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# Federal Probation

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## This Issue in Brief

NOTES

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### ACQUISITIONS

**A Diversionary Approach for the 1980's.**—Various changes in social thought and policy of the past several years carry important implications for the treatment of young offenders. These changes include a marked decrease in public willingness to spend tax money for social programs, a shift in focus from offender-rights to victim-rights, and an increase in the desire for harsher treatment of serious offenders. The general social ethos reflected in those positions has prompted a reassessment and new direction for the delivery of juvenile diversion services in Orange County, California. Authors Arnold Binder, Michael Schumacher, Gwen Kurz, and Linda Moulson discuss a new Juvenile Diversion/Noncustody Intake Model, which has successfully combined the collaborative efforts of law enforcement, probation, and community-based organizations in providing the least costly and most immediate level of intervention with juvenile offenders necessary to protect the public welfare and to alter delinquent behavioral patterns.

**Home as Prison: The Use of House Arrest.**—Prison overcrowding has been a major crisis in the correctional field for at least the last few years. Alternatives to incarceration—beyond the usual probation, fines, and suspended sentences—have been tried or proposed. Some—such as restitution, community service, intensive probation supervision—are being implemented; others have simply been proposed. In this article, authors Ronald P. Corbett, Jr. and Ellsworth A.L. Fersch advocate house arrest as a solution to prison overcrowding and as a suitable punishment for many nonviolent, middle-range offenders. The authors contend that with careful and random monitoring of offenders by special probation officers, house arrest can be both a humane and cost-effective punishment for the offender and a protection to the public.

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explains that exclusionary rules developed to keep illegally obtained evidence from being used in court and that both arrests and searches can occur without a warrant in specific circumstances.

*Assessing Correctional Officers:*—Authors Cindy Wahler and Paul Gendreau review the research on correctional officer selection practices. Traditionally, selection of correctional officers was based upon physical requirements, with height and size being a primary consideration. A number of studies have

employed the use of personality tests to aid in the identification of the qualities of "good" correctional officers. These assessment tools, however, have provided qualities that are global and not unique to the role of a correctional officer. Noting a recent trend towards a behavioral analysis within the field personnel selection, the authors argue that a similar type of analysis may provide a more fruitful avenue for assessment of correctional officers.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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# Reliability in Guideline Application: Initial Hearings-1982

BY JAMES L. BECK AND PETER B. HOFFMAN\*

**I**N AN effort to enhance fairness and equity, the United States Parole Commission utilizes explicit decisionmaking guidelines in its determinations of the duration of imprisonment for Federal offenders under its jurisdiction.<sup>1</sup> These guidelines employ a two dimensional matrix to set forth the customary range of months to be served for various combinations of offense (severity)<sup>2</sup> and offender (parole prognosis) characteristics. Appendix I displays the guideline matrix currently used by the Parole Commission. Appendix II shows the "salient factor score," an actuarial risk assessment device, which provides the horizontal axis of the guideline matrix shown in Appendix I. Appendix III displays an excerpt from the "offense severity scale" which forms the vertical axis of the guideline matrix.<sup>2</sup> For each prisoner eligible for parole consideration, the applicable guideline range is calculated by the Parole Commission panel hearing the case. Discretionary decisions departing from the guidelines are permitted, but only for "good cause" and upon provision of specific written reasons.<sup>3</sup>

It is important that a guideline system actually structures discretion and does not merely conceal its exercise. To adequately structure discretion and provide consistency in case decisionmaking among similarly situated offenders, a guideline system must provide guideline ranges of relatively narrow width; accommodate sufficient information (decision factors) to enable the decisionmakers to be comfortable in remaining within the applicable guideline range a substantial majority of the time; and allow consistent calculation of the applicable guideline range from panel to panel. If these conditions are met, the application of the guidelines will facilitate consistent decisionmaking in ordinary cases, and increased attention may be focused on those cases with special circumstances that may indicate a departure from the guideline range. If these conditions are not met, the consistency-producing func-

tion of the guideline system is likely to be diminished.

