

# Legislative Analysis

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## **JAILS: REVISE CRITERIA FOR DOUBLE BUNKING; CLASSIFICATION OF INMATES**

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**House Bill 4071 as enrolled**  
**Public Act 211 of 2011**  
**Sponsor: Rep. Matt Lori**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary**

### **Second Analysis (2-19-13)**

**BRIEF SUMMARY:** The act revised the square footage requirements per jail inmate to allow more inmates per single-occupancy and double-occupancy cells than currently allowed and also revised the inmate classification system.

**FISCAL IMPACT:** The act has the potential for a fiscal impact for both state and local government, as discussed in more detail later in the analysis. (See *Fiscal Information* later in the analysis.)

### **THE APPARENT PROBLEM:**

Many jails struggle with chronic overcrowding and some counties are forced to release inmates early when empty beds cannot be found. In 2009, a committee of jail administrators was formed to look at state laws regarding the construction and use of jail cells in Michigan's county jails. The committee compared Michigan's laws with the Core Jail Standards adopted by the American Correctional Association (ACA) in August of 2009 (the first ever national standards) and also reviewed mandatory standards for local jails established by some states. In particular, the committee reviewed statutes that regulate the conditions under which two inmates can be housed in a cell designed for just one inmate and more than two inmates can be housed in a cell designed for two.

According to the committee's final draft report dated August 31, 2009, most other states had laws that were less restrictive in many areas, such as the minimum cell size for double bunked cells. The report also highlights the ACA's finding that use of an objective classification system – in which the probability of assault and disruptive behavior is reduced by separating inmates into groups based on the appropriate level of custody, appropriate housing assignment, and inmate's interest and eligibility to participate in available programs – can be effective in protecting the community and jail staff, volunteers, and inmates from harm. The committee put forth several recommendations, all of which have been incorporated into legislation.

### **THE CONTENT OF THE BILL:**

Public Act 211 did the following:

- Revised provisions regulating the number of inmates housed in a jail cell designed for one or two inmates,
- Eliminated the restriction on the percent of inmates in a jail allowed to be double bunked,
- Revised criteria on which inmates can and cannot be housed together, and
- Allowed high security and segregation cells to be constructed to house multiple inmates.

Previously, jails could only double bunk inmates in a cell intended for one inmate and house more than two inmates in a cell designed for that purpose under certain criteria. House Bill 4071 amended the Corrections Code to revise the criteria to allow for more prisoners to be housed in a cell than currently allowed. The act took effect November 8, 2011.

**Double Bunking.** The code had allowed the housing of two inmates in a county jail cell that was designed and constructed for single occupancy under certain conditions. One condition allowed double bunking if the cell was at least 65 square feet in area and provided *unrestricted* access to a day area that was *available at least 14 hours per day* and contained an average of at least 20 additional square feet of space per inmate. House Bill 4071 eliminated the requirement that access to the day area be unrestricted and that the day area be accessible for at least 14 hours per day.

Previously, a person with no prior criminal convictions could only be double bunked with an inmate who did not have a prior felony conviction. The act deleted this restriction. A provision allowing double bunking in a cell that is at least 55 square feet in area if both of the two inmates participate in a day parole program (e.g., work release) for at least 32 hours per week was retained.

The new act also eliminated a provision that required the authorization of the sentencing judge before an inmate sentenced for a "Proposal B" crime could be double bunked with another inmate. (A "Proposal B" crime refers to a list of crimes involving violence or crimes resulting in injury to a person or damage to property and for which a person must serve his or minimum sentence in a secure facility.)

In addition, the code had specified that no more than 75 percent of the total inmate population of a jail could be double bunked and that pretrial inmates must be housed in separate cell blocks or housing units from sentenced inmates. If a jail has five or more floors, pretrial inmates had to be housed on separate floors from sentenced inmates. The act eliminated these provisions.

**Dorm cell.** The code allows two or more inmates to be housed in a county jail cell that was designed and constructed for housing two or more inmates if certain conditions are met. The act revised one of the conditions. Instead of requiring the basic cell to have at least 52 square feet in area per inmate, the act requires only 25 square feet in area per inmate. If the inmates are confined in the cell for 10 or more hours per day, at least 35 square feet in area must be provided per inmate.

