

2003 DRAFTING REQUEST

Bill

Received: **01/27/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 7-0370**

By/Representing: **Mukasa**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing
Correctional System - misc**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Mukasa - BB0453,

Topic:

Sentencing Commission

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>
/?	mdsida 01/29/2003	kgilfoy 01/30/2003		_____			
/P1			jfrantze 01/30/2003	_____	sbasford 01/31/2003		
/1	mdsida	kgilfoy	pgreensl	_____	mbarman		

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/4	mdsida 02/10/2003	kgilfoy 02/10/2003	rschluet 02/10/2003	_____	mbarman 02/10/2003		

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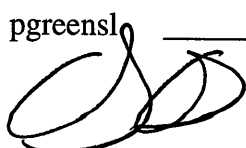
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13-2/7
Kmg

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1/?	mdsida	1/1-1/29 Kmg	1/30	1/30			

FE Sent For:

<END>



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR
MARC MAROTTA
SECRETARY

Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: January 25, 2003

To: Steve Miller, LRB

1792

From: Roger Mukasa, DOA
267-0370

Subject: Sentencing Commission 2003-05 Biennial Budget Request
Statutory Language Drafts

I am forwarding statutory language changes that Governor Doyle would like to include in the budget regarding the Sentencing Commission.

The Governor has proposed to move the Sentencing Commission to the DOC. Please change:

1. Section 15.105(27) to attach the commission to the Department of Corrections.
2. Section 973.30(1) as necessary to ensure that the commission performs the following duties:
 - a. Develops alternative guidelines to incarceration.
 - b. Collects sentencing data.
 - c. Revises and strengthens sentencing guidelines based on: (i) sentencing data; (ii) the most cost effectiveness approach; and (iii) the most effective means to provide public safety.
 - d. Makes recommendations to legislature to creates mandatory guidelines for sentences by a certain date: (i) with terms less than five years; (ii) recommending more sentencing options for the courts; (iii) that are initially limited to drug and property offenders; and (iv) if the DOC secretary makes a finding that costs are not coming under control with the other provisions enacted in the budget.

cc: James T. Johnston

*P/c to Jim -
add (ii) to
current par (c)*

*Report on how
Temp. guidelines
by 11/1/04
have achieved
(c) goals*

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, January 28, 2003 10:06 AM
To: Mukasa, Roger
Subject: RE: Sentencing Commission

On the first point -- the advisory sentencing guidelines will already cover probation. Are you thinking about other types of diversion, like deferred prosecution agreements or Milwaukee's drug court program?

-----Original Message-----

From: Mukasa, Roger
Sent: Tuesday, January 28, 2003 9:54 AM
To: Dsida, Michael
Cc: Johnston, James
Subject: Sentencing Commission

Mike,

Thanks for the e-mail.

Yes to the first question.

For the second question, in addition to gathering general sentencing data, data on referrals to the Challenge Program and data on the earned release program should be gathered. To ensure that these programs' data are gathered, should the current language be modified by a clause, "...including data on referrals to the Challenge and Earned Release Programs...?" Thanks for checking.

On the last question, Jim will let me or you know later today.

Roger

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, January 28, 2003 9:08 AM
To: Mukasa, Roger
Subject:

Roger-

In your memo regarding the Sentencing Commission draft, you ask that the commission be required to develop "alternative guidelines to incarceration." Did you mean guidelines for alternatives to incarceration?

In addition, you ask that s. 973.30 (1) be amended to ensure that the commission collect sentencing data, but s. 973.30 (1) (b) already requires that. Please let me know if there is any particular data that you want the commission to collect that may not be covered by that provision.

Finally, you refer in 2.d. to "mandatory guidelines," which seems a contradiction in terms. Given that you refer to the proposals developed by the commission as "recommending ... options for the courts," and given that the guidelines for felony sentences in s. 973.30 (1) (c) are merely advisory, do you want the same treatment for drug and property offense "guidelines"? Or does the objective of controlling costs necessitate making them mandatory? And on that note, what do you mean by "costs ... not coming under control"? Is there a particular percentage increase or decrease that you want the Secretary to use as a benchmark? (By the way, you probably don't have to have one, but I thought you might want to think about it.)

Thanks.

Mike Dsida

Sentencing Commission -

If the temporary guideline do not achieve par. (c) goals,
mandatory sentencing rules -

~~Phase~~ Prioritize based on ~~crimes most likely to lead to~~

-
Class
Start w/ ~~to~~ G+ under
Frequency of crimes



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-179210 P1
MGD.....
KMG

D Note
↓

DOA:.....Mukasa - BB0453, Sentencing commission

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

LPS: check auto refs.

1 AN ACT ^{DON'T GEN. CAT.} ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
✓ This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 15.01 (2) of the statutes is amended to read:
3 15.01 (2) "Commission" means a 3-member governing body in charge of a
4 department or independent agency or of a division or other subunit within a
5 department, except for the Wisconsin waterways commission which shall consist of
6 5 members, the parole commission which shall consist of 8 members, and the Fox
7 River management commission which shall consist of 7 members. A Wisconsin group
8 created for participation in a continuing interstate body, or the interstate body itself,
9 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 (27)~~ 15.145 (4) shall be known as a "commission" but is not a
 4 commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

History: 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109.

5 SECTION 2. 15.105 (27) of the statutes is renumbered 15.145 (4), and 15.145 (4)

6 (a) (intro.), as renumbered, is amended to read:

7 15.145 (4) (a) (intro.) There is created a sentencing commission that is attached
 8 to the department of ~~administration~~ corrections under s. 15.03 and that shall consist
 9 of the following members:

Creation; membership.

History: 1971 c. 40, 164, 270; 1973 c. 90, 333; 1975 c. 397; 1977 c. 29 s. 1649; 1977 c. 196 ss. 9, 10; 1977 c. 325, 392, 396, 418, 447; 1981 c. 20, 62, 182, 350, 374; 1983 a. 27, 91; 1983 a. 192 s. 303 (7); 1983 a. 371; 1985 a. 29 ss. 68 to 70, 87, 3202 (27); 1985 a. 180 s. 30m; 1987 a. 27, 142; 1987 a. 147 s. 25; 1987 a. 204, 342; 1989 a. 31, 56, 107, 345; 1991 a. 212, 269; 1993 a. 75, 246, 349, 437, 465, 491; 1995 a. 27 ss. 79 to 118p, 9116 (5), 9126 (19); 1995 a. 221, 225; 1997 a. 3, 27, 247; 1999 a. 9, 105, 185; 2001 a. 16 ss. 139, 174, 109.

10 SECTION 3. 20.410 (4) (title) of the statutes is created to read:

11 20.410 (4) (title) SENTENCING COMMISSION.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

12 SECTION 4. 20.505 (4) (dr) of the statutes is renumbered 20.410 (4) (a).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

13 SECTION 5. 20.505 (4) (mr) of the statutes is renumbered 20.410 (4) (mr).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

14 SECTION 6. 973.017 (title) of the statutes, as ~~amended~~ *created* by 2001 Wisconsin Act
 15 109, is amended to read:

16 **973.017 (title) Bifurcated sentences; use Use of guidelines;**
 17 **consideration of aggravating and mitigating factors.**

2001

18 History: 2001 a. 109. SECTION 7. 973.017 (1) of the statutes, as created by ~~2001~~ *2001* Wisconsin Act 109,
 19 is amended to read:

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

History: 2001 a. 109.

