SENATE HEARING SLIP

(Please Print Plainly)

DATE: Oct 11, 1999

BILL NO. SB 237
or
SUBJECT Truth in Sentencing

Sharon Schmeling
(NAME)

30 W. Mifflin St. #302
(Street Address or Route Number)

Madison, WI 53703
(City and Zip Code)

WI Catholic Conference
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☐

Speaking for information only; Neither for nor against: ☒

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99

BILL NO. AB 465

or

SUBJECT SB 237 truth in sent'g

Ray Dall'Osto

(NAME)

111 E. Kilbourn

(Street Address or Route Number)

Milwaukee 53202

(City and Zip Code)

State Bar Crim Law Section

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☒

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/10/99

BILL NO. SB 237 / AB 465

or

SUBJECT

John Birkall

(NAME)

5020 N. Santa Monica

(Street Address or Route Number)

Whitefish Bay, WI 53217

(City and Zip Code)

Wisconsin Assoc. of Criminal Defense Lawyers

(Representing)

Speaking in Favor: ☒

Speaking Against: ☒

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10.11.99

BILL NO. AB465 / SB237

or

SUBJECT Truth In Sentencing / Criminal Penalties Study

Cory Mason, for Ray Dall'Osto

(NAME)

5302 Eastpark Blvd.

(Street Address or Route Number)

Madison, WI 53707

(City and Zip Code)

State Bar of WI-Criminal Law Section

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☒

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-11-99

BILL NO. AB 465 / SB 237
or

SUBJECT

THOMAS HAMMER
(NAME)

1103 W Wisconsin Ave
(Street Address or Route Number)

Milwaukee WI 53211
(City and Zip Code)

CRIMINAL PENALTIES STUDY COMMITTEE
(Representing)

Speaking in Favor: ✓

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Oct. 11

BILL NO. SB 237+
or AB 465

SUBJECT

Joanne Huelsman
(NAME)

(Street Address or Route Number)

(City and Zip Code)

11th Senate District
(Representing)

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-11-99

BILL NO. AB465 / SB 237
or

SUBJECT

Rep. Scott Walker
(NAME)

(Street Address or Route Number)

(City and Zip Code)

14th (co-author AB465)
(Representing)

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99

BILL NO. _____
or
SUBJECT Truth In Sentencing

Karen Murphy-Smith
(NAME)
765 North 42nd St.
(Street Address or Route Number)
Milw. WI 53209
(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☒

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☐

Speaking for information only; Neither for nor against: ☒

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Dear -

Ray Dall'Osto had to leave. He asked that I read a statement on his behalf.

Thankyou,
- Cory Mason
Government Relations Coordinator
State Bar of WI

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-9-99

BILL NO. SB237/AB465
or
SUBJECT

Cory Mason
(NAME)

PO Box 7158
(Street Address or Route Number)

Madison, WI 53707-7158
(City and Zip Code)

State Bar of WI
(Representing)

Speaking in Favor: [X]

Speaking Against: [ ]

Registering in Favor: w/amendments
but not speaking: [X]

Registering Against:
but not speaking: [ ]

Speaking for information only; Neither for nor against: [ ]

Please return this slip to a messenger PROMPTLY.
Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP 9:45

(Please Print Plainly)

DATE: 11/09/99

BILL NO. AB465/SB237
or
SUBJECT

Rep. Scott Walker
(NAME)

(Street Address or Route Number)

(City and Zip Code)
HEAD
(Representing)

Speaking in Favor: [ ]

Speaking Against: [ ]

Registering in Favor:
but not speaking: [ ]

Registering Against:
but not speaking: [ ]

Speaking for information only; Neither for nor against: [X]

Please return this slip to a messenger PROMPTLY.
Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/9/99

BILL NO. 237 & 465
or
SUBJECT TRUTH IN SENTENCING - WITH AMENDMENTS

GERALD MOORIS
(NAME)

131 W WILSON #201
(Street Address or Route Number)

MADISON, WI 53703
(City and Zip Code)

STATE BAR OF WIS - CRIMINAL LAW SECTION
(Representing)

Speaking in Favor: [X]

Speaking Against: [ ]

Registering in Favor:
but not speaking: [ ]

Registering Against:
but not speaking: [ ]

Speaking for information only; Neither for nor against: [ ]

Please return this slip to a messenger PROMPTLY.
Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: TUE 11/9

BILL NO. AB 465 / SB 237
or
SUBJECT

w/ TOM HAMMER

MIKE BRENNAN

(NAME)

CRIMINAL PENALTIES

(Street Address or Route Number)

STUDY COMMITTEE

(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-9-99

BILL NO. SB 237 / AB 465
or
SUBJECT

THOMAS J. HAMMER

(NAME)

CRIMINAL PENALTIES

(Street Address or Route Number)

STUDY COMMITTEE

(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/8/99

BILL NO. SB 237 / AB 465
or
SUBJECT

John Birdsall

225 E. Michigan #408

(NAME)

Milwaukee, WI 53202

(Street Address or Route Number)

(City and Zip Code)

Wisconsin Association of Criminal Defense Attorneys

(Representing)

Speaking in Favor: X
with Amendments

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: October 5, 1999

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 465 and 1999 Senate Bill 237, Generally Relating to Criminal Penalties

1999 Assembly Bill 465, generally relating to criminal penalties, was introduced on September 14, 1999. The bill, as amended by Assembly Amendments 3, 4, 6, 13 and 17, passed the Assembly on September 23, 1999 by a vote of Ayes, 83; Noes, 13; and Paired, 2. On September 28, 1999, Assembly Bill 465 was referred to the Senate Committee on Judiciary and Consumer Affairs. A companion bill, 1999 Senate Bill 237, was introduced on September 21, 1999 and also referred to the Senate Committee on Judiciary and Consumer Affairs.

This memorandum, prepared at your request, primarily discusses the contents of the Assembly amendments to Assembly Bill 465. The memorandum also provides a brief discussion of current law and a brief discussion of the major policy initiatives of Assembly Bill 465 and Senate Bill 237.

A. CURRENT LAW

1. Criminal Sentencing Prior to December 31, 1999

A felony is a crime punishable by imprisonment for one year or more in a Wisconsin state prison. Prior to December 31, 1999, a felony created in the Criminal Code is placed in one of six classes, Class A, B, BC, C, D or E, and each class has a specific maximum term of imprisonment and, in most classes, a maximum fine. There are a number of felonies in the statutes outside of the Criminal Code and outside of the classification system in the code. Penalties for these felonies vary but all include at least possible imprisonment in a Wisconsin state prison.

Under Wisconsin's indeterminate sentencing system, prior to December 31, 1999, a court may sentence a person convicted of a felony offense to a term of imprisonment up to the

maximum amount allowed under the classification system. After sentencing, a person serving a sentence of imprisonment to a state prison usually has the following three possible ways of being released on parole:

a. ***Discretionary parole on parole eligibility date.*** The offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The determination as to whether the offender is released on discretionary parole is made by the Parole Commission.

b. ***Mandatory release.*** The offender, barring any additional time for misconduct, is required to be released after serving 2/3 of the sentence. This is termed the offender's mandatory release date.

c. ***Special action release.*** The offender may be released by the Secretary of the Department of Corrections (DOC) on a special action release, which is a program designed to relieve prison crowding.

Special parole provisions exist, prior to December 31, 1999, for persons convicted of various serious offenses and for those persons receiving a life sentence.

2. Criminal Sentencing on or After December 31, 1999

On or after December 31, 1999, a person convicted of a felony will be sentenced according to the provisions of 1997 Wisconsin Act 283. In general, this act created a new bifurcated sentencing structure for felony offenses in the statutes under which the offender will serve 100% of the term of imprisonment stated in the prison portion of the sentence and serve a term of extended supervision, under the jurisdiction of DOC, equal to at least 25% of the length of the term of confinement in prison. The parole system and the Parole Commission are abolished with respect to this class of offenders. Also, the act increased penalties for all felonies in the statutes by increasing the maximum imprisonment time that may be imposed, in general, by 50% or one year, whichever is greater. Special provisions exist for the application of extended supervision to a person who is convicted of a serious crime or who receives a life sentence.

