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An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories

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Executive Summary

Recent years have been marked by dramatic increases in the Federal prison population and in the number of Federal defendants sentenced for drug law violations. This report takes as its focus drug offenders with a minimal or no prior criminal history whose offense did not involve sophisticated criminal activity and whose offense behavior was not violent. We refer to this person as a "low-level" drug offender. This shorthand is adopted for purposes of convenience, and not to suggest any policy conclusions or assessments about the seriousness or harm resulting from drug offenses. The purpose of the analysis is to gain a more solid foundation of knowledge to inform criminal justice policy decisions.

The study started with a group of offenders selected from computerized records used by the U.S. Sentencing Commission and the Bureau of Prisons. A sample was identified on the basis of automated information about prior convictions, violence in the current offense, and level of sophistication of the instant offense. However, once the sample was identified, more in-depth record searches (including paper records with considerably more detail and National Crime Information Center records) disclosed more specific information about criminal histories as well as the functional role individual offenders played in their offenses.

It should be noted that there are at least two fundamental approaches to the sentencing of drug law offenders. One approach emphasizes the harm associated with the amount of drugs involved in the offense. Indeed, mandatory-minimum penalties for drug offenses have this premise. A second approach recognizes that in addition to the harm associated with the quantity of drugs, there are other important sentencing factors including the offender's role, and the risk he or she poses to the community. This report does not endorse or recommend one approach above the other. Rather it provides information on risk and role for the consideration of policymakers.

The major findings of this study are:

A substantial number of drug law violators who are sentenced to incarceration in Bureau of Prisons custody can be classified as "low-level". Using one set of criteria which limited offenders to no current or prior violence in their records, no involvement in sophisticated criminal activity and no prior commitment, there were 16,316 Federal prisoners who could be considered low-level drug law violators. They constituted 36.1 percent of all drug law offenders in the prison system and 21.2 percent of the total sentenced Federal prison population.

If we further restricted the population to those offenders with zero criminal history points (according to U.S. Sentencing Commission rules), there were 12,727 Federal prisoners who could be considered low-level drug law violators. They constituted 28.2

percent of all drug law offenders in the prison system and 16.6 percent of all sentenced prisoners.

The average sentence of the low-level drug law offender group was 81.5 months, which means that, under Guideline sentencing, these individuals will serve, on average, at least 5¾ years before release from prison.

Even with a liberal interpretation of criminal justice contact (where criminal justice contact was defined as an arrest regardless of disposition), the majority of low-level offenders had no prior recorded contact with the criminal justice system. The data do not reflect criminal justice contacts outside the United States. Therefore, criminal justice contacts for non-citizens may be under-reported.

Based on the study sample, two-thirds of low-level drug offenders currently in the Bureau of Prisons received mandatory-minimum sentences.

Even among low-level drug offenders, sentences have increased 150 percent above what they were prior to the implementation of Sentencing Guidelines and significant sentencing legislation which established mandatory-minimum sentences for primarily drug and weapons offenses.

Among the low-level offenders, 42.3 percent were couriers or played peripheral roles in drug trafficking.

Low-level drug law violators are much less likely than high-level defendants to reoffend after their release from prison and, if they do recidivate, they are unlikely to commit a crime of violence. Furthermore, the length of their incarceration does not positively or negatively influence their recidivism. These conclusions were based on a review of the research literature.

Even for low-level defendants, the most significant determinant of their sentence was drug quantity. The defendant's role in the offense had only a small influence on the length of the eventual sentence.

When examining the importance of demographics in sentencing outcomes for low-level offenders, citizenship was a significant factor even after accounting for most factors involved in sentencing.

Throughout the report, we distinguish among the role a defendant played in the drug scheme, the amount of drugs involved in the offense, and risk (i.e., the likelihood someone will reoffend and whether their new offense would be a crime involving drugs or violence). We based our evaluation of risk to a great extent on the criminal history of the defendant. Past research has consistently shown that prior record is the best determinant of future criminal involvement. Role in the offense was intended to portray the defendant's function in the drug

scheme. The concept of functional role was developed by the U.S. Sentencing Commission (USSC) and has been used in their research. We originally coded 17 categories consistent with the USSC categories; however, we found that among the non-violent drug offenders with minimal criminal histories, high-/mid-level dealer, money launderer/manufacturer, street-level dealer, courier, and peripheral role were the primary categories necessary to understand the defendant's involvement in the drug offense. As a result of this coding effort, some offenders originally defined as low-level, were found to have relatively sophisticated roles.

In several sections of this report, we contrast "low-" and "high-level" offenders. This distinction is a relative one. We used certain criteria to define a low-level offender pool and anyone who did not meet these criteria were categorized as higher level. This remaining pool of higher-level offenders does not imply these are all extremely risky defendants. This remaining group spans some defendants who are similar to the low-level pool and some who are very dissimilar. As a shorthand, throughout this paper, instead of referring to low- and higher-level we adopt the convention low- and high-level.

The study shows that even with a conservative definition of risk, which, along with other constraints, limited the target population to defendants with no past arrest of any kind, regardless of the disposition (conviction, not guilty, dismissed, no information), there were still a substantial number of low-level offenders. We used National Crime Information Center (NCIC) "rap sheets" as the basis for assessing past criminal justice contacts. This database does not report criminal justice contacts in other countries. Therefore, it is possible that we have under-represented the past criminal justice contacts of non-citizens. Nevertheless, by using the broad definition of criminal justice contact as any arrest, we also probably overestimated the past criminal histories of both U.S. citizens and some non-citizens.

Almost all of the analyses in this report distinguished between U.S. citizens and non-citizens. Our purpose was to develop the information based on citizenship in the event that specific policy has to be written for the low-level non-citizen offender. Without going into the details of our analyses, it seems clear that low-level non-citizens received longer sentences than their U.S. counterparts. However, we found no racial or gender trends in the sentencing of low-level drug law violators.

This paper demonstrates that mandatory-minimum prison sentences for specific drug amounts have had a profound influence on the structure of Sentencing Guidelines. Not surprisingly, drug quantity is, by far, the most important determinant of sentence length. Even after adding role adjustments or departure results into the sentencing equation, drug quantity was still the dominant determinant of sentence length. We have shown that drug defendants with minor functional roles (e.g., courier or peripheral role) still receive sentences that overlap a great deal with defendants who had much more significant roles in the drug scheme. This suggests that one possible mechanism to further calibrate sentences (upward or downward) would be to increase the effect of Guideline adjustments for role.

Additionally, the data from this study confirmed that Federal drug offenders, even those with

minor or no past criminal behavior, are receiving much longer sentences than they were prior to the 1986 Anti-Drug Abuse Act, which established most of the mandatory-minimum penalties for drug trafficking and importation, and the implementation of Sentencing Guidelines. In many cases, defendants are receiving a prison sentence when, previously, they would have received probation. This study showed that these defendants were clearly culpable and some of them were convicted of offenses involving large quantities of drugs. Nevertheless, as the research literature shows, at least for the low-level defendants, a short prison sentence is just as likely to deter them from future offending as a long prison sentence.

Long sentences do serve important criminal justice goals such as retribution and incapacitation of the offender. Long sentences may also have instrumental value in promoting general deterrence and in encouraging defendants to cooperate with prosecutors in some cases. However, long sentences may entail certain costs. If sentences for drug crimes, especially those involving relatively small amounts of drugs and in which the defendant had a peripheral role are perceived as too harsh, this perception may diminish the value of long sentences for crimes considered more serious, such as those involving violence. Long sentences for low-level offenders also have the effect of increasing the use of expensive prison bed space. The Bureau of Prisons calculates it costs approximately $20,000 per year to house a Federal offender. Some might argue that these resources could be used more efficiently to promote other criminal justice needs such as providing more money for additional police in our communities.

Overview

In this study, we have examined information on low-level drug law violators. By low-level drug law violators, we mean, essentially, non-violent, offenders with minimal or no prior criminal history whose offense did not involve sophisticated criminal activity[1] and who otherwise did not present negative characteristics which would preclude consideration for sentence modification. Our purpose in this analysis was to gain a more solid foundation of knowledge to inform criminal justice policy decisions. In order to accomplish this task, we have produced a report in eight sections.

In section I, we discuss the scope and purpose of the study. Sections II, III, and IV describe the low-level population in considerable detail. Section II contrasts the low- and high-level inmate populations confined in the Bureau of Prisons in June 1993. Based on a sample of 767 offenders, section III highlights the low-level offender's role in the drug offense, criminal record, and information on violent behavior in past or current offenses. Section IV looks at an even smaller sample (126 offenders) and provides a description of a study in which Department of Justice staff wrote brief narratives on selected offender cases. Sections V and VI examine the potential recidivism of the low-level population if alternative or shorter sentences were imposed. Section V has a brief discussion of the recidivism of a low-level offender population released in 1987. Section VI discusses the relationship between time-served and recidivism based on previous research. Section VII compares sentences before and after implementation of U.S. Sentencing Guidelines and mandatory-minimum sentences for drug offenses. Section VIII examines the relationship between a defendant's role in the offense, the risk he or she poses to the community, and the quantity of drugs involved in the offense. A summary of each section appears below.

Section I. This section briefly states the scope of the study which was designed to provide information relevant to policy considerations for low-level drug offenders. We do not recommend specific sentencing or charging policies and practices. These policy decisions must be made on the basis of the sometimes competing goals of criminal justice, namely retribution, justice, rehabilitation, incapacitation, general deterrence, specific deterrence, law

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[1] When we selected offenders from the Bureau of Prisons (BOP) database, we excluded offenders with any indication of sophisticated criminal activity. BOP policy defines sophisticated criminal activity for a drug offense as an offender who "was a principal figure or prime motivator in the criminal organization or activity, including an individual who acted alone or directed the illicit activities of a criminal organization." This definition obviously overlaps with the Sentencing Guideline definition of "aggravating role."

enforcement utilities, and fiscal constraints. However, because mandatory-minimum sentences for drug trafficking and importation have a pervasive effect on Guideline sentencing structure for drug offenses, any discussion of policy affecting drug offenders must consider the effect of these penalties on prison sentences. In this paper, we distinguish risk, defined as the probability an offender will commit a new offense after release and whether that offense will be violent, from drug quantity involved in the crime. This is consistent with Federal Sentencing Guidelines which calculate criminal history (risk) and offense severity separately. One approach to sentencing drug offenders is to make drug quantity the primary sentencing factor. An alternative approach for low-level drug law offenders could decouple or weaken the relationship between drug quantity and sentence length that currently exists and increase the influence of other sentencing factors. This is not to suggest that sentences will necessarily or should be lowered, but that other sentencing factors such as role in the offense might be given greater weight.

Section II. Based upon one set of criteria used in this study, the analysis found that as of June 1993, there were 16,316 Federal prisoners who could be considered low-level drug law violators. They constituted 36.1 percent of all drug law offenders in the prison system and 21.2 percent of the total sentenced Federal prison population. The average sentence of the low-level drug law offender group was 81.5 months, which means that, under Guideline sentencing, these individuals will serve, on average, at least 5¾ years before release from prison.

Even using rather conservative criteria of risk based on the arrest records of offenders, we found that 30.3 percent of drug trafficking defendants sentenced in FY 1992 and 21.4 percent of drug offenders currently in Bureau of Prisons custody could be considered low-level. We excluded quantity of drugs involved in the offense from our low-level calculations, which is consistent with the way the U.S. Sentencing Commission (USSC) separately treats criminal history (risk) and offense level.

While the primary comparison made throughout this report is between low- and high-level drug offenders, in most of our analyses we also compare citizens and non-citizens. We did this because of the possible policy decisions that may require information based upon citizenship; however, as the data showed, while low-level U.S. citizens and non-citizens shared similar criminal backgrounds, citizenship also had a pronounced effect on differences between offenders with regard to marital status, substance abuse, and other characteristics.

Section II first compares low- and high-level drug offenders on a number of demographic and behavioral characteristics. Then, for both policy considerations and because of the striking differences between citizen and non-citizen drug law offenders on a number of important characteristics, citizens are compared with non-citizens for the entire Bureau of Prisons drug offender population. Following that, comparisons are made between low- and high-level citizens and between low- and high-level non-citizens.

Contrasts Between Low- and High-Level Drug Law Offenders. The most distinctive differences between the low- and high-level groups were the following: the low-level group was disproportionately female (13.9 percent of the low-level and 5.9 percent of the high-level group were women) and disproportionately non-citizens (43.3 percent of the low-level and 21.3 percent of the high-level group were non-citizens).

Members of the low-level group were less likely to have regularly used drugs at least once a week for one month at any time in their lives (33.9 percent of the low-level and 44.7 percent of the high-level group were self-reported users).[2] The low-level group had a lower rate of prison misconduct overall and a substantially lower rate of serious misconduct, which includes assaults, escape attempts, and drug possession or use (15.6 percent of the low-level and 27.8 percent of the high-level group had at least one misconduct incident and 2.5 percent of the low-level and 8.7 percent of the high-level group had serious misconduct incidents). The low-level group was more likely to be married (45.8 percent of the low-level and 40.8 percent of the high-level group were married). The low-level group was somewhat younger than the high-level group (29.8 percent of the low-level and 25.7 percent of the high-level group were less than 30 years old at admission to prison). The low-level group was slightly more likely than the high-level group to have at least 12 years of education and to have been employed full time prior to their incarceration than members of the high-level group (73.8 percent of the low-level and 72.6 percent of the high-level group had at least 12 years of education and 68.9 percent of the low-level and 65.6 percent of the high-level group were employed full time prior to their present incarceration).

Contrasts Between Citizen and Non-Citizen Drug Law Offenders. Of the 31,991 confined drug law violators who were U.S. citizens, 28.9 percent (9,258) were low-level drug law violators. And among the 13,207 non-citizen drug law violators, over half (7,044) were low-level offenders. The average sentence of low-level drug law violators who were U.S. citizens was 78.8 months, while for low-level non-citizens, the average sentence length was 85.0 months. Since the great majority of these offenders were sentenced under the U.S. Sentencing Guidelines, the U.S.-citizen group will serve, on average, 5½ years before release

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[2] Throughout this report, we use different definitions of "drug abuse." In some cases, we refer to regular use. In other cases, we refer to drug dependence or whether a defendant was under the influence of drugs at the time of his or her arrest. The proportion of offenders who have a drug abuse problem can vary widely depending on the definition one adopts. In this report, we are simply trying to demonstrate the relative difference in drug use among different types of defendants. The Bureau of Prisons has adopted a rigorous definition of drug abuse that depends on a clinical diagnosis of a substance abuse problem. Under that definition, about 30 percent of BOP inmates have a moderate to severe problem and require treatment. That definition should not be confused with the various drug abuse definitions that appear throughout this paper.

while, non-citizens will serve an average of 6 years.

Non-citizen drug law offenders were predominantly from Mexico (31.6 percent), Colombia (23 percent), Cuba (9.8 percent), the Dominican Republic (6.7 percent), Jamaica (5.5 percent) and Nigeria (4.7 percent). Non-citizen drug law violators were also more likely to be married and less likely separated or divorced (55.1 percent of the non-citizens were married compared to 37.7 percent of the citizens). Furthermore, of the small proportion of drug law defendants who did graduate from college, a greater percentage of non-citizens were more likely to have received college diplomas; however, U.S. citizens were more likely than non-citizens to have had some high school education or to have graduated from high school. Non-citizen drug law violators were also more likely to have been employed at the time of arrest and to have others dependent upon them, yet to have earned less both legitimately and illegitimately the year before arrest. Non-citizen drug law offenders were much less likely to be drug users or dependent on drugs (15.7 percent of the non-citizens compared to 50.7 percent of the citizens were self-reported substance abusers).

Contrasts Between Low- and High-Level U.S. Citizens. Focusing on U.S. citizens, we see that the low-level group had a disproportionate number of women (16.3 percent of the low-level group were women, compared to 6.4 percent of the high-level group). The low-level group also had a lower percentage of persons charged with prison misconduct than did the high-level group (15.3 percent of the low-level and 28.5 percent of the high-level group had any misconduct charges while in prison). Serious misconduct (i.e., assaults, escape attempts, drug use) was also lower among the low-level group than among the high-level group (2.8 percent of the low-level group had been charged with a serious misconduct compared to 8.8 percent of the high-level group). Finally, the low-level group had a smaller percentage of self-reported substance abusers than the high-level group (45.3 percent of the low-level and 52.9 percent of the high-level group could be categorized as self-reported substance abusers).

Contrasts Between Low- and High-Level Non-Citizens. Among low-level non-citizens, there were a disproportionate number of women (10.8 percent of the low-level and 4.1 percent of the high-level group were women). Compared to high-level non-citizens, low-level non-citizens were less likely to be separated or divorced (14.8 percent of the low-level and 19.2 percent of the high-level group were separated or divorced); were less likely to have been employed in a full-time job (71.6 percent of the low-level and 75.1 percent of the high-level group were employed full-time prior to incarceration); were less likely to be reliant on illegal income (4.4 percent of the low-level and 9.5 percent of the high-level group had income from illegal sources); were less likely to have a history of substance abuse (12.9 percent of the low-level and 17.6 percent of the high-level group were substance abusers); and were less likely to have a record of prison misconduct (14.7 percent of the low-level and 25.1 percent of the high-level group had any prison misconduct). Additionally, only 2 percent of the low-level group had any serious misconduct (i.e., assaults, escape attempts, drug use), compared to 8.2 percent of the high-level group. Lastly, among the low-level group, there were

relatively more Mexicans, Colombians, Nigerians, and Ghanians, and fewer Cubans and Jamaicans, than in the high-level group.

Section III. Because some information, particularly on Guideline sentencing issues and past criminal history, is not recorded in the Bureau of Prisons automated database, we supplemented our information with a sample of 767 offenders who were in the custody of the Bureau in June 1993 and were sentenced in 1992. Based upon the sample of 767 offenders representative of low-level drug law violators, we coded information on the defendant's functional role in the offense, weapon use, gang activity, and the type(s) and amount(s) of drug(s) involved in the offense from files kept by the U.S. Sentencing Commission (USSC). We also coded the FBI's National Crime Information Center (NCIC) "rap sheets" on every offender, and combined these data with data from USSC and Federal Bureau of Prisons automated files.

According to USSC data, 33 percent of our sample did not receive a mandatory-minimum penalty; 33 percent received a 5-year and 33 percent a 10-year mandatory-minimum prison sentence for a drug offense. The remaining 1 percent received either a 1-year or more than a 10-year mandatory prison sentence.

In this more in-depth review of low-level drug law cases, we found few instances of violence, street gang membership, or weapons use associated with the drug offense either from the paper records (judge's statement of reasons, pre-sentence report, guideline worksheets, plea agreements, Government's version of the offense), or the rap sheets. Using the rap sheets, we coded any arrest, regardless of disposition (i.e., not guilty, dismissed, conviction, no information). Using this criterion, we found 77 percent of non-citizens and 60 percent of U.S. citizens had no NCIC arrest record. NCIC does not contain criminal justice contacts in countries other than the United States. For that reason, the NCIC recorded arrests of non-citizens probably under-represents their criminal history. On the other hand, by using the broad definition of criminal justice contact as any arrest, regardless of disposition, we are probably over-representing the past criminality of both U.S. citizen and non-citizen defendants.

We also found that 95 percent of non-citizen drug law violators had no prior arrest for a violent offense and 88 percent had no prior arrest for a drug offense. Among U.S. citizens, 89 percent had no prior arrest for a violent offense and 78 percent had no prior arrest for a drug offense.

We also examined the extent to which offenders with a score of zero Guideline criminal history points had any NCIC arrest record. Among non-citizens with no criminal history points, 82 percent had no prior arrest of any kind, 97 percent had no arrest for a violent offense, 92 percent had no arrest for a drug offense, and 89 percent had no arrest for other than a drug or violent offense. Among U.S. citizens with zero criminal history points, 71

percent had no prior arrest of any kind, 91 percent had no arrest for a violent offense, and 86 percent had no arrest for a drug offense. Furthermore, among non-citizens, 18 percent had an arrest for an offense other than a drug or violent crime.

There was a significant difference in the types of roles U.S. citizens and non-citizens played in the drug offense. Most U.S. citizens could be characterized as dealers, while most non-citizens could be characterized as couriers or "mules" or having even more peripheral roles.

Section IV. Based upon a subsample of 126 offenders, two groups of Department of Justice staff wrote short narratives on the same defendants. This analysis was intended to be more contextual and descriptive than the analyses portrayed in sections II and III. One group used USSC records to cull information, while the other called the Assistant U.S. Attorneys involved in the cases to gather their information and to develop an understanding of the particular cases which went beyond the USSC records. We summarize our findings below primarily in the form of impressions rather than data. Because we are making generalizations in this section based on only 126 cases, we must emphasize that further systematic research should be conducted to confirm or disconfirm our impressions.

In reviewing these cases closely, it was clear that there was little doubt as to the culpability of these defendants. Moreover, there were few defendants who had a record of violence or a gang affiliation. What emerged was a variety of fact patterns and circumstances. There were some cases when individuals had rather minimal roles in the drug offense, but the drug amount was so high as to result in a long mandatory sentence.

In some cases, the defendants played minimal roles in large drug operations which extended many months or even years into the past. It was also evident that although the study group members did not have a prior commitment record, some had extensive juvenile and/or adult arrest records, suggesting that their lack of prior commitment may have been a matter of their good fortune. Some of these individuals also had a history of illegal drug activity as part of their arrest record.

Section V. Based on a study of 1987 BOP releasees, persons with similar criminal backgrounds to low-level drug law offenders had about half the recidivism rate (20 percent) of the entire release group (40.7 percent recidivism). Recidivism was defined, in this study, as any arrest or supervision revocation within 3 years of release. When an offender was arrested, the offense was typically a drug law violation and rarely involved violence. The study also found that, unlike the present group of low-level drug law offenders who will serve, on average, 5¼ years of their sentence, the comparable 1987 releasee served, on average, less than 1½ years.

