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INTRODUCED BY

House BILL NO. 272

[Handwritten signature: John Johnson]

4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING PERMANENT THE COMMISSION ON SENTENCING;
 5 PROVIDING FOR STAGGERED TERMS OF COMMISSION MEMBERS; AUTHORIZING THE COMMISSION TO
 6 DEVELOP A SYSTEM OF VOLUNTARY SENTENCING GUIDELINES FOR USE ON AN EXPERIMENTAL BASIS;
 7 DIRECTING THE COMMISSION TO REVIEW CURRENTLY AVAILABLE CORRECTIONAL RESOURCES AND
 8 CURRENT LAWS CONCERNING CORRECTIONAL POLICY, CRIMINAL PENALTIES, LENGTH OF SENTENCES,
 9 AND SENTENCING OPTIONS; DIRECTING THE COMMISSION TO MAKE RECOMMENDATIONS TO THE
 10 GOVERNOR AND THE LEGISLATURE REGARDING SENTENCING AND CORRECTIONAL STATUTES;
 11 AUTHORIZING THE COMMISSION TO SPONSOR AND CARRY OUT A PUBLIC INFORMATION PROGRAM
 12 CONCERNING CORRECTIONAL RESOURCES AND SENTENCING AND CORRECTIONAL LAWS; AMENDING
 13 SECTIONS 46-18-130 AND 46-18-131, MCA; REPEALING SECTION 46-18-132, MCA, AND SECTION 5,
 14 CHAPTER 306, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 **Section 1.** Section 46-18-130, MCA, is amended to read:

19 "**46-18-130. ~~(Temporary) Commission on sentencing -- definition.~~** ~~(1) There is a commission on~~
 20 ~~sentencing. The commission is allocated to the department of corrections for administrative purposes only,~~
 21 ~~as provided in 2-15-121.~~

22 ~~(2) The commission consists of:~~

23 ~~(a) two members of the house of representatives, selected by the speaker of the house of~~
 24 ~~representatives, no more than one of whom may be from the same political party;~~

25 ~~(b) two members of the senate, selected by the president of the senate, no more than one of whom~~
 26 ~~may be from the same political party;~~

27 ~~(c) two district court judges selected by the chief justice of the Montana supreme court;~~28 ~~(d) the director of the department of corrections or the director's designee; and~~29 ~~(e) the following persons appointed by the governor:~~30 ~~(i) a county attorney;~~

1 ~~(ii) a criminal defense attorney;~~
 2 ~~(iii) a probation and parole officer;~~
 3 ~~(iv) a county sheriff;~~
 4 ~~(v) a chief of police;~~
 5 ~~(vi) a member of the board of pardons;~~
 6 ~~(vii) an employee of the department of justice; and~~
 7 ~~(viii) two members of the public, one of whom must be a victim of a crime for which a sentence~~
 8 ~~of death or of imprisonment for more than 1 year was imposed.~~

9 ~~(2) Appointments under subsection (2) must be made within 60 days after March 31, 1995.~~

10 ~~(4) The commission shall select a presiding officer from its members.~~

11 ~~(5) The commission shall meet at least quarterly. Unless the context requires otherwise, in~~
 12 ~~46-18-131, "commission" means the commission on sentencing provided for in [section 3]. (Terminates~~
 13 ~~May 31, 1997 see. 5, Ch. 306, L. 1995.)"~~

15 **Section 2.** Section 46-18-131, MCA, is amended to read:

16 **"46-18-131. ~~(Temporary) Duties~~ Commission on sentencing -- duties -- compilation of data --**
 17 **voluntary sentencing guidelines.** (1) The commission shall monitor criminal sentencing practices in Montana
 18 and develop recommendations for changes needed to achieve a consistent, effective, humane, and rational
 19 sentencing system. The commission shall compile statewide data that includes data on:

20 (a) the present sentencing and release practices in Montana;

21 (b) correctional populations;

22 (c) whether sentencing disparities exist in sentencing similar offenders for similar crimes;

23 (d) whether current sentencing options provide an appropriate range of sentences to protect the
 24 victim and society and to allow adequate opportunity for treatment of nonviolent or first-time offenders;
 25 and

26 (e) whether the current sentencing laws and practices for felony offenses are overburdening
 27 correctional resources in Montana.