Act 283 also created the Criminal Penalties Study Committee to study, and make recommendations concerning, the classification of criminal offenses in the Criminal Code, the penalties for all felonies and Class A misdemeanors and the creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges. Specifically, the committee was directed to make recommendations concerning all of the following matters:

a. Creating a uniform classification system for all felonies, including felonies outside of the Criminal Code.

b. Classifying each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.

c. Consolidating all felonies into a single criminal code.

d. The creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing sentence under the new sentencing structure.

e. Temporary advisory sentencing guidelines for use by judges when imposing sentencing during the period before the promulgation of advisory sentencing guidelines by the sentencing commission.

f. Changing the administrative rules of DOC to ensure that a person who violates a condition of extended supervision is returned to prison promptly and for an appropriate period of time.

The Criminal Penalties Study Committee presented its final report on August 31, 1999.

B. ASSEMBLY BILL 465 AND SENATE BILL 237

Assembly Bill 465 and Senate Bill 237 constitute the proposed codification of the recommendations of the Criminal Penalties Study Committee. The recommendations are explained in detail in the final report of the study committee and summarized in the Legislative Reference Bureau analysis to the bills. In general, the bills reorganize the classification system of felonies by increasing the number of felony classes from six to nine and creating new maximum terms of imprisonment and new maximum fines. Many felonies outside of the Criminal Code are placed into the classification system. The bills also set maximum terms of extended supervision for the felonies, unlike current law which usually provides that the period of extended supervision must be at least 25% of the term of confinement.

The bills treat a number of other topics, including the following:

1. The bills create a sentencing commission attached to the Department of Administration. The sentencing commission consists of 17 voting members and three nonvoting members. The duties of the sentencing commission include monitoring and compiling data regarding sentencing practices, adoption of advisory sentencing guidelines and studying whether race is a basis for imposing sentences in criminal cases. The sentencing commission expires on December 31, 2004.

2. The bills provide that when a court makes a sentencing decision on or after December 31, 1999, the court must consider, if the offense is a felony, the sentencing guidelines adopted by the sentencing commission, or if the sentencing commission has not adopted a guideline for the offense, any applicable temporary sentencing guideline adopted by the Criminal Penalties Study Committee. The court also must consider any applicable mitigating factors and any applicable aggravating factors. The aggravating factors include the substantive provisions of specific current sections of the statutes that are repealed in the bills such as crimes committed while concealed, crimes involving criminal gangs, sex crimes committed while infected with certain diseases, violence against the elderly, sexual assault and sexual abuse and controlled substances offenses. The advisory sentencing guidelines used by a court are not subject to the procedure for administrative rule-making or legislative review of administrative rules.

3. The bills provide procedures for sentence modification and revocation of extended supervision.

(For more detailed information relating to the penalties provided for felonies and misdemeanors in Assembly Bill 465 and Senate Bill 237, see the following attached documents:

1. Attachment 1, memorandum to Representative Shirley Krug, from Anne Sappenfield, Staff Attorney, *Felony Penalties Under Current Law and 1999 Assembly Bill 465*, (September 16, 1999).

2. Attachment 2, memorandum to Representative Jon Richards, from Anne Sappenfield, Staff Attorney, *Provisions Relating to Misdemeanors in 1999 Assembly Bill 465, Relating to Criminal Penalties* (September 30, 1999; Revised October 5, 1999).)

C. AMENDMENTS TO 1999 ASSEMBLY BILL 465

1. Assembly Amendment 3

Assembly Amendment 3 creates the Joint Review Committee on Criminal Penalties. The committee is to be composed of 11 members, including four legislators, two reserve judges, two public members and the Attorney General, the Secretary of Corrections and the State Public Defender or their designees.

The amendment provides that if any bill is introduced in the Legislature that proposes to create a new crime or revise a penalty for an existing crime and the bill is referred to a standing committee of the house in which it is introduced, the chairperson of that committee may request the Joint Review Committee to prepare a report on the bill. If the bill is not referred to a standing committee, the presiding officer of the house may request the Joint Review Committee report. If the Joint Review Committee receives a request for a report, the committee must report on all of the following matters:

a. The costs that are likely to be incurred or saved by DOC, the Department of Justice, the State Public Defender, the courts, district attorneys and other state and local government agencies if the bill is enacted.

b. The consistency of penalties proposed in the bill with existing criminal penalties.

c. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.

d. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

Finally, the amendment provides that a standing committee may not vote on whether to recommend a bill for passage, and a bill may not be passed by the house in which it is introduced, before the Joint Review Committee submits a report or before the 30th day after a report is requested, whichever is earlier.

2. Assembly Amendment 4

Current s. 940.195 (6), Stats., provides that whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class D felony. Assembly Bill 465 repeals this provision. Assembly Amendment 4 restores the provision and states that whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony.

3. Assembly Amendment 6

Current law generally provides that when a court makes a dispositional order regarding a juvenile who is found to be delinquent or a juvenile found to be in need of protection and services, the order must terminate at the end of one year unless the court specifies a shorter period of time. However, a judge is required to make the order apply for five years, if the juvenile is placed in the serious juvenile offender program and if the juvenile is adjudicated delinquent for committing an act that would be punishable as a Class B felony if committed by an adult. [See s. 938.355 (4), Stats.] Assembly Bill 465 extends the applicability of a five-year order to a juvenile who is placed in the serious juvenile offender program and who has committed an act that would be punishable as a Class C felony if committed by an adult. Assembly Amendment 6 extends the five-year order to a juvenile, placed in the serious juvenile offender program, who has committed a burglary under any of the following circumstances:

a. While armed with certain dangerous weapons, devices or containers.

b. While unarmed, but later armed with certain dangerous weapons, devices or containers while still in the burglarized enclosure.

c. While in the burglarized enclosure, opens, or attempts to open, any depository by use of an explosive.

d. While in the burglarized enclosure, commits a battery upon a person lawfully in the enclosure.

Under the provisions of Assembly Bill 465, whoever commits the crime described in Assembly Amendment 6 is guilty of a Class E felony.

4. Assembly Amendment 13

Current s. 939.623, Stats., provides that if a person has one or more prior convictions for first- or second-degree sexual assault and subsequently commits another first- or second-degree sexual assault, a court must sentence the person to not less than five years imprisonment, along with other penalties applicable to the crime, subject to any applicable penalty enhancement. The same penalty provision applies to a person who has one or more prior convictions for felony murder, second-degree intentional homicide or a crime punishable by life imprisonment and subsequently commits another felony murder, second-degree intentional homicide or crime punishable by life imprisonment. [See s. 939.624, Stats.]

Assembly Bill 465 repeals these provisions of the statutes. Assembly Amendment 13 restores the statutory provisions and amends them to provide that a court, in these instances, must impose a bifurcated sentence under which the term of confinement in prison may not be less than three years and six months, along with any other applicable penalties for the crime and subject to any applicable penalty enhancement.

5. Assembly Amendment 17

Current law often distinguishes between a misdemeanor and a felony, or a lesser felony and a higher felony, based on the monetary value of property stolen, damaged or otherwise involved in a crime. For example, a person who intentionally causes damage to any physical property of another without the person's consent, when the property is valued at $500 or less, is guilty of a Class A misdemeanor. If the property is valued at $500 but not more than $1,000, the person is guilty of a Class E felony. If the property involved is valued at more than $1,000, the person is guilty of a Class D felony. Assembly Bill 465 generally doubles these property value thresholds. Assembly Amendment 17 restores current law.

