



State of Wisconsin
1999 - 2000 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 465**

November 4, 1999 - Offered by Senator GEORGE.

1 **AN ACT** *to amend* 15.01 (2); *to create* 15.105 (26), 19.42 (10) (o), 19.42 (13) (n),
2 20.505 (4) (dr), 20.505 (4) (mr), 20.923 (4) (b) 7., 20.923 (6) (hr), 230.08 (2) (L)
3 6., 230.08 (2) (of), 973.017 and 973.30 of the statutes; and *to affect* 1997
4 Wisconsin Act 283, section 454 (1) (f) and 1997 Wisconsin Act 283, section 454
5 (2); **relating to:** the creation of a sentencing commission, the duties of the
6 criminal penalties study committee and making appropriations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 15.01 (2) of the statutes is amended to read:
8 15.01 (2) "Commission" means a 3-member governing body in charge of a
9 department or independent agency or of a division or other subunit within a
10 department, except for the Wisconsin waterways commission which shall consist of
11 5 members, the parole commission which shall consist of 6 members and the Fox

1 river management commission which shall consist of 7 members. A Wisconsin group
2 created for participation in a continuing interstate body, or the interstate body itself,
3 shall be known as a “commission”, but is not a commission for purposes of s. 15.06.
4 The parole commission created under s. 15.145 (1) shall be known as a “commission”,
5 but is not a commission for purposes of s. 15.06. The sentencing commission created
6 under s. 15.105 (26) shall be known as a “commission” but is not a commission for
7 purposes of s. 15.06 (1) to (4m), (7) and (9).

8 **SECTION 2.** 15.105 (26) of the statutes is created to read:

9 15.105 **(26)** SENTENCING COMMISSION. (a) *Creation; membership.* There is
10 created a sentencing commission which is attached to the department of
11 administration under s. 15.03 and which shall consist of the following members:

12 1. The attorney general or his or her designee.

13 2. The state public defender or his or her designee.

14 3. Six members, at least 2 of whom are not employed by any unit of federal, state
15 or local government, appointed by the governor.

16 4. One majority party member and one minority party member from each house
17 of the legislature, appointed as are the members of standing committees in their
18 respective houses.

19 5. Two circuit judges, appointed by the supreme court.

20 6. One representative of crime victims and one district attorney, each appointed
21 by the attorney general.

22 7. One attorney in private practice engaged primarily in the practice of criminal
23 defense, appointed by the criminal law section of the State Bar of Wisconsin.

1 (b) *Nonvoting members.* The secretary of corrections or his or her designee, the
2 chairperson of the parole commission or his or her designee and the director of state
3 courts or his or her designee shall be nonvoting members of the commission.

4 (c) *Terms.* 1. Except as provided in subd. 2., members appointed under par. (a)
5 3. and 5. to 7. shall serve 3-year terms and are eligible for reappointment.

6 2. The term of a circuit judge appointed under par. (a) 5. shall end when such
7 person ceases to be a circuit judge. The term of a district attorney appointed under
8 par. (a) 6. shall end when such person ceases to be a district attorney.

9 (d) *Officers.* The governor shall designate annually one of the members of the
10 commission as chairperson. The commission may elect officers other than a
11 chairperson from among its members as its work requires.

12 (e) *Reimbursement and compensation.* Members of the commission shall be
13 reimbursed for their actual and necessary expenses incurred in the performance of
14 their duties. An officer or employe of the state shall be reimbursed by the agency that
15 pays the member's salary. Members who are full-time state officers or employes
16 shall receive no compensation for their services. Other members shall be paid \$25
17 per day, in addition to their actual and necessary expenses, for each day on which
18 they are actually and necessarily engaged in the performance of their duties.

19 (f) *Sunset.* This subsection does not apply after December 31, 2004.

20 **SECTION 3.** 19.42 (10) (o) of the statutes is created to read:

21 19.42 (10) (o) A member, the executive director or the deputy director of the
22 sentencing commission.

23 **SECTION 4.** 19.42 (13) (n) of the statutes is created to read:

24 19.42 (13) (n) The position of member, executive director or deputy director of
25 the sentencing commission.

1 **SECTION 12.** 973.017 of the statutes is created to read:

2 **973.017 Bifurcated sentences; use of guidelines.** (1) **DEFINITION.** In this
3 section, “sentencing decision” means a decision as to whether to impose a bifurcated
4 sentence under s. 973.01 or to place a person on probation and a decision as to the
5 length of a bifurcated sentence, including the length of each component of the
6 bifurcated sentence, the amount of a fine and the length of a term of probation.

7 (2) **GENERAL REQUIREMENT.** When a court makes a sentencing decision
8 concerning a person convicted of a felony committed on or after December 31, 1999,
9 the court shall consider the sentencing guidelines adopted by the sentencing
10 commission under s. 973.30 or, if the sentencing commission has not adopted a
11 guideline for the offense, any applicable temporary sentencing guideline adopted by
12 the criminal penalties study committee created under 1997 Wisconsin Act 283.

13 (3) **USE OF GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL.** The requirement under
14 sub. (2) that a court consider sentencing guidelines adopted by the sentencing
15 commission or the criminal penalties study committee does not require a court to
16 make a sentencing decision that is within any range or consistent with a
17 recommendation specified in the guidelines, and there is no right to appeal a court’s
18 sentencing decision based on the court’s decision to depart in any way from any
19 guideline.

20 **SECTION 13.** 973.30 of the statutes is created to read:

21 **973.30 Sentencing commission.** (1) **DUTIES.** The sentencing commission
22 shall do all of the following:

23 (a) Select an executive director having appropriate training and experience to
24 study sentencing practices and prepare proposed sentencing guidelines.

