

COUNTY JAIL POPULATION MANAGEMENT PLAN

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House Bill 4234 (Substitute H-1)
Sponsor: Rep. Lorence Wenke

House Bill 4725 (Substitute H-1)
Sponsor: Rep. Paul Condino
Committee: Regulatory Reform

Complete to 5-29-07

A SUMMARY OF HOUSE BILLS 4234 AND 4725 AS REPORTED FROM COMMITTEE 5-16-07

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. House Bill 4234 would 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 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.

County jail population management plan. 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 included that county; 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 sentencing authority for the purpose of reducing prior valid jail sentences and for 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 allow a judge to modify the bond set by the court for unsentenced prisoners. A sentencing judge or judge, respectively, could delegate this authority to the chief judge (or a designee) of the judicial district or circuit in which the sentencing judge or judge (or a designee) serves.

House Bill 4725

The bill would also amend the Jail Overcrowding Emergency Powers Act (MCL 801.51 et al.). If a county did not approve a jail population management plan under proposed House Bill 4234, 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.)

Actions by Sheriff to Reduce General Population. First, 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). Secondly, the sheriff would have to release any sentenced prisoner who had served 85 percent or more of his or her sentence: this would not apply to any prisoner that the chief circuit judge in that county believed would present a threat to the public safety if released. (An exception would also 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 which 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.

BACKGROUND INFORMATION:

The bills seek to address a recurring problem of county jails reaching bed capacity, which then triggers a statutory response mechanism. The problem is particularly acute in larger counties. For example, Oakland County has declared seven overcrowding emergencies since August of 2005, with the most recent in April of 2007. Some believe that a better response to jail overcrowding would be to allow local authorities to address the problem sooner. House Bill 4234 would allow local authorities to create their own jail population management plan that would include authorizing a sentencing judge to suspend or reduce a validly imposed jail sentence that he or she had imposed and also allow for the modification of bond set for unsentenced prisoners. Currently, only sentenced prisoners are released when a jail overcrowding emergency is declared. Supporters believe House Bill 4234 would give counties the flexibility to craft a plan that would fit each county's unique needs. Detractors feel that the bill is too unstructured, and should instead provide a tighter framework but which would still grant counties enough flexibility to make the plan fit their own particular needs.

For those counties in which the required authorities cannot reach an agreement on a jail population management plan, the legislation would require certain actions to be taken when the county jail reached 95 percent of capacity. It is believed that this change will allow for a more controlled release and would also allow fewer prisoners at a time to be released early.

Some were concerned that because House Bill 4725 as introduced would have, with a few exceptions, released any prisoner who had served 85 percent of his or her sentence, regardless of the facts surrounding the crime, the bill would in effect "silence the voice of the victims" and create a threat to public safety. As reported from committee, however, House Bill 4725 would grant discretion to the chief circuit judge of a county that had reached 95 percent of capacity to exclude from early release any prisoner deemed to pose a threat to the public safety if released early. It should be noted, though, that the bill grants authority to the sheriff, rather than to the sentencing judge, to modify the bond for an unsentenced prisoner (which would release the unsentenced person on his or her personal recognizance). Some feel this bill should be further amended to keep the discretion to modify bond with the sentencing judge, who is more familiar with the particulars of the case.

POSITIONS:

The Michigan Association of Counties supports the bills. (5-16-07)

The Oakland County Board of Commissioners supports House Bill 4725.

A representative of the Oakland County Sheriff's Office testified in support of the bills. (5-13-07)

A representative of the Oakland County Criminal Justice Coordinating Council testified in support of the bills. (5-16-07)

The 9th Circuit Court, Hon. J. Richardson Johnson presiding, indicated support for the bills. (5-16-07)

A representative of the Michigan Sheriffs' Association indicated support for the bills. (5-16-07)

The Prosecuting Attorneys Association of Michigan supports the concepts of the bills. (5-16-07)

Judge Lisa L. Asadoorian, 52-3 Judicial District Court, submitted written testimony opposing the bills as introduced. (5-16-07)

Chief Judge Diane Dickow D'Agostini, 48th District Court, submitted written testimony opposing the bills as introduced. (5-16-07)

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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.