Further, the code previously banned the construction of high security and segregation cells to house multiple inmates. The bill would eliminate this prohibition.

### ***FISCAL INFORMATION:***

The act essentially gives counties the ability to expand existing jail capacities by housing additional inmates within their existing jail space. For counties where the number of inmates has been at or near overall jail capacity under current law, the act could reduce county costs in two ways. First, such a county might avoid future costs of expanding current jail space in response to current or future overcrowding. Second, the county may see its existing costs decrease if it is able to house more inmates within its own jail rather than through an arrangement with another jail facility (e.g. a neighboring county) to house those inmates.

Conversely, for counties that already have excess capacity and have agreements with one or more other counties to house those counties' inmates, the act could reduce both revenue and related county jail costs under those agreements to the extent that the neighboring counties are now able to house inmates locally.

Finally, the act could conceivably reduce state prison costs if additional county jail bed capacity results in fewer commitments to state prisons. This could occur in one of two ways: First, additional parole violators might be housed in county jails rather than returned to prisons using any additional capacity that results from the bill's provisions. Second, any added capacity might also allow judges to sentence more convicted felons to county jail sentences rather than to state prison sentences if jail capacity is a factor in these decisions. In this instance, any state savings would be partially offset by additional reimbursement to counties under the County Jail Reimbursement Program. However, reimbursement under the program is capped at appropriated levels. For FY 2010-11, program funding is \$16.6 million.

### ***ARGUMENTS:***

#### ***For:***

House Bill 4071 as enacted will give jail administrators more flexibility in housing their inmate populations. This flexibility may help avoid triggering mandatory early releases under the state Jail Overcrowding Emergency Powers Act. For instance, in order to place two inmates in a cell designed for single occupancy, the law previously required the cell be a certain size and the inmates to have access to a day area at least 14 hours a day. Under the new act, a cell could be double bunked even if the day area was only accessible for four, six, or eight hours. Thus, access to a day area by inmates in a double bunk cell would be on par with cells designed for two or more inmates, as those dorm cells do not have a per day minimum for access to a day area. Some believe that eliminating the 14-hour access provision will provide greater safety for some inmates as access to the day area could be scheduled according to an inmate's risk of violence rather than the size of the cell in which an inmate is housed.

In addition, the act removes several provisions that some see as vestiges of the time when all jail inmates were housed in single cells and double bunking was done only under a variance, with an expiration date, issued by the Department of Corrections in response to an overcrowding emergency. For example, the act eliminated the prohibition on double bunking (in a cell designed for one person) a first offender with a person having a prior felony conviction. This restriction did not take into account that it may be safer for a first offender with a nonviolent misdemeanor charge to be housed with a pretrial inmate with a misdemeanor charge but who has a prior felony conviction for check fraud than to be housed with another first offender who is charged with murder or other assaultive crime.

Likewise, it may be safer for inmates and jail staff alike if nonviolent offenders could be housed in the same cell block, housing unit, or floor regardless of whether they were pre-trial or post-sentence than to house violent and nonviolent offenders in close proximity based on sentencing status.

Protections afforded by jail classification systems are viewed as being more effective than restrictions such as no double bunking if sentenced for a "Proposal B" crime, a restriction that was also eliminated by the act. As to removal of the 75 percent cap on double bunked inmates, the committee of jail administrators did not find any other state with a standard that was equally restrictive. According to the committee's final draft report, Wisconsin caps double bunking at 85 percent and South Carolina caps only double bunking of pretrial inmates, and that to 50 percent.

It is important to note that the amendments pertaining to double bunking only apply to double bunking in jail cells that were originally designed to house a single inmate and not to all cells having two inmates. Many newer jails have been built to design standards that allow double bunking.

***For:***

The act also gives more flexibility for the housing of inmates in what are known as "dorm cells." Previously, two or more inmates could only be housed in a cell that was designed for that purpose as long as certain criteria were met. The act revised the square footage space requirement per inmate to conform to American Correctional Association (ACA) standards. The ACA Core Jail Standards, the first ever national minimum jail standards, recommend that to ensure a safe environment for inmates as well as staff and volunteers, multiple-occupancy cells/rooms that house between two and 64 inmates provide at least 25 square feet of unencumbered space per occupant. If the inmates are confined more than 10 hours per day, the square footage space per inmate should be increased to 35 square feet. The act reflects these and other ACA minimum standards.

***Response:***

The ACA Core Jail Standards pertaining to square footage space per inmate per cell/dorm is based on *unencumbered* space. That is, the square footage taken up by beds, desks, storage lockers, toilets, and sinks must be subtracted from the overall square footage of the cell/dorm when determining how many inmates may be housed in a single cell or dorm cell. Thus, it is not 25 square feet of space per inmate, but 25 square feet of unencumbered space per inmate. However, the changes to the space per inmate

requirements in Sections 262b and 262c do not specify this is to be unencumbered space. Without this distinction being placed in statute, it is conceivable that a jail administrator could claim compliance with state law by providing each inmate space that is little larger than a cot. Such overcrowding is believed by many to be a major factor in jail violence.

***For:***

The act eliminated the prohibition on constructing high security and segregation cells for multiple inmates. According to the committee report, the terms "high security" and "segregated" as they relate to inmates are not defined and therefore the provision does not give clear guidance to jail administrators. For instance, some have wondered if it would be appropriate to house some maximum custody inmates together or for short periods as part of a disciplinary detention. In addition, inmates suffering from mental illnesses who are placed in segregation cells tend to spiral downward. They do better when in contact with others. Suicides and suicide attempts are also more prevalent among inmates who are segregated than when bunking with others. Thus, there may be times when double bunking of these populations would not be inappropriate.

***Response:***

Inmates who are depressed or suffering from a mental illness or developmental disability are more vulnerable to exploitation and assault by cellmates. For them, segregation may afford greater safety, especially at night when it is harder for guards to detect an attack in progress in a cell. Utilizing proper suicide prevention protocols and providing appropriate assessment and treatment can help stabilize inmates with suicidal tendencies, mental illnesses, or developmental disabilities.

***For:***

Enactment of House Bill 4071 may result in savings to taxpayers by giving jail administrators more flexibility in using available jail facilities efficiently and effectively without the expense of building new jails to fit archaic space and housing requirements.

***Against:***

Although the act is said to be eliminating overly restrictive provisions so as to conform more closely to the Core Jail Standards developed by the ACA, the act fails to incorporate many ACA standards (as seen in the discussion above regarding the failure to base square footage space requirements on *unencumbered* space). In an August 19, 2010, *Design Development Presentation* by the Allegan County Sheriff's Office regarding construction of a new jail, it was noted that "Michigan Jail Standards are generally not as strict as the standards of the American Corrections Associations Standards." According to the presentation, the *ACA Standards for Adult Local Detention Facilities* are generally accepted as the "closest thing to a national standard" and as such, "any jail designed to these standards should be defensible in Local, State, or Federal Court." (Underlining added.) The report goes on to say that the "Allegan County Jail has been designed to meet the stricter requirement of the two standards."

The *U.P. Regional Jail Feasibility and Facility Re-Use Study*, published in January 2010, stated that "Michigan standards address less than 25% of the topics and issues presented in the Core Jail Standards." As an example, the report cites a case study in which

compliance with the national core jail standards was assessed for Schoolcraft County by a U.S. Department of Justice consultant in October 2009. A list of 24 violations of the core standards was presented as just some of the many violations by the jail, including not providing the minimum required square feet of unencumbered space per inmate in cells and in the adjacent dayrooms.

In the 2009 article "New 'Core Jail Standards' Provide Sheriffs and Jail Managers with Much-Needed Guidance" by Scott Strait and Tim Ahlborn, the authors write that though they found their facility in Mackinac County to be in full compliance with mandatory state jail standards, they also found that Michigan's standards "address less than 25% of the issues that are in the core jail standards," leaving them very concerned about their facility's liability should they be sued. Prompted by concerns about liability, they agreed to field test the final draft of the core jail standards in their jail and became the first jail in the U.S. to receive accreditation under the new standards.

As seen by these articles and presentations, Michigan's laws and policies regarding jail construction and housing of inmates pale in comparison to the national standards of the ACA. Therefore, any changes to existing law regarding jails should be careful to incorporate the ACA's Core Jail Standards.

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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.