

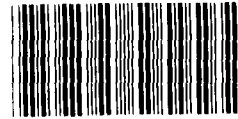
GAO

Briefing Report to the Chairman,  
Committee on the Judiciary,  
United States Senate

May 1987

DRUG  
INVESTIGATIONS

Organized Crime Drug  
Enforcement Task  
Force Program's  
Accomplishments



133040

**RESTRICTED** — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

RELEASED

538785

Blank header area with horizontal lines.

Main body of the page, mostly blank with a vertical dashed line on the left side.



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

General Government Division

B-223391

May 6, 1987

The Honorable Joseph R. Biden, Jr.  
Chairman, Committee on the Judiciary  
United States Senate

Dear Mr. Chairman:

We were requested by the former Chairman of the Senate Judiciary Committee's Criminal Law Subcommittee to examine accomplishments reported by the Organized Crime Drug Enforcement Task Force (OCDETF) Program and the task force's use of options for seeking reduced or enhanced penalties for drug related offenses. As arranged with the former Chairman and your office, this briefing report is being addressed to you as Chairman of the Senate Judiciary Committee.

The OCDETF Program was established in January 1983 as the cornerstone of the Administration's efforts against organized crime and drug trafficking. The program's mission is to identify, investigate, and prosecute high-level members of drug trafficking enterprises and to destroy their operations. The program comprises 13 task forces around the United States (see fig I.1).

Early in the program, operating guidelines were developed which were to be sufficiently flexible to meet the needs of each of the 13 task forces. At the same time the guidelines were to provide the uniformity necessary to ensure that the fundamental purposes of OCDETF were being served and the use of task force resources could be monitored and assessed. The Drug Task Force Administrative Staff, within the Department of Justice (Justice), is responsible for accumulating and summarizing operational information in an annual report, sent by the Attorney General to the President and Congress.

As agreed with the former Chairman's office, our primary objectives were to determine, for cases prosecuted under the OCDETF Program: (1) the actual penalties imposed (sentences and fines) versus the maximum concurrent penalties authorized by statute at the time offenders were sentenced; (2) the amount of criminal fines assessed against these offenders versus those collected by the federal government; (3) the validity of certain accomplishments claimed by OCDETF--number of offenders convicted, sentences imposed, criminal fines assessed, and non-drug assets (cash and property) seized and/or forfeited; (4) compliance with task force guidance requiring U.S. Attorney approval for pleas to

less than the most serious charge; and (5) whether task force attorneys are seeking enhanced drug penalties for offenders with prior federal felony drug convictions.<sup>1</sup>

This briefing report responds to the last three objectives. Our field work was conducted between January 1986 and November 1986. The review was conducted in accordance with generally accepted government auditing standards. The results of this review are summarized below and discussed in detail in the appendix as are details of our objectives, scope, and methodology.

ANALYSIS OF ACCOMPLISHMENTS  
REPORTED BY OCDETF

Accomplishments reported by OCDETF during calendar years 1983 and 1984--the first 2 years of the program and the latest period for which data was available--included the number of offenders convicted, the amount of criminal fines assessed, and the amount of non-drug assets seized and forfeited. The data for the period was reported in OCDETF's annual report issued in March 1985. To collect this data, Justice established a case monitoring system. This system relies upon OCDETF attorneys submitting a series of reports to the Administrative Staff at various stages of case development and disposition.

Our analysis of the reported accomplishments were as follows:

- OCDETF reported 1,408 offenders convicted; we identified 1,528.
- OCDETF reported that about 80 percent of the 1,408 convicted offenders were sentenced to various terms of imprisonment, with about 33 percent of those convicted receiving terms of more than 5 years. We also found that about 80 percent of convicted offenders received prison sentences. About 29 percent of the 1,528 offenders in our review received prison sentences of more than 5 years.
- OCDETF reported \$9,624,000 in criminal fines assessed; we identified \$9,607,900. However, on a task force regional basis there were larger differences between our tabulations and the amounts reported by OCDETF.

---

<sup>1</sup>As arranged with the former chairman's office, our briefing report, Criminal Penalties Resulting From The Organized Crime Drug Enforcement Task Forces, (GAO/GGD-87-29BR, Dec. 22, 1986) addressed the first two objectives.

-- OCDETF reported \$157.6 million in non-drug asset seizures and \$52 million in forfeitures to the government; we could not verify these amounts because supporting documentation was not maintained by OCDETF.

The OCDETF Administrative Staff made changes to the case monitoring system in January 1985, in part to improve the reliability of information on assessed criminal fines and non-drug asset seizures and forfeitures. As of February 1987, the Administrative Staff personnel said the system was still not providing reliable information on these accomplishments because task force attorneys were not consistently supplying the required information. Also, the Director of the Administrative Staff told us that collection of seizure and forfeiture data was complicated because task force attorneys are not always aware of the outcome of seizure and forfeiture actions.

