Sentencing

'Indeterminate' is fiscal bottom line of new guidelines

trichard Oc. homecommant

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and prison construction.

"The fiscal impact of sentencing guidelines and truth-in-sentencing is indeterminate," says is
senate Fiscal Agency analysis of
the long-dobated package of
laws, which take effect Dec. 16.

"Indeterminate" is the bottom
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"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 1999s, and where we're going with the 1998 laws.

Where we've been

Where Weve 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 adviso-ry committee and in 1984 adopt-de "sentencing guidelines" based on what the bulk of judges actu-able were design. ally were doing. In 1988 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

The 1990s
In 1994 the Legislature set up a sentencing commission to recommend new guidelines. The goal: to make prison sentences proportionate to the seriousness of the crime, the convicts prior record and prison especially. 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

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

Matters came to a head in andmark case from Eaton County in which Judge Richard Schuster ignored the guidelines and threw the book at Scott Milbourn for terrorizing an ex-girl-friend. The Supreme Court, in 43 decision, sent back the case for re-sentencing. Schuster gux Milbourn the same sentence.

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

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The new laws

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.

nate" effect on the partition.

Public Acts 315-317 enumer-wimes and set sentials take ate felony crimes and set sen-tencing guidelines that take effect for crimes committed after

effect for crimes commuted after Jan. 1, 1999.

In 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" – additions to an immate's sentence for violating department.

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 larcony, property damage and had check offenses.

■ PA 320 requires inmates to carn a high school diploma or peneral education development (SED) 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 thas schooling opportunities are too schooling opportunities are too limited for the GED requirement to be realistic.

Judges' view

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 aggravated use of a weapon? Physical injury to the victim? Paychological injury to the victim or the victim's family? Caption of the property of the prope

tivity? Criminal sexual penetra-tion? Alcohol or drug abuse? If a certain crime requires a mandatory minimum sentence, the judge must impose it – no

mandatory minimum sentence, the judge must impose it – no discretion.

Prisons are to be used for offenders whose minimum sentence is greater than 18 months. For short sentences, the convict may be housed in a county juil. The law requires the Department of Corrections to reinhurse counties for juil use. The Legislature will get a chance to debate this in the annual Department of Corrections budget bill. How will all these changes affect the Corrections budget and prison population? The Senate Fiscal Agency quotes Dr. Charles Ostrom of Michigan State University and Dr. James Austin of the National Council on Crime and Delinquency. Their projection shows a 1,323-immate increase over baseline year 2007.

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immate increase over baseline year 2007.

But many variables are at work - the parole rate, the effects of creating new crimes, judges behavior.

The projections assume that, on average, prisoners will serve 13 percent additional time beyond their minimum sentence for disciplinary infractions. But that's up to the parole beard.

That's why the effect of this year's new laws is, in the Senate Fiscal Algency's words, "indeterminate."

CAPSULES

Appointments

Appointments
Gov. Engler has appointed:
David A. Sebastian of
Birmingham to the Athlotic
Board of Control. He is an
attorney in private practic
and represents professionals
for a term ending March 30,
2000.
David Goreyen, Oakland
County prosecutor and a
Troy resident, to the Juve
Block Grant program board.
It will distribute \$73 million
in federal grants for building
detention facilities, hiring
prosecutors, establishing gun
courts and improving probation programs.

prosecutora, establishing guatourts and improving probation programs.

Bouchard of
Farmington Hills to the
Board of Mechanical Rules,
which regulates heating,
cooling, ventilating and
refrigerating licenses.
Bouchard is manager of the
Bouchard is manager of MacCapuing Oct. 1, 2000.

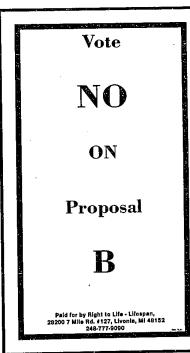
James J. Lapham of Commerce to the Board of
Mechanical Rules, which
regulates heating, cooling,
ventilating and refrigerating,
itenses. He is business manager of Pipefitters Local 636
and will represent organized
labor for a term ending Oct.
1, 2000.

Nancy A. Smith of
Northville to the Michigan

1,2000.

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





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