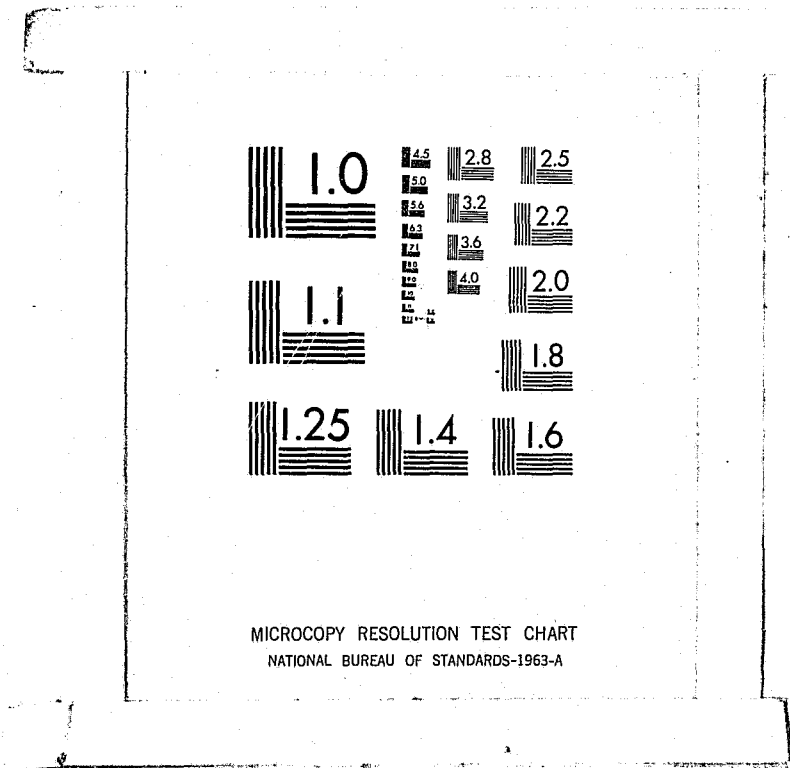


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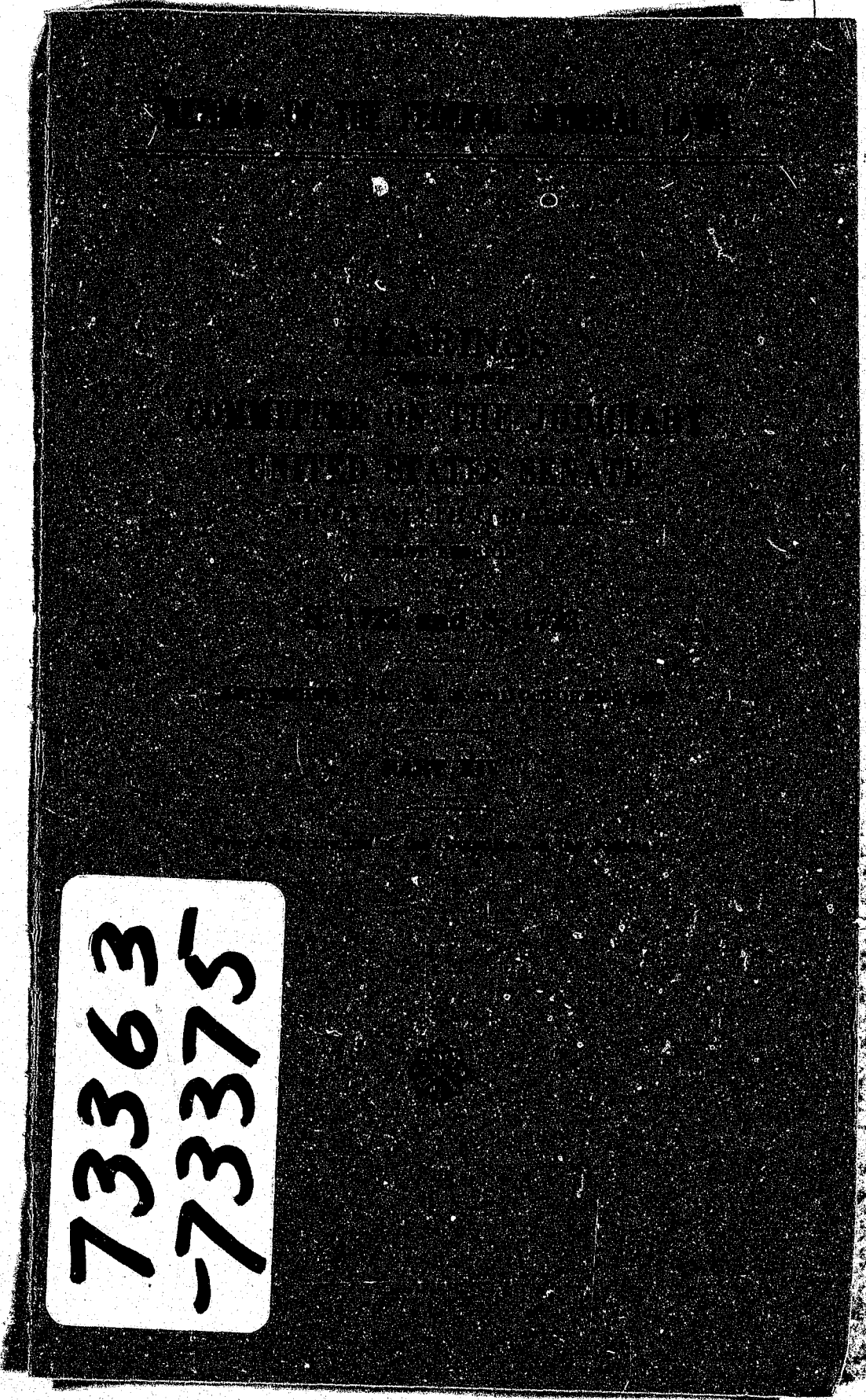


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REFORM OF THE FEDERAL CRIMINAL LAWS

NCJRS

OCT 20 1980

HEARINGS
BEFORE THE ACQUISITIONS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1722 and S. 1723

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

PART XIV

Printed for the use of the Committee on the Judiciary



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 and Recording Industry of America Inc.
 Concerning Film and Record Piracy and
 Counterfeiting

November 17, 1978.

SENTENCING PROVISIONS OF MAJOR CRIMINAL CODE REFORM LEGISLATION OF THE
 95TH CONGRESS: POSSIBLE IMPACT ON SENTENCE LENGTH AND TIME SERVED IN
 PRISON

INTRODUCTION

The following is an examination of data developed by the Congressional Research Service to determine through computer analysis the possible impact on prison terms imposed and prison terms served of the sentencing provisions of major legislative proposals of the 95th Congress which would have restructured the Federal criminal code. The analysis is based on a number of assumptions as to the impact of the proposals on judicial sentencing behavior. The bills considered are H.R. 6869 (introduced by House Judiciary Committee Chairman Rodino), H.R. 2311 (introduced by Representative Cohen), and S. 1437 (introduced by Senators McClellan and Kennedy) as passed by the Senate on January 30, 1978.