In a complementary study of all non-citizens released in the first 6 months of 1987 who were drug law violators and who met the USSC criteria for a criminal history category I, it was

found that these offenders were even less likely to recidivate than their U.S.-citizen counterparts. Although many of these non-citizen offenders were deported after serving a prison sentence, even non-citizens released to supervision in the United States were less likely to reoffend than similar U.S. citizens.

Section VI. In this section, we review the research literature that examines the fundamental relationship between time-served and recidivism. Citing previous research conducted in jurisdictions including the Federal and State prison systems, the evidence clearly shows that the amount of time a defendant serves does not have an impact on his or her likelihood of re-offending.

Section VII. In this section, we compare sentences for low-level drug law violators sentenced in 1985 and those sentenced in our 1992 sample. In this analysis, sentences are compared among defendants with the same criminal history points and similar drug quantities. When the data are categorized into 19 groups, depending on the quantity of drugs involved in the offense, the analysis shows that in almost every group, sentences for the 1992 sample are longer than sentences for 1985 drug law violators. On average, sentences have increased 146 percent for offenders with zero criminal history points -- from 24.9 to 61.2 months, and by 140 percent for offenders with one criminal history point -- from 28.3 to 68 months. This section also shows that far fewer defendants receive probation under new sentencing policies than they did in 1985.

In section VII, by assuming that sentence length indicates the criminal justice system's view of the relative harm caused by an offense, we demonstrate that drug trafficking has been elevated above almost every serious crime except murder. Among offenders with a category I criminal history score, sentence lengths for offenders convicted of drug trafficking were higher than sentence lengths for offenders convicted of kidnapping/hostage taking, robbery, assault, arson, firearms, and racketeering/extortion. We demonstrate that in 1986, the relative harm (measured as the ratio of time served for one offense to time served for a second offense) of robbery to drug trafficking was almost 2 to 1. In 1992, that ratio was 1.26 to 1.

Section VIII. Section VIII compares the drug quantities involved in the offense for high-level dealers, street-level dealers, couriers, and defendants with a peripheral role. The data show that almost 77 percent of all defendants in the low-level sample of 767 offenders were convicted of offenses involving a large enough quantity of drugs to trigger a mandatory-minimum penalty. Regardless of the functional role a defendant played in the drug scheme, the drug amounts involved in the offense are similar across the roles. After applying Guideline adjustments and downward departures, there is a great deal of overlap in the distribution of sentences among high-level dealers, street-level dealers, couriers, and those with a peripheral role.

An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories

Section I. Purpose and Scope of the Study

Recent Federal Prison Population Growth

Since 1980, the Federal prison population has more than tripled, rising from 24,000 to more than 90,000 in early December 1993. Moreover, it is projected that by the year 2000 the prison population will reach 130,000. Much of this increase has taken place in the last few years, driven by the new sentencing laws which have provided for longer prison sentences, set mandatory-minimum sentences for certain offenses such as drug law violations and offenses involving weapons, abolished parole, and substantially reduced prison good time credit. Since the end of 1988, when the full impact of these new laws was realized, the prison population has grown by an average of over 650 inmates per month, or enough to fill one medium size institution with each new month.

The emphasis on drug offenses has dramatically changed the composition of the Federal prison population. In 1980, 18 percent of Federal prisoners were drug law violators. By the end of 1988, this figure was 46 percent, and currently it is 60 percent. The latter percentage translates to approximately 46,000 Federal prisoners who are confined for drug law violations, many of whom are first-time offenders.

According to the U.S. Sentencing Commission, 28,754 individuals were sentenced to Federal prisons in 1992 under Guideline sentences. Of these, 14,622 were convicted of drug trafficking offenses, and, of this latter group, 9,007 were Sentencing Commission Criminal History Category I offenders (i.e., individuals with zero or one "countable" [3] prior conviction(s)). Thus, drug law violators with minimal criminal histories accounted for almost one-third of the 28,754 Guideline-sentenced cases in 1992.

Study Purpose

This study was undertaken to enhance our understanding of the "low-level" offender population. We use "low-level" as a label in a relative sense. The offenders we have targeted in this study are less likely to be violent, and as the information in the recidivism section of this report demonstrates, are less likely to reoffend following release from prison than "higher

[3] "Countable" criminal history points refer to points assigned to the prior conviction record of the defendant according to Guideline rules. These rules are defined more precisely in section III of this report.

level" offenders who commit drug law or other violations. However, this study does not make recommendations on sentence lengths or whether probation or prison is a preferred sanction. These considerations must be made with respect to the goals of criminal justice policy planners.

We also recognize that one of the essential problems in developing sentencing policy for drug law defendants is the extent to which drug amount should influence the sentencing decision. The past practices study conducted by the U.S. Sentencing Commission[4] found that prior to the implementation of Sentencing Guidelines, drug weight was the most influential factor in a judge's sentencing decision. Under current sentencing practices, drug weight is still the most influential factor in sentencing. However, due to mandatory-minimum sentences, drug quantity establishes a "floor" precluding prison sentences below a certain level for trafficking and importation of all drugs, and for possession of crack cocaine.

Those who advocate the primacy of drug weight in the sentencing decision argue that the harm to society of a drug offense is proportional to the type and quantity of the drugs involved. Those who advocate that other sentencing factors should play a significant role in the sentencing decision argue that personal responsibility or culpability should be an essential factor in the sentencing process. Since both points of view have merit, the issue is the extent to which drug quantity or culpability should affect the sentencing decision. Stated in these terms, the issue is more a matter of degree than fundamental differences in sentencing approaches. However, under current sentencing practices, culpability, defined as role, can only enter the sentencing equation under limited circumstances. For example, culpability can affect sentences if mandatory-minimum penalties do not apply, if mitigating role adjustments do not lower sentences below a mandatory-minimum penalty, or if aggravating role leads to an increased sentence. In this study, we conducted an evaluation of the defendant's functional role in drug trafficking to enhance our understanding of defendant culpability.

There are some who argue that drug trafficking is inherently violent. Indeed, the research literature indicates there is evidence that violence is systemic to the illegal drug market.[5] For

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[4]Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, United States Sentencing Commission, June 18, 1987.

[5] The research by Paul J. Goldstein has demonstrated that 39 percent of all homicides in a New York City sample in 1988 were a result of violence systemic to drug trafficking. Goldstein distinguishes systemic violence, which is primarily a feature of the illicit market, from psychopharmacological or economic-compulsive violence. The former is violence associated with the psychopharmacological effects of drug inebriation or drug withdrawal. The latter is violence associated with economic crimes to finance drug use. Goldstein has found that when there is psychopharmacological violence, it is usually as a result of alcohol, while economic-compulsive violence is not common. For a bibliography of Goldstein's

the purposes of criminal justice, it is important to understand and document the extent to which an individual has been violent or is likely to be violent. Therefore, it is necessary to distinguish between the concepts of an inherently violent drug market and of risk to the community posed by individual drug offenders. The study's focus on risk was intended to assist our understanding of the relationship between drug offenses and recidivism, especially violence, and to document the extent of the violence in both the offender's instant offense and in the offender's criminal history.

Competing Criminal Justice Policy Goals

Because drug offenses constitute particularly serious crimes, consideration of criminal justice policy goals becomes all the more challenging. There are many such goals to be evaluated. There are retributive and justice goals. These goals emphasize punishment commensurate to the crime. There are instrumental goals. Among these are the incapacitative, rehabilitative, general and specific deterrent effects of criminal justice policy. Some have emphasized the importance of mandatory-minimum sentences and longer Guideline sentences as leverage in gaining cooperation from defendants to assist the Government in making cases against other criminals. There is also the practical goal of designing a Federal criminal justice policy that will not pose an excessive economic burden on taxpayers.

To put this study in perspective, the information we gathered cannot answer questions about the relative merits of these diverse, and in some cases, competing goals. The scope of this study was to shed light on characteristics of this "low-level" offender population so that criminal justice policy planners can make informed decisions in the context of relevant criminal justice goals.

Because mandatory-minimum sentences for drug trafficking and importation have a pervasive effect on the Guideline sentencing structure for drug offenses, any discussion of policy affecting drug offenders (whether they are low- or high-level offenders) must confront the effect of these penalties on prison sentences. As we show later in this paper, almost two-thirds of low-level drug offenders currently confined are serving mandatory-minimum prison sentences. It is worth emphasizing that drug quantities, as a result of the incorporation of mandatory-minimums into the Sentencing Guidelines, are the single most important determinant of the drug offender's sentence length. If policy planners were to consider sentence reductions for the low-level offender population, then a strategy would have to be developed to decouple or weaken the link between drug amounts and prison sentences. Throughout this paper, we often refer to the effect or impact of Sentencing Guidelines. This

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published work consult "Drugs and Violence in America", United States Sentencing Commission, Proceedings of the Inaugural Symposium on Crime and Punishment in the United States, Washington, D.C., June 16-18, 1993, pp. 96-98.

is a shorthand for referring to the effect of Sentencing Guidelines in combination with mandatory-minimum penalties.

Sections II through VIII

The remainder of this paper considers several definitions of low-level offender and characterizes the target population on the basis of demographics, social history, sentencing characteristics, criminal history, role in the offense, and drug quantities involved in the instant offense. The information is intended to provide policymakers with as precise a picture of the low-level offender as is possible and to represent the risk to the community if sentences were reduced for these offenders.

There are seven additional sections to this report. In section II, we attempt to show how many offenders currently under the jurisdiction of the Bureau of Prisons (BOP) could be affected by a policy focusing on low-level drug offenders. We define the low-level group and present data that come primarily from automated BOP records. The data contrast the low- and high-level populations. Throughout this report, almost all comparisons of risk also focus on distinctions between U.S. citizens and non-citizens.[6]

In section III, our purpose is to gain further insight into the low-level inmate population by 1) limiting our interest to offenders sentenced in FY 1992, and 2) supplementing our information with data from the U.S. Sentencing Commission automated records and from other information we coded directly from paper records the Commission keeps in their files. Because coding data from files is labor intensive and time consuming, we restricted our analysis to a statistical sample of 767 low-level offenders.

In section IV, we describe the analysis of an even more limited sample of 126 offenders. Staff wrote brief narratives in response to a set of protocol questions designed to elicit information on the circumstances of the offense with respect to violent behavior, role, aggravating or mitigating circumstances, criminal history, gang affiliation, and information on departure status. Seven defendants from each of 18 judicial districts were chosen at random. A summary of these findings is described in section IV.

In section V, we review evidence on the likelihood that low-level offenders will recidivate. We present these data to show the relative risks of releasing low- versus high-level offenders.

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[6] The distinction U.S. citizen versus non-citizen is made without attempting to draw the line between legal and illegal alien. Because illegal alien is a status determined by the Immigration and Naturalization Service and that determination is typically made after an offender completes his or her sentence, BOP files have no information on which inmate or what proportion of inmates will be determined to be an illegal alien.

In section VI, we briefly present data on the relationship between time-served and post-release outcome. We present this information to show that the current best evidence is that length of stay of imprisonment, after adjusting or controlling for other factors that predict recidivism, is not related to reoffending. In other words, for many offenders, shorter or longer sentences have no impact on recidivism.

In section VII, we compare the differences in sentences for low-level offenders using information from defendants sentenced in 1985, prior to implementation of Guidelines, and similar defendants sentenced in 1992.

In section VIII, we present data on the relationship between functional role (the active role a defendant played in the drug crime) and the amount of drugs involved. We present these data for several reasons. The data show that there is very little difference in the quantity of drugs involved when looking at the functional roles of offenders. Because drug quantity is the primary determinant of sentences under the Guidelines, on this basis alone defendants having different roles, whether peripheral or central to the drug scheme, are likely to have received similar sentences.

Section II. "Low-Level" Drug Offenders

In this section, we draw upon Bureau of Prisons and U.S. Sentencing Commission data to represent the potential low-level target population and then, using Bureau of Prisons data exclusively, portray characteristics of the low-level population. In subsequent sections, we add more information to our analysis; however, the size of our study population gets smaller and smaller as we sacrifice sample size for more refined and contextual information. BOP automated data are used to represent the potential target group of low-level offenders among inmates currently in Bureau of Prisons custody. USSC data are used to represent the number of Guideline-sentenced defendants who were sentenced in FY 1992 and who may qualify as low-level. Thus, the BOP data represent a cross-section of these offenders and the USSC data represent a cohort. To the extent that low-level offenders have shorter sentences than high-level offenders, a cross-section will indicate a smaller pool of low-level candidates over some given time period.

In the next several paragraphs, we use different definitions of risk to show what proportion of the current Bureau of Prisons drug offenders and what proportion of offenders convicted of drug trafficking in 1992 under Sentencing Guidelines might qualify as low-level. In each case, we add more restrictions to pare down the pool of drug defendants to less risky subpopulations. This serves two purposes. It shows how different criteria can be applied to define a low-level subpopulation. It also shows how large a difference there might be between these different populations after applying different criteria of risk.

Figure I shows the number and percentage of offenders who might be considered low-level based on BOP data. Each line in the stacked bar graph shows how large the low-level pool would be, depending on the restrictiveness of the low-level criteria. Obviously, as we add restrictions, this low-level pool will decrease. The top of the stacked bar shows the entire Bureau of Prisons sentenced drug law violation population in June 1993 -- 45,198 offenders. Each stack below represents the number and proportion of the drug law population that meets the different additional low-level criteria.

In the topmost low-level bar, we define low-level drug law violators as any individuals who meet the following criteria. First, they must be sentenced individuals who have been convicted of a drug offense. In addition, if they are U.S. citizens, they must have no record of prior commitment, no history of violence, no detainer filed against them, no significant record of a public safety factor risk[7] (other than a long sentence length), and no known record

[7] Public safety factors are defined by the Bureau of Prisons Program Statement on Security Designation and Custody Classification as any factor "which requires increased security to ensure the protection of society." These factors include membership of a security threat group, use or possession of a firearm which was intended to influence the commission

of sophisticated criminal activity. For non-citizens, the selection criteria are the same except that information on detainer is not used and the public safety factor indicating deportable alien is disregarded. This population is 36.1 percent of all drug law violators, or 16,316 offenders.

If we add a further restriction that low-level defendants cannot exceed a Guideline-determined criminal history category I, the target population becomes 32.1 percent of all drug law violators, or 14,522 offenders. Restricting the group further to zero Guideline-defined criminal history points results in 28.2 percent, or 12,727 offenders. Further restricting offenders to no prior violent- or drug-related arrests (we define this later) results in a proportion of 23.4 percent, or 10,551 offenders. Finally, if we restrict this group to only those offenders who had no recorded arrests, the resulting pool becomes 21.4 percent of drug law violators, or 9,673 offenders.

Figure 2 uses USSC data and portrays the eligible pool of low-level offenders as the proportion of defendants whose major Guideline offense was § 2D1.1, drug trafficking, and who were sentenced in FY 1992. When the U.S. Sentencing Commission provided these data to us in March of this year, the Commission had recorded 13,511 defendants sentenced under Guideline § 2D1.1 for FY 1992. Of these, the stacked bars show the eligible low-level pools as the following restrictions are added: category I criminal history points, 63.2 percent, 8,535 offenders; no conviction under 18 U.S.C. § 924(c), a mandatory-minimum penalty for a weapons offense, 54.2 percent, 7,328 offenders; no aggravating role adjustment, 49.7 percent, 6,712 offenders; zero criminal history points, 39.8 percent, 5,381 offenders; no prior arrest for a violent or drug crime, 33.0 percent, 4,461 offenders; and, finally, no prior arrest of any kind, 30.3 percent, 4,090 offenders.[8] The low-level pools using prior arrests are

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of an offense, an offense involving aggressive sexual behavior, including child pornography and child prostitution, and an offense indicating a significant threat to a Government official.

[8] Recently, the U.S. Sentencing Commission provided the Department of Justice with additional data on drug defendants sentenced under Federal Sentencing Guidelines in Fiscal Year. 1992. These data include all defendants sentenced under Chapter Two, Part D of the Guidelines manual. The percentages based on all Part D drug defendants versus those based on only §2D1.1 defendants are very similar. For example the data below shows that 50.7 percent of all defendants sentenced under Chapter 2 Part D met the following criteria: criminal history category I, no weapon involved in the offense, and the defendant played no aggravating role in the offense. For defendants sentenced under §2D1.1 meeting these criteria, the percentage was 49.7 percent.

I. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual: 16,684

II. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual who met the following criteria:

zero criminal history points
no weapon involved in the offense
defendant played no aggravating role in the offense

6,897 (41.3 percent of the total number of drug offenders sentenced under the guidelines in FY '92)

III. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual who met the following criteria:

criminal history category I (includes offenders with zero and one criminal history points)
no weapon involved in the offense
defendant played no aggravating role in the offense

8,459 (50.7 percent of the total number of drug offenders sentenced under the guidelines in FY '92)

IV. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual who were convicted of a statute carrying a mandatory-minimum penalty: 9,212

V. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual who met the following criteria:

sentenced under a mandatory-minimum statute
zero criminal history points
no weapon involved in the offense
defendant played no aggravating role in the offense

3,198 (34.7 percent of the total number of drug offenders sentenced under the guidelines in FY '92 upon conviction for a statute that carried a mandatory-minimum penalty)

VI. Defendants sentenced under Chapter Two, Part D of the Guidelines Manual who met the following criteria:

sentenced under a mandatory-minimum statute
criminal history category I (includes offenders with zero and one criminal history points)
no weapon involved in the offense
defendant played no aggravating role in the offense

3,984 (43.2 percent of the total number of drug offenders sentenced under the guidelines in

estimates based on a sample we represent in section IV.

As we indicated, the cohort representation indicates a greater low-level pool than the cross-section because low-level offenders have shorter sentences, are released sooner, and therefore are not as likely to show up in a cross-section. Even the most restrictive definition of risk still yields a low-level cohort which is 30.3 percent of drug trafficking defendants sentenced in FY 1992 and 21.4 percent of offenders currently in Bureau of Prisons custody. Although we have left drug quantity out of our low-level calculations, this is consistent with the way the U.S. Sentencing Commission separately treats criminal history (risk) and offense level.

Characteristics of Low-Level Drug Offenders in the Bureau of Prisons Current Population

Using the most inclusive definition of low-level BOP offenders, we developed information on these defendants which are presented in tables 1 through 4.[9] The information is presented on

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FY '92 upon conviction for a statute that carried a mandatory-minimum penalty)

[9]Profile information for sentenced Federal offenders was obtained from two sources. The primary source is the automated online SENTRY system which provides operational and management information including basic background, prison sentence, and programmatic information on inmates confined in BOP and contract facilities. At the time the information was gathered for this study (June 1993), there was a total of 76,835 sentenced inmates in BOP and contract facilities.

The second information source is a 1991 interview survey of a stratified sample of 6,572 Federal inmates which was conducted by the U.S. Census Bureau under contract with BOP. Besides collecting demographic information on respondents, the survey covered such topics as work history, prior criminal record, use of weapons, and drug use history. The information gathered from the survey was used to project population profiles and response distributions for the total sentenced BOP population which, at the time of the survey, was 54,006.

One may question the use of inmate self-reported information for purposes of describing drug law offenders in this report. However, by drawing upon demographic information provided by survey respondents, it was possible to actually match many of these inmates in the SENTRY system and then to verify the information provided by them as to current offense and prior criminal record. The correspondence between self-reported and officially recorded information was so high as to greatly enhance our confidence in the veracity of self-reported information, and we feel comfortable in the use of this material in this report.

Differences do exist between the two information sources. One is current to June 1993 and

both low-level and high-level drug law violators, the latter group being composed of sentenced drug law violators who were excluded by the selection criteria from the low-level category. In addition, a distinction was made between drug law violators who are U.S. citizens and the growing number of non-citizen drug law violators.[10] This was necessary because of the often substantial differences in background characteristics and other factors which distinguish these two groups of offenders. Indeed, the analysis was made more complicated because the differences between U.S.-citizen and non-citizen drug law violators frequently were greater than differences between high- and low-level offenders. Another reason for separating U.S. citizens from non-citizens is that policy implications for handling a non-citizen offender population may be different than for a U.S.-citizen group.

A summary of the information presented in tables 1 to 4 follows:

- Table 1 presents information on sentence length and offense severity. Of 76,835 sentenced inmates in the BOP in June 1993, 45,198, or 58.8 percent, were confined for drug law violations.

- 70.8 percent of drug law violators were U.S. citizens and 29.2 percent were non-citizens.

- 28.9 percent of U.S. citizen drug law violators met the low-level criteria and 53.3 percent of non-citizen drug law violators met the low-level criteria. In actual numbers, 9,258 U.S.-citizen and 7,044 non-citizen drug law violators fell into the low-level category.

- Among U.S. citizen drug law violators, the average sentence for high-level

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the other dates to 1991. Also, the 1991 survey projections are restricted to BOP facilities only and do not include contract facilities where many non-citizens are housed. These differences are not critical to our interests, particularly since we will rely on SENTRY information for our numerical estimates of low-level and high-level drug law violators and will only draw upon the 1991 survey information to add to the description of these populations.

[10] In 1980, there were 946 sentenced non-citizens in BOP custody. In September, 1993, there were 17,283 sentenced non-citizens. As a percentage of the BOP sentenced population, non-citizens were 4.3 percent of that population in 1980 and were 22.4 percent of the sentenced population in September, 1993. Although these sentenced non-citizens were not exclusively drug law violators, over 80 percent of the non-citizens in BOP custody in 1993 were sentenced for drug offenses.

offenders was 138.9 months, while for low-level offenders, the average sentence was 78.8 months. For non-citizen high-level and low-level offenders, the sentences were 156.9 and 85.0 months, respectively. Since the vast majority of those confined are "new law" cases, we can estimate that low-level drug law violators who are U.S. citizens will serve, on average, 5½ years before release while low-level non-citizens will serve 6 years on average.

