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Sentencing Guidelines: What is Their
Potential Impact on Federal Prisons?

Statement of
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Before the
Subcommittee on Federal Spending, Budget,
and Accounting
Committee on Governmental Affairs
United States Senate



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today. As you requested, our testimony will present the results of our review work to date on the United States Sentencing Commission's estimates of the impact of its sentencing guidelines on federal prisons.

BACKGROUND

The Comprehensive Crime Control Act of 1984 (Public Law 98-473) established the United States Sentencing Commission as an independent agency within the judicial branch. The Commission is composed of seven voting and two nonvoting members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes. The guidelines are intended to reduce unwarranted sentencing disparities among offenders with similar criminal backgrounds who commit similar crimes. Under the guidelines' system, parole will be abolished and sentenced offenders will serve their entire sentences, less any good time credit--time reductions from their sentences for good behavior.

As required by the law, the Commission submitted its proposed guidelines to Congress on April 13, 1987. The guidelines were approved by six of the commissioners, with one commissioner

dissenting. The guidelines will go into effect on November 1, 1987, unless Congress passes a law to delay or stop their implementation. In submitting the guidelines, the Commission unanimously recommended that Congress delay their implementation for 9 months, or until August 1, 1988. The Commission wants this additional time for field testing the guidelines, training court officials, and proposing any necessary amendments to the guidelines before they go into effect.

Section 235 of Public Law 98-473 requires GAO to report to Congress within 150 days after the Commission submits its guidelines (by September 10, 1987) on the potential impact of the sentencing guidelines on the federal criminal justice system. In response to that requirement, we have been monitoring the Commission's activities and reviewing drafts of the guidelines. On July 13, 1987, one of your representatives asked us to be prepared to testify today on the Commission's study of the impact of the guidelines on federal prisons.

To address the prison impact issue, we reviewed (1) the Commission's June 18, 1987, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements which contains a summary of the Commission's prison impact study; and (2) a draft of its technical report being prepared to further explain the methodology for its study. We also interviewed Commission officials responsible for preparing the impact study and Federal Prison System (FPS) officials responsible for estimating future

federal prison populations and preparing building plans for federal prisons.

The Commission believes that its sentencing guidelines will have a minimal effect on future prison populations. However, the Commission expects there will be significant growth in the federal prison population over the next 10 to 15 years primarily because of the mandatory minimum penalties required by the Anti-Drug Abuse Act of 1986, increases in federal prosecutions and convictions, and increased sentences required by the career offender provisions of the Comprehensive Crime Control Act of 1984. If the Commission's estimates prove to be accurate, it could cost several billion dollars over the next decade to build prisons for the additional inmates. Also, the increased prison population would, by 1997, add as much as \$1 billion a year to the cost of inmate custody, care, and rehabilitation programs.

PRISON IMPACT

Between 1970 and 1986, the federal prison population increased significantly (averaging about 4.3 percent a year), with periods of sharp increases occurring from 1975 to 1978 and 1980 to 1986. From 1978 to 1980, a decrease in prosecutions contributed to a sharp decline in the federal prison population.

-- In fiscal year 1970 the average daily population was about 21,000.

- In 1975 the population was about 23,000 and grew to about 30,000 in 1978, a 30.4 percent increase over 3 years.
- The population dropped from 30,000 in 1978 to about 24,000 in 1980, a 20.0 percent drop in 2 years.
- The population grew from about 24,000 in 1980 to about 39,000 in 1986, a 62.5 percent increase over 6 years.
- FPS estimates that the average daily population for 1987 will be 42,000, a 7.7 percent increase in 1 year.

As of July 2, 1987, FPS reported that 43,507 inmates were in federal prisons. This was 15,581 (about 56 percent) more than the system's rated capacity of 27,926. An additional 5,031 prisoners were housed in contract facilities.

FPS officials said that overcrowding is the principal issue facing federal prisons. Prison overcrowding increases the likelihood of violence and puts the staff in greater danger. It also results in inmates being housed in less than generally acceptable conditions and makes providing efficient and effective operations and programs more difficult. To address the overcrowding problem, FPS plans to build more prisons and expand the capacities of some existing facilities.

Section 994(g) of Public Law 98-473 directs the Sentencing Commission to estimate the impact of its sentencing guidelines on the federal prison population. This section of the law also requires that the Commission make recommendations to Congress concerning any change or expansion in the nature or capacity of federal correctional facilities and services as a result of the guidelines. On June 18, 1987, the Commission provided a supplementary report to Congress that contained a prison impact study estimating dramatic increases in the future federal prison population. However, the Commission has not yet determined the number or types of facilities that would be needed to house the increased prison population it projects, although it plans to do so.