A study similar to this one was requested in 1975 by the Subcommittee on National Penitentiaries of the U.S. Senate Judiciary Committee during that Committee's consideration of S. 1, the major criminal code reform bill of the 94th Congress. In discussions with Subcommittee staff at that time we ascertained what information that staff considered most useful in consideration of that legislation. A report was issued in March of 1976 showing the results of the examination of those assumptions that were felt to be most crucial at that time.¹

All three bills considered by the 95th Congress call for several radical departures from existing sentencing procedures. H.R. 6869 and H.R. 2311 would maintain parole release but would eliminate statutory good time. S. 1437 would maintain both parole release and statutory good time, though not in the same form as under current law. Under S. 1437 as passed by the Senate, the normal sentence to imprisonment would be served in full with no eligibility for parole; only in the "unusual" case in which a defendant is sentenced solely for rehabilitative purposes would it be contemplated that a judge would specify that a defendant is eligible to be considered for early release on parole.² Those individuals not eligible for parole would earn time off for good behavior—good time—at the rate of three days per month after the first year of imprisonment—a lesser amount than can be earned under current good time provisions. In addition, both H.R. 6869 and S. 1437 would establish a U.S. Sentencing Commission to issue guidelines to govern the imposition of sentences by Federal judges and the granting of early release by the U.S. Parole Commission.

During its consideration of this legislation, the House Criminal Justice Subcommittee heard testimony expressing concern that despite the elimination of good time under H.R. 6869 and H.R. 2311 and the virtual abolition of parole under S. 1437, sentences imposed under these bills if enacted might not differ significantly from sentences imposed under current law. Concern was expressed that there should be adequate safeguards in the legislation to ensure that sentences recommended by a Sentencing Commission and that sentences actually imposed should not be too long. Therefore, the House Subcommittee believed it would be valuable to repeat our earlier analysis in order to test what the effects might be under each of the three new bills should current sentencing practices continue relatively unchanged. A report of the results of this analysis was issued in June of 1978,³ and they are repeated in this report. No attempt was made in the analysis to predict what sentencing guidelines a Sentencing Commission might develop nor their possible effect on sentencing practices.

However, several provisions of S. 1437 and the Senate report support the contention that under S. 1437 sentence lengths would more closely approximate the amount of time currently served in prison rather than the length of sentence currently imposed. S. 1437 directs the Sentencing Commission in promulgating its guidelines to "be guided by . . . in cases involving sentences to terms of imprisonment, the lengths of such terms actually served" in categories of cases

¹ See Jacobsen, Madeleine, Charlotte J. Moore, and Miriam S. Saxon, Preliminary Study of the Possible Impact of S. 1 on the Federal Prison Population, Washington, D.C., Library of Congress, Congressional Research Service, March 10, 1976, 25 p.

² U.S. Congress, Senate, Committee on the Judiciary, Criminal Code Reform Act of 1977; Report to Accompany S. 1437, Washington, U.S. Govt. Print. Off., 1977. (95th Congress, 1st session, Report No. 95-605), p. 883.

³ See McClure, Barbara, and Steve Chilton, Study of the Possible Impact on Sentence Length and Time Served in Prison of Sentencing Provisions of Major Criminal Code Reform Legislation of the 95th Congress, Washington, D.C., Library of Congress, Congressional Research Service, June 7, 1978, 29 p.

prior to the creation of the Commission, and to "tak[e] into account the nature and capacity of the penal, correctional, and other facilities and services available . . . to assure that the available capacities of such facilities and services will not be exceeded."⁴ The Senate Judiciary Committee report on the bill states that "with the almost total elimination of early parole release it is absolutely essential that the Commission not be unduly influenced by the lengths of sentences of imprisonment imposed today."⁵ To assure compliance with the guidelines, the bill directs the court to impose a sentence within the guideline range unless it finds aggravating or mitigating circumstances not adequately considered by the Commission, and it requires the court to state the specific reason for departing from the guideline and provides a right to appellate review as a result of inconsistency with the guideline.⁶ Both the House and Senate Subcommittees heard testimony to the effect that as a result of these provisions of S. 1437 and its legislative history, terms of imprisonment imposed under that bill would approximate the amount of time now actually served in prison rather than the lengths of sentences now actually imposed. Therefore, the Senate Judiciary Subcommittee on Criminal Laws and Procedures believed it would also be valuable to test the effects of S. 1437 based on the assumption that sentences imposed under the guidelines imposed by a Sentencing Commission would closely approximate the amount of time currently served in prison. The results of this analysis are contained in this more comprehensive report.

There is a significant lack of quantitative analysis in the literature regarding changes in sentencing policy and practices which result from statutory change in the law governing sentencing, which means that there are few tools on which to base a predictive model. For this reason, we have made no attempt in this study to use any single model of estimated sentences. We did, however, apply four different assumptions to our data in order to gauge a range of possible sentences and time served in prison under the proposed legislation.

The source of our data was a 20% sample of all Federal offenders sentenced to prison in fiscal year 1974. This sample was drawn from a computer tape provided by the Administrative Office of the United States Courts, which annually collects data on offenders convicted in the U.S. District Courts. Although we have a high degree of confidence in the data that we have developed, we recognize that there are certain problems in using it as a basis for predictive analysis. First, the 1974 population of convicted offenders may not be similar to the population in subsequent years because of differing proportions of types of convictions or differing law enforcement or prosecutorial priorities. Second, the Administrative Office tape records only the most serious offense that was a basis for conviction in each case without regard to other counts. Therefore, it could be argued that the data on the tape do not accurately reflect the crimes for which there were convictions in 1974. However, the addition of multicount information would have required extensive staff time and most likely would have resulted in distorted sentence length data due to the preponderant practice of sentencing to concurrent rather than consecutive sentences of imprisonment.⁷

An additional caution must be noted concerning the conclusions of this report as to possible effects on man years served in prison and prison population, since it is not feasible to evaluate in this report any encouragement given by the legislation to increased use of alternatives to imprisonment.⁸ Any reduction that might result in the percentages of offenders that are imprisoned would have an effect on prison population and man years that could not be reflected using the methodology in this report.

The principal conclusions of this study set forth a wide range of possibilities, each of which is as valid as its corresponding assumption. For example, the study states four possible effects of the enactment of S. 1437 on prison man years, ranging from an increase of 92.8 percent to a decrease of 27.7 percent. In order to determine whether any one of these possible effects is likely, the assumption on which it is based must be evaluated.

⁴ Title III, chapter 58, sec. 904(1).

⁵ *Ibid.*, sec. 904(g).

⁶ U.S. Congress, Senate, Committee on the Judiciary, Criminal Code Reform Act of 1977: Report to Accompany S. 1437, op. cit., p. 1189.

⁷ Title I, Chapter 20, sec. 2003(a) (2) and 2003(b); Chapter 37, sec. 3725(a).

⁸ See Dawson, Robert O. Sentencing, 1969, Pp. 207-210.

⁹ See Dawson, Boston, Little, Brown and Co., 1969, Pp. 207-210. S. 1437, for example, directs the Sentencing Commission to insure that the guidelines reflect the appropriateness of a sentence other than imprisonment for a minor offense by a first offender, and the general inappropriateness of imprisoning an offender solely for a rehabilitative purpose. Title III, Chapter 58 (1), (j).

