

United States Sentencing Commission

Alternatives to Imprisonment Project

**REPORT**

**The Federal Offender:**

**A Program of Intermediate Punishments**

**December 28, 1990**

**Disclaimer: This is an Alternatives to Imprisonment Project document. This information does not necessarily represent the official position of the United States Sentencing Commission.**


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MEMORANDUM

TO: Commissioner William W. Wilkins, Jr., Chairman  
Commissioner Julie E. Carnes  
Commissioner Michael S. Gelacak  
Commissioner George E. MacKinnon  
Commissioner A. David Mazzone  
Commissioner Ilene H. Nagel  
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Commissioner Paul L. Maloney  
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FROM: Helen G. Corrothers, Commissioner  
Alternatives to Imprisonment Project, Director 

RE: Alternatives to Imprisonment Project Report

DATE: December 28, 1990

The Alternatives to Imprisonment Project Report is attached. The organization, design and rationale for the project are found in Part I. Part II of the Report reflects the Advisory Committee's recommendations to the U.S. Sentencing Commission.

Project staff assisting me have been part-time employees Dr. James Beck, Attorney Pat Smith, Dr. Charles Betsey<sup>1</sup>, Ken Roberts, Mary McDowell and full-time Paul Pierrot and Vina McEachern. A group of individuals from other agencies periodically assisted staff.

<sup>1</sup> Dr. Charles Betsey departed the Commission during July, 1990, taking the chairmanship of the Economics Department at Howard University.

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**United States Sentencing Commission**

**Alternatives To Imprisonment Project**

**Message From The Director**

It is with pride that I present the Report from the U.S. Sentencing Commission's Alternatives to Imprisonment Project. It was personally gratifying to have had extremely busy nationally recognized experts accept my invitation to serve on the Advisory Committee for this project. They have been deeply committed and interested in contributing to improving the federal system. There is gratitude for the support of the judiciary and for Judge Edward R. Becker, then Chairman of the Committee on Criminal Law and Probation Administration of the Judicial Conference of the United States, who conveyed that support as he motivated and inspired the Advisory Committee with his key note address at our first meeting on September 27, 1989.

In general, we found the various benefit claims for intermediate sanctions made across the country to be valid, saving taxpayers dollars, relieving overcrowding or conserving space for the more serious offender. It is also true that fairness is enhanced by having the appropriate sanctions available. Despite the advantages of relieving overcrowding and tax savings, an effective program of intermediate punishments must have public safety and offender accountability as primary concerns. It is also important to address the work ethic and victim concerns through restitution payments and public service work (community service).

The Report consists of two parts. Part I deals primarily with my responsibilities as Project Director for the organization and design of the project. Consequently, it presents the mission and blueprint for activities and efforts discussed in Part II. Part II discusses the two major recommendations. First to expand the array of sentencing options currently available to the courts. Secondly, while the Advisory Committee sought to make no change relative to the serious offender or career criminal, it is recommended that the pool of offenders eligible be increased among the less serious offenders. This section also reflects the impact of the proposal through the presentation of offense and offender data. It was seen of utmost importance to provide additional sentencing options by developing intermediate punishments which hold the offenders accountable for their conduct, meet the purposes of sentencing as established by Congress and to increase the pool of offenders who would be eligible for these options without jeopardizing public safety. Consistent with this concern, the recommendations made are restricted to offenders with criminal history category of III or less, and whose history or current offense does not involve violence. Additionally, serious white collar offenders are excluded.

There are a number of outstanding features of the intermediate punishment package model. (1) A menu of sentencing options is provided. (2) There is a continuum of punishments ranging from imprisonment (it is recommended that the courts' option of imposing some imprisonment for every offense be retained) to 24 hour incarceration for designated periods of time in the community to intermittent community incarceration (confinement separated by periods of liberty) to non-incarcerative community supervision. In summary, there is no gap. The gradations in the seriousness of offenses are addressed through the provision of a continuum of punishments. (3) The package is multi-objective. The sentencing options are designed to accomplish all of the purposes of sentencing: deterrence, just punishment, incapacitation and rehabilitation. Additionally, all programs include components/elements mandating concern for the victim, the work ethic and discipline. (4) The model provides the courts the opportunity to distinguish between offenders. Though each of the four stated purposes should be considered in imposing sentence, in a particular case one purpose may have more bearing on the sentence to be imposed. In our model, public safety and the courts' flexibility are enhanced because of the availability of programs with appropriate emphasis on one or another of the purposes of sentencing. (5) To avoid unwarranted disparity and to maintain the congressionally established determinate sentencing system, the options are to be judicially imposed and a system of equivalencies or exchange rates between prison and non-prison is established. (6) The recommendations are compatible with the guideline structure as designed by the U.S. Sentencing Commission.

We are aware that a resource problem exists. Where sufficient resources exist, immediate implementation is recommended. Where resources are inadequate, we anticipate this document's use for planning purposes and recommend support for the appropriate agency.

While the task has been extremely challenging, it has been exhilarating and rewarding for me to work with Norm Carlson and members of the Advisory Committee, dedicated program providers across the country, staff and the Working Group.

I present to you a package of highly structured sentencing options emphasizing accountability, control, responsibility, counseling, education and other treatment or risk reducing programs. This system of intermediate punishments will safeguard public safety, more effectively and efficiently utilize taxpayers dollars and limited prison space, enhance fairness and be sufficiently punitive. Moreover, the system will complement the work already done by the U.S. Sentencing Commission.



Helen G. Corrothers

Commissioner and  
Project Director

Alternatives to Imprisonment Project

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## ORGANIZATION/DESIGN PROJECT

### PART I

#### I. INTRODUCTION

##### A. Summary - United States Sentencing Commission's History and Mandate

The Sentencing Commission was created by the Sentencing Reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984). The Sentencing Reform Act was the result of the 98th Congress' bipartisan legislative efforts begun in the early 1970's. This independent agency in the Judicial Branch of government consists of seven voting members appointed by the President and confirmed by the Senate and two non-voting ex-officio members<sup>1</sup> and began in the fall of 1985. The Commission promulgated the initial guidelines, and subsequent to a six-month review by Congress,<sup>2</sup> they became effective November 1, 1987, and apply to all offenses committed on or after that date. The Commission's mandate is to establish sentencing policies and practices that provide certainty, fairness, and avoid unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors.<sup>3</sup> Most importantly, the Commission is directed to ensure that sentencing policies and practices meet the basic purposes of sentencing: just punishment, deterrence, incapacitation and

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<sup>1</sup> 28 U.S.C. § 991(a).

<sup>2</sup> 28 U.S.C. § 994(p); 18 U.S.C. 3551.

<sup>3</sup> 28 U.S.C. § 991(B).

promotion of rehabilitation.<sup>4</sup> Among the purposes of the sentencing reform law were the Congressional concerns for honesty, uniformity, and proportionality. Honesty is achieved by virtue of the offender serving the actual sentence imposed.<sup>5</sup> Uniformity is achieved by narrowing the wide disparity in sentences imposed by different federal courts or even by different judges within the same court for similar criminal conduct by similar offenders.<sup>6</sup> Proportionality is achieved in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.<sup>7</sup> Therefore, the Commission's overall goal and our mandate from Congress is to provide a structure and framework for sentencing decisions so that similar offenders who commit similar offenses are sentenced in a similar fashion.<sup>8</sup> Since 1987, as authorized by legislation, the Commission has continued to review the initial guidelines and promulgate amendments each year.

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<sup>4</sup> 18 U.S.C. § 3553(a)(2).

<sup>5</sup> United States Sentencing Commission, Guidelines Manual, Ch. 1, Pt. A, Intro. Comment (Nov. 1990).

<sup>6</sup> *Id.* at 1.2.

<sup>7</sup> *Id.* at 1.2.

<sup>8</sup> 18 U.S.C. § 3553(a)(6).

## B. Description of Guidelines

The two operative components in determining the sentence are offense and offender characteristics. Each offense has been assigned a level based on the seriousness of the offense. The levels range from the least serious level of 1 to the most serious level of 43. The offender's criminal history is divided into six categories with Category 1 being the lowest. The Sentencing Table shows that the range within each offense level increases with the criminal history score. At the intersection of each offense level and criminal history category a guideline range in months of imprisonment is set forth. The court is able to depart from the guideline range in an atypical situation. The judge however must in all instances provide the reasons for the sentence which is subject to review by the court of appeals for "unreasonable" departures, incorrect guideline application, or a sentence imposed in violation of law.<sup>9</sup>

## C. Current Sentencing Options

Imprisonment is always an option. Additionally, for offense levels with a minimum guideline range of 0, the court may elect probation (with or without confinement conditions).<sup>10</sup> For offense levels whose minimum is from 1 to 6 months, probation may be substituted for a prison term, but must include a confinement condition (community and/or

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<sup>9</sup> 18 U.S.C. § 3553(e)(1)(2).

<sup>10</sup> United States Sentencing Commission, Guidelines Manual, § 5C1.1(b) (Nov. 1990).

intermittent confinement, or home detention).<sup>11</sup> For offense levels whose minimum is from 1 to 10 months, the court must impose prison confinement for at least one half the minimum confinement sentence (unless sentenced to probation with conditions when the minimum is less than 8 months), the remainder to be served on supervised release with a condition of community confinement or home detention.<sup>12</sup> In summary, currently, imprisonment is always a sentencing option and straight probation is possible only when the minimum guideline range is 0.

D. Perspectives on the Need and Benefits of Intermediate Punishments

It is believed that a significant national need exists today for the dual effort of increasing the construction of prison facilities to accommodate the dangerous and serious offenders and at the same time increasing our efforts to develop innovative methods to accomplish the punishment of some offenders in the community. At the federal level, a clear need exists for the U.S. Sentencing Commission to consider alternatives to imprisonment to determine whether the Commission could, in fact, expand the use of intermediate punishments without jeopardizing public safety or promoting disrespect for the law.

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<sup>11</sup> U.S.S.G. § 5C1.1(c).

<sup>12</sup> U.S.S.G. § 5C1.1(d).

It is believed that there are benefits to be derived from the development of non-prison sanctions.

1. Savings of Taxpayers' Dollars. This benefit is most often mentioned since these programs would be generally less costly than traditional imprisonment (nationally, up to over \$100,000 per cell and up to \$30,000 per inmate per year operational cost). Thus, to the extent that the programs are used for offenders who would have otherwise gone to prison a saving of taxpayers' dollars may be realized. In dealing with the issue of saving money, it is important to note several factors.

(a) Tough Community Sanctions Cost More. Effective community sanctions will cost more. The public has generally expressed disapproval for yesteryear community sanctions because of the lack of offender accountability. For example, the Probation Officer's caseload of 100 or more offenders is no longer viewed as acceptable for certain types of offenders. Therefore, if community sanctions are made more effective by emphasizing public safety and offender accountability, an increase in community program costs will occur.



(b) Net-Widening. One of the factors frequently used to discourage expectations of cost savings is what is termed net-widening. Caution, coming from concerns about both costs and fairness, is advised lest net widening will occur. If, as the 98th Congress indicated, the lack of a sufficient number of sentencing options forced judges to be more lenient or more restrictive than they would otherwise be, a couple of things can be expected: (1) those offenders who would have otherwise gone to prison, not because of risk posed, but due to the unavailability of an effective and comprehensive program of community sanctions, would now be placed in these programs; (2) it logically follows that when these programs become available some of the offenders who would have been treated more leniently than the court desired and who would have received straight or regular probation, would now be placed in an appropriate community punishment program. Consequently, because the focus is on just and fair sentences, it is conceivable that some net widening may be inevitable (which would reduce savings), but public safety and the purposes of sentencing would be more adequately served.

(c) Examples of Potential Savings. Finally, there is what might be called the "hardware" factor. If it is found that the purposes of sentencing could be accomplished by placing an offender in a facility with porcelain rather than steel toilet fixtures and regular walls rather than those reenforced with expensive materials, etc., which now cost up to \$132,000 per cell (Hawaii), more expensive forms of incarceration would not be needed. If the offender is able to work and pay for his upkeep, the up to \$30,000 annual operating cost will be saved. Therefore, when public safety will not be jeopardized through the use of non-prison sanctions, some savings will be realized.

2. More Efficient Utilization of Prison Space. The alleviation of overcrowding in the institution is often cited as a goal to be attained through the utilization of non-prison sanctions. While this benefit may be realized, it is not recommended that one utilizes overcrowding as the rationale, or the relief of overcrowding, as the primary purpose for the establishment of an intermediate sanction program. A just/fair system which safeguards public safety must be paramount. However, there is a benefit to be derived from better utilization of prison space because it is more economical and public safety is enhanced as well.

If defendants are not sent to prison when they could be appropriately sanctioned elsewhere, that is to say without jeopardizing public safety, then prison space will be reserved and made available for the dangerous or more serious offenders. Systems which routinely send offenders to prison, without regard for whether an appropriate sanction is available in the community, only to later implement early release (sometimes after individuals have served less than a month for each year of the sentence pronounced) based on an insufficient number of beds, are not only ineffective, but constitute a threat to public safety. Moreover, if proper attention is not devoted to determining who goes to prison on the front-end, there is not much opportunity for the necessary selectivity on the back-end. This is especially true when a court ordered population cap is in effect.

3. An Increase in Fairness. It is believed that the benefit derived from an increase in fairness is the most important. If the courts have a sufficient number of options, they will not be forced to be either more restrictive or more lenient than they would be otherwise. Consequently, the sentences would be more just and fair. An increase in fairness is seen as a part of the Commission's Congressional mandate and thus, along with accountability, is an important purpose for this project.

In summary, it is believed that an effective comprehensive program of intermediate punishments may save the taxpayers' money, will enhance public safety as a result of more efficient utilization of prison space, and enhance fairness.

E. Project Authorization and Target Date

During 1989, Chairman William W. Wilkins, Jr., authorized Commissioner Helen Corrothers to conduct this project and to bring back recommendations for action by the full Commission. A target date of December 1990 was established for submission of the recommendations to the Commission. This would be timely because if the recommendations are approved for comment, they can be included in the annual package of guideline amendments scheduled for publication in the Federal Register in February, and for public hearings later in March. If adopted, the proposal will be included in the package submitted to Congress by May 1, 1991.

II. MISSION

A. Legislative History

A strong orientation to mission and adherence to the Congressional mandate would support the decision that the starting point for this project be a thorough examination

of the relevant statute and legislative history. It was found that Congress itself had expressed concern about the limited availability of sentencing options during its debate on sentencing reform. Relevant legislative history states: "Current law is not particularly flexible in providing the sentencing judge with a range of options from which to fashion an appropriate sentence. The result is that a term of imprisonment may be imposed in some cases in which it would not be imposed if better alternatives were available. In other cases, the judge might impose a longer term than would ordinarily be appropriate simply because there were no available alternatives that served the purposes he sought to achieve with a long sentence."<sup>13</sup>

B. Project Mission

The primary mission then is to provide additional sentencing options to the federal courts by developing a comprehensive package of intermediate punishments that meet the purposes of sentencing as established by Congress. It is expected that to the extent that the additional options are effective our ability to increase the number of offenders eligible will be enhanced. For a more comprehensive statement concerning the mission, see Attachment 1.

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<sup>13</sup> S.Rep. No. 225, 98th Cong., 1st Sess., 50.

### III. PRINCIPLES

#### A. Sources/Objectives

The development and use of principles is considered critical for effective program design and identification of targeted offenders. The appropriate primary sources of ideas for this internal tool were determined to be: (1) our enabling legislation (Title 28, Chapter 58, §§991-998, U.S. Code); (2) legislative history pertaining to the enabling legislation; (3) expressions of Congressional intent concerning facets of the criminal justice system from any source; and (4) factors based on sound judgement from experienced criminal justice officials. The principles which provide our objectives are designed to be used as guideposts and assist us in (1) the types of programs selected; (2) components and elements of these programs; and (3) the types of offenders recommended or not recommended for such programs. Attention to the principles ensures that throughout the process our focus is maintained on the purposes to be achieved by each program/component.

B. Listing

**PRINCIPLE 1.                    FUNDAMENTAL APPROACH**

The intermediate punishments package will be multi-objective which will provide the court with an array of sentencing programs/components that address the statutory purposes of sentencing.

**PRINCIPLE 2.                    AVOIDING UNWARRANTED DISPARITIES**

Any proposed sentencing option must take into account the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

**PRINCIPLE 3.                    PROHIBITED FACTORS**

Any sentencing option must be entirely neutral as to race, sex, national origin, creed and socioeconomic status of offenders.

**PRINCIPLE 4.                    PROTECTION OF THE PUBLIC**

Any sentencing option will be consistent with the concept that the sentence imposed must protect the public from further crimes of the defendant.

**PRINCIPLE 5.                    PROMOTION OF RESPECT FOR THE LAW AND JUST PUNISHMENT**

Any sentencing option will reflect the seriousness of the offense, the promotion of respect for the law, and the provision of just punishment for the offense.

**PRINCIPLE 6.                    DETERRENCE**

Any sentencing option will be consistent with the general concept that the sentence offers adequate deterrence to criminal conduct.

**PRINCIPLE 7.                    VICTIMS OF CRIMES**

Any sentencing option will reflect concern for the impact of the offense on the victim.



**PRINCIPLE 8.                    REHABILITATION**

Any sentencing option will reflect consideration of the defendant's needed educational or vocational training, medical care, or other risk reducing programs in the most effective manner.

**PRINCIPLE 9.                    PARSIMONY**

Any sentencing option must reflect concern that the sanction is sufficient, but not greater than necessary, to comply with the purposes of sentencing.

**PRINCIPLE 10.                    MONETARY SANCTIONS: FINES AND RESTITUTION**

Any sentencing option will reflect the opportunity for the use of monetary sanctions as deemed appropriate.

**PRINCIPLE 11.                    PROMOTION OF WORK ETHIC**

Any sentencing option will reflect the importance of promoting the work ethic in convicted offenders.

**PRINCIPLE 12.**

**SOCIETAL CONCERNS/VIEWS**

Any sentencing option should take into account to the extent they are relevant -- the community view of the gravity of the offense; the public concern generated by the offense; and the current incidence of the offense in the community and the nation as a whole.

**PRINCIPLE 13.**

**CREATIVITY AND INNOVATION**

Sentencing options will reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process.

**PRINCIPLE 14.**

**DISCIPLINE**

Any sentencing option will reflect the necessity that discipline is an integral part of total programming in all intermediate punishment facilities and non-residential programs.

**Report.**

The Principles and discussion pertaining thereto are included in the Supplementar

#### IV. RESEARCH

During the design of the project, several goals were established in the research area.

##### A. National Survey of Federal, State and Local Jurisdictions

It was deemed necessary for optimum results to conduct extensive research to ascertain what existed nationally in the world of alternatives and to obtain an up-to-date picture of the current "state of the art" in intermediate punishment programs. It was learned however that Commission budgetary concerns would make it necessary to abandon the planned research or nation-wide field survey. Hence, a secondary plan was formulated to conduct a comprehensive overview of existing literature. Because of the knowledge that changes occur rapidly in this field, it was also deemed essential to supplement this literature review with telephone calls to program providers and other individuals knowledgeable as to what transpires in this area.

**B. National Survey of Judges and Magistrates**

A second major comprehensive research effort was planned concerning judicial input. Again, the estimated cost was prohibitive. But because it was felt essential to obtain input from the most knowledgeable group of beneficiaries of the project, volunteer assistance was sought and received which made the judicial survey financially feasible.

**C. Demographic Information**

Plans were established to receive on a regular basis statistical information from the Bureau of Prisons and information from the U.S. Sentencing Commission's Research Division pertaining to both past sentencing information as well as projections.

**V. PHASES OF THE PROJECT**

It was determined that the project would be divided into three major phases:

**A. Information Gathering**

As indicated above in Item IV, it was determined necessary to discover what existed in intermediate sanctions across the country, what district judges and magistrates thought about increasing their flexibility in fashioning appropriate sentences, and what

resources were available for implementation. There was also concern that the programs recommended to the Commission be suitable for the federal offender. Consequently, it was determined that programs deemed suitable would achieve specific desired objectives and purposes and actually be needed, i.e. the types of offenders targeted are presently in, or will be entering, the federal system. Thus, as indicated above, information was needed from both the Bureau of Prisons and the Research Division of the U.S. Sentencing Commission.

B. Program Evaluation, Visitation and Selection

It was determined during the design of this project that though it is essential to review state and local programs across the country, it is also essential to ensure suitability of the programs designed and recommended for the federal offender who is presently in the system, as well as those projected to enter the system. Demographic information is valuable to ensure that programs are included in our recommendations if: (a) current or projected prison populations indicate a sufficient number of the types of offenders that would justify the existence of the program and (b) information concerning characteristics of these offenders would assist in ensuring that the program components and elements recommended would be appropriate to their needs.

Valid internal program evaluation tools include the principles which were designed to assist our effort to ensure that the programs selected and recommended are

designed to serve specific purposes (the purposes of sentencing). It was emphasized that during the program evaluation process, the project must continuously focus on the purposes to be achieved by programs and components that are designed and selected.

It was also decided that during the program evaluation process our General Counsel would be consulted to ferret out any legal restrictions attached to a particular program.

Limited visits to various program sites were planned to be used as an evaluation tool. Specifically, site visits would not be planned unless there was already familiarity with the particular program (through literature review, telephone conversations with program providers, etc.) and there was interest in designing the type of program for the federal system.

Among the items of significant interest during site visits, it was determined to be mandatory to obtain responses to the following questions:

- (1) Did the intermediate punishment programs in the state visited safeguard public safety?

- (2) Did the programs adequately serve as alternatives to imprisonment (vs. facilitating widening the net)?
- (3) Did the public perceive the programs to be punitive?
- (4) Did the offenders perceive the program to be punitive?
- (5) Did the community benefit from the existence of alternative programs?

C. Model Development

It was determined that the model developed should provide additional sentencing options through a menu of intermediate punishments designed to assist the court in accomplishing its purposes of sentencing.

The model reflects the type of offender targeted and a continuum of punishments or a range of sanctions that should allow the judge to distinguish between offenders with different levels of offense seriousness, criminal histories and treatment program needs related to reducing their risk to public safety.

The model provides exclusionary information relative to offense and offender characteristics that are undesirable for intermediate punishment.

The model should, avoid unwarranted disparity, maintain the certainty of sentencing reform and enhance the court's flexibility through the provision of interchangeable punishments or exchange rates between prison and non-prison sanctions.

The model should contain a statement addressing an evaluation process for present and future concerns.

## VI. ADVISORY COMMITTEE

The Project Director appointed an Advisory Committee. The Committee members are nationally known criminal justice officials, including representatives from the judiciary and the fields of research, law enforcement, academia, corrections, criminal defense law, prosecution and the military. Criteria for selection included a demonstrated interest in the



subject matter, sufficient capabilities, and most importantly, because of the nature of the project, credibility among their peers and nationally. Norman A. Carlson, Professor and former Director of the Bureau of Prisons, was appointed Chairman of the Committee.

## VII. STAFFING AND SUPPLEMENT

### A. Project Staff

A consultant was requested to assist in the project design and staffing needs. It was advised that required staff would consist of a full-time Director who would run the project on a daily basis. The direction of the program on a full-time, daily basis was said to be both essential and critical to the development of a high quality product. In addition to the Project Director, a full-time research staff, (optimal number of five, minimal number of three), and clerical/data entry personnel would be necessary. Overall, the optimum number of personnel for a quality product was recommended by the consultant as eight full-time personnel. Due to financial constraints, it was necessary for Commissioner Corrothers to take the Project Director responsibilities despite the difficulty of her not being able to devote full-time effort on this one particular project. The staff for this project has primarily consisted of one clerk and one full-time staff for the duration of the project and several periodic part-time staff and individuals to include an employee from the Bureau of Prisons. See Consultant recommendations and list of Project Staff at Attachment 2.

**B. Working Group**

A Working Group was appointed to supplement the small Project Staff primarily in the development of components and elements of programs selected. Individuals in the Working Group come primarily from various federal, state or local government agencies to include representatives from the Probation Division, the Administrative Office of the U.S. Courts, the Federal Judicial Center, the Federal Prison System, the National Institute of Corrections and the United States Parole Commission. Joan Petersilia, a nationally known criminal justice researcher at RAND Corporation and President of the American Society of Criminology, is also a member of this group. See list of Working Group members at Attachment 3.

**END OF PART I**

**ATTACHMENT 1**

**UNITED STATES SENTENCING COMMISSION**  
**ALTERNATIVES TO IMPRISONMENT PROJECT**

**STATEMENT OF PURPOSE**

The Crime Control Act of 1984, which created the United States Sentencing Commission, provided the impetus for more certain and consistent sentencing. The Commission has made tremendous strides toward compliance with this Congressional mandate through its development and promulgation of the federal Sentencing Guidelines. However, it is now recognized that the Commission should determine the feasibility of developing community based corrections programs suitable for the federal offender. Commissioner Corrothers has been authorized by Chairman Wilkins to conduct the "Alternatives to Imprisonment" project. In general, the project will develop recommendations for the Commission concerning the availability and application of alternatives to imprisonment. Specifically, the primary purpose of the project is to increase the array of sanctions available to the federal courts and to ascertain the desirability of increasing the pool of offenders eligible for intermediate sanctions without jeopardizing public safety.

Traditionally, federal sanctions have been limited primarily to imprisonment, regular probation and fines. The goal of this project is to present for the consideration of the Sentencing Commission a more comprehensive plan that will create intermediate

punishments that more appropriately sanction eligible offenders and allow certain imprisoned offenders to serve at least part of their sentence outside of the traditional prison setting.

It is envisioned that these programs will be consistent with the legislative directives given to the Sentencing Commission by Congress, as well as the current guideline structure. The project will also identify any statutory or guideline changes that would enhance the effectiveness of its recommendations.

The project will proceed by exploring various kinds of alternatives to imprisonment to assess their appropriateness for implementation on the federal level. This examination will include consideration of existing programs with an eye towards determining which offenders and what offense characteristics are most appropriately sanctioned in the community. All programs under consideration, whether currently in existence or not, will be evaluated according to the purposes of sentencing as set forth in 18 U.S.C. Section 3553 (a)(2), i.e., reflect the seriousness of the offense; promote respect for the law, and provide just punishment for the offense; afford adequate deterrence to criminal conduct; protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner. The project will also scrutinize the current resources used by the Federal Bureau of Prisons, including the classification and acquisition of facilities, as it relates to the development of alternative sanctions.

Programs will also be evaluated on the basis of their rehabilitation potential, cost-effectiveness, the extent to which they promote and provide for restitution, and other forms of offender accountability. These programs may precede imprisonment ("front end"), or succeed it ("back end"), or substitute for all or part of the time which would be otherwise spent in a traditional prison setting. To the extent appropriate, the project will also make recommendations to the Commission in response to other legislative directives and empowerment in 28 U.S.C. Section 994.

To assist in the accomplishment of these goals, an Advisory Committee of nationally known experts in the field of criminal justice, corrections and sentencing policy has been formed to assist the project staff in developing a system of non-prison sanctions for consideration by the Commission. A smaller group of individuals, primarily from governmental agencies, will work closely with project staff members on a regular basis. In addition, individuals from across the country with expertise in specific subject areas will be called upon to assist the Advisory Committee and staff as needed.

A proposal (including any necessary legislative or guideline changes) will be presented to the Sentencing Commission no later than December, 1990, in order to make possible its inclusion with the United States Sentencing Commission's annual recommendations package due to reach Congress by May 1, 1991.

The Sentencing Commission has a unique opportunity to improve the operation of the entire federal criminal justice system, from sentencing through post-release supervision. The project will assist the Commission in meeting the tremendous challenge by filling the gap between traditional imprisonment and straight probation. The system of intermediate punishments will enhance public safety, more effectively and efficiently utilize taxpayer dollars and scarce prison space, enhance fairness and be sufficiently punitive.

ATTACHMENT 2  
UNITED STATES SENTENCING COMMISSION  
ALTERNATIVES TO IMPRISONMENT PROJECT

Mary L. Parker, Ph.D.  
Associate Professor  
University of Arkansas  
at Little Rock

CONSULTANT RECOMMENDATIONS

I. PROJECT DIRECTOR

The director of the alternatives project must be qualified to supervise other individuals involved in a prolonged process, knowledgeable about alternatives in general and most importantly self motivated and dedicated to the completion and passage of the Alternatives Model. The director should be allowed to devote his/her full energies and efforts to this project with no distraction from other assignments (i.e. full time on the project), especially during the early stages of the alternatives project when organization and control are essential to the long range success of the Alternatives Model. Commissioner Corrothers should contribute to the internal operation of the project in an advisory capacity but due to her already hectic schedule should rely on the project director to run the project on a daily, weekly and monthly basis. Her input is invaluable to the project team and she should be briefed and consulted on a regular basis, however due to other demands on her time she should not add another burden to her already heavy load and try to organize and supervise the project and its staff. A full time director who has the authority to direct the program on a daily basis is essential to the development of a quality Alternatives Model.

II. STAFF

In order to produce an end product of the quality essential to the approval of the Alternatives Model, a full time research staff of at least three (3) individuals is needed in addition to the project director. The research staff should ideally come from varying backgrounds (i.e. law, CBC field work, research, institutional corrections, computer systems, etc.) in order to create a well rounded team of individuals who will contribute to the overall project from their respective knowledge bases. In addition to those individuals, at least one clerical/data entry person is necessary to the project to enter incoming information and to handle the necessary arrangements and correspondence associated with a project such as this. The clerical position would best be filled by someone who possesses word processing and computer systems knowledge since he/she will be responsible for the majority of the data entry and retrieval and for the compilation of reports, correspondence, and supporting material.

The above recommendation covers the bare bones staff necessary for project success. If additional monies are available, a research staff of at least five (5) would be preferable to the three mentioned above and two clerical positions would serve the project better than one. The additional clerical position would allow one person to devote his/her full time to the maintenance of the data and information files while the other individual handles the word processing and arrangements aspects of the project.

### 1.1. COMPUTER SUPPORT

As mentioned earlier in this report, the development of a computer program to store and manipulate the project information is essential to the efficient management of the Model data and material. A computer programmer should be either a full time or part time member of the project team from the beginning of the project, which would allow for in house adjustments to the program and the information retrieval format. His/her contributions to the project will not only make the process easier but will enhance the quality of the information and will positively affect the Model as well.

In addition to the programmer and his/her programs, computer access must be provided for all team members (preferably a computer terminal for each project team member) A larger more powerful computer unit or unlimited access to the Commission's main computer system should be provided for those individuals who are most actively involved in the development of programs, the entry of data and the retrieval of information. If individual computers are not possible, several accessible computers should be put at the disposal of the project team in order to facilitate their access to the information stored within.



#### IV. EXTERNAL RESOURCES

There are numerous research groups who may be valuable to the project at various points. The decision as to whether certain aspects of the process should be handled by external resource groups (i.e. questionnaire development, mail out, storage and retrieval program development, data input, etc.) is best left to the project team (including Commissioner Corrothers) and other individuals who have past knowledge of projects of this nature. Whatever decision is made with regard to the use of external resources, the ultimate direction and control of the project should always be kept in the hands of the project team.

#### V. DOCUMENTATION - OTHER USES OF INFORMATION ACQUIRED

A question was raised by the project staff as to what is the value of this project past the possibility of Commission approval of the Alternatives Model. In other words what if the project as a whole does not meet with Commission approval at this point in time? In response to that question several offshoots of the project are possible. The primary use of the information acquired through the project would be the development of a new Model and/or the revision of the existing Model to promote a more marketable product.

In addition to that possibility, the information acquired could form the basis of the most up-to-date, comprehensive Alternatives to Incarceration Resource Manual to date. Since the project seeks to acquire information about all such programs nationwide, the documentation and compilation of program information of this type would prove invaluable to those who are working in the fields of corrections and education.

Regardless of the outcome of the Model, the information acquired in the course of its development is of immense value above and beyond the Model itself.

**ATTACHMENT 2**

**UNITED STATES SENTENCING COMMISSION**  
**ALTERNATIVES TO IMPRISONMENT PROJECT**

**HONORABLE HELEN G. CORROTHERS**  
Commissioner  
United States Sentencing Commission

and

Project Director  
Alternatives to Imprisonment Project

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\*Charles Betsey departed the Commission during July, 1990, taking the chairmanship of the Economics Department at Howard University.

**ATTACHMENT 3**

**UNITED STATES SENTENCING COMMISSION**

**ALTERNATIVES TO IMPRISONMENT PROJECT**

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## PART II - PROJECT OVERVIEW

### I. INFORMATION GATHERING

#### A. Literature Review.

The literature review was conceived primarily to give an overview of the types of alternatives to imprisonment being implemented by the various states nationwide. To accomplish this task, the project staff reviewed hundreds of books, articles and evaluation reports. Initially, the project staff looked at the successful models of alternative programs more likely to be implemented at the federal level within the framework of the federal sentencing guidelines. Afterwards, the project staff prepared a topical listing of the different types of alternatives to imprisonment and conducted a search from the following reference services and databases: Social Scisearch, National Criminal Justice Reference Service (NCJRS), Legal Resources Index, and Courier Plus. As a result, the project staff compiled a short annotated bibliography of selected articles and books pertaining to "alternatives."<sup>1</sup> It is worth noting that our effort to collect information extended beyond the written literature as we made contact with various organizations such as the American Bar Association, National Institute for Sentencing Alternatives, National Organization of Victim Assistance, Washington Legal Foundation, National Prison Project of the American Civil Liberties Union, National Institute of Corrections, National Association of Criminal Defense Lawyers, Vera Institute of Justice, ABT Associates, Wainwright Judicial Programs, Inc., the Justice Fellowship, The Rand Corporation, the Federal Judicial Center, the Sentencing

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<sup>1</sup> See Supplementary Report.



Project, Aleph Institute, etc., in order to monitor any new development. Also, the project staff attended several conferences and seminars sponsored by various criminal justice associations, including the most recent "National Conference on Intermediate Punishments As Sentencing Options" during 1990 under the auspices of the National Institute of Justice.