However, the second and third conditions noted above may be difficult to achieve simultaneously. To accommodate the factors generally thought important in prison term/parole decisions, a guideline system must contain relatively complex information about the seriousness of the prisoner's offense and likelihood of criminal conduct upon release.<sup>4</sup> Yet, as the information included in a guideline system increases in complexity, the potential for inconsistent calculation of the applicable guideline range also increases. Every item, no matter how objective it may appear, has some potential for producing differences in interpretation. For example, the salient factor score item "prior commitment(s) of more than 30 days" appears to be a relatively objective item. But even this item raises questions. What about unexecuted terms? Does more than 30 days refer to the length of the sentence or to the days actually served? Are prior concurrent terms counted separately? What about prior consecutive terms? Is a term for behavior occurring prior to the current offense counted if it is imposed after commission of the present offense but prior to the present commitment? How are commitments which are later "pardoned" or "set aside" to be counted?

To facilitate consistent application of its guidelines, the United States Parole Commission provides its staff with a manual containing detailed instructions to assist in guideline assessment.<sup>5</sup> This

<sup>1</sup> See 18 U.S.C. Sec. 4206 (1976); 28 C.F.R. Sec. 2.20 (1983). For a description of the development and use of the guideline system, see Gottfredson, Wilkins, and Hoffman (1978) and Hoffman and Stover (1978).

<sup>2</sup> In January 1983, the Parole Commission implemented a revision of the severity scale which improved its organization and increased the number of severity levels from seven to eight. Its basic context, however, remained unchanged. The revised offense severity scale is shown in this paper. The severity scale and guideline format in use at the time of the hearings studied in this research may be found at 28 C.F.R. 2.20 (1982).

<sup>3</sup> See 18 U.S.C. Sec. 4206(c) (1976); 28 C.F.R. Sec. 2.20(c). During the fiscal years 1980-82, between 83 and 86 percent of the decisions at initial hearings were within the applicable guideline range or were nondiscretionary departures due to the constraint of sentence length (i.e., parole denial in a case with a mandatory release date below the guideline range or a parole grant at eligibility in a case with an eligibility date above the guideline range).

<sup>4</sup> The guideline system also considers institutional behavior. The guideline ranges are predicated on the absence of serious disciplinary infractions. 28 C.F.R. Sec. 2.36 contains guidelines for the sanctioning of disciplinary infractions. 28 C.F.R. Sec. 2.60 contains standards for the limited advancement of release dates for "superior program achievement."

<sup>5</sup> For instructions and guidance provided at the time of the hearings studied in this research, see the *U.S. Parole Commission Rules and Procedures Manual* (U.S. Parole Commission, 1982).

\*James L. Beck is deputy director and Peter B. Hoffman is director of Research and Program Development, United States Parole Commission. This article is adapted from United States Parole Commission, Research and Program Development Unit, Report Thirty-Five, March 1983.

research examines the extent to which the guideline determinations of Parole Commission hearing examiner panels can be independently replicated by research staff. Thus, this research addresses a primary requirement for guideline effectiveness: the ability of the system to achieve consistency in the calculation of the applicable guideline determinants.

### Research Design

A stratified random sample of initial hearings conducted during August and September 1982 was examined (N=100; 20 cases from each of the five Parole Commission regions). The Parole Commission file for each case was obtained, and the section of the file containing the hearing panel summary and Parole Commission action was sealed to prevent the research staff person scoring the case from becoming aware of the hearing panel's scoring. Each case then was scored independently by two research staff members. Severity rating, salient factor score items, salient factor score category, guideline type, and guideline range were recorded. Differences between the researchers were resolved and the research panel's judgment recorded.<sup>6</sup> After completion of this task, the case file was unsealed and the research panel scoring compared with that of the hearing panel.<sup>7</sup> When hearing panel/researcher differences occurred, the reasons underlying the differences were recorded. The researchers also noted cases in which the presentence report or other file material was unclear or inadequate and cases in which the guideline rules appeared subject to different interpretation.

