

CLASS A (LIFE)

NO ENTRIES

CLASS B (40 MAX PRISON: 20 E.S.)

NO ENTRIES

CLASS C (25 MAX PRISON; 15 E.S.)

Delivery of COCAINE > 40 g ²³⁰	961.41(1)(cm)4
Possession of COCAINE w/intent to deliver > 40 g ²³¹	961.41(1m)(cm)4
Delivery of HEROIN, > 50 g ²³²	961.41(1)(d)4
Possession of HEROIN w/intent to deliver > 50 g ²³³	961.41(1m)(d)4
Delivery of METH > 50 g (from E) ²³⁴	961.41(1)(e)4
Possession of METH w/intent to deliver > 50 g (from E) ²³⁵	961.41(1m)(e)4

²³⁰ The Committee recommends that all cocaine delivery offenses involving more than 40 grams be classified as a C felony. It further recommends that the categories of 40-100 grams and more than 100 grams for this offense be eliminated. Using the Class C felony classification for all offenses over 40 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of cocaine delivery laws are prosecuted in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 40- 100 and more than 100 grams are therefore unnecessary.

²³¹ See preceding note.

²³² The Committee recommends that all heroin delivery offenses involving more than 50 grams be classified as a C felony. It further recommends that the categories of 50-200 grams, 200-400 grams, and more than 400 grams for this offense be eliminated. Using the Class C felony classification for all offenses over 50 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of heroin delivery laws are prosecuted in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 50-200, 200-400, and more than 400 grams are therefore unnecessary.

²³³ See preceding note.

²³⁴ The Committee recommends that all delivery methamphetamine, amphetamine, phencyclidine (PCP) and methcathinone offenses involving more than 50 grams be classified as a C felony. It further recommends that the categories of 50-200 grams, 200-400 grams, and more than 400 grams for these offenses be eliminated. Using the Class C felony classification for all offenses over 50 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of these delivery laws are subject to prosecution in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 50-200, 200-400, and more than 400 grams are therefore unnecessary. The Committee has considered the threat to public safety posed by recent increases in methamphetamine activity (most notably in the rural parts of western Wisconsin) and has noted the pending legislation to treat this substance on a par with heroin, which the recommendation of the Committee does. See 1999 A.B. 3 18.

²³⁵ See preceding note.

CLASS D (15 MAX PRISON; 10 E.S.)

Delivery of COCAINE > 15 g but ≤ 40 g	961.41(1)(cm)3
Possession of COCAINE w/ int. to deliver > 15 but ≤ 40 g	961.41(1m)(cm)3
Delivery of HEROIN, > 10 g but ≤ 50 g	961.41(1)(d)3
Possession of HEROIN w/intent to deliver > 10 g but ≤ 50 g	961.41(1m)(d)3
Delivery of METH > 10 g but ≤ 50 (from E)	961.41(1)(e)3
Possession of METH w/intent to deliver > 10 g but ≤ 50 g (from E)	961.41(1m)(e)3

CLASS E (10 MAX PRISON; 5 E.S.)

Delivery of COCAINE > 5 g but ≤ 15 g	961.41(1)(cm)2
Possession of COCAINE w/ int. to deliver > 5 but ≤ 15 g	961.41(1m)(cm)2
Delivery of HEROIN, > 3 g but ≤ 10 g	961.41(1)(d)2
Possession of HEROIN w/intent to deliver > 3 g but ≤ 10 g	961.41(1m)(d)2
Delivery of METH > 3 g but ≤ 10 (from H)	961.41(1)(e)2
Possession of METH w/intent to deliver > 3 g but ≤ 10 g (from H)	961.41(1m)(e)2
Delivery of LSD > 5 g	961.41(1)(f)3
Possession of LSD w/intent to deliver > 5 g	961.41(1m)(f)3
Delivery of THC > 10,000 g ²³⁶	NEW STATUTE
Possession of THC w/ intent to deliver > 10,000 g ²³⁷	NEW STATUTE
Delivery of a narcotic drug included in Schedule I or II	961.41(1)(a)
Possession w/intent to deliver a narcotic drug included in Schedule I or II	961.41(1m)(a)
Delivery of PSILOCIN > 500 grams	961.41(1)(g)3
Possession w/intent to deliver PSILOCIN > 500 grams	961.41(1m)(g)3
Delivery or possession w/intent to deliver a counterfeit substance included in Schedule I or II which is a narcotic drug	961.41(2)(a)

CLASS F (7.5 MAX PRISON; 5 E.S.)

Delivery of COCAINE > 1 g but ≤ 5 g	961.41(1)(cm)1
Possession of COCAINE w/ int. to deliver > 1 but ≤ 5 g	961.41(1m)(cm)1
Delivery of HEROIN ≤ 3g	961.41(1)(d)1
Possession of HEROIN w/intent to deliver ≤ 3 g	961.41(1m)(d)1
Delivery of METH ≤ 3 (from H)	961.41(1)(e)1
Possession of METH ≤ 3 g (from H)	961.41(1m)(e)1
Delivery of LSD > 1 g but ≤ 5 g (from H)	941(1)(f)2
Possession of LSD w/intent to deliver > 1 g but ≤ 5 g (from H)	961.41(1m)(f)2

²³⁶ Under current law the maximum penalties for delivery of THC apply to deliveries of 2500 g or more. Considering the great range between this amount and the amount at which federal authorities are likely to become interested in the case (100-400 kilograms) and given that state cases can involve amounts well in excess of 2500 g, the Committee recommends that the amount categories on the higher end be as follows: >10,000, 2500 to 10,000, and 1000-2500 grams.

²³⁷ See preceding note.

CLASS F (7.5 MAX PRISON; 5 E.S.) (continued)

Delivery of THC > 2500 g but \leq 10,000 g	NEW STATUTE
Possession of THC w/intent to deliver > 2500 g but \leq 10,000 g	NEW STATUTE
Delivery of PSILOCIN >100 but \leq 500 grams	961.41(1)(g)2
Possession of PSILOCIN w/intent to deliver >100 but \leq 500 g	961.41(1m)(g)2
False or fraudulent drug tax stamp	139.95(3)
Possession of any amount of piperidine	961.41(1n)(c)
Use of a person who is under the age of 17 for the purpose of the delivery of a controlled substance ²³⁸	961.455(1)

CLASS G (5 MAX PRISON; 5 E.S.)

Delivery of COCAINE \leq 1 g ²³⁹	NEW STATUTE
Possession of COCAINE w/ int. to deliver \leq 1 g ²⁴⁰	NEW STATUTE
Delivery of LSD \leq 1 g (from H)	961.41(1)(f)1
Possession of LSD w/intent to deliver $<$ 1 g (from H)	961.41(1m)(f)1
Delivery of THC > 1000 but \leq 2500 g ²⁴¹	961.41(1)(h)3
Possession of THC w/intent to deliver > 1000 but < 2500 ²⁴²	961.41(1m)(h)3
Delivery of PSILOCIN < 100 grams	961.41(1)(g)1
Possession of PSILOCIN w/intent to deliver < 100 grams	961.41(1m)(g)1

CLASS H (3 MAX PRISON; 3 E.S.)

Delivery of THC > 200 but \leq 1000 g	961.41(1)(h)2
Possession of THC w/intent to deliver > 200 but \leq 1000 g	961.41(1m)(h)2
Delivery of any other controlled substance included in Schedule I, II or III, or a controlled substance analog of any other controlled substance included in Schedule I or II	961.41(1)(b)
Delivery or possession with intent to deliver any other counterfeit substance included in Schedule I, II or III	961.41(2)(b)

²³⁸ Statute should be amended to prohibit use of a person “under the age of 17 years” for the purpose of delivering a controlled substance. This would be consistent with recent amendments to Wisconsin’s Juvenile Code.

²³⁹ The Committee recommends creation of a new category for delivery of cocaine to cover amounts of 1 gram or less. This encompasses the vast majority of state delivery cases and the 5 year penalty of Class G is sufficient for offenses in this category. As a matter of fact sentencing data available from the Department of Corrections (as substantiated by the experience of experts who assisted the Committee) reveal that the vast majority of sentences statewide for deliveries of 5 grams or less (the lowest category under current law), when adjusted for truth in sentencing and time actually served, result in actual incarceration well within the 5-year range.

²⁴⁰ See previous footnote.

²⁴¹ Under current law the lower end THC weight categories are 500 g or less and more than 500 but less than 2500 grams. The Committee recommends that the amounts be more stratified to more accurately reflect the diversity of violations and to structure penalties accordingly. Thus it recommends that the lower end amount ranges be as follows: >1000 but \leq 2500 g, > 200 but \leq 1000 g, and \leq 200 g.

²⁴² See preceding note.

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

Possession with intent to deliver any other controlled substance included in Schedule 1, II or III, or a controlled substance analog of a controlled substance included in Schedule I or II	961.41(1m)b
Possession of a Schedule I or II controlled substance not bearing drug tax stamp	139.95(2)
Delivery of a substance included in Schedule IV	961.41(1)(i)
Possession with intent to deliver a substance included in Schedule IV	961.41(1m)(i)
Delivery or possession with intent to deliver a counterfeit substance included in Schedule IV	961.41(2)(c)
Acquire or obtain a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge	961.43(2)
Possession or attempted possession of gammahydroxybutric acid, gammahydroxybutyrolactone, ketamine or flunirazepam ²⁴³ (from I)	96 1.41(3g)(f)

CLASS I (18 MO. MAX PRISON; 2 YRS E.S.)

Delivery of THC \leq 200 g	961.41(1)(h)1
Possession of THC w/intent to deliver \leq 200 g	961.41(1m)(h)1
Delivery of a substance included in Schedule V	961.41(1)(j)
Possession with intent to deliver a substance included in Schedule V	961.41(1m)(j)
Delivery or possession with intent to deliver a counterfeit substance included in Schedule V	961.41(2)(d)
Possession of a narcotic included in Schedule I or II ²⁴⁴	961.41(3g)(a)1
Possession or attempted possession of Heroin	96 1.41(3g)(a)2
Distribution or delivery of imitation controlled substance	961.41(4)(am)3
Keeping of a drug house	961.42(2)

²⁴³ The substances included in the text accompanying this footnote include what have come to be known as “date rape” drugs.

²⁴⁴ A first offense under this statute is now punishable by 1 year and subsequent offenses are punishable by 2 years. The Committee recommends deleting this distinction, classifying all offenses a Class I felonies, and treating the fact of prior conviction as a sentencing factor or, when appropriate, as a basis for invoking repeat offender laws.

4. Depiction of Controlled Substances Offenses with Stratified Penalties in the A-I Classification System

ALL OFFENSES INCLUDE DELIVERY & POSSESSION WITH INTENT TO DELIVER

COKE = COCAINE
 HEROIN = HEROIN
 METH = METHAMPHETIMINE AMPHETAMINE, PHENCYCLIDINE (PCP) AND METHCATHINONE
 PSILOCIN = PSILOCIN AND PSILOCYBIN
 LSD = LYSERGIC ACID DIETHYLAMIDE
 THC = TETRAHYDROCANNABINOLS (MARIJUANA)

A	B	C	D	E	F	G	H	I
		COKE > 40 g		PSILOCIN > 500 g				
			COKE > 15 g but < 40 g		PSILOCIN > 100 g but < 500 g			
		HEROIN > 50 g	-	COKE > 5 g but < 15g		PSILOCIN ≤ 100 g		
			HEROIN > 10 g but < 50 g	-	COKE > 1g but < 5 g			
				HEROIN > 3 g but ≤ 10 g	-	COKE ≤ 1 g		
					HEROIN < 3 g			
		METH > 50 g		THC > 10,000g	-			
			METH > 10 g but < 50 g		THC > 2500but < 10,000g			
				METH > 3 g but ≤ 10 g		THC > 1000but ≤ 2500 g		
					METH ≤ 3 g		THC >200but ≤ 1000 g	
				LSD > 5 g				THC ≤ 200 g
					LSD > 1g but < 5 g			
						LSD < 1 g		

5. Additional Recommendations Regarding Controlled Substances Offenses

In addition to the classification of drug offenses described above, the Committee also makes the following recommendations regarding the provisions of Chapter 961 of the Statutes:

1. The penalty doubler for second and subsequent offenses²⁴⁵ should be recast to resemble the general habitual criminality statute²⁴⁶ but should remain codified in sec. 961.46 with the procedures now specified therein. In particular the Committee recommends that if a defendant is a second or subsequent drug offender,²⁴⁷ the maximum term of imprisonment²⁴⁸ may be increased as follows:
 - Four years if the present offense is a Class E, F, G, H or I felony.
 - Six years if the present offense is a Class C or D felony.²⁴⁹
2. Simple possession or attempted possession of (a) cocaine or cocaine base,²⁵⁰ (b) lyseric acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin,²⁵¹ and (c) tetrahydrocannabinols (THC),²⁵² all of which are misdemeanors, should retain their present misdemeanor penalties unless the offender qualifies as a second or subsequent offender,²⁵³ in which case the possession or attempted possession offense should be classified as a Class I felony. The Committee makes no recommendation for changing the penalties of other misdemeanor offenses codified in Chapter 961. Nor does it classify those misdemeanors because doing so would be beyond the charge given to the Committee by the legislature.²⁵⁴

²⁴⁵ See Wis. Stat. sec. 961.48.

²⁴⁶ See generally Wis. Stat. sec. 939.62.

²⁴⁷ Persons qualifying as second or subsequent offenders are described in Wis. Stat. sec. 961.48(3).

²⁴⁸ The proposal speaks of increasing the maximum period of incarceration for repeat drug offenders. It does not increase fines. Further, any reference to doubling minimum penalties should be deleted because of the general recommendation against the use of minimum penalties for drug and non-drug offenses alike.

²⁴⁹ No drug felonies are proposed for classification in Class A or B.

²⁵⁰ See Wis. Stat. sec. 961.41(3g)(c).

²⁵¹ See Wis. Stat. sec. 961.41(3g)(d).

²⁵² See Wis. Stat. sec. 961.41(3g)(e).

²⁵³ Persons qualifying as second or subsequent offenders are described in Wis. Stat. sec. 961.48(3).

²⁵⁴ 1997 Wis. Act 283 sec. 454(1)(e)2 directs the Criminal Penalties Study Committee to classify "each felony and Class A misdemeanor." There is no direction to classify currently unclassified misdemeanors (like those in Chapter 961) though doing so may be desirable at some point in the future.

3. The penalty enhancer for distribution of or possession with intent to deliver a controlled substance on or near certain places (e.g., within 1,000 ft. of a park, jail or correctional facility, school, youth center, etc.)²⁵⁵ should be set at 5 years. This is the same as present law **except** that under Truth-in-Sentencing it means 5 real years. The provisions for minimum penalties associated with this enhancer should be repealed for the reasons articulated **above**.²⁵⁶ The judge should have the full range of penalties available when exercising sentencing discretion in these kinds of cases.
4. The penalty doubler for distribution to **prisoners**²⁵⁷ should be recast as a statutory sentencing aggravator which may result in a lengthier disposition but which does not otherwise increase the maximum term of imprisonment. In this regard the Committee notes that one who distributes to a prisoner within the precincts of a prison, jail or other correctional facility will be subject to the penalty enhancer described in the preceding paragraph.
5. The penalty doubler for distribution to persons under age 18²⁵⁸ should be recast as a sentencing enhancer which increases the maximum term of imprisonment by 5 years. The provision for doubling fines and presumptive minimum penalties should be repealed.
6. The penalty enhancer for distribution or possession with intent to deliver certain controlled substances on public transit **vehicles**²⁵⁹ should be recast as a statutory sentencing aggravator which may result in a lengthier disposition but which does not otherwise increase the maximum term of imprisonment. The Committee believes that existing penalty ranges proposed for delivery and possession with intent to deliver are adequate to deal with the aggravating circumstance of delivery or possession with intent to deliver a controlled substance while on a public transit vehicle.

²⁵⁵ See Wis. Stat. sec. 961.49.

²⁵⁶ See p. .

²⁵⁷ See Wis. Stat. sec. 961.465.

²⁵⁸ See Wis. Stat. sec. 96 1.46.

²⁵⁹ See Wis. Stat. sec. 961.492.

G. Classification of Non-Drug Non-Criminal Code Felonies

1. Introduction

The non-drug non-Criminal Code felonies analyzed in this section of the Committee's report, which number approximately 150, are scattered throughout the Wisconsin Statutes. These crimes are not part of the Wisconsin Criminal Code,²⁶⁰ though many of the Code's general provisions apply to them²⁶¹ and, unless there is a specific provision to the contrary, so do the provisions of the Wisconsin Code of Criminal Procedure.²⁶² Under current law these felonies are not classified. Each offense has its own special penalty provision expressed in terms of incarceration or fine or both.

The Committee used the same approach for classifying non-drug non-Criminal Code offenses that it used for classifying Criminal Code felonies and drug felonies.²⁶³ It used the mandatory release date under present law to convert these crimes into the A-I felony classification system. It then employed the classification factors discussed earlier to determine whether to make any class adjustments after the M.R. converter was applied.

The Committee notes that there are several felonies codified throughout the Statutes that are punishable by imprisonment for up to one year. It grappled with the issue of how best to classify these crimes. It had two choices: increase them to Class I felonies (confinement for not more than 18 months plus extended supervision for not more than two years or a \$10,000 fine or both) or assign to them Class A misdemeanor penalties (imprisonment for not more than 9 months or a \$10,000 fine or both). The Committee concluded that unless its classification criteria suggested that a penalty increase was warranted, it should apply the mandatory release converter generally used to classify felonies. This means that many of the one-year felonies have been assigned Class A misdemeanor penalties.

2. Impact of Classification on the Nature of Non-Drug Non-Criminal Code Penalties

Under current law these miscellaneous offenses are not classified; each has a specific penalty articulated for the particular statute and different penalty systems are used. In some instances a maximum fine and a maximum amount of imprisonment are specified. In others minimum fines and minimum periods of incarceration are included.

²⁶⁰ Chapters 939 to 951 comprise the Wisconsin Criminal Code. See Wis. Stat. sec. 939.01.

²⁶¹ Wis. Stat. sec. 939.20 provides: "Sections 939.22 to 939.25 [definitions of criminal intent, criminal recklessness, criminal negligence, and other miscellaneous words and phrases] apply only to crimes defined in chs. 939 to 95 I. Other sections in ch. 939 [the general provisions of Wisconsin's substantive criminal law] apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 95 I."

²⁶² Wis. Stat. sec. 967.01 provides in pertinent part that "Chapters 967 to 979 [the Wisconsin Criminal Procedure Code] shall govern all criminal proceedings. . . ."

²⁶³ See Part II.C.4., pp. - - - - -.

For some of the latter probation is an option, but if the court elects to incarcerate, then the minimum period of incarceration must be imposed.

Bringing these miscellaneous offenses within a uniform system for classifying crimes (a charge given to the Committee by the legislature) means that the penalty structure for these offenses will be expressed in terms of a maximum fine and a maximum term of imprisonment. Once a crime is placed in a given felony classification, the penalty range for that classification will apply.