- Among high-level U.S.-citizen drug law violators, 17.1 percent had integral or managerial roles (greatest severity category in table 1), while among low-level U.S. citizens, 0.3 percent had played an integral or managerial role in the offense. Among high-level non-citizen drug law violators, 28.4 percent of the high-level and 0.9 percent of the low-level offenders had assumed integral or managerial roles in the drug offense.

- Table 2 shows that among both U.S.-citizen and non-citizen low-level drug law offenders, females were over-represented.

- Table 2 also shows that in the low-level non-citizen category, Mexicans, Colombians, Nigerians, and Ghanians were over-represented while Cubans and Jamaicans were under-represented.

- Regarding other background items in table 2, differences tended to be greater between U.S. citizens and non-citizens than between high- and low-level drug offenders. Thus, a higher percentage of non-citizens were married and a lower percentage were separated or divorced than among U.S. citizens. Non-citizens were more likely to have graduated from college or have had some college experience than U.S. citizens; however, non-citizens were also less likely to have finished high school than their U.S.-citizen counterparts. Non-citizens were also more likely to have been employed at the time of their arrest and to have had others dependent upon them, yet they tended to have earned less money during the year before their arrest and were less likely to have obtained illegal income.

- Table 3 presents a series of items related to drug and alcohol use. There are four conclusions to be drawn from this table:

    - Many of the U.S. citizens confined for drug law violations are themselves drug users and drug dependent. Thus, 50.7 percent of the U.S. citizen group stated they regularly used drugs (i.e., once a week or more for at least a month), 38.2 percent said they had used drugs in the month prior to their arrest, and 16.1 percent said they were under the influence of drugs at the time of arrest.

- As one moves from high-level U.S. citizens to low-level non-citizens, there is a decrease in the use of and dependence on drugs. Among U.S. citizens, for example, 52.9 percent of high-level drug law violators had regularly used drugs while among low-level violators the figure was 45.3 percent. Among non-citizens, 17.6 percent of high-level and 12.9 percent of low-level offenders regularly used drugs.

- The decrease in drug use was greatest between U.S. citizens and non-citizens. While 50.7 percent of the U.S. citizen group had used drugs regularly, among non-citizens, the figure was 15.7 percent.

- The drug of choice in all cases is marijuana, followed by cocaine. Among high-level U.S. citizens, for example, 39.0 percent were regular users of marijuana and 23.8 percent regularly used cocaine. For low-level non-citizens, 7.8 percent regularly used marijuana and 5.8 percent regularly used cocaine.

- Table 4 presents information on prison experience. It shows that while the majority of low-level drug law offenders who are U.S. citizens are kept in minimum-security facilities (i.e., prison camps), few low-level non-citizens are so housed.[11]

- Table 4 also reflects that low-level drug law violators were more likely to have a better adjustment record as measured by frequency and type of disciplinary report. Lastly, low-level drug law violators who were U.S. citizens were more likely to have received a prison furlough while few low-level non-citizens received such consideration.

If we were to quickly summarize the data in tables 1 through 4 for U.S. citizens, we would point mainly to the greater concentration of female offenders in the low-level group, and the better prison adjustment record of this group, but we would also stress the involvement of many of these individuals in the drug culture as evidenced by their drug use and dependence.

In the case of non-citizens as a group, we start with people primarily from Central and South America with often more intact family backgrounds, but poorer earnings. These individuals also are less likely themselves to be drug users. Within the non-citizen group, low-level drug law violators were disproportionately female and also more likely single and less likely separated or divorced relative to high-level non-citizens. The low-level group had even poorer earnings and were even less likely to use drugs. Finally, they had a better prison adjustment record.

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[11] As a matter of policy, the Bureau of Prisons does not ordinarily house non-citizens in prison camps. These minimum security facilities do not have fences or a perimeter security.

In subsequent sections, we will focus on smaller samples representative of the low-level population in order to evaluate in greater detail their criminal histories, past violence, and other contextual information.

Section III. Sample of 767 Low-Level Drug Offenders

This section focuses in more detail on the possible past criminal history or violence of the offender. The selection of this sample is described in Appendix A. The sample represents low-level drug offenders who were confined in Bureau of Prisons facilities in June 1993 and who were sentenced in 1992. The sample represents information culled from both BOP and USSC automated data and from the coding of additional information from sentencing records maintained by the Commission. Although coding is labor intensive, and, between BOP and USSC automated records there was a great deal of information already available, it was still necessary to code information on drug amounts involved in the conviction, weapons use, functional role, and other important variables not contained in either electronic data set. The coding form used to collect this additional information can be found in Appendix D. We used a coding scheme developed by the Commission to gain an understanding of the functional role the defendant played in the drug offense.

This sample was chosen from a larger file of 5,099 defendants who met the low-level criteria. This file included both defendants who received mandatory-minimum penalties and those who did not.[12] The sample of 767 is very representative of the larger data set of 5,099.[13] Table 5 shows the percentage of defendants in the sample who received mandatory-minimum penalties according to USSC records. Of the sample, 33.0 percent received no mandatory-minimum penalty, while 33 percent received a 5-year mandatory-minimum penalty and another 33 percent received a 10-year mandatory-minimum penalty. Citizens were slightly more likely to receive the mandatory-minimum than were non-citizens.

Violence in the Instant or Past Offense and Criminal History

Although the cases in this sample were selected by using Bureau of Prisons automated data to explicitly exclude any offenders who had violence in prior recorded criminal activity or their

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[12] We did not restrict this sample to offenders who received mandatory-minimum penalties because one of the purposes of this study was to assess level among defendants who currently receive prison sentences. The penalties for all drug defendants have increased as a result of reconciling drug Guidelines with drug quantities specified in statutes containing mandatory-minimum penalties. Thus, many defendants who previously would have qualified for a sentence of probation now receive prison sentences as a consequence of this reconciliation. Therefore, it was necessary to sample offenders who did not receive mandatory-minimum prison sentences, but who nevertheless received prison sentences.

[13] Although the sample of offenders was 767, some of the information collected on these defendants was missing. Therefore, in subsequent sections where data are presented in tables, the number of defendants will vary depending on which data items are being considered.

current offense, an attempt was made to record any additional indication of possible current or past history of violence either from U.S. Sentencing Commission automated data, material contained in USSC files, or from NCIC recorded criminal histories.

Guideline Criminal History Points and Categories

Tables 6 and 7 represent the criminal history categories and criminal history points recorded in the USSC database on defendants in the sample. These data are based on the pre-sentence investigation recommendations to the court. In most cases, the court adopts these recommendations or modifies them only slightly. As can be seen in table 6, 93.4 percent of non-citizens and 85.5 percent of citizens fell into criminal history category I of the U.S. Sentencing Guidelines. Table 7 indicates that 86.8 percent of non-citizens and 72.1 percent of citizens had zero criminal history points while 6.6 percent of non-citizens and 13.4 percent of citizens had one "countable" criminal history point.[14] According to the U.S. Sentencing Guidelines, defendants having zero or one criminal history point fall into criminal history category I.

Weapons Use in Current Offense

Using Bureau of Prisons data, we tried to screen out any defendant who may have used a weapon in the current offense. However, we also verified our screening procedure by coding pre-sentence investigations for weapon use and by merging our data with an indicator in the USSC database that records whether a defendant was convicted of 18 U.S.C. § 924(c) which carries, at a minimum, a 5-year mandatory consecutive sentence for use or possession of a firearm if the instant offense is a crime of violence or drug trafficking crime. Table 8 indicates that of the 767 offenders in our sample, 3 non-citizens and 4 citizens had a 924(c) conviction. When we coded presentence investigations for weapons use, we used a fairly liberal definition. Among citizens, 4.3 percent of their codefendants had possessed a weapon. Among non-citizens, 2 percent had codefendants with a weapon. There were no instances in which the possession of a weapon was used as a threat or resulted in bodily harm. In fact, among non-citizens, we could find no mention of a weapon in 95.2 percent of the cases, while for citizens there was no mention of a weapon in 87.8 percent of the cases.

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[14] "Countable" criminal history points according to Guideline rules found in § 4A1.1 and application notes do not include a sentence for "a foreign conviction, a sentence imposed for an offense committed prior to the defendant's 18th birthday unless it resulted from an adult conviction, and a sentence imposed more than 15 years prior to the defendant's commencement of the instant offense unless the defendant's incarceration extended into this 15-year period."

Gang Membership

Another indication of violence was the possible link of an offender with a gang. We coded two variables in relation to gang activity. The first variable indicated whether the offender had any association with a gang. Thus, if there was any connection to a cartel or organized gang, we indicated gang association. A second variable was coded if gang membership was relevant in the current offense. Among the sample of 767 defendants, only 13 (1.8 percent) had any indication of a relationship to a gang. In some of these cases the relationship was tangential. In 15 of the 767 cases (2.1 percent), there was an indication that the drug crime was related to gang activity. Citizenship had no influence on these indicators.

Possible Violence in a Secondary Offense

Another indication of possible violence in the instant offense was the extent to which a conviction offense other than the primary drug conviction indicated violent criminal activity. This information appears in table 9. Using the USSC data on a secondary conviction offense, we found that there were only a few secondary offenses that were not drug statute violations. These offenses included income tax violations (four offenders), money laundering (one offender), racketeering (two offenders), and administration of justice offenses such as accessory after the fact (two offenders). These data clearly indicate, there was little or no violence in any secondary conviction offense.

NCIC Arrest History

Department of Justice analysts ran National Crime Information Center (NCIC) criminal history checks on all 767 defendants in the sample. The "rap sheets" were then coded and the following information was recorded for every arrest: date of arrest, NCIC offense code, disposition (not guilty, dismissed, conviction, turned over to another agency, no information), type of sentence (e.g., probation or prison), months of sentence, and whether the defendant was under any kind of criminal justice supervision when the arrest occurred.

In the present analysis, we coded an arrest regardless of its disposition. This was the most inclusive measure of criminal justice contact we could use. This, of course, included defendants whose charges were dismissed, who were found not guilty, and for whom there was no disposition. We counted every arrest as one "prior." In addition, we separately calculated arrests involving violent offenses,[13] arrests for prior drug offenses, and arrests for other than violent or drug offenses.

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[13] We counted the following offenses as violent: homicide, manslaughter, kidnapping, rape/sexual assault, robbery, simple or aggravated assault, arson where a life was endangered, extortion where a person was threatened with injury, and weapons offenses.

The "prior" arrest distributions are represented in table 10. As depicted in table 10, 66.7 percent of the offenders had no indication of any prior arrest. Another 13.9 percent had 1 previous arrest, 6.3 percent had two arrests, and 4.4 percent had three arrests. The remaining 8.7 percent had from 4 to 14 prior arrests.

Among defendants in the sample, 91.1 percent had no indication of a previous violent offense and 5.3 percent had one arrest for a violent offense. Of the total sample, 82.1 percent had no previous arrest for a drug offense, while another 10.4 percent had one previous arrest for a drug offense. Finally, among defendants in the sample, 78.4 percent had no arrest for a crime which could be categorized as an offense that was neither violent nor drug-related.

The most common response for an NCIC recorded arrest was that no information was available on the disposition of the arrest. For example, although we found that 8.9 percent of the offenders in this sample had a prior arrest for a violent offense, there was no information on disposition in 53.7 percent of the violent arrests. There was a not guilty finding in 2.8 percent of the violent arrests, a conviction in 17.6 percent of the violent arrests, and a dismissal in 25.9 percent of the violent arrests. Thus, we were only able to verify that 1.6 percent of the total sample was convicted of a violent offense (computed as 1.6 percent verified conviction for a violent arrest = 17.6 percent convicted x 8.9 percent violent arrest).

This pattern of dispositions for drug offenses was 0 percent not guilty, 21.1 percent conviction, 28.5 percent dismissal, and 50.4 percent no information. For other than drug or violent offenses, the pattern was 2.2 percent not guilty, 25.9 percent conviction, 21.8 percent dismissal, and 50.2 percent no information. Thus, we were able to verify a conviction for 3.8 percent of the drug arrests and 5.6 percent of arrests for other than a drug or violent offense.

One approach to coding this data would have been to assume that for every case in which there was no information on the disposition of the arrest, the actual disposition occurred in the same proportions as the not guilty, dismissed, and conviction findings. This assumption would have meant that 46 percent of arrests resulted in a conviction. Rather than make this assumption, we simply counted every arrest as evidence of a criminal justice contact and called it a "prior," an assumption which overstates the extent of the defendant's criminal history.

Tables 11 through 13 represent the arrest histories separately for U.S. citizens and non-citizens. As can be seen from table 11, U.S. citizens (39.8 percent) were more likely to have a recorded arrest for any crime than non-citizens (23.3 percent). As shown in tables 12 and 13, U.S. citizens were also more likely than non-citizens to have been arrested for a violent crime (11.5 percent versus 4.9 percent) and for a prior drug crime (21.6 percent versus 12.2 percent). Although there are obvious reasons for the differences in arrest information between citizens and non-citizens, it is clear that some information is available through NCIC on prior criminal activity among non-citizens. Furthermore, for violent and drug-related offenses,

neither U.S. citizens nor non-citizens had an extensive prior arrest record regardless of the disposition.

Some proposals for modifying mandatory-minimum penalties for drug offenses have been predicated on the lower categories of criminal history points assigned through the application of Guideline rules.

As an example, we looked at the recorded arrest histories of offenders in the sample who had zero prior countable criminal history points. We found that 76.1 percent had no prior arrests. Another 11.9 percent had one prior arrest. For those offenders with zero criminal history points, 93.5 percent had no prior arrest for a violent offense, 4.4 percent had one prior arrest for a violent offense, and the remaining 2.1 percent had two or three prior arrests for a violent offense. Looking at prior drug arrests, 88.6 percent of the sample who had zero criminal history points also had no prior arrests for a drug offense. Another 7.5 percent had one prior arrest for a drug offense. Looking at other than drug or violent offenses, for offenders with zero criminal history points, 82.4 percent had no prior arrest for "other" offenses. Of this sample 9.9 percent had one arrest and 3.7 percent two arrests for an "other" offense.

Table 14 depicts this information for U.S. citizens and table 15 for non-citizens. For non-citizens, 81.9 percent had no prior NCIC recorded arrests of any kind. Furthermore, for non-citizens, close to 97 percent had no recorded violent arrests, 92.4 percent had no recorded drug arrests, and 89 percent had no "other" arrests. For U.S. citizens who had zero criminal history points, 70.7 percent had no NCIC recorded arrest of any nature. Furthermore, for U.S. citizens, 90.7 percent had no recorded violent arrests, 85.6 percent had no recorded drug arrests, and 81.7 percent had no recorded "other" arrests. It is clear that even with this liberal interpretation of criminal justice contact, the great majority of non-citizens and even the majority of U.S. citizens do not have recorded prior criminal justice contact.

Functional Role in the Offense

One of the interests in the study of non-violent, "low-level" drug offenders is the extent to which their role in the drug crime warrants adjustments for aggravating or mitigating roles. Sentencing Guidelines allow for a 2-, 3-, or 4-level increase in offense level depending on the extent to which a defendant was an organizer, leader, manager, or supervisor of a criminal activity (§ 3B1.1). Similarly, a defendant's offense level can be decreased 2 to 4 levels depending on minor or minimal participation in the criminal activity (§ 3B1.2). For research and policy development purposes, the U.S. Sentencing Commission has developed an alternative coding scheme for categorizing role according to the function of the defendant in the activity or scheme. A list of these functional roles appears in table 16 along with the percentages found in the sample by Department of Justice staff. A description of each

function appears in Appendix B.

As can be seen in table 16, the offender's function was related to citizenship status. While most defendants operated as couriers or mules (34.7 percent), street-level dealers (22.1 percent), or mid-level dealers (20.4 percent), U.S. citizens were more likely to be mid- or street-level dealers (23.0 and 29.5 percent respectively) than non-citizens (16.4 and 11.0 percent respectively). Non-citizens were more likely to be couriers or mules (50.8 percent) than U.S. citizens (23.9 percent).

In order to simplify further analyses and because some of the functional role categories had very few offenders, we collapsed the original 17-level variable into 6 levels: high-level dealer, mid-level dealer, street-level dealer, manufacturer/financier (includes pilot/boat captain, manufacturer/mill manager, financier, money launderer, bodyguard), courier (includes courier and mule), and peripheral role (includes renter/storer, moneyrunner, off-loader, gofer/lookout/deckhand/worker, enabler, and user only).

Using this collapsed set of categories of functional role, we found that for non-citizens the following proportions resulted: high-level dealer, 4.7 percent; mid-level dealer, 16.4 percent; money launderer/manufacturer, 7.7 percent; street-level dealer, 11.0 percent; courier, 50.8 percent; and peripheral role, 9.4 percent. For U.S. citizens, the functional roles resulted in the following percentages: high-level dealer, 2.9 percent, mid-level dealer, 23.0 percent, money launderer/manufacturer, 12.3 percent, street-level dealer, 29.5 percent, courier, 23.9 percent, and peripheral role, 8.5 percent. It is obvious from this representation of functional roles that U.S. citizens are more likely to be street-level dealers than non-citizens, and non-citizens are much more likely to be couriers than their U.S.-citizen counterparts. In any event, even if we assume the importance of the street level dealer's role in drug trafficking, about 60 percent of non-citizens and 32.4 percent of citizens served as a courier or played an even more peripheral role in the drug trafficking scheme.

Our sample was originally screened to eliminate offenders who could be categorized as participating in sophisticated criminal activity by Bureau of Prisons policy or who had received an aggravating role adjustment through the application of the U.S. Sentencing Guidelines. Nevertheless, Department of Justice staff coded 27 cases (3.6 percent) as high-level dealers, and 28 cases (3.8 percent) as manufacturers, categories which many would consider as warranting an aggravating role adjustment. There are several reasons why there might be a discrepancy between the coding of these significant functional roles and the fact that these defendants did not receive an aggravating role adjustment.

Department of Justice staff were relying on the pre-sentence investigation to make their judgment about functional role. In many cases, there was not a great deal of information to distinguish high- from mid-level dealers. It was often difficult to infer how significant the defendant was in the drug distribution network. In all cases, even high-level dealers in this

sample were purchasing drugs from "higher-level" dealers before wholesaling or redistributing the drugs. Among the manufacturers, 16 of the 28 (57.1 percent) grew marijuana and were for the most part the primary or only manufacturers involved in the offense. In the other 12 cases, it was not always clear whether the offender was the only or the most important organizer, manager, supervisor, or leader in the drug manufacturing offense.

Guideline Departures, Mitigating Role Adjustment, and Citizenship

Table 17 indicates the extent to which citizens and non-citizens are likely to receive a guideline departure.[16] Table 17 shows that 10 percent fewer departures occurred for non-citizens than for citizens. There was a large difference between citizens and non-citizens in substantial assistance departures. Among citizens, 27.3 percent of our sample received 5K1.1 departures. Among non-citizens, 12.7 percent received 5K1.1 departures. Although non-citizens tended to receive downward departures more often than citizens (7.6 versus 3.3 percent), downward departures were infrequent relative to 5K1.1 departures.

Table 18 shows the relationship between mitigating role adjustment and citizenship. In this case, non-citizens were more likely to benefit from mitigating role reductions. A higher proportion of non-citizens received downward adjustment for roles and were much more likely to receive a four point reduction than citizens (20.4 versus 4.5 percent respectively).

Functional Role, Guideline Departures, and Citizenship

In this section, we examine the relationship between functional role, Guideline departures, citizenship, and sentence length. By doing this analysis, we hope to gain a better understanding of the practice of departures for low-level drug defendants. Because departures may have a significant effect on sentence length and only a motion by the Government for substantial assistance can result in a sentence below a mandatory-minimum penalty, it is important to understand the extent to which departures are used.

We looked at the extent to which a defendant received a Guideline departure depending on his/her functional role in the offense. Table 19 depicts the relationship between functional role

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[16]There are essentially two types of Guideline departures. The court can depart from a guideline sentence when it finds circumstances "not adequately taken into consideration by the Sentencing Commission in formulating the guidelines..." 18 U.S.C. § 3553(b). The court may also depart from the guidelines "upon motion of the Government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense." United States Sentencing Commission Guidelines Manual, 1992, §5K1.1, p. 329.

and departure status where downward and 5K1.1 departures have been collapsed into one category. Table 19 demonstrates that in this sample, mid-level dealers were most likely to receive a departure (36.1 percent), followed closely by offenders with a peripheral role (35.9 percent), and high-level dealers (30.8 percent). However, even 23.2 percent of couriers, 23.4 percent of money launderers/manufacturers, and 19.8 percent of street-level dealers received departures.[17] This data demonstrates that even defendants who have much less important roles than the organizers of drug distribution networks still manage to qualify for departures, including substantial assistance. This corroborates a similar result found by the U.S. Sentencing Commission in their study of functional roles in relation to higher-level drug transactions.[18]

Tables 20 and 21 represent the relationship between functional role, citizenship, and departure status. For non-citizens, 28.6 percent of high-level dealers, 27.7 percent of mid-level dealers, 13.6 percent of money launderers/manufacturers, 9.7 percent of street-level dealers, 17.8 percent of couriers, and 30.8 percent of defendants with peripheral roles received a downward or 5K1.1 departure. For citizens, 33.3 percent of high-level dealers, 40.0 percent of mid-level dealers, 27.3 percent of money launderers/manufacturers, 22.1 percent of street-level dealers, 30.8 percent of couriers, and 39.5 percent of defendants with peripheral roles received a downward or 5K1.1 departure. In this sample, it is clear that U.S. citizens performing any role were more likely to receive a downward departure than their non-citizen counterparts. For several functional roles the differences were substantial.

We also analyzed the extent of downward departures by computing the difference between the sentence imposed on the defendant and the bottom of the Guideline range identified by the court in the statement of reasons for imposing a sentence or in the pre-sentence report. This analysis showed that when defendants received departures, there was no statistical difference among citizens or non-citizens in the number of months of their departures. However, there were differences in departures among defendants having different functional roles.