To further supplement the search, during 1989 and 1990 Commissioner Corrothers, the Project Director, solicited input concerning desirable programs from U.S. Sentencing Commissioners and staff. In addition, members of the project visited a number of facilities in the states which have pioneered the most innovative alternatives to imprisonment and based on the Commissioner's "list of principles" as guideposts, we were able to identify the objectives and components of each type of alternative programs consistent with the purposes of sentencing set forth in 18 U.S.C. 3553. (Georgia, North Carolina, South Carolina, Oklahoma, Arizona, New York, etc.)

We found that most alternatives to imprisonment have the following common objectives:

- o To provide judges with the flexibility to fashion alternative punishments in sentencing offenders.
- o To reduce overcrowding of prisons and jails.
- o To reduce the cost of imprisonment.
- o To ensure public safety.

What follows is a summary of the major alternatives to imprisonment. For a more detailed discussion related to eligibility criteria and program components and elements, refer to the Supplementary Report.

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### 1. Intensive Supervision Probation (ISP)

Intensive Supervision Programs (ISPs) are alternative sentencing options designed primarily to punish and strictly supervise certain types of low risk nonviolent offenders. Most ISPs are being implemented either as front-door diversion programs to reduce prison overcrowding or as alternative sentencing strategies, thus allowing judges to sentence offenders directly to the program. (Cochran, et al., 1986).

There are 40 states with such programs. Depending upon which types of offenders are targeted, a particular jurisdiction may fashion its program on either a justice model ("just desserts"), a risk control model or a traditional treatment oriented model. However, none of the programs are set up purely as a justice or risk control model, but incorporate aspects of both to enable the program to achieve its goals.

Most intensive supervision programs have relatively strict eligibility criteria. Some exclude offenders who have had any prior felony conviction involving violence and others require employment (e.g., Georgia, New Jersey, Kentucky). Once admitted into a program, a candidate must strictly abide by the mandatory community service, face-to-face or telephone contacts, mandatory referrals in high need areas (drug, alcohol, education), imposition of supervision fees and "spot testing" for drug and alcohol abusers that are common features of the majority of the ISP programs. (Byrne, 1986).

The attraction about ISPs is their flexibility to fashion the punitive and the reformative components of the program to address both the concerns over public safety and the needs of the offender. Within the extremes of incarceration and release on probation, intensive supervision offers a myriad of possibilities of criminal sanctions. Further, the

conditions of intensive supervision programs can be set up to serve "a variety of correctional ends" without the staggering cost of long-term imprisonment.

Most ISPs in the United States are patterned after the three best-known programs initiated in Georgia, New Jersey and Massachusetts.

(a) Georgia's ISP

As a result of its overcrowded prison facilities, the federal courts issued an order threatening to take over the entire Georgia corrections system. (Petersilia, 1986.) In 1982, the state of Georgia initiated one of the most innovative and comprehensive intensive supervision programs in the United States. (Petersilia, 1987). The corrections officials in Georgia formulated a very stringent set of standards of supervision combining both the retributive and reformatory aspects in implementing their ISP program. Listed below are some of its most salient features:

1. Five face-to-face contacts per week in phase one (decreasing to two face-to-face contacts per week in phase three).
2. 132 hours of mandatory community service.
3. Mandatory curfews.
4. Weekly checks of local arrest records.
5. Automatic notification of an arrest elsewhere via State Crime Information Network (SCIN) listing.
6. Routine alcohol and drug screens. (Erwin, 1986).

In order to effectively enforce these conditions, the program administrators have reduced to twenty-five the number of probationers per caseload, managed by a supervision

team. (Petersilia, 1987; Erwin, 1986). Finding it extremely difficult to separate the functions of treatment and enforcement, the role of the surveillance officer in charge of enforcement and the counseling role of the probation officer necessarily overlap. (Clear *et al.*, 1987; Erwin, 1986).

One specific objective of the program is to divert prison-bound offenders to ISP without jeopardizing public safety (Erwin, 1986). Most evaluators agree that the Georgia model is a success in that regard. Of the 2,322 offenders who have been diverted from prison to ISP less than 1 percent have been convicted for violent personal crimes; another 16 percent have been terminated for technical violations or new crimes (Petersilia, 1987; Erwin, 1986). Georgia's model, with its strong emphasis on punishment, maintains the reformatory aspects of its program by requiring its participants "to perform 132 hours of community service and to be involved in an educational/vocational program full time" (Petersilia, 1987). Offenders usually spend six to twelve months in the program followed by a year of basic probation. In addition to court ordered fines and restitution, the payment of probation supervision fees range from \$10 to \$50 per month (Petersilia, 1987; Erwin, 1986). One evaluation reported the program's aggregate earnings (including taxes paid, restitution, fines, probation fees and the estimated value of community service work) at \$1.5 million in comparison to a total expenditure of \$900,000 (Pearson, 1985). The annual expense of each ISP client is \$1,600, which is considerably less than the \$9,000 annual cost for housing a prison inmate (Petersilia, 1987).

(b) New Jersey's ISP

New Jersey's ISP was created in June 1983 as a front-door option to eligible offenders who have actually served at least thirty days of their prison term (Pearson, 1986; Petersilia, 1987). Violent offenders are virtually excluded from the program, and those deemed eligible have to pass a very stringent set of criteria (Petersilia, 1987).

New Jersey's screening process requires each applicant to submit to a total of forty contacts, twelve of which are face-to-face contacts during the entire eighteen month program. Failure to find employment or to participate in an education/vocational training after the first ninety days in the program constitutes a violation which results in imprisonment. Each participant is required to perform sixteen hours of community service per month. The majority of the participants also take part in specialized counseling. (Pearson, 1987).

As of December 31, 1985, approximately 2400 applications were evaluated for admission into the program; only twenty-five percent were admitted. Another sixty percent were rejected for failure to meet the basic eligibility requirements. It is interesting to note that fifteen percent of the eligible offenders opted for imprisonment because they found the program too punitive. (Pearson and Bidel, 1986).

An early progress report covering the period from September 1983 through October 1984 has shown that 86 percent of the participants met their community service requirement; 83 percent maintained full time employment; another 25 percent were involved in some kind of an educational or vocational training. Only one of the twenty-nine revocations has been for an indictable offense. (Pearson, 1985).

The New Jersey ISP was able to divert each of these offenders into the program at the much lower cost of \$7,000 per year compared to the \$17,000 it would have cost to incarcerate one offender. (Pearson, 1986). New Jersey's ISP costs are slightly higher than the average ISP cost because electronic monitoring is used for about half of the participants. (Petersilia, 1987).

(c) Massachusetts

Unlike the diversion programs in Georgia and New Jersey, the Massachusetts intensive probation supervision program is a risk control model designed to manage high risk probationers. The program emphasizes strict enforcement of the conditions of supervision, including mandatory counseling or treatment addressing the rehabilitation needs of each offender while under supervision. (Cochran, et al., 1986).

The Massachusetts program is based on the assumption that high risk/high need offenders can be handled effectively through enhanced community supervision. (Cochran, et al., 1986). The probation department has been able to validate, over the years, an objective risk/need case classification system. The validated risk assessment instrument and the systematic evaluation of the offender's background information are used to assess his probability of recidivism and his placement in the appropriate level of supervision (minimum, medium, maximum or intensive). (Petersilia, 1987; Cochran, et al., 1986).

It is estimated that fifteen percent of the 23,000 active probationers in Massachusetts meet the criteria for intensive supervision.

Most offenders assigned to the Massachusetts IPS program receive the following specialized supervision:

- o Ten personal and collateral contacts per month.
- o Mandatory referral to treatment and counseling programs related to criminal behavior.
- o Strict enforcement of probation conditions. (Cochran, et al., 1986; Petersilia, 1987).

(d) California (Contra Costa, Ventura, and Los Angeles Counties)

Unlike Georgia which targeted low-risk offenders, the newer ISP programs such as the California experiments in Contra Costa, Ventura and Los Angeles counties, now include high-risk offenders. Over fifty percent of the nearly 500 offenders admitted into these programs have been incarcerated or had serious drug abuse problems. The risk assessment instrument used for offender classification shows that 75 percent of them scored as high risk. (Petersilia, 1990). As a result, the offenders in the California experiments have a higher rate of recidivism than prison-diversion ISP programs in many other states. The evaluators concluded that enhanced supervision "without a substantive treatment component" failed to impact on the offender's underlying criminal behavior. (Petersilia, 1990). Having met the objectives of most ISP programs -- that is to divert nonviolent offenders, save money and impose punishments more severe than routine probation -- it was found that the overall recidivism rate were lower among the high risk offenders who received counseling, were employed, paid restitution, and did community service. (Petersilia, 1990).

## 2. Home Confinement

Home confinement is an intermediate sentencing option which requires an offender to remain in his or her residence during specified hours. Depending upon the extent the judge wishes to restrict the movement of the offender in the community, home confinement can be tailored to achieve various sentencing goals. For example, as a condition of probation, an offender can be required to remain at home during the usual curfew hours (10:00 p.m. - 6:00 a.m.) found in ISP programs. In the stricter sentence of home incarceration, the offender is required to remain at home at all times except for court-authorized travels. (Hofer & Meierhoefer, 1987; Hurwitz, 1987).

As a correctional policy, home confinement has been used primarily as a front-end diversion program in 42 states since the fall of 1985. (Hofer & Meierhoefer, 1987). The vast majority of these programs involve the accompanying use of electronic monitoring to ensure compliance. By 1987, thirteen states had home confinement programs with electronic monitoring for participants subject to twenty-four hour surveillance.

According to a recent report from the National Institute of Justice (1990), in 1987 there were 826 offenders being monitored while two years later the total had reached about 6,500. The monitored population of the early 1990s may peak in the 40,000 to 70,000 range and the eventual number of monitorees in the United States could range to a high figure of between 500,000 to 1,000,000. The 1989 data also suggest that monitors are being used on a broader range of offenders and there is considerable movement towards post-incarceration and community confinement applications (i.e., "back end" system applications).



(a) Florida's Non-Electronic Monitored Home Confinement

Florida's "Community Control" is one of the best known non-electronic, monitored home detention programs in the country. Established in 1983 with five thousand prison-bound offenders restricted to their residence, the program includes misdemeanants as well as felons with each "controllee" under the supervision of a community control officer. (Blomberg, et al., 1987; Petersilia, 1988). Florida has been able to divert 20,000 offenders since 1987.

The program's participants are classified into three categories:

- Those found guilty of non-forcible felonies.
- Probationers with technical and misdemeanor violations.
- Parolees with technical and misdemeanor violations.

Violent offenders and those with a history of drug addiction are generally excluded. Seventy percent of its participants are diverted from state prisons, fifteen percent from the county jails and the remaining fifteen percent are not sentenced to imprisonment of any sort but show need for intensive supervision. (Hofer & Meierhoefer, 1987).

Consistent with the rehabilitative aspects of the program mandated by the Florida legislature, "controllees" are allowed to leave their residences for court-approved travels to their places of employment and medical treatment centers (Petersilia, 1988; Hurwitz, 1987).

It should be noted that Florida's "Community Control" is meant to be a separate and more severe sanction than probation. (Hurwitz, 1987). For example, the program's participants are required to:

1. Report to the home confinement officer at least four times a week, or, if employed part-time, report daily.
2. Perform 140 hours of public service work, without pay, as directed by the home confinement officer during the program which cannot exceed two years.
3. Remain confined to his/her residence except for approved employment, public service work, or other special activities specifically approved by the home confinement officer.
4. Make monthly restitution payments for a specified total amount.
5. Submit to and pay for urinalysis, breathalyzer, or blood specimen tests at any time as requested by the home confinement officer or other professional staff to determine possible use of alcohol, drugs, or other controlled substances. (Blomberg, et al., 1987).

Florida officials consider the program a resounding success. Of more than ten thousand offenders who have been sentenced to home confinement since 1983, only sixteen percent have had their sentence revoked. Further, it costs only about \$3 per day to supervise an offender confined to the home, as compared with \$28 per day for traditional imprisonment in Florida. (Petersilia, 1988).

Finally, besides alleviating the overcrowding situation that exist in the state's prison facilities and county jails, the reformative aspects of the program have proven quite successful. The findings indicate that most offenders are able to either find new employment or retain their previous employment while on home confinement. Married and

more mature offenders have an easier time in successfully adapting to the requirements of home confinement in comparison to younger and less mature offenders. (Blomberg, et al., 1987).

(b) Michigan Home Confinement with Electronic Monitoring

The Michigan Department of Corrections began the electronic monitoring of felony offenders on an experimental basis in April of 1986, and the program was expanded statewide in October of 1987. The Department uses an active system with a dual tamper alarm. A radio transmitter attached to the ankle sends a signal to a receiver connected to the telephone. This receiver then relays curfew information to the computer located at regional computer sites in Grand Rapids, Flint or Detroit. These computers are monitored by staff 24 hours per day, and if the offender violates curfew or removes the transmitter, the supervising officer is notified.

Probationers, prisoners in the Community Residential Program, parolees, Department of Social Services juveniles, and Community Electronic Monitoring offenders are on the monitoring system.

Circuit court sentenced felony probationers are placed on the system by order of the sentencing court and comprise approximately 42% of the 2,100 on the system. Prisoners and parolees are placed on tether at the discretion of the Department of Corrections. Prisoners now make up approximately 54%, and parolees 2% of the total.

The remaining 2% of the population consists of juveniles being monitored for the State Department of Social Services and offenders being monitored for District and Probate Courts under the Community Electronic Monitoring (CEM) Program. This program is

intended to serve as an alternative to jail incarceration by providing local community corrections boards, in coordination with county sheriffs and sentencing judges, access to the State's electronic monitoring program for \$7.50 per day per offender. The program has been promoted via presentations to judges, local community corrections boards and sheriffs by Department staff. Also the Department has been working with the Office of Community Corrections to encourage the use of this program throughout the state.

There are substantial savings for each day an offender is on the monitoring system. Each day on the system represents a day that the monitored offender could have been occupying a jail or prison bed. The cost of a Department of Corrections supervised offender on electronic monitoring for FY 1988/89 was approximately \$11.50 per day. This amount also includes the cost of the supervising parole/probation officer. These offenders reimbursed the Department an average of \$3.00 per day, which further reduced the cost of the system to \$8.50 per day for those offenders under the supervision of the Department. Those offenders unable to pay are required by statute to perform one hour of community service work for each day on monitoring.

Electronic monitoring provides parole and probation officers with an additional tool to intensively supervise offenders. It allows for the monitoring and enforcement of curfews and other conditions of community supervision. Monitored offenders are more intensively supervised than any other offenders in the community.

During fiscal year 1989/90, 6,416 offenders were monitored. Of this number, only 1.9% (n = 120) were arrested for new felonies and only 3.3% (n = 210) absconded or escaped. These specific violation rates are lower than those for similar offenders in the community

who are not on electronic monitoring.

The Michigan Department of Corrections has the largest and one of the most sophisticated electronic monitoring system in the nation. Most importantly, the development and implementation of this program have been accomplished without unduly increasing the risk to the community. The program has resulted in substantial monetary savings and other benefits to the community at large, to local officials, to the Department of Corrections, and to many offenders.

### 3. Shock Incarceration

Shock incarceration involves a short period of confinement, typically three to six months, during which offenders are exposed to a demanding regimen of strict discipline, military-style drill, physical exercise, and manual labor. (Parent, 1989). In return for successfully completing the program participants are released from prison after a shorter period of time (typically 6 months of boot camp substitutes for prison sentences of from 2 to 5 years or more). Generally, upon completion of the basic training, or "boot camp", offenders are placed under an intensive type of supervision to complete the second phase of the program in order to facilitate their re-entry into the community.

As of January 1990, there were 14 states with one or more shock incarceration programs.<sup>2</sup> An additional 14 states were either considering initiating programs, or were developing programs.<sup>3</sup> It is predicted that within the next few years over 50 percent of the

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<sup>2</sup> Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Michigan, Mississippi, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

<sup>3</sup> Arkansas, California, Connecticut, Indiana, Kansas, Maryland, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Pennsylvania, Wisconsin, and Wyoming.

state correctional jurisdictions may have boot camp prisons for adult offenders. (Mackenzie, 1990). Typically, to be eligible, an offender must volunteer and be mentally and physically able to participate in the program's physical regimen. (Mackenzie, et al., 1989). The target population consists of nonviolent offenders between the ages of eighteen and twenty-five who have not been previously imprisoned and who are convicted of crimes with maximum sentences of seven years or less. (Parent, 1989). A few states, including Alabama, Idaho and Louisiana, do not strictly adhere to the nonviolent offense requirement. (Mackenzie, 1990).

Having met all these criteria does not guarantee automatic admission in these programs, as each state may add specific requirements. For example, Louisiana's Intensive Motivational Program for Alternative Correctional Treatment (IMPACT) requires recommendations from three different sources: (1) the Division of Probation and Parole, (2) the sentencing court, and (3) a classification committee at the Louisiana Department of Public Safety and Corrections' (LDPSC) diagnostic center. To be admitted into IMPACT, an offender must be recommended by all three evaluators. (Mackenzie, et al., 1988).

Louisiana's two-phase shock incarceration program begun in 1987 by the Department of Public Safety and Corrections (LDPSC), conducted a study in which prison adjustment, expectations, and attitude of offenders participating in shock incarceration were compared to two other groups consisting of offenders who dropped out of the program and a regular group of offenders serving their sentences in a regular prison. Even though the demographic and criminal history of the three groups were similar it was found that overall, the shock incarceration offenders had become more prosocial, while the incarcerated groups

had not changed. (Mackenzie and Shaw, 1990). The offenders felt positive about their experience in the program and their future. Inmates completing the shock program in New York were found to have gained more or at least as much in educational scores as comparison groups who had been in prison longer. (Aziz, 1988).

The Florida Department of Corrections' Boot Camp program requires that an offender be sentenced pursuant to the Youthful Offender Act of the Florida Statutes or be a designated offender age 24 or under serving ten years or less for other than a capital or life felony. (Florida Department of Corrections, Research Report, "Boot Camp Evaluation," March 1989).

The Arizona Department of Corrections Shock Incarceration Program requires that an "offender have no obvious or known contagious or communicable disease." (Arizona Department of Corrections Shock Incarceration Program, 1988).

(a) Placement Criteria

The control over who participates in shock incarceration has created some conflicts between judges and corrections officials. In Mississippi and Georgia, judges control the selection process. In other states, such as New York and Oklahoma, offenders who meet the statutory criteria are first screened by the Department of Corrections and then offered the chance to volunteer for the program. (Parent, 1989). It has been suggested that the selection process be left either under the control of the department of corrections or the judiciary, depending upon the program's objectives. Dale Parent argues that if the purpose of the program is to control prison overcrowding, then a selection process influenced by the department of corrections may be appropriate. However, if the goals are to increase the

availability of probation and to present more sentencing options to judges, the judiciary should have enough control to ensure that it can reasonably attain these goals. It is worth noting that an Oklahoma law effectively giving corrections officials the power to re-sentence offenders they found suitable for shock incarceration was opposed by judges and ultimately ruled unconstitutional. (Oklahoma officials now use a different statute as the basis for SI.) As a result, judicial support for shock incarceration now appears lower in Oklahoma than in other states. Oklahoma officials estimate that about one-third of the persons in SI were sentenced by judges with the intent that they participate in the program. In the other two-thirds of the cases, judges fully intended the defendants to serve a regular prison term. (Parent, 1989).

In 1990, the Oklahoma sentencing procedure to implement their shock incarceration program evolved into three (3) distinct options available to the sentencing judge. The first option allows the judge to defer entry of judgment to allow the offender's conviction record to remain clear if the offender satisfactorily completes certain conditions of probation. Completion of the RID program (shock incarceration) can be one such condition of probation. A second option allows a judge to sentence a convicted offender to any sentence provided by law while in the custody of the Department of Corrections. This would include a direct sentence to shock incarceration provided that the offender met all other criteria for that program. The third option allows a judge to suspend execution of the sentence imposed and to place the offender on probation with whatever special conditions are set forth in a plan submitted by the Department of Corrections. Shock incarceration can be a condition of that plan. The Department of Corrections now prepares a specialized offender



accountability plan for each offender prior to sentencing. This replaces the previously statutorily required pre-sentence investigation.

Establishing strict statutory criteria for the different agencies involved in the selection process for shock incarceration participants is recommended, particularly for programs which have the dual purpose of diversion and rehabilitation. The Louisiana IMPACT program, which was designed to help alleviate overcrowding and to teach the offender responsibility, respect for self and others, and self confidence, followed such an approach by requiring positive recommendations from the probation and parole agent, the judge and the classification committee. (Mackenzie, et al., 1988).

(b) Costs

Corrections officials agree that the incentive for implementing shock incarceration programs is their cost-effectiveness in reducing overcrowding in their prison facilities. While these programs cost as much or more to operate than standard imprisonment, most officials acknowledge that the real cost savings result from the fact that participating inmates serve shorter sentences. (Parent, 1989).

According to a recent report in Federal Probation (Mackenzie, 1990), evaluators in both New York and Florida have completed preliminary cost analyses of their programs. In both the cost of the program was estimated to be slightly higher than the cost of regular prison but the shorter period of incarceration resulted in an overall cost savings. (Aziz, 1988; Florida Department of Corrections, 1989). In Florida this cost savings was estimated to be \$1.1 million, and in New York the estimate was \$5.1 million for the first 321 inmates. Although this does not take into consideration the additional cost of the aftercare program

in New York, it does appear to represent a relatively large cost savings.

(c) Evaluations

Finally, there is presently no conclusive evidence that shock incarceration deters offenders from committing new crimes, or permanently changes their attitudes. (Parent, 1989). Many program officials continue to claim success by simply comparing the recidivism rates of their programs' participants with those of offenders who did not participate in shock incarceration. Such findings, according to some researchers, are misleading because they fail to evaluate programs in terms of their objectives or take into account the environment surrounding participants after they are released from the program. Parent suggests that "the survival rate," which indicates how long it takes a former program participant to commit future crimes after his release from the program, and "the failure rate," which shows how many participants do commit crimes over the same period of time, are better ways to assess the effectiveness of shock incarceration. (Parent, 1989).

4. Community Service

By definition, community service involves performing a specified number of hours of unpaid work within a limited period of time for the benefit of the community. (Harris, 1979). Community service was developed in England in the early seventies as a specific sentence primarily designed to deal with convicted offenders with short terms of imprisonment. The concept of community work service in the United States began in Alameda County, California, where municipal judges, reluctant to jail female traffic offenders who could not pay their fines, ordered them to perform unpaid labor assigned by the local volunteer bureaus. (Klein, 1988; Krajick, 1982).

In the past, the community service order in the United States has been used to a great extent as a condition of probation for offenders convicted of drunk driving. However, since the enactment of the Highway Safety Act of 1984, which requires two days of jail or one hundred hours of community work service for first-offender drunk drivers; and the 1983 United States Supreme Court ruling in Bearden v. Georgia, which suggest that courts may require community service as a substitute for the payment of fine or restitution, community service is being used more and more as an alternative to incarceration.

By 1979, there were at least one hundred community service programs operating in the United States. A 1977 survey by the Institute for Policy Analysis found that 86 percent of a random sample of juvenile courts used community service to some extent, though most of them did not have formal programs. (Krajick, 1982).

At the federal level, community service is not currently authorized in lieu of imprisonment. If the offender was convicted of a felony and sentenced to probation, the court has the option of ordering a fine, restitution or community service. If the court has ordered a fine and the court finds that the offender is unable to pay or if the fine imposes an undue burden on the offender's dependents, community service is permissible as an alternative to a fine.<sup>4</sup>

North Carolina judges used community service as a condition of probation for offenders who have committed their first nonviolent offense, particularly DWI offenders. Participants in the programs are required by statute to complete all required hours and pay a community service fee.

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<sup>4</sup> 18 U.S.C. §3563(a)(2).

In California alone, judges sentence more than ten thousand defendants to complete between ten to fifteen million hours of service each year. (Klein, 1988).

San Diego county's Public Service Program allows offenders who are unable to pay a fine or restitution to volunteer into the program instead of imprisonment. However, offenders who have committed a violent offense are required to serve a sentence of incarceration.

Today community service is widely accepted by the public as a form of punishment whereby both the public and the offender can benefit. Because of its flexibility, community service is one of the most effective alternatives to incarceration available to judges. Community service, when properly implemented, provides the offender with an opportunity to work in an environment where positive change can take place, thus facilitating his reintegration in society. Second, the community profits from the many hours of unpaid labor which usually would remain undone. Further, the control over the offender's time serves as a form of incapacitation, hence reducing the concerns over public safety. The idea of an offender doing publicly noticeable work to pay back the community for the damage he has done, instead of being incarcerated at the taxpayers' expense in already overcrowded prison facilities, is one reason why community service has gained public acceptance.

While most community service proponents agree on the economic advantages and the humanitarian aspect of such an alternative, they differ on how it should be implemented. There is widespread disagreement on how to correlate jail time and number of hours of community service. Jerome Miller, President of National Center on Institutions and Alternatives (NCIA), argues that long community service sentences are necessary if judges

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are to take the sanctions seriously as an alternative to incarceration. For example, his office once proposed 2700 hours of unpaid work at a daycare center for a defendant convicted of killing her husband. Other critics such as Kay Harris, author of "Community Service by Offenders" and Mark Umbreit, Director of Prisoners and Community Together (PACT) disagree on the reasonableness of such sanctions and whether direct conversions from jail time to work time are appropriate. Michael Smith, the Director of Vera Institute of Justice, seriously doubts whether most programs have the resources to efficiently enforce long community service sentences. He proposed a seventy hour standard sentence for all offenders which can be completed in two weeks. (Krajick, 1982).

Generally, community service programs with clearly defined objectives are not difficult to implement in a manner consistent with the requirements of the Sentencing Reform Act. However, the successful community service program should emphasize that the offender's noncompensable labor or talents benefit primarily government and nonprofit organizations which show a genuine need for volunteers. Proper placement should consider the skills and abilities of the offender as well as the needs of the recipient agency. Since compliance with the order is an important step in the rehabilitation process, it is critical that the probation officer maintain an ongoing communication with the agency throughout the duration of the program. Such contacts should provide the probation office with information on the performance of both the offender and the agency which will be necessary to evaluate success or failure of the program.

Carefully imposed community service can provide a wide range of services to the community. Generally the list of offenders includes both misdemeanants and felons.

employed and unemployed, first offenders and recidivists, homemakers and corporations. The selection process should take into consideration the probationers' physical, psychological, and financial circumstances. Some offenders, however, should be excluded from participation if they present an unacceptable risk to the community or if they exhibit personal characteristics that seriously limit their potential for successful performance of community service. Such characteristics often include:

- o Current drug or alcohol abuse.
- o History of assaultive behavior or sexual offense.
- o Serious emotional or psychological problem.
- o Physical health problems specifically related to the ability to perform available community work.
- o History of chronic unemployment, and
- o Financial situation requiring greater than normal work hours to meet reasonable needs for subsistence.

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## B. Demographics.

An effort was made to collect as much information as possible on the types of offenders who might be eligible for alternative sanctions under whatever proposal might be developed by the Committee. This data collection effort took four forms. First, the Federal Bureau of Prisons provided statistical information on a monthly basis describing the characteristics of the federal prison population as sentenced under the guidelines (see Attachment 6 for the most recent data). Second, the Monitoring Unit from the Research Office of the United States Sentencing Commission provided sentencing information on the application of the guidelines (see Attachment 3). Third, previous data collected by the Sentencing Commission on cases sentenced prior to the guidelines ("Augmented FPSSIS") were reviewed to measure the projected impact of the guidelines. Finally, a random sample of 114 cases sentenced under the guidelines was examined in detail to determine the types of offenders who would be eligible for alternatives (see Attachment 7). The case reviews are discussed later in this proposal.

## C. Judicial Survey<sup>5</sup>

### 1. Mailed Questionnaire

Last March, a short questionnaire was mailed to all federal District Court judges and full-time magistrates soliciting their opinions on (1) the types of sanctions currently used as substitutes for imprisonment and the feasibility of expanding them and (2) the types of

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<sup>5</sup> Then project staff member Dr. Charles Betsey, assisted by Dr. Barbara Meierhoefer of the Federal Judicial Center, were responsible for the overall design and implementation of the judicial survey. Dr. Meierhoefer's voluntary assistance made the survey financially feasible.

offenders who may be eligible for alternative sentencing. Included in the survey was a question of interest to the Federal Bureau of Prisons concerning the availability of current community resources.

Contrary to some predictions, many judges were willing to respond to our request for information. In fact, responses from 255 judges and magistrates were received, nearly one-third of the questionnaires mailed. Although the survey was assigned in such a way that judges and magistrates could respond anonymously, many indicated their interest in further discussing their reactions to the survey and the guidelines in general.

Many judges indicated that they had insufficient experience with the guidelines to be able to comment. An analysis of the responses from 172 judges and magistrates who had been able to form an opinion follows.

(a) Adequacy of Community Resources

A majority of those responding, 57%, indicated that they consider the current resources inadequate to implement the sentencing alternatives currently available under the guidelines; about one-third, 32%, indicated that the resources were adequate; 6% indicated no opinion; 2% provided no response; and 2% indicated that resources were adequate for some, but inadequate for other, currently authorized sentencing alternatives. The two most frequently mentioned alternatives for which resources were lacking were electronic monitoring (19) and home detention (16).

(b) Eligibility for Current Alternatives

Respondents were asked whether or not the current policy appropriately identifies the offenders who should be eligible for the various alternatives to imprisonment currently

respondents indicated that the current eligibility policy was appropriate, 40% indicated it was not, 9% indicated no opinion, and 5% did not comment. With regard to eligibility for community confinement, 48% indicated the current provisions were appropriate, 36% indicated they were not, 11% indicated no opinion, and 5% indicated no answer. Currently eligibility criteria for home detention were considered appropriate by 40% of respondents, while 40% indicated they were not appropriate, 10% indicated no opinion, and 10% did not answer. Thus, in the case of home detention, respondents were evenly divided between those who thought the current eligibility criteria were appropriate and those who did not. While this result is striking, in no case did a majority of the respondents indicate that the eligibility criteria for the alternatives currently available under the guidelines were appropriate.

Among those who indicated that the current eligibility criteria for alternative sanctions under the guidelines were inappropriate, most indicated that first offenders and non-violent offenders should generally be eligible. The four (4) most frequently mentioned desired eligibility criteria for intermittent confinement were non-violent offenders (14); non-violent first offenders (9); first offenders (14); and first time non-violent non-drug offenders (17). Respondents indicating that current eligibility for home detention should be changed, suggested those eligible should be first time, non-violent offenders (21); offenders with extenuating circumstances (illness, handicap, dependents) (6); at the court's discretion (6); and non-violent, non-drug, first offenders (5).

(c) Equivalency/Rate of Exchange

A clear majority of the respondents indicated that the current equivalency or rate of exchange of 1 month of any one of the alternatives for 1 month of imprisonment is appropriate. Thus, with regard to intermittent confinement, 61% indicated that 1:1 is the appropriate rate of exchange, 11% indicated the rate should be different, 20% expressed no opinion, and 8% did not answer. Sixty-eight (68) percent of the respondents indicated that the current ratio is appropriate for community confinement, while 9% indicated it should be changed, 13% indicated no opinion, and 10% did not answer. Finally, 55% of respondents indicated that the current equivalency is appropriate for home detention, 15% indicated that it should be different, 22% indicated they had no opinion, and 9% of the responses were missing. The differences in the responses were all statistically significant at the 95 percent level of confidence.

(d) Current "Split Sentence" Provision

Fifty-one (51) percent of respondents indicated they thought that the current guideline that allows an alternative to be substituted for no more than one-half of the minimum of an imprisonment term, §5C1.1(c)(3),(d)(2), was appropriate. Twenty-eight (28) percent indicated they thought it should be different, 13% indicated they had no opinion, and 8% did not answer. Of those who indicated that the ratio should be different, 92% indicated they thought that the proportion of the sentence that could be satisfied with an alternative sanction should be increased, while 8% indicated they thought the proportion should be decreased. The majority of those who wanted to see the ratio increased, indicated that judges should have complete discretion to decide how much of the sentence should be

served in traditional confinement and how much in an alternative setting.

(e) Expansion of Alternative Options

Responding to whether or not the current range of alternatives should be expanded in specific ways, 24% indicated that day fines should be added, compared with 84% who indicated that they should not be added, 21% indicated that had no opinion, and 6% did not answer. A clear majority, sixty-two (62) percent, indicated that community service should be added as an available alternative sanction under the guidelines, 20% indicated that it should not be added, 15% expressed no opinion, and 3% did not answer. Similarly, a majority of the respondents, 53%, indicated that shock incarceration (e.g., boot camps) should be an available sanction, compared with 22% who indicated it should not be, 19% who indicated no opinion, and 7% not responding. Fifty-six (56) percent of the respondents indicated that intensive supervision should be an available sanction under the guidelines, while 19% said it should not be, 20% expressed no opinion, and 6% did not respond. Finally, only about eight (8) percent of the respondents indicated that some other form of sanction should be considered as an alternative under the guidelines, and in no case was a specific program identified by more than one (1) respondent. Of the four programs listed in question (5) as possible expansions of guidelines options, day fine was the only program that a significant share of respondents indicated should not be added as an option under the guidelines. Again, the differences we found were statistically significant at the 95% level.

2. Telephone Survey

Our next step was to conduct telephone interviews with a group of judges who have extensive experience with guideline sentencing to cover the same issues in somewhat more

depth. This survey was accomplished with the able assistance of USSC staff (David Anderson, Esq., Winston Swenson, Esq., Dean Stowers, Esq., Peter Hoffman, and Ronnie Scotkin) under the direction of Patrick J. Smith, Esq., Assistant to Commissioner Corrothers, who tabulated the results.

Twenty-eight out of forty-six judges/magistrates identified for this survey responded. A resounding 61% took the time to set up telephone appointments to discuss these issues. In addition, 4 of the 18 judges that did not participate were either retired, or on extended sick leave.

