# UNITED STATES SENTENCING COMMISSION

## SUPPLEMENTARY REPORT TO THE CONGRESS:

## STATUTORY PENALTY REVIEW PROJECT



### SUMMARY OF FINDINGS AND RECOMMENDATIONS

### Introduction

The United States Sentencing Commission, established by the Sentencing Reform Act of 1984, is charged with promulgating sentencing policies and practices for the federal courts that include guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal offenses. In furtherance of that mandate, the Act requires the Commission to "recommend to the Congress that it raise or lower ... the maximum penalties of those offenses for which such an adjustment appears appropriate." 28 U.S.C. § 994(r). This report responds to that mandate by identifying four groups of statutory penalties that appear inconsistent with the goals of sentencing reform as identified in the 1984 Act.

### Criteria for Including Statutes in this Report

Statutes selected for review in this report include those in which the penalty range available is insufficiently broad to allow for a full consideration of the defendant's conduct in determining a sentence. Generally, such statutes fall into two categories: 1) statutes that encompass a wide range of criminal behavior, including serious violent or drug-related offenses, but provide only a narrow range of sentencing alternatives; or, 2) statutes that create the potential for irrational and disproportionate sentences by providing a schedule of escalating maximum penalties based upon a limited set of aggravating factors.

### Methodology

Each statute selected for review was analyzed using legal and statistical research methods. Legal research included examination of the legislative background of the statutes, landmark cases involving their interpretation, and appellate opinions involving both pre- and post-guideline sentencing issues. The Final Report of the National Commission on Reform of Federal Criminal Laws (the Brown Commission), the Model Penal Code, and the most recent proposed legislation reforming the federal criminal code passed by the United States Senate were reviewed. Finally, where appropriate, the Commission examined selected state statutes.

Statistical research for each relevant federal statute included review of data received on sentences imposed from January 19, 1989, through June 30, 1990, to determine:

- the number of multiple count and single count guideline cases;
- the number of single count cases resolved by guilty pleas;
- the number of single count cases in which sentences at the statutory maxima were imposed; and
- whether absent statutory constraints the guidelines would have required a sentence in excess of the statutory maximum.

Additionally, court records were examined in a representative sampling of cases sentenced under 18 U.S.C. §§ 371, 1952, and 1112 to further supplement the empirical research.

A summary of the Commission's findings and recommendations follows.

## A. OFFENSES IN DEPRIVATION OF CIVIL RIGHTS

**18 U.S.C. §§ 242, 245, 247;**
**42 U.S.C. § 3631**

Sections 242, 245, and 247 of title 18 and section 3631 of title 42 provide the protection of federal criminal law to the exercise of certain civil rights and religious liberties. Each of these statutes provides maximum penalties of life imprisonment where the offense resulted in death, ten years imprisonment where the offense involved bodily injury, and one year imprisonment in all other cases. Through its review, the Commission found that this statutory penalty structure can produce irrational results. For example, if a defendant attempts to murder a visitor to a national park, he is subject to a maximum term of 20 years imprisonment under 18 U.S.C. § 1113, even if no injury results. If the defendant attempts to kill a federal employee and causes no injury, the defendant may be sentenced to any term of years or life imprisonment under 18 U.S.C. § 351(c). However, the attempted murder of a civil rights worker that does not result in injury is only a misdemeanor under section 245 and is thus subject to a one-year statutory maximum term of imprisonment.

In such cases, the guidelines are powerless to prescribe sentences that are proportionate to the seriousness of the offense conduct or comparable to what other defendants convicted of offenses involving similar conduct would receive. Consequently, the Sentencing Reform Act directive that the Commission promulgate sentencing guidelines that, among other things, "reflect the seriousness of the offense, ... promote respect for the law, ... and provide just punishment," cannot be fully achieved in certain civil rights cases. 28 U.S.C. § 991(b)(1)(A); 18 U.S.C. § 3553(a)(2)(A).

Generally, the guidelines provide that where the underlying offense conduct constitutes a serious crime (other than the civil rights violation itself) such as aggravated assault or attempted murder, the guideline penalties for those underlying offenses should be applied to the defendant. Additionally, the guidelines require a 24 percent increase in the penalty otherwise available for the underlying criminal conduct (e.g., assault) to reflect both the

heightened criminal intent necessary to constitute a civil rights offense as well as the increased societal harms that occur when a crime involves the deprivation of civil rights.

The penalty scheme of the guidelines is frustrated by the treatment of serious violent crimes as misdemeanors under the statute. For example, a defendant who uses a weapon to inflict serious bodily injury on a civil rights worker would be guilty of a felony punishable by up to ten years imprisonment under 18 U.S.C. § 245 and subject to a sentencing range of 57 to 71 months under Chapter Two of the guidelines. However, where the defendant discharges a firearm in an attempt to murder a civil rights worker, yet fortuitously fails to inflict bodily injury, he is guilty of only a misdemeanor under section 245. Although that defendant could have been subject to a Chapter Two guideline sentencing range of 97 to 121 months for attempted murder, his sentence is capped by the 12-month maximum penalty available under the statute. Similarly, when the offense conduct constituting a violation of the civil rights statutes also amounts to kidnapping, arson, or other serious offenses that may not involve the infliction of bodily injury, the sentence is limited by statute to 12 months.

Although the number of convictions in any given year for violent offenses committed under the civil rights statutes is likely to be small, such cases may involve core legal and political values. As a result, prosecutions under the criminal civil rights statutes are likely to carry an importance far greater than their numbers alone might indicate.

> **Recommendation:** *Amend sections 242, 245, and 247 of title 18 and section 3631 of title 42 to provide a maximum penalty of life imprisonment for offenses that not only involve death, but also attempted murder, kidnapping, or aggravated sexual abuse -- crimes for which life imprisonment is otherwise available under the federal code.*
>
> *Amend the statutes to provide a maximum penalty of ten years imprisonment for offenses involving not only bodily injury, but also the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire.*
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> *Additionally, to improve the uniformity of the code, amend the statutes to require only "bodily injury" as a predicate for invoking higher penalties.*

## B. ASSAULT

**18 U.S.C. §§ 111, 112(a), 113(c), 351(e), 1751(e)**

The statutes addressed in this section provide inconsistent penalties for simple and aggravated forms of assault and make it difficult to implement guidelines that prescribe sentences according to the severity of the defendant's conduct. Under the current statutes, assault with a dangerous weapon is variously treated as a felony carrying a maximum penalty of ten years imprisonment, a felony carrying a maximum penalty of five years imprisonment,

and a misdemeanor carrying a maximum penalty of one year imprisonment. Simple assault is variously treated as a misdemeanor carrying a maximum penalty of one year imprisonment and a felony carrying a maximum penalty of three years imprisonment. Assault resulting in injury is treated both as a felony carrying a maximum term of ten years . imprisonment and a felony carrying a maximum term of three years imprisonment.

Under sections 351(e) and 1751(e), assault with a dangerous weapon not resulting in injury against a member of Congress, a Supreme Court justice, or a Cabinet or senior White House staff member is a misdemeanor. The potential for disproportionate and irrational sentencing under these statutes is illustrated by comparing the hypothetical cases of assaults involving the discharge of a firearm against a member of Congress and an employee of the Bureau of Land Management. Assuming that the defendants in each case have a criminal history category of III and neither assault resulted in injury, the guideline sentencing range is 57 to 71 months. Because section 111(b) provides a maximum penalty of ten years for assault with a dangerous weapon against a federal employee, the assailant of the Bureau of Land Management employee can receive the full guideline sentence. However, because of the low statutory maximum penalty available under section 351(e), the full guideline sentence cannot be imposed upon the congressman's assailant; that defendant may be sentenced to no more than the statutory maximum term of one year imprisonment.

The distinction that these statutes make between an assault resulting in injury and an assault with a deadly weapon makes little sense when one considers that an assault with a deadly weapon often involves an attempt to cause injury. Generally, the severity of an attempt crime depends in large part on the extent to which the defendant was successful in achieving his criminal objective. Where the defendant actually discharges a firearm or otherwise uses a weapon in attempting to cause personal injury, he has taken virtually all steps necessary to complete the crime. Under the guidelines, such attempts are treated the same as the completed offense.[1] Similarly, the guideline for aggravated assault treats assault with a dangerous weapon and assault resulting in personal injury as roughly equivalent crimes (depending on whether the weapon was a firearm, how it was used, and the degree of injury sustained).

Under sections 111 and 112(a), a maximum penalty of ten years imprisonment is provided for assaults with a dangerous weapon against certain federal officers and employees, foreign officials, official guests, and internationally protected persons. However, a maximum penalty of three years imprisonment is available for assaults resulting in personal injury that do not involve the use of a weapon. These two statutes also make simple assault subject to a maximum penalty of three years imprisonment. A defendant may inflict substantial injuries upon a victim without the aid of a dangerous weapon, yet the punishment for such an assault is far less than for an assault with a weapon that involves no injury. At the same time, both statutes treat simple assault involving no physical contact as a felony.

Finally, section 113(c) provides a maximum penalty of five years for assault with a dangerous weapon committed within the special territorial and maritime jurisdiction of the United

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[1] See U.S.S.G. §2X1.1(b)(1).

States. While section 113(c) is unlikely to interfere with guideline sentencing in most cases, its penalty provision appears inconsistent with those contained in sections 111 and 112(a).

> **Recommendation:** *Amend sections 111, 112(a), 113(c), 351(e), and 1751(e) of title 18 to provide consistent penalties for assault with a dangerous weapon, assault resulting in injury, and simple assault. Taken together, the statutes should be amended to provide a maximum penalty of one year imprisonment for simple assault and a maximum penalty of ten years imprisonment for assault with a dangerous weapon and assault resulting in injury.*

## C. THE TRAVEL ACT

**18 U.S.C. § 1952**

The Travel Act provides a maximum penalty of five years imprisonment for offenses such as extortion, money laundering, drug distribution, prostitution, and gambling (as well as crimes of violence committed in furtherance of such activities) involving interstate travel or the use of interstate facilities. The guideline applicable to section 1952 offenses sets penalties according to the severity of the defendant's underlying offense conduct. Because Travel Act violations may involve serious drug and violent offenses, the five-year maximum penalty may limit imposition of the full guideline sentence that would otherwise be applicable to defendants who commit similar criminal acts but are indicted under different federal statutes.

For example, a defendant is convicted of committing murder in furtherance of an unlawful activity under the Act. Under the guidelines, such an offense would be sentenced using the Chapter Two guidelines for first or second degree murder. Even if treated as the lesser of the two offenses, a defendant with little or no criminal history would receive a sentencing range of 135 to 168 months. However, because the Travel Act carries a maximum penalty of no more than five years imprisonment, the guideline sentence is reduced to a maximum of 60 months.

A review of Commission data indicates that such "topping out" does occur frequently in cases involving the Travel Act. Almost 30 percent of the defendants convicted of a single count under the Travel Act receive the statutory maximum sentence of five years. Importantly, 71.4 percent of those defendants would have received a greater sentence if the guidelines were not constrained by the five-year statutory maximum. In these cases, it appears that the sentencing ranges required by the guidelines may have been frustrated by the statutory maximum penalty.

> **Recommendation:** *Amend the Travel Act to provide the following maximum penalty scheme: life imprisonment for offenses where death results; 20 years for crimes of violence or felony drug offenses; and five years in all other cases.*

## D. INVOLUNTARY MANSLAUGHTER

### 18 U.S.C. § 1112

Section 1112 of title 18 provides a maximum term of three years imprisonment for involuntary manslaughter. For the most part, section 1112 is used to prosecute criminal conduct amounting to driving while intoxicated or under the influence of alcohol or a controlled substance where death results. The maximum penalty available under section 1112 appears disproportionately low when compared to penalties available for such conduct under many state laws, penalties recommended in earlier federal criminal code reform proposals, and penalties currently available under the federal code for crimes involving substantially lesser harms. Notwithstanding the lower mens rea standard for involuntary manslaughter, the current maximum penalty appears low when compared with these other, arguably less serious offenses.

Among jurisdictions punishing vehicular homicide (including recklessly negligent or criminally negligent conduct resulting in death by a vehicle), at least 23 states and the District of Columbia have statutory maxima of five years or more, while only five states have maxima of three years or less. Thirty-seven states that punish vehicular homicide in connection with a DWI offense -- the heartland federal involuntary manslaughter offense -- have statutes with maximum penalties ranging from five to 25 years imprisonment.[2]

Even among federal statutes, the penalties available for involuntary manslaughter appear disproportionate when compared with the penalties available for other federal offenses resulting in lesser harm to the victim. For example, numerous offenses involving theft, embezzlement, fraud, false statements, forgery, gambling, and other non-violent offenses carry five- and ten-year statutory maxima, even where no physical harm results.[3]

Over the last three decades, proposals for criminal code reform have urged significant increases in the statutory maximum penalties available for involuntary manslaughter. The final report of the Brown Commission established two categories of involuntary manslaughter -- negligent and reckless -- with maximum penalties of five and seven years, respectively.[4] The last Senate effort at criminal code reform also recommended creating two categories of involuntary manslaughter: manslaughter resulting from recklessness (carrying a 12-year maximum term) and manslaughter resulting from negligence (carrying a six-year maximum term).[5] In 1962, the Model Penal Code adopted a similar approach,

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[2] For details concerning state involuntary manslaughter statutes and other related statutes, see infra Part E.

[3] See, e.g., 7 U.S.C. §§ 270, 1379i(d); 8 U.S.C. § 1160; 18 U.S.C. §§ 511, 659, 661, 1302, 1702-04, 1957, 2318.

[4] See Nat'l. Comm. on Reform of Federal Criminal Laws, Final Report (1971).

[5] See S. Rep. No. 307, 97th Cong., 1st Sess. 573-78 (1981) (discussion of S. 1630, the "Criminal Code Reform Act of 1981").

establishing the maximum penalty for "negligent homicide" at five years and the maximum penalty for voluntary and involuntary manslaughter at ten years.[6]

In light of the grave consequences and seriousness of the conduct prosecuted under section 1112, the Commission believes that a three-year statutory maximum is inconsistent with the overall penalty structure of the code.

> **Recommendation:** *Amend section 1112 of title 18 to make involuntary manslaughter a Class D felony carrying a maximum penalty of six years imprisonment.*

## Conclusion

Through creation of the Commission and guideline sentencing, the Sentencing Reform Act of 1984 inaugurated a new era of sentencing practice in the federal criminal justice system. The hallmarks of this new era are more uniform sentencing for similarly situated defendants through the use of guidelines that take into account both the severity of the offense and the criminal history of the defendant. The recommendations contained in this report advance the goals of the Act by removing impediments created by statutory maximum penalties that serve to inhibit the ability of courts to take into account relevant sentencing factors as identified by the guidelines.