The Commission's study pointed out problems in forecasting prison populations, including the absence of reliable methods for predicting future crime rates and changes in the level of federal prosecutions and enforcement priorities. The study also noted that uncertainties about sentencing under the guidelines made forecasting the effects of the guidelines on prison populations especially difficult. For example, the study pointed out that the proportion of defendants who plead guilty could change under the guidelines. According to the Administrative Office of the United States Courts, during the 12-month period ending June 30, 1986, about 86 percent of the criminal cases were decided through guilty pleas. Similarly, the authority of judges to depart from the guidelines (even though they must provide a written

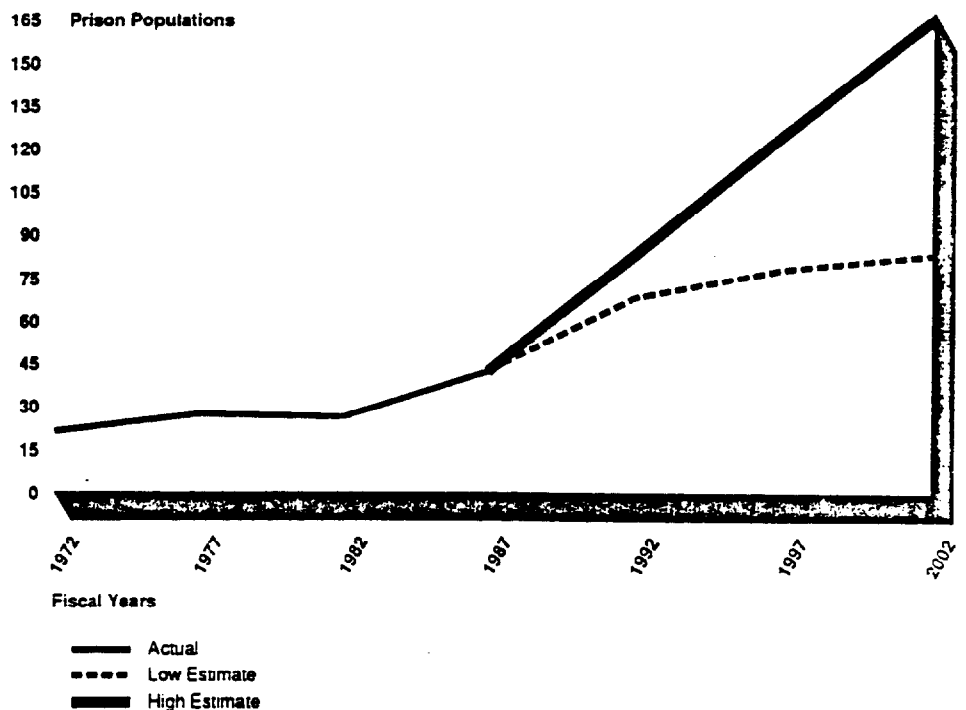
explanation) creates uncertainty about the ultimate impact of the guidelines.

After pointing out the unknowns concerning the guidelines' effect on future prison populations, the study explains how the Commission estimated this impact. Generally, the Commission analyzed sentencing practices for a sample of about 10,500 offenders who were convicted during fiscal year 1985. Then, working with FPS, the Commission developed a computer simulation model to project future prison population on the basis of a variety of factors, including: (1) current practice; (2) anticipated prosecution trends; (3) the Anti-Drug Abuse Act of 1986 (which requires, among other things, mandatory minimum sentences for certain drug offenders); (4) the career offender provisions of the Comprehensive Crime Control Act of 1984 (which require, among other things, substantial prison terms or terms at or near the maximum prescribed by law for certain repeat offenders); and (5) the guidelines.

Because future prosecution policy cannot be anticipated, the Commission projected prison impact for 1992, 1997, and 2002 using alternative assumptions concerning prosecution/conviction rates, plea negotiation practices, and the extent that judges would depart from the guidelines' sentences. The Commission's prison population estimates range from 67,000 to 83,000 for 1992, 78,000

to 125,000 for 1997, and 83,000 to 165,000 for 2002.¹ Compared to the 42,000 inmates estimated for 1987, these translate into increases which range from about 60 to 98 percent for 1992, 86 to 198 percent for 1997, and 98 to 293 percent for 2002. Figure 1 illustrates the Commission's estimated prison population growth.

Figure 1: Growth in Prison Population From 1972 to 2002



Source: Federal Prison System and U.S. Sentencing Commission.

All figures for 1987 and beyond are estimates based on the U.S. Sentencing Commission prison population projections.

The Commission's estimates indicate that the population of federal prisons will increase dramatically primarily because

¹The Commission believes its 1992 estimates are the most accurate, its 1997 estimates are somewhat less accurate, and its 2002 estimates are very speculative.

convictions will increase, sentences that do not include confinement (probationary sentences) will be reduced significantly, and the average time served for drug related, violent, and repeated offenses will increase substantially. According to the Commission's study, the use of straight probation without any confinement will decrease under the guidelines for all nine offense types that they analyzed. In addition, the use of some type of confinement combined with probation will increase under the guidelines for six of the nine offense types analyzed. The Commission also estimates that the average imprisonment time will increase under the guidelines for seven of the nine offense types analyzed.