On average, among those offenders who received departures, high-level dealers received 71.1-month departures; mid-level dealers received 48.9-month departures; financiers/manufacturers received 84.2-month departures; street-level dealers received 25-

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[17] The following proportions of defendants received downward and 5K1.1 departures by functional role: high-level dealers, downward - 2.9 percent, 5K1.1 - 27.9 percent; mid-level dealers, downward - 3.4 percent, 5K1.1 - 32.7 percent; money launderers/manufacturers, downward - 2.9 percent, 5K1.1 - 20.5 percent; street-level dealers, downward - 3.7 percent, 5K1.1.1 - 16.1 percent; couriers, downward - 7.6 percent, 5K1.1 - 15.6 percent; peripheral roles, downward - 3.1 percent, 5K1.1 - 32.8 percent.

[18] Addendum to the Drug/Role Working Group Report, April 1, 1993, U.S. Sentencing Commission.

month departures; couriers received 30.8-month departures; and defendants with peripheral roles received 68.6-month departures.[19]

Thus, although couriers were the most likely to receive a departure, on average, they received 30.8-month reductions in their sentences. Mid-level dealers who were next most likely to benefit from a departure, received, on average, 48.9-month sentence reductions. Defendants with peripheral roles who received departures also received substantial sentence reductions, especially considering their sentences were, on average, lower than defendants having other roles (couriers were the one exception). Generally, the higher the functional role, the higher the sentence reduction due to a departure. Defendants with a peripheral role, however, also received sizable sentence reductions due to a departure.

Table 22 shows the relationship between sentence length, functional role, and citizenship. Except for couriers, citizens in every other functional role were more likely to receive a lower sentence than their non-citizen counterparts.

Functional Role and Mitigating Role Adjustment

Among the 767 defendants in this sample, approximately two-thirds received mandatory-minimum penalties. Because mitigating role adjustments cannot be used to reduce a sentence below a mandatory-minimum, it is possible that pre-sentence reports and sentence calculations in such cases do not fully reflect the mitigating role adjustment for which the defendant might otherwise qualify. Bearing this in mind, the data represented in this section may underestimate the extent to which defendants have played a minor or minimal role in the offense.

Table 23 represents the relationship between functional role and mitigating role adjustment. Table 23 shows that within functional role, offenders with a peripheral role were the most likely to receive the mitigating role reduction (43.9 percent). In addition, 40.5 percent of couriers, 21.8 percent of money launderers/manufacturers, 12.1 percent of street-level dealers, 5.3 percent of mid-level dealers, and even 3.7 percent of high-level dealers received a downward adjustment for mitigating role. Tables 24 and 25 represent this same information by citizenship.

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[19] Although we used a statistical procedure (Analysis of Variance) to evaluate the extent to which citizenship and collapsed functional role influenced the amount of departure, in some categories there were very few defendants. We can be confident in our conclusions that citizenship did not influence the amount of departure and that collapsed functional role was a significant determinant. However, some of the estimates of the average length of departures are based on too few cases to be confident in the precision of those estimates. We present the averages for descriptive purposes.

Citizens were less likely to receive a mitigating role reduction than non-citizens (18.8 versus 32.1 percent). Non-citizens were most likely to receive a mitigating role adjustment for a peripheral (50.0 percent), courier (47.4 percent) or money launderer/manufacturer (26.1 percent) functional role. Among U.S. citizens, although they were generally less likely to receive a mitigating role reduction, when they did, the reduction followed roughly the same pattern as non-citizens. Those with peripheral roles (39.5 percent), couriers (30.8 percent), and money launderers/manufacturers (20.0 percent) were most likely to receive the reduction.

Functional Role, Mitigating Role, and Other Factors That Determine Sentence Length

A multivariate analysis was undertaken to simultaneously assess the influence of citizenship, functional role, mitigating role reduction, and other characteristics related to sentencing. In this analysis, we examined the influence of drug amount (in marijuana-equivalence weights), criminal history points, whether the defendant pled, whether the defendant received a 5K1.1 motion, age, gender, race, marital status, employment status at the time of arrest, two categories of mitigating role (yes, no), and five categories of functional role (high- and mid-level dealer combined, street-level dealer, launderer/manufacturer, courier, and peripheral).

These analyses are represented in Appendix C. Three different models (A, B, and C) are presented. The difference between Model A and B is that a variable representing employment at the time of arrest was added to the latter model. Model C includes the employment variable and an interaction term which represents the combined effect of marital status and employment. The analyses showed that drug amount has, by far, the most influence on a defendant's sentence length. This is not surprising given that Guideline offense level is most affected by drug quantity. In addition to drug amount, the following characteristics resulted in a longer sentence: trial, non-citizen status, and whether one was a money launderer/manufacturer or mid- or high-level dealer. The following characteristics resulted in a lower sentence: a 5K1.1 departure, mitigating role adjustment, and whether functional role was courier or peripheral. Characteristics having no effect were: total criminal history points, age, gender, race, and marital status. Criminal history points were probably not significant because there was very little variation in the number of points because of the way our sample was chosen.

When employment was added in Model B and the interaction term of marital status and employment was added in Model C, the effect of whether the defendant was a mid- or high-level dealer became stronger.

This analysis confirmed that non-citizens received somewhat longer sentences even after we accounted for their functional role, their mitigating role adjustment, and other background characteristics. Clearly, one of the major differences is the fact that non-citizens were much less likely to receive 5K1.1 substantial assistance departures.

Section IV. Sample of 126 Cases Coded by Department of Justice Staff

The second subsample consisted of 126 cases which, besides the analysis described above, were examined in even greater detail. Because we were primarily interested in defendants who received mandatory-minimum-sentences, we chose a sample that guaranteed such a selection.

For each of these cases, Department of Justice researchers reviewed documents that the U.S. Sentencing Commission collects and uses to create its monitoring database. These documents include pre-sentence reports (PSR), a judge's statement of reasons for specific sentences, any plea agreements between the Government and the defendant, and Guideline worksheets if they were not already incorporated into the PSR. Occasionally, the Government's version of the offense was included in the file.

A protocol was developed by Department of Justice staff and appears in Appendix A. The protocol allowed two groups of staff to write brief narratives which focused on the role played by the individuals in their offense, whether the individual was involved in a larger drug or other illegal operation, background characteristics, mitigating or aggravating factors in the offense, and whether or not the defendant provided substantial assistance to prosecutors. While one group of staff completed these protocols based on USSC documentation, the other contacted the Federal prosecutors involved in these 126 cases and using the same protocol obtained the same information from Assistant U.S. Attorneys (AUSA). The purpose of this exercise was to compare information contained in AUSA files with similar information kept by the U.S. Sentencing Commission. If we found correspondence between these records, it would bolster our confidence in the information culled from USSC files used in the larger study.

Eighteen judicial jurisdictions were chosen for this project, with 7 cases selected from each jurisdiction.[20] Of the 126 cases selected, 86 were taken from the first sample of 767, along with 40 additional cases so that each jurisdiction surveyed had 7 cases.

Both groups of staff involved in this part of the study also coded functional role using the USSC scheme. In comparing these assessments, there generally was a fair amount of agreement in that, when differences were found, the roles assigned tended to differ by only

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[20] The 18 jurisdictions were Central District of California, the D.C. District Court, District of Delaware, Southern District of Florida, Northern District of Iowa, Northern District of Illinois, District of Kansas, Western District of Kentucky, District of Maine, Western District of Michigan, District of Montana, Eastern District of North Carolina, District of New Jersey, Eastern District of New York, Southern District of New York, Northern District of Ohio, District of South Carolina, and Northern District of Texas.

one category level (on a ranked scale of involvement), such as mid- versus street-level dealer. Those staff who worked with the Federal prosecutors were more inclined to assign a higher role to defendants than the other group, but there were also cases when this was reversed, and there were only a few cases when the disparity in role assignment was substantial.

This analysis was intended to be more contextual and descriptive. It gave staff an opportunity to describe some of the more qualitative features of the cases. Because we are making generalizations in this section based on only 126 cases, we must emphasize that further systematic research should be conducted to confirm or disconfirm our impressions of these cases.

We can start by briefly noting some of the things we did not find. Among the cases examined, there were few instances of violence, gang membership, or weapons associated with the drug offense. These are factors that should have been part of the initial screening process in identifying low-level drug law offenders. Nonetheless, it is noteworthy that they were seldom present in any part of the overall criminal activity involving low-level drug law violators. Among the 126 cases in the second study group, there were 17 instances when weapons--almost always firearms--were found, 10 of which involved the defendant while 7 involved codefendants. Generally, however, these were cases in which the weapon was incidental to the offense and usually had no bearing on the charges brought or the sentence imposed.

In reviewing these cases closely, it was clear that there was little doubt as to the culpability of these defendants. What emerged was a variety of fact patterns and circumstances. There were some cases when individuals had rather minimal roles in the drug offense, but the drug amount was so high as to result in a long mandatory sentence.

In some cases, the defendants played minor roles in large drug operations which extended many months or even years into the past. It was also evident that although the study group members did not have a prior commitment record, some had extensive juvenile and/or adult arrest records, suggesting that their lack of prior commitment may have been a matter of their good fortune. Some of these individuals also had a history of illegal drug activity as part of their arrest record.

In general, because there was a fair amount of agreement between the interpretation of the records kept by AUSA's and the U.S. Sentencing Commission, we had increased confidence in the information we gathered from USSC records for our sample of 767 offenders.

Section V. Post-Release Adjustment of "First-Time" Drug Law Violators

In sections V and VI, we review past research related to recidivism. This research is used to contrast the risk that low-level offenders pose relative to other inmates released from Federal prison.

Harer (1993) undertook a 3-year followup of 1,205 Bureau of Prisons inmates released to the community during the first 6 months of 1987. The study group included 236 drug law violators whose criminal history category, using the Sentencing Commission classification scheme, was I, (i.e., essentially, first-time offenders). Harer found that the recidivism rate for these first-time drug law violators was 19.1 percent, or well below the overall failure rate of 40.7 percent for the total study group. Table 26, part I, shows the relationship between criminal history category in the sample and the proportion of defendants who were rearrested or had their supervision revoked within a 3-year period after release. It is clear from table 26 that lower criminal history category defendants were much less likely to recidivate than the higher risk category defendants. Table 27 breaks down criminal history into the USSC point scheme. As can be seen in table 27, offenders who received zero criminal history points were less likely to recidivate than those with one point. Generally, the higher number of points, the higher the likelihood of recidivating.

The differences between the lowest and highest number of criminal history points with respect to recidivism was quite remarkable. Those with zero criminal history points were likely to fail 18.3 percent of the time. Those with 11, 12, or 13 points were likely to fail 77.0 percent of the time.

Harer also found that when reason for failure among the Category I drug law offenders was considered, none of the 45 individuals who failed following release from prison were charged with a serious crime of violence such as robbery or murder. Instead, half the failures were arrested for drug sale or possession, 14 percent for larceny, theft, or fraud, 12 percent for DWI, 6 percent for simple assault, and 19 percent for technical parole violations or miscellaneous non-violent offenses.

Many Federal drug law violators are non-citizens who have been arrested for smuggling drugs into this country or who otherwise were engaged in illegal drug activities. For the most part, these non-citizens were excluded from Harer's followup analysis, since the study considered inmates either directly released to the community or through halfway house placement, while non-citizen drug law violators are instead likely to be deported or, if they do achieve community release, may do so only after first being transferred to Immigration and Naturalization Service (INS) custody.

In order to determine what happens to these individuals following imprisonment, Harer undertook a second followup study, this time examining all Category I non-citizen drug law

violators who were released from BOP custody during the first 6 months of 1987. He found that of the 574 cases identified, 61, or 10.6 percent, were rearrested or had a parole revocation action in the United States during the 3-year followup period.

Among the 574 cases, 220, or 38.3 percent, were released directly to the community on parole or mandatory release; 28, or 4.9 percent, were immediately deported; and 326, or 56.8 percent, were released to INS custody (or, in 2 cases, to Drug Enforcement Administration (DEA) custody) for further processing and eventual deportation or release to community. Harer found that those released to the community had a failure rate of 14.5 percent, those immediately deported had a failure rate of 10.7 percent (presumably after reentering the U.S.), and those released to INS (or DEA) had a failure rate of 8.0 percent.

These findings indicate that, like Category I U.S.-citizen drug law violators, Category I non-citizen drug law violators had a very low failure rate. Although their lower recidivism rate might be attributed to the deportation, the fact remains that at least as far as this country is concerned, the non-citizen group had very few individuals who failed within 3 years following release from BOP custody. Moreover, this finding is reinforced by the indication that very few of those who did fail committed crimes of violence.

The claim is sometimes made that official arrest records underestimate the actual rate of reoffending. Therefore, it can be argued that the recidivism rates reported for the 1987 study group under-represent the rate of actual criminal behavior among this group. While this is undoubtedly true, several considerations should be kept in mind when trying to assess unmeasured recidivism for this group.

First, regarding serious violent crimes, especially homicide and, to a somewhat lesser extent, robbery, arrest statistics have been shown to be reasonably accurate measures of actual offending behavior.[21] It is these serious violent crimes that the public and criminal justice policy planners are primarily trying to prevent through imprisonment. Second, the majority of the low-level drug traffickers in the 1987 study group were released on parole supervision, increasing the likelihood that either any new offending or violation of parole conditions would be officially recorded.[22] Third, rearrest is used here as a measure of reoffending, not reconviction, where reconviction presumably would be a better measure of the actual offending or, at least, a better measure of the person's criminal culpability. In many State

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[21] For example, see Hindelang, Michael 1978. "Race and Involvement in Common-Law Personal Crimes." American Journal of Sociology. 78:360-370; Sampson, Robert J. 1987. "Urban Black Violence: The Effect of Male Joblessness and Family Disruption." American Journal of Sociology. 93:348-382.

[22] Petersilia, Joan, and Turner, Susan 1993. Intensive Supervision For High-Level Probationers. Santa Monica, CA: Rand.

systems, less than 54 percent of all felony arrests result in a conviction.[23] In other words, an arrest charge does not necessarily mean a conviction will occur and, therefore, that the person charged actually committed the offense. Fourth, and finally, probability theory tells us that many, if not most, undetected reoffending was committed by those releasees who were arrested; therefore, the criminal history score which is used to predict who will recidivate, also predicts those who will commit undetected offenses.

To summarize, while it is possible that our measure of recidivism underestimates the actual rate of reoffending by study group members, we should remember that (1) our measure has been shown by other research to be a good measure of serious violent reoffending; (2) the majority of the study group members were placed on parole supervision, increasing the likelihood of detecting any new offense; (3) rearrest and parole revocations are used to measure reoffending, not reconviction, therefore, the recidivism measure used may actually inflate the rate of criminal involvement; and (4) probability theory tells us that the recidivists will account for the majority of any undetected reoffending among these releasees.

[23] Rosen, Richard A. 1984. Applying Offender Based Statistics to the Analysis of Criminal Justice Processing. Albany: Office of Program Development and Research, New York State Division of Criminal Justice Services.

Section VI. The Effect of Prison Time Served on Post-Release Recidivism

The great majority of recidivism studies of State prison releasees and all studies of Federal prison releasees report that the amount of time inmates serve in prison does not increase or decrease the likelihood of recidivism, whether recidivism is measured as a parole revocation, rearrest, reconviction, or return to prison.[24] One of the most recent studies of recidivism among State prison releasees was conducted by Allen Beck and Bernard Shipley, two researchers at the Bureau of Justice Statistics in Washington, D.C.[25] Beck and Shipley examined rearrests and reconviction among prisoners in 11 States who were released from prison in 1983. Regarding the effect of time served in prison, they found that, "The amount of time served by prisoners on their most recent offense before their release in 1983 was not associated with an increased or decreased likelihood of their rearrest" (p. 9) within 3 years of release.

Since at least the 1950's, the Federal Bureau of Prisons Office of Research and Evaluation has continually examined recidivism predictors, including time served, for Federal prison releasees. Time served in prison has never been found to decrease, or increase, the likelihood of recidivating either when time served is examined alone in relation to recidivism, or when controls are introduced for demographic variables (including age), education, work experience, prior arrests, convictions, and incarcerations, drug and alcohol dependency, and post-release living arrangements. [26]

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[24] See, for example, Schmidt, P., and A. D. Witte 1988. Predicting Recidivism Using Survival Models New York: Springer-Verlag; Beck, Allen J. and Bernard E. Shipley 1989. "Recidivism of Prisoners Released in 1983." Bureau of Justice Statistics: Special Report. Washington, DC: Department of Justice. Beck, James L., and Peter B. Hoffman 1976. "Time Served and Release Performance: A Research Note." Journal of Research in Crime and Delinquency, July 1976.; Harer, Miles D. 1993. Recidivism Among Federal Prison Releasees in 1987. Washington, DC: Federal Bureau of Prisons.

[25] Beck, Allen J. and Bernard E. Shipley 1989. "Recidivism of Prisoners Released in 1983." Bureau of Justice Statistics: Special Report.

[26] Because both marital stability and post-release income are strongly related to reduced likelihood of recidivating, anything, including a long prison term, that erodes marital stability or reduces employability will likely increase recidivism.

Section VII. Comparison of Sentences Before and After Guideline Implementation Controlling for Drug Amount and Criminal History Points

To gain additional perspective on Guideline sentences, in this section, we compared sentences for low-level drug offenders sentenced in 1985, prior to the Guidelines, with sentences received by defendants in our 1992 sample. We compared 1985 and 1992 sentences for offenders having the same number of criminal history points and drug quantities.[27]

Tables 28 and 29 compare sentencing outcomes for low-level drug offenders sentenced in fiscal year 1985 with our sample of drug offenders sentenced in fiscal year 1992.[28] Table 28

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[27] We conducted multiple regression analyses separately for the 1985 and 1992 defendants who were sentenced to prison. We used the log of prison term in months as the dependent variable in all of the regression models. For the 1985 group, explanatory variables were introduced for the log of the drug amount (marijuana equivalency in Kgs); trial versus a guilty plea; whether the defendant was helpful to the prosecutor or not; age at sentence; gender; and marital status. In addition to the explanatory variables used for the 1985 group, the model for the 1992 group also included explanatory variables measuring U.S. citizenship and a set of variables (dummy coded) measuring functional role in the drug offense. For the 1985 group, the R-square (explained variance) for the full regression model (the model that included all of the explanatory variables) was 0.2402 and for a model that excluded only the drug amount variable the R-square was 0.0905. Therefore, we see that drug amount accounted for 62 percent of the explained variance in the full model (i.e., (0.2402-0.0905)/0.2402). Using this measure of explanatory importance, we see that drug amount is, by far, the most important variable for explaining prison time served for those in 1985 who were sentenced to prison. Similarly, for the 1992 group, the R-square for the full model was 0.4099 and the R-square was 0.2014 for the model from which the drug amount variable was excluded. Therefore, 51 percent of the explained variance in the full model may be accounted for by the drug amount variable alone (i.e., (0.4099-0.2014)/0.4099). These regression analyses help justify comparing the 1985 and 1992 sentences for drug law violators controlling for drug amount alone. For the remaining variables predicting prison term we will assume that they are distributed randomly across drug amount categories both in 1985 and 1992. The extremely low correlations between each of these explanatory variables and the drug amount variable (always less than .10) for both the 1985 and 1992 groups, support this assumption.

[28] The data for the 1985 sentenced offenders were obtained from the United States Sentencing Commission and are the same data used in evaluating the impact of Sentencing Guidelines on the Federal Prison Population (see, Supplementary Report on The Initial Sentencing Guidelines and Policy Statements, United States Sentencing Commission, June 18, 1987). The Sentencing Commission obtained these data from the Administrative Office of the U.S. Courts and the Federal Bureau of Prisons.

shows sentencing outcomes for persons with zero criminal history points and table 29 has outcomes for persons with one criminal history point. Sentences in each table are grouped by 19 drug weight categories representing marijuana equivalency weights in kilograms (Kg's) corresponding to each of the 19 offense severity scores based on drug weight. The equivalency weights were computed using tables in the 1992 United States Sentencing Commission Guidelines Manual.

The two top shaded rows in tables 28 and 29 indicate the two categories of drug quantities under the Guidelines for which a defendant could receive straight probation, i.e., probation without any period of confinement. Because only defendants in the lowest two drug weight categories were eligible for probation in 1992, we can see that most of the defendants who received probation in 1985 would be precluded from a sentence of probation in 1992 by the restrictions imposed by the Guidelines.

The tables demonstrate the increased number of low-level drug offenders sentenced to prison in 1992, rather than to probation. Overall, 17.7 percent of offenders with zero criminal history points (table 28) and 16.0 percent of those with one criminal history point (table 29) received probation in 1985. Even though we selected the 1992 sample based upon offenders receiving prison sentences, it is clear from tables 28 and 29 that in 1985, many defendants having the same criminal history points and similar drug quantities to those receiving prison in 1992 received probation in 1985.

The shaded rows in tables 28 and 29, beginning with the row where the marijuana equivalent rate was between 100 and 400 kilograms, represent drug quantities that trigger mandatory-minimum penalties. Tables 28 and 29 demonstrate the importance of mandatory-minimum penalties in current sentencing practices. Furthermore, tables 28 and 29 demonstrate that offenders sentenced to prison in 1985 served considerably less time in prison than the 1992 group. Overall, members of the 1985 group who went to prison having zero criminal history points stayed, on average, 24.9 months (table 28) while those with one criminal history point, stayed, on average, 28 months (table 29). By comparison, all of the 1992 group were sentenced to prison and will serve, on average, 61.2 months for those with zero criminal history points and, on average, 68.0 months for those with one criminal history point, assuming they do not forfeit any prison good time.

Another way to contrast sentences is to compare sentence lengths among different offense categories. By doing this, we gain a sense of the criminal justice system's view of the relative harm caused by various offenses. A precise comparison would equate circumstances of the offense. That type of comparison is beyond the scope of this study. Instead, we compared the sentences prior to and after the implementation of Sentencing Guidelines by adjusting for the proportion of defendants receiving a sentence of probation. This was important because far fewer offenders receive a sentence of probation now than was the case prior to the Guidelines. Another important consideration is the modification of time served

that resulted from parole decision-making prior to the Guidelines. Rather than compare sentences, a fairer comparison is between time served prior to and after the implementation of Sentencing Guidelines. Whereas offenders now serve at least 85 percent of their sentence under the current sentencing structure, offenders often served 33 percent of their sentence prior to the Sentencing Guidelines.