[6] Model Penal Code §§ 210.3 - 210.4 (1980).

# INTRODUCTION

## The Commission and its Mandate

The United States Sentencing Commission, established by the Sentencing Reform Act of 1984, is composed of seven members appointed by the President and confirmed by the Senate.[1] Additionally, the Attorney General and the Chairman of the U.S. Parole Commission serve as ex-officio members.[2]

Pursuant to the Sentencing Reform Act, the Commission promulgated detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes. Additionally, the Commission monitors implementation of the guidelines, conducts various research studies on sentencing issues, and makes recommendations concerning needed legislation.[3] Specifically, section 994(r) of title 28 requires the Commission to submit a report to Congress recommending changes to statutory maximum penalties established in the federal code.

> The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

Responding to this mandate, the Commission submitted a preliminary report to Congress on November 1, 1989, that included a statutory penalties project description and compilations of federal criminal offenses.[4] This supplemental report contains recommendations for raising or lowering the penalties in federal criminal statutes proscribing violations of civil rights, assaults against federal officials, organized crime, and involuntary manslaughter.

## Scope of the Report

In its preliminary report, the Commission noted that the review of statutory maximum penalties is compatible with the Commission's overall mission of developing sentencing guidelines and policy statements for the federal courts. The Commission views this study as affording an opportunity to highlight inconsistencies and unwarranted disparities in the

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[1] 28 U.S.C. § 991.

[2] Id.

[3] 28 U.S.C. §§ 995(a)(9), (12)-(16), (20).

[4] United States Sentencing Commission, Preliminary Report to the Congress: Statutory Penalties Project Description and Compilations of Federal Criminal Offenses (November 1, 1989).

maximum punishment available under the code for similarly situated offenders who commit similar offenses.

In large measure, the Commission has addressed disparities in the patchwork of statutory penalties through promulgation of the sentencing guidelines. The guidelines were intended to cut through inconsistent statutory maximum penalties to ensure uniformity, consistency, and certainty in federal sentencing. This is possible, in part, because guideline sentences generally do not reach the maximum penalties authorized by the statute. Thus, even where one guideline covers several statutes containing different maximum penalties, uniformity in sentencing for similar criminal conduct can be achieved.

The guidelines have been successful in instilling a large measure of rationality in sentencing despite variations in statutorily authorized penalties for similar offenses. However, when the guideline sentence conflicts with a statutory maximum penalty, the statute prevails. In such instances, the statute may frustrate the sentencing outcome otherwise required by the guidelines and, in that sense, impede the goal of a uniform, consistent sentencing system envisioned by the Sentencing Reform Act.

With such concerns in mind, the Commission reviewed statutes or groups of statutes that appeared to defeat, or carry the potential to defeat, the guidelines' objective of providing similar sentences for similarly situated defendants who commit similar offenses. The Commission's recommendations in this report focus on those statutory penalties that possess a strong potential to perpetuate unwarranted disparity, disproportionality, or inconsistency in federal sentencing. Implementation of the Commission's recommendations will also reduce inconsistencies in the penalty exposure of criminal defendants and improve the overall consistency of the federal code.

## Criteria for Including Statutes in this Report

Statutes selected for review in this report include those in which the penalty range available is insufficiently broad to allow for a full consideration of the defendant's conduct in determining the guideline sentence. Generally, such statutes fell into two categories: 1) statutes that encompass a wide range of criminal behavior, including serious violent or drug-related offenses, but provide only a narrow range of sentencing alternatives; or, 2) statutes that create the potential for irrational and disproportionate sentences by providing a schedule of escalating maximum penalties based upon a limited set of aggravating factors.[5]

Based on this criteria, the following statutes were selected for inclusion in this report:

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[5] For example, section 111 of title 18, United States Code, provides a three-year penalty for assaulting certain federal officers and employees. That penalty is increased to ten years where the assault involves the use of a dangerous weapon. One result of this penalty structure is that an assault against a federal officer that does not involve the use of a dangerous weapon but does involve the infliction of serious bodily injury is subject to a maximum penalty of three years imprisonment, whereas an assault that involves brandishing a weapon without the infliction of injury is subject to the ten-year penalty. For a more full discussion of section 111, see infra Part B.

- **Offenses in Deprivation of Civil Rights**
  18 U.S.C. §§ 242, 245, 247; 42 U.S.C. § 3631

- **Assaults Against Members of Congress, Supreme Court Justices, Senior White House Staff, Federal Officers and Employees, Foreign Officials, Official Guests, Internationally Protected Persons; Assault With a Dangerous Weapon**
  18 U.S.C. §§ 111, 112(a), 113(c), 351(e) and 1751(e)

- **The Travel Act**
  18 U.S.C. § 1952

- **Involuntary Manslaughter**
  18 U.S.C. § 1112

Methodology

Each statute selected for review was analyzed using legal and statistical research methods. Legal research included examination of the legislative background of the statutes, landmark cases involving their interpretation, and appellate opinions involving both pre- and post-guideline sentencing issues. The Final Report of the National Commission on Reform of Federal Criminal Laws (the Brown Commission), the Model Penal Code, and the most recent proposed legislation reforming federal criminal code passed by the United States Senate were reviewed. Finally, where appropriate, the Commission examined selected state statutes.

Statistical research for each relevant federal statute included review of data received on sentences imposed from January 19, 1989,[6] through June 30, 1990, to determine:

- the number of multiple count and single count guideline cases;
- the number of single count cases resolved by guilty pleas;
- the number of single count cases in which sentences at the statutory maxima were imposed; and
- whether absent statutory constraints the guidelines would have required a sentence in excess of the statutory maximum.

Convictions on multiple counts were excluded from detailed review because they do not provide a clear picture of the relationship between a sentence imposed and a particular count of conviction. For example, where the concern is sentences imposed under 18 U.S.C. § 1952 (Travel Act), it may be difficult, if not impossible, to determine the extent to which a sentence imposed for a Travel Act conviction and several related substantive counts may be attributed to the Travel Act count or the accompanying substantive offenses.

[6] The Commission's dataset begins on January 19, 1989, the day after the Supreme Court's decision in Mistretta v. United States, 109 S. Ct. 647 (1989), upholding the constitutionality of the guidelines. It was only as a result of the Mistretta decision that the guidelines were applied uniformly in all federal judicial districts.

Additionally, court records were examined in a representative sampling of cases sentenced under 18 U.S.C. §§ 1952 and 1112 to further supplement the empirical research.

# PART A -- OFFENSES IN DEPRIVATION OF CIVIL RIGHTS

STATUTORY PROVISIONS:
18 U.S.C. §§ 242, 245, 247;
42 U.S.C. § 3631

## Introduction and Summary of Recommendations

Sections 242, 245, and 247 of title 18 and section 3631 of title 42 extend the protection of federal criminal law to the exercise of certain civil rights and religious liberties. These statutes provide penalties based on the victim's physical injuries that result from the crimes they proscribe. Where an offense results in death, the statutes authorize a term of up to life imprisonment; where the offense involves bodily injury, a term of up to ten years; and, in all other cases, a term of up to one year imprisonment. As a result, certain serious offenses such as attempted murder are treated as misdemeanors if no injury occurs. In such cases, the guidelines are powerless to prescribe sentences that are proportionate to the seriousness of the offense conduct or comparable to what other defendants convicted of offenses involving similar conduct would receive.

> Recommendation: *Amend sections 242, 245, and 247 of title 18 and section 3631 of title 42 to provide a maximum penalty of life imprisonment for offenses that not only involve death, but also attempted murder, kidnapping, or aggravated sexual abuse -- crimes for which life imprisonment is otherwise available under the federal code.*
>
> *Amend the statutes to provide a maximum penalty of ten years imprisonment for offenses involving not only bodily injury, but also the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire.*
>
> *Additionally, to improve the uniformity of the code, amend the statutes to require only "bodily injury" as a predicate for invoking higher penalties.*

## I. Background

**The Civil Rights Act of 1968:** Passed in the wake of the assassination of Dr. Martin Luther King, Jr. and the civil disorder that followed, the Civil Rights Act of 1968 was the "antidote prescribed by Congress to deter and punish those who would forcibly suppress the free exercise of civil rights."[7] The Act created, among other things, two new criminal statutes:

[7] Johnson v. Mississippi, 421 U.S. 213, 224 (1975).

section 245 of title 18, prohibiting the forcible interference with certain enumerated rights,[8] and section 3631 of title 42, prohibiting the forcible interference with an individual's right to occupy, acquire, or dispose of a dwelling.[9] Additionally, the Act amended section 242 of title 18 (prohibiting the deprivation of rights under color of law)[10] to provide up to life imprisonment for offenses resulting in death.[11] Section 242 was amended again in 1988

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[8] Section 245 prohibits any person, whether or not acting under color of law, from using force or the threat of force to willfully injure, intimidate, or interfere with any other person because of his race, color, religion or national origin and because he is or has been attending a public school or college, participating or enjoying any program or benefit provided by a state, applying for employment with any private employer or state agency, serving as a grand or petit juror, travelling or using any facility of interstate commerce, or enjoying the services of any hotel, restaurant, theater, or other specified establishment that serves the public (subsection (b)(1)). Section 245 also prohibits the forcible interference with any person exercising the right to vote, participating in or enjoying any benefit or program of the federal government or any program or activity that receives federal financial assistance, applying for or enjoying employment in the federal government, or serving as a grand or petit juror in a federal court (subsection (b)(2)). Finally, section 245 prohibits the forcible interference with any person participating in the above activities (subsection (b)(4)); with civil rights workers (subsection (b)(5)); and with any person engaged in a business in or affecting interstate commerce, during or incident to a riot or civil disorder (subsection (b)(3)).

[9] More specifically, section 3631 prohibits any person, whether or not acting under color of law, from using force or the threat of force to willfully injure, intimidate, or interfere with any other person "because of his race, color, religion, sex, handicap, ... familial status, ... or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings," or because he has been engaging in such activities "without discrimination on account of race, color, religion, sex, handicap, ... familial status, ... or national origin ... [or] ... affording another person or class of persons opportunity or protection so to participate ... or ... because he is or has been, or in order to discourage [others] from lawfully aiding or encouraging other persons" to engage in such activities.

[10] Section 242 of title 18 has its origins in Reconstruction Era legislation. It provides in full:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

[11] The Civil Rights Act of 1968 also amended section 241 of title 18, prohibiting conspiracies "to injure, oppress, threaten, or intimidate any [person] in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same" and similar forms of group conduct. The 1968 amendment increased the penalties under section 241 to any term of years or life imprisonment "if death results" from the offense.

to provide penalties of up to ten years imprisonment for offenses involving serious bodily injury.[12]

The penalty provisions of these statutes are identical and intended to be "graduated in accordance with the seriousness of the results" of the offense.[13] Misdemeanor penalties are available for offenses where no injuries are inflicted. Where a victim has sustained bodily injury, the statutes authorize penalties of up to ten years imprisonment.[14]

Finally, where death results from the offense, the defendant faces a penalty of up to life imprisonment. Since passage of the 1968 Act, courts have held that the phrase "if death results" requires only that the "death ensued as a proximate result of the accused's willful violation of a victim's defined rights," rather than that the death be the direct and intended result of the violation. Thus, where death foreseeably and naturally results from the rights-violating conduct, the statutory requirement for enhanced punishment is met.[15]

**Forcible Interference with the Free Exercise of Religion:** In 1988, legislation was enacted to make violence motivated by hostility to religion a federal offense.[16] The Act, codified at section 247 of title 18, prohibits "intentionally defac[ing], damag[ing], or destroy[ing] any religious real property, because of the religious character of that property" and "intentionally obstruct[ing], by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs." The jurisdictional basis of the statute is limited to those who commit the offense while "travel[ing] in interstate or foreign commerce, or us[ing] a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce." Additionally, for offenses involving solely damage or destruction to property, the statute requires a jurisdictional threshold of losses resulting from the offense in excess of $10,000.

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[12] Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7019, 102 Stat. 4396 (1988).

[13] S. Rep. No. 721, 90th Cong., 1st Sess. 4 (1968) reprinted in 1968 U.S. Code Cong. & Admin. News 1837, 1841.

[14] A conscious decision was made to increase penalties based upon "bodily injury" rather than "serious" bodily injury:

> The House amended the penalty provision by inserting the word "serious" before "bodily injury." We have removed the word "serious" from the bill because it is believed that judging the seriousness of an injury would add needless complexity to cases brought under the statute and would in many instances bear no meaningful relationship to the gravity of the offense.

S. Rep. No. 721, supra note 13, at 1846.

[15] U.S. v. Harris, 701 F.2d 1095, 1101 (4th Cir. 1983), citing U.S. v. Guillette, 547 F.2d 743, 748 (2d Cir. 1976), cert. denied, 434 U.S. 839 (1977); accord, U.S. v. Hayes, 589 F.2d 811, 820-22 (5th Cir. 1979), cert. denied, 444 U.S. 847 (1979).

[16] S. Rep. No. 324, 100th Cong., 2d Sess. 2 (1988).

The penalty provision of section 247 was patterned on the penalties available under the Civil Rights Act of 1968.[17] An apparently deliberate departure was made from the earlier statutes, however, in providing a ten-year penalty under section 247 where "serious" rather than simple bodily injury results from the offense.[18] As used in the statute, serious bodily injury means "bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty."[19] Thus, under section 247 an offense is a misdemeanor punishable by up to one year imprisonment where no injury results, or a felony punishable either by up to ten years imprisonment where serious bodily injury results or by any term of years or life where death results.

## II. Sentencing Under the Guidelines

**Development and Application of the Guidelines:** Under the guidelines developed by the Commission, the severity of punishment imposed for a civil rights conviction is based on the severity of the underlying criminal conduct. In testimony at an oversight hearing on the initial set of guidelines held by the House Judiciary Criminal Justice Subcommittee, Commissioner Helen G. Corrothers noted that developing guidelines to cover such offenses was difficult in part because the Commission "felt constrained by the statutory maximum of one year" for offenses under section 242 not involving death.[20] Since many serious crimes not resulting in death could nevertheless be brought under section 242, treating such crimes as misdemeanors results in disproportionate and disparate sentencing compared to the treatment of such criminal conduct under other federal statutes.

