



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Lansing, Michigan 48909

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MEMORANDUM

DATE: January 10, 2008

TO: Judges
cc: County Clerks
Court Administrators
Probation Agents

FROM: Dawn M. Childress, Management Analyst

RE: Amendments to Jail Overcrowding Emergency Powers Act

Amendments to the Jail Overcrowding Emergency Powers Act, will take effect February 11, 2008 under 2007 PA 139. These amendments allow a county or judicial circuit to adopt and implement a written county jail population management plan to reduce or prevent chronic jail overcrowding. Any proposed plan would not take effect unless it is approved by all the following individuals:

- 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; and
- d) a district judge designated as follows:
 - 1) if the plan affects a single-county or multicounty judicial district, the chief judge for that judicial district.
 - 2) in all other cases, a district judge chosen by the chief district judges of all judicial districts affected by the plan.

New provisions of the act authorize a sentencing judge to suspend or reduce any validly imposed jail sentence imposed by that judge, and permits a judge to modify bond set by the court for unsentenced prisoners. Judges may delegate this authority to the chief judge of the judicial

district or circuit in which the judge serves, or to his or her designee. Each plan must provide for the delegation of judicial sentencing authority and bond review authority for unsentenced prisoners. A plan is effective for the term prescribed within the plan, but for no longer than four years. A plan may be amended if the amendments are approved by all the parties listed above, but any amendment does not extend the four-year limit prescribed by the statute.

For those counties that have not adopted a county jail management plan or that have a population greater than 650,000 as of the most recent federal decennial census and have implemented a written jail management plan in which the basis of the plan is jail bed allocation, the procedures discussed below apply.

On the fifth consecutive day where the county jail's general population exceeds 95 percent of the jail's rated design capacity, the sheriff is to review each prisoner's outstanding bonds. If a prisoner's total outstanding bonds do not exceed a previously determined maximum value, the sheriff, subject to the chief circuit judge's approval, shall modify all of that prisoner's outstanding bonds to personal recognizance bonds in the amount originally set by the court.

The sheriff must issue a receipt to the prisoner for the personal recognizance bond and send a copy to the court that set the bond. In a single-county or multi-county judicial district, the maximum value of outstanding bonds is to be determined by a majority vote of the chief circuit judge for the circuit that includes that county, the chief district judge for that district, and the sheriff of the county. In a county containing two or more judicial districts, the maximum value of outstanding bonds is to be determined by a majority vote of the chief circuit judge for the circuit that includes that county, the chief probate judge for that county, the sheriff of the county, and two district judges chosen by the chief district judges sitting in that county. A determination made as to the maximum value of outstanding bonds remains in effect for one year after the date on which that determination was made. Except for any prisoners that the chief circuit judge in that county believes would present a threat to the public safety if released, the following prisoner "classes" must be immediately released:

- 1) any sentenced prisoner who has served 85 percent 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; and
- 2) 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.

If the general prisoner population of a county jail exceeds 100 percent of the rated design capacity of the county jail or a percentage of rated design capacity less than 100 percent as set by a court before February 8, 1983, for seven consecutive days or for fewer days as set by a court

before February 8, 1983, the sheriff for that county must certify that the jail has met the statutory over-crowding provisions and deliver it by either 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, as well as 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. After receiving the sheriff's certification of jail overcrowding, if a majority of the judges and county officials who have been notified do not find the sheriff acted in error, the sheriff shall declare a county jail overcrowding state of emergency and must notify the judges and county officials and the chief law enforcement official of each state, county, and municipal law enforcement agency located in the county that such a state of emergency exists. Notice provisions have been updated to allow service by electronic communications. The Legislature also has amended the act to suggest courts use accelerated review and rescheduling of court dates to reduce jail overcrowding.

If the actions taken by the courts, law enforcement agencies, county officials, and prosecutors fail to reduce the county jail's population to an acceptable level within 42 days of the declaration of the county jail overcrowding state of emergency, the sheriff shall defer acceptance for incarceration until the state of emergency has ended. However, persons sentenced for or charged with the following crimes may not be deferred from incarceration: 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.

If you need assistance in developing your local plan, please contact your regional administrator.

Region I: Deborah Green (greend@courts.mi.gov or 313-972-3300)

Region II: James Hughes (hughesj@courts.mi.gov or 517-373-9353)

Region III: Bruce Kilmer (kilmerb@courts.mi.gov or 989-772-5934)

Region IV: Jim Covault (covaultj@courts.mi.gov or 989-732-3311)

For clarification of the new legislation, please contact Dawn Childress at childressd@courts.mi.gov or 517-373-3756.