

124105

United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 10 a.m., EST
Wednesday, May 9, 1984

STATEMENT OF
ARNOLD P. JONES, SENIOR ASSOCIATE DIRECTOR
GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY
ON SENTENCING REFORM PROPOSALS



Mr. Chairman and Members of the Subcommittee:

Our testimony today will present the results of our review work to date which focuses on various sentencing reform legislative proposals and the impact these proposals may have on various components of the federal criminal justice system. Our review was requested by both the House and Senate Judiciary Committees. For over a decade, the Congress has generated numerous legislative proposals to reduce the disparity in sentences imposed. In our testimony we will discuss (1) various aspects of sentencing reform legislation and their potential effects on the criminal justice system, (2) aspects that need to be considered before sentencing guidelines are developed or used

and (3) the potential impact of the legislative proposals on the workload of circuit courts, U.S. attorneys, and court-appointed defense counsel as well as the potential impact on the federal prison population.

In conducting our review, we examined numerous sentencing reform bills introduced in this and prior sessions of Congress. Among those examined were your bills 2013 and 4827. (App. I includes a comparison of various legislative bills examined and several other bills currently being considered by the Congress.)

I would now like to discuss our preliminary findings in more detail.

SCOPE AND METHODOLOGY

Before preceding with our findings and conclusions, I would like to point out that in conducting our review we sent questionnaires to all 128 active circuit judges (119 responded), to a random sample of 150 active district judges (137 responded) and all 93 U.S. attorneys (82 responded); discussed sentencing reform proposals with 17 circuit judges in 6 of the 12 circuits and with 27 district judges, 10 prosecutors and 14 court-appointed defense attorneys in 10 of the 94 judicial districts.

We examined congressional bills and committee reports; reviewed studies, reports, and articles on sentencing reform. We also interviewed officials from the Administrative Office of the U.S. Courts, Federal Judicial Center, Federal Prison System, and Office of Legal Policy within the Department of Justice. We discussed sentencing reform with the Chairman of the Judicial Conference's Committee on the Administration of the Probation System and discussed sentencing reform measures with representatives of the Minnesota Sentencing Guidelines Commission.

In addition, we sampled 2,573 cases where federal offenders were sentenced to a term of imprisonment between 1974 and 1978 for 10 offense categories (homicide, bank robbery, drugs, postal theft, forgery, bribery, bank embezzlement, false claims, income tax fraud, and postal fraud) to make estimates of the impact of legislatively proposed sentences on the federal prison population. The 10 offense categories used in our analysis account for a large portion of offenders currently sentenced, specifically, 43 percent of the offenders sentenced to imprisonment and 56 percent of the total prison-years imposed during the statistical year ending June 30, 1982. (This is the latest available data on sentencing statistics.)

ASPECTS TO CONSIDER IN
SENTENCING REFORM PROPOSALS

On the basis of our review work to date, we have identified several aspects of sentencing that need to be considered when reviewing legislative proposals dealing with sentencing. The areas identified deal with (1) requiring appellants to present all claims or grounds for appeal of district court imposed sentences at one time, (2) establishing standards to assist judges in determining whether or not to accept plea agreements, and (3) establishing a specific time frame prior to sentencing for the disclosure of presentence investigation reports. I will now discuss each of these in detail.

Appellate review of sentences

Presently, sentences imposed by the district courts generally can be appealed only when they fall outside statutorially prescribed sentences. Under a sentencing guidelines system, a critical component would be the ability to appeal the use of the guidelines (sentence imposed). This would help to ensure that the guidelines are not improperly abused without any corrective alternative. In this regard, current sentencing reform proposals, which provide for the establishment of sentencing

guidelines, (H.R. 2151, H.R. 3128, H.R. 4554, H.R. 3997, S. 668, S. 829, S. 2240, S. 1182 and S. 1762) would expand the degree to which appellate review of district court sentencing decisions is authorized. Although appellate review of sentences is intended to reduce any remaining unwarranted disparities that may continue even with a sentencing guidelines system, it could also greatly increase the workload of the circuit courts.