RS:rv:jal;tlu

Attachments

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: November 5, 1999

TO: INTERESTED LEGISLATORS

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 465 and 1999 Senate Bill 237, Generally Relating to Criminal Penalties

This memorandum describes the Senate's position on 1999 Assembly Bill 465 and 1999 Senate Bill 237, the so-called "Truth-in-Sentencing Bills." The Senate's position is reflected in Senate Substitute Amendment 1 to Assembly Bill 465 and Senate Substitute Amendment 1 to Senate Bill 237. (Attached to this memorandum is a memorandum to Senator Gary R. George, dated October 5, 1999, which provides a broad overview of the contents of 1999 Assembly Bill 465 and 1999 Senate Bill 237.)

A. SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 465

In general, Substitute Amendment 1 to Assembly Bill 465 contains provisions that relate only to the Sentencing Commission that is created in the original proposals. The major provisions of the substitute amendment are described below:

1. The original proposals create a sentencing commission consisting in part of seven gubernatorial appointees and three members of the Legislature. The substitute amendment provides that the Governor must appoint ***six*** members to the Sentencing Commission and that ***four*** members of the Legislature, one from each party in each house, will be appointed to the Sentencing Commission.

2. The substitute amendment contains all of the appropriations and position authorizations for the Sentencing Commission and for the Criminal Penalties Study Committee. (No appropriations remain in Senate Substitute Amendment 1 to Senate Bill 237.)

3. The substitute amendment provides that the Sentencing Commission must establish a procedure by which a court may modify a sentence previously imposed by that court in order to reduce the term of confinement in prison while retaining the total length of the bifurcated

sentence imposed in the truth-in-sentencing system. The procedures developed by the Sentencing Commission must specify factors that a court may consider when deciding whether to modify a bifurcated sentence.

4. The original proposals provide that the sentencing commission is not subject to the rule-making requirements of ch. 227, Stats. The substitute amendment does not retain that exemption from the rule-making process. Consequently, guidelines or standards proposed by the sentencing commission must be promulgated as administrative rules, subject to legislative review of those proposed administrative rules.

B. SENATE SUBSTITUTE AMENDMENT 1 TO SENATE BILL 237

Senate Substitute Amendment 1 to Senate Bill 237 contains the bulk of the truth-in-sentencing proposals. The major differences between the original proposals (Assembly Bill 465 and Senate Bill 237) and the substitute amendment are described below:

1. The Assembly adopted five amendments to Assembly Bill 465. The amendments: (a) create the joint review committee on criminal penalties; (b) restore a criminal provision that was repealed in Assembly Bill 465, relating to intentional bodily harm to an unborn child; (c) expand the length of a juvenile dispositional order when the juvenile has committed an egregious burglary; (d) restore various penalty enhancements and mandatory minimum sentences that were repealed by Assembly Bill 465; and (e) restore the monetary thresholds distinguishing misdemeanors and felonies that were amended in Assembly Bill 465. Of the Assembly amendments, the substitute amendment retains only the provisions relating to the joint review committee on criminal penalties and the extended juvenile dispositional order. (In other words, the substitute amendment retains Assembly Amendments 3 and 6 and rejects Assembly Amendments 4, 13 and 17. For a full discussion of the Assembly amendments, see the attached memorandum to Senator George at pages 4-6.)

2. The substitute amendment creates s. 301.03 (3a), Stats., to provide that the Department of Corrections must take steps to promote the increased effectiveness of probation, extended supervision and parole in Brown, Dane, Kenosha, Milwaukee, Racine and Rock Counties. In each of these counties, the department must, beginning on January 1, 2001, develop a partnership with the community, have strategies for local crime prevention, supervise offenders actively, commit additional resources to enhance supervision and purchase services for offenders, establish day reporting centers and ensure that probation, extended supervision and parole agents, on average, supervise no more than 20 persons on probation, extended supervision or parole. In a nonstatutory provision, the substitute amendment provides that the department must develop a plan to implement the new statute, which it must submit to the Joint Committee on Finance no later than May 1, 2000. Reduction of case loads must begin no later than July 1, 2000.

3. The substitute amendment creates s. 973.031, Stats., to provide that whenever a court imposes a sentence or places a person on probation for any offense created on or after July 1, 2000, the court may order the person to participate in a drug treatment program as a condition of probation, or in the case of a person sentenced, while the person is in prison or as a condition of extended supervision, or both. The court may order the Department of Corrections to pay for

the cost of drug treatment from its appropriations for persons in jail or prison or for persons on probation or extended supervision.

4. The substitute amendment creates s. 973.017 (10), Stats., to require a sentencing court to make explicit findings of fact on the record to support each element of its sentencing decision. These elements include a decision to impose a bifurcated sentence or probation and the length of each component of a bifurcated sentence, the amount of a fine and the length of a term of probation.

5. The substitute amendment creates s. 973.017 (11), Stats., to provide that in an appeal from a court's sentencing decision, the appellate court must reverse a sentencing decision if the appellate court determines that there is not substantial evidence in the record to support the sentencing decision. (This is contrast to the current standard used by an appellate court in review of a lower court sentencing decision. The current standard asks whether the sentencing court abused its discretion.)

6. The substitute amendment delays the beginning of truth-in-sentencing from December 31, 1999 to July 1, 2000.

RS:ksm:jal;tlu

Attachment

Brown Co.
Facilities Dept.
(920) 448-4057
(Rosie)
(920) 448-4053
Dean Gaza

State of Wisconsin

GARY R. GEORGE
SENATOR

October 25, 1999

The Honorable Charles Chvala, Chairman
Committee on Senate Organization
Room 211 South, State Capitol
Madison, WI 53703

Dear Senator Chvala:

I am writing to request authorization to take the Senate Committee on Judiciary and Consumer Affairs to Green Bay for a public hearing on Monday, November 1, 1999. The hearing, which will begin at 2:00 P.M., will be held in Room 200 of the Northern Building (located directly across from the Brown County Courthouse). The Northern Building is located at 305 N. Walnut Street, Green Bay, Wisconsin. The main subjects of the hearing will be Senate Bill 237 and Assembly Bill 465, companion bills that reflect the recommendations of the Criminal Penalties Study Committee regarding implementation of the "Truth-In-Sentencing" law.

I request that all committee members be reimbursed for all actual and necessary expenses associated with their attendance at this meeting. I also request that the Committee Clerk and the committee's Legislative Council attorney be reimbursed for all actual and necessary expenses associated with their attendance at this meeting.

I further request that two members of the Senate Sergeant At Arms staff be provided as well a vehicle for their transportation. It is my understanding that there is no charge for the use of the facility where the hearing will be held. Should this not be the case, I would request permission to amend this request to authorize payment of any charges for facility use.

Thank you in advance for your prompt consideration of this request. If you have any questions or need additional information, please contact my Chief of Staff, Dan Rossmiller, who serves as the Committee Clerk.

Most sincerely,

Gary R. George

GARY R. GEORGE
State Senator
Sixth Senate District

Problems with Truth-in-Sentencing Implementation

November 1, 1999

Prepared by:

Attorney John A. Birdsall
Legislative Director, Wisconsin Association of
Criminal Defense Lawyers
Gonzalez, Saggio, Birdsall & Harlan, LLP
225 East Michigan Ave., Suite 408
Milwaukee, WI 53202
(414)-277-8500
(414)-277-8521 (f)
john_birdsall@gsbh.com

The Legislature Must Delay The Effective Date of Truth In Sentencing Legislation (1997 Wis. Act 283)

The Wisconsin Association of Criminal Defense Lawyers (Hereafter "WACDL") does not oppose the concept of truth in sentencing, and agrees with the Criminal Penalties Study Committee (Hereafter "CPSC") that a severe exacerbation of Wisconsin's current prison population crisis and enormous additional corrections costs will be the inevitable result in the very near future if the following concerns are not addressed in conjunction with Truth in Sentencing:

1. Creation and full funding for major Alternative to Incarceration programs,
2. A major funding for the "Milwaukee Probation Problem," i.e., hiring many more agents, and
3. Wider education of both the judiciary and the public about the need for lesser sentences under truth in sentencing (See, Criminal Penalties Study Committee Report p. 155-156) (Hereafter "Committee Report").

