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83 WisACT 371

1983 Assembly Bill 173

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**1983 Wisconsin Act 371**  
**(Vetoed in Part)**

AN ACT to renumber 973.01; to amend 15.01 (4) and 15.06 (1) (a); and to create 15.06 (3) (c), 15.101 (18), 15.105 (17), 20.505 (4) (dm), (gm) and (mm), 20.923 (4) (a) 1, 230.08 (2) (xm), 751.13, 751.14, 758.03 and 973.01 to 973.012 of the statutes, relating to sentencing guidelines, creating a sentencing council, creating a sentencing commission, granting rule-making authority and making appropriations.

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

SECTION 1. 15.01 (4) of the statutes is amended to read:

15.01 (4) "Commission" means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the tax appeals commission which shall consist of 5 members, the sentencing commission which shall consist of 17 members and the Wisconsin waterways commission which shall consist of 5 members. A Wisconsin group created for participation in a continuing interstate body shall be known as a "commission," but is not a commission for purposes of s. 15.06.

SECTION 2. 15.06 (1) (a) of the statutes is amended to read:

15.06 (1) (a) The members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years, except for the Wisconsin waterways commission whose members shall be appointed for staggered 5-year terms and except as otherwise provided in this subsection and s. 15.105 (17).

SECTION 3. 15.06 (3) (c) of the statutes is created to read:

15.06 (3) (c) This subsection does not apply to the sentencing commission. The chairperson and members of the sentencing commission shall be reimbursed for expenses under s. 15.07 (5).

SECTION 4. 15.101 (18) of the statutes is created to read:

15.101 (18) SENTENCING COMMISSION. The sentencing commission shall have the program responsibilities specified for the commission under ch. 973. This subsection applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

SECTION 5. 15.105 (17) of the statutes is created to read:

15.105 (17) SENTENCING COMMISSION. (a) There is created a sentencing commission which is attached to the department of administration under s. 15.03. The commission consists of 17 members as follows:

1. The secretary of health and social services or his or her designee.
2. The chairperson of the parole board.
3. Four circuit judges nominated by the chief justice of the supreme court and appointed by the governor.
4. The public defender or his or her designee.
5. One attorney in private practice who has experience representing defendants in criminal actions, appointed by the governor.

- 6. The attorney general or his or her designee.
  - 7. One prosecuting attorney appointed by the governor.
  - 8. Three members who are not attorneys and who have been victims of felonies or who have demonstrated sensitivity and concern for crime victims, appointed by the governor.
  - 9. One member each nominated by the speaker of the assembly, the senate majority leader and the minority leader in each house and appointed by the governor.
- (b) The members shall be appointed under par. (a) to provide geographic, racial, social and gender diversity on the commission. Notwithstanding s. 15.06 (1), the members under par. (a) 1, 2, 4 and 6 serve by reason of their offices and the members under par. (a) 3, 5, 7, 8 and 9 shall serve 6-year terms expiring on March 1 of the odd-numbered years.
- (c) Notwithstanding s. 15.06 (2), the governor shall designate one of the members of the commission as chairperson.

(d) This subsection applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

SECTION 6. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

		1983-84	1984-85
<b>20.505</b>	<b>Administration, department of</b>		
(4 )	ATTACHED DIVISIONS, BOARDS AND COMMISSIONS		
(dm)	Sentencing commission; general program operations	GPR A	O O

SECTION 7. 20.505 (4) (dm), (gm) and (mm) of the statutes are created to read:

20.505 (4) (dm) *Sentencing commission; general program operations.* The amounts in the schedule for the general program operations of the sentencing commission. This paragraph applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

(gm) *Sentencing commission; gifts and grants.* All moneys received from gifts and grants for the purposes for which made and received. This paragraph applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

(mm) *Sentencing commission; federal aid.* All moneys received as federal aid as authorized by the governor under s. 16.54 to carry out the purposes for which made and received. This paragraph applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

SECTION 8. 20.923 (4) (a) 1 of the statutes is created to read:

20.923 (4) (a) 1. Administration, department of; sentencing commission: executive director. This subdivision applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

SECTION 9. 230.08 (2) (xm) of the statutes is created to read:

230.08 (2) (xm) The executive director of the sentencing commission.

SECTION 10. 751.13 of the statutes is created to read:

**751.13 Sentencing rules; determination of authority to promulgate.** (1) INTENT. The legislature finds that sentencing of criminal defendants should be even-handed and consistent. Guidelines for use by judges are useful to accomplish this purpose. Under our criminal justice system, the legislature generally establishes the minimum and maximum sentences for crimes, and judges use their discretion to determine, within the limits estab-

lished by the legislature, what particular sentence is appropriate in a particular case. As this exercise of judicial discretion is so directly related to the establishment of sentencing guidelines, it is most appropriate that the supreme court promulgate rules for sentencing guidelines. Only if the supreme court declines to do so will the legislature establish an independent sentencing commission to establish sentencing guidelines.