With regard to sentence appeals, several bills (H.R. 2151, H.R. 3128, H.R. 3997, S. 668, S. 829, S. 1182, and S. 1762) provide for the appeal of sentences by both the defendant and the government whereas two bills (H.R. 4554 and S. 2240) provide for appeal by the defendant only. Generally, the appellate review of sentences in proposed legislation would grant the right of appeal to either the defendant and/or the government when a sentence deviates from the established guidelines or there is a misapplication of the guidelines. (App. II contains details on the permissible grounds for sentence appeal contained in pending sentencing reform proposals.)

If there is to be an appellate review of sentences imposed by district courts, it is important to design a system that handles sentence appeals in the most efficient manner without

infringing on the legal rights of the parties involved. Therefore, a sentence appeal system should be targeted towards a single review by the circuit courts rather than a series of appeals. This will occur only if appellants (defendant or government) present all the grounds on which their appeal is based and are not allowed to subsequently raise issues that were available to them at the time of their initial sentence appeal.

Responses to our questionnaires from circuit court judges showed that 99 percent of the judges favored the use of a single comprehensive review rather than multiple reviews of a sentence appeal. Their responses also indicate that under proposed legislation multiple reviews would have a much more pronounced impact on the workload of the circuit courts than a single review. In fact, 76 percent of the respondents believed that multiple reviews would greatly increase the circuit courts' workload. However, the circuit court judges responded that if only single reviews of sentence appeals took place the impact on the court would not be as severe, even though they acknowledged that there would be an increase in their workload.

Circuit court judges, when asked if a time limit should be established for the filing of an appeal of a sentence, said almost unanimously (97 percent) that they favored the establishment of a time limit. Further, when asked what the time limit

should be, 45 percent of the judges favored a 10 day limit, 45 percent of the judges favored an 11 to 30 day limit, and 10 percent favored a 31 to 120 day limit.

Standards concerning plea
agreements

Disparate treatment of defendants is not limited to sentencing; it also occurs in prosecutive practices. Proposed sentencing guidelines are intended to reduce sentencing disparity by structuring judicial discretion but do not address the disparity caused by prosecutive practices. Rather, this type of disparity will be reduced only by oversight of the use of plea agreements. Currently, plea agreements are conducted under differing policies with minimal oversight from the Department of Justice and the judiciary. One form of oversight occurs at the judicial level when judges decide whether or not to accept plea agreements. Establishing standards for judges to use in making these decisions would help to minimize the disparity caused by prosecutorial discretion. However, another form of oversight occurs at the prosecutor level through the establishment of policies for, and supervisory review of, the use of plea agreements. Disparity will continue to exist in this area unless Justice takes a more active role in overseeing the plea agreements of prosecutors.

Plea agreements have become a common tool of U.S. attorneys for disposing of criminal cases. They generally consist of an agreement between the prosecutor and the defendant or defense counsel whereby in return for a defendant's guilty plea to a lesser charge, the prosecutor agrees not to press a more serious charge which he/she asserts could be proven at a trial. Because plea agreements have an impact on the ultimate sentence imposed on the defendant, the consistency of their application directly influences the treatment of defendants.

As pointed out in a prior GAO report, U.S. attorneys have established their own policies regarding the use of plea agreements.¹ However, these policies differ among U.S. attorneys; some allow certain types of plea agreements, such as dropping, reducing, or withholding criminal charges, while others do not. Because the final charges brought by the prosecutor ultimately affect the sentence that can be imposed, people with similar criminal histories who are guilty of similar

¹Greater Oversight and Uniformity Needed in U.S. Attorneys' Prosecutive Policies (GAO/GGD-83-11, Oct. 27, 1982).

offenses can receive markedly different sentences. Even though plea agreements are frequently used, they are normally not guided by written procedures or policies, nor are they always subject to supervisory review and approval.

Further, plea agreement practices of U.S. attorneys also vary because federal district courts have established different procedures governing the use of plea agreements. For example, pleas conditioned on the defendant receiving a specific sentence or on U.S. attorneys making a recommendation for a particular sentence are allowed by some district courts but not by others.

A 1979 study² conducted for the Federal Judicial Center concluded that sentencing reform measures which limit judicial and Parole Commission discretion could greatly increase the prosecutor's power, absent proper controls. To control prosecutorial discretion, this study recommended the establishment of guidelines for judges to use in deciding whether to accept charge-reduction plea agreements.

