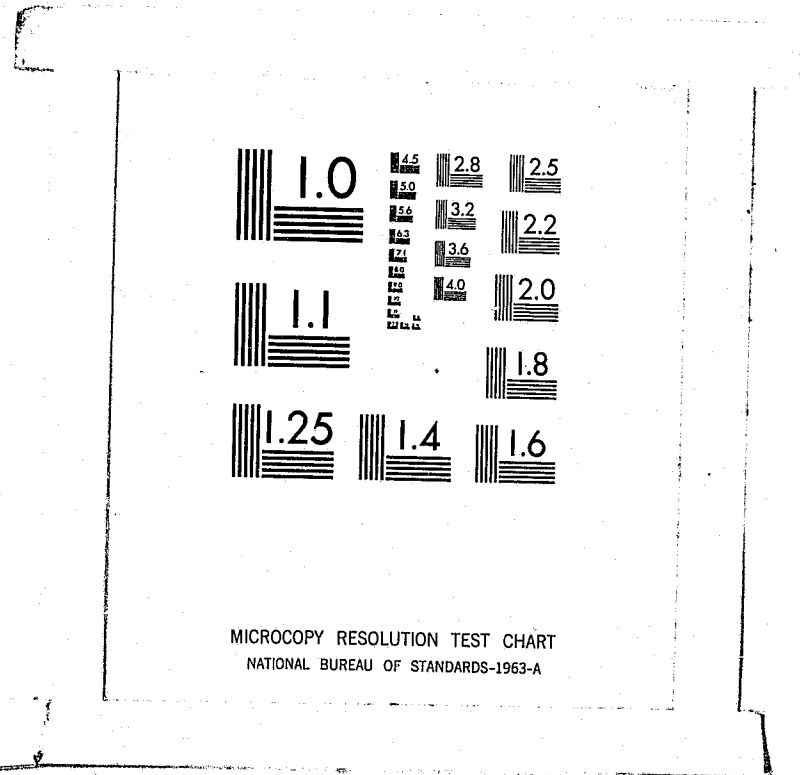


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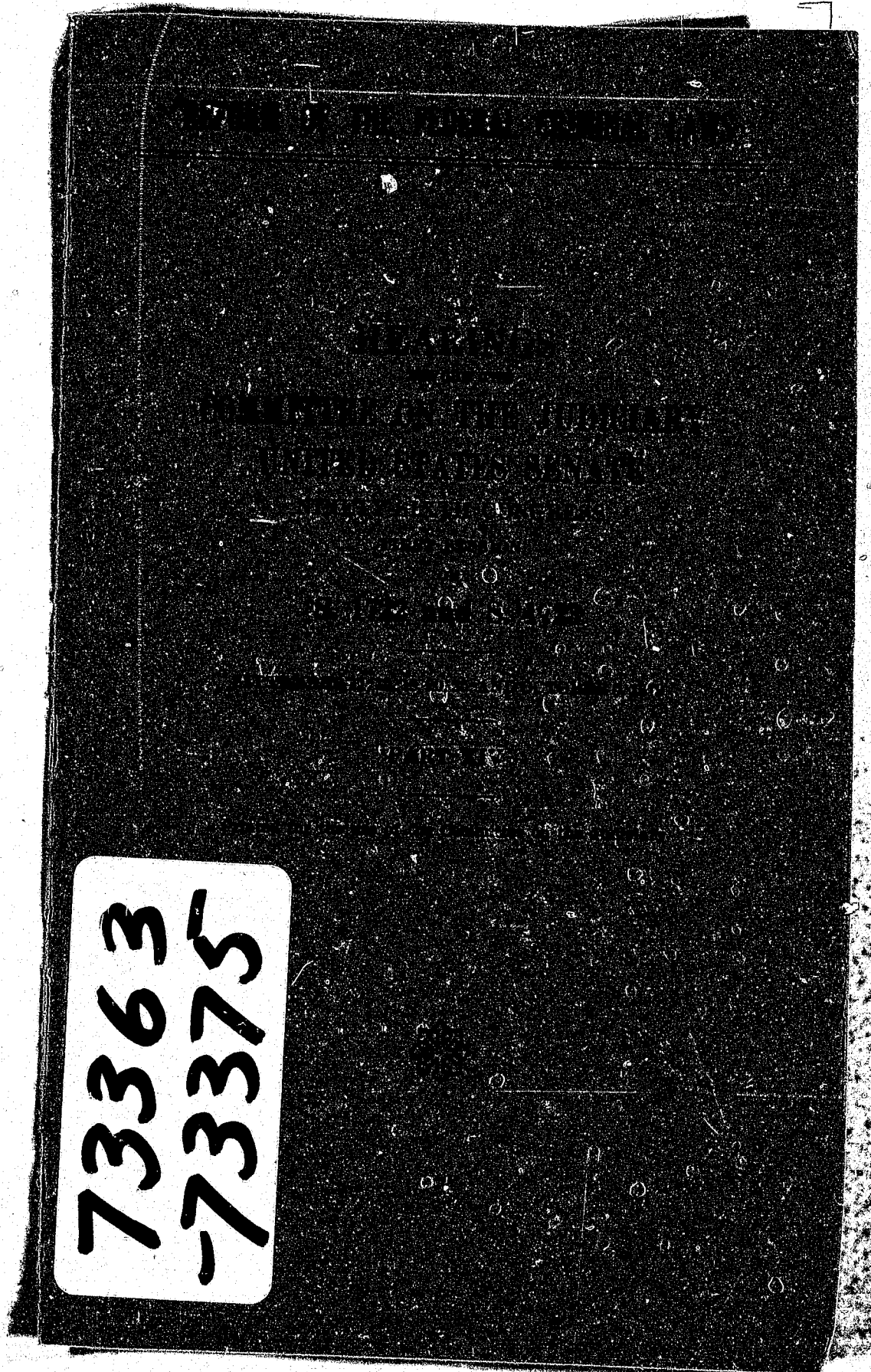
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REFORM OF THE FEDERAL CRIMINAL LAWS

NCJRS

OCT 20 1980

HEARINGS
BEFORE THE
ACQUISITIONS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1722 and S. 1723

SEPTEMBER 11, 13, 18, 20, 25, AND OCTOBER 5, 1979

PART XIV

Printed for the use of the Committee on the Judiciary



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73373

10642

Mr. COOMBS. Thank you, Mr. Chairman.
 [Statement follows:]

June 7, 1978.

