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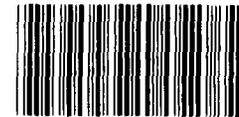
REPORT BY THE U.S.

# General Accounting Office

## Statistics On Sentences And Parole For Federal Offenders Who Commit Crimes Involving Firearms

GAO reviewed sentencing and parole decisions for federal offenders who committed federal crimes involving firearms. For those individuals convicted of firearms violations the median sentence imposed was 180 months as compared to 60 months for nonfirearms violators.

Federal offenders, whether firearms violators or not, are usually released before completing their sentences, either through parole or through time off for good behavior if denied parole. The median time served or to be served for those firearms violators granted parole was 72 months while the median sentence imposed was 180 months. On the other hand, for firearms violators denied parole the median time served or to be served was 44 months while the median sentence imposed was 60 months.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
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GENERAL GOVERNMENT  
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B-215590

The Honorable Paul Laxalt  
Chairman, Subcommittee on Criminal Law  
Committee on the Judiciary  
United States Senate

The Honorable William J. Hughes  
Chairman, Subcommittee on Crime  
Committee on the Judiciary  
House of Representatives

As you requested, we examined sentencing and parole decisions for federal offenders who committed crimes involving firearms. The report provides statistical information on the number of offenders who committed crimes and were charged with and/or convicted of firearms violations and the sentences imposed, and illustrates the impact that parole and good time have on reducing the period of imprisonment served or to be served by offenders convicted of firearms violations.

We trust the information provided will be useful to your continuing oversight efforts. As arranged with your offices, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

*W. J. Anderson*

William J. Anderson  
Director



D I G E S T

The Chairmen, Subcommittee on Crime, House Committee on the Judiciary, and Subcommittee on Criminal Law, Senate Committee on the Judiciary, requested that GAO review sentencing and parole decisions for federal offenders who committed federal crimes involving firearms. Examples of federal crimes involving firearms include armed bank robbery, armed postal robbery, and possession of a firearm by a convicted felon. The Chairmen were specifically interested in

- the number of offenders who committed crimes and were charged with and/or convicted of firearms violations,
- the sentences imposed, and
- the impact that parole or good time--time off the sentence for good behavior--have on reducing the period of imprisonment. (See pp. 5 to 7.)

The Comprehensive Crime Control Act of 1984 (Public Law 98-473 dated October 12, 1984) which changed several criminal laws and procedures, eliminates the possibility of release on parole for all offenders sentenced after November 1, 1986, and reduces the amount of good time that offenders sentenced after that date can receive. GAO's analyses were based on the provisions of the laws existing prior to the passage of Public Law 98-473. Even though this law was enacted after the completion of GAO's audit, the requesters' offices believed that the statistical information on sentences imposed and time served by offenders who committed crimes involving firearms would be useful to the recently established Sentencing Commission. The Commission, established by Public Law 98-473, was given the responsibility of developing sentencing guidelines to be used by federal judges in sentencing federal defendants. (See p. 1.)

To answer the Chairmen's concerns, GAO reviewed court records of 4,562 federal offenders randomly selected from the population (18,310) of sentenced and confined federal offenders as of June 1983; and examined the Parole Commission's case files for 805 sampled offenders who were convicted of firearms violations. GAO is 95 percent confident that projections to offenders are within  $\pm 5$  percentage points or less of what would have been found had GAO reviewed all 18,310 case files.

#### RESULTS OF ANALYSIS

GAO's review showed that 29 percent, or 5,270, of the sentenced and confined offenders committed crimes which violated firearms statutes. Of these, 81 percent, or 4,259, were charged with firearms violations and about 76 percent, or 3,231 of those charged were convicted. (See p. 8.)

GAO found that the median sentence imposed for all offenders was 72 months, while for offenders committing crimes when no firearm was involved the median sentence was 60 months. However, GAO found that when a firearm was involved but the offenders were not charged with a firearm violation the offenders received a median sentence of 120 months. In contrast, where offenders were charged with and convicted of a firearm violation, they received a median sentence of 180 months. (See p. 8)

GAO estimated that the Parole Commission made parole release decisions for 2,464 of the projected 3,231 offenders convicted of firearms violations and had made no decision for the remaining 767 offenders as of September 1984. GAO projects that a parole release date was established for 1,774 offenders, whereas parole was denied for 690 offenders.

GAO found that the median time served or to be served for offenders (1,774) given a parole release date was 72 months while the median sentence imposed by the courts was 180 months. Overall, the offenders served or will serve a median of 36 percent of their imposed sentences. (See pp. 17 and 18.) GAO also found that the median time served or to be served by offenders (690) denied parole but

granted good time<sup>1</sup> was 44 months while the median sentence imposed by the courts was 60 months. Overall, the offenders denied parole served or will have served a median of 74 percent of their imposed sentences. (See pp. 18 to 20.)

AGENCY COMMENTS

Neither the Administrative Office of the U.S. Courts nor the Department of Justice took issue with the information presented in this report. (See app. IX and X.)

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<sup>1</sup>Good time is calculated when an offender enters prison. The basis used to calculate the amount of good time is the length of the sentence imposed. (See p. 19.)



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## CHAPTER 1

### INTRODUCTION

The Chairmen, Subcommittee on Crime, House Committee on the Judiciary, and Subcommittee on Criminal Law, Senate Committee on the Judiciary, requested that we review sentencing and parole decisions for federal offenders who committed crimes involving firearms.

The Comprehensive Crime Control Act of 1984 (Public Law 98-473, dated October 12, 1984), hereafter referred to as Public Law 98-473, made a number of changes to federal criminal laws and procedures. This new law provides a mandatory term of imprisonment for (1) offenders convicted of unlawful carrying or use of firearms during the commission of a crime of violence and (2) armed career criminals who have a history of committing multiple robberies and/or burglaries. Public Law 98-473 also eliminates the possibility of release on parole for offenders sentenced after November 1, 1986, and reduces the amount of good time that offenders sentenced after that date can earn (see p. 5 for further details). For the purposes of our study, we used the provisions of law existing before passage of Public Law 98-473.

Even though the new law was enacted subsequent to the completion of our audit, the requesters' offices believed that the statistical information on sentences received and time served for offenders who committed crimes involving firearms would be useful to the recently established Sentencing Commission. The Commission, established by Public Law 98-473, was given the responsibility of developing sentencing guidelines to be used by federal judges in sentencing federal defendants.

### FEDERAL CRIMES INVOLVING FIREARMS

Definitions of federal crimes involving firearms are found primarily in Title 18 of the United States Code. At least 10 sections of that title define violations for illegal possession or use of a firearm. These include such crimes as armed bank robbery, possession of a firearm by a felon, armed postal robbery, and use of a dangerous weapon to assault employees of the United States government or officials of foreign governments.<sup>1</sup>

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<sup>1</sup>In addition to Title 18, Title 49 of the United States Code contains penalties for persons who use a dangerous weapon to interfere with an aircraft flight crew (49 U.S.C. App. §1472(j)) and who carry firearms or explosives aboard an aircraft (49 U.S.C. App. §1472(1)).

The term "firearm" encompasses a wide range of weapons or destructive devices, including any weapon which can expel a projectile by the action of an explosive, as well as a starter gun or a silencer. The destructive devices included under "firearm" are explosives, incendiary and poison gas bombs, grenades, rockets, missiles, and mines.

The code briefly defines each violation and cites the maximum penalty the court can impose. The prescribed penalty may be a fine, probation, a term of imprisonment, or some combination of these alternatives. The penalty for a firearm violation is generally more severe than the penalty for the same offense committed without a firearm. For example, the penalty for unarmed bank robbery (18 U.S.C. §2113(a)) is a fine of not more than \$5,000 or imprisonment for not more than 20 years, or both. By contrast, the penalty for armed bank robbery (18 U.S.C. §2113(d)) is a fine of not more than \$10,000 or imprisonment for not more than 25 years, or both.

The major firearms violations committed by offenders in our sample are discussed below.<sup>2</sup>

<u>Code citation</u>	<u>Description</u>
18 U.S.C. §111	Assault on officers and employees of the U.S. government, using a deadly or dangerous weapon.
18 U.S.C. §844(i)	Malicious damage or destruction, or attempts to damage or destroy by means of an explosive, any building, vehicle, or other real or personal property used in or affecting interstate or foreign commerce.
18 U.S.C. §922(h)	Receipt, by a person indicted for or convicted of a felony, of a firearm that has been shipped or transported through interstate or foreign commerce.
18 U.S.C. §924(c)(1)	Use of a firearm to commit any felony for which an individual may be prosecuted in a court of the United States.

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<sup>2</sup>In determining which offenses in our sample were firearms violations, we excluded crimes that involved taxing, licensing, and registering of firearms contained in Titles 18 and 26 of the U.S. Code because they are not violent crimes.

