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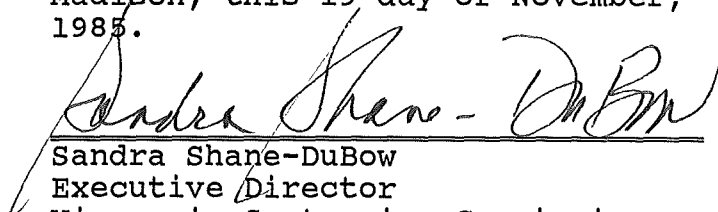
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Revisor of Statutes
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STATE OF WISCONSIN)
) SS
SENTENCING COMMISSION)

I, Executive Director of the sentencing commission and custodian of the official records do hereby certify that the annexed rules relating to the objectives, scope, and applicability of the sentencing guidelines, were duly approved and adopted by this commission on June 14, 1985.

I further certify that this copy has been compared by me with the original on file in this commission and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand of the sentencing commission at 30 West Mifflin Street in the city of Madison, this 19 day of November, 1985.


Sandra Shane-DuBow
Executive Director
Wisconsin Sentencing Commission

PROPOSED ORDER OF THE
SENTENCING COMMISSION
ADMINISTRATIVE RULES

To create chapters SC 1, 2, 3, 4, 5, and 6, relating to the objectives, scope, and applicability of the sentencing guidelines.

ANALYSIS PREPARED BY THE SENTENCING COMMISSION

The commission proposes to create rules for the development and use of the sentencing guidelines. By proposing these rules the commission intends to provide sentencing standards based on the severity of the offense and the extent of the offender's prior record.

The sentencing guidelines reflect sentencing experience in this state and are for use in all general jurisdiction courts. The guidelines are in the form of matrices with a different matrix for each offense. Guideline matrices for armed robbery, robbery, and burglary have been completed. Guideline matrices for first degree sexual assault, second degree sexual assault, felony theft, forgery, and violations of the uniform substance act are being developed. Each matrix sets forth recommended guideline sentences for terms of confinement and the likelihood that the offender would be incarcerated.

Each matrix was developed from extensive research on sentencing in Wisconsin general jurisdiction courts. A point system was established directly from the research findings. The guidelines provide a recommended sentence in range of months based on indices of prior record and of offense severity. Indices of prior record include but are not limited to past felony convictions, past juvenile adjudications, past violent offense convictions, and supervision status at time of offense. Indices of offense severity include but are not limited to weapon use, victim harm, class of offense, concealing identity, existence of read-in charges, and value and type of contraband or drugs.


Use of the sentencing guideline system including notation of the aggravating and mitigating circumstances shall be required in all criminal cases. Imposition of the specific guideline sentence will not be required, and there is no restriction of how much above or below the guideline sentence a judge may sentence.

The guideline matrices shall be reviewed by the commission every year. If ongoing research conducted by the commission indicates that matrix revisions are necessary, the revisions will be done by July 1 of each year. Revisions will be based on statistical analysis of statewide data from the sentencing courts.

There is no expected fiscal effect of the proposed chapters SC 1, 2, 3, 4, 5, and 6.

Pursuant to authority vested in the sentencing commission by s. 973.01(1)(b), Stats., and s. 277.014(2), Stats., the sentencing commission hereby creates rules as follows.

DATE:



Chair

Wisconsin Sentencing Commission

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Chapter SC 1

Authority and Objectives of Rules; Definitions

SC 1.01 Authority and objectives of rules

SC 1.02 Definitions

SC 1.01 AUTHORITY AND OBJECTIVES OF RULES (1) These rules of the sentencing commission are promulgated under the authority of s. 973.01(1)(b), Stats., s. 973.011(1)(2)(3) Stats., and s. 277.014(2), Stats., and shall apply to all actions and proceedings of the commission.