Making these adjustments, we found that in 1986, robbery defendants served, on average, 44.8 months, while defendants convicted of a drug offense served, on average, 23.1 months. If we gauge the relative harm of robbery to drug crimes by forming the ratio of the two, we find that the harm value of robbery was 1.93 that of drug offenses. By contrast, in 1991, the relative harm of robbery (90.8 months time served) to drug offenses (71.8 months time served) was 1.26.

Table 21 in the U.S. Sentencing Commission's 1992 Annual Report lists the average and median sentence lengths of offenders convicted in 1992 by criminal history category (p. 63). For criminal history category I offenders, the following median sentences are listed by offense: murder, 170 months; drug trafficking, 60 months; kidnapping/hostage-taking, 57 months; robbery, 51 months; arson, 36.5 months; racketeering/extortion, 36 months; assault, 24 months; and firearms, 15 months. As a result of mandatory-minimum sentences and their raising Guideline penalties, the relative harm of drug trafficking has been elevated above that of almost every serious crime other than murder.

Section VIII. The Relationship Between Functional Role and Drug Quantity for Defendants With Zero or One Criminal History Point(s)

Throughout this paper, we have used a definition of risk that is independent of drug quantity. In previous sections, we have reviewed evidence that suggests that low-level drug law violators may be good candidates for possible sentence modifications. Regardless of risk, some might argue that drug quantity, by itself, should be a sufficient reason for a longer prison sentence. Indeed, the Guidelines are premised on the relationship between drug amounts and sentences ranging from probation to life imprisonment. One way to reconcile shorter (or longer) sentences or alternative sanctions with large drug quantities is to allow reductions (or increments) depending on the role in the offense. Again, the Guidelines explicitly allow for these adjustments with mitigating and aggravating roles.

To gain additional insight into the relationship between role and potential sentencing alternatives, we developed information to show the distribution of drug quantities by functional role. In this instance, functional role was collapsed into four categories: high-level dealer, street-level dealer, courier, and peripheral role. High-level dealer included the previously collapsed categories of mid-level dealer and money launderer/manufacturer. We collapsed these categories to have a sufficient number of cases. We used 19 drug quantity categories corresponding to the U.S. Sentencing Commission's 19 levels of offense severity based on marijuana-equivalent drug amounts. In this analysis, we had to exclude offenders convicted of drug offenses in which stimulants or hallucinogens were the primary drugs. These cases were excluded because the precise stimulant is required to translate drug amount into marijuana equivalency and the precise drug was not recorded. Table 30 and figure 3A (a box and whisker plot of these numbers) represent the relationship between functional role and drug quantities for offenders with zero or one criminal history point(s).

One may have expected that larger drug quantities would be associated with the higher level functional roles. This was not the case. Instead, what table 30 and figure 3A show is that the distribution of the amount of drugs is the same across the different functional roles. If there is a difference, street-level dealers were involved with less drug quantities than high-level dealers, couriers, or those with a peripheral role. In fact, those with a peripheral role were involved with more drugs than couriers and street-level dealers and almost as much as high-level dealers.

The shaded portions of table 30 also indicate that only the first two rows correspond to drug quantities associated with the possibility of probation. The bottom shaded rows beginning with the "100 < 400" marijuana equivalence in kilograms indicate which drug quantities trigger a mandatory-minimum penalty. Table 30 also shows that offenders with zero or one criminal history point(s) are generally involved with sufficient drugs to trigger a mandatory-minimum penalty. Of all the defendants represented in table 30, 76.7 percent had sufficient drug amounts to warrant a mandatory-minimum penalty.

If defendants were sentenced exclusively on the basis of drug amounts, it is clear from table 30 and figure 3A that all defendants regardless of their role would receive, on average, the same sentence. If functional role is a valid basis for sentence modifications, we would expect to see some relationship between functional role and the guideline sentence whether or not there was a departure. Even if a defendant did not receive a departure, his or her guideline range would be modified downward or upward depending on functional role. Of course, for those defendants whose adjustments were trumped by mandatory-minimum penalties, only so much adjustment could occur.

In figure 3B, we represent the lower value of the final guideline range recommended by the court after criminal history points and all adjustments were applied. As can be seen in figure 3B, there was movement in the distributions toward a reordering by functional role. Except for peripheral role, higher level functional roles were associated with higher guideline ranges.

Figure 3C represents the distribution of sentences by the four functional roles after downward and substantial assistance departures were applied. Figure 3C shows that sentences for peripheral role and high-level dealer came down relative to their Guideline range minimum. Sentences for couriers and street-level dealers also came down, but not as significantly.

Figures 3A, 3B, and 3C together demonstrate the following: regardless of the functional role a defendant played in the drug scheme, the drug amounts involved in the offense are similar across the roles. Guideline adjustments tend to mitigate the influence of drug quantity on the Guideline range and role becomes more important in the sentence. Departures (downward and 5K1.1) tend to adjust sentences associated with peripheral roles downward more than courier, or street-level roles; high-level dealers also tend to have their sentences adjusted downward due to departures.

One implication of these data is that prospective sentencing legislation or Guideline changes that would permit modification of sentences could rely on functional role to provide further downward or upward adjustments.

U.S. Department of Justice

TABLE 1: Sentence Length and Offense Severity of High and Low-Level U.S. Citizen and Non-Citizen Drug Law Violators, June 1993.

Sentence Length and Offense Severity	ALL BOP		Drug Law Violators							
			U.S. Citizen				Non-Citizen			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Total[1]	76,835	100.0	22,733	100.0	9,258	100.0	6,163	100.0	7,044	100.0
1. Sentence Length										
Less than 2 years.....	9,700	12.6	756	3.3	797	8.6	75	1.2	406	5.8
2 to 5 years.....	16,160	21.0	3,615	15.9	2,482	26.8	669	10.9	1,656	23.5
5 to 10 years....	23,027	30.0	11,626	51.1	3,752	40.5	1,967	31.9	3,011	42.7
10 to 20 years...	18,935	24.6	7,222	31.8	2,011	21.7	2,534	41.1	1,774	25.2
20 to 30 years...	5,314	6.9	1,905	8.4	153	1.7	578	9.4	147	2.1
30 to 40 years...	3,162	4.1	682	3.0	42	0.5	201	3.3	38	0.5
40 or more years.....	2,111	2.7	536	2.4	21	0.2	139	2.3	12	0.2
Mean Months.....	321.9	-	338.9	-	78.8	-	156.9	-	85.0	-
5 year sentence..	7,713	10.0	2,301	10.1	1,354	14.6	510	8.3	1,193	17.0
10 year sentence.....	4,944	6.4	1,804	7.9	684	7.4	527	9.4	559	7.9

[1]Total reflects total population confined and not necessarily total response for each item.

Sentence Length and Offense Severity	ALL BOP		Drug Law Violators							
			U.S. Citizen				Non-Citizen			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
2. Offense Severity[3]										
Lowest or Low Moderate.....	8,737	14.0	3,021	14.9	1,013	13.8	265	4.7	208	4.0
Moderate.....	25,928	41.8	9,010	44.6	4,229	57.6	2,289	40.9	3,326	64.5
High.....	12,643	20.4	4,725	23.4	2,077	28.3	1,448	25.9	1,576	30.6
Greatest.....	14,756	23.8	3,451	17.1	22	0.3	1,590	28.4	46	0.9

Source: SENTRY database, Federal Bureau of Prisons

[3]Offensive severity refers to most serious current offense. Offenses such as counterfeiting - under $2,000 and tax violations are considered lowest level offenses while murder, kidnapping, and aircraft hijacking fall in the greatest severity level. In the case drug law violations, the lowest severity level applies to persons whose drug possession was for personal use while the greatest severity applies to persons who maintained an integral or managerial role in a drug offense involving large quantities of drugs. The middle scale ratings are determined by the amount of drugs involved in the offense.

U.S. Department of Justice

TABLE 2: Demographic and Other Background Characteristics of High and Low-Level U.S. Citizen and Non-Citizen Drug Law Violators, June 1993.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Total[1]	76,835	100.0	22,733	100.0	9,258	100.0	6,163	100.0	7,044	100.0
1991 Survey Total[2]	54,006	100.0	16,166	100.0	6,502	100.0	4,900	100.0	3,535	100.0
1. Sex										
Female.....	6,271	8.2	1,460	6.4	1,506	16.3	254	4.1	763	10.8
Male.....	70,564	91.8	21,273	93.6	7,752	83.7	5,909	95.9	6,281	89.2
2. Race/Ethnicity										
Hispanic.....	19,407	25.3	3,425	15.1	1,884	20.4	4,300	69.8	4,890	69.4
Non-H. White.....	31,124	40.5	9,630	42.4	4,301	46.5	769	12.5	1,816	11.6
Non-H. Black.....	24,285	31.6	9,477	41.7	2,953	31.9	959	15.6	1,206	17.1
Non-H. Other.....	2,019	2.6	201	0.9	116	1.3	135	2.2	132	1.9
3. Age										
24 or less.....	7,012	9.1	2,217	9.8	1,195	12.9	303	4.9	519	7.4
25 to 30.....	12,572	16.4	3,972	17.5	1,839	19.9	945	15.3	1,310	18.6
30 to 35.....	14,618	19.0	4,152	18.3	1,758	19.0	1,290	20.9	1,639	23.3
35 to 40.....	13,936	18.1	3,940	17.3	1,525	16.5	1,303	21.1	1,385	19.6
40 to 50.....	18,902	24.6	5,570	24.5	1,996	21.6	1,615	26.2	1,558	22.1

[1]Total reflects total population confined and not necessarily total response rate for each item.

[2]Same as above.

U.S. Department of Justice

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
50 to 60.....	7,397	9 6	2,204	9.7	748	8.1	576	9.3	506	7.2
60 or more.....	2,398	3 1	678	3.0	197	2.1	131	2.1	127	1.8
4. Marital Status										
Married.....	20,225	37.9	5,790	36 4	2,632	40 8	2,695	55.2	1,914	55 1
Widowed.....	952	1.8	226	1 4	75	1.2	66	1.4	85	2 4
Separated or Divorced.....	14,757	27 7	4,578	28 8	1,518	23.5	937	19.2	513	14.8
Never Married....	17,382	32 6	5,325	33.5	2,220	34 4	1,190	24 4	964	27 7
5. Citizenship (Non-Citizens Only)										
Total Non-Citizens.....	17,282	100 0					6,163	100 0	7,044	100 0
Mexico.....	6,456	37 4					1,863	29.3	2,310	32 8
Colombia.....	3,363	19 5					1,211	19.6	1,851	26 0
Cuba.....	1,523	8 8					895	14.5	395	5.6
Dominican Republican.....	1,009	5 8					442	7.2	449	6 4
Jamaica.....	882	5 1					474	7.7	252	3.6
Nigeria.....	726	4 2					141	2.3	476	6.8
Canada.....	212	1.2					81	1.3	57	0.8
Haiti.....	189	1 1					74	1.2	96	1.4
Panama.....	147	0 9					68	1.2	49	0.7
Guyana.....	122	0 7					71	1.1	34	0.5
Ghana.....	119	0 7					18	0.3	92	1.3
Venezuela.....	118	0 7					43	0.7	58	0.8

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Italy.....	313	0 7					52	0.8	38	0.5
Pakistan.....	100	0 6					30	0.5	53	0 7
Other.....	2,203	12 7					700	11 4	854	12.1
6. Education (1991 Survey)										
Less than High School.....	5.056	9 4	1.384	8 6	475	7.3	1.024	21.0	764	21.8
Some High School.....	7,647	14.2	2.699	16 8	1.116	17.2	617	12 7	265	7.6
High School Graduate.....	24.009	44 7	7.385	46 0	2.817	43.5	1.941	39.9	1.385	39 6
Some College.....	11.982	22 3	3.699	23 0	1.532	23 6	760	15 6	701	20 0
College Grad.....	5.005	9 3	897	5 6	543	8 4	523	10.8	384	11.0
7. Employment (1991 Survey)										
Full-Time.....	35.044	65 4	10.057	62 7	4.354	67.2	3.636	75.1	2.523	71.6
Part-Time.....	3.518	6 6	1.216	7.6	397	6 1	364	7.5	367	10 4
Occasional.....	1.283	2 4	424	2 6	183	2.5	139	2.9	67	1.9
Looking for Work.....	5.382	10 0	1.785	10 9	622	9.6	518	10.7	341	9 7
Not Looking for Work.....	8.335	15 6	2.578	16 1	964	14.6	185	3.8	226	6 4
8. Income (1991 Survey)										
0 to $4999.....	9.800	17.8	2.686	16 6	1.364	21.0	1.017	20.8	1.040	29.4
$5,000 to $9,999.....	7.342	13 4	2.036	12.6	978	15.0	901	18 4	587	16.6

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
$10,000 to $19,999.....	11,585	21.5	3,681	22.8	1,518	23.3	1,185	24.2	986	27.9
$20,000 to $49,999.....	10,303	19.1	3,050	18.9	1,558	24.0	907	18.5	421	11.9
$50,000 or more.....	5,813	10.8	1,887	11.7	499	7.7	246	5.0	78	2.2
Unknown.....	9,461	17.5	2,825	17.5	585	9.0	645	13.2	423	12.0
9. Income from Illegal Sources (1991 Survey)										
Most.....	5,713	10.6	2,225	14.1	677	10.4	214	4.4	56	1.6
Some.....	2,489	4.6	975	6.0	347	5.3	112	2.3	53	1.5
Very Little.....	2,229	4.1	914	5.7	385	5.9	139	2.8	44	1.3
None.....	43,575	80.7	11,992	74.2	5,097	78.4	4,436	90.5	3,380	95.6
10. Support Others (1991 Survey)										
Yes.....	36,050	66.8	10,727	66.4	4,270	65.6	3,960	80.8	2,885	81.6

Source: SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 3: Drug and Alcohol Use of High and Low-Level U.S. Citizen and Non-Citizen Drug Law Violators, June 1993.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
1991 Survey Total[1]	54,006	100.0	16,166	100.0	6,502	100.0	4,900	100.0	3,535	100.0
1. Drug Use History										
Ever Used Drugs..	32,301	60.1	11,649	72.6	4,446	68.6	1,704	34.9	944	26.8
Regularly Used[2]...	22,586	42.0	8,488	52.9	2,937	45.3	860	17.6	456	12.9
Used Month Before Arrest.....	17,066	31.8	6,363	39.7	2,242	34.6	768	15.7	416	11.8
Used a Needle....	7,476	13.8	2,579	16.0	563	8.7	25	0.5	10	0.3
Under Influence of Drugs at Time of Arrest.....	8,994	16.7	3,482	21.5	1,000	15.4	316	6.5	198	5.6
Crime was for Money for Drugs..	5,324	9.9	1,956	12.1	599	9.2	155	3.2	76	2.1
2. Drug Regularly Used[3]										
Marijuana.....	17,154	31.8	6,298	39.0	2,262	34.8	522	10.7	276	7.8
Cocaine.....	10,098	18.7	3,853	23.8	1,519	23.4	477	9.7	204	5.8

[1]Totals reflect total population confined and not necessarily total response for each item.

[2] For drugs, regular use is once a week or more for at least a month.

[3] For drugs, regular use is once a week or more for at least a month.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Crack.....	2,600	4.8	959	5.9	343	5.3	49	1.0	39	1.1
Heroine/Opiates..	4,962	9.2	1,718	10.6	267	4.1	55	1.1	48	1.4
All Other.....	7,071	13.1	2,608	16.1	809	12.5	26	0.5	41	1.2
3. Past Treatment for Drug Use										
Yes.....	6,937	12.8	2,694	16.7	776	11.9	71	1.4	21	0.6
4. Alcohol										
Regularly Used.[4]..	9,132	16.9	2,994	18.5	873	13.4	428	8.7	209	5.9
Under Influence of Alcohol at time of Arrest...	5,906	10.9	1,556	9.6	416	6.4	322	6.6	266	7.5

Source: SENTRY database, Federal Bureau of Prisons

[4]For alcohol, regular use is daily or almost daily in year prior to arrest.

U.S. Department of Justice

TABLE 4: Institution Security Level and Prison Adjustment Record or High and Low-Level U.S. Citizen and Non-Citizen Drug Law Offenders, June 1993.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Total[1]	76,835	100.0	22,733	100.0	9,258	100.0	6,163	100.0	7,044	100.0
1991 Survey Total[2]	54,006	100.0	16,166	100.0	6,502	100.0	4,900	100.0	3,535	100.0
1. Institution Security Level										
Minimum.....	17,739	25.4	5,212	24.0	5,798	69.8	344	5.9	782	13.3
Low.....	15,635	22.4	4,763	21.9	1,132	13.6	1,737	29.6	2,825	48.0
Medium.....	22,308	31.9	8,002	36.8	576	6.9	2,901	49.5	1,299	22.1
High.....	5,817	8.3	1,320	6.1	17	0.2	309	5.3	31	0.5
Administrative...	8,349	12.0	2,460	11.3	787	9.5	574	9.8	947	16.1
2. Individual Security Level										
Minimum.....	24,068	31.4	6,297	27.7	7,776	84.2	355	5.8	979	13.9
Low.....	27,679	36.1	7,765	34.2	1,167	12.6	3,358	54.5	5,743	81.6
Medium.....	16,919	22.1	6,654	29.3	265	2.9	2,049	33.3	295	4.2
High.....	8,063	10.5	2,015	8.9	26	0.3	397	6.4	24	0.3

[1]Total reflects total population confined and not necessarily total response rate for each item.

[2]Total reflects total population confined and not necessarily total response rate for each item.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
3. Disciplinary Reports Within Last Year										
None.....	47,636	76.8	15,207	75.3	6,219	84.7	4,445	79.5	4,662	86.5
1.....	8,459	13.6	3,050	15.1	789	10.7	759	13.6	492	9.5
2 or more.....	5,969	9.6	1,950	9.7	333	4.5	388	6.9	202	3.9
4. Type of Disciplinary Report[3]										
None.....	44,967	72.4	14,442	71.5	6,143	83.7	4,188	74.9	4,600	85.3
200 to 400 level in last 2 years..	10,507	16.9	3,982	19.7	994	13.5	948	17.0	683	12.7
Any 100 level in last 10 years....	6,590	10.6	1,783	8.8	204	2.8	456	8.2	103	2.0
5. Prison Program Participation (1991 Survey)										
Organizations....	22,486	41.8	6,407	39.8	2,952	45.5	2,403	49.3	1,587	45.0
Education.....	31,191	58.0	9,316	57.9	3,963	61.0	3,538	72.5	2,695	76.5
Vocational Training.....	15,827	29.4	4,700	29.2	1,676	25.9	1,653	33.9	1,025	29.1
Counseling.....	6,209	11.6	1,697	10.6	570	8.8	346	7.1	334	9.5

[3]Disciplinary reports received by Federal offenders are classified from 100 to 400 level in terms of severity. Disciplinary reports in the 100 level are of greatest severity, while 200-level are high severity, 300-level are moderate, and 400-level are low moderate.

ITEM	ALL BOP		Drug Law Violators							
			U.S. Citizens				Non-Citizens			
			High Level		Low Level		High Level		Low Level	
	#	%	#	%	#	%	#	%	#	%
Furloughs.....	2,586	4.8	201	5.0	768	11.9	56	1.3	46	1.3
6. Family Contact Weekly or More Often (1991 Survey)										
Telephone.....	18,612	45.7	6,104	49.1	2,835	48.7	1,624	60.7	854	30.9
Mail.....	15,597	38.4	4,893	39.5	2,117	43.8	1,588	40.0	949	34.6
Visiting.....	2,570	6.3	801	6.5	417	6.6	223	5.6	183	6.6

Source: SENTRY database, Federal Bureau of Prisons

TABLE 5: MANDATORY MINIMUM SENTENCE LENGTH IN MONTHS BY CITIZENSHIP						
MONTHS	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
No Mandatory Minimum	111	36.51	142	30.67	253	32.99
12-Months	0	0.00	2	0.43	2	0.26
60-Months	90	29.61	161	34.77	251	32.72
120-Months	99	32.57	151	32.61	250	32.59
180-Months	1	0.33	0	0.00	1	0.13
240-Months	2	0.66	4	0.86	6	0.78
360-Months	0	0.00	1	0.22	1	0.13
Life	0	0.00	1	0.22	1	0.13
Missing	1	0.33	1	0.22	2	0.26
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 6: CRIMINAL HISTORY CATEGORY BY CITIZENSHIP						
C.H. CATEGORY	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
I	284	93.42	396	85.53	680	88.66
II	12	3.95	45	9.72	57	7.43
III	8	2.63	19	4.10	27	3.52
IV	0	0.00	2	0.43	2	0.26
Missing	0	0.00	1	0.22	1	0.13
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 7: CRIMINAL HISTORY POINTS BY CITIZENSHIP						
POINTS	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
0	264	86.84	334	72.14	598	77.97
1	20	6.58	62	13.39	82	10.69
2	4	1.32	17	3.67	21	2.74
3	8	2.63	28	6.05	36	4.69
4	6	1.97	8	1.73	14	1.83
5	1	0.33	11	2.38	12	1.56
6	1	0.33	0	0.00	1	0.13
7	0	0.00	0	0.00	0	0.00
8	0	0.00	2	0.43	2	0.26
Missing	0	0.00	1	0.22	1	0.13
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 8: CONVICTION UNDER 18 § 924(C) BY CITIZENSHIP						
924(c)	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
No	301	99.01	459	99.14	760	99.09
Yes	3	0.99	4	0.86	7	0.91
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 9: SECONDARY OFFENSE BY CITIZENSHIP						
OFFENSE	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
Drugs: Trafficking	297	97.70	450	97.19	747	97.39
Drugs: Comm. Facl.	5	1.64	4	0.86	9	1.17
Drugs: Possession	0	0.00	2	0.43	2	0.26
Tax	1	0.33	3	0.65	4	0.52
Money Laundering	1	0.33	0	0.00	1	0.13
Racketeering	0	0.00	2	0.43	2	0.26
Admininstration of Justice	0	0.00	2	0.43	2	0.26
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 10: NUMBER OF DEFENDANTS WITH ANY PRIOR ARREST, A PRIOR ARREST FOR A VIOLENT CRIME, A PRIOR ARREST FOR A DRUG CRIME OR A PRIOR ARREST FOR ANY CRIME OTHER THAN A DRUG OR A VIOLENT OFFENSE

Total Number of Prior Arrests			Number of Arrests for a Violent Offense			Number of Arrests for a Drug Offense			Number of Arrests for a Crime Other than a Drug Crime or Violent Offense		
No.	Frequency	%	No.	Frequency	%	No.	Frequency	%	No.	Frequency	%
0	505	66.7	0	699	91.1	0	630	82.1	0	601	78.4
1	105	13.9	1	41	5.3	1	80	10.4	1	88	11.5
2	48	6.3	2	18	2.3	2	22	2.9	2	36	4.7
3	33	4.4	3	5	0.7	3	16	2.1	3	15	2.0
4	20	2.6	4	2	0.3	4	12	1.6	4	14	1.8
5	17	2.2	5	1	0.1	5	3	0.4	5	7	0.9
6	8	1.1	6	-	-	6	2	0.3	6	3	0.4
7	6	0.8	7	1	0.1	7	1	0.1	7	-	-
8	2	0.3				8	-	-	8	3	0.4
9	1	0.1				9	-	-			
10	4	0.5				10	-	-			
11	3	0.4				11	1	0.1			
12	4	0.5									
13	-	-									
14	1	0.1									

Source: National Crime Information Center, FBI

TABLE 11: NUMBER OF DEFENDANTS WITH A PRIOR ARREST BY CITIZENSHIP						
NUMBER OF PRIOR ARRESTS	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
0	230	76.67	275	60.18	505	66.71
1	32	10.67	73	15.97	105	13.87
2	11	3.67	37	8.10	48	6.34
3	8	2.67	25	5.47	33	4.36
4	7	2.33	13	2.84	20	2.64
5	3	1.00	14	3.06	17	2.25
6	2	0.67	6	1.31	8	1.06
7	1	0.33	5	1.09	6	0.79
8	0	0.00	2	0.44	2	0.26
9	0	0.00	1	0.22	1	0.13
10	3	1.00	1	0.22	4	0.53
11	1	0.33	2	0.44	3	0.40
12	1	0.33	3	0.66	4	0.53
13	-	-	-	-	-	-
14	1	0.33	0	0.00	1	0.13
Totals	300	39.63	457	60.37	757	100.00

Sources: National Crime Information Center, FBI
SENTRY database, Federal Bureau of Prisons

TABLE 12: NUMBER OF DEFENDANTS WITH A PRIOR ARREST FOR A VIOLENT OFFENSE BY CITIZENSHIP						
NUMBER OF PRIOR ARRESTS	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
0	289	95.07	410	88.55	699	91.13
1	6	1.97	35	7.56	41	5.35
2	6	1.97	12	2.59	18	2.35
3	1	0.33	4	0.86	5	0.65
4	1	0.33	1	0.22	2	0.26
5	0	0.00	1	0.22	1	0.13
6	-	-	-	-	-	-
7	1	0.33	0	0.00	1	0.13
Totals	304	39.63	463	60.37	767	100.00

Sources: National Crime Information Center, FBI
SENTRY database, Federal Bureau of Prisons

TABLE 13: NUMBER OF DEFENDANTS WITH A PRIOR ARREST FOR A DRUG OFFENSE BY CITIZENSHIP						
NUMBER OF PRIOR ARRESTS	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
0	267	87.83	363	78.40	630	82.14
1	19	6.25	61	13.17	80	10.43
2	4	1.32	18	3.89	22	2.87
3	3	0.99	13	2.81	16	2.09
4	8	2.63	4	0.86	12	1.56
5	3	0.99	0	0.00	3	0.39
6	0	0.00	2	0.43	2	0.26
7	0	0.00	1	0.22	1	0.13
8	-	-	-	-	-	-
9	-	-	-	-	-	-
10	-	-	-	-	-	-
11	0	0.00	1	0.22	1	0.13
Totals	304	39.63	463	60.37	767	100.00

Sources: National Crime Information Center, FBI
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 14: NUMBER OF PRIOR ARRESTS, ARRESTS FOR VIOLENT OFFENSES, ARRESTS FOR DRUG OFFENSES, AND ARRESTS FOR OTHER THAN VIOLENT OR DRUG OFFENSES FOR U. S. CITIZEN DEFENDANTS WHO RECEIVED ZERO CRIMINAL HISTORY POINTS

Total Number of Prior Arrests			Number of Arrests for a Violent Offense			Number of Arrests for a Drug Offense			Number of Arrests for a Crime Other than a Drug Crime or Violent Offense		
No.	Frequency	%	No.	Frequency	%	No.	Frequency	%	No.	Frequency	%
0	232	70.73	0	302	90.69	0	285	85.59	0	272	81.68
1	46	14.02	1	21	6.31	1	34	10.21	1	39	11.71
2	19	5.79	2	7	2.10	2	8	2.40	2	8	2.40
3	11	3.35	3	3	0.90	3	4	1.20	3	5	1.50
4	6	1.83	Total	333	100.00	4	0	0.00	4	4	1.20
5	6	1.83				5	-	-	5	4	1.20
6	2	0.61				6	1	0.30	6	1	0.30
7	3	0.91				7	-	-	Total	333	100.00
8	0	0.00				8	-	-			
9	1	0.30				9	-	-			
10	1	0.30				10	-	-			
11	-	-				11	1	0.30			
12	1	0.30				Total	333	100.00			
Total	328	100.00									

Sources: National Crime Information Center, FBI
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 15: NUMBER OF PRIOR ARRESTS, ARRESTS FOR VIOLENT OFFENSES, ARRESTS FOR DRUG OFFENSES, AND ARRESTS FOR OTHER THAN VIOLENT OR DRUG OFFENSES FOR NON-CITIZEN DEFENDANTS WHO RECEIVED ZERO CRIMINAL HISTORY POINTS

Total Number of Prior Arrests			Number of Arrests for a Violent Offense			Number of Arrests for a Drug Offense			Number of Arrests for a Crime Other than a Drug Crime or Violent Offense		
No.	Frequency	%	No.	Frequency	%	No.	Frequency	%	No.	Frequency	%
0	213	81.92	0	256	96.97	0	244	92.42	0	235	89.02
1	25	9.62	1	5	1.89	1	11	4.17	1	21	7.95
2	8	3.08	2	2	0.76	2	3	1.14	2	3	1.14
3	5	1.92	3	1	0.38	3	3	1.14	3	2	0.76
4	6	2.31	Total	264	100.00	4	3	1.14	4	2	0.76
5	1	0.38				Total	264	100.00	5	-	-
6	2	0.77							6	1	0.38
7	-								Total	264	100.00
8	-	-									
9	-										
10	0	0.00									
Total	260	100.00									

Sources: National Crime Information Center, FBI
SENTRY database, Federal Bureau of Prisons

TABLE 16: FUNCTIONAL ROLE IN DRUG OFFENSE BY CITIZENSHIP						
ROLE	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
High Level Dealer	14	4.68	13	2.90	27	3.61
Pilot/Boat Captain	4	1.34	4	0.89	8	1.07
Mid-Level Dealer	49	16.39	103	22.99	152	20.35
Street-Level Dealer	33	11.04	132	29.46	165	22.09
Manufacturer	1	0.33	27	6.03	28	3.75
Financier	1	0.33	0	0.00	1	0.13
Money Launderer	1	0.33	5	1.12	6	0.80
Bodyguard	2	0.67	2	0.45	4	0.54
Broker	14	4.68	17	3.79	31	4.15
Courier	72	24.08	77	17.19	149	19.95
Mule	80	26.76	30	6.70	110	14.73
Renter/ Storer	4	1.34	6	1.34	10	1.34
Moneyrunner	2	0.67	1	0.22	3	0.40
Off-Loader	5	1.67	4	0.89	9	1.20
Worker/ Gofer	15	5.02	19	4.24	34	4.55

Continued on next page ...

TABLE 16: FUNCTIONAL ROLE IN DRUG OFFENSE BY CITIZENSHIP (CONTINUED)						
ROLE	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
Enabler/ Passive	2	0.67	6	1.34	8	1.07
User Only	0	0.00	2	0.45	2	0.27
Totals	299	40.03	448	59.97	747	100.0

Source: Sentence Monitoring database, U.S. Sentencing Commission

TABLE 17: DEPARTURE STATUS BY CITIZENSHIP						
DEPARTURE	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
No Departure	232	79.73	315	69.23	547	73.32
Upward	0	0.00	1	0.22	1	0.13
Downward	22	7.56	15	3.30	37	4.96
Substantial Assistance	37	12.71	124	27.25	161	21.58
TOTALS	291	39.01	455	60.99 .	746	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 18: MITIGATING ROLE REDUCTION BY CITIZENSHIP						
ROLE REDUCTION	NON-CITIZEN		CITIZEN		ROW TOTAL	
	Number	Col. Percent	Number	Col. Percent	Number	Col. Percent
-4	62	20.39	21	4.54	83	10.82
-3	3	0.99	3	0.65	6	0.78
-2	31	10.20	63	13.61	94	12.26
None	208	68.42	376	81.21	584	76.14
Totals	304	39.63	463	60.37	767	100.0

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 19: COLLAPSED FUNCTIONAL ROLE BY DEPARTURE								
ROLE	NONE		UPWARD		DOWNWARD/SUBSTANTIAL ASSISTANCE		ROW TOTAL	
	Number	Row Percent	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	18	69.23	0	0.00	8	30.77	26	3.58
Mid Level	94	63.95	0	0.00	53	36.05	147	20.25
Money/Manufacturer	59	76.62	1	1.30	17	22.08	77	10.61
Street	130	80.25	0	0.00	32	19.75	162	22.31
Courier	192	76.80	0	0.00	58	23.20	250	34.44
Peripheral Role	41	64.06	0	0.00	23	35.94	64	8.82
Totals	534	73.55	1	0.14	191	26.31	726	100.00

Source: Sentence Monitoring database, U.S. Sentencing Commission

TABLE 20: COLLAPSED FUNCTIONAL ROLE BY DOWNWARD DEPARTURE STATUS FOR NON-CITIZENS

ROLE	NONE		DOWNWARD/SUBSTANTIAL ASSISTANCE		ROW TOTAL	
	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	10	71.43	4	28.57	14	4.90
Mid Level	34	72.34	13	27.66	47	16.43
Money/Manufacturer	19	86.36	3	13.64	22	7.69
Street	28	90.32	3	9.68	31	10.84
Courier	120	82.19	26	17.81	146	51.05
Peripheral Role	18	69.23	8	30.77	26	9.09
Totals	229	80.07	57	19.93	286	100.00

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 21: COLLAPSED FUNCTIONAL ROLE BY DEPARTURE STATUS FOR CITIZENS								
ROLE	NONE		UPWARD		DOWNWARD/SUBSTANTIAL ASSISTANCE		ROW TOTAL	
	Number	Row Percent	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	8	66.67	0	0.00	4	33.33	12	2.73
Mid Level	60	60.00	0	0.00	40	40.00	100	22.73
Money/Manufacturer	40	72.73	1	1.82	14	25.45	55	12.50
Street	102	77.86	0	0.00	29	22.14	131	29.77
Courier	72	69.23	0	0.00	32	30.77	104	23.64
Peripheral Role	23	60.53	0	0.00	15	39.47	38	8.64
Totals	305	69.32	1	0.23	134	30.45	440	100.00

Source: Sentence Monitoring database, U.S. Sentencing Commission

TABLE 22 AVERAGE SENTENCE LENGTH IN MONTHS BY FUNCTIONAL ROLE AND CITIZENSHIP

FUNCTIONAL ROLE	CITIZENSHIP					
	Citizen			Non-Citizen		
	Average	N	S.D.[1]	Average	N	S.D.
High-Level	113.3	13	96.0	159.5	14	85.0
Mid-Level	75.1	103	45.6	93.8	49	54.5
Launderer/ Manufacturer	79.7	54	53.2	104.1	23	79.5
Street-Level	69.8	131	47.8	80.5	33	67.5
Courier	65.4	107	44.5	61.4	152	40.3
Peripheral	62.5	38	61.8	88.5	28	50.0

1. N represents the number of defendants average sentence was based on; S.D. is the standard deviation for the distribution.

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 23: COLLAPSED FUNCTIONAL ROLE BY MITIGATING ROLE (SENTENCING GUIDELINES)						
ROLE	MITIGATING ROLE				ROW TOTAL	
	NO		YES			
	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	26	96.30	1	3.70	27	3.61
Mid Level	144	94.74	8	5.26	152	20.35
Money/Manufacturer	61	78.21	17	21.79	78	10.44
Street	145	87.88	20	12.12	165	22.09
Courier	154	59.46	105	40.54	259	34.67
Peripheral Role	37	56.06	29	43.94	66	8.84
Totals	567	75.90	180	24.10	747	100.00

Source: Sentence Monitoring database, U.S. Sentencing Commission

TABLE 24: COLLAPSED FUNCTIONAL ROLE BY MITIGATING ROLE FOR NON-CITIZENS

ROLE	MITIGATING ROLE				ROW TOTAL	
	NO		YES			
	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	13	92.86	1	7.14	14	4.68
Mid Level	49	100.00	0	0.00	49	16.39
Money/Manufacturer	17	73.91	6	26.09	23	7.69
Street	30	90.91	3	9.09	33	11.04
Courier	80	52.63	72	47.37	152	50.84
Peripheral Role	14	50.00	14	50.00	28	9.36
Totals	203	67.89	96	32.11	299	100.00

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

TABLE 25: COLLAPSED FUNCTIONAL ROLE BY MITIGATING ROLE FOR CITIZENS						
ROLE	MITIGATING ROLE				ROW TOTAL	
	NO		YES			
	Number	Row Percent	Number	Row Percent	Number	Col. Percent
High Level	13	100.00	0	0.00	13	2.90
Mid Level	95	92.23	8	7.77	103	22.99
Money/Manufacturer	44	80.00	11	20.00	55	12.28
Street	115	87.12	17	12.88	132	29.46
Courier	74	69.16	33	30.84	107	23.88
Peripheral Role	23	60.53	15	39.47	38	8.48
Totals	364	81.25	84	18.75	448	100.00

Sources: Sentence Monitoring database, U.S. Sentencing Commission
SENTRY database, Federal Bureau of Prisons

U.S. Department of Justice

TABLE 26: PART I. RECIDIVISM RATES BY CRIMINAL HISTORY CATEGORY FOR DRUG TRAFFICKERS IN THE 1987 RELEASE STUDY GROUP RELEASED IN THE UNITED STATES

	Criminal History Category (Score in Parentheses)						
	I	II	III	IV	V	VI	Total
	(0-1)	(2-3)	(4-6)	(7-9)	(10-12)	(13+)	
Failed	45	17	22	23	12	19	139
Percent	19.07	35.42	40.00	51.11	80.00	73.08	32.71
Successful	191	31	33	22	3	7	286
Percent	80.93	64.58	60.00	48.89	20.00	26.92	67.29
Total	236	48	55	45	15	26	425
Percent	55.53	11.29	12.94	10.59	3.53	6.12	100.00

PART II. MEDIAN TIME SERVED IN MONTHS FOR CITIZEN DRUG TRAFFICKERS IN THE 1987 RELEASE STUDY GROUP BY CRIMINAL HISTORY CATEGORY [1]

	Criminal History Category						
	I	II	III	IV	V	VI	Total
Median Months Served	16.8	19.7	16.3	12.4	12.7	12.6	16.4

1. All persons in the 1987 Study Group were sentenced under the Old Law.

PART III. MEDIAN TIME SERVED IN MONTHS FOR DRUG TRAFFICKERS SENTENCED UNDER THE GUIDELINES IN FISCAL YEAR 1992 -- ADDITIONAL MONTHS THEY WILL SERVE COMPARED TO OLD LAW OFFENDERS, AND NUMBER AND PERCENT SENTENCED, BY CRIMINAL HISTORY CATEGORY

	Criminal History Category						
	I	II	III	IV	V	VI	Total
Median Months They Will Serve[1]	51.0	51.9	61.3	74.0	81.3	138.4	
Additional Months Under New Law	34.2	33.2	44.9	61.6	68.5	125.9	
Number Sentenced in FY 1992.	9,007	1,937	1,819	732	350	614	14,459
Percent	62.3%	13.4%	12.5%	5.1%	2.4%	4.3%	

1. Estimated by reducing the median sentence by 15 percent, the maximum available good time, because some inmates may have good time taken away because of prison misconduct this will slightly underestimate the actual median time served.

Source: Harer, Miles D. "Recidivism Among Federal Inmates in 1987: A Preliminary Report, Bureau of Prisons, 1993

TABLE 27: RECIDIVISM[1] RATES BY CRIMINAL HISTORY POINTS FOR DRUG TRAFFICKERS IN THE 1987 RELEASE STUDY GROUP RELEASED IN THE UNITED STATES

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Failed	36	9	6	11	3	8	11	10	4	9	4	4	4	19	138
Percent	18.27	23.08	28.57	40.74	27.27	36.36	50.00	45.45	44.44	64.29	66.67	100.00	80.00	73.08	32.47
Successful	161	30	15	16	8	14	11	12	5	5	2	0	1	7	287
Percent	81.73	76.92	71.43	59.26	72.73	63.64	50.00	54.55	55.56	35.71	33.33	00.00	20.00	26.92	67.53
Total	197	39	21	27	11	22	22	22	9	14	6	4	5	26	425
Percent	46.35	9.18	4.94	6.35	2.59	5.18	5.18	5.18	2.12	3.29	1.41	0.94	1.18	6.12	100.00

[1] Recidivism was defined as rearrest or parole revocation within three years of release.

Source: Harer, Miles D. "Recidivism Among Federal Inmates in 1987: A Preliminary Report, Bureau o Prisons, 1993

TABLE 28: SENTENCING OUTCOMES FOR LOW LEVEL DRUG OFFENDERS SENTENCED IN FISCAL YEAR 1985 AND THOSE SENTENCED IN FISCAL YEAR 1992 BY DRUG AMOUNT FOR THOSE WITH ZERO CRIMINAL HISTORY POINTS

	FY 1985					FY 1992 SAMPLE	
Marijuana Equivalent Kgs	Number Sentenced	Number Receiving Probation	Percent Receiving Probation	Number To Prison	For Those Sentenced To Prison, Mean Months Served	Number Sentenced To Prison	Estimated Mean Months in Prison
< .25	9	3	33.3	6	1.9	5	38.3
.25 < 1	15	7	46.7	8	11.4	0	NA
1 < 2.5	31	21	67.7	10	16.3	0	NA
2.5 < 5	8	0	0.0	8	9.9	0	NA
5 < 10	10	2	20.0	8	5.0	4	32.5
10 < 20	474	140	29.5	334	12.4	3	27.2
20 < 40	195	40	20.5	155	9.1	20	22.5
40 < 60	153	40	26.1	113	20.0	17	22.0
60 < 80	88	6	6.8	82	26.1	19	29.7
80 < 100	64	17	26.6	47	17.6	27	35.4
100 < 400	711	200	28.1	511	22.1	110	45.3
400 < 700	361	44	12.2	317	22.1	54	47.5
700 < 1000	101	6	5.9	95	22.7	42	61.9
1000 < 3000	305	12	3.9	293	33.9	80	77.1
3000 < 1 mil.	491	45	9.2	446	30.1	41	83.9
1 mil. < 3 mil.	376	22	5.9	354	59.5	21	95.0

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TABLE 28: SENTENCING OUTCOMES FOR LOW LEVEL DRUG OFFENDERS SENTENCED IN FISCAL YEAR 1985 AND THOSE SENTENCED IN FISCAL YEAR 1992 BY DRUG AMOUNT FOR THOSE WITH ZERO CRIMINAL HISTORY POINTS
(CONT.)

	FY 1985					FY 1992 Sample	
Marijuana Equivalent Kgs	Number Sentenced	Number Receiving Probation	Percent Receiving Probation	Number To Prison	For Those Sentenced To Prison, Mean Months Served	Number Sentenced To Prison	Estimated Mean Months in Prison *
3 mil. < 10 mil.	61	6	9.8	55	59.5	20	123.8
10 mil. < 30 mil.	6	0	0.0	6	70.4	8	148.6
> 30 mil	2	1	50.0	1	17.9	18	120.8
TOTAL	3461	612	17.7	2849	24.9	493	61.2

* Estimated by taking 85 percent of prison sentence.

Source: Enhanced sample of convicted offenders sentenced in FY 1985. Refer to "Supplementary Report on the Initial Sentencing Guidelines and Policy Statements," U.S. Sentencing Commission, 1987.

TABLE 29: SENTENCING OUTCOMES FOR LOW LEVEL DRUG OFFENDERS SENTENCED IN FISCAL YEAR 1985 AND THOSE SENTENCED IN FISCAL YEAR 1992 BY DRUG AMOUNT FOR THOSE WITH ONE HISTORY POINTS

	FY 1985					FY 1992 SAMPLE	
Marijuana Equivalent Kgs	Number Sentenced	Number Receiving Probation	Percent Receiving Probation	Number to Prison	For Those Sentenced To Prison, Mean Months Served	Number Sentenced To Prison	Estimated Mean Months in Prison
< .25	21	13	61.9	8	4.6	1	34.9
.25 < 1	0	0	0.0	0	NA	0	NA
1 < 2.5	23	14	60.9	9	16.3	0	NA
2.5 < 5	2	2	100.0	0	NA	0	NA
5 < 10	0	0	0.0	0	NA	0	NA
10 < 20	145	29	20.0	116	18.2	0	NA
20 < 40	67	6	9.0	61	15.7	1	20.4
40 < 60	76	21	27.6	55	12.5	5	33.7
60 < 80	10	0	0.0	10	18.9	3	30.9
80 < 100	5	2	40.0	3	10.7	4	23.4
100 < 400	91	1	1.1	90	29.7	16	49.7
400 < 700	45	2	4.4	43	30.8	9	50.4
700 < 1000	7	0	0.0	7	59.7	0	NA
1000 < 3000	58	6	10.3	52	28.3	11	88.2
3000 < 1 mil.	108	22	20.4	86	53.0	9	88.0

Continued on next page ...

TABLE 29: SENTENCING OUTCOMES FOR LOW LEVEL DRUG OFFENDERS SENTENCED IN FISCAL YEAR 1985 AND THOSE SENTENCED IN FISCAL YEAR 1992 BY DRUG AMOUNT FOR THOSE WITH ONE CRIMINAL HISTORY POINTS (CONT.)

	FY 1985					FY 1992 SAMPLE	
Marijuana Equivalent KGs	Number Sentenced	Number Receiving Probation	Percent Receiving Probation	Number To Prison	For Those Sentenced To Prison, Mean Months Served	Number Sentenced To Prison	Estimated Mean Months in Prison •
1 mil. < 3 mil.	26	0	0.0	26	46.7	3	80.8
3 mil. < 10 mil.	43	0	0.0	43	31.7	6	86.1
10 mil < 30 mil.	10	0	0.0	10	32.0	3	204.0
> 30 mil.	0	0	0.0	0	NA	2	85.0
TOTAL	737	118	16.0	619	28.0	73	68.0

• Estimated by taking 85 percent of prison sentence.

Source: Sample of 767 defendants sentenced in 1992. Sentence Monitoring Database, U.S. Sentencing Commission

TABLE 30. THE RELATIONSHIP BETWEEN COLLAPSED FUNCTIONAL ROLE AND DRUG QUANTITY

Functional Role								Row Totals	
Marijuana Equivalent Kgs	High-Level Dealer		Street-Level Dealer		Courier		Peripheral		Number	Percent
	N	Pct	N	Pct	N	Pct	N	Pct		
< .25	15	6.58	12	8.51	2	0.86	5	8.33	34	5.14
.25 < 1	0	0.00	2	1.42	0	0.00	0	0.00	2	0.30
1 < 2.5	1	0.44	0	0.00	0	0.00	0	0.00	1	0.15
2.5 < 5	1	0.00	1	0.71	0	0.00	0	0.00	2	0.30
5 < 10	1	0.44	2	1.42	2	0.86	0	0.00	5	0.76
10 < 20	0	0.00	2	1.42	0	0.00	1	1.67	3	0.45
20 < 40	4	1.75	11	7.80	10	4.29	1	1.67	26	3.93
40 < 60	6	2.63	7	4.96	9	3.86	2	3.33	24	3.63
60 < 80	4	1.75	4	2.84	14	6.01	3	5.00	25	3.78
80 < 100	11	4.82	7	4.96	12	5.15	2	3.33	32	4.83
100 < 400	41	17.98	38	26.95	62	26.61	10	16.67	151	22.81
400 < 700	23	10.09	9	6.38	29	12.45	5	8.33	66	9.97
700 < 1000	14	6.14	8	5.67	23	9.87	1	1.67	46	6.95
1000 < 3000	43	18.86	16	11.35	30	12.88	13	21.67	102	15.41
3000 < 1 mil.	23	10.09	16	11.35	16	6.87	4	6.67	59	8.91
1 mil. < 3 mil.	14	6.14	0	0.00	8	3.43	3	5.00	25	3.78
3 mil. <10 mil.	13	5.70	2	1.42	11	4.72	3	5.00	29	4.38
10 mil <30 mil.	5	2.19	1	0.71	4	1.72	1	1.67	11	1.66
< 30 mil.	9	3.95	3	2.13	1	0.43	6	10.00	19	2.87

Source: Sample of 767 defendants sentenced in FY 1992. Sentence Monitoring database, U.S. Sentencing Commission.

Figure 1

Drug Law Offenders Currently Sentenced

Cross Section ("Snapshot" of BOP Drug Law Offenders, June 1993)

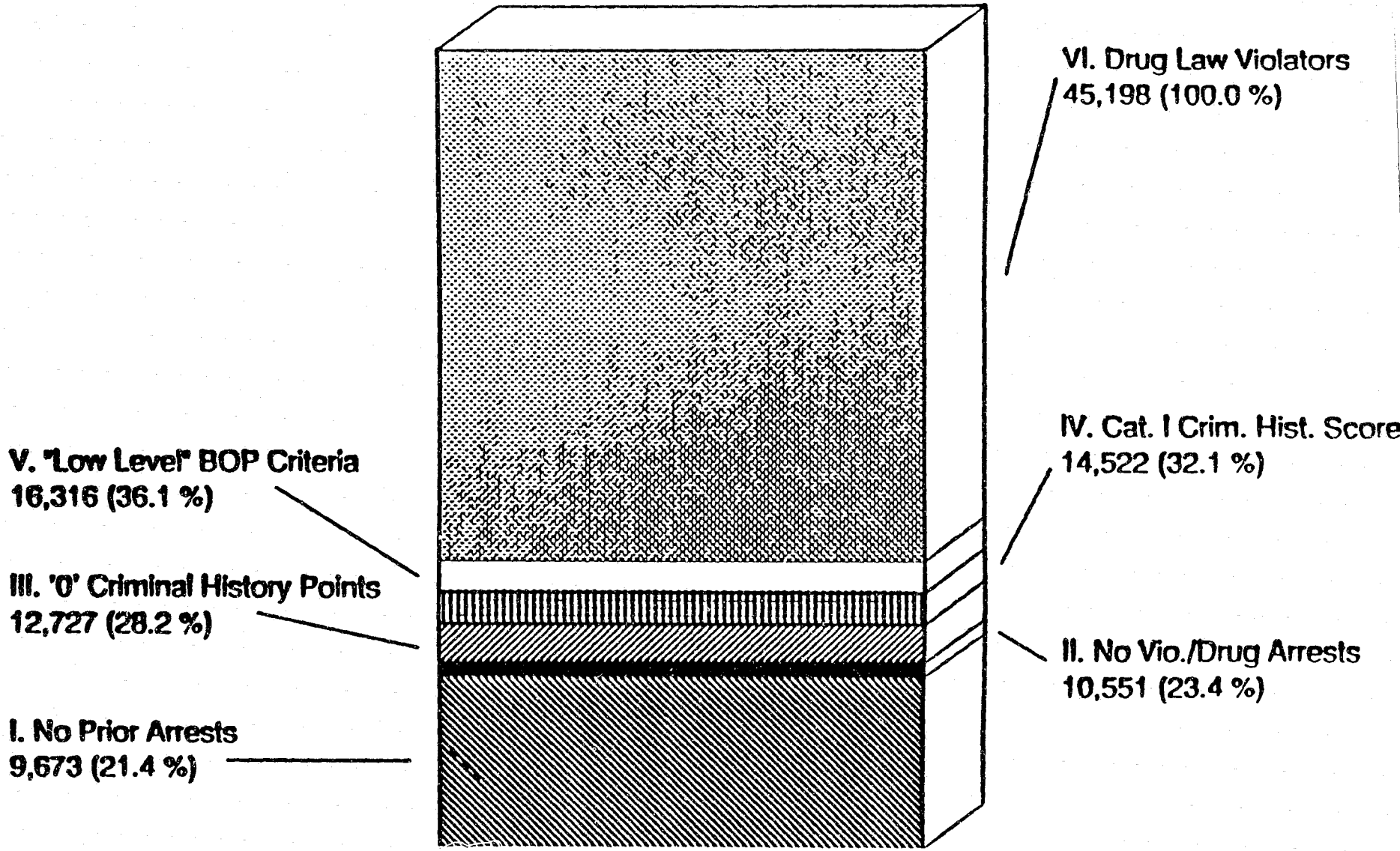


Figure 2

Guideline Drug Law Offenders Sentenced
Fiscal Year 1992 Cohort

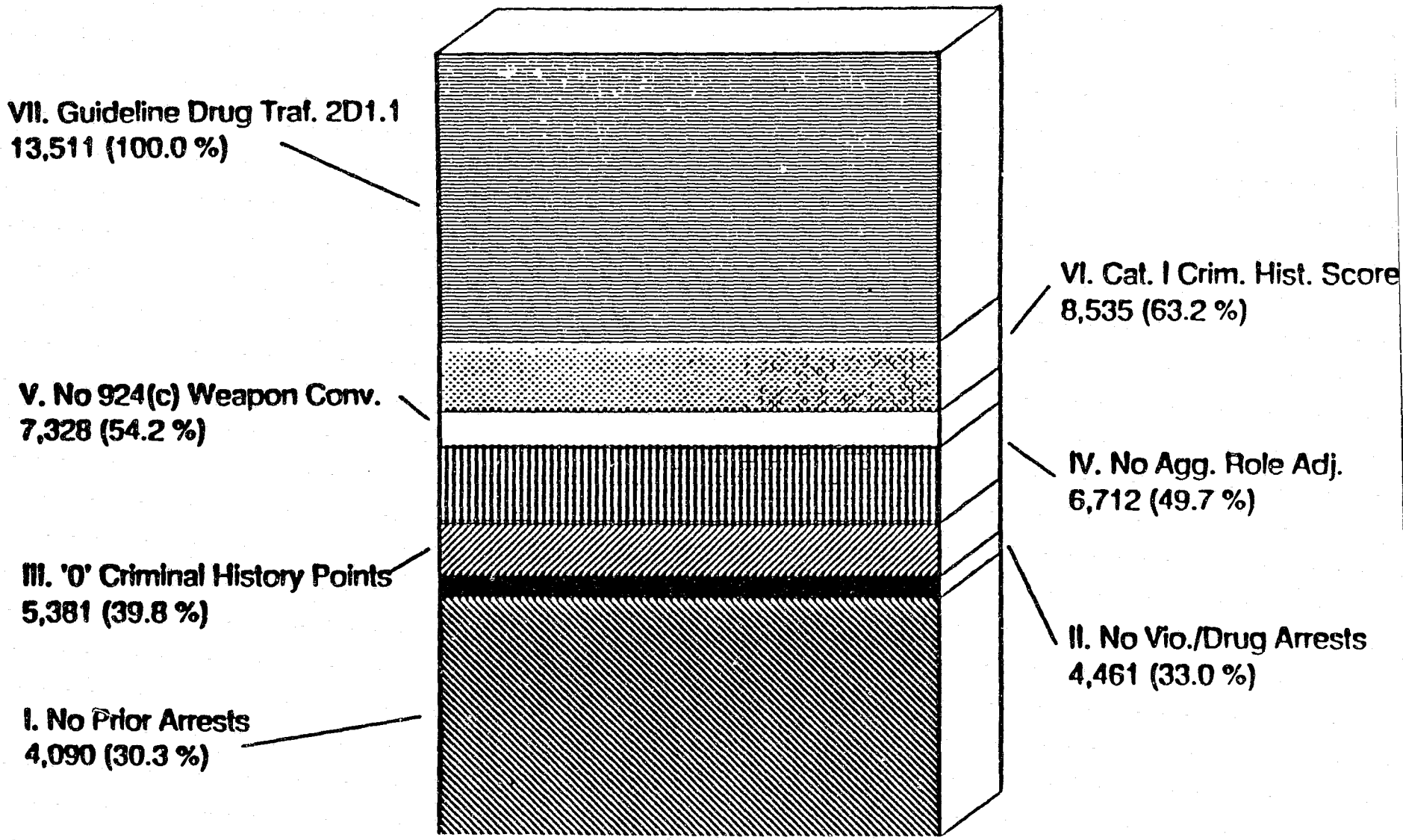


FIGURE 3A

Drug offense severity levels for defendants having different functional roles.

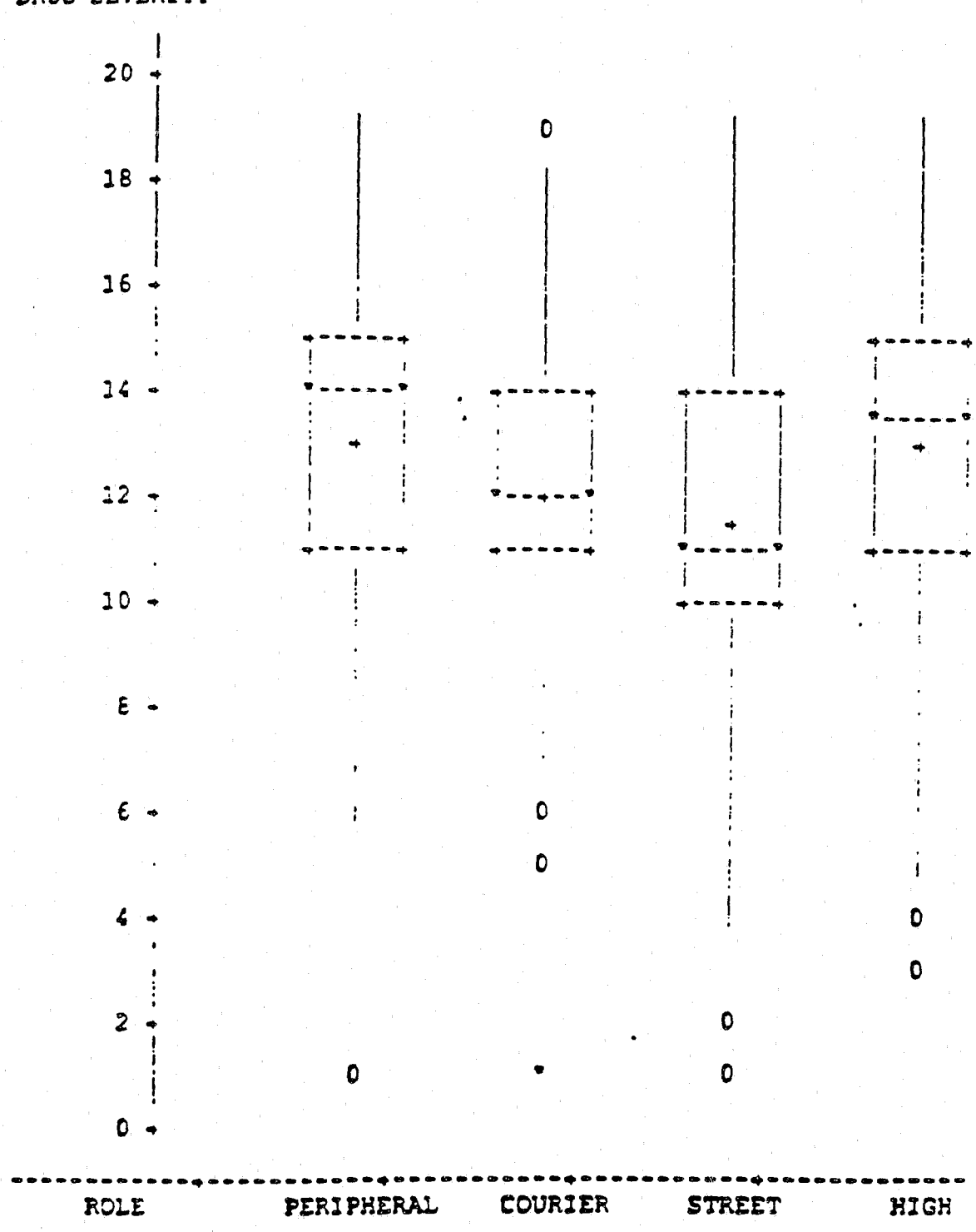


FIGURE 3B

Guideline minimum sentences (in months) for defendants having different functional roles.

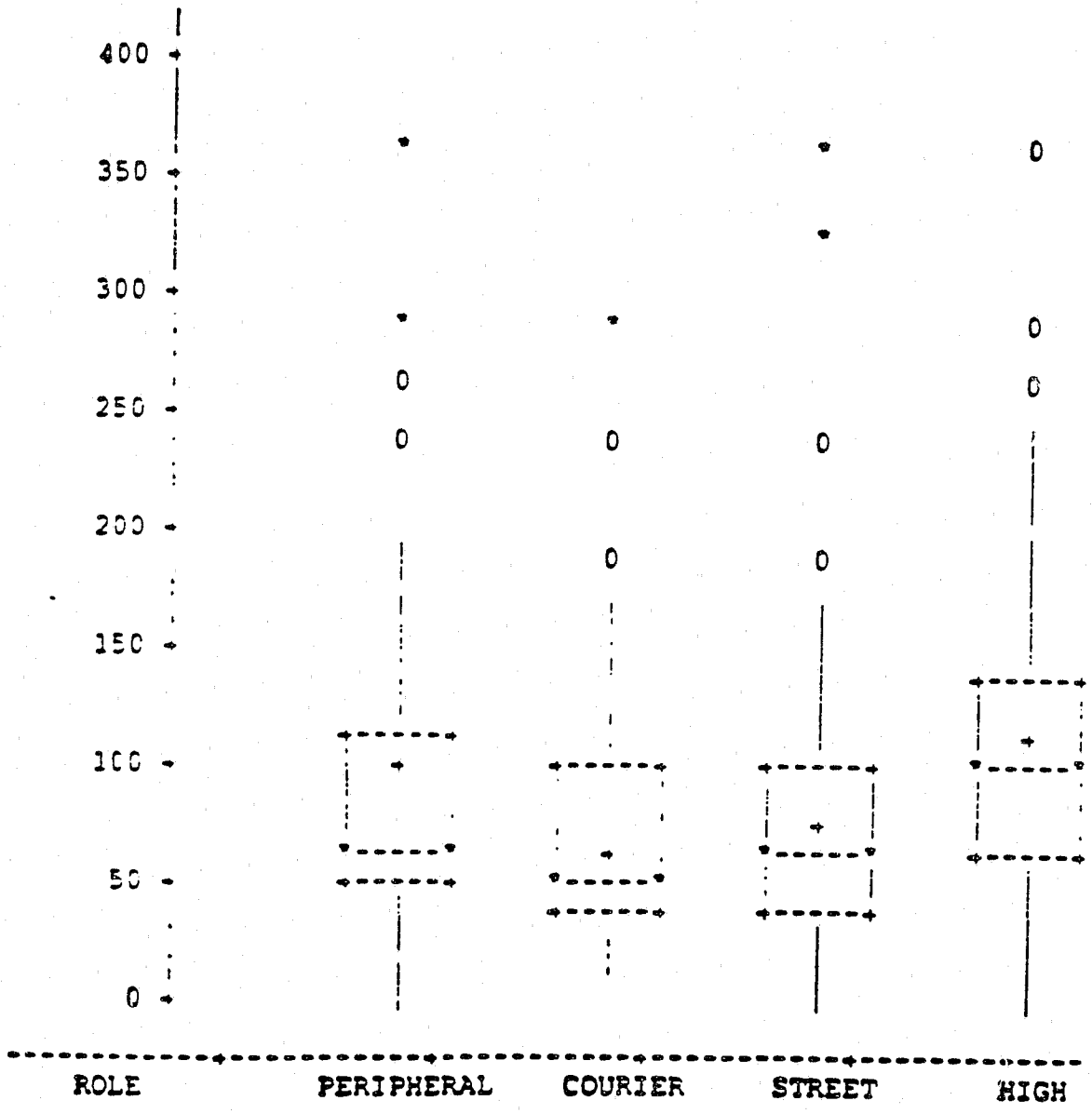
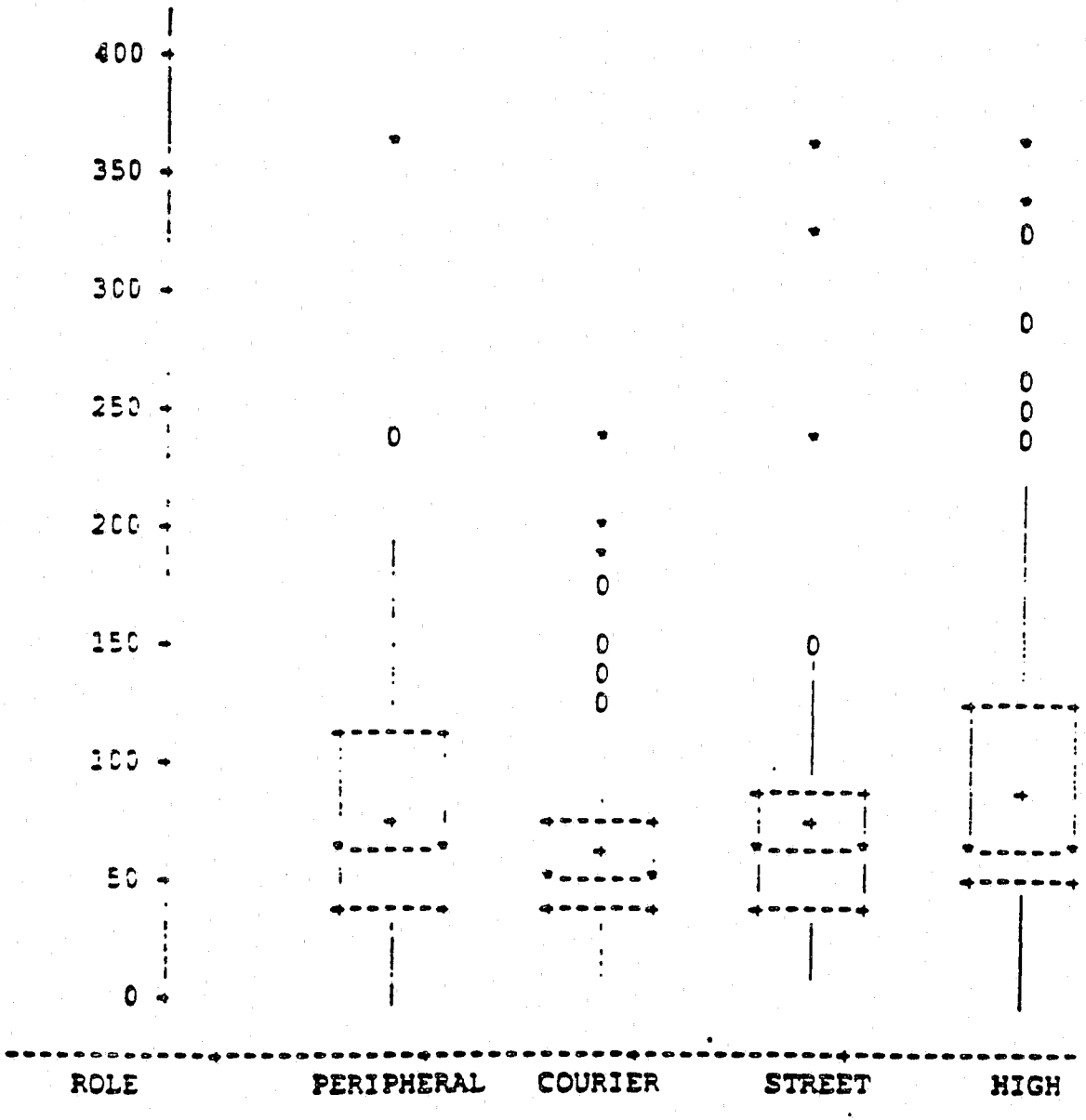


FIGURE 3C

Average prison sentence (in months) for defendants having different functional roles.