- 18 U.S.C. §924(c)(2) Unlawful carrying of a firearm during the commission of any felony for which an individual may be prosecuted in a court of the United States.
- 18 U.S.C. Appendix §1202(a) Receipt, possession, or transportation of any firearm in commerce or affecting commerce by a convicted felon.
- 18 U.S.C. §2113(d) The taking of property or money from any bank, credit union, or savings and loan association and assaulting or putting in jeopardy the life of a person while using a dangerous weapon or device.
- 18 U.S.C. §2113(e) The killing of a person or the taking of a hostage while committing a bank robbery, or attempting to avoid arrest for the robbery.
- 18 U.S.C. §2114 Assault on a person having lawful custody of any mail, money, or other property of the United States while using a dangerous weapon.

Generally, other Title 18 violations carry no additional penalty for use of a firearm, even though they are often committed by offenders using firearms. For example, kidnapping can be committed with or without a firearm, but the statute (18 U.S.C. §1201) does not carry an additional penalty if a firearm is used.

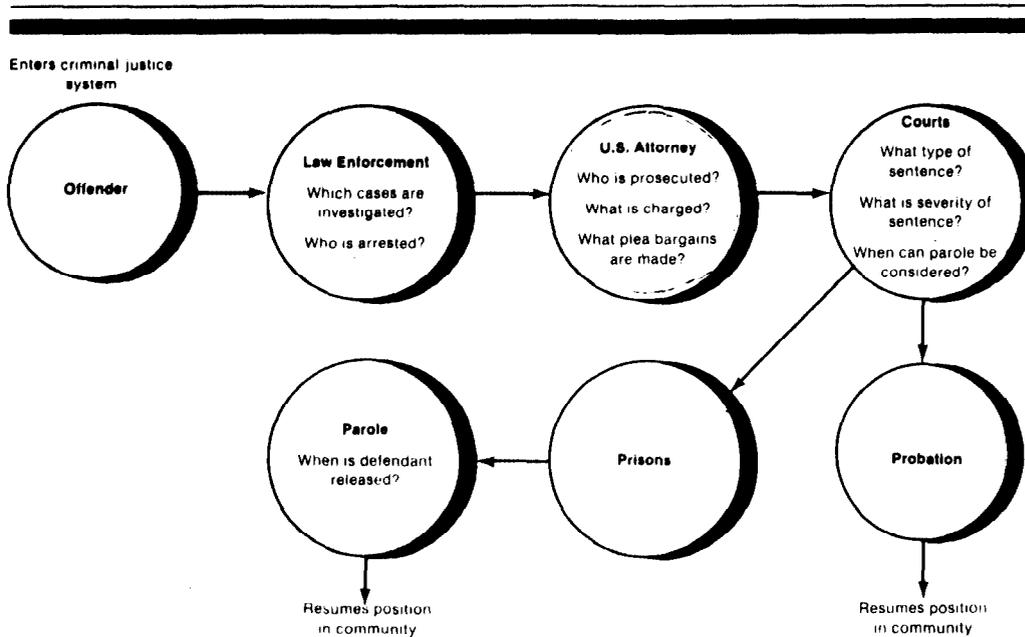
Before passage of Public Law 98-473, 18 U.S.C. §924(c) provided a penalty for unlawful carrying or use of a firearm during the commission of a federal felony--1 to 10 years for a first conviction and 2 to 25 years for a second or subsequent conviction. However, case law had determined that 18 U.S.C. §924(c) could not be used to impose additional penalties if the authorizing statute violated already prescribed a penalty for use of a firearm. Subsequently, Public Law 98-473 amended 18 U.S.C. §924(c) to provide a mandatory term of imprisonment--5 years for a first conviction and 10 years for a second or subsequent conviction--for carrying or using a firearm during a crime of violence. This penalty is in addition to whatever sentence was imposed for the underlying crime of violence even if that statute includes an additional penalty for use of a firearm. This legislation also amended 18 U.S.C. Appendix §1202(a) by providing a mandatory term of imprisonment of not less than 15 years for an offender who receives, possesses, or transports a firearm in commerce, and has three or more prior

convictions in any court (federal, state, or local) for armed/unarmed robbery or burglary.<sup>3</sup>

**DESCRIPTION OF DECISIONMAKING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM**

The federal criminal justice system is divided into 94 judicial districts. Each has a federal district court and a U.S. attorney. For the 12-month period ending June 30, 1984, these districts terminated 35,500 criminal cases. At the federal level, criminal justice responsibilities are divided into the components of law enforcement, prosecution, adjudication and sentencing, and corrections. The following chart details this chain of responsibilities.

**Decisions Made In The Federal Criminal Justice System**



Prosecuting federal cases is the responsibility of the Department of Justice's litigating divisions and of the U.S. attorney in each of the judicial districts.<sup>4</sup> U.S. attorneys are appointed by the President for 4-year terms with the advice and consent of the Senate. They receive executive assistance

<sup>3</sup>This amendment is referred to as the Armed Career Criminal Act of 1984.

<sup>4</sup>Federal cases are prosecuted in 94 federal judicial districts; however, there are only 93 U.S. attorneys because one U.S. attorney administers activities for the districts of Guam and the Northern Mariana Islands.

and administrative support from the Executive Office for United States Attorneys in Washington, D.C.

In the federal criminal justice system, sentencing is affected by discretionary decisions made by prosecutors, judges, and the United States Parole Commission. The range of potential sentences is initially determined by the prosecutor's decision regarding the charge to be brought. Upon conviction, the judge selects a sentence within the range authorized by the relevant statute: a fine, probation, a term of imprisonment, or some combination of these alternatives. After sentencing, offenders receiving probation are placed under the supervision of the probation office in the district court. If the offender is sentenced to a term of incarceration, however, the Federal Prison System becomes responsible for the custody and care of the offender--generally undertaken in one of the federal correctional institutions located throughout the country.

The Parole Commission and Reorganization Act of 1976 (Public Law 94-233, March 15, 1976, 18 U.S.C. §4201 et seq.) established the Parole Commission as an independent agency with parole release jurisdiction over all eligible federal prisoners, wherever confined. The Commission has established parole release guidelines that indicate the customary range of time to be served before release. The criterion that establishes the range consists of two parts--offense severity and parole prognosis. (See app. I.)

Public Law 98-473 eliminates the possibility of release on parole for offenders sentenced after November 1, 1986; however, the Parole Commission is retained until 1991 to set parole release dates for eligible offenders who are sentenced prior to November 1, 1986. This law also provides that offenders sentenced to prison for more than 1 year after November 1, 1986, will earn 54 days of good time per year at the end of each year in prison. (Details on current good time provisions are discussed in ch. 3.)

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairmen, Subcommittee on Crime, House Committee on the Judiciary, and Subcommittee on Criminal Law, Senate Committee on the Judiciary, asked that we review the sentencing and parole decisions for federal offenders who committed crimes involving firearms. The objectives of this review were to determine, from the population of sentenced and confined federal offenders in the Federal Prison System as of June 30, 1983, the following:

- How many federal prisoners violated firearms statutes?
- How many of these offenders were charged with firearms violations, and in what percentage were firearms violations dismissed?

--How many offenders were convicted of firearms violations and under what statutes?

--What median sentence was imposed on those offenders convicted of firearms violations and for how many offenders were concurrent or consecutive sentences ordered by the court?

--How many offenders convicted of firearms violations would qualify for prosecution as armed career criminals under two legislative proposals considered during the 98th Congress?

--What impact did parole or good time have on reducing the period of imprisonment for offenders convicted of firearms violations?

Between October 1983 and September 1984, we conducted our review at the Federal Prison System headquarters, the Parole Commission headquarters and its five regional offices--Atlanta, Burlingame (California), Dallas, Kansas City, and Philadelphia--the Probation Division within the Administrative Office of the United States Courts, the Executive Office for United States Attorneys, and 35 judicial districts.<sup>5</sup>

Using data from the Federal Prison System, we excluded all unsentenced prisoners and offenders serving sentences given by the District of Columbia Superior Court, state courts, foreign courts, and military courts who were confined in federal correctional institutions. Thus, we determined that the population of sentenced federal prisoners who were confined as of June 30, 1983, was 20,361. From this population, we drew a statistically valid random sample of 5,073 offenders.<sup>6</sup> Our sample included offenders sentenced in 93 of 94 judicial districts. Subsequently, we eliminated 511 cases from our sample because the offenders were either released prior to June 30, 1983, or not sentenced under a federal statute. This gave us an adjusted sample of 4,562 offenders. This decrease in the sample size resulted in a projected population of 18,310 sentenced offenders included in the Federal Prison System's data base. Except where noted, we are 95 percent confident that findings for offenders are within +5 percentage points of what would have been found

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<sup>5</sup>We performed detailed audit work in 35 judicial districts, and probation officers supplied us with information on cases in an additional 58 judicial districts for our analysis. (See pp. 21 and 22.)