Such problems were avoided in S. 1630, the last major attempt to re-codify federal criminal law. Under that bill, federal statutes addressing offenses involving deprivation of civil rights

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[17] See id. note 16, at 6.

[18] 18 U.S.C. § 247(c)(2). The statutes created or amended by the Civil Rights Act of 1968, unlike 18 U.S.C. § 247, do not contain a definition of "bodily injury." Generally, the guidelines provide for increased sentences for violent offenses that result in "bodily injury," "serious bodily injury," or "permanent or life-threatening bodily injury." Although the meaning of those terms as used in the guidelines may differ from their meaning as used in various criminal statutes (including those under consideration here), the Commission does not view the differing definitions as conflicting.

The extent to which punishment is increased to account for bodily injury will correspond to the severity of the injury. Generally, offenses involving "bodily injury" will receive a 2-level increase; those involving "serious bodily injury" will receive a 4-level increase; and those offenses involving "permanent or life-threatening bodily injury" will receive a 6-level increase. See, e.g., U.S.S.G. §§2A2.2(b)(3) (aggravated assault, including assault with a deadly weapon), 2B3.1(b)(3) (robbery). Under some guidelines, however, the increase for injury is less because the base offense level for the offense assumes that bodily injury has occurred. See, e.g., U.S.S.G. §§2A3.1(b)(4) (criminal sexual abuse), 2A4.1(b)(2) (kidnapping, abduction, unlawful restraint).

[19] 18 U.S.C. § 247(e)(2).

[20] Sentencing Guidelines: Hearings on Sentencing Guidelines before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 100th Cong., 1st Sess. 732 (1987).

would carry misdemeanor penalties. However, where the conduct constituting an offense in deprivation of civil rights also constituted a violent felony under federal law (e.g., aggravated assault), the more serious offense could be charged under the "ancillary jurisdiction" provisions of the bill.[21]

For example, where a defendant violated the civil rights of an individual by attempted murder, under S. 1630 the defendant would be subject to federal prosecution on a misdemeanor count for the civil rights offense and a felony count for the attempted murder. In other words, S. 1630 made it possible to scale penalties to the increased severity of civil rights offenses involving violence, whether or not a victim of the offense sustained bodily injury.

The guidelines take a similar approach by adjusting the level of punishment according to the severity of the underlying offense conduct.[22] Generally, the guidelines provide that where the underlying offense conduct constitutes a serious crime (other than the civil rights violation itself) such as aggravated assault or attempted murder, the guideline penalties for those underlying offenses should be applied to the defendant.[23] Additionally, the guidelines require a 24 percent increase in the penalty to reflect both the heightened criminal intent necessary to constitute a civil rights offense as well as the increased societal harms that occur when a crime involves the deprivation of civil rights. In other cases involving the deprivation of civil rights, the guidelines provide a minimum penalty.[24]

**Data:** A review of the monitoring data[25] indicates that to date few guideline sentences

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[21] S. Rep. No. 307, 97th Cong., 1st Sess. 43, 489-503 (1981).

[22] Of course, substantial differences exist between the legislation considered by the 97th Congress and the guidelines promulgated by the Commission. The guidelines have no effect on federal jurisdiction or the statutory elements of the various civil rights offenses. Furthermore, under the guidelines the availability of greater penalties for more serious conduct constituting a civil rights offense is less dependent upon the charges contained in the indictment than would have been the case under the scheme contained in S. 1630.

[23] The guidelines applicable to civil rights offenses distinguish serious offenses depending upon their offense level. Thus, the civil rights guidelines would treat as serious both violent and non-violent offenses that receive high offense levels. See infra note 24.

[24] Generally, the guidelines covering civil rights offenses provide penalties for violations based upon the following calculation. First, the greater of a fixed base offense level or 2 levels plus the offense level applicable to any underlying offense is selected. Additionally, a specific offense characteristic providing a 4-level increase is provided where the defendant was a public official at the time of the offense. For example, if a defendant was sentenced under §2H1.3 (use of force or threat of force to deny benefits or rights in furtherance of discrimination; damage to religious property), the base offense level would be the greater of level 10 if the offense involved no injury, 15 if the offense involved injury, or, in either case, 2 levels plus the offense level applicable to any underlying offense (e.g., aggravated assault, kidnapping, or arson). Additionally, if the defendant was a public official at the time of the offense, an additional 4 levels would be added. See U.S.S.G. §§2H1.1 - 2H1.5.

[25] The Sentencing Commission data file, MON0690, includes information on defendants sentenced under the Sentencing Reform Act of 1984 between January 19, 1989, and June 30, 1990, that were reported to the Commission by September 28, 1990. The data file excludes defendants sentenced solely for petty offenses and

have been imposed under the civil rights statutes -- 22 of the 36,489 cases received by the Commission and sentenced between January 19, 1989, and June 30, 1990. Specifically, 11 guideline sentences were imposed under 18 U.S.C. § 242 and 11 under 42 U.S.C. § 3631. No guideline sentences were imposed under 18 U.S.C. §§ 245 and 247.

## III. Analysis

As noted earlier, Congress amended section 242 in 1988 to provide a maximum penalty of ten years imprisonment for violations of the statute that result in bodily injury.[26] That change conformed the penalties available under section 242 to those available under other statutes providing penalties for civil rights offenses[27] and thus provided more latitude for the guidelines to shape a rational sentencing policy. Despite that amendment, however, many serious violent offenses against civil rights such as attempted murder are still treated as misdemeanors unless they result in injury.

For example, a defendant who uses a weapon to inflict serious bodily injury on a civil rights worker would be guilty of a felony punishable by up to ten years imprisonment under 18 U.S.C. § 245 and subject to a sentencing range of 57 to 71 months under Chapter Two of the guidelines. However, where the defendant discharges a firearm in an attempt to murder a civil rights worker, yet fortuitously fails to inflict bodily injury, he is guilty of only a misdemeanor under section 245. Although that defendant could have been subject to a Chapter Two guideline sentencing range of 97 to 121 months for attempted murder, his sentence is capped by the 12 month maximum penalty available under the statute.[28] Similarly, when the offense conduct constituting a violation of the civil rights statutes amounts to kidnapping, arson, or other serious offenses but does not involve the infliction of bodily injury, the sentence is limited by statute to 12 months.

Although the number of convictions in any given year for violent offenses committed under the civil rights statutes is likely to be small, such cases may involve core legal and political values. As a result, prosecutions under the criminal civil rights statutes are likely to carry an importance far greater than their numbers alone might indicate. In this respect, it is anomalous that under the federal code the attempted murder of a visitor to a national park

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those receiving diversionary sentences. Multiple count cases involving both guideline and pre-guideline counts (420 cases) have been excluded from this review. The Administrative Office of the U.S. Courts' FPSSIS data file provides a large portion of the variables (e.g., victim injury, use or possession of a weapon) currently in MON0690. While MON0690 contains records on 36,909 defendants, not all defendants are reported due to missing data for certain variables. Of 36,909 defendants, 2,762 (7.5%) did not match with the Administrative Office's FPSSIS data and consequently all FPSSIS information is missing for those cases.

[26] See the Anti-Drug Abuse Act of 1988, Pub.L. 100-690, § 7019, 102 Stat. 4396 (1988).

[27] See 18 U.S.C. §§ 241, 245; 42 U.S.C. § 3631.

[28] Under the guidelines, "[w]here the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence becomes the guideline sentence." U.S.S.G. §5G1.1(a).

is punishable by up to 20 years imprisonment[29] (even where the visitor suffers no injury), while under the Civil Rights statutes the same crime committed against a civil rights worker is merely a misdemeanor.

## IV. Recommendations

Amend sections 242, 245, and 247 of title 18 and section 3631 of title 42 to expand the life imprisonment provisions to include offenses involving attempted murder, kidnapping, or aggravated sexual abuse. The recommendation would also expand the ten-year penalty provisions to offenses involving not only bodily injury, but also the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire. Such a change in the law would in most instances allow the imposition of penalties consistent with the general principles of sentencing contained in the guidelines.

Expanding the life imprisonment penalty provisions of the civil rights statutes to include kidnapping, aggravated sexual abuse, and attempted murder would be consistent with the treatment those offenses receive elsewhere in the federal code. Both kidnapping and aggravated sexual abuse are subject to life imprisonment,[30] while attempted murder is subject, under different statutes, to either life imprisonment for offenses involving the attempted murder of certain government officials[31] or 20 years imprisonment.[32]

Additionally, the injury predicate for higher penalties should be made uniform. It is unclear why penalties of up to ten years are available for certain civil rights violations involving "bodily injury," while the ten-year penalties are only available for other civil rights violations where the offense results in "serious bodily injury." The guidelines generally distinguish between three levels of injury: bodily injury, serious bodily injury, and permanent or life-threatening bodily injury. Consistent with that scheme, the Commission recommends that the threshold for invoking the higher penalties under each of these statutes should be "bodily injury."

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[29] 18 U.S.C. § 1113.

[30] See 18 U.S.C. §§ 1201, 2241.

[31] See 18 U.S.C. § 351(c).

[32] See 18 U.S.C. §§ 113(a), 1113, 1116(a).

An alternate approach with respect to civil rights violations involving attempted murder would be to amend the statute to provide for a maximum penalty of 20 years imprisonment. As the guidelines are currently drafted, it is unlikely to make a significant difference whether the maximum statutory penalty is set either at 20 years or life imprisonment (although it is theoretically possible for the guidelines to produce a sentence in excess of 20 years in the rare case where the offense conduct is extremely egregious and the defendant has an extensive criminal record). A drawback to that alternative, however, is that it would add to the complexity of the penalty provisions of the civil rights statutes without clearly affecting sentencing practices.

# PART B -- ASSAULT

STATUTORY PROVISIONS:
18 U.S.C. §§ 111, 112(a), 113(c), 351(e), 1751(e)

## Introduction and Summary of Recommendations

The statutes addressed in this section provide inconsistent penalties for simple and aggravated forms of assault, thereby making it difficult to implement guidelines that prescribe sentences according to the severity of the defendant's conduct. Under the current statutes, assault with a dangerous weapon is variously treated as a felony carrying a maximum penalty of ten years imprisonment, a felony carrying a maximum penalty of five years imprisonment, and a misdemeanor carrying a maximum penalty of one year imprisonment.

Notably, under these statutes, assault with a dangerous weapon against members of Congress, Supreme Court justices, and Cabinet and senior White House staff members that do not result in injury are treated as misdemeanors. As such, the low statutory maximum penalty acts to shield defendants from the guideline sentence that would otherwise be applicable.

Similarly, simple assault is variously treated as a misdemeanor carrying a maximum penalty of one year imprisonment and a felony carrying a maximum penalty of three years imprisonment. Finally, assault resulting in injury is treated both as a felony carrying a maximum term of ten years imprisonment and a felony carrying a maximum term of three years imprisonment.

> **Recommendation:** *Amend sections 111, 112(a), 113(c), 351(e), and 1751(e) of title 18 to provide consistent penalties for assault with a dangerous weapon, assault resulting in injury, and simple assault. Taken together, the statutes should be amended to provide a maximum penalty of one year imprisonment for simple assault and a maximum penalty of ten years imprisonment for assault with a dangerous weapon and assault resulting in injury.*

## I. Background

**Overview of Statutes:** Sections 111, 112(a), 113(c), 351(e) and 1751(e) of title 18 proscribe various forms of assault. Section 111 prohibits assaults on federal officers and employees[33]

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[33] Section 111 provides:

(a) In General.- Whoever-

and sections 351(e) and 1751(e) prohibit assaults on members of Congress, Supreme Court justices, certain Cabinet officials, major Presidential candidates, the President, Vice-President, their successors, and certain high ranking members of their staffs.[34] Section

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(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall be fined under this title or imprisoned not more than three years, or both.

(b) Enhanced Penalty.- Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon, shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 1114, incorporated in section 111(a), covers a wide range of federal officers and employees who perform law enforcement, investigatory, or intelligence functions.

[34] Section 351(e) provides:

(e) Whoever assaults any person designated in subsection (a) ... shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

The persons designated in subsection (a) are as follows:

[A]ny individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director ... [or pending nominee] or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential Candidate ..., or a Justice of the United States ... [or pending nominee].

Section 1751(e) provides:

(e) Whoever assaults any person designated in subsection (a)(1) shall be fined not more than $10,000, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

The persons designated in subsection (a) are as follows:

(1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and the laws of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President.

112(a) prohibits assaults on foreign officials, official guests, and internationally protected persons.[35] Section 113(c) prohibits assault with a dangerous weapon.[36]

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[35] Section 112(a) provides in pertinent part:

> Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person ... shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Section 112(c) incorporates the following definitions from 18 U.S.C. § 1116(b), which states in pertinent part:

> (3) "Foreign official" means-
>
> > (A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and
> >
> > (B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.
>
> (4) "Internationally protected person" means -
>
> > (A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or
> >
> > (B) any other representative, officer, employee, or other agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, dignity, and any member of his family then forming part of his household.
>
> * * * * *
>
> (6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

[36] Section 113(c) provides:

> Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:
>
> * * * * *
>
> (c) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by fine of not more than $1,000 or imprisonment for not more than five years, or

Because the penalties provided under these statutes are inconsistent in their treatment of aggravated and simple assault, the statutes potentially defeat the guideline policy of sentencing according to the severity of the defendant's conduct. Most strikingly, under these statutes assault with a dangerous weapon against a member of Congress, a Supreme Court justice, or other high ranking official that does not result in injury is a misdemeanor subject to a maximum penalty of one year imprisonment. Consequently, defendants who commit such crimes will be shielded by the statutory maximum penalty from the guideline sentence that would otherwise be applicable.

Similarly, assaults against lower ranking federal officers and employees as well as foreign officials and diplomats that result in bodily injury but do not involve the use of a dangerous weapon are subject to only a maximum term of imprisonment of three years. Here, too, the statutory maximum penalty may serve to shield defendants from the guideline sentence that would otherwise be applicable.

At the same time, the statutes make simple assault against lower ranking federal officers, employees, and foreign officials a felony subject to the same maximum term of imprisonment of three years. Defendants who commit such crimes are subject to penalties far higher than those who commit simple assault against high ranking officials or anyone within the special territorial and maritime jurisdiction of the United States.