### Findings and Discussion

For the current sample, substantive agreement on the guideline range between hearing examiner and research panels was found in 86 percent of the cases. This includes 3 percent of the cases in which the examiner panel had additional information unavailable to the researchers which affected the guideline assessment. In the remaining 14 percent of the cases, there was disagreement on the guideline range due to lack of guideline clarity, inadequate file information, or hearing panel error. There was agreement on the severity rating in 92 percent of the cases, agreement on the salient factor score category in 95 percent of the cases, and agreement

on the guideline type in 99 percent of the cases. Table 1 displays information on agreement/disagreement for each element considered in guideline calculation.

It is to be noted that not every disagreement on the guideline range produces actual decision disparity. To Parole Commission hearing examiners, a practice of giving the prisoner the benefit of the doubt on an unclear item, particularly a contested

TABLE 1. PERCENT AGREEMENT/DISAGREEMENT BY ITEM

	Agreement	Primary Source of Disagreement		
		Hearing Panel Error*	Inadequate File Information*	Guideline Clarity
Severity	92	1	1	6
Salient Factor Score Category	95	5	0	0
Salient Factor Score Items				
Item A	97	2	0	1
Item B	98	1	1	0
Item C	97	3	0	0
Item D	96	4	0	0
Item E	99	1	0	0
Item F	100	0	0	0
Guideline Type	99	1	0	0
Guideline Range	86	7	1	6

\*Note: The distinction between hearing panel error and inadequate information is somewhat imprecise. Both in this study and prior studies, the likelihood of hearing panel error appeared inversely related to the clarity of the presentence report. The more precisely the presentence report is written, the less likely is hearing panel error.

one, where the decision will be unaffected (e.g., where parole is denied on a case with a mandatory release date below the applicable guideline range) may appear to be justified to save time and argument and avoid an otherwise appealable issue. This would also be the case where a disagreement concerning one of the salient factor score items would not change the salient factor score category. Similarly, there may be a tendency to use the highest possible rating where clarity on the guideline range is lacking, but the parole eligibility date is above the

<sup>6</sup> In the case of an unresolvable difference between the two researchers scoring the case, a third staff member would cast the deciding vote.

<sup>7</sup> Modifications resulting from administrative review at the regional office pursuant to 28 C.F.R. Sec. 2.24 were considered; modifications resulting from appeal or subsequent review were not considered.

guideline range and parole on the eligibility date is being recommended. This may be considered as a strategy to demonstrate that parole on such date is considered warranted even if the case is considered in its least favorable light.

A record was kept of the actual decision for the cases in which a disagreement on the guideline range was present. For 11 of the 14 cases, the actual decision was nonetheless either within the guideline range established by the researcher panel or was a nondiscretionary departure from this range (mandated by a short mandatory release date). In the majority of the 14 cases, the difference in guideline assessment is not likely to have significantly affected the actual decision. More specifically, in six cases, the actual decision clearly would not have been affected;<sup>8</sup> in five cases, a different decision was possible, but not required;<sup>9</sup> and in three cases, a significantly different decision was clearly indicated.<sup>10</sup>

<sup>8</sup> Cases 9, 19, 57, 68, 80, and 97. In each of these cases, the decision was to continue to a mandatory release date below the guideline range calculated by the researchers.

<sup>9</sup> Cases 5, 36, 58, 67, and 79. In cases 5 and 58, the difference, if any, produced by the disagreement on guideline rating would not have exceeded 2 months; in case 79, the difference, if any, produced by the disagreement on guideline rating would not have exceeded 4 months; and in cases 36 and 67, a significant difference produced by the disagreement on guideline rating was possible, but a review of the circumstances surrounding the cases from the parole file indicated that a different decision was unlikely in either case.

<sup>10</sup> Cases 38, 87, and 93.

<sup>11</sup> Commission staff have conducted two similar previous studies (Hoffman, Fife, and Stone-Meierhoefer, 1980; Hoffman, Stone-Meierhoefer, and Fife, 1981). Data obtained in the first study were useful in the Commission's development of a revised salient factor score (SFS 81), implemented in August 1981, which modified or eliminated certain items that the research had shown to pose reliability problems. For a description of the revised salient factor score, see Hoffman (1982). Furthermore, in January 1983, the Commission implemented a revision of its offense index, based in part upon data from the above studies, partially to enhance scoring reliability. In addition, there have been two other studies of Federal parole guideline reliability. Lees and Burke (1981), using the same methodology as the Commission studies, found a lower consistency rate than the comparable study by Commission researchers, but a significant source of this difference admittedly was error on the part of the researchers scoring the cases. The Lees and Burke coders appeared to have little practical experience working with and interpreting prison/parole files and lacked the familiarity with the Federal parole guidelines that comes from day to day use. This highlights the importance of having trained, experienced decisionmakers apply a guideline system, as well as the need for clarity in the guideline system itself. A study by the U.S. General Accounting Office (1982), based upon a nonrandom sample of 30 cases, alleged serious reliability problems in calculation of the Commission guidelines. Unfortunately, this study contained several major methodological flaws. Most importantly, the 30 cases selected clearly were not typical, but rather were unusually complicated and/or were missing critical information. According to two General Accounting Office field staff persons who actually selected the cases, the selection of the most difficult cases was part of the research design (see U.S. General Accounting Office Report, Appendix 1 - U.S. Parole Commission Response). The draft report claimed the sample was selected "without using any prescribed method"; the final report stated the sample was selected "judgementally rather than randomly," but alleged that the Commission's criticism of the sampling procedure was not correct. Nevertheless, the U.S. General Accounting Office Report appears usefully to have focused the attention of the Commission's members and staff on the importance of maximizing reliability through policy clarification and quality control.

<sup>12</sup> Parole Commission Form F-5, February 1984.

### Summary

In application to actual cases, guideline-based decisionmaking has two stages. The first is the calculation of the applicable guideline range. The second is the decision as to whether the individual case is to be placed within the applicable guideline range or whether there are sufficient aggravating or mitigating factors to warrant a decision departing from the guidelines. A necessary, although not sufficient, condition for consistent decisionmaking under a guideline system is that the applicable guideline range can be calculated reliably from panel to panel. This research deals with the first stage of guideline application. It finds that while the applicable guideline ranges can be reliably calculated for the substantial majority of cases, there is nowhere near perfect agreement. This finding makes clear that the mere presence of guidelines is not in itself sufficient to ensure consistency in decisionmaking, and points to the need for continual monitoring and quality control of guideline application.

Research on reliability in guideline application can highlight these facets in the guideline system which are most difficult to interpret consistently, whether because of lack of guideline clarity, scoring complexity, or deficiencies in the the information available. Such research can serve to examine the effectiveness of the guideline system and focus the attention of the policymakers on those areas which may require clarification or other corrective action.<sup>11</sup>

### Addendum

Several steps are being taken by the U.S. Parole Commission to enhance reliability in guideline application. First, the Commission has developed procedures for hearing examiners to "prereview" cases sufficiently in advance of the hearing so that inadequate or conflicting information may be clarified. Second, the Commission has requested the Federal Probation System to provide the Commission with an "estimated guideline assessment" attached to the presentence report that will report the specific guideline indicants (offense severity rating and salient factor score items) for each case.<sup>12</sup> The key to guideline reliability lies primarily in the adequacy of the presentence report. Reporting the specific guideline indicants will improve clarity of the document and will allow the hearing examiners to focus on the specifics of any difference between the probation officer's assessment and the hearing examiner's assessment at the time of the prereview.