COMPLIANCE WITH OCDETF GUIDELINE  
ON PLEA AGREEMENTS

The OCDETF guideline provides that in every case where there is a plea agreement, the defendant must enter a plea to at least the most serious charge in the indictment unless the United States Attorney, in whose judicial district the case is pending, personally approves a plea to a lesser charge. This requirement was established to provide high level approval over the plea agreement practices of task force attorneys. The guideline does not address whether this approval should be written or oral.

Of the 1,697 cases we reviewed, which included 169 offenders sentenced in 1985, 387 offenders involving 47 judicial districts pleaded guilty to less than the most serious charge. Prosecutors in 16 of the districts said that, generally, the OCDETF guideline was not followed in their district. In an additional 16 judicial districts, the general practice was to obtain oral approval by the United States Attorney. Some combination of oral or written approval or approval by some other official in the U.S. Attorney's office was the practice in 13 judicial districts. Because prosecutors were not available, we were unable to obtain information for the two remaining districts. The Director of the Administrative Staff said that no one in Justice monitors compliance with the guideline on plea agreements.

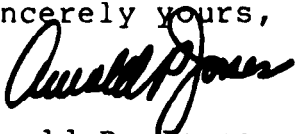
ENHANCED PENALTIES AUTHORIZED FOR  
OFFENDERS WITH PRIOR FEDERAL  
FELONY DRUG CONVICTIONS

The Drug Abuse Prevention and Control Act of 1970 authorized an enhanced or doubling of the criminal penalty (sentence and fine) for an offender convicted of a drug charge with a prior federal felony drug conviction. With the passage of the Comprehensive Crime Control Act of 1984 an offender with a prior state or foreign felony drug conviction also became eligible for the double criminal penalty. The decision on whether to seek the enhanced penalty is made by the prosecutor.

Of the 1,697 offenders included in our review, 1,450 were convicted of drug offenses and 64 of these offenders had prior federal felony drug convictions. Prosecutors sought the enhanced penalty for 27 offenders and did not seek it for the remaining 37 offenders. The OCDETF guidelines do not provide for the prior approval of the U.S. Attorney for a prosecutor's decision to not seek the enhanced penalty. The Director of the Administrative Staff told us that the issue of whether a prosecutor's decision to not seek an enhanced penalty should be subject to the approval of the U.S. Attorney would be addressed during the summer of 1987, when revisions to the guidelines will be considered.

As requested by your office, we did not obtain official agency comments on this report. However, we discussed the report with Justice officials, who generally agreed with its contents and their comments were considered in preparing the final report. As arranged with your office, we have also sent a copy of the report to the former Chairman of the Criminal Law Subcommittee. Also as arranged with your office, we plan no further distribution until 15 days from the date of report issuance unless you publicly announce the contents of the report earlier. At that time, we will send copies to interested parties and make copies available to others upon request. If there are any questions on the contents of this report, please call me at (202) 275-8389.

Sincerely yours,



Arnold P. Jones  
Senior Associate Director

# C O N T E N T S

## APPENDIX

## Page

BACKGROUND	6
OCDETF Program Oversight	6
Task Force Guidelines and Resources	7
OBJECTIVES, SCOPE, AND METHODOLOGY	8
ANALYSIS OF ACCOMPLISHMENTS REPORTED BY OCDETF	9
Convictions	10
Criminal Fines	11
Seizures and Forfeitures	12
COMPLIANCE WITH OCDETF GUIDELINE ON PLEA AGREEMENTS	13
ENHANCED PENALTIES FOR PRIOR OFFENDERS	16

## TABLES

I.1	Comparison of Terms of Imprisonment	11
I.2	Comparison of Criminal Fines Assessed	12
I.3	Method of Approval for Plea Agreements	15

## FIGURES

I.1	Organized Crime Drug Enforcement Task Forces	19
-----	--	----

## ABBREVIATIONS

OCDETF	Organized Crime Drug Enforcement Task Force
--------	---

DRUG INVESTIGATIONS: ORGANIZED CRIME  
DRUG ENFORCEMENT TASK FORCE PROGRAM'S ACCOMPLISHMENTS

BACKGROUND

The formation of the OCDEF Program was announced by President Reagan on October 14, 1982. The program's overall goal is to identify, investigate, and prosecute members of high-level drug trafficking enterprises and destroy the operations of those organizations. This is to be done by adding new federal resources and fostering interagency coordination and cooperation in the investigation and prosecution of major drug cases.

The task force program was initially comprised of 12 task forces, each covering a specific region of the country. The exception was Florida, where a South Florida task force had been operating under a different program since January 1982. The 12 task forces became operational in 1983. A 13th task force, in the Florida/Caribbean region, was added in 1984. A map depicting the 13 task force regions is shown on page 19.

OCDEF Program Oversight

National oversight of the OCDEF Program is to be provided by the National Drug Enforcement Policy Board.<sup>1</sup> The Board is responsible for providing top-level review of the national policies, interagency coordination, and intergovernmental cooperative efforts of OCDEF.<sup>2</sup> The Board is to report directly to the White House.

