



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 3

**Assembly Amendments
2, 3, 4, 5 and 6**

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Under the **current “truth-in-sentencing” law (1997 Act 283)**, courts are required, for offenses occurring on or after December 31, 1999, to impose a bifurcated sentence for offenders sentenced to prison. The bifurcated sentence consists of a term of confinement in prison for not less than one year, followed by a term of extended supervision for not less than 25% of the length of the term of confinement. The prisoner is required to serve 100% of the bifurcated sentence. Act 283 also increased the maximum sentences for most felonies by 50%, or one year, whichever was greater.

Act 283 also created a Criminal Penalties Study Committee to address issues relating to implementation of changes in sentencing made by the Act. In particular, the committee was required to make recommendations concerning:

- a. Creating a uniform classification system for all felonies, including felonies outside the criminal code;
- b. Classifying each felony and Class A misdemeanor in a manner that places crimes of similar severity in the same classification;
- c. Consolidating all felonies into a single criminal code;
- d. Creating a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing sentence;
- e. Creating temporary advisory sentencing guidelines for use by judges when imposing sentence during the period before the promulgation of advisory sentencing guidelines by a sentencing commission; and
- f. Changing the administrative rules of the Department of Corrections (DOC) to ensure that a person who violates a condition of extended supervision imposed as part of a bifurcated sentence is returned to prison promptly and for an appropriate period of time.

Assembly Bill 3 contains the recommendations of the Criminal Penalties Study Committee created by Act 283. The bill expands the number of felony classes from six to nine and, except for Class A and Class B felonies, creates new maximum terms of imprisonment and new maximum fines. The bill places felony offenses under current law into the new felony classes, with the exception of a few classified felony offenses that are reduced to misdemeanor offenses. The bill increases penalties for a few misdemeanor offenses by classifying them as felony offenses. With a few exceptions, the bill eliminates both mandatory and presumptive minimum prison sentences for felony offenses. The bill also eliminates certain mandatory consecutive sentences and retains only some of the various penalty enhancers that allow the penalties for a crime to be increased if the crime was committed under certain circumstances.

Assembly Bill 3 makes several changes relating to the imposition of a bifurcated sentence. Consistent with Act 283, the bill establishes maximum terms of confinement in prison for the various felony classes. Unlike Act 283, the bill also establishes a maximum amount of extended supervision that a court is permitted to impose for classified felonies. The bill also changes the procedure for revoking extended supervision by requiring that a court determine how long to send a person back to prison after his or her extended supervision is revoked. Additionally, the bill creates a procedure by which the DOC or a person on extended supervision may petition the court to modify the conditions of extended supervision set by the court. The bill also creates a procedure by which certain older prisoners who have been given a bifurcated sentence may petition the sentencing court for modification of the terms of the sentence.

Assembly Bill 3 also creates a Sentencing Commission consisting of 17 voting members, 3 nonvoting members and requires the commission to adopt advisory sentencing guidelines for use by judges when imposing sentences for felonies. In addition, the commission is required to study whether race is a basis for imposing sentences in criminal cases and submit a report and recommendations on this issue to the Governor, the Legislature and the Supreme Court. The duties of the commission end on December 31, 2006.

Assembly Bill 3 also creates a Joint Review Committee on Criminal Penalties and assigns this committee the task of reviewing proposed legislation that creates a new crime or revises a penalty for an existing crime. The joint review committee is comprised of one majority party member and one minority party member from each house of the Legislature, the Attorney General or his or her designee, the Secretary of DOC or his or her designee, the state public defender or his or her designee, two reserve judges and two members of the public appointed by the Governor, one of whom must have law enforcement experience in this state and one of whom must be an elected county official. A report on a bill that has been referred to the joint review committee must address such issues as the costs that are likely to be incurred or saved if the bill is enacted, the consistency of penalties proposed in the bill with existing criminal penalties and whether acts prohibited under the bill are prohibited under existing criminal statutes.

Assembly Amendment 2 authorizes a court, when imposing a sentence or placing a person on probation, to require participation in a drug treatment program as a condition of probation, imprisonment or extended supervision.

Assembly Amendment 3 requires the Joint Review Committee on Criminal Penalties, which is created under the bill, to report to the Legislature and the Governor recommendations regarding

standards and procedures to be used by a court to modify a bifurcated sentence, including proposed legislation necessary for implementation. The amendment specifies that any proposed legislation included in the report must provide that a bifurcated sentence that a court previously imposed may be modified only by reducing the term of confinement in prison portion of the sentence and lengthening the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change. The amendment also changes the date for automatic repeal (sunset) of the statute authorizing the review committee from January 1, 2002 to January 1, 2003.

Assembly Amendment 4 adds one minority party member from each house of the Legislature to the Sentencing Commission and deletes the member appointed by the Senate majority leader under the bill.

Assembly Amendment 5 authorizes modification of a bifurcated sentence if an inmate has a “terminal” condition. “Terminal” condition is defined as “. . . an incurable condition afflicting a person, caused by injury, disease, or illness, as a result of which the person has a medical prognosis that his or her life expectancy is 6 months or less, even with available life–sustaining treatment provided in accordance with the prevailing standard of medical care.”

Assembly Amendment 6 requires a court, when making a sentencing decision, to consider, in addition to the sentencing guidelines and mitigating and aggravating factors required under the bill, the following additional considerations: protection of the public, gravity of the offense and rehabilitative needs of the defendant. The amendment also requires the court to state its reasons for its sentencing decision in open court and on the record, unless the court determines that it is not in the interest of the defendant for it to state the reasons for its sentencing decision in the defendant’s presence. If the court does not state its reasons for its sentencing decision in open court, the court is required to state its reasons in writing and include the written statement in the court record.

Assembly Amendments 2, 3, 4, 5 and 6 were adopted by the Assembly on a vote of Ayes, 99, Noes, 0. Assembly Bill 3, as amended, passed the Assembly on a vote of Ayes, 86, Noes, 10, Paired, 2, Absent or Not Voting, 1.