(a) Adequacy of Community Resources

A majority of those responding, 54%, indicated that they considered the current resources in their community inadequate to implement sentencing alternatives; 23% indicated that the resources available to them were adequate; and 3% indicated that the resources in their community were marginal. The most frequently mentioned alternative for which resources were lacking was for community treatment centers that had a component of job training. A majority of all judges also responded that they lack resources for electronic monitoring, which they felt necessary for home detention.

(b) Eligibility for Current Alternatives

Twenty-two out of twenty-eight judges responding (79%) requested that more offenders be eligible for intermittent confinement, community confinement, and home detention. Six judges (21%) felt that the number of offenders currently eligible for intermittent confinement and community confinement was fine as is. Six of the twenty-two responding (21%) felt that fewer offenders should be eligible for home detention. Eleven



percent of those responding in favor of more offenders being eligible for home detention indicated a concern for adequate control. These judges felt that electronic monitoring for home detention was necessary. Of the judges indicating that fewer offenders should be eligible for home detention, 7% indicated that home detention should only be available for serious health reasons.

The response is nearly unanimous that all first time non-violent property offenders should be eligible for alternative sanctions. It was also the consensus that low level drug offenders be eligible, while drug dealers be excluded. Several judges specifically mentioned that they felt that white collar offenders should do some period of time in jail. Two judges mentioned intermittent confinement as an appropriate sanction for white collar offenders.

(c) Equivalency/Rate of Exchange

Seventy-one percent (20) of the responding judges felt that the current policy of 1 month to 1 month was appropriate. Eighteen percent (5) of the judges stated that alternative sanctions should be imposed for two months for every month in prison. Eleven percent (3) had no opinion. Eleven percent of 79% requesting that more offenders be eligible for home detention felt that home detention should be at a rate of 2 months of home detention to 1 month of imprisonment.

(d) Current "Split-Sentence" Provision

Thirty-six percent of the respondents indicated that they thought the current guideline that allows an alternative to be substituted for one half of the minimum term of imprisonment should be increased. One half of these respondents felt that it should be increased to 75% of the sentence and one half felt that it should be increased to 100% of

the sentence. Twenty-one percent of the respondents felt that current policy was appropriate. Fourteen percent felt that the current policy for a split sentence was inappropriate and should be less. Twenty-nine percent of the respondents had no opinion.

(e) Expansion of Alternative Options

(i) Community Service

Seventy-five percent of the judges (21) responded in favor of adding community service as an alternative sanction. Twenty-five percent (7) felt that it should not be available. Those responding in opposition to community service as an alternative cited high rates of unemployment, a lack of work available for offenders, and that although state and local courts use it extensively they do not feel it appropriate for federal offenders.

(ii) Boot Camps

Eighty-two percent of the judges responding (23) responded in favor of boot camps. Eleven percent opposed boot camps (3). Seven percent (2) had no opinion. Of the eighty-two percent of judges responding in favor of boot camp, seventy-one percent (20) thought the equivalency to imprisonment should be 1 month to 1 month. Only eighteen percent felt that 2 months of boot camp was equal to 1 month in prison. Eleven percent had no opinion.

(iii) Intensive Supervision Probation

Seventy-one percent of the judges responding (20) were in favor of adding Intensive Supervision Probation as an available alternative to imprisonment. Twenty-five percent (7) were opposed and four percent (1) had no opinion.

As to the type of offenders that should be eligible for Community Service, and Intensive Supervision Probation, most judges were referring to non-violent, first offenders

involved in low dollar value property crimes and low level involvement drug cases. Several recommended ISP as a follow up to boot camp. The twenty-three judges in favor of boot camp were unanimous in their feeling that it should be primarily for young, first time offenders with no violence in their history.

(f) General Opinions

Eighty percent of the judges that were surveyed indicated that they would like to have more discretion in fashioning appropriate sentences for the individual offenders. They are generally supportive of the guidelines, but feel that the low level and first time offenders are unduly punished. There is also an appreciable amount of concern for the amount of discretion placed in the hands of the prosecutor and the tremendous workload placed upon probation officers in preparing pre-sentence investigation reports.

II. PROGRAM EVALUATION, VISITATION AND SELECTION

A. Program Evaluation

The Principles provided the framework for the program evaluation process by emphasizing the purposes to be achieved by the programs recommended. All programs endorsed below were designed and selected because they serve the Congressionally mandated purposes of sentencing. Data from the Bureau of Prisons and the USSC provided valuable information on who the offenders were, what type of offenses they had committed, how many there were at each offense and criminal history level, and program needs. This information was critical to the Advisory Committee in determining which offenders would be targeted and who should be excluded from the intermediate punishments program.

Armed with this data and guided by the principles, site visits were made to several states to determine what offenders were in what kinds of alternative community based programs and program effectiveness. The states of Georgia and South Carolina were selected because they have centralized administrations of probation and corrections that implement programs statewide analogous to how the federal Probation Division and Bureau of Prisons administer programs nationally. These states also have comprehensive menus of available alternatives with Georgia having the only program designed specifically for offenders who violate probation (Detention Centers). The observations made and data collected provided invaluable assistance in determining what programs worked well and for whom. The result is the highly structured programs emphasizing discipline, control, responsibility, treatment, vocational training and education designed and recommended below for the federal system.

A survey of all district judges and magistrates was conducted to assist in the evaluation of existing programs and those to be recommended. Along with what the BOP and USSC data validated, the judges and magistrates confirmed that there are significant numbers of federal offenders for whom intermediate sanctions would be appropriate. It was clear that the judges want more options available to them for sentencing and that current resources available to them in the community are inadequate.

#### B. Site Visitation Summary<sup>6</sup>

The states of North Carolina, South Carolina and Georgia were selected based on

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<sup>6</sup>Information pertaining to key jurisdictions in more detail, primarily as a result of site visits, is provided in the Supplementary Report.

staff's literature search, and input from George Keiser at NIC, as to which states had the most comprehensive programs. In visiting South Carolina and Georgia, we saw the entire gambit of available alternatives and how they are operating and being implemented. We added North Carolina to the list primarily because it had the most recently established boot camp. Because it was not opened until the fall of '89, North Carolina had had the benefit of looking at boot camp effects in other states to decide what it was going to do. Our North Carolina visit also coincided with a platoon graduation and ropes challenge course demonstration.

One of the most comprehensive residential programs is South Carolina's Restitution Center. The Restitution Center has 24 hours accountability, 40 hours a week work and 10 hours a week in community service. Offenders are at the facility for about 3-6 months. The most significant component is financial management. Offenders' checks are turned in to the director of the Restitution Center. There is a fee for room and board that helps to bear the cost and expense of housing the inmate. If there is any child support order outstanding, that is deducted. Fines and restitution, of course, are deducted and offenders receive money management counselling on how to budget their income. GED and literacy courses are available along with drug and alcohol education and treatment and life skills training.

In Georgia, what is comparable to the Restitution Center in South Carolina is called a Diversion Center. It has all of the components that we saw in South Carolina, but offenders can be there for a longer period of time. Offenders are there for four months minimum (120 days) up to one year. Another difference in the Georgia Diversion Center, consistent with offenders being there for a longer period of time, is they earn weekend

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furloughs, depending on conduct and behavior.

In Georgia, they also have a residential program that is actually more like a jail, the Detention Center. This is a minimum security fenced in facility constructed with ordinary materials. There is no heavy duty prison construction. The Detention Center is primarily used for probation violators, habitual drunk drivers and traffic offenders, or repeat misdemeanants (e.g., an offender who returns for shop lifting again and again is determined unsuitable for the Diversion Center and is placed in the Detention Center). A very important component of the Detention Center is the punitive aspect of non-paid labor in the community, and it is very hard work. Many of the Detention Centers (Georgia has 7 open now), are located in rural areas and in towns and counties that cannot afford to trim back roadsides etc. so that highway safety is maintained. Inmates also do work restoring or repainting public buildings and things of that nature.

Detention Center inmates are required to attend GED, literacy, and/or drug and alcohol treatment sessions in-house every evening. All inmates are locked down at night in dormitory settings.

There are many similar back-end programs in each of the three (3) states visited. Conceptually, they are the same as what the Federal system has for a Half-Way House. In North Carolina they have an Extended Work Release Program, which tries to bring inmates out a little bit earlier, but they serve more of the actual term by getting into the Extended Work Release Program. This allows the system to provide offenders with some life skills training and drug and alcohol counseling and treatment as needed. It also allows for transition by gradually increasing the amount of freedom or furlough time they have in the

community.

Intensive Supervision Probation is used extensively in all three jurisdictions (North Carolina, South Carolina and Georgia). North Carolina, because of its limited alternatives and extreme prison crowding, uses early release statutes and is relying very heavily on Home Detention with Electronic Monitoring as an alternative to prison. It reports a great deal of success with pilot programs of 400 and 1,000 electronic monitoring units. It was reported that another 5,000 units were planned for 1990, for a total of 6,400 electronic monitoring units. It is a very sophisticated monitoring system.

Common to all three jurisdictions for offenders on Intensive Supervision Probation, is that each probationer has to submit a 7 day a week, 24 hour a day schedule on where he is going to be and for what purpose: at home, at church, at work, at an AA meeting, etc. This level of accountability exists under Intensive Supervision, with or without electronic monitoring. The general ratio for ISP is 2 probation officers for 25 probationers. Some of the jurisdictions are also using second shift surveillance to support the 2 probation officers, causing active supervision to be extended to 24 hours. Second Shift Surveillance officers are less trained than Probation Officers. They are not necessarily trained in counselling. They are retired police officers who drop by a probationer's home unannounced in order to take a urine sample, or breathalyzer, or to simply check to see whether he is at home or otherwise participating in authorized activities.

South Carolina is also getting backup on its second shift surveillance from local police involvement. Patrol officers are given a list of probationers that are on ISP curfew, or home detention, so they can conduct spot checks. All probationers on ISP have required drug and

alcohol counseling if needed, have to maintain full time employment, and have to perform community service hours in addition to working full time.

Home Confinement or Home Detention is done with and without electronic monitoring. South Carolina doesn't have a lot of units for electronic monitoring (it has only about 100 as it stands now). It has been the South Carolina experience with home detention that electronic monitoring for about 90 days (even with a reduction in the frequency of checks during that 90 days) impresses upon the subject that he is going to be watched. South Carolina has also concluded that home confinement should generally not exceed six months, but certainly no more than a year.

There are differences in the components of the various boot camps. There is also a big difference in how offenders get assigned. Is it Shock Probation or is it Shock Incarceration? In Georgia and South Carolina, it can be a component of probation: a 5 year sentence, with execution suspended and the subject placed on probation with a special condition of probation to complete the boot camp. In North Carolina, however, the offender is sentenced to the Department of Corrections, which offers boot camp.

All three jurisdictions have the military regimentation, extensive physical training, and education and counseling components. Where they differ is as to whether summary punishment should be allowed. North Carolina is the only jurisdiction visited that allows it.

The Circuit Judges interviewed in DeKalb County, Georgia indicated that it was important that boot camp be a component of a probationary sentence so that the judge who ordered boot camp may also deal with those offenders who do not "shape up." Although



a second chance to complete boot camp is not a frequent occurrence, there have been a few instances, one in North Carolina, two or three in Georgia, where probationers had actually been recycled in the boot camp.

North Carolina, South Carolina and Georgia all have community service programs as alternatives and as add-ons to probation. South Carolina seems to be the leader with a very extensive Public Service Employment program. Georgia has an excellent program as well, producing 7-8 million dollars worth of work to communities (computed at minimum wage). Community service is used extensively for misdemeanor offenders and as an add-on to intensive probation, regular probation and other programs. Examples of the work done are: painting, carpentry, masonry, grounds maintenance, some clerical (principally for women, along with some bookkeeping), building maintenance and automotive maintenance. This means that in every community thousands of hours of free labor, which even computed at minimum wage rates, comes out to millions of dollars worth of work.

Public safety was being preserved in the community confinement residential programs observed as well as in the probation and community service programs. Those participating were thoroughly screened, the supervision ratio was realistic (not one probationer for 150 cases), and there were follow-up programs.

The public and the offenders in these alternative programs perceive the alternatives as punitive. Because offenders at restitution centers work in businesses with community exposure, the public has an opportunity to observe the punitive nature of the alternative. Members of the public see that control of their money is taken away from offenders, privacy is taken away from offenders, and freedom is taken away from offenders. The offenders

perceive the alternatives as punitive for the same reasons.

The alternatives to prison are too lenient for some, too harsh for others. In general, we saw more serious offenders than expected, especially in the state of Georgia.

Since our visit on July 6 1990, the South Carolina Legislature has decided that in its boot camp there was too much "net widening"; that boot camp should not be used as an alternative sanction, but solely as a prison-overcrowding relief measure. The authority to put a person in boot camp was transferred from the judge to the Department of Corrections.

In October 1990, the Project Director, Commissioner Corrothers, was able to visit some of Oklahoma's community-based programs in conjunction with a trip to that state for the American Correctional Association.

Oklahoma has a very unique community work center that provides inmate labor groups to perform work activity in and around a community. It is unique because the community selects the site where low-risk offenders will reside and the work projects to be performed (construction, maintenance, beautification, etc.). Inmate accountability is ensured by around the clock supervision by trained, professional correctional officers. The work center visited (Sayre Center) was opened in January 1990 as a back-end program. Inmates assigned can expect a one year stay before their release.

Oklahoma also has the only shock incarceration (boot camp) program accredited by the Commission on Accreditation for Corrections. The Regimented Inmate Discipline (RID) program is a para-military program which offers the offender an opportunity to gain a sense of pride, self-esteem, and self-worth. This is accomplished through rigorous discipline, education, and self-development programs which begin at 5:00 a.m.

The RID program is designed for first time offenders with low self-esteem doing time primarily for drug-related crimes, whether involving commission of a robbery, or theft to pay for a drug or alcohol need. The program is both physically tough and treatment oriented.

Finally, in every state visited it was learned that the public perceived alternative programs to be punitive; offenders perceived them as punitive; communities benefitted from them; public safety was preserved; and there was little, if any, net widening.

C. Selection Phase

1. Paths Not Taken

In order properly to evaluate the recommendations of the Advisory Committee and to understand the context of this proposal, it is important to know what the Advisory Committee chose not to recommend to the Commission. There was at least as much deliberation concerning ideas and approaches that were ultimately rejected as there was concerning the proposal finally developed. Overall, the Committee has attempted to provide additional sentencing options for the less serious offender, but has sought to make no change relative to the serious offender or career criminal.

Early in the project, there was discussion devoted to the possibility of totally restructuring the guideline system. It was the view of some members of the Advisory Committee that the project provided a window of opportunity to question and reevaluate the basic assumptions underlying the guidelines. No specific proposal was ever developed but it was envisioned that the guidelines could be rewritten in a way which would continue to emphasize offense seriousness, but which would give additional weight to treatment and rehabilitation while identifying the needs associated with reducing public risk and/or

changing criminal behavior. Recommending the deletion of the sentencing table was also discussed, because it was believed to restrict judges' options and to imply that prison was the sole sanction.

A rewriting of the guidelines was rejected because all members of the Advisory Committee recognized the practical difficulty in revising the entire guideline system at this late date. More importantly, however, it was the consensus of the Committee that the Sentencing Commission, based on its understanding of the legislation and congressional intent, had already considered issues being discussed in determining the structure of the guidelines. Moreover, it was felt that it was not the role of the Advisory Committee as a group to redo the work of the Commission nor was it necessary substantially to revise the guideline structure in order to achieve the goal of providing the courts greater discretion to use alternative sanctions.

A second, somewhat less radical, proposal discussed was the implementation of a two-step process in imposing sentences. In the first step, the court would decide whether to impose probation, taking into account the individual circumstances of the offense and the offender. Only if the court rejected probation would the court proceed to the second step and impose a sentence in accordance with the guideline range. This approach was rejected because of a view that it would violate the intent, if not the letter, of the legislation mandating narrow guideline ranges, and that it would result in unwarranted sentencing disparity.

A brief discussion addressed mandating non-imprisonment sanctions for certain low severity offenses under the guidelines. It was the consensus of the Committee that the

current policy which allows the judicial option of imposing some imprisonment for every offense should be maintained.

Several specific proposals to modify the guidelines were considered: these proposals, if adopted, would have resulted in lower sentencing ranges for certain offenders. They would have had the effect of making more offenders eligible for intermediate sanctions, even under current policy. For example, allowing a greater reduction for minimal role in the offense or setting a maximum offense level for minimal participants (e.g., level 12) was discussed as a way of insuring that drug couriers and other less culpable offenders would be eligible for alternative sanctions. A greater reduction for acceptance of responsibility was also considered. Along with proposals to change the guideline calculations, there was some discussion relative to recommending changes in the sentencing ranges themselves, e.g., changing 1-7 months in the current sentencing table to 0-6 months wherever it appears.

Finally, consideration was given to recommending a modification in the policy statements in Chapter Five, Part H to allow the court greater latitude in using specific offender characteristics such as age, family responsibilities, and employment record in departing below the guidelines.

Proposals to modify the guideline calculations, modify the sentencing table, or allow greater latitude to depart from the guidelines were rejected, primarily on the grounds noted earlier that the Sentencing Commission will have ample opportunity to refine the guidelines and to modify policy as deemed appropriate. Again, the Advisory Committee did not wish to redo the work of the Commission and therefore limited its mission primarily to providing the courts greater flexibility in using alternative sanctions.

By specific design, the proposal being presented to the Sentencing Commission does not recommend any changes in the guideline calculations in Chapter Two, the adjustments in Chapter Three, the criminal history computation in Chapter Four, or the specific offender characteristics in Chapter Five. Rather, the proposal is designed to be implemented with no change in current policy other than to give the court more flexibility in selecting alternative sanctions and to make those sanctions available to a greater number of offenders.

Even within the constraints of the proposal outlined below, there are options which could have been included but which were rejected. First, fines in lieu of imprisonment were rejected as sentencing options. One reason for this rejection was to avoid the appearance of allowing offenders to "buy" their way out of prison. Even granting that day (equity) fines attempt to make fines equally onerous for rich and poor alike, there was still a fear that it would be easier to impose a fine on wealthy offenders and to deny fines as an alternative sanction for offenders with limited financial resources. Another reason was a concern that fines as alternatives might interfere with the collection of restitution which, by statute and Commission policy, must take precedence. However, as to types of fine, there was strong support for the concept of day (equity) fines. The Committee, in fact, recommends that the current fine table be reexamined with a view towards incorporating the concept of what the Committee prefers to call equity fines.

The Advisory Committee is recommending that the proposal be restricted to offenders with a criminal history category of III or less. Recognizing the risk that offenders with extensive prior records may present in a community setting, there are no changes to

current policy being recommended for offenders with a criminal history category of IV, V, or VI.

There was unanimous agreement in the Committee that intermediate punishments should be available to more offenders than is allowed under current policy. There was difficulty, however, in reaching a consensus as to which offenders to include. Several options were developed, and data provided by the Monitoring Unit allowed the Committee to compare the characteristics and types of offenders who would be eligible under each option. Prior to the Committee's final meeting on December 4, 1990, there were two options still under consideration and they were both reexamined at that time.

Strong sentiment was expressed by some members of the Committee that the option eventually recommended did not go far enough in expanding the availability of alternative punishments to more offenders. Other members felt just as strongly that the recommended option went too far and that the less expansive option was the proper recommendation. Taking into account the divergent views of the Committee, the recommendation represents a compromise. The Advisory Committee's recommendation (see Attachment 2) allows the use of intermediate sanctions in lieu of the entire period of imprisonment if the minimum guideline range is at least one month but not more than 18 months ("Line B") and allows the use of intermediate sanctions in lieu of imprisonment provided that at least half of the minimum guideline is satisfied by imprisonment if the minimum guideline range is at least 21 months but not more than 24 months ("Line C"). The current policy on probation (i.e., a minimum guideline of zero months) remains unchanged and alternatives are denied to offenders with a minimum guideline range beyond 24 months. This dividing line is

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somewhat arbitrary, but it was selected with a view towards excluding more serious offenders such as armed robbers and large scale drug offenders based on a review of the guidelines and information provided by the Monitoring Unit. It was also recognized that as sentences become longer, it becomes more difficult to implement equivalent intermediate sanctions. Data provided by the Monitoring Unit (see Attachment 3) compares the characteristics and types of offenders eligible under the Committee's recommendation and those eligible under current policy.

## 2. Approach

The Advisory Committee in its final proposal is recommending that intermediate sanctions be available as a condition of probation in lieu of an entire period of confinement for certain offenders and as conditions of supervised release in lieu of a portion of a period of imprisonment for certain offenders. The Committee also recommends that intermediate sanctions be available in lieu of imprisonment for offenders who violate supervision (probation or supervised release), particularly technical violators.

## 3. Exclusionary Criteria

While the proposal developed by the Advisory Committee attempts to expand the availability of alternative sanctions to more offenders than is currently allowed, the Committee recognizes that non-imprisonment sanctions are inappropriate for certain offenders. Therefore, it is recommended that non-imprisonment sanctions generally be denied to offenders with a history of violence, offenders whose current offense involves violence, or offenders who for any reason present an unusually high risk to the public.

Another area of concern is economic crimes or so called "white collar crimes." The

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introduction to the guidelines in Chapter One states: "Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious'." The Committee agrees that white collar crimes are serious and should be dealt with accordingly.

In order to insure that the most culpable "white collar" offenders be adequately sanctioned, it is recommended that non-imprisonment sanctions generally be denied to any offender who receives an enhancement for an abuse of a position of public or private trust (§3B1.3) or if an abuse of trust is included in the base offense level or specific offense characteristics. Although this exclusion refers to any offender who abused a trust, it is believed that the large majority of offenders who would be effected by this exclusion would be offenders who committed economic crimes.

In this regard, out of a random sample of 114 cases sentenced under the guidelines, eleven cases involved theft, forgery, fraud, or embezzlement. Out of those eleven cases, four included a finding that the offender abused a trust: 1) the offender was the supervisor of the accounting department in a bank and embezzled over \$80,000 (guideline range was 6-12 months); 2) the offender was the president of a bank and embezzled nearly \$300,000 (guideline range was 18-24 months); 3) the offender owned an investment service and stole over \$70,000 from one of his clients (guideline range was 12-18 months); and 4) the offender was the vice president of a bank and fraudulently authorized nearly \$450,000 in loans to himself (guideline range was 18-24 months). Under the proposed exclusion, non-imprisonment sanctions would be denied to all four of the cases because of the abuse of a

position of trust. Without the exclusionary language, all four cases would be eligible for alternative punishments under the Committee's recommendation.

Finally, non-imprisonment sanctions should be denied to any offender who commits an offense while in custody. The most common example of an offense committed while in custody is escape.

### III. MODEL DEVELOPMENT AND RECOMMENDATIONS

#### A. Model Description

The Alternatives to Imprisonment Project recommends an expansion of the array of sentencing options currently available to the courts. The intermediate punishment package for the federal offender provides a menu of sentencing options. Sanctions available range from imprisonment to 24 hour incarceration for designated periods of time in the community to regular probation. See specific Sentencing Options recommended at Attachment 5.

The Sentencing Options are designed to accomplish all of the purposes of sentencing: deterrence, just punishment, incapacitation and rehabilitation. Additionally, all programs include components mandating concern for the victim, the work ethic and discipline.

The model provides the courts the opportunity to distinguish between offenders. There is agreement with the Congressional opinion expressed in the legislative history that while each of the four stated purposes should be considered in imposing sentence, in a particular case, one purpose may have more bearing on the sentence to be imposed. The model being recommended, therefore will enhance public safety and the courts' flexibility

because of the availability of programs with appropriate emphasis on one or another of the purposes of sentencing.<sup>7</sup>

Three components have been determined sufficient to encompass all the purposes of sentencing, victims' concerns and the work ethic: Restrictions on Movement in the Community, Financial and Reparative Responsibility and Risk Reducing Programs. Restrictions on Mobility (through incapacitation) address punishment, deterrence and rehabilitation, but emphasize deterrence to a greater degree. Financial and Reparative Responsibility probably places greater emphasis on deterrence and punishment. Risk Reducing Programs while addressing deterrence and incapacitation, emphasize rehabilitation to a greater degree.

To avoid unwarranted disparity and to maintain the determinate sentencing system mandated by Congress, the options are to be judicially imposed and a system of equivalencies or exchange rates between prison and non-prisons is established. See Programs/Components/Elements and Exchange Rates at Attachment 5.

B. Offenders Eligible

Taking into account the exclusionary criteria provided, it is recommended that intermediate punishments be made available to more offenders than is allowed under current policy. As noted earlier under "Paths Not Taken", the Committee made its selection from several options which were developed for offenders with a Criminal History of Category III or less. This recommendation (see Attachment 2) allows the use of

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<sup>7</sup> For example, home detention with an electronically monitored curfew addresses the statutory purpose of incapacitation to a greater degree than home detention with a non-electronically monitored curfew; intensive supervision probation is more incapacitative than regular probation and so forth.

intermediate punishments in lieu of the entire period of imprisonment if the minimum guideline range is at least one month but not more than eighteen months ("Line B"). It also allows the use of intermediate punishments in lieu of imprisonment provided that at least half of the minimum guideline is satisfied by imprisonment if the minimum guideline range is at least twenty-one months but not more than twenty-four months ("Line C"). The current policy on probation (i.e., a minimum guideline range of zero months) remains unchanged. The policy for offenders with a Criminal History Category of IV, V, or VI is also unchanged. See 1990 data reflecting characteristics and types of offenders who would be eligible under this proposal at Attachment 3.

C. Summary Discussion of Programs/Components and Scenarios

In addition to recommending that additional offenders become eligible for intermediate punishments, the Advisory Committee also recommends that additional sentencing options be made available to the court. In addition to community confinement, intermittent confinement, and home detention already authorized under current policy, the Committee recommends that intensive supervision and public service work (both defined later in this report) be made available.<sup>8</sup> Under this proposal, the following sentencing options are recommended.

1. Intermittent Confinement

(a) Definition

Intermittent confinement is defined as confinement in prison, jail or total

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<sup>8</sup> Although Community Confinement and Home Detention are authorized under current policy, it has been necessary to provide a more comprehensive definition as well as to develop appropriate components for each of these programs.

incarceration in the community for periods of time (e.g., weekends) interrupted by periods of freedom in the community.

(b) Program Components

Intermittent confinement is already authorized as a sentencing option and currently typically involves serving a sentence to confinement on weekends in a jail type facility. The Advisory Committee recommends that intermittent confinement be allowed in lieu of not more than 6 months in prison. There are two reasons for this. First, serving longer periods of confinement on weekends would take an inordinately long time (e.g., 12 months confinement served on weekends would take over three and one half years to complete). Second, many jurisdictions already have insufficient jail space available to meet current needs. It is unlikely that sufficient jail space will be available in every jurisdiction because of the difficulty in locating jails and the expense of building jail cells.

By the nature of the program, intermittent confinement does not lend itself well to providing treatment or programming. Therefore, it is recommended that intermittent confinement be reserved for those offenders with minimal treatment or programming needs. If possible, however, offenders should be required to perform meaningful work. The Committee recommends as a new program a public work center. When this is developed, offenders should be assigned to these centers in order to perform public service work in conjunction with intermittent confinement.

Unless current policy is changed, intermittent confinement would not be available following a period of imprisonment.

(c) Equivalency

It is recommended that one day of intermittent confinement be equivalent to one day in prison. This is consistent with current policy.

(d) Maximum Amount

It is recommended that no offender be placed on intermittent confinement in lieu of more than 6 months of imprisonment. The Committee recommends that this should not extend for more than 15 months assuming three days per week (e.g., weekends) in jail.

2. Community Confinement

(a) Definition

Community confinement is defined as residence in a community corrections center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, psychological or psychiatric treatment, education programs, or similar facility-approved programs during non-residential hours.

(b) Program Components

Community confinement is already authorized as a sentencing option and typically means confinement in a community corrections center that is contracted for by the Bureau of Prisons but run by a private agency or a state or local department of corrections. In relatively rare instances, it can also mean confinement in a residential substance abuse or mental health program.

A primary program component should be a strict system of accountability. Access to the community should be strictly controlled. Initially, the offender should not be allowed



to leave the facility except for employment, job search, approved treatment/education programs or for medical emergencies. After a period of time, limited leave for recreational purposes should be allowed to encourage and reward good behavior. All movement in the community should be closely monitored and attendance at employment or treatment/education programs should be continually verified. As circumstances warrant, there should also be the possibility of totally confining the offender with no access to the community. A major element should be substance abuse surveillance and treatment. All offenders sentenced to community confinement should be subject to mandatory, random drug testing combined with mandatory substance abuse education (including information on the danger of AIDS). For those offenders who need it, substance abuse treatment should be mandatory.

Another component should be financial and reparative responsibility. All employable offenders should be expected to work and a reasonable portion of their income should be devoted to the payment of restitution and fine orders and the payment of room and board. Offenders who are unable to find adequate work should receive job placement services and vocational or educational training, if beneficial. Willful refusal to work should be grounds for sanctioning the offender.

Finally, all sentencing options should have a risk reducing component. Treatment programs should be made available to meet any special needs of the offender (e.g., mental health care, substance abuse, etc.).

(c) Equivalency

It is recommended that one day of community confinement be equivalent to one day

in prison (see specific program recommendations at Attachment 5).

(d) Maximum Amount

It is recommended that no offender be placed on community confinement for more than 18 months which would be the equivalent of 18 months of imprisonment.

3. Residential Incarceration

(a) Definition

Residential incarceration is defined as a program of confinement and supervision that restricts the offender to his place of residence continuously and is enforced by an appropriate means of surveillance. When an order of residential incarceration is imposed, the offender is required to be in his place of residence at all times except for religious services, medical care, or other emergencies. Electronic monitoring ordinarily should be used in connection with residential incarceration. However, alternative means of surveillance may be used so long as they are as effective as electronic monitoring.

(b) Program Components

Residential incarceration has many program elements in common with home detention (discussed later) with the major exception that the offender is confined to the residence continuously and is not allowed in the community for purposes of employment or recreation. It is noted that this option would be appropriate only for those limited number of offenders who are able to support themselves without employment outside the home.

(c) Equivalency

The Committee recommends that one and one-half days of residential incarceration be the equivalent of one day of imprisonment based on a view that residential incarceration

is less intrusive than imprisonment but more intrusive than home detention. It is also recommended that no offender be placed on residential incarceration for more than 12 months.

(d) Maximum Amount

It is recommended that no offender be placed on residential incarceration for more than 12 months which would be the equivalent of 8 months of imprisonment.

4. Home Detention

(a) Definition

Home detention is defined as a program of confinement and supervision that restricts the offender to his place of residence continuously, except for authorized absences, and is enforced by an appropriate means of surveillance. When an order of home detention is imposed, the offender is required to be in his place of residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, and such other times as may be specifically authorized. Electronic monitoring ordinarily should be used in connection with home detention. However, alternative means of surveillance may be used so long as they are as effective as electronic monitoring.

(b) Program Components

Home detention is already authorized as a sentencing option. The offender is typically confined to the offender's residence except for authorized absences and compliance with a home detention requirement is monitored by a U.S. Probation Officer (with or without the assistance of electronic monitors).

As with community confinement, a crucial program component is a strict system of accountability. Initially, the offender should not be allowed to leave the residence except for employment, job search, approved treatment/education programs, or for medical emergencies. It is anticipated that electronic monitors would generally be used at least during the first 12 weeks but alternative means of surveillance may be used so long as they are as effective as electronic monitoring. All movement in the community should be closely monitored and attendance at employment and treatment/education programs should be continually verified.

A major element should be substance abuse surveillance and treatment. All offenders sentenced to home detention should be subject to mandatory, random drug testing combined with mandatory substance abuse education (including information on the danger of AIDS). For those offenders who need it, substance abuse treatment should be mandatory.

Another component should be financial and reparative responsibility. All employable offenders should be expected to work and a reasonable portion of their income should be devoted to the payment of restitution and fine orders and reimbursement for the cost of electronic or other forms of monitoring. Offenders who are unable to find adequate work should receive job placement services and vocational or educational training if beneficial. Willful refusal to work should be grounds for sanctioning the offender.

(c) Equivalency

The Committee recommends that two days of home detention be the equivalent of one day of imprisonment based on a view that home detention is less intrusive and punitive

than imprisonment.

(d) Maximum Amount

It is recommended that no offender be placed on home detention for more than 24 months which would be the equivalent of 12 months of imprisonment.

5. Intensive Supervision

(a) Definition

Intensive supervision generally requires daily (or near daily) contact between the offender and the supervising officer. The supervising officer typically has a limited case load to allow greater attention to each offender. Candidates are usually those considered too serious for standard probation, but not so serious that confinement is required. Program elements should include random drug and alcohol testing, work, community service, and victim restitution.

(b) Program Components

Intensive Supervision is conceived of as close supervision with a curfew. Intensive supervision is not currently authorized by Commission policy as a sentencing option in lieu of imprisonment.

It is recommended that three days of intensive supervision be equal to one day of imprisonment. Twelve months of intensive supervision (equivalent to 4 months imprisonment) was felt to be the longest period of time that an offender could be successfully maintained on intensive supervision.

In addition to all of the standard conditions of probation (including the payment of restitution and fines), there should be greater accountability and restriction of movement

in the community than is typically the case with probation. All offenders should be subject to random tests for substance abuse and after the first positive result given drug education and treatment. All offenders should be required to contact the probation office daily and be scheduled for random drug testing and random personal contacts as deemed appropriate.

The offender's associations and personal finances should be closely monitored (e.g., all purchases over \$500 should be reported weekly) and travel should be severely restricted. In order to accomplish this, reduced case loads are mandatory.

Financial and reparative responsibility should also be emphasized. All employable offenders should be expected to work and, based on their income, should pay a supervision fee to cover the cost of supervision. Offenders who are unable to find adequate work should receive job placement service and vocational or education training if beneficial. Willful refusal to work should be grounds for sanctioning the offender.

