95th Congress
2d Session

COMMITTEE PRINT

No. 29

REPORT OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE ON RECODIFICATION OF FEDERAL CRIMINAL LAW

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

DECEMBER 1978

d for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

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FOREWORD

In the 95th Congress the Subcommittee on Criminal Justice undertook the important task of recodifying and revising federal criminal laws. The subcommittee, under the able and dedicated leadership of its chairman, Representative James R. Mann, and its ranking minority Member, Representative Charles E. Wiggins, conducted numerous open briefing sessions, hearings, and markup sessions.

The work of the subcommittee in the 95th Congress will surely prove most valuable in continued efforts to improve our criminal justice system. In recognition of the importance of the Subcommittee's work, the Committee on the Judiciary adopted the following resolution on October 4, 1978:

Resolved, that the Committee on the Judiciary—

(1) commends the Subcommittee on Criminal Justice and its Chairman and ranking minority Member for their excellent and conscientious work on the general revision of the United States Criminal Code;

(2) recognizes that there is not enough time remaining in the 95th Congress to complete action on the general revision of the United States Criminal Code, including sentencing reform; and

(3) authorizes and directs the Subcommittee on Criminal Justice to issue as a Committee Document a report on its work, including its findings and recommendations with regard to the general revision of the United States Criminal Code.

PETER W. RODINO, Jr., *Chairman.*

Preface

The Subcommittee on Criminal Justice has jurisdiction over the recodification of federal criminal laws and during the 95th Congress the subcommittee devoted a majority of its time and energy to recodification legislation. The subcommittee considered the need for recodification and the most appropriate method for recodifying, as well as individual recodification bills.

After a careful and thorough study of the various proposals, the subcommittee drafted its own bill and unanimously recommended it to the full Committee on the Judiciary. The full committee recognized that it would be unable to complete action on the subcommittee's bill before the end of the 95th Congress, so it directed the subcommittee to publish a report setting forth the subcommittee's findings and recommendations about the recodification of federal criminal laws. This is that report.

CONTENTS

PART I

CHAPTER 1. INTRODUCTION

It is axiomatic that Federal criminal laws should be kept up to date. Seeing that they are kept up to date is a responsibility which Congress shares with others—such as the Justice Department, the Federal judiciary, and the defense bar. The record indicates that this responsibility has been imperfectly carried out.

Federal criminal laws have undergone three substantial recodifications—in 1877, in 1909, and, most recently, in 1948. There can be little doubt, especially in view of the growth in the number of criminal provisions of Federal law since 1948, that Federal criminal laws need to be recodified again.

There are, however, a number of practical and philosophical concerns which must be addressed before any change is made in current Federal criminal law. One concern is that the impact of each individual change must be assessed. This involves full use of the legislative process—including careful analysis and input from a wide variety of interests. It is only through careful evaluation that Congress can determine the impact of each new criminal law. Another concern is the impact of changes in current law upon the Federal system. Traditionally, each State has assumed responsibility for most of the criminal justice matters within its borders. The Federal Government should never usurp the States' function in the criminal justice area unless overwhelming evidence of a need can be shown—such as a State's inability to act in a particular area or an overriding Federal interest. Certainly, the decision to alter the balance between the State and Federal prosecutorial function should be made by the legislature, never by the prosecutor. The final concern is the impact of changes in current law upon individual liberty. It is the burden of proponents of change in criminal laws to prove that the demands of society require enactment of laws at the expense of individual liberty.

The subcommittee began its analysis of the Senate-passed bill, S. 1437, optimistic that the bill's "reformed" Federal criminal code would be an improvement over current law. The subcommittee conducted a section-by-section analysis and received testimony from a wide variety of individuals and groups. The subcommittee found, however, that little is known of the impact of each change S. 1437 makes upon individual provisions of current law. It appears that, as a result of the omnibus approach, primarily the special interests have been heard. Consequently, the impact of many sections of the bill has not been determined. An even more disturbing result of the failure to thoroughly analyze each individual section is that the overall impact of the bill on the Federal system and on individual liberty is impossible to assess.

In addition to these concerns, the subcommittee's own analysis of S. 1437 led it to conclude that the bill is seriously flawed. Three of the

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most obvious flaws are: overall expansion of Federal criminal jurisdiction, enhancement of the power and discretion of the prosecutor, and creation of a new, untested sentencing mechanism.

The bill expands Federal criminal jurisdiction, and it does so at the expense of State and local law enforcement. The Solicitor General, Wade H. McCree, has noted that:

> We should *reduce* the role of the Federal Government in enforcing the criminal laws . . . the constitutional feasibility of asserting Federal law ought not obscure the fact that in many cases the investigation and prosecution might be better left to State authorities.[1]

However, S. 1437 (which, ironically, the Justice Department supports) expands the role of the Federal Government. As noted by the Federal Public and Community Defenders:

> To an extent unprecedented in American jurisprudence, S. 1437 lays the groundwork for expansion of Federal criminal jurisdiction. The bill will open the Federal courthouse door to prosecution of offenses which are now the exclusive province of State authorities. Every liquor store or supermarket robbery, for example, will be subject to Federal prosecution.[2]

Professor Melvin B. Lewis underscored this concern with the jurisdictional impact of S. 1437:

> [P]resent Federal criminal jurisdiction reflects the status of the Federal Government as a delegated sovereign. Accordingly, the Federal criminal function, although constantly expanding, has always been expressed in terms of a constitutionally delegated area of Federal concern. Delineation of standards of public morality, through the medium of criminal statutes and other public policy statements, has been the function and responsibility of the several States. Federal criminal statutes have punished only offenses against Federal sovereignty. . . . S. 1437 would completely revise the criminal role of the Federal Government. The bill contains an express provision that Federal jurisdiction is not an element of the offense, § 201(c). Under that doctrine, conduct is denounced as a Federal crime not because it affects some constitutional function of the Federal Government, but simply because the Federal Government views the proscribed conduct as morally wrong. Under S. 1437, in short, the Federal Government will take over the traditional role of the States in defining socially unacceptable conduct.[3]

The subcommittee believes that the Senate-passed bill significantly, and unwisely, expands the scope of Federal criminal jurisdiction, thus endangering the viability of State courts by increasing the role of Federal courts in the lives of people. This erosion of the Federal system should not be tolerated.

The second serious flaw in S. 1437 as passed concerns the extent to which the bill enhances the power and discretion of the prosecutor at the expense of other participants in the Federal criminal justice system. This is true not only because of the broadened jurisdiction and scope of many Federal criminal laws but also because the sentencing provisions expand the importance of the Federal prosecutor at the expense of the Federal judge. As U.S. District Judge James M. Burns noted, those provisions would "result in transfer of almost all sentenc-

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[1] Address by Solicitor General Wade H. McCree before the Prosecuting Attorneys Association of Michigan, reprinted in *Congressional Record*, August 5, 1977, at H. 8852 (daily ed.) (emphasis added).

[2] Position Paper and Testimony of the Federal Public and Community Defenders on the Proposed Criminal Code in "Legislation to Revise and Recodify Federal Criminal Laws: Hearings Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary", 95th Cong., 1st and 2d sess. 1031 (1977–78) [hereinafter cited "Hearings"].

[3] Statement of Prof. Melvin B. Lewis. Hearings, pp. 2422–23.

ing discretion from the court to one of the adversaries in the system, namely, the prosecution." [4]

The third serious flaw in the bill centers on its sentencing provisions, which create a new and untested sentencing mechanism that virtually deprives the sentencing judge of the ability to tailor criminal sentences to the individual being sentenced. U.S. Circuit Judge David L. Bazelon pointed out that

> There are infinite ways of characterizing any individual defendant, and which characteristics are relevant must in fact depend upon the particular circumstances of the specific case. By masking these differences, the apparently "precise" categories of the [Sentencing] Commission might produce grave injustice: Why, for instance, should one defendant receive a different sentence than another simply because his "physical condition" is different? In some circumstances, one might say, this factor will be relevant; in other circumstances it won't but how can one tell *in the abstract?* [5]

The new sentencing mechanism proposed in S. 1437, moreover, will lead to further overcrowding of Federal correctional facilities, a matter compounded by the bill's failure adequately to emphasize alternatives to imprisonment and pretrial diversion programs. Adequate measures in that regard are essential, not only from the standpoint of humane and effective correction programs, but also from an economic standpoint, given the high cost of housing and caring for prisoners.

The subcommittee prefers an incremental approach to modernization of Federal criminal laws not only because S. 1437 is flawed, but for more general reasons, too. Truly modernizing criminal laws means making substantive changes in them—reforming them to conform them to modern mores and to integrate court interpretations into statutory language. An omnibus reform bill, however, stands little chance of success because constituencies against change multiply in proportion to the number of reforms involved. This is particularly true where the legislation deals with criminal laws and procedures that have governed human conduct for many decades and that supposedly have some relationship to basic concepts of right and wrong and, particularly in the Federal model, to practices that permeate our ways of doing business. The negative legislative impact of massive change upon an informed representative body is enormous.

There is a tendency to refer to Federal criminal law as if it were a unified body of statutes that serve as the principal set of legal rules governing the lives of people. However, Federal criminal law is not that. In our Federal system, the States are primarily responsible for law enforcement, and the Federal criminal law is a collection of separate and distinct statutes which supplement State criminal statutes. Federal criminal statutes are intended to protect or vindicate substantial Federal interests. Reforms in Federal criminal laws, therefore, are appropriately dealt with separately, after a careful, thorough and conscientious consideration of all of the policy issues and constitutional questions that each proposed change presents.

Federal criminal laws ought not to be the product of extensive horse-trading. The greater the numbers of substantive changes made by a bill, however, the more likely it is that such trade-offs will occur. The

[4] Hearings, p. 1934.
[5] Hearings, p. 2390.

tremendous investment of time, energy and emotion that goes into an omnibus bill results in a tremendous pressure to agree to things in order not to hold up the legislation. This sort of pressure was clearly evident during the Senate debate on S. 1437.

At the beginning of its consideration of recodification legislation, the Subcommittee on Criminal Justice idealistically and enthusiastically undertook to work with the Senate-passed bill. However, it soon became apparent that the deliberative process customary in the House, which the subcommittee thinks is the essence of good legislation, does not lend itself to massive changes in laws unless it can be established that the effects of the legislation have been thoroughly analyzed, that there has been adequate public input, and, indeed, that each change has been shown to be an improvement over existing law.

An omnibus reform bill that will substantially change the Federal criminal justice system must be carefully assessed. We must be able to state with reasonable certainty that the new system will be a material improvement over the present one. The broader and more comprehensive the reforms made in the legislation, however, the more difficult it is to make such an assessment.

The record does not reflect that the Senate had available to it when it passed its bill all of the information and data necessary to make a reasoned assessment of the impact of its bill. A thorough-going analysis of what the bill would do to the present Federal criminal justice system does not appear to have been made. There was, for example, no assessment of the bill's impact on the Federal prison population prior to the Senate passage of the bill.[6] In addition, there does not appear to have been a careful analysis of the consequences of the Senate bill's rather sharp curtailment of judicial discretion, and what impact that curtailment would have on plea bargaining and on the power of the Federal prosecutor. Even the budget implications of S. 1437 were unknown at the time of the Senate passage, for no cost estimate for the bill was issued by the Congressional Budget Office.

The subcommittee believes that the incremental approach—processing a series of bills each of which makes appropriate substantive changes in a discrete area—is the most appropriate way to go about modernizing and updating Federal criminal laws. This approach permits the thorough and careful study, analysis and drafting that ought to go into changing any Federal law, and especially Federal criminal laws. Because this approach limits the area where substantive changes are made, it does not foster legislative horse-trading across a broad spectrum. Changes in each area must stand on their own merits. Moreover, the limited area of change means it is possible to assess with reasonable certainty how the bill will affect the people and the criminal justice system.

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[6] The Subcommittee on Criminal Justice generated a Congressional Research Service study which suggests that the Senate bill will result in increased crowding in the Federal prisons. See Congressional Research Service "Study of the Possible Impact on Sentence Length and Time Served in Prison of Sentencing Provisions of Major Criminal Code Reform Legislation of the 95th Congress" (June 7, 1978) (prepared by Barbara McClure and Steve Chilton). See p. 26, *infra*.

See statement of Milton G. Rector, president, National Council on Crime and Delinquency. Hearings, p. 1739 ("Perhaps the most important shortcoming of the bill is that the question of what its impact on the Federal criminal justice system would be remains a mystery.")

The subcommittee drafted, and unanimously reported to the full committee, a bill that is premised upon the incremental approach (H.R. 13959). The bill is the beginning step in the process of modernizing and updating Federal criminal laws. It makes significant substantive changes to a manageable area of Federal criminal law. Other areas of Federal criminal law will need to be examined in detail in order to determine what sort of substantive changes are appropriate, and legislation making such changes will need to be drafted and acted upon. The subcommittee firmly believes that this course of action is best.

H.R. 13959 does several things. First, it repeals several outmoded or unnecessary provisions of title 18 of the United States Code. For example, it repeals an often-cited obsolete statute, section 45 of title 18, which makes it a misdemeanor offense to detain or interfere with a carrier pigeon belonging to the United States. The deletions were based in part on a list of current statutes deleted by S. 1437 which was supplied by the Department of Justice. Although deletion of obsolete statutes is often cited as one of the most important reforms of S. 1437, the Justice Department list revealed that S. 1437 repeals only about 17 statutes which currently define substantive offenses in title 18. The subcommittee in its recommended bill would repeal some 23 current substantive offenses. (See Appendix I).

Second, H.R. 13959 establishes a uniform and graded fine structure with higher fine levels. These fines will be applicable to all title 18 offenses, as well as to criminal statutes in other titles of the United States Code (with the exception of title 26, the Internal Revenue Code).

Third, H.R. 13959 makes substantive changes in the area of sentencing in order to promote greater fairness and eliminate unjustified and unwarranted disparities in punishment. In addition, some changes in maximum penalties are made in order to achieve a greater degree of consistency among title 18 offenses, and minor substantive changes are made in a number of other criminal statutes in the area of corrections.[7]

Finally, H.R. 13959 restructures present title 18 in an effort to improve its organization.[8] Part of the restructuring involves transferring into title 18 six criminal provisions presently located in other titles of the United States Code. It is interesting to note that one of the claims made for S. 1437 as passed is that it consolidates Federal criminal statutes. Yet, as its proponents admit, the Senate bill leaves more criminal statutes outside of title 18 than it puts in title 18. While this may be understandable, it is clearly inconsistent with the goal of improving current law through consolidation of offenses, and merely confirms that Federal criminal law is not a unified whole.

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[7] For example, the bill provides that the Chief of the Division of Probation of the Administrative Office of the U.S. Courts shall be a member of the National Institute of Corrections (other members include the Director of the Bureau of Prisons, the Chairman of the Parole Commission, and the Assistant Secretary for Human Development of the Department of Health, Education and Welfare).

[8] The subcommittee is advised that in order to restructure title 18 it is necessary, as a practical matter, to reenact it. In order to avoid creating the inference that the reenactment of the provisions of title 18 is intended to put a congressional imprimatur on each of them, or on any judicial or agency interpretation of any of them, the bill includes a disclaimer provision making it clear that, except insofar as the bill makes a substantive change in a section, the reenactment of the provisions of title 18 is for the purpose of restructuring title 18.

CHAPTER 2. BACKGROUND

The present legislative efforts to recodify Federal criminal laws can be traced to the National Commission on Reform of Federal Criminal Laws, which was established in 1966 with a mandate to "make a full and complete review and study of the statutory and case law of the United States for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice."[1] The Commission's membership consisted of 3 judges appointed by the Chief Justice, three Senators appointed by the President of the Senate, three Members of Congress appointed by the Speaker of the House, and three people appointed by the President. The Commission came to be known as the "Brown Commission," after its chairman, Edmund G. "Pat" Brown, then the Governor of California.[2] The Brown Commission was aided in its work by an advisory committee chaired by the late Supreme Court Justice Tom C. Clark,[3] as well as by its staff and consultants.

At the start of its work, the Brown Commission decided to focus on drafting a new substantive criminal code.[4] In June of 1970 it published a study draft of a revised criminal code and invited public comment. Its Final Report, which takes the form of a draft of a new title 18 of the United States Code, was issued in January 1971. Following each section of the draft Federal criminal code is a commentary prepared by the Commission. With the transmittal of the Final Report to Congress and the President, the Brown Commission went out of existence.

Congressional action

In February of 1971, shortly after the Brown Commission's Final Report was published, the Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedures, chaired by the late Senator John L. McClellan, began hearings on the recodification of Federal criminal laws. Senator McClellan and his staff drafted recodification legislation, which Senator McClellan introduced in January 1973, at the beginning of the 93d Congress, as S. 1.

Contemporaneously with the start of Senator McClellan's hearings, President Richard M. Nixon directed the Justice Department to

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[1] Public Law 89–801.

[2] Other Members of the Commission were: then-Representative, and now Virginia Supreme Court Justice, Richard H. Poff; Senator Sam J. Ervin, Jr.; U.S. District Judge A. Leon Higginbotham, Jr.; Senator Roman L. Hruska; Representative Robert W. Kastenmeier; U.S. District Judge Thomas J. MacBride; the late Senator John L. McClellan; Donald Scott Thomas, Esq. of Texas; and Theodore Voorhees, Esq. of Washington, D.C. U.S. Circuit Judge James M. Carter and George C. Edwards, Jr., split a term, as did Representatives Don Edwards and Abner Mikva.

[3] Advisory committee members included Hon. Patricia Roberts Harris; Hon. Elliott L. Richardson; Dean Louis H. Pollack of the Yale Law School; Major General (Retired) Charles L. Decker, formerly the Judge Advocate General of the U.S. Army; Howard R. Leary, a former Philadelphia and New York City Police Commissioner; and Milton G. Rector, the President of the National Council on Crime and Delinquency.

[4] "Taking into account that Congress, the Judicial Conference, other Commissions and privately financed projects were engaged in intensive studies of many issues of criminal law other than a substantive penal code, the Commission selected reform of provisions of title 18 of the United States Code as its central concern." National Commission on Reform of Federal Criminal Laws, *Study Draft of a New Federal Criminal Code* xx (1970). *See also* National Commission on Reform of Federal Criminal Laws, *Final Report* xi (1971).

Thus, it appears that the Brown Commission either did not focus on the question of whether the omnibus or the incremental approach was most appropriate, or else it assumed, without discussion or analysis, that the omnibus approach was the most appropriate way to proceed. In short, the Brown Commission did not address the legislative question as to how best to go about reforming title 18.

The Brown Commission also did not adequately analyze the question of the overall impact of its proposals on the scope of federal jurisdiction.

evaluate the Brown Commission's Final Report and recommend legislation to Congress. The Justice Department reported its recommendations to the Congress during the first session of the 93d Congress, and the administration's proposed legislation was introduced in the Senate as S. 1400 and in the House as H.R. 6046. The Brown Commission's recommendations were also introduced during the 93d Congress (H.R. 10047). None of these bills got out of subcommittee.

In January of 1975, at the start of the 94th Congress, a revised recodification bill that included elements of his bill and the Nixon Administration's bill was introduced by Senator McClellan, and it was designated S. 1. Further hearings were held by Senator McClellan's Subcommittee on Criminal Laws and Procedures and a substantial amount of opposition to the bill was heard. However, late in the second session, Senator McClellan's subcommittee reported the bill, without recommendation, to the full Senate Judiciary Committee. The Senate Judiciary Committee did not act on it.

The majority and minority leaders of the Senate, in an effort to move the bill, suggested that 4 Senators closely involved with the bill—the late Senators McClellan and Philip Hart, and Senators Hruska and Kennedy—work out a compromise. Negotiations to this end continued through the end of the 94th Congress.

In the House, the McClellan-Administration bill was introduced during the 94th Congress as H.R. 3907, and the Brown Commission recommendations were introduced as H.R. 333. In addition, three members of the Brown Commission—Representatives Robert W. Kastenmeier, Don Edwards and Abner Mikva—together with several other Members, introduced recodification legislation that they had drafted (H.R. 10850, H.R. 12504, H.R. 13279 and H.R. 14488).

The negotiations in the Senate to work out an acceptable bill continued into the 95th Congress. In early May of 1977, Senator McClellan introduced S. 1437, a compromise bill that he and Senator Kennedy had drafted with the encouragement and assistance of Attorney General Griffin Bell. The McClellan-Kennedy bill was introduced in the House as H.R. 6869. In addition, Representative William S. Cohen reintroduced as H.R. 2311 the bill he cosponsored in the 94th Congress (H.R. 14488).

In June of 1977, Senator McClellan's Subcommittee on Criminal Laws and Procedures held 5 days of hearings on his bill, focusing principally upon the sentencing aspects. Senator McClellan's subcommittee reported the bill to the full Senate Judiciary Committee, and the Senate Judiciary Committee reported it favorably to the Senate in November of 1977. The Senate took up the bill in late January of 1978 and passed it by a vote of 72–15.[5]

In the 95th Congress, the Subcommittee on Criminal Justice began working on the recodification legislation early in the first session. The formal proceedings began with two roundtable discussions. Taking part in these discussions, besides members of the subcommittee, were several House Members—Representatives Robert W. Kastenmeier, Robert McClory, Tom Railsback and Abner Mikva—and a Senate colleague, Senator Edward Kennedy; two Federal judges representing

[5] For background on the Senate's action, see "Criminal Law Codification Bill Brought Up for Debate, Surprising Almost Everyone," 36 Congressional Quarterly 142 (Jan. 21, 1978); "Senate Passes Criminal Code Bill," 36 Congressional Quarterly 283 (Feb. 4, 1978).

the Judicial Conference of the United States and the Federal Judicial Center; a Federal judge who served on the Brown Commission, as well as the Brown Commission's staff director and deputy staff director; a Federal Public Defender; the executive director of the American Civil Liberties Union; the president of the National Council on Crime and Delinquency; the executive director of the Metropolitan New Orleans Crime Commission; the executive director of Americans for Effective Law Enforcement; and a representative of the National Prison Project of the American Civil Liberties Union Foundation.

In the fall of 1977 the Criminal Justice Subcommittee began the first of some 16 open discussion meetings, at which the Senate-passed bill, as well as the other recodification proposals, were gone over in detail, provision by provision. The subcommittee at these meetings focused its attention on the provisions dealing with substantive criminal offenses in order to determine how they would change current law. Representatives of the Justice Department and Senate staff people familiar with the legislation attended these meetings and frequently took part in the discussions.

The Criminal Justice Subcommittee opened its hearings on September 15, 1977, with testimony from full Committee Chairman Peter W. Rodino and Attorney General Griffin Bell. The hearings were resumed in early February 1978, after completion of the open discussion sessions. In all, 23 hearings were held, and more than a hundred witnesses testified.[6] These witnesses represented a broad cross-section of viewpoints—labor and business groups, bar organizations, elected officials, law professors, prosecutors, defenders, religious organizations, "public interest" groups and "special interest" groups.

The Subcommittee on Criminal Justice began markup of legislation in early May 1978, shortly after the conclusion of its hearings. A total of some 16 markup meetings were held, during the course of which the subcommittee drafted a recodification bill. The subcommittee began circulation of a tentative draft of its bill in June 1978 in order to solicit comments and suggestions from people and organizations interested in the recodification legislation. A number of changes were made in the tentative draft as a result of comments received by the subcommittee. Finally, on July 28, 1978, the subcommittee ordered a clean bill introduced and reported favorably to the full Committee on the Judiciary.