**Assaults Against Members of Congress, Supreme Court Justices, and Senior White House Staff:** As originally enacted, section 1751 prohibits assaults against the President, the Vice President, and senior members of their staffs. The statute was enacted in the wake of the assassination of President John F. Kennedy and the killing of his alleged assailant, Lee Harvey Oswald. The statute encompasses Presidential assassination and kidnapping as well as assault. It was intended to protect against the "striking down [of] the life of the person who is actually in the exercise of the Executive power," and the corollary "interruption of the Government of the United States and the destruction of its security" that Presidential assassination may foreseeably entail.[37] As originally enacted, the penalty provided for assault was a term of imprisonment not to exceed ten years.[38]

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both.

[37] H.R. Rep. No. 488, 89th Cong., 1st Sess. 3 (1965), quoting, a statement by Senator George F. Hoar made during a 1902 debate on legislation to make assassination of the President a federal crime.

[38] See supra note 34. Congress considered imposing a term of incarceration not to exceed fifteen years. H.R. 6097, 89th Cong., 1st Sess. (1965). This suggestion was abandoned upon recognition of the broad common law definition of assault and the relatively innocuous conduct that could technically be sanctioned under it. Providing Penalties for the Assassination of the President: Hearings on H.R. 6097 Before Subcomm. No. 4 of the House Comm. on the Judiciary, 89th Cong., 1st Sess. 26, 35-36 (1965) (statements of Rep. Boggs, Rep. Whitener, and Rep. Ford).

Section 1751 was amended in 1982[39] after the attempt on the life of President Reagan and the shooting and permanent disablement of White House Press Secretary James Brady.[40] For the purposes of this report, the most significant aspect of the 1982 legislation was its provision amending section 1751 to include up to 30 members of the senior staff of the President and Vice President within the class of protected persons.[41] The amendment provided a maximum penalty of one year imprisonment for assaults on senior staff members that do not result in personal injury and ten years imprisonment for assaults that result in personal injury.[42]

The assassination of Senator Robert Kennedy was fresh in the memory of Congress when section 351 of title 18 was enacted as part of the Omnibus Crime Control Act of 1970. The new law extended the protection of federal criminal law to members of Congress and members-of-Congress-elect. The penalty for an offense under section 351, as originally introduced, was the same as that of section 1751(e); that is, a maximum of ten years imprisonment, regardless of whether a dangerous weapon was used or whether personal injury resulted.[43] Senator Sam Ervin sponsored an amendment that won approval to provide a maximum penalty of one year for an assault that did not result in personal injury.[44]

In 1982, as part of the legislation amending section 1751, Congress enlarged section 351 to include members of the President's Cabinet, pending nominees to Cabinet departments and the second ranking officials of those departments, the Director, pending nominees to be

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[39] Act of Oct. 6, 1982, Pub. L. No. 97-285, § 3, 96 Stat. 1219, 1220 (1982).

[40] 128 Cong. Rec. H6944 (daily ed. Sept. 14, 1982) (statement of Rep. Hughes).

[41] The positions protected under 18 U.S.C. § 1751 are listed in 3 U.S.C. §§ 105(a)(2)(A) and 106(a)(1)(A). See supra note 34. Such personnel include the Counsellor to the President, the Chief of Staff, the Deputy Chief of Staff, the Press Secretary, the National Security Advisor, the Public Liaison, the Assistant for Legislative Affairs, the Counsel to the President, and the Communications Director. Penalties for Crimes Against Cabinet Officers, Supreme Court Justices, and Presidential Staff Members: Hearing on S. 907 Before Subcomm. on Criminal Law of the House Comm. on the Judiciary, 97th Cong., 1st Sess. 4 (1982) (prepared by Assistant Attorney General Lowell Jensen).

[42] See supra note 34.

[43] Id.

[44] Senator Ervin was concerned that, given the broad common law definition of assault, a person could be convicted under section 351(e) for an act of simple assault. As he stated on the floor of the Senate:

> [i]f a man draws back his fist and strikes at a Member of Congress, without striking him or if he slapped a Member with his open hand, he would be guilty of assault under this provision, although that, under the laws of most states, would be simple assault, and in the state of North Carolina a man convicted thereof could not be punished by more than 30 days imprisonment or a $50 fine.

116 Cong. Rec. S17519-20 (daily ed. Oct. 8, 1970) (statement of Sen. Ervin).

Director, and the Deputy Director of Central Intelligence, and Supreme Court justices and pending nominees to the Supreme Court.

The most recent amendment to section 351 was enacted in 1986 when the statute was enlarged to include major Presidential and Vice Presidential candidates.[45] Both section 351(e) and, as it relates to senior White House staff, section 1751(e) distinguish assaults that result in personal injury from those that do not:[46] assaults not resulting in personal injury are treated as misdemeanors; those resulting in personal injury are treated as felonies.[47] One result of structuring statutory penalties in this way is that assault with a dangerous weapon, an offense traditionally considered serious, is treated as a misdemeanor if no personal injury results.

**Assaults Against Federal Officers and Employees:** Section 111, prohibiting assaults on federal officers and employees, can be traced to 1905.[48] It originally proscribed assault against officers and employees of the Bureau of Animal Industry of the Department of Agriculture when such assault was connected to the performance of their duties. Punishment included a term of imprisonment of no less than one month and no more than one year. If a dangerous weapon was used in the assault, the maximum term of imprisonment was increased to five years.

Congress amended the statute in 1909 when the federal criminal code was codified as title 18,[49] altering the punishment provisions by eliminating the one-month mandatory minimum term of imprisonment. The next change was legislated in 1934 when the imprisonment provisions were raised to not more than three years if no weapon was involved and not more than ten if a dangerous weapon was used.[50] Notably, the lower penalty applies even where an assault without a dangerous weapon results in bodily injury. The last noteworthy amendment to section 111 was in 1948[51] when Congress expanded the class of persons

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[45] Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 62, 100 Stat. 3592 (1986).

[46] See supra note 34.

[47] Id.

[48] The original precursor of section 111 was enacted in 1905. Act of March 3, 1905, § 5, 33 Stat. 1265 (1905). The original precursor of section 112(a) was enacted by the First Congress in 1790. Act of April 30, 1790, § 28, 1 Stat. 118 (1790).

[49] Act of March 4, 1909, Sess. II, Ch. 321, § 62, 35 Stat. 1100 (1909).

[50] Act of May 18, 1934, Pub. L. No. 73-230, § 2, 48 Stat. 781 (1934). The amendment also broadened the scope of the statute to include marshals and deputy marshals, special agents of the Department of Justice's Investigation Division, post office inspectors, Secret Service operatives, members of the Coast Guard, prison system workers, customs officers, internal revenue officers, and immigration officials.

[51] Act of June 25, 1948, Pub. L. No. 80-772, § 111, 62 Stat. 695 (1948).

protected by the statute to include all officers and employees listed in 18 U.S.C. § 1114.[52]

**Assaults Against Foreign Officials, Official Guests, and Internationally Protected Persons:** Section 112, prohibiting assaults against foreign officials, official guests, and "internationally protected persons," can be traced back to 1790 when Congress passed legislation providing a maximum penalty of three years imprisonment for individuals who assault ambassadors or other public ministers.[53]

Section 112 was not substantively amended until 1948[54] when Congress increased the maximum penalty from three to ten years imprisonment for assault with a dangerous weapon.[55] The statutory maximum penalty available for other forms of assault against foreign officials, official guests, and internationally protected persons remained three years imprisonment. As with the penalties available under section 111, the lower penalty applies even where an assault not involving a dangerous weapon results in serious injury. These punishment provisions have remained unchanged since 1948.[56]

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[52] See supra note 33.

[53] See supra note 35.

[54] Act of June 25, 1948, Pub. L. No. 80-772, § 112, 62 Stat. 688 (1948).

[55] H.R. Rep. No. 304, 80th Cong., 1st Sess. 2457 (1947).

[56] See supra note 35. The statute, however, has been amended on several occasions to increase the class of protected persons. In 1964 Congress expanded the statute to include not only ambassadors and public ministers, but also the heads of foreign states or governments and foreign ministers. Act of Aug. 27, 1964, Pub. L. No. 88-493, §§ 1 and 5, 78 Stat. 610 (1964).

Section 112 was again amended in 1972. Act for the Protection of Foreign Officials and Official Guests of the United States, Pub. L. No. 92-539, § 301, 86 Stat. 1070 (1972). Besides the addition of a number of non-assault offenses, the Act amended the enumeration of those protected to include any person who is a "foreign official or official guest." For a definition of those terms, see supra note 35.

The final substantive amendment to section 112 was passed in 1976. Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Pub. L. No. 94-467, § 5, 90 Stat. 1999 (1976). The 1976 amendment was enacted pursuant to the terms of two international Conventions: the Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes Against Persons and Related Extortion that are of International Significance and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons. H.R. Rep. No. 1614, 94th Cong., 2d Sess. reprinted in 1976 U.S. Code Cong. & Admin. News 4481 (1976). The provisions of the 1976 amendments relating to assault included expansion of the class of persons protected by the statute to "internationally protected persons"; expansion of the conduct prohibited by the statute to include attacks on the offices, homes, or means of transportation of protected persons; expansion of federal jurisdiction over offenders present in the United States regardless of where the offense was committed; and, authorization for the Attorney General to request assistance from military and state authorities to enforce the statute. For the definition of "internationally protected person," see supra note 35.

Assault with a Dangerous Weapon: The federal crime of assault with a dangerous weapon dates back to 1825.[57] The current jurisdictional limitation (the special maritime and territorial jurisdiction of the United States) and the imprisonment provision of no more than five years date back to 1909.[58]

## II. Sentencing Under the Guidelines

Assault: The guidelines divide assaults into "Aggravated Assault" and "Minor Assault."[59] Generally, minor assaults are misdemeanor offenses and receive an offense level of 3 or 6 depending on whether the offense involved "physical contact."[60] In either case, first

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[57] Act of March 3, 1825, Sess. II, Ch. 65, § 22, 4 Stat. 121-22 (1925). Section 22 provides in pertinent part:

> [t]hat, if any person or persons, upon the high seas or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular state, on board any vessel belonging in whole or in part to the United States, or any citizen or citizens thereof, shall, with a dangerous weapon ... commit an assault on another, such person shall, upon conviction thereof, be punished by fine, not exceeding three thousand dollars, and by imprisonment and confinement to hard labor, not exceeding three years, according to the aggravation of the offense.

[58] Act of March 4, 1909, Sess. II, Ch. 321, § 276, 35 Stat. 1100, 1142-43 (1909).

[59] A third category, "assault with intent to kill," is treated as attempted murder under the guidelines and therefore is not relevant to this discussion. See §2A2.1.

[60] U.S.S.G. §2A2.3 (Minor Assault) provides as follows:

> §2A2.3. Minor Assault
>
> (a) Base Offense Level:
>
> (1) 6, if the conduct involved physical contact, or if a dangerous weapon (including a firearm) was possessed and its use was threatened; or
>
> (2) 3, otherwise.
>
> Commentary
>
> Statutory Provisions: 18 U.S.C. §§ 112, 115(a), 115(b)(1), 351(e), 1751(e). For additional statutory provision(s), see Appendix A (Statutory Index).
>
> Application Notes:
>
> 1. "Minor assault" means a misdemeanor assault, or a felonious assault not covered by §2A2.2.
>
> 2. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to §1B1.1 (Application Instructions).
>
> Background: Minor assault and battery are covered in this section.

offenders may receive a term of probation. However, the guidelines require some form of confinement for offenders at offense level 6 with a criminal history category of III or higher.

Aggravated assaults are subject to a base offense level of 15 that corresponds to a sentencing range of 18 to 24 months for a first offender. The base offense level may be increased depending upon whether the offense involved more than minimal planning, the use of a firearm or other weapon, bodily injury and the extent of such injury, and whether the assault was motivated by a payment or offer of money or other thing of value. The highest offense level available for aggravated assault under Chapter Two of the guidelines is 28, corresponding to a sentencing range of 78 to 97 months for a first offender.[61]

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[61] U.S.S.G. §2A2.2 (Aggravated Assault) provides as follows:

§2A2.2. Aggravated Assault

(a) Base Offense Level: **15**

(b) Specific Offense Characteristics

(1) If the assault involved more than minimal planning, increase by **2** levels.

(2) (A) If a firearm was discharged, increase by **5** levels; (B) if a dangerous weapon (including a firearm) was otherwise used, increase by **4** levels; (C) if a dangerous weapon (including a firearm) was brandished or its use was threatened, increase by **3** levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of Bodily Injury | | Increase in Level |
|---|---|---|
| (A) | Bodily Injury | add **2** |
| (B) | Serious Bodily Injury | add **4** |
| (C) | Permanent or Life-Threatening Bodily Injury | add **6** |

(D) If the degree of injury is between that specified in subdivisions (A) and (B), add **3** levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add **5** levels.

*Provided*, however, that the cumulative adjustments from (2) and (3) shall not exceed **9** levels.

(4) If the assault was motivated by a payment or offer of money or other thing of value, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 111, 112, 113(b),(c),(f), 114, 115(a), (b)(1), 351(e), 1751(e). For additional statutory provision(s), see Appendix A (Statutory Index).

Additionally, the guidelines provide a 3-offense level (or 36 percent) increase in the sentence where an assault is committed against certain federal officers and employees.[62] The Commission has promulgated departure policy statements that would potentially be relevant to assaults against members of Congress, Supreme Court justices, and other federal officers and employees as well as foreign diplomats and officials. Upward departures from the guidelines are authorized when an offense, including assault, results in "a significant disruption of a governmental function" or where the offense was committed "in furtherance of a terroristic action."[63]

**Data:** With two exceptions, most assault statutes are rarely prosecuted. A review of the monitoring data[64] indicates that from January 19, 1989, to June 30, 1990, no guideline sentences were imposed under the following assault statutes: 18 U.S.C. §§ 112(a), 351(e), and 1751(e).

However, guideline cases involving 18 U.S.C. § 111 (assaulting, resisting, or impeding certain officers or employees) and 18 U.S.C. § 113(c) (aggravated assault within the special territorial and maritime jurisdiction of the United States) occur with some frequency: 120 cases were sentenced under section 111 and 75 cases under section 113(c).

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Application Notes:

1. "Aggravated assault" means a felonious assault that involved (a) a dangerous weapon with intent to do bodily harm (i.e., not merely to frighten), or (b) serious bodily injury, or (c) an intent to commit another felony.

2. Definitions of "more than minimal planning," "firearm," "dangerous weapon," "brandished," "otherwise used," "bodily injury," "serious bodily injury," and "permanent or life-threatening bodily injury," are found in the Commentary to §1B1.1 (Application Instructions).