7 **SECTION 8.** 973.017 (2) (a) of the statutes, as ~~affected~~ ^{created} by ~~2001~~ ²⁰⁰¹ Wisconsin Act
8 109, is renumbered 973.017 (2g) and amended to read:

9 973.017 (2g) USE OF ADVISORY GUIDELINES. ~~If the offense is a felony~~ [✓] When a court
10 makes a sentencing decision concerning a person convicted of a felony committed on
11 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
12 by the sentencing commission under s. 973.30 or, if the sentencing commission has
13 not adopted a guideline for the offense, any applicable temporary sentencing
14 guideline adopted by the criminal penalties study committee created under 1997
15 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
16 adopted mandatory sentencing guidelines for the felony under s. 973.31. ✓

History: 2001 a. 109.

17 **SECTION 9.** 973.017 (2r) of the statutes is created to read:

18 973.017 (2r) USE OF MANDATORY GUIDELINES. If the sentencing commission has
19 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
20 when making a sentencing decision concerning a person convicted of that crime,
21 shall impose a sentence of the kind and within the range described in the applicable
22 sentencing guideline unless the court finds that there is an aggravating or mitigating
23 factor that warrants the imposition of a different kind of sentence or a sentence
24 outside of the range described in the guideline.

as created by 2001 Wisconsin Act 109,

1 SECTION 10. 973.017 (10) of the statutes is amended to read:

2 973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL. The
3 requirement under sub. ~~(2)~~ [✓] ~~(a)~~ [✓] (2g) that a court consider sentencing guidelines
4 adopted by the sentencing commission or the criminal penalties study committee
5 does not require a court to make a sentencing decision that is within any range or
6 consistent with a recommendation specified in the guidelines, and there is no right
7 to appeal a court's sentencing decision based on the court's decision to depart in any
8 way from any guideline. This subsection does not apply to a sentencing decision that
9 is made in connection with a crime for which the sentencing commission has adopted
10 mandatory sentencing guidelines under s. 973.31. ✓

History: 2001 a. 109.

11 SECTION 11. 973.30 (1) (c) of the statutes is amended to read:

12 973.30 (1) (c) Adopt and, as necessary, update advisory sentencing guidelines
13 and guidelines regarding the use of alternatives to incarceration for felonies
14 committed on or after July 30, 2002, to promote public safety in a cost-effective
15 manner, to reflect changes in sentencing practices, and to preserve the integrity of
16 the criminal justice and correctional systems.

History: 2001 a. 109.

17 SECTION 12. 973.31 of the statutes is created to read:

18 **973.31 Mandatory sentencing guidelines.** (1) In this section,
19 "commission" means the sentencing commission.

20 (2) If the commission determines in the report required under 2003 Wisconsin
21 Act (this act), section 9110 (1) that temporary sentencing guidelines adopted by
22 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
23 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission

1 shall adopt mandatory sentencing guidelines for felonies and misdemeanors for
2 which a court may impose a bifurcated sentence.

3 (3) When adopting a mandatory sentencing guideline^g for a crime, the
4 commission, subject to sub. (4), shall assign suggested ranges of punishment to
5 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
6 based upon the combination of offense and defendant characteristics in each case.
7 The commission may also include any of the following as part of a mandatory
8 sentencing guideline:

9 (a) Conditions of extended supervision or probation to be imposed.

10 (b) The length of a term of imprisonment to be imposed if, after the court
11 withholds a sentence and places a defendant on probation, the court revokes
12 probation.

13 (c) Whether penalties should be imposed concurrently or consecutively if the
14 defendant is convicted of more than one crime.

15 (4) The commission may not adopt a mandatory sentencing guideline for a
16 crime that calls for a range of punishment that conflicts with any provision of the
17 statutes relating to penalties for that crime.

18 (5) In general, the commission shall develop mandatory sentencing guidelines
19 for Class G to I felonies, unclassified felonies, and misdemeanors for which a court
20 may impose a bifurcated sentence before developing them for Class B to F felonies.
21 Beginning with the crimes that are committed most frequently, the commission shall
22 develop mandatory sentencing guidelines for crimes based on the frequency with
23 which they are committed.

24 **SECTION 9110. Nonstatutory provisions; corrections.**

1 (1) REPORT REGARDING TEMPORARY SENTENCING GUIDELINES. No later than
2 January 1, 2004, the sentencing commission shall analyze whether the temporary
3 sentencing guidelines adopted by the criminal penalties study committee created
4 under 1997 Wisconsin Act 283 are adequately promoting the objectives listed in
5 section 973.30 (1) (c) of the statutes and submit a report to the governor, the
6 legislature, and the supreme court explaining its conclusions.

7

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1792/tdn P1

MGD:.....
hmg

Jim and Roger:

1. Advisory sentencing guidelines are not treated as rulemaking under ch. 227. Mandatory sentencing guidelines are. Is that okay? A
2. This draft amends the definition of "sentencing decision" in s. 973.017 (1) to specify that a court may consider the factors listed in sub. (2) (ad), (ag), (ak), and (b) when deciding whether to impose a fine, whether to impose a jail sentence, and, if the court imposes a jail sentence, the length of that sentence. ✓

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

**DRAFTER'S NOTE
FROM THE
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LRB-1792/P1dn
MGD:kmg:jf

January 30, 2003

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Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1792/P1

MGD:kmg:jf

1

DOA:.....Mukasa – BB0453, Sentencing Commission

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

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3 15.01 (2) "Commission" means a 3-member governing body in charge of a
4 department or independent agency or of a division or other subunit within a
5 department, except for the Wisconsin waterways commission which shall consist of
6 5 members, the parole commission which shall consist of 8 members, and the Fox
7 River management commission which shall consist of 7 members. A Wisconsin group
8 created for participation in a continuing interstate body, or the interstate body itself,
9 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 (27)~~ 15.145 (4) shall be known as a “commission” but is not a
4 commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

5 **SECTION 2.** 15.105 (27) of the statutes is renumbered 15.145 (4), and 15.145 (4)
6 (a) (intro.), as renumbered, is amended to read:

7 15.145 (4) (a) *Creation; membership.* (intro.) There is created a sentencing
8 commission that is attached to the department of ~~administration~~ corrections under
9 s. 15.03 and that shall consist of the following members:

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8 makes a sentencing decision concerning a person convicted of a felony committed on
9 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
10 by the sentencing commission under s. 973.30 or, if the sentencing commission has
11 not adopted a guideline for the offense, any applicable temporary sentencing
12 guideline adopted by the criminal penalties study committee created under 1997
13 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
14 adopted mandatory sentencing guidelines for the felony under s. 973.31.

15 **SECTION 9.** 973.017 (2r) of the statutes is created to read:

16 973.017 (2r) USE OF MANDATORY GUIDELINES. If the sentencing commission has
17 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
18 when making a sentencing decision concerning a person convicted of that crime,
19 shall impose a sentence of the kind and within the range described in the applicable
20 sentencing guideline unless the court finds that there is an aggravating or mitigating
21 factor that warrants the imposition of a different kind of sentence or a sentence
22 outside of the range described in the guideline.

23 **SECTION 10.** 973.017 (10) of the statutes, as created by 2001 Wisconsin Act 109,
24 is amended to read:

1 **973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL.** The
2 requirement under sub. ~~(2)~~-(a) (2g) that a court consider sentencing guidelines
3 adopted by the sentencing commission or the criminal penalties study committee
4 does not require a court to make a sentencing decision that is within any range or
5 consistent with a recommendation specified in the guidelines, and there is no right
6 to appeal a court's sentencing decision based on the court's decision to depart in any
7 way from any guideline. This subsection does not apply to a sentencing decision that
8 is made in connection with a crime for which the sentencing commission has adopted
9 mandatory sentencing guidelines under s. 973.31.

10 **SECTION 11.** 973.30 (1) (c) of the statutes is amended to read:

11 **973.30 (1) (c)** Adopt and, as necessary, update advisory sentencing guidelines
12 and guidelines regarding the use of alternatives to incarceration for felonies
13 committed on or after July 30, 2002, to promote public safety in a cost-effective
14 manner, to reflect changes in sentencing practices, and to preserve the integrity of
15 the criminal justice and correctional systems.

16 **SECTION 12.** 973.31 of the statutes is created to read:

17 **973.31 Mandatory sentencing guidelines.** (1) In this section,
18 "commission" means the sentencing commission.

19 (2) If the commission determines in the report required under 2003 Wisconsin
20 Act (this act), section 9110 (1) that temporary sentencing guidelines adopted by
21 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
22 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission
23 shall adopt mandatory sentencing guidelines for felonies and misdemeanors for
24 which a court may impose a bifurcated sentence.

1 (3) When adopting a mandatory sentencing guideline for a crime, the
2 commission, subject to sub. (4), shall assign suggested ranges of punishment to
3 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
4 based upon the combination of offense and defendant characteristics in each case.
5 The commission may also include any of the following as part of a mandatory
6 sentencing guideline:

7 (a) Conditions of extended supervision or probation to be imposed.

8 (b) The length of a term of imprisonment to be imposed if, after the court
9 withholds a sentence and places a defendant on probation, the court revokes
10 probation.

11 (c) Whether penalties should be imposed concurrently or consecutively if the
12 defendant is convicted of more than one crime.

13 (4) The commission may not adopt a mandatory sentencing guideline for a
14 crime that calls for a range of punishment that conflicts with any provision of the
15 statutes relating to penalties for that crime.

16 (5) In general, the commission shall develop mandatory sentencing guidelines
17 for Class G to I felonies, unclassified felonies, and misdemeanors for which a court
18 may impose a bifurcated sentence before developing them for Class B to F felonies.
19 Beginning with the crimes that are committed most frequently, the commission shall
20 develop mandatory sentencing guidelines for crimes based on the frequency with
21 which they are committed.

22 **SECTION 9110. Nonstatutory provisions; corrections.**

23 (1) **REPORT REGARDING TEMPORARY SENTENCING GUIDELINES.** No later than
24 January 1, 2004, the sentencing commission shall analyze whether the temporary
25 sentencing guidelines adopted by the criminal penalties study committee created

1 under 1997 Wisconsin Act 283 are adequately promoting the objectives listed in
2 section 973.30 (1) (c) of the statutes and submit a report to the governor, the
3 legislature, and the supreme court explaining its conclusions.

4 (END)

1

ANALYSIS INSERT

CRIMES

The Sentencing Commission is attached to DOA. Under current law, the commission is required to collect and disseminate information about sentencing practices in criminal cases. The commission must also develop advisory sentencing guidelines for felonies to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. As of the date of this bill's introduction, however, the Sentencing Commission has not adopted any sentencing guidelines.

When a court sentences a person who, on or after February 1, 2003, committed a felony, the court must consider any advisory sentencing guidelines that the Sentencing Commission develops for that offense. If the Sentencing Commission has not adopted guidelines, the court must consider any temporary advisory sentencing guidelines developed by the Criminal Penalties Study Committee (CPSC) for that offense. The court, however, is not required to make a sentencing decision that is consistent with applicable guidelines, and a defendant may not appeal a court's sentencing decision based on the court's decision to depart from a guideline.

Under this bill, by January 1, 2004, the Sentencing Commission must analyze whether the temporary sentencing guidelines adopted by the CPSC are adequately promoting public safety in a cost-effective manner, whether they reflect changes in sentencing practices, and whether they are preserving the integrity of the criminal justice and correctional systems. If the commission determines that the temporary guidelines are not adequately promoting these objectives, it must adopt mandatory sentencing guidelines for felonies and any other crimes for which a person may be sentenced to a state prison, other than those for which the penalty is life imprisonment. The mandatory sentencing guidelines for an offense must assign suggested ranges of punishment based upon the combination of offense and defendant characteristics in each case, but the range of punishment must be consistent with the penalty ~~provided~~ for that crime under current law. *provided*

If the commission adopts a mandatory sentencing guideline for a crime, a court, in sentencing a person convicted of that crime, must impose a sentence of the kind and within the range described in the guideline, unless the court finds that there is an aggravating or mitigating factor that warrants a different sentence. In addition, the prohibition on appeals based on a departure from an advisory guideline does not apply to a departure from a mandatory guideline.

This bill also requires the Sentencing Commission to adopt guidelines regarding the use of alternatives to incarceration for felonies. It also detaches the commission from DOA and attaches it to ~~DOA~~.

DOC



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1792/1
MGD:kmg:pg

DOA:.....Mukasa - BB0453, Sentencing Commission

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1

Don't Sen.
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

The Sentencing Commission is attached to DOA. Under current law, the commission is required to collect and disseminate information about sentencing practices in criminal cases. The commission must also develop advisory sentencing guidelines for felonies to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. As of the date of this bill's introduction, however, the Sentencing Commission has not adopted any sentencing guidelines.

When a court sentences a person who, on or after February 1, 2003, committed a felony, the court must consider any advisory sentencing guidelines that the Sentencing Commission develops for that offense. If the Sentencing Commission has not adopted guidelines, the court must consider any temporary advisory sentencing guidelines developed by the Criminal Penalties Study Committee (CPSC) for that offense. The court, however, is not required to make a sentencing decision that is consistent with applicable guidelines, and a defendant may not appeal a court's sentencing decision based on the court's decision to depart from a guideline.

Under this bill, by January 1, 2004, the Sentencing Commission must analyze whether the temporary sentencing guidelines adopted by the CPSC are adequately promoting public safety in a cost-effective manner, whether they reflect changes in sentencing practices, and whether they are preserving the integrity of the criminal

justice and correctional systems. If the commission determines that the temporary guidelines are not adequately promoting these objectives, it must adopt mandatory sentencing guidelines for felonies and any other crimes for which a person may be sentenced to a state prison, other than those for which the penalty is life imprisonment. The mandatory sentencing guidelines for an offense must assign suggested ranges of punishment based upon the combination of offense and defendant characteristics in each case, but the range of punishment must be consistent with the penalty provided for that crime under current law.

If the commission adopts a mandatory sentencing guideline for a crime, a court, in sentencing a person convicted of that crime, must impose a sentence of the kind and within the range described in the guideline, unless the court finds that there is an aggravating or mitigating factor that warrants a different sentence. In addition, the prohibition on appeals based on a departure from an advisory guideline does not apply to a departure from a mandatory guideline.

This bill also requires the Sentencing Commission to adopt guidelines regarding the use of alternatives to incarceration for felonies. It also detaches the commission from DOA and attaches it to DOC.

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

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

2 15.01 (2) “Commission” means a 3–member governing body in charge of a
3 department or independent agency or of a division or other subunit within a
4 department, except for the Wisconsin waterways commission which shall consist of
5 5 members, the parole commission which shall consist of 8 members, and the Fox
6 River management commission which shall consist of 7 members. A Wisconsin group
7 created for participation in a continuing interstate body, or the interstate body itself,
8 shall be known as a “commission”, but is not a commission for purposes of s. 15.06.
9 The parole commission created under s. 15.145 (1) shall be known as a “commission”,
10 but is not a commission for purposes of s. 15.06. The sentencing commission created
11 under s. ~~15.105 (27)~~ 15.145 (4) shall be known as a “commission” but is not a
12 commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

1 SECTION 2. 15.105 (27) of the statutes is renumbered 15.145 (4), and 15.145 (4)

2 (a) (intro.), as renumbered, is amended to read:

3 15.145 (4) (a) *Creation; membership.* (intro.) There is created a sentencing
4 commission that is attached to the department of ~~administration~~ corrections under
5 s. 15.03 and that shall consist of the following members:

INS
3/5

6 SECTION 3. 20.410 (4) (title) of the statutes is created to read:

7 20.410 (4) (title) SENTENCING COMMISSION.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

8 SECTION 4. 20.505 (4) (dr) of the statutes is renumbered 20.410 (4) (a).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

9 SECTION 5. 20.505 (4) (mr) of the statutes is renumbered 20.410 (4) (mr).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 SECTION 6. 973.017 (title) of the statutes, as created by 2001 Wisconsin Act 109,
11 is amended to read:

12 973.017 (title) ~~Bifurcated sentences; use~~ Use of guidelines;
13 consideration of aggravating and mitigating factors.

14 SECTION 7. 973.017 (1) of the statutes, as created by 2001 Wisconsin Act 109,
15 is amended to read:

16 973.017 (1) In this section, "sentencing decision" means a decision as to
17 whether to impose a bifurcated sentence under s. 973.01, whether to impose a jail
18 sentence, and whether to impose a fine or whether to place a person on probation and
19 a decision as to the length of a bifurcated sentence, including the length of each
20 component of the bifurcated sentence, the length of a jail sentence, the amount of a
21 fine, and the length of a term of probation.

1 **SECTION 8.** 973.017 (2) (a) of the statutes, as created by 2001 Wisconsin Act 109,
2 is renumbered 973.017 (2g) and amended to read:

3 **973.017 (2g) USE OF ADVISORY GUIDELINES.** ~~If the offense is a felony~~ When a court
4 makes a sentencing decision concerning a person convicted of a felony committed on
5 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
6 by the sentencing commission under s. 973.30 or, if the sentencing commission has
7 not adopted a guideline for the offense, any applicable temporary sentencing
8 guideline adopted by the criminal penalties study committee created under 1997
9 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
10 adopted mandatory sentencing guidelines for the felony under s. 973.31.

11 **SECTION 9.** 973.017 (2r) of the statutes is created to read:

12 **973.017 (2r) USE OF MANDATORY GUIDELINES.** If the sentencing commission has
13 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
14 when making a sentencing decision concerning a person convicted of that crime,
15 shall impose a sentence of the kind and within the range described in the applicable
16 sentencing guideline unless the court finds that there is an aggravating or mitigating
17 factor that warrants the imposition of a different kind of sentence or a sentence
18 outside of the range described in the guideline.

19 **SECTION 10.** 973.017 (10) of the statutes, as created by 2001 Wisconsin Act 109,
20 is amended to read:

21 **973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL.** The
22 requirement under sub. ~~(2) (a)~~ (2g) that a court consider sentencing guidelines
23 adopted by the sentencing commission or the criminal penalties study committee
24 does not require a court to make a sentencing decision that is within any range or
25 consistent with a recommendation specified in the guidelines, and there is no right

1 to appeal a court's sentencing decision based on the court's decision to depart in any
2 way from any guideline. This subsection does not apply to a sentencing decision that
3 is made in connection with a crime for which the sentencing commission has adopted
4 mandatory sentencing guidelines under s. 973.31.

5 SECTION 11. 973.30 (1) (c) of the statutes is amended to read:

6 973.30 (1) (c) Adopt and, as necessary, update advisory sentencing guidelines
7 and guidelines regarding the use of alternatives to incarceration for felonies
8 committed on or after July 30, 2002, to promote public safety in a cost-effective
9 manner, to reflect changes in sentencing practices, and to preserve the integrity of
10 the criminal justice and correctional systems.

11 SECTION 12. 973.31 of the statutes is created to read:

12 **973.31 Mandatory sentencing guidelines.** (1) In this section,
13 “commission” means the sentencing commission.

14 (2) If the commission determines in the report required under 2003 Wisconsin
15 Act ... (this act), section 9110 (1) that temporary sentencing guidelines adopted by
16 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
17 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission
18 shall adopt mandatory sentencing guidelines for felonies and misdemeanors for
19 which a court may impose a bifurcated sentence.

20 (3) When adopting a mandatory sentencing guideline for a crime, the
21 commission, subject to sub. (4), shall assign suggested ranges of punishment to
22 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
23 based upon the combination of offense and defendant characteristics in each case.
24 The commission may also include any of the following as part of a mandatory
25 sentencing guideline:

1 (a) Conditions of extended supervision or probation to be imposed.

2 (b) The length of a term of imprisonment to be imposed if, after the court
3 withholds a sentence and places a defendant on probation, the court revokes
4 probation.

5 (c) Whether penalties should be imposed concurrently or consecutively if the
6 defendant is convicted of more than one crime.

7 (4) The commission may not adopt a mandatory sentencing guideline for a
8 crime that calls for a range of punishment that conflicts with any provision of the
9 statutes relating to penalties for that crime.

10 (5) In general, the commission shall develop mandatory sentencing guidelines
11 for Class G to I felonies, unclassified felonies, and misdemeanors for which a court
12 may impose a bifurcated sentence before developing them for Class B to F felonies.
13 Beginning with the crimes that are committed most frequently, the commission shall
14 develop mandatory sentencing guidelines for crimes based on the frequency with
15 which they are committed.

16 **SECTION 9110. Nonstatutory provisions; corrections.**

17 (1) REPORT REGARDING TEMPORARY SENTENCING GUIDELINES. No later than
18 January 1, 2004, the sentencing commission shall analyze whether the temporary
19 sentencing guidelines adopted by the criminal penalties study committee created
20 under 1997 Wisconsin Act 283 are adequately promoting the objectives listed in
21 section 973.30 (1) (c) of the statutes and submit a report to the governor, the
22 legislature, and the supreme court explaining its conclusions.

23 (END)

INS 3/5

SEC. #.

AM 20.410(1) ~~was~~

(a) *General program operations.* The amounts in the schedule to operate institutions and provide field services and administrative services. No payments may be made under this paragraph for payments in accordance with other states party to the interstate corrections compact under s. 302.25.

20.410 (1) ^B

and for the general ^{program} ~~of~~ operations ^{tions} of the
sentencing commission

Dsida, Michael

From: Johnston, James
Sent: Friday, February 07, 2003 3:16 PM
To: Dsida, Michael
Subject: RE: DACC earned release

Sorry, for not getting back to you. I greatly appreciate your patience and indulgence in making these changes.

As we just discussed, the criteria for the DACC options should parallel the Boot Camp criteria relating to only allowing the earned release if the judge listing it as an option. SO it would be for future releases after the judges starting using the option.

Listed below is a rough cut at the language I would like for these sections:

For Draft # 1792. section 9 s. 973.30(1)(c)

Adopt and as necessary, update advisory sentencing guidelines for felonies committed on or after July 30, 2002, to promote public safety in a cost-effective manner, to promote consistency in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. Develop advisory guidelines regarding the appropriate use of alternatives to incarceration.

Section 10 s.973.31(5)

In general, the commission shall first develop mandatory sentencing guidelines, beginning with the felonies that most frequently result in sentences to a period of confinement.

Many Thanks,
Jim

-----Original Message-----

From: Dsida, Michael
Sent: Friday, February 07, 2003 2:27 PM
To: Johnston, James
Subject: RE: DACC earned release
Importance: High

Jim-

I never heard from you about this!

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 03, 2003 9:03 AM
To: Johnston, James
Subject: FW: DACC earned release

Jim --

02/07/2003

Besides the offense-based eligibility criteria, do any of the other eligibility criteria for boot camp apply to this program? I know that the age restriction does not apply, but I wasn't sure about the others.

Also, will inmates who are in the program on the effective date of the bill be eligible for early release? (The answer to this may depend on your answer to the first question. For example, if the court needs to okay early release at sentencing, a current participant who is serving a bifurcated sentence would not be eligible for early release.)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1792/2 (3)
MGD:kmg:pg

DN

DOA:.....Mukasa – BB0453, Sentencing Commission

FOR 2003-05 BUDGET – NOT READY FOR INTRODUCTION

~~to stay~~
NOW

*Don't
Sen.*

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

The Sentencing Commission is attached to DOA. Under current law, the commission is required to collect and disseminate information about sentencing practices in criminal cases. The commission must also develop advisory sentencing guidelines for felonies to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. As of the date of this bill's introduction, however, the Sentencing Commission has not adopted any sentencing guidelines.

When a court sentences a person who, on or after February 1, 2003, committed a felony, the court must consider any advisory sentencing guidelines that the Sentencing Commission develops for that offense. If the Sentencing Commission has not adopted guidelines, the court must consider any temporary advisory sentencing guidelines developed by the Criminal Penalties Study Committee (CPSC) for that offense. The court, however, is not required to make a sentencing decision that is consistent with applicable guidelines, and a defendant may not appeal a court's sentencing decision based on the court's decision to depart from a guideline.

Under this bill, by January 1, 2004, the Sentencing Commission must analyze whether the temporary sentencing guidelines adopted by the CPSC are adequately promoting public safety in a cost-effective manner, whether they reflect changes in sentencing practices, and whether they are preserving the integrity of the criminal

justice and correctional systems. If the commission determines that the temporary guidelines are not adequately promoting these objectives, it must adopt mandatory sentencing guidelines for felonies and any other crimes for which a person may be sentenced to a state prison, other than those for which the penalty is life imprisonment. The mandatory sentencing guidelines for an offense must assign suggested ranges of punishment based upon the combination of offense and defendant characteristics in each case, but the range of punishment must be consistent with the penalty provided for that crime under current law.

If the commission adopts a mandatory sentencing guideline for a crime, a court, in sentencing a person convicted of that crime, must impose a sentence of the kind and within the range described in the guideline, unless the court finds that there is an aggravating or mitigating factor that warrants a different sentence. In addition, the prohibition on appeals based on a departure from an advisory guideline does not apply to a departure from a mandatory guideline.

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

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

2 15.01 (2) “Commission” means a 3-member governing body in charge of a
3 department or independent agency or of a division or other subunit within a
4 department, except for the Wisconsin waterways commission which shall consist of
5 5 members, the parole commission which shall consist of 8 members, and the Fox
6 River management commission which shall consist of 7 members. A Wisconsin group
7 created for participation in a continuing interstate body, or the interstate body itself,
8 shall be known as a “commission”, but is not a commission for purposes of s. 15.06.
9 The parole commission created under s. 15.145 (1) shall be known as a “commission”,
10 but is not a commission for purposes of s. 15.06. The sentencing commission created
11 under s. ~~15.105 (27)~~ 15.145 (4) shall be known as a “commission” but is not a
12 commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

1 **SECTION 2.** 15.105 (27) of the statutes is renumbered 15.145 (4), and 15.145 (4)
2 (a) (intro.), as renumbered, is amended to read:

3 15.145 (4) (a) *Creation; membership.* (intro.) There is created a sentencing
4 commission that is attached to the department of ~~administration~~ corrections under
5 s. 15.03 and that shall consist of the following members:

6 **SECTION 3.** 20.410 (1) of the statutes is amended to read:

7 20.410 (1) (a) *General program operations.* The amounts in the schedule to
8 operate institutions and provide field services and administrative services and for
9 the general program operations of the sentencing commission. No payments may be
10 made under this paragraph for payments in accordance with other states party to the
11 interstate corrections compact under s. 302.25.

12 **SECTION 4.** 973.017 (title) of the statutes, as created by 2001 Wisconsin Act 109,
13 is amended to read:

14 **973.017** (title) ~~Bifurcated sentences; use~~ **Use of guidelines;**
15 **consideration of aggravating and mitigating factors.**

16 ~~**SECTION 5.** 973.017 (1) of the statutes, as created by 2001 Wisconsin Act 109,~~
17 ~~is amended to read:~~

18 ~~973.017 (1) In this section, "sentencing decision" means a decision as to~~
19 ~~whether to impose a bifurcated sentence under s. 973.01, whether to impose a jail~~
20 ~~sentence, and whether to impose a fine or whether to place a person on probation and~~
21 ~~a decision as to the length of a bifurcated sentence, including the length of each~~
22 ~~component of the bifurcated sentence, the length of a jail sentence, the amount of a~~
23 ~~fine, and the length of a term of probation.~~

24 **SECTION 6.** 973.017 (2) (a) of the statutes, as created by 2001 Wisconsin Act 109,
25 is renumbered 973.017 (2g) and amended to read:

INS ✓
3/16

1 **973.017 (2g) USE OF ADVISORY GUIDELINES.** ~~If the offense is a felony~~ When a court
2 makes a sentencing decision concerning a person convicted of a felony committed on
3 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
4 by the sentencing commission under s. 973.30 or, if the sentencing commission has
5 not adopted a guideline for the offense, any applicable temporary sentencing
6 guideline adopted by the criminal penalties study committee created under 1997
7 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
8 adopted mandatory sentencing guidelines for the felony under s. 973.31.

9 **SECTION 7.** 973.017 (2r) of the statutes is created to read:

10 **973.017 (2r) USE OF MANDATORY GUIDELINES.** If the sentencing commission has
11 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
12 when making a sentencing decision concerning a person convicted of that crime,
13 shall impose a sentence of the kind and within the range described in the applicable
14 sentencing guideline unless the court finds that there is an aggravating or mitigating
15 factor that warrants the imposition of a different kind of sentence or a sentence
16 outside of the range described in the guideline.

17 **SECTION 8.** 973.017 (10) of the statutes, as created by 2001 Wisconsin Act 109,
18 is amended to read:

19 **973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL.** The
20 requirement under sub. ~~(2)~~ ~~(a)~~ (2g) that a court consider sentencing guidelines
21 adopted by the sentencing commission or the criminal penalties study committee
22 does not require a court to make a sentencing decision that is within any range or
23 consistent with a recommendation specified in the guidelines, and there is no right
24 to appeal a court's sentencing decision based on the court's decision to depart in any
25 way from any guideline. This subsection does not apply to a sentencing decision that

1 is made in connection with a crime for which the sentencing commission has adopted
2 mandatory sentencing guidelines under s. 973.31.

3 SECTION 9. 973.30 (1) (c) of the statutes is amended to read:

4 973.30 (1) (c) Adopt and, as necessary, update advisory sentencing guidelines
5 ~~and guidelines regarding the use of alternatives to incarceration~~ for felonies
6 committed on or after July 30, 2002, to promote public safety in a cost-effective
7 manner, to ~~reflect changes~~ ^{promote consistency} in sentencing practices, and to preserve the integrity of
8 the criminal justice and correctional systems.

9 SECTION 10. 973.31 of the statutes is created to read:

10 **973.31 Mandatory sentencing guidelines.** (1) In this section,
11 “commission” means the sentencing commission.

12 (2) If the commission determines in the report required under 2003 Wisconsin
13 Act ... (this act), section 9110 (1) that temporary sentencing guidelines adopted by
14 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
15 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission
16 shall adopt mandatory ~~sentencing~~ ^{sentencing decisions, as defined in s. 973.017(1), for} guidelines for felonies and misdemeanors for
17 which a court may impose a bifurcated sentence.

18 (3) When adopting a mandatory sentencing guideline for a crime, the
19 commission, subject to sub. (4), shall assign suggested ranges of punishment to
20 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
21 based upon the combination of offense and defendant characteristics in each case.
22 The commission may also include any of the following as part of a mandatory
23 sentencing guideline:

24 (a) Conditions of extended supervision or probation to be imposed.

*with respect to each component of
the sentencing decision, as defined in s. 973.017(1)*

NS
5/8

1 (b) The length of a term of imprisonment to be imposed if, after the court
2 withholds a sentence and places a defendant on probation, the court revokes
3 probation.

4 (c) Whether penalties should be imposed concurrently or consecutively if the
5 defendant is convicted of more than one crime.

6 (4) The commission may not adopt a mandatory sentencing guideline for a
7 crime that calls for a range of punishment that conflicts with any provision of the
8 statutes relating to penalties for that crime.

9 (5) In general, the commission shall develop mandatory sentencing guidelines
10 for Class G to I felonies, unclassified felonies, and misdemeanors for which a court
11 may impose a bifurcated sentence before developing them for Class B to F felonies.
12 Beginning with the crimes that are committed most frequently, the commission shall
13 develop mandatory sentencing guidelines for crimes based on the frequency with
14 which they are committed.

15 **SECTION 9110. Nonstatutory provisions; corrections.**

16 (1) REPORT REGARDING TEMPORARY SENTENCING GUIDELINES. No later than
17 January 1, 2004, the sentencing commission shall analyze whether the temporary
18 sentencing guidelines adopted by the criminal penalties study committee created
19 under 1997 Wisconsin Act 283 are adequately promoting the objectives listed in
20 section 973.30 (1) (c) of the statutes and submit a report to the governor, the
21 legislature, and the supreme court explaining its conclusions.

22 (END)

INS
8/9

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1792/ins 3
MGD:kmg:pg

1 insert 3/16 ✓

2 SECTION 1. 973.017 (1) of the statutes, as created by 2001 Wisconsin Act 109,
3 is renumbered 973.017 (1) (intro.) and amended to read:

4 973.017 (1) (intro.) DEFINITION. In this section, "sentencing decision" means
5 the following:

6 (a) With respect to a crime for which the court may impose a bifurcated sentence
7 under s. 973.01, a decision as to whether to impose a bifurcated sentence under s.
8 973.01 or place a person on probation and a decision as to the length of a bifurcated
9 sentence, including the length of each component of the bifurcated sentence, the
10 amount of a fine, and the length of a term of probation.

History: 2001 a. 109.

11 SECTION 2. 973.017 (1) (b) of the statutes is created to read:

12 973.017 (1) (b) With respect to any other crime, a decision as to whether to
13 impose a jail sentence or place a person on probation and a decision as to the length
14 of a jail sentence, the amount of a fine, and the length of a term of probation.

15 insert 5/8 ✓

16 SECTION 3. 973.30 (1) (cm) of the statutes is created to read:

17 973.30 (1) (cm) Develop advisory guidelines regarding the appropriate use of
18 alternatives to incarceration.

19 insert 6/9 ✓

20 No 8 In general, in developing mandatory sentencing guidelines, the commission
21 shall begin with crimes that result in the greatest number of bifurcated sentences
22 being imposed.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1792/3dn

.....
mgd King

Jim:

In view of Secretary Frank's comments, I deleted "whether to impose a fine" from the definition of "sentencing decision." The reference to the court determining the amount of a fine and the fact that, under nearly all other penalty statutes, the court has the discretion to fine or to not fine a convicted defendant should make it sufficiently clear that that decision as to whether to impose a fine is part of the sentencing decision.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1792/3
MGD:kmg:pg

February 7, 2003

Jim:

In view of Secretary Frank's comments, I deleted "whether to impose a fine" from the definition of "sentencing decision." The reference to the court determining the amount of a fine and the fact that, under nearly all other penalty statutes, the court has the discretion to fine or to not fine a convicted defendant should make it sufficiently clear that that decision as to whether to impose a fine is part of the sentencing decision.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Dsida, Michael

From: Johnston, James
Sent: Sunday, February 09, 2003 12:04 PM
To: Dsida, Michael
Cc: Mukasa, Roger; Dombrowski, Cynthia; Caucutt, Dan
Subject: Modification to LRB Draft #1792/3 Sentencing Commission

Mike,
If at all possible, please repeal s.20.505(4)(dr) and s.20.505(4)(mr).

Many Thanks,
Jim
Jim Johnston

State Budget Office -- WI Dept. of Administration
608/266-3420
608/267-0372 (fax)
james.johnston@doa.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1792/3
MGD:kmg:pg

4

DOA:.....Mukasa – BB0453, Sentencing Commission

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Don't know.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

The Sentencing Commission is attached to DOA. Under current law, the commission is required to collect and disseminate information about sentencing practices in criminal cases. The commission must also develop advisory sentencing guidelines for felonies to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. As of the date of this bill's introduction, however, the Sentencing Commission has not adopted any sentencing guidelines.

When a court sentences a person who, on or after February 1, 2003, committed a felony, the court must consider any advisory sentencing guidelines that the Sentencing Commission develops for that offense. If the Sentencing Commission has not adopted guidelines, the court must consider any temporary advisory sentencing guidelines developed by the Criminal Penalties Study Committee (CPSC) for that offense. The court, however, is not required to make a sentencing decision that is consistent with applicable guidelines, and a defendant may not appeal a court's sentencing decision based on the court's decision to depart from a guideline.

Under this bill, by January 1, 2004, the Sentencing Commission must analyze whether the temporary sentencing guidelines adopted by the CPSC are adequately promoting public safety in a cost-effective manner, ~~whether they reflect changes in~~ sentencing practices, and ~~whether they are~~ preserving the integrity of the criminal

promoting consistency

justice and correctional systems. If the commission determines that the temporary guidelines are not adequately promoting these objectives, it must adopt mandatory sentencing guidelines for felonies and any other crimes for which a person may be sentenced to a state prison, other than those for which the penalty is life imprisonment. The mandatory sentencing guidelines for an offense must assign suggested ranges of punishment based upon the combination of offense and defendant characteristics in each case, but the range of punishment must be consistent with the penalty provided for that crime under current law.

If the commission adopts a mandatory sentencing guideline for a crime, a court, in sentencing a person convicted of that crime, must impose a sentence of the kind and within the range described in the guideline, unless the court finds that there is an aggravating or mitigating factor that warrants a different sentence. In addition, the prohibition on appeals based on a departure from an advisory guideline does not apply to a departure from a mandatory guideline.

This bill also requires the Sentencing Commission to adopt ^{advisory} guidelines regarding the use of alternatives to incarceration ~~for felonies~~. It also detaches the commission from DOA and attaches it to DOC.