The CPSC managed to develop some excellent recommendations to bring better order too, and confidence in, Wisconsin's criminal justice system. Among the positive proposals are the expansion of felony classifications, elimination of mandatory/minimum and presumptive sentences, the revamped parole system that will now be called "Extended Supervision" and the changes to certain substantive crimes such as battery, fleeing, and operating a motor vehicle without the owner's consent.

However, AB 465 and SB 237 now propose a new world of sentencing that purports to undertake enormous costs and further our prison overcrowding conditions that specifically does **not** address the above items (these were termed "critical" by the CPSC's Chairman, Eau Claire Circuit Court Judge Thomas Barland). Many CPSC members and state legislators have

expressed the view that these proposed measures are merely a "first step" and that the remaining problems can be addressed with subsequent legislation. WACDL proposes our current prison overcrowding crisis and **simultaneously** enact proposals consistent with those recognized by the CPSC.

Prison population increase/cost

Since 1985 Wisconsin's prison population increased dramatically:

1985 prison population	4,800
1997 prison population	16,277
1998 prison population	18,451 (Committee Report, p. 153)
1992-1997 growth rate:	79.2% (top ten states in US for growth)(BJS)

Wisconsin's prison population stands at 165% of the 11,136 bed capacity (Bureau of Justice Statistics Bulletin "BJS", August 1999) or 18,654 prisoner on December 31, 1998 (Committee Report, Appendix M); Population grew 13.4% last year, the 3rd highest growth rate in the nation (Committee Report, Barland reply)

Wisconsin currently houses 3,825 prisoners in out of state facilities (BJS, August 1999)

CPSC 2004 projection is 30,000 inmates with no indication as to how this number will be accommodated within the system. (Committee Report, p. 143)

Nationally the numbers for prisoners in federal, state prisons and local jails are just as dramatic (See, General Accounting Office, "GAO," report number GGD-97-15 and 1998 BJS report):

1980 501,900
1985 742,600
1990 1,148,700
1995 1,585,600
1997 1,743,900
1998 1,837,000*
1999 1,923,000*
2000 2,014,000* (* year end estimates from National Council on Crime and Delinquency)

Between 1980 and 1995, the US **adult** population grew 19% from 163,541,000 to 194,015,000 and the total **prison** population grew 237% (GAO report, table II.6)

The CPSC Agrees That the Continued Increase in Prison Population Will Result in a Serious Heightening of the Current Overcrowding and a Real Public Safety Threat

"[If] judges did not adjust new determinate sentences downward to at lest approximate current time to first release, two negatives would occur:

a. "New world" offenders will quickly clog the system, forcing dangerous "old world"-parolable offenders out of the system, many of whom would go to Milwaukee; and
b. Truth-in-Sentencing sentences will result in so many additions to prisons, or new prisons have to be built, that the corrections budget will become unmanageable." (Committee Report, pp. 155-156)

Under Truth in Sentencing An Equal Number of People Will Be Sentenced to Prison But Will Serve Longer Sentences.

All sides agree that the lower level drug crimes and non-violent offenses are driving our current population crisis and that this trend will continue. The lack of confidence in probation (especially in Milwaukee), the practice of giving short (2-4 years) sentences for these crimes and the attractive new device of Extended Supervision will continue to point judges to the prison option and, thus, further overcrowding:

"Since non-violent and non-dangerous felons generally have received shorter sentences under the old system, the greatest danger of sentence inflation and hence prison overcrowding and expense lies with those felons whose crimes call for these shorter sentences." (Committee Report, p.154)

Milwaukee District Attorney E. Michael McCann said, "short" sentences will continue to be given for the 2-4 year range and not take into account the reduction anticipated by truth-in-sentencing. This will likely continue and "my prediction is that, on the net, there will be more time served putting even more pressure on the corrections system." (Wisconsin State Journal, September 5, 1999, p. 1)

Additionally, "To take advantage of the judicial control and supervision permitted under extended supervision, a felon must first be sentenced to prison for at least one year. Because Wisconsin will no longer have parole, an offender sentenced to prison will serve his or her entire prison sentence. Thus, a 1-year sentence under the new system is equivalent to a 2½ year sentence under the old system." (Committee Report, p. 154)

The reason that this new scheme will be popular and thus increase the prison population is that:

> The Department of Corrections maintains an average probation and parole caseload of 1:72 (1 agent for 72 supervisees); under truth-in-sentencing and Extended Supervision the caseload ratio will drop to 1:20, according to Committee Report estimates. (Committee Report, p. 142)

Alternatives to Incarceration and Beefed Up Parole Systems Helped Other Truth in Sentencing States Avoid Overcrowding

Ohio, Delaware, and North Carolina and Virginia created major alternative to incarceration programs provided massive new funding for probation agents when they adopted truth-in-sentencing.

Ohio dramatically expanded community corrections funding; increased halfway house beds by 20%; expanded local community correctional facilities by 44%; added $5.9 million for diversion from jail, and authorized funding for 500 new probation officers. (Overcrowded Times, August 1997) The probation and parole caseload jumped by 27%. They have also are currently funding 7 new prisons with 5,450 new beds to boost their prison capacity to 39,000 with a population of 46,296. (Overcrowded Times, August 1997). Ohio also delayed the effective date of truth in sentencing to allow for adequate training of 2000 judges, prosecutors, court clerks and probation officers. (Overcrowded Times, August 1997)

Delaware held prison growth to .9% a year; "good" actors are moved to "less expensive incarceration modes more quickly" -- tying level of supervision to behavior. (Committee Report, p. 106) The state created local Treatment Access Committees and an agency called Treatment Alternatives to Street Crime (TASC). (Overcrowded Times, August 1996) Non-violent prisoners made up 25% of the prison population in 1986, but only 10% in 1993. (Overcrowded Times, August 1996)

North Carolina emphasized "community corrections for lower-end felonies . . . intermediate sanctions as an alternative to prison," (Committee Report, p. 105) and expanded sentencing options so that the choice in punishment was no longer limited to prison or probation (Overcrowded Times, June 1996) Prison admissions dropped 25%. They hired 500 new probation officers created:

-41 Day Reporting Centers
-18 Pretrial release programs
-16 Stand alone substance abuse programs
-3 Stand alone work programs, and
-75 Substance abuse treatment beds

The CPSC fully recognized that this is the only path to take if truth in sentencing is going to work:

> "Two Truth-in-Sentencing states that have managed to reduce the number of inmates in prison while continuing to imprison violent and dangerous offenders for longer periods of time inmates are North Carolina and Virginia. Study of other states, especially North Carolina, show what in these states' implementation of Truth-in-Sentencing, in addition to increasing the number of prison beds, they greatly increased state funding for alternatives to incarceration and for probation/parole supervision. These state have accomplished this in good part by using intermediate sanctions as an alternative to prison. Their intermediate sanctions involve highly structured treatment facilities, short-term lockup, and immediate punishment for infractions and strict supervision, all done under the ambit of community corrections." (Committee Report, p. 153)

The much cited Virginia example of .6% growth (Committee Report, p.106), is out of context since the CPSC also noted that the longer sentences (and the longer required service of those sentences) for **violent** crimes "will bear great corrections expenses in the coming decades due to longer sentences." (Committee Report, p. 106)

Milwaukee Probation Problem

Milwaukee judges have been sending defendants to prison at much higher rates and in much larger numbers than the rest of the state. The reason, all sides agree, is utter lack of confidence in the ability of the probation department to properly supervise persons who would otherwise be probation candidates:

> The "Milwaukee Probation Problem" illustrates the insurmountable challenges of the Committees' recommendations on extended supervision. Not only does the "Milwaukee Probation Problem" illustrate the general challenge, Milwaukee County produces 40% of Wisconsin's prison inmates and from only 18% of the state's total population. (Committee Report, p. 151)

Further

> "Informal polls taken at this Committee's educational efforts yielded that approximately one-third of the Wisconsin judiciary lacks confidence in probation. The lack of confidence in probation is exceptionally strong in the Milwaukee judiciary." (Committee Report, p. 151) If judges continue to sentence offenders, instead of placing them on parole under truth-in- sentencing, the prison population will grow beyond the Committee Report's estimates of 30,000 prisoners by 2004.

