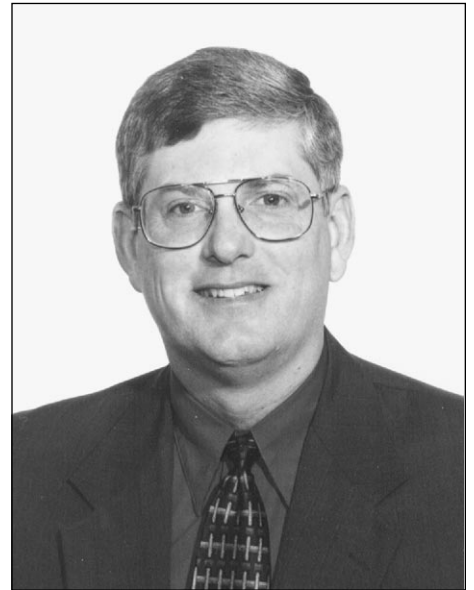


# Jail Overcrowding Emergency Act Amendments Sought

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**A**nother 200 inmates at the Oakland County Jail received a sizeable reduction in their sentences last month, marking the fifth time in the last 15 months that inmates were released early in an attempt to end jail overcrowding emergencies. All told, more than 1,100 convicted and sentenced inmates have been released early in the five jail overcrowding emergencies combined.

This is by no means a problem unique to Oakland County. The battle to control jail populations rages in counties across Michigan. In the last two years burgeoning jail populations have proven problematic in Macomb, Kent, Allegan, Berrien, Kalamazoo, Livingston, Muskegon, Grand Traverse, Wexford, Otsego, Washtenaw, Saginaw, Tuscola, Monroe, Genesee and Lenawee counties.

The County Commission created a Criminal Justice Coordinating Council (CJCC) in 2005 with the task of recommending strategies to expedite the processing of criminal cases and reduce dependencies upon the jail. Several strategies have already been implemented ranging from the automation and electronic distribution of reports to judges regarding the status of jailers to the implementation of a county-wide felony plea program wherein felony defendants can enter a plea at district court. These strategies have had an impact on reducing the jail population; yet more must be done as we continue to flirt with jail overcrowding.

The requirements imposed by Michigan law to end jail overcrowding emergencies are radical. The first step requires the chief circuit judge to grant sentence reduc-

tions to all inmates in the jail who do not present a high risk to the public safety. If that doesn't reduce the population enough to end the emergency, the sheriff must apply an equal percentage reduction to all convicted and sentenced inmates, irrespective of the charge(s) for which they were sentenced.

You might think that the first action would produce enough "empty jail beds" to end an emergency. So far it has, but on one occasion, the population dropped just enough despite an across-the-board sentence reduction of 45 percent for 234 non-high-risk inmates. Had the number of inmates granted sentence reductions been lower by just a handful, the sheriff would have been required to reduce the sentences of every inmate in the jail, including those sentenced on weapons offenses, sex offenses, drunk driving offenses, and other violent offenses.

The statute's reactive approach to jail overcrowding emergencies does nothing to solve the problem. Counties across Michigan have released inmates early subject to the statute only to encounter jail overcrowding again within weeks or months (see the opening paragraph). Of note, the statute doesn't "kick in" until the jail population is already overcrowded. The mere presence of a population that exceeds capacity creates concern for the safety and welfare of law enforcement personnel who staff the jail, and the inmates themselves.

The CJCC decided to consider a less drastic and more measured approach to reducing the population in the wake of jail overcrowding emergencies. Amendments to the Jail Overcrowding Act were crafted to pre-emptively

reduce the jail population with a limited number of early releases for the purpose of avoiding a full-scale jail overcrowding emergency wherein hundreds of sentenced inmates would be released early. It is the expectation that legislation will be drafted to amend the Jail Overcrowding Act, possibly as early as the fall legislative session.

The amendments provide for three primary changes to the Act. Under the current Act, certain actions are required once the population exceeds the jail's capacity for seven consecutive days. One amendment would trigger certain events after the population exceeds 95 percent of the jail's capacity for three consecutive business days. A jail is not overpopulated at 95 percent, but it's getting close. Why wait and subject law enforcement personnel and inmates to the unsafe conditions that an overpopulated jail produces when limited actions could be taken earlier to avoid an overcrowded situation? Why not tackle a burgeoning population before it's too late? Once the population exceeds capacity and a jail overcrowding emergency is declared, the options and timing available to reduce the population are limited. We believe it makes more sense to pre-empt overcrowding.

The second change would allow for low bonds to revert to personal bonds, thereby granting the early release of inmates to await the disposition of their cases. This event would happen when the jail population exceeds 95 percent of the jail capacity for three consecutive business days. Remember that the statute only allows the chief judge to grant sentence reductions in response to overcrowding. The entire pre-disposition population is "off limits" when determining who to let out.

We believe that expanding the pool of inmates that can be considered for early release to include non-violent offenders who are "presumed innocent" until proven otherwise is a practical and sensible public safety measure. We believe it is preferable to include inmates held on low bond if it correspondingly reduces the number of convicted and sentenced inmates released early. In case you're wondering, the definition of "low bonds" would be subject to the discretion of certain elected officials in each county.

The third amendment would trigger the early release of some sentenced inmates, subject to certain conditions. Inmates would only be eligible if they were sentenced on

non-violent offenses. Inmates sentenced on violent or assaultive offenses, sex offenses, weapons offenses, escape from jail or prison, controlled substance offenses (except possession under 25 grams), and 2<sup>nd</sup> and subsequent drunk driving offenses, would not be eligible for early release. The other condition is that inmates must have completed 85 percent of their sentences to be eligible for release.

Some might be inclined to question the necessity of an amendment that provides for the early release of some sentenced inmates when the statute already contains such a provision. A couple of key distinctions should be noted. The early releases contemplated by the amendment take place at the 95 percent threshold discussed earlier. The purpose for this is to avoid an overcrowding emergency by granting a limited number of releases rather than letting out hundreds of inmates before completion of their sentences.

Another distinction is that the list of underlying offenses for which inmates may be released is MORE restrictive than the statute. The statute does not exempt persons sentenced on drunk driving offenses. The amendment prohibits the early release of inmates convicted of 2<sup>nd</sup> and subsequent drunk driving offenses.

Lastly, inmates cannot be eligible for release unless they complete 85 percent of their sentences. The statute has no such restriction. The fact is that inmates given sentence reductions in Oakland County's jail overcrowding emergencies received time cuts, on average of more than 45 percent. From a public safety standpoint, which is preferable – a 45 percent time cut or a maximum of 15 percent?

The Oakland County officials who approved these amendments would likely agree that they are not a panacea insofar as jail overcrowding is concerned. But it's better than the current approach where hundreds of convicted and sentenced inmates get released after completing barely half of their sentences. Something has got to be done to deal effectively with this problem. Building a new jail at a cost of millions to the taxpayers is not the answer. The recommendation to amend the Jail Overcrowding Act will, we hope, stop the bleeding and give us time to find other creative and meaningful solutions.

Until next time ...