The Committee on the Judiciary adopted the following resolution on October 4, 1978:

> *Resolved*, that the Committee on the Judiciary—
>
> (1) commends the Subcommittee on Criminal Justice and its Chairman and ranking minority Member for their excellent and conscientious work on the general revision of the United States criminal code;
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> (2) recognizes that there is not enough time remaining in the 95th Congress to complete action on the general revision of the United States criminal code, including sentencing reform; and
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> (3) authorizes and directs the Subcommittee on Criminal Justice to issue as a Committee Document a report on its work, including its findings and recommendations with regard to the general revision of the United States criminal code.

[6] A list of the witnesses testifying before the subcommittee, with the date on which they testified, is found in Appendix II of this Report.

PART II

During the course of its work on S. 1437, the Subcommittee on Criminal Justice received numerous comments on the bill. In addition to the comments received during the subcommittee's roundtable discussions, open discussion meetings and hearings, several people and organizations submitted statements for the hearing record and numerous other people and groups wrote to express their views.

This intensive analysis of each section of the proposed code revealed that S. 1437 makes innumerable changes in current substantive criminal law. A complete understanding of the changes requires a thorough review of case law at the very least. A thorough analysis of each change is particularly important since the Senate report misrepresents many provisions as only a rewrite of current law. The tremendous volume of information concerning S. 1437's changes in current substantive law makes it impractical to discuss the changes in detail in this report. In view of the public interest in this issue, however, the subcommittee believes it would be most useful to suggest the scope of the changes in current substantive law proposed in S. 1437 by identifying some of the most significant and controversial changes.

In order fully to understand the changes in current law, it is necessary to be familiar with the structure and organization of S. 1437.

CHAPTER 3. STRUCTURE OF S. 1437

S. 1437 is a comprehensive bill that amends 42 of the 49 titles of the United States Code.[1] The bill is divided into 6 titles: Title I—"Codification, Revision, and Reform of Title 18"; Title II—"Amendments to the Federal Rules of Criminal Procedure"; Title III—"Amendments to Title 28, United States Code"; Title IV—"General Provisions"; Title V—"Technical and Conforming Amendments Cross-Referenced in Title 18"; Title VI—"Technical and Conforming Amendments."

Title I of the bill repeals all of the provisions of present title 18 of the United States Code, which is entitled "Crimes and Criminal Procedure," and replaces them with comprehensive new provisions.

Title II of S. 1437 amends the Federal Rules of Criminal Procedure. Some of the amendments in title II of the bill are conforming changes, but other amendments constitute separate decisions on questions of policy.

Title III of the bill amends title 28 of the United States Code. The provisions in title III of the bill relate principally to the Bureau of Prisons, a U.S. Victim Compensation Board to administer the Federal victim compensation program established by title I of the bill, and a United States Sentencing Commission to draft sentencing guidelines for judges.

Title IV of S. 1437 contains a severability clause, an effective date provision, and an authorization provision.

Titles V and VI of the bill are supposed to make technical and conforming changes in criminal statutes outside of title 18. Thus, for example, nontitle 18 criminal provisions are amended to conform their

[1] Numerically, there are 50 titles, but one of them, title 34, was repeated in 1956. Act of Aug. 10, 1956, Ch. 1041, 70A Stat. 1.

fines and terms of imprisonment to the fine and imprisonment structure set up in proposed new title 18.

The proposed new title 18 established by title I of the bill is divided into 5 parts: Part I—"General Provisions and Principles"; Part II—"Offenses"; Part III—"Sentences"; Part IV—"Administration and Procedure"; Part V—"Ancillary Civil Proceedings."

Part I of proposed new title 18 sets forth provisions generally applicable to all of proposed new title 18. It contains such matters as a statement of the principles of construction to be applied to interpreting the provisions of proposed new title 18; definitions for some 100 terms; definitions for the culpable states of mind used in proposed title 18; principles of complicity liability; and time limitations on bringing prosecutions.

Part II of proposed new title 18 defines criminal offenses. A common format is used in setting forth the offenses. The initial subsection defines the elements of the offense. That will be followed by subsections to define, if necessary, any applicable defense or affirmative defense, any special provision concerning proof of any element of the offense, and any special definitions applicable to the section. The next subsection will designate the grade of the offense (for example, "Class C felony"), and the final subsection (entitled "jurisdiction") defines those situations in which the offense becomes of Federal concern, thereby enabling the Federal Government to prosecute. The use of a separate jurisdictional subsection marks a departure from current drafting practice.

In present law, the "jurisdiction" provisions are a part of the definition of the offense. For example, present title 18 includes this theft provision: "Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both." 18 U.S.C. 2312.[2] Thus, when the Government charges a violation of this statute, it must show, beyond a reasonable doubt, that a vehicle was transported in interstate or foreign commerce. *See* E. Devitt & C. Blackmar, Federal Jury Practice and Instruction §§ 37.01–.12 (2d ed. 1970).

S. 1437 is drafted on the premise that, analytically, "jurisdiction" is not an element of the offense.[3] Since it is not an element of the offense, it is unnecessary to require that the jury find the facts relating to jurisdiction, and S. 1437 goes on to provide that the existence of Federal "jurisdiction" is to be determined by the judge. Thus, under the S. 1437 provisions that replace 18 U.S.C. 2312, the judge, not the jury, would determine whether the vehicle was transported in interstate or foreign commerce.[4]

Part III of proposed new title 18 deals with sentencing. It sets forth the authorized sentences that a judge may impose, defines the

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[2] In contrast, S. 1437 contains a single theft provision, proposed 18 U.S.C. § 1731, which defines the offense as: "A person is guilty of an offense if he obtains or uses the property of another with intent: (1) to deprive the other of a right to the property or a benefit of the property; or (2) to appropriate the property to his own use or to the use of another person." The same section also lists 4 different grades for the offense and some 31 bases for federal jurisdiction.

[3] "The question of what criminal behavior triggers Federal jurisdiction is entirely divorced from the question of what is criminal conduct." Senate Report No. 95–605, at 7.

[4] Proposed 18 U.S.C. sec. 201(c): "The existence of Federal jurisdiction is not an element of the offense."

maximum prison term and maximum fine for each grade of offense, and defines the terms and conditions of probation. Part IV of proposed new title 18 deals with such matters as responsibility for investigating offenses described in proposed new title 18, appointment of Government-reimbursed counsel, bail, and the disposition of juvenile and incompetent offenders. Part V of proposed new title 18 sets forth some civil actions that the Government and private citizens may bring in connection with the offenses described in proposed new title 18, and it also sets up a program to compensate the victims of Federal crimes.

PART II—CHAPTER 4

SYNOPSIS OF COMMENTS ON THE SUBSTANTIVE OFFENSE PROVISIONS OF S. 1437

The Criminal Code Reform Act of 1978, S. 1437, contains a great number of changes in current substantive Federal criminal law. Some of the changes are discussed in the 1,411 page Report of the Senate Judiciary Committee which accompanies S. 1437.[1] That report, however, discusses only those changes in current substantive law which the drafters of S. 1437 apparently intended. During some 50 hours of open discussion sessions the members of the Subcommittee on Criminal Justice discovered many examples of changes in current substantive law which were not discussed in the Senate Report. Many of the witnesses who appeared before the subcommittee identified further changes. It cannot be determined which of those changes were intentional, since supporters of the legislation and the Senate Report fail, first, to identify many of the changes and, second, to discuss adequately the full impact of many of the changes they do identify. The subcommittee concluded that it would be irresponsible to enact S. 1437 without a more thorough analysis of the impact of the changes contained in S. 1437 upon current substantive Federal criminal law.

It is clear from testimony received by the subcommittee that S. 1437 would not only effect many changes in the current substantive Federal criminal law but also that many of the changes are highly controversial. As a result of the testimony and its own independent analysis the subcommittee concluded that there is serious doubt whether many of the changes proposed by S. 1437 would improve current law. Clearly, many of the changes should be subject to further independent analysis, public input, and full legislative review.

Although the subcommittee took positions on many aspects of S. 1437, no attempt will be made to describe those positions in detail. Instead, this part of the report identifies some of the more significant and controversial ways in which S. 1437 affects current substantive law.

The subcommittee found that there are three categories of ways in which S. 1437 affects current substantive law: by radically changing the format of current title 18; by changing current law; and by enacting provisions not in current law.

The first way in which S. 1437 affects current substantive law is by reorganizing and restructuring title 18 of the United States Code. One example of a change in format which has potentially far-reaching sub-

[1] Senate Report No. 95-605, 95th Cong., 1st sess. parts 1 and 2 (1977).

stantive impact is the reduction of the number of current culpable states of mind (the *mens rea* element of the offense) to only four: intentional, knowing, reckless and negligent.[2]

Many witnesses argued that changing the required proof of state of mind will affect the outcome of many criminal cases. For example, witnesses representing the Federal Public and Community Defenders argued that the bill's use of the "reckless" element

> * * * introduces into the Federal criminal law the traditional civil law concept of recklessness to an extent never before seen; and, with potential results, we believe, that may in some instances have been wholly unintended. By dispensing with the traditional requirement of *mens rea*, the Senate bill will lessen the government's burden of proof in a substantial number of cases . . . .[3]

An example of one of the many offenses that will be affected by changing the *mens rea* element is Receiving Stolen Property.[4] Under S. 1437 the requisite mental element is "reckless"—that is, the offender was aware of the risk that the property was stolen but disregarded that risk.[5] According to the Senate Report, the offense in S. 1437 consolidates nine current offenses.[6] What the Senate Report fails to point out is that every current offense requires proof that the defendant obtained the property "*knowing*" that the property had been stolen.[7] Although the difference between "reckless" and "knowing" is subtle, the change affects the nature of the offense by lessening the Government's burden of proof. More importantly, such a change places a greater burden on citizens by broadening the definition of criminal conduct.

The subcommittee analyzed many similar offenses and concluded that changing the mental element of an offense necessarily changes the nature of the offense. Such changes, however subtle, should not be undertaken without thorough analysis of each one to determine its impact. The assurances of the proponents of omnibus legislation that the *mens rea* provisions S. 1437 "can add considerable clarity to a confused area of Federal law, and can help achieve the settling of important legal principles that previously have been left to fluctuate," [8] are not a satisfactory substitute for thorough, detailed analysis.

Another example of a way in which S. 1437's format will have considerable impact on Federal criminal law is the result of the bill's approach to Federal jurisdiction. Under the proposed format of S. 1437 a number of current offenses which may have somewhat similar elements are often combined into a single offense with all possible jurisdictional bases listed seriatim.[9]

Many witnesses and other analysts of the bill argue that this approach to defining the scope of Federal jurisdiction will result in an expansion of Federal jurisdiction over many offenses. They frequently expressed concern that, due to time limitations, they were able to examine only a few of what may be very many instances in which S. 1437's

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[2] Proposed 18 U.S.C. § 302.
[3] Hearings, p. 1038.
[4] Proposed 18 U.S.C. § 1733.
[5] Proposed 18 U.S.C. § 302(c)(1). See also, proposed 18 U.S.C. § 303(b).
[6] Senate Report No. 95-605, at 677.
[7] *See* 18 U.S.C. §§ 641, 659, 662, 922(j), 1708, 2113(c), 2313, 2315 and 2317.
[8] Hearings, p. 76.
[9] For example, proposed 18 U.S.C. § 1731, Theft, contains 31 subparagraphs defining federal jurisdiction. Under current law there are over 100 theft offenses, each with its own basis for federal jurisdiction.

format expands Federal jurisdiction. Similarly, they noted that while some of the ways in which S. 1437's format expands Federal jurisdiction are obvious, other ways are very subtle. For example, S. 1437 expands Federal jurisdiction over robbery to include situations where *any person*, even a victim, crosses a State line in connection with the offense—while under current law the *offender* must cross a State line. A more subtle expansion in the scope of Federal jurisdiction results from changing the current phrase "facility in interstate commerce" to "facility of interstate commerce," thereby authorizing Federal prosecution if a local telephone call is made.

The format of S. 1437 also expands current Federal jurisdiction by adopting a system of ancillary jurisdiction. Under this system some 17 crimes become Federal offenses if committed during the course of another Federal offense.. It has been estimated that the result of the creation of this so-called "piggyback jurisdiction" will be the potential expansion of Federal jurisdiction to encompass some 300–350 new crimes.[10]

A third way in which the format of S. 1437 will have an impact on current substantive law is by making the provisions of proposed title 18 "apply to prosecutions under any Act of Congress." [11] As a result, all of the provisions of proposed title 18, including those affecting interpretation and application, would apply to hundreds of criminal offenses outside of title 18. There has been very little research to determine the possible impact of such changes. The need for full and careful analysis is obvious, particularly when one considers that provisions such as the general definitions section, the inchoate offenses and the four culpable states of mind will be applicable to highly technical areas of the law such as tax, securities fraud, and bankruptcy.

These are only a few examples of the changes in current substantive law which are inherent in the new format S. 1437 proposes for title 18. The subcommittee found that virtually every offense in current law is changed by the new format—including those offenses that the proponents of the bill argued were unchanged. Because the proponents failed to meet the burden of proving that current law is unchanged by the format, the subcommittee believes the proposed new format should be rejected.

The second way in which S. 1437 affects current substantive law is by changing individual provisions of current law. Many witnesses and analysts were critical of the substantive changes in current law contained in S. 1437. Their criticisms varied widely, ranging from those who argued that specific changes were inferior to current law to those who argued that far more radical change is needed. The subcommittee undertook detailed analysis of each change in current substantive law but found that the tremendous number of changes made analysis of each individual section futile. Consequently, the subcommittee agrees with those witnesses who concluded that only the most significant changes have been analyzed and further time is needed to identify and analyze the less obvious changes.

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[10] Position Paper and Testimony of the Federal Public and Community Defenders Hearings, p. 1036. *See also* statement of Professor John Quigley, Hearings, p. 306–308.

[11] Proposed 18 U.S.C. § 103; The only exceptions are Acts of Congress applicable solely in the District of Columbia; the Canal Zone Code; and the Uniform Code of Military Justice.

Some of the substantive changes in existing law which witnesses and analysts most frequently criticized include: expanding current conspiracy law by implicitly eliminating the requirement that a conspirator have the intent to commit the offenses and by adopting a "unilateral theory" of conspiracy which allows a single person to be charged with conspiracy, even if no one agreed with him; [12] reversing current law to permit a person who owed no additional tax or was due a refund to be found guilty of tax evasion; [13] making it a felony to make false unsworn oral statements to Government agencies, thus codifying some court interpretations of current law but contrary to other court interpretations; [14] expanding current law concerning an election in many respects, including making it an offense for the first time to engage in a wide variety of common election activities which could be found to "obstruct or impair" an election, prohibiting acts by "any person" instead of requiring proof of a conspiracy as in current law, and changing the current *mens rea* element; [15] expanding current law to permit prosecution for extortion of participants in virtually any labor dispute in which picketing "threatened" property damage, thereby reversing current law; [16] expanding the current liability of an accomplice by omitting the requirement that an accomplice intend that his or her action assist in the consummation of the offense; [17] expanding current prohibitions against obstructing a Government function by fraudulent means to encompass the acts of individuals and to encompass any Federal Government function; [18] and expanding current prohibitions against rioting by eliminating the requirement of "intent" to incite a riot and by making it an offense to participate in a riot and to lead a riot.[19]

Although these are but a few of the changes S. 1437 makes in current substantive offenses, they illustrate the need for extensive input and thorough analysis of each change to ensure that the criminal justice system does not take a step backward.

The third way in which S. 1437 changes current substantive law is by enacting new provisions. The subcommittee did not take a position on each specific new provision since it determined that further input and analysis is needed to ensure that each new provision receives thorough consideration. However, many of the provisions created by S. 1437 were highly controversial. A few of the provisions which caused considerable comment and concern are those creating: a general attempt statute applicable to all offenses; [20] an offense of "criminal solicitation" under which the solicitor need only intend that the conduct occur—he need not know that it was criminal—and under which the solicitor is guilty even if the criminal conduct never occurs; [21] an offense prohibiting disruption of any official Government proceeding even if such disruption is only the coincidental result of speech-related conduct; [22] an offense prohibiting a present or former public servant

[12] Proposed 18 U.S.C. § 1002.
[13] Proposed 18 U.S.C. § 1401.
[14] Proposed 18 U.S.C. § 1343.
[15] Proposed 18 U.S.C. § 1511.
[16] Proposed 18 U.S.C. § 1722.
[17] Proposed 18 U.S.C. § 401.
[18] Proposed 18 U.S.C. § 1301.
[19] Proposed 18 U.S.C. §§ 1831, 1833.
[20] Proposed 18 U.S.C. § 1001.
[21] Proposed 18 U.S.C. § 1003.
[22] Proposed 18 U.S.C. § 1334.

from disclosing certain information submitted to the Government; [23] and a federal obscenity statute based on widely varying "community standards." [24]

Two additional controversial provisions created by S. 1437 will have impact upon the determination of guilt for nearly every current criminal offense. The first provision eliminates jurisdiction as an element of federal offenses,[25] thus removing the responsibility for determining Federal jurisdiction from the jury and placing it with the judge. The second new provision is the attempt in S. 1437 to codify a rule of strict construction. It has been argued that S. 1437 (after considerable amendment) merely restates the current common law rule of strict construction.[26] If that is true, then the provision is not necessary. More importantly, codification of the common law rule will prevent further refinement of its interpretation by the courts—thus, changing the law by halting its development.

CHAPTER 5. SYNOPSIS OF COMMENTS ON THE SENTENCING PROVISIONS OF S. 1437

Overview of current law

Current law sets forth the sentence that a judge can impose upon a convicted defendant either in the statute defining the offense or in one of several special sentencing provisions dealing with "youth" and "young adult" offenders, "dangerous special" offenders, "dangerous special drug" offenders, and narcotics addicts.[1] The statute defining the offense will state the maximum prison term and maximum fine for the offense and will generally authorize the imposition of both a term of imprisonment and a fine. Offenses in title 18 of the United States Code currently authorize maximum terms of imprisonment ranging from 3 months to life or any term of years [2] and maximum fines ranging from $50.00 to $25,000. In lieu of a specified fine, a number of statutes, generally those involving embezzlement, permit a fine based upon the amount obtained in the commission of the offense.[3] Some 40 offenses authorize imposition of either a fine only or a term of imprisonment only.

A judge, "when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby," [4] may suspend the imposition of sentence or suspend its execution and place a defendant on probation, unless the offense is punishable by

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[23] Proposed 18 U.S.C. § 1525.
[24] Proposed 18 U.S.C. § 1842.
[25] See p. 10 *infra*.
[26] Proposed 18 U.S.C. § 112.

[1] 18 U.S.C. Ch. 402 ("Youth" Offenders), and Ch. 314 ("narcotic addicts"); 18 U.S.C. §§ 4216 ("Young adult" offenders) and 3575 ("dangerous special" offenders); 21 U.S.C. § 849 ("dangerous special drug" offenders).

[2] Eight offenses contain mandatory imprisonment language—18 U.S.C. §§ 924(c), 1651, 1652, 1653, 1655, 1661, 2113(e) and 2114.

Some sixteen offenses in title 18—18 U.S.C. §§ 34, 351(a), 351(b), 351(d), 794, 798, 844(d), 844(f) 844(i), 1111, 1114, 1716, 1751(b), 1751(d), 2031, and 2381—authorize imposition of a sentence of death. In addition, section 1472(i) of title 49, United States Code, also authorizes imposition of a sentence of death. Because the title 18 provisions do not contain procedures for imposing a sentence of death, they are constitutionally deficient. *Furman* v. *Georgia*, 408 U.S. 238 (1972). *See also Gregg* v. *Georgia*, 428 U.S. 153 (1976); *Profitt* v. *Florida*, 428 U.S. 242 (1976); *Jurek* v. *Texas*, 428 U.S. 262 (1976); *Woodson* v. *North Carolina*, 428 U.S. 280 (1976); *Roberts* v. *Louisiana*, 428 U.S. 325 (1976); *Gardner* v. *Florida*, 430 U.S. (1977); *Robert* v. *Florida*, 432 U.S. 282 (1977).

[3] A fine equal to the amount obtained is authorized in 18 U.S.C. §§ 643, 644, 646, 647, 648, 649, 650, 653, 654, and 1711. A fine of double the amount obtained is authorized in 18 U.S.C. §§ 645, 651, 652 and 893.

[4] 18 U.S.C. § 3651.

death or life imprisonment. The probation period may not exceed 5 years, and the court may impose "such terms and conditions as the court deems best." [5] The judge may impose what is known as a "split-sentence"—a short term of imprisonment (no more than 6 months) followed by probation.

In deciding whether to impose a jail term, a fine, or both a jail term and a fine, or to suspend the imposition or execution of sentence, the judge is free to consider whatever factors he or she considers relevant.

Appeal of a sentence is authorized only under very limited circumstances. The Government or the defendant may initiate an appeal of a criminal sentence in cases involving the imposition, correction, or reduction of a sentence of a "dangerous special offender." On review, the court of appeals determines "whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused." [6]

A defendant who is sentenced to a term of imprisonment remains in prison until the expiration of the term of imprisonment minus any "good time" earned, unless released earlier on parole.[7] Good time is earned if the person has "faithfully observed all the rules and has not been subject to punishment." [8] Good time can be forfeited for violating institution rules,[9] and forfeited good time can be restored.[10] A person may earn "industrial good time" for each month of actual employment and may be awarded industrial good time for "exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operation." [11] Industrial good time may be forfeited and later restored.[12]

A person serving a prison term in excess of 1 year is eligible for parole, unless the judge specifies an earlier date, after service of ⅓ of the term of imprisonment.[13] A person who is eligible is not automatically released on parole. The decision as to whether the person ought to be released is the responsibility of the U.S. Parole Commission. Its discretion must be exercised pursuant to a guideline system that takes into account the severity of the offense and the probability of future criminal conduct, which is determined primarily by reference to past criminal history. This guideline system was mandated by Congress in the Parole Commission and Reorganization Act of 1976.

Overview of Major Changes in Current Law Proposed in S. 1437

The sentencing provisions of S. 1437 proceed from the premise that "a major reform of federal sentencing law is required." [14] The bill as passed by the Senate makes what its proponents call "major reforms"

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[5] *Id.*
[6] 18 U.S.C. § 3576.
[7] A defendant may also be released pursuant to the special provisions in the Youth Corrections Act, 18 U.S.C. § 5017, or in the Narcotic Addicts Rehabilitation Act, 18 U.S.C. § 4254.
[8] 18 U.S.C. § 4161. The maximum amount of good time that can be earned ranges from 5 days per month, if the term is not less than 6 months or more than a year, to 10 days per month, if the term is over 10 years.
[9] 18 U.S.C. § 4165.
[10] 18 U.S.C. § 4166.
[11] 18 U.S.C. § 4162. The maximum amount of industrial good time that can be awarded is 5 days per month for the first year and 5 days per month for any succeeding year.
[12] 18 U.S.C. §§ 4165, 4166.
[13] 18 U.S.C. 18 § 4205.
[14] See Statement of Deputy Assistant Attorney General Ronald L. Gainer, Office for Improvements in the Administration of Justice, U.S. Department of Justice. Hearings, p. 1411. *See also* Statement of Senator Edward M. Kennedy, Hearings, p. 766.

in the area of sentencing by creating a number of entirely new sentencing provisions and eliminating or substantially altering many existing provisions.

S. 1437 authorizes six types of sentences: imprisonment, fine, probation, order of criminal forfeiture, order of notice to victims, and order of restitution.[15]

Imprisonment

S. 1437 provides for three types of offenses—felonies, misdemeanors and infractions. There are five classes of felonies (A through E) and three classes of misdemeanors (A through C). Proposed section 2301 of title 18 authorizes the following maximum prison terms:

Class A felony—life or any term of years.
Class B felony—not more than 20 years.
Class C felony—not more than 10 years.
Class D felony—not more than 5 years.
Class E felony—not more than 2 years.
Class A misdemeanors—not more than 1 year.
Class B misdemeanors—not more than 6 months.
Class C misdemeanors—not more than 30 days.
Infraction—not more than 5 days.