There is at least a two-fold impact of such classification. First, with the exception of 5th offense OWI for which a minimum mandatory term of imprisonment is preserved to maintain consistency in the structure of penalties for all OWI offenders, for all felony classes into which these miscellaneous felonies have been placed, there is no minimum term of imprisonment. In appropriate cases the judge would have the discretion to place the offender on probation. The Committee supports this result. It believes that judges should have the same full range of penalties available to them when sentencing violators of these miscellaneous offenses as they have when sentencing persons convicted of such dangerous offenses as homicide (other than first-degree intentional homicide), armed robbery, sexual assault, or aggravated burglary. It also believes that the exercise of sound judicial discretion in sentencing these offenders should not be restricted by minimum penalties when the legislature has not seen fit to so restrict discretion when sentencing offenders convicted of other serious felonies like those noted above.²⁶⁴

Another impact of classification occurs in the area of maximum fines. Under current law maximum fines vary with each offense. The Committee recommends that its proposed fine structure for other classified felonies be applied to these miscellaneous felonies as well with the exception of a few offenses for which the legislature is established particularly high fines for obvious reasons. As to the latter the Committee recommends that the current maximum fines be preserved. Further, unless specifically noted, the Committee recommends that minimum fines be abandoned. As a general principle it believes the court should have full discretion in deciding when to impose a fine and, if so, in what amount.

²⁶⁴ The Committee recognizes that some presumptive minimum penalties are used in the penalty enhancer statutes. It will be recommending that these be repealed as well for the same reasons as those articulated in the text accompanying this note.

3. Proposed Classification of Non-Drug Felonies
Codified Outside the Criminal Code

NOTE: THE LIST OF NON-DRUG FELONIES CODIFIED OTHER THAN IN THE WISCONSIN CRIMINAL CODE WAS DERIVED FROM DOCUMENTATION PREPARED BY THE WISCONSIN LEGISLATIVE REFERENCE BUREAU.

COLOR CODES

ENTRIES IN GREEN REFLECT
UPWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R. CONVERTER.

ENTRIES IN BLUE REFLECT
NEW CRIMES RECOMMENDED
FOR ENACTMENT BY THE
LEGISLATURE OR EXISTING
CRIMES FOR WHICH
SIGNIFICANT AMENDMENTS
ARE PROPOSED.

ENTRIES IN RED REFLECT
DOWNWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R.
CONVERTER.

ENTRIES IN BLACK REFLECT
THE NATURAL PLACEMENT
OF CRIMES IN A-I SYSTEM
AFTER APPLICATION OF THE
M.R. CONVERTER.

NOTE: Each entry in green and red is accompanied by a parenthetical which indicates “from Red.” and green entries mean that an adjustment has been made either upward (green) or downward (red) from the felony class where a crime would naturally be placed by application of the M.R. converter. The “from” indicates where natural placement would be in the new class A-I system.

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
11.61(1)(a) and (b)	Criminal violations of campaign finance statutes	Fine not more than \$10,000 or imprisoned not more than 3 years or both	Class I
12.60(1)(a)	Criminal violations of elections statutes	Fine not more than \$10,000 or imprisoned not more than 3 years in the Wisconsin state prisons or both	Class I
13.05	Logrolling by members of the Legislature prohibited	Fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 3 years or both	Class I
13.06	Granting of executive favor by members of the Legislature prohibited	Fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 2 years or both	Class I
13.69(6m)	Criminal violations of lobby law statutes	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
23.33(13)(cg)	Causing death or injury by interfering with all-terrain vehicle route or trail sign standard	Fine not more than \$10,000 or imprisoned for not more than 2 years or both if the violation causes the death or injury	Class H (from I)
26.14(8)	Intentionally setting fires to land of another or a marsh	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class H
29.971(1)(c)	Possession of fish with a value exceeding \$1,000 in violation of statutes	Fine of not more than \$10,000 or imprisonment for not more than 2 years or both	Class I
29.971(1m)(c)	Possession of clams with a value exceeding \$1,000 in violation of statutes	Fine of not more than \$10,000 or imprisonment for not more than 2 years or both	Class I
29.971(11m)(a)	Illegal shooting, shooting at, killing, taking, catching or possessing a bear	Fine of not more than \$5,000 or imprisonment for not more than <i>one</i> year or both for the second and any subsequent violation	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
29.971(11p)(a)	Entering the den of a hibernating black bear and harming the bear	Fine of not more than \$10,000 or imprisonment for not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
30.80(3m)	Falsifying boat certificate or title, or altering hull or engine serial numbers	Fine not more than \$5,000 or imprisoned not more than 5 years or both	Class H
30.80(2g)(b)	Failure to render aid in a boating accident that involves injury to a person but not great bodily harm	Fine not less than \$300 nor more than \$5,000 or imprisoned not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
30.80(2g)(c)	Failure to render aid in a boating accident that involves injury to a person and the person suffers great bodily harm	Fine not more than \$10,000 or imprisoned not more than 2 years or both	Class I
30.80(2g)(d)	Failure to render aid in a boating accident that involves the death of a person	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class H
36.25(6)(d)	Improper release of mines and explored mine land information by employes of the Geological and Natural History Survey or Department of Revenue	Fine not less than \$50 nor more than \$500, or imprisoned in the county jail for not less than one month nor more than 6 months, or imprisoned in the Wisconsin state prisons for not more than 2 years	Class I
47.03(3)(d)	Illegal use of the term "blind-made"	Fine not more than \$1,000 or imprisoned not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
49.127(8)(a)2.	Illegal use of food stamps with a value over \$100 but less than \$5000 - first offense	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class I (from H)
49.127(8)(b)2.	Illegal use of food stamps with a value over \$100 but less than \$5000 - second and subsequent offenses	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class H
49.127(8)(c)	Illegal use of food stamps with value of \$5000 or more - Any offense	Fine not more than \$250,000 or imprisoned not more than 20 years or both.	Class G (from D)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
49.141(7)(a)	Committing a fraudulent act in connection with providing items or services under W-2	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H
49.141(7)(b)	Committing other fraudulent acts to obtain W-2 benefits or payments	Fine not more than \$ 10,000 or imprisoned for not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
49.141(9)(a)	Solicitation or receiving of a kickback, bribe or rebate in connection with providing items or services under W-2	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.141(9)(b)	Offering or paying a kickback, bribe or rebate in connection with providing items or services under W-2	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.141(10)(b)	Improper charging by a provider for W-2 services	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(1)(b)1.	Committing a fraudulent act in connection with providing items or services under medical assistance	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(2)(a)	Soliciting or receiving a kickback, bribe or rebate in connection with providing medical assistance	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(2)(b)	Offering or paying a kickback, bribe or rebate in connection with providing medical assistance	Fine not more than \$25,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(3)	Fraudulent certification of qualified medical assistance facilities	Fine not more than \$25,000 or imprisoned not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(3m)(b)	Improper charging by a provider for medical assistance services	Fine not more than \$25,000 or imprisoned not more than 5 years or both	Class H KEEP OLD MAX FINE
49.49(4)(b)	Improper charging by a facility for medical assistance services	Fine not more than \$25,000 or imprisoned not more than 5 years or both	Class H KEEP OLD MAX FINE

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
49.95(1)	Illegal intent to secure public assistance if the value exceeds \$1,000 but does not exceed \$2,500	Fine not more than \$500 or imprisoned for not more than 5 years or both	See sec. 49.95 in LRB Draft attached to this report.
49.95(1)	Illegal intent to secure public assistance if the value exceeds \$2,500	Fine not more than \$10,000 or imprisoned for not more than 10 years or both (Class C felony)	See sec. 49.95 in LRB Draft attached to this report.
51.15(12)	False statement related to emergency mental health detentions	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
55.06(1 l)(am)	False statement related to protective services placements	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
66.4025(1)(b)	False statement related to securing or assisting in the securing of housing for persons of low income in order to receive at least \$2,500 but not more than \$25,000	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class 1
66.4025(1)(c)	False statement related to securing or assisting in the securing of housing for persons of low income in order to receive more than \$25,000	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
69.24(1)(intro)	Fraudulent or destroyed vital statistical record	Fine not more than \$10,000 or imprisoned not more than 2 years or both	Class I
70.47(1 S)(a)	Tampering with records of the Board of Review with intent to injure or defraud	Fine not more than \$1,000 or imprisoned not more than 2 years or both	Class I
71.83(2)(b)1.	False income tax return; fraud	Fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both	Class H
71.83(2)(b)2.	Officer of a corporation; false franchise or income tax return	Fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both, together with the cost of prosecution	Class H

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
71.83(2)(b)3.	Income tax evasion	Fine not more than \$5,000 or imprisoned not more than 3 years or both, together with the costs of prosecution	Class I
71.83(2)(b)4.	Fraudulent claim for tax credit	Fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both, together with the cost of prosecution	Class H
86.192(4)	Tampering with road signs if the tampering results in the death of a person	Fine up to \$10,000 or imprisoned not more than 2 years, or both	Class H (from I)
97.43(4)	Use of meat from dead or diseased animals	Fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 5 years or both	Class H
97.45(2)	Violation of horsemeat labeling requirements	Fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 5 years or both	Class H
134.74(7)(b)	Intentional violation of prize notification laws	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class I
100.2095(6)(d)	Violations Relating to Labeling of Bedding	Fine not less than \$100 nor more than \$1,000 or imprisonment for not more than 1 year or both.	Class A misd. penalties (9 mos. or \$10,000 or both)
100.26(2)	Violation of commission merchant duties and responsibilities	Fine not less than \$50 nor more than \$3,000, or by imprisonment for not less than 30 days nor more than 3 years , or both	Class I
100.26(5)	Violations of dairy license requirements, DATCP orders or regulations and false advertising	Fine not less than \$100 nor more than \$1,000 or imprisoned for not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
100.26(7)	Fraudulent drug advertising	Fine not less than \$500 nor more than \$5,000 or imprisoned not more than one year or both for each offense	Class A misd. penalties (9 mos. or \$10,000 or both)
101.143(10)(b)	Intentional destruction of a PECFA record	Fine not more than \$10,000 or imprisoned for not more than 10 years or both	Class G (from F)
IO 1,94(8)(b)	Intentional violation of manufactured home laws that threaten health and safety	Fine not more than \$1,000 or imprisoned not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
102.835(11)	Intent to evade collection of uninsured employer levies under the worker's compensation law	Fine not more than \$5,000 or imprisoned for not more than 3 years or both, and shall be liable to the state for the cost of prosecution	Class I
102.835(18)	Discharge or discrimination by employer against employe who has been the subject of a worker's compensation levy	Fine not more than \$1,000 or imprisoned for not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
102.85(3)	Violation of an order to cease operation because of a lack of worker's compensation insurance	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class I
108.225(11)	Evading collection of unemployment compensation levies under employment compensation law	Fine not more than \$5,000 or imprisoned for not more than 3 years or both	Class I
108.225(18)	Discharge or discrimination by employer against employe who has been the subject of an unemployment compensation levy	Fine not more than \$1,000 or imprisoned for not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
114.20(18)(c)	False statement related to aircraft registration	Fine not more than \$5,000 or imprisoned not more than 5 years or both	Class H

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
125.075(2)	Injury or death by providing alcohol beverages to a minor	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H - if great bodily harm results Class G - if death results
125.085(3)(a)2.	Receiving money or other considerations for providing false proof of age	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class I
125.105(2)(b)	Impersonating an agent, inspector or employe of DOR or DOJ in commission of a crime	Fine not more than \$10,000 or imprisoned for not more than Syears or both	Class H
125.66(3)	Sale and manufacturing of liquor without permits	Fine not more than \$10,000 or imprisonment for not more than 10 years or both	Class F
125.68(12)(b)	Delivering alcohol from denatured alcohol	Fine not less than \$1,000 nor more than \$5,000 or imprisoned not less than one year nor more than 10 years or both	Class F
125.68(12)(c)	Sale or disposal of denatured alcohol resulting in death	Imprisoned for not more than 10 years	Class E (from F)
132.20(2)	Trafficking in counterfeit trademarks and other commercial marks with intent to deceive	Fine not more than \$250,000 or imprisoned for not more than Syears or both, or, if the person is not an individual, be fined not more than \$1,000,000	Class H KEEP OLD MAX FINE
133.03(1)	Unlawful contracts or conspiracies in restraint of trade or commerce	Fine not more than \$100,000 if a corporation, or, if any other person, \$50,000, or be imprisoned for not more than Syears , or both	Class H KEEP OLD MAX FINE
133.03(2)	Monopolization of any part of trade or commerce	Fine not more than \$100,000 if a corporation, or, if any other person, \$50,000, or be imprisoned for not more than Syears or both	Class H KEEP OLD MAX FINE

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
134.05(4)	Bribery of an agent, employe or servant	Fine of not less than \$10 nor more than \$500, or by such fine and by imprisonment for not more than one <i>year</i>	Class A misd. penalties (9 mos. or \$10,000 or both)
134.16	Fraudulently receiving deposits	Imprisoned in the Wisconsin state prisons not more <i>than 10 years</i> nor less than one year or fined not more than \$10,000	Class F
134.20(1)(intro)	Fraudulent issuance or use of warehouse receipts or bills of lading	Fine not more than \$5,000 or imprisoned not more than 5 <i>years</i> , or both	Class H
134.205(4)	Issuance of warehouse receipts without entering item into register with intent to defraud	Fine not more than \$5,000 or imprisoned not more than 5 <i>years</i> , or both	Class H
134.58	Unauthorized use of armed persons to protect persons or property or to suppress strikes	Fine not more than \$1,000 or imprisoned not less than one year nor more than 3 <i>years</i> or both	Class I
139.44(1)	Use or manufacturing of counterfeit cigarette stamps	Imprisonment not less than one year nor more than 10 <i>years</i>	Class Ci (from F)
139.44(1m)	Tampering with cigarette meter	Imprisoned not less than one year nor more than 10 <i>years</i>	Class G (from F)
139.44(2)	False or fraudulent report or attempts to evade the cigarette tax	Fine not less than \$1,000 nor more than \$5,000, or imprisoned not less than 90 days nor more than <i>one year</i> , or both	Class A misd. penalties (9 mos. or \$10,000 or both)
139.44(8)(c)	Unlawful possession of cigarettes if the number exceeds 36,000	Fine not more than \$10,000 or imprisoned not more than 2 <i>years</i> or both	Class I
139.95(2)	Possessing a schedule I or II controlled substance not bearing drug tax stamp	Fine not more than \$10,000 or imprisoned not more than 5 <i>years</i> or both	Class H
139.95(3)	False or fraudulent drug tax stamp	Fine not more than \$10,000 or imprisoned not less than one year nor more than 10 <i>years</i> or both	Class F

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
146.345(3)	Sale of human organs for transplantation prohibited	Fine not more than \$50,000 or imprisoned for not more than 5 years or both	Class H KEEP OLD MAX FINE
146.35(5)	Female genital mutilation	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
146.60(9)(am)	Second violation of failing to comply with notice of release of genetically engineered organisms into the environment requirements	Fine not less than \$1,000 nor more than \$50,000 or imprisoned for not more than oneyear or both	Class A misd. KEEP OLD MAX FINE
146.70(10)(a)	Filing of false 911 report	Fine not more than \$10,000 or imprisoned not more than 5 years or both for any other offense committed within 4 years after the first offense	Class H
154.15(2)	Falsification or withholding of information related to a declaration to a physician	Fine not more than \$10,000 or imprisoned not more than 10 years or both	Class F
154.29(2)	Falsification or withholding of information related to a do-not-resuscitate order	Fine not more than \$10,000 or imprisoned for not more than 10 years or both	Class F
166.20(1)(b)1.	Knowing and willful failure to report release of a hazardous substance, first offense	Fine not less than \$100 nor more than \$25,000 or imprisoned for not more than 2 years or both	Class I KEEP OLD MAX FINE
166.20(11)(b)2.	Knowing and willful failure to report release of a hazardous substance, second and subsequent offenses	Fine not less than \$200 nor more than \$50,000 or imprisoned for not more than 2 years or both	Class I KEEP OLD MAX FINE
167.10(9)(g)	Violation of fireworks manufacturing licensure requirement	Fine not more than \$10,000 or imprisoned not more than 10 years or both	Class G (from F)
175.20(3)	Violation of amusement place licensure requirements	Fine of not less than \$25 and not more than \$1,000, or by imprisonment for not less than 30 days in the county jail and not more than oneyear in the state prison, or by both such fine and imprisonment	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
180.0129(2)	Filing of a false document with DFI, business corporation	Fine not more than \$10,000 or imprisoned for not more than <i>2 years</i> or both	Class I
181.0129(2)	Filing of a false document with DFI, nonstock corporations	Imprisoned in the Wisconsin state prisons not more than <i>3 years</i> or in the county jail not more than one <i>year</i> or fined not more than \$1,000	Class I
200.09(2)	Fraudulently obtaining or using a certificate of authority to issue any security by a public service corporation	Fine of not less than \$500, or by imprisonment in the state prison not less than one or more than <i>10 years</i> , or by both fine and imprisonment	Class I (from F)
185.825	Filing of a false document with DFI, cooperatives	Fine not more than \$1,000 or imprisoned not more than <i>3 years</i> or both	Class I
214.93	Filing of a false document with the Division of Savings and Loans	Imprisoned for not more than <i>20 years</i>	Class F (from D)
215.02(6)(b)	Illegal disclosure of information by employees of the Division of Savings and Loans	Fine not less than \$100 nor more than \$1,000, or imprisoned not less than 6 months nor more than <i>2 years</i> or both	Class I
215.12	Falsification of records and dishonest acts, savings and loans	Imprisoned in the Wisconsin state prisons for not to exceed <i>20 years</i>	Class F (from D)
215.21(21)	Giving or accepting money for loans, savings and loans	Fine not to exceed \$10,000 or imprisoned in the Wisconsin state prisons not to exceed <i>2 years</i> or both	Class I
218.21(7)	False statement related to a motor vehicle salvage dealer license	Fine not more than \$5,000 or imprisoned not more than <i>5 years</i> or both	Class H
220.06(2)	Illegal disclosure of information by employees of the Division of Banking	Fine of not less than \$100 nor more than \$1,000, or imprisonment in the Wisconsin state prisons not less than 6 months nor more than <i>2 years</i> , or both	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
299.53(4)(c)2.	False statement to DNR related to used oil facilities, second or subsequent violations	Fine not more than \$50,000 or imprisonment for not more than 2 years or both	Class 1. KEEP OLD MAX FINE
302.095(2)	Illegal delivery of articles to inmates by prison or jail employes	Imprisoned for not more than 2 years or fined not more than \$500	Class I
341.605(3)	Unlawful transfer of license plates, insert tag, decal or other evidence of registration or the transfer of counterfeit, forged or fictitious license plates, insert tag, decal or other evidence of registration.	Fine not more than \$5,000 or imprisoned not more than 5 years or both	Class H
342.06(2)	False statement in an application for a vehicle title	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
342.065(4)(b)	Failing to obtain title for salvage vehicle, with intent to defraud	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
342.155(4)(b)	Violation of mileage disclosure requirements with intent to defraud	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
342.156(6)(b)	Transfers of leased vehicles, with intent to defraud	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
342.30(3)(a)	Alteration of vehicle identification number	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
342.32(3)	Counterfeiting and unlawful possession of certificate of title	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
343.44(2)(b) (as affected by 1997 Act 84)	Operating after Revocation of Operating Privilege or While Disqualified	Fine not more than \$2,500 or imprisoned not more than 1 year , or both.	Fine not more than \$2,500 or imprisoned not more than 1 year in the county jail , or both.