<sup>6</sup>Our sample was drawn from a universe of offenders, not district court cases. Therefore, when we refer to a case in this report, it represents an offender.

had we reviewed case files for all 18,310 offenders. (For further details on our sample, see ch. 4.)

During our review, we examined Parole Commission and Federal Prison System policies and procedures; studied federal laws, United States Supreme Court and Circuit Court opinions, and congressional bills; and reviewed congressional committee reports, legislative histories, professional articles, and previous GAO reports. In addition, we examined records maintained by federal district courts on all offenders in our sample. For those offenders convicted of firearms violations, we examined case files maintained by the Parole Commission. Our review was performed in accordance with generally accepted government auditing standards.

CHAPTER 2

FEDERAL CRIMES INVOLVING FIREARMS AND

THE PENALTIES IMPOSED

There were 18,310 federal offenders sentenced and confined in the Federal Prison System as of June 30, 1983. We sampled 4,562 offenders and projected our results to the total to ascertain the number of offenders who (1) committed crimes involving firearms, (2) were charged with firearms violations, and (3) were convicted of firearms violations. The results of our sample and projections to the total population are detailed below.

	<u>Sample</u>	<u>Projections</u>
	---(characteristics)---	
Offenders	4,562	18,310
Offenders who violated firearms statutes	1,313	5,270
Offenders charged with firearms violations	1,061	4,259
Offenders convicted of firearms violations	805	3,231

On the basis of our sample, we projected that 29 percent of the sentenced federal offenders committed crimes involving firearms and 81 percent of these were charged with firearms violations. Finally, 76 percent of those charged were convicted of firearms violations.

With regard to the sentences imposed, we found that the median sentence<sup>1</sup> imposed for all offenders (18,310) was 72 months, while for offenders committing crimes when no firearm was involved the median sentence was 60 months. However, we found that when a firearm was involved but the offender was not charged with a firearm violation the offenders received a median sentence of 120 months. In contrast, when offenders were charged with and convicted of firearms violations the offenders received a median sentence of 180 months.

Of the projected 3,231 offenders convicted of firearms violations, judges had the option of imposing concurrent, consecutive, or a combination of concurrent and consecutive sentences for 1,469 offenders. Whereas for the remaining 1,762 offenders,

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<sup>1</sup>The median is the middle value in a distribution with an equal number of instances above and below.

the judges did not have an option because the offenders were convicted of only one violation. Where the judges had an option, we estimated the following occurred.

<u>Sentence option used</u>	<u>Projected number of offenders</u>	<u>Percent<sup>a</sup></u>
Concurrent	811	55
Consecutive	453	31
Combination of both	<u>205</u>	<u>14</u>
Total	<u>1,469</u>	<u>100</u>

<sup>a</sup>Projections are within +7.7 percent or less at the 95-percent level of confidence.

OFFENDERS COMMITTING, CHARGED WITH, AND CONVICTED OF FIREARMS VIOLATIONS

According to our projections, 5,270 (29 percent) of the 18,310 total offenders committed crimes involving firearms, while 13,040 committed crimes that did not involve violations of firearms statutes. (See app. II for a further discussion of nonfirearms offenses.) Almost all of the crimes committed by the projected 5,270 offenders involved possession or use of firearms as opposed to other destructive devices. We estimated that 5,065 offenders (96 percent) committed crimes in which some type of handgun, rifle, or shotgun was involved whereas 205 offenders (4 percent) used a destructive device (explosives or bombs) or a firearm and a destructive device.

Most offenders committing crimes involving firearms were charged with and convicted of firearms violations

Of the projected 5,270 offenders whose crimes involved firearms, 4,259 (81 percent) were charged<sup>2</sup> with a firearms violation and 1,011 (19 percent) were not. (See app. III for detailed breakdown of federal offenders sentenced and confined.) Of the 1,011 offenders not charged with firearms violations,

<sup>2</sup>Charges are brought against defendants by means of indictments from grand juries or by formal accusations, called informations, brought by a U.S. attorney rather than a grand jury. For the purpose of our discussion, however, we will refer to all formal charges as "indictments" and use the words "charged" and "indicted" interchangeably.

738 were convicted of other crimes, such as murder, kidnapping, rape, narcotics violations, air piracy, extortion, or racketeering. The remaining 273 offenders used firearms to commit armed bank robbery, but they were charged and convicted of unarmed bank robbery (18 U.S.C. §2113 (a)). The table below details our projections for the 1,011 offenders convicted of other violations.

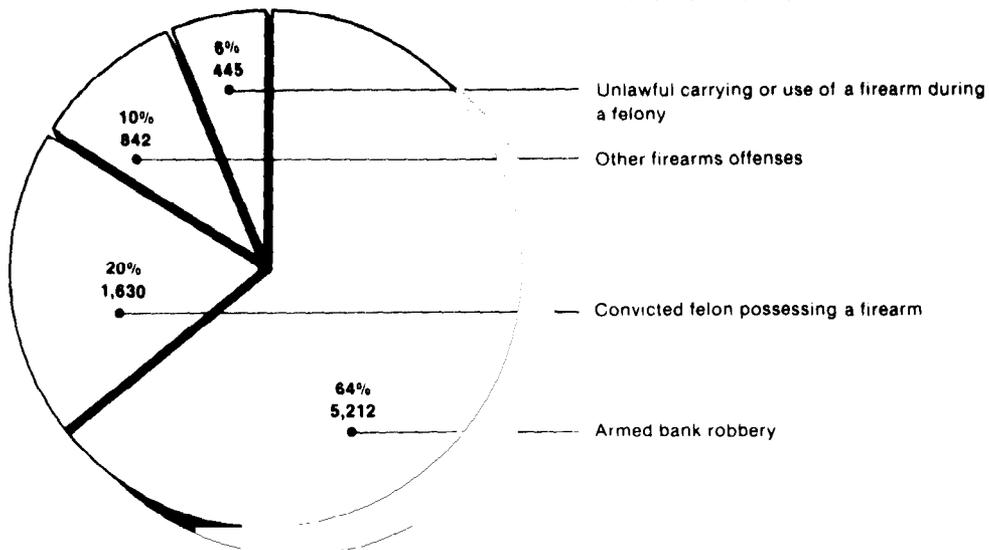
<u>Nonfirearms violation convictions</u>	<u>Projected number of offenders</u>
Unarmed bank robbery	273
Homicide, kidnapping, rape, assault resulting in injury, and assault on a mail person	253
Narcotics	177
Firearm registration violations <sup>a</sup>	92
Theft	80
Racketeering and extortion	60
Air piracy	24
Other	<u>52</u>
Total	1,011 *****

<sup>a</sup>These offenders possessed firearms, but they were charged with registration violations. In determining which offenses in our sample were firearms violations, we excluded registration violations because they are not violent crimes.

An indictment contains a count for each violation that an offender has allegedly committed. For example, an offender may be charged under the same indictment with one count of armed bank robbery, one count of interstate transportation of a stolen vehicle, and one count of kidnapping. Offenders who commit multiple violations in any judicial district may also face multiple indictments, each containing one or more counts. The number of violations is important because it can shape the sentence imposed if the offender is convicted.

Of the projected 4,259 offenders in the Federal Prison System charged with firearms violations, 2,590 (61 percent) were charged with one firearms violation and 1,669 (39 percent) were charged with multiple firearms violations. The projected 4,259 offenders were charged with a total of 8,129 separate firearms violations as shown below. (Projections are within +7.8 percent or less at the 95 percent confidence level.)

## Distribution of Firearms Violations



Of the projected 4,259 offenders in the Federal Prison System who were charged with 8,129 separate firearms violations, our analysis showed that 76 percent were actually convicted of 4,669 violations. The remaining violations were either dismissed or resulted in acquittal. This results because an offender charged, for example, with four violations could have been convicted on two, acquitted on one, and had the remaining violation dismissed. The following table summarizes the outcome of all violations for the 4,259 offenders.

<u>Outcome</u>	<u>Projected number of offenders</u>	<u>Projected number of violations</u>			<u>Total</u>
		<u>Convictions</u>	<u>Dismissals</u>	<u>Acquittals</u>	
Convictions only	2,372	3,308	-	-	3,308
Dismissals only	1,028	-	1,558	-	1,558
Combination of outcomes	<u>859</u>	<u>1,361</u>	<u>1,786</u>	<u>116</u>	<u>3,263</u>
Total	<u>4,259</u>	<u>4,669</u>	<u>3,344</u>	<u>116</u>	<u>8,129</u>

The decision to run the term of imprisonment for conviction on multiple violations within the same or separate indictments concurrently, consecutively, or as a combination of these options is generally left to the sentencing judge's discretion. For example, an offender was convicted of three violations of armed bank robbery within the same indictment, and the judge imposed the maximum sentence of 25 years on each violation. One sentencing option would be for the judge to impose a concurrent term of imprisonment on each violation, a 25-year sentence. A second sentencing option would be for the judge to impose a consecutive term of imprisonment on each violation, a 75-year

sentence. A third sentencing option would be for the judge to impose a combination of concurrent and consecutive terms of imprisonment on the violations, a 50-year sentence.

Of the projected 3,231 offenders convicted of firearms violations as of June 30, 1983, judges had the option of imposing concurrent, consecutive, or a combination of these two sentences for 1,469 offenders. This option arose because 730 of these offenders had multiple violations within a single indictment, and the remaining 739 offenders had multiple violations in more than one indictment. Under this option judges imposed concurrent sentences for 811 offenders (55 percent), consecutive sentences for 453 offenders (31 percent), and a combination of these two for 205 offenders (14 percent).

SENTENCES IMPOSED FOR  
FIREARMS VIOLATIONS

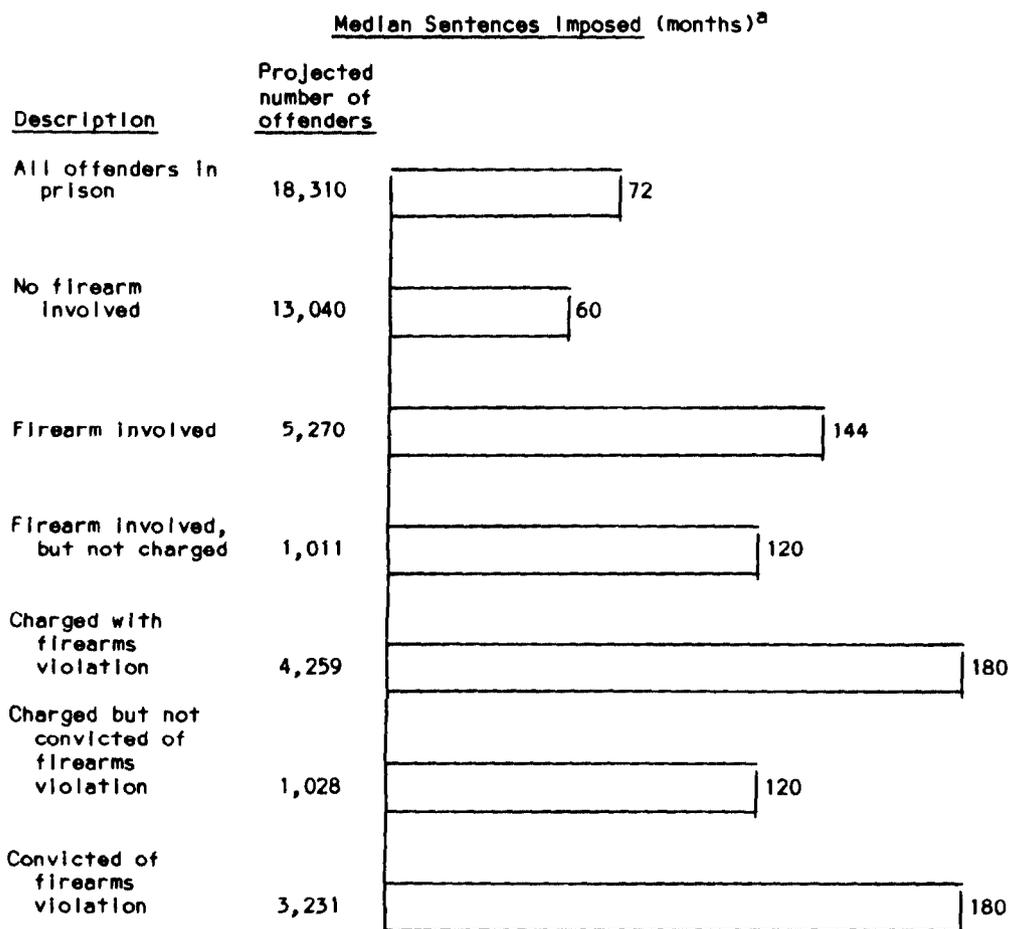
Sentences imposed for the projected 3,231 offenders convicted of firearms violations follow:<sup>3</sup>

- 554 (17 percent) received prison sentences of 5 years or less;
- 1,204 (37 percent) received prison sentences of over 5 years but equal to or less than 15 years;
- 1,036 (32 percent) received prison sentences of over 15 years but equal to or less than 25 years;
- 349 (11 percent) received prison sentences of over 25 years but less than life; and
- 88 (3 percent) received life sentences, not a specific number of years.

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<sup>3</sup>Rule 35(b) of the Federal Rules of Criminal Procedure permits an offender or his/her counsel to petition the court for a reduction of his or her sentence within 120 days of the court's final sentencing decision. The sentences imposed used in our analysis consider all reductions in sentences granted by the courts. Of those projected offenders requesting sentence reductions (10,063 out of 18,310), we estimated that judges granted requests to 854 offenders. When projected to the prison population, we estimated that sentence reductions were granted to 88 of the 1,754 offenders convicted of firearms violations (5.0 percent), 88 of the 1,056 offenders who violated firearms statutes but were convicted of other crimes (8.4 percent), and 678 of the 7,253 offenders whose crimes did not involve firearms (9.4 percent). These percentages are within +8 percentage points at the 95 percent confidence level.

Federal offenders convicted of firearms violations received longer sentences than those offenders whose crimes did not involve firearms--a projected median sentence of 180 months versus 60 months.<sup>4</sup> The following graph depicts the median sentence imposed for various categories of offenders in the population of the Federal Prison System as of June 30, 1983.

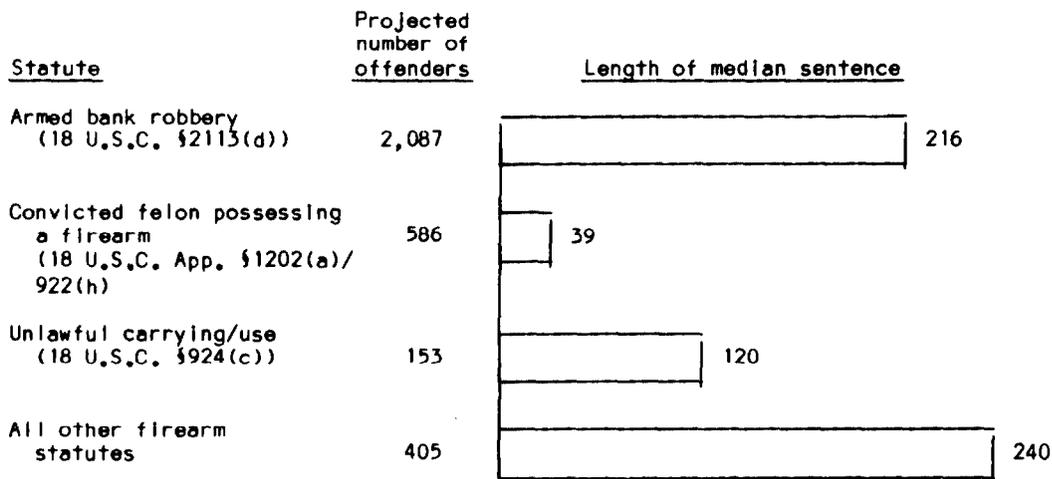


<sup>a</sup>Confidence ranges are presented in appendix IV.

<sup>4</sup>In this report, median sentence length for firearm and non-firearm violations is based upon all current offenses for which an offender was incarcerated as of June 30, 1983. When projected to the prison population, we estimated that 2,256 of the 3,231 offenders (70 percent) were convicted of only firearms violations while 975 offenders (30 percent) were convicted of both firearms and nonfirearms violations. For the 975 offenders convicted of both types of crimes, we estimated that 638 offenders received some additional period of imprisonment for the nonfirearms violations, while 337 offenders received no additional period of imprisonment.

Of the projected 3,231 offenders convicted of firearms violations, 2,087 (65 percent) were convicted of armed bank robbery, 586 (18 percent) were convicted under one of two statutes which prohibit felons from possessing firearms, 153 (5 percent) were convicted of unlawful carrying or use of a firearm during the commission of a felony, and the remaining 405 (12 percent) were convicted under other firearms statutes. The following chart compares the median sentence by statute for the 3,231 convicted offenders.

Median Sentences for Firearms Statutes (months)<sup>a</sup>



<sup>a</sup>Confidence ranges are presented in appendix V.

### Mandatory sentences for armed career criminals

The 98th Congress considered two principal pieces of legislation for creating mandatory sentences to deter armed career criminals who have a history of multiple robberies and/or burglaries--S. 52 and H.R. 6248. The House bill passed and was included in Public Law 98-473, which was enacted on October 12, 1984.

Public Law 98-473 amended 18 U.S.C. Appendix §1202(a) to provide a mandatory term of imprisonment of at least 15 years for an offender who receives, possesses, or transports any firearm in commerce, and who has at least three prior convictions for armed/unarmed robbery or burglary in any court, (federal, state, or local). Of the projected 3,231 offenders in the Federal Prison System who were convicted of firearms violations, 417 were convicted under 18 U.S.C. App. §1202(a). We projected that 56 (13 percent) of the 417 offenders had at least three prior convictions for robbery or burglary and would have qualified for prosecution under the legislation if it had been in effect when these offenders committed their crimes.