(c) Equivalency

It is recommended that three days of intensive supervision be equivalent to one day in prison.

(d) Maximum Amount

It is recommended that no offender be placed on intensive supervision for more than 12 months which would be equivalent to 4 months imprisonment. There is concern that intensive supervision is difficult to maintain over an extended period of time.

6. Public Service Work (Community Service)

(a) Definition

As a condition of supervision, public service work requires offenders to work without

pay for public and not-for-profit agencies.

(b) Program Components

Public service work (community service) has long been a sentencing option for federal offenders. Public service work is currently authorized in the guidelines as a sentencing option in lieu of a fine but not in lieu of imprisonment.

It is recommended that the term "public service work" be used rather than "community service" because it is more descriptive of the recommended programs. As with other sentencing options, accountability should be emphasized. Work sites should be visited regularly and performance of the work should be verified. In determining the type of public service work to be performed, it is recommended that the work be of value and of a kind that assists the needs of the community. Specialized skills possessed by the offender should be utilized if they meet a clear need in the community. The work, however, should involve genuine work on the part of the offender (i.e., money donations and public speaking appearances would be precluded).

(c) Equivalency

It is recommended that 12 hours of public service work be equivalent to one day in prison.

(d) Maximum Amount

It is recommended that no offender be required to perform more than 1,080 hours of public service work which would be the equivalent of 3 months of imprisonment. It would be very difficult to enforce greater amounts of public service work. This is consistent with information collected during site visits.

In summary, the Committee recommends that the following programs be available as intermediate punishments:

<u>Program</u>	<u>Equivalency To Imprisonment</u>	<u>Maximum Amount</u>	<u>Maximum Prison Equivalent</u>
Intermittent Confinement	1 day to 1 day	6 months*	6 months
Community Confinement**	1 day to 1 day	18 months	18 months
Residential Incarceration	1.5 days to 1 day	12 months	8 months
Home Detention	2 days to 1 day	24 months	12 months
Intensive Supervision	3 days to 1 day	12 months	4 months
Public Service Work	12 hours to 1 day	1,080 hours	3 months

\* Not to extend longer than 15 months assuming three days per week (e.g., weekends) in jail.

\*\* Community confinement includes programs such as restitution centers, public work centers, and inpatient substance abuse facilities.

### 7. Implementation/Scenarios

In accordance with the recommendations being made (see Attachment 2), straight probation is available if the minimum guideline range is 0 months. If the minimum guideline range is at least 1 month but not more than 18 months, the sentence may be



satisfied by a term of imprisonment, community confinement, home detention up to the equivalent of 12 months of imprisonment, residential incarceration up to the equivalent of 8 months of imprisonment, intermittent confinement up to the equivalent of 6 months imprisonment, intensive supervision up to the equivalent of 4 months imprisonment, or public service work up to the equivalent of 3 months imprisonment. If the minimum guideline range is more than 18 months but not more than 24 months, at least half of the sentence must be satisfied by a term of imprisonment but the rest can be satisfied by community confinement, home detention, residential incarceration up to the equivalent of 8 months of imprisonment, intensive supervision up to the equivalent of 4 months imprisonment, or public service work up to the equivalent of 3 months imprisonment. Unless current policy is changed, intermittent confinement is not available following a term of imprisonment.

For example, if the guideline range is 18-24 months, the sentence can be satisfied by the following or some combination of the following:

- a) 18 months in prison,
- b) 18 months community confinement,
- c) 24 months home detention combined with other sentencing options equivalent to 6 months in prison,
- d) 12 months residential incarceration combined with other sentencing options equivalent to 10 months in prison,
- e) 6 months intermittent confinement combined with other sentencing options equivalent to 12 months in prison,

- f) 12 months intensive supervision combined with other sentencing options equivalent to 14 months in prison,
- g) 1,080 hours of public service work combined with other sentencing options equivalent to 15 months in prison.

If the guideline range is 24-30 months, the sentence can be satisfied by the following or some combination of the following:

- a) 24 months in prison,
- b) 12 months in prison and 12 months community confinement,
- c) 12 months in prison and 24 months home detention,
- d) 12 months in prison and 12 months residential incarceration combined with other sentencing options equivalent to 4 months in prison,
- e) 12 months in prison and 12 months intensive supervision combined with other sentencing options equivalent to 8 months in prison,
- f) 12 months in prison and 1,080 hours of public service work combined with other sentencing options equivalent to 9 months in prison.

It is intended that the recommended sentencing options serve as a menu from which the court can select the appropriate sanction to fit the intended purpose of the sentence. To illustrate how this could happen, shown below are summaries of actual cases sentenced under the guidelines, the sentence imposed, and some of the possible sentencing options

which would be available under this proposal. It should be assumed in these examples that the offender is a U.S. citizen or is at least not being deported.

**Case #1**

**Offense.** The offender worked as a postal clerk and embezzled approximately \$150 over a period of a few months.

**Guideline calculations.** The offender was found guilty after trial of embezzlement (18 U.S.C. § 643). Based upon the theft, the base offense level was calculated as level 4 (§2B1.1). There was a one level increase based upon the loss (§2B1.1(b)(1)) and a two level increase for more than minimal planning (§2B1.1(b)(3)) because the defendant attempted to conceal the offense by not recording cash transactions as required resulting in a total offense level of 7.

**Sentence imposed.** The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to three years probation with one month community confinement. The defendant was also ordered to pay \$153 restitution and a \$500 fine.

**Possible Additional Sentencing Options:**

- a) Three years probation with two months home detention. Restitution and a fine would also be imposed.
- b) Three years probation, three months of which would be intensive supervision. Restitution and a fine would also be imposed.
- c) Three years probation with the condition that the offender complete 360 hours of public service work. Restitution and a fine would also be imposed.

Case #2

Offense. The offender was part of a "loosely organized criminal operation" that used fake identification cards to cash stolen checks. The offender was identified as "least culpable" and was recruited by others to cash four stolen checks worth \$4,373.

Guideline calculations. The offender pleaded guilty to one count (one check worth \$528) of receipt of stolen mail (18 U.S.C. § 1708). Based upon the receipt of stolen property, the base offense level was calculated as level 4 (§2B1.1). There was a two level increase based upon the loss of \$4,373 (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.1(b)(3)(B)), and the offense level was increased to level 14 for an organized criminal activity (§2B1.2(4)). There was a two level decrease for minor role (§3B1.2(b)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence imposed. The guideline range was 8-14 months (criminal history category II) and the defendant was sentenced to 8 months in prison with three years supervised release. The fine was waived but the offender was ordered to pay \$528 restitution for the single check involved in the count of conviction.

Possible Additional Sentencing Options:

- a) 8 months community confinement plus restitution,
- b) 16 months home detention plus restitution,
- c) 4 months in prison and 4 months community confinement plus restitution,
- d) 4 months in prison and 12 months intensive supervision plus restitution,

- e) 3 months community confinement, 6 months home detention, and 720 hours of public service work plus restitution.

Case #3

Offense. The offender sold a small amount of base cocaine to an undercover agent for \$20.

Guideline calculations. The offender pleaded guilty to distribution of a controlled substance (21 U.S.C. § 41(a)(1)). Based upon the distribution of base cocaine, the base offense level was calculated as level 12 (§2D1.1). There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence imposed. The guideline range was 6-12 months (criminal history category I) and the offender was sentenced to 12 months in prison with three years supervised release. The offender was fined \$500.

Possible Additional Sentencing Options:

- a) 12 months community confinement plus a fine,
- b) 24 months home detention plus a fine,
- c) 6 months in prison and 6 months community confinement plus a fine,
- d) 6 months in prison, 2 months community confinement, and 12 months intensive supervision plus a fine,
- e) 6 months community confinement, 6 months home detention, and 1,080 hours of public service work plus a fine.

#### Case #4

Offense. The offender owned an investment service and stole over \$74,000 from one of his accounts over an extended period of time. The loss was discovered when the victim retired and found he had no money, which caused considerable hardship to the victim.

Guideline calculations. The offender pleaded guilty to mail fraud (18 U.S.C. § 1341). The base offense level was calculated as level 6 (§2F1.1). There was a five level increase based upon the loss of over \$74,000 (§2F1.1(b)(1)), a two level increase for more than minimal planning based upon information that the loss was hidden through fraudulent bookkeeping (§2F1.1(b)(2)), a two level increase for abuse of a position of trust (§3B1.3), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 13.

Sentence imposed. The guideline range was 12-18 months (criminal history category I) and the offender was sentenced to 12 months in prison with three years supervised release. The fine was waived but the offender was ordered to pay \$74,190 in restitution.

#### Possible Additional Sentencing Options:

Because the offense involved the abuse of a position of trust, alternative sanctions would not be authorized except by departure.

#### Case #5

Offense. The offender sold pornographic video tapes showing adults through the mail. The amount of the pecuniary gain was not clarified. The offender also failed to appear for trial and was rearrested in another part of the country.

Guideline calculations. The offender pleaded guilty to unlawful use of the U.S. mail for distribution of pornography (18 U.S.C. § 1461). The base offense level was calculated as level 6 (§2G3.1). There was a five level increase for distribution involving pecuniary gain (§2G3.1(b)(1)) and a two level increase for obstruction of justice (§3C1.1) resulting in a total offense level of 13. Acceptance of responsibility was denied because of the obstruction of justice. The basis for the obstruction of justice was not clear in the record, but it appears that it relates to the failure to appear at trial.

Sentence imposed. The guideline range was 12-18 months (criminal history category I) and the offender was sentenced to 12 months in prison with two years supervised release. The fine was waived.

Possible Additional Sentencing Options:

- a) 12 months community confinement,
- b) 24 months home detention,
- c) 6 months community confinement and 12 months home detention,
- d) 6 months in prison, 2 months community confinement, and 12 months intensive supervision,
- e) 6 months community confinement, 6 months home detention, and 1,080 hours public service work.

Case #6

Offense. The offender and a codefendant were stopped while attempting to smuggle 56 kilograms of marijuana into the United States. The offender "appeared" to be a "mule" but there was no information concerning either the source of the drugs or its ultimate

destination.

Guideline calculations. The offender pleaded guilty to possession with the intent to distribute marijuana (21 U.S.C. §841(a)(1)). Based upon the attempt to import marijuana, the base offense level was calculated as level 20 (§2D1.1). There was a two level decrease for being a minor participant based upon circumstantial evidence that the offender was a courier (§3B1.2) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence imposed. The guideline range was 21-27 months (criminal history category I) and the offender was sentenced to 24 months in prison with three years supervised release. The fine was waived.

Possible Additional Sentencing Options:

- a) 12 months in prison and 12 months community confinement,
- b) 12 months in prison and 24 months home detention,
- c) 12 months in prison, 6 months community confinement, and 12 months home detention,
- d) 12 months in prison, 8 months community confinement, and 12 months intensive supervision,
- e) 12 months in prison, 6 months community confinement, 8 months home detention, and 720 hours public service work.

Case #7

Offense. The offender sold .91 grams of cocaine base and 12.6 grams of cocaine to an informant.



Guideline calculations. The offender pleaded guilty to the distribution of cocaine (21 U.S.C. § 841(a)(1)). Based upon the sale of the equivalent of approximately 104 grams of cocaine, the base offense level was calculated as level 18 (§2D1.1). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence imposed. The guideline range was 24-30 months (criminal history category II) and the defendant was sentenced to 24 months in prison with three years supervised release. The fine was waived.

Possible Additional Sentencing Options:

- a) 12 months in prison and 12 months community confinement,
- b) 12 months in prison and 24 months home detention,
- d) 12 months in prison, 9 months community confinement, and 6 months home detention,
- c) 12 months in prison, 8 months community confinement, and 12 months intensive supervision,
- e) 12 months in prison, 5 months community confinement, 8 months home detention, and 1,080 hours public service work.

D. Violation of Probation and Supervised Release

The Sentencing Commission has promulgated policy statements guiding the court on revoking probation and supervised release (Chapter Seven). In the case of "Grade B" and "Grade C" violations, if the minimum of the guideline range is at least one month but not more than six months, the sentence can be satisfied under current policy by a term of

imprisonment, community confinement, or home detention. If the minimum guideline range is more than six months but not more than ten months, at least half of the sentence must be satisfied by a term of imprisonment but the rest can be satisfied by community confinement or home detention.

It is strongly recommended that when the Sentencing Commission issues guidelines for revoking probation and supervised release (as opposed to policy statements), the Commission should develop a comprehensive package of intermediate punishments to include the sanctions outlined in this proposal.

E. Shock Incarceration ("Boot Camps")

The Committee is keenly aware that the jury is still out on the true level of effectiveness of these programs. However, based on the success of post-release behavior changes reported in states like New York and Louisiana, the Committee recommends that the Commission adopt a policy supporting the concept that this sentencing option be judicially imposed at sentencing with the consent of the defendant; that it be of short duration (6 months); that it contain adequate educational, literacy, and other treatment and job training programs with emphasis that is equal to the time allocated for regiment, drill, exercise, and work; and that high-quality after-care in the form of intensive supervision probation follow for a period of one year. The Committee recommends that six (6) months shock incarceration followed by one (1) year intensive supervision probation be deemed to satisfy sentences of 12 to 30 months. The complete curriculum for boot camps in several states will be included in the Supplementary Report.

#### IV. IMPLEMENTATION

The literature review and site visits revealed a variety of methods employed by the various states to place offenders into intermediate punishment programs. In some jurisdictions (i.e., South Carolina until recently) a defendant is sentenced to probation for a specific period of time with specific conditions that must be completed. For example, probation for three (3) years with a condition that the defendant be placed in and complete a restitution center program, or boot camp, or an in-patient substance abuse program. Failure to satisfactorily complete any imposed condition constitutes a violation of probation and places the defendant back before the sentencing judge who can revoke the probationary sentence and sentence him to prison. Other jurisdictions sentence defendants to the care, custody, and control of the Department of Corrections, which evaluates the offender and offers him the opportunity to volunteer for intermediate programs (i.e. North Carolina IMPACT [boot camp], or BRIDGE [forestry] programs), or place him directly into a program. Failure of a defendant in either situation can result in an automatic return to prison.

In this proposal, the court alone has the authority to impose an intermediate sanction as either a condition of probation or as a condition of supervised release (i.e., as a "split sentence"). Any community programs developed by the Bureau of Prisons (such as release through a halfway house) is outside the scope of this proposal and should be considered independent of the recommendations of the Advisory Committee.

Because the intermediate punishments being proposed are under the authority of the judiciary, the judiciary may need to seek additional funding in order to adequately

implement some of the alternatives being recommended. In some instances, such as community confinement, the Bureau of Prisons may provide the necessary resources. In other instances the defendant himself may provide the necessary resources, such as the offender who pays for his own electronic monitoring. In many situations, however, the Probation System will be expected to provide the necessary resources, including adequate supervision with reduced caseloads.

In order to protect the public and ensure the overall success of this proposal, it is vital that proposed sanctions be implemented when adequate resources are in place. For example, effective intensive supervision programs can be implemented at such time that the Probation Division has acquired sufficient probation officers to ensure surveillance at the required level. Likewise, some jurisdictions now have adequate space in jails for intermediate confinement, while others are experiencing overcrowding. Some alternative sanctions can be implemented immediately while the implementation of others will need to be delayed. Therefore, it is important that there be close coordination between the Sentencing Commission, the Administrative Office of the Courts, and the Probation System in implementing this proposal if adopted. Because the Bureau of Prisons may be capable of providing resource assistance, coordination with them is also recommended.

## V. EVALUATION

If the proposal is adopted by the Commission, it is critical that the use of intermediate punishments by the courts be continually monitored. Specifically, the Monitoring Unit of the Sentencing Commission is requested to collect information on

sentencing practices as they relate to the use of these sanctions. This information should include the type of sentencing option used (e.g., home detention, community service, etc.), the type of offenders for whom options are used (e.g., the offense level, type of offense, and criminal history category), the combinations of sentencing options (e.g., imprisonment combined with community confinement or home detention combined with intensive supervision), and the incidence of guideline departure resulting in the imposition of a sentencing option.

The Monitoring Unit should report back to the Commission on the use of sentencing options two years after this proposal (as adopted by the Commission) becomes effective and annually thereafter. Information provide by the Monitoring Unit should be used to evaluate which sentencing options are being used most frequently and for what types of offenders. If certain options are used infrequently, an attempt should be made to determine if a particular option lacks judicial support or if there are insufficient resources to implement the option. If resources are lacking, the Administrative Office of the Courts should be encouraged to secure the necessary resources and/or funding necessary to make the option a viable one.

#### VI. GENERAL ENDORSEMENT OF USSC'S POSITION ON MANDATORY MINIMUMS

The Advisory Committee wishes to note its unanimous endorsement of a letter from Commission Chairman Wilkins to House and Senate leaders during recent deliberations on the 1990 Omnibus Crime Bill. Chairman Wilkins' letter outlined a number of serious concerns the Commission has with any further enactment of mandatory minimum sentencing

provisions and in particular cautioned that mandatory minimums are widely viewed by members of the criminal justice community as working against key goals of the Sentencing Reform Act of 1984. The Advisory Committee takes this opportunity to voice its unanimous agreement with the concepts reflected in that letter.

END OF REPORT

# ATTACHMENT I SENTENCING TABLE

(in months of imprisonment)

CURRENT  
POLICY

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	1-7	2-8	4-10	8-14	12-18	15-21
8	2-8	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	82-115	100-125
25	57-71	63-78	70-87	84-105	92-115	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	140-175	168-210
31	108-135	121-151	135-168	151-188	151-188	188-235
32	121-151	135-168	151-188	168-210	168-210	210-262
33	135-168	151-188	168-210	188-265	188-235	235-293
34	151-188	168-210	188-235	210-262	210-262	262-327
35	168-210	188-235	210-262	235-293	235-293	292-365
36	188-235	210-262	235-293	262-327	262-327	324-405
37	210-262	235-293	262-327	292-365	292-365	360-life
38	235-293	262-327	292-365	324-405	324-405	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

**KEY**

A - Probation available (see §5B1.1(a)(1))  
 B - Probation with conditions of confinement available (see §5B1.1(a)(2))  
 C - Probation with conditions of confinement available (see §5B1.1(a)(2))

# ATTACHMENT 2 SENTENCING TABLE

(in months of imprisonment)

ADVISORY  
COMMITTEE'S  
RECOMMENDATION

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	1-7	2-8	4-10	8-14	12-18	15-21
8	2-8	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-265	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

**KEY**

A - Probation available (see §5B1.1(a)(1))

B - Probation with conditions of confinement available (see §5B1.1(a)(2))

C - Probation available (see §5B1.1(c)(1) (d)(2))



Tables 5-8 duplicate Tables 1-4 but include offenders with Criminal History Categories I, II, and III. Offenders with Criminal History Category III are included in the second set of tables because the Advisory Committee recommends changing Commission policy up to Category III but leaving policy for offenders in Criminal History Category IV and higher unchanged.

It should be noted that the Committee's recommendation has a fairly limited impact on the total number of offenders for whom alternatives would be available. For example, as shown in the last table (Table 8), 3,752 offenders with Criminal History Category III or less are eligible for alternatives under current policy compared with 4,833 under the Committee's recommendation (out of a total sample of 8,073 cases). The main impact of of the proposal is to make additional types of alternatives available to the court and only to a limited degree does the proposal make alternatives available to more offenders.

Also attached for reference are sentencing tables comparing current policy with the Advisory Committee's recommendation.

**ATTACHMENT 3**  
**UNITED STATES SENTENCING COMMISSION**  
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George E. MacKinnon  
A. David Mazzone  
John H. Nease  
Benjamin F. Blair (ex officio)  
Paul J. Mahoney (ex officio)



MEMORANDUM

TO: Commissioner Corrothers  
FROM: Jim Beck *JB*  
DATE: December 11, 1990  
SUBJECT: Data on Guideline Implementation

The Monitoring Unit recently provided information on 8,073 cases sentenced under the guidelines between January 1990 and June 1990 (see Memo from Candy Johnson dated November 16, 1990). Attached are tables reformatting that information in a way which should be more useful.

Tables 1-4 compare current policy with the Advisory Committee's recommendation. These tables are restricted to Criminal History Categories I and II and compare cases eligible for alternative sanctions within "Group A" (Table 1), within "Group B" (Table 2), within "Group C" (Table 3), and all cases eligible for alternatives within Groups A, B, and C (Table 4). Offenders above Criminal History Category II are excluded because current commentary recommends against substitutes for imprisonment for offenders Category III and higher.





Table 1:

**OFFENDER CHARACTERISTICS**  
Criminal History Category I and II

**\*Group A\* - Straight Probation**

	<u>Current Policy</u> N = 1,478		<u>Recommendation</u> N = 1,478
<b>1) Sex</b>			
Male	822	66.2%	Same
Female	420	33.8%	
Missing	24		
<b>2) Race</b>			
White	631	51.3%	Same
Black	353	28.7%	
Hispanic	195	15.8%	
Other	52	4.2%	
Missing	247		
<b>3) Age</b>			
17-20	101	8.1%	Same
21-25	252	20.2%	
26-30	257	20.6%	
31-40	351	28.1%	
41+	289	23.1%	
Missing	228		
<b>4) Adult Convictions</b>			
No Priors	928	74.7%	Same
1-2 Priors	253	20.4%	
3-4 Priors	36	2.9%	
5+ Priors	25	2.0%	
Missing	236		

5) Offense	<u>Current Policy</u>		<u>Recommendation</u>
Homicide	1	0.1%	Same
Robbery	0	0.0%	
Assault	9	0.7%	
Burglary	0	0.0%	
Larceny	297	22.5%	
Embezzlement	154	12.4%	
Tax	13	1.0%	
Fraud	292	23.5%	
Drug Dist.	52	4.2%	
Drug Poss	134	10.8%	
Auto theft	3	0.2%	
Forgery	60	4.8%	
Sex	1	0.1%	
Bribery	7	0.6%	
Escape	4	0.3%	
Firearms	36	2.9%	
Immigration	74	6.0%	
Extortion	2	0.2%	
Gambling	2	0.2%	
Other	119	9.6%	
Missing	230		

Table 2:

**OFFENDER CHARACTERISTICS**  
Criminal History Category I and II

\*Group B\* - Alternatives In Lieu of Entire Period of Imprisonment

	<u>Current Policy</u> N = 1,318		<u>Recommendation</u> N = 2,424	
1) <u>Sex</u>				
Male	898	75.2%	1,734	78.6%
Female	296	24.8%	473	21.4%
Missing	124		217	
2) <u>Race</u>				
White	685	57.5%	1,245	56.5%
Black	247	20.7%	460	20.9%
Hispanic	211	17.7%	429	19.5%
Other	48	4.0%	68	3.1%
Missing	127		222	
3) <u>Age</u>				
17-20	63	4.9%	118	4.9%
21-25	258	20.0%	427	17.9%
26-30	255	19.7%	459	19.2%
31-40	401	31.0%	764	32.0%
41-	316	24.4%	623	26.1%
Missing	25		33	
4) <u>Adult Convictions</u>				
No Priors	810	67.8%	1,441	65.3%
1-2 Priors	311	26.0%	594	26.9%
3-4 Priors	46	3.9%	116	5.3%
5+ Priors	27	2.3%	56	2.5%
Missing	124		217	

5) Offense

Current Policy

Recommendation

Homicide	2	0.2%	6	0.3%
Robbery	1	0.1%	5	0.2%
Assault	7	0.6%	10	0.5%
Burglary	6	0.5%	12	0.5%
Larceny	103	8.6%	163	7.4%
Embezzlement	142	11.9%	195	8.8%
Tax	8	0.7%	9	0.4%
Fraud	242	20.3%	402	18.2%
Drug Dist	220	18.5%	632	28.6%
Drug Poss	12	1.0%	32	1.4%
Auto theft	18	1.5%	28	1.3%
Forgery	96	8.0%	137	6.2%
Sex	8	0.7%	42	1.9%
Bribery	18	1.5%	27	1.2%
Escape	3	0.3%	16	0.7%
Firearms	83	7.0%	147	6.9%
Immigration	131	11.0%	153	6.7%
Extortion	6	0.5%	11	0.5%
Gambling	31	2.6%	47	2.1%
Other	57	4.8%	133	6.0%
Missing	124		217	



Table 3:

**OFFENDER CHARACTERISTICS**  
Criminal History Category I and II

\*Group C - Alternatives In Lieu of Half of the Period of Imprisonment

	<u>Current Policy</u> N = 566		<u>Recommendation</u> N = 377	
1) <u>Sex</u>				
Male	416	80.2%	323	92.0%
Female	103	19.8%	28	8.0%
Missing	47		26	
2) <u>Race</u>				
White	297	57.3%	167	47.6%
Black	123	23.7%	64	18.2%
Hispanic	91	17.6%	113	32.2%
Other	7	1.4%	7	2.0%
Missing	48		26	
3) <u>Age</u>				
17-20	26	5.0%	24	6.4%
21-25	76	14.0%	76	20.2%
26-30	104	18.6%	70	18.6%
31-40	194	34.7%	114	30.3%
41+	155	27.7%	92	24.5%
Missing	7		1	
4) <u>Adult Convictions</u>				
No Priors	327	63.0%	209	59.5%
1-2 Priors	145	27.9%	106	30.2%
3-4 Priors	30	5.8%	26	8.0%
5+ Priors	17	3.3%	8	2.3%
Missing	47		26	

5) Offense

	<u>Current Policy</u>		<u>Recommendation</u>	
Homicide	1	0.2%	1	0.3%
Robbery	1	0.2%	21	6.0%
Assault	0	0.0%	4	1.1%
Burglary	4	0.8%	1	0.3%
Larceny	35	6.7%	11	3.1%
Embezzlement	36	6.9%	4	1.1%
Tax	1	0.2%	0	0.0%
Fraud	96	18.5%	24	6.8%
Drug Dist.	173	33.3%	221	63.0%
Drug Poss.	7	1.3%	13	3.7%
Auto theft	8	1.5%	5	1.4%
Forgery	16	3.1%	6	1.7%
Sex	10	1.9%	0	0.0%
Bribery	2	0.4%	3	0.9%
Escape	8	1.5%	2	0.6%
Firearms	41	7.9%	11	3.1%
Immigration	20	3.9%	0	0.0%
Extortion	4	0.8%	7	2.0%
Gambling	11	2.1%	3	0.9%
Other	45	8.7%	14	4.0%
Missing	47		26	

Table 4:

**OFFENDER CHARACTERISTICS**  
**Criminal History Category I and II**

**\*Groups A, B, and C - All Offenders For Whom Alternatives Are Authorized**

	<u>Current Policy</u>		<u>Recommendation</u>	
	N = 3,362		N = 4,279	
1) <u>Sex</u>				
Male	2,136	72.3%	2,879	75.8%
Female	819	27.7%	921	24.2%
Missing	407		479	
2) <u>Race</u>				
White	1,613	54.9%	2,043	54.0%
Black	723	24.6%	877	23.2%
Hispanic	497	16.9%	737	19.5%
Other	107	3.6%	127	3.4%
Missing	422		496	
3) <u>Age</u>				
17-20	192	6.2%	243	6.0%
21-25	585	19.0%	755	18.8%
26-30	616	19.9%	786	19.6%
31-40	946	30.5%	1,229	30.6%
41+	760	24.5%	1,004	25.0%
Missing	260		262	
4) <u>Adult Convictions</u>				
No Priors	2,065	69.9%	2,576	67.8%
1-2 Priors	709	24.0%	953	25.1%
3-4 Priors	112	3.8%	181	4.7%
5+ Priors	69	2.3%	89	2.3%
Missing	407		479	

	<u>Current Policy</u>		<u>Recommendation</u>	
5) <u>Offense</u>				
Homicide	4	0.1%	8	0.2%
Robbery	2	0.1%	26	0.7%
Assault	16	0.5%	23	0.6%
Burglary	10	0.3%	13	0.3%
Larceny	417	14.1%	453	11.9%
Embezzlement	332	11.2%	353	9.3%
Tax	22	0.7%	22	0.6%
Fraud	630	21.3%	718	18.9%
Drug Dist.	445	15.1%	905	23.8%
Drug Poss.	153	5.2%	179	4.7%
Auto theft	29	1.0%	36	0.9%
Forgery	172	5.8%	203	5.3%
Sex	19	0.6%	43	1.1%
Bribery	27	0.9%	37	1.0%
Escape	15	0.5%	22	0.6%
Firearms	160	5.4%	194	5.1%
Immigration	225	7.6%	227	6.0%
Extortion	12	0.4%	20	0.5%
Gambling	44	1.5%	52	1.4%
Other	221	7.5%	266	7.0%
Missing	407		479	

Table 5:

**OFFENDER CHARACTERISTICS**  
Criminal History Category I, II, and III

\*Group A\* - Straight Probation

	<u>Current Policy</u> N = 1,555		<u>Recommendation</u> N = 1,555
<b>1) Sex</b>			
Male	874	67.0%	Same
Female	431	33.0%	
Missing	250		
<b>2) Race</b>			
White	665	51.5%	Same
Black	368	28.4%	
Hispanic	206	15.9%	
Other	55	4.3%	
Missing	261		
<b>3) Age</b>			
17-20	106	8.0%	Same
21-25	263	19.9%	
26-30	279	21.1%	
31-40	373	28.3%	
41+	299	22.7%	
Missing	235		
<b>4) Adult Convictions</b>			
No Priors	937	71.8%	Same
1-2 Priors	272	20.8%	
3-4 Priors	55	4.2%	
5+ Priors	41	3.1%	
	259		

<u>5) Offense</u>	<u>Current Policy</u>		<u>Recommendation</u>
Homicide	1	0.1%	Same
Robbery	0	0.0%	
Assault	9	0.7%	
Burglary	2	0.2%	
Larceny	289	22.1%	
Embezzlement	156	12.0%	
Tax	13	1.0%	
Fraud	304	23.3%	
Drug Dist.	57	4.4%	
Drug Poss.	139	10.7%	
Auto theft	3	0.2%	
Forgery	67	5.1%	
Sex	1	0.1%	
Bribery	7	0.5%	
Escape	4	0.3%	
Firearms	49	3.8%	
Immigration	76	5.8%	
Extortion	2	0.2%	
Gambling	2	0.2%	
Other	124	9.5%	
Missing	250		

Table 6:

**OFFENDER CHARACTERISTICS**  
**Criminal History Category I, II and III**

**\*Group B\* - Alternatives In Lieu of Entire Period of Imprisonment**

	<u>Current Policy</u> N = 1,501		<u>Recommendation</u> N = 2,847	
<b>1) Sex</b>				
Male	1,026	76.4%	2,052	79.7%
Female	317	23.6%	523	20.3%
Missing	158		272	
<b>2) Race</b>				
White	744	55.6%	1,423	55.4%
Black	291	21.7%	563	21.9%
Hispanic	254	19.0%	511	19.9%
Other	50	3.7%	72	2.8%
Missing	162		278	
<b>3) Age</b>				
17-20	69	4.7%	129	4.6%
21-25	300	20.5%	506	18.1%
26-30	297	20.3%	551	19.7%
31-40	453	30.9%	907	32.5%
41+	345	23.6%	702	25.1%
Missing	37		52	
<b>4) Adult Convictions</b>				
No Priors	823	61.3%	1,465	56.9%
1-2 Priors	373	27.8%	742	28.8%
3-4 Priors	87	6.5%	221	8.6%
5+ Priors	60	4.5%	147	5.7%
Missing	158		272	

5) Offense

	<u>Current Policy</u>		<u>Recommendation</u>	
Homicide	2	0.1%	6	0.2%
Robbery	1	0.1%	6	0.2%
Assault	7	0.5%	10	0.4%
Burglary	6	0.4%	13	0.5%
Larceny	115	8.6%	188	7.3%
Embezzlement	146	10.9%	203	7.9%
Tax	8	0.6%	9	0.3%
Fraud	265	19.7%	467	18.1%
Drug Dist	229	17.1%	707	27.4%
Drug Poss	18	1.3%	39	1.5%
Auto theft	21	1.6%	35	1.4%
Forgery	105	7.8%	154	6.0%
Sex	9	0.7%	48	1.9%
Bribery	18	1.3%	27	1.0%
Escape	5	0.4%	29	1.1%
Firearms	116	8.6%	217	8.4%
Immigration	175	13.0%	217	8.4%
Extortion	6	0.4%	11	0.4%
Gambling	31	2.3%	48	1.9%
Other	60	4.5%	141	5.5%
Missing	158		272	



Table 7:

**OFFENDER CHARACTERISTICS**  
**Criminal History Category I, II and II**

**\*Group C - Alternatives In Lieu of Half of the Period of Imprisonment**

	<u>Current Policy</u>		<u>Recommendation</u>	
	N = 696		N = 431	
<b>1) <u>Sex</u></b>				
Male	518	81.6%	368	92.0%
Female	117	18.4%	32	8.0%
Missing	61		31	
<b>2) <u>Race</u></b>				
White	357	56.3%	196	49.0%
Black	150	23.7%	73	18.3%
Hispanic	119	18.8%	123	30.8%
Other	8	1.3%	8	2.0%
Missing	62		31	
<b>3) <u>Age</u></b>				
17-20	30	4.4%	24	5.6%
21-25	99	14.5%	89	20.7%
26-30	133	19.5%	81	18.8%
31-40	236	34.6%	125	29.1%
41+	184	27.0%	111	25.8%
Missing	14		1	
<b>4) <u>Adult Convictions</u></b>				
No Priors	334	52.6%	212	53.0%
1-2 Priors	190	29.9%	128	32.0%
3-4 Priors	68	10.7%	40	10.0%
5+ Priors	43	6.8%	20	5.0%
Missing	61		31	

	<u>Current Policy</u>		<u>Recommendation</u>	
5) <u>Offense</u>				
Homicide	1	0.2%	2	0.5%
Robbery	1	0.2%	21	5.2%
Assault	0	0.0%	4	1.0%
Burglary	4	0.6%	1	0.2%
Larceny	46	7.2%	15	3.7%
Embezzlement	40	6.3%	4	1.0%
Tax	1	0.2%	0	0.0%
Fraud	116	18.3%	27	6.7%
Drug Dist.	202	31.8%	242	60.4%
Drug Poss.	7	1.1%	15	3.7%
Auto theft	10	1.6%	7	1.8%
Forgery	20	3.1%	10	2.5%
Sex	11	1.7%	0	0.0%
Bribery	2	0.3%	3	0.8%
Escape	9	1.4%	2	0.5%
Firearms	63	9.9%	18	4.5%
Immigration	39	6.1%	0	0.0%
Extortion	4	0.6%	9	2.2%
Gambling	12	1.9%	3	0.8%
Other	47	7.4%	17	4.2%
Missing		61		31

Table 8:

**OFFENDER CHARACTERISTICS**  
Criminal History Category I, II and III

Groups A, B, and C - All Offenders For Whom Alternatives Are Authorized

	<u>Current Policy</u> N = 3,752		<u>Recommendation</u> N = 4,833	
1) <u>Sex</u>				
Male	2,418	73.7%	3,294	77.0%
Female	865	26.3%	986	23.0%
Missing	469		553	
2) <u>Race</u>				
White	1,766	54.1%	2,284	53.6%
Black	809	24.8%	1,004	23.6%
Hispanic	579	17.7%	840	19.7%
Other	113	3.5%	135	3.2%
Missing	485		570	
3) <u>Age</u>				
17-20	205	5.9%	259	5.7%
21-25	662	19.1%	856	18.9%
26-30	709	20.5%	911	20.0%
31-40	1,062	30.6%	1,405	30.9%
41+	828	23.9%	1,112	24.5%
Missing	286		288	
4) <u>Adult Convictions</u>				
No Priors	2,094	63.8%	2,614	61.1%
1-2 Priors	835	25.4%	1,142	26.7%
3-4 Priors	210	6.4%	316	7.4%
5+ Priors	144	4.4%	208	4.9%
Missing	469		553	

	<u>Current Policy</u>		<u>Recommendation</u>	
5) <u>Offense</u>				
Homicide	4	0.1%	9	0.2%
Robbery	2	0.1%	27	0.6%
Assault	16	0.5%	23	0.5%
Burglary	12	0.4%	16	0.4%
Larceny	450	13.7%	492	11.5%
Embezzlement	342	10.4%	363	8.5%
Tax	22	0.7%	22	0.5%
Fraud	685	20.9%	798	18.6%
Drug Dist.	488	14.9%	1,006	23.5%
Drug Poss	164	5.0%	193	4.5%
Auto theft	34	1.0%	45	1.1%
Forgery	192	5.8%	231	5.4%
Sex	21	0.6%	49	1.1%
Bribery	27	0.8%	37	0.9%
Escape	18	0.5%	35	0.8%
Firearms	228	6.9%	284	6.6%
Immigration	291	8.8%	293	6.8%
Extortion	12	0.4%	22	0.5%
Gambling	45	1.4%	53	1.2%
Other	231	7.0%	282	6.6%
Missing	469		553	

## ATTACHMENT 4

### MAILED SURVEY RESULTS

1. ARE THERE ADEQUATE COMMUNITY RESOURCES IN YOUR JURISDICTION TO IMPLEMENT THE CURRENT ALTERNATIVES?

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	31%	57%	0%	3%	3%

2. DOES CURRENT POLICY APPROPRIATELY IDENTIFY THE OFFENDERS WHO SHOULD BE ELIGIBLE FOR THE FOLLOWING ALTERNATIVES TO IMPRISONMENT

INTERMITTENT CONFINEMENT

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	47%	40%	9%	4%	0%

COMMUNITY CONFINEMENT

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	48%	36%	11%	4%	0%

HOME DETENTION

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	40%	40%	10%	10%	0%

3. IS THE CURRENT 1 MO FOR 1 MO RATE OF EXCHANGE FOR THE CURRENT ALTERNATIVES APPROPRIATE FOR

INTERMITTENT CONFINEMENT

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	61%	11%	20%	8%	0%

COMMUNITY CONFINEMENT

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	62%	9%	13%	10%	0%

HOME DETENTION

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	55%	15%	22%	8%	0%

4. THE CURRENT PROVISION FOR A "SPLIT SENTENCE" ALLOWS AN INTERMEDIATE SANCTION TO SUBSTITUTE FOR NO MORE THAN ONE HALF OF THE MINIMUM IMPRISONMENT GUIDELINE. DO YOU THINK THIS IS APPROPRIATE?