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
221.0625(2) (intro)	Illegal loans to bank officials	Imprisoned for not more than 10 <i>years</i>	Class F
221.0636(2)	Theft by bank employe or officer	Imprisoned for not more than 20 <i>years</i>	Class H (from D)
221.0637(2)	Illegal commission to bank office and employes	Fine not more than \$10,000 or imprisoned for not more than 2 <i>years</i> or both	Class I
221.1004(2)	False statements related to records, reports and legal processes, state banks	Fine not less than \$1,000 nor more than \$5,000, or imprisoned not less than one year nor more than 10 <i>years</i> , or both	Class F
253.06(4)(b)	Fraudulent Practices re: State Supplemental Food Program for Women, Infants and Children (first offense)	Fine not more than \$10,000 or imprisoned not more than 2 <i>years</i> or both.	Class I
253.06(4)(b)	Fraudulent Practices re: State Supplemental Food Program for Women, Infants and Children (second or subsequent offense)	Fine not more than \$10,000 or imprisonment not more than 5 <i>years</i> or both.	Class H
285.87(2)(b)	Intentional violations of air pollution statutes and rules, second and subsequent convictions	Fine not more than \$50,000 per day of violation or imprisonment for not more than 2 <i>years</i> or both	Class I KEEP OLD MAX FINE
29 1.97(2)(b)	1. Transportation of hazardous waste to an unlicensed facility or site 2. Storage, treatment, transportation or disposal of any hazardous waste without a license	Fine not less than \$1,000 nor more than \$100,000 or imprisoned not more than 5 <i>years</i> or both	Class H KEEP OLD MAX FINE
29 1.97(2)(c) 1.	Second or subsequent violation of hazardous waste handling reporting requirements	Fine not less than \$1,000 nor more than \$50,000 or imprisoned not more than one <i>year</i> in state prison or both	Class I KEEP OLD MAX FINE
291.97(2)(c)2.	Second or subsequent violation of hazardous waste transportation, storage, treatment or disposal	Fine not less than \$5,000 nor more than \$150,000 or imprisoned not more than 10 <i>years</i> or both	Class F KEEP OLD MAX FINE

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
344.48(2)	Forged proof of security for past accidents	Fine not more than \$1,000 or imprisoned not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
346.17(3)(a)	Fleeing an officer	Fine not less than \$300 nor more than \$10,000 and may be imprisoned not more than 2 <i>years</i>	Class I A new Class A misd. Fleeing is being proposed.
346.17(3)(b)	Fleeing an officer resulting in bodily harm, or damage to property	Fine not less than \$500 nor more than \$10,000 and may be imprisoned not more than 2 <i>years</i>	Class H (from I)
346.17(3)(c)	Fleeing an officer resulting in great bodily harm	Fine not less than \$600 nor more than \$10,000 and may be imprisoned not more than 2 <i>years</i>	Class F (from I)
346.17(3)(d)	Fleeing an officer resulting in death	Fine not less than \$600 nor more than \$10,000 and may be imprisoned not more than 5 <i>years</i>	Class E (from H)
346.65(2)(e)	OWI - 5 th or subsequent offense	Fine not less than \$600 nor more than \$2000 and imprisoned not less than 6 mos. nor more than 5 <i>years</i>	Class H KEEP MIN. FINE & MIN. MANDATORY 6 MOS. JAIL
346.65(5)	Negligent use of a vehicle causing great bodily harm	Fine not less than \$600 nor more than \$2,000 and may be imprisoned not less than 90 days nor more than 18 <i>months</i>	Class I
346.74(5)(b)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves injury to a person but the person does not suffer great bodily harm	Fine not less than \$300 nor more than \$5,000 or imprisoned not less than 10 days nor more than one <i>year</i> or both	Class A misd. penalties (9 mos. or \$10,000 or both)
346.74(5)(c)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves injury to a person and the person suffers great bodily harm	Fine not more than \$10,000 or imprisoned not more than 2 <i>years</i> or both	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
346.74(5)(d)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves death	Fine no more than \$10,000 or imprisoned not more than 5 <i>years</i> or both	Class H
350.11(2m)	Causing death or injury by interfering with snowmobile route or trail sign or standard	Fine not more than \$10,000 or imprisoned for not more than 2 <i>years</i> or both	Class H (from I)
446.07	Violation of Chiropractic Examining Board statutes	Fine not less than \$100 nor more than \$500 or imprisoned not more than <i>one year</i> or both	Class A misd. penalties (9 mos. or \$10,000 or both)
447.09	Violation of Dental Examining Board statutes, second or subsequent offenses	Fine not more than \$2,500 or imprisonment for not more than 2 <i>years</i> or both for the 2nd or subsequent conviction within 5 years	Class I
450.11(9)(b)	Delivery or possession with intent to manufacture or deliver a prescription drug in violation of the Pharmacy Examining Board statutes	Fine not more than \$10,000 or imprisoned not more than 5 <i>years</i> or both	Class H
450.14(5)	Illegal delivery of poisons	Fine not less than \$100 nor more than \$1,000 or imprisoned not less than <i>one year</i> nor more than 5 <i>years</i> or both	Class H
450.15(2)	Placing of prescription drugs: (a) in public place; or(b) upon private premises without consent of owner or occupant	Fine not less than \$100 nor more than \$1,000 or imprisoned not less than <i>one year</i> nor more than 5 <i>years</i> or both	Class H
551.58(1)	Willful violation of securities law	Fine not more than \$5,000 or imprisoned not more than 5 <i>years</i> or both	Class H
552.19(1)	Willful violation of corporate take-over laws	Fine not more than \$5,000 or imprisoned not more than 5 <i>years</i> or both	Class H
553.52(1)	Willful violation of fraudulent and prohibited practices statutes under state franchise investment law	Fine not more than \$5,000 or imprisoned for not more than 5 <i>years</i> or both	Class G

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
553.52(2)	Fraud in connection with the offer or sale of any franchise	Fine not more than \$5,000 or imprisoned for not more than 5 years or both	Class G
562.13(3)	Facilitation of off-track wagering and possession of fraudulent wagering tickets with intent to defraud	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class I
562.13(4)	Tampering with race animals; illegal killing of race dogs; counterfeiting race tickets with intent to defraud; illegal race activities	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
565.50(2)	Forged or altered lottery ticket	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class I (from H)
565.50(3)	Possession of forged or altered lottery ticket	Fine not more than \$10,000 or imprisoned for not more than 2 years or both	Class A misd. penalties (9 mos. or \$10,000 or both) (from 1)
601.64(4)	Intentional violation of any insurance statute or rule	Fine not more than \$5,000 or imprisoned for not to exceed 3 years or both	Class I
64 1.19(4)(a)	Willful violation or failure to comply with statutes or false statements related to employe welfare funds and plans	Fine not more than \$5,000 or imprisoned not more than 5 years or both	Class H
64 I. 19(4)(b)	Willful and unlawful use of employe welfare funds	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class H
765.30(1)(intro)	Marriage outside state to circumvent state law	Fine not less than \$200 nor more than \$1,000, or imprisoned not more than one year , or both	Class A misd. penalties (9 mos. or \$10,000 or both)
765.30(2)(intro)	False marriage license statement; unlawful issuance of marriage license; false solemnization of marriage	Fine not less than \$100 nor more than \$1,000, or imprisoned not more than one year , or both	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
768.07	Violation of actions abolished statutes	Fine not less than \$100 nor more than \$1,000 or imprisoned for not more than one year , or both	Class A misd. penalties (9 mos. or \$10,000 or both)
783.07	Failure or neglect to respond to a writ of mandamus	Fine not more than \$5,000 per officer or imprisonment for a term not exceeding 5 years	Class H
946.85(1)	Engaging in a continuing criminal enterprise	Imprisoned not less than 10 years nor more than 20 years, and fined not more than \$10,000	Class E (from D)
968.3 1 (1)(intro)	Illegal interception and disclosure of wire, electronic or oral communications	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
968.34(3)	Illegal use of pen register or trap and trace device	Fine not more than \$10,000 or imprisoned not more than one year or both	Class A misd. penalties (9 mos. or \$10,000 or both)
968.43(3) [formerly 756.13(3), affected by Supreme Court Order 98-08]	Violation of an oath by a stenographic reporter or typewriter operator in connection with a grand jury	Imprisoned for not more than 5 years	Class H
977.06(2)(b)	False statement to qualify for assignment of a Public Defender	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class I (from H)

H. Additional Recommendations

Attempts. As a general proposition Wisconsin law punishes attempts at one-half the maximum imprisonment and one-half the maximum fine for the completed crime.²⁶⁵ There are a few exceptions to this general rule. For example, an attempt to commit a crime for which the punishment is life imprisonment is punishable as a Class B felony.²⁶⁶ For a limited number of crimes, attempts are punished with the same maximum imprisonment and fine that apply to the completed offense.²⁶⁷

The Committee recommends that an attempt to commit a crime for which the penalty is life imprisonment (Class A felonies) be classified as a Class B felony. Further, as to those limited number of crimes for which the legislature has concluded that attempts ought to be punished at the same level as the completed crimes, the Committee does not recommend any change.

The Committee further recommends that the general rule for calculating the maximum punishment for attempts be maintained at one-half the maximum for the completed crime. In the interest of clarity, it suggests that the statute be amended to specifically provide that the maximum punishment for an attempt is as follows:

- One-half the maximum term of confinement for the completed offense
- One-half the maximum term of extended supervision for the completed offense
- One-half the fine for the completed offense

Adding the first two components together would equal one-half the maximum term of imprisonment for the completed offense because, under Act 283, the maximum term of confinement plus the maximum term of extended supervision equals the maximum term of imprisonment.

Finally, the Committee recommends repeal of Wis. Stat. sec. 939.32(1)(b). This statute specifies that an attempt to commit battery to law enforcement officers, firefighters, probation agents, parole agents, extended supervision agents and aftercare agents is punishable as a Class A misdemeanor (9 months imprisonment). The Committee has proposed that these batteries be classified as Class H felonies (3 years maximum confinement followed by 3 years maximum extended supervision). An attempt to commit any one of these batteries ought to be punished using the general one-half formula (18 months maximum confinement followed by 18 months maximum extended supervision). The Class A misdemeanor penalties for these attempts under current law are too low. Law enforcement officers, firefighters, and the others mentioned ought to

²⁶⁵ Wis. Stat. sec. 939.32(1).

²⁶⁶ Wis. Stat. sec. 939.32(1)(a).

²⁶⁷ See, e.g., Wis. Stat. sec. 939.32(c)-(e).

have the same protection from attempted battery as others who have special protection under the battery laws which the Committee recommends for classification at the H felony level (e.g., emergency department workers, emergency medical technicians, first responders, etc.²⁶⁸).

Maximum Term of Institutionalization for Persons Found Not Guilty by Reason of Mental Disease or Defect. Under present law the maximum term of institutionalization for persons found not guilty by reason of mental disease or defect (NGI acquittees) is set at two-thirds of the maximum sentence for the underlying offense (including any penalty enhancers).²⁶⁹ If the underlying offense is punishable by life imprisonment, institutionalization may be for life, subject to termination as provided for by statute.²⁷⁰

When the legislature specified that institutionalization of NGI acquittees may not exceed 2/3rds of the maximum imprisonment for the underlying offense, it was obviously pegging maximum institutionalization for these individuals to the maximum an ordinary offender would serve in prison prior to being mandatorily paroled on a maximum sentence. With the advent of truth in sentencing and the abolition of parole, the Committee concluded that the period of maximum institutionalization should be adjusted accordingly. It recommends that the NGI statute be amended to provide that the maximum period of institutionalization for felonies not exceed the maximum term of confinement the court may impose for the underlying offense. The recommended maximum periods of institutionalization were therefore be as follows:

Class A felonies	Life
Class B felonies	40 years
Class C felonies	25 years
Class D felonies	15 years
Class E felonies	10 years
Class F felonies	7.5 years
Class G felonies	5 years
Class H felonies	3 years
Class I felonies	18 months

There is no recommendation to change the 2/3rds formula for misdemeanants. Nor is there a recommendation to change the statute addressing the interaction of NGI commitments with court orders for lifetime supervision of serious sex offenders.²⁷¹

Bifurcated Sentences for Misdemeanants Sentenced to State Prison. There is serious doubt whether Act 283's requirement that felons sentenced to prison receive bifurcated sentences also applies to misdemeanants sentenced to prison. The Committee

²⁶⁸ See Wis. Stat. sec. 940.20(7).

²⁶⁹ Wis. Stat. sec. 971.17(1).

²⁷⁰ Wis. Stat. sec. 971.17(1).

²⁷¹ See Wis. Stat. sec. 971.17(1j).

has concluded that if a misdemeanor is dangerous enough and/or has committed offenses serious enough to warrant incarceration in prison, then that individual should receive a bifurcated sentence that includes both a term of incarceration and a term of extended supervision. The same philosophy of managed supervision upon release from prison that applies to convicted felons supports application of extended supervision to dangerous misdemeanants as well.

Accordingly, the Committee recommends that the relevant statutes be amended to require bifurcated sentences for all misdemeanants sentenced to prison and to further require that the extended supervision component of these sentences be at least 25% of the amount of confinement ordered by the court.

I. Legislative Charge to Consolidate All Felonies Into a Single Criminal Code

The legislature charged the Committee to consolidate all felonies into a single criminal code.²⁷² The Committee strongly opposes this change for numerous reasons and respectfully urges the legislature to reconsider it. Among the reasons for its opposition are the following:

- Approximately 220 felonies are codified in various chapters of the Wisconsin Statutes other than in the Criminal Code. They are logically related to the subject matter of the various statutory chapters and for ease of access should remain where they are. To remove the crimes from their related substantive law provisions would promote needless confusion among the lawyers, judges, legislators and others who must use these laws and would require searching in multiple places to locate statutes dealing with the same subject matter. To prevent this from happening, drug offenses should remain within the Uniform Controlled Substances Act; natural resources crimes should remain with other natural resources statutes; traffic crimes should remain in the Vehicle Code; securities crimes should remain with other securities laws, etc.
- Act 283 speaks only in terms of relocating all non-Criminal Code felonies to the Criminal Code. Thus, misdemeanors would remain scattered throughout the statutes while felonies would be in the Criminal Code, even if those felonies and misdemeanors dealt with related subject matter.
- Drug laws, which constitute some of the most commonly utilized statutes, are currently codified together in the Uniform Controlled Substances Act (Wis. Stat. ch. 961). This act is a relatively self-

²⁷² 1997 Wis. Act 283 sec. 454(1)(e)3.

contained drug code for the State of Wisconsin. Beyond the complex set of crimes codified therein, it has its own declaration of legislative intent, its own extensive set of definitions, and its own unique structure of crimes. To **engraft** the drug code upon the Criminal Code without a general recodification effort involving the careful integration of both (assuming that would be desirable) would do little, if anything, to promote statutory clarity and ease of use. Rather, it would pose a substantial risk of unnecessarily confounding what are already complex and difficult chapters of the Wisconsin Statutes.

If the legislature truly wants all Wisconsin felonies located in a single criminal code that contains a unified and principled codification of the state's criminal laws presented in a structurally sound set of statutes, then it must undertake a massive recodification effort to achieve those results. The last time such a project was undertaken, it took over five years to complete and dealt only with the subject matter now contained in the Criminal Code.²⁷³ To expand the horizons of recodification to include the hundreds of offenses located other than in the Criminal Code would involve instituting a project of enormous proportions. And, for the reasons stated above, the Committee does not view the centralization of all crimes in one code as being either necessary or desirable.

The kind of recodification effort described in the preceding paragraphs was not within the charges given to the Committee by the legislature and, given the Committee's other substantial assignments which had to be accomplished within challenging time limits, any such undertaking would have been well beyond its capacity.

J. Subjects for Further Study

During the course of its work, the Code Reclassification Subcommittee, which had responsibility for the subject matter described in Part II of this report, discovered several problematic aspects of Wisconsin's criminal laws that need to be remedied after further investigation by the legislature. These include statutes dealing with abortion, special circumstances batteries, abuse and neglect of residents of certain facilities, criminal damage to property under special circumstances, and others. During the course of classifying drug offenses, that same subcommittee also came to perceive the need for a comprehensive review of the policies of this state which deal with the enforcement of these laws, the punishment for those who are convicted thereunder, and the treatment of violators who are truly addicted.

The Code Reclassification Subcommittee presented these problems to the whole Committee, which has included a discussion of them in Part VIII of this report.

²⁷³ See 1955 Wis. Laws 656.

PART III

TEMPORARY ADVISORY SENTENCING GUIDELINES

Statutory charges:

*“e. Development of temporary advisory sentencing guidelines for use by judges when imposing a bifurcated sentence.”*²⁷⁴

A. Introduction and Overview

Perhaps the most difficult question this Committee faced was the choice of a sentencing guidelines system. The Sentencing Guidelines Subcommittee, as well as the full Committee, had long and difficult discussions about the format sentencing guidelines should take for Wisconsin’s “new world” of Truth-in-Sentencing. As it studied this problem, the Committee knew that given the new determinate sentencing system,²⁷⁵ all actors in the criminal justice system, but especially judges who will be making essentially irrevocable decisions on sentence lengths, will need guidance as to proper sentences in this “new world.”

B. Study of Other States’ Sentencing Guidance Systems

The full Committee studied the sentencing guidance systems of several states and the federal system, each of which has implemented Truth-in-Sentencing, as well as the former Wisconsin sentencing guidelines. Given the full Committee’s quick deadline to issue its final report, other states’ systems were examined closely to determine if any one stood out as an attractive option to import into Wisconsin.

Committee members noted the following regarding those other systems:

North Carolina - mandatory guidelines using grid with 54 cells

Strengths - 1) prison population and cost projection capabilities
2) emphasis on community corrections for lower-end felonies
3) use of intermediate sanctions as an alternative to prison

Weaknesses - 1) less flexibility for judges, prosecutors, and defendants than Wisconsin may desire
2) incompatible with 1997 Wis. Act 283 mandate that guidelines be “advisory”

²⁷⁴ See 1997 Wis. Act 283 sec. 454(1)(e)4-5.

²⁷⁵ See p. ____.

