

1999 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB465)

Received: **11/03/1999**

Received By: **olsenje**

Wanted: **Today**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **mdsida**

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Sentencing commission; appropriation for CPSC

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	olsenje 11/03/1999	chanaman 11/04/1999		_____			
/1			jfrantze 11/04/1999	_____	lrb_docadmin 11/04/1999	lrb_docadmin 11/04/1999	
/2	olsenje 11/04/1999		kfollet 11/04/1999	_____	lrb_docadmin 11/04/1999	lrb_docadmin 11/04/1999	

FE Sent For:

<END>

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/1		<i>Chr</i>	jfrantze 11/04/1999	_____	lrb_docadmin 11/04/1999	lrb_docadmin 11/04/1999	
FE Sent For:		<i>11/4</i> <i>1/2</i>	<i>KJE</i> <i>11/4</i>	<i>KJE</i> <i>11/4</i> <END>	<i>cmh</i>		

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1?	olsenje	cmv 11	Jo 11/4	Jo / TK 11/4			
FE Sent For:		11/4					

<END>

Changes to the Bill/Topics for Discussion

X. Eliminate any increases in sentences over current law/No upward reclassifications.

X. Eliminate penalty enhancers/mandatory minimums added by Assembly.

3. Balance the composition of the Sentencing Commission

- Balance partisan composition
- More public members/business backgrounds?

3. 6 not 7
 4. One from major/minor party
 5. delete

4. Require legislative oversight/review of Sentencing Commission Guidelines.

- Require promulgation as administrative rules? *Yes; delete 227. restriction*

5. No appropriations in bill. CPSC too

6. Enhancements to Probation and Parole

- Provide Milwaukee with the equivalent of the Racine or Dane County experiments?
- Provide staffing on a par with Extended Supervision?
- Legislative Fiscal Bureau to provide cost estimates?

7. Grant courts/judicial system the power to order drug treatment and make the state pay for it.

- Establish day reporting/treatment facilities?
- Establish drug prisons?
- Legislative Fiscal Bureau to provide cost estimates?

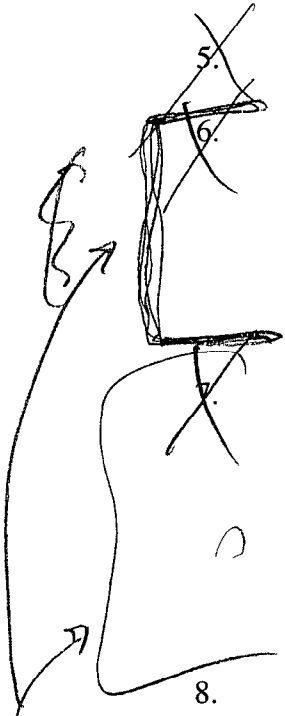
8. Create or structure some relief valves for judges and the DOC to do something about prison population levels.

- Require court to make explicit findings of fact upon which he or she concludes that a particular sentence is appropriate—(possible grounds for appeal?);
- ~~Establish statutory standards of appellate review?~~
- Allow DOC to petition the sentencing judge (or branch if the judge is no longer sitting) for revision or modification of sentence (or confinement portion)

subs. or in record for sentence

9. Delay effective date

Have Sent. Comm. create procedure



for SSA to SB 237

Sub # 1 (to AB-465)

Take out everything but appropriations

- Sentencing comm. ? ...

- not created in bill then?

→ ie, vehicle for \$...

Seat comm.	- all references	incl. membership charges
	\$	
	\$ CPSC	

Delete sentencing comm. from the SB.

1999

Date (time) needed

Thurs. 11/4
By 9:00 am

LRB s. 0180, 1

**SUBSTITUTE AMENDMENT
[TO A BILL]**

JED & MGD: CMTA

Use the appropriate components and routines developed for substitute amendments.

**(S) A SUBSTITUTE AMENDMENT
TO 1999 SB (AB) 465 (LRB- 1)**

AN ACT . . . [generate catalog] **to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .** of the statutes; **relating to:** *the creation of a sentencing commission, the duties of the criminal penalties study committee and making appropriate amendments*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.



**SENATE SUBSTITUTE AMENDMENT,
TO 1999 SENATE BILL 237**

1 **AN ACT** *to amend* 15.01 (2); and *to create* 15.105 (26), 19.42 (10) (o), 19.42 (13)
2 (n), 20.505 (4) (dr), 20.923 (4) (b) 7., 20.923 (6) (hr), 227.01 (13) (sm), 230.08 (2)
3 (L) 6., 230.08 (2) (of), 973.017 and 973.30 of the statutes; **relating to:** the
4 creation of a sentencing commission.

