

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4725

A bill to amend 1982 PA 325, entitled

"An act to authorize county sheriffs to declare a county jail overcrowding state of emergency; to prescribe the powers and duties of certain judges, county sheriffs, and other county officials; and to provide remedies for a county jail overcrowding state of emergency,"

by amending sections 1, 2, 3, 4, 5, 8, 9, and 10 (MCL 801.51, 801.52, 801.53, 801.54, 801.55, 801.58, 801.59, and 801.60), sections 8 and 9 as amended by 1988 PA 399, and by adding section 1a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. As used in this act:
- 2 (a) "Chief circuit judge" means ~~any~~ **EITHER** of the following:
- 3 (i) The circuit judge in a judicial circuit having only 1

1 circuit judge.

2 (ii) ~~Except in the county of Wayne, the~~ **THE** chief judge of the
3 circuit court in a judicial circuit having 2 or more circuit
4 judges.

5 ~~— (iii) In the county of Wayne, the executive chief judge of the~~
6 ~~circuit court in the third judicial circuit and the recorder's~~
7 ~~court of the city of Detroit.~~

8 (b) "Chief district judge" means the chief district judge or
9 only district judge in a district court district.

10 ~~— (c) "Commission of corrections" means the state commission of~~
11 ~~corrections.~~

12 (C) ~~(d)~~ "County jail" means a facility operated by a county
13 for the physical detention and correction of persons charged with
14 or convicted of criminal offenses and ordinance violations, persons
15 found guilty of civil or criminal contempt, and juveniles detained
16 by court order. ~~, or a facility which houses prisoners pursuant to~~
17 ~~an agreement authorized under Act No. 164 of the Public Acts of~~
18 ~~1861, as amended, being sections 802.1 to 802.21 of the Michigan~~
19 ~~Compiled Laws.~~

20 (D) ~~(e)~~ "Department of corrections" means the state department
21 of corrections.

22 (E) ~~(f)~~ "Prisoner" means a person who is currently being
23 physically detained in a county jail.

24 (F) ~~(g)~~ "Rated design capacity" means the actual available bed
25 space of the general population of a county jail as determined by
26 the department of corrections. ~~, subject to applicable rules~~
27 ~~including variances to those rules granted by the commission of~~

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1 ~~corrections.~~

2 SEC. 1A. (1) IN A COUNTY <<DESCRIBED IN SUBSECTION (4)

3
4 >>, THE SHERIFF OF THAT COUNTY SHALL TAKE THE FOLLOWING
5 ACTIONS ON THE FIFTH CONSECUTIVE DAY ON WHICH THE GENERAL
6 POPULATION OF THE COUNTY JAIL EXCEEDS 95% OF THE JAIL'S RATED
7 DESIGN CAPACITY:

8 (A) THE SHERIFF SHALL REVIEW THE OUTSTANDING BONDS FOR EACH
9 PRISONER. IF THE TOTAL OF A PRISONER'S OUTSTANDING BONDS DOES NOT
10 EXCEED A MAXIMUM VALUE DETERMINED AS PROVIDED IN SUBSECTION (2),
11 THE SHERIFF, SUBJECT TO THE APPROVAL OF THE CHIEF CIRCUIT JUDGE IN
12 THAT COUNTY, SHALL MODIFY EACH OUTSTANDING BOND FOR THAT PRISONER
13 TO A PERSONAL RECOGNIZANCE BOND IN THAT SAME AMOUNT, ISSUE TO THE
14 PRISONER A RECEIPT SIMILAR TO AN INTERIM BOND RECEIPT, AND SEND A
15 COPY OF THE RECEIPT TO THE COURT THAT SET THE BOND.

16 (B) THE FOLLOWING PRISONERS, EXCEPT FOR ANY PRISONER THAT THE
17 CHIEF CIRCUIT JUDGE IN THAT COUNTY BELIEVES WOULD PRESENT A THREAT
18 TO THE PUBLIC SAFETY IF RELEASED, SHALL BE RELEASED IMMEDIATELY:

19 (i) ANY SENTENCED PRISONER WHO HAS SERVED 85% OR MORE OF HIS OR
20 HER SENTENCE, UNLESS HE OR SHE IS SERVING A SENTENCE FOR A VIOLENT
21 OR ASSAULTIVE OFFENSE, SEX OFFENSE, PRISON OR JAIL ESCAPE OFFENSE,
22 WEAPONS OFFENSE, DRUNK DRIVING OFFENSE, OR A CONTROLLED SUBSTANCE
23 OFFENSE EXCEPT POSSESSION OF LESS THAN 25 GRAMS OF A CONTROLLED
24 SUBSTANCE.

25 (ii) ANY PRISONER DETAINED IN THE COUNTY JAIL FOR A CIVIL
26 CONTEMPT ADJUDICATION FOR FAILURE TO PAY CHILD SUPPORT WHO HAS NO
27 OTHER CHARGES PENDING AGAINST HIM OR HER.