28 (2) The commission ~~may~~ shall review currently available correctional resources and the current laws
 29 concerning correctional policy, criminal penalties, length of sentences, and sentencing options and shall:

30 ~~(1)(a)~~ (a) collect and study data, studies, and research from public and private entities concerning

1 sentencing processes and guidelines;

2 ~~(2)(b)~~ publish or distribute material concerning sentencing processes, sentencing guidelines,
3 sentences imposed, and the effect of those sentences;

4 ~~(3)(c)~~ prior to each legislative session, make recommendations to the 55th legislature governor and
5 the legislature concerning modification or enactment of sentencing and correctional statutes that the
6 commission believes ~~is~~ are necessary or advisable to carry out ~~an~~ a consistent, effective, humane, and
7 rational sentencing policy and to develop a continuum of sentences to deal with all felony offenders, within
8 available resources; and

9 ~~(4)~~ make a recommendation to the 55th legislature as to whether the commission should be
10 continued in existence;

11 ~~(5)(d)~~ identify monitor the impact of truth-in-sentencing laws and the elimination of good time
12 credits and sentencing guidelines on the criminal justice system, including impacts on sentencing practices
13 and on the correctional resources in the state; and,

14 ~~(6)~~ make a recommendation to the 55th legislature concerning the advisability of good time credits.
15 (Terminates May 31, 1997 see. 5, Ch. 306, L. 1995.)

16 (3) By [1 year after the effective date of this act], the commission shall develop a system of
17 voluntary sentencing guidelines. In establishing the voluntary sentencing guidelines, the primary
18 consideration of the commission must be public safety and the restoration of the victim. Following
19 development of the guidelines, the courts may use the guidelines on an experimental basis. Use of the
20 guidelines by a court, or the choice of a court not to use the guidelines, does not confer any rights on a
21 defendant regarding the use or nonuse of the guidelines by a court that sentences the defendant. An
22 offender sentenced under the guidelines remains subject to the parole process, as otherwise provided by
23 law, unless the sentencing court specifies that the offender is ineligible for parole.

24 (4) The guidelines may specify:

25 (a) the range of sentences applicable to each crime;

26 (b) a range of sentences for a defendant previously convicted of a felony or felonies or convicted
27 of a crime involving the use of a deadly weapon;

28 (c) variations from the range of applicable sentences because of aggravating or mitigating
29 circumstances;

30 (d) the circumstances under which imprisonment of an offender is proper;

1 (e) a suggested sentence for offenders for whom imprisonment is proper, based upon an evaluation
2 of the crime committed, the circumstances under which the crime was committed, and the criminal history
3 of the offender; and

4 (f) appropriate sanctions for an offender for whom imprisonment is not proper.

5 (5) The commission may evaluate and obtain comment on the system of voluntary guidelines while
6 it is in place.

7 (6) The commission shall sponsor and carry out a public information program to advise the general
8 public, including participants in the criminal justice system, about the currently available correctional
9 resources and current laws concerning correctional policy, criminal penalties, length of sentences, and
10 sentencing options.

11 (7) In carrying out its duties under this section, the commission shall work with participants in the
12 criminal justice system, including courts, probation and parole officers, law enforcement, victims,
13 prosecutors, defense attorneys, the department of corrections, the board of crime control, and other
14 interested parties."

15
16 **NEW SECTION. Section 3. Commission on sentencing -- composition -- allocation.** (1) There is
17 a commission on sentencing. The commission is allocated to the department of corrections for
18 administrative purposes only, as provided in 2-15-121.

