

Legislative Analysis



COUNTY JAIL OVERCROWDING: MODIFICATION OF BOND FOR UNSENTENCED PRISONERS

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House Bill 5987 (Substitute H-2)
Sponsor: Rep. Richard Hammel
Committee: Judiciary

First Analysis (5-22-08)

BRIEF SUMMARY: The bill would allow, after a jail overcrowding emergency had been declared, the bond to be reduced for eligible prisoners who have not yet been sentenced.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

When the population of a county jail reaches a certain level, mechanisms to reduce overcrowding mandated in statute are triggered. Recently enacted legislation provided the means for local judges, prosecutors, and sheriffs to develop plans for their counties that could be implemented before the number of inmates housed in a jail triggered the mandates. Sometimes, these efforts are not enough, and a jail overcrowding state of emergency must be declared. This declaration triggers other responses mandated in statute, such as releasing prisoners deemed not to pose a threat to the public if the prisoner had served at least 85 percent of his or her sentence. If the overcrowding continues for another two weeks, the sentences of eligible prisoners must be reduced.

Rather than just targeting prisoners who have already been convicted of and sentenced for a crime, some believe that prisoners who have not yet been sentenced should also be eligible for release on bond. These would include persons who could not make bond after the initial arrest, who are waiting for trial, and those who have been tried and convicted and are awaiting sentencing. Some of these people may be more likely to receive probation after conviction rather than a term of incarceration. The ability to release them on bond pending further proceedings would free up space better suited for those who have already been sentenced to jail.

THE CONTENT OF THE BILL:

Public Acts 139 and 140 of 2007 amended the Jail Overcrowding Emergency Powers Act to create more flexibility in the way in which counties deal with overcrowded jails. Public Act 139 allowed 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.

If a written plan was not implemented, the changes to the act made by Public Act 140 allowed, when the jail population exceeded 85 percent for the fifth consecutive day, the

sheriff to review and modify the outstanding bonds of prisoners and release them on a personal recognizance bond (subject to the approval of the chief circuit judge) and also to release any sentenced prisoner who did not pose a threat to public safety who had served 85 percent or more of his or her sentence and those detained for failure to pay child support. Violent offenders and those convicted of weapons offenses, sex offenders, drunk drivers, prison or jail escapees, and most controlled substance offenders are not eligible for early release under the act. Public Act 140 also allowed for the accelerated review and rescheduling of court dates as a means to reduce overcrowding.

House Bill 5987 would further amend Section 6 of the Jail Overcrowding Emergency Powers Act. Currently, if the mechanisms in the act to reduce jail overcrowding do not reduce the jail population to levels prescribed in statute within 14 days of the declaration of the county jail overcrowding state of emergency, the sheriff must present to the chief circuit judge of that county certain information for each prisoner sentenced to and housed in that jail. A prisoner's sentence is then reduced based on a formula prescribed in the act if he or she does not pose a threat to public safety.

The bill would require the sheriff to also report to the judge information on all prisoners housed in the jail who are not serving a sentence of imprisonment for conviction of a crime. The information would have to include the prisoner's name, his or her offense, the amount of his or her bond, the date he or she began the period of detention, and the name of the judge who ordered the prisoner to be detained.

The judge would have to review the list of these unsentenced prisoners and determine for each prisoner whether or not the release of that prisoner would present a high risk to public safety. The judge could modify the prisoner's bond subject to any conditions reasonably necessary to ensure the appearance of the individual in court.

Further, the bill would revise an obsolete provision in the act pertaining to a report made to the Legislature in the late 1980s. Under the revision, the Office of Facility Services of the Department of Corrections, in conjunction with the Michigan Sheriff's Association, would have to make an annual report to the chairpersons of the Senate and House standing committees responsible for legislation concerning corrections. The report would have to evaluate the effect on the overcrowding state of emergency procedures made by the provisions of Section 6.

MCL 801.56

ARGUMENTS:

For:

Quite simply, jails currently house offenders who have been convicted and sentenced to serve a term of incarceration, and also house persons arrested on suspicion of a crime who are awaiting trial and those convicted of a crime who have not yet been sentenced. Many of these unsentenced prisoners are eligible to be released on bond, but for financial reasons, are unable to come up the money needed to post bond. Under the bill, the chief

circuit court judge of a county could review a list of these prisoners and, if the person was not considered to pose a high risk to public safety, could have his or her bond reduced to an affordable level. The judge could also impose a nonfinancial bond, such as wearing a tether, attending alcohol or substance abuse treatment, submitting to drug testing, or attending school. Since some of the unsentenced inmates of a jail would most likely receive probation instead of incarceration, it makes sense to release them on bond rather than release inmates who not only have been tried and convicted, but who were denied probation and sent to jail. It is important to note that the provisions of the bill would only be triggered after a declaration of a jail overcrowding emergency had been issued, and then only after other statutorily-mandated procedures had been implemented but failed to resolve the overcrowding.

Against:

Many, if not most, of those incarcerated in county jails have been convicted of misdemeanors in district court. Yet, under the bill, it would be the chief circuit court judge who would be making the determinations regarding whether a particular unsentenced prisoner posed a high risk to the public safety. Some would argue that district court judges would have a better sense as to the risk posed by these unsentenced persons, especially since the person may have previously appeared before their court.

In addition, the bill as worded would apparently include those housed in a jail under a civil contempt order, such as for not paying child support. Some report that it is difficult to secure incarceration for child support arrearages, even for those parents who blatantly violate child support orders; some feel they should be excluded from eligibility for early release.

POSITIONS:

The Michigan's Sheriff's Association supports the bill. (5-21-08)

The Chief Judge of the 7th Judicial Circuit Court for Genessee County supports the bill. (5-21-08)

The Michigan Association of Counties indicated support of the bill's concept. (5-21-08)

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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.