²Stephen J. Schulhofer, Prosecutorial Discretion and Federal Sentencing Reform, Volume I (a report based on a study for the Federal Judicial Center, August 1979), pp. 1-2, and 5.

Current law (Rule 11(e)(2) of the Federal Rules of Criminal Procedure) sets forth the procedure under which judges decide to accept or reject plea agreements. However, no standards exist for judges to use in making this determination. For example, the judiciary has no standards by which to evaluate the plea agreement of a defendant who pleads guilty to one charge and the government refrains from bringing or agrees to drop other charges. Much concern has been voiced by some members of Congress and judicial officials about promulgating sentencing guidelines for judges without similar guidance and control over prosecutorial discretion in plea agreements. This concern involves the disparate sentences that could result from the broad discretion of the prosecutor.

In light of such concerns, sentencing reform proposals (H.R. 2151, S. 829, S. 668, H.R. 3997, and S. 1762) require the sentencing commission to issue policy statements for federal judges to use when determining whether or not to accept plea agreements. Other proposals (H.R. 3128, S. 1182, H.R. 4554 and S. 2240) require the sentencing commission to recommend standards for federal judges to use when determining whether or not to accept plea agreements. We agree that if sentencing guidelines are to be used there should be a requirement that standards be established to assist district court judges when

reviewing plea agreements. Such reviews by district judges would help to minimize disparities that otherwise might result from the use of plea agreements. Also if the Justice Department more closely monitored the plea agreement activities of U.S. attorneys, prosecutorial disparities in the use of plea agreements could be minimized under a sentencing guidelines system.

With regard to establishing greater control over the prosecutors' discretion in negotiating plea agreements, both the district court judges (90 percent) and U.S. attorneys (99 percent) in responding to our questionnaires overwhelmingly disapprove of establishing greater control. Even though both the judges and U.S. attorneys are opposed to greater controls, we believe that if the major purpose of sentencing guidelines is to be fulfilled (i.e. elimination of unwarranted sentencing disparity) then some type of oversight of prosecutorial use of plea agreements needs to be established. As noted earlier, this could be accomplished by establishing standards for judges to use when reviewing plea agreements and/or providing greater oversight of U.S. attorneys' activities by the Justice Department.

Time frames prior to sentencing
for disclosure of presentence reports

Under a sentencing guidelines system, district court judges will have an even greater need for complete and accurate information about the defendant. Such information will enable them to properly apply the guidelines when imposing a sentence. The tool to obtain this information is the presentence investigation report prepared by the probation officer and provided to the district court judge. Disclosure of this report must take place prior to sentencing to ensure that the defendant, defense counsel, and the prosecutor are given adequate opportunity prior to sentencing to review the report and assess the accuracy of the information.

However, under current law (Rule 32(c)(3) of the Federal Rules of Criminal Procedure), the court is only required to release the presentence report at a reasonable time before sentencing. Under this law, the definition of a reasonable time is left to the discretion of each district court judge. In this regard, court-appointed defense attorneys in 10 districts we visited indicated that the time period for disclosure of presentence reports ranged from immediately prior to the sentencing hearing to as much as a week prior to the hearing.

In this regard, your bills Mr. Chairman (H.R. 2013 and H.R. 4827), Chairman Rodino's bill H.R. 4554, and other bills (S. 668, H.R. 3997, S. 2240 and S. 1762) include a provision for establishing a minimum period for disclosure of presentence reports. Your bills call for disclosure at least 14 days prior to sentencing, while other bills (H.R. 4554, S. 668, H.R. 3997, S. 1762 and S. 2240) call for disclosure at least 10 days prior to sentencing. In addition, four proposals (H.R. 2151, H.R. 3128, S. 829, and S. 1182) do not establish a specific time frame for disclosure of presentence reports.

Our questionnaire responses indicated that about 75 and 73 percent of the district court judges and prosecutors, respectively, believe that a specific time limit should be established for the defendant, defense counsel, and prosecutor to review presentence reports prior to sentencing. More specifically, for the judges and prosecutors favoring the establishment of a time limit for disclosure, 56 and 52 percent respectively, said that the report should be released between 1 to 3 working days prior to sentencing while 44 and 47 percent respectively favored release between 4 to 10 days.

