

# SENATE BILL NO. 1009

June 25, 2020, Introduced by Senators CHANG, IRWIN, GEISS, WOJNO, SANTANA, HERTEL, BAYER and BRINKS and referred to the Committee on Judiciary and Public Safety.

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 the title and sections 2, 3, 4, 5, and 9 (MCL 801.52, 801.53, 801.54, 801.55, and 801.59), sections 2, 3, 4, 5, and 9 as amended by 2007 PA 140, and by adding section 5a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**

TITLE

1 An act to authorize county sheriffs to declare a county jail  
 2 overcrowding state of emergency **or a county jail health state of**  
 3 **emergency;** to prescribe the powers and duties of certain judges,  
 4 county sheriffs, and other county officials; and to provide  
 5 remedies for a county jail overcrowding state of emergency **and a**  
 6 **county jail health state of emergency.**

7 Sec. 2. ~~If the general prisoner population of a county jail~~  
 8 ~~exceeds 100% of the rated design capacity of the county jail or a~~  
 9 ~~percentage of rated design capacity less than 100% as set by a~~  
 10 ~~court before February 8, 1983, for 7 consecutive days or for a~~  
 11 ~~lesser number of days as set by a court before February 8, 1983,~~  
 12 **either of the following occurs with respect to a county jail,** the  
 13 sheriff for ~~that~~**the** county shall certify ~~that fact~~**the occurrence**  
 14 in writing, by first-class mail, personal delivery, or electronic  
 15 communications, to the chief circuit judge, the chief district  
 16 judge, and each municipal court judge in the county in which the  
 17 county jail is located, the prosecuting attorney for the county,  
 18 the chairperson of the county board of commissioners, and the  
 19 county executive in a county in which a county executive is  
 20 elected: -

21 (a) **The general prisoner population of a county jail exceeds**  
 22 **100% of the rated design capacity of the county jail or a**  
 23 **percentage of rated design capacity less than 100% as set by a**  
 24 **court before February 8, 1983 for 7 consecutive days or for a**  
 25 **lesser number of days as set by a court before February 8, 1983.**

26 (b) **A state of emergency is declared in this state in response**  
 27 **to a declaration by the World Health Organization that a disease is**  
 28 **a pandemic.**

29 Sec. 3. (1) If, upon receipt of a certification by the sheriff

1 under section ~~2~~, **2(a)**, a majority of the judges and county  
 2 officials notified pursuant to section 2 do not find that the  
 3 sheriff acted in error, the sheriff shall declare a county jail  
 4 overcrowding state of emergency.

5 **(2) If, upon receipt of a certification by the sheriff under**  
 6 **section 2(b), a majority of the judges and county officials**  
 7 **notified pursuant to section 2 do not find that the sheriff acted**  
 8 **in error, the sheriff shall declare a county jail health state of**  
 9 **emergency.**

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

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

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

20 Sec. 5. ~~The~~ **If a county jail overcrowding state of emergency**  
 21 **or a county jail health state of emergency is declared under**  
 22 **section 3, the** sheriff, the persons notified pursuant to section 4,  
 23 and other circuit, district, and municipal judges may attempt to  
 24 reduce the prisoner population of the county jail through any  
 25 available means ~~which~~ **that** are already within the scope of their  
 26 individual and collective legal authority, including, but not  
 27 limited to, the following:

28 (a) Accelerated review and rescheduling of court dates.

29 (b) Judicial review of bail for possible bail reduction,

1 release on recognizance, or conditional release of prisoners in the  
2 county jail.

3 (c) Prosecutorial pre-trial diversion.

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

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

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

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

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

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

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

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

27 (l) Alternative booking, processing, and housing arrangements,  
28 including the use of appearance tickets instead of booking at the  
29 county jail and the use of weekend arraignment, for categories of

1 cases considered appropriate by the persons notified pursuant to  
2 section 4.

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

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

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

13 (p) Preparation of a long-range plan for addressing ~~the~~<sup>a</sup>  
14 county jail overcrowding problem, **if applicable**, including  
15 recommendations to the county board of commissioners on  
16 construction of new jail facilities and funding for construction or  
17 other options designed to alleviate the overcrowding problem.