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

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

2 15.01 (2) “Commission” means a 3-member governing body in charge of a
3 department or independent agency or of a division or other subunit within a
4 department, except for the Wisconsin waterways commission which shall consist of
5 5 members, the parole commission which shall consist of 8 members, and the Fox
6 River management commission which shall consist of 7 members. A Wisconsin group
7 created for participation in a continuing interstate body, or the interstate body itself,
8 shall be known as a “commission”, but is not a commission for purposes of s. 15.06.
9 The parole commission created under s. 15.145 (1) shall be known as a “commission”,
10 but is not a commission for purposes of s. 15.06. The sentencing commission created
11 under s. ~~15.105 (27)~~ 15.145 (4) shall be known as a “commission” but is not a
12 commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

1 **SECTION 2.** 15.105 (27) of the statutes is renumbered 15.145 (4), and 15.145 (4)

2 (a) (intro.), as renumbered, is amended to read:

3 15.145 (4) (a) *Creation; membership.* (intro.) There is created a sentencing
4 commission that is attached to the department of ~~administration~~ corrections under
5 s. 15.03 and that shall consist of the following members:

6 **SECTION 3.** 20.410 (1) (a) of the statutes is amended to read:

7 20.410 (1) (a) *General program operations.* The amounts in the schedule to
8 operate institutions and provide field services and administrative services and for
9 the general program operations of the sentencing commission. No payments may be
10 made under this paragraph for payments in accordance with other states party to the
11 interstate corrections compact under s. 302.25.

12 **SECTION 4.** 973.017 (title) of the statutes, as created by 2001 Wisconsin Act 109,
13 is amended to read:

14 **973.017** (title) ~~Bifurcated sentences; use~~ Use of guidelines;
15 consideration of aggravating and mitigating factors.

16 **SECTION 5.** 973.017 (1) of the statutes, as created by 2001 Wisconsin Act 109,
17 is renumbered 973.017 (1) (intro.) and amended to read:

18 973.017 (1) **DEFINITION.** (intro.) In this section, “sentencing decision” means
19 the following:

20 (a) With respect to a crime for which the court may impose a bifurcated sentence
21 under s. 973.01, a decision as to whether to impose a bifurcated sentence under s.
22 973.01 or place a person on probation and a decision as to the length of a bifurcated
23 sentence, including the length of each component of the bifurcated sentence, the
24 amount of a fine, and the length of a term of probation.

25 **SECTION 6.** 973.017 (1) (b) of the statutes is created to read:

Section #. (RP) 20.505 (4) (dr) ✓
Note: bud

Section #. RP; 20.505 (4) (mr) (RP) ✓
Note: bud

1 973.017 (1) (b) With respect to any other crime, a decision as to whether to
2 impose a jail sentence or place a person on probation and a decision as to the length
3 of a jail sentence, the amount of a fine, and the length of a term of probation.

4 **SECTION 7.** 973.017 (2) (a) of the statutes, as created by 2001 Wisconsin Act 109,
5 is renumbered 973.017 (2g) and amended to read:

6 973.017 (2g) USE OF ADVISORY GUIDELINES. ~~If the offense is a felony~~ When a court
7 makes a sentencing decision concerning a person convicted of a felony committed on
8 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
9 by the sentencing commission under s. 973.30 or, if the sentencing commission has
10 not adopted a guideline for the offense, any applicable temporary sentencing
11 guideline adopted by the criminal penalties study committee created under 1997
12 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
13 adopted mandatory sentencing guidelines for the felony under s. 973.31.

14 **SECTION 8.** 973.017 (2r) of the statutes is created to read:

15 973.017 (2r) USE OF MANDATORY GUIDELINES. If the sentencing commission has
16 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
17 when making a sentencing decision concerning a person convicted of that crime,
18 shall impose a sentence of the kind and within the range described in the applicable
19 sentencing guideline unless the court finds that there is an aggravating or mitigating
20 factor that warrants the imposition of a different kind of sentence or a sentence
21 outside of the range described in the guideline.

22 **SECTION 9.** 973.017 (10) of the statutes, as created by 2001 Wisconsin Act 109,
23 is amended to read:

24 973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL. The
25 requirement under sub. ~~(2) (a)~~ (2g) that a court consider sentencing guidelines

1 adopted by the sentencing commission or the criminal penalties study committee
2 does not require a court to make a sentencing decision that is within any range or
3 consistent with a recommendation specified in the guidelines, and there is no right
4 to appeal a court's sentencing decision based on the court's decision to depart in any
5 way from any guideline. This subsection does not apply to a sentencing decision that
6 is made in connection with a crime for which the sentencing commission has adopted
7 mandatory sentencing guidelines under s. 973.31.

8 **SECTION 10.** 973.30 (1) (c) of the statutes is amended to read:

9 973.30 (1) (c) Adopt and, as necessary, update advisory sentencing guidelines
10 for felonies committed on or after July 30, 2002, to promote public safety in a
11 cost-effective manner, to ~~reflect changes~~ promote consistency in sentencing
12 practices, and to preserve the integrity of the criminal justice and correctional
13 systems.

14 **SECTION 11.** 973.30 (1) (cm) of the statutes is created to read:

15 973.30 (1) (cm) Develop advisory guidelines regarding the appropriate use of
16 alternatives to incarceration.

17 **SECTION 12.** 973.31 of the statutes is created to read:

18 **973.31 Mandatory sentencing guidelines.** (1) In this section,
19 “commission” means the sentencing commission.

20 (2) If the commission determines in the report required under 2003 Wisconsin
21 Act (this act), section 9110 (1) that temporary sentencing guidelines adopted by
22 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
23 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission
24 shall adopt mandatory guidelines for sentencing decisions, as defined in s. 973.017

1 (1), for felonies and misdemeanors for which a court may impose a bifurcated
2 sentence.

3 (3) When adopting a mandatory sentencing guideline for a crime, the
4 commission, subject to sub. (4), shall assign suggested ranges of punishment to
5 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
6 based upon the combination of offense and defendant characteristics in each case.
7 The commission may also include any of the following as part of a mandatory
8 sentencing guideline:

9 (a) Conditions of extended supervision or probation to be imposed.

10 (b) The length of a term of imprisonment to be imposed if, after the court
11 withholds a sentence and places a defendant on probation, the court revokes
12 probation.

13 (c) Whether penalties should be imposed concurrently or consecutively if the
14 defendant is convicted of more than one crime.

15 (4) The commission may not adopt a mandatory sentencing guideline for a
16 crime that calls for a range of punishment that conflicts with any provision of the
17 statutes relating to penalties for that crime.

18 (5) In general, in developing mandatory sentencing guidelines, the commission
19 shall begin with crimes that result in the greatest number of bifurcated sentences
20 being imposed. In general, the commission shall develop mandatory sentencing
21 guidelines for Class G to I felonies, unclassified felonies, and misdemeanors for
22 which a court may impose a bifurcated sentence before developing them for Class B
23 to F felonies. Beginning with the crimes that are committed most frequently, the
24 commission shall develop mandatory sentencing guidelines for crimes based on the
25 frequency with which they are committed.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1792/4
MGD:kmg:rs

DOA:.....Mukasa – BB0453, Sentencing Commission

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

The Sentencing Commission is attached to DOA. Under current law, the commission is required to collect and disseminate information about sentencing practices in criminal cases. The commission must also develop advisory sentencing guidelines for felonies to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the criminal justice and correctional systems. As of the date of this bill's introduction, however, the Sentencing Commission has not adopted any sentencing guidelines.