3. This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by §2A2.1. Assault with intent to commit rape is covered by §2A3.1.

Background: This section applies to serious (aggravated) assaults. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows §2A2.1.

There are a number of federal provisions that address varying degrees of assault and battery. The punishments under these statutes differ considerably, even among provisions directed to substantially similar conduct. For example, if the assault is upon certain federal officers "while engaged in or on account of . . . official duties," the maximum term of imprisonment under 18 U.S.C. § 111 is three years. If a dangerous weapon is used in the assault on a federal officer, the maximum term of imprisonment is ten years. However, if the same weapon is used to assault a person not otherwise specifically protected, the maximum term of imprisonment under 18 U.S.C. § 113(c) is five years. If the assault results in serious bodily injury, the maximum term of imprisonment under 18 U.S.C. § 113(f) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances under 18 U.S.C. § 114, in which case the maximum term of imprisonment is twenty years.

[62] See U.S.S.G. §3A1.2.

[63] See U.S.S.G. §§5K2.7, p.s.; 5K2.15, p.s.

[64] See supra note 25.

Of the 120 cases sentenced under section 111, 80 involved a single count of conviction. Forty-seven of the defendants with single count convictions were sentenced under subsection (a) of section 111[65] that carriers a statutory maximum penalty of 36 months. Three of the 47 defendants were sentenced to the statutory maximum penalty of 36 months. Three. defendants were sentenced solely to probation and ten received probation with a period of confinement. The remaining 31 defendants were sentenced to a term of imprisonment of less than 36 months. Fourteen of the 80 single count cases fell under the enhanced statutory maximum (120 months) provided for use of a deadly or dangerous weapon. Two of the 14 defendants received the maximum sentence.

Fifty-two of the 75 defendants sentenced under section 113(c) involved a single count of conviction.[66] Six of the 52 defendants were sentenced to the statutory maximum penalty of 60 months, while three defendants received straight probation and two received probation with confinement conditions. The remaining 41 defendants received a term of imprisonment less than the statutory maximum of five years.

## III. Analysis

The Sentencing Reform Act of 1984 charged the Commission with promulgating guidelines that ensure that penalties imposed for federal offenses are proportionate to the gravity of the defendant's criminal conduct and similar to what other similarly situated offenders committing like offenses receive.[67] Because sections 111, 112(a), 113(c), 351(e), and 1751(e), taken together, treat serious offenses as misdemeanors and at the same time make simple assault a felony, the objectives of the Act and the guidelines may be frustrated.

Table A illustrates the maximum terms of imprisonment available under the statutes for assault, assault with a dangerous weapon not resulting in injury, and assault resulting in injury that did not involve the use of a dangerous weapon.

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[65] The statutory maximum for 18 U.S.C. § 111 could not be identified in 19 cases. When the statutory maximum was missing, the Commission was unable to determine whether or not the statutory maximum penalty was 36 months or 120 months.

[66] In six cases the statutory maximum was either missing or greater than 60 months.

[67] 28 U.S.C. § 991(b)(1)(B).

Table A

| Statute | Assault | Dangerous Weapon (no injury) | Injury (no weapon) |
|---|---|---|---|
| § 111 | 3 years | 10 years | 3 years |
| § 112(a) | 3 years | 10 years | 3 years |
| § 113(c) | --- | 5 years | --- |
| § 351(e) | 1 year | 1 year | 10 years |
| § 1751(e) | 1 year | 1 year | 10 years |

Under sections 351(e) and 1751(e), assault with a dangerous weapon not resulting in injury against a member of Congress, a Supreme Court justice, or a Cabinet or senior White House staff member is a misdemeanor.[68] The potential for disproportionate and irrational sentencing under these statutes is illustrated by comparing the hypothetical cases of assaults with a dangerous weapon that fail to cause injury against a member of Congress and against an employee of the Bureau of Land Management. Assuming that the defendants in each case have a criminal history category of III, the guideline sentencing range is 57 to 71 months.[69] Because section 111(b) provides a maximum penalty of ten years for assault with a dangerous weapon against a federal employee, the assailant of the Bureau of Land Management employee can receive the full guideline sentence. However, because of the low statutory maximum available under section 351(e), the full guideline sentence cannot be imposed upon the congressman's assailant; that defendant may be sentenced to no more than the statutory maximum of one year imprisonment.[70]

The distinction that these statutes make between an assault resulting in injury and an assault with a deadly weapon makes little sense when one considers that an assault with a deadly weapon often involves an attempt to cause injury. Generally, the severity of an attempt crime depends in large part on the extent to which the defendant was successful in achieving

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[68] See supra note 34.

[69] The base offense level under §2A2.2 (aggravated assault) is 15. Five levels are added as a result of discharging a firearm (§2A2.2(b)(2)). Three levels are added due to the official status of the victim (§3A1.2(a)). The example assumes that there are no further aggravating or mitigating factors to be considered under the guidelines.

[70] Arguably, the criminal conduct described in these hypothetical cases may amount to attempted murder, punishable under sections 351 and 1751 by a life term of imprisonment (18 U.S.C. § 1114 provides a maximum term of 20 years imprisonment for attempted murder against those federal officials covered by section 111). Even where a defendant is charged with attempted murder, however, a jury may make a finding of guilt on the lesser included charge of assault. Moreover, the possibility that aggravated assaults against high ranking government officials may also involve an intent to kill does not explain the difference in treatment under sections 351 and 1751.

his criminal objective. Where the defendant actually discharges a firearm or otherwise uses a weapon in attempting to cause personal injury, he has taken virtually all steps necessary to complete the crime. Under the guidelines, such attempts are treated the same as the completed offense.[71] Similarly, the guideline for aggravated assault treats assault with a dangerous weapon and assault resulting in personal injury as roughly equivalent crimes (depending on whether the weapon was a firearm, how it was used, and the degree of injury sustained).[72] It is difficult to justify penalties for assault with a dangerous weapon that are potentially ten times less onerous than those available for assault resulting in personal injury.[73]

Under sections 111 and 112(a), a maximum penalty of ten years imprisonment is provided for assaults with a dangerous weapon against certain federal officers and employees, foreign officials, official guests, and internationally protected persons. However, a maximum penalty of three years imprisonment is available for assaults resulting in personal injury that do not involve the use of a weapon. These two statutes also make simple assault subject to a maximum penalty of three years imprisonment. A defendant may inflict substantial injuries upon a victim without the aid of a dangerous weapon, yet the punishment for such an assault is far less than for an assault with a weapon that involves no injury. At the same time, both statutes treat simple assault involving no physical contact as a felony.[74]

Finally, section 113(c) provides a maximum period of incarceration of five years for assault with a dangerous weapon committed within the special territorial and maritime jurisdiction of the United States. While section 113(c) is unlikely to interfere with guideline sentencing in most cases (six out of 46 single count convictions for section 113(c) "topped out" at five years), its penalty provision appears inconsistent with those contained in sections 111 and 112(a).

## IV. Recommendations

Amend sections 111, 112(a), 113(c), 351(e), and 1751(e) of title 18 to provide consistent penalties for assault with a dangerous weapon, assault resulting in injury, and simple assault. Taken together, the statutes should be amended to provide a maximum penalty of one year imprisonment for simple assault and a maximum penalty of ten years imprisonment for assault with a dangerous weapon and assault resulting in injury.

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[71] See U.S.S.G. §2X1.1(b)(1).

[72] See supra note 61.

[73] It should be noted that the penalty structure of sections 351(e) and 1751(e) are identical to the penalty structure of sections 242, 245, and 247 of title 18 and section 3631 of title 42. Elsewhere in this report, these statutes are critiqued as providing similar problems as those presented by sections 351(e) and 1751(e). See supra Part A.

[74] See supra notes 33 and 35.

**Simple Assault:** Sections 113, 351, and 1751 all treat simple assault as a misdemeanor. Sections 111 and 112(a), however, treat simple assault as a felony subject to a maximum term of imprisonment of three years. The penalty provisions of sections 111 and 112(a) should be decreased to a maximum of one year for assaults not causing personal injury and not committed with a dangerous weapon.[75]

**Assault with a Dangerous Weapon:** Sections 111 and 112(a) provide a maximum term of ten years imprisonment for assault with a dangerous weapon. Sections 351(e) and 1751(e), however, treat such assaults as misdemeanors carrying no more than a term of one year imprisonment. The penalty provision of sections 351(e) and 1751(e) should be amended to provide a ten-year maximum term of imprisonment for assaults involving the use of a dangerous weapon. Additionally, section 113(c), which provides a maximum term of imprisonment of five years for assault with a dangerous weapon, should be amended to provide a ten-year maximum penalty.

**Assault Resulting in Injury:** Sections 351(e) and 1751(e) both provide a maximum term of ten years imprisonment for assault resulting in injury. Sections 111 and 112(a), however, provide a maximum term of imprisonment of three years for such assaults. These latter statutes should be amended to provide a maximum term of imprisonment of ten years for assault resulting in injury.

[75] Sections 113(d) and (e) provide penalties of three months for simple assault and six months for assault involving a "striking, beating, or wounding." While those provisions are unlikely to cause significant interference with the guidelines, the statute appears unnecessarily complex. Under the guidelines, both offenses would generally be subject to probationary sentences. The statute and, more generally, the code could be simplified by providing a single maximum penalty of six months imprisonment.

# PART C -- THE TRAVEL ACT

STATUTORY PROVISION:
18 U.S.C. § 1952

## Introduction and Summary of Recommendations

The Travel Act, 18 U.S.C. § 1952, provides a maximum penalty of five years imprisonment for offenses such as extortion, money laundering, drug distribution, prostitution, and gambling (as well as crimes of violence committed in furtherance of such activities) involving interstate travel or the use of interstate facilities. The guideline applicable to section 1952 offenses sets penalties according to the severity of the defendant's underlying offense conduct. Because Travel Act violations may involve serious drug and violent offenses, the five-year maximum penalty may limit imposition of the full guideline sentence that would otherwise be applicable to defendants who commit similar criminal acts but are indicted under different federal statutes.

> Recommendation: *Amend the Travel Act to provide the following maximum penalty scheme: life imprisonment for offenses where death results; 20 years for crimes of violence or felony drug offenses; and five years in all other cases.*

## I. Background

**Provisions of the Travel Act:** The Travel Act creates three categories of "unlawful activities" involving interstate travel or the use of interstate facilities in furtherance of:

- any business enterprise involving gambling, liquor on which the federal excise tax has not been paid, narcotics or controlled substances ... or prostitution offenses in violation of the laws of the state in which they are committed or of the United States;[76]
- extortion, bribery, or arson in violation of the laws of the state in which committed or of the United States;[77] and
- money laundering offenses.[78]

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[76] 18 U.S.C. § 1952(b)(1).

[77] 18 U.S.C. § 1952(b)(2).

[78] Specifically, "any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of [title 18, United States Code]." 18 U.S.C. § 1952(b)(3).

Violations of the Travel Act are punishable by a maximum term of imprisonment of five years.[79]

Legislative History: The Travel Act was one of several bills enacted into law by the 87th Congress as part of the Attorney General's 1961 legislative program directed against organized crime.[80] The Act was part of an overall package aimed at giving the Department of Justice authority to deal with the nationwide gambling syndicates.[81] As originally introduced, the bill would have prohibited interstate travel with an intent to further the unlawful activities described above. Responding to criticism that such coverage was too broad,[82] the Senate Judiciary Committee narrowed the proposed legislation to require an overt act subsequent to the travel.[83]

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[79] 18 U.S.C. § 1952 states in full:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to --

(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity; or
(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

[80] Perrin v. United States, 444 U.S. 37, 45 (1979).

[81] Robert F. Kennedy, "The Program of the Department of Justice on Organized Crime," 38 Notre Dame Lawyer 637, 638-39 (1963). The other statutes included in the package were 18 U.S.C. §§ 1084 (prohibiting interstate transmission by wire or by telephone of wagering information), 1953 (prohibiting interstate transmission of wagering paraphernalia), and the Gambling Devices Act of 1962.

[82] Senator Sam Ervin, a leading critic, argued that the bill would "render people punishable ... for merely stepping across a state line with an improper intent in their minds." Pollner, "Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering," 28 Brooklyn L. Rev. 37, 39 n.15, 40 (1964).

[83] See id.

In United States v. Nardello,[84] the Supreme Court summarized the legislative history of the Act:

> The Travel Act formed part of Attorney General Kennedy's legislative proposals to combat organized crime. The Attorney General told the Senate Committee that the purpose of the Travel Act was to aid local law enforcement officials. In many instances the "top men" of a given criminal operation resided in one state but conducted their illegal activities in another; by creating a federal interest in limiting the interstate movement necessary to such operations, criminal conduct beyond the reach of local officials could be controlled. The Attorney General's concerns were reflected in the Senate Committee Report favoring adoption of the Travel Act. The Report, after noting the Committee's belief that local law enforcement efforts would be enhanced by the Travel Act, quoted from the Attorney General's submission letter: "Over the years an ever-increasing portion of our national resources has been diverted into illicit channels. Because many rackets are conducted by highly organized syndicates whose influence extends over state and national borders, the federal government should come to the aid of local law enforcement authorities in an effort to stem such activity." The measure was passed by the Senate and subsequently became § 1952.
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> The House version of the Travel Act contained an amendment unacceptable to the Justice Department. The Senate bill defined "unlawful activity" as "any business enterprise involving gambling, liquor... narcotics, or prostitution offenses in violation of the laws of the State ... or ... extortion or bribery in violation of the laws of the States." However, the House amendment, by defining "unlawful activity" as "any business enterprise involving gambling, liquor, narcotics, or prostitution offenses or extortion or bribery in connection with such offenses in violation of the laws of the State," required that extortion be connected with a business enterprise involving the other enumerated offenses. In a letter to the Chairman of the House Judiciary Committee the Justice Department objected that the House amendment eliminated from coverage of the Travel Act offenses such as "shakedown rackets," "shylocking," and labor extortion which were traditional sources of income for organized crime. The House-Senate Conference Committee accepted the Senate version.
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> The Travel Act, primarily designed to stem the "clandestine flow of profits" and to be of "material assistance to the States in combating pernicious undertakings which cross State lines," thus reflects a congressional judgment that certain activities of organized crime which were violative of state law had become a national problem.[85]

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[84] 393 U.S. 286 (1969).

[85] Id. at 290-92 (citations omitted).