(2) **FIRST TIME PERIOD.** The supreme court may promulgate rules under s. 973.011. The supreme court retains that authority if, on or before the first day of the 4th month commencing after the effective date of this subsection (1983), it promulgates an order directing the director of state courts to continue the study of sentencing guidelines initiated by the sentencing guidelines advisory committee and to begin preparation of proposed rules under s. 973.011.

(3) **DETERMINATION REGARDING FIRST TIME PERIOD.** The supreme court may determine whether it has met the conditions in sub. (2) by the date specified in sub. (2). If the supreme court declares in any order prior to the date specified in sub. (2) that it has met the conditions, the authority to promulgate rules under s. 973.011 is retained by the supreme court.

(4) **TRANSFER OF AUTHORITY.** If the supreme court does not promulgate the order under sub. (3), the authority to promulgate rules under s. 973.011 transfers to the sentencing commission on the day after the date specified in sub. (2).

(5) **SECOND TIME PERIOD.** If the supreme court retains authority under sub. (3), the supreme court may promulgate rules under s. 973.011. The supreme court continues to retain that authority if, on or before the first day of the 28th month commencing after the effective date of this subsection (1983), it promulgates rules under s. 973.011 for robbery, armed robbery, burglary, first and 2nd degree sexual assault, felony theft including motor vehicle theft, forgery and violations under ch. 161.

(6) **DETERMINATION REGARDING 2ND TIME PERIOD.** The supreme court may determine whether it has met the conditions in sub. (5) by the date specified in sub. (5). If the supreme court declares in any order prior to the date specified in sub. (5) that it has met the conditions, the authority to promulgate rules is retained by the supreme court.

(7) **TRANSFER OF AUTHORITY.** If the supreme court does not promulgate the order under sub. (6), the authority to promulgate rules under s. 973.011 transfers to the sentencing commission on the day after the date specified in sub. (5).

**SECTION 11.** 751.14 of the statutes is created to read:

**751.14 Supreme court sentencing rules.** (1) The supreme court may do all of the following:

(a) Promulgate rules under s. 973.011, in accordance with s. 751.13.

(b) Collect, develop and maintain statistical information relating to sentencing practices and other dispositions of criminal complaints. The supreme court may promulgate forms for this purpose. Sentencing courts shall promptly complete and return these forms as directed by the supreme court.

(c) Develop instructional programs for judges relating to sentencing, including restitution policies and community service alternatives to incarceration and probation.

(d) Explain sentencing practices and rules to the public.

(2) This section applies only if the authority to promulgate sentencing rules is not transferred to the sentencing commission under s. 751.13 (4) or (7).

**SECTION 12.** 758.03 of the statutes is created to read:

**758.03 Sentencing council.** (1) There is created a sentencing council. The council consists of 17 members as follows:

(a) The secretary of health and social services or his or her designee.

(b) The chairperson of the parole board.

(c) Four circuit judges nominated by the chief justice of the supreme court and appointed by the governor.

(d) The public defender or his or her designee.

(e) One attorney in private practice who has experience representing defendants in criminal actions, appointed by the governor.

(f) The attorney general or his or her designee.

(g) One prosecuting attorney appointed by the governor.

(h) Three members who are not attorneys and who have been victims of felonies or who have demonstrated sensitivity and concern for crime victims, appointed by the governor.

(i) One member each nominated by the speaker of the assembly, the senate majority leader and the minority leader in each house and appointed by the governor.

(2) The members shall be appointed under sub. (1) to provide geographic, racial, social and gender diversity on the council. Notwithstanding s. 15.09 (1), the members under sub. (1) (a), (b), (d) and (f) serve by reason of their offices and the members under sub. (1) (c), (e), (g), (h) and (i) shall serve 6-year terms expiring on July 1 of the odd-numbered years.

(3) Notwithstanding s. 15.09 (2), the governor shall designate one of the members of the council as chairperson.

(4) Except as provided in subs. (2) and (3), s. 15.09 applies to the sentencing council.

(5) The sentencing council shall advise the supreme court and the director of state courts regarding the promulgation of rules which provide guidelines for use by judges for sentencing defendants convicted of felonies.

(6) This section applies only if the authority to promulgate sentencing rules is not transferred to the sentencing commission under s. 751.13 (4) or (7).

SECTION 13. 973.01 of the statutes, as affected by 1983 Wisconsin Act 102, is renumbered 973.013.