The Commission believes that the most significant factors contributing to future prison population increases will be growth in the number of prosecutions and the mandatory minimum sentences required by the new anti-drug law. The Commission attributes some of the growth to the longer sentences required under the career offender provisions of the Comprehensive Crime Control Act. It attributes a relatively modest amount of the increased prison population to the guidelines themselves. Table 1 shows the extent that the Commission believes each of these factors will contribute to growth in the federal prison system from 1987 to 1997 under two of its scenarios.²

²We used these two scenarios because they contain estimates that fall between the Commission's lowest and highest estimates for 1997. Also, these are the two basic scenarios that the Commission discusses extensively in its study.

Table 1: Factors Contributing to
Growth in Prison Populations 1987 to 1997

<u>Factor</u>	<u>Scenario # 1</u>		<u>Scenario # 2</u>	
	<u>Estimated number</u>	<u>(Percent)</u>	<u>Estimated number</u>	<u>(Percent)</u>
Growth due to increased prosecutions	+ 19,000	(38.0)	+ 36,000	(47.4)
Growth due to anti-drug law	+ 24,000	(48.0)	+ 30,000	(39.5)
Growth due to career offender law	+ 4,000	(8.0)	+ 6,000	(7.9)
Growth due to guidelines	+ <u>3,000</u>	(<u>6.0</u>)	+ <u>4,000</u>	(<u>5.3</u>)
Total growth	+ 50,000	(100.0)	+ 76,000	(100.0) ^a
Plus 1987 population	<u>42,000</u>		<u>42,000</u>	
Total 1997 population	<u>92,000</u>		<u>118,000</u>	

^aDoes not add to 100 due to rounding.

We are still in the process of reviewing the Commission's methodology for estimating prison impact. On the basis of our work so far, the Commission's methodology appears reasonable. The Assistant Director for Administration of FPS told us that FPS staff worked closely with the Sentencing Commission in developing the Commission's prison population projection model. While recognizing the inherent difficulties of all prison population projection methodologies, this official said that the Commission's range of estimates and their underlying assumptions are reasonable. He added that it is highly probable that FPS will eventually use the Commission's model, with possible modifications, to estimate future prison populations.

ESTIMATED COST OF INCREASED

PRISON SPACE

Before the Commission submitted its proposed guidelines and prison impact estimates to Congress, FPS had planned to add 16 new prisons and expand the capacity of 38 (about 81 percent) of the existing 47 correctional facilities at a cost of about \$900 million. FPS estimated that their prison population would be 55,200 by fiscal year 1993, and that they would have an overcrowding rate of about 20 percent (which calculates to a base capacity of 46,000). However, that estimate did not include the additional prison space that will be needed because of the Anti-Drug Abuse Act of 1986, the career offender provisions of the Comprehensive Crime Control Act of 1984, or the sentencing guidelines.

FPS' April 1987 cost estimates for new minimum/medium security correctional facilities indicate an average cost per bed of about \$66,000. Applying that cost figure to the difference between the Sentencing Commission's estimated population and the approximate 34,500 bed capacity that has been funded by Congress (current capacity of about 28,000 beds plus about 6,500 beds in process) would provide a rough estimate of the cost to build new facilities for the additional prisoners.

Using the Commission's previously discussed 1997 populations of 92,000 and 118,000, FPS would need space for 57,500 to 83,500 additional prisoners at a cost of about \$3.8 to \$5.5 billion to totally eliminate overcrowding. To achieve a 20 percent overcrowding rate, which is FPS' goal, FPS would need 42,200 to 63,800 more spaces at a cost of about \$2.8 to \$4.2 billion.

These estimates do not reflect the higher costs likely because of future inflation. Also, the costs could be higher if FPS has to build proportionately more maximum security facilities. Maximum security facilities are more expensive than medium or minimum security facilities. Similarly, costs would be lower if more minimum security facilities were built. Further, the costs could be reduced to the extent that FPS can avoid constructing new prisons by using lesser cost alternatives, such as (1) expanding the capacity of existing federal prisons; (2) placing more offenders in state and local correctional facilities; (3) making greater use of halfway houses; or (4) acquiring facilities no longer needed for their original purpose. FPS officials believe the first two alternatives will not provide much relief because they are already expanding existing facilities to the maximum extent possible and because state and local facilities are currently overcrowded. Any need not met by these four alternatives would most likely have to be satisfied by new construction.

Besides the money needed to provide additional prison space, a greatly expanded prison population would substantially increase the funds needed by FPS to operate and maintain its prisons and to provide for inmate custody, care, and rehabilitation programs. For fiscal year 1986, FPS' operating costs were about \$13,100 per inmate. Using that figure and ignoring any inflation or productivity improvements, FPS could need additional operating funds of as much as \$650 million to \$1 billion annually to house the 50,000 to 76,000 additional prisoners that the Sentencing Commission estimates for 1997.

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