

1999 DRAFTING REQUEST

Senate Amendment (SA-SB357)

Received: 02/08/2000

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:

Subject: **Criminal Law - sentencing**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Statement of reasons for sentence

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>
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FE Sent For:

<END>

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FE Sent For:

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21333

George by Dan

18 USC § 3553 (b) ~~(c)~~

Replace sub. (1) in 973.0**7**

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) **Application of guidelines in imposing a sentence.** The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(c) **Statement of reasons for imposing a sentence.** The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

SENTE

(d) Pre order o defenda order. 1 motion, (1) p writt such: (2) al appro (3) in reasor order.

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(e) Limit Upon m impose a sentence: gation or Such sen 994 of titl (Added O 1989; Oct 3207-7; N 3593, 361 1269, 127 102 Stat. 4

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*Senator Gary R. George
State of Wisconsin
Sixth Senate District*

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Facsimile Cover Sheet

Please deliver to the individual named below.

To: *Jafren Olsen*
Phone:
Fax: *4-8522*
From: *Dan Rossmiller*
Number of pages:
Message:



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: January 31, 2000
TO: SENATOR GARY R. GEORGE
FROM: Ronald Sklansky, Senior Staff Attorney
SUBJECT: Review of Federal Criminal Sentencing Decisions

This memorandum, prepared at your request, describes the federal statutory structure for the review of federal criminal sentencing decisions and the Senate proposal, as provided in Senate Joint Resolution 29, for reviewing state criminal sentencing decisions.

A. LAW PRIOR TO THE APPLICATION OF FEDERAL SENTENCING GUIDELINES

Before the application of federal sentencing guidelines, a federal trial court was afforded broad sentencing discretion in criminal cases. A sentencing decision was to be affirmed as long as the sentence was within statutory limits and the judge did not rely on improper information. In this system, the appellate court had a limited standard of review and would not disturb a trial court decision unless the trial court relied on improper or unreliable information or did not exercise discretion at all. An example of an abuse of discretion would have been the imposition by the same court of disparate sentences on similar defendants without explanation. [See *U.S. v. McClain*, 2 F.3d 205 (7th Cir. 1993) and *U.S. v. Ramusack*, 928 F.2d 780 (7th Cir. 1991).]

B. LAW UNDER FEDERAL SENTENCING GUIDELINES

Federal law requires a sentencing court to impose a sentence within federal sentencing guidelines, unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Federal Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described. At the time of sentencing, the trial court must state in open court the reasons for its imposition of the particular sentence. If the sentence is within the federal sentencing guidelines, the court must state its reason for imposing a sentence at a particular point within the guideline range. If the sentence is not within the federal sentencing guideline, the trial court must describe the specific reason for the imposition of a sentence different from the guideline. [See 18 U.S.C. s. 3553 (b) and (c).]

If a notice of appeal of a federal criminal sentencing decision is served, the clerk of the district court must certify to the court of appeals all of the following information:

1. The portion of the record in the case that is designated as pertinent by either of the parties.
2. The presentence report.
3. The information submitted during the sentencing proceeding.

Upon review of the record, the court of appeals must determine whether the sentence was imposed in violation of law, was imposed as a result of an incorrect application of the sentencing guidelines or is outside the range of the applicable sentencing guidelines and is unreasonable. The court of appeals must give due regard to the opportunity of the district court to judge the credibility of the witnesses and must accept the findings of fact of the district court unless they are clearly erroneous. If the sentence was not imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, and is not unreasonable, the appellate court must affirm the sentence delivered by the trial court. [See 18 U.S.C. s. 3742 (c), (d) and (e) 3.]

C. SENATE PROPOSAL

The Senate proposal for sentencing in a truth-in-sentencing environment provides that when a court imposes a sentence it must make explicit findings of fact on the record to support its exercise of discretion. The court's findings of fact must be the basis upon which it imposes a bifurcated sentence, probation or a fine.

In an appeal from a sentencing decision, the appellate court must reverse the sentence if it determines that the sentencing court has erroneously exercised its discretion or if there is not substantial evidence in the record to support any of the findings of fact made by the sentencing court.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:rv;ksm

Proposed amendment to Senate Substitute Amendment 1 to Senate Bill 237.

Page 182, line 6: delete the material beginning on line 6 and ending on line 14 and insert:

"(10) IMPOSITION OF SENTENCE. When a court imposes a sentence, it shall make explicit findings of fact on the record to support its exercise of discretion. The court's findings of fact shall be the basis upon which it makes any of the following decisions:

(a) To impose a bifurcated sentence under s. 973.01 and to determine the length of each component of the bifurcated sentence.

(b) To impose probation.

(c) To impose a fine.

* → **(11) BASIS FOR APPEAL.** In an appeal from a court's sentencing decision, the appellate court shall reverse the sentencing court if it determines that the sentencing court has abused its discretion. An abuse of discretion by the sentencing court occurs under any of the following circumstances:

(a) No discretion has been exercised.

(b) Discretion is exercised without an explained judicial reasoning process.

(c) Discretion is exercised on clearly irrelevant or improper factors such as vindictiveness.

(d) A sentence is so excessive ^{or} and unusual ^{or} and so disproportionate to the offense as to shock the public sentiment and violate the judgment of reasonable persons concerning what is right and proper under the circumstances.

(e) Too much weight is given to one factor in the face of other contravening circumstances.

(f) There is not substantial evidence in the record to support any of the ~~findings of fact~~ ^{Reasons} made by the sentencing court."

for exercise



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1338/1

JEO:.....

New

Sent to
CRPS

JG

**SENATE AMENDMENT ,
TO 1999 SENATE BILL 357**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 277, line 15: delete lines 15 and 16 and substitute: ✓

3 “(11) STATEMENT OF REASONS FOR SENTENCE. The court shall state in open court
4 and on the record the reasons for its imposition of a particular sentence and the
5 reasons for each element of its sentencing decision, including its decision”. ✓

6 **2.** Page 277, line 21: after “APPEAL.” insert “(a)”. ✓

7 **3.** Page 277, line 24: delete lines 24 and 25 and substitute “sentencing
8 decision.

9 (b) An erroneous exercise of discretion occurs under any of the following
10 circumstances:

11 1. The sentencing court fails to exercise discretion in making its sentencing
12 decision.

1 2. The sentencing court fails to explain its reasoning process in making its
2 sentencing decision.

3 3. The sentencing court bases its sentencing decision on clearly irrelevant or
4 improper factors.

5 4. The sentencing court gives too much weight to one factor in the face of other
6 contravening factors in making its sentencing decision.

7 5. The sentencing court imposes a sentence that is so excessive, unusual or
8 disproportionate to the offense as to shock the public sentiment and violate the
9 judgment[✓] of reasonable persons concerning what is right and proper under the
10 circumstances.

11 6. There is not substantial evidence in the record to support the reasons stated
12 on the record under sub. (11)[✓] for the imposition of the sentence and the sentencing
13 decision.

14 (c) Paragraph (b)[✓] does not preclude an appellate court from finding that a
15 sentencing court erroneously exercised its discretion for reasons other than those
16 specified in par. (b).[✓]

17

(END)