If the judge is going to sentence a defendant to serve a term of imprisonment greater than 1 year, the judge may designate that the defendant will be eligible for early release after service of a specified portion of the term. A person may be released prior to expiration of the term of imprisonment only if the judge has stated at the time of sentencing that the person is eligible for early release.

S. 1437 repeals the special sentencing provisions currently applicable to persons qualifying as a "dangerous special offender," a "dangerous special drug offender," a "narcotic addict," a "youth offender," or a "young adult offender."

Fines

S. 1437 establishes a single fine level for each type of offense, differentiating between individuals and organizations.[16]

	Maximum fine
Individual:	
Felonies	$100,000
Misdemeanors	10,000
Infractions	1,000
Organization:	
Felonies	500,000
Misdemeanors	100,000
Infractions	10,000

While these levels are generally adhered to, there are exceptions.[17]

[15] S. 1437 leaves what may be the only constitutional death penalty provision in federal law, 49 U.S.C. § 1472(i), outside of title 18. Thus, the most severe criminal penalty that can be imposed will not be a part of S. 1437's "comprehensive" criminal code. S. 1437 also transfers from title 18 to the Espionage and Sabotage Act of 1954 an offense carrying the death penalty (18 U.S.C. § 794).

[16] An organization is defined to mean "a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, estate, society, union, club, church, and any other association of persons." Proposed 18 U.S.C. § 111.

[17] For example, proposed 18 U.S.C. § 1813 (possessing drugs) lowers the fines for a class C misdemeanor and an infraction when the substance involved is marijuana. See also proposed 18 U.S.C. § 1764.

S. 1437 also establishes an "alternative authorized fine" where the defendant has derived a pecuniary gain or has caused bodily injury, property damage or other loss. The amount of the alternative fine can be up to the greater of twice the gain or twice the loss. Because of the manner in which key terms are defined, this section will be applicable in nearly every instance.

The proposed code does not relate the alternative authorized fine to either the criminal order of restitution or existing civil multiple damages rights of recovery.

Probation

S. 1437 changes present law by making probation a sentence, rather than the suspension of the imposition or execution of sentence. It provides for one mandatory condition—that the defendant not commit a federal, state, or local crime while on probation. It also authorizes several discretionary conditions and includes a catch-all clause, "such other conditions as the court may impose." Thus, the discretionary conditions of probation under S. 1437 reach the same result as current law, which authorizes "such terms and conditions as the court deems best."

"Split sentences" are specifically precluded. However, the same result (a short prison term followed by a probationary period) can be reached under S. 1437 since one of the conditions of probation can be imprisonment for up to 1 year during the first year of the term of probation.[18]

The length of a term of probation depends upon the type of offense. For a felony, the term can be up to 5 years; for a misdemeanor, up to 2 years; and for an infraction, up to one year.[19] Present law sets a maximum of up to 5 years for all offenses.

Order of criminal forfeiture

S. 1437 requires that for certain offenses, the judge must order the defendant to forfeit certain property to the United States. When a defendant is convicted of any of three organized crime offenses,[20] the court must order the defendant to forfeit his interest in the "racketeering syndicate" or "enterprise" involved.[21]

Order of notice to victims

S. 1437 authorizes the judge, when an individual is found guilty of an offense involving fraud or other deceptive practices or an organization is found guilty of any offense, to require that the defendant notify any victims of the offense. The notification must include an explanation of the conviction, and it must be delivered "by mail, by advertising in designated areas, or by other appropriate means" to "the class of persons or the sector of the public affected by the conviction or financially interested in the subject matter of the offense.[22] This penalty may be in addition to a sentence of probation, fine or imprisonment, and it is new to Federal law.

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[18] Proposed 18 U.S.C. § 2103(b)(11).
[19] Proposed 18 U.S.C. § 2101(b).
[20] Proposed 18 U.S.C. § 1801 (Operating a racketeering syndicate), 1802 (Racketeering), and 1803 (Washing racketeering proceeds).
[21] "Racketeering syndicate" is defined in proposed 18 U.S.C. § 1806(g), and "enterprise" is defined in proposed 18 U.S.C. § 111.
[22] Proposed 18 U.S.C. § 2005.

Order of restitution

S. 1437 authorizes a judge, when a defendant is found guilty of an offense "causing bodily injury or property damage or other loss," [23] to order the defendant to make restitution to any victims of the offense. Federal law presently authorizes the making of restitution as a condition of probation. The proposed code does not relate restitution to either the alternative fine or to existing civil multiple damages rights of recovery.

Sentencing procedures

Many of the bill's most ambitious changes in current sentencing procedures are accomplished by creation of an independent administrative body within the judicial branch, to be called the United States Sentencing Commission.[24] The Commission would consist of seven full-time members who may serve for two 6-year terms and who are compensated at the same rate as judges of the U.S. Courts of Appeals.[25]

S. 1437 empowers the President of the United States, "after consultation with the Judicial Conference of the United States," [26] to appoint four Commission members, subject to the Senate's advice and consent. The President selects the remaining three Commission members from a list of at least seven judges provided by the Judicial Conference of the United States.[27] The Sentencing Commission must have judicial and non-judicial members, and not more than two of the four persons appointed by the President with the advice and consent of the Senate may be members of the same political party.[28]

The Sentencing Commission's primary duties are to promulgate (1) sentencing guidelines for judges to use "in determining the sentence to be imposed in a criminal case" and (2) "general policy statements regarding application of the guidelines or any other aspect of sentencing." [29]

The sentencing guidelines promulgated by the Sentencing Commission must address: (1) the initial "in-out" decision (whether to imprison the defendant, fine him or place him on probation); (2) the appropriate length of a term of imprisonment or a term of probation and the appropriate amount of a fine; and (3) whether the defendant should be made eligible for early release and, if so, after service of what proportion of the term of imprisonment.[30]

The guidelines are to be formulated by setting up categories of offenses and categories of defendants. For each category of offense involving each category of defendant, the sentencing guidelines must "establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code." [31]

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[23] Proposed 18 U.S.C. § 2006.

[24] Title III, Section 124 of S. 1437, establishes a new chapter (58), entitled "United States Sentencing Commission," in Title 28 of the United States Code.

[25] Presently $57,500.00 per year.

[26] Proposed 28 U.S.C. § 991(a).

[27] The Judicial Conference of the United States consists of the Chief Justice of the United States, the chief judge of each judicial circuit, the chief judge of the Court of Customs and Patent Appeals, and a district judge from each judicial circuit, 28 U.S.C. § 331.

[28] Proposed 28 U.S.C. § 994(a).

[29] Proposed 28 U.S.C. § 994(a)(1).

[30] *Id.*

[31] Proposed 28 U.S.C. § 994(b).

S. 1437 requires the Sentencing Commission to consider several factors when establishing categories of offenses and categories of defendants. It must consider, when establishing categories of offenses, the relevancy of:

(1) The grade of the offense;
(2) Any mitigating or aggravating circumstances;
(3) The nature and degree of the harm caused by the offense;
(4) The community view of the gravity of the offense;
(5) The public concern generated by the offense;
(6) The deterrent effect a particular sentence may have on the commission of the offense by others; and
(7) The current incidence of the offense in the community and in the nation as a whole.[32]

In establishing categories of defendants, the Sentencing Commission must consider the relevancy of the defendant's age, education, vocational skills, mental and emotional condition, physical condition, including drug dependence, family ties and responsibilities, community ties, role in the offense, criminal history, and degree of dependence upon criminal activity for a livelihood.[33]

The Sentencing Commission is given some specific instructions as to the guidelines. For example, the Sentencing Commission, in drawing up its guidelines, must be "guided by the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of terms actually served." [34] If the Commission determines that a term of imprisonment is appropriate for the crime, then its guideline must provide for a range of imprisonment. The maximum term of a range established by a guideline cannot exceed the minimum term by more than 12 months or 25 percent, whichever is greater.[35]

S. 1437 directs a judge to consider several factors when imposing sentence. The factors include the circumstances of the offense, the characteristics of the defendant, the kind of sentences available, the "need to avoid unwarranted sentence disparity", and the sentencing guidelines.[36]

S. 1437 contains additional provisions to ensure that judges will, save for rare and exceptional instances, sentence within the guidelines. One provision directs the judge to impose a sentence within the guideline range unless the judge finds an aggravating or mitigating circumstance that "was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a different sentence." [37]

S. 1437 also requires the judge to state in every case, in open court, the reasons for imposing a particular sentence and the specific reason for imposing a sentence outside the guideline range.[38] The latter requirement is intended to be satisfied only by "a statement of why the court felt that the guidelines did not adequately take into account all of the pertinent circumstances of the case at hand." [39] Finally, appel-

[32] Proposed 28 U.S.C. § 994(c).
[33] Proposed 28 U.S.C. § 994(d).
[34] Proposed 28 U.S.C. § 994(l).
[35] Proposed 28 U.S.C. §994(b)(1).
[36] Proposed 18 U.S.C. § 2003(a)(1).
[37] Proposed 18 U.S.C. § 2003(a)(2).
[38] Proposed 18 U.S.C. § 2003(b).
[39] Senate Report 95-605, at 893.

late review of sentence is available if the sentence is outside of the guidelines but not if it is within the guidelines.[40]

Postsentence procedures

S. 1437 authorizes the Government and the defendant to appeal sentences for felonies and class A misdemeanors that fall outside the sentencing guidelines. The defendant may appeal when the sentence is in excess of the guideline range, unless the sentence is one that the defendant agreed to as a part of a plea agreement under rule 11(e)(1)(B) or (C) of the Federal Rules of Criminal Procedure. The Government may appeal sentences when the sentence is less than the guideline range, unless the sentence is one that the Government agreed to as a part of a plea agreement under rule 11(e)(1)(B) or (C) of the Federal Rules of Criminal Procedure.

When a sentence is appealed, the court of appeals reviews the record to determine if the sentence is "unreasonable." If, upon appeal by the defendant, the court determines the sentence is too high, the court of appeals can impose a lesser sentence or remand for further sentencing proceedings or for imposition of a lesser sentence. If, upon appeal by the Government, the court of appeals determines that a sentence is too low, it can impose a higher sentence or remand for further sentencing proceedings or for imposition of a higher sentence.[41]

S. 1437 substantially changes the procedures for determining the length of time a defendant actually serves in prison. "Good time" is substantially reduced. A person earns 3 days per month unless the Bureau of Prisons determines that the person has not "satisfactorily complied" with disciplinary regulations, in which case the Bureau of Prisons can reduce the good time or deny it altogether. The Bureau of Prisons' decision must be made within 2 days after the end of the month, and, once credited, the good time may not later be reduced or withdrawn.[42]

Parole as it exists today is abolished. A person may be released prior to the expiration of the term of imprisonment only if the judge, at the time of imposition of sentence, designates that the person shall be eligible for "early release" (that is, release after service of a specified portion of the term).[43] However, a person who is eligible for early release does not accrue any "good time."[44]

Eligibility for early release does not automatically entitle the person to release after service of the specified portion of the term. The Parole Commission must decide that the person's release "is consistent with the applicable factors that led to the imposition of this particular sentence," that there is no "undue risk" that the person will fail to conform to parole conditions, and that early release of a person would not have a "substantially adverse effect on institutional discipline."[45]

It is intended that "early release" be rarely used and limited to "exceptional" cases.[46]

S. 1437 imposes, in all instances where a term of imprisonment is imposed, a period of post-release supervision, which it calls "parole."

[40] Proposed 18 U.S.C. § 3725(a).
[41] Proposed 18 U.S.C. § 3725(d) and (e).
[42] Proposed 18 U.S.C. § 3824(b).
[43] Proposed 18 U.S.C. § 2301(c) and 3824(a)(2).
[44] Proposed 18 U.S.C. § 3824(b).
[45] Proposed 18 U.S.C. § 3831(c).
[46] Senate Report No. 95-605, at 924.

For class A and B felonies, the parole term can be up to 5 years; for class C felonies, up to 3 years; for class D felonies, up to 2 years, for class E felonies, up to 1 year; and for a person serving a term of imprisonment for 2 or more misdemeanors, up to 6 months.[47] Violation of any condition of parole can result in the reimprisonment of the person for up to 90 days, even if the person has already served in full the term of imprisonment to which he was sentenced.[48]

As an example, assume that a person was sentenced to a prison term of 5 years. If that person received all his "good time," he would be released after 4½ years. Upon release, he would be put on "parole" for up to 2 years. If he violates a condition of parole, he could be imprisoned for up to 90 days. The judge could also have sentenced the person to a prison term of 5 years with eligibility for early release after service of 80 percent of his term. In that case, the Parole Commission would determine, after the person served 4 years, whether or not to grant early release. If early release is denied, the person will serve the full 5 years because he does not accrue "good time." Upon release, he will be on "parole" for up to 2 years. If he violates a condition of parole, he could be imprisoned for up to 90 days, even if he had served the full 5 years.

Overview of Critical Comments on the Sentencing Provisions of S. 1437

1. GENERAL COMMENTS

Witnesses before the Subcommittee on Criminal Justice and individuals and groups submitting statements for the hearing record generally expressed concern about, and made recommendations regarding, specific provisions in the bill. A number of witnesses, however, raised important issues regarding the overall impact of the bill. The issues most frequently raised concern the bill's impact on (a) prosecutorial discretion, (b) individualization of sentences, (c) reduction of disparity in sentences, (d) the size of the prison population, and (e) alternatives to incarceration.

(a) Prosecutorial discretion

A number of those who closely examined S. 1437 concluded that one impact of the bill would be an expansion in the scope of the prosecutor's authority. This conclusion raises two important and, as yet, unanswered questions—what are the consequences of increasing prosecutorial discretion? What are the alternatives? Because of the serious threat to defendants' rights, these questions must be answered before legislation is enacted. In their prepared statement, the Federal Public and Community Defenders succinctly summarized the concerns of many witnesses regarding the bill's impact on prosecutorial discretion and the role of the prosecutor in determining sentence:

> In the interests of eliminating disparity and in achieving certainty and fairness in sentencing, the Congress intends to destroy a certain amount of sentencing discretion. However, constraints upon the court's discretion will merely

[47] Proposed 18 U.S.C. § 3843(b).
[48] Proposed 18 U.S.C. § 3844(e).

transfer the responsibility to other non-judicial components of the Government, principally the prosecutor. Where several grades of one offense are available to the prosecutor and where the range of discretion available to the sentencing judge is limited, the prosecutor can determine the sentence within a narrow range with the charging decision.

Placing this discretion with the prosecutor may be severely criticized because it is exercised in an atmosphere of low visibility and is generally not the subject of review. Another strong criticism we have is that it has been placed in the hands of an advocate. The transfer of the sentencing discretion to the charging authority moves sentencing one step away from the courtroom and one step closer to the police station.[49]

In general, witnesses argued that S. 1437 would greatly enhance the power of the prosecutor.[50] Under current law, the actual length of sentences results from the exercise of discretion by the prosecutor, the judge, and the Parole Commission. Since, as its proponents agree, S. 1437 sharply curtails the discretion of the judge and eliminates the discretion of the Parole Commission in all but exceptional cases, the result is to transfer a great deal of the sentencing discretion to the prosecutor. S. 1437 has no procedures or guidelines for controlling the exercise of that discretion by prosecutors.[51]

Some proponents of the bill argued that the problem of increased prosecutorial discretion can be met by the development of prosecutorial "guidelines," either by the Sentencing Commission or by the Department of Justice.[52] It is important to note, however, that the bill as passed does not authorize the Sentencing Commission to establish prosecutorial guidelines, nor does it contain procedures for ensuring that prosecutors follow any guidelines that the Department of Justice might develop.

The Department of Justice has argued that its U.S. Attorneys' Manual and policy statements are an effective vehicle for controlling prosecutorial discretion. But policies set forth in the U.S. Attorneys' Manual and other policy statements are not binding, and there is no practical means of assuring that Federal prosecutors will comply with them. Moreover, it was questioned whether the Department of Justice is willing or capable of formulating effective prosecutorial guidelines. A recent study by the General Accounting Office concluded that the Department of Justice has failed to promulgate "uniform policies and guidelines to decide what violations of the criminal statutes to prosecute" and has failed to establish a "mechanism to monitor the use of prosecutive discretion to insure that it is applied fairly and promotes equity." [53] Thus, for example, similarly situated defendants may re-

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[49] Position Paper and Testimony of the Federal Public and Community Defenders on the Proposed Federal Criminal Code, Hearings, p. 1050.

[50] *See* Statements of Professor Daniel J. Freed, Hearings, p. 2324; United States District Judge James M. Burns (D. Oregon), Hearings, p. 1933; Phyllis Skloot Bamberger, Esq., on behalf of the Legal Aid Society of New York City, Hearings, p. 1449; Cecil McCall, Chairman, U.S. Parole Commission, Hearings, p. 2219; Professor Melvin B. Lewis, The John Marshall Law School, Hearings, p. 2416.

[51] *See* Statements of Professor Michael Tonry, Hearings, p. 1131; Phyllis Skloot Bamberger, Esq., on behalf of the Legal Aid Society of New York City, Hearings, p. 1938; Professor Melvin Lewis, p. 2416.

[52] Statement of Judge Harold R. Tyler, Jr., Chairman, Advisory Corrections Council, Hearings, p. 1973; Statement of Deputy Assistant Attorney General Ronald L. Gainer, Office for Improvements in the Administration of Justice, U.S. Department of Justice, Hearings, p. 1403. Judge Tyler, who currently is in the private practice of law, resigned his position as a U.S. District Judge in order to become Deputy Attorney General, a post he held for nearly 2 years (1975–1976).

[53] Statement of William J. Anderson, Deputy Director, General Government Division on behalf of the United States General Accounting Office, Hearings, p. 2461. *See also:* United States General Accounting Office, "U.S. Attorneys Do Not Prosecute Many Suspected Violators of Federal Laws," Report No. GGD–77–86, February 27, 1978, p. 13.

ceive unjustifiably different sentences because different Federal prosecutors were involved in the plea agreements. Therefore, by substantially enhancing the power of the Federal prosecutor without any effective safeguards around the exercise of that power, S. 1437 may result in the continuance of unwarranted sentence disparity.[54]

Another aspect of "prosecutorial discretion" is the fact that many crimes are defined quite broadly in the proposed code, instead of narrowly and specifically, and that as to certain regulatory, non-title 18 crimes, no state of mind is required. Both of these techniques cause more conduct to be technically "criminal" than at present. It has been suggested that there is little need to fear abuse because, as a matter of discretion, enforcement authorities will only prosecute violators guilty of morally reprehensible behavior. It is also suggested that in any event courts and juries, as a practical matter, will only convict where they find such morally reprehensible behavior. Such a system contradicts our preference for "the rule of law and not of men" and recalls Justice Black's quotation from Lord Coke:

> God send me never to live under the Law of Conveniency or Discretion. Shall the Soldier and Justice Sit on one Bench, the Trumpet will not let the Cryer speak in Westminster-Hall.[55]

(*b*) *Individualization of sentences*

S. 1437 was also criticized on the ground that its sentencing system "will be inevitably destructive of an appropriate individualization of sentences." [56] This conclusion was reached by Judge James M. Burns, U.S. District Judge for the District of Oregon. In his testimony before the subcommittee, Judge Burns stated that the sentencing procedures proposed in S. 1437

> will combine to force a widespread reality of mandating the sentence depending entirely upon the category of offense and category of defendant regardless of any or all of the particular surrounding circumstances of the case. In sum, it would deny individualization of treatment and of sentence. To me that is the ultimate vice and inhumanity of the sentencing scheme. . . . The denial of individualization will be virtually complete once this scheme is in full operation.[57]

Proponents of the sentencing procedures proposed in S. 1437 have argued that the loss of individualization in sentences will be outweighed by the reduction in unwarranted sentencing disparity which will result from the sentencing guidelines. There are two problems with this argument. First, the extent to which disparities in current sentences are "unwarranted" is entirely unknown. Studies involving hypothetical defendants in artificial situations do not overcome the need to prove unwarranted disparity in cases involving real live defendants. No witnesses came forth to inform the subcommittee of specific cases. Second, the sentencing guideline system is based upon

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[54] See Statements of Phyllis Skloot Bamberger, Esq., on behalf of the Legal Aid Society of New York City, Hearings, p. 1933; Richard T. Mulcrone, Chairman, Minnesota Corrections Board, Hearings, p. 2009.

[55] *Reid* v. *Covert*, 354 U.S. 1, 41 (1957).

[56] Association of the Bar of the City of New York, The Special Committee on the Proposed New Federal Criminal Code. "Special Report on the Provisions of S. 1437 (the proposed New Federal Criminal Code) Relating to a U.S. Sentencing Commission", Hearings, p. 2092. *See also* statement of Professor Melvin B. Lewis, Hearings p. 2416.

[57] Statement of United States District Judge James M. Burns (D. Ore.), Hearings, p. 1936.

trust in the assumption that defendants and situations can be categorized. At least one witness, United States Circuit Judge David L. Bazelon, questions this assumption. In his testimony before the subcommittee, Judge Bazelon stated:

> I do not believe that defendants or offenses can be categorized in any meaningful sense . . . . There are infinite ways of characterizing any individual defendant, and which characteristics are relevant must in fact depend upon the particular circumstances of the specific case. By masking these differences, the apparently "precise" categories of the Commission might produce grave injustice . . . .[58]

(*c*) *Unwarranted sentence disparity*

Although many witnesses concluded that unwarranted sentence disparity would result from the increase in prosecutorial discretion brought about by S. 1437, other factors were also identified as contributing to unwarranted sentence disparity. For example, Prof. Franklin E. Zimring, Director of the Center for Studies in Criminal Justice at the University of Chicago Law School, noted that S. 1437 could result in:

> a redelegation of power from the parole authority to individual sentencing judges. If the guidelines allow considerable leeway for deciding the nature and duration of punishment of particular offenders, individual judicial discretion will play a more dominant role than in the current system because parole power will be sharply curtailed. The same result will obtain if sentencing guidelines are specific but trial judges frequently deviate from the guidelines and are not rigorously policed by the courts of appeal. Under these circumstances, it would be possible for the new sentencing scheme to lead to more disparity in prison time served because it decentralizes the power to fix actual time served for those who are imprisoned.[59]

There is no question that avoidance of unwarranted sentencing disparity is of utmost importance. Professor Zimring's warning that S. 1437 may increase disparity by removing controls on judges' sentencing power is, therefore, particularly alarming.