We endorse the idea of establishing a specific time frame for disclosure of the presentence report because this report will become a more essential tool under a sentencing guidelines

system than it is today. Also, the information must be accurate and complete for the district judge to be able to use the report. Thus, providing a specific time limit on its release to the defendant, defense counsel, and the prosecutor in advance of sentencing will provide everyone the opportunity to seek correction of any deficiencies in the report prior to sentencing.

ASPECTS THAT NEED TO BE
CONSIDERED BEFORE SENTENCING
GUIDELINES ARE DEVELOPED OR USED

The entity responsible for developing sentencing guidelines will find that comprehensive data on federal sentencing practices would be very useful in establishing sentencing guidelines and judges will find under a sentencing guidelines system that complete and accurate information in presentence investigation reports will be needed to accurately establish offense severity and offender characteristics in applying the guidelines. However, comprehensive sentencing data on current sentencing practices is not available for use in the existing system and may not be available in time to meet the needs of the entity responsible for establishing guidelines or meet the proposed legislative time frames for establishing such guidelines. Also, presentence investigation reports in the past have not always

contained all the information necessary to accurately establish offense severity and offender characteristics. However, the judiciary has recently taken steps to improve these reports, which will be an essential tool under a sentencing guidelines system.

Comprehensive data on current
sentencing practices could facilitate
the establishment of guidelines

Legislative proposals (S. 1762, H.R. 3997, S. 668, S. 829, S. 2240, H.R. 3128, S. 1182, H.R. 4554 and H.R. 2151) would establish a Sentencing Commission that would be charged with the responsibility for developing sentencing guidelines. These legislative proposals direct the commission to consider current sentencing practices in the development of the guidelines and require a specific time by which guidelines must be developed. However, comprehensive data on current sentencing practices is not available because the data accumulated has traditionally not shown (1) information on sentences imposed on offenders with similar characteristics who are convicted of similar offenses, (2) the changes in sentences resulting from sentence modifications, or (3) information on other than the most serious offense of conviction in multiple offense convictions. The judiciary

has recognized the need for improved sentencing data and has initiated action to help resolve this problem. However, the judiciary does not expect to have such data available until early 1985.

The Judicial Conference has long recognized the need for more detailed information to guide judges in sentencing. In fact, as early as January 1980 the Administrative Office and the Federal Judicial Center initiated a long-term project to establish an information system. This system is known as the Probation Information Management System (PIMS).

In this regard Administrative Office officials have told us that PIMS will not be fully operational in all districts until far into the future. Therefore, the judiciary has decided to proceed with a modification to an existing statistical information system as an interim measure. This modified system will provide reports to each district court which will permit comparison of sentences imposed for similar offenses upon offenders with similar characteristics. Collection of data began on a nationwide basis on July 1, 1983, and it is anticipated that the first statistical reports will become available in early 1985. The information generated from this system may not be available in time to meet the proposed legislative time frames for establishing such sentencing guidelines.

Presentence investigation reports should
have complete information to assist
judges in the sentencing process

Under a sentencing guidelines system, the presentence investigation reports prepared by probation officers will be the principal document that judges will use to determine the appropriate guideline range from the description of the offense and the characteristics of the offender. Presentence reports are supposed to contain information on the nature and circumstances of the offense, the extent of property or monetary loss, the defendant's role in planning and committing the crime, an offender's prior criminal record, employment history, and any dependence on drugs.

Presentence reports in the past have not contained complete information that would assist judges in determining the appropriate sentence an individual convicted of a federal offense should receive. However, the judiciary over the last couple of years, has taken steps to improve the completeness of the presentence reports. Because presentence reports will be a key document under a sentencing guidelines system, the judiciary needs to continue actions designed to ensure that presentence reports are complete and accurate.

A prior GAO report on parole activities³ and a private study⁴ have shown that presentence investigation reports, in the past, did not always contain complete details, and this lack of information not only affects the quality of the current sentencing system but would certainly impair the operation of a sentencing guidelines system. Under sentencing guidelines, inadequate presentence report information could result in erroneous offender classification and the imposition of an improper sentence. This could result because the proposed guidelines system will recommend an appropriate kind and range of sentence for a particular category of offense committed by a particular category of offender. Therefore, all information must be as accurate and complete as possible to assist the district court judge in his/her sentencing decision.

