

# Sentencing Commissions & Guidelines

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# Agenda

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1. Sentencing Commission Functions – What do sentencing commissions do?
2. Sentencing Guidelines – What are they and how do they work?
3. Tie all of the above to the Nevada Sentencing Commission's mandate as stated in SB 451.

# Sentencing Commissions

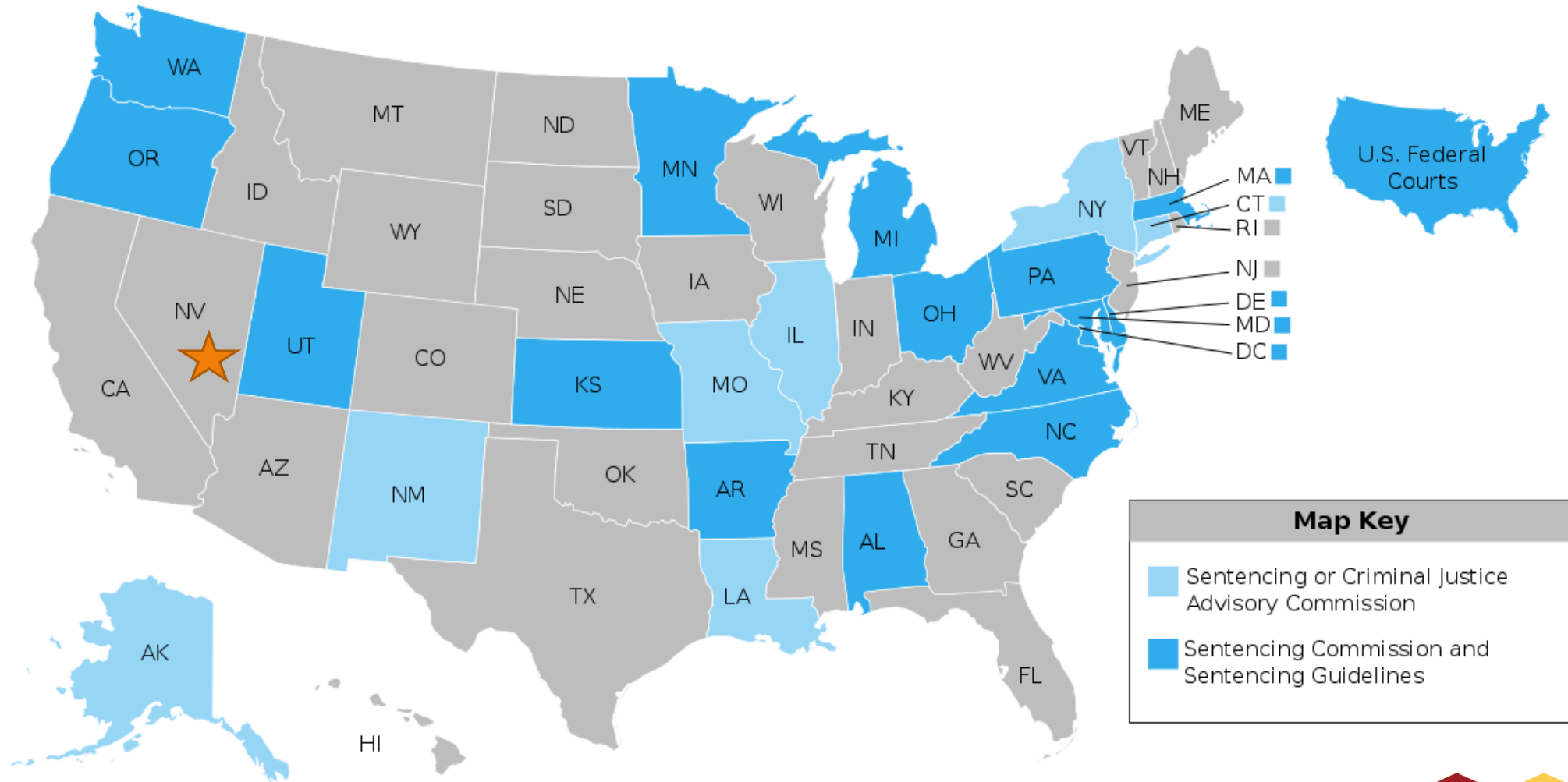
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Two main types:

1. Established to develop, implement, and monitor some form of Sentencing Guidelines.
2. Created to focus on the development and analysis of sentencing and/or criminal justice policy.