Since its enactment, the Travel Act has been amended three times. In 1965, the Act was amended to include arson as a prohibited "unlawful activity."[86] In 1970, the language of the Act respecting controlled substances was amended as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970.[87] The net effect of the change was to increase the reach of the Travel Act from criminal conduct involving narcotics to criminal conduct involving all types of controlled substances. Finally, in 1986 the Act was amended to include money laundering offenses as prohibited "unlawful activity."[88]

**Scope of the Act:** The Travel Act covers a wide range of criminal conduct. As one commentator has noted:

> The Travel Act has been employed in such diverse prosecutions as organized crime infiltration of legitimate business, smuggling and distribution of cocaine, misconduct of state and federal elected officials, illegal drug and prostitution activities of motorcycle gangs, and even attempts to establish a nationwide "Hookers' Union."[89]

The Act's broad scope derives from its incorporation of crimes defined in state and federal law. A felony conviction under the Travel Act can be predicated upon the commission of a state law misdemeanor.[90] Moreover, the crimes enumerated in the Travel Act are to be understood in a "generic" sense[91] and do not depend upon the label used by the state. Thus, the Supreme Court upheld a conviction under the Travel Act predicated upon the violation of a state blackmail statute, reasoning that "the inquiry is not the manner in which States classify their criminal prohibitions but whether the particular State involved prohibits the [defendant's] extortionate activity charged."[92] The Court's reasoning has been extended to include bribery,[93] arson,[94] gambling,[95] and prostitution.[96]

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[86] Act of July 2, 1965, Pub. L. No. 89-68, 79 Stat. 212 (1965).

[87] Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, § 701(i)(2), 84 Stat. 1236, 1282 (1970).

[88] Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1365(a), 100 Stat. 3207, 3235 (1986).

[89] Breen, "The Travel Act (18 U.S.C. § 1952): Prosecution of Interstate Acts in Aid of Racketeering," 24 Am. Crim. L. Rev. 125-26 (1986).

[90] See United States v. Polizzi, 500 F.2d 856 (9th Cir. 1974), cert. denied, 419 U.S. 1120 (1975); United States v. Isaacs, 493 F.2d 1124 (7th Cir. 1974) cert. denied, 417 U.S. 976, reh'g denied, 418 U.S. 955.

[91] Perrin v. United States, 444 U.S. 37 (1979); United States v. Nardello, 393 U.S. 286 (1969).

[92] United States v. Nardello, 393 U.S. 286, 295 (1969).

[93] Perrin v. United States, 444 U.S. 37 (1979).

[94] United States v. Conway, 507 F.2d 1047 (5th Cir. 1975), reh'g denied, 511 F.2d 1192 (5th Cir. 1975).

[95] United States v. Roselli, 432 F.2d 879 (9th Cir. 1970), cert. denied, 401 U.S. 924 (1971).

[96] United States v. Prince, 515 F.2d 564 (5th Cir. 1975).

Each distinct act of travel or use of an interstate facility constitutes a separate violation that is separately punishable.[97] A defendant can be subject to multiple convictions and punishment for separate acts of travel leading up to the commission of a single substantive offense.[98] Under such circumstances, whether a defendant is charged with one or more violations of the Travel Act is largely a matter within the prosecutor's discretion.[99] Additionally, the court may not compel the prosecution to elect one from among multiple Travel Act counts.[100]

Where the defendant's violation of the Travel Act is predicated upon the violation of another federal criminal statute requiring different elements of proof, the defendant may be convicted and punished for both offenses.[101] Courts have held that Travel Act violations and conspiracies to violate the Travel Act are separate offenses warranting separate punishment.[102] Finally, a defendant may be subject to conviction and punishment both for a violation of the Travel Act and violation of RICO arising from the same conduct.[103]

## II. Sentencing Under the Guidelines

**The Development of Guidelines for Travel Act Cases:** The complexity of prosecutions under the Travel Act created a significant challenge in the drafting of the guidelines. Because the real offense conduct encompassed by a Travel Act conviction may vary widely, the Chapter Two guideline provides for an offense level "applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken"

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[97] United States v. Polizzi, 500 F.2d 856, 898-99 (9th Cir. 1974), cert. denied, 419 U.S. 1120 (1975).

[98] United States v. Briggs, 700 F.2d 408, 417 (7th Cir. 1983), cert. denied, 462 U.S. 1110 (1986).

[99] United States v. Alsobrook, 620 F.2d 139, 142 (6th Cir. 1980), cert. denied, 449 U.S. 843 (1980).

[100] United States v. Jabara, 644 F.2d 574, 577-78 (6th Cir. 1981).

[101] U.S. v. Fontanez, 869 F.2d 180 (2d Cir. 1989) (international drug activity); U.S. v. Barrington, 806 F.2d 529 (5th Cir. 1986) (Mann Act violations); United States v. Teplin, 775 F.2d 1261 (4th Cir. 1985) (extortion); United States v. Fife, 573 F.2d 369 (6th Cir. 1976), cert. denied sub nom., Klien v. United States, 430 U.S. 933 (1977) (arson counts); United States v. McLeod, 493 F.2d 1186 (7th Cir. 1974) (betting violations under 18 U.S.C. § 1084); and United States v. Strafford, 831 F.2d 1479 (9th Cir. 1987) (bribery counts under 18 U.S.C. § 1510).

[102] See United States v. Polizzi, 500 F.2d 856, 897 (9th Cir. 1974), cert. denied, 419 U.S. 1120 (1975); United States v. McGowan, 423 F.2d 413 (4th Cir. 1970); Nolan v. United States, 423 F.2d 1031 (10th Cir. 1969), cert. denied, 400 U.S. 848 (1970); United States v. Roselli, 432 F.2d 879 (9th Cir. 1971), cert. denied, 401 U.S. 924 (1971); United States v. McLeod, 493 F.2d 1186 (7th Cir. 1974); and United States v. Nickerson, 606 F.2d 156 (6th Cir. 1979), cert. denied, 444 U.S. 994 (1979).

[103] United States v. Hawkins, 658 F.2d 279 (1st Cir. 1981), reh'g denied, 766 F.2d 1493 (1985), cert. denied, 474 U.S. 1100 (1985); United States v. Truglio, 731 F.2d 1123 (4th Cir. 1984), cert. denied, 469 U.S. 802 (1984); United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), reh'g denied, 714 F.2d 137 (1983), cert. denied, 465 U.S. 1005 (1984); United States v. Starnes, 644 F.2d 673 (7th Cir. 1981), cert. denied, 454 U.S. 826 (1981); United States v. Watchmaker, 761 F.2d 1459 (11th Cir. 1985), reh'g denied, 766 F.2d 1493 (11th Cir. 1985), cert. denied, 474 U.S. 1100 (1986).

but no less than offense level 6 (the level generally applicable to class A misdemeanors and minor felonies).[104] Thus, for example, where the substantive criminal offense committed or attempted by the defendant was extortion, the Chapter Two guideline applicable for extortion would be applied.[105] Where the substantive offense is a violation of state rather than federal law, the commentary to the guideline provides that "the offense level corresponding to the most analogous federal offense is to be used."[106]

A more complex problem was presented in dealing with single and multiple count Travel Act convictions. Each act of interstate travel or use of an interstate facility may constitute a separate offense even where such acts are part of a single criminal objective. The Commission believes that such cases should be treated differently from those involving multiple counts under the Travel Act where each count represented a distinct criminal

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[104] U.S.S.G. §2E1.2, which covers the Travel Act, reads as follows:

§2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise

(a) Base Offense Level (Apply the greater):

(1) 6; or

(2) the offense level applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken.

Commentary

Statutory Provision: 18 U.S.C. § 1952.

Application Notes:

1. Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (i.e., 6), the alternative minimum base offense level is to be used.

[105] See U.S.S.G. §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) that provides a base offense level of 18 (27 to 33 months for a category I offender) and substantial aggravating factors for the amount of money extorted, possession or use of a weapon, bodily injury inflicted, and abduction or restraint of any person. Where the extortionate conduct supporting a Travel Act conviction was blackmail, as in Nardello, the guideline most likely to be applied would be U.S.S.G. §2B3.3 (Blackmail and Similar Forms of Extortion) that provides a base offense level of 9 (4 to 10 months for a category I offender) plus aggravating factors for the amount of money involved.

[106] U.S.S.G. §2E1.2, comment. (n.2).

objective.[107] At the same time, it is also possible that multiple criminal objectives (e.g., extortion and murder) may be encompassed under a single count alleging a violation of the Travel Act.

To ensure that the underlying criminal behavior under a Travel Act conviction is fully taken into account at sentencing, the guideline requires that each underlying criminal offense be treated as a separate count of conviction.[108] These "pseudo" counts are then subject to the multiple count grouping rules in Chapter Three of the guidelines. Where the underlying criminal offenses constitute distinct criminal objectives, the multiple count guidelines provide for an incremental increase in the sentence.[109] However, where the counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan,[110] no increase in sentence is provided.

Multiple Travel Act convictions based on multiple acts of interstate travel or multiple uses of interstate facilities receive similar treatment under the guidelines. Where the various counts involve a single victim and a single criminal objective or a common scheme or plan, they are treated as a single count of conviction and no increase in sentence arises from the multiple convictions.[111] However, where multiple counts of conviction involve multiple criminal objectives or victims, the guidelines increase the sentence commensurate with the relative severity of the crimes.[112]

**Data:** A review of the monitoring data[113] shows that 182 of the 36,489 cases received by the Commission and sentenced between January 19, 1989, and June 30, 1990, had at least one count of conviction under 18 U.S.C. § 1952. Of the 182 Travel Act cases, 98 (54 percent) involved a single count of conviction. For purposes of this analysis, the statistical review is limited to the 98 single count cases. In approximately 84 percent (81 cases), the sentence imposed involved a term of imprisonment; in 12 percent (12 cases), straight probation was imposed; and in 4 percent (4 cases), a term of probation involving a period of confinement was imposed.

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[107] See generally, U.S.S.G. Ch. 1, Pt. A(4)(e), intro. comment. ("The [guidelines] have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence.")

[108] U.S.S.G. §2E1.2, comment. (n.1).

[109] See U.S.S.G. §3D1.4 (Determining the Combined Offense Level).

[110] U.S.S.G. §3D1.2(b).

[111] Id.

[112] U.S.S.G. §3D1.4.

[113] See supra note 25.

Of the 98 single count Travel Act cases, 30 percent (28) were sentenced to the statutory maximum penalty of 60 months. Information on the guideline range[114] established by the court was available in 75 percent (21) of these 28 cases sentenced to the statutory maximum. The guideline sentence would have exceeded the statutory maximum penalty of 60 months in all but one of the 21 cases that received the statutory maximum sentence.

The data indicate that while Travel Act cases occur infrequently, a term of imprisonment is imposed in more than 80 percent of the single count cases. Additionally, there is some indication, especially among the cases sentenced to the statutory maximum, that the 60-month maximum penalty caps the sentence that would have been imposed if the guidelines were free to operate unchecked. In fact, all but one of the cases sentenced to the statutory maximum for which data were available had a guideline range higher than 60 months. These data seem to suggest that the 60-month maximum undermines the application of the guidelines for Travel Act cases sentenced at the statutory maximum.

## III. Analysis

Despite the structure of the guidelines, the goal of proportionate sentencing is frustrated by the broad array of criminal conduct that may form a basis for prosecution under the Travel Act and the single statutory maximum penalty for all violations of the Act.

Proportionate sentencing can be achieved, for example, where a defendant is convicted of committing murder in furtherance of an unlawful activity under the Act. Under the guidelines, such a Travel Act case would be sentenced as either first or second degree murder. Even if treated as the lesser of the two offenses, an offender with little or no prior criminal record would receive a sentencing range of 135 to 168 months under Chapter Two of the guidelines. However, because the Travel Act carries a maximum penalty of no more than five years imprisonment, the guideline sentence is effectively reduced to 60 months, irrespective of the underlying criminal conduct.

Such results can produce inconsistencies in federal sentencing inasmuch as defendants sentenced under the second degree murder guideline for Travel Act violations receive a substantially lower sentence than defendants sentenced under that guideline for violations of other statutes -- even though both offenses may involve virtually identical criminal conduct.

Such inconsistencies do, in fact, occur. As described above, a substantial majority of defendants convicted under the Travel Act receive a sentence of imprisonment. Close to 30 percent of defendants convicted of a single Travel Act count receive a sentence of five years and most of the defendants (71.4 percent) would otherwise have received a sentence under the guidelines of greater than five years. In these cases, it appears that the sentencing

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[114] The guideline range established by the court is coded from the Reports on the Sentencing Hearing. The USSC Monitoring Unit received Reports on the Sentencing Hearing with a non-missing guideline range in 20,117 (55.1 percent) of the 36,489 guideline cases.

outcomes required by the guidelines have been frustrated by the low statutory maximum penalty.

## IV. Recommendations

Because of the broad array of criminal conduct that is encompassed under the Travel Act, the availability of a single statutory maximum penalty serves to inhibit the operation of the guidelines and can result in disproportionate and disparate sentences. The difficulty with the Travel Act resembles the difficulty with conspiracy under section 371 of title 18. One solution to the problem would be to tie the maximum penalty available under the Travel Act to that available for the underlying criminal offense (see Part D, infra).

Unlike federal conspiracy law, however, the Travel Act is further complicated because federal criminal liability is predicated upon the commission of state offenses. Tying the maximum penalty available for Travel Act violations to the penalty available for the underlying criminal objective would have the effect, in many cases, of incorporating state penalties into federal law. Because state statutes define and penalize offenses in widely different ways, the Commission does not believe that such a penalty scheme would be appropriate for Travel Act cases.

Instead, the Commission recommends that the Travel Act be amended to provide the following penalty scheme: life imprisonment for offenses where death results; 20 years for crimes of violence or felony drug offenses; and five years in all other cases. This scheme would continue to limit the statutory liability for non-violent Travel Act offenses while providing adequate flexibility for the guidelines to operate in more serious violent or drug offenses.

# PART D -- INVOLUNTARY MANSLAUGHTER

STATUTORY PROVISION:
18 U.S.C. § 1112

## Introduction and Summary of Recommendations

Section 1112 of title 18 of the United States Code proscribes involuntary manslaughter and provides for a maximum term of three years imprisonment. For the most part, section 1112 is used to prosecute criminal conduct amounting to driving while intoxicated or under the influence of alcohol or a controlled substance where death results. The maximum penalty available under section 1112 is disproportionately low when compared to penalties available for such conduct under many state laws, penalties recommended in earlier federal criminal code reform proposals, and penalties currently available under the federal code for crimes involving substantially lesser harms.