(2) The goal of the commission is to articulate clear sentencing standards in order to enhance the exercise of judgment and decision making in criminal cases. Final discretion remains with the sentencing judge. It is the intent of the commission that these standards be useful, but not controlling, to the prosecution, defense, probation and parole, and other personnel in criminal cases. By law, the sentencing guidelines may not affect appeal practices. The guidelines developed by the commission take into account the following objectives which are deemed to be appropriate considerations at sentencing:

- (a) Sentencing shall be based primarily upon the severity of the offense and the extent of the offender's prior record.
- (b) Sentence length should increase in direct proportion to offense severity and the extent of the offender's prior record.
- (c) A sentence of probation or another type of non-incarcerative sentence shall be the preferred sentence unless persuasive reasons including the severity of the offense and the protection of the public exist to the contrary.
- (d) Similarly situated offenders should receive similar sentences and dissimilarly situated offenders should receive different sentences.
- (e) Sentencing shall be neutral with respect to the race, gender, social or economic status, religious beliefs or national origin of the offender.
- (f) Sentencing shall take into account the offender's potential for rehabilitation, individual circumstances, and needs.

- (g) Guideline sentences and the appropriate rationale for sentencing outside the guidelines shall be developed by the commission.
- (h) Sentences may depart from the guidelines due to mitigating or aggravating circumstances.
- (i) Sentencing guidelines shall be revised periodically, primarily reflecting recent sentencing practices in this state to the extent sufficient data is available.
- (j) The impact of the crime on the victim shall be considered in sentencing.

SC 1.02 DEFINITIONS The following are definitions for terms used in chapters SC 1, 2, 3, 4, 5, and 6.

- (1) "Commission" means the sentencing commission.
- (2) "Guideline sentence" means probation or the sentence in range of months as indicated by locating the intersection of the offender's criminal history score and his or her offense severity score on the appropriate matrix.
- (3) "Guideline system" means the entire system developed to guide sentencing decision making, including the scoring of offenders' criminal history and offense severity, the notation of aggravating and mitigating circumstances, and the completion and submission of the guideline form.
- (4) "Offender criminal history" (A scale) means a measurement of the offender's prior criminal record and status relating to incarceration, probation, parole or pretrial release.
- (5) "Offender severity" (B scale) means a measurement of the seriousness of the offense relating to weapon use, victim harm, offense class, concealing identity, read-in charges, and value and type of contraband or drugs.
- (6) "Sentencing guidelines form" means the form used to record the scored evaluation of the offender and the sentence actually imposed.
- (7) "Sentencing guideline matrix" means a standardized guide for use in sentence decision making in general jurisdiction courts that involves specific evaluation of the offender's prior record and the severity of the offense.

Chapter SC 2

Scope of the Rules

SC 2.01 The scope of the rules

SC 2.01 THE SCOPE OF THE RULES (1) The sentencing guidelines system shall be used in sentencing for every felony for which guidelines are developed.

(2) Use of the sentencing guideline system will not require that the guideline sentence be imposed in every instance.

(3) In all cases, whether or not the guideline sentence is imposed, sentencing judges shall indicate aggravating or mitigating circumstances on the appropriate sentencing guidelines form.

Chapter SC 3

Methodology for Calculating Recommended Sentence Lengths

SC 3.01 Methodology for calculating recommended sentence

SC 3.01 METHODOLOGY FOR CALCULATING RECOMMENDED SENTENCE LENGTHS (1) Guideline sentences for specific offense and offender type shall be developed using appropriate standardized statistical techniques to determine the relative weight of legal variables on sentence length in past sentencing in Wisconsin general jurisdiction courts. In every instance, the guideline sentences shall relate directly to multivariate coefficients significant at the .05 level or less, and shall be established directly from the research findings.

(2) In every instance the effect of inappropriate variables on sentence length shall be controlled.

(3) Guideline sentences developed by the method outlined in SC 3.01(1) and SC 3.01(2) shall be reviewed periodically by means of additional statistical analysis to confirm their validity.

Chapter SC 4

Guideline Revision; Guideline Revision Criteria

SC 4.01 Guideline revision

SC 4.02 Guideline revision criteria

SC 4.01 GUIDELINE REVISION (1) Guideline matrices shall be reviewed by the commission every year.

(2) If ongoing research conducted by the commission indicates that matrix revisions are necessary, they shall be done by July 1 of each year.

