



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4234 (Substitute H-1 as passed by the House)

House Bill 4725 (Substitute H-3 as passed by the House)

Sponsor: Representative Lorence Wenke (H.B. 4234)

Representative Paul Condino (H.B. 4725)

House Committee: Regulatory Reform

Senate Committee: Judiciary

Date Completed: 9-11-07

### **CONTENT**

**House Bills 4234 (H-1) and 4725 (H-3) would amend the jail overcrowding emergency powers Act to do all of the following:**

- **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.**
- **Require the approval of certain judges and county officials for a county jail population management plan to take effect.**
- **Require that a county jail population management plan provide for the delegation of judicial authority to reduce sentences and review bonds.**
- **Require the sheriff of a county without a county jail population management plan to review and modify prisoners' outstanding bonds and immediately release certain prisoners, if the jail population exceeded 95% of capacity for five consecutive days.**
- **Revise provisions pertaining to the certification, declaration, and termination of a county jail overcrowding state of emergency.**
- **Allow accelerated review and rescheduling of court dates in an attempt to reduce overcrowding.**
- **Revise provisions concerning the release and deferred acceptance of prisoners during an overcrowding state of emergency.**

House Bill 4725 (H-3) would take effect 90 days after its enactment.

### **House Bill 4234 (H-1)**

Under the bill, for the purpose of reducing or preventing chronic jail overcrowding, a county or judicial circuit could adopt and implement a written county jail population management plan. The plan could not take effect unless it were approved by all of the following:

- The sheriff of each affected county.
- The 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.
- If the plan affected a single-county or multicounty judicial district, the chief district judge for that judicial district; or, in all other cases, a district judge chosen by the chief district judges of all judicial districts affected by the plan.

A written county jail population management plan could be amended if the amendments were approved by all of the parties listed above. A plan adopted under the bill would be effective for the term prescribed in the plan, but not longer than four years. The amendment of a plan would not extend the four-year limit.

A plan would have to provide for the delegation of judicial sentencing authority for the purpose of reducing prior valid jail sentences and for the delegation of judicial authority for the purpose of reviewing bonds for unsentenced prisoners.

For purposes of the Act, a sentencing judge could suspend or reduce any validly imposed jail sentence imposed by that judge, and a judge could modify bond set by the court for unsentenced prisoners. A sentencing judge could delegate this authority to the chief judge of the judicial district or circuit in which the sentencing judge served or the chief judge's designee.

### **House Bill 4725 (H-3)**

#### **Bond Review & Prisoner Release**

Under the bill, in a county other than one for which a county jail population management plan had been approved under Section 9a (which House Bill 4234 (H-1) would add), on the fifth consecutive day on which the county jail's general population exceeded 95% of the jail's rated design capacity, the sheriff would have to review the outstanding bonds for each prisoner. If the total of a prisoner's outstanding bonds did not exceed a maximum value determined as described below, the sheriff, subject to the chief circuit judge's approval, would have to modify each outstanding bond for that prisoner to a personal recognizance bond in the same amount, issue to the prisoner a receipt similar to an interim bond receipt, and send a copy of the receipt to the court that set the bond. In addition, except for any prisoner whom the chief circuit judge believed would present a threat to the public safety, the following prisoners would have to be released immediately:

- Any sentenced prisoner who had served 85% or more of his or her sentence, unless he or she were 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 other than possession of less than 25 grams of a controlled substance.
- Any prisoner detained in the county jail for a civil contempt adjudication for failure to pay child support who had no other charges pending against him or her.

The maximum value of outstanding bonds, for purposes of the sheriff's review described above, would have to be determined by a majority vote of the following individuals, as applicable:

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

#### **Overcrowding State of Emergency**

Under the Act, if the general prisoner population of a county jail exceeds 100% of the jail's rated design capacity, or a percentage less than 100% as set by a court before February 8, 1983 (the effective date of the Act), for seven consecutive days or for a lesser number of days as set by a court before that date, the sheriff must certify that fact in writing, by first-class mail or personal delivery to the chief judge in the county, the chairperson of the county board of commissioners, and the county executive in a county with an elected executive. The bill would require the sheriff also to send the certification to the county's

prosecuting attorney and would allow the written certification to be delivered by electronic communication.

If a majority of the officials notified do not find, within three business days after certification, that the sheriff acted in error, the sheriff must declare a county jail overcrowding state of emergency. Under the bill, the sheriff would have to take that action if the officials notified did not find, upon receipt of the certification, that the sheriff acted in error.

Upon declaring a county jail overcrowding state of emergency, the sheriff must give written notice to the judges and county officials who received the overcrowding certification, the county prosecutor, and the chief law enforcement official of each State, county, and municipal law enforcement agency located in the county. The notice must be given, by first-class mail or personal delivery. The bill also would allow notification by electronic communication.

The Act lists measures that judges and officials may take to attempt to reduce the prisoner population of the county jail. The bill would add to that list accelerated review and rescheduling of court dates.

If actions taken under the Act to reduce county jail overcrowding do not reduce the jail population to the level prescribed in the Act within 42 days of the declaration of the county jail overcrowding state of emergency, the sheriff must defer acceptance for incarceration in the general population of people sentenced to or otherwise committed to the jail for incarceration until the overcrowding emergency is ended. The sheriff may not defer acceptance, however, of people under sentence for or charged with violent or assaultive crimes, sex offenses, escape from prison or jail, controlled substance offenses, or weapons offenses. Under the bill, the sheriff also could not defer acceptance of those under sentence for or charged with drunk driving offenses. The sheriff could defer acceptance, however, of people under sentence for or charged with possession of less than 25 grams of a controlled substance.

If the general prisoner population is reduced to the level prescribed in the Act at any time during the state of emergency, or if the population is not reduced to the prescribed level within 70 days after the state of emergency was declared, the sheriff must certify that fact to the judges and county officials who were notified of the overcrowding. The sheriff must end the state of emergency unless a majority of those judges and officials find, within three business days after receiving the certification, that the sheriff has acted in error. The bill would delete the three-day time frame.

Proposed MCL 801.59a & 801.59b (H.B. 4234)  
MCL 801.51 et al. (H.B. 4725)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on local government. If inmate populations were reduced gradually over the course of a management plan or when a jail exceeded 95% of rated design capacity, instead of only when the jail exceeded 100% capacity, counties could have fewer jail bed days. To the extent that the bill allowed jails to maintain lower inmate populations for a longer time, local governments would incur decreased costs of incarceration, which vary by county. To the extent that changing the offenses that are eligible for deferred acceptance into the jail would increase or decrease the jail population, local governments would incur higher or lower incarceration costs.

Fiscal Analyst: Bruce Baker  
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.