

HOUSE BILL No. 4725

May 8, 2007, Introduced by Reps. Condino, Rick Jones, Vagnozzi, Robert Jones, Meadows, Kathleen Law, Byrnes, Hammon, Meisner, Donigan and Polidori and referred to the Committee on Judiciary.

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, 9, and 10 (MCL 801.51, 801.52, 801.53, 801.54, 801.55, 801.59, and 801.60), section 9 as amended by 1988 PA 399, and by adding sections 1a, 9a, and 9b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Chief circuit judge" means any of the following:

3 (i) The circuit judge in a judicial circuit having only 1
4 circuit judge.

5 (ii) Except in the county of Wayne, the chief judge of the
6 circuit court in a judicial circuit having 2 or more circuit

1 judges.

2 (iii) In the county of Wayne, the executive chief judge of the
3 circuit court in the third judicial circuit. ~~and the recorder's~~
4 ~~court of the city of Detroit.~~

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

7 ~~— (c) "Commission of corrections" means the state commission of~~
8 ~~corrections.~~

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

17 (D) ~~(e)~~ "Department of corrections" means the state department
18 of corrections.

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

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

26 SEC. 1A. (1) IN A COUNTY OTHER THAN A COUNTY FOR WHICH A
27 COUNTY JAIL POPULATION MANAGEMENT PLAN HAS BEEN APPROVED UNDER

1 SECTION 9A, THE SHERIFF OF THAT COUNTY SHALL TAKE THE FOLLOWING
2 ACTIONS ON THE THIRD CONSECUTIVE DAY ON WHICH THE GENERAL
3 POPULATION OF THE COUNTY JAIL EXCEEDS 95% OF THE JAIL'S RATED
4 DESIGN CAPACITY:

5 (A) THE SHERIFF SHALL REVIEW THE OUTSTANDING BONDS FOR EACH
6 PRISONER. IF THE TOTAL OF A PRISONER'S OUTSTANDING BONDS DOES NOT
7 EXCEED A MAXIMUM VALUE DETERMINED AS PROVIDED IN SUBSECTION (2),
8 THE BONDS SHALL BE MODIFIED TO PERSONAL RECOGNIZANCE BONDS IN THAT
9 SAME AMOUNT.

10 (B) THE FOLLOWING PRISONERS SHALL BE RELEASED IMMEDIATELY:

11 (i) ANY SENTENCED PRISONER WHO HAS SERVED 85% OR MORE OF HIS OR
12 HER SENTENCE, UNLESS HE OR SHE IS SERVING A SENTENCE FOR A VIOLENT
13 OR ASSAULTIVE OFFENSE, SEX OFFENSE, PRISON OR JAIL ESCAPE OFFENSE,
14 WEAPONS OFFENSE, DRUNK DRIVING OFFENSE, OR A CONTROLLED SUBSTANCE
15 OFFENSE EXCEPT POSSESSION OF LESS THAN 25 GRAMS OF A CONTROLLED
16 SUBSTANCE.

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

20 (2) THE MAXIMUM VALUE OF OUTSTANDING BONDS, FOR PURPOSES OF
21 SUBSECTION (1) (A), SHALL BE DETERMINED BY A MAJORITY VOTE OF THE
22 CHIEF CIRCUIT JUDGE FOR THE JUDICIAL CIRCUIT THAT INCLUDES THAT
23 COUNTY OR HIS OR HER DESIGNEE, THE CHIEF PROBATE JUDGE FOR THAT
24 COUNTY OR HIS OR HER DESIGNEE, AND 1 OF THE FOLLOWING, AS
25 APPLICABLE:

26 (A) IN A SINGLE-COUNTY JUDICIAL DISTRICT, THE CHIEF DISTRICT
27 JUDGE FOR THAT DISTRICT.

1 (B) IN A COUNTY CONTAINING 2 OR MORE JUDICIAL DISTRICTS, A
2 DISTRICT JUDGE CHOSEN BY THE DISTRICT JUDGES SITTING IN THAT
3 COUNTY, OR HIS OR HER DESIGNEE.

4 Sec. 2. If the general prisoner population of a county jail
5 exceeds 100% of the rated design capacity of the county jail or a
6 percentage of rated design capacity less than 100% as set by a
7 court ~~prior to the effective date of this act~~ **BEFORE FEBRUARY 8,**
8 **1983,** for 7 consecutive days or for a lesser number of days as set
9 by a court ~~prior to the effective date of this act~~ **BEFORE FEBRUARY**
10 **8, 1983,** the sheriff for that county shall certify that fact in
11 writing, by first-class mail, ~~or~~ personal delivery, **OR ELECTRONIC**
12 **COMMUNICATIONS,** to the chief circuit judge, the chief district
13 judge, and each municipal court judge in the county in which the
14 county jail is located, **THE PROSECUTING ATTORNEY FOR THE COUNTY,**
15 the chairperson of the county board of commissioners, and the
16 county executive in a county in which a county executive is
17 elected.

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

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

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

3 ~~—— (b) The county prosecutor.~~

4 (B) ~~(e)~~ The chief law enforcement official of each state,
5 county, and municipal law enforcement agency located in the county.

6 Sec. 5. The sheriff, the persons notified pursuant to section
7 4, and other circuit, district, **AND** municipal ~~, and recorder's~~
8 ~~court~~ judges may attempt to reduce the prisoner population of the
9 county jail through any available means which are already within
10 the scope of their individual and collective legal authority,
11 including, but not limited to, the following:

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

13 (B) ~~(a)~~ Judicial review of bail for possible bail reduction,
14 release on recognizance, or conditional release of prisoners in the
15 county jail.

16 (C) ~~(b)~~ Prosecutorial pre-trial diversion.

17 (D) ~~(e)~~ Judicial use of probation, fines, community service
18 orders, restitution, and delayed sentencing as alternatives to
19 commitment to jail.

20 (E) ~~(d)~~ Use of work-release, community programs, and other
21 alternative housing arrangements by the sheriff, if the programs
22 and alternative housing arrangements are authorized by law.

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

26 (G) ~~(f)~~ Entering into agreements which allow the sheriff for
27 the county in which the overcrowded county jail is located to house

1 prisoners in facilities operated by other units of government.

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

4 **(I)** ~~(h)~~—Acceleration of the transfer of prisoners sentenced to
5 the state prison system, and prisoners otherwise under the
6 jurisdiction of the department of corrections, to the department of
7 corrections.

8 **(J)** ~~(i)~~—Judicial acceleration of pending court proceedings for
9 prisoners under the jurisdiction of the department of corrections
10 who will be returned to the department of corrections regardless of
11 the outcome of the pending proceedings.

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

14 **(L)** ~~(k)~~—Alternative booking, processing, and housing
15 arrangements, including the use of appearance tickets instead of
16 booking at the county jail and the use of weekend arraignment, for
17 categories of cases considered appropriate by the persons notified
18 pursuant to section 4.

19 **(M)** ~~(l)~~—Acceptance by the courts of credit cards for payments
20 of bonds, fines, and court costs.

21 **(N)** ~~(m)~~—Use of community mental health and private mental
22 health resources in the county as alternatives to housing prisoners
23 in the county jail for those prisoners who qualify for placement in
24 the programs and for whom placement in the programs is appropriate.

25 **(O)** ~~(n)~~—Use of community and private substance abuse programs
26 and other therapeutic programs as alternatives to housing prisoners
27 in the county jail for those prisoners who qualify for placement in

1 the programs and for whom placement in the programs is appropriate.

2 (P) ~~(e)~~ Preparation of a long-range plan for addressing the
3 county jail overcrowding problem, including recommendations to the
4 county board of commissioners on construction of new jail
5 facilities and funding for construction or other options designed
6 to alleviate the overcrowding problem.

7 (Q) ~~(p)~~ Review of sentencing procedures, including the
8 elimination of delays in preparing presentence reports for
9 prisoners awaiting sentence, and staggering the dates on which
10 prisoners will start serving a jail sentence to minimize
11 fluctuating demands on jail capacity.

12 Sec. 9. If either of the following occur, the sheriff shall
13 certify that fact in writing by first class mail or personal
14 delivery, to the judges and county officials notified pursuant to
15 section 2 and, unless a majority of the judges and county officials
16 so notified find ~~within 3 business days after~~ **UPON** receipt of the
17 certification pursuant to this section that the sheriff has acted
18 in error, the sheriff shall end the county jail overcrowding state
19 of emergency:

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

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

26 **SEC. 9A. (1) FOR THE PURPOSE OF REDUCING OR PREVENTING CHRONIC**
27 **JAIL OVERCROWDING, A COUNTY OR JUDICIAL CIRCUIT MAY ADOPT AND**

1 IMPLEMENT A WRITTEN COUNTY JAIL POPULATION MANAGEMENT PLAN. THE
2 PLAN SHALL NOT TAKE EFFECT UNLESS IT IS APPROVED BY ALL OF THE
3 FOLLOWING:

4 (A) THE SHERIFF OF EACH AFFECTED COUNTY.

5 (B) THE PROSECUTING ATTORNEY OF EACH AFFECTED COUNTY.

6 (C) THE CHIEF CIRCUIT JUDGE OF THE JUDICIAL CIRCUIT OR, IN THE
7 CASE OF A COUNTY PLAN, THE CHIEF CIRCUIT JUDGE OF THE JUDICIAL
8 CIRCUIT THAT INCLUDES THAT COUNTY.

9 (D) A DISTRICT JUDGE DESIGNATED AS FOLLOWS:

10 (i) IF THE PLAN AFFECTS A SINGLE COUNTY AND THAT COUNTY IS A
11 SINGLE-COUNTY JUDICIAL DISTRICT, THE CHIEF DISTRICT JUDGE FOR THAT
12 JUDICIAL DISTRICT.

13 (ii) IN ALL OTHER CASES, A DISTRICT JUDGE CHOSEN BY THE
14 DISTRICT JUDGES OF ALL JUDICIAL DISTRICTS AFFECTED BY THE PLAN.

15 (E) THE STATE COURT ADMINISTRATIVE OFFICE.

16 (2) A WRITTEN COUNTY JAIL POPULATION MANAGEMENT PLAN ADOPTED
17 UNDER SUBSECTION (1) MAY BE AMENDED IF THE AMENDMENTS ARE APPROVED
18 BY ALL OF THE PARTIES LISTED IN SUBSECTION (1) (A) TO (E).

19 (3) A WRITTEN COUNTY JAIL POPULATION PLAN ADOPTED UNDER
20 SUBSECTION (1) IS EFFECTIVE FOR THE TERM PRESCRIBED IN THE PLAN,
21 BUT NOT MORE THAN 4 YEARS. THE AMENDMENT OF A PLAN PURSUANT TO
22 SUBSECTION (2) DOES NOT EXTEND THE 4-YEAR LIMIT PRESCRIBED IN THIS
23 SUBSECTION.

24 (4) A WRITTEN COUNTY JAIL POPULATION MANAGEMENT PLAN SHALL
25 PROVIDE FOR THE DELEGATION OF JUDICIAL SENTENCING AUTHORITY FOR THE
26 PURPOSE OF REDUCING PRIOR VALID JAIL SENTENCES, CONSISTENT WITH
27 SECTION 9B(1).

1 (5) A WRITTEN COUNTY JAIL POPULATION MANAGEMENT PLAN SHALL
2 PROVIDE FOR THE DELEGATION OF JUDICIAL AUTHORITY FOR THE PURPOSE OF
3 REVIEWING BONDS FOR UNSENTENCED PRISONERS.

4 SEC. 9B. (1) FOR PURPOSES OF THIS ACT, A SENTENCING JUDGE MAY
5 SUSPEND OR REDUCE ANY VALIDLY IMPOSED JAIL SENTENCE IMPOSED BY THAT
6 JUDGE. A SENTENCING JUDGE MAY DELEGATE THE AUTHORITY CONFERRED
7 UNDER THIS SUBSECTION TO THE CHIEF JUDGE OF THE JUDICIAL DISTRICT
8 OR CIRCUIT IN WHICH THE SENTENCING JUDGE SERVES OR HIS OR HER
9 DESIGNEE.

10 (2) FOR PURPOSES OF THIS ACT, A JUDGE MAY MODIFY BOND SET BY
11 THE COURT FOR UNSENTENCED PRISONERS. A JUDGE MAY DELEGATE THE
12 AUTHORITY CONFERRED UNDER THIS SUBSECTION TO THE CHIEF JUDGE OF THE
13 JUDICIAL DISTRICT OR CIRCUIT IN WHICH THE JUDGE SERVES, OR HIS OR
14 HER DESIGNEE.

15 Sec. 10. For purposes of ~~section~~ **SECTIONS 1A AND 8**, a listing
16 of violent or assaultive crimes, sex offenses, escape from prison
17 or jail offenses, controlled substance offenses, and weapons
18 offenses shall be developed by the ~~office of criminal justice in~~
19 ~~the department of management and budget~~ **DEPARTMENT OF ATTORNEY**
20 **GENERAL.**