25 (b) Monitor and compile data regarding sentencing practices in the state.

1 (c) Adopt advisory sentencing guidelines for felonies committed on or after
2 December 31, 1999, to promote public safety, to reflect changes in sentencing
3 practices and to preserve the integrity of the criminal justice and correctional
4 systems.

5 (cm) Establish a procedure by which a sentencing court may at any time modify
6 a bifurcated sentence that was previously imposed by the court by reducing the term
7 of confinement in prison portion of the sentence and lengthening the term of
8 extended supervision imposed so that the total length of the bifurcated sentence
9 originally imposed does not change. The procedure established under this
10 paragraph shall specify the factors that a court may consider when deciding whether
11 to modify a bifurcated sentence. The procedure shall provide that a court may on its
12 own motion review a bifurcated sentence for purposes of deciding whether to modify
13 the sentence, and the procedure shall also specify the circumstances under which a
14 court may review and modify a bifurcated sentence when requested to do so by the
15 department or the person serving the sentence.

16 (d) Provide information to the legislature, state agencies and the public
17 regarding the costs to and other needs of the department which result from
18 sentencing practices.

19 (e) Provide information to judges and lawyers about the sentencing guidelines.

20 (f) Publish and distribute to all circuit judges hearing criminal cases an annual
21 report regarding its work, which shall include all sentencing guidelines and all
22 changes in existing sentencing guidelines adopted during the 12 months preceding
23 the report.

1 (g) Study whether race is a basis for imposing sentences in criminal cases and
2 submit a report and recommendations on this issue to the governor, to each house
3 of the legislature under s. 13.172 (2) and to the supreme court.

4 (h) Assist the legislature in assessing the cost of enacting new or revising
5 existing statutes affecting criminal sentencing.

6 (i) At least semiannually, submit reports to all circuit judges, and to the chief
7 clerk of each house of the legislature for distribution to the appropriate standing
8 committees under s. 13.172 (3), containing statistics regarding criminal sentences
9 imposed in this state. Each report shall have a different focus and need not contain
10 statistics regarding every crime. Each report shall contain information regarding
11 sentences imposed statewide and in each of the following geographic areas:

- 12 1. Milwaukee County.
- 13 2. Dane and Rock counties.
- 14 3. Brown, Outagamie, Calumet and Winnebago counties.
- 15 4. Racine and Kenosha counties.
- 16 5. All other counties.

17 (j) Study how sentencing options affect various types of offenders and offenses.

18 **(2) STAFF.** Subject to authorization under s. 16.505, the sentencing commission
19 may hire staff to assist it in the performance of its duties.

20 **(3) SUNSET.** This section does not apply after December 31, 2004.

21 **SECTION 14.** 1997 Wisconsin Act 283, section 454 (1) (f) is amended to read:

22 [1997 Wisconsin Act 283] Section 454 (1) (f) ~~No later than April 30, 1999, the~~
23 The committee shall submit a report of its findings and recommendations to the
24 legislature in the manner provided under section 13.172 (2) of the statutes and to the

1 governor. The report shall include any proposed legislation that is necessary to
2 implement the recommendations made by the committee in its report.

3 **SECTION 15.** 1997 Wisconsin Act 283, section 454 (2) is amended to read:

4 [1997 Wisconsin Act 283] Section 454 (2) ATTORNEY PROJECT POSITION. The
5 authorized FTE positions for the department of administration are increased by 1.0
6 GPR attorney project position, to be funded from the appropriation under section
7 20.505 (3) (c) of the statutes, for the purpose of providing legal services to the criminal
8 penalties study committee established under subsection (1), for the period ending on
9 ~~April 30, 1999~~ June 30, 2000.

10 **SECTION 16. Nonstatutory provisions.**

11 (1) SENTENCING COMMISSION; INITIAL TERMS. Notwithstanding section 15.105 (26)
12 (c) 1. of the statutes, as created by this act, the initial members of the sentencing
13 commission shall be appointed for the following terms:

14 (a) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
15 created by this act, one of whom is not employed by any unit of federal, state or local
16 government, one circuit judge and one district attorney, for terms expiring on
17 January 1, 2001.

18 (b) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
19 created by this act, one of whom is not employed by any unit of federal, state or local
20 government, and one circuit judge, for terms expiring on January 1, 2002.

21 (c) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
22 created by this act, one representative of crime victims and one attorney in private
23 practice, for terms expiring on January 1, 2003.

24 (2) POSITION AUTHORIZATION. There is authorized for the sentencing commission
25 1.0 FTE GPR executive director position, 1.0 FTE GPR deputy director position and

1 4.0 FTE GPR other positions to be funded from the appropriation under section
2 20.505 (4) (dr) of the statutes, as created by this act.

3 (3) CRIMINAL PENALTIES STUDY COMMITTEE. Until the members of the sentencing
4 commission created under section 973.30 of the statutes, as created by this act, are
5 appointed, the criminal penalties study committee shall provide information to
6 lawyers, judges, the legislature and the public regarding the changes made in
7 criminal sentencing by 1997 Wisconsin Act 283 and this act.

8 **SECTION 17. Appropriation changes.**

9 (1) CRIMINAL PENALTIES STUDY COMMITTEE. In the schedule under section 20.005
10 (3) of the statutes for the appropriation to the department of administration under
11 section 20.505 (3) (c) of the statutes, as affected by the acts of 1999, the dollar amount
12 is increased by \$112,500 for fiscal year 1999-00 to fund the activities of the criminal
13 penalties study committee created under 1997 Wisconsin Act 283, section 454 (1).

14 (END)