Adequate Education Could Help Avoid Longer Sentences.

The Committee Report suggests that overcrowding and costs can be "controlled" with education, "especially of judge (sic) and prosecutors, to whom much discretion has been shifted under Truth-in-Sentencing." (Committee Report, p. 156) So far, the Committee's scheduled educational seminars have been limited, and any education will be subject to change as the Legislature continues to modify the Committee's recommendations.

Ohio delayed the effective date of truth-in-sentencing to allow time for training. North Carolina undertook an ambitious education program, training 2,000 judges, prosecutors, DAs, court clerks, probation officers and others. (Overcrowded Times, August 1999)

A public campaign will also be necessary to sensitize the public to the real need to lessen sentence lengths to accommodate the new truth in sentencing paradigm. For example the 10 year sentence in the current system may be with the thought of actually serving only 5. The new sentence would be 5 years and the entire time would have to be served.

Costs Will Increase by Hundreds of Millions But The Committee Report's Cost Estimates Are Conservative at Best and Are Based on Questionable Data

Despite the apparent certainty of its cost estimates, the Committee's estimates rest on a completely unreliable statistical foundation:

> "A common refrain heard at this Committee's meetings was that Wisconsin's corrections data cannot be accessed in a useful way. The Committee had serious difficulties getting basic statistical questions answered . . . Wisconsin retains its corrections data in an antiquated fashion." (Committee Report, p. 135)

In terms of any comprehensive proposals that include the probation and alternative to corrections Dr. Rob Anderson, University of Minnesota, provided a "pessimistic" report:

> "Given that the Committee has neither [the] staff, nor more than a few months of time, they will need considerable additional technical expertise to accomplish their tasks....they were being much too optimistic in their expectations for doing this work with their existing constraints in terms of both resources and time." (Committee Report, p. 138)

Technical experts from North Carolina, Virginia, Delaware and Ohio all "stressed that for the Committee's work to have credibility, it must accurately forecast prison population and cost." (Committee Report, p. 135)

The Legislative Fiscal Bureau set the Department of Corrections' budget at $360 million GPR for the fiscal year ends June 30, 1999, for an average daily population of 17,930. Under five scenarios offered by the Committee Report, prison population could range from 30,000 at a cost of $580 million (plus $22.5 million for extended supervision) in 2010 to a prison population of 27,500 at a cost of $525 million (plus $27.5 million for extended supervision). (Committee Report, pp. 142-144)

These are conservative numbers and most agree that they would likely be much higher. Further this only represents the operational costs of the facilities, not the court personnel and related systems costs. Finally this is already on top of a $1.3 billion DOC budget.

Wisconsin is currently forced to house 15% of its prison population out-of-state. (Wisconsin Department of Corrections)

The Sentencing Guidelines Will Do Little to Prevent Further Overcrowding

The Committee had time to write guidelines for only 11 of 435 felonies in Wisconsin's statutes. (Committee Report, p. 14). Dr. Rob Anderson of the University of Minnesota, hired by the CPSC to give technical assistance stated:

> Given that the Committee has neither [the] staff, nor more than a few months of time, they will need considerable additional technical expertise to accomplish their tasks....they were being much to optimistic in their expectations for doing this work with their existing constraints in terms of both resources and time. (Committee Report, p.138)

Some sentencing guidelines allow large ranges of possible sentences. For a 2nd degree sexual assault of a child, an aggravated assault for a medium-risk offender could result in a prison sentence ranging from 8 years to 20 years. (Committee Report, Appendix E)

Even with all the Committee's work on voluntary sentencing guidelines, *State v. McCleary* 49 Wis. 2d 263 (1971), is still the substantive law in Wisconsin sentencing - - judges must exercise discretion and take into account the character of the defendant, severity of the offense and protection of public. Consequently, the Committee, like everyone else, cannot predict the sentencing behavior of judges under truth-in-sentencing. No one can predict in the example above, whether a judge will sentence the majority of offenders to 8 years or 20 years, or something in between.

Other Unaddressed Considerations

Racism

African Americans make up 41.96% of the state's prison population while making up just 5% of the state's overall population. The burden of truth-in-sentencing will fall most heavily on the state's ethnic and racial minorities.

Further Revision of the Criminal Code

The Committee did not rewrite the Criminal Code, contrary to popular belief; it reclassified many crimes and penalties and rewrote sentences. It did, however, recognize the need to a rewrite at least portions of the Wisconsin Criminal Code:

> "The Code contains overlapping statutes, inconsistent statutes, outdated statues, statutes so long and complex that they defy usage (though they address important problems), statutes dealing with civil liability and procedures for enforcing civil claims, and statutes offering protection against the lowest form of battery to an endless list of groups and punishing those batteries at the felony level." Committee Report, p. 156-157).

In fact the CPSC was specifically charged with bringing all of the criminal laws in Wisconsin into a single code [1997 Wis. Act 283 sec. 454(1)(e)3] but consciously chose to ignore this citing strong opposition within the committee. (Committee Report, p.103).

CONCLUSION

It is universally recognized that the work of criminal justice reform is only partially done. It should be done comprehensively and correctly and then implemented. The wisest and most logical way of accomplishing this historic and paradigmatic policy change is to delay the effective date of the truth-in-sentencing law and implement all of the recommendations of the CPSC instead of the currently planned piecemeal approach.

SB237

Problems with Truth-in-Sentencing

The Legislature Must Delay The Effective Date of Truth In Sentencing Legislation (1997 Act 283)

The Wisconsin Association of Criminal Defense Lawyers (WACDL) does not oppose the concept of truth in sentencing, and agrees with the Criminal Penalties Study Committee (CPSC) that a severe exacerbation of Wisconsin's current prison population crisis and enormous additional corrections costs will be the inevitable result in the very near future if the following concerns are not addressed in conjunction with Truth in Sentencing:

1. Creation and full funding for major Alternative to Incarceration programs,
2. Major funding for the "Milwaukee probation problem," i.e., hiring many more agents,
3. Wider education of both the judiciary and the public about the need for lesser sentences under truth in sentencing (See, Committee Report p. 155-156)

The CPSC managed to develop some excellent recommendations to bring better order too, and confidence in, Wisconsin's criminal justice system. Among the positive proposals are the expansion of felony classifications, elimination of mandatory/minimum and presumptive sentences, the revamped parole system that will now be called "Extended Supervision" and the changes to certain substantive crimes such as battery, fleeing, and operating a motor vehicle without the owner's consent.

Before this legislature passes any law and undertakes the enormous costs associated with these proposals, however, a more careful look at the underlying problems driving the prison overcrowding problems and simultaneous enactment of proposals consistent with those recognized by the CPSC is necessary.

Prison population increase/cost

Since 1985 Wisconsin's prison population increased dramatically:

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1998 prison population	18,451 (Committee Report, p. 153)

Prison population stands at 165% of the 11,136 bed capacity (Bureau of Justice Statistics Bulletin "BJS", August 1999) or 18,654 prisoner on December 31, 1998 (Committee Report, Appendix M); Population grew 13.4% last year, the 3rd highest growth rate in the nation (Committee Report, Barland reply)

Wisconsin currently houses 3,825 prisoners in out of state facilities (BJS, August 1999)

2004 projection 30,000 (Committee Report, p. 143)

Under Truth in Sentencing Even in Conjunction with the Current Proposal More People Will Be Sentenced for Longer Times.