The Senate bill--S. 52 as passed by the Senate--had proposed a mandatory term of imprisonment of at least 15 years for an offender convicted of a federal armed robbery/burglary who had at least two prior convictions for armed/unarmed robbery or burglary in any court. Of the projected 3,231 offenders in the Federal Prison System convicted of firearms violations, 2,247 were convicted of armed bank (includes convictions under 18 U.S.C. §2113((d) and (e)) or postal robbery. We projected that 895 of the 2,247 (40 percent) had at least two prior convictions for robbery or burglary and would have qualified for prosecution under the legislation if it had passed and been in effect when these offenders committed their crimes.

Legislative changes address  
problems with the use of  
18 U.S.C. §924(c)

Before enactment of Public Law 98-473, the Gun Control Act of 1968 specified a penalty under 18 U.S.C. §924(c) for unlawful carrying or use of a firearm during the commission of a federal felony. The penalty for a first conviction under the statute included probation, a suspended sentence, or a term of imprisonment of 1 to 10 years which could be concurrent with or consecutive to any other sentence imposed by the court. In the case of a second or subsequent conviction under the statute, the term of imprisonment authorized was 2 to 25 years; however, probation, a suspended sentence, or a concurrent sentence were specifically prohibited.

We found that the Department of Justice did not consider 18 U.S.C. §924(c) an effective deterrent against violent crime because it did not provide a true mandatory penalty for carrying or using a firearm during a federal felony. Four principal weaknesses surfaced during our review of 18 U.S.C. §924(c). These included: (1) the statute could not be used to impose additional penalties if the authorizing statute violated (e.g., armed bank robbery) already prescribed a penalty for use of a firearm; (2) the court was authorized to impose probation, a suspended sentence, or a concurrent sentence for a first conviction under the statute; (3) the statute required that the government prove the firearm was unlawfully possessed in violation of a federal, state, or local law before an offender could be convicted of the possession charge; and (4) release of the offender on parole was at the discretion of the Parole Commission--upon commitment of the offender to prison if the Commission. (Specific views of criminal justice officials on the first three weaknesses are included in appendix VI.)

With respect to the fourth weakness, the Gun Control Act provided that release on parole for an offender sentenced under that law was at the total discretion of the Parole Commission. Thus, the offender could be released at any time after commitment and was not required to serve the normal one-third (or 10

years for a sentence over 30 years) before being eligible for release on parole. For the projected 100 offenders convicted under 18 U.S.C. §924(c) and given a parole release date, the median time served or to served at parole was 48 months while the median sentence imposed by the courts was 108 months. The median time served or to be served for 28 projected offenders convicted under 18 U.S.C. §924(c) who were denied parole was 80 months while the median sentence imposed by the courts was 120 months.

Public Law 98-473 completely revised 18 U.S.C. §924(c) to provide a mandatory determinate sentence for a person who uses or carries a firearm during, and in relation to, any federal crime of violence--5 years' imprisonment for a first conviction under the statute and 10 years imprisonment for a second or subsequent conviction. Under either circumstance, probation, a suspended sentence, or a concurrent sentence are not authorized. Also, parole is specifically prohibited for offenders sentenced under 18 U.S.C. §924(c). In addition, the new law expands the scope of the statute to include those offenses which provide for their own enhanced punishment if a crime is committed by using a dangerous weapon, and it no longer authorizes the use of 18 U.S.C. §924(c) in the case of nonviolent felonies.

Our review and discussions with officials from Justice's Criminal Division indicate that the principal objections of the Department to the prior statute have been rectified by Public Law 98-473. Also, Criminal Division officials told us that they believe the new law has strengthened the effectiveness of 18 U.S.C. §924(c) as a deterrent to violent crime.

### CHAPTER 3

#### EFFECT OF PAROLE AND GOOD TIME ON THE PERIOD OF IMPRISONMENT FOR FIREARMS VIOLATORS

Federal offenders, whether firearms violators or not, are usually released before completing their sentences, either through parole or through time off for good behavior if parole is denied (good time).<sup>1</sup> In the case of firearms violations, convicted offenders granted parole served or will serve about 36 percent of their sentences, whereas offenders denied parole served or will serve about 74 percent of their sentences.

Public Law 98-473 eliminates the possibility of release on parole for offenders sentenced after November 1, 1986. However, the Parole Commission is retained until 1991 to set release dates for eligible offenders who were sentenced prior to November 1, 1986. This law also provides that offenders sentenced to prison for more than 1 year after November 1, 1986, will earn 54 days of good time per year at the end of each year in prison. Current good time provisions will continue to apply to those offenders sentenced to prison prior to November 1, 1986.

The Parole Commission is charged with deciding whether to grant or deny parole. We estimated that the Parole Commission made parole release decisions for a projected 2,464 of the 3,231 offenders in the Federal Prison System as of June 30, 1983, who were convicted of firearms violations. We projected that the Parole Commission established parole release dates for 1,774 offenders and denied parole to 690 offenders. We estimated that for the remaining 767 offenders, the Parole Commission had not made a parole release decision as of September 1984.

For the projected 1,774 offenders given a parole release date, the median time served or to be served at parole was 72 months, while the median sentence imposed by the courts was 180 months. The median time served or to be served for 690 offenders denied parole--full term of the sentence less accumulated good time--was 44 months, while the median sentence imposed by the courts was 60 months.

#### EFFECT OF PAROLE ON PERIOD OF IMPRISONMENT

If incarceration in excess of 1 year is imposed by the court, the actual duration of the prison term is determined by the Parole Commission within the constraints imposed by statute and the judge's sentencing order. Unless otherwise provided by

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<sup>1</sup>Good time is calculated when an offender enters prison. The basis used to calculate the amount of good time is the length of the sentence imposed. (See p. 19.)

statute, a federal prisoner confined and serving a definite term or terms is eligible for parole consideration after serving one-third of such term or terms (18 U.S.C. §4205(a)). If given a life sentence (other than under 21 U.S.C. §848) or a sentence over 30 years, the offender is eligible for parole consideration after serving 10 years. The judge may designate in the sentence imposed a minimum prison term before the prisoner can be eligible for parole; however, this may be less than but shall not be more than one-third of the maximum sentence imposed (18 U.S.C. §4205(b)(1)). The judge may also set the maximum sentence to be served (18 U.S.C. §4205(b)(2)), in which event the judge may specify that the Parole Commission shall determine when a prisoner can be paroled.

The Commission has established parole release guidelines which indicate the customary range of time to be served before release from prison. The criterion which establishes the range consists of two parts--offense severity and parole prognosis (see app. I).

The Parole Commission, using the parole guidelines it has established, decides whether to grant or deny parole. According to our analysis, the Commission had formulated a parole release decision for 2,464 of the 3,231 projected offenders who were convicted of firearms violations. For 1,774 of these offenders, the Commission established a parole release date. The median sentence imposed by the courts was 180 months--15 years for these offenders. The median time these offenders served or will serve when paroled was 72 months--6 years. Excluding 20 projected offenders sentenced to life but granted parole, the offenders served or will serve a median of 36 percent of their imposed sentences. The impact of parole on time served or to be served by statute of conviction and the confidence ranges for sentences imposed and actual time served are presented in appendix VII.

#### EFFECT OF GOOD TIME ON PERIOD OF IMPRISONMENT

If an offender has been denied parole or is ineligible for parole consideration because of the statute used in sentencing, release is at expiration of the sentence less good time earned by the offender. The amount of statutory good time awarded to offenders under 18 U.S.C. §4161 is determined by the length of the sentence imposed by the court, with the exception that good time does not apply to a life sentence. The amount of good time awarded is depicted in the following table.

<u>Length of sentence imposed</u>	<u>Good time awarded per month</u> (days)
6 months but not more than 1 year	5
More than 1 year but less than 3 years	6
3 years but less than 5 years	7
5 years but less than 10 years	8
10 years or more	10

Offenders also may earn additional time off their sentences at a rate of 3 days for each month of actual employment in an industry or camp for the first year of imprisonment and 5 days per month in subsequent years (18 U.S.C. §4162). In addition, the statute provides the award of additional good time on a discretionary basis for exceptionally meritorious service or for performing duties of outstanding importance in connection with institutional operations. Federal Prison System regulations (Code of Federal Regulations, Title 28, Chapter V, Sections 523.12, 523.13, 523.14, and 523.15) have extended extra good time to prisoners employed in Federal Prison Industries, involved in work/study release programs and community treatment centers, and assigned to a camp or farm. The regulations provide that extra good time be awarded automatically, except in the case of meritorious good time, which is based on recommendations by prison staff.