At the next level is the OCDEF Working Group, chaired by the Deputy Attorney General and composed of ranking officials

---

<sup>1</sup>The Comprehensive Crime Control Act of 1984 codified the drug enforcement coordination mechanisms established by the Cabinet Council on Legal Policy and the Working Group on Drug Supply Reduction. Effective January 20, 1985, this Act established the National Drug Enforcement Policy Board chaired by the Attorney General. Other members include the Secretaries of State, Treasury, Defense, Transportation, and Health and Human Services; the Director of Central Intelligence and Office of Management and Budget; the Deputy Assistant to the President for Drug Abuse Policy; and the Vice President's Chief of Staff. The word "enforcement" was deleted from the Board's title in March 1987.

<sup>2</sup>For a discussion of OCDEF structure, activities, and operations, see our report Drug Investigations: Organized Crime Drug Enforcement Task Force Program: A Coordinating Mechanism, (GAO/GGD-86-73BR, July 17, 1986).



from Justice, Treasury, and Transportation agencies. The Working Group's role is to articulate policy and coordinate the development and progress of the program. It is also responsible for resolving interagency administrative or policy disagreements that cannot be settled in the field. The Washington Agency Representative Group, chaired by the Associate Attorney General, is composed of representatives of the participating agencies. It was established to assist the Working Group and to meet with Administrative Staff so that regular coordination and problem resolution could be achieved.

The Administrative Staff, which is in the Justice Department, has day-to-day responsibility for providing administrative support to the task forces, compiling task force operational data for the Attorney General and U.S. Attorneys, and preparing annual reports for the President and the Congress. As of February 1987, three annual reports have been produced which highlight OCDETF accomplishments including the number of task force cases initiated, offenders indicted and convicted, sentences and fines imposed, drugs seized, and non-drug assets (cash and property) seized and forfeited.

Each task force region encompasses a number of federal judicial districts, and a major city ("core-city") designated as the regional headquarters. The U.S. Attorney in each core-city is accountable to the Deputy Attorney General for the conduct of that task force. The U.S. Attorney's responsibilities include establishing a Task Force Advisory Committee and a Task Force Coordination Group and selecting an Assistant U.S. Attorney to be the Task Force Coordinator. The coordinator manages the administrative operations of the task force and the coordination group.

Federal agencies participating in the task forces include: the U.S. Attorneys' offices; the Drug Enforcement Administration; the Federal Bureau of Investigation; the U.S. Customs Service; the Bureau of Alcohol, Tobacco and Firearms; the Internal Revenue Service; the U.S. Marshals Service; the Immigration and Naturalization Service; and the U.S. Coast Guard. Consistent with the objective of fostering interagency coordination, state and local law enforcement agencies also participate in the program.

#### Task Force Guidelines and Resources

Early in the OCDETF program, guidelines were developed by the OCDETF Working Group, agency representatives, U.S. Attorneys, and agents and prosecutors in the field. These guidelines present standards and procedures which were deemed to be, "sufficiently broad and flexible to allow individual task force's to develop to meet the special needs of their area." At the same time, the guidelines were to be sufficiently structured and

uniform to ensure that the fundamental purposes of the OCDEF Program were served and that task force resource expenditures could be monitored and assessed. The OCDEF Working Group is responsible for annually reviewing the guidelines.

Task force resources were intended to be an addition to existing federal drug law enforcement efforts, and positions were to be filled by experienced personnel from the participating agencies. The attorney and agency positions allocated to the OCDEF Program--1,769 as of December 1986--are spread throughout most of the 94 federal judicial districts, with the majority of the allocations in the 13 core cities.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The former Chairman, Subcommittee on Criminal Law, Senate Committee on the Judiciary, requested that we make an independent assessment of reported accomplishments of the OCDEF Program. More specifically, the Subcommittee requested that we determine: (1) the actual penalties imposed (sentences and fines) versus the maximum concurrent penalties authorized by statute at the time offenders were sentenced; (2) the amount of criminal fines assessed against these offenders versus those collected, (3) the validity of accomplishments claimed by OCDEF (number of offenders convicted, sentences imposed, criminal fines assessed, and non-drug assets seized and/or forfeited); (4) the compliance with task force guidance requiring U.S. Attorney approval for pleas to less than the most serious charge; and (5) whether task force attorneys are seeking enhanced drug penalties for offenders with prior federal felony drug convictions. As arranged with the former chairman's office, our previous briefing report addressed the first two objectives.<sup>3</sup>

To accomplish the last three objectives, we obtained from the Administrative Staff their list of 1,484 offenders who were charged with criminal offenses as a result of investigations by the 13 task forces during the first 2 years of the program--calendar years 1983 and 1984. OCDEF reported the accomplishments for this period in its annual report issued in March 1985. This was the latest annual report at the time of our review.

Based upon our review of court records, we dropped 141 offenders from further examination because: (1) 49 had all charges dismissed; (2) 41 were acquitted of all charges; (3) 18 had not been sentenced; (4) 13 were not prosecuted under the OCDEF Program; and (5) 20 were dropped for other reasons (e.g., convictions were reversed on appeal).