"Since non-violent and non-dangerous felons generally have received shorter sentences under the old system, the greatest danger of sentence inflation and hence prison overcrowding and expense lies with those felons whose crimes call for these shorter sentences." (Committee Report, p.154)

Milwaukee District Attorney E. Michael McCann said, "short" sentences will continue to be given for the 2-4 year range and not take into account the reduction anticipated by truth-in-sentencing. This will likely continue and "my prediction is that, on the net, there will be more time served putting even more pressure on the corrections system." (Wisconsin State Journal, September 5, 1999, p. 1)

Additionally, "To take advantage of the judicial control and supervision permitted under extended supervision, a felon must first be sentenced to prison for at least one year. Because Wisconsin will no longer have parole, an offender sentenced to prison will serve his or her entire prison sentence. Thus, a 1-year sentence under the new system is equivalent to a 2½ year sentence under the old system." (Committee Report, p. 154)

Alternatives to incarceration helped other states avoid overcrowding

Ohio, Delaware, and North Carolina created major alternative to incarceration programs when they adopted truth-in-sentencing.

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1996) Prison admissions dropped 25%.

"Two Truth-in-Sentencing states that have managed to reduce the number of inmates in prison while continuing to imprison violent and dangerous offenders for longer periods of time inmates are North Carolina and Virginia. Study of other states, especially North Carolina, show what in these states' implementation of Truth-in-Sentencing, in addition to increasing the number of prison beds, they greatly increased state funding for alternatives to incarceration and for probation/parole supervision. These state have accomplished this in good part by using intermediate sanctions as an alternative to prison. Their intermediate sanctions involve highly structured treatment facilities, short-term lockup, and immediate punishment for infractions and strict supervision, all done under the ambit of community corrections." (Committee Report, p. 153)

By contrast, Virginia "will bear great corrections expenses in the coming decades due to longer sentences." (Committee Report, p. 106)

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"Informal polls taken at this Committee's educational efforts yielded that approximately one-third of the Wisconsin judiciary lacks confidence in probation. The lack of confidence in probation is exceptionally strong in the Milwaukee judiciary." (Committee Report, p. 151) If judges continue to sentence offenders, instead of placing them on parole under truth-in-sentencing, the prison population will grow beyond the Committee Report's estimates.

"[If] judges did not adjust new determinate sentences downward to at lest approximate current time to first release, two negatives would occur:

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Extended Supervision Will Add to Costs.

The State currently spends $1,400 a year for supervision of each parolee; under extended supervision the average cost will increase to $3,103 ($8,881 per year for 4.5% of the population on strict supervision; $3,500 for 43.1% of the population on maximum supervision; $2,450 for 43.9% on medium supervision; and, $1,400 for 8.5% on minimum supervision. (Committee Report, p. 142)

The Department of Corrections maintains an average probation and parole caseload of 1:72 (1 agent for 72 supervisees); under truth-in-sentencing the caseload ratio will drop to 1:20, according to Committee Report estimates. (Committee Report, p. 142)

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Further Revision of the Criminal Code

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In fact the CPSC was specifically charged with bringing all of the criminal laws in Wisconsin into a single code [1997 Wis. Act 283 sec. 454(1)(e)3] but consciously chose to ignore this citing strong opposition within the committee. (Committee Report, p.103).

Goal - not to give a higher sentence.

I. How Much Is This Going to Cost?

The costs identified in the study committee's report represent only the costs for prison and extended supervision. Costs for probation and parole, DOC administration and program support are not identified. Neither are costs for the courts, district attorneys, public defenders or DOJ. Truth-In-Sentencing eliminates of Parole Commission release of offenders and thereby eliminates the safety valve to combat prison overcrowding.

Some observers have suggested the study committee's report understates the costs of Truth-In-Sentencing, perhaps dramatically. Questions are raised about the assumptions that went into the model, the predictive accuracy of the model (particularly given the advisory nature of the sentencing guidelines) and the behavior of both sentencing judges and the Parole Commission in determining the amount of time offenders spend in confinement.

A. Computer Modeling and Cost Estimates

Can the model be trusted given that it is based on only part of the data available?

We understand that part of the difficulty the study committee faced in putting together a computer model is that CCAP (Circuit Court Automation Project) data is incompatible with Department of Corrections data.

J. Barland: Q - how will J's react?

> Q: If the model is built using incomplete data (i.e., only part of the database), isn't the model going to understate cost simply because it is incomplete?

The Legislative Fiscal Bureau indicates that the study committee's prison population estimates could be low. It indicates that the estimates of average daily population for calendar year 2001 are nearly 4,000 inmates lower than the estimates of average daily population used in establishing the biennial budget bill just passed by the Legislature (21,000 vs. 23,937). Further, according to the Legislative Fiscal Bureau, the average daily population has recently been growing at a rate of 1.16% per month, which, incidentally, is significantly below the growth rates from 1996 through mid 1998. In order to reach the population estimates identified by the study committee, however, the current growth rate would have to decline to below 0.8% per month.

> Q: Is there an explanation for this discrepancy?

The Legislative Fiscal Bureau indicates that the study committee's prison cost figures per inmate could be low. It suggests that the study committee may have used a per inmate figure that is roughly $1,000 less than the actual 1997-98 fiscal year figure ($19,330 vs. $20,328). The Legislative Fiscal Bureau suggests that to the extent that new institutions open and crowding at existing facilities decreases, costs per inmate will be higher.

> Q: Is there an explanation for this discrepancy?

→ P+P tools

B. The "New World" Population –Those Sentenced Under the New Law

For the first 12 months we won't have any offenders on Extended Supervision. For the first 18 months or so, the costs associated with Truth-In-Sentencing will be largely indistinguishable from those of the current system. Since about half of our prison population currently has sentences of 4 years or less, short-sentenced offenders comprise a significant component of prison spending. In the short-term, most of the increased spending under Truth-In-Sentencing will be attributable to short-sentenced offenders, with the "boom" in spending coming when we begin to "harvest" these short-sentenced offenders into the Extended Supervision (ES) program.

Q: Would you agree that it would be fair to say that the factors that will determine prison population growth in the short-run will be 1) the extent to which judges place offenders on probation rather than sentence them to prison; 2) the extent to which judges sentence the group of currently short-sentenced offenders to prison for comparable periods as opposed to extended supervision; 3) the extent to which the Parole Commission releases or fails to release "old world" offenders on parole prior to their mandatory release date; and 4) the extent to which "old world" offenders are revoked and returned to confinement?

Q: If yes, is it fair to say that nobody predict any of these four factors with certainty?

The Truth-In-Sentencing law (1997 Act 283) mandates that sentencing guidelines be **advisory**. Advisory sentencing guidelines offer minimal predictive value for determining costs.

Q: To what extent do you expect judges to follow the advisory guidelines?

Q: What incentive/disincentive do judges have to follow the advisory guidelines?

Q: Should sentencing guidelines be made mandatory?

C. The "Old World" Population -- Problems with Probation and Parole

It is clear that the "old world" offender population will dominate the DOC budget for the foreseeable future. There are about 20,000 inmates in prison and about 80,000 offenders on probation and parole supervision. About 45,000 of those 80,000 are felons who could be eligible for prison if their probation or parole is revoked, meaning that the state has a contingent prison liability of 60,000 or more offenders. Under Extended Supervision (ES), the state will spend about $8500 per year or roughly 4 times what we spend on probation and parole. While the study committee wasn't charged with revamping probation and parole we assume it looked at the parole system in making its recommendations regarding ES.

Q: What kind of supervision are we going to give to the 60,000 plus felons to provide public safety and what resources are needed to do this? How much will

this cost? Did the study committee develop any position on this or do you have any thoughts?