Offenders who are granted parole also receive good time while in prison. However, because they are almost always paroled prior to the date established by good time, good time mostly benefits only those who have been denied parole or who are ineligible for parole.

We projected that the Parole Commission denied parole to 690 of the 3,231 offenders convicted of firearms violations. The median sentence imposed by the courts on these offenders was 60 months. However, after statutory good time allowances are subtracted, these offenders were or will be incarcerated for a median term of 44 months. Overall, these offenders served or will serve a median of 74 percent of their imposed sentences.<sup>2</sup> The impact of good time on time served or to be served by

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<sup>2</sup>The calculations in this section for the amount of time served reflect time served or to be served after statutory good time is subtracted. Information on the amount of extra good time earned was not readily available and not included in our calculations of time served. We also assumed that good time was not taken away for misbehavior.

statute of conviction and the confidence ranges for sentences imposed and actual time served are presented in appendix VIII.

## CHAPTER 4

### SCOPE AND METHODOLOGY

Between October 1983 and September 1984 we reviewed in detail the case files of a random sample of 5,073 sentenced offenders who were listed by the Federal Prison System as being confined as of June 30, 1983; and we examined the Parole Commission's release decisions for 805 sampled offenders who were convicted of firearms violations.

#### SELECTION OF SAMPLE AND LOCATIONS

To enable us to identify the population of eligible federal offenders, officials of the Federal Prison System provided us with a copy of a computer tape containing case information on all offenders identified in their computer system as being incarcerated in federal correctional institutions as of June 30, 1983. With their assistance, we deleted all unsentenced prisoners and offenders serving District of Columbia Superior Court, state court, foreign court, and military court sentences. Thus, we arrived at a population of 20,361 sentenced and confined federal offenders for our study.

From the population of 20,361, we drew a random sample of 5,073 federal prisoners. This random sample represented cases from 93 of the 94 federal judicial districts.<sup>1</sup> For 3,947 cases in 35 judicial districts, we reviewed indictments, informations, criminal complaints, docket sheets, judgment and commitment orders, plea agreements, and presentence investigation reports in the court files. For the remaining 1,126 cases in 58 additional judicial districts, probation officers assigned to the courts furnished copies of the material to us for analysis. We contacted court personnel when necessary to clarify questions that arose during our examination of case file material.

The following table breaks down the original sample by judicial districts.

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<sup>1</sup>The random sample happen to not include any cases from the district of the Northern Mariana Islands.

Distribution of Sample Cases

Data developed by GAO:

Information provided by probation offices:

<u>Judicial district</u>	<u>Number of cases</u>	<u>Judicial district</u>	<u>Number of cases</u>	<u>Judicial district</u>	<u>Number of cases</u>
Alabama, No.	52	Alabama, Mid.	19	Pennsylvania, W.	42
Arizona	116	Alabama, So.	22	Rhode Island	6
California, No.	94	Alaska	6	South Dakota	18
California, E.	84	Arkansas, E.	23	Tennessee, E.	29
California, Central	249	Arkansas, W.	12	Tennessee, Mid.	33
California, So.	277	Connecticut	31	Tennessee W.	16
Colorado	44	Delaware	11	Texas, E.	21
Florida, Mid.	88	Florida, No.	47	Utah	18
Florida, So.	237	Georgia, Mid.	14	Vermont	5
Georgia, No.	89	Georgia, So.	30	Virginia, W.	15
Illinois, No.	89	Hawaii	20	Washington, E.	7
Illinois, E. <sup>a</sup>	26	Idaho	15	Washington, W.	52
Kentucky, E.	46	Illinois, So.	30	West Virginia, No.	8
Louisiana, E.	87	Illinois, Central	1	West Virginia, So.	13
Maryland	131	Indiana, No.	38	Wisconsin, E.	25
Michigan, E.	109	Indiana, So.	31	Wisconsin, W.	8
Minnesota	64	Iowa, No.	10	Wyoming	16
Missouri, E.	64	Iowa, So.	14	Federal Virgin Islands	4
Missouri, W.	39	Kansas	32	Federal Guam	3
New Jersey	97	Kentucky, W.	37		
New York, E.	168	Louisiana, W.	14		
New York, So.	178	Louisiana, Mid.	5	Total	1,126
North Carolina, E.	62	Maine	7		*****
North Carolina, Mid.	47	Massachusetts	38		
North Carolina, W.	38	Michigan, W.	10		
Ohio, No.	56	Mississippi, No.	13		
Ohio, So.	53	Mississippi, So.	14		
Oklahoma, W.	41	Montana	15		
Pennsylvania, E.	76	Nebraska	15		
South Carolina	73	Nevada	27		
Texas, No.	99	New Hampshire	5		
Texas, So.	149	New Mexico	44		
Texas, W.	217	New York, No.	10		
Virginia, E.	96	New York, W.	20		
Federal Puerto Rico	23	North Dakota	20		
Federal Canal Zone <sup>a</sup>	2	Oklahoma, No.	21		
District of Columbia	180	Oklahoma, E.	16		
Offenders with sentences in multiple districts	307	Oregon	37		
		Pennsylvania, Mid.	13		
Total	3,947				
	*****				

<sup>a</sup>The Eastern District of Illinois was closed in April 1979, and the Federal Canal Zone was closed in March 1982; however, cases were handled by these districts and appeared in our sample.

Both the Federal Prison System and the Parole Commission maintain records on offenders confined in federal prisons, but they record only the most serious statute for which the offender was convicted. Neither maintains current data that could indicate the exact number of offenders whose crimes involved firearms. One of the objectives of our review was to statistically project estimates of the number of offenders sentenced and the length of sentences imposed under firearms statutes. Except where noted, we are 95 percent confident that findings for offenders are within +5 percentage points of what would have been found had we reviewed case files for all 18,310 offenders.

Our random sample of 5,073 federal offenders confined as of June 30, 1983, was selected from the Federal Prison System's inmate information system. Because this sample contained 511 offenders (10 percent) who we determined were not in custody or were not serving a federal sentence as of June 30, 1983, we deleted them from our sample to yield an adjusted sample of 4,562 offenders. This decrease in the sample size resulted in a projected population of 18,310 instead of 20,361 sentenced offenders in the Federal Prison System's data base as of June 30, 1983.

We examined federal district court case files for the adjusted sample of 4,562 offenders to determine

- how many federal prisoners committed offenses involving violations of firearms statutes;
- how many were charged with firearms violations and what percentage of firearms violations were dismissed;
- how many offenders were convicted of firearms violations and the statutes of conviction; and
- what median sentence was imposed on those offenders convicted of violations involving firearms and the number in which concurrent or consecutive sentences were ordered by the court.

To determine what impact parole or good time has on reducing the period of imprisonment for offenders convicted of violating firearms statutes, we examined case files maintained by the Parole Commission on 805 offenders in our sample who were convicted of firearms violations. The Parole Commission granted parole to 442 of the 805 offenders in our sample. We calculated the amount of time the 442 offenders served or will serve on the basis of information in the Parole Commission's case files. For 172 of the 805 offenders who were denied parole, we calculated the amount of time they served or will serve at release on the basis of sentence computation records of the Federal Prison System. We assumed that good time was not taken away for misbehavior. These calculations excluded extra good time because it is awarded monthly and all records are kept manually at the institutions. Therefore, our estimates of the actual time served for the 172 offenders denied parole may be slightly different from the actual time served. For the remaining 191 offenders, we were unable to determine the impact of parole or good time because, as of September 1984, no parole decisions had been made by the Parole Commission.

To determine how many offenders convicted of firearms violations would have qualified for prosecution under the two career criminal proposals considered by the 98th Congress, we performed two separate analyses. One proposal, which was enacted into law as a part of Public Law 98-473, amended

18 U.S.C. §1202(a) to provide a mandatory term of imprisonment of at least 15 years for a felon in possession of a firearm who had at least three prior convictions in any court (federal, state, or local) for robbery or burglary (armed/unarmed). For the 104 offenders in our sample who were convicted under 18 U.S.C. Appendix §1202(a), we examined their prior criminal records as contained in presentence investigation reports to determine how many of these offenders would have qualified for prosecution under the act if this legislation had been law when the offenders committed their crimes.

Under the proposal which did not become law, an offender would have received a mandatory term of imprisonment of at least 15 years if convicted of a federal armed robbery/burglary and the offender had at least two prior convictions in any court for robbery/burglary (armed or unarmed). For 560 offenders in our sample who were convicted of armed bank robbery and/or armed postal robbery, we examined their prior criminal records as contained in presentence investigation reports to determine how many of the offenders would have qualified for prosecution under this proposal if it had been law when the offenders committed their crimes.

#### STATISTICAL ANALYSES

Statistical sampling of the population of sentenced and confined federal offenders as of June 30, 1983, allowed us to make a series of comparisons between

- offenders who violated firearms statutes and those who did not;
- offenders who committed crimes involving a firearm and were charged with a firearms violation and those who committed crimes involving a firearm but were not charged with a firearms violation; and
- offenders convicted of a firearms violation and those who were charged with, but not convicted of, a firearms violation.