Despite all the considerations discussed above, we believe that the data give us sufficient information on the characteristics of the population sentenced to prison in 1974 to permit us to provide a range of projections as to the possible impact of the sentencing provisions of the various 95th Congress criminal code reform proposals in an area where little such information has heretofore existed. It is our hope that this analysis, with due regard to its limitations, will supply useful information for policymaking purposes.

In summary, and with due regard for the cautions raised above, the results of our analyses indicated that there would be an estimated overall decrease from current law in average maximum sentences imposed under all three bills examined—a 17.5 percent decrease under H.R. 6869, a 52.7 percent decrease under H.R. 2311, and a 30.8 percent decrease under S. 1437. By applying different assumptions about what may occur with regard to sentences actually imposed as a result of statutory change, we also developed a range of possible sentences under each of the bills. Under the assumption that sentencing practices would continue to approximate current practices, we estimated that the range of average imposed sentences under H.R. 6869 would be from 86 to 90 percent of average imposed sentences under current law; the range under H.R. 2311 would be from 47 to 67 percent; and the range under S. 1437 would be from 72 to 86 percent. However, under the assumption that sentencing practices would be modified to reflect the amount of time currently served in prison, we estimated that the range of average imposed sentences under S. 1437 would be from 31 to 39 percent of average imposed sentences under current law.

We further estimated that the elimination of good time by H.R. 6869 might result in a total increase of 1712.9 man-years served in prison (based on the total population of offenders sentenced to prison during fiscal year 1974), an estimated 6.3 percent increase. We estimated that the almost total elimination of parole and the reduction in available statutory good time under S. 1437 might lead to a 62.8 percent to 92.8 percent increase in prison man-years based on sentencing assumptions closely approximating current sentencing practices, and to a 6.3 percent to 27.7 percent decrease based on sentencing assumptions closely approximating the current amount of time served in prison. Because these figures may be subject to misinterpretation, it is essential that they be viewed only in light of the qualifications presented in the full text. For a full discussion of the assumptions, used to arrive at these ranges see parts III, IV, and V, below.

I. DEVELOPMENT OF THE DATA

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

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

To assure the credibility of our comparison between convictions under current law and under S. 1, at our request the U.S. Department of Justice's Criminal Division provided a legislative attorney with extensive background in the drafting of S. 1 to make the comparative determinations. Briefly, he was asked to identify the title and section number of the U.S. Code under which each offender in the sample had been convicted. In case of a multicount conviction, the title and section number of the offense regarded as the most serious (by maximum prison term) was recorded. He was then asked to record the maximum sentence provided by the cited U.S. Code section, and the actual prison sentence the offender received. After recording this information, he was referred to the official version of the offense as provided in the presentence report to determine the probable section of conviction under S. 1 and the maximum sentence available for the offense under that section. He was instructed to make the selection of the S. 1 section as comparable as possible to the actual conviction under the current U.S. Code.

Sufficient information was available in the presentence reports to identify most offenders' probable time served in prison through application of parole guidelines issued by the U.S. Parole Commission. Under these guidelines, an offender is assigned a "salient factor score" based on certain individual characteristics such as prior record. This score, coupled with the severity of the offense, determines a fairly narrow range of months that the offender should serve in prison. The Parole Commission, in the great majority of cases, uses this range to determine when an offender should be released on parole.²⁰

We contracted with the American University Institute for Advanced Studies in Justice to interpret and record parole guideline information from the presentence reports. The coders, trained in court data collection, were oriented for this specific task by Dr. Peter B. Hoffman of the U.S. Parole Commission, one of the principal designers of the parole guidelines. Parole data were recorded for all cases in our sample except for about 100 for which there was insufficient information.²¹

For our current study, we began with this same data base developed for the original S. 1 study. Based on the S. 1 section numbers and maximum sentences assigned by the Justice Department attorney in that study, we assigned comparable sections of conviction and maximum sentences under each of the three bills in the 95th Congress, H.R. 6869, H.R. 2311, and S. 1437. By adding this information to the data base, we were able to make some determinations as to the effect the sentencing provisions of each of these proposals may have on length of sentences and time served in prison for Federal offenders.

II. ANALYSIS OF AVERAGE MAXIMUM SENTENCE POSSIBLE

Although few offenders are sentenced to the maximum statutory limit for imprisonment, it is important to examine the changes in maximum sentences that would occur if H.R. 6869, H.R. 2311, or S. 1437 were enacted because of the possible effect these changes may have on sentences actually imposed.²² Table I shows that the average maximum sentence for all offenses in our sample under the present U.S. Code is 9.79 years. Under H.R. 6869, the average maximum for all offenses in our sample is 8.08 years; under H.R. 2311, 4.63 years; and under S. 1437, 6.77 years. Thus, under H.R. 6869 there would be approximately a 17.5-percent decrease in this total average maximum sentence; under H.R. 2311 there would be a 52.7-percent decrease; and under S. 1437 there would be a 30.8-percent decrease.

²⁰ Hoffman, Peter. Federal Parole Guidelines: Three Years of Experience. U.S. Board of Parole Research Unit Report 10, Nov. 1975. p. 7.

²¹ For more complete details on the development of the original data base, see Jacobsen, Madeleine, Charlotte J. Moore, and Miriam S. Saxon, op. cit., p. 3-8.

²² Maximum terms of imprisonment under the three bills are:

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

Among specific offense categories, there is a wide range in the percentage change in average maximum sentences under the three bills. For example, analysis of the largest offense category, narcotics offenses, shows that average maximum sentences would decrease under each of the bills—by 3.9 percent under H.R. 6869, by 39.1 percent under H.R. 2311, and by 20.9 percent under S. 1437. For robbery offenses, there would be a 33.0-percent decrease under H.R. 6869, a 68.8-percent decrease under H.R. 2311, and a 44.1-percent decrease under S. 1437.

The average maximums shown in Table I include mandatory consecutive sentences that would apply under H.R. 6869 and S. 1437, i.e., section 1823 of these two bills which mandates consecutive sentences if a defendant is charged with and convicted of using a firearm or dangerous weapon during the commission of a crime of violence. Excluded from the table are juvenile delinquency offenses and offenses such as conspiracy which under the three bills would carry penalties determined by a related substantive offense (18 U.S.C. 371, 18 U.S.C. 8, 18 U.S.C. 4). As an example of this latter group, if an offender were convicted under 18 U.S.C. 371, the conspiracy section, under H.R. 6869, H.R. 2311, and S. 1437, the penalty would be determined by the offense that is the object of the conspiracy.

TABLE I.—AVERAGE MAXIMUM SENTENCE IMPOSABLE

Offense type	Offense count	Maximum (years)			
		United States Code	H.R. 6869	H.R. 2311	S. 1437
Homicide.....	15	24.93	26.20	10.13	25.33
Robbery.....	212	22.57	14.91	7.04	12.61
Assault.....	34	7.43	4.53	3.44	4.12
Burglary.....	12	13.75	9.50	2.67	7.92
Larceny and theft.....	221	7.03	3.99	2.67	3.10
Embezzlement.....	40	5.40	4.93	3.33	4.08
Fraud.....	118	4.13	4.84	3.26	3.97
Auto theft.....	188	5.00	5.70	3.81	4.72
Forgery.....	198	10.01	6.34	4.10	5.27
Counterfeiting.....	33	13.48	11.46	6.73	9.55
Sex offenses.....	7	18.29	8.14	6.25	11.00
Marihuana.....	241	5.29	5.73	.27	4.77
Narcotics.....	476	13.95	13.41	8.50	11.03
Controlled substances.....	82	8.41	8.04	4.50	6.68
Bribery.....	4	8.50	7.50	4.50	6.00
Escape.....	103	4.97	5.95	3.70	4.97
Racketeering.....	43	12.14	8.72	5.59	7.21
Gambling and lottery.....	26	4.88	5.65	3.77	4.65
Kidnapping.....	13	45.00	12.00	7.00	20.00
Perjury.....	13	5.00	6.00	4.00	5.00
Firearms and weapons.....	169	6.63	5.37	3.54	4.36
Immigration laws.....	70	3.64	1.57	1.17	1.17
Liquor (IRS).....	34	5.00	4.94	3.29	3.94
Federal statutes.....	56	5.09	4.71	3.15	3.67
Other Federal statutes.....	22	8.05	6.55	4.47	5.41
All offenses.....	2,430	9.79	8.08	4.63	6.77

III. ASSUMPTIONS BASED ON CURRENT SENTENCING PRACTICES

In moving away from maximum sentences impossible to sentences which might actually be imposed under a new criminal code, it is necessary to use assumptions about what pattern of sentencing might result. The assumptions we used and their results are discussed in this section (III) and the next (IV).

A. *Proportionate sentencing assumption.*—The assumption used in Table II is: If offenders are currently sentenced to some proportion of the statutory maximum for their offense, they will continue to receive sentences of that proportion to the statutory maximum under a new criminal code (regardless of whether that offense's maximum increases or decreases).

This assumption is based on the view that the graduations in penalties embodied in the criminal law in general reflect the severity with which society views

various offenses,¹³ and therefore, any increases or decreases in maximum penalties will be reflected proportionately in sentences imposed.¹⁴

Based on this assumption, for each case in our data base, we calculated the relationship of the maximum sentence in months under present law to the sentence actually imposed.¹⁵ We then applied this ratio to the maximum sentence proposed for that offense under H.R. 6869, H.R. 2311, and S. 1437 to arrive at the estimated sentence to be imposed for each case under each bill. The figures in Table II represent the average maximum sentence and the average sentence actually imposed by offense category under current law, and the average maximum sentence and the average estimated proportionate sentence by offense category for each of the proposed bills.

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

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

Certain problems in employing this assumption based on proportionate sentencing should be noted. First, as previously discussed, the data tape received from the Administrative Office contains only the most serious offense of conviction recorded for each offender, i.e., multicount indictments were not recorded on this tape. However, the total prison sentence each offender received was recorded as the sentence given, regardless of whether it may have been a result of multicount concurrent or consecutive sentencing. We have no indication as to how many sentences in Table II are skewed by this problem. However, we do not consider this a serious problem because sentencing for multiple convictions is mainly concurrent, not consecutive (see footnote 8). It also could be argued that the proportion of a statutory limit may only be a small consideration in judicial sentencing decisions, such as type of plea, prior record of the defendant, and type of trial.¹⁶ The analysis using the proportionate sentencing assumption is unable to control for variations in such factors. The analysis also assumes that judges will alter their practices in direct proportion to a change in maximum sentences without altering their practices in response to other changes affecting lengths of prison terms in the same legislation.¹⁷

¹³ Barrett, Donald N. *Sentence Prediction and Penalties: A Sociological Approach*. Notre Dame Lawyer, v. 35, May 1960: p. 305.

¹⁴ An earlier Congressional Research Service study using this same data base found a strong statistical relationship between the statutory maximum and the judge's disposition under current law. See Saxon, Miriam, Steve Chilton, and Clay Wilson. *Characteristics, Crimes, and Sentences Received by Federal Offenders: Summary of Findings*. Washington, D.C.: Library of Congress, Congressional Research Service, August 1, 1977. p. 8. However, we are aware of no study which analyzes how this relationship changes with statutory change.

¹⁵ A life sentence was counted as 45 years (540 months).

¹⁶ For a discussion of factors effecting sentencing decisions see, Tiffany, Laurence P., et al. *A Statistical Analysis of Sentencing in Federal Courts: Defendants Convicted After Trial, 1967-1968*. Journal of Legal Studies, v. 4, June 1975: pp. 369-390.

¹⁷ For example, it assumes that sentences for an offense will be reduced by one-third as a result of revisions in the law which reduce the applicable maximum term from 3 years to 2 years; but will not be reduced as a result of revisions requiring that prisoners serve about 90 percent rather than 40 percent of their sentences.

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

Offense type	United States Code		Maximum H.R. 6869	Possible H.R. 6869
	Maximum	Actual		
Homicide.....	299	1 329	314	1 333
Robbery.....	271	140	179	94
Assault.....	89	32	54	27
Burglary.....	165	73	114	53
Larceny and theft.....	84	37	42	22
Embezzlement.....	65	19	59	18
Fraud.....	50	25	53	29
Auto theft.....	60	37	68	42
Forgery.....	120	36	76	23
Counterfeiting.....	162	43	137	36
Sex offenses.....	219	1 257	98	95
Marihuana.....	63	32	69	36
Narcotics.....	157	57	161	59
Controlled substances.....	101	38	96	39
Bribery.....	102	6	90	7
Escape.....	60	25	72	30
Racketeering.....	146	36	105	29
Gambling and lottery.....	59	10	68	11
Kidnapping.....	540	358	144	96
Perjury.....	60	30	72	36
Firearms and weapons.....	80	51	64	29
Immigration laws.....	44	26	19	13
Liquor (IRS).....	60	18	59	17
Federal statutes.....	61	35	56	43
Other Federal statutes.....	97	84	79	58
All offenses.....	117	51	97	44

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

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

B. Identical sentencing assumption.—The assumption used in Table III is: Regardless of any increases or decreases in maximum sentences, given the same set of factual circumstances, sentences imposed under a new criminal code will be the same as sentences imposed under the former law unless that sentence could exceed the maximum sentence allowable under the new criminal code.

This assumption is based on the view that sentencing guidelines and judges will be influenced by past experiences in sentencing, and when confronted with the same set of factual circumstances would impose the same sentence under a new criminal code as under the former law, except where that sentence exceeds the maximum allowable under the new law.¹⁸

In order to evaluate the effect that failure by judges to change their sentencing practices would have on sentences actually imposed, for each case in our data base, we assigned the same sentence under H.R. 6869, H.R. 2311, and S. 1437 that was actually imposed under the current U.S. Code.¹⁹ If the sentence actually given was longer than the statutory maximum provided for the offense in a bill, the maximum sentence under that bill was assigned instead. The figures in Table III represent the average sentence actually imposed by offense category under current law, and the average estimated sentence under this assumption by offense category for each of the proposed bills.

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

Applying the assumption to individual offense categories, we found that there would be no change in average sentences from current law under H.R. 6869 and S. 1437 for homicide offenses, but there would be a 97-month decrease under H.R. 2311 (49 percent). For narcotics offenses, the average sentence under H.R. 6869 would decrease by 2 months (4 percent), the average sentence under H.R. 2311 would decrease by 6 months (11 percent), and the average sentence under S. 1437 would decrease by 3 months (5 percent). In those instances in which the average predicted sentence under a bill equals the average imposed sentence under current law, there were no sentences given under current law which exceeded the maximums under the bill. In instances where the average predicted sentence is less than the average actual sentence under current law, there were cases in which the sentence under current law exceeds the maximum allowable sentence under the bill—in which case the maximum allowable sentence was used.²⁰

TABLE III.—ESTIMATED SENTENCE IMPOSED: IDENTICAL SENTENCING ASSUMPTION
(In months)

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

¹⁸ See Statement of Cecil C. McCall, before the House Judiciary Subcommittee on Criminal Justice (April 18, 1978).

¹⁹ For purposes of this analysis, all U.S. Code sentences longer than 45 years were counted as 45 years.

²⁰ This discussion in the previous section, concerning the limitations of the Administrative Office tape in that it contains only the most serious offense of conviction, applies equally to this analysis.

IV. ASSUMPTIONS BASED ON CURRENT PERIODS OF CONFINEMENT (S. 1437)

A. Identical to current confinement assumption.—The assumption used in Table IV is:

Regardless of any increase or decrease in maximum sentences, if parole is virtually abolished under a new criminal code (as in S. 1437) sentences will be imposed equal to current periods of actual confinement in prison (rather than currently imposed sentences).

This assumption is based on various provisions of S. 1437. That bill would require issuance of sentencing guidelines which take into consideration the time prisoners now actually serve and the capacity of prisons, contains provisions designed to induce judges to follow the guidelines, and has legislative history indicating the intent that average sentences imposed under S. 1437 would approximate time currently being served.²¹

Based on this assumption, we calculated the average time that would be served by each offender in our data base under the present U.S. Code²² and then assigned that amount of time as the sentence imposed under S. 1437. If the sentence actually assigned was longer than the statutory maximum provided for the offense in S. 1437, the maximum sentence under the bill was assigned instead. The figures in Table IV represent the average sentence imposed by offense category under current law, the average estimated time served by offenders under current law,²³ and the average estimated sentence under this assumption by offense category for S. 1437.

Examining the results of this analysis, we found that there would be a 31-month overall decrease from current law in average sentences imposed under S. 1437 (61 percent). Applying the assumption to individual offense categories, we found that for auto theft offenses the average sentence under S. 1437 would decrease by 17 months (46 percent), and average sentences for forgery offenses would decrease by 21 months (58 percent).

TABLE IV.—ESTIMATED SENTENCE IMPOSED: IDENTICAL TO CURRENT CONFINEMENT ASSUMPTION
(In months)

Offense type	Actual United States Code	Estimated time served		Possible S. 1437
		Actual United States Code	United States Code	
Homicide				
Robbery	329	40	42	40
Assault	140	42	17	42
Burglary	32	17	15	22
Larceny and theft	73	22	16	22
Embezzlement	37	17	18	16
Fraud	19	10	10	10
Auto theft	25	11	11	11
Forgery	37	21	20	20
Counterfeiting	36	16	15	15
Sex offenses	43	17	17	17
Marihuana	257	38	37	37
Narcotics	32	15	14	14
Controlled substances	57	28	27	27
Bribery	38	19	19	19
Escape	6	5	5	5
Racketeering	25	13	13	13
Gambling and lottery	36	16	15	15
Kidnapping	10	7	7	7
Perjury	358	52	52	52
Firearms and Weapons	30	15	15	15
Immigration Laws	31	18	18	18
Liquor (IRS)	26	8	7	7
Federal statutes	18	10	10	10
Other Federal statutes	35	9	9	9
All offenses	84	20	20	20
	51	21	20	

¹ For an explanation of how estimated time served was calculated, see pt. V of this report.

²¹ See footnotes 4-6.
²² For an explanation of how time served was calculated see part V of this report. It should be emphasized that average time served is based on the assumption that if an offender is released on parole it will be on the date calculated from the parole release guidelines.
²³ *Ibid.*

B. *Proportionate to current confinement assumption.*—The assumption used in Table V is:

If parole is abolished and the statutory maximums increase or decrease under a new criminal code, sentences will be imposed equal to current periods of confinement in prison adjusted in proportion to the changes in the statutory maximums.

As with the proportionate sentencing assumption, this assumption reflects the view that because the gradations in penalties embodied in the criminal law in general reflect the severity with which society views various offenses, it can be assumed that increases or decreases in maximum penalties will be reflected proportionately in sentencing guidelines and in sentences imposed by judges. However, under this assumption sentences would be increased or decreased proportionate to time currently served in prison (rather than current imposed sentences) because S. 1437 and its accompanying report indicate that sentences are intended to approximate time now being served rather than sentences now being imposed.²¹

Based on this assumption we again calculated the average time that would be served by each offender in our data base under the present U.S. Code.²² We also calculated the relationship of the maximum sentence in months under S. 1437 to the maximum sentence in months under current law, and then applied this ratio to the period of confinement under present law to arrive at the estimated sentence for each case under S. 1437. The figures in Table V represent the average sentence imposed by offense category under current law, the average estimated time served by offenders under current law,²³ and the average estimated sentence under this assumption by offense category for S. 1437.

Examining the results of this analysis, we found that there would be a 35 month overall decrease from current law in average sentences imposed under S. 1437 (69 percent). Applying the assumption to individual offense categories, we found that average sentences under S. 1437 for larceny and theft offenses would decrease by 29 months (78 percent), and the average sentence for firearms and weapons offenses would decrease by 18 months (58 percent).

TABLE V.—ESTIMATED SENTENCE IMPOSED: PROPORTIONATE TO CURRENT CONFINEMENT ASSUMPTION
(In months)

Offense type	Actual United States Code	Estimated time served United States Code	Possible S. 1437
Homicide	329	40	43
Robbery	140	42	23
Assault	32	17	13
Burglary	73	22	14
Larceny and Theft	37	17	8
Embezzlement	19	10	8
Fraud	25	11	11
Auto theft	37	21	20
Forgery	36	16	8
Counterfeiting	43	17	12
Sex offenses	257	38	26
Marihuana	32	15	14
Narcotics	57	28	24
Controlled substances	38	19	16
Bribery	6	5	4
Escape	25	13	13
Racketeering	36	16	10
Gambling and Lottery	10	7	7
Kidnapping	358	52	23
Perjury	30	15	15
Firearms and Weapons	31	18	13
Immigration laws	26	8	3
Liquor (IRS)	18	10	7
Federal statutes	35	9	11
Other Federal statutes	84	20	16
All offenses	51	21	16

¹ For an explanation of how estimated time served was calculated, see pt. V of this report.

²¹ See footnotes 4-6.

²² See footnote 22.

²³ Ibid.

V. ESTIMATED TIME SERVED IN PRISON

In addition to the possible effect of the criminal code reform proposals on lengths of sentences imposed, we also examined other provisions of the bills and possible changes in sentencing and parole practices which could directly affect actual time served in prison.

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

In Table VI the average time that would be served by offenders in the sample under the present U.S. Code was estimated as follows: first, the good time formula of 18 U.S.C. 4161 was applied to each offender's sentence in order to derive a predicted release date. Although good time can be withdrawn for disciplinary reasons, the maximum possible good time was applied because U.S. Bureau of Prisons authorities estimate that most offenders who are released due to accumulated good time are released with 80 to 90 percent of their potential statutory good time intact. Inmates may also earn extra good time for industrial work or meritorious service but this could not be accounted for in this study. The predicted parole guidelines date of release was then calculated for each offender.²⁷ The midpoint of the offender's appropriate range of months to be served in prison according to the guidelines was chosen as the number of months that would be served until release. In the case of the severity of an offense being ranked "greatest," the median months actually served by this group according to Parole Commission data was used.

A comparison was then made of each offender's predicted parole guideline release date and the predicted release date based on statutory good time. Based on the assumption that offenders are released by the earlier of the two dates calculated by these means, the earlier date was selected as the release date.²⁸ The average time served was then calculated by offense category both for the group of individuals who would probably be released on their parole guideline date and for the group who would probably be released with accumulated good time. In Table VI, each case in which the earlier date was the date based on statutory good time was included in the first two columns, headed "Goodtime." Each case in which the earlier date was the parole release date was included in the third and fourth columns, headed "Parole Guidelines." The average number of months served was then calculated for both groups combined to establish the estimated average time to be served under present law for all offenders in our sample (20.7 months), and forms the fifth column of Table VI.

²⁷ It should be noted that there have been minor changes in the parole guidelines since the data was first recorded for the original study. However, it is believed that these changes would have little effect on the outcome.

²⁸ A few offenders serve their entire sentence, but we could not account for these.

TABLE VI.—ESTIMATED TIME SERVED: PRESENT UNITED STATES CODE¹

	Goodtime		Parole guidelines ²		Total average months served
	Number	Average months served	Number	Average months served	
Homicide.....	5	19.0	10	50.8	40.2
Robbery.....	27	31.4	180	43.5	41.9
Assault.....	21	13.4	9	26.9	17.4
Burglary.....	2	10.1	10	24.7	22.3
Larceny and theft.....	82	11.4	130	20.1	16.7
Embezzlement.....	24	5.7	16	16.1	11.4
Fraud.....	61	5.1	53	17.5	20.5
Auto theft.....	62	14.9	118	23.4	15.6
Forgery.....	72	10.2	118	19.0	17.3
Counterfeiting.....	8	8.0	24	20.4	37.8
Sex offenses.....	3	24.9	3	50.7	14.7
Marihuana.....	121	10.1	117	19.4	27.5
Narcotics.....	231	21.4	237	33.4	19.3
Controlled substances.....	37	14.1	43	23.7	13.3
Bribery.....	4	5.2	0	0	16.2
Escape.....	46	11.0	32	16.6	7.2
Racketeering.....	29	13.2	14	22.5	52.4
Gambling and lottery.....	23	6.4	2	16.0	14.7
Kidnapping.....	0	0	13	52.4	17.9
Perjury.....	7	13.4	5	16.6	17.9
Firearms and weapons.....	97	14.7	66	22.5	9.8
Immigration laws.....	23	5.7	29	10.4	9.2
Liquor (IRS).....	19	6.1	14	14.9	20.1
Federal statutes.....	41	6.5	10	20.0	20.7
Other Federal statutes.....	12	15.8	10	25.2	
All offenses.....	1,062	13.6	1,263	26.6	

¹ These figures do not include juvenile delinquency offenses, offenses which would carry penalties determined by a related substantive offense under the 3 bills, and offenders whose presentence reports did not provide sufficient information for calculating the parole guideline data.

² Since individuals sentenced under the Youth Corrections Act do not receive good time, they are all included as parolees.

H.R. 6869 would maintain parole release but would eliminate statutory good time. In an effort to reflect only the proposed elimination of good time under this bill, we calculated the average months that would be served assuming all offender in our sample were confined until the parole guideline dates applicable under current parole guidelines, except that if release on that date would result in an offender serving longer than the actual sentence he received under current law, we assumed he would be released at the rate of expiration of his sentence. We could not take into account any changes in the guidelines that might result from the regrading of offenses under H.R. 6869 nor from sentencing guidelines issued under it. Then, the estimated average number of months served under the present U.S. Code was subtracted from the estimated average months served under the good time were eliminated to establish what, if any, additional amount of time (labeled in Table VII as "Extra Time Served") offenders would serve. An offender's actual sentence if not otherwise needed to calculate a parole guideline release date, so no attempt was made to incorporate the four sentencing assumptions into this analysis. Therefore, the analysis reflects only the possible impact of the elimination of good time. The analysis assumes that the Sentencing Commission and judges would not reduce average sentences imposed in response to the elimination of good time. No attempt was made to analyze the provisions of H.R. 6869 which allow a judge to impose a parole ineligibility period at any time up to nine-tenths of the sentence, since we would have no way to predict which offenders this would affect nor what period of parole ineligibility might be imposed.

This "Extra Time Served" data was used to calculate the effects in terms of additional prison man-years. For example, even though under the practices assumed our sample of individuals convicted of robbery would serve an average of 1 month longer in prison, this figure, multiplied by the 207 robbers in our sample would result in 17.2 additional man-years spent in prison for this group of offenders.

In Table VII the estimated average time served for our sample under the current U.S. Code is 20.7 months. The average time served estimate for the same group of offenders under the assumptions stated would be 22 months, a difference of approximately 1.3 months. This additional 1.3 months would increase prison man-years by 251.9 years for our sample alone.

The 1974 population from which we drew our original sample contained 15,706 offenders sentenced to some term of imprisonment. The results presented in Table VII are based on only 2325 of these. Therefore, if this 251.9-year increase in man-years were projected to the total 1974 population of offenders sentenced to prison, we estimate that the total average increase in prison man-years would be 1,712.9 years. This represents a 6.3-percent increase over the estimate of prison man-years under current law.²⁰

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

	Present United States Code average months served	H.R. 6869 parole guidelines		Effect of H.R. 6869	
		Number	Average months served	Extra time served ¹	Prison man-years
Homicide.....	40.2	15	41.9	1.7	2.1
Robbery.....	41.9	207	42.9	1.0	17.2
Assault.....	17.4	30	19.7	2.3	5.8
Burglary.....	22.3	12	22.7	.4	4.4
Larceny and theft.....	16.7	212	17.6	.9	15.9
Embezzlement.....	9.9	40	10.5	.6	2.0
Fraud.....	11.4	114	12.0	.6	5.7
Auto theft.....	20.5	180	21.6	1.1	16.5
Forgery.....	15.6	190	16.5	.9	14.3
Counterfeiting.....	17.3	32	17.6	.3	1.4
Sex offenses.....	37.8	6	40.5	2.7	17.9
Marihuana.....	14.7	238	15.6	.9	89.7
Narcotics.....	27.5	468	29.8	2.3	10.0
Controlled substances.....	19.3	80	20.8	1.5	4.4
Bribery.....	5.2	4	6.3	1.1	10.4
Escape.....	13.3	78	14.9	1.6	6.5
Racketeering.....	18.2	43	18.0	1.8	2.1
Gambling and lottery.....	7.2	25	8.2	1.0	2.0
Kidnapping.....	52.4	13	52.4	0	2.3
Perjury.....	14.7	12	17.0	2.3	25.8
Firearms and weapons.....	17.9	163	19.8	1.9	2.4
Immigration laws.....	8.1	57	8.6	.5	1.9
Liquor (IRS).....	9.8	33	10.5	.7	3.8
Federal statutes.....	9.2	51	10.1	.9	2.8
Other Federal statutes.....	20.1	22	21.6	1.5	
All offenses.....	20.7	2,325	22.0	1.3	251.9

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

H.R. 2311 also would maintain parole release and eliminate good time. However, the authorized maximum sentences under this bill are so greatly reduced from current law²⁰ that in many instances the parole release dates under the guidelines exceed the maximum sentence allowable under the bill, so that there is no reason to believe the parole guidelines would be maintained in their present form were it enacted. Therefore, there would be little value in applying the time served analysis to H.R. 2311.