3) some discomfort with community corrections as a possibility for punishment for serious/violent felonies

Virginia - voluntary guidelines using grid with 6 to 11 cells

Strengths

- 1) voluntary nature of grid
- 2) although voluntary, achieved 75% compliance by mandating that a report form be filled out at sentencing
- 3) strong program of educating the public through handouts to the public
- 4) card given to offender exiting system delineating penalties if offender re-offends
- 5) allows release of elderly, unhealthy prisoners if they pose no risk to the community

Weaknesses --

- 1) risk of reoffense calculation was controversial
- 2) midpoint sentence enhancements for violent felonies were controversial
- 3) recommendation of imprisonment for longer period of time for younger offenders was controversial
- 4) VA will bear great corrections expenses in the coming decades due to longer sentences

Delaware - voluntary guidelines; does not use a grid, but certain crimes have presumptive sentence lengths in certain types of institutions

Strengths --

- 1) by tying the level of supervision of offenders to their behavior, “good” actors are transferred into less expensive incarceration modes more quickly

Weaknesses --

- 1) difficult to translate system from such a small state to Wisconsin
- 2) complexity of system
- 3) felony-class based rather than offense based

Ohio - mandatory narrative guidance without a grid

Strengths -

- 1) narrative questions posed by the judge were more particular/useful than other such questions studied
- 2) non-grid approach does not “reduce an offender to numbers”

Weaknesses -

- 1) elaborateness of system would seem to make it take too long to sentence an average case
- 2) sentence ranges for serious/violent felonies could be insufficient to protect public safety
- 3) recidivist calculation too complex

Federal - mandatory guidelines using grid with 258 cells

Strengths - 1) accurate prison population and cost projection capabilities

Weaknesses - 1) less flexibility for judges, prosecutors, and defendants than Wisconsin desires
2) incompatible with 1997 Wis. Act 283 mandate that guidelines be “advisory”
3) too complex
4) grid approach “reduced an offender to numbers”
5) those intimately familiar with the system objected to its adoption for reasons 3) and 4), among others

Former Wisconsin - advisory guidelines using a grid with 6 to 16 cells

Strengths -- 1) Strong foundation in historical research
2) Judiciary’s familiarity with framework
3) Offense-based system

Weaknesses -- 1) Perceived as “least common denominator” approach
2) Comments from those who used the former guidelines that even in 1995, when they ceased to be used, sentencing ranges were too low

C. Conversion Table

The Committee developed a conversion table, the purpose of which is to numerically convert “old world” indeterminate sentences to “new world” Truth-in-Sentencing determinate sentencing ranges.²⁷⁶

On the back of this table, information was provided converting old indeterminate sentences to Truth-in-Sentencing converted sentences based on the average prison time served to first release for (a) assaultive, (b) sexual assaultive, (c) drug, and (d) property/other crime categories. The time served percentages are based on very broad crime categories,²⁷⁷ to give judges an idea on where new world sentences could fall based on their knowledge of “old world” sentence numbers. Some concern was expressed with the conversion table’s use of averages from broad crime categories. Because those categories incorporate many crimes, sentences for severe crimes are decreased, and sentences for less severe ones are increased.

The four categories listed each consolidate numerous and disparate types of felonies. The percentage of time served at the top of each column represents an average over 7 years of prison time served for all of the felonies in that category. Thus, the sentence listed is merely an example of what an average Truth-in-Sentencing-converted sentence could be for an average felony in that category.

²⁷⁶ A copy of the conversion table is included at Appendix D.

²⁷⁷ Based on the most detailed Department of Corrections data available.

It should be noted that the former Wisconsin Sentencing Commission, with a staff of 5 people, took 11 years to develop 16 sentencing guidelines. Time constraints have limited this Committee to developing guidelines for the 11 crimes which consume the greatest amount of corrections resources - approximately 72%. The conversion table the Committee developed should be used in sentencing for all other crimes committed on or after December 31, 1999 until the Sentencing Commission develops additional and permanent sentencing guidelines.

D. Goals of Sentencing Guidelines Format

None of the other systems studied garnered enough support for the Committee to recommend that Wisconsin adopt it. Instead, the Committee decided to formulate a new advisory guidelines format. The format developed is unique - no other state has attempted to do what Wisconsin has done in this format.

The Committee discussed its goals for a sentencing guidelines system. Among those articulated were: (1) ensuring public safety; (2) achieving fairness; (3) preserving judicial sentencing discretion; (4) preserving individualized sentencing; (5) achieving proportionality in sentencing statewide, especially given the abolition of parole,²⁷⁸ and (6) achieving a greater level of predictability, so that the legislature, the governor, and the DOC may identify and plan for resource requirements, including cost.

The Committee determined that it did not want any sentencing guidelines system to undermine: (1) the independence of the judiciary by removing from the judiciary any key decisionmaking authority; or (2) the community's sense of the proper punishment for a crime.

E. Particular Issues Discussed

The Committee discussed numerous particular issues as it considered various sentencing guideline formats.

The Committee considered at length the merits and demerits of **“grid” versus “non-grid”** guidelines formats. A grid system would incorporate a graph with two axes upon which offender risk (horizontal axis) and offense severity (vertical axis) are measured. A non-grid system would ask a series of narrative questions to guide the judge's sentencing logic.

²⁷⁸ Under Truth-in-Sentencing, all of the sentencing discretion will be at the front end of the process in the hands of the judge, rather than part of it at the back end of the process being shared between the Parole Commission and the DOC. With the abolition of parole and other forms of early release, proportionality will have to be achieved by proper classification of crimes - “vertical” proportionality, in that crimes are in properly descending order, most serious to least serious - as well as by the implementation of appropriate sentencing guidelines - “horizontal” proportionality, which will produce comparable sentence lengths for comparable crimes statewide.

All members agreed on the **necessity to preserve advocacy** in the sentencing process. Advocacy humanizes victims, as well as the defendant, and elucidates offense characteristics necessary to make the best sentencing decision. Accordingly, where possible, the guidelines format raised particular questions for the judge's consideration, and for litigants to use in advocating their client's position before the judge.

The Committee wanted the guideline format and any accompanying documents to provide **valuable information** to the sentencing judge and to the litigants. More than a checklist, the guideline format ought to bring before the judge and litigants key issues and topics to be covered such that the sentencing exercise would be more accurate and productive for all involved.

The Committee discussed the issue of how the guidelines format should consider **concurrent versus consecutive sentences**. Rather than attempt to include such calculations, the Committee decided to let this issue be handled as it was under the former Wisconsin sentencing guidelines: a separate calculation would be made for each count, and the judge would calculate the total sentence as the judge wishes.

Concern was expressed that if **non-violent misdemeanors** were included in Sections II-C-2 and II-C-3 of the criminal history calculation in the worksheets, it would result in an undue impact on racial minorities, as historically misdemeanor cases might go forward against residents of the City of Milwaukee, but not that city's surrounding suburbs. Accordingly, non-violent misdemeanors were not included in the criminal history calculation in the guideline worksheet in Sections II-C-2 and II-C-3.

Appellate review was also discussed. There was no sentiment on the Committee to recommend a change in current law and practice.

Whether and how much **guidance to give for extended supervision** was also discussed. Act 283 provides that the period of ES must be equal to at least 25% of the confinement period in the sentence. Given the potential contingent prison liability of long periods of ES, the Committee discussed whether each guideline should include recommended ES ranges. But because each offender's characteristics will differ greatly, the Committee decided not to recommend a standard or presumptive term of ES, instead leaving it to the individual sentencing judge's discretion. The Committee addressed this issue by recommending caps on the maximum period of ES.²⁷⁹

F. The Different Guideline Formats Discussed

The Committee considered different proposals for this sentencing guidelines format, including the following:

²⁷⁹ See Part II.C.3, pp. - - .

a. “Rule-of-Law” sentencing guidance

The supporters of this proposal pointed to public safety as the overriding principle underlying felony sentencing. It asks the judge to determine what version of the crime the offender committed (for example, what type of burglary had been committed - professional, retaliatory, opportunistic, or thrill-seeking?). The answer to this question is relevant to public protection and punishment deserved. The judge is to look at certain relevant facts and circumstances. These would include facts about the offense - e.g., what type of premises was burgled? - as well as facts about the victims - e.g., was the victim a vulnerable person, and was the victim known to the perpetrator to be vulnerable? These facts will affect what punishment is deserved, and what future risk the offender may be.

The judge would also examine facts about the offender’s character and behavior. Initially, the judge would look at prior crimes and bad acts. Under this proposal, the judge would be told that prior offenses may render an offender more deserving of punishment for the current crime, but the judge would be required to look at the type of prior offense. This proposal sought to have the judge engage in a reasoning process about prior convictions to see what is relevant to the offense and what is not.

Other factors the judge would consider include the offender’s legal status at the time of the crime, the offender’s age, and his employment and family status. This proposal would consider aggravating and mitigating circumstances, but not label them as such, on the theory that some circumstances can be aggravating in one context and mitigating in another. Rather, this approach would instruct the judge to weigh the itemized circumstances of the crime by asking two fundamental questions: (1) Can the sentence contain the risks posed by the offender’s return to the community?, and (2) Can punishment deserved by this offender be effective within the community? If the answer to both questions is “no,” the judge must sentence the individual to prison within the range provided. A judge may depart upward or downward from the stated range if the judge, in analyzing these factors, determines that a sentence outside the guideline range was warranted.

Some members thought the benefits to this proposal were that it tells litigants in advance what information to present to the judge, gives guidance to the judge about how to use the information, directs the judge to decide based on current sentencing case law requiring that the least restrictive form of punishment be used, and it avoids the use of a grid. This lack of a grid was the essential difference between this and the other approaches. Supporters of this proposal felt that scoring prior crimes was deceptive and under-punished those offenders who deserved greater punishment because they did not have a prior bad act or prior crime, and over-punished those whose prior bad acts or crimes were not related to this particular crime.

Critics of this proposal found it amorphous, and that its use could lead to contradictory results for similarly situated offenders. They saw this proposal having no ability to predict corrections numbers or resources. They also thought the format was too

long, and unwieldy. Also, they thought racial bias might be inserted if an offender's prior record was not considered in an objective manner. If the judge was not given an objective indication of what criminal history should result in what level of punishment, that judge could use any excuse to punish a defendant of one race one way and a defendant of another race in another way. Another concern with this approach was the lack of guidance the question "What type of burglary was this?" actually provides.

b. Former Wisconsin sentencing guidelines with monthly ranges adjusted for time-served

Another proposal offered was based on the theory that actual prison time served under determinate sentencing should equal Truth-in-Sentencing. Under this proposal, the former Wisconsin sentencing guidelines would be adopted in all respects except for the numbers contained in the cells in the guideline matrix. Those monthly ranges would be converted to actual time served in prison. As sentence lengths increased, the percentage of the sentence actually served increased. Those increasing percentages of time-served would be multiplied by the increasing sentences in the matrix to give truthful ranges to be used.

Proponents of this proposal thought it would be truthful and would direct judges to mete out sentences in the new determinate system equal to the time periods which offenders actually served under indeterminate sentencing. Supporters also thought this proposal had a statistical foundation in the former Wisconsin sentencing guidelines, and judge and litigants would still be familiar with it. Further, if this approach to guidelines is followed, and if judges adhered to the guidelines, neither the number of prisoners nor costs would increase any more than they would have before Truth-in-Sentencing was enacted. This proposal continued to recognize that prior record and offense severity were the two key factors that made a statistical difference in all sentences studied over many years and thousands of sentences. The former Wisconsin sentencing guidelines also allowed for consideration of aggravating and mitigating factors related to the crime and the offender.

Critics of this proposal noted that the data relied upon in the former Wisconsin guidelines was 5, and sometimes 10 years old at the time work ceased on these guidelines in 1995. Also, many of the people in the criminal justice system who used the former guidelines said that since the ranges were based on old data, significant adjustments to the sentence ranges would be necessary. Other detractors thought that the grid did not sufficiently take into account an offender's circumstances. The grid created a starting point into which an individual is automatically plugged; for any negotiation, that starting point could inflate sentence lengths.

c. "Merged" approach

An approach drawing on the strengths of both the Rule-of-Law approach and the former Wisconsin guidelines was also considered. This proposal attempted to maintain some of the benefits of a grid guideline system (proportionality, predictability, neutrality)

while preserving individualized sentencing and judicial discretion. The main objective of this proposal was to produce a clear starting point based upon criminal history, which is generally regarded as a reliable predictor of recidivism. In addition to the objective treatment of criminal history, this approach directed the judge to evaluate the severity of the offense, as well as various itemized aggravating and mitigating factors. Some of these factors would be general in nature, and some would be crime-specific.

This proposal originally retained a version of criminal-history scoring from the former Wisconsin guidelines (the horizontal axis), but with some substantial differences. Unlike the former guidelines, this proposal contained no offense severity scoring (the vertical axis); rather, it categorized the offense as aggravated, intermediate, or mitigated. Finding the intersection of the two axes would give the judge a starting point with a range of prison or probation. The judge would proceed from this range to the aggravating and mitigating factors, both general and crime-specific, and arrive at a sentence particular to the offender but also proportionate to similarly situated offenders statewide.

Supporters of this proposal thought it gave the judge and the litigants some idea as to where a judge is likely to start the sentencing analysis. This would allow litigants to structure their arguments accordingly. Critics felt that the criminal history scoring lent an improper scientific caste to past criminal history, and overweighed that factor in assessing an offender's risk.

G. Decision on Sentencing Guideline Format

The Committee discussed these various proposals at length. The Committee approached the choice of a guideline format as an evolutionary process. The Committee attempted to incorporate some of the aspects of each of the proposals. Ultimately, the committee decided to recommend a two-page **worksheet**²⁸⁰ with accompanying **notes**.²⁸¹

The worksheet was drafted such that before sentencing, the **presentence** writer or a person designated by the judge could fill out all but 1 section.

In Section I of the worksheet, **offense severity** is assessed. This directs the judge to consider: (a) factors affecting the severity of the crime, (b) the harm caused by the offense, (c) the offender's role in the offense, (d) statutory sentencing aggravators (former penalty enhancers), and brings to the courts attention (e) other factors relating to offense severity. A crime's severity is ranked as mitigated, intermediate, and aggravated. This assessment includes statutory aggravating factors, non-statutory aggravating and mitigating factors, as well as crime-specific **factors**.²⁸²

In Section II of the worksheet, **risk assessment** is evaluated. This directs the judge to consider: (a) factors that may suggest heightened or lesser risk of future criminal conduct, including prior acts (whether or not convictions or adjudications), the

²⁸⁰ See Appendix E.

²⁸¹ See Appendix F.

²⁸² See Part II.D.4., pp. -- ____.

offender's age, employment, character, family/community ties, alcohol/drug dependency, drug treatment, and performance on bail; (b) the offender's criminal convictions or juvenile adjudications which, if present in various specified combinations, should generally result in placement of the offender in a specified risk range. Criminal history should be assessed with caution, and the judge is to consider whether prior criminal convictions fairly reflect risk to public safety or to re-offend. The worksheet poses normative questions concerning an offender's prior criminal history as a guide toward certain risk levels. It also asks litigants to identify and evaluate factors that bear upon the offender's future risk to public safety and directs the judge to determine which factors are relevant. At the end of this Section, the judge is asked to consider whether the score improperly understates or overstates the offender's future risk to public safety. This risk assessment is ranked lesser, medium, and high. The format was altered to remove numerical criminal history scoring in favor of a narrative approach. The lesser, medium, and high risk ranges roughly approximate the types of offenders judges encounter. A judge may decide for a variety of reasons to move a defendant out of a generally specified range if the judge concludes that the risk assessment does not accurately reflect the offender's circumstances.

In Section III. of the worksheet, the judge consults a **9-cell graph** where these two assessments intersect. This gives the judge an advisory starting point from which to begin to sentence the offender. The percentage of offenders placed on probation for this offense over the last 5 years is listed. A description of an intermediate version of this offense is included for reference. The concept of extended supervision is addressed below the chart.

The worksheet also directs the judge to consider additional important factors which may warrant adjustment of the sentence are listed, such as uncharged read-in offenses, acceptance of responsibility, attorneys' recommendations, restitution paid at great sacrifice before sentencing, and the effect of multiple counts.

Along with the worksheet, the Guidelines Subcommittee has drafted detailed **notes**²⁸³ that elucidate for judges and litigants many of the considerations and concepts underlying the questions posed on the worksheet.

This format has the strengths of assessing offender risk using a variety of factors, including criminal history, and employing narrative questions which guide the judge's sentencing reasoning. The guideline system is not overly complex, so it is capable of being used in a high-volume felony court. Further, the use of a graph will allow for some corrections population and cost projection capabilities. This middle-ground approach addressed the concerns about the use of a purely narrative approach, such as the Rule-of-law proposal, as well as a purely numerical approach, such as the former Wisconsin sentencing guidelines.

Per the direction of 1997 Wis. Act 283 sec. 454(e) 4-5, this format maintains the advisory nature of sentencing guidelines for the flexibility of judges and litigants.

²⁸³Appendix F.

H. Monthly Ranges for the Graph in the Guideline Format

On June 11, 1999, a survey was conducted of a number of circuit judges from around the state to help determine sentence ranges for the graph to be used in the temporary advisory sentencing guidelines recommended by this committee.

Forty-seven judges who were thought to represent different viewpoints, different areas of the state, and who are particularly experienced in felony sentencing were invited to Madison for a survey on June 11, 1999. Of the invitations extended, 18 judges accepted and attended the meeting, which was facilitated by former Wisconsin Supreme Court Justice Janine Geske.

At the meeting, the judges identified the general characteristics of low-risk, medium-risk and high-risk offenders, and the mitigated, intermediate and aggravated forms of the 11 major crimes which consume the vast majority - 72% - of corrections resources. Those crimes are:

1. **Burglary**
2. **Theft**
3. **Forgery/Uttering**
4. **Robbery**
5. **Armed Robbery**
6. **Possession of Controlled Substance With Intent to Deliver Cocaine - 1 gram or less²⁸⁴**
7. **Possession of Controlled Substance With Intent to Deliver Marijuana - 200-1000 grams²⁸⁵**
8. **1st Degree Sexual Assault**
9. **1st Degree Sexual Assault of a Child**
10. **2nd Degree Sexual Assault**
11. **2nd Degree Sexual Assault of a Child**

The statutory maximums recommended by the code reclassification subcommittee were used. The list of offender and offense characteristics compiled by the judges became valuable as the full committee reviewed the sentencing ranges in the guidelines worksheets. While there was not always universal agreement - *e.g.*, some judges thought an addiction was an aggravating factor, others thought it was a mitigating factor - judges agreed on almost all of the indicia of a criminal's risk and an offense's severity.

After discussing the characteristics of each crime, the judges wrote ranges of punishment into each cell of a 9-cell graph to be inserted into whichever guideline format the committee ultimately chose. For each crime, Justice Geske led a discussion among the judges as to what ranges they placed in which cells and why. Judges were

²⁸⁴ The Committee proposes this new crime. See p. _____.

²⁸⁵ The Committee proposes this new crime. See p. _____.

encouraged to rethink the ranges, and then submitted these draft graphs for tabulation by committee staff.

