

COUNTY JAIL POPULATION MANAGEMENT PLAN

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House Bill 4234

Sponsor: Rep. Lorence Wenke

House Bill 4725

Sponsor: Rep. Paul Condino

Committee: Judiciary

Complete to 5-15-07

A SUMMARY OF HOUSE BILL 4234 AS INTRODUCED 2-6-07 AND HOUSE BILL 4725 AS INTRODUCED 5-8-07

The Jail Overcrowding Emergency Powers Act provides that when the prisoner population of a county jail exceeds 100 percent of the rated design capacity for its general population for seven days, the sheriff must certify this fact to the chief judge of each circuit and municipal court in the county and to the chairperson of the county board of commissioners. If a majority of these officials do not find the sheriff in error within three business days, the sheriff must declare a "county jail overcrowding state of emergency." Notification of the emergency is then sent to those same officials and to the county prosecutor and to the chief of each law enforcement agency in the county as well.

The act also provides a sequence of mechanisms to bring the jail population down to 90 percent of capacity. If the first set of options does not succeed in attaining this objective within 14 days of the declaration of emergency, then the second would be applied. After 28 days the third remedy would be applied, and after 42, the fourth. The remedies range from alternatives to bail and imprisonment (Option 1) to refusing to accept new prisoners into the general population, with the exception of persons convicted of certain crimes such as sex offenses or violent crimes (Option 4).

House Bills 4234 and 4725 would both amend the Jail Overcrowding Emergency Powers Act to authorize a county or judicial circuit to adopt and implement a written county jail population management plan for the purpose of reducing or preventing chronic jail overcrowding. House Bill 4725 would also require, for those counties not adopting a jail population management plan, that a county sheriff take certain actions to reduce the prison population if the general population of the jail reached 95 percent on three consecutive days. (Note: Reportedly, this would allow a county to release smaller numbers of prisoners at a time before reaching capacity and thus avoid the larger releases triggered when a jail exceeds 100 percent of capacity.) Specifically, the bills would do the following:

House Bill 4234

The bill would add a new section to the Jail Overcrowding Emergency Powers Act (MCL 801.59a) to allow, for the purpose of reducing or preventing chronic jail overcrowding, a county or judicial circuit to adopt and implement a written county jail population management plan. The plan could not take effect unless it was approved by the sheriff of each affected county, a majority of the circuit judges and majority of the district judges who

sit within the affected county or judicial circuit, and the State Court Administrative Office (SCAO).

The plan would have to provide for the delegation of judicial sentencing authority for the purpose of reducing prior valid jail sentences. Under the bill, a sentencing judge could suspend or reduce a prisoner's sentence that he or she had previously imposed. A sentencing judge could delegate this authority to the chief judge of the judicial district or circuit in which he or she (the sentencing judge) serves.

House Bill 4725

The bill would also add a new section to the Jail Overcrowding Emergency Powers Act (MCL 801.59a) similar to that proposed by House Bill 4234. However, the provision to allow a county or a judicial circuit to adopt and implement a county jail population management plan would differ in the following respect:

- The written county jail population management plan would have to be approved by the sheriff and prosecuting attorney of each affected county; the chief circuit judge of the judicial circuit or, in the case of a county plan, the chief circuit judge of the judicial circuit that includes that county; the State Court Administrative Office (SCAO); and a district judge designated as detailed in the bill.
- The plan could be amended if the amendments were approved by all of the above listed parties.
- The time period for which the plan would be effective would be limited to a maximum of four years. Amending the plan would not extend this time period.
- The plan would have to provide for the delegation of judicial authority for the purpose of reviewing bonds for unsentenced prisoners.

Suspension or Reduction of Jail Sentences. In addition, the bill would also authorize a sentencing judge to suspend or reduce any validly imposed jail sentence that he or she imposed and to modify the bond set by the court for unsentenced prisoners. A judge could delegate this authority to the chief judge (or a designee) of the judicial district or circuit in which the sentencing judge serves.

Actions by Sheriff to Reduce General Population. If a county did not approve a jail population management plan, the sheriff would be required to take several actions on the third consecutive day on which the general population of the county jail exceeded 95 percent of the jail's rated design capacity. (The population of a jail is made up of unsentenced and sentenced prisoners, and inmates sentenced for felonies. The term "general population" excludes holding cells and processing areas, segregation cells, detoxification cells, infirmary beds, and facilities for juveniles.)

In one action, the sheriff would have to review the outstanding bonds for each prisoner. If the total of the outstanding bonds did not exceed a maximum value determined as provided in the bill, the bonds would have to be modified to personal recognizance bonds in that same amount. The maximum amount of the outstanding bonds would have to be determined by a majority vote of the chief circuit judge (or a designee) for the judicial circuit that included

that county, the chief probate judge for that county (or a designee), and either the chief district judge for that district (applies in a single-county judicial district) or a district judge chosen by the district judges sitting in that county or his or her designee (applies in a county containing two or more judicial districts)

In another action, the sheriff would have to release any sentenced prisoner who had served 85 percent or more of his or her sentence. (An exception would be made for those serving a sentence for a violent or assaultive offense, sex offense, prison or jail escape offense, weapons offense, drunk driving offense, or a controlled substance offense – though a person convicted of possession of less than 25 grams of a controlled substance could be released under this provision). The sheriff would also have to release a prisoner detained in the county jail for a civil contempt adjudication for failure to pay child support if the prisoner had no other charges pending against him or her.

Other Provisions. The bill would also make the following changes:

- Allow a sheriff to use electronic communications (in addition to other allowable methods) to certify to the required officials that a jail has exceeded 100 percent capacity and to notify the officials that a jail overcrowding state of emergency had been declared.
- Allow a sheriff to declare a county jail overcrowding *state of emergency* and to end a county jail overcrowding state of emergency if a majority of the officials found, *upon receipt of a certification by the sheriff*, that the sheriff did not act in error in regard to the certification. This would be instead of allowing the officials to have *three business days* in which to make their determination.
- Allow, in addition to other legal remedies, accelerated review and rescheduling of court dates to be used to reduce county jail prisoner populations.
- Several technical changes that are editorial in nature.

FISCAL IMPACT:

The bills appear to have no significant fiscal impact on the Judiciary.

House Bill 4234 would have an indeterminate fiscal impact on counties; any fiscal impact would depend on whether, and how, a jail population management plan affected the timing of inmate releases.

Under House Bill 4725, a county could experience jail-related cost savings through provisions triggering jail overcrowding responses on the third consecutive day that the jail population exceeded 95 percent of capacity. The fiscal impact of provisions for development of a jail population management plan would depend on whether, and how, a jail population management plan affected the timing of inmate releases.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.