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

5 **SECTION 1.** 15.01 (2) of the statutes is amended to read:

6 15.01 (2) "Commission" means a 3-member governing body in charge of a
7 department or independent agency or of a division or other subunit within a
8 department, except for the Wisconsin waterways commission which shall consist of
9 5 members, the parole commission which shall consist of 6 members and the Fox
10 river management commission which shall consist of 7 members. A Wisconsin group
11 created for participation in a continuing interstate body, or the interstate body itself,
12 shall be known as a "commission", but is not a commission for purposes of s. 15.06.

1 The parole commission created under s. 15.145 (1) shall be known as a "commission",
2 but is not a commission for purposes of s. 15.06. The sentencing commission created
3 under s. 15.105 (26) shall be known as a "commission" but is not a commission for
4 purposes of s. 15.06 (1) to (4m), (7) and (9).

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

6 15.105 (26) SENTENCING COMMISSION. (a) *Creation; membership.* There is
7 created a sentencing commission which is attached to the department of
8 administration under s. 15.03 and which shall consist of the following members:

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

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

11 3. ~~Seven~~ ^{Six} members, at least 2 of whom are not employed by any unit of federal,
12 state or local government, appointed by the governor.

13 4. One majority party member ^{and one minority party member} from each house of the legislature, appointed
14 as are the members of standing committees in their respective houses.

15 5. One member appointed by the senate majority leader or, if the senate
16 majority leader and the governor are members of the same political party, by the
17 senate minority leader.

18 5 ~~6~~ Two circuit judges, appointed by the supreme court.

19 6 ~~7~~ One representative of crime victims and one district attorney, each appointed
20 by the attorney general.

21 7 ~~8~~ One attorney in private practice engaged primarily in the practice of criminal
22 defense, appointed by the criminal law section of the State Bar of Wisconsin.

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

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

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

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

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

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

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

18 19.42 (10) (o) A member, the executive director or the deputy director of the
19 sentencing commission.

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

21 19.42 (13) (n) The position of member, executive director or deputy director of
22 the sentencing commission.

23 **SECTION 5.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
24 the following amounts for the purposes indicated:

1 1999-00 2000-01

2 20.505 Administration, department of

3 (4) ATTACHED DIVISIONS, BOARDS, COUNCILS AND
4 COMMISSIONS

415,000

380,000

5 (dr) Sentencing commission GPR A

6 SECTION 6. 20.505 (4) (dr) of the statutes is created to read:

7 20.505 (4) (dr) *Sentencing commission*. The amounts in the schedule for the
8 general program operations of the sentencing commission. No money may be
9 encumbered from the appropriation under this paragraph after December 31, 2004.

INS
4-9

10 SECTION 7. 20.923 (4) (b) 7. of the statutes is created to read:

11 20.923 (4) (b) 7. Sentencing commission: executive director.

12 SECTION 8. 20.923 (6) (hr) of the statutes is created to read:

13 20.923 (6) (hr) Sentencing commission: deputy director.

14 SECTION 9. 227.01 (13) (sm) of the statutes is created to read:
15 227.01 (13) (sm) Establishes sentencing guidelines under s. 973.30 (1) (c).

16 SECTION 10. 230.08 (2) (L) 6. of the statutes is created to read:

17 230.08 (2) (L) 6. Sentencing commission.

18 SECTION 11. 230.08 (2) (of) of the statutes is created to read:

19 230.08 (2) (of) The executive director of the sentencing commission.

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

21 973.017 Bifurcated sentences; use of guidelines, consideration of
22 aggravating and mitigating factors (1) DEFINITION. In this section, "sentencing

23 decision" means a decision as to whether to impose a bifurcated sentence under s.

24 973.01 or place a person on probation and a decision as to the length of a bifurcated

to

1 sentence, including the length of each component of the bifurcated sentence, the
2 amount of a fine and the length of a term of probation.

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

9 (3) USE OF GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL. The requirement under
10 sub. (2)[✓] that a court consider sentencing guidelines adopted by the sentencing
11 commission or the criminal penalties[✓] study committee does not require a court to
12 make a sentencing decision that is within any range or consistent with a
13 recommendation specified in the guidelines, and there is no right to appeal a court's
14 sentencing decision based on the court's decision to depart in any way from any
15 guideline. In any appeal from a court's sentencing decision, the appellate court may
16 reverse the sentencing decision only if it determines that the sentencing court
17 erroneously exercised its discretion in making the sentencing decision.