> Recommendation: *Amend section 1112 of title 18 to make involuntary manslaughter a Class D felony carrying a maximum penalty of six years imprisonment.*

## I. Background

**Provisions of the Statute:** Section 1112 of title 18 defines involuntary manslaughter as:

> the unlawful killing of a human being without malice ... [i]n the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.[115]

Section 1112 provides for a maximum of three years imprisonment and a $1,000 fine upon conviction of involuntary manslaughter.[116] At least 16 federal criminal statutes proscribe involuntary manslaughter[117] and all but two authorize a maximum term of imprisonment

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[115] 18 U.S.C. § 1112(a).

[116] 18 U.S.C. § 1112(b).

[117] 7 U.S.C. § 2146 (involuntary manslaughter of a Department of Agriculture official on account of official's performance of duties); 15 U.S.C. § 1825 (involuntary manslaughter of a Department of Agriculture official on account of official performance of horse protection duties); 18 U.S.C. § 351(a) (involuntary manslaughter of member of the Supreme Court, Congress, or Cabinet); 18 U.S.C. § 1112 (involuntary manslaughter); 18 U.S.C. § 1114 (involuntary manslaughter of specified federal officials); 18 U.S.C. § 1115 (involuntary manslaughter by ship officer); 18 U.S.C. § 1116 (involuntary manslaughter of foreign officials or guests); 18 U.S.C. § 1153 (involuntary manslaughter on Indian territory); 18 U.S.C. § 1512(a) (involuntary manslaughter with intent to obstruct justice); 18 U.S.C. § 1751(a) (involuntary manslaughter of President or Presidential staff); 18 U.S.C. § 2331(a) (involuntary manslaughter of United States citizen abroad); 21 U.S.C. § 461(c) (involuntary

of three years by referencing section 1112.[118] Section 1112 has historically been, and remains today, the focal point of statutory criminal manslaughter law.

The Common Law: At common law, manslaughter was said to be the "unlawful killing of another without malice, express or implied, which may be voluntary, upon a sudden heat, or involuntary, but in the commission of some unlawful act."[119]

Early court opinions addressing the common law tradition of manslaughter noted the distinctions between murder and manslaughter, and voluntary and involuntary manslaughter. Murder requires "malice aforethought."[120] Homicide, absent malice, was manslaughter. The presence of "a sudden heat of the passions" or "hot blood" negated malice and served as a defense to murder.[121] "Heat of passion" served as a justification only where "adequate provocation" existed.[122] Homicide occurring in the absence of malice, but in the heat of passion following adequate provocation was "voluntary manslaughter." Involuntary manslaughter was characterized by negligent or misdemeanor conduct (both involving no intent to kill) resulting in the death of a person.[123] This act of negligence may not be proven by showing simple negligence. Rather, "the amount or degree or character of the negligence to be proven in a criminal case is gross negligence, that is, negligence amounting

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manslaughter of poultry inspector on account of official duties); 21 U.S.C. § 675 (involuntary manslaughter of meat inspector on account of official duties); 21 U.S.C. § 1041 (involuntary manslaughter of egg products inspector on account of official duties); 42 U.S.C. § 2283(a) (involuntary manslaughter of Nuclear Regulatory Commission inspector on account of official duties); 49 U.S.C. § 1472(k) (involuntary manslaughter of person in special aircraft jurisdiction of the United States).

[118] 18 U.S.C. § 2331 (involuntary manslaughter of United States citizen abroad) establishes a three-year maximum independent of reference to section 1112; 18 U.S.C. § 1115 (involuntary manslaughter by captain or vessel operator) establishes a ten-year maximum.

[119] 4 W. Blackstone Commentaries 191. See also, 1 Whart. Crim. Law (8th Ed.) § 305 ("voluntary manslaughter is an intentional killing in hot blood, without malice; and involuntary manslaughter is where death results unintentionally, so far as the defendant is concerned, from an unlawful act on his part, not amounting to felony, or from a lawful act negligently performed").

[120] Malice is defined as "an intent to do injury to another," and as "a conscious violation of law to the prejudice of another; evil design in general; the dictates of a wicked, depraved, and malignant heart." United States v. Hart, 162 F. 192, 194 (N.D. Fl. 1908).

[121] It also served to distinguish manslaughter from excusable homicide. United States v. King, 34 F. 302, 303, 310 (E.D.N.Y. 1888) ("The difference between manslaughter and excusable homicide is this: In excusable homicide the slayer could not escape if he would; in manslaughter he would not escape if he could.").

[122] Model Penal Code § 210.3, Comment 1 (1980). See also, 2 W. LaFave & A. Scott, Substantive Criminal Law § 7.9 (1986) for a discussion of the subjective and objective elements of "adequate provocation" and "heat of passion."

[123] See United States v. King, 34 F. 302, 309, 315 (E.D.N.Y. 1888). See also Model Penal Code § 210.3, Comment 1 (1980); and United States v. Pardee, 368 F.2d 368, 374 (4th Cir. 1966) (citing State of Maryland v. Chapman, 101 F.Supp. 335, 340-41 (D.Md. 1951) (involuntary manslaughter involves "a felonious homicide in which one takes the life of another without legal excuse 'unintentionally while needlessly doing anything in its nature dangerous to life, or ... by neglecting a duty imposed either by law or by contract'").

to a wanton or reckless disregard for human life."[124] Moreover, the offender "must be shown to have had actual knowledge that his conduct was a threat to the lives of others, or to have knowledge of such circumstances as could reasonably be said to have made foreseeable to him the peril to which his acts might subject others."[125] Thus, case law interpreting section 1112 has rejected the broad notion of involuntary manslaughter that might be implied by the statute's apparent adoption of the misdemeanor-manslaughter standard that narrowed the offense to conduct of substantial culpability.[126]

The common law recognized no distinction in maximum penalties between voluntary and involuntary manslaughter.[127]

**The Early Statutes:** Manslaughter was first proscribed as a federal offense in 1790 in one of the first laws of the new republic.[128] That statute was amended twice during the nineteenth century.[129] These early statutes made no distinction between involuntary and

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[124] Id.

[125] United States v. Pardee, 368 F.2d 368, 374 (4th Cir. 1966). See also 2 W. LaFave & A. Scott, Substantive Criminal Law §7.12 (1986) (noting that many states require both gross negligence and defendant's awareness of the risk created by the conduct).

[126] See S. Rep. No. 307, 97th Cong. 1st Sess. 830 (1981) (discussing United States v. Pardee, 368 F.2d 368, 373, 375 (4th Cir. 1966), noting that the standard has not been taken at face value by courts, and if it were to be so considered would "wholly undermine the distinction between civil and criminal liability by making any driver guilty of manslaughter who operated a vehicle in violation of any provision of the motor vehicle code and who became involved in a fatal accident").

[127] Model Penal Code § 210.3, Comment 1 (1980); 2 W. LaFave & A. Scott, Substantive Criminal Law § 7.9 (1986).

[128] "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 7, 1 Stat. 112, 113 (1790), set out the following provision:

> ... if any person or persons shall within any fort, arsenal, dock-yard, magazine, or other place or district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of manslaughter, and shall be thereof convicted, such person or persons shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.

[129] "An Act in Addition to an Act more effectually to provide for the Punishment of certain Crimes against the United States, and for other Purposes," ch. 116, § 1, 11 Stat. 250 (1857), read in relevant part:

> ... if any person or persons upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, shall unlawfully and wilfully, but without malice aforethought, strike, stab, wound, or shoot at any other person, of which striking, stabbing, wounding or shooting, such person shall afterwards die ... every person so offending ... shall be deemed guilty of the crime of manslaughter ...

"Crimes Arising Within the Maritime and Territorial Jurisdiction of the United States," Ch. 3, § 5341, Rev. Stat. 1042, 1043 (1875) reads:

voluntary manslaughter, apparently relying on common law notions of the crime, and specified a term of imprisonment not to exceed three years.[130]

The Contemporary Statutes: The extensive criminal code revision enacted in 1909 included the precursor of section 1112[131] that established the first statutory definition of manslaughter and the first statutory distinction between involuntary and voluntary manslaughter. Its scope was not clear: the House Committee Report stated that the law "enlarges the common-law definition" with manslaughter being defined and classified in language similar to that found in the statutes of a large majority of the states. Otherwise the report provided no details.[132] A subsequent 1940 recodification relocated the crime in title 18 without modification.[133] The 1948 codification and enactment of title 18 brought minor changes to the 1940 statute[134] and finalized the language of today's statute.[135]

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> Every person who [within the special maritime and territorial jurisdiction of the United States] unlawfully and willfully, but without malice, strikes, stabs, wounds, or shoots at, or otherwise injures another, of which striking, stabbing, wounding, shooting, or other injury such other person dies, either on land or sea ... is guilty of the crime of manslaughter.

[130] See supra, note 128 (imprisonment not to exceed three years, fine not to exceed $1,000); see supra note 129 (same); see supra note 129 (same). Note, however, that the 1857 Act authorized that imprisonment be served "with or without hard labor," and that penalties be imposed "at the discretion of the court." See supra note 129. The 1875 Act replaced the "discretion" clause with "except as otherwise specially provided by law." See supra note 129.

[131] "Offenses within the Admiralty and Maritime and the Territorial Jurisdiction of the United States," ch. 11, § 274, 35 Stat. 1142, 1143 (1909) provided:

> Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:
> First. Voluntary -- Upon a sudden quarrel or heat of passion.
> Second. Involuntary -- In the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

[132] H.R. Rep. No. 2, 60th Cong., 1st Sess. 24 (1908). The Commission report on which the 1909 law is based also notes that the "lines of demarcation [found in the all but universal State statutory approaches to murder and manslaughter] have been observed in the sections which we here submit." 1 Final Report of the Commission to Revise and Codify the Laws of the United States 113 (1906), quoted in United States v. Alexander, 471 F.2d 923, 945 (D.C. Cir. 1973).

[133] 18 U.S.C. § 453 (1940).

[134] The 1948 changes resulted in slight non-substantive modifications in the language of the section, made explicit the jurisdictional basis for the crime (federal jurisdiction is predicated upon the killing occurring within the special maritime and territorial jurisdiction of the United States), and consolidated as subsection (b) the previously separate penalty provision.

[135] See 18 U.S.C. § 1112, which reads as follows:

> (a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:
> Voluntary -- Upon a sudden quarrel or heat of passion.

The 1909 Act also distinguished the penalties available for voluntary and involuntary manslaughter at ten and three years imprisonment, respectively. Those penalties have survived into the current statute.[136]

## II. Sentencing Under the Guidelines

The Involuntary Manslaughter Guideline: Generally, a defendant with little or no criminal history sentenced under section 1112 receives a sentencing range of 15 to 21 months imprisonment under Chapter Two of the guidelines.[137]

Data: A review of the monitoring data[138] indicates that 59 of the 36,489 cases received by the Commission and sentenced between January 19, 1989, and June 30, 1990, had at least one count of conviction under 18 U.S.C. § 1112. Of these 59 cases, 31 involved convictions for involuntary manslaughter and 27 involved convictions for voluntary manslaughter.[139] Most of the involuntary manslaughter cases involved vehicular homicide by an intoxicated driver. Twenty-three of the involuntary manslaughter cases (74 percent) involved vehicular manslaughter; intoxication of the driver was a factor in 21 (68 percent) of the cases.

## III. Analysis

Federal experience with involuntary manslaughter mirrors that of the states. According to the drafters of the Model Penal Code, 99 percent of all negligent homicides involve

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> Involuntary -- In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.
>
> (b) Within the special maritime and territorial jurisdiction of the United States,
>
> Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;
>
> Whoever is guilty of involuntary manslaughter, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

[136] Although the penalties contained in section 1112 have been incorporated into most other federal statutes proscribing manslaughter, see supra note 180, those penalties have not been incorporated in all such statutes. Thus, 18 U.S.C. § 1115, concerning manslaughter by ship officers, punishes both voluntary and involuntary manslaughter, as does section 1112. However, section 1115 authorizes ten years imprisonment for any ship officer through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed. Interestingly enough, the rationale, referred to in a colloquy during Senate debate on the provision, is the traditional treatment of manslaughter (voluntary and involuntary) as an offense with uniform penalties. Cong. Rec. 1190 (daily ed. Jan. 28, 1908) (colloquy of Senators Bacon and Heyburn).

[137] See U.S.S.G. §2A1.4 (Involuntary Manslaughter).

[138] See supra note 25.

[139] One case file was incomplete.

automobiles.[140] The states, however, generally provide greater penalties for vehicular homicide in connection with a drunk driving related offense.

**The Treatment of Manslaughter and Drunk Driving Related Homicides under State Statutes:** Among states punishing vehicular homicide (including recklessly negligent or criminally negligent conduct resulting in death by a vehicle), at least 23 states and the District of Columbia have statutory maximums of five years or more,[141] and at least five states have maximum penalties of three years or less.[142]

Among states punishing vehicular homicide in connection with a DWI offense -- the heartland involuntary manslaughter offense -- only two states have statutes capping penalties at less than five years imprisonment.[143] Thirty-seven states have maxima ranging from five to 25 years.[144]

**Section 1112 Compared with Other Federal Offenses:** Even among federal statutes, the penalties available for involuntary manslaughter appear disproportionate compared to penalties available for other federal offenses resulting in lesser harm to the victim. For example, numerous offenses involving theft,[145] embezzlement,[146] fraud,[147] false

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[140] Model Penal Code § 210.4, Comment 4 (1980).

[141] See, e.g., Alabama (five years); District of Columbia (five years); Vermont (fifteen years).

[142] See, e.g., Massachusetts (two and a half years). In addition, Indiana provides for a maximum of four years.

[143] New Mexico has a statutory maximum of three years or less; Indiana has a four year maximum.

[144] See, e.g., Florida (15 years); Georgia (15 years); Iowa (five years); Maine (five years); Minnesota (ten years); Nevada (20 years); New Hampshire (seven years); New York (seven years); Rhode Island (ten years); South Carolina (25 years); Tennessee (21 years); Washington (ten years). North Dakota places no apparent maximum on DWI-related vehicular homicides, but requires a mandatory minimum of one year imprisonment.

Indeed, a number of states have statutory mandatory minima, particularly for vehicular homicide in connection with a DWI offense. See, e.g., Georgia (two-year mandatory minimum under certain circumstances); Hawaii (three-year and four-month mandatory minimum under certain circumstances); Nevada (one-year mandatory minimum); New Mexico (one-year mandatory minimum); South Carolina (one-year mandatory minimum); Tennessee (one-year mandatory minimum). But cf., Hawaii (one-year and eight-month mandatory minimum in some circumstances for simple vehicular homicide regardless of DWI-related offense).

