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TRUTH-IN-SENTENCING AND CRIMINAL CODE REVISION

2001 Wisconsin Act 109, passed by the legislature and signed by Governor Scott McCallum on July 26, 2002, makes significant changes to the state's criminal penalties structure. It also modifies the "truth-in-sentencing" law, enacted by 1997 Wisconsin Act 283, which increased maximum sentences for felony convictions, changed the sentencing system, and eliminated parole. The new sentencing provisions generally will apply to crimes committed February 1, 2003, or later.

BACKGROUND

In general, in Wisconsin, a felony is a crime punishable by imprisonment of more than one year in the state's prison system. (Misdemeanors are lesser crimes, which usually involve confinements of less than a year, which are served in county jail.) Under the criminal penalty system which existed prior to 1997 Wisconsin Act 283, most convicted felons did not serve their entire sentence inside prison. They were generally eligible for discretionary parole after being confined for 25% of the sentence. Those who did not receive discretionary parole were usually paroled by a "mandatory release date", which was set at two-thirds of the sentence time. (Prisoners could be held beyond the mandatory release date under certain circumstances, such as for misbehavior while in prison.) When determining a sentence, many judges took these legal variations into consideration and set term lengths that would require a convict to actually serve a certain minimum amount of prison time.

In response to calls for greater certainty and uniformity regarding incarceration time, Act 283 created a determinate sentencing structure for all felons sentenced for crimes committed on or after December 31, 1999 (other than those sentenced to life imprisonment). It also eliminated parole for prisoners sentenced for crimes committed on or after that date. (Prisoners sentenced for crimes committed before that date remain eligible for parole.) Felons are now required to serve the entire length of both portions of a bifurcated sentence, which includes: 1) a period of incarceration, followed by 2) a period of extended supervision outside prison. The maximum length of the entire sentence is established by law, but the judge may determine the respective length of the two components, provided the felon serves a minimum of one year in confinement and the sentence is split so that at least 25% of it is spent under extended supervision.

Act 283 increased the maximum penalties for most felonies by 50% to accommodate the extended supervision period, and it created the Criminal Penalties Study Committee to make recommendations about reclassifying all felonies and some Class A misdemeanors in a uniform criminal code, so that offenses of similar severity are similarly penalized. The committee submitted its final report on August 31, 1999. Although the committee's recommendations were considered in four prior bills (1999 Assembly Bill 465, 1999 Senate Bill 357, 2001 AB-3, and 2001 SB-55), passage came as part of Act 109, the budget reform bill enacted in 2002.

FELONY SENTENCING

Prior to Act 109, most felonies were classified into six categories designated by letters, but there were more than 200 other felonies that were not classified. The tables below compare classifications and penalties before and after the passage of truth-in-sentencing, but before the most recent changes.

Felony Class	Offenses before 12/31/99		Offenses between 12/31/99 and 2/1/03	
	Maximum Sentence	Mandatory Release Date	Maximum Sentence	Maximum Prison Time
Class A	Life in Prison	Not Applicable	Life in Prison	Life in Prison
Class B	40 years	2/3 of sentence	60 years	40 years
Class BC	20 years	2/3 of sentence	30 years	20 years
Class C	10 years	2/3 of sentence	15 years	10 years
Class D	5 years	2/3 of sentence	10 years	5 years
Class E	2 years	2/3 of sentence	5 years	2 years

New Felony Penalties. Under Act 109, all existing felonies (about 500 in number) and some Class A misdemeanors were divided into nine felony classes with maximum sentence lengths set for each type. Persons convicted for crimes committed on or after February 1, 2003, are subject to the following penalties:

Felony Class	Maximum Term of Confinement	Maximum Extended Supervision	Maximum Term of Sentence	Maximum Fine
Class A	Life in prison	(see note below)	Life	None
Class B	40 years	20 years	60 years	None
Class C	25 years	15 years	40 years	\$100,000
Class D	15 years	10 years	25 years	100,000
Class E	10 years	5 years	15 years	50,000
Class F	7.5 years	5 years	12.5 years	25,000
Class G	5 years	5 years	10 years	25,000
Class H	3 years	3 years	6 years	10,000
Class I	1.5 years	2 years	3.5 years	10,000

Note: In the case of Class A life sentences, the judge may: 1) deny extended supervision; 2) determine the person will be eligible for extended supervision after serving 20 years; or 3) set a specific date beyond 20 years on which the person will become eligible for extended supervision. In the case of a life sentence, extended supervision covers the remainder of a person’s life after release from prison.