	YES	NO	NO OPINION	NO ANSWER	YES/NO
<u>PERCENTAGE</u>	51%	28%	13%	8%	0%

4A. IF NO, THE PROPORTION OF THE MINIMUM GUIDELINE THAT COULD BE SATISFIED BY AN INTERMEDIATE SANCTION SHOULD BE

	INCREASED	DECREASED	NO ANSWER
<u>PERCENTAGE</u>	13%	6%	3%

	<u>YES</u>	<u>NO</u>	<u>NO OPINION</u>	<u>NO ANSWER</u>	<u>YES/NO</u>
5 SHOULD THE CURRENT RANGE OF ALTERNATIVES BE EXPANDED TO INCLUDE					
DAY FINES					
<u>Percentage</u>	24%	48%	21%	6%	1%
COMMUNITY SERVICE					
<u>Percentage</u>	62%	20%	15%	3%	0%
SHOCK INCARCERATION					
<u>Percentage</u>	53%	22%	19%	7%	0%
INTENSIVE SUPERVISION					
<u>Percentage</u>	36%	19%	20%	5%	0%
OTHER					
<u>Total</u>	13 Yes Responses, 159 No Responses				
<u>Percentage</u>	8%	92%			

TELEPHONE SURVEY RESULTS

1 ARE THERE ADEQUATE COMMUNITY RESOURCES IN YOUR JURISDICTION TO IMPLEMENT THE CURRENT ALTERNATIVES?

YES	NO	NO OPINION	YES/NO
23%	54%	10%	3%

2 DOES CURRENT POLICY APPROPRIATELY IDENTIFY OFFENDERS WHO SHOULD BE ELIGIBLE FOR ALTERNATIVES, OR SHOULD MORE OR FEWER BE ELIGIBLE?

OK AS IS	MORE	FEWER	NO OPINION
21%	79%		

3 DOES CURRENT POLICY APPROPRIATELY IDENTIFY OFFENDERS WHO SHOULD BE ELIGIBLE FOR THE FOLLOWING ALTERNATIVES, OR SHOULD MORE OFFENDERS OR FEWER OFFENDERS BE ELIGIBLE?

COMMUNITY CONFINEMENT

OK AS IS	MORE	FEWER	NO OPINION
21%	79%		

HOME DETENTION

OK AS IS	MORE	FEWER	NO OPINION
21%	79% (11% wanted more control, 7% wanted it used only for health reasons)		

4 CURRENT COMMISSION POLICY ALLOWS SUBSTITUTION OF ONE (1) MONTH OF INTERMITTENT CONFINEMENT, COMMUNITY CONFINEMENT, OR HOME DETENTION FOR ONE (1) MONTH OF IMPRISONMENT. IS THIS RATE OF EXCHANGE APPROPRIATE?

	YES	NO	NO OPINION
COMMUNITY CONFINEMENT	71%	18%	11%
INTERMITTENT CONFINEMENT	71%	18%	11%
HOME DETENTION	60%	29%	11%

5 THE CURRENT PROVISION FOR A "SPLIT SENTENCE" ALLOWS AN INTERMEDIATE SANCTION FOR NO MORE THAN ONE HALF OF THE MINIMUM IMPRISON GUIDELINE. DO YOU THINK THIS IS APPROPRIATE, SHOULD BE INCREASED OR DECREASED?

OK AS IS	INCREASE	DECREASE	NO OPINION
21%	26%	14%	39%

6 SHOULD THE CURRENT RANGE OF ALTERNATIVES BE EXPANDED TO INCLUDE:

	YES	NO	NO OPINION
DAY FINES	23%	69%	3%
COMMUNITY SERVICE	23%	25%	-
SHOCK INCARCERATION (Boot Camp)	6%	11%	7%
INTENSIVE SUPERVISION PROBATION	71%	25%	4%

**ATTACHMENT 5**  
**ALTERNATIVES TO IMPRISONMENT PROJECT**  
**SENTENCING OPTIONS**

The Alternatives to Imprisonment Project recommends an expansion of the sentencing options currently available by providing an array of intermediate punishments for the federal offender. Sanctions available range from imprisonment, to 24 hour incarceration in the community for a designated period of time, to regular probation.

The Sentencing Options are designed to accomplish all of the purposes of sentencing: deterrence, just punishment, incapacitation and rehabilitation. Additionally, all programs include components reflecting concern for the victim, the work ethic, and discipline.

The model provides the courts the opportunity to distinguish between offenders. There is agreement with the Congressional opinion expressed in the legislative history that while each of the four stated purposes should be considered in imposing a sentence, in a particular case one purpose may have more bearing than others on the sentence to be imposed. The model being recommended, therefore, will enhance public safety and the courts' flexibility because of the availability of programs with appropriate emphasis on one or another of the purposes of sentencing.<sup>1</sup>

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<sup>1</sup> For example, home detention with an electronically monitored curfew addresses the statutory purpose of incapacitation to a greater degree than home detention with a non-electronically monitored curfew. Intensive Supervision Probation is more incapacitative than regular probation and so forth.



Three components have been determined sufficient to encompass all the purposes of sentencing, victims' concerns and the work ethic: restrictions on movement in the community, financial and reparative responsibility, and risk reduction. Restrictions on mobility (through incapacitation), address punishment, deterrence and rehabilitation, but emphasize deterrence to a greater degree. Financial and reparative responsibility probably places greater emphasis on deterrence and punishment. Risk reducing programs, while addressing deterrence and incapacitation, emphasize rehabilitation to a greater degree.

To avoid unwarranted disparity, and to maintain the determinant sentencing system mandated by Congress, a system of equivalencies or exchange rates has been established between the various prison and non-prisons components of a sentence.

The recommendations presented here are, in our judgement, compatible with the current guideline structure. Additionally, it is consistent with the proposal that the courts retain the option of imposing some imprisonment for any offense.

These sentencing options are not mutually exclusive and, it is contemplated that where appropriate, they will be used in conjunction with each other. For example, a short period of the more restrictive residential incarceration option might be followed by a longer period of home detention. An ISP sentence might be followed by regular probation for an appropriate period of time, etc. Examples of possible sentencing scenarios are provided in Part II, Section III of the Report (pp. 63-72).

## SENTENCING OPTIONS

	<u>Ratio to Imprisonment</u>	<u>Maximum Program Length</u>	<u>Maximum Prison Equivalency</u>
<b>I. 24 HOUR COMMUNITY INCARCERATION</b>			
A. Residential Incarceration	15:1	12 months	8 months
B. Public Work Center	1:1	18 months	18 months
C. Drug/Alcohol/Gambling Treatment Center (In-Patient)	1:1	18 months	18 months
<b>II. INTERMITTENT COMMUNITY INCARCERATION</b>			
A. Jail ( Weekends )	1:1	6 months	6 months
B. Home Detention	2:1	24 months	12 months
C. Restitution Center	1:1	18 months	18 months
<b>III. COMMUNITY SUPERVISION - NON INCARCERATION</b>			
A. Intensive Supervision Probation	3:1	12 months	4 months
B. Regular Probation	Not used in lieu of Imprisonment.		
C. Public Service Work (Community Service)	12 hrs:1	1080 hours	3 months
<b>IV. NON-TRADITIONAL IMPRISONMENT</b>			
A. Regimented Discipline Unit (Shock Incarceration/Boot Camp)	6 month program satisfies 12 to 30 months of prison		
<b>V. RECOMMENDATIONS FOR FUTURE DEVELOPMENT AND IMPLEMENTATION</b>			
A. Detention Center	1:1	18 months	18 months

## I. SENTENCING OPTIONS FOR 24 HOUR COMMUNITY INCARCERATION

### A. RESIDENTIAL INCARCERATION

Residential incarceration is defined as a program of confinement and supervision that restricts the offender to his place of residence continuously and is enforced by an appropriate means of surveillance. When a sentence of residential incarceration is imposed the offender is required to be in his place of residence at all times except for worship services, medical care, or other emergencies. Electronic monitoring ordinarily should be used in connection with residential incarceration. However, alternative means of surveillance may be used so long as they are as effective as electronic monitoring.<sup>2</sup>

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<sup>2</sup> In imposing this option the Committee recommends the courts consider the suitability of the environment into which the offender shall be placed (e.g. to sentence similar offenders - one to a comfortable home, the other to a dilapidated one room flat - would render the same sentence more severe for some offenders).

## I. SENTENCING OPTIONS FOR 24 HOUR COMMUNITY INCARCERATION

### A. RESIDENTIAL INCARCERATION

#### Components\*

- ◆ **Restrictions on Movement in the Community**  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ **Financial and Reparative Responsibilities\*\***  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ **Risk Reducing Programs**  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

#### Elements

- ◆ Mobility in the Community limited to worship services, medical treatment and life threatening emergencies
- ◆ Electronic Monitoring.
- ◆ Drug Testing.
- ◆ Frequent Contacts (face to face and collateral).

- ◆ Supervision Fees.
- ◆ Restitution payments.
- ◆ Payment of Fines.
- ◆ Child Support/Familial Obligations.

- ◆ This option is designed to be primarily punitive. In some instances, as in the case of a young offender with AIDS, or an aged an infirm offender, participation in these programs would not be required.

\* Each of these components address all purposes of sentencing. However, in a particular case, one purpose may weigh more heavily on the sentence to be imposed. The sentencing purpose shown in bold print indicates the purpose being emphasized by that component.

\*\* The court may find that the offender has established that he is not able, and, even with the use of a reasonable payment schedule is not likely to become able to pay all or part of the financial obligation. This finding should not preclude the utilization by the court of this sentencing option.

## L. SENTENCING OPTIONS FOR 24 HOUR INCARCERATION

### B. PUBLIC SERVICE WORK CENTER

A sentence to a Public Work Center is a sentence to a minimum security prison facility with 24 hour a day supervision and accountability. All able bodied inmates are assigned to work crews and are taken into the community to perform public work projects (e.g. public building maintenance, park and roadside maintenance, clean up after storms, etc.). Inmates with physical limitations remain inside the facility and work in the kitchen, laundry, or facility maintenance.

Evening hours are dedicated to education and literacy classes, life skills training, substance abuse education and treatment, etc.

This proposed facility is also recommended to house week-end inmates who currently are housed in jail. These inmates would work an eight (8) hour day like any other inmate.

## I. SENTENCING OPTIONS FOR 24 HOUR COMMUNITY INCARCERATION

### B. PUBLIC WORK CENTER

#### Components

- ◆ Restrictions on Movement in the Community.
  - (Incapacitation)
  - (Rehabilitation)
  - (Deterrence)
  - (Punishment)

- ◆ Financial and Reparative Responsibilities\*
  - (Punishment)
  - (Deterrence)
  - (Incapacitation)
  - (Rehabilitation)

- ◆ Risk Reducing Programs
  - (Rehabilitation)
  - (Deterrence)
  - (Incapacitation)
  - (Punishment)

#### Elements

- ◆ 24 Hour Supervision.
- ◆ Random Drug Testing.
- ◆ Labor on Community Projects.

- ◆ Supervision Fees.
- ◆ Restitution Payments.
- ◆ Room/Board Fees.
- ◆ Child Support/Familial Obligations.
- ◆ Payment of Fines.

- ◆ Substance Abuse/Alcohol Treatment (Out-Patient).
- ◆ Life Skills Training.
- ◆ GED/Literacy Program.
- ◆ Counseling

\* The court may find that the offender has established that he is not able and, even with the use of a reasonable payment schedule, is not likely to become able to pay all or part of the financial obligation. This finding should not preclude the utilization by the courts of this sentencing option.

## **I. SENTENCING OPTIONS FOR 24 HOUR COMMUNITY INCARCERATION**

### **C. DRUG/ALCOHOL/GAMBLING TREATMENT CENTER (IN-PATIENT)**

A sentence to a Drug/Alcohol/Gambling Treatment Center, on an in-patient basis is a sentence to a secure treatment facility with 24 hour a day supervision and accountability.

It is envisioned that these centers will be particularly well suited to enforcing sobriety and providing intensive substance abuse treatment and behavior modification therapy. Like residential incarceration, or imposition to a public work center, a sentence to the option will require the offender to be present at the center 24 hours a day, everyday, with constant supervision.

## I. SENTENCING OPTIONS FOR 24 HOUR COMMUNITY INCARCERATION

### C. DRUG/ALCOHOL/GAMBLING TREATMENT CENTER (IN-PATIENT)

#### Components

#### Elements

- ◆ Restrictions on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ 24 hour Supervision, in-patient Status.
- ◆ Random Drug Testing.

- ◆ Financial and Reparative Responsibilities\*  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Restitution Payments.
- ◆ Medical Expenses.
- ◆ Child Support/Familial Obligations
- ◆ Supervision Fees.
- ◆ Payment of Fines.
- ◆ Room/Board Payment.

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Alcohol and drug and gambling treatment (In-Patient)
- ◆ Life-skills training.

\* The court may find that the offender has established that he is not able and, even with the use of a reasonable payment schedule, is not likely to become able to pay all or part of the financial obligation. This finding should not preclude the utilization by the courts of this sentencing option.



## **II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY CONFINEMENT**

### **A. JAIL (WEEK-ENDS)**

This sentencing option is defined as confinement in a prison or jail for periods of time (i.e. weekends) interrupted by periods of freedom in the community. The Advisory Committee recommends as a new program a Public Work Center. When this is developed, offenders should be assigned to these centers in order to perform public service work while serving week-end sentences.

## II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY INCARCERATION

### A. JAIL (WEEK-ENDS)

#### Components

- ◆ Restrictions on Movement  
in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Financial and Reparative  
Responsibilities  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

#### Elements

- ◆ Total confinement for entire  
intermittent weekend period.
- ◆ Random Drug Testing.
- ◆ Mandatory Employment.

- ◆ Restitution Payments.
- ◆ Payment of Fines.
- ◆ Supervision Fees.
- ◆ Child Support/Familial Obligations.
- ◆ Public Service Work.\*

- ◆ Drug, alcohol and/or gambling  
treatment (out-patient).
- ◆ GED/Literacy Programs.
- ◆ Vocational Program.
- ◆ Mental Health Treatment.

- \* Public service work must be in addition to full time employment.

## II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY INCARCERATION

### B. HOME DETENTION

Home detention is defined as a program of confinement and supervision that restricts the offender to his place of residence continuously, except for authorized absences, and is enforced by an appropriate means of surveillance. When a sentence of home detention is imposed the defendant is required to be in his place of residence at all times except for approved absences for gainful employment, community service, worship services, medical care, educational or training programs, and such other such activities as may be specifically authorized. Electronic monitoring ordinarily should be used in connection with home detention. However, alternative means of surveillance may be used so long as they are as effective as electronic monitoring.

## II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY INCARCERATION

### B. HOME DETENTION

#### Components

#### Elements

- ◆ Restrictions on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Electronic monitoring.
- ◆ Drug Testing.
- ◆ Only Authorized Absences Allowed\*
- ◆ Frequent Contacts (face to face and collateral).
- ◆ Mandatory Employment.

- ◆ Financial and Reparative Responsibilities  
(Punishment)  
(Deterrence)  
(Rehabilitation)  
(Punishment)

- ◆ Restitution Payments.
- ◆ Payment of Fines.
- ◆ Supervision Fees
- ◆ Child Support/Familial Obligations.
- ◆ Public Service Work\*\*

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Alcohol, Drug and Gambling treatment (Out-patient).
- ◆ GED/Literacy Program.
- ◆ Mental Health Treatment.

\* Offender must remain at home except for authorized absences which are primarily related to employment, medical needs public service work, and risk reducing programs.

\*\* Public service work must be in addition to full time employment.

## II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY INCARCERATION

### C. RESTITUTION CENTERS

Restitution centers are defined as community based facilities providing a strictly supervised living environment for non-violent offenders while they maintain employment, pay victim restitution and perform public service work. An offender sentenced to the restitution center returns to the center every night after work and turns his paycheck over to the staff at the restitution center who disburse various payments, including restitution payments which are sent to the Clerk of the court or appropriate entity for distribution.

While the offender resides at the restitution center, security personnel are on duty each shift to note the location and conduct of each resident each hour so as to ensure that proper conduct and compliance with the rules are maintained.

## II. SENTENCING OPTIONS FOR INTERMITTENT COMMUNITY INCARCERATION

### C. RESTITUTION CENTERS

#### Components

#### Elements

- ◆ Restrictions on Movement  
in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Mandatory Employment.
- ◆ Curfew.
- ◆ Random Drug Testing.

- ◆ Financial and Reparative  
Responsibilities  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Supervision Fees.
- ◆ Restitution Payments.
- ◆ Payment of Fines.
- ◆ Child Support/Familial Obligations.
- ◆ Room/Board Payments.
- ◆ Public Service Work.\*

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Substance Abuse/Gambling  
Treatment (Out-Patient).
- ◆ GED/Literacy Programs.
- ◆ Counseling.
- ◆ Vocational Training.
- ◆ Mental Health Treatment.

\* Public service work must be in addition to full time employment.

### **III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION**

#### **A. INTENSIVE SUPERVISION PROBATION**

Intensive supervision generally requires daily (or near daily) contact between the offender and the supervising officer. The supervising officer typically has a limited case load to allow greater attention to each offender. The vast majority of these contacts should be face to face but it is anticipated that probation officers may extend their effectiveness with the use of electronic monitoring, phone robots, code-a-phones, etc. Candidates are usually those considered too serious for standard probation, but not so serious that confinement is required. Intensive supervision generally involves more onerous or more intrusive conditions than standard probation (e.g. curfew, home detention, etc.).

### III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION

#### A. INTENSIVE SUPERVISION PROBATION

##### Components

##### Elements

- ◆ Restriction on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Curfew.
- ◆ Mandatory Drug Testing
- ◆ Frequent to Daily Contacts.
- ◆ Mandatory Employment.
- ◆ Extreme travel restrictions.
- ◆ Association restrictions.

- ◆ Financial and Reparative Responsibilities  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Restitution Payments.
- ◆ Payment of Fines.
- ◆ Public Service Work.\*
- ◆ Child Support/Familial Obligations.

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Substance Abuse/Gambling Treatment (out-patient).
- ◆ GED/Literacy Program.
- ◆ Vocational Training.
- ◆ Counseling.
- ◆ Mental Health Treatment.

\* Public service work must be in addition to full time employment.



### **III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION**

#### **B. REGULAR PROBATION<sup>3</sup>**

Regular probation is defined as the conditional release of an offender to the community. The offender will be supervised to enforce compliance with the conditions of his release, to reduce risk to the public, and to reintegrate the offender into a law-abiding lifestyle. " Probation is not a means by which a punitive sentence is suspended. It is a sentence that may have elements of punishment, incapacitation, deterrence, and correctional treatment. As a sanction in and of itself, it must be enforced as is a sentence to imprisonment."<sup>4</sup>

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<sup>3</sup> The Advisory committee chose not to recommend any changes to the standard terms of regular probation as defined in U.S.S.G. Sec. 5B1.(1), Sec. 5B1.(2), Sec. 5B1.(3), Sec. 5B1.(4).

<sup>4</sup> "Supervision Monograph", Administrative Office of the United States Courts, Probation Division, March 1990, pg.2.

### III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION

#### B. REGULAR PROBATION

##### Components

##### Elements

- ◆ Restrictions on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Frequent Contact.
- ◆ Random Drug Testing.
- ◆ Travel Restrictions.
- ◆ Association Restrictions.
- ◆ Financial Disclosure.
- ◆ Mandatory Employment.

- ◆ Financial and Reparative Responsibilities  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Restitution Payment.
- ◆ Payment of Fines.
- ◆ Supervision Fees.
- ◆ Public Service Work.\*

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

- ◆ Substance Abuse/Gambling treatment as needed (Out-Patient)
- ◆ GED/Literacy Programs.
- ◆ Vocational Training.
- ◆ Mental Health Treatment.

- \* Public service work must be in addition to full time employment.

### III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION

#### C. PUBLIC SERVICE WORK (COMMUNITY SERVICE)

Public Service Work requires offenders to work without pay for public and not-for-profit agencies. It should be noted that while currently, public service work in the federal system is viewed as merely a condition of probation and not in lieu of imprisonment. Under the Alternatives Project scheme the concept of public service work will be expanded (not unlike regular probation) to function as a sentence in and of itself. This sentencing option will hold offenders accountable for their actions through direct service to their communities. The program will promote the work ethic in the offender and perhaps most importantly, this sentencing option will allow offenders to live in the community and retain regular employment, so that he can provide family support and contribute as a tax payer.

### III. SENTENCING OPTIONS FOR COMMUNITY SUPERVISION - NON INCARCERATION

#### C. PUBLIC SERVICE WORK (COMMUNITY SERVICE)\*

##### Components

- ◆ Restrictions on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Financial and Reparative Responsibilities  
(Punishment)

- (Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

##### Elements

- ◆ Participant must adhere to public service schedule, thereby necessitating restrictions on travel, etc.
- ◆ Random Drug testing.
- ◆ Frequent Contacts.
- ◆ Mandatory Employment.

- ◆ Restitution Payments.
- ◆ Payment of Fines.
- ◆ Child Support/Familial Obligations.

- ◆ Substance Abuse/Gambling treatment as Needed.(Out-Patient).
- ◆ GED/Literacy Program.
- ◆ Vocational Training
- ◆ Mental Health Treatment

- \* Public service work must be in addition to full time employment.

#### **IV. SENTENCING OPTIONS FOR NON-TRADITIONAL IMPRISONMENT**

##### **A. FEDERAL REGIMENTED DISCIPLINE UNIT (SHOCK INCARCERATION/BOOT CAMP)**

Shock Incarceration, or Boot Camp, is defined as commitment to a para-military prison type facility which emphasizes discipline, structure and life skills training to assist the young offender in developing positive, responsible behavior. This program has a strong deterrence component since by giving the offender some idea of how unpleasant incarceration can be, the threat of a future prison sentence is made more credible and onerous. The experience of strict discipline (the first such experience for many of the offenders) will improve the offender's self-esteem, self-control and ability to cope with stressful situations in the community in a more productive fashion. Additionally, the various elements such as drug treatment, literacy classes, job seeking skills, etc., provided in this structured setting will also enhance the offender's chances of successful living in free society. The strong follow-up, recommended one year of Intensive Supervision Probation, is thought to be crucial for successful reintegration into society and to fully realize the benefits of the boot camp experience itself.

In summary, the concept for total programming recommended for the federal boot camp is that it be a six month judicially imposed sentence with the consent of the defendant and that the program emphasize a rigorous curriculum of hard work and discipline with

equal emphasis on rehabilitative activities to include reduced public safety risk (RPSR) programs. Most importantly, the program should emphasize high quality after-care in the form of intensive supervision probation for a period of one year.

Important studies are in process. The Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) has provided for fund in their Fiscal Year 1990 budget to develop the intermediate sanction program - Juvenile Boot Camp. Subsequently, evaluations will be conducted by the National Institute of Justice (NIJ).

Concerning adults, after establishing demonstration sites in New York and Texas, the Bureau of Justice Statistics (BJS) and NIJ are currently conducting assessments of the effectiveness of boot camps. Since these programs generally include a high percentage of offenders with substance abuse histories, this assessment will focus on this area.

In developing the federal program, it is advisable in addition to a careful review of existing programs to include the only nationally accredited shock incarceration program, RID in Oklahoma, and to consider the results of the National Institute of Justice evaluations described above. Hopefully, these evaluations will reveal program effectiveness information including curriculum, age and types of offenders.

Although general and workable components and elements have been developed, ongoing studies may necessitate revision. In that event, the components, elements and curriculum for the federal boot camp should be developed using the Advisory Committee's concept statement, results of reviews of current successful state programs, and the results of the NIJ evaluations.

## IV. SENTENCING OPTIONS FOR NON-TRADITIONAL IMPRISONMENT

### A. FEDERAL REGIMENTED DISCIPLINE UNIT (SHOCK INCARCERATION/BOOT CAMP)

#### Components

- ◆ Restrictions on Movement in the Community  
(Incapacitation)  
(Rehabilitation)  
(Deterrence)  
(Punishment)

- ◆ Financial and Reparative Responsibilities  
(Punishment)  
(Deterrence)  
(Incapacitation)  
(Rehabilitation)

- ◆ Risk Reducing Programs  
(Rehabilitation)  
(Deterrence)  
(Incapacitation)  
(Punishment)

#### Elements

- ◆ 24 Hour Confinement to Boot Camp facility.

- ◆ Forestry Conservation.
- ◆ Physical Labor on Approved Projects.
- ◆ Restitution Payment.
- ◆ Payment of Fines.
- ◆ Child Support/Familial Obligations<sup>5</sup>.

- ◆ Substance Abuse Treatment.
- ◆ Life Skills Counseling.
- ◆ Vocational Training.
- ◆ GED/Literacy Program.
- ◆ Counseling.

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<sup>5</sup> The period of Intensive supervision probation after completion of the program will enable the offender to find gainful employment and complete the risk reducing programs.

## **V. RECOMMENDATIONS FOR FUTURE DEVELOPMENT AND IMPLEMENTATION**

### **A. DETENTION CENTERS**

A Detention Center is described as a minimum security residential facility providing a strictly supervised living environment for the non-violent offender requiring a structured environment as punishment, as well as for incapacitation. The target population might consist of probation "technical" violators who under current conditions would be revoked and confined in valuable and scarce prison space. Those eligible would probably also include habitual traffic offenders who would currently serve prison time, as well as non-violent, first time offenders and repeat misdemeanants. The focus of activities will be work oriented. The daily activities of the offender will be directed towards the provision of non-paid labor to the local area of the center, being provided to the community by the detainees. The offenders are transported to a work site for the day and then returned to the facility for GED, literacy, drug and alcohol sessions, etc., and are locked down at night. Rehabilitative Programming will be limited to evening participation in those areas identified as needs specifically attendant to the offender's criminal behavior.



## V. RECOMMENDATIONS FOR FUTURE DEVELOPMENT AND IMPLEMENTATION

### A. DETENTION CENTERS

#### Components

#### Elements

- ◆ Restrictions on Movement in the Community
  - (Incapacitation)
  - (Rehabilitation)
  - (Deterrence)
  - (Punishment)

- ◆ 24 Hour Supervision in a Short-Term Minimum Security Confinement Facility.
- ◆ Random Drug Testing.
- ◆ Labor on Community Projects.

- ◆ Financial and Reparative Responsibilities\*
  - (Punishment)
  - (Deterrence)
  - (Incapacitation)
  - (Rehabilitation)

- ◆ Supervision Fees.
- ◆ Restitution Payments.
- ◆ Room/Board Fees.
- ◆ Child Support/Familial Obligations.
- ◆ Payment of Fines.

- ◆ Risk Reducing Programs
  - (Rehabilitation)
  - (Deterrence)
  - (Incapacitation)
  - (Punishment)

- ◆ Evening Substance Abuse treatment.
- ◆ GED/Literacy Programs
- ◆ Counseling

\* The court may find that the offender has established that he is not able and, even with the use of a reasonable payment schedule, is not likely to become able to pay all or part of the financial obligation. This finding should not preclude the utilization by the courts of this sentencing option.