SECTION 14. 973.01 to 973.012 of the statutes are created to read:

**973.01 Sentencing commission; duties.** (1) The sentencing commission shall do all of the following:

(a) Appoint an executive director having appropriate training and experience to conduct statistical studies of sentencing practices, interpret and explain social science information relating to sentencing, and prepare proposed sentencing rules. The executive director shall serve for 5 years and shall continue until a successor is appointed. During the 5-year term, the executive director may be discharged only for cause by the commission after a public hearing. The executive director position is in the unclassified service.

(b) Promulgate rules under s. 973.011, using the procedure under ch. 227, necessary to carry out its duties and functions under this chapter.

(c) Collect, develop and maintain statistical information relating to sentencing practices and other dispositions of criminal complaints. The sentencing commission may promulgate forms for this purpose. Sentencing courts shall promptly complete and return these forms as directed by the sentencing commission.

(d) Cooperate with the supreme court in developing instructional programs for judges relating to sentencing, including restitution policies and community service alternatives to incarceration and probation.

(e) Explain sentencing practices and rules to the public.

(f) Exercise all powers and perform all duties necessary and proper in discharging its responsibilities.

(2) This section applies only if the authority to promulgate sentencing rules is transferred to the sentencing commission under s. 751.13 (4) or (7).

**973.011 Sentencing rules; guidelines for judges.** If the supreme court has authority under s. 751.13, it may promulgate rules under this section. If that authority has been transferred under s. 751.13 (4) or (7), the sentencing commission shall promulgate rules under this section. ~~No such rule is applicable unless approved by act of the legislature.~~ Any such rules shall provide guidelines for use by judges for sentencing defendants convicted of felonies. The rules shall:

**Vetoed  
in Part**

(1) Be based primarily on sentencing experience in this state to the extent sufficient data is available. The rules shall set forth recommended sentence lengths for terms of confinement expressed in ranges of months. The rules shall indicate the likelihood that the offender would be placed on probation or incarcerated according to sentencing experience in this state.

(2) Include consideration of previous criminal history; status relating to incarceration, probation, parole or pretrial release; and severity of the present offense.

(3) Include mitigating and aggravating factors and other factors to be considered in sentencing.

**973.012 Use of guidelines by judges.** Beginning on the first day of the 18th month commencing after the effective date of this section (1983), a sentencing court, when imposing a sentence, shall take the guidelines established under s. 973.011 into consideration. If the court does not impose a sentence in accordance with the recommendations in the guidelines, the court shall state on the record its reasons for deviating from the guidelines. There shall be no right to appeal on the basis of the trial court's decision to render a sentence that does not fall within the sentencing guidelines.

**SECTION 15. Nonstatutory provisions.** (1) The initial members of the sentencing council under section 758.03 (1) (c), (e), (g), (h) and (i) shall be appointed for the following terms:

(a) The following, for terms expiring on July 1, 1987: 2 circuit judge members and one member who is not an attorney.

(b) The following, for terms expiring on July 1, 1989: one circuit judge member, one prosecuting attorney member and one member who is an attorney in private practice.

(c) The following, for terms expiring on July 1, 1991: one circuit judge member, 4 members nominated by legislators and 2 members who are not attorneys.

(2) If the authority to promulgate sentencing rules is transferred to the sentencing commission under section 751.13 (4) or (7) of the statutes, the establishment of the sentencing commission becomes applicable. The initial members of the commission shall be the members of the sentencing council. Each initial member of the commission serving for a fixed term shall serve until March 1 of the year when his or her council term would have expired.

(3) If the authority to promulgate sentencing rules is transferred to the sentencing commission under section 751.13 (4) or (7) of the statutes:

(a) All rules and orders promulgated by the supreme court relating to guidelines for use by judges for sentencing defendants convicted of felonies remain in effect until modified or rescinded by the sentencing commission.

(b) All contracts entered into by the supreme court relating to the guidelines remain in effect and are transferred to the commission.

~~(c) There are transferred 3.0 positions from the supreme court to the sentencing commission. The 3.0 positions include the position of the executive director of the sentencing commission.~~

(d) All records of the sentencing council are transferred to the sentencing commission.

**Vetoed  
in Part**

(4) The appropriation to the supreme court under section 20.680 (2) (b) of the statutes, as affected by the acts of 1983, is decreased by \$15,000 for fiscal year 1984-85 to eliminate previously authorized funding for sentencing guidelines training.

**SECTION 17. Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

<b>A</b>	<b>B</b>	<b>C</b>
Statute Sections	References Deleted	References Inserted
14.011 (intro.)	973.01 (2)	973.013 (2)
15.191 (intro.)	none	15.105 (17)
15.191 (intro.)	none	758.03 (1)
15.251 (intro.)	none	15.105 (17)
15.251 (intro.)	none	758.03 (1)

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