³Federal Parole Practices: Better Management and Legislative Changes Are Needed (GAO/GGD-82-1, July 16, 1982).

⁴INSLAW, Inc., and Yankelovich, Skelly, and White, Inc., Federal Sentencing: Toward a More Explicit Policy of Criminal Sanctions, May 1981.

To correct and improve the presentence reports the Judicial Conference, through the Probation Division within the Administrative Office, issued new guidelines for probation officers to use when preparing presentence reports. These guidelines require that reviews be made of presentence reports by supervisors before they are given to the judges. These guidelines also require that the information in the reports be more succinct and germane in order to assist judges in their sentencing decision process.

We believe that the above actions will help to ameliorate the problems with incomplete information in presentence reports and improve their usefulness in sentencing decisionmaking. Because presentence investigation reports will become even more important under a sentencing guidelines system, the Administrative Office through periodic evaluations by the Probation Division and its management review teams must ensure itself that recent improvements are resulting in complete and accurate presentence investigation reports.

POTENTIAL IMPACTS OF SENTENCING

REFORM MEASURES

Sentencing reform proposals under consideration by the Congress will have various impacts on the components of the federal criminal justice system. These reforms could result in (1) an increased caseload for the circuit courts and (2) an increase in the workload of prosecutors and court-appointed defense attorneys. The impact on the federal prison population is difficult to precisely determine until information on the structure of the guidelines is available. However, using the sentences prescribed in four legislative proposals and making certain assumptions about what will happen in the future, we estimated that under two of the proposals the prison population would decrease while under the other two proposals there would be no change or an increase.

Appellate review of sentences could increase the workload of the circuit courts

As stated earlier, legislative proposals authorizing appellate review of sentences would expand the degree that district court sentencing decisions would be reviewed by the circuit

courts. This expanded authority could increase the number of sentences appealed to the circuit courts and place an added burden on a component of the court system that is already overburdened with a rising number of appeals. Therefore, additional resources may be required to handle this potential new increase in workload.

Sentencing reform proposals, (H.R. 4554, H.R. 2151, H.R. 3997, S. 668, S. 829, S. 2240, H.R. 3128, S. 1182, and S. 1762), currently under consideration by the Congress, would establish sentencing guidelines and appellate review of sentences. These proposals would expand the degree to which circuit courts review sentences. Under all these proposals, except H.R. 4554 and S. 2240, both the defendant and the government may appeal a sentence imposed. In contrast, H.R. 4554 and S. 2240 only allow the defendant to appeal a sentence. (App. II contains details on the specific grounds for appeal of sentences.)

Overall, the U.S. attorneys responding to our questionnaire overwhelmingly indicated that the workload of the circuit courts could increase or greatly increase as a result of sentences being appealed. In this regard, U.S. attorneys responded that for five specific grounds of appeal, the circuit court's workload would increase or greatly increase as follows.

<u>Appeal basis</u>	<u>Percent of respondents</u>
Sentence is more or less severe than the guidelines	97
Sentence is within the guidelines but is considered unreasonable by the defendant or the government	97
Sentence is based on an incorrect application of the guidelines	96
Sentence is more or less severe than the sentence specified in a plea agreement accepted by the court	89
Sentence is for an offense not covered by the sentencing guidelines	94

Ninety-eight percent of the district court judges responding to our questionnaire stated that the number of cases appealed to circuit courts would increase or greatly increase. Similarly, as stated earlier, circuit court judges indicated that the impact on the court's workload would not be as severe if only single reviews, as opposed to multiple reviews, of sentence appeals were allowed. However, they overwhelmingly indicated that there would be an increase in their workload as a result of sentence appeals.

Increase in the workload of
court-appointed defense attorneys

The workload of court-appointed defense attorneys could also increase as a result of appellate review of sentences. Therefore, an increase in the level of federal funding to provide representation under the Criminal Justice Act may be required. In this regard, court-appointed defense attorneys (14) located in 10 federal judicial districts told us that appellate review of sentences would increase the workload of the circuit courts. As a result the workload of court-appointed defense attorneys will also increase to handle the sentence appeals.