S. 1437 would maintain both parole release and statutory good time, though not in the same form as under current law. Under this bill as passed by the Senate, the normal sentence to imprisonment would be served in full with no eligibility for parole; only in the "unusual" case in which a defendant is sentenced solely for rehabilitative purposes would it be contemplated that a judge would specify that a defendant is eligible to be considered for early release on parole.²¹ Those individuals who are ineligible for parole would earn good time at the rate of three

²⁰ Our earlier study of June 7, 1973, reported that the elimination of good time under H.R. 6869 might result in a total increase of 8936.9 man years served in prison, or an estimated 29.5-percent increase. However, since that study, it has come to our attention that the amount of the increase in prison man years reported there resulted less from the abolition of goodtime than from the fact that we assumed in our analysis of H.R. 6869 that prisoners would be confined for the periods provided by current parole guidelines even if the sentences imposed on them under current law were shorter than those periods provided by current parole guidelines even if the sentences imposed on them under current law were shorter than those periods. In the present analysis, therefore, if an offender's estimated parole guideline release date were later than the date of the expiration of his actual sentence under current law, we assumed he would be released at the earlier date.

²¹ See footnote 12.
²² U.S. Congress, Senate, Committee on the Judiciary, Criminal Code Reform Act of 1977; Report to Accompany S. 1437, op. cit., p. 883.

days per month after the first year of imprisonment—a lesser amount than can be earned under current 18 U.S.C. 2141. Calculations were made of the average months that would be served assuming all offenders in our sample were ineligible for parole and earned the maximum possible good time under S. 1437. Since good time earned must be subtracted from the sentence imposed to determine the actual time served, we made these calculations using the four alternative sentencing assumptions discussed in parts III and IV.

Tables VIII and IX present the results from employing the sentencing assumptions based on current sentencing practices without regard to how sentencing guidelines might change those practices. In Table VIII the estimated average time served for our sample under S. 1437, assuming all earned good time, using the proportionate sentencing assumption, and ignoring the possible effects of sentencing guidelines, would be 35.3 months, a difference of 14.6 months from our estimate of 20.7 months under current law. This additional 14.6 months would increase prison man years by 2,828.8 years for our sample, and by 19,235.8 years for the total 1974 population of offenders sentenced to prison. This represents a 70.5-percent increase over the estimate of prison man-years under current law.

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

	Present United States Code average months served	S. 1437 All good time		Effect of S. 1437	
		Number	Average months served	Extra time served ¹	Prison man-years
Homicide.....	40.2	15	324.0	283.8	354.8
Robbery.....	41.9	207	73.9	32.0	552.0
Assault.....	17.4	30	21.4	4.0	10.0
Burglary.....	22.3	12	40.8	18.5	18.5
Larceny and theft.....	16.7	212	16.4	-.3	-5.3
Embezzlement.....	9.9	40	14.4	4.5	15.0
Fraud.....	11.4	114	22.7	11.3	107.4
Auto theft.....	20.5	180	32.2	11.7	175.5
Forgery.....	15.6	190	18.3	2.7	42.8
Counterfeiting.....	17.3	32	27.7	10.4	27.7
Sex offenses.....	37.8	6	136.8	99.0	49.5
Marihuana.....	14.7	238	27.9	13.2	261.8
Narcotics.....	27.5	468	45.3	17.8	694.2
Controlled substances.....	19.3	80	30.4	11.1	74.0
Bribery.....	5.2	4	5.2	0	0
Escape.....	13.3	78	25.0	11.7	76.0
Racketeering.....	16.2	43	22.3	6.1	21.9
Gambling and lottery.....	7.2	25	8.5	1.3	2.7
Kidnapping.....	52.4	13	154.4	102.0	110.5
Perjury.....	14.7	12	28.5	13.8	13.8
Firearms and weapons.....	17.9	163	22.2	4.3	58.4
Immigration laws.....	8.1	57	8.7	.6	2.9
Liquor (IRS).....	9.8	33	12.3	2.5	6.9
Federal statutes.....	9.2	51	38.6	29.4	125.0
Other Federal statutes.....	20.1	22	46.0	25.9	47.5
All offenses.....	20.7	2,325	35.3	14.6	2,828.8

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

In Table IX the estimated average time served for our sample under S. 1437, assuming all earned good time, using the identical sentencing assumption, and ignoring the possible effect of sentencing guidelines, would be 39.9 months, a difference of 19.2 months from our estimate under current law. This additional 19.2 months would increase prison man-years by 3,720 years for our sample, and by 25,296 years for the total 1974 population of offenders sentenced to prison. This represents a 92.8-percent increase over the estimate of prison man-years under current law.

Additional calculations were made using each of the two sentencing assumptions based on current time imposed to determine the estimated average time that would be served under S. 1437 if 10 percent of the offenders in our sample were the "unusual" cases made eligible for early release on parole and 90 percent earned good time. Under the proportionate sentencing assumption, the average time served would be 33.7 months, a difference of 13 months from current law.

The resulting increase in prison man years for the sample would be 2,518.8 years, and for the total 1974 population of offenders sentenced to prison, the increase would be 17,127.8 years. This represents a 62.8-percent increase over the estimate of prison man-years under current law. Under the identical sentencing assumption, the average time served would be 38.1 months, a difference of 17.4 months from our estimate under current law. This additional 17.4 months would increase prison man-years by 3,371.3 years for our sample, and by 22,924.8 years for the total 1974 population of offenders sentenced to prison. This represents an 84.1-percent increase over the estimate of prison man-years under current law. It should be emphasized that the results presented in Tables VIII and IX do not take into account the effect that sentencing guidelines issued by a Sentencing Commission and other provisions of S. 1437 affecting sentencing standards and procedures might have on time served in prison.