Medians were used to calculate minimum and maximum numbers for each of the cells in the graphs. There was horizontal and vertical overlap between the ranges in the cells: e.g., the highest number in the cell for a low-risk offender, committing a mitigated version of an offense, would be higher than the lowest number for a medium-risk offender committing the same version of the same offense. Also, the judges were surveyed as to whether or not they would recommend that the standard term of ES be presumptively set at 25% of the confinement term. The judges' responses to that inquiry - overwhelmingly "no" - were listed on the bottom of the draft graphs distributed to the committee members. Most thought that the amount of ES time should vary based upon the offender's risk.

Topics of discussion among the judges at the survey included how many cells should include probation as the lower number in the range in the cell, and whether or not the maximum term for each crime should generally be included in the last cell in the graph. The judges who attended worked hard and patiently in order to come up with sound, middle-of-the-road ranges for the cells in the graphs for the various crimes.

The draft graphs were the topic of discussion at three separate Sentencing Guidelines Subcommittee meetings. A symmetry emerged in the monthly ranges in the cells. For each crime, the median low was probation, and the median high was the statutory maximum. For most crimes, for a low-risk offender committing an aggravated version of an offense, a range of punishment was given identical to a range of punishment for a medium-risk offender committing an intermediate version of the same offense. Also, judges tended to give a higher sentence to an offender with an extended criminal history even though the offender had committed a more mitigated version of an offense, in contrast to a first-time offender or low-risk offender who had committed the most aggravated form of an offense.

The consensus among all who worked with the monthly ranges was that they wished to see relatively broad ranges in each cell to maintain a great deal of flexibility.

The former Wisconsin guideline monthly ranges for the same 11 crimes were also adjusted for the time period actually served. Those ranges were then reviewed by the guidelines subcommittee, but the resulting monthly ranges were so low as to cause concern among some members that the ranges were insufficiently punitive, and would not adequately protect the public. Ultimately, the subcommittee rejected their use in the graphs.

For the Committee's work to be credible, it was concluded that the cell for the high-risk offenders committing the most severe version of the crime had to include the statutory maximum time in prison, and that the cell for the least-risky offenders committing the most mitigated version of the crime had to incorporate the statutory minimum of 1 year in prison.

The judicial survey approach was not without its critics. A judge filling in the graphs might be doing different things: sentencing as he would normally sentence an offender; and setting up ranges of guidelines for judges to use when sentencing. However, judges were told to draw on their experience sentencing a variety of offenders who had committed these various offenses in their various permutations. Those who participated in the survey thought that the judges were applying their judgments as to the proper sentence range for each cell. The judges paid attention to the minimum in each cell, as they recognized the practical realities of sentencing decisionmaking.

The judicial survey did not purport to be a scientific process. Rather, it was an attempt to get a general reaction from judges as to what ranges they would like to see in a graph such as the committee recommends. The indicia of each cell, both offender risk and offense severity, were scrutinized, and judges were encouraged, after they initially filled out the graph, to change the numbers they inserted if they changed their minds after group discussion of the numbers.

The survey demonstrated a fair amount of agreement among judges, even from different places in the state and different points of view, as to how like offenders committing the same offense should be treated. It was not possible to list all of the indicia for a sentencing range. Since the sentencing guidelines are ultimately advisory, judges will be free to move among the ranges based upon the facts and circumstances of each offense and offender.

Given time and resource constraints, the judicial survey was the equivalent of the “wise person” approach advocated by sentencing expert Kay Knapp from Minnesota, who addressed the full Committee at its first meeting on August 28, 1998.

It is important to note that the former Wisconsin Sentencing Commission with a staff of 5 persons took 11 years to develop 16 sentencing guidelines. Time constraints have limited this Committee to developing sentencing guidelines for the 11 crimes which consume the greatest amount of corrections resources - approximately 72%. The conversion table should be used during “new world” sentencing of all other crimes. Given time and resource constraints, the Committee could not validate either the sentencing guidelines worksheets or the monthly ranges in the graphs,

I. Interplay of Former Penalty Enhancers as Statutory Aggravators

As discussed above at Part II.D.4, pp. , ___ - ___ the Committee recommends that certain penalty enhancers be retained, others be repealed, and still others be transformed into statutory aggravators to be considered at the time of sentencing.

The guideline worksheets include a section in which it is suggested that the judge consider such statutory sentencing aggravators. See Appendix E, Part I.D. of each of the guideline worksheets.

PART IV

THE SENTENCING COMMISSION

Statutory charges:

"d. Creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing a bifurcated sentence."²⁸⁶

As this Committee studied the Wisconsin corrections system, it became clear that the various criminal justice and corrections agencies and departments within state government spoke with each other very little if at all. Often the left hand does not know what the right hand is doing. Even if one agency was aware of the activities of another, that entity's computer system was not compatible with any other entity such that they could work together to solve problems that cross departments or agencies.

The Committee envisions a Sentencing Commission as a large, broad-based group that will review sentencing policy for the state. The Sentencing Commission should act as a link between various state criminal justice agencies, and as a bridge between the legislature and the Department of Corrections ("DO,"), to discuss corrections and criminal justice issues. The Sentencing Commission also should have a research role.

A. Justification for Sentencing Commission

Even if there were no legislative mandate for a Sentencing Commission, the creation of a Sentencing Commission is desirable for a number of reasons:

a. Truth-in-Sentencing significantly increases judicial responsibility to sentence fairly and for the appropriate length of time because of the elimination of parole which has functioned in the past as a safety valve in ameliorating unduly harsh or severe sentences. A Sentencing Commission can be of assistance to sentencing judges by suggesting sentence standards through sentencing guidelines.

b. Presently, judges sentence with very little knowledge of empirical studies of the effectiveness of one kind of sentence versus another, or the indicia of dangerousness of an offender, or of the effectiveness and availability of treatment programs. A Sentencing Commission can monitor sentences, carry out sentencing studies, collect data and publish information relating to the effectiveness of sentencing options.

c. The Committee found that there was a paucity of sentencing data for Wisconsin courts, that what data there was, was not reliable or organized in such a way as to provide useful information concerning sentencing practices, and that there was no electronic

²⁸⁶ See 1997 Wis. Act 283 sec. 454(1)(e)4-5.

transfer of data between the court system and DOC, each of which had data the other would find useful. Further, there was little or sporadic communication between the court system, the prosecution, the public defenders and corrections regarding the effectiveness of sentences. A Sentencing Commission can act as a bridge among prosecutors, public defenders, the courts, and DOC to promote a more rational and coherent approach to the sentencing of criminals.

d. The Committee found the prediction of future probation, parole, and prison populations to be a surprisingly unsophisticated process. A Sentencing Commission can assist the governor and legislature by more accurately predicting prison and probation populations for budgeting purposes through its utilization of both the CCAP and DOC data bases.

e. Frequently, the legislature feels pressure to pass criminal penalty laws in response to notorious crimes, without the benefit of a cost analysis of the impact of that new law on the court system or the prison population. Such quick response legislation is sometimes passed without an understanding of its effect upon other criminal laws or that criminal laws already exist which can adequately handle the problem. The result has been a hodge podge of overlapping and conflicting criminal penalty provisions which create confusion at trials and impede the effective administration of justice. A Sentencing Commission can review proposed criminal legislation as to its impact on the court system, the probation and prison population, and cost to the state.

B. The Sentencing Commission's Functions, Role and Authority

The Sentencing Commission should monitor sentencing practices in the state to modify sentencing guidelines according to public safety needs and changes in sentencing practices, to preserve the integrity of the system, and to compile data regarding anticipated needs.

The Sentencing Commission should report to the legislature in order to anticipate DOC budget needs, gain public support and public understanding of sentencing practices, and inform the legislature and other agencies of anticipated needs in corrections. The Sentencing Commission should use the computer model developed by this Committee to accomplish this.

The Sentencing Commission should work with the state legislature's budget office to project the fiscal impact of any proposed new criminal laws and changes such that the legislature make an informed decision on same. The Committee foresees this function as similar to that contained in a proposal recently considered by the Joint Finance Committee requiring fiscal estimates for legislative bills with penalty provisions, referred to as the "prison pay-as-you-go" plan.

At least on a limited basis, the Sentencing Commission should take the lead in teaching the sentencing guidelines. It should also aid in educating judges, prosecutors, public defenders and the private bar concerning sentencing guidance.

The Sentencing Commission should issue statistics, updated semi-annually, or even quarterly if possible, publishing what sentences offenders received, on which crimes, both statewide, and by geographic area: Milwaukee County, Dane-Rock Counties, the Fox Valley, Racine-Kenosha Counties, and the rest of the state. These reports should be distributed to all judges.

These reports should have a different substantive theme each year to prevent them from becoming a purely statistical compendium. The Sentencing Commission should issue a public annual report with any proposed sentencing guideline revisions.

C. Sentencing Commission Membership

The Committee decided that the new Sentencing Commission should have a make-up similar to the Criminal Penalties Study Committee. The Sentencing Commission should have 17 regular members:

- The state attorney general or designee
- The state public defender or designee
- 7 members appointed by the Governor, including 2 not in public employment
- 1 member from the political party other than the Governor's²⁸⁷
- 2 circuit judges appointed by the Supreme Court
- 1 member appointed from the state senate
- 1 member appointed from the state assembly
- 1 victim's advocate appointed by the attorney general
- 1 district attorney appointed by the attorney general
- 1 private defense attorney appointed by the criminal law section of the State Bar of Wisconsin

The Sentencing Commission also would have 3 ex officio, non-voting members:

- The secretary of corrections or designee
- The parole commissioner or designee
- The state court administrator or designee

The Governor should appoint the chair of the Sentencing Commission.

A term of service on the Sentencing Commission should be for 3 years. The Committee recommends no term limits because of the specialized and detailed knowledge members will accrue over time regarding sentencing issues. The terms should be staggered so that members already on the commission could educate new members.

²⁸⁷ Appointed by the state senate majority leader or minority leader, whichever applicable.

D. Sentencing Commission Staff and Budget

Through research of other states' sentencing commission's, especially Virginia's, the Committee recommends that the Sentencing Commission have a staff of 6 persons. Although the Sentencing Commission itself should decide the functions of the various staff members, the Committee thought that a good breakdown of the 6 positions could be:

- 1 executive director
- 1 deputy director
- 1 data entry operator
- 2 research analysts
- 1 training coordinator

A cost estimate for the new sentencing commission is attached at Appendix C.

E. Duration of Sentencing Commission

The Committee debated whether the new Sentencing Commission should be temporary or permanent. The Committee recommends that after the Sentencing Commission's initial run of 5 years, the Sentencing Commission would sunset with a provision for legislative review to decide whether or not the Sentencing Commission should continue.

F. Character of Sentencing Commission

The Committee proposes that the new Sentencing Commission be attached to the Department of Administration for all administrative support services, as was the previous sentencing commission.

G. Scope of Sentencing Commission's Responsibility

Committee members agree that for the commission to have the powerful policy role the Committee envisions, the selection of an executive director will be important.

H. Enactment and modification of guidelines

The Sentencing Commission should promulgate annually new sentencing guidelines or revisions to existing guidelines.

PART V

EXTENDED SUPERVISION AND ITS REVOCATION

Statutory charge: *“f. Changing the administrative rules of the Department of Corrections to ensure that a person who violates a condition of ES is returned to prison promptly and for an appropriate period of time.”*²⁸⁸

A. Act 283’s New Bifurcated Sentence Structure

Act 283 provides that if a court chooses to sentence a felony offender to a term of imprisonment in a state prison for a felony committed on or after December 31, 1999, the court must do so by providing a bifurcated sentence that includes (a) a term of confinement in prison, followed by (b) a term of extended supervision (“ES”) in the community. The term of ES must equal at least 25% of the length of the term of confinement in prison. After the offender completes the prison component of the bifurcated sentence, the offender serves the term of ES subject to conditions set by both the court and DOC and under the supervision of DOC. If a person violates a condition of ES, supervision may be revoked and the person may be returned to prison for a period of time which may not exceed the amount of remaining ES.²⁸⁹

B. Subcommittee Approach

Given this Committee’s charge, it asked representatives from each of the entities involved in the present probation and parole revocation process to participate, in a non-voting capacity, at its meetings. The Committee received assistance from key participants in the probation and parole process: DOC Division of Community Corrections and the DOC office of legal counsel, Department of Administration (“DO,” division of hearings and appeals (including that division’s administrator and at least one administrative law judge), state public defender’s office, and state attorney general’s office. The Committee relied on these representatives to educate Committee members on the revocation process, to give background information, and to answer members’ questions. This arrangement allowed those who participate in the revocation process and who will be affected by the statutory and administrative law changes to participate in formulating the proposed recommendations.

C. Extended Supervision (“ES”) Procedure

To determine whether, and if so how, any administrative law changes should be made concerning ES, the Committee had to understand what ES will look like in the

²⁸⁸ See 1997 Wis. Act 283 sec. 454(1)(e)6.

²⁸⁹ Explanation of some of the details of ES and its revocation procedure in Act 283 may be found in Legislative Council Staff Information Memorandum 98-11 at pp. 9-13, and in Legislative Fiscal Bureau Informational Memorandum # 55 at pp. 4-7.

“new world” of Truth-in-Sentencing on and after December 31, 1999. Accordingly, the Committee began its study by describing what they thought ES should look like, and then sought reactions from the DOC.

The Committee believes that ES should consist of differing levels of supervision based upon an offender’s behavior. The Committee recommends that DOC start all offenders entering ES at a strict level of supervision, and that offenders may earn their way to lesser degrees of supervision as a result of good behavior. Considerations as to the appropriate level of supervision should include:

- a. the length of that offender’s ES term
- b. the offender’s dangerousness
any movement among levels of supervision by that offender
- c. the offender’s treatment needs
- d. the existence/non-existence of a community environment/support network

The model the Committee used for strict supervision was described by the Intensive Sanctions Review Panel which issued its report in February 1998.²⁹⁰ Its primary goal is to enhance public safety. In the Panel’s strict supervision model, offenders may earn less restrictive levels of supervision only as a result of positive, measurable performance. It assumes a staff caseload of 20 offenders per agent. The purchase of service cost per offender would be expended upon halfway houses; confinement beds; alcohol, drug abuse, and sex offender programming; day reporting centers; employment programming; and psychological services.

The strict supervision model will allow for reduced caseloads in contrast to current parolee-to-agent ratios. This lower ratio will allow increased frequency of contact with offenders. Offenders will be required to participate in employment, education, treatment, and community services. Violations of supervision rules will meet with swift and sure consequences. The model employs streamlined due process procedures for confinement of offenders for violations of supervision. Agents in cooperation with the police actively search for, apprehend, and process absconders. Program operating hours are extended to 24 hours per day, 7 days per week. Increased use of computer technology for more efficient and effective supervision would be employed, and data collection would be implemented for ongoing evaluation of the program to measure improvements in community safety.

The DOC - Division of Community Corrections (“DCC”) took these recommendations from the Committee and gave them detail. DCC also made a detailed cost breakdown of this strict supervision model. That estimate was an annual cost of \$8,881 per offender, with a startup cost of \$10,464 per offender.²⁹¹ This annual cost is less than one-half of the annual cost of a prison bed in Wisconsin, which is \$19,330,²⁹²

²⁹⁰ See pp. 15-18 of that report.

²⁹¹ See Grosshans Jan. 20, 1999 memorandum to Judges Barland and Fiedler, attached as Appendix G

²⁹² See Grosshans handout at July 9, 1999 CPSC meeting, a copy of which is in the committee’s file.

and slightly more than six times the annual cost of traditional probation and parole supervision in Wisconsin, which averages \$1 ,400²⁹³ annually for each offender supervised. The Committee believes that stricter and stronger supervision of offenders on ES will reduce the number of violators returned to prison.

The state attorney general's office evaluated the strict supervision model and concluded that it meets basic due process requirements, as long as offenders being supervised on ES who enter strict supervision are not placed in Phase I (incarcerative) supervision. Supervision cannot be the same as confinement, as currently defined in the statutes.

The Committee recommends the strict supervision model as the initial stage of ES in order to increase the panoply of sanctions available to the DOC to match the spectrum of possible ES violations. As described below, the Committee emphasizes that its recommendation for strict supervision requires a sufficient number of local confinement beds to assure that offenders who violate ES will be held accountable swiftly. This will require that sufficient funding be allocated.

A graphic representation of ES follows:

²⁹³ See Grosshans handout at July 9, 1999 CPSC meeting, a copy of which is in the committee's file.

	EXTENDED SUPERVISION
A. Primary Goal/ Population	Enhanced public safety by the strict supervision of all offenders returning to a community setting from prison.
B. Supervision Standard	<p>Outcome-based Supervision</p> <p>Key components:</p> <ul style="list-style-type: none"> • Movement to less restrictive supervision as a result of positive measurable changes • Minimum of twice weekly face-to-face contacts • Four additional collateral contacts per week • Mandatory employment, school and/or community service • Mandatory electronic monitoring
	<p>Supervision Standards</p> <ol style="list-style-type: none"> 1. 'High Risk' <ul style="list-style-type: none"> • weekly face-to-face contacts • two home visits per month • electronic monitoring is at the agent's discretion (however, for certain sex-offenders, electronic monitoring is mandatory) 2. Maximum <ul style="list-style-type: none"> • face-to-face contact every 14 working days • monthly home visits • electronic monitoring is discretionary 3. Medium <ul style="list-style-type: none"> • monthly face-to-face contacts • home visits every other month 4. Minimum <ul style="list-style-type: none"> • face-to-face contacts every three months, monthly reports by mail on those months when not reporting in person • home visits at agent's discretion 5. Contract Supervision (for some administrative/minimum cases) <ul style="list-style-type: none"> • State has a contract to supervise certain minimum/administrative cases. These are phone-in contracts over a "900" telephone line. (These are usually "collection only" cases where an offender owes restitution/other court fiscal obligations. Offenders are stable in job, etc.) 6. Intensive Sanctions (ends as a sentencing option on December 31, 1999)Phase system (four phase, the first in a secure facility, the other three in the community) where an offender is required to have numerous face-to-face contacts each week at the agent's office, offender's residence, work or school; mandatory urinalysis; mandatory work/school/community service; electronic monitoring is mandatory in two of the three community phases. Inmates earn their movement to other phases based on their behavior and minimum time requirements in each phase.

