



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 15, 2003

Joint Committee on Finance

Paper #246

Transfer of the Sentencing Commission to the Department of Corrections (DOA and DOC -- Adult Corrections)

[LFB 2003-05 Budget Summary: Page 39, #4 and #5, and Page 121, #19]

CURRENT LAW

The Sentencing Commission was created in 2001 Act 109 and is currently attached to DOA, with a base budget of \$140,000 GPR and 6.0 GPR positions, including 1.0 GPR unclassified director and 1.0 GPR unclassified deputy director.

GOVERNOR

Adjust the funding of the Sentencing Commission under DOA as follows: (a) provide \$300,500 GPR annually for full funding of salaries and fringe benefits for the Sentencing Commission positions; (b) provide \$60,000 GPR annually for increased supplies and services funding; and (c) reduce the Commission's total funding by \$198,800 GPR and 4.0 GPR positions annually as a base budget reduction measure. Transfer the Sentencing Commission from the Department of Administration to Corrections. Reduce funding and position authority under in DOA by \$301,700 GPR and 2.0 GPR positions annually and provide \$301,700 GPR and 2.0 GPR classified positions annually in Corrections. Modify Corrections' general program operations appropriation to also include funding for the Sentencing Commission.

DISCUSSION POINTS

Background

1. In the Final Report of the Criminal Penalties Study Committee (a committee created in 1997 Act 283 to study and make recommendations on truth-in-sentencing), the

Committee indicated that creation of a sentencing commission was necessary because a sentencing commission could: (a) be of assistance to sentencing judges by suggesting sentence standards through sentencing guidelines; (b) monitor sentences, carry out sentencing studies, collect data and publish information relating to the effectiveness of sentencing options; (c) "act as a bridge among prosecutors, public defenders, the courts, and DOC [Corrections] to promote a more rational and coherent approach to the sentencing of criminals"; (d) assist the Governor and Legislature by more accurately predicting prison and probation populations for budgeting purposes through its utilization of data from both the Courts and Corrections; and (e) review proposed criminal legislation as to its impact on the court system, the probation and prison population, and cost to the state.

2. Under 2001 Act 109, a 21-member Sentencing Commission, attached to the Department of Administration, was created, consisting of the following members: (a) the Attorney General or his or her designee; (b) the State Public Defender or his or her designee; (c) seven members, at least two of whom are not employed by any unit of federal, state or local government, appointed by the Governor; (d) one majority party member and one minority party member from each house of the Legislature, appointed in the same manner as the members of standing committees in their respective houses; (e) two circuit judges, appointed by the Supreme Court; (f) one representative of crime victims and one prosecutor, each appointed by the Attorney General; (g) one attorney in private practice engaged primarily in the practice of criminal defense, appointed by the criminal law section of the State Bar of Wisconsin; (h) the Secretary of Corrections or his or her designee, as a nonvoting member; (i) the Chairperson of the Parole Commission or his or her designee, as a nonvoting member; and (j) the Director of State Courts or his or her designee, as a nonvoting member.

3. Under current law, the Sentencing Commission is required to do all of the following:

a. Select an executive director having appropriate training and experience to study sentencing practices and prepare proposed sentencing guidelines;

b. Monitor and compile data regarding sentencing practices in the state;

c. Adopt advisory sentencing guidelines for felonies committed on or after July 30, 2002, to promote public safety, to reflect changes in sentencing practices and to preserve the integrity of the criminal justice and correctional systems;

d. Provide information to the Legislature, state agencies and the public regarding the costs to, and other needs of, the Department of Corrections which result from sentencing practices;

e. Provide information to judges and lawyers about the sentencing guidelines;

f. Publish and distribute to all circuit judges hearing criminal cases an annual report regarding its work, which must include all sentencing guidelines and all changes in existing sentencing guidelines adopted during the preceding year;

g. Study whether race is a basis for imposing sentences in criminal cases and submit a report and recommendations on this issue to the Governor, to each house of the Legislature, and to the Supreme Court;

h. Assist the Legislature in assessing the cost of enacting new or revising existing statutes affecting criminal sentencing;

i. At least semiannually, submit reports to all circuit judges, and to the chief clerk of each house of the Legislature for distribution to appropriate standing committees of the Legislature, that contain statistics regarding criminal sentences. Each semiannual report must have a different focus and need not contain statistics regarding every crime. Each report must contain information regarding sentences imposed statewide and in each of the following geographic areas: (a) Milwaukee County; (b) Dane and Rock Counties; (c) Brown, Outagamie, Calumet and Winnebago Counties; (d) Racine and Kenosha Counties; and (e) all other counties; and