19 (2) The commission consists of the director of the department of corrections or the director's
20 designee, the presiding officer of the board of pardons and parole or the presiding officer's designee, and
21 14 members appointed as follows:

22 (a) two members of the house of representatives appointed by the speaker, each from a different
23 political party;

24 (b) two members of the senate appointed by the president, each from a different political party;

25 (c) two district court judges selected by the chief justice of the Montana supreme court; and

26 (d) the following persons appointed by the governor:

27 (i) a county attorney;

28 (ii) a criminal defense attorney;

29 (iii) a probation and parole officer;

30 (iv) a county sheriff;

- 1 (v) a chief of police;
- 2 (vi) an employee of the department of justice; and
- 3 (vii) two members of the public, one of whom must be a victim of a crime for which a sentence of
- 4 death or of imprisonment for more than 1 year was imposed.

5 (3) (a) The director of the department of corrections and the presiding officer of the board of

6 pardons and parole, or their designees, shall serve terms concurrent with the gubernatorial term and until

7 their successors are appointed.

8 (b) Appointed members shall serve staggered 2-year terms and until their successors are appointed,

9 except that initial appointments must be made as follows:

10 (i) the two house members to terms that expire December 31, 1998;

11 (ii) one senate member to a term that expires December 31, 1998, and one senate member to a

12 term that expires December 31, 1999;

13 (iii) one district court judge to a term that expires December 31, 1998, and one district court judge

14 to a term that expires December 31, 1999; and

15 (iv) four members appointed by the governor to terms that expire December 31, 1998, and four

16 members to terms that expire December 31, 1999.

17 (4) The terms of commission members run with the position, and if a vacancy occurs, the

18 appointing authority shall appoint a person to fill the unexpired portion of the term. A vacancy must be

19 filled in the manner of the original appointment. Members may be reappointed.

20 (5) A legislative member position is vacant if the person no longer serves in the legislature. The

21 position of a member appointed by the governor or chief justice is vacant if that person becomes a

22 legislator.

23 (6) The commission shall select a presiding officer from its members.

24 (7) The commission shall meet at least quarterly.

25

26 **NEW SECTION. Section 4. Repealer.** Section 46-18-132, MCA, and section 5, Chapter 306, Laws

27 of 1995, are repealed.

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29 **NEW SECTION. Section 5. Codification instruction.** [Section 3] is intended to be codified as an

30 integral part of Title 2, chapter 15, part 23, and the provisions of Title 2, chapter 15, part 23, apply to

1 [section 3].

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3 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

4

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0272, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

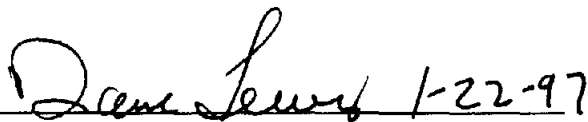
An act making permanent the Commission on Sentencing; providing for staggered terms of commission members; authorizing the commission to develop a system of voluntary sentencing guidelines for use on an experimental basis; directing the commission to review currently available correctional resources and current laws concerning correctional policy, criminal penalties, length of sentences, and sentencing options; directing the commission to make recommendations to the Governor and the Legislature regarding sentencing and correctional statutes; authorizing the commission to sponsor and carry out a public information program concerning correctional resources and sentencing and correctional laws and providing an immediate effective date.

ASSUMPTIONS:

Department of Corrections (DOC):