Q: The study committee recommends applying the stricter probation supervision plan currently being tested in Dane and Racine counties to Milwaukee County. This includes developing closer relationships with local law enforcement, day reporting centers, intensive programming and treatment for offenders. Has the study committee calculated how much this would cost?

Q: Some have suggested that one of the reasons for judges' lack of confidence in the probation and parole system in Milwaukee is a high rate of staff turnover. It has also been suggested that higher pay levels would stabilize the probation and parole workforce and could lead to more effective supervision. Would you support creating a pay differential between Milwaukee agents and agents elsewhere in the state to give higher compensation to Milwaukee agents?

Q: Does the problem of staff turnover raise any doubts in your mind about whether the state will be able to successfully implement Extended Supervision (ES) in Milwaukee?

Q: What will be the consequence if the state fails to fund Extended Supervision (ES) in the way it was envisioned?

Q: About 50% of current admissions to prison are revocations from probation and parole. Does this suggest that we are not selecting the right people for probation and parole or that we are not adequately monitoring them or both?

(6-18% actual revocation rate

Q: Does the study committee have a recommendation on this aspect of the prison overcrowding problem?

It has been suggested that the way some other states, such as North Carolina and Virginia, curbed growth in their prison populations in the first years after implementation of Truth-In-Sentencing was by paroling "old world" offenders.

Q: Is there a danger that if the inmate population increases under Truth-In-Sentencing the Parole Commission might be forced to parole "old world" offenders to stabilize the prison population and/or prevent further overcrowding?

D. Length of Sentences Under Truth-In-Sentencing

Will sentences really be about the same under the revised law as under the old law? If not, what are the implications for our prison system and for prison spending?

At page 22, the Criminal Penalties Study Committee Report indicates, "Act 283 does not require the imposition of longer prison sentences nor does it suggest that offenders should be held in confinement for periods of time longer than under current law."

elected judges? North Carolina system

Q: The criticism has been raised that what the guidelines do is to permit "business as usual" under a new name. How do you respond to that criticism?

Q: Given the fact that judges hold political office (in the sense of elective office) and given that the sentencing guidelines are advisory only, isn't it likely that offenders will be confined for longer periods of time? If so, in effect, under Truth-In-Sentencing, won't we have substituted a system of longer sentences without parole with the only real change being that the sentences will be determined entirely by judges?

Q: It is argued, by some, that the grids will direct judges toward sentencing to prison rather than to probation. As the study committee noted, this is already a problem in Milwaukee County, where offenders are far more likely to be sentenced to prison than to probation in comparison to similar offenders who commit similar offenses elsewhere in the state. How would you respond to this criticism?

The theory of the existing indeterminate sentencing structure is that an offender's release would come somewhere between parole eligibility (25% of sentence) and mandatory release (66.7% of sentence) and that in general, only the worst offenders would serve until their mandatory release date (66.7%). Increasingly, it appears the Parole Commission is not releasing offenders until their mandatory release date.

Q: (The Parole Commission used to state parole ranges.) Currently, there are no guidelines for parole. Shouldn't the Parole Commission have guidelines for parole? Wouldn't it make sense to have a systematic approach in place regarding how much time offenders should serve in prison?

As the study committee noted, the difference between the use of probation in Milwaukee and the use of probation in the rest of the state is shocking. While 67% of those convicted of a felony statewide were sentenced to probation, the comparable figure for Milwaukee was 52 percent.

It has been noted that other states that have adopted Truth-In-Sentencing approaches have implemented truth –in-sentencing over a longer period of time during which those states beefed up their probation programs and implemented new alternatives to incarceration.

Q: Could you comment on that?

Q: If Wisconsin misses this golden opportunity and fails to beef up its probation and parole system, would you agree that this would be a tragic?

Q: Given that Wisconsin's prisons are over capacity and likely to remain over capacity for the foreseeable future, would you agree that the need to devote fiscal resources to meeting the demand for prison beds and prison construction diverts resources away from probation and parole?

Q: How can the state provide the resources to probation and parole that will be needed to restore confidence in the probation system given the continuing need to meet a growing prison population.

E. The War on Drugs and Prisons Crowding

The study committee indicates that a significant proportion of Wisconsin prison population is attributable to offenders convicted of drug-related offenses, perhaps 20% or more. It appears many of these offenders are low-level drug dealers who are imprisoned for 1 or 2 years. It also appears that as soon as these young people are arrested and convicted they are replaced by another young person on the same street corner.

Q: Did the study committee examine the drug law enforcement policy/strategy in Milwaukee? If yes, based on the study committee's review, has this strategy had any effect on the availability or price of illegal drugs in Milwaukee?

Q: Does the study committee have any recommendations regarding the role or powers of drug courts?

Q: What role does drug treatment play in plan recommended by the study committee?

F. Restructuring the Criminal Code

As part of the study committee's charge, it reclassified felonies within the Criminal Code.

As the part of the reclassification, the dollar threshold for a number of felony property offenses was raised from $1,000 to $2,000 as part of the reclassification. These felonies include: retail theft, worthless checks, theft, financial transaction card crimes, receiving stolen property, fraud on hotel or restaurant keepers or taxicab operators, fraudulent insurance and employee benefit program claims, damage to property, removing or damaging encumbered real property, and graffiti. Some business interests have labeled this a "cost of living" increase for criminals.

Q: Do you have comment on this objection or a comment on why the threshold was raised as part of the study committee's recommendations?

G. Avoiding Prison Overcrowding

When the study committee presented its report to Governor Thompson, the Governor indicated he is finished building prisons.

Q: Is this a realistic position and what must be done in order to ensure that more prisons are not needed.

Other states have beefed up community corrections programs, adopted day reporting and drug treatment among other strategies as a way to avoid prison overcrowding.

Q: Does the study committee have any recommendations to offer based on its review of what other states have done in this area?

H. Racial Disparities

Q: Some have said that the study committee's recommendation will, at best, simply "freeze" or "lock in" the existing racial disparities. How would you respond to this criticism?

I. Permanent Sentencing Commission

Q: Some have suggested that the study committee was too heavily weighted toward judges, since a third (6 of 18) of the members were judges. They suggest that judges are too concerned about preserving judicial discretion and not concerned enough about the costs of Truth-In-Sentencing. How would you respond to this criticism?

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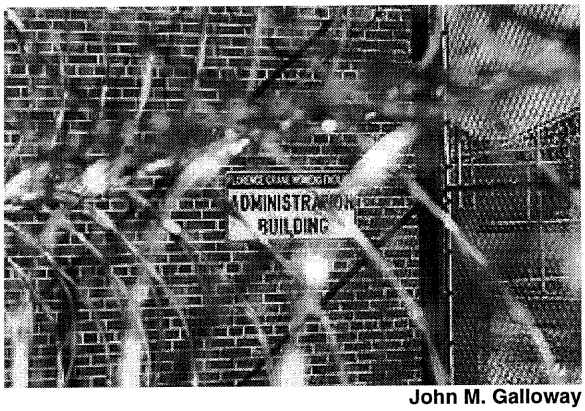
Prison sex could draw prison term

Lawmakers debate bills making it a felony for guards to have sexual contact with inmates



John M. Galloway

Incidents involving guards and female prisoners prompted the Legislature to consider tougher laws. The Crane's Women's Facility in Coldwater is one of three women's prisons.

By Gary Heinlein / The Detroit News

LANSING -- With allegations of shameful behavior by state prison employees as a backdrop, Michigan lawmakers are considering tough new penalties against Corrections Department workers who have sexual relations with inmates.

Proposals now in both chambers of the state Legislature would make it a 15-year felony for a Corrections employee to have "sexual contact" with a prisoner -- including consensual sex.

Under current Michigan law, it is a misdemeanor, punishable by no more than two years' imprisonment.

The bills haven't yet come up for debate in committees -- the first step in the legislative process. But it will be hard for lawmakers to ignore the embarrassing publicity the state already has received about treatment of women prisoners.