C. Staff Caseload	Ratios (Agents: Offenders) 1:20
	Ratios (Agents: Offenders) Numerous ratios presently: <ul style="list-style-type: none"> • intensive sanctions 1:25 • enhanced supervision projects (Racine/Dane Counties) 1:17 • high risk (varies by region) 1:20 / 1:30 • traditional caseload average 1:72
D. Purchase of Services/Resources	\$3,500 Per Offender <ul style="list-style-type: none"> • Housing (HWH, TLP) • Substance abuse programming • Sex offender programs • Employment Readiness/job skills training • Community service • Day report centers • Education
	1. \$48.62 per offender/year for probation or parole supervision 2. Intensive sanctions funded at \$2,190/offender
E. Hours of Work	Sevens days/week, 24 hour operation in select areas of the state
	1. Traditional supervision M-F, 7:45am-4:30pm 2. Intensive sanctions 7 days/week, 6:00am-10:00pm 3. Absconder Unit (Milwaukee) 7 days/week, 6:00am-10:00pm 4. Enhanced supervision (Racine/Dane) 7 days/week, hours vary 5. R.O.P.E. (Milwaukee)
F. Absconders	Caseloads of 1:20 would provide for active search for non-compliant offenders
	1. Created and funded in 1998 in Milwaukee. There are currently 20 absconder agents assigned to actively search for absconders 2. Enhanced supervision projects (Racine/Dane)
G. Transportation to the Community From Parole/MR	Mandatory DOC transport from prison to the community
	1. Mandatory DOC staff transport from prison to community for intensive sanctions and certain sex offenders 2. Offender is directed to report to the agent upon parole/MR
H. Institution Visits/Meetings	DCC staff required to meet with offender/ institution staff annually. In last year of institution of institution stay, DCC staff meet with offender/institution staff 6 months before extended supervision is to begin
	Not required - at agent's discretion
I. Urine Screening	Mandatory. <ul style="list-style-type: none"> • 'Baseline urine screens on all offenders at point of release' • At least weekly urine screens,
	1. Agent's discretion for traditional supervision model 2. Mandatory weekly for intensive sanctions 3. Federal requirement for truth-in- sentencing funds - 8% monthly of randomly selected parolees

J. Electronic Monitoring	Mandatory for all offenders upon return to the community
	<ol style="list-style-type: none"> 1. Mandatory for intensive sanctions in two of the three phases 2. Mandatory for some sex offenders 3. Agent's discretion for traditional supervision
K. Neighborhood Supervision	<p>Agents assigned/located in defined neighborhoods</p> <ul style="list-style-type: none"> • Active supervision • Teams of staff and police • Work with neighborhood associations/others • The neighborhood is our "client"
	<ol style="list-style-type: none"> 1. Developed in 1993, there is some form of neighborhood supervision in all regions of the state 2. Enhanced supervision projects (Dane/ Racine)-agents located in neighborhoods
L. Revocation/Return to Secure Confinement/Sanctions	<ol style="list-style-type: none"> 1. Streamlined revocation process for program removal 2. Update re-incarceration forfeiture grid 3. Provide mechanism for return of offenders to secure confinement for up to 90 days (involuntary)
	<ol style="list-style-type: none"> 1. Traditional supervision model - revocation process outlined in Administrative Code 331 2. Intensive sanctions - reduced due process provides for return to secure confinement 3. Sanctions - agent's discretion after consulting with supervisor
M. Technology	<ol style="list-style-type: none"> 1. GIS - statewide 2. Electronic monitoring - discussed 3. Global positioning - if available/ reliable 4. Polygraph - expand statewide 5. Pagers/cell phones - provide to all agents 6. Juris monitoring - expand 7. Remote alcohol units - expand 8. Offender identification cards - create them/require offenders to carry them.
	<ol style="list-style-type: none"> 1. Geographical Information System (limited use) 2. Electronic monitoring 3. Global positioning/tracking (tested) 4. Polygraphs for sex offenders (limited use) 5. Pagers/cell phones 6. Juris monitoring (domestic violence) 7. Remote alcohol units 8. Offender identification cards (Racine)
N. Victims	Increase emphasis on rights of victims/ notification
	<ol style="list-style-type: none"> 1. 10,000 victims registered in the Parole Eligibility Notification System (PENS) 2. Victim Advisory Committee
O. Community Advisory Boards	Required community advisory boards statewide
	Beginning to implement boards

P. cost	\$8,881 per year
	1. Probation and Parole - \$1,400 per year 2. Intensive Sanctions.- \$7,400 per year
Q. Secure Beds	Will require secure beds
	1. Use of county jails/reimbursement for felony non-criminal violations 2. Milwaukee <ul style="list-style-type: none"> • 125 beds at county jail • 300 beds at House of Correction • 300 beds at Racine Correctional Institution • 1048 bed facility to open February, 2000 3. Biennial Budget <ul style="list-style-type: none"> • Secure P/P Hold Facilities

D. Sanctions for Violation of ES Condition(s)

After it hypothesized what ES will look like, the Committee addressed the possible sanctions for violation of an ES condition or conditions. The Committee envisioned three tiers of such sanctions:

1. Alternatives-to-revocation (“ATR”)
2. Confinement Sanction
3. Revocation

The Committee’s recommendations as to each of these tiers are explained below.

1. Alternatives-to-Revocation (ATRs)

The Committee concluded that current alternatives-to-revocation should remain unchanged, with one exception, explained immediately below.

Current ATRs include:

- a. modify the rules of supervision (e.g. no contact provision)
- b. increase the level of supervision
- c. complete a program (e.g. anger management)
- d. community service
- e. halfway house placement
- f. electronic monitoring
- g. formal alternative to revocation in a state correctional facility (felons only)
- h. curfews/home confinement
- i. return the offender to court to modify the rules of supervision

The one current ATR the Committee thought should not be retained was detention for disciplinary purposes, which requires supervisory approval and cannot exceed 5

working days pursuant to Wisconsin Administrative Code DOC 328.22(c)(3). This ATR would be eliminated in favor of “time-out,” explained below.

When an ALJ determines whether a violation of supervision has occurred, the ALJ must address the availability of reasonable alternatives-to-revocation pursuant to the ruling in Plotkin v. Department of Health & Social Serv., 63 Wis. 2d 535,217 N.W. 2d 64 1 (1974). The committee heard from various individuals who worked with the revocation process that over the years the Plotkin criteria had been codified in Chapter Hearings and Appeals 2 of the Wisconsin Administrative Code.²⁹⁴

The Committee heard from many individuals unhappy with the current interpretation of the Plotkin criteria. It became clear that certain ALJ's, and others in the revocation process, were interpreting the criteria to mandate that a supervising agent attempt all possible alternatives to revocation before an offender being supervised could be revoked. Accordingly, the subcommittee has reviewed and revised applicable statutory and administrative law language to ensure that a supervisee may be revoked without the ALJ mandating that all possible alternatives-to-revocation be attempted.²⁹⁵ The Committee recommends that these proposed revisions be adopted.

2. Confinement Sanction

No legal sanction currently exists between an alternative-to-revocation and full revocation. State agencies that assisted the Committee's work - including the state public defender's office, which now represents many probation and parole violators - desired a punishment mechanism short of full revocation, and less transparent than a disciplinary hold without an actual intent to revoke. Such a sanction will provide a less expensive solution to meet the problem of punishable but not revocable conduct than an offender on supervision occupying a \$20,000 prison bed, which is in such short supply.

After many discussions, the concept of the confinement sanction evolved. This sanction is short of full revocation for violation of an ES condition or conditions. The

²⁹⁴ The Wisconsin Supreme Court in Plotkin had adopted the American Bar Association standards relating to probation, which provide:

Revocation followed by imprisonment should not be the disposition, however, unless the court finds on the basis of the original offense and the intervening conduct of the offender that:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

. . . In any event, the following intermediate steps should be considered in every case as possible alternatives to revocation:

- (i) a review of the conditions, followed by changes where necessary or desirable;
- (ii) a formal or informal conference with the probationer to re-emphasize the necessity of compliance with the conditions;
- (iii) a formal or informal warning that further violations could result in revocation.

Plotkin, 63 Wis. 2d at 544-45.

²⁹⁵ See Appendix H.

confinement sanction would involve confinement for an amount of time not to exceed 90 days in an ES regional detention facility, if available, or if not available, a county jail. If violations are alleged, and there is a signed admission of **same**,²⁹⁶ then an ES agent can either: (a) invoke an ATR; or (b) impose up to a 90 day hold in confinement; or (c) begin the revocation process.

To successfully put the confinement sanction into practice, a number of requirements will have to be met. First, sufficient funds must be allocated for ES regional detention facilities to alleviate potential overcrowding at county jails. A good example is the ~~probation and parole holding facility~~ on which the DOC-DCC broke ground in Milwaukee at 10th & State Streets in May 1999. Second, if the offender is placed in confinement in a county jail, sheriffs must (a) have the option to refuse the placement, or (b) be fully reimbursed. Third, absent disciplinary circumstances, Huber privileges should be an option for ES supervisees in confinement. Fourth, confinement lasting 0-45 days must be approved by a DOC supervisor who has not been involved in that individual defendant's supervision; confinement lasting 46-90 days must be approved by a regional DOC chief.

The attorney general's office offered has evaluated "time out" and concluded that a 90-day hold will be legally acceptable provided that the offender admits the violation. This is true even though there is no formal due process other than supervisory approval.

3. Revocation and return to prison

In its examination of the current revocation process, the Committee heard from various entities involved in the process. Pursuant to its statutory charge, the Committee focused on streamlining and strengthening the process to provide better community protection from those who might violate this new form of community supervision.

First, the Committee concluded early on that administrative law judges, who currently conduct revocation hearings and make revocation decisions, should continue to do so. This was considered most efficient and effective as it speeds up the process and eases the workload of circuit court judges. In the "new world" of Truth-in-Sentencing, the ALJ will continue to conduct the revocation hearings, prepare a report containing specific findings of fact, and make the revocation decision. If the ALJ decides to revoke, the ALJ will also make a recommendation to the circuit judge as to the period of prison time the revoked offender should serve.

Wisconsin has spent many years and millions of dollars constructing the current ALJ system. The Committee finds this system to be working relatively well. In 1997, DOC submitted 1,495 requests for hearings in parole revocation cases to the DOA division of hearings and appeals. Of those cases, 561 waived their right to a hearing, DOC withdrew 324 of them, and the DHA decided 576 cases by hearing. Of those 576, in 546 of them parole was revoked, and in 30 of them parole was not revoked.

²⁹⁶ Study yielded that supervisees admit approximately 90% of violations of condition of parole and probation.

To shorten the revocation process too much could rob the system of its natural attrition. As demonstrated in the figures just cited, many revocation hearing requests are withdrawn or hearings are waived. This allows the system to function efficiently. Also, higher costs will result should the revocation process be shortened too much. It is DHA's experience that shorter time limits generate more case referrals. Thus, any reduction in the time limit would require a corresponding budget increase. The state public defender's ("SPD") office agreed with the DHA's reluctance to shorten the revocation process too much, as the SPD staff preferred as much time as possible to prepare for revocation hearings.

The appeal from the ALJ's revocation decision will continue to be to the DHA administrator. This allows for errors to be caught before circuit court review. But the administrative review of the ALJ's decision will be discretionary rather than mandatory. Administrative review is not automatic in every case and will occur only when timely requested by an offender whose ES supervision has been revoked.

The ALJ's report (and the administrator's written decision, if appealed) will be forwarded to the circuit court of conviction. The Committee intends return to the circuit court of the county of conviction for the dispositional hearing. The Committee's recommendation is that the case be assigned to the judge who imposed the initial sentence, if available, since that judge may be in the best position to determine the proper period of incarceration upon revocation.

The Committee recognizes that pursuant to Drow v. Schwartz, 225 Wis. 2d 362, N. W.2d ___ (1999), review of probation/parole revocations may be had by writ of certiorari in the circuit court of the county of conviction, but that did not necessarily mean the same branch of the circuit court. If that is not possible, the return is to the circuit court of the county of conviction consistent with Drow. Circuit courts may adopt local rules specifying assignment of these matters for imposition of the new bifurcated penalty.

The circuit judge will conduct the disposition hearing and determine an appropriate time period for the revoked offender to be returned to prison. The disposition hearing is not a "resentencing." Rather, the judge will decide the new bifurcated penalty (prison + extended supervision) that the supervisee will serve as punishment in this revocation. The judge will be limited to the total amount of ES time the individual has remaining from which to calculate this new bifurcated penalty. This will involve the circuit judge in the decisionmaking process consistent with the accountability philosophy underlying Truth-in-Sentencing, but with minimal impact on the judge's time, and take advantage of the ALJs experience in this area. (Currently, the ALJ alone makes this decision, with power to reverse lodged with the administrator.)

The Committee does not recommend altering the current writ of certiorari path for circuit court review of the revocation decision. The offender will retain the writ of certiorari remedy. Also, the Committee agrees that the DOC should be allowed to seek

47	ALJ written decision
57	Appeal due - if no appeal, trial court notified
64	If appeal, response due
71	Administrator's decision -trial court notified

E. Hearing location - Regional ES Detention Facilities

The DHA currently holds probation and parole revocation hearings in county jails. Although the DHA frequently chooses to use the jail in the county where the offender was last being supervised, it also often substitutes the jail where the offender is actually confined for a new crime or sentence. But jails often move offenders to other “contract” locations due to overcrowding. As a result, hearings are often held at a site other than where the offender is actually confined. This can cause problems for the parole agent as well as for any assigned attorney if they are unable to obtain ready access to the offender prior to the hearing. It also requires that the offender be transported from one location to another for the hearing. Holding the hearing at the site of the offender’s location would also require that witnesses travel a great distance to the hearing or that the jails make available video and teleconferencing equipment.

The Committee’s recommended solution to these problems is the creation of regional detention facilities for probation and extended supervision detentions. (Such a facility is now being constructed in Milwaukee at 10th & State Streets.) These facilities would add stability to the hearing process, minimize the impact of the process on county facilities, and would allow suitable hearing space, which could include new technologies for video and teleconferencing. These facilities would also give the DHA a resource to use in treatment situations and would provide a location for “time out” placements. Finally, these facilities would provide some advantage to DHA by allowing it to schedule “clusters” of revocation hearings rather than being required to travel to isolated locations for just one hearing.

In many instances, the local county jails will remain the most viable site for revocation hearings. In other situations, the state may want to “lease” regional detention facilities from interested counties. Or part of an existing corrections facility may be able to be converted into a regional detention facility. The final configuration of such facilities should, however, take into account the need to keep the offender and the hearing reasonably close to the site of the violations.

F. Will Changing the Revocation Criteria Apply Only to New Law Offenders or Also Apply to Old Law Offenders?

The Attorney General’s office has advised the Committee that applying the new revocation procedures to old law parolees as well as ES supervisees under Truth-in-

Sentencing would not violate the principles of ex post facto. These procedures include the modified interpretation of the Plotkin criteria and the shortened revocation time line. (The Committee does not intend for the new confinement sanction procedures to apply to old law parolees.)

The Committee recommends that the new revocation procedures relating to a modified interpretation of the Plotkin criteria apply to both new law supervisees as well as old law parolees. The Committee recommends that the new revocation procedures relating to the shortened revocation time line apply only to new law supervisees. The Committee consulted with various state agencies, including the DOA-Division of Hearings and Appeals, the state public defender, and the DOC, and each agency stated that they could not apply the shortened revocation time line to old law parolees properly given present resource limitations.

G. Recommended Statutory and Administrative Law Changes

The committee's recommended statutory and administrative law changes are contained in Appendix H.

PART VI

COMPUTER MODELING

A. The Challenge

Each of the representatives of other Truth-in-Sentencing states from which the committee heard - North Carolina, Virginia, Delaware, and Ohio - remarked how important a corrections population projection mechanism had been in their consideration of different policies. Individual Committee members also noted that the Committee's recommendations would have a large impact on increasing corrections population and the state's corrections budget.

Technical specialists were polled at each of the states from which the Committee had heard to determine how each state developed an accurate forecast of prison population and cost. Each state's technical expert stressed that for the committee's work to have credibility, it must accurately forecast prison population and cost.²⁹⁷ Also, a survey was done of the type of data Wisconsin has within its DOC and CCAP ("Circuit Court Automation Project") to determine whether, and if so, how, such data could be used to meet the needs of committee members.

Given other states' experiences, and the desires of Committee members, it was concluded that, although not part of the Committee's express statutory charge, it should attempt to develop a computer model to: (1) evaluate corrections data by crime, sentence length, time actually served, and consumption of prison beds and resources; and (2) project the impact of criminal justice policy changes.

B. A Major Problem

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, not out of lack of effort by DOC - Bureau of Technology Management ("DOC-BTM"), or any other state entity, but because Wisconsin retains its corrections data in an antiquated manner. Further, the state has not done a good job of linking corrections data systems. The installation of OPUS, ("Offender Population Unified System"), DOC's new prison population tracking system, and the increasing coverage of CCAP, could solve some of these problems. But this is an area that requires much improvement. The new sentencing commission will require this data for its deliberations and recommendations. Currently, that data is not accessible. It was necessary for the Committee to in effect "go around" Wisconsin's data to build the computer model.

²⁹⁷ **The North Carolina Sentencing and Policy Advisory Commission graciously gave the committee free of charge a copy of its prison population projection software, which is now in the public domain. Unfortunately, it could not be adopted for use in Wisconsin because it uses a structured grid format which the committee did not choose to adopt.**

C. Wisconsin's Current Ability to Forecast Corrections Population

First the committee turned to the DOC to determine whether or not it currently used such a statistical projection mechanism. It did not. Currently, the DOC uses a software package named "Forecast Pro." That software looks at data points over time to discern trends - e.g., corrections population at certain dates. Then it projects a trend into the future based upon a single variable - those past data points. Because it examines only a single variable, Forecast Pro did not allow for the policy analysis the Committee required. Forecast Pro has no explanatory power, as all it can do is forecast the next point in a series based upon past points. It would not allow the Committee to determine the causes behind the projections - e.g., whether the corrections population for a certain category was increasing, and how a reclassification of that crime, or a different guideline for that crime, might affect both that crime category and the overall corrections population, and thus the resources implicated.

OPUS may contain a corrections population projection component, but it is not expected to be installed completely until 2003. CCAP is on-line in 66 of Wisconsin's 72 counties and given full funding and use by all state circuit courts in the future may fulfill this population projection function. But it will not be able to do so for at least the next few years, again which did not help our committee meet its deadline.

D. Subcommittee and Working Group Formed

The Committee formed a Computer Modeling Subcommittee to address this challenge. Because of the technical complexity of this challenge, the Committee relied heavily on technical assistance from various individuals already employed by state government. These individuals formed themselves into a working group which met every few weeks to address the continuing issues of data collection, data structuring, and monitoring technical consultants hired to build the model. The working group included representatives of DOC-BTM, CCAP, the Department of Administration - Bureau of Justice Information Services ("BJIS"), as well as professor Michael Smith of the University of Wisconsin Law School, who had previously developed a computer model used by the Governor's 1996 Task Force on Sentencing and Corrections.

The computer modeling subcommittee decided that it must secure data in two primary areas:

(A) Who is in prison now, on what crimes, on what length of sentence, and how much prison time would they actually serve? This current population will drive future numbers, and to an extent policy recommendations, for some years. An accurate picture is needed of what is happening in and to the current DOC population.

(B) What are past and current sentencing practices, and how do they relate to the criminal histories of the offenders in the DOC database? What are the trends in sentences per crime, and by type of offender?

Once this information was secured, the subcommittee thought that computer modeling software could be borrowed, modified, or built to project prison population and assess the impact of Truth-in-Sentencing code reclassification and new sentencing guidelines.

E. Federal Technical Assistance

Dr. Ron Anderson of the University of Minnesota met with representatives of this subcommittee on February 4 & 5, 1999 to render technical assistance on this project.²⁹⁸ Dr. Anderson developed the first computer model for structured sentencing simulation, variations of which are used in several states, including Minnesota and North Carolina.

