COUNTY JAIL OVERCROWDING STATE OF EMERGENCY
Act 325 of 1982

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.

History: 1982, Act 325, Eff. Feb. 8, 1983.

Popular name: Jail Overcrowding Emergency Powers Act

The People of the State of Michigan enact:

801.51 Definitions.

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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Constitutionality: The county jail overcrowding act does not infringe upon the Governor's power of executive clemency. Kent Pros v Sheriff (On Reh), 428 Mich 314; 409 NW2d 202 (1987).

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801.51a County jail population exceeding 95% of jail's rated design capacity; actions by county sheriff; maximum value of outstanding bonds; duration; applicability of subsections (1) to (3).

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

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in effect.

History: Add. 2007, Act 140, Eff. Feb. 11, 2008.

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801.52 Certifying general prisoner population exceeds 100% of rated design capacity of county jail or percentage of rated design capacity set by court; duties of sheriff.

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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Popular name: Jail Overcrowding Emergency Powers Act

801.52a Reporting prisoner population counts.

Sec. 2a. The prisoner population counts required for any purpose under this act shall be reported as being taken between the hours of 12:01 a.m. and 4:00 a.m. on each day on which a count is conducted.

History: Add. 1988, Act 399, Imd. Eff. Dec. 27, 1988.

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801.53 Declaring county jail overcrowding state of emergency.

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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

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801.54 Notice of declaration of 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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Popular name: Jail Overcrowding Emergency Powers Act

801.55 Reduction of prisoner population by sheriff, notified persons, and other judges; means.

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.

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(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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

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801.56 Requirement of further actions; failure of certain actions to reduce population to level prescribed in subsection (1); presenting prisoner information to chief circuit judge; applicability of subsection (2)(b) to certain prisoners; review; classification of prisoners; reduction of sentences; duration; report.

Sec. 6. (1) The further actions prescribed in subsections (2) to (5) and in sections 7 and 8 shall be required unless the actions taken pursuant to section 5 reduce the county's jail population to the higher of the following:

(a) 90% of rated design capacity or a percentage of rated design capacity less than 90% as set by a court prior to February 8, 1983.

(b) A prisoner population such that the jail has the following number of empty beds:

(*i*) For a jail with a rated design capacity of less than 500 beds, at least 10 empty beds.

(*ii*) For a jail with a rated design capacity of 500 beds or more, at least 25 empty beds.

(2) If the actions taken pursuant to section 5 do not reduce the county jail's population to the level prescribed in subsection (1) within 14 days after the declaration of the county jail overcrowding state of emergency, the sheriff shall present to the chief circuit judge for the county in which the jail is located the following information for each prisoner housed in the county jail on that date:

(a) For prisoners who are serving a sentence of imprisonment for conviction of 1 or more crimes:

(*i*) The name of each prisoner.

(*ii*) The offense for which the prisoner was convicted.

(*iii*) The length of sentence imposed for the prisoner.

(*iv*) The date on which the prisoner began serving his or her sentence.

(*v*) The date on which the prisoner will be released from the jail according to the terms of his or her sentence, including computations for good time.

(*vi*) The name of the judge who imposed the sentence.

(b) For prisoners housed in the county jail, other than a prisoner described in subsection (3), who are not serving a sentence of imprisonment for conviction of a crime:

(*i*) The name of the prisoner.

(*ii*) The offense for which the prisoner is being detained in the county jail.

(*iii*) The amount of the prisoner's bond.

(*iv*) The date on which the prisoner began his or her period of detention.

(*v*) The name of the judge who ordered the prisoner to be detained.

(3) Subsection (2)(b) does not apply to a prisoner who is detained in the county jail in connection with a

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crime or an allegation of a crime in which the victim was a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual residing or having resided in the same household, or an individual with whom he or she has or has had a dating relationship as that term is defined in section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(4) After the chief circuit judge for the county in which the jail is located reviews the information presented by the sheriff pursuant to subsection (2), the chief circuit judge shall, for purposes of county jail population reduction, do both of the following:

(a) Classify prisoners who are serving sentences of imprisonment for conviction of crimes into 2 groups: those prisoners who, if released, would present a high risk to the public safety, and those who, if released, would not present a high risk to the public safety. The chief circuit judge shall also determine a minimum and a maximum percentage by which the sentences can be reduced. The sheriff shall reduce the sentences of all prisoners who, if released, would not present a high risk to the public safety by an equal percentage which is within the minimum and maximum percentages determined by the chief circuit judge.

(b) Review the list of prisoners housed in the county jail who are not serving a sentence for conviction of crimes and determine for each prisoner whether the release of that prisoner would or would not present a high risk to public safety. The chief circuit judge may do either or both of the following with regard to a prisoner whose release would not present a high risk to the public safety:

(*i*) Modify the bond of the prisoner, subject to any conditions reasonably necessary to ensure the appearance of the individual in court.

(*ii*) Release the prisoner subject to the condition that he or she be placed on electronic monitoring.

(5) The sentences of prisoners sentenced to and housed in the county jail after the fourteenth day of the county jail overcrowding state of emergency may continue to be reduced in the same manner as prescribed in subsections (2)(a) and (4)(a), but shall not be reduced after the county jail overcrowding state of emergency is ended or after the sheriff orders a sentence reduction pursuant to section 7, whichever occurs first.