---

<sup>3</sup>Criminal Penalties Resulting From The Organized Crime Drug Enforcement Task Forces, (GAO/GGD-87-29BR, Dec. 22, 1986).

We added 121 offenders who, according to court records, were convicted and sentenced as a part of the OCDETF Program but were not included in the list furnished to us by the Administrative Staff. Also, some offenders were convicted in more than one case. We counted each additional conviction (64) as a separate offender.<sup>4</sup> This brought our total offenders to 1,528.

For the last two objectives, the Chairman's office subsequently requested that we include some offenders sentenced in 1985. Accordingly, we added an additional 169 offenders sentenced in 1985 who, according to court records, were codefendants of offenders convicted in 1983 and 1984. This addition gave us a total of 1,697 convicted offenders.

We examined the district court and probation case files of offenders for data on (1) sentences and fines, (2) indications of non-drug asset seizures and forfeitures,<sup>5</sup> (3) whether the offender pleaded guilty to the most serious charge he/she faced, and (4) the offender's eligibility for enhanced drug penalties and whether such were sought.

We supplemented our case files analysis with related discussions with task force coordinators and task force attorneys (who we occasionally refer to as prosecutors). Further, we reviewed a July 1986 audit report, prepared by the Justice Management Division, on the OCDETF Program.

#### ANALYSIS OF ACCOMPLISHMENTS REPORTED BY OCDETF

Accomplishments reported by OCDETF in March 1985 for the first 2 years of the program included 1,408 offenders convicted, \$9.6 million in criminal fines assessed, and asset seizures of \$157.6 million and forfeitures of \$52 million. OCDETF uses a case monitoring system to collect this type of information.

The case monitoring system was designed to meet the management needs of the Deputy Attorney General, U.S. Attorneys, the OCDETF Working Group and the regional task forces. In addition, the information system was designed to provide data on program performance used in annual reports from the Attorney General to the President and Congress. The system consists of a

---

<sup>4</sup>Justice's data included one sentence for these offenders. For our purposes, we considered each conviction under a separate criminal docket number as an offender.

<sup>5</sup>For purposes of this report, we will refer to these non-drug asset seizures and forfeitures merely as seizures and forfeitures, although we recognize drugs are also seized in many OCDETF cases.

series of forms that the task force attorney must submit to the Administrative Staff at various stages of case development and disposition. These forms include information on case initiation, indictments filed, sentence disposition (offender convicted, sentences imposed, and criminal fines assessed), and assets forfeited.

In 1984, after the system had been in operation a full year, the Administrative Staff simplified the system's forms and upgraded the system's software. The resulting changes became effective January 1, 1985. In July 1986, the Justice Management Division issued an audit report on the OCDEF Program; this pointed out that there was no incentive for task force participants to submit timely reports or to ensure that the information in the system was accurate and complete.

As of February 1987, the Administrative Staff said that task force attorneys were submitting more complete sentence disposition information; however, the case monitoring system was still not providing reliable information on criminal fines assessed and assets seized and forfeited because task force attorneys were not consistently supplying the required information.

### Convictions

In March 1985, OCDEF reported in its annual report that 1,408 offenders were convicted during the first 2 years of the program. In support of the 1,408 reported convicted offenders, the Administrative Staff gave us a list of 1,484 offenders. From that we eliminated 141 for various reasons (see p. 8). To the list of the 1,343 remaining offenders, we added 185 for a total of 1,528 offenders convicted during the first 2 years of the program (see p. 9).

In March 1985, OCDEF reported the terms of imprisonment for the reported 1,408 offenders convicted during the first 2 years of the program. See table I.1 for a comparison of terms of imprisonment for the 1,528 offenders included in our review, to those reported by OCDEF.

Table I.1:  
Comparison Of Terms Of Imprisonment

<u>Terms of imprisonment</u>	<u>Percentage of criminal offenders</u>	
	<u>Reported by OCDETF</u>	<u>Included in GAO's review</u>
None	19.6	20.7
5 years or less	47.7	50.5
Greater than 5 years to 10 years	19.0	18.6
Greater than 10 years to 15 years	7.9	5.9
Greater than 15 years to 25 years	3.4	2.9
Over 25 years	2.4	1.4
Total	<u>100.0</u>	<u>100.0</u>

Criminal Fines

In March 1985, OCDETF reported that criminal fines totaling \$9,624,000 were assessed during the first 2 years of the program. This information, however, was not compiled from the OCDETF case monitoring system because task force attorneys had not submitted the required data. Therefore, the Administrative Staff requested that each of the 13 task force coordinators supply a dollar amount for fines assessed in their respective regions. None of the 13 task force regions could provide us with case-specific information supporting the dollar amount submitted to the Administrative Staff and ultimately used in the annual report.

Our examination of court records for the 1,528 offenders we found to be convicted during the first 2 years of the program, showed that criminal fines totaling \$9,607,900 were assessed by the courts. While our total for fines assessed was comparable to that reported by OCDETF, as shown in table I.2, on a regional basis there were differences between our tabulations and the amounts reported by OCDETF.

Table I.2:  
Comparison Of Criminal Fines Assessed

<u>Task Force</u>	<u>Fines assessed</u>		<u>Differences</u>
	<u>Reported by OCDETF</u>	<u>GAO's Tabulation</u>	
Florida- Caribbean	\$ 863,000	\$ 748,000	\$ - 115,000
Great Lakes	1,376,000	1,818,000	+ 442,000
Gulf Coast	615,000	675,000	+ 60,000
Los Angeles/Nevada	0	177,500	+ 177,500
Mid-Atlantic	2,402,000	640,400	-1,761,600
Mountain States	51,000	68,250	+ 17,250
New England	288,000	1,069,600	+ 781,600
New York/New Jersey	754,000	1,376,600	+ 622,600
North Central	426,000	461,900	+ 35,900
Northwest	427,000	405,500	- 21,500
South Central	611,000	594,000	- 17,000
Southeast	1,769,000	1,460,350	- 308,650
Southwest	42,000	112,800	+ 70,800
<b>Total</b>	<b><u>\$9,624,000</u></b>	<b><u>\$9,607,900</u></b>	<b><u>\$- 16,100</u></b>

In January 1985, the Administrative Staff revised the forms used in the case monitoring system, in part, to improve the reliability of information on criminal fines assessed. However, as of February 1987, Administrative Staff personnel told us the system was still not providing reliable information on criminal fines assessed. Because of this problem, the Administrative Staff is not relying on the case monitoring system to supply information for the annual report on fines imposed from January 1 to September 30, 1986. Rather, it is requesting that the 13 task force regions supply a dollar amount. The Director of the Administrative Staff told us that, in the future, he was going to request task force attorneys to submit, with the case monitoring form, a copy of the judge's order imposing the fine.

#### Seizures and Forfeitures

OCDETF reported in March 1985 that the value of asset seizures totaled \$157.6 million and forfeitures amounted to \$52 million during the first 2 years of the program (see footnote 5 on p. 9). However, we could not verify these accomplishments because, for the most part, the 13 task force regions could not supply us with supporting documentation for specific cases.

The initial case monitoring system, according to Administrative Staff personnel, did not generate reliable information on the dollar amounts of seizures and forfeitures because task force attorneys did not always submit the required information. Therefore, the Administrative Staff requested that each region submit a dollar amount for these accomplishments.

Overall, we were able to obtain limited documentation supporting the dollar figures reported by OCDETF. Three task force regions were able to provide case specific documentation for the dollar figures reported, three task force regions were able to supply some non-case specific documentation, and 7 task force regions were unable to provide any supporting documentation.

The Administrative Staff made changes to the case monitoring system in January 1985, in part, to improve the reliability of information on seizures and forfeitures. As a part of this change, a separate asset forfeiture form was developed. Previously, asset forfeiture information was submitted on a form with other information. However, as of February 1987, Administrative Staff personnel told us that the case monitoring system was still not providing reliable information on these accomplishments because task force attorneys were not consistently supplying the information. The Director of the Administrative Staff also told us that collection of seizure and forfeiture data was a complicated process because task force attorneys are not always aware of the outcome of seizure and forfeiture actions.

#### COMPLIANCE WITH OCDETF GUIDELINE ON PLEA AGREEMENTS

An OCDETF guideline provides for task force attorneys to obtain the personal approval of the U.S. Attorney before defendants are permitted to plead guilty to less than the most serious charge in the indictment. The guideline, however, does not address whether the approval should be written or oral. This requirement was established to provide high level approval over the plea agreement practices of task force attorneys. We found, however, that this requirement was not being consistently followed by task force attorneys.

We examined case files for 1,697 offenders. Of these, 1,390 offenders pleaded guilty while the remaining 307 were found guilty. Of the 1,390 offenders who pleaded guilty, 387 entered a guilty plea to less than the most serious charge. These 387 offenders were prosecuted in 47 of the 94 judicial districts.

Our examination of court records showed that U.S. attorneys approved plea agreements to less than the most serious charge for 17 of the 387 offenders. For 150 additional offenders, we found evidence that another individual within the U.S. attorney's office approved the plea agreement to less than the most serious charge. For nine additional offenders, there was a plea agreement, but we were unable to determine who approved it.

Prosecutors of 67 of the remaining 211 offenders said that it was always the practice in their districts to obtain either written or oral approval by the U.S. Attorney to all guilty pleas to less than the most serious charge. Prosecutors of 47 of the 211 offenders said that approval by the U.S. Attorney or some other official was sometimes obtained. Prosecutors of three other offenders said that approval was always obtained by the U.S. Attorney, or in his absence, some other higher official in the office. Prosecutors of 93 offenders said that as a matter of practice the OCDEF requirement was not followed in their districts. The remaining case was from a judicial district in which, because prosecutors were not available, we were unable to talk with them about the practice.