We made the appropriate tests to determine the confidence level at which differences noted are statistically significant--that is, when differences are not due to sampling error. Our analyses showed that there was a very high statistical significance (99.5 percent or higher) between the particular categories we compared. This means that we are 99.5 percent certain that differences between the groups actually exist and are not due to sampling error.

#### CONFIDENCE RANGES

We also conducted the appropriate tests to determine the confidence range for certain projections. The range reflects

the probable upper and lower limits between which the actual value is likely to be found. For all projections, except where noted, the chances are 95 in 100 that the actual value would be within the ranges shown.

Most confidence ranges for median sentences, reported in appendixes III to V, VII, and VIII, were calculated using a conservative method in which order statistics serve as the upper and lower limits.<sup>2</sup> In many cases, using this procedure resulted in confidence limits that are not symmetrical about the median. In several instances, where groups contained less than 10 cases, we used 1.25 times the standard error of the mean to calculate the confidence ranges for the median.

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<sup>2</sup>See Snedecor, G.W. and Cochran, W.G., Statistical Methods, 7th ed., Iowa State University Press: Ames, Iowa, 1980, pp. 136-137.

GUIDELINES FOR PAROLE

DECISIONMAKING

**GUIDELINES FOR DECISION-MAKING<sup>a</sup>**  
 [Guidelines for Decision-Making, Customary Total Time to be Served before Release (Including jail time)]

OFFENSE CHARACTERISTICS:  Severity of Offense Behavior	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
Category One [formerly 'low severity']	Adult Range			
	<=6 months	6-9 months	9-12 months	12-16 months
-----				
(Youth Range)				
(<=6) months	(6-9) months	(9-12) months	(12-16) months	
Category Two [formerly 'low moderate severity']	Adult Range			
	<=8 months	8-12 months	12-16 months	16-22 months
-----				
(Youth Range)				
(<=8) months	(8-12) months	(12-16) months	(16-20) months	
Category Three [formerly 'moderate severity']	Adult Range			
	10-14 months	14-18 months	18-24 months	24-32 months
-----				
(Youth Range)				
(8-12) months	(12-16) months	(16-20) months	(20-26) months	
Category Four [formerly 'high severity']	Adult Range			
	14-20 months	20-26 months	26-34 months	34-44 months
-----				
(Youth Range)				
(12-16) months	(16-20) months	(20-26) months	(26-32) months	
Category Five [formerly 'very high severity']	Adult Range			
	24-36 months	36-48 months	48-60 months	60-72 months
-----				
(Youth Range)				
(20-26) months	(26-32) months	(32-40) months	(40-48) months	

10/01/83

<sup>a</sup>Excerpts from the United States Parole Commission Rules and Procedures Manual, dated October 1, 1983.

**GUIDELINES FOR DECISION-MAKING<sup>a</sup>**  
**[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]**

OFFENSE CHARACTERISTICS: Severity of Offense Behavior	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
Category Six (formerly 'Greatest I severity')	40-52 months	Adult Range 52-64 months	64-78 months	78-100 months
	(30-40) months	(Youth Range) (40-50) months	(50-60) months	(60-76) months
Category Seven (formerly Included in 'Greatest II severity')	52-80 months	Adult Range 64-92 months	78-110 months	100-148 months
	(40-64) months	(Youth Range) (50-74) months	(60-86) months	(76-110) months
Category Eight* (formerly Included in 'Greatest II severity')	100* months	Adult Range 120* months	150* months	180* months
	(80*) months	(Youth Range) (100*) months	(120*) months	(150*) months

<sup>a</sup>Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

SALIENT FACTOR SCORE (SFS 81)

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE).....

- None .....= 3
- One .....= 2
- Two or Three .....= 1
- Four or More .....= 0

Item B: PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS.....   
(ADULT OR JUVENILE)

- None .....= 2
- One or two .....= 1
- Three or more .....= 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS.....

- Age at commencement of current offense
- 26 years of age or more.....= 2
- 20-25 years of age.....= 1
- 19 years of age or less.....= 0

\*\*\*Exception: If five or more prior commitments of more than than thirty days (adult or juvenile), place an "X" here \_\_\_ and score this item.....= 0

Item D: RECENT COMMITMENT FREE PERIOD (THREE YEARS).....

- No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense.....= 1
- Otherwise.....= 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS.....

- Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time.....= 1
- Otherwise .....= 0

Item F: HEROIN/OPIATE DEPENDENCE.....

- No history of heroin/opiate dependence.....=1
- Otherwise.....=0

TOTAL SCORE.....

Note: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

PREDOMINANT CRIMINAL BEHAVIOR FOR  
WHICH OFFENDERS WERE CONVICTED<sup>a</sup>

Offense category

<u>Firearms cases:<sup>b</sup></u>	<u>Sample</u>	<u>Projection</u>	<u>Percentage</u>
Bank robbery	785	3,151	59.8
Felon in receipt of a firearm	123	494	9.4
Narcotics	104	417	7.9
Murder and kidnapping	79	317	6.0
Other <sup>c</sup>	<u>222</u>	<u>891</u>	<u>16.9</u>
Total	1,313 *****	5,270 *****	100.0 *****
 <u>Nonfirearms cases:</u>			
Narcotics	1,300	5,218	40.0
Mall violations	365	1,465	11.2
Unarmed bank robbery	294	1,180	9.0
Illegal entry into U.S.	178	714	5.5
Interstate transportation of stolen goods	139	558	4.3
Interstate transportation of a stolen motor vehicle	87	349	2.7
Altered federal reserve note violation	75	301	2.3
Murder and kidnapping	74	297	2.3
False statement	71	285	2.2
Embezzlement	70	281	2.2
Other <sup>c</sup>	<u>596</u>	<u>2,392</u>	<u>18.3</u>
Total	3,249 *****	13,040 *****	100.0 *****

<sup>a</sup>This classification groups cases by the most serious offense for which offenders were convicted; thus if an offender was convicted of both kidnapping and carrying a firearm during a felony, he or she would have been classified in the "murder and kidnapping" category.

<sup>b</sup>This category includes all cases that involved a firearm, regardless of whether or not offenders were charged with the firearm violation. "Bank robbery," for example, includes some offenders who used or carried a firearm during a crime but were charged with unarmed bank robbery.

<sup>c</sup>The "other" category is composed of many different criminal offenses.

PROJECTED NUMBER OF SENTENCED AND CONFINED  
FEDERAL OFFENDERS AS OF JUNE 30, 1983

<u>Category</u>	<u>Sample number of offenders</u>	<u>Projected number of offenders</u>	<u>Upper con- fidence limit</u>	<u>Lower confidence limit</u>
Total number of federal offenders	4,562	18,310	18,456	18,164
Total number of nonfirearms offenders	3,249	13,040	13,273	12,807
Total number of firearms offenders	1,313	5,270	5,483	5,057
Total number of indicted firearms offenders	1,061	4,259 <sup>a</sup>	4,456	4,061
Total number of nonindicted firearms offenders	252	1,011	1,117	906
Total number of convicted firearms offenders	805	3,231	3,408	3,054
Total number of indicted, but not convicted, firearms offenders	256	1,028 <sup>a</sup>	1,134	921

<sup>a</sup>Rounded to next whole number.

CONFIDENCE LIMITS FOR MEDIAN  
TOTAL SENTENCE IMPOSED

<u>Category</u>	<u>Median</u>	<u>Upper confidence limit</u>	<u>Lower confidence limit</u>
	- - - - - (months) - - - - -		
All federal offenders	72	72	72
Nonfirearms offenders	60	60	60
Firearms offenders	144	180	144
Nonindicted firearms offenders	120	120	96
Indicted firearms offenders	180	180	144
Indicted, unconvicted firearms offenders	120	120	120
Convicted firearms offenders	180	180	180

CONFIDENCE LIMITS FOR MEDIAN TOTAL SENTENCE  
IMPOSED FOR SELECTED FEDERAL FIREARMS STATUTES

<u>Statute</u>	<u>Median</u>	Upper confidence <u>limit</u>	Lower confidence <u>limit</u>
	- - - - - (months) - - - - -		
Armed bank robbery <sup>a</sup>	216	240	215
Convicted felon possessing a firearm	39	60	36
Unlawful carrying or use of a firearm during a felony	120	180	96
All other firearm statutes	240	300	180

<sup>a</sup>This category only includes convictions under  
18 U.S.C. §2113(d).

DETAILED DATA ON SPECIFIC  
PROBLEMS ENCOUNTERED WITH  
18 U.S.C. §924(c)

1. Statute could not be used to impose additional penalties if the authorizing statute violated already prescribed a penalty for use of a firearm.