Existing legislation requires the court to appoint defense counsel for defendants who are financially unable to obtain adequate legal representation in criminal cases. The cost under

this existing legislation increased from about \$31 million in fiscal year 1982 to over \$34 million in 1983. In fiscal year 1984, the judiciary estimates that the act will require expenditures of about \$42 million. If, as expected, the sentencing guidelines result in a greater number of sentences being appealed, the cost of representing defendants under the Criminal Justice Act would increase beyond the rate already occurring. However, the extent of this increase is unknown at the present time.

An additional burden on U.S.
attorneys' offices

U.S. attorneys' offices have experienced overall increases in their caseload. Between 1980 and 1982, the number of criminal and civil cases filed increased from about 97,000 to about 104,000. The number of pending criminal and civil cases during this period grew from about 117,000 to about 140,000. These increases are largely due to increased civil cases, because the criminal cases have remained relatively stable. For fiscal years 1980 and 1982, about 29,000 criminal cases were filed and about 25,000 criminal cases were pending at the end of each year.

Questionnaire responses from 82 U.S. attorneys' offices showed that almost all of the respondents believed that appellate review of sentences would increase or greatly increase their workload. In this regard, U.S. attorneys responded that, for five specific grounds of appeal, their workload would increase or greatly increase as follows:

<u>Appeal basis</u>	<u>Percent of respondents</u>
Sentence is more or less severe than the guidelines	99
Sentence is within the guidelines but is considered unreasonable by the defendant or the government	97
Sentence is based on an incorrect application of the guidelines	99
Sentence is more or less severe than the sentence specified in a plea agreement accepted by the court	86
Sentence is for an offense not covered by the sentencing guidelines	94

As indicated by U.S. attorneys' responses to our questionnaire, they overwhelmingly believe that their workload would increase or greatly increase as a result of appellate review of sentences. Therefore, additional resources may be required to handle this increased workload.

Sentencing reform proposals could
have an impact on the population
of the federal prison system

With regard to the impact of four sentencing reform proposals (H.R. 1647,⁵ H.R. 2013, S. 829 and H.R. 2151), we estimated their effect on the size of the federal prison population. Our estimates were made on the basis that the number and types of individuals and conviction offenses would remain the same as that which occurred in 1982. It should be pointed out that in 1982 as well as currently the federal prison system is faced with overcrowding. Justice officials believe this situation will continue in the future. On the basis of the proposed

⁵This bill was not reintroduced in the current Congress, however, it was a pending bill when we were requested to perform our evaluation of sentencing proposals.

sentences in the four legislative proposals and other provisions included in some of these proposals such as parole eligibility and reduced time to be served due to good behavior, we assumed that

1. Judges would continue to sentence so that time served would remain the same as before, as long as the total amount of time to be served would be permissible under the proposed law. That is, if the time served by an offender was 5 years for a particular crime when the maximum sentence was 10 years, the defendant would continue to serve 5 years as long as the revised maximum was not below the 5 year limit.
2. Judges would change their sentencing practices in proportion to changes in maximum authorized sentences. Under H.R. 1647 and H.R. 2013 it was assumed that judges would adjust sentences in proportion to the change in maximum imposable sentences (that is, if a judge sentenced a defendant to 5 years when the maximum was 10 years, and if the maximum was reduced by 20 percent to 8 years the judge would sentence the defendant to 4 years). For S. 829 and H.R. 2151, it was assumed that judges would adjust time served in proportion to changes in maximum sentences (that is, if

the maximum was reduced by 20 percent from 10 years to 8 years, we assumed the judge would sentence so that time served would decrease by 20 percent).

Under the assumption that judges would continue to sentence so that time served would remain the same, we estimated that all four bills in the long run, would result in a slight decrease or no change in the federal prison population. When using our second assumption--that judges would make changes in proportion to legislatively proposed sentences--we estimated that the size of the prison population would decrease, in the long run, by 9.1 percent and 26.3 percent under H.R. 1647 and H.R. 2013, respectively. However, under S. 829 and H.R. 2151, we estimated that the prison population would increase, in the long run, by 23.6 percent. These estimates were based on (1) judges having discretion to follow or not follow sentencing guidelines and (2) changes to the general provisions of the legislation and not provisions which affect a particular crime category except for drug offenses.

In contrast, however, under a sentencing guidelines system where the judges would be required to follow the guidelines, the

impact on the federal prison population is difficult to precisely determine until information on the structure of the guidelines is available.

- - -

This concludes my prepared statement. We hope this information and the information in our final report will assist the Subcommittee in its deliberations. We would be pleased to respond to any questions.

COMPARISON OF THE SENTENCING PROVISIONS
IN VARIOUS LEGISLATIVE BILLS

Provisions	Bills				
	<u>H.R. 1647^a and</u>			<u>H.R. 3997,</u>	<u>H.R. 312</u>
	<u>H.R. 4554,</u> <u>S. 2240</u>	<u>H.R. 2013</u> <u>and H.R. 4827</u>	<u>H.R. 2151</u> <u>and S. 829</u>	<u>S. 668 and</u> <u>S. 1762</u>	<u>and S. 11</u>
1. Establish a sentencing commission or committee	Yes	No	Yes	Yes	Yes
2. Develop and use sentencing guidelines to guide judicial discretion	Yes	No	Yes	Yes	Yes
3. Expand the grounds for appellate review of sentences	Yes	No	Yes	Yes	Yes
4. Require a sentencing committee to recommend standards for judicial evaluation of plea agreements	Yes	No	No	No	Yes
5. Require a sentencing commission to issue general policy statements regarding the appropriate use of the authority granted under Rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement	No	No	Yes	Yes	No
6. Establish a specific time period for presentence investigation report disclosure	Yes	Yes	No	Yes	No

^a This is the only bill not introduced or reintroduced in the current Congress.

**COMPARATIVE CHART OF THE GROUNDS
FOR APPEAL OF SENTENCE INCLUDED IN
VARIOUS SENTENCING REFORM BILLS**

Grounds for Appeal of Sentence	Appeal of Sentence							
	By Defendant or Government						By	
	H.R. 2151 (3/16/83)	S. 829 (3/16/83)	S. 668 (3/3/83)	H.R. 3997 (9/27/83)	S. 1762 (2/09/84)	H.R. 3128 (5/24/83)	S. 1182 (4/28/83)	H.R. 451 (11/18/83)
Sentence was imposed in violation of law	X	X	X	X	X	X	X	X
Sentence was imposed in violation of the Constitution						X	X	X
Sentence was imposed as a result of incorrect application of the sentencing guidelines	X	X	X	X	X	X	X	
Sentence was imposed in violation of the prescribed sentencing procedures						X	X	
Sentence is greater than (defendant)/less than (prosecutor) the sentence, if any, specified in a plea agreement and is greater than (defendant)/less than (prosecutor) the sentence specified in the applicable sentencing guideline	X ^a	X ^a	X	X				
Sentence is greater than (defendant)/less than (prosecutor) the sentence, if any, specified in a plea agreement, and there is no guideline for the offense of conviction				X	X			
Sentence is unreasonable, excluding a sentence which is pursuant to a plea agreement accepted by the court and 1) is not greater than the sentence which the prosecutor recommended or agreed not to oppose, or 2) is agreed to by the prosecutor and the defendant								X
Sentence is more severe than (defendant)/less than (prosecutor) the most severe (defendant)/least (prosecutor) sentence specified in the applicable sentencing guideline						X ^b	X ^b	
There is no applicable sentencing guideline, and the sentence is plainly inappropriate						X ^b	X ^b	
Sentence was imposed for an offense for which a sentencing guideline has been issued, and the sentence is greater than (defendant)/less than (prosecutor) the sentence specified in the applicable guideline, and the sentence specified in a plea agreement, if any								X
Sentence was imposed for an offense which has no sentencing guideline and is greater than (defendant)/less than (prosecutor) the sentence specified in a plea agreement, if any								X

^a Applies to a felony or a Class A misdemeanor only.
^b Excludes plea agreements accepted by the court and 1) is not greater than (defendant)/no less than (prosecutor) the sentence that the prosecutor recommended or