## ATTACHMENT 6

### DISTRIBUTION OF INMATES AMONG BOP MAIN AND CONTRACT POPULATIONS

		<u>Percent of Main Facilities</u>	<u>Percent of Total BOP Population</u>
Total Main and Contract Population	65,736		100.0%
<b>MAIN FACILITIES</b>			
Total Main Facilities	59,141	100.0%	90.0%
Sentenced Prisoners	50,665	85.7%	77.1%
State Boarders	1,027	1.7%	1.6%
D.C. Superior Court	1,215	2.1%	1.8%
Sentenced Holdovers	969	1.6%	1.5%
All Other	47,454	80.2%	72.2%
Unsentenced Prisoners	8,476	14.3%	12.9%
INS Detainees	1,906	3.2%	2.9%
Material Witnesses	19	0.0%	0.0%
Pretrial	4,462	7.5%	6.8%
Unsentenced Holdovers	1,916	3.2%	2.9%
All Other	173	0.3%	0.3%
<b>CONTRACT FACILITIES</b>			
Total Contract	6,595	100.0%	10.0%
Community Corrections	3,908	59.3%	5.9%
Juvenile Contracts	109	1.7%	0.2%
D.C. Contracts	32	0.5%	0.0%
Jail Contracts	1,177	17.8%	1.6%
Long-Term Boarders	1,369	20.8%	2.1%

Date of Data: December 9, 1990

CITIZENSHIP BY SENTENCE IMPOSED FOR CCCA DRUG OFFENDERS

SENTENCE IMPOSED	CITIZENSHIP		TOTAL
	US CITIZEN	NON US CITIZEN	
LESS THAN 1 YEAR	221 (95.3%)	11 ( 4.7%)	232 ( 1.4%)
1 - 3 YEARS	2174 (77.1%)	646 (22.9%)	2820 ( 17.5%)
3 - 5 YEARS	1755 (66.1%)	899 (33.9%)	2654 ( 16.4%)
5 - 10 YEARS	3616 (61.6%)	2256 (38.4%)	5872 ( 36.3%)
10 - 15 YEARS	1742 (63.0%)	1025 (37.0%)	2767 ( 17.1%)
15 - 20 YEARS	566 (64.3%)	314 (35.7%)	880 ( 5.5%)
20 YEARS	635 (73.3%)	231 (26.7%)	866 ( 5.4%)
LIFE	52 (75.4%)	17 (24.6%)	69 ( 0.4%)
TOTAL	10761 (66.6%)	5399 (33.4%)	16160 (100.0%)

DATE OF DATA: December 9, 1990

STATISTICS ON FEDERAL INMATES

SENTENCED POPULATION 50665\* NEW LAW 23557 (46.5%) OLD LAW 27108 (53.5%)

	NEW LAW		OLD LAW		TOTAL	
<b>BY REGIONS</b>						
Mid-Atlantic	4170	(17.7%)	5066	(18.7%)	9236	(18.2%)
Northeast	2659	(11.3%)	3483	(12.9%)	6142	(12.1%)
Southeast	4027	(17.1%)	4463	(16.5%)	8490	(16.8%)
North Central	3331	(14.1%)	4516	(16.7%)	7847	(15.5%)
South Central	5628	(23.9%)	5007	(18.5%)	10635	(21.0%)
Western	3742	(15.9%)	4573	(16.9%)	8315	(16.4%)
<b>INMATE SECURITY LEVELS<sup>1</sup></b>						
1	11534	(49.0%)	10043	(37.1%)	21577	(42.6%)
2	3866	(16.4%)	3596	(13.3%)	7462	(14.7%)
3	3986	(16.9%)	4500	(16.6%)	8486	(16.6%)
4	3507	(14.9%)	6569	(24.2%)	10076	(19.9%)
5	540	(2.3%)	1811	(6.7%)	2351	(4.6%)
6	76	(0.3%)	521	(1.9%)	597	(1.2%)
Unassigned	48	(0.2%)	62	(0.3%)	116	(0.2%)
<b>BY GENDER</b>						
Male	21222	(90.1%)	25641	(94.6%)	46863	(92.5%)
Female	2335	(9.9%)	1467	(5.4%)	3802	(7.5%)
<b>BY RACE</b>						
White	15568	(66.1%)	17311	(63.9%)	32879	(64.9%)
Black	7457	(31.7%)	9046	(33.4%)	16503	(32.6%)
American Indian	352	(1.5%)	512	(1.9%)	870	(1.7%)
Asian	150	(0.6%)	233	(0.9%)	413	(0.8%)
<b>SPANISH</b>						
	6320	(26.8%)	4806	(17.7%)	11126	(22.0%)
<b>MARITAL STATUS**</b>						
Married	7092	(34.1%)	8668	(34.6%)	15766	(34.4%)
Single	7800	(37.5%)	8624	(34.4%)	16424	(35.8%)
Divorced	2964	(14.3%)	4246	(16.9%)	7210	(15.7%)
Common Law	1735	(8.3%)	1887	(7.5%)	3622	(7.9%)
Separated	1025	(4.9%)	1416	(5.7%)	2441	(5.3%)
Widowed	169	(0.8%)	236	(0.9%)	405	(0.9%)

Date of Data: December 9, 1990

Unless otherwise specified the N=50665

\* Because of missing data the N is lower.

This classification of inmates is based on an objective assessment of their propensity for involvement in serious rule infractions, especially violence and escape. A higher security level rating represents a greater risk of involvement in serious misconduct. The percentages in this table reflect the proportion of inmates in each security level group.

	NEW LAW		OLD LAW		TOTAL	
<b>CITIZENSHIP</b>						
United States	17162	(72.9%)	23075	(85.1%)	40237	(79.4%)
Columbia	1360	(5.8%)	1054	(3.9%)	2414	(4.8%)
Mexico	1799	(7.6%)	614	(2.3%)	2413	(4.8%)
Cuba	518	(2.2%)	708	(2.6%)	1226	(2.4%)
Other	2121	(9.0%)	1333	(4.9%)	3454	(6.8%)
Unknown	597	(2.5%)	324	(1.2%)	921	(1.8%)

**TYPE OF OFFENSES\*\***

Drug	16160	(68.6%)	9631	(38.3%)	25791	(53.0%)
Robbery	1725	(7.3%)	4256	(16.9%)	5981	(12.3%)
Fraud	957	(4.1%)	1662	(6.6%)	2619	(5.4%)
Larceny	517	(2.2%)	988	(3.9%)	1505	(3.1%)
State, Govt Res	459	(2.0%)	1859	(7.4%)	2318	(4.8%)
DC	4	(0.0%)	1591	(6.3%)	1595	(3.3%)
Firearms Laws	1325	(5.6%)	909	(3.6%)	2234	(4.6%)
INS	285	(1.2%)	96	(0.4%)	381	(0.8%)
Racketeering	385	(1.6%)	875	(3.5%)	1260	(2.6%)
Forgery	81	(0.3%)	261	(1.0%)	342	(0.7%)
ISB	50	(0.2%)	320	(1.3%)	370	(0.8%)
Counterfeiting	197	(0.8%)	179	(0.7%)	376	(0.8%)
Explosives/EXT	122	(0.5%)	248	(1.0%)	370	(0.8%)
Kidnapping	71	(0.3%)	374	(1.5%)	445	(0.9%)
Seizement	153	(0.7%)	144	(0.6%)	297	(0.6%)
Other	1066	(4.5%)	1735	(6.9%)	2801	(5.8%)

**NUMBER OF PRIOR ARRESTS**

	NEW LAW (N=20765)		OLD LAW (N=25045)	
0 Priors	7162	(34.5%)	4375	(17.5%)
1 Prior	3243	(15.6%)	2583	(10.3%)
2 Priors	2236	(10.8%)	2172	(8.7%)
3 Priors	1716	(8.3%)	1838	(7.3%)
4 Priors	1282	(6.2%)	1623	(6.5%)
5 or More Priors	5126	(24.7%)	12454	(49.7%)

**NUMBER OF PRIOR CONVICTIONS**

	NEW LAW (N=20739)		OLD LAW (N=25010)	
0 Priors	8549	(41.2%)	5964	(23.9%)
1 Prior	3437	(16.6%)	3487	(13.9%)
2 Priors	2212	(10.7%)	2788	(11.1%)
3 Priors	1644	(7.9%)	2241	(9.0%)
4 Priors	1144	(5.5%)	1788	(7.1%)
5 or More Priors	3753	(18.1%)	8722	(34.9%)

**NUMBER OF PRIOR COMMITMENTS**

	NEW LAW (N=20702)		OLD LAW (N=24978)	
0 Priors	13162	(63.6%)	10831	(43.4%)
1 Prior	2944	(14.2%)	4202	(16.8%)
2 Priors	1508	(7.3%)	2781	(11.1%)
3 Priors	961	(4.6%)	1925	(7.7%)
4 Priors	659	(3.2%)	1485	(5.9%)
5 or More Priors	1468	(7.1%)	3754	(15.0%)

AVERAGE AGE OF POPULATION NEW LAW (N=23551) = 35 OLD LAW (N=27105) = 40  
 AVERAGE AGE AT FIRST ARREST NEW LAW (N=20285) = 26 OLD LAW (N=24705) = 24  
 AVERAGE AGE AT FIRST COMMITMENT NEW LAW (N=19568) = 29 OLD LAW (N=23997) = 27

	NEW LAW		OLD LAW		TOTAL	
<b>TYPE OF COMMITMENTS</b>						
U.S. Code	23099	(98.1%)	18246	(67.3%)	41345	(81.6%)
Parole/Rel Viol	168	( 0.7%)	2924	(10.8%)	3092	( 6.1%)
DC Superior Court	0	( 0.0%)	1215	( 4.5%)	1215	( 2.4%)
Probation Viol	266	( 1.1%)	1334	( 4.9%)	1600	( 3.2%)
State, Terr, Con	0	( 0.0%)	1027	( 3.8%)	1027	( 2.0%)
Other	24	( 0.1%)	2362	( 8.7%)	2386	( 4.7%)
<b>SENTENCES IMPOSED**</b>						
Less than 1 Year	539	( 4.0%)	381	( 1.5%)	1320	( 2.7%)
1-2 Years	5494	(23.3%)	1245	( 5.0%)	6739	(13.8%)
3-4 Years	4074	(17.3%)	2240	( 8.9%)	6314	(13.0%)
5-10 Years	7372	(31.3%)	6768	(26.9%)	14140	(29.1%)
11-15 Years	3183	(13.5%)	5178	(20.6%)	8361	(17.2%)
16-20 Years	1225	( 5.2%)	3354	(13.4%)	4579	( 9.4%)
21-25 Years	1162	( 4.9%)	4788	(19.1%)	5950	(12.2%)
Over 25 Years	107	( 0.5%)	1171	( 4.7%)	1278	( 2.6%)
<b>AGE*</b>						
Less than 25	3584	(15.2%)	1075	( 4.0%)	4659	( 9.2%)
25 - 29	4976	(21.1%)	3417	(12.6%)	8393	(16.6%)
30 - 34	4833	(20.5%)	5144	(19.0%)	9977	(19.7%)
35 - 39	3866	(16.4%)	5494	(20.3%)	9360	(18.5%)
40 - 44	2745	(11.7%)	4897	(18.1%)	7642	(15.1%)
45 - 49	1599	( 6.8%)	3036	(11.2%)	4635	( 9.2%)
50 - 54	935	( 4.0%)	1904	( 7.0%)	2839	( 5.6%)
55 - 59	556	( 2.4%)	1099	( 4.1%)	1655	( 3.3%)
Over 60	457	( 1.9%)	1039	( 3.8%)	1496	( 3.0%)

POPULATION REPORT

12-06-1990  
01:28:36

	CURRENT POPULATION	RATED CAPACITY	& OVER/UNDER
ALDERSON, WV	772	590	31
ALLENWOOD, PA	830	535	55
ASHLAND, KY	1272	516	147
ATLANTA, GA	1303	553	136
ATLANTA CAMP	506	244	107
BASTROP, TX	817	472	73
BIG SPRING, TX	819	746	10
BORON, CA	510	316	61
BRYAN, TX	238	210	13
BUTNER, NC	802	427	88
CHICAGO, IL	650	363	79
DANBURY, CT	978	512	91
DANBURY CAMP	159	101	57
DULUTH, MN	716	699	2
EGLIN, FL	781	480	63
EL PASO, TX	199	93	114
EL RENO, OK	1670	852	96
EL RENO CAMP	226	144	57
ENGLEWOOD, CO	913	455	101
ENGLEWOOD CAMP	83	40	108
FAIRTON, NJ	509	496	3
FORT WORTH, TX	1123	657	71
HARTFORD, CT	52	0	0
HUNTSVILLE, AL	146	73	100
JESUP, GA	887	496	79
JESUP CAMP	273	256	7
LA TUNA, TX	938	493	90
LA TUNA CAMP	285	164	74
LEAVENWORTH, KS	1559	712	119
LEAVENWORTH CAMP	404	276	46
LEWISBURG, PA	1261	976	29
LEXINGTON, KY	1513	1275	19
LOMPOC, CA	1623	1134	43
LOMPOC CAMP, CA	722	464	56
LORETTO, PA	500	273	83
LOS ANGELES, CA	899	544	65
MARIANNA, FL	1184	562	111
MARIANNA CAMP	267	148	80
MARION, IL	356	435	-18
MARION CAMP	266	255	4
MCKEAN, PA	917	500	83
MCKEAN CAMP	251	148	70
MEMPHIS, TN	1160	554	109
MIAMI, FL	1233	424	191
MILAN, MI	1490	732	104
MILLINGTON, TN	274	111	147
MONTGOMERY, AL	721	480	50
MORGANTOWN, WV	801	358	124
MORRIS, NV	126	84	50
MORRIS CAMP	860	473	82
OAKDALE, LA	1027	656	57
OAKDALE II, LA	291	118	147
OTISVILLE, NY	885	438	102
OXFORD, WI	868	560	55
OXFORD CAMP	115	104	11

POPULATION REPORT

12-06-1990  
01:28:36

	CURRENT POPULATION	RATED CAPACITY	± OVER/UNDER
PETERSBURG, VA	919	551	67
PETERSBURG CAMP	242	150	61
PHOENIX, AZ	1098	518	112
PHOENIX CAMP	178	136	31
PLEASANTON, CA	892	440	103
PLEASANTON CAMP	83	80	4
RAY BROOK, NY	1018	510	100
ROCHESTER, MN	789	513	54
SAFFORD, AZ	397	221	80
SAN DIEGO, CA	952	546	74
SANDSTONE, MN	864	510	69
SEAGOVILLE, TX	924	438	111
SEYMOUR JOHNSON, NC	147	153	-4
SHERIDAN, OR	1061	504	111
SHERIDAN CAMP	444	256	73
SPRINGFIELD, MO	951	1027	-7
TALLADEGA, AL	950	484	96
TALLADEGA CAMP	169	148	14
TALLAHASSEE, FL	1243	594	109
TERMINAL ISLAND, CA	1083	532	104
TERRE HAUTE, IN	1636	725	126
TERRE HAUTE CAMP	263	194	36
TEXARKANA, TX	1060	502	111
TEXARKANA CAMP	245	144	70
THE RIVERS, TX	104	232	-55
TUCSON, AZ	712	306	133
TYNDALL, FL	116	60	93
YANKTON, SD	494	397	24
BUREAU OF PRISONS	59352	34843	70

CCC'S	3925
LONG-TERM BOARDERS	1414
JAIL/DETENTION CTRS	1177
CONTRACT JUVENILES	107
CONTRACT FACILITIES	6623



ATTACHMENT 7

UNITED STATES SENTENCING COMMISSION  
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Bernard F. Barr (Executive Office)  
Paul J. MacDonnell (Office)



MEMORANDUM

TO: Helen G. Corrothers  
Commissioner and Project Director

FROM: Jim Beck *JB*

DATE: August 28, 1990

SUBJECT: Case Reviews

I recently reviewed a random sample of 114 cases sentenced under the guidelines in September and October of 1989. This sample represents a three percent random sample of approximately 3,800 guideline cases sentenced during this time frame. At the time cases were selected, this was the most recent time frame for which complete information was available.

Each of the 114 cases reviewed has been briefly summarized (see attached). Where feasible, the probation officer was contacted where there was missing information in the files. A sample size of around 100 cases was selected because it was large enough to be fairly representative but small enough to allow a reasonably detailed summary of each case. In essence, the reviews condense the 3,000 to 4,000 pages contained in the 114 files down to 50 pages. Although still lengthy, 50 pages is hopefully short enough to be read and reviewed in a convenient amount of time.

The guidelines in effect for the cases reviewed were the guidelines effective October 15, 1988. These are the guidelines described in the case summaries. If the guidelines were significantly modified subsequent to the sentencing of these cases, the change was noted.

It should be emphasized that these 114 cases were not selected because they were "problem" cases or because they were particularly complicated. Rather, they are typical of the types of cases sentenced every day in federal court.

Also attached is a table summarizing the guideline information for each case, the sentence imposed, and a brief notation of the reason for departure if applicable.

I hope this information will be of value to the Advisory Committee in describing the types of cases that fall within particular guideline ranges.

Enclosure

## Case Summaries

### CHAPTER TWO, PART A - OFFENSES AGAINST THE PERSON

#### §2A1.1. First Degree Murder

##### • Case #1 (24114)

Offense. The offender and a codefendant abducted an 82 year old man. Both men shot and killed the victim and then stole his vehicle.

Guideline calculations. The offender pleaded guilty to aiding and abetting murder (18 U.S.C. §1111). Based upon the murder, the base offense level was calculated as level 43. There was a two level increase because of a vulnerable victim (§3A1.1) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 43.

Sentence. The guideline range was life (criminal history category I) and the defendant was sentenced to life with five years supervised release. The fine was waived.

Reasons. Not applicable.

#### §2A2.2. Aggravated Assault

##### • Case #2 (21310)

Offense. The offender beat and then raped his daughter. The victim was struck repeatedly with a belt and suffered a broken tooth and severe bruises.

Guideline calculations. The offender pleaded guilty to assault resulting in serious bodily injury (18 U.S.C. § 113(f)) and assault with a dangerous weapon (18 U.S.C. § 113(c)). Based upon the aggravated assault, the base offense level was calculated as level 15. There was a four level increase for serious bodily injury (§2A2.2(e)(3)(E)), a four level increase for use of a dangerous weapon (i.e., a belt and buckle) (§2A2.2(b)(2)(B)), a two level increase for a vulnerable victim (i.e., the victim was 14 years old) (§3A1.1), and a two level increase for role in the offense because of the violation of parental trust (§3B1.3) resulting in a total offense level of 27. Acceptance of responsibility was not allowed because the offender admitted beating his daughter but rationalized his criminal conduct by blaming his daughter's behavior which instigated his conduct.

Sentence. The guideline range was 70-87 months (criminal history category I) and the defendant was sentenced to 52 months with three years supervised release. The fine was waived.

Reasons: Not documented.

CHAPTER TWO, PART B - OFFENSE INVOLVING PROPERTY

§2B1.1 Larceny, Embezzlement, and Other Forms of Theft

• Case #3 (23691)

Offense. The offender shoplifted merchandise worth approximately \$250 from a store on a military base.

Guideline calculations. The offender pleaded guilty to theft of government property (18 U.S.C. § 641). Based upon the theft, the base offense level was calculated as level 4. There was a one level increase based upon the value of the stolen property (§2E1.1(b)(1)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 3.

Sentence. The guideline range was 0-3 months (criminal history category I) and the defendant was sentenced to one month in prison with one year of supervised release. In addition, the offender was required to reside in a drug treatment facility as a condition of supervised release until discharged by the facility director. The court did not view this as a guideline departure. The fine was waived.

Reasons. Not applicable.

• Case #4 (27622)

Offense. The offender worked as a postal clerk and embezzled over \$3,000 from a cash drawer in small amounts over a one year period.

Guideline calculations. The offender pleaded guilty to theft of the U.S. Postal Service (18 U.S.C. § 641). Based upon the theft, the base offense level was calculated as level 4. There was a three level increase based upon the loss (§2B1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 5. There was no adjustment for more than minimal planning (§2B1.1(b)(3)) because of the court's "previous rulings."

Sentence: The guideline range was 0-5 months (criminal history category I) and the offender was sentenced to three years probation and ordered to pay \$3,170 in restitution. The fine was waived but the offender was ordered to perform 100 hours of community service.

Reasons. Not applicable.

• Case #5 (24456)

Offense. The defendant worked as a postal clerk and embezzled approximately \$150 over a period of a few months.

Guideline calculations. The defendant was found guilty after trial of embezzlement (18 U.S.C. § 643). Based upon the theft, the base offense level was calculated as level 4. There was a one level increase based upon the loss (§2B1.1(b)(1)) and a two level increase for more than minimal planning (§2B1.1(b)(3)) because the defendant attempted to conceal the offense by not recording cash transactions as required resulting in a total offense level of 7.

Sentence. The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to three years probation with one month community confinement. The defendant was also ordered to pay \$153 restitution and a \$500 fine.

Reasons. Not applicable.

• Case #6 (22084)

Offense. The defendant stole a bus while intoxicated and crashed it resulting in approximately \$2,300 damage. The bus was valued at \$24,000.

Guideline calculations. The defendant pleaded guilty to larceny (18 U.S.C. § 661). Based upon the theft, the base offense level was calculated as level 4. There was a six level increase based upon the value of the stolen bus (about \$24,000) (§2B1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 8.

Sentence. The guideline range was 2-8 months (criminal history category I) and the defendant was sentenced to five years probation with two months community confinement. The fine was waived but the defendant was ordered to pay \$2,335 in restitution.

Reasons. Not applicable.

• Case #7 (25042)

Offense. The defendant worked as an "operations support clerk" in a bank and embezzled \$16,762 in several thefts over a six month period.

Guideline calculations. The defendant pleaded guilty to bank embezzlement (18 U.S.C. § 656). Based upon the theft, the base offense level was calculated as level 4. There was a five level increase based upon the loss (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.1(b)(4)), and two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 9.

Sentence. The guideline range was 4-10 months (criminal history category I) and the defendant was sentenced to five years probation with three months home detention. The fine was waived but the defendant was ordered to perform 200 hours of community service and to pay \$5,000 restitution.

Reasons. The court departed below the guidelines because the defendant had no prior record, was under the influence of her boyfriend (who was not charged with any offense), and because of "5K2.13."

• Case #8 (20689)

Offense. The defendant worked as a bank teller and embezzled \$6,977 in several thefts over a two month period.

Guideline calculations. The defendant pleaded guilty to embezzlement (18 U.S.C. § 657). Based upon the theft, the base offense level was calculated as level 4. There was a four level increase based upon the loss (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.1(b)(4)), and two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 8.

Sentence. The guideline range was 6-12 months (criminal history category III) and the defendant was sentenced to five years probation. The fine was waived but the defendant was ordered to perform 300 hours of community service and to pay \$6,977 restitution.

Reasons. The court departed below the guidelines because the defendant cooperated with investigators reviewing the books and because the "defendant shows remorse."

• Case #9 (26244)

Offense. The defendant was the "supervisor of the Accounting Department" in a bank and embezzled \$81,168 in several thefts over a three month period. The defendant repaid all the money after being confronted by bank auditors.

Guideline calculations. The defendant pleaded guilty to bank embezzlement (18 U.S.C. § 656). Based upon the theft, the base offense level was calculated as level 4. According to the presentence report, there should be a seven level increase based upon the amount of the theft (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.1(b)(4)), a two level increase because the defendant was a "manager" (§3B1.1(c)) [§3B1.3 - abuse of trust - appears to be the appropriate adjustment], and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total estimated offense level of 13. For reasons that were

not clear on the record, however, the court established a total offense level of 10.

Sentence. The guideline range was 6-12 months (criminal history category I) and the defendant was sentenced directly to one month community confinement with three years supervised release to follow. The defendant was also fined \$14,000.

Reasons. The court departed below the guidelines because the defendant "made full restitution before the institution of any criminal action."

• Case #10 (23190)

Offense. The offender served as the president of a bank and embezzled several million dollars between 1984 and 1988. It was determined that approximately \$290,000 was stolen by the defendant since 11/1/87.

Guideline calculations. The defendant pleaded guilty to misapplication of bank funds (18 U.S.C. § 656). Based upon the theft, the base offense level was calculated as level 4. There was a nine level increase based upon the \$290,000 loss (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.1(b)(4)(B)), a two level increase for abuse of a position of trust (§3E1.3), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 15.

Sentence. The guideline range was 18-24 months (criminal history category I) and the defendant was sentenced to 20 months with no supervised release. The fine was waived. The defendant was also sentenced to a 60 month concurrent parolable term for behavior committed prior to 11/1/87 and ordered to pay \$5,276,332 restitution.

Reasons. Not applicable.

• Case #11 (20601)

Offense. The defendant and two other individuals never identified drugged a truck driver in a tavern by putting "knock-out" pills in the driver's beer. The defendant stole the truck, removed 353 cases of cigarettes, and burned the truck. The cigarettes were valued at \$125,000 and the truck was valued at \$40,000.

Guideline calculations. The defendant pleaded guilty to theft from interstate shipment (18 U.S.C. § 659). Based upon the theft, the base offense level was calculated as level 4. There was an eight level increase based upon the loss (§2B1.1(b)(1)), a two level increase because the theft was from the person of another (§2B1.1(b)(3)), a two level increase for more than minimal planning

(§2B1.1(b)(4)), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 14.

Sentence. The guideline range was 37-46 months (criminal history category VI) and the defendant was sentenced to 41 months with three years supervised release. The fine was waived and no restitution was ordered.

Reasons. Not applicable.

#### §2B1.2 Receiving Stolen Property

- Case #12 (22128)

Offense. The defendant was part of a "loosely organized criminal operation" that used fake identification cards to cash stolen checks. The defendant was identified as "least culpable" and was recruited by others to cash four stolen checks worth \$4,373.

Guideline calculations. The defendant pleaded guilty to one count (one check worth \$528) of receipt of stolen mail (18 U.S.C. § 1708). Based upon the receipt of stolen property, the base offense level was calculated as level 4. There was a two level increase based upon the loss of \$4,373 (§2B1.1(b)(1)), a two level increase for more than minimal planning (§2B1.2(b)(3)(B)), and the offense level was increased to level 14 for an organized criminal activity (§2E1.2(4)). There was a two level decrease for minor role (§3E1.2(b)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence. The guideline range was 8-14 months (criminal history category II) and the defendant was sentenced to 8 months with three years supervised release. The fine was waived but the offender was ordered to pay \$528 restitution for the single check involved in the count of conviction.

Reasons. Not applicable.

#### §2B2.3 Trespass

- Case #13 (22095)

Offense. The defendant entered a nuclear test site to protest against nuclear arms.

Guideline calculations. The defendant was convicted by trial of trespass (42 U.S.C. § 227Ba). Based upon the trespass, the base offense level was calculated as level 4. There was a two level increase because the offense occurred in a secure government facility (§2B2.3(b)(1)). Although the defendant went to trial and expressed no "remorse", he was given credit for acceptance of



responsibility for admitting the offense and being cooperative (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to one year probation and ordered to perform 100 hours of community service. The fine was waived.

Reasons. Not applicable.

§2B3.1. Robbery

• Case #14 (22504)

Offense. The defendant robbed a bank of approximately \$2,500 of which approximately \$1,500 was recovered. No reference was made to the presence or absence of a weapon.

Guideline calculations. The defendant pleaded guilty to bank robbery (18 U.S.C. § 2113(a)). Based upon the robbery, the base offense level was calculated as level 18. There was a one level increase because the robbery involved a financial institution (§2B3.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 17. Under guidelines now in effect, robbery has a base offense level of 20 with a two level increase for robbery of a financial institution.

Sentence. The guideline range was 24-30 months (criminal history category I) and the defendant was sentenced to 30 months with 3 years supervised release. The fine was waived but the offender was ordered to pay \$1,084 restitution.

Reasons. Not applicable.

• Case #15 (21512)

Offense. The offender robbed two banks of a total of \$3,190. The offender admitted to being armed.

Guideline calculations. The offender pleaded guilty to one count of bank robbery (18 U.S.C. § 2113(a)). The guideline calculations were based on two bank robberies because the second robbery was stipulated to pursuant to a plea agreement. The base offense level for bank robbery was level 18 with a one level increase for robbery of a financial institution (§2B3.1(b)(1)). The combined offense level for both robberies (each offense level 19) was offense level 21 (§3D1.4). There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 19. Although the offender admitted to being armed, there was no adjustment for possession of a firearm because there was "no physical evidence to substantiate the claim." Under guidelines now

in effect, robbery has a base offense level of 20 with a two level increase for robbery of a financial institution.

Sentence. The guideline range was 33-41 months (criminal history category II) and the offender was sentenced to 33 months with three years supervised release. The fine was waived but the offender was ordered to pay \$3,190 restitution.

Reasons. Not applicable.

• Case #16 (21009)

Offense. The offender robbed three banks of \$10,073, \$9,240, and \$803. The offender used a toy gun in one robbery but was otherwise unarmed.

Guideline calculations. The offender pleaded guilty to three counts of unarmed bank robbery (18 U.S.C. § 2113(a)). The base offense level for the first count of robbery was level 18 with a two level increase based upon the loss to the bank of over \$10,000 (§2B3.1(b)(1)). The base offense levels for the second and third counts of robbery were level 18 with a one level increase for robbery of a financial institution (§2B3.1(b)(1)). The combined offense level for all three robberies (offense level 20, offense level 19, and offense level 19) was offense level 23 (§3D1.3). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 21. Under guidelines now in effect, robbery has a base offense level of 20 with a two level increase for robbery of a financial institution.

Sentence. The guideline range was 41-51 months (criminal history category II) and the offender was sentenced to 46 months with three years supervised release. The fine was waived and no restitution was ordered.

Reasons. Not applicable.

§2B5.1 Offenses Involving Counterfeit Obligations of the United States

• Case #17 (27806)

Offense. The offender passed approximately \$400 in counterfeit money.

Guideline calculations. The offender pleaded guilty to passing a counterfeit obligation (18 U.S.C. § 472). Based upon the possession of counterfeit money, the base offense level was calculated as level 9. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 7.

Sentence. The guideline range was 2-8 months (criminal history category II) and sentenced to three years probation. The fine was waived but the defendant was ordered to pay \$400 restitution.

Reasons. Although the sentence appears to be a departure below the guidelines, the court stated that there was "no reason to depart" and the departure may have been unintentional.

#### CHAPTER TWO, PART D - OFFENSES INVOLVING DRUGS

##### §2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking

- Case #18 (20911)

Offense. The offender sold marijuana totaling 83 grams on three occasions to fellow postal employees.

Guideline calculations. The offender pleaded guilty to distribution of marijuana (21 U.S.C. § 841(a)(1)). Based upon the distribution of marijuana, the base offense level was calculated as level 6. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to 18 months probation. The offender was also ordered to pay a \$250 fine and restitution of \$260.

Reasons. Not applicable.

- Case #19 (23464)

Offense. The offender sold approximately 10 grams of cocaine to an informant.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the distribution of cocaine, the base offense level was calculated as level 12. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence. The guideline range was 6-12 months (criminal history category I) and the offender was sentenced to five years probation with six months community confinement. The fine was waived.

Reasons. Not applicable.

- Case #20 (21339)

Offense. The offender sold a small amount of base cocaine to an undercover agent for \$20.

Guideline calculations. The offender pleaded guilty to distribution of a controlled substance (21 U.S.C. § 841(a)(1)). Based upon the distribution of base cocaine, the base offense level was calculated as level 12. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence. The guideline range was 6-12 months (criminal history category I) and the offender was sentenced to 12 months with three years supervised release. The offender was fined \$500 and ordered to perform 300 hours of community service.

Reasons. Not applicable.

• Case #21 (21665)

Offense. The offender and two others sold 54 grams of heroin to undercover agents. Although the offender was present at the sale, he was identified as less culpable than the other two and functioned as an intermediary.

Guideline calculations. The offender pleaded guilty to aiding and abetting the distribution of heroin (21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2). Based upon the distribution of heroin, the base offense level was calculated as level 20. There was a two level decrease for role in the offense because to offender was a "minor" participant (§3E1.2) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence. The guideline range was 21-27 months (criminal history category I) and sentenced to 21 months. The fine was waived.

Reasons. Not applicable.

• Case #22 (21229)

Offense. The offender was arrested at the border walking away from a vehicle. A search of the vehicle uncovered approximately 30 kilograms of marijuana. The offender gave a false name at arrest and later asked an individual not involved in the offense to lie to police to help the offender avoid prosecution. This individual at first provided false information to police to the effect that other individuals had used the vehicle but later told the truth.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1) and 841(b)(1)(D)). Based upon the attempt to import and distribute marijuana, the base offense level was calculated as level 15. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16. The offender

admitted the offense but also claimed that he had changed his mind and was arrested in the act of disposing of the marijuana.

Sentence. The guideline range was 21-27 months (criminal history category I) and the offender was sentenced to 10 months with three years supervised release. The fine was waived.

Reasons. The court departed below the guidelines because the plea agreement stipulated a 10 month maximum sentence.

• Case #23 (23620)

Offense. The offender and a codefendant were stopped while attempting to smuggle 56 kilograms of marijuana into the United States. The offender "appeared" to be a "mule" but there was no information concerning either the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1)). Based upon the attempt to import marijuana, the base offense level was calculated as level 20. There was a two level decrease for being a minor participant based upon circumstantial evidence that the offender was a courier (§3B1.2) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence. The guideline range was 21-27 months (criminal history category I) and the offender was sentenced to 24 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #24 (21153)

Offense. On six separate occasions, the offender sold small amounts of cocaine base (totalling approximately one gram) to undercover agents. One sale of .11 grams occurred within 1,000 feet of a school. The offender also sold USDA food coupons to an undercover agent for \$245.

Guideline calculations. The offender pleaded guilty to distribution of cocaine within 1,000 feet of a school (21 U.S.C. § 841(a)(1)) and unlawfully acquiring food coupons (7 U.S.C. § 2024(b)). Based upon the sale of cocaine base, the base offense level was calculated as level 18. In arriving at the base offense level, the .11 grams of cocaine base sold near the school was doubled and added to the other amounts. Based upon the sale of the food coupons, the base offense level for this offense was calculated as level 6 (§2F1.1). Applying the multiple count procedures (Chapter Three, Part D), the combined adjusted offense level remains level 18. There was a two level reduction for

acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence. The guideline range was 21-27 months (criminal history category I) and the offender was sentenced to 21 months with six years supervised release. The offender was fined \$2,000 and ordered to pay \$245 restitution.

Reasons. Not applicable.

• Case #25 (21730)

Offense. The offender sold .91 grams of cocaine base and 12.6 grams of cocaine to an informant.

Guideline calculations. The offender pleaded guilty to the distribution of cocaine (21 U.S.C. § 841(a)(1)). Based upon the sale of the equivalent of approximately 104 grams of cocaine, the base offense level was calculated as level 18. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence. The guideline range was 24-30 months (criminal history category II) and the defendant was sentenced to 24 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #26 (24829)

Offense. On three occasions, the offender sold 70 grams of cocaine and 1.59 grams of heroin to an undercover agent and was later in possession of 6 grams of heroin when arrested. The offender was identified as the leader of a small operation including himself and two others.

Guideline calculations. The offender pleaded guilty to distribution of cocaine and heroin (21 U.S.C. § 841(a)(1)). Based upon the total amount of heroin and cocaine distributed and possessed (for distribution), the base offense level was calculated as level 18. The court, however, reduced the base offense level to 17. The reason for the change was not clear in the record, but it appears that the court did not include the heroin in possession at the time of arrest. There was a two level increase for role in the offense (§3B1.1(c)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 17.

Sentence. The guideline range was 24-30 months (criminal history category I) and the defendant was sentenced to 24 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #27 (23536)

Offense. The offender sold a small amount of cocaine base to an undercover agent. When police attempted to arrest the defendant a short time later, he began to run. While being chased on foot, the defendant threw a small package to the ground which contained 2.4 grams of cocaine base. The offender was arrested without further incident.

Guideline calculation. The offender pleaded guilty to one count of possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the cocaine base sold to the agent and the cocaine base seized at the time of arrest, the base offense level was calculated as level 20. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 18.