When a court sentences a person who, on or after February 1, 2003, committed a felony, the court must consider any advisory sentencing guidelines that the Sentencing Commission develops for that offense. If the Sentencing Commission has not adopted guidelines, the court must consider any temporary advisory sentencing guidelines developed by the Criminal Penalties Study Committee (CPSC) for that offense. The court, however, is not required to make a sentencing decision that is consistent with applicable guidelines, and a defendant may not appeal a court's sentencing decision based on the court's decision to depart from a guideline.

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correctional systems. If the commission determines that the temporary guidelines are not adequately promoting these objectives, it must adopt mandatory sentencing guidelines for felonies and any other crimes for which a person may be sentenced to a state prison, other than those for which the penalty is life imprisonment. The mandatory sentencing guidelines for an offense must assign suggested ranges of punishment based upon the combination of offense and defendant characteristics in each case, but the range of punishment must be consistent with the penalty provided for that crime under current law.

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

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3 department or independent agency or of a division or other subunit within a
4 department, except for the Wisconsin waterways commission which shall consist of
5 5 members, the parole commission which shall consist of 8 members, and the Fox
6 River management commission which shall consist of 7 members. A Wisconsin group
7 created for participation in a continuing interstate body, or the interstate body itself,
8 shall be known as a "commission", but is not a commission for purposes of s. 15.06.
9 The parole commission created under s. 15.145 (1) shall be known as a "commission",
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3 15.145 (4) (a) *Creation; membership.* (intro.) There is created a sentencing
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7 20.410 (1) (a) *General program operations.* The amounts in the schedule to
8 operate institutions and provide field services and administrative services and for
9 the general program operations of the sentencing commission. No payments may be
10 made under this paragraph for payments in accordance with other states party to the
11 interstate corrections compact under s. 302.25.

12 **SECTION 4.** 20.505 (4) (dr) of the statutes is repealed.

 ***NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

13 **SECTION 5.** 20.505 (4) (mr) of the statutes is repealed.

 ***NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

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2 under s. 973.01, a decision as to whether to impose a bifurcated sentence under s.
3 973.01 or place a person on probation and a decision as to the length of a bifurcated
4 sentence, including the length of each component of the bifurcated sentence, the
5 amount of a fine, and the length of a term of probation.

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10 **SECTION 9.** 973.017 (2) (a) of the statutes, as created by 2001 Wisconsin Act 109,
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12 973.017 (2g) USE OF ADVISORY GUIDELINES. ~~If the offense is a felony~~ When a court
13 makes a sentencing decision concerning a person convicted of a felony committed on
14 or after February 1, 2003, the court shall consider the sentencing guidelines adopted
15 by the sentencing commission under s. 973.30 or, if the sentencing commission has
16 not adopted a guideline for the offense, any applicable temporary sentencing
17 guideline adopted by the criminal penalties study committee created under 1997
18 Wisconsin Act 283. This subsection does not apply if the sentencing commission has
19 adopted mandatory sentencing guidelines for the felony under s. 973.31.

20 **SECTION 10.** 973.017 (2r) of the statutes is created to read:

21 973.017 (2r) **USE OF MANDATORY GUIDELINES.** If the sentencing commission has
22 adopted mandatory sentencing guidelines for a crime under s. 973.31, the court,
23 when making a sentencing decision concerning a person convicted of that crime,
24 shall impose a sentence of the kind and within the range described in the applicable
25 sentencing guideline unless the court finds that there is an aggravating or mitigating

1 factor that warrants the imposition of a different kind of sentence or a sentence
2 outside of the range described in the guideline.

3 **SECTION 11.** 973.017 (10) of the statutes, as created by 2001 Wisconsin Act 109,
4 is amended to read:

5 973.017 (10) USE OF ADVISORY GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL. The
6 requirement under sub. ~~(2)~~ ~~(a)~~ (2g) that a court consider sentencing guidelines
7 adopted by the sentencing commission or the criminal penalties study committee
8 does not require a court to make a sentencing decision that is within any range or
9 consistent with a recommendation specified in the guidelines, and there is no right
10 to appeal a court's sentencing decision based on the court's decision to depart in any
11 way from any guideline. This subsection does not apply to a sentencing decision that
12 is made in connection with a crime for which the sentencing commission has adopted
13 mandatory sentencing guidelines under s. 973.31.

14 **SECTION 12.** 973.30 (1) (c) of the statutes is amended to read:

15 973.30 (1) (c) Adopt and, as necessary, update advisory sentencing guidelines
16 for felonies committed on or after July 30, 2002, to promote public safety in a
17 cost-effective manner, to ~~reflect changes~~ promote consistency in sentencing
18 practices, and to preserve the integrity of the criminal justice and correctional
19 systems.

20 **SECTION 13.** 973.30 (1) (cm) of the statutes is created to read:

21 973.30 (1) (cm) Develop advisory guidelines regarding the appropriate use of
22 alternatives to incarceration.

23 **SECTION 14.** 973.31 of the statutes is created to read:

24 **973.31 Mandatory sentencing guidelines.** (1) In this section,
25 "commission" means the sentencing commission.

1 (2) If the commission determines in the report required under 2003 Wisconsin
2 Act (this act), section 9110 (1) that temporary sentencing guidelines adopted by
3 the criminal penalties study committee created under 1997 Wisconsin Act 283 are
4 not adequately promoting the objectives listed in s. 973.30 (1) (c), the commission
5 shall adopt mandatory guidelines for sentencing decisions, as defined in s. 973.017
6 (1), for felonies and misdemeanors for which a court may impose a bifurcated
7 sentence.

8 (3) When adopting a mandatory sentencing guideline for a crime, the
9 commission, subject to sub. (4), shall assign suggested ranges of punishment to
10 promote the objectives listed in s. 973.30 (1) (c). The ranges of punishment shall be
11 based upon the combination of offense and defendant characteristics in each case.
12 The commission may also include any of the following as part of a mandatory
13 sentencing guideline:

14 (a) Conditions of extended supervision or probation to be imposed.

15 (b) The length of a term of imprisonment to be imposed if, after the court
16 withholds a sentence and places a defendant on probation, the court revokes
17 probation.

18 (c) Whether penalties should be imposed concurrently or consecutively if the
19 defendant is convicted of more than one crime.

20 (4) The commission may not adopt a mandatory sentencing guideline for a
21 crime that calls for a range of punishment that conflicts with any provision of the
22 statutes relating to penalties for that crime.

23 (5) In general, in developing mandatory sentencing guidelines, the commission
24 shall begin with crimes that result in the greatest number of bifurcated sentences
25 being imposed. In general, the commission shall develop mandatory sentencing

1 guidelines for Class G to I felonies, unclassified felonies, and misdemeanors for
2 which a court may impose a bifurcated sentence before developing them for Class B
3 to F felonies. Beginning with the crimes that are committed most frequently, the
4 commission shall develop mandatory sentencing guidelines for crimes based on the
5 frequency with which they are committed.

6 **SECTION 9110. Nonstatutory provisions; corrections.**

7 (1) REPORT REGARDING TEMPORARY SENTENCING GUIDELINES. No later than
8 January 1, 2004, the sentencing commission shall analyze whether the temporary
9 sentencing guidelines adopted by the criminal penalties study committee created
10 under 1997 Wisconsin Act 283 are adequately promoting the objectives listed in
11 section 973.30 (1) (c) of the statutes, as affected by this act, and submit a report to
12 the governor, the legislature, and the supreme court explaining its conclusions.

13 (END)