Conditions of Extended Supervision. The Department of Corrections (DOC) administers extended supervision, with conditions for the supervision set by the court, by DOC, or both. Examples of these requirements include participation in drug abuse treatment or testing, educational programs, electronic monitoring, or community service work. A person who violates a condition of extended supervision may be returned to prison to serve all or part of the remaining total sentence.

SENTENCING COMMISSION

An 18-member Sentencing Commission will study sentencing practices around the state and adopt advisory sentencing guidelines that judges must consider when passing sentences for crimes committed on or after February 1, 2003. The commission, which is scheduled to sunset December 31, 2007, will also: 1) provide information to the legislature, state agencies, and

the public about the costs and needs of the DOC that result from sentencing practices; 2) provide information to judges and lawyers about the sentencing guidelines; 3) publish annual reports for the use of circuit judges; 4) make recommendations to the governor, the legislature, and the supreme court on the effect of race in sentencing decisions; 5) help the legislature in assessing the cost of enacting new or revised statutes affecting criminal sentencing; 6) study how sentencing options affect various types of offenders and offenses; and 7) submit semi-annual statistical reports regarding various types of criminal sentences, both statewide and in specified geographic areas.

SENTENCING STANDARDS

When passing sentences for crimes committed on or after February 1, 2003, judges must consider the sentencing guidelines adopted by the Sentencing Commission, as well as: 1) protection of the public, 2) gravity of the offense, 3) rehabilitative needs of the defendant, 4) applicable mitigating factors, and 5) applicable aggravating factors. Although courts are required to consider the guidelines, a convict has no right to appeal a sentencing decision because it departs in any way from any guideline. The judge must state his or her reasons for the sentencing decision on the record, either in open court or, if the judge determines that it is not in the best interests of the defendant to verbally state the reasons in the defendant's presence, by means of a written statement included in the trial record.

Aggravating Factors. When determining a sentence, the judge must consider the following aggravating factors:

- Use of disguise or other identity concealment.
- Crimes involving information obtained from the state's database of registered sex offenders.
- Crimes associated with criminal gang activity.
- Committing a crime while wearing a bullet-resistant vest.
- Crimes intended to influence a governmental unit or punish a governmental unit for a prior policy decision if the perpetrator caused bodily harm, great bodily harm, or death; caused at least \$25,000 in property damage; or used or threatened to use force or violence.
- Specified sex crimes committed by a person who knew he or she was infected at the time with certain sexually transmitted diseases, including syphilis, gonorrhea, or HIV, the virus which causes AIDS.
- Violent felonies committed against a person age 62 or older.
- Child sexual assault or child abuse while responsible for the welfare of the child.
- Homicide or injury by intoxicated use of a motor vehicle, particularly if a minor under 16 years of age or an unborn child was in the person's motor vehicle at the time.
- Criminal delivery or distribution of, or possession with intent to deliver or distribute, a controlled substance to an inmate of a prison or jail or to a passenger on a public transit vehicle.

Penalty Enhancers; Minimum Sentences. Previously, numerous crimes carried penalty enhancers which permitted the judge to increase the penalties if the crimes were committed

under certain circumstances. Act 109 repealed most of the enhancers but requires the court to consider those that were repealed as aggravating factors when deciding sentences. Those penalty enhancers that are retained include: use or possession of a dangerous weapon when committing a crime; distribution of controlled substances within 1,000 feet of a school, park, correctional institution, or other facilities; committing a violent crime in a school zone; distribution of a controlled substance to a person under 17 years of age; habitual criminality; and the commission of subsequent drug offenses. (Persons may be sentenced to state prison for misdemeanors due to the longer sentence resulting from penalty enhancers, in which case bifurcated sentences will apply.)

Act 109 retains the minimum sentence provisions for persistent repeaters (“two strikes” or “three strikes”) and maintains the existing mandatory minimum penalties for repeat OWI (operating while intoxicated) offenders.

PETITIONS FOR SENTENCE ADJUSTMENT

An imprisoned felon may petition the sentencing court to adjust the confinement portion of the sentence if the conviction involved a crime other than a Class A or B felony. A petition may be filed if the inmate has served at least 85% of the confinement portion of the original sentence in the case of a Class C, D, or E felony or at least 75% of the incarceration sentence for a Class F or lesser felony. If the court makes an adjustment, the inmate will generally be released to extended supervision with the reduction in prison time added to the length of supervision, so that the total length of sentence remains the same.