STUDY OF THE POSSIBLE IMPACT ON SENTENCE LENGTH AND TIME SERVED IN
 PRISON OF SENTENCING PROVISIONS OF MAJOR CRIMINAL CODE REFORM LEGIS-
 LATION OF THE 95TH CONGRESS

INTRODUCTION

The following is an examination of data developed by the Congressional Research Service to determine through computer analysis the possible impact on sentence length and time served in prison of the sentencing provisions of major legislative proposals of the 95th Congress which would restructure the Federal criminal code. The bills considered are H.R. 6869 (introduced by House Judiciary Committee Chairman Rodino), H.R. 2811 (introduced by Representative Cohen), and S. 1437 (introduced by Senators McClellan and Kennedy) as passed by the Senate on January 30, 1978. This study was requested by the Subcommittee on Criminal Justice of the U.S. House of Representatives Committee on the Judiciary in connection with its consideration of these proposals.

A similar study was requested in 1975 by the Subcommittee on National Penitentiaries of the U.S. Senate Judiciary Committee during that Committee's consideration of S. 1, the major criminal code reform bill of the 94th Congress. In discussions with Subcommittee staff at that time, we ascertained what information would be most useful in consideration of that legislation. A report was issued in March of 1976 showing the results of the examination of those assumptions that were felt to be most crucial at that time.¹ The House Criminal Justice Subcommittee felt that it would be valuable now to develop a similar analysis based on the proposals currently under consideration by the 95th Congress.

Because judicial discretion is the greatest determinant of sentence length, it is impossible to estimate with certainty the change in length of prison sentences that may actually result from statutory change in maximum sentences allowable. There is a significant lack of quantitative analysis in the literature regarding sentencing policy and practices, which means that there are few tools on which to base a predictive model. Therefore, we have made no attempt in our study to use any single model of estimated sentences. We did, however, apply two different but plausible assumptions to our data in order to gauge a likely range of possible sentences and time served in prison under the proposed legislation.

The source of our data was a 20% sample of all Federal offenders sentenced to prison in fiscal year 1974. This sample was drawn from a computer tape provided by the Administrative Office of the United States Courts, which annually collects data on offenders convicted in the U.S. District Courts.² Although we have a high degree of confidence in the data that we have developed, we recognize that there are certain problems in using it as a basis for predictive analysis. First, the 1974 population of convicted offenders may not be similar to the population in subsequent years because of differing proportions of types of convictions or differing law enforcement or prosecutorial priorities. Second, the Administrative Office tape records only the most serious offense that was a basis for conviction in each case without regard to other counts. Therefore, it could be argued that the data on the tape do not accurately reflect the crimes for which there were convictions in 1974. However, the addition of multicount information would have required extensive staff time and most likely would have resulted in distorted sentence length data due to the preponderant practice of sentencing to concurrent rather than consecutive sentences of imprisonment.³ Finally, the bills H.R. 6869 and S. 1437 would establish a U.S. Sentencing Commission to issue guidelines to govern the imposition of sentences for Federal offenses. Because we cannot predict what these guidelines might be, and because judges would still retain discretion to sentence outside the guidelines range in appropriate cases, we have no way at this time to control for the possible effect that guidelines may have on sentencing practices.

¹See Jacobsen, Madeleine, Charlotte J. Moore, and Marjiam S. Saxon. Preliminary Study of the Possible Impact of S. 1 on the Federal Prison Population. Washington, D.C., Library of Congress, Congressional Research Service, March 10, 1976. 25 p.
²At the time the sample was drawn, the data tape for fiscal 1974 was the latest available.
³See Dawson, Robert O. Sentencing: The Decision as to Type, Length and Conditions of Sentence. Boston, Little, Brown & Co., 1969. pp. 207-210.

Despite these considerations, we believe that the data give us sufficient information on the characteristics of the population sentenced to prison in 1974 so that by applying reasonable assumptions, we may be able to provide a fair range of projections as to the possible impact of the sentencing provisions of the various criminal code reform proposals in an area where little such information has heretofore existed. It is our hope that this analysis, with due regard to its limitations, will supply useful information for policymaking purposes.

In summary, the results of our analyses indicated that there would be an estimated overall decrease from current law in average maximum sentences impossible under all three bills examined—a 17.5-percent decrease under H.R. 6869, a 52.7-percent decrease under H.R. 2311, and a 30.8-percent decrease under S. 1437. By applying two different assumptions about what may occur with regard to sentences actually imposed as a result of statutory change, we developed a likely range of possible sentences under each of the bills. We estimated that the range of average imposed sentences under H.R. 6869 would be from 86 to 90 percent of average imposed sentences under current law; the range under H.R. 2311 would be from 47 to 67 percent; and the range under S. 1437 would be from 72 to 86 percent. We further estimated that the elimination of good time by H.R. 6869 might result in a total increase of 8036.9 man-years served in prison (based on the total population of offenders sentenced to prison during fiscal year 1974), an estimated 29.5-percent increase. The almost total elimination of parole and the reduction of statutory good time under S. 1437 might result in a total increase of from 17,127.8 to 25,296 prison man-years, or an estimated increase of from 62.8 to 92.8 percent. Because these figures may be subject to misinterpretation, it is essential that they be viewed only in light of the qualifications presented in the full text. For a full discussion of the assumptions used to arrive at these ranges, see Sections III, IV, and VI, below.