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

4. The Commission sunsets on December 31, 2007.

2003 Senate Bill 44

5. Under the bill, the total change to Sentencing Commission funding and positions would be as follows:

	2003-04		2004-05	
	<u>Funding</u>	<u>Positions</u>	<u>Funding</u>	<u>Positions</u>
Sentencing Commission Base Budget	\$140,000	6.00	\$140,000	6.00
Funding and Position Adjustments under DOA				
Full Funding of Salaries and Fringe Benefits	\$300,500	0.00	\$300,500	0.00
Increased Supplies and Services	60,000	0.00	60,000	0.00
Budget Reduction	<u>-198,800</u>	<u>-4.00</u>	<u>-198,800</u>	<u>-4.00</u>
Total Adjustments	\$161,700	-4.00	\$161,700	-4.00
Transferred to Department of Corrections	-\$301,700	-2.00	-\$301,700	-2.00
Funding in Department of Corrections	\$301,700	2.00	\$301,700	2.00
Total Change to Base	\$161,700	-4.00	\$161,700	-4.00

6. Under SB 44, funding in Corrections would be for the following: (a) salaries, \$164,800; (b) fringe benefits, \$59,600; and (c) supplies and services, \$77,300. The bill would also modify Corrections' general program operations appropriation to include funding for the Sentencing Commission.

Sentencing Commission Attachment to Corrections

7. In reviewing the transfer of the Sentencing Commission, the Committee may wish to consider the independence of the Commission if it is attached to the Department of Corrections. The Commission's statutory duties impact executive branch agencies other than Corrections. Also, the Commission has duties to provide information to the Legislature and Courts. It could be argued that if the Commission is attached to Corrections, the ability of the Commission to provide information, independent of the departmental needs of Corrections, could be diminished.

8. It should be noted that the Criminal Penalties Study Committee recommended that the Commission be attached to DOA. If the Committee wishes, the Commission could remain in the Department of Administration. DOA is a non-justice related agency and has a number of attached boards and commissions to which it provides support. Given that the staff of the Commission are reduced to two positions under SB 44, DOA could be directed to provide all necessary administrative and technical support to the Commission.

9. On the other hand, it could be argued that given Corrections' role as the state agency that is most directly impacted by sentencing decisions, Corrections is in a unique position to provide support to the Commission. Further, one of the Commission's duties is to provide information to the Legislature, state agencies and the public regarding the costs to and other needs of the Department of Corrections which result from sentencing practices. If the Commission is attached to Corrections, the Committee could direct the Department to provide all necessary administrative and technical support to the Commission.

Funding and Staffing for the Commission

10. When creation of the Sentencing Commission was proposed by the Criminal Penalties Study Committee, the Committee recommended a staff for the Commission of six positions based on staffing for sentencing commissions in other states. The Committee recommended one unclassified director, one unclassified deputy director and four research positions.

11. In January 2002 Special Session Assembly Bill 1, the Legislature created the Sentencing Commission, and provided \$284,800 GPR and 6.0 GPR positions in 2002-03 to staff the Commission. As enacted as 2001 Act 109, the Governor vetoed \$144,800 GPR. As a result of the veto, funding of \$140,000 GPR and 6.0 GPR positions was provided for the Commission. In the veto message, the Governor stated: "I am vetoing this provision to eliminate the funding provided for four Sentencing Commission support staff because we need to control spending in all areas of state government. I object to the increased funding level as excessive, given the state's fiscal situation, and therefore I am reducing the funding to a level that is reasonable based on what we can afford in these difficult economic times."