The working group met with Dr. Anderson over a two-day period. The first day was spent discussing the minimum data requirements for the forecasting tasks of the committee. In discussing those data requirements, the first and consistently most difficult hurdle the committee faced was with how the State of Wisconsin maintains its corrections data. The working group included individuals from DOC and CCAP expert in their respective databases. These individuals were questioned at length as to how the committee might secure the two types of data referenced above. No common identified or variable exists linking the DOC and CCAP systems, so access was severely limited. This was especially problematic for our task, as we needed sentencing and criminal history information from CCAP, as well as information from DOC as to how many offenders are actually serving how much time on which crimes. Because DOC has very limited criminal history information, and CCAP does not have time-served information, the data could not tell us which criminals will be serving what sentence lengths on which crimes.

The numerous state employees aiding this effort attempted to unravel the differences between the CCAP and DOC data and to map out a “data cleansing” and subsequent “data linkage” task list. The huge magnitude of this task became clear when the group attempted to assign ownership to and time frames on the various tasks necessary just to posture the data in a format accessible for the type of model the Committee would find useful, much less to start the actual modeling. Finally, it was concluded on the second day that the committee’s short deadline dictated that it would not be possible to merge the court and corrections data in a timely manner.

Dr. Anderson issued a pessimistic report given the committee’s data requirements and constraints, and the committee’s **timeline** and requests:

The work involved in obtaining adequate information from corrections databases, to say nothing of the construction of criminal justice models and hypothetical simulations would be challenging even to a large research staff with a year of time

²⁹⁸ A federal technical grant paid for Dr. Anderson’s expenses.

to do it. Given that the Committee has neither such a staff, nor more than a few months of time, they will need considerable additional technical expertise to accomplish their tasks. We made major conceptual progress in the two days of discussion, but I advised them that, on the basis of my experience with other states, they were being much too optimistic in their expectations for doing this work with their existing constraints in terms of both resources and time.

F. Solution

With the help of Professor Smith, the computer modeling group altered its approach from asking a model to “microsimulate” -- replicate an offender’s movement throughout the corrections system, and then aggregate that data -- to a “consumption” approach -- modeling and mining existing data in terms of its consumption of resources, which could give us estimates of corrections numbers and dollars, both principal concerns of the committee. This “consumption” approach attempted to answer 3 questions:

(A) What resources does Wisconsin need to service its existing corrections population over the next 10 years? (“old world”)?

(B) What resources does Wisconsin need to service those individuals convicted after 12/31/99 over the next 10 years, absent any guidance from this Committee (“new world without guidance”)? and

(C) What resources does Wisconsin need to service those individuals convicted after 12/31/99 **over** the next 10 years, modeling this Committee’s conclusions (“new world with guidance”)?

This consumption model would be less data intensive. DOC data could be relied upon heavily, and it was not necessary to link DOC and CCAP data, although CCAP sentencing data would be used in the model’s calculations. This type of model could be constructed more quickly, and would more readily fit the committee’s needs to debate differing recommendations for crime classifications and sentencing guidelines.

G. Hiring of Technical Consultants to Construct Computer Model

The subcommittee interviewed applicants to retain as outside technical consultants. The consultants would work with the working group to build a “consumption approach” computer model. The consultants needed technical background and expertise in statistics and computer applications. They had to be able to manage and manipulate complex datasets. They also had to be able to advise on and implement various statistical tests and forecasting techniques. The consultants had to be able to massage and mine the data for the information the committee needed, be able to work with DOC and CCAP people to ensure the proper data is in the system, and be able to run “what-if?” queries on the model as the committee debated differing policies.

At the suggestion of the DOC-BTM, the subcommittee interviewed representatives of IBM, as that company had been retained to install OPUS at DOC. IBM did a preliminary analysis of the committee's computer modeling needs, and offered an approximate bid of \$175,000. The subcommittee found this price tag too expensive. The subcommittee also interviewed Systems Seminar Consultants ("SSC") of Madison, Wisconsin, and concluded that SSC were the best consultants to fit this job description.

H. Computer Model Constructed

The intended use of the computer model is to study the effects of different scenarios. The model gives the user the flexibility to change input parameters, allowing different policies to be forecasted.

The DOC-BTM supplied SSC with over 8 years of historical corrections data, which included prison, probation, and parole information. That information described when each inmate made a transition among various statuses at DOC: e.g., from prison to parole, from probation to prison, or from parole to prison, etc.

The DOC data tracked offenders by what is termed a "governing statute." This means that if an offender is convicted of more than one crime, he might be tracked under a particular burglary statute, and not the criminal trespass statute on which he was also convicted. This problem, the vast number of statutes and their individual subsections, and changes in the statutory numbering of drug penalties hindered grouping the data into a manageable number of crime categories. Committee staff and SSC worked together to classify similar statutes into distinct felony groupings. The result was 47 felony categories that covered more than 500 individual statute classifications. Those groupings are:

1. **1st Degree Intentional Homicide**
2. **1st Degree Reckless Homicide**
3. **Other Homicide (e.g.: 2nd Degree Intentional Homicide; Felony Murder)**
4. **Substantial/Aggravated Battery**
5. **Battery**
6. **Other Bodily Security (e.g.: Mayhem, 1st and 2nd Degree Reckless Injury)**
7. **1st Degree Sexual Assault**
8. **1st Degree Sexual Assault of a Child**
9. **2nd Degree Sexual Assault**
10. **2nd Degree Sexual Assault of a Child**
11. **3rd Degree Sexual Assault**
12. **Kidnapping/Hostage Taking/False Imprisonment**
13. **Stalking**
14. **Intimidate Witness/Victim**
15. **Child Abuse**
16. **Other Crimes Against Children (e.g.: Incest, Child Enticement)**
17. **Armed Robbery**
18. **Unarmed Robbery**
19. **Burglary**
20. **Tresspass**
21. **Theft (including felony Retail Theft)**
22. **Receiving Stolen Property**

23. **Operating Vehicle Without Owners Consent**
24. **Criminal Damage to Property (including graffiti offenses)**
25. **Arson**
26. **Weapons/Explosives (e.g.: Felon in Possession of Firearm)**
27. **Other Public Safety Crimes (e.g.: 1st and 2nd Degrees of Recklessly Endangering Safety)**
28. **Gambling**
29. **Drug Manufacture/Delivery (but not Cocaine or Marijuana)**
30. **Drug Possession With Intent to Deliver - Marijuana**
31. **Drug Possession With Intent to Deliver - Cocaine**
32. **Drug Possession (but not Cocaine or Marijuana)**
33. **Drug Possession - Cocaine**
34. **Drug Possession - Marijuana**
35. **Other Drug Offenses (e.g. Maintaining Drug Trafficking Place)**
36. **Traffic-related Felonies**
37. **Forgery**
38. **Issuance of Worthless Checks**
39. **Public Assistance Fraud**
40. **Other Fraud (e.g.: Food Stamps, W2)**
41. **Perjury**
42. **Escape**
43. **Bail Jumping**
44. **Extradition**
45. **Interference with Law Enforcement**
46. **Other Felonies (e.g.: election law violations, securities law violations)**
47. **Unidentified Felonies**

The modelers received data from the Circuit Court Automation Project (“CCAP”) concerning imposed sentence lengths for each of these categories. This data was from 1996-1998. Median time served for incarcerations, median parole time, and median probation time was calculated from the master data set supplied by the DOC. The computer modeling working group performed a series of validation exercises to ensure these figures were correct.

With help from individuals knowledgeable about the current indeterminate and future determinate sentencing systems, SSC developed a transitional matrix. Transitions among different corrections states (i.e. incarceration, parole/extended supervision, or probation) were aggregated and **summarized** to yield statistics for the matrix. This matrix included revocation rates, parole rates, discharge rates, and continuation rates (chance of continuing in same state) across each of the 47 categories.

Average new additions for incarceration and probation for each category were also calculated. These were the average new additions to the corrections population for incarcerations and probation across 1990- 1998.

SSC made extensive efforts to validate the accuracy of the DOC data. During this process, it noted overlapping episodes: **e.g.**, a single offender was listed in incarceration and parole status at the same time. The computer model working group worked hard to unravel these problems, and ultimately relied on adult institution incarceration data to take precedence over conflicts in the parole and probation data.

After the data had been validated, the transitional matrix was applied to the projected prison population on 12/31/99. New additions were not added. This gave an estimate of the “old world” (e-Truth-in-Sentencing) population decay across the next 9 years.

SSC then calculated “new world” population growth with new Truth-In-Sentencing additions from 1/1/2000 forward for the next 9 years. SSC ran initial projections across many scenarios with different parameters. SSC used revocation rates from the “old world” transitional matrix across all felony categories.

After the initial presentation of the computer model to the CPSC, a few members questioned the integrity of portions of the data. There was much discussion about the validity of the “old world” decay. The consensus was that the “old world” prison population was decaying too rapidly. So SSC used maximums, rather than averages, for each of the transitional probabilities. This adjustment slowed “old world” decay significantly. This adjustment also addressed a concern over probation revocation rates being too low. To keep adjustments consistent, “new world” parameters were also revised.

SSC created a front-end template for the committee and subsequent sentencing commission to use for flexible input of “new world” computer model parameters. The model’s user can change the following parameters: (1) new addition counts; (2) revocation rates; (3) sentence lengths; (4) Extended Supervision (ES) parameters, including length; (5) ratio of incarceration to probation. These parameters can be changed for the whole scenario, or per crime category.

The model produces an overall summary as well as individual summaries at the category level. The output consists of three components: (1) new world; (2) old world decay; and (3) new world and old world decay combined.

I. Use of Computer Model, and the Model’s Results

The computer model was used in different ways. It was used to assess code reclassification decisions to ensure that when a crime was placed in a new class (Class A through Class I), the new maximum period of time in prison for that class “fit” with the majority of the time periods offenders were serving for that crime. If offenders currently serve much more time than the new maximum, the crime was classified with too short of a maximum. If offenders currently serve much less time than the new maximum, the crime was classified with too long of a maximum.

Charts of several high-volume crime categories (felony battery; burglary; operating vehicle without owner’s consent; possession of controlled substance - cocaine) were reviewed to assess what percentage of imposed and time-served sentences fall under the Committee’s proposed classifications for those crimes. The results were encouraging. The proposed crime classifications (H, F, H, and G, respectively) captured high percentages of the time-served sentences for each of these crimes (79%, 82%, 78%, 92%,

respectively). The Committee's choice of felony classes for these crimes was thus judged to be correct.

The model was also used to forecast corrections population and corrections costs. Immediately following this section may be found population and cost estimates for scenarios A and B.²⁹⁹ These scenarios make a number of assumptions:

Scenario A: **VIOLENT CRIMES=CURRENT SENTENCES; NON-VIOLENT CRIMES = TIME SERVED SENTENCES**

For violent crime categories (including drugs), judges sentence offenders to same prison terms in the old world and the new world, and ES in the new world = parole in the old world.

For nonviolent crime categories in the new world, judges adjust sentences down to time-served periods for the same crimes in the old world and ES = 25% of prison time served.

Violent crime categories (including drugs) = 1-12; 15-18; 29-35 (from a handout to the committee)

Nonviolent crime categories = 13-14; 19-28; 36-47 (same)

Scenario B: **MOST LIKELY SCENARIO?**

For violent crime categories in the new world, judges sentence offenders to 85% of old world imposed sentences, and ES in the new world = parole in the old world.

For non-violent crime categories in the new world, judges adjust sentences down to time-served and ES = 150% of prison time served.

²⁹⁹ Cost estimates used the following figures: \$19,330 per prisoner per year; \$1,400 per parolee per year; and \$3,103 per ES supervisee per year. (This last figure assumes \$8,881 per supervisee per year for the 4.5% of that population on strict supervision; \$3,500 per supervisee per year for the 43.1% of that population on "maximum" supervision; \$2,450 per supervisee per year for the 43.9% of that population on "medium" supervision; and \$1,400 per supervisee per year for the 8.5% of that population on minimum or administrative supervision.) All figures were arrived at from DOC materials.

A brief synopsis of these results are as follows:

Scenario A	2001	2005	2010
Average Daily Prison Population	21,000	26,500	28,000
Cost Per Year	\$405 million	\$505 million	\$550 million
E.S./ Parole Population	14,500	13,500	12,000

Scenario B	2001	2005	2010
Average Daily Prison Population	21,500	26,000	27,500
Cost Per Year	\$405 million	\$500 million	\$525 million
E.S./ Parole Population	14,500	14,500	13,500
Cost Per Year	\$20 million	\$25 million	\$27.5 million

For purposes of comparison, the DOC’s budget for the fiscal year ending June 30, 1999 allocated approximately \$360 million of GPR funds for adult institutions, housing an average daily population of 17,930 offenders. The Legislative Fiscal Bureau, in Paper #330, estimates an average daily population of 23,937 offenders for the Fiscal Year 2000-2001. The figures shown in the charts above estimate average daily prison population from January 1st through December 31st. The Department of Corrections and Legislative Fiscal Bureau figures estimate average daily population from July 1st through June 30th.

J. Future Issues

The Committee has identified a number of topics for future consideration in this area.

First, the CCAP system which courts use to gather sentencing information should be altered to accommodate the new Truth-in-Sentencing sentences which will be given after January 1, 2000. In the future, the new sentencing commission, and other state law enforcement entities, will increasingly look to CCAP for data, since that system collects sentencing information statewide. It is important that CCAP remain fully funded, as for many years it will remain the primary source of sentencing information for the courts and litigants.

Second, sentencing guidelines information must be collected in a streamlined manner for the new sentencing commission. This will require “computer-friendly” forms

and a central data collection program. Information from the new guidelines forms will be instrumental in the new sentencing commission's work.

Third, the various law enforcement computer systems in use in Wisconsin should be linked to maximize utility and efficiency. Now, a single defendant will change identification numbers as he moves from arrest, through the court system, and into the corrections system. The technology exists to solve this problem. A common computer system, or at least a network linking existing systems, should be developed with a common defendant identification number.³⁰⁰

Finally, this computer model which the Committee has developed can be used by the new Sentencing Commission to accomplish some of its data and policy analysis needs. The computer model was constructed such that it can be added on to and improved. The impact of Truth-in-Sentencing on Wisconsin's corrections population and resources probably will not be felt for a number of years. It is hoped that the Commission can use the computer model to spot danger points, and make guideline changes, with plenty of time to prepare and recommend changes to the governor and the legislature.

³⁰⁰ On this topic, see Interagency Justice Information System Report, published September 1998 by the Department of Administration, Bureau of Justice Information Services; see also Legislative Fiscal Bureau Information Paper # 190.

PART VII

EDUCATION OF THE JUDICIARY, THE BAR, AND THE PUBLIC

As the Committee's work progressed, members realized that educating the bench, the bar, and the public about this new law will be an important part of making Truth-in-Sentencing work. A complex, indeterminate sentencing system with parole, varying release times for offenders, and decisionmaking authority dissipated among prosecutors, judges, and the parole board will be replaced by a simpler, more straightforward system which employs some new principles and terminology.

This educational challenge is exacerbated by the short time period between the date of this report and the effective date of Truth-in-Sentencing, December 31, 1999. So another subcommittee was formed to formulate a strategy to educate the judiciary, the bar and the public about the new law, and to act as liaisons between the Committee and the media, members of the justice system and the public.

The education effort is important for another reason. In the "new world" of Truth-in-Sentencing, once a judge pronounces sentence, it is largely irrevocable. There is no parole, and sentence modifications will continue to be governed by the existing "new factor" test, which is rarely satisfied. The sentencing guidelines are expressly advisory. Accordingly, educating prosecutors and defense lawyers, who will be making sentence recommendations, as well as judges, who will be meting out these sentences, is extremely important. Also, educating the media and community groups will increase public understanding of the new law.

A. Education Plan

The Committee has decided to target education efforts at three core audiences: the bench, the bar, and the public through the media. It is critical that Wisconsin state circuit judges understand the new law and how it can be applied as they make the serious decisions about whether an offender should be sentenced to prison and for how long. Advocates in the new system must understand how it works as they negotiate, plead, and try cases in the new world of Truth-in-Sentencing, and as they argue on behalf of their clients at sentencing hearings. Members of the general public, the beneficiaries of Truth-in-Sentencing, can look forward to an easier understanding of the criminal justice system, but also must be taught the new system through the media. The new system will often mean shorter sentences in the number of years pronounced at sentencing, but may result in equal or greater time actually served in prison.

Various vehicles were considered and then chosen to accomplish this education effort. The Wisconsin Supreme Court's public information office has helped in a number of ways. For example, that office helped by drafting a prototype media plan.³⁰¹

B. Education Efforts Thus Far

The education subcommittee already has accomplished two major education efforts, one for judges and one for prosecutors.

On May 20, 1999, committee members and staff presented at the 1999 Criminal Law & Sentencing Institute in Eau Claire, Wisconsin. Approximately 105 judges attended. Staff counsel made a presentation on the new law and committee members also formulated and administered a survey of how judges sentencing practices might change from the current law to the new Truth-in-Sentencing law. The survey contained exercises for burglary, armed robbery, sexual assault and drug cases, and utilized mitigated, intermediate, and aggravated fact scenarios, which the judges considered using low-, medium-, and high- risk offender profiles. An analysis of the survey responses was done. In general, judges sentencing offenders under the new Truth-in-Sentencing law lowered the prison component of the new bifurcated sentences to take into account the determinative nature of these new truthful sentences. This was true of their sentences for the burglary, armed robbery and drug dealing scenarios, but not for sexual assault. Overall sentence lengths increased, as judges gave lengthy post-prison extended supervision periods for some scenarios; thus, the overall period of state involvement with an offender increased in the Truth-in-Sentencing sentences.³⁰²

Committee members also participated in a discussion with the judges attending the seminar about the various aspects of Truth-in-Sentencing. The judges made some interesting comments. When filling out the survey, about one-half of the judges went through the mental exercise of translating indeterminate to determinate sentences. When doing so, the judges rarely used time to first release (25%) of the indeterminate sentence in this calculation. Rather, they used their own estimate as to how long an offender at the specified level of risk committing an offense of the stated severity would serve. Approximately one-third of the judges present, mostly from Milwaukee, did not have confidence in probation. Many judges said that they would continue to give out one- and two-year sentences, even though this might mean the offender will serve between two and four times as much real-time on such sentences.

On June 16, 1999, Committee members and staff presented at the 1999 State Prosecutors Education and Training Conference in Egg Harbor, Wisconsin. Approximately 240 prosecutors attended. Again, Committee staff counsel spoke about the new law, and committee members participated in a discussion among the prosecutors about the various aspects of Truth-in-Sentencing. Committee members also administered a shorter version of the same survey of sentencing practices under the new law given to the judges at Eau Claire.

³⁰¹ A copy of this plan is attached as Appendix K.

³⁰² A copy of this spreadsheet analysis is attached at Appendix 1.