Overall, our discussions with task force attorneys disclosed that in 16 of 45 judicial districts the general practice was not to seek U.S. Attorney approval for pleas to less than the most serious charge. Because prosecutors were not available, we were unable to obtain information for two judicial districts. The method of approval for the districts is shown in table I.3.



Table I.3:  
Method Of Approval For Plea Agreements

<u>Number of districts</u>	<u>Approval process</u>
3	Oral approval by U.S. Attorney only for major cases
1	Written approval by U.S. Attorney or some other official in the office in his absence
2	Oral approval by U. S. Attorney or some other official in the office in his absence
1	Either written or oral approval by U.S. Attorney or some other official in the office in his absence
16	Oral approval by U.S. Attorney
5	Written approval by U.S. Attorney
1	Either written or oral approval by U.S. Attorney
<u>16</u>	No prior approval by U.S. Attorney
<u>45</u>	

The Director of the Administrative Staff told us that no one in Justice monitors compliance by task force attorneys with the guidelines for obtaining approval for plea agreements.

Sentences imposed for those offenders who pleaded guilty to less than the most serious charge were shorter than for those offenders who entered a plea to the most serious charge. The median sentence imposed for 1,003 offenders who pleaded guilty to the most serious charge and were incarcerated was 48 months. The median sentence imposed for the 387 offenders who pleaded guilty to less than the most serious charge and were incarcerated was 30 months.<sup>6</sup>

Task force attorneys gave us a number of reasons for allowing offenders to plead guilty to less than the most serious charge. The three most frequently cited reasons were (1) the offender cooperated by providing testimony or other information, (2) the offender played a minor role in the crime, and (3) the evidence against the defendant was weak.

---

<sup>6</sup>The median is the middle value in a distribution with an equal number of instances above and below.

ENHANCED PENALTIES  
FOR PRIOR OFFENDERS

The Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513, Oct. 27, 1970) authorized an enhanced or doubling of the criminal penalty (sentence and fine) for an offender convicted of a drug offense with a prior federal felony drug conviction. With the passage of the Comprehensive Crime Control Act of 1984 (Public Law 98-473, Oct. 12, 1984) offenders with a prior state or foreign felony drug conviction also became eligible for the double criminal penalty. Further, the Anti-Drug Abuse Act of 1986<sup>7</sup> requires mandatory minimum prison sentences for certain categories of drug offenses. This law also provides for a mandatory doubling of the minimum penalty (sentence and fine) for offenders with prior federal, state, or foreign felony drug convictions.

Under 21 U.S.C. 851, no offender will be subject to an enhanced penalty unless the prosecutor files an information document with the court before the offender's trial or entry of a plea of guilty. The information document, a copy of which is given to the offender and/or his/her attorney, outlines for the court the offender's prior conviction. This affords the offender an opportunity to challenge the validity of the conviction in open court. Thus, if the prosecutor does not file the information with the court as required, the sentencing judge can impose only a penalty for a first time drug violator.

Of the 1,697 offenders included in our review, 1,450 were convicted of drug offenses. Court records show that 64 of the 1,450 offenders had prior federal felony drug convictions.<sup>8</sup> Prosecutors sought the enhanced penalty for 27 offenders and chose not to seek it for the remaining 37 offenders. For 7 of the 27 offenders in which prosecutors sought the enhanced penalty, judges imposed a term of imprisonment that exceeded the maximum penalty authorized for a first time drug violator. In addition, judges imposed criminal fines against 5 of the 27 offenders. For 4 of the 5 offenders, the amount of the criminal fine imposed by the judge exceeded the maximum fine authorized for a first time drug violator.

---

<sup>7</sup>The Anti-Drug Abuse Act of 1986 (Public Law 99-570, Oct. 27, 1986).

<sup>8</sup>The criminal conduct of the 1,450 offenders convicted of drug offenses occurred before the enactment of Public Law 98-473, therefore, these offenders would only be eligible for the enhanced penalty if they had prior federal felony drug convictions and not prior state or foreign felony drug convictions.

We talked with task force attorneys concerning 33 of the 37 remaining offenders. Prosecutors for the other four offenders were unavailable. Task force attorneys cited a specific reason or reasons for not seeking the enhanced penalty for 29 of the 33 offenders. These reasons included: (1) the offender provided testimony against other defendants; (2) the prosecutor was negotiating a plea with the offender's counsel which called for a sentence that would be less than the maximum penalty for a first time drug offender; (3) the offender played a minor role in the offense; (4) the prosecutor wanted all offenders to plead guilty in a large case, and therefore did not seek the enhanced penalty against any of the offenders; and (5) some judges were reluctant to impose long sentences, and therefore no benefit would have been derived in seeking the enhanced penalty. For the remaining four offenders, task force attorneys said that they did not seek the enhanced penalty because they were not aware the offenders had prior federal felony drug convictions.

The following are cases which illustrate task force attorneys reasons for not seeking the enhanced penalty. In each case, the maximum penalty on each count of conviction for a first time drug violator was 15 years imprisonment and/or a fine of \$25,000. All offenders had a prior federal felony drug conviction.