I. DEVELOPMENT OF THE DATA

In March 1975, the Subcommittee on National Penitentiaries of the Senate Committee on the Judiciary asked the Congressional Research Service to analyze the possible impact of S. 1 (94th Congress), a bill to restructure the Federal criminal law, on the Federal prison population. We began by obtaining from the Administrative Office of the United States Courts a computer tape containing detailed information on the conviction and disposition of Federal offenders in 1974. From the tape, we drew a population of cases for which there was a sentence of imprisonment and retained the elements of information on these cases that would be useful to our analysis. Because the "imprisonment" population was an unmanageable number (15,706) on which to develop the new data needed for the study, we drew a 20 percent random sample stratified by judicial district. After testing the accuracy of the proportionate representation in the sample, we believed our sample to be an accurate representation of the full population with regard to types of offenses as well as district distribution.

One of the questions of primary interest to our study was how the likely maximum sentence an offender in our sample would be exposed to if convicted under S. 1 would compare to the maximum sentence under current law. Complete information on the sections of conviction under the current code, as well as details of the offense necessary to determine the probable section of conviction under S. 1, were found to be available only in the offender's presentence or other similar report. With the cooperation of the Probation Division of the Administrative Office of the United States Courts, we obtained available presentence reports or other relevant records for offenders in our sample (by docket number) from all but two U.S. District Courts in the United States. Under a prior agreement with the Probation Division, every effort was made to protect the privacy and security of the information. All work with these records took place on the premises of the Probation Division. No information exists on our computer tape through which the offenders, judges, or probation officers could be identified.

To assure the credibility of our comparison between convictions under current law and under S. 1, at our request the U.S. Department of Justice's Criminal Division provided a legislative attorney with extensive background in the drafting of S. 1 to make the comparative determinations. Briefly, he was asked to identify the title and section number of the U.S. Code under which each offender in the sample had been convicted. In case of a multicount conviction, the title and section number of the offense regarded as the most serious (by maximum

ing of S. 1 to make the comparative determinations. Briefly, he was asked to record the maximum sentence provided by the cited U.S. Code section, and the actual prison sentence the offender received. After recording this information, he was referred to the official version of the offense as provided in the presentence report to determine the probable section of conviction under S.1 and the maximum sentence available for the offense under that section. He was instructed to make the selection of the S. 1 section as comparable as possible to the actual conviction under the current U.S. Code.

Sufficient information was available in the presentence reports to identify most offenders' probable time served in prison through application of parole guidelines issued by the U.S. Parole Commission. Under these guidelines, an offender is assigned a "salient factor score" based on certain individual characteristics such as prior record. This score, coupled with the severity of the offense, determines a fairly narrow range of months that the offender should serve in prison. The Parole Commission, in the great majority of cases, uses this range to determine when an offender should be released on parole.⁴

We contracted with the American University Institute for Advanced Studies in Justice to interpret and record parole guideline information from the presentence reports. The coders, trained in court data collection, were oriented for this specific task by Dr. Peter B. Hoffman of the U.S. Parole Commission, one of the principal designers of the parole guidelines. Parole data were recorded for all cases in our sample except for about 100 for which there was insufficient information.⁵

For our current study, we began with this same data base developed for the original S. 1 study. Based on the S. 1 section numbers and maximum sentences assigned by the Justice Department attorney in that study, we assigned comparable sections of conviction and maximum sentences under each of the three new bills, H.R. 6869, H.R. 2311, and S. 1437. By adding this information to the data base, we were able to make some determinations as to the effect the sentencing provisions of each of these proposals may have on length of sentences and time served in prison for Federal offenders.

II. ANALYSIS OF AVERAGE MAXIMUM SENTENCE POSSIBLE

Although few offenders are sentenced to the maximum statutory limit for imprisonment, it is important to examine the changes in maximum sentences that would occur in H.R. 6869, H.R. 2311, or S. 1437 were enacted because of the possible effect these changes may have on sentences actually imposed.⁶ Table I shows that the average maximum sentence for all offenses in our sample under the present U.S. Code is 9.79 years. Under H.R. 6869, the average maximum for all offenses in our sample is 8.08 years; under H.R. 2311, 4.63 years; and under S. 1437, 6.77 years. Thus, under H.R. 6869 there would be approximately a 17.5 percent decrease in this total average sentence; under H.R. 2311 there would be a 52.7 percent decrease; and under S. 1437 there would be a 30.8 percent decrease.

Among specific offense categories, there is a wide range in the percentage change in average maximum sentences under the three bills. For example, analysis of the largest offense category, narcotics offenses, shows that average maximum sentences would decrease under each of the bills—by 3.9 percent under H.R. 6869, by 39.1 percent under H.R. 2311, and by 20.9 percent under S. 1437. For marijuana offenses, there would be an 8.3-percent increase under H.R. 6869, a 95-percent decrease under H.R. 2311, and a 9.8-percent decrease under S. 1437.

⁴ Hoffman; Peter. Federal Parole Guidelines: Three Years of Experience. U.S. Board of Parole Research Unit Report 10, Nov. 1973, p. 7.

⁵ For more complete details on the development of the original data base, see Jacobsen, Madeleine, Charlotte J. Moore, and Miriam S. Saxon, op. cit., pp. 3-8.

⁶ Maximum terms of imprisonment under the three bills are:

Class of offense	H.R. 6869	H.R. 2311	S. 1437
Class A felony.....	Life.....	15 yr.....	Life.....
Class B felony.....	25 yr.....	7 yr.....	20 yr.....
Class C felony.....	12 yr.....	4 yr.....	10 yr.....
Class D felony.....	6 yr.....	2 yr.....	5 yr.....
Class E felony.....	3 yr.....	1 yr.....	2 yr.....
Class A misdemeanor.....	1 yr.....	1 yr.....	1 yr.....
Class B misdemeanor.....	6 mo.....	6 mo.....	6 mo.....
Class C misdemeanor.....	30 days.....	30 days.....	30 days.....
Infraction.....	5 days.....	5 days.....	5 days.....

For robbery offenses, there would be a 33.9-percent decrease under H.R. 6869, a 68.8-percent decrease under H.R. 2311, and a 44.1-percent decrease under S. 1437.