(*d*) *Prison population*

A good deal of concern was expressed that S. 1437 would lead to an overreliance upon the use of imprisonment. Milton G. Rector, President of the National Council on Crime and Delinquency, pointed out that it is difficult to assess the impact of S. 1437's sentencing provisions because many of the important decisions are delegated to the sentencing commission. On balance, however, Mr. Rector believed that the sentencing system set up by S. 1437, which he described as "untried and perhaps unworkable", was tilted toward excessive reliance on imprisonment. This conclusion was concurred in by Alvin J. Bronstein, Executive Director of the National Prison Project of the American Civil Liberties Union Foundation, who stated that the enactment of S. 1437 "could and probably would lead to more incarceration, longer terms of incarceration, and create both a social and physical disaster, certainly for the Federal Bureau of Prisons. . . ." Chairman Cecil C. McCall of the United States Parole Commission, based upon his study of the bill, concluded that "enactment of this legislation would probably lead to increasingly lengthy prison terms. If that happens, Congress should be

[58] Statement of United States Circuit Judge David L. Bazelon (D.C. Circuit), Hearings, p. 2390.
[59] Statement of Professor Franklin E. Zimring, Hearings, p. 1376.

prepared for a corresponding (and expensive) increase in prison population. . . ." [60]

The Subcommittee attempted to develop independent data about the impact of S. 1437 upon Federal prison population and requested that the Congressional Research Service analyze the possible impact of S. 1437 upon time served in prison. The Congressional Research Service study concluded that the sentencing provisions in S. 1437 could increase prison time served by between 62.8 and 92.8 percent. In response to that finding, the Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedures asked the Congressional Research Service to do a second study of S. 1437's impact on prison time served. In the study requested by the Subcommittee on Criminal Justice, the researchers were permitted independence in arriving at the assumptions used in conducting the research and analyzing the data. For the subsequent study, the Senate Subcommittee provided the assumptions upon which the research and analysis were to be based. The results of the second study indicated a possible decrease in prison time served of between 6.3 and 27.7 percent. The value of the two studies obviously depends upon the merit of the underlying assumptions.[61]

(e) *Alternatives to incarceration*

Many witnesses criticized S. 1437 because it does not provide sufficient incentive for imposition of sentences other than imprisonment. It was noted, for example, that "one of the saddest aspects of this proposed code is its reliance on prisons," and

> it seems clear that we should not be relying so heavily on our prisons, which are ineffective as crime deterrents or rehabilitators, dehumanizing, over crowded, and expensive to operate. There ought to be, in our federal criminal code, a *preference* for alternatives to incarceration—a *presumption* that if practicable, alternative penalties to incarceration *shall* be assigned. Prison should be our last resort. Alternatives such as weekend jail, intermittent incarceration, community services, fines, and restitution to victims should be available.[62]

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[60] Statement of Milton G. Rector, President, National Council on Crime and Delinquency, Hearings p. 1741–48, 1752; testimony of Alvin J. Bronstein, Executive Director, National Prison Project of the American Civil Liberties Union Foundation, Hearings p. 1906; statement of Cecil C. McCall, Chairman, United States Parole Commission, Hearings p. 2227. See also statement of Rep. Robert F. Drinan, Hearings p. 2299 ("One of the saddest aspects of this proposed code is its reliance on prisons."); statement of Prof. Edith Elisabeth Flynn, on behalf of the National Moratorium on Prison Construction, Hearings pp. 1915–16; statement of Bishop J. Francis Stafford, on behalf of the United States Catholic Conference, Hearings p. 1812.

[61] The initial study: Congressional Research Service, "Study of the Possible Impact on Sentence Length and Time Served in Prison of Sentencing Provisions of Major Criminal Code Reform Legislation of the 95th Congress" (June 7, 1978) (prepared by Barbara McClure and Steve Chilton). The second study (which also reprints the first study): "Sentencing Provisions of Major Criminal Code Reform Legislation of the 95th Congress: Possible Impact on Sentence Length and Time Served in Prison" (November 17, 1978) (prepared by Barbara McClure and Steve Chilton).

[62] Statement of Hon. Robert F. Drinan, Hearings, pp. 2299, 2301. *See also* Statements of Robert D. Vincent, Commissioner, North Central Region, United States Parole Commission, Hearings, p. 1960; Edith Elisabeth Flynn, Professor of Criminal Justice, Northeastern University, Boston, Massachusetts, on behalf of the National Moratorium on Prison Construction, Hearings, p. 1913; Tom Donelson and Ira Lowe, on behalf of Creative Alternatives to Prison, Hearings, p. 2278; Judge Gerald B. Tjoflat, United States Fifth Circuit Court of Appeals, on behalf of the Judicial Conference of the United States, Hearings, p. 1653; Alvin J. Bronstein, Executive Director, The National Prison Project of the A.C.L.U. Foundation, Hearings, p. 1899; Rev. J. Francis Stafford, Auxiliary Bishop of Baltimore, on behalf of the United States Catholic Conference, Hearings p. 1810; Professor Thomas I. Emerson on behalf of the National Committee Against Repressive Legislation Hearings, p. 561; Rev. Barry W. Lynn, on behalf of the National Interreligious Task Force on Criminal Justice, Hearings, p. 1784; Harold Baer, Jr., Chairman, Committee on Criminal and Juvenile Justice, Community Service Society of New York, Hearings, p. 2087; Representative Kevin M. Burke, Massachusetts House of Representatives. Hearings, p. 1802; and Milton G. Rector, President, National Council on Crime and Delinquency, Hearings, p. 1735.

2. AUTHORIZED SENTENCES

The proponents of S. 1437 indicate that they intend to exchange the "indeterminate" sentences of current law for more "determinate" sentences.[63] In an attempt to achieve greater determinancy, S. 1437 makes sweeping changes in present sentencing procedures. A number of people and organizations raised objections to the bill's repeal of some current sentencing provisions as well as its new provisions.

For example, Senior U.S. District Judge Alfonso J. Zirpoli, speaking on behalf of the Judicial Conference of the United States, criticized S. 1437's repeal of the Youth Corrections Act. He indicated that the Judicial Conference believes that it would be a mistake to scrap the provisions of the Youth Corrections Act in their entirety.[64]

While the increased fine levels were generally supported, the new "alternative authorized fine" provision[65] was sharply criticized on three grounds. First, the provision does not preclude use of an alternative fine in situations where multiple civil damages are already available. Second, despite the complexity likely to be involved in determining gain or loss in antitrust, security, or fraud cases, the proposed code provides no procedural safeguards governing the judge's determination of the amount of loss or gain. Third, the provision may require a defendant to choose between the constitutional right to be silent and the need to testify in order to avoid harsh sentences.[66]

The new "Notice to Victims" penalty[67] was also criticized. It was argued that this provision, applicable to an organization that has committed "any offense," when combined with the provisions broadening an organization's liability for acts of its agents,[68] would result in disparate sentences.

> To permit the imposition of such an open-ended sanction for any offense would lead to unwarranted disparity in sentencing, because there would be no standards or criteria to guide the courts in imposing the sanction. Evenhanded application of the sanction is also made difficult because some organizations rely to a much greater extent on public acceptance or goodwill than do others.[69]

The merits of the new "Restitution" penalty were similarly questioned and objected to on several grounds. First, no adversary proceeding is prescribed for determining the amount of the victim's loss or the amount of restitution to be awarded. In complex cases, it is impractical

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[63] See Senate Report No. 95-605, at 883.

[64] Statement of Senior U.S. District Judge Alfonso J. Zirpoli on behalf of the Judicial Conference of the United States, Hearings, p. 1493.

[65] Proposed 18 U.S.C. § 2201(c).

[66] Comments of the Business Roundtable on the Sentencing Provisions of the Proposed Federal Criminal Code Embodied in H.R. 6869, H.R. 2311, and S. 1437 (April 28, 1978), Hearings, p. 2599.

[67] Proposed 18 U.S.C. § 2005.

[68] The organizational liability provision referred to in proposed 18 U.S.C. § 402 by its scope exposes an "organization" to criminal liability for an agent's conduct even if it was unauthorized, contrary to instructions or contrary to the organization's efforts to prevent it.

S. 1437 defines "organization" very broadly. The term includes "a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, estate, society, union, club, church and any other association of persons." Proposed 18 U.S.C. § 111.

[69] Comments of the Business Roundtable on the Sentencing Provisions of the Proposed Federal Criminal Code Embodied in H.R. 6869, H.R. 2311, and S. 1437 (April 28, 1977), Hearings, p. 2603.

to develop procedures within a criminal proceeding by which to identify victims and determine loss.

Second, the provision gives the complaining witness a direct, economic stake in the outcome of a criminal trial. It is argued that the merger of a civil-type remedy for the plaintiff with the traditional criminal remedy on behalf of the state, poses a significant threat to the integrity of the criminal justice system. It not only could encourage the unscrupulous to lodge false criminal charges in order to benefit financially from another's criminal trial, but it would permit an additional ground of attack upon the credibility of the complainant.

Third, the restitution provision engages the prosecutor, at taxpayer's expense, in the task of making private cash recoveries for those experiencing loss, a questionable diversion of the criminal law from its traditional task of representing society in law enforcement, and not to represent or seek economic recoveries for any particular individual or entity.[70]

It was also argued that the creation of separate penalties of "Notice to Victims" and "Restitution," is an unnecessary change in current law since the judge is free now to impose such penalties as conditions of probation.[71] Whether S. 1437 permits these penalties to be imposed as conditions of probation is unclear. Although S. 1437 contains a catchall clause requiring a probationer to "satisfy such other conditions as the court may impose" [72] a close reading of the penalty provisions of the bill suggests that they might not be covered by the catchall clause of the probation provision. Two penalties authorized by S. 1437—fine and imprisonment—are specifically set forth as possible conditions of probation.[73] By mentioning them and failing to mention the other penalties authorized by S. 1437, the probation provision, under the canon of *expressio unius est exclusio alterius*, would appear to preclude imposing the other penalties as conditions of probation.

3. SENTENCING PROCEDURES

Witnesses generally agreed that supplying judges with data concerning current sentencing practices would be an important step toward reducing unwarranted sentence disparity. There was also general agreement that development of a sentencing guideline system is a worthwhile goal. However, many of the witnesses who examined S. 1437 concluded that its proposed sentencing commission and guidelines procedures contain a number of objectionable features.

The Judicial Conference, for example, questioned the bill's method for appointing sentencing commission members. Under S. 1437, the President, with the advice and consent of the Senate, appoints four of the Members "after consultation with the Judicial Conference of the United States." The President chooses the remaining three Members from a list of at least seven judges supplied by the Judicial Conference.[74] The Judicial Conference opposes this appointment

[70] *Id.* at 2603, 2604.
[71] 18 U.S.C. § 3651 empowers the judge to impose as conditions of probation "such terms as the court deems best."
[72] Proposed 18 U.S.C. § 2103(b)(20).
[73] Proposed 18 U.S.C. § 2103(b) (2) and (11).
[74] Proposed 28 U.S.C. § 991(a).

mechanism on the constitutional ground that it would violate the principle of separation of powers.[75]

Constitutional concerns were also raised by Phylis Skloot Bamberger who testified on behalf of the Legal Aid Society of New York. Ms. Bamberger concluded that:

> The effect of the sentencing scheme of S. 1437 is an improper delegation of what is either a legislative or a judicial power to the executive. The sentencing power is placed in the hands of an independent body, the Commission, which is not an Article III court. The ability of the Commission to control sentences is apparent: Four Presidential appointments have the power to set mandatory sentences. The guidelines to be prepared by the Commission need not include a range between a maximum and a minimum term. Even where a range between a maximum and a minimum is included in a guideline, it is expected that eventually such a range will be narrowed or eliminated. Further, the guidelines themselves are a limitation, imposed by the Commission, on the way the courts exercise their power.[76]

Presidential appointment of Commission members was also criticized by those who believed the Commission should be apolitical. Their views were summarized in the prepared statement of the Federal Public and Community Defenders:

> It is clear that the Presidential appointees will control the Commission. See 28 U.S.C. § 994 (a) and (e). It must be recognized that with every change of administration (and therefore political philosophy) we may see a shift in sentencing directives being issued by the Commission. We submit that the guidelines used by the court and Parole Commission should be insulated from the political process.[77]

The functions and duties of the sentencing commission were also analyzed by witnesses who questioned the need to establish a new bureaucratic body. A representative of the Judicial Conference characterized the sentencing commission as "another needless and expensive entity" that "would in many ways duplicate the services currently being performed effectively and efficiently by the Administrative Office of the U.S. Courts and by the Federal Judicial Center."[78]

The suggestion that the Judicial Conference, rather than a newly-created commission, should perform the functions assigned to the sentencing commission in S. 1437 was based upon practical as well as theoretical concerns. Witnesses pointed out that the Judicial Conference is currently authorized by statute to conduct "institutes and joint councils on sentencing." These institutes and councils are to be held "in the interest of uniformity in sentencing procedure" and "for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States."[79]

Witnesses also criticized S. 1437's making commission membership a full-time position with compensation at the same rate as received

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[75] C. H. Imlay and W. R. Burchill, Jr., "Appointment of Commissioners for the Proposed Sentencing Commission Provided by H.R. 6869: Background Paper on the Constitutional Power of Appointment," submitted to the subcommittee on behalf of the Administrative Office of the U.S. Courts, Hearings, p. 1629. *See also*, the statements submitted to the Subcommittee on Criminal Justice on behalf of the Judicial Conference of the U.S. by Senior U.S. District Judge Alfonso J. Zirpoli, Hearings, p. 1479, and United States Circuit Judge Gerald B. Tjoflat, Hearings, p. 1653.

[76] Statement of Phylis Skloot Bamberger, Chief, Appeals Bureau, Federal Defenders Service Unit, Legal Aid Society of New York City, Hearings, p. 1455.

[77] Position Paper and Testimony of the Federal Public and Community Defenders, Hearings, p. 1051.

[78] Statement of U.S. Circuit Judge Gerald B. Tjoflat, Hearings, p. 1670.

[79] 28 U.S.C. § 334(a).

by U.S. Court of Appeals judges. Since current facilities can adequately perform many of the functions of the sentencing commission, its members would not need to give the sentencing commission their full-time attention. Therefore, it was suggested that commission members should only be compensated for the time they actually devote to commission activities.[80]

4. POSTSENTENCE PROCEDURE

The most frequent objections to the postsentence procedures established by S. 1437 focused upon (a) the provisions authorizing sentence appeals, and (b) the substantial changes S. 1437 makes in the current parole system.

(a) *Appellate Review of Sentences.*—Nearly all of the witnesses who addressed the issue were in favor of authorizing some form of appellate review of sentences. Most, however, had strong objections to the appellate review procedures established in S. 1437.[81] Those objections generally centered on two issues: the authorization of appeal by the prosecution, and the limitation placed on a defendant's right to appeal.

Those witnesses who objected to the prosecution appealing sentences based their objections upon constitutional, as well as policy and practical, grounds.

The objections to the provisions in S. 1437 giving the prosecution the right to appeal sentences were succinctly summarized by former Representative David W. Dennis:

> First, I think that such an option on the part of the government may well operate, or can be used, to chill the defendant's right to appeal his conviction on its merits. Second, I believe that this provision is very likely unconstitutional, as violating the double jeojardy clause of the Fifth Amendment by permitting the imposition of a second, increased, and heavier punishment for the same offense.[82]

The chilling effect of the prosecution's right to appeal sentences was pointed out by the Federal Public and Community Defenders with this example:

> Assume defendant files a motion to suppress on fourth amendment grounds. The district court denies the motion and sentences the defendant to a sentence which is under Sentencing Commission guidelines. The defendant is in the untenable position of risking a greater sentence on appeal if he appeals the validity of his conviction and at the same time the government appeals the sentence.[83]

A representative of the Legal Aid Society of New York described the provision permitting the prosecution to appeal as "yet another weapon for coercion of a defendant to surrender his rights (the right to appeal from either the judgment or the sentence) or to cooperate * * *.[84]

The essence of the constitutional argument, as set forth by the Business Roundtable, is that "venerable case law authority indicates that such an appeal [of sentence] by the Government would be in

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[80] Statement of Senior United States District Judge Alfonso J. Zirpoli, on behalf of the Judicial Conference of the United States, Hearings, p. 1492.
[81] Proposed 18 U.S.C. § 3725.
[82] Statement of Hon. David W. Dennis, Hearings, p. 2313.
[83] Position Paper and Testimony of the Federal Public and Community Defenders on the Proposed Federal Criminal Code, Hearings, p. 1054.
[84] Statement of Phyllis Skloot Bamberger, Chief, Appeals Bureau, Federal Defenders Service Unit, Legal Aid Society of New York City, Hearings, p. 1457.

conflict with the fundamental purpose of the double jeopardy clause: to prevent governmental overreaching by preventing the government from having 'two bites at the apple.'" The Roundtable cited this language of the Supreme Court in *Ex parte Lange*, 18 Wall. (85 U.S.) 163, 168 (1874), quoted in *North Carolina* v. *Pearce*, 395 U.S. 711, 717–18 (1969):

> If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. And . . . there has never been any doubt of [this rule's] entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense.[85]

The provision in S. 1437 precluding appeal of sentence when the sentence falls within the sentencing commission's guidelines was criticized. Representative Robert F. Drinan noted that this provision "precludes appeal for a possible real abuse of judicial discretion when the sentence is within the guidelines. It is erroneous to think that no abuses could occur with respect to sentences meted out within the guidelines.[86] The Business Roundtable pointed out further that if a defendant is sentenced within the limits of a guideline, and does not dispute the court's choice of a guideline but wishes to challenge the harshness of the guideline itself, he has no recourse under the provisions of title 18 as proposed in S. 1437.[87]

Those witnesses who argued in favor of removing S. 1437's restrictions on the defendant's right to appeal believed that doing so would not result in overburdening the courts of appeals. The rationale for this conclusion was summarized by U.S. District Judge Morris E. Lasker.

> It may be argued that granting defendants a right of appeal in all cases will impose an unworkable burden on the Court of Appeals. I do not believe this will be so. First, it is unlikely that sentences within the guidelines will often be appealed, and if they are the Appellate Courts should be able to decide them summarily in many instances. Second, where the conviction itself is appealed, a determination as to the propriety of the sentence will add only marginally to the burden of the court.[88]

(*b*) *Parole.*—S. 1437's virtual elimination of the parole function as it presently exists proved quite controversial. Almost all of the witnesses who are expert in the area agreed that S. 1437's approach is unwise and would not be likely to bring about a net reduction in unjustified disparity.

Professor Andrew von Hirsch of Rutgers University, one of the leading spokesmen for determinate sentencing, criticized S. 1437's treatment of the parole function.[89] He pointed out that at present the Federal trial judge makes the threshold decision as to whether or not to imprison a convicted defendant (the "in/out" decision). The U.S. Parole Commission, within the parameters of the judicially fixed maximum term (and minimum term, if imposed), then decides the precise duration of confinement pursuant to its congressionally-mandated guidelines system. This frequently results in lengthy imposed sentences being brought to more realistic and equitable terms of actual confine-

[85] Hearings, p. 2606.
[86] Statement of Hon. Robert F. Drinan, Hearings, p. 2304.
[87] Hearings, p. 2606.
[88] Statement of U.S. District Judge Morris E. Lasker (S.D. New York), Hearings, p. 2476.
[89] Statement of Professor Andrew von Hirsch, Hearings, pp. 1322–29.

ment. Professor von Hirsch argues that a more sensible approach than the one taken by S. 1437 would be to establish a sentencing commission and then see how well it achieves judicial compliance with its guidelines, and the desired reduction of unwarranted disparity, with regard to the critical "in/out" decision—before considering the transfer of power over duration of actual confinement as well. In particular, Professor von Hirsch expressed concern that the "compliance mechanism" provided by the bill (i.e., the procedures to ensure that judges adhere to the guidelines) may be inadequate to insure even-handedness of sentencing, given the complexity of the guidelines and the likelihood that judges may well regard the guidelines as an encroachment upon their traditional independence. Moreover, Professor von Hirsch pointed out that the Parole Commission has only a few officials whose discretion it needs to control, whereas S. 1437's approach will require controlling the discretion of what will soon be more than 500 Federal judges.[90]

The Subcommittee on Criminal Justice also heard from Don M. Gottfredson, Dean of the School of Criminal Justice at Rutgers University, who with Professor Leslie T. Wilkins of the State University of New York directed one of the first studies of sentencing guidelines and aided in the development of the Parole Commission's parole guidelines. Dean Gottfredson indicated that, with a large number of Federal judges sitting individually and interpreting complex guidelines, "considerable room for disparity" in judicial decisions would remain.[91] These problems of inconsistency could be far more effectively prevented in the situation of a small agency with a subordinate corps of hearing examiners, such as the U.S. Parole Commission.[92]

In addition, several people experienced in the operation of a parole guideline system (including Cecil C. McCall, Chairman of the U.S. Parole Commission; Richard T. Mulcrone, chairman of the Minnesota Corrections Board; and Ira Blalock, chairman of the Oregon Parole Board), based upon their own experience, warned that any successful guideline system presupposes a uniformity of application. They doubted that a sentencing commission or the 11 U.S. Courts of Appeals would be in a position to make the sentencing guidelines produce the expected benefits. Chairman Mulcrone also pointed out that Federal judges reflect the widest extremes in American culture, a factor that will only tend to increase unwarranted disparities in sentencing once the U.S. Parole Commission is no longer able to serve its present function of reducing such disparities to the extent that it can and does.[93]

A pessimistic assessment of the appellate courts' ability to function as an effective control mechanism in a decentralized operation was shared by other witnesses, including Professor Michael Tonry of the University of Maryland Law School. Professor Tonry presently heads a project established by supporters of S. 1437 to simulate the process by which the sentencing commission would develop its guidelines. He concluded that "the scanty literature on the effectiveness of appellate review to reduce sentence disparities does not suggest an

[90] *Id.*
[91] Statement of Dean Don M. Gottefredson, Hearings, p. 1388.
[92] *See Id.*
[93] Statement of Richard T. Mulcrone, Chairman, Minnesota Corrections Board, Hearings, p. 2009.

optimistic prediction of the likely activism of the appellate courts in monitoring sentencing decisions." [94] Professor von Hirsch also called attention to the limited scope of review given to the appellate courts and the fact that they are already overworked. The Chairman of the U.S. Parole Commission, Cecil McCall, testified that limiting review to decisions outside the guidelines was unrealistic, for the more complex a guideline system is made, the more it is subject to continual problems of inconsistent interpretation. Moreover, Chairman McCall illuminated a fundamental difference between the S. 1437 sentencing guidelines and the Parole Commission's parole guidelines. A purely mechanical application of the sentencing guidelines—that is, an application of the guidelines without regard to individual factors calling for a decision below the guidelines—could not, under the provisions of S. 1437, be appealed. By contrast, the U.S. Parole Commission's internal appellate system presently reviews such purely mechanical application of the parole guidelines and is thus more flexible.[95]

Chairman McCall pointed to what he called a basic inconsistency of purpose in S. 1437: the desire to limit the burden of appeals courts while at the same time insuring that the appeals courts will be a policing authority adequate to control unwarranted disparities.

The criticisms of S. 1437 pointed to persuasive reasons why the retention of the present paroling authority, the U.S. Parole Commission, which bases parole release decisions on congressionally-mandated parole guidelines and which sets release dates early in the sentence, would be the most practical means of assuring that reform of the sentencing process would bring positive results. This view seemed to be held even by witnesses otherwise critical of the parole guidelines presently employed by the U.S. Parole Commission. For example, John J. Cleary, Director of Federal Defenders of San Diego, who testified on behalf of the National Legal Aid and Defender Association, pointed out that S. 1437 proposes a radical departure from the traditional "checks and balances" approach to the exercise of power by vesting the sentencing power exclusively in the judicial branch. Mr. Cleary opposed the change and recommended instead that the Congress retain a balance of power among the sentencing judge (who has the power to impose imprisonment and set its maximum limit), the U.S. Parole Commission (which has the power to release within the judicial limits), and the institution (which has the power to affect the prisoner's release date through the award of "good-time" credits in the event parole is denied).[96] Much of the testimony along this line urged consideration of the recently enacted Parole Commission and Reorganization Act of 1976 and the significance to the present debate of the reforms contained in that comprehensive statute. The U.S. Parole Commission's parole guidelines were generally regarded as an important start.