[145] 18 U.S.C. § 1704 (ten years for theft or reproduction of post office keys); 18 U.S.C. § 661 (five years for theft of personal property--United States jurisdiction).

[146] 18 U.S.C. § 659 (ten years for embezzlement of over $100 from interstate or foreign shipments); 18 U.S.C. § 1702 (five years for embezzling United States mail with intent to pry into business of another).

[147] 18 U.S.C. § 659 (ten years for obtaining over $100 worth of goods in interstate commerce by fraud); 18 U.S.C. § 511 (five years for altering or removing motor vehicle numbers).

statements,[148] forgery,[149] gambling,[150] and other non-violent offenses[151] establish five- and ten-year statutory maxima even where no physical injury results.

**Recent Reform Proposals:** Over the last three decades, proposals recommending criminal code reform have urged significant increases in the statutory maximum for section 1112. The Brown Commission established two categories of involuntary manslaughter and assigned a five-year maximum penalty for negligent manslaughter and a seven-year maximum penalty for reckless manslaughter.[152]

Senate Bill No. 1630, proposed in 1981,[153] also recommended creating two categories of involuntary manslaughter: manslaughter resulting from recklessness[154] and manslaughter resulting from negligence.[155] S. 1630 set the maximum penalty for the latter at six years and for the former at 12 years.

In 1962 the Model Penal Code adopted a similar approach by establishing four classes of homicide: criminal homicide,[156] murder,[157] manslaughter,[158] and negligent

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[148] 7 U.S.C. § 270 (ten years for false representation of license in connection with agriculture warehouses); 8 U.S.C. § 1160 (five years for false statement regarding alien agriculture).

[149] 7 U.S.C. § 1379i(d) (ten years for forging wheat products certificate); 18 U.S.C. § 2318 (five years for trafficking in counterfeit music recordings).

[150] 18 U.S.C. § 1957 (ten years for engaging in monetary transaction with gambling proceeds).

[151] See, e.g., 18 U.S.C. § 1703(a) (five years for opening mail or newspaper entrusted to offender by postal officer).

[152] See Final Report of the National Commission on Reform of Federal Criminal Laws (1971).

[153] See S. Rep. No. 307, 97th Cong. 1st Sess. (1981), for a discussion of S. 1630, the "Criminal Code Reform Act of 1981."

[154] See section 1602 of S. 1630; and discussion in S. Rep. No. 307, 97th Cong. 1st Sess. 573-76 (1981) (offender was reckless in that offender was aware of, but disregarded, substantial risk that death might result from conduct and death occurred in circumstances where offender lost self-control).

[155] See section 1603 of S. 1630; and discussion in S. Rep. No. 307, 97th Cong. 1st Sess. 577-78 (1981) (offender ought to have been aware of the risk that the resulting death would occur and the failure to perceive the risk was a gross deviation from the standard of care).

[156] Model Penal Code § 210.1 (1980).

[157] Model Penal Code § 210.2 (1980).

[158] Manslaughter is criminal homicide committed recklessly or otherwise committed under the influence of reasonably explained, extreme mental or emotional disturbance. Model Penal Code § 210.3 (1980). The "judgment underlying the Model Code [classifies] all forms of manslaughter [i.e., voluntary and involuntary] at the same level" for sentencing purposes. Model Penal Code § 210.3, Comment 9 (1980).

homicide.[159] The Model Code established a five-year maximum penalty for negligent killings[160] and a ten-year penalty for manslaughter (both voluntary and involuntary).[161]

Both criminal code reform proposals and the Model Penal Code advocated a higher maximum penalty for "negligent" involuntary manslaughter at amounts greater than three years (both the Model Code and the Brown Commission at five years, S. 1630 at six years) and the maximum for "reckless" involuntary manslaughter at even greater levels (the Model Code at ten, the Brown Commission at seven, and S. 1630 at 12 years).

In light of the consequences and serious nature of the conduct sanctioned under section 1112, a three-year statutory maximum seems inconsistent with the overall penalty structure of the code.

## IV. Recommendations

Amend section 1112 of title 18 to make involuntary manslaughter a Class D felony.[162] As such, involuntary manslaughter would carry a maximum penalty of six years imprisonment.

Currently, all federal criminal statutes that provide penalties of less than ten but more than five years imprisonment are classified as Class D felonies.[163] This is consistent with the range of penalties provided for involuntary manslaughter under both state law and reflected in past efforts at federal criminal code reform. Where a statute designated as a Class D felony does not carry a specified maximum penalty, the maximum penalty is six years.[164]

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[159] "Negligent homicide" is considered criminal homicide committed "negligently," Model Penal Code § 210.4 (1980), and includes vehicular homicide. Model Penal Code §§ 210.4, Comment 4 (1980).

[160] Model Penal Code § 210.4 (negligent homicide is a third degree felony, punishable by up to five years imprisonment) (1980).

[161] Model Penal Code § 210.3 (manslaughter is a second degree felony, punishable by up to ten years imprisonment with a one- to three-year minimum term) (1980).

[162] An equivalent revision for the penalty provisions of 18 U.S.C. § 2331 (involuntary manslaughter of United States citizen abroad) would appear to be appropriate on similar grounds. This statute is the only involuntary manslaughter statute with a three-year maximum that does not reference section 1112. See supra note 4.

[163] See 18 U.S.C. § 3559(a)(4).

[164] See 18 U.S.C. §§ 3559(b), 3581(b)(4).

# APPENDIX

Below are amendments to the U.S. Code implementing the recommendations made in this report and, where appropriate, making conforming changes either within the statute directly affected by the recommendation or other closely related statutes. Among the conforming changes are technical modifications to various fine provisions to reflect the fine scheme of 18 U.S.C. §3571. These fine amendments make no substantive change in the currently imposable fine.

**Assault**

Section 111 of title 18, United States Code, is amended:

-- in subsection (a) after "shall" by inserting ", where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases,"; and,

-- in subsection (b) after "weapon," by inserting "or inflicts bodily injury,".

Section 112 of title 18, United States Code, is amended in subsection (a) by striking "not more than $5,000" and inserting in lieu thereof "under this title"; by striking "three years" and inserting in lieu thereof "one year"; after "weapon" by inserting ",or inflicts bodily injury,"; and, by striking "not more than $10,000" and inserting in lieu thereof "under this title".

Section 113 of title 18, United States Code, is amended:

-- in subsection (c) by striking "of not more than $1,000" and inserting in lieu thereof "under this title" and by striking "five" and inserting in lieu thereof "ten";

-- in subsection (e) by striking "of not more than $300" and inserting in lieu thereof "under this title" and by striking "three" and inserting in lieu thereof "six".

Section 351(e) of title 18, United States Code, is amended by striking "not more than $5,000," and inserting in lieu thereof "under this title"; after "if" by inserting "the assault involved the use of a dangerous weapon, or"; by striking "not more than $10,000" and inserting in lieu thereof "under this title"; and by striking "for".

Section 1751(e) of title 18, United States Code, is amended by striking where it occurs throughout "not more than $10,000," and inserting in lieu thereof throughout "under

this title"; by striking "not more than $5,000," and inserting in lieu thereof "under this title"; after "if" by inserting "the assault involved the use of a dangerous weapon, or".

Manslaughter

Section 1112 of title 18, United States Code, is amended in subsection (b) after "shall be" the first time it appears by inserting "fined under this title or"; after "years" by inserting ", or both"; by striking "not more than $1,000" and inserting in lieu thereof "under this title"; and by striking "three" and inserting in lieu thereof "six".

Section 2331 of title 18, United States Code, is amended in subsection (a)(3) by striking "three" and inserting in lieu thereof "six".

Civil Rights

Section 241 of title 18, United States Code, is amended by striking "not more than $10,000" and by inserting in lieu thereof "under this title"; after "results" by inserting "from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill,"; and, by striking "subject to imprisonment" and inserting in lieu thereof "fined under this title or imprisoned" and after "life," by inserting "or both".

Section 242 of title 18, United States Code, is amended by striking "not more than $1,000" and inserting in lieu thereof "under this title"; after "bodily injury results" by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire,"; after "death results" by inserting "from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or"; by striking "shall be subject to imprisonment" and inserting in lieu thereof "imprisoned"; and, after "life," by inserting "or both".

Section 245 of title 18, United States Code, is amended in subsection (b) by striking "not more than $1,000" and by inserting in lieu thereof "under this title"; after "bodily injury results" by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire"; by striking "not more $10,000" and inserting in lieu thereof "under this title"; after "death results" by inserting "from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, "; by striking "subject to imprisonment" and inserting in lieu thereof "fined under this title or imprisoned"; and, after "life" by inserting ", or both".

Section 247 of title 18, United States Code, is amended: in subsection (c)(1) after "death results" by inserting "from the acts committed in violation of this section or if such

acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill"; and, by striking "and" and inserting "or"; in subsection (c)(2), by striking "serious"; after "bodily injury results" by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" and by striking "and" and inserting "or"; in subsection (c)(3), by striking "and" and inserting "or"; and, by striking subsection (e)(2).

Section 3631 of title 42, United States Code, is amended in the caption by striking "bodily injury; death;"; by striking "not more than $1,000," and inserting in lieu thereof "under this title"; after "bodily injury results" by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire"; by striking "not more than $10,000," and inserting in lieu thereof "under this title"; after "death results" by inserting "from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill,"; by striking "subject to imprisonment" and inserting in lieu thereof "fined under this title or imprisoned"; and, after "life" by inserting ", or both".

Travel Act

Section 1952 of title 18, United States Code, is amended in subsection (a) by striking "not more than $10,000" and inserting in lieu thereof "under this title"; by striking "for"; and, after "both" by inserting the following:

> "; and if the acts attempted or performed constitute a crime of violence or an offense involving narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act) punishable as a felony under the laws of the state in which they are committed or of the United States, shall be fined under this title, or imprisoned not more than 20 years, or both; and if death results shall be fined under this title, or imprisoned for any term of years or for life, or both".

18 U.S.C. § 111. Assaulting, resisting or impeding certain officers or employees

(a) In general.- Whoever-

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than three years, or both.

(b) Enhanced penalty.- Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon, or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined ~~not more than $5,000~~ under this title or imprisoned not more than ~~three years~~ one year, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon ,or inflicts bodily injury, shall be fined ~~not more than $10,000~~ under this title or imprisoned not more than ten years, or both.

[Subsections (b) through (f) are unchanged.]

**18 U.S.C. § 113. Assaults within maritime and territorial jurisdictions**

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

[Subsections (a), (b), and (d) are unchanged.]

(c) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by fine ~~of not more than~~ $1,000 under this title or imprisonment for not more than ~~five~~ ten years, or both.

* * * * *

(e) Simple assault, by fine ~~of not more than~~ $300 under this title or imprisonment for not more than ~~three~~ six months, or both.

**18 U.S.C. § 351. Congressional, Cabinet and Supreme Court assassination, kidnaping, and assault; penalties**

[Subsections (a) through (d) and (f) through (i) are unchanged.]

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined ~~not more than $5,000,~~ under this title or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined ~~not more than $10,000~~ under this title or imprisoned not more than ten years, or both.

**18 U.S.C. § 1751. Presidential and Presidential staff assassination, kidnaping, and assault; penalties**

[Subsections (a) through (d) and (f) through (k) are unchanged.]

(e) Whoever assaults any person designated in subsection (a)(1) shall be fined ~~not more than $10,000,~~ under this title or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined ~~not more than $5,000,~~ under this title or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined ~~not more than $10,000,~~ under this title or imprisoned not more than ten years, or both.

**18 U.S.C. § 1112. Manslaughter**

[Subsection (a) is unchanged.]

**(b)** Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than ten years ~~,~~or both;

Whoever is guilty of involuntary manslaughter, shall be fined ~~not more than $1,000~~ under this title or imprisoned not more than ~~three~~ six years, or both.

**18 U.S.C. § 2331. Terrorist acts abroad against United States nationals**

(a) Homicide. -- Whoever kills a national of the United States, while such national is outside the United States shall --

* * * * *

(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ~~three~~ six years, or both.

[Subsections (b) through (e) are unchanged.]

**18 U.S.C. § 241. Conspiracy against rights**

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined ~~not more than~~ $10,000 under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be ~~subject to imprisonment~~ fined under this title or imprisoned for any term of years or for life, or both.

**18 U.S.C. § 242. Deprivation of rights under color of law**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined ~~not more than~~ $1,000 under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than 10 years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be ~~subject to imprisonment~~ fined under this title or imprisoned for any term of years or for life, or both.

18 U.S.C. § 245. Federally protected activities

[Subsections (a) and (c) are unchanged.]

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with --

* * * * *

shall be fined ~~not more than $1,000~~ under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined ~~not more than $10,000~~ under this title, or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be ~~subject to imprisonment~~ fined under this title or imprisoned for any term of years or for life, or both.

* * * * *

18 U.S.C. § 247 Damage to religious property; obstruction of persons in the free exercise of religious beliefs

[Subsections (a), (b), and (d) are unchanged]

(c) The punishment for a violation of subsection (a) of this section shall be --

(1) if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title ~~and~~ or imprisonment for any term of years or for life, or both;

(2) if ~~serious~~ bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title ~~and~~ or imprisonment for not more than ten years, or both; and

(3) in any other case, a fine in accordance with this title ~~and~~ or imprisonment for not more than one year, or both.

* * * * *

(e) As used in this section --

* * * * *

~~(2) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.~~

**42 U.S.C. § 3631. Violations; ~~bodily injury; death~~; penalties**

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with --

* * * * *

shall be fined ~~not more than $1,000,~~ under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined ~~not more than $10,000,~~ under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be ~~subject to imprisonment~~ fined under this title or imprisoned for any term of years or for life, or both.

**18 U.S.C. § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises**

**(a)** Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to -

**(1)** distribute the proceeds of any unlawful activity; or

**(2)** commit any crime of violence to further any unlawful activity; or

**(3)** otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

.nd thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined ~~not more than~~ $10,000 under this title or imprisoned not more than five years, or both; and if the acts attempted or performed constitute a crime of violence or an offense involving narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act) punishable as a felony under the laws of the state in which they are committed or of the United States, shall be fined under this title or imprisoned not more than 20 years, or both; and if death results shall be fined under this title, or imprisoned for any term of years or for life, or both.