18 SECTION 13. 973.30[✓] of the statutes is created to read:

19 **973.30 Sentencing commission.** (1) DUTIES[✓]. The sentencing commission
20 shall do all of the following:

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

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

24 (c) Adopt advisory sentencing guidelines for felonies committed on or after
25 December 31, 1999, to promote public safety, to reflect changes in sentencing

1 practices and to preserve the integrity of the criminal justice and correctional
2 systems.

INS
6-2
3 (d) Provide information to the legislature, state agencies and the public
4 regarding the costs to and other needs of the department which result from
5 sentencing practices.

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

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

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

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

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

- 22 1. Milwaukee County.
- 23 2. Dane and Rock counties.
- 24 3. Brown, Outagamie, Calumet and Winnebago counties.
- 25 4. Racine and Kenosha counties.

1 5. All other counties.

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

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

INS
7-5

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

6 SECTION 14. Nonstatutory provisions.

7 (1) SENTENCING COMMISSION; INITIAL TERMS. Notwithstanding section 15.105 (26)

8 (c) 1. of the statutes, as created by this act, the initial members of the sentencing
9 commission shall be appointed for the following terms:

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

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

17 (c) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
18 created by this act, ~~the member appointed under section 15.105 (26) (a) 5 of the~~
19 ~~statutes, as created by this act,~~ one representative of crime victims and one attorney
20 in private practice, for terms expiring on January 1, 2003.

INS
7-20

21 (END)

ASSEMBLY BILL 465

INS 4-9

1999-00 2000-01

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20.505 Administration, department of

(4) ATTACHED DIVISIONS, BOARDS, COUNCILS AND COMMISSIONS

(dr) Sentencing commission GPR A 415,000 380,000

SECTION 13. 20.505 (4) (dr) of the statutes is created to read:

20.505 (4) (dr) *Sentencing commission*. The amounts in the schedule for the general program operations of the sentencing commission. No money may be encumbered from the appropriation under this paragraph after December 31, 2004.

SECTION 14. 20.505 (4) (mr) of the statutes is created to read:

20.505 (4) (mr) *Sentencing commission; federal aid*. All moneys received as federal aid as authorized by the governor under s. 16.54 to carry out the purposes for which the aid is provided. No money may be encumbered from the appropriation under this paragraph after December 31, 2004.

(end of insert)

SECTION 15. 20.923 (4) (b) 7. of the statutes is created to read:

20.923 (4) (b) 7. Sentencing commission: executive director.

SECTION 16. 20.923 (6) (hr) of the statutes is created to read:

20.923 (6) (hr) Sentencing commission: deputy director.

SECTION 17. 23.33 (13) (cg) of the statutes, as affected by 1997 Wisconsin Act 283, is amended to read:

23.33 (13) (cg) *Penalties related to causing death or injury; interference with signs and standards*. A person who violates sub. (8) (f) 1. shall be fined not more than \$10,000 or imprisoned for not more than 3 years or both is guilty of a Class H felony

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0180/lins
JEO:.....

1 **INSERT 6-2:**

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

(end insert)

BILL

INS 7-5, p. 1 of 2

SECTION 767

1 977.06 (2) (b) A person who makes a false representation that he or she does
 2 not believe is true for purposes of qualifying for assignment of counsel shall be fined
 3 not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
 4 is guilty of a Class I felony.

5 SECTION 768. 978.13 (1) (c) of the statutes is amended to read:

6 978.13 (1) (c) In counties having a population of 500,000 or more, the salary and
 7 fringe benefit costs of clerk positions in the district attorney's office necessary for the
 8 prosecution of violent crime cases primarily involving felony violations under s.
 9 939.63, if a felony is committed while armed, and under ss. 940.01 to 940.03, 940.05,
 10 940.06, 940.225, 943.23 (1g), (1m) and (1r) and 943.32 (2). The state treasurer shall
 11 pay the amount authorized under this paragraph to the county treasurer pursuant
 12 to a voucher submitted by the district attorney to the secretary of administration
 13 from the appropriation under s. 20.475 (1) (i). The amount paid under this paragraph
 14 may not exceed \$88,500 in the 1997-98 fiscal year and \$91,600 in the 1998-99 fiscal
 15 year.