(3) All revisions will be communicated to judges, prosecutors, defense attorneys, and probation and parole agents in additional training sessions or by direct mail notices.

SC 4.02 GUIDELINE REVISION CRITERIA (1)(a) Revisions to the matrices shall be made only if the following technical requirements are met:

- (b) More than fifty percent of all imposed sentences do not agree with the guideline sentence range in a particular cell of a matrix.
- (c) Additionally, analysis of additional sentencing information in which the influence of non-legal variables is controlled, indicates that the regression coefficients representing length of sentence have altered and the alteration is significant at the .05 level.
- (d) Or, the statutes relevant to the guideline offense are changed.

Chapter SC 5

The Guideline Scoring;
The Completion of the Guideline Scoring Forms

SC 5.01 The guideline scoring

SC 5.02 The completion of the guideline scoring forms

- SC 5.01 THE GUIDELINE SCORING (1)(a) The offender criminal history score (A scale) indicates an increase in the extent of the prior record from left to right on the matrix. Different points are assigned for each item in the criminal history scoring.
- (b) The offender's legal status includes being on parole, probation for a prior felony, bail for a prior offense, Huber release, or being an escapee from a correctional institution at the time of the offense.
 - (c) Felony-type juvenile adjudications do not include juvenile status offenses.
 - (d) Prior felonies are felonies for which the offender has been convicted prior to the conviction for the offense being scored.
 - (e) A violent felony is one which involves the threat or use of force, such as robbery, sexual assault, or armed robbery.
- (2)(a) The offense severity (B scale) indicates an increase in the severity of the offense or case from the top to the bottom of the matrix. Different points are assigned for each item in the criminal history scoring. All points are derived from the analysis of past sentencing.
- (b) Offenses committed with a firearm include offenses committed with starter pistols and similar guns, loaded or unloaded, which are capable of producing death or great bodily harm.
 - (c) Concealing identity, read-in charges, sexual intercourse, and bodily harm are used as they are defined in the statutes and are scored as indicated.
 - (d) All calculations of seriousness are based on statutory designation of Class A, B, C, D, and E felonies.

- (3) (a) The points assigned to the items in the criminal history score and the offense severity score as well as the selection of the scorable items were derived from the legal variables found to be statistically significant in research on sentencing practices in Wisconsin general jurisdiction courts.

SC 5.02 THE COMPLETION OF THE GUIDELINE SCORING FORMS

(1) A record of the sentencing evaluation or scoring shall be kept on appropriate forms developed by the commission.

(2) In cases where a pre-sentence investigation is ordered, after the pre-sentence investigation is completed, the probation and parole agent shall complete the form required under SC 5.02(1), and attach it to the pre-sentence investigation report.

(3) (a) In cases where no pre-sentence investigation is ordered, the prosecutor and the defense counsel shall each complete a copy of the form required under SC 5.02(1).

(b) Any information required on the sentencing guidelines form shall not be modified or omitted by negotiation between the prosecutor and the defense counsel.

(c) When two copies of the form required under SC 5.02(1) are completed by the prosecutor and the defense counsel they shall submit both forms to the sentencing judge at the beginning of the sentencing hearing.

(4) When a dispute arises between the prosecutor and the defense counsel regarding the completion of the sentencing guidelines form or the correct sentencing guideline, the sentencing judge shall determine the facts and resolve the dispute at the beginning of the sentencing hearing.

(5) In all cases in which a sentencing guidelines form is used, the sentencing judge shall have the final responsibility as to the form's completeness and accuracy.

(6) The completed sentencing guidelines form shall be returned by the sentencing judge to the sentencing commission within five working days of the sentencing hearing.