Most witnesses, such as Professor Louis B. Schwartz, of the University of Pennsylvania Law School, viewed the retention of parole as a safeguard against arbitrary judicial sentences. As stated by Professor Edith Flynn of Northeastern University, the downgrading

[94] Statement of Professor Michael Tonry, Hearings, p. 1356.
[95] Statement of Cecil C. McCall, Chairman, United States Parole Commission, Hearings, p. 2224.
[96] Statement of John J. Cleary, Hearings, pp. 2242–53.

of parole at this point would simply be "premature." [97] Professor Leslie T. Wilkins pointed out that as long as the bill is going to retain the Parole Commission in any event, there is no need to reduce its decisional powers or modify its procedures.[98]

In sum, there appeared no compelling reason why the U.S. Parole Commission, a successfully functioning existing agency, should not be retained as part of an overall reform to achieve the goals of "certainty" (by setting presumptive release dates at the outset of the sentence) and "reduction of unwarranted disparity" (by the application of durational guidelines).

This was the substance of the testimony of Professor Andrew von Hirsch, who expressed a clear preference for sharply dividing the judicial "in/out" responsibility from the Parole Commission's responsibility for deciding actual duration, at least until the Sentencing Commission's performance with regard to the "in/out" decision might be found to justify a shifting of the responsibility for durational decisions to the judiciary. However, Professor von Hirsch agreed that he would not initially alter the trial judge's authority to set the minimum and maximum terms within which the U.S. Parole Commission would operate.

Finally, retention of a paroling authority was seen by a number of witnesses (such as Professor von Hirsch, Chairman Mulcrone of the Minnesota Corrections Board, and Chairman McCall of the U.S. Parole Commission) as carrying with it a number of other needed advantages, beyond that of being able to achieve a more effective reduction of unjustified disparity. These were:

(1) A parole authority can provide a more realistic assessment of the necessity for incarceration. As explained by Chairman Mulcrone, this is not a question of "expertise," but of an increased opportunity to learn to set "appropriate and fair prison terms." Chairman Mulcrone pointed out that most Federal judges at best are only "part-time" sentencers, whereas parole officials perform the job full-time.[99]

(2) A parole authority can respond evenly and fairly to evolving public attitudes toward the seriousness of certain types of offenses, making retroactive reductions to avoid disparity among the total prison population in the event a change in public attitude has resulted in less severe treatment for certain categories of offenders coming into the system.[100]

(3) Finally, a parole authority, by means of a periodic and systematic review of each case, can respond to changes in individual circumstances that a sentencing judge could not possibly foresee or account for under a system of "determinate" sentences, such as the prisoner's illness, the effects of aging, and so forth. Chairman McCall noted that since judges are human beings, not prophets, it would be unwise to abandon the ability to cut short

[97] Statement of Professor Edith Elisabeth Flynn. Hearings, p. 1913.
[98] Letter from Professor Leslie T. Wilkins to Chairman James R. Mann, Subcommittee on Criminal Justice, dated April 9, 1978. Hearings, p. 2875.
[99] Statement of Richard T. Mulcrone, Chairman, Minnesota Corrections Board. Hearings, p. 2011.
[100] See statement of Cecil C. McCall, Chairman, United States Parole Commission, Hearings, p. 2227; statement of Richard T. Mulcrone, Chairman, Minnesota Corrections Board, Hearings, pp. 2012–13.

unjust incarceration that has also become a burdensome misapplication of tax dollars.[101]

In sum, the testimony presented on the subject of the proposed downgrading of parole reflected a widely-shared concern that the progressive Federal parole system (as reorganized in 1976) be retained in order to provide a counterweight to judicial and prosecutional discretion, at least for the time being. The consensus was also that judges should be given as much input and assistance as possible in achieving a consistent sentencing policy, without unduly impinging on their traditional independence.

PART III

CHAPTER 6. CONCLUSIONS

The Subcommittee on Criminal Justice, as the result of its hearings, roundtable discussions, briefing meetings and markups, has reached two main conclusions.

The first main conclusion is that it is neither essential nor desirable to enact S. 1437 (or a bill similar to it). The federal criminal justice system is not on the verge of collapse; there is no crisis, or impending crisis, which makes it imperative that the Congress restructure, in some manner, the entire Federal criminal justice system. Failure to enact S. 1437 or similar legislation will not have dire consequences for Federal law enforcement and will not endanger the citizenry. In short, the enactment of S. 1437 is not essential.

The enactment of S. 1437 is also not desirable. S. 1437 is an omnibus reform bill. While it does not make as many, or as far-sweeping, changes as previous proposals, such as S. 1 of the 93d and 94th Congresses, enactment of S. 1437 would substantially alter the present Federal criminal justice system. It is virtually impossible to draft a bill that literally translates present Federal criminal statutes into a new format and style. The drafters of S. 1437, however, did not attempt a literal translation. They made several major changes in important areas such as determining sentence length, jurisdiction, and *mens rea*. They also made countless subtle changes in the meaning of current statutes by changing statutory language to conform to the bill's rigid format and style. The overall impact of all of the changes that would be wrought by S. 1437 would be to alter substantially present law.

It has not been shown that the overall impact of the substantial changes that S. 1437 would bring about will be a better, more efficient, and fairer Federal criminal justice system. The overall impact of the bill is uncertain. It would appear likely, for example, that there will be an immediate increase in the appellate court caseload as appeals are brought to work out the practical implications of the new language. Since enactment of recodification legislation is not essential, the subcommittee believes that Congress should proceed cautiously and should not enact an omnibus reform bill unless its overall impact has been carefully and thoroughly assessed.

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[101] Statement of Cecil C. McCall, Chairman, United States Parole Commission, Hearings, p. 2226.

The subcommittee's second main conclusion is that the significant problems of the Federal criminal justice system can best be dealt with individually, in separate pieces of legislation. This will permit a fuller and more thorough exploration and resolution of the issues involved. It will avoid the legislative logrolling that is inevitably associated with omnibus legislation, an evil particularly to be avoided when dealing with criminal laws. Finally, this approach will avoid the delay inherent in the omnibus reform approach—putting off any particular change until the entire reform package has been agreed to.

Clearly, strict adherence to the omnibus approach has already blocked many changes. As obvious example is the often-cited repeal of the current offenses of detaining a Government carrier pigeon (18 U.S.C. 45) and seduction of a female steamship passenger (18 U.S.C. 2198). These deletions and other similar non-controversial changes could have been accomplished with ease if they had not been held up to await passage of a criminal code reform package.

The bill recommended unanimously by the subcommittee, H.R. 13959, is premised upon the approach that significant problems should be dealt with individually. The bill was drafted to limit the areas of substantive change, with the understanding that only noncontroversial changes would be dealt with and controversial changes would be left for detailed individual consideration in separate pieces of legislation.

During the course of its work the subcommittee identified two areas in particular where legislative action is very desirable—fairness in the sentencing process and alternatives to incarceration. The subcommittee recommends that these issues receive priority attention during the 96th Congress.

The subcommittee is not suggesting that other areas of the criminal law be left forever in their current state. Other areas of Federal criminal law ought to be modernized and updated. The Federal homicide statutes, for example, could be redrafted to reflect current thinking and mores, and the redrafted provisions could incorporate much of the style and format of S. 1437. However, because murder is not a frequently-occurring Federal crime (most murders are state offenses), the redrafting of the homicide statutes is not urgently required.

There are serious problems in the Federal criminal justice system which deserve timely congressional consideration. Congressional action on these problems, however, is delayed by the effort to enact omnibus reform legislation. The subcommittee believes that the incremental approach will result in significant improvements in, and modernization of, the Federal criminal justice system and is, therefore, to be preferred over the omnibus approach exemplified by S. 1437.

As indicated above, enactment of an omibus reform bill such as S. 1437 is neither essential nor desirable. Criminal laws affect basic rights protecting the citizen from the sovereign, and they must be drafted with great care. For this reason, the subcommittee has recommended that Federal criminal laws be reformed by dealing with significant problems individually. The subcommittee believes that this approach ensures the thorough, deliberate, and public consideration of individual issues that is essential to the freedom of all citizens.

APPENDIX I

SECTION-BY-SECTION ANALYSIS OF H.R. 13959

On July 28, 1978, the Subcommittee on Criminal Justice voted unanimously to order a clean bill introduced and reported favorably to the full Committee on the Judiciary. That bill, H.R. 13959, restructures present title 18 of the United States Code in order to improve its organization. In the course of the reenactment, the bill makes some substantive changes in present law. Outmoded and unnecessary statutes are repealed. A uniform and graded fine structure is established, and some changes in maximum penalties are made in order to achieve a greater degree of consistency among title 18 offenses. Finally, sentencing provisions are added to promote greater fairness and eliminate unjustified and unwarranted disparities in punishment.

H.R. 13959 is divided into two titles. Title I, "Revision of title 18," reenacts title 18 of the United States Code. Title II contains "Technical and Conforming Provisions."

TITLE I—REVISION OF TITLE 18

Present title 18 is reenacted with a number of organizational, structural, and grammatical changes. Those changes are not intended to, and in the subcommittee's judgment do not, make substantive changes in the provisions involved.

Revised title 18 is divided into four subtitles: Subtitle I—"Crimes;" subtitle II—"Miscellaneous Provisions Relating to Criminal Procedure;" subtitle III—"Sentencing;" and subtitle IV—"Corrections." Appendix II outlines the provisions of revised title 18 and indicates for each provision the current sections of title 18 that it replaces. Appendix II also indicates provisions of current title 18 which are not being carried forward.

SUBTITLE I—CRIMES

Subtitle I ("Crimes") is divided into 53 uneven-numbered chapters, 1 through 105. The chapters, which are arranged alphabetically by captions, contain all of revised title 18's substantive offenses. The offense provisions restate current law with some substantive changes which the Subcommittee believes improve current law.

The substantive changes fall into the following categories: deletion of certain provisions, modification of certain provisions, addition of certain nontitle 18 criminal offenses, and changes in penalties.

The subcommittee deleted, by not reenacting, 29 current substantive offenses found to be outdated and unnecessary. The deleted offenses are:

18 U.S.C. 14—Applicability to Canal Zone—Definition.

18 U.S.C. 45—Capturing or Killing Carrier Pigeons.
18 U.S.C. 439—Indian Enrollment Contracts.
18 U.S.C. 592—Troops at Polls.
18 U.S.C. 593—Interference by Armed Forces.
18 U.S.C. 596—Polling Armed Forces.
18 U.S.C. 604—Solicitation from Persons on Relief.
18 U.S.C. 605—Disclosure of Names of Persons on Relief.
18 U.S.C. 754—Rescue of Body of Executed Offender.
18 U.S.C. 798—Temporary Extension of 794.
18 U.S.C. 928—Separability.
18 U.S.C. 953—Private Correspondence with Foreign Governments.
18 U.S.C. 969—Exportation of Arms, Liquors and Narcotics to Pacific Islands.
18 U.S.C. 1154—Intoxicants Dispensed in Indian Country.
18 U.S.C. 1155—Intoxicants Dispensed on School Site.
18 U.S.C. 1156—Intoxicants Possessed Unlawfully.
18 U.S.C. 1160—Property Damaged in Committing Offense.
18 U.S.Cl. 1161—Application of Indian Liquor Laws.
18 U.S.C. 1582—Vessels for Slave Trade.
18 U.S.C. 1691—Laws Governing Postal Savings.
18 U.S.C. 1714—Foreign Divorce Information as Nonmailable.
18 U.S.C. 1904—Disclosure of Information or Speculation in Securities Affecting Reconstruction Finance Corporation.
18 U.S.C. 1908—Disclosure of Information by National Agricultural Credit Corporation Examiner.
18 U.S.C. 2157—Temporary Extensions of Emergency Powers Continuation Act.
18 U.S.C. 2198—Seducing of Female Passenger.
18 U.S.C. 2385—Advocating Overthrow of Government.
18 U.S.C. 2386—Registration of Certain Organizations.
18 U.S.C. 2391—Temporary Extension of 2388.
18 U.S.C. 2424—Filing Factual Statements About Alien Female harbored for purposes of prostitution.

Revised title 18 modifies three susbtantive offenses of current title 18, sections 552, 1461(a), and 1462. Current 18 U.S.C. 552 reads:

§ 552. Officers aiding importation of obscene or treasonous books and articles

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring abortion or other articles of indecent or immoral use or tendency, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

The corresponding section of revised title 18 reads:

§ 2512. Officers aiding importation of obscene or treasonous books and articles

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring an illegal abortion, or other articles of indecent or immoral use or tendency, shall be imprisoned not more than ten years or fined, or both.

Thus, the subcommittee changed current law to require proof that the offender aided in the mailing of a means of procuring an *illegal* abortion. Under this provision an abortion is "illegal" if it is contrary to the laws of the State in which the abortion is performed. It is the subcommittee's intent that in order to be convicted under this provision a defendant must have knowledge of both the content of the material and its intended purpose.

Current 18 U.S.C. 1461 reads:

§ 1461. Mailing obscene or crime-inciting matter

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

H.R. 13959 amends that provision to read:

§ 6701. Mailing obscene or crime-inciting matter

(a) Every—

(1) obscene, lewd, lascivious, indecent, filthy, or vile article, matter, thing, device, or substance; and

(2)(A) drug, medicine, article, or thing intended by the offender under subsection (b) of this section to be used to produce an illegal abortion;

(B) written or printed notice of any kind—

(i) respecting a drug, medicine, article, or thing intended by the offender under subsection (b) of this section to be used to produce an illegal abortion; or

(ii) intended by the offender under subsection (b) of this section to induce or incite another to produce an illegal abortion;

is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

(b) Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be imprisoned not more than five years or fined, or both, for the first such offense, and shall be imprisoned not more than ten years or fined, or both, for each such offense thereafter.

(c) As used in this section, the term "indecent" includes matter of a character tending to incite arson, murder, or assassination.

Thus, under current law, the offender commits an offense whenever he "knowingly" mails any of the designated abortion materials. Section 6701 of revised title 18 requires proof that the offender specifically intended that the mailed materials be used to produce an illegal abortion. An abortion is "illegal" if it is contrary to the laws of the state in which it is performed.

Current 18 U.S.C. 1462 reads:

§ 1462. Importation or transportation of obscene matters

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

H.R. 13959 amends that provision to read:

§ 6702. Importation or transportation of obscene matters

Whoever—

(1) brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate of foreign commerce—

(A) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character;

(B) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(C) (i) any drug, medicine, article, or thing, with the intent that such drug, medicine, article, or thing be used to produce an illegal abortion;

(ii) any written or printed notice of any kind respecting a drug, medicine, article, or thing, with intent that such drug, medicine, article, or thing be used to produce an illegal abortion; or

(iii) any written or printed notice of any kind with the intent to induce or incite another to produce an illegal abortion; or

(2) knowingly takes from such express company or other common carrier any matter or thing the carriage of which is made unlawful under paragraph (1) of this section;

shall be imprisoned not more than five years or fined, or both, for the first such offense and shall be imprisoned not more than ten years or fined, or both, for each such offense thereafter.

Thus, revised title 18 changes current law by requiring proof that the relevant material or object to be used to produce an illegal abortion and that the offender specifically intended the material or object to be so used. As in the two previous sections, an abortion is "illegal" if it is contrary to the law of the state in which the abortion is performed.

The subcommittee also examined a number of substantive offenses outside title 18 and determined that six of them should be moved into title 18:

1. 21 U.S.C. 675 ("Assaulting, resisting, or impeding certain persons; murder; protection of such persons") (partly carried forward in revised 18 U.S.C. 701, partly carried forward in revised 18 U.S.C. 5304);
2. 21 U.S.C. 1041 ("Penalties; scope of liability") (partly carried forward in revised 18 U.S.C. 701, partly carried forward in revised 18 U.S.C. 5304);
3. 22 U.S.C. 1198 ("Embezzlement of fees or of effects of American citizens) (revised 18 U.S.C. 2934);
4. 22 U.S.C. 1203 ("Depositions and notarial acts; perjury") (revised 18 U.S.C. 2339);
5. 42 U.S.C. 3631 ("Violations; bodily injury; death; penalties") (revised 18 U.S.C. 1307); and
6. 49 U.S.C. 1472 (n) ("Aircraft piracy outside special aircraft jurisdiction of the United States") (revised 18 U.S.C. 306).

The subcommittee, in order to attain a greater degree of consistency among title 18 offenses, changed the maximum prison terms for a number of offenses. The following changes were made:

1. 18 U.S.C. 3 (revised 18 U.S.C. 13(d)): maximum for accessory to an offense punishable by life imprisonment or a maximum prison term of more than 20 years set at 10 years (the same as the maximum for an accessory to a capital offense);
2. 18 U.S.C. 4 (revised 18 U.S.C. 104): maximum changed from 3 to 10 years;
3. 18 U.S.C. 114 (revised 18 U.S.C. 704): maximum changed from 7 to 10 years;
4. 18 U.S.C. 286 (revised 18 U.S.C. 4702): maximum changed from 10 years to 5 years;
5. 18 U.S.C. 479 (revised 18 U.S.C. 2309): maximum changed from 3 to 5 years;
6. 18 U.S.C. 482 (revised 18 U.S.C. 2312): maximum changed from 2 to 5 years;
7. 18 U.S.C. 660 (revised 18 U.S.C. 2920): maximum changed from 10 years to 5 years;
8. 18 U.S.C. 844 (revised 18 U.S.C. 3710(f)): maximum for basic offense changed from 10 years to 20 years, for offense where personal injury results from 20 years to 30 years;
9. 18 U.S.C. 844(i) (revised 18 U.S.C. 3710(i)): maximum for basic offenses changed from 10 years to 20 years, for offense where personal injury results from 20 years to 30 years;

10. 18 U.S.C. 1071 (revised 18 U.S.C. 4901) : maximum where there is a felony warrant issued changed from 5 years to 3 years;
11. 18 U.S.C. 1585 (revised 18 U.S.C. 7304) : maximum changed from 7 years to 10 years;
12. 18 U.S.C. 1588 (revised 18 U.S.C. 7307) : maximum changed from 5 years to 10 years;
13. 18 U.S.C. 2114 (revised 18 U.S.C. 9504) : "not more than" is inserted before "twenty-five years.";
14. 18 U.S.C. 2272 (revised 18 U.S.C. 10102) : maximum changed from life to 10 years.

Subtitle II—Miscellaneous Provisions Relating to Criminal Procedure

Subtitle II ("Miscellaneous Provisions Relating to Criminal Procedure") contains 14 uneven numbered chapters, 201 through 227. This subtitle carries forward provisions of current title 18 except for provisions which consist merely of a cross reference to the Federal Rules of Criminal Procedure or which are outdated and unnecessary. The following sections of current title 18 fall into the latter category:

18 U.S.C. 3005—Counsel and Witnesses in Capital Cases.
18 U.S.C. 3012—Orders Respecting Persons in Custody.
18 U.S.C. 3045—Internal Revenue Violations.
18 U.S.C. 3047—Multiple Warrants Unnecessary.
18 U.S.C. 3055—Officers Powers to Suppress Indian Liquor Traffic.
18 U.S.C. 3113—Liquor Violations in Indian Country.
18 U.S.C. 3165(e)—District Plans—Generally.
18 U.S.C. 3286—Seduction on Vessel of United States.
18 U.S.C. 3321—Number of Grand Jurors: Summoning Additional Jurors.
18 U.S.C. 3435—Receiver of Stolen Property Triable Before or After Principal.
18 U.S.C. 3481—Competency of Accused.
18 U.S.C. 3488—Intoxicating Liquor in Indian Country as Evidence of Unlawful Introduction.

The subcommittee amended one provision in current law—18 U.S.C. 3148 (revised 18 U.S.C. 21707). Under 18 U.S.C. 3148, only an individual charged with a capital offense may be denied release prior to conviction. Revised 18 U.S.C. 21707 permits denial of early release when a defendant is charged with an offense punishable by life imprisonment.

Subtitle III—Sentencing

Subtitle III ("Sentencing") is divided into eight uneven-numbered chapters, 301 through 315. Subtitle III establishes procedures concerning imposition of sentence and defines imposable sentences. Certain provisions of current law are deleted; certain provisions are amended; and a number of new provisions are established.

Provisions of current title 18 that merely cross-reference to the Federal Rules of Criminal Procedure are deleted. In addition, the following provisions, which the subcommittee found to be outdated and unnecessary, are deleted:

18 U.S.C. 3563—Corruption of Blood or Forfeiture of Estate.
18 U.S.C. 3564—Pillary and whipping.
18 U.S.C. 3567—Death Sentence may Prescribe Dissection.

18 U.S.C. 3613—Fines for Setting Grass and Timber Fires.
18 U.S.C. 3614—Fine for Seduction.
18 U.S.C. 3618—Conveyances Carrying Liquor.
18 U.S.C. 3619—Disposition of Conveyances Seized for violation of Indian Liquor Laws.

Minor changes in the following six provisions of current title 18 were made:

1. 18 U.S.C. 3653 authorizes "the court for the district in which he was last under supervision" to issue a warrant for the arrest of a probationer who is no longer under supervision. Revised 18 U.S.C. 30307 changes this provision to authorize "the court of jurisdiction" to issue the warrant. This is intended to facilitate the arrest of a probationer located in a state other than the state in which he was last under supervision.

2. 18 U.S.C. 3654 currently provides that the court "may in its discretion remove a probation officer serving in such court." Revised 18 U.S.C. 30304 provides that "the court may, for cause, remove a probation officer appointed to serve with compensation and may, in the discretion of the court, remove a probation officer appointed to serve with compensation and may, in the discretion of the court, remove a probation officer appointed to serve without compensation." This amendment was adopted upon the recommendation of the Administrative Office of the United States Courts and it was approved by the Judicial Conference of the United States.

3. 18 U.S.C. 3655 lists a number of duties of probation officers. Revised 18 U.S.C. 30305 expands those duties to include two additional duties. The first is that the probation officer must "include in any presentence report required to be submitted to the court information necessary to make a realistic evaluation of sentencing alternatives to imprisonment and a statement concerning the appropriate application of any applicable advisory sentencing guidelines established under section 30101 of this title." This amendment was adopted to encourage probation officers to explore a variety of alternatives to incarceration and to assist sentencing judges in determining suitable alternatives.

The second new duty is that probation officers must "upon request of the attorney general, furnish information about and supervision of, persons in the custody of the attorney general while such persons are on work release, furlough, or other authorized release from their regular place of confinement." This amendment was adopted at the request of the Administrative Office of the United States Courts and it was approved by the Judicial Conference at its April 1972 meeting. According to the Administrative Office, "incorporation of this duty in the statute would give authority to actual practice. Probation officers have been performing this duty for some time."

4. 18 U.S.C. 5038 (a)(1), (2), and (3) were amended to require that courts, and law enforcement and other agencies submit requests for juvenile records "in writing." This amendment merely expands the "in writing" requirement which is currently applicable to directors of a treatment agency or facility to which the juvenile has been committed by the court.

In addition, the subcommittee made changes in current law in the area of probation. One change, in revised 18 U.S.C. 30301, makes a term of probation a sentence. Under current law, probation is imposed following the suspension of either the imposition or the execution of a sentence. This change is merely a change in nomenclature and does not substantively alter a judge's power.

Revised 18 U.S.C. 30312 reenacts conditions of probation currently impossible under 18 U.S.C. 3651. However, the maximum prison component of a so-called "split-sentence" is increased from 6 months to 1 year.

Subtitle III contains five provisions not in current law. The first pertains to advisory guidelines to assist Federal judges to eliminate unwarranted disparities in punishment. Revised 18 U.S.C. 30101 directs the Judicial Conference to gather and analyze data concerning "the sentences imposed by Federal courts in criminal cases and the nature and circumstances of the offenses and the relevant history and characteristics of defendants in those cases" (revised 18 U.S.C. 30101(a)). The Judicial Conference is to disseminate this data on a continuing basis.