The average maximums shown in Table I include mandatory consecutive sentences that would apply under H.R. 6869 and S. 1437, i.e., section 1823 of these two bills which mandates consecutive sentences for use of a firearm or dangerous weapon. Excluded from the table are juvenile delinquency offenses and offenses such as conspiracy which under the three bills would carry penalties determined by a related substantive offense (18 U.S.C. 371, 18 U.S.C. 3, 18 U.S.C. 4). As an example of this latter group, if an offender were convicted under 18 U.S.C. 371, the conspiracy section, under H.R. 6869, H.R. 2311, and S. 1437 the penalty would be determined by the offense that is the object of the conspiracy.

TABLE I.—AVERAGE MAXIMUM SENTENCE

Offense type	Offense count	Maximum (years)			
		United States Code	H.R. 6869	H.R. 2311	S. 1437
Homicide.....	15	24.93	26.20	10.13	25.33
Robbery.....	212	22.57	14.91	7.04	12.61
Assault.....	34	7.43	4.53	3.44	4.12
Burglary.....	12	13.75	9.50	3.50	7.92
Larceny and theft.....	221	7.03	3.99	2.67	3.10
Embezzlement.....	40	5.40	4.93	3.33	4.08
Fraud.....	118	4.13	4.84	3.26	3.97
Auto theft.....	188	5.00	5.70	3.81	4.72
Forgery.....	198	10.01	6.34	4.10	5.27
Counterfeiting.....	33	13.48	8.14	6.73	9.55
Sex offenses.....	7	18.29	5.73	6.25	11.09
Marijuana.....	241	5.29	5.73	27	4.77
Narcotics.....	476	13.95	13.41	8.50	11.03
Controlled substances.....	82	8.41	8.04	6.59	6.68
Bribery.....	4	8.50	7.50	4.50	6.00
Escape.....	103	4.97	5.96	3.70	4.97
Racketeering.....	43	12.14	8.72	5.59	7.21
Gambling and lottery.....	26	4.88	5.65	3.77	4.65
Kidnapping.....	13	45.00	12.00	7.00	20.00
Perjury.....	13	5.00	6.00	4.00	5.00
Firearms and weapons.....	169	6.63	5.37	3.54	4.36
Immigration laws.....	70	3.64	1.57	1.17	1.17
Liquor (IRS).....	34	5.00	4.94	3.29	3.94
Federal statutes.....	56	5.09	4.71	3.15	3.87
Other Federal statutes.....	22	8.05	6.55	4.47	5.41
All offenses.....	2,430	9.79	8.08	4.63	6.77

III. ESTIMATED SENTENCE IMPOSED: PROPORTIONATE SENTENCING ASSUMPTION

The only comparative sentence length data contained in our data base are the maximum sentences imposable under the current code and under the code reform bills. However, it is possible to apply assumptions in order to develop data comparing the sentence actually given to each offender in our sample under current law to a possible sentence imposed on each offender under H.R. 6869, H.R. 2311, and S. 1437. The assumption used in Table II is:

If judges currently sentence offenders to some proportion of the statutory maximum for their offenses, they will continue to give sentences of that proportion to the statutory maximum under H.R. 6869, H.R. 2311, and S. 1437 (regardless of whether that offense's maximum increase or decreases).

Based on this assumption, for each case in our data base, we calculated the relationship of the maximum sentence in months under present law to the sentences actually imposed.⁷ We then applied this ratio to the maximum sentence proposed for that offense under H.R. 6869, H.R. 2311, and S. 1437 to arrive at the estimated sentence for each case under each bill. The figures in Table II represent the average maximum sentence and the average sentence actually imposed by offense category under current law, and the average maximum sentence and the average estimated proportionate sentence by offense category for each of the proposed bills. Once again, mandatory consecutive sentences that would apply under H.R. 6869 and S. 1437 were included, and both juvenile delinquency offenses and offenses which would carry penalties determined by a related substantive offense under the three bills were excluded.

⁷ A life sentence was counted as 45 years (540 months).

Examining the results of this analysis, we found that there would be a 7 month overall decrease from current law in average sentences imposed under H.R. 6869 (14 percent), a 27-month decrease under H.R. 2311 (53 percent), and a 14-month decrease under S. 1437 (28 percent).

Applying the assumption to certain individual offense categories, the average sentence received for robbery under H.R. 6869 would decrease by 46 months (33 percent), the average sentence under H.R. 2311 would decrease by 98 months (70 percent), and the average sentence under S. 1437 would decrease by 59 months (42 percent). For narcotics offenses, the average sentence under H.R. 6869 would increase by 2 months (4 percent), the average sentence under H.R. 2311 would decrease by 19 months (33 percent), and the average sentence under S. 1437 would decrease by 8 months (14 percent). For marijuana offenses, the average sentence under H.R. 6869 would increase by 4 months (13 percent), the average sentence under H.R. 2311 would decrease by 31 months (97 percent), and the average sentence under S. 1437 would decrease by 2 months (6 percent). In certain categories, e.g., homicide and sex offenses, the average actual imposed sentence under current law and the average predicted sentence under the proposed bills exceed the average maximum sentence. This results from the fact that in certain instances multicount sentences imposed under present law exceeded the maximum sentence for the most serious offense of conviction.