Appendix A.

Sample Selection

A sample of "low-level" drug offenders was selected by running against the Bureau of Prisons automated file of inmates (SENTRY). Prior to this sample selection, the Office of Research and Evaluation (ORE) used criteria similar to those referenced below to generate descriptive statistics on "low-level" drug offenders. In June 1993, there were 76,835 sentenced inmates in both Bureau and contract facilities monitored by the BOP. Of those sentenced offenders, 45,198 (59 percent) were convicted of drug offenses. Of sentenced drug offenders, 16,316 (36.1 percent) were considered "low-level" drug defendants. For the present analysis, the following sample selection criteria were used to select inmates from the BOP automated files.

Drug Offense Conviction: Includes only those inmates whose instant offense included a drug offense.

No Previous Commitments: Includes only those inmates who have no documented history of a commitment of any length from a prior conviction. Juvenile or YCA adjudication records were used unless expunged or vacated.

Sentenced in 1992: Includes only those inmates who had their sentences imposed in 1992. This criterion was chosen as a practical matter. The U.S. Sentencing Commission records which were used to code the data are only readily available through 1991. Department of Justice staff also expressed a concern that AUSA's records were not readily accessible for defendants sentenced in earlier years.

No Record of a Firearm in the Instant Offense: Excludes those inmates whose current offense involved the possession of a firearm and it is apparent that firearms were intended to influence the commission of the offense. An inmate was excluded if a weapon was not necessarily used in the offense but was in close proximity (e.g., in the inmate's vehicle or residence) to the inmate when he/she was apprehended.

No Record of Previous Violence: Excludes those inmates who have a prior record of violence, including prior institutional behavior, prior conviction offenses, or any other information implying violent past behavior. Juvenile or YCA adjudication records can be used unless expunged or vacated.

This selection resulted in 6,554 inmates. After deleting inmates who were sentenced prior to implementation of the Sentencing Reform Act (SRA), 6,302 offenders remained. This data set was merged with data from the U.S. Sentencing Commission. There were matches on 5,855 offender. Two additional selection criteria were applied to the data based on USSC information:

Aggravating Role: Excludes those inmates who received an adjustment under the guidelines for an aggravating (important) role in the offense.

Mandatory-Minimum Sentence: Includes only those inmates who were convicted of an offense that carries a mandatory-minimum penalty.

After applying the aggravating role criteria and excluding defendants with missing data as well, 5,099 inmates remained. Of those 5,099 offenders, 32.5 percent (1,657) had no indication of a mandatory-minimum penalty. Thus, there were 3,442 offenders remaining in the data set after all the above criteria had been applied. In order to supplement our knowledge of these cases, two samples were selected from the data set. Offenders were sampled using judicial district and citizenship as sampling strata, i.e., inmates were proportionally sampled based on those two criteria. Sample 1 included defendants from the pool of 5,099 who did and did not have a mandatory-minimum penalty indicated. This sample contained 767 offenders.

In addition, 7 cases were randomly selected from 18 districts. This sample (Sample 2) was restricted to mandatory-minimum cases only; however, most of the offenders overlapped with Sample 1. There were only 40 offenders in sample 2 who were not in sample 1. These offenders were from districts represented in sample 2 which had fewer than 7 offenders represented in sample 1.

For the first samples 1 and 2, a code sheet was filled out which included information not contained in automated files. These data included marital status, employment history, drug abuse, types and amounts of drugs pertaining to the instant offense, gang affiliation, and whether a weapon was possessed or used in the current offense. For the 126 cases from the 18 jurisdictions in addition to the coding form, a protocol was filled out by two groups of Department of Justice staff. The protocol asked for responses to the following questions:

1. With what offense or offenses was the defendant charged?
2. How many other defendants were there in this case?
3. In broad terms, describe the nature of case against this defendant and his/her co-defendants, e.g. "buy bust", undercover buy, "cold hit", Title III, historical conspiracy, violent crime initiative, or other (refer to the indictment if necessary).
4. What role did the defendant play in the organization or scheme?
5. Describe the defendant's specific conduct.
6. Using the attached descriptions, specify the defendant's "role in the offense."
7. What brought this case to your attention and influenced you to charge the defendant in this case (and with a mandatory minimum offense)?
8. Describe the defendant's background, including the following characteristics, if applicable:
    a. The extent and nature of past criminal activity, charged or uncharged, including juvenile offenses, if known.
    b. The nature of past and present criminal associations, including any involvement with gang or organized criminal activity.

c. Any history of charged or uncharged violence (with or without firearms) or association with violent individuals.

9. Was there anything incriminating or aggravating about this defendant that was not taken into consideration at sentencing and not made part of the record to your knowledge?

10. Was there anything mitigating or sympathetic about this defendant that was not taken into consideration at sentencing and not made part of the record to your knowledge?

11. Did the defendant provide substantial assistance? If so, what was the extent of the departure? Was the departure based on a 5K1.1 or a Rule 35 motion?

12. Did the trial judge comment upon the application of the mandatory minimum sentence in this particular instance?

13. Do you have any additional comments about this defendant?

Appendix B.

Explanation and Coding Scheme for Role in the Offense

Indicate the most serious (not necessarily the primary) specific function or task performed by the defendant in the criminal activity.

High-Level Dealer/Importer: Purchases or imports drugs near the top of the drug distribution chain, and distributes drugs to other high-level or mid-level dealers; or leads, directs, or otherwise runs a significant drug organization.

Pilot/Boat Captain: Transports a large cargo of drugs in a boat or an airplane .

Mid-Level Dealer: Distributes large quantities to other mid-level dealers or to street-level dealers. This category includes "spot"-dealers who are the "owners" of a specific street corner or spot and distribute drugs to street level dealers.

Street-Level Dealer: Distributes small quantities directly to the user.

Manufacturer/Mill Manager: Manufactures a controlled substance and /or manages and oversees a packaging operation called a mill.

Financier: Provides money for purchase, importation, manufacture, cultivation, transportation, or distribution of drugs.

Money Launderer: Arranges for or assists in concealment, transportation, and laundering of drug-related proceeds.

Bodyguard/Strongman/Debt Collector: Provides physical and personal security for another participant in the criminal activity; collects debts owed, or punishes recalcitrant persons or competitors.

Broker/Steerer/Go-Between: Arranges for two parties to buy/sell drugs, or directs potential buyer to a potential seller.

Courier: Transports or carries drugs with the assistance of a vehicle or other equipment. Includes situations where defendant, who is otherwise considered to be a crewmember, is the only participant directing a vessel (e.g., a go-fast boat) onto which drugs had been loaded from a "mother ship."

Mule: Transports or carries drugs internally or on their person, often by airplane, or by walking across a border. Also includes a defendant who only transports or carries drugs in baggage, souvenirs, clothing, or otherwise.

Renter/Storer: Provides, for profit/compensation, own residence or other's, structures (barns, storage bins, buildings), land, or equipment for use to further the criminal activity.

Moneyrunner: Transports/carries money from the purchase or sale of drugs in the criminal activity.

Off-loader/Loader: Performs the physical labor required to put large quantities of drugs into storage or hiding or onto some mode of transportation.

Gofer/Lookout/Deckhand/Worker/Employee: Performs very limited, low-level function in the criminal activity (whether or not ongoing); includes running errands, answering the telephone, receiving packages, packaging the drugs (e.g., millworker), manual labor, acting as lookout to provide early warnings during meetings, exchanges, or off-loading, or acting as deckhand/crewmember on vessel or aircraft used to transport large quantities of drugs.

Enabler (Passive): Plays no more than passive role in criminal activity, knowingly permitting certain unlawful criminal activity to take place without affirmatively acting in any way to further such activity; may be coerced or unduly influenced to play such a function (e.g., a parent or grandparent threatened with displacement from a home unless they permit the activity to take place), or may do so as "a favor" (without compensation); may include the rare case of a "passenger" or one of two "drivers" of a vehicle transporting drugs, where the defendant is almost certainly unaware of the presence of drugs in the vehicle.

User Only: Possessed small amount of drugs apparently for personal use only; no apparent function in any conspiratorial criminal activity.

Appendix C

Variable	Explanation of Variables
LPRISON	log of prison sentence (in months)
INTERCEP	intercept of equation
LSTDDRUG	log of drug amount in marijuana equivalence weight
TOTCHPTS	total criminal history points
TRIAL1	trial = 1, plea = 0
HELP	substantial assistance = 1, otherwise 0
AGE	age in years
MALE	male = 1, female = 0
BLACK	black = 1, white = 0
CITIZEN	U.S. citizen = 1, non-citizen = 0
SPOUSE	married or common law = 1, otherwise 0
HIGHMID	high- or mid-level dealer = 1 , otherwise 0[40]
STREET	street-level dealer = 1, otherwise 0
MONMANF	money launderer/manufacturer = 1, otherwise 0
COURIER	courier = 1, otherwise 0
FEMPLOY	employed = 1, not employed = 0
SPS_WRK	interaction of marriage and employment

[40] The referent vector for all four functional role dummy variables was peripheral role.

Model: A Dependent Variable: LPRISON

Analysis of Variance

Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	14	124.10872	8.86491	28.948	0.0001
Error	558	170.87959	0.30624		
C Total	572	294.98832			

Root MSE	0.55339	R-square	0.4207
Dep Mean	4.06594	Adj R-sq	0.4062
C.V.	13.61029		

Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	T for H0: Parameter=0	Prob > |T|
INTERCEP	1	3.099528	0.14104160	21.976	0.0001
LSTDDRUG	1	0.127208	0.00877921	14.490	0.0001
TOTCHPTS	1	0.063629	0.06942561	0.917	0.3598
TRIAL	1	0.480377	0.06338010	7.579	0.0001
HELP	1	-0.284939	0.06506073	-4.380	0.0001
AGE	1	0.001317	0.00242552	0.543	0.5875
MALE	1	0.082221	0.06350206	1.295	0.1959
BLACK	1	0.097701	0.05492159	1.779	0.0758
CITIZEN	1	-0.125232	0.05247816	-2.386	0.0173
SPOUSE	1	-0.017151	0.06958047	-0.246	0.7295
MITROLHI	1	-0.188501	0.05817960	-3.240	0.0013
HIGHMID	1	0.180498	0.09316886	1.937	0.0532
STREET	1	0.089757	0.09663618	0.929	0.3534
MONMANT	1	0.261446	0.10829669	2.414	0.0161
COURIER	1	-0.000832	0.08651129	-0.010	0.9923

Variable	DF	Standardized Estimate
INTERCEP	1	0.00000000
LSTDDRUG	1	0.50583831
TOTCHPTS	1	0.03007882
TRIAL	1	0.25901214
HELP	1	-0.15586377
AGE	1	0.01843848
MALE	1	0.04297279
BLACK	1	0.06198739
CITIZEN	1	-0.08667011
SPOUSE	1	-0.01194943
MITROLHI	1	-0.11717394
HIGHMID	1	0.10620501
STREET	1	0.05058685
MONMANT	1	0.10820343
COURIER	1	-0.00055988

Appendix C. Cont'd.

Model: B Dependent Variable: LPRISON

Analysis of Variance

Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	15	124.13385	8.27559	26.979	0.0001
Error	557	170.85447	0.30674		
C Total	572	294.98832			

Root MSE	0.55384	R-square	0.4208
Dep Mean	4.06594	Adj R-sq	0.4052
C.V.	13.62150		

Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	T for H0: Parameter=0	Prob > |T|
INTERCEP	1	3.093926	0.14250844	21.710	0.0001
LSTODRUG	1	0.127331	0.00879704	14.474	0.0001
TOTCHPTS	1	0.063315	0.06969124	0.911	0.3626
TRIAL	1	0.479629	0.06351870	7.548	0.0001
HELP	1	-0.285756	0.06517684	-4.384	0.0001
AGE	1	0.001316	0.00242752	0.542	0.5881
MALE	1	0.079208	0.06442080	1.230	0.2194
BLACK	1	0.098437	0.05502681	1.789	0.0742
CITIZEN	1	-0.128616	0.05368732	-2.392	0.0171
SPOUSE	1	-0.017962	0.04970220	-0.361	0.7179
METHDHI	1	-0.187796	0.05827960	-3.222	0.0013
HIGHMID	1	0.182162	0.09362225	1.950	0.0517
STREET	1	0.092128	0.09706973	0.949	0.3430
MONMAINT	1	0.263157	0.10855075	2.424	0.0157
COURIER	1	-0.001460	0.08661037	-0.017	0.9866
EMPLOY	1	0.014232	0.04972892	0.286	0.7748

MODEL B: Continued.

Variable	DF	Standardized Estimate
INTERCEP	1	0.00000000
LSTDDRUG	1	0.50632955
TOTCHPTS	1	0.02993048
TRIAL	1	0.25850111
HELP	1	-0.15631055
AGE	1	0.01842332
MALE	1	0.04139768
BLACK	1	0.06245378
CITIZEN	1	-0.08867424
SPOUSE	1	-0.01251463
MITROLHI	1	-0.11673573
HIGHMID	1	0.10717203
STREET	1	0.05192272
MONMAINT	1	0.10891177
COURCEP	1	-0.00098263
FEMPLOY	1	0.00967120

Model: C, Dependent Variable: LPRISON

Analysis of Variance

Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	16	124.47814	7.77988	25.369	0.0001
Error	556	170.51017	0.30667		
C Total	572	294.98832			

Root MSE	0.55378	R-square	0.4220
Dep Mean	4.06594	Adj R-sq	0.4053
C.V.	13.62000		

Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	T for H0: Parameter=0	Prob > |T|
INTERCEP	1	3.109941	0.14329215	21.704	0.0001
LSTDDRUG	1	0.127042	0.00880031	14.436	0.0001
TOTCHPTS	1	0.062809	0.06948523	0.904	0.3664
TRIAL	1	0.477153	0.06354803	7.509	0.0001
HELP	1	-0.288175	0.06520962	-4.419	0.0001
AGE	1	0.001497	0.00243326	0.615	0.5388
MALE	1	0.079125	0.06441375	1.228	0.2198
BLACK	1	0.096486	0.05505160	1.753	0.0802
CITIZEN	1	-0.125165	0.05376906	-2.328	0.0203
SPOUSE	1	-0.080930	0.07746904	-1.045	0.2966
MITROLHI	1	-0.185603	0.05830993	-3.183	0.0015
HIGHMID	1	0.191060	0.09379044	2.037	0.0421
STREET	1	0.098935	0.09727142	1.017	0.3095
MONMAUT	1	0.275288	0.10914093	2.522	0.0119
COURIER	1	0.008724	0.08713260	0.100	0.9203
EMPLOY	1	-0.036865	0.06927069	-0.532	0.5948
SPE_WRK	1	0.102313	0.09656143	1.060	0.2898

Model C: Continued.

Variable	DF	Standardized Estimate
INTERCEP	1	0.00000000
LSTDDRUG	1	0.50517832
TOTCHPTS	1	0.02969128
TRIAL	1	0.25727367
HELP	1	-0.15763356
AGE	1	0.02095836
MALE	1	0.04135454
BLACK	1	0.06121504
CITIZEN	1	-0.08662377
SPOUSE	1	-0.05638627
METROLHI	1	-0.11537245
HIGHMID	1	0.11241981
STREET	1	0.05575912
MONMAINT	1	0.11393222
COURIER	1	0.00587026
EMPLOY	1	-0.02505364
SPS_WRK	1	0.06686000

Appendix D

Protocol for Coding U.S. Sentencing Commission Files

1) CODER'S INITIALS: [| |]   DATE CODED: [|]/[|]/[|]
M M D D Y Y

2A) BOP REGISTER NUMBER: [| | | |]-[| |]

2B) INTERNAL KEY: [| | | | |]

2C) USSC ID: [| | | | |]

3) INMATE NAME:

[| | | | | |],[| | | | | | | | | |]
(last) (first)

4) FBI NUMBER: [| | | | | | | |]

5) WEAPON in any current offense: [|]

(1) NONE
(2) IMPLIED ONLY
(3) POSESS FIREARM
(4) FIREARM: AS THREAT
(5) FIREARM: TO CAUSE BODILY HARM
(6) POSESS KNIFE
(7) KNIFE: AS THREAT
(8) KNIFE: TO CAUSE BODILY HARM
(9) POSESS OTHER WEAPON
(10) OTHER WEAPON AS THREAT
(11) OTHER: TO CAUSE BODILY HARM
(12) 1 OR 2 AND BODILY HARM
(13) CO-DEFENDANT WITH A WEAPON
(99) MISSING OR UNKNOWN

6) Was subject EMPLOYED (Verified Employment) at the time of ARREST OR REVOCATION leading to the current commitment?

___ (1) YES
___ (2) NO
___ (3) NOT EMPLOYABLE (e.g. institutionalized)
(9) NO INFO

7) Marriage Status at Commitment:

___ (1) SINGLE
(2) MARRIED
___ (3) WIDOWED
(4) DIVORCED
(5) SEPARATED
(6) COMMON LAW
(7) OTHER
(9) NOT KNOWN

8) VERIFIED EMPLOYMENT (OR FULL-TIME SCHOOL ATTENDANCE) for a total of at least 6 months during the last 2 years in the community prior to the current commitment?

___ (1) YES
(2) NO
___ (9) NOT KNOWN

DRUG USE INFORMATION

9)
ANY DRUG USE EVER

(1) YES
(2) NO

Any use ever, of:

10) OPIATES | 11) HALLUCINOGENS | 12) COCAINE | 13) OTHER STIMULANTS

14) BARBITURATES | 15) MARIJUANA | 16) ALCOHOL | 17) OTHER ILLEGAL DRUGS

ANY DRUG USE IN LAST FREE YEAR IN THE COMMUNITY

Any use in the last year, of:

18) OPIATES | 19) HALLUCINOGENS | 20) COCAINE | 21) OTHER STIMULANTS

22) BARBITURATES | 23) MARIJUANA | 24) ALCOHOL | 25) OTHER ILLEGAL DRUGS

DRUG USE IN CURRENT OFFENSE

During the current offense, was the individual UNDER THE INFLUENCE OF:

26) OPIATES | 27) HALLUCINOGENS | 28) COCAINE | 29) OTHER STIMULANTS

30) BARBITURATES | 31) MARIJUANA | 32) ALCOHOL | 33) OTHER ILLEGAL DRUGS

HISTORY OF DRUG USE

Used any of the following drugs 5 or more times:

34) OPIATES | 35) HALLUCINOGENS | 36) COCAINE | 37) OTHER STIMULANTS

38) BARBITURATES | 39) MARIJUANA | 40) History of abuse (involved in current offense and/or indication of abuse on PSI e.g., 2 DWI's referral to alcohol treatment) of ALCOHOL.

41) OTHER ILLEGAL DRUGS |

42) ROLE IN CURRENT OFFENSE:

_____
_____

01. High-Level Dealer
02. Pilot/Boat Captain
03. Mid-Level Dealer
04. Street-Level Dealer
05. Manufacturer/Mill Manager
06. Financier
07. Money Launderer
08. Bodyguard/Strongman/Debt Collector
09. Broker/Steerer/Go-Between
10. Courier
11. Mule
12. Renter/Storer
13. Moneyrunner
14. Off-Loader/Loader
15. Gopher/Lookout/Deckhand/Worker/Employee
16. Enabler (Passive)
17. User Only

43) Drug Type, Current Conviction (Check if appropriate and fill in amount in grams)

☐ HEROIN/OPIATES

Amount in grams

☐ CRACK/COCAINE BASE

Amount in grams

☐ COCAINE

Amount in grams

☐ HALLUCINOGENS

Amount in grams

☐ BARBITURATES

Amount in grams

☐ STIMULANTS

Amount in grams

☐ MARIJUANA

Amount in grams

☐ OTHER ILLEGAL DRUGS

Amount in grams

44A) Drug type that the total drug quantity was based on:

___ 1. Heroin/Opiates
___ 2. Crack/Cocaine Base
___ 3. Cocaine
___ 4. Hallucinogens
___ 5. Barbiturates
___ 6. Stimulants
___ 7. Marijuana
___ 8. Other Illegal Drugs

44B) Total Drug Quantity in grams that the base offense level was based on :
Note: Check SOR against PSR to reconcile total offense level

45) Was there any gang affiliation or membership?

___
___

1. Yes If Yes, Fill in gang _____.
2. No
3. Some indication, but not verified

45) Was gang membership relevant in instant offense?

___
___

1. Yes If Yes, Fill in gang _____.
2. No
3. Some indication, but not verified

46) Comments including quality of information in PSR:

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