1. The Commission on Sentencing (commission) will:
 - a. compile statewide data on sentencing and release practices, correctional populations, whether sentencing disparities exist in sentencing similar offenders for similar crimes, whether current sentencing options provide an appropriate range of sentences to protect the victim and society and to allow adequate opportunity for treatment of nonviolent or first-time offenders, and whether current sentencing laws and practices are overburdening correctional resources in Montana;
 - b. review currently available correctional resources and laws concerning correctional policy, length of sentences and sentencing options, and collect and study data, studies, and research from public and private entities concerning sentencing processes and guidelines;
 - c. develop a system of voluntary guidelines to be used on an experimental basis and conduct training programs for judges, prosecutors, defense attorneys and others on interpretation and use of the guidelines, and will monitor the use of the voluntary guidelines and obtain input from participants in the criminal justice system as to their effectiveness;
 - d. plan, sponsor and carry out a public information program, including public meetings and informational sessions to advise and hear from the public on matters relating to laws and practices concerning correctional policy, criminal penalties, length of sentences and sentencing options;
 - e. work with participants in the criminal justice system and other interested parties; and
 - f. make recommendations to the Governor and the Legislature concerning modifications or enactments to sentencing statutes.
2. The budget figures for the 1999 biennium were submitted by the commission to the budget office prior to the commission making its decision and recommendation for this legislation. The Governor's Executive Budget includes funding to sustain the commission at minimum staffing levels for the next biennium. However, current level funding is inadequate for the commission to carry out the duties included in this legislation. An additional FTE for the biennium, with associated operating costs including computer hardware and software is needed.
3. If the commission is funded at the level requested in the Governor's Executive Budget (\$95,842 in fiscal year 1998 and \$96,339 in fiscal year 1999), it will perform those functions for which funding is available, but will not likely be able to complete a useful compilation of statewide data on sentencing and release practices, correctional populations, and whether sentencing disparities exist in sentencing

(Continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DANIEL MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0272, as introduced

HB 272

(continued)

similar offenders for similar crimes. The commission expects to develop a budget for sufficient funding to carry out the information compilation of statewide data, review of current sentencing options as it relates to correctional resources and the computer modeling to determine the effects of sentencing guidelines on the current corrections resources during the next budget cycle.

4. The full commission will hold 4 quarterly meetings, as well as regular meetings of 5 subcommittees, and will send one commissioner and one staff member to a national meeting of state sentencing commissions. Printing costs will include production of training packets for judges, county attorneys, deputy county attorneys, defense attorneys, corrections employees, law enforcement officers, clerks of courts, etc. Also included are costs for 400 copies of a biennial report by the Montana Commission on Sentencing.
5. Personal Services includes 1.00 FTE director (grade 18), 1.00 FTE research director (grade 17), and 1.00 administrative assistant (grade 11).
6. Operating expenses includes \$3,900 per FTE for communications, supplies, travel; \$35,000 in fiscal year 1998 contracted services for computer modeling project; \$5,000 each year for printing expenses; \$32,000 (\$12,000 funded by carryover private funds) in fiscal year 1998 and \$20,000 in fiscal year 1999 for travel expenses for commission members. Equipment in fiscal year 1998 is for necessary office and computer equipment for the new staff.
7. The DOC assumes that it will be able to acquire grant funding in fiscal year 1998 of \$45,000 and \$10,000 in fiscal year 1999 to offset general fund.

Judiciary:

8. The state funded judiciary is responsible for travel costs for district court judges. Two district court judges are on this commission and if funds are not appropriated for the operation of the commission then the judiciary would have to pay these travel costs. It is not possible to estimate these costs at this time as the number of meetings and locations have not been determined. However, the current judiciary budget is not adequate to cover additional travel costs.

FISCAL IMPACT:

Judiciary:

None

Department of Justice:

None

Department of Corrections Commission on Sentencing Budget:

Expenditures: [As shown in the Executive Budget]

	<u>FY98</u>	<u>FY99</u>
FTE	2.00	2.00
Personal Services	65,570	65,586
Operating Expenses	30,272	30,753
Equipment	<u>0</u>	<u>0</u>
Total	95,842	96,339

Funding:

General Fund (01)	85,842	86,339
Federal Grant (03)	<u>10,000</u>	<u>10,000</u>
Total	95,842	96,339

Expenditures: [Total Commission on Sentencing Budget]

FTE	3.00	3.00
Personal Services	110,095	110,095
Operating Expenses	83,700	36,700
Equipment	<u>3,500</u>	<u>0</u>
Total	197,295	146,795

(Continued)

Fiscal Note Request, HB0272, as introduced

Page 3

(continued)