- An offender, identified by the task force as a top leader of a drug organization, was charged with conspiracy to possess and distribute cocaine and possession with intent to distribute 7 kilograms of cocaine. The prosecutor told us that he did not seek the enhanced penalty in this case because the offender was prepared to plead guilty and he only had a small amount of drugs. The offender pleaded guilty to one count of conspiracy and was sentenced to 7 years imprisonment.
- An offender, identified by the task force as a supplier and/or distributor, was charged with conspiracy to distribute and distribution of cocaine. The prosecutor told us that he did not seek the enhanced penalty in this case because the offender was a cooperative government witness. Also, the government recommended to the court that a term of imprisonment of not more than 5 years be imposed. The offender pleaded guilty to one count of conspiracy to distribute cocaine and was sentenced to 5 years.
- An offender whose role was not identified by the task force was charged with conspiracy to possess with intent to distribute heroin. The prosecutor told us that he did not seek the enhanced penalty against the offender because the sentencing judge was lenient. The offender

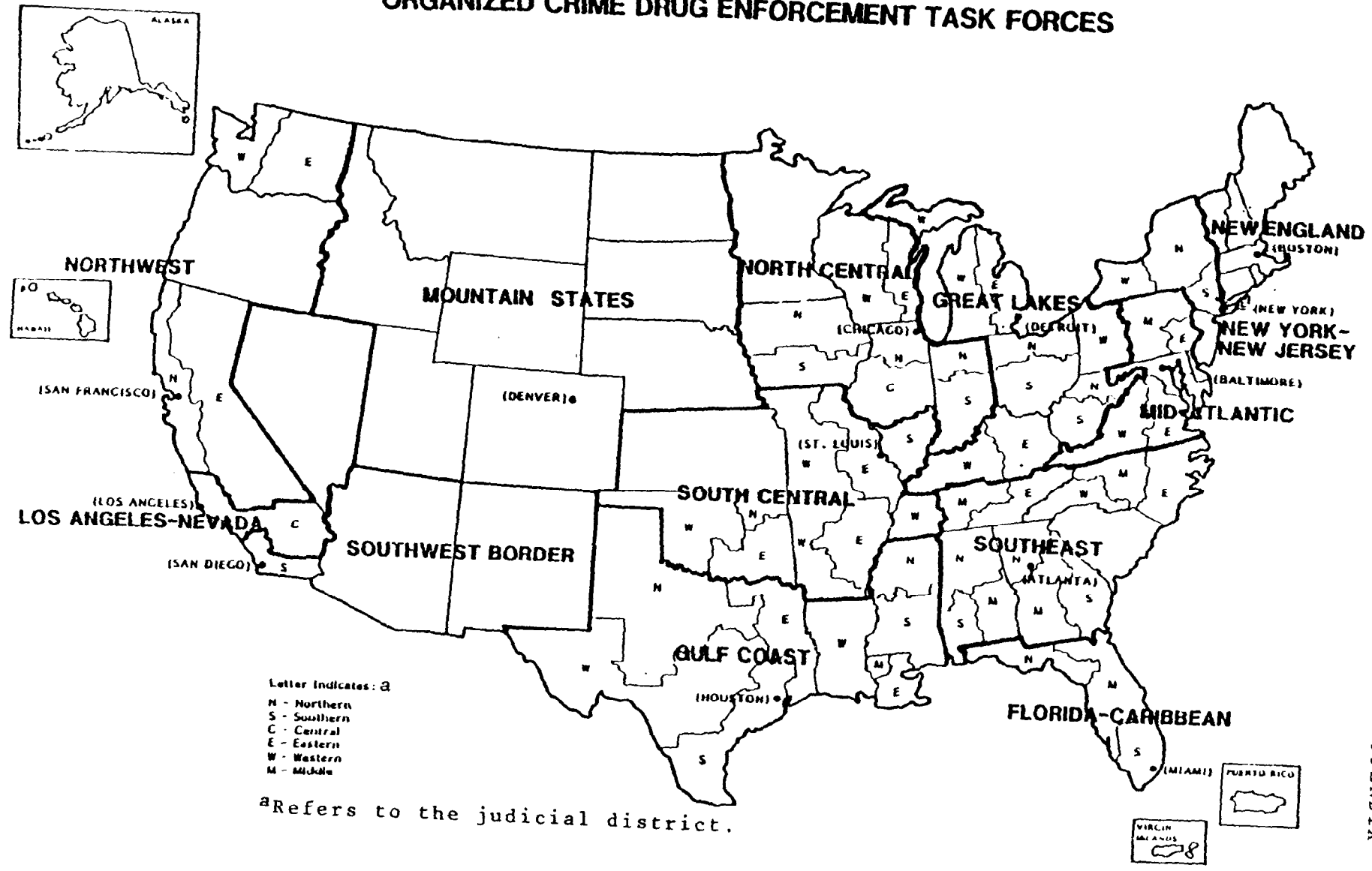
pleaded guilty to one count of possession with intent to distribute heroin and was sentenced to 4 years imprisonment. In the same case, the task force attorney sought the enhanced penalty against a codefendant. This person was eligible for the enhanced penalty as a second-time federal drug offender. The judge imposed a 4-year term of imprisonment.