Certain problems in employing this assumption based on proportionate sentencing should be noted. First, as previously discussed, the data tape received from the Administrative Office contains only the most serious offense of conviction recorded for each offender, i.e., multicount indictments were not recorded on this tape. However, the total prison sentence each offender received was recorded as the sentence given, regardless of whether it may have been a result of multicount concurrent or consecutive sentencing. We have no indication as to how many sentences in Table II are skewed by this problem. However, we do not consider this a serious problem because sentencing for multiple conviction is mainly concurrent, not consecutive (see Introduction, CRS-3). It also could be argued that the proportion of a statutory limit may only be a small consideration in judicial sentencing decisions. Available literature would suggest that numerous factors affect sentencing decisions, such as type of plea, prior record of the defendant, and type of trial.⁸

TABLE II.—ESTIMATED SENTENCE IMPOSED: PROPORTIONATE SENTENCING ASSUMPTION
[In months]

Offense type	United States Code		Maximum H.R. 6869	Possible H.R. 6869
	Maximum	Actual		
Homicide.....	299	1 329	314	1 338
Robbery.....	271	140	179	94
Assault.....	89	32	54	27
Burglary.....	165	73	114	53
Larceny and theft.....	84	37	48	22
Embezzlement.....	65	19	59	18
Fraud.....	50	25	58	29
Auto theft.....	60	37	68	42
Forgery.....	120	36	76	23
Counterfeiting.....	162	43	137	36
Sex offenses.....	219	1 257	98	95
Marijuana.....	63	32	69	36
Narcotics.....	167	57	161	59
Controlled substances.....	101	38	96	39
Bribery.....	102	6	90	7
Escape.....	60	25	72	30
Racketeering.....	146	36	105	29
Gambling and lottery.....	59	10	68	11
Kidnapping.....	540	358	144	96
Perjury.....	60	30	72	36
Firearms and weapons.....	80	31	64	29
Immigration laws.....	44	26	19	13
Liquor (IRS).....	60	18	59	17
Federal statutes.....	61	35	56	43
Other Federal statutes.....	97	84	79	58
All offenses.....	117	51	97	44

⁸ For a discussion of factors affecting sentencing decisions see, Tiffany, Laurence P., et al. A Statistical Analysis of Sentencing in Federal Courts: Defendants Convicted After Trial 1967-1968. Journal of Legal Studies, v. 4, June 1975: pp. 369-390.

	Maximum H.R. 2311	Possible H.R. 2311	Maximum S. 1437	Possible S. 1437
Homicide.....	122	122	304	1 333
Robbery.....	84	42	151	81
Assault.....	41	21	49	24
Burglary.....	66	31	95	44
Larceny and theft.....	32	15	37	17
Embezzlement.....	40	12	49	15
Fraud.....	39	20	48	24
Auto theft.....	45	28	57	35
Forgery.....	49	15	63	19
Counterfeiting.....	81	21	115	30
Sex offenses.....	75	1 81	132	1 135
Marijuana.....	3	1	57	30
Narcotics.....	102	38	132	49
Controlled Substances.....	67	27	80	49
Bribery.....	54	5	72	32
Escape.....	44	18	60	25
Racketeering.....	67	19	87	24
Gambling and lottery.....	45	7	56	9
Kidnapping.....	84	56	240	159
Perjury.....	48	24	60	30
Firearms and weapons.....	43	19	52	23
Immigration and laws.....	14	10	14	10
Liquor (IRS).....	40	11	47	13
Federal statutes.....	38	23	46	37
Other Federal statutes.....	54	43	65	47
All offenses.....	56	24	81	37

¹ The average actual imposed sentence under current law and the average possible sentence under each bill exceeds the average maximum sentence because in certain instances multicount sentences imposed under present law exceeded the maximum sentence for the most serious offense of conviction.

IV. ESTIMATED SENTENCE IMPOSED: IDENTICAL SENTENCING ASSUMPTION

The assumption used in Table III is:

Regardless of any increase or decrease in maximum sentences, judges will continue to give the same sentence for the same case unless that sentence would exceed the maximum sentence allowable under a new criminal code.⁹ Based on this assumption, for each case in our data base, we assigned the same sentence under H.R. 6869, H.R. 2311, and S. 1437 that was actually imposed under the current U.S. Code.¹⁰ If the sentence actually given was longer than the statutory maximum provided for the offense in a bill, the maximum sentence under that bill was assigned instead. The figures in Table III represent the average sentence actually imposed by offense category under current law, and the average estimated sentence under this assumption by offense category for each of the proposed bills. As with the previous analyses, mandatory consecutive sentences that would apply under H.R. 6869 and S. 1437 were included, and juvenile delinquency offenses and offenses which would carry penalties determined by a related substantive offense under the three bills were excluded.

Examining the results of this analysis, we found that there would be a 5-month overall decrease from current law in average sentences imposed under H.R. 6869 (10 percent), a 16-month decrease under H.R. 2311 (33 percent), and a 7-month decrease under S. 1437 (14 percent).

Applying the assumption to individual offense categories, we found that there would be no change in average sentences from current law under H.R. 6869 and S. 1437 for homicide offenses, but there would be a 97 month decrease under H.R. 2311 (49 percent). For narcotics offenses, the average sentence under H.R. 6869 would decrease by 2 months (4 percent), the average sentence under H.R. 2311 would decrease by 6 months (11 percent), and the average sentence under S. 1437 would decrease by 3 months (5 percent). For marijuana offenses, the average sentence under H.R. 6869 would decrease by 3 months (9 percent), the average sentence under H.R. 2311 would decrease by 30 months (94 percent), and the average sentence under S. 1437 would decrease by 4 months (13 percent). In those instances in which the average predicted sentence under a bill equals the average imposed sentence under current law, there were no sentences given

⁹ In fact, language added on the floor of the Senate to S. 1437 specifically directs the U.S. Sentencing Commission in promulgating its guidelines to be guided by average sentences imposed prior to the creation of the Commission.