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(2) THE MAXIMUM VALUE OF OUTSTANDING BONDS, FOR PURPOSES OF SUBSECTION (1) (A), SHALL BE DETERMINED BY A MAJORITY VOTE OF THE FOLLOWING INDIVIDUALS, AS APPLICABLE:

(A) IN A SINGLE-COUNTY OR MULTICOUNTY JUDICIAL DISTRICT, THE CHIEF CIRCUIT JUDGE FOR THE JUDICIAL CIRCUIT THAT INCLUDES THAT COUNTY, THE CHIEF DISTRICT JUDGE FOR THAT DISTRICT, AND THE SHERIFF OF THE COUNTY.

(B) IN A COUNTY CONTAINING 2 OR MORE JUDICIAL DISTRICTS, THE CHIEF CIRCUIT JUDGE FOR THE JUDICIAL CIRCUIT THAT INCLUDES THAT COUNTY, THE CHIEF PROBATE JUDGE FOR THAT COUNTY, THE SHERIFF OF THE COUNTY, AND 2 DISTRICT JUDGES CHOSEN BY THE CHIEF DISTRICT JUDGES SITTING IN THAT COUNTY.

(3) A DETERMINATION MADE UNDER SUBSECTION (2) REMAINS IN EFFECT FOR 1 YEAR AFTER THE DATE ON WHICH THAT DETERMINATION WAS MADE.

<<(4) SUBSECTIONS (1) TO (3) DO NOT APPLY TO EITHER OF THE FOLLOWING:

(A) A COUNTY FOR WHICH A COUNTY JAIL MANAGEMENT PLAN HAS BEEN APPROVED UNDER SECTION 9A.

(B) A COUNTY HAVING A POPULATION GREATER THAN 650,000 AS OF THE MOST RECENT FEDERAL DECENNIAL CENSUS THAT, ON THE EFFECTIVE DATE OF THIS SECTION, HAS IMPLEMENTED A WRITTEN JAIL MANAGEMENT PLAN IN WHICH THE BASIS OF THE PLAN IS JAIL BED ALLOCATION. THE EXCEPTION PROVIDED BY THIS SUBSECTION APPLIES ONLY AS LONG AS THAT PLAN REMAINS IN EFFECT.>>

Sec. 2. If the general prisoner population of a county jail exceeds 100% of the rated design capacity of the county jail or a percentage of rated design capacity less than 100% as set by a court ~~prior to the effective date of this act~~ **BEFORE FEBRUARY 8, 1983**, for 7 consecutive days or for a lesser number of days as set by a court ~~prior to the effective date of this act~~ **BEFORE FEBRUARY 8, 1983**, the sheriff for that county shall certify that fact in writing, by first-class mail, ~~or~~ personal delivery, **OR ELECTRONIC COMMUNICATIONS**, to the chief circuit judge, the chief district judge, and each municipal court judge in the county in which the county jail is located, **THE PROSECUTING ATTORNEY FOR THE COUNTY**, the chairperson of the county board of commissioners, and the

1 county executive in a county in which a county executive is
2 elected.

3 Sec. 3. If, **UPON RECEIPT OF A CERTIFICATION BY THE SHERIFF**
4 **UNDER SECTION 2**, a majority of the judges and county officials
5 notified pursuant to section 2 do not find ~~within 3 business days~~
6 ~~after certification~~ that the sheriff acted in error, the sheriff
7 shall declare a county jail overcrowding state of emergency.

8 Sec. 4. Upon the declaration of a county jail overcrowding
9 state of emergency pursuant to section 3, the sheriff shall notify
10 ~~all BOTH~~ of the following persons in writing, by first-class mail,
11 ~~or personal delivery~~, **OR ELECTRONIC COMMUNICATIONS**, that a county
12 jail overcrowding state of emergency has been declared:

13 (a) The judges and county officials notified pursuant to
14 section 2.

15 ~~—— (b) The county prosecutor.~~

16 **(B)** ~~(c)~~ The chief law enforcement official of each state,
17 county, and municipal law enforcement agency located in the county.

18 Sec. 5. The sheriff, the persons notified pursuant to section
19 4, and other circuit, district, **AND** municipal ~~, and recorder's~~
20 ~~court~~ judges may attempt to reduce the prisoner population of the
21 county jail through any available means which are already within
22 the scope of their individual and collective legal authority,
23 including, but not limited to, the following:

24 **(A) ACCELERATED REVIEW AND RESCHEDULING OF COURT DATES.**

25 **(B)** ~~(a)~~ Judicial review of bail for possible bail reduction,
26 release on recognizance, or conditional release of prisoners in the
27 county jail.

1 (C) ~~(b)~~—Prosecutorial pre-trial diversion.

2 (D) ~~(c)~~—Judicial use of probation, fines, community service
3 orders, restitution, and delayed sentencing as alternatives to
4 commitment to jail.

5 (E) ~~(d)~~—Use of work-release, community programs, and other
6 alternative housing arrangements by the sheriff, if the programs
7 and alternative housing arrangements are authorized by law.

8 (F) ~~(e)~~—Review of agreements which allow other units of
9 government to house their prisoners in the overcrowded county jail
10 to determine whether the agreements may be terminated.