16 SECTION 769. 1997 Wisconsin Act 283, section 454 (1) (f) is amended to read:

17 [1997 Wisconsin Act 283] Section 454 (1) (f) ~~No later than April 30, 1999, the~~
 18 The committee shall submit a report of its findings and recommendations to the
 19 legislature in the manner provided under section 13.172 (2) of the statutes and to the
 20 governor. The report shall include any proposed legislation that is necessary to
 21 implement the recommendations made by the committee in its report.

22 SECTION 770. 1997 Wisconsin Act 283, section 454 (2) is amended to read:

23 [1997 Wisconsin Act 283] Section 454 (2) ATTORNEY PROJECT POSITION. The
 24 authorized FTE positions for the department of administration are increased by 1.0
 25 GPR attorney project position, to be funded from the appropriation under section



BILL

INS 7-5, p. 2 of 2

1 20.505 (3) (c) of the statutes, for the purpose of providing legal services to the criminal
2 penalties study committee established under subsection (1), for the period ending on
3 April 30, 1999 June 30, 2000. (end of insert)

4 SECTION 771. Nonstatutory provisions.

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

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

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

15 (c) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
16 created by this act, the member appointed under section 15.105 (26) (a) 5. of the
17 statutes, as created by this act, one representative of crime victims and one attorney
18 in private practice, for terms expiring on January 1, 2003.

19 (2) POSITION AUTHORIZATION. There is authorized for the sentencing commission
20 1.0 FTE GPR executive director position, 1.0 FTE GPR deputy director position and
21 4.0 FTE GPR other positions to be funded from the appropriation under section
22 20.505 (4) (dr) of the statutes, as created by this act.

23 (3) CRIMINAL PENALTIES STUDY COMMITTEE. Until the members of the sentencing
24 commission created under section 973.30 of the statutes, as created by this act, are

BILL

INS 7-20, p. 1 of 2

1 20.505 (3) (c) of the statutes, for the purpose of providing legal services to the criminal
2 penalties study committee established under subsection (1), for the period ending on
3 April 30, 1999 June 30, 2000.

4 SECTION 771. Nonstatutory provisions.

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

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

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

15 (c) Two members appointed under section 15.105 (26) (a) 3. of the statutes, as
16 created by this act, the member appointed under section 15.105 (26) (a) 5. of the
17 statutes, as created by this act, one representative of crime victims and one attorney
18 in private practice, for terms expiring on January 1, 2003.

19 (2) POSITION AUTHORIZATION. There is authorized for the sentencing commission
20 1.0 FTE GPR executive director position, 1.0 FTE GPR deputy director position and
21 4.0 FTE GPR other positions to be funded from the appropriation under section
22 20.505 (4) (dr) of the statutes, as created by this act.

23 (3) CRIMINAL PENALTIES STUDY COMMITTEE. Until the members of the sentencing
24 commission created under section 973.30 of the statutes, as created by this act, are



BILL

INS 7-20, p. 2 of 2

SECTION 771

1 appointed, the criminal penalties study committee shall provide information to
2 lawyers, judges, the legislature and the public regarding this act.