Petitions for adjustment may be filed, beginning February 1, 2003, by any prisoner sentenced for a crime committed since the effective date of bifurcated sentencing (December 31, 1999). Only one petition may be filed per sentence. A prisoner has the right to be represented by legal counsel during the petition process, but indigent inmates are not entitled to help from the state public defender. Those convicted of crimes committed before December 31, 1999, may be eligible for parole consideration and are not permitted to petition under the sentence adjustment procedure.

An inmate may request sentence adjustment based on any of the following grounds: 1) the inmate has evidenced good conduct, progress in rehabilitation, or participation in educational, treatment, or other correctional programs; 2) there has been a change in law or procedure related to sentencing or revocation of extended supervision that takes effect after the inmate was sentenced and would have resulted in a shorter term of confinement if applicable when the inmate was originally sentenced; 3) the inmate is subject to a sentence of confinement in another state; 4) the inmate is in the United States illegally and the sentence adjustment will facilitate deportation; or 5) the sentence adjustment is otherwise in the interests of justice.

The court may reject the petition outright or hold it for further consideration. If held for consideration, the court must notify the district attorney of the inmate’s petition, and, if the district attorney objects to sentence adjustment within 45 days of receiving notification, the court must deny the petition.

If the inmate seeking adjustment has been sentenced for one of several specified sex crimes, and the district attorney does not object to the petition within 10 days of receiving notice, the DA’s office must notify the crime victim about the petition. If the victim objects to the adjustment within 45 days of the date on which the DA’s office received notice of the petition, the court is required to deny the request. Crimes covered under this provision are second or third degree sexual assault, second degree sexual assault of a child, or soliciting a child for prostitution. (Sentences for more severe sex crimes are not eligible for adjustment petitions.)

If the court receives no objection from the district attorney or crime victim, the court may adjust the inmate's sentence if the court determines that doing so is in the public interest. The court must provide written reasons on the record for granting the sentence adjustment. There is no provision for appeal of denial of the petition.

GERIATRIC AND MEDICAL RELEASE

An elderly or seriously ill inmate serving a bifurcated sentence for other than a Class A or B felony may seek modification of the sentence and be released from confinement if the inmate: 1) is 65 years of age or older and has served at least 5 years of the prison portion of the bifurcated sentence; 2) is 60 years of age or older and has served at least 10 years of the prison portion of the bifurcated sentence; or 3) has an incurable terminal medical condition with a life expectancy of 6 months or less.

If the correctional institution's program review committee determines that the public interest would be served by modification of the inmate's sentence, it refers the petition to the sentencing court through DOC, which requests the court to conduct a hearing on the matter. The district attorney or any victim of the inmate's crime has the right to attend the hearing and provide statements. The inmate has the burden of proving, by the greater weight of the credible evidence, that sentence modification would be in the public interest. If the court agrees, it can modify the sentence by releasing the inmate to extended supervision within 30 days and correspondingly lengthening the term of supervision so that the total length of the original bifurcated sentence does not change.

An inmate may appeal a court's decision to deny a petition, and the state may appeal a decision to grant the petition. The appellate court may reverse the decision only if it determines that the sentencing court erroneously exercised its discretion. A prisoner has the right to be represented by legal counsel during the petition process, and indigent inmates may be eligible for help from the state public defender. If an inmate's petition is denied by either the program review committee or the court, another petition cannot be filed for one year.

CRIMINAL PENALTIES REVIEW COMMITTEE

Act 109 also created the Joint Review Committee on Criminal Penalties to review, upon request, bills that propose a new crime or revise the penalty for an existing crime. The committee, which is made up of legislators and specified other members, has 30 days to review each bill and hold hearings if it chooses. In its report, it must address the fiscal effects of the bill and determine whether the proposed changes conform with existing criminal statutes. Other standing committees and the house of origin cannot act on the bill until the committee reports on the proposal or 30 days have elapsed without a report.

FOR MORE INFORMATION

Relevant sections of the Wisconsin Statutes may be downloaded from: www.legis.state.wi.us/rsb/stats.html. Key sections include: 302.113 (9g), petitions for geriatric and medical release; 939.50, felony classifications and penalties; 973.01, the structure of bifurcated sentences; 973.017, use of sentencing guidelines and consideration of aggravating and mitigating factors; and 973.195, sentence adjustment petitions.

For questions about the sentence adjustment petition process, contact the Department of Corrections, at (608) 240-5000. To obtain information on legal assistance for geriatric and medical sentence adjustment petitions, contact the State Public Defender at (608) 266-0087.