11 (G) ~~(f)~~—Entering into agreements which allow the sheriff for
12 the county in which the overcrowded county jail is located to house
13 prisoners in facilities operated by other units of government.

14 (H) ~~(g)~~—Refusal by the sheriff to house persons who are not
15 required by law to be housed in the county jail.

16 (I) ~~(h)~~—Acceleration of the transfer of prisoners sentenced to
17 the state prison system, and prisoners otherwise under the
18 jurisdiction of the department of corrections, to the department of
19 corrections.

20 (J) ~~(i)~~—Judicial acceleration of pending court proceedings for
21 prisoners under the jurisdiction of the department of corrections
22 who will be returned to the department of corrections regardless of
23 the outcome of the pending proceedings.

24 (K) ~~(j)~~—Reduction of waiting time for prisoners awaiting
25 examination by the center for forensic psychiatry.

26 (L) ~~(k)~~—Alternative booking, processing, and housing
27 arrangements, including the use of appearance tickets instead of

1 booking at the county jail and the use of weekend arraignment, for
2 categories of cases considered appropriate by the persons notified
3 pursuant to section 4.

4 (M) ~~(I)~~—Acceptance by the courts of credit cards for payments
5 of bonds, fines, and court costs.

6 (N) ~~(m)~~—Use of community mental health and private mental
7 health resources in the county as alternatives to housing prisoners
8 in the county jail for those prisoners who qualify for placement in
9 the programs and for whom placement in the programs is appropriate.

10 (O) ~~(n)~~—Use of community and private substance abuse programs
11 and other therapeutic programs as alternatives to housing prisoners
12 in the county jail for those prisoners who qualify for placement in
13 the programs and for whom placement in the programs is appropriate.

14 (P) ~~(o)~~—Preparation of a long-range plan for addressing the
15 county jail overcrowding problem, including recommendations to the
16 county board of commissioners on construction of new jail
17 facilities and funding for construction or other options designed
18 to alleviate the overcrowding problem.

19 (Q) ~~(p)~~—Review of sentencing procedures, including the
20 elimination of delays in preparing presentence reports for
21 prisoners awaiting sentence, and staggering the dates on which
22 prisoners will start serving a jail sentence to minimize
23 fluctuating demands on jail capacity.

24 Sec. 8. (1) Except as otherwise provided in this subsection
25 and subsection (2), if the actions taken pursuant to sections 5, 6,
26 and 7 do not reduce the county jail's population to the level
27 prescribed in section 6(1) within 42 days of the declaration of the

1 county jail overcrowding state of emergency, the sheriff shall
2 defer acceptance for incarceration in the general population of the
3 county jail persons sentenced to or otherwise committed to the
4 county jail for incarceration until the county jail overcrowding
5 state of emergency is ended pursuant to section 9, except that the
6 sheriff shall not defer acceptance for incarceration all persons
7 under sentence for or charged with violent or assaultive crimes,
8 sex offenses, escape from prison or jail, **DRUNK DRIVING OFFENSES,**
9 controlled substance offenses **EXCEPT POSSESSION OF LESS THAN 25**
10 **GRAMS OF A CONTROLLED SUBSTANCE,** or weapons offenses.

11 (2) The sheriff shall not defer acceptance of a prisoner for
12 incarceration into the general population of the county jail if
13 both of the following occur:

14 (a) The sheriff or the sentencing judge presents to the chief
15 circuit judge for the county in which the county jail is located
16 information alleging that deferring acceptance of the prisoner for
17 incarceration would constitute a threat to public safety.

18 (b) The chief circuit judge, based upon the presence of a
19 threat to public safety, approves of accepting the prisoner for
20 incarceration.

21 Sec. 9. If either of the following occur, the sheriff shall
22 certify that fact in writing by first class mail or personal
23 delivery, to the judges and county officials notified pursuant to
24 section 2 and, unless a majority of the judges and county officials
25 so notified find ~~within 3 business days after~~ **UPON** receipt of the
26 certification pursuant to this section that the sheriff has acted
27 in error, the sheriff shall end the county jail overcrowding state

1 of emergency:

2 (a) At any time during the county jail overcrowding state of
3 emergency, the general prisoner population of the county jail is
4 reduced to the level prescribed in section 6(1).

5 (b) The county jail's population is not reduced to the level
6 prescribed in section 6(1) within 70 days after the declaration of
7 the county jail overcrowding state of emergency.

8 Sec. 10. For purposes of ~~section~~ **SECTIONS 1A AND 8**, a listing
9 of violent or assaultive crimes, sex offenses, escape from prison
10 or jail offenses, **DRUNK DRIVING OFFENSES**, controlled substance
11 offenses **EXCEPT POSSESSION OF LESS THAN 25 GRAMS OF A CONTROLLED**
12 **SUBSTANCE**, and weapons offenses shall be developed by the ~~office of~~
13 ~~criminal justice in the department of management and budget~~
14 **DEPARTMENT OF ATTORNEY GENERAL.**

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted.