

Act No. 140
Public Acts of 2007
Approved by the Governor
November 12, 2007
Filed with the Secretary of State
November 13, 2007
EFFECTIVE DATE: February 11, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Reps. Condino, Rick Jones, Vagnozzi, Robert Jones, Meadows, Kathleen Law, Byrnes, Hammon, Meisner, Donigan and Polidori

ENROLLED HOUSE BILL No. 4725

AN ACT 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:

Sec. 1. As used in this act:

(a) "County jail" means a facility operated by a county for the physical detention and correction of persons charged with or convicted of criminal offenses and ordinance violations, persons found guilty of civil or criminal contempt, and juveniles detained by court order.

(b) "Department of corrections" means the state department of corrections.

(c) "Prisoner" means a person who is currently being physically detained in a county jail.

(d) "Rated design capacity" means the actual available bed space of the general population of a county jail as determined by the department of corrections.

Sec. 1a. (1) In a county other than a county described in subsection (4), the sheriff of that county shall take the following actions on the fifth consecutive day on which the general population of the county jail exceeds 95% of the jail's rated design capacity:

(a) The sheriff shall review the outstanding bonds for each prisoner. If the total of a prisoner's outstanding bonds does not exceed a maximum value determined as provided in subsection (2), the sheriff, subject to the approval of the chief circuit judge in that county, shall modify each outstanding bond for that prisoner to a personal recognizance bond in that 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.

(b) The following prisoners, except for any prisoner that the chief circuit judge in that county believes would present a threat to the public safety if released, shall be released immediately:

(i) Any sentenced prisoner who has served 85% or more of his or her sentence, unless he or she is 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 except possession of less than 25 grams of a controlled substance.

(ii) Any prisoner detained in the county jail for a civil contempt adjudication for failure to pay child support who has no other charges pending against him or her.

(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 before February 8, 1983, for 7 consecutive days or for a lesser number of days as set by a court before February 8, 1983, the sheriff for that county shall certify that fact in writing, by first-class mail, 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 county executive in a county in which a county executive is elected.

Sec. 3. If, upon receipt of a certification by the sheriff under section 2, a majority of the judges and county officials notified pursuant to section 2 do not find that the sheriff acted in error, the sheriff shall declare a county jail overcrowding state of emergency.

Sec. 4. Upon the declaration of a county jail overcrowding state of emergency pursuant to section 3, the sheriff shall notify both of the following persons in writing, by first-class mail, personal delivery, or electronic communications, that a county jail overcrowding state of emergency has been declared:

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

(b) The chief law enforcement official of each state, county, and municipal law enforcement agency located in the county.

Sec. 5. The sheriff, the persons notified pursuant to section 4, and other circuit, district, and municipal judges may attempt to reduce the prisoner population of the county jail through any available means which are already within the scope of their individual and collective legal authority, including, but not limited to, the following:

(a) Accelerated review and rescheduling of court dates.

(b) Judicial review of bail for possible bail reduction, release on recognizance, or conditional release of prisoners in the county jail.

(c) Prosecutorial pre-trial diversion.

(d) Judicial use of probation, fines, community service orders, restitution, and delayed sentencing as alternatives to commitment to jail.

(e) Use of work-release, community programs, and other alternative housing arrangements by the sheriff, if the programs and alternative housing arrangements are authorized by law.

(f) Review of agreements which allow other units of government to house their prisoners in the overcrowded county jail to determine whether the agreements may be terminated.

(g) Entering into agreements which allow the sheriff for the county in which the overcrowded county jail is located to house prisoners in facilities operated by other units of government.

(h) Refusal by the sheriff to house persons who are not required by law to be housed in the county jail.

(i) Acceleration of the transfer of prisoners sentenced to the state prison system, and prisoners otherwise under the jurisdiction of the department of corrections, to the department of corrections.

(j) Judicial acceleration of pending court proceedings for prisoners under the jurisdiction of the department of corrections who will be returned to the department of corrections regardless of the outcome of the pending proceedings.

(k) Reduction of waiting time for prisoners awaiting examination by the center for forensic psychiatry.

(l) Alternative booking, processing, and housing arrangements, including the use of appearance tickets instead of booking at the county jail and the use of weekend arraignment, for categories of cases considered appropriate by the persons notified pursuant to section 4.

(m) Acceptance by the courts of credit cards for payments of bonds, fines, and court costs.

(n) Use of community mental health and private mental health resources in the county as alternatives to housing prisoners in the county jail for those prisoners who qualify for placement in the programs and for whom placement in the programs is appropriate.

(o) Use of community and private substance abuse programs and other therapeutic programs as alternatives to housing prisoners in the county jail for those prisoners who qualify for placement in the programs and for whom placement in the programs is appropriate.

(p) Preparation of a long-range plan for addressing the county jail overcrowding problem, including recommendations to the county board of commissioners on construction of new jail facilities and funding for construction or other options designed to alleviate the overcrowding problem.

(q) Review of sentencing procedures, including the elimination of delays in preparing presentence reports for prisoners awaiting sentence, and staggering the dates on which prisoners will start serving a jail sentence to minimize fluctuating demands on jail capacity.

Sec. 8. (1) Except as otherwise provided in this subsection and subsection (2), if the actions taken pursuant to sections 5, 6, and 7 do not reduce the county jail's population to the level prescribed in section 6(1) within 42 days of the declaration of the county jail overcrowding state of emergency, the sheriff shall defer acceptance for incarceration in the general population of the county jail persons sentenced to or otherwise committed to the county jail for incarceration until the county jail overcrowding state of emergency is ended pursuant to section 9, except that the sheriff shall not defer acceptance for incarceration all persons under sentence for or charged with violent or assaultive crimes, sex offenses, escape from prison or jail, drunk driving offenses, controlled substance offenses except possession of less than 25 grams of a controlled substance, or weapons offenses.

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

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

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

Sec. 9. If either of the following occur, the sheriff shall certify that fact in writing by first-class mail or personal delivery, to the judges and county officials notified pursuant to section 2 and, unless a majority of the judges and county officials so notified find upon receipt of the certification pursuant to this section that the sheriff has acted in error, the sheriff shall end the county jail overcrowding state of emergency:

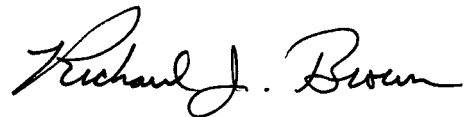
(a) At any time during the county jail overcrowding state of emergency, the general prisoner population of the county jail is reduced to the level prescribed in section 6(1).

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

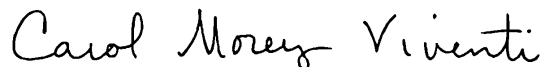
Sec. 10. For purposes of sections 1a and 8, a listing of violent or assaultive crimes, sex offenses, escape from prison or jail offenses, drunk driving offenses, controlled substance offenses except possession of less than 25 grams of a controlled substance, and weapons offenses shall be developed by the department of attorney general.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor