

Sentencing

'Indeterminate' is fiscal bottom line of new guidelines

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Michigan is making massive changes in the way it sends convicted criminals to prison, but no one can say how it will affect spending and prison construction.

"The fiscal impact of sentencing guidelines and truth-in-sentencing is indeterminate," says a Senate Fiscal Agency analysis of the long-debated package of laws, which take effect Dec. 15.

"Indeterminate" is the bottom line.

Some say legislators' chant of "tough new laws" will swell prison populations, sucking money from colleges and other services for good folks. Others say the changes take too much power from circuit judges.

Here's a look at where the state has been, what has happened during the 1990s, and where we're going with the 1998 laws.

make the guidelines too strict because its action lacked the force of law enacted by the Legislature. And it didn't consider the effect on state prison capacity and local jail budgets.

Matters came to a head in a landmark case from Eaton County in which Judge Richard Schuster ignored the guidelines and threw the book at Scott Milbourn for terrorizing an ex-girlfriend. The Supreme Court, in a 4-3 decision, sent back the case for re-sentencing. Schuster gave Milbourn the same sentence.

The appellate courts became immersed in a flood of appeals based on sentencing guidelines. So the Legislature began to act.

The 1990s

In 1994 the Legislature set up a sentencing commission to recommend new guidelines. The goal was to make prison sentences proportionate to the seriousness of the crime, the convict's prior record and prison capacity.

The commission took a 12-3 vote as it approved its report Oct. 22, 1997.

Meanwhile, the Legislature in 1994 passed a "Truth in Sentencing" law ending the practice of "good time" — releasing a well-behaved inmate before he had served his minimum sentence. Often, said the critics, these parolees committed new crimes.

But the Legislature added a feature called "disciplinary time" for breaking prison rules. The inmate's sentence could actually be lengthened, not by a judge but by a prison official, for violating prison rules. Inmates call

these "flops."

From 1982 to date, the state prison population more than tripled, from around 13,000 to 43,000. Social critics say the U.S., with Michigan as a typical state, puts a greater percentage of its population behind bars than almost any country in the world except Russia.

Political candidates this year spent a lot of time arguing about whether to just keep building more prisons or to release less dangerous inmates.

At the same time, the Legislature softened the 1978 "550 drug lifer law," under which young "mules" in the drug trade were getting automatic life sentences with no hope of parole. The U.S. Supreme Court upheld the law's constitutionality, but a majority of people thought it was too harsh.

The new laws

After long debates, the Senate and House Judiciary Committees produced a set of bills that passed muster in both chambers and were signed by the governor — but still have an "indeterminate" effect on the prison population.

Public Acts 315-317 enumerate felony crimes and set sentencing guidelines that take effect for crimes committed after Jan. 1, 1999.

The same laws extend these guidelines to all crimes committed on and after Dec. 15, 2000.

They delete the Department of Corrections' ability to issue "flops" — citations to an inmate's sentence for violating depart-

mental rules. Instead, the inmate's prison record will be reviewed by the parole board when he is considered for parole.

PA 319 modifies the 650-lifer law. It requires a prison sentence of at least 20 years for intent to deliver 650 grams of cocaine or similar narcotics. Two drugs are added to the list.

PA 311-312 amend the penal code to increase penalties for larceny, property damage and bad check offenses.

PA 320 requires inmates to earn a high school diploma or general education development (GED) certificate as a condition of parole. It won't apply to those over age 65. Lansing hasn't heard the last of this issue, because inmates complain that schooling opportunities are too limited for the GED requirement to be realistic.

Judges' view

In handing out sentences, circuit judges will deal with a "grid" of offenses and conditions. They will have some leeway, but less than in the past, in sending convicts to prison. Here's a simplified outline:

On one side of the grid, PA 317 classifies more than 700 offenses into nine crime classes. Some attempted crimes are included. The old Supreme Court guidelines listed 100 offenses.

On another side of the grid are 19 offense variables and seven prior record variables. Was there aggravated use of a weapon?

Physical injury to the victim? Psychological injury to the victim or the victim's family? Cap-

CAPSULES

Appointments

Gov. Engler has appointed: David A. Sebastian of Birmingham to the Athletic Board of Control. He is an attorney in private practice and represents professionals for a term ending March 30, 2000.

David Gorey, Oakland County prosecutor and a Troy resident, to the Juvenile Accountability Incentive Block Grant program board. It will distribute \$7.3 million in federal grants for building detention facilities, hiring prosecutors, establishing gun courts and improving probation programs.

Maurice Bouchard of Farmington Hills to the Board of Mechanical Rules, which regulates heating, cooling, ventilating and refrigerating licenses. Bouchard is manager of the Detroit district for Trane Co. and will represent HVAC equipment for a term expiring Oct. 1, 2000.

James J. Lapham of Commerce to the Board of Mechanical Rules, which regulates heating, cooling, ventilating and refrigerating licenses. He is business manager of Pipefitters Local 636 and will represent organized labor for a term ending Oct. 1, 2000.

Nancy A. Smith of Northville to the Michigan Small Business Clean Air Compliance Advisory Commission. Smith is a senior environmental engineer for Detroit Diesel Corp.

Where we've been

For decades, the state has allowed sentencing judges wide discretion — too much discretion, perhaps. So in 1979 the state Supreme Court set up an advisory committee and in 1984 adopted "sentencing guidelines" based on what the bulk of judges actually were doing.

In 1989 the high court adopted the guidelines by order. A judge could depart from the guidelines but would have to justify his departure in writing.

Two problems emerged. The Supreme Court hesitated to

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