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

23 **Sec. 5a. (1) If a county jail health state of emergency is**  
24 **declared under section 3 and has not ended under section 9, in**  
25 **addition to the means authorized under section 5, the sheriff, the**  
26 **persons notified pursuant to section 4, and other circuit,**  
27 **district, and municipal judges shall attempt to reduce the prisoner**  
28 **population of the county jail through the following means:**

29 (a) The sheriff shall review the outstanding bonds for each

1 prisoner. If the total of a prisoner's outstanding bonds does not  
2 exceed a maximum value determined under section 1a(2), the sheriff,  
3 subject to the approval of the chief circuit judge in that county,  
4 shall modify each outstanding bond for that prisoner to a personal  
5 recognizance bond in that same amount, issue to the prisoner a  
6 receipt similar to an interim bond receipt, and send a copy of the  
7 receipt to the court that set the bond.

8 (b) The following prisoners, except for any prisoner that the  
9 chief circuit judge in that county believes would present a threat  
10 to public safety if released, must 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 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 (c) Except as provided under subsection (2), the sheriff shall  
21 present to the chief circuit judge for the county in which the jail  
22 is located the information listed under section 6(2). After the  
23 chief circuit judge for the county in which the jail is located  
24 reviews the information, the chief circuit judge shall, for  
25 purposes of county jail population reduction, do both of the  
26 following:

27 (i) Classify prisoners who are serving sentences of  
28 imprisonment for conviction of crimes into 2 groups: those  
29 prisoners who, if released, would present a high risk to public

1 safety, and those who, if released, would not present a high risk  
2 to public safety. The chief circuit judge shall also determine a  
3 minimum and a maximum percentage by which the sentences may be  
4 reduced. The sheriff shall reduce the sentences of all prisoners  
5 who, if released, would not present a high risk to public safety by  
6 an equal percentage which is within the minimum and maximum  
7 percentages determined by the chief circuit judge.

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

15 (A) Modify the bond of the prisoner, subject to any conditions  
16 reasonably necessary to ensure the appearance of the individual in  
17 court.

18 (B) Release the prisoner subject to the condition that he or  
19 she be placed on electronic monitoring.

20 (d) The sheriff shall reduce the original sentences, not  
21 including good time, of all prisoners sentenced to and housed in  
22 the county jail on that date by a percentage not to exceed 30%.

23 (e) Except as provided under subsection (3), the sheriff shall  
24 defer acceptance for incarceration in the general population of the  
25 county jail individuals sentenced to or otherwise committed to the  
26 county jail for incarceration.

27 (2) Subsection (1)(c) does not apply to a prisoner who is  
28 detained in the county jail in connection with a crime or an  
29 allegation of a crime in which the victim was a spouse, a former

1 spouse, an individual with whom he or she has had a child in  
 2 common, an individual residing or having resided in the same  
 3 household, or an individual with whom he or she has or has had a  
 4 dating relationship as that term is defined in section 2950 of the  
 5 revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

6 (3) The sheriff must not defer acceptance of an individual for  
 7 incarceration under subsection (1)(e) if either of the following  
 8 applies:

9 (a) The individual is under sentence for or charged with  
 10 violent or assaultive crimes, sex offenses, escape from prison or  
 11 jail, drunk driving offenses, controlled substance offenses except  
 12 possession of less than 25 grams of a controlled substance, or  
 13 weapons offenses.

14 (b) The sheriff or the sentencing judge presents to the chief  
 15 circuit judge for the county in which the county jail is located  
 16 information alleging that deferring acceptance of the individual  
 17 for incarceration would constitute a threat to public safety and  
 18 the chief circuit judge, based upon the presence of a threat to  
 19 public safety, approves of accepting the individual for  
 20 incarceration.

21 Sec. 9. If ~~either~~**any** of the following occur, the sheriff  
 22 shall certify that fact in writing by first-class mail or personal  
 23 delivery, to the judges and county officials notified pursuant to  
 24 section 2 and, unless a majority of the judges and county officials  
 25 so notified find upon receipt of the certification ~~pursuant to~~  
 26 **under** this section that the sheriff has acted in error, the sheriff  
 27 shall end the county jail overcrowding state of emergency **or the**  
 28 **county jail health state of emergency, as applicable:**

29 (a) At any time during the county jail overcrowding state of



1 emergency, the general prisoner population of the county jail is  
2 reduced to the level prescribed in section 6(1).

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

6 (c) **The state of emergency declared as described under section**  
7 **2(b) is lifted.**