That survey contained exercises for burglary, armed robbery, and sexual assault cases, and used mitigated and aggravated fact scenarios, which the prosecutors considered using low- and high- risk offender profiles. An analysis of the prosecutors sentence recommendations was done. In general, prosecutors proposed bifurcated sentences for offenders under the new Truth-in-Sentencing law with lower prison components. Overall sentence lengths increased slightly, so again the overall period of state involvement with an offender increased slightly.³⁰³

Committee members met with City of Milwaukee Mayor John Norquist on February 15, 1999, and with Milwaukee County Executive Thomas Ament on March 11, 1999, to give them an overview of Act 283 and the Committee's work, hear their thoughts on Truth-in-Sentencing, and to begin a dialogue between their offices and the Committee. Also, on June 17, 1999 staff counsel made a 2 hour presentation to the state's chief judges, deputy chief judges, and court administrators on Act 283 and the Committee's work.

C. Future Education Efforts

For a variety of reasons, it is the Committee's recommendation that its office and staff remain in operation and fully funded until the new Sentencing Commission begins its work.

Because of the education efforts the Committee must undertake before Truth-in-Sentencing becomes effective December 31, 1999, educational materials, including sentencing exercises, must be produced to be used to teach the new law. Also, Microsoft Powerpoint presentations, in various lengths, should be produced for use at these seminars.

Many Committee members and staff have agreed to speak at many future education efforts. As of the date of this report, the dates, audience, and locations for these efforts include:

September 16- 17, 1999 - State Public Defender Conference (state public defenders) in Milwaukee

September 27, 1999 - Wisconsin Correctional Conference (statewide corrections personnel) in Milwaukee

October 5, 1999 - State Judicial Districts 4 & 8 (court personnel) in Kimberly

October 14-15, 1999 -- Wisconsin Clerks of Court (court personnel) in Oshkosh

October 22, 1999 - District 1 Felony Division Retreat (judges) in Milwaukee

November 5, 1999 - State Judicial District 7 (court personnel) in Spring Green

November 18, 1999 - State Bar Truth-in-Sentencing Continuing Legal Education seminar (general bar) in Brookfield

December 4, 1999 - Marquette University Law School Criminal Law Seminar (general bar) in Milwaukee

³⁰³ A copy of this spreadsheet analysis is attached at Appendix J.

December 9, 1999 - Statewide Prosecutor Education and Training Seminar (state prosecutors) in Madison

December 16-17, 1999 - Judicial Truth-in-Sentencing seminar (statewide judiciary) in Wisconsin Rapids

January 26-28, 2000 - Bench-Bar Conference (statewide bar and judiciary) in Milwaukee

The Committee looked into federal technical assistance grants to help with the expenses of this educational effort. Unfortunately, this approach did not bear fruit.

The public information office of the Supreme Court of Wisconsin has grant money available for “mock trial” presentations and accompanying panel discussions for the media and the public around the state. That office has agreed to restructure these presentations to focus on Truth-in-Sentencing education, and the subcommittee has made its members and committee staff available to assist in that effort.

Another project to get underway will be the construction of a Criminal Penalties Study Committee website on DOA server space which will include a copy of the committee’s report, its minutes, and other key documents. Also, the State Bar of Wisconsin has committed to placing articles about Truth-in-Sentencing in its monthly magazine, The Wisconsin Lawyer, as well as in its quarterly section newsletters and on its website. Other education ideas include forming “training teams” involving a judge, an attorney, and maybe one Committee member, who would place local editorials, conduct interviews with the local media, and seek out community forums at which presentations on Truth-in-Sentencing will be given.

PART VIII

ISSUES THE COMMITTEE HAS IDENTIFIED FOR FURTHER STUDY

A. Probation as a Viable Alternative to Prison

Whether or not -- and if so how much -- Truth-in-Sentencing will exacerbate Wisconsin's prison overcrowding has been a concern during much of this Committee's study. The issue of prison overcrowding is intertwined with another topic of much discussion - lack of confidence in probation supervision, especially in Milwaukee.

1. The "Milwaukee Probation Problem"

Throughout this Committee's work it has received anecdotal comments by Milwaukee judges and witnesses knowledgeable about the criminal justice system in Milwaukee that probation supervision in Milwaukee is insufficient. This Committee is not the first to identify this **problem**.³⁰⁴ After the Committee's study, it strongly concludes that an important element in reducing the increase in flow of prisoners into the prison system is to strengthen the effectiveness of probation and parole services in the Milwaukee area.

Violent and dangerous felons should be sentenced to prison and for periods long enough to protect the public. Further, some crimes so offend the public that prison should be considered, even though the felon may be considered not violent and not dangerous. But today in Wisconsin, felons are sometimes sentenced to prison who could be better sanctioned and the public adequately protected were the state to have more fully developed alternatives to prison than it now has. Exclusive of capital costs, it costs approximately \$20,000 per year to house a felon in the prison system. It could cost only approximately \$8,800 per year per felon to utilize an alternative to prison other than traditional probation, or even less, depending upon the level of supervision.

Although the legislature did not assign to this Committee the duty of studying either probation or alternatives to prison, our study has led us to the conclusion that Wisconsin must strengthen its probation system and develop credible alternatives to prison. The strength of probation supervision effects whether a judge will sentence an offender to prison or place that offender on probation. Also, the attractiveness of extended supervision may influence judges to use prison with extended supervision rather than probation in a case which is a close call between probation or prison.

³⁰⁴See Governor's Task Force on Sentencing and Corrections (December 17, 1996) pp.1-2; "Privatizing Parole and Probation in Wisconsin," Wisconsin Policy Research Institute Report (April 1999) pp. 6, 10, 14-15.

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. Nearly 47% of Wisconsin's prison inmates come from Milwaukee County. Yet Milwaukee has **only** 18.3% of Wisconsin's population. For the state as a whole in 1998, 67% of those convicted of a felony were placed on probation. The comparable figure for Milwaukee County was 52%.

Some of these discrepancies can be attributed to causes other than lack of confidence in probation. Milwaukee County is the most densely urban area of the state and has greater social and racial problems than the less urban areas of the state. An armed robbery in Milwaukee County often is a much more serious armed robbery than one in a rural county. Milwaukee County's defendants tend to have more serious past criminal histories. And there is a higher conviction rate in Milwaukee County than other counties. For example, as to all burglary and auto theft charges in 1998, Milwaukee County had a conviction rate of 73%, while the comparable figure for the remainder of the state was 47%. While a drive-by shootings may occur with some regularity in certain areas of Milwaukee, such a shooting is a rarity in much of the rest of the state.

There are many reasons for the lack of confidence in probation in Milwaukee. Milwaukee is the most urban area of the state with a heavy criminal case load with many probation agents and a large number of judges. Thus, communication between the judiciary and the agents is remote and impersonal, in contrast with the more rural areas where the judges and agents have frequent and close contact. Milwaukee has a higher turnover of agents. It has become a training ground with many newly trained agents leaving for more peaceful parts of the state. With a high turnover of agents, supervisors must spend more time training. In the past, there has been a lack of **sufficient** holding cells for short term incarceration of recalcitrant or uncooperative probationers and parolees. Agents have not had the tools such as immediate short-term incarceration to enforce discipline. Finally, the intensive sanctions program fell into disfavor for a variety of **reasons**.³⁰⁵ While intensive sanctions is a sanction separate from probation, the Division of Community Corrections ("DC,"") which administers both programs was tarred as a whole by those incidents.

2. DCC's attempts to solve the "Milwaukee Probation Problem"

The DOC and its DCC are working hard to strengthen probation. As reported to this Committee at its July 9, 1999 meeting, DCC has strengthened its relationship with the Milwaukee police department. A DOC regional chief, attends all police command staff meetings. DCC also has developed an absconder unit to actively search for people who violate their supervision and who do not report to their agents. Twenty probation agents are active seven days a week in that unit. The Milwaukee police department has designated six officers who work along with this absconder unit to find absconders. DCC also has implemented a re-offender prevention enforcement ("ROPE") program, in which probation officers team with Milwaukee police officers to go out into neighborhoods in non-traditional working hours and on weekends to knock on doors to ensure that

³⁰⁵ See Intensive Sanctions Review Panel Final Report (Feb. 1998).

probationers or parolees are where they should be. These are unannounced visits; if a probationer or parolee is not there, or if contraband is found, the probationer is located and jailed. In Milwaukee, DCC has set up intake units in the Milwaukee County Courthouse and Safety Building so that immediately after offenders are placed on probation they have contact with a DOC representative, rather than a long interval taking place between sentencing and reporting to DCC. DCC is attempting to move away from "fortress probation" by developing neighborhood supervision. DCC works with the Milwaukee police department in neighborhood precinct offices.

Most importantly, more secure beds have been added in Milwaukee. DCC has arranged with the Milwaukee County Sheriff to add 125 beds, and has also provided 300 beds at the Racine Correctional Institution just for violators from Milwaukee County. A 400-bed addition has been constructed at the Milwaukee County House of Corrections, and for the next 3 years 300 of those beds will be used to hold probation offenders accountable for their conduct. Further, in February 1999, the division broke ground for a 1,048 bed secure facility in Milwaukee, which will be run like a jail to hold probation and parole violators. Also, agents can now incarcerate offenders and place them in the county jail without their supervisor's approval for 10 days, a suggestion made by the Intensive Sanctions Review Panel chaired by Judge Lamelas. DCC has created community advisory boards across the state, including in Milwaukee, and the Milwaukee region has been assigned two regional chiefs to handle the magnitude of the caseload in that area.

3. Can the Racine and Dane County experiments help solve the "Milwaukee Probation Problem"?

Stricter supervision has been tested in the Racine and County probation experiments. In these experiments, DCC has tried to develop a partnership with the community, to have strategies for local crime prevention, to supervise offenders actively, and to commit additional resources to enhance supervision. DCC has also evaluated these programs' successes and failures.

The enacting legislation for these experiments mandated that the programs take place in southern Wisconsin, so DCC chose Racine and Dane Counties. The legislature provided \$7.6 million for 64 additional staff, 47 of whom are agents. The offices equally split \$1.6 million for purchase of services. The agent-to-offender ratio was 1-to-17. In Dane County, neighborhood supervision has been developed in which housing for the probationers has been located in the probationer's neighborhood and community police stations have been set up. In Racine County, DCC has located its facility in the same houses as community police stations and community-oriented policing houses.

After one year, the International Committee of Corrections Association independently reviewed the experiments. The Racine County project scored 1st, and the Dane County project scored 3rd, of the 150-200 such programs in the United States.

The experiments have produced close positive working relationships with local law enforcement. Day-reporting centers have been developed. The experiments have

demonstrated that offenders need to be programmed for at least 70% of their day. In addition to work, they need to be involved in other treatment, parenting, and/or cognitive skills programming. The staffs attitude is positive because they believe the caseloads are manageable, and resources are available to purchase services the supervisees require. Technology is also being used. Geographical information systems in Racine and Dane Counties are used to plot where offenders are. Both programs have community advisory boards.

It is the Committee's recommendation that the results of the Dane and Racine County experiments be applied in Milwaukee to help solve its probation **difficulties**.

4. Alternatives to Incarceration

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 that in that state's implementation of Truth-in-Sentencing, in addition to increasing the number of prison beds, it greatly increased state funding of alternatives to incarceration and probation/parole supervision. These states have accomplished this in good part by using intermediate sanctions as an alternative to prison. Their intermediate sanctions involve highly structure treatment facilities, short-term lockup, and immediate punishment for infractions and strict supervision, all done under the **ambit** of community corrections. The cost per inmate per year is higher than ordinary probation, but much less than prison. It has meant more money from the Legislature for more agents and treatment, but that investment of resources has resulted in a reduction of the overall cost of the system. The same could be done in Wisconsin to keep the lid on prison costs.

Drug offenses continue to be a significant factor in the increasing prison population. Milwaukee County, which has 18.3% of the state's population, is responsible for more than one-half of the drug offense admissions to prison. Many of these offenders are small-time drug dealers who serve between six months to two years of actual time in prison. Because under Truth-in-Sentencing the minimum prison sentence is one year, if the same number of drug offenders are continued to be sentenced to prison there will be a significant increase in inmates over time.

There was much debate at Committee meetings as to the percentage of offenders convicted for drug crimes who are themselves addicted to drugs. The Milwaukee County District Attorney's office's drug unit believes the percentage to be approximately **25%**, while Corrections and the Public Defender believes it to be **67%** or higher. Whatever the actual percentage, drug users could be screened out for treatment in highly controlled and structured facilities outside prison which can be operated at a lower cost per inmate per year than within the prison system.

We recommend that DOC be given sufficient resources to permit the use of strict supervision and appropriate drug and alcohol treatment facilities in Milwaukee County and other urban areas with high crime rates. We further recommend that Wisconsin study

successful crime reduction programs in other states such as the CUNY Catch Program in New York, the drug prison in Pennsylvania, and the drug usage program in Arizona, with the view of possibly implementing them in Wisconsin.

Under current conditions, Truth-in-Sentencing could exacerbate the prison overcrowding problem, at increased cost to the state, because the judiciary could view extended supervision as a more attractive alternative than probation. Under Act 283, a sentencing judge can set conditions to be met while on extended supervision. A judge cannot now set conditions of parole. 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 entire prison sentence so a 1-year sentence under the new system is equivalent to a 2½-year sentence under the old system. 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.

Our discussion of probation cannot end without some reference to the racial misrepresentation within the corrections system. Approximately 57% of our prison population and 36% of our probation/parolee population are members of minority groups. Yet minorities make up only 10% of the state's population. Over 3% of the state's black population was in prison as of December 31, 1998, along with 1% of the Native American population and 1% of the Hispanic population. The comparable figure for whites was .17%. Only Asians had a lower percentage at .12%. Although it is not within this Committee's statutory charges to explain these figures, they do deserve attention and further study.³⁰⁶

B. DOC Data Problems

As described above in part VI, this Committee struggled mightily to get accurate data to use in its study and in meeting its statutory charges. It succeeded only partially. When CCAP, or OPUS for DOC, are fully operational, they may be capable of some of the forecasting necessary to engage in this public policy discussion. But policy- and decisionmakers need to understand how woefully inadequate Wisconsin's criminal justice information and corrections computer systems are for fundamental public policy debate.

This Committee's model is state property. The Committee encourages the new Sentencing Commission, the DOC, and other state entities to use, revise, and build onto the computer model so that it may continue to help policy debate in this area.

C. Cost of Committee's Proposals

A fiscal note will be attached to the proposed legislation estimating fiscal impact of committee's proposed legislation. Rough cost projections are listed above at part VI.

³⁰⁶ The figures in this paragraph are a result of a statistical analysis using DOC statistics and the U.S. Census Bureau figures from _____. Attached as Appendix ____.

Throughout the Committee's work, members discussed the role cost should play in the Committee's discussions and its conclusions. Concerns about the increasing corrections budget are not unfounded due to the ever-increasing portion of state spending devoted to this issue. Some members worried that if judges did not adjust new determinate sentences downward to at least 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, having to be built that the corrections budget will become unmanageable.

Given its study and "overview" capability, the committee offers 3 major ways costs can be controlled:

(a) education, especially of judge and prosecutors, to whom much discretion has been shifted under Truth-in-Sentencing;

(b) alternatives to prison - so a judge need not always use a \$20,000 per year per offender solution; this includes the strengthening of probation; and

(c) sentencing guidelines - to funnel "typical" cases into proper sentencing ranges.

Also, it must be remembered that cost savings from incarcerating an offender must be calculated. This is not as easy to calculate, but such externalities are part of an entire cost picture.

CONCLUSION

For all of the reasons articulated in this report, the Committee **respectfully** commends its proposals to the legislature, the governor, and the citizens of the State of Wisconsin.

Dated at Madison, Wisconsin this 31st day of August, 1999.

Respectfully submitted,

**CRIMINAL PENALTIES
STUDY COMMITTEE**

Appendix A

MEMBERS OF SUBCOMMITTEES

CODE RECLASSIFICATION SUBCOMMITTEE

Thomas Hammer - Chair
Nicholas Chiarkas
Matthew Frank
Joanne Huelsman
Stephen Hurley
Diane Sykes
Thomas Barland - ex officio

SENTENCING GUIDELINES SUBCOMMITTEE

Elsa Lamelas - Chair
Walter Dickey
Gregory Everts
Stephen Hurley
Michael Malmstadt
E. Michael McCann
Linda Pugh
Lee Wells
Thomas Barland - ex officio
Michael Smith - consultant

EXTENDED SUPERVISION REVOCATION SUBCOMMITTEE

Patrick Fiedler - Chair
Bradley Gehring
William Jenkins
B a r b a r a P o w e l l
Diane Sykes
Lee Wells - ex officio
Thomas **Barland** - ex officio

COMPUTER MODELING

Walter Dickey - Chair
Matthew Frank
Thomas Barland - ex officio

EDUCATION COMMITTEE

Diane Sykes - Chair
Patrick Fiedler
Stephen Hurley
William Jenkins
Thomas Barland - ex officio

Appendix B

CRIMINAL PENALTIES STUDY COMMITTEE MEETING DATES AND PLACES

<u>Date</u>	<u>Place</u>
August 28, 1998	Room 328NW, State Capitol, Madison
October 2, 1998	Room 417N, State Capitol, Madison
October 16, 1998	Room 417N, State Capitol, Madison
November 20, 1998	Room 417N, State Capitol, Madison
December 11, 1998	Room 417N, State Capitol, Madison
January 8, 1999	Room 417N, State Capitol, Madison
January 21-22, 1999	The Concourse Hotel, Madison
February 19, 1999	Room 417N, State Capitol, Madison
March 5, 1999	Room 417N, State Capitol, Madison
March 18-19, 1999	The Country Inn, Waukesha
April 16, 1999	Room 417N, State Capitol, Madison
April 30, 1999	Room 417N, State Capitol, Madison
May 13-14, 1999	The Chula Vista Resort, Wisconsin Dells
June 4, 1999	North Hearing Room, State Capitol, Madison
June 25, 1999	Room 417N, State Capitol, Madison
July 9, 1999	Room 417N, State Capitol, Madison
July 30, 1999	Room 417N, State Capitol, Madison
August 16, 1999	Room 417N, State Capitol, Madison
August 20, 1999	Room 417N, State Capitol, Madison

Appendix C

BUDGET PROJECTION FOR SENTENCING COMMISSION

	#FTE	Class rate	Salary	Fringe	Supplies & Services	One-time costs	Total Year 1	Annualized cost
Exec. Director	1	23.7	49,296	17,668	1,200	5,500	73,664	68,164
Dep. Director	1	19.727	41,032	14,706	1,200	5,500	62,438	56,938
Data Entry Operator	1	9.437	19,629	7,035	1,200	5,500	33,364	27,864
Research Analyst	2	15.593	32,433	11,624	1,200	5,500	101,515	90,515
Training Coordinator	1	15.593	32,433	11,624	1,200	5,500	50,758	45,258

DOA rate
35.84%

	Year 1	Annualized'	<u>One-time costs/FTE</u>
Staff Costs	321,739	288,739	2,500 Furniture
Publications	70,000	70,000	3,000 Computer
Rent	20,000	20,000	
Total	411,739	378,739	