The changes made in criminal sentencing by 1997 Wisconsin Act 283 and

3 **SECTION 772. Appropriation changes.**

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

9 **SECTION 773. Initial applicability.**

10 (1) PENALTY PROVISIONS GENERALLY. The repeal of sections 351.07 (2) (b), 939.32
11 (1) (b), 939.50 (1) (bc), 939.50 (3) (bc), 939.615 (7) (c), 939.622, 939.623, 939.624,
12 939.625, 939.63 (2), 939.635, 939.64, 939.641, 939.646, 939.647, 939.648, 940.09 (1b),
13 940.19 (3), 940.195 (3), 940.195 (6), 940.25 (1b), 940.285 (2) (b) 3., 941.29 (2m),
14 941.296 (3), 943.01 (2g), 943.23 (1m), 943.23 (1r), 946.42 (4), 946.425 (2), 948.02 (3m),
15 948.025 (2m), 948.03 (5), 948.35, 948.36, 948.605 (4), 961.41 (1) (cm) 5., 961.41 (1) (d)
16 5., 961.41 (1) (d) 6., 961.41 (1) (e) 5., 961.41 (1) (e) 6., 961.41 (1m) (cm) 5., 961.41 (1m)
17 (d) 5., 961.41 (1m) (d) 6., 961.41 (1m) (e) 5., 961.41 (1m) (e) 6., 961.41 (2) (c), 961.41
18 (3g) (a) 2., 961.41 (3g) (a) 3., 961.438, 961.46 (2), 961.46 (3), 961.465, 961.48 (2),
19 961.48 (4), 961.49 (2), 961.49 (3), 961.492 and 973.03 (3) (e) 3. of the statutes; the
20 renumbering of sections 351.07 (2) (a) and 961.49 (1) of the statutes; the renumbering
21 and amendment of sections 49.95 (1), 125.075 (2), 939.63 (1), 943.20 (3) (d) 2., 948.025
22 (1), 948.025 (2), 961.41 (1) (cm) 1., 961.41 (1m) (cm) 1., 961.41 (3g) (a) 1., 961.46 (1)
23 and 961.48 (1) of the statutes; the amendment of sections 11.61 (1) (a), 11.61 (1) (b),
24 12.60 (1) (a), 13.05, 13.06, 13.69 (6m), 23.33 (13) (cg), 26.14 (8), 29.971 (1) (c), 29.971
25 (1m) (c), 29.971 (11m) (a), 29.971 (11p) (a), 30.80 (2g) (b), 30.80 (2g) (c), 30.80 (2g) (d),



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0180/1
JEO&MGD:cmh:jf

Now

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SENATE SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 465

changes on
P. 5 only

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SECTION 5.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

				1999–00	2000–01
3					
4	20.505 Administration, department of				
5	(4) ATTACHED DIVISIONS, BOARDS, COUNCILS AND				
6	COMMISSIONS				
7	(dr) Sentencing commission	GPR	A	415,000	380,000

8 **SECTION 6.** 20.505 (4) (dr) of the statutes is created to read:

9 20.505 (4) (dr) *Sentencing commission.* The amounts in the schedule for the
10 general program operations of the sentencing commission. No money may be
11 encumbered from the appropriation under this paragraph after December 31, 2004.

12 **SECTION 7.** 20.505 (4) (mr) of the statutes is created to read:

13 20.505 (4) (mr) *Sentencing commission; federal aid.* All moneys received as
14 federal aid as authorized by the governor under s. 16.54 to carry out the purposes for
15 which the aid is provided. No money may be encumbered from the appropriation
16 under this paragraph after December 31, 2004.

17 **SECTION 8.** 20.923 (4) (b) 7. of the statutes is created to read:

18 20.923 (4) (b) 7. Sentencing commission: executive director.

19 **SECTION 9.** 20.923 (6) (hr) of the statutes is created to read:

20 20.923 (6) (hr) Sentencing commission: deputy director.

21 **SECTION 10.** 230.08 (2) (L) 6. of the statutes is created to read:

22 230.08 (2) (L) 6. Sentencing commission.

23 **SECTION 11.** 230.08 (2) (of) of the statutes is created to read:

24 230.08 (2) (of) The executive director of the sentencing commission.

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

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

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

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

~~In any appeal from a court's sentencing decision, the appellate court may
20 reverse the sentencing decision only if it determines that the sentencing court
21 erroneously exercised its discretion in making the sentencing decision.~~

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

23 973.30 Sentencing commission. (1) DUTIES. The sentencing commission
24 shall do all of the following:

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

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

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

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

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

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

23 (f) Publish and distribute to all circuit judges hearing criminal cases an annual
24 report regarding its work, which shall include all sentencing guidelines and all

1 changes in existing sentencing guidelines adopted during the 12 months preceding
2 the report.

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

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

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

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

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

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

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

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

24 [1997 Wisconsin Act 283] Section 454 (1) (f) ~~No later than April 30, 1999, the~~
25 The committee shall submit a report of its findings and recommendations to the

1 legislature in the manner provided under section 13.172 (2) of the statutes and to the
2 governor. The report shall include any proposed legislation that is necessary to
3 implement the recommendations made by the committee in its report.

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

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

11 **SECTION 16. Nonstatutory provisions.**

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

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

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

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

1 (2) POSITION AUTHORIZATION. There is authorized for the sentencing commission
2 1.0 FTE GPR executive director position, 1.0 FTE GPR deputy director position and
3 4.0 FTE GPR other positions to be funded from the appropriation under section
4 20.505 (4) (dr) of the statutes, as created by this act.

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

10 **SECTION 17. Appropriation changes.**

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

16

(END)