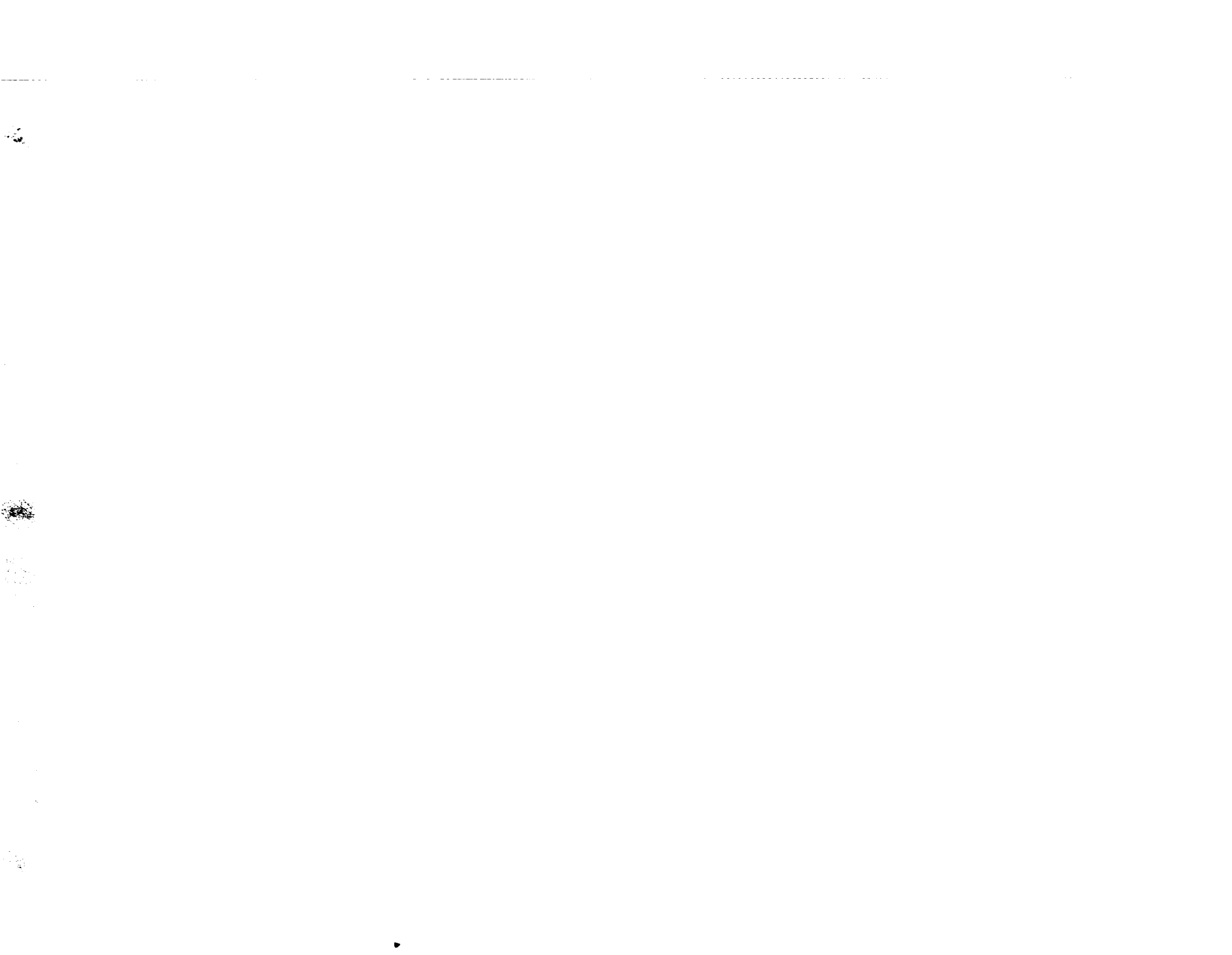
OCDETF guidelines do not provide for the prior approval of the U.S. Attorney for prosecutors' decisions to not seek the enhanced penalty. The Director of the Administrative Staff told us that this matter would be addressed during the summer of 1987, when revisions to the guidelines would be considered.

The enactment of Public Law 98-473 expanded the number of offenders eligible for the enhanced penalty by including those offenders with prior state and foreign felony drug convictions. If this law had been in effect when the offenders included in our review had committed their crimes, an additional 150 offenders would have been eligible for the enhanced penalty.

Figure I.1:

### ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES





---

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office  
Post Office Box 6015  
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

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

**Official Business  
Penalty for Private Use \$300**

**Address Correction Requested**

**First-Class Mail  
Postage & Fees Paid  
GAO  
Permit No. G100**