Chapter SC 6

Mitigating Circumstances; Aggravating Circumstances;
Circumstances not to be Considered as
Either Mitigating or Aggravating

- SC 6.01 Mitigating circumstances
- SC 6.02 Aggravating circumstances
- SC 6.03 Circumstances not to be considered as mitigating or aggravating

SC 6.01 MITIGATING CIRCUMSTANCES (1) Mitigating circumstances may require that the guideline sentence not be imposed. Mitigating circumstances to be considered in sentencing decisions include but are not limited to the following:

- (a) The offender's involvement in actual offense is minimal or due to coercion, duress, or ignorance that the offense constituted a crime.
- (b) The offender cooperated with authorities in apprehending or prosecuting other offenders.
- (c) The offender's life, conduct or behavior has become stable since the offense; the offender has secured a job, or ended his or her association with known criminals.
- (d) The offender has maintained a substantial crime-free period, adult and/or juvenile, before this offense occurred.
- (e) The offender has demonstrated responsible action and judgment in other aspects of his or her life.
- (f) The offender has made or will make restitution.
- (g) The offender will participate in drug or alcohol treatment, or emotional/mental health treatment, and it has been determined that such treatment will likely deter further criminal activity.
- (h) The offender lacked substantial capacity for judgment due to physical or mental impairment. This does not include voluntary use of intoxicants such as drugs or alcohol.
- (i) The offender's age impaired judgment due to extreme youth or extreme age.

- (j) The victim desires no prosecution or lenient treatment of the offender.
- (k) The recommendation of the District Attorney involves lenient treatment of the offender.
- (l) Any other circumstances as determined by the sentencing judge.

SC 6.02 AGGRAVATING CIRCUMSTANCES (1) Aggravating circumstances may require that the guideline sentence not be imposed. Aggravating circumstances to be considered in sentencing decisions include but are not limited to the following:

- (a) Special vulnerability of the victim, such as the victim being young, elderly, handicapped, or visibly pregnant.
- (b) Extreme injury to the victim including permanent physical or mental injury, disfigurement, or permanent handicap such as blindness.
- (c) Wanton or extreme cruelty or depravity toward the victim.
- (d) The victim desires full prosecution of the offender.
- (e) The offender used or threatened to use a firearm or other particularly menacing or dangerous weapon, if this fact is not included in matrix scoring.
- (f) The circumstances of the offense indicate premeditation or extensive planning.
- (g) There is extensive property damage, or contraband of unusual or great value such as artwork or a large amount of money.
- (h) If multiple participants, the offender took major role or directed offense.
- (i) The offense involved multiple victims.
- (j) Prior juvenile offenses, especially prior violent juvenile offenses, if they are not included in matrix scoring.
- (k) Prior adult misdemeanors, especially prior violent misdemeanors.
- (l) Offenses that are read into the record, if

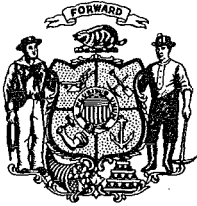
they are not included in matrix scoring.

- (m) The attitude or behavior of offender showed lack of remorse.
- (n) The recommendation of the District Attorney involves lengthy sentences for the offender.
- (o) Any other circumstances that are considered important by the sentencing judge and that are not included in the guidelines scoring.

SC 6.03 CIRCUMSTANCES NOT TO BE CONSIDERED AS MITIGATING OR AGGRAVATING (1) The following non-exclusive factors may not be considered as aggravating or mitigating in sentencing:

- (a) The race of the offender.
- (b) The religious beliefs of the offender.
- (c) The gender of the offender.
- (d) The exercise of constitutional rights by the offender.

The sentencing commission intends that the rules proposed in chapters SC 1 and 2 shall take effect on the first day of the month following publication in the register as authorized under s. 227.026(1), Stats.



State of Wisconsin Sentencing Commission

Suite 901 • 30 West Mifflin • Madison, Wisconsin 53703
(608) 267-2437

David Travis
Chairman
Sandra Shane-DuBow
Executive Director

November 19, 1985

Mr. Orlan Prestegard
Revisor of State Statutes
30 W. Mifflin St.
Suite 904
Madison, WI 53703

Dear Mr. Prestegard:

Enclosed please find a copy of the Sentencing Commission's administrative rules and attached report.

It is my understanding that the Criminal Justice and Public Safety Committee has taken no action on these rules well past the 30 day period allowed after posting hearing notice. For your information, the hearing notice on the rules was posted on October 8, and the initial hearing date scheduled for October 14, postponed to October 24.

Therefore, we submit these rules for your review.

Sincerely,


Sandra Shane-Dubow

SSD:cw

Enclosures