¹⁰ For purposes of this analysis, all U.S. Code sentences longer than 45 years were counted as 45 years.

under current law which exceed the maximums under the bill. In instances where the average predicted sentence is less than the average actual sentence under current law, there were cases in which the given sentence exceeds the maximum allowed sentence under the bill.¹¹

TABLE III.—ESTIMATED SENTENCE IMPOSED: IDENTICAL SENTENCING ASSUMPTION

Offense type	[In months]			
	Actual United States Code	Possible		
		H.R. 6869	H.R. 2311	S. 1437
Homicide	199	199	102	199
Robbery	134	121	74	114
Assault	32	26	29	26
Burglary	73	65	51	63
Larceny and theft	37	29	24	25
Embezzlement	19	18	16	18
Fraud	25	23	20	22
Auto theft	37	36	34	35
Forgery	36	32	29	31
Counterfeiting	43	43	40	43
Sex offenses	165	77	72	103
Marihuana	32	29	2	28
Narcotics	57	55	51	54
Controlled substances	38	37	35	37
Bribery	6	6	6	6
Escape	25	25	21	25
Racketeering	35	31	29	29
Gambling and lottery	10	10	10	10
Kidnapping	254	127	81	175
Perjury	30	26	23	25
Firearms and weapons	31	30	27	29
Immigration laws	26	15	12	12
Liquor (IRS)	18	18	16	16
Federal statutes	23	22	15	21
Other Federal statutes	54	42	38	38
All offenses	49	44	33	42

V. COMPARISON OF RESULTS UNDER PROPORTIONATE AND IDENTICAL SENTENCING ASSUMPTIONS

By applying two plausible assumptions about what may occur as a result of statutory change in sentencing provisions under three criminal code reform proposals (H.R. 6869, H.R. 2311, S. 1437), we have developed a likely range of possible sentences for each of the proposals.

Under all three bills we found that there would be an overall decrease in average sentences regardless of whether the proportionate or identical sentencing assumption is applied. Under all three bills the assumption of proportionate sentencing leads to overall average sentences equal to or lower than overall average sentences under the identical sentencing assumption.

The range of overall average sentence lengths estimated by these two assumptions under each of the proposed bills is as follows:

H.R. 6869: 86-90 percent of average imposed sentences under current law.

H.R. 2311: 47-67 percent of average imposed sentences under current law.

S. 1437: 72-86 percent of average imposed sentences under current law.

VI. ESTIMATED TIME SERVED IN PRISON

In addition to the possible effect of the criminal code reform proposals on length of sentences imposed, we also examined other provisions of the bills which would directly affect actual time served in prison.

Under present law there are three major means (excluding death or revocation of sentence) by which an individual can be released from prison: (1) parole, (2) mandatory release, or (3) expiration of sentence. Mandatory release involves an inmate's early release due to accumulated time off for good conduct in prison ("good time") under a formula provided in 18 U.S.C. 4161. Offenders who are paroled are, in the majority of cases, released according in the U.S. Parole Com-

¹¹ The discussion in the previous section concerning the limitations of the Administrative Office tape in that it contains only the most serious offense of conviction applies equally to this analysis.

mission guidelines. Thus, the parole guidelines and "good time" are the two crucial factors affecting the time an offender is incarcerated.

In Table IV the average time that would be served by offenders in the sample under the present U.S. Code was estimated as follows: first, the good time formula of 18 U.S.C. 4161 was applied to each offender's sentence in order to derive a predicted release date. Although good time can be withdrawn for disciplinary reasons, the maximum possible good time was applied because U.S. Bureau of Prisons authorities estimate that most offenders who are released due to accumulated good time are released with 80 to 90 percent of their potential statutory good time intact. Inmates may also earn extra good time for industrial work or meritorious service but this could not be accounted for in this study. The predicted parole guidelines date of release was then calculated for each offender.¹²

The midpoint of the offender's appropriate range of months to be served in prison according to the guidelines was chosen as the number of months that would be served until release. In the case of the severity of an offense being ranked "greatest," the median months actually served by this group according to Parole Commission data was used.

A comparison was then made of each offender's predicted parole guideline release date and the predicted release date based on statutory good time. Based on the assumption that offenders are released by the earlier of these two means, the earlier date was selected as the release date.¹³ The average time served was then calculated by offense category both for the group of individuals who would probably be released on their parole guideline date and for the group who would probably be released with accumulated good time. The average number of months served was then calculated for both groups combined to establish the estimated average time to be served under present law for all offenders in our sample (20.7 months).

H.R. 6869 would maintain parole release but would eliminate statutory good time. Therefore, a calculation was made of the average months that would be served assuming all offenders in our sample were released at their parole guideline date, to reflect the proposed elimination of good time under this bill. We assumed that all offenders would be paroled and that none would serve their entire prison sentence. Then, the average number of months served under the present U.S. Code was subtracted from the average months served under H.R. 6869 to establish what, if any, additional amount of time (labeled in Table V as "extra time served") offenders would serve under H.R. 6869 with no "good time" provisions.

This "extra time served" data was used to calculate the effects of H.R. 6869 in terms of additional prison man-years. For example, even though H.R. 6869 would only cause our sample of individuals convicted of robbery to serve an average of 2 months longer in prison, this figure, multiplied by the 207 robbers in our sample would result in 34.5 additional years spent in prison for this group of offenders.

In Table V the estimated average time served for our sample under the current U.S. Code is 20.7 months. The average time served estimate for the same group of offenders under H.R. 6869 would be 26.8 months, a difference of approximately 6.1 months resulting from the lack of good time under H.R. 6869. This additional 6.1 months would increase prison man-years by 1,181.9 years for our sample alone.

The 1974 population from which we drew our original sample contained 15,706 offenders sentenced to some term of imprisonment. The results presented in Table V are based on only 2,325 of these. Therefore, if this 1,181.9-year increase in man-years under H.R. 6869 were projected to the total 1974 population of offenders sentenced to prison, we estimate that the total average increase in prison man-years under H.R. 6869 would be 8,036.9 years. This represents a 29.5 percent increase over the estimate of prison man-years under current law.

H.R. 2311, like H.R. 6869, would maintain parole release and eliminate good time. However, the authorized maximum sentences under this bill are so greatly reduced from current law¹⁴ that there is no reason to believe the parole guidelines would be maintained in their present form were it enacted. Therefore, there would be little value in applying the time served analysis to H.R. 2311.

S. 1437 would maintain both parole release and statutory good time, though not in the same form as under current law. Under this bill as passed by the

¹² It should be noted that there have been minor changes in the parole guidelines since the data was first recorded for the original study. However, it is believed that these changes would have little effect on the outcome.

¹³ A few offenders serve their entire sentence, but we could not account for these.

¹⁴ See footnote 6, page CRS-8.