(6) The department of corrections, in cooperation with the Michigan sheriffs' association, shall annually report to the chairpersons of the senate and house standing committees responsible for legislation concerning corrections. The report shall evaluate the effect on the overcrowding state of emergency procedures under this section.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 1988, Act 399, Imd. Eff. Dec. 27, 1988;—Am. 2008, Act 542, Imd. Eff. Jan. 13, 2009.

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801.57 Failure of certain actions to reduce population to level prescribed in MCL 801.56(1); equal reduction of original sentences.

Sec. 7. If the actions taken pursuant to sections 5 and 6 do not reduce the county jail's population to the level prescribed in section 6(1) within 28 days of the declaration of the county jail overcrowding state of emergency, the original sentences, not including good time, of all prisoners sentenced to and housed in the county jail on that date shall be equally reduced by the sheriff by the least possible percentage reduction necessary, not to exceed 30%, to reduce the county jail's prisoner population to the level prescribed in section 6(1).

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 1988, Act 399, Imd. Eff. Dec. 27, 1988.

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801.58 Failure of certain actions to reduce population to level prescribed in MCL 801.56(1); deferring acceptance for incarceration of certain persons.

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

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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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 1988, Act 399, Imd. Eff. Dec. 27, 1988;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Popular name: Jail Overcrowding Emergency Powers Act

801.59 Ending county jail overcrowding state of emergency; conditions; certification by sheriff.

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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 1988, Act 399, Imd. Eff. Dec. 27, 1988;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Popular name: Jail Overcrowding Emergency Powers Act

801.59a Written county jail population management plan; adoption; implementation; approval; amendments; duration; delegation of judicial sentencing authority.

Sec. 9a. (1) For the purpose of reducing or preventing chronic jail overcrowding, a county or judicial circuit may adopt and implement a written county jail population management plan. The plan shall not take effect unless it is approved by all of the following:

(a) The sheriff of each affected county.

(b) The prosecuting attorney of each affected county.

(c) 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 includes that county.

(d) A district judge designated as follows:

(*i*) If the plan affects a single-county or multicounty judicial district, the chief district judge for that judicial district.

(*ii*) In all other cases, a district judge chosen by the chief district judges of all judicial districts affected by the plan.

(2) A written county jail population management plan adopted under subsection (1) may be amended if the amendments are approved by all of the parties listed in subsection (1)(a) to (d).

(3) A written county jail population plan adopted under subsection (1) is effective for the term prescribed in the plan, but not more than 4 years. The amendment of a plan pursuant to subsection (2) does not extend the 4-year limit prescribed in this subsection.

(4) A written county jail population management plan shall provide for the delegation of judicial sentencing authority for the purpose of reducing prior valid jail sentences, consistent with section 9b(1).

(5) A written county jail population management plan shall provide for the delegation of judicial authority for the purpose of reviewing bonds for unsentenced prisoners.

History: Add. 2007, Act 139, Imd. Eff. Nov. 13, 2007.

Popular name: Jail Overcrowding Emergency Powers Act

801.59b Suspension or reduction of jail sentence by sentencing judge; delegation of authority to chief judge; modification of bond.

Sec. 9b. (1) For purposes of this act, a sentencing judge may suspend or reduce any validly imposed jail sentence imposed by that judge. A sentencing judge may delegate the authority conferred under this subsection to the chief judge of the judicial district or circuit in which the sentencing judge serves or his or her designee.

(2) For purposes of this act, a judge may modify bond set by the court for unsentenced prisoners. A judge may delegate the authority conferred under this subsection to the chief judge of the judicial district or circuit in which the judge serves, or his or her designee.

History: Add. 2007, Act 139, Imd. Eff. Nov. 13, 2007.

Popular name: Jail Overcrowding Emergency Powers Act

801.60 Listing of crimes and offenses; development.

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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.

History: 1982, Act 325, Eff. Feb. 8, 1983;—Am. 2007, Act 140, Eff. Feb. 11, 2008.

Compiler's note: For transfer of powers and duties of former office of criminal justice under the county jail overcrowding act from department of management and budget to office of attorney general, see E.R.O. No. 1994-6, compiled at MCL 801.71 of the Michigan Compiled Laws.

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801.61 Loss of bed space due to natural disaster or deliberate destruction of property; applicability of act.

Sec. 11. The provisions of this act shall not be applicable if a county jail population exceeds rated design capacity as the direct result of loss of bed space due to a natural disaster or deliberate destruction of property.

History: 1982, Act 325, Eff. Feb. 8, 1983.

Popular name: Jail Overcrowding Emergency Powers Act

801.62 Prisoners sentenced to county jail as condition of probation; applicability of act.

Sec. 12. This act shall apply to prisoners sentenced to a county jail as a condition of probation but shall not reduce or otherwise affect the total probationary period imposed by the court.

History: 1982, Act 325, Eff. Feb. 8, 1983.

Popular name: Jail Overcrowding Emergency Powers Act

801.63 Maximum sentence reductions where act invoked more than once; good time.

Sec. 13. If the provisions of this act are invoked more than once with respect to an individual prisoner, sentence reductions granted to that prisoner pursuant to section 7 shall not exceed 35% of the prisoner's original sentence. This section shall not limit a sheriff's authority to grant a prisoner good time as authorized by law.

History: 1982, Act 325, Eff. Feb. 8, 1983.

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801.64 Effective date.

Sec. 14. This act shall take effect upon the expiration of 60 days after it is enacted into law.

History: 1982, Act 325, Eff. Feb. 8, 1983.

Popular name: Jail Overcrowding Emergency Powers Act

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