	<u>FY98</u>	<u>FY99</u>
<u>Funding:</u>		
General Fund (01)	140,295	136,795
Carryover Funds (02)	12,000	0
Federal Grant (03)	<u>45,000</u>	<u>10,000</u>
Total	197,295	146,795
<u>Expenditures: [Difference from Executive Budget]</u>		
FTE	1.50	1.00
Personal Services	44,525	44,509
Operating Expenses	53,428	5,947
Equipment	<u>3,500</u>	<u>0</u>
Total	101,453	50,456
<u>Funding:</u>		
General Fund (01)	54,453	50,456
Carryover Funds (02)	12,000	0
Federal Grant (03)	<u>35,000</u>	<u>0</u>
Total	101,453	50,456
<u>Net Impact on Fund Balance: (Difference due to HB 272)</u>		
General Fund (01)	(54,453)	(50,456)

TECHNICAL NOTES:

Since federal grant funding has increased by \$35,000 for fiscal year 1998 since preparation of the Executive Budget, HB 2 language may be considered requiring a decrease in the general fund appropriation if additional federal revenue is received pursuant to 17-2-108(2), MCA.

HOUSE BILL NO. 272

INTRODUCED BY MCGEE, BARTLETT, ESTRADA, J. JOHNSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~MAKING PERMANENT~~ EXTENDING THE COMMISSION ON
5 SENTENCING FOR 2 YEARS; PROVIDING FOR STAGGERED TERMS OF COMMISSION MEMBERS;
6 AUTHORIZING THE COMMISSION TO DEVELOP A SYSTEM OF VOLUNTARY SENTENCING GUIDELINES
7 FOR USE ON AN EXPERIMENTAL BASIS; DIRECTING THE COMMISSION TO REVIEW CURRENTLY
8 AVAILABLE CORRECTIONAL RESOURCES AND CURRENT LAWS CONCERNING CORRECTIONAL POLICY,
9 CRIMINAL PENALTIES, LENGTH OF SENTENCES, AND SENTENCING OPTIONS; DIRECTING THE
10 COMMISSION TO MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING
11 SENTENCING AND CORRECTIONAL STATUTES; AUTHORIZING THE COMMISSION TO SPONSOR AND
12 CARRY OUT A PUBLIC INFORMATION PROGRAM CONCERNING CORRECTIONAL RESOURCES AND
13 SENTENCING AND CORRECTIONAL LAWS; AMENDING SECTIONS 46-18-130 AND 46-18-131, MCA, AND
14 SECTION 5, CHAPTER 306, LAWS OF 1995; REPEALING SECTION 46-18-132, MCA, AND SECTION 5,
15 CHAPTER 306, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION
16 DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19

20 **Section 1.** Section 46-18-130, MCA, is amended to read:

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22 ~~sentencing. The commission is allocated to the department of corrections for administrative purposes only,~~
23 ~~as provided in 2-15-121.~~**

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30 ~~(d) the director of the department of corrections or the director's designee; and~~

1 ~~(e) the following persons appointed by the governor:~~
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 6 ~~(v) a chief of police;~~
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 9 ~~(viii) two members of the public, one of whom must be a victim of a crime for which a sentence~~
 10 ~~of death or of imprisonment for more than 1 year was imposed.~~

11 ~~(3) Appointments under subsection (2) must be made within 60 days after March 31, 1995.~~

12 ~~(4) The commission shall select a presiding officer from its members.~~

13 ~~(5) The commission shall meet at least quarterly. Unless the context requires otherwise, in~~
 14 ~~46-18-131, "commission" means the commission on sentencing provided for in [section 3]. (Terminates~~
 15 ~~May 31, 1997 sec. 5, Ch. 306, L. 1995.)"~~

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 17 **Section 2.** Section 46-18-131, MCA, is amended to read:

18 **"46-18-131. ~~(Temporary) Duties Commission on sentencing -- duties -- compilation of data --~~**
 19 **voluntary sentencing guidelines.** (1) The commission shall monitor criminal sentencing practices in Montana
 20 and develop recommendations for changes needed to achieve a consistent, effective, humane, and rational
 21 sentencing system. The commission shall compile statewide data that includes data on:

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6 ~~(3)(c)~~ prior to each legislative session, make recommendations to the 55th legislature governor and
7 the legislature concerning modification or enactment of sentencing and correctional statutes that the
8 commission believes ~~is~~ are necessary or advisable to carry out ~~as~~ a consistent, effective, humane, and
9 rational sentencing policy and to develop a continuum of sentences to deal with all felony offenders, within
10 available resources; and

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12 continued in existence;

13 ~~(5)(d)~~ identify monitor the impact of truth-in-sentencing laws and the elimination of good time
14 credits and sentencing guidelines on the criminal justice system, including impacts on sentencing practices
15 and on the correctional resources in the state; and.

16 ~~(6)~~ make a recommendation to the 55th legislature concerning the advisability of good time credits.

17 ~~(Terminates May 31, 1997 sec. 5, Ch. 306, L. 1995.)~~

18 (3) By [1 year after the effective date of this act], the commission shall develop a system of
19 voluntary sentencing guidelines. In establishing the voluntary sentencing guidelines, the primary
20 consideration of the commission must be public safety and the restoration of the victim. Following
21 development of the guidelines, the courts may use the guidelines on an experimental basis. Use of the
22 guidelines by a court, or the choice of a court not to use the guidelines, does not confer any rights on a
23 defendant regarding the use or nonuse of the guidelines by a court that sentences the defendant. An
24 offender sentenced under the guidelines remains subject to the parole process, as otherwise provided by
25 law, unless the sentencing court specifies that the offender is ineligible for parole.

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1 circumstances;

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 4 of the crime committed, the circumstances under which the crime was committed, and the criminal history
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 11 resources and current laws concerning correctional policy, criminal penalties, length of sentences, and
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13 (7) In carrying out its duties under this section, the commission shall work with participants in the
 14 criminal justice system, including courts, probation and parole officers, law enforcement, victims,
 15 prosecutors, defense attorneys, the department of corrections, the board of crime control, and other
 16 interested parties."

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 18 **NEW SECTION. Section 3. Commission on sentencing -- composition -- allocation.** (1) There is
 19 a commission on sentencing. The commission is allocated to the department of corrections for
 20 administrative purposes only, as provided in 2-15-121.

21 (2) The commission consists of the director of the department of corrections or the director's
 22 designee, the presiding officer of the board of pardons and parole or the presiding officer's designee, and
 23 14 members appointed as follows:

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 25 political party;

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4 (vi) an employee of the department of justice; and
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7 (3) (a) The director of the department of corrections and the presiding officer of the board of
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10 (b) Appointed members shall serve staggered 2-year terms and until their successors are appointed,
11 except that initial appointments must be made as follows:

12 (i) the two house members to terms that expire December 31, 1998;

13 (ii) one senate member to a term that expires December 31, 1998, and one senate member to a
14 term that expires December 31, 1999;

15 (iii) one district court judge to a term that expires December 31, 1998, and one district court judge
16 to a term that expires December 31, 1999; and

17 (iv) four members appointed by the governor to terms that expire December 31, 1998, and four
18 members to terms that expire December 31, 1999.

19 (4) The terms of commission members run with the position, and if a vacancy occurs, the
20 appointing authority shall appoint a person to fill the unexpired portion of the term. A vacancy must be
21 filled in the manner of the original appointment. Members may be reappointed.

22 (5) A legislative member position is vacant if the person no longer serves in the legislature. The
23 position of a member appointed by the governor or chief justice is vacant if that person becomes a
24 legislator.

25 (6) The commission shall select a presiding officer from its members.

26 (7) The commission shall meet at least quarterly.

27

28 **SECTION 4. SECTION 5, CHAPTER 306, LAWS OF 1995, IS AMENDED TO READ:**

29 "Section 5. **Termination.** [This act] terminates May 31, ~~1997~~ 1999."

30