Senate, the normal sentence to imprisonment would be served in full with no eligibility for parole; only in the "unusual" case in which a defendant is sentenced for rehabilitative purposes would it be contemplated that a judge would specify that a defendant is eligible to be considered for early release on parole.¹⁵ Those individuals who are not made eligible for parole would earn good time at the rate of three days per month after the first year of imprisonment—a lesser amount than can be earned under current 18 U.S.C. 2141. Calculations were made of the average months that would be served assuming all offenders in our sample were ineligible for parole and earned the maximum possible good time under S. 1437. Since good time earned must be subtracted from an offender's actual sentence, we made these calculations using the proportionate and identical sentencing assumptions discussed in Parts III and IV, which means that the following analysis of extra time served under S. 1437 is based on sentencing practices closely approximating those under current law. It should be emphasized that S. 1437 would establish a U.S. Sentencing Commission to promulgate guidelines for sentencing by Federal judges. We have no way to predict what these guidelines might be or how they will affect sentencing practices. However, the clear intent of the legislation is that these guidelines should be drafted with the abolition of the parole function in mind.¹⁶ Therefore, it is reasonable to assume that were the guidelines available, the estimated average time served under S. 1437 would be somewhat reduced from that of the following analysis which does not take into account any alteration in sentencing practices under sentencing guidelines.

In Table VI the estimated average time served for our sample under S. 1437, assuming all earned good time and using the proportionate sentencing assumption, would be 35.3 months, a difference of 14.6 months from our estimate of 20.7 months under current law. This additional 14.6 months would increase prison man-years by 2,828.8 years for our sample, and by 19,235.8 years for the total 1974 population of offenders sentenced to prison. This represents a 70.5 percent increase over the estimate of prison man-years under current law.

In Table VII the estimated average time served for our sample under S. 1437, assuming all earned good time and using the identical sentencing assumption, would be 39.9 months, a difference of 19.2 months from our estimate under current law. This additional 19.2 months would increase prison man-years by 3,720 for our sample, and by 25,290 years for the total 1974 population of offenders sentenced to prison. This represents a 92.8 percent increase over the estimate of prison man-years under current law.

Additional calculations were made using each of the sentencing assumptions to determine the estimated average time that would be served under S. 1437 if 10 percent of the offenders in our sample were the "unusual" cases made eligible for early release on parole and 90 percent earned good time. Under the proportionate sentencing assumption, the average time served would be 33.7 months, a difference of 13 months from current law. The resulting increase in prison man-years for the sample would be 2,518.8 years, and for the total 1974 population of offenders sentenced to prison, the increase would be 17,127.8 years. This represents a 62.8 percent increase over the estimate of prison man-years under current law. Under the identical sentencing assumption, the average time served would be a 38.1 months, a difference of 17.4 months from our estimate under current law. This additional 17.4 months would increase prison man-years by 3,371.3 years for our sample, and by 22,924.8 years for the total 1974 population of offenders sentenced to prison. This represents a 84.1 percent increase over the estimate of prison man-years under current law.

In summary, we estimated that the elimination of good time under H.R. 6869 might result in a 29.5 percent increase in man-years served in prison (based on the total population of offenders sentenced to prison in 1974). We estimated that the almost total elimination of parole and the reduction in available statutory good time under S. 1437 might lead to a 62.8 percent to 70.5 percent increase in prison man-years based on the proportionate sentencing assumption, and to an 84.1 percent to 92.8 percent increase based on the identical sentencing assumption. It should be emphasized again that these results do not take into account the possible effect that sentencing guidelines issued by a Sentencing Commission

¹⁵ U.S. Congress, Senate, Committee on the Judiciary, Criminal Code Reform Act of 1977; Report to Accompany S. 1437, Washington, U.S. Govt. Print. Off., 1977. (95th Congress, 1st session, Report No. 95-605) p. 883.

¹⁶ *Ibid.*, p. 1167-8.

(as proposed by H.R. 6869 and S. 1437), nor accompanying changes in the parole guidelines, might have on time served in prison.¹⁷

TABLE IV.—ESTIMATED TIME SERVED: PRESENT UNITED STATES CODE

	Goodtime		Parole guidelines ¹		Total average months served
	Number	Average months served	Number	Average months served	
Homicide.....	5	19.0	10	50.8	40.2
Robbery.....	27	31.4	180	43.5	41.9
Assault.....	21	13.4	9	26.9	17.4
Burglary.....	2	10.1	10	24.7	22.3
Larceny and theft.....	32	11.4	130	20.1	16.7
Embezzlement.....	24	5.7	15	16.5	9.9
Fraud.....	61	6.1	53	17.5	11.4
Auto theft.....	62	14.9	118	23.4	20.5
Forgery.....	72	10.2	113	19.0	15.6
Counterfeiting.....	8	8.0	24	20.4	17.3
Sex offenses.....	3	24.9	3	50.7	37.8
Marijuana.....	121	10.1	117	19.4	14.7
Narcotics.....	231	21.4	237	33.4	27.5
Controlled substances.....	37	14.1	43	23.7	19.3
Bribery.....	4	5.2	0	0	5.2
Escape.....	46	11.0	32	16.6	13.3
Racketeering.....	29	13.2	14	22.5	16.2
Gambling and lottery.....	23	6.4	2	16.0	7.2
Kidnapping.....	0	0	13	52.4	52.4
Perjury.....	7	13.4	5	16.6	14.7
Firearms and weapons.....	97	14.7	66	22.5	17.9
Immigration laws.....	28	5.7	29	10.4	8.1
Liquor (IRS).....	19	6.1	14	14.9	9.8
Federal statutes.....	41	6.5	10	20.0	9.2
Other Federal statutes.....	12	15.8	10	25.2	20.1
All offenses.....	1,052	13.6	1,263	26.6	20.7

¹⁷ These figures do not include juvenile delinquency offenses, offenses which would carry penalties determined by a related substantive offense under the 3 bills, and offenders whose presentence reports did not provide sufficient information for calculating the parole guideline data.

¹⁸ Since individuals sentenced under the Youth Corrections Act do not receive good time, they are all included as parolees.