On the basis of our sample, we projected that 2,319 federal offenders convicted of using a firearm during the commission of a felony were sentenced under statutes which had their own enhanced penalty for use of a firearm, thus precluding the use of 18 U.S.C. §924(c). Most of the prosecutors, probation officers, and district court judges we talked with saw no problem in restricting the use of 18 U.S.C. §924(c) to crimes that did not have an enhanced penalty for use of a firearm--36 saw it as no problem, 12 considered it a problem, and 12 had no opinion.

2. The court was authorized to impose probation, a suspended sentence, or a concurrent sentence for a first conviction under the statute.

The Department of Justice considered this provision of the prior law to be a major weakness in the prior statute. Also, the Attorney General's 1981 Task Force on Violent Crime considered this a weakness and had recommended that legislative changes be enacted to require a mandatory sentence for those convicted of using a firearm during the commission of a federal felony.

In contrast to the Department's position, most of the prosecutors, probation officers, and district court judges we talked with were of the opinion that a suspended sentence, probation, or a concurrent sentence were all viable options that should be available to the court in sentencing a first offender of 18 U.S.C. §924(c)--39 supported the wide discretion offered by the statute, 12 considered the wide discretion a weakness, and 9 had no opinion.

3. The statute required that the government prove the firearm was unlawfully possessed in violation of a federal, state, or local law before an offender could be convicted of the possession charge.

Carrying a firearm during the commission of a felony without using it violated 18 U.S.C. §924(c)(2) only if the possession of the firearm was itself unlawful.

Most prosecutors we talked with were of the opinion that the unlawful provision was a weakness in the statute--nine considered it a weakness, three did not consider it a problem, and two had no opinion. Also, two of the nine prosecutors who considered the unlawful provision a weakness told us that they did not use 18 U.S.C. §924(c)(2) because it was difficult to prove. In contrast, four probation officers did not consider the unlawful provision a problem, four probation officers considered it a weakness in the statute, and six probation officers had no opinion.

CONFIDENCE LIMITS FOR MEDIAN TOTAL  
SENTENCE IMPOSED AND ACTUAL TIME SERVED FOR  
CONVICTED FIREARMS OFFENDERS GRANTED PAROLE

<u>Statute and category</u>	<u>Number of sample cases</u>	<u>Projected number paroled</u>	<u>Median</u>	<u>Upper confidence limit</u>	<u>Lower confidence limit</u>
			- - - - - (months) - - - - -		
<u>Armed bank robbery<sup>a</sup></u>	328	1,317			
Total sentence imposed			216	216	180
Total time served			73	80	72
<u>Armed postal robbery</u>	10	40			
Total sentence imposed			300	Life	300
Total time served			103	150	78
<u>Use of a firearm in commission of a felony</u>	25	100			
Total sentence imposed			108	180	84
Total time served			48	72	32
<u>Possession of a firearm by a convicted felon</u>	29	117			
Total sentence imposed			60	108	36
Total time served			26	40	19
<u>Receipt of firearm by a convicted felon</u>	22	88			
Total sentence imposed			60	72	36
Total time served			27	36	16
<u>Assault on federal officers</u>	4	16			
Total sentence imposed			156	273 <sup>b</sup>	39 <sup>b</sup>
Total time served			75	133	17
<u>Damage to property by use of explosives</u>	7	28			
Total sentence imposed			180	264 <sup>b</sup>	60 <sup>b</sup>
Total time served			72	108 <sup>b</sup>	29 <sup>b</sup>
<u>Armed bank robbery with killing of a person or taking of a hostage<sup>c</sup></u>	7	28			
Total sentence imposed			420	Life <sup>b</sup>	180 <sup>b</sup>
Total time served			144	216 <sup>b</sup>	112 <sup>b</sup>
<u>Other</u>	10	40			
Total sentence imposed			180	240	72
Total time served			75	120	42
<u>Total</u>	<u>442</u>	<u>1,774</u>			
	-----	-----			
Total sentences imposed for all statutes			180	192	180
Total time served			72	73	67

<sup>a</sup>These offenders were convicted under 18 U.S.C. §2113(d).  
<sup>b</sup>Confidence limit calculated at 90 percent.  
<sup>c</sup>These offenders were convicted under 18 U.S.C. §2113(e).

CONFIDENCE LIMITS FOR MEDIAN TOTAL SENTENCE  
IMPOSED AND MEDIAN TIME SERVED FOR  
CONVICTED FIREARMS OFFENDERS DENIED PAROLE

<u>Statute and Category</u>	<u>Number of sample cases</u>	<u>Projected number</u>	<u>Median</u>	<u>Upper</u>	<u>Lower</u>
				<u>confidence limit</u>	<u>confidence limit</u>
				- - - - - (months) - - - - -	
<u>Armed bank robbery<sup>a</sup></u>	61	245			
Total sentence imposed			120	144	96
Total time served			80	97	71
<u>Use of a firearm in commission of a felony</u>	7	28			
Total sentence imposed			120	180	60
Total time served			80	119	41
<u>Possession of firearms by convicted felon</u>	52	209			
Total sentence imposed			24	36	24
Total time served			19	28	19
<u>Receipt of firearms by convicted felon</u>	27	108			
Total sentence imposed			42	60	36
Total time served			32	44	28
<u>Assault on federal officers</u>	5	20			
Total sentence imposed			120	227	13
Total time served			81	145	17
<u>Damage to property by use of explosives</u>	4	16			
Total sentence imposed			106	205 <sup>b</sup>	7 <sup>b</sup>
Total time served			65	125 <sup>b</sup>	5 <sup>b</sup>
<u>Armed bank robbery with killing of a person or taking of a hostage<sup>c</sup></u>	3	12			
Total sentence imposed			184	-	60 <sup>d</sup>
Total time served			116	-	31 <sup>d</sup>
<u>Other</u>	13	52			
Total sentence imposed			60	96	36
Total time served			44	64	28
<u>Total</u>	172	690			
	****	****			
Total sentence imposed for all statutes			60	72	60
Total time served			44	53	44

<sup>a</sup>These offenders were convicted under 18 U.S.C §2113(d).

<sup>b</sup>A two-tailed test at 90 percent confidence was used to determine limits.

<sup>c</sup>These offenders were convicted under 18 U.S.C. §2113(e).

<sup>d</sup>A one-tailed test at 90 percent confidence was used to determine limit.

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS  
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY  
DIRECTOR

JOSEPH F. SPANIOL, JR.  
DEPUTY DIRECTOR

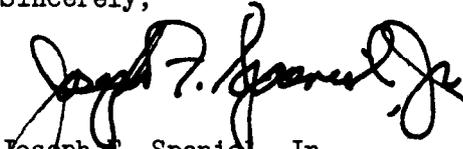
May 21, 1985

Mr. William J. Anderson  
Director, General Government Division  
General Accounting Office  
Washington, D. C. 20548

Dear Mr. Anderson:

Thank you for providing a copy of the draft report, "Federal Offenders Who Commit Crimes Involving Firearms: The Sentences Imposed and Time Served." As you note in your cover letter, the report makes no recommendations to the judiciary. We appreciate the opportunity to review this draft and have nothing to add.

Sincerely,



Joseph F. Spaniol, Jr.  
Deputy Director



## U.S. Department of Justice

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Washington, D.C. 20530

MAY 30 1985

Mr. William J. Anderson  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice on your draft report entitled "Federal Offenders Who Commit Crimes Involving Firearms: The Sentences Imposed and Time Served."

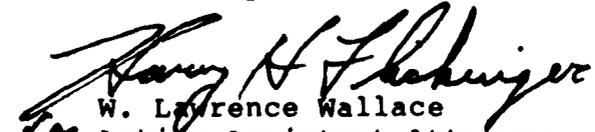
The report deals primarily with statistics on sentencing, parole decisions and statutory good time related to federal offenders who committed crimes involving firearms. Unfortunately, as the General Accounting Office (GAO) points out, with passage of the Comprehensive Crime Control Act of 1984 (Public Law 98-473, dated October 12, 1984), usefulness of the report's statistics is limited because the Act eliminates the possibility of release or parole for all offenders sentenced after November 1, 1986, and reduces the amount of good time that offenders sentenced after that date can receive.

The statistical results presented in the GAO report were developed through application of a statistically valid random sample technique designed for the purpose of this study. Since we cannot reconstruct the exact statistical methodology used, we are unable to determine the validity of the results obtained and do not believe any useful purpose would be served in attempting to do so.

Our only comment relates to the first full sentence at the top of page 6. The report states that the universe of sentenced federal prisoners who were confined as of June 30, 1983 was determined from the Federal Prison System's inmate information system. Given the general criteria stated in the report for arriving at a confined sentenced population of 20,361, the figure appears low.

We appreciate the opportunity to respond to the report while in draft form. If you desire to contact us with regard to our one comment, please feel free to do so.

Sincerely,

  
for W. Lawrence Wallace  
Acting Assistant Attorney  
General for Administration

(186706)



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