Sentence. The guideline range was 33-41 months (criminal history category III) and the defendant was sentenced to 41 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #28 (23655)

Offense. The offender was the passenger in a vehicle transporting 1002 grams of cocaine. The offender claimed to be a courier and this was consistent with the statements of his codefendants.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the attempted distribution of cocaine, the base offense level was calculated as level 26. There was a four level reduction for mitigating role (§3B1.2(a)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20.

Sentence. The guideline range was 33-41 months (criminal history category I) and sentenced to a mandatory minimum term of 60 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #29 (22832)

Offense. The offender was stopped leaving a commercial airline flight and was found to have swallowed 110 balloons filled with heroin. The "gross weight" of the heroin and the balloons was 540 grams. The weight of these heroin was estimated to be between 100 and 399 grams but the heroin was never weighted separately. The

offender claimed to be a courier but there was no information concerning either the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to importation of heroin (21 U.S.C. § 952(a)). Based upon the importation of heroin, the base offense level was calculated as level 26. There was a four level decrease for mitigating role based upon circumstantial evidence that the offender was a courier (§3B1.2) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20.

Sentence. The guideline range was 33-41 months (criminal history category I) and the offender was sentenced to 18 months with three years supervised release. The fine was waived.

Reasons. The court departed below the guidelines "based on the social factors faced by the defendant (i.e., family in Nigeria) and the passionate plea of defense counsel."

• Case #30 (22E39)

Offense. The offender was stopped leaving a commercial airline flight and 800 grams of cocaine were found in his luggage and in balloons which had been swallowed. The offender claimed to be a courier but there was no information concerning either the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to importation of cocaine (21 U.S.C. § 952(a)). Based upon the importation of cocaine, the base offense level was calculated as level 26. There was a four level reduction for mitigating role pursuant to a plea agreement and circumstantial evidence that the offender was a courier (§3B1.2) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20.

Sentence. The guideline range was 33-41 months (criminal history category I) and the offender was sentenced to 6 months with three years supervised release. The fine was waived.

Reasons. The court departed below the guidelines pursuant to "3E1.1." There was no further explanation.

• Case #31 (21299)

Offense. The offender and two codefendants were arrested in possession of 277 pounds marijuana seized from a warehouse. A rifle and a handgun were also seized from the vehicle of a codefendant.



Guideline calculations. The offender pleaded guilty to possession with intent to distribute marijuana (21 U.S.C. § 841(a) and (b)(1)(D)). Pursuant to a plea agreement, the government agreed to "limit proof to 109 pounds" of marijuana. Based upon the amount of drugs stipulated in the plea agreement, the base offense level was calculated as level 20. There was a two level increase for possession of a firearm during the commission of a drug offense (§2D1.1(b)(1)(A)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20.

Sentence. The guideline range was 33-41 months (criminal history category I) and the offender was sentenced to 40 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #32 (20516)

Offense. A boat was stopped in international waters and 134 pounds of marijuana was seized. There were three individuals arrested on the boat but the offender was identified as the "ship's master" and as the navigator.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute marijuana (46 U.S.C. § 1903(a)(g)). The base offense level was originally calculated as level 22 based upon 134 pounds of marijuana. However, because the "lab report clearly indicates that some of the bales of marijuana were wet," the court accepted the recommendation of the defense counsel that level 20 was the appropriate base offense level. There was a two level increase for role in the offense because the offender was the captain of the boat (§3B1.1(c)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20.

Sentence. The guideline range was 37-46 months (criminal history category II) and the offender was sentenced to 37 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #33 (21735)

Offense. Police seized 4,851 marijuana plants from the offender's residence. When arrested, the offender was sitting on a handgun.

Guideline calculations. The offender pleaded guilty to manufacture of marijuana (21 U.S.C. § 841(a)(1)) which has a five year mandatory minimum term. The marijuana plants were each treated as the equivalent of 100 grams of marijuana each. Based upon the number of plants, the base offense level was calculated as level 20. There was a two level increase for possession of a firearm

during a drug offense (§2D1.1(b)(1)(A)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 20. Under guidelines now in effect, the marijuana plants would be treated as the equivalent of 481 kilos of marijuana with a base offense level of 26.

Sentence. The guideline range was 37-46 months (criminal history category II) and the offender was sentenced to a mandatory minimum term of 60 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #34 (20655)

Offense. The offender was arrested crossing the border with 107 kilograms of marijuana (21 U.S.C. § 841(a)(1)). The offender claimed to be a courier but there was no information concerning the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1)). Pursuant to a plea agreement, the "Government will limit its proof to 99 kilograms of marijuana." Based upon the amount of drugs stipulated in the plea agreement, the base offense level was calculated as level 24. There was no adjustment for role in the offense but there was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 22.

Sentence. The guideline range was 41-51 months (criminal history category I) and the offender was sentenced to 41 months with three years supervised release. The offender was also fined \$500 and ordered to perform 100 hours of community service.

Reasons. Not applicable.

• Case #35 (23407)

Offense. The offender was stopped at the border and a search of his vehicle uncovered 81 kilograms of marijuana. The offender claimed to be a courier there was no information concerning either the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to importation of marijuana (21 U.S.C. § 952(a) and 960(a)(1)). Based upon the amount of marijuana, the base offense level was calculated as level 24. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 22.

Sentence. The guideline range was 41-51 months (criminal history category I) and the offender was sentenced to 41 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #36 (23828)

Offense. The offender was arrested after selling cocaine to an informant. The offender was originally charged with distributing "approximately 505 grams of cocaine." According to the U.S. Attorney's Office, however, the cocaine was "re-weighted" and found to total 497 grams.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the amount of cocaine as "re-weighted", the base offense level was calculated as level 24. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 22.

Sentence. The guideline range was 51-63 months (criminal history category III) and the offender was sentenced to 51 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #37 (25974)

Offense. The offender and a codefendant sold cocaine to undercover agents. When they noticed they were under surveillance, they drove off and threw a package of cocaine from the window of their vehicle. The package was retrieved. Both individuals were arrested a short time later and a total of 1,115 grams of cocaine and \$1,980 in counterfeit money were seized. The codefendant arranged the sale to undercover agents and the offender was identified as a "runner."

Guideline calculations. The offender pleaded guilty to conspiracy to possess and distribute cocaine (21 U.S.C. § 846). Based upon the amount of cocaine, the base offense level was calculated as level 26. There was no adjustment for role in the offense but there was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to 18 months with three years supervised release. The fine was waived.

Reasons. The court departed below the guidelines because of substantial assistance to the government.

• Case #38 (23242)

Offense. The offender and a codefendant obtained 1,905 grams of cocaine and 8,240 grams of marijuana in another state and had the drugs mailed to them. The package was intercepted and they were arrested.

Guideline calculations. The offender pleaded guilty to conspiracy to distribute cocaine (21 U.S.C. § 846). Based on the amount of cocaine and marijuana, the base offense level was calculated as level 26. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to 60 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #39 (20535)

Offense. The offender was paid to drive his codefendants and 194 grams of heroin to a location where the drugs were to be sold to undercover agents. When the agents attempted to arrest the individuals, one of the codefendants pulled a gun, used an agent as a shield, and was shot dead by other agents. None of the agents were harmed in the incident.

Guideline calculations. The offender pleaded guilty to conspiracy to possess with intent to distribute heroin (21 U.S.C. § 846, 841(a)(1), and 841(b)(1)(B)). Based upon the amount of heroin, the base offense level was calculated as level 26. There as a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to 60 months with 5 years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #40 (21121)

Offense. The offender and a codefendant sold slightly more than one kilogram of cocaine to undercover agents.

Guideline calculations. The offender pleaded guilty to conspiracy to possess cocaine (21 U.S.C. § 846). Based upon the amount of cocaine, the base offense level was calculated as level 26. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to five years probation with six months community confinement. The fine was waived.

Reasons. The court departed below the guidelines because of substantial assistance to the government.

• Case #41 (20519)

Offense. The offender was arrested leaving a cruise ship with 994 grams of cocaine. The offender claimed to be a courier acting under duress. There was no information concerning the source of the drugs or its ultimate destination.

Guideline calculations. The offender was convicted by trial of importation of cocaine (21 U.S.C. § 952(a) and 960(a)(1)). Based upon the amount of cocaine, the base offense level was calculated as level 26. The offender admitted the offense after trial and there was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to 60 months with four years supervised release. The fine was waived.

• Case #42 (20482)

Offense. The offender and a codefendant attempted to purchase three kilograms of cocaine from an undercover agent. Information in the file indicated that the offender distributed cocaine independently as well as in partnership with his codefendant.

Guideline calculations. The offender pleaded guilty to conspiracy to distribute cocaine (21 U.S.C. § 846). Based upon the amount of cocaine the offender attempted to obtain from the undercover agent, the base offense level was calculated as level 28. Pursuant to a plea agreement, there was a two level reduction for role in the offense (§3E1.2(b)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 57-71 months (criminal history category II) and the offender was sentenced to 57 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #43 (23861)

Offense. The offender sold approximately 14 grams of base cocaine to an undercover agent. The offender also offered to sell food stamps with a face value of over \$5,000.

Guideline calculations. The offender pleaded guilty to distributing cocaine (21 U.S.C. § 841(a)(1) and (b) (1)(C)) and unlawfully transferring food stamps (7 U.S.C. § 2024(b)). Based upon the amount of "crack", the base offense level was calculated as level 26. Based upon the unlawful transfer of the food stamps, the base offense level for the second offense was calculated as level 6 (§2F1.1). There was a two level increase based upon the value of the food stamps (§2F1.1(b)(1)) resulting in an adjusted offense level of 8. The combined offense level for both offenses remained level 26 (§3D1.4). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentenced. The guideline range was 63-78 months (criminal history category III) and the offender was sentenced to 51 months with three years supervised release. The offender was also fined \$10,000.

Reasons. The court departed below the guidelines pursuant to a plea agreement.

• Case #44 (27077)

Offense. The offender was stopped leaving a commercial airline flight and was found to have 950 grams of cocaine strapped to his body. There was no information concerning the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the amount of cocaine, the base offense level was calculated as level 26. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.

Sentence. The guideline range was 63-78 months (criminal history category III) and the offender was sentenced to 68 months with four years supervised release. The offender was also fined \$10,000.

Reasons. Not applicable.

• Case #45 (21E01)

Offense. The offender reported to police that his truck and 1,000 pounds of marijuana had been stolen. Police eventually recovered the vehicle and 650 pounds of marijuana.

Guideline calculations. The offender was convicted by trial of possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1) and 841(b)(1)(B)). Based upon the amount of marijuana recovered, the base offense level was calculated as level 26. There was no reduction for acceptance of responsibility.

Sentence. The guideline range was 63-78 months (criminal history category I) and the offender was sentenced to 76 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #46 (21559)

Offense. Police tried to follow the offender's vehicle which appeared suspicious. The offender, however, sped up and led police on a four mile chase at speeds up to 75 MPH. The vehicle was eventually stopped and the offender fled on foot and was arrested hiding in a drainage pipe. 217 pounds of marijuana was seized from the vehicle.

Guideline calculations. The offender pleaded guilty to importation of marijuana (21 U.S.C. § 952(a) and 960(a)(1)). Based upon the amount of marijuana, the base offense level was calculated as level 24. There was a two level increase for obstruction of justice based upon the attempt to flee police (§3C1.1) resulting in a total offense level of 26. The offender admitted involvement in the offense, but there was no adjustment for acceptance of responsibility because of the obstruction of justice.

Sentence. The guideline range was 63-78 months (criminal history category I) and the offender was sentenced to 63 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #47 (23065)

Offense. The offender and five others were involved in an attempt to sell 998 grams of cocaine to an undercover agent. When arrested, a hand gun was found in the offender's vehicle. Two of the codefendants were identified as lookouts. The offender was described as directly involved in the drug sale but under the control of a more culpable codefendant.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the amount of cocaine, the base offense level was calculated as level 26. There was a two level increase for possession of a firearm during a drug offense (§2D1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 26.

Sentence. The guideline range was 63-78 months (criminal history category I) and the offender was sentenced to 63 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #48 (23282)

Offense. The offender and a codefendant sold 2.5 kilograms of cocaine to an undercover agent.

Guideline calculations. The offender pleaded guilty to conspiracy to possess cocaine (21 U.S.C. § 846 and 841(a)(1)). Based upon the amount of cocaine possessed for distribution, the base offense level was calculated as level 28. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 26.

Sentence. The guideline range was 63-78 months (criminal history category I) and the offender was sentenced to 63 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #49 (24416)

Offense. The offender and two codefendants were stopped by police and a search of their vehicle uncovered 32 grams of base cocaine, a hand gun, and approximately \$9,000.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)) and possession of a firearm during a drug trafficking offense (18 U.S.C. § 924(c)(1)). Based upon the amount of base cocaine, the base offense level was calculated as level 28. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 26. There was no enhancement for possession of a firearm during a drug offense because it was a separate count of conviction requiring a consecutive sentence.

Sentence. The guideline range was 78-97 months (criminal history category III) and the offender was sentenced to 87 months with a 60 month consecutive term (147 months total) with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #50 (22289)

Offense. The offender was stopped driving across the border with 7.5 pounds of marijuana, 251 grams of heroin, and 2 grams of cocaine. There was no information concerning the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to importation of heroin (21 U.S.C. § 952(a), 960(a)(1) and 960(b)(2)(A)). Based on the total amount of drugs seized, the base offense level was



calculated as level 26. Although the offender pleaded guilty and admitted to smuggling marijuana and cocaine, he denied smuggling heroin and was not given acceptance of responsibility.

Sentence. The guideline range was 78-97 months (criminal history category III) and the offender was sentenced to 76 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #51 (22235)

Offense. The offender was stopped leaving a commercial airline flight and a search of his luggage uncovered slightly over four kilograms of cocaine. The offender claimed to be a courier and there was no information concerning the source of the drugs or its ultimate destination.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based on the amount of cocaine, the base offense level was calculated as level 30. There was no adjustment for role in the offense but there was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 28.

Sentence. The guideline range was 78-97 months (criminal history category I) and the offender was sentenced to 60 months with five years supervised release. The fine was waived.

Reasons. Not documented.

• Case #52 (27042)

Offense. The offender and two other codefendants sold cocaine base to an undercover agent in a movie theater. After arrest, additional cocaine base was found under the theater seat and a total 4.8 grams was seized. The offender was identified as the "manager" who directed the other two individuals.

Guideline calculations. The offender pleaded guilty for possession with intent to distribute "crack" (21 U.S.C. § 812, 841(a)(1), 841(b)(1)(c) and 18 U.S.C. § 2). Based on the amount of cocaine base seized, the base offense level was calculated as level 24. There was a two level increase for role in the offense for being a "manager" (§3B1.1) resulting in a total offense level of 26. Although the offender pleaded guilty, he admits only to possessing "crack" for his own use and denies distributing any drugs. Therefore, there was no reduction for acceptance of responsibility.

Sentence. The guideline range was 92-115 months (criminal history category IV) and the offender was sentenced to 84 months with three years supervised release. The fine was waived.

Reasons. Not documented.

• Case #53 (20456)

Offense. The offender was arrested at an airport with a codefendant who had nearly 3,200 grams of cocaine taped to his body. Based upon testimony, it was established that codefendant had 4,500 grams of cocaine but this individual cleared customs and the drugs were never recovered. The offender was "clearly seen as a supervisor" who recruited the couriers and was "financially responsible" for the cocaine.

Guideline calculations. The offender was convicted by trial of possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)) and importation of cocaine (21 U.S.C. § 952(a) and 960(a)(1)(b)). Based on a total of approximately 3 kilograms of cocaine (excluding the drugs not recovered), the base offense level was calculated as level 28. There was a two level increase for role in the offense for being "supervisor" (§3B1.1) resulting in a total offense level of 30.

Sentence. The guideline range was 97-121 months (criminal history category I) and the offender was sentenced to 121 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #54 (22825)

Offense. The offender was suspected of distributing cocaine. When police went to the offender's residence, the offender attempted to escape out the rear window but was apprehended. Approximately 2,400 grams of cocaine were seized from the residence. In addition, the offender denied under oath at trial any involvement with illegal drugs but was convicted anyway.

Guideline calculations. The offender was convicted by trial of possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the amount of cocaine, the base offense level was calculated as level 28. There was a two level increase for obstruction of justice based upon the perjury at trial (§3C1.1) resulting in a total offense level of 30.

Sentence. The guideline range was 97-121 months (criminal history category I) and the offender was sentenced to 97 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #55 (25216)

Offense. An informant agreed to act as a courier for the offender and transported "at least" 17 kilograms of cocaine. The offender later sold cocaine to an undercover agent and approximately 8,400 grams of cocaine were seized. A later search of the offender's residence uncovered a handgun.

Guideline calculations. The offender pleaded guilty to conspiracy to distribute cocaine (21 U.S.C. § 841(a)(1) and 846). Based on the amount of cocaine seized at arrest (8,400 grams), the base offense level was calculated as level 32. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 30. There was no increase for possession of a weapon during a drug offense (§2D1.1(b)) because "authorities" believed it was not being used in connection with this offense.

Sentence. The guideline range 97-121 months (criminal history category I) and the offender was sentenced to 120 months with five years supervised release. The offender was also fined \$250,000.

Reasons. Not applicable.

• Case #56 (25526)

Offense. The offender and four codefendants negotiated the delivery of 50 kilograms of cocaine to an undercover agent. The group eventually delivered slightly over five kilograms of cocaine to the agent and were arrested. It was understood that an additional 45 kilograms of cocaine were to be delivered at a later date.

Guideline calculations. The offender pleaded guilty to conspiracy to possess with intent to distribute cocaine (21 U.S.C. § 846). Based upon the amount of cocaine actually delivered (5 kilograms), the base offense level was calculated as level 32. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 30.

Sentence. The guideline range was 97-121 months (criminal history category I) and the offender was sentenced to 97 months with fifteen years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #57 (18556)

Offense. A private plane crashed and 300 kilograms of cocaine were recovered from the wreckage. The offender was a passenger in the plane whose "primary duties would have been to kick the contraband out of the aircraft should it have been detected in mid air by law enforcement authorities."

Guideline calculations. The offender pleaded guilty to importation of cocaine (21 U.S.C. § 952(a) and 960(a)(1)(b)). Based upon the amount of cocaine recovered, the base offense level was calculated as level 36. There was a two level reduction for role in the offense (§3B1.2(b)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 32.

Sentence. The guideline range was 121-151 months (criminal history category I) and the offender was sentenced to 121 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #58 (24730)

Offense. The police searched a house boat inhabited by the offender and a codefendant and uncovered a methamphetamine lab. Police seized 4.7 kilograms of an "intermediary chemical substance" containing methamphetamine and 500 grams of ephedrine. A rifle and a hand gun were also seized from the boat and a shotgun was taken from a vehicle parked nearby.

Guideline calculations. The offender pleaded guilty to manufacture of methamphetamine (21 U.S.C. § 841(a)(1)). A "criminalist involved in this case" estimated that the ephedrine would produce approximately 400 grams of methamphetamines. The entire 4.7 kilograms of intermediary substance was counted because it contained a detectable amount of methamphetamines. Based on a total of 5.1 kilograms of methamphetamines, the base offense level was calculated as level 32. There was a two level increase for possession of a firearm during a drug offense (§2D1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 32.

Sentence. The guideline range was 151-188 months (criminal history category III) and the offender was sentenced to 151 months with five years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #59 (25348)

Offense. The offender and four codefendants attempted to purchase 2 kilograms of cocaine from an undercover agent with the understanding that a total of 32 kilograms of cocaine would eventually be delivered. The agent indicted that the offender did not play a "managerial role" but file information indicated that the offender played an active role in the negotiations to obtain the cocaine.

Guideline calculations. The offender pleaded guilty to interstate travel to promote a business enterprise involving narcotics (18

U.S.C. § 1952). Based upon the attempt to obtain 32 kilograms of cocaine, the base offense level was calculated as level 34. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 32.

Sentence. The guideline range was 151-186 months (criminal history category III) and the offender was sentenced to 18 months with three years supervised release. The fine was waived.

Reasons. The court departed below the guidelines because of substantial assistance to the government.

• Case #60 (23661)

Offense. The offender's vehicle was stopped by police and a search uncovered 19 kilograms of cocaine. There was no information concerning either the source of the drugs or its ultimate destination.

Guideline calculations. The offender was convicted by trial of possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)) and travel in interstate commerce with intent to unlawfully distribute cocaine (18 U.S.C. § 1952). Based upon the amount of cocaine, the base offense level was calculated as level 34. There were no adjustments and the total offense level was 34.

Sentence. The guideline range was 151-186 months (criminal history category I) and the offender was sentenced to 151 months with five years supervised release. The offender was also fined \$17,500.

Reasons. Not applicable.

• Case #61 (25195)

Offense. The offender and 25 codefendants were involved in an extensive scheme to distribute cocaine between 1985 and 1988. The information in the file is limited but the offender received "at least 14 kilograms" of cocaine, directed the activities of couriers, and distributed drugs to others for redistribution. The offender also hid the proceeds from the activity under the name of other individuals.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)), operating a continuing criminal enterprise (21 U.S.C. § 848), aiding and abetting the laundering of monetary instruments (18 U.S.C. § 1956(a)(1)), and unlawful use of a telephone to facilitate a conspiracy to distribute cocaine (21 U.S.C. § 843(b)). The court calculated a total offense level of 35. There was no explanation in the file on how this offense level was calculated.

Sentence. The guideline range was 168-210 months (criminal history category I) and the offender was sentenced to 138 months with eight years supervised release. The fine was waived.

Reasons. The reasons for departure were not documented although the court noted that some of the term of imprisonment "does fit with the guidelines in some of the cases."

• Case #62 (22788)

Offense. The offender and seven codefendants were involved in distributing 15 kilograms of cocaine over a three year period. The offender was described as a "second lieutenant" in the organization.

Guideline calculations. The offender pleaded guilty to possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1) and 841(b)(1)(C)). Based on the amount of cocaine, the base offense level was calculated as level 34. There was a two level increase for role in the offense (§3B1.1) based on information that the offender supervised the activities of some of the codefendants and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 34.

Sentence. The guideline range was 188-235 months (criminal history category III) and the offender was sentenced 141 months with five years supervised release. The fine was waived.

Reasons. The record is unclear, but it appears that the court departed below the guidelines because of substantial assistance to the government.

• Case #63 (22809)

Offense. The offender sold approximately 1 kilograms of cocaine base over a one month period. When arrested, the offender was in possession of five handguns, two of which had the serial numbers removed. The offender was associated with a large, loosely run organization that distributed drugs. It appeared that the offender obtained cocaine and cocaine base from the organization which he then sold through street dealers.

Guideline calculations. The offender pleaded guilty to conspiracy to manufacture, distribute, and possess with intent to distribute cocaine base (21 U.S.C. § 846). Based upon at least 1 kilogram of cocaine base, the base offense level was calculated as level 36. There was a two level increase for possession of a firearm during a drug offense (§2D1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 36.

Sentence. The guideline range was 235-293 months (criminal history category III) and the offender was sentenced to 121 months with five years supervised release. The fine was waived.

Reasons. The court departed below the guidelines because of substantial assistance to the government.

• Case #64 (22247)

Offense. The offender distributed extremely large amounts of cocaine and marijuana over a six year period. The exact amount of drugs is unclear, but cocaine was distributed in allotments in excess of 100 kilograms on a number of occasions. The offender was identified as the most culpable and directed the activities of a number of other individuals.

Guideline calculations. The offender pleaded guilty to conspiracy to distribute cocaine (21 U.S.C. § 846) and importation of cocaine (21 U.S.C. § 952(a) and 960(a)(1)(b)). Based on information that the amount of cocaine exceeded 50 kilograms, the base offense level was calculated as level 36. There was a three level increase for role in the offense (§3E1.1) based on information that the offender was a "manager or supervisor" of a criminal activity involving five or more participants and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 37.

Sentence. The guideline range was 235-293 months (criminal history category II) and the offender was sentenced to 144 months with five years supervised release. The fine was waived, but the offender surrendered assets equal to about \$1,000,000.

Reasons. The court departed below the guidelines because of "Section 5K1.1." No other explanation was provided.

• Case #65 (25542)

Offense. The offender and a number of individuals (exact number unspecified) were involved in a scheme to distribute methamphetamine and marijuana. A search of the offender's residence uncovered drugs and a handgun. Based on the amount of drugs seized and an estimate of the drugs distributed, the total amount of drugs involved in the offense were estimated to be the equivalent of approximately 16 kilograms of heroin under the guidelines in effect at the time of sentencing. The offender delivered drugs to an unspecified number of other individuals but the offender's exact role was unclear in the record. The offender also refused to voluntarily surrender while on bond and was rearrested.

Guideline calculations. The offender was convicted by trial of possession with intent to distribute marijuana (21 U.S.C. § 841(a)(1)) and possession with intent to distribute methamphetamine

(21 U.S.C. § 841(a)(1)). Based on the amount of drugs involved in the offense, the base offense level was calculated as level 36. There were no adjustments and the total offense level remained 36.

Sentence. The guideline range were 292-365 months (criminal history category V) and the offender was sentenced to 192 months with no supervised release. The fine was waived.

Reasons. The court departed below the guidelines because of the offender's age, his health, and because he encouraged codefendants to testify. The offender was 55 years old and there was no information in the file concerning the offender's health.

#### §2D1.4. Attempts and Conspiracies

##### • Case #66 (22323)

Offense. The offender sold approximately 80 grams of cocaine to a cooperating individual. The offender was a deputy sheriff and when arrested he was in possession of two handguns, three knives, and a "smoke grenade."

Guideline calculations. The offender pleaded guilty to conspiracy to possess with intent to distribute cocaine (21 U.S.C. § 841(a)(1) and 846) and possession of a firearm during commission of a drug trafficking offense (18 U.S.C. § 924(c)(1)). Based upon the amount of cocaine, the base offense level was calculated as level 16. There was a two level increase for abuse of a position of trust (§3E1.3) based on the fact that the offender was a law enforcement officer and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 16.

Sentence. The guideline range was 21-27 months (criminal history category I) and the offender was sentenced to 25 months plus 60 months consecutive for possession of a firearm (85 months total) with three years supervised release. The fine was waived.

Reasons. Not applicable.

##### • Case #67 (20619)

Offense. Based upon information provided by an informant, the offender and a codefendant were arrested in a hotel room with "approximately one kilogram of cocaine."

Guideline calculations. The offender pleaded guilty to conspiracy to possess with intent to distribute cocaine (21 U.S.C. § 846). Based upon the amount of cocaine, the base offense level was calculated as level 26. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 24.



Sentence. The guideline range was 51-63 months (criminal history category I) and the offender was sentenced to 42 months with six years supervised release. The fine was waived.

Reasons. The court departed below the guidelines pursuant to a plea agreement.

• Case #68 (21362)

Offense. The offender and two codefendants manufactured approximately 16 pounds of methamphetamine.

Guideline calculations. The offender was convicted by trial of conspiracy to manufacture a controlled substance (21 U.S.C. § 846 and 841(a)(1)) and aiding and abetting the manufacture of a controlled substance (21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2). Based upon the amount of methamphetamine, the base offense level was calculated as level 32. There were no adjustments and the total offense level remained 32.

Sentence. The guideline range was 121-151 months (criminal history category I) and the offender was sentenced to 136 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #69 (21456)

Offense. The offender was identified as the "leader" of a "fairly extensive smuggling organization" which brought cocaine into this country. The total amount of cocaine is unclear but "known activities" involved 7 kilograms of cocaine. There were a total of 21 individuals involved in the offense.

Guideline calculations. The offender was convicted by trial of conspiracy to distribute cocaine (21 U.S.C. § 846) and possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)). Based upon the 7 kilograms of cocaine, the base offense level was calculated as level 32. There was a four level increase for role in the offense (§3B1.1) based on information that the offender was the leader for a criminal activity involving five or more participants resulting in a total offense level of 36.

Sentence. The guideline range was 188-235 months (criminal history category I) and the offender was sentenced to 188 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

§2D1.5. Continuing Criminal Enterprise

Case #70 (21377)

Offense. The offender was described as the "leader" of a sophisticated cocaine trafficking organization involving five other individuals. There was no estimate of the total amount of cocaine involved but the organization was estimated to be receiving at least 30 kilograms of cocaine per week from Columbia for an extended period of time. The profits from the organization were banked in Yemen. A search of the offender's residence uncovered cocaine residue and a firearm.

Guideline calculations. The offender pleaded guilty to continuing criminal enterprise (21 U.S.C. § 848(a) and (d)). The base offense level was calculated as level 36. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 34. Under guidelines now in effect, the base offense level could be as high as level 42.

Sentence. The guideline range was 168-210 months (criminal history category II) and the offender was sentenced to 204 months with four years supervised release. The fine was waived.

Reasons. Not applicable.

§2D2.1. Unlawful Possession

Case #71 (22487)

Offense. The offender and two codefendants were arrested transporting 500 grams of cocaine by automobile. The record is unclear on the extent of the offender's involvement in the offense.

Guideline calculations. The offender pleaded guilty to simple possession of cocaine (21 U.S.C. § 844(a)). Based upon simple possession, the base offense level was calculated as level 6. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-6 months (criminal history category III) and the offender was sentenced to 3 months with one year supervised release. The offender was also fined \$1,100.

Reasons. Not applicable.

• Case #72 (20363)

Offense. The offender was arrested trying to purchase "crack" from another for his own use. When arrested, the offender attempted to throw away a lit marijuana cigarette.

Guideline calculations. The offender pleaded guilty to simple possession of a controlled substance (21 U.S.C. § 833(a)(1)).

Based upon simple possession, the base offense level was calculated as level 6. There was a two level increase for obstruction of justice (§3C1.1) based upon the attempt to conceal a marijuana cigarette and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 6.

Sentence. The guideline range was 0-6 months (criminal history category I) and the offender was sentenced to 6 months with one years supervised release. The fine was waived.

Reasons. Not applicable.

#### CHAPTER TWO, PART E - OFFENSE INVOLVING CRIMINAL ENTERPRISE AND RACKETEERING

##### §2E3.1. Engaging in a Gambling Business

• Case #73 (24274)

Offense. The offender and six codefendants participated in an illegal sports gambling business. The offender was primarily a customer who worked for two months collecting bets to pay off a gambling debt.

Guideline calculations. The offender pleaded guilty to operating an illegal gambling business (18 U.S.C. § 1955). Based upon the gambling activities, the base offense level was calculated as level 12. The record is unclear, but it appears that there was a four level decrease for role in the offense (§3B1.2) based upon the offender's limited involvement and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 6.

Sentence. The guideline range was 2-8 months (criminal history category III) and the offender was sentenced to 2 months probation with a condition of 2 months community confinement. The fine was waived but the offender was ordered to perform 50 hours of community service.

Reasons. Not applicable.

#### CHAPTER TWO, PART F - OFFENSES INVOLVING FRAUD OR DECEIT

##### §2F1.1. Fraud and Deceit

• Case #74 (21742)

Offense. The offender cashed a stolen check worth \$470 using a false identification.

Guideline calculations. The offender pleaded guilty to possession of a false identification document with intent to defraud (18

U.S.C. § 1028(a)(4)). Based upon the intent to defraud, the base offense level was calculated as level 6. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to three years probation. The offender was also fined \$500.

Reasons. Not applicable.

• Case #75 (21623)

Offense. The offender attempted to cash a stolen check worth approximately \$600.

Guideline calculations. The offender pleaded guilty to receipt of a stolen U.S. Treasury check (18 U.S.C. § 510(b)). The base offense level was calculated as level 6. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-5 months (criminal history category II) and the offender was sentenced to 3 years probation. The fine was waived.

Reasons. Not applicable.

• Case #76 (21551)

Offense. The offender obtained a bank loan worth approximately \$7,500 through a false loan application and filed a second false application in an attempt to obtain a \$25,000 loan.

Guideline calculations. The offender pleaded guilty to bank fraud (18 U.S.C. § 1344). Based on the false loan applications, the base offense level was calculated as level 6. There was a four level increase based upon the attempt to obtain approximately \$32,500 (§2F1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 8.

Sentence. The guideline range was 4-10 months (criminal history category II) and the offender was sentenced to 3 years probation with 4 months community confinement. The fine was waived but the offender was ordered to pay \$4,811 in restitution and to perform 200 hours of community service.

Reasons. Not applicable.

• Case #77 (24068)

Offense. A codefendant operated a "sports betting service" that defrauded a number of victims of over \$150,000. The offender was recruited as a telephone solicitor for one month and was directly responsible for almost \$17,000 in losses to a number of victims.

Guideline calculations. The offender was convicted by trial of wire fraud (18 U.S.C. § 1343). The base offense level was calculated as level 6. There was a three level increase for a loss of approximately \$17,000 (§2F1.1(b)(1)), a two level increase for a scheme to defraud more than one victim (§2F1.1(b)(2)), and a two level decrease for role in the offense because the offender's role was limited to telephone solicitations (§3B1.2) resulting in a total offense level of 9.

Sentence. The guideline range was 4-10 months (criminal history category I) and the offender was sentenced to 7 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #7E (2E175)

Offense. The offender and seven codefendants were part of a loosely organized group that fraudulently acquired credit cards to obtain cash, merchandise, and rental cars which were not returned. The total loss to numerous victims exceeded \$100,000. The offender, however, was directly responsible for approximately \$15,000 in losses to multiple victims.

Guideline calculations. The offender pleaded guilty to fraud in connection with access devices (18 U.S.C. § 1029(A)(2)) and bank fraud (18 U.S.C. § 1344). The base offense level was calculated as level 6. There was a three level increase based upon a loss of approximately \$15,000 (§2F1.1(b)(1)), a two level increase for a scheme to defraud multiple victims (§2F1.1(b)(2)), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 9. It was determined that the offender had been unemployed for two years and derived a substantial position of his income from criminal activity. Therefore, criminal livelihood applied (§4B1.3) and the offense level was raised to level 11.

Sentenced. The guideline range was 8-14 months (criminal history category I) and the offender was sentenced to 6 months. There was no supervised release imposed and the fine was waived.