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

	Present United States Code average months served	S. 1437 All good time		Effect of S. 1437	
		Number	Average months served	Extra time served ¹	Prison man-years
Homicide.....	40.2	15	191.0	150.8	188.5
Robbery.....	41.9	207	103.7	61.8	1,066.0
Assault.....	17.4	30	23.4	6.0	15.0
Burglary.....	22.3	12	57.9	35.6	35.6
Larceny and theft.....	16.7	212	16.7	7.3	129.0
Embezzlement.....	9.9	40	16.7	6.8	22.7
Fraud.....	11.4	114	21.0	9.6	91.2
Auto theft.....	20.5	180	32.8	12.3	184.5
Forgery.....	15.6	190	29.2	13.6	215.3
Counterfeiting.....	17.3	32	39.8	22.5	60.0
Sex offenses.....	37.8	6	98.6	60.8	30.4
Marihuana.....	14.7	238	26.1	11.4	226.1
Narcotics.....	27.5	468	49.8	22.3	869.7
Controlled substances.....	19.3	80	34.2	14.9	99.3
Bribery.....	5.2	4	6.3	1.1	.4
Escape.....	13.3	78	24.9	11.6	75.4
Racketeering.....	16.2	43	27.5	11.3	40.5
Gambling and lottery.....	7.2	25	9.1	1.9	4.0
Kidnapping.....	52.4	13	164.3	111.9	121.2
Perjury.....	14.7	12	24.0	9.3	9.3
Firearms and weapons.....	17.9	163	27.8	9.9	134.5
Immigration laws.....	8.1	57	11.0	2.9	13.8
Liquor (IRS).....	9.8	33	14.9	5.1	14.0
Federal statutes.....	9.2	51	21.6	12.4	52.7
Other Federal statutes.....	20.1	22	36.6	16.5	30.3
All offenses.....	20.7	2,325	39.9	19.2	3,720.0

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

Tables X and XI present the results from employing the sentencing assumptions based on current periods of confinement that are described in Part IV. In Table X the estimated average time served for our sample under S. 1437, assuming all earned good time and using the identical to current confinement sentencing assumption, would be 19.4 months, a decrease of 1.3 month from our estimate under current law. This 1.3-month difference would decrease prison man-years by 251.9 years for our sample, and by 1,712.9 years for the total 1974 population of offenders sentenced to prison. This represents a 6.3-percent decrease from the estimate of prison man-years under current law.

In Table XI the estimated average time served for our sample under S. 1437, assuming all earned good time and using the proportionate to current confinement sentencing assumption, would be 15 months, a decrease of 5.7 months from our estimate under current law. This 5.7-month difference would decrease prison man-years by 1,104.4 years for our sample, and 7,509.9 years for the total 1974 population of offenders sentenced to prison. This represents a 27.7 percent decrease from the estimate of prison man-years under current law.

TABLE X.—ESTIMATED TIME SERVED: IDENTICAL TO CURRENT CONFINEMENT ASSUMPTION

	Present United States Code, average months served	S. 1437, all good time ¹		Effect of S. 1437	
		Number	Average months served	Lesser time served ¹	Prison man-years
Homicide.....	40.2	15	37.4	2.8	3.5
Robbery.....	41.9	207	38.9	3.0	51.8
Assault.....	17.4	30	14.6	2.8	7.0
Burglary.....	22.3	12	21.1	1.2	1.8
Larceny and theft.....	16.7	212	15.6	1.1	19.2
Embezzlement.....	9.9	40	9.6	.3	1.4
Fraud.....	11.4	114	11.0	.4	3.0
Auto theft.....	20.5	180	19.4	1.1	16.5
Forgery.....	15.6	190	14.3	.8	12.7
Counterfeiting.....	17.3	32	16.7	.6	1.6
Sex offenses.....	37.8	6	34.7	3.1	19.8
Marihuana.....	14.7	238	13.7	1.0	70.2
Narcotics.....	27.5	468	25.7	1.8	6.0
Controlled substances.....	19.3	80	18.4	.9	0
Bribery.....	5.2	4	5.2	0	2.6
Escape.....	13.3	78	12.9	.4	5.4
Racketeering.....	16.2	43	14.7	1.5	4.2
Gambling and lottery.....	7.2	25	7.1	.1	4.3
Kidnapping.....	52.4	13	48.4	4.0	6.6
Perjury.....	14.7	12	14.1	.6	10.9
Firearms and weapons.....	17.9	163	17.1	.8	6.2
Immigration laws.....	8.1	57	6.8	1.3	3
Liquor (IRS).....	9.8	33	9.7	.1	1.7
Federal statutes.....	9.2	51	8.8	.4	2.2
Other Federal statutes.....	20.1	22	18.9	1.2	
All offenses.....	20.7	2,325	19.4	1.3	251.9

¹ "Lesser time served" reflects the difference between average months served under the present United States Code and average months served under the S. 1437 identical to current confinement assumption.

TABLE XI.—ESTIMATED TIME SERVED: PROPORTIONATE TO CURRENT CONFINEMENT ASSUMPTION

	Present United States Code, average months served	S. 1437, all good time		Effect of S. 1437	
		Number	Average months served	Lesser time served ¹	Prison man-years
Homicide.....	40.2	15	40.0	0.2	0.3
Robbery.....	41.9	207	22.2	19.7	339.8
Assault.....	17.4	30	12.8	4.6	11.5
Burglary.....	22.3	12	13.6	8.7	8.7
Larceny and theft.....	16.7	212	7.9	8.8	155.5
Embezzlement.....	9.9	40	7.8	2.1	7.0
Fraud.....	11.4	114	10.7	.7	6.7
Auto theft.....	20.5	180	18.7	1.8	27.0
Forgery.....	15.6	190	8.3	7.3	115.6
Counterfeiting.....	17.3	32	12.0	5.3	14.1
Sex offenses.....	37.8	6	24.7	13.1	6.6
Marihuana.....	14.7	238	13.2	1.5	29.8
Narcotics.....	27.5	468	22.6	4.9	191.1
Controlled substances.....	19.3	80	15.8	3.5	23.3
Bribery.....	5.2	4	4.3	.9	.3
Escape.....	13.3	78	12.9	.4	2.6
Racketeering.....	16.2	43	9.6	6.6	23.7
Gambling and lottery.....	7.2	25	6.7	.5	1.0
Kidnapping.....	52.4	13	22.1	30.3	32.8
Perjury.....	14.7	12	14.1	.6	6.6
Firearms and weapons.....	17.9	163	13.0	4.9	66.8
Immigration laws.....	8.1	57	3.0	5.1	24.2
Liquor (IRS).....	9.8	33	7.4	2.4	6.6
Federal statutes.....	9.2	51	10.4	-1.2	-5.1
Other Federal statutes.....	20.1	22	14.8	5.3	9.7
All offenses.....	20.7	2,325	15.0	5.7	1,104.4

¹ "Lesser time served" reflects the difference between average months served under the present United States Code and average months served under the S. 1437 proportionate to current confinement assumption.

In summary, we estimated that if good time were eliminated (as for example under H.R. 6069), and if parole guidelines remained the same as under current law, there might be a 6.3 percent increase in man years served in prison (based on the total population of offenders sentenced to prison in 1974). We estimated that the almost total elimination of parole and the reduction in available statutory good time under S. 1437, ignoring the possible effects of sentencing guidelines, might lead to a 62.8 percent to 92.8 percent increase in prison man-years based on sentencing assumptions closely approximating current sentencing practices. However, if sentencing guidelines and other changes in S. 1437 resulted in sentences based on current time served, there might be 6.3 percent to 27.7 percent decrease in prison man-years.

END