12. Despite the veto for funding in 2001 Act 109, six positions remain in the Sentencing Commission's base budget and are fully funded through standard budget adjustments. The

Sentencing Commission has a base budget of \$140,000 GPR and 6.0 GPR positions, including 1.0 GPR unclassified director and 1.0 GPR unclassified deputy director. Under the bill, full funding (\$300,500 GPR annually) and increased supplies and services funding (\$60,000 GPR annually) are provided for the Sentencing Commission in DOA prior to transfer to Corrections, increasing total funding to \$500,500 GPR annually. Subsequently, under DOA, \$198,800 GPR and 4.0 GPR positions annually associated with the Sentencing Commission are removed as a DOA budget reduction, and \$301,700 GPR and 2.0 GPR positions are transferred to Corrections. Under the bill, the net change to the Sentencing Commission's base budget is \$161,700 GPR and -4.0 GPR positions annually.

13. Total salary and fringe benefits funding for the Sentencing Commission, exceeds the amount necessary to support the two transferred positions by \$66,100 GPR annually based on current salaries and fringe benefits cost in Corrections. As a result, the Committee may wish to remove this funding.

14. In the base, the Sentencing Commission has 2.0 unclassified positions. Under current law, both positions are statutorily included in the unclassified service. When the positions were transferred to Corrections, these positions were created as classified. DOA indicates that the positions being created as classified was unintentional.

15. If the Committee wishes to staff the Commission as was recommended by the Criminal Penalties Study Committee and as passed by the Legislature in Enrolled 2002 January Special Session Assembly Bill 1, 4.0 GPR positions annually and an additional \$128,300 GPR annually could be provided. Under this alternative, total funding for the Commission would be \$430,000 GPR and 6.0 GPR positions annually.

16. Under the bill, funding for the Sentencing Commission is part of the Department of Corrections general program operations appropriation. As a result, funding for the Commission is combined with the Department's largest GPR appropriation. If the Sentencing Commission is attached to Corrections, the Committee may wish to consider creating a separate, annual GPR appropriation for the Commission. Under a separate appropriation, funding would be separately identifiable and could only be used for expenses of the Commission.

ALTERNATIVES

1. Approve the Governor's recommendation to transfer the Sentencing Commission from the Department of Administration to the Department of Corrections. Provide a net \$161,700 GPR and -4.0 GPR positions annually for the Sentencing Commission. Under this alternative, total funding for the Commission would be \$301,700 GPR and 2.0 GPR positions annually.

2. Delete the transfer of the Sentencing Commission to the Department of Corrections. Provide \$161,700 GPR and -4.0 GPR positions annually related to full funding of salaries and fringe benefits for the Sentencing Commission positions, increased supplies and services funding and a base budget reduction measure. Under this alternative, the Commission would remain in

DOA and total funding would be \$301,700 GPR and 2.0 GPR positions annually.

3. In addition to Alternative 1 or Alternative 2, delete \$66,100 GPR annually based on current salary and fringe benefit costs. Under this alternative, total funding for the Commission would be \$235,600 GPR and 2.0 GPR positions annually.

<u>Alternative 3</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	- \$132,200

4. In addition to Alternative 1 or Alternative 2, provide an additional \$128,300 GPR and 4.0 GPR positions annually. Under this alternative, total funding for the Commission would be \$430,000 GPR and 6.0 GPR positions annually. *[This alternative may not be selected with Alternative 3.]*

<u>Alternative 4</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	\$256,600
2004-05 POSITIONS (Change to Bill)	4.00

5. Create a separate GPR appropriation in the Department of Corrections for the Sentencing Commission. *[This alternative may not be selected if the Sentencing Commission remains in DOA.]*

6. Retain the 2.0 positions in the Department of Corrections as unclassified positions. *[This alternative may not be selected if the Sentencing Commission remains in DOA.]*

7. Delete provision. Under this alternative, funding for the Commission would remain at the base level (\$140,000 GPR and 6.0 GPR positions annually).

<u>Alternative 7</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	- \$323,400
2004-05 POSITIONS (Change to Bill)	4.00

Prepared by: Jere Bauer