Section 30101 also directs the Judicial Conference to develop, on a continuing basis, advisory sentencing guidelines. It is the subcommittee's intent that these guidelines assist the court in determining a just sentence for a particular defendant. The guidelines are not mandatory and the imposition of a sentence outside the guidelines is not a basis for an appeal of sentence.

The advisory guidelines are to be made available at least annually to Federal courts and other interested persons. It is the subcommittee's intent that "other interested persons" be interpreted broadly, and that it include representatives of the prosecution, defense and academic communities.

Prior to issuance of advisory sentencing guidelines, the Judicial Conference is required to hold hearings and take testimony and to "seek the opinions and participation of a broadly representative cross section of persons interested in and concerned with the operation of the Federal criminal justice system, including persons who can ably represent the concerns of the defense bar, prosecutors, and the academic community." It is anticipated that the Judicial Conference will fulfill these duties through a committee whose members are broadly representative of the Federal criminal justice community.

Finally, section 30101(d) requires the Judicial Conference to report to the Congress every year upon its activities under this section and upon any recommendations for further legislation.

The second new provision in Subtitle III is section 30102—"Imposition of Sentence". This section lists four factors the court must consider, and it requires the judge to state on the record the specific reasons for imposing a particular sentence.

The first factor the judge must consider is "the nature and circumstances of the offense and, to the extent available, the relevant history and characteristics of the defendant." Under this provision, the judge would consider the relevant circumstances and factors of the crime (such as whether a weapon was used, the extent of property damage, or the victim's emotional or physical harm). Relevant history and char-

acteristics of the defendant may include a defendant's prior criminal conduct and the nature of any previous criminal sanctions and their effectiveness.

The second factor the sentencing judge must consider is the need for the sentence imposed to accomplish the four most commonly recognized purposes of sentencing. Those purposes are:

(1) "To provide punishment commensurate with the seriousness of the criminal conduct and to promote respect for law";

(2) "To afford adequate deterrence to criminal conduct";

(3) "To protect the public from further crimes of the defendant"; and

(4) "To provide the defendant with appropriate educational or vocational training, medical care, or other correctional treatment in the most effective manner".

The third factor the judge must consider in imposing sentence is "the kinds of sentences available including effective alternatives to imprisonment." By specifically referring to alternatives to imprisonment, the subcommittee hopes to encourage judges to consider a variety of alternatives and to expand their usage.

The final factor the judge must consider in imposing sentence is "any applicable advisory sentencing guidelines and any information made available under section 30101(c)(1) of this title." This provision requires judges to consult the advisory guidelines; it does not require judges to sentence within the guidelines.

Revised 18 U.S.C. 30102(b) requires that at the time of sentencing the judge must state on the record the specific reasons for imposing the particular sentence. Although in most cases the statement will be brief, a somewhat detailed statement would be appropriate when a sentence deviates from the typical sentence in similar cases. Sentencing judges can easily determine the typical sentence imposed in similar cases from sentencing data and advisory guidelines issued by the Judicial Conference. Since the judge's statement of reasons for a sentence will be particularly important in determining whether the sentence is clearly unreasonable on appeal, an appellate court would be justified in returning a case to a sentencing judge for a statement of reasons if the judge failed to make the statement in open court at the time of sentencing.

The third new provision in subtitle III, section 30103, authorizes appeal of a sentence. Under this section a defendant may appeal all sentences unless: (1) The sentence was part of a plea agreement accepted by the judge and was no greater than the sentence which the attorney for the Government agreed to recommend or not to oppose under the Federal Rules of Criminal Procedure or which was agreed to by the attorney for the Government and the defendant under the Federal Rules of Criminal Procedure; or (2) review of the sentence is available under section 30902 (relating to dangerous special offenders).

This section also establishes the procedures for filing an appeal of sentence, including authorizing the defendant to join the sentence appeal with any other appeal of the case. The court of appeals reviews the record of the case to determine if the sentence was "clearly unreasonable". Such a finding should only be made after a thorough review

of all relevant factors in the case, with particular regard for: "(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the opportunity of the district court to observe the defendant; and (3) any findings upon which the sentence was based and the statement of reasons required under section 30102 (b)". A sentence found to be clearly unreasonable is remanded to the district court for further sentencing. Upon remand, the district court may not impose a sentence more severe than the sentence originally imposed.

Finally, sections 30501 and 30502 contain new provisions relating to fines. Section 30501 establishes fine levels applicable to all criminal offenses throughout the United States Code, except as otherwise provided. The new fine levels are:

Individuals:	
Misdemeanors:	
Through 6 months	$2,500
181 days through 1 year	5,000
Felonies:	
1 year and a day through 3 years	15,000
3 years and a day through 5 years	25,000
5 years and a day through 10 years	50,000
Over 10 years	100,000
Organizations:	
Misdemeanors:	
Through 6 months	10,000
181 days through 1 year	100,000
Felonies:	
All	500,000

Section 30502 establishes procedures for imposition of a fine. It requires a judge to consider the following factors in deciding whether to impose a fine and the amount of fine: "(1) the defendant's income, earning capacity, and financial resources; (2) the nature of the burden that payment of the fine will impose on the defendant and on any person who relies upon the defendant for financial support; (3) any requirement imposed upon the defendant to make restitution to the victim of the offense; and (4) any other pertinent equitable consideration."

Subtitle IV—Corrections

Subtitle IV ("Corrections") reenacts provisions of current title 18 relating to corrections, deletes four provisions in current title 18, and amends certain provisions relating to parole, the Advisory Corrections Council, and "good time."

The subcommittee has deleted, by not reenacting, the following four sections of current title 18 which were found to be outdated and unnecessary:

18 U.S.C. 4217—Warrants to Retake Canal Zone Parole Violators.
18 U.S.C. 4321—Board of Advisors.
18 U.S.C. 4353—Authorization of Appropriations.
18 U.S.C. 5022—Applicable Date.

The subcommittee, upon the recommendation of the U.S. Parole Commission, adopted amendments to four current parole provisions.

(1) 18 U.S.C. 4205(e) (revised 18 U.S.C. 41305) was amended to add the requirement that the sentencing court furnish the Parole Commission with "a copy of the complete presentence investigation report in the case of each prisoner eligible for parole as well as any recommendation concerning parole which the court deems appropriate." This amendment will insure that the Parole Commission automatically receives a complete copy of the presentence report in the case of each prisoner who is to be considered for parole and will better enable the Parole Commission to carry out its duties under the Parole Commission and Reform Act of 1976.

(2) 18 U.S.C. 4205(f) (revised 18 U.S.C. 41305(f)) was amended to provide that prisoners serving sentences of 90 days to 1 year are released at expiration of their term minus good time. Under current law such release is available for prisoners whose term is 6 months to 1 year. This subsection was further amended to delete the current exception to the general rule of release for prisoners serving 90 days to one year when "the court which imposed the sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164." This provision was deleted because the provisions for release as if on parole under 18 U.S.C. 4205(f) substantially overlap with, and are operationally less effective, than the present provisions of 18 U.S.C. 3651 (revised 18 U.S.C. 30301). If "after one-third" is interpreted to mean "at one third," then this subsection adds nothing to the sentencing alternatives already available to the court under present section 3651, except to involve a different supervisory agency in a very short term cases. If the language is interpreted to mean "at one third or any time thereafter," a confinement period approaching 10 months in actual time (4 months more than under present section 3651) may be imposed, but then the supervision period becomes inadequate. Furthermore, the subcommittee's amendment of the provisions of present section 3651 to allow a "split sentence" with a confinement portion of up to 1 year more effectively accomplishes the intent of present section 4205(f) by allowing a more adequate period of supervision.

(3) 18 U.S.C. 4205(g) (revised 18 U.S.C. 41305(g)) was amended to authorize the Parole Commission to submit a motion to the court to reduce any minimum term to time served or any other period of time. Under current law such a motion may only be made by the Bureau of Prisons and the sentence may only be reduced to the time already served. This amendment is intended to assist the Parole Commission in reducing unjustified disparity in punishment by seeking reduction of an unusually long minimum term. Such a reduction is necessary in order to permit a prisoner to be considered for parole at the time when others similarly situated prisoners are considered for parole.

(4) 18 U.S.C. 4208(a) (revised 18 U.S.C. 41308(a)) was amended to provide that "following the initial parole determination proceeding, the Parole Commission shall, pursuant to its rules and regulations, set a presumptive date of release." This amendment provides the Parole Commission with a mandate to expand its present administrative practice of setting presumptive release dates following initial parole determination proceedings. A presumptive release date reduces

unnecessary uncertainty and indeterminancy, while at the same time it preserves the Parole Commission's ability to respond to significant changes in prison conduct or other unforseen events.

Minor amendments were also made to three sections in addition to the parole provisions. Present 18 U.S.C. 4351 (revised 18 U.S.C. 40303) was amended to make the Chief of the Division of Probation of the Administrative office of the United States Courts an exofficio member of the Advisory Board of the National Institute of Corrections. Present 18 U.S.C. 5002 (revised 18 U.S.C. 40113) was amended to delete the Chairman of the "Youth Division" from the Advisory Corrections Council since that division no longer exists. Finally, 18 U.S.C. 4161 (revised 18 U.S.C. 41101(a)(1)) was amended to make good time allowances of 5 days available to prisoners serving 90 days to 1 year terms. The minimum term eligible for good time under current law is 180 days.

TITLE II—TECHNICAL AND CONFORMING PROVISIONS

Section 201

Section 201 of the bill provides that, except to the extent that the bill makes a substantive change in a provision of title 18, the legislation does not affect any provision of title 18 as that provision existed prior to the enactment of the bill. Section 201 also provides that the legislation does not, by implication, adopt or endorse any judicial or administrative interpretation of any provision of present title 18.

Section 202

Section 202 of the bill sets January 1, 1980 as the effective date of the legislation.

Sections 203 through 238

Sections 203 through 238 of the bill amend criminal statutes in titles other than title 18 in order to conform fine levels established in revised 18 U.S.C. 30501. Offenses with maximum penalties greater than the penalties in section 30501 are not changed.

Various statutes which currently refer an offense as a "misdemeanor" or a "felony" were also amended to specify maximum prison terms.

Section 203

Section 203 amends title of the United States Code to conform fine provisions to the fine provisions established in revised title 18 section 30501. The following provisions are amended:

Section 203(a) amends Section 8 of the Act of August 4, 1950 (2 U.S.C. 167g).

Section 203(b) amends Section 102 of the Revised Statutes (2 U.S.C. 192).

Section 203(c) amends The Federal Regulation of Lobbying Act in section 310(a) (2 U.S.C. 269(a)); and section 310(b) (2 U.S.C. 269(b)).

Section 203(d) amends Section 11 of the Federal Contested Elections Act (2 U.S.C. 390).

Section 204

Section 204 amends section 3 of title 4 of the United States Code to conform fine provisions to the fine provisions established in revised 18 U.S.C. 30501.

Section 205

Section 205 amends title 7 of the United States Code to conform fine provisions to the fine provisions in revised 18 U.S.C. 30501. The following provisions are amended:

Sec. 205 (a)(1) amends Sections 6b (7 U.S.C. 13a) and 6(c) (7 U.S.C. 13b) of the Commodity Exchange Act.

Sec. 205(a)(2) amends Section 9 of the Commodity Exchange Act (7 U.S.C. 13) in each of subsections (a) and (b); in subsection (c); and in each of subsections (d) and (e).

Sec. 205(a)(3) amends Section 1952(k) of the United States Cotton Futures Act (7 U.S.C. 15B(k)).

Sec. 205 (b)(1) amends Section 9 of the United States Cotton Standards Act (7 U.S.C. 60).

Sec. 205 (b)(2) amends Section 14(a) of the United States Grain Standards Act (7 U.S.C. 87c).

Sec. 205 (b)(3) amends Section 6 of the Naval Stores Act (7 U.S.C. 96).

Sec. 205 (c)(1) amends Section 14(b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 1361(b)), paragraph (1), paragraph (2), and paragraph (3).

Sec. 205 (c)(2) amends Section 108 of the Federal Plant Pest Act (7 U.S.C. 150gg).

Sec. 205 (c)(3) amends Section 10 of the Plant Quarantine Act (7 U.S.C. 163).

Sec. 205 (d)(1) amends Section 205 of the Packers and Stockyard Act, 1921 (7 U.S.C. 195(3)).

Sec. 205 (d)(2) amends Section 306(h) of the Packers and Stockyards Act, 1921 (7 U.S.C. 207(h)).

Sec. 205 (d)(3) amends the last sentence of section 502(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 218a(a)).

Sec. 205 (d)(4) amends Section 401 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221).

Sec. 205 (d)(5) amends Section 30 of the United States Warehouse Act (7 U.S.C. 270).

Sec. 205 (d)(6) amends Section 2 of the Act of August 31, 1922 (7 U.S.C. 282).

Sec. 205(e) amends the Act of March 3, 1927, popularly known as the Cotton Statistics and Estimates Act, (7 U.S.C. 471 et seq.).

(1) in the second sentence of section 2 (7 U.S.C. 472), and (2) in section 3c–2 (7 U.S.C. 473c–2).

Sec. 205 (f) amends the first section of the Act of March 3, 1927 (7 U.S.C. 491).

Sec. 205 (g) amends Section 14(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n(b)).

Sec. 205 (h) amends Section 3 of the Act of January 14, 1929 (7 U.S.C. 503).

Sec. 205 (i) amends Section 12 of the Tobacco Inspection Act (7 U.S.C. 511k).

Sec. 205 (k) (1) amends the last sentence of section 8d(2) of the Agricultural Adjustment Act (7 U.S.C. 608d(2)).

Sec. 205(k) (2) amends Section 15 of the Agricultural Adjustment Act (7 U.S.C. 615 (b–3)) each of paragraphs (1) and (2) and paragraph (3).

Sec. 205(k) (3) amends Section 20 of the Agricultural Adjustment Act (7 U.S.C. 620).

Sec. 205(k) (4) amends the last sentence of section 3 of the Act of June 24, 1936 (7 U.S.C. 953).

Sec. 205(k) (5) amends the Agricultural Adjustment Act of 1938 in section 379i(d) (7 U.S.C. 1379i(d)).

Sec. 205(l) amends Section 4 of the Act of September 21, 1959 (7 U.S.C. 1433).

Sec. 205(n) amends the last sentence of section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1662(h)) "imprisoned not more than one year or fined, or both".

Sec. 205(o) amends the last sentence of section 336 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1986) "be imprisoned not more than two years or fined, or both".

Sec. 205(p) amends the Food Stamp Act of 1964:

In section 6(b) (2) (7 U.S.C. 2015(b) (2)), "imprisoned not more than 1 year or fined, or both";

In each of sections 6(b) (3) (7 U.S.C. 2015(b) (3)), 7(b) (4) (C) (7 U.S.C. 2015(b) (4) (C)), and 7(d) (5) (c) (7 U.S.C. 2016(d) (5) (C)), "imprisoned not more than 10 years, or fined".

In section 6(c) (2) (7 U.S.C. 2015(c) (2)), "imprisoned not more than 1 year or fined";

In section 7(d) (2) (B), "imprisoned not more than 1 year or fined";

In each of sections 7(d) (3) (B) (7 U.S.C. 2016(d) (3) (B)), 7(d) (4) (B) (7 U.S.C. 2016(d) (4) (8)), and 7(d) (5) (B) (7 U.S.C. 2016 (d) (5) (B)), "imprisoned not more than 1 year or fined";

In section 14 in each of subsections (b) and (c) (7 U.S.C. 2023(b) and (c)), "imprisoned not more than 5 years or fined";

In each of subsections (b) and (c) (7 U.S.C. 2023(b) and (c), "imprisoned not more than 1 year or fined"

Sec. 205(q) amends Section 9 of the Farm Labor Contract Registration Act of 1963 (7 U.S.C. 2048).

In subsection (a), "imprisoned not more than 1 year or fined, or both, for a first offense under this subsection, and for a second or subsequent such offense, shall be imprisoned not more than three years or fine";

In subsection (c), "imprisoned 3 years or fined."

Sec. 205(r) amends the Animal Welfare Act—

In sections 16(b) (7 U.S.C. 2146(b))—

(A) "Shall be imprisoned not more than 3 years or fined, or both";

(B) "Shall be imprisoned not more than 10 years or fined, or both";

In the first sentence of section 19(d) (7 U.S.C. 2149) "be imprisoned not more than 1 year or fined";

In section 26(e) (7 U.S.C. 2156(e)), "imprisoned not more than 1 year or fined"

Sec. 205(s) (1) amends the last sentence of section 310(c) of the Potato Research and Promotion Act (7 U.S.C. 2619(c)) "imprisoned not more than 1 year or fined".

Sec. 205(s)(2) amends section 7(c) of the Egg Research and Consumer Information Act (7 U.S.C. 2706(c)) "imprisoned not more than 1 year or fined, or both".

Sec. 205(t) amends section 8 of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2807) "imprisoned not more than 1 year or fined".

Sec. 205(u) amends Section 7(c) of the Beef Research and Information Act (7 U.S.C. 2906(c)) imprisoned not more than 1 year or fined".

In addition, section 205(m) amends Section 408 of the Federal Seed Act (7 U.S.C. 1598) by substituting "present" for "prevent."

Section 206

Section 206 amends title 8 of the United States Code to conform fine provisions to the fine levels established in revised 18 U.S.C. 30501. The following provisions are amended:

Sec. 206(a) amends Section 215(c) of the Immigration and Nationality Act (8 U.S.C. 1185(c)).

Sec. 206(b) amends Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) in subsection (d), and in subsection (e).

Sec. 206(c) amends Section 252(c) of the Immigration and Nationality Act (8 U.S.C. 1282(c)).

Sec. 206(d) amends Section 264(e) of the Immigration and Nationality Act (8 U.S.C. 1304(e)).

Sec. 206(e) amends Section 266 of the Immigration and Nationality Act (8 U.S.C. 1306) in each of subsections (a) and (c), in subsection (b), and (3) in subsection (d).

Sec. 206 (f) amends Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)).

Sec. 206 (g) amends Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325).

Sec. 206 (h) amends Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326).

Sec. 206 (i) amends Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327).

Section 207

Section 207 amends title 10 of the United States Code and related laws to conform fine provisions to the fine levels established in revised title 18 U.S.C. 30501. The following provisions are amended:

Sec. 207 (a) amends Section 2276(c) of title 10 of the United States Code.

Sec. 207(b) amends paragraph (4) and (5) of section 816 of Public Law 94–106 (10 U.S.C. 2304 note).

Sec. 207 (c) amends Section 816(d4)(5) of Public Law 94–106 (10 U.S.C. 2304 note).

Sec. 207 (d) amends Section 816(f) of Public Law 94–106 (10 U.S.C. 2304 note).

Sec. 207 (e) amends Section 7678 of title 10 of the United States Code.

Section 209

Section 209 amends title 2 of the United States Code to conform fine provisions to the provisions established in revised title 18 U.S.C. The following provisions are amended:

Sec. 209. (a) amends the second sentence of section 1(h) of the Act of September 28, 1962 (12 U.S.C. 92a(h)).

Sec. 209 (b) amends the second sentence of section 4 of the Act of March 9, 1933 (12 U.S.C. 95).

Sec. 209 (c) amends Section 5(b)(3) of the Trading with the Enemy Act (12 U.S.C. 95a(3)).

Sec. 209 (d) amends the second sentence of section 211 of the Bank Conservation Act (12 U.S.C. 211).

Sec. 209 (e) amends Section 21(b) of the Act of June 16, 1933 (12 U.S.C. 378(b)).

Sec. 209 (f) amends the 11th paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 617).

Sec. 209 (g) amends the 24th paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 630).

Sec. 209 (h) amends the 25th paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 631).

Sec. 209 (i) amends section 15 of the Agricultural Marketing Act (12 U.S.C. 1141j) in subsection (b), in subsection (c), and in subsection (d).

Sec. 209 (j) amends section 308 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1457).

Sec. 209 (k) amends section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) in subsection (d)(12)(A), in subsection (d)(12)(C).

Sec. 209 (l) amends section 912 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1790-2).

Sec. 209 (m) amends the National Housing Act in section 239(b) (12 U.S.C. 17152-4(b)), in the last sentence of section 402(g) (12 U.S.C. 1725(g)), in section 407(p)(1) and in section 408(j)(2) (12 U.S.C. 1730a(j)(2)).

Sec. 209 (n) amends the Federal Credit Union Act in the second sentence of section 202(d)(3), and in section 206(k) (12 U.S.C. 1786(k)).

Sec. 209 (o) amends the Federal Deposit Insurance Act in section 2(8)(j)(12 U.S.C. 1818(j)), and in section 18 (12 U.S.C. 1828).

Sec. 209 (p) amends section 8 of the Bank Holding Company Act (12 U.S.C. 1847).

Sec. 209 (q) amends section 210 of the Credit Control Act (12 U.S.C. 1909).

Sec. 209 (r) amends section 8(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2067(d)).

Section 210

Section 210 amends chapter 7 of title 13 of the United States Code in section 211, in each of subsections (a) and (b) of section 213, in section 214, and in section 222 to conform fine provisions to the sentencing provisions established in revised title 18.

Section 211

Section 211 amends title 14 of the United States Code to conform fine provisions to the fine sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 211 (a) amends section 431(c) of title 14 of the United States Code.

Sec. 211 (b) amends the last sentence of section 638(b) of title 14 of the United States Code.

Sec. 211 (c) amends the last sentence of section 639 of title 14 of the United States Code.

Section 212

Section 212 amends title 15 of the United States Code and related laws to conform fine provisions to the sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 212 (a)(1) amends the second sentence of section 73 of the Wilson Tariff Act (15 U.S.C. 8).

Sec. 212 (a)(2) amends the second paragraph of section 3 of the Act of June 19, 1936 (15 U.S.C. 13a).

Sec. 212 (a)(3) amends the last sentence of section 10 of the Clayton Act (15 U.S.C. 20).

Sec. 212 (a)(4) amends Section 14 of the Clayton Act (15 U.S.C. 24).

Sec. 212 (a)(5) amends the Federal Trade Commission Act the first paragraph of section 10 (15 U.S.C. 50), the second paragraph of section 10 (15 U.S.C. 50), the last paragraph of section 10 (15 U.S.C. 50), and section 14(a) (15 U.S.C. 54(a)).

Sec. 212 (b) amends the first paragraph of section 10 of the Wool Products Labeling Act (15 U.S.C. 68h), section 11(a) of the Fur Products Labeling Act.

Sec. 212 (c) amends the Act of September 18, 1916 the second paragraph of section 801 (15 U.S.C. 72), section 805 (15 U.S.C. 76) and in the second paragraph of section 806 (15 U.S.C. 77), the second paragraph of section 805 (15 U.S.C. 77), and the third paragraph of section 805 (15 U.S.C. 77).

Sec. 212 (d)(1) amends Section 24 of the Securities Act of 1933 (15 U.S.C. 77x).

Sec. 212 (d)(2) amends Section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa).

Sec. 212 (d)(3) amends Section 8(c) of the Foreign Investment Study Act of 1974 (15 U.S.C. 78b note).

Sec. 212 (d)(4) amends the Securities Exchange Act of 1934 in section 32(a) (15 U.S.C. 78ff(a)).

Sec. 212 (d)(5) amends Section 18 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r) and Section 29 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-3).

Sec. 212 (d)(6) amends the Investment Company Act of 1940 section 42(c).(15 U.S.C. 80a-41(c)) and section 49 (15 U.S.C. 80a-48.)

Sec. 212 (d)(7) amends section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-17).

Sec. 212 (e) amends the China Trade Act 1922 in the last sentence of section 18 (15 U.S.C. 158).

Sec. 212 (f)(1) amends section 2 of the Act of March 4, 1915 (15 U.S.C. 235).

