

Legislative Analysis



COUNTY JAIL POPULATION MANAGEMENT PLAN

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House Bill 4234 as enrolled
Public Act 139 of 2007
Sponsor: Rep. Lorence Wenke

House Bill 4725 as enrolled
Public Act 140 of 2007
Sponsor: Rep. Paul Condino

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (8-26-08)

BRIEF SUMMARY: The bills would allow a county or judicial circuit to adopt and implement a plan to reduce or prevent chronic jail overcrowding and would require, if a county did not adopt and implement such a plan, a county sheriff to take certain actions when the jail population reached 95 percent.

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

Any fiscal impact on jails would depend on whether, and how, a jail population management plan affected the timing of inmate releases.

THE APPARENT PROBLEM:

County jails house a diverse population comprising those sentenced for misdemeanor and certain felony offenses, civil contempt (i.e., failure to pay child support), parole and probation violations, and those waiting arraignment, trial, or sentencing. Nationwide, many county jails have been consistently operating at, and frequently exceeding, capacity. Under Michigan law, certain mechanisms to alleviate overcrowding are triggered when a jail exceeds its rated capacity for seven consecutive days. Often this results in the early release of nonviolent prisoners, regardless of how much of their sentence has been served, their previous record, or their likelihood to reoffend. Since jail overcrowding emergency protocols treat only the immediate need and not the circumstances contributing to the overcrowding, they are only a stopgap measure providing temporary relief.

The Michigan Task Force on Jail and Prison Overcrowding was created in June 2004 by Governor Granholm to, among other things, explore strategies for utilizing jail and prison resources more effectively and efficiently while maintaining public safety. In its final report released in March 2005, the task force found that while there was no single cause for jail and prison overcrowding, there were various and often inconsistent policies and procedures that existed on bonding practices, pretrial services, incarceration pending case

disposition, and community supervision—inconsistencies that also affected jail overcrowding. The task force report contains many recommendations that courts, county prosecutors, and county sheriffs can adopt to avert reaching capacity and triggering the emergency protocols; for instance, greater use of alternative sentencing such as drug courts, electronic tethers, and alerting judges when the jail is reaching capacity.

Despite these measures, many jails in Michigan are still operating at or near capacity much of the time, with some of the larger jails—such as Oakland—having to declare an overcrowding emergency several times a year. In addition, not all judges and prosecutors have embraced the use of alternative sentences or other of the task force recommendations; therefore, attempts to prevent overcrowding in the first place do not always flow smoothly and a jail on occasion reaches full capacity.

Some feel that the law should be amended to allow judges, along with the county prosecutor and sheriff, to devise plans that could be implemented earlier; that is, plans too alleviate overcrowding before 100 percent capacity is reached and the statutory mechanisms are triggered. It is believed that such an approach would allow for smaller, more controlled releases. If the county and judicial officials could not agree on a plan, some feel that an additional mechanism should be created by which a sheriff could release certain prisoners—including those who have not yet been sentenced—who do not pose a threat to society.

THE CONTENT OF THE BILLS:

House Bills 4234 and 4725 would both amend the Jail Overcrowding Emergency Powers Act.

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 is applied. After 28 days the third remedy is 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, except those convicted of such crimes as sex offenses or violent crimes (Option 4).

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 five 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 and 801.59b) to allow 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.

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. A plan could be effective for up to four years. Amending the plan could 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 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 House Bill 4234, the sheriff would be required to take several actions on the fifth 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 sheriff – subject to

approval of the chief circuit judge in that county – would be required to modify each outstanding bond for that prisoner to a personal recognizance bond in that same amount, issue a receipt to the prisoner similar to an interim bond receipt, and send a copy of the receipt to the court that set the bond.

For the purposes of the above provision, the maximum value of the outstanding bonds would have to be determined by a majority vote of the following individuals:

- In a single-county or multicounty judicial district, the chief circuit judge for the judicial circuit that included that county, the chief district judge for that district, and the sheriff for the county.
- In a county containing two or more judicial districts, the chief circuit judge for the judicial circuit that included that county, the sheriff of the county, and two district judges chosen by the chief district judges sitting in that county.

A determination of the maximum value of the outstanding bonds made under the above provision would remain in effect for one year.

Secondly, the sheriff would have to release any sentenced prisoner who had served 85 percent or more of a sentence. However, 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. Also not eligible for release would be 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.

The required actions by the sheriff to reduce the jail population would not apply to either (1) a county for which a jail management plan had been approved under the provisions of House Bill 4234 or, (2) a county with a population greater than 650,000 as of the most recent federal decennial census that, as of the bill's effective date, had implemented a written jail management plan in which the basis of the plan was jail bed allocation; this exception would apply only as long as that plan remained in effect.

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 (or an amount set by a court prior to February 8, 1983) and to notify the officials that a jail overcrowding state of emergency had been declared. The prosecuting attorney for the county would be included in the list of officials required to be noticed.
- 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.
- Add drunk driving offenses to the list of offenses for which a sheriff could not defer acceptance of a person for incarceration. (A sheriff must defer acceptance of individuals for incarceration in the general population who had been charged with or who were under sentence for a crime if attempts failed to reduce the overcrowding to mandated levels within 42 days of the declaration of a county jail overcrowding state of emergency, with the exception of certain crimes, such as sex offenses). However, a sheriff could defer acceptance of a person under sentence for or charged with possession of a controlled substance less than 25 grams.
- Several technical changes which are editorial in nature.

ARGUMENTS:

For:

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.

Response:

Some concern has been raised that the bill is too unstructured, and should instead provide a tighter framework within which counties would still be granted enough flexibility to make the plan fit their own particular needs.

For:

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. The bill would require two actions on the part of a county sheriff facing an imminent jail overcrowding emergency: the modification of outstanding bonds to a personal recognizance bond in the same amount and the immediate release of any prisoner who had served a minimum of 85 percent of a sentence (except for individuals

convicted of certain violent crimes and drunk driving offenses and those deemed by the chief circuit judge to pose a threat to public safety).

The bond modification would be subject to the approval of the chief circuit judge in that county. This is important, as the court would be aware of information or factors that would or would not make a particular prisoner a good candidate for release on a personal bond, information that could otherwise not be available to a sheriff faced with averting an eminent jail overcrowding emergency.

Against:

Michigan has one of the strongest laws protecting victims' rights and ensuring truth in sentencing for convicted felons. Yet, neither victims nor their advocates would be included under House Bill 4234 as participants with county and judicial officials in developing a written county jail population management plan. House Bill 4725 places bond modifications and early release decisions in the hands of county sheriffs, with no notification or input from victims. Such practices would seem to fly in the face of the intent of the Crime Victim's Rights Act.

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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.