## FEDERAL PROBATION

APPENDIX I  
 GUIDELINES FOR DECISIONMAKING  
 Guidelines for Decisionmaking, Customary Total Time To Be Served before Release  
 (Including Jail Time)

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

<p>Category Six [formerly "Greatest I severity"]</p>	<p>Adult Range</p>			
	<p>40-52 months</p>	<p>52-64 months</p>	<p>64-78 months</p>	<p>78-100 months</p>
<p>(Youth Range)</p>				
<p>(30-40) months</p>	<p>(40-50) months</p>	<p>(50-60) months</p>	<p>(60-76) months</p>	
<p>Category Seven [formerly included in "Greatest II severity"]</p>	<p>Adult Range</p>			
	<p>52-80 months</p>	<p>64-92 months</p>	<p>78-110 months</p>	<p>100-148 months</p>
<p>(Youth Range)</p>				
<p>(40-64) months</p>	<p>(50-74) months</p>	<p>(60-86) months</p>	<p>(76-110) months</p>	
<p>Category Eight* [formerly included in "Greatest II severity"]</p>	<p>Adult Range</p>			
	<p>100+ months</p>	<p>120+ months</p>	<p>150+ months</p>	<p>180+ months</p>
<p>(Youth Range)</p>				
<p>(80+) months</p>	<p>(100+) months</p>	<p>(120+) months</p>	<p>(150+) months</p>	

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

APPENDIX II  
SALIENT FACTOR SCORE (SFS 81)

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

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

Item B: PRIOR COMMITMENT(S) OF MORE THAN 30 DAYS (ADULT OR JUVENILE)

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

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS

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

\*\*\* Exception: If five or more prior commitments of more than 30 days (adult or juvenile), place and "X" here \_\_\_\_\_ and score this item..... = 0

Item D: RECENT COMMITMENT-FREE PERIOD (3 YEARS)

- No prior commitment of more than 30 days (adult or juvenile) or released to the community from last such commitment at least 3 years prior to the commencement of the current offense..... = 1
- Otherwise..... = 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

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

Item F: HEROIN/OPIATE DEPENDENCE

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

TOTAL SCORE



APPENDIX III  
U.S. PAROLE COMMISSION OFFENSE SEVERITY INDEX

\* \* \*

## CHAPTER THREE - OFFENSES INVOLVING PROPERTY

## SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 *Property Destruction by Arson or Explosives*

- (a) If the conduct results in serious bodily injury\* or if "serious bodily injury is clearly intended,"\* grade as Category Seven;
- (b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury,\* grade as Category Six;
- (c) Otherwise, grade as "property destruction other than listed above" but not less than Category Five.

302 *Wrecking a Train*  
Category Seven.303 *Property Destruction Other Than Listed Above*

- (a) If the conduct results in bodily injury\* or serious bodily injury,\* or if "serious bodily injury is clearly intended,"\* grade as if "assault during commission of another offense";
- (b) If damage of more than \$500,000 is caused, grade as Category Six;
- (c) If damage of more than \$100,000 but not more than \$500,000 is caused, grade as Category Five;
- (d) If damage of at least \$20,000 but not more than \$100,000 is caused, grade as Category Four;
- (e) If damage of at least \$2,000 but less than \$20,000 is caused, grade as Category Three;
- (f) If damage of less than \$2,000 is caused, grade as Category One.
- (g) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

## SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 *Burglary or Unlawful Entry*

- (a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;
- (b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;
- (c) If the conduct involves use of explosives or safecracking, grade as Category Five;
- (d) Otherwise, grade as "theft" offense, but not less than Category Two.
- (e) *Exception:* If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense.

## SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACKMAIL

321 *Robbery*

- (a) Category Five.
- (b) *Exceptions:*
  - (1) If the grade of the applicable "theft" offense exceeds the grade for robbery, grade as a "theft" offense.
  - (2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained for a significant period, grade as Category Six.
  - (3) Pickpocketing (stealth—no force or fear), see Subchapter D.
- (c) *Note:* Grade purse snatching (fear or force) as robbery.

322 *Extortion*

- (a) If by threat of physical injury to person or property, or extortionate extension of credit (loan-sharking),\* grade as Category Five;
- (b) If by use of official governmental position, grade according to Chapter Six, Subchapter C.
- (c) *Exceptions:*
  - (1) If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense;
  - (2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 *Blackmail [threat to injure reputation or accuse of crime]*

Grade as a "theft" offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

## SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 *Theft, Forgery, Fraud, Trafficking in Stolen Property,\* Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses*

- (a) If the value of the property\* is more than \$500,000, grade as Category Six;
- (b) If the value of the property\* is more than \$100,000 but not more than \$500,000, grade as Category Five;
- (c) If the value of the property\* is at least \$20,000 but not more than \$100,000, grade as Category Four;
- (d) If the value of the property\* is at least \$2,000 but less than \$20,000, grade as Category Three;
- (e) If the value of the property\* is less than \$2,000, grade as Category One.
- (f) *Exceptions:*
  - (1) Offenses involving stolen checks or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property,\* or embezzlement shall be graded as not less than Category Two;
  - (2) Theft of an automobile shall be graded as no less than Category Three. *Note:* where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor.
- (g) *Note:* In "theft" offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. [[Notes and Procedures. Example (1): Seven persons in concert commit a theft of \$70,000; each receives \$10,000. Grade according to total amount (\$70,000). Example (2): Seven persons in concert fraudulently sell stock worth \$20,000 for \$90,000. Grade according to the loss (\$70,000)].

332 *Pickpocketing [stealth—no force or fear]*

Grade as a "theft" offense, but not less than Category Three.

333 *Fraudulent Loan Applications*

Grade as a "fraud" offense according to the amount of the loan.

334 *Preparation or Possession of Fraudulent Documents*

- (a) If for purposes of committing another offense, grade according to the offense intended;
- (b) Otherwise, grade as Category Two.

335 *Criminal Copyright Offenses*

- (a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;
- (b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;
- (c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;

- (d) If small scale (e.g., less than 2,000 sound recordings or less than 200 audio visual works), grade as Category Two.

## SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES

341 *Passing or Possession of Counterfeit Currency or Other Medium of Exchange\**

- (a) If the face value of the currency or other medium of exchange is more than \$500,000, grade as Category Six;
- (b) If the face value is more than \$100,000 but not more than \$500,000, grade as Category Five;
- (c) If the face value is at least \$20,000 but not more than \$100,000, grade as Category Four;
- (d) If the face value is at least \$2,000 but less than \$20,000, grade as Category Three;
- (e) If the face value is less than \$2,000, grade as Category Two.

342 *Manufacture of Counterfeit Currency or Other Medium of Exchange\* or Possession of Instruments for Manufacture*

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession), but not less than Category Five. The term "manufacture" refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes.

## SUBCHAPTER F - BANKRUPTCY OFFENSES

351 *Fraud in Bankruptcy or Concealing Property*

Grade as a "fraud" offense.

## SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 *Violation of Securities or Investment Regulations* (15 U.S.C. 77ff, 80)

- (a) If for purposes of fraud, grade according to the underlying offense;
- (b) Otherwise, grade as Category Two.

362 *Antitrust Offenses*

- (a) If estimated economic impact is more than one million dollars, grade as Category Four;
- (b) If the estimated economic impact is more than \$100,000 but not more than one million dollars, grade as Category Three;
- (c) Otherwise, grade as Category Two.

[[Notes and Procedures: The term "economic impact" refers to the estimated loss to any victims (e.g., loss to consumers from a price-fixing offense).]]

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