Reasons. The court departed below the guidelines because the offender was to be deported.

• Case #79 (23726)

Offense. The offender fraudulently acquired a credit card and obtained nearly \$5,000 in cash advances using the card.

Guideline calculations. The offender pleaded guilty to mail fraud (18 U.S.C. § 1341). The base offense level was calculated as level 6. There was a one level increase based upon the loss of nearly \$5,000 (§2F1.1(b)(1)), the base offense level was increased to level 10 because the false application for the credit card indicated more than minimal planning (§2F1.1(b)(2)), and there was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 8. It was determined that the offender was unemployed and derived a substantial portion of his income from criminal activity. Therefore, criminal livelihood applied (§4B1.3) and the offense level was raised to level 11.

Sentence. The guideline range was 8-14 months (criminal history category I) and the offender was sentenced to 9 months with three years supervised release. The fine was waived but the offender was ordered to pay \$4,894 in restitution.

Reasons. Not applicable.

• Case #E0 (23195)

Offense. The offender fraudulently acquired three credit cards and over a two month period obtained money, merchandise, and a rental car never returned worth over \$70,000. The offense involved multiple victims.

Guideline calculations. The offender pleaded guilty to use of an unauthorized access device (18 U.S.C. § 1029(a)). The base offense level was calculated as level 6. There was a five level increase based upon a loss of over \$70,000 (§2F1.1(b)(1)), a two level increase for a scheme to defraud multiple victims (§2F1.1(b)(2)), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in total offense level of 11.

Sentence. The guideline range was 10-16 months (criminal history category II) and the offender was sentenced to 16 months with three years supervised release. The fine and restitution were waived.

Reasons. Not applicable.

• Case #E1 (22952)

Offense. The offender owned an investment service and stole over \$74,000 from one of his accounts over an extended period of time. The loss was discovered when the victim retired and found he had no money which caused considerable hardship to the victim.

Guideline calculations. The offender pleaded guilty to mail fraud (18 U.S.C. § 1341). The base offense level was calculated as level

6. There was a five level increase based upon the loss of over \$74,000 (§2F1.1(b)(1)), a two level increase for more than minimal planning based upon information that the loss was hidden through fraudulent bookkeeping (§2F1.1(b)(2)), a two level increase for abuse of a position of trust (§3B1.3), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 13.

Sentence. The guideline range was 12-18 months (criminal history category I) and the offender was sentenced to 12 months with three years supervised release. The fine was waived but the offender was ordered to pay \$74,190 in restitution.

Reasons. Not applicable.

• Case #82 (23692)

Offense. The offender was the vice president of a bank and provided an unauthorized line of credit to a company in which he was a "silent partner." A number of loans were made over a twelve month period and the bank lost approximately \$440,000 when the loans were defaulted.

Guideline calculations. The offender pleaded guilty to bank fraud (18 U.S.C. § 1344). The base offense level was calculated as level 6. There was a seven level increase based on a loss of approximately \$440,000 (§2F1.1(b)(1)), a two level increase for more than minimal planning because of numerous acts that occurred over a one year period (§2F1.1(b)(2)), a two level increase for abuse of a position of trust (§3B1.3), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 15.

Sentence. The guideline range was 18-24 months (criminal history category I) and the offender was sentenced to 21 months with three years supervised release. The fine was waived but the offender was ordered to pay \$250,000 restitution.

Reasons. Not applicable.

• Case #83 (21441)

Offense. The offender and four codefendants were involved in a scheme to deposit "disintegrating" checks brushed with acid in bank accounts and then attempted to withdraw money before the worthless checks could be processed. The offenders actually received approximately \$8,500 but intended to defraud the banks of nearly \$71,000. The offender was identified as the leader who planned the offense.

Guideline calculations. The offender pleaded guilty to bank fraud (18 U.S.C. § 1344). The base offense level was calculated as level

6. There was a five level increase based upon the intended loss of nearly \$71,000 (§2F1.1(b)(1)), a two level increase for more than minimal planning (§2F1.1(b)(2)), a four level increase for being the leader of a scheme involving five participants (§3B1.1), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 15.

Sentence. The guideline range was 21-27 months (criminal history category II) and the offender was sentenced to 27 months with three years supervised release. The offender was also fined \$5,000.

Reasons. Not applicable.

• Case #84 (20664)

Offense. Over a three month period, the offender opened a series of checking accounts in different banks using various names and then overdraw the accounts. The total loss was approximately \$22,000.

Guideline calculations. The offender pleaded guilty to bank fraud (18 U.S.C. § 1344). The base offense level was calculated as level 6. There was a four level increase based upon a loss of approximately \$22,000 (§2F1.1(b)(1)), a two level increase for a scheme to defraud more than one victim (§2F1.1(b)(2)), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10.

Sentence. The guideline range was 24-30 months (criminal history category VI) and the offender was sentenced to 30 months with three years supervised release. The fine was waived, but the offender was ordered to pay \$20,000 restitution.

Reasons. Not applicable.

CHAPTER TWO, PART G - OFFENSES INVOLVING PROSTITUTION, SEXUAL EXPLOITATION OF MINORS, AND OBSCENITY

§2G2.2. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor

• Case #85 (21905)

Offense. The offender traded pornographic video tapes showing minors through the mail.

Guideline calculations. The offender pleaded guilty to transporting and receiving sexually explicit material involving minors through the mail (18 U.S.C. § 2252). The base offense level was calculated as level 13. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 11.



Sentence. The guideline range was 10-16 months (criminal history category II) and the offender was sentenced to 12 months with two years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #86 (23664)

Offense. The offender purchased pornographic video tapes showing a minor under the age of 12 from an undercover operation conducted by the U.S. Customs Service.

Guideline calculations. The offender pleaded guilty to receipt of child pornography (18 U.S.C. § 2252(a)(2)). The base offense level was calculated as level 13. There was a two level increase because the material involved a minor under the age of 12 (§2G2.2(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 13.

Sentence. The guideline range was 12-18 months (criminal history category I) and the offender was sentenced to 4 years probation. The offender was also fined \$4,397 which includes the cost of supervision.

Reasons. The court departed below the guidelines because of "5K2.13." Section 5K2.13 relates to diminished capacity but no additional explanation was provided and there was no information in the file that indicated diminished capacity.

§2G3.1. Importing, Mailing, or Transporting Obscene Matter

• Case #87 (21918)

Offense. The offender sold pornographic video tapes showing adults through the mail. The amount of the pecuniary gain was not clarified. The offender also failed to appear for trial and was rearrested in another part of the country.

Guideline calculations. The offender pleaded guilty to unlawful use of the U.S. mail for distribution of pornography (18 U.S.C. § 1461). The base offense level was calculated as level 6. There was a five level increase for distribution involving pecuniary gain (§2G3.1(b)(1)) and a two level increase for obstruction of justice (§3C1.1) resulting in a total offense level of 13. Acceptance of responsibility was denied because of the obstruction of justice. The basis for the obstruction of justice was not clear in the record it appears that it relates to the failure to appear at trial.

Sentence. The guideline range was 12-18 months (criminal history category I) and the offender was sentenced to 12 months with two years supervised release. The fine was waived.

Reasons. Not applicable.

#### CHAPTER TWO, PART K - OFFENSES INVOLVING PUBLIC SAFETY

##### §2K1.5. Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft

• Case #86 (23236)

Offense. The offender attempted to board an aircraft while in possession of a firearm. No presentence report was prepared and no further description of the offense is available in the file.

Guideline calculations. The offender pleaded guilty to attempting to board an aircraft while in possession of a firearm (49 U.S.C. § 1472(L)(1)(A)). The base offense level was calculated as level 9. There was a three level decrease because the act would otherwise have been lawful and the offender acted from negligence (§2K1.5(b)(3)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to 18 months probation. The fine was waived.

Reasons. Not applicable.

##### §2K2.1. Receipt, Possession, or Transportation of Firearms and Other Weapons by Prohibited Persons

• Case #89 (21759)

Offense. The offender forced another individual to purchase a firearm for the offender by threatening to inform a welfare agency about the individual's unreported income. The threatened individual informed police and the offender was arrested with two handguns and an unregistered machine gun. The offender also told an undercover agent prior to arrest and before he knew he was talking to a police officer that he would render the informant "inoperative" if he caused trouble. There is no information, however, that the threat was ever made known to the informant.

Guideline calculations. The offender pleaded guilty to one count of felon in possession of a firearm (a handgun) (18 U.S.C. § 922(g) and 924(a)(1)). Based on the possession of a single hand gun, the base offense level was calculated as level 9. There was a two level increase for obstruction of justice based on the threat to the informant (§3C1.1) and a two level decrease based upon

acceptance of responsibility (§3E1.1) resulting in a total offense level of 9. Under guidelines now in effect, a conviction under 18 U.S.C. § 922(g) has a base offense level of 12.

Sentence. The guideline range was 6-12 months (criminal history category II) and the offender was sentenced to 3 months with three years supervised release. The offender was also fined \$1,000.

Reasons. The court departed below the guidelines because of substantial assistance to the government in an unrelated case. No information was provided in the file concerning this case.

• Case #90 (22471)

Offense. Police searched a residence suspected of being a distribution point for illegal drugs. When police identified themselves, the offender fled the residence on foot and was stopped after a short distance. When stopped, a handgun was found in the offender's pocket. There is no information in the file that any illegal drugs were confiscated.

Guideline calculations. The offender pleaded guilty to unlawful acts: firearms (18 U.S.C. § 922(g)(1)) and was found to be an armed career criminal (18 U.S.C. § 924(e)(1)). Based on the possession of a firearm, the base offense level was calculated as level 9. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 7. Under guidelines now in effect, this offense has a base offense level of 12 and recent changes submitted to Congress increases the base offense level to 33.

Sentence. The guideline range was 12-18 months (criminal history category V) and the offender was sentenced to a 15 year mandatory minimum term with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #91 (23580)

Offense. During a routine record check, it was discovered that the offender had purchased a shotgun. A search of his residence uncovered the shotgun and a handgun.

Guideline calculations. The offender pleaded guilty to false statement in acquisition of a firearm (18 U.S.C. § 922(a)(6)) and felon in possession of a firearm (18 U.S.C. § 922(g)(1)). Based on the possession of a shotgun, the base offense level was calculated as level 9. Based on the possession of a handgun, the base offense level was calculated as level 9. The combined offense

level for two counts of possession of a firearm was level 11 (§3D1.4). There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 9. Under guidelines now in effect, this offense has a base offense level of 12.

Sentence. The guideline range was 12-18 months (criminal history category IV) and the offender was sentenced to 14 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

§2K2.2. Receipt, Possession, or Transportation of Firearm and Other Weapons in Violation of National Firearms Act

• Case #92 (26434)

Offense. Based on information from an informant, police searched the offender's residence and uncovered four weapons that had been modified to fire automatically. While on bond, the offender attempted to board a commercial airline flight and an unspecified number of handguns were found in the offender's luggage. Charges resulting from the attempt to transport firearms on an airline were dismissed and there were no bond violation proceedings against the defendant.

Guideline calculations. The offender pleaded guilty to four counts of possession of a machine gun (18 U.S.C. § 922(o)). The counts were grouped (§3D1.2) and the base offense level was calculated as level 12. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10. Under proposed guidelines recently submitted to Congress, this offense has a base offense level of 18.

Sentence. The guideline range was 6-12 months (criminal history category I) and the offender was sentenced to 6 months with three years supervised release. The offender was also fined \$2,000.

Reasons. Not applicable.

§2K2.3. Prohibited Transactions in or Shipment of Firearms and Other Weapons

• Case #93 (24571)

Offense. The offender and a codefendant illegally distributed eight firearms to underage individuals through a pawn shop.

Guideline calculations. The offender pleaded guilty to unlawful sale of firearms (18 U.S.C. § 922(b)) and false entry in firearm acquisition and disposition record book (18 U.S.C. § 922(m)). The base offense level was calculated as level 6. There was a one

level increase because the offense involved eight firearms (§2K2.3(b)(1)), a two level increase because the purchaser was prohibited from owning the firearm (§2K2.3(b)(2)), and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 7.

Sentence. The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to two years probation with 2 months community confinement. The offender was also fined \$1,000.

Reasons. Not applicable.

• Case #94 (23352)

Offense. The offender and a codefendant "manufactured a variety of plastic explosive devices" and "sold a couple of hundred of those devices to the public" without a license. It was not clear in the record who purchased the explosives or why.

Guideline calculations. The offender pleaded guilty to possession of destructive devices (26 U.S.C. § 5861(d)), illegally transferring destructive devices (26 U.S.C. § 5861(e)), and preparation of destructive devices (26 U.S.C. § 5861(f)). The base offense level was calculated as level 12. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 10. Under proposed guidelines recently submitted to Congress, this offense has a base offense level of 18.

Sentence. The guideline range was 10-16 months (criminal history category III) and the offender was sentenced to 5 months in prison and 5 months community confinement (10 months total) with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #95 (20846)

Offense. The offender sold a machine gun and a small amount of methamphetamine to an informant. When arrested, the offender also gave police a false name and social security number.

Guideline calculations. The offender was never charged with the illegal distribution of methamphetamine. The offender pleaded guilty to illegal transfer of a machine gun (26 U.S.C. § 5861(e)) and use of a false social security number (42 U.S.C. § 406(g)(2)). Based upon the illegal transfer of the machine gun, the base offense level was calculated as level 12. There was a two level increase for obstruction of justice based upon the false social security number (§3C1.1) resulting in an adjusted offense level of 14. Based upon the use of a false social security number, (§2F1.1), the base offense level was calculated as level 6. There

was a two level increase for obstruction of justice based upon the same false social security number (§3C1.1) resulting in an adjusted offense level of 8. The combined offense level for both counts was level 15 (§3D1.4). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 13. Under proposed guidelines recently submitted to Congress, this offense has a base offense level of 18.

Sentence. The guideline range was 15-21 months (criminal history category II) and the offender was sentenced to 18 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

CHAPTER TWO, PART L - OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

§2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien

• Case #96 (2522E)

Offense. When Border Patrol agents attempted to stop a suspicious vehicle driven by the offender, the offender sped off at a high rate of speed. The offender eventually lost control of the vehicle, hit a guard rail, and was arrested. A search of the vehicle uncovered eight illegal aliens and a stolen handgun was found under the driver's seat. There was some evidence that the offender (an illegal alien) was transporting the other aliens in return for free passage.

Guideline calculations. Possession of a stolen firearm was never charged. The offender pleaded guilty to transportation of illegal aliens (8 U.S.C. § 1324(a)(1)(B)). The base offense level was calculated as level 9. There was a three level decrease based on information that the offense was committed other than for profit (§2L1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to 10 months with three years supervised release. The fine was waived.

Reasons. The court departed above the guidelines because of the high speed chase.

• Case #97 (2511E)

Offense. Police stopped a vehicle driven by the defendant and three other passengers in the vehicle were illegal aliens. There was information that the individuals being transported were relatives of the offender and the offender was not being paid to transport them.

Guideline calculations. The offender pleaded guilty to transporting illegal aliens (8 U.S.C. § 1324(a)(1)(B)). The base offense level was calculated as level 9. There was a three level decrease based on information that the offense was committed other than for profit (§2L1.1(b)(1)) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to three years probation. The offender was also fined \$250.

Reasons. Not applicable.

• Case #98 (24425)

Offense. A vehicle driven by the offender was stopped by the Border Patrol and found to contain seven illegal aliens.

Guideline calculations. The offender pleaded guilty to transporting an unlawful alien (8 U.S.C. § 1324(a)(1)(B)). The base offense level was calculated as level 9. There was a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 7.

Sentence. The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to 3 months with two years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #99 (27825)

Offense. The offender was arrested in a hotel room with eighteen illegal aliens. The defendant was transporting these individuals across the country.

Guideline calculations. The offender pleaded guilty to transporting illegal aliens (8 U.S.C. § 1324(a)(1)(B)). The base offense level was calculated as level 9. Although the offender pleaded guilty, he denies any guilt in the offense and there was no adjustment for acceptance of responsibility (§3E1.1). The total offense level remains 9.

Sentence. The guideline range was 4-10 months (criminal history category I) and the offender was sentenced to 4 months with two years supervised release. The offender was also fined \$6,960 which covers the cost of incarceration and supervision.

Reasons. Not applicable.

• Case #100 (23357)

Offense. The offender was arrested smuggling four aliens into the United States.

Guideline calculations. The offender was convicted of conspiracy to bring aliens into the United States (18 U.S.C. § 371). The base offense level was calculated as level 9. There was a two level increase for role in the offense based upon information that the offender was an "organizer" who directed the activities of the aliens being smuggling (§3B1.1) and a two level decrease for acceptance of responsibility (§3E1.1) resulting in a total offense level of 9.

Sentence. The guideline range was 4-10 months (criminal history category I) and the offender was sentenced to three years probation. The offender was also fined \$12,000.

Reasons. The court departed below the guidelines because of "5K1.1". No further information or explanation was available in the file.

§2L1.2. Unlawfully Entering or Remaining in the United States

• Case #101 (25203)

Offense. The offender was arrested by local authorities in a drug raid and found to be an illegal alien. Local drug charges are pending.

Guideline calculations. The defendant pleaded guilty to one count of being an alien in the U.S. after deportation (8 U.S.C. § 1326). The base offense level was calculated as level 8. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 6.

Sentence. The guideline range was 2-8 months (criminal history category III) and the defendant was sentenced to 6 months. Supervised release and the fine were waived, apparently because of an expectation that the defendant would be deported.

Reasons. Not applicable.

• Case #102 (24955)

Offense. When Border Patrol agents attempted to stop a stolen vehicle being driven by the offender, the offender sped off and started a high speed chase. The offender ran several stop lights and stop signs, "blasted through" a guard's entrance to a military base and stopped at a dead-end parking lot. The offender then turned around and then "ran head-on into a marked Border Patrol van that had stopped on the street." Both the offender and the agent



sustained injuries. The agent received number bruises, abrasions, and a laceration requiring four stitches.

Guideline calculations. The offender was never charged with possession of a stolen vehicle. The offender pleaded guilty to illegal entry (8 U.S.C. § 1325). The base offense level was calculated as level 8. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 6.

Sentence. The guideline range was 2-8 months (criminal history category III) and the offender was sentenced to 18 months with any year supervised release. The fine was waived.

Reasons. The court departed above the guidelines because of the high speed chase.

• Case #103 (21882)

Offense. The offender was arrested for driving while intoxicated and found to be an illegal alien.

Guideline calculations. The offender pleaded guilty to being a deported alien in the United States (8 U.S.C. § 1326). The base offense level was calculated as level 8. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 6.

Sentence. The guideline range was 12-18 months (criminal history category VI) and the offender was sentenced to 18 months with one year supervised release. The fine was waived.

Reasons. Not applicable.

§2L2.1. Trafficking in Evidence of Citizenship or Documents Authorizing Entry.

• Case #104 (23184).

Offense. The offender provided false letters of employment to allow a codefendant to obtain work permits from INS which were then sold to aliens for \$500 each. There is no information in the file on the number of documents sold. At least four sales were documented but it appears that there were more.

Guideline calculations. The offender pleaded guilty to special agriculture workers fraud (8 U.S.C. § 1160). The base offense level was calculated as level 6. There was a three level increase because the offense was committed for profit (§2L2.1(b)(1)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 7. As part of the plea agreement, the government recognized that the offender had a

"limited" role and could be characterized as a minor participant. The presentence report, however, noted that the offender was equally culpable compared to his codefendant and the fraudulent documents prepared by the offender were "an essential part of the application packet."

Sentence. The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to three years probation. The fine was waived.

Reasons. The court departed below the guidelines because of the offender's limited role. Essentially, it appears that the court departed as the result of a plea agreement.

• Case #105 (22928)

Offense. The offender prepared thirteen sets of false documents for submission to INS for work permits. The offender was recruited by a codefendant identified as more culpable.

Guideline calculations. The offender pleaded guilty to conspiracy to make false statements to INS (18 U.S.C. § 371). The base offense level was calculated as level 6. There was a three level increase because the offense was committed for profit (§2L2.1(b)(1)) and a two level decrease of or acceptance of responsibility (§3E1.1) resulting in a total offense level of 7.

Sentence. The guideline range was 1-7 months (criminal history category I) and the offender was sentenced to three years probation. The offender was also fined \$3,000.

Reasons. The court departed below the guidelines because of substantial assistance to the government.

• Case #106 (23705)

Offense. The offender sold a set of fraudulent work permits to an informant.

Guideline calculations. The offender was convicted by trial of supplying false documents (8 U.S.C. § 1160(b)). The base offense level was calculated as level 6. There was a three level increase because the offense was committed for profit (§2L2.1(b)(1)) resulting in a total offense level of 9.

Sentence. The guideline range was 4-10 months (criminal history category I) and the offender was sentenced to 9 months with two years supervised release. The fine was waived but the offender was ordered to pay \$400 restitution to the government.

Reasons. Not applicable.

§2L2.4. Fraudulently Acquiring or Improperly Using a United States Passport

• Case #107 (21522)

Offense. The offender was in the U.S. illegally and made a false application for a passport.

Guideline calculations. The offender pleaded guilty to false representation as a U.S. citizen (18 U.S.C. § 911). The base offense level was calculated as level 6. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 4.

Sentence. The guideline range was 0-4 months (criminal history category I) and the offender was sentenced to two years probation. The fine was waived but the offender was ordered to perform 200 hours of community service.

Reasons. Not applicable.

CHAPTER TWO, PART P - OFFENSES INVOLVING PRISONS AND CORRECTIONAL FACILITIES

§2P1.1. Escape, Instigating or Assisting Escape

• Case #108 (22740)

Offense. While leaving court after being convicted of distributing cocaine, the offender broke away from U.S. Marshals after picking open the lock on his leg irons. The offender was apprehended without incident a short time later.

Guideline calculations. The offender pleaded guilty to escape (18 U.S.C. § 751(9)). The base offense level was calculated as level 13. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 11.

Sentence. The guideline range was 12-18 months (criminal history category III) and the offender was sentenced to 18 months (consecutive) with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #109 (22877)

Offense. The offender walked away from a halfway house and was arrested the same day in a stolen vehicle driven by another individual.

Guideline calculations. The offender was never charged with the stolen vehicle. The offender pleaded guilty to escape (18 U.S.C. § 751(a)). The base offense level was calculated as level 13. There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 11.

Sentence. The guideline range was 18-24 months (criminal history category IV) and the offender was sentenced to 18 months (consecutive) with two years supervised release. The fine was waived.

Reasons. Not applicable.

#### CHAPTER TWO, PART S - MONEY LAUNDERING AND MONETARY TRANSACTIONS REPORTING

##### §2S1.3. Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

• Case #110 (22444)

Offense. The offender and two others attempted to leave the country on a commercial airline flight. The three were found to be in possession of over \$360,000 which they failed to declare. There was no information in the file to indicate that the funds were criminally derived or intended for some other criminal purpose.

Guideline calculations. The offender pleaded guilty to conspiracy to commit an offense: failure to report a monetary transaction (18 U.S.C. § 371). The base offense level was calculated as level 13. There was a three level increase based on the amount of money involved (§2S1.3(b)(2)) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 14.

Sentence. The guideline range was 15-21 months (criminal history category I) and the offender was sentenced to 18 months with three years supervised release. The fine was waived.

Reasons. Not applicable.

• Case #111 (21552)

Offense. The offender and two codefendants laundered \$60,000 in Mexico to facilitate an attempt to purchase approximately 600 pounds of marijuana. A search of the offender's residence uncovered 7 ounces of cocaine, 9 ounces of hashish, 671 codeine tablets, 11 grams of marijuana, \$55,000, and three hand guns. The offender was identified as the leader relative to the other two codefendants.

Guideline calculations. The offender pleaded guilty to money laundering (31 U.S.C. § 5316(a) and 5322(b)). The base offense level was calculated as level 13. There was a five level increase because the funds were known to be criminally derived (§2S1.3(b)(1)), and a two level increase for role in the offense because the offender was a leader (§3B1.1) resulting in a total offense level of 20. Although the offender pleaded guilty and admitted involvement in the offense, the offender was denied acceptance of responsibility (§3E1.1) because he "sought to minimize his role."

Sentence. The guideline range was 37-46 months (criminal history category II) and the offender was sentenced to 120 months with three years supervised release. The offender was also fined \$50,000.

Reasons. The court departed above the guidelines to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, to afford adequate deterrence, and to protect the public.

#### CHAPTER TWO, PART X - OTHER OFFENSES

##### §2X3.1. Accessory After the Fact

###### Case #112 (24709)

Offense. The offender's son was wanted for distributing cocaine. The offender helped his son escape to Canada where the son was eventually arrested and returned to the United States.

Guideline calculations. The offender pleaded guilty to harboring and concealing a person from arrest (18 U.S.C. § 1071). For reasons that were not explained in the record, the offense level for the underlying offense (distribution of cocaine) was calculated as level 30. The base offense level for accessory after the fact was calculated as level 24 (6 levels lower than the underlying offense). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 22.

Sentence. The guideline range was 46-57 months (criminal history category II) and the offender was sentenced to 51 months with three years supervised release.

Reasons. Not applicable.

##### §2X4.1. Misprision of Felony

###### Case #113 (22288)

Offense. As part of an investigation of a large scale conspiracy to distribute cocaine, the offender was intercepted "several times"

negotiating over the telephone the sale of cocaine with a more culpable codefendant. The conversations discussed the sale of "one to two kilograms" of cocaine at a time.

Guideline calculations. The offender pleaded guilty to misprision of a felony (18 U.S.C. § 4). The underlying offense was determined to be the use of a communications facility in committing a drug offense (§2D1.6) which had a base offense level of 12. The base offense level for misprision of a felony was calculated as level 4 (9 levels less than the underlying offense but not less than level 4). There was a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 2.

Sentence. The guideline range was 0-2 months (criminal history category I) and the offender was sentenced to 3 years probation with 6 months in a "house arrest program." The offender was also fined \$1,000.

Reasons. Home detention was not yet authorized under the guidelines at the time of sentencing and 6 months of "house arrest" was not considered by the court to be a departure.

• Case #114 (22795)

Offense. The offender and two others were involved in a scheme to rent 20 automobiles which were sold after reporting them to the rental companies as stolen. The total loss to the victims was slightly over \$100,000. The defendant was under the direction of her brother and personally rented three cars and reported them stolen. It was unclear in the record to what extent the offender was involved with or profited from the other vehicles.

Guideline calculations. The offender pleaded guilty to misprision of a felony (18 U.S.C. § 4). Based upon the theft, the base offense level was calculated as level 4. There was an eight level increase based upon the loss (§2B1.1(b)(1)) and a two level increase for more than minimal planning (§2B1.1(b)(4)(B)). There was a nine level reduction because the offense of conviction involved misprision of a felony (§2X4.1) and a two level reduction for acceptance of responsibility (§3E1.1) resulting in a total offense level of 3.

Sentence. The guideline range was 0-3 months (criminal history category I) and the defendant was sentenced to three years probation. The fine was waived but the offender was required to complete 300 hours of community service.

Reasons. Not applicable.

	Guideline	Level	Category	Range	Sentence	Reason for Departure	Other
1	2A1.1	43	I	Life	Life	.	.
2	2A2.2	27	I	70-87	52 mo.	Unknown	.
3	2B1.1	3	I	0-3	1 mo.	.	.
4	2B1.1	5	I	0-5	Prob.	.	.
5	2B1.1	7	I	1-7	1 mo.	.	.
6	2B1.1	8	I	2-8	2 mo.	.	.
7	2B1.1	9	I	4-10	Prob.	SK2.13	.
8	2B1.1	8	III	6-12	Prob.	Remorse	.
9	2B1.1	10	I	6-12	1 mo.	Restitution	.
10	2B1.1	15	I	18-24	20 mo.	.	.
11	2B1.1	14	VI	37-46	41 mo.	.	.
12	2B1.2	10	II	8-14	8 mo.	.	.
13	2B2.3	4	I	0-4	Prob.	.	.
14	2B3.1	17	I	24-30	30 mo.	.	.
15	2B3.1	19	II	33-41	33 mo.	.	.
16	2B3.1	21	II	41-51	46 mo.	.	.
17	2B3.1	7	II	2-8	Prob.	Unknown	.
18	2D1.1	4	I	0-4	Prob.	.	.
19	2D1.1	10	I	6-12	6 mo.	.	.
20	2D1.1	10	I	6-12	12 mo.	.	.
21	2D1.1	16	I	21-27	21 mo.	.	.
22	2D1.1	16	I	21-27	10 mo.	Plea	.
23	2D1.1	16	I	21-27	24 mo.	.	.
24	2D1.1	16	I	21-27	21 mo.	.	.
25	2D1.1	16	II	24-30	24 mo.	.	.
26	2D1.1	17	I	24-30	24 mo.	.	.
27	2D1.1	18	III	33-41	41 mo.	.	.
28	2D1.1	20	I	33-41	60 mo.	Mandatory	..
29	2D1.1	20	I	33-41	18 mo.	SH1.6	.
30	2D1.1	20	I	33-41	6 mo.	SK1.1	.
31	2D1.1	20	I	33-41	40 mo.	.	.
32	2D1.1	20	II	37-46	37 mo.	.	.
33	2D1.1	20	II	37-46	60 mo.	Mandatory	..
34	2D1.1	22	I	41-51	41 mo.	.	.
35	2D1.1	22	I	41-51	41 mo.	.	.
36	2D1.1	22	III	51-63	51 mo.	.	.
37	2D1.1	24	I	51-63	18 mo.	SK1.1	.
38	2D1.1	24	I	51-63	60 mo.	.	.
39	2D1.1	24	I	51-63	60 mo.	.	.
40	2D1.1	24	I	51-63	6 mo.	SK1.1	.
41	2D1.1	24	I	51-63	60 mo.	.	.
42	2D1.1	24	II	57-71	57 mo.	.	.
43	2D1.1	24	III	63-76	51 mo.	Plea	.
44	2D1.1	24	III	63-76	66 mo.	.	.
45	2D1.1	26	I	63-76	76 mo.	.	.
46	2D1.1	26	I	63-76	63 mo.	.	.
47	2D1.1	26	I	63-76	63 mo.	.	.
48	2D1.1	26	I	63-76	63 mo.	.	.
49	2D1.1	26	III	76-97	87 + 60 mo.	Mandatory	...
50	2D1.1	26	III	76-97	76 mo.	.	.
51	2D1.1	26	I	76-97	60 mo.	Unknown	.
52	2D1.1	26	IV	92-115	84 mo.	Unknown	.
53	2D1.1	30	I	97-121	121 mo.	.	.

2D11	30	I	97-121	97 mo.	.
2D11	30	I	97-121	120 mo.	.
2D11	30	I	97-121	97 mo.	.
2D11	32	I	121-151	121 mo.	.
2D11	32	III	151-186	151 mo.	.
2D11	32	III	151-186	18 mo.	SK1.1
2D11	34	I	151-186	151 mo.	.
2D11	35	I	168-210	138 mo.	Unspecific
2D11	34	III	186-235	141 mo.	SK1.1
2D11	36	III	235-293	121 mo.	SK1.1
2D11	37	II	235-293	144 mo.	SK1.1
2D11	36	V	292-365	192 mo.	SH1.1
2D14	16	I	21-27	25 + 60 mo.	Mandatory
2D14	24	I	51-63	42 mo.	Pica
2D14	32	I	121-151	136 mo.	.
2D14	36	I	186-235	186 mo.	.
2D15	34	II	168-210	204 mo.	.
2D21	4	III	0-6	3 mo.	.
2D21	6	I	0-6	6 mo.	.
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2E31	6	III	2-8	2 mo.	.
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2F11	4	I	0-4	Prob.	.
2F11	4	II	0-5	Prob.	.
2F11	6	II	4-10	4 mo.	.
2F11	9	I	4-10	7 mo.	.
2F11	11	I	8-14	6 mo.	SH1.7
2F11	11	I	8-14	9 mo.	.
2F11	11	II	10-16	16 mo.	.
2F11	13	I	12-18	12 mo.	.
2F11	15	I	16-24	21 mo.	.
2F11	15	II	21-27	27 mo.	.
2F11	10	V	24-30	30 mo.	.
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2G22	11	II	10-16	12 mo.	.
2G22	13	I	12-18	Prob.	SK2.13
2G31	13	I	12-18	12 mo.	.
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2K15	4	I	0-4	Prob.	.
2K21	9	II	6-12	3 mo.	SK1.1
2K21	7	V	12-18	180 mo.	Mandatory
2K21	9	IV	12-18	14 mo.	.
2K22	10	I	6-12	6 mo.	.
2K23	7	I	1-7	2 mo.	.
2K23	10	III	10-16	10 mo.	.
2K23	13	II	15-21	16 mo.	.
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2L11	4	I	0-4	10 mo.	Chase
2L11	4	I	0-4	Prob.	.
2L11	7	I	1-7	3 mo.	.
2L11	9	I	4-10	4 mo.	.
2L11	9	I	4-10	Prob.	SK1.1
2L12	6	III	2-8	6 mo.	.
2L12	6	III	2-8	16 mo.	Chase
2L12	6	VI	12-18	16 mo.	.
2L21	7	I	1-7	Prob.	Pica
2L21	7	I	1-7	Prob.	SK1.1
2L21	9	I	4-10	9 mo.	.



	2L24	4	I	0-4	Prob.	
106	2P11	11	III	12-16	18 mo.	.
107	2P11	11	IV	18-24	18 mo.	.
110	2S13	14	I	15-21	18 mo.	.
111	2S13	20	II	37-46	120 mo.	Seriousness .
112	2X31	22	II	46-57	51 mo.	.
113	2X41	2	I	0-2	Prob.	.
114	2X41	3	I	0-3	Prob.	.

\*In these cases, it appears that the guideline calculations were manipulated as the result of a plea agreement.

\*\*Offense carries a mandatory minimum term.

\*\*\*Offense carries a mandatory 60 month consecutive term.