The Nevada Sentencing Commission appears to have been created to serve both purposes. (*See* S.B. 451, § 6 ¶ 1.)

# Commissions and Guidelines

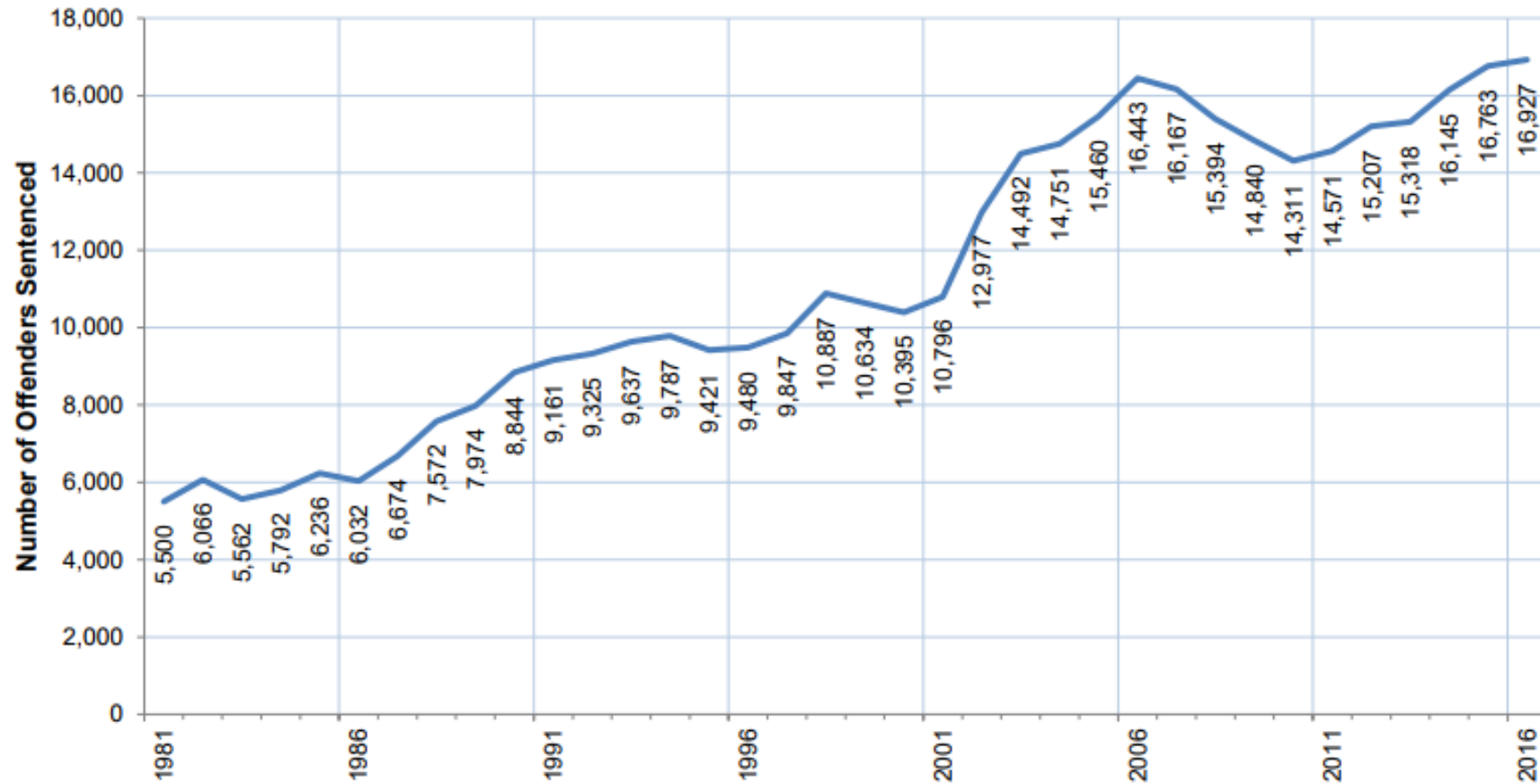


# Common Commission Functions

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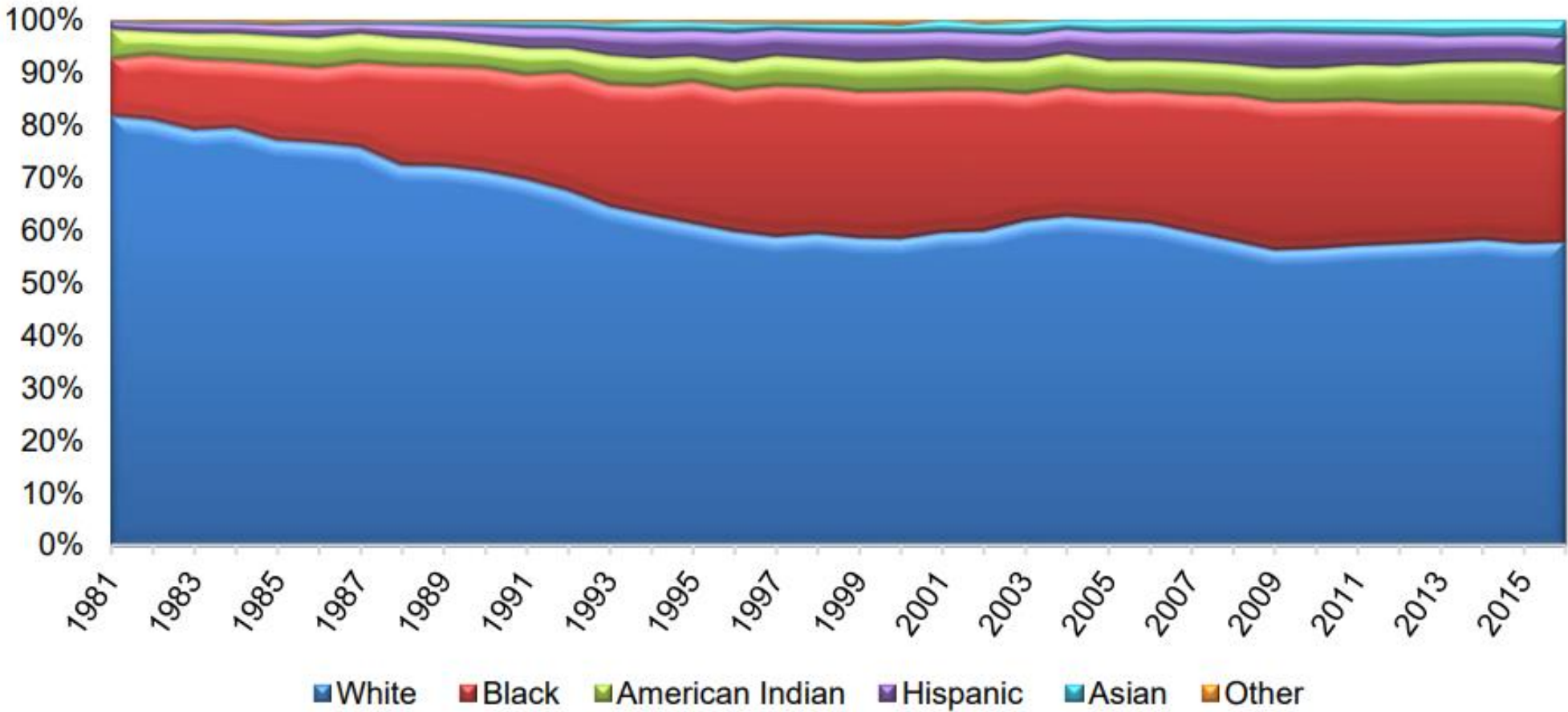
- Developing sentencing guidelines and then revising them as needed in response to legislation, case law, or issues identified through monitoring of their implementation. (See S.B. 451, § 6 ¶ 8.)
- Monitoring compliance with the guidelines.
- Collecting and analyzing data to identify sentencing trends and patterns and source of disparity; producing annual reports on these trends and findings. (See S.B. 451, § 6 ¶ 4, 7.)
- Forecasting correctional populations based on current sentencing practices.
- Developing fiscal and/or racial impact analyses of proposed legislative or policy changes. (See S.B. 451, § 6 ¶ 2.)