Sec. 212 (f)(2) amends section 2 of the Act of February 21, 1905 (15 U.S.C. 293).

Sec. 212 (f)(3) amends section 5(a) of the Act of June 13, 1960 (15 U.S.C. 298(a)).

Sec. 212 (g) amends section 3 of the Act of August 9, 1955 (15 U.S.C. 377).

Sec. 212 (h) amends the Small Business Act section 16(a) (15 U.S.C. 545(a)), section 16(b) (15 U.S.C. 645(b)) and section 16(c) (15 U.S.C. 645(c)).

Sec. 212 (i) amends the Commodity Credit Corporation Charter Act in each of subsections (a) and (b) of section 15 (15 U.S.C. 714m), section 15(c) (15 U.S.C. 714m(c)), and section 15(f) (15 U.S.C. 714m(f).

Sec. 212 (j) amends section 6 (15 U.S.C. 715e) of the Act of February 22, 1935.

Sec. 212 (k) amends section 21(a) of the Natural Gas Act (15 U.S.C. 717t(a)).

Sec. 212 (l) amends section 3 of the Act of March 14, 1944 (15 U.S.C. 1004) and section 3 of the Act of July 1, 1946 (15 U.S.C. 1007).

Sec. 212 (m)(1) amends section 6 of the Act of January 2, 1951 (15 U.S.C. 1176).

Sec. 212 (m)(2) amends section 7 of the Flammable Fabrics Act (15 U.S.C. 1196).

Sec. 212 (m)(3) amends section 2 of the Act of August 2, 1956 (15 U.S.C. 1212).

Sec. 212 (n) amends section 4(c) of the Automobile Information Disclosure Act (15 U.S.C. 1233).

Sec. 212 (o) amends sections 2 (15 U.S.C. 1242) and 3 (15 U.S.C. 1243) of the Act of August 12, 1958.

Sec. 212 (p) amends section 5(a) of the Federal Hazardous Substances Act (15 U.S.C. 1264(a)).

Sec. 212 (q)(1) amends section 112 of the Truth in Lending Act (15 U.S.C. 1611).

Sec. 212 (q)(2) amends section 134 of the Truth in Lending Act (15 U.S.C. 1644).

Sec. 212 (q)(3) amends section 304(b) of the Consumer Credit Protection Act (15 U.S.C. 1674(b)).

Sec. 212 (q)(4) amends sections 619 (15 U.S.C. 1681q) and 620 (15 U.S.C. 168r) of the Fair Credit Reporting Act.

Sec. 212 (r)(1) amends section 1418 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1717).

Sec. 212(r)(2) amends section 6(a) of the House Protection Act of 1970 (15 U.S.C. 1825(a)) in paragraph (1), in paragraph (2)(A), in paragraph (2)(B), and in paragraph (2)(C).

Sec. 212(s)(1) amends section 14(d) of the Toxic Substances Control Act (15 U.S.C. 2613(d)).

Sec. 212(s)(2) amends section 16(b) of the Toxic Substances Control Act (15 U.S.C. 2615(b)).

Sec. 212(s)(3) amends section 26(d) of the Toxic Substances Control Act (15 U.S.C. 2625(e)).

Section 213

Section 213 amends title 16 of the United States Code to conform sentencing provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 213(a)(1) amends section 3 of the Act of August 25, 1916 (16 U.S.C. 3).

Sec. 212(a)(2) amends section 1 of the Act of March 2, 1933 (16 U.S.C. 9a).

Sec. 213(a)(3) amends section 4 of the Act of May 7, 1894 (16 U.S.C. 26).

Sec. 213(a)(4) amends section 5 of the Act of July 3, 1926 (16 U.S.C. 45e).

Sec. 213 (a)(5) amends section 4 of the Act of June 30, 1916 (16 U.S.C. 98).

Sec. 213(a)(6) amends section 4 of the Act of June 29, 1906 (16 U.S.C. 114).

Sec. 213(a)(7) amends section 4 of the Act of April 25, 1928 (16 U.S.C. 117c).

Sec. 213(a)(8) amends section 3 of the Act of May 22, 1902 (16 U.S.C. 123).

Sec. 213(a)(9) amends section 4 of the Act of August 21, 1916 (16 U.S.C. 127).

Sec. 213(a)(10) amends section 6 of the Act of January 9, 1903 (16 U.S.C. 146).

Sec. 213(a)(11) amends the second paragraph of section 18 of the Act of April 21, 1904 (16 U.S.C. 152).

Sec. 213(a)(12) amends section 4 of the Act of August 22, 1914 (16 U.S.C. 170) and section 4 of the Act of March 2, 1929 (16 U.S.C. 198c).

Sec. 213(a)(13) amends section 4 of the Act of April 16, 1928 (16 U.S.C. 204c) section 3 of the Act of March 6, 1942 (16 U.S.C. 256b).

Sec. 213(a)(14) amends section 8 of the Act of February 26, 1917 (16 U.S.C. 354).

Sec. 213(b) amends the Act of March 2, 1911 (16 U.S.C. 371).

Sec. 213(c)(1) amends section 4 of the Act of April 19, 1930 (16 U.S.C. 395c) section 3 of the Act of August 19, 1937 (16 U.S.C. 403c–3), and section 3 of the Act of March 6, 1942 (16 U.S.C. 408i).

Sec. 213(c)(2) amends section 3 of the Act of April 29, 1942 (16 U.S.C. 403h–3) and section 3 of the Act of June 5, 1942 (16 U.S.C. 404c–3).

Sec. 213(c)(3) amends section 1 of the Act of March 3, 1897 (16 U.S.C. 413).

Sec. 213(d)(1) amends section 2 of the Act of March 3, 1897 (16 U.S.C. 414).

Sec. 213(d)(2) amends the second sentence of section 3(b) of the Act of June 26, 1935 (16 U.S.C. 430v(b)).

Sec. 213(e) amends section 1 of the Act of June 8, 1906 (16 U.S.C. 433).

Sec. 213(f)(1) amends section 4 of the Act of December 22, 1944 (16 U.S.C. 460d).

Sec. 213(f)(2) amends section 4 of the Act of September 28, 1962 (16 U.S.C. 460K–3).

Sec. 213(f)(3) amends section 6 of the Act of October 8, 1964 (16 U.S.C. 460n–5).

Sec. 213(f)(4) amends section 3 of the Act of June 3, 1978 (16 U.S.C. 606).

Sec. 213(f)(5) amends section 7 of the Act of March 10, 1934 (16 U.S.C. 666a).

Sec. 213(f)(6) amends section 1 of the Act of June 8, 1940 (16 U.S.C. 668).

Sec. 213(f)(7) amends section 4 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd).

Sec. 213(f)(8) amends section 204 of the Act of September 15, 1960 (16 U.S.C. 607j).

Sec. 213(f)(9) amends section 9 of the Act of April 23, 1928 (16 U.S.C. 690g).

Sec. 213(f)(10) amends section 2 of the Act of June 13, 1933 (16 U.S.C. 693a).

Sec. 213(g)(1) amends section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) in subsection (a) and in subsection (b).

Sec. 213(g)(2) amends section 11 of the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 730).

Sec. 213(g)(3) amends section 13 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j–1) in subsection (a).

Sec. 213(g)(4) amends section 6(a) of the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772e(a)).

Sec. 213 (g)(5) amends section 5(a) of the Sockeye Salmon or Pink Salmon Fishing Act of 1947 (16 U.S.C. 776c(a)).

Sec. 213 (h) amends the Federal Power Act in section 307(c) (16 U.S.C. 825F9C)), and in section 316(a) (16 U.S.C. 825o(a)).

Sec. 213 (i) amends section 21 of the Tennessee Valley Authority Act (16 U.S.C. 831t) in subsection (b) and in subsection (c).

Sec. 213 (j)(1) amends section 7 of the Act of May 20, 1926 (16 U.S.C. 853).

Sec. 213 (j)(2) amends section 8 of the Whaling Convention Act.

Sec. 213 (j)(3) amends section 10(b) of the Northwest Atlantic Fisheries Act of 1950 (16 U.S.C. 989).

Sec. 213 (j)(4) amends section 11(c) of the North Pacific Fisheries Act of 1954 (16 U.S.C. 1031(c)).

Sec. 213 (j)(5)(A) amends section 207 of the Fur Seal Act of 1966 (16 U.S.C. 1167).

Sec. 213 (j)(B) amends section 404 of the Fur Seal Act of 1966 (16 U.S.C. 1184).

Sec. 213 (k) amends section 7(i) of the National Trail Systems Act (16 U.S.C. 1246(i)).

Sec. 213 (l) amends section 8(a) of the Act of December 17, 1971 (16 U.S.C. 1338(a)).

Sec. 213 (m)(1) amends section 105(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(b)).

Sec. 213 (m)(2) amends section 11(b)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1540).

Sec. 213 (n) amends section 13(d) of the Act of September 28, 1976 (16 U.S.C. 1912(d)).

Section 214

Section 14 amends title 19 of the United States Code to conform sentencing provisions to fine provisions established in revised title 18. The following provisions are amended:

Sec. 214 (a) amends section 3113 of the Revised Statutes (19 U.S.C. 283).

Sec. 214 (b) amends the Tariff Act of 1930 in section 304(e) (19 U.S.C. 1304(e)), the first paragraph of section 436 (19 U.S.C. 1436),

the second paragraph of section 436 (19 U.S.C. 1436), in section 464 (19 U.S.C. 1465), in section 586(e) (19 U.S.C. 1586(e)), and in section 620 (19 U.S.C. 1620).

Sec. 214 (c) amends Section 8 of the Anti-Smuggling Act (19 U.S.C. 1708(b)).

Sec. 214 (d) amends section 319 of the Trade Expansion Act of 1962 (19 U.S.C. 1919).

Sec. 214 (e) amends the Trade Act of 1974 in section 244 (19 U.S.C. 2316), and in section 259 (19 U.S.C. 2349).

Section 215

Section 215 amends title 20 of the United States Code to conform fine provisions to sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 215 (a) amends section 1001(f)(4)(B) of the National Defense Education Act of 1958 (20 U.S.C. 581(f)(4)(B).

Sec. 215 (b) amends the Higher Education Act of 1965 in section 440(a) (20 U.S.C. 1087–4(a)), in each of subsections (b), (c), and (d) of section 440 (20 and in section 440(e) (20 U.S.C. 1087–4(e)).

Section 216

Section 216 amends title 21 of the United States Code to conform fine provisions to sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 216 (a) amends section 3 of the Act of March 4, 1923 (21 U.S.C. 63).

Sec. 216 (b) amends the last sentence of section 6 of the Act of August 30, 1890 (21 U.S.C. 104).

Sec. 216 (c) amends section 7 of the Act of May 29, 1884 (21 U.S.C. 117), section 3 of the Act of February 2, 1903 (21 U.S.C. 122), and section 6 of the Act of March 3, 1905 (21 U.S.C. 127).

Sec. 216 (d) amends section 6(a) of the Act of July 2, 1962 (21 U.S.C. 134e(a)).

Sec. 216 (e) amends section 5 of the Act of February 15, 1927 (21 U.S.C. 145).

Sec. 216 (f) amends the seventh paragraph under the heading "General Expenses, Bureau of Animal Industry" of the Act of March 4, 1913 (21 U.S.C. 158).

Sec. 216 (g) amends the Federal Food, Drug, and Cosmetic Act in section 303(a) (21 U.S.C. 333(a)), in section 303(b) (21 U.S.C. 333(b)) and in section 702A (21 U.S.C. 372a).

Sec. 216(h) amends the Poultry Products Inspection Act in section 12(a) (21 U.S.C. 461(a) and in section 12(c) (21 U.S.C. 461(c)).

Sec. 216(i) amends Section 406(a) of the Federal Meat Inspection Act (21 U.S.C. 676).

Sec. 216(j)(1) amends Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) in paragraph (1)(A), in paragraph (1)(B), in paragraph (2), and in paragraph (3).

Sec. 216(j)(2) amends Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)).

Sec. 216(k) amends Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) in paragraph (1) and in paragraph (2).

Sec. 216(l) amends Section 12(a) of the Egg Products Inspection Act (21 U.S.C. 1041(a)).

Section 217

Section 217 amends laws codified in title 21 of the United States Code to conform fine provisions to the sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 217 (a) amends Section 4064 of the Revised Statutes (22 U.S.C. 253).

Sec. 217 (b) amends Section 5 of the Act of April 29, 1964 (22 U.S.C. 277d–21).

Sec. 217 (c) amends Section 8(c) of the Act of July 31, 1945 (22 U.S.C. 286f(c)).

Sec. 217 (d) amends Section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)).

Sec. 217 (e) amends the Act of November 4, 1939 in section 15 (22 U.S.C. 455).

Sec. 217 (f) amends Section 8 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 618).

Sec. 217(g) amends Section 3(c) of the Act of June 30, 1944 (22 U.S.C. 703(c)).

Sec. 217 (h) amends Section 2 of the Act of June 30, 1902 (22 U.S.C. 1179).

Sec. 217 (i) amends Section 1716 of the Revised Statutes (22 U.S.C. 1182).

Sec. 217 (j) amends Section 1734 of the Revised Statutes (22 U.S.C. 1198).

Sec. 217 (k) amends Section 1736 of the Revised Statutes (22 U.S.C. 1199).

Sec. 217 (m) amends the International Claims Settlement Act of 1950 in section 3(f) (22 U.S.C. 1623(f)), in section 215 (22 U.S.C. 1631n), in section 317(a) (22 U.S.C. 1641x(a)), in section 414 (22 U.S.C. 1642n), and in section 512 (22 1643k).

Sec. 217 (n) amends Section 19(b)(2) of the Peace Corps Act (22 U.S.C. 2518(b)(2).

Section 218

Section 218 amends Section 4 of the Act of March 22, 1906, (24 U.S.C. 154) to conform fine provisions to the sentencing provisions established in revised title 18.

Section 219

Section 219 amends laws codified in title 25 of the United States Code to conform fine provisions to the sentencing provisions established in revised title 18. The following provisions are amended:

Sec. 219 (a) amends Section 3(c) of the Act of August 10, 1967 (25 U.S.C. 70b(c)).

Sec. 219 (b) amends the second sentence of section 5 of the Act of June 25, 1910 (25 U.S.C. 202).

Sec. 219 (c) amends Section 6 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450d).

Section 220

Section 220 amends section 6(b) of the Federal Alcohol Administration Act (27 U.S.C. 206(b) to conform fine provisions to the sentencing provisions established in revised title 18.

Section 221

Section 221 amends Title 28 of the United States Code in section 1864(b), in section 1866(g), in the last sentence of section 1867(f), and in the second paragraph of section 2678 to conform fine provisions to the fine provisions established in revised title 18.

Section 222

Section 222 amends laws codified in title 29 of the United States Code to conform fine provisions to the fine established in revised title 18. The following provisions are amended:

Sec. 222. (a) amends The Labor Management Relations Act, 1947 in section 12 (29 U.S.C. 162) and in section 302(d) (29 U.S.C. 186(d)).

Sec. 222. (b) amends Section 16(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(a).

Sec. 222. (c) amends The Labor-Management Reporting and Disclosure Act of 1959 in section 209 (29 U.S.C. 439), in subsections (c) and (d) of section 301 (29 U.S.C. 461(c) and (d) in section 303(b) (29 U.S.C. 463(b)), in section 501(c) (29 U.S.C. 501(c)), in section 502(b), (29 U.S.C. 502(b)), in section 503(c) (29 U.S.C. 503(c)), in section 504(b) (29 U.S.C. 504(b)), in section 602(b) (29 U.S.C. 522 (b)), and in the last sentence of section 610 (29 U.S.C. 530).

Sec. 222(d) amends Section 10 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 629).

Sec. 222. (e) amends Section 17(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666(g)).

Sec. 222. (f) amends The Employee Retirement Income Security Act of 1974 in section 411(b) (29 U.S.C. 1111(b)), and in section 501 (29 U.S.C. 1131).

Section 223

Section 223 amends section 9 of the Act of October 3, 1961 (30 U.S.C. 689) in subsection (a) and in subsection (b) to conform fine provisions to the fine provisions established in revised title 18.

Section 224

Section 224 amends laws codified in title 31 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 224. (a) amends Section 105(b) of the Act of July 23, 1965 (31 U.S.C. 395(b)).

Sec. 224. (b) Section 3679(i)(1) of the Revised Statutes (31 U.S.C. 665(i)(1)).

Sec. 224(c) Section 750 of the Act of September 22, 1976 (31 U.S.C. 699b).

Sec. 224. (d) amends Section 209 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1058).

Section 225

Section 225 amends laws codified in title 33 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended.

Sec. 225. (a) amends the second sentence of section 4 of the Act of August 18, 1894 (33 U.S.C. 1).

Sec. 225 (b) amends the last sentence of section 5 of the Act of March 3, 1909 (33 U.S.C. 2).

Sec. 225 (c) amends section 3 of chapter XIX of the Act of July 9, 1918 (33 U.S.C. 3).

Sec. 225. (d) amends section 2 of the Act of September 4, 1890 (33 U.S.C. 368).

Sec. (e) amends section 4304 of the Revised Statutes (33 U.S.C. 395).

Sec. (f) amends the first sentence of section 12 of the Act of March 3, 1899 (33 U.S.C. 406).

Sec. (g) amends the last sentence of section 2 of the Act of May 9, 1900 (33 U.S.C. 410).

Sec. (h) amends the first sentence of section 16 of the Act of March 3, 1899 (33 U.S.C. 411).

Sec. (i) amends the Act of June 29, 1888 in section 1 (33 U.S.C. 441), and in section 3 (33 U.S.C. 447).

Sec. 225 (j) amends the second paragraph of section 2 of the Act of August 18, 1894 (33 U.S.C. 452).

Sec. 225 (k) amends section 5 of the Act of August 18, 1894 (33 U.S.C. 499).

Sec. 225. (l) amends the Act of August 21, 1935 in the last sentence of section 4 (33 U.S.C. 506) and in section 5 (33 U.S.C. 507).

Sec. 225. (m) amends section 510 of the Act of August 2, 1946 (33 U.S.C. 533).

Sec. 225. (n) amends section 2 of the Act of February 21, 1891 (33 U.S.C. 554).

Sec. 225. (o) amends the second paragraph of section 11 of the Act of September 22, 1922 (33 U.S.C. 555).

Sec. 225. (p) amends the sentence beginning "And any person" in section 1 of the Act of August 11, 1888 (33 U.S.C. 601).

Sec. 225. (q) amends section 22 of the Act of March 1, 1803 (33 U.S.C. 682).

Sec. 225. (r) amends the Longshoremen's and Harbor Workers' Compensation Act in section 28(e) (33 U.S.C. 928(e)), in section 31 (33 U.S.C. 931), in the last sentence of section 37 (33 U.S.C. 937), and in section 38 (33 U.S.C. 938).

Sec. 225. (s) amends section 9 of the Act of May 13, 1954 (33 U.S.C. 990) in subsection (b), and in subsection (c).

Section 226

Section 226 amends section 186 of title 35 of the United States Code to conform fine provisions to the fine provisions established in revised title 18.

Section 227

Section 227 amends the last sentence of section 9 of the Act of September 21, 1950 (36 U.S.C. 379) to conform fine provisions to the fine provisions established in revised title 18.

Section 228

Section 228 amends laws codified in title 38 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 228. (a).

Sec. 228. (b) amends section 787 of title 38 of the United States Code in subsection (a) and in subsection (b).

Sec. 228. (c) amends section 3405 of title 38, United States Code.

Sec. 228. (d) amends section 3501(a) of title 38, United States Code.

Sec. 228. (e) amends section 3502 of title 38, United States Code.

Section 229

Section 229 amends laws codified in title 40 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 229. (a) amends section 8 of the Act of August 18, 1949 (40 U.S.C. 13m).

Sec. 229. (b) the second sentence of section 15 of the Act of July 29, 1892 (40 U.S.C. 101).

Sec. 229. (c) amends section 8 of the Act of July 31, 1946 (40 U.S.C. 193h) in subsection (a), and in subsection (b).

Sec. 229. (d) amends section 6 of the Act of October 24, 1951 (40 U.S.C. 193s).

Sec. 229. (e) amends section 4 of the Act of June 1, 1948 (40 U.S.C. 318c).

Sec. 229. (f) amends section 106 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 332)

Sec. 229. (g).

Section 230

Section 230 amends Section 4 of the Act of March 8, 1946 (41 U.S.C. 54) to conform fine provisions to the fine provisions established in revised title 18.

Section 231

Section 231 amends law codified in title 42 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 231. (a) amends the Public Health Service Act in section 346(a) (42 U.S.C. 261(a)), in section 346(b) (42 U.S.C. 261(b)), in section 346(c) (42 U.S.C. 261(c)), in section 351(f) (42 U.S.C. 262 (f)), in section 353(h) (42 U.S.C. 263a(h)), and in section 368(a) (42 U.S.C. 271(a)).

Sec. 231. (b) amends section 205 of the Family Planning and Population Research Act of 1975 (42 U.S.C. 300a–8).

Sec. 231. (c) amends the War Hazards Compensation Act in section 203 (42 U.S.C. 1713) and in section 204 (42 U.S.C. 1714).

Sec. 231. (d) amends section 15(d)(2)(B) of the National Science Foundation Act of 1950 (42 U.S.C. 1874(d)(2)(B)).

Sec. 231. (e) amends the Voting Rights Act of 1965 in section 11 (42 U.S.C. 1973i) in section 12 (42 U.S.C. 1973j), in section 205, (42 U.S.C. 1973aa–3), and in section 301(b) (42 U.S.C. 1973bb(b)).

Sec. 231. (f) amends section 4 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd–3).

Sec. 231. (g) amends sections 301 and 302 of the Civil Rights Act of 1960 (42 U.S.C. 1974 and 1974a).

Sec. 231. (h) amends section 102(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975a (g)).

Sec. 231. (i) amends Civil Rights Act of 1964 in the sentence beginning with "Any person" in section 706(b) (42 U.S.C. 2000e–5(b)) in the last sentence of section 709(e) (42 U.S.C. 2000(e)–8(e)), in the last sentence of section 714 (42 U.S.C. 2000e–13), and in the last sentence of section 1003(b) (42 U.S.C. 2000g–2(b)).

Sec. 231. (j) amends the Atomic Energy Act of 1954 in section 229(c) (42 U.S.C. 2278a(c)), and in section 230 (42 U.S.C. 2278b).

Sec. 231. (k) amends section 6(g) of the Act of November 18, 1969 (42 U.S.C. 2462 (g)).

Sec. 231. (l) amends section 626 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971f) in subsection (b).

Sec. 231 (m)(1) amends section 508 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3188) in the last sentence of subsection (a), and in the last sentence of subsection (c).

Sec. 231 (m)(2) amends section 710 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3220).

Sec. 231. (n) amends the Act of April 11, 1968 in the last sentence of section 810(a) (42 U.S.C. 3610(a)), in section 811(f) (42 U.S.C. 3611(f)) and in section 901 (42 U.S.C. 3631).

Sec. 231. (o) amends section 651 of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3791).

Sec. 231. (p) amends section 13(c) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4912(c)).

Sec. 231. (q) amends section 317(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5157(a)).

Sec. 231. (r) amends the Housing and Community Development Act of 1974 in section 611(b) (42 U.S.C. 5410(b)) and in section 621 (42 U.S.C. 5420).

Sec. 231. (s) amends section 522(d) of the Energy Policy and Conservation Act (42 U.S.C. 6392(d)).

Sec. 231. (t) amends section 1007(d) of the Solid Waste Disposal Act (42 U.S.C. 6906(d)).

Section 232

Section 232 amends laws codified in title 43 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 232. (a) amends the second sentence of section 3 of the Act of January 31, 1903 (43 U.S.C. 104).