"Women in Michigan prisons have been raped, forced to perform oral sex, subjected to unwanted sexual touching and retaliated against for reporting these acts," Ann Arbor attorneys Deborah LaBelle and

Molly Reno charged in a recent statement about state and federal lawsuits filed in 1995.

LaBelle and Reno have a class action suit on behalf of women prisoners that began in Washtenaw County Circuit Court and is now on appeal to the Michigan Supreme Court and a lawsuit involving 31 women prisoners in federal district court in Detroit.

Some of their clients were prominently featured in a recent report by national TV journalist Geraldo Rivera about sexual abuse in women's prisons around the country. The telecast was cited several times last week during a House debate about other prison-related legislation.

Proponents of harsher penalties for sexual misconduct by prison workers say the change is overdue and will protect the integrity of the state's prison system. The theory is that even consensual sex is wrong, because a prison worker holds authority over an inmate.

"It will help reinforce the message that prison guards are not above the law." said Rep. Jennifer Faunce, R-Warren, chief sponsor of the House bill.

Republican Sen. Shirley Johnson of Royal Oak is sponsoring a similar bill.

Northville resident Katie Haines isn't sure how she feels about the proposed legislation, but said more of an effort to rehabilitate prisoners could reduce the number of incidents.

"I think it's wrong to have any type of relationship like that between a man and a woman who aren't married, whether or not it's in prison," said Haines. "You have to have morals. You need that teaching. You need to reach people when they're put in prison, not just let them sit there."

The state has three women's prisons: Florence Crane Correctional Facility and Camp Branch in Coldwater; and Robert Scott Correctional Facility in Plymouth.

State Corrections Director Bill Martin supports the proposed increase in penalties, even while defending his department and staff against allegations that he says are lurid and overblown. Michigan prison workers are well-trained and professional, but sexual misconduct by a few will not be tolerated, said Martin, who took over the Corrections system last January.

Martin pointed out that the penalties would apply equally to female Corrections officers working in men's prisons, where there is a vastly greater potential for improper sexual relations. Of the 46,000 inmates in Michigan prisons, 1,880 are women.

"There is no such thing as consensual sex in prison, period," said Martin, a former lawmaker from Battle Creek. "I've always believed it's a felony. It's a huge breach of the public trust. It's also a breach of security. The officers might be subject to blackmail. All sorts of things could happen."

The correctional officers union, however, argues that the new law would require harsher punishment for prison staff than for other workers guilty of the same type of misconduct. The Michigan Corrections Organization also says corrections officers are unfairly

being branded as untrustworthy.

Attorney LaBelle said the legislation is a step in the right direction but the state should do more to protect women prisoners. The state should go back to a policy in which, prior to 1985, only women officers guarded women prisoners, she said.

"I'm preventive-oriented, rather than punishment-oriented," LaBelle said.

Martin said he'd like to return to the old policy, but his department has been advised that would violate labor laws requiring equal opportunity for officers of both genders in all of the facilities.

About one-third of the state's 17,000 Corrections employees are female. Of nearly 9,000 Corrections officers, about 2,000 are female.

"I think most male officers would tell you they feel more comfortable supervising male prisoners," said Martin. "But at the same time, it is possible for them to conduct themselves professionally and never abuse their authority in a women's facility."

Comments?

WISCONSIN CATHOLIC CONFERENCE

Testimony Regarding Senate Bill 237
October 11, 1999
Presented to the Senate Committee on Judiciary and Consumer Affairs
By Sharon Schmeling, Associate Director

On behalf of the Wisconsin Catholic Conference I am testifying for information only on the impact of SB 237.

Our interest in corrections issues stems from our Church's ministry to the poor and imprisoned. During his earthly ministry, Jesus said our worthiness to inherit the kingdom of God will be judged on how we serve the least among us, including visiting and serving those who are in prison.

Nearly two years ago, concern about Wisconsin's prison overcrowding prompted the state's Roman Catholic Bishops to appoint a task force of Catholics with specific expertise in the criminal justice system to study the state's prison system. Task force members included former Supreme Court Justice Janine Geske, former Brown County Sheriff Michael Donart, Milwaukee County Assistant District Attorney Sr. Debra Sciano, Mrs. Mary Steppe, who directs Project RETURN which places ex-offenders in jobs and housing in the Milwaukee area, several prison chaplains, an ex-offender, and a former probation officer.

Based on the Task Force's recommendations, the Bishops issued a document last month titled, *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin*. The Statement identifies five principles for evaluating public policies in the criminal justice area.

Two principles that are especially helpful in evaluating this proposed legislation are the Bishops' call to adopt public policies that serve the common good, and that foster the goal of restoring offenders and victims to the community and one another. Given these principles, we offer the following reflections.

For some time, the process by which people have been sentenced to prison or probation has been a blend of objective criteria and public relations. The criminal code, the courts, the parole system and the media have all interacted to produce sentencing practices that differ from what one might expect from a literal reading of the law.

Judges imposed sentences based on mandatory release dates, the severity of the offense, the defendant's prior criminal history, their degree of remorse and the needs of the community in which the defendant lived. Thus, before "truth in sentencing" it was common for a judge to

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obtain the amount of prison time the judge felt appropriate. This pattern of imposing longer sentences was also a response to society's demand for harsh treatment of offenders. sentence a criminal to a term much longer than he/she knew the person would serve in order to The success of the new model depends on all of us in the community being more realistic about our expectations of what prison sentences are meant to accomplish. The common good is not served when the desire to be "tough on crime" leads to overly long sentences that burden the community with fiscal costs and inhibits the goal of restoring the offender to the community.

Should this legislation result in longer sentences, we are very concerned that such sentences, when coupled with the current and ongoing problem of inadequate treatment programs for prisoners, will undermine the goal of restoring these broken men and women to our community life. Therefore, we caution that to be truly effective, truth in sentencing must address the need for treatment for offenders while they are in prison. If treatment is not addressed, truth in sentencing will cost society more in the long run.

In addition, we believe the prospects for restoring criminals is affirmed by measures that give judges discretion in sentencing. Therefore, we support repealing mandatory minimum sentences and eliminating penalty enhancers.

The bill's mandate of longer periods on extended supervision implies a significant investment in programs aimed at helping offenders live crime-free lives once they are released. Community corrections programs will not be successful unless they address the full gamut of challenges facing the ex-offender. This includes access to housing, jobs and ongoing counseling for addictions and personality disorders. The Legislature must be prepared to honor that commitment if truth in sentencing is to be effective and affordable in the long run.

Finally, we believe the state should carefully measure the impact of eliminating parole.

Critics point out that other states that have implemented this policy have all experienced a surge in their prison population. If the same holds true for Wisconsin's implementation, there will be increased pressure on an already overcrowded system. Current experience shows that the need to house such a huge population of inmates diverts money from probation and prison treatment programs.

Other states implementing truth in sentencing have found it necessary to use discretionary parole to release offenders who were sentenced under the old law in order to relieve pressure on the system. Some of these were not good parole risks but were released anyway because the law did not permit early release of less violent criminals sentenced under the new law.

Given this experience, there must be some effort in Wisconsin to determine whether the elimination of parole affects prisoners' desire and ability to reform, and the impact on the safety of the entire prison system and society. If the new system results in overcrowding, it would be preferable to address that problem by granting parole to model prisoners sentenced under the new law than to grant it to less deserving and more dangerous prisoners sentenced under the old system.

In conclusion, we believe that this legislation provides policy makers with an opportunity to transcend the passion of the moment and create a new sentencing system that serves all of society and that restores society's relationship with offenders. We urge you accept the uncertainties inherent in such monumental reform. Rather than speak in absolutes that leave no option for change in the future, please remain open to the possibility that we will learn things as this law is implemented and that our state may benefit from revisiting it down the road as we balance the need to maintain public safety with the need to restore offenders to the community.

Thank you for your consideration.