear that the success of his federal criminal and immigration policies will depend heavily on the willingness of local law enforcement to partner with the Departments of Justice and Homeland Security. Sheriffs currently housing federally incarcerated people should review their IGAs and look to increase their federal population. Sheriffs without current federal populations but with available jail bed space should now enter into new IGAs with USMS or ICE. The next four years likely will bring a historic increase in federal detention bed space requirements, and sheriffs will be critical in fulfilling those needs. ★

Joe Summerill is CEO of JailGeek Inc., which assists sheriffs in negotiating new IGAs with USMS and ICE.

John Scalia is former chief statistician for USMS' Prisoner Operations Division, which focuses on detention population projection and cost estimation models.

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