Sec. 232. (b) amends section 3 of the Act of August 21, 1916 (43 U.S.C. 362).

Sec. 232 (c) amends section 4 of the Act of February 25, 1885 (43 U.S.C. 1064).

Sec. 232. (d) amends the first sentence of section 5(a)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)(2)).

Sec. 232. (e) amends section 20(f)(2) of the Alaska Native Claims Settlement Act (43 U.S.C. 1619(f)(2)).

Sec. 232 (f) amends the Federal Land Policy and Management Act of 1976 in the second sentence of section 303(a) (43 U.S.C. 1733(a)), and in section 313(d) (43 U.S.C. 1743(d)).

Section 233

Section 233 amends laws codified in title 45 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 233. (a) amends the first sentence of section 10 of the Act of April 22, 1908 (45 U.S.C. 60).

Sec. 233. (b) amends section 4 of the Act of September 3, 5, 1916 (45 U.S.C. 66).

Sec. 233. (c) amends the last sentence of section 5256 of the Revised Statutes (45 U.S.C. 81).

Sec. 233. (d) amends the second paragraph of section 15 of the Act of July 2, 1864 (45 U.S.C. 83).

Sec. 233. (e) amends section 9(c) of the Railroad Unemployment Insurance Act (45 U.S.C. 359(c)).

Section 234

Section 234 amends laws codified in title 46 of the United States Code to conform fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 234. (a) amends section 11 of the International Voyage Load Line Act of 1973 (46 U.S.C. 86i) and in subsection (e).

Sec. 234. (b) amends section 8 of the Coastwise Load Line Act, 1935 (46 U.S.C. 88g) in subsection (d), and in subsection (e).

Sec. 234. (c) amends the last sentence of the Act of March 3, 1887 (46 U.S.C. 143).

Sec. 234. (d) amends the Passenger Act of 1882 in the first sentence of the last paragraph of section 4 (46 U.S.C. 154), in the last sentence of section 8 (46 U.S.C. 156a), in the first sentence of section 7 (46 U.S.C. 157), and in section 12 (46 U.S.C. 161).

Sec. 234. (e) amends section 2 of the Act of March 31, 1900 (46 U.S.C. 163).

Sec. 234. (f) amends section 4472(15) of the Revised Statutes (46 U.S.C. 170(15)).

Sec. 234. (g) amends the last paragraph of section 5 of the Act of May 12, 1948 (46 U.S.C. 229e).

Sec. 234. (h)(1) amends the last sentence of section 4445 of the Revised Statutes (46 U.S.C. 231).

Sec. 234. (h)(2) amends the first sentence of section 4450(i) of the Revised Statutes (46 U.S.C. 239(i)).

Sec. 234. (i) amends the second sentence of section 4 of the Act of July 24, 1956 (46 U.S.C. 249e).

Sec. 234. (j) amends section 4336 of the Revised Statutes (46 U.S.C. 277).

Sec. 234. (k) amends section 5(e) of the Act of May 27, 1936 (46 U.S.C. 369(e)).

Sec. 234. (l)(1) amends section 4425 of the Revised Statutes (46 U.S.C. 403).

Sec. 234. (l)(2) amends the last sentence of section 4430 of the Revised Statutes (46 U.S.C. 408).

Sec. 234. (l)(3) amends section 4482 of the Revised Statutes (46 U.S.C. 410).

Sec. 234. (l)(4) amends section 4437 of the Revised Statutes (46 U.S.C. 413).

Sec. 234. (l)(5) amends the second paragraph of section 4456 of the Revised Statutes (46 U.S.C. 452).

Sec. 234. (l)(6) amends section 4488(d) of the Revised Statutes (46 U.S.C. 481(d)).

Sec. 234. (m) amends the proviso in the second paragraph of section 2 of the Act of June 19, 1886 (46 U.S.C. 563).

Sec. 234. (n)(1) amends the second sentence of section 10(a) of the Act of June 26, 1884 (46 U.S.C. 599(a)).

Sec. 234. (n)(2) amends the last sentence of section 10(a) of the Act of June 26, 1884 (46 U.S.C. 599(a)).

Sec. 234. (o)(1) amends the last sentence of section 4551(a) of the Revised Statutes (46 U.S.C. 643(a)).

Sec. 234. (o)(2) amends section 4551(g) of the Revised Statutes (46 U.S.C. 643(g)) in the first paragraph and in the second paragraph.

Sec. 234. (o)(3) amends the sentence beginning "If any person" in section 4561 of the Revised Statutes (46 U.S.C. 658).

Sec. 234. (p) amends the second proviso in section 13(d) of the Act of March 4, 1915 (46 U.S.C. 672(d)).

Sec. 234. (q) amends section 4596 of the Revised Statutes (46 U.S.C. 701) in the fourth paragraph, in the fifth paragraph, in the sixth paragraph, in the seventh paragraph, and in the eighth paragraph.

Sec. 234 (r) amends the first sentence of section 4607 of the Revised Statutes (46 U.S.C. 709).

Sec. 234 (s) amends section 2 of the Act of August 1, 1912 (46 U.S.C. 728).

Sec. 234 (t) amends the Shipping Act, 1916 in the last paragraph of section 9 (46 U.S.C. 808) in the second paragraph of subsection (f) (46 U.S.C. 835(f)) in the second paragraph of section 40 (46 U.S.C. 838), and in the second paragraph (46 U.S.C. 839).

Sec. 234. (u) amends the subsection J(b) of section 30 of the Act of June 5, 1920 (46 U.S.C. 941(b)).

Sec. 234. (v) amends section 806(b) of the Act of June 29, 1936 (46 U.S.C. 1228).

Sec. 234. (w) amends section 3(e) of the Act of June 12, 1940 (46 U.S.C. 1333(e)).

Sec. 234. (x) amends section 34 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1483).

Section 235

Section 235 amends laws codified in title 47 of the United States Code to conform their fine provisions to those established in revised title 18. The following provisions are amended:

Sec. 235. (a) amends section 5 of the Act of August 7, 1888 (47 U.S.C. 13).

Sec. 235. (b) amends the Act of February 29, 1888 in section 1 (47 U.S.C. 21), in section 2 (47 U.S.C. 22), in section 4 (47 U.S.C. 24),

in the first sentence of section 5 (47 U.S.C. 25), and in section 7 (47 U.S.C. 27).

Sec. 235. (c) amends section 4 of the Act of May 27, 1921 (47 U.S.C. 37).

Sec. 235. (d) amends the Communications Act of 1934 in section 220 (e) (47 U.S.C. 220(e)), in section 223 (47 U.S.C. 223), in section 409(m) (47 U.S.C. 409(m)), in section 506(d) (47 U.S.C. 506(d)), and in section 606(h) (47 U.S.C. 606(h)).

Section 236

Section 236 amends laws codified in title 49 of the United States Code to conform their fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 236. (a) amends Part I of the Interstate Commerce Act in the last sentence of section 1(17)(b) (49 U.S.C. (1)(17)(b)), in the proviso of section 10(1), in section 10(2) (49 U.S.C. 10(2)), in section 10(3) (49 U.S.C. 10(3)), and in section 10(4) (49 U.S.C. 10(4)).

Sec. 236. (b) amends section 20(7) of part I of the Interstate Commerce Act (49 U.S.C. 20(7)) in subdivision (b) and in subdivision (f).

Sec. 236. (c)(1) amends the last sentence of section 20a(11) of part I of the Interstate Commerce Act (49 U.S.C. 20a(11)).

Sec. 236. (c)(2) amends the last sentence of section 20a(12) of part I of the Interstate Commerce Act (49 U.S.C. 20a(12)).

Sec. 236. (d) amends section 41 of the Act of August 29, 1916 (49 U.S.C. 121).

Sec. 236. (e) amends section 222(d) of part III of the Interstate Commerce Act (49 U.S.C. 322(d)).

Sec. 236. (f)(1) amends section 317(e) of part III of the Interstate Commerce Act (49 U.S.C. 917(e)).

Sec. 236. (f)(2) amends section 421(e) of part III of the Interstate Commerce Act (49 U.S.C. 1021(e)).

Sec. 236. (g) amends the last sentence of section 10(a) of the International Aviation Facilities Act (49 U.S.C. 1159(a)).

Sec. 236. (h) amends section 902 of the Federal Aviation Act of 1958 in subsection (b) (49 U.S.C. 1472(b)), in subsection (c) (47 U.S.C. 1472(c)), in subsection (f) (49 U.S.C. 1472(f)), in subsection (g) (49 U.S.C. 1472(g)), in subsection (h)(2) (49 U.S.C. 1472(h)(2)), in subsection (i)(1)(A) (49 U.S.C. 1472(i)(1)(A)) and in subsection (i)(1)(B) (49 U.S.C. 1472(i)(1)(B)).

Sec. 236. (i) amends section 902(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1472) in paragraph (1) and in paragraph (2).

Sec. 236. (j) amends section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(m)) in paragraph (1) and in paragraph (2).

Sec. 236. (k) amends section 902(p) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(p)).

Sec. 236. (l) amends section 25 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1725).

Sec. 236. (m) amends the second sentence of section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)).

In addition, section 236 amends section 902 of the Federal Aviation Act in subsection (j) (49 U.S.C. 1472(j)) to provide that an offender

may be "imprisoned not more than 20 years or fined, or both," and any offender who "in the Commission of such act uses a deadly or dangerous weapon shall be imprisoned for life or any term of years, or be fined, or both".

Section 237

Section 237 amends laws codified in Title 50 of the United States Code to conform their fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 237. (a) amends section 13 of the Helium Act (50 U.S.C. 167k).

Sec. 237. (b) amends section 2 of the Act of June 15, 1917 (50 U.S.C. 192) in the undesignated paragraph, and in subsection (a).

Sec. 237. (c) (1) amends the first sentence of section 5306 of the Revised Statutes (50 U.S.C. 210).

Sec. 237. (c) (2) amends the second sentence of section 5313 of the Revised Statutes (50 U.S.C. 217).

Sec. 237. (d) amends section 4(d) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(d)).

Sec. 237. (e) amends the first sentence of section 13(d)(3) of the Subversive Activities Control Act of 1950 (50 U.S.C. 792(d)(3)).

Sec. 237. (f) amends section 15 of the Subversive Activities Control Act of 1950 (50 U.S.C. 794).

Sec. 237. (g) amends section 21(a) of the Subversive Activities Control Act of 1950 (50 U.S.C. 797(a)).

Sec. 237. (h) amends section 6(a) of the Act of August 1, 1956 (50 U.S.C. 855(a)).

Sec. 237 (i) amends section 410(g) of the Act of November 19, 1969 (50 U.S.C. 1436(g)).

Section 238

Section 238 amends laws codified in title 50, Appendix of the United States Code to conform their fine provisions to the fine provisions established in revised title 18. The following provisions are amended:

Sec. 238(a) amends the Trading with the Enemy Act in the second sentence of section 5(b)(3) (50 U.S.C. App. 5(b)(3)), in the second sentence of the fourth paragraph of section 12 (50 U.S.C. App. 12), in section 16 (50 U.S.C. App. 16), and in the last paragraph of section 19 (50 U.S.C. 19).

Sec. 238. (b) amends the last sentence of section 7 of the Act of March 31, 1947 (50 U.S.C. App. 327).

Sec. 238 (c) amends section 12 of the Military Selective Service Act (50 U.S.C. App. 462), in the first sentence of subsection (a), and in the first sentence of subsection (b).

Sec. 238 (d) amends section 6 of the Act of June 19, 1951 (50 U.S.C. App. 473).

Sec. 238 (e) amends the Soldiers' and Sailors' Civil Relief Act of 1940 in section 200(2) (50 U.S.C. App. 520(2)), in section 300(3) (50 U.S.C. App. 530(3)), in section 301(2) (50 U.S.C. App. 531(2)), in section 302(4) (50 U.S.C. App. 532(4)), in section 304(3) (50 U.S.C. App. 534(3)) and in section 305(3) (50 U.S.C. App. 535(3)).

Sec. 238. (f) (1) amends the last sentence of section 1302 of the Act of March 27, 1942 (50 U.S.C. App. 643a).

Sec. 238. (f) (2) amends the last sentence of section 1303 of the Act of March 27, 1942 (50 U.S.C. App. 643b).

Sec. 238. (g) amends section 3 of the Act of June 25, 1942 (50 U.S.C. App. 783).

Sec. 238. (h) amends the last sentence of section 2(a) (4) of the Act of June 28, 1940 (50 U.S.C. App. 1152(a) (4)).

Sec. 238. (i) amends the last sentence of section 403(a) (5) (A) of the Act of April 28, 1942 (50 U.S.C. App. 1191(c) (5) (A)).

Sec. 238. (j) amends section 3(h) of the Act of May 21, 1948 (50 U.S.C. App. 1193(h)).

Sec. 238. (k) amends the second paragraph of section 5 of the Act of July 2, 1948 (50 U.S.C. App. 1985).

Sec. 238. (l) amends the second sentence of section 10 of the War Claims Act of 1948 (50 U.S.C. App. 2009).

Sec. 238. (m) amends the last sentence 214 of the War Claims Act of 1948 (50 U.S.C. App. 2017m).

Sec. 238. (n) amends the last sentence of section 106 of the Micronesian Claims Act of 1971 (50 U.S.C. App. 2019e).

Sec. 238. (o) amends section 705(d) of the Defense Prosecution Act of 1950 (50 U.S.C. App. 2155(d)).

Sec. 238. (p) amends the last sentence of section 204 of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2284).

Section 239

Section 239 repeals provision outside title 18 which H.R. 13959 moves into revised title 18. The folloging provisions are repealed:

Sec. 239. (a) amends the Act of September 13, 1961 (15 U.S.C. 1281 and 1282).

Sec. 239. (b) amends section 405 of the Federal Meat Inspection Act (21 U.S.C. 675).

Sec. 239. (c) amends section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041(c)).

Sec. 239. (d) (1) amends section 1734 of the Revised Statutes (22 U.S.C. 1198).

Sec. 239. (d) (2) amends section 1750 of the Revised Statutes (22 U.S.C. 1203).

Sec. 239. (e) (1) amends section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472).

Sec. 239. (e) (2) amends section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) subsection (c).

Section 240

Section 240 amends title 28 of the United States Code to transfer into section 604(a) conferral of certain powers on the Administrative Office of the United States Courts.

Section 241

Section 241 amends provisions outside of title 18 to conform cross-references to section numbers established in revised title 18.

APPENDIX II

LIST OF WITNESSES WHO TESTIFIED BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE ON RECODIFICATION OF FEDERAL CRIMINAL LAWS

Advisory Corrections Council, Hon. Harold Tyler, Jr., Chairman.

American Bar Association, Prof. William Greenhalgh, Chairperson, Criminal Code Revision Committee, Criminal Justice Section, accompanied by Laurie Robinson.

American Civil Liberties Union, John H. F. Shattuck, Director, Washington Office, accompanied by David E. Landau, Esq.

American Insurance Association, Wilfred J. Perry, Assistant Vice President, Claims-Administration.

American Newspaper Publishers Association, Jerry W. Friedheim, Executive Vice President and General Manager, accompanied by Arthur B. Hanson, General Counsel.

American Society of Newspaper Editors, Anthony Day, Chairman, Freedom of Information Committee.

Americans for Democratic Action, Prof. Louis B. Schwartz, University of Pennsylvania Law School.

Anderson, Rep. Glenn M., 32d Congressional District, California.

Associated Builders and Contractors, Joseph Fagan, General Counsel, accompanied by Hon. John Reed, Director, Governmental Relations.

Associated Press Managing Editors Association, Frank Johnson, Chairman, Freedom of Information Committee.

Association of American Publishers, Henry Kaufman, Legal Counsel.

Association of the Bar of the City of New York, Murray Mogel, Esq.

Bazelon, Hon. David, United States Circuit Judge, District of Columbia Court of Appeals.

Bennett, Rep. Charles E., 3d Congressional District, Florida.

Blalock, Ira, Chairman, Oregon Parole Board.

Burke, Massachusetts State Rep. Kevin M., accompanied by Massachusetts State Rep. Paul Means.

Burns, Hon. James M., United States District Judge, District of Oregon.

Children's Rights, Inc., Arnold I. Miller and Rae Gummel.

Church of the Brethren General Board. See National Interreligious Service Board for Conscientious Objectors.

Citizens Commission on Human Rights, Lee Coleman, M.D., accompanied by Kathleen Wiltsey, Director.

Clark, Sheldon Esq., Cleveland, Ohio.

Coalition to End Grand Jury Abuse, Mary Emma Hixon, Executive Director, accompanied by Linda Backiel, Esq., Grand Jury Project of the National Lawyers Guild.

Commission of Social Action of Reform Judaism, Rabbi David Saperstein, Director, Religious Action Center.

Communist Party U.S.A., Simon W. Gerson, accompanied by John J. Abt., General Counsel.

Community Services Society of New York, Harold Baer, Jr., Esq., Chairman, Committee on Criminal and Juvenile Justice.

Conyers, Rep. John Jr., 1st Congressional District, Michigan.

Creative Alternatives to Prison, Ira Lowe, Esq., accompanied by Tom Donelson.

Dennis, Hon. David W., Dennis, Reinke & Vertesh, Richmond, Indiana.

Direct Selling Association, Neil H. Offen, President.

Drinan, Rep. Robert F., 4th Congressional District, Massachusetts.

Dunn, James, Federal Public Defender, Central District of California.

Federal Bar Association, Arthur L. Burnett, Esq., Chairman, Criminal Law Committee.

Federal Bureau of Prisons, Norman Carlson, Director.

Fiske, Robert B. Jr., United States Attorney, Southern District of New York.

Frankel, Hon. Marvin E., United States District Judge, Southern District of New York.

Freed, Prof. Daniel J., Yale Law School, accompanied by Matthew Heartney.

Freeman, David, Federal Public Defender, Western District of Missouri.

Friends Committee on National Legislation, Prof. Harrop Freeman, Cornell Law School.

Georgetown Juvenile Justice Clinic, Ramona Powell and Wallace Mlyniec, Director.

General Accounting Office, William J. Anderson, Deputy Director, General Government Division.

Gottfredson, Don M., Dean, Rutgers University School of Criminal Justice.

Grand Jury Project of the National Lawyers Guild, see Coalition to End Grand Jury Abuse.

Halperin, Morton H., Director, Center for National Security Studies.

Hill, Rev. Morton A., S.J., New York City.

Hruska, Hon. Roman L., Omaha, Nebraska.

International Association of Chiefs of Police, Glen Murphy, Director, Bureau of Governmental Relations.

Judicial Conference of the United States, Hon. Alfonso J. Zirpoli, United States District Judge, Northern District of California, and Hon. Gerald B., Tjoflat, United States Circuit Judge, Fifth Circuit Court of Appeals.

Kansas Bar Association, Michael Lerner, Esq., Chairman, Criminal Justice Section.

Kennedy, Sen. Edward M.

Labor Organizers Defense Fund, Ronald Kokinda.

Lasker, Hon. Morris E., United States District Judge, Southern District of New York.

Legal Aid Society of New York City, Phylis Skloot Bamberger, Chief, Appeals Bureau, Federal Defenders Service Unit.
Levitas, Rep. Elliott H., 4th Congressional District, Georgia.
Lewis, Prof. Melvin B., The John Marshall Law School.
Liebmann, George Esq., Frank, Bernstein, Conway & Goldman, Baltimore, Maryland.
Lilly, Francis X. Esq., Arent, Fox, Kintner, Plotken & Kahn, Washington, D.C.
Lowenstein, Roger A. Esq., Lowenstein, Sandler, Brodkin, Kohl & Fisher, Newark, New Jersey.
Madison Coalition to Stop S. 1, Peter Nemenyi.
Marcus, Prof. Paul, University of Illinois College of Law.
Marek, Edward, Federal Public Defender, Northern District of Ohio.
Mulcrone, Richard, Chairman, Minnesota Corrections Board.
National Association of Blacks in Criminal Justice, Prof. G. LaMarr Howard, Executive Chairman.
National Association of Chain Drug Stores, Robert J. Bolger, President.
National Coalition to Ban Handguns, Samuel Fields, Field Director.
National Committee Against Repressive Legislation, Prof. Thomas I. Emerson, Yale Law School.
National Conference of State Legislatures. Ohio State Sen. Stanley Aronoff.
National Coordinating Committee for Trade Union Action and Democracy, Norman Roth, Convenor, Chicago, Illinois.
National Council of Jewish Women, Ms. Ray M. S. Tucker, Esq.
National Council on Crime and Delinquency, Milton Rector, President.
National Interreligious Task Force on Criminal Justice, Rev. Barry Lynn, accompanied by Steven Angell.
National Legal Aid and Defender Association, John Cleary, Director. Federal Defenders of San Diego, Inc.
National Moratorium on Prison Construction, Prof. Edith E. Flynn, Northeastern University.
National Organization for Reform of Marijuana Laws, Keith Stroup, National Director.
New Jersey Coalition to Defend the Bill of Rights, Daniel Crystel, Esq.
New Jersey Council of Churches, Rev. Dudley E. Sarfaty, Associate General Secretary.
New York Criminal Bar Association, Herald P. Fahringer, Esq.
Prison Project of the American Civil Liberties Union Foundation, Alvin J. Bronstein, Executive Director.
Quigley, Prof. John B., Ohio State University School of Law.
Railway Labor Executives Association, J. B. Snyder, Chairman, accompanied by Marshall Sage, Research Director, United Transportation Union, and Lawrence M. Mann, Esq.
Reporters Committee for Freedom of the Press, Jack C. Landau, accompanied by Charles J. Sennet.
Rodino, Rep. Peter W. Jr., 10th Congressional District, New Jersey.
Rothstein, Prof. Paul M., Georgetown University Law Center.

Schwartz, Irwin H., Federal Public Defender, Western District of Washington.

Scientific Games International Inc., John Koza, Chairman of the Board.

Sears, Daniel, Federal Public Defender, District of Colorado.

Segal, Terry Esq., Siverman & Kudish, Boston, Massachusetts.

Skelton, Rep. Ike, 4th Congressional District, Missouri.

Small Business Administration, A. Vernon Weaver, Administrator.

Smith, Rep. Neal, 4th Congressional District, Iowa.

Society of Professional Journalists, Robert Lewis, Freedom of Information Committee.

Teske, David, Federal Public Defender, District of Oregon.

Tonry, Prof. Michael, University of Maryland School of Law.

United Electrical, Radio and Machine Workers of America, Lance Compa, Washington Representative.

United States Catholic Conference, Bishop J. Francis Stafford, accompanied by Barbara Stolz, Ph.D.

United States Department of Justice, Attorney General Griffin Bell and Deputy Assistant Attorney General Ronald L. Gainer, accompanied by Karen Scrivseth, Esq.

United States League of Savings Associations, Ira W. Thornton, Jr., President, Bay View Federal Savings & Loan Association, San Mateo, California, accompanied by Hon. Laurie Battle, Legislative Consultant, and John Rasmus, Assistant Vice President, United States League of Savings Associations.

United States Parole Commission, Cecil C. McCall, Chairman, accompanied by Peter Hoffman, Ph.D., Director of Research.

Vincent, Robert, Regional Parole Commissioner, North Central Region, United States Parole Commission.

von Hirsch, Prof. Andrew, Rutgers University School of Criminal Justice.

Washington Council of Lawyers, Larry Mirel, Esq.

Women's Lobby, Carolyn Bode.

Women Strike for Peace, Catherine L. Reeverts.

Younger, Hon. Evelle, Attorney General, State of California.

Zimring, Prof. Franklin E., Director, Center for Studies in Criminal Justice, University of Chicago Law School.

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