TABLE V.—ESTIMATED TIME SERVED: H.R. 6869

	Present United States Code average months served	H.R. 6869 parole guidelines		Effect of H.R. 6869	
		Number	Average months served	Extra time served ¹	Prison man-years
Homicide.....	40.2	50	46.7	6.5	8.1
Robbery.....	41.9	207	43.9	2.0	34.5
Assault.....	17.4	30	36.0	18.6	46.5
Burglary.....	22.3	12	26.3	4.0	4.0
Larceny and theft.....	16.7	212	20.4	3.7	63.4
Embezzlement.....	9.9	40	15.9	6.0	20.0
Fraud.....	11.4	114	17.0	5.6	53.2
Auto theft.....	20.5	180	24.2	3.7	55.6
Forgery.....	15.6	190	19.2	3.6	57.0
Counterfeiting.....	17.3	32	19.4	2.1	5.6
Sex offenses.....	37.8	6	43.1	5.3	2.7
Marijuana.....	14.7	238	20.2	5.5	109.1
Narcotics.....	27.5	468	37.3	9.8	382.2
Controlled substances.....	19.3	80	27.3	8.0	53.3
Bribery.....	5.2	4	12.0	6.8	2.3
Escape.....	13.3	78	21.0	7.7	50.1
Racketeering.....	16.2	43	27.8	11.6	41.6
Gambling and lottery.....	7.2	25	17.5	10.3	21.5
Kidnapping.....	52.4	13	52.4	0	0
Perjury.....	14.7	12	21.8	7.1	7.1
Firearms and weapons.....	17.9	163	25.2	7.3	99.2
Immigration laws.....	8.1	57	10.8	2.7	12.8
Liquor (IRS).....	9.8	33	14.0	4.2	11.6
Federal statutes.....	9.2	51	18.4	9.2	39.1
Other Federal statutes.....	20.1	22	26.3	6.2	11.4
All offenses.....	20.7	2,325	26.8	6.1	1,181.9

¹ "Extra time served" reflects the difference between average months served under the present United States Code and average months served under H.R. 6869.

² For further details on problems relating to this portion of the study, see Jacobsen, Madeleine, Charlotte J. Moore, and Miriam S. Saxon, *op. cit.*, p. 15-22.

TABLE VI.—ESTIMATED TIME SERVED: S. 1437 PROPORTIONATE SENTENCING ASSUMPTION

Present United States Code, average months served	S. 1437, all good time		Effect of S. 1437	
	Number	Average months served	Extra time served ¹	Prison-man-years
Homicide.....	15	324.0	283.8	354.8
Robbery.....	207	73.9	32.0	552.0
Assault.....	30	21.4	4.0	10.0
Burglary.....	12	40.8	18.5	18.5
Larceny and theft.....	212	16.4	— .3	— 5.3
Embezzlement.....	40	14.4	4.5	15.0
Fraud.....	114	22.7	11.3	107.4
Auto theft.....	180	32.2	11.7	175.5
Forgery.....	190	18.3	2.7	42.8
Counterfeiting.....	32	27.7	10.4	27.7
Sex offenses.....	6	136.8	99.0	49.5
Marihuana.....	238	27.9	13.2	261.8
Narcotics.....	468	45.3	17.8	694.2
Controlled substances.....	80	30.4	11.1	74.0
Bribery.....	4	5.2	0	0
Escape.....	78	25.0	11.7	76.0
Racketeering.....	43	22.3	6.1	21.9
Gambling and lottery.....	25	8.5	1.3	12.7
Kidnapping.....	13	154.4	102.0	110.5
Perjury.....	12	28.5	13.8	13.8
Firearms and weapons.....	163	22.2	4.3	58.4
Immigration laws.....	57	8.7	.6	2.9
Liquor (IRS).....	33	12.3	2.5	6.9
Federal statutes.....	51	38.6	29.4	125.0
Other Federal statutes.....	22	46.0	25.9	47.5
All offenses.....	2,325	35.3	14.6	2,828.8

¹ "Extra time served" reflects the difference between average months served under the present United States Code and average months served under the S. 1437 proportionate sentencing assumption.

TABLE VII.—ESTIMATED TIME SERVED: S. 1437 IDENTICAL SENTENCING ASSUMPTION

Present United States Code, average months served	S. 1437 All good time		Effect of S. 1437	
	Number	Average months served	Extra time served ¹	Prison-man-years
Homicide.....	15	191.0	150.8	189.5
Robbery.....	207	103.7	61.8	1,066.0
Assault.....	30	23.4	6.0	15.0
Burglary.....	12	57.9	35.6	35.6
Larceny and theft.....	212	24.0	7.3	129.0
Embezzlement.....	40	16.7	6.8	22.7
Fraud.....	114	21.0	9.5	91.2
Auto theft.....	180	32.8	12.3	184.5
Forgery.....	190	22.2	13.6	215.3
Counterfeiting.....	32	39.8	22.5	60.0
Sex offenses.....	6	98.6	60.8	30.4
Marihuana.....	238	26.1	11.4	226.1
Narcotics.....	468	49.8	22.3	869.7
Controlled substances.....	80	34.2	14.9	99.3
Bribery.....	4	6.3	1.1	.4
Escape.....	78	24.9	11.6	75.4
Racketeering.....	43	27.5	11.3	40.5
Gambling and lottery.....	25	9.1	1.9	4.0
Kidnapping.....	13	164.3	111.9	121.2
Perjury.....	12	24.0	9.3	9.3
Firearms and weapons.....	163	27.8	9.9	134.5
Immigration laws.....	57	11.0	2.9	13.8
Liquor (IRS).....	33	14.9	5.1	14.0
Federal statutes.....	51	21.6	12.4	52.7
Other Federal statutes.....	22	36.6	16.5	30.3
All offenses.....	2,325	39.9	19.2	3,720.0

¹ "Extra time served" reflects the difference between average months served under the present United States Code and average months served under the S. 1437 identical sentencing assumption.

END