**Figure 1. Number of Offenders Sentenced for Felony Convictions, 1981-2016**



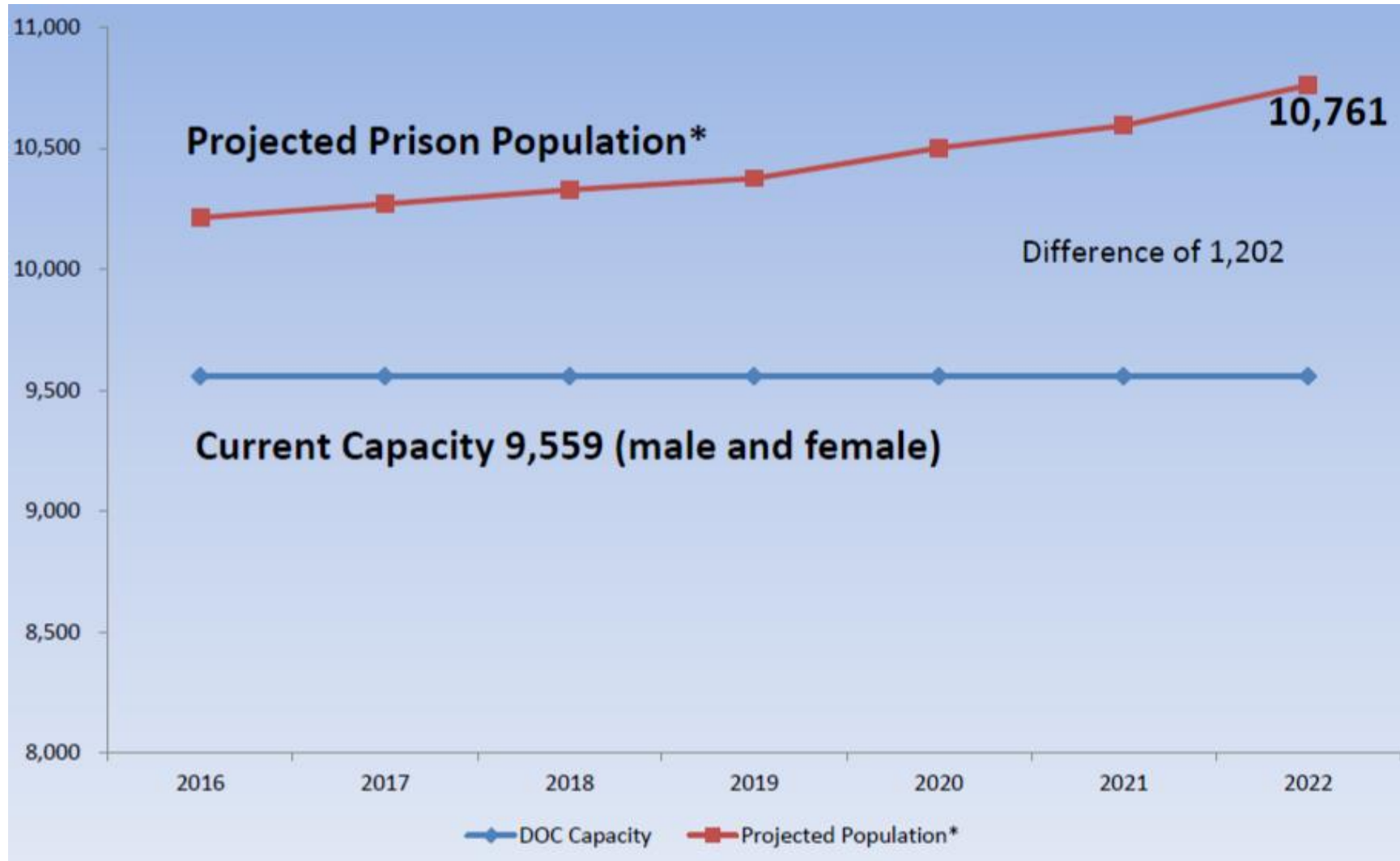
Source: Minnesota Sentencing Guidelines Commission, *2016 Annual Sentencing Practices* at p. 7 (Oct. 2017).

**Figure 6. Distribution of Felony Offenders by Race/Ethnicity, 1981-2016**



Source: Minnesota Sentencing Guidelines Commission, *2016 Annual Sentencing Practices* at p. 14 (Oct. 2017).

# Projected Prison Population vs. Capacity



Source: MN Department of Corrections

\*Based on October 2014 Projection



## HOUSE BILL 3884

### SENTENCE CREDIT FOR PASSING HIGH SCHOOL EQUIVALENCY TESTING 730 ILCS 5 SECTION 3-6-3

#### TOTAL BENEFITS IN REDUCED FISCAL COSTS IN FISCAL YEAR 2014: \$445,134

House Bill 3884 ([HB 3884](#)) amends the Unified Code of Corrections to award 90 days of sentence credits to any prisoner who passes a high school equivalency test (such as the General Equivalency Degree, or GED, test) while committed to the Illinois Department of Corrections (IDOC) or while in pre-trial detention prior to the current commitment. This bill increases the amount of sentence credits from the current law of 60 days.

The increased sentence credits for passing the GED test may incentivize participation from inmates and aid IDOC in managing the prison population. Research also indicates that GED programs have a positive impact on recidivism, meaning those who participate in the program will likely have a lower recidivism rate than those who do not.<sup>1</sup>

To analyze the possible impact of this bill, SPAC analyzed GED completion data from fiscal year 2014. The estimate below uses assumed IDOC credit awards. These awards may vary due to truth-in-sentencing or policy rules that limit sentence credits. SPAC presents these estimates as a starting point for discussion.

FY 2014 Impact of Additional Sentence Credit		
	Current	Proposed
Number of Offenders (FY14)	929	
Credits Awarded in Days	60	90
Credits Awarded in Years	0.16	0.25
Total Bed Years of Credits (Offenders x Credit Years)	152.6	228.9
Difference in Bed Years (Proposed – Current)	76.3	
Marginal Cost of Year in IDOC	\$5,834	
Value of Additional Time Awarded	\$445,134	

# Commission Mandate

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***8. Propose and recommend statutory sentencing guidelines, based on reasonable offense and offender characteristics which aim to preserve judicial discretion and provide for individualized sentencing, for the use of the district courts. If such guidelines are enacted by the Legislature, the Sentencing Commission shall review and propose any recommended changes.***

# What Are Sentencing Guidelines?

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- Sentencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction.
- Sentencing guidelines are one mechanism that can be used to implement determinate sentencing, though seven states have combined guidelines and parole systems.

# Purposes of Sentencing Guidelines

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The primary purposes of sentencing guidelines are to:

- Foster **proportionality** in sentencing
- Secure **public safety**
- **Reduce disparity**
- **Manage** correctional capacity
- Achieve **certainty** in sentencing

# Connecting Purposes to Commission Mandate

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➤ Foster **proportionality** in sentencing

***3. (a) Offenders must receive sentences that increase in direct proportion to the severity of their crimes and their histories of criminality.***

***3. (d) Offenders with similar histories of criminality who are convicted of similar crimes must receive sentences that are generally similar.***

# Connecting Purposes to Commission Mandate

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## ➤ Secure **public safety**

*3. (b) Offenders who have extensive histories of criminality or who have exhibited a propensity to commit crimes of a predatory or violent nature must receive sentences which reflect the need to ensure the safety and protection of the public and which allow for the imprisonment for life of such offenders.*

*3. (g) Offenders must receive sentences which are based upon the specific circumstances and facts of their offenses, including the nature of the offense and any aggravating factors, the savagery of the offense, as evidenced by the extent of any injury to the victim, and the degree of criminal sophistication demonstrated by the offender's acts before, during and after commission of the offense.*

# Connecting Purposes to Commission Mandate

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## ➤ **Manage** correctional capacity

***3. (c) Offenders who have committed offenses that do not include acts of violence and who have limited histories of criminality must receive sentences which reflect the need to conserve scarce economic resources through the use of various alternatives to traditional forms of incarceration.***

# Connecting Purposes to Commission Mandate

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## ➤ Reduce disparity

***3. (f) Offenders must not receive disparate sentences based upon factors such as race, gender or economic status.***



# What Are Sentencing Guidelines?

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Sentencing guidelines can provide the following guidance to judges in sentencing:

1. Prison in/out decision – Is this an offense that should be sentenced to prison or community supervision?
2. If prison, how long should the prison term be?
3. If probation, how long should the probation term be?
  - As appropriate, the guidelines can also provide guidance about the use of jail terms or other intermediate sanctions.

# MN Sentencing Grid

The horizontal axis represents the offender's total criminal history score.

The vertical axis represents the severity level of the current offense. Felonies are currently ranked from 1-11. The offenses listed on the grid are examples of common offenses at that severity level.

In the gray shaded area, the guidelines recommend a stayed sentence (probation). In the white area of the grid, the guidelines recommend prison

## 4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i> )		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> ( <i>intentional murder; drive-by-shootings</i> )	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 <sup>2</sup>	426 363-480 <sup>2</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> ( <i>unintentional murder</i> )	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1<sup>st</sup> Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2<sup>nd</sup> Degree</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 <sup>2</sup>
<i>Controlled Substance Crime, 3<sup>rd</sup> Degree</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 <sup>1</sup>	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 17-22

Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

<sup>1</sup> 12<sup>1</sup>=One year and one day

<sup>2</sup> Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

The Oregon Sentencing Guidelines Grid

Crime Seriousness	A	B	C	D	E	F	G	H	I	Prob Term	Max Depart	PPS
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18			
7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90	3 Years	18 Mos.	2 Years
6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90			
5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60	2 Years	12 Mos.	1 Year
4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60			
3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30			
2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	1½ Years	6 Mos.	
1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30			

Like the Minnesota grid, the Oregon grid shows:

- In/Out decision
- Prison Length

But this grid also shows:

- Jail days for probation sentences
- Probation terms
- Maximum departure limits
- Periods of post-prison supervision

# What Are Sentencing Guidelines?

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- The recommended sentences are generally believed to be appropriate for all “typical” cases sharing the same or similar offense and offender characteristics.
- Most sentencing guidelines systems also allow for departure sentences. A *departure* is simply a sentence that is something other than the sentence recommended under the guidelines. If the crime or the offender is truly “atypical” then a departure sentence may be more appropriate than the recommended sentence.

# What Are Sentencing Guidelines?

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- The two primary determinants of recommended sentences in guidelines systems are offense severity and criminal history.
- For systems that arrange these attributes on a grid, the recommended sentence is found at the intersection of these two points.
- For systems that use worksheets to calculate the guidelines, the recommended sentence is determined by assigning points to these attributes.

# Offense Severity Dimension

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- Refers to a ranking system that places each offense in context with all other offenses.
  - Crimes with similar elements, levels of harm, and statutory maximum sentences are ranked at the same severity level.
  - In a few systems, additional offense elements (i.e., weapon use or victim harm) may serve to adjust the offense ranking up or down.
- State systems typically have 10-15 severity levels.
- Some systems have more than one grid (e.g., drug grid, sex offender grid), resulting in more severity levels.

# Criminal History Dimension

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- Composite of multiple measures of prior offending.
  - Prior felonies
  - Prior Misdemeanors/ Gross Misdemeanors
  - Prior Juvenile Adjudications
- Can also include additional measures such as custody status (whether under supervision for a prior crime at time of the offense).

# Criminal History Dimension

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Two ways to represent criminal history on the grid:

1. Point-Based: The total criminal history score is determined by adding up points for the various criminal history components.
2. Categorical: The applicable criminal history category is determined by the number and severity of prior offenses.

A	B	C	D	E	F	G	H	I
3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misd.	1 Misd. No Record



# Criminal History Dimension

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- Prior offenses are typically weighted so that more serious crimes garner more criminal history points or a higher criminal history category than less serious crimes.
- Misdemeanors, gross misdemeanors, and juvenile adjudications generally contribute less to criminal history than felonies.
  - Generally takes more than one of these offenses to equal one criminal history point or a higher category.
  - Most systems cap the total number of points or categories relating to these sources.

# Criminal History Dimension

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- Additional policy decisions related to criminal history:
  - Should prior offenses be counted forever, or should they wash out or lapse after a set period or after a crime-free period?
  - Given that the goal of the juvenile system is usually rehabilitation and proceedings are therefore not subject to the same due process as adult criminal cases, should juvenile adjudications be counted at all? If so, for how long?
  - If multiple offenses are sentenced on the same day, should all count towards criminal history in the future?
  - If an offense was committed after the current offense but has already been sentenced, should it be counted in the criminal history score for the current offense?

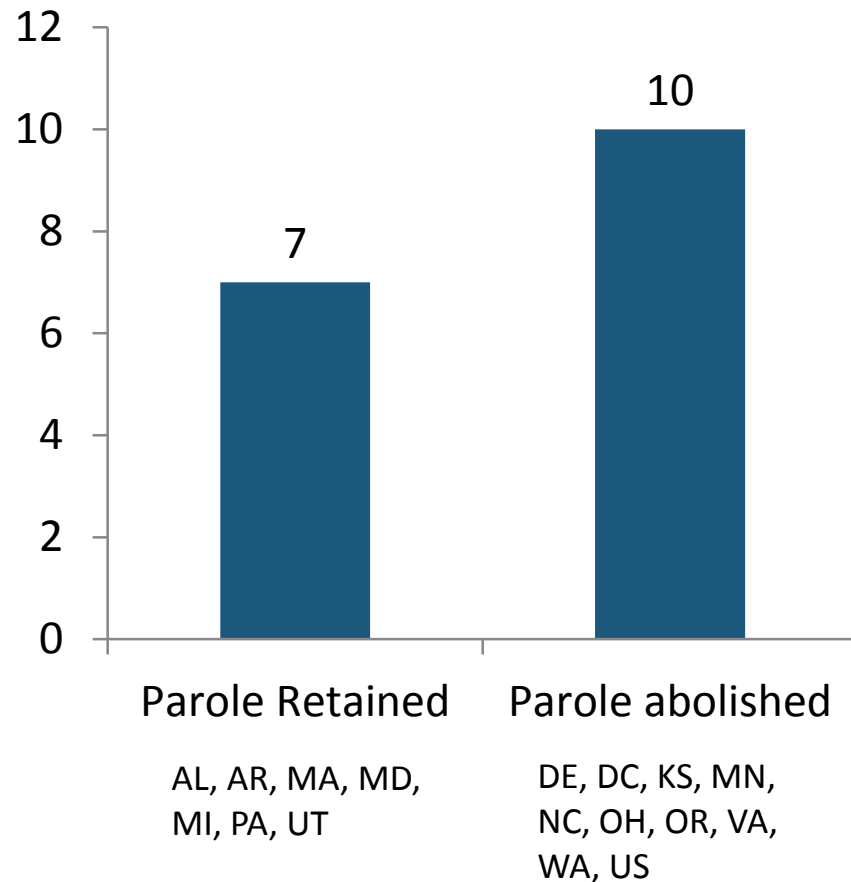
# Connecting Purposes to Commission Mandate

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➤ Achieve **certainty** in sentencing

***3. (e) Offenders sentenced to imprisonment must receive sentences which do not confuse or mislead the public as to the actual time those offenders must serve while incarcerated or before being released from confinement or supervision.***

# Interaction with Parole



When Guidelines exist within a parole system, they can either be used to set the:

Minimum term

-- OR --

Maximum term

# Commission Mandate

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***9. Evaluate whether sentencing guidelines recommended pursuant to subsection 8 should be mandatory and if judicial findings should be required for any departures from the sentencing guidelines.***

# Advisory to Mandatory Continuum

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Mandatory  
(Legally  
Binding)



Advisory

- Subject to appellate review
- Departure reasons required

- Limited or no appellate review
- Full judicial discretion in sentencing

# Departures

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- A departure is a sentence other than that recommended in the sentencing guidelines.
- Two Types:
  - Dispositional – Probation when guidelines call for prison or prison when guidelines call for parole.
  - Durational – Longer or shorter prison term.
- Two dimensions:
  - Mitigated
  - Aggravated

# Departures

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- Departures are acts of judicial discretion, and are intended to be used in atypical cases.
- Some systems have checks in place to ensure departures are limited to these cases.
  - Action must meet a departure standard.
    - “substantial and compelling reasons”
    - “mitigating or aggravating factors that support a departure”
  - Court must state reasons for departure on the record or in writing.
  - Commission tracks and reports on rates of departures and departure reasons.



# Departures

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Two reasons to track departures:

1. To establish the rate of compliance with the guidelines.
2. To serve as a feedback loop for the commission and state legislature.

# Appeals

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- Appeals are another way to bolster the strength of sentencing guidelines.
- Two types:
  - Appeal of sentences within the guidelines.
    - E.g., criminal history calculated incorrectly.
    - E.g., guidelines provision is unclear; needs consistent court interpretation.
  - Appeal of departures.
    - Appellate courts might accept or reject departure reasons.

# Relationship Between Departures and Appeals

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- All of the jurisdictions that would label themselves as mandatory permit appeals of departure sentences, and all articulate a departure standard thereby establishing a parameter to govern the appeal.
- For jurisdictions on the advisory end of the spectrum, several may articulate a standard for departure, but with no right of appeal to enforce that standard, the requirement is somewhat meaningless.

# Placing Jurisdictions on the Advisory to Mandatory Continuum

Jurisdiction	Advisory or Mandatory (Self-Described)	W/In Guidelines Appeal Permitted	Appeals of Departures Permitted	Departure Standard Articulated	Departure Reasons Required	Advisory or Mandatory In Application
Arkansas	Advisory	No	No	No	Yes	Advisory
Maryland	Advisory	No	No	No	Yes	
Utah	Advisory	No	No	No	Yes	
Virginia	Advisory	No	No	No	Yes	
District of Columbia	Advisory	No	No	Yes	Yes	Mandatory Elements, but Advisory in Application
Delaware	Advisory	No	No	Yes	Yes	
Massachusetts	Advisory	No	No	Yes	Yes	
Michigan	Advisory	Yes	Yes	No	No	Leans Mandatory
Pennsylvania	Advisory	Yes	Yes	No	Yes	
Alabama	Both	No	Yes	Yes	Yes	Mandatory
Kansas	Mandatory	No	Yes	Yes	Yes	
Minnesota	Mandatory	Yes	Yes	Yes	Yes	
North Carolina	Mandatory	Yes	Yes	Yes	Yes	
Oregon	Mandatory	Yes	Yes	Yes	Yes	
Washington	